

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA



IN RE:  
SPECIAL PURPOSE GRAND JURY

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Case Number: 2022-EX-00024  
Judge Robert C.I. McBurney

**OPPOSITION TO MOTION TO DISQUALIFY PROSECUTOR**

COMES NOW, the State of Georgia, by and through undersigned counsel for the Fulton County District Attorney's Office, to oppose the meritless "Motion to Disqualify Prosecutor and for Other Relief" filed by Burt Jones. Jones has been notified that he is a potential target of the special purpose grand jury investigation, and consequently has moved this Court to disqualify District Attorney Fani T. Willis in her capacity as legal advisor to the grand jury, Special Prosecutor Nathan Wade, and the entire Fulton County District Attorney's Office based on an apparent misread of the applicable legal standards for disqualification of a prosecuting attorney.

To the contrary, this case presents no basis for the extraordinary relief of disqualification of the District Attorney, or any of her staff. Because 1) Jones has failed to identify any personal interest on behalf of the District Attorney or any other prosecutor that meets the legal criteria for disqualification, and 2) Jones is similarly situated and has been treated identically to each of the fifteen other unofficial "electors" who represented themselves as properly certified electors for the 2020 Presidential election and who received similar target status notification,

Jones cannot meet his burden to justify the disqualification of the District Attorney or Special Prosecutor Wade, or any other requested relief. The motion has no merit and should be denied.

**I. THE MOTION IDENTIFIES NO CONFLICT OF INTEREST, AND THEREFORE NO BASIS FOR DISQUALIFICATION OF THE DISTRICT ATTORNEY**

Jones has moved to disqualify District Attorney Willis, Special Prosecutor Wade, and the entirety of the Fulton County District Attorney's Office based on what he characterizes as political interest stemming from the District Attorney's support for Charlie Bailey, a political opponent of Jones'. Mot. at 4 ("[District Attorney Willis'] involvement is a conflict because her active role in Mr. Bailey's campaign is clearly made in her capacity as Fulton County District Attorney, not as a private citizen."). That position finds no support in the law.

Georgia courts have long recognized that there are two generally accepted grounds for disqualification of a prosecuting attorney. The first such ground is based on a conflict of interest, and the second ground has been described as "forensic misconduct." *Williams v. State*, 258 Ga. 305, 314 (1988); *Whitworth v. State*, 275 Ga. App. 790 (2005) (same). Jones does not advance any argument that forensic misconduct has occurred here. Instead, he speculates that the prosecutors' financial support for Mr. Bailey amounts to a conflict of interest, and consequently influenced Jones' status as a witness and

target of the special purpose grand jury investigation in a non-specified manner.  
Mot. at 4.<sup>1</sup>

Such tenuous allegations of “conflict of interest” based on political affiliation has never provided a basis for disqualification “from interest or relationship.”<sup>2</sup> Disqualified from interest means a “‘personal interest,’ and . . . a [district attorney] is not disqualified by personal interest in a case where he ‘was not acting in his personal or individual character, or for his personal or individual interest, but in his character as an officer of the law specially charged by statute to perform this particular duty.’” *State v. Sutherland*, 190 Ga. App. 606, 607 (1989) (citations omitted) (finding a prosecutor’s potential personal interest in civil litigation unrelated to the criminal charges was insufficient to support disqualification); *see also State v. Davis*, 159 Ga. App. 537, 538 (1981) (prosecutor’s decision not to pursue criminal charges was not a “personal interest” justifying recusal).

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<sup>1</sup> Mr. Bailey initially announced his candidacy for the Democratic Party’s nomination for Attorney General, and it was during the pendency of that campaign that Special Prosecutor Wade donated financially to the Bailey campaign. Mot. at Exh. 2 (documenting January 31, 2021, donation from Nathan Wade to the Bailey for Attorney General Campaign), Mot. at Exh. 3 (documenting June 30, 21, donation to the Bailey for Attorney General Campaign. Special Prosecutor Wade has made no contribution to the Bailey for Lieutenant Governor campaign.

<sup>2</sup> While the motion cites O.C.G.A. § 15-18-5(a) as a basis for his demand for disqualification, the Supreme Court of Georgia has recently noted that statutory provision outlines only the procedure that the Attorney General follows to designate or appoint another prosecuting attorney to handle a prosecution “[w]hen a district attorney’s office is disqualified from interest or relationship.” *Neuman v. State*, 311 Ga. 83, 88 n.6 (2021). The statute itself provides no standard for recusal.













