

# Charging George Santos: Analyzing the U.S. Department of Justice's Indictment of the Congressman

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*Political Law Podcast*

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Political Law · Charging George Santos: Analyzing the U.S. Department of Justice's Indictment of the Congressman

Congressman George Santos was elected to the House of Representatives in November 2022, representing New York's Third Congressional District. On May 10, 2023 he was arraigned in Federal District Court in Long Island, NY on a 13-count criminal indictment for allegedly defrauding donors, illegally obtaining unemployment benefits, and lying about his income and his assets on public financial disclosure forms. Why does the indictment cover only a small portion of what has been reported about Congressman Santos's alleged wrongdoings? Listen as Election Law & Government Ethics attorneys Rob Walker and Caleb Burns discuss why the indictment is narrowly focused, how the U.S. Department of Justice (DOJ) will work to prove these charges, and more.

## Transcript

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## Related Professionals

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## Practice Areas

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Election Law & Government Ethics

Rob Walker

Hello, and welcome to Wiley Rein's political law podcast. I'm Rob Walker, Of Counsel in Wiley's Election Law and Government Ethics practice group.

Caleb Burns

And I'm Caleb Burns, a partner in the Election Law and Government Ethics practice group. Now, I've spent over two decades in private practice, advising and defending clients in campaign finance and public corruption matters. But my co-podster ,that's what we're calling you, Rob, has seen it from the other side too, haven't you Rob?

Rob Walker

I have. I am a former federal prosecutor, first as an assistant US attorney and then with the Public Integrity Section of the Department of Justice. After that, I moved to the Hill and I was Chief Counsel of both the House and Senate ethics committees, although at different times. I was in that role with the House, in fact, the last time the House voted to expel a sitting member. That was Jim Traficant in 2002. For the last fifteen years, I've been at Wiley, and I've been advising and defending clients in congressional and other government ethics matters, in public corruption matters, and in other political law matters. And as Caleb is going to explain, we've provided these mini resumes to you because of the particular subject matter of our conversation today.

Caleb Burns

That's right. Rob and I are here today to talk about the recent federal indictment of US representative George Santos. Now, we're going to approach the topic from several angles. We are going to primarily focus on the indictment itself and the criminal law perspective, but we'll also touch on the potential for implications for Federal Election Commission, that is FEC, as well as House Ethics Committee investigations, penalties, and possible punishment. So, Rob, at a high level, what's in this indictment?

Rob Walker

So, this is at a really high level for now, although we're going to shortly get into more specifics. Congressman George Santos was elected to the House of Representatives in November 2022 to represent New York's 3<sup>rd</sup> Congressional District. He was arraigned in federal district court on Long Island in New York on May 10, 2023, on a 13-count criminal indictment. Boiled down to the basics, this indictment alleges that George Santos engaged in three principal kinds of illegal conduct. One, defrauding donors, two, illegally obtaining unemployment benefits, and three, lying about his income and his assets on public financial disclosure forms that he was required to file as a candidate for the House of Representatives.

Caleb Burns

But Rob, of course, there was a lot more reported in the press about Congressman Santos and his alleged wrongdoings. But the indictment seems to cover only a small portion of those claims. Now, I've read and heard others suggest that this is a defect in the prosecution. I'm not so sure about that, and I know we have some thoughts on why the indictment was written as it was, but we'll save them for a little later in the podcast.

Rob Walker

Yeah, I agree that this is a pared-down, efficient indictment, certainly when you compare the conduct charged in the indictment to what has been and is being reported now in the press about George Santos's alleged misconduct. You might even call it a simple indictment. The charges are relatively garden-variety fraud, theft, and false statements. But I don't mean that to minimize the conduct charge. They're serious alleged offenses, and of course they're all the more serious because they involve a sitting congressman. But because they do involve a member of Congress, these charges were certainly reviewed, vetted, and approved at the highest levels of the Department of Justice. I think, in fact, the simplicity of the indictment reflects that careful multi-level scrutiny and review.

Caleb Burns

Ok, so notwithstanding the simplicity of the indictment and your summary a few minutes ago, why don't you walk us through each of these three principal claims that you just shared with our audience?

Rob Walker

Alright, so to unpack the indictment a little bit more, the first five counts to the indictment, in sum, allege a fraudulent scheme through which George Santos and/or someone working at his direction raised funds ostensibly for campaign-related entities but which actually, allegedly, went to Santos' own personal benefit. And the indictment alleges that those personal benefits included, after it had transferred to his personal bank accounts, making cash withdrawals, purchasing luxury designer clothing, making credit card payments, making a car payment, and making payments on personal debts. So, the indictment focuses on two separate contributions of \$25,000, one each from two different individuals. On the circumstances leading to and surrounding these contributions, the federal prosecutors in the Eastern District of New York charged five counts of federal wire fraud, as I indicated, and three counts of unlawful monetary transactions. They made the wire fraud charges based on the use of emails and text messages in connection with obtaining these contributions and based the counts of unlawful monetary transactions on the movement of the money so obtained to his personal bank accounts. The indictment also includes an explanatory section on applicable campaign finance laws. And in that section, it references and relies on such campaign finance law terms that we likely all know as Super PACs, coordinated expenditures, and FEC registration requirements. Yet, despite using those terms, none of the accounts in the indictment charge campaign finance law violations per se. As we've said, and will continue to say throughout this podcast, the charges instead are fraud, theft of public money, and false statements. So, given that, Caleb, what do you make of that? What does that mean that those campaign finance violations per se were not charged?

Caleb Burns

Well, I think I'd start with taking an issue with your comment that we all know what a Super PAC or a coordinated expenditure or an FEC regulation, or registration, I should say, what those terms really mean. And I'll get to that here more in a moment because I think that's relevant to why we didn't see those charges substantively laid out in the indictment. But let me back up for a moment.

Rob Walker

I'll just say, I think it's a fair point. I meant to say that we've probably all heard the terms, even if we don't all know what they mean, but that's what you're here for.

Caleb Burns

Well, thank you. But Rob, I mean, we all read the stories regarding Santos' campaign finance irregularities, and we see them described, as you rightly noted, in the indictment. In theory, and as you suggested, the government could have charged him with substantive violations of the campaign finance laws based on those descriptions in the indictment but chose not to, and my instinct is that was a very deliberate decision. And this is kind of getting back to my point about this terminology, this dense terminology, which is to say that the campaign finance laws are dense, and they're often illogical, and trying to explain them to a jury is going to be fraught with difficulty. And so, my sense is that at the end of the day, it was probably just easier to charge him as a fraudster and a liar, to the themes you've already teed up in this podcast, which are easy concepts for the public and jury to understand, as opposed to charging him with a series of highly technical and possibly arcane campaign finance law violations. Why not just leave that stuff to the Federal Election Commission, who, as we'll discuss in a bit has civil enforcement authority over this very complex campaign finance law regulatory regime.

So I think this goes to your point before, Rob, in terms of this being an efficient indictment. What's your reaction?

Rob Walker

I think that's exactly right, the way you've described it, and again, I think this reflects what I'll call here the KIS theory of prosecution. Keep it simple. And yes, I've left off the last "s" on purpose, by the way. But as you say, Caleb...

Caleb Burns

So as not to offend me.

Rob Walker

Yes, exactly. So, as you say, why complicate the proof requirements of trial by having to address an arcane area of law? And I think another reason we don't see such campaign finance charges in this indictment is that prosecutors want to send and emphasize their message to the public and to the jury that this was not, according to their allegations, this was not legitimate political activity in any way. It was fraud for personal gain, and to include substantive campaign finance charges would distract from and muddy this central message. But having said that, Caleb, have we seen, and I think we have, similar fraud-based charges brought by DOJ before, in other cases, involving real or supposed political fundraising?

Caleb Burns

Yeah, we absolutely have, and this seems to be part of a pattern emanating from the Department of Justice. Over the last few years, the Department has taken a very strong interest in prosecuting cases where campaign contributors have been defrauded. These have generally been in the context of so-called scam PAC cases, where operators of political organizations raise money but have kept most of the money for themselves, oftentimes as alleged by the government in the form of salaries or disguised fees, rather than using those contributor funds to advance the political causes that the organizers represented that they would to their contributors. This portion of the Santos indictment sounds very similar. That is, Santos claimed to supporters that their funds will be used to promote his political candidacy, when, in fact, the funds as you've outlined were allegedly diverted for his personal use.

Having said that, now that we have a real feel for these campaign contribution fraud allegations, how is the government going to prove this? I mean, are they going to rely on documents, electronic communications, testimony, all of the above? How's this all going to work?

Rob Walker

Well, the answer is, of course, yes to all of the above. First, on the face of the indictment and given the nature of the charges, that is wire fraud, theft of public money, illegal monetary transactions, false financial disclosure forms, proof is obviously going to depend and rely on emails, text messages, electronic bank transfer records, other bank account records, and federal financial disclosure forms. But, in looking at the indictment, it seems equally plain, particularly regarding the fraudulent fundraising scheme, that the government is also going to rely at trial on the testimony of one or more persons with inside, firsthand knowledge of George Santos' alleged conduct and activities. And those witnesses may include one or both of the contributors, called Contributor 1 and Contributor 2 in the indictment, and/or may include the individual called Person 1 in the indictment, who is described there as a political consultant operating in Queens County and surrounding areas in New York. So, these witnesses, first of all, are necessary to authenticate the emails and texts allegedly used to accomplish the fraudulent fundraising scheme. But they are also necessary and going to be necessary to provide narrative context and cohesion and an explanation for the documents and for what was going on.

Caleb Burns

Well, thanks Rob. I think that's a nice, more detailed explanation of this first category and the indictment of fraudulent campaign contribution scheme. Let's move to the second category. The indictment also includes three counts relating to allegations that George Santos fraudulently obtained, some may say stole, unemployment benefits. What's being alleged here?

Rob Walker

These counts relate to George Santos' alleged application to the New York State Department of Labor for, and his subsequent receipt of, \$24,744 in unemployment benefits at a time when Santos was, according to the indictment, a regional director at an investment firm and was being paid at an annual salary of \$120,000 by that investment firm for his work there. So, the allegation is, of course, that he was not eligible for the unemployment benefits that he applied for and received.

Caleb Burns

Seems quite straightforward, so let's move to the third category, that is, the indictment contains two counts of making false statements. This is a little more complicated. Can you walk us through what was required of Santos and what the indictment alleges?

Rob Walker

Yeah, so these charges are being brought under Title 18 of United States Code Section 1,001, and they relate to public financial disclosure forms that Santos, as a candidate for the US House of Representatives, was required to file by federal law. The law being the Ethics and Government Act. He was required to file such a form in connection, both with his candidacy for the House in 2020, and in 2022. So, on these forms, candidates are required to disclose, among a broad range of other items, such things as earned income, income earned through investments or unearned income, specific assets including, for example, securities, checking and savings account balances, and also required, among other things, to disclose liabilities. The filing candidate, and in this instance, Georges Santos, must sign the form before it's filed, and by signing, must certify, specifically, "that the statements I've made on the attached financial disclosure statement and all attached schedules are true, complete, and correct to the best of my knowledge and belief." Indictment here alleges that in the financial disclosure forms at issue, Santos knowingly misrepresented amounts he received in earned income and other payments and knowingly misreported amounts in his checking and savings accounts.

More specifically, for example, according to indictment, for the form he filed in September of 2022, it's alleged that he disclosed \$750,000 in salary from an LLC he controlled, and it's also alleged that he disclosed or reported checking and savings accounts of a total value together between \$1 million and \$5 million. But the indictment says that he reported that when he knew that he had not received that amount of income and knew that he did not maintain checking and savings accounts in the amount that he reported. So, there's something interesting about these charges in that it appears that Santos is being accused in the indictment of

falsely inflating this income and these assets, and that's unusual. Typically, when there is a concern about information being misreported by someone in such disclosure forms, it's a concern that the individual has underreported or undervalued income and assets, not overvalued them. This is because the purpose of this form is to evaluate, for the official reviewers, for the public, for the press, to be able to evaluate whether the income and the assets and other financial holdings being reported create a financial conflict of interest or an appearance of a conflict. So, it's odd if he's being charged, or if he did, in fact, inflate the value. Now, maybe there's going to be something else that we're going to learn about this reporting, but that's the way it looks to me right now,

And one last word, I promise, on these financial disclosure forms. It's important to emphasize here how much this indictment, these charges in this indictment, underscore just how seriously the disclosure obligations must be taken by federal candidates and also by federal public officials who must file these forms as well. And that includes members and highly paid staff of the House and Senate. These are not forms to be dismissed as a mere formality. The filers of these forms have to be able to truthfully make the certification I quoted earlier.

Caleb Burns

Rob, I'm going to follow up on your last two points if I could. First, if you're right about your read of the indictment, that Santos inflated the value of the assets, I wonder if that ties back to some of the campaign finance irregularities that were reported in the press. My recollection is that Santos claimed that he had loaned money to his campaign, but questions were immediately asked about the source of those funds, and I wonder out loud here if this document and these disclosures might have been an attempt by him to answer those questions. The second thing I just wanted to follow up on was underscoring your last point, which is, I've also seen and read the suggestion that, well, this portion of the indictment is really just a ministerial violation, that is, you know, he simply failed to complete a form correctly. But I want to emphasize that this is precisely how the government has prosecuted other high-profile individuals. Former Senator Ted Stevens of Alaska was prosecuted, not for taking impermissible gifts, but for not disclosing them on the same exact form, and, in fact, you can go way back a century to the infamous gangster Al Capone who was prosecuted for failing to declare income on his federal income tax returns, not for the underlying crimes he committed to obtain that income. So again, I just want to emphasize your point, which is these false disclosure prosecutions are nothing new. They're not to be trifled with, and, in fact, they've been an important tool for the government in prosecuting all manner of public corruption cases or otherwise.

Rob Walker

I think that's right, yeah.

Caleb Burns

But speaking of press reports because I keep referring to them. I've also read that Santos could face up to 20 years in prison if convicted the crimes charged in this indictment. Is that accurate? Is that likely? What's your read on his potential time behind bars if the government's successful at this prosecution?

Rob Walker

So, technically, the 20-year range is accurate, given that the language of the federal wire fraud statute, for example, states that if convicted under the statute an individual may be imprisoned not more than 20 years. But in reality, a sentence of anywhere near 20 years even for all the conduct charged in the George Santos indictment is unlikely and unrealistic. And that's because sentencing in federal criminal cases is guided by something called the Federal Sentencing Guidelines, which focus on a number of factors. And those factors include what the core criminal conduct was, what amount was fraudulently or illegally obtained, what the defendant's criminal history is, and what the defendant's role in the offense was, for example was he an organizer or a leader of the offense. So based on these and other specific factors, sentencing range is calculated. All the factors have numerical values and that's totaled up and you come up with a range. A sentencing judge doesn't have to follow the guidelines range. But if the judge does depart from that range, she has to provide a specific, cognizable reason for doing so.

Alright, so looking at the offenses for which George Santos has been charged in this indictment, I would say a rough sentencing guideline range for that conduct seems to be 27 to 33 months depending on what, again, what specific factors are brought into play. It's not 20 years. That would be a significant amount of jail time.

Caleb Burns

But that also assumes we're seeing the full panoply of federal charges against Santos. I mean, the federal government could issue a superseding indictment to include additional charges, additional information. Now, notwithstanding the fact that I just brought up the topic of a superseding indictment, I tend to think the likelihood of seeing one is less likely and that we probably are looking at the full extent of the federal charges to be brought against George Santos. And my reason for reaching that conclusion, I'll be interested in your thoughts in a minute Rob, is just by way of comparison to another significant indictment that we've seen come from the Department of Justice and that is, of course, of Sam Bankman-Fried, the notorious founder of the FTX cryptocurrency exchange. Bankman-Fried was the subject of a quick initial indictment as well as a more comprehensive superseding indictment. But that was largely because, from my perspective, Bankman-Fried was out of the country, he was in the Bahamas, and gaining control of FTX assets was proving to be a challenge for the government. So those imperatives in that case for a quick initial indictment to secure a defendant and assets simply aren't present here. Santos very clearly and openly continues to work in Washington and New York as a sitting member of Congress and has even announced his intention to seek re-election. So, in other words, he and his funds aren't going anywhere, so there wouldn't have been any urgency to file a half-baked initial indictment with the intention of filing a supplemental superseding indictment. So, this may be the last word from the federal prosecutors. Do you agree, and to tease the next topic, is this the last word in terms of criminal liability altogether?

Rob Walker



I agree with what you're saying about a superseding indictment, or to put it in another way, I think that this indictment is completely bait for the most part, but I do agree with your assessment there. Going to the point of what's happening with state criminal liability. Based on public reports, it looks like the New York State Attorney General is still investigating George Santos. And as recently as a few days ago, that is a few days before we're sitting here doing this podcast on May 16, the Nasseau County New York DA said that her investigation of Santos is continuing. She also said that the indictment brought by the feds against Santos was, she called it a product of cooperation between her office and federal prosecutors and investigators and said that if her continuing investigation calls for bringing the feds back in, she will. To me, this supports the view that a superseding indictment by the federal prosecutors is not in the cards, at least not anticipated right now, although, of course, the DA statement doesn't entirely foreclose that possibility.

Caleb Burns

Okay, well, we've spent a lot of time talking about criminal liability. Let's talk about other possible danger zones for George Santos. I mentioned at the outset the Federal Election Commission and House Ethics Committee. Why don't I start with Federal Election Commission and then you can take us home with the House Ethics Committee?

Rob Walker

Fair enough.

Caleb Burns

Alright, well as I discussed earlier, the lack of any substantive campaign finance law violations in the indictment, again, I think was a deliberate decision to defer those issues for civil enforcement by the Federal Election Commission. As we have been discussing, it would have complicated the federal indictment, and here is this other regulatory body sitting at the ready to handle these much more technical and, as we've described, arcane legal issues. In fact, we know from press reports that the Department of Justice has asked the FEC to stand down and pause its proceedings regarding Congressman Santos while the Department prosecutes its case. That, of course, strongly suggests that the FEC has matters before it involving Congressman Santos. However, all FEC matters are required by statute to proceed in strict confidence, which is why, frankly, I was quite surprised to hear in the press about the Department's requests to the FEC to stand down. That never should have been made public. Of course, it has been now, and now we're reading the tea leaves. And I think what we can discern from that is whatever the FEC does, we won't learn about it until after it has completed its review, again, because of the statutory confidentiality requirements that surround FEC proceedings. But we also now know that that review will not be reinitiated until after the federal criminal case is resolved. So, the FEC aspect of this is going to be a bit of a black hole. I don't think there's going to be much to observe or see from the outside. But what about Congressman Santos' standing in the US house? In particular, Rob, what have you seen and what do you anticipate that the House Ethics Committee might do?

Rob Walker

Well, first of all, on his standing in the House. He is not now currently serving on any House committees, but he can still participate in votes by the full House. House rules mandate that members indicted on felony charges must step down from committees, but Santos had already done that earlier in the year before this indictment, so nothing new there.

House rules don't require an indicted house member to resign from the House, and in fact, the house rules don't require a convicted house member to resign. If a convicted member does not resign, and if the member is to be disciplined, and that would include being forced from the House through expulsion, the Ethics Committee would first have to conduct an investigation to determine whether to bring what's called a Statement of Alleged Violations. Then, the committee would have to hold a public trial-like proceeding on those alleged violations. And finally, they would have to refer their findings and recommendations to the full House for action, for disciplinary action. Expulsion by the House would require a vote of two-thirds of the members of the house. Lesser discipline, things called reprimand or censure, would require a majority vote in the house. So, the House Ethics Committee is already conducting an investigation of Representative Santos. The committee announced publicly in March that it has unpaneled what is called an investigative subcommittee to look into a number of allegations against Santos, including that he engaged in unlawful activity, and here I'm quoting from a press release by the House committee, "that he engaged in unlawful activity with respect to his 2022 congressional campaign, failed to properly disclose required information on statements filed with the House," that is, his candidate financial disclosure forms, "violated federal conflict of interest laws in connection with his role in a fiduciary firm," that is, here, an investment firm, and/or, according to the Ethics Committee, "that Santos engaged in sexual misconduct towards an individual seeking employment in his congressional office." So those are the House charges, again, there is an Ethics Committee investigative subcommittee and panel to look into that. So, does the fact that the Ethics Committee has unpaneled an investigative subcommittee mean that the Committee's investigation could overtake the criminal investigation, leading to Santos leaving the House or being disciplined by the House before his criminal matter is resolved? I would say that is unlikely here. It seems pretty clear, from statements that leaders have made, that the decision point leading to an official call for Santos to resign and leading to Santos' resignation will be whether or not he is convicted, whether through a guilty plea or at trial, on one or more felony charges.

Caleb Burns

Well, Rob, there's certainly a lot going on here, and there's a lot more dust to settle. Let's see how things unfold in the coming weeks, and maybe we'll do this again.

Rob Walker

We will stay on top of it and let our listeners know. Thanks, Caleb.

Caleb Burns

Thank you, Rob.

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