IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

MICHAEL J. DAUGHERTY,
CONTESTANT,
v.

CIVIL ACTION NO.: 2021CV344953

FULTON COUNTY REGISTRATION AND ELECTION BOARD, et al.,
DEFENDANTS.

RESPONSE TO PERKINS COIE REPLY TO CONTESTANT'S OBJECTION TO VERIFIED APPLICATIONS FORADMISSION PRO HAC VICE

INTRODUCTION

The focus of every reported Georgia case in which an attorney has been denied admission or disqualified turns on the answer to a single question: *Is there is evidence that the attorney seeking to appear has either engaged in "actual impropriety" or has a conflict of interest that could adversely affect the present parties or the current proceeding?*

In this case, Movant Perkins Coie LLP and three of its attorneys [collectively referred to as "PC"], here seek the privilege of *pro hac vice* admission. As explained more fully in Section I below, admitting Movants to participate as counsel in this case would create a non-waivable conflict of interest with the very client its attorneys seek to represent. This arises from PC attorneys writing for a former client in a New York election contest that attacked the reliability and accuracy of the vote tallies generated by Dominion voting equipment and software – a key issue in this case. That assertion makes them potential witnesses in this case and creates a firm-wide conflict under Georgia Rules of Professional Conduct. Dealing with this conflict will significantly delay, derail, and multiply the proceedings.

Further, PC partner Amanda Callais, one of the three attorneys seeking admission here, justifies her admission on the ground that the Georgia law involved in this case is "complicated,"

and that she is so "highly specialized" that a sixteenth (16th) *pro hac vice* admission is warranted. Contestant Michael Daugherty respectfully submits that the process and proof under the Georgia election contest statute is not complicated at all. The process is designed to foster a transparent and accountable post-election review of the votes and of the conduct of election officials. This will stand or fall on the facts, not the expertise of counsel on other laws that may be complicated.

In addition, as also explained in Part II below, the Fifth Circuit sanctioned PC in a Texas election case for that type of activity which it is attempting to do here:

- Before admission and without first seeking leave of this court, PC has in a court filing offered as "fact" its own version of history and the disposition of other election cases outside the record. The Fifth Circuit sanctioned PC because, among other things, it had inappropriately sought to include non-record material in filings that the Circuit panel found had "multiplied the proceedings unreasonably and vexatiously" and from which material information had been "inexplicably omitted."

- Before being admitted and without first seeking leave of this court, PC is *already* "unreasonably and vexatiously" burdening and multiplying the proceedings *on this motion* by including inappropriate and untimely factual assertions and legal argument. Contestant is under no obligation to respond, and by separate filing, moves to strike the offending material.

PC has a remarkable history of creating "complications" where none exist. Contrary to PC's suggestion, Mr. Daugherty's objection is not simply about an attorney's abusing Rule 4.4 with unwarranted, over-utilized *pro hac* motions. His objection includes PC's demonstrated, questionable behavior in this and other cases. Neither the parties nor this court need the "complications" and delays PC's participation as counsel will foster, as previously demonstrated.

ARGUMENT

Georgia law and U.S.C.R. 4.4 afford a trial court broad discretion in deciding whether to admit an attorney *pro hac vice*. *Head v. State*, 253 Ga. App. 757, 758, 560 S.E.2d 536 (2002) (abuse of discretion standard applies; chief investigator's marriage to the victim did not require

disqualification of entire District Attorney's office where the investigator's only contact with the case was a brief conversation with someone who knew the victim and the defendant, but nothing about the case); *Ventura v. State*, 346 Ga. App. 309, 816 S.E.2d 151 (2018)(same; prosecutor's marriage to attorney who had represented defendant in an unrelated plea three years earlier did not create *per se* conflict of interest). In *Blumenfeld v. Borenstein*, 247 Ga. 406, 409-410, 276 S.E.2d 607 (1981), our Supreme Court suggested that:

> It is perhaps helpful to view the issue of the attorney disqualification as a continuum. At one end of the scale where disqualification is always justified and indeed mandated, even when balanced against a client's right to an attorney of choice, is the appearance of impropriety coupled with a conflict of interest or jeopardy to a client's confidences. In these instances, it is clear that the disqualification is necessary for the protection of the client. Somewhere in the middle of the continuum is the appearance of impropriety based on conduct on the part of the attorney. As discussed above, this generally has been found insufficient to outweigh the client's interest in counsel of choice. This is probably so because absent danger to the client, the nebulous interest of the public at large in the propriety of the Bar is not weighty enough to justify disqualification. Finally, at the opposite end of the continuum is the appearance of impropriety based not on conduct but on status alone. This is an insufficient ground for disqualification. This is particularly clear in this case in light of the trial court's specific finding that there was no actual impropriety on the part of any of the parties.

No party questions the unassailable proposition that admission *pro hac vice* is committed to the sound discretion of the Court, U.S.C.R. 4.4(B), or that the inquiry is heavily fact-dependent. As the Court of Appeals observed in *Clos v. Pugia*, 204 Ga. App. 843, 844-845, 420 S.E.2d 774 (1992),

> [t]he rules of disqualification of an attorney will not be mechanically applied; rather, we should look to the facts peculiar to each case in balancing the need to ensure ethical conduct on the part of lawyers appearing before the court and other social interests, which include the litigant's right to freely chosen counsel. [Cit.] *Stoddard v. Bd. of Tax Assessors*, 173 Ga. App. 467, 468(1), 326 S.E.2d 827 (1985)

In *Clos,* counsel initiated an *ex parte* communication with Pugia after Pugia's counsel had filed notice of withdrawal, but before the court had granted the motion to withdraw. The court disqualified him, even though "there was no wilfulness on the part of appellants' counsel, the ex

parte communication was, nevertheless, a `specifically identifiable impropriety' which was at least technically violative of the applicable standards of professional conduct. Kleiner v. First Nat. Bank of Atlanta, 751 F2d 1193, 1210 [23] (11th Cir. 1985)" [disqualification of counsel for "misleading portrayals of fact"]. Affirming the trial court's decision to disqualify, the Court of Appeals held:

> We find no abuse of discretion in the trial court's ultimate determination that, although counsel had not acted wilfully, the appearance of impropriety nevertheless outweighed appellants' interest in being represented by their counsel of choice. … Our review of the record reveals no abuse of discretion in [granting appellee's motion] to disqualify [appellants' counsel]." *Gene Thompson Lumber Co.*, supra 189 Ga.App. at 574-575(1), 377 S.E.2d 15.

Where, as here, there is an actual conflict of interest, the case for exclusion is even stronger. *See Bugg v. Chevron Chemical Co.*, 224 Ga. 809, 165 S.E.2d 135 (1968) [conflict between present and former client required disqualification of attorney and firm; attorney's affidavit undercut position of former client] and *Tilley v. King*, 190 Ga. 421, 9 S.E.2d 670 (1940) [conflict with former client's interest required disqualification].

Contestant respectfully submits that the Movants have a history of ethically dubious behavior that unreasonably burdens the proceedings and opposing counsel. PC may attempt to argue that these particular PC attorneys were not specifically sanctioned by the 5th Circuit, so their admission is not tainted. But this argument ignores that a) the PC attorneys seeking admission are supervised by the same PC lawyer who was sanctioned; b) the PC firm has an irreconcilable conflict of interest issue because it will be called as a witness to a key issue in this case; and c) that PC, as a firm and perhaps these attorneys individually, were involved in questionable actions involving the Steele Dossier and in efforts to intimidate the Arizona State Senate. Some of the assertions in PC's response to this motion show that it learned nothing from the Fifth Circuit's sanction. This is precisely the sort of behavior that our Supreme Court has

held lies at "end of the scale where disqualification is always justified and indeed mandated, even when balanced against a client's right to an attorney of choice[.]"

I. IN THE COURSE OF REPRESENTING A FORMER CLIENT, PC PRESENTED FACTS TO A NEW YORK COURT THAT ARE CONTRARY TO THE POSITION OF ITS PRESENT CLIENT, CREATING A NON-WAIVABLE POSITIONAL CONFLICT OF INTEREST AND MAKING PC A LIKELY WITNESS IN THIS LITIGATION.

Five (5) PC attorneys[1] represented former U.S. Representative Anthony Brindisi during his unsuccessful challenge to the outcome of the November, 2020 congressional election in New York's 22nd Congressional District. *See* Memorandum in Support of Proposed Order to Show Cause of Respondent Anthony Brindisi, *Tenney v. Oswego County Board of Elections*, N.Y. Supreme Court, Oswego County, Index No. EFC-2020-1376. [Exhibit A]

Among the statements of fact PC offered to the New York court in support of Mr. Brindisi's claim that his client was entitled to a recount were the following:

- "… there has also been mounting evidence of significant irregularities in the tabulation of ballots." (Ex. A at p. 1)
- "Specifically, and in the language of the statute, there is substantial evidence which "indicates that there is a likelihood of a material discrepancy between such manual audit tally and such voting machine or system tally…" (Ex. A. at p. 1)
- "Applying the same error rate to 325,548 ballots, there may have been as many as 2,599 votes that the machines did not read." (Ex. A at p. 4.)
- "In addition to the table-to-machine count discrepancies … there have also been procedural inconsistencies that question the integrity of the process, as conducted by the counties." (Ex. A at p. 5.)
- "In this case, there is reason to believe that voting tabulation machines misread *hundreds* if not *thousands* of valid votes as undervotes, (*supra* at 4), and that these tabulation machine errors disproportionately affected Brindisi, (*id.*)." (Ex. A at p. 10) (emphasis in original)
- "Furthermore, allowing the counties to certify the apparent results *in light of these abundant discrepancies without first conducting a robust and thorough*

[1] Bruce Spiva, Henry Brewster, Martin Connor, Alexander Tischenko, and Alexi Velez are noted as having appeared for Mr. Brindisi. Tenney v. Oswego Cty. Bd. of Elections, 71 Misc. 3d 421, 142 N.Y.S.3d 323 (N.Y. Sup. Ct. 2021).

> *manual audit, particularly as the discrepancies appear to disproportionately affect and undercount votes* for Brindisi (*see supra* at 4), would be extremely prejudicial to Brindisi." (Ex. A at p. 10) (emphasis supplied)

The PC attorneys offered these facts to the court – directly and not through quotation of others providing evidence -- and it may be very true there are no other sources for the same information. Contestant is entitled, at a minimum, to explore all the factual bases of PC's factual assertions and to learn the names of any or all witnesses known to PC who could testify; and PC has an obligation to identify them. Under Ga. Code Ann. § 9-11-26(b)(1), Contestant may also discover "… any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other part". If, as PC asserted in open court, PC's attorneys knew or learned how and why the Dominion voting machines used in one New York congressional district had such a high error rate that "there may have been as many as 2,599 votes that the machines did not read" (Ex. A at p. 4.), Contestant is entitled to explore that information fully. Having put that information before the New York court, PC can neither disclaim that knowledge, nor avoid its obligation to testify.

More troubling than PC's seeming unfamiliarity with its obligations under Georgia discovery rules is its attorneys' willingness to assert different versions of the same facts depending on the forum and the election contest involved. In this case, the result of the serious factual allegations PC made about problems with Dominion voting machines in New York means they are relevant to the operation and reliability of Dominion voting systems in Georgia. This puts PC into a "positional" conflict of interest at the "end of the scale where disqualification is always justified and indeed mandated, even when balanced against a client's right to an attorney of choice[.]" *Blumenfeld v. Borenstein*, 247 Ga. 406, 409-410, 276 S.E.2d 607 (1981).

The typical "positional conflict" arises when an attorney presents *legal* arguments on an identical "issue of law that is directly contrary to the position being urged by the lawyer (or lawyer's firm) on behalf of another client in a different, and unrelated pending matter." American Bar Association, "Positional Conflicts", A.B.A. Formal Opinion 94-477 (October 16, 1993). That is *not* the situation we have in this case.

> "A different type of conflict occurs when lawyers take conflicting positions in two different cases regarding a particular item of property, the same res, the same facts. This type of conflict is much easier to deal with, because the conflict is more obvious."

Ronald D. Rotunda, John Dzienkowski, "Comparing the Taking of Adverse Legal Positions with the Taking of Adverse Factual Positions" in LEGAL ETHICS: THE LAWYER'S DESKBOOK ON PROF. RESP. § 1.7–6(o)(6) (2018-2019 ed.). *See* Fiandaca v. Cunningham, 827 F.2d 825 (1st Cir. 1987) (factual conflict over the suitability of a specific facility as a prison that pit the interests of present class action clients against one another was grounds to disqualify class counsel).

II. CONFLICTS OF INTEREST AND RELATED DISABILITIES ARE SUFFICIENT TO DISQUALIFY.

PC falsely characterizes the Contestant's objections to *pro hac vice* admission as "unusual" because admissions "ordinarily" should be granted. (PC Reply at 1) By its very terms, U.S.C.R. 4.4(D) (3) is discretionary, not a direction to rubber stamp *pro hac vice* applications. Its broadly accommodating approach to "non-domestic lawyers" assures that Georgia courts have the authority to maintain control over both the integrity of the proceedings and the behavior of the lawyers who appear before them.

Contestant objects to PC's participation *as counsel* because their conflicts of interest and well-documented misbehavior, including in other election cases, which will inevitably delay the proceedings and prejudice the interests of all the parties here as they have elsewhere.

Until PC filed its motion for admission, Contestant had no reason to discern either that PC had attacked the integrity and reliability of the Dominion voting systems used to elect a client they propose to represent or that it had critical information about the specifics of the malfunctions, and the names and qualifications of other potential witnesses. PC *volunteered* that information on the record and in the press. Contestant will now naturally seek discovery to learn who and what PC knows that can shed light on what PC itself described as "substantial evidence of deeply concerning errors and irregularities, any number of which 'creates a substantial possibility' that the outcome of the election could change as a result of a hand audit." Memorandum in Support of Proposed Order to Show Cause of Respondent Anthony Brindisi, *Tenney v. Oswego County Board of Elections*, N.Y. Supreme Court, Oswego County, Index No. EFC-2020-1376. [Exhibit A] at p 8.

Research in response to PC's motion for admission also uncovered evidence that PC[2] has been *found* by the Fifth Circuit under 28 U.S.C. § 1927 to have made a duplicative filing offering material not in the record "that multiplied the proceedings unreasonably and vexatiously" through its "inexplicable failure" to disclose to the court that "their previous and nearly identical motion was denied." Order, *Texas Alliance for Retired Americans. v. Hughs*, No. 20-40643 (5th Cir. Mar. 11, 2021) (per curiam), at 2 See, Exhibit A to Contestant's Consolidated

[2] One PC applicant before this Court, Mr. Geise, was and is directly associated with the "Political Law" group team on one of the five cases that are associated with, and consolidated with, the case in which the Fifth Circuit imposed sanctions. While none of the three "Political Law" group applicants in this case names were on the specific sanctioned pleadings in the Fifth Circuit case, all applicants here are under the direct supervision and leadership of Mr. Elias, who was sanctioned by the Fifth Circuit along with other members of his group. However,

Response to All Pending Motions for Admission Pro Hac Vice).

Even after having been found to have filed a "redundant and misleading submission," and having had the Fifth Circuit reject its attempt to reference non-record materials, PC has persisted in the same behavior, both in the Fifth Circuit, and in this case. *See* Letter of Texas Deputy Solicitor General Matthew H. Frederick to Lyle W. Cayce, Clerk of the U.S. Court of Appeals for the Fifth Circuit, *Texas Democratic Party v. Hughs*, No. 20-50667, ECF #00515819520, April 13, 2021. PC's disruptive and unethical behavior in other high-profile cases is also matter of public record. *See, e.g.,* Debra Cassens Weiss, "Perkins Coie hired company that compiled Trump dossier", ABA JOURNAL, October 25, 2017, 10:42 AM CDT at:

https://www.abajournal.com/news/article/perkins_coie_hired_company_that_compiled_trump_dossier_on_behalf_of_clinton/ (accessed May 27, 2021).

A. The Facts Concerning PC'S Ethics Violations Are Neither Mistaken Nor Misunderstood.

PC's Reply brief mischaracterizes the Contestant's objections as being "based on misstatements and misunderstandings of the facts." (PC Reply at 1-2) The facts to the contrary speak for themselves, but beyond that Contestant is rightly concerned that PC's unethical behavior in other cases is being repeated in this one. PC has not even been admitted, but its filing before this Court already contains inappropriate legal arguments and unsupported factual assertions it has no current authority from this court to make. When given an inch, PC obviously takes a mile.

The Fifth Circuit's sanctions order expressly recognized that PC's behavior might be repeated. Not only did it suggest that the PC team "… review Rule 3.3 of the Model Rules of Professional Conduct (Candor Toward the Tribunal) and complete one hour of Continuing Legal

Education in the area of Ethics and Professionalism", it then used its broad powers under 28 U.S.C. § 1927 to order PC lawyers to reimburse the court "double costs" and pay the attorneys' fees incurred by opposing counsel for the time they were forced to waste policing PC's bad behavior:

> Sanctions are warranted in this case to deter future violations. The attorneys listed on the February 10, 2021 motion to supplement the record shall pay: (i) the reasonable attorney's fees and court costs incurred by Appellant with respect to Appellees' duplicative February 10, 2021 motion, to be determined by this court following the filing of an affidavit by Appellant and any response by Appellees, and (ii) double costs.
>
> (See, Exhibit A to Contestant's Consolidated Response to All Pending Motions for Admission Pro Hac Vice at p.3)

Flagrant disregard of court rules, and a formal sanction for "misleading" and "vexatious[]" conduct in other proceedings would, if committed in Georgia, violate both Ga. Rules of Prof. Conduct 3.3 [candor toward the tribunal] and 3.4 [fairness to opposing party and counsel].

And this is not all. PC has sent threatening "evidence preservation" letters that clearly suggest criminal charges to citizens and businesses who are participating in a lawful, court ordered State Senate-sponsored audit in Arizona. [See, Contestant's Consolidated Response to All Pending Motions for Admission Pro Hac Vice, Exhibit D]. Contestant respectfully urges that any lay person would – and arguably should – view such a letter as a threat. *See* Arizona Ethics Rule 4.1 [truthfulness in statements to others] and Ethics Rule 4.3 [dealing with unrepresented persons]. See, Exhibit D to Contestant's Consolidated Response to All Pending Motions for Admission Pro Hac Georgia Rules of Prof. Conduct 3.4(f) unequivocally state that "[a] lawyer shall not: … present, participate in presenting or threaten to present criminal charges solely to obtain an advantage in a civil matter." PC, which has been admitted *pro hac vice* in scores of Georgia cases, should know and live according to this rule.

B. All Attorneys Associated with PC Should Be Disqualified.

PC argues that "*none* of Mr. Daugherty's other objections involves any attorney who is actually seeking admission in this case." This is untrue as a matter of fact, and as a matter of law. Should PC lawyers be called as witnesses, Georgia Rule of Professional Conduct 3.7(b) permits other lawyers in the firm to participate as advocates in a trial only when they are *not* "precluded from doing so by Rule 1.7 [present conflicts of interest] or Rule 1.9 [conflicts with former client's interests]." If, as Contestant alleges, PC has a present, positional conflict of interest, Rule 3.7(b) requires exclusion of all attorneys in the firm.

The ethical lapses of PC's attorneys are well known and the Georgia Rules of Professional Conduct do not permit its leadership to avoid responsibility for the unethical behavior of its subordinates. Marc E. Elias is the Firm Wide Chair of the PC's Political Law Practice. As such, he is bound by Georgia Rule of Professional Conduct 5.1 not only to supervise his subordinates, but to "take reasonable remedial action" whenever the consequences of the misconduct "can be avoided or mitigated." Mr. Elias, however, is at the very center of some of PC's most serious ethical lapses.

- Mr. Elias is one of the few people who actually knows how and why the lying Steele Dossier was organized, where the money came from and where it went, and knew or should have known that the misrepresentations in the Dossier would be used to illegally obtain search warrants from the FISA (and perhaps other) courts. (See, Exhibit "G")
- Mr. Elias' was silent after his client lied to a Senate investigating committee about who paid for the Steele Dossier (Ex. B at p. 13) and Elias has publicly denied of involvement with the Steel Dossier. (Ex. C and Ex. C-1).

As Firm Wide Chair of the Political Law Practice, Mr. Elias possesses the requisite "managerial authority" to be held ultimately chargeable with the ethical lapses that led to the

Fifth Circuit's imposition of sanctions in another election case. Nor is Mr. Elias the only attorney in PC's Political Law Practice group whose behavior has been questioned. Though not specifically named and sanctioned in the Fifth Circuit, Mr. Geise – who is also attempting admittance in this case -- was a member of the PC Texas team headed by Mr. Elias that was specifically sanctioned.

Contestant respectfully submits that it is principally the behavior of the Political Law Practice *group* and the specter of complicating a straightforward case that should lead this court to deny their motions.

CONCLUSION

An election challenge under Ga. Code Ann. §21-2-522 is a straightforward inquiry into the behavior of elections officials and of the accuracy and integrity of the vote counting effort. Like every case, the outcome will depend on the facts, and on the good faith – and good behavior – of the parties and their counsel. Contestant's motion to deny admission to all of the PC applicants rests on serious, documented concerns about their "vexatious" and "misleading" behavior in other election cases, and on their own admission in open court that they have evidence casting serious doubt on the reliability of Dominion's voting systems. Mr. Daugherty therefore respectfully submits that these requests for admission should be **DENIED**.

Respectfully submitted this the 2nd day of June, 2021.

MADDOX & HARDING, LLC

Todd A. Harding, For the Firm
Ga. Bar No.: 101562
Attorney for Contestant

Maddox & Harding, LLC
Attorneys at Law
113 E. Solomon Street
Griffin, GA 30223
(770) 229-4578
(770) 228-9111 facsimile

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

MICHAEL J. DAUGHERTY,
CONTESTANT,

v. **CIVIL ACTION NO.: 2021CV344953**

FULTON COUNTY REGISTRATION AND ELECTION BOARD, et al.,
DEFENDANTS.

CERTIFICATE OF SERVICE

COMES NOW, THE CONTESTANT, by and through his attorney of record, and certifies that a true and accurate copy of the **RESPONSE TO PERKINS COIE REPLY TO CONTESTANT'S OBJECTION TO VERIFIED APPLICATIONS FOR ADMISSION PRO HAC VICE** has been served by the Odyssey automated system upon all Parties of record.

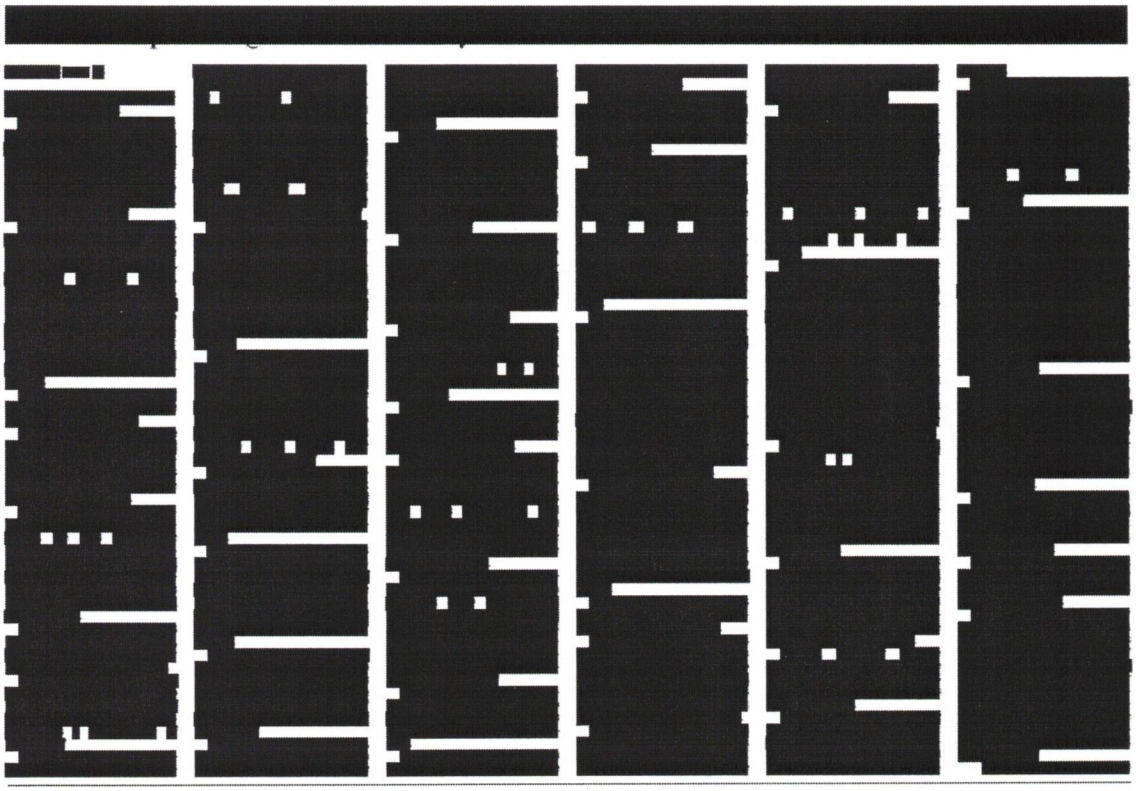
Respectfully submitted this the 2nd day of June, 2021.

MADDOX & HARDING, LLC

Todd A. Harding, For the Firm
Ga. Bar No.: 101562
Attorney for Contestant

Maddox & Harding, LLC
Attorneys at Law
113 E. Solomon Street
Griffin, GA 30223
(770) 229-4578
(770) 228-9111 facsimile

EXHIBIT “G”



Lawyer had authority to use Democratic funds for dossier

Marc Elias is known as the go-to attorney for the party in Washington

BY MICHAEL KRANISH

When Marc Elias, general counsel for Hillary Clinton's presidential campaign, hired a private research firm in the spring of 2016 to investigate Donald Trump, he drew from funds he was authorized to spend without oversight by campaign officials, according to a spokesperson for his law firm.

The firm hired by Elias, Fusion GPS, produced research that resulted in a dossier detailing alleged connections between Trump and Russia. While the funding for the work came from the campaign and the Democratic National Committee, Elias kept the information about the investigation closely held as he advised the campaign on its strategy, according to the spokesperson, who spoke on the condition of anonymity to discuss the internal dynamics.

Elias's involvement in the financing and internal dissemination of the Trump research underscores the influence he wields behind the scenes in Democratic politics — a role that is now being pushed into the spotlight amid multiple investigations into Russia's attempts to meddle in the 2016 elections.

The 48-year-old lawyer and his firm, Perkins Coie, represent many of the party's political committees and candidates. Elias also has worked on behalf of companies such as Facebook, fighting in 2011 to exempt the social media network from disclaimer rules on political ads. The company's sale of ads to Russian actors during last year's campaign triggered calls on Capitol Hill for more disclosure of online ads.

Elias's robust client list — which included both Clinton's campaign and the Democratic National Committee last year — has led to questions about how he juggles competing interests and whether some of the arrangements create awkward dynamics.

Elias declined to comment.

In September, he accompanied former Clinton campaign chairman John Podesta to a closed-door interview with Senate Intelligence Committee staffers, during which Podesta said he had no knowledge of payments to Fusion GPS, according to CNN.

At the time, it was not publicly known Elias had hired Fusion GPS; that was revealed by The Washington Post this week. Elias, who was there as Podesta's lawyer, did not participate in the interview as a witness, CNN reported.

Podesta did not respond to a request for comment.

While it is common for campaigns to conduct opposition research, Elias's decision to hire Fusion GPS has drawn intense interest because it resulted in the controversial dossier. Republicans have said their effort to investigate Fusion's role in producing the dossier will intensify with the revelation that it was funded by Clinton's campaign and the DNC.

President Trump seized upon the news, saying this week that "this was the Democrats coming up with an excuse for losing the election . . . they made up the whole Russia hoax."

The dossier was part of research into Trump that Fusion GPS began in the Republican primaries for the Washington Free Beacon, a conservative publication that receives financing from billionaire GOP donor Paul Singer. The Beacon's role was first reported Friday by the New York Times.

After the Free Beacon stopped funding the project, Fusion GPS founder Glenn Simpson met with Elias at his Washington law office and asked if he was interested, according to people familiar with the arrangement.

Elias agreed, deciding Fusion GPS had more capacity than the campaign's in-house operation to do sophisticated research, according to the Perkins Coie spokesperson. Elias drew from funds that both the Clinton campaign and the DNC were paying Perkins Coie, The Post reported this week.

It is unclear who else was familiar with the arrangement, or who knew that Fusion GPS hired a former British intelligence officer, Christopher Steele, who wrote the dossier. Clinton has not responded to requests for comment.

A spokesman for Rep. Debbie Wasserman Schultz (Fla.), who was DNC chairwoman at the time Perkins Coie contracted with Fusion GPS, said the former chair was "not aware" of the law firm's arrangement with Fusion.

Elias himself did not receive the dossier but was briefed on some of the information in it, according to his firm's spokesperson. The dossier was published by BuzzFeed after the election.

Clinton campaign officials who said they were not aware of Elias's arrangement with the firm defended his decision to tap its resources.

"Marc is known as one of the most skilled professionals in Democratic politics, in addition to being the party's top election lawyer," said Brian Fallon, who served as a spokesman for the campaign. "I am damn glad he pursued this on behalf of our campaign and only regret more of this material was not verified in time for the voters to learn it before the election."

Among Perkins Coie's clients is Facebook, which Elias helped in 2011 when the company was asking the Federal Election Commission for an exemption from having to include political disclaimers on the small ads that appear on its site.

Advocates for more transparency of online ads said that better disclosure requirements could have prevented a Russian troll farm from running ads during last year's election that were aimed at sowing divisions between groups of Americans.

Facebook, which noted that it has pledged to create a system to disclose the ads run on its site, declined to comment on Elias's role.

Elias is well known in political circles for his work on voting rights cases, an effort that has been funded by Democratic megadonor George Soros. Elias also has scored major victories in hard-fought election recounts, including the 2008 election of Sen. Al Franken (D-Minn.).

His role as the go-to Democratic lawyer in Washington was spotlighted this week when he was slated to testify in the federal bribery trial of one of his clients, Sen. Robert Menendez (D-N.J.). Elias, who had been expected to testify about the advice he gave Menendez about how to fill out financial disclosures, was ultimately stricken from the witness list by the judge.

Even as he has built a robust Democratic client list, Elias has often been at odds with groups that advocate for stricter campaign finance rules, including many on the left, over his efforts that have expanded the influence of wealthy donors in politics.

"He has done good stuff on the voting rights side, but he has also been an opponent of many campaign finance reforms and has been largely responsible for some of the loopholes that exist in the campaign finance laws," said Lawrence Noble, a former Federal Election Commission general counsel who now works as a senior director at the advocacy group Campaign Legal Center.

Elias played a key role in helping craft a massive expansion of party fundraising that was slipped into a 2014 end-of-the-year spending bill. That measure created new party accounts that can accept donations three times larger than contributions to the general party fund. The Republican National Committee is now using money raised by one of those funds to help pay for the legal bills accrued by President Trump and his eldest son, Donald Trump Jr., in the multiple Russia probes.

In 2015, Elias appeared before the FEC to seek greater interplay between candidates and super PACs, which can collected unlimited contributions. Critics saw it as a way around campaign finance laws that set a strict cap on donations to candidates.

Then-commissioner Ann Ravel, a Democratic appointee, objected to the idea — and was "berated" by Elias, who said she should have raised her concerns earlier, she said in an interview. A key element of the measure passed by a 4-to-2 vote, with Ravel in opposition.

"He was always trying to figure out a way to get around" campaign finance restrictions, Ravel said.

Veteran election law attorney Robert Bauer, who founded the Perkins Coie political practice and recruited Elias, said that anyone practicing political law "cannot escape the politics."

"It understood that your clients, and their objectives, will come under fire," Bauer said. "But it is wrong to find fault in a lawyer because he is effective in making the client's case for a particular law or rule."

Former secretary of state John F. Kerry, who hired Elias as general counsel for his 2004 presidential campaign, called Elias "an outstanding lawyer."

"He always gave us advice to live up to the law and not avoid it," Kerry said.

Former Senate Democratic leader Harry M. Reid, who won a 1998 recount with the help of Elias, said the lawyer's decision to tap Fusion GPS for research "makes good sense."

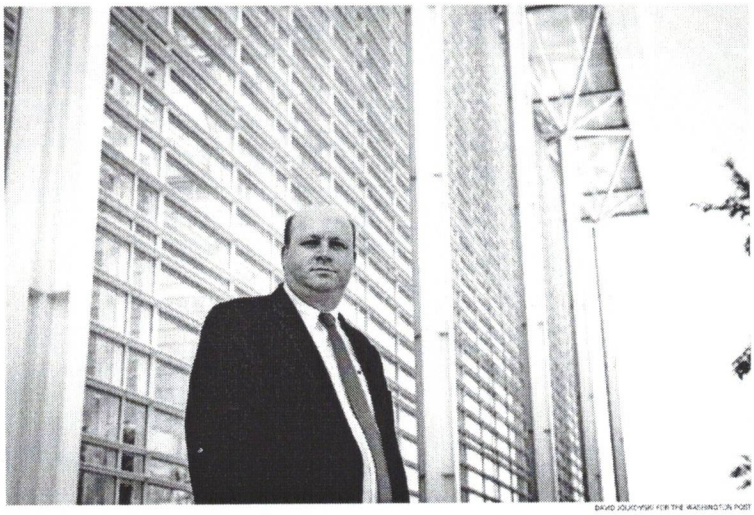
"Time is not on your side in these elections," Reid said.

Franken, who declined an interview request, praised Elias in a statement for helping him secure his Senate seat, while saying that "I don't always agree with what he advocates for — including when it comes to campaign finance."

In his book "Al Franken, Giant of the Senate," published this year, the senator ribbed Elias about the size of his legal fees, which totaled $3.6 million, according to federal filings. Franken wrote that he was often sequestered at home, "calling people for money to pay our bafflingly large and expensive team of lawyers, led by Democratic superattorney Marc Elias. (If you're ever in Washington, check out the Franken Wing of the Perkins Coie law office — it's gorgeous.)"

michael.kranish@washpost.com

Tom Hamburger contributed to this report.



DAVID JOLES/FOR THE WASHINGTON POST

A former member of the FEC said Marc Elias, above, "was always trying to figure out a way to get around" campaign finance restrictions.