

Nos. 23-13360; 23-13361; 23-13362

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

DAVID J. SHAFER, SHAWN STILL, CATHLEEN LATHAM
Appellants,
v.
STATE OF GEORGIA,
Appellee.

**On Appeal from the United States District Court
For the Northern District of Georgia
No. 1:23-cv-03720-SCJ; No. 1:23-cv-03792-SCJ; No.
1:23-cv-03803-SCJ;
Hon. Steve C. Jones**

**APPELLANTS' JOINT EMERGENCY MOTION FOR EXTENSION OF TIME
TO FILE JOINT BRIEF AND APPENDIX (*CURRENTLY DUE
DECEMBER 19, 2023*)**

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**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

David Shafer, Appellant, files this Certificate of Interested Persons and Corporate Disclosure Statement, listing all trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates, parent corporations, any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party, as follows:

Alex M. Bernick, Counsel for Appellee

Thomas Bever, Counsel for Appellant Shawn Still

Bondurant Mixson & Elmore LLP, Counsel for Appellee

William "Bill" Cromwell, Counsel for Appellant Cathleen Latham

Anna G. Cross, Counsel for Appellee

Cross Kincaid, Counsel for Appellee

John E. Floyd, Counsel for Appellee

Craig A. Gillen, Counsel for Appellant David J. Shafer

Gillen & Lake LLC, Counsel for Appellant David J. Shafer

The Honorable Steve C. Jones, United States District Judge

Anthony C. Lake, Counsel for Appellant David J. Shafer

Cathleen Latham, Appellant

Cole McFerren, Counsel for Appellant Shawn Still

Adam S. Ney, Counsel for Appellee

Holly A. Pierson, Counsel for Appellant David J. Shafer

Grant H. Rood, Counsel for Appellee

David J. Shafer, Appellant

Shawn Still, Appellant

State of Georgia, Appellee

Nathan J. Wade, Counsel for Appellee

Wade & Campbell Firm, Counsel for Appellee

Francis M. Wakeford, IV, Counsel for Appellee

Fani T. Willis, Counsel for Appellee

John W. Wooten, Counsel for Appellee

Daysha D. Young, Counsel for Appellee

COME NOW Appellants David Shafer, Shawn Still, and Cathleen Latham, by and through undersigned counsel, and move the Court, on an emergency basis and pursuant to Eleventh Circuit Rule 31-2(d), for a second extension of time to file a joint appellate brief and appendix.

Appellants filed notices of removal to federal court in the U.S. District Court for the Northern District of Georgia, seeking removal of their cases to federal court pursuant to the federal officer removal statute, 28 U.S.C. § 1442(a)(1). *See Georgia v. Shafer*, Case No. 1:23-CV-03720, ECF No. 1 (N.D. Ga. 2023); *Georgia v. Still*, No. 1:23-CV-03793, ECF No. 1 (N.D. Ga. 2023); *Georgia v. Latham*, No. 1:23-CV-03802, ECF No. 1 (N.D. Ga. 2023). Judge Steve C. Jones subsequently entered orders in each of the three cases denying removal to federal court and remanding Appellants' cases to State court on the basis that Appellants were not federal officers under 28 U.S.C. § 1442(a)(1). *See Shafer*, No. 1:23-CV-03720, ECF No. 27; *Still*, No. 1:23-CV-03793, ECF No. 31; *Latham*, No. 1:23-CV-03803, ECF No. 26. Each Appellant then timely appealed Judge Jones' orders to this Court. *See Shafer*, No. 1:23-CV-03720, ECF No. 30; *Still*, No. 1:23-CV-03793, ECF No. 34; *Latham*, No. 1:23-CV-03803, ECF No. 29. This Court consolidated the three appeals. *See Georgia v. Shafer*, No. 23-13360, ECF Nos. 14, 19; *Georgia v. Still*, No. 23-13361, ECF Nos. 8, 11; *Georgia v. Latham*, No. 23-13362, ECF No. 8, 14.

On November 21, 2023, the Court granted Appellants an extension of time to file their Joint Brief and Appendix, setting **tomorrow, December 19, 2023, as the deadline to file their Joint Brief**, and December 26, 2023, as the deadline to file their Joint Appendix. *Georgia v. Shafer*, No. 23-13360, ECF No. 23; *Georgia v. Still*, No. 23-13361, ECF No. 18; *Georgia v. Latham*, No. 23-13362, ECF No. 18. Based on the district court’s order, the primary issue before this Court is whether presidential electors are federal officers for purposes of the federal officer removal statute, 28 U.S.C. § 1442(a)(1).

In a related case, today, on December 18, 2023, this Court—in a 35-page majority opinion and 12-page concurring opinion—addressed a related issue: whether co-Defendant Mark Meadows, former chief of staff at the White House, may remove his state criminal prosecution to federal court under the federal officer removal statute, 28 U.S.C. § 1442(a)(1). *Georgia v. Meadows*, No. 23-12958, ECF No. 79-1 (11th Cir. Dec. 18, 2023) (the “Meadows Order”). In the Meadows Order, this Court affirmed Judge Jones’ remand on the basis that the federal officer removal statute, 28 U.S.C. § 1442(a)(1), does not apply to *former* federal officers. *Id.*

Because the Meadows Order directly impacts Appellants’ consolidated appeal and briefing, Appellants **request an extension of 30 days to file their Joint Brief and Appendix**. The Meadows Order constitutes an “extraordinary circumstance” under Eleventh Circuit Rule 31-2(d) because the Court issued the 35-page order—

which directly impacts Appellants' briefing—the day before the deadline for Appellants to file their Joint Brief. Appellants need additional time to sufficiently analyze and address the Meadows Order in their own briefing on the federal officer removal statute.

An extension of thirty (30) days was granted by this Court today in another related case, *Georgia v. Clark*, Case No. 23-13368, ECF No. 25, whose opening brief was also scheduled to be filed tomorrow, December 19, 2023. Judicial economy will be served by keeping the *Clark* case and this consolidated case on the same briefing schedule.

The issue addressed in the Meadows Order was not raised by the State or the District Court below, and it was not foreseeable at the time Appellants made their first requests for an extension of time to file their Joint Brief and Appendix on November 21, 2023. Accordingly, Appellants **respectfully request an extension of 30 days to file their Joint Brief and Joint Appendix on an emergency basis.**

Respectfully submitted, this 18th day of December, 2023.

/s/ Craig A. Gillen

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing Appellants' Joint Emergency Motion for Extension of Time to File Joint Appellant Brief and Appendix complies with the Federal Rules of Appellate Procedure and this Court's Rules, including 11th Cir. R 27-1.

This the 18th day of December, 2023.

/s/ Holly A. Pierson

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**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

STATE OF GEORGIA,

Case No: 23-13361

v.

SHAWN STILL

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date set forth below, a true and accurate copy of the foregoing Appellants' **JOINT EMERGENCY MOTION FOR EXTENSION OF TIME TO FILE JOINT BRIEF AND APPENDIX** filed electronically with the U.S. Court of Appeals for the Eleventh Circuit through the Court's ECF system, which will send notice of this filing to all counsel of record.

This the 18th day of December, 2023.

/s/ Holly A. Pierson

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