

STATEMENT OF CRAIG A. GILLEN
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ATTORNEY FOR DAVID J. SHAFER

On behalf of David Shafer and his legal team, we thank Pete Skandalakis and the Prosecuting Attorneys Council of Georgia for the decision to file a *Nolle Prosequi* (Nol Pros) dismissing all charges brought by Fulton County District Attorney Fani Willis. We appreciate Mr. Skandalakis' objectivity and professionalism in evaluating the charges against Mr. Shafer and his decision to dismiss all the charges against him. This nearly four-year nightmare is finally over.

Mr. Shafer is completely innocent, and we were always confident that an objective review of the facts and law by a competent and objective prosecutor would lead to his complete vindication.

2020 ELECTION AND TRUMP-SHAFER ELECTION CONTEST

Held amid a worldwide pandemic, the 2020 elections were chaotic. The final margin in the presidential election was the closest in state history – less than ¼ of 1% of the vote separated the leading candidates.

David Shafer, then Chairman of the Georgia Republican Party, joined President Trump in filing a lawsuit under the Georgia Election Code contesting the reported results of the 2020 presidential election in Georgia.

Both state and federal law requires election contests to be expeditiously heard and resolved. But the lawsuit filed by Mr. Shafer and President Trump was never heard at all. In fact, it was not set down for a hearing until January 8, 2021 – a full month after federal law required the case to be resolved and two days after Georgia's electoral votes had been counted and certified.

THE ELECTORS MEETING AND “SAFE HARBOR” DATE

The Electoral Count Act required the 2020 presidential electors to meet on Monday, December 14, 2020. Further, it required the states to resolve any pending election contests six days prior to the meeting date. Having failed to do so, Georgia

lost the right to resolve the contest. The power to resolve the contest was transferred to the United States Congress.

The 2020 version of the Electoral Count Act gave Georgia a “safe harbor” to resolve the contest, specifically stating: “If there is a final judicial determination of a controversy or contest concerning the appointment of electors pursuant to State law made at least 6 days prior to the date of the meeting of the electors, the determination shall be conclusive and govern the counting of the electoral votes for the State.” (3 U.S.C. § 5 (2020))

Georgia did not timely act. The consequences are best described by Justice Souter: “3 U.S.C. § 5 … sets certain conditions for treating a State’s certification of Presidential electors as conclusive in the event that a dispute over recognizing those electors must be resolved in the Congress under 3 U.S.C. § 15. Conclusiveness requires selection under a legal scheme in place before the election, with results determined at least six days before the date set for casting electoral votes. But no State is required to conform to § 5 if it cannot do that (for whatever reason); **the sanction for failing to satisfy the conditions of § 5 is simply loss of what has been called its “safe harbor.”** And even that determination is to be made, if made anywhere, in the Congress.” (Emphasis added) *Bush v. Gore*, 531 U.S. 98, 130 (2000) (Souter, J., dissenting)

ADVICE OF LEGAL COUNSEL

Given Georgia’s failure to comply with the Safe Harbor provision, Mr. Shafer’s counsel explicitly directed him on what must be done to preserve the pending challenge to the election. On December 10, 2020, he received the following email from Alex Kaufman, general counsel of the Georgia Republican Party on behalf of the lawyers representing him in the election contest:

“Based upon the developments both in our state case as well as in the Supreme Court, I am reconfirming the importance and our collective advice that our slate of delegates meet on December 14th (per the Federal Deadline) and cast their ballots in favor of President Trump and specifically per the Georgia Election Code. It is essential that our delegates act and vote in the exact manner as if Governor Kemp has certified the Presidential Contest in favor of President Trump. I believe that this is still the most conservative course of action to preserve the best chance for Georgia to ultimately support the President’s reelection. As we discussed in the 1960 Hawaii

case, the convening of our electors and their casting of ballots in favor of President Trump in the specifically required form and manner is necessary in order to preserve our state and party's say in the presidential contest. I am available tomorrow if you wish to discuss further. Please let me know if you disagree with this advice or need any other assistance."

Following his attorney's advice and relying on the 1960 Hawaii precedent, Mr. Shafer did precisely what he was directed by counsel to do. The Republican presidential electors met on December 14, 2020, and followed legal advice to preserve the pending legal action challenging the election results.

TWO SETS OF CONTINGENT ELECTORS

Because Georgia failed to have a final adjudication of the election challenge by the Safe Harbor Date prescribed by federal law, the decision regarding which electoral slate was to be recognized reverted back to Congress. As a result, on December 14, 2020, both the Democratic and Republican presidential electors were contingent electors.

DISQUALIFICATION OF THE DISTRICT ATTORNEY

Ms. Willis was rightly disqualified based on a significant appearance of impropriety.

We questioned Ms. Willis' objectivity from the very beginning. Five times we requested a meeting with Ms. Willis to discuss her investigation of Mr. Shafer. In March of 2023, we even waived attorney-client privilege by providing Ms. Willis with the written legal advice Mr. Shafer received. Despite our request, we were never afforded a meeting to substantively discuss Mr. Shafer's reliance on counsel's advice and our understanding of the clear language of the Electoral Count Act. In fact, she refused even a two-minute telephone call with us shortly before the indictment. We concluded that Mr. Shafer, as Chairman of the Georgia Republican Party, was to be targeted.

On a personal note, I have practiced law for 49 years, serving two years as an Assistant District Attorney, fifteen years as an Assistant United States Attorney, more than three years as a Deputy Independent Counsel in the Iran-Contra investigation and 32 years as a defense attorney. Given Ms. Willis' refusal to meet with us to

substantively discuss the explicit written legal advice Mr. Shafer received, the charges against Mr. Shafer and the other Republican presidential electors were one of the most disturbing exercises of prosecutorial discretion I have ever observed.

In contrast, Mr. Skandalakis, executive director of the bipartisan Prosecuting Attorneys Council of Georgia, met with us, listened to us, and objectively reviewed the evidence. He conducted himself with objectivity and professionalism, reviewing the facts and correctly applying law.