August 31, 2022

Attorney Grievance Committee
Supreme Court of the State of New York
Appellate Division
180 Maiden Lane
New York, NY 10038

VIA ELECTRONIC MAIL: [redacted]

Dear Attorney Grievance Committee:

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 Attorney Grievance Committee investigate the actions taken by Brandon Johnson relating to his effort to overturn the 2020 presidential election. Mr. Johnson served as part of a coordinated attempt to "release the Kraken" on American democracy, alongside Sidney Powell, Rudy Giuliani, Lin Wood, and John Eastman as they abused the judicial system to promote and amplify bogus, unsupported claims of fraud to discredit an election that Mr. Trump lost.

Mr. Johnson worked on five separate matters:

- *Feehan v. Wisconsin Elections Commission*, Case No. 20-cv-1771 (E.D. Wis. 2020)
- *King, et al. v. Whitmer, et al.*, Case No. 20-cv-13134 (E.D. Mich. 2020)
- *Bowyer, et al. v. Ducey, et al.*, Case No. 2:20-cv-02321-DJH (D. Ariz. 2020)
- *Pearson, et al. v. Kemp, et al.*, Case No. 1:20-v-04809-TCB (N.D. Ga. 2020)
- *Gohmert v. Pence*, Case No. 6:20-cv-00660 (E.D. Tex. 2020)

These matters not only lacked any basis in law or fact, but included the Plaintiffs' counsel manufacturing quotes from caselaw, adding a plaintiff who had not agreed to join the lawsuit, materially altering a copy of an official document and presenting the altered version to the court as evidence, and presenting patently false evidence that the lawyers did not investigate before presenting it to federal court. Incredibly, and perhaps conclusively for your investigation, Mr. Johnson's own co-counsel has defended herself against a defamation claim based on the

assertions she made regarding the 2020 election by stating that, "no reasonable person" would believe those assertions to be "statements of fact."[1]

The courts handling these matters uniformly rejected the effort. As one court contending with Mr. Johnson's efforts stated, "Allegations that find favor in the public sphere of gossip and innuendo cannot be a substitute for earnest pleadings and procedure in federal court." Further, as you may know, the United States District Court in Michigan has referred Mr. Johnson for discipline for his conduct in that case. However, even that court's powerful order could not account for Mr. Johnson's misconduct across the country.

A full investigation by the Attorney Grievance Committee will demonstrate the egregious nature of Mr. Johnson's actions, especially when considered in light of his purposes, the direct and possible consequences of his behavior, and the serious risk that Mr. Johnson will repeat such conduct unless disciplined.

BACKGROUND

Joe Biden received over 81 million votes in November 2020, defeating Mr. Trump by over seven million votes and over four percentage points.[2] Mr. Trump's head of the U.S. Cybersecurity and Infrastructure Security Agency, Christopher Krebs, announced that the "November 3rd 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.[3]

Many of Mr. Trump's own senior advisors agreed with Attorney General Barr and Mr. Krebs.[4] 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

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[1] *See U.S. Dominion, Inc. v. Powell*, Case No. 1:21-cv-00040 (D.D.C. 2021), Mot. to Dismiss at 27, available at https://storage.courtlistener.com/recap/gov.uscourts.dcd.225699/gov.uscourts.dcd.225699.22.2_3.pdf.

[2] *See* Federal Election Commission, *Official 2020 Presidential General Election Results*, available at https://www.fec.gov/resources/cms-content/documents/2020presgeresults.pdf.

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

[4] *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.

allegations that Mr. Trump and his allies asserted about a fraudulent election.[5] Mr. Rosen has testified that on December 15, 2020, at a meeting that included Mark Meadows, White House Chief of Staff, he and others told Mr. Trump that the information he was receiving from his political allies was not correct.[6] 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."[7]

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.[8] 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.[9]

CONDUCT GIVING RISE TO THE COMPLAINT

Mr. Johnson helped lead the charge on behalf of Mr. Trump in four states that served as the focal point of the effort: Arizona, Georgia, Michigan, and Wisconsin.

On or around December 1, 2020 – four weeks after the presidential election – Mr. Johnson filed the complaints initiating the four lawsuits noted above. He was, as his co-counsel Sidney Powell stated, attempting to "release the Kraken." Mr. Johnson sought to have the federal courts "order state officials to decertify the election results that state officials had certified the day before, order the Governor not to transmit to the Electoral College the certified results he'd transmitted the day before and order the Governor to instead transmit election results that declared Donald Trump to be 'the winner of this election.'"

The complaints were carbon copies of each other. As just a sampling, the Complaint (and Amended Complaint) Mr. Johnson filed in *Feehan* asserted:

> This civil action brings to light a massive election fraud, multiple violations of Wisconsin Statutes Chapters 5 – 12 (hereafter, "Wisconsin Election Code"), *see, e.g.,* Wis. Stat. §§ 5.03, *et. seq.*, in addition to the Election and Electors Clauses and Equal

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[5] *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

[6] Interview of Jeffrey Rosen.

[7] Interview with Richard Donoghue.

[8] W. Cummings, J. Garrison & J. Sergent, *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/.

[9] *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.

Protection Clause of the U.S. Constitution. These violations occurred during the 2020 General Election in the City of Milwaukee, southeastern Wisconsin counties, and throughout the State of Wisconsin, as set forth in the affidavits of dozens of eyewitnesses and the statistical anomalies and mathematical impossibilities detailed in the affidavits of expert witnesses. *See* Exh. 19, Declaration of affiant presenting statistical analysis prediction of 105,639 fraudulent ballots cast for Joe Biden in the City of Milwaukee and Exh. 17, Declaration of Russell James Ramsland, Jr. wherein he demonstrates it is statistically impossible for Joe Biden to have won Wisconsin.

…

The scheme and artifice to defraud was for the purpose of illegally and fraudulently manipulating the vote count to manufacture an election of Joe Biden as President of the United States, and also of various down ballot democrat candidates in the 2020 election cycle. The fraud was executed by many means, but the most fundamentally troubling, insidious, and egregious ploy was the systemic adaptation of old-fashioned "ballot-stuffing" techniques. *See* Exh. 16, U. S. Senator Elizabeth Warren (D. Mass.) letter of December 6, 2019 concerning the dangers of private equity control and censorship of election technology in the United States.
The fraud has now been amplified and rendered virtually invisible by computer software created and run by domestic and foreign actors for that very purpose.

…

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…

The multifaceted schemes and artifices implemented by Defendants and their collaborators to defraud resulted in the unlawful counting, or fabrication, of hundreds of thousands of illegal, ineligible, duplicate or purely fictitious ballots in the State of Wisconsin, that collectively add up to multiples of Biden's purported lead in the State of 20,565 votes.

…

While this Amended Complaint, and the eyewitness and expert

testimony incorporated herein, identify with specificity sufficient ballots required to set aside the 2020 General Election results, the entire process is so riddled with fraud, illegality, and statistical impossibility that this Court, and Wisconsin's voters, courts, and legislators, cannot rely on, or certify, any numbers resulting from this election. Accordingly, this Court must set aside the results of the 2020 General Election and grant the declaratory and injunctive relief requested herein.

…

The fraud begins with the election software and hardware from Dominion Voting Systems Corporation ("Dominion") used by the Wisconsin Elections Commission. The Dominion systems derive from the software designed by Smartmatic Corporation, which became Sequoia in the United States.

…

Smartmatic and Dominion were founded by foreign oligarchs and dictators to ensure computerized ballot-stuffing and vote manipulation to whatever level was needed to make certain Venezuelan dictator Hugo Chavez never lost another election. See Exh. 1, Redacted Declaration of Dominion Venezuela Whistleblower ("Dominion Whistleblower Report") and Exh. 8, Statement by Ana Mercedes Diaz Cardozo outlining actual examples of election manipulation by hacking and misuse of technology in Venezuelan elections. Notably, Chavez "won" every election thereafter.

…

As set forth in the Dominion Whistleblower Report, the Smartmatic software was contrived through a criminal conspiracy to manipulate Venezuelan elections in favor of dictator Hugo Chavez.

…

In addition to the Dominion computer fraud, this Amended Complaint identifies several additional categories of "traditional" voting fraud that occurred as a direct result of Defendant Wisconsin Election Commission ("WEC") and other Defendants directing Wisconsin clerks and other election officials to ignore or violate the express requirements of the Wisconsin Election Code. First, the WEC issued "guidance" to county and municipal clerks

> not to reject "indefinitely confined" absentee voters, even if the clerks possess "reliable information" that the voter is no longer indefinitely confined, in direct contravention of Wisconsin Statute § 6.86(2)(6), which states that clerks must remove such voters. Second, the WEC issued further guidance directing clerks – in violation of Wisconsin Statute § 6.87(6)(d), which states that an absentee envelope certification "is missing the address of a witness, the ballot may not be counted" – to instead fill in the missing address information.
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> …
>
> In the accompanying redacted declaration of a former electronic intelligence analyst with 305th Military Intelligence with experience gathering SAM missile system electronic intelligence, the Dominion software was accessed by agents acting on behalf of China and Iran in order to monitor and manipulate elections, including the most recent US general election in 2020. *See* Exh. 12 (copy of redacted witness affidavit).[10]

Throughout the Amended Complaints in these actions, "fraud" or its variations appear 45 times, "Venezuela" or "Venezuelan" appear 16 times, and there are at least nine references to Hugo Chavez.[11] Indeed, Mr. Johnson and her co-counsel appeared to purposefully seek to link Smartmatic and Dominion, even though they are actually rival companies (for example, both bid for contracts in Georgia).[12] Moreover, the Amended Complaint falsely states that Dominion was "founded by foreign oligarchs and dictators to ensure computerized ballot-stuffing and vote manipulation to whatever level was needed to make certain Venezuelan dictator Hugo Chavez never lost another election."[13] In actuality, John Poulos founded the company in Toronto, Canada in 2002 – a publicly available fact – and in 2009, Dominion Voting Systems, Inc. incorporated in Delaware and headquartered in Denver, Colorado.[14]

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[10] *Feehan v. Wisconsin Elections Commission*, Case No. 20-cv-1771 (E.D. Wis. 2020), Am. Compl. ¶¶ 1-16, available at https://storage.courtlistener.com/recap/gov.uscourts.wied.92717/gov.uscourts.wied.92717.9.0.pdf.

[11] *See generally id*.

[12] Georgia Secretary of State, Elections Security Is Our Top Priority: Security-Focused Tech Company, Dominion Voting to Implement New Verified Paper Ballot System, available at https://sos.ga.gov/news/security-focused-tech-company-dominion-voting-implement-new-verified-paper-ballot-system.

[13] *Feehan v. Wisconsin Elections Commission*, Case No. 20-cv-1771 (E.D. Wis. 2020), Am. Compl. ¶ 7.

[14] *See, e.g.*, Neena Stija, *What You Need to Know About Dominion, the Company that Trump and His Lawyers Baselessly Claim "Stole" the Election*, Wash. Post., Nov. 20, 2020, available at https://www.washingtonpost.com/politics/2020/11/20/dominion-voting-trump-faq/.

The efforts contained other concerning features, as well. For example:

- The Plaintiffs allege that the Dominion software misallocates, redistributes, or deletes votes, but prior to including those allegations in the complaints, Mr. Johnson knew that Georgia had completed two hand recounts that confirmed the accuracy of Dominion's tabulation.[15] They also knew that the Chairman of the Maricopa County Board of Supervisors in Arizona had released a statement explaining, "The Dominion tabulation equipment met mandatory requirements during logic and accuracy testing before the Presidential Preference Election, the Primary Election and the General Election. And after each of these 2020 elections, the hand count audit showed the machines generated an accurate count."[16]

- Wisconsin conducted a post-election audit that included fifteen percent of Dominion machines and Wisconsin Election Commissioner Eastman Knudson, a former Republican state legislator, stated that the audit showed "no evidence of systemic problems" or "hacking" or of "switched votes."[17] The audit results were posted online and available prior to the Amended Complaint's filing.

- On December 1, 2020, Attorney General Barr reiterated that no fraud occurred, specifically rebutting the claims regarding Dominion by saying, "There's been one assertion that would be systemic fraud and that would be the claim that machines were programmed essentially to skew the election results. And the DHS and DOJ have looked into that, and so far, we haven't seen anything to substantiate that."[18]

- In the Georgia action, Plaintiffs' counsel alleged that Governor Kemp and Secretary of State Raffensperger "rushed through the purchase of Dominion voting machines" and that "[a] certificate from the Secretary of State was awarded to Dominion Voting but is undated."[19] Plaintiffs' counsel then attached a copy of the Certification for Dominion Voting Systems from Secretary of State. However, the certification was not undated, but the August 9, 2019 date on the

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[15] Georgia Secretary of State, *3rd Strike Against Voter Fraud Claims Means They're Out After Signature Audit Finds No Fraud*, https://sos.ga.gov/news/3rd-strike-against-voter-fraud-claims-means-theyre-out-after-signature-audit-finds-no-fraud.

[16] Letter from Clint Hickman to Maricopa County Voters (Nov. 17, 2020), available at https://www.maricopa.gov/DocumentCenter/View/64676/PR69-11-17-20-Letter-to-Voters#:~:text=Here%20are%20the%20facts%3A&text=The%20evidence%20overwhelmingly.

[17] Video available at https://wiseye.org/2020/12/01/wisconsin-elections-commission-december-2020- meeting at 2:05:18.

[18] Michael Balsamo, *Disputing Trump, Barr says no widespread election fraud*, Associated Press (Dec. 1, 2020), available at https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d.

[19] *Pearson, et al. v. Kemp, et al.*, Case No. 1:20-v-04809-TCB (N.D. Ga. 2020), Compl. ¶ 12.

certificate disrupted Plaintiffs' counsel's narrative. And so they altered the document:[20]

Doctored undated Secretary of State certificate attached to Powell's complaint in Georgia	Authentic dated Secretary of State certificate publicly available online
	

- The lawyers included a declaration of an anonymous source – a "code-named "Spyder" – who the Plaintiffs stated was a "military intelligence expert."[21] In fact, "Spyder" (which a mistaken filing by Ms. Powell revealed to be Josh Merritt) never actually worked in military intelligence and he himself acknowledged that the declaration that Plaintiffs' counsel wrote for him was "misleading."[22]

- The complaints also selectively quoted Princeton professor Andrew Appel and

[20] *Compare Pearson v. Kemp*, No. 1:20- cv-04809 (N.D. Ga. Nov. 25, 2020) Compl. at Ex. 5 *with* Georgia Secretary of State, Dominion Certification (Aug. 9, 2019), available at, https://sos.ga.gov/admin/uploads/Dominion _Certification.pdf as well as at https://twitter.com/bradheath/status/1333789738373767172/photo/2.

[21] *See, e.g.*, *Pearson v. Kemp*, No. 1:20- cv-04809 (N.D. Ga. Nov. 25, 2020) Compl. ¶ 111.
[22] Emma Brown, Aaron C. Davis & Alice Crites, *Sidney Powell's secret 'military intelligence expert,' key to fraud claims in election lawsuits, never worked in military intelligence*, Wash. Post (Dec. 11, 2020), available at, https://www.washingtonpost.com/investigations/sidney-powellspider-spyder-witness/2020/12/11/0cd567e6-3b2a-11eb-98c4-25dc9f4987e8_story.html.

indicated he was speaking about Dominion in 2020, when, in fact Dr. Appel was speaking about a decades-old machine.[23] In reality, Dr. Appel had 58 other specialists in election security rebut the assertions made about his views in the complaints and stated, "no credible evidence has been put forth that supports a conclusion that the 2020 election outcome in any state has been altered through technical compromise."[24]

- The attorneys for Plaintiffs submitted sworn statements from individuals that contained identical explanations for speaking up:[25]

Declaration of Anonymous Source Claiming to be on the National Security Guard Detail of the President of Venezuela:	**Declaration of Ana Mercedes Dias Cardozo:**
"I want to alert the public and let the world know the truth about the corruption, manipulation, and lies being committed by a conspiracy of people and companies intent upon betraying the honest people of the United States and their legally constituted institutions and fundamental rights as citizens. This conspiracy began more than a decade ago in Venezuela and has spread to countries all over the world. It is a conspiracy to wrongfully gain and keep power and wealth. It involves political leaders, powerful	"I want to alert the public and let the world know the truth about the corruption, manipulation, and lies being committed by a conspiracy of people and companies intent upon betraying the honest people of the United States and their legally constituted institutions and fundamental rights as citizens. This conspiracy began more than a decade ago in Venezuela and has spread to countries all over the world. It is a conspiracy to wrongfully gain and keep power and wealth. It involves political leaders, powerful

[23] *See* Tony Adams, Prof. Andrew W Appel, et al., *Scientists say no credible evidence of computer fraud in the 2020 election outcome, but policymakers must work with experts to improve confidence*, Matt Blaze (Nov. 16, 2020), available at, https://www.mattblaze.org/papers/election2020.pdf.

[24] *Id*.

[25] *Compare Pearson v. Kemp*, No. 1:20-cv-04809 (N.D. Ga. Nov. 25, 2020) Declaration of an anonymous source claiming to have been selected for the "national security guard detail of the President of Venezuela" at ¶ 4 *with Pearson v. Kemp*, No. 1:20-cv-04809 (N.D. Ga. Nov. 25, 2020) Statement by Ana Mercedes Diaz Cardozo at ¶ 4.

companies, and other persons whose purpose is to gain and keep power by changing the free will of the people and subverting the proper course of governing."	companies, and other persons whose purpose is to gain and keep power by changing the free will of the people and subverting the proper course of governing."

- Plaintiffs' attorneys cited, and attached to their complaints, a declaration from Terpsichore Maras-Lindeman without ever speaking to Ms. Maras-Lindeman. Instead, Ms. Maras-Lindeman "distributed her affidavit widely to like-minded people and was unaware it had come to Powell's attention until it appeared as an exhibit in one of her cases."[26] Had Plaintiffs' counsel actually spoken to Ms. Maras-Lindeman, or conducted even the most rudimentary investigation, they would have learned that Ms. Maras-Lindeman has an extensive history of making false claims about her career, education, and training. The North Dakota Attorney General's Office investigated her for violating consumer fraud and charitable solicitation laws and noted that "it has been very difficult to determine the truth among Maras-Lindeman's various claims."[27] A North Dakota court entered a judgment against Ms. Maras-Lindeman finding that she engaged in fraud and deceptive behavior.[28] All of this information was publicly available before Mr. Johnson and her co-counsel relied on her affidavit that happened to find its way into their hands.

- Another affiant relied on by Plaintiffs' counsel was Russell Ramsland, a conspiracy theorist who has asserted that George Soros (born in 1930) helped form the "Deep State" in Nazi Germany in the 1930s, working alongside Senator Prescott Bush (President George H.W. Bush's father), the Muslim Brotherhood, and "leftists."[29] Mr. Ramsland made these publicly reported statements, as far

[26] Jon Swaine, *Sidney Powell's Secret Intelligence Contractor Witness is a Pro-Trump Podcaster*, Wash. Post. (Dec. 24, 2020), available at https://www.washingtonpost.com/investigations/sidney-powells-secret-intelligence-contractor-witness-is-a-pro-trump-podcaster/2020/12/24/d5a1ab9e-4403-11eb-a277-49a6d1f9dff1_story.html.

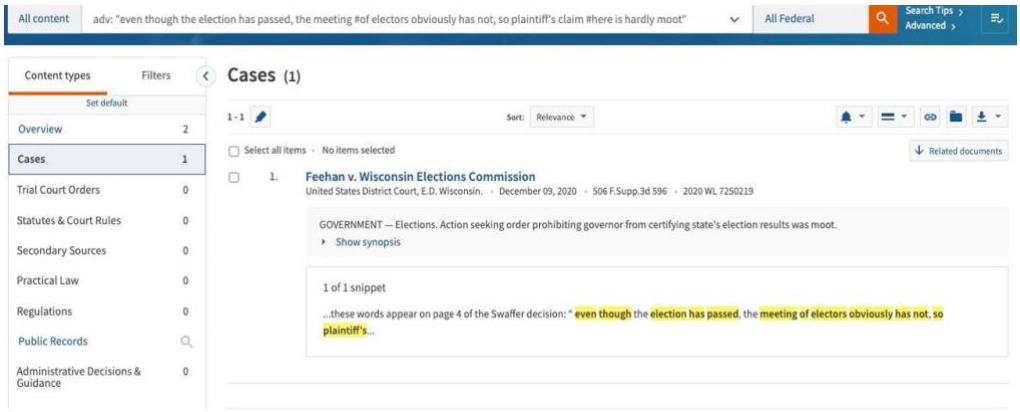
[27] North Dakota Attorney General, *Attorney General Details Investigation of Unlicensed Business for Alleged Fraud* (Apr. 4, 2018), available at https://attorneygeneral.nd.gov/news/attorney-general-details-investigation-unlicensed-business-alleged-fraud-tore-maras-lindeman.

[28] Findings of Fact, Conclusions of Law, and Order for Judgment, State v. Maras, No. 51-2018-CV-01339 (Dist. Ct. N. Central Jud. Dist., N.D. Sept. 11, 2020), available at https://attorneygeneral.nd.gov/sites/ag/files/documents/RecentActions/2020-09-14-MagicCityChristmas-Judgment.pdf.

[29] John Savage, *Texas Tea Partiers Are Freaking Out Over 'Deep State' Conspiracy Theories*, Vice (Sept. 20, 2018), available at, https://www.vice.com/en/article/mbwgxx/texas-tea-partiersare-freaking-out-over-deep-state-conspiracy-theories.

back as 2018. Mr. Ramsland's analysis of voter turnout was riddled with obvious and quickly documented errors and Mr. Johnson never informed the Court of those errors.[30]

- The District Court in Wisconsin noted in its decision dismissing the case that the Plaintiffs' counsel "seems to have made up the 'quote' in his brief that purports to be from [a cited case]."[31] Indeed, the Court read the cited opinion "three times" and could not find that quote.[32] In fact, we have reviewed the quoted language and run it through Westlaw, without any citations, other than the Court's decision in *Feehan*, coming up:



- They also misrepresented well-established caselaw and standards. For example, Plaintiffs contended that *Whitford v. Nichol*, 151 F. Supp. 3d 918 (W.D. Wis. 2015), established standing "to challenge state laws that collectively reduce the value of one party."[33] However, they did not inform the Court that the Supreme Court expressly overruled that exact rationale in that exact case.[34] They relied on notice pleading standards that have long since been overtaken by *Twombly* and *Iqbal*.

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[30] Clara Hendrickson, *Affidavit in Michigan lawsuit seeking to overturn election makes wildly inaccurate claims about vote*, PolitiFact (Dec. 4, 2020), available at https://www.politifact.com/factchecks/2020/dec/04/russell-james-ramsland-jr/affidavit-michigan-lawsuit-seeking-overturn-electi/.

[31] *Feehan v. Wisconsin Election Commission, et al.*, Case No. 20-cv-1771 (E.D. Wisc. 2020), Order Granting Defendants' Motion to Dismiss at 32, available at https://storage.courtlistener.com/recap/gov.uscourts.wied.92717/gov.uscourts.wied.92717.83.0_5.pdf.

[32] *Id.*

[33] *Feehan v. Wisconsin Election Commission, et al.*, Case No. 20-cv-1771 (E.D. Wisc. 2020), Brief in Opposition to Motion to Dismiss at 20, available at https://storage.courtlistener.com/recap/gov.uscourts.wied.92717/gov.uscourts.wied.92717.72.0.pdf.

[34] See *Gill v. Whitford*, 138 S. Ct. 1916, 1921 (2018).

- One of the original plaintiffs in the Complaint Mr. Johnson signed and filed was not aware he was a plaintiff in the case:

  Mr. Johnson had to file an Amended Complaint, removing Mr. Van Orden as a plaintiff.

Additionally, sufficient public information about her co-counsel's work existed to have put Mr. Johnson on notice that she needed to ensure that the claims she would be advancing in court had a factual basis. In a November 28, 2020 article, the *Washington Post* reported that:

> Campaign lawyers Justin Clark and Matt Morgan told others they should not present the Dominion theory because there was no evidence for it, the two officials said. The campaign official who was surprised by her sudden involvement said she did not seem interested in having the evidence.
>
> "What you saw with Sidney Powell and Rudy, it wasn't shoot first and ask questions later. It was shoot first and don't ask questions at all," that official said.[35]

Other, even presumably friendlier sources called Ms. Powell's claims into question. Fox News's Tucker Carlson stated on the air on November 19, 2020, that he invited Ms. Powell to appear on his show and present her evidence, but, he noted, "She never sent [] any evidence, despite a lot of requests…not a page…[Powell] never demonstrated that a single actual vote moved illegitimately by software from one candidate to another. Not

[35] Aaron C. Davis, Josh Dawsey, Emma Brown, and Jon Swaine, *For Trump Advocate Sidney Powell, a Playbook Steeped in Conspiracy Theories*, Wash. Post (Nov. 28, 2020), available at https://www.washingtonpost.com/investigations/sidney-powell-trump-kraken-lawsuit/2020/11/28/344d0b12-2e78-11eb-96c2-aac3f162215d_story.html.

one."[36]

Mr. Johnson either failed to conduct the requisite reasonable inquiry to ascertain whether the claims she was bringing had a factual basis or she knew that she was falsely asserting facts to the court. Afterall, as Ms. Powell has since argued, "no reasonable person" would believe those assertions to be "statements of fact."[37]

Either way, all of the United States District Courts soundly rejected the effort. In Wisconsin:

> [T]he legal question at the heart of this case is simple. Federal courts have limited jurisdiction. Does the federal court have the jurisdiction and authority to grant the relief this lawsuit seeks? The answer is no.
>
> Federal judges do not appoint the president in this country. One wonders why the plaintiffs came to federal court and asked a federal judge to do so. After a week of sometimes odd and often harried litigation, the court is no closer to answering the "why." But this federal court has no authority or jurisdiction to grant the relief the remaining plaintiff seeks. The court will dismiss the case.[38]

The Court also noted that the Plaintiffs in "presented *no* case, statute or constitutional provision providing the court with" the authority Plaintiff sought the Court to exercise.[39] Further, "Plaintiffs' alleged injury does not entitle them to seek their requested remedy because the harm of having one's vote invalidated or diluted is not remedied by denying millions of others *their* right to vote."[40]

In Arizona, federal judge Diane Humetewa, who was on Mr. Trump's shortlist for United States Supreme Court vacancies, held:

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[36] MUST-SEE: Tucker Carlson ABANDONS Trump's election fraud case on air, YouTube (Nov. 19, 2020), available at, https://www.youtube.com/watch?v=BspHzH6RRxo.
[37] *See U.S. Dominion, Inc. v. Powell*, Case No. 1:21-cv-00040 (D.D.C. 2021), Mot. to Dismiss at 27, available at https://storage.courtlistener.com/recap/gov.uscourts.dcd.225699/gov.uscourts.dcd.225699.22.2_3.pdf.
[38] *Feehan v. Wisconsin Election Commission, et al.*, Case No. 20-cv-1771 (E.D. Wisc. 2020), Order Granting Defendants' Motion to Dismiss at 2, available at https://storage.courtlistener.com/recap/gov.uscourts.wied.92717/gov.uscourts.wied.92717.83.0_5.pdf.
[39] *Id*. at 22 (emphasis in original).
[40] *Id.* at 23 (emphasis in original).

> By any measure, the relief Plaintiffs seek is extraordinary. If granted, millions of Arizonans who exercised their individual right to vote in the 2020 General Election would be utterly disenfranchised. Such a request should then be accompanied by clear and conclusive facts to support the alleged "egregious range of conduct in Maricopa County and other Arizona counties . . . at the direction of Arizona state election officials." Yet the Complaint's allegations are sorely wanting of relevant or reliable evidence, and Plaintiffs' invocation of this Court's limited jurisdiction is severely strained…
>
> The allegations they put forth to support their claims of fraud fail in their particularity and plausibility. Plaintiffs append over three hundred pages of attachments, which are only impressive for their volume. The various affidavits and expert reports are largely based on anonymous witnesses, hearsay, and irrelevant analysis of unrelated elections…
>
> Allegations that find favor in the public sphere of gossip and innuendo cannot be a substitute for earnest pleadings and procedure in federal court. They most certainly cannot be the basis for upending Arizona's 2020 General Election.[41]

In Georgia, the Court stated:

> [T]he burden is on the Plaintiffs, and the relief that they seek is extraordinary. And although they make allegations of tremendous worldwide improprieties regarding the Dominion voting machines, those allegations are supported by precious little proof.[42]

The Court added in its order dismissing the case:

> [T]he Plaintiffs essentially ask the Court for perhaps the most extraordinary relief ever sought in any Federal Court in connection with an election. They want this Court to substitute its judgment

[41] *Bowyer, et al. v. Ducey, et al.*, Case No. 2:20-cv-02321-DJH (D. Ariz. 2020) Order, available at https://storage.courtlistener.com/recap/gov.uscourts.azd.1255923/gov.uscourts.azd.1255923.84.0_2.pdf.

[42] *Pearson, et al. v. Kemp, et al.*, Case No. 1:20-v-04809-TCB (N.D. Ga. 2020) Tr. from Nov. 29, 2020 hearing at 15:24-16:3, available at https://storage.courtlistener.com/recap/gov.uscourts.gand.284055/gov.uscourts.gand.284055.23.0.pdf.

> for that of two-and-a-half million Georgia voters who voted for Joe Biden, and this I am unwilling to do.[43]

And in Michigan, the Court held:

> Plaintiffs . . . [bring] forth claims of widespread voter irregularities and fraud in the processing and tabulation of votes and absentee ballots. They seek relief that is stunning in its scope and breathtaking in its reach. If granted, the relief would disenfranchise the vote of more than 5.5 million Michigan citizens who, with dignity, hope, and a promise a voice, participated in the 2020 General Election. The Court declines to grant Plaintiffs this relief.[44]

But the federal court in Michigan went further when presented with a motion for sanctions against the attorneys who brought that matter forward:

> This lawsuit represents a historic and profound abuse of the judicial process. It is one thing to take on the charge of vindicating rights associated with an allegedly fraudulent election. It is another to take on the charge of deceiving a federal court and the American people into believing that rights were infringed, without regard to whether any laws or rights were in fact violated. This is what happened here.
>
> Individuals may have a right (within certain bounds) to disseminate allegations of fraud unsupported by law or fact in the public sphere. But attorneys cannot exploit their privilege and access to the judicial process to do the same. And when an attorney has done so, sanctions are in order.
>
> Here's why. America's civil litigation system affords individuals the privilege to file a lawsuit to allege a violation of law. Individuals, however, must litigate within the established parameters for filing a claim. Such parameters are set forth in statutes, rules of civil procedure, local court rules, and professional rules of responsibility and ethics. Every attorney who files a claim

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[43] *Pearson, et al. v. Kemp, et al.*, Case No. 1:20-v-04809-TCB (N.D. Ga. 2020) Tr. from Dec. 7, 2020 hearing.

[44] *King, et al. v. Whitmer, et al*., Case No. 20-cv-13134 (E.D. Mich. 2020) Opinion and Order 2, available at https://storage.courtlistener.com/recap/gov.uscourts.mied.350905/gov.uscourts.mied.350905.62.0_11.pdf.

> on behalf of a client is charged with the obligation to know these statutes and rules, as well as the law allegedly violated.
>
> Specifically, attorneys have an obligation to the judiciary, their profession, and the public (i) to conduct some degree of due diligence before presenting allegations as truth; (ii) to advance only tenable claims; and (iii) to proceed with a lawsuit in good faith and based on a proper purpose. Attorneys also have an obligation to dismiss a lawsuit when it becomes clear that the requested relief is unavailable.
>
> …
>
> The attorneys who filed the instant lawsuit abused the well-established rules applicable to the litigation process by proffering claims not backed by law; proffering claims not backed by evidence (but instead, speculation, conjecture, and unwarranted suspicion); proffering factual allegations and claims without engaging in the required prefiling inquiry; and dragging out these proceedings even after they acknowledged that it was too late to attain the relief sought.
>
> *And this case was never about fraud—it was about undermining the People's faith in our democracy and debasing the judicial process to do so.*[45]

The Court granted the motion for attorney's fees and sanctions and directed that a copy of that order be sent to the appropriate disciplinary authority where each attorney involved in the matter is admitted. The Plaintiffs' counsel appealed the order to the Sixth Circuit, which denied the appeal.[46]

Following the demise of the "Kraken" litigation, Mr. Johnson and several of his colleagues then filed *Gohmert v. Pence* in the Eastern District of Texas on December 27, 2020. In that matter, the attorneys presented what they called "only an issue of law" – attacking the constitutionality of the Electoral Count Act.[47]

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[45] *King, et al. v. Whitmer, et al*., Case No. 20-cv-13134 (E.D. Mich. 2020) Opinion and Order 1-3, available at https://storage.courtlistener.com/recap/gov.uscourts.mied.350905/gov.uscourts.mied.350905.172.0_8.pdf (emphasis in original).

[46] *See* https://storage.courtlistener.com/recap/gov.uscourts.mied.350905/gov.uscourts.mied.350905.193.0_2.pdf.

[47] *Gohmert v. Pence*, Case No. 6:20-cv-660 (E.D. Tex. 2020) Compl. ¶¶ 52-53, available at https://storage.courtlistener.com/recap/gov.uscourts.txed.203073/gov.uscourts.txed.203073.1.0_2.pdf.

The attorneys referred to "massive multi-state electoral fraud," even though courts had already rejected such assertions.[48] Putting those bogus claims aside, more troubling is that the Plaintiffs' counsel made serious false statements of material facts to the court. Specifically, the Complaint alleged that "the State of Arizona (and several others) have appointed two competing slates of electors."[49] And then stated:

> Plaintiffs include the United States Representative for Texas' First Congressional District and the entire slate of Republican Presidential Electors for the State of Arizona. The Arizona Electors have cast Arizona's electoral votes for President Donald J. Trump on December 14, 2020, at the Arizona State Capitol with the permission and endorsement of the Arizona Legislature.[50]

Additionally, Mr. Johnson and his co-counsel alleged:

> On December 14, 2020, members of the Arizona Legislature passed a Joint Resolution in which they: (1) found that the 2020 General Election "was marred by irregularities so significant as to render it highly doubtful whether the certified result accurately represents the will of the voters;" (2) invoked the Arizona Legislature's authority under the Electors Clause and 5 U.S.C. § 2 to declare the 2020 General Election a failed election and to directly appoint Arizona's electors; (3) resolved that the Plaintiff Arizona Electors' "11 electoral votes be accepted for … Donald J. Trump or to have all electoral votes nullified completely until a full forensic audit can be conducted;" and (4) further resolved "that the United States Congress is not to consider a slate of electors from the State of Arizona until the Legislature deems the election to be final and all irregularities resolved."[51]

The counsel then attached to the Complaint as Exhibit A what they labeled "A Joint Resolution of the 54th Legislature, State of Arizona, To The 116th Congress, Office of the President of the Senate Presiding."[52]

The problems abound. First, the State of Arizona did not appoint two competing slates of electors. Instead, as has been widely reported, a rogue group of individuals declared themselves to be the duly appointed electors, forged documents, and forwarded them to Congress, the United States Archivist, and the U.S. District Court. In Georgia, where this also occurred, two of the false electors are lawyers and the State Bar's Office of Disciplinary Counsel has referred the

[48] *Id*. at ¶ 5.
[49] *Id*. at ¶ 4.
[50] *Id*. at ¶ 5.
[51] *Id*. at ¶ 25.
[52] *Id*. at Ex. A.

matter to the State Disciplinary Board.[53] Federal law enforcement are reviewing the matter for criminal charges.[54]

Further, Plaintiffs' counsel wrote that "members of the Arizona Legislature passed a joint resolution." But as the attorneys must have known, the Arizona Legislature did nothing of the sort. In fact, the 54th Arizona Legislature adjourned *sine die* on May 26, 2020 and the 55th Legislature would not convene until January 2021. Instead, a group of Republican legislators drafted the resolution that the attorneys then presented as the work of the Arizona Legislature. Perhaps in an effort to avoid fully lying to the court, the attorneys wrote that "members of the Arizona Legislature" rather than simply the "Arizona Legislature." That, though, just reveals their intent – to mislead the court. Further, a group of legislators cannot "pass" a resolution and so including the legislative language misrepresented the action. And, finally, the document that the attorneys attached was titled, by them, "A Joint Resolution of the 54th Legislature."

Aside from the factual misrepresentations, the substantive arguments that Mr. Johnson and his co-counsel advanced lacked any merit. They challenged a presidential electoral system in place for over 130 years that had never been objected to by any other presidential candidate (including Mr. Trump in 2016). They claimed an "emergency" and sought expedited consideration despite the law they were challenging being in place since 1887 and despite waiting *a month after* the Arizona Secretary of State certified the election results on November 30, 2020. They premised their claims on false assertions of fraud that had been rejected by dozens of courts. And they brought the matter in Texas, which lacked jurisdiction – which they sought to get around by having Representative Gohmert acting as a named plaintiff despite his obvious lack of standing.

The legal system dealt with the frivolous matter in record time: the district court dismissed it on January 1, 2021,[55] the Fifth Circuit affirmed on January 2,[56] and the United States Supreme Court denied the application for interim relief on January 7, 2021.[57]

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[53] David Wickert, *State Bar Investigates Two Georgia Trump Electors*, Atlanta Journal-Constitution (July 26, 2022), available at https://www.ajc.com/politics/state-bar-investigates-two-georgia-trump-electors/AXJD6EANGZEJ3BSZM7KKAWNWDI/.

[54] Evan Perez and Tierney Sneed, *Federal Prosecutors Looking at 2020 Fake Elector Certifications, Deputy Attorney General Tells CNN*, CNN (Jan. 26, 2022), available at https://www.cnn.com/2022/01/25/politics/fake-trump-electoral-certificates-justice-department/index.html.

[55] *See* https://storage.courtlistener.com/recap/gov.uscourts.txed.203073/gov.uscourts.txed.203073.37.0_2.pdf.

[56] *See* https://storage.courtlistener.com/recap/gov.uscourts.txed.203073/gov.uscourts.txed.203073.42.0.pdf.

[57] *See* https://www.supremecourt.gov/orders/courtorders/010721zr_08l1.pdf.

A SUBSTANTIAL BASIS EXISTS FOR THE ATTORNEY GRIEVANCE COMMITTEE TO INVESTIGATE MR. JOHNSON'S CONDUCT AND TO IMPOSE APPROPRIATE DISCIPLINE

The Attorney Grievance Committee should investigate Mr. Johnson's actions on the following basis:

1. Mr. Johnson 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."

Comment 2 states that a lawyer's conduct is frivolous if "the lawyer knowingly advances a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law."

"Knowledge" under the Rules of Professional Conduct can be "inferred from circumstances."[58]

Ample evidence demonstrates that Mr. Johnson knew of the frivolous nature of the litigation he initiated. As the District Court in *Feehan* found, the Plaintiffs "presented *no* case, statute or constitutional provision providing the court with" the authority they sought for the Court to exercise.

Four separate federal courts reviewed the allegations – nearly identical across the board – and rejected the efforts. And the defendants in the Michigan matter successfully requested sanctions against the attorneys advancing the same claims as Mr. Johnson.

Further, the surrounding context demonstrates the frivolousness of Mr. Johnson's conduct. Public reports available prior to Mr. Johnson's initiating these matters showed that the Trump campaign's attorneys did not believe Ms. Powell had any evidence to support her claims. He filed a complaint on behalf of a plaintiff who did not even know of, or give approval to, the filing. He did not dismiss the matters when they became moot after the states' electoral votes were cast on December 14, 2020.

After losing the "Kraken" matters, Mr. Johnson persisted. He joined with his co-counsel to bring a claim against Vice President Pence on behalf of Representative Gohmert in the Eastern District of Texas, challenging the 1887 Electoral Count Act. Though the court system was able to dispose of the matter quickly, that is only a testament to the frivolity of the undertaking. Further, it required significant work by others – including the House of Representatives and Mr. Pence – who had to quickly defend against the untimely and unmeritorious filing.

[58] Rule 1.0(f).

In short, for the many reasons provided above, Mr. Johnson's conduct violated Rule 3.1.

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

Rule 3.3 commands that an

> Attorney 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 attorney;
> …
> (3) offer or use evidence that the attorney knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

Additionally, the complaints and accompanying affidavits that Mr. Johnson filed included false statements regarding the background of at least two witnesses. That information was available publicly prior to Mr. Johnson's filing the complaints, but he filed the affidavits nevertheless, referred to the mistaken background throughout the filings, and failed to correct the record even after the matter was published in a national newspaper.

Further, the complaints and briefing made purposefully false statements regarding Dominion's founding, sought to connect Smartmatic and Dominion even though the two companies are competitors, and used affiant allegations about Smartmatic against Dominion in a deliberate effort to mislead the Court regarding Dominion.

Mr. Johnson continued his dishonesty in the *Gohmert* matter, where he misrepresented to the court that a resolution drafted by some Republican state legislators was "passed" by the 54th Arizona Legislature and also stated that Arizona had submitted two slates of electors. The wording of the filings strongly indicates that the attorneys were well aware that what they were presenting to the court was misleading.

The duty under Rule 3.3 is one of candor, and Mr. Johnson violated it.

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

Rule 4.4(a) provides that, "In representing a client, an attorney shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a 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. Johnson sought to have tens of millions of voters lose their right to decide the 2020 presidential election. Every court addressing the same complaint filed by Mr. Johnson noted the extraordinary remedy they sought and the effect it would have on millions of Americans.

Mr. Johnson disregarded the potential consequences of his proposed remedy – showing no respect for the rights of millions of third persons whose votes would be invalidated – and his actions warrant discipline.

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

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;
> (b) engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer;
> (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
> (d) engage in conduct that is prejudicial to the administration of justice;
> … or …
> (h) engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.

Mr. Johnson 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 from discredited sources. He offered dishonest arguments and manufactured evidence.

Furthermore, Mr. Johnson assisted others in violating the Rules of Professional Conduct. The State Bar of Texas's Committee for Lawyer Discipline filed a petition against Ms. Powell for her conduct related to the post-election cases he filed, including *Feehan*.[59] A Texas court recently denied Ms. Powell's motion to dismiss the petition.

Similarly, Mr. Johnson's actions must be scrutinized and disciplined.

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[59] https://courtsportal.dallascounty.org/DALLASPROD/DocumentViewer/Embedded/ye0-5n-ZNL7oyR1i6dndFnGQjA9qBJlrva-IvUlu1xeuIp-m_RTyMkwd1O6ghQITaElOonF8oaAAp0SfE3OCw2?p=0.

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. Johnson 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 across the country 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 Attorney Grievance Committee investigate Mr. Johnson's conduct and pursue appropriate discipline.

Sincerely,

Managing Director
[redacted]
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.