

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA, :
 :
 Plaintiff, :
 :
 v. : CASE NO. 23SC188947
 :
 DONALD JOHN TRUMP, : Judge: Scott McAfee
 :
 Defendant. :

**PRESIDENT TRUMP’S REPLY TO STATE’S OPPOSITION TO
DEFENDANTS ROMAN, TRUMP, AND CHEELEY’S MOTIONS TO
DISMISS AND TO DISQUALIFY THE DISTRICT ATTORNEY**

President Trump files this reply to the State’s response.¹ Specifically, he replies in opposition to section 1-C of the response on pages 17-18.

1. The State first claims that the DA’s extrajudicial public comments in her well-publicized MLK holiday weekend church speech “neither reference this case nor these defendants” Nothing could be further from the truth. The DA said in pertinent part:

“Why does [Fulton County] Commissioner [Bridget] Thorne, and **so many others**, question my decision in special counsel? Lord, your flawed, hard-headed and imperfect child--I’m a little ... confused. I appointed three special counsel [in this very case, which the DA now claims she did not reference], as is my right to do. Paid them all the same hourly rate. **They** only attack one. I hired one white woman, a

¹ In support of his “motion to adopt and supplement Roman’s motion,” President Trump also adopts the arguments made in (1) defendant Shafer’s February 5 filing titled: “motion to disqualify the District Attorney and [her] office from further prosecution of this action and for an evidentiary hearing” and (2) defendant Clark’s February 5 filing titled: “motion to adopt and supplement [co-defendants’] motions to dismiss or disqualify.”

good personal friend and great lawyer. A superstar, I tell you, I hired one white man, brilliant, my friend and a great lawyer. And I hired one **black** man. Another superstar a great friend and a great lawyer. Oh, Lord, **they**'re going to be mad when I call **them** out on this nonsense. First thing **they** say. Oh, she going to **play the race card** now? But no. God, isn't it **them** who's **playing the race card** when **they** only question one? Isn't it **them** playing the **race card** when **they** constantly think I need someone from some other jurisdiction in some other state to tell me how to do a job I've been doing almost 30 years. God why don't **they** look at **themselves** and just be honest? I mean, can't **they** keep it a hundred with **themselves**, right? Come on. Why are **they** so surprised that a diverse team that I assembled, your child can accomplish extraordinary things? Yes. God, wasn't it **them** that attacked this lawyer of impeccable credentials? The **black** man I chose has been a judge more than ten years, huh? Run a private practice. More than 20 represented businesses and civil litigation. I ain't done. Y'all [he] served as a prosecutor, a criminal defense lawyer, special assistant attorney general one chief Justice Robert Benham award from the state bar of Georgia. You know, **they** ain't just giving this to **black** men. How come God, the same **black** man I hired was acceptable when a Republican in another county hired him and paid him twice the rate? "Oh, y'all ain't hear me. All right. In another county, the elected official has the authority to pay him twice the rate. Why is the **white male Republicans** judgment good enough? But the **black female Democrats** Not yet." (emphasis added).²

See Atlanta News First article, which includes a transcription of DA Willis' speech, at <https://www.atlantanewsfirst.com/2024/01/15/read-fulton-county-da-fani-willis-improper-relationship-charges/>.

The speech was six days after Roman filed his motion on January 8, 2024.

The speech was two days after the motion was brought up in open court on January

² Of course, the DA diffidently "neglected" to mention that she only had an intimate, personal relationship with the person she referred to as the "black man" (Nathan Wade) and not the "white women" (Anna Cross) or the "white man" (John Floyd), when she wrongfully accused defense counsel of "playing the race card."

12, 2024, and this Court announced that an evidentiary hearing would be scheduled in February. The speech was during MLK holiday weekend. Commissioner Thorne in minor part, but first and foremost the defendants, through defense counsel (specifically Roman's motion and undersigned lead counsel's statements in open court on behalf of President Trump), had led the exposure of, and the outcry about, the inappropriate personal relationship between the DA and Special Assistant DA Wade, and the DA's improper hiring of Wade. Thus, who else would the DA be repeatedly and predominantly referring to in her use of the words "they" and "them" and "themselves," other than the defendants via disparagement and condemnation of their defense counsel? Those references are just as clear as the fact that her unnamed reference to the hired "black man" could only be Wade. From the day of the speech forward, not a single reporter, journalist, or media outlet has expressed the slightest bit of doubt that the DA's racially invective comments were in direct response to Roman's allegations in his court filing and were directed at the defendants and defense counsel.^{3 4} Stated succinctly, the DA's position in its filed

³ As this Court is aware, even before the speech, the DA, in private emails to defense counsel on January 10, 2024, had already gratuitously and falsely accused defense counsel in general, and undersigned lead counsel in particular, of racism.

⁴ As one prominent commentator, Elie Honig, a former federal and state prosecutor, insightfully noted in a published article in New York Magazine's Intelligencer:

After these allegations surfaced, Willis somehow made it worse still. Prosecutors love to proclaim that "we do our talking in court" (preferably accompanied by a dramatic lowering of the sunglasses over the eyes). This is more than a catchphrase. It's an affirmation of the core duty to protect the defendant's liberty

response is preposterous and disingenuous at best, and an outright lie at worst. It is an after-the-fact futile attempt to mislead this Court.⁵

2. The State claims President Trump’s motion to adopt and supplement “rais[es] vague and plaintive cries of Due Process.” Nonsense. President Trump does not even mention due process in his motion. Just another instance of misrepresentations designed to delude this Court.

3. For some unknown reason, the State’s response talks about selective prosecution, voir dire, and change of venue. The State must be confused. The

interests and the integrity of our criminal process. Indeed, under the Georgia Rules of Professional Conduct (and pretty much every other professional code), prosecutors must “refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused.”

Yet Willis did just that. Days after Trump’s co-defendant filed the motion relating to Wade, Willis responded not in a court filing but in a speech from the pulpit of a historic Black church on Martin Luther King Jr. Day with the cameras rolling. Willis told the assembled congregation (and the general public) that the defendants had raised allegations about Wade — criminal defendants are entitled to make motions, by the way — *because of Wade’s race*.

These public comments by the district attorney are anathema to prosecutorial ethics and fair practice. Willis, who is enormously popular in Fulton County — she received over 71 percent of the Democratic primary vote in 2020, then ran unopposed in the general election — publicly calls the defense teams in her highest-profile case racist. What could outrage a potential jury pool more than that? Various judges have slapped pretrial gag orders on Trump in his other cases to prevent him from making inflammatory public statements outside of court that could prejudice the jury pool. Now Willis has done exactly that.

See Fani Willis Has Problems (Upon Problems), at <https://nymag.com/intelligencer/2024/02/fani-willis-has-problems-upon-problems.html>.

⁵ Undersigned lead counsel can only hope that at the scheduled evidentiary hearing, the DA will be required to explain in testimony under oath who else she was referring to as “playing the race card” if not first and foremost the defendants and defense counsel.

threshold issues are the disqualification of the DA and the dismissal of the case because of her prosecutorial misconduct. Maybe what the DA expects this Court to do is to acquiesce in, and accept at face value, her proclamation that she is unlike all other prosecutors. That this DA is somehow something special. That this DA must be treated differently. That the ethical rules, and laws, simply don't apply to this DA. That this DA alone can make prejudicial out-of-court racially partisan and invidious statements about this case, defense counsel, and the defendants whenever she pleases, in clear violation of her ethical duties as a prosecutor, and therefore that this Court is powerless to punish her by dismissal of the case and her disqualification, and instead may only seek to undo the substantial prejudice she creates during voir dire. Such hubris; such self-consequence.

The State knows better. The State knows that improper extrajudicial public comments by a prosecutor in the State of Georgia may be dealt with by disqualification. In *Williams v. State*, 258 Ga. 305 (1988), the Supreme Court was asked to overturn a conviction because allegedly unethical extrajudicial statements by the prosecutor should have required his disqualification. After discussing the ethical prohibitions against making extrajudicial statement, the Court found that the prosecutor's public comment did not require disqualification. *Id.* at 313-314. But in so holding, the Court affirmatively signaled that if the improper out-of-court remarks by a prosecutor were "egregious," disqualification would be a remedy. *Id.*

at 314; *see State of Vermont v. Hohman*, 138 Vt. 502, 505-6, 420 A.2d 852, 854-5 (1980) (overruled on other grounds) (trial court erred in denying motion to disqualify prosecutor because of ethical impropriety of extrajudicial statement but reversal of conviction not required).

Here, the DA's conduct was indeed egregious. It was undeniably unethical. Her MLK holiday "church speech" intentionally and in bad faith injected race, religion, and politics into the case and stoked racial animus by, among other statements, asking God why defense counsel and the defendants were questioning her conduct in hiring a Black man but not his White counterparts, and why the judgment of a Black female Democrat wasn't as good as White male Republicans. She did so to publicly denounce and rebuke defense counsel and the defendants for having the audacity to challenge her personal and professional conduct, and to defend her public and political reputation against the allegations Roman made in his court filing. The DA's provocative and inflammatory extrajudicial racial comments, made in a widely publicized speech at a historical Black church in Atlanta, and cloaked in repeated references to God, catalyze the quintessential "appearance of impropriety" regarding her prosecutorial judgment and conduct.

As everyone involved in this case well knows, this is not the first time in this matter that the DA's incredibly poor judgment created an "appearance of impropriety" resulting in her disqualification. Judge McBurney took her to task

during the special grand jury's investigation of now Lieutenant Governor Burt Jones when the DA held a fundraiser for his opponent for that position. Judge McBurney, noting "[t]he optics are horrific," called it a "what-were-you-thinking moment."

The present case is not a "what-were-you-thinking moment." It is far worse. The DA utterly failed to learn any lesson about unethical behavior from that incident. Instead, DA Willis made a calculated and purposeful choice here to disregard her special ethical responsibilities as a prosecutor because she conceived it was in her own best interest to do so. She must not be given a third opportunity to flagrantly flout the rules to serve her own self-interest to the prejudice of the defendants. Her egregious misconduct demands the dismissal of the indictment, the DA's disqualification, as well as the other relief prayed for in the motions of Roman, Shafer and President Trump.

Respectfully submitted,

/s/ Steven H. Sadow

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CERTIFICATE OF SERVICE

I hereby certify I electronically filed the foregoing document with the Clerk of Court using Odyssey Efile Georgia electronic filing system that will send notification of such filing to all parties of record.

This 7th day of February, 2024.

/s/Steven H. Sadow
STEVEN H. SADOW