

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA v. MARILYN J. MOSBY, Defendant	Criminal No. 22-cr-00007-LKG-1 (Perjury, 18 U.S.C. § 1621; False Statement on a Loan Application, 18 U.S.C. § 1014)
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DEFENDANT MARILYN J. MOSBY'S MOTION TO DISMISS INDICTMENT

Defendant Marilyn J. Mosby (“State’s Attorney Mosby”), by and through her undersigned counsel, hereby moves to dismiss the Indictment in this matter on the basis of selective or vindictive prosecution pursuant to Federal Rule of Criminal Procedure 12(b)(3).

Since its inception, the prosecution against State’s Attorney Mosby has been driven by malicious personal, political, and even racial animus on the part of the prosecutors. The Indictment returned against State’s Attorney Mosby is the culmination of a long-running crusade to ruin the political career of a young, progressive, Black, female elected official, led by a prosecutor who has repeatedly made financial contributions to the campaigns of her political opponents and led a prosecution team that engaged in intentionally reckless behavior that stonewalled any participation by State’s Attorney Mosby and failed to disclose exculpatory evidence to the Grand Jury.

Lead prosecutor Assistant United States Attorney Leo Wise (“Mr. Wise”) in particular has been involved in several attempts to sabotage State’s Attorney Mosby’s career from the beginning of her time in office. Unfortunately for Mr. Wise, his animosity toward State’s Attorney Mosby is not a one-off event. It appears to be just one example of a pattern and practice of engaging in similar conduct aimed at other Black officials. Indeed, at seemingly every turn in his career, Mr. Wise has received criticism for his penchant for directing his prosecutorial or investigatory powers

toward Black political officials. In addition to Mr. Wise, the United States Attorney for the District of Maryland, Erek Barron—who is overseeing the prosecution and signed the Indictment against State’s Attorney Mosby—also has had his fair share of conflicts with State’s Attorney Mosby. To be sure, he has expressed his disapproval for her both personally and professionally.

This conduct, which is outlined in more detail below, highlights the ongoing animosity toward State’s Attorney Mosby by two of the most important members of the prosecution team. Such animosity goes to the heart of whether the prosecution against State’s Attorney Mosby is fair and just, and whether she will receive a fair day in court, as due process requires. The lack of due process is reflected in how the prosecution has been handled. In this regard, despite repeated efforts by counsel to present relevant exculpatory evidence, as well as make State’s Attorney Mosby available to testify before the Grand Jury, the prosecution team intentionally ignored defense counsel. Rather than adhere to his ethical obligations under Department of Justice (“DOJ”) policy, Mr. Wise is instead driven by his own personal animus, which resulted in his abuse of the Grand Jury process to return an indictment at any and all costs, in an effort to negatively impact State’s Attorney Mosby’s upcoming election in June 2022.

For the reasons stated below, it is clear that the entire prosecutorial process has been so thoroughly tainted by animus that the extraordinary relief of dismissing the Indictment is appropriate.

LEGAL STANDARD

“Vindictive and selective prosecutions (discriminatory prosecutions) violate constitutional due process and equal protection and threaten the rule of law.” *United States v. Torquato*, 602 F.2d 564, 569 (3d Cir. 1979). The Federal Rules of Criminal Procedure accordingly identify “selective or vindictive prosecution” as a ground for dismissal of an Indictment. Fed. R. Crim. P. 12(b)(3). “It is hornbook law that a federal court may dismiss an Indictment if the accused

produces evidence of actual prosecutorial vindictiveness sufficient to establish a due process violation, or even if [s]he demonstrates a likelihood of vindictiveness sufficient to justify a presumption.” *United States v. Stokes*, 124 F.3d 39, 45 (1st Cir. 1997).

To establish prosecutorial vindictiveness, a defendant must show “that the prosecutor acted with genuine animus toward the defendant, and the defendant would not have been prosecuted but for that animus.” *United States v. Wilson*, 262 F.3d 305, 314 (4th Cir. 2001). Even without direct evidence of animus, a defendant can establish a rebuttable presumption of vindictiveness by showing that a “reasonable likelihood of vindictiveness exists.” *United States v. Goodwin*, 457 U.S. 368, 373 (1982). If she succeeds, the burden then shifts to the Government to present objective evidence justifying its conduct. *Id.* at 384.

The personal and political animus towards State’s Attorney Mosby that infects this entire prosecution did not begin with the Indictment. Rather, it reflects years of conflict and outright hostility by Mr. Wise toward State’s Attorney Mosby. That history, along with the specific conduct of prosecutors during the investigatory phase of this prosecution, all point to only one conclusion: the prosecution is vindictive, and the Indictment must be dismissed.

FACTUAL BACKGROUND

I. The Prosecution Team In This Case Has a History of Vindictiveness and Animus Toward State’s Attorney Mosby In Particular And Black Elected Officials In Maryland Generally.

A. Mr. Wise Baselessly Smears State’s Attorney Mosby Over the Baltimore Gun Trace Task Force Prosecution.

The animus between the Maryland U.S. Attorney’s Office (“USAO”)—Mr. Wise in particular—and State’s Attorney Mosby began almost five years before the Indictment at issue here. In 2017, Mr. Wise and then-Acting U.S. Attorney Stephen Schenning (“Mr. Schenning”) began a smear campaign to falsely accuse State’s Attorney Mosby and her staff of improperly

leaking the federal GTTF investigation to the lead suspect in the police corruption scandal. *See* Exhibit A, March 19, 2021 letter from A. Scott Bolden to Jeffrey Ragsdale.¹

This campaign came to a head in January 2018, when, during a plea hearing for Mr. Wayne Jenkins, Mr. Wise made an on-the-record assertion that State's Attorney Mosby's office was leaking information about the federal investigation to the lead suspect in the case. *See* Exhibit A, March 19, 2021 letter from A. Scott Bolden to Jeffrey Ragsdale. Faced with this criticism of her office, State's Attorney Mosby demanded a meeting with Mr. Wise and the documentation and notes that supported Mr. Wise's assertion. *Id.*

During that meeting, which included Mr. Schenning and several other prosecutors, Mr. Wise indicated that he learned of the alleged leak from statements made during a proffer session between the USAO and Mr. Jenkins. *Id.* Yet, Mr. Wise was unable to produce any further proof to support the USAO's public statements that State's Attorney Mosby's office leaked information about the GTTF prosecution beyond his own say-so. *Id.; see also* Exhibit B, March 23, 2021 letter from A. Scott Bolden to Jeffrey Ragsdale. Specifically, despite identifying the alleged source of the information at the prior proffer session with Mr. Jenkins, Mr. Wise was unable to identify or corroborate anything in his notes that supported his public assertion. *See* Exhibit B, March 23, 2021 letter from A. Scott Bolden to Jeffrey Ragsdale. After being unable to identify the material at the meeting, Mr. Schenning assured State's Attorney Mosby that he would attempt to obtain additional evidence supporting Mr. Wise's assertions—yet that evidence never materialized. *See id.*

B. Mr. Wise Contributes to State's Attorney Mosby's Political Opponents Just Days After Being Unable to Support His Baseless GTTF Allegations.

¹ Although the letter is dated May 19, 2021, this is a typographical error – the letter was drafted and sent to Mr. Ragsdale on March 19, 2021.

After Mr. Wise was unable to produce evidence to support his claim that State's Attorney Mosby's office had leaked the existence of the GTTF Investigation, he did not simply stay quiet. Mr. Wise was apparently embarrassed by that encounter, and it appears to have directly led to his own personal efforts to undermine State's Attorney Mosby's re-election. A mere five days after the meeting discussed above, Wise donated to one of State's Attorney Mosby's challengers – his first ever reported donation in support of a candidate for office in Maryland. He again donated money six months later, this time to another of State's Attorney Mosby's then-challengers. *See* Exhibit C, Records of Leo Wise Political Donations.

C. This Prosecution Is Not the First Time Mr. Wise Has Been Accused of Being Motivated By Racial Animus.

Separate and apart from the animus directed specifically at State's Attorney Mosby, this is not the first time that Mr. Wise has been involved in a controversy involving the targeting and investigation of a Black elected official. As far back as 2008, when Mr. Wise was head of the Office of Congressional Ethics, the Congressional Black Caucus complained about the office's behavior under his leadership. *See* "Ethics Cases Raise Racial Questions," Politico, August 2, 2010, available at <https://www.politico.com/story/2010/08/ethics-cases-raise-racial-questions-040533>. After Mr. Wise's resignation, questions were raised about his alleged targeting of Black elected officials. *See* "Leo Wise Resigns," Time, October 15, 2010, available at <https://swampland.time.com/2010/10/15/leo-wise-resigns/>.² At one point during Mr. Wise's tenure, all eight lawmakers under formal investigation by the House Ethics Committee were Black

² "As the House's top watchdog, Wise was not a popular guy on the Hill. Members complained of being unfairly targeted and that investigations that sometimes yielded nothing were made public, tarring them with the stigma any way. Much of that blame, though, was also directed at the still-dysfunctional Standards Committee. The OCE investigates hints of impropriety and recommends what action the Standards Committee should take. The Standards Committee has had an uneven record in deciding what cases it'll pursue and those it drops. **The stilted approach had led to accusations of racism – most of the cases they've pursued have been against Congressional Black Caucus members.**" (Emphasis added)

Democrats, including Representatives Maxine Waters and Charles Rangel. Mr. Wise was alleged to have disproportionately targeted Black elected officials while working for Congress, and prominent commentators have wondered if this tendency continues during his tenure in Maryland. After State's Attorney Mosby was indicted, the President of the NAACP Legal Defense Fund stated sarcastically, "There must be a federal prosecutor assigned just to Black mayors" because Mr. Wise's office ("the Maryland USAO") has prosecuted so many Black elected officials. *See* https://twitter.com/Sifill_LDF/status/1482380791460122631. This was a reference to the fact that Mr. Wise seems to have a particular interest in targeting Black leaders and prominent figures in Maryland. These include: State Delegate Cheryl Glenn, Former Baltimore Mayor Catherine Pugh, Former Baltimore Police Commissioner Darryl DeSousa, Prominent Attorney Ken Ravenell, State Senator Nathaniel Oaks, City Council President Nick Mosby, and now State's Attorney Marilyn Mosby.

Perhaps because of this, in one internal USAO correspondence (which defense counsel was not meant to see but was mistakenly included as a recipient), Mr. Schenning preposterously suggested that, because the political opponents of State's Attorney Mosby who had received donations from Mr. Wise were candidates of color, Mr. Wise could not have been motivated by racial animus.

Also, basing racial animus on the fact Leo made modest contributions to [one opponent] whose parents are Sri Lankan and [another opponent], an African American, is a wild stretch.

See Exhibit D, October 28, 2021 Emails between A. Scott Bolden and Stephen Schenning.

That racially insensitive remark in an email intended to be internal to the USAO attorneys equates to having "one Black friend, and therefore, I am not a racist." We all know that not to be the case under any circumstances.

D. Animus on the Part of United States Attorney Erek Barron.

Mr. Wise is not the only member of the prosecution team who has a negative history with State's Attorney Mosby. The United States Attorney, Erek Barron, has previously commented negatively on Ms. Mosby's style and approach to work. *See* Exhibit E, Declaration of Sheaniqua A. Thompson, ¶ 6. While he was a Delegate in the Maryland General Assembly, he commented that he did not "understand how she got where she is," and repeated disparaging rumors alleging marital infidelity. *Id.* at ¶ 5.

II. The Prosecution Team's History Of Vindictiveness And Animus Toward State's Attorney Mosby Motivated This Prosecution and Tainted Every Aspect of It.

A. Mr. Wise Initially Contemplated Criminal Tax Charges Against State's Attorney Mosby, But Did Not Pursue Those Charges.

This prosecution of State's Attorney Mosby has its roots in July 2020, following the incessant harassment of Bar Counsel Lydia Lawless ("Ms. Lawless"). In October 13, 2020, Ms. Lawless became aware of a tax lien placed against State's Attorney Mosby and her husband after an article discussing the tax lien was published by the Baltimore Sun. Ms. Lawless, who at the time was investigating a six year old unfounded complaint against State's Attorney Mosby, dismissed this initial investigation and immediately opened another investigation into State's Attorney Mosby's taxes. Pursuant to that investigation, Ms. Lawless made requests for State's Attorney Mosby to turn over her tax returns for 2014 to 2019. *See* Exhibit F, November 30, 2020 Letter from Lydia Lawless to Counsel for State's Attorney Mosby. Following the advice of counsel representing her in the State Bar investigation, State's Attorney Mosby turned over her joint tax records dating back seven years, after which Ms. Lawless subsequently requested additional documentation to then substantiate State's Attorney Mosby's deductions. *See* Exhibit G, March 1, 2021 Letter from Counsel for State's Attorney Mosby to Lydia Lawless. State's Attorney Mosby, based on advice of counsel, declined to provide substantiation of her deductions

to Bar Counsel pursuant to the overbroad and unlawful request where there was absolutely no factual basis for the inquiry.

On March 10, 2021, State's Attorney Mosby received a letter from Mr. Wise indicating that she was a subject of a criminal tax investigation into returns filed in tax years 2015, 2016, 2017, 2018, and 2019.³ Subsequently, on April 30, 2021, Mr. Wise indicated in an email to counsel in the instant matter that Ms. Lawless had referred the State Bar inquiry to Mr. Wise's office after State's Attorney Mosby declined to comply with Ms. Lawless' overbroad request that she turn over substantiation of her deductions dating back seven years. *See* Exhibit H, May 4, 2021 Email from A. Scott Bolden to Leo Wise. Instead of referring this matter to the IRS for a civil audit which would have been the normal course of action in this scenario, Ms. Lawless' referral resulted in the opening of a criminal tax grand jury investigation, when there had been no evidence of wrongdoing on the part of State's Attorney Mosby. The irregular manner in which this referral was made instead of initiating a civil audit demonstrates how Ms. Lawless and Mr. Wise conspired together to effectuate their mutual goal of damaging State's Attorney Mosby's reputation. The only basis Ms. Lawless had to make this referral was that State's Attorney Mosby, upon advice of counsel, had declined to provide further documentation beyond the seven years of tax returns she had already provided. Ms. Lawless' request was overbroad and at its essence a phishing expedition to find any wrongdoing she could pin on State's Attorney Mosby after Ms. Lawless' initial investigation had been dismissed.

³ On that same day, March 10, 2021, the FBI went to Baltimore's City Hall in the middle of a public City Council meeting that State's Attorney Mosby's husband, Nick Mosby, was participating in to interview Mr. Mosby. Rather than conduct this interview in a private setting, the FBI intentionally disrupted a public meeting pointing towards the Government's intention to publicly shame State's Attorney Mosby. This motivation was also seen in the issuance of subpoenas to several black churches that State's Attorney Mosby had donated to. The FBI elected to serve these subpoenas *in the middle of* Sunday services. These instances show a pattern and practice of animus and are consistent with Mr. Wise's goal of affecting State's Attorney Mosby's reputation and electoral success at all costs.

Once counsel in the instant matter learned of this referral from Mr. Wise's April 30, 2021 email, counsel wrote back to Mr. Wise inquiring as to how Ms. Lawless' overbroad requests for State's Attorney Mosby's tax returns could possibly have given rise to a Grand Jury investigation into alleged criminal tax violations. *See* Exhibit H, May 4, 2021 Email from A. Scott Bolden to Leo Wise. Counsel asked for the opportunity to meet to present exculpatory evidence, which the Government never granted.

The USAO would go on to repeatedly refuse to have a formal meeting with counsel for State's Attorney Mosby to discuss the potential criminal tax charges against her. *See, e.g.*, Exhibit I, June 18, 2021 Emails Between A. Scott Bolden and Leo Wise; Exhibit J, October 26, 2011 Emails between Rizwan Qureshi and Erek Barron. Counsel for State's Attorney Mosby made multiple requests for meetings, in part because defense counsel believed that it had highly relevant information that absolved State's Attorney Mosby of any wrongdoing; however, the USAO was completely uninterested in such exculpatory evidence and refused to meet.

During this same time period, the Government refused to identify the allegedly false statements (while purporting to be investigating allegations of tax-related perjury), refused to identify statements in which State's Attorney Mosby allegedly perjured herself, and refused to provide even the most basic information to her or to counsel. In other words, despite State's Attorney Mosby's efforts to cooperate with the USAO's investigation, she and her counsel were forced to expend energy investigating and defending these proposed charges, while not being informed of any information relevant to the charges that were ultimately brought.

Despite all this, the tax investigation was a nonstarter. While Mr. Wise initially elected to use the Grand Jury process to conduct inquiries into otherwise routine civil IRS audit matters, State's Attorney Mosby was ultimately not charged with *any* criminal tax violations. No criminal

tax violations were pursued, even after the Government subpoenaed and interviewed multiple witnesses (which included her hairdresser and her children's dance instructor) and subpoenaed various churches and charities that State's Attorney Mosby was suspected of contributing to in tax years 2014-2019.⁴

B. The Grand Jury Process Improperly Excluded State's Attorney Mosby and Failed to Consider Exculpatory Evidence.

Since at least the September 2021 taxpayer conference and in follow-up correspondence, counsel for State's Attorney Mosby repeatedly offered to have her testify and offer exculpatory evidence in her defense to the Grand Jury. Not only did the Government fail to respond to this demand (and did not allow her to testify), it did not even take the offer seriously. In an internal USAO email inadvertently sent to counsel for State's Attorney Mosby,⁵ Stephen Schenning, the former acting United States Attorney, said to the current United States Attorney for Maryland, Erek Barron:

“Bolden in the meeting at DOJ Tax floated the idea of ‘Queen for a Day’ meeting. (His characterization, not mine.). He is again suggesting MM’s appearance before GJ. **I doubt if he would follow through on that.**”

See Exhibit D, October 28, 2021 Emails between A. Scott Bolden and Stephen Schenning (emphasis added). A. Scott Bolden replied, stating:

“I have put in writing and stated in our DOJ tax conference of putting her in the grand jury, and no one from your office has responded. . . . Also, whether to seek MM going into the grand jury is the defense call – not the prosecution’s call re our defense strategy. Doubt as you will, but her appearance should be considered a real possibility.”

⁴ Mr. Wise proposed in writing to the DOJ Tax Division that State's Attorney Mosby be charged with tax evasion for tax year 2020, when in fact her 2020 tax return had not been filed at the time of the September 10, 2021 taxpayer conference with the Maryland USAO and the DOJ Tax Division. At that meeting, nine government attorneys were present and declined to inform counsel of the perjurious statement State's Attorney Mosby had allegedly made.

⁵ Mr. Schenning, once he became aware that he had sent this email to counsel for State's Attorney Mosby, attempted to recall it. See Exhibit K, September 21, 2021 Recall Email from Stephen Schenning.

See Exhibit L, October 28, 2021 Emails between A. Scott Bolden and Stephen Schenning – ASB Response. Despite this skepticism, there is no dispute that counsel for State’s Attorney Mosby made the offer to have her testify on more than one occasion, and at least once in writing. *Id.* In other words, there was absolutely no indication given by counsel for State’s Attorney Mosby that the repeated request to allow State’s Attorney Mosby to testify before the Grand Jury was anything other than genuine.

Not only was State’s Attorney Mosby precluded from testifying, but the Government also excluded the exculpatory evidence she provided from consideration by the Grand Jury. During the Grand Jury’s investigation, the Government called Carlton Saunders, State’s Attorney Mosby’s former campaign treasurer, to testify regarding some allegedly improper reimbursements for campaign expenses. *See* Exhibit M, Declaration of Carlton Saunders. In September of 2021, Counsel for State’s Attorney Mosby had provided the USAO with documentation substantiating those same reimbursements, along with a narrative describing the documents and again requesting a meeting with the USAO. *See* Exhibit N, September 1, 2021 Letter from A. Scott Bolden to Leo Wise. Mr. Saunders had also provided the Government with relevant documents. *See* Exhibit M, Declaration of Carlton Saunders. The information provided made clear that the campaign reimbursements were not in any way improper, and were made to reimburse State’s Attorney Mosby for legitimate campaign expenses incurred on her personal credit cards. *See* Exhibit N, September 1, 2021 Letter from A. Scott Bolden to Leo Wise.

Despite this, when Mr. Wise questioned Mr. Saunders in the Grand Jury, Mr. Wise did not present any of the exculpatory documents provided by Mr. Saunders or by State’s Attorney Mosby’s counsel to the Grand Jury on his own initiative, despite the fact that this evidence was exculpatory in nature. *See* Exhibit M, Declaration of Carlton Saunders.

After learning of this incident, counsel for State’s Attorney Mosby communicated with the USAO regarding this issue, insisting that the Government provide any and all exculpatory evidence in its possession to the Grand Jury. *See* Exhibit O, September 21, 2021 Emails between A. Scott Bolden and Leo Wise. The USAO refused to respond or confirm that this had been done. *Id.*

C. The USAO Filed an Indictment Mere Months Before State’s Attorney Mosby’s Reelection.

On January 11, 2022, counsel for State’s Attorney Mosby, having not heard from the USAO for quite some time, re-iterated his request for a meeting. *See* Exhibit P, January 2022 Emails between A. Scott Bolden and Erik Barron. On January 12, 2022, Erik Barron, the United States Attorney for the District of Maryland responded: “Thank you for your email, I will definitely contact you if a meeting will be helpful.” *Id.* The indictment was filed the very next day—five months before State’s Attorney Mosby’s re-election date.

ARGUMENT

I. The Investigation and Prosecution of State’s Attorney Mosby Has Been Driven by Improper Animus and Requires Dismissal.

The history of this prosecution, along with the conduct of Mr. Wise and his prosecution team, demonstrates “genuine animus” toward State’s Attorney Mosby. At the very least, the facts discussed above raise a “reasonable likelihood” that this prosecution was motivated by vindictiveness. *See Goodwin*, 457 U.S. at 373. At every step of this investigation, Mr. Wise, a prosecutor with a history of animus toward State’s Attorney Mosby specifically and targeting Black elected officials generally, treated State’s Attorney Mosby unfairly, inappropriately and unethically. Taken together, the animus by the prosecution team—and Mr. Wise in particular—is sufficient to warrant dismissal of the indictment.

A. The Grand Jury Proceedings Were Aimed at Indicting State’s Attorney Mosby, Not Seeking the Truth.

First and foremost, the Grand Jury proceedings in this matter were fundamentally flawed, because they were aimed at obtaining an indictment, not at discovering the truth. The prosecution repeatedly refused to permit State’s Attorney Mosby to appear before the Grand Jury. Based on the evidence available to counsel through Grand Jury witness Carlton Saunders, the Grand Jury was also not provided with relevant exculpatory evidence. To that end, as noted above, the Government possessed an enormous amount of exculpatory evidence it received from counsel for State’s Attorney Mosby, yet Mr. Wise and the prosecution team failed to comply with their obligations under the Justice Manual to make that evidence available to the Grand Jury. *See* U.S. Dep’t of Just., Just. Manual § 9-11.152 (“under normal circumstances, where no burden upon the Grand Jury or delay of its proceedings is involved, reasonable requests by a ‘subject’ or ‘target’ of an investigation . . . to testify personally before the Grand Jury ordinarily should be given favorable consideration . . .”); *see also* U.S. Dep’t of Just., Just. Manual § 9-11.233 (“[i]t is the policy of the Department of Justice, however, that when a prosecutor conducting a Grand Jury inquiry is personally aware of substantial evidence that directly negates the guilt of a subject of the investigation, the prosecutor must present or otherwise disclose such evidence to the Grand Jury before seeking an indictment against such person.”).

The only reason a federal prosecutor would engage in this kind of gratuitous misconduct is to ensure that he or she obtained an indictment at any cost. This is exactly what motivated Mr. Wise here—turning what should have been a fact-finding endeavor into a recitation of only those facts he wanted to present. In doing so, Mr. Wise completely ignored his own ethical obligations and the defendant’s due process rights. These are not mere technical violations, but rather serious

violations of the defendant's due process rights that can only be cured by dismissal of the entire Indictment.

B. Mr. Wise's Animus Toward State's Attorney Mosby Infected These Proceedings From the Start.

The deep-seated animus Mr. Wise has toward State's Attorney Mosby is well documented and outlined above. Even the United States Attorney himself has previously disparaged State's Attorney Mosby, in both personal and professional terms. These facts make clear exactly what Mr. Wise's goal was here: settle a score with State's Attorney Mosby and derail her career in elected office. His efforts trampled State's Attorney Mosby's due process rights and cannot be allowed to succeed.

As an initial matter, Mr. Wise repeatedly supported State's Attorney Mosby's electoral opponents. It is telling that, based on the information that was publicly available at the time Mr. Wise began his investigation, the only two times that Mr. Wise had *ever* donated to any Maryland candidate for office were both to opponents of State's Attorney Mosby, whom he is now prosecuting. His contributions were unsuccessful, as State's Attorney Mosby was victorious in her election, and he now seeks to do through the DOJ what he could not do through the ballot box – remove State's Attorney Mosby from office.

That animus resulted in the appearance of a conflict of interest that should have been reported to higher-ups in the DOJ. Despite the troubling history between State's Attorney Mosby and Messrs. Schenning and Wise, they failed to report to the Executive Office for United States Attorneys General Counsel's Office ("GCO") about their previous contentious interactions with State's Attorney Mosby before pursuing this prosecution. Under the Justice Manual, which governs the conduct of attorneys in the Department of Justice like Mr. Wise, when Assistant United States Attorneys become aware of an issue that "could require a recusal . . . as a result of an actual

or apparent conflict of interest, they *must* contact [the GCO].” See U.S. Dep’t of Just., Just. Manual § 3-1.140. The Justice Manual further provides that the requirement of recusal arises “where a conflict of interest exists or there is an appearance of a loss of impartiality.” *Id.* Whether Messrs. Schenning and Wise personally believe their prior interactions with State’s Attorney Mosby require a recusal or not, under DOJ policy they had an obligation to contact the GCO. See U.S. Dep’t of Just., Just. Manual § 3-1.140; see also *Young v. United States ex rel. Vuitton Et Fils S.A.*, 481 U.S. 787, 808 (1987) (recognizing the “requirement of a disinterested prosecutor” because of a prosecutor’s role in pursuing the public interest).⁶ There is no evidence that any such notification of a potential conflict of interest to the GCO occurred.

Moreover, Messrs. Schenning and Wise have been on notice for almost a year regarding State’s Attorney Mosby’s concerns about the “appearance of a loss of impartiality” – the exact type of scenario the Justice Manual seeks to avoid. Rather than thoughtfully respond to Ms. Mosby’s concern, they continued their attempts to pursue a conflicted and animus-based prosecution of her. While an investigation into potential criminal activity is not evidence of animus *per se*, the way that they have conducted this investigation demonstrates that their goal is to harm State’s Attorney Mosby’s electoral prospects.

This appearance of impropriety did not stop the USAO here. A simple review of the charges that were initially explored reveals that “justice” was never the point. The amount of the alleged tax loss in the ill-fated tax investigation was miniscule – under \$5000, which is a preposterously low amount to initiate a federal criminal prosecution, which typically involve tax

⁶ Although prosecutors are “traditionally accorded wide discretion . . . in the enforcement process,” nevertheless, “[a] scheme injecting personal interest, financial or otherwise, into the enforcement process may bring irrelevant or impermissible factors into the prosecutorial decision and in some contexts raise serious constitutional questions.” *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 248-50 (1980). A prosecutor with a conflict of interest “creates an appearance of impropriety that diminishes faith in the fairness of the criminal justice system in general.” *Young*, 481 U.S. at 811.

losses into the hundreds of thousands or millions of dollars. *See* Exhibit Q, September 13, 2021 Letter from A. Scott Bolden to Melissa Siskind. Moreover, the Tax Division indicated that, under the guidance of Mr. Wise’s office, it was contemplating charging State’s Attorney Mosby for tax evasion for tax year 2020 when at the time of the taxpayer conference on September 10, 2021, State’s Attorney Mosby’s 2020 tax return had *not yet been filed*. Nevertheless, the USAO—with Mr. Wise as the face of the prosecution—doggedly continued to pursue the tax investigation all in an effort to “get” State’s Attorney Mosby. When comparing the proposed charges identified by the Tax Division in advance of the taxpayer conference (*See* Exhibit R, August 23, 2021 email from Melissa Siskind to Kelley Miller) to the charges that were returned in the Indictment, it is clear that the initial proposed tax charges that were sought by the USAO were without merit and ultimately not pursued. This backpedaling, too, is clear evidence of animus as well as vindictive and selective prosecution.

This history also carried over into the watered-down charges that were ultimately brought, where Mr. Wise and his team not only ambushed State’s Attorney Mosby with an Indictment that was wholly unrelated to the initial charges they had spelled out, but also repeatedly stonewalled efforts by counsel to offer exculpatory evidence and make State’s Attorney Mosby available to testify before the Grand Jury. The USAO’s refusal to allow exculpatory evidence to be presented to the Grand Jury or allowing State’s Attorney Mosby to testify before the Grand Jury directly contradicts the policies found the DOJ’s Justice Manual § 9-11.152 and § 9-11.233. This deeply unfair process put State’s Attorney Mosby at a disadvantage, deprived her of her due process rights, and ultimately aided Mr. Wise in his misadventure of discrediting State’s Attorney Mosby and derailing her career. A vindictive prosecution such as this one is a clear due process violation.

See generally Bordenkircher v. Hayes, 434 U.S. 357, 363 (holding that a vindictive prosecution or investigation is a due process violation “of the most basic sort.”).

C. This Prosecution is Counter to Established DOJ Policy on Election Non-Interference.

Perhaps the clearest demonstration of the animus at issue in this case is the timing of the Indictment filed against State’s Attorney Mosby. It is most assuredly not an accident or a coincidence. The fact that State’s Attorney Mosby was indicted a mere five months before her re-election is clear evidence of the Government’s inappropriate attempt to negatively influence the 2022 election results for the Baltimore State’s Attorney’s Office.

The First Amendment safeguards the principle that individuals must be protected from government retaliation for their political views or affiliations. U.S. Const. amend. I. A prosecution brought in retaliation for the defendant’s political views clearly violates the First Amendment. *See Hartman v. Moore*, 547 U.S. 250, 256 (2006) (“the law is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions, including criminal prosecutions . . .”). Furthermore, the DOJ’s Justice Manual specifically designates “political association, activities, or belief[s]” as impermissible considerations in initiating or declining criminal charges. U.S. Dep’t of Just., Just. Manual § 9-27.260. Here, the timing of the charges coupled with Mr. Wise’s history of donating to State’s Attorney Mosby’s political opponents suggests a clear political animus and desire to impact the outcome of her pending election.

The timing and nature of the charges demonstrate that the USAO and Mr. Wise proceeded on their own with charges that did not require DOJ Tax Division approval — two counts of perjury in violation of 18 U.S.C. § 1621 and 18 U.S.C. § 1746 and two counts of false statements in violation of 18 U.S.C. § 1014. This is clearly a fallback plan to the initially contemplated tax

charges. Mr. Wise sought to have an indictment prior to the date of State’s Attorney Mosby’s re-election—June 28th, 2022—with or without the aforementioned tax violations.

These actions are counter to DOJ guidance. The DOJ instructs prosecutors to proceed with extreme caution when dealing with matters that may interfere with an upcoming election. The April 11, 2016 memo entitled “Election year Sensitivities” (the “Lynch Memo”) makes clear that:

Simply put, politics must play no role in the decisions of federal investigators or prosecutors regarding any investigations or criminal charges. Law enforcement officers and prosecutors may never select the timing of investigative steps or criminal charges for the purpose of affecting any election, or for the purpose of giving an advantage or disadvantage to any candidate or political party. Such a purpose is inconsistent with the Department's mission and with the Principles of Federal Prosecution.

See Exhibit S, April 11, 2016 Department of Justice Internal Memorandum. Mr. Wise has certainly not acted in accordance with these principles. State’s Attorney Mosby is a sitting elected official; expected to seek re-election; actively fundraising; and was only months away from an election at the time of her indictment. Combined with the voluminous evidence of animus on the part of Mr. Wise, there can be no doubt that he is attempting to interfere in an election and insure that she is unsuccessful in her re-election efforts.

As a result, this Court must give every consideration to dismissing this Indictment to reject the prosecutorial misconduct in this case, but also to preserve the integrity of the 2022 election for the State’s Attorney Office for Baltimore.

* * *

All of these actions, taken together, constitute direct evidence of prosecutorial animus. They also indicate that, absent this animus, this prosecution would not have been initiated. *See United States v. Koh*, 199 F.3d 632 (2d Cir. 1999) (holding that vindictive prosecution can be shown when a prosecutor harbored genuine animus towards the defendant and the defendant would not have been prosecuted except for the animus). It is admittedly rare for a court to question the

motives of a prosecutor, and generally prosecutorial discretion is a key part of the criminal justice system. *See, e.g., United States v. Riley*, No. WDQ-13-0608, 2015 U.S. Dist. LEXIS 15332, at *26 (D. Md. Feb. 4, 2015). However, if there were ever an example of facts that demonstrate prosecutorial vindictiveness requiring dismissal, it is this case.

II. The Taint of Animus Shifts the Burden to the Government To Provide An Alternative Explanation for Its Motives.

At the very least, the conduct of Mr. Wise and his team gives rise to a “rebuttable presumption of vindictiveness.” *Goodwin*, 457 U.S. at 373. And this presumption has yet to be rebutted. Despite being given numerous opportunities to address Mr. Wise’s behavior in this case, the Department of Justice has refused to act, or engage in any sort of meaningful investigation. That such an investigation would be uncomfortable provides no excuse. The burden lies with the Government now to explain these facts and to present evidence justifying the prosecutor’s acts, for which the most likely explanation is pure animus. *Id.* at 384.

To erase the taint of vindictiveness, the Government must explain its behavior towards State’s Attorney Mosby, beginning with Mr. Wise’s wrongful allegations towards her office during the GTTF federal investigation in 2018 and during the State Bar tax investigation, which paved the way for his vendetta against her. The Government should be required to explain the leaks, Mr. Wise’s pursuit of baseless tax charges, his actions before the Grand Jury, his failure to present relevant exculpatory evidence, and his improper treatment of counsel.

Finally, the Government should be required to explain its lack of investigation into Mr. Wise’s conduct and its failure to assign a different prosecutor to this matter given his clear bias. If the Government is unable to reasonably explain these actions, the indictment should be dismissed as fatally tainted by prosecutorial animus.

CONCLUSION

The clear animus and political witch hunt that Mr. Wise has pursued against State's Attorney Mosby speaks to the lack of integrity and improper nature of this prosecution. Mr. Wise's refusal to present exculpatory evidence to the Grand Jury or allow State's Attorney Mosby to meet with the Government to present exculpatory evidence is indicative of Mr. Wise's vindictiveness and runs contrary to DOJ policy that prosecutors consider exculpatory evidence, particularly in white-collar cases such as this one. *See* U.S. Dep't of Just., Just. Manual § 9-11.152. The following sequence of events that gave rise to this Indictment demonstrate the clear inappropriateness of the origin of the Indictment and why it should be dismissed:

1. In 2018, the U.S. Attorney's Office for the District of Maryland alleged that State's Attorney Mosby's office had leaked information surrounding the federal investigation into the Baltimore Gun Trace Task Force. This allegation was ultimately unfounded.
2. Five days after State's Attorney Mosby confronted Leo Wise for this baseless claim that staff in her office leaked existence of the Gun Trace Task Force investigation, Mr. Wise, unable to corroborate his public claims, donated to one of her political opponents. Then, two weeks before her re-election, Mr. Wise donated to yet another one of State's Attorney Mosby's opponents. The fact that he donated to any candidate other than State's Attorney Mosby further demonstrates his disdain for her and desire to affect the outcome of her election. Indeed, this political bias is inappropriate, as he is currently the lead prosecutor now involved in her case. The lack of integrity on the part of the Department of Justice for allowing this prosecution to continue while knowing of his political bias is astounding.
3. Mr. Wise, conspiring with Ms. Lawless, then turned what should have been an ordinary referral to the IRS for a civil tax audit, into a criminal tax investigation.
4. Next, the manner in which Mr. Wise conducted the investigation speaks to his clear bias and animus against State's Attorney Mosby. The FBI publicly served subpoenas in the middle of church services and served subpoenas to State's Attorney Mosby's hairdresser and her children's dance instructor in an effort to cause public knowledge of the investigation and affect her communal support leading up to her reelection. The FBI also disrupted a Baltimore City Council meeting in a public government building to speak to Nick Mosby, rather than to approach him on an individual basis. The intention to impact State's Attorney

Mosby's public perception and the outcome of her election was again clear here. As clear as the fact that Mr. Wise himself donated to two of her opponents.

5. Pursuant to the criminal tax investigation, Mr. Wise recommended to the DOJ Tax Division that one of the criminal tax charges should be tax evasion for 2020, when State's Attorney Mosby had not even filed her taxes for that year based on a legitimate extension granted to her by the IRS. One of the other violations contemplated by Mr. Wise was tax evasion for improper charitable tax contributions for a tax liability of less than \$5,000, far under the ordinary monetary threshold for a criminal tax investigation.

6. Next, Mr. Wise declined to show members of the Grand Jury exculpatory documents that State's Attorney Mosby's campaign treasurer had produced to the Government. These actions were inconsistent with DOJ policy. *See* U.S. Dep't of Just., Just. Manual § 9-11.233.

7. Mr. Wise went on to outright refuse multiple requests by State's Attorney Mosby's counsel to meet with the Government to present exculpatory evidence or to allow State's Attorney Mosby to testify before the Grand Jury herself. This again runs contrary to DOJ policy. *See* U.S. Dep't of Just., Just. Manual § 9-11.152.

8. When counsel for State's Attorney Mosby met with the Government during the September 10, 2021 taxpayer conference, Mr. Wise indicated that a perjury charge was being contemplated but refused to provide information on what statement had been perjurious so that State's Attorney Mosby could provide exculpatory evidence.

9. Ultimately, DOJ did not bring the baseless tax charges recommended by Mr. Wise. With no need to get the approval of DOJ Tax on perjury charges, Wise charged State's Attorney Mosby with two counts of perjury and two counts of false statements. His relentless and unethical pursuit of these charges only further demonstrates Mr. Wise's intention to wrongfully indict State's Attorney Mosby by any means or costs.

10. Finally, the timing of this Indictment speaks to Mr. Wise's inappropriate intent as he has charged State's Attorney Mosby a mere four months before her reelection. Indeed, what Mr. Wise's political contributions did not accomplish in State's Attorney Mosby's last election, removing her from office, he now seeks to accomplish through prosecutorial misconduct and animus.

For the foregoing reasons, all counts of the Indictment against Marilyn J. Mosby should be dismissed under Federal Rule of Criminal Procedure 12(b)(3).

Dated: February 18, 2022

Respectfully Submitted,

/s/ A. Scott Bolden

A. Scott Bolden

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Counsel for Defendant Marilyn J. Mosby.

CERTIFICATE OF SERVICE

I certify that, on February 18, 2022, this document was electronically filed with the Clerk of Court using the Court's CM/ECF system, which will then serve a notification of the filing to the registered parties of record.

/s/ A. Scott Bolden
B. Scott Bolden

EXHIBIT A



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May 19, 2021

Confidential

By Electronic Mail

Jeffrey Ragsdale
Director and Chief Counsel
Office of Professional Responsibility
U.S. Department of Justice
950 Pennsylvania Avenue, N.W., Suite 3266
Washington, D.C. 20530-0001

Re: Complaint Against Former Acting United States Attorney Stephen M. Schenning and Assistant United States Attorney Leo J. Wise for the District of Maryland

Dear Mr. Ragsdale:

This is to advise you that I have been engaged by State’s Attorney for Baltimore City Marilyn Mosby (“State’s Attorney Mosby”) and Baltimore City Council President Nick Mosby (“Council President Mosby”) in connection with a federal criminal tax investigation commenced by the United States Attorney’s Office for the District of Maryland (“USAO”). Please direct all future correspondence regarding this matter, to my attention.

I write to inform you of certain troubling misconduct by Former Acting United States Attorney Stephen M. Schenning (“Mr. Schenning”) and Assistant United States Attorney Leo J. Wise (“Mr. Wise”) while performing their duties in connection with above-referenced investigation against my clients. Their misconduct warrants their immediate removal from this matter and an investigation by your office.

There is no question that the investigation against my clients is frivolous, politically-motivated, and arises from the animus both Mr. Schenning and Mr. Wise have against State’s Attorney Mosby. But for their genuine animus towards my client, what could have been a routine civil tax examination resulted in a vindictive federal criminal investigation.¹ Their animus is further demonstrated by the fact that they have intentionally revealed facts of a secret grand jury investigation to the media in an effort to harass, degrade, and embarrass my clients.

¹ See *United States v. Johnson*, 325 F.3d 205, 210 (4th Cir. 2003) (citing the elements to establish prosecutorial vindictiveness as “(1) the prosecutor acted with genuine animus toward the defendant and (2) the defendant would not have been prosecuted but for that animus”) (internal citation omitted).

On March 10, 2021, Mr. Schenning issued grand jury subpoenas to State's Attorney Mosby and Council President Mosby, among others, in connection with a federal criminal investigation into their federal income tax filings for tax years January 2014 to the present. Even a cursory review of the history here reveals that since at least 2017, Messrs. Schenning and Wise have been engaged in a smear campaign to falsely accuse State's Attorney Mosby and her staff of improperly leaking certain facts regarding the USAO's prosecution of members of the Baltimore Gun Trace Task Force (the "GTTF Prosecution"). Despite State's Attorney Mosby's multiple requests to Mr. Schenning for relevant evidence regarding the alleged leak within her office, Mr. Schenning's office instead chose to make a public accusation (through Mr. Wise) against State's Attorney Mosby and her office during the detention hearing of Wayne Jenkins, an officer charged and convicted as part of the GTTF Prosecution. For more than a year, State's Attorney Mosby engaged in dialogue with Mr. Schenning and Mr. Wise about their rationale for implicating her office in what was determined to be unsubstantiated accusations that were motivated simply to cast aspersions on her office.

Given this tumultuous history, Messrs. Schenning and Wise were required to report to the Executive Office for United States Attorneys General Counsel's Office ("GCO") about their relationship with State's Attorney Mosby that would necessitate their recusal in the instant federal criminal investigation against my clients. *See* Justice Manual § 3-1.140. Their prolonged smear campaign demonstrates a conflict of interest between them and State's Attorney Mosby or, at the very least, an appearance of a loss of impartiality. *Id.* However, there are no facts to indicate that they alerted the GCO "to discuss whether a recusal is required." *Id.*

Instead of taking the appropriate actions to recuse themselves from the investigation, Messrs. Schenning and Wise have led the instant investigation with reckless disregard for the secret nature of grand jury investigations by prematurely alerting the media and community members of my clients' connection to this investigation. In fact, on March 10, 2021, at the direction of the prosecutors, FBI agents interrupted Council President Mosby while he was conducting a city-wide Board of Estimates meeting and demanded to speak with him. Rather than leave a subpoena or conduct their field investigation outside of the scope of public view, the FBI interrupted Council President Mosby during a public meeting in an effort to alert the public of the pending investigation.

As a direct result of the FBI's intentional lack of discretion, that same night, Fox News sent a media inquiry to Council President Mosby's office requesting comment on not only the FBI investigation, but also the subpoena that was served on him. Although the FBI's presence was publicly known, the fact that Council President Mosby was served with a subpoena was not publicly known, suggesting that someone on the prosecution team leaked the existence of the subpoena to the media.

The roles played by Messrs. Schenning and Wise in leaking to the press is only further supported by the fact that State's Attorney Mosby was made aware by a reporter in October 2020 that she was under investigation. There is reason to believe that Mr. Wise is communicating with the media regarding this federal investigation since a reporter with knowledge of the investigation has a close relationship with him and also authored a book on the GTTF Prosecution – a prosecution led by Mr. Wise.

As a career prosecutor, including serving as Chief of the Homicide Section at the U.S. Attorney's Office in the District, you are well aware of the vital importance of maintaining the secrecy and overall integrity

of a grand jury investigation. In fact, the Justice Manual provides that the function of the grand jury is not only the investigation of crime, “but also the protection of the citizenry from unfounded criminal charges.” See Justice Manual, § 9-11.010. Prosecutors like Mr. Schenning and Mr. Wise are required to conduct themselves as officers of the court who have a duty to ensure justice is done and “must do nothing to inflame or otherwise improperly influence the grand jury.” *Id.* (emphasis added). The evidence here suggests that Messrs. Schenning and Wise have no regard for the Justice Manual or their oath, given that their conduct has been entirely focused on treating my clients like criminals all while inflaming the grand jury with their improper prosecutorial tactics effectuated through the FBI and leaks to the media. Given Mr. Schenning’s specific role in leadership of the USAO, I am also copying Acting Assistant Attorney General McQuaid, in the hope that he determines in his judgment that, given the instant referral to OPR, these prosecutors are immediately removed from the investigation and that this animus-driven investigation is immediately suspended.

Attorney Mosby and Council President Mosby are high-profile public servants that fight everyday against systems of injustice, inequality, and racism. They have been at the forefront of police accountability reform, criminal justice reform, and racial health disparities. Although they have not been charged with a criminal offense, Mr. Schenning and Mr. Wise have already led them to be tried and convicted in the court of public opinion.

Based on Mr. Schenning’s and Mr. Wise’s exhibited genuine animus towards State’s Attorney Mosby and Council President Mosby that resulted in an unwarranted investigation into their taxes, I request that these prosecutors be immediately removed from this baseless and politically-motivated investigation and that OPR investigate their misconduct.

Please do not hesitate to contact me should you have any questions or need any additional information regarding this matter.

Sincerely, I am,

/s/ A Scott Bolden /RQ

A. Scott Bolden

CC: Nicholas L. McQuaid, Esq.
Stephen M. Schenning, Esq.
Leo J. Wise, Esq.
Rizwan A. Qureshi, Esq. (Reed Smith LLP)

EXHIBIT B



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March 23, 2021

Confidential

By Electronic Mail

Jeffrey Ragsdale
Director and Chief Counsel
Office of Professional Responsibility
U.S. Department of Justice
950 Pennsylvania Avenue, N.W., Suite 3266
Washington, D.C. 20530-0001

Re: Supplemental Letter In Support of Complaint Against Former Acting United States Attorney Stephen M. Schenning and Assistant United States Attorney Leo J. Wise for the District of Maryland

Dear Mr. Ragsdale:

I write to supplement my letter of March 19, 2021 which pertains to the alleged misconduct of Former Acting United States Attorney Stephen M. Schenning (“Mr. Schenning”) and Assistant United States Attorney Leo J. Wise (“Mr. Wise”) in connection with a federal criminal tax investigation commenced against my clients, State’s Attorney for Baltimore City Marilyn Mosby (“State’s Attorney Mosby”) and Baltimore City Council President Nick Mosby (“Council President Mosby”), by the United States Attorney’s Office for the District of Maryland (“USAO”) *See* Exhibit A.

Messrs. Schenning and Wise have exhibited a genuine animus towards my clients that has resulted in the instant vindictive criminal investigation. As previously stated, they have engaged in a smear campaign to falsely accuse State’s Attorney Mosby and her staff of improperly leaking certain facts regarding the USAO’s prosecution of members of the Baltimore Gun Trace Task Force (the “GTTF Prosecution”). The falsity of this alleged leak or tip by a prosecutor in State’s Attorney Mosby’s office was extensively discussed and memorialized in multiple letters between State’s Attorney Mosby and Mr. Schenning. *See* Exhibit B. Instead of taking the appropriate step of recusing themselves from the instant investigation, Messrs. Schenning and Wise continued to engage in professional misconduct by recently revealing facts of the instant grand jury investigation to the media in an effort to harass, degrade, and embarrass my clients.

Publicly available records further support our allegation of the animus exhibited by the USAO, and specifically Mr. Wise, against my clients. In fact, according to campaign finance records for the State of

Maryland, Mr. Wise has made a total of two political contributions in support of a candidate for office in the State of Maryland – one on January 10, 2018, and the other on June 14, 2018 – and each contribution was made in support of an opponent of State’s Attorney Mosby. *See* Exhibit C. These donations were made during the same time period when Mr. Wise made the unsupported allegations regarding the alleged role played by State’s Attorney Mosby’s office in leaking certain facts about the GTTF Prosecution.

On January 5, 2018, during the plea hearing for Wayne Jenkins, Mr. Wise again stated on the record in a proceeding widely covered by the media that the defendant spoke with a prosecutor in State’s Attorney Mosby’s office who told the defendant that one of his co-defendants was under investigation for lying and stealing. The impression left by Mr. Wise was that a prosecutor in State’s Attorney Mosby’s office had tipped off Mr. Jenkins about the GTTF Prosecution. The most troubling aspect of this statement on the record is that Mr. Wise was aware that over the previous year State’s Attorney Mosby had raised concerns that a mere allegation of this nature with no supporting evidence is both insufficient and troubling. Despite being on notice about the seriousness of making baseless public accusations, at Mr. Jenkins’s January 5, 2018 plea hearing – more than a year after Mr. Jenkins’s detention hearing – Mr. Wise again made an unsupported public accusation about a Baltimore City prosecutor’s role in leaking facts of the GTTF Prosecution.

Following Mr. Wise’s reckless statement on the record at the January 5, 2018 plea hearing, on that same day, State’s Attorney Mosby and her Chief Deputy, Michael Schatznow, met with Mr. Schenning and the trial attorneys on the GTTF Prosecution, which included Mr. Wise. During this meeting, Mr. Schenning stated that the basis of Mr. Wise’s statement in court about the role played by a prosecutor in State’s Attorney Mosby’s office in leaking confidential information was learned from a proffer session between the USAO and the defendant, Mr. Jenkins. Following this assertion by Mr. Schenning, State’s Attorney Mosby requested the portion of the notes from Mr. Jenkins’s proffer that implicated a prosecutor in her office and despite their best efforts, the trial attorneys at USAO, namely Mr. Wise, were unable to locate the notes that supposedly formed the basis of Mr. Wise’s public accusation. Mr. Schenning then ended the meeting with the promise that evidence supporting Mr. Wise’s assertion would be provided following that meeting. To date, not only has Mr. Schenning failed to provide supporting evidence, subsequent communications from State’s Attorney Mosby to Mr. Schenning confirm that the purported leak was not related to a “federal” investigation. In fact, the evidence shows that that during his proffer session with the USAO, Mr. Jenkins was most likely referring to being tipped off about an investigation being handled by State’s Attorney Mosby’s office, *not* the GTTF Prosecution. *See* Exhibit B.

Based on these facts, it is clear that Mr. Wise’s representation to the Court during Jenkins’s plea hearing was not only misleading – as the defendant was tipped off about a different state-level investigation – but it was also reckless since it resulted in the generation of negative media publicity about State’s Attorney Mosby. Putting aside the fact that Mr. Wise lacked a good faith basis to make such an accusation, his motives are even more evident when his gratuitous statement is viewed in appropriate context. Because it is unclear how alleged leaks regarding the GTTF Prosecution had any relevance to Mr. Jenkins’s plea hearing, and in fact, the evidence suggests it was simply a gratuitous statement intended to garner additional media scrutiny. However, Mr. Wise’s animus did not stop there. Exactly **five days after** his reckless statement on the record and **five days after** failing to produce supporting evidence from his notes during the meeting with State’s Attorney Mosby, on January 10, 2018, Mr. Wise donated to the campaign of Thiruvendran Vignarajah’s, one of State’s Attorney Mosby’s challengers during the primary election.

See Exhibit B. Then, six months later, Mr. Wise made his second of only two political contributions on record, but this time in support of the other candidate who was challenging State's Attorney Mosby during the primary election.

For the reasons stated in my letter of March 19, 2021 and based on the above, the USAO's federal criminal tax investigation against my clients appears to be frivolous, politically-motivated, and driven by the animus both Mr. Schenning and Mr. Wise have against State's Attorney Mosby. The history here shows that these prosecutors, specifically Mr. Wise, were put on notice and repeatedly called to task on the recklessness of their gratuitous statements in the public space and yet failed to produce relevant support when such evidence was demanded of them. Because Mr. Wise was unable to remove State's Attorney Mosby from her elected position through his political contributions and false accusation of leaking information about the GTTF Prosecution, it now appears he has resorted to commencing a vindictive prosecution. This is not a coincidence.

Based on Messrs. Schenning's and Wise's vindictive and ethically-challenged conduct, I reiterate my request that these prosecutors be immediately removed from this investigation and that your office investigate their alleged misconduct.

Please do not hesitate to contact me should you have any questions.

Sincerely, I am,

/s/ A Scott Bolden

A. Scott Bolden

CC: Nicholas L. McQuaid, Esq.
Stephen M. Schenning, Esq.
Leo J. Wise, Esq.
Rizwan A. Qureshi, Esq. (Reed Smith LLP)

EXHIBIT A



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May 19, 2021

Confidential

By Electronic Mail

Jeffrey Ragsdale
Director and Chief Counsel
Office of Professional Responsibility
U.S. Department of Justice
950 Pennsylvania Avenue, N.W., Suite 3266
Washington, D.C. 20530-0001

Re: Complaint Against Former Acting United States Attorney Stephen M. Schenning and Assistant United States Attorney Leo J. Wise for the District of Maryland

Dear Mr. Ragsdale:

This is to advise you that I have been engaged by State’s Attorney for Baltimore City Marilyn Mosby (“State’s Attorney Mosby”) and Baltimore City Council President Nick Mosby (“Council President Mosby”) in connection with a federal criminal tax investigation commenced by the United States Attorney’s Office for the District of Maryland (“USAO”). Please direct all future correspondence regarding this matter, to my attention.

I write to inform you of certain troubling misconduct by Former Acting United States Attorney Stephen M. Schenning (“Mr. Schenning”) and Assistant United States Attorney Leo J. Wise (“Mr. Wise”) while performing their duties in connection with above-referenced investigation against my clients. Their misconduct warrants their immediate removal from this matter and an investigation by your office.

There is no question that the investigation against my clients is frivolous, politically-motivated, and arises from the animus both Mr. Schenning and Mr. Wise have against State’s Attorney Mosby. But for their genuine animus towards my client, what could have been a routine civil tax examination resulted in a vindictive federal criminal investigation.¹ Their animus is further demonstrated by the fact that they have intentionally revealed facts of a secret grand jury investigation to the media in an effort to harass, degrade, and embarrass my clients.

¹ See *United States v. Johnson*, 325 F.3d 205, 210 (4th Cir. 2003) (citing the elements to establish prosecutorial vindictiveness as “(1) the prosecutor acted with genuine animus toward the defendant and (2) the defendant would not have been prosecuted but for that animus”) (internal citation omitted).

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Given this tumultuous history, Messrs. Schenning and Wise were required to report to the Executive Office for United States Attorneys General Counsel's Office ("GCO") about their relationship with State's Attorney Mosby that would necessitate their recusal in the instant federal criminal investigation against my clients. *See* Justice Manual § 3-1.140. Their prolonged smear campaign demonstrates a conflict of interest between them and State's Attorney Mosby or, at the very least, an appearance of a loss of impartiality. *Id.* However, there are no facts to indicate that they alerted the GCO "to discuss whether a recusal is required." *Id.*

Instead of taking the appropriate actions to recuse themselves from the investigation, Messrs. Schenning and Wise have led the instant investigation with reckless disregard for the secret nature of grand jury investigations by prematurely alerting the media and community members of my clients' connection to this investigation. In fact, on March 10, 2021, at the direction of the prosecutors, FBI agents interrupted Council President Mosby while he was conducting a city-wide Board of Estimates meeting and demanded to speak with him. Rather than leave a subpoena or conduct their field investigation outside of the scope of public view, the FBI interrupted Council President Mosby during a public meeting in an effort to alert the public of the pending investigation.

As a direct result of the FBI's intentional lack of discretion, that same night, Fox News sent a media inquiry to Council President Mosby's office requesting comment on not only the FBI investigation, but also the subpoena that was served on him. Although the FBI's presence was publicly known, the fact that Council President Mosby was served with a subpoena was not publicly known, suggesting that someone on the prosecution team leaked the existence of the subpoena to the media.

The roles played by Messrs. Schenning and Wise in leaking to the press is only further supported by the fact that State's Attorney Mosby was made aware by a reporter in October 2020 that she was under investigation. There is reason to believe that Mr. Wise is communicating with the media regarding this federal investigation since a reporter with knowledge of the investigation has a close relationship with him and also authored a book on the GTTF Prosecution – a prosecution led by Mr. Wise.

As a career prosecutor, including serving as Chief of the Homicide Section at the U.S. Attorney's Office in the District, you are well aware of the vital importance of maintaining the secrecy and overall integrity

of a grand jury investigation. In fact, the Justice Manual provides that the function of the grand jury is not only the investigation of crime, “but also the protection of the citizenry from unfounded criminal charges.” See Justice Manual, § 9-11.010. Prosecutors like Mr. Schenning and Mr. Wise are required to conduct themselves as officers of the court who have a duty to ensure justice is done and “must do nothing to inflame or otherwise improperly influence the grand jury.” *Id.* (emphasis added). The evidence here suggests that Messrs. Schenning and Wise have no regard for the Justice Manual or their oath, given that their conduct has been entirely focused on treating my clients like criminals all while inflaming the grand jury with their improper prosecutorial tactics effectuated through the FBI and leaks to the media. Given Mr. Schenning’s specific role in leadership of the USAO, I am also copying Acting Assistant Attorney General McQuaid, in the hope that he determines in his judgment that, given the instant referral to OPR, these prosecutors are immediately removed from the investigation and that this animus-driven investigation is immediately suspended.

Attorney Mosby and Council President Mosby are high-profile public servants that fight everyday against systems of injustice, inequality, and racism. They have been at the forefront of police accountability reform, criminal justice reform, and racial health disparities. Although they have not been charged with a criminal offense, Mr. Schenning and Mr. Wise have already led them to be tried and convicted in the court of public opinion.

Based on Mr. Schenning’s and Mr. Wise’s exhibited genuine animus towards State’s Attorney Mosby and Council President Mosby that resulted in an unwarranted investigation into their taxes, I request that these prosecutors be immediately removed from this baseless and politically-motivated investigation and that OPR investigate their misconduct.

Please do not hesitate to contact me should you have any questions or need any additional information regarding this matter.

Sincerely, I am,

/s/ A Scott Bolden /RQ

A. Scott Bolden

CC: Nicholas L. McQuaid, Esq.
Stephen M. Schenning, Esq.
Leo J. Wise, Esq.
Rizwan A. Qureshi, Esq. (Reed Smith LLP)

EXHIBIT B

STATE'S ATTORNEY
Marilyn J. Mosby



OFFICE of the STATE'S ATTORNEY for BALTIMORE CITY
120 East Baltimore Street | Baltimore, Maryland 21202

DIRECT DIAL
443-984-6000

February 26, 2018

The Honorable Stephen M. Schenning
Acting United States Attorney
U.S. Department of Justice
United States Attorney District of Maryland
36 S. Charles Street
Suite 400
Baltimore, MD 21201

Dear Mr. Schenning,

Thank you for your confidential letter dated February 15, 2018 concerning the Gun Trace Task Force (GTTF) trial. Although I appreciate receiving the information in the letter, I renew my request for a review of the underlying evidence used to support the inferences and conclusions contained therein. Unfortunately, I was not briefed on the investigation or intent to file charges against the GTTF officers prior to the press conference on March 1, 2017; neither was I made aware of any potential involvement of any members of my staff until a public accusation was made by an Assistant United States Attorney (AUSA) at Jenkins' detention hearing on March 2, 2017. Since my office has been brought into this matter, it is only fair that I see the evidence that is the basis for the public accusations, as well as those detailed within your letter. This request is even more crucial now because the information in your letter is inaccurate in some regards, and does not support the inferences derived.

Putting to one side the question of whether it was necessary to make that public allegation in order to obtain his detention, or whether such an alleged tip-off supports detention, there can be no denying the fact that the accusation presented an unresolvable dilemma for my office. My Chief Deputy, Michael Schatzow, and I have continuously expressed to you that a mere allegation with no supporting evidence is insufficient, and that we needed to be provided with more information to determine whether the allegation was accurate so that we could take action. After several pleas for additional information, you did then share the basis of the allegation with Mr. Schatzow—an in-car recording of Gondo telling Hendrix that Jenkins had just told him (Gondo) that a female Assistant State's Attorney (ASA) had told Jenkins that some GTTF members were under investigation, as well as a cell phone record disclosing the existence of a 17-minute telephone conversation between Jenkins and a phone linked to ASA Anna Mantegna on the same day as the in-car recording. However, you also made it clear that further investigation of the alleged leak was not a high priority in light of the GTTF trials and other related issues, and that the United States Attorney's Office (USAO) and Federal Bureau of Investigations (FBI) would likely not pursue the matter until the conclusion of the GTTF trials, if at all. You asked Mr. Schatzow not to share the information about ASA Mantegna with anyone but me—that request was honored.

Not surprisingly, my office was inundated with press inquiries about the identity of the "leaking" ASA. Each time, we referred all inquiries to your office. Then, on January 5, 2018, Jenkins entered his guilty plea. As recited in your letter, part of the factual basis for the plea, quoted publicly in court, was that on October 5, 2016, Jenkins "spoke with an Assistant State's Attorney who told him that Rayam was under investigation for lying and stealing." I called you immediately to express my concern, and later that day Mr. Schatzow and I met with you and the GTTF trial AUSAs. During that meeting, I asked that you have the FBI interview Ms. Mantegna

STATE'S ATTORNEY
Marilyn J. Mosby



OFFICE of the STATE'S ATTORNEY for BALTIMORE CITY
120 East Baltimore Street | Baltimore, Maryland 21202

DIRECT DIAL
443-984-6000

so as to conclude their investigation of her alleged conduct, and you said you would consider doing so. I also requested the portion of the notes the implicated Ms. Mantegna. When the trial AUSAs were then unable to locate their notes of the relevant information provided by Jenkins in proffer sessions, you said that you would provide it following our meeting.

When the alleged leak by the ASA came up in GTTF trial testimony, I called you again. I expressed my frustration about my office being tainted by the alleged conduct of one ASA, yet my being denied access to the materials that would allow me to investigate the matter. At that time, you told me that you would provide the relevant materials after the trial.

As of February 26, 2018, all I have received is your letter, which indicates that even Jenkins himself does not say that the investigation he was advised about was a "federal" one. Given how closely kept your investigation was and continues to be, it is extremely unlikely that it was in fact the subject of her conversation with Jenkins. As we have asked repeatedly since first advised of this matter, how would ASA Mantegna have known of the federal investigation? I certainly did not know about it until the indictments, and neither did my deputies. Additionally, while your letter provides an inference of a potential source also within my office, you should be aware that the basis of the inference you've drawn within your letter is founded on inaccurate information.

From my vantage point, what is most logical and probable is that ASA Mantegna improperly disclosed an ongoing investigation within my office—the investigation of Rayam by my office and the Baltimore Police Department (BPD), an investigation that was still active on October 5, 2016 when Ms. Mantegna spoke with Jenkins. Information provided by Ms. Mantegna to the FBI as set forth in your letter is simply wrong. The case where Rayam's Franks hearing testimony was found to be incredible was that of Gary Clayton, not Zachary Newsome. The Franks hearing occurred in November of 2015, at which time Judge Barry Williams did not believe Rayam's hearing testimony and said so, granting the motion. This was no secret—it occurred in open court and, as you can imagine, was the subject of much conversation in my office.

My Public Trust and Police Integrity Unit referred the case to BPD's Internal Affairs and began an investigation of Rayam's testimony and conduct with BPD. That investigation was not unknown in my office. In cases in which Rayam was a witness, we disclosed the existence of the investigation of Rayam for his Franks hearing testimony and related conduct to defense counsel. In cases where Rayam was a witness, we also disclosed that Rayam had been previously investigated for, and failed a polygraph test, concerning lying and stealing (emphasis added). Although Rayam was the witness who testified at the Franks hearing, and was the affiant on the search warrant that was the subject of that hearing, Gondo was actively involved in the arrest of Gary Clayton and the conduct that led to the search.

The Zachary Newsome case, which was nolle prosecuted by our office in August 2016, also involved both Rayam and Gondo. The two Rayam disclosures referenced in the paragraph above were made in the Newsome case, and influenced the decision to terminate the prosecution. Ms. Mantegna was not the prosecutor on the Newsome case, although it was handled by the unit in which she worked—which handled many of the cases involving the GTTF officers.

When considering all of the above, the strongest inference, by far, is that the investigation that Ms. Mantegna disclosed to Jenkins was not federal at all, but rather was the ongoing SAO/BPD investigation of Rayam that was known to ASAs in Ms. Mantegna's unit due to the

STATE'S ATTORNEY
Marilyn J. Mosby



OFFICE of the STATE'S ATTORNEY for BALTIMORE CITY
120 East Baltimore Street | Baltimore, Maryland 21202

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disclosures we were making in all Rayam cases. In her capacity, such a disclosure was inappropriate. While I have taken personnel action as a result of the limited information you have provided, I would very much appreciate it if you would provide me with all of the underlying evidence you have that might implicate anyone in my office so that I can determine what action to take on the basis of evidence, and not speculation, conjecture, or inferences that are unlikely and not compelling.

Sincerely,

A handwritten signature in blue ink, appearing to read "Marilyn J. Mosby", with a long horizontal flourish extending to the right.

Marilyn J. Mosby, Esq.
State's Attorney for Baltimore City



U.S. Department of Justice

*United States Attorney
District of Maryland*

*Stephen M. Schenning
Acting United States Attorney
Stephen.Schenning@usdoj.gov*

*Suite 400
36 S. Charles Street
Baltimore, MD 21201-3119*

*DIRECT: 410-209-4800
MAIN: 410-209-4800
FAX: 410-962-3091*

March 7, 2018

Marilyn J. Mosby
State's Attorney
Office of the State's Attorney for Baltimore City
120 East Baltimore Street
Baltimore, MD 21202

Dear Ms. Mosby:

Thank you for your letter of February 26, 2018. You ask that I provide you with all the underlying evidence that might implicate anyone in your office in providing information to Wayne Jenkins in connection with the G.T.T.F. case. My letter of February 15, 2018, represents an accurate summary of the information we have on the subject.

Whether you regard this information as evidence or mere speculation, conjecture, or unlikely inferences is, of course, your judgment and prerogative. We did not bring criminal charges against Ms. Mantegna nor do we intend to do so.

I understand from press accounts that you have terminated Ms. Mantegna's employment.

The only other information regarding personnel in your office related to Jenkins is that Mia Morosy is married to a police officer. In confidence, I advised you that we were told that this police officer informed Wayne Jenkins about the existence of a wiretap on Momodu Gondo. I had no "evidence" that Ms. Morosy did anything wrong. In fact, I had no knowledge of her marital status until Ms. Mantegna brought it up in her interview with the FBI. But you have raised the point that Ms. Mantegna had no knowledge of the federal investigation so her 17-minute phone conversation with Jenkins on October 5, 2016 could not have been a tipoff.

I can only say what we know. Ms. Mantegna called Jenkins on October 5, 2016. On October 5, 2016, Gondo and Hendrix are heard on a wiretap discussing what Jenkins had told Gondo: a female ASA had said Rayam was under investigation. After his arrest on federal charges, Jenkins in proffer sessions with the FBI identified Ms. Mantegna as the female ASA and his phone records confirm the 17-minute call. Jenkins also identified by name the police officer (Ms. Morosy's husband) who had told him Gondo was the subject of a wiretap and federal investigation. Lastly, Jenkins pleaded guilty and affirmed in his guilty plea that he was warned by an ASA and a member of the BPD about the investigation. The Government raised this information at Jenkins' detention hearing to support its motion that, because of his contacts,

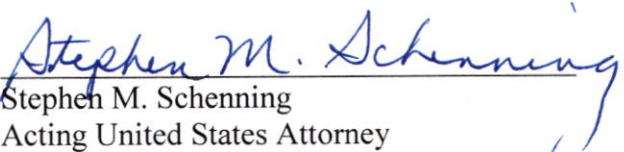
he presented a potential threat to the prosecution case. Obviously, there were other factors we cited in pursuing Jenkins' detention - which the Court ordered - but we believed the suspicion that Jenkins had the potential ability to acquire sensitive information about the prosecution case from insiders to be reasonable.

In a related matter, I understand that you have formed a police integrity unit in your office under the supervision on Janet Bledsoe. From press accounts, I further understand Commissioner DeSousa has established a unit in Internal Affairs specifically charged with pursuing allegations against BPD personnel that arose during the G.T.T.F. trial and investigation. I assume that Ms. Bledsoe and the IAD will coordinate their efforts.

To assist you, I would propose a meeting between Ms. Bledsoe, the prosecutors assisting her, and the BPD officers assigned to the IAD unit with the FBI agents and AUSAs who prosecuted the G.T.T.F.

Let me know whether you are interested in pursuing this avenue.

Very truly yours,


Stephen M. Schenning
Acting United States Attorney

cc: Michael Schatzow

EXHIBIT C

Receiving Committee	Filing Period	Contribution Date	Contributor Name	Contributor Address	Contribution Type	Contribution Type	Contribution Amount	Employer Name	Employer Occupation	Office	Fundtype
Vignarajah, Thiru for Baltimore	2018 Annual	1/10/2018	Wise, Leo	305 Thornhill Road, Baltimore, MD 21212	Individual	Credit Card	100.0000	U.S. Department of Justice	Legal	State's Attorney (Baltimore City)	Electoral
Bates, Ivan Friends of	2018 Gubernatorial Pre-General Report	6/14/2018	Wise, Leo	305 Thornhill Rd, Baltimore, MD 21212	Individual	Credit Card	100.0000			State's Attorney (Baltimore City)	Electoral

EXHIBIT C

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Vignarajah, Thiru for Baltimore	2018 Annual	1/10/2018	Wise, Leo	305 Thornhill Road, Baltimore, MD 21212	Individual	Credit Card	100.0000	U.S. Department of Justice	Legal	State's Attorney (Baltimore City)	Electoral
Bates, Ivan Friends of	2018 Gubernatorial Pre-General Report	6/14/2018	Wise, Leo	305 Thornhill Rd, Baltimore, MD 21212	Individual	Credit Card	100.0000			State's Attorney (Baltimore City)	Electoral

EXHIBIT D

From: Schenning, Stephen (USAMD) <Stephen.Schenning@usdoj.gov>
Sent: Thursday, October 28, 2021 11:45 AM
To: Bolden, A. Scott
Cc: Barron, EreK (USAMD); Selden, Philip (USAMD); Wise, Leo (USAMD); Qureshi, Rizwan A.
Subject: Re: [EXTERNAL] RE: Confidential

EXTERNAL E-MAIL - From Stephen.Schenning@usdoj.gov

Erek: Some quick observations. It is still premature given the pendency of DOJ Tax's decision. Bolden in the meeting at DOJ Tax floated the idea of "Queen for a Day" meeting. (His characterization, not mine.). He is again suggesting MM's appearance before GJ. I doubt if he would follow through on that.

Also, basing racial animus on the fact Leo made modest contributions to Thiru whose parents are Sri Lankan and Ivan Bates, an African American, is a wild stretch.

Sent from my iPhone

On Oct 28, 2021, at 11:20 AM, Bolden, A. Scott <ABolden@reedsmith.com> wrote:

Erek,

I don't believe we have met before, but have heard many great things about you.

For all the reasons listed in the defense memos and attached docs we have sent you, the investigation of Marilyn Mosby should be terminated. If this is not the right time, there could be no better time.

To be sure, this is a bad faith prosecution. The lead prosecutor in this matter has demonstrated political and personal animus towards my client, has contributed to two different political opponents of my client; recommended that my client be indicted, but has refused to provide us any substantive information regarding the basis for his recommendation; he has refused to provide us with a reverse proffer; refused to identify the statement for the proposed charge of perjury in the case; proposed charging my client with criminal tax violations for Tax Year 2020—before my client even filed her Tax Year 2020 tax returns (the 2019 tax year alleged exposure is a mere \$4000); and even has refused to confirm whether the exculpatory evidence we have provided him will be presented to the grand jury. We also know with one grand jury witness, he refused to introduce the exculpatory evidence negating her guilt, which was sent to him by me and the witness before the witness appeared in the proceeding.

Indeed, if your office insists on moving forward with the proposed charges, my client is very interested in appearing before the grand jury. Here again, Mr. Wise will not even discuss the status of our

exculpatory evidence, and has refused to respond to our consideration of Ms. Mosby appearing before the grand jury.

These are facts that are supported by documents and the related foregoing representations—not defense arguments—and they are not going away, regardless of how your office wishes to proceed.

With so little cooperation from your office and the lead prosecutor, it only begs the question, as to whether Mr. Wise and his team bear some racial animus, as well, against my client. Only an investigation by your office will determine the results of that question and other questions raised by our defense team.

As a result, we have requested that your office do a full and complete internal investigation with respect to the handling of the Mosby matter and the origins of the investigation with respect to the Trump administration and the Maryland State Bar Association. Why is it, that an otherwise routine civil tax audit matter, pending before a federal grand jury in Maryland?

Moreover, we are less than eight (8) months from her re-election effort and this tainted investigation certainly should not, and cannot further taint her ability to get re-elected under the DOJ rules. As state election that Leo Wise is sure to contribute again to her political opponents.

Please at least advise us as to whether such an internal investigation is under way; whether you have had the opportunity to review our defense materials; whether Leo Wise will be removed from the case, and whether the investigation will be terminated.

Here again, if not now, please advise when we can further discuss. Many thanks again for considering our concerns.

A. Scott Bolden
Managing Partner
Washington, D.C. Office
Pronouns: He/Him/His
[Full Bio](#)

ReedSmith LLP

1301 K Street, N.W., Suite 1000 – East Tower, Washington, DC 20005
Direct +1 202 414 9266 | Mobile +1 202 236 4166 | Fax +1 202 414 9299
abolden@reedsmith.com

<image001.png>

ABU DHABI • ATHENS • BEIJING • CENTURY CITY • CHICAGO • DALLAS • DUBAI • FRANKFURT • HONG KONG • HOUSTON • KAZAKHSTAN • LONDON • LOS ANGELES • MIAMI • MUNICH • NEW YORK • PARIS • PHILADELPHIA • PITTSBURGH • PRINCETON • RICHMOND • SAN FRANCISCO • SHANGHAI • SILICON VALLEY • SINGAPORE • TYSONS • WASHINGTON, D.C. • WILMINGTON

From: Barron, Ereka (USAMD) <Ereka.Barron@usdoj.gov>
Sent: Tuesday, October 26, 2021 4:55 PM
To: Qureshi, Rizwan A. <RQureshi@reedsmith.com>
Cc: Bolden, A. Scott <ABolden@ReedSmith.com>; Schenning, Stephen (USAMD) <Stephen.Schenning@usdoj.gov>; Selden, Philip (USAMD) <Philip.Selden@usdoj.gov>; Wise, Leo (USAMD) <Leo.Wise@usdoj.gov>
Subject: Re: [EXTERNAL] RE: Confidential

EXTERNAL E-MAIL - From Erek.Barron@usdoj.gov

Gentlemen,

Thank you for following up, and please forgive my delayed response. At this stage, a meeting would be premature but we'll be in touch should there be a more appropriate time.

Thank you,
Erek

Sent from my iPhone

On Oct 26, 2021, at 12:10 PM, Qureshi, Rizwan A. <RQureshi@reedsmith.com> wrote:

Mr. Barron,

I hope you are well. We write in follow-up to our email and letter of October 12, 2021. Please let us know if you are available for a meeting with us regarding our client, Baltimore City State's Attorney Marilyn Mosby.

Thanks and have a great day.

Best
Rizzy Qureshi

Rizwan (Rizzy) Qureshi, Esq.
rqureshi@reedsmith.com

Reed Smith LLP
1301 K Street, N.W.
Suite 1000 - East Tower
Washington, D.C. 20005-3373
Phone: 202-414-9218
Mobile: 202-893-6160
Fax: 202-414-9299

From: Qureshi, Rizwan A.
Sent: Tuesday, October 12, 2021 5:41 PM
To: 'erek.barron@usdoj.gov' <erek.barron@usdoj.gov>
Cc: Bolden, A. Scott <ABolden@ReedSmith.com>; Qureshi, Rizwan A. <RQureshi@reedsmith.com>

Subject: Confidential

Importance: High

Dear Mr. Barron,

I hope this email reaches you well. Reed Smith LLP represents Baltimore City State's Attorney Marilyn Mosby. I write to provide you the attached letter with exhibits on behalf of my partner, A. Scott Bolden.

Please let us know if you have any questions and when you are available to discuss.

Best,
Rizzy Qureshi

Rizwan (Rizzy) Qureshi, Esq.
rqureshi@reedsmith.com

Reed Smith LLP
1301 K Street, N.W.
Suite 1000 - East Tower
Washington, D.C. 20005-3373
Phone: 202-414-9218
Mobile: 202-893-6160
Fax: 202-414-9299

* * *

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Disclaimer Version RS.US.201.407.01

EXHIBIT E

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

<p>UNITED STATES OF AMERICA</p> <p style="text-align: center;">v.</p> <p>MARILYN J. MOSBY,</p> <p style="text-align: center;">Defendant</p>	<p>Criminal No. 22-cr-00007-LKG</p> <p>(Perjury, 18 U.S.C. § 1621; False Statement on a Loan Application, 18 U.S.C. § 1014)</p>
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**DECLARATION OF SHEANIQUA A. THOMPSON IN SUPPORT OF MARILYN J.
MOSBY’S MOTION TO DISMISS INDICTMENT**

I, Sheaniqua A. Thompson, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney and am admitted to practice in Georgia (inactive). I submit this Declaration in support of Marilyn J. Mosby’s Motion to Dismiss Indictment (the “Motion”). I have personal knowledge of the facts set forth herein and could and would testify competently thereto if called upon as a witness.

2. From approximately November of 2017 to April of 2019, I was a Senior Policy Advocate at the Job Opportunities Task Force.

3. During that time, I worked on crafting and advocating for legislation. In the spring of 2019, I was working with then-assemblyman Erek Barron (“Mr. Barron”) to pass various pieces of criminal justice reform, including a bill allowing for the vacateur of marijuana-related crimes.

4. One day during this time period, I was standing outside of a committee room talking with Mr. Barron. State’s Attorney Marilyn J. Mosby (“State’s Attorney Mosby”) walked past, and I expressed admiration for her.

5. He responded first by discussing rumors about State’s Attorney Mosby’s sex life, and then commented “I don’t understand all the hype around her, I don’t get it. She was my intern and I don’t get how she got where she is.” My recollection of this comment is not precisely

verbatim, but this is an approximation.

6. During other subsequent interactions while working on the legislation, Mr. Barron would tell me how much he disliked working with State's Attorney Mosby, and how he didn't like her style and approach. He made these sorts of comments regularly.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 4th day of February, in Washington, DC.

/s/ Sheaniqua A. Thompson
Sheaniqua A. Thompson

EXHIBIT F

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND

OFFICE OF BAR COUNSEL

200 HARRY S. TRUMAN PARKWAY
SUITE 300

ANNAPOLIS, MARYLAND 21401-7479
(410) 514-7051

LYDIA E. LAWLESS
BAR COUNSEL

RAYMOND A. HEIN
DEPUTY BAR COUNSEL

ERIN A. RISCH
DEPUTY BAR COUNSEL

November 30, 2020

PRIVATE AND CONFIDENTIAL

VIA EMAIL ONLY (wbrennan@brennanmckenna.com)

William C. Brennan, Jr., Esquire
Brennan, McKenna & Lawlor
6305 Ivy Lane, Suite 700
Greenbelt, MD 20770

Re: BC Docket No. 2020-1450
Respondent: Marilyn J. Mosby
Complainant: Bar Counsel

Dear Mr. Brennan:

Thank you for providing copies of Ms. Mosby's state and federal income tax returns for tax years 2014-2019 as well as copies of her tax transcripts for tax years 2014-2018. Please provide the additional information and documentation no later than **December 18, 2020**:

1. Copies of all documents, including but not limited to notices, payment plans, and correspondence, sent to or received from Ms. Mosby and the Internal Revenue Service regarding tax years 2014-2019 (as requested in my letter of October 19, 2019);
2. Copies of all documents, including but not limited to notices, payment plans, and correspondence, sent to or received from Ms. Mosby and the Maryland Comptroller regarding tax years 2014-2019 (as requested in my letter of October 19, 2019);
3. Copies of all documents, including but not limited to notices, payment plans, and correspondence, sent to or received from Nick Mosby and the Internal Revenue Service regarding tax years 2014-2018 (as requested in my letter of October 19, 2019);

4. Copies of all documents, including but not limited to notices, payment plans, and correspondence, sent to or received from Nick Mosby and the Maryland Comptroller regarding tax years 2014-2019 (as requested in my letter of October 19, 2019).
5. For each payment made towards any payment plan or installment agreement as reflected on the 2014 tax transcripts, please provide evidence of the payment including any cancelled checks and bank statements;
6. Please provide a complete explanation for Ms. Mosby's failure to timely pay income taxes owed for tax years 2014 and 2015;
7. On October 9, 2017, the IRS assessed a penalty in the amount of \$2,708 and assessed additional taxes owed in the amount of \$13,542. It appears that this is for underreporting income for tax year 2014. Please provide a complete explanation for this penalty/assessment and all associated documentation;
8. On April 15, 2019, the IRS assessed a penalty in the amount of \$618 and assessed additional taxes owed in the amount of \$5,816. It appears that this is for underreporting income for tax year 2016. Please provide a complete explanation for this penalty/assessment and all associated documentation;
9. Ms. Mosby claimed deductions based on charitable gifts in the following amounts:

2014	\$11,089
2015	\$21,581
2016	\$25,568
2017	\$15,957
2018	\$16,954
2019	\$18,730

Please provide evidence to substantiate these deductions including, but not limited to, any cancelled checks, credit card statements, or receipts;

10. In tax year 2017, Ms. Mosby reported \$3,600 for gross income and \$9,900 in expenses associated with Monumental Squared, LLC. In tax year 2018, Ms. Mosby reported \$49,227 for gross income and \$52,371 in expenses associated with Monumental Squared, LLC. Please provide all supporting documentation for Schedule C for each tax year including, but not limited, bank statements, cancelled checks, deposit items, credit card statements, receipts, paid invoices, and mileage charts;
11. In tax year 2019, Ms. Mosby reported \$0 for gross income and \$5,000 in expenses for Mahogany Elite Enterprises, LLC on Schedule C. Please provide all supporting documentation for Schedule C including, but not limited, bank statements,

cancelled checks, deposit items, credit card statements, receipts, paid invoices, and mileage charts;

12. Mahogany Elite Enterprises, LLC is described on the tax return as a “traveling and consulting” business. Please explain, in detail, all business-related activities Mahogany engaged in during tax year 2019; and
13. In tax year 2019, Ms. Mosby filed a Form 2106 claiming \$7,033 in expenses. Please provide all supporting documentation for Form 2106 including, but not limited, bank statements, cancelled checks, deposit items, credit card statements, receipts, paid invoices, and mileage charts.

Thank you in advance and do not hesitate to be in touch if you have any questions.

Very truly yours,

/s/ Lydia E. Lawless

Lydia E. Lawless
Bar Counsel

EXHIBIT G

BRENNAN McKENNA & LAWLOR, CHTD



ATTORNEYS AT LAW

6305 IVY LANE, SUITE 700
GREENBELT, MARYLAND 20770
TELEPHONE (301) 474-0044
FAX (301) 474-5730

WILLIAM C. BRENNAN, JR.*
WBRENNAN@BSM-LEGAL.COM
ADMITTED IN MARYLAND & D.C.*

March 1, 2021

Lydia E. Lawless, Esq.
Bar Counsel, Attorney Grievance
Commission of Maryland
200 Harry S. Truman Parkway, Suite 300
Annapolis, MD 21401-7479

Re: BC Docket No. 2020-1450
Respondent Marilyn J. Mosby
Complainant: Bar Counsel

Dear Ms. Lawless:

This letter is in response to your letter dated February 4, 2021. I would first like to make a few general observations.

First, I represent only Marilyn J. Mosby, Esq. I do not represent her husband Nicholas J. Mosby (who is not a lawyer). I can only request information and cooperation from Mr. Mosby, I cannot demand that he produce documents that he may or may not possess. Notwithstanding that, Mr. Mosby has made every reasonable effort to assist in your investigation of this matter. He has (1.) produced the tax documents that remain in his possession (tax transcripts and payment plans); (2.) provided an affidavit (November 23, 2020) concerning the background of his tax issues and Ms. Mosby's lack of knowledge of those issues and (3.) indicated that he is willing to be interviewed by your office with respect to the Mosby family tax matters. Mr. Mosby has been more than reasonably cooperative.

Second, my client understands Md. Rule 19-308 and the requirement that she not "knowingly fail to respond to a lawful demand for information" from your office. In that regard she has supplied those tax documents in her possession including joint federal and state tax returns for the tax years 2014 – 2018 and her individual federal and state tax return for tax year 2019. Also, she is assembling pertinent documents and information regarding Mahogany Elite Enterprises, LLC in response to your Requests 11 and 12 below.

Third, my client understands the genesis of the lawful inquiry from your office concerning the tax lien that was placed on her and her husband's property by the Internal Revenue Service in February 2020 as reported in the Baltimore Sun on October 13, 2020. Your

Lydia E. Lawless, Esq.

February 18, 2021

Page 2 of 9

office would have jurisdiction and authority to make a lawful inquiry concerning that tax lien and the circumstances giving rise to that lien. In that regard, Ms. Mosby maintains that she has fully complied with your lawful demand for information. In addition, she understands you concerns involving Mahogany Elite Enterprises, LLC and as stated above is preparing those documents for your review.

Fourth, my client takes issue with your demand for information concerning the specifics of her tax filings. You have essentially requested back-up verification for charitable gifts in tax years 2014 through 2019 and the business records for Monumental Squared, LLC (owned by her husband). Neither the Internal Revenue Service nor the Maryland Comptroller have taken issue with the charitable contributions or the bona fides of that business entity. Your office is basically conducting an in-depth tax audit of my client and her husband's tax returns without any suggestion from the taxing authorities - or anyone else - that the tax returns are not in order. It is the taxing authorities (either the IRS or the Comptroller) who make the determination concerning the validity of the items on a tax return. I respectfully suggest that your office does not otherwise have the authority to independently conduct tax audits of lawyers in the absence of a complaint suggesting that there is fraud in the tax filings as determined by a taxing authority. As such, your request for the back-up documents (some going back seven years) for the charitable contributions and the records of Monumental is not "a lawful demand for information" with the meaning of Md. Rule 19-308.

This issue concerning the scope of Bar Counsel's investigative authority has been litigated in Maryland. See, *Unnamed Atty. v. Attorney Grievance Comm'n*, 313 Md. 357, 365 (1988) and *Unnamed Attorney v. Attorney Grievance Comm'n*, 409 Md. 509, 521-22 (2009). The 1988 case requires that your office have some factual basis to support the investigation and the requested information must be relevant and material.

In light of the above, it becomes clear that the AGC's investigatory power, while broad, is not without limits. For example, an Inquiry Panel's investigation, or a subpoena issued in furtherance thereof, cannot be justified by the AGC's unsubstantiated suspicion of unethical behavior. Instead, there must exist some factual basis to support the investigation and, furthermore, any subpoenaed testimony or documents must appear relevant and material to the inquiry.

Unnamed Atty. v. Attorney Grievance Comm'n, 313 Md. 357, 365 (1988)

The reasoning of the 1988 case was followed in the 2009 case in affirming that the request be reasonable and not be based upon mere conjecture or supposition.

Nonetheless, "in defining the appropriate boundaries of the [Commission's] subpoena power, we are guided by the requirement of reasonableness which circumscribes an administrative agency's investigatory powers." *Unnamed Attorney*, 313 Md. at 364, 545

Lydia E. Lawless, Esq.

February 18, 2021

Page 3 of 9

A.2d at 689. We said in that regard that, “in order to meet the test of reasonableness, an investigation of an individual by an administrative agency may not be based upon mere conjecture or supposition that a violation of law exists. Rather, it is incumbent upon an agency to demonstrate some factual basis to support its concern.” Id.

Unnamed Attorney v. Attorney Grievance Comm'n, 409 Md. 509, 521–22 (2009)

Fifth, Mr. Mosby’s affidavit bears careful scrutiny and a number of important conclusions can be drawn from it.

- He was the person in the marriage that was responsible for filing the federal and state income tax returns from 2014-2018.
- He presented the federal and state tax returns to my client for her signature and for her to review the accuracy of only her income figures.
- He affirms that my client did not review the entirety of the returns, which would include his income and his withholdings for tax years 2014-2018.
- All tax returns were correct and were timely filed by a tax professional.
- He states that in 2014 in response to a family emergency, he withdrew money from his 401k plan but did not withhold sufficient taxes on the withdrawal, which caused tax liability.
- He clearly states that he did not tell my client about the 401k withdrawal. He did not tell my client about the consequential tax liability, nor did he tell my client that he entered into an installment payment plan agreement with the IRS.
- In 2015, Mr. Mosby affirms that he again withdrew money from his 401k without the knowledge of my client and yet again failed to withhold sufficient taxes, which caused additional tax liability that required that he enter into a second installment payment plan agreement with the IRS. He asserts that he did not inform my client.
- According to Mr. Mosby, in 2017, the IRS assessed additional back taxes related to an IRS audit, which resulted in a third installment payment plan agreement with Mr. Mosby.
- In 2019, Mr. Mosby attests that his agreement with the IRS was cancelled due a miscalculation of the tax liability by the IRS, which subsequently forced him to attempt to enter into yet another installment payment plan agreement.

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- According to Mr. Mosby, he alone, sought professional tax service assistance when engaging with the IRS. He exclusively, hired and then subsequently terminated the professional assistance of that tax service.
- Most importantly, Mr. Mosby asserts under penalties of perjury that “Since it was my tax liability that caused the deficiencies I and I alone- dealt with the Internal Revenue Services. All phone calls, correspondence and agreements with the Internal Revenue Service was with me and not with my wife. I did not tell her about the tax issues until I learned about the tax lien by a reporter for the Baltimore Sun sometime on October 13, 2020.”

My client is clearly an innocent spouse that did not know about the 2014-2018 tax issues stemming from her husband’s efforts to deal with the tax issues on his own and to conceal his efforts from my client.

I will now delineate the extent of my client and her husband’s cooperation to your “lawful demand for information.”

1. Request: Copies of all documents, including but not limited to notices, payment plans, and correspondence, sent to or received from Ms. Mosby and the Internal Revenue Service regarding tax years 2014-2019 (as requested in my letter of October 19, 2019);

Response: My client, Marilyn J. Mosby, has no documents. See Nicholas J. Mosby affidavit — “I and I alone - dealt with the Internal Revenue Services. All phone calls, correspondence and agreements with the Internal Revenue Service was with me and not my wife. I did not tell my wife about the tax issues until I learned about the tax lien by a reporter for the Baltimore Sun sometime on October 13, 2020.” Mr. Mosby has provided what is in his possession and control, which includes: (1) Form 433-D Installment Agreement dated December 6, 2018; (2) IRS Notice Number CP-89 dated August 29, 2019; (3) Payment Details for July 16, 2018 through July 15, 2019; (4) Form 8821 Tax Information Authorization dated July 31, 2020; and (5) MECU Credit Union voided check.

2. Request: Copies of all documents, including but not limited to notices, payment plans, and correspondence, sent to or received from Ms. Mosby and the Maryland Comptroller regarding tax years 2014-2019 (as requested in my letter of October 19, 2019);

Response: My client, Marilyn J. Mosby, has no documents. See Nicholas J. Mosby affidavit — “I and I alone - dealt with the Internal Revenue Services. All phone calls, correspondence and agreements with the Internal Revenue Service was with me and not my wife. I did not tell my wife about the tax issues until I learned about the tax lien by a reporter for the Baltimore Sun sometime on October 13, 2020.” Nick Mosby advises that he’s already provided you with what is in his possession and control, which includes: (1) Form 433-D Installment Agreement dated December 6, 2018; (2) IRS Notice Number CP-89 dated August 29, 2019; (3) Payment Details for July 16, 2018 through July 15, 2019; (4) Form 8821 Tax Information Authorization dated July 31, 2020; and (5) MECU Credit Union voided check.

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3. Request: Copies of all documents, including but not limited to notices, payment plans, and correspondence, sent to or received from Nick Mosby and the Internal Revenue Service regarding tax years 2014-2018 (as requested in my letter of October 19, 2019);

Response: See Nicholas J. Mosby affidavit — “I and I alone- dealt with the Internal Revenue Services. All phone calls, correspondence and agreements with the Internal Revenue Service was with me and not my wife. I did not tell my wife about the tax issues until I learned about the tax lien by a reporter for the Baltimore Sun sometime on October 13, 2020.” Nick Mosby advises that he’s already provided you with what is in his possession and control, which includes: (1) Form 433-D Installment Agreement dated December 6, 2018; (2) IRS Notice Number CP-89 dated August 29, 2019; (3) Payment Details for July 16, 2018 through July 15, 2019; (4) Form 8821 Tax Information Authorization dated July 31, 2020; and (5) MECU Credit Union voided check.

4. Request: Copies of all documents, including but not limited to notices, payment plans, and correspondence, sent to or received from Nick Mosby and the Maryland Comptroller regarding tax years 2014-2019 (as requested in my letter of October 19, 2019).

Response: See Nicholas J. Mosby affidavit — “I and I alone- dealt with the Internal Revenue Services. All phone calls, correspondence and agreements with the Internal Revenue Service was with me and not my wife. I did not tell my wife about the tax issues until I learned about the tax lien by a reporter for the Baltimore Sun sometime on October 13, 2020.” Nick Mosby advises that he’s already provided you with what is in his possession and control, which includes: (1) Form 433-D Installment Agreement dated December 6, 2018; (2) IRS Notice Number CP-89 dated August 29, 2019; (3) Payment Details for July 16, 2018 through July 15, 2019; (4) Form 8821 Tax Information Authorization dated July 31, 2020; and (5) MECU Credit Union voided check.

5. Request: For each payment made towards any payment plan or installment agreement as reflected on the 2014 tax transcripts, please provide evidence of the payment including any cancelled checks and bank statements;

Response: See Nicholas J. Mosby affidavit — “I and I alone- dealt with the Internal Revenue Services. All phone calls, correspondence and agreements with the Internal Revenue Service was with me and not my wife. I did not tell my wife about the tax issues until I learned about the tax lien by a reporter for the Baltimore Sun sometime on October 13, 2020.” Nick Mosby advises that he’s already provided you with what is in his possession and control, which includes: (1) Form 433-D Installment Agreement dated December 6, 2018; (2) IRS Notice Number CP-89 dated August 29, 2019; (3) Payment Details for July 16, 2018 through July 15, 2019; (4) Form 8821 Tax Information Authorization dated July 31, 2020; and (5) MECU Credit Union voided check.

6. Request: Please provide a complete explanation for Ms. Mosby’s failure to timely pay income taxes owed for tax years 2014 and 2015;

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Response: See Nicholas J. Mosby affidavit.

“In 2014, I took a withdrawal from my Fidelity Financial 401k plan. Unfortunately, I did not withhold sufficient taxes on the withdrawal and this caused a tax liability for tax year 2014. Since this was my responsibility, I did not tell my wife about this issue and I entered into an installment payment plan with the Internal Revenue Service (IRS).

In 2015, I withdrew from the same Fidelity 401k plan. Again, I failed to communicate to my wife regarding that decision. And again, sufficient taxes weren't withheld because the withdrawal deductions did not factor my elevated tax bracket and penalty for the early withdrawal. Per IRS rules, a new deficiency causes an existing installment plan to go in default and it required that I enter into a second installment payment plan with the Internal Revenue Service.

In 2017, the IRS assessed an additional back tax amount related to an audit. Per IRS rules, a new deficiency causes an existing installment plan to go in default and it required that I enter into a third installment payment plan with the Internal Revenue Service.

In 2019, a new agreement was established but after the first payment was collected the agreement was cancelled by the IRS. I called the account services department of the IRS and was informed that my installment agreement was cancelled because of an incorrect calculation by the IRS and it would require a new installment agreement be established. Knowing that I always filed timely and accurate returns and due to the multiple iterations of setting up agreements, I decided to seek professional services to act as a representative for me.

In 2020, I attempted to establish a fourth installment agreement. When the payment was not automatically deducted from my account, I called the IRS and learned that the agreement was in the system but not established and I needed to do the installment agreement process for a fifth time. The new installment agreement would be almost 40% higher than the agreement established just a few months prior. I decided not to do another installment agreement and to develop a lump sum payment solution that would put this lingering issue to rest.

Suspecting that the IRS calculations (tax, penalties and interest) on the deficiency may be wrong because of the different calculations by different agents, I retained a tax service company in an attempt to develop an offer in compromise agreement that would completely resolve the debt. Unfortunately, after the tax service provider worked on my behalf with the IRS for several months, they requested that I pay a substantial amount of money directly to them with zero guarantee of resolving my issue. I grew suspicious of their ultimatum and decided not to move forward.

Less than a month after ending the representation of the tax service, I was informed about the tax lien.

I and I alone- dealt with the Internal Revenue Services. All phone calls, correspondence and agreements with the Internal Revenue Service was with me and not my wife. I did not tell

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my wife about the tax issues until I learned about the tax lien by a reporter for the Baltimore Sun sometime on October 13, 2020.”

7. Request: On October 9, 2017, the IRS assessed a penalty in the amount of \$2,708 and assessed additional taxes owed in the amount of \$13,542. It appears that this is for underreporting income for tax year 2014. Please provide a complete explanation for this penalty/assessment and all associated documentation;

Response: See Nicholas J. Mosby affidavit — “I and I alone- dealt with the Internal Revenue Services. All phone calls, correspondence and agreements with the Internal Revenue Service was with me and not my wife. I did not tell my wife about the tax issues until I learned about the tax lien by a reporter for the Baltimore Sun sometime on October 13, 2020.”

8. Request: On April 15, 2019, the IRS assessed a penalty in the amount of \$618 and assessed additional taxes owed in the amount of \$5,816. It appears that this is for underreporting income for tax year 2016. Please provide a complete explanation for this penalty/assessment and all associated documentation;

Response: See Nicholas J. Mosby affidavit - “I and I alone- dealt with the Internal Revenue Services. All phone calls, correspondence and agreements with the Internal Revenue Service was with me and not my wife. I did not tell my wife about the tax issues until I learned about the tax lien by a reporter for the Baltimore Sun sometime on October 13, 2020.”

9. Request: Ms. Mosby claimed deductions based on charitable gifts in the following amounts:

2014	\$11,089
2015	\$21,581
2016	\$25,568
2017	\$15,957
2018	\$16,954
2019	\$18,730

Please provide evidence to substantiate these deductions including, but not limited to, any cancelled checks, credit card statements, or receipts;

Response: See Nick Mosby affidavit — “I, am the person in the marriage who takes responsibility for filing the state and federal income taxes. I present the returns to Marilyn who checks her income figures for accuracy but she does not review the entire return including my income and withholding.

All tax returns were timely filed by a tax professional and the returns were correct.”

In addition, my client contends a request for six years’ worth of “cancelled checks, credit card statements or receipts” is purely in the nature of an audit of her and her husband’s federal

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and state income tax returns. Such an in-depth audit – in the absence of a suggestion or complaint from the taxing authorities that the returns are not correct - is well beyond the scope of your office’s authority. Such a request is not “a lawful demand for information” with the meaning of Md. Rule 19-308.

10. Request: In tax year 2017, Ms. Mosby reported \$3,600 for gross income and \$9,900 in expenses associated with Monumental Squared, LLC. In tax year 2018, Ms. Mosby reported \$49,227 for gross income and \$52,371 in expenses associated with Monumental Squared, LLC. Please provide all supporting documentation for Schedule C for each tax year including, but not limited, bank statements, cancelled checks, deposit items, credit card statements, receipts, paid invoices, and mileage charts;

Response: See Nicholas J. Mosby affidavit. “I, am the person in the marriage who takes responsibility for filing the state and federal income taxes. I present the returns to Marilyn who checks her income figures for accuracy but she does not review the entire return including my income and withholding.

All tax returns were timely filed by a tax professional and the returns were correct.”

As stated above, Monumental Squared, LLC is Mr. Mosby’s company – not Ms. Mosby’s. In addition, my client contends a request for “all supporting documentation for Schedule C for each tax year including, but not limited, bank statements, cancelled checks, deposit items, credit card statements, receipts, paid invoices, and mileage charts” is purely in the nature of an audit of her and her husband’s federal and state income tax returns for 2017 and 2018. Such an in-depth audit – in the absence of a suggestion or complaint from the taxing authorities that the returns are not correct - is well beyond the scope of your office’s authority. Such a request is not “a lawful demand for information” with the meaning of Md. Rule 19-308.

11. Request: In tax year 2019, Ms. Mosby reported \$0 for gross income and \$5,000 in expenses for Mahogany Elite Enterprises, LLC on Schedule C. Please provide all supporting documentation for Schedule C including, but not limited, bank statements, cancelled checks, deposit items, credit card statements, receipts, paid invoices, and mileage charts;

Response: My client is in the process of gathering the requested information.

12. Request: Mahogany Elite Enterprises, LLC is described on the tax return as a “traveling and consulting” business. Please explain, in detail, all business-related activities Mahogany engaged in during tax year 2019;

Response: My client is in the process of gathering the requested information.

13. Request: In tax year 2019, Ms. Mosby filed a Form 2106 claiming \$7,033 in expenses. Please provide all supporting documentation for Form 2106 including, but not limited, bank statements, cancelled checks, deposit items, credit card statements, receipts, paid invoices, and mileage charts.

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Response: My client contends a request for “all supporting documentation for Form 2106 “including, but not limited, bank statements, cancelled checks, deposit items, credit card statements, receipts, paid invoices, and mileage charts” is purely in the nature of an audit of her federal and state income tax returns for 2019. Such an in-depth audit – in the absence of a suggestion or complaint from the taxing authorities that the returns are not correct - is well beyond the scope of your office’s authority. Such a request is not “a lawful demand for information” with the meaning of Md. Rule 19-308.

As discussed above, my client fully appreciates your initial inquiry into whether or not she timely filed her taxes and why a tax lien was placed on her and her husband’s property. **She also understands your inquiry concerning Mahogany Elite Enterprises, LLC.** She has fully cooperated in that inquiry. However, the basis for your initial inquiry has morphed into a full-fledged desire to audit my client’s tax returns without any legally legitimate basis to do so. It is up to the Internal Revenue Service and the Maryland Comptroller to determine compliance with the specifics of tax codes – not your office. As such, your request for back-up documentation is not reasonable, is based upon mere conjecture or supposition that a violation of law exists and lacks a factual basis to support the investigation.

Please feel free to contact me should you desire to discuss this further. I am,

Very truly yours,

W. C. Brennan, Jr.

William C. Brennan, Jr.

WCB

cc: Marilyn J. Mosby, Esq.

EXHIBIT H

From: Bolden, A. Scott
Sent: Tuesday, May 4, 2021 3:57 PM
To: Wise, Leo (USAMD)
Cc: Qureshi, Rizwan A.; Bolden, A. Scott; Delaney, Sean (USAMD); Zelinsky, Aaron (USAMD); Schenning, Stephen (USAMD); Hanlon, Michael (USAMD)
Subject: Marilyn Mosby GJ Investigation.

Mr. Wise,

Thank you for the law school tutorial on the Federal Rules of Criminal Procedure, however, I don't need it.

You say that my characterization of your previous conversations with Mr. Qureshi are not accurate, but then you confirm that I was correct when I stated that it was you who raised Bar Counsel's investigation in response to Mr. Qureshi's inquiry.

Now for the first time, you cite the Bar Counsel's letter of November 30, 2020, which includes thirteen different document requests, but you fail to state which requests you are focused on. As you are aware, these requests were made after Ms. Mosby had already produced her state and federal tax returns and tax transcripts for 2014 through 2018. Because Bar Counsel's follow-up requests on November 30th – which included requests regarding Mr. Mosby, a non-lawyer – were clearly outside the scope of Bar Counsel's authority, Ms. Mosby, under the advice of counsel, did not produce any supporting documents in response to Bar Counsel's "unlawful", overbroad, inappropriate and burdensome requests. To date, there has been no adverse finding by Bar Counsel regarding Ms. Mosby and her taxes.

If your office took any interest in treating my client with a modicum of fairness, and without personal or political animus, you would know that Bar Counsel, Lydia Lawless, shares your disdain for my client and has been engaged in a relentless campaign to destroy Ms. Mosby's reputation. Now, it is clear, that your office is acting as her agent and now may be abusing the federal grand jury process to further Ms. Lawless's agenda. If so, it is a shameful abuse of power and prosecutorial discretion, imposed upon two popular and powerful Black elected officials in Maryland. Your office, nor Bar Counsel, should serve, with or without pretext, the role of the IRS in connection to these matters.

To be sure, you have confirmed that Ms. Lawless is the individual who referred this matter to your office. Even assuming that Bar Counsel's requests in the November 30th letter identify certain issues with Ms. Mosby's income tax filings, and they do not – how does this establish sufficient criminal intent to warrant opening a grand jury investigation?

And, are you suggesting that Ms. Mosby's decision to refuse to provide supporting documents in response to Bar Counsel's unlawful and overbroad requests was sufficient to obtain authorization from the Tax Division under JM 6-4.120 to use the grand jury to investigate alleged criminal tax violations?

If you did in fact follow the Department of Justice Manual, and obtained the necessary approval, please provide us with any communications from the Tax Division providing any such authorization.

You also condescendingly raise your observation that subjects of similar criminal tax investigations "often retain counsel with expertise in criminal tax law." Notwithstanding your observation and feigned attempt to insult me and my white collar criminal defense practice, even a law student would be, as well as, our retained criminal tax law experts are, bewildered by why the instant inquiry is before a federal criminal grand jury when it should be handled by an IRS civil auditor. These are fair questions because there is no evidence of any criminal intent that would warrant a grand jury investigation. Hence, this is precisely why we are asking you these questions. Your refusal to answer them is not only telling, but very disappointing, given my client's commitment to public service, and your purported dedication to the same.

As I have stated, we are eager for the opportunity to meet with you and your colleagues on behalf of Ms. Mosby. The fact is, Ms. Mosby has not engaged in any intentional wrongdoing and although Mr. Mosby handled their income tax filings for most of the subject years (2014-2018), they collectively relied upon the expertise of their CPA. This is why your guidance, even by identifying the relevant requests by Bar Counsel on November 30th, and/or a target letter, could prove helpful in any possible meeting.

If you will not reconsider your negative position on our reasonable requests, we will have no choice but to conclude that in the state of Maryland, Black elected officials continue to be unfairly targeted by federal government prosecutors, and to that end, your office is more than willing to use the federal criminal grand jury process, to conduct inquiries into otherwise, routine civil IRS audits matters.

Thanks/asb

A. Scott Bolden

Managing Partner

Washington, D.C. Office

Pronouns: He/Him/His

[Full Bio](#)

ReedSmith LLP

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From: Wise, Leo (USAMD) <Leo.Wise@usdoj.gov>

Sent: Friday, April 30, 2021 11:17 AM

To: Bolden, A. Scott <ABolden@ReedSmith.com>

Cc: Qureshi, Rizwan A. <RQureshi@reedsmith.com>; Delaney, Sean (USAMD) <Sean.Delaney@usdoj.gov>; Zelinsky, Aaron (USAMD) <Aaron.Zelinsky@usdoj.gov>; Schenning, Stephen (USAMD) <Stephen.Schenning@usdoj.gov>; Hanlon, Michael (USAMD) <Michael.Hanlon@usdoj.gov>

Subject: RE: Marilyn Mosby GJ Investigation.

EXTERNAL E-MAIL - From Leo.Wise@usdoj.gov

Mr. Bolden,

Your summary and characterizations of our conversations with Mr. Qureshi are not accurate. We say that not to begin a debate with you about those two phone calls, but to make it clear that we do not agree with what you have written about them.

Our response to your question is the same as the one we gave Mr. Qureshi: we cannot disclose the information you request related to the Grand Jury because of the restrictions placed on us by Federal Rule of Criminal Procedure 6(e). Your specific request that we “provide us further information about the *focus* of the investigation – without

revealing secret grand jury *materials* –“ (emphasis added) inverts the law on what is and isn’t covered by Rule 6(e). As the D.C. Circuit explained in *Senate of the Commonwealth of Puerto Rico on Behalf of Judiciary Committee. v. United States Department of Justice*:

There is no *per se* rule against disclosure of any and all information which has reached the grand jury chambers; as the district court correctly observed, the touchstone is whether disclosure would “tend to reveal some secret aspect of the grand jury’s investigation” such matters as “the identities of witnesses or jurors, the substance of testimony, *the strategy or direction of the investigation*, the deliberations or questions of jurors, and the like.’” The disclosure of information “coincidentally before the grand jury [which can] be revealed in such a manner that its revelation *would not elucidate the inner workings of the grand jury*” is not prohibited.

823 F.2d 574, 582 (D.C. Cir. 1987) (emphasis added).

As a professional courtesy, we reiterate that the Bar Counsel’s investigation raised numerous questions related to your client’s taxes. *See e.g.*, Letter to William Brennan dated November 30, 2020. We are able to reference the Bar Counsel’s investigation because it is not covered by Rule 6(e). We also observe that in federal criminal tax investigations, subjects of the investigation, like your client, often retain counsel with expertise in criminal tax law to review their returns and identify likely issues for criminal enforcement.

You are under no obligation to provide any information beyond what was called for in the grand jury subpoena. However, as we told Mr. Qureshi, we will review any information you choose to voluntarily provide us.

Sincerely,

Leo J. Wise
Assistant United States Attorney
Chief, Fraud and Public Corruption Section
United States Attorney’s Office for the District of Maryland
36 South Charles Street
Baltimore, MD 21201
(410) 209-4909 (desk)
(410) 725-6725 (cell)

From: Bolden, A. Scott <ABolden@ReedSmith.com>

Sent: Tuesday, April 27, 2021 4:33 PM

To: Wise, Leo (USAMD) <lwise@usa.doj.gov>

Cc: Qureshi, Rizwan A. <RQureshi@reedsmith.com>; Delaney, Sean (USAMD) <SDelaney2@usa.doj.gov>; Zelinsky, Aaron (USAMD) <AZelinsky@usa.doj.gov>; Schenning, Stephen (USAMD) <SSchenning@usa.doj.gov>; Hanlon, Michael (USAMD) <MHanlon@usa.doj.gov>; Bolden, A. Scott <ABolden@ReedSmith.com>

Subject: Marilyn Mosby GJ Investigation.

Mr. Wise,

Late last week, I was briefed by my partner, Rizzy Qureshi, regarding your brief call on Friday which I could not attend. I write in follow-up to that conversation.

You will recall, during that March 23rd call, Mr. Qureshi requested further background information on the focus of the grand jury investigation, specifically as it relates to the subject letters that were issued by your office. Rather than directly respond to Mr. Qureshi's question, you noted that there had been "a request by Bar Counsel that identified issues . . . potential tax issues" that could be informative in response to Mr. Qureshi's inquiry.

As inappropriate as your response appeared to be, we relied on your information and approached Ms. Mosby's attorney who represented her in connection with Bar Counsel's inquiry. I should note that since Mr. Mosby is not an attorney, your reference to Bar Counsel's inquiry seems to suggest the focus of your investigation is on Ms. Mosby and not Mr. Mosby. Our communications with Ms. Mosby's attorney and review of the record in that matter did not reveal any impropriety related to Ms. Mosby's taxes, let alone any potential criminal tax issues. Moreover, the only relevant aspect of that inquiry was that Bar Counsel requested certain tax records from Ms. Mosby, and based on the advice of counsel, certain documents were produced, and other back-up or supporting documents, were not produced by Ms. Mosby. Moreover, to date, no adverse finding has been made by Bar Counsel related to Ms. Mosby's conduct.

To be sure, and based upon our follow-up on Bar Counsel's inquiry, Mr. Qureshi then further requested that you expound upon the relevance of Bar Counsel's inquiry to the pending grand jury investigation. As I understand it, you were unwilling to elaborate further.

Then, in the spirit of professional courtesy, Mr. Qureshi requested that we be contacted should you anticipate that any further adverse action is taken against Ms. Mosby by the grand jury, including, specifically, the issuance of an indictment. You stated that you were not willing to agree to that. Thereafter, Mr. Qureshi inquired that if Ms. Mosby is perceived as a target in connection with the grand jury investigation, whether we could expect a target letter. You responded, "I never do target letters..." and then stated that if we wanted to meet with your office about our client, that we should do it sooner rather than later.

Frankly, your refusal to discuss this matter or your concerns generally about the alleged conduct of my client is untenable. You directed us to the inquiry by Bar Counsel and left us with the belief that a dispute over the inappropriate request by Bar Counsel for production of certain tax records, somehow led to the subject criminal federal grand jury investigation. If that was the case, any such dispute could essentially be resolved by Bar Counsel or the IRS (Civil Division), and Ms. Mosby—not with a federal criminal grand jury. If so, these circumstances beg the question as to why your office is even spending time, money and resources on a federal grand jury investigation of a Maryland state elected official regarding a document production dispute between Ms. Mosby and Bar Counsel. To be sure, we cannot even begin to have a reasonable discussion with your office or present our defense concerns, without more information or a general basis for the Mosby investigation. In that regard, we have essentially received nothing from your office.

As advocates for our client, we would appreciate the opportunity to present our defense and/or related contextual information for your consideration before any further adverse action is taken. We should be entitled to that much. At least a target letter provides some general information, including applicable criminal statutes, that could guide our eventual presentation to you and your colleagues before you seek formal charges.

Your unwillingness to be helpful is either indicative of your political and personal animus against my client, or reflective of the weakness of your case, or both. Whatever the case may be, I again request that you provide us further information about the focus of your investigation – without revealing secret grand jury materials – so that we may prepare to meet with you and your colleagues. If you are unwilling to provide us this information now because of the status of your investigation, we again request the courtesy of a target letter and/or discussion before you bring formal charges. Again, I must reiterate that our review of the facts here suggests that there is no basis for any formal charges, but still, I request this courtesy, nonetheless. Indeed, mere questions about a taxpayer's deductions and supporting documentation thereof, seems more fitting for an IRS audit—not a federal grand jury investigation.

Please give the foregoing request every consideration and let us know when we can discuss the alleged misconduct, and the basis for your investigation.

Thanks/asb

A. Scott Bolden

Managing Partner
Washington, D.C. Office
Pronouns: He/Him/His
[Full Bio](#)

ReedSmith LLP

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* * *

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EXHIBIT I

From: Wise, Leo (USAMD) <Leo.Wise@usdoj.gov>
Sent: Monday, June 28, 2021 12:19 PM
To: Bolden, A. Scott
Cc: Qureshi, Rizwan A.; Delaney, Sean (USAMD); Zelinsky, Aaron (USAMD); Schenning, Stephen (USAMD); Hanlon, Michael (USAMD)
Subject: RE: Marilyn Mosby GJ Investigation.

EXTERNAL E-MAIL - From Leo.Wise@usdoj.gov

Scott,

Our position hasn't changed.

Leo J. Wise
Assistant United States Attorney
Chief, Fraud and Public Corruption Section
United States Attorney's Office for the District of Maryland
36 South Charles Street
Baltimore, MD 21201
(410) 209-4909 (desk)
(410) 725-6725 (cell)

From: Bolden, A. Scott <ABolden@ReedSmith.com>
Sent: Friday, June 18, 2021 11:00 AM
To: Wise, Leo (USAMD) <lwise@usa.doj.gov>
Cc: Qureshi, Rizwan A. <RQureshi@reedsmith.com>; Delaney, Sean (USAMD) <SDelaney2@usa.doj.gov>; Zelinsky, Aaron (USAMD) <AZelinsky@usa.doj.gov>; Schenning, Stephen (USAMD) <SSchenning@usa.doj.gov>; Hanlon, Michael (USAMD) <MHanlon@usa.doj.gov>; Bolden, A. Scott <ABolden@ReedSmith.com>
Subject: Marilyn Mosby GJ Investigation.

Leo,

Just checking in with you regarding the MM grand jury investigation. I has been a number of weeks since my last communication with your office. To be sure, I am writing to reiterate our interest in further discussing your investigation and the issues you are looking into, and perhaps even assisting in answering any questions you may have regarding my client. Having a dialogue on the issues you are investigating can only assist both sides making sure that there is clarity and accuracy in what and why your office is reviewing it, and our ability to address or explain any concerns you may have about my client.

Unfortunately, it is difficult at best to do so, if you are still unwilling to share more information with us, or even the origins of your investigation, the necessary internal approvals, nor even agreeing to a meeting before any possible negative actions are taken against my client by your office. I strongly believe we are entitled to this information and/or a meeting under the DOJ Criminal Tax Division rules. In the alternative, please consider the fact that my client is a duly elected Baltimore State's Attorney who is under federal investigation, and it would seem at a minimum, she would be entitled to know the basis, origin and what and why she is being investigated.

Here again, I reiterate our readiness to further discuss these issues, but without further information from your office, it would hardly be a fruitful discussion for either side. Accordingly, please let me know whether you will reconsider your prior position, and share with us the information we have been requesting for weeks, as well as, the assurance that me and my client receive a meeting to discuss and/or defend any allegations against her, before any charges are brought against her.

Thanks/asb.

A. Scott Bolden
Managing Partner
Washington, D.C. Office
Pronouns: He/Him/His
[Full Bio](#)

ReedSmith LLP
1301 K Street, N.W., Suite 1000 – East Tower, Washington, DC 20005
Direct +1 202 414 9266 | Mobile +1 202 236 4166 | Fax +1 202 414 9299
abolden@reedsmith.com



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* * *

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EXHIBIT J

From: Barron, Ere (USAMD) <Erek.Barron@usdoj.gov>
Sent: Tuesday, October 26, 2021 4:55 PM
To: Qureshi, Rizwan A.
Cc: Bolden, A. Scott; Schenning, Stephen (USAMD); Selden, Philip (USAMD); Wise, Leo (USAMD)
Subject: Re: [EXTERNAL] RE: Confidential

EXTERNAL E-MAIL - From Ere.Barron@usdoj.gov

Gentlemen,

Thank you for following up, and please forgive my delayed response. At this stage, a meeting would be premature but we'll be in touch should there be a more appropriate time.

Thank you,
Erek

Sent from my iPhone

On Oct 26, 2021, at 12:10 PM, Qureshi, Rizwan A. <RQureshi@reedsmith.com> wrote:

Mr. Barron,

I hope you are well. We write in follow-up to our email and letter of October 12, 2021. Please let us know if you are available for a meeting with us regarding our client, Baltimore City State's Attorney Marilyn Mosby.

Thanks and have a great day.

Best
Rizzy Qureshi

Rizwan (Rizzy) Qureshi, Esq.
rqureshi@reedsmith.com

Reed Smith LLP
1301 K Street, N.W.
Suite 1000 - East Tower
Washington, D.C. 20005-3373
Phone: 202-414-9218
Mobile: 202-893-6160

Fax: 202-414-9299

From: Qureshi, Rizwan A.
Sent: Tuesday, October 12, 2021 5:41 PM
To: 'erek.barron@usdoj.gov' <erek.barron@usdoj.gov>
Cc: Bolden, A. Scott <ABolden@ReedSmith.com>; Qureshi, Rizwan A. <RQureshi@reedsmith.com>
Subject: Confidential
Importance: High

Dear Mr. Barron,

I hope this email reaches you well. Reed Smith LLP represents Baltimore City State's Attorney Marilyn Mosby. I write to provide you the attached letter with exhibits on behalf of my partner, A. Scott Bolden.

Please let us know if you have any questions and when you are available to discuss.

Best,
Rizzy Qureshi

Rizwan (Rizzy) Qureshi, Esq.
rqureshi@reedsmith.com

Reed Smith LLP
1301 K Street, N.W.
Suite 1000 - East Tower
Washington, D.C. 20005-3373
Phone: 202-414-9218
Mobile: 202-893-6160
Fax: 202-414-9299

* * *

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EXHIBIT K

From: Schenning, Stephen (USAMD) <Stephen.Schenning@usdoj.gov>
Sent: Thursday, October 28, 2021 11:50 AM
To: Bolden, A. Scott
Cc: Barron, Erek (USAMD); Selden, Philip (USAMD); Wise, Leo (USAMD); Qureshi, Rizwan A.
Subject: Recall: [EXTERNAL] RE: Confidential

EXTERNAL E-MAIL - From Stephen.Schenning@usdoj.gov

Schenning, Stephen (USAMD) would like to recall the message, "[EXTERNAL] RE: Confidential".

EXHIBIT L

From: Bolden, A. Scott
Sent: Thursday, October 28, 2021 12:18 PM
To: Schenning, Stephen (USAMD)
Cc: Barron, Erek (USAMD); Selden, Philip (USAMD); Wise, Leo (USAMD); Qureshi, Rizwan A.; Bolden, A. Scott
Subject: RE: [EXTERNAL] RE: Confidential

Thanks for your opinion, but that is all it is--your opinion.

I have put in writing and stated in our DOJ tax conference of putting her in the grand jury, and no one from your office has responded. The consideration was linked to whether your office would confirm whether our substantial exculpatory evidence was put into the grand jury—no one from your office has ever responded to those questions either. I can send you the emails on this if you want them—but you have them.

Also, whether to seek MM going into the grand jury is the defense call—not the prosecutions call re our defense strategy. Doubt as you will, but her appearance should be considered a real possibility.

Please re-read my racial animus concerns more closely—they are race based questions raised—not assertions and completely separate from the political animus towards my client. And you really think because Leo Wise gave political contributions to another candidate of color removes the possible racial animus towards my client? Clearly, our privilege is getting in the way of understanding our concerns regarding racial animus and race discrimination. Indeed, since you are not a person of color, you are completely unqualified to advise the U.S. Attorney for Maryland, or anyone else on race, racism and the law.

Lastly, your assertion that Leo Wise’s political contributions were modest and a “wild stretch”, misses the mark. It is his two (2) contributions alone, that confirm his political animus against my client—regardless of the amount, or whom he gave them to, or even the race of her political opponents.

Your email response in many ways confirms all of our concerns regarding the lack of viability and the appropriateness of the MM investigation.

Erek, I hope you will launch a full internal investigation into this matter and terminal this bad faith investigation. Look forward to hearing from you soon.

Asb.

A. Scott Bolden

Managing Partner
Washington, D.C. Office
Pronouns: He/Him/His
[Full Bio](#)

ReedSmith LLP

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abolden@reedsmith.com



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From: Schenning, Stephen (USAMD) <Stephen.Schenning@usdoj.gov>

Sent: Thursday, October 28, 2021 11:45 AM

To: Bolden, A. Scott <ABolden@ReedSmith.com>

Cc: Barron, Erek (USAMD) <Erek.Barron@usdoj.gov>; Selden, Philip (USAMD) <Philip.Selden@usdoj.gov>; Wise, Leo (USAMD) <Leo.Wise@usdoj.gov>; Qureshi, Rizwan A. <RQureshi@reedsmith.com>

Subject: Re: [EXTERNAL] RE: Confidential

EXTERNAL E-MAIL - From Stephen.Schenning@usdoj.gov

Erek: Some quick observations. It is still premature given the pendency of DOJ Tax's decision. Bolden in the meeting at DOJ Tax floated the idea of "Queen for a Day" meeting. (His characterization, not mine.) He is again suggesting MM's appearance before GJ. I doubt if he would follow through on that.

Also, basing racial animus on the fact Leo made modest contributions to Thiru whose parents are Sri Lankan and Ivan Bates, an African American, is a wild stretch.

Sent from my iPhone

On Oct 28, 2021, at 11:20 AM, Bolden, A. Scott <ABolden@reedsmith.com> wrote:

Erek,

I don't believe we have met before, but have heard many great things about you.

For all the reasons listed in the defense memos and attached docs we have sent you, the investigation of Marilyn Mosby should be terminated. If this is not the right time, there could be no better time.

To be sure, this is a bad faith prosecution. The lead prosecutor in this matter has demonstrated political and personal animus towards my client, has contributed to two different political opponents of my client; recommended that my client be indicted, but has refused to provide us any substantive information regarding the basis for his recommendation; he has refused to provide us with a reverse proffer; refused to identify the statement for the proposed charge of perjury in the case; proposed charging my client with criminal tax violations for Tax Year 2020—before my client even filed her Tax Year 2020 tax returns (the 2019 tax year alleged exposure is a mere \$4000); and even has refused to confirm whether the exculpatory evidence we have provided him will be presented to the grand

jury. We also know with one grand jury witness, he refused to introduce the exculpatory evidence negating her guilt, which was sent to him by me and the witness before the witness appeared in the proceeding.

Indeed, if your office insists on moving forward with the proposed charges, my client is very interested in appearing before the grand jury. Here again, Mr. Wise will not even discuss the status of our exculpatory evidence, and has refused to respond to our consideration of Ms. Mosby appearing before the grand jury.

These are facts that are supported by documents and the related foregoing representations—not defense arguments—and they are not going away, regardless of how your office wishes to proceed.

With so little cooperation from your office and the lead prosecutor, it only begs the question, as to whether Mr. Wise and his team bear some racial animus, as well, against my client. Only an investigation by your office will determine the results of that question and other questions raised by our defense team.

As a result, we have requested that your office do a full and complete internal investigation with respect to the handling of the Mosby matter and the origins of the investigation with respect to the Trump administration and the Maryland State Bar Association. Why is it, that an otherwise routine civil tax audit matter, pending before a federal grand jury in Maryland?

Moreover, we are less than eight (8) months from her re-election effort and this tainted investigation certainly should not, and cannot further taint her ability to get re-elected under the DOJ rules. As state election that Leo Wise is sure to contribute again to her political opponents.

Please at least advise us as to whether such an internal investigation is under way; whether you have had the opportunity to review our defense materials; whether Leo Wise will be removed from the case, and whether the investigation will be terminated.

Here again, if not now, please advise when we can further discuss. Many thanks again for considering our concerns.

A. Scott Bolden

Managing Partner
Washington, D.C. Office

Pronouns: He/Him/His

[Full Bio](#)

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<image001.png>

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From: Barron, Ereka (USAMD) <Ereka.Barron@usdoj.gov>

Sent: Tuesday, October 26, 2021 4:55 PM

To: Qureshi, Rizwan A. <RQureshi@reedsmith.com>

Cc: Bolden, A. Scott <ABolden@ReedSmith.com>; Schenning, Stephen (USAMD) <Stephen.Schenning@usdoj.gov>; Selden, Philip (USAMD) <Philip.Selden@usdoj.gov>; Wise, Leo (USAMD) <Leo.Wise@usdoj.gov>
Subject: Re: [EXTERNAL] RE: Confidential

EXTERNAL E-MAIL - From Erek.Barron@usdoj.gov

Gentlemen,

Thank you for following up, and please forgive my delayed response. At this stage, a meeting would be premature but we'll be in touch should there be a more appropriate time.

Thank you,
Erek

Sent from my iPhone

On Oct 26, 2021, at 12:10 PM, Qureshi, Rizwan A. <RQureshi@reedsmith.com> wrote:

Mr. Barron,

I hope you are well. We write in follow-up to our email and letter of October 12, 2021. Please let us know if you are available for a meeting with us regarding our client, Baltimore City State's Attorney Marilyn Mosby.

Thanks and have a great day.

Best
Rizzy Qureshi

Rizwan (Rizzy) Qureshi, Esq.
rqureshi@reedsmith.com

Reed Smith LLP
1301 K Street, N.W.
Suite 1000 - East Tower
Washington, D.C. 20005-3373
Phone: 202-414-9218
Mobile: 202-893-6160
Fax: 202-414-9299

From: Qureshi, Rizwan A.
Sent: Tuesday, October 12, 2021 5:41 PM
To: 'erek.barron@usdoj.gov' <erek.barron@usdoj.gov>
Cc: Bolden, A. Scott <ABolden@ReedSmith.com>; Qureshi, Rizwan A. <RQureshi@reedsmith.com>
Subject: Confidential
Importance: High

Dear Mr. Barron,

I hope this email reaches you well. Reed Smith LLP represents Baltimore City State's Attorney Marilyn Mosby. I write to provide you the attached letter with exhibits on behalf of my partner, A. Scott Bolden.

Please let us know if you have any questions and when you are available to discuss.

Best,
Rizzy Qureshi

Rizwan (Rizzy) Qureshi, Esq.
rqureshi@reedsmith.com

Reed Smith LLP
1301 K Street, N.W.
Suite 1000 - East Tower
Washington, D.C. 20005-3373
Phone: 202-414-9218
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* * *

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EXHIBIT M

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA v. MARILYN J. MOSBY, Defendant	Criminal No. 22-cr-00007-LKG-1 (Perjury, 18 U.S.C. § 1621; False Statement on a Loan Application, 18 U.S.C. § 1014)
---	--

DECLARATION OF CARLTON SAUNDERS

I, Carlton Saunders, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I served as treasurer for Marilyn J. Mosby's campaign from the date that her campaign launched until approximately 2018.

2. I submit this Declaration to be used as an exhibit to Marilyn J. Mosby's Motion to Dismiss Indictment (the "Motion"). I have personal knowledge of the facts set forth herein and could and would testify competently thereto if called upon as a witness.

3. On August 26, 2021, I received a subpoena to produce documents to the Grand Jury in the District of Maryland.

4. In response to that subpoena, I produced documents to the government. These documents included materials regarding certain alleged campaign finance irregularities, wherein State's Attorney Mosby had received reimbursement from her campaign funds. The documents that I provided showed that the reimbursements were for campaign-related expenses that State's Attorney Mosby had paid for on her personal credit cards.

5. On August 26, 2021, I received a subpoena to testify before the Grand Jury in the District of Maryland. As I understood it, the basis of the subpoena was to inquire about an \$11,000 check that State's Attorney Mosby had written to herself from the campaign's account.

6. I was scheduled to testify before the Grand Jury on September 2, 2021.

7. When I was testifying before the Grand Jury, Mr. Wise had a large number of documents with him at the podium. These documents included the documents that I had produced to the government, which I believed explained the legitimacy of the reimbursements to State's Attorney Mosby. Mr. Wise never presented these documents to the Grand Jury, though I mentioned them several times in my testimony.

8. I am not aware that Mr. Wise presented the documents, which I believe to be exculpatory, to the Grand Jury during the proceeding in which I took part.

9. I asked that the additional documents that I had produced about other expenses be shown to the Grand Jury. Mr. Wise declined to do so and moved on.

10. I found it to be unusual that Mr. Wise declined to show the Grand Jury all of the exculpatory evidence that I had provided with respect to the legitimacy of State's Attorney Mosby's campaign expenses.

Executed on the 18th day of February, in Maryland.

/s/ Carlton Saunders
Carlton Saunders

EXHIBIT N



Driving progress
through partnership

A. Scott Bolden

Direct Phone: +1 202 414 9266

Email: abolden@reedsmith.com

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Fax +1 202 414 9299
reedsmith.com

September 1, 2021

Confidential

Via Email

Leo Wise

Assistant United States Attorney

United States Attorney, District of Maryland

36 S. Charles Street, Suite 400

Baltimore, M.D. 21201-3119

Re: Investigation into State's Attorney Marilyn Mosby

Dear Mr. Wise:

As you know, Reed Smith LLP ("Reed Smith") represents Ms. Marilyn Mosby, State's Attorney for Baltimore City ("State's Attorney Mosby"). It is my understanding that your office may be investigating my client for certain campaign finance violations. In the spirit of cooperation, I write to provide a document production on behalf of State's Attorney Mosby in connection with your office's investigation into allegations related to funds reimbursed to State's Attorney Mosby by her campaign.

Contemporaneous with this letter, you should receive an FTP link to download a production of documents. These materials have been bates labeled MOS0000001 - MOS0000070. These documents consist of various receipts and records that support the campaign expenses for which State's Attorney Mosby was reimbursed. The amount of the reimbursement totaled \$11,722, and the supporting documents consist of the following:

- September 2014 American Express Statement (MOS0000009-17)
- October 2014 Chase Freedom Card Statement containing \$1004.88 expense from Grove Printing for campaign literature (MOS00000018-21)
- October 2014 American Express Statement (MOS00000048-54)
- November 2014 American Express Statement (MOS00000055-66)
- December 2014 American Express Statement (MOS00000030-40)
- March 2016 American Express Statement containing \$407.18 expense from FatCow for campaign web hosting (MOS00000041-47)
- March 2018 American Express Statement containing \$3899.84 expense from Big Daddy for sign printing (MOS00000067-70)
- May 2018 Chase Freedom Card Statement containing \$975.20 expense from Grove Printing for campaign literature (MOS00000026-29)
- June 2018 Chase Freedom Card Statement containing \$3292.00 expense from Grove Printing for campaign literature (MOS00000022-25)



Leo Wise
September 1, 2021
Page 2

In addition, these statements contain \$1132.76 in various charges related to a fundraiser in Atlanta, GA; \$710.42 in various charges related to a fundraiser in Chicago, IL and \$200 in charges from Google to maintain the campaign's email accounts. The total of these charges is \$11,722.29.

Further, I also include in the production a bank statement (MOS0000001-09) showing a check deposit on September 24, 2018 into State's Attorney Mosby's Bank of America Account in the amount of \$11,722.

Given this evidence that these were legitimate campaign expenses and reimbursement was appropriate, we are troubled by the fact that you are investigating State's Attorney Mosby. As such, we request a meeting to discuss the status of your investigation, and whether we can provide your office with any other additional information to resolve this matter(s). Please let me know what date or time works best for your schedule.

I look forward to working with you to resolve any of your concerns.

Sincerely, I am,

/s/ A. Scott Bolden
A. Scott Bolden

AB:ml

Enclosures

cc: Charlton T. Howard, Maryland State Prosecutor

EXHIBIT O

From: Wise, Leo (USAMD) <Leo.Wise@usdoj.gov>
Sent: Thursday, September 30, 2021 1:46 PM
To: Bolden, A. Scott
Cc: Catriola.M.Coppler@tax.usdoj.gov; Delaney, Sean (USAMD); Hanlon, Michael (USAMD); Schenning, Stephen (USAMD); Rachel.Solomon@ci.irs.gov; Zelinsky, Aaron (USAMD); Qureshi, Rizwan A.; Miller, Kelley C.; Siskind, Melissa S. (TAX)
Subject: RE: Marilyn Mosby Investigation.

EXTERNAL E-MAIL - From Leo.Wise@usdoj.gov

Scott,

As we have said repeatedly, we cannot disclose matters occurring before the grand jury to you.

Leo J. Wise
Assistant United States Attorney
Chief, Fraud and Public Corruption Section
United States Attorney's Office for the District of Maryland
36 South Charles Street
Baltimore, MD 21201
(410) 209-4909 (desk)
(410) 725-6725 (cell)

From: Bolden, A. Scott <ABolden@ReedSmith.com>
Sent: Tuesday, September 21, 2021 4:35 PM
To: Wise, Leo (USAMD) <lwise@usa.doj.gov>
Cc: Catriola.M.Coppler@tax.usdoj.gov; Delaney, Sean (USAMD) <SDelaney2@usa.doj.gov>; Gupta, Vanita (OASG) <Vanita.Gupta19@usdoj.gov>; Lisa.Monaco@usdoj.gov; Hanlon, Michael (USAMD) <MHanlon@usa.doj.gov>; Stuart.Goldberg@usdoj.gov; Schenning, Stephen (USAMD) <SSchenning@usa.doj.gov>; Rachel.Solomon@ci.irs.gov; Zelinsky, Aaron (USAMD) <AZelinsky@usa.doj.gov>; Qureshi, Rizwan A. <RQureshi@reedsmith.com>; Miller, Kelley C. <KMiller@ReedSmith.com>; Bolden, A. Scott <ABolden@ReedSmith.com>; Siskind, Melissa S. (TAX) <Melissa.S.Siskind@tax.USDOJ.gov>
Subject: [EXTERNAL] Marilyn Mosby Investigation.

Leo,

As you know, Reed Smith LLP represents Ms. Marilyn Mosby, State's Attorney for Baltimore City. I write in follow-up to my letter of September 1, 2021 regarding your office's purported investigation into my client for certain campaign finance violations (the "September 1st Letter"). In this regard, contemporaneous with the September 1st Letter, your office was provided several documents, totaling 70 pages, that provided appropriate support for reimbursements

received by State's Attorney Mosby from her campaign for the total amount of \$11,722.00 (this production together with the September 1st Letter, hereinafter referred to as the "Brady Evidence").

It is our understanding that the Brady Evidence was provided to you in advance of the scheduled grand jury testimony of Mr. Carlton Saunders. You eventually acknowledged receipt of the Brady Evidence, but upon information and belief, you failed to present the Brady Evidence during Mr. Saunders' testimony before the grand jury. It was only after I sent an email to Melissa Siskind of DOJ Tax on September 7, 2021, noting that "Mr. Wise has not even acknowledged my email, dated 9/1/2021, containing exculpatory evidence in connection to a campaign finance issue" that you **finally** acknowledged receipt of the Brady Evidence on September 9, 2021.

In that same regard, on September 15, 2021, you were copied on an email transmission from me to Melissa Siskind, along with several other DOJ officials, including Senior Counsel Stuart Goldberg, Associate Attorney General Vanita Gupta and Deputy Attorney General Lisa Monaco. Attached to that email was a fifteen (15) page letter along with 8 exhibits (Exhibit A through H), which sets forth State's Attorney Mosby's various defenses which clearly negate her guilt as it relates to the charges being considered by the DOJ Tax Division (the September 15, 2021 email with attachments, the "Tax Division Submission"). To date, you have not acknowledged receipt of the Tax Division Submission.

Under Section 9-11.233 of the DOJ Manual, "[i]t is the policy of the Department of Justice . . . that when a prosecutor conducting a grand jury inquiry is personally aware of substantial evidence that directly negates the guilt of a subject of the investigation, **the prosecutor must present or otherwise disclose such evidence** to the grand jury before seeking an indictment against such a person." On September 1, 2021 and September 15, 2021 – whether you acknowledged receipt of the Brady Evidence and the Tax Division Submission or not – you became "personally aware" that there is "substantial evidence" that directly negates the guilt of State's Attorney Mosby.

Given the above, please confirm that you presented the relevant contents of the Brady Evidence and the Tax Division Submission to the grand jury. If not, please advise whether you intend to submit this exculpatory evidence to the grand jury and when. Additionally, and consistent with Section 9-11.233, we must require that you immediately terminate the pending grand jury investigation, as we remain confident that the Brady Evidence and Tax Division Submission, coupled with State's Attorney Mosby's lawful and ethical dealings with her campaign and her taxes, do not warrant an inquiry, let alone the resources of a grand jury investigation.

Should you require additional information from State's Attorney Mosby on this issue, we will make ourselves, and if appropriate, Ms. Mosby available as necessary or appropriate.

Please let me know if you have any questions or would like to discuss further.

Thanks/asb

A. Scott Bolden
Managing Partner
Washington, D.C. Office
Pronouns: He/Him/His
[Full Bio](#)

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abolden@reedsmith.com



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From: Siskind, Melissa S. (TAX) <Melissa.S.Siskind@usdoj.gov>

Sent: Friday, September 17, 2021 9:10 AM

To: Bolden, A. Scott <ABolden@ReedSmith.com>

Cc: Catriola.M.Coppler@tax.usdoj.gov; Delaney, Sean (USAMD) <Sean.Delaney@usdoj.gov>; Gupta, Vanita (OASG) <Vanita.Gupta19@usdoj.gov>; Lisa.Monaco@usdoj.gov; Hanlon, Michael (USAMD) <Michael.Hanlon@usdoj.gov>; Stuart.Goldberg@usdoj.gov; Schenning, Stephen (USAMD) <Stephen.Schenning@usdoj.gov>; Rachel.Solomon@ci.irs.gov; Wise, Leo (USAMD) <Leo.Wise@usdoj.gov>; Zelinsky, Aaron (USAMD) <Aaron.Zelinsky@usdoj.gov>; Qureshi, Rizwan A. <RQureshi@reedsmith.com>; Miller, Kelley C. <KMiller@ReedSmith.com>

Subject: RE: Marilyn Mosby Investigation

EXTERNAL E-MAIL - From Melissa.S.Siskind@usdoj.gov

Good morning,

I am confirming receipt of your letter and the exhibits. I will pass on your request for a conference with Acting Deputy Assistant Attorney General Goldberg, who will make the ultimate decision whether to authorize charges in this matter.

Thank you,

Melissa S. Siskind
Trial Attorney
Department of Justice Tax Division
Northern Criminal Enforcement Section
(202) 598-7822

External Signed

From: Bolden, A. Scott <ABolden@ReedSmith.com>

Sent: Wednesday, September 15, 2021 10:58 PM

To: Siskind, Melissa S. (TAX) <Melissa.S.Siskind@tax.USDOJ.gov>

Cc: Catriola.M.Coppler@tax.usdoj.gov; Delaney, Sean (USAMD) <SDelaney2@usa.doj.gov>; Gupta, Vanita (OASG) <Vanita.Gupta19@usdoj.gov>; Lisa.Monaco@usdoj.gov; Hanlon, Michael (USAMD) <MHanlon@usa.doj.gov>; Stuart.Goldberg@usdoj.gov; Schenning, Stephen (USAMD) <SSchenning@usa.doj.gov>; Rachel.Solomon@ci.irs.gov; Wise, Leo (USAMD) <lwise@usa.doj.gov>; Zelinsky, Aaron (USAMD) <AZelinsky@usa.doj.gov>; Qureshi, Rizwan A. <RQureshi@reedsmith.com>; Miller, Kelley C. <KMiller@ReedSmith.com>

Subject: [EXTERNAL] Marilyn Mosby Investigation

Dear Attorney Siskind:

Per our discussion last Friday, September 10, 2021, attached is our position to date for why the Department of Justice should decline any recommendation by AUSA Wise and his team, and the IRS to prosecute any and all current, proposed charges against our client, Baltimore State's Attorney Marilyn Mosby.

Given the nature of the issues at stake here, and the scrutiny that any decision to prosecute this case will understandably (and rightly) attract, we must demand that if you do agree to prosecute any of the current proposed charges that we receive a conference to present our objections to your decision, and to generally discuss all of the implications of the same, with Senior Counselor Stuart Goldberg, Associate Attorney General Vanita Gupta and/or Deputy Attorney General Lisa Monaco.

Please contact me to discuss any questions regarding the attached letter.

Thanks/asb

A. Scott Bolden
Managing Partner
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Pronouns: He/Him/His
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EXHIBIT P

From: Barron, EreK (USAMD) <Erek.Barron@usdoj.gov>
Sent: Wednesday, January 12, 2022 9:59 AM
To: Bolden, A. Scott
Cc: Qureshi, Rizwan A.; Wise, Leo (USAMD); Schenning, Stephen (USAMD); Selden, Philip (USAMD)
Subject: RE: MM Investigation.

EXTERNAL E-MAIL - From EreK.Barron@usdoj.gov

Happy New Year! I hope that you and your family are staying safe and healthy.

Thank you for your email, I will definitely contact you if a meeting will be helpful.

Sincerely,
Erek

From: Bolden, A. Scott <ABolden@ReedSmith.com>
Sent: Tuesday, January 11, 2022 9:40 AM
To: Barron, EreK (USAMD) <EBarron@usa.doj.gov>
Cc: Qureshi, Rizwan A. <RQureshi@reedsmith.com>; Bolden, A. Scott <ABolden@ReedSmith.com>; Wise, Leo (USAMD) <lwise@usa.doj.gov>; Schenning, Stephen (USAMD) <SSchenning@usa.doj.gov>; Selden, Philip (USAMD) <PSelden@usa.doj.gov>
Subject: [EXTERNAL] MM Investigation.
Importance: High

Dear U.S. Attorney Barron,

Happy New Year.

Since your last email of October 26, 2021 below, much time has passed and we have not heard anything from your office. Although I again reiterate my request for a meeting, given the passage of time and the fact that my client is in the middle of campaigning for her next election, I respectfully request that your office immediately issue a declination as it relates to Ms. Mosby.

We believe a declination in this case is warranted for several reasons.

First, the immense weight of exculpatory evidence as delineated in my letter of September 15, 2021 indicates that State's Attorney Mosby had absolutely no intent to commit any crime, and her prosecution would be difficult to prove beyond a reasonable doubt. To date, and after several requests with no response, your office and the prosecutors assigned to this matter have not confirmed that Ms. Mosby would be permitted to appear before the grand jury, nor that they have presented every piece of exculpatory evidence, we have shared with them. To be sure, our discussions with at least one grand jury witness, Carlton Saunders, confirms that your office failed to present exculpatory evidence

to the grand jury, or inquire of the witness on the exculpatory evidence he provided to your office, or the exculpatory evidence we provided your office. This is troubling and unethical and merits a full internal investigation by your office. Another request made by me that has gone unanswered by your office.

Second, the miniscule amount of the alleged tax loss involved – as confirmed by the DOJ Tax Division both before and during the September 10, 2021 taxpayer conference – does not warrant prosecution under the DOJ’s own policies.

Third, as laid out in both our September 15, 2021 correspondence and our subsequent October 12, 2021 request for an ethical review, we believe that this investigation is politically-motivated and driven, at least in part, by personal animus, and even racial animus, on the part of one or more of the assigned prosecutors, Leo Wise and Stephen Shenning.

Finally, as the election for the State’s Attorney for Baltimore City is approaching rapidly, a failure to resolve this investigation into State’s Attorney Mosby constitutes improper interference in an upcoming election. As noted in my correspondence dated September 15, 2021, as a result of the reckless investigative tactics of the investigation team, the investigation into State’s Attorney Mosby is a matter of public record, despite your office’s obligations to maintain the secrecy of grand jury investigations under Rule 6(e) of the Federal Rules of Criminal Procedure.

The fact that the investigation team recklessly alerted members of the public of this investigation, coupled with the weakness of the evidence in light of the substantial exculpatory evidence, I am deeply concerned about your office’s direct role in impacting the outcome of the upcoming election. See Lynch Memo on Election Year Sensitivities, dated April 11, 2016 (“Law enforcement officers and prosecutors may never select the timing of investigative steps or criminal charges for the purpose of affecting any election, or for the purpose of giving an advantage or disadvantage to any candidate or political party.”) Inappropriate public announcements of a similar nature about pending investigations had a significant impact on the 2016 U.S. Presidential election, and I would respectfully advise that your office affirmatively refrain from interfering with the upcoming Baltimore City State’s Attorney election.

For these foregoing reasons, on behalf of State’s Attorney Marilyn Mosby, I am requesting a formal declination of charges by your office and the DOJ Tax Division.

In the interim, if you believe a meeting or presentation of our exculpatory evidence would be helpful in reaching a determination to decline the prosecution of Marilyn Mosby, please let me know.

Sincerely, I am,

A. Scott Bolden

**Managing Partner
Washington, D.C. Office**

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EXHIBIT Q



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September 15, 2021

**CONFIDENTIAL
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By Electronic Mail (Melissa.S.Siskind@usdoj.gov)

Melissa Siskind, Trial Attorney
United States Department of Justice, Tax Division
Northern Criminal Enforcement Section
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

RE: Marilyn Mosby

Dear Attorney Siskind:

On behalf of our client, Ms. Marilyn Mosby, State’s Attorney for Baltimore City (“State’s Attorney Mosby”) we write to respectfully request that the Department of Justice Tax Division (the “Division”) decline to prosecute any of the government’s proposed charges against our client.¹ We understand that the Assistant United States Attorneys in the U.S. Attorney’s Office for the District of Maryland are considering charging State’s Attorney Mosby with violations of 26 USC § 7201 (2 counts, one each for 2019 and 2020), 26 USC § 7206(1) (1 count for 2019), 18 USC § 1014 (1 count), and 18 USC § 1621 / 28 USC § 1746 (2 counts) in connection with an alleged total tax loss of approximately \$4,000 in 2019.²

¹ During our conference on September 10, 2021, you would not confirm that the proposed charges addressed in this letter are the *only* charges that may be considered against our client. Accordingly, we respectfully request that if the government is considering additional charges now or in the future that we be afforded the opportunity to meet with you to present our position as to why the Department of Justice Tax Division should decline prosecution of such charges.

² There is no basis for the government’s computation of alleged tax loss for 2020 as: (1) our client has yet to file her Form 1040, U.S. Income Tax Return for tax year 2020; (2) we assisted our client with filing a Form 4868, Application for Automatic Extension of Time To File U.S. Individual Income Tax Return, that takes no position as to our client’s income, deductions, or tax owing due to her retention of a new accountant; (3) the only basis for government’s position is an unauthenticated document provided by Shariff Small that purportedly reflects a \$13,000 deduction. Assuming *arguendo* that such a deduction would be claimed by our client on her Form 1040 for 2020, there is no correlation between the amount of a deduction and a dollar-for-dollar tax loss. Accordingly, there is no basis for the government’s computation of loss under the specific item method of proof for 2020 based on the facts.

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As explained below, the evidence does not support charging our client under *any* of the foregoing statutes, let alone all of them. That the Division would even consider moving forward with a criminal prosecution of State’s Attorney Mosby in light of a dearth of evidence and an alleged tax loss that does not warrant the heavy hand of a federal indictment is troubling standing alone. But what makes the possibility of prosecution even more disturbing is that from the outset, this matter has been pursued by individuals demonstrably driven by personal and political animus (at a minimum). Under these circumstances, justice demands that this bias-tainted criminal investigation be closed and any outstanding tax issues be resolved in an appropriate – meaning proportionate – and fair manner.

I. The government cannot meet its burden of proof that State’s Attorney Mosby violated 26 USC § 7201 for either 2019 or 2020.

The evidence does not support charging State’s Attorney Mosby with a violation of 26 USC § 7201 for either 2019 or 2020.

We have been informed that for tax year 2020, the government is alleging evasion of assessment. However, at this point, despite our request, the Division has failed to provide any evidence – and we are aware of none – illustrative of conduct that would support this charge. Nor has States Attorney Mosby’s Form 1040, U.S. Tax Return for tax year 2020 even been filed. There is no basis for the government’s computation of alleged tax loss for 2020 as: (1) our client has yet to file her Form 1040, U.S. Income Tax Return for tax year 2020; (2) we assisted our client with filing a Form 4868, Application for Automatic Extension of Time To File U.S. Individual Income Tax Return that takes *no position* as to our client’s income, deductions, or tax owing due to her retention of a new accountant; and (3) the only basis for the government’s position is an unauthenticated document provided by Shariff Small that purportedly reflects a \$13,000 deduction. There is no evidence that Ms. Mosby has or will claim a \$13,000 deduction for her 2020 tax year. There is also no evidence that Ms. Mosby would not be entitled to such a deduction, either, were she to claim it (which again, and to be clear, she has not).

Similarly, with regard to 2019, the DOJ has informed us that the specific, proposed charge is evasion of assessment. And here too, the government has not provided, and we are not aware of, any evidence that would support this charge. You informed us during our conference on September 10, 2021 that the government has used the specific item method to determine the alleged tax loss for tax year 2019. We presume, since you would not further confirm, that the items that the government has used to compute this alleged tax loss are the Schedule A and C deductions reported on the Form 1040 for 2019. Ms. Mosby relied on Mr. Small to properly prepare and file her return, including, her Schedules A and C, for tax year 2019. Ms. Mosby provided Mr. Small with support for the deductions claimed on Schedule C. Contrary to the potentially self-serving testimony of Mr. Small in the grand jury, Ms. Mosby *did not* provide Mr. Small with any schedule or an exact amount of Schedule A charitable deductions for 2019. Rather, Mr. Small independently determined the amount of Schedule A deductions in the course of his preparation and filing of Ms. Mosby’s Form 1040.

The elements of tax evasion under 26 U.S.C. § 7201 are: (1) an attempt to; (2) evade or defeat payment of any tax due and owing and; (3) willfulness. The key element of a Section 7201 violation is intent. And the intent element here, willfulness, requires “more than a showing of careless disregard for the truth.” *United States v. Pomponio*, 429 U.S. 10, 12 (1976). *See also United States v. Bishop*, 412 U.S. 346, 359-61 (1973). In *United States v. Eilertson*, 707 F.2d 108, 109-110 (4th Cir. 1983), the Fourth

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Circuit overturned a criminal tax conviction because the prosecutor focused on whether the defendant's conduct showed careless and/or reckless disregard for the law. The Fourth Circuit held that the willfulness element, under the standard set by the Supreme Court in *Bishop* and *Pomponio*, required more than carelessness or recklessness. *Id.*

The clearest analysis of the willfulness standard comes from *Cheek v. United States*, 498 U.S. 192 (1991), where the Court explained that the government must show that (1) the law imposed a duty on the defendant, (2) the defendant was aware of said duty, and (3) the defendant voluntarily and intentionally violated that duty. *Id.* at 201. Importantly, under *Cheek*, a taxpayer's good faith belief does not have to be objectively reasonable to negate or refute the willfulness element.

In determining whether Section 7201's willfulness standard is satisfied, the Fourth Circuit has made clear that only specific, limited types of conduct will support such a finding. For example, in *United States v. Neujahr*, No. 97-4260, 1999 U.S. App. LEXIS 3770, at *19, 83 A.F.T.R.2d (RIA) 1999-1499 (4th Cir. Mar. 10, 1999), the court found a jury instruction on willfulness to be appropriate where the instruction provided that “willfulness could be inferred if an individual: 1) had consistently failed to report income, 2) had made or used false documents, 3) had altered or destroyed records, 4) had made false statements, or 5) had engaged in other conduct likely to mislead or conceal.” See also *United States v. Zamzam*, No. 97-4523, 1999 U.S. App. LEXIS 11375, at *12, 83 A.F.T.R.2d (RIA) 1999-2851 (4th Cir. June 4, 1999) (upholding finding that the defendant acted willfully when he made false statements to the IRS, including specific lies to IRS special agents).

“Willful blindness may satisfy knowledge in a criminal tax prosecution, where ‘the evidence supports an inference that a defendant was subjectively aware of a high probability of the existence of a tax liability, and purposefully avoided learning the facts pointing to such liability.’” *United States v. Jinwright*, 683 F.3d 471, 479 (4th Cir. 2012). In *Jinwright*, for example, the defendants spent millions of dollars that they did not report as taxable income, intentionally avoided learning about their tax liability, and took affirmative steps to avoid reporting income, including avoiding audits.

Applying the foregoing legal standards here, it is clear that the government cannot properly support a Section 7201 charge against State's Attorney Mosby for either tax year 2019 or 2020.

With regard to 2020, as we described during our September 10th conference, State's Attorney Mosby has not yet filed a tax return for that year. State's Attorney Mosby has filed a request for an extension, and that request does not contain any estimates of taxes owed or deductions to be taken. As a threshold matter, this means that a key element of a 7201 charge (a tax due and owing) has not even been established at this point.

Further, this request for an extension of time to file a Form 1040 was filed by Reed Smith LLP, rather than State's Attorney Mosby or her former tax preparer, Sharif Small. It contains no numbers, no claims as to State's Attorney Mosby's tax liability, and no claims as to State's Attorney Mosby's eligibility for any business or charitable deductions. Given these facts, it is unclear how State's Attorney Mosby could have formulated the requisite willful intent to evade the assessment (or payment) of taxes for which she has requested an extension and thus not yet filed or paid.

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Indeed, the only document that the government could possibly rely on to show any intent to take deductions in tax year 2020 is an informal excel spreadsheet, which appears to contain a proposed deduction amount that matches the government's alleged 2020 tax loss. However, relying on such a document would constitute an egregious error. There is no evidence that State's Attorney Mosby prepared this spreadsheet. State's Attorney Mosby did not base her 2020 return on such a spreadsheet, as no 2020 return has yet been filed. If the government were to proceed on this basis, it would be the evidentiary equivalent of bringing a tax evasion charge based on an individual's thoughts and/or scribbles on a notepad regarding their personal finances – in other words, an entirely inappropriate basis to support a 7201 charge. It should be noted that this proposed charge for 2020 is of particular concern as it exemplifies the insatiable appetite the US Attorney's Office has, irrespective of the evidence (or lack thereof), for indicting and convicting State's Attorney Mosby, including even for what she may be thinking as it relates to her taxes. That prosecutors view such conduct as willful criminal conduct demonstrates the pre-textual and unjust nature of this investigation.

With regard to 2019, we also have identified no evidence that State's Attorney Mosby engaged in any evasion of assessment, let alone a willful evasion. First, State's Attorney Mosby is a W-2 salaried employee, with no other source of income other than very limited business endeavors. Given this, there is no evidence whatsoever that State's Attorney Mosby failed to report any of her income.

With regard to State's Attorney Mosby's claimed deductions in 2019, these fall into two categories: Schedule C business deductions and Schedule A charitable deductions. State's Attorney Mosby's deduction information for 2019 is as follows:

<u>Character of Deduction</u>	<u>Amount</u>
Business Loss	-\$5,000
Qualified Business Loss Carryforward	\$4,124
Business Expenses, Meals, and Travel for fee basis government official	\$7,033
Child Tax Credit	\$2,000
Itemized Deductions	\$23,730 (\$5,000 State and Local Taxes, \$18,730 Gifts to Charity)

Despite being an attorney, State's Attorney Mosby, like most American taxpayers, has no specific knowledge of tax law. She certainly does not have sufficient understanding of tax law to engage in an intentional effort to calculate the amount of business loss to carry forward, as opposed to business expenses to deduct. Instead, she relied on the advice of her tax advisor and tax return preparer, Sharif Small.

With regard to State's Attorney Mosby's Schedule C Business deductions, State's Attorney Mosby provided all of the necessary documentation of the expenses for her business, Mahogany Elite, to Mr. Small. Mr. Small determined the amount of the deductions (which came from a combination of legal and travel expenses) and the amount of business loss to be carried forward. Mr. Small holds himself out as a business and tax consultant who specializes in advising his clients on the best structures to use in their businesses. In fact, he holds a Master's degree in Taxation, and he has even facilitated seminars throughout the greater Baltimore area over the past several years focused on tax and business strategy.

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With regard to State's Attorney Mosby's Schedule A charitable deductions, the specific amount of \$18,730 claimed on the 2019 return was entirely the product of Mr. Small's work. State's Attorney Mosby relied on Mr. Small to tell her what backup or evidence was needed to prepare and file her return. Mr. Small had been preparing the Mosbys' taxes for years as a married couple, and had full transparency into their joint finances. Even in 2019, when State's Attorney Mosby was, for the first time, filing her taxes separately, Mr. Small was also preparing Mr. Mosby's taxes, and had access to and knowledge of the couple's financial records through his work for Mr. Mosby.

For key context, before 2019, Nick Mosby, State's Attorney Mosby's husband, handled all tax matters for the couple. Nick Mosby executed an affidavit (attached as **Exhibit A**) as part of submissions to the Maryland Attorney Grievance Commission. That affidavit, which supports State's Attorney Mosby's contention that she did not willfully make any false statements on her tax return, contains the following relevant facts:

- Mr. Mosby handled all tax matters for the couple;
- State's Attorney Mosby did not review the couples' returns, except to determine that her employment income was correctly reported;
- In 2014, Nick Mosby incorrectly calculated the withholdings on a withdrawal from his 401(k) plan (attached as **Exhibit B**), resulting in a tax liability. Then, Mr. Mosby subsequently entered into an installment plan with the IRS to satisfy this liability, but did not inform State's Attorney Mosby of the agreement;
- In 2015, Mr. Mosby withdrew money from his 401(k) and failed to calculate the correct withholdings (attached as **Exhibit C**). He once again entered into an installment plan with the IRS to satisfy this liability, and again did not inform State's Attorney Mosby;
- In 2017, 2019 and 2020, Mr. Mosby negotiated payment plans with the IRS;
- In 2020, Mr. Mosby became aware of the existence of a tax lien. He did not inform State's Attorney Mosby until October of 2020.
- All communications between the taxpayers and the IRS until 2019 were exclusively handled by Mr. Mosby, and this can be corroborated by documents in possession of the IRS; and
- All payments made to the IRS, as part of the tax installment agreements entered in connection with the tax lien at issue, originated from Nick Mosby's personal bank account, for which State's Attorney Mosby is not a signatory or co-account holder; no such transfers came from State's Attorney Mosby's bank account. This is further uncontroverted evidence that State's Attorney Mosby had no direct knowledge or information related to the alleged tax lien or that it had not been addressed. The installment payments were made from two of Nick Mosby's bank accounts at MECU of Baltimore Inc. (Checking #*****882 and Primary Savings #*****022). Over the course of the relevant time period, 21 unique tax payments were made from Nick Mosby's MECU accounts (attached as **Exhibit D**).

In 2019, State's Attorney Mosby contemplated separating from her husband for a host of reasons. At this time, she decided to change her tax status from married filing jointly to married filing separately. Her knowledge of the couple's pre-2019 taxes was very limited, and her experience with tax filing was equally limited. She relied on Mr. Small's knowledge and understanding of the couple's previously filed returns, and she also relied upon years of advice and guidance provided by Mr. Small to State's Attorney

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Mosby and her husband.³ Note that Mr. Small had not only been preparing the couple's taxes for years, and was an experienced tax return preparer holding a Master's Degree in Taxation, he had actively held himself out within the greater Baltimore community as an expert in tax planning and business advice.

In these circumstances, the government could not establish a willful intent to evade taxes. *See, e.g., United States v. Witasick*, 443 F. App'x 838, 840 (4th Cir. 2011) (good faith reliance on a tax preparer negates willfulness element if all relevant information was provided to the preparer). Based on the above information, the government will not be able to satisfy the willfulness requirement of Section 7201. Unlike the cases cited above where violations were found, State's Attorney Mosby made no false statements to IRS agents or personnel, did not alter records or use false documents, and has not engaged in conduct intended to conceal information from the government.

While Mr. Small may have testified in the grand jury that State's Attorney Mosby provided Mr. Small with an exact amount of charitable deductions to be listed on the return, this is absolutely false, and there is no independent evidence to support this assertion. In fact, Mr. Small prepared State's Attorney Mosby's Schedule A Form 1040 himself based on either information in his possession or that he determined based on information that Nick Mosby provided to him for the preparation of Mr. Mosby's return.

Finally, even if some amount of State's Attorney Mosby's Schedule A charitable deductions were to be disallowed by the IRS, the government has presented no evidence to support the idea that State's Attorney Mosby made absolutely no charitable donations in 2019. State's Attorney Mosby regularly donated to churches, community groups and other charitable causes. If the amount of charitable deductions (which, once again, was entirely the product of Mr. Small's work) is incorrect, that is a civil matter, not a criminal one, which can be easily resolved through an audit. There is no evidence, as would be required for a criminal tax case, that State's Attorney Mosby had the requisite knowledge that any aspect of her 2019 tax return was false.

State's Attorney Mosby's conduct also does not rise to the level of willful blindness, as there is no evidence to support that she intentionally avoided learning about her tax liability. Instead, State's Attorney Mosby relied in good faith on her tax preparer, including with respect to the amounts of her deductions. In fact, we believe Mr. Small testified that he input the amount of State's Attorney Mosby's charitable deductions and did not inform her of the amount or ask for documentation; as a result, State's Attorney Mosby did not know about the deduction amount until after her return was filed. Under the standard set out in *Cheek*, State's Attorney Mosby's good-faith reliance (whether objectively reasonable or not) is sufficient to defeat the willfulness element of Section 7201.

Without sufficient evidence supporting an inference that State's Attorney Mosby engaged in willful evasion, it would be improper for the Division to authorize charges under Section 7201, as it is highly unlikely that the charges could be proven beyond a reasonable doubt. And as we explain below, there are several additional reasons why a prosecution here would be profoundly unjust.

³ Note that all guidance was communicated to Mr. Mosby prior to 2019 as he assumed all responsibilities for the couple's personal tax planning and tax return preparation.

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II. The government cannot meet its burden of proof that State’s Attorney Mosby violated 26 USC 26 § 7206(1) for 2019.

The evidence similarly does not support charging State’s Attorney Mosby under Section 7206(1). In fact, Section 7206(1)’s and Section 7201’s intent elements are the same. *See Bishop, supra*.

The statutory elements of Section 7206 are: (1) making or subscribing a return, statement, or other document which is false as to a material matter; (2) the return, statement or other document contained a written declaration that it was made under the penalties of perjury; (3) the maker did not believe the return, statement or other document to be true as to every material statement; and (4) the maker falsely subscribed to the return, statement or other document willfully, with the specific intent to violate the law.

As with the government’s proposed 7201 claim, it is unlikely that the government would be able to establish the elements of its 7206 claim. As a threshold matter, there is no evidence that State’s Attorney Mosby signed her 2019 tax return. Further, there is no evidence that State’s Attorney Mosby believed that the return was false as to any material statement. It is not required that a tax return be perfect in every respect in order for a taxpayer to avoid a violation of the law. “Congress did not intend that a person, by reason of a bona fide misunderstanding as to his liability for the tax, as to his duty to make a return, or as to the adequacy of the records he maintained, should become a criminal by his mere failure to measure up to the prescribed standard of conduct.” *United States v. Murdock*, 290 U.S. 389, 396, 54 S. Ct. 223, 226 (1933). State’s Attorney Mosby may not have retained perfect records of all deductions, but there is no evidence that she willfully engaged in making any false statements.

As explained above, an experienced tax consultant, tax return preparer and small business advisor, Mr. Small prepared State’s Attorney Mosby’s taxes for 2019, and State’s Attorney Mosby relied upon his expertise to ensure that all taxes were properly paid. Her good faith reliance on Mr. Small, including with respect to determining the amounts of her deductions, supports that no intentional false statements were made by her.

If the government were to attempt to claim that State’s Attorney Mosby’s charitable deductions were false, the government would likely be unable to prove at trial that she did not in fact make charitable donations. Proving fraudulent charitable donations requires specific documentation to show the falsity of the return. *See, e.g., United States v. Kimble*, No. WDQ-13-035, 2015 U.S. Dist. LEXIS 90107 (D. Md. July 8, 2015) (government proved up fraudulent charitable deductions through bank and tax records). Further, the false return would have to have been filed knowingly and intentionally. As noted above, Mr. Small entered an amount of charitable deductions without informing State’s Attorney Mosby, and she did not discover this until after the return was filed. Given that there is no evidence of which we are aware of intentional false deductions, it will be difficult for the government to prove these elements at trial.

There is no indicia here of a willful misrepresentation on the part of State’s Attorney Mosby. While it is true that willfulness in this context is generally inferred, rather than proved by direct evidence, there is no evidence here that supports this inference against State’s Attorney Mosby. *See, e.g., United States v. Guidry*, 199 F.3d 1150, 1157 (10th Cir. 1999) (listing some of the possible items that allow for an inference of willfulness). State’s Attorney Mosby has not made false entries, created or falsified invoices or documents, destroyed books or records, concealed assets or covered up sources of income or done anything else that would allow a reasonable finder of fact to infer that she had the requisite intent of

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willfulness to satisfy the elements required by 7206. This is, rather, a case of a reasonable person without any tax expertise who relied on her tax preparer to inform her as to what deductions were appropriate and to inform her what documentation was necessary. The government cannot meet its burden of proof to establish that State's Attorney Mosby had the requisite intent to create a false return, and any doubts as to that proof should be resolved in favor of State's Attorney Mosby.

For these reasons, and the additional reasons set out in Parts V-VII, the Division should decline to authorize moving forward on a Section 7206(1) charge.

III. The government's alleged charge of 18 USC § 1014 is similarly without merit.

The government's proposed Section 1014 charge for making a false statement to a financial institution is equally unsupported here.

To prove a violation of Section 1014, the government must prove beyond reasonable doubt that (1) defendant made a false statement to a financial institution; (2) defendant did so for the purpose of influencing the financial institution's action; (3) the statement was false as to material facts; and (4) defendant made the false statement knowingly. *United States v. Bonnette*, 663 F.2d 495, 1981 U.S. App. LEXIS 16649 (4th Cir. 1981), cert. denied, 455 U.S. 951. "A person violates § 1014 by knowingly making any false statement for the purpose of influencing in any way the action of any FDIC-insured financial institution upon any application, advance, discount, purchase, commitment or loan." *United States v. Blythe*, 654 F. App'x 618, 619 (4th Cir. 2016).

Examples of conduct found to have violated Section 1014 include:

- In *Hines v. Drew*, 634 F. App'x 918, 920 (4th Cir. 2015), the defendant concocted a multi-million dollar mortgage fraud scheme, and was charged with making false statements in connection with loan applications.
- In *United States v. Miller*, 680 F. App'x 187, 188 (4th Cir. 2017), the defendant passed a counterfeit check to a bank.
- In *United States v. Johnson*, 683 F. App'x 241, 244 (4th Cir. 2017), the defendant submitted false credit reports on behalf of thousands of clients of their "credit repair" business.

In this case, there is no similar evidence of any nature that supports how our client would have made a false or fraudulent statement.

While the government refuses to inform us what the basis of the alleged false statement may be, we have reason to believe that the government may be planning to allege that State's Attorney Mosby made false statements in the course of applying for mortgages in 2020 and 2021. In response to a question that asked whether she was "presently delinquent or in default on any Federal debt or other loan, mortgage, financial obligation, bond, or loan guarantee," State's Attorney Mosby truthfully indicated that she was not at the time of those applications.

While a tax lien in the amount of \$45,022.00 had been filed against the Mosby home on February 21, 2020, the Mosby's home is not in State's Attorney Mosby's name, she was never given notice of the

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lien, and did not become aware of the lien until October 13, 2020, when she was informed by a reporter who publicly disclosed the existence of it on that same day.

And in November 2020, her husband, Nick Mosby – who handled all communications with the IRS about the tax lien and made all payments on the lien from his personal bank account – informed State’s Attorney Mosby as well as the public (incorrectly) that the lien had been paid off. (*See Exhibit E, Documentation of Lien and Payment.*) These dates are important because State’s Attorney Mosby submitted a mortgage application on September 2, 2020 (before she became aware of the lien) and then again on February 19, 2021 (after her husband told her the lien had been paid off). Neither of these applications disclosed the lien, because State’s Attorney Mosby was not aware that the lien existed at the time either of them were submitted. Further complicating matters, documentation of the lien was not properly served on State’s Attorney Mosby, likely because it occurred contemporaneously with the beginning of COVID-19-related lockdowns. It appears that the lien was also not properly recorded electronically (again, likely due to COVID-19), as even counsel for State’s Attorney Mosby had great difficulty in electronically locating evidence of the lien.

Given that State’s Attorney Mosby lacked knowledge of the existence of any tax lien at the times she submitted her applications and the fact that she took steps to pay off the lien expeditiously once she became aware in March 2021 that it had not been paid off, it is unlikely that the government would be able to prove that State’s Attorney Mosby made a knowing false statement under Section 1014. A Section 1014 charge is therefore unwarranted on the facts and would be fatally tainted for the reasons discussed in Parts V-VII below.

IV. The government cannot meet its burden of proof under 18 USC § 1621 / 28 USC § 1746.

The government is also apparently considering perjury charges. This is equally troubling because, among other reasons discussed in this memorandum, prosecutions involving alleged false statements on tax forms typically are not brought under these perjury statutes, given that there are specific prohibitions of false statements on tax returns – which the government is already considering in this very matter.

Perhaps most importantly, both before and at our September 10, 2021 conference, defense counsel specifically requested that the government provide the alleged false statements that supported the perjury charges; however, the government refused to identify the alleged false statements. The government’s failure and refusal to date to provide the alleged false statements to us impairs our ability to defend our client against perjury charges, and in our judgment, is additional evidence of the miscarriage of justice as it relates to our client. Providing this information would in no way prejudice your case. Here again, it demonstrates the U.S. Attorney’s Office’s zeal to inappropriately indict and prosecute State’s Attorney Mosby over an alleged \$4,000 tax loss for 2019. Indeed, the government’s apparent “piling on” is especially disturbing given the very small alleged tax loss amount and the fact that the AUSAs who have spearheaded this investigation bear personal and political animus against State’s Attorney Mosby (*see Part VII infra*).

The elements of the offense of perjury are: (1) making a false statement; (2) under oath; (3) willfully or knowingly; and (4) as to a material matter. “[A] witness testifying under oath or affirmation violates this statute if she gives false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory.” *United States v.*

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Cooke, No. 96-4686, 1998 U.S. App. LEXIS 7831, at *15 (4th Cir. Apr. 23, 1998). Despite our repeated requests to the Division, we have not been provided any information regarding the alleged, perjurious conduct here (and we are not aware of State’s Attorney Mosby having testified under oath).

If, as we suspect, the government is considering charging State’s Attorney Mosby under these perjury statutes for the very same statements that appear to form the basis for the specific tax charges, these multiplicitous charges fail for the same reason the tax charges do: nothing we have seen to this point would satisfy the intent element of the offense – that State’s Attorney Mosby knowingly and intentionally made any false statements, including any statements made on her 2019 taxes. *See* Parts I & II, *supra*.

V. Agreeing to prosecute State’s Attorney Mosby constitutes inappropriate prosecutorial discretion.

The dearth of evidence supporting the potential charges above means this is an inappropriate case for DOJ to prosecute under its own internal guidelines. The DOJ Justice Manual instructs prosecutors that they “should not include in an information, or recommend in an indictment, charges that he/she cannot reasonably expect to prove beyond a reasonable doubt by legally sufficient and admissible evidence at trial.” DOJ Justice Manual 9-27.300 (Comments). As set out above, the government will face significant challenges meeting the elements of each of the potential offenses.

The DOJ Justice Manual also instructs prosecutors that “[t]he attorney for the government should commence or recommend federal prosecution if he/she believes that the person’s conduct constitutes a federal offense, and that the admissible evidence will probably be sufficient to obtain and sustain a conviction, unless (1) the prosecution would serve no substantial federal interest...” DOJ Justice Manual 9-27.220. Elements of a “substantial federal interest” include the nature and seriousness of the offense; the person’s criminal history; the interests of any victims; and the probable sentence or other consequences if the person is convicted. DOJ Justice Manual 9-27.230.

Given the low amount of the tax loss alleged by the government, and the fact that we have seen no evidence of the criminal intent required under the various statutes, there is no “substantial federal interest” in proceeding with this prosecution. The alleged seriousness of the offense is mitigated by the substantially low alleged tax loss amount of \$4,000, which is far below the base offense loss amount of \$15,000 under the U.S. Sentencing Guidelines. Moreover, the only victim here is the federal government, whose interests have already been served by State’s Attorney Mosby’s repayment of the initial \$45,022 tax lien. State’s Attorney Mosby is also the twice-elected top prosecutor of Baltimore City and has no criminal history.

In addition, the prosecution of this matter would be out of proportion with the crimes that the Division typically prosecutes. A review of the Division’s public statements reveals that, in the past month, prosecuted tax losses range from a low of \$85,000 to a high of \$165 million, with all but one case involving a loss to the government of more than \$1.5 million.

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Date	Amount	Sentence	Source
9/1/21	\$1.5 million	1 year imprisonment, 2 years SR	https://www.justice.gov/opa/pr/former-long-island-construction-business-owner-sentenced-prison-employment-tax-fraud
8/18/21	\$165 million	Not sentenced	https://www.justice.gov/opa/pr/georgia-man-convicted-filing-fraudulent-tax-returns
8/16/21	\$5 million	Not sentenced	https://www.justice.gov/opa/pr/federal-court-bars-florida-tax-preparation-businesses-and-their-tax-return-preparers-0
8/12/21	Approximately \$5 million	Not sentenced	https://www.justice.gov/opa/pr/utah-man-convicted-tax-fraud
8/10/21	\$83, 451	Not sentenced	https://www.justice.gov/opa/pr/philadelphia-tax-preparer-pleads-guilty-false-returns
8/6/21	\$14.2 million	30 months	https://www.justice.gov/opa/pr/michigan-biodiesel-exporter-sentenced-prison-tax-fraud
8/3/21	\$1.7 million	Not convicted	https://www.justice.gov/opa/pr/las-vegas-couple-indicted-tax-evasion-scheme

Even the lowest amount prosecuted in recent months (itself an outlier) was more than twenty-one times the 2019 loss amount cited by the Division in connection with this investigation. This is yet another reason why this case is so inappropriate for prosecution and is further evidence that it does not present a substantial federal interest. In fact, the disjunction between the loss amount and the contemplated serious criminal charges provides strong reason to conclude that something other than the merits of the case is driving the prosecutors' proposed decisions here. As we explain in part VII below, substantial evidence exists that personal and political animus explains their zealous targeting of State's Attorney Mosby.

VI. Agreeing to prosecute State's Attorney Mosby constitutes inappropriate election interference.

Under the DOJ Justice Manual, as well as the 2016 Memo from Attorney General Loretta Lynch regarding Election Year Sensitivities, prosecutors are instructed to proceed with extreme caution when dealing with matters that may interfere with an upcoming election. As you are aware, State's Attorney Mosby is the twice-elected State's Attorney for Baltimore City who is less than nine months away from her next election. Given the weakness of the potential charges, the absence of a substantial federal interest in light of the low, alleged \$4,000 tax loss for one year, and the animus of the prosecutor leading this investigation (who has openly donated to her political opponents), any prosecution of State's Attorney Mosby is not only inappropriate and politically motivated, but comes dangerously close to potentially interfering in her upcoming election.

VII. Agreeing to prosecute State's Attorney Mosby evidences impermissible and egregious personal, political and possibly a racial animus

The aforementioned analysis makes clear that the government could not meet its burden on the proposed charges and thus the Division **should not** prosecute for that reason alone. If the lack of evidence

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or substantial federal interest does not convince the Division to stand down, however, the demonstrated personal and political animus of AUSA Wise toward State’s Attorney Mosby, as delineated in our September 7, 2021 email to you, should. Mr. Wise’s animus has tainted this investigation from the outset. Authorizing prosecution in these circumstances would leave an indelible stain on the Division’s, and DOJ’s, reputation for integrity.

As explained in several letters from counsel for State’s Attorney Mosby to, among others, the DOJ’s Office of Professional Responsibility (“OPR”), attached hereto as **Exhibit F**, the instant investigation can be traced back to State’s Attorney Mosby’s refusal to provide Baltimore Inspector General Isabel Cumming – an undisputed political adversary of State’s Attorney Mosby – with tax and business records dating back several years.

On the advice of counsel, State’s Attorney Mosby refused to provide the requested tax records, which had absolutely no relevance to, and were outside the scope and purview of, the investigation that State’s Attorney Mosby requested herself to disprove erroneous media reports regarding her business travel and financial disclosures. Immediately thereafter, with no basis and/or allegation of wrongdoing, Lydia Lawless, Bar Counsel for the Maryland Attorney Grievance Commission – an individual who has a history of baselessly targeting State’s Attorney Mosby and is also an undisputed political adversary – requested the exact same tax and business records that Ms. Cumming had requested. Despite the lack of evidence of any wrongdoing, State’s Attorney Mosby made a substantial production of tax documents to Bar Counsel, but on the advice of counsel, declined to provide additional supporting documents that were outside the scope and purview of Bar Counsel’s jurisdiction. *See Exhibit G.*

The federal grand jury investigation against State’s Attorney Mosby, which was initiated and approved under the Trump Administration,⁴ was mostly likely commenced as a result of a criminal referral from Bar Counsel, not the Tax Division, given the eerily similar nature of the tax inquiry. These facts are undisputed since AUSA Wise confirmed both verbally and via email that the issues the grand jury is focused on relate to Bar Counsel’s investigation. *See* Email from AUSA Leo Wise dated, April 30, 2021, attached hereto as **Exhibit H.**

Additionally, AUSA Wise, has a lengthy verifiable history of animus against State’s Attorney Mosby. That history – which makes clear that Mr. Wise has a motive to discredit State’s Attorney Mosby – dates back at least to AUSA’s Wise false and defamatory statements about State’s Attorney Mosby and her office’s alleged role in connection with the USAO’s prosecution of members of the Baltimore Gun Trace Task Force (the “GTTF prosecution”). In particular, Mr. Wise and then-Acting U.S. Attorney Stephen Schenning engaged in a smear campaign to falsely accuse State’s Attorney Mosby and her staff of improperly leaking certain facts regarding the GTTF prosecution.

Rather than stay silent and permit Mr. Wise to disparage her office without evidence, State’s Attorney Mosby demanded a meeting. During that meeting, which included Mr. Schenning and several other prosecutors, Mr. Wise was unable to produce the requisite proof to support the USAO’s public

⁴ Indeed, Ms. Mosby has been the subject of attacks from the highest levels of that administration. *See, e.g.,* Attorney General William P. Barr Delivers Remarks at the Major County Sheriffs of America Winter Conference, February 11, 2020, available at <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-major-county-sheriffs-america-winter>.

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statements that State's Attorney Mosby's office leaked information about the GTTF prosecution. Mr. Wise was clearly embarrassed by that encounter and five days later donated to one of State's Attorney Mosby's challengers – his first reported donation in support of a candidate for office in Maryland.

Two weeks before her last election, Mr. Wise then made it a point to donate to her other political opponent. (*See Exhibit I*, Records of Wise Donations) Now, State's Attorney Mosby is approximately nine months away from her reelection and Mr. Wise has seemingly abused the grand jury process in spearheading this tax investigation. This grand jury investigation – which is no longer a secret because of Mr. Wise, *see Exhibit F*, March 19, 2021 Letter at 2 (discussing Mr. Wise's disregard for grand jury secrecy) – is being used as a vehicle to destroy State's Attorney Mosby's reputation and political viability in an election year to give an electoral advantage to her opponents, both of whom Mr. Wise has supported in the past.

Most disturbingly and further indicative of Mr. Wise's enthusiastic fixation to indict State's Attorney Mosby is the fact that just last week Mr. Wise abused his power and authority before a federal grand jury by attempting to indict State's Attorney Mosby for campaign finance violations despite possessing the exculpatory evidence that no crime was ever committed. We (attorneys for State's Attorney Mosby) provided AUSA Wise with the substantiation of legitimate campaign expenses in the amount of \$11,722 for an appropriate reimbursement check that State's Attorney Mosby received. Despite both counsel as well as the former treasurer providing the proof (credit card statements, receipts, and emails) of the validity of the reimbursements, Mr. Wise not only still called State's Attorney Mosby's former treasurer before the grand jury, but unethically and inappropriately misled the grand jury by acting as if he had not received the substantiation of those expenses, clear *Brady* evidence - which we would submit is evidence of prosecutorial misconduct and in violation of the DOJ Justice Manual. DOJ Justice Manual 9-27.300 (Comments).

Given all the above-referenced arguments, why this investigation even exist begs the question of whether racial animus is at work here. Despite the number of prosecutions of African American female elected officials from the City of Baltimore, some with the direct involvement of the current federal prosecution team in this case, State's Attorney Mosby may be a Black female elected official, but she is not a criminal nor a tax cheat. If Mr. Wise and his team believe otherwise, they will need far more than an unsubstantiated belief and racial animus - real or perceived - to prove their case beyond a reasonable doubt.

DOJ's mission is to seek justice in every case. That mission would be fundamentally disserved by pursuing charges against State's Attorney Mosby on these facts. Indeed, the fact that Mr. Wise has not been removed from the investigation is by itself incomprehensible and evidence of a miscarriage of justice. As the DOJ Office of Professional Responsibility has urged us to do, if there is an indictment, we will seek the appropriate relief from the federal judge on these matters. Given the lack of evidence to prove the proposed charges beyond a reasonable doubt, the miniscule \$4,000 loss amount, the fact that any established tax liability has been paid, the fact that the investigation arises from the efforts and allegations of biased political adversaries, and AUSA Wise's demonstrable personal and political animus toward State's Attorney Mosby, we respectfully request that you decline to authorize the proposed charges.

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Conclusion - Request for Additional DOJ Consideration & Review

The alleged tax loss in this case (\$4,000) for one year (2019) and the return at issue (2019) on its own would not have elicited even notice under the discriminate income function score nor would this alleged amount have even triggered a manual review. Moreover, even if the amounts alleged as tax loss by the government were proven as true, these amounts would not be sufficient to justify the application of any penalties on either tax year. There are no alleged or actual abusive transactions, there is no alleged or actual failure to report income, and there is no alleged or actual evidence of public corruption.

If despite our arguments here you accept the recommendation to prosecute some or all of the proposed charges, we intend to try this case and, due to the lack of any facts, proof or evidence, will prevail. However, even if we were somehow not to prevail, under the relevant sentencing guidelines, the very worst result for our client based on the current proposed charges would be a non-custodial sentence of no more than 6 months. We are, simply put, at a loss to understand how such a sentence would accomplish the government's goals of deterrence. At best, this case is a civil audit regarding substantiation. It is not a criminal case.

In fact, we believe so strongly that this case is not a criminal case that, if you do agree to prosecute, we are—by this letter—requesting an immediate conference with both Stuart Goldberg and Lisa Monaco to discuss your decision. We have copied Mr. Goldberg and Ms. Monaco on this letter to make them aware of this request.

For the foregoing reasons, we can see no basis, facts, proof or evidence upon which the government could meet its burden to establish any of the proposed violations against our client. We trust that this summary leads you to the same conclusion. To the extent and if you have any doubts or questions that would not lead you to this same conclusion, please contact us immediately. Thank you again for your time in providing us the opportunity of a conference with you, and for your important and necessary consideration of our client's position as provided herein.

Sincerely, I am,



A. Scott Bolden
Rizwan A. Qureshi
Kelley Miller

cc: Catriona Coppler (DOJ Tax) – Catriola.M.Coppler@tax.usdoj.gov
Sean Delaney (DOJ) – Sean.Delaney@usdoj.gov
Michael Hanlon (DOJ) – Michael.Hanlon@usdoj.gov
Vanita Gupta (DOJ) - Vanita.Gupta@usdoj.gov.
Stuart Goldberg (DOJ) - Stuart.Goldberg@usdoj.gov

Melissa Siskind, Trial Attorney

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Lisa Monaco (DOJ) - Lisa.Monaco@usdoj.gov

Stephen Schenning (DOJ) – Stephen.Schenning@usdoj.gov

Rachel Solomon (IRS) – Rachel.Solomon@ci.irs.gov

Leo Wise (DOJ) – Leo.Wise@usdoj.gov

Aaron Zelinsky (DOJ) – Aaron.Zelinsky@usdoj.gov

EXHIBIT R

From: Siskind, Melissa S. (TAX) <Melissa.S.Siskind@usdoj.gov>
Sent: Monday, August 23, 2021 8:53 AM
To: Miller, Kelley C.; Bolden, A. Scott
Cc: Qureshi, Rizwan A.
Subject: RE: Marilyn Mosby - Taxpayer Conference

EXTERNAL E-MAIL - From Melissa.S.Siskind@usdoj.gov

Good morning Kelley,

The Tax Division is considering the following charges with respect to your client:

- 26 USC 7201 (evasion of assessment; 2 counts; 2019 and 2020)
- 26 USC 7206(1) (1 count; 2019)
- 18 USC 1014 (1 count)
- 18 USC 1621 / 28 USC 1746 (2 counts)

The IRS calculated the tax loss as follows:

- 2019: \$4,841
- 2020: \$13,355

The IRS's calculations are not binding on the Tax Division, and the Tax Division may authorize charges that are different than those presently under consideration.

Please let me know in the next few days when you would like to schedule the conference.

Thank you,

Melissa

Melissa S. Siskind
Trial Attorney
Department of Justice Tax Division
Northern Criminal Enforcement Section
(202) 598-7822

From: Miller, Kelley C. <KMiller@ReedSmith.com>
Sent: Thursday, August 19, 2021 1:05 PM
To: Siskind, Melissa S. (TAX) <Melissa.S.Siskind@tax.USDOJ.gov>; Bolden, A. Scott <ABolden@ReedSmith.com>
Cc: Qureshi, Rizwan A. <RQureshi@reedsmith.com>
Subject: RE: Marilyn Mosby - Taxpayer Conference

Dear Melissa:

Thank you for your email. Our partner, A. Scott Bolden, is presently out of the office due to the passing of his father last evening. Would you please allow us a day or so to confirm the date for our conference? Many thanks.

In the interim, and to enable us to prepare for the same, would you please confirm (a) the tax years at issue, (b) the proposed tax loss, and (c) the proposed charges? Thank you again for your consideration. We will reach out to confirm a conference date with you as soon as possible.

Best regards,
Kelley Miller

From: Siskind, Melissa S. (TAX) <Melissa.S.Siskind@usdoj.gov>
Sent: Wednesday, August 18, 2021 10:01 AM
To: Bolden, A. Scott <ABolden@ReedSmith.com>
Cc: Miller, Kelley C. <KMiller@ReedSmith.com>
Subject: Marilyn Mosby - Taxpayer Conference

EXTERNAL E-MAIL - From Melissa.S.Siskind@usdoj.gov

Good morning Mr. Bolden,

The Tax Division is in receipt of your letter dated April 2, 2021 requesting a conference in this matter in the event the IRS referred your client for criminal prosecution. The Tax Division has received a referral from the IRS, and therefore I am writing to schedule the taxpayer conference. The conference will occur via WebEx and will be attended by myself, another attorney from the Tax Division, and one or more of the AUSAs assigned to this investigation.

The following dates are available: August 31 (after 2:00pm), September 2, September 3, September 9 (after 2:00 pm), and September 10 (after 10:00 am). Please indicate which date(s) you prefer.

Please let me know if you have any questions.

Thank you,

Melissa S. Siskind
Trial Attorney
Department of Justice Tax Division
Northern Criminal Enforcement Section
(202) 598-7822

External Signed

* * *

This E-mail, along with any attachments, is considered confidential and may well be legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then

delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

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EXHIBIT S



Office of the Attorney General
Washington, D. C. 20530

April 11, 2016

MEMORANDUM FOR ALL DEPARTMENT EMPLOYEES

FROM: THE ATTORNEY GENERAL *[Signature]*

SUBJECT: ELECTION YEAR SENSITIVITIES

[Signature]

Department of Justice employees are entrusted with the authority to enforce the laws of the United States and with the responsibility to do so in a neutral and impartial manner. This is particularly important in an election year. Now that the 2016 election season is upon us, and as was done during the last election cycle, I am issuing this memorandum to remind you of the Department's existing policies with respect to political activities.

I. INVESTIGATION AND PROSECUTION OF ELECTION CRIMES

The Department of Justice has a strong interest in the prosecution of election-related crimes, such as those involving federal and state campaign finance laws, federal patronage laws, and corruption of the election process. As Department employees, however, we must be particularly sensitive to safeguarding the Department's reputation of fairness, neutrality, and nonpartisanship.

Simply put, politics must play no role in the decisions of federal investigators or prosecutors regarding any investigations or criminal charges. Law enforcement officers and prosecutors may never select the timing of investigative steps or criminal charges for the purpose of affecting any election, or for the purpose of giving an advantage or disadvantage to any candidate or political party. Such a purpose is inconsistent with the Department's mission and with the Principles of Federal Prosecution.

If you are faced with a question regarding the timing of charges or overt investigative steps near the time of a primary or general election, please contact the Public Integrity Section of the Criminal Division for further guidance. Please remember also that consultation with the Public Integrity Section of the Criminal Division is required at various stages of all criminal matters that focus on violations of federal and state campaign-finance laws, federal patronage crimes and corruption of the election process. More detailed guidance is available in sections 1-4 and 9-85 of the United States Attorneys' Manual, which can be accessed on line at http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/.

II. HATCH ACT

As you are aware, the Hatch Act generally prohibits Department employees from engaging in partisan political activity while on duty, in a federal facility, or using federal property. Please note that this prohibition includes using the Internet at work for any political activities. The Act also prohibits us from using our authority for the purpose of affecting election results; soliciting (or discouraging) political participation; soliciting, accepting, or receiving political contributions; and generally from running as a candidate in a partisan election.

In addition to restrictions on what Department employees may and may not do while on duty, while using government property, and in off-duty activities, certain employees are further restricted from engaging in certain political activity even while not on duty. The degree to which an employee is restricted in his/her or his/her off duty activities depends on his/her position, members of the career SES, administrative law judges, employees of the Criminal Division, National Security Division, the Federal Bureau of Investigation, Criminal Investigators and Explosives Enforcement Officers of the Bureau of Alcohol, Tobacco and Firearms, and noncareer appointees in the Department. If you are unclear on these restrictions or the classification of your position, please consult with your component's designated ethics official about the limits of permissible activity prior to engaging in any political activity. You can also visit the Justice Management Division's Ethics page at www.usdoj.gov/jmd/ethics/politic.html for more detailed information, which includes the most recent guidance issued by the Deputy Attorney General on December 17, 2011.

It is critical that each of us complies with the Hatch Act and the principles set out in this memorandum to ensure that the public retains its confidence that we are adhering to our responsibility to administer justice in a neutral manner. The Department's reputation for fairness and impartiality depends upon it.