



## Legal Errors in the New York Prosecution of President Trump Due Process

There is no evidence Trump intended to violate the Federal Election Campaign Act (FECA), either in 2016 or 2017, which supports the enhancement of Penal Law § 175.05 to felonious Penal Law § 175.10. Because that flawed indictment is the basis for his current convictions, his conviction should be reversed.

### Underlying Crime: Penal Law § 175.10

- Falsifying Business Records in the Second Degree is a misdemeanor<sup>1</sup> whereas Falsifying a Business Record in the First Degree is a felony.<sup>2</sup>
- The First Degree charge requires that the defendant intend to make a false entry with the further intent to commit another crime or to aid or conceal the commission thereof.<sup>3</sup>
- The District Attorney failed to identify the specific underlying crime that President Trump allegedly intended to commit and used, an overly broad definition of intent.<sup>4</sup>

### Indictment and Fair Notice/Due Process Violation

- New York law requires that the indictment must contain “[a] plain and concise factual statement in each count” and “assert facts supporting *every element* of the offense charged.”<sup>5</sup>
- The Prosecution may not allege one material fact in the indictment and then alter it at trial to prove another significantly different material fact.
- Yet that is exactly what District Attorney Bragg did. He did not list an intended crime in the indictment, presumably to keep all options on the table at trial, in violation of the defendant’s rights.<sup>6</sup>
- The indictment did not identify an underlying crime or facts to support a crime. Instead, the prosecution waited until the eve of President Trump’s trial to decide what laws Trump “intended” to break.<sup>7</sup>

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<sup>1</sup> N.Y. PENAL LAW § 175.05.

<sup>2</sup> N.Y. PENAL LAW § 175.10.

<sup>3</sup> *People v. Houghtaling*, 912 N.Y.S.2d 157 (N.Y. App. Div. 2010).

<sup>4</sup> *People v. Trump*, 2024 WL 1624427 (N.Y. Sup. Ct. Feb. 15, 2024).

<sup>5</sup> *People v. Grega*, 531 N.E.2d 282, 283–84 (N.Y. 1988) (citing NY CRIM PRO § 200.50.7(a)) (emphasis added).

<sup>6</sup> *People v. Shealy*, 415 N.E.2d 975 (N.Y. 1980). *Shealy* held that once the prosecution decides upon an intent crime in the indictment, they must prove intent only for that crime.

<sup>7</sup> See generally Indictment, *People v. Trump*, 683 F. Supp. 3d 334 (S.D.N.Y. 2023).