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IN THE FOURTH JUDICIAL DISTRICT COURT, PROVO DEPARTMENT
IN AND FOR THE COUNTY OF UTAH, STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. TYLER JAMES ROBINSON, Defendant.	PARTIAL REPLY TO OPPOSITION TO MOTION TO DISQUALIFY AND REQUEST TO TAKE EVIDENCE Case No. 251403576 Honorable Tony F. Graf, Jr.
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INTRODUCTION

Defendant, Tyler James Robinson, by and through undersigned counsel, hereby files the following *Partial Reply to Opposition to Motion to Disqualify and Request to Take Evidence* in partial response to the State's *Opposition to Defendant's Motion to Disqualify the Utah County Attorney's Office*, filed January 5, 2026 (docket entry 279) ("OMTD"). This partial response is intended to place the Court on notice that the defense intends to call witnesses at the hearing on January 16, 2026. The Utah County Attorney's Office ("UCAO") is already on notice.¹ Further, Mr. Robinson seeks the opportunity to supplement briefing after the evidentiary hearing.

DUE PROCESS REQUIRES FURTHER DEVELOPMENT OF THE FACTUAL RECORD ON MR. ROBINSON'S MOTION TO DISQUALIFY

The UCAO suggests at various points in its opposition that an evidentiary hearing on Mr. Robinson's motion may be necessary to establish the necessary facts to support his motion. Mr. Robinson agrees.

Other courts have noted the need for an evidentiary hearing in determining a motion to disqualify. For example, in *State ex rel. Mitchell v. Palmer in and for County of Maricopa*, the Arizona Supreme Court opined that "a motion to disqualify involves a fact-intensive inquiry" and "will likely necessitate a hearing" as the court declined to adopt a bright-line rule about disqualification in certain circumstances. 546 P.3d 101, ¶ 28 (AZ 2024). Rather, the Arizona Supreme Court counsels that trial courts "should consider all relevant evidence when making" a decision on prosecutorial disqualification. *Id.* See also *State v. McClellan*, 2009 UT 50, ¶ 8, 216

¹ Consistent with this request, Mr. Robinson has served the relevant witnesses with subpoenas to testify at the hearing scheduled on January 16, 2026. All four witnesses have accepted service as of this filing.

P.3d 956 (evidentiary hearing held to take evidence on prosecutor conflict). While not binding on the Court, the Arizona approach ensures that the appropriate level of scrutiny is afforded to the ultimate question—whether the prosecution of Mr. Robinson by the relevant prosecutor, and indeed the entire UCAO, has denied and continues to deny Mr. Robinson his right to Due Process. *See* U.S. Const. amend. V, XIV; Utah Const. art I, § 7; *Marshall v. Jerrico, Inc.*, 466 U.S. 238, 249-50 (1980); *Ganger v. Peyton*, 379 F.2d 709, 714 (1967).

Likewise, the Supreme Court of Nevada has observed that “upon a motion to disqualify, an evidentiary hearing might be necessary to engage in the ‘delicate task’ of balancing the parties’ and the public’s interests” and “it might be necessary to assess the sufficiency of screening.” *Nelson v. Eighth Judicial District in and for County of Clark*, 521 P.3d 1179, 1185 (Nev. 2022). And, “where fact and credibility determinations are necessary”, trial courts “should hold an evidentiary hearing.” *Id.* *See also Fullmer v. Harper*, 517 F.2d 20 (10th Cir. 1975) (*per curiam*) (reversing the denial of a motion to disqualify that raised “ethical questions that are conceivably of a serious nature” and ordering the trial court to conduct an evidentiary hearing on remand); *US v. Williams, et. al* 18-cr-1695-JES-EJM. ([D. AZ](#)) (Report & Recommendation May 10, 2024) (Magistrate Judge conducted multi-day evidentiary hearing on motion to disqualify government counsel, including compelling testimony from numerous Assistant United States Attorneys at that and at an earlier related hearing).

Here, the UCAO offers fourteen numbered paragraphs of facts with the footnote that, “Factual assertions of County Attorney Jeff Gray and [the relevant prosecutor] will be supported by their proffer or, if necessary, their testimony, at the hearing on this matter.” OMTD, at 6 n.1.²

² Given that the Utah County Attorney’s Office is not conceding that disqualification is required, it has a vested interest in the outcome of the motion to disqualify. Its vested interest raises concerns regarding the completeness of the information it has provided this Court, as well as

Also, in relation to the testimony of the family member, the UCAO posits that the burden of proving the risk associated with the prosecutor's conflict "rests with Defendant and may be accomplished at an evidentiary hearing." *Id.* at 9. Mr. Robinson agrees that an evidentiary hearing is the necessary and appropriate avenue to develop the relevant facts and make an adequate record of the issue presented. The Court's decision on this matter necessarily requires factual findings and conclusions of law. Mr. Robinson should have the opportunity to develop the factual record in support of his motion for relief.

Moreover, the presentation of unsworn evidence (or the lack thereof) in the UCAO's opposition necessitates the need for fact development through testimony.

For example, four of the numbered paragraphs in the opposition contain assertions of fact not supported by affidavit or sworn declaration. *Id.* at 4-5 (¶¶ 11-14). The four paragraphs pertain to the experiences of Mr. Gray and the relevant prosecutor and some of the conclusions they have reached relative to the family member being present at Charlie Kirk's death and the communications that occurred in real time during the event and its aftermath. *Id.* The opposition goes on to provide significant information concerning the County Attorney's decision to file a notice of intent to seek death with the charging document and this information is, again, not supported by affidavit or sworn declaration. *See* OMTD, at 14. Although the information appears to be provided in an attempt to distance the death decision from the disqualifying conflict, it lacks any specific facts regarding the content of the communications between the County

whether it is even appropriate for the UCAO to litigate this issue on its own behalf. While the UCAO may have provided this Court with the information that *it has deemed relevant* to this issue, the scope of the disclosures and litigation of this motion should have been assigned to another state agency, such as the Attorney General, and should not be controlled by the very entity with a vested interest and potential conflict. A fulsome evidentiary hearing will permit this Court to determine what additional facts it deems relevant to its determination of the issues presented in this motion.

Attorney and Mr. [REDACTED] about his [REDACTED]'s experience including, but not limited to, the timing of the communications, the nature of the communications, and the number of communications. Disclosure of all of these factual circumstances, and others, is necessary for this Court to evaluate the impact the conflict has already had on the prosecution.

The opposition contains additional assertions not supported by affidavit or sworn declaration that require further inquiry. For example, in arguing that the experience of having his [REDACTED] present at the shooting was not impactful on Mr. [REDACTED], the UCAO writes that he was "[a]ware of the [] circumstances" so "Mr. [REDACTED]'s feelings for his [REDACTED] did not elicit any unusually intense negative reaction about the case or Defendant." OMTD, at 12. Noticeably absent from this assertion is any explanation as to how Mr. [REDACTED] came to know of the circumstances described, suggesting additional discussions were had between Mr. [REDACTED] and his [REDACTED] about the incident and how it impacted [REDACTED]. The defense should be allowed to probe these issues in an evidentiary hearing.

The opposition also fails to offer any meaningful facts regarding the communications Mr. [REDACTED] had with the rest of the prosecution team, other than Mr. Gray, about his [REDACTED]'s presence and experience at the shooting and its aftermath. The opposition does not identify who the members of the prosecution team are, when communications took place, the nature of the communications, and fails to address the issue of loyalty to Mr. [REDACTED] and the comradery amongst the prosecution team that might make such an experience more personally impactful. Disclosure of these factual circumstances is necessary if this Court is to be able to evaluate the impact the conflict has had or will have on the prosecution team.

Finally, without an evidentiary hearing, the defense is limited to the facts the current prosecution team unilaterally chose to disclose. As noted above, the UCAO has a vested interest

in the outcome of the motion. This also raises concerns about the appearance of impropriety both in the underlying conflict issue and the UCAO's decision to litigate this matter without an outside prosecutor. *See supra*, n. 2. An evidentiary hearing will ensure that nothing less than a full disclosure has been made on the issues that give rise to the asserted disqualification.

CONCLUSION

Based upon the foregoing, Mr. Robinson respectfully requests the opportunity to develop the factual record in support of his motion to disqualify. He will be prepared to do so at the hearing on January 16, 2026.

RESPECTFULLY SUBMITTED this 8th day of January, 2026.

/s/ Kathryn N. Nester
Kathryn N. Nester

/s/ Michael N. Burt
Michael N. Burt

/s/ Richard G. Novak
Richard G. Novak

/s/ Staci Visser
Staci Visser

Attorneys for Defendant, Tyler James Robinson

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was served via the Court's electronic filing system on the 8th day of January, 2026, which served all attorneys of record.

/s/ Staci Visser