

The Honorable Merrick Garland
U.S. Department of Justice
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Washington, D.C. 20530

Special Counsel Jack Smith
Special Counsel's Office, Room B-206
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950 Pennsylvania Ave., N.W.
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The Honorable Christopher Wray
Federal Bureau of Investigation
935 Pennsylvania Avenue
Washington, D.C. 20535

April 18, 2023

Re: January 6th Committee Testimony Suggests Plan to Unlawfully Copy Voting System Software was Discussed with Trump

Dear Attorney General Garland, Special Counsel Smith, and Director Wray:

We¹ write to you today to follow on to our December 12, 2022 letter² detailing evidence collected in the civil litigation *Curling v. Raffensperger*. As explained in that letter, several individuals and entities were involved in the unauthorized acquisition, copying and distribution of voting system software that is used in multiple states. This plan, conducted at the direction of Sidney Powell and

¹ Free Speech For People is a non-profit, non-partisan public interest legal organization that works to renew our democracy and our United States Constitution for the people. As part of our mission, we are committed to promoting, through legal actions, secure, transparent, trustworthy and accessible voting systems for all voters. We are not parties or counsel in the civil litigation referenced in this letter.

² Available here: https://freespeechforpeople.org/wp-content/uploads/2022/12/doj.fbi_dhs_coffee.ga_12.12.2022.pdf

attorneys for the Trump campaign, was implemented in part to support the effort to overturn the 2020 presidential election.

Since we sent our December 2022 letter, additional information has come to light from the transcripts of depositions published by the January 6th Committee—evidence that then-President Donald J. Trump was involved. The evidence summarized below suggests that the unauthorized, multistate plot to access and copy voting system software was discussed in an infamous meeting held December 18, 2020, in the Oval Office of the White House in Trump’s presence, suggesting that Trump was, at a minimum, aware of the unlawful, multistate plot.

On February 8, 2023, we received a letter by email, dated January 18, 2023, from FBI Section Chief R. Joseph Rothrock stating that the FBI is not investigating this matter. We remain concerned that, even though the effort to copy and covertly distribute voting software could constitute federal crimes and could be implicated in the larger plan to overturn a free and fair election, this incident is not being investigated by the FBI, Department of Justice, or the Special Counsel.³

Testimony from the January 6th Committee Cites a Plan to Access Voting Systems

In evidence developed through depositions, interviews and discovery, the January 6th Committee has been able to piece together discussions from the infamous December 18, 2020 meeting in the Oval Office which included Trump, Sidney Powell, Mike Flynn, Patrick Byrne, Rudy Giuliani, Mark Meadows, and other Trump advisors.

The testimony available to the public shows that Powell, Flynn and Byrne attempted to persuade Trump to issue an executive order that would, among other things, direct the seizure of voting machines by either the Department of Homeland Security or the Department of Defense.⁴ The evidence also indicates that Rudy Giuliani and White House Counsels Pat Cipollone and Eric Herschmann opposed this plan, and succeeded in dissuading Trump from enacting it.

³ Sarah Wire, “Are the feds ignoring Trump allies’ multistate effort to access voting systems? Experts raise alarms for 2024,” *Los Angeles Times*, March 9, 2023. Available at:

<https://www.yahoo.com/entertainment/anyone-investigating-trump-allies-multi-100017273.html>

⁴ Luke Broadwater, Maggie Haberman, Alan Feuer, Michael S. Schmidt, “Jan. 6 Panel Examining Trump’s Role in Proposal to Seize Voting Machines,” *The New York Times*, updated, October, 13, 2022. Available at: <https://www.nytimes.com/2022/02/01/us/jan-6-panel-trump-voting-machines.html>

Less media and public attention have been focused on the fact that the testimony also includes references to a parallel plan for non-governmental individuals and entities to access voting systems. The stated goal of this effort to gain access to software and electronic data was to help construct narratives that would support overturning the election. **This plan did proceed, and after a few failed attempts, was executed to successfully obtain copies of voting system software in Michigan and in Georgia.**

Former White House staff secretary and counselor, Derek Lyons, described the effort in his testimony to the January 6th Committee. The published transcript stated:

Q Mr. Lyons, in the course of the discussion about seizing and inspecting machines, do you recall specific States being mentioned?

A Yes. So I don't recall if I mentioned this before, you know, when I was describing the people there, but at some point, Rudy Giuliani joined by phone, and then later in the evening, he was there in person. Later in the evening when he was there in person, you know, his point of view was that in some way the campaign, I believe, was going to be able to secure access to voting machines in Georgia through means other than seizure, that, you know, the access would be -- I don't know what the right word is, but, you know, voluntary, like it wouldn't be coerced and that, you know, examination of those machines would, you know, begin to show the evidence of the allegations that were being made, and that that evidence could then be leveraged to gain additional access to additional machines -- sorry -- to gain access to additional machines. Georgia was the topic of discussion at that time. Earlier -- so that's partial answer to your question.

Earlier in the evening, I don't know if it was before Rudy joined by phone or I was on the phone, but it was in the Oval Office, you know, I think there had been discussion of whatever happened in Michigan in the county that you had mentioned earlier in our conversation today, in terms of, you know, getting access to those -- to voting machines.

However, I think the only State I specifically remember being discussed was

Georgia. The specifics didn't -- sorry. The specifics didn't really add a step with me because it didn't really matter. There wasn't evidence for any of the 50 States...

Q Earlier you had discussed the idea of, you know, two camps, it seemed like, in this meeting of those potentially who thought, like, that you could seize and inspect machines, and another camp who did not believe that could happen. Did you have a sense of where Rudy Giuliani fell in those two camps?

A Right. So as I just mentioned, when he showed up at the meeting, his position was that I believe the campaign was going to secure voluntary access to machines, and that that would be the way to prove up the compromise of the machines.

So given that was his position, I don't recall him taking necessarily the more aggressive posture.

Q Did he -- do you recall if he explained how the campaign was going to get voluntary access to machines in Georgia?

A I'm sure he said something, you know, to substantiate his claim, but I don't remember what it was. Yeah, I just remember thinking, you know, why are we even having this discussion about involuntary access, so to speak, if they're going to get voluntary access. It seemed like it sort of made the -- sort of obviated any need for any of this discussion we had been having.⁵

In Rudy Giuliani's January 6th Committee deposition, the Committee's investigator read aloud an email that was included as an exhibit. It does not appear that the email was ever published in the January 6th Committee materials. It was represented to have been sent from Sidney Powell to Mark Meadows and Donald Trump's assistant, Molly Michael, a few days after the December 18th meeting. As read aloud by the investigator, the email says:

⁵ Interview of Derek Lyons by the Select Committee to Investigate the January 6th Attack on the US Capitol, US House of Representatives, page 113-116. Available at: <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000055541/pdf/GPO-J6-TRANSCRIPT-CTRL0000055541.pdf>

*"Also be advised Michigan trip was not set up properly on the ground with locals. Team is there with no access. It has cost us great expense that should be reimbursed by Rudy's funding. Georgia machine access promised in meeting Friday night to happen Sunday has not come through."*⁶

This email suggests that (1) a plan to access voting machines in Michigan was developed but did not come to fruition, and (2) a similar plan to access the voting system in Georgia on Sunday, December 20, 2020, was promised at the meeting with Trump, but did not come through.

In testimony, multiple witnesses describe other unsuccessful attempts by non-governmental individuals and entities, to access voting systems.⁷ But Giuliani and Powell did not abandon the effort after a few unsuccessful attempts. As described in detail in our December 12, 2022 letter, evidence surfaced in the *Curling* lawsuit which proves that Powell, on behalf of the Trump Campaign, directed the firm SullivanStrickler to access and obtain copies of the voting system software used in all of Georgia by imaging the system in Coffee County, in January 2021.⁸

A text message from Giuliani associate Katherine Friess, produced in discovery in the *Curling* lawsuit, provides a little color into the effort to access the Georgia system. The text message was sent from Friess to Jennifer Jackson (an employee of SullivanStrickler) on January 1, 2021, just six days before the Georgia software was accessed and copied by SullivanStrickler. It reads:

"Hi! Just handed [sic] back in DC with the Mayor. Huge things starting to come together! Most immediately, we were granted access -by written invitation! - to the Coffee County Systems [sic]. Yay! Putting details together now with Phil, Preston, Jovan etc. Want to give you a heads up for your team. [...]"

⁶ See: Rudy Giuliani deposition transcript, page 179-181. Available at: <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000083774/pdf/GPO-J6-TRANSCRIPT-CTRL0000083774.pdf>

⁷ See: Derek Lyons' interview transcript, page 113-115. Available at: <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000055541/pdf/GPO-J6-TRANSCRIPT-CTRL0000055541.pdf>, Sidney Powell deposition transcript, page 101-107. Available at: <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000082296/pdf/GPO-J6-TRANSCRIPT-CTRL0000082296.pdf> and Patrick Byrne deposition transcript, page 65-66. Available at: <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000915977/pdf/GPO-J6-TRANSCRIPT-CTRL0000915977.pdf>

⁸ See note 2.

Based on discovery information obtained in the *Curling* case we believe that “the Mayor” is of course Mr. Giuliani, “Phil” is Philip Waldron, “Preston” is Georgia attorney Preston Haliburton who was at the Willard Hotel “war room” during the period in mid-December when the executive orders were drafted, and “Jovan” is Jovan Pulitzer, a consultant to some of Trump’s team.

After being refused access to voting systems on more than one occasion, it stands to reason that Giuliani’s team would be pleased to have received a “written invitation” to access Georgia’s statewide software via the servers and voting system components in Coffee County, Georgia. The “written invitation” was never produced to the plaintiffs in *Curling*.

The voting software taken from Coffee County is now being shared among election deniers and far-right extremists to spread disinformation.

Our December 12, 2022 letter describes how copies of the voting software have been shared covertly with an unknown number of election deniers. Our letter also warned that the software could be used to sow distrust in elections, fabricate evidence to challenge legitimate election results, or even to manipulate election results in the future.⁹

It was recently reported in the Los Angeles Times that far-right extremists used the unlawfully obtained software from Coffee County, Georgia in a March 2023 presentation at the Conservative Political Action Conference (CPAC) that advanced election disinformation,¹⁰ proving these warnings all too true.

Conclusion

Testimony published by the January 6th Committee suggests that, in addition to discussing and rejecting a plan to use federal government agencies to obtain sensitive voting system software, Sidney Powell, Rudy Giuliani, Patrick Byrne, and Mark Meadows also appear to have discussed, with Trump, a plan to have non-governmental entities and individuals covertly and unlawfully access and copy

⁹ See note 2.

¹⁰ Sarah Wire, “Far-right presentation using misappropriated election software alarms experts,” *Los Angeles Times*, March 30, 2023. Available at: <https://www.latimes.com/politics/story/2023-03-30/election-machines-cpac>

voting system software on behalf of the Trump Campaign, and in the Campaign's effort to overturn the 2020 election.

This plot was carried out successfully in Georgia and in Michigan at the direction of Sidney Powell on behalf of the Trump Campaign. The software was captured and shared covertly among Trump allies, and is now being used to advance election disinformation. Yet it appears these unlawful activities, which could constitute federal crimes, are not being investigated by federal law enforcement. These events demand a vigorous and swift investigation by the Department of Justice, the Special Counsel, and the Federal Bureau of Investigation.

We thank you for your consideration and stand ready to assist in any way we can.

Sincerely,

Susan Greenhalgh
Senior Advisor for Election Security
Free Speech For People

Ron Fein
Legal Director
Free Speech For People