IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

THE STATE OF GEORGIA **v.** **DONALD JOHN TRUMP,** **RUDOLPH WILLIAM LOUIS GIULIANI,** **MARK RANDALL MEADOWS,** **JEFFREY BOSSERT CLARK,** **ROBERT DAVID CHEELEY,** **MICHAEL A. ROMAN,** **DAVID JAMES SHAFER,** **HARRISON WILLIAM PRESCOTT FLOYD,** **and CATHLEEN ALSTON LATHAM** **Defendants.**	**Case Number 23SC188947**

DEFENDANTS' JOINT MOTION FOR A CERTIFICATE OF IMMEDIATE REVIEW

Defendants President Donald J. Trump, Rudolph Giuliani, Mark Meadows, Jeffrey B. Clark, Robert Cheeley, Michael Roman, David Shafer, Harrison Floyd, and Cathleen Latham file this Joint Motion for a Certificate of Immediate Review, and request that the Court grant a Certificate of Immediate Review of the Court's Order on Defendants' Motions to Dismiss and Disqualify the Fulton County District Attorney, issued March 15, 2024 (the "March 15 Order"), to the Georgia Court of Appeals pursuant to O.C.G.A. § 5-6-34(b).

The March 15 Order is of exceptionally great importance to this case, substantially impacting the Defendants' rights to due process. Additionally, given the lack of guidance from the appellate courts on key issues, and the fact that any errors in the March 15 Order could be structural errors that would necessitate retrial(s), the grant of a certificate of immediate review is both prudent and warranted.

In its Order, the Court found that District Attorney Willis' actions had created an appearance of impropriety and an "odor of mendacity" that lingers in this case, as well as the continuing possibility that "an outsider could reasonably think that District Attorney Willis is not exercising her independent professional judgment totally free of any compromising influences." *See* March 15 Order at 10-17. Despite this, the Court declined to disqualify District Atorney Willis, finding that eliminating only the Special Assistant District Attorney would cure the lingering appearance of impropriety. *Id.* at 17. Defendants believe that the relevant case law requires dismissal of the case, or at the very least, the disqualification of the District Attorney and her entire office under the facts that exist here, and the resignation of Mr. Wade is insufficient to cure the appearance of impropriety the Court has determined exists. Given these facts and the current state of the case law, the Court of Appeals should speak definitively to this outcome-determinative issue now.

The Court also found that District Attorney Willis' nationally televised speech at Big Bethel AME Church on January 14, 2024 was "legally improper," *id.* at 20, but declined to disqualify her on the basis of this forensic misconduct (and the other forensic misconduct proven by Defendants), noting in particular a lack of guidance in Georgia case law for the standard for disqualification of a prosecuting attorney for forensic misconduct. *Id.* ("As best it can divine, under the sole direction of *Williams*, the Court cannot find that this speech crossed the line . . . ."); *see also id.* at 18 ("Unmoored from precedent, the Court feels confined to the boundaries of *Williams* and restricts the application of the facts found here to its limited holding.") Based on the holding in *Williams v. State*, 258

Ga. 305 (1988),[1] and the other persuasive authorities from the U.S. Supreme Court and other jurisdictions cited to the Court on forensic misconduct, however, it is likely that the Georgia appellate courts would decide that District Attorney Willis' forensic misconduct requires her disqualification in this case.

At a minimum, the factual findings of the Court and the lack of appellate guidance from the Georgia courts on the issue weigh heavily in favor of immediate appellate review, *especially* given that the failure to disqualify a prosecutor who should be disqualified is a structural error that could necessitate a retrial without any additional showing of prejudice. *McLaughlin v. Payne*, 295 Ga. 609, 613 (2014) (for a prosecutor to have a conflict of interest is contrary to public policy and could warrant a new trial) (citations omitted); *cf. Lewis v. State*, 312 Ga. App. 275, 282 (2011) (Erroneous deprivation of counsel is a "structural error, one that affects 'the framework within which the trial proceeds,' and it requires an appellate court to reverse any conviction that follows without any inquiry into harm or prejudice.") Seeking clear direction from the appellate courts on these critical issues at this pretrial juncture is a compelling and immediate interest.

Immediate appellate review is also needed of the March 15 Order declining to disqualify District Attorney Willis based upon the personal stake that she has acquired in this prosecution, both through her actual conflicts of interest and the appearance of impropriety created by her actions. Specifically, the Georgia appellate courts, in applying

[1] The law review note cited favorably by the Court in *Williams* defines forensic misconduct much more broadly than the facts in the *Williams* case itself, stating that "[p]rosecutor's forensic misconduct may be generally defined as *any activity by the prosecutor which tends to divert the jury from making its determination of guilt or innocence by weighing the legally admitted evidence* in the manner prescribed by law." *See The Nature and Consequences of Forensic Misconduct in the Prosecution of a Criminal Case*, 54 Colum. L. Rev. 946, 949 (1954) (emphasis added).

their relevant precedent, including *McLaughlin,* 295 Ga. at 613, would likely determine that disqualification of the District Attorney is required when she has acquired a personal stake in the prosecution by *either* laboring under an actual conflict of interest, including non-pecuniary actual conflicts (which Defendants believe the evidence has established), *or* by creating the appearance of impropriety that this Court has already determined she has created, and remains here.

CONCLUSION

A criminal defendant is entitled to a disinterested prosecutor. *See Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 807 (1987). "If the assigned prosecutor has acquired a personal interest or stake in the conviction, the trial court abuses its discretion in denying a motion to disqualify h[er]…" *Amusement Sales, Inc. v. State*, 316 Ga. App. 727, 735 (2012) (citing *Whitworth*, 275 Ga. App. at 796; *Young v. United States*, 481 U.S. 787, 809–814 (1987)). Certificates of immediate review have been granted by courts under similar circumstances. *See, e.g., Registe v. State*, 287 Ga. 542, 544 (2010) (granting defendant's motion for a certificate of immediate review following the court's disqualification of the defendant's counsel); *State v. Cook*, 172 Ga. App. 433, 434-435 (1984) (defendant granted certificate of immediate review from denial of motion to disqualify two Special Assistant District Attorneys); *State v. Mantooth*, 337 Ga. App. 698, 698 (2016) (granting interlocutory review following the trial court's grant of motion to recuse the DeKalb County Solicitor-General).

Whether District Attorney Willis and her Office are permitted to continue representing the State of Georgia in prosecuting the Defendants in this action is of the utmost importance to this case, and ensuring the appellate courts have the opportunity to weigh in on these matters pre-trial is paramount. As noted, should such review not occur

until after any trial in this case and these decisions were ultimately reversed on appeal, such reversal would likely require the retrial of every convicted defendant without any additional showing of error or prejudice. *McLaughlin*, 295 Ga. at 613; *Amusement Sales, Inc. v. State*, 316 Ga. App. at 735. Given the length and complexity of the trial(s) in this case (should the current Indictment survive such that any such trials are possible), neither the Court nor the Parties should run an unnecessary risk of having to go through that process more than once.

For all of these reasons, Defendants President Donald J. Trump, Rudolph Giuliani, Mark Meadows, Jeffrey B. Clark, Robert Cheeley, Michael Roman, David Shafer, Harrison Floyd, and Cathleen Latham respectfully request that the Court grant the Defendants' Joint Motion for a Certificate of Immediate Review and issue a Certificate of Immediate Review of the Court's Order on Defendants' Motions to Dismiss and Disqualify the Fulton County District Attorney, issued March 15, 2024, to the Georgia Court of Appeals pursuant to O.C.G.A. § 5-6-34(b).

Respectfully submitted, this 18th day of March, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that I have, this 18th day of March 2024, served a true and correct copy of the within and foregoing DEFENDANTS' JOINT MOTION FOR A CERTIFICATE OF IMMEDIATE REVIEW via electronic filing which will serve all counsel of record in this matter.

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CERTIFICATE OF IMMEDIATE REVIEW

This Court, having entered an order denying defendants' motions to dismiss and to disqualify the Fulton County District Attorney on March 15, 2024, and this order not being subject to direct appeal, now, within the time provided by law, does hereby certify that said order is of such importance that immediate review be had by the Georgia Court of Appeals.

SO ORDERED, this _____ day of March, 2024.

_____
Judge Scott McAfee
Superior Court of Fulton County