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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](#).*

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