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APRIL 11, 2018

CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

JUDICIAL ADMINISTRATOR  
CLERK OF COURT  
ORLEANS PARISH

STATE OF LOUISIANA

NO.

DIVISION "H"

IN RE SUBPOENA DUCES TECUM

FILED: \_\_\_\_\_

DEPUTY CLERK

**MAYOR-ELECT LATOYA CANTRELL'S MOTION  
AND INCORPORATED MEMORANDUM TO QUASH SUBPOENA DUCES TECUM**

**NOW INTO COURT**, though undersigned counsel, comes Mayor-elect Latoya Cantrell, who moves to quash a subpoena duces tecum issued by this Court for her personal financial records. The Mayor-elect does not object to the subpoenas requesting bank records for any city-issued credit cards, or the bank account associated with her mayoral campaign. The Mayor-elect's motion should be granted for the reasons stated below.

**BACKGROUND**

On November 27, 2017, the New Orleans Advocate and other news outlets reported that an Orleans Parish Criminal Court judge approved subpoenas for democratic Mayor-elect LaToya Cantrell's financial records, including, among other things, a subpoena for her personal credit card and bank account records. Although filed under seal, the news media reported that the subpoenas were requested by republican Louisiana Attorney General Jeff Landry as part of an investigation into alleged credit card expenditures made and reimbursed by Mayor-elect Cantrell while she served as a New Orleans city councilwoman.

Reported details concerning the purpose of the subpoenas apparently had a non-judicial source. As the New Orleans Advocate reports, "Criminal District Court Judicial Administrator ... *confirmed* that a judge signed the subpoenas Monday morning but declined to discuss other details of the orders." Exhibit "A" (emphasis added). Thus, the source of the leaks to the press about the subpoenas' existence and the purpose of the subpoenas remains unclear. As the requesting party, one potential source is the Louisiana Attorney General's office.

For her part, Mayor-elect Cantrell has not been served with any subpoena and requests for copies have been denied, even though the contents of those subpoenas have been reported by news outlets. As a result, Mayor-elect Cantrell is left to speculate over the subpoenas' actual

scope, along with the general public. Upon information and belief, however, one of the subpoenas requests personal financial information and is not limited to official mayoral or city council credit-card accounts or purchases.

Of course, Mayor-elect Cantrell has no objection to the production of bank records for her city-issued credit card or her mayoral campaign. But the subpoena directed to Mayor-elect Cantrell's personal accounts (unrelated to any official expenditures) should be quashed because the subpoena is harassing, irrelevant, and issued for an improper purpose. Should the Court disagree, the Mayor-elect respectfully requests an evidentiary hearing to determine whether the leaks concerning the subpoenas were generated by the Attorney General's office for improper purposes, which would provide additional grounds for quashing the subpoena. In the alternative, the Mayor-elect requests that the Court modify the subpoena to require in camera review and redaction of any personal financial information.

**I. The subpoena directed at Mayor-elect Cantrell's personal financial records is irrelevant and harassing.**

The Mayor-elect's personal bank records are irrelevant to any investigation of government spending and the subpoena requesting their production should be quashed. A party has standing to challenge a subpoena duces tecum when she is able to claim a justifiable, reasonable, or legitimate expectation of privacy in the items seized. *See State v. Bone*, 2012-34, (La. App. 5 Cir. 9/11/12), 107 So.3d 49. Although Mayor-elect Cantrell asserts no privacy interest in the bank records for her city-issued credit card or her mayoral campaign, her personal bank accounts and credit cards are private and confidential.

“Ordinarily, documents such as bank records and tax returns are confidential documents.”

*Dana Johno, LLC v. Centennial Ins. Co.*, 2004-1658 (La. App. 4 Cir. 12/1/04), 891 So. 2d 32, 34. In fact, Louisiana law recognizes an individual's personal interest in private financial records by statute, *see LA. REV. STAT. § 6:333*, and courts in other jurisdictions have routinely held that a party has standing to challenge a subpoena issued to a third-party requesting her confidential bank records. *See Pilkington N. Am., Inc. v. Smith*, CIV.A. 11-176-BAJ, 2012 WL 689854, at \*2 (M.D. La. Mar. 2, 2012); *Old Towne Dev. Group, L.L.C. v. Matthews*, CIV. A. 09-224-B-M2, 2009 WL 2021723, at \*1 (M.D. La. July 9, 2009); *Keybank Nat. Ass'n v. Perkins Rowe Associates, LLC*, 2011 WL 338470, \*2 (M.D. La. Jan. 31, 2011).

In addition, the Court has the duty to quash any subpoena issued by a prosecutor that is unreasonable or oppressive. *See State v. Cacioppo*, 390 So.2d 523 (La. 1980). To that end,

Louisiana courts have held that subpoenas do not authorize the disclosure of documents as part of a “fishing expedition,” *see, e.g., State v. Johnson*, 2000-0680 (La. App. 1 Cir. 12/22/00), 775 So. 2d 670, 676, which is exactly how the Attorney General’s request for Mayor-elect Cantrell’s personal financial records must be considered. Mayor-elect Cantrell’s personal financial records have no relevance to any investigation of government spending, while producing these records to a partisan prosecutor is nothing more than an intrusive and harassing witch-hunt by a political opponent. *See State v. Reynolds*, 1999-1847 (La. App. 3 Cir. 6/7/00), 772 So. 2d 128, 132 (quashing financial records subpoena when records were irrelevant). The subpoena should be quashed on that basis alone.

**II. Leaks to the media have prejudiced the Mayor-elect who requests an evidentiary hearing to determine any misconduct.**

Should the Court decline to quash the subpoena for the reasons stated in Section I, the Mayor-elect requests an evidentiary to determine whether the Attorney General’s office was responsible for the leak. If the Attorney General’s office in-fact leaked the subpoenas in order to generate negative media coverage for the Mayor-elect, then quashing the subpoenas would be appropriate on that basis as well.

Improper use of the media by persons close to the judicial process has the potential to inflame the public and prejudice the rights of parties allegedly under investigation. In *Sheppard v Maxwell*, the Supreme Court stated collaboration between prosecutors and the press as to information affecting the fairness of a criminal proceeding is not only subject to regulation, but is highly censurable and worthy of disciplinary measures. 384 U.S. at 362-63 (1966). Indeed, courts have long held that a prosecution’s improper use of the media is subject to special scrutiny. “To have the prosecutor himself feed the press with evidence that no self-restrained press ought to publish in anticipation of a trial is to make the State itself through the prosecutor, who wields its power, a conscious participant in trial by newspaper, instead of by those methods which centuries of experience have shown to be indispensable to the fair administration of justice.” *Stroble v. State of Cal.*, 343 U.S. 181, 201 (1952) (Frankfurter, J., Dissenting).

Prosecutorial media manipulation comes in many forms, including statements to the press, *see, e.g., United States v. Coast of Maine Lobster, Co.*, 538 F.2d 899, 902-03 (1st Cir. 1976) (new trial granted because of improper public statements by prosecuting attorney’s supervisor while trial was pending), and leaks of grand jury testimony, or other confidential information, *see, e.g., United States v. Lance*, 610 F.2d 202, 217-18 (5th Cir. 1980). Recently,

the Fifth Circuit affirmed the decision in *United States v. Bowen*, when the district court found that improper “cultivation of media” by the government warranted a new trial. *See United States v. Bowen*, 969 F.Supp.2d 546, 620 (E.D. La. 2013) *aff’d* 799 F.3d 336 (5th Cir. 2015).

If the initial source of the leaked subpoenas is within the Attorney General’s office, the sanction of quashing the subpoenas at issue would be appropriate. Accordingly, should the Court decline to quash the subpoena for the reasons stated in Section I, the Mayor-elect respectfully request an evidentiary hearing to determine whether the Attorney General’s office purposefully leaked the subpoenas to generate unfavorable media coverage.

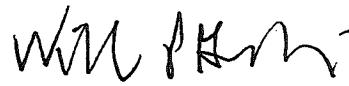
### **III. In the alternative, the Mayor-elect requests in camera inspection.**

Finally, if the Court elects not to quash the government’s subpoena entirely, and fails to order an evidentiary hearing, it should review the return in camera and redact all personal financial information. Even if the State may legitimately subpoena information, the court may modify or vacate the subpoena if it is deemed unreasonable or oppressive. *See, e.g., State v. Cacioppo*, 390 So.2d 523 (La. 1980). Modifying the subpoena to require in camera review by the Court would lessen the burden of the Attorney General’s partisan “fishing expedition” into the Mayor-elect’s personal finances.

## **CONCLUSION**

For the reasons stated above, Mayor-elect Latoya Cantrell requests that the subpoena duces tecum directed to her personal bank accounts and credit cards be quashed or that the Court conduct an evidentiary hearing to determine whether there are additional grounds for quashing the subpoena.

Respectfully submitted,



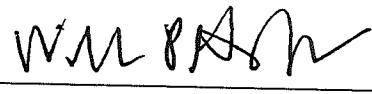
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Attorneys for Mayor-elect Latoya Cantrell

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Quash has been served upon the Attorney General and District Attorney by e-mail this 29<sup>th</sup> day of November, 2017.

  
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WILLIAM P. GIBBENS