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Via US Mail

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Re: Lawyer Responsibilities To Rule of Law

Dear Ms. Hageman:

Like you, and our deceased colleague, Gerald R. Mason, we are all “proud to be Wyoming lawyers.” We are grateful to be part of a profession that, since the founding of our nation, has done more than any other to shape, nurture and improve our constitutional democracy. Fundamental to this, and what makes our country so special, is our collective commitment to upholding the Rule of Law. Unlike most of the world, after almost 250 years of struggle we can still make the legitimate claim that we are a country ruled by laws, not men.

As lawyers, perhaps more than most citizens, we understand that the Rule of Law is the bedrock of most everything good that our nation has achieved and is essential to the future well-being of our children and grandchildren. We thus admire and feel encouraged when a member of our honorable profession, who is trained and committed to the Rule of Law, hears the call and endures the hardship of the election process to serve in public office. As your professional colleagues, we wish you the best as you head into the November election and whatever challenges and responsibilities that may follow.

Having said that, we feel compelled to express our deep concern and disappointment that in recent weeks you have chosen to lend your credibility as a Wyoming lawyer to the myth that the 2020 Presidential election was stolen. According to the Casper Star Tribune, on August 3, 2022,

while addressing a crowd of people at Casper’s televised “Politics in the Park,” you stated as a matter of fact—not opinion—that:

Absolutely the election was rigged. It was rigged to make sure that President Trump could not get reelected. What happened in 2020 is a travesty. It should never happen again. We need to make sure our elections are free and fair.¹

Surely you know that these statements were both false and incendiary. They received wide publication, both in Wyoming and nationally.² Not only did they serve to undermine public confidence in the outcome of our last presidential election, but they were also contrary to at least the spirit, if not the letter, of the oath you and the rest of us swore upon our admission to the Wyoming bar, as well as other ethical duties and responsibilities owed by all of us as Wyoming lawyers.

Let us explain how we have reached this conclusion.

Donald Trump Lost The Election.

Donald Trump lost the 2020 presidential election.³ The facts are that Joe Biden received over 81 million votes and he defeated Mr. Trump by more than seven million votes.⁴ Joe Biden received 306 certified electoral college votes and Donald Trump received 232.⁵

According to a joint statement published by the Election Infrastructure Government Coordinating Council made up of numerous federal agencies and NGOs involved in election

¹ See https://trib.com/news/state-and-regional/hageman-says-2020-election-was-rigged/article%20_01a1e786-13f1-11ed-b6fc-d32f25c31359.html.

² See <https://thehill.com/homenews/campaign/3588172-cheney-challenger-hageman-takes-firm-stance-on-2020-the-election-was-rigged/>; <https://cowboystatedaily.com/2022/08/04/harriet-hageman-calls-2020-presidential-election-rigged-and-travesty/>; <https://wyofile.com/does-hageman-really-believe-the-big-lie/>; <https://www.businessinsider.com/harriet-hageman-shares-details-of-trump-call-after-liz-cheney-defeat-2022-9>; <https://www.newsweek.com/harriet-hageman-plays-rigged-2020-election-claim-victory-speech-1734293>.

³ See United States National Archives, Electoral College Results–2020, available at <https://www.archives.gov/electoral-college/2020>; see also <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>

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

⁵ <https://www.archives.gov/electoral-college/2020#certificates>

security and oversight matters, “[t]he November 3rd election was the most secure in American history. . . . There is no evidence that any voting system deleted or lost votes or changed votes or was in any way compromised.”⁶

William Barr, Mr. Trump’s Attorney General, declared early on that the Department of Justice did not find fraud that could have caused a different outcome.⁷ More recently, after resigning his office, Barr was more candid, testifying in a deposition that allegations of the election being somehow stolen were “completely bogus and silly” without “substance” “idiotic...with absolutely zero basis” “crazy stuff” and, in sum, “bullshit.” Moreover, he concluded that the former president himself “was detached from reality” in making such claims.⁸

The presidential election results were challenged in over 60 lawsuits, numerous administrative review proceedings, and post-election audits. None of those efforts produced any evidence that the election was rigged against Mr. Trump so that he could not win.⁹

Despite this clear proof that the election was not “rigged” and that no fraud occurred or in any way impacted the election results, Mr. Trump and his allies have continued to propagate the myth that the election was “stolen” from him and that President Biden was not legitimately elected. Regretfully, this fiction has been lent credence by too many lawyers, in at least potential violation of their ethical duties owed under the codes of conduct in many states.¹⁰

Recently, in connection with the suspension of Mr. Giuliani’s license to practice law, a New York appellate court aptly described the fundamentally destabilizing consequences of election denialism furthered by lawyers:

The seriousness of respondent’s uncontroverted misconduct cannot be overstated. This country is being torn apart by continued attacks on the legitimacy of the 2020 election and of our current president, Joseph R. Biden. The hallmark of our democracy is predicated on free and fair elections. False statements intended to foment a loss of confidence in our elections and resulting loss of confidence in

⁶ <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>

⁷ M. Balsamo, *Disputing Trump, Barr says no widespread election fraud*, Associated Press (Dec. 1, 2020), <https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d>

⁸ <https://www.latimes.com/politics/story/2022-06-13/barr-trying-to-shoot-down-trumps-bogus-election-fraud-claims-was-like-playing-whack-a-mole>

⁹ *See Lost Not Stolen: The Conservative Case that Trump Lost and Biden Won the 2020 Presidential Election*, available at <https://lostnotstolen.org/>

¹⁰ See numerous bar complaints available at <https://the65project.com/>

government generally damage the proper functioning of a 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. It tarnishes the reputation of the entire legal profession and its mandate to act as a trusted and essential part of the machinery of justice.

Where, as here, the false statements are being made by [an attorney], acting with the authority of being an attorney, and using his large megaphone, the harm is magnified. One only has to look at the ongoing present public discord over the 2020 election, which erupted into violence, insurrection and death on January 6, 2021 at the U.S. Capitol, to understand the extent of the damage that can be done when the public is misled by false information about the elections We need not decide any issue of "causal nexus" to understand that the falsehoods themselves cause harm. This event only emphasizes the larger point that the broad dissemination of false statements, casting doubt on the legitimacy of thousands of validly cast votes, is corrosive to the public's trust in our most important democratic institutions.

Matter of Giuliani, 146 N.Y.S.3d 266, 283 (N.Y.S. 2021).

In Wyoming, we have seen for ourselves the passions stirred by untruthful statements about the election. Indeed, your primary opponent believed she was personally unsafe campaigning in Wyoming. Plainly, her vocal opposition to Mr. Trump's persistent election denialism was at the root of the safety concerns that so dramatically impacted her campaign activity. Sadly, more than any other factor, her rejection of Mr. Trump's "stolen election" narrative spelled her defeat. Moreover, the outcome of the Wyoming Secretary of State race was based on the same false claims about the Presidential election—the eventual victor, by parroting Mr. Trump's election conspiracy narrative, won his coveted endorsement and, as a consequence, will be our next Secretary of State.

This should be highly disturbing to every Wyoming lawyer. We want you to know that we believe your comments about a rigged election were not supportive of the Rule of Law, have contributed to destabilizing our democratic institutions, and were inconsistent with our collective duties as members of the Wyoming bar.

Responsibilities of Wyoming Lawyers

Before we were admitted to the bar each of us needed to demonstrate that we had the good moral character needed to engage in the practice of law, the purpose of which was to "to assure the protection of the public and safeguard the justice system."¹¹ We were required to show that our character included "the qualities of honesty, candor, trustworthiness, observance of fiduciary

¹¹ Rule 401(b), Wyoming Rules & Procedures Governing Admission To The Practice of Law.

responsibilities, adherence to the law, and a respect for the rights of other persons and the judicial process,” as well as “the ability to conduct [ourselves] in a manner that engenders respect for the law and adheres to the Wyoming Rules of Professional Conduct.”¹²

Then, after we managed to fulfill that requirement, as required by Wyoming statute 33-5-112, all of us took an oath upon our admission to the bar. In its current form that oath is as follows:

I, _____, do solemnly swear that I will support, obey and defend the Constitution of the United States and the Constitution and laws of the State of Wyoming, and that I will faithfully and honestly and to the best of my ability discharge the duties of an Attorney and Counselor at Law.¹³

As we are sure you know, those “duties” that we have collectively sworn to discharge include “faithfully” and “honestly” abiding by the Wyoming Rules of Professional Conduct.

Specifically, our rules of conduct state that a lawyer, as an “officer of the legal system” and “public citizen” has a “special responsibility for the quality of justice.” W.R.P.C. at Preamble § 1. As such, all of us are duty bound to: (i) exhibit “respect for the legal system and for those who serve it, including judges, other lawyers and public officials,” (ii) “*further the public’s understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority,*” and (iii) “aid the legal profession in pursuing these objectives and...help the bar regulate itself in the public interest.” *Id.* at §§ 5 & 6 (emphasis added).

In keeping with these aspirations, Rule 8.4(c), W.R.P.C., states that it is professional misconduct for a lawyer to “engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.” “[T]he prohibition against false statements is broad and includes misleading statements as well as affirmatively false statements.” *Matter of Giuliani*, 146 N.Y.S.3d 266, 269 (N.Y.S. 2021); *see also* W.R.P.C. 4.1 at CMT. 1 (“Misrepresentations can also occur by partially true, but misleading statements or omissions that are the equivalent of affirmative false statements.”). Further, the Rules concern conduct and statements both inside and outside of the courtroom. *Matter of Giuliani*, 146 N.Y.S.3d at 269-70; *see also Matter of Discipline of Arabia*, 495 P.3d 1103, 1114 (Nev. 2021) (Rule 8.4(d) applies to conduct occurring inside or outside of a courtroom).

With respect to your remarks about the election, we do not suggest that your membership in the Wyoming bar results in the loss of your rights to freely express your ideas and opinions under the 1st Amendment. We recognize that the free exercise of speech—especially political speech—

¹² Rule 401(b)(i) & (b)(ii)(B)., Wyoming Rules & Procedures Governing Admission To The Practice of Law.

¹³ Rule 504(a), Wyoming Rules & Procedures Governing Admission To The Practice of Law.

is fundamental to our constitutional form of government and any permissible restraint on such speech must be carefully balanced against the interest of the bar in regulating itself for the benefit of the public. Indeed, whether a lawyer's demonstrably false statements of fact about an election made in the public square are subject to bar discipline consistent with the 1st Amendment is an interesting issue that does not yet appear to have been settled. But, as noted by the United States Supreme Court in *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 792 (1975), "[t]he interest of the States in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been 'officers of the courts.' " And for that reason, in a variety of contexts, courts have approved bar regulations placing limitations on lawyer's speech when necessary to protect the public.¹⁴

We also bring to your attention Rule 8.4(d), W.R.P.C., which provides that as lawyers we should not engage in "conduct that is prejudicial to the administration of justice." In *Bd. of Pro. Resp., Wyoming State Bar v. Hinckley*, the Wyoming Supreme Court held, "[o]ur cases demonstrate Rule 8.4(d) does not prohibit an attorney from making a mistake, or even from committing malpractice. It focuses on conduct which *interferes with the legal process*." 503 P.3d 584, 611 (Wyo. 2022) (emphasis added) (citing *Bd. of Pro. Responsibility v. Fulton*, 2006 WY 51, 133 P.3d 514, 518 (Wyo. 2006)). Statements of fact by lawyers to the effect that the legal process followed in every state in the land to elect President Biden—necessarily including the judicial and administrative review upholding that process—was "rigged" would seem to us to not only "interfere with the legal process" but to foment the outright rejection of that process.

Finally, we wish to point out Rule 8.2(a), W.R.P.C., which prohibits a lawyer from making false or reckless statements concerning the "qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office." Although your comments did not directly impugn anyone by name, we heard your words as implicitly impugning the integrity of the legions of state officials who oversaw the 2020 election, the many judges who reviewed and upheld that work, and even President Biden himself, who is now responsible as the head of the executive branch of our government for upholding the Rule of Law. It will not help President Biden to perform that critical function if the public believes he gained his office dishonestly through a rigged election. Only a few days ago, he addressed the nation to point out the growing risks presented by election denialism. And we have all heard too much about the safety of our hard-working election workers being threatened by people who think those election workers were somehow part of the "rigged" election.

Many members of the public most certainly believe that your status as a long-standing Wyoming trial lawyer with professed expertise in constitutional law has granted you access to information and knowledge of the election process unavailable to them. That is why statements

¹⁴ Kathleen M. Sullivan, *The Intersection of Free Speech and the Legal Profession: Constraints on Lawyers' First Amendment Rights*, 67 Fordham L. Rev. 569 (1998). available at: <https://ir.lawnet.fordham.edu/flr/vol67/iss2/11>

coming from you, as opposed to a non-lawyer, about our election being rigged carry great weight and make them especially volatile and destabilizing.

Simply put, we do not think your recent statements upheld “respect for our legal system” or furthered “the public’s understanding of and confidence in the rule of law” as directed by our Rules of Conduct that we are all committed to uphold. Nor do they seem consistent with the professional oath we took all those years ago when we committed to becoming Wyoming lawyers.

Again, we wish you the best in your likely status as Wyoming’s newest representative in the U.S. Congress. We hope that you will take our concerns to heart, and that all of your actions in the days ahead will serve to uphold the Rule of Law and its cousin—Fact-based Truth—in accordance with the very highest standards of a Wyoming lawyer. Needless to say, we ask that you not make any further statements denying the lawfulness of the 2020 election, or of the legitimacy of President Biden’s authority. Beyond that, we also hope that you challenge, or at least distance yourself from, those that continue to perpetuate the dangerous myth of the “stolen election.”

Thank you for your consideration. We would welcome any comments or information that you may wish to share.

[signed by 41 members of Wyoming Bar Association]

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