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MEDIA CONTACT

Miriam Krinsky

krinskym@krinsky.la

818-416-5218

Over 60 Current and Former Elected Prosecutors and Attorneys General Urge VA Supreme Court to Protect Prosecutorial Discretion

Amicus brief argues Circuit Court judge improperly infringed on prosecutorial discretion of Commonwealth's Attorney Buta Biberaj and undermined the will of voters when he removed her entire office from a case

Today, a bipartisan group of 62 current and former elected prosecutors and attorneys general from Virginia and across the country filed an [amicus brief](#) in the Virginia Supreme Court in support of the well-settled and constitutionally protected prosecutorial discretion of Loudoun County, Va. Commonwealth's Attorney Buta Biberaj. Last month, a Circuit Court judge in Virginia entered an unprecedented order removing CA Biberaj's entire office from a case, with no prior notice, based solely on his personal disagreement with the office's handling of a plea agreement.

The signatories to the brief emphasize that if the Court allows this decision to stand, it would create a slippery slope for further judicial intrusion into the power uniquely vested in prosecutors and the rights of voters to determine their own vision for safety and justice: "[T]he Loudoun County community elected someone who promised to...bring a new vision of how to allocate resources and promote public safety. This order threatens that community's vision and, in doing so, sets a dangerous precedent around eroding the will of voters and intruding into discretion uniquely vested in our nation's and Virginia's elected prosecutors."

"It is completely out of bounds for a judge to throw an entire prosecutor's office off a case simply because he disagrees with decisions that are squarely within the exercise of established prosecutorial discretion," said **Miriam Krinsky, Executive Director of Fair and Just Prosecution**, the organizer of the brief. "The voters of Loudoun County elected CA Biberaj because of her commitment to roll back the harms of decades of tough-on-crime policies championed by her predecessor, who also happens to be the judge in this case. Any effort to prevent her from carrying out that vision is not just an attack on her discretion, but also an infringement on the will of the people who put CA Biberaj in office. It is essential that the Virginia Supreme Court recognizes the sanctity of separation of powers and allow CA Biberaj to carry out the work she was elected to do without judicial interference."

The brief also explains that the Circuit Court judge flouted Virginia law that explicitly gives very limited power to courts to overrule decisions within a prosecutor's discretion, preventing the judiciary from infringing on prosecutorial autonomy. A judge can reject a plea agreement but

must then recuse themselves from the case and allow a different judge to evaluate the deal. Instead, the judge in this case, with no prior notice of his intent to do so, removed the Commonwealth's Attorney and her entire office from the case. As *amici* note: "This dramatic and unprecedented move sent a clear message to CA Biberaj: exercise your discretion according to the court's values and judgment or risk losing oversight and control of your cases."

"Since the founding of our country, prosecutorial discretion has been enshrined as a crucial part of our justice system, even as it was used to fuel mass incarceration at immense human and financial costs," said **Albemarle County, Va. Commonwealth's Attorney Jim Hingeley**, a signatory to the brief. "Now, when reform-minded prosecutors and the voters who put them in office are rejecting decades of failed tough-on-crime policies, the discretion that judges have respected for centuries must continue to be protected."

The signatories include **Virginia Commonwealth's Attorneys Amy Ashworth** (Prince William County), **Parisa Dehghani-Tafti** (Arlington County and the City of Falls Church), **Ramin Fatehi** (Norfolk), **Jim Hingeley** (Albemarle County), **Elizabeth K. Humphries** (Fredericksburg), **Colette W. McEachin** (Richmond) and **Bryan Porter** (Alexandria); and **Attorneys General Leevin Camacho** (Guam), **Keith Ellison** (Minnesota) and **Karl A. Racine** (District of Columbia), among other elected prosecutors from across the country.

Read the brief [here](#); for a full list of *amici*, see below.

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Fair and Just Prosecution is a national network of elected prosecutors working towards common-sense, compassionate criminal justice reforms. To learn more about FJP's work, visit our [website](#) and follow us on [Facebook](#), [Twitter](#), and [LinkedIn](#).

List of Amici

Amy Ashworth

Commonwealth's Attorney, Prince William County, Virginia

Diana Becton

District Attorney, Contra Costa County, California

Wesley Bell

Prosecuting Attorney, St. Louis County, Missouri

Sherry Boston

District Attorney, DeKalb County, Georgia

Aisha Braveboy

State's Attorney, Prince George's County, Maryland

Leevin Camacho

Attorney General, Guam

John Choi

County Attorney, Ramsey County (St. Paul), Minnesota

Dave Clegg

District Attorney, Ulster County, New York

Laura Conover

County Attorney, Pima County (Tucson), Arizona

John Creuzot

District Attorney, Dallas County, Texas

Satana Deberry

District Attorney, Durham County, North Carolina

Parisa Dehghani-Tafti

Commonwealth's Attorney, Arlington County and the City of Falls Church, Virginia

Mark Dupree

District Attorney, Wyandotte County (Kansas City), Kansas

Matt Ellis

District Attorney, Wasco County, Oregon

Keith Ellison

Attorney General, Minnesota

Ramin Fatehi

Commonwealth's Attorney, City of Norfolk, Virginia

Kimberly M. Foxx

State's Attorney, Cook County (Chicago), Illinois

Glenn Funk

District Attorney, Nashville, Tennessee

Gil Garcetti

Former District Attorney, Los Angeles County, California

Kimberly Gardner

Circuit Attorney, City of St. Louis, Missouri

Stan Garnett

Former District Attorney, 20th Judicial District (Boulder), Colorado

José Garza

District Attorney, Travis County (Austin), Texas

George Gascón

District Attorney, Los Angeles County, California

Former District Attorney, City and County of San Francisco, California

Sarah F. George

State's Attorney, Chittenden County (Burlington), Vermont

Joe Gonzales

District Attorney, Bexar County (San Antonio), Texas

Deborah Gonzalez

District Attorney, Western Judicial Circuit (Athens), Georgia

Eric Gonzalez

District Attorney, Kings County (Brooklyn), New York

Mark Gonzalez

District Attorney, Nueces County (Corpus Christi), Texas

Christian Gossett

Former District Attorney, Winnebago County, Wisconsin

Andrea Harrington

District Attorney, Berkshire County, Massachusetts

Jim Hingeley

Commonwealth's Attorney, Albemarle County, Virginia

John Hummel

District Attorney, Deschutes County, Oregon

Elizabeth K. Humphries

Commonwealth's Attorney, City of Fredericksburg, Virginia

Natasha Irving

District Attorney, 6th Prosecutorial District, Maine

Shalena Cook Jones

District Attorney, Chatham County (Savannah), Georgia

Melinda Katz

District Attorney, Queens County, New York

Justin F. Kollar

Former Prosecuting Attorney, County of Kaua'i, Hawaii

Lawrence Krasner

District Attorney, Philadelphia, Pennsylvania

Beth McCann

District Attorney, 2nd Judicial District (Denver), Colorado

Colette W. McEachin

Commonwealth's Attorney, City of Richmond, Virginia

Ryan Mears

Prosecuting Attorney, Marion County (Indianapolis), Indiana

Brian Middleton

District Attorney, Fort Bend County, Texas

Jody Owens

District Attorney, Hinds County (Jackson), Mississippi

Bryan Porter

Commonwealth's Attorney, City of Alexandria, Virginia

Dalia Racine

District Attorney, Douglas County, Georgia

Karl A. Racine

Attorney General, District of Columbia

Ira Reiner

Former District Attorney, Los Angeles County, California

Former City Attorney, Los Angeles, California

Jeff Rosen

District Attorney, Santa Clara County, California

Dan Satterberg

Prosecuting Attorney, King County (Seattle), Washington

Eli Savit

Prosecuting Attorney, Washtenaw County (Ann Arbor), Michigan

Mike Schmidt

District Attorney, Multnomah County (Portland), Oregon

Daniella Shorter

District Attorney, 22nd Judicial District, Mississippi

Carol Siemon

Prosecuting Attorney, Ingham County (Lansing), Michigan

Eric Sparr

District Attorney, Winnebago County, Wisconsin

Raúl Torrez

District Attorney, Bernalillo County (Albuquerque), New Mexico

Suzanne Valdez

District Attorney, Douglas County (Lawrence), Kansas

Matthew Van Houten

District Attorney, Tompkins County, New York

Cyrus R. Vance

Former District Attorney, New York County (Manhattan), New York

Lynneice Washington

District Attorney, Jefferson County, Bessemer District, Alabama

Jared Williams

District Attorney, Augusta, Georgia

Todd Williams

District Attorney, Buncombe County (Asheville), North Carolina

Monique H. Worrell

State Attorney, 9th Judicial Circuit (Orlando), Florida