



**FOR IMMEDIATE RELEASE - November 18, 2020**

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**New York City Bar City Bar Association Statement  
on Lawyers' and Public Officials' Obligations  
During the Presidential Transition Period**

Shortly before the Presidential election on November 3, 2020, New York City Bar Association President Sheila S. Boston issued a statement in which she urged lawyers everywhere, whether they are in private practice, sitting as judges of state or federal courts, or serving as state or federal legislators, to carry out their duties with due respect for the principles of law that are the foundation of our democracy. This duty includes preserving the central role that free and fair elections play in our society.<sup>1</sup> As that statement noted, “Whatever the pressures from clients, public officials or our own political preferences, or whether we live in a so-called ‘red’ state or ‘blue’ state, our role as lawyers must never serve to undermine the bedrock electoral processes on which our democracy rests.”<sup>2</sup>

In this critical period testing the strength of our democracy and our nation’s commitment to the rule of law, we note with pride the demonstrated independence of the state and federal courts that are considering and adjudicating the numerous cases – brought by the Trump campaign and others – challenging the procedures or results of the Presidential election in a number of states.<sup>3</sup>

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<sup>1</sup> Sheila S. Boston, *Election Day Message from New York City Bar City Bar President Sheila S. Boston*, NEW YORK CITY BAR (Nov. 3, 2020), <https://www.nycbar.org/media-listing/media/detail/election-day-message-from-city-bar-president-sheila-s-boston> (all websites last visited Nov. 18, 2020).

<sup>2</sup> *Id.*

<sup>3</sup> Katelyn Polantz, *Trump had a very bad Friday in court with his election cases. They’re headed for more action next week*, CNN POLITICS, (Nov. 14, 2020), <https://www.cnn.com/2020/11/14/politics/trump-election-cases-status/index.html>; Mary Claire Dale and Mark Scolforo, *Republicans face court setbacks, Trump law firm steps down*, AP NEWS (Nov. 13, 2020), <https://apnews.com/article/election-2020-pennsylvania-elections-coronavirus-pandemic-campaigns-8238b4fdb6e2b0ebddfbf619272f8562>; Emily Bazelon, *Trump Is Not Doing Well With His Election Lawsuits. Here’s a Rundown*, NY TIMES (Nov. 13, 2020; updated Nov. 16, 2020), <https://www.nytimes.com/2020/11/13/us/politics/trump-election-lawsuits.html>; Sonam Sheth and Jacob

That such claims are being adjudicated in accordance with law by an independent judiciary is a mark of a healthy and lawful democratic nation.<sup>4</sup> Likewise, many state election officials, from secretaries of state to local election officials, and tens of thousands of citizens, have worked to ensure fair elections at voting districts throughout the country.<sup>5</sup> All accounts to date, including a recent announcement by the federal Cybersecurity and Infrastructure Security Agency, indicate that this complex 50-state electoral process was “the most secure in American history” and that “there is no evidence that any voting system deleted or lost votes, changed votes or was in any way compromised.”<sup>6</sup>

Despite these important contributions to the rule of law, the City Bar notes with concern that the pattern of troubling and inappropriate conduct by Trump administration officials, which we have previously documented and criticized, appears to have continued. Specifically, we have noted such conduct on the part of the Attorney General,<sup>7</sup> the Postmaster General,<sup>8</sup> the Secretary of

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Shamsian, *Republicans have won just one out of 21 lawsuits they've filed in the wake of Election Day so far*, BUSINESS INSIDER (Nov. 13, 2020; updated Nov. 18, 2020), <https://www.businessinsider.com/trump-campaign-lawsuits-election-results-2020-11> (detailing the current status of the lawsuits, many of which have been dismissed or dropped because the plaintiffs could not provide any evidence of the alleged election fraud).

<sup>4</sup> *Id.*

<sup>5</sup> Joint Statement From Elections Infrastructure Government Coordinating Council & The Election Infrastructure Sector Coordinating Executive Committees, U.S. DEPARTMENT OF HOMELAND SECURITY CISA CYBER + INFRASTRUCTURE (Nov. 12, 2020), <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>.

<sup>6</sup> *Id.* On November 17, 2020, via Twitter, President Trump fired the Executive Director of the Cybersecurity and Infrastructure Security Agency, Chris Krebs; see @realDonaldTrump, (Nov. 17, 2020, 7:07 PM) <https://twitter.com/realDonaldTrump/status/1328852354049957888>. This firing was in apparent retaliation for the Agency’s release of this announcement, claiming it was “highly inaccurate”. Alana Wise, *Trump Fires CISA Director Chris Krebs, Who Corrected Voter Fraud Disinformation*, NPR NEWS (Nov. 17, 2020), <https://www.npr.org/2020/11/17/936003057/cisa-director-chris-krebs-fired-after-trying-to-correct-voter-fraud-disinformati>.

<sup>7</sup> *Request for Prompt Investigation into the Events of June 1, 2020 at Lafayette Square Park*, NEW YORK CITY BAR ASSOCIATION (June 9, 2020), <https://www.nycbar.org/media-listing/media/detail/lafayette-square-protests-city-bar-asks-congressional-leaders-to-investigate>; *New York City Bar City Bar Sends Letter to Congressional Leaders and Department of Justice Inspector General Regarding the Prosecution of Roger Stone and Related Actions by the Department of Justice*, NEW YORK CITY BAR ASSOCIATION (Feb. 12, 2020), <https://www.nycbar.org/media-listing/media/detail/prosecution-of-roger-stone-and-related-actions-by-the-department-of-justice>; Brief of the New York City Bar City Bar as Amicus Curiae in Opposition to the Petition For a Writ of Mandamus, *In re: Michael T. Flynn* (2020)(No. 20-5143), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/in-re-michael-t-flynn-amicus-brief>; *Request for Formal Congressional Inquiries into Conduct of Attorney General William P. Barr*, NEW YORK CITY BAR ASSOCIATION (Jan. 8, 2020), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/request-for-formal-congressional-inquiries-into-conduct-of-attorney-general-william-p-barr>; *Concern over the Attorney General’s Conduct: Removal of Mr. Geoffrey Berman as U.S. Attorney for the Southern District of New York*, NEW YORK CITY BAR ASSOCIATION (June 23, 2020), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/geoffrey-berman-removal-attorney-general-barrs-conduct>.

<sup>8</sup> *Concerns Regarding Recent U.S. Postal Service Operational Changes That Could Impact Voting By Mail-In Ballot*, NEW YORK CITY BAR ASSOCIATION (Sept. 25, 2020), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/us-postal-service-operational-changes-mail-in-ballots>.

State<sup>9</sup> and the President himself.<sup>10</sup> Most recently, the actions by Attorney General Barr authorizing local U.S. attorneys to bypass established channels to investigate, during the election season itself, “substantial allegations of voting and vote tabulation irregularities” that could “potentially impact the outcome” of the election suggests, in the absence of any evidence of such irregularities, continuing efforts by the Attorney General to act as the President’s personal counsel rather than the representative of the American people in the administration of justice.<sup>11</sup> Indeed, noting the absence of any credible evidence of substantial voting irregularities during the Presidential election, this past Friday 16 U.S. Attorneys from around the country took the extraordinary step of asking the Attorney General to rescind his memorandum.<sup>12</sup>

Moreover, and similarly, the continuing refusal by the Administrator of the General Services Administration, Emily Murphy, to facilitate an orderly and efficient Presidential transition appears inconsistent with the purpose of the Presidential Transition Act of 1963, 3 U.S.C. §102, which directs that office to recognize and cooperate with the “apparent successful candidates” for the offices of President and Vice President.<sup>13</sup> The refusal to facilitate the transition is especially egregious given that the nation is in the grip of the worst pandemic in 100 years. Coordinated federal action is required to confront COVID-19’s extraordinary threat to the health and lives of millions of Americans. The refusal by the Administrator to ascertain, on the basis of widespread publicly available evidence (including the dismissal or withdrawal of numerous legal challenges<sup>14</sup>), which candidates are the “apparent successful candidates” in the recent Presidential election appears to be, at the very least, a concerning abuse of discretion by the

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<sup>9</sup> *Letter Requesting a Prompt Investigation of Potential Hatch Act and State Department Policy Violations by Secretary of State Mike Pompeo*, NEW YORK CITY BAR ASSOCIATION (Sept. 3, 2020), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/investigation-of-mike-pompeos-apparent-hatch-act-violation>; *Statement Opposing U.S. Sanctions on Persons Working with or for the International Criminal Court*, NEW YORK CITY BAR ASSOCIATION, July 29, 2020), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/opposing-sanctions-on-international-criminal-court>.

<sup>10</sup> *Protecting the Independence of the Federal Inspector General Offices: Call for Congressional Oversight and Hearings*, NEW YORK CITY BAR ASSOCIATION (Apr. 25, 2020), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/protect-independence-of-federal-inspector-general-offices>.

<sup>11</sup> Attorney General Barr, Memorandum for the United States Attorneys on Post-voting Election Irregularity Inquiries (Nov. 9, 2020), <https://int.nyt.com/data/documenttools/barr-memo-elections-fraud/9bf5cac375012c4c/full.pdf>. Richard Pilger, who was director of the Election Crimes Branch of the Justice Department, resigned from his position in protest of the Attorney General’s memo, telling colleagues “Having familiarized myself with the new policy and its ramifications... I must regretfully resign from my role as Director of the Election Crimes Branch.” See Dartunorro Clark and Ken Dilanian, *Justice Department’s election crimes chief resigns after Barr allows prosecutors to investigate voter fraud claims*, NBC NEWS (Nov. 9, 2020), <https://www.nbcnews.com/politics/2020-election/doj-s-election-crimes-chief-resigns-after-barr-directs-prosecutors-n1247220>.

<sup>12</sup> Phil Helsel, *16 Prosecutors Tell Barr There’s No Evidence of Election Fraud*, NBC NEWS (Nov. 14, 2020), <https://www.nbc.com/2020/11/14/16-prosecutors-tell-barr-theres-no-evidence-of-election-fraud.html>; Christina Carrega, *Federal Prosecutors Assigned to Investigate Election Fraud Denounce William Barr’s Policy Change*, CNN (Nov. 13, 2020), <https://www.cnn.com/2020/11/13/politics/federal-prosecutors-william-barr-election-fraud/index.html>.

<sup>13</sup> 3 U.S.C. §102.

<sup>14</sup> See n. 3, *supra*.

Administrator and, as such, a disservice to the rule of law at a critical moment in our country's history.<sup>15</sup>

With the Presidential transition in limbo, the public continues to monitor the numerous lawsuits filed by the Trump campaign and others challenging the procedures or results of the election. It is not the purpose of this statement to take a position on the lawsuits. That is the role of our court system and, to date, judges in state and federal courts have dismissed most of the cases as lacking merit, or the claims have been withdrawn.<sup>16</sup> Given the courts' rulings so far, we must raise a concern regarding the actions of lawyers in some of these post-election challenges. We recognize and respect the duty of lawyers to represent controversial clients and causes, even when they personally disagree with their clients' contentions, so long as they have a good faith belief in the validity of their clients' view of the facts or the law. Lawyers who represent controversial clients often do so despite the knowledge that they may face public criticism. However, to the extent lawyers have filed election-challenge cases that lack any plausible basis in fact or law, as many judges are finding, then the public is justified in believing that such cases were filed primarily to cast doubt on the legitimacy of our nation's most fundamental democratic procedure – the election of our President. Not only do these actions contribute to the public's lack of trust in our institutions, but also, they do a regrettable disservice to our profession's commitment to the rule of law.

November 18, 2020

Sheila S. Boston  
President, New York City Bar Association

Stephen L. Kass  
Chair, Task Force on the Rule of Law

### **About the Association**

*The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world. [www.nycbar.org](http://www.nycbar.org)*

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<sup>15</sup> By statement dated November 8, 2020, the non-partisan Center for Presidential Transition Advisory Board explicitly recognizing Biden as the President-Elect. See Josh Bolten, Michael Leavitt, Thomas F. (Mack) McLarty, and Penny S. Pritzker, *A Message From the Center for Presidential Transition Advisory Board*, Center for Presidential Transition (Nov. 8, 2020), <https://presidentialtransition.org/publications/message-from-the-center-advisory-board/>. For an earlier criticism of the failure of the GSA Administrator to act before the December 12, 2000 Supreme Court decision in *Bush v. Gore*, see Todd J. Zywicki, *The Law of Presidential Transitions and the 2000 Election*, 2001 BYU L. REV. 1573 (2001).

<sup>16</sup> See n. 3, *supra*, e.g., Sonam Sheth and Jacob Shamsian, *Republicans have won just one out of 21 lawsuits they've filed in the wake of Election Day so far*, BUSINESS INSIDER (Nov. 13, 2020; updated Nov. 18, 2020), <https://www.businessinsider.com/trump-campaign-lawsuits-election-results-2020-11>; Emily Bazelon, *Trump Is Not Doing Well With His Election Lawsuits. Here's a Rundown*, NY TIMES (Nov. 13, 2020; updated Nov. 16, 2020), <https://www.nytimes.com/2020/11/13/us/politics/trump-election-lawsuits.html>.