

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA)	
)	No. 23SC188947
vs.)	
)	
DONALD JOHN TRUMP, <i>et al.</i> ,)	
)	
Defendants.)	

**MOTION OF *AMICI CURIAE* ETHICS EXPERTS AND FORMER FEDERAL AND
GEORGIA STATE PROSECUTORS TO FILE A SUPPLEMENTAL BRIEF IN
OPPOSITION TO DEFENDANTS ROMAN, TRUMP, AND CHEELEY’S MOTIONS TO
DISMISS THE GRAND JURY INDICTMENT AND DISQUALIFY THE DISTRICT
ATTORNEY, HER OFFICE, AND THE SPECIAL PROSECUTOR**

Amici curiae, Richard Briffault, Amy Lee Copeland, Scott Cummings, Charles Geyh, Bruce Green, Peter Joy, David Luban, J. Tom Morgan, Richard Painter, Russell Pearce, Cassandra Burke Robertson, Rebecca Roiphe, Sarah Saldaña, Charles Silver, Abbe Smith, Brad Wendel, and Shan Wu, respectfully seek leave of this Court to appear as *amici curiae* and file this brief as a supplement to their brief in opposition to Defendants’ motions to dismiss the grand jury indictment and disqualify the District Attorney, her office, and the special assistant district attorney. The supplemental brief is attached to this Motion as Exhibit A. In support of this motion, *amici curiae* state that they are ethics experts and former federal and Georgia state prosecutors who collectively have decades of experience with the disqualification and conflict of interest issues that apply to prosecutors. Based on their years of experience with the very issues raised in Defendants’ motions, *amici* respectfully submit that their amicus brief may assist the Court in its decisional process and in its evaluation of the legal issues raised in this matter. The supplemental brief is narrowly tailored to specific legal questions raised by the Court and parties during summation and granting leave would not cause any delay or prejudice to the parties.

WHEREFORE, *amici curiae* request this Court accept and consider the supplemental brief attached hereto.

Respectfully submitted, this 6th day of March, 2024.

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**Admitted Pro Hac Vice*

EXHIBIT A

**IN THE SUPERIOR COURT OF FULTON COUNTY
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STATE OF GEORGIA)	
)	No. 23SC188947
vs.)	
)	
DONALD JOHN TRUMP, <i>et al.</i> ,)	
)	
Defendants.)	

**SUPPLEMENTAL BRIEF OF *AMICI CURIAE*
ETHICS EXPERTS AND FORMER FEDERAL AND GEORGIA
STATE PROSECUTORS**

Amici curiae Richard Briffault, Amy Lee Copeland, Scott Cummings, Charles Geyh, Bruce Green, Peter Joy, David Luban, J. Tom Morgan, Richard Painter, Russell Pearce, Cassandra Burke Robertson, Rebecca Roiphe, Sarah Saldaña, Charles Silver, Abbe Smith, Brad Wendel, and Shan Wu previously sought leave of court to file an amicus brief in opposition to various Defendants’ motions to dismiss the grand jury indictment and to disqualify the District Attorney, her office, and the special assistant district attorney. As *amici* previously explained and reiterate here, disqualification is not warranted in this case. *Amici* now supplement their prior brief to clarify the standard the Court should use in determining the disqualification question and to explain why Defendants’ argument that disqualification is warranted based upon on an “appearance of impropriety” is wrong under Georgia Supreme Court precedent.

The law of disqualification, which cautions courts to grant motions to disqualify “sparingly,” *see Hodge v. URFA-Sexton, LP*, 295 Ga. 136, 138-39 (2014),¹ places great trust in

¹ *See also Bernocchi v. Forcucci*, 279 Ga. 460, 462 (2005) (“The right to counsel is an important interest which requires that any curtailment of the client’s right to counsel of choice be approached with great caution. Disqualification has an immediate adverse effect on the client by separating him from counsel of his choice, and inevitably causes delay. A client whose attorney

prosecutors to proceed fairly, even when their personal interests may be in tension with the duty to treat defendants fairly. *See State v. Sutherland*, 190 Ga. App. 606, 607 (1989) (reversing disqualification where record did not establish ADA was “acting . . . for his personal or individual interest” rather than “in his character as an officer of the law”). Thus, the “[Georgia] Supreme Court has held that absent an actual conflict of interest or actual impropriety, the trial court does not abuse its discretion in denying a motion to disqualify counsel.” *See Georgia Trails & Rentals, Inc. v. Rogers*, 359 Ga. App. 207, 214 (2021) (citing *Blumenfeld v. Borenstein*, 247 Ga. 406, 409-10 (1981) (holding that mere appearance of impropriety not based on actual conduct is an insufficient ground for disqualification)).

In *Blumenfeld*, the Georgia Supreme Court reversed the trial court’s decision to disqualify a husband-attorney based solely on the wife-attorney’s position with the firm representing the opposing party. *See Blumenfeld v. Borenstein*, 247 Ga. 406 (1981).² In reaching its decision to reverse, the Georgia Supreme Court explained it viewed the issue of attorney disqualification as

is disqualified may suffer the loss of time and money in finding new counsel and may lose the benefit of its longtime counsel’s specialized knowledge of its operations. Because of the rights involved and the hardships brought about, disqualification of chosen counsel should be seen as an extraordinary remedy and should be granted sparingly.”) (internal citations and quotations omitted).

² The trial court had made its decision “on the basis of Canon 9 of the Code of Professional Responsibility (Bar Rule 3-109): ‘A lawyer should avoid even the appearance of professional impropriety.’” *Id.* at 407. On June 12, 2000, the Supreme Court of Georgia adopted the new Georgia Rules of Professional Conduct effective January 1, 2001, thereby deleting the Canons of Ethics in its entirety, including Canon 9. *See Georgia Rules of Professional Conduct*, available at <https://www.gabar.org/barrules/georgia-rules-of-professional-conduct.cfm>.

Notably, the current Georgia Rules of Professional Conduct contain no parallel provision to Canon 9. The phrase “appearance of impropriety” appears in the Rules *only once*, in comment 2 to Rule 3.5, and *only* with respect to behavior around judges. *See* Rule 3.5, cmt. 2 (“Regardless of an advocate’s innocent intention, actions which give the appearance of tampering with judicial impartiality are to be avoided. The activity proscribed by this rule should be observed by the advocate in such a careful manner that there be no appearance of impropriety.”)

a “continuum.” *Id.* at 409. On one end, where there is an appearance of impropriety based only on *status*, like in *Blumenfeld*, disqualification should never result. *Id.* At the other end, where there is an “appearance of impropriety *coupled with* a conflict of interest or jeopardy to a client’s confidences” disqualification is mandated. *Id.* (emphasis added). And in the middle of the continuum, where there is an “appearance of impropriety based on *conduct* on the part of the attorney” disqualification should not result “absent danger to the client.” *Id.* (emphasis added). On this last point, the Court explained that “the nebulous interest of the public at large in the propriety of the Bar is not weighty enough to justify disqualification.” *Id.*

As *amici* explained in the prior brief, Defendants have not established an actual conflict of interest requiring disqualification and have not established that the conduct they complain of impacted the fairness or due process owed to them. The mere fact of a previous romantic relationship between Willis and Wade, Wade’s compensation for work on the case, Willis and Wade’s travel together, and Willis’s speech at the Big Bethel AME Church do not amount to disqualifiable conduct, as they do not demonstrate an improper personal interest or stake in the case, particularly in light of un rebutted evidence that Willis reimbursed Wade for their travels together. *See Amici’s* Feb. 5, 2024 Br. at 10-16. Thus, regardless of whether “appearance of impropriety” is a relevant consideration, Defendants have failed to meet the heavy burden for disqualification set by Georgia precedent.

Respectfully submitted, this 6th day of March, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Motion of Amici Curiae Ethics Experts and Former Federal and Georgia State Prosecutors to File a Supplemental Brief, together with the related Supplemental Brief, using the eFileGA electronic filing system, thereby causing it to be electronically transmitted to counsel for all parties of record.

I further certify that, in compliance with Judge McAfee's Standing Order, a copy of this Motion has been emailed to the Court via the Litigation Manager Cheryl Vortice at Cheryl.vortice@fultoncountyga.gov.

This 6th day of March, 2024.

/s/ Amy Lee Copeland
Amy Lee Copeland