



Legal Errors in the New York Prosecution of President Trump FECA Preemption

Donald Trump was charged and convicted in state court of various election-related crimes. However, New York lacks jurisdiction over federal election crimes because federal courts hold exclusive jurisdiction over federal campaign and finance issues. If the decision in the Bragg case stands, it would allow state and local prosecutors to take federal law into their own hands.

Background on preemption

- Federal law is “the Supreme Law of the Land.”¹
- Accordingly, when state and federal law conflict, federal law prevails, rendering a conflicting or “preempted” state law unenforceable.

Federal preemption of campaign and election law

- The Federal Election Campaign Act of 1971 (FECA) is a federal law that states “the provisions of this Act, ... supersede and preempt *any provision* of State law with respect to election to Federal office.”²
- The Federal Election Commission (FEC) has clarified that FECA supersedes state laws concerning the “[o]rganization and registration of political committees supporting Federal candidates,” “[d]isclosure of receipts and expenditures by Federal candidates and political committees,” and “[l]imitation on contributions and expenditures regarding Federal candidates and political committees.”³
- The New York Court of Appeals—the highest state court in New York—has also recognized the preemption in this space, previously holding that FECA “occupies the field with respect to reporting and disclosure of political contributions to and expenditures by Federal candidates and political committees.”⁴

Federal courts have primary jurisdiction

- Trump was convicted of conspiracy to prevent election of any person of a public office by “unlawful means.”⁵ Because this case concerns a conspiracy to get a person elected in *federal* office, it is under the umbrella of FECA, which has exclusive jurisdiction over issues of federal elections.
- Thus, the New York state court does not have jurisdiction.

¹ U.S. CONST. art. VI, cl. 2.

² 52 U.S.C. § 30143(a) (emphasis added).

³ 11 C.F.R. § 108.7.

⁴ *Matter of Holtzman v. Oliensis*, 91 N.Y.2d 488, 495 (1998) (citation omitted).

⁵ N.Y. ELEC. LAW § 17-152