SC96931

In the Supreme Court of Missouri

State ex rel. Jean Peters-Baker,

Relator,

v.

The Honorable Bryan E. Round,

Respondent.

On Petition for a Writ of Prohibition

Brief of *Amicus Curiae* the Missouri Attorney General

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INTEREST OF *AMICUS CURIAE*

The Attorney General is the "chief legal officer of the State." *State v. Todd*, 433 S.W.2d 550, 554 (Mo. 1968). As the chief legal officer of the State, the Missouri Attorney General is empowered to file an *amicus curiae* brief as a matter of right. Rule 84.05(f)(4).

Although the Attorney General's common-law power is the historical source of all local prosecuting attorneys' authority, at present the Attorney General exercises original or concurrent prosecuting authority only in a limited number of criminal matters. *See*, *e.g.*, Section 287.128, RSMo (violations of the Worker's Compensation Act); Section 27.105, RSMo (violations of the Gambling chapter). The Attorney General also serves as the original prosecuting attorney when appointed by a trial court under Section 56.110, RSMo. *State v. Steffen*, 647 S.W.2d 146, 153 (Mo. App. W.D. 1982).

The Attorney General was appointed to represent the State's interests in the same order that disqualified the Jackson County Prosecuting Attorney's Office. Accordingly, the outcome of this proceeding will impact whether the Attorney General or another prosecutor represents the State's interest in the underlying case. The Attorney General has a strong interest both in the efficient use of his office's resources and in the proper balance between local prosecutors and the Office of the Attorney General.

STATEMENT OF FACTS

On May 5, 2013, Tyron Skinner fired several shots at a house in Jackson County, Missouri, as a result of a disagreement between himself and others at a barbeque the week before. *State v. Skinner*, 494 S.W.3d 591, 592–93 (Mo. App. W.D. 2016). Skinner was charged with unlawful use of a weapon and armed criminal action, and a jury found him guilty of both offenses. Pet. Ex. 4 at 3.[1] The trial court sentenced Skinner to fifteen years' imprisonment on count one, three years' imprisonment on count two, and ordered both counts to be served concurrently. *Id.* Skinner, represented by Jeanette Wolpink, unsuccessfully sought relief on direct appeal. *Skinner*, 494 S.W.3d at 595. During the pendency of the direct appeal, Skinner filed a *pro se* motion for post-conviction relief, and the Jackson County Circuit Court appointed the Missouri State Public Defender to represent him. The post-conviction relief proceeding was stayed until the completion of the direct appeal.

After Skinner's direct appeal, the Jackson County Prosecutor's Office hired Ms. Wolpink. Tr. at 5. When she was hired, the Jackson County Prosecutor's Office issued an office policy that no member of the Jackson County Prosecutor's Office was to have contact with Ms. Wolpink about cases

[1] The Attorney General cites to the record as follows: citations to Prosecutor Peters-Baker's exhibits are "Pet. Ex." except for citations to the hearing transcript, Pet. Ex. 16, which are cited as "Tr."

in which Ms. Wolpink represented the criminal defendant. Tr. at 6. To facilitate this policy, the office distributed a list of cases in which Ms. Wolpink previously represented defendants the Jackson County Prosecutor's Office was prosecuting. *Id*. The list of cases was continuously updated as the Jackson County Prosecutor's Office became aware of additional cases, or as additional cases were filed. *Id*.

Meanwhile, Skinner, now represented by the Missouri State Public Defender System's post-conviction relief unit, filed an amended motion for post-conviction relief. Pet. Ex. 7. Eight months later, Skinner filed a motion asking Respondent to disqualify the entire Jackson County Prosecutor's Office. Pet. Ex. 10. Skinner asserted that Ms. Wolpink and the Jackson County Prosecutor's Office had to be disqualified because Ms. Wolpink represented Skinner on direct appeal, and because Skinner wished to call Ms. Wolpink as a witness in the post-conviction relief hearing. Pet. Ex. 10 at 3–4. Specifically, Skinner wanted Ms. Wolpink to testify about how she obtained a transcript of the preliminary hearing. Pet. Ex. 10 at 3–4; Pet. Ex. 7 at 54–6.

After briefing, Respondent entered an order granting the motion and finding that Ms. Wolpink had "an ongoing duty of loyalty to [Skinner], and that duty is inconsistent with the duties of her current office." Pet. Ex. 13 at 1. Respondent made no findings about the remainder of the Jackson County Prosecutor's Office. Pet. Ex. 13 at 1–2. Nevertheless, Respondent entered an

order disqualifying Ms. Wolpink, disqualifying the entire Jackson County Prosecutor's Office, and appointing the Missouri Attorney General's Office as special prosecutor. *Id*. at 2.

Thereafter, the Jackson County Prosecutor's Office filed a motion to reconsider. Pet. Ex. 14. Respondent held a hearing where a member of the Jackson County Prosecutor's Office testified about the screening process that the Jackson County Prosecutor's Office had implemented. Tr. at 4–7. Respondent also heard argument from both sides. *Id*. at 8–29.

Respondent then stated that he did not "see that there is a risk worth taking" and reaffirmed that the Jackson County Prosecutor's Office would remain disqualified, reasoning that it is "just impossible to know what could happen and even though these screening practices are set up, it's impossible to say that there can't be some way in which there isn't an inadvertent disclosure, innocent as it may be, that could effect [sic] the case." *Id*. at 29. Respondent then entered a written order denying the motion to reconsider. Pet. Ex. 15 at. 1.

ARGUMENT

I. Blanket disqualification of a prosecuting attorney's office is an extreme remedy that should be imposed only in rare and unusual circumstances.

While within its authority, a trial court's disqualification of an entire prosecuting attorney's office is a substantial intrusion on the executive branch. Accordingly, and because it is a drastic remedy, blanket disqualification of an entire office should be imposed by a trial court only when it is the least restrictive means to protect an individual defendant or to protect society's confidence in the justice system.

Analysis

There are only two reasons for a trial court to grant a motion to disqualify: the protection of an individual defendant or the protection of society's belief in the fairness of the justice system. Disqualification of an individual prosecutor is appropriate, and most often arises, when necessary to protect an individual defendant. *See State v. Jones*, 268 S.W. 83, 85–6 (Mo. 1924); s*ee also State v. Burns*, 322 S.W.2d 736, 741–42 (Mo. 1959). Disqualification of an entire prosecutor's office is appropriate when necessary to protect society's belief in the fairness of the judicial system. *See State v. Lemasters*, 456 S.W.3d 416, 422–23 (Mo. banc 2015).

A. Disqualification of an individual prosecutor is appropriate, and most often necessary, to protect an individual defendant.

Disqualification of an individual prosecutor is most often appropriate when necessary to protect an individual defendant. A trial court has two sources of authority to enter an order disqualifying an individual prosecutor: the principle that a prosecutor may not participate in a case in which he or she is interested, and the trial court's inherent authority to supervise the proceedings before the court.

It is a long-standing rule that a prosecutor may not participate in a case in which he or she has a personal interest. *See, e.g., State v. Moxley*, 102 Mo. 374 (1890), *citing* R.S. 1889, § 642 (now codified at Section 56.110, RSMo.). This rule is designed to protect individual defendants from a prosecutor's conflict. For instance, in *Jones*, a prosecutor charged a defendant with driving while intoxicated for events that included the defendant driving into the prosecutor's car. *Jones*, 268 S.W. at 84. This Court held that the prosecutor should have been disqualified because he had a personal interest in the case. *Id*. This Court explained that the purpose of the interest statute is to prevent prosecutors from participating in cases in which they have an interest because it is a "prostitution of the criminal process of the state, and a reproach to the administration of justice" for a prosecutor to institute

"criminal proceedings against a citizen in a case in which [the prosecutor] is interested." *Jones*, 268 S.W. at 86. The Missouri Court of Appeals has explained that the rule only requires disqualification of the prosecutor "when he has a personal interest of a nature which might preclude his according the defendant the fair treatment to which he is entitled." *State v. Stewart*, 869 S.W.2d 86, 90 (Mo. App. W.D.1993).

In addition to cases involving a personal interest, a trial court has inherent authority to disqualify a prosecutor who is burdened with other conflicts of interest. This inherent authority derives from a trial court's "duty to maintain the integrity of the judicial system." *State ex rel. Horn v. Ray*, 325 S.W.3d 500, 511 (Mo. App. E.D. 2010); *see also State ex inf. Fuchs v. Foote*, 903 S.W.2d 535, 537 (Mo. banc 1995), *abrogated on other grounds by State v. Olvera*, 969 S.W.2d 715, 716 n. 1 (Mo. banc 1998). This duty to maintain the integrity of the judicial system is reflected in the Rules of Professional Responsibility, which prohibit a prosecutor from trying a defendant if the prosecutor previously represented the defendant in the same or a similar criminal matter. *See Lemasters*, 456 S.W.3d at 419–20. In such cases, a prosecutor's previous privileged relationship with the defendant endangers the defendant's right to a fair trial, as the prosecutor may have had access to privileged information from the defendant. So, even though the source of the authority to disqualify is different, the general purpose of

disqualification is not; disqualification of an individual prosecutor to protect a defendant from that prosecutor's conflict.

B. Blanket disqualification of a prosecuting attorney's office is appropriate in some circumstances to protect society's confidence in the justice system.

In most circumstances, a trial court should only disqualify an entire prosecuting attorney's office when blanket disqualification is necessary to protect society's confidence in the judicial system. *Lemasters* and its progenitors articulate this concept by their implementation of a burden-shifting analysis. First, a trial court looks to see if there is an appearance of impropriety. *Lemasters*, 456 S.W.3d at 424. It is the movant's burden to show that there are "facts that—if known to a reasonable person—would create an appearance of impropriety and cast doubt on the fairness of the trial...." *Id*. Then the burden shifts back to the State to show that there are "countervailing facts to dispel that appearance and restore confidence in the fairness of the trial." *Id*. If the State demonstrates these countervailing facts—such as a thorough and effective screening process—then blanket disqualification is not appropriate. *Id*. at 424–25.

In some circumstances, it may be necessary for a trial court to disqualify an entire prosecuting attorney's office in order to effectuate an order to disqualify an individual prosecutor. For instance, if the local

prosecutor to be disqualified is the elected prosecutor, then disqualification of the entire office is appropriate. *See, e.g., State ex rel. Burns v. Richards*, 248 S.W.3d 603 (Mo. banc 2008). Similarly, disqualification of the entire prosecuting attorney's office may[2] be necessary when many of the prosecutors within the office are implicated in the appearance of impropriety.[3] *State v. Ross*, 829 S.W.2d 948, 949–950 (Mo. banc 1992); *State ex rel. Winkler v. Goldman*, 485 S.W.3d 783, 786 (Mo. App. E.D. 2016).

But these exceptions fit within the policy framework discussed in *Lemasters*. For instance, this Court explained that "there *may* be cases in which proof of a thorough and effective screening process ... will not be sufficient to prevent a reasonable person from concluding, based upon all the facts and circumstances, that an appearance of impropriety casts doubt on the fairness of a trial." *Lemasters*, 456 S.W.3d at 425 (emphasis added). For instance, a screening process may not dispel the appearance of impropriety where the conflicted prosecutor is the locally-elected prosecutor—such as in

[2] Disqualification is not necessary when there is an appearance of impropriety that is "dispelled" by "countervailing facts." *Lemasters*, 456 S.W.3d at 425.

[3] There may be rare and unusual circumstances where disqualification of an individual prosecutor is necessary to protect the public's confidence in the justice system. In such circumstances, other mechanisms—such as disciplinary proceedings under Rule 4—may also be used to restore society's faith in the justice system.

Ross—or where many assistant prosecuting attorneys are implicated—such as in *Winkler*.

C. Because blanket disqualification substantially intrudes on the executive branch, it should be ordered only when it is the least restrictive means to protect an individual defendant or to protect society's confidence in the justice system.

Blanket disqualification is a significant judicial intrusion into the executive branch. Elected prosecutors exercise significant discretion and authority and a check on this power comes from the People of Missouri through direct elections. Disqualification of an individual assistant prosecuting attorney, while intrusive, does not raise the same concerns because the matter ultimately remains within the same office, supervised by the same locally elected prosecuting attorney. But when an entire prosecuting attorney's office is disqualified, then the replacement prosecutor is answerable to a different—or in the Attorney General's case, a larger—group of citizens. This Court has recognized the benefit of a close connection between the electorate and the prosecutor. *See, e.g., State v. Harrington*, 534 S.W.2d 44, 49 (Mo. banc 1976) (banning private prosecutors). Blanket disqualification of a local prosecuting attorney's office is a significant

disruption of that close connection. Such substantial interference ought to be limited to only the most serious circumstances.

Out of respect for the unique position that local prosecuting attorneys occupy in the justice system, the Attorney General and the Missouri Office of Prosecution Services have promulgated a policy defining the situations where it is most appropriate for the Attorney General to serve as special prosecutor. App. at A7–A9.[4] In addition to promoting comity between the Attorney General and local prosecuting attorneys, the policy also promotes the effective use of the Attorney General's limited resources.

While it is true that the Attorney General's Office filed an entry of appearance, Respondent and Skinner were mistaken when they considered the entry to be an expression of policy. Tr. at 17–18. Instead, the entry of appearance was filed out of respect for Respondent's order directing the Attorney General to appear, and in order for the Attorney General to receive notification about actions taken in the case.[5] It continues to be the Attorney General's view that blanket disqualification of a locally elected prosecutor's

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[4] Although this policy was not admitted into evidence, the policy was in the possession of Respondent, Relator, and counsel for Skinner at the time of the hearing. Tr. at 17. At the time of adoption, the policy was also provided to the Clerk of this Court. App. at A7. A copy of the policy has been included in the appendix for the Court's use.

[5] With the adoption of the Case.Net system, electronic notification has become standard. Paper notifications are no longer used by most circuit courts.

entire office is an intrusive remedy that should be employed sparingly in rare and unusual circumstances.

This Court's cases recognize the drastic nature of blanket disqualification, and this Court has limited that remedy to circumstances where blanket disqualification is the least restrictive available remedy. Thus, for example, as discussed in *Lemasters*, this Court requires a court to consider whether there are "countervailing facts" that would "dispel" any appearance of impropriety. *Lemasters*, 456 S.W.3d at 424. Moreover, this Court has implied that a "thorough and effective screening process" will usually be sufficient to dispel any appearance of impropriety. *Id.* at 425 ("....There *may* be cases in which proof of a thorough and effective screening process ... will not be sufficient to prevent a reasonable person from concluding ... that and appearance of impropriety" exists.) (emphasis added). This Court's implicit statement that a "thorough and effective screening process" will usually be sufficient is an implicit recognition that trial courts should order blanket disqualification only when it is the least restrictive means to protect an individual defendant or to protect society's belief in the justice system.

This Court ought to make *Lemasters*' implicit statement explicit in this case. In the years since *Lemasters* was decided, it has become more common for litigants to request blanket disqualification of the local prosecuting

attorney's office. For instance, some defendants have sought blanket disqualification even when *no* prosecutor has been disqualified. *See, e.g., State v. Clemons*, 22911-01758B-01; *State v. Jennings*, 07H6-CR00667-02; *State v. William Henry*, 15BT-CR00680. And other defendants have begun requesting blanket disqualification based on the fact that other defendants have requested blanket disqualification. *See, e.g., State v. Verba*, 17CF-CR01294 (Mot. filed May 2, 2018). In a few cases—those with rare and extraordinary circumstances—blanket disqualification has been necessary. *See Goldman*, 485 S.W.3d at 786.

As these motions become more common, there is a danger that litigants and courts view motions to disqualify as routine, which in turn could lead to a relaxed standard. That is what appears to have happened in this case, when, during a discussion on whether the State would be prejudiced by blanket disqualification, Respondent asked "What's the big deal?" Tr. at 8 This Court should use this case to provide further guidance to litigants and to the lower courts and to reaffirm that blanket disqualification is an significant intrusion that should be employed only when it is the least restrictive means to protect and individual defendant or society's trust in the justice system.

II. Respondent abused his discretion when he disqualified the entire Jackson County Prosecutor's Office, because the office's screening policy dispelled any appearance of impropriety.

In this case, the Jackson County Prosecutor's Office identified the potential conflict, activated its screening process, and implemented an ethical wall. It appears that Relator took these steps *before* any motions were filed. Relator's actions were consistent with her obligations as a minister of justice. *See* Rule 4–3.8, Comment 1. Nevertheless, Respondent entered an order for blanket disqualification. Respondent abused his discretion because he failed to apply *Lemasters*' standard of review. Moreover, disqualification is not warranted under the *Lemasters*' standard.

Standard of Review

A trial court's ruling disqualifying a prosecuting attorney is reviewed for an abuse of discretion. *State v. Lemasters*, 456 S.W.3d at 420. When a trial court erroneously disqualifies the prosecuting attorney, prohibition is appropriate. *State ex rel. Horn v. Ray*, 138 S.W.3d 729, 731 (Mo. App. E.D. 2002).

Analysis

Both of Respondent's orders for blanket disqualification of the Jackson County Prosecutor's Office were improvidently granted in that Respondent failed to follow the correct legal standard. Under *Lemasters* and its

progenitors, a trial court should first inquire if there is an appearance of impropriety. *Lemasters*, 456 S.W.3d at 424. It is the movant's burden to show that there are "facts that—if known to a reasonable person—would create an appearance of impropriety and cast doubt on the fairness of the trial...." *Id*. Then the burden shifts back to the State to show that there are "countervailing facts to dispel that appearance and restore confidence in the fairness of the trial." *Id*. If the State demonstrates these countervailing facts—such as a thorough and effective screening process—then blanket disqualification is not appropriate. *Id*. at 424–25.

In this case, Respondent applied the wrong legal standard when he issued his initial order for blanket disqualification of the Jackson County Prosecutor's Office. Respondent's initial order found that Ms. Wolpink's duty of loyalty to her client was "inconsistent with the duties of her current office" and that the entire Jackson County Prosecuting Attorney's Office should be disqualified. Pet. Ex. 13 at 1–2. In support of his order, Respondent cited to his "sound discretion" and to Section 56.110.1, RSMo. Respondent's initial order is deficient in three key respects.

First, nothing in the record supports an inference that Ms. Wolpink was ever assigned to represent the State in Skinner's motion for post-conviction relief. Thus, Section 56.110, RSMo. cannot be the basis for

Respondent's order because that provision only empowers a trial court to disqualify a particular prosecutor.

Second, Respondent's order only made findings about Ms. Wolpink's involvement in the case, but Respondent nevertheless disqualified the entire Jackson County Prosecutor's Office. Findings about Ms. Wolpink are not automatically imputed to the entire Jackson County Prosecutor's Office. *Lemasters*, 456 S.W.3d at 421–22. It was an error of law for Respondent to disqualify the entire Jackson County Prosecutor's Office without making findings about the office.

And *third*, Respondent's reliance on Section 56.110.1, RSMo., is misplaced because that provision refers to a *personal* interest. *Stewart*, 869 S.W.2d 86, 90 (Mo. App. W.D. 1993) ("Disqualification of a prosecutor is only called for when he has a *personal* interest of a nature which might preclude his according the defendant the fair treatment to which he is entitled.") (emphasis added). By its very definition, a personal interest that would require disqualification of a particular prosecutor under Section 56.110.1, RSMo., cannot automatically be imputed to the remainder of the office.

Respondent also applied the wrong legal standard when he issued his second order for blanket disqualification of the Jackson County Prosecutor's Office. Respondent's second order merely denied the motion to reconsider (Pet. Ex. 15), but Respondent's analysis may be found in the transcript of the

hearing. At the hearing, Relator admitted that Ms. Wolpink could not represent the State's interests and argued that *Lemasters* governed Respondent's analysis. Tr. at 8. Respondent's initial inquiry focused on whether there would be prejudice to the State's interest if the entire office was disqualified. *Id*. at 8–10. Respondent also inquired about any potential prejudice to the Jackson County Prosecutor's Office, or to the Missouri Attorney General. *Id*. at 10. Although these are valid policy considerations underlying the standard, these questions do not relate to the application of the *Lemasters* test. Skinner argued to Respondent that *Lemasters* did not remove the trial court's ability to exercise discretion. *See, e.g., Id*. at 23. Ultimately, Respondent concluded that he would disqualify the entire Jackson County Prosecutor's Office because:

> It's just impossible to know what could happen and even though these screening practices are set up, it's impossible to say that there can't be some way in which there isn't and [sic] inadvertent disclosure, innocent as it may be, that could effect [sic] the case. And that's going to be my ruling, I'm going to deny your motion.

Tr. at 28.

While Skinner correctly pointed out that *Lemasters* did not strip a trial court of discretion, a trial court's discretion is not unfettered. A trial court's power to disqualify a particular prosecuting attorney derives from either Section 56.110, RSMo., or the court's inherent authority to supervise and regulate the proceedings. *State ex inf. Fuchs v. Foote*, 903 S.W.2d 535, 537

(Mo. banc 1995), *abrogated on other grounds by State v. Olvera*, 969 S.W.2d 715, 716 n. 1 (Mo. banc 1998). But a trial court's ability to exercise that power is governed by this Court's holding in *Lemasters*. Accordingly, Respondent should have followed the *Lemasters* standard when deciding whether to issue an order for the blanket disqualification of the Jackson County Prosecutor's Office. The need for Respondent to follow *Lemasters* is heightened by the similarity between the facts of this case and the facts of *Lemasters*.

Moreover, under *Lemasters*, it was an abuse of discretion to disqualify the entire Jackson County Prosecutor's Office. There were no "facts that—if known to a reasonable person—would create an appearance of impropriety and cast doubt on the fairness of the trial...." *Lemasters*, 456 S.W.3d at 424. The primary fact identified by Respondent and Skinner was that Ms. Wolpink represented Skinner on direct appeal and was subsequently hired as a Jackson County Assistant Prosecuting Attorney. Tr. at 12. Although this gave Respondent "grave concerns," *Lemasters* asks the trial court to consider the reasonable person's beliefs, not the trial court's beliefs. A reasonable person with knowledge of all the facts and circumstances would not find Ms. Wolpink's employment at the Jackson County Prosecutor's Office to be so offensive that they would "cast doubt on the fairness" of the post-conviction relief hearing. Skinner also identified Ms. Wolpink as a potential witness. *Id.* at 14, 24. But the fact that Ms. Wolpink may be called to testify about the

process of obtaining a transcript,[6] or potentially called as a rebuttal witness, does not change this analysis. These type of incidental connections would not cause a reasonable person with knowledge of all the facts and circumstances to doubt the fairness of the proceeding.

Even if Ms. Wolpink's employment at the Jackson County Prosecutor's Office did create an appearance of impropriety, blanket disqualification is still not necessary because the Jackson County Prosecutor's "thorough and effective screening process" is a "countervailing fact[]" that would "dispel" any appearance of impropriety. *Lemasters*, 456 S.W.3d at 424. Implicit in *Lemasters*' holding is the notion that a "thorough and effective screening process" will be sufficient to remove any appearance of impropriety in all but the rare and extraordinary case. *Id*. This is not a rare and extraordinary case.

The Jackson County Prosecutor's Office implemented a screening policy when Ms. Wolpink was hired. The testimony at the hearing indicated that the Jackson County Prosecutor's Office issued an office policy that no member of the Jackson County Prosecutor's Office was to have contact with Ms. Wolpink about cases where Ms. Wolpink represented the defendant. Tr. at 6. To facilitate this policy, the Office distributed a list of cases where Ms.

[6] At the hearing, the litigants discussed the possibility that the court reporter could be called to testify about the process of obtaining a preliminary hearing transcript. Tr. at 25. Accordingly, Ms. Wolpink does not appear to be a necessary witness. In the alternative, the trial court could take judicial notice of this process.

Wolpink previously represented people the Jackson County Prosecutor's Office was prosecuting. *Id*. The list of cases was continuously updated as the Jackson County Prosecutor's Office became aware of additional cases, or as additional cases were filed. *Id*. The screening policy was followed in this case, and the attorney assigned to Skinner's case had no contact with Ms. Wolpink. *Id*.

This "thorough and effective screening process" was more than sufficient to dispel any appearance of impropriety. In fact, neither Respondent nor Skinner had any complaints about the scope or implementation of the screening policy. Instead, Respondent dismissed the existence of the screening procedure based on speculation that the screening process *might* fail. Tr. at 28. But this Court's cases do not demand the elimination of any possible risk. Instead, this Court has only required "countervailing facts," such as the use of a screening process that could "dispel" any appearance of impropriety. By requiring the Jackson County Prosecutor's Office to create a process that made "inadvertent disclosure" "impossible" (*Id*.), Respondent deviated from the *Lemasters* standard, and thereby abused his discretion.

Respondent's order—if it becomes precedent—has real consequences for the efficient administration of justice. It is common for attorneys to transition between both sides of the criminal defense work. If blanket disqualification

were necessary in every case, the prosecutors—including the Attorney General's Office—would rapidly become overburdened. And the People's direct connection to their elected prosecutors would be significantly undermined.

CONCLUSION

The preliminary writ should be made permanent.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the attached brief complies with the limitations contained in Supreme Court Rule 84.06, and contains 4,796 words as calculated pursuant to the requirements of Supreme Court Rule 84.06, as determined by Microsoft Word 2010 software.

/s/ *Gregory M. Goodwin*
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