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Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
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Kurt R. Erskine
Acting U.S. Attorney
U.S. Department of Justice, Northern District of Georgia
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Re: Complaint Requesting Investigation of Former President Donald J. Trump's Violations of Federal Laws by Attempting to Overturn the Results of the Presidential Election

Dear Attorney General Garland and Acting U.S. Attorney Erskine:

Common Cause, a nonprofit, nonpartisan organization with more than 1.5 million members and supporters around the United States, and Common Cause Georgia, a state office of Common Cause with more than 25,000 members and supporters, respectfully request that the Department of Justice (DOJ), either directly or through a special counsel appointed pursuant to 28 CFR § 600.1, investigate whether then-President Donald J. Trump, then-White House Chief of Staff Mark Meadows, Senator Lindsey Graham, Rudolph W. Giuliani, Cleta Mitchell, Kurt Hilbert and others violated one or more federal statutes by attempting to overturn presidential election results in Georgia and in other states.

Specifically, Common Cause and Common Cause Georgia request an investigation of whether then-President Donald J. Trump, then-White House Chief of Staff Mark Meadows, Senator Lindsey Graham, Rudolph W. Giuliani, Cleta Mitchell, Kurt Hilbert and others violated federal statutes including 18 U.S.C. §§ 241, 1343, 1346, 1349 and 52 U.S.C. § 20511(2), by calling via telephone and speaking via videoconference with state officials, including Georgia Secretary of State Brad Raffensperger, Georgia Governor Brian Kemp, Georgia Attorney General Chris Carr, and Georgia state senators in an effort to overturn presidential election results.

The DOJ explains in *Federal Prosecution of Election Offenses*:

democracy is **OUR** common cause

In the United States, as in other democratic societies, it is through the ballot box that the will of the people is translated into government that serves rather than oppresses. It is through elections that the government is held accountable to the people and political conflicts are channeled into peaceful resolutions. And it is through elections that power is attained and transferred. Our constitutional system of representative government only works when the worth of honest ballots is not diluted by invalid ballots procured by corruption. ... When the election process is corrupted, democracy is jeopardized. Accordingly, the effective prosecution of corruption of the election process is a significant federal law enforcement priority.¹

The DOJ further explains that criminal prosecution of election offenses is “most appropriate when the facts demonstrate that the defendant’s objective was to corrupt the process by which voters were registered, or by which ballots were obtained, cast, or counted” and there is “potential federal jurisdiction over the conduct” because the conduct entails “corrupt acts that occur in elections when the name of a federal candidate appears on the ballot, that are committed ‘under color of law,’ ... and when the election fraud is part of a larger public corruption problem reachable using general anticorruption statutes[.]”²

Georgians deserve to have confidence in elections and have a right under federal law to have their votes counted. For months, the losing 2020 presidential election candidate Donald J. Trump and his supporters fraudulently and corruptly attempted and conspired to overturn presidential election results in Georgia. Common Cause calls on the DOJ to investigate this matter fully and to hold any and all lawbreakers accountable for their actions.

Applicable Laws

Federal law prohibits two or more persons from conspiring to “injure, oppress, threaten, or intimidate any person in any State ... in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States.” 18 U.S.C. § 241. The Supreme Court has made clear that the right to vote is among the rights protected by the Constitution and by Section 241.³

The DOJ has successfully relied upon Section 241 broadly in prosecutions of conspiracies to interfere with voting rights, noting in the in *Federal Prosecution of Election Offenses* manual⁴ application to

¹ U.S. Dept. of Justice, *Federal Prosecution of Election Offenses*, 1, Eighth Edition, Dec. 2017, available at <https://www.justice.gov/criminal/file/1029066/download>.

² *Id.* at 10.

³ See, e.g., *United States v. Classic*, 313 U.S. 299 (1941); *Ex parte Yarborough*, 110 U.S. 651 (1884).

⁴ U.S. Dept. of Justice, *supra* note 1, at 34-35.

conspiracies regarding stuffing ballot boxes,⁵ preventing the official count of ballots,⁶ destroying ballots,⁷ casting ballots in illegally-registered voters' names,⁸ failing to count votes and altering votes counted,⁹ and stealing votes by changing votes cast by voters.¹⁰

Federal law also renders it a crime for any person to “knowingly and willfully deprive[], defraud[], or attempt[] to deprive or defraud the residents of a State of a fair and impartially conducted election process, by ... the procurement, casting, or tabulation of ballots that are known by the person to be materially false, fictitious, or fraudulent....” 52 U.S.C. § 20511(2).

Federal fraud statutes are violated when a person devises or intends to devise “any scheme or artifice to defraud” using interstate wire communications (e.g., telephone) for the purpose of executing such scheme or artifice. 18 U.S.C. § 1343. “Scheme or artifice to defraud” includes a “scheme or artifice to deprive another of the intangible right of honest services.” 18 U.S.C. § 1346.

Although these anti-fraud statutes have been interpreted as applying only in circumstances involving money or property losses, the DOJ has successfully prosecuted fraud based on a “salary theory”—*i.e.*, schemes to obtain or deny salaried government positions entail a pecuniary interest and constitute prosecutable fraud.¹¹ Consequently, this “salary theory” has “potential application to some election fraud schemes, since most elected offices in the United States carry with them a salary[.]”¹² The DOJ has explained: “[S]chemes to obtain salaried elected positions through procuring and tabulating invalid ballots ... result in the payment of a salary to an official who would not have been elected absent the fraud.”¹³ For example, in *United States v. Webb*, the U.S. District Court for the Western District of Kentucky held actionable a scheme to fraudulently elect sheriff by procuring false ballots, explaining:

It can be argued that tax dollars spent on improperly elected officials or officials elected in tainted elections are as much a loss as private money lost on poor service. The fact that Prunty would have won anyway without the absentee ballots is of no consequence

⁵ See *United States v. Saylor*, 322 U.S. 385 (1944); *United States v. Mosley*, 238 U.S. 383 (1915).

⁶ See *United States v. Classic*, 313 U.S. 299 (1941).

⁷ See *United States v. Townsley*, 843 F.2d 1070, 1073–75 (8th Cir. 1988).

⁸ See *United States v. Weston*, 417 F.2d 181, 182–85 (4th Cir. 1969).

⁹ See *Ryan v. United States*, 99 F.2d 864, 866 (8th Cir. 1938); *Walker v. United States*, 93 F.2d 383, 386 (8th Cir. 1937).

¹⁰ *United States v. Thompson*, No. 6:09–16–KKC, 2013 WL 5528827, at *1 (E.D. Ky. Oct. 4, 2013).

¹¹ U.S. Dept. of Justice, *supra* note 1, at 67–68, citing, e.g., *United States v. Sorich*, 523 F.3d 702, 712–13 (7th Cir. 2008); *United States v. Granberry*, 908 F.2d 278, 280 (8th Cir. 1990); *United States v. Doherty*, 867 F.2d 47, 54–57 (1st Cir. 1989) (Breyer, J.); *United States v. O'Brien*, 994 F. Supp. 2d 167, 182–83 (D. Mass. 2014).

¹² U.S. Dept. of Justice, *supra* note 1, at 68.

¹³ *Id.*

in that we have already seen that the scheme or artifice to defraud is itself illegal. The scheme does not have to succeed to be illegal.¹⁴

Finally, the federal criminal code provides that any “person who attempts or conspires to commit” any fraud offense “shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.” 18 U.S. Code § 1349.

Facts Providing Reason to Believe Former President Donald J. Trump and Others May Have Violated Federal Laws Attempting to Overturn Presidential Election Results in Georgia

On January 2, 2021, then-President Donald J. Trump called Georgia’s Republican Secretary of State Brad Raffensperger and repeatedly urged Raffensperger to alter the outcome of the presidential vote in Georgia. Joining Trump on the hour-long phone call were White House Chief of Staff Mark Meadows and attorneys Cleta Mitchell and Kurt Hilbert. Joining Raffensperger were his office’s general counsel, Ryan Germany, and Deputy Secretary of State Jordan Fuchs. The *Washington Post* obtained a recording of the call and then published a transcription.¹⁵

During the January 2 call, Trump began by acknowledging that his opponent Joseph Biden’s “current margin is only 11,779” votes, stating: “Brad, I think you agree with that, right? That’s something I think everyone—at least that’s a number that everyone agrees on.”¹⁶ Trump listened to Raffensperger and his general counsel Ryan Germany explain that Biden’s 11,779 vote margin was accurate, and that Georgia’s thorough investigation uncovered no significant problems with voting or vote counting, at one point stating to Raffensperger: “You know, and I watched you this morning, and you said, well, there was no criminality.”¹⁷

Nevertheless, Trump urged Raffensperger to alter the vote totals, stating: “I just want to find 11,780 votes, which is one more than we have because we won the state” and later repeating: “I don’t know, look, Brad. I got to get . . . I have to find 12,000 votes” and after that stating: “So what are we going to do here, folks? I only need 11,000 votes. Fellas, I need 11,000 votes. Give me a break.”¹⁸

¹⁴ *United States v. Webb*, 689 F. Supp. 703, 707 (W.D. Ky. 1988).

¹⁵ Amy Gardner and Paulina Firozi, *Here’s the full transcript and audio of the call between Trump and Raffensperger*, WASH. POST, Jan. 5, 2021, https://www.washingtonpost.com/politics/trump-raffensperger-call-transcript-georgia-vote/2021/01/03/2768e0cc-4ddd-11eb-83e3-322644d82356_story.html.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

Former President Trump was seemingly attempting to—and conspiring with Mark Meadows, Cleta Mitchell and Kurt Hilbert to—oppress the free exercise of voting rights by Georgia voters by urging Secretary of State Raffensperger to not count or alter the count of votes cast for Trump’s opponent. Trump was attempting to deprive Georgians of a fair and impartially conducted election. Trump was using interstate wire communication for a scheme to defraud Georgia residents.

This wire communication between former President Trump, Secretary Raffensperger and others was only one of multiple communications initiated by Trump and his allies to corruptly and fraudulently interfere with Georgia’s counting of presidential election votes.

Indeed, Trump and his allies began pressuring Secretary Raffensperger for political support early in 2020 and continued the pressure throughout 2020 and into 2021. In January 2020, Raffensperger reportedly declined an offer to serve as an honorary co-chair of the Trump campaign in Georgia and later rejected requests to support Trump publicly.¹⁹ Like most secretaries of state, who oversee the administration of elections, Raffensperger chose to remain neutral in the presidential election, thinking it would be a conflict of interest for him to take sides. Late in the spring of 2020, for example, senior Trump advisor Billy Kirkland “burst uninvited into a meeting in Raffensperger’s office ... that was supposed to be about election procedures and demanded that the secretary of state endorse Trump, according to Raffensperger and two of his staffers.”²⁰

On November 13, 2020, Senator Lindsey Graham called Secretary Raffensperger and reportedly asked Raffensperger about Georgia’s signature-matching law for mailed ballots and “whether Raffensperger had the power to toss all mail ballots in counties found to have higher rates of nonmatching signatures.”²¹ Raffensperger “was stunned that Graham appeared to suggest that he find a way to toss legally cast ballots.”²²

In early December, when Texas Attorney General Ken Paxton and others filed a frivolous lawsuit challenging the presidential election results in Georgia and other states—a lawsuit quickly dismissed by the U.S. Supreme Court²³—former President Trump called Georgia’s Republican Attorney General

¹⁹ Jessica Huseman and Mike Spies, *Trump Campaign Officials Started Pressuring Georgia’s Secretary of State Long Before the Election*, PROPUBLICA, Nov. 18, 2020, <https://www.propublica.org/article/trump-campaign-officials-started-pressuring-georgias-secretary-of-state-long-before-the-election>.

²⁰ *Id.*

²¹ Amy Gardner, *Ga. secretary of state says fellow Republicans are pressuring him to find ways to exclude ballots*, WASH. POST, Nov. 16, 2020, https://www.washingtonpost.com/politics/brad-raffensperger-georgia-vote/2020/11/16/6b6cb2f4-283e-11eb-8fa2-06e7cbb145c0_story.html.

²² *Id.*

²³ Emma Platoff, *U.S. Supreme Court throws out Texas lawsuit contesting 2020 election results in four battleground states*, TEX. TRIBUNE, Dec. 11, 2020, <https://www.texastribune.org/2020/12/11/texas-lawsuit-supreme-court-election-results/>.

Chris Carr, who had described the lawsuit as “constitutionally, legally and factually wrong,” and warned Carr not to interfere in the lawsuit.²⁴

Also, in early December, former President Trump’s attorney Rudolph Giuliani, together with his team of “witnesses and experts,” testified before the Georgia House Governmental Affairs Committee and a Georgia Senate Judiciary subcommittee in separate hearings—urging state legislators to ignore Georgia’s presidential election results and, instead, appoint electors to the Electoral College who would cast Georgia’s 16 electoral votes for Trump.²⁵

On December 23, 2020, President Trump called the lead elections investigator in Secretary Raffensperger’s office urging him to “find the fraud” and saying the official would be a “national hero” according press accounts.²⁶ Secretary Raffensperger confirmed that Trump had placed the call and noted the inappropriateness of the call: “That was an ongoing investigation,” Raffensperger said. “I don’t believe that an elected official should be involved in that process.”²⁷

Former President Trump’s calls to Secretary Raffensperger and his lead elections investigator came in the midst of Trump’s public pressure campaign on Georgia’s Republican Governor to overturn presidential election results in Georgia, including a December 30, 2020, Tweet by Trump that “@BrianKempGA should resign from office” and that “He is an obstructionist who refuses to admit that we won Georgia, BIG!”²⁸

On the evening of January 3, 2021, a senior DOJ official at the behest of the White House called Trump-appointed U.S. Attorney for the Northern District of Georgia, Byung J. Pak, and reportedly told Pak that Trump was furious the U.S. Attorney’s office was not investigating Trump’s unfounded claims of election fraud in Georgia and that Trump wanted to fire Pak.²⁹ Pak resigned abruptly the next

²⁴ Jim Rutenberg et al., *77 Days: Trump’s Campaign to Subvert the Election*, N.Y. TIMES, Jan. 31, 2021, <https://www.nytimes.com/2021/01/31/us/trump-election-lie.html>.

²⁵ Beau Evans, *Rudy Giuliani again lobs election fraud claims in Georgia House hearing*, GWINNET DAILY POST, Dec. 10, 2020, https://www.gwinnettdaily.com/local/politics/rudy-giuliani-again-lob-election-fraud-claims-in-georgia-house-hearing/article_d9d994fb-e01d-5645-93f2-71e51154bc13.html.

²⁶ Amy Gardner, *‘Find the fraud’: Trump pressured a Georgia elections investigator in a separate call legal experts say could amount to obstruction*, WASH. POST, Jan. 9, 2021, https://www.washingtonpost.com/politics/trump-call-georgia-investigator/2021/01/09/7a55c7fa-51cf-11eb-83e3-322644d82356_story.html.

²⁷ *Id.*

²⁸ John Wagner, *Trump calls for Georgia Gov. Brian Kemp, a fellow Republican, to resign*, WASH. POST, Dec. 30, 2020, https://www.washingtonpost.com/politics/trump-calls-for-georgia-gov-brian-kemp-a-fellow-republican-to-resign/2020/12/30/bc297d28-4aab-11eb-839a-cf4ba7b7c48c_story.html.

²⁹ Aruna Viswanatha, Sadie Gurman and Cameron McWhirter, *White House Forced Georgia U.S. Attorney to Resign*, WALL STREET JOURNAL, Jan. 9, 2021, <https://www.wsj.com/articles/white-house-forced-georgia-u-s-attorney-to-resign-11610225840>.



morning. Pak had considered resigning after learning of Trump's January 2 call to Raffensperger and when he shared this on his January 3 call, the White House reportedly indicated he should leave his position immediately.³⁰

Conclusion

The Supreme Court has made clear that “every voter in a federal ... election ... has a right under the Constitution to have his vote fairly counted[.]”³¹

Based on the publicly available information detailed in this complaint, there is reason to believe that then-President Donald J. Trump, then-White House Chief of Staff Mark Meadows, Senator Lindsey Graham, Rudolph W. Giuliani, Cleta Mitchell, Kurt Hilbert and others violated one or more federal statutes, including 18 U.S.C. §§ 241, 1343, 1346, 1349 and 52 U.S.C. § 20511(2), by communicating with Georgia Secretary of State Brad Raffensperger, Georgia Attorney General Chris Carr, Georgia state legislators and other government officials in an effort to fraudulently and corruptly overturn 2020 presidential election results in Georgia.

We look forward to your prompt and thorough investigation of this matter.

Respectfully submitted,

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³⁰ *Id.*

³¹ *Anderson v. United States*, 417 U.S. 211, 227 (1974).

