



VPP BACKGROUNDER: POTENTIAL CRIMINAL ISSUES PRESENTED BY TRUMP'S CALL TO RAFFENSPERGER

BACKGROUND

- On Saturday, January 2, 2021, President Trump called Georgia Secretary of State Brad Raffensperger and attempted to use the power of the presidency to pressure Secretary Raffensperger to "find 11,780 votes" and to "get this thing straightened out fast."
- By his conduct on this call, President Trump threatened our democracy and our free and fair elections. This document answers preliminary questions about the call's legal significance.
- A full transcript of the call can be found [here](#), and pertinent excerpts [here](#).

DID PRESIDENT TRUMP COMMIT A CRIMINAL OFFENSE?

- A full investigation must take place before anyone concludes whether a crime occurred.
- The recorded call, during which the President tells a state official that he needs to "find 11,780 votes" and suggests that not doing so would be "a criminal offense" and a "big risk to you and to . . . your lawyer," provides ample grounds to begin a criminal investigation.

WHAT FEDERAL CRIMES ARE IMPLICATED?

Federal crimes potentially implicated by President Trump's January 2 call include but are not limited to:

- **18 U.S.C. § 241 (Conspiracy Against Rights):** It is a felony for "two or more persons [to] conspire to injure, oppress, threaten, or intimidate any person in any State . . . in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States."
 - o The phone call is evidence that the President and others may be working to overthrow a lawful, democratic election, thereby oppressing and threatening the rights of Georgia voters. Voters not only have a right to cast their ballots but also to have their votes counted.
- **52 U.S.C. § 20511(2)(B):** It is a felony for "a person, . . . who in any election for Federal office . . . knowingly and willfully . . . attempts to deprive or defraud the residents of a State of a fair and impartially conducted election process, by . . . the . . . tabulation of ballots that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held."
 - o This statute, unlike Section 241, does not require more than one conspirator. President Trump's call could constitute a crime on his part alone under Section 20511(2)(B).
- **Other federal crimes may also be implicated.**

WHICH STATE CRIMES ARE IMPLICATED?

Georgia state crimes potentially implicated by President Trump's January 2 call include but are not limited to:

- **Ga. Code Ann. § 21-2-604 (Criminal Solicitation to Commit Election Fraud):** It is a Georgia felony to intentionally solicit, request, command, importune, or otherwise attempt to cause another person to engage in conduct constituting a felony under the election code.
 - By soliciting and attempting to coerce Secretary Raffensperger to commit election crimes (see below), President Trump may have violated this provision. Criminality under this provision would not be affected by Secretary Raffensperger's refusal to cooperate with President Trump's solicitation.
- **Ga. Code Ann. § 21-2-562:** It is a Georgia felony to insert any "fraudulent entry on or in . . . [any] tally paper, general or duplicate return sheet, statement, certificate, oath, voucher, account, ballot, or other record or document authorized or required to be made, used, signed, returned, or preserved for any public purpose in connection with any primary or election."
 - It is a crime to tamper with votes or to "find" additional votes and add them to a tally, as President Trump asked of Secretary Raffensperger. It is a Georgia felony to solicit someone else to do this on your behalf, too.
- **Other Georgia statutes may be implicated by the call, as may other states' laws.**

CAN THE PRESIDENT PARDON HIMSELF FOR THIS?

- No. While the text of the Constitution is silent about whether a president may pardon himself, an [opinion](#) issued by the Department of Justice Office of Legal Counsel in 1974 forbids it. As that opinion states, "[u]nder the fundamental rule that no one may be a judge in his own case," the President cannot pardon himself.
- In any event, the President only has the power to pardon individuals for federal crimes. He would have no power to pardon anyone for a state crime. See U.S. Const. art. 2, § 2, cl. 1 ("The President . . . shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.").

WHAT SHOULD HAPPEN NEXT?

- The tape of the call provides more than enough grounds for federal and state authorities to investigate fully. Once an investigation has occurred, prosecutors and grand juries should make a decision based on an unbiased reading of the facts, law, and evidence as to whether to prosecute.