



February 15, 2023

VIA ELECTRONIC MAIL: [REDACTED]

State Bar of Georgia  
Office of the General Counsel  
104 Marietta Street, N.W., Suite 100  
Atlanta, GA 30303

Dear General Counsel's Office:

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

We write to request that the Office of General Counsel investigate the actions taken by Kurt Hilbert relating to his effort to overturn the 2020 presidential election. Mr. Hilbert 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. Hilbert worked on four matters, all in the state of Georgia: *Boland v. Raffensperger*, *Trump v. Raffensperger*, *Still v. Raffensperger*, and *Trump v. Kemp*. All of these actions, in which Mr. Hilbert filed similar complaints, lacked any basis in law or fact. Indeed, they were nearly copies of litigation filed in other battleground states, as lawyers sought to create a false narrative about voter fraud that was based on conjecture and conspiracy theories.

A full investigation by the Office of General Counsel will demonstrate the egregious nature of Mr. Hilbert's actions, especially when considered in light of his purposes, the direct and possible consequences of his behavior, and the serious risk that Mr. Hilbert 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

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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>.

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 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. Hilbert helped lead the charge on behalf of Mr. Trump in Georgia.

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<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.

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

<sup>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).

On November 30, 2020, Mr. Hilbert initiated *Boland v. Raffensperger* in the Superior Court of Georgia in Fulton County. Then, on December 4, 2020, Mr. Hilbert filed *Trump v. Raffensperger* in the Superior Court of Georgia in Fulton County. Mr. Hilbert subsequently filed *Still v. Raffensperger* in the Superior Court of Georgia in Fulton County on December 12, 2020. Finally, Mr. Hilbert initiated *Trump v. Kemp* on December 31, 2020 in the United States District Court for the Northern District of Georgia. The complaints Mr. Hilbert filed in these four cases all rely solely on unfounded conspiracy theories, easily proven false, with no basis in law or fact.

For example, in *Trump v. Kemp*, the Plaintiffs stated:

[T]he most egregious violation is by the conduct of Fulton County Election Officials. At about 10:00 pm on the evening of November 3, 2020 election day, Fulton County election officials falsely informed observers at the State Farm Arena in Atlanta, which was serving as the vote tabulation center, that counting of ballots was being stopped for the evening and would recommence the next morning at 8:00 a.m. Observers and members of the media departed, but several election officials then proceeded to remove suitcases full of ballots from under a table where they had been hidden, and processed those ballots without open viewing by the public in violation of O.C.G.A § 21-2-483. Whether the ballots were properly placed under the table is not the question, or is whether the ballots were fraudulent, rather, the *actus reus* was processing the ballots after fraudulently informing the public that counting was to stop and then restarting counting, without open viewing by the public.<sup>9</sup>

Nothing in the above assertion is true. This “suitcases full of ballots” myth was promoted directly after the election and has no factual basis. There were no suitcases of ballots, but simply regular ballots storage containers, no announcement was made to get people to leave, and even if there was it is not against Georgia law to count ballots once some observers have left.<sup>10</sup> And Mr. Hilbert knew this allegation was false. This conspiracy theory was debunked weeks before he even filed his complaint in *Trump v. Kemp*, and yet he filed it anyway.

In *Boland v. Raffensperger*, Mr. Hilbert argues that an “expert analysis identified 20,312 ballots cast by individuals in the 2020 General Election who do not reside in Georgia.” This is a stunning allegation. Not only is this claim false, but this so called “expert” is really just a conspiracy theorist with a YouTube channel. In fact, Judge Emily K. Richardson of the Superior Court of Georgia in Fulton County, found that “Count I, which alleges that 20,312 people may have voted illegally in Georgia, relies upon a YouTube video which purportedly is based upon United States Postal Service mail forwarding information,” and that [e]ven if credited, the

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<sup>9</sup> *Trump v. Kemp*, Case No. 20-cv-05310-MHC (N.D. Ga.) Dec. 31, 2020, Compl. at 10-11.

<sup>10</sup> Angelo Fichera, *Video Doesn't Show "Suitcases" of Illegal Ballots in Georgia*, FACTCHECK.ORG (Dec. 4, 2020), <https://www.factcheck.org/2020/12/video-doesnt-show-suitcases-of-illegal-ballots-in-georgia/>.

Complaint’s factual allegations do not plausibly support his claims.<sup>11</sup> Judge Richardson simply found that “[t]he allegations in the Complaint rest on speculation rather than duly pled facts. They cannot, as a matter of law, sustain this contest.”<sup>12</sup>

Further, in *Trump v. Raffensperger*, Mr. Hilbert alleged, without providing evidence, that “thousands of unqualified persons” were allowed to register to vote, including, “2,560 felons” and “66,247 underage—and therefore unqualified—people.”<sup>13</sup> This is not the only woefully deficient complaint filed by Mr. Hilbert. In *Trump v. Kemp*, not only did Judge Mark H. Cohen of the United States District Court for the Northern District of Georgia find that the lawsuit lacked standing, and that the court lacked jurisdiction over the suit, but that the plaintiffs failed to find any law that supports their claim.<sup>14</sup>

In fact, Judge Cohen held that the *Trump v. Kemp* lawsuit must fail because “Plaintiff offers no authority to support a federal court hijacking a pending state election contest case under any circumstances,” and that the “Plaintiff has failed to cite any statute or case that provides for any mode of challenging electoral votes already certified and counted by the Electoral College outside the congressional method outlined in 3 U.S.C. § 15. Thus, this Court finds no grounds upon which to independently order the decertification of Georgia's election results.”<sup>15</sup> Furthermore, Judge Cohen found that “[t]he Complaint does not elaborate specifically how the Electors Clause was violated. Plaintiffs brief in support of his Motion for Expedited Declaratory and Injunctive Relief does little to clarify the matter. Plaintiff argues in conclusory fashion that because Defendants violated the Georgia Election Code they thereby violated the Electors Clause.”<sup>16</sup>

Including these types of allegations to support any lawsuit would be problematic. More troubling, though, is that Mr. Hilbert sought to disqualify *every vote* in Georgia so that Mr. Trump would prevail. Mr. Hilbert knew he had neither the law nor the facts on his side, and yet he filed numerous lawsuits anyway. He did this to undermine faith in our electoral system.

After a flurry of activity on these cases, Mr. Hilbert voluntarily dismissed each one of his cases on January 7<sup>th</sup>, 2021. The day after a violent mob attempted an insurrection on the Capitol, Mr. Hilbert withdrew all four of his cases.

Oddly enough, Mr. Hilbert lied to the court in all four of the voluntary dismissals he filed in court. In each one, Mr. Hilbert said he was dismissing his case because of an “out of court agreement” with the Defendants.<sup>17</sup> However, no agreement had ever been reached. In fact, defense counsel stated that “inquiries [into settling] were repeatedly rebuffed by Defendants on

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<sup>11</sup> *Boland v. Raffensperger*, Case No. 2020CV343018 (Ga. Sup. Ct.), Dec. 8, 2020, Final Order at 5.

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

<sup>13</sup> *Trump v. Raffensperger*, Case No. S21M0561 (Ga. Sup. Ct.), Dec. 4, 2020, Compl. at 16-17.

<sup>14</sup> *Trump v. Kemp*, Case No. 20-cv-05310-MHC (N.D. Ga.) Dec. 31, 2020, Order at 9, 15.

<sup>15</sup> *Id.* at 17, 19.

<sup>16</sup> *Id.* at 19-20.

<sup>17</sup> *See e.g. Trump v. Raffensperger*, Case No. S21M0561 (Ga. Sup. Ct.), Jan. 7, 2021, Notice of Voluntary Dismissal at 1.

the grounds that Plaintiffs' litigation efforts were frivolous."<sup>18</sup> Defense counsel even filed in the response emails between Mr. Hilbert and the defense attorneys where the defense attorneys completely reject any settlement and make it plain that no settlement is on the table.<sup>19</sup>

These lawsuits had the intended effect of undermining our democracy. In *Still v. Raffensperger*, Mr. Hilbert lied to the court and alleged that his client, Shawn Still was an "Official Presidential Elector."<sup>20</sup> This was false, and now Shawn Still is under criminal investigation for posing as a fake elector.<sup>21</sup> Mr. Hilbert used this lawsuit to attack the Coffee County Board of Elections in Georgia. Then, on January 7<sup>th</sup>, 2021, the same day he withdrew the lawsuit, another fake elector helped pro-Trump operatives break into voting machines in Coffee County, Georgia.<sup>22</sup>

Mr. Hilbert's actions warrant discipline.

**A SUBSTANTIAL BASIS EXISTS FOR THE DISCIPLINARY COMMISSION TO  
INVESTIGATE MR. HILBERT'S CONDUCT AND TO  
IMPOSE APPROPRIATE DISCIPLINE**

The Office of General Counsel should investigate Mr. Hilbert's actions on the following basis:

1. Mr. Hilbert 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>23</sup>

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<sup>18</sup> See e.g. *Trump v. Raffensperger*, Case No. S21M0561 (Ga. Sup. Ct.), Jan. 7, 2021, Response to Voluntary Dismissal at 1.

<sup>19</sup> *Id.* at 14.

<sup>20</sup> *Still v. Raffensperger*, Case No. 2020CV343711 (Ga. Sup. Ct.), Dec. 12, 2020, Compl. at 2.

<sup>21</sup> Mark Niese, *Republicans Back Fake Elector for State Senate*, ATLANTA-JOURNAL CONSTITUTION (Aug. 2, 2022), <https://www.ajc.com/politics/republicans-back-fake-elector-for-georgia-state-senate/GTXWF7YSZ5COPEE3UDOEMM5IEE/>.

<sup>22</sup> Zachary Cohen and Jason Morris, *Newly Obtained Surveillance Video Shows Fake Trump Elector Escorted Operatives Into Georgia County's Elections Office Before Voting Machine Breach*, CNN (Sept. 6, 2022), <https://www.cnn.com/2022/09/06/politics/surveillance-video-voting-machine-breach-coffee-county-georgia/index.html>.

<sup>23</sup> Rule 1.0(f).

Ample evidence demonstrates that Mr. Hilbert knew of the frivolous nature of the litigation he initiated. In *Trump v. Kemp*, the complaint was based on debunked conspiracy theories, and the complaint in *Boland v. Raffensperger* was so deficient that Judge Richardson said that the complaint rested on “speculation rather than duly pled facts.” Further, no reasonable person would consider the cited “evidence” a sufficient basis for throwing out millions of votes in Georgia.

In fact, the pleadings themselves make clear that when filing the claims, Mr. Hilbert did not have a proper basis for bringing them because the Plaintiffs did not have even a shred of the evidence they claimed they would produce.

Furthermore, Mr. Hilbert knew his claims lacked merit, because he was concerned that allowing former President Trump to sign a verification would open him up to perjury.<sup>24</sup> In the runup to the *Trump v. Kemp* filing, Mr. Hilbert became aware that allegations in his previous lawsuit, *Trump v. Raffensperger*, had been inaccurate, and yet continued with the lawsuit with the knowledge he was promoting debunked conspiracy theories.<sup>25</sup> These communications detailing the concern over perjury caused Judge David O. Carter of the United States District Court for the Central District of California to find that Trump “knew that the specific numbers of voter fraud were wrong but continued to tout those numbers, both in court and to the public.”<sup>26</sup>

Finally, the fact that Mr. Hilbert’s complaints were a part of a broad system of filings in 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. Hilbert knew the claims he was advancing in *Trump v. Kemp*, *Still v. Raffensperger*, *Trump v. Raffensperger*, and *Boland v. Raffensperger* lacked any basis in law or fact.

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

2. Mr. Hilbert Violated Rule 4.2 for Communicating with Defendants Without Seeking Approval from Counsel

Under Rule 4.2 of the Georgia Rules for Professional Conduct, “A lawyer who is representing a client in a matter shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or court order.”

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<sup>24</sup> Jonathan Swan and Zachary Basu, *Exclusive Emails: Inside Trump’s Botched Georgia Fight*, AXIOS (Nov. 4, 2022), [https://www.axios.com/2022/11/04/trump-georgia-lawsuit-cleta-mitchell?utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=newsletter\\_axiosam&stream=to](https://www.axios.com/2022/11/04/trump-georgia-lawsuit-cleta-mitchell?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axiosam&stream=to).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

Mr. Hilbert, however, ignored this rule and contacted Defendant Raffensperger without first seeking approval from Raffensperger’s counsel or even notifying defense counsel of the phone conversation.<sup>27</sup>

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

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

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

In the interests of his clients, Mr. Hilbert sought to have millions of voters lose their right to decide the 2020 presidential election. Every court addressing the complaint filed by Mr. Hilbert highlighted the extraordinary remedy they sought and the effect it would have on millions of Americans, with Judge Cohen stating that “Plaintiff seeks an extraordinary and unprecedented remedy: the decertification of the votes cast in the presidential election, after millions of people lawfully cast their ballots. To interfere with the result of an election that has already concluded and has been audited and certified on multiple occasions would be unprecedented and harm the public in countless ways.”

Mr. Hilbert 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. Hilbert 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. Hilbert 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.

Mr. Hilbert misrepresented the availability of expert evidence to support the Verified Complaint’s allegations. He knew that expert testimony did not exist and yet purported to rely on them anyway.

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<sup>27</sup> See e.g. *Trump v. Raffensperger*, Case No. S21M0561 (Ga. Sup. Ct.), Jan. 7, 2021, Response to Voluntary Dismissal at 1.

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>28</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>29</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>30</sup>

Mr. Hilbert 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 Georgia to disenfranchise millions of his fellow citizens because he did not like how they voted.

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<sup>28</sup> *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

<sup>29</sup> *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

<sup>30</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.



For the reasons set forth above, we respectfully request that the Office of General Counsel investigate Mr. Hilbert's conduct and pursue appropriate discipline.

Sincerely,

A handwritten signature in cursive script that reads "Michael Tete".

Managing Director



On behalf of The 65 Project