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Via Email and U.S. Mail

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In re disciplinary complaint against Alan Wilson

Dear Disciplinary Counsel,

I am writing to make a complaint against Attorney General Alan Wilson, a member of the South Carolina Bar, for making a knowingly false and frivolous filing with the United States Supreme Court in support of the plaintiff's claims in Texas v. Pennsylvania, No. 22O155, seeking to overturn the result of the U.S. presidential election in four battleground states. Those baseless claims of fraud—claims Mr. Wilson endorsed and urged the Supreme Court to act on—incited supporters of Donald Trump to falsely believe the 2020 election was stolen.

The baseless allegations of fraud culminated in thousands of rioters, some armed with tactical military gear and weapons, descending on the U.S. Capitol on January 6, 2021, while votes of the Electoral College were being counted. The seditious mob overwhelmed U.S. Capitol Police, breached the halls of Congress, and stalked from office to office hunting the Vice President of the United States, the Speaker of the House, and members of Congress for certain harm. A police officer was murdered. Others were dragged and beaten. Congressional computers were stolen; offices trashed. The confederate battle flag—a symbol of treason and racism—was proudly carried into the people's house. The full scope of this treachery is not yet known, but what is clear is that this attack on Congress was incited by the executive with aid and comfort from many like Mr. Wilson who repeated and lent the credibility of their offices to the false claim that the presidential election was stolen from Trump.

Yesterday, Mr. Wilson finally told the South Carolina press corps what every credible election authority, including many courageous Republican election administrators, has already affirmed: Joe Biden is the legitimate, duly elected President of the United States. Notably, this concession follows public news reports that a political organization with which Mr. Wilson is associated paid for robocalls urging Trump supports to travel to Washington, D.C. for the so-called "stop the steal" rally that ended in bloodshed. See John Monk & Jamie Self, "Group tied to SC AG Alan Wilson urged 'patriots' to attend Trump pre-riot rally," THE STATE (Jan. 9, 2021). But Mr. Wilson's belated effort to stamp out the fire he helped set comes with important new information for this office: a confession that he submitted and supported baseless filings in the U.S. Supreme Court during the Texas litigation in violation of the Rules of Professional Conduct.

According to press accounts, Mr. Wilson sought to distance himself from the terrorist insurrection and affirm his support for the Constitution. THE STATE Newspaper reported:

> "Vice President Mike Pence lacked the constitutional authority to do anything but open (the Electoral College votes) and count," Wilson said. "There are a lot of people out there who believe differently, ... but *no evidence has been presented* in a court by the Trump campaign or by anybody — to my knowledge — that says differently."
>
> As for Trump's widespread claims that the election was "rigged" in Biden's favor, Wilson said, "I believe that Vice President Biden was legitimately elected and certified this past week in Congress."

John Monk, "SC's AG Alan Wilson: Biden is legitimate, Pence had no power to overturn election," THE STATE (Jan. 11, 2021) (emphasis added); see also Avery Wilkes, "SC Attorney General Wilson disavows robocall that invited 'patriots' to DC rally-turned-riot," POST & COURIER (Jan. 11, 2021) ("But Monday, spokesman Robert Kittle said Wilson believes Biden is the lawful winner of the election. 'While there were allegations of election fraud, as far as the Attorney General knows there has been no evidence presented in court to substantiate those allegations,' Kittle said."). But Mr. Wilson *did* say differently in a filing with the nation's highest court urging it to take the Texas case.

In Texas, the plaintiff advanced a number of false claims as grounds to overturn the results in Pennsylvania, Georgia, Michigan, and Wisconsin. For example, Texas claimed suitcases of ballots were fraudulently introduced into the result, that a laptop and USB drive were stolen and used to alter vote tallies, that a glitch in Dominion voting systems switched votes away from Trump, and that a statistical analysis demonstrated the likelihood of former Vice President Biden winning the four battleground states was "less than one in a quadrillion[.]" See Bill Cmplt. 5–6. "Put simply," Texas contended in its filing, "there is substantial reason to doubt the voting results in the Defendant States." Id. at 7.

These lies were supported and amplified by Mr. Wilson and 15 other Republican attorneys general in a December 9, 2020 filing as *amici curiae* urging the Supreme Court to take the case because "[t]he allegations in the Bill of Complaint raise important questions about election integrity and public confidence in the administration of Presidential elections." Br. *Amici* 3. Repeating the gravamen of Texas's claims, Mr. Wilson argued "amici States have a strong interest in safeguarding against fraud in voting by mail during Presidential elections." Id. at 2. The day after he showed support for the Texas case, Mr. Wilson was invited to meet with Trump at the White House with the other Republican attorneys general supporting Texas. The next day, Mr. Wilson and his colleagues moved to formally intervene in the case in support of Texas.

By a vote of 9-0, the Supreme Court rejected these claims. Seven justices held Texas did not have a legal interest in how other states conducted their elections, while two justices would have held that disputes between states must be heard in the Court's original jurisdiction, but that they "would not grant other relief[.]" Order, 592 U.S. ___ (Dec. 11, 2020). To be clear, the relief Mr. Wilson sought was an order throwing out *all* of more than 20 million votes cast by fellow

Americans in what the Commonwealth of Pennsylvania aptly described as an effort to create an "alternate reality."

Our rules mandate that "[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." Rule 3.1 RPC, Rule 407, SCACR (emphasis mine). When an attorney submits a filing, he certifies the factual contentions are true and supported by a reasonable inquiry, that the filing is not presented for an improper purpose, and that the legal contentions are not frivolous. Fed. R. Civ. P. 11(b). Attorneys are subject to sanction when there is no reasonable factual basis for the allegations counsel is making. See, e.g., Am. Int'l Adjustment Co. v. Galvin, 86 F.3d 1455, 1461 (7th Cir. 1996) ("... a pleader may assert contradictory statements of fact only when legitimately in doubt about the facts in question."); Lancellotti v. Fay, 909 F.2d 15, 19 (1st Cir. 1990) (explaining that under the new Rule 11, "[w]hile bad faith remains sanctionable, it is now not a sine qua non to a Rule 11 impost. Put bluntly, a pure heart no longer excuses an empty head.").

But Mr. Wilson now concedes there is *no evidence* for what he urged the U.S. Supreme Court to find and hold just one month ago. This amounts to a confession he violated his obligations as a member of the bar and warrants punishment, particularly in light of the harm he helped cause.

Mr. Wilson's bad-faith litigation conduct is underscored by three additional points. First, questions surrounding the election procedures in the defendant states were hotly litigated at all levels of the state and federal courts and decided in accordance with the rule of law such that there was no legitimate basis for the Texas case. Second, there is no evidence of widespread voting fraud, something former U.S. Attorney General Bill Barr (among countless others) acknowledged on December 1—eight days before Mr. Wilson's first filing. Third, Mr. Wilson's motivation appears political. As an editorial deriding the Texas litigation as dangerous explained, just one-month earlier Mr. Wilson had supported another meritless effort to overturn the Pennsylvania result, but joined the Texas case "a mere day after the nation's high court rejected the less radical lawsuit targeting Pennsylvania[.]" See "How Alan Wilson is undermining the foundations of our republic," POST AND COURIER (Dec. 10, 2020). In return, he was invited to the White House.

It is important that Mr. Wilson be held accountable for several reasons.

First, there are serious, unanswered questions concerning Mr. Wilson's knowledge and involvement with the Republican Attorneys General Association's (RAGA's) so-called Rule of Law Defense Fund that used robocalls to encourage participation in the so-called "March to Save America" that ended in bloodshed on January 6. According to public filings and news reports, Mr. Wilson has long been affiliated with RAGA in a leadership role and a former staffer from his office was serving as the group's executive director until he resigned following the disclosure of RAGA's role in urging participation in the insurrection. Mr. Wilson's meeting with Trump at the White House also warrants scrutiny to discern whether the RAGA communications came at the urging of or in coordination with Trump and what, if any, involvement or knowledge Mr. Wilson may have had in facilitating them. Indeed, given Mr. Wilson's own statements yesterday confessing the election was in fact legitimate, his after-the-fact claims he was unaware of RAGA's activities lack credibility and warrant close scrutiny for additional misconduct.

Second, disciplining Mr. Wilson is necessary to protect the integrity of our profession and the public we serve. Lawyers are public citizens with special responsibilities as members of the legal profession for the quality of justice. See Preamble, RPC, Rule 407, SCACR. As such, we are trusted by the public to police the conduct of our colleagues, but that trust necessarily depends on our willingness to hold one another accountable for transgressions against the public trust. Mr. Wilson's conduct—using his position of power to mislead and incite—was reckless and anti-democratic with ruinous consequence. If we, as lawyers, are to continue to hold our privileged position of public trust, there must be accountability for Mr. Wilson and others like him.

Third, the office Mr. Wilson occupies as the State's top prosecutor does not permit the bar to turn a blind eye to his conduct. Again, a police officer was murdered, others dragged and beaten. Because of the bravery and quick thinking of some capitol police and federal agents, no members of Congress were killed, and the chain of succession was preserved. But events easily could have taken an even darker turn. Real respect for law enforcement and the rule of law begins with not placing lives in harms' way with reckless claims. Mr. Wilson's conduct badly failed that test.

Finally, in making this complaint, I am particularly mindful of the hardworking lawyers who serve with integrity as assistant attorneys general pursuing the business of this State under this Attorney General. It is important to hold Mr. Wilson accountable for their sake so when they appear in the courts of this State to advance the rule of law, those earnest claims are not undermined by the craven political calculations of the person who happens to presently hold the office.

I trust you will thoroughly investigate this matter and make an appropriate recommendation based upon detailed findings. The filings at issue here are on the U.S. Supreme Court's public docket. Please do not hesitate to contact me if you require any further information.

Respectfully,

Christopher P. Kenney

cc: Alan Wilson, Esq.