



FEDERAL ELECTION COMMISSION  
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Chairman Jordan, Ranking Member Nadler, and distinguished members of the Committee on the Judiciary, it is an honor to appear before you today to discuss the critical issue of jurisdictional overreach in the prosecution of federal campaign finance law, specifically regarding the actions taken by Alvin Bragg, the District Attorney of New York County, in his prosecution of former President Donald Trump. I will also highlight the inaction by the Department of Justice (DOJ) to defend federal jurisdiction and reiterate the alarm I sounded last September to the House Committee on Administration regarding the growing criminalization of political participation in our country.

The Federal Election Campaign Act (FECA) of 1971<sup>1</sup>, as amended, is the cornerstone of federal campaign finance regulation. It establishes the rules governing campaign finance and delineates the authorities responsible for enforcing these rules. According to FECA, exclusive jurisdiction over the enforcement of federal campaign finance laws is vested in the Federal Election Commission (FEC) and the DOJ. This framework ensures a uniform and consistent application of campaign finance laws across the United States, preventing a patchwork of enforcement that could vary from state to state and district to district.

The relevant sections of FECA clearly articulate this exclusive jurisdiction. Specifically, 52 U.S.C. § 30106(b)(1) grants the FEC the authority to initiate civil enforcement actions, while 52 U.S.C. § 30109(a)(5) outlines the procedures for handling alleged violations, including the role of the DOJ in criminal prosecutions. This bifurcation of authority is designed to harness the expertise and resources of federal agencies, thereby maintaining the integrity and consistency of campaign finance law enforcement.

However, the recent actions by District Attorney Alvin Bragg in prosecuting former President Donald Trump represent a significant deviation from this established legal framework. By pursuing charges related to alleged violations of federal campaign finance laws, Mr. Bragg has effectively usurped the jurisdiction that Congress has explicitly reserved for federal authorities.

This overreach not only undermines the statutory framework established by FECA but also sets a troubling precedent for the politicization of legal proceedings at the state level. In short, New

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<sup>11</sup>, 52 U.S.C. § 30101 *et seq.*

York has violated the well-established legal principle of field preemption crafted by the U.S. Supreme Court in *Rice v. Santa Fe Elevator Corp.*<sup>2</sup>

John Yoo, a law professor at the University of California at Berkeley, expertly examined the Constitutional pitfalls of what has taken place in the New York Court. He explained that the U.S. Supreme Court has made clear in cases such as *New York v. United States*<sup>3</sup>, *Printz v. United States*<sup>4</sup>, and *Arizona v. United States*<sup>5</sup>, that the Constitution forbids state officers from prosecuting violations of federal law. In fact, he notes that the Constitution's Take Care clause<sup>6</sup> vests that authority exclusively in the president and his subordinates.

The fact that U.S. Supreme Court precedent is so decidedly in favor of jealously guarding the ability of federal agencies to enforce federal law leaves us to wonder why Attorney General Merrick Garland and the DOJ did not intervene in the prosecution of Donald Trump. The DOJ often touts its *Memorandum Regarding Election Year Sensitivities* as a reason for inaction on certain matters of a political nature. However, the purpose of the policy is to mitigate the affect legal actions have on providing an advantage or disadvantage to any candidate or political party. I posit that if the DOJ had intervened early to protect the jurisdiction of the FEC and itself to prosecute federal campaign finance laws, we would not be here discussing this matter today and it wouldn't be the preeminent topic of the 2024 presidential election. That is to say, the legal proceedings in New York would not now be seen as advantaging or disadvantaging any candidate.

On May 31st, the inability of the DOJ, after a year-long investigation, to find any criminal acts committed by former President Donald Trump came to light. This disclosure was done at my request, after some back and forth with the DOJ and the FEC Office of General Counsel. Today, unredacted FEC documents<sup>7</sup> show that the DOJ had no issues with intervening in eight pending investigations being conducted by the FEC into the supposed \$130,000 payment that was alleged to be misreported on a campaign finance report. Those eight matters involved Michael Cohen, Donald J. Trump, Donald J. Trump for President and its treasurer, Trump Organization, LLC, Timothy Jost, and Essential Consultants, LLC. The public now knows that on July 31, 2018, the FEC, at the request of DOJ, voted to provide certain documents from the matters to DOJ and hold those matters in abeyance. Then, on June 5, 2019, the Commission voted, again at the behest of DOJ, to continue holding those matters in abeyance. Finally, on July 15, 2019, the United States Attorney's Office for the Southern District of New York informed the United States District Court for the Southern District of New York that it had "effectively concluded its investigations" of the campaign finance violations to which Michael Cohen pled guilty, and, concurrently, that it no longer sought to maintain under seal the grand jury materials related to that investigation.

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<sup>2</sup> 331 U.S. 218 (1947).

<sup>3</sup> 505 U.S. 144 (1992).

<sup>4</sup> 521 U.S. 898 (1997).

<sup>5</sup> 567 U.S. 387 (2012).

<sup>6</sup> U.S. Const. Art. II, § 3.

<sup>7</sup> [https://www.fec.gov/files/legal/murs/7313/7313\\_27.pdf](https://www.fec.gov/files/legal/murs/7313/7313_27.pdf), footnote 8 and [https://www.fec.gov/files/legal/murs/7313/7313\\_19.pdf](https://www.fec.gov/files/legal/murs/7313/7313_19.pdf), footnote 2.

DOJ inserted itself so fully into an ongoing FEC investigations that, once the abeyance request was lifted, the Commission faced a statute of limitations bar on prosecuting the matters. Clearly, the DOJ knows a great deal about the federal campaign finance issues that Alvin Bragg has prosecuted. DOJ counsel knew the extent to which they themselves had exercised federal jurisdiction, investigated, and found no illegal activity by anyone other than Michael Cohen. However, they have sat idly by and allowed a state officer to assert federal jurisdiction where they themselves had taken jurisdiction and couldn't prosecute.

The implications of such jurisdictional overreach and disregard for the principles of federalism at issue are profound. If local district attorneys are permitted to initiate prosecutions based on their interpretations of federal campaign finance laws, we risk eroding the uniformity and predictability that FECA aims to provide. This could lead to a fragmented enforcement landscape where political motivations and local biases influence the application of laws meant to govern national elections and provide public transparency into the financing of campaigns.

The actions by the Supreme Court of New York, at the behest of a local official, belie a long-standing concern that has existed for the State of New York since the earliest days of our Republic. Writing under a pseudonym, Alexander Hamilton, in his 1784 *Letter from Phocion to the Considerate Citizens of New York* spoke to the then prevailing practice of state government officials taking action against "...any number of citizens at pleasure by general descriptions...[to] banish at discretion all those whom particular circumstances render obnoxious, without hearing or trial, no man can be safe, nor know when he may be the innocent victim of a prevailing faction."

This encroachment on federal jurisdiction should raise serious concern that qualified candidates will be deterred from seeking public office, fearing that their political activities, past and present, might be subjected to disparate legal standards depending on the locality. It is essential to preserve the centralized enforcement mechanism that FECA envisions to ensure fair and impartial oversight of federal campaign finance regulations.

As I have previously testified to the House Committee on Administration, the process is becoming the punishment. Alvin Bragg has laid the framework, however misguided, for other rogue prosecutors to tear after political opponents that cannot be defeated in the marketplace of ideas. This is clear manifestation of Saul Alinsky's blueprint, outlined in *Rules for Radicals*, of finding an external antagonist to turn into a "common enemy" to galvanize the public in a specific direction.

The actions of District Attorney Alvin Bragg in prosecuting former President Donald Trump under the guise of federal campaign finance violations represent a clear usurpation of federal jurisdiction. The DOJ has allowed it to happen by failing to zealously represent the interests of the United States. Unfortunately, we will only see more politically motivated prosecutions unless there is a reaffirmation of the exclusive authority of the FEC and the DOJ to exclusively enforce federal campaign finance laws, as mandated by FECA. The integrity of our electoral system is at stake. The dangerous precedent of local prosecutorial overreach in matters of federal concern must not be left unaddressed.

Thank you, Chairman Jordan, and Members of the Committee, for your time and attention. I look forward to your questions.