



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 Ray Smith III relating to his effort to overturn the 2020 presidential election. Mr. Smith 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. Smith worked on three matters, all in the state of Georgia: *Trump v. Raffensperger*, *Wood v. Raffensperger*, and *Brooks v. Mahoney*. All of these actions, in which Mr. Smith 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. Smith's actions, especially when considered in light of his purposes, the direct and possible consequences of his behavior, and the serious risk that Mr. Smith 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

¹ 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 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.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. Smith 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 11, 2020, Mr. Smith initiated *Brooks v. Mahoney* in the United States District Court for the Southern District of Georgia. Mr. Smith subsequently filed *Wood v. Raffensperger* in the United States District Court for the Northern District of Georgia on November 13, 2020. Finally, Mr. Smith initiated *Trump v. Raffensperger* on December 4, 2020, in the Superior Court of Georgia in Fulton County. The complaints Mr. Smith filed in these three cases all rely solely on unfounded conspiracy theories, easily proven false, with no basis in law or fact.

For example, in *Brooks v. Mahoney*, the Plaintiffs stated, “[v]oting machines crashed in Georgia’s Spalding and Morgan Counties on the morning of the election, due to the same software “glitch” that caused Michigan votes to be miscalculated.”⁹ However, this conspiracy theory is patently false. Instead, “[e]lection officials said it was the result of human error that was quickly discovered and corrected. Secretary of State Jocelyn Benson explained in a statement on November 6 that an election worker had made ‘an honest mistake’ and failed to update the software to properly combine the electronic totals, ‘even though the tabulators counted all the ballots correctly.’”¹⁰

Further, in *Trump v. Raffensperger*, Mr. Smith 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.”¹¹

In *Wood v. Raffensperger*, Mr. Smith alleges that two election workers observed “improprieties,” and could not “tell if any counting was accurate or if the activity was proper.”¹² 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.”¹³ A far cry from fraud, these factually useless affidavits fail to provide any evidence of fraud or cast any doubt on the 2020 election.

These complaints were not only factually deficient, but they were legally deficient as well. In *Wood v. Raffensperger*, Mr. Smith 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.¹⁴ In a baffling claim, Mr. Smith argues that the Constitution provides a nondelegable power to the state legislature to establish election law.¹⁵ This was strongly rebuked by Judge Steven D. Grimberg of the United States District Court of the Northern District

⁹ *Brooks v. Mahoney*, Case No. 4:20-cv-00281-RSB-CLR (S.D. Ga.) Nov. 11, 2020, Compl. at 12.

¹⁰ Li Cohen, *6 Conspiracy Theories About the 2020 Election – Debunked*, CBSNEWS (Jan. 15, 2021), <https://www.cbsnews.com/news/presidential-election-2020-conspiracy-theories-debunked/>.

¹¹ *Trump v. Raffensperger*, Case No. S21M0561 (Ga. Sup. Ct.), Dec. 4, 2020, Compl. at 16-17.

¹² *Wood v. Raffensperger*, Case No. 1:20-cv-04651-SDG (N.D. Ga.) Nov. 13, 2020, Compl. at 22-23.

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

¹⁴ *Wood v. Raffensperger*, Case No. 1:204-cv-04651-SDG (N.D. Ga.) Nov. 13, 2020, Compl. at 30.

¹⁵ *Id.* at 29-30.

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.”¹⁶

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.”¹⁷ 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.”¹⁸

Mr. Smith 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.”¹⁹

Finally, Mr. Smith 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.”²⁰

Including these types of allegations to support any lawsuit would be problematic. More troubling, though, is that Mr. Smith 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

¹⁶ *Wood v. Raffensperger*, Case No. 1:20-cv-04651-SDG (N.D. Ga.) Nov. 13, 2020, Order at 30-31.

¹⁷ *Id.* at 18.

¹⁸ *Id.*

¹⁹ *Wood v. Raffensperger*, Case No. 1:20-cv-04651-SDG (N.D. Ga.) Nov. 13, 2020, 11th Cir. Order at 18.

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

demonstrable harm to Wood, this Court finds no basis in fact or in law to grant him the relief he seeks.”²¹

Mr. Smith 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.

In addition to promoting baseless conspiracy, Mr. Smith lied to the court in his voluntary dismissal in *Trump v. Raffensperger*. Mr. Smith said he was dismissing his case because of an “out of court agreement” with the Defendants.²² However, no agreement had ever been reached. In fact, defense counsel stated that “inquiries [into settling] were repeatedly rebuffed by Defendants on the grounds that Plaintiffs’ litigation efforts were frivolous.”²³ Defense counsel even filed in the response emails between Mr. Smith and the defense attorneys where the defense attorneys completely reject any settlement and make it plain that no settlement is on the table.²⁴

Mr. Smith’s actions were a part of a concerted effort to undermine faith in our electoral system. Attorneys across the country filed lawsuits with strikingly similar language, despite the case-specific factual allegations typically required for illegal voting.

For example, in *Brooks v. Mahoney*:

In addition to the foregoing evidence, Voters will provide evidence, upon information and belief, that sufficient illegal ballots were included in the results to change or place in doubt the November 3 presidential-election results. This will be in the form of expert reports based on data analysis comparing state mail in/absentee, provisional, and poll-book records with state voter registration databases, United States Postal Service (“USPS”) records, Social Security records, criminal-justice records, Georgia Department of Driver Services records, and other governmental and commercial sources by using sophisticated and groundbreaking programs to determine the extent of illegal voters and illegal votes, including double votes, votes by ineligible voters, votes by phantom (fictitious) voters, felon votes (where illegal), non-citizen votes, illegal ballot harvesting, and pattern recognition to identify broader underlying subversion of the election results. Plaintiffs have persons with such expertise and data-analysis software already in place who have begun preliminary analysis of available data to which final data, such as the official poll list, will be added and reports generated.

Upon information and belief, the expert report will identify persons who cast votes illegally by casting multiple ballots, were deceased, had moved, or were otherwise not qualified to vote in the November 3 presidential election, along with evidence of illegal ballot stuffing, ballot harvesting, and other illegal voting. This evidence will be shortly forthcoming when the relevant official documents are final and available, for which

²¹ *Id.* at 38.

²² *See e.g. Trump v. Raffensperger*, Case No. S21M0561 (Ga. Sup. Ct.), Jan. 7, 2021, Notice of Voluntary Dismissal at 1.

²³ *See e.g. Trump v. Raffensperger*, Case No. S21M0561 (Ga. Sup. Ct.), Jan. 7, 2021, Response to Voluntary Dismissal at 1.

²⁴ *Id.* at 14.

discovery may be required, and the result of the analysis and expert reports based thereon will show that sufficient illegal ballots were included in the results to change or place in doubt the November 3 presidential election results.²⁵

And in a separate case in Wisconsin:

In addition to the foregoing evidence, Voters will provide evidence, upon information and belief, that sufficient illegal ballots were included in the results to change or place in doubt the November 3 presidential-election results. This will be in the form of expert reports based on data analysis comparing state mail in/absentee, provisional, and poll-book records with state voter registration databases, United States Postal Service (“USPS”) records, Social Security records, criminal-justice records, department-of-motor-vehicle records, and other governmental and commercial sources by using sophisticated and groundbreaking programs to determine the extent of illegal voters and illegal votes, including double votes, votes by ineligible voters, votes by phantom (fictitious) voters, felon votes (where illegal), non-citizen votes, illegal ballot harvesting, and pattern recognition to identify broader underlying subversion of the election results. Plaintiffs have persons with such expertise and data-analysis software already in place who have begun preliminary analysis of available data to which final data, such as the official poll list, will be added and reports generated.

Upon information and belief, the expert report will identify persons who cast votes illegally by casting multiple ballots, were deceased, had moved, or were otherwise not qualified to vote in the November 3 presidential election, along with evidence of illegal ballot stuffing, ballot harvesting, and other illegal voting. This evidence will be shortly forthcoming when the relevant official documents are final and available, for which discovery may be required, and the result of the analysis and expert reports based thereon will show that sufficient illegal ballots were included in the results to change or place in doubt the November 3 presidential election results.²⁶

Mr. Smith promoted conspiracy theories to harm our democracy.

Mr. Smith’s actions warrant discipline.

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

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

1. Mr. Smith Violated Rule 3.1 By Bringing and Defending a Matter He Knew Lacked Merit

²⁵ *Brooks v. Mahoney*, Case No. 4:20-cv-00281-RSB-CLR (S.D. Ga.) Nov. 11, 2020, Compl. at 15.

²⁶ *Langenhorst, et al. v. Pecore, et al.*, Case No. 1:20-cv-1701 (E.D. Wis.), Nov. 12, 2020, Am. Compl. at 15-16.

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.”²⁷

Ample evidence demonstrates that Mr. Smith knew of the frivolous nature of the litigation he initiated. In *Trump v. Raffensperger* and *Brooks v. Mahoney* the complaint was based on debunked conspiracy theories. 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. Smith 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. Smith knew his claims lacked merit, because according to newly released emails, Mr. Smith became aware that allegations in *Trump v. Raffensperger* had been inaccurate, and yet continued with the lawsuit with the knowledge he was promoting debunked conspiracy theories.²⁸ 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.”²⁹

Finally, the fact that Mr. Smith’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. Smith knew the claims he was advancing in *Trump v. Raffensperger*, *Wood v. Raffensperger*, and *Brooks v. Mahoney* lacked any basis in law or fact.

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

²⁷ Rule 1.0(f).

²⁸ 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.

²⁹ *Id.*

2. Mr. Smith 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.”

Mr. Smith, 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.³⁰

3. Mr. Smith 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. Smith sought to have millions of voters lose their right to decide the 2020 presidential election. Every court addressing the complaint filed by Mr. Smith 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.”

Mr. Smith 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. Smith 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. Smith 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.

³⁰ See e.g. *Trump v. Raffensperger*, Case No. S21M0561 (Ga. Sup. Ct.), Jan. 7, 2021, Response to Voluntary Dismissal at 1.

The bare “factual” bases he relied on were supported by false statements and wild speculation from discredited sources.

Mr. Smith 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.”³¹ 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.”³² 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.³³

Mr. Smith 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.

³¹ *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

³² *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

³³ *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. Smith'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