THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Appellate Case No. 2022-001604

RECEIVED

Nov 23 2022

S.C. SUPREME COURT

State of Georgia ..... Respondent.

v.

Mark Randall Meadows ..... Appellant.

BRIEF OF *AMICI CURIAE* OF CURRENT AND FORMER PROSECUTORS IN SUPPORT OF RESPONDENT STATE OF GEORGIA

HAYNSWORTH SINKLER BOYD, P.A.

Costa M. Pleicones
William C. McKinney
Jonathan D. Klett
P.O. Box 2048 (29602)
ONE North Main St., 2nd Floor
Greenville, South Carolina 29601
Telephone: (864) 240-3200
Facsimile: (864) 240-3300
cpleicones@hsblawfirm.com
wmckinney@hsblawfirm.com
jklett@hsblawfirm.com

KEKER, VAN NEST & PETERS LLP

Steven A. Hirsch*
633 Battery Street
San Francisco, CA 94111
Telephone: (415) 391-5400
shirsch@keker.com

STATES UNITED DEMOCRACY CENTER

Norman L. Eisen*
1101 17th St. NW, Suite 250
Washington, D.C. 20036
Telephone: (202) 999-9305
norm@statesuniteddemocracy.org

Maithreyi Ratakonda*
1 Liberty Plaza
165 Broadway
23rd Floor, Office 2330
New York, New York 10006
Telephone: (202) 999-9305
mai@statesuniteddemocracy.org

Jonathan L. Williams*
400 NW 7th Ave #14310
Ft. Lauderdale, FL 33311
Telephone: (202) 999-9305
jonathan@statesuniteddemocracy.org

**Pro Hac Vice Forthcoming*

Counsel for Amici Curiae

November 23, 2022
Greenville, South Carolina

TABLE OF CONTENTS

TABLE OF AUTHORITIES i
I. INTRODUCTION 1
II. STATEMENT OF THE CASE 2
A. THE PURPOSE AND RELEVANT PROVISIONS OF THE UNIFORM ACT 2
B. THE CRIMINAL-INVESTIGATION POWERS OF GEORGIA'S SPECIAL-PURPOSE GRAND JURY 4
C. MEADOWS' FAILED ATTEMPT TO REBUT THE GEORGIA COURT'S PRIMA FACIE EVIDENCE. 7
III. ARGUMENT 10
A. ACCEPTING MEADOWS' VIEW OF THE UNIFORM ACT WOULD UNDERMINE INTERSTATE LAW-ENFORCEMENT COMITY AND THE EFFECTIVENESS OF LAW ENFORCEMENT ACROSS STATE BORDERS, NOT ONLY IN THE VICINITY OF THIS STATE, BUT NATIONWIDE. 10
1. MEADOWS' ARGUMENTS ARE HOSTILE TO THE INTERSTATE LAW-ENFORCEMENT COMITY THAT MOTIVATED ALL 50 STATES TO ADOPT THE UNIFORM ACT. 11
2. THE GEORGIA COURT UNDERSTOOD GEORGIA LAW CONCERNING SPGJS CORRECTLY; MEADOWS DOES NOT. 14
3. MEADOWS ASKS THE COURT TO MAKE THE UNIFORM ACT NON-UNIFORM BY GIVING IT A UNIQUE SOUTH CAROLINA INTERPRETATION. 17
B. MEADOWS' ASSERTION OF EXECUTIVE PRIVILEGE IS LEGALLY TENUOUS AND WOULD FRUSTRATE EFFORTS TO INVESTIGATE CRIMINAL ACTIVITIES. 19
IV. CONCLUSION 22

TABLE OF AUTHORITIES

CONSTITUTION

U.S. CONST. ART. 1, § 6 21

CASES

Graham v. Fulton Cnty. Spec. Purpose Grand Jury,
No. 22A337, 2022 WL 16558760 (U.S. Nov. 1, 2022) 21
In re Pick,
__ S.W.3d__, 2022 WL 4003842 (Tex. Ct. Crim. App. Sept. 1, 2022) 11
In re Sealed Case,
121 F.3d 729 (D.C. Cir. 1997) 20
Kenerly v. State,
715 S.E.2d 688 (Ga. Ct. App. 2011) 5, 15
McLarty v. Fulton Cnty.,
183 S.E. 646 (Ga. Ct. App. 1936) 6
People v. Glass,
627 N.W.2d 261 (Mich. 2001) 13
People v. Superior Ct. (Jans),
274 Cal. Rptr. 586 (Cal. Ct. App. 1990) 12
State v. Bramlett,
164 S.E. 873 (S.C. 1932) 13
State v. Bartel,
479 S.E.2d 4 (1996) 15, 16
State v. Christiansen,
365 P.2d 1189 (Utah 2015) 13
State v. Lampl,
770 S.E.2d 629 (Ga. 2015) 5, 6, 8, 14
Tenney v. Brandhove,
341 U.S. 367 (1951) 21
Vannier v. Super. Ct.,
185 Cal. Rptr. 427 (Cal. 1982) 12
Wright v. State,
500 P.2d 582 (Okla. Ct. Crim. App. 1972) 12
Zepp v. Brannen,
658 S.E.2d 567 (Ga. 2008) 15

STATUTES

18 U.S.C. § 3331 4

Ga. Code § 15-12-102 ..... 5, 9
Ga. Code § 15-12-100, (a), (c) 4, 5, 6, 14
Ga. Code § 15-12-62 5
Ga. Code § 15-12-71, (a), (b), (c) 6, 16, 19
Ga. Code § 24-13-90 7
Ga. Code § 24-13-92 8
S.C. Code Ann. § 19-9-30 3
S.C. Code Ann. § 19-9-40 ..... 3, 18
S.C. Code Ann. § 19-9-70 ..... 3, 7, 10
S.C. Code Ann. § 19-9-130 ..... 3, 10, 18

OTHER AUTHORITIES

38A C.J.S. *Grand Juries* § 5 (2022) 19
38A C.J.S. *Grand Juries* § 7 (2022) 19
BEALE ET AL., GRAND JURY LAW & PRACTICE § 2:2 (2D ED.) 19

I. INTRODUCTION[1]

This is a significant case for two reasons. First, it concerns a Georgia special-purpose grand jury's investigation of alleged attempts to interfere with the results of Georgia's 2020 presidential election and thereby overturn the will of the voters.

The second reason, and the one that amici curiae address here, is that accepting petitioner Mark Meadows' arguments as to why he should not be compelled to testify before the Georgia special-purpose grand jury would unravel the decades-old system of interstate law-enforcement comity and cooperation enabled by the adoption in all 50 states of the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings.

Amici curiae are former and current law-enforcement officials who submit this brief to explain the important state policies served by the Uniform Act[2] and to voice their deep concerns that accepting Meadows' view of the Act would

---

[1] *Amici* do not include here a Statement of Issues on Appeal or Standard of Review section in accordance with Rule 208(b)(6), SCACR, as these are inapplicable due to the procedural posture of this matter.

[2] Throughout this brief, **(1)** "Uniform Act" refers to the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings, **(2)** "Meadows" refers to Appellant Mark Randall Meadows, **(3)** "MTC" refers to Meadows' Motion to Certify Case for Review by the South Carolina Supreme Court; and **(4)** unless otherwise indicated, emphases were added to quotations and internal quotation marks, brackets, ellipses, footnotes, citations, and the like were omitted from them.

undermine interstate comity and the effectiveness of law enforcement across state borders, not just between South Carolina and its neighbor Georgia, but nationwide.

Amici also explain why Meadows' overbroad assertion of executive privilege lacks any firm basis in law and would frustrate efforts to investigate criminal activities.

For reasons set forth below, the Circuit Court's order compelling Meadows to testify in Georgia is correct and should be affirmed.

II. STATEMENT OF THE CASE

A. The purpose and relevant provisions of the Uniform Act

Proposed in 1931 and modified in 1936 to secure the attendance of grand-jury witnesses,[3] the Uniform Act has been enacted by all 50 states, including by South Carolina in 1948.[4] The Act's purpose is to "facilitate the administration of the criminal law" by providing "statutory authority for securing the attendance of a witness from without the state in which the criminal proceeding is pending."[5]

To that end, the Uniform Act provides a mechanism by which a court in a signatory state ("the investigating state") may issue a certificate stating that "there

---

[3] Explanatory Statement, Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings, Nat'l Conf. of Comm'rs on Unif. State Laws, at 1 (1936) [hereinafter *Explanatory Statement*].

[4] Unif. Act Secure Attend. Witnesses Without State in Crim. Proc. Refs. & Annos. (Westlaw 2022).

[5] *Explanatory Statement*.

is a criminal prosecution pending in [that] court or that a grand jury investigation has commenced or is about to commence" and that a person in another signatory state ("the witness's state") is a "material witness" in the proceeding. S.C. Code § 19-9-30.

The court in the witness's state then holds a hearing ("the certificate-confirmation hearing") and, upon confirming (inter alia) that the witness is "material and necessary" to the prosecution or to the existing or imminent grand-jury investigation, issues a summons directing the witness to "attend and testify in the court in" the investigating state. *Id*., § 19-9-40. Importantly, "[i]n any such hearing the certificate [issued by the court of the investigating state] shall be prima facie evidence of all the facts stated therein." *Id*. It is therefore the burden of the witness opposing the request to demonstrate that the certificate's statements are inaccurate.

The Uniform Act's provisions are expressly reciprocal, *see id*., § 19-9-70, and the Act itself instructs courts to interpret it so as to "effectuate its general purpose to make uniform the law of the states which enact substantially identical legislation." *Id*., § 19-9-130. Accordingly, any judicial interpretation of the Act must take into account the Act's intended national purpose of furthering law-enforcement comity among the states.

B. The criminal-investigation powers of Georgia's special-purpose grand jury.

State statutes authorizing special grand juries followed the enactment of federal legislation in 1970, when Congress authorized the empanelment of federal special grand juries as a part of the Organized Crime Control Act. *See* 18 U.S.C. § 3331.[6] Today at least 26 states, including Georgia, permit the empanelment of some form of the special grand jury.[7]

Georgia Code § 15-12-100(a) authorizes the superior court, on its own motion or that of various public officials including (as here) the district attorney, to "impanel a special grand jury for the purpose of investigating *any alleged violation of the laws of [Georgia]* or *any other matter subject to investigation by grand juries* as provided by law." That language unambiguously embraces criminal investigations.

Georgia SPGJs "are useful vehicles to investigate organized criminal activity or other complex issues of inquiry" because—being "unburdened by the heaps of cases that bedevil regular grand juries"—they "can develop a deeper understanding of the convoluted issue at hand."[8] Moreover, Georgia SPGJs "are not limited to the

---

[6] Anna Bower, "Everything You Ever Wanted to Know About Georgia Special Purpose Grand Juries But Were Afraid to Ask," *Lawfare* (Oct. 17, 2022), https://www.lawfareblog.com/everything-you-ever-wanted-know-about-georgia-special-purpose-grand-juries-were-afraid-ask [hereinafter *Everything About Georgia SPGJs*].

[7] *Id*.

[8] *Id.*

typical two-month fixed term of regular grand juries but, instead, are empaneled for any time period required to complete its investigation. That flexibility permits prosecutors to take on complex investigations that would normally exceed the brief term of a regular grand jury."[9] The SPGJ "can recommend indictments for criminal acts uncovered during the investigation, and the district attorney can then pursue those indictments by empaneling a separate, regular grand jury."[10]

Although a Georgia SPGJ focuses on judicially specified subject matter and may only recommend but not issue indictments, *see Kenerly v. State*, 715 S.E.2d 688, 689 (Ga. Ct. App. 2011), in most other respects the SPGJ functions like any other grand jury and is governed by the same laws, *see State v. Lampl*, 770 S.E.2d 629, 632 (Ga. 2015) (citing Ga. Code § 15-12-102). For example:

- Both types of grand juror are chosen the same way, under the same statute, *see* Ga. Code § 15-12-100(b) (referring to Ga. Code § 15-12-62.1); and both types are sworn to secrecy, *see* Ga. Code § 15-12-67 (oath, made applicable to SPGJs by Ga. Code § 15-12-102).
- Both bodies are empowered to conduct investigations and to produce reports on the findings of those investigations, which may lead to criminal prosecutions. *Compare* Ga. Code § 15-12-100(a) (re: SPGJ

[9] *Id*.

[10] *Id*.

investigations) *with* Ga. Code § 15-12-71(a), (b) (re: general-grand-jury investigations); *see also McLarty v. Fulton Cnty*., 183 S.E. 646, 649 (Ga. Ct. App. 1936) (recognizing investigatory power of general grand juries).[11]

- Both bodies may subpoena witnesses and require the production of records, documents, correspondence, and books relating to the subject of an investigation. *Compare* § 15-12-100(c) (re: SPGJ investigations) *with* Ga. Code § 15-12-71(c) (re: general-grand-jury investigations).
- Both bodies may, notwithstanding the Fifth Amendment, subpoena a prospective criminal defendant to testify without regard to his testimony's eventual admissibility at trial, *see Lampl*, 770 S.E.2d at 634; and the *ultra vires* acts of both bodies will not result in dismissal of an indictment or the suppression of evidence. *Id*. at 633.

In sum: The Georgia SPGJ is, without question, a "grand jury" empowered to investigate and recommend the prosecution of criminal matters—especially those too complex for an ordinary and overburdened grand jury to tackle.

[11] The general grand jury's duties are "confined to such matters and things as it is required to perform by the Constitution and laws or by order of any superior court judge[.]" Ga. Code § 15-12-71(a). But its expressly enumerated investigatory powers are far more limited than those of an SPGJ, being restricted to investigations of various state officials and fatal police shootings. *See* Ga. Code § 15-12-71(b).

C. Meadows' failed attempt to rebut the Georgia court's prima facie evidence.

In this case, the August 22, 2022 Certificate of Material Witness issued by the Superior Court of Fulton County, Georgia set forth (inter alia) the following facts—each of which, under South Carolina's Uniform Act,[12] had to be treated as "*prima facie evidence*" at the certificate-confirmation hearing held in Pickens County, South Carolina, where Meadows resides:

- A Fulton County SPGJ is currently "investigat[ing] any and all facts and circumstances relating directly or indirectly to possible attempts to disrupt the lawful administration of the 2020 elections in the State of Georgia."[13]
- "While Georgia law authorizes special purpose grand juries to conduct both civil and criminal investigations, [this] Special Purpose Grand Jury's investigation is criminal in nature in that it was requested for the purpose of investigating criminal disruptions related to the 2020 elections in Georgia, and the Special Purpose Grand Jury is authorized to make recommendations concerning criminal prosecution. Further, the authority for a special purpose grand jury to

[12] *See* S.C. Code § 19-9-70.

[13] Certificate of Material Witness Pursuant to Uniform Act to Secure the Attendance of Witnesses from Without a State, Codified in the State of Georgia as O.C.G.A. § 24-13-90 Et Seq., ¶ 1 ("Certificate").

conduct a criminal investigation has been upheld by the Supreme Court of Georgia. *See State v. Lampl*, 770 S.E.2d 629 (Ga. 2015). Accordingly, the provisions of the Uniform Act . . . apply pursuant to O.C.G.A. § 24-13-92 et seq."[14]

- Meadows is a "necessary and material witness to the Special Purpose Grand Jury's investigation" because, as President Trump's Chief of Staff, he **(1)** was in "constant contact" with the President in the weeks following the November 2020 election; **(2)** attended a December 21, 2020 Oval Office meeting in which the President and members of Congress discussed how to "fight back" against "mounting evidence of voter fraud"; **(3)** made a "surprise visit" to personally observe the absentee-ballot signature-match audit in Marietta, Georgia; **(4)** tried to persuade the U.S. Department of Justice to investigate purported voter fraud in Georgia and elsewhere; and **(5)** participated in the January 2, 2021 telephone call in which President Trump urged Georgia Secretary of State Brad Raffensperger to "find 11,780 [additional] votes" for the President.[15] The Certificate further stated that Meadows possesses "unique knowledge" concerning all these matters and that

[14] Certificate ¶ 2.

[15] Certificate ¶¶ 5–9.

his testimony will "not be cumulative of any other evidence this matter."[16]

In the certificate-confirmation hearing before the Pickens County Court of Common Pleas, Meadows deployed two legal arguments in hopes of persuading the South Carolina court that it should grant no weight to the prima facie evidence supplied by the Georgia court.[17]

First, Meadows asserted that—contrary to the Georgia court's representation that the SPGJ's investigation of 2020 election interference is criminal in nature—the SPGJ is not entitled to law-enforcement comity under the Uniform Act because its investigation is civil, not criminal.[18] Meadows bases that characterization on the fact that, under Georgia law, the SPGJ may recommend but not initiate criminal prosecutions, and because some aspects of the SPGJ's proceedings may not be secret.[19]

---

[16] Certificate ¶¶ 10–11.

[17] Meadows also asserted that the certificate had become "moot," an argument that amici do not address.

[18] Besides the representations made in the Certificate, the Georgia Superior Court has previously addressed and rejected the argument that the special-purpose grand jury proceeding at issue here was civil in nature. *See* Order Denying Motion to Quash, *In re 2 May 2022 Special Purpose Grand Jury—Subpoena for Governor Kemp*, No. 2022-EX-000024, at 4–5 (Ga. Super. Ct. Aug. 29, 2022) [hereinafter *Kemp Order*].

[19] As previously noted, general and special grand jurors swear the same oath of secrecy. *See* Ga. Code § 15-12-67 (oath, made applicable to SPGJs by Ga. Code § 15-12-102).

Second, Meadows argued that he is not a "material witness" within the meaning of the Uniform Act because his invocation of "executive privilege" and of his own state-constitutional privacy rights would "limit, if not outright preclude," his testimony.[20]

The Pickens County court rejected Meadows' arguments and ordered him to appear in the Fulton County, Georgia Superior Court on November 30, 2022.[21] For reasons discussed below, amici urge this Court to affirm that result.

III. ARGUMENT

A. Accepting Meadows' view of the Uniform Act would undermine interstate law-enforcement comity and the effectiveness of law enforcement across state borders, not only in the vicinity of this State, but nationwide.

Interstate law-enforcement comity and reciprocity constitute the very heart of the Uniform Act, which, as previously mentioned, must be interpreted so as to further its national purposes. *See* S.C. Code §§ 19-9-70, 19-9-130. But Meadows urges this Court to create a precedent that disrespects comity and hobbles interstate law enforcement. Under Meadows' view of the Act, the court in the witness's state may (a) brush aside the prima facie evidence presented in the investigating state's

[20] Respondent's Memorandum of Law Opposing Application for Attendance of Witness Out of State, *State of Georgia v. Meadows*, C.A. No.: 2022-CP-39-01085, at 1 (filed Oct. 24, 2022).

[21] Order Summoning Witness to Testify in Another State, *State of South Carolina, County of Pickens v. Meadows*, No. 2022-CP-39-01085 (S.C. Ct. Common Pleas, 13th Judicial Dist.) (filed Nov. 7, 2022).

judicial certificateand then (b) decide for itself whether, under the law and public policy of its own state, a specialized grand jury that the investigating state has organized to probe its most complex crimes possesses the requisite characteristics to be afforded comity and reciprocity under the Uniform Act.

Meadows thus calls for each state to create, through judicial interpretation, its own *state-specific version* of the Uniform Act—necessarily rendering the Act ***non***-uniform. For each state to arrogate to itself the right to determine the adequacy of other states' grand-jury systems represents the very opposite of comity—and it invites retaliation that would in short order unravel the 50-state cooperative system enabled by universal adoption of the Uniform Act. Unsurprisingly, the court below correctly rejected Meadows' arguments. Other courts have as well.[22] This Court should reject it, too.

[22] In addition to the court below, courts in Florida and Virginia recently rejected similar arguments made by individuals subpoenaed to testify in front of the Georgia SPGJ. *See* Order Directing a Witness to Appear and Testify in a Georgia Court Pursuant to Uniform Act, In Re: The Special Purpose Grand Jury, Case No. 2022-FF-011326 (Fla. 12th Cir. Ct Nov. 15, 2022); Order Directing Witness to Appear in the Superior Court, Fulton County, Georgia, In re Newton Leroy Gingrich, Case No. KM 2022-623 (Va. Cir. Ct. Nov. 9, 2022); *see also Everything About Georgia SPGJs* ("Thus far, judges in Georgia and elsewhere have overwhelmingly rejected the view that the special purpose grand jury's investigation is civil rather than criminal. Here's a running list of judges who have weighed in and explicitly rejected the idea: Judge Leigh Martin May of the U.S. District Court for the Northern District of Georgia; Judge Gregory Lammons of the Eighth District Court of Colorado; and Judge Robert McBurney, the special purpose grand jury's supervising judge on the Fulton County Superior Court."). By contrast, Meadows has nothing better to cite than the dicta of dissenting Texas

1. Meadows' arguments are hostile to the interstate law-enforcement comity that motivated all 50 states to adopt the Uniform Act.

"The Uniform Act was intended as a matter of comity between states to enable states to obtain material witnesses for criminal prosecutions." *Wright v. State*, 500 P.2d 582, 588 (Okla. Ct. Crim. App. 1972). The Act therefore applies to witnesses needed for "a trial or a grand jury investigation, or other criminal proceedings, which [are] pending or under way." *Id*.

Comity and reciprocity are the Act's touchstones. The Act "requires reciprocal cooperation for the enforcement of witness attendance orders. The essence of the Uniform Act is to create a community of jurisdictions which will honor the request of fellow members for the appearance of witnesses at criminal proceedings under the conditions specified in the Act." *People v. Superior Ct. (Jans)*, 274 Cal. Rptr. 586, 589 (Cal. Ct. App. 1990).

A state that turns its back on the Act's comity and reciprocity by erecting needless barriers to requests from the courts of other states should expect similar treatment when its turn comes to seek cooperation to secure the presence of a material witness. "A restrictive interpretation" of the Act's reach "necessarily restricts the reach of the enacting jurisdiction to ensure that all who are deemed necessary and material witnesses will be forced to appear in its own criminal cases.

---

judges in a case that was dismissed as moot. *See* MTC at 12 (citing *In re Pick*, __ S.W.3d __, 2022 WL 4003842 (Tex. Ct. Crim. App. Sept. 1, 2022)).

The Act gives only insofar as it takes." *Jans*, 274 Cal. Rptr. at 589. South Carolina thus "has a fundamental interest in complying with the demands of other jurisdictions which have adopted similar legislation." *Vannier v. Super. Ct.*, 185 Cal. Rptr. 427, 431 (Cal. 1982).

For one state to sit in judgment of another's grand-jury system violates the comity required by the Uniform Act. As applied to state criminal proceedings, the grand jury is entirely a creature of state law,[23] and the resulting "grand-jury federalism" has produced a flowering of diverse institutional arrangements and innovations. Thus, "[i]n many states, constitutional or statutory provisions require that certain crimes be prosecuted on indictment or presentment by a grand jury"; but "in some states the creation of grand juries is not constitutionally required. Where not constitutionally required, the grand jury is a creature of statute." 38A C.J.S. *Grand Juries* § 5 (2022); *see generally State v. Christiansen*, 365 P.2d 1189, 1192–94 (Utah 2015) (tracing historical development of states' varying systems and criteria for summoning grand juries). Most states—including South Carolina—permit grand juries to issue public reports of their investigations under at least some circumstances. BEALE ET AL., GRAND JURY LAW & PRACTICE § 2:2 (2d ed.) (citing *State v. Bramlett*, 164 S.E. 873 (S.C. 1932)). And as previously noted, some 26 states, including Georgia, have exercised their prerogative to create some form

[23] *See People v. Glass*, 627 N.W.2d 261, 272 (Mich. 2001) ("[T]he Fifth Amendment does not require grand juries in state prosecutions[.]").

of special purpose grand jury.[24] Those grand juries, too, come in a wide variety of state-specific forms. *See* 38A C.J.S. *Grand Juries* § 7 (2022).

2. The Georgia court understood Georgia law concerning SPGJs correctly; Meadows does not.

Here, the Georgia court explained the nature of Georgia's SPGJs, assuring the South Carolina court that, "[w]hile Georgia law authorizes special purpose grand juries to conduct both civil and criminal investigations, [this] Special Purpose Grand Jury's investigation is criminal in nature in that it was requested for the purpose of investigating criminal disruptions related to the 2020 elections in Georgia, and the Special Purpose Grand Jury is authorized to make recommendations concerning criminal prosecution."[25] The Georgia court further observed that "the authority for a special purpose grand jury to conduct a criminal investigation has been upheld by the Supreme Court of Georgia."[26]

The Georgia court's understanding of Georgia's grand-jury system was—unsurprisingly—correct. A Georgia SPGJ may be impaneled to investigate "*any* alleged violation of the laws of [Georgia] or *any* other matter subject to investigation by grand juries[.]" Ga. Code § 15-12-100(a). That sweeping authority necessarily encompasses criminal investigations. *See Lampl*, 770 S.E.2d at 633

[24] *See Everything About Georgia SPGJs*.
[25] Certificate ¶ 2.
[26] *Id*. (citing *Lampl*, 296 Ga. 892).

(holding that Georgia SPGJ lacked authority to investigate matters *outside* its judicially designated focus on "*potential criminal conduct* by county officials or employees"). As discussed above at Part II.B., the Georgia special-purpose grand jury is a true grand jury, subject to most of the same rules that govern Georgia's general grand juries, but specially designed to focus on and probe some of the state's most complex legal matters, civil and criminal.

Meadows' only evidence that the Georgia court misunderstood Georgia law is his citation to mistaken obiter dicta in an opinion from an intermediate Georgia court.[27] In *Kenerly v. State*, the Georgia Court of Appeals misread an earlier intermediate-court decision, *State v. Bartel*, 479 S.E.2d 4 (1996), as having "concluded that special purpose grand juries conduct ***only*** civil investigations." *Kenerly*, 715 S.E.2d at 194–95 (citing *Bartel*, 479 S.E.2d at 5 [697 of the official reports]).

Meadows' reliance on the *Kenerly* dicta fails for two reasons (besides its being dicta). ***First***, the Uniform Act does not specify what type of investigation the grand jury must be conducting—it merely requires, in relevant part, that a prosecution be pending or that a "grand jury investigation" has commenced or is about to commence. S.C. Code § 19-9-40. ***Second***, the *Kenerly* court was simply

[27] *See Zepp v. Brannen*, 658 S.E.2d 567, 569 (Ga. 2008) (treating language in court's own prior opinion as obiter dicta because it "was not necessary to resolve the issue before the Court and its implicit premise . . . is without statutory basis").

mistaken: *Bartel* does not say that special-purpose grand juries only conduct civil investigations. In fact, *Bartel* acknowledges that both special and general grand juries may conduct "civil investigations."[28] *See* Ga. Code § 15-12-71(b),(c) (authorizing investigations by general grand juries).[29] If anything, that fact demonstrates the overbreadth of Meadows' theory, which necessarily implies that even a general Georgia grand jury would be powerless to demand his presence under the Uniform Act while engaged in a "civil investigation."

Logically, the investigation at issue here could only be criminal—because it has no bearing on any civil proceeding and is entirely concerned with a criminal attempt to overturn the results of the Georgia's 2020 election. The point was made, and made well, by the Fulton County, Georgia Superior Court, in the course of denying Georgia Governor Brian Kemp's motion to quash a subpoena from the same SPGJ at issue here. Governor Kemp had claimed sovereign immunity to the subpoena, but the district attorney countered that sovereign immunity does not

---

[28] *See Bartel*, 479 S.E.2d at 697 (adverting to "1994 enactments . . . broadening the civil investigatory powers of grand juries"); *id*. at 698 (concluding that statutory oath is "irrelevant to civil investigations conducted pursuant to OCGA § 15-12-71(b) [governing general grand juries] and/or OCGA § 15-12-100 et seq. [governing special purpose grand juries]).

[29] Although the discretionary investigatory power of general grand juries is restricted to various types of Georgia-specific subject matter, nothing in Georgia Code § 15-12-71 prevents a general grand jury from invoking the Uniform Act to compel an out-of-state witness to testify in such an investigation—as might occur, for example, where a Georgia official is suspected of having received bribes from an out-of-state person.

apply in criminal matters. The Superior Court had no difficulty concluding that the SPGJ's investigation is criminal:

> [This SPGJ's] purpose is unquestionably and exclusively to conduct a criminal investigation: its convening was sought by the elected official who investigates, lodges, and prosecutes criminal charges in this Circuit; its convening Order specifies its purpose as the investigation of possible criminal activities; and its final output is a report recommending whether criminal charges should be brought. Unlike the special purpose grand jury in *Bartel*, it is not investigating "irregularities" in hospital administration. It will not be recommending whether anyone should be sued or should be referred for civil administrative proceedings; it will be recommending whether anyone should be prosecuted for crimes. Put simply, there is nothing about this special purpose grand jury that involves or implicates civil practice.[30]

It is therefore clear that the Georgia court in this case (and in the *Kemp* case) understood Georgia law concerning SPGJs correctly. Meadows does not.

3. Meadows asks the Court to make the Uniform Act ***non***-uniform by giving it a unique South Carolina interpretation.

Meadows asks this Court to flout an interpretive rule built into the Uniform Act itself—and to render the Uniform Act ***non***-uniform—when he asserts: "[T]he question here is not whether the 'special purpose grand jury' is civil or criminal—it is whether it qualifies as a 'grand jury' within the meaning of the *South Carolina* Uniform Act." MTC at 9. He concludes that it does not, because it is "*not a grand jury under South Carolina law*." *Id*.

[30] *Kemp Order* at 4–5.

In Meadows' view, therefore, the "South Carolina version" of the Uniform Act uniquely defines "grand jury" to mean "a grand jury under South Carolina law," incorporating whatever guarantees of secrecy and privacy South Carolina law may provide in connection with its own grand juries. *See* MTC at 9–13.

That is the very antithesis of the interpretive approach mandated by the Uniform Act itself, which expressly requires courts to interpret it so as to "effectuate its general purpose to *make uniform the law of the states* which enact substantially identical legislation." *Id*., § 19-9-130. By asking the Court to give the Uniform Act a unique South Carolina gloss, Meadows thus invites the Court to violate the Act's own explicit interpretive rule, thereby rendering it ***non***-uniform.

Meadows also offers public-policy arguments in support of giving the Uniform Act a unique South Carolina interpretation. He suggests, for example, that a South Carolinian should not be imposed upon to leave "the normal protection of the South Carolina legal system" to participate in "mere investigations" in other states. MTC at 9. That argument fails for at least two reasons.

First, the Uniform Act allays any fears about leaving South Carolina because it provides witnesses with specific protections to ensure that they will not be prejudiced by being compelled to appear before a different state's grand jury. Before issuing a summons under the Uniform Act, the court in the witness's state must determine that compelling the witness's out-of-state appearance will not cause him "undue hardship" and that the state in which he is to testify and all states

through which he must travel will protect him from arrest and from the service of civil and criminal process. S.C. Code § 19-9-40.

Second, Meadows' argument ignores the fact that, as previously noted, a general Georgia grand jury (one that issues indictments) likewise could subpoena a South Carolina witness for a "mere investigation." *See* Ga. Code § 15-12-71(b),(c). Meadows fails to explain why that investigation would be worthy of reciprocity under the Uniform Act while this one is not. The Court should reject Meadows' argument.

B. Meadows' assertion of executive privilege is legally tenuous and would frustrate efforts to investigate criminal activities.

Meadows asserts overbroad executive-privilege and privacy claims that would shield presidential election interference from effective investigation. Using his aggressive privilege arguments as a bootstrap, he then further asserts that he cannot be deemed a "material and necessary" witness within the meaning of the Uniform Act because his invocation of the federal executive privilege and of his own state-constitutional privacy rights will prevent him from saying much, if anything, to the Georgia SPGJ. MTC at 13–17.[31]

[31] Meadows references his "pending" federal case asserting executive privilege to avoid a Congressional subpoena and suggests that the Court pause his testimony to allow that case to resolve. MTC at 13–14. But that case was dismissed on October 31 on jurisdictional grounds without addressing his privilege claims—a decision that the court has refused to stay or reconsider. *Meadows v. Pelosi*, Civ. A. No. 1:21-cv-03217-CJN (D.D.C.) (Dkt. Nos. 49, 50, 54, 55). The order dismissing the case is reported at 2022 WL 16571232.

The lower court rejected Meadows' privilege- and privacy-based materiality arguments, and this Court should as well. The presidential-communications privilege that he plans to invoke may be overcome by a showing that the subpoenaed evidence is necessary for a grand jury proceeding. *See In re Sealed Case*, 121 F.3d 729, 753 (D.C. Cir. 1997). This involves demonstrating why it is likely that the subpoenaed materials contain important evidence and why that evidence is not feasibly available from another source. *Id.* at 756. If one of the crimes that a grand jury is investigating involves the content of conversations and that evidence is "not available elsewhere," "the grand jury's need for the most precise evidence, the exact text of oral statements . . . is undeniable." *Id.* at 761.

Under those standards, the presidential-communications privilege is unavailable here. The Georgia court has certified facts demonstrating a compelling need for Meadows' testimony, and it is highly likely that this information is not available elsewhere. The court's Uniform Act certificate explains that Meadows, as the former president's chief of staff, was in "constant contact" with President Trump after the November 2020 election and that he possesses unique knowledge of the events under criminal investigation.[32] For example, Meadows made a "surprise visit" to the location where Georgia's absentee-ballot signature-match audit was being conducted, and he participated in post-election White House

[32] Certificate ¶¶ 5 and 10.

conversations about how to "fight back" against the purported election fraud. He also participated in President Trump's call to Georgia Secretary of State Raffensperger.[33] Meadows is very likely the only person who can adequately answer the SPGJ's potential questions about his actions, conversations, and motivations on those days. Meadows' argument that he is not a material witness thus fails because the presidential-communications privilege will not apply to many, if not all, of the topics on which he will be questioned.

Regardless, instead of blocking Meadows's testimony based on his claims that he is privileged to avoid answering questions that have not yet been asked, the Court should proceed as the U.S. Supreme Court just did with Senator Lindsey Graham's assertion of federal privilege under the Speech or Debate Clause, *see* U.S. Const. art. I, § 6, cl. 1. Meadows should testify, and if "disputes arise regarding the application of [executive privilege] to specific questions," he can "return to . . . court" to have that concrete dispute decided. *Graham v. Fulton Cty. Special Purpose Grand Jury*, No. 22A337, 2022 WL 16558760, at *1 (U.S. Nov. 1, 2022). If anything, Senator Graham's privilege claim was even stronger than Meadows', as it was based on an express textual protection designed to spare legislators the "cost and inconvenience" of litigation. *See Tenney v. Brandhove*, 341 U.S. 367, 377 (1951). Meadows merits no greater protection here.

[33] Certificate ¶ 7.

IV. CONCLUSION

For all the reasons stated above, amici curiae urge the Court to affirm the Circuit Court's order compelling Meadows to testify before the Fulton County, Georgia special-purpose grand jury on November 30, 2022.

Respectfully submitted,

KEKER, VAN NEST & PETERS LLP

`

s/ Steven A. Hirsch
Steven A. Hirsch*
Keker, Van Nest & Peters LLP
633 Battery Street
San Francisco, CA 94111-1809
Telephone: (415) 391-5400
shirsch@keker.com

HAYNSWORTH SINKLER BOYD, P.A.

s/ Jonathan D. Klett
Costa M. Pleicones, S.C. Bar No. 4479
William C. McKinney, S.C. Bar No. 100690
Jonathan D. Klett, S.C. Bar No. 103208
Haynsworth Sinkler Boyd, P.A.
P.O. Box 2048 (29602)
ONE North Main St., 2nd Floor
Greenville, South Carolina 29601
Telephone: (864) 240-3200
Facsimile: (864) 240-3300
cpleicones@hsblawfirm.com
wmckinney@hsblawfirm.com
jklett@hsblawfirm.com

Norman L. Eisen*
States United Democracy Center
1101 17th St. NW, Suite 250
Washington, D.C. 20036
Telephone: (202) 999-9305

norm@statesuniteddemocracy.org

Maithreyi Ratakonda*
States United Democracy Center
1 Liberty Plaza
165 Broadway
23rd Floor, Office 2330
New York, New York 10006
Telephone: (202) 999-9305
mai@statesuniteddemocracy.org

Jonathan L. Williams*
States United Democracy Center
400 NW 7th Ave #14310
Ft. Lauderdale, FL 33311
Telephone: (202) 999-9305
jonathan@statesuniteddemocracy.org

**Pro Hac Vice Forthcoming*

Counsel for Amici Curiae

November 23, 2022
Greenville, South Carolina