

January 4, 2021

Jeffrey A. Rosen  
Acting Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530

Fani T. Willis  
District Attorney, Fulton County  
141 Pryor St., NW  
Atlanta, GA 30303

Re: Request for Investigation of President Donald J. Trump's Violations of Federal and Georgia Law by Attempting to Overturn the Results of the Presidential Election

Dear Acting Attorney General Rosen and District Attorney Willis:

Citizens for Responsibility and Ethics in Washington ("CREW") respectfully requests that the U.S. Department of Justice and the Fulton County District Attorney investigate whether President Donald J. Trump violated federal and Georgia criminal law by pressuring Georgia Secretary of State Brad Raffensperger to overturn the results of Georgia's presidential election in a recent telephone conversation. President Trump appears to have illegally conspired to deprive the people of Georgia of their right to vote and have their votes counted, conspired to intimidate Georgia election officials in an effort to falsify the count of votes in the presidential election, attempted to deprive or defraud the residents of Georgia of a fair election process by falsely tabulating ballots, and attempted to cause Georgia officials to engage in conduct that constitutes a crime under the state election code. President Trump's conduct violates not only the law, but the foundation on which our democracy is built.

### **Factual Background**

On January 2, 2021, President Trump and various associates, including White House Chief of Staff Mark Meadows and attorneys Clea Mitchell and Kurt Hilbert, called Georgia Secretary of State Brad Raffensperger in an attempt to pressure and coerce him to overturn the results of Georgia's presidential election.<sup>1</sup> A recording of the call was obtained by the *Washington Post*, which also produced a transcript of the conversation.<sup>2</sup>

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<sup>1</sup> While this complaint focuses on President Trump's conduct, we believe that your offices should also review the conduct of Mr. Meadows, Ms. Mitchell, and any other individuals who aided the President's likely illegal activity.

<sup>2</sup> Audio: Trump's full Jan. 2 call with Ga. secretary of state, *Washington Post*, Jan. 3, 2021, <https://wapo.st/3rY2P79>; The Post has published Trump's full phone call with Georgia election officials. Listen to the audio and read the transcript, *Washington Post*, Jan. 3, 2021, <https://wapo.st/35nBp0P>.

Throughout the discussion, President Trump repeatedly insisted that – despite Georgia certifying the election for President-elect Joe Biden, as well as numerous investigations by the Secretary of State’s office, the Georgia Bureau of Investigation and others, and multiple court decisions upholding the result – he “won the election” in Georgia.<sup>3</sup> President Trump made clear that the purpose of his efforts was to have Secretary Raffensperger overturn the results of the election, telling him at one point, “I just want to find 11,780 votes” – one more than the 11,779 votes by which he lost the state to President-elect Biden. President Trump later reiterated to Secretary Raffensperger and his counsel Ryan Germany: “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.”

President Trump and his associates repeatedly implored Secretary Raffensperger and Mr. Germany to take official action that would undermine the Georgia vote count and overturn the election results. Among other things, President Trump pressed Secretary Raffensperger to conduct “signature verification” for one county where there were no allegations of verification problems and to investigate a variety of debunked theories of voter fraud.<sup>4</sup>

When Secretary Raffensperger rejected President Trump’s exhortations, he appeared to threaten Secretary Raffensperger and Mr. Germany with exposure for purported criminal violations. After making a litany of allegations about “corrupt” ballots, President Trump told them: “And you are going to find that they are [corrupt] – which is totally illegal, it’s more illegal for you than it is for them because, you know what they did and you’re not reporting it. You know, that’s a criminal — that’s a criminal offense. And you know, you can’t let that happen. That’s a big risk to you and to Ryan, your lawyer. That’s a big risk.”<sup>5</sup>

President Trump also appeared to threaten political and other consequences if Secretary Raffensperger failed to help him quickly overturn the election. Referring first to the impending Senate elections in Georgia, and then to Governor Brian Kemp and Secretary Raffensperger himself, President Trump said: “I think we should come to a resolution of this before the election. Otherwise you’re going to have people just not voting. They don’t want to vote. They hate the state, they hate the governor and they hate the secretary of state. I will tell you that right now. And the only people that like you are people that will never vote for you. You know that Brad, right?” President Trump further warned Secretary Raffensperger that failing to overturn the election results would be “very costly,” saying: “So tell me, Brad, what are we going to do? We won the election and it’s not fair to take it away from us like this. And it’s going to be very costly in many ways.”

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<sup>3</sup> *Id.* In fact, President Trump claimed to have won Georgia by “hundreds of thousands” of votes. *Id.*

<sup>4</sup> *Id.* Some of the steps requested also may be illegal. For instance, President Trump and Mr. Meadows sought access to voter data that Mr. Germany said is protected by law. *Id.*

<sup>5</sup> *Id.* Making further criminal allegations against Secretary Raffensperger and Mr. Germany, President Trump also said: “[U]nder the law you’re not allowed to give faulty election results, OK? You’re not allowed to do that. And that’s what you [have] done. This is a faulty election result.” *Id.*

## **Potential Violations**

### Conspiracy against rights – 18 U.S.C. § 241

Section 241 makes it unlawful for two or more persons to “conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States.” The right to vote for federal offices and the right to have one’s vote fairly counted are among the rights secured by Article I, Sections 2 and 4, of the Constitution, and hence is protected by Section 241.<sup>6</sup>

President Trump appears to have violated Section 241.<sup>7</sup> First, he and his associates conspired to call Secretary Raffensperger to pressure him to use the power of his office – that is, the power to oversee the counting of ballots, the determination of the final vote totals, and the final certification of the state’s election results – as part of a scheme to overturn the results of Georgia’s presidential election. The object of the conspiracy was thus to oppress the citizens of Georgia by denying them their constitutional rights to vote in a free and fair election and to have their votes fairly counted.<sup>8</sup>

Second, because Section 241 applies to conspiracies to commit conduct affecting the integrity of the federal election process as a whole (and does not require fraudulent action with respect to any particular voter), President Trump’s threats, exhortations, and attempts to intimidate Secretary Raffensperger to use the power of his office to illegally change the result of the election fall within the scope of the statute.<sup>9</sup> President Trump’s solicitation that Secretary Raffensperger use the power of his office to “find 11,780 votes” to add to the total count – presumably, either by manufacturing new ballots or by changing or invalidating legally cast ballots – would have resulted in the dilution of valid ballots, thus corrupting an honest vote tally and depriving the citizens of Georgia of their constitutional rights.<sup>10</sup>

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<sup>6</sup> *Anderson v. United States*, 417 U.S. 211, 227 (1974); *United States v. Classic*, 313 U.S. 299 (1941); *Ryan v. United States*, 99 F.2d 864, 866 (8th Cir. 1938); *Ex parte Yarborough*, 110 U.S. 651 (1884).

<sup>7</sup> Should Secretary Raffensperger have followed through on President Trump’s demands and used the power of his office to overturn the result in Georgia, he would have been criminally liable under Section 241’s sister crime, 18 U.S.C. § 242. Section 242 makes it a crime for anyone acting under color of law to willfully deprive another person of their constitutional or statutory rights.

<sup>8</sup> *United States v. Classic*, 313 U.S. 299, 321 (1941) (holding that “a conspiracy to prevent the citizen from voting or to prevent the official count of his ballot when cast, is a conspiracy to injure and oppress the citizen in the free exercise of a right secured by the Constitution”). Though Section 241 does not require the conspirators to take an overt act in furtherance of the conspiracy, see *United States v. Colvin*, 353 F.3d 569, 576 (7th Cir. 2003); *United States v. Whitney*, 229 F.3d 1296, 1301 (10th Cir. 2000), the very fact of the call itself would satisfy an overt act requirement should a court decide to apply one (as in *United States v. Brown*, 49 F.3d 1162, 1165 (6th Cir. 1995)).

<sup>9</sup> *United States v. Nathan*, 238 F.2d 401, 407 (7th Cir. 1956).

<sup>10</sup> *United States v. Haynes*, 1992 WL 296782, at \*1 (6th Cir. 1992); *United States v. Townsley*, 843 F.2d 1070, 1073-75 (8th Cir. 1988); *United States v. Howard*, 774 F.2d 838 (7th Cir. 1985); *United States v. Olinger*, 759 F.2d 1293 (7th Cir. 1985); *United States v. Anderson*, 481 F.2d 685, 689 (4th Cir. 1973).

*Depriving State residents a fair and impartial election process – 52 U.S.C. § 20511(2)(B)*

Under federal law, any “person, . . . who in any election for Federal office . . . knowingly and willfully . . . attempts to deprive or defraud the residents of a State of a fair and impartially conducted election process, by . . . the . . . tabulation of ballots that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held,” commits a felony punishable by up to five years in prison.<sup>11</sup>

President Trump appears to have violated this statute. Pressuring and threatening Secretary Raffensperger to take official actions to overturn the results of the presidential election, in the face of overwhelming evidence that the votes were counted legally and properly, was an attempt to deprive the residents of Georgia of a fair and impartially conducted election process. President Trump attempted to do so by preventing the tallying of legitimate votes, which would result in a tabulation that is false and fictitious. President Trump’s conduct further appears to be knowing and willful, as Georgia government agencies, courts, election experts, the news media and, on the call itself, Secretary Raffensperger and Mr. Germany, have all debunked the invalid theories that President Trump claims justify overturning Georgia’s presidential election. Accordingly, President Trump’s pressuring and threatening of Secretary Raffensperger appears to violate 52 U.S.C. § 20511(2)(B).

*Criminal solicitation to commit election fraud – Ga. Code Ann. § 21-2-604*

Georgia’s law makes it a felony to intentionally solicit, request, command, importune, or otherwise attempt to cause another person to engage in conduct constituting a felony under the election code (or a misdemeanor if the solicited conduct is a misdemeanor).<sup>12</sup> President Trump appears to have violated this statute by soliciting and attempting to coerce Secretary Raffensperger to commit several election crimes.

First, under Georgia election code Section 2-562, it is a felony to insert any fraudulent entry on or in, or to alter or intentionally destroy any “registration card, electors list, voter’s certificate, affidavit, tally paper, general or duplicate return sheet, statement, certificate, oath, voucher, account, ballot, or other record or document authorized or required to be made, used, signed, returned, or preserved for any public purpose in connection with any primary or election.”<sup>13</sup>

In pressuring Secretary Raffensperger to change the determination of Georgia’s voters in the presidential election, President Trump intentionally solicited, and attempted to command and coerce, Secretary Raffensperger to either insert, alter, or destroy entries in the official record and certificate of election, or to alter or destroy validly cast ballots. Specifically, under Section 2-499 of the election code, the Secretary of State is required to “file” an official “tabulation of votes” in his office,<sup>14</sup> and to submit an official certification of all votes cast to the Governor.<sup>15</sup> Both of these documents fall within the broad requirements of Section 2-562, as they are both

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<sup>11</sup> 52 U.S.C. § 20511(2)(B).

<sup>12</sup> Ga. Code Ann. § 21-2-604.

<sup>13</sup> Ga. Code Ann. § 21-2-562.

<sup>14</sup> Ga. Code Ann. § 21-2-499(a).

<sup>15</sup> Ga. Code Ann. § 21-2-499(b).

“certificates” and “document[s] ... required to be made, used, signed, returned, or preserved for any public purpose” in connection with an election. Accordingly, in order to “find” the extra votes President Trump said he needed to overturn the result of the election, Secretary Raffensperger would have to either alter the numbers recorded on the various certificates, destroy or alter valid ballots, or alter a “tally paper” – all violations of the election code. That President Trump acted with the requisite intent appears clear: in addition to attempting to coerce Secretary Raffensperger through threats and intimidation about the “risks” Mr. Raffensperger ran by not complying with President Trump’s demands, President Trump at various points explicitly stated that he wanted Secretary Raffensperger to simply find enough ballots to overturn President-elect Biden’s margin in the state – statements which belie any suggestion that President Trump was concerned with rooting out legitimate voter fraud.

Additionally, it is a misdemeanor for any public officer to willfully refuse to perform a duty required by the election code.<sup>16</sup> President Trump appears to have further violated Section 2-604 by soliciting and attempting to coerce Secretary Raffensperger to refuse to perform his duty to “tabulate, compute, canvass, and certify” election returns under Section 2-499.<sup>17</sup> To overturn the results of the election, Secretary Raffensperger would need to willfully enter a false tabulation of votes and improperly certify a false result, and therefore would be refusing to perform his duty under the election code to correctly tabulate, compute and certify the results of the election. As a result, by pressuring Secretary Raffensperger to engage in such conduct, President Trump appears to have violated Section 2-604.

### Conclusion

Throughout his presidency, Donald Trump has repeatedly attempted to use federal resources to boost his candidacy for re-election. President Trump’s January 2, 2021 call with Georgia Secretary of State Raffensperger provides clear and incontrovertible evidence that he attempted to pressure Georgia state officials to overturn the will of Georgia’s voters in the 2020 presidential election. This conduct is not only a gross abuse of power, but also represents clear violations of federal and state statutes designed to protect our elections from unscrupulous interference. We ask that each of you immediately open an investigation to determine what criminal laws under your respective jurisdiction may have been violated and take swift action as necessary to ensure accountability and the rule of law. Thank you for your prompt attention to this matter.

Sincerely,



Noah Bookbinder  
Executive Director

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<sup>16</sup> Ga. Code Ann. § 21-2-596.

<sup>17</sup> Ga. Code Ann. § 21-2-499.