SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

THE PEOPLE OF THE STATE OF NEW YORK -against- DONALD J. TRUMP, Defendant.	PEOPLE'S OPPOSITION TO DEFENDANT'S MOTION FOR RECUSAL Ind. No. 71543-23

INTRODUCTION

When considering a motion to disqualify, judges must balance two critically important obligations. First is the duty of impartiality, both actual and perceived. Second is the obligation that judges hear the cases to which they have been assigned and not to recuse absent a true need to do so. The duty of impartiality is critical to assure a fair trial with public confidence that the outcome is based only on the facts and the law. The obligation to reject unsupported recusal motions is just as critical because it deters parties from judge-shopping that can undermine the perception of fairness in the justice system. Indeed, "[a] judge is as much obliged not to recuse himself when it is not called for as he is obliged to when it is." *In re Drexel Burnham Lambert Inc.*, 861 F.2d 1307, 1312 (2d Cir. 1988).

Defendant presents no arguments that fairly raise any actual or perceived conflict of interest or preconceived bias. The motion could be denied on that basis alone. But the Court should also deny the motion in light of the Court's obligation to hear its assigned cases absent a true need to recuse. As noted below, defendant has a prolific history of baselessly accusing state and federal judges around the country of bias—including "[t]he whole New York Judicial System," which defendant has criticized for having judges "just as bad or, believe it or not, worse!" than this Court. *See* Ex. 1. Recusal would facilitate an apparent effort by defendant to

select his own judge and would encourage other litigants to adopt the same approach. The motion to recuse should be denied.

ARGUMENT

I. The Court's daughter's employment does not provide any basis for recusal.

1. Defendant first argues that recusal is required because the Court's daughter is President and Chief Operating Officer of a company, Authentic Campaigns, that purportedly "stands to financially benefit from decisions the Court makes in this case." Def.'s Mem. 4. According to defendant, the Court's daughter may "profit from negative rulings or a conviction of President Trump" because the company where she has a leadership role has done work for elected Democratic officials and has "publicly taken positions against President Trump." *Id.* at 4-5. But defendant's claim of a financial interest is so "remote, speculative, 'possible or contingent,'" *Kilmer v. Moseman*, 124 A.D.3d 1195, 1198 (3d Dep't 2015), that the Court's recusal would not be warranted here.

Recusal is required "only where there exists a direct, personal, substantial or pecuniary interest in reaching a particular conclusion." *People v. Alomar*, 93 N.Y.2d 239, 246 (1999). There must be concrete proof of such a direct interest; "speculative" claims of potential bias are insufficient to warrant recusal. *Rumsey v. Niebel*, 286 A.D.2d 564, 564 (4th Dep't 2001). "[A]bsent a legal disqualification under Judiciary Law § 14"—which defendant does not and could not allege here[1]—"a trial judge is the sole arbiter of recusal and his or her decision in that regard will not be lightly overturned." *Khan v. Dolly*, 39 A.D.3d 649, 650 (2d Dep't 2007) (*citing People*

[1] New York Judiciary Law § 14 prohibits a judge from sitting in a matter "to which he is a party, or in which he has been attorney or counsel, or in which he is interested, or if he is related by consanguinity or affinity to any party to the controversy within the sixth degree." The "interest" in Judiciary Law § 14 must be a "pecuniary or property interest" that the judge has in the instant proceeding or motion. Again, defendant does not allege a statutory basis for recusal.

v. Moreno, 70 N.Y.2d 405-406 (1987)); *see also People v. Glynn*, 21 N.Y.3d 614, 618 (2013); *People v. Evans*, 118 A.D.3d 1476, 1476 (4th Dep't 2014) ("a court's decision in this respect may not be overturned unless it was an abuse of discretion").

As an initial matter, defendant has identified no direct, substantial, or pecuniary interest of the kind that typically would be required to support recusal. The Court's daughter has no direct personal or professional relationship with the People or defendant; she will not receive any part of any financial penalty that may be levied as part of a conviction in this case; and neither Authentic nor any of its clients is a party or attorney in this proceeding. The circumstances here are thus far afield from those presented in the opinions cited by defendant from the New York State Advisory Committee on Judicial Ethics, in which a judge's family member has an actual, present financial interest with the parties that would be directly affected by the outcome of the proceeding. *See* Opinion 13-24 (commercial tenants of judge's children cannot appear before judge as attorneys or parties); Opinion 02-36 (judge should recuse from cases involving child's landlord); Opinion 92-46 (judge's first cousin had engaged in business transaction with the party insurer).

Defendant also vastly overstates the degree to which Authentic's business turns on this defendant at all, let alone the conduct of this specific criminal proceeding. According to its website, Authentic represents many candidates and organizations that do not, on their face, appear to be directly concerned with defendant or presidential politics. For example, among Authentic's clients are the VoteVets Action Fund, which "elevates the voices of Veterans on matters of national security, Veterans' care, and everyday issues that affect the lives of those who served, their families, and the country"[2]; the Voter Participation Center, a "non-profit, non-partisan

[2] VoteVets, https://votevets.org (last visited June 14, 2023).

organization" that "has helped more than 6 million people register and cast ballots"[3]; Patients for Affordable Drugs, "the only independent national patient organization focused exclusively on achieving policy changes to lower the price of prescription drugs"[4]; and candidates for local or state elected office like Michelle Wu in Boston and Gavin Newsom in California.[5] Moreover, even if some of Authentic's *clients* may previously have opposed or campaigned against defendant (such as President Biden and Vice President Harris), it is hardly self-evident that *Authentic's* work would focus on those aspects of the campaign, as opposed to other work on "fundraising, advertising, web and graphic design, [and] online organizing"[6] that would not even refer to a political opponent—for example, advertisements touting a client's legislative accomplishments, or digital systems to facilitate online fundraising.

It would also be pure speculation to assume that Authentic's contracts with its clients are contingent on defendant's political fortunes, rather than being based on (for example) the duration of a client's campaign or the parameters of a specific project. And it is even more speculative to assume that interim rulings by this Court in this specific proceeding would affect Authentic's contracts or revenue, when there is no indication that Authentic has done *any* work referencing or affected by the criminal charges at issue here.[7] Recusal is simply not warranted when, as here,

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[3] Voter Participation Center, https://www.voterparticipation.org/about-us (last visited June 14, 2023).

[4] Patients for Affordable Drugs, https://patientsforaffordabledrugs.org (last visited June 14, 2023).

[5] Authentic, Our Clients, https://authentic.org/clients (last visited June 14, 2023).

[6] Authentic, Our Services, https://authentic.org/services (last visited June 14, 2023).

[7] The sole statement that defendant identifies to support Authentic's own "anti-Donald J. Trump[] slant," Def.'s Mem. 6, is a quotation from another member of the company—not the Court's daughter—commenting several years ago on fundraising practices by defendant's former campaign that have nothing to do with the criminal charges at issue here. *See* Shane Goldmacher, *Trump Camp Uses Online Gimmick to Fuel Donations Into December*, N.Y. Times,

"the interest asserted bears only a tangential relationship to the subject matter of the suit." *Brody v. President & Fellows of Harvard Coll.*, 664 F.2d 10, 12 (1st Cir. 1981).

At base, given the absence of any *direct* relationship between the Court's daughter, the company she works for, and this prosecution, defendant's demand for recusal is premised on nothing more than his guess that "negative rulings" or a "conviction" here may affect national politics in a way that might in turn affect the Court's daughter's work in the same field. Courts have routinely found no partiality or appearance of partiality under such circumstances. Judges or their family members routinely participate in industries that may, as a general matter, be affected by the outcome of a case involving other members of that industry. Such a potential impact is too attenuated as a matter of law to warrant recusal. *See, e.g.*, *Langdon v. Town of Webster*, 270 A.D.2d 896, 896 (4th Dep't 2000) (no recusal when judge, as a town property owner, could possibly receive a refund from the water fund if plaintiffs prevailed); *Gas Utils. Co. of Alabama v. S. Nat. Gas Co.*, 996 F.2d 282, 283 (11th Cir. 1993) (no recusal in dispute over oil and gas leases when "[t]he trial judge's wife and father-in-law have proprietary interests in land leased to oil and gas interests but not to companies involved in the present action"); *In re Placid Oil Co.*, 802 F.2d 783, 786 (5th Cir. 1986) ("We are unwilling to adopt a rule requiring recusal in every case in which a judge owns stock of a company in the same industry as one of the parties to the case."); *New York City Dev. Corp. v. Hart*, 796 F.2d 976, 979 (7th Cir. 1986) ("It could be said that no judge who owns a house should render a decision that potentially affects the value of real estate in general, that no judge who owns stock should decide a case under the securities or antitrust laws, and so on. Effects of this sort are both ubiquitous and too indirect to require disqualification.").

Nov. 1, 2020, https://www.nytimes.com/2020/10/31/us/politics/trump-fundraising-donations.html.

2. For largely the same reasons, defendant's claim of an "*appearance* of partiality" (Def.'s Mem. 9) is also baseless. A judge must disqualify in any proceeding where the Court's impartiality "might reasonably be questioned." 22 N.Y.C.R.R. 100.3(E)(1). "[T]he appearance of partiality . . . must have an objective basis," *In re Aguinda*, 241 F.3d 194, 201 (2d Cir. 2001)—namely, "would an objective, disinterested observer fully informed of the underlying facts, entertain significant doubt that justice would be done absent recusal?" *United States v. Lovaglia*, 954 F.2d 811, 815 (2d Cir. 1992). Here, there are too many speculative leaps that an objective observer would have to make to reasonably question this Court's impartiality. In particular, the imputed political affiliations of Authentic (and, by extension, the Court's daughter) would not support any appearance of partiality. As explained further below, even a judge's own general political leanings are not enough to disqualify him from every case with political overtones. Given that well-settled principle, there would be even less basis for recusal based on the speculative indirect effects between a case and the professional political work of a judge's adult child.

This case bears no similarity to *Concord Assocs., L.P. v. EPT Concord, LLC*, 130 A.D.3d 1404 (3d Dep't 2015) (cited in Def.'s Mem. 10-11). The trial judge in that case presided over a dispute involving casino development. At the same time, however, the judge's wife, in her role as a local politician, had publicly supported one side of that dispute. *Id.* at 1406. No similar facts are present here. Defendant's motion does not identify any statements by the Court's daughter or Authentic that advocate for any specific outcome in this proceeding (or any statements regarding the proceeding at all, for that matter). And, as discussed, it is purely speculative how any rulings in, or the outcome of, this proceeding might affect the financial interests of either the Court's daughter or Authentic. New York courts have repeatedly held that recusal is not warranted on the basis of such speculative and attenuated claims that a judge's family member might be indirectly

affected by a pending proceeding. *See, e.g., Kilmer v. Moseman*, 124 A.D.3d 1195, 1198 (3d Dep't 2015) (fact that counsel for plaintiffs was wife of Deputy Chief Administrative Judge, who controlled assignments given to presiding judge, was too "remote, speculative, possible or contingent a financial interest" to warrant recusal); *Rumsey*, 286 A.D.2d at 565 (no recusal in dispute involving local political party despite judge's son being a politician who had previously been endorsed by that party); *Matter of Emory CC*, 199 A.D.2d 932, 933 (3d Dep't 1993) (no recusal in case involving a local agency represented by the County Attorney when trial judge's husband was First Assistant County Attorney but not directly involved in the proceeding).

3. Nor is there any grounds for recusal based on interactions between Authentic and the District Attorney's campaign committee that did not result in any business for Authentic. Yesterday, the People learned through a June 12 Reuters report of a recently released opinion of the Advisory Committee on Judicial Ethics that mirrored the facts of this case. *See* Karen Freifeld, *Judge in Trump criminal hush-money case can stay, NY ethics panel signals*, Reuters, June 12, 2023.[8] That opinion concluded, among other things, that "[a] judge's impartiality cannot reasonably be questioned based on . . . the business and/or political activities of the judge's first-degree relative, where the relative has no direct or indirect involvement in the proceeding and no interests that could be substantially affected by the proceeding." Opinion of the Advisory Committee on Judicial Ethics, Op. 23-54 (May 4, 2023).[9]

In reaching that conclusion, the Opinion described the factual question presented as whether the judge "must disclose that his/her relative's agency recently declined to work for the prosecutor now appearing before the judge." *Id.* The People were not aware of that factual

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[8] *Available at* https://www.reuters.com/legal/judge-trump-criminal-hush-money-case-can-stay-ny-ethics-panel-signals-2023-06-12/.

[9] *Available at* https://www.nycourts.gov/legacyhtm/ip/judicialethics/opinions/23-54.htm.

circumstance before learning of it when reviewing Opinion 23-54 on June 13, 2023. After further inquiry that day, the People have determined that in or around September 2022, a consultant for the District Attorney's campaign committee contacted a number of agencies, including Authentic, about a possible engagement for digital outreach services; decided shortly after that contact not to engage any agency for that service; reiterated in a follow-up discussion with Authentic in or around January 2023 that the campaign committee was not engaging any agency for digital outreach services; did not make the District Attorney aware of those contacts with Authentic; did not have any contact with the Court's daughter in the course of any of those interactions; and did not learn that this Court's daughter was employed by Authentic until on or around the time of the arraignment in this matter on April 4, 2023. *See* Affirmation of Richard Fife ¶¶ 1-6 (Ex. 2).

Under these circumstances, and as the Advisory Committee concluded, "the judge's impartiality cannot reasonably be questioned" because:

> [T]he matter current before the judge does not involve either the judge's relative or the relative's business, whether directly or indirectly. They are not parties or likely witnesses in the matter, and none of the parties or counsel before the judge are clients of the business. We see nothing in the inquiry to suggest that the outcome of the case could have any effective on the judge's relatives, the relative's business, or any of their interest.

Opinion 23-54 (citing Opinion 22-172; Opinion 17-126; Opinion 15-212; Opinion 15-62; Opinion 98-22).

4. Finally, defendant contends that press coverage of the Court's family supports his argument that an appearance of partiality already exists. Def.'s Mem. 12-13 n.8 (citing news accounts). But defendant's reference to that press coverage as a basis for recusal omits that those same news accounts were reporting on defendant's own public statements criticizing the Court's family, which prompted the coverage. *See* Giulia Carbonaro, *Juan Merchan Under Pressure as*

Trump Supporters Focus on Daughter's Ties, Newsweek, Apr. 5, 2023[10]; Katelyn Caralle, *REVEALED: The progressive daughter of judge presiding over Donald Trump's hush money case who worked for Kamala Harris and Joe Biden*, DailyMail.com, Apr. 5, 2023.[11] Allowing a defendant to conduct a campaign of public criticism against a judge and his family, and then point to the resultant press coverage as evidence that "press articles already reflect that this Court's impartiality is being questioned," Def.'s Mem. 12-13 n.8, would corrode public confidence in the integrity of the judicial process.

II. The Court should reject defendant's effort to relitigate a failed recusal motion from a different case involving different defendants.

In a different case assigned to this Court, two corporate entities affiliated with but legally distinct from defendant—the Trump Corporation and Trump Payroll Corp.—were tried and convicted last year on seventeen felony counts of tax fraud, falsifying business records, scheme to defraud, and conspiracy. *See People v. The Trump Corporation, et al.*, Ind. No. 1473/2021. Those corporate defendants unsuccessfully sought this Court's recusal for reasons related to the Court's participation in plea negotiations with a third co-defendant, Allen Weisselberg. Defendant now presses one of the same recusal arguments that the corporate defendants raised without success in that case. The Court properly denied the recusal motion in that case, and should deny it as even more attenuated and unfounded here.

Defendant claims that this Court "pushed Mr. Weisselberg" to "cooperate[] with the People against Donald Trump and his interests"; and that the Court therefore "thought [Trump] was

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[10] *Available at* https://www.newsweek.com/juan-merchan-under-pressure-daughter-works-democrats-trump-1792701. This article also quotes a lawyer and professor of legal ethics for the view that the Court's daughter's employment "is an insufficient basis for recusal." *Id.*

[11] *Available at* https://www.dailymail.co.uk/news/article-11938591/Daughter-judge-presiding-Trumps-hush-money-case-worked-Kamala-Joe-Biden.html.

someone who was worthy of prosecution." Def.'s Mem. 6, 13; *see* Def.'s Ex. A (9/8/22 Necheles Aff. ¶¶ 2-3). This argument is doubly flawed: the allegation about the Court's conduct is factually incorrect, and the conclusion defendant draws from that allegation does not follow.

First, as attested in the Affirmation of Susan Hoffinger filed in connection with the *Trump Corporation* recusal motion, counsel for Mr. Weisselberg initiated plea discussions with the People and confirmed that Mr. Weisselberg could provide a full factual allocution against the corporate defendants. Def.'s Ex. B (9/19/22 Hoffinger Aff. ¶¶ 3,8, 11). At a subsequent meeting with the Court in chambers, the People—not this Court—then conveyed that the People would only recommend a non-custodial sentence if Mr. Weisselberg cooperated by providing information he had previously refused to provide; and "there was no statement by the People or the Court that Mr. Weisselberg had to cooperate against Donald J. Trump."[12] *Id.* ¶ 15. The Court expressed that he was not inclined to give Mr. Weisselberg a non-incarceratory sentence without the People's recommendation, but emphasized that he would not require guilty pleas from the corporate defendants as a condition of Mr. Weisselberg's plea deal. *Id.* ¶ 14.

After further negotiations among the parties, the People informed the Court that despite their prior insistence upon recommending a term of state prison unless Mr. Weisselberg cooperated with their investigation or the corporate defendants pleaded guilty (neither of which occurred), the People had decided to recommend a six-month split sentence in exchange for Mr. Weisselberg's guilty plea, repayment of taxes, truthful allocution under oath, and truthful testimony at the trial of

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[12] Defendant concedes this fact but calls it a "red herring" because "Mr. Weisselberg worked for President Trump for over 35 years." Def.'s Mem. 6 n.5. Where defendant seeks the Court's recusal on the ground that the Court purportedly "thought [Trump] was someone who was worthy of prosecution," Def.'s Mem. 13, more than speculation and innuendo is required. *See Kilmer*, 124 A.D.3d at 1198; *Cooney v. Booth*, 262 F. Supp. 2d 494, 502 (E.D. Pa. 2003) (under the federal recusal standard, "suspicion, innuendo, speculation or conjecture are legally insufficient to warrant recusal").

the corporate defendants as to the facts underlying his plea and allocution. *Id.* ¶ 35. At the request of Mr. Weisselberg's counsel, the Court agreed to a five-month split sentence instead. *Id.*; *see People v. Farrar*, 52 N.Y.2d 302, 307 (1981) (regardless of sentence proposed by prosecutor, "the ultimate determination of an appropriate sentence is to be made by the court"). At no point did the Court seek to "induce" Mr. Weisselberg to cooperate against defendant, or condition any provision of the sentence on such cooperation.

Second, it does not follow that the Court's involvement in plea negotiations involving the former Chief Financial Officer of the Trump Organization in a different prosecution has any bearing at all on the Court's impartiality in this case. "[O]pinions formed by a judge on the basis of facts introduced or events occurring in the course of judicial proceedings do not constitute a basis for recusal unless they indicate that the judge has 'a deep-seated favoritism or antagonism that would make fair judgment impossible.'" *United States v. Diaz*, 176 F.3d 52, 112 (2d Cir. 1999) (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)). The Court's participation in plea discussions involving Mr. Weisselberg was completely proper and displayed no favoritism or antagonism toward any party. And despite defendant's claim that this Court's involvement in Mr. Weisselberg's plea negotiation in a previous case shows a "preconceived bias" against defendant, Def.'s Mem. 1, courts have expressly held that "no objective observer could reasonably question the judge's impartiality" in presiding over a defendant's case in which he accepted a guilty plea from the defendant's accomplice who then testified at trial. *United States v. Mason*, 118 F. App'x 544, 546 (2d Cir. 2004). That principle applies even more forcefully in this case, where there is not even the same close relationship that there would be between codefendants: defendant here was not a party in the earlier prosecution, and the facts at issue do not overlap. The Court should reject

defendant's effort to relitigate a motion that companies affiliated but legally distinct from him brought and lost in a different case.

III. The reported contributions totaling $35 would not be a basis for recusal.

Defendant's motion also seeks "an explanation" from the Court regarding three reported contributions totaling $35 in July 2020, including $15 "earmarked for the Biden campaign" and $20 for organizations promoting voter turnout. Def.'s Mem. 7. Although defendant does not move for recusal on this basis, the Court should decline to recuse if it considers this question *sua sponte*.

The Advisory Committee on Judicial Ethics recently concluded that aggregate political contributions totaling less than $50, where one contribution "was made to the person who opposed the defendant in an election," do not require recusal because "these modest political contributions made more than two years ago cannot reasonably create an impression of bias or favoritism in the case before the judge." Opinion 23-54. For that reason, the Advisory Committee concluded, the judge's "impartiality cannot 'reasonably be questioned'" under these circumstances, and neither disclosure nor disqualification is required. *Id.* (quoting 22 N.Y.C.R.R. 100.3(E)(1)). That conclusion is clearly correct, and the Court should decline to recuse under these circumstances for several reasons.

First, the reported $15 political contribution earmarked for a political candidate would be a *de minimis* donation that does not warrant recusal. Courts examining the impact of political contributions on a judge's impartiality in other contexts have held that it is only in the "exceptional case" that such contributions create the probability of bias requiring recusal. *Anderson v. Belke*, 80 A.D.3d 483, 483 (1st Dep't 2011) ("greater than [] average" contribution of defense counsel to judge's re-election campaign was insufficient to establish risk of bias because "it was only a small percentage of the total contributions to the campaign"). "The inquiry centers on the contribution's

relative size in comparison to the total amount of money contributed to the campaign, the total amount spent in the election, and the apparent effect such contribution had on the outcome of the election." *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 882-84 (2009) ("exceptional case" where recusal was warranted because litigant's $3 million contribution to Justice Benjamin's campaign to unseat the incumbent "eclipsed the total amount spent by all other Benjamin supporters and exceeded by 300% the amount spent by Benjamin's campaign committee," and was "pivotal" in getting Benjamin elected).

This test generally applies to contributions made *to* a sitting judge by a person directly affiliated with a party before the court. Here, by contrast, the *de minimis* contribution was reportedly made by Your Honor, and it was made in support of a political candidate *not* currently before the Court, years before the initiation of this proceeding. Given these circumstances, unlike in *Caperton*, the reported $15 contribution reveals no actual bias or risk of a *quid pro quo* against defendant in this criminal proceeding. *See, e.g.*, *Arkansas State Conference NAACP v. Arkansas Bd. of Apportionment*, 578 F. Supp. 3d 1011, 1017-19 (E.D. Ark. 2022) (denying motion to recuse from civil case where judge had donated $500 to the Governor because "[a] reasonable person would understand that a four-year-old political contribution connotes nothing more than the view that the donor (me) thought the candidate (Governor Hutchinson) would be better than his opponent for the contested position. It does not come close to the level of ties that would suggest an inability to fairly decide a case involving the Governor as a defendant or to fairly evaluate his potential testimony on the stand."). Indeed, the news story that defendant cites to identify the Court's reported contribution (Def.'s Mem. 7) quotes legal ethics professor Stephen Gillers for the conclusion that this donation "would be viewed as trivial, especially given the small sums," and would "[a]bsolutely not" be grounds for a legal challenge because "[t]his does not come anywhere

near the kind of proof required for recusal." Jeremy Herb et al., *$35 political contribution to Democrats raises fresh scrutiny of Judge Merchan*, CNN, Apr. 6, 2023.[13]

Second, the reported $35 political contributions would not raise a plausible concern regarding the appearance of impartiality. It is well established that "[j]udges generally have political backgrounds to one degree or another[.]" *MacDraw, Inc. v. CIT Grp. Equip. Fin., Inc.*, 138 F.3d 33, 38 (2d Cir. 1998). But a judge's identification with a political party is not an indication that a judge is incapable of acting impartially. *See id.*; *see also Dekom v. New York*, No. 12-CV-1318 (JS) (ARL), 2013 WL 3095010, at *8 (E.D.N.Y. June 18, 2013), *aff'd*, 583 F. App'x 15 (2d Cir. 2014) (rejecting argument that because the judge was elected to the state bench as a member of the Republican Party, she could "be expected to be particularly loyal to the machine which made her"); Opinion of the Advisory Committee on Judicial Ethics, Op. 91-146 (1991) ("A judge need not disqualify himself or herself from hearing a matter where one of the litigants was the judge's opponent in the last election").

Indeed, given New York's constitutional system for selecting Justices of Supreme Court, defendant's demand for recusal here has no logical stopping point that would prohibit defendant from effectively hand-picking his own judge. Under our Constitution, Justices "shall be chosen by the electors of the judicial district in which they are to serve." N.Y. Const. art. VI, § 6(c). Candidates for election are nominated by political party at a district-wide nominating convention. N.Y. Elec. Law §§ 6-106, 6-124, 6-126. And Acting Justices can receive their original appointments from the Governor or Mayor, *e.g.*, N.Y. Const. art. VI, § 21(a), who are of course elected. Within our constitutional structure, there is thus no judge authorized to preside over

[13] *Available at* https://www.cnn.com/2023/04/06/politics/judge-merchan-trump-biden-contribution/index.html.

criminal trials in Supreme Court who comes to the bench without a preexisting affiliation with some political party. Defendant's argument that *any* perceived political affiliation is enough to demand recusal (Def.'s Mem. 16) would permit him to serially seek the disqualification of any Justice assigned to this matter until he found one whose politics he deemed favorable.[14] That is not the law.

Defendant objects even more broadly that the reported $35 contribution displays support for "causes contrary to President Trump's agenda." Def.'s Mem. 7, 14. There is no authority for the apparent demand that a judge demonstrate support for "President Trump's agenda" before he may be considered impartial.

Finally, defendant's concern regarding compliance with the New York Rules Governing Judicial Conduct is meritless, and in any event properly raised in a different forum. The Commission on Judicial Conduct has authority to examine a judge's compliance with those Rules and to determine what response, if any, is warranted in any particular instance. N.Y. Jud. Law §§ 42, 44; *see* 22 N.Y.C.R.R. Part 100, Preamble. Notably, any actions a judge takes "in accordance with findings or recommendations contained in an advisory opinion issued by the" Advisory Committee on Judicial Ethics "shall be presumed proper" for the purposes of any review by the Commission. N.Y. Jud. Law § 212(2)(*l*)(iv). Because Opinion 23-54 concludes that "these modest political contributions made more than two years ago cannot reasonably create an impression of bias or favoritism in the case before the judge" (and that "the judge's impartiality

[14] Given defendant's denigration of "[t]he whole New York Judicial System"—which defendant has characterized as having judges "just as bad or, believe it or not, worse!" than this Court—it is not mere speculation to be concerned that recusal here would simply invite additional recusal motions until defendant is assigned a judge he likes. Ex. 1.

cannot reasonably be questioned based on the judge's relative's business and/or political activities"), any complaint filed with the Commission on these circumstances would be meritless.

Defendant effectively seeks a rule that would grant any defendant in any case with political salience the power to veto any judge who he believes does not share his political views or policy preferences. The recusal standard should not be interpreted to "grant litigants the power to veto the assignment of judges." *In re Drexel Burnham Lambert Inc.*, 861 F.2d at 1315. The Court's reported contributions provide no basis for recusal.

IV. Given defendant's conduct in this and other matters, recusal would undermine—not advance—public confidence in the integrity of the judicial system.

Finally, in considering defendant's motion to recuse, the Court should take account of defendant's lengthy history of "attack[ing] courts, judges, various law enforcement officials and other officials, and even individual jurors in other matters," including by making baseless demands for recusals. *Carroll v. Trump*, No. 22-cv-10016 (LAK), 2023 WL 2612260, at *2 & n.7, *4 & n.16 (S.D.N.Y. Mar. 23, 2023) (collecting examples). To give just a few examples of defendant's "many statements regarding individual judges [and] the judiciary in general," *id.* at *4, defendant has claimed that Judge Gonzalo Curiel (S.D. Cal.) has "an inherent conflict of interest" because he is "of Mexican heritage" and was thus "totally biased against me," Ex. 1[15]; Supreme Court Justices Ruth Bader Ginsburg and Sonia Sotomayor "should recuse themselves" "on all Trump, or Trump related, matters!," Ex. 1; Judge Amy Berman Jackson (D.D.C.) is "totally biased," Ex. 1; and Justice Arthur F. Engoron (Sup. Ct., N.Y. Cnty.) is "a highly partisan, Trump Hating Judge who was sought out, or 'shopped,' by Peekaboo James. VERY UNFAIR." Ex. 1. These are merely

[15] *See also* Brent Kendall, *Trump Says Judge's Mexican Heritage Presents 'Absolute Conflict,'*, Wall St. J., June 3, 2016, https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442.

illustrative examples from a much longer catalog of attacks on judges and the judicial system. *See, e.g.*, *In His Own Words: The President's Attacks on the Courts, Brennan Center for Justice* (updated Feb. 14, 2020), at https://www.brennancenter.org/our-work/research-reports/his-own-words-presidents-attacks-courts.

Defendant's effort to question this Court's impartiality is thus far from novel. "In the real world, recusal motions are sometimes driven more by litigation strategies than by ethical concerns." *Trump v. Clinton*, 599 F. Supp. 3d 1247, 1249 (S.D. Fla. 2022) (quoting *In re Kansas Pub. Emps. Ret. Sys.*, 85 F.3d 1353, 1360 (8th Cir. 1996)). Defendant's long history of targeting judges with unfounded allegations of bias makes clear that this motion is based on tactics, not ethics. And his attacks on judges and the judicial system themselves undermine public confidence in the integrity of the judicial system. *See* Hon. Paul L. Friedman, U.S. District Judge, *Threats to Judicial Independence and the Rule of Law* 7-11, The Eleventh Annual Thomas A. Flannery Lecture (Nov. 6, 2019).[16] Granting defendant's recusal motion would ill-serve the obligation to "promote[] public confidence in the integrity and impartiality of the judiciary." 22 N.Y.C.R.R. § 100.2(A).

[16] *Available at* https://www.ali.org/media/filer_public/2b/8d/2b8d0272-3934-4bed-bd48-eff7d8802c82/2019-11-06_-_2019_flannery_lecture_-_judge_paul_friedman_remarks.pdf.

CONCLUSION

The Court should deny defendant's motion for recusal.

Dated: New York, New York
June 14, 2023

Respectfully submitted,

/s/ Matthew Colangelo
Matthew Colangelo
Assistant District Attorney

Steven C. Wu
Chief, Appeals Division
Alan Gadlin
Deputy Bureau Chief, Appeals Division
Caroline S. Williamson
Assistant District Attorney

Of Counsel

PART 59 JUN 20 2023

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

THE PEOPLE OF THE STATE OF NEW YORK -against- DONALD J. TRUMP, Defendant.	AFFIRMATION IN OPPOSITION TO DEFENDANT'S MOTION FOR RECUSAL Ind. No. 71543-23

Matthew Colangelo, an attorney admitted to practice before the Courts of this State, affirms under penalty of perjury that:

1. I am an Assistant District Attorney in the New York County District Attorney's Office. I am assigned to the prosecution of the above-captioned case and am authorized to make this affirmation. I am familiar with the facts and circumstances underlying this case.

2. On May 31, 2023, defendant filed a motion styled a "Motion for the Court's Recusal and for an Explanation."

3. I submit this affirmation with the accompanying memorandum of law in support of the People's opposition to defendant's motion.

4. Attached as Exhibit 1 are true and accurate copies of five of defendant's public statements made on social media.

5. Attached as Exhibit 2 is the Affirmation of Richard Fife dated June 14, 2023.

WHEREFORE, for the reasons set forth in the accompanying Memorandum of Law, the People respectfully request that the Court deny defendant's motion for recusal.

Dated: New York, New York
June 14, 2023

Respectfully submitted,

/s/ Matthew Colangelo
Matthew Colangelo
Assistant District Attorney

Exhibit 1

← **Truth Details**

Donald J. Trump
@realDonaldTrump

This Article, as written in The Wall Street Journal, is a truthful and very important one. The whole New York Judicial System is RIGGED against me, and everyone knows it. It's a disgrace, and not only this Judge, there are others that are just as bad or, believe it or not, worse! It's all a political Witch Hunt, in coordination with heavy handed, dishonest, and highly partisan prosecutors, working in conjunction with D.C. "Justice," the likes of which our Country has never seen before!

Donald J. Trump
@realDonaldTrump · Apr 30

wsj.com/articles/selection-of-...

6.78k ReTruths **21.9k** Likes Apr 30, 2023, 10:05 PM

Reply ReTruth Like

← **Tweet**

Donald J. Trump
@realDonaldTrump

I should have easily won the Trump University case on summary judgement but have a judge, Gonzalo Curiel, who is totally biased against me.

5:55 PM · May 30, 2016

2,502 Retweets **50** Quotes **9,257** Likes **2** Bookmarks

← **Thread**

Donald J. Trump ✓
@realDonaldTrump

“Sotomayor accuses GOP appointed Justices of being biased in favor of Trump.” @IngrahamAngle @FoxNews This is a terrible thing to say. Trying to “shame” some into voting her way? She never criticized Justice Ginsberg when she called me a “faker”. Both should recuse themselves..

11:09 PM · Feb 24, 2020

12.1K Retweets **2,047** Quotes **57.6K** Likes **83** Bookmarks

Donald J. Trump ✓ @realDonaldTrump · Feb 24, 2020
....on all Trump, or Trump related, matters! While “elections have consequences”, I only ask for fairness, especially when it comes to decisions made by the United States Supreme Court!

5,316 7,031 35.9K

← **Tweet**

Donald J. Trump ✓
@realDonaldTrump

...

There has rarely been a juror so tainted as the forewoman in the Roger Stone case. Look at her background. She never revealed her hatred of "Trump" and Stone. She was totally biased, as is the judge. Roger wasn't even working on my campaign. Miscarriage of justice. Sad to watch!

3:01 PM · Feb 25, 2020

11.7K Retweets **2,220** Quotes **60.3K** Likes **72** Bookmarks

← Truth Details

Donald J. Trump
@realDonaldTrump

The A.G. case should be tried in front of the Commercial Division, not in front of a highly partisan, Trump Hating Judge who was sought out, or "shopped," by Peekaboo James. VERY UNFAIR. NEW YORK STATE SHOULD BE ASHAMED OF THIS INJUSTICE!

8.05k ReTruths **32.4k** Likes Apr 13, 2023, 12:47 AM

Reply ReTruth Like

Exhibit 2

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

PART 59 JUN 20 2023

THE PEOPLE OF THE STATE OF NEW YORK -against- DONALD J. TRUMP, Defendant.	AFFIRMATION OF RICHARD FIFE Ind. No. 71543-23

RICHARD FIFE, pursuant to penalty of perjury, does hereby affirm the following:

1. Since June, 2022, I have served as a consultant for the Alvin Bragg for DA committee.
2. In the Fall of 2022, I talked to 2 or 3 digital firms exploring whether it would make sense for the Alvin Bragg for DA committee to expand its digital outreach. One of the firms I spoke to was Authentic. Alvin Bragg was not involved in these conversations and I did not make him aware of them.
3. In this context, I talked to Mike Nellis, CEO of Authentic on September 13, 2022 and he submitted a proposal describing their work. The Alvin Bragg for DA committee decided not to move forward with any firm.
4. With the start of the New Year, Nellis reached out and we had a follow-up conversation on January 16, 2023 in which I again said that the Alvin Bragg for DA committee decided not to move forward with any firm.
5. Around the time of the April 4, 2023 arraignment in the People v. Trump case, Nellis called to inform me that one of their firm's executives, Loren Merchan, was the daughter of the judge assigned to this case. This was the first time I heard of this connection, and to my knowledge I have never communicated with Loren Merchan.
6. To this date, the Alvin Bragg for DA committee has no plans to hire any digital firm. Authentic has never done any work or provided advice for the Alvin Bragg for DA committee.

Dated: New York, New York
June 14, 2023

RICHARD FIFE