



October 20, 2022

Lawyer Regulation Division
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

Dear Lawyer Regulation Division:

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 Lawyer Regulation Division investigate the actions taken by David W. Spilsbury relating to his effort to overturn the 2020 presidential election. Mr. Spilsbury 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. Spilsbury worked on two matters: *Stevenson v. Ducey* and *Ward v. Jackson*. Both of these actions 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. In *Stevenson*, Mr. Spilsbury advanced bizarre allegations about Mark Zuckerberg – and his co-counsel filed similar complaints in Wisconsin and Georgia.

A full investigation by the Lawyer Regulation Division will demonstrate the egregious nature of Mr. Spilsbury’s actions, especially when considered in light of his purposes, the direct and possible consequences of his behavior, and the serious risk that Mr. Spilsbury 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.¹ 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

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

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.²

Many of Mr. Trump’s own senior advisors agreed with Attorney General Barr and Mr. Krebs.³ 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.⁴ 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.⁵ 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.”⁶

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.⁷ 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.⁸

CONDUCT GIVING RISE TO THE COMPLAINT

Mr. Spilsbury helped lead the charge on behalf of Mr. Trump in Arizona.

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

³ 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>.

⁴ 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>

⁵ Interview of Jeffrey Rosen.

⁶ Interview with Richard Donoghue.

⁷ W. Cummings, J. Garrison & J. Sargent, *By the numbers: President Donald Trump’s failed efforts to overturn the election*, USA Today (Jan. 6, 2021), available at <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>.

⁸ 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.

On November 24, 2020, Mr. Spilsbury filed *Ward v. Jackson*, which attempted to allow inspection of mail-in ballots and prevent certification of the election results. As noted above, these lawsuits were part of a larger, national effort to sow the false sense of election fraud and to delay Mr. Biden’s victory.

In *Ward v. Jackson*, both the trial court and the Arizona Supreme Court found no evidence to support the claims brought by Mr. Miller. Indeed, Chief Justice Robert Brutinel, for a unanimous Arizona Supreme Court, wrote that Mr. Miller failed to “present any evidence of ‘misconduct,’ ‘illegal votes’ or that the Biden Electors ‘did not in fact receive the highest number of voters for office,’ let alone establish any degree of fraud or a sufficient error rate that would undermine the certainty of the election results.” The key here is that Mr. Miller did not even “present” such evidence. Because none existed and, therefore, the matter should never have been brought in the first place.

On December 4, 2020, Mr. Spilsbury initiated *Stevenson v. Ducey* in the Superior Court of Arizona in Maricopa County. The goal of this lawsuit was to declare the entire election void, disenfranchise millions of voters, and delegitimize our democratic system. The complaint Mr. Spilsbury filed was nearly identical to others filed by Mr. Spilsbury’s co-counsel in the District of Columbia, Georgia, and Wisconsin around the same time – despite the case-specific factual assertions of illegal voting.

For example, Mr. Spilsbury alleged:

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.⁹

And in *Wood v. Raffensperger* in Georgia, Mr. Spilsbury’s co-counsel 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.¹⁰

⁹ *Stevenson v. Ducey*, Case No. CV2020-096490 (Ariz. Sup. Ct.), December 4, 2020, Compl. ¶ 12.

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

Similar alleges were made in the District of Columbia¹¹ and Wisconsin.¹²

This bizarre allegation of illegal activity by CTCL, coupled with strange statistical analyses by Matt Braynard – a former Trump campaign aide without a scientific background,¹³ was so lacking in merit, that Wisconsin Supreme Court Justice Brian Hagedorn stated in his opinion in the Wisconsin matter 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.”¹⁴ Both in Georgia and Arizona, Mr. Spilsbury promoted discredited claims of fraud and relied on statistics that no reasonable attorney would consider as a basis for a meritorious claim. This was all done to cast doubt on our elections, and to undermine our democracy.

Including these types of allegations to support any lawsuit would be problematic. More troubling, though, is that Mr. Spilsbury sought to disqualify *every vote* in Arizona, 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 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.¹⁵

In sum, Mr. Spilsbury sought to undermine the 2020 presidential election by filing baseless claims designed to cause public doubt about the integrity of the vote. A direct line can be drawn from Mr. Spilsbury’s conduct to the January 6, 2021 insurrection and the resulting harms to our country. Mr. Spilsbury’s actions warrant discipline.

¹¹ *Wisconsin Voters Alliance v. Pence*, Case No. 1:20-cv-03791 (Dist. D.C.), Dec. 22, 2020, Compl. ¶ 35.

¹² *Wisconsin Voters Alliance v. Wisconsin Elections Commission*, Case No. 2020AP1930-OA (Wis.), Nov. 23, 2020, Compl. ¶¶ 20-21.

¹³ 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/>.

¹⁴ *Wisconsin Voters Alliance v. Wisconsin Elections Commission*, No. 2020AP1930-OA, at 2 (Wis. December 4, 2020).

¹⁵ *Id.*

**A SUBSTANTIAL BASIS EXISTS FOR THE LAWYER REGULATION DIVISION TO
INVESTIGATE MR. SPILSBURY’S CONDUCT AND TO
IMPOSE APPROPRIATE DISCIPLINE**

The Lawyer Regulation Division should investigate Mr. Spilsbury’s actions on the following basis:

1. Mr. Spilsbury 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.”¹⁶

Ample evidence demonstrates that Mr. Spilsbury 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.”

Further, no reasonable person would consider the cited evidence a sufficient basis for throwing out millions of votes, and disenfranchising entire states.

Finally, the fact that Mr. Spilsbury’s 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.

Mr. Spilsbury knew the claims he was advancing lacked any basis in law or fact.

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

2. Mr. Spilsbury 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.”

¹⁶ Rule 1.0(f).

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

Mr. Spilsbury 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. Spilsbury 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. Spilsbury 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. Spilsbury’s co-counsel brought nearly identical claims in four separate jurisdictions, 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.

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.”¹⁷ 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.”¹⁸ 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.

¹⁷ *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

¹⁸ *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

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.¹⁹

Mr. Spilsbury 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 Arizona 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 Lawyer Regulation Division investigate Mr. Spilsbury’s conduct and pursue appropriate discipline.

Sincerely,



Michael Teter
Managing Director

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On behalf of The 65 Project

¹⁹ *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.