IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

STATE OF GEORGIA CASE NUMBER: 23SC188947

V.

DONALD JOHN TRUMP, ET AL.

STATE'S MOTION TO NOLLE PROSEQUI

COMES NOW, THE STATE, By and through Peter J. Skandalakis, District Attorney Pro Tempore, and after a thorough examination of the case file, consideration of applicable statutory and case law, and prior to submission to a jury, the State hereby moves for entry of a Nolle Prosequi for the following reason: to serve the interests of justice and promote judicial finality (see exhibit A).

For all remaining defendants, this disposition meets the criteria for the Georgia Crime Information Center to Restrict access to the criminal history for this arrest pursuant to O.C.G.A. 35-3-37(h)(2)(A).

THIS the 26th day of November, 2025.

Peter J. Skandalakis
District Attorney Pro Tempore
Georgia Bar #: 649624
Atlanta Judicial Circuit

Prosecuting Attorneys' Council of Georgia
1590 Adamson Pkwy 4th Floor
Morrow, GA 3060

PAC Prosecuting Attorneys' Council of Georgia

Peter J. Skandalakis
Executive Director

Exhibit A

I. Introduction

"The Georgia election interference case against President Donald J. Trump and more than a dozen of his allies is technically still alive — but on life support. Its future rests with a Republican former prosecutor at an obscure state agency already familiar with a portion of Fulton County District Attorney Fani Willis' racketeering case."[1]

Ms. Hallerman was right about the case. It is on life support and the decision what to do with it falls on me and me alone. But unlike family members who must make the emotional decision to withdraw loved ones from life-sustaining treatment, I have no emotional connection to this case. As a former elected official who ran as both a Democrat and a Republican and now is the Executive Director of a non-partisan agency, this decision is not guided by a desire to advance an agenda but is based on my beliefs and understanding of the law. My determination about the future of this case is based on a host of factors addressed in this detailed memorandum of findings.

II. Timeline of this case[2]

- December 14, 2020: Democrat and Republican Electors meet at the State Capitol and cast electoral votes for President Biden and President Trump respectively.
- January 2, 2021: President Trump calls Secretary of State Brad Raffensperger and during a lengthy conversation tells him "to find 11,780 votes" which would change the outcome of the vote and move Georgia's 16 Electoral Votes to Trump's column.
- February 10, 2021: Atlanta Judicial Circuit District Attorney Fani Willis announces the beginning of her criminal investigation to determine if Trump and others violated Georgia criminal statutes in an attempt to change the election outcome in Georgia.[3]
- May 2, 2022: A Special Purpose Grand Jury is selected in Fulton County to investigate the matter.

[1] Hallerman, Tamar. "What happens next to the Trump election interference case in Georgia?" Atlanta Journal Constitution, September 17, 2025.
[2] Timeline does not include all pretrial motions and hearings considered and ruled upon by Judge McAfee. Judge McAffee quashed Counts 2, 5, 6, 23, 28, and 38 by order dated March 13, 2024, and quashed Counts 14, 15, and 27 by order dated September 12, 2024.
[3] https://www.atlantanewsfirst.com/2023/07/24/timeline-donald-trumpgeorgia-investigation/

- January 2023: The Special Purpose Grand Jury completes its eight-month long investigation and is discharged after submitting its report to the District Attorney. Judge McBurney makes certain portions of the report available to the public.[4]
- August 14, 2023: A Fulton County Grand Jury indicts President Donald J. Trump and 18 co-defendants on 41 criminal counts including RICO. The case is docketed as 23SC188947 and is randomly assigned to Fulton County Superior Court Judge Scott McAfee.
- September 8,2023: The full version of the Special Purpose Grand Jury Report is released to the public by Order of Superior Court Judge Robert McBurney.[5]
- February 15, 2024: Judge McAfee holds the first motions-hearing to disqualify District Attorney Willis and her office from the *State of Georgia v. Donald J. Trump et al.*, 23SC188947.
- March 15, 2024: Judge McAfee issues an order requiring that either District Attorney Willis and her entire office recuse themselves from the case or that Special Prosecutor Nathan Wade withdraw from the case. Wade resigns after the order is filed.
- June 3, 2024, the Court of Appeals dockets Case A24A1599, the Defendants' interlocutory review of Judge McAfee's order denying the motion to dismiss the indictment and granting, in part, the motions to disqualify District Attorney Willis and her office.
- July 1, 2024: The United States Supreme Court rules in *Trump v. United States*, 603 U.S. 593 (2024).
- December 19, 2024: The Georgia Court of Appeals reverses Judge McAfee's order and disqualifies District Attorney Willis and her office from the entire case based upon "a significant appearance of impropriety."
- January 8, 2025: District Attorney Willis files a petition with the Georgia Supreme Court seeking certiorari to review the Court of Appeals Ruling.
- September 16, 2025: The Supreme Court declines to hear District Attorney Willis's petition.
- October 1, 2025: The case is returned to the Superior Court of Fulton County for further proceedings. Pursuant to O.C.G.A. § 15-18-5, the Executive Director of the Prosecuting Attorneys' Council of Georgia must request, designate, or appoint a conflict prosecutor for the case.
- October 3, 2025: Judge McAfee orders PAC to appoint a prosecutor within 14 days or the case will be dismissed for "want of prosecution."

[4] IN RE 2 MAY 2022 SPECIAL PURPOSE GRAND JURY, 2022-EX-000024, filed February 13, 2023.
[5] https://www.justsecurity.org/wp-content/uploads/2023/09/Full-Publication-of-Special-Purpose-Grand-Jury-Final-Report-Sept.-8-2023-Case-No.-2022-EX-000024.pdf

- October 8, 2025: Judge McAfee grants PAC's motion for additional time to find a prosecutor and extends the deadline to November 14, 2025.
- October 29, 2025: The Atlanta Judicial Circuit District Attorney's Office relinquishes 101 banker boxes filled with documents related to the Trump investigation to PAC.
- November 6, 2025: Atlanta Judicial Circuit District Attorney's Office delivers an 8-terabyte hard drive containing the Trump investigation to PAC.
- November 14, 2025: An Administrative Appointment Order is filed with the Superior Court Clerk appointing myself, Peter J. Skandalakis, to the case.
- November 14, 2025: Superior Court Judge McAffee orders Status/Pretrial Conference for December 1, 2025.

III. My involvement with this case.

A. Philosophy and beliefs

As noted in my November 14, 2025, press release, the appointment reflects the fact that I was unable to secure another conflict prosecutor to take responsibility for this case. Consequently, I determined that the most appropriate course of action was to assign the case to myself, which would enable me to conduct a thorough review and make a fully informed decision on how best to proceed.

Given the substantial constitutional, federal, and state issues implicated in this case, the length of time that has elapsed since the investigation began, and the court's interest in moving the proceedings forward, I have taken care to familiarize myself with the matter as thoroughly as possible in order to render this decision.

Before proceeding further, it is important to know that an appointed conflict prosecutor is not tied to any of the decisions or actions that the recused or disqualified prosecutor made in the case. In other words, the conflict prosecutor is not tethered to the previous prosecutor and is free to substitute his practices, methods of operation, charging decisions and prosecutorial philosophy in the case at hand.

As a career prosecutor for the past 40 years, my approach has been influenced by the timeless words of U.S. Attorney General Robert H. Jackson, delivered at the Second Annual Conference of United States Attorneys on April 1, 1940. He eloquently stated:

> *The prosecutor has more control over life, liberty, and reputation than any other person in America. His discretion is tremendous. He can have citizens investigated and, if he is that kind of person, he can have this done*

> *to the tune of public statements and veiled or unveiled intimations. Or the prosecutor may choose a more subtle course and simply have a citizen's friends interviewed. The prosecutor can order arrests, present cases to the grand jury in secret session, and on the basis of his one-sided presentation of the facts, can cause the citizen to be indicted and held for trial. He may dismiss the case before trial, in which case the defense never has a chance to be heard. Or he may go on with a public trial. If he obtains a conviction, the prosecutor can still make recommendations as to sentence, as to whether the prisoner should get probation or a suspended sentence, and after he is put away, as to whether he is a fit subject for parole. While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst.*

In evaluating any case, including this one, I have strived to adhere to these enduring principles, ever mindful of the tremendous responsibility and discretion inherent in the office of a prosecutor.

B. Process

I begin the process of evaluating this case with a basic truth: It is not illegal to question or challenge election results. Our nation's foundational principles of free speech and electoral scrutiny are rooted in this very freedom. The State of Georgia is no stranger to such challenges. In 2018, Ms. Stacy Abrams questioned the legitimacy of Brian Kemp's victory in the gubernatorial race. Likewise, in 2020, many Republicans struggled to accept the reality that President Donald J. Trump did not win the popular vote in Georgia or in other key states and therefore lost the presidential race. To this day, a significant number of individuals continue to reject that outcome.

Elections, by their very nature, are often hard-fought campaigns between candidates of different parties, and occasionally produce contested results. As a society, we recognize this possibility and have enacted laws providing legal avenues to challenge election outcomes. Like most areas of the law requiring a particular expertise, there are skilled and competent attorneys well-versed in election law who can properly guide such challenges. Unfortunately, as this case demonstrates, there are also attorneys who overestimate their expertise and provide flawed or unlawful advice to the public—and, most concerning, to unsuspecting non-lawyers who rely on it.

In light of the foregoing, this review is undertaken with an understanding of the grave seriousness with which many citizens view the events discussed in this case. I share their concerns and acknowledge the impact that my decision will have.

C. Reviewing the Fulton County Indictment

Taken as a whole, the indictment alleges a compelling set of acts which, if proven beyond a reasonable doubt, as required by our Constitution, would establish a conspiracy undertaken by multiple individuals working toward a common objective: to overturn the results of the November 2020 Presidential Election in Georgia, and in other states across the country. Although some of the alleged overt acts occurred outside the state, venue may properly lie in Georgia if the State can prove beyond a reasonable doubt that one or more criminal acts occurred within Georgia, and specifically within Fulton County. For purposes of determining whether continued prosecution of this case is viable, I have elected to focus solely on the acts that can be proven within this state.

My analysis begins by organizing the indictment into sections that are connected by time, conduct, and interrelated objectives. For example, the overt acts alleged in Count 1, violation of Georgia's Racketeer Influenced and Corrupt Organizations Act, along with the other counts relating to the actions of Republican Electors and their alleged violations of criminal statutes in casting and submitting electoral votes for President Donald J. Trump, are evaluated together.

I have, therefore, divided the indictment into the following sections: the actions of the Republican Electors[6]; the breach of election equipment in Coffee County[7]; the unsworn statements to the Georgia General Assembly[8]; the efforts to influence a Fulton County election worker[9]; and the conduct of certain federal employees and others working in coordination with President Donald J. Trump and his close advisors.[10]

With this structure in place, I begin with an analysis of the Republican Electors, a matter with which I am familiar based on my prior review of the relevant facts and circumstances.

D. The Republican Electors

For the reasons in which I found Lieutenant Governor Burt Jones committed no crime in connection with the December 14, 2020, meeting of the Republican Electors at the Georgia State Capitol, it should come as no surprise that I reach the same conclusion here.

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[6] Count 1, Acts: 18, 23, 34-37, 44, 46-55, 57-86, 95, 102, 123, 124; Counts 8-13, 16-19.
[7] Count 1, Acts: 4, 33, 91, 134, 142-155, and 159; Counts 32-37.
[8] Count 1, Acts: 24, 25, 56, and 103-105; Counts 3, 4, 7, 24-26.
[9] Count 1, Acts: 87-89, 115-122, and 127; Counts 20-21, 30-31.
[10] Count 1, Acts involving public statements: 1, 3, 22, 26, 27, 32, 38, 75, 100, 101, 106, 114, 128, 133, 136, 137, 138, 139, and 140; Count 1, Acts involving private statements: 2, 6, 7, 10-16, 18, 29-31, 39-45, 68, 90, 93-98, 107, 109, 110, 112, 113, 123, 129-132, 141, 156, and 157; Count 1, Acts involving meetings: 5, 8, 9, 17, 19, 20, 21, and 28; Counts 22, 29, 39-41.

Specifically, the Republican Electors lacked criminal intent in taking the actions alleged as overt acts in the indictment. Criminal intent is an essential element of committing any crime. You cannot presume someone has it, but a jury or judge may find a person has it upon consideration of the words, conduct, demeanor, motive, and all other circumstances connected with the act for which a person is prosecuted. O.C.G.A. § 16-2-6.

Fortunately, the meeting was transcribed by a court reporter, providing a clear and reviewable record. **Of the sixteen Republican Electors, only three were indicted.** Nothing in the evidence suggests that David Shafer, Shawn Still, Cathleen Latham, or any of the remaining electors conspired to overturn the election. On the contrary, the record overwhelmingly demonstrates that the electors believed their actions were legally required to preserve Georgia's electoral votes in the event President Donald J. Trump prevailed in the then-pending lawsuit in Fulton County challenging the election. None of the electors were attorneys; they cast their votes based on the advice of attorney Ray Stallings Smith III, who they reasonably believed to be knowledgeable in election law.

During the December 14, 2020, meeting, Smith advised the electors as follows:

> **MR. SMITH:** Yes. We're— we're conducting this as—as Chairman Shafer said, we're conducting this because the contest of the election in Georgia is ongoing. And so we continue to contest the election of the electors in Georgia. And so we're going to conduct this in accordance with the Constitution of the United States, and we're going to conduct the electorate today similar to what happened in 1960 in Hawaii.
>
> **CHAIRMAN SHAFER:** And if we did not hold this meeting, then our election contest would effectively be abandoned; is—
>
> **MR. SMITH:** That's correct.

Transcript, Page 7, Lines 17–25; Page 8, Lines 1–6.

Evidence in the form of emails further demonstrates that the electors convened the meeting pursuant to the advice of counsel. In an email dated December 10, 2020, titled *"Election Delegation Reminder,"* attorney Alex Kaufman, general counsel for the Fulton County Republican Party and an associate general counsel for the Georgia Republican Party, advised David Shafer:

> David – Based upon the developments both in our state as well as the Supreme Court, I am reconfirming the importance and our collective advice that our slate of delegates meet on December 14th (per the Federal Deadline) and cast their ballots in favor of President Trump and specifically per the Georgia Election Code. It is essential that our delegates act and vote

> in the exact manner as if Governor Kemp has certified the Presidential Contest in favor of President Trump.
>
> I believe that this is still the most conservative course of action to preserve the best chance for Georgia to ultimately support the President's re-election. As we discussed in the 1960 Hawaii case, the convening of our electors and their casting of ballots in favor of President Trump in the specifically required form and manner is necessary in order to preserve our state and party's say in the presidential contest.
>
> I am available tomorrow if you wish to discuss further. Please let me know if you disagree with this advice or need any other assistance.

While I am confident in the conclusion I have reached regarding this particular set of facts, it is important to note that others have reached similar conclusions. Comparable findings regarding the conduct of alternate electors were reached by Special Counsel Jack Smith and by Judge Kristen D. Simmons of the 54-A District Court in Lansing, Michigan, each of whom examined the actions of electors within their respective jurisdictions.

Special Counsel Smith wrote in his final report:

> For the most part, the co-conspirators deceived Mr. Trump's elector nominees in the targeted states by falsely claiming that their electoral votes would be used **only if** ongoing litigation were resolved in Mr. Trump's favor. Indeed, the co-conspirators deliberately withheld from the elector nominees information showing otherwise. This deception was crucial to the conspiracy, as many who participated as fraudulent electors would not have done so had they known the true extent of the co-conspirators' plans.

Final Report of the Special Counsel Under 28 C.F.R. § 600.8, pp. 13–14 (Emphasis added).

Likewise, Judge Kristen D. Simmons concluded:

> Right, wrong, or indifferent, it was these individuals and many other individuals in the state of Michigan who sincerely believed for some reason that there were some serious irregularities with the election or with the voting, and that somehow their candidate didn't receive all the votes that were intended for them. This is not for the Court to decide whether that was true or false, but this was their belief, and their actions were prompted by this belief. And I believe that they were executing their constitutional right to seek redress. And that's based on the statements of all of the People's witnesses.

> And so, for those reasons, these cases will not be bound over to the Circuit Court. Each case will be dismissed.

People of the State of Michigan v. Berden et al., 2022-034323

To reiterate, it is not illegal to challenge election results. As a prosecutor, I am loath to use the criminal justice system to pursue law-abiding citizens who, in good conscience and upon the advice of counsel, were asked to perform certain tasks in connection with the litigation of an election challenge. Attempting to criminalize the actions of these sixteen Republican Electors, and the three in particular, is a path I oppose and will not pursue. Acting on the advice of an attorney they reasonably believed to be an expert in election law, Shafer, Still, and Latham understood themselves to be fulfilling a civic responsibility. They genuinely and sincerely believed that their actions were a lawful component of the election contest process. Thus, I find no criminal intent concerning the meeting of the Republican Electors and their plan to preserve an election challenge by casting their ballots for President Trump. Therefore, I will not pursue criminal prosecutions in matters related to the December 14, 2020, meeting of the Republican Electors.

Further, several of the alleged overt acts in the RICO Count concern public statements made by the Republican Electors. These statements regarding the 2020 election, whether addressed to small groups or the broader public, are framed as criminal acts in furtherance of the alleged conspiracy. I have grave concerns that prosecuting individuals for such speech would raise serious constitutional questions. In light of these concerns, and recognizing the limits of the State's prosecutorial authority, I also decline to pursue these charges.

E. Unsworn Statements to the General Assembly

Six of the overt acts alleged in the RICO Count and six separate counts allege criminal conduct on the part of Rudy Giuliani, Ray Stallings Smith III, and Robert David Cheeley for giving false statements to committees of the Georgia General Assembly. These statements were unsworn.[11] I searched for any precedent of a prosecutor using unsworn statements to the General Assembly as a predicate for the offense of false statements and found no cases where such conduct had been alleged as a crime before this case. It is obvious witnesses on opposite sides of these issues could give statements that differ in important material facts.

I find that Defendants Giuliani, Smith, and Cheeley's statements were wrong and baseless. But as the District Attorney *Pro Tempore* for the Atlanta Judicial Circuit, the

[11] Count 1, Acts: 24-26, 103-15. Separate Counts: 3, 4, 7, 24-26, all counts charged under O.C.G.A. § 16-10-20, False Statements and Writings.

circuit where the General Assembly sits, I decline to use prosecutorial authority on witnesses before committees. Criminalizing such unsworn testimony would have a chilling effect on witnesses appearing before the Legislature on important issues, and I would adhere to this position whatever the political views of the witnesses, or the party of the elected authority seeking to prosecute them.

F. Breach of Coffee County Election Equipment

The RICO Count places significant emphasis on the breach of the Coffee County election system computers. The primary architect of the scheme, Sidney Powell, and a principal accomplice, Scott Hall, negotiated plea agreements with the State reducing their charges to misdemeanors. Powell pled guilty to six misdemeanor counts of conspiracy to commit intentional interference with election duties, and Hall pled guilty to five misdemeanor conspiracy counts. Both received probation, provided statements to prosecutors, and agreed to testify in future proceedings.

The evidence in the case file shows that Powell, an attorney, advised others that accessing the Coffee County computers was legal because it was undertaken for the purpose of gathering evidence in a pending lawsuit. The indictment further alleges, and evidence in the case file convinces me, Powell "entered into a contract with the company Sullivan Strickler LLC" to access the Coffee County computers and paid the company $26,000 for the work.

Hall's proffer to the District Attorney's Office provides little evidentiary value and is of questionable credibility regarding key events. He downplays his involvement in numerous activities, cannot recall critical details, and frequently speculates in response to the special prosecutor's questions. He asserts that on January 6, 2021, he received an unsolicited call from Cathleen Latham inviting him to Coffee County regarding alleged ballot discrepancies. At the time, Hall was in Robert Cheeley's office observing a virtual court hearing related to an election contest. He then personally chartered a plane to travel to Coffee County the following day. Upon arrival at the elections office, he observed individuals around the election equipment but did not closely monitor their actions. Hall characterized his visit as motivated by "intellectual curiosity" and described himself as merely a "tourist" observing the process. While Hall minimized his participation in the Coffee County breach during his proffer, a review of the file shows his interactions with Robert Cheeley, who was one of President Donald J. Trump's attorneys in multiple election challenges.

In sum, Powell, an attorney regarded as an authority on election contest litigation and who advised non-attorneys on the legality of accessing election computers, and Hall, who coordinated the computer intrusion, arrived by chartered plane, and supervised the

forensic work, conveyed the appearance of acting under the color of law. The two principal actors, Powell and Hall, pled guilty to misdemeanor offenses and would likely serve as key witnesses at any future trial involving these events. Their pleas and proffers will present credibility concerns, particularly in Hall's case. I am convinced that further prosecution is unwarranted. Pursuing these counts against others, while the primary participants have resolved their cases favorably through negotiations with the District Attorney's Office, would constitute an inefficient use of state resources.

G. David Shafer

A separate count[12] of the indictment charges David Shafer with making two false statements during an interview with Special Prosecutor Nathan Wade, three assistant district attorneys, and an investigator from the District Attorney's Office. Mr. Shafer was represented by two attorneys throughout the interview, which was audio-recorded and later transcribed by a court reporter. The resulting transcript spans 81 pages but does not indicate the date or the start and end times of the interview. Count 40, however, alleges that the interview occurred "on or about the 25th day of April 2022," roughly one year and four months after the Republican Electors' meeting on December 14, 2020.

A review of the transcript reveals the following. Special Prosecutor Wade began the interview by introducing himself and the District Attorney's Office personnel present. He acknowledged that Mr. Shafer, through counsel, had "voluntarily… elected" to make himself available for the interview.[13] Over the next 80 pages, Mr. Shafer responded to all questions openly and without hesitation. At no point did he refuse to answer a question, nor did his attorneys intervene. In preparation for his interview with the Atlanta Judicial Circuit prosecutors and investigators, he consulted only with his attorneys and did not review any notes.[14]

The count alleges that Mr. Shafer "knowingly, willfully, and unlawfully made at least one of the following false statements and representations in the presence of 'Fulton County District Attorney's Office' investigators"[15]:

1) That he "attended and convened" the December 14, 2020, meeting of Trump presidential elector nominees in Fulton County, Georgia, but did not "call each of

[12] Count 40.
[13] David Shafer Interview Transcript ("DSIT"), p. 2, lines 12–14.
[14] DSIT, p. 5, lines 1–9.
[15] There is no legal entity called "The Fulton County District Attorney's Office" despite many people referring to it by that name. The legal name is Atlanta Judicial Circuit District Attorney's Office. Georgia Constitution, Article VI. Section VIII. Paragraph I.

the individual members or make and notify them of the meeting or make any of the other preparations necessary for the meeting."

2) That a court reporter was not present at the December 14, 2020, meeting of Trump presidential elector nominees in Fulton County, Georgia.

With respect to the first alleged false statement, a thorough review of the transcript reveals no false or misleading statements by Mr. Shafer. The transcript reflects broad, open-ended questions and answers, showing Mr. Shafer's best recollection of events over a year old. For example:

> **Wade**: Did you organize the meeting of… of alternate electors in December of 2020?
>
> **Shafer**: It depends on what you mean by the word "organized," but I attended and convened the meeting of Republican nominees for presidential electors in December of 2020.
>
> **Wade**: In your mind, what does the word "organize" mean?
>
> **Shafer**: Um, well, I attended and convened the meeting. I don't know if in your mind that means that I organized it or not. But I didn't call each of the individual members and notify them of the meeting or make any of the other preparations necessary for the meeting, but I did attend it; I did convene it.

DSIT, p. 6, lines 4–18

Mr. Shafer further explained that the meeting was organized by the attorneys representing President Trump in the election contest.[16] When pressed by an assistant district attorney regarding "how many of the electors had you spoken with beforehand," Mr. Shafer responded:

> **Shafer:** I don't recall. Um, there were some of the presidential electors who I was speaking to on a daily basis because they were also officers in the Georgia Republican Party. And we were in the middle of the… two runoff elections for United States Senate and the runoff for the Public Service Commission. … I'm sure that I spoke to them about why I was attending the meeting. But I don't think I spoke to all of them. I'm almost certain that I didn't speak to all of them, but I probably spoke to some of them. I don't remember any specific conversations.

[16] DSIT, p. 6, line 21.

DSIT, p. 11, lines 11–25

These answers are neither false nor misleading. Mr. Shafer acknowledged that he "attended and convened" the meeting but did not believe he had spoken with all electors beforehand. Both statements are consistent with the transcript and immaterial to the underlying investigation. Sixteen Republican Electors appeared, met publicly at the State Capitol, and cast their ballots for President Donald J. Trump in the presence of the press. Before voting, they were advised by legal counsel that the procedure was lawful and necessary to preserve their electoral votes pending resolution of the ongoing election contest. Whether Mr. Shafer contacted all, some, or none of the electors has no bearing on the investigation. Perjury requires the false statement to be material to the issue or point in question.[17]

The second alleged false statement—concerning whether a court reporter was present at the December 14, 2020, meeting—likewise does not withstand scrutiny. To deem the statement false or misleading, one would have to assume that investigators in the District Attorney's Office were unaware of the court reporter's transcript or that Mr. Shafer intended to conceal it. Such an assumption is untenable. The investigators and assigned prosecutors are highly experienced, and by the time of Mr. Shafer's interview, the transcript was well known and available to the District Attorney's Office. Moreover, it would defy logic for Mr. Shafer to conceal a transcript that affirmatively supports his position. The transcript reflects attorney Ray Smith—representing President Trump and advocating the elector-preservation legal theory—advising the electors that casting their ballots was lawful and necessary should the election contest prevail.

Based on this review, there is insufficient evidence to sustain this charge, and it will be dismissed.

H. Allegations against federal officials

i. Jeffrey Bossert Clark

The RICO Count, and many of the predicate acts, continues to unravel when one scrutinizes the allegations against federal officials Jeffrey Bossert Clark and Mark Meadows. The charges brought against Clark are especially concerning. They plainly fall short of the far more rigorous standard of proof beyond a reasonable doubt required to sustain a criminal conviction.

[17] See O.C.G.A. § 16-10-70.

The facts supporting Counts 1 and 22 of the Indictment may be the easiest to deconstruct because they are straightforward and plainly fail to establish the commission of any crime. Count 22 charges Jeffrey Clark with Criminal Attempt to Commit False Statements and Writings, in violation of O.C.G.A. §§ 16-4-1 and 16-10-20, alleging that he—individually and as a party to the crime, and together with unindicted co-conspirators—knowingly and willfully attempted to make a false writing by asserting that the Department of Justice had "identified significant concerns that may have impacted the outcome of the election in multiple States, including the State of Georgia." The indictment further alleges that Clark sought authorization from Acting Attorney General Jeffrey Rosen and Acting Deputy Attorney General Richard Donoghue to send this draft letter to Georgia officials and that these requests constituted substantial steps toward committing the crime of False Statements and Writings.

It is well documented that United States Attorney General William Barr repeatedly stated that the Department of Justice "has not seen fraud on a scale that could have effected a different outcome in the election."[18] Upon Barr's resignation, Acting Attorney General Jeffrey Rosen maintained the DOJ's position, despite pressure from President Trump and certain private attorneys who sought to have DOJ intervene in state-level election challenges.

On December 28, 2020, Assistant Attorney General Jeffrey Clark emailed Rosen and Deputy Attorney General Richard Donoghue requesting a meeting regarding a draft letter he proposed to send to the Governor and legislative leaders in states where Trump attorneys were contesting the election results. The draft letter stated, in part, that the Department of Justice was "investigating various irregularities in the 2020 election" and had "identified significant concerns that may have impacted the outcome of the election." The version he proposed sending to Georgia would have further asserted that the DOJ believed the Governor of Georgia should call a special session of the legislature. The document was explicitly marked **Pre-Decisional & Deliberative / Attorney-Client or Legal Work Product.**

Donoghue responded immediately, stating there was "no chance" he would sign the letter "or anything remotely like this." Either that evening or on January 2, 2021, Rosen and Donoghue met with Clark and informed him that they would not authorize the letter.[19] Ultimately, the proposed letter was never approved, never signed by any DOJ official, and never sent to any Georgia official.

These facts create a significant legal barrier to prosecuting Count 22. It is difficult to see how a jury could find, beyond a reasonable doubt, that Clark committed a criminal attempt when he (1) labeled the document as a draft, (2) submitted it for supervisory

[18] BBC, *US Attorney Finds 'No Voter Fraud That Could Overturn Election',* Dec. 1, 2020.
[19] Rosen testimony, Senate Judiciary Committee, Aug. 7, 2021, pp. 101–103.

approval, (3) accepted his superiors' decision not to issue it, and (4) never delivered the letter to anyone in any state.

Prosecution of this count is further complicated by attorney-client and work-product privileges, which shield pre-decisional legal analysis and internal communications among DOJ attorneys. Lawyers are subject to the Rules of Professional Conduct for the State in which they are practicing. In Georgia, Rule 2.1 commands a client to "exercise independent professional judgment and render candid advice. A lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client." Rule 1.4 requires a lawyer "to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Part of being a zealous advocate is to present all sides of a client's case, so they are fully informed. Giving advice that is rejected is not a criminal act - it is simply an attorney fully explaining a matter to a client. Routine internal debate between attorneys should not be transformed into criminal conduct and doing so sets a dangerous precedent.

Additional doctrines including Federal Supremacy, Federal and Qualified Immunity, and the Due Process requirement of fair notice present further formidable obstacles for these counts to go forward. These issues, as detailed in filings by Clark's counsel in *State v. Trump, et al.*, would likely generate extensive litigation and undermine any viable prosecution.

But one need not rely on the full weight of these defenses to conclude that these matters are not prosecutable. The indictment itself acknowledges that Clark merely "requested authorization" from his superiors to send a letter recommending that Georgia officials convene a special legislative session to investigate election irregularities. Attempting to persuade leadership to reconsider agency policy—even unsuccessfully—is not a crime. The policy was never changed. The letter was never authorized. And it was never sent.

The RICO Count further alleges that Scott Hall's phone call to Jeffrey Clark constituted an overt act in furtherance of the conspiracy. Yet Hall's proffer contains no evidence establishing that Clark acted with criminal intent or that he conspired to overturn Georgia's election results. As previously noted, Hall's proffer offers little, if any, evidentiary value to anyone prosecuting this case, let alone to an experienced prosecutor.

In the statement Hall provided following his guilty plea, and in connection with his agreement to testify, Hall was questioned about the 63-minute phone call to Assistant United States Attorney General Clark and about any relationship between them. Hall stated that he had no relationship with Clark and that someone had told him to call Clark, though he could not recall who. Hall was unable to provide any meaningful details about the substance of the conversation. He could not recall any specific information from the call other than his assumption that it must have related to the election issues in Georgia.

He speculated that some portion of the conversation might have involved him asking Clark questions, but he provided nothing further.

For the aforementioned reasons, the RICO charge and associated count[20] fail against Clark.

ii. Mark Meadows

The RICO Count alleges several overt acts associated with the conspiracy by Mark Meadows, former Chief of Staff to President Donald J. Trump during the period alleged in the indictment. The acts include:

1) Observing a nonpublic Georgia election signature-verification audit at the Cobb County Civic Center[21];

2) Arranging a phone call between Trump and a Georgia Secretary of State investigator concerning the election results;

3) Messaging the investigator about "speeding up" the Fulton County signature-verification audit and suggesting that the Trump campaign could provide financial assistance; and

4) Soliciting Georgia Secretary of State Brad Raffensperger to violate his oath of office by altering the certified election results.

A separate count alleges that on January 2, 2021, Meadows "unlawfully solicited, requested, and importuned Georgia Secretary of State Brad Raffensperger, a public officer, to engage in conduct constituting the felony offense of Violation of Oath by Public Officer."[22] The allegations concern Meadows unlawfully altering, adjusting, or otherwise influencing the certified returns for presidential electors for the November 3, 2020, presidential election in Georgia, in willful and intentional violation of Raffensperger's oath, with intent that he engage in such conduct, contrary to the laws of the State and the good order, peace, and dignity thereof.

The White House Chief of Staff's job duties are varied and fluid. We could have a debate if arranging phone calls, observing the signature-verification audit, or messaging an

[20] Count 22.
[21] Even though the event was "nonpublic", members of the media covered the event and Secretary Raffensperger issued a press release https://sos.ga.gov/news/secretary-raffensperger-launches-cobb-county-and-statewide-signature-match-audits.
[22] O.C.G.A. § 16-10-1. This was Count 28 of the indictment which was dismissed by Judge McAfee on March 13, 2024.

investigator to expedite the vote audit process falls within Mark Meadows's duties. One could reasonably conclude that he was not acting in his official capacity in all of these matters. For instance, when Meadows offers to assist with the Fulton County "voter audit" by having the Trump campaign fund it, he clearly is not performing duties associated with the office of Chief of Staff. At the same time, it is plausible that Meadows believed it was his role to assist the President of the United States in obtaining clear information about what was happening in Georgia regarding the voter recount. The blurred lines between campaign duties and official duties do not provide an easy, obvious answer. His actions, both in Georgia and in other states, remain subject to interpretation.

Regarding the phone call to Georgia Secretary of State Brad Raffensperger, at no point did Meadows or President Donald J. Trump explicitly solicit the Secretary of State to violate his oath of office. The nearly one-hour call begins with Meadows introducing all participants, which included several lawyers advising the various elected officials,[23] and then ceding the conversation to President Donald J. Trump. Most of the call consists of President Trump repeatedly raising unsubstantiated and disproven allegations of voter fraud, while Raffensperger and his staff refute each claim when given the opportunity to respond.

While the call is concerning, reasonable minds could differ as to how to interpret the call. One interpretation is that President Donald J. Trump, without explicitly stating it, is instructing the Secretary of State to fictitiously or fraudulently produce enough votes to secure a victory in Georgia. An alternative interpretation is that President Donald J. Trump, genuinely believing fraud had occurred, is asking the Secretary of State to investigate and determine whether sufficient irregularities exist to change the election outcome.

When multiple interpretations are equally plausible, the accused is entitled to the benefit of the doubt and should not be presumed to have acted criminally. In Georgia, a person will not be presumed to act with criminal intention, but a jury or judge may find they had such criminal intent upon consideration of the words, conduct, demeanor, motive, and all other circumstances connected with the act for which the accused is prosecuted.[24] This is why it was critical that I evaluate all of the acts, statements, aims, and goals of the accused in this case.

It is also important to consider the broader context of the 2020 election. Despite overwhelming evidence to the contrary, millions of citizens and hundreds of politicians

[23] "Mr. President, everyone is on the line. And just so this is Mark Meadows, the chief of staff. Just so we all are aware. On the line is secretary of state, and two other individuals. Jordan and Mr. Germany with him. You also have the attorneys that represent the president, Kurt [Hilbert] and Alex [Kaufman] and Cleta Mitchell … myself and then the president." January 2, 2021 phone call from President Donald J. Trump to Georgia Secretary of State Brad Raffensperger.
[24] See O.C.G.A. § 16-2-6.

continued to make unsubstantiated claims of election fraud. In response, the Secretary of State undertook extensive audits to verify the vote count and demonstrate that no substantial voter fraud had occurred. Yet, despite these efforts and the evidence confirming a fair election, many individuals continue to believe—and may never be convinced otherwise—that the 2020 presidential election was stolen.

While I am convinced that there is currently insufficient evidence to bring Meadows to trial—based on the summary of facts currently in the State's possession, and even without Meadows mounting a defense—I am deeply troubled that neither the State, Meadows, nor his defense attorneys have been able to access Meadows's diary and notes from the National Archives, which may be critical to his defense and potentially exculpatory.

Judge Scott McAfee granted a Certificate of Need on March 13, 2024, seeking access to these materials from the National Archives but a federal court denied the request, citing lack of subject-matter jurisdiction.[25] It is, therefore, contrary to the interests of justice to pursue a prosecution in which the defendant may have a legitimate defense but is unable to obtain key documents solely because the case is being tried in a state rather than a federal court.

Furthermore, Special Counsel Jack Smith interviewed Meadows on three separate occasions as part of the investigation into the January 6, 2021, attack on the U.S. Capitol. Meadows additionally testified before a federal grand jury under a grant of immunity concerning the same subject matter. Smith's report does not identify Meadows as a target, and it is therefore reasonable to infer that he was treated as a witness rather than a subject of prosecution.

For these reasons, pursuing charges against Clark and Meadows is not justified.

I. The victimization Ms. Ruby Freeman

A genuinely sympathetic figure in this matter is Ms. Ruby Freeman. Falsely accused by Rudy Giuliani and others of voter fraud, Ms. Freeman endured harassment and threats from individuals who embraced the narrative that the 2020 election had been stolen from President Trump. Evidence in the case file shows that the allegations in the indictment occurred solely in Cobb County, where Ms. Freeman resided at the time.

If the RICO Count was viable in Fulton County, this would not be a problem because venue in a RICO case lies in any county in which an incident of racketeering occurred.[26] However, because the three people accused of the activity involving Ms. Freeman were so

[25] *Meadows v. Shogan*, 1:24-cv-01856-TJK, United States District Court, District of Columbia.
[26] See O.C.G.A. § 16-14-11.

far removed and unrelated to the goal of the "Organization," to unlawfully change the results of and to stop the Vice President's certification of the 2020 election results, I find that these charges are too tenuous to be part of the RICO Count. As these charges should not be part of the RICO Count, they cannot be used to link the alleged criminal acts in Cobb County to those in Fulton County. Accordingly, the alleged crimes against Ms. Freeman must be prosecuted in Cobb County.[27]

IV. The Case Against President Donald J. Trump and his Campaign Advisors

This entire case, from the initiation of the District Attorney's investigation in 2021 to the present, is without precedent. A former President of the United States was indicted, along with 18 others, in a RICO indictment unequalled in Georgia history for its sweeping, nationwide scope, alleging 161 overt acts, 41 criminal counts, and 30 unindicted co-conspirators. The District Attorney who initiated the investigation was ordered to remove herself or her special assistant from the case. Meanwhile, on July 1, 2024, the U.S. Supreme Court issued its ruling in *Trump v. United States*. While that disqualification was being appealed, Donald J. Trump was re-elected as President. One month later, the Court of Appeals disqualified the District Attorney and her entire office. Before the Georgia Supreme Court could hear the District Attorney's appeal, the former president was sworn in as the 47th President of the United States. Eight months later, the Georgia Supreme Court declined to hear the appeal, and the disqualification stood.

Never before, and hopefully never again, will our country face circumstances such as these. The case is now nearly five years removed from President Trump's phone call with the Secretary of State, and two years have passed since the Grand Jury returned charges against President Trump and the eighteen other defendants. There is no realistic prospect that a sitting President will be compelled to appear in Georgia to stand trial on the allegations in this indictment. Donald J. Trump's current term as President of the United States of America does not expire until January 20, 2029; by that point, eight years will have elapsed since the phone call at issue.

And even if, by some extraordinary circumstance, President Donald J. Trump were to appear in Georgia on January 21, 2029—the day after his term concludes—an immediate jury trial would be impossible. Litigating the immunity issues identified in *Trump v. United States* would require months, if not years, assuming the State could even prevail at the state level on these vigorously contested questions of presidential immunity. In dismissing his federal case, Special Prosecutor Jack Smith acknowledged that unresolved

[27] See O.C.G.A. § 17-2-2.

legal questions remain concerning the scope of presidential immunity, as reflected in his *Report of Special Counsel Smith, Volume I*.

Given the complexity of the legal issues at hand—ranging from constitutional questions and the Supremacy Clause to immunity, jurisdiction, venue, speedy-trial concerns, and access to federal records—and even assuming each of these issues were resolved in the State's favor, bringing this case before a jury in 2029, 2030, or even 2031 would be nothing short of a remarkable feat. The timeline of events outlined at the beginning of this report demonstrates just how difficult it is to move appellate issues through the courts with any degree of speed.

As previously stated, elections, particularly presidential elections, are intensely contested events. All too frequently, some campaign staffers, attorneys, and supporters genuinely believe that the nation's future is at stake if the opposing candidate prevails. Political rhetoric to mobilize voters serves a purpose, but the efforts by President Trump and his legal advisors to obstruct the counting of electoral votes on January 6th lie at the core of this case. This is also why Special Counsel Jack Smith's federal investigation and prosecution would have been the most appropriate avenue to determine whether the actions of those involved were crimes that could be proven beyond a reasonable doubt.

I have considered and dismissed the idea of severing defendants and trying them separately on any remaining counts in the indictment. President Donald J. Trump is the lead defendant in this case. His name appears first on the indictment, he is named in multiple RICO Acts and separate counts, and as the presidential candidate and then sitting president, he bears the responsibility for any conspiracy, if it were proved at trial.

Severing President Trump from the remaining defendants and conducting separate trials, while simultaneously waiting for the conclusion of his term and addressing all of the aforementioned legal issues, would be both illogical and unduly burdensome and costly for the State and for Fulton County.

Some may argue that cases against the campaign attorneys and advisors should proceed even if President Trump is removed from the indictment. However, I am extremely reluctant to criminalize the act of attorneys providing flawed legal advice to the President of the United States under these circumstances. Certainly, these lawyers should be accountable to their respective state bars for any violations of professional conduct—and some have faced such accountability—but prosecuting these attorneys and advisors without President Trump would be both futile and unproductive.

The Prosecuting Attorneys' Council of Georgia lacks the resources to conduct multiple trials in this matter. To uphold the constitutional speedy trial rights of the remaining defendants, PAC would be forced to commence trials immediately, diverting critical attention from our ongoing missions and imposing a financial burden the agency cannot

sustain. Continuing this litigation under these circumstances would neither serve the citizens of Georgia nor fulfill our statutory obligations. Our agency is simply not equipped to carry out this case while meeting the essential duties required under the current budget—or under any realistically conceivable budget the State could provide.

In my professional judgment, the citizens of Georgia are not served by pursuing this case in full for another five to ten years. For all the reasons enumerated above, the Motion to Nolle Prosequi as to all remaining defendants and counts in Indictment Number 23SC118947 has been filed.

V. Conclusions

As I have previously stated, contesting an election is not unlawful. Both Congress and state legislatures have long recognized this principle and have enacted detailed procedures to permit such challenges. However, the strategy conceived in Washington, D.C. to contest the 2020 Presidential Election quickly shifted from a legitimate legal effort into a campaign that ultimately culminated in an attack on the Capitol, undertaken to prevent the Vice President from carrying out his ministerial duty of counting the electoral votes.

But for this plan to use the fraudulent elector certificates to disrupt the congressional certification on January 6, 2021, law-abiding citizens in Georgia, misled by campaign attorneys, some of whom were themselves misled, would not have served as Republican Electors or cast electoral votes for the Republican candidate. But for the plan to disrupt and halt the counting of electoral votes, Sidney Powell would not have signed contracts and funded a forensic team to access the Coffee County election machines, nor would Scott Hall have immersed himself in election disputes and chartered an airplane to observe the effort. But for the plan to stop the electoral count, President Trump's phone call to the Secretary of State would have been merely the conversation of a losing candidate struggling to accept defeat — a call in which multiple attorneys participated, representing both the President of the United States and the Secretary of State of Georgia. And but for the plan driven by select individuals meeting in Washington, D.C., we would not have Fulton County grand juries selectively determining who should be charged with providing false statements to legislative committees convening on state capitol grounds. Nor would we have had individuals encouraged by the false cries of voter fraud to harass and threaten an innocent poll worker.

I have addressed the foregoing in my findings and explained the reasons why the offenses related to these specific instances will not be pursued.

The Fulton County Indictment includes a significant number of overt acts, ranging from public and private statements to meetings and other miscellaneous acts, many of which occurred outside the state of Georgia, further reinforcing my view that this case is best pursued at the federal level rather than by an individual state. In this final report, I have addressed a substantial number of the overt acts alleged in Count 1 of the indictment, as well as most of the other counts. However, it is neither necessary nor productive to examine the indictment overt act by overt act or count by count to conclude that the overarching theory of this case is not a viable basis for prosecution.

Overt acts such as arranging a phone call, issuing a public statement, tweeting to the public to watch the Georgia Senate subcommittee hearings, texting someone to attend those hearings, or answering a 63-minute phone call without providing the context of that conversation, just to name a few examples, are not acts I would consider sufficient to sustain a RICO case.

The strongest and most prosecutable case against those seeking to overturn the 2020 Presidential election results and prevent the certification of those votes was the one investigated and indicted by Special Counsel Jack Smith. Although Special Counsel Jack Smith's federal case encompassed evidence from multiple states, he ultimately concluded the federal case could not be prosecuted because of the U. S. Supreme Court's decision in *Trump v. United States* and the re-election of President Donald J. Trump.

Special Counsel Jack Smith wrote in his report, "Conversely, a select few of Mr. Trump's agents and elector nominees had insight into the ultimate plan to use the fraudulent elector certificates to disrupt the congressional certification on January 6 and willingly assisted.... In each of the targeted states, Mr. Trump and his co-conspirators successfully organized enough elector nominees and substitutes to gather on December 14, cast fraudulent electoral votes on his behalf, and send them to Washington, D.C., for the congressional certification."[28]

The criminal conduct alleged in the Atlanta Judicial Circuit's prosecution was conceived in Washington, D.C., not the State of Georgia. The federal government is the appropriate venue for this prosecution, not the State of Georgia. Indeed, if Special Counsel Jack Smith, with all the resources of the federal government at his disposal, after reviewing the evidence in this case and considering the U.S. Supreme Court's decision in *Trump v. United States*, along with the years of litigation such a case would inevitably entail, concluded that prosecution would be fruitless, then I too find that, despite the available evidence, pursuing the prosecution of all those involved in *State of Georgia v. Donald Trump, et al.* on essentially federal grounds would be equally unproductive.

[28] Special Counsel Jack Smith's report page 14-15.

Finally, I recognize that, given the deep political divisions in our country, this decision will not be universally popular. When it became public that I would retain this case to determine the appropriate course of action, reactions were sharply divided. Some citizens praised the decision and supported continued prosecution of President Donald J. Trump, while others condemned it, and a few even issued threats against me and my family.

Today, I fully expect those reactions to shift. Those who initially supported the decision may now criticize it, exercising their constitutional rights, and in some cases perhaps resorting again to threats, while those who previously opposed the decision may now express approval.

Such is the state of public discourse in our country. Citizens have every right to question and criticize their public officials. However, threats and violence have no place in that process. The role of a prosecutor is not to satisfy public opinion or achieve universal approval; such a goal is both unattainable and irrelevant to the proper exercise of prosecutorial discretion. My assessment of this case has been guided solely by the evidence, the law, and the principles of justice.