

# Opinion Is Georgia's case against Trump one case too many?



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A Fulton County grand jury has [indicted former president Donald Trump](#) over his efforts to subvert the 2020 presidential election in Georgia, and District Attorney Fani Willis is well within her legal rights to bring the case under state law. Whether that prosecution is advisable, in the [wake of federal charges](#) arising out of the same conduct, is a tougher call — one about which I have substantial misgivings.

The Georgia case is sprawling, a no-holds-barred [indictment that runs 98 pages](#) and that accuses Trump of engaging in a racketeering conspiracy “to unlawfully change the outcome of the election in favor of Trump.” It sweeps in 18 other alleged co-conspirators, from the well-known (former White House chief of staff Mark Meadows and Rudy Giuliani) to the obscure, and Willis said Monday night that she wants to try all the defendants together, within six months — an ambitious plan. And this is no modest, Georgia-focused set of charges by a local prosecutor; the indictment ranges far beyond Trump’s conduct in Georgia to sweep in his efforts to change the outcomes in six other states as well.

Where Justice Department special counsel Jack Smith took pains to acknowledge Trump’s First Amendment rights and appeared to craft the charges to avoid butting up against free speech concerns, the Georgia indictment doesn’t tread so gingerly. The very first overt act it cites in furtherance of the alleged conspiracy is Trump’s speech declaring victory in the early morning hours following Election Day. Overt acts don’t have to constitute crimes in and of themselves, but using a candidate’s victory speech as evidence against him is one aggressive move.

First, a legal issue — or nonissue — that nonetheless illustrates some of my concerns about the wisdom of Willis’s decision to indict Trump. It might sound like a problem of double jeopardy for state and federal prosecutors to pursue the same defendant over the same alleged course of conduct. It’s not. Legally, the federal government and the state of Georgia are what’s known as dual sovereigns. Each has the authority to punish conduct that violates their own laws under the theory that, even if it’s the same conduct, the offenses are different.

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The Supreme Court made this clear as recently as 2019, in *Gamble v. United States*. In that case, Alabama had prosecuted Terance Gamble, a felon, for illegally possessing a gun in violation of the state’s gun law. Federal prosecutors then stepped in, going after Gamble for violating the federal gun law that similarly bars felons from having guns. Ruling 7-2, with Justices Ruth Bader Ginsburg and Neil M. Gorsuch in dissent, the court rejected Gamble’s bid to overturn its long-standing precedents holding that such dual prosecutions do not violate the constitutional prohibition against double jeopardy.

So, there’s no legal problem here — and in many situations multiple prosecutions make sense. The most common scenario arises in the context of civil rights prosecution — for example, cases of police brutality, in which a state court jury acquits officers and the federal government steps in to bring charges under federal civil rights law. That’s what happened, for example, in the case of the Los Angeles police officers acquitted of beating Rodney King; two of the four were convicted of violating King’s civil rights. More recently, and more unusually, even after former Minneapolis police officer Derek Chauvin was convicted of second-degree murder in the death of George Floyd, the Justice Department prosecuted him and other former officers for violating Floyd’s civil rights.

But the Justice Department itself has recognized the potential problems inherent in bringing such successive prosecutions. Under the Petite policy, named for a 1960 Supreme Court case, noting the need “to protect persons charged with criminal conduct from the burdens associated with multiple prosecutions,” it has instructed prosecutors to refrain from bringing additional charges unless the matter involves “a substantial federal interest” and the state prosecution has “left that interest demonstrably unvindicated.”

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In the Trump situation, of course, the federal government acted first; the Petite policy is not directly implicated. But the concerns underlying that rule apply with equal force to Georgia and Willis’s decision to pursue state charges. Willis doesn’t have to prove it, but it’s fair to ask: What’s the “substantial Georgia interest” implicated here that has been left “demonstrably unvindicated”?

**Trump Georgia indictment live updates**

Former president [Donald Trump and 18 others have been indicted in Georgia](#) in connection with efforts to overturn Joe Biden's 2020 election victory in the state. [Follow live updates.](#)

Obviously, the federal indictment ranges far beyond Georgia, but the efforts of Trump and his as-yet-unindicted co-conspirators to overturn the election results are extensively cited in the indictment, including Trump's infamous demand that Georgia Secretary of State Brad Raffensperger "find" 11,780 votes for him in the state. Georgia has an important interest in ensuring that its elections are conducted fairly and that votes are accurately counted, but the primary interest at issue here is that of the United States. This was a federal election, after all.

So, what is gained by bringing state charges — and what are the downsides of doing so?

I don't fault Willis at all for investigating. The potential that Trump's conduct was criminal was clear from the moment the Raffensperger phone call was reported, and her investigation swiftly, and appropriately, followed. For months, if not years, [it was not clear that federal prosecutors](#) were pursuing a case against Trump himself. But they were, and they have.

Then there's the belt-and-suspenders argument for dual prosecutions. Any number of things could go awry in the federal case: There could be a hung jury or acquittal. A conviction could be overturned on appeal. If Trump or another Republican is elected president, the case could be dropped or Trump pardoned. Why not have Georgia as a kind of backup plan? Perhaps its criminal statutes are better tailored to the conduct at issue.

But there is a concern about piling on here. Why stop at Georgia? The [federal indictment](#) sets out conduct in six other states in which Trump and his co-conspirators allegedly sought to overturn the election results. Will he be prosecuted in those states, too? At some point, it becomes unfair — yes, even to Trump — to go state by state. That's why the federal approach is preferable.

Underlying my queasiness is a bias in favor of federal prosecutors who, unlike most of their local counterparts, don't have to run for election. (Small point, but Monday's spectacle of an after-hours indictment and late-night news conference didn't exactly inspire confidence in the Willis office's professionalism.) Let Republicans denounce the supposed weaponization of the Justice Department. I'd rather stick with the judgment and experience of federal prosecutors making certain that voters across the country have their voices heard, but that is not, it seems, where we are.

