

Challenges with Felony-Records Case Against Trump for Hush-Money Payments



Former President Donald Trump has been indicted on reportedly more than two dozen counts, stemming from hush-money payments made to adult film actress Stormy Daniels and former Playboy model Karen McDougal. These payments were allegedly made to cover up alleged affairs with the two women and were characterized as legal fees, which constituted campaign finance violations. Trump's former lawyer, Michael Cohen, pleaded guilty to these violations in August 2018. According to experts who spoke with Law360 and The New York Times, the prosecution of Trump could pose several problems.

One issue is the need to prove an intent to defraud, which would be required to prove a misdemeanor or a felony under Article 175 of the New York Penal Law. To prove a felony, prosecutors would have to show an intent to commit or conceal a second crime. It may be unclear whether Trump intended to avoid personal embarrassment or to influence the 2016 presidential election, which could constitute a campaign finance violation.

Another issue is Cohen's credibility problems, as he is now a convicted felon who pleaded guilty to campaign finance violations, bank and tax fraud, and lying to Congress. Trump's lawyers could use this fact to undermine Cohen's testimony against Trump.

The statute of limitations is also a potential issue, as the statute of limitations for most misdemeanors in New York is two years, and for a felony-records charge, it is five years. The Stormy Daniels payment was made in 2016, but New York's governor extended the statute of limitations by more than a year during the COVID-19 pandemic. Additionally, New York law extends the statute of limitations when a defendant is not continuing to live in the state.

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Using a federal election violation as the second crime could also lead to jurisdictional issues. Campaign finance crimes are federal crimes, and the case could be argued to belong in federal court. Using a state election law violation as the second crime could be argued to not apply to the federal presidential campaign, making it difficult to pursue a prosecution.

There could also be preemption issues, as federal campaign finance law preempts state election law regarding campaign donation limits. This could rule out a prosecution based on state election law 14-126, which makes it illegal to knowingly solicit another person to spend money to avoid campaign contribution limits. Another possibility is state election law 17-152, which makes it illegal to promote the election of a candidate by unlawful means. However, there is a better chance that 17-152 won't trigger federal preemption, according to The New York Times.

In conclusion, the prosecution of Donald Trump could pose several legal challenges, including the need to prove intent to defraud, Cohen's credibility problems, the statute of limitations issues, and preemption issues. The outcome of the case remains to be seen and will likely depend on how the prosecution and the defense address these legal challenges.