



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 Harry MacDougald relating to his effort to overturn the 2020 presidential election. Mr. MacDougald 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. MacDougald worked on two matters, both in the state of Georgia: *Pearson v. Kemp*, and *Wood v. Raffensperger*. Both of these actions 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. MacDougald's actions, especially when considered in light of his purposes, the direct and possible consequences of his behavior, and the serious risk that Mr. MacDougald 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

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

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

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 13, 2020, Mr. MacDougald initiated *Wood v. Raffensperger* in the United States District Court for the Northern District of Georgia. Mr. MacDougald then filed *Pearson v. Kemp* on November 25, 2020, in the United States District Court for the Northern District of Georgia. The complaints Mr. MacDougald filed in these cases all rely solely on unfounded conspiracy theories, easily proven false, with no basis in law or fact.

For example, in *Pearson v. Kemp*, which is full of baseless claims, the Plaintiffs stated:

[V]ideo from the State Farm Arena in Fulton County shows that on November 3rd after the polls closed, election workers falsely claimed a water leak required the facility to close. All poll workers and challengers were evacuated for several hours at about 10:00 PM. However, several election workers remained unsupervised and unchallenged working at the computers for the voting tabulation machines until after 1:00 AM.⁹

However, this is not what happened at all. Apparently, there was an overflowing urinal in the morning of November 3rd and it had no impact of vote tabulation that evening.¹⁰ No one was asked to leave, and there was no disruption in the chain of custody of the ballots.¹¹ As Gabriel Sterling, the Voting Implementation Manager of Georgia, said about the incident, “What’s really frustrating is the president’s attorneys had this same videotape. They saw the exact same things the rest of us could see and they chose to mislead state senators and the public about what was on that video.”¹² Mr. MacDougald knew the truth, and yet chose to promote lies to harm our democracy.

Furthermore, Mr. MacDougald asserted that Dominion Voting Systems and Smartmatic 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.”¹³ This is untrue for several reasons. Not only is there no evidence these technologies were used for vote switching anywhere, neither company was founded by oligarchs, and Dominion is a Canadian company and majority-owned by Americans.¹⁴ While Smartmatic founders are from Venezuela, they have called out the Venezuelan government for voter fraud in the past.¹⁵

Mr. MacDougald continually promoting falsehoods related to vote switching in Georgia. He argued “that hundreds of thousands of votes that were cast for President Trump in the 2020

⁹ *Pearson v. Kemp*, Case No. 1:20-cv-04809-TCB (N.D. Ga.) Nov. 25, 2020, Compl. at 7.

¹⁰ Shayna Greene, *Fact Check: Did Fabricated Water Main Break Affect Vote Counting in Georgia as Trump Says?*, NEWSWEEK (Jan. 4, 2021), <https://www.newsweek.com/fact-check-did-fabricated-water-main-break-affect-vote-counting-georgia-trump-says-1558876>.

¹¹ *Id.*

¹² *Id.*

¹³ *Pearson v. Kemp*, Case No. 1:20-cv-04809-TCB (N.D. Ga.) Nov. 25, 2020, Compl. at 4.

¹⁴ *Does the Dominion Voting Systems Organization Have Ties to Venezuelan President Hugo Chavez, George Soros and the Clinton Foundation*, CNN, https://www.cnn.com/factsfirst/politics/factcheck_829bf37c-cbd5-4a5c-8d87-7e53504997cb.

¹⁵ *Id.*

general election were transferred to former Vice-President Biden.”¹⁶ This has no basis in reality. According to the Cybersecurity & Infrastructure Security Agency, there is no truth to any claim that votes for Trump were switched in favor of Biden.¹⁷ As with so many of these lies, this claim was widely debunked before Mr. MacDougald filed the complaint, and yet Mr. MacDougald went ahead and filed it anyway.

While the myriad of allegations against Dominion Voting Systems in *Pearson v. Kemp* tell a tale of a global conspiracy to cheat Donald Trump out of a second term, there was never any proof to support any of these factual claims. As Chief Judge Timothy Batten of the United States District Court for the Northern District of Georgia declared, “although [the Plaintiffs] make allegations of tremendous worldwide improprieties regarding the Dominion voting machines, those allegations are supported by precious little proof.”¹⁸

Mr. MacDougald continued to promote baseless conspiracy theories in later court documents. In his response to the 11th Circuits questions over jurisdiction, Mr. MacDougald began accusing poll workers of committing voter fraud. He argued that poll workers took “‘votes’ out in suitcases from under the tables at which they were working,” and alleged they were attempting in plain sight to steal an election.¹⁹

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.²⁰ And Mr. MacDougald knew this allegation was false. This conspiracy theory was debunked, and yet Mr. MacDougald proceeded to make the claim in court documents.

In *Wood v. Raffensperger*, Mr. MacDougald alleges that two election workers observed “improprieties,” and could not “tell if any counting was accurate or if the activity was proper.”²¹ However, as Chief Judge William Pryor of the 11th Circuit noted, “Wood submitted two affidavits from volunteer monitors. One monitor stated that she was not allowed to enter the counting area because there were too many monitors already present, and she could not be sure from a distance whether the recount was accurate. The other explained that the counting was hard for her to follow and described what she thought were possible tabulation errors.”²² A far cry from fraud, these factually useless affidavits fail to provide any evidence of fraud or cast any doubt on the 2020 election.

¹⁶ *Pearson v. Kemp*, Case No. 1:20-cv-04809-TCB (N.D. Ga.) Nov. 25, 2020, Compl. at 9.

¹⁷ Ali Swenson, *AP Fact Check: Trump Legal Team’s Batch of False Vote Claims*, AP (Nov. 19, 2020), <https://apnews.com/article/fact-check-trump-legal-team-false-claims-5abd64917ef8be9e9e2078180973e8b3>.

¹⁸ *Pearson v. Kemp*, Case No. 1:20-cv-04809-TCB (N.D. Ga.) Nov. 25, 2020, Hearing Trans. at 15-16.

¹⁹ *Pearson v. Kemp*, Case No. 1:20-cv-04809-TCB (N.D. Ga.) Nov. 25, 2020, Resp. to Jurisdictional Questions at 7.

²⁰ 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/>.

²¹ *Wood v. Raffensperger*, Case No. 1:20-cv-04651-SDG (N.D. Ga.) Nov. 13, 2020, Compl. at 22-23.

²² *Wood v. Raffensperger*, Case No. 1:20-cv-04651-SDG (N.D. Ga.) Nov. 13, 2020, 11th Cir. Order at 6.

These complaints were not only factually deficient, but they were legally deficient as well. In *Wood v. Raffensperger*, Mr. MacDougald argued that a Settlement Agreement reached between Raffensperger and the Democratic Party of Georgia was unconstitutional, and thus votes cast legally because of this agreement should be thrown out, because Raffensperger had no authority to enter into the agreement.²³ In a baffling claim, Mr. MacDougald argues that the Constitution provides a nondelegable power to the state legislature to establish election law.²⁴ This was strongly rebuked by Judge Steven D. Grimberg of the United States District Court of the Northern District of Georgia, who argued that “State legislatures—such as the Georgia General Assembly—possess the authority to delegate their authority over elections to state officials in conformity with the Elections and Electors Clauses” and “[r]ecognizing that Secretary Raffensperger is ‘the state’s chief election official,’ the General Assembly enacted legislation permitting him (in his official capacity) to ‘formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections.’ The Settlement Agreement is a manifestation of Secretary Raffensperger’s statutorily granted authority.”²⁵

Not only was the central claim in *Wood v. Raffensperger* legally dubious, but the lawsuit was so legally deficient that it lacked basic requirements to be heard in court. Judge Grimberg found that the plaintiffs were relying on overruled precedent to argue standing, noting that “[o]stensibly, Wood believes he suffered a particularized injury because his preferred candidates—to whom he has contributed money—did not prevail in the General Election. This argument has been squarely rejected by the Eleventh Circuit.”²⁶ Judge Grimberg then highlighted the shoddy legal argument by adding that “the Court notes the futility of Wood’s standing argument is particularly evident in that his sole relied-on authority—*Meek v. Metropolitan Dade County, Florida*, 985 F.2d 1471 (11th Cir. 1993)—is no longer good law.”²⁷

Mr. MacDougald also fundamentally misunderstood basic issues related to mootness. Chief Judge Pryor found that “Wood’s arguments reflect a basic misunderstanding of what mootness is. He argues that the certification does not moot anything “because this litigation is ongoing” and he remains injured. But mootness concerns the availability of relief, not the existence of a lawsuit or an injury.”²⁸

Finally, Mr. MacDougald argued for relief without pointing to any relevant legal authority. When arguing that his client had a right to monitor vote counts, he presented nothing to support his claim. Judge Grimberg simply stated that “Wood presents no authority, and the Court finds none, providing for a right to unrestrained observation or monitoring of vote counting, recounting, or auditing.”²⁹

²³ *Wood v. Raffensperger*, Case No. 1:20-cv-04651-SDG (N.D. Ga.) Nov. 13, 2020, Compl. at 30.

²⁴ *Id.* at 29-30.

²⁵ *Wood v. Raffensperger*, Case No. 1:20-cv-04651-SDG (N.D. Ga.) Nov. 13, 2020, Order at 30-31.

²⁶ *Id.* at 18.

²⁷ *Id.*

²⁸ *Wood v. Raffensperger*, Case No. 1:20-cv-04651-SDG (N.D. Ga.) Nov. 13, 2020, 11th Cir. Order at 18.

²⁹ *Wood v. Raffensperger*, Case No. 1:20-cv-04651-SDG (N.D. Ga.) Nov. 13, 2020, Order at 36.

Including these types of allegations to support any lawsuit would be problematic. More troubling, though, is that Mr. MacDougald sought to disqualify *every vote* in Georgia so that Mr. Trump would prevail. Judge Grimberg put it best - “Wood seeks an extraordinary remedy: to prevent Georgia’s certification of the votes cast in the General Election, after millions of people had lawfully cast their ballots. To interfere with the result of an election that has already concluded would be unprecedented and harm the public in countless ways. Granting injunctive relief here would breed confusion, undermine the public’s trust in the election, and potentially disenfranchise of over one million Georgia voters. Viewed in comparison to the lack of any demonstrable harm to Wood, this Court finds no basis in fact or in law to grant him the relief he seeks.”³⁰

But the goal was never a complete victory in the courts. Mr. MacDougald, alongside his fellow election denying attorneys across the country, were simply trying to cast doubt on our election, and harm public confidence in our democracy. This became evident to Judge Andrew Brasher of the 11th Circuit Court of Appeals, who stated that “[i]n this case, the district court issued an emergency temporary restraining order at the plaintiffs’ request, worked at a breakneck pace to provide them an opportunity for broader relief, and was ready to enter an appealable order on the merits of their claims immediately after its expedited hearing on December 4, 2020. But the plaintiffs would not take the district court’s ‘yes’ for an answer. They appealed instead. And, because they appealed, the evidentiary hearing has been stayed and the case considerably delayed.”³¹ Mr. MacDougald’s main objective was to use the courts to delay, to confuse, and to harm our electoral process. This was not a good faith effort to make sure the right person won.

Mr. MacDougald 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.

Mr. MacDougald’s actions warrant discipline.

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

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

1. Mr. MacDougald 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.”

³⁰ *Id.* at 38.

³¹ *Pearson v. Kemp*, Case No. 1:20-cv-04809-TCB (N.D. Ga.) Nov. 25, 2020, 11th Cir. Order Denying Appeal at 4-5.

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.”³²

Ample evidence demonstrates that Mr. MacDougald knew of the frivolous nature of the litigation he initiated. In *Pearson v. Kemp* and *Wood v. Raffensperger* the complaint was based on debunked conspiracy theories. Many of these theories had been proven false before he filed complaints. 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. MacDougald 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.

Finally, the fact that Mr. MacDougald’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. MacDougald knew the claims he was advancing in *Pearson v. Kemp* and *Wood v. Raffensperger* lacked any basis in law or fact.

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

2. Mr. MacDougald 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. MacDougald sought to have millions of voters lose their right to decide the 2020 presidential election. Every court addressing the complaint filed by Mr. MacDougald highlighted the extraordinary remedy they sought and the effect it would have on millions of Americans, with Judge Grimberg stating that “Wood seeks an extraordinary remedy: to prevent Georgia’s certification of the votes cast in the General Election, after millions of people had lawfully cast their ballots. To interfere with the result of an election that has already concluded would be unprecedented and harm the public in countless ways.”

³² Rule 1.0(f).

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

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.”³³ 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.”³⁴ 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

³³ *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

³⁴ *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

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.³⁵

Mr. MacDougald 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.

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

Sincerely,



Managing Director



On behalf of The 65 Project

³⁵ *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.