



March 7, 2022

VIA ELECTRONIC MAIL: [REDACTED]

Hamilton P. Fox, III  
Office of Disciplinary Counsel  
Board of Professional Responsibility  
District of Columbia Court of Appeals  
515 5th Street NW Building A, Suite 117  
Washington, DC 20001

Dear Mr. Fox:

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 Disciplinary Counsel investigate the actions taken by Cleta D. Mitchell relating to a concerted effort to overturn the legitimate 2020 presidential election results. Ms. Mitchell served as a lawyer and advisor to Donald Trump and his presidential campaign, working alongside Rudy Giuliani, John Eastman, Lin Wood, and Sidney Powell in an effort to overturn the 2020 presidential election.

On January 2, 2021, Ms. Mitchell participated in a telephone call in which she and Mr. Trump sought to convince Georgia's Secretary of State to "find" enough votes for Mr. Trump to win that state and offered knowingly false facts and allegations as part of their pressure campaign.

Ms. Mitchell's conduct violated numerous Rules of Professional Conduct, including Rule 3.3 (Candor to Tribunal), Rule 4.1 (Truthfulness in Statements to Others), and Rule 8.4 (Misconduct). A full investigation by the Office of Disciplinary Counsel office will demonstrate the egregious nature of Ms. Mitchell's actions, especially when considered in light of her purposes, the direct and possible consequences of her behavior, and the serious risk that Ms. Mitchell will repeat such conduct unless your office acts on this matter.

## BACKGROUND

Donald Trump lost the 2020 presidential election.<sup>1</sup> He also lost Georgia and its 16 electoral votes.<sup>2</sup> Having anticipated his loss, Mr. Trump and his allies began questioning the election's legitimacy months before even one voter had cast a ballot.<sup>3</sup> In fact, this fit a pattern of Mr. Trump declaring fraud or a rigged election any time he lost or expected to lose.

Joe Biden received over 81 million votes in November 2020, defeating Mr. Trump by over seven million votes and over four percentage points.<sup>4</sup> Mr. Trump's head of the U.S. Cybersecurity and Infrastructure Security Agency, Christopher Krebs, [announced](#) that the "November 3<sup>rd</sup> election was the most secure in American history. . . . There is no evidence that any voting system deleted or lost votes or changed votes or was in any way compromised." Mr. Trump [fired him](#). William Barr, Mr. Trump's own Attorney General, [declared that the Department of Justice](#) has "not seen fraud on a scale that could have effected a different outcome in the election." Attorney General Barr announced his resignation less than two weeks later, but not before again confirming that the 2020 elections had been free and fair.<sup>5</sup>

Many of Mr. Trump's own senior advisors agreed with Attorney General Barr and Mr. Krebs.<sup>6</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>7</sup> Mr. Rosen has testified that on December 15, 2020, at a meeting that included Mark Meadows, White House Chief of Staff, that he and others told Mr. Trump that the information he was receiving from his political allies was not correct.<sup>8</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

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<sup>1</sup> See United States National Archives, Electoral College Results – 2020, available at <https://www.archives.gov/electoral-college/2020>.

<sup>2</sup> See Certificate of Ascertainment, State of Georgia, available at <https://www.archives.gov/files/electoral-college/2020/ascertainment-georgia.pdf>.

<sup>3</sup> Kevin Liptak, *A List of the Times Trump Has Said He Won't Accept the Election Results or Leave Office if He Loses*, CNN (Sept. 24, 2020), <https://www.cnn.com/2020/09/24/politics/trump-election-warnings-leaving-office/index.html>.

<sup>4</sup> See Federal Election Commission, *Official 2020 Presidential General Election Results*, available at <https://www.fec.gov/resources/cms-content/documents/2020presgeresults.pdf>.

<sup>5</sup> M. Balsamo, *Disputing Trump, Barr says no widespread election fraud*, Associated Press (Dec. 1, 2020), <https://perma.cc/4U8N-SMB5>.

<sup>6</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>7</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>8</sup> Interview of Jeffrey Rosen.

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>9</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>10</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>11</sup>

## FACTS GIVING RISE TO COMPLAINT

Failing to achieve their desired ends through the courts, Mr. Trump’s supporters turned to pressuring public officials to violate the laws and their oaths. On January 2, 2021, Mr. Trump, his chief of staff, Mark Meadows, and three of Mr. Trump’s attorneys, including Ms. Mitchell, spoke with Georgia Secretary of State Brad Raffensperger, Mr. Raffensperger’s general counsel, Ryan Germany, and the Deputy Secretary of State Jordan Fuchs. A full transcript of the call is attached as Exhibit 1.

At the outset, Mr. Meadows introduced Ms. Mitchell as one of Mr. Trump’s attorneys. During the call, Mr. Trump repeated false allegations that had repeatedly been debunked. Ms. Mitchell also misrepresented facts, which she knew to be false. Consider the alleged suitcase stuff with ballots conspiracy:

- On December 3, 2020, the Trump campaign posted an edited video to its YouTube channel that the campaign alleged showed Georgia election officials hiding suitcases of ballots under a table were counted after poll workers left for the day.<sup>12</sup>
- On December 4, 2020, a Georgia election official tweeted that investigators for the Secretary of State’s office had watched the hours-long video in its entirety and that the unedited version showed “normal ballot processing.”<sup>13</sup> A local Georgia news station fact-checked and debunked the Trump campaign’s claim about the video. An election official tweeted: “You can watch the @wsbtv report to show that the President’s team is intentionally misleading the public about what happened at State Farm Arena on election night. They had the whole video too and ignored the truth.”<sup>14</sup>

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<sup>9</sup> Interview with Richard Donoghue.

<sup>10</sup> W. Cummings, J. Garrison & J. Sergent, *By the numbers: President Donald Trump’s failed efforts to overturn the election*, USA Today (Jan. 6, 2021), available at <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>.

<sup>11</sup> See, e.g., *King v. Whitmer*, No. 20-13134 (U.S. Dist. Ct. E. Dist. Mich. Aug. 25, 2021), available at [https://www.michigan.gov/documents/ag/172\\_opinion\\_order\\_King\\_733786\\_7.pdf](https://www.michigan.gov/documents/ag/172_opinion_order_King_733786_7.pdf).

<sup>12</sup> Available at <https://www.youtube.com/watch?v=keANzinHWUA>.

<sup>13</sup> Available at <https://twitter.com/gabrielsterling/status/1334827098637291520>.

<sup>14</sup> J. Gray, *Georgia Election Officials Show Frame-By-Frame What Happened in Fulton Surveillance Video*, WSB-TV (Dec. 4, 2020), available at <https://www.wsbtv.com/news/politics/georgia-election-officials-show-frame-by-frame-what-really-happened-fulton-surveillance-video/T5M3PYIBYFHHFOD3CIB2ULDVDE/>.

- On December 5, 2020, the Georgia Secretary of State’s office released the full video to news outlets, which then again debunked the Trump campaign’s claims.<sup>15</sup>
- On December 6, 2020, the Chief Investigator in the Georgia Secretary of State’s office signed a sworn statement affirming that:

[T]here were no mystery ballots that were brought in from an unknown location and hidden under tables as has been reported by some. Video taken hours before shows the table being brought into the room at 8:22 a.m. Nothing was underneath the table them [sic]. Around 10 p.m., with the room full of people, including official monitors and the media, the video shows ballots that had already been opened but not counted placed in boxes, sealed up, stored under the table. This was done because employees thought that they were done for the night and were closing up and ready to leave. When the counting continued into later in the night, those boxes were opened so that the ballots inside could then be counted.<sup>16</sup>

- On December 7, 2020, Georgia election officials held a press conference and stated: “what you saw, the secret suitcases with magic ballots, were actually ballots that had been packed into those absentee ballot carriers by the workers in plain view of the monitors and the press.”<sup>17</sup>
- Acting Attorney General Jeffrey Rosen and Acting Deputy Attorney General Donoghue also directly addressed these claims in mid- to late-December.<sup>18</sup>

When speaking with the Georgia officials on January 2, Mr. Trump raised the topic of the video and Ms. Mitchell bolstered Mr. Trump’s false statements:<sup>19</sup>

**Trump:** I mean, look. Brad. We have a new tape that we’re going to release. It’s devastating. And by the way, that one event, that one event is much more than the 11,000 votes that we’re talking about. It’s, you know, that one event was a disaster. And it’s just, you know, but it was, it was something, it can’t be disputed. And again, we have a version that you haven’t seen, but it’s magnified. It’s magnified, and you can see everything. For some reason, they put it in three times, each ballot, and I don’t know why. I don’t know why three times. Why not five times, right? Go ahead.

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<sup>15</sup> *Id.*

<sup>16</sup> Decl. of Frances Watson ¶ 7, ECF No. 72-1, *Pearson, et al. v. Kemp, et al.*, 20-cv-4809 (N.D. Ga. Dec. 6, 2020).

<sup>17</sup> Georgia Election Officials Briefing Transcript December 7: Will Recertify Election Results Today (Dec. 7, 2020).

<sup>18</sup> R. Donoghue Tr. 43 (informing President Trump that the “allegations about ballots being smuggled in a suitcase and run through the machines several times, it was not true, that we had looked at it, we looked at the video, we interviewed the witnesses, and it was not true”).

<sup>19</sup> The full transcript of the audio recording of the January 2, 2021 call is available at [https://www.washingtonpost.com/politics/trump-raffensperger-call-transcript-georgia-vote/2021/01/03/2768e0cc-4ddd-11eb-83e3-322644d82356\\_story.html](https://www.washingtonpost.com/politics/trump-raffensperger-call-transcript-georgia-vote/2021/01/03/2768e0cc-4ddd-11eb-83e3-322644d82356_story.html).

**Raffensperger:** You're talking about the State Farm video. And I think it's extremely unfortunate that Rudy Giuliani or his people, they sliced and diced that video and took it out of context. The next day, we brought in WSB-TV, and we let them show, see the full run of tape, and what you'll see, the events that transpired are nowhere near what was projected by, you know —

**Trump:** But where were the poll watchers, Brad? There were no poll watchers there. There were no Democrats or Republicans. There was no security there.

It was late in the evening, late in the, early in the morning, and there was nobody else in the room. Where were the poll watchers, and why did they say a water main broke, which they did and which was reported in the newspapers? They said they left. They ran out because of a water main break, and there was no water main. There was nothing. There was no break. There was no water main break. But we're, if you take out everything, where were the Republican poll watchers, even where were the Democrat pollwatchers, because there were none.

And then you say, well, they left their station, you know, if you look at the tape, and this was, this was reviewed by professional police and detectives and other people, when they left in a rush, everybody left in a rush because of the water main, but everybody left in a rush. These people left their station.

When they came back, they didn't go to their station. They went to the apron, wrapped around the table, under which were thousands and thousands of ballots in a box that was not an official or a sealed box. And then they took those. They went back to a different station. So if they would have come back, they would have walked to their station, and they would have continued to work. But they couldn't do even that because that's illegal, because they had no Republican pollwatchers. And remember, her reputation is — she's known all over the Internet, Brad. She's known all over.

I'm telling you, "Where's [name]" was one of the hot items . . . [name] They knew her. "Where's [name]?" So Brad, there can be no justification for that. And I, you know, I give everybody the benefit of the doubt. But that was — and Brad, why did they put the votes in three times? You know, they put 'em in three times.

**Raffensperger:** Mr. President, they did not put that. We did an audit of that, and we proved conclusively that they were not scanned three times.

**Trump:** Where was everybody else at that late time in the morning? Where was everybody? Where were the Republicans? Where were the security guards? Were the people that were there just a little while before when everyone ran out of the room. How come we had no security in the room. Why did they run to the bottom of the table? Why do they run there and just open the skirt and rip out the votes. I mean, Brad. And they were sitting there, I think for five hours or something like that, the votes.

**Raffensperger:** Mr. President, we'll send you the link from WSB.

**Trump:** I don't care about the link. I don't need it. Brad, I have a much better —

**Mitchell:** I will tell you. I've seen the tape. The full tape. So has Alex. We've watched it. And what we saw and what we've confirmed in the timing is that they made everybody leave — we have sworn affidavits saying that. And then they began to process ballots. And our estimate is that there were roughly 18,000 ballots. We don't know that. If you know that —

Ms. Mitchell's statement was false, as independent observers and media who viewed the tape know. Either she did not watch the full tape or she deliberately misstated what the tape showed. It continued:

**Mitchell:** I've watched the entire tape.

**Trump:** — but nobody can make a case for that, Brad. Nobody. I mean, look, that's, you'd have to be a child to think anything other than that. Just a child. I mean you have your never-Trumper U.S. attorney there —

**Mitchell:** — how many ballots, Mr. Secretary, are you saying were processed then?

**Raffensperger:** We had GBI . . . investigate that.

**Germany:** We had our — this is Ryan Germany. We had our law enforcement officers talk to everyone who was, who was there after that event came to light. GBI was with them as well as FBI agents.

**Trump:** Well, there's no way they could — then they're incompetent. They're either dishonest or incompetent, okay?

**Mitchell:** Well, what did they find?

**Trump:** There's only two answers, dishonesty or incompetence. There's just no way. Look. There's no way. And on the other thing, I said too, there is no way. I mean, there's no way that these things could have been, you know, you have all these different people that voted, but they don't live in Georgia anymore. What was that number, Cleta? That was a pretty good number, too.

**Mitchell:** The number who have registered out of state after they moved from Georgia. And so they had a date when they moved from Georgia, they registered to vote out of state, and then it's like 4,500, I don't have that number right in front of me.

**Trump:** And then they came back in, and they voted.

**Mitchell:** And voted. Yeah.

**Trump:** I thought that was a large number, though. It was in the 20s.

**Germany:** We've been going through each of those as well, and those numbers that we got, that Ms. Mitchell was just saying, they're not accurate. Every one we've been through are people that lived in Georgia, moved to a different state, but then moved back to Georgia legitimately. And in many cases —

**Trump:** How many people do that? They moved out, and then they said, "Ah, to hell with it, I'll move back." You know, it doesn't sound like a very normal . . . you mean, they moved out, and what, they missed it so much that they wanted to move back in? It's crazy.

**Germany:** They moved back in years ago. This was not like something just before the election. So there's something about that data that, it's just not accurate.

**Trump:** Well, I don't know, all I know is that it is certified. And they moved out of Georgia, and they voted. It didn't say they moved back in, Cleta, did it?

**Mitchell:** No, but I mean, we're looking at the voter registration. Again, if you have additional records, we've been asking for that,

but you haven't shared any of that with us. You just keep saying you investigated the allegations.

In addition to repeated falsehoods, Ms. Mitchell sought to convince the officials to provide the Trump campaign with private records of individual voters:

**Trump:** Because what's the difference between winning the election by two votes and winning it by half a million votes. I think I probably did win it by half a million. You know, one of the things that happened, Brad, is we have other people coming in now from Alabama and from South Carolina and from other states, and they're saying it's impossible for you to have lost Georgia. We won. You know in Alabama, we set a record, got the highest vote ever. In Georgia, we set a record with a massive amount of votes. And they say it's not possible to have lost Georgia.

And I could tell you by our rallies. I could tell you by the rally I'm having on Monday night, the place, they already have lines of people standing out front waiting. It's just not possible to have lost Georgia. It's not possible. When I heard it was close, I said there's no way. But they dropped a lot of votes in there late at night. You know that, Brad. And that's what we are working on very, very stringently. But regardless of those votes, with all of it being said, we lost by essentially 11,000 votes, and we have many more votes already calculated and certified, too.

And so I just don't know, you know, Mark, I don't know what's the purpose. I won't give Dominion a pass because we found too many bad things. But we don't need Dominion or anything else. We have won this election in Georgia based on all of this. And there's nothing wrong with saying that, Brad. You know, I mean, having the correct — the people of Georgia are angry. And these numbers are going to be repeated on Monday night. Along with others that we're going to have by that time, which are much more substantial even. And the people of Georgia are angry, the people of the country are angry. And there's nothing wrong with saying that, you know, that you've recalculated. Because the 2,236 in absentee ballots. I mean, they're all exact numbers that were done by accounting firms, law firms, etc. And even if you cut 'em in half, cut 'em in half and cut 'em in half again, it's more votes than we need.

**Raffensperger:** Well, Mr. President, the challenge that you have is the data you have is wrong. We talked to the congressmen, and they were surprised.



But they — I guess there was a person named Mr. Braynard who came to these meetings and presented data, and he said that there was dead people, I believe it was upward of 5,000. The actual number were two. Two. Two people that were dead that voted. So that's wrong.

**Trump:** Well, Cleta, how do you respond to that? Maybe you tell me?

**Mitchell:** Well, I would say, Mr. Secretary, one of the things that we have requested and what we said was, if you look, if you read our petition, it said that we took the names and birth years, and we had certain information available to us. We have asked from your office for records that only you have, and so we said there is a universe of people who have the same name and same birth year and died.

But we don't have the records that you have. And one of the things that we have been suggesting formally and informally for weeks now is for you to make available to us the records that would be necessary [interrupted by Mr. Trump]

As Mr. Germany informed the group, "I don't think we can give access to data that's protected by law."

Ms. Mitchell then sought to circumvent the courts, falsely claiming not to know about the outcomes of investigations into the concerns Mr. Trump was raising, and then alluded to refuted allegations regarding Dominion voting machines:

**Mitchell:** Mr. Secretary, Mr. President, one of the things that we have been, Alex can talk about this, we talked about it, and I don't know whether the information has been conveyed to your office, but I think what the president is saying, and what we've been trying to do is to say, look, the court is not acting on our petition. They haven't even assigned a judge. But the people of Georgia and the people of America have a right to know the answers. And you have data and records that we don't have access to.

And you can keep telling us and making public statement that you investigated this and nothing to see here. But we don't know about that. All we know is what you tell us. What I don't understand is why wouldn't it be in everyone's best interest to try to get to the bottom, compare the numbers, you know, if you say, because . . . to try to be able to get to the truth because we don't have any way of confirming what you're telling us. You tell us that you had an investigation at the State Farm Arena. I don't have any report. I've

never seen a report of investigation. I don't know that is. I've been pretty involved in this, and I don't know. And that's just one of 25 categories. And it doesn't even. And as I, as the president said, we haven't even gotten into the Dominion issue. That's not part of our case. It's not part of, we just didn't feel as though we had any to be able to develop —

The January 2 call also included a direct request by Mr. Trump to Secretary Raffensperger and Mr. Germany to “find 11,780 votes, which is one more than we have because we won the state.” Given that Mr. Trump trailed Mr. Biden by 11,779 votes, he was demanding that seeking to have the officials alter the election in his favor.

Mr. Trump also subtly threatened Secretary Raffensperger and Mr. Germany: “you are going to find that they are – which is totally illegal – it is more illegal for you than it is for them because you know what they did and you're not reporting it.” Mr. Trump then added it is a “big risk to you and to Ryan, your lawyer.”

Secretary Raffensperger and Mr. Germany did not succumb to the pressure. They upheld the rule of law in the face of Mr. Trump's and Ms. Mitchell's subversive efforts.

### **APPLICABLE STANDARDS AND RULES OF PROFESSIONAL CONDUCT**

Rule 3.3(a) of the Rules of Professional Conduct provides:

A lawyer shall not knowingly: (2) Counsel or assist a client to engage in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good-faith effort to determine the validity, scope, meaning, or application of the law...

Rule 4.1(a) states that, “In the course of representing a client, a lawyer shall not knowingly...make a false statement of material fact or law to a third person.”

Rule 8.4 provides that it constitutes professional misconduct to:

- (a) 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;
- (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- ...
- (g) Seek or threaten to seek criminal charges or disciplinary charges solely to obtain an advantage in a civil matter.

**A SUBSTANTIAL BASIS EXISTS FOR THE OFFICE OF DISCIPLINARY COUNSEL  
TO INVESTIGATE MS. MITCHELL’S CONDUCT AND TO IMPOSE  
APPROPRIATE DISCIPLINE**

The Office of Disciplinary Counsel should investigate on the following bases:

1. Ms. Mitchell knowingly counseled and assisted her client in criminal and fraudulent behavior.<sup>20</sup>

Mr. Trump engaged in criminal behavior when he sought to pressure public official to “find” him votes that would allow him to declare victory in Georgia. Specifically, Mr. Trump violated, at least, the following Georgia statutes:<sup>21</sup>

- O.C.G.A. § 21-2-604(a): solicitation to commit election fraud;<sup>22</sup>
- O.C.G.A. § 21-2-597: intentional interference with performance of election duties;
- O.C.G.A. § 21-2-603: conspiracy to commit election fraud;
- O.C.G.A. § 16-10-20: making false statements; and
- O.C.G.A. § 16-10-93: improperly influencing government officials.

The evidence demonstrates that Mr. Trump sought to induce Georgia election officials to disregard their legal obligations and instead “give [him] a break” and “find 11,780 votes.” The President of the United States threatened a “big risk” if the officials disregarded him and said it would be “very dangerous” for them not to heed his request. The actions Mr. Trump solicited from the election officials would have required those officials to take illegal steps to secure Mr. Trump the victory that the Georgia voters denied him.

He also made clear his intent to interfere with the officials’ performance of their election duties. Georgia law prescribes specific requirements on the Secretary of State, including “receiv[ing] from the superintendent the returns of primaries and election,” “canvass[ing] and comput[ing] the votes cast for candidates,” and “perform[ing] ... other duties as may be prescribed by law.”<sup>23</sup>

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<sup>20</sup> It is known that Mr. Trump engaged with other election officials, including an investigator for the Georgia Secretary of State’s office, prior to the January 2, 2021 call. The accounts of those interactions reveal additional criminal conduct by Mr. Trump. It is not known, however, whether Ms. Mitchell participated in those calls and so for purposes of this complaint, we limit ourselves to discussing Mr. Trump’s actions on the January 2, 2021 call.

<sup>21</sup> The Brookings Institute has completed a full, comprehensive review of the potential criminal acts relating to the January 2, 2021 call. The Brookings full report is important reading and is available at [https://www.brookings.edu/wp-content/uploads/2021/10/Fulton-County-Trump-Investigation\\_Brookings-Report\\_October2021.pdf](https://www.brookings.edu/wp-content/uploads/2021/10/Fulton-County-Trump-Investigation_Brookings-Report_October2021.pdf).

<sup>22</sup> A person engages in first-degree criminal solicitation to commit election fraud “when, with intent that another person engage in conduct constituting a felony under this article, he or she solicits, requests, commands, importunes, or otherwise attempts to cause the other person to engage in such conduct.

<sup>23</sup> O.C.G.A. § 21-2-50.

Secretary Raffensberger could not “find” Mr. Trump 11,780 votes without implicating his responsibility to “tabulate, compute, and canvass the votes cast for each slate of presidential electors”<sup>24</sup> and “certify the votes for all candidates.”<sup>25</sup>

Mr. Trump also broke Georgia law by making repeatedly false statements in a “matter within the jurisdiction of any department or agency of state government or of the government of any county, city, or other political subdivision.”<sup>26</sup> In other words, the question of certifying the presidential election in Georgia rested with the Secretary of State’s office and Mr. Trump made intentionally false statements to Secretary Raffensberger and Mr. Germany during the January 2, 2021 call. He knew these statements to be false based on the repeated efforts of his own staff – including Attorney General Barr, Deputy Attorney General Rosen, and Associate Deputy Attorney General Donoghue – to apprise him of their investigations and to dissuade him from continuing to make baseless claims regarding the 2020 election. He ignored their briefings and advice, disregarded the facts and investigations, and instead sought to extol and extort Secretary Raffensberger and Mr. Germany into changing the election outcome.

Mr. Trump took these actions in Ms. Mitchell’s presence, and based on her active participation in furthering his claims, with her support. As such, Ms. Mitchell violated Rule 3.3(a) by assisting Mr. Trump in his criminal and fraudulent actions.

2. Ms. Mitchell engaged in illegal conduct that reflects adversely on her honesty and trustworthiness

As president, Mr. Trump’s conduct on the phone call is more aggressive and problematic, but Georgia’s criminal code applies to more than just sitting presidents. Ms. Mitchell’s actions and statements during the January 2, 2021 call constitute their own violations of the Georgia statutes discussed above. As such, she violated Rule 8.4(b) as she deliberately disregarded known facts to aid her client in subverting the election. She violated Rule 8.4(g) by threatening, through Mr. Trump, Secretary Raffensberger and Mr. Germany with criminal charges for advantage in a civil matter.

Ms. Mitchell violated Rule 4.1 by making her own false statements during the call, as Mr. Germany pointed out. For example, she alleged that about 4,500 people voting illegally after moving out of state. Mr. Germany corrected her. When Secretary Raffensberger discussed the suitcase of ballots video, Ms. Mitchell insisted that she had watched the entire video and that it showed something different than what all the Secretary of State office staff and news media saw. Further, Ms. Mitchell proposed that the Secretary of State’s office provide Mr. Trump’s legal team with voters’ private personal information, which would have violated the law.

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<sup>24</sup> O.C.G.A. § 21-2-499.

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

<sup>26</sup> O.C.G.A. § 16-10-20.

3. Ms. Mitchell engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation

As discussed above, the entire enterprise that Ms. Mitchell participated in involved dishonesty, fraud, deceit, and misrepresentation. Further, this ethical standard applies to conduct that occurs outside of a tribunal.

4. Ms. Mitchell assisted others to engage in conduct that violated the Rules of Professional Conduct

The call to Secretary Raffensberger and Mr. Germany was part of a larger, concerted effort to prevent Congress from counting the electoral votes from Georgia and a handful of other states. The basis for this strategy rested in two memoranda written by John Eastman, one of Mr. Trump's attorneys.<sup>27</sup>

Mr. Eastman's memoranda, which has been shown to be grounded in neither law nor fact, recommended that Mr. Pence take "BOLD" action to secure Mr. Trump's victory.<sup>28</sup> Mr. Pence would preside over the January 6, 2021 Joint Session of Congress, during which the electoral votes cast and certified in each state on December 14, 2020 would be opened and confirmed. Established law and precedent limited Mr. Pence's role to opening the Certificates of Votes and announcing the results of each, as well as the outcome. Mr. Eastman sought to have Mr. Pence disregard the vice president's constitutional and statutory obligations, and to instead claim unto himself the authority to invalidate seven states' electoral votes and unilaterally declare Mr. Trump the victor, without turning the matter over to Congress. The scheme required an existing controversy over which slate of electors should be viewed as valid from the seven states.<sup>29</sup> In other words, for Mr. Pence to throw out the electoral votes cast and certified by the seven states, there needed to be an alternative slate of electors who claimed to be the legitimate electors.

Individuals from those seven states obliged and created false slates of electors. And thus, Mr. Eastman's scheme became a conspiracy. A conspiracy that Ms. Mitchell participated in through joining Mr. Trump's call to pressure the Georgia Secretary of State's office.

It is well-documented what happened a few days later. Mr. Trump and several members of his legal team spoke at a rally on January 6, and repeated the same type of claims that Mr. Trump and Ms. Mitchell made during the January 2 call. Members of that crowd then marched to the Capitol, breached security, vandalized the building, assaulted police officers, and sought to hunt down members of Congress and Mr. Pence. Nine people died as a result of the insurrection, including four police officers who committed suicide within seven months of responding to the

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<sup>27</sup> The main Eastman memorandum is available at <https://www.cnn.com/2021/09/21/politics/read-eastman-full-memo-pence-overturn-election/index.html>.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

attack.<sup>30</sup> The insurrectionists injured over 138 police officers.<sup>31</sup> To date, 769 people have been charged in connection with the January 6 insurrection, with 165 of those defendants pleading guilty, and courts have imposed sentences reaching over 60 months.<sup>32</sup>

Thus, Ms. Mitchell aided Mr. Eastman’s effort to pressure Mr. Pence to disregard his constitutional and statutory duties so that Mr. Trump could reclaim the presidency. Mr. Eastman is under investigation by the State Bar of California for his actions seeking to overturn the 2020 The Rules establish that aiding others to violate such standards constitutes its own misconduct. Ms. Mitchell’s efforts to assist Mr. Eastman violated Rule 8.4(a).

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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>33</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>34</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>35</sup>

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<sup>30</sup> Wolfe, Jan, *Four Officers Who Responded to U.S. Capitol Attack Have Died by Suicide*, Reuters (Aug. 2, 2021), available at <https://www.reuters.com/world/us/officer-who-responded-us-capitol-attack-is-third-die-by-suicide-2021-08-02/>.

<sup>31</sup> Schmidt, Michael S.; Broadwater, Luke, *Officers’ Injuries, Including Concussions, Show Scope of Violence at Capitol Riot*, N.Y. Times (Feb. 12, 2021), available at <https://www.nytimes.com/2021/02/11/us/politics/capitol-riot-police-officer-injuries.html>.

<sup>32</sup> See <https://www.insider.com/all-the-us-capitol-pro-trump-riot-arrests-charges-names-2021-1>.

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

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

<sup>35</sup> *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021, available at [https://www.nycourts.gov/courts/ad1/calendar/List\\_Word/2021/06\\_Jun/24/PDF/Matter%20of%20Giuliani%20\(2021-00506\)%20PC.pdf](https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20(2021-00506)%20PC.pdf).

Ms. Mitchell abused her place of trust and played a significant role in fomenting discord, violence, and death, all through spreading lies and misinformation.

For the reasons set forth above, The 65 Project respectfully requests that the Office of Disciplinary Counsel investigate Ms. Mitchell's conduct and impose appropriate discipline. And, because she has demonstrated a willingness to engage in the same problematic behaviors, we ask that you treat this matter with urgency.

Sincerely,

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

Michael Teter  
Managing Director, The 65 Project

