DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of	:	
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 Number: 237255	:	

SPECIFICATION OF CHARGES

The disciplinary proceedings instituted by this petition are based upon conduct that violates the standards governing the practice of law in the District of Columbia as prescribed by D.C. Bar Rule X and D.C. Bar Rule XI, § 2(b).

Jurisdiction for this disciplinary proceeding is prescribed by D.C. Bar Rule XI. Pursuant to D.C. Bar Rule XI, § 1(a), jurisdiction is found because:

1. Respondent Rudolph W. Giuliani is a member of the Bar of the District of Columbia Court of Appeals, having been admitted by motion on December 2, 1976, and assigned Bar. No. 237255. He took Inactive (non-practicing) status on December 12, 2002. On July 7, 2021, the Court of Appeals temporarily suspended Respondent based on the order of the Supreme Court of New York, Appellate

Division, First Judicial Department, suspending Respondent from the practice of law in New York pending final dispositions of disciplinary proceedings in New York.

The conduct and standards that Respondent has violated, and the relevant facts, are as follows:

2. In the November 3, 2020, presidential election, in excess of 6.7 million votes were cast in the Commonwealth of Pennsylvania. President Biden carried the state by more than 80,000 votes.

3. Respondent represented Donald J. Trump for President, Inc. (the "Trump Campaign"), and Lawrence Roberts and David John Henry, registered voters who were citizens of the Commonwealth of Pennsylvania (collectively "Plaintiffs").

4. Neither Respondent nor Plaintiffs challenged the November 3, 2020, election results pursuant to the Commonwealth of Pennsylvania's statutory procedures for election contests.

5. Instead, with Respondent's assistance, Plaintiffs filed a lawsuit that sought to overturn the results of the Pennsylvania presidential election through a federal district court order, based on alleged violations of the United States Constitution.

PROCEDURAL HISTORY

6. On behalf of Plaintiffs, Respondent participated in drafting a Verified Complaint for Declaratory and Injunctive Relief (the "Initial Complaint") in *Donald J. Trump for President, Inc. v. Boockvar*, which was filed in the United States District Court for the Middle District of Pennsylvania on November 9, 2020. The defendants were the Secretary of the Commonwealth of Pennsylvania and the bipartisan boards of elections of Allegheny County (which included the city of Pittsburgh), Centre County, Chester County, Delaware County, Montgomery County, Northampton County, and Philadelphia County (which included the city of Philadelphia) (collectively "Defendant Counties").

7. Respondent was not a member of the Bar of the Middle District of Pennsylvania, and he did not sign the Initial Complaint nor the accompanying pleadings.

8. On November 15, 2020, Plaintiffs filed a First Amended Verified Complaint for Declaratory and Injunctive Relief. Respondent did not sign the First Amended Complaint.

9. On November 17, 2020, Respondent was admitted *pro hac vice* to the Middle District of Pennsylvania and argued on behalf of Plaintiffs in opposition to a Motion to Dismiss the First Amended Complaint.

10. On November 18, 2020, Respondent signed and sought to have filed on behalf of Plaintiffs a Second Amended Verified Complaint for Declaratory and Injunctive Relief. Ancillary to the Second Amended Complaint were the following pleadings, all signed by Respondent:

a. Amended Motion for Temporary Restraining Order or Preliminary Injunction (filed on November 19, 2020);

b. Plaintiffs' Memorandum of Law in Support of Renewed Motion for Temporary Restraining Order and Preliminary Injunction (filed on November 19, 2020);

c. Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Leave to File Second Amended Complaint (filed on November 20, 2020); and

d. Plaintiffs' Omnibus Reply Memorandum of Law in Further Support of Renewed Motion for Temporary Restraining Order and Preliminary Injunction (filed on November 21, 2020).

11. On November 21, 2020, the district court dismissed Plaintiffs' action with prejudice and denied leave to file the Second Amended Complaint. It denied the motion for preliminary injunction as moot. *Donald J. Trump for President, Inc. v. Boockkvar*, 502 F. Supp. 3d 899, 923 (M.D. Pa. 2020).

12. On November 22, 2020, Respondent signed and filed with the district court a Notice of Appeal to the United States Court of Appeals for the Third Circuit of the denial of leave to file the Second Amended Complaint.

13. On November 23, 2020, the Pennsylvania counties certified their election results. The next day, the Secretary of the Commonwealth certified the vote totals, and the Governor signed the Certificate of Ascertainment. The Biden margin of victory was 80,555 votes.

14. On November 27, 2020, the court of appeals affirmed the district court's denial of Plaintiffs' leave to file the Second Amended Complaint and denied Plaintiffs' motion for injunction pending appeal. *Donald J. Trump v. Sec'y of Pa.*, 830 F. App'x 377, 391 (3d Cir. 2020).

15. Separately, the Trump Campaign or related entities unsuccessfully challenged a number of Pennsylvania's election practices via several lawsuits, including:

a. Whether mail-in ballots must be disqualified if they lack a handwritten name, address, or date on the outer envelope (*In re Canvass of Absentee and Mail-in Ballots of November 3, 2020 Gen. Election,* No. 29 WAP 2020, 2020 WL 6875017 (Pa. Nov. 23, 2020)).

b. Whether Pennsylvania election procedures violated the Equal Protection and Due Process clauses due to the state's use of election "drop boxes,"

a lack of signature verification requirement, and a county residency requirement for poll watchers (*Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331 (W.D. Pa. 2020)).

c. Whether candidate representatives are entitled to be within a specific distance of the ballots that are being tallied (*In re Canvassing Observation Appeal of: City of Philadelphia Bd. of Electors*, 241 A.3d 399 (Pa. 2020)).

THE EXTRAORDINARY RELIEF SOUGHT BY RESPONDENT

16. In various pleadings and in his November 17, 2020, oral argument, Respondent sought extraordinary relief from the district court, expressed in various ways:

a. An emergency order prohibiting Defendants from certifying the results of the Presidential General Election.

b. An emergency order prohibiting Defendants from certifying any results from the Presidential General Election that included tabulation of absentee and mail-in ballots (hereinafter "mail-in ballots") that did not comply with the state election code's tabulation and observation provisions.

c. A permanent injunction requiring the seven Defendant Counties to invalidate ballots cast by voters who were notified and given an opportunity to cure their invalidly cast mail-in ballots.

d. An order, declaration, and/or injunction directing Defendants to verify and confirm that all mail-in ballots tabulated in the 2020 election were validly cast in compliance with state law and to disallow those ballots that did not comply.

e. An order, declaration, and/or injunction that the results of the 2020 presidential election were defective and providing that the Pennsylvania General Assembly should choose the state's electors.

f. A declaration that Donald Trump was the winner of the legal votes cast in Pennsylvania in the November 3, 2020, election and thus the recipient of Pennsylvania's electors.

17. Respondent, in various pleadings and in his November 17, 2020, argument to the district court, specified that Plaintiffs were asking that the district court invalidate between 680,000 and 1.5 million (out of approximately 2.6 million) mail-in ballots. These were all votes that had already been counted by Pennsylvania election officials.

18. The district court wrote that it was "unable to find any case in which a plaintiff has sought such a drastic remedy in the context of an election, in terms of the sheer volume of votes asked to be invalidated." 502 F. Supp. 3d at 906.

19. The circuit court wrote that the "relief sought–throwing out millions of votes–is unprecedented" and noted that Plaintiffs "cite[d] no authority for this drastic remedy." 830 F. App'x at 388.

RESPONDENT'S ASSERTIONS OF ELECTION FRAUD TO THE DISTRICT COURT

20. The Initial Complaint consisted of seven counts and included allegations that sounded in fraud, without using the term, asserting that in the seven Defendant Counties, election fraud had occurred.

21. The First Amended Complaint eliminated five of the seven counts and alleged only (a) equal protection violations because election officials in some Pennsylvania counties provided notice to their mail-in voters who had cast deficient ballots and extended an opportunity to cure ballot deficiencies, and (b) a violation of the Electors and Election Clauses of the Constitution because the notice-and-cure procedures permitted in some counties were not authorized by the Pennsylvania General Assembly.

22. At the November 17, 2020, hearing, Respondent argued to the district court that the extraordinary judicial intervention he sought on Plaintiffs' behalf was justified because of wide-spread election fraud:

a. "But the best description of this situation is, it's widespread, nationwide voter fraud of which this is a part. And that's probably the reason I'm here, Your Honor, because this is not an isolated case, it's a case that is repeated in at least ten other jurisdictions." Transcript of Oral Argument at 15, *Donald J. Trump for President, Inc. v. Boockkvar*, 502 F. Supp. 3d 899 (M.D. Pa. 2020), ECF No. 199.

b. "All of the sudden, we now have – it's almost like, you know, putting them in a candy store. We now have a wonderful opportunity to hold back votes, even to produce votes after the election to make up a deficit." *Id. at* 16-17.

c. "The only place we have it happening en masse is in the Democrat – heavily controlled counties that you can call counties controlled by a Democratic machine that have quite an impressive list of voter fraud convictions as part of their history and tradition. And all of the sudden, with this greater opportunity to do it, they did it on a grand scale." *Id.* at 22.

d. "And what did they steal, really? Well, they stole, they stole an election, at least in this Commonwealth." *Id*. at 27.

e. "The conduct was egregious. The conduct was premeditated. The conduct was planned. … And the purpose was to have those ballots examined in secret so that only a Democratic officeholder would get to see it in just two counties and no place else in the state." *Id*. at 108.

23. After making these conclusory accusations, the district court asked Respondent if he was "alleging a fraud" by the Defendants, and Respondent replied "Yes, Your Honor." *Id*. at 118.

24. Following this exchange, the district court reminded Respondent that Rule 9(b) of the Federal Rules of Civil Procedure requires plaintiffs alleging fraud to state with particularity the circumstances constituting fraud, and Respondent

acknowledged both that the Plaintiffs' First Amended Complaint "doesn't plead fraud" and that "this is not a fraud case." *Id.* at 118, 137.

25. The next day, November 18, 2020, Respondent submitted the Second Amended Complaint, which included (and amplified) factual allegations sounding in fraud that were included in the Initial Complaint, including restoring claims based on counties' observational boundaries for candidate representatives.

26. Respondent had no non-frivolous basis in law and fact for asserting to the district court that the Defendants committed election fraud, much less a factual basis for setting forth fraud with particularity, as required by Rule 9(b) of the Federal Rules of Civil Procedure.

27. Respondent cited to the district court as a basis for his fraud allegations several sources that could not, as a categorical matter, prove that the Defendants committed or facilitated election fraud during the 2020 election: (a) statements from various authorities, including a misquoted excerpt from the Baker-Carter Commission on Federal Election Reform 2006 report about the general potential for mail-in ballot fraud that made no reference to Pennsylvania, to Pennsylvania's recently enacted mail-in ballot system, or to the 2020 election; (b) allegations of misconduct in states other than Pennsylvania; (c) allegations of misconduct in Pennsylvania during previous elections; and (d) allegations of election irregularities in Pennsylvania counties other than the seven Defendant Counties.

28. Respondent also alleged that observation boundaries for candidate representatives, *i.e.*, physical barriers to the movement of observers outside of designated areas, were evidence of fraud by the Defendant Counties based solely on their mere existence, despite the fact that (a) the Pennsylvania Supreme Court found the boundaries to be consistent with state election law; (b) Plaintiffs never alleged facts showing improper vote counting; (c) there was no evidence that these boundaries were not applied equally to the campaigns of both major candidates; and (d) one or more Republican-controlled counties also imposed such boundaries.

29. Respondent further justified his allegations of fraud against the Defendant Counties by promising the district court that "statistical analysis will evidence that over 70,000 mail and other mail ballots which favor Biden were improperly counted," Second Amended Verified Complaint for Declaratory and Injunctive Relief at 10, *Donald J. Trump for President, Inc. v. Boockkvar*, 502 F. Supp. 3d 899 (M.D. Pa. 2020), ECF No. 172-2, but Respondent should have known the "evidence" he provided relied upon false or faulty statistics and analysis.

30. Finally, Respondent told the district court that he had "300 either affidavits, declarations, or our own statements that we've written down" that could prove his allegations of fraud against the Defendant Counties. Transcript of Oral Argument at 28. The affidavits, declarations, and statements that he provided to the district court and other bodies were (a) unsupported, (b) unrelated to Trump voters,

(c) involve conduct outside the seven Defendant Counties, and (d) by their own terms were isolated incidents that could not have affected the presidential election's results by offsetting the Biden majority of over 80,000 votes.

RESPONDENT'S ASSERTIONS OF CONSTITUTIONAL VIOLATIONS

31. Respondent argued to the district court that the extraordinary judicial remedies he requested were proper because the Defendant Counties' used a notice-and-cure procedure for mail-in ballots and imposed physical boundaries on candidate representatives who were observing the counting of votes in violation of: (a) the Equal Protection Clause of the Fourteenth Amendment; (b) the Due Process Clause of the Fourteenth Amendment; and (c) the Electors and Election Clauses of the Constitution, although he declined to pursue this last claim.

a. Equal Protection--Notice and Cure

32. Some Pennsylvania counties chose to offer voters within their jurisdiction who submitted deficient mail-in ballots prior to Election Day a notice of the defect and the opportunity to vote a provisional ballot. Pennsylvania state law neither requires nor prohibits this so-called "notice-and-cure" procedure.

33. Respondent contended that the Defendant Counties violated the rights of Plaintiff voters, Mr. Roberts and Mr. Henry, under the Equal Protection Clause. Yet, Messrs. Roberts and Henry were residents of other non-defendant Pennsylvania counties that Respondent chose not to sue. Respondent failed to allege that the

Defendant Counties took any improper action with respect to the ballots of Mr. Roberts and Mr. Henry. Moreover, Respondent acknowledged that Mr. Roberts and Mr. Henry submitted only incorrect ballots that were properly disregarded by their respective county election officials and were never counted as lawful votes in the first place.

34. Rather than ask that these two ballots be counted, Respondent sought to leverage the lawful rejection of two ballots by non-defendant counties into invalidating up to 1.5 million votes already counted.

35. Additionally, Respondent argued that the Defendant Counties' use of notice-and-cure violated the Trump Campaign's Equal Protection rights because not every Pennsylvania county adopted this procedure, even though procedures vary among local-level jurisdictions and are a commonplace feature of elections endorsed by jurisprudence. Respondent failed to acknowledge that the use of the notice-and-cure procedure did not affect the more than 85,000 vote margin of victory.

36. There was no factual or legal basis for the Equal Protection claims that Respondent made with respect to the Defendants or for the relief that Respondent sought, including the invalidation of up to 1.5 million ballots cast in the Defendant Counties.

b. Equal Protection--Observational Boundaries

37. During the COVID-19 pandemic, Pennsylvania counties established different physical boundaries (in facilities that varied in space and accommodations) for candidate representatives who were present when mail-in ballots were tallied.

38. Respondent contended that the Defendant Counties' imposition of these observational boundaries was a violation of the Trump Campaign's Equal Protection rights.

39. Respondent offered no evidence that any Defendant treated Trump representatives differently from the Biden representatives or other similarly situated groups.

40. There was no legal basis for Respondent's contention that observers had any right other than to be present in the room when mail-in votes were tallied.

41. None of the Defendants whom Respondent sued had the authority to mandate uniform observational boundaries across the Commonwealth.

42. There was no legal basis for an Equal Protection claim of any kind to be the impetus for the requested remedies, including invalidating up to 1.5 million mail-in votes.

c. Due Process

43. To the extent Respondent was making a Due Process claim with respect to the notice-and-cure procedures, there was no legal basis for Respondent's

contention that providing mail-in voters with notice-and-cure opportunities violated any fundamental right in deprivation of substantive due process.

44. There was no legal basis for Respondent's contention that there is a fundamental right for campaign representatives to observe the tabulation of mail-in ballots, much less that they be permitted to do so within some minimum distance, and hence no basis for a substantive due process claim.

THE CHARGES

45. Respondent's conduct violated the following Pennsylvania Rules of Professional Conduct:

a. 3.1, in that he brought a proceeding and asserted issues therein without a non-frivolous basis in law and fact for doing so; and

b. 8.4(d), in that he engaged in conduct prejudicial to the administration of justice.

Respectfully submitted,

Hamilton P. Fox, 999

Hamilton P. Fox, III
Disciplinary Counsel

/s/ Jason R. Horrell
Jason R. Horrell
Assistant Disciplinary Counsel

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VERIFICATION

I do affirm that I verily believe the facts stated in the Specification of Charges to be true this 4th day of April 2022.

Hamilton P. Fox, III

Hamilton P. Fox, III
Disciplinary Counsel

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of	:	
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 Number: 237255	:	

PETITION INSTITUTING FORMAL DISCIPLINARY PROCEEDINGS

A. This Petition (including the attached Specification of Charges which is made part of this Petition) notifies Respondent that disciplinary proceedings are hereby instituted pursuant to Rule XI, § 8(c), of the District of Columbia Court of Appeals' Rules Governing the Bar (D.C. Bar R.).

B. Respondent is an attorney admitted to practice before the District of Columbia Court of Appeals on the date stated in the caption of the Specification of Charges.

C. A lawyer member of a Hearing Committee assigned by the Board on Professional Responsibility (Board) pursuant to D.C. Bar R. XI, § 4(e)(5), has approved the institution of these disciplinary proceedings.

D. ***Procedures***

(1) **Referral to Hearing Committee** -- When the Board receives the Petition Instituting Formal Disciplinary Proceedings, the Board shall refer it to a Hearing Committee.

(2) **Filing Answer** -- Respondent must respond to the Specification of Charges by filing an answer with the Board and by serving a copy on the Office of Disciplinary Counsel within 20 days of the date of service of this Petition, unless the time is extended by the Chair of the Hearing Committee. Permission to file an answer after the 20-day period may be granted by the Chair of the Hearing Committee if the failure to file an answer was attributable to mistake, inadvertence, surprise, or excusable neglect. If a limiting date occurs on a Saturday, Sunday, or official holiday in the District of Columbia, the time for submission will be extended to the next business day. Any motion to extend the time to file an answer, and/or any other motion filed with the Board or Hearing Committee Chair, must be served on the Office of Disciplinary Counsel at the address shown on the last page of this petition.

(3) **Content of Answer** -- The answer may be a denial, a statement in exculpation, or a statement in mitigation of the alleged misconduct. Any charges not answered by Respondent may be deemed established as provided in Board Rule 7.7.

(4) **Mitigation** -- Respondent has the right to present evidence in mitigation to the Hearing Committee regardless of whether the substantive allegations of the Specification of Charges are admitted or denied.

(5) **Process** -- Respondent is entitled to fifteen days' notice of the time and place of hearing, to be represented by counsel, to cross-examine witnesses, and to present evidence.

E. In addition to the procedures contained in D.C. Bar R. XI, the Board has promulgated Board Rules relating to procedures and the admission of evidence which are applicable to these procedures. A copy of these rules is being provided to Respondent with a copy of this Petition.

WHEREFORE, the Office of Disciplinary Counsel requests that the Board consider whether the conduct of Respondent violated the District of Columbia Rules of Professional Conduct, and, if so, that it impose/recommend appropriate discipline.

OFFICE OF DISCIPLINARY COUNSEL

BY: _Hamilton P. Fox, 999_____
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