DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
AD HOC HEARING COMMITTEE

In the Matter of	:	**Board Docket No. 22-BD-027**
RUDOLPH W. GIULIANI,	:	**Disciplinary Docket No. 2020-D253**
Respondent,	:	
A Temporarily Suspended Member Of the Bar of the District of Columbia Court of Appeals. Bar Registration Number: 237255	:	

DISCIPLINARY COUNSEL'S REPLY BRIEF

Disciplinary Counsel's opening brief showed that Mr. Giuliani violated Pennsylvania Rules 3.1 and 8.4 because he lacked a nonfrivolous basis in fact or law for the claims he pleaded and the arguments he advanced in attempting to overturn the results of the 2020 presidential election in Pennsylvania. Disciplinary Counsel specifically noted that the "most glaring defect" in Mr. Giuliani's claims was the lack of any factual basis to bring them. DC Br. 26.

Mr. Giuliani's responsive brief does not refute that argument, claiming only that the allegations of his complaints were supported by declarations. But that is no answer. Instead, he spends the bulk of his efforts attacking the district court's decision in *Donald J. Trump for President, Inc. v. Boockvar*, 502 F. Supp. 3d 899 (M.D.

Pa. 2020) (DCX 14), and in particular, the court's holdings that the neither the Trump campaign nor the individual voters in that case had standing to bring the asserted claims. *See* R. Br. 28-42. Even if those arguments were correct, it would not refute Disciplinary Counsel's showing that Mr. Giuliani had neither a basis in fact nor a nonfrivolous legal basis for his election claims in Pennsylvania. Standing only opens the courthouse door; a lawyer must still have a factual basis and a substantive legal basis for a complaint, even if his client has standing.

Mr. Giuliani agrees that the Pennsylvania action challenged the use of two procedures during the 2020 election (notice and cure and observational barriers); under two theories of relief (the Electors and Election Clauses and 42 U.S.C. § 1983); the latter theory based on alleged violations of two constitutional provisions (Fourteenth Amendment equal protection and substantive due process); on behalf of two sets of clients (the Trump campaign and two voters who were not offered notice and cure). PFF 21 & Resp. Br. 24 (noting proposed finding 21 is undisputed). He agrees that the lawsuit "sought injunctive relief that ranged from preventing the certification of the results of the 2020 election to ordering the Pennsylvania General Assembly to choose new electors." *Id.* The question before the Hearing Committee is whether Mr. Giuliani had a nonfrivolous basis in law and in fact to assert each of those claims.

I. Mr. Giuliani did not have a factual or legal basis to assert the Section 1983 claims.

Section 1983 imposes liability on a person acting under color of state law to deprive persons of "any rights, privileges, or immunities secured by the Constitution and laws [of the United States]." 42 U.S.C. § 1983. The right in question was the right of Pennsylvanians to vote, which encompasses the right to have their votes honestly counted. Mr. Giuliani's Section 1983 claims in the election litigation challenged the notice and cure procedures and the installation of barriers to ensure social distancing between election observers and election workers canvassing mail-in ballots. To make out a nonfrivolous Section 1983 claim under either an equal protection or substantive due process theory, Mr. Giuliani required a factual and legal basis to claim that the barriers or notice and cure deprived voters of an honest count. He had neither.

A. Mr. Giuliani had no factual basis to assert a claim under Section 1983 (or any other theory) based on observational barriers.

Rule 3.1 forbade Mr. Giuliani from bringing any claim based on the observational barriers without a factual basis connecting the barriers to impropriety in the canvassing of mail-in votes. The fact that barriers were installed, by itself, is plainly insufficient. The barriers did not prevent anyone from voting, and the mere installation of barriers does not show or even suggest that anything untoward happened in the canvassing of ballots. There is no constitutional requirement that governs mail-in voting

procedures or that requires states to allow poll watchers or vote-canvassing observers, much less a constitutional right that such observers be within a certain distance of election workers. PFF 27. (Mr. Giuliani disputes this proposed finding but does not offer any contrary record citation or authority. R. Br. 25. Indeed, he offers no record support for any of the proposed findings he disputes, even though this Committee's December 21, 2022 Order required him to do so for each one.) Accordingly, a claim that the barriers prevented an accurate count of the vote could only succeed if the barriers permitted or protected fraudulent activity.

Mr. Giuliani had no factual basis to make such a claim. Disciplinary Counsel's brief (at PFF 34) catalogued every factual allegation that the Giuliani complaints (the initial complaint and the second amended complaint) asserted to establish election fraud. (Mr. Giuliani disputes PFF 34, R. Br. 25, but provides no record citation, just a reference to his own RFF 37, which recites the same allegations, often with almost identical language, but reorganized.) On their face, the PFF 34 allegations would not establish fraudulent vote counting or any other fraud caused by observational barriers or which would have been prevented without barriers. Of the 26 alleged facts, none even mention the observational barriers. *See* PFF 34 (a-z). Five involve election observers (PFF 34 (a, n, r, s, t)), but none of those allege fraudulent activity that would have been prevented by closer observation than the barriers allowed. The rest are even further from supporting a claim based on observational

barriers: Ten allege irregularities with in-person voting, which has nothing to do with the canvassing of mail-in ballots. *See* PFF 34 (a, h, i, j, *l*, m, *o*, p, q, u). Eight allege irregularities with the delivery of mail-in ballots to voters (PFF 34 (b, c, d, f, g, k, v)) or their return (PFF 34 (z)), both of which occurred before election day and neither of which is relevant to observers' ability to view the canvassing of ballots. Four allege irregularities in counties that were not even defendants in the litigation (PFF 34 (c, d, e, v)), and three are so unspecific that it is unclear how they were intended to be relevant (PFF 34 (w, x, y)).

Mr. Giuliani's brief makes no attempt to show that that the allegations in his complaints add up to a basis in fact to support a claim based on observational barriers (or any of his other theories). Instead, he argues that there were "declarations supporting these allegations," R. Br. 14-21 (RFF 37), and that a lawyer may generally allege facts that aren't fully substantiated, R. Br. 56-57. Disciplinary Counsel has never disputed whether Mr. Giuliani had some basis in the declarations to allege the scattering of minor election improprieties described in the complaints. The question is not whether the allegations of the complaints had some factual basis, but whether those facts, assuming them to be true, supported the legal claims alleged in the complaints.

As a representative sample, consider every third allegation set forth in RFF 37, starting with the first and presumably strongest:

- Election workers failed to properly "spoil," *i.e.*, render unusable, turned-in ballots or did not allow provisional voting when a voter appeared in person and surrendered a mail-in ballot. R. Br. 15. This was something that was observed and has nothing to do with barriers. Failure to follow spoiling procedures does not mean there was improper voting.
- Numerous voters reported receiving mail-in ballots for which they did not apply. R. Br. 16. There is no claim that these voters voted both in person and by mail, and this has nothing to do with observational barriers.
- Voters were required to vote provisionally when they appeared at the polls with un-voted mail-in ballots, R. Br. 18. (This allegation contradicts the first allegation.) This has nothing to do with vote-canvassing or tallying and hence with observational barriers. These voters did not even vote by mail. Voting provisionally does not mean that their votes were not counted, only that the decision whether to do so was deferred to the county election board.
- Poll watchers saw workers placing mail-in ballots in unsecure containers rather than properly spoiling them. R. Br. 19. Since this conduct was observed, it has nothing to do with barriers. Failure to follow spoiling procedures does not mean the ballots were later voted illegally.

- A poll worker in Chester County reported 15% of the mail-in ballots were damaged by the machines that opened them. R. Br. 19. This mechanical problem does not mean the ballots were not properly counted. Since it was observed, it is unrelated to observational barriers.
- "Numerous" voters in seven locations in Delaware County were given regular ballots, even thought they had registered to vote by mail, and did not sign a registration book. Since this was apparently observed, it had nothing to do with barriers, and it also had nothing to do with counting mail-in votes. Moreover, there is no claim that these voters voted more than once.
- A Delaware County observer saw a delivery two days after the election of v-cards or USB drives in an unsealed plastic bag with no accompanying paper ballots and could not see what was done with them. It is unclear what this even means, but it has nothing to do with barriers preventing observers from seeing the canvassing of mail-in votes.

Mr. Giuliani's restatement of the allegations from PFF 34 in RFF 37 does not make them any more supportive of the legal claims in the complaints. The existence of observational barriers did not cause, hide, or otherwise facilitate election fraud or the deprivation of the right to vote.

B. Mr. Giuliani had no nonfrivolous basis in law to allege any violation based on observational barriers.

Mr. Giuliani also lacked a nonfrivolous legal basis to claim that the barriers led to any violation of the plaintiffs' rights. Under Rule 3.1, a nonfrivolous legal basis could be based on the application of existing law—that is, that the barriers illegally violated the plaintiffs' rights under some existing authority—or a good-faith argument for the extension, modification, or reversal of existing law. Mr. Giuliani's claims had none of those.

The legality of the barriers under state law was properly established in state court proceedings, which balanced the public health concerns with the requirements of Pennsylvania Act 77. PFF 9. Before the election, the courts ruled that Act 77 did not authorize election boards to compare signatures on mail-in ballot envelopes with registration forms and that observers were not authorized to challenge mail-in ballots. PFF 7. Thus, although his brief refers to the absence of "meaningful observation" and to the observation of the counting of mail-in ballots "as required by law," *e.g.*, RFF 8-9, R. Br. 49, Mr. Giuliani does not show any legal basis to claim that additional observation was required for the observation to be meaningful or lawful under state law. Nor can Mr. Giuliani show that his claims were based on a good-faith argument to extend, modify, or reverse the existing state law. Mr. Giuliani sued in federal court, which has no authority to hold that state courts have incorrectly interpreted state law.

Mr. Giuliani's brief misunderstands the impropriety of bringing his case in federal court. R. Br. 47-53. Disciplinary Counsel does not argue that it is inherently wrong to challenge election procedures in federal court, but federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A non-frivolous complaint must raise a federal claim. For example, *Ritter v. Migliori*, 142 S.Ct. 1824 (2002) (RX 29), on which he relies, properly challenged certain election procedures in federal court, because there was a federal statute, 52 U.S.C. § 10101(a)(2)(B), that specifically provided for federal courts to hear the specific cause of action the plaintiff brought. Every claim that might properly be raised in state court cannot be raised in federal court, however, and not every challenge to state election procedures that is proper in state court can be made to fit the procrustean bed of Section 1983.

The question then becomes whether Mr. Giuliani possessed a nonfrivolous basis in federal law to claim that the observational barriers violated some right of the Trump campaign or the two individual voters. In his brief, Mr. Giuliani claims that the barriers resulted in an equal protection or due process violation because different counties imposed different boundaries, resulting in "unequal treatment of observers *between* the counties," that is, observers in a given county faced different barriers than observers in some other county. R. Br. 42, n. 4. Although that claim is obviously true as a factual matter—the facilities in which votes were canvassed naturally

required barriers appropriate to their floor plans—it does not follow that the different facilities denied the Trump campaign or the individual voters due process or equal protection. Nor does Mr. Giuliani identify any "rights, privileges, or immunities" that were violated by the county-to-county variations in observational barrier installation.

Instead, Mr. Giuliani contends that his claims were supported by a reasonable argument to extend the reasoning of cases such as *Bush v. Gore* and *Pierce v. Allegheny County Board of Elections*. R. Br. 42-47. Mr. Giuliani presses that argument primarily in defense of the notice and cure claims. *See id.* But as we explain in the section immediately below, no good-faith argument supports extending those cases to the notice and cure claims; their application to the observational barriers claims is even more attenuated. To the extent Mr. Giuliani intends his exposition on standing (R. Br. 27-42) to establish a legal basis for either the observational barriers or the notice and cure claims, he is wrong for the reasons discussed in part III below.

C. Mr. Giuliani had no nonfrivolous basis in law or fact to bring any claim based on Notice and Cure.

Rule 3.1 required Mr. Giuliani to have both a factual basis and a nonfrivolous legal basis to bring claims that the adoption of notice and cure procedures in some counties violated the plaintiffs' rights and required the disqualification of all mail-in ballots in those counties.

Mr. Giuliani makes no effort to refute Disciplinary Counsel's showing that he lacked a factual basis for the notice and cure claims. The four largest counties had an estimated 6,500 notice and cure voters. The Third Circuit wrote that even if the notice and cure votes in the remaining counties brought the total to 10,000 voters (and even assuming they all voted for Biden), the result of the election would not have changed. Mr. Giuliani disputes the 10,000 figure because he "had no way of knowing whether those numbers are accurate," R. Br. 25 (responding to PFF 30). But Mr. Giuliani does not state any basis to claim that the procedures affected a number of votes in the seven defendant counties that even approaches President Biden's 80,000-vote margin. Nor did he plead any other facts to suggest that notice and cure could have affected the outcome of the election, even assuming it was unlawful. *See* PFF 34 (a-z); RFF 37. Without such facts, Mr. Giuliani had no factual basis to support a claim that the notice and cure procedures entitled the Trump campaign or the two voters to seek the disqualification of 680,000 votes—representing every single ballot cast by mail-in the defendant counties.

Mr. Giuliani contends that it would be unusual to sanction an attorney for the relief he requested (R. Br. 53), but Rule 3.1 does not distinguish remedial issues from other sorts of issues in a proceeding. It no more permits an attorney to advocate for a remedy without a factual or legal basis than it does for issues involving the

imposition of liability or any other issue. It is no less a waste of the court's time to make a frivolous claim for relief than it is to make a frivolous claim for liability.

While the lack of any factual basis for the notice and cure claims is enough to show that Mr. Giuliani violated Rule 3.1, he also lacked a nonfrivolous legal basis for those claims. Mr. Giuliani argues that the inconsistent county-to-county use of notice of cure procedures "resulted in discrimination between different Pennsylvania counties—and by extension, discrimination amongst their respective residents and voters." R. Br. 42. He claims this alleged discrimination "corresponded heavily" with the partisan leanings of different counties and resulted in injury to the Trump campaign. *Id*. Mr. Giuliani claims the same alleged discriminatory treatment supports finding a due process violation. *Id.* at 45-47.

Mr. Giuliani does not argue that any existing law supports that argument. Instead, he contends the claims were based on a good-faith argument to extend the reasoning of cases such as *Bush v. Gore* and *Pierce v. Allegheny County Board of Elections*. R. Br. 42-47. But there is no reasonable good-faith argument that would support extending those cases to Mr. Giuliani's claims.

Bush v. Gore involved a Florida Supreme Court order to conduct a manual recount of ballots rejected by ballot-counting machines in the 2000 election. 531 U.S. 98, 107 (2000). Because the order did not clearly announce a uniform standard to determine the voter's intended choice of candidate, it permitted counties to

employ different standards to determine whether a vote had been cast. *Id.* The Supreme Court held that process was "inconsistent with the minimum procedures necessary to protect the fundamental right of each voter." *Id*. at 109. Similarly, *Pierce v. Allegheny County Board of Elections* involved the use of different standards to determine whether a third-party, hand-delivered absentee ballot would be counted as a legal vote. 324 F.Supp.2d 684, 698 (W.D. Pa. 2003). As Mr. Giuliani's brief explains, "The court [in *Pierce*] held this disparate treatment implicated the equal protection clause because uniform standards will not be used statewide to discern the legality of a vote in a statewide election." R. Br. 43.

No good-faith argument supports extending the reasoning of those cases to Mr. Giuliani's notice and cure claims. Unlike *Pierce* or *Bush v. Gore,* a uniform standard was employed in Pennsylvania to determine if mail-in ballots were defective. Mr. Giuliani did not claim that notice and cure was among "the minimum procedures necessary to protect the fundamental right of each voter," *Bush v. Gore*, 531 U.S. at 109; he claimed the opposite—that the counties which expanded the opportunity to vote through notice and cure somehow infringed the rights of the voters in other counties who were not offered notice and cure. There is no good faith argument that the holding or reasoning of *Bush v. Gore* supports such a claim. Nor is there any reasonable argument for extending the reasoning of *Pierce*—where different standards determined whether votes were legal—to the Pennsylvania election, where a

uniform standard was applied to all mail-in ballots. Notice and cure afforded voters who had cast ballots in violation of the uniform standards to submit ballots that conformed to those standards. Rather than infringing on the right to vote like the procedures in *Bush* and *Pierce*, the notice and cure procedures protected and expanded it. Mr. Giuliani thus lacked a nonfrivolous basis in law to claim that the procedures violated any right of the Trump campaign or the individual voters to equal protection or due process.

II. Mr. Giuliani did not have a factual or legal basis to bring claims under the Election and Electors Clauses.

Mr. Giuliani also challenged the notice and cure procedures and observational barriers as violating the Election and Electors Clauses of the U.S. Constitution. In sum, the claim was that county election boards usurped the legislature's plenary power over elections by installing observational barriers or by employing notice and cure procedures.

As with the Section 1983 claims, the Electors and Elections Clause claims were unsupported by any factual basis for the plaintiffs' claims of injury. For the reasons described above, Mr. Giuliani had no factual basis to claim that the installation of observational barriers or the implementation of notice and cure affected the outcome of the 2020 presidential election in Pennsylvania. Accordingly, there was no factual basis to allege that the Trump campaign or the individual voters suffered

cognizable harm from the practices or to justify the extraordinary relief that Mr. Giuliani sought.

The claims also lacked a nonfrivolous basis in law because Mr. Giuliani's clients lacked standing to raise them. If the legislature's power was usurped by notice and cure or observational barriers, it was the legislature that suffered injury, not the Trump campaign or the individual voters. *See* DC Br. 32-33.

Mr. Giuliani's lengthy discourse on standing does not show otherwise. He argues that the Trump campaign had "competitive standing based upon disparate state action leading to the potential loss of an election" and that the district court in *Boockvar* incorrectly rejected that theory. R. Br. 28 (internal quotation marks omitted), 28-38. But he never explains how—even if competitive standing had the contours he suggests—either the notice and cure procedures or the observational barriers could plausibly "lead to the potential loss of an election." To satisfy the "irreducible constitutional minimum" of standing, a plaintiff must establish (1) an injury in fact, that is (2) fairly traceable to the challenged conduct, and is (3) likely to be redressed by a favorable judicial decision. *E.g.*, *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). Mr. Giuliani argues that the "potential loss of an election" is a cognizable injury in fact, R. Br. 31, but he does not explain any theory under which the potential loss of the 2020 election could be fairly traced to notice and cure procedures or the installation of observational barriers. Thus, the question of which entity, the legislature or

the election boards, was authorized to establish these procedures cannot matter to the campaign if the procedures did not affect the election result.

Even more broadly, Mr. Giuliani claims that "increased competition" or "an illegally structured competitive environment" may be a cognizable injury to justify competitive standing. R. Br. 33-34 (quoting *Mecinas v. Hobbs*, 30 F.4th 890 (9th Cir. 2002). But even if that were correct, Mr. Giuliani does not articulate any theory that the observational barriers or notice and cure could fairly be said to cause a competitive environment injurious to the Trump campaign. Thus, even if Mr. Giuliani's assertion of standing were based on a reasonable argument for the extension of existing law, it still fails to provide a nonfrivolous basis for the Election and Electors Clauses claims, or indeed for the Section 1983 claims.

Mr. Giuliani likewise lacked any nonfrivolous basis to assert those claims on behalf of the individual voters. Under longstanding Supreme Court precedent, individual citizens lack standing to bring a "generalized grievance" for an injury that is undifferentiated and common to all members of the public. *E.g.*, *United States v. Richardson*, 418 U.S. 166, 173-175 (1974). The claim that county election boards usurped the state legislature's plenary power over elections is exactly such an undifferentiated grievance. The individual voters did not suffer any harm from those actions that was different from or greater than any other citizen. Mr. Giuliani does not

assert any argument to the contrary or make any argument for extending, modifying, or reversing that longstanding principle.

Instead, he argues that he should not be faulted for pursing a theory that was contrary to the standing decision in *Bognet v. Secretary Commonwealth of Pennsylvania*, 980 F.3d 336 (3d Cir. 2020), particularly while that case could still have been reviewed in the Supreme Court. R. Br. 40. That argument misses the point. It was not *Bognet*'s decision on standing that made the claims frivolous. They were frivolous because they lacked any basis in law under longstanding, pre-*Bognet*, principles of standing, and Mr. Giuliani did not assert any good-faith argument to modify or reverse those principles. The rejection of standing in *Bognet* was simply a highly relevant, recent application of those principles. Mr. Giuliani is likewise wrong to rely on the theoretical possibility that *Bognet* could have been reversed in the Supreme Court. R. Br. 39-42. The same could be said for any claim, in any proceeding, no matter how frivolous. The question under Rule 3.1 is not whether the existing law could theoretically be modified or reversed, but whether an attorney asserting the claim has a good-faith argument for the extension or modification of the existing law. Mr. Giuliani does not make such an argument here and had no such basis when he brought the claims. He violated Rule 3.1 when he brought the claims anyway.

III. Mr. Giuliani should be disbarred.

Disciplinary Counsel's opening brief explained why Mr. Giuliani's attempt to subvert the founding principles of our democracy merits a sanction beyond what has been imposed in ordinary cases involving frivolous litigation, such as those on which Mr. Giuliani relies. R. Br. 60-61 (citing *In re Spikes*, 881 A.2d 1118 (2005), *In re Yelverton*, 105 A.3d 413 (2014), and *In re Pearson*, 228 A.3d 417 (2020)). Mr. Giuliani's only response is that Disciplinary Counsel's arguments are "political statements" with no support in the record. R. Br. 61. Not so. Although Mr. Giuliani was unquestionably pursuing political motives when he brought frivolous claims seeking to undermine the presidential election and the orderly transfer of power, the harm he inflicted on our country does not fall on one side of the political line. Frivolous claims undermining the integrity of the 2020 election have been roundly denounced by leaders across the political spectrum, including in a report authored by prominent Republican conservatives such as John Danforth, Michael Luttig, and Theodore Olson, which Disciplinary Counsel relied on in its opening brief. DC Br. 41-42. There is nothing partisan about imposing a sanction that aligns with the gravity of the conduct at issue.

Mr. Giuliani attempts to mitigate his violations of Rule 3.1 and 8.4(d) by arguing that the initial complaint was a "nullity" and the Second Amended Complaint was never accepted for filing. R. Br. 10, 59. But those circumstances do not make

Mr. Giuliani's conduct any less culpable. Mr. Giuliani disavowed the first amended complaint (PFF 17) and drafted and filed the second amended complaint, which restored the claims omitted in the First Amended Complaint and added others (PFF 18). In his complaints and at the oral argument, Mr. Giuliani whole-heartedly advocated frivolous issues, focusing in particular on the observational barrier claims, which were dropped in the first amended complaint, but which he intended to restore in the second amended complaint. PFF 17 (undisputed, R. Br. at 24).

Mr. Giuliani also argues that he did not abuse the judicial process, noting that election challenges have to be asserted promptly, that the law is complex, and that there is no Rule 3.1 violation if a lawyer has a good faith basis to seek an extension, modification, or reversal of existing law. But while a lawyer may ethically seek to modify existing law, that does not justify bringing suit without any good faith argument for such a modification. Mr. Giuliani apparently believes that lawyers are entitled to use the judicial process to bring any lawsuit they can think of, regardless of whether they have considered whether the law or the facts would support the claims. Rule 3.1 says the opposite. It uses mandatory language: "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." Pa. R. Prof'l Conduct 3.1 (emphasis added). The rule does not give way simply because an attorney's

client wants a reason to sue. The attorney must ensure that the facts and the law—or a reasonable argument to change the law—would support the claim. One would expect that if a lawyer were advancing an argument to change the law, he would acknowledge what the existing law is and state explicitly how he was seeking to change it. Mr. Giuliani's pleadings opposing the motion to dismiss do no such thing, other than to state in footnotes that *Blognet* was wrongly decided. *See* HCX 16 generally & 0019, n.8

One would have to be insentient to ignore the societal damage to which Mr. Giuliani has made a substantial contribution. Mr. Giuliani's public service, while alluded to in his testimony, is not part of the record in this case, but he urges it as mitigation. Equally relevant, although as aggravation, are the consequences of his misconduct: the loss of faith in the integrity of elections by a substantial portion of the citizenship, an unfounded belief that President Biden was not legally elected, the consequential claim of illegitimacy of his administration—all culmination in the events of January 6, 2021. Mr. Giuliani objects to being compared to a lawyer who spied against her country, but he did a great deal more harm to his country than Ms. Squillacote.

It must be made clear that lawyers cannot use their law licenses illegitimately to undermine the constitutional system they are sworn to uphold. Rudolph W. Giuliani must be disbarred.

CONCLUSION

The Hearing Committee should find that Mr. Giuliani violated Pennsylvania Rules of Professional Conduct 3.1 and 8.4(d) and recommend that he be disbarred.

Respectfully submitted,

s/ Hamilton P. Fox, 999

HAMILTON P. FOX, III
Disciplinary Counsel

THEODORE (JACK) METZLER
Senior Assistant Disciplinary Counsel

JASON R. HORRELL
Assistant Disciplinary Counsel

OFFICE OF DISCIPLINARY COUNSEL
515 5th Street, N.W.
Bldg. A., Suite 117
Washington, D.C. 20001
(202) 638-1501

DISCIPLINARY COUNSEL'S REPLY TO RESPONDENT'S PROPOSED FINDINGS OF FACT

1. Admit.
2. Deny that "no-excuse" mail-in voting was contrary to the Pennsylvania constitution or of "dubious legality," although this is an irrelevant legal argument.
3. Admit.
4. Admit.
5. Admit.
6. Admit.
7. Admit that Corey Lewandowski and Pam Bondi were denied access. Deny that they were representatives of the Trump campaign within the definition of 25 P.S. §§ 3146.8 (g)(1.1 & 2). The campaign was permitted to designate one representative to remain in the room during the canvassing of the mail-in ballots. DCX 19 at 005. (discussing procedures under Pennsylvania Election Code). Judge Fizzano-Cannons order was on appeal. DCX 20.
8. Admit, although the testimony was that there was an informal settlement, not a federal consent order. Tr. 564-65 (Ortiz). Deny that there was no "meaningful observation." *See* DCX 18, 19, 20. Admit that observers could generally not read outside ballot envelopes.

9. Deny. Under Pennsylvania law, the observers were given all the access to which they were entitled. DCX 20.

10. Admit.

11. Admit that some counties adopted notice and cure and some did not. Deny there is evidence of whether these were Democratic or Republican Counties in cited declarations. (Keller declaration is miscited; proper cite is RX01 at 261.) There was also no evidence about the remaining counties, including whether they were Democratic or Republican and (except for the two counties where the individual voters lived) whether they permitted notice and cure.

12. Admit

13. Admit that Ronald Hicks, Jr. drafted most of the complaint, but Giuliani wrote 10-30% of it and edited it. Tr. 53 (Giuliani: "I contributed 20 percent, 10 percent, and I edited it."), 889 (Giuliani: "I shouldn't have said 10 or 20, because it may have been 15 or 30,"); DCX 34 at 141.

14. Admit, except deny that Respondent's contribution to the initial complaint was minor. *See* Response to RFF 13, *supra*.

15. Admit.

16. Admit.

17. Admit.

18. Admit.

19. Admit.

20. Admit.

21. Admit.

22. Admit.

23. Admit.

24. Admit.

25. Admit.

26. Admit.

27. Admit that the district court dismissed for lack of standing, but deny that it relied on *Bagnet*. Plaintiffs conceded that *Bagnet* deprived them of standing on the Election and Electors Clause count, and the court dismissed it without discussion. DCX 14 at 0010. The court discussed standing only in connection with the sole remaining claim, equal protection, and did not rely on *Bagnet*, except in a single footnote relating to the individual plaintiffs' vote-dilution theory. *Id.* at 0011-13 & n. 50. But the court also reached the merits and dismissed under Fed. R. Civ. P. 12(b)(6) (failure to state a claim upon which relief can be granted). Assuming the facts that were pled to be true, the court concluded that they did not state a cause of action. *Id.* at 0013-17.

28. Admit.

29. Admit.

30. Admit the first sentence; deny the second. The court noted that representing the Trump campaign "in some corridors" might be an unpopular cause, but it also said, "I would suggest that representing the Trump Campaign in many corridors is not an unpopular cause," noting that a little less than half of the voting population "thinks this is exactly the right thing to do." DCX 08 at 0161.

31. Deny. This seems to be a legal conclusion, advanced without support, and it is unclear what Respondent means by "a nullity."

32. Admit that the appeal was only of the denial of the motion to amend the complaint a second time, but deny that the Third Circuit affirmed solely on procedural grounds. The court also affirmed on the grounds that amending the complaint would have been futile because it failed to state a claim. DCX 16 at 0008-10. Deny that this alternative ground was dicta, which is a legal argument, or that it would matter to these proceedings if it were dicta. Admit that Disciplinary Counsel's Rule 3.1 charge was based on the allegations made in the district court, but deny that the appeal to the Third Circuit is not part of the Rule 8.4(d) violation.

33. Admit the Second Amended Complaint was not permitted to be filed.

34. Admit that there was not a specific cause of action for fraud in the Second Amended Complaint, for which the federal court would have had no jurisdiction, but for the reasons set forth in DC Br. 28-31 & Reply Br. 3-4, Respondent's due process/equal protection challenge to the observational barriers were dependent upon fraud that resulted from or was somehow linked to the existence of those barriers.

35. This proposed finding is a legal argument. To the extend a response is necessary, it is denied.

36. Admit that there were allegations of fraud in the Second Amended Complaint. Deny that any of the cited declarations support claims of fraud arising from the existence of observational barriers. (Respondent's citation to RX01 at 586, should be at 566.)

37. Deny. PFF 34 (which Respondent refers to by citation to pages 17-21 of DC Br.) does not say that Respondent had no factual basis for the allegations in the complaint. It says that the allegations in the complaints "provided no factual basis for their legal claims." RFF 37 cites to declarations that allegedly support the factual claims in the Giuliani complaints. But even if those factual claims were all true, they are not a basis for the legal claims Respondent made or for setting aside the results of an election. *See* DC Reply Br. 5-7.

38. Admit, on the assumption that "discounted" means "not counted." Disciplinary Counsel does not understand the reference to 25 P.S. § 3146.8(g)(1). *See* DCX 20 with respect to the role of watchers.

39. Admit.

40. Admit.

41. Admit.

42. Admit.

43. Deny. Ortiz testified that relying on a case that was subsequently reversed "could" mean the judge's opinion was in error, depending upon the materiality of the analysis, and that "could" mean that Ortiz's opinion was in error. Tr. 673-74 (Ortiz).

44. Admit.

45. Deny. Judge Brann relied on the Third Circuit opinion, not the district court opinion in *Marks v. Stinson*, and Ortiz was familiar with the appellate opinion. Tr. 680-82 (Ortiz). Admit that Ortiz did not remember the details of *Pierce*. Tr. 691 (Ortiz).

46. Deny. Ortiz testified there was no case in which a court had overturned an election following *Bush v. Gore* where there was no central actor who could have assured uniformity—a reference to the fact that the Florida Supreme Court was supervising the state-wide recount. *Compare* Tr. 548-49 (Ortiz)

("when a single official or state institution, here in the Florida Supreme Court, has the capacity of instructing that a recount proceed with more definitive standards . . .") *with* Tr. 717-18 (Ortiz) ("there was no central actor, who at that time, could have assured uniformity.")

47. Admit.

48. Admit.

s/ *Hamilton P. Fox, 999*

HAMILTON P. FOX, III
Disciplinary Counsel

THEODORE (JACK) METZLER
Senior Assistant Disciplinary Counsel

JASON R. HORRELL
Assistant Disciplinary Counsel

OFFICE OF DISCIPLINARY COUNSEL
515 5th Street, N.W.
Bldg. A., Suite 117
Washington, D.C. 20001
(202) 638-1501

CERTIFICATE OF COMPLIANCE

This document complies with the length and format requirements of Board Rule 19.8(c) because it contains 5968 words, double-spaced, with one-inch margins, on 8 1/2 by 11-inch paper. I am relying on the word-count function in Microsoft Word in making this representation.

s/ *Hamilton P. Fox, 999*
HAMILTON P. FOX, III
Disciplinary Counsel

CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2023, I caused a copy of the foregoing to be filed electronically with the Board on Professional Responsibility by email to CaseManager@dcbpr.org, and to be served on Respondent's counsel by email to John M. Leventhal, Esq., at judgeleventhal@aidalalaw.com, and to Barry Kamins, Esq., at judgekamins@aidalalaw.com.

s/ *Hamilton P. Fox, 999*
HAMILTON P. FOX, III
Disciplinary Counsel