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**Submitted to the House Judiciary Subcommittee on the Constitution and
Limited Government hearing on**

“Legislative Reforms to End Lawfare by State and Local Prosecutors”

March 4, 2025

Chairman Roy, Ranking Member Scanlon, and members of the Subcommittee on the Constitution and Limited Government. Thank you for inviting me to testify on this important matter.

President Donald J. Trump overcame the most vindictive weaponization of the justice system against an American leader in our Nation’s history.

Partisan operatives sought to destroy President Trump in 2016, when the Clinton campaign branded him as a Russian asset by laundering campaign opposition research to the FBI to spy on the Trump campaign, leading to multiple investigations by Special Counsel Mueller. The Mueller investigation substantiated no criminal activity by President Trump, nor could it: its jurisdictional authority was based on a lie manufactured by Christopher Steele. But as the American people would witness, the first Special Counsel investigation was mere child’s play. Two impeachment attempts, four criminal indictments, one \$400 million civil judgment, one mugshot, three states attempting to disqualify him from their ballots, two Democrat-nominated Presidential opponents, and two assassination attempts later, Democrats would finally claim their scalp when they obtained a conviction against President Trump in

a New York state court—weeks before the American people overwhelmingly reelected him with a historic landslide mandate.

The American people saw through the coordinated hit-job on their president—a hit job that culminated in a conviction by a radically liberal jury pool in front of a judge who donated to Trump’s first 2024 election opponent President Joe Biden and whose daughter works for a firm that represented both Joe Biden’s and Kamala Harris’s presidential campaigns—campaigns against President Trump, a party arguing before her father. Despite these clear questions about Acting Justice Juan Merchan’s ability to appear impartial, the jury unanimously convicted President Trump of concealing a crime that it did not even need to agree on or share publicly. That’s right: while some members of this Committee celebrated the dark verdict by repeating the talking point, “no one is above the law,” they cannot even be certain of *which* law.

Had the New York jury considered the obvious legal errors and corrupt motivations by those tasked with enforcing the law and acquitted Trump, Bragg and Biden would not have successfully sidelined President Trump from the campaign trail,¹ drained his resources,² and harmed his reputation among voters.³ But while

¹ Jordan Boyd, *Democrats’ Election Interference Starts With Lawfare That Keeps Trump From Campaigning*, THE FEDERALIST (Feb. 16, 2024), <https://perma.cc/T8RS-HS4A>.

² Richard Lardner & Aaron Kessler, *Trump Spent \$76 Million Over Last Two Years on Attorneys as Legal Troubles Mount Ahead of Election*, ASSOCIATED PRESS (updated Feb. 2, 2024), <https://perma.cc/HQP2-4WN7>.

³ Eric Levitz, *Trump’s Felony Conviction Has Hurt Him in the Polls*, VOX (June 7, 2024), <https://perma.cc/6NJQ-XGSK>; see also Reid J. Epstein & Nicholas Nehamas, *Democrats Push Biden to Make Trump’s Felonies a Top 2024 Issue*, N.Y. TIMES (June 1, 2024), <https://perma.cc/J5D5-PAAF>.

the New York jury did convict President Trump, the American voters acquitted him overwhelmingly on Election Day, making it clear that they understood the fix was in.

State courts must never be allowed to baselessly interfere with the elections of federal officials, especially when the charges at issue concern federal law.

I. The State of New York lacked jurisdiction over the campaign charges against President Trump

The State of New York did not have jurisdiction to hear a case centered on federal election law. District Attorney Alvin Bragg violated a Supreme Court doctrine known as the “primary jurisdiction doctrine,” which says that a court should stay or dismiss a claim when it implicates issues within the special competence of a federal administrative agency, here, the Federal Election Commission (FEC).⁴

The New York case against President Trump alleged a violation of the Federal Election Campaign Act of 1971 (FECA). The FECA vests *exclusive jurisdiction* over issues of federal elections in the FEC and the Department of Justice. As FEC Commissioner Trainor testified before this Committee last year:

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.⁵

⁴ Daniel Z. Epstein, *Bragg’s Prosecution of Trump Violates This Important Legal Doctrine*, WASH. EXAMINER (May 9, 2024), <https://perma.cc/6XWU-G4ZE>.

⁵ *H. Comm. on the Judiciary Hearing on the Manhattan Dist. Attn’y’s Off.*, 118th Cong. 1 (June 13, 2024), (written testimony of James E. “Trey” Trainor III, Commissioner, Federal Election Commission), available at <https://perma.cc/A2AW-XYSJ>.

Accordingly, Commissioner Trainer explained that District Attorney Bragg “usurped the jurisdiction that Congress has explicitly reserved for the federal authorities” and “undermin[ing] the statutory framework established by FECA.”⁶

In President Trump’s case, the FEC *did* look at the allegations and then decided they were *not* worth further investigation.⁷ This should have been the end of the matter, but Biden’s DOJ did not enforce its exclusive jurisdiction, allowing a politically motivated District Attorney⁸ to bring his own case built on this alleged violation of the FECA.

II. A top official in Biden’s Department of Justice was dispatched to assist the Manhattan District Attorney’s prosecution of President Trump

In coordination with President Biden and his campaign’s lawfare strategy to take out his political opponent (President Trump), New York County District Attorney Alvin Bragg resurrected a “hush money” “zombie case” under a legal theory that Bragg’s predecessor had previously sent “back into the grave,” out of concerns that the felony charges would not hold up in court.⁹

The case concerned federal subject matter identical to a matter that the United States Department of Justice had previously declined to prosecute in 2018, and Bragg’s prosecution relied heavily on the testimony of Michael Cohen—a felon convicted for lying to Congress with a documented animus towards President

⁶ *Id.*

⁷ See Statement of Reasons of Comm’rs Sean J. Cooksey and James E. “Trey” Trainor III, MURs 7313, 7319, and 7379 (Apr. 26, 2021).

⁸ America First Legal (@America1stLegal), (Sept. 12, 2024, 2:46 PM), <https://perma.cc/NH9R-SRSN>

⁹ See Erica Orden, *How a Hush Money Scandal Turned into a Criminal Case*, POLITICO (Apr. 15, 2024), <https://perma.cc/M9BE-KXH6> (quoting MARK POMERANTZ, PEOPLE V. DONALD TRUMP (2023)); see also STAFF OF H. COMM. ON THE JUDICIARY, INTERIM REPORT: AN ANATOMY OF A POLITICAL PROSECUTION (Apr. 25, 2024), <https://perma.cc/HNC7-X97B>.

Trump.¹⁰ In February 2022, two prosecutors leading the case, Mark Pomerantz and Carey Dunne, resigned from the District Attorney’s Office because Bragg “had doubts about moving forward with the case against Trump.”¹¹ But even Pomerantz acknowledged that any charges would rely on “untested” legal theories.¹²

New York Rule of Professional Conduct 3.8 provides, *inter alia*, that a prosecutor “shall not institute, cause to be instituted or maintain a criminal charge when the prosecutor or other government lawyer knows or it is obvious that the charge is not supported by probable cause.”¹³ Comment 1 to Rule 3.8 provides, “[a] prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence.”¹⁴ Comment 5 provides that, “a prosecutor’s extrajudicial statement can create the additional problem of increasing public condemnation of the accused.”¹⁵ Bragg did exactly this. During his campaign to become District Attorney, Bragg “remind[ed] voters frequently that in his former job, he sued Mr. Trump’s administration ‘more than a hundred times.’”¹⁶ Bragg would not have prosecuted Trump but for Trump’s candidacy.

¹⁰ Letter from Chairman Jim Jordan, H. Comm. on the Judiciary, to the Hon. Merrick Garland, Att’y Gen., U.S. Dep’t Justice (Apr. 30, 2024), <https://perma.cc/T6VZ-TADY>.

¹¹ William K. Rashbaum et al., *2 Prosecutors Leading N.Y. Trump Inquiry Resign, Clouding Case’s Future*, N.Y. TIMES (Feb. 23, 2022), <https://perma.cc/FQU7-A8NP>.

¹² Luc Cohen, *Trump Hush Money Trial Stems From ‘Zombie Case’ Brought Back to Life*, REUTERS (Apr. 9, 2024), <https://perma.cc/54BL-WEEY>.

¹³ N.Y. RULES OF PRO. CONDUCT r. 3.8.

¹⁴ N.Y. RULES OF PRO. CONDUCT r. 3.8 cmt. 1.

¹⁵ N.Y. RULES OF PRO. CONDUCT r. 3.8 cmt. 5.

¹⁶ Jonah E. Bromwich et al., *2 Leading Manhattan D.A. Candidates Face the Trump Question*, N.Y. TIMES (June 2, 2021), <https://perma.cc/EFZ4-ZP6D>.

Bragg’s commitment to getting Trump gained him the support of senior Biden political operatives. One day after Bragg announced his primary campaign against his predecessor,¹⁷ Bragg received a contribution from Chiraag Bains,¹⁸ who would later become a Deputy Assistant to the President in the Biden White House.¹⁹ On June 29, 2019, Bragg received a contribution from Adam Hickey,²⁰ who would later serve as a senior official in Biden’s Department of Justice.²¹ Bragg’s commitment to getting Trump also gained him the support of Billionaire George Soros and Color of Change, a progressive prosecutor front group.²² On May 8, 2021, the Political Action Committee for Color of Change endorsed Bragg, and a week later, Soros gave \$1 million to Color of Change, who then used part of that money to support Bragg’s

¹⁷ See Anna Sanders, *Alvin Bragg Announces Democratic Primary Campaign Against Manhattan DA Cy Vance*, N.Y. DAILY NEWS (June 18, 2019), <https://perma.cc/PQG6-9V3J>.

¹⁸ NYSBOE Public Report System: Contributions By Recipient, N.Y. STATE BD. ELECTIONS, <https://perma.cc/VQB6-QMJ8> (search in “Candidate Name” search bar for “Alvin Bragg – District Attorney”; then search in the search bar for “Bains”).

¹⁹ Chiraag Bains, PAUL & DAISY SOROS FELLOWSHIPS FOR NEW AMERICANS, <https://perma.cc/2VR2-22DW>.

²⁰ NYSBOE Public Report System: Contributions By Recipient, N.Y. STATE BD. ELECTIONS, <https://perma.cc/VQB6-QMJ8> (search in “Candidate Name” search bar for “Alvin Bragg – District Attorney”; then search in the search bar for “Hickey”).

²¹ *Senior Justice Department Official Joins Mayer Brown as Partner*, MAYER BROWN (May 15, 2023), <https://perma.cc/ALX9-9HBY>.

²² Charles “Cully” Stimson & Zack Smith, *Commentary: Washington Post Fact-Checker Should Try Checking Facts About Soros Prosecutors*, HERITAGE FOUND. (Apr. 12, 2023), <https://perma.cc/4GEB-MLVH>; see also Rashad Robinson, Statement, *Color of Change Asserts That Trump Indictment Points to the Importance of Progressive Prosecutors*, COLOR OF CHANGE (May 31, 2024), <https://perma.cc/ZVU3-DYEB> (“Color of Change PAC worked to help elect and hold progressive prosecutor Alvin Bragg accountable once in office. *We have seen the fruits of our labor, not only with Bragg’s prosecution of Trump* but with thousands of decisions that he has made and millions of decisions made by progressive prosecutors we helped elect nation-wide.”) (emphasis added).

election.²³ Between 2019 and 2021, Soros’ son, Jonathan Soros, and his wife, Jennifer Allan Soros, made five separate contributions to Bragg’s campaign.²⁴

But Biden’s operatives’ support for Bragg did not stop there; in December 2022, New York County District Attorney Alvin Bragg reportedly hired Matthew B. Colangelo to “jump-start” his office’s investigation of President Trump, due to Colangelo’s “history of taking on Donald J. Trump and his family business.”²⁵ Colangelo contributed to Bragg’s campaign for District Attorney three separate times.²⁶ Colangelo previously served in senior positions in Biden’s Department of Justice and the New York Attorney General’s Office, both of which had competing investigations related to President Trump.²⁷

At the Biden Department of Justice, Colangelo served as the politically-appointed Acting Associate Attorney General (AAG)—the third highest-ranking position in the Department.²⁸ Historically, the AAG position is a rocketship to become partner at a major law firm or a top position at a multinational corporation, but we are expected to believe that Matthew Colangelo went from the third highest-ranking

²³ *Id.*

²⁴ *NYSBOE Public Report System: Contributions By Recipient*, N.Y. STATE BD. ELECTIONS, <https://perma.cc/VQB6-QMJ8> (search in “Candidate Name” search bar for “Alvin Bragg – District Attorney”; then search in the search bar for “Soros”); *see also* America First Legal, *supra* note 8.

²⁵ Jonah E. Bromwich, *Manhattan D.A. Hires Ex-Justice Official to Help Lead Trump Inquiry*, N.Y. TIMES (Dec. 5, 2022), <https://perma.cc/NF8F-B8RK>.

²⁶ *NYSBOE Public Report System: Contributions By Recipient*, N.Y. STATE BD. ELECTIONS, <https://perma.cc/VQB6-QMJ8> (search in “Candidate Name” search bar for “Alvin Bragg – District Attorney”; then search in the search bar for “Colangelo”).

²⁷ *Id.*; *see also* Letter from Chairman Jim Jordan, H. Comm. on the Judiciary, to Matthew B. Colangelo, Senior Couns., N.Y. Co. District Att’y’s Off. (Apr. 7, 2024), <https://perma.cc/L6VM-3LU8>.

²⁸ Letter from Chairman Jim Jordan, H. Comm. on the Judiciary, to the Hon. Letitia James, Att’y Gen. of the State of N.Y. (May 15, 2024), <https://perma.cc/SM79-T7V5>.

official in Biden’s Department of Justice to the Manhattan District Attorney’s Office, which just happened to be criminally prosecuting President Trump.

This Committee’s thorough investigation revealed that Bragg’s hush money prosecution was “coordinated” with Biden,²⁹ *i.e.*, it was made “in cooperation, consultation or concert with, or at the request or suggestion of” Biden.³⁰ The FEC Office of the General Counsel has consistently recommended that the Commission find reason to believe that acts by a third party intended to influence an election and “coordinated” with a candidate, authorized committee, or agent thereof result in a contribution by the person making the expenditure or political committee with whom the expenditure is coordinated.³¹

Despite that link between Biden’s Department of Justice and Bragg’s District Attorney’s Office, Attorney General Merrick Garland refused during a congressional hearing to commit to turning over communications between his Department and

²⁹ *See, e.g.*, Press Release, Chairman Jim Jordan, Chairman Jordan Investigates Justice Department Coordination with Alvin Bragg’s Politicized Prosecution (Apr. 30, 2024), <https://perma.cc/3DGL-B77Y>; Press Release, Mo. Att’y Gen. Andrew Bailey, Attorney General Bailey Demands DOJ Turn Over Documents Relating to Prosecutions of President Trump (May 9, 2024), <https://perma.cc/A9D5-W8BE> (“Given the timing (Bragg charged Trump only after Trump declared his candidacy for President), the transparent weakness of the charges, and the effect the charges have in keeping Trump off the campaign trail, there is substantial reason to suspect the Biden administration has coordinated with Bragg and others to bring prosecutions against Trump”).

³⁰ 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(a)–(b). The Commission has explained that expenditures that are not made for communications are analyzed under the Commission’s regulation at 11 C.F.R. § 109.20(b) and not under the Commission’s three-part test for “coordinated communications” under 11 C.F.R. § 109.21. Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 425 (Jan. 3, 2003).

³¹ *See* 11 C.F.R. § 109.20(a)–(b); *see, e.g.*, First Gen. Counsel’s Report at 29–41, MURs 7313, 7319, and 7379 (Michael D. Cohen, *et al.*) (recommending finding reason to believe that Cohen made, and Trump and the Trump Committee knowingly accepted, an excessive contribution in contribution in the form of a coordinated expenditure).

Bragg’s Office,³² and the Department’s follow-up response to the Committee stated that a “comprehensive search for email communications ... between any officials in Department leadership ... and the District Attorney’s office regarding any investigation or prosecution of the former President,” turned up nothing.³³ But at, America First Legal, our investigation had already uncovered that the District Attorney’s Office identified “36 responsive records” to our request for their communications with the DOJ “mentioning or regarding Donald J. Trump,” and we’re currently suing in New York to bring these records to light.³⁴

On the final day of President Trump’s trial in New York, the Biden campaign held a press conference across the street from the courtroom.³⁵ Moments after the jury verdict, the Biden campaign posted the statement: “In New York today, we saw that no one is above the law Convicted felon or not, Trump will be the Republican nominee for president. The threat Trump poses to our democracy has never been greater.”³⁶

The true threat to democracy was a partisan and legally unprecedented local prosecution that came so close to taking down the duly-elected President of the United States.

³² Press Release, Rep. Matt Gaetz, Congressman Gaetz Slams AG Garland on Alleging the DOJ Communicating with State Prosecutors Against President Trump is a ‘Conspiracy Theory’ (June 4, 2024), <https://perma.cc/D85Z-2K4R>.

³³ Letter from Carlos Felipe Uriarte, Assistant Att’y Gen, U.S. Dep’t of Just., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, (June 10, 2024), available at <https://perma.cc/M8LK-EZPL>.

³⁴ America First Legal Sues the New York District Attorney’s Office for Illegally Concealing Records on Alvin Bragg’s Partisan Persecution of President Trump, AM. FIRST. LEGAL FOUND. (Aug. 13, 2024), <https://perma.cc/4746-MHG5>.

³⁵ Colleen Long & Zeke Miller, *Biden Campaign Sends Allies de Niro and First Responders to Trump’s NY Trial to Put Focus on Jan. 6*, ASSOCIATED PRESS (May 28, 2024), <https://perma.cc/L4LS-ARUM>.

³⁶ Biden-Harris HQ (@BidenHQ), X (May 30, 2024, 5:44 PM), <https://perma.cc/49NF-PUQC>.