



July 7, 2022

Krista K. Beatty
Office of Disciplinary Counsel
601 Commonwealth Avenue, Suite 5800
P.O. Box 62675
Harrisburg, PA 17106-2675

VIA FACSIMILE: [REDACTED]

Dear Ms. Beatty:

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 Disciplinary Counsel investigate the actions taken by Brian C. Caffrey (Attorney Identification No. 42667) relating to his representation of Donald J. Trump in his effort to overturn the 2020 presidential election. Mr. Caffrey chose to lend his law license to the assault on democracy by joining as Plaintiff's counsel in *Donald J. Trump for President, Inc., et al. v. Boockvar, et al.*, 4:20-cv-02078 (M.D. Pa.), a case in which Plaintiffs sought to have the court disenfranchise nearly seven million voters. As the district court stated when denying the effort:

This Court has been unable to find any case in which a plaintiff has sought such a drastic remedy in the contest of an election, in terms of the sheer volume of votes asked to be invalidated. One might expect that when seeking such a startling outcome, a plaintiff would come formidably armed with compelling legal arguments and factual proof of rampant corruption, such that this Court would have no option but to regrettably grant the proposed injunctive relief despite the impact it would have on such a large group of citizens.

That has not happened. Instead, this Court has been presented with strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence. In the United States of America, this cannot justify the

disenfranchisement of a single voter, let alone all the voters of its sixth most populated state. Our people, laws, and institutions demand more.¹

Pennsylvania’s Rules of Professional Conduct demand more, as well. “The primary purpose of our lawyer discipline system in Pennsylvania is to protect the public, preserve the integrity of the courts, and deter unethical conduct.” *Off. of Disciplinary Couns. v. Czmus*, 586 Pa. 22, 32–33, 889 A.2d 1197, 1203 (2005) (citing *In re Iulo*, 564 Pa. 205, 766 A.2d 335, 339 (2001)). “Truth is the cornerstone of the judicial system; a license to practice law requires allegiance and fidelity to truth.” *Office of Disciplinary Counsel v. Surrick*, 561 Pa. 167, 749 A.2d 441, 449 (2000) (citation omitted). “Whenever an attorney is dishonest, that purpose is served by disbarment.” *Office of Disciplinary Counsel v. Grigsby*, 493 Pa. 194, 425 A.2d 730, 733 (1981).

A full investigation by the Office of Disciplinary Counsel will demonstrate the disturbing nature of Mr. Caffrey’s actions, especially when considered in light of his objectives and the direct and likely consequences of his behavior.

CONDUCT GIVING RISE TO THE COMPLAINT

Donald Trump lost the 2020 presidential election.² He also lost Pennsylvania and its 20 electoral votes.³ In an effort to overturn the legitimate results, Mr. Trump and his allies filed at least 65 baseless lawsuits across the country, alleging conspiracies and fraud and claiming the election was stolen. They brought these claims despite the fact that officials across the country and at every level of government have called the 2020 election “the most secure in American history.”⁴ None of Mr. Trump’s efforts succeeded. In some instances, courts have imposed sanctions on the lawyers who participated in the lawsuits and referred them for sanctions by their respective state bars.⁵ The disciplinary arms of various state bars are pursuing the matters.⁶

¹ *Donald J. Trump for President, Inc., et al. v. Boockvar, et al.*, 4:20-cv-02078 (M.D. Pa.) Nov. 21, 2020 Memorandum Opinion (“Memorandum Opinion”) at 2.

² See United States National Archives, Electoral College Results – 2020, available at <https://www.archives.gov/electoral-college/2020>.

³ See Certificate of Ascertainment, Commonwealth of Pennsylvania, available at <https://www.archives.gov/files/electoral-college/2020/ascertainment-pennsylvania.pdf>.

⁴ Maria Henriquez, *Director of CISA Chris Krebs Says There's No Evidence of Foreign Interference in the 2020 Election*, Security Magazine (Nov. 5, 2020), <https://www.securitymagazine.com/articles/93846-director-of-cisa-chris-krebs-says-theres-no-evidence-of-foreign-interference-in-the-2020-election>.

⁵ See, e.g., *King v. Whitmer*, Case No. 21-13134 (E.D. Mich.), Aug. 25, 2021 Opinion and Order, available at https://www.michigan.gov/documents/ag/172_opinion_order_King_733786_7.pdf; *Washington Election Integrity Coalition United v. Inslee*, Case No. 100202-0, May 17, 2022 Clerk’s Ruling Setting Amount of Attorney Fees and Expenses, available at https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/029_Order_DeputyClerkRulingSetAttrnyFees.pdf.

⁶ See, e.g., *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); *State Bar Announced John Eastman Ethics Investigation*, available at <https://www.calbar.ca.gov/About-Us/News/News-Releases/state-bar-announces-john-eastman-ethics->

On November 9, 2020, the Plaintiffs initiated *Donald J. Trump for President, Inc., et al. v. Boockvar, et al.* On November 12, 2020, two of the three original attorneys representing Plaintiffs withdrew. By November 16, 2020, the Defendants had filed a motion to dismiss, Plaintiffs had filed an Amended Complaint, and Defendants had filed a motion to dismiss the Amended Complaint. The District Court set a November 17, 2020 hearing for the motion to dismiss.

On November 16, 2020, Mr. Caffrey entered his appearance. Thus, by that time he had the opportunity to review the Complaint, the motion to dismiss, the Amended Complaint, and the motion to dismiss the Amended Complaint. He was aware that two-thirds of the original team of attorneys bringing the matter had withdrawn. And he knew that a hearing was set for November 17. Mr. Caffrey's first action was to file a motion to continue the hearing. He specifically stated in his motion that he and his partner, Marc Caffrey, would be lead counsel and that, "Plaintiffs will file a motion seeking leave to file a second amended complaint."⁷ The Court denied the motion the same day.

On November 17, 2020, Mr. Caffrey filed a petition for special admission (*pro hac vice*) for Rudy Giuliani, Mr. Trump's lead counsel. On November 18, 2020, Mr. Caffrey, along with Mr. Caffrey and Mr. Giuliani, filed a motion to file a second amended complaint. The proposed second amended complaint sought to "restore claims which were inadvertently deleted from their Amended Complaint, and to add claims based on newly learned facts, including the Pennsylvania Supreme Court's November 17, 2020 decision."⁸ Additionally, the motion regurgitated false allegations of "widespread reports of voter fraud and irregularities in the casting and processing of votes around the country and particularly in Pennsylvania."⁹

In addition to reasserting allegations and causes of action made in the original Complaint, the Second Amended Complaint Mr. Caffrey sought to file also borrowed significantly from claims that Mr. Trump brought – and lost – in an earlier matter litigated. He therefore knew he was requesting to bring meritless claims that had already been decided by a federal court.

Like the Complaint and Amended Complaint, the proposed Second Amended Complaint sought unheard of relief from the federal court: invalidating millions of votes based on the allegation

investigation; *State Bar Sues Trump Lawyer Sidney Powell*, available at <https://www.houstonchronicle.com/politics/texas/article/Texas-State-Bar-sues-Trump-lawyer-Sidney-Powell-16989673.php>; *Two Former U.S. Officials Help Ethics Probe of Trump Ally Clark*, Source Says, available at <https://www.reuters.com/world/us/exclusive-two-former-us-officials-help-ethics-probe-trump-ally-clark-source-says-2022-03-29/>.

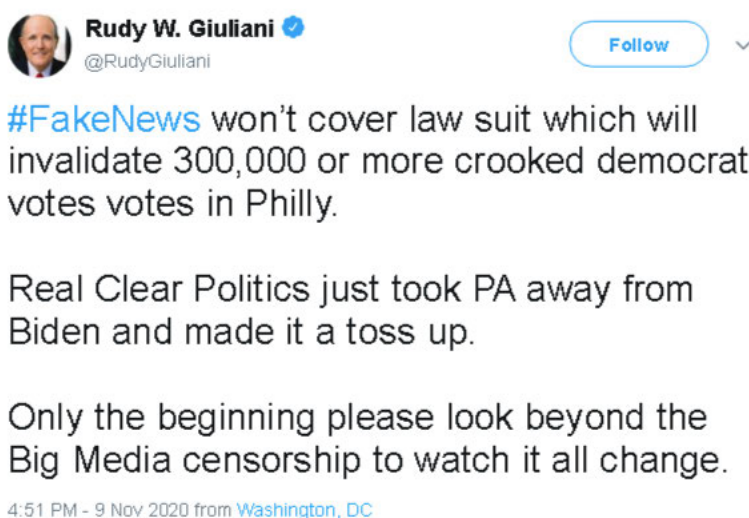
⁷ *Donald J. Trump for President, Inc., et al. v. Boockvar, et al.*, 4:20-cv-02078 (M.D. Pa.) Nov. 21, 2020 Motion to Continue Oral Argument and Hearing at 3.

⁸ *Donald J. Trump for President, Inc., et al. v. Boockvar, et al.*, 4:20-cv-02078 (M.D. Pa.) Nov. 21, 2020 Motion for Leave to File Second Am. Compl. at 1.

⁹ *Id.* at 5.

that two voters' absentee ballots were not counted for failing to comply with applicable standards.¹⁰

It is telling that not long after filing the Complaint, two other attorneys withdrew from the case after other attorneys at their law firm expressed concerns that his efforts were undermining American democracy.¹¹ And that was accurate. In fact, that was largely the design of the lawsuits. Mr. Caffrey, and the other lawyers filing similar lawsuits in the battleground states that Mr. Biden won, knew that they would not prevail on the merits. Instead, they were using the courts as part of their political propaganda. They littered their complaints and pleadings with allegations of fraud and malfeasance and then publicly sought to bolster those bogus assertions by pointing to their legal filings:



Thus, by joining the lawsuit, Mr. Caffrey lent his law license and the legal professional's integrity and power to an orchestrated effort to undermine our nation's elections so that the person who lost the 2020 presidential election could remain in power. A direct line exists between this abuse of the court system and the January 6, 2021 attack on the United States Capitol. Withdrawing from the matter after helping light the fuse does not shield Mr. Caffrey from responsibility, nor does it alter the fact that appropriately disciplining his for this misconduct is an essential part of deterring future abuse.

As evidence of Mr. Caffrey's violations of the Rules of Professional Conduct your office should consider the following:

The lawsuit named Secretary of State Boockvar and Seven Democratic County Boards of Elections as Defendants. The factual basis for suing Secretary Boockvar and the seven Democratic counties rested on two Individual Plaintiffs having had their mail-in votes canceled.

¹⁰ *Donald J. Trump for President, Inc., et al. v. Boockvar, et al.*, 4:20-cv-02078 (M.D. Pa.) Compl. at p. 84.

¹¹ Rachel Abrams, et al., *Once Loyal to Trump, Law Firms Pull Back from His Election Fight*, N.Y. Times, Nov. 13, 2020, available at <https://www.nytimes.com/2020/11/13/business/porter-wright-trump-pennsylvania.html>.

Prior to election day, Secretary Boockvar had sent an email to counties encouraging them to allow mail-in voters to cure their ballots if any problems are detected during the pre-canvas period. Importantly, the two Individual Plaintiffs' ballots were canceled not by any of the Defendants, but by Lancaster and Fayette counties – neither of which Plaintiffs chose to sue. The Amended Complaint and the proposed Second Amended Complaint continued this approach. In other words, Mr. Caffrey chose to bring this matter not against the counties who caused his clients' harm, but against counties whose voters favored Joe Biden.

The requested relief for the alleged harm of Lancaster and Fayette Counties canceling the two Individual Plaintiffs' ballots was to prevent Defendants from certifying the entire election. The Individual Plaintiffs theorized that failing to count their ballots violated the Equal Protection Clause. As a remedy to the alleged violation, they sought either: (1) an order “prohibit[ing] the Defendant County Boards of Elections and Defendant Secretary Boockvar from certifying the results of the 2020 General Election in Pennsylvania on a Commonwealth-wide basis” or (2) an order “prohibit[ing] Defendants from certifying the results of the General Elections which include the tabulation of absentee and mail-in ballots which Defendants improperly permitted to be cured.”¹² Thus, Individual Plaintiffs asserted as their injury the denial of their right to vote and to redress that injury, they sought to have millions of others' right to vote denied. As the District Court noted:

Neither of these orders would redress the injury the Individual Plaintiffs allege they have suffered. Prohibiting certification of the election results would not reinstate the Individual Plaintiffs' right to vote. It would simply deny more than 6.8 million people their right to vote. “Standing is measured based on the theory of harm and the specific relief requested.” It is not “dispensed in gross: A plaintiff's remedy must be tailored to redress the plaintiff's particular injury.” Here, the answer to invalidated ballots is not to invalidate millions more.¹³

The District Court Found that Plaintiffs Concocted Their Theories to Avoid Controlling Precedent. Plaintiffs initially asserted seven causes of action. Four days later, the Third Circuit Court of Appeals issued an opinion in another case that directly affected Plaintiffs' ability to assert several of their claims. As such, they amended their complaint and excised five of the seven original causes of action, leaving just one equal protection claim and one cause of action premised on the Constitution's Electors and Elections Clause.¹⁴ The Court stated that the equal protection claim was, “like Frankenstein's Monster...haphazardly stitched together from two distinct theories in an attempt to avoid controlling precedent.”¹⁵ The Plaintiffs sought to make a broad attack on the mail-in voting procedures, a claim that Third Circuit precedent

¹² *Donald J. Trump for President, Inc., et al. v. Boockvar, et al.*, 4:20-cv-02078 (M.D. Pa.) Am. Compl.

¹³ Memorandum Opinion at 18.

¹⁴ Even then, Plaintiffs acknowledged that under the new Third Circuit case, they lacked standing to raise the Electors and Elections Clause claim, but stated they included it to preserve the issue for appellate review. Nevertheless, when Plaintiffs later appealed the District Court's order, they did not appeal the Electors and Elections Clause issue.

¹⁵ Memorandum Opinion at 11.

clearly and directly prevented. So, instead, for purposes of standing, they cited as the basis for the lawsuit the canceling of Individual Plaintiffs' ballots and then "on the merits, Plaintiffs appear to have abandoned this theory of harm and instead raise their broader argument that the lack of a uniform prohibition against notice-and-cure is unconstitutional."¹⁶ It was "not lost on the Court" that such a "mix-and-match" effort improperly sought to bypass precedent contrary to the Plaintiffs' claims.¹⁷

The Plaintiff Trump Campaign Failed to Offer a Theory of Its Injury or a Basis for its Claim. The Individual Plaintiffs at least asserted a valid theory for their harm – a denial of their vote – even if they did not sue the counties that caused the harm and even if they sought an unconstitutional, legally baseless remedy. But:

The standing inquiry as to the Trump Campaign is particularly nebulous because neither in the [First Amended Complaint] nor in its briefing does the Trump Campaign clearly assert what its alleged injury is. Instead, the Court was required to embark on an extensive project of examining almost every case cited to by Plaintiffs to piece together the theory of standing as to this Plaintiff – the Trump Campaign.¹⁸

In conducting that review, the District Court found that the Plaintiff Trump Campaign was advancing two theories: associational standing and competitive standing. With regard to associational standing, Plaintiff Trump Campaign relied on "inapposite"¹⁹ cases and also failed to inform the Court of another "particularly relevant, very recent decision" in which a federal court rejected the Trump Campaign's exact argument that it was now advancing in *Boockvar*.²⁰ With regards to its competitive standing argument, the Court found the assertion "at best, misguided."²¹ The Plaintiff relied on cases that had no similarity to the present matter or that actually "contradict" their arguments. "It is telling," the Court further stated, "that the only case from the Third Circuit cited to by Plaintiffs, *Marks v. Stinson*, does not contain a discussion of competitive standing or any other theory of standing applicable in federal court."²² In short, the Court held that "the Trump Campaign has not pled a cognizable theory."²³

Mr. Caffrey's motion to allow a second amended complaint also cited *Marks v. Stinson*, misrepresenting its importance and falsely asserting that the Trump Campaign would have standing under that precedent.²⁴

¹⁶ *Id.* at 12.

¹⁷ *Id.*

¹⁸ *Id.* at 18-19.

¹⁹ *Id.* at 19.

²⁰ *Id.*

²¹ *Id.* at 21.

²² *Id.* at 22.

²³ *Id.* at 23.

²⁴ *Donald J. Trump for President, Inc., et al. v. Boockvar, et al.*, 4:20-cv-02078 (M.D. Pa.) Nov. 21, 2020 Motion for Leave to File Second Am. Compl. at 8.

The Claims Plaintiffs Asserted Lacked Even Plausibility. To survive the motion to dismiss, Plaintiffs needed only to have asserted claims that were plausible when accepting their well-pleaded facts as true. The Court dismissed Plaintiffs claims even under this deferential standard. With regards to the Individual Plaintiffs, the Court held that Defendants could not credibly be alleged to impose a burden on Individual Plaintiffs’ right to vote by lifting the burden on their own residents’ ability to vote. “Expanding the right to vote for some residents of a state does not burden the rights of others.”²⁵ The Trump Campaign lacked even that level of plausibility. As the Court noted, “Plaintiffs’ brief in opposition to the motions to dismiss spends only *one* paragraph discussing the merits of its equal-protection claim.”²⁶ That one paragraph raised two arguments – one of which was not pleaded within the Amended Complaint and the other of which relied on *Bush v. Gore* and failed because “(1) they misapprehend the issues at play in that case; and (2) the facts of this case are distinguishable.”²⁷

The Pleadings Included Allegations Recycled from a Lawsuit Dismissed a Month Earlier in a 138-page Opinion. Nearly half of the paragraphs in the original Complaint and the proposed Second Amended Complaint that Mr. Caffrey prepared duplicated allegations made in *Donald J. Trump for President, Inc. v. Boockvar*, 2:20-cv-00966-NR (W.D. Pa.). The Court in that case granted summary judgment to defendants, holding that plaintiff relied on “hypotheticals, rather than actual events” and that the plaintiffs’ theory “does not appear to be any law to support it.”²⁸ Importantly, the plaintiffs did not even appeal that decision.

The Complaint, Amended Complaint, and Proposed Second Amended Complaint Made Over Three Dozen References to “Fraud,” But Do Not Actually Assert Any Claims Premised on Fraud. In an effort to support their public propaganda, Plaintiffs littered their pleadings with allegations or references to fraud or fraudulent actions. But, importantly, none of their actual claims rested on any claims of fraud or improper conduct. Indeed, as Plaintiffs’ counsel stated at the motion to dismiss hearing, the Trump Campaign “doesn’t plead fraud. ... [T]his is not a fraud case.”²⁹

The District Court Denied Plaintiffs’ Motion for Leave to File a Second Amended Complaint and the Third Circuit Upheld That Order. Despite a favorable standard that encourages district courts to freely grant leave to file amended complaints, the District Court denied the request. The Plaintiffs appealed that decision and the Third Circuit upheld the District Court, finding that allowing an amended complaint would be inequitable and futile. The Court focused on the fact that that, like the two other complaints: (1) the Second Amended Complaint “is light on facts,”³⁰ (2) that “[t]he Campaign has already litigated and lost most of these

²⁵ *Id.* at 29.

²⁶ *Id.* at 32 (emphasis in original).

²⁷ *Id.* at 34.

²⁸ *Donald J. Trump for President, Inc. v. Boockvar*, 2:20-cv-00966-NR (W.D. Pa.) Oct. 10, 2020 Opinion at 82, 108.

²⁹ *Donald J. Trump for President, Inc., et al. v. Boockvar, et al.*, 4:20-cv-02078 (M.D. Pa.) Nov. 17, 2020 Transcript of Oral Argument Proceedings In Re: Motion to Dismiss at 137:18.

³⁰ [Donald J. Trump for President, Inc. v. Sec’y of Pennsylvania](#), 830 F. App’x 377, 386 (3d Cir. 2020).

issues”³¹ and instead was improperly seeking to “collaterally attack those prior rulings,”³² (3) no factual allegations actually support the causes of action;³³ and (4) “the Second Amended Complaint seeks breathtaking relief: barring the Commonwealth from certifying its results or else declaring the election results defective and ordering the Pennsylvania General Assembly, not the voters, to choose Pennsylvania’s presidential electors. It cites no authority for this drastic remedy.”³⁴

**A SUBSTANTIAL BASIS EXISTS FOR THE OFFICE OF DISCIPLINARY COUNSEL
TO INVESTIGATE MR. CAFFREY’S CONDUCT AND TO
IMPOSE APPROPRIATE DISCIPLINE**

The Office of Disciplinary Counsel should investigate Mr. Caffrey’s actions on the following bases:

1. Mr. Caffrey Violated Rule 3.1 By Bringing and Defending a Matter He Knew Lacked Merit

Rule 3.1 provides, in part, as follows: “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.”

Comment 2 states that: “The action is frivolous...if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.”

Further, “[a] claim advanced in a proceeding is considered frivolous if it lacks any basis in law and fact.” *Adams v. Dep’t of Pub. Welfare*, 781 A.2d 217, 220 (Pa. Commw. Ct. 2001).

As the District Court’s and Third Circuit’s treatment of the matter demonstrate, the Amended Complaint that Mr. Caffrey defended lacked any basis in law or fact. As a sampling of their views of the litigation:

- “This Court has been unable to find any case in which a plaintiff has sought such a drastic remedy in the contest of an election, in terms of the sheer volume of votes asked to be invalidated.”³⁵
- “This Court has been presented with strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence.”³⁶

³¹ *Id.* at 387.

³² *Id.*

³³ *Id.* at 388.

³⁴ *Id.*

³⁵ Memorandum Opinion at 2.

³⁶ *Id.*

- “This claim, like Frankenstein’s Monster, has been haphazardly stitched together from two distinct theories in an attempt to avoid controlling precedent.”³⁷
- “That Plaintiffs are trying to mix-and-match claims to bypass contrary precedent is not lost on the Court. The Court will thus analyze Plaintiffs’ claims as if they had been raised properly and asserted as one whole for purposes of standing and the merits.”³⁸
- “The former finds no support in the operative pleading, and neither states an equal protection violation.”³⁹
- “That deficiency aside, to the extent this new theory is even pled, Plaintiffs fail to plausibly plead that there was ‘uneven treatment’ of Trump and Biden watchers and representatives. Paragraphs 132-143 of the [First Amended Complaint] are devoted to this alleged disparity. None of these paragraphs support Plaintiffs’ argument.”⁴⁰
- “Granting Plaintiffs’ requested relief would necessarily require invalidating the ballots of every person who voted in Pennsylvania. Because this Court has no authority to take away the right to vote of even a single person, let alone millions of citizens, it cannot grant Plaintiffs’ requested relief.”⁴¹
- “Rather than requesting that their votes be counted, they seek to discredit scores of other votes, but only for one race. This is simply not how the Constitution works.”⁴²
- Four times in the Third Circuit opinion, the Court refers to the Plaintiffs citing no authority for its propositions:
 - “The Campaign cites no authority suggesting that an actor discriminates by treating people equally while harboring a partisan motive, and we know of none.”⁴³
 - “[T]he Second Amended Complaint seeks breathtaking relief: barring the Commonwealth from certifying its results or else declaring the election results defective and ordering the Pennsylvania General Assembly, not the voters, to choose Pennsylvania’s presidential electors. It cites no authority for this drastic remedy.”⁴⁴
 - “It cites no federal authority regulating poll watchers or notice and cure. It alleges no specific discrimination. And it does not contest that it lacks standing under the Elections and Electors Clauses. These claims cannot succeed.”⁴⁵
 - “But nothing in the Due Process Clause requires having poll watchers or representatives, let alone watchers from outside a county or less than eighteen feet away from the nearest table. The Campaign cites no authority for those propositions, and we know of none. (Ditto for notice-and-cure procedures.) And the Campaign litigated and lost that claim under state law too.”⁴⁶

³⁷ *Id.* at 11.

³⁸ *Id.* at 12.

³⁹ *Id.* at 33.

⁴⁰ *Id.*

⁴¹ *Id.* at 32.

⁴² *Id.* at 31.

⁴³ *Donald J. Trump for President, Inc.*, 830 F. App'x at 388.

⁴⁴ *Id.*

⁴⁵ *Id.* at 389.

⁴⁶ *Id.* at 387.

Indeed, perhaps the Third Circuit said it most clearly: “Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here...*The Campaign’s claims have no merit.*”⁴⁷

“Knowledge” under the Rules of Professional Conduct can be “inferred from circumstances.”⁴⁸

Ample evidence demonstrates that Mr. Caffrey knew of the frivolous nature of the litigation he initiated. As a starting point, several attorneys had already withdrawn and, an additional attorney sought to withdraw at the same time Mr. Caffrey entered his appearance.⁴⁹ Additionally, as the District Court noted, the Plaintiffs “haphazardly stitched together” their claims to avoid controlling precedent.⁵⁰ Further, these matters had already been litigated (and lost) as state-law claims. Moreover, the clear disconnect between the asserted injuries and requested relief would be apparent to any lawyer seeking to make a meritorious and redressable claim. Finally, both the District Court and Court of Appeals repeatedly refer to the Plaintiffs’ failure to allege relevant facts or cite any authority for their legal propositions. For that reason, the Third Circuit held that allowing the Second Amended Complaint, which Mr. Caffrey drafted, would prove futile.

Mr. Caffrey knew the claims he was advancing in this matter lacked any basis in law or fact. He did not seek a good-faith extension, modification, or reversal of the law – he simply ignored it.

No matter the reasoning or rationale, Mr. Caffrey violated Rule 3.1 and his actions warrant discipline.

2. Mr. Caffrey Violated Rule 3.3 By Making False Statements Regarding Law to the Court and Failing to Correct Those Statements

Rule 3.3(a)(1) provides that a “lawyer shall not knowingly make a false statement of material 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.”

Comment 4 states that, “Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities.”

The District Court’s opinion notes that Plaintiffs improperly sought to avoid controlling precedent by concocting theories and that the Trump Campaign cited cases that was, “at best, misguided.”⁵¹

⁴⁷ *Id.* at 381 (emphasis added).

⁴⁸ Rule 1.0(f).

⁴⁹ *Donald J. Trump for President, Inc., et al. v. Boockvar, et al.*, 4:20-cv-02078 (M.D. Pa.) Nov. 16, 2020 Motion to Withdraw as Attorney.

⁵⁰ Memorandum Opinion at 11.

⁵¹ *Id.* at 21.

In fact, the District Court noted that the way in which the Plaintiffs presented their arguments required the Court itself to “embark on an extensive project of examining almost every case cited to by Plaintiffs to piece together the theory of standing as to this Plaintiff – the Trump Campaign.”⁵² In doing so, the District Court found that not a single case cited by the Plaintiffs stood for the proposition they were making about the Trump Campaign’s standing.

That is not candor, that is misrepresentation. It is one thing for an attorney to rely on a case or two that fail to ultimately support the attorney’s proposition. But, here, the entire basis for the Trump Campaign’s assertion of standing lacked merit. And as the District Court’s opinion demonstrates, the Plaintiffs’ lawyers were not forthright about that fact – they hid that and forced the District Court to discern it for itself. Such conduct violates the Rules of Professional Conduct. Mr. Caffrey attended, and spoke at, the November 17 hearing. He never corrected the representations made in the pleadings (filed after he joined the legal team) and at the hearing. And, importantly, he reaffirmed those false representations in the motion to allow leave to file a second amended complaint, which he prepared and filed.

3. Mr. Caffrey Violated Rule 4.4 Command That Lawyers Respect the Rights of Third Parties

Pursuant to Rule 4.4, “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.”

Comment 1 to the Rule states, “Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons.”

In the interests of his clients, Mr. Caffrey sought to have between 1.5 million and 6.8 million Pennsylvanians lose their right to vote. Incredibly, while asserting that, “Every legal – not illegal – vote should be counted,”⁵³ Plaintiffs sought the opposite. Paradoxically, while challenging the denial of two people’s right to vote, the remedy Plaintiffs fought for was the canceling of every validly cast ballot.⁵⁴ The District Court stated as much: “Granting Plaintiffs’ requested relief would necessarily require invalidating the ballots of every person who voted in Pennsylvania. Because this Court has no authority to take away the right to vote of even a single person, let alone millions of citizens, it cannot grant Plaintiffs’ requested relief.”⁵⁵

The Court of Appeals went further, directly calling the Plaintiffs’ effort one that would harm others:

Granting relief would harm millions of Pennsylvania voters too. The Campaign would have us set aside 1.5 million ballots without even alleging fraud. As the deadline to certify votes has already passed, granting relief would disenfranchise those voters or

⁵² *Id.* at 18-19.

⁵³ Compl. ¶ 1.

⁵⁴ Compl. at p. 84.

⁵⁵ Memorandum Opinion at 32.

sidestep the expressed will of the people. Tossing out those ballots could disrupt every down-ballot race as well. There is no allegation of fraud (let alone proof) to justify harming those millions of voters as well as other candidates.⁵⁶

4. Mr. Caffrey Engaged in Misconduct that Violates Rule 8.4

Under Rule 8.4, “It is professional misconduct for a lawyer to...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; [or] engage in conduct involving dishonesty, fraud, deceit or misrepresentation; [or] engage in conduct that is prejudicial to the administration of justice.”

Mr. Caffrey participated in a purposefully dishonest effort to undermine the 2020 election. He brought frivolous claims that the Constitution, prior court decisions, and relevant statutes barred. The bare “factual” bases he relied on were supported by false statements and wild speculation. As both the District Court and Court of Appeals found, no legal or factual grounds existed for the claims Mr. Caffrey advanced.

Moreover, although the District Court generously called some of the legal arguments Plaintiffs advanced as “at best, misguided,”⁵⁷ they were actually misrepresentations of law. “When alleged attorney misconduct is misrepresentation in violation of professional conduct rule prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation, prima facie case is made where record establishes that misrepresentation was knowingly made, or made with reckless ignorance of truth or falsity of representation.” *Office of Disciplinary Counsel v. Price*, 732 A.2d 599, 557 Pa. 166. The fact that the District Court also found a Frankensteinian effort to concoct legal arguments to evade controlling precedent demonstrates the knowing nature of the misrepresentations and dishonesty involved in this matter.

Furthermore, Mr. Caffrey assisted others in violating the Rules of Professional Conduct. After Mr. Caffrey filed a pro hac vice motion to allow Mr. Giuliani to serve as counsel in the matter, Mr. Giuliani actively participated in the *Boockvar* litigation and Mr. Caffrey attended the November 17, 2020 hearing with Mr. Giuliani.⁵⁸

The Appellate Division of the Supreme Court of New York has suspended Mr. Giuliani for his role in the efforts to overturn the 2020 election – and specifically cited the *Boockvar* litigation as a basis for his discipline.⁵⁹ Thus, Mr. Caffrey assisted Mr. Giuliani violate rules of professional conduct.

⁵⁶ *Donald J. Trump for President, Inc.*, 830 F. App’x at 390.

⁵⁷ Memorandum Opinion at 21.

⁵⁸ *Donald J. Trump for President, Inc., et al. v. Boockvar, et al.*, 4:20-cv-02078 (M.D. Pa.) Nov. 17, 2020 Transcript of Oral Argument Proceedings In Re: Motion to Dismiss at 31:12-15.

⁵⁹ *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021 at 11-14, 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).

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.”⁶⁰ 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.”⁶¹ 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.

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.⁶²

Mr. Caffrey chose to offer his professional license to an assault on our democracy. He pursued litigation that lacked any basis in law or fact. He participated in an organized effort to sow discord and doubt about the 2020 elections. He helped lead the charge in Pennsylvania to disenfranchise millions of his fellow citizens because he did not like how they voted.

For the reasons set forth above, we respectfully request that the Office of Chief Disciplinary Counsel investigate Mr. Caffrey’s conduct and pursue appropriate discipline.

Sincerely,



Michael Teter
Managing Director

On behalf of The 65 Project

⁶⁰ *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

⁶¹ *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

⁶² *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021 at 30-31.