

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

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v.

DONALD JOHN TRUMP,
RUDOLPH WILLIAM LOUIS GIULIANI,
JOHN CHARLES EASTMAN,
MARK RANDALL MEADOWS,
KENNETH JOHN CHESEBRO,
JEFFREY BOSSERT CLARK,
JENNA LYNN ELLIS,
RAY STALLINGS SMITH III,
ROBERT DAVID CHEELEY,
MICHAEL A. ROMAN,
DAVID JAMES SHAFER,
SHAWN MICAH TRESHER STILL,
STEPHEN CLIFFGARD LEE,
HARRISON WILLIAM PRESCOTT FLOYD,
TREVIAN C. KUTTI,
SIDNEY KATHERINE POWELL,
CATHLEEN ALSTON LATHAM,
SCOTT GRAHAM HALL,
MISTY HAMPTON a/k/a EMILY MISTY HAYES
Defendants.

CASE NO.

23SC188947

**STATE'S RESPONSE IN OPPOSITION TO REOPENING EVIDENCE AND MOTION TO
STRIKE THE PROPOSED TESTIMONY OF CINDI YEAGER AND MANNY ARORA**

The State of Georgia files this Response in Opposition to Reopening Evidence as it pertains to Defendant Cathleen Latham's and David Shafer's Notices of Proposed Testimony of Cindi Yeager and Manny Arora, respectfully showing the Court as follows:

The law fundamentally favors finality. It does not allow for endless re-hearings and reopening of evidence based simply upon regret about prior strategy, consistently unsubstantiated positions or political incentive. This Court unambiguously set the March 1, 2024, hearing as the date that the evidence was closed.

The Court's directive notwithstanding, and subsequent to the conclusion of an exhaustive, multi-week hearing, Defendants David Shafer and Cathleen Latham filed late on March 4, 2024, notices of proposed testimony of attorneys Cindi Yeager and Manny Arora regarding the various motions to disqualify the District Attorney of Fulton County, in thinly veiled attempts to request reopening of the evidence. The State respectfully requests this Court reject the notices and any direct or implied request to reopen the evidence. These assertions, pertain to matters not germane to the determinations that remain before this Court.

To convince a court to allow new evidence, the movant must convince the judge that its failure to present the evidence in a timely manner was excusable. *See Dominiak v. Camden Tel. & Tel. Co.*, 205 Ga. App. 620, 622(1) (422 S.E.2d 887) (1992) ("In this case, the refusal to find that the circumstances showed excusable neglect did not constitute an abuse of discretion"); *Browner v. Martin & Jones Produce Co.*, 116 Ga. App. 324, 325(2) (157 S.E.2d 514) (1967) ("The record does not show that the plaintiff had not had a reasonable opportunity to make out her case prior to the judgment"). On January 8, 2023, this matter was brought to the Court's attention by defense counsel. The Court then scheduled an evidentiary hearing to commence on February 15, 2023. The parties had 6 weeks to prepare for the hearing they requested, and an additional 12 days in between the start and end of witness testimony.

Clearly, in the case at hand there is no legitimate excuse as to the untimeliness of the proposed testimony submitted by defendants. They are nothing more than additional examples of defendants' attempts to belabor focus on irrelevant and collateral matters, despite extensive hearings covering them. The proposed testimony may also be seen as an attempt to try this case in the public eye and to further prejudice, embarrass, and harass the District Attorney using inadmissible and incredible assertions motivated by personal and political gain. As the notice

plainly indicates, both Attorney Yeager and Attorney Arora had knowledge of the alleged information claimed to be relevant to the motion to disqualify since as early as September of 2023. It is only now before this Court with no explanation in either proposal for the delays.

Additionally, the motive and credibility of these proposed witnesses is questionable in substance and in timing. Attorney Arora represented Defendant Kenneth John Chesebro in this case, who pled guilty to a serious felony offense stemming from this indictment. Attorney Arora recently publicly stated in the *New Yorker* magazine, published on February 14, 2024, that he had knowledge of the allegations behind Defendant Roman's motion to disqualify as early as Fall 2023, but he never brought them to the Court's attention, and he advised his client to enter a felony guilty plea. Attorney Yeager is employed as second-in-command to Cobb County District Attorney Flynn Brody, whose reelection is currently being challenged by a Deputy District Attorney of the Fulton County District Attorney's Office. The timing of Attorney Yeager's proposed testimony is not coincidental. Neither of these proposed witnesses ever testified at any of the hearings in this matter, despite counsel for Defendant Shafer and Defendant Latham having every opportunity to speak with them, subpoena them, and question them before the Court while the evidence was still open.

At best, the last minute, self-serving barrage, disguised as a notice of proposed testimony is cumulative, impermissible hearsay under O.C.G.A. § 24-6-613 and O.C.G.A. § 24-8-801(D)(1)(A), as they are clearly attempts by the defendants to bypass the rules of evidence as it relates to the use of extrinsic evidence of a "*prior inconsistent statement.*"

This "proffer" demeans the process. Rather than responding in kind and addressing each outrageous allegation raised, and given the Court's order closing the evidence, at this juncture, and without waiving or forfeiting any right or argument the State may possess, the State opposes the inauthentic motions to reopen evidence disguised as notices and moves to strike the proposed

testimony they contain without further evidence or argument. Nothing provided in the notice has any bearing on the legal question that remains before this Court: whether the District Attorney has any personal interest or stake in the outcome of this case. These motions seek to circumvent this Court's established deadlines and controlling law all while attacking the defendants' own, "star" witness, who's credibility they thoroughly attacked.

WHEREFORE, the State respectfully prays to this Court that:

1. It enter a pre-trial order striking from the clerk's record the proposed testimony of Cindi Yeager;
2. It enter a pre-trial order striking from the clerk's record the proposed testimony of Manny Arora;
3. It deny defense counsels' requests to reopen the evidence.

This 5th day of March, 2024.

Fani T. Willis,
District Attorney
Atlanta Judicial Circuit

/s/ Adam Abbate
GA Bar #516126
Chief Deputy District Attorney
Atlanta Judicial Circuit

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this STATE'S RESPONSE IN OPPOSITION TO REOPENING EVIDENCE AND MOTION TO STRIKE THE PROPOSED TESTIMONY OF CINDY YEAGER AND MANNY ARORA, upon all counsel who have entered appearances as counsel of record in this matter via the Fulton County e-filing system.

This 5th day of March 2024,

FANI T. WILLIS
District Attorney
Atlanta Judicial Circuit

/s/ Adam Abbate
GA Bar #516126
Chief Deputy District Attorney
Atlanta Judicial Circuit