

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

<b>STATE OF GEORGIA,</b>	)	
	)	<b>INDICTMENT NO.:</b>
<b>v.</b>	)	<b>23SC188947</b>
	)	
<b>SHAWN STILL,</b>	)	
	)	
<b>Defendant.</b>	)	

**DEFENDANT SHAWN STILL’S MOTION FOR  
CONTINUANCE OF DEPOSITION**

Defendant Shawn Still, by and through undersigned counsel, respectfully moves this Court to continue the deposition of Susan Holmes until three weeks after the Georgia General Assembly’s 2024 regular session ends.

**BACKGROUND**

On January 8, 2024, the State filed a Motion to Take Deposition, seeking to take the deposition of Susan Holmes. (*Georgia v. Trump, et al.*, State’s Motion To Take Deposition To Preserve Testimony Of A Material Witness, 23SC188947 (Jan. 8, 2024).) In its Motion, the State asserted that Holmes’ testimony

is material . . . in that she had been recruited and qualified to serve as a candidate for presidential elector in early 2020. She was not aware of the December 14, 2020 Alternate Elector Meeting described in the indictment until she was asked to attend it by an unindicted co-conspirator. Her position was that she would not attend the meeting because she knew that Defendant Donald Trump did not win the presidential election in Georgia. Susan Holmes has testimony regarding the recruitment of individuals to attend the December 14 meeting that other witnesses do not have, and that no other witness can testify to.

(*Id.* at p. 2.) Notably, the purported topic of Holmes’ testimony directly relates to and concerns the Indictment’s allegations against Mr. Still. Indeed, the factual allegations related to Mr. Still

only relate to his attendance at the December 14, 2020, meeting during which he served as a Republican presidential elector. (See Indictment, pp. 13, 40–42, 76–81; *Georgia v. Still*, Defendant Shawn Still’s Plea in Bar and Motion to Quash the Indictment, 23SC188947, pp. 3–4 (Oct. 2, 2023).)

On January 10, 2024, the Court granted the State’s motion to take the deposition of “prospective material witness” Holmes pursuant to O.C.G.A. § 24-13-130. (*Georgia v. Trump, et al.*, Order Granting State’s Motion for Deposition, 23SC188947 (Jan. 10, 2024).) The Court further ordered that the deposition take place on February 2, 2024, at 2:30 p.m. “[s]hould the parties fail to agree on a location, format, and time.” (*Id.* at p. 1.)

On January 5, 2024, Mr. Still—pursuant to O.C.G.A. § 17-8-26(a)—filed a Motion to Stay and Continue Proceedings, seeking a “a stay and continuance of ‘all aspects’ of his case, including his deadline to file pretrial motions,” until April 18, 2024.<sup>1</sup> (*Georgia v. Still*, Defendant Shawn Still’s Motion to Stay and Continue Proceedings, 23SC188947 (Jan. 5, 2024).) Indeed, Mr. Still is a sitting member of the Georgia State Senate, representing State Senate District 48. Senator Still assumed office on January 9, 2023. The General Assembly 2024 regular session is currently underway and ends on March 28, 2024.

On January 11, 2024, the Court granted Senator Still’s Motion, extending his filing

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<sup>1</sup> O.C.G.A. § 17-8-26 provides that a member of the Georgia General Assembly who is a party to a case “shall be granted a continuance and stay of the case.” O.C.G.A. § 17-8-26(a). “The continuance and stay shall apply to all aspects of the case, including, but not limited to, the filing and serving of an answer to a complaint, the making of any discovery or motion, or of any response to any subpoena, discovery, or motion, and appearance at any hearing, trial, or argument.” *Id.* “[T]he continuance and stay shall last for the seven days prior to the regular . . . session of the General Assembly; the length of any regular . . . session of the General Assembly; [and] during the first three weeks following any recess or adjournment.” *Id.*

deadline for pretrial motions to April 18, 2024, and acknowledging that, as a current member of the Georgia General Assembly, he is “automatically entitled to a continuance and stay from ‘all aspects of the case.’” (*Georgia v. Still*, 23SC188947, Amended Case Specific Scheduling Order (Jan. 11, 2024).)

## DISCUSSION

The Confrontation Clause of the United States Constitution guarantees Senator Still the right to be “confronted with the witnesses against him.” U.S. Const. amend. VI; *see* Ga. Const. art. I, § 1, ¶ XIV (providing that the accused “shall be confronted with the witnesses testifying against such person”). “The right to confront one’s accusers is a bedrock procedural guarantee that applies to both federal and state prosecutions[]and is a concept that dates back to Roman times.” *State v. Hines*, 365 Ga. App. 341, 344 (2020) (quotations omitted). If the State intends to use Holmes’ deposition testimony at trial, Mr. Still enjoys the right to the opportunity to both cross examine Holmes and to personally face Holmes during the deposition. *Coy v. Iowa*, 487 U.S. 1012, 1016 (1988) (“[T]he Confrontation Clause guarantees the defendant a face-to-face meeting with witnesses appearing before the trier of fact.”); *Richardson v. State*, 276 Ga. 639, 641–42 (2003) (finding that the Confrontation Clause guarantees the defendant a “face-to-face meeting with witnesses appearing before the trier of fact”); *Spratlin v. State*, 366 Ga. App. 607, 610 (2023) (quoting *McCord v. State*, 305 Ga. 318, 321 (2019)) (“The Confrontation Clause of the United States Constitution ‘imposes an absolute bar to admitting out-of-court statements in evidence when they are testimonial in nature, and when the defendant does not have an opportunity to cross-examine the declarant.’”).

Here, as the Court has previously recognized and held, Senator Still is entitled to an

automatic continuance and stay from “all aspects of the case” because he is a current member of the Georgia General Assembly. (*Georgia v. Still*, Amended Case Specific Scheduling Order, 23SC188947 (Jan. 11, 2024) (quoting O.C.G.A. § 17-8-26(a)).) Permitting the State to conduct the deposition prior to April 18, 2024, would violate Senator Still’s rights under the Confrontation Clause of the United States Constitution because he will be in legislative session and unable to attend the deposition. Therefore, Senator Still would be unable to exercise his rights to cross examine and face Holmes. Such a violation would constitute a “constitutional error of the first magnitude.” *Mangum v. State*, 274 Ga. 573, 577 (2001). This is especially pertinent to Senator Still because Holmes’ testimony is directly relevant to the State’s allegations against Senator Still. (*Compare* Indictment at pp. 13, 40–42, 76–81, *and Georgia v. Still*, Defendant Shawn Still’s Plea in Bar and Motion to Quash the Indictment, 23SC188947, pp. 3–4 (Oct. 2, 2023), *with Georgia v. Trump, et al.*, State’s Motion To Take Deposition To Preserve Testimony Of A Material Witness, 23SC188947, p. 2 (Jan. 8, 2024).) Furthermore, while Holmes is purportedly over 72 years of age, there is no indication from the State’s Motion, or otherwise, that Holmes is in poor health to the extent her ability to be deposed in April 2024 would be jeopardized. Finally, Senator Still’s Sixth Amendment rights are applicable to depositions taken pursuant to O.C.G.A. § 24-13-130 just the same as live testimony during trial. *See Hines*, 356 Ga. App. at 344–46 (deposition taken pursuant to O.C.G.A. § 24-13-130 did not provide opportunity for cross examination in satisfaction of the Confrontation Clause).

Therefore, pursuant to the Court’s Amended Case Specific Scheduling Order, and O.C.G.A. § 17-8-26(a), the Court should continue the deposition of Holmes until after April 18, 2024, three weeks after the General Assembly’s regular session ends.

## CONCLUSION

Based on the foregoing, the Court should stay and continue “all aspects” of Defendant Shawn Still’s case, including the deposition of Susan Holmes, until after April 18, 2024, three weeks after the General Assembly’s regular session ends.

This 24th day of January, 2024.

Respectfully submitted,

/s/ Thomas D. Bever

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**CERTIFICATE OF SERVICE**

I hereby certify that I have filed the foregoing **MOTION FOR CONTINUANCE OF DEPOSITION** with the Clerk of Court using the Odyssey eFileGA Filing System, which will automatically send email notification of such filing to all attorneys of record.

This 24th day of January, 2024.

/s/ Thomas D. Bever  
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