

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE ADMINISTRATION

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March 19, 2021

The Honorable Zoe Lofgren
Chairperson
Committee on House Administration
1309 Longworth House Office Building
Washington, DC 20515

Dear Chairperson Lofgren:

At our most recent business meeting, you stated that the American people deserve a transparent, fair, and nonpartisan resolution of the nation's elections. We agree. In order for us to conduct a fair and nonpartisan process, we must hold ourselves to the highest standards of ethical conduct as we continue proceedings to consider the election contests before our Committee.

We write to bring to your attention to a serious conflict of interest regarding Marc Elias, an attorney with the law firm Perkins Coie. In the election contests currently before us, Mr. Elias simultaneously represents Members of the Committee, the triers of fact and law, and parties to these contests, an arrangement clearly prohibited by attorney ethics rules and obligations. *See* Notice of Contest Regarding Election for Representative in the One Hundred Seventeenth Congress from Iowa's Second Congressional District; Contestee's Motion to dismiss Contestant's Notice of Contest Regarding the Election for Representative in the 117th Congress from Illinois' fourteenth Congressional District. Marc Elias and his firm, Perkins Coie, represent you, Representative Pete Aguilar, and Representative Mary Gay Scanlon, one-half of the Democratic Members of the House Committee on House Administration, the Committee charged with hearing election contests. Further, Mr. Elias and Perkins Coie represent Rita Hart, the Contestant in the IA-02 election contest, and Rep. Lauren Underwood, the Contestee in the IL-14 election contest.

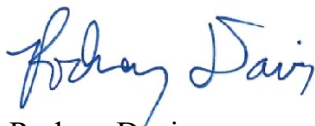
Rule 1.7 of the American Bar Association's Model Rules of Professional Conduct clearly prohibit an attorney from engaging in representation that involves "a concurrent conflict of interest." Such a conflict exists here: You, Mr. Aguilar, and Ms. Scanlon serve as triers of fact and law on the tribunal charged with deciding election contests, and Mr. Elias represents you; Ms. Hart and Ms. Underwood are parties to election contests before the Committee, and Mr. Elias represents them. Your interests are quite clearly "directly adverse" to one another, and Mr. Elias' ability to offer advice to both sides certainly "will be materially limited by [his] responsibilities to another client[]," namely you, Mr. Aguilar, Ms. Scanlon, and the parties to the election contests before the Committee. Rule 1.7(a). We are gravely concerned that these serious conflicts of interest and ethical lapses on the part of counsel compromise the work of this Committee, and, more specifically, demonstrate further

that the Democratic Members of this Committee operate not in search of the truth but solely in search of partisan, political gain.¹

Further, we want to bring to your attention that the U.S. Court of Appeals for the Fifth Circuit sanctioned recently Mr. Elias and his colleagues from Perkins Coie for their failure to meet their duty of candor to that tribunal by filing “redundant and misleading” information. The Fifth Circuit’s conscience was so shocked by this conduct that it required Mr. Elias and his colleagues to cover their opponents’ fees and pay punitive damages. Order at 3, *Texas Alliance for Retired Americans v. Ruth Hughs*, 976 F.3d 564 (5th Cir. March 11, 2021) (No. 20-40643). Further, the Court “encouraged [but did] not require” Mr. Elias and his colleagues “to 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, specifically candor with the court.” *Id.* The Court made clear that this punishment was intended to “deter future violation[s]”, implying concern that such violations would continue but for these sanctions. *Id.* Madam Chair, as an attorney, we know you understand the severity of these sanctions and this ethical lapse by Mr. Elias and his colleagues. We question whether you can ensure a transparent, fair, and nonpartisan process when your attorneys have been proven not to speak with candor when representing clients before a tribunal.

We strongly urge you to take immediate, affirmative steps to ensure that this Committee follows a fair process for all parties involved in this election contest and guarantees to all parties involved that counsel will provide only true, accurate, and candid information to the tribunal considering this contest, this Committee.

Sincerely,



Rodney Davis
Ranking Member
Committee on House Administration



Barry Loudermilk
Member
Committee on House Administration



Bryan Steil
Member
Committee on House Administration

¹ Mr. Elias and Perkins Coie are attorneys of record for the DCCC, the Democratic National Committee, and the DSCC. Further, Mr. Elias and Perkins Coie represent a lengthy laundry list of Democratic Member of Congress, including Speaker Nancy Pelosi, Majority Leader Steny Hoyer, Majority Whip James Clyburn, DCCC Chair Sean Patrick Maloney, former DNC Chair Debbie Wasserman Schultz, Representative Rashida Tlaib, Representative Ayanna Pressley, and at least 78 others.