

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 BRIEF SUPPORTING
DISMISSAL OF COUNTS 15 AND 27 BASED ON *IN RE LONEY***

President Trump takes the opportunity provided by the Court to concisely state why *In re Loney*, 134 U.S. 372 (1890) requires that counts 15 and 27 be dismissed. Those counts cannot stand because the State of Georgia lacks the authority to criminalize conduct under a state statute, here O.C.G.A. § 16-10-20.1(b)(1), where such conduct is directed at a federal forum, here the federal judiciary. Essentially, *Loney* decided that a state cannot prosecute a crime (there, perjury) under a state criminal statute when the alleged conduct *only* constitutes an “offense against the public justice of the United States, and within the exclusive jurisdiction of the courts of the United States.” Consequently, the State of Georgia cannot punish the filing of an allegedly false document in federal court, as the power to do so belongs solely to the federal government.

Count 15 alleges a conspiracy to file and count 27 alleges the filing of false documents in an exclusive federal tribunal, the United States District Court for the

Northern District of Georgia, not in a public record or court of the State of Georgia. According to the rationale underlying *Loney*, because the conduct charged in both counts actually and directly impacts the judiciary of the United States, it contravenes federal, not state criminal law. Thus, it cannot be prosecuted in state court under a state criminal statute. This holds true even though § 16-10-20.1(b)(1), on its face, attempts to assert concurrent criminal jurisdiction over the filing of a false document in a court of the United States.¹ Under *Loney*, such jurisdiction cannot exist. Stated simply, since under *Loney* the state has no jurisdiction or authority to enforce federal criminal law, which is precisely what the prosecution is attempting to do in counts 15 and 27, those counts must be dismissed.

This is the same principle applied in *Ross v. State*, 55 Ga. 192 (1875), which was cited favorably in *Loney*. In granting the defendant's motion to quash, the Georgia Supreme Court in *Ross* made clear that if "the offense charged in the indictment contained in the record was an offense against the public justice of the United States, and not an offense against the public justice of this state, [the trial court] had no jurisdiction to try it."

This is reinforced by the decision in *People v. Hassan*, 86 Cal.Rptr. 314, 323-24 (2008), which prohibited a prosecution under an ambiguous California statute for "false documents provided in connection with a federal immigration investigation."

¹ Counsel's research has not uncovered a case or prosecution brought under § 16-10-20.1(b)(1) where the alleged conduct involved a court of the United States.

In so holding, the *Hassan* Court noted that “[s]everal federal laws potentially criminalize the presentation of false or fraudulent documents in connection with that investigation,” which led the appellate court to limit the reach of the state statute “to its manifest purpose to protect the integrity of state and not federal proceedings.”

Our case is no different. Using (which necessarily includes filing) false documents in the jurisdiction of the judiciary of the United States is criminalized by a specific federal statute, 18 U.S.C. § 1001(a)(3).^{2 3} That statute is designed to protect the federal interest against the use of allegedly false documents in connection with the United States judiciary. The alleged conduct which the state is attempting to prosecute in counts 15 and 27 is addressed by the federal false statement statute and thus jurisdiction is exclusively vested in federal court. As such, the state is without jurisdiction or authority to prosecute President Trump when the plain purpose of doing so is to protect the integrity of federal matters. The state statute at issue here

² Section 1001, commonly referred to as the federal false statement statute, reads in pertinent part:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

...

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years....

³ A conspiracy to violate section 1001 is criminalized under 18 U.S.C. § 371.

reaches too far and may not be applied to criminalize the conduct alleged in counts 15 and 27. Those counts must 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 24th day of April, 2024.

/s/ Steven H. Sadow
STEVEN H. SADOW

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