

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

THE STATE OF GEORGIA)
)
 Plaintiff,) CIVIL CASE NO.
)
 v.) 1:23-cv-03792-SCJ
)
 SHAWN STILL)
)
 Defendant.)
 _____)

THE STATE OF GEORGIA)
)
 Plaintiff,) CIVIL CASE NO.
)
 v.) 1:23-CV-03720-SCJ
)
 DAVID SHAFER)
)
 Defendant.)
 _____)

THE STATE OF GEORGIA)
)
 Plaintiff,) CIVIL CASE NO.
)
 v.) 1:23-cv-03803-SCJ
)
 CATHLEEN LATHAM)
)
 Defendant.)
 _____)

**JOINT MOTION FOR AUTHORIZATION FOR WITNESS
TO APPEAR AND TESTIFY BY MEANS OF VIDEO TELECONFERENCE
TECHNOLOGY**

Defendants Shawn Still, David Shafer and Cathleen Latham, by and through their undersigned counsel, jointly move for authorization for witness Professor Todd Zywicki to appear and testify by means of video teleconference technology during the evidentiary hearings in this action set for Wednesday, September 20, 2023 at 9:30 A.M., showing this Court as follows:

BACKGROUND

Mr. Shafer, Mr. Still and Mrs. Latham have filed Notices of Removal with the Court, removing the criminal action against them in the Superior Court of Fulton County, No. 23SC188947, in relation to their actions as potential Presidential Electors. The Court ordered evidentiary hearings in the Defendants' cases, and subsequently ordered that the hearings be consolidated and held on September 20, 2023, at 9:30 A.M. (*See* Case No. 1:23-cv-03792-SCJ, ECF No. 13, pp. 1-2.)

In seeking removal, Defendants possess the burden of proof. *See Kirkland v. Midland Mortg. Co.*, 243 F.3d 1277, 1281 n. 5 (11th Cir. 2001) (citing *Tapscott v. MS Dealer Service Corp.*, 77 F.3d 1353, 1356 (11th Cir. 1996)). To satisfy that burden, Defendants intend to call as a witness during their evidentiary hearing(s) Professor Todd Zywicki, a law professor and resident of the State of Virginia. Professor Zywicki is a

recognized expert in laws governing presidential elections and presidential electors, and he has reviewed and is familiar with the facts in this case. Professor Zywicki can be available for the hearing by video teleconference technology, but is unable to travel to Atlanta, Georgia, on that date to testify in person. Specifically, Mr. Zywicki is serving as a visiting scholar at the University of Colorado this semester, and his class schedule and other commitments do not permit him to travel in person to Atlanta, Georgia on September 18, 2023 or September 20, 2023.

The prosecution's charges against Defendants arise out of the 2020 election for President of the United States, as it concedes in the introductory paragraph to its Indictment. (*See, e.g.*, Case No. 1:23-cv-03792-SCJ, ECF No. 2, Ex. A, p. 14.) The Indictment alleges that the defendants, including Mr. Still, Mr. Shafer and Mrs. Latham, allegedly knowingly and willfully joined a conspiracy to unlawfully change the outcome of the election. (*Id.*) It expressly alleges that:

Members of the enterprise, including several of the Defendants, created false Electoral College documents and recruited individuals to convene and cast false Electoral College votes at the Georgia State Capitol, in Fulton County, on December 14, 2020. After the false Electoral College votes were cast, members of the enterprise transmitted the votes to the President of the United States Senate, the Archivist of the United States, the Georgia Secretary of State, and the Chief Judge of the United States District Court for the Northern District of Georgia. The false documents were intended to disrupt and delay the joint session of Congress on January 6, 2021, in order to unlawfully change the outcome of the November 3, 2020, presidential election in favor of Donald Trump.

(*Id.* at 17.)

Given the fact that the State has alleged as criminal the casting of votes relating to the Electoral College for the office of President of the United States, which it alleges were transmitted to Congress with an intent to disrupt and delay a joint session of Congress, Professor Zywicki's expertise regarding Georgia election law, federal election law, particularly the Electoral Count Act and the federal rights and duties of Presidential Electors and contingent Presidential Electors, is highly relevant to the matters for which Defendants have the burden to prove under 28 U.S.C. § 1442.¹ For example, Professor Zywicki's testimony is integral to explaining and demonstrating for the Court that Presidential Electors are federal officers, and that the State's Indictment charges Defendants with conduct that is expressly permitted by (and therefore protected by) federal law. For these and other reasons, Professor Zywicki's testimony will prove helpful to the Court in adjudicating Defendants' Notices of Removal, as well as Mr. Shafer's alternative grounds for immediate federal jurisdiction.

DISCUSSION

Federal Rule of Civil Procedure 43 states that, “[f]or good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open

¹ Professor Zywicki's testimony is also important and would be very helpful to Mr. Shafer's alternative grounds for federal jurisdiction, specifically habeas and injunctive relief.

court by contemporaneous transmission from a different location.” Fed. R. Civ. P. 43(a). The Court possesses the authority to allow parties and witnesses to appear at hearings via remote audio and video means, and may hold hearings via such means. *See Solubiomix, LLC v. Attain Med, Inc.*, No. CV 1:20-MI-00163-SDG, 2022 WL 3336439, at *1 (N.D. Ga. May 23, 2022); *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 587 F. Supp. 3d 1222, 1315 (N.D. Ga. 2022) (expert, a history professor, was permitted to testify remotely by videoconference at a motions hearing); *Sportswear Co. - S.p.A v. 121212*, No. 1:21-CV-04335-JPB, 2021 WL 8648974, at *6 (N.D. Ga. Oct. 21, 2021); *United States v. Renteria-Perez*, No. 1:19-CR-492-JPB-CMS, 2020 WL 13111124, at *1 n. 1 (N.D. Ga. Dec. 23, 2020), *report and recommendation adopted*, No. 1:19-CR-00492-JPB, 2022 WL 444063 (N.D. Ga. Feb. 14, 2022). The Court also broadly authorized the use of video teleconferencing by the Court for a variety of proceedings during the COVID-19 pandemic. *See In re: Emergency Authorization of Video Teleconferencing and Telephone Conferencing in Criminal Proceedings Due to the COVID-19 Pandemic*, General Order 20-04 (N.D. Ga., Mar. 30, 2020).

For the reasons set forth herein, Professor Zywicki is a critical witness for Defendants for the evidentiary hearing on their Notices of Removal. Professor Zywicki is available to testify during the hearing, however he is unable to travel to be present at the hearing. Professor Zywicki’s scheduling conflicts surrounding the hearing constitute

sufficient good cause and compelling grounds to authorize Professor Zywicki to appear and testify at the evidentiary hearings on September 18, 2023 and September 20, 2023 (or, alternatively, at a consolidated hearing on September 20, 2023 should that motion be granted). A proposed Order is attached to this Motion as Exhibit A.

CONCLUSION

Based on the foregoing, Defendants Shawn Still, David Shafer and Cathleen Latham respectfully requests that the Court issue an order authorizing witness Professor Todd Zywicki to appear and testify by means of video teleconference technology during the evidentiary hearing set for Wednesday, September 20, 2023 at 9:30 AM.

Respectfully submitted this 14th day of September, 2023.

/s/ Thomas D. Bever

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*Counsel for Defendant Cathleen
A. Latham*

THE STATE OF GEORGIA)
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THE STATE OF GEORGIA)
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CIVIL CASE NO.
1:23-CV-03720-SCJ

THE STATE OF GEORGIA)
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 Plaintiff,)
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CIVIL CASE NO.
1:23-cv-03803-SCJ

**CERTIFICATE OF SERVICE
AND COMPLIANCE WITH LOCAL RULE 5.1**

The undersigned hereby certifies that on the date set forth below, a true and accurate copy of the foregoing, which has been prepared using 14-point Times New Roman font, was filed electronically with the clerk of the United States District Court for the Northern District of Georgia. Notice of this filing will be sent by operation of the Court's electronic filing system to all ECF-registered parties. Parties may access this filing through the Court's CM/ECF system.

This the 14th day of September, 2023.

/s/ Thomas D. Bever

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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

THE STATE OF GEORGIA

v.

[SHAWN STILL/DAVID SHAFER/
CATHLEEN LATHAM],

Defendant.

CIVIL ACTION FILE

No. [1:23-cv-03792-SCJ/1:23-CV-
03720-SCJ/1:23-cv-03803-SCJ]

ORDER

This matter appears before the Court on Defendant [Shawn Still's/David Shafer's/Cathleen Latham's] Joint Motion for Authorization for Witness to Appear and Testify by Means of Video Teleconference Technology. Doc. No. []. It appearing to the Court that sufficient good cause exists to grant the Motion, the Motion is **GRANTED**. The Court **ORDERS** that witness Todd Zywicki for the Defendant shall be permitted to appear at the evidentiary hearing set by the Court for Wednesday, September 20, 2023 at 9:30 AM by means of video teleconference technology.

IT IS SO ORDERED, this ____ day of _____, _____.

HONORABLE STEVE C. JONES
UNITED STATES DISTRICT JUDGE

Order prepared by:

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