

FULTON COUNTY SUPERIOR COURT
STATE OF GEORGIA

STATE OF GEORGIA,

V.

KENNETH CHESEBRO *ET AL.*,

DEFENDANTS.

CASE No. 23SC188947

JUDGE McAFEE

MOTION TO QUASH COUNTS 11 & 17

COMES NOW, Kenneth Chesebro, by and through undersigned counsel, and asks this Honorable Court to quash Counts 11 and 17 of the Indictment. The basis for this motion is vested in Georgia law, the Electoral Count Act, and the Twelfth Amendment.¹ In support thereof, Mr. Chesebro states as follows:

1.

Counts 11 and 17 charge Mr. Chesebro and others with a conspiracy to commit first degree forgery in violation of O.C.G.A. § 16-9-1(b), based on the allegation that the Republican presidential electors were not “duly elected and qualified” and thus, their actions in preserving their alternate ballot were illegal. The charged conduct is alleged to have taken place between December 6, 2020, and December 14, 2020. Both counts allege illegality based on the actions of the Republican presidential electors and their completion and certification of their ballots. Specifically, Count 11 concerns the Republican electors’ Certificates of the Vote,² and Count 17 concerns their vacancy filing notice.³

¹ The instant motion hereby incorporates the facts and arguments in co-defendant Ray Smith’s motion titled *Demurrers to the Indictment*, filed on September 11, 2023.

² Titled in full, “Certificate of the Votes of the 2020 Electors from Georgia.”

³ Titled in full, “RE: Notice of Filing of Electoral College Vacancy.”

2.

Both counts fail to allege an essential element of the offense of forgery: that the document was used to defraud anybody in particular. The Indictment alleges that the documents were given to the U.S. Archivist and the Georgia Governor's Office, but it does not allege that the documents were provided to *defraud* the Archivist or Governor. In fact, during the meeting of the Republican Electors, both David Shafer and Shawn Still stated on the record that the electors were meeting **to preserve any potential victory that may transpire through litigation**. See Ex. A at 3:07–13, 7:17–25. Following the meeting, Mr. Shafer then sent out a tweet which again stated that the Republican Electors had met and voted solely **in a contingent capacity**. See Ex. B.⁴ Further still, at the December 14, 2020 Republican elector meeting, Mr. Shafer specified numerous times on the record that the meeting was for the “Republican **nominees** for Presidential Elector.” See Ex. A at 3. Thus, there is no evidence that the Republican Electors intended to defraud anyone.

3.

Additionally, O.C.G.A. § 16-9-1(b) does not apply to the conduct alleged in these two counts, as the authority to be a Republican presidential elector comes from the Republican Party—not the State of Georgia.

4.

⁴ In his tweet, Mr. Shafer states, “Because the President’s lawsuit contesting the Georgia election is still pending, the Republican nominees for Presidential Elector met today at noon at the State Capitol today and cast their votes for President and Vice President.” David Shafer (@DavidShafer), TWITTER (Dec. 14, 2020, 12:51 PM), <https://twitter.com/DavidShafer/status/1338542161932021762>. Mr. Shafer then goes on to add that “[h]ad we not meet [sic] today and cast our votes, the President’s pending election contest would have been effectively mooted. Our action today preserves his rights under Georgia law.” David Shafer (@DavidShafter), TWITTER (Dec. 14, 2020, 1:07 PM), <https://twitter.com/DavidShafer/status/1338546066346676224>.

Here, Count 11 alleges that the alternate electors' Certificates of the Vote is a fraudulent document because it purports to have been made by the authority of the "duly elected and qualified" presidential electors from Georgia but in actuality lacked the authority. But the Republican slate of presidential electors **were** qualified and elected by the Republican Party. Notably, however, the Certificate of the Vote at issue here does **not** contain any statement claiming that the alternate slate was certified or ascertained.

5.

Even if this Court understands "duly elected" to mean the elector slate chosen by the people of Georgia to cast votes for president, the Republican electors' Certificate of the Vote is *still* not a forgery because it was made to be used in the event that the alternate slate became the official one. In other words, the Republican electors had to put that language in the Certificate of the Vote in order to preserve the alternate slate for Congress to consider in case the Trump Campaign won its election challenge(s) in Georgia. As stated above, the Republican Electors explicitly made this point on the record during their meeting, and afterwards via social media.

6.

Count 17 alleges that the vacancy filing notice is also fraudulent for the same reason that it purports to have been made by the authority of the "duly elected and qualified" presidential electors from Georgia. However, the vacancy filing notice does not actually contain the words "duly elected and qualified."⁵ Regardless, the same argument for Count 11 also applies to Count 17.

⁵ Nor does it claim that the alternate slate was certified or ascertained.

WHEREFORE, Mr. Chesebro requests that this Honorable Court quash Counts 11 and 17 of the Indictment.

Respectfully submitted, this 17th day of September, 2023.

/s/ Scott R. Grubman
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Counsel for Defendant

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JUDGE MCAFEE

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **Motion to Quash Counts 11 & 17** on counsel for the State of Georgia via the e-filing system.

This 17th day of September, 2023.

/s/ Scott R. Grubman
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ELECTORAL COLLEGE OF GEORGIA
MEETING on 12/14/2020

UNITED STATES OF AMERICA
STATE OF GEORGIA
COUNTY OF FULTON

MEETING OF THE ELECTORAL COLLEGE OF GEORGIA
RE GEORGIA'S ELECTORAL VOTES
* FOR
PRESIDENT and VICE PRESIDENT
OF THE
UNITED STATES

* * *

December 14, 2020

12:05 p.m.

Georgia State Capitol
206 Washington Street
Room 216
Atlanta, Georgia 30334

Anne Hansen, RPR, CCR #2711

Videographer, Ben Jones

CERTIFIED COPY

AHREPORTING, LLC

(970)231-0859
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A P P E A R A N C E S

1
2 Representing the 2020 Electors for the
3 State of Georgia:

4 Chairman David Shafer

5 Joseph Brannan

6 James "Ken" Carroll

7 Vikki Townsend Consiglio

8 Carolyn Hall Fisher

9 Honorable Burt Jones

10 Gloria Kay Godwin

11 David G. Hanna

12 Mark W. Hennessy

13 Mark Amick

14 John Downey

15 Cathleen Alston Latham

16 Daryl Moody

17 Brad Carver

18
19 Representing President Donald J. Trump:

20 Ray S. Smith, III, ESQ.

21 Smith & Liss, LLC

22 Five Concourse Parkway, Suite 2600

23 Atlanta, Georgia 30328

24 (404) 760-6000

25

PROCEEDINGS

1
2 CHAIRMAN SHAFER: My name is David Shafer.
3 I'm the chairman of the Georgia Republican Party. And
4 the hour of noon having arrived, it's my privilege to
5 call to order this meeting of the Republican nominees
6 for the Electoral College from the State of Georgia.

7 The President has filed a contest to the
8 certified returns. That contest has -- is pending.
9 It's not been decided or even heard by any judge with
10 the authority to hear it. And so in order to preserve
11 his rights, it's important that the Republican
12 nominees for Presidential Elector meet here today and
13 cast their votes.

14 From my observation, 13 of the 16 nominees
15 are present. The first order of business is for the
16 electors who are present to fill the three vacancies
17 for those who are not present.

18 Is there a motion to elect Mark Amick, Brad
19 Carver, and Burt Jones as Substitute Presidential
20 Electors?

21 MS. FISHER: I so move.

22 JOSEPH BRANNAN: Second.

23 CHAIRMAN SHAFER: It's been moved and
24 seconded that Mark Amick, Brad Carver, and Burt Jones
25 be elected Substitute Presidential Electors.

1 Is there any discussion on that motion?

2 The Chair hears no discussion, and the motion
3 will be put to a vote.

4 All those in favor signify so by saying
5 "Aye."

6 Those opposed "No."

7 The "Ayes" have it. The motion carries. And
8 we now have a full slate of 16 Presidential Electors.

9 I will pause for a moment and say that Pat
10 Garland, one of our Presidential Electors, his wife
11 died last week, and he is taking care of his family.
12 And our hearts are -- obviously all go out to him.

13 We will suspend for a moment while the
14 paperwork is prepared to reflect the new slate of
15 Presidential Electors, and then we will conduct the
16 balloting. So this meeting is suspended momentarily.

17 (Recess 12:07-12:11 p.m.)

18 CHAIRMAN SHAFER: All right. Is there any
19 objection to Carolyn Fisher serving as the secretary
20 of this meeting?

21 The Chair hears no objection, and Carolyn
22 Fisher is now the secretary of this meeting.

23 Now, Secretary, if you would call the roll of
24 the Presidential -- Presidential Electors.

25 MS. FISHER: Joseph Brannan.

1 MR. BRANNAN: Here.
2 MS. FISHER: Ken Carroll.
3 MR. CARROLL: Here.
4 MS. FISHER: Vikki Consiglio.
5 MS. CONSIGLIO: Here.
6 MS. FISHER: Carolyn Fisher.
7 Kay Godwin.
8 MS. GODWIN: Here.
9 MS. FISHER: David Hanna.
10 MR. HANNA: Here.
11 MS. FISHER: Mark Hennessy.
12 MR. HENNESSY: Here.
13 MS. FISHER: John Isakson.
14 CHAIRMAN SHAFER: No. I'm sorry. He was
15 replaced. He was substituted.
16 MS. FISHER: Sorry.
17 Cathy Latham.
18 MS. LATHAM: Here.
19 MS. FISHER: Daryl Moody.
20 MR. MOODY: Here.
21 MS. FISHER: David Shafer.
22 MR. SHAFER: Here.
23 MS. FISHER: Shawn Still.
24 MR. STILL: Here.
25 MS. FISHER: Chandra Yadav.

1 MR. YADAV: Here.

2 MS. FISHER: Mark Amick.

3 MR. AMICK: Here.

4 MS. FISHER: Brad Carver.

5 MR. CARVER: Here.

6 MS. FISHER: Burt Jones.

7 MR. JONES: Here.

8 MS. FISHER: And Frank -- what's that?

9 CHAIRMAN SHAFER: I'm sorry.

10 Oh. Can I confer with you for just a moment,
11 please?

12 MR. SMITH: Yes.

13 CHAIRMAN SHAFER: Okay. So there is -- we
14 will need to elect one more.

15 Robert, do you need me to elect one more?

16 One of our -- one of our presidential
17 electors has -- is no longer eligible because he
18 registered to vote in another state to further his
19 college studies.

20 Is there a motion to elect John Matt Downey
21 as a substitute presidential elector?

22 MS. FISHER: I so move.

23 MS. LATHAM: Second.

24 CHAIRMAN SHAFER: It's been moved and
25 seconded that John Downey be elected as a substitute

1 presidential elector. All those -- is there any
2 discussion on that motion?

3 The Chair hears no discussion and will put
4 the motion to a vote.

5 All those in favor signify so by saying
6 "Aye."

7 Those opposed "No."

8 The "Ayes" have it. The motion carries, and
9 John Downey is a -- now a Presidential -- Republican
10 Candidate for Presidential Elector. And he is
11 present.

12 MR. DOWNEY: Yes, sir.

13 CHAIRMAN SHAFER: And -- and so all 16 are
14 present. And we will conduct the voting momentarily.

15 Ray Smith is a lawyer for President Trump.
16 Do you wish to make any comments at this time?

17 MR. SMITH: Yes. We're -- we're conducting
18 this as -- as Chairman Shafer said, we're conducting
19 this because the contest of the election in Georgia is
20 ongoing. And so we continue to contest the election
21 of the electors in Georgia. And so we're going to
22 conduct this in accordance with the Constitution of
23 the United States, and we're going to conduct the
24 electorate today similar to what happened in 1960 in
25 Hawaii.

1 CHAIRMAN SHAFER: And if we did not hold this
2 meeting, then our election contest would effectively
3 be abandoned; is --

4 MR. SMITH: That's correct.

5 CHAIRMAN SHAFER: -- that not correct?

6 MR. SMITH: That's correct.

7 CHAIRMAN SHAFER: And so the only way for us
8 to have any judge consider the merits of our
9 complaint, the thousands of people who we allege voted
10 unlawfully, is for us to have this meeting and permit
11 the contest to continue; is that not correct?

12 MR. SMITH: That's correct. That's correct,
13 Mr. Chairman.

14 MR. SINNERS: Chairman Shafer --

15 CHAIRMAN SHAFER: Yes, sir.

16 MR. SINNERS: -- I have John A. Isakson as an
17 original elector being replaced by John Downey.

18 CHAIRMAN SHAFER: That's correct.

19 MR. SINNERS: Patrick Garland, Mark -- being
20 replaced by Mark Amick.

21 CHAIRMAN SHAFER: That's correct.

22 MR. SINNERS: C.J. Pearson being replaced by
23 Honorable Burt Jones, and Susan Holmes being replaced
24 by Brad Carver.

25 CHAIRMAN SHAFER: That's -- that's fine.

1 Yes. And they all 16 are present. And you've got the
2 paperwork ready?

3 MR. SINNERS: Yes, sir.

4 CHAIRMAN SHAFER: So if you would -- do you
5 know these people by sight or probably not?

6 MR. SINNERS: Yes.

7 CHAIRMAN SHAFER: So how are you going to
8 distribute the --

9 MR. SINNERS: The ballots?

10 CHAIRMAN SHAFER: Yeah.

11 MR. SINNERS: One at a time individually
12 today to cast their ballot.

13 CHAIRMAN SHAFER: So why don't we . . .

14 Okay. I want to thank Carolyn Fisher for her
15 service as the secretary of the meeting.

16 Because the documents have been prepared with
17 Shawn Still listed as the secretary of the meeting --
18 of the meeting, I would like to avoid reprinting the
19 documents, that there would be a motion to thank
20 Carolyn Fisher for her service and to elect Shawn
21 Still as the proper secretary of the meeting. Is
22 there --

23 MR. CARROLL: So moved.

24 CHAIRMAN FISHER: And is there a second?

25 MS. LATHAM: Second.

1 CHAIRMAN SHAFER: Is there any discussion on
2 that motion? No discussion.

3 All those in favor signify so by saying
4 "Aye."

5 Those opposed "No."

6 The "Ayes" have it. The motion carries.
7 Shawn Still is elected to Permanent Secretary of this
8 meeting.

9 MR. STILL: Mr. Chairman, I'd like to take a
10 moment to thank Carolyn for her hard work in this
11 role, and I appreciate all that you've done.

12 MS. FISHER: Thank you.

13 CHAIRMAN SHAFER: Shawn, if you would come
14 forward and sign these documents electing the
15 substitute electors so we can move next to the vote.

16 All right. So the certificates have been
17 executed. Are we prepared now to vote?

18 MR. SINNERS: Yes, we are.

19 CHAIRMAN SHAFER: Are the ballots individual?

20 MR. SINNERS: Yes.

21 CHAIRMAN SHAFER: So do you want me to -- do
22 you want to call out the name and have that person
23 raise their hand and maybe --

24 MR. SINNERS: Come up to sign.

25 CHAIRMAN SHAFER: Huh?

1 MR. SINNERS: Come up to sign.

2 CHAIRMAN SHAFER: Okay. So call the name.

3 And then if the elector would come forward and
4 complete the ballot and sign. So why don't you call
5 the name.

6 MR. SINNERS: Joseph Brannan.

7 James Ken Carroll.

8 Vikki Consiglio.

9 Carolyn Fisher.

10 Kay Godwin.

11 David Hanna.

12 Mark Hennessy.

13 Mark Amick.

14 Brad Carver.

15 The Honorable Burt Jones.

16 Cathy Latham.

17 John Downey.

18 Chairman David Shafer.

19 Shawn Still.

20 Chandra Yadav.

21 CHAIRMAN SHAFER: Did you call Daryl Moody?

22 MR. SINNERS: Daryl Moody.

23 16 votes.

24 CHAIRMAN SHAFER: Do we have 16 votes cast?

25 MR. SINNERS: 16 have been cast for Vice

1 President Pence. And 16 have been cast for President
2 Trump. Congratulations.

3 CHAIRMAN SHAFER: Is there any other business
4 to come before this meeting?

5 Hearing none, the chair declares this meeting
6 of the Republican Nominees for the Electoral College.

7 Are you trying to get my attention?

8 MR. SINNERS: Yes. We must complete some
9 paperwork in private to certify.

10 CHAIRMAN SHAFER: Okay. So we'll adjourn
11 this meeting. And then if the electors would remain
12 behind for a few minutes for us to complete the
13 paperwork.

14 But hearing nothing else, this meeting of the
15 electors is hereby adjourned.

16 (The meeting adjourned at 12:31 p.m.)
17
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25

C E R T I F I C A T E

1 STATE OF GEORGIA)

2)


3)
4 COUNTY OF HENRY)

5 I hereby certify that the foregoing meeting
6 was taken down, as stated in the caption, and was
7 reduced to typewriting under my direction; that the
8 foregoing transcript is a true and correct record of
9 evidence given.

10 The above certification is expressly
11 withdrawn and denied upon the disassembly or
12 photocopying of the foregoing transcript, unless said
13 disassembly or photocopying is done under the auspices
14 of AHReporting, Certified Court Reporters, and the
15 signatures and original seal is attached thereto.

16 I further certify that I am not a relative,
17 employee, attorney of any present, nor am I
18 financially interested in the outcome of this meeting.

19 This, the 18th day of December, 2020.

20
21 

22
23 Anne Hansen, RPR, CCR #2711

24 Commission expires 3/31/2021

25

D I S C L O S U R E

1
2 STATE OF GEORGIA)

3)

4 COUNTY OF HENRY)

5 Pursuant to Article 10.B of the Rules and
6 Regulations of the Board of Court Reporting of the
7 Judicial Council of Georgia, I make the following
8 disclosure:

9 I am a Georgia Certified Court Reporter here
10 as a representative of AHReporting to report the
11 foregoing matter.

12 AHReporting is not taking this meeting under
13 any contract that is prohibited by O.C.G.A Sec.
14 9-11-28 (c).

15 AHReporting will be charging its usual and
16 customary rates for this transcript.



Exhibit B

Post



David Shafer  @DavidShafer · 12/14/20 

Because the President's lawsuit contesting the Georgia election is still pending, the Republican nominees for Presidential Elector met today at noon at the State Capitol today and cast their votes for President and Vice President.



1,342




5,325



26.5K



David Shafer  

@DavidShafer

Had we not meet today and cast our votes, the President's pending election contest would have been effectively mooted. Our action today preserves his rights under Georgia law.