

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CASE NO. 23SC188947
	:	
DONALD JOHN TRUMP,	:	Judge: Scott McAfee
	:	
Defendant.	:	

**PRESIDENT TRUMP’S SUPPLEMENTAL REPLY BRIEF
SUPPORTING DISMISSAL OF COUNTS 15 AND 27 BASED ON
*IN RE LONEY***

President Trump replies to the State’s supplemental brief as follows:

1. The State’s brief cites numerous cases related to habeas, perjury, and preemption but fails to even mention the two persuasive cases cited by President Trump: *Ross* and *Hassan*. Why? Because they can’t be distinguished, so it appears that the State believes it best to simply ignore them. Both cases stand for the correct proposition of law that a state may not encroach on exclusive federal jurisdiction. Where, as here, the offense charged is solely against the public justice of the United States (in this case, the federal judiciary and federal government), a state has no authority or jurisdiction to prosecute the alleged conduct. This is so because a state’s intrusion into that arena is barred by the Supremacy Clause, as expounded in *Loney*, *Ross*, and other cases. This concept of exclusive federal jurisdiction is not cabined

to habeas cases or perjury cases – it is the basic operational precept of the Supremacy Clause in all such contexts.

Loney stands for the proposition that when, like here, matters are exclusively within the federal realm, the federal sovereign alone has the authority and jurisdiction to decide *whether* and *how* to criminalize that conduct, and a state’s general criminal laws have no application. As it applies specifically to allegedly false filings to the federal government, the federal government has made its choice and enacted a specific federal statute (18 U.S.C. § 1001(a)(3)) designed to protect the integrity of federal proceedings.

The offenses charged in counts 15 and 27 relate exclusively to the integrity of federal matters: an alleged conspiracy to file and an actual filing with the federal judiciary. Under the Supremacy Clause and *Loney*, *Ross*, and other cases, the State of Georgia is prohibited from prosecuting the claimed conduct.

2. The State’s brief on page 7, quoting *U.S. v. Lawson*, 809 F.2d 1514, 1518-19 (11th Cir. 1987), argues 18 U.S.C. § 1001 does not apply to count 27 because the allegedly false document at issue was filed in a civil action between non-governmental litigants and § 1001 “is not intended to apply to false statements made in civil actions in the United States Courts where the [federal] government is not a party to the lawsuit.” But the State’s quote from *Lawson* is at best incomplete and misleading. The relevant portion of the opinion actually reads in pertinent part:

In the alternative Lawson argues that the use of 18 U.S.C. § 1001 is improper when the false statement is made in a federal judicial proceeding.... Lawson offers two cases which involve federal civil litigation between private litigants. *United States v. London*, 714 F.2d 1558 (11th Cir.1983); *United States v. D'Amato*, 507 F.2d 26 (2d Cir.1974). The courts in these two cases found § 1001 inapplicable. Citing *D'Amato*, *London* states “the statute is **not intended to apply to false statements made in civil actions in the United States Courts where the government is not a party to the lawsuit**; instead, the statute was intended to proscribe only those false statements meant to deceive the government or its agencies.” *London*, 714 F.2d at 1561. In *London* an attorney presented a *purported* court order to clients in an effort to extract a large sum of money from them; in fact, the attorney had fabricated the order. This fraud was not against the government but against the lawyer's clients. *London*, 714 F.2d at 1562. In *D'Amato*, the defendant filed an affidavit denying knowledge of the counterfeit nature of a product which he sold. Although the affidavit was an official document, the falsehood contained therein was intended to deceive a corporation, not the government. Under *D'Amato*, 18 U.S.C. § 1001 may indeed be applied to statements made or used in a court proceeding if “the false statement in question involved a fraud upon the Government or was made to an investigative or regulatory agency of the Government in connection with some matter legitimately within the agency's jurisdiction.” 507 F.2d at 27-28. Clearly these cases are distinguishable from Lawson's case as the persons involved did present false documents, but in so doing they were not trying to deceive the government. Lawson was specifically trying to deceive the government, not solely the court. (emphasis added to show misleading quote.)

Count 27 is not a civil lawsuit between “private” litigants. The lawsuit is between President Trump, in his capacity as a candidate for President of the United

States, and Brian Kemp, in his **official capacity as Governor of the State of Georgia** and Brad Raffensperger, in his **official capacity as Georgia Secretary of State**. Count 27 essentially claims the filing of the allegedly false document was intended to deceive not only the federal judiciary, but ultimately the federal government, *i.e.*, the Congress and Vice President of the United States. While, of course, President Trump resolutely denies the allegations in count 27, that count, as pleaded, falls outside the jurisdiction of the State of Georgia to prosecute.

3. The State's brief attempts to improperly pigeonhole *Loney* to its unique facts or the offense of perjury. But it only does so by totally ignoring caselaw which it cannot meaningfully distinguish. *Loney* and *Ross* require that counts 15 and 27 be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify I electronically filed the foregoing document with the Clerk of Court using Odyssey Efile Georgia electronic filing system that will send notification of such filing to all parties of record.

This 15th day of May, 2024.

/s/ Steven H. Sadow
STEVEN H. SADOW