



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

# Trump Bid To End Ga. Election Probe Premature, Experts Say

By **Rosie Manins**

Law360 (March 21, 2023, 9:38 PM EDT) -- Former President Donald Trump's attempt to shut down a criminal election interference probe in Georgia is premature, legal ethics and white collar defense experts say, noting it appears to be more of a publicity stunt than a valid request for relief.

Trump, who could soon be indicted in an unrelated New York **hush money case**, asked a Georgia state trial court Monday to quash a special grand jury's report into possible criminal election interference and to disqualify an Atlanta-area district attorney's office from the matter.

But Trump, who **claimed in his motion** to have been deprived of constitutional rights, was not one of 75 witnesses who testified before a special purpose grand jury in Atlanta during 2022. Nor has he, or anyone else, been indicted in relation to the investigation, led by Fulton County District Attorney Fani T. Willis.

"He's got no reason to complain and no remedy that he's seeking," former Assistant U.S. Attorney Kevin J. O'Brien told Law360 on Tuesday. "It's pointless. He's as free today as he was on the day the special grand jury was convened."

Trump's highly publicized and controversial request to Georgia Secretary of State Brad Raffensperger that he "find" just over 11,000 votes so Trump could win the state's November 2020 election is what **prompted** the probe by Willis, a Democrat.

In his 51-page motion to the Fulton County Superior Court, Trump found fault with the state laws under which the special grand jury was convened, the way the supervising judge had governed the investigation, and the "media tour" that the foreperson and other grand jury members embarked on after **issuing** their recommendations under seal and being dismissed in January.

Trump also claimed Willis and her team were biased and personally interested in the outcome of the case. He sought a ruling preventing any state prosecuting agency from presenting or utilizing any evidence or testimony derived by the 26-member special grand jury.

O'Brien, a New York-based partner at Ford O'Brien Landy LLP who specializes in white collar defense, has no involvement in the case, but like many, he's been following its progression. He told Law360 that Trump's request is unlike a typical motion to quash because "no-one's calling for him to do anything."

"It's not clear what the practical remedy they're really seeking is," O'Brien said. "Do they want some clerk to collect all the hard copies [of the grand jury's report] and burn them?"

## Trump Is Likely Filing for Attention

The motion by Trump seems geared toward casting suspicion over Willis and Fulton County Superior Court Judge Robert C.I. McBurney, O'Brien and others **monitoring the case** say.

"I view the motion really more of a press release right now than as a serious motion," said Georgia State University College of Law professor Clark D. Cunningham. "Right now, I think the motion is completely premature."

Like O'Brien, Cunningham pointed out that Trump can't show he's been harmed in any way by the actions of the special grand jury, Judge McBurney or Willis. He said describing Trump's current alleged right to a remedy as unpersuasive would be an understatement.

"Why is he any different than you or me, thinking that we should just go into court and ask that the district attorney be disqualified, or to take a grand jury report and throw it into the river?" Cunningham said. "He doesn't have any standing."

Trump could legitimately ask for any mention of his name within the grand jury's report, in the context of alleged misconduct, to be redacted before the report's publication, Cunningham said. He said that's arguably one legal right Trump has at the moment in relation to the case.

Judge McBurney **decided** in February that most of the report should stay exclusively within Willis' possession until she completes her investigation. He **published** the report's introduction and conclusion as well as the grand jury's concerns that some unnamed witnesses may have lied under oath.

Cunningham cited Georgia case law holding that dismissal of an indictment is an extreme sanction used sparingly as a remedy for unlawful government conduct. He said it's a tough test that can't be applied to someone who hasn't been indicted.

The special grand jury, which did not have the authority to indict, was tasked with hearing the evidence and making recommendations about whether criminal charges should be pursued. It is possible that Willis could seek the indictment of Trump and others through a regular grand jury, but that remains hypothetical.

"You have to speculate about the timing [of the motion]," Cunningham said. "It may be part of a general media campaign that's really driven by the expectation that he's going to be fingerprinted [in relation to the New York case]. Maybe he wants demonstrators outside the Fulton County courthouse at the same time that they're in Manhattan."

O'Brien said it wouldn't be the first time Trump had sought to generate favorable publicity for himself and play the victim, "which he's very good at doing."

"And he's done it here in spades," O'Brien said.

### **Trump's Claims Could Hold Weight In Future**

Though Trump currently lacks an injury for which the court could provide relief, some of his arguments against the special grand jury proceeding could be valid down the road, if he is indicted in relation to the investigation, O'Brien and Cunningham said.

Both felt the foreperson's public comments, including on national television, were potentially unhelpful to Willis in that they could open the door, sometime in the future, for defense arguments about pretrial publicity. The sentiment was shared by former U.S. Department of Justice senior litigator Richard A. Serafini of Serafini Law Office, a Florida-based white collar defense attorney who is not involved in the case.

"I was a little surprised to see the grand jury foreperson giving interviews and being kind of cagey and talking about what happened without saying what happened," Serafini told Law360. "I'm sure people in the DA's office were not happy to see that."

Under Georgia law, jurors are only barred from talking about their deliberations, as Judge McBurney mentioned during a **January hearing** on a **request** by a coalition of media companies to publish the grand jury's report in full. The grand jurors had voted for their report to be made public, Judge McBurney revealed.

Cunningham said while the foreperson's media interviews did not appear to break the rules, they could have hampered public confidence in the investigation. He said it would be prudent for Willis to keep the special grand jury's report from the eyes of a regular grand jury and only present the evidence acquired through the special grand jury process for indictment.

"I think that's all she needs to do," Cunningham said. "And if that's the case, the actual grand jury that indicts isn't tainted at all, because they haven't read the report."

O'Brien said Trump's claims of prejudice would be more apt if lodged against a grand jury that indicted him. Trump could, if indicted, make the argument that the grand jury that indicted him was unduly influenced by the special grand jury's report, O'Brien said.

"That's at least an intelligible argument," he said.

O'Brien said Willis might keep the special grand jury's report away from a regular grand jury tasked with indictment, or "she could decide to rely on it and lean on it a great deal." He said for Trump to seriously challenge the special grand jury proceedings, he would need to examine the transcripts of what happened behind closed doors over the course of about eight months.

It's also possible Trump's motion is an attempt to stall his potential indictment in the Georgia investigation, Serafini said. He said the filing could be an indication that Trump has reason to believe his indictment in Georgia is forthcoming.

"I would guess that the Trump people, his legal team, have had contact with the DA's office," Serafini said. "But that's mere speculation. Either way, it doesn't appear that Georgia is as far along in the process as New York."

Trump's attorneys and the Fulton County District Attorney's Office did not respond to questions about the motion.

Trump is represented by Jennifer L. Little of Jennifer Little Law LLC and Drew Findling and Marissa Goldberg of Findling Law Firm.

The Fulton County District Attorney's Office is represented in-house by Fani T. Willis, Will Wooten, Donald Wakeford and Adam Ney and Nathan J. Wade of Wade & Campbell Firm.

The case is In re: Special Purpose Grand Jury, case number 2022-EX-000024, in the Superior Court of Fulton County, Georgia.

--Additional reporting by Kelcey Caulder and Frank G. Runyeon. Editing by Michael Watanabe.