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Association of American Physicians and Surgeons, Inc.  
A Voice for Private Physicians Since 1943  
*Omnia pro aegroto*

July 17, 2026

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JOURNAL OF AMERICAN  
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Editor-In-Chief

The Honorable Todd Blanche  
Acting Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

**Re: Request Based on the Double Jeopardy Clause Against a  
Second Prosecution of Ron Elfenbein, M.D.**

Dear Acting Attorney General Blanche,

The Association of American Physicians and Surgeons (“AAPS”) respectfully submits this letter in support of Ron Elfenbein, M.D. (“Dr. Elfenbein”). We urge the Department of Justice to honor the spirit of the Double Jeopardy Clause by not subjecting Dr. Elfenbein to a second federal prosecution after a federal district court judge ruled, based on a full first trial, that there was insufficient evidence for a conviction.

By way of background, AAPS is a national association of physicians, founded in 1943. AAPS is dedicated to protecting the patient-physician relationship, and has been a litigant in the U.S. Supreme Court and in other appellate courts. *See, e.g., Ass’n of Am. Physicians & Surgs. v. Mathews*, 423 U.S. 975 (1975); *Ass’n of Am. Physicians & Surgs. v. Tex. Med. Bd.*, 627 F.3d 547 (5th Cir. 2010); *Ass’n of Am. Physicians & Surgs. v. Clinton*, 997 F.2d 898 (D.C. Cir. 1993). AAPS has repeatedly objected to prosecutorial overreach in the past, as when its amicus brief successfully urged reversal in connection with the conviction of another physician. *See Ruan v. United States*, 597 U.S. 450, 467 (2022).

We joined an amicus brief which we filed in the U.S. Supreme Court in support of Dr. Elfenbein, on his petition for certiorari which was subsequently denied. We pointed out in our brief that the U.S. faces a crisis shortage of physicians, and criminal prosecution is inappropriate in mere disputes about levels of coding and reimbursement, which is what the federal case against Dr. Elfenbein concerns. Where the government has entered medical care as a participant, as it does with the Medicare program, government should handle

its disagreements about billing as private companies do, without prosecuting those with whom it disagrees.

In an analogous situation of a second prosecution after a court overturned an initial conviction, many applauded the decision by the Department of Justice (“DOJ”) not to re prosecute the former Nebraska Congressman Jeff Fortenberry after his initial conviction was overturned by the Ninth Circuit. We respectfully request that a similar decision not to re prosecute be made with respect to Dr. Elfenbein, and we suggest that a broad view of the constitutional safeguard of the Double Jeopardy Clause be adopted by DOJ. A general policy against re prosecution in these situations would protect not only Dr. Elfenbein, but also others who have endured and survived an initial prosecution, only to be put through the same ordeal a second time contrary to the spirit of the Double Jeopardy Clause.

The Double Jeopardy Clause is a cherished constitutional right of all Americans, which is intended to protect against multiple prosecutions on the same charges. James Madison’s original draft of the Double Jeopardy Clause protected against multiple trials for the same offense:

No person shall be subject, except in cases of impeachment, to more than one punishment or trial for the same offense.<sup>1</sup>

Madison’s draft was reworded before becoming part of the Fifth Amendment, but it seems unlikely that the Framers wanted federal prosecution and re prosecution that occur today.

We respectfully request that Dr. Elfenbein not be subjected to more than one criminal trial in federal court for the same offense. At the end of that trial, the federal district judge held that:

The Court—having observed the trial and having carefully parsed the record in this case—concludes that the jury’s verdict cannot stand. Thus, an Order will issue vacating the Defendant’s convictions, granting the Defendant’s Motion for Judgment of Acquittal, and conditionally granting a new trial. A formal Judgment of Acquittal will enter. The Defendant will be discharged.

*United States v. Elfenbein*, 708 F. Supp. 3d 621, 683 (D. Md. 2023), *aff’d in part and rev’d in part*, 144 F.4th 551 (4th Cir. 2025).

We feel that the district court decision above was correct, and that the prosecution of Dr. Elfenbein should not be restarted again in light of it.

Multiple other medical associations, coming from diverse political backgrounds, have supported Dr. Elfenbein either during his initial trial or appeal, or in arguing against a second prosecution now. The Fourth Circuit has allowed a second prosecution to proceed, but we urge

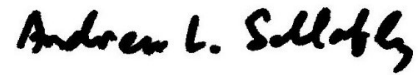
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<sup>1</sup> Constitution Annotated, Amdt5.3.2, [https://constitution.congress.gov/browse/essay/amdt5-3-2/ALDE\\_00000857/#ALDF\\_00008011](https://constitution.congress.gov/browse/essay/amdt5-3-2/ALDE_00000857/#ALDF_00008011) (viewed July 16, 2026).

DOJ to broaden and strengthen an adherence to the spirit of the Double Jeopardy Clause and decline to prosecute Dr. Elfenbein a second time.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink that reads "Andrew L. Schlafly". The signature is written in a cursive, slightly stylized font.

Andrew L. Schlafly  
General Counsel  
**Association of American Physicians and  
Surgeons** (Founded in 1943)