

**IN THE SUPREME COURT
STATE OF GEORGIA**

APPEAL NO. S21A0329

ALBERT E. LOVE et al.

Appellants,

vs.

FULTON COUNTY BOARD OF TAX ASSESSORS, et al.

Appellees.

**MOTION TO DISQUALIFY
JUSTICE NELS S.D. PETERSON**

Wayne B. Kendall
Georgia Bar No. 414076
Wayne B. Kendall, P.C.
155 Bradford Square, Suite B
Fayetteville, GA 30215
770-778-8810
770-716-2439 fax

**IN THE SUPREME COURT
STATE OF GEORGIA**

ALBERT E. LOVE, et al.)	
)	
Petitioners,)	
)	
v.)	
)	
FULTON COUNTY BOARD OF TAX)	
ASSESSORS, et al.)	
)	<u>APPEAL NO. S21A0329</u>
Respondents,)	
)	
v.)	
)	
ATLANTA FALCONS STADIUM)	
COMPANY, LLC AND GEORGIA)	
WORLD CONGRESS CENTER)	
AUTHORITY)	
)	
Intervenors.)	

**APPELLANT’S MOTION TO DISQUALIFY
JUSTICE NELS S. D. PETERSON**

COME NOW the Appellants, above named, and file this their Motion to Disqualify Justice Nels S.D. Peterson, stating as follows:

FACTUAL BACKGROUND

1.

This case was docketed in this Court on October 23, 2020, five days ago.

2.

Robert S. Highsmith, Jr., a partner in Holland & Knight, and counsel of

record for the Atlanta Falcons Stadium Company, (hereinafter StadCo) served as the campaign chairman for Justice Nels S. D. Peterson on his campaign committee for election to the seat he now holds on the Georgia Supreme Court. (See Exhibit “A”).

3.

Presumably, in that capacity, Mr. Highsmith was responsible for the overall effort to get Justice Peterson elected to the Georgia Supreme Court.

4.

It is reasonable therefore to believe that Justice Peterson has forged a close professional relationship Mr. Highsmith in order to have trusted Mr. Highsmith with the responsibility of overseeing his election campaign to this Court.

5.

Further, Justice Peterson’s impartiality can be reasonably questioned by this close associational relationship with Mr. Highsmith, particularly in a matter such as this wherein an adverse ruling to Mr. Highsmith’s client, StadCo, could result in the imposition of tens of millions of dollars in annual ad valorem taxes owed by his client, StadCo, to Fulton County.

ARGUMENT AND CITATION TO AUTHORITY

Canon 1 and specifically, Rule 1.2 thereunder, of the Georgia Code of Judicial Conduct, provides that “[j]udges shall act at all times in a manner that

promotes public confidence in the *independence, integrity, and impartiality* of the judiciary.” The Comments to Rule 2.11 provide that a judge is subject to disqualification whenever his impartiality might reasonably be questioned, regardless of whether any of the specific items in Rule 2.11(A) apply. The close professional relationship disclosed by Justice Peterson with Mr. Highsmith as his campaign chairman is grounds for Justice Peterson’s recusal from this case.

CONCLUSION

Justice Nels S.D. Peterson should favorably consider recusal and disqualification from this case due to his close associational relationship with counsel of record, for one of the parties.

Respectfully submitted this 28th day of October 2020.

WAYNE B. KENDALL, P.C.

/s/ Wayne B. Kendall
Georgia Bar No.: 414076
Attorney for Appellants

155 Bradford Square
Suite B
Fayetteville, GA 30215
Tel: 770-778-8810
wbkendall2@yahoo.com

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing Appellants' Motion To Disqualify Justice Nels S. D. Peterson on the below listed individual(s) by electronic filing and by depositing the same in the United States Postal Service with adequate postage thereon to insure delivery to the following persons at the below listed address:

Patrice Perkins-Hooker, County Attorney
Kaye W. Burwell, Deputy County Attorney
Cheryl Ringer, Senior Staff Attorney
Fulton County Office of the County Attorney
141 Pryor St. SW, Suite 4038
Atlanta, GA 30303

Alex F. Sponseller, Senior Assistant Attorney General
J. Scott Forbes, Assistant Attorney General
40 Capitol Square, SW
Atlanta, GA 30334

Robert S. Highsmith, Jr., Esq,
A. André Hendrick, Esq.
Philip J. George, Esq.
HOLLAND AND KNIGHT, LLP
1180 W. Peachtree Street
Suite 1800
Atlanta, GA 30309

This 28th day of October 2020.

155 Bradford Square
Suite B
Fayetteville, GA 30215
(770) 778-8810

Respectfully submitted,
WAYNE B. KENDALL, P.C.

/s/ Wayne B. Kendall
Attorney for Appellants
GA BAR NO. 414076

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 Respondents,)
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 COMPANY, LLC AND GEORGIA)
 WORLD CONGRESS CENTER)
 AUTHORITY)
)
 Intervenors.)

APPEAL NO. S21A0329

**AFFIDAVIT OF WAYNE B. KENDALL
IN SUPPORT OF MOTION TO DISQUALIFY
JUSTICE NELS S.D. PETERSON**

Personally appeared before the undersigned officer authorized to administer oaths, Wayne B. Kendall, after being duly sworn, states and deposes under oath as follows:

1.

I am Wayne B. Kendall. I am over 18 years of age and competent to give this Affidavit. I am a licensed attorney in the State of Georgia, and I am counsel

of record for the Appellants in the above-styled case. I have personal knowledge of the facts set forth herein.

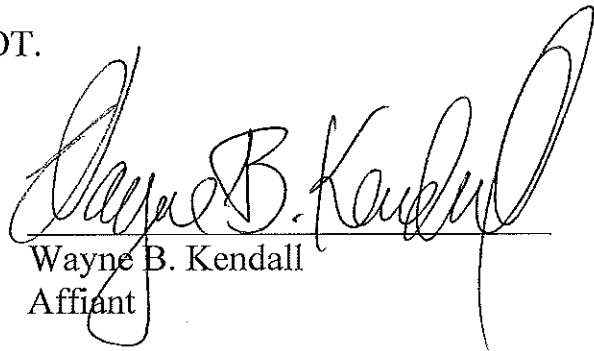
2.

From public records maintained on the website of the Georgia Government Transparency and Campaign Finance Commission my staff and I prepared the document which is attached hereto as Exhibit "A".

3.

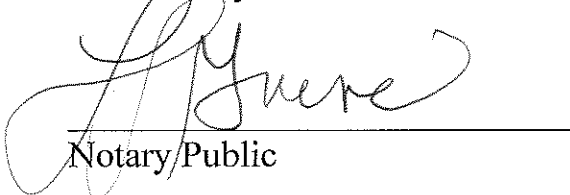
Exhibit "A" is a true and accurate compilation of records maintained by the Georgia Government Transparency and Campaign Finance Commission Robert S. Highsmith, Jr., served as the campaign chairman for Friends of Justice Peterson, Inc.

FURTHER AFFIANT SAYETH NOT.


Wayne B. Kendall
Affiant

Sworn to and subscribed before me

this 28th day of October 2020.


Notary Public

My Commission expires: 6/17/2023

CAMPAIGN REPORTS AND REGISTRATION INFORMATION

Candidate Name: **Peterson, Nels**

FilerID	Office Sought	Candidate Information	Status
C2017000133	Supreme Court	Click Here To View	Active

Campaign Disclosure Reports Registration Information

CAMPAIGN REGISTRATION INFORMATION

CANDIDATE INFORMATION

C2017000133
 Peterson, Nels
 2040 Planters Mill Lane
 Marietta GA 30062
 (770) 509 - 1215
 Supreme Court

COMMITTEE INFORMATION

Friends of Justice Peterson, Inc.
 P.O. box 70581
 Marietta, GA 30007

CHAIRPERSON INFORMATION

Robert Highsmith
 1180 West Peachtree Street NW
 Atlanta, GA 30309

TREASURER INFORMATION

Jason Adler
 6485 Shiloh Road Bldg. B # 100
 Alpharetta, GA 30005