No. 25-573

IN THE
Supreme Court of the United States

PRESIDENT DONALD J. TRUMP,
Petitioner,
v.
E. JEAN CARROLL,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

Brief *Amicus Curiae* of Citizens United, Citizens United Foundation, and The Presidential Coalition, LLC in Support of Petitioner

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December 15, 2025 — *Attorneys for Amici Curiae*

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MISCELLANEOUS

INTEREST OF THE *AMICI CURIAE*[1]

Amicus Citizens United is exempt from federal income taxation under section 501(c)(4) of the Internal Revenue Code ("IRC"). *Amicus* Citizens United Foundation is exempt from federal income taxation under IRC section 501(c)(3). These entities, *inter alia*, participate in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law. The Presidential Coalition, LLC is a political committee which has a deep interest in the integrity of elections and the need to end the weaponization of law against those participating in the electoral process.

These *amici* have filed eight *amicus curiae* briefs in four different cases fighting against the weaponization of the judicial system with a special focus on the corrupt use of lawfare against President Trump and his supporters:

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[1] It is hereby certified that counsel of record for all parties received timely notice of the intention to file this brief; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

A. Criminal Prosecution of Trump's former National Security Advisor Lt. General Michael T. Flynn.

- Brief *Amicus Curiae* of Citizens United, Citizens United Foundation, and The Presidential Coalition, LLC, in *United States of America v. Flynn*, U.S. District Court for the District of Columbia, No. 1:17-cr-232 (June 10, 2020).

B. Civil Fraud Claims Brought by New York Attorney General Letitia James.

- Brief for *Amici Curiae* Citizens United, et al. in *New York v. Trump,* Supreme Court of the State of New York, Appellate Division – First Department, Nos. 2023-04925, 2024-01134, and 2024-01135 (Aug. 2, 2024).

C. Criminal Prosecution Brought by Special Counsel Jack Smith regarding Classified Documents.

- Brief of Former Attorney General Edwin Meese III, Law Professors Steven Calabresi and Gary Lawson, Citizens United, and Citizens United Foundation as *Amici Curiae*, *United States of America v. Trump*, U.S. District Court, Southern District of Florida, No. 9:23-cr-80101 (Mar. 5, 2024);
- Supplemental Brief for Former Attorneys General Edwin Meese III and Michael B. Mukasey, Law Professors Steven Calabresi and Gary Lawson, and Citizens United as *Amici Curiae*, *United States of America v. Trump*, U.S. District Court, Southern District

of Florida, No. 9:23-cr-80101 (June 11, 2024); and

- Brief of Former Attorneys General Edwin Meese III and Michael B. Mukasey, Professors Steven Calabresi and Gary Lawson, Citizens United, and Citizens United Foundation as *Amici Curiae*, in *United States of America v. Trump*, U.S. Court of Appeals for the Eleventh Circuit, No. 24-12311 (Nov. 1, 2024).

D. Criminal Prosecution Brought by Special Counsel Jack Smith regarding Events of January 6:

- Brief of Former Attorney General Edwin Meese III, Law Professors Steven Calabresi and Gary Lawson, and Citizens United as *Amici Curiae*, *Trump v. United States*, U.S. Supreme Court, No. 23A745 (Feb. 20, 2024);
- Brief of Former Attorneys General Edwin Meese III and Michael B. Mukasey; Law Professors Steven Calabresi and Gary Lawson; and Citizens United as *Amici Curiae*, *Trump v. United States*, U.S. Supreme Court, No. 23-939 (Mar. 19, 2024); and
- Brief *Amicus Curiae* of ... Citizens United, Citizens United Foundation, The Presidential Coalition ... in Support of Petitioner, *Joseph W. Fischer v. United States*, U.S. Supreme Court, No. 23-5572 (Feb. 5, 2024).

STATEMENT OF THE CASE

In 2019, Respondent E. Jean Carroll made public claims that President Trump had assaulted her in a

department store dressing room over 20 years earlier. Despite having no corroborating evidence of any type, and President Trump consistently denying the allegations, after consulting with anti-Trump political operatives, and with anti-Trump advice and financial support,[2] Respondent filed suit against Donald Trump, then serving as the nation's 45th President, for battery, and for defamation in stating his opinion that the suit against him was a politically motivated hoax. *See* Petition for Certiorari ("Pet. Cert.") at 2, 9.

From the record, it appears that the district court consistently ruled against President Trump on contested evidentiary issues, compromising the fairness of the trial and violating his due process rights. The "propensity evidence" presented at trial consisted of claims by two women who alleged that President Trump acted improperly toward them many years before, but claims which were not made until October 2016, only days before the November 2016 Presidential Election. One woman claimed that she was accosted by President Trump in 2005 (18 years before the trial), while the other woman claimed the event occurred in 1979 (44 years before the trial). Pet. Cert. at 7-8, 16. These evidentiary rulings of the district court allowed prejudicial and inflammatory propensity evidence to be presented to the jury, paving the way for a May 2023 verdict from a New York jury

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[2] These opponents of President Trump included Biden-funder Reid Hoffman who funded the litigation through his nonprofit, American Future Republic, and founder of the anti-Trump Lincoln Project super PAC, George Conway who provided advice and encouragement. Pet. Cert. at 6, 53A.

of $5 million.[3] (This is the issue on which these *amici* focus.)

The Second Circuit panel upheld the district court's admission of the propensity evidence, and President Trump's petition for rehearing *en banc* was also denied on a split vote. Judge Menashi, joined by Judge Park, issued a stinging dissent from that denial, stating:

> The panel opinion embraced a series of anomalous holdings to affirm the judgment of the district court.... [I]t upheld the admission of propensity evidence on the dubious theory that evidence of prior acts of sexual assault could "prove the *actus reus*," meaning whether the defendant acted in accordance with the propensity on a later occasion.... These holdings conflict with controlling precedents and produced a judgment that cannot be justified under the rules of evidence that apply as a matter of course in all other cases. [Petition Appendix ("Pet. App.") at 201A-202A.]

SUMMARY OF ARGUMENT

The evidentiary rulings of the district court judge blatantly violated the due process rights of defendant,

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[3] The jury pool for the Southern District of New York includes some lightly populated, marginally Republican counties, but is primarily drawn from densely populated, heavily anti-Trump Manhattan and the Bronx.

by allowing the jury to be presented propensity evidence which is banned by Federal Rule of Evidence Rules 403 and 404, and fails to qualify under any of the exceptions to Rule 404. Especially since the defendant was the President of the United States, overwhelmingly opposed politically by the great bulk of those in one of the most liberal jury pools in the nation, it is inconceivable that the trial judge did not understand that the evidence would be far more prejudicial than probative.

In admitting propensity evidence, the district court adopted a practice that characterized proceedings before the Court of Star Chamber — a court designed to protect the interests of the King and his nobles. One of the procedural abuses used to protect the King's interests was also used by the political supporters of President Biden to damage the chances of President Trump winning a second term.

The *Carroll v. Trump* case must be seen as one component of a larger, thoroughly corrupt, lawfare strategy waged against President Trump and his supporters designed to punish them for the audacity of challenging the nation's political establishment, and to derail President Trump's campaign seeking return to office. The epicenter of these efforts has been in New York, where, in addition to the *Carroll* case, an unprecedented civil case was brought by Democrat New York Attorney General Letitia James, and a baseless prosecution was brought by Democrat Manhattan District Attorney Alvin Bragg. Three other lawfare cases were also brought to stop Trump, two by President Biden Attorney General Merrick

Garland's appointee, Jack Smith, and litigated as meetings were held with the Biden White House Counsel's office by Fulton County, Georgia, Prosecutor Fani Willis and her paramour, Nathan Wade.

ARGUMENT

I. THE SECOND CIRCUIT ERRONEOUSLY AFFIRMED THE DISTRICT COURT'S VIOLATIONS OF THE RULES OF EVIDENCE WHICH CAUSED THE TRIAL BELOW TO RESEMBLE A STAR CHAMBER PROCEEDING.

The district court admitted highly prejudicial "propensity" testimony in the civil case against President Trump, which evidence should have been excluded under Federal Rule of Evidence Rule 404. Rule 404(a)(1) provides, "Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait." Subsection (b)(1) provides, "Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." The Petition explains clearly that the district court elevated a floor statement by one congressional sponsor over the text of the rule, avoiding making the type of decisions routinely required of trial judges, as to whether this evidence was more prejudicial than probative. Indeed, the jury verdict proved it was. *See* Pet. App. at 18A.

Petitioner has provided ample, indeed abundant, detail of the specific errors made by the district court. This argument is enhanced by an understanding of the historical context of the rule barring propensity evidence. It has been often noted by this Court and other courts and commentators that the rule to exclude propensity evidence is well-grounded in Anglo-American law, to ensure that a jury hears only evidence connected with a particular crime or civil allegation, and is not prejudiced or inflamed against the defendant on the basis of other actions. What is less well known is the specific English practice which this rule was designed to end.

A. The Court of Star Chamber Routinely Relied on Propensity Evidence.

Although there are occasions where a modern proceeding is hyperbolically described as resembling a Star Chamber proceeding, this is a case where that description is accurate. The Court of Star Chamber operated as an English prerogative court, meaning that it derived its authority from the royal prerogative — the King's inherent powers, privileges, and immunities. Indeed, it was designed to protect the interests of the King and his powerful nobles. It addressed both civil and criminal matters, without a jury, and became notorious for political prosecutions and arbitrary procedures of the sort that would not have been permitted by the common-law courts.[4] The

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[4] *See generally,* K.J. Kesselring & N. Mears, eds., Star Chamber Matters: An Early Modern Court and Its Records (Univ. London Press: 2021).

type of evidence regularly relied on by Star Chamber was propensity evidence.

A 2009 law review article by University of South Carolina School of Law Professor Colin Miller explained Star Chamber's use of evidence banned today by Rule 404:

> One of the most conspicuous consumers of propensity character evidence, and ultimately the harbinger of its death, was The Court of Star Chamber. Established in 1487, the Star Chamber was an expeditious way for the Tudors and Stuarts to exorcise political and religious dissenters of the monarchy while masquerading as a court conducting treason trials. The Star Chamber was the Crown's "organ of terror, renown[ed] among the citizenry for its arbitrary and cruel decisions," and one of its most capricious practices was the deluge of character evidence it admitted, resulting in defendants being punished for their sordid character rather than their culpable conduct.[5]

After the Long Parliament abolished Star Chamber in 1641, prosecutors were proscribed from

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[5] C. Miller, "Impeachable Offenses?: Why Civil Parties in Quasi-Criminal Cases Should be Treated Like Criminal Defendants Under the Felony Impeachment Rule," 36 PEPP. L. REV. Iss. 4, 997, 1003 (May 2009) (citations omitted). *See also*, C. Miller, Evidence: Propensity Character Evidence (Rule 404) (CALI eLangdell Press: 2013).

proving at trial any overt acts not charged in the indictment, thus precluding character evidence, a protection later extended to all criminal trials. *Id*. Soon "courts and commentators recogniz[ed] that such evidence violated the right to due process of law guaranteed by the Magna Carta." *Id*. at 1004. Justice Robert Jackson explained that the ban on propensity evidence was well-established in common law courts. *See Michelson v. United States*, 335 U.S. 469 (1948).

B. The Rule Against Propensity Evidence Was Imported to America and Has Been Universally Recognized.

Eight decades prior to July 1, 1975, when the Federal Rules of Evidence went into effect, this Court ruled that a trial court erred in admitting evidence that defendants who were on trial for murder had previously committed robberies. The Court explained the importance of the rule to achieving a fair trial:

> Proof of them only tended to **prejudice** the defendants with the jurors, to **draw their minds away from the real issue**, and to produce the impression that they were wretches whose lives were of no value to the community, and who were not entitled to the full benefit of the rules prescribed by law for the trial of human beings charged with crime involving the punishment of death.... However depraved in character, and however full of crime their past lives may have been, the **defendants were entitled to be tried** upon competent evidence, and **only for the offence**

> **charged**. [*Boyd v. United States*, 142 U.S. 450, 458 (1892) (emphasis added).]

A half-century later, Justice Robert Jackson, writing for the Court, explained the policy which underlies the rule, providing an explanation that has frequently been quoted ever since:

> The state may not show defendant's prior trouble with the law, specific criminal acts, or ill name among his neighbors, even though such facts might logically be persuasive that he is by propensity a probable perpetrator of the crime. The inquiry is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade them as to **prejudge** one with a bad general record and deny him a **fair opportunity to defend** against a particular charge. The overriding policy of excluding such evidence, despite its admitted probative value, is the practical experience that its disallowance tends to prevent confusion of issues, unfair surprise and **undue prejudice**. [*Michelson* at 475-76 (emphasis added).]

More recently, this Court again stated this policy, that although "'propensity evidence" is relevant, the **risk** that a jury will convict for crimes other than those charged — or that, uncertain of guilt, it will convict anyway because a bad person deserves punishment — creates **a prejudicial effect that outweighs ordinary relevance**." *Old Chief v. United States*, 519 U.S. 172, 181 (1997) (quoting

United States v. Moccia, 681 F.2d 61, 63 (1st Cir. 1982) (emphasis added)).[6] This has been the rule in New York State as well. *See People v. Stout*, 4 Park. Crim. 71, 98 (N.Y. Sup. Ct. 1858). *See also People v. Juarbe*, 43 D.P.R. 448 (P.R. 1932), relying on *People v. Stout*.

When Rule 404 was proposed, it was accompanied by Advisory Committee Notes, which are instructive here:

> Character evidence ... **subtly permits** the trier of fact to reward the good man to **punish the bad man** because of their respective characters **despite what the evidence in the case shows actually happened**. [Rule 404 Notes (emphasis added).]

The same problem exists in civil and criminal cases. Politicized prosecutors and politically savvy plaintiff attorneys will have a sense of how propensity evidence can be used to manipulate a jury to win a case unfairly. Judges are on the bench to prevent lawyers from manipulating juries based on emotion and prejudice, but here the district court gave Respondent's counsel free rein to inflame the jury beyond any hope of rationally considering only the evidence at hand, and accordingly delivered a politicized judgment and award.

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[6] *See, generally*, S. Koch, "Reversing the Odds: Creating Uniformity with Rule 404(b)," 59 S. TEX. L. REV. 507, 512 (Fall 2018).

II. THE SECOND CIRCUIT'S AFFIRMATION OF THE DISTRICT COURT'S EVIDENTIARY RULINGS MUST BE VIEWED IN THE CONTEXT OF NUMEROUS LAWFARE ACTIONS AGAINST PRESIDENT TRUMP AND HIS SUPPORTERS.

Guided and funded by some of President Trump's most virulent political opponents, the suit by Ms. Carroll must be viewed in the context of a raft of other unfounded civil and criminal cases brought to abuse the law to achieve a political objective.

A. Criminal Prosecution of President Trump's Former National Security Advisor Lt. General Michael T. Flynn.

General Flynn was appointed National Security Advisor by President Trump in his first Administration. Before Inauguration Day, General Flynn had a call with the Russian Ambassador Sergey Kislyak to urge him not to over-react to an Obama provocation, as a new Administration was soon to take office. His call was intercepted and leaked by unidentified elements of the Biden intelligence community. FBI Director James Comey bragged he violated protocol and sent agents to the White House to meet with General Flynn under false pretenses without advising him he was being investigated.[7] Although the agents did not believe Flynn lied,

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[7] *See* A. Pappas, "Comey admits decision to send FBI agents to interview Flynn was not standard," *Fox News* (Dec. 13, 2018).

charges were brought against General Flynn for violation of 18 U.S.C. § 1001.

Judge Rudolph Contreras was initially assigned to the Flynn case, yet on December 7, 2017, Judge Contreras "was recused" from the case, and it was reassigned to Judge Emmet G. Sullivan. No reason was given by the Court for the reassignment.[8] Later, messages between senior FBI counterintelligence official Peter Strzok[9] and FBI lawyer Lisa Page, both famous for their role in Crossfire Hurricane, were revealed, and from those texts it was learned that Judge Contreras had a personal relationship with Strzok — one of the two FBI agents who interviewed Flynn.

After first pleading guilty largely to prevent threatened charges from being brought against his son, General Flynn filed a motion for leave to withdraw his guilty plea "because of the government's bad faith, vindictiveness, and breach of the plea agreement." After an investigation, on May 7, 2020, the Department of Justice ("DOJ") moved to dismiss the charges with prejudice. Yet, Judge Sullivan adamantly refused to dismiss the charges.

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[8] *See* L. O'Connor, "Why was Judge recused from Mueller/Flynn case?" *Washington Times* (Jan. 31, 2018).

[9] Peter Strzok was on the staff of Special Counsel Robert Mueller, but later fired from the FBI. *See, e.g.,* A. Blake, "Nobody did more damage to Robert Mueller than Peter Strzok," *Washington Post* (Aug. 13, 2018).

On Thursday, May 21, 2020, a three-judge panel from the D.C. Circuit issued an order requiring Judge Sullivan to provide information regarding his decision not to immediately grant the DOJ request to dismiss the case against General Flynn. On June 24, 2020, the appeals court panel ruled 2–1 in favor of Flynn on the first two requests, and the panel unanimously rejected the third request. Refusing to give up, Judge Sullivan on July 9 petitioned the Court of Appeals for an *en banc* rehearing, a request opposed by Flynn and the DOJ, and on July 30, the court granted Sullivan's petition and vacated the panel's ruling. After oral argument on August 11, 2020, the appeal was dismissed on August 31, 2020. Even though Flynn had committed no crime, to end the matter, President Trump pardoned Flynn on November 25, 2020,[10] and the district court was forced to dismiss the case as moot on December 8, 2020.

B. Civil Fraud Claims Brought by New York Attorney General Letitia James.

In September 2022, Democrat New York Attorney General Letitia James filed an unprecedented, seven-count civil suit against former President Trump, several family members, business associates, and companies in which Mr. Trump had a controlling interest, for violating New York Executive Law §63(12) by submitting false financial statements to banks and insurance companies to obtain better rates on loans and insurance coverage.

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[10] Michael T. Flynn, Full and Unconditional Pardon, *U.S. DOJ*, (Nov. 25, 2020).

Count One was a "standalone" count for violating §63(12), which the trial court found required only a finding of "persistent and repeated fraud." *See People v. Trump*, 2023 N.Y. Misc. LEXIS 5705, at 43-44 (N.Y. Sup. Ct. 2023) ("*New York I*"). In September 2023, Justice Arthur Engoron granted summary judgment to James on Count I, sending the case to trial to determine the penalty, together with the remaining six claims to determine both liability and the penalty. *Id*. at *43-45, 72-77. In February 2024, the trial court ruled that, where "persistent fraud or illegality" exists, New York courts can impose an award of fines payable to the attorney general under "equitable" principles, **even though such fines are not expressly authorized by statute**. *See People v. Trump*, 2024 N.Y. Misc. LEXIS 711, at 8 (N.Y. Sup. Ct. 2024) ("*New York II*").

On February 16, 2024, the trial court found Mr. Trump liable on five of the six remaining counts *(New York II* at 177-79, 183-86, 205) and two Trump organization officials liable on the final count of committing insurance fraud (*id.* at 185, 205). The Judgment consisted of three primary amounts. *Id*. at 205-07. First was **$168,040,168** for the amount the Trump organizations saved in interest payments on loans for four properties allegedly obtained at artificially-low interest rates through use of false financial information. *Id*. at 189. Second was **$126,828,600** as profit for the sale of the "Old Post Office" property on which the Trump organizations allegedly obtained loans via false financial statements. *Id*. at 191. Third was **$60 million** in profits from the sale of a license agreement for the Ferry Point

property, an agreement allegedly obtained by the use of false financial statements. *Id*. In addition, the court-imposed prejudgment interest, with the total award and interest reportedly in the range of **$435 million**. The court also barred Trump from serving as an officer or director of a corporation in New York for three years and barred his associated businesses from applying for loans in New York for three years. *Id*. at 207.

According to the theory pressed by New York state, a large and sophisticated New York bank represented by experienced counsel was incompetent to negotiate an agreement to protect itself. There was no complaint, and no one lost any money. The loans were repaid timely and in full. The evidence never demonstrated reasonable reliance on Trump's representations which were accompanied by a disclaimer.

The Attorney General of New York abused her powers to invent a problem that did not exist, to obtain a mammoth penalty, the sole beneficiary of which would be the State of New York. This case fulfilled James' campaign promise to "**get Trump**."[11] Following these *amici's* brief,[12] the Appellate Division — in a sharply divided opinion — upheld the decision,

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[11] *See* D. Murdock, "Letitia James, Judge Engoron Wanted to Get Trump, Justice Be Damned," *Daily Signal* (Feb. 27, 2024) (emphasis added).

[12] Brief for *Amici Curiae* Citizens United, *et al.*, *New York v. Trump*.

but could not bring itself to affirm the size of the judgment awarded to the State. *See People v. Trump*, 237 N.Y.S.3d 443 (App.Div. 1st Dept.) (Aug. 21, 2025).

C. Criminal Prosecution Brought by Special Counsel Jack Smith regarding Classified Documents.

On August 8, 2022, the FBI conducted an unannounced raid at the residence of President Trump and his family in West Palm Beach, Florida, while President Trump was in New York. The FBI searched for classified documents, spending 10 hours combing through his property, including Melania Trump's underwear drawers, seizing 33 boxes of materials.

President Trump announced his candidacy for the 2024 election on November 15, 2022.[13] Three days later, on November 18, President Biden's Attorney General Merrick B. Garland announced that he had appointed John L. "Jack" Smith as Special Counsel to investigate candidate for President Trump.[14] The Attorney General's Order authorized the Special Counsel "to conduct the ongoing investigation into whether any person or entity violated the law in connection with efforts to interfere with the lawful transfer of power following the 2020 presidential

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[13] J. Wulfsohn, "Donald Trump's 2024 announcement delights fans as critics hit 'low energy' speech," *Fox News* (Nov. 16, 2022).

[14] Office of the Attorney General, Order No. 5559-2022, "*Appointment of John L. Smith as Special Counsel*," ¶ (c) (Nov. 18, 2022).

election or the certification of the Electoral College vote held on or about January 6, 2021." *Id.,* ¶ (b).

On February 22, 2024, former President Trump moved to dismiss the superseding indictment, on the grounds that the appointment of the Special Counsel violated the Appointments Clause (Art. II, § 2, cl. 2) and that the funding for the Special Counsel from the permanent indefinite appropriation for the Department of Justice violated the Appropriations Clause (Art. I, § 9, cl. 7). *United States v. Trump,* No. 9:23-CR-80101-AMC, Doc. No. 326. On July 15, 2024, the District Court granted Trump's motion to dismiss. *Id.,* Doc. No. 672. Special Counsel Smith appealed the district court's dismissal order to the Eleventh Circuit.

The delegation of authority claimed by the Special Counsel presupposes a grant of legislative power to the Attorney General to establish an office of the United States in violation of the Framers' check on the power of the Executive Branch to create offices by requiring they "be established by Law." The statutory authority claimed by Attorney General Garland to create an office that exercised "the full power and independent authority" of a United States Attorney with no effective supervision of or control over the Special Counsel violated the non-delegation doctrine.

Some of these *amici* filed two *amicus* briefs in the district court and one in the Eleventh Circuit, arguing in support of the position that Jack Smith was not properly appointed because he was not a Senate-confirmed U.S. Attorney, as other Special Counsels

have been. After President Trump was re-elected in November 2024, the case against him was dismissed.

D. Criminal Prosecution Brought by Special Counsel Jack Smith regarding Events of January 6.

On August 1, 2023, the Biden Administration's Special Counsel Smith obtained his second federal indictment of President and candidate Trump, this time in the District of Columbia for crimes allegedly committed between the November 3, 2020 Presidential election and the January 20, 2021 Presidential inauguration. On December 1, 2023, district judge Tanya S. Chutkan ruled that former Presidents enjoy no immunity from criminal prosecution for official acts, and a federal prosecutor may bring criminal charges against a former President based on conduct for which he was acquitted during an impeachment proceeding. *United States v. Trump*, 704 F. Supp. 3d 196 (D.D.C. 2023). The district court stayed proceedings during the pendency of President Trump's appeal of Judge Chutkan's ruling. However, Special Counsel Jack Smith seemed eager to move the case along to have time to obtain a conviction of President Trump before the November 2024 election, as he filed a petition for certiorari before judgment and a motion to expedite in this Court, while the appeal was pending in the D.C. Circuit, which this Court denied.

On February 6, 2024, the D.C. Circuit affirmed the district court. *United States v. Trump*, 91 F.4th 1173 (D.C. Cir. 2024). On February 12, 2024, Trump filed an application to stay the D.C. Circuit's mandate

pending disposition of his petition for certiorari, which this Court treated as a petition and granted.[15] These *amici* filed *amicus* briefs in support of President Trump on February 20, 2024 and March 19, 2024, but this Court declined to consider the legality of the Attorney General's appointment of Jack Smith.[16]

On July 1, 2024, this Court rejected the district court's and the circuit court's conclusions that former Presidents have no federal criminal immunity for actions taken during their presidency. This Court held that for presidential actions within the core of the President's constitutional powers, former Presidents have absolute immunity. *See Trump v. United States*, 603 U.S. 593 (2024). For other official actions, there is at least presumptive immunity which may be rebutted by the prosecution. *Id*.

Additionally, half of the charges that Smith brought against Trump in D.C. were based not on the insurrection statute so often claimed to have occurred, but on a perverse reading of 18 U.S.C. § 1512(c)(2) enacted as part of the Sarbanes-Oxley Act of 2002. That section was weaponized by federal prosecutors against hundreds of Trump supporters who were at the Capitol Building on January 6, 2021. These *amici* filed a brief in support of one January 6 defendant who had been charged with § 1512(c)(2) simply for entering the Capitol for a few minutes that day, thus facing a

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[15] *Trump v. United States*, 144 S. Ct. 1027 (2024).

[16] *See* Briefs of Former Attorneys General Edwin Meese III, *et al.* as *Amici Curiae*, *supra*.

potential 20 year sentence if convicted.[17] Just a few days before its decision in *Trump v. United States*, this Court rejected the interpretation of that section which D.C. prosecutors were using as part of their lawfare against Trump supporters, and which Special Counsel Smith attempted to use against President Trump. *See Fischer v. United States*, 603 U.S. 480 (2024).

E. Criminal Prosecution Brought by Fulton County, Georgia District Attorney Fani Willis regarding Effort to Overturn Georgia Election.

In *State of Georgia v. Donald J. Trump, et al.*, Superior Court of Fulton County, No. 23SC188947, Fulton County, Georgia Democrat District Attorney Fani Willis prosecuted efforts by then-President Donald Trump and his supporters to challenge the integrity of Georgia's 2020 presidential election results, where Joe Biden was reported to have won by only 11,779 votes.

Willis delayed bringing these charges for over 1,000 days after the 2020 election. Then, on August 14, 2023, when it was becoming clear that President Trump was the favorite to be nominated to run again,

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[17] Brief Amicus Curiae of America's Future, Gun Owners of America, Gun Owners Fdn., Gun Owners of Cal., Citizens United, Citizens United Foundation, The Presidential Coalition, Tennessee Firearms Assn., U.S. Constitutional Rights Legal Def. Fund, and Conservative Legal Def. and Ed. Fund in Support of Petitioner, *Fischer v. United States*, U.S. Supreme Court, No. 23-5572 (Feb. 5, 2024)

she brought a 98-page, 41-count indictment against Trump and 18 co-defendants. The charges were centered on "criminal enterprise" racketeering (RICO) under a Georgia statute typically used against organized crime.

Just days before filing the indictment, Willis launched a fundraising site highlighting the Trump probe, raising over $500,000. In early 2024, a romantic relationship between Willis and special prosecutor Nathan Wade, whom she hired to bring the case, was exposed. Trump and co-defendants moved to disqualify Willis, arguing it created a conflict of interest and appearance of impropriety. "It was also alleged that Willis prolonged the case against Trump and his co-defendants so Wade could rake in more pay from the county, which he then used to take her on lavish trips."[18] Republicans on the U.S. House Judiciary Committee sent a letter to Willis demanding answers to several improprieties in the indictment process, including "questions about the involvement of Department of Justice Special Counsel Jack Smith and whether Willis' office 'coordinated' with Smith 'during the course of [her] investigation.'"[19] Wade also billed for meetings with White House Counsel and an interview at the White House.

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[18] M. Palin, "Nathan Wade makes absurd claim about the moment he and Fani Willis ended their love affair," *New York Post* (May 6, 2024).

[19] S. Fleetwood, "House Republicans Launch Probe Into Fulton County's 'Politically Motivated' Trump Indictments," *The Federalist* (Aug. 24, 2023).

Judge Scott McAfee ruled March 15, 2024 that Willis could stay on the case if Wade resigned (which he did), but the judge criticized the prosecution's creating a "significant appearance of impropriety."[20] In June 2024, the Georgia Court of Appeals paused the proceedings in the case pending an appeal of Willis' qualification.[21] In December 2024, the Georgia Court of Appeals disqualified Willis entirely due to the conflict, ordering a new prosecutor, declaring that "[t]his is the rare case in which disqualification is mandated and no other remedy will suffice to restore public confidence in the integrity of these proceedings."[22] On November 26, 2025, a substitute prosecutor moved to dismiss all remaining charges against Trump and the those co-defendants still facing trial, stating, "it is not illegal to question or challenge election results."[23] Judge McAfee granted the motion.[24]

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[20] P. DeGregory and O. Land, "Judge slams Fani Willis' 'tremendous lapse in judgment' in ruling on Trump election interference case," *New York Post* (Mar. 15, 2024).

[21] K. Lewis, "Donald Trump's Georgia Case Order Sparks Timeline Concerns," *Newsweek* (June 5, 2024).

[22] J. Gerstein and K. Cheney, "Fani Willis is disqualified from prosecuting Trump election case in Georgia, appeals court rules," *Politico* (Dec. 19, 2024).

[23] State's Motion to Nolle Prosequi (Nov. 26, 2025).

[24] Order Granting State's Motion for Dismissal (Nov. 26, 2025).

F. Criminal Prosecution Brought by Manhattan District Attorney Alvin Bragg regarding Business Records.

The first lawfare indictment against President Trump was Democrat Manhattan District Attorney Alvin Bragg's prosecution for "falsifying business records," brought on March 30, 2023. Bragg developed 34 counts centered around the manner certain reimbursement payments to attorney Michael Cohen were characterized in the Trump Organization's non-public records.

Bragg's theory of the case is that the business records concealed the true nature of the entries in order to conceal violations of federal election laws. However, there was no federal election law violation, so the very basis for Bragg's case was concocted lawfare in order to prevent Trump from being reelected in 2024.[25]

Just last month, the Second Circuit remanded the case to the federal district court to determine whether the case should be removed from state court due to the

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[25] In order to taint President Trump, the office of the U.S. Attorney for the Southern District of New York coerced a guilty plea from Michael Cohen to a campaign finance crime that did not exist. But the act of Cohen was payment for a publisher **not to publish** an article, an act which does not meet this Court's limiting definition of "express advocacy" established in *Buckley v. Valeo*, 424 U.S. 1 (1976), and its progeny. *See* J. Morgan, "Why Did Michael Cohen Plead Guilty to Campaign Finance Crimes That Aren't Campaign Finance Crimes?" *American Thinker* (Dec. 17, 2018).

federal issues at stake, including presidential immunity. *See People v. Trump*, 158 F.4th 458 (Nov. 6, 2025).

CONCLUSION

The electorate issued its own verdict on the lawfare waged in and by certain lower courts against President Trump when it elected him the Forty-Seventh President of the United States.

For the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

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