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ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
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WASHINGTON, DC 20515–6216
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August 24, 2023

The Honorable Fani T. Willis
District Attorney
Fulton County District Attorney's Office
141 Pryor Street SW
Atlanta, GA 30303

Dear Ms. Willis:

On August 14, 2023, you brought a 41-count indictment against 19 defendants—including a former President of the United States and current declared candidate for that office, his attorneys, a former White House Chief of Staff, and a former U.S. Department of Justice (DOJ) official—related to the 2020 election for President of the United States. Among other things, you have alleged that these 19 individuals, 30 unindicted co-conspirators, and others were part of a "criminal enterprise."[1] And you have identified a number of acts that you claim were committed in furtherance of this purported criminal enterprise, including: (1) the then-White House Chief of Staff asking a Member of Congress for the phone number of the Speaker of the Pennsylvania House of Representatives; (2) the then-President tweeting that hearings in the Georgia legislature were being aired on a news channel and commenting on those hearings; and (3) numerous acts taking place in other states not involving the conduct of the 2020 election in Georgia or the counting of the votes cast in Georgia. Your indictment and prosecution implicate substantial federal interests, and the circumstances surrounding your actions raise serious concerns about whether they are politically motivated.

Turning first to the question of motivation, it is noteworthy that just four days before this indictment, you launched a new campaign fundraising website that highlighted your investigation into President Trump.[2] Additionally, the forewoman of the special grand jury you convened to investigate President Trump earlier this year bragged during an unusual media tour about her excitement at the prospect of subpoenaing President Trump and getting to swear him in. Last week, the Fulton County Superior Court's Clerk publicly released a list of criminal

[1] Indictment, *Georgia v. Donald John Trump et al.*, No. 23SC188947 (Aug. 14, 2023, Fulton Co. Sup. Ct.).
[2] Tim Darnell, *'We have an announcement' – Fulton DA Willis launches fundraising website*, ATLANTA NEWS FIRST (Aug. 10, 2023); *Meet Fani Willis*, FANIFORDA.COM (last visited Aug. 18, 2023) (highlighting an article from the New York Times with the headline "In Atlanta, a Local Prosecutor Takes on Murder, Street Gangs and a President").

charges against President Trump reportedly hours before the vote of the grand jury.[3] A Fulton County court has disqualified you from targeting current Georgia Lieutenant Governor Burt Jones as part of your probe on the grounds that you actively supported and held fundraising events for his Democratic opponent. And unlike officials in other jurisdictions, Fulton County officials "have suggested [they] will process [the former President] as [a] typical criminal defendant[], requiring mug shots and possibly even cash bond."[4]

The timing of this prosecution reinforces concerns about your motivation. In February 2021, news outlets reported that you directed your office to open an investigation into President Trump.[5] Indeed, sometime on or around February 11, 2021, your office purportedly sent a letter to several Republican officials in Georgia, requesting that they preserve documents relating to a "matter . . . of high priority" that your office was investigating.[6] Yet, you did not bring charges until two-and-a-half years later, at a time when the campaign for the Republican presidential nomination is in full swing. Moreover, you have requested that the trial in this matter begin on March 4, 2024, the day before Super Tuesday and eight days before the Georgia presidential primary.[7] It is therefore unsurprising many have speculated that this indictment and prosecution are designed to interfere with the 2024 presidential election.

Moreover, this indictment and prosecution implicate several significant federal interests. First, the indictment appears to be an attempt to use state criminal law to regulate the conduct of federal officers acting in their official capacities. In Count 22, for example, the indictment seeks to criminalize under Georgia law internal deliberations within DOJ, including a meeting where a former DOJ official requested formal authorization from his superiors to take an official act. And in Count 1, the indictment seeks to criminalize under Georgia law the White House Chief of Staff arranging meetings and phone calls for the President. There are also aspects of the indictment that give rise to questions about whether your office is seeking to criminalize under Georgia law certain speech of federal officers, including the President, that is protected by the First Amendment. Especially given the potential for states to target certain federal officials,[8] such indictments implicate core federal interests.

When states rely on acts like these—apparently taken in connection with official duties—to criminally prosecute federal officers, it raises serious concerns under the Supremacy Clause of the Constitution and poses a threat to the operations of the federal government. The threat of future state prosecution for official acts may dissuade federal officers from effectively performing their official duties and responsibilities. Congress has long been sensitive to the threat that such state prosecutions can pose to the operations of the federal government. For example, to protect "the very basic interest in the enforcement of federal law through federal

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[3] Kate Brumback, *Georgia court website publishes, then removes, list of criminal charges against Trump*, ASSOC. PRESS (Aug. 14, 2023).
[4] *Id.*
[5] Graham Kates, *Timeline: The Trump investigation in Fulton County, Georgia*, CBS NEWS (Aug. 15, 2023).
[6] *Id.*
[7] Olivia Rubin, *Willis proposes March 4 start date for Trump's Georgia election interference trial*, CBS NEWS (Aug. 16, 2023).
[8] *See, e.g.*, *Watson v. Philip Morris Companies, Inc.*, 551 U.S. 142, 150 (2007) ("State-court proceedings may reflect 'local prejudice' against unpopular federal laws or federal officials.").

officials," federal law permits any federal officer to remove to federal court a state prosecution that "relat[es] to any act under color of such office."[9]

Second, the indictment charges a former President of the United States, and the federal government has a substantial interest in the welfare of former Presidents. Under federal law, former Presidents are entitled to funding for an office staff, "suitable office space, appropriately furnished and equipped," a substantial lifetime federal pension, travel funds, and franked mail privileges.[10] They also have Secret Service protection.[11] Thus, Congress may probe whether former Presidents are being subjected to politically motivated state investigations and prosecutions due to the policies they advanced as President, and, if so, what legislative remedies may be appropriate.[12] To the extent that Presidents fear that they may be subject to politically motivated prosecutions after they leave office, this could impact the policies they choose to pursue while in office. And because this former President is a current candidate for that office, the indictment implicates another core federal interest: a presidential election.[13]

Third, because Congress appropriates federal funds that are distributed to local law enforcement agencies, it has an interest in overseeing how the Fulton County District Attorney's Office has used such funds, including whether it has expended any federal dollars on this investigation. As a federal court recently explained, "[t]here can be no doubt that Congress may permissibly investigate the use of federal funds, particularly where the result of the investigation might prompt Congress to pass legislation changing how such funds are appropriated or may be spent."[14]

Fourth, there are questions about whether and how your office coordinated with DOJ Special Counsel Jack Smith during the course of this investigation,[15] and Congress has an interest in any such activity that involves federal law enforcement agencies and officials that fall under its oversight. News outlets have reported that your office and Mr. Smith "interviewed many of the same witnesses and reviewed much of the same evidence" in reaching your decision

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[9] *See Willingham v. Morgan*, 395 U.S. 402, 406 (1969); 28 U.S.C. § 1442(a)(1); *Watson*, 551 U.S. at 150 ("[T]he removal statute's 'basic' purpose is to protect the Federal Government from the interference with its 'operations' that would ensue were a State able, for example, to 'arres[t]' and bring 'to trial in a State cour[t] for an alleged offense against the law of the State,' 'officers and agents' of the Federal Government 'acting ... within the scope of their authority.'" (alterations in original) (citation omitted)).

[10] *See* 3 U.S.C. § 102 note (a), (c), (g); 39 U.S.C. § 3214.

[11] 18 U.S.C. § 3056(a)(3).

[12] *See, e.g.*, H.R. 2553, 118th Cong. (2023) (allowing the President, Vice President, former President, and former Vice President to remove state cases to federal court).

[13] *Cf. Bragg v. Jordan*, No. 1:23-CV-3032 (MKV), 2023 WL 2999971, at *7 (S.D.N.Y. Apr. 19, 2023) ("Congress also has authority to investigate legislative reforms to prevent local prosecutions that could potentially interfere with federal elections."), *appeal dismissed sub nom. Bragg v. Pomerantz*, No. 23-615, 2023 WL 4612976 (2d Cir. Apr. 24, 2023).

[14] *Id.* at *6.

[15] Josh Gerstein, *Prosecutor in Trump documents case has history pursuing prominent politicians*, POLITICO (June 13, 2023); Jerry Dunleavy, *Trump special counsel Jack Smith was involved in Lois Lerner IRS scandal*, WASHINGTON EXAMINER (Nov. 25, 2022).

to indict President Trump.[16] The House Committee on the Judiciary (Committee) thus may investigate whether federal law enforcement agencies or officials were involved in your investigation or indictment. It may also investigate whether DOJ raised any concerns about how your investigation impacted federal interests, and if so, whether and how those concerns were resolved.

Given the weighty federal interests at stake, the Committee is conducting oversight of this matter to determine whether any legislative reforms are appropriate or necessary. Such reforms could include changes to the federal officer removal statute, immunities for federal officials, the permissible use of federal funds, the authorities of special counsels, and the delineation of prosecutorial authority between federal and local officials.

Federal courts have held that "[c]ongressional committees have constitutional authority to conduct investigations and issue subpoenas because each House has the power to secure needed information in order to legislate."[17] "This 'power of inquiry—with process to enforce it—is an *essential* and *appropriate* auxiliary to the legislative function,'" and the "'power of the Congress to conduct investigation is inherent in the legislative process.'"[18] In fact, the Supreme Court has "described the congressional power of inquiry as broad and indispensable," and held "Congress may conduct inquiries into the administration of existing laws, studies of proposed laws, and [particularly relevant here,] surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them."[19] Accordingly, to advance our oversight, please produce the following documents and information for the period of January 1, 2021, to the present:

1. All documents and communications referring or relating to the Fulton County District Attorney's Office's receipt and use of federal funds;

2. All documents and communications between or among the Fulton County District Attorney's Office and DOJ and its components, including but not limited to the Office of Special Counsel Jack Smith, referring or relating to your office's investigation of President Donald Trump or any of the other eighteen individuals against whom charges were brought in the indictment discussed above; and

3. All documents and communications between the Fulton County District Attorney's Office and any federal Executive Branch officials regarding your office's investigation of President Donald Trump or any of the other eighteen individuals against whom charges were brought in the indictment discussed above.

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[16] Glenn Thrush & Danny Hakim, *Georgia Case Lays the Ground for Parallel Prosecutions of Trump*, N.Y. TIMES (Aug. 15, 2023).
[17] *Bragg*, 2023 WL 2999971, at *6 (internal quotation marks omitted).
[18] *Id.* (quoting *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927), and *Watkins v. United States*, 354 U.S. 178, 187 (1957)).
[19] *Id.* (internal quotation marks omitted).

Please provide this information as soon as possible but not later than 10:00 a.m. on September 7, 2023.

Pursuant to Rule X of the Rules of the House of Representatives, the Committee has jurisdiction over criminal justice matters in the United States.[20]

If you have any questions about this request, please contact Committee staff at (202) 225-6906. Thank you for your prompt attention to this matter.

Sincerely,

Jim Jordan
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member

[20] Rules of the House of Representatives, R. X, 118th Cong. (2023).