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**Nov 23 2022**

**S.C. SUPREME COURT**

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

State of Georgia..... Respondent.

v.

Mark Randall Meadows..... Appellant.

**RESPONSE IN SUPPORT OF AFFIRMING THE CIRCUIT COURT ORDER  
DIRECTING APPELLANT MEADOWS TO APPEAR AT THE FULTON COUNTY,  
GEORGIA SPECIAL PURPOSE GRAND JURY**

As will be shown below, the State of Georgia believes that South Carolina Circuit Court Judge Miller properly exercised his discretion in approving the material witness request and ordering Mark Randall Meadows to appear at the Fulton County Georgia Courthouse on November 30, 2022. The State of Georgia asks the South Carolina Supreme Court to affirm Judge Miller’s order.

**Background and Procedural History**

On May 2, 2022 the State of Georgia, by and through the District Attorney in Fulton County, Georgia, impaneled a Special Purpose Grand Jury to investigate criminal allegations that individuals attempted and conspired to undermine the integrity of the November 2020 election

results in Georgia. As part of this criminal investigation, the Special Purpose Grand Jury has issued numerous subpoenas for witnesses inside and outside of Georgia to testify. When witnesses from outside the State of Georgia have not agreed to service of process, the Special Purpose Grand Jury has summoned witnesses through the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings (“the Uniform Act”). Georgia and South Carolina are signatories of the Uniform Act. *See* SC Code §§19-9-10-130, OCGA §§ 24-13-90-97.

Pursuant to the OCGA § 24-13-94(a), Georgia Superior Court Judge Robert C. I. McBurney issued the Certificate of Material Witness (“Certificate”) for Meadows on August 22, 2022. The certificate was served upon Meadows in Pickens County, South Carolina, where he currently resides. South Carolina Circuit Court Judge Edward W. Miller conducted a hearing on this matter in Pickens County, South Carolina on October 26, 2022 wherein Meadows was provided a full opportunity to present evidence and make argument. On November 7, 2022 Judge Miller issued a written order granting the State of Georgia’s request for the certification of Meadows as a material witness and ordered Meadows to appear at the Fulton County, Georgia Courthouse on November 30, 2022 for the purpose of providing testimony.<sup>1</sup>

Meadows appealed this order to the South Carolina Court of Appeals and then filed a Motion to Certify this Case for Review by the South Carolina Supreme Court pursuant to South Carolina Appellate Court Rule 204(b). On November 21, 2022, this Court issued two orders: the first order granted the motion to certify this matter for review by the South Carolina Supreme Court; and the second order instructed the State of Georgia to respond to the merits of the arguments raised by Meadows in his Motion to Certify the Case for Review.

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<sup>1</sup> Meadows will be able to raise any privilege issue at that time to Judge McBurney, who is presiding over the Special Grand Jury in Fulton County, Georgia.

Meadows argues that Judge Miller abused his discretion by making the following “four fundamental errors”: 1) the underlying certification is moot; 2) there is no criminal matter or “Grand Jury” as required by South Carolina’s uniform law; 3) the Special Purpose Grand Jury lacks the secrecy protections of a “true” Grand Jury; and 4) Mr. Meadows does not qualify as a “material witness.”

As will now be shown, Meadows’ arguments to overturn Judge Miller’s Order are unpersuasive. Judge Miller did not err, and the Order directing Meadows to appear in Georgia should be affirmed.

**1. The underlying certification was valid and timely.**

Georgia Judge McBurney certified Meadows to be a necessary and material out-of-state witness and included the date of September 27, 2022 for Meadows to provide testimony at the Special Purpose Grand Jury in Fulton County, Georgia. The Pickens County, South Carolina Uniform Act hearing regarding materiality was not held prior to September 27, 2022, rather the hearing was on October 26, 2022. At the Pickens County hearing, Meadows raised the issue of mootness as a reason to deny Georgia’s request. Transcript 30-31.

The Georgia material witness certification was not moot because the Georgia Special Purpose Grand Jury is still meeting, Meadows remains a material and necessary witness, and the date of attendance in the certification was not required by law, rather the length of time the witness is needed in the court proceeding is required by law. *See* OCGA § 24-13-94(a) (“a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required.”).

Solicitor W. Walter Wilkins, who represented the State of Georgia at the hearing, submitted an affidavit prepared by Fulton County Deputy District Attorney Will Wooten to Judge Miller showing that the Georgia Special Purpose Grand Jury is still meeting and continues to need Meadows' testimony for the criminal investigation. Transcript p. 7. Further, Solicitor Wilkins called DDA Will Wooten as a witness. DDA Wooten testified that the Georgia material witness certificate does not require that a specific date for testimony be included in the certificate, rather the Uniform Act requires that the Georgia certificate provide the anticipated number of days that the witness' testimony will be required. Transcript p. 14-17, *see also* OCGA § 24-13-94(a). Here, Meadows' testimony is expected to take one day. Transcript p. 7.

DDA Wooten was cross examined about whether the District Attorney's office had the authority to set a date for Meadow's testimony other than for September 27, 2022. *See* Transcript pp. 13-18. DDA Wooten maintained that under the Uniform Act a date is not required in the Georgia certificate and that the South Carolina judge sets a date for attendance in the order granting the summons. *See* SC Code §19-9-40 (“(The South Carolina Judge) shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court in which the prosecution is pending or in which a grand jury investigation has commenced or is about to commence at a time and place specified in the summons.”). For these reasons, the State of Georgia did not obtain a new certificate after September 27, 2022. Instead, the State of Georgia provided Judge Miller with several dates that the Special Purpose Grand Jury could accommodate Meadows' schedule.

Judge Miller carefully considered Meadows' argument regarding mootness before rejecting it. The Uniform Act makes clear that Georgia issues the certificate and South Carolina sets the date for Meadows to attend the Georgia Court proceeding. Thus, the fact that the date in

the Georgia certificate has lapsed is of no consequence. What is relevant is that the Special Purpose Grand Jury is still meeting, Meadows is still a material and necessary witness, and that the Special Purpose Grand Jury will be able to accept Meadows' testimony on November 30, 2022.

Judge Miller's ruling is consistent with SC Code § 19-9-130 instruction to "interpret[] and construe[] [the Uniform Act] as to effectuate its general purpose to make uniform the law of the states which enact substantially identical legislation."

Judge Miller properly exercised his discretion in finding the Georgia certificate was timely.

**2. South Carolina properly recognizes certificates for witnesses summoned to a Georgia Special Purpose Grand Jury that is conducting a criminal investigation.**

Meadows contends that the Georgia Special Purpose Grand Jury does not have the authority to secure his attendance by the Uniform Act because the Special Purpose Grand Jury does not constitute a grand jury within the definition in SC Code § 19-9-20. Meadows' argues that the Georgia Special Purpose Grand Jury is not a grand jury under South Carolina law because 1) it does not issue indictments, 2) it may only conduct civil investigations, and 3) it lacks the "hallmark secrecy of a true grand jury."

**a. The Georgia Special Purpose Grand Jury proceeding is a "criminal action, prosecution or proceeding" pursuant to SC Code § 19-9-20.**

However, before addressing Meadows' three grand jury arguments, it is important to recognize that SC Code §19-9-20 has two provisions that trigger the application of the Unified Act to out-of-state witnesses. While both provisions apply here, Meadows' did not contest the application of the second provision. This omission is fatal to Meadows' argument.

SC Code §19-9-20 states that the Unified Act applies to out-of-state witnesses “whose testimony is desired in any proceeding or investigation by a grand jury **or** in a criminal action, prosecution or proceeding.” (Emphasis added). The Georgia Special Purpose Grand Jury at issue in this matter qualifies both as a grand jury **and** as a “criminal action, prosecution or proceeding.” (Emphasis added). Meadows, who must show that neither prong applies, makes no argument that the Georgia Special Purpose Grand Jury is not involved in a “criminal action, prosecution or proceeding.” Because it is undisputed that the Georgia Special Purpose Grand Jury is a criminal action or proceeding, Judge Miller must be affirmed in applying SC Code §19-9-20 to a Georgia Special Purpose Grand Jury certificate.

**b. The Georgia Special Purpose Grand Jury proceeding is a grand jury proceeding pursuant to SC Code § 19-9-20.**

As to the grand jury argument, Meadows’ interpretation of Georgia law to the grand jury provision in SC Code §19-9-20 is too narrow and wrong. The Georgia Special Purpose Grand Jury is a grand jury conducting a criminal investigation pursuant to Georgia law.

Georgia Judge McBurney’s certificate describes this specific Georgia Special Purpose Grand Jury and sheds light generally on the nature of a Special Purpose Grand Jury pursuant to Georgia Law. In Georgia a Special Purpose Grand Jury may be impaneled for a civil or a criminal investigation. Certificate, p. 1 (“Georgia law authorizes special purpose grand juries to conduct both civil and criminal investigations.”). Here, the Special Purpose Grand Jury was impaneled unambiguously for a criminal investigation. Certificate, p. 1-2 (“[T]he 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.”). In Judge McBurney’s

view, because this is a criminal investigation, the Uniform Act applies. Certificate, p. 2 (“the provisions of the Uniform Act to Secure the Attendance of Witnesses from Without the State apply pursuant to O.C.G.A. § 24-13-92 et seq.”).

The Georgia Special Purpose Grand Jury is in fact a grand jury. Not only is it entitled a “special purpose grand jury” by the applicable statutes (O.C.G.A. §§ 15-12-100, 15-12-101), but it is also governed by all the statutes applicable to more “traditional” grand juries.<sup>2</sup> Thus, each consideration applicable to traditional grand juries (who can serve as a juror, how jurors are selected, how they are sworn, standards regarding secrecy of deliberations, etc.) is applicable to special purpose grand juries *in addition to* the special requirements outlined in O.C.G.A. §§ 15-12-100 and 15-12-101.<sup>3</sup> Georgia special purpose grand juries have differences from similar investigative grand juries in other states, but such variety is inevitable across the judicial systems of the United States. These differences do not somehow render the Georgia Special Purpose Grand Jury something other than “a grand jury.”

Meadows alleges the Georgia Special Purpose Grand Jury does not qualify as a grand jury in South Carolina because the Special Purpose Grand Jury does not issue indictments. The fact that the Special Purpose Grand Jury issues an investigative report rather than an indictment does not change the analysis. These Uniform Act statutes adopted by the states are intended to be broad and widely applicable, which suits their purpose, rather than fall under a stringent and needlessly

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<sup>2</sup> “Except as otherwise provided by this part, Part 1 of this article shall apply to the grand juries authorized by this part.” O.C.G.A. § 15-12-102. The pertinent “article” is entitled “Article 4: Grand Juries”; part 1 is “General Provisions,” while part 2 (“this part”) is “Special Purpose Grand Juries.”

<sup>3</sup> O.C.G.A. § 15-12-102 makes clear that Appellant is being asked to come to Georgia to provide sworn grand jury testimony regarding his knowledge of and participation in events known to the Grand Jury. *See* O.C.G.A. § 15-12-68 (regarding oath of grand jury witnesses and applicable to special purpose grand juries through operation of O.C.G.A. § 15-12-102).

technical interpretation which would hinder interstate cooperation. *See* SC Code § 19-9-130 (broad rules of construction to effectuate the purpose of the Act).

Meadows next alleges that the Georgia Special Purpose Grand Jury is not a grand jury under South Carolina law because it “only conducts civil investigations.”<sup>4</sup> As shown above, this is a fundamental misunderstanding of Georgia law relating to the Special Purpose Grand Jury. A Special Purpose Grand Jury may be convened for a civil or criminal investigation. The Fulton County Special Purpose Grand Jury that has summoned Meadows is unambiguously convened for a criminal investigation and is carrying out its mission without fear or favor.

Finally, Meadows argues that the Georgia Special Purpose Grand Jury is not a grand jury pursuant to SC Code §19-9-20 because it lacks the “hallmark secrecy of a true grand jury.” This too is a fundamental misunderstanding of Georgia law. The Georgia Special Purpose Grand Jury laws for secrecy are identical to the Georgia Grand Jury laws for secrecy. OCGA § 15-12-67 governs secrecy at both a regular grand jury and at a special purpose grand jury in Georgia through the application of OCGA § 15-12-102. Both special purpose and regular grand jurors swear an oath to “keep the deliberations of the grand jury secret unless called upon to give evidence thereof in some court of law in this state.” OCGA § 15-12-67.

The SC Code §19-9-20 states that the Uniform Act applies to grand jury investigations. This provision properly applies here since the Special Purpose Grand Jury is a “grand jury” (as explicitly defined under Georgia statutes) that is conducting a criminal “investigation” (as explicitly authorized under Georgia statutes) and is seeking Appellant’s appearance. Circuit Judge

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<sup>4</sup> Appellant’s argument is similar to one in a dissenting opinion from a recent Texas Court of Criminal Appeals case, which is based on a misunderstanding of Georgia law. *See In re Pick*, No. WR-94,0661-01; 2022 WL 4003842, \*2 (Tx. Ct. Crim. App. Sept. 1, 2022) (Yeary, J., dissenting).

Miller's analysis was a correct application of South Carolina law and was not an abuse of discretion.

**3. Meadows is a “material witness” whose testimony is “material and necessary” in the criminal investigation being conducted by the Fulton County Georgia Special Purpose Grand Jury.**

In his final argument, Meadows asserts that 1) he is not a material witness and his testimony is not material and necessary, and 2) that he has a “sweeping and valid claim of executive privilege” that should provide him protection from service of process that ordinary people do not enjoy. Judge Miller properly rejected these arguments.

As to the second claim regarding the “sweeping and valid claim of executive privilege,” Judge Miller recognized that if Meadows has valid arguments of executive privilege that may shield some or all of his testimony, the proper forum to litigate the contours of the executive privilege assertion is in Georgia. Specifically, in response to Meadows' argument, Judge Miller said, “[t]hat's a good argument to make in Georgia.” Transcript p. 32. DDA Wooten testified that with other out-of-state witnesses with assertions of privilege, those issues have been properly litigated in Georgia and are not relevant in determining whether a witness is material and necessary under the Uniform Act.

Complex privilege issues have been asserted by several witnesses in this investigation. The merits of the privilege issues have been litigated in the Fulton County, Georgia courthouse, or in the federal courthouse in the Northern District of Georgia. The privilege issues are ripe in the jurisdiction conducting the investigation. Respectfully, the South Carolina courts are not the appropriate forum for wading into an assertion of executive privilege in a Georgia criminal investigation.

In Meadows's estimation, he is not a material witness and is not material and necessary for the Georgia investigation. Judge Miller found to the contrary. In analyzing whether Judge Miller abused his discretion, it is helpful to review the record in front of Judge Miller.

Georgia Judge McBurney's certificate contained the following conclusions regarding the materiality of Meadows that were reviewed by Judge Miller:

- "the Court finds that from March 31, 2020, to January 20, 2021, the Witness served as Chief of Staff to former President Donald Trump and was in constant contact with former President Trump in the weeks following the November 2020 election." Certificate paragraph 5.
- "the Court finds that on December 21, 2020, the Witness attended a meeting at the White House with former President Trump, members of Congress, and others to discuss allegations of voter fraud and the certification of electoral college votes from Georgia and other states. The Witness confirmed this meeting in a Tweet on December 21, 2020, when he stated, "Several members of Congress just finished a meeting in the Oval Office with President @realDonaldTrump, preparing to fight back against mounting evidence of voter fraud. Stay tuned.'" Certificate paragraph 6.
- "the Court finds that on December 22, 2020, the Witness made a surprise visit to the Cobb County Civic Center in Marietta, Georgia, where the Georgia Secretary of State's Office and the Georgia Bureau of Investigation were conducting an absentee ballot signature match audit. Officials conducting the audit were unaware of the Witness's trip to Georgia until shortly before he arrived at the Civic Center. The Witness requested to personally observe the audit process but was prevented from doing so because the audit was not open to the public." Certificate paragraph 7.
- "The Court finds that between at least December 30, 2020, and January 1, 2021, the Witness sent e-mails to United States Department of Justice officials, including Acting Attorney General Jeffrey Rosen, making various allegations of voter fraud in Georgia and elsewhere and requesting that the Department of Justice conduct investigations into these allegations. The e-mails were obtained by the United States Senate Judiciary Committee and were released publicly." Certificate paragraph 8.
- "the Court finds that on January 2, 2021, former President Donald Trump and members of his team, including the Witness, participated in a lengthy telephone call with Georgia Secretary of State Brad Raffensperger and others to discuss allegations of voter fraud in Georgia. An audio recording of the telephone call was widely broadcast. During the telephone call, former President Trump stated to Secretary Raffensperger, "I just want to find 11,780 votes." The

Witness actively participated in and spoke on the call, and the Special Purpose Grand Jury's investigation has revealed that the Witness was involved in setting up the call.” Certificate paragraph 9.

- “the Court finds that the Witness is a necessary and material witness. The Witness possesses unique knowledge concerning the logistics, planning, and subject matter of the meeting at the White House on December 21, 2020. The Witnesses possess unique knowledge concerning the logistics, planning, and execution of his visit to the Cobb County Civic Center on December 22, 2020. The Witness possesses unique knowledge concerning the logistics, planning, and subject matter of his e-mails to United States Department of Justice officials. The Witnesses possesses unique knowledge concerning the logistics, planning, execution, and subject matter of the January 2, 2021, phone call with Georgia Secretary of State Brad Raffensperger. The Witness possesses unique knowledge concerning relevant communications between the Witness, former President Donald Trump, the Trump Campaign, and other known and unknown individuals involved in the multi-state, coordinated efforts to influence the results of the November 2020 elections in Georgia and elsewhere. Finally, the Witness's anticipated testimony is essential in that it is likely to reveal additional sources of information regarding the subject of this investigation.” Certificate paragraph 10.
- “The testimony of the Witness will not be cumulative of any other evidence in this matter.” Certificate Paragraph 11.

At the hearing in Pickens County, DDA Wooten testified for Judge Miller regarding Meadows six areas of materiality to the Fulton County criminal investigation, as follows:

- “The first is the kind of roles and responsibilities of the witness in his position as chief of staff for former President Donald Trump.” Transcript 5. “[S]pecifically pertaining to the time period weeks before, during, and after the 2020 election, November 2020 election.” Transcript p. 5.
- “Second is a meeting that occurred at the White House on December the 21st of 2020. The witness was present at that meeting. Also present was former President Trump and several members of Congress. The witness tweeted subsequent to that meeting confirming that he was in attendance there. And the subject matter of that meeting, we believe, was related to the certification of electoral college votes from various states including Georgia.” Transcript p. 5-6.
- “The third area is a visit that the witness made to Cobb County, Georgia on December 22nd of 2020. We’ve received information that the witness visited Cobb County during a signature match audit that was going on there,

looking at some of the absentee ballots that were submitted in Cobb County.” Transcript p. 6.

- “Fourth area is several e-mails that the witness sent to officials within the Department of Justice. Those e-mails -- United States Department of Justice. Those e-mails were roughly in December 2020 and January 2021, all dealing with the general subject matter of the special purpose Grand Jury's investigation.” Transcript p. 6.
- “Fifth area is a January 2, 2021 phone call that former President Trump made to Georgia Secretary of State, Brad Raffensperger, and his team. It was widely reported on in the media. The witness is identified on the recording of that call as being a participant on the call and thus speak, to some extent.” Transcript p. 6.
- “And then the sixth area is kind of the witness' own unique knowledge about the coordination, execution, and communications about each of those other five areas. Information that would be unique to him as an individual that only he would have related to his communications and knowledge of each of those areas.” Transcript p. 7.

DDA Wooten was cross examined by Meadows. However, Meadow’s pursued no line to cross examination that challenged DDA’s assessment of Meadow’s materiality and necessity in the Georgia criminal investigation. Transcript pp. 11-27.

Additionally, Judge Miller reviewed the Fulton County District Attorney’s petition seeking the certificate of materiality.

The certificate, in combination with the testimony of DDA Wooten and the underlying petition, demonstrates Meadows’ obvious connections to multiple events and issues within the scope of the special purpose grand jury’s investigation. Judge Miller concluded that Meadows is a “material and necessary witness” and granted the out-of-state witness summons. Order, p.1. Rather than an abuse of discretion, this was the easy and proper exercise of it.

**4. The right to privacy in South Carolina law does not shield Meadows from being summoned in a Georgia criminal investigation.**

Meadows raises a novel argument that applying the Unified Act to him would violate his right to privacy under South Carolina law. While he cites authority to show that a right to privacy exists under South Carolina law, Meadows cites no cases where a right to privacy is a mechanism to thwart the application of a Unified Act to a material and necessary witness in a grand jury investigation or a criminal proceeding. There are no cases supporting this argument.

Meadows contends that the right to privacy protects him because the Georgia Special Purpose Grand Jury “fails to observe the stringent secrecy provisions required of a true grand jury.” Meadows Brief, p. 15. As shown on page 8 above, this is a misunderstanding of Georgia law. The same secrecy rules that apply to a regular grand jury applies with equal force to the Georgia Special Purpose Grand Jury.

Additionally, the fact that Meadows’ testimony may be revealed in an investigative report does not shield him from this service of process under the Uniform Act. The Uniform Act has never guaranteed anonymity to witnesses. Rather, the Uniform Act applies to witnesses whose testimony may be repeated in a report, summarized in an indictment, or provided in an open court.<sup>5</sup>

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<sup>5</sup> The Uniform Act is a proper tool in the event there is a day where Meadows testimony is needed in a public trial. The right to privacy in South Carolina law has never been construed to prevent a witness from testifying at trial.

## CONCLUSION

For the foregoing reasons, the State of Georgia and the Georgia Special Purpose Grand Jury respectfully requests that this Court affirm the exercise of discretion by Circuit Judge Miller in ordering Meadows to appear at the Georgia Special Purpose Grand Jury's criminal investigation and deny the substantive arguments contained in Appellant's Motion to Certify Case for Review by the South Carolina Supreme Court.

November 23, 2022

Respectfully submitted,

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