



March 7, 2022

VIA FACSIMILE: [REDACTED]

Colorado Supreme Court  
Office of Attorney Regulation Counsel  
1300 Broadway, Suite 500  
Denver, CO 80203

Dear Counsel:

The 65 Project is a bipartisan, nonprofit effort to protect democracy from abuse of the legal system by holding accountable lawyers who engage in fraudulent and malicious efforts to overturn legitimate elections.

We write to request that the Office of Attorney Regulation Counsel investigate the actions taken by Jenna Lynn Ellis (licensed as Jenna Lynn Rives) (Registration No. 44026) relating to a concerted effort to overturn the legitimate 2020 presidential election results. Ms. Ellis served as a lawyer and advisor to Donald Trump and his presidential campaign, working alongside Rudy Giuliani, John Eastman, Sidney Powell, and others in an effort to overturn the 2020 presidential election.

Ms. Ellis's conduct violated Rules of Professional Conduct 3.3 (Candor Toward Tribunal), 4.1 (Truthfulness in Statements to Others), 4.4 (Respect for Rights of Third Persons), and 8.4 (Misconduct). A full investigation by the Office of Attorney Regulation Counsel will demonstrate the egregious nature of Ms. Ellis's actions, especially when considered in light of her purposes, the direct and possible consequences of her behavior, and the serious risk that Ms. Ellis will repeat such conduct unless the Colorado Supreme Court acts on this matter.

### **BACKGROUND**

Donald Trump lost the 2020 presidential election.<sup>1</sup> Anticipating his loss, Mr. Trump and his allies began questioning the election's legitimacy months before even one voter had cast a ballot.<sup>2</sup> In fact, this fit a pattern of Mr. Trump declaring fraud or a rigged election any time he lost or anticipated a loss.

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<sup>1</sup> See United States National Archives, Electoral College Results – 2020, available at <https://www.archives.gov/electoral-college/2020>.

<sup>2</sup> Kevin Liptak, *A List of the Times Trump Has Said He Won't Accept the Election Results or Leave Office if He Loses*, CNN (Sept. 24, 2020), <https://www.cnn.com/2020/09/24/politics/trump-election-warnings-leaving-office/index.html>.

Joe Biden received over 81 million votes in November 2020, defeating Mr. Trump by over seven million votes and over four percentage points.<sup>3</sup> Mr. Trump’s head of the U.S. Cybersecurity and Infrastructure Security Agency, Christopher Krebs, [announced](#) that the “November 3<sup>rd</sup> election was the most secure in American history. . . . There is no evidence that any voting system deleted or lost votes or changed votes or was in any way compromised.” Mr. Trump [fired him](#). William Barr, Mr. Trump’s own Attorney General, [declared that the Department of Justice](#) has “not seen fraud on a scale that could have effected a different outcome in the election.” Attorney General Barr announced his resignation less than two weeks later, but not before again confirming that the 2020 elections had been free and fair.<sup>4</sup>

Many of Mr. Trump’s own senior advisors agreed with Attorney General Barr and Mr. Krebs.<sup>5</sup> Indeed, Deputy (and later Acting) Attorney General Jeffrey Rosen and Associate (and later Acting) Deputy Attorney General Richard Donoghue regularly refuted the false information and allegations that Mr. Trump and his allies asserted about a fraudulent election.<sup>6</sup> Mr. Rosen has testified that on December 15, 2020, at a meeting that included Mark Meadows, White House Chief of Staff, that he and others told Mr. Trump that the information he was receiving from his political allies was not correct.<sup>7</sup> And Mr. Donoghue has testified to the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee) that on December 27, 2020, he told Mr. Trump “in very clear terms” that after “dozens of investigations, hundreds of interviews” looking at “Georgia, Pennsylvania, Michigan, and Nevada,” the Department of Justice – Mr. Trump’s own Department of Justice – had concluded that “the major allegations are not supported by the evidence developed.”<sup>8</sup>

Despite clear proof that no fraud occurred, and that no one stole the election from him, Mr. Trump and his lawyers sought to overturn the legitimate results by filing 65 baseless lawsuits across the country.<sup>9</sup> None succeeded and, in fact, courts have imposed sanctions on the lawyers who participated in these suits and referred them for sanctions to their respective state bars.<sup>10</sup>

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<sup>3</sup> See Federal Election Commission, *Official 2020 Presidential General Election Results*, available at <https://www.fec.gov/resources/cms-content/documents/2020presgeresults.pdf>.

<sup>4</sup> M. Balsamo, *Disputing Trump, Barr says no widespread election fraud*, Associated Press (Dec. 1, 2020), <https://perma.cc/4U8N-SMB5>.

<sup>5</sup> See Deposition of Jason Miller (Feb. 3, 2022), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>;

Interview of Jeffrey Rosen (Aug. 7, 2021), United States Senate Committee on the Judiciary, 117th Cong. 30, available at <https://www.judiciary.senate.gov/rosen-transcript-final>.

<sup>6</sup> See Interview of Jeffrey Rosen *see also* Interview of Richard Donoghue (Oct. 1, 2021), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>

<sup>7</sup> Interview of Jeffrey Rosen.

<sup>8</sup> Interview with Richard Donoghue.

<sup>9</sup> W. Cummings, J. Garrison & J. Sargent, *By the numbers: President Donald Trump’s failed efforts to overturn the election*, USA Today (Jan. 6, 2021), available at <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>.

<sup>10</sup> See, e.g., *King v. Whitmer*, No. 20-13134 (U.S. Dist. Ct. E. Dist. Mich. Aug. 25, 2021), available at [https://www.michigan.gov/documents/ag/172\\_opinion\\_order\\_King\\_733786\\_7.pdf](https://www.michigan.gov/documents/ag/172_opinion_order_King_733786_7.pdf).

## FACTS GIVING RISE TO COMPLAINT

Ms. Ellis actively advised, and participated in, the litigation. As Rudy Giuliani, Mr. Trump's lead attorney stated:<sup>11</sup>

Well, this is representative of our legal team. We're representing President Trump and we're representing the Trump campaign. When I finish, Sidney Powell and then Jenna Ellis will follow me. And we will present in brief the evidence that we've collected over the last, I guess it is two weeks. Also, Joseph diGenova, Victoria Toensing are here with me. There are a lot more lawyers working on this, but I guess, we're the senior lawyers.

Ms. Ellis stood alongside Mr. Giuliani as the latter repeated falsehood after falsehood about the 2020 election, on behalf of the legal team representing Mr. Trump. In fact, just a small sampling of what Mr. Giuliani said *at one press conference* illustrates the problem:

And what emerged very quickly is it's not a single voter fraud in one state. This pattern repeats itself in a number of states. Almost exactly the same pattern, which to any experienced investigator, prosecutor would suggest that there was a plan from a centralized place to execute these various acts of voter fraud, specifically focused on big cities and specifically focused on, as you would imagine, big cities controlled by Democrats, and particularly focused on big cities that have a long history of corruption.

The number of voter fraud cases in Philadelphia could fill a library. Just a few weeks ago, there was a conviction for voter fraud and one two weeks before that. And I've often said, I guess, sarcastically, but it's true, the only surprise I would have found in this is if Philadelphia hadn't cheated in this election, because, for the last 60 years, they've cheated in just about every single election. You could say the same thing about Detroit.

Each one of these cities are cities that are controlled by Democrats, which means they can get away with anything they want to do. It means they have a certain degree of control over... certainly control the election board completely. And they control law enforcement. And unfortunately, they have some friendly judges that will issue ridiculously irrational opinions just to come out in their favor.

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<sup>11</sup> Rudy Giuliani Trump Campaign Press Conference Transcript November 19: Election Fraud Claims, available at <https://www.rev.com/blog/transcripts/rudy-giuliani-trump-campaign-press-conference-transcript-november-19-election-fraud-claims>.

...

A truck pulled up to the Detroit center where they were counting ballots. The people thought it was food, so they all ran to the truck. Wasn't food. It was thousands and thousands of ballots and the ballots were in garbage cans, they were in paper bags, they were in cardboard boxes, and they were taken into the center. They were put on a number of tables. At that time, they thought all the Republican inspectors had left, all but two had and an employee of Dominion who we will address a little bit later, Dominion.

And, again, while Mr. Giuliani spoke, he did so on behalf of the entire legal team. Indeed, photos from the press conference reveal Ms. Ellis as an active participant:



Jonathan Ernst/Reuters

*Trump Campaign Senior Legal Adviser Jenna Ellis speaks as Trump campaign adviser Boris Epshteyn whispers to former New York City Mayor Rudy Giuliani, personal attorney to President Donald Trump, during a news conference about the 2020 U.S. presidential election results at Republican National Committee headquarters in Washington, Nov. 19, 2020.*

And during her turn at the lectern, Ms. Ellis underscored that Mr. Giuliani had presented the equivalent of the legal team's opening argument:

So we have given you an overview, but recognize this is not a court of law. We will get there and we have time and we have constitutional provisions that will step in when we show the corruption and the irredeemably challenged and overturned votes that are absolutely corrupt in all of these counties. It is irredeemably compromised. We will show that, but you have to give us that opportunity. This has been just our opening statement and we have an opportunity to get there and we have time and we

will do that. This is the United States of America, and we stand proudly for President Donald J. Trump.<sup>12</sup>

Indeed, when Ms. Ellis spoke about the election in interviews and through her social media, she repeated the same false claims that Mr. Giuliani offered:

- “@RudyGiuliani and me on Third Circuit’s opinion: The activist judicial machinery in Pennsylvania continues to cover up the allegations of massive fraud. We are very thankful to have had the opportunity to present proof and the facts to the PA state legislature. On to SCOTUS!”<sup>13</sup>
- “Election official FRAUD must be and will be exposed in #Wisconsin! Count all LEGAL votes!”<sup>14</sup>
- “Joe Biden. Joe Biden. His press conference last week, he said let’s count all votes. What he hasn’t acknowledged is that he wants to count all legal votes. What he’s wanting is the late ballots. He’s wanting all of these ballots from dead, from non-residents all of those.”<sup>15</sup>
- “If we can go back to Pennsylvania, we have prevailed on two things. One is that we have the meaningful access part of this where we got a court order from a judge that said — because this is a long-standing tradition that both Republicans and Democrats need to be able to observe the ballots being counted. That was not going on in Pennsylvania or Michigan... We actually have, there are 682,000 ballots that were counted without meaningful access from Republicans or team Trump.”<sup>16</sup>
- “If you have two people in the room from a hundred feet away, and they’re not able to actually observe what’s going on and they’re actually seeing that there are ballots that are being manipulated, that are counted twice, that are being changed, that the signature matching some of the envelopes are being destroyed. These, we have over 11,000 credible reports that are coming in through our election hotline.”<sup>17</sup>
- “Hillary Clinton still has not conceded the 2016 election.”<sup>18</sup>

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<sup>12</sup> *Id.*

<sup>13</sup> Available at <https://twitter.com/jennaellisesq/status/1332380180065738754?lang=en>.

<sup>14</sup> Available at <https://twitter.com/jennaellisesq/status/1332895810313392130>.

<sup>15</sup> R. Lincoln & P. Owen, *Maier Fights With Trump Campaign Lawyer Jenna Ellis Over her Nonstop Falsehoods: ‘Just Stop It,’* Nov. 13, 2020, available at <https://www.thewrap.com/maier-fights-with-trump-campaign-lawyer-jenna-ellis-over-her-nonstop-falsehoods-just-stop-it/>.

<sup>16</sup> *Id.* But, in fact, observers were in the room. See D. Boucher, C. Hendrickson & T. Baldas, *Trump Lies Repeatedly About Election Efforts in Michigan, Detroit During National Speech*, Detroit Free Press (Nov. 5, 2020), available at <https://www.freep.com/story/news/politics/elections/2020/11/05/trump-speech-election-2020-detroit-michigan/6182170002/>.

<sup>17</sup> R. Lincoln & P. Owen, *Maier Fights With Trump Campaign Lawyer Jenna Ellis Over her Nonstop Falsehoods: ‘Just Stop It.’* But, in fact, the Trump campaign did not receive any credible calls. See M. Pitofsky, *Trump Campaign Ends Voter Fraud Hotline After it’s Filled with Prank Calls*, The Hill (Nov. 13, 2020), available at <https://thehill.com/homenews/campaign/525901-trump-campaign-ends-voter-fraud-hotline-after-its-filled-with-prank-calls>.

<sup>18</sup> R. Lincoln & P. Owen, *Maier Fights With Trump Campaign Lawyer Jenna Ellis Over her Nonstop Falsehoods: ‘Just Stop It.’* But, in fact, Hillary Clinton conceded the election on Nov. 9, 2016. See <https://www.youtube.com/watch?v=khK9fIgoNjQ>.

- “Our strategy... is to continue to challenge all of these false and fraudulent votes... the point of this, of course, is to get to fair and accurate results because the election was stolen, and president trump won by a landslide.”<sup>19</sup>
- “The issue here the issue here is that we have 682,000 votes in Pennsylvania alone that we have not been able to see how we’re counted. We have reports of election fraud and irregularities across multiple states.”<sup>20</sup>
- “[The Supreme Court] [has] also shown a dereliction of duty and fidelity to the U.S. Constitution by refusing to take up cases that of course the president and the campaign absolutely should have standing, as well as, the Texas case that was original jurisdiction in the Supreme Court... and if this election and all of the fraud is not corrected by January 6, this will have been a failure not of the Trump legal team, not a failure of the evidence, but of the Supreme Court, the judicial branch all the way down... and rather than go through some procedural hoop and kick this out like every other court has done and what the Supreme Court has done so far with these electoral challenges, they need to look at this on the merits.”<sup>21</sup>
- “Six states currently have electoral delegates that are in dispute, and we know based on the clear and convincing evidence that there is sufficient legal basis to question whether the state law and Constitution was followed in the administration of those elections... [Pence] should not open any of the electoral votes in the six contested states... and instead ask [state legislatures] which of the two slates of electors have in fact been chosen in the manner that they have provided for.”<sup>22</sup>
- “We’re very excited the Pennsylvania legislature... will use their... authority to make sure they don’t go along with an irredeemably corrupted election... we’re hopeful that [other state legislatures] will also recognize how corrupt this election was, and also take back their delegates...”<sup>23</sup>
- “I am deeply disappointed in @Mike\_Pence. The Constitution constrains, yes, and that’s why we worked hard to provide him with a constitutional option to protect election integrity. BUT, he should not have been in that position—state leadership was cowardly first; SCOTUS was also.”<sup>24</sup>
- And Ms. Ellis continues to assert fraudulent claims about the 2020 elections, stating in November 2021 that, “We know already that the election results in at least five of the swing states were irredeemably compromised. So, we already have sufficient evidence for these states to decertify their electoral results.”<sup>25</sup>

Ms. Ellis also joined Mr. Giuliani in an effort to convince legislatures in states Mr. Biden won to certify instead Trump electors. As part of this “tour,” Ms. Ellis spoke before: the Pennsylvania

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<sup>19</sup> <https://www.youtube.com/watch?v=6oXfVEfn1EY>.

<sup>20</sup> Lincoln & P. Owen, *Maher Fights With Trump Campaign Lawyer Jenna Ellis Over her Nonstop Falsehoods: ‘Just Stop It.’*

<sup>21</sup> E. Mack, *Jenna Ellis to Newsmax TV: Trump Denied ‘Due Process,’* (Dec. 29, 2020), available at <https://www.newsmax.com/newsmax-tv/jenna-ellis-campaign-legal-adviser/2020/12/29/id/1003545/>.

<sup>22</sup> <https://www.youtube.com/watch?v=IHMSnRFX3DI>

<sup>23</sup> <https://www.youtube.com/watch?v=6oXfVEfn1EY>.

<sup>24</sup> Available at <https://twitter.com/jennaellisesq/status/1346933207095132162>.

<sup>25</sup> Available at <https://twitter.com/SebGorka/status/1447404087964807171>.

Senate Majority Policy Committee, Arizona lawmakers, the Michigan House Oversight Committee, and Georgia legislators. She repeated bogus and unsupported claims of fraud.

For example, Ms. Ellis spoke at the Michigan House Oversight Committee hearing after Mr. Giuliani. She said, in part:<sup>26</sup>

And this is not a political question, this is a legal one. When you have a, what you will see before you, a substantial evidence of fraud and corruption in an election, it's your obligation under the United States constitution to not allow the corruption to continue.

...

And what we're here to do today is to present to you the evidence that we've been able to do in the last four hours. Mayor Giuliani is very correct that this is only a sample. But no honest person can hear these citizens of your own state today, look at what happened in Wayne County with the bullying of the two GOP Board of Canvassers, when they didn't want to certify the election, and can let this proceed.

...

But what we asked initially was to simply stop the certification because we had significant, not just concern, but actual evidence. And what you've heard today is not just a speculation, it's not just concern, it's not a conspiracy theory. It's people who were there, who were eyewitnesses, who are telling you what they saw.

This was election officials who have violated the laws of your state that you, as the General Assembly, passed in order to preserve election integrity. There are two different tracks. You have the laws of the state that election officials on the ground are supposed to adhere to. And then you have the issue with Dominion. Now, absolutely, the mayor is right that you need to audit those machines. But you have more than enough just based on the election official, absolute fraud, absolutely ignoring the laws of this general assembly, the laws of your state to reclaim your authority. That is your duty. It's your constitutional obligation. And that's why we are in front of you.

...

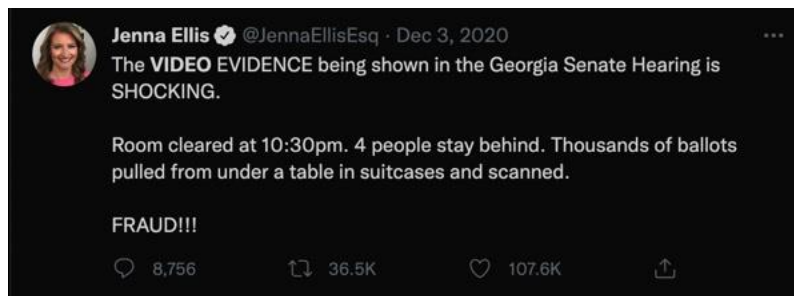
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<sup>26</sup> Trump Lawyers Rudy Giuliani & Jenna Ellis Testify Before Michigan House Oversight Committee: Full Transcript, Dec. 3, 2020, available at <https://www.rev.com/blog/transcripts/trump-lawyers-rudy-giuliani-jenna-ellis-testify-before-michigan-house-oversight-committee-transcript>.

There have been a massive amount of irregularities. There have been ignorance and complete disregard for the law of the State of Michigan. And so when it is so irredeemably compromised, when you have something like what's happened in Wayne County, you have the intimidation of officials who are trying to do the right thing, intimidation even here in this committee of witnesses, that is unacceptable.

As noted above, Mr. Giuliani also testified at the hearing, and the New York State Supreme Court, Appellate Division relied, in part, on Mr. Giuliani's "false claims" during this appearance to suspend his license.<sup>27</sup> Ms. Ellis adopted and bolstered Mr. Giuliani's claims.

And just as Mr. Giuliani was set to testify at the Georgia Senate hearing, she repeated false claims about a suitcase stuffed with ballots in Georgia:



But in truth:

- On December 3, 2020, the Trump campaign posted an edited video to its YouTube channel that the campaign alleged showed Georgia election officials hiding suitcases of ballots under a table were counted after poll workers left for the day.<sup>28</sup>
- On December 4, 2020, a Georgia election official tweeted that investigators for the Secretary of State's office had watched the hours-long video in its entirety and that the unedited version showed "normal ballot processing."<sup>29</sup> A local Georgia news station fact-checked and debunked the Trump campaign's claim about the video. An election official tweeted: "You can watch the @wsbtv report to show that the President's team is intentionally misleading the public about what happened at State Farm Arena on election night. They had the whole video too and ignored the truth."<sup>30</sup>

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<sup>27</sup> *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021, available at [https://www.nycourts.gov/courts/ad1/calendar/List\\_Word/2021/06\\_Jun/24/PDF/Matter%20of%20Giuliani%20\(2021-00506\)%20PC.pdf](https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20(2021-00506)%20PC.pdf).

<sup>28</sup> Available at <https://www.youtube.com/watch?v=keANzinHWUA>.

<sup>29</sup> Available at <https://twitter.com/gabrielsterling/status/1334827098637291520>.

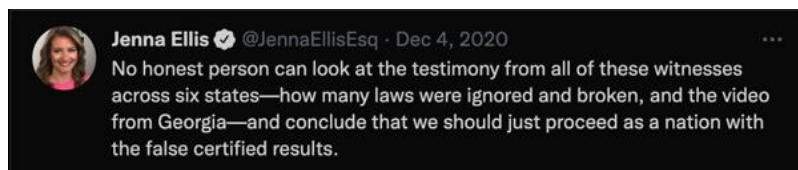
<sup>30</sup> J. Gray, *Georgia Election Officials Show Frame-By-Frame What Happened in Fulton Surveillance Video*, WSB-TV (Dec. 4, 2020), available at <https://www.wsbtv.com/news/politics/georgia-election->



- On December 5, 2020, the Georgia Secretary of State’s office released the full video to news outlets, which then again debunked the Trump campaign’s claims.<sup>31</sup>
- On December 6, 2020, the Chief Investigator in the Georgia Secretary of State’s office signed a sworn statement affirming that:
 

[T]here were no mystery ballots that were brought in from an unknown location and hidden under tables as has been reported by some. Video taken hours before shows the table being brought into the room at 8:22 a.m. Nothing was underneath the table them [sic]. Around 10 p.m., with the room full of people, including official monitors and the media, the video shows ballots that had already been opened but not counted placed in boxes, sealed up, stored under the table. This was done because employees thought that they were done for the night and were closing up and ready to leave. When the counting continued into later in the night, those boxes were opened so that the ballots inside could then be counted.<sup>32</sup>
- On December 7, 2020, Georgia election officials held a press conference and stated: “what you saw, the secret suitcases with magic ballots, were actually ballots that had been packed into those absentee ballot carriers by the workers in plain view of the monitors and the press.”<sup>33</sup>
- Acting Attorney General Jeffrey Rosen and Acting Deputy Attorney General Donoghue also directly addressed these claims in mid- to late-December.<sup>34</sup>

Ms. Ellis tweeted other falsehoods, too:



[officials-show-frame-by-frame-what-really-happened-fulton-surveillance-video/T5M3PYIBYFHFFOD3CIB2ULDVDE/](https://www.youtube.com/watch?v=T5M3PYIBYFHFFOD3CIB2ULDVDE/).

<sup>31</sup> *Id.*

<sup>32</sup> Decl. of Frances Watson ¶ 7, ECF No. 72-1, *Pearson, et al. v. Kemp, et al.*, 20-cv-4809 (N.D. Ga. Dec. 6, 2020).

<sup>33</sup> Georgia Election Officials Briefing Transcript December 7: Will Recertify Election Results Today (Dec. 7, 2020).

<sup>34</sup> R. Donoghue Tr. 43 (informing President Trump that the “allegations about ballots being smuggled in a suitcase and run through the machines several times, it was not true, that we had looked at it, we looked at the video, we interviewed the witnesses, and it was not true”).

Failing to achieve their desired ends through the courts or the state legislatures, Mr. Trump’s legal team turned to pressuring Vice President Mike Pence to usurp Congress’s power by throwing out the electoral votes of seven states that Joe Biden won and thereafter declaring Mr. Trump (and, incidentally, Mr. Pence) victorious. The basis for this strategy originated with Mr. Trump’s lawyers, and Ms. Ellis played a significant role in orchestrating the effort.

The plan began with a memorandum<sup>35</sup> from Kenneth Chesebro, another attorney for Mr. Trump, outlining a plan to create slates of false electors from several states, who would claim that they were the legitimate electors. The memorandum relied on factual and legal misstatements and absurdities, and relegated to footnotes (if cited at all) the critical statutes, rules, and facts that disproved the memorandum’s contentions.

Mr. Chesebro’s memorandum appears to have made its way to Ms. Ellis and John Eastman, another of Mr. Trump’s attorneys. In a memorandum<sup>36</sup> to Mr. Trump, Ms. Ellis wrote:

Six states currently have electoral delegates in dispute and there is sufficient rational and legal basis to question whether the state law and Constitution was followed. There is a clear basis in the Constitutional text that the Vice President’s role is to open all electoral votes from the electors chosen in the “manner” prescribed by the state legislatures. The Vice President cannot fulfill that responsibility if he does not know which ones were so chosen.

On January 6, the Vice President should therefore not open any of the votes from these six states, and instead direct a question to the legislatures of each of those states and ask them to confirm which of the two slates of electors have in fact been chosen in the manner the legislature has provided for under Article II, Section 1.2 of the U.S. Constitution. The Vice President should open all other votes from states where electors have been certified and counted accordingly.

Ms. Ellis wrote a follow up memorandum<sup>37</sup> to Mr. Trump’s attorney, Jay Sekulow, in which she argued:

In at least six states, state executives rushed to certify while judicial and legislative disputes in accordance with state law and had just begun – how can that be constitutional and entitled to deference EVEN IF federal law purports to allow it?

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<sup>35</sup> Available at <https://int.nyt.com/data/documenttools/trump-electors-memo-november/6dfa71755c7d0879/full.pdf>.

<sup>36</sup> Available at <https://www.politico.com/f/?id=0000017d-a4d0-dac5-abff-a5ddcf600000>.

<sup>37</sup> Available at <https://www.politico.com/f/?id=0000017d-a4d0-dac5-abff-a5ddcf600000>.

Where a determination or ascertainment process has not been completed in accordance with state law, no elector can be deemed as legitimate/valid/constitutionally determined because the constitution *requires* that electors be chosen as directed by the state legislature and the state law as enacted by the general assembly.

...

Therefore, the Vice President should begin alphabetically in order of the states, and coming first to Arizona, not open the purported certification, but simply stop the count at that juncture invoking authority of 3 U.S. Code § 5 and require the final determination of ascertainment of electors to be completed before continuing.<sup>38</sup>

Mr. Eastman also drafted two memoranda<sup>39</sup> of his own, which have similarly been shown to be grounded in neither law nor fact, and that recommended that Mr. Pence take “BOLD” action to secure Mr. Trump’s victory.<sup>40</sup> Mr. Pence would preside over the January 6, 2021 Joint Session of Congress, during which the electoral votes cast and certified in each state on December 14, 2020 would be opened and confirmed. Established law and precedent limited Mr. Pence’s role to opening the Certificates of Votes and announcing the results of each, as well as the outcome. Mr. Eastman sought to have Mr. Pence disregard the vice president’s constitutional and statutory obligations, and to instead claim unto himself the authority to invalidate seven states’ electoral votes and unilaterally declare Mr. Trump the victor, without turning the matter over to Congress. The scheme required an existing controversy over which slate of electors should be viewed as valid from the seven states.<sup>41</sup> In other words, for Mr. Pence to throw out the electoral votes cast and certified by the seven states, there needed to be an alternative slate of electors who claimed to be the legitimate electors.

Importantly, even the plan’s main proponent, John Eastman, one of Mr. Trump’s attorneys, admitted at the time that he was offering an interpretation of the Twelfth Amendment or the Electoral Count Act that not even one member of the Supreme Court would agree with.<sup>42</sup> In fact,

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<sup>38</sup> Available at <https://www.politico.com/f/?id=0000017d-a4d0-dac5-abff-a5ddcf600000>.

<sup>39</sup> Available at <https://www.cnn.com/2021/09/21/politics/read-eastman-full-memo-pence-overturn-election/index.html>.

<sup>40</sup> Available at <https://www.cnn.com/2021/09/21/politics/read-eastman-full-memo-pence-overturn-election/index.html>.

<sup>41</sup> *Id.*

<sup>42</sup> Deposition of Gregory Jacob (Feb 1, 2022), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>.

in an email to Mr. Pence’s lawyer, Mr. Eastman acknowledged he was proposing violating the Electoral Count Act – though he considered it only a “relatively minor violation.”<sup>43</sup>

Boris Epshteyn, another of Mr. Trump’s attorneys working alongside Ms. Ellis, explained:

This was in total congruence with the overall effort to send it back to the states. With the rampant fraud across the country, the interplay of the 12th Amendment and the Electoral Count Act made it important to have alternate slates of electors be available when a challenge to states’ slate of electors would be successful.<sup>44</sup>

Many original Trump electors refused to participate in the scheme. For example, Lawrence Tabas – the Chairman of the Pennsylvania Republican Party and *an election lawyer who represented Mr. Trump in 2016* – rejected the effort and did not attend the gathering to select false electors.<sup>45</sup> Another originally slated elector, John Isakson, from Georgia later told the Washington Post: “It seemed like political gamesmanship, and that’s not something I would have participated in. We have a process for certifying the election. We have a process for challenging the election. The challenges failed, *so I wouldn’t have participated in something that was going against all of that.*”<sup>46</sup>

Unfortunately, 84 individuals from seven states obliged and created false slates of electors. And thus, the scheme orchestrated, in part, by Ms. Ellis, became a conspiracy.

Throughout the process, in public statements, in television appears, and on social media, Ms. Ellis continued to promote a false narrative about a stolen election:

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<sup>43</sup> Email from John Eastman to Gregory Jacob on Jan. 6, 2021, available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>.

<sup>44</sup> B. Reinhard, et al., *As Giuliani Coordinated Plan for Trump Electoral Votes in States Biden Won, Some Elections Balked*, Washington Post (Jan. 20, 2022), available at [https://www.washingtonpost.com/investigations/electors-giuliani-trump-electoral-college/2022/01/20/687e3698-7587-11ec-8b0a-bcfab800c430\\_story.html](https://www.washingtonpost.com/investigations/electors-giuliani-trump-electoral-college/2022/01/20/687e3698-7587-11ec-8b0a-bcfab800c430_story.html).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*



## APPLICABLE STANDARDS AND RULES OF PROFESSIONAL CONDUCT

Rule 3.3(a) of the Rules of Professional Conduct provides:

A lawyer shall not knowingly (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2) fail to disclose to the tribunal controlling legal authority known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (3) offer or use evidence that the lawyer knows to be false ...

The Rules define tribunal to include legislative bodies acting in adjudicative capacities:

“Tribunal” denotes a court, an arbitrator in an arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence

or legal argument by a party or parties, will render a legal judgment directly affecting a party's interests in a particular matter.

Rule 4.1(a) provides that: “In the course of representing a client, a lawyer shall not knowingly make a false statement of fact or law to a third person.”

Rule 4.4(a) states that: “In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person...”

Rule 8.4 provides that it constitutes professional misconduct to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

...

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation...;

...

(h) engage in any conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on a lawyer's fitness to practice law.

**A SUBSTANTIAL BASIS EXISTS FOR THE OFFICE OF ATTORNEY REGULATION TO INVESTIGATE MS. ELLIS’S CONDUCT AND TO IMPOSE APPROPRIATE DISCIPLINE**

The Supreme Court of the State of New York, Appellate Division suspended Mr. Giuliani’s license for his post-election conduct, including the statements he made at press conferences, at legislative sessions, and in media appearances.<sup>47</sup> As the Court stated:

[T]here is uncontroverted evidence that [Mr. Giuliani] communicated demonstrably false and misleading statements to courts, lawmakers and the public at large in his capacity as lawyer for former President Donald J. Trump and the Trump campaign in connection with Trump’s failed effort at reelection in 2020. These statements were made to improperly bolster [Mr. Giuliani’s] narrative that due to widespread voter fraud, victory in the 2020 United States presidential election was stolen from his client. We conclude that [Mr. Giuliani’s] conduct immediately threatens the public interest and warrants interim suspension from the practice

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<sup>47</sup> *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021, available at [https://www.nycourts.gov/courts/ad1/calendar/List\\_Word/2021/06\\_Jun/24/PDF/Matter%20of%20Giuliani%20\(2021-00506\)%20PC.pdf](https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20(2021-00506)%20PC.pdf).

of law, pending further proceedings before the Attorney Grievance Committee.<sup>48</sup>

Ms. Ellis worked alongside Mr. Giuliani in his effort to discredit the U.S. election system and overturn the fair and legitimate results. She should be held similarly accountable.

The Office of Attorney Regulation should investigate on the following bases:

1. During the course of representing Mr. Trump, Ms. Ellis knowingly made false statements of fact or law to third parties

Ms. Ellis repeatedly misrepresented the claims, arguments, and status of litigation that Mr. Trump's legal team were pursuing.

The Supreme Court of New York addressed this topic at length in its [opinion suspending Mr. Giuliani's license](#). Specifically, the Court noted that Mr. Giuliani "repeatedly represented to the court that his client, the plaintiff, was pursuing a fraud claim, when indisputably it was not." An attorney violates the Rules of Professional Conduct by "misrepresent[ing] the status of a pending proceeding, whether in or out of court." Thus, the Court found that Mr. Giuliani's misstatements about the allegations violated Rule 8.4(c), Rule 3.3, and Rule 4.1 because "they were made to third parties consisting of over 3,700 members of the press and the public."

Ms. Ellis's comments were also false and misleading. She did not make them to a tribunal, so Rule 3.3 is not implicated. Nevertheless, Rules 4.1 and 8.4(c) apply. Ms. Ellis falsely stated the nature of various legal proceedings and claims and did so in interviews and through social media. As such, she violated Rule 4.1 and the misconduct was additionally dishonest, fraudulent, and a misrepresentation, thereby violating Rule 8.4(c).

2. Ms. Ellis used tactics to embarrass and burden third parties.

Ms. Ellis's public statements and Twitter feed provide ample evidence of her engaging in tactics designed to embarrass and burden third parties. The claims that lawmakers in Michigan were harassing witnesses, that elections officials were committing fraud, that poll workers had suitcases full of ballots stashed under a table were all designed to burden third parties. And it worked. Ms. Ellis participated in a scheme that led to [elections officials pleading for the harassment and death threats](#) to stop, to [children of honest administration officials fearing that their father would be executed](#), and to, on January 6, the worst domestic attack on American democracy since the Civil War.

Ms. Ellis played a leading role in all of this. Her efforts to deceive were unrelenting and untethered to truth or a concern for the nation. She must be held accountable.

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<sup>48</sup> *Id.*

3. Ms. Ellis engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation

The entire enterprise that Ms. Ellis participated in involved dishonesty, fraud, deceit, and misrepresentation. Further, this ethical standard applies to conduct that occurs outside of a tribunal. Just as the Supreme Court of New York found that Mr. Giuliani's conduct violated Rule 8.4, so, too, did Ms. Ellis's similar acts and statements.

4. Ms. Ellis assisted others to engage in conduct that violated the Rules of Professional Conduct

Ms. Ellis worked closely with, and assisted, Mr. Giuliani as the latter carried out his effort to undermine the 2020 presidential election results and overturn the will of over 81 million voters. Because Ms. Ellis's work alongside Mr. Giuliani is uncontroverted and because the Supreme Court of New York has already found that Mr. Giuliani violated numerous Rules of Professional Conduct, Ms. Ellis violated Rule 8.4(a).

Further, Ms. Ellis participated in a concerted effort to pressure Mr. Pence to disregard his constitutional and statutory duties so that Mr. Trump could reclaim the presidency.

When seven separate groups filing false certificates, a condition precedent of the scheme orchestrated, in part, by Ms. Ellis had been satisfied. Several of the 84 false electors are lawyers. And these lawyers transmitted their false documents to the U.S. District Court, thereby violating their duty of candor to a tribunal.

Additionally, Congress, when acting pursuant to the Electoral Count Act, engages in a proceeding that implicates the Rules' definition of tribunal. A federal court in one of the criminal matters involving a January 6 defendant found that:

[I]t is a formal process. In addition, the Vice President, as President of the Senate, serves as presiding officer while the votes cast by Electors are counted. As in a court of law, members of Congress may object, which in turn causes the Senate and the House of Representatives to separately consider and render their separate decision[s] on the objection. Further, after the count is finished, the certification must end with a result declared.<sup>49</sup>

Thus, when the false electors sent their certificates to the United States Congress, they also violated Rule 3.3's duty of candor to a tribunal. Ms. Ellis assisted in that effort, thereby further violating Rule 8.4.

Ms. Ellis's violations do not end there.

After December 14, 2020, Mr. Eastman and Mr. Trump continued to apply significant private and public pressure on Mr. Pence to go along with the scheme. And they used the false electors

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<sup>49</sup> *United States v. Nordean*, 2021 WL 6134595 (D.C.D.C. 2021), at \*6 (citations and quotation marks omitted).



as part of that effort. For example, while addressing the January 6, 2021 rally, Mr. Giuliani, [stated](#):

[E]very single thing that has been outlined as the plan for today is perfectly legal. I have Professor Eastman here with me to say a few words about that. He's one of the preeminent constitutional scholars in the United States. It is perfectly appropriate given the questionable constitutionality of the Election Counting Act of 1887 [sic] that the Vice President can cast it aside and he can do what a president called Jefferson did when he was Vice President. He can decide on the validity of these crooked ballots, or he can send it back to the legislators, give them five to 10 days to finally finish the work.

Mr. Eastman, who spoke right before Mr. Trump, [said](#):

[A]ll we are demanding of Vice President Pence is this afternoon at 1:00 he let the legislators of the state look into this so we get to the bottom of it, and the American people know whether we have control of the direction of our government, or not...And anybody that is not willing to stand up to do it, does not deserve to be in the office. It is that simple.

And [Mr. Trump declared](#):<sup>50</sup>

Despite that, despite that, we won Wisconsin. It's going to see. I mean, you'll see.

...

But the only way that can happen is if Mike Pence agrees to send it back. Mike Pence has to agree to send it back.

...

And Mike Pence is going to have to come through for us, and if he doesn't, that will be a, a sad day for our country because you're sworn to uphold our Constitution.

Now, it is up to Congress to confront this egregious assault on our democracy. And after this, we're going to walk down, and I'll be there with you, we're going to walk down, we're going to walk down.

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<sup>50</sup> Available at <https://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial>.

Anyone you want, but I think right here, we're going to walk down to the Capitol, and we're going to cheer on our brave senators and congressmen and women, and we're probably not going to be cheering so much for some of them.

Because you'll never take back our country with weakness. You have to show strength and you have to be strong. We have come to demand that Congress do the right thing and only count the electors who have been lawfully slated, lawfully slated.

It is well-documented what happened next. Members of the crowd then marched to the Capitol, breached security, vandalized the building, assaulted police officers, and sought to hunt down members of Congress and Mr. Pence. Nine people died as a result of the insurrection, including four police officers who committed suicide within seven months of responding to the attack.<sup>51</sup> The insurrectionists injured over 138 police officers.<sup>52</sup> To date, 769 people have been charged in connection with the January 6 insurrection, with 165 of those defendants pleading guilty, and courts have imposed sentences reaching over 60 months.<sup>53</sup>

Thus, Ms. Ellis participated in a concerted effort to pressure Mr. Pence to disregard his constitutional and statutory duties so that Mr. Trump could seize the presidency. She assisted and encouraged an array of people to violate the Rules of Professional Conduct as part of that effort. The Rules establish that aiding others to violate such standards constitutes its own misconduct.

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The United States Supreme Court has long recognized in upholding disciplinary actions that “speech by an attorney is subject to greater regulation than speech by others.”<sup>54</sup> As officers of the court an attorney is “an intimate and trusted and essential part of the machinery of justice” and a “crucial source of information and opinion.”<sup>55</sup> Although attorneys, of course, maintain First Amendment rights, the actions in question here cross far beyond protected speech. Indeed, disciplinary boards and courts considering the conduct of other lawyers involved in the effort to overturn the 2020 election have rejected assertions that the attorneys enjoyed First Amendment protections for their conduct.

That members of our esteemed profession would engage in such actions – conduct that contributed to substantial harm to American democracy – should cause considerable distress within the entire legal community.

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<sup>51</sup> Wolfe, Jan, *Four Officers Who Responded to U.S. Capitol Attack Have Died by Suicide*, Reuters (Aug. 2, 2021), available at <https://www.reuters.com/world/us/officer-who-responded-us-capitol-attack-is-third-die-by-suicide-2021-08-02/>.

<sup>52</sup> Schmidt, Michael S.; Broadwater, Luke, *Officers' Injuries, Including Concussions, Show Scope of Violence at Capitol Riot*, N.Y. Times (Feb. 12, 2021), available at <https://www.nytimes.com/2021/02/11/us/politics/capitol-riot-police-officer-injuries.html>.

<sup>53</sup> See <https://www.insider.com/all-the-us-capitol-pro-trump-riot-arrests-charges-names-2021-1>.

<sup>54</sup> *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

<sup>55</sup> *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

False statements intended to foment a loss of confidence in our elections and resulting loss of confidence in government generally damage the proper functioning of free society. When those false statements are made by an attorney, it also erodes the public's confidence in the integrity of attorneys admitted to our bar and damages the profession's role as a crucial source of reliable information.<sup>56</sup>

Ms. Ellis abused her place of trust and played a significant role in fomenting discord, violence, and death, all through spreading lies and misinformation.

For the reasons set forth above, The 65 Project respectfully requests that the Office of Attorney Regulation investigate Ms. Ellis's conduct and impose appropriate discipline. And, because she has demonstrated a willingness – perhaps even eagerness – to engage in the same problematic behaviors, we ask that you treat this matter with urgency.

Sincerely,



Michael Teter  
Managing Director, The 65 Project

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<sup>56</sup> *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021, available at [https://www.nycourts.gov/courts/ad1/calendar/List\\_Word/2021/06\\_Jun/24/PDF/Matter%20of%20Giuliani%20\(2021-00506\)%20PC.pdf](https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20(2021-00506)%20PC.pdf).