



October 20, 2022

Minnesota Lawyers Professional Responsibility Board  
Office of Lawyers Professional Responsibility  
445 Minnesota Street, Suite 2400,  
St. Paul, Minnesota 55101

Dear Lawyers Professional Responsibility Board:

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 Board investigate the actions taken by Erick G. Kaardal relating to his effort to overturn the 2020 presidential election. Mr. Kaardal served as part of a coordinated attempt to abuse the judicial system to promote and amplify bogus, unsupported claims of fraud to discredit an election that Mr. Trump lost.

Mr. Kaardal worked on four matters: *Wisconsin Voters Alliance v. Pence* in the District of Columbia, *Stevenson v. Ducey* in Arizona, *Wood v. Raffensperger II* in Georgia, and *Wisconsin Voters Alliance v. Wisconsin Elections Commission* in Wisconsin. All of these actions, in which Mr. Kaardal filed remarkably similar complaints, lacked any basis in law or fact. Indeed, lawyers sought to create a false narrative about voter fraud that was based on conjecture and conspiracy theories.

A full investigation by the Board will demonstrate the egregious nature of Mr. Kaardal's actions, especially when considered in light of his purposes, the direct and possible consequences of his behavior, and the serious risk that Mr. Kaardal 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.<sup>1</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>2</sup>

Many of Mr. Trump's own senior advisors agreed with Attorney General Barr and Mr. Krebs.<sup>3</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>4</sup> 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.<sup>5</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>6</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

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<sup>1</sup> See Federal Election Commission, *Official 2020 Presidential General Election Results*, available at <https://www.fec.gov/resources/cms-content/documents/2020presgeresults.pdf>.

<sup>2</sup> M. Balsamo, *Disputing Trump, Barr says no widespread election fraud*, Associated Press (Dec. 1, 2020), <https://perma.cc/4U8N-SMB5>.

<sup>3</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>4</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>5</sup> Interview of Jeffrey Rosen.

<sup>6</sup> Interview with Richard Donoghue.

across the country.<sup>7</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>8</sup>

### CONDUCT GIVING RISE TO THE COMPLAINT

Mr. Kaardal helped lead the charge on behalf of Mr. Trump in Wisconsin, Arizona, Georgia, and in the District of Columbia.

On November 23, 2020, Mr. Kaardal initiated *Wisconsin Voters Alliance v. Wisconsin Elections Commission* in the Wisconsin Supreme Court. On November 25, 2020 Mr. Kaardal filed *Wood v. Raffensperger* in the Superior Court of Georgia in Fulton County. Then on December 4, 2020, Mr. Kaardal initiated *Stevenson v. Ducey* in the Superior Court of Arizona in Maricopa County. After these filings, Mr. Kaardal filed *Wisconsin Voters Alliance v. Pence* on December 22, 2020 in the United States District Court for the District of Columbia. The complaints Mr. Kaardal filed in these four cases were nearly identical to each other, despite the case-specific factual assertions of illegal voting.

For example, in *Wisconsin Voters Alliance v. Wisconsin Elections Commission*, the Plaintiffs stated:

The cities of Madison, Green Bay, Racine, Kenosha and Milwaukee entered into agreements with a non-profit organization, the Center for Technology and Civic Life (“CTLC”), an organization funded with \$350,000,000 by Facebook billionaire Mark Zuckerberg, a well-known Democratic activist and partisan, to take millions of dollars from CTLC to conduct the November 3, 2020 election in violation of Wisconsin law.<sup>9</sup>

In *Wood v. Raffensperger* in Georgia, Mr. Kaardal asserted:

Fulton County entered into an agreement with a non-profit organization, CTCL, an organization created in 2012 and funded with \$350 million USD by Facebook billionaire Mark Zuckerberg, a well-known activist and partisan, to take millions of dollars from CTCL to conduct the November 3, 2020 election in violation of Georgia law.<sup>10</sup>

And in *Stevenson v. Ducey* in Arizona, Mr. Kaardal promoted a similar allegation:

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<sup>7</sup> 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/>.

<sup>8</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).

<sup>9</sup> *Wisconsin Voters Alliance v. Wisconsin Elections Commission*, Case No. 2020AP1930-OA (Wis.), Nov. 23, 2020, Compl. ¶¶ 20-21.

<sup>10</sup> *Wood v. Raffensperger*, Case No. 2020CV342959 (Ga. Sup. Ct.), Nov. 25, 2020, Compl. ¶ 12.

Maricopa County entered into an agreement with a non-profit organization, Center for Tech and Civic Life (“CTCL”), an organization created in 2012 and funded with \$350 million USD by Facebook billionaire Mark Zuckerberg, a well-known Democratic activist and partisan, to take millions of dollars from CTCL to conduct the November 3, 2020 election in violation of Arizona law.<sup>11</sup>

Finally, in *Wisconsin Voters Alliance v. Pence*, in the District of Columbia, Mr. Kaardal asserted this similarly strange allegation:

Defendant States’ voters have alleged, in 2020, a systematic effort was launched in Defendant States, using \$350,000,000 in private money sourced to Mark Zuckerberg, the Facebook billionaire, to illegally circumvent absentee voting laws to cast tens of thousands of illegal absentee ballots. Defendants States’ votes have alleged that the Zuckerberg-funded private organization, the Center for Technology and Civic Life (CTCL), gifted millions of dollars to election officials in Democratic Party urban strongholds in Georgia, Wisconsin, Pennsylvania, Michigan and Arizona in order for those cities to facilitate the use of absentee voting: Fulton County (GA), Milwaukee (WI), Madison (WI), Philadelphia (PA), Wayne County (MI) and Maricopa County (AZ).<sup>12</sup>

This bizarre allegation of illegal activity by CTCL, coupled with strange statistical analyses related to alleged widespread absentee ballot fraud, was so lacking in merit, that Wisconsin Supreme Court Justice Brian Hagedorn stated in his opinion that “[o]ne might expect that this solemn request would be paired with evidence of serious errors tied to a substantial and demonstrated set of illegal votes. Instead, the evidentiary support rests almost entirely on the unsworn expert report of a former campaign employee that offers statistical estimates based on call center samples and social media research.”<sup>13</sup>

Including these types of allegations to support any lawsuit would be problematic. More troubling, though, is that Mr. Kaardal sought to disqualify *every vote* in Wisconsin, by preventing the certification of a free and fair election, so that Mr. Trump would prevail. As Justice Hagedorn put it:

But the real stunner here is the sought-after remedy. We are invited to invalidate the entire presidential election in Wisconsin by declaring it 'null'—yes, the whole thing. And there’s more. We

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<sup>11</sup> *Stevenson v. Ducey*, Case No. CV2020-096490 (Ariz. Sup. Ct.), December 4, 2020, Compl. ¶ 12.

<sup>12</sup> *Wisconsin Voters Alliance v. Pence*, Case No. 1:20-cv-03791 (Dist. D.C.), Dec. 22, 2020, Compl. ¶ 35.

<sup>13</sup> *Wisconsin Voters Alliance v. Wisconsin Elections Commission*, No. 2020AP1930-OA, at 2 (Wis. December 4, 2020).

should, we are told, enjoin the Wisconsin Elections Commission from certifying the election so that Wisconsin’s presidential electors can be chosen by the legislature instead, and then compel the Governor to certify those electors. At least no one can accuse the petitioners of timidity.<sup>14</sup>

After a judicial opinion on the case in Wisconsin, Mr. Kaardal voluntarily dismissed the matter in Arizona just three days after filing, and just three days after the Wisconsin opinion.

However, three weeks after the Wisconsin Supreme Court completely rejected his arguments, and Justice Hagedorn found the filing to be severely deficient and frivolous, Mr. Kaardal filed *Wisconsin Voters Alliance v. Pence*. Three weeks after having these claims rejected, Mr. Kaardal peddled these same frivolous and dangerous legal claims, with similar plaintiffs, similar defendants, and relying on the same factually dubious statistical analysis by the same person, Matt Braynard – a former Trump campaign aide without a scientific background.<sup>15</sup> This was all done to cast doubt on our elections, and to undermine our democracy.

The over 100-page complaint in *Wisconsin Voters Alliance v. Pence* argues three main theories for overturning a free and fair election, all of which lack any legal or factual credibility. First, several states, all of which voted for President Biden, should void their entire election results because they received money from CTCL to help run them. During the 2020 election season, CTCL gave grants to several localities across the country to help them prepare for an election during a pandemic, an endeavor that would naturally raise election administration expenses. Not only, in Mr. Kaardal’s eyes, should this system of providing money automatically invalidate whole elections, but this money also allegedly created fraud.<sup>16</sup> For example, Mr. Kaardal argues that CTCL paid workers “failed to ensure transparency and integrity as it did not allow the public to see election officials during key points of absentee ballot processing” in Detroit.<sup>17</sup> However, this is false. Numerous sources, including the source used in Mr. Kaardal’s own complaint reject the claim that any laws were broken, or that the public was not allowed access to the ballots.<sup>18</sup> This part of the complaint is rife with innuendo and allegations of fraud, all of which crumble when scrutinized.

Second, Mr. Kaardal argues that Article II of the United States Constitution voids several state laws in all the challenged states, as well as a few federal laws, because these states chose to have

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<sup>14</sup> *Id.*

<sup>15</sup> Ellie Silverman and Rachel Weiner, *Matt Braynard, Former Trump Campaign Aide, Nabs Spotlight with Capitol Crusade*, WASH. POST, Sept. 17, 2021, <https://www.washingtonpost.com/dc-md-va/2021/09/17/matt-braynard-justice-j6-rally/>.

<sup>16</sup> *Wisconsin Voters Alliance v. Pence*, Case No. 1:20-cv-03791 (Dist. D.C.), Dec. 22, 2020, Compl. ¶ 211.

<sup>17</sup> *Id.*

<sup>18</sup> *There’s a Simple Reason Workers Covered Windows at a Detroit Vote-Counting Site*, NEW YORK TIMES (Nov. 5, 2020) (<https://www.nytimes.com/2020/11/05/technology/michigan-election-ballot-counting.html>).

people who are not a part of the state legislature certify the vote.<sup>19</sup> Article II gives states the power to choose how they pick electors, and in its most pertinent part, states that “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors.”<sup>20</sup> Mr. Kaardal erroneously argued that this passage meant that only the state legislature could certify an election, a claim that both lacks merit and completely ignores the plain language of the text. As Judge James E. Boasberg of the United States District Court for the District of Columbia opined about Article II, “[p]laintiffs somehow interpret this straightforward passage to mean that state legislatures alone must certify Presidential votes and Presidential electors after each election, and that Governors or other entities have no constitutionally permitted role. As a result, state statutes that delegate the certification to the Secretary of State or the Governor or anyone else are invalid. That, however, is not at all what Article II says.”<sup>21</sup> Judge Boasberg then concluded that these absurd legal claims forced him to believe that “[i]t is not a stretch to find a serious lack of good faith here.”<sup>22</sup>

Third, Mr. Kaardal promoted almost every false claim related to mail-in voting, in the hopes that courts would disenfranchise millions of voters across several states simply for voting in a manner they thought was safe during the COVID-19 pandemic. While offering no real evidence of fraud, Mr. Kaardal argued that mail-in voter fraud was ubiquitous because allegedly Pennsylvania ballots were mailed from New York<sup>23</sup> (ignoring the fact that it is legal to vote absentee from another state or country), or that disenfranchised felons in Michigan must have voted illegally because “109 people voted absentee from the Center for Forensic Psychiatry.”<sup>24</sup>

Mr. Kaardal’s actions related to *Wisconsin Voters Alliance v. Pence* were so egregious that the court has already referred Mr. Kaardal to its Committee on Grievances to potentially discipline Mr. Kaardal for his involvement in such a frivolous lawsuit.

Judge Boasberg reached the devastating conclusion that “[i]n addition to being filed on behalf of Plaintiffs with no standing and (at least as to the state defendants) in the wrong court and with no effort to even serve their adversaries, the suit rests on a fundamental and obvious misreading of the Constitution.”<sup>25</sup>

Mr. Kaardal’s actions warrant discipline.

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<sup>19</sup> *Wisconsin Voters Alliance v. Pence*, Case No. 1:20-cv-03791 (Dist. D.C.), Dec. 22, 2020, Compl. ¶¶ 54-58.

<sup>20</sup> U.S. CONST. art. II, § 1.

<sup>21</sup> *Wisconsin Voters Alliance v. Pence*, Case No. 1:20-cv-03791 (Dist. D.C.), Jan. 4, 2021, Mem. Opinion 5.

<sup>22</sup> *Id.* at 6.

<sup>23</sup> *Wisconsin Voters Alliance v. Pence*, Case No. 1:20-cv-03791 (Dist. D.C.), Dec. 22, 2020, Compl. ¶¶ 126.

<sup>24</sup> *Id.* at 344.

<sup>25</sup> *Wisconsin Voters Alliance v. Pence*, Case No. 1:20-cv-03791 (Dist. D.C.), Jan. 4, 2021, Mem. Opinion 1-2.

**A SUBSTANTIAL BASIS EXISTS FOR THE BOARD TO INVESTIGATE MR.  
KAARDAL’S CONDUCT AND TO  
IMPOSE APPROPRIATE DISCIPLINE**

The Board should investigate Mr. Kaardal’s actions on the following basis:

1. Mr. Kaardal 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.”

“Knowledge” under the Rules of Professional Conduct can be “inferred from circumstances.”<sup>26</sup>

Ample evidence demonstrates that Mr. Kaardal knew of the frivolous nature of the litigation he initiated. In *Wisconsin Voters Alliance v. Wisconsin Elections Commission*, Justice Hagedorn found the factual basis of the case to rest “on so flimsy a foundation,” that ruling in the Plaintiffs favor would do “indelible damage.” In addition, the legal basis was so insufficient that there were several “glaring flaws” that rendered the petition “woefully deficient.” Mr. Kaardal did not even justify the Wisconsin Supreme Court’s original jurisdiction. Further, no reasonable person would consider the cited evidence a sufficient basis for throwing out millions of votes, and disenfranchising entire states. Three weeks after the Wisconsin Supreme Court threw out Mr. Kaardal’s lawsuit because it was “woefully deficient,” Mr. Kaardal filed *Wisconsin Voters Alliance v. Pence*, which shares similar claims and legal challenges. Therefore, Mr. Kaardal was on notice that his lawsuits were lacking in merit, and yet he filed them anyway.

In *Wisconsin Voters Alliance v. Pence*, Judge Boasberg concluded that Mr. Kaardal truly “wished only to file a sweeping Complaint filed with baseless fraud allegations and tenuous legal claims” to undermine an election and engage in “political grandstanding.” This lawsuit is the epitome of an unmeritorious case – a lawsuit without subject-matter jurisdiction, without personal jurisdiction, and relied on a contention the court found to be “flat-out wrong” and “lies somewhere between a willful misreading of the Constitution and fantasy.”

Finally, the fact that Mr. Kaardal and his co-counsel filed complaints containing nearly identical allegations in a total of four states that Mr. Biden won helps confirm that the efforts were part of a larger effort to undermine the legitimacy of the entire 2020 presidential election.

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<sup>26</sup> Rule 1.0(f).

Mr. Kaardal knew the claims he was advancing in *Wisconsin Voters Alliance v. Wisconsin Elections Commission*, *Wood, Stevenson*, and *Wisconsin Voters Alliance v. Pence* lacked any basis in law or fact.

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

2. Mr. Kaardal Violated Rule 4.4's 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. Kaardal sought to have millions of voters lose their right to decide the 2020 presidential election. Every court addressing the same complaint filed by Mr. Kaardal and his co-counsel noted the extraordinary remedy they sought and the effect it would have on millions of Americans.

Mr. Kaardal 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.

3. Mr. Kaardal 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. Kaardal 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.

Finally, that Mr. Kaardal and his co-counsel brought nearly identical claims in four separate states, all challenging the results in counties Mr. Biden won demonstrates a deceitful purpose. It all amounted to a dishonest attempt to undermine the public confidence in the 2020 election. It is easy – indeed, necessary – to also recognize the direct link between the use of the courts to sow these seeds of doubt and confusion and the events of January 6, 2021, when people believing that the 2020 was stolen stormed the Capitol in a violent insurrection.

His actions must be scrutinized and disciplined.



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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>27</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>28</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.

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>29</sup>

Mr. Kaardal 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 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 Board investigate Mr. Kaardal’s conduct and pursue appropriate discipline.

Sincerely,



Michael Teter  
Managing Director

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On behalf of The 65 Project

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<sup>27</sup> *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

<sup>28</sup> *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

<sup>29</sup> *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.