No. 22A___

IN THE SUPREME COURT OF THE UNITED STATES

SENATOR LINDSEY GRAHAM,
in his official capacity as United States Senator,

Applicant,

v.

FULTON COUNTY SPECIAL PURPOSE GRAND JURY,

Respondent.

Application from the United States Court of Appeals for the Eleventh Circuit (No. 22-12696)

EMERGENCY APPLICATION FOR STAY AND INJUNCTION PENDING APPEAL

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TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT:

Under Rules 22 and 23 of this Court, and under 28 U.S.C. § 1651, U.S. Senator Lindsey Graham respectfully applies for an emergency order staying the district court's order pending appeal and, if necessary, enjoining the Georgia "special grand jury" from questioning Senator Graham until final resolution of his appeal.

INTRODUCTION

Without a stay, Senator Lindsey Graham will soon be questioned by a local Georgia prosecutor and her ad hoc investigative body about his protected "Speech or Debate" related to the 2020 election. This will occur despite the Constitution's command that Senators "shall not be questioned" about "any Speech or Debate." U.S. Const. art. I, § 6, cl. 1. It will occur in state court, without the consent of the federal government. And it will undisputedly center on Senator Graham's official acts—phone calls he made in the course of his official work, in the leadup to the critical vote under the Electoral Count Act. The district court's refusal to quash or at least stay this impermissible questioning—and the Eleventh Circuit's cursory acquiescence, while misquoting the "Speech *or* Debate Clause," failing to invoke or apply the standard for a stay, and without so much as mentioning sovereign immunity—cries out for review.

This application thus presents an overwhelming case for a stay. For one thing, Senator Graham's constitutional immunities will be lost, and his statutorily guaranteed appeal mooted, the moment the local Georgia prosecutor questions him. Although the prosecutor says that "Senator Graham has a right to an appeal"

and "should be free to pursue it," Doc. 36 at 7[1], Senator Graham will *not* be free to pursue it if this Court does not intervene. Before the Eleventh Circuit will be able to resolve the appeal, and certainly before this Court can review any decision, Senator Graham will suffer the precise injury he is appealing to prevent: being questioned in state court about his legislative activity and official acts. "[I]ssuance of a stay is warranted," therefore, because "the normal course of appellate review might otherwise cause the case to become moot." *Chafin v. Chafin*, 568 U.S. 165, 178 (2013); *see, e.g.*, *Garrison v. Hudson*, 468 U.S. 1301, 1302 (1984) (Burger, C.J., in chambers). Indeed, the loss of appellate review is "[p]erhaps the most compelling justification" for the requested relief. *John Doe Agency v. John Doe Corp.*, 488 U.S. 1306, 1309 (1989) (Marshall, J., in chambers).

And it is not just any appellate review that Senator Graham would be losing. It is appellate review highly likely to result in reversal. The court below broke from this Court and the majority of circuits that have addressed the issue—including the D.C. Circuit in an opinion from just two months ago—in allowing questioning of a legislator in state court about the motives for an investigation. *See Comm. on Ways & Means v. U.S. Dep't of Treasury*, 45 F.4th 324, 331–33 (D.C. Cir. 2022). At issue here is Senator Graham's investigation into Georgia's absentee-ballot process and "allegations of widespread voter fraud." Doc. 2-3 at 2–3. As alleged by the local Georgia prosecutor (Fulton County District Attorney Fani Willis), Senator Graham

[1] Citations to "Doc. __" refer to docket filings in *Fulton County Special Purpose Grand Jury v. Graham*, No. 1:22-cv-03027 (N.D. Ga.), which is the docket of the last opinion on the merits. The appeal is pending at the Eleventh Circuit in Case No. 22-12696.

"called [Secretary of State Brad Raffensperger]" and "ask[ed] about [Georgia's] signature match procedure" for absentee ballots (Doc. 42 at 7 (quoting Raffensperger)) and about allegations of voter fraud (Doc. 2-3 at 2–3). Senator Graham needed this information for a certainly impending vote on certifying the election under the Electoral Count Act. He also served as Chairman of the U.S. Senate Committee on the Judiciary reviewing election-related issues (including possible national standards for mail-in voting). After the phone calls, Senator Graham relied on the information gained from the calls both to vote Joe Biden "the legitimate President of the United States," 167 Cong. Rec. S31 (daily ed. Jan. 6, 2021), and to co-sponsor legislation to amend the Electoral Count Act.

The courts below recognized that all of that reflects a protected "legislative investigation[]"—and that questioning about it, as such, is prohibited. *E.g.*, App. 4a. But the courts split from other Courts of Appeals by not stopping there. Most courts that have addressed similar issues hold that the Speech or Debate Clause "forbids inquiry into acts which are purportedly or apparently legislative, even to determine if they are legislative in fact." *E.g.*, *United States v. Dowdy*, 479 F.2d 213, 226 (4th Cir. 1973). When a legislator takes some action that is *objectively* "legislative" (here, a "request for information … on which legislation could be had"), these "courts do not probe the motives of [the] individual legislator[]," even when the investigation is allegedly "mere pretext for an unconstitutional ulterior motive." *E.g.*, *Comm. on Ways & Means*, 45 F.4th at 331–33.

Yet here, the district court permitted precisely that sort of additional "probing" into motives. App. 59a–61a. The district court allowed questioning of Senator Graham based entirely on a wholly impermissible reason: Senator Graham's supposed political "purpose" for his investigation. App. 12a n.1. The court speculated that Senator Graham was motivated, not for purely "legislative" reasons, but instead to help President Trump. The district court was wrong factually: Senator Graham investigated in his official capacity for legislative reasons. But, in any event, the Senator's motives are irrelevant *legally*: Whether an act is covered by the immunity turns on "the nature of the act," "stripped of all considerations of intent and motive." *Bogan v. Scott-Harris*, 523 U.S. 44, 54–55 (1998).

Given how deeply the district court's ordered inquiry cuts at the Senator's legislative immunity, and given the crucial importance of this case and this issue, this Court is unlikely to allow that decision to stand. Add to that the violation of sovereign immunity, and Senator Graham is even more likely to ultimately succeed.

The equities also overwhelmingly favor Senator Graham, who will be deprived not only of these constitutional immunities—itself irreparable injury—but also of his right to appeal, another irreparable injury. *John Doe Agency*, 488 U.S. at 1309 (Marshall, J., in chambers). In contrast, the District Attorney, who has publicly stated that she is "not in a rush" to finish her investigation into the 2020 election,[2]

[2] Blayne Alexander, *Fulton County DA: Expect More Subpoenas of Trump Associates*, NBC NEWS (July 6, 2022), available at https://nbcnews.to/3PyPIDK.

can await a quick merits decision at the Eleventh Circuit while proceeding with other witnesses who are not immunized by the United States Constitution.

Only this Court can prevent the state-court questioning of Senator Graham contrary to constitutional immunities, because the district court and Eleventh Circuit have refused to temporarily stay the proceedings until the appeal is finally resolved. Senator Graham thus respectfully requests that Your Honor stay the proceedings by (1) staying the district court's order pending appeal (*e.g.*, App. 7a–29a), and, if necessary (2) enjoining the state-court proceedings as to Senator Graham until his federal appeal is resolved. Given the imminence of the Senator's testimony (in less than a month), Senator Graham also respectfully requests that Your Honor enter an administrative stay pending a decision on this application.

JURISDICTION

Senator Graham removed the case to federal court and moved to quash based on his federal defenses. *See* Doc. 1 at 3–7. No one disputes federal-court jurisdiction. *See* 28 U.S.C. § 1442(a)(1) (permitting removal of any "civil action or criminal prosecution" pending in state court and directed at a federal official "for or relating to any act under color of such office"); *id.* § 1442(d) (defining "civil action" and "criminal prosecution" to include proceedings like this one, in which "a judicial order, including a subpoena for testimony or documents, is sought or issued").

The district court entered an order denying Senator Graham's motion to quash on August 15, 2022. App. 47a–68a. Senator Graham appealed two days later. Doc. 32. He moved the district court to stay proceedings on August 17, and the Eleventh

Circuit to stay the proceedings on August 19. Doc. 29; Emergency Motion to Stay, *Fulton Cnty. Special Purpose Grand Jury v. Graham*, No. 22-12696 (11th Cir. Aug. 19, 2022). The district court denied Senator Graham's emergency motion to stay proceedings on August 19. App. 32a–46a.

The Eleventh Circuit granted a temporary stay on August 22, holding the Senator's stay motion in abeyance pending a limited remand to the district court. *Fulton Cnty. Special Purpose Grand Jury v. Graham*, No. 22-12696, 2022 WL 3581876 (11th Cir. Aug. 22, 2022). The limited remand was for the district court to consider whether to partially quash any of the subpoena. On remand, the district court ordered partial quashal on September 1. The Eleventh Circuit then lifted its temporary stay yesterday (October 20). App. 6a.

This Court has jurisdiction under 28 U.S.C. §§ 1254(1), 1651, and it may grant the requested relief under 28 U.S.C. § 1651(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitution's Speech or Debate Clause is contained in Article I, Section 6, Clause 1, which provides:

> The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all cases, except Treason, Felony, and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; *and for any Speech or Debate in either House, they shall not be questioned in any other place.*

(emphasis added).

The "structure of the original Constitution itself" preserves sovereign immunity. *Alden v. Maine*, 527 U.S. 706, 728 (1999). So, too, does the Supremacy Clause, which provides:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

U.S. Const. art. VI, para. 2; *see Mayo v. United States*, 319 U.S. 441, 447 (1943).

OPINIONS BELOW

The district court's initial order denying Senator Graham's motion to quash the subpoena is available at App. 47a–68a. The district court's order denying a stay is available at App. 32a–46a. The Eleventh Circuit's opinion ordering a limited remand is available at App. 30a–32a and published at *Fulton Cnty. Special Purpose Grand Jury v. Graham*, No. 22-12696, 2022 WL 3581876 (11th Cir. Aug. 22, 2022). The district court's order on limited remand is available at App. 7a–29a. The Eleventh Circuit's order lifting its temporary stay and denying a stay pending appeal is available at App. 1a–6a.

STATEMENT

A local prosecutor named Fani Willis subpoenaed Senator Lindsey Graham to testify before what is known under Georgia law as a "special grand jury." O.C.G.A. § 15-12-100(a). The term "grand jury" here is a misnomer. Unlike the typical grand jury, this one cannot indict; all it can do by law is issue non-binding recommendations. *Kenerly v. State*, 715 S.E.2d 688, 690 (Ga. 2011). And the Special Grand Jury is a

purely civil body. *Id.* This civil body is being used by Ms. Willis as a tool to investigate events "relating directly or indirectly to possible attempts to disrupt the lawful administration of the 2020 elections in the State of Georgia." Doc. 2-2 at 2. It has already heard from a number of officials.[3] These officials include Georgia Secretary of State Brad Raffensperger and Deputy Secretary of State Gabe Sterling, who along with Senator Graham take center stage in this case.

1. Although he is not a target of this special grand jury, the District Attorney wants to hear from Senator Graham. On July 5, she filed an *ex parte* petition to begin the process of securing Senator Graham's testimony. She claimed that the Senator is "a necessary and material witness" to her investigation into "possible attempts to disrupt the lawful administration of the 2020 elections in the State of Georgia." Doc. 2-3, ¶¶ 1–2). The only reason she offered for this assertion was that, "[t]hrough both [her] investigation and through publicly available information," she had learned that Senator Graham "made at least two telephone calls to Georgia Secretary of State Brad Raffensperger and members of his staff in the weeks following the November 2020 election." *Id.* ¶ 2. The District Attorney's request, then, centers on these phone calls.

On these phone calls, the District Attorney alleges that Senator Graham investigated the process around "absentee ballots cast in Georgia" and the "allegations of widespread voter fraud in the November 2020 election in Georgia." *Id.*

[3] *See* Tamar Hellerman, *Raffensperger testifies before Fulton grand jury probing 2020 elections*, The Atlanta Journal-Constitution (June 2, 2022).

Others on the calls said the same thing—that "[Senator Graham] had questions about [Georgia's] process" related to absentee ballots,[4] specifically about how Georgia verified signatures on those ballots and how courts might treat claims that they are not "truly matching."[5]

After these calls, Senator Graham voted under the Electoral Count Act to certify Joe Biden as President, explicitly listing the outcome of his investigation among the reasons for his vote. 167 Cong. Rec. S31 (daily ed. Jan. 6, 2021) ("They say there is 66,000 people in Georgia under 18 voting. How many people believe that? I asked: Give me 10. I haven't had one. … [Joe Biden] is the legitimate President of the United States."). Senator Graham also co-sponsored legislation to amend the Electoral Count Act.[6]

2. Without hearing from Senator Graham, the state-court judge ex parte adopted the District Attorney's petition nearly verbatim. In the resulting Certificate, and based only "on the representations made by the State in the [petition]" about the phone calls, the judge found that Senator Graham was "a necessary and material witness." Doc. 2-2 at 2–3. Specifically, the state-court judge found that based on District Attorney's representations about those calls:

> [Senator Graham] possesses unique knowledge concerning the substance of the telephone calls, the circumstances surrounding his decision to make the telephone calls, the logistics of setting up the

[4] *Georgia election official speaks on Sen. Graham, SOS declining to endorse Trump*, CNN Newsource, at 1:56 (Nov. 18, 2020), https://bit.ly/3za979a.

[5] D. Gregorian, D. Clark, & The Associated Press, *Georgia officials spar with Sen. Lindsey Graham over alleged ballot tossing comments*, NBC News (Nov. 17, 2020), https://nbcnews.to/3cmKJZb.

[6] Electoral Count Reform and Presidential Transition Improvement Act of 2022, S. 4573, 117th Cong. (2022), https://www.congress.gov/bill/117th-congress/senate-bill/4573/cosponsors.

> telephone calls, and any communications between himself, others involved in the planning and execution of the telephone calls, the Trump Campaign, and other known and unknown individuals involved in the multi-state, coordinated efforts to influence the results of the November 2020 election in Georgia and elsewhere.

Id. at 3–4. The judge's Certificate thus ordered that Senator Graham "be in attendance and testify" about the "substance" and "logistics" of, and "circumstances surrounding," the investigative phone calls. *Id.*

Pursuant to this Certificate, the District Attorney's Office then issued a subpoena, which Senator Graham agreed to accept subject to challenging the legal basis for it. The subpoena required Senator Graham to testify on August 23. Doc. 2-4. It added that Senator Graham is "required to attend from day to day and from time to time until the matter is disposed of." Doc. 2-4 at 2. (Just today, a new subpoena was issued commanding Senator Graham's testimony on November 17, 2022—a legislative day. *See* App. 69a.)

3. Senator Graham removed from state court the proceedings related efforts to compel him to submit to questioning before the Special Grand Jury. Doc. 1.

Once in federal court, Senator Graham moved to quash the subpoena as invalid under the Constitution and federal law. As relevant to this Application, he argued first that the Constitution's Speech or Debate Clause prohibits "question[ing]" him about investigations undertaken to inform a vote or about a topic on which legislation can be had. U.S. Const. art. I, § 6, cl. 1. And he argued that, independently, federal sovereign immunity precluded the District Attorney's attempt to question him in state-court proceedings concerning his official actions as a Senator. *See* Doc. 2.

The district court denied the motion, initially in full. App. 47a–68a. On Speech or Debate, the court left open the key question: whether the calls investigating Georgia's absentee-ballot process were "legislative" and thus protected. Instead, it permitted "probing" into Senator Graham's motives to determine whether his investigation was "actually" legislative or, instead, politically motivated. App. 50a–62a. For support, the court looked to the speculations of Secretary of State Raffensperger, who inferred a political motive from Senator Graham's investigative questions—namely, that Senator Graham really wanted to help President Trump. *Id*. The district court also refused to consider partial quashal—that is, limiting the scope of the questioning so that it did not reach immunized topics (as determined by the district court). Contra Fed. R. Civ. P. 45(d)(3)(A)(iii). And the court rejected the Senator's sovereign-immunity arguments. App. 62a–63a.

4. Senator Graham appealed the decision, as all agree is his right. 28 U.S.C. § 1447(d).

Once on appeal, the District Attorney agreed that she would not go forward with Senator Graham's testimony until his appeal was finally resolved. That would have obviated the need for a stay. But just two business days before Senator Graham's scheduled testimony, the District Attorney reneged on that agreement.[7]

[7] Emergency Motion by Senator Lindsey Graham to Stay District Court's Order and Enjoin Select Grand Jury Proceedings Pending Appeal at 2 n.2, in Eleventh Circuit Case No. 22-12696, *linking to* https://www.dropbox.com/s/e7ybis49cgkyedr/4043750281-081722-131124-48528-2040-1.mp3?dl=0 (voicemail from D. Wakeford).

Senator Graham thus had to move to stay the proceedings pending appeal. The district court denied the stay, even while acknowledging that Senator Graham would "suffer irreparable harm by being subjected to questioning before the grand jury" if he is correct on the merits. App. 41a–42a.

The Eleventh Circuit granted a temporary stay. It retained jurisdiction during a limited remand for the district court to determine whether the Speech or Debate Clause requires "partial quashal or modification of the subpoena." *Fulton Cnty. Special Purpose Grand Jury v. Graham*, No. 22-12696, 2022 WL 3581876 (11th Cir. Aug. 22, 2022).

On limited remand, the district court changed its mind and held that, as a matter of law, the Speech or Debate Clause protected Senator Graham—in part. The court held that, under Supreme Court precedent, Senator Graham's phone calls contained "investigatory fact-finding," including "related to his decision to certify the results of the 2020 presidential election." App. 7a; *see* App. 15a ("[T]o the extent Senator Graham was merely asking questions about Georgia's then-existing election procedures and allegations of voter fraud in the leadup to his certification vote, such questions are shielded from inquiry under the Speech or Debate Clause. In other words, Senator Graham cannot be asked about the portions of the calls that were legislative fact-finding."). The district court therefore "quashe[d] the subpoena" in part to prohibit testimony about that, App. 7a, 28a.

But the district court doubled down on the rest of its earlier opinion. It continued to slice and dice the legislative phone calls, allowing testimony about some

parts. It continued to speculate about Senator Graham's supposed "purpose" for his investigation and to allow questioning supposedly unrelated to the investigation. App. 12a n.1. And it continued to permit questioning on three other topics—namely, (1) communications with the Trump campaign, (2) public statements on the 2020 election, and (3) supposed "cajol[ing]" of election officials. App. 20a; *see* App. 20a–27a. The district court claimed these topics were "[u]nrelated to the [p]hone [c]alls" and so, as a legal matter, not barred by the Speech or Debate Clause. App. 20a.

5. The case returned to the Eleventh Circuit. After receiving supplemental briefing, the Eleventh Circuit yesterday denied Senator Graham's emergency motion for a stay. The court's opinion was cursory: It repeated the district court's reasoning without adding any new analysis. The court did not mention the stay standard or anything about the equities. Nor did the court say anything about sovereign immunity—an independent basis for Senator Graham's motion and appeal. App. 1a–6a.

Senator Graham now in timely fashion files this application for relief.

REASONS FOR GRANTING THE APPLICATION

This Court's action is necessary to allow this appeal to be heard before it becomes moot—before, that is, Senator Graham suffers the constitutional injury this appeal is meant to avoid.

This Court regularly grants stays of a district court's order "pending disposition of [an] appeal in [a] United States Court of Appeals" and the "disposition of the petition for a writ of certiorari, if such a writ is timely sought." *E.g.*, *Louisiana*

v. Am. Rivers, 142 S. Ct. 1347 (2022). And this Court and its Members have also stayed or enjoined state-court proceedings pending disposition of a constitutional right or immunity currently being litigated in federal court. *See, e.g.*, *Lucas v. Townsend*, 486 U.S. 1301, 1304–05 (1988) (Kennedy, J., in chambers) (enjoining a Georgia election pending appeal); *In re Roche*, 448 U.S. 1312, 1317 (1980) (Brennan, J., in chambers) (staying enforcement of a state civil contempt citation because refusing a stay would "moot [the] claim of right" being litigated); *Garrison*, 468 U.S. at 1302 (Burger, C.J., in chambers) (staying state criminal trial because "the normal course of appellate review might otherwise cause the [federal] case to become moot"). It has temporarily halted state-court investigatory proceedings because, "if these proceedings continue in this fashion, applicants may well suffer a deprivation of constitutional rights [and immunities] which can never be adequately redressed." *Patterson v. Superior Ct. of Cal. In & For Fresno Cnty.*, 420 U.S. 1301, 1302 (1975) (Douglas, J., in chambers).

Your Honor or the Court should take the same course here: stay the district court's order denying Senator Graham's motion to quash and enjoin the grand jury from questioning Senator Graham until his appeal (and any certiorari petition) is finally resolved.

In assessing these requests, this Court generally considers whether there is "(1) a reasonable probability that four Justices will consider [an] issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will

result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam); *see, e.g.*, *San Diegans For Mt. Soledad Nat'l War Mem'l v. Paulson*, 548 U.S. 1301, 1302–03 (2006) (Kennedy, J., in chambers); *see also Lucas*, 486 U.S. 1301, 1304–05 (Kennedy, J., in chambers) (same standard for enjoining state-court action). Senator Graham has satisfied these standards. His case is also extraordinary because "the normal course of appellate review might otherwise cause the case to become moot." *Chafin*, 568 U.S. at 178.

A. This Court Is Likely To Grant Review And Reverse.

Senator Graham is "likely to succeed on the merits of [at least one] claim," *NFIB v. OSHA*, 142 S. Ct. 661, 664 (2022)—either under the Speech or Debate Clause or because of sovereign immunity. And, relatedly, if the Eleventh Circuit does not reverse the district court's partial denial of Senator Graham's motion to quash, this Court would]likely to grant review and reverse.

1. Speech or Debate Clause

The Constitution guarantees that Senator Graham "shall not be questioned in any other Place" for his "Speech or Debate." U.S. Const. art. I, § 6, cl. 1. This Court has interpreted "broadly" to include any actions taken "within the sphere of legitimate legislative activity." *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 503 (1975). The Clause thus immunizes a legislator from being "questioned" about "acts that occur in the regular course of the legislative process and [] the motivation for those acts." *Id.* at 508.

Under the Clause's original meaning and this Court's longstanding precedent, Senator Graham's phone calls—investigating facts and allegations before his certainly impending Electoral Count Act vote and exercising his oversight responsibilities as then-Chair of the Senate Judiciary Committee—readily qualify as constitutionally protected "Speech or Debate." Yet the district court ordered Senator Graham to submit to questioning on the calls, essentially so that a local prosecutor can inquire into the Senator's *true motives*—to determine whether, that is, the Senator was *really* engaged in legislative activity in the run-up to his vote to certify President Biden's election. The district court's and District Attorney's apparent suspicions about motives are baseless, but even assuming otherwise, the Speech or Debate Clause was designed to prevent exactly this sort of examination. Senator Graham is thus likely to succeed on the merits, and this Court is likely to grant review.

Likelihood of success.

1. The Framers contemplated just this sort of situation when they insisted on broadly protecting Senators from having to testify about their legislative activity. "The immunities of the Speech or Debate Clause were not written into the Constitution simply for the personal or private benefit of Members of Congress, but to protect the integrity of the legislative process by insuring the independence of individual legislators"—to guarantee, in short, that "legislative function[s] . . . may be performed independently." *Eastland*, 421 U.S. at 501; *see Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967). By "enabling these representatives to execute the functions of their office without fear" of interference from prosecutors, grand juries, or courts,

the Framers understood that the "rights of the people" would, in turn, be protected. *Tenney v. Brandhove*, 341 U.S. 367, 373–74 (1951) (collecting historical sources). Legislators would not have to endure "the cost and inconvenience and distractions" of grand-jury testimony all over the country based on nothing more than "speculation as to motives" or the "conclusion of [a state-actor] pleader"; our legislators would instead be free from inquiry about all matters within their sphere so that they can best serve the people. *Id.* at 377. Else, there would be nothing to stop any state or local official (on whatever side) from investigating—or "intimidat[ing]" under the veneer of investigating—Senators or Representatives with whom they disagree. *United States v. Johnson*, 383 U.S. 169, 178–79 (1966); *see Rangel v. Boehner*, 785 F.3d 19, 23 (D.C. Cir. 2015).

The Framers thus viewed the Speech or Debate Clause as an "indispensable" privilege, and they meant for it to apply "liberally." *Kilbourn v. Thompson*, 103 U.S. 168, 202–03 (1880); *see Eastland*, 421 U.S. at 501. It does not turn on the party of the legislator, or on how much the prosecutor or even the people "resent[ed]" what the legislator allegedly did or why he did it. *Tenney*, 341 U.S. at 373; *see, e.g.*, Minute Order, *United States v. Bannon*, No. 21-cr-00670 (D.D.C. July 11, 2022) (quashing a subpoena issued to Speaker Pelosi); *Jud. Watch, Inc. v. Schiff*, 998 F.3d 989, 992–93 (D.C. Cir. 2021) (same for Congressman Schiff); *RNC v. Pelosi*, __ F. Supp. 3d __, 2022 WL 1294509, at *7–10 (D.D.C. May 1, 2022), *vacated on other grounds by* No. 22-5123, 2022 WL 4349778 (D.C. Cir. Sept. 16, 2022) (per curiam) (unpublished order) (mootness) (refusing to review the Select Committee's motivations in conducting

January 6th investigation). Nor does the Clause turn on the alleged subjective motivations of the legislators. Rather, the Clause's protections turn only on "the question whether, *stripped of all considerations of intent and motive*, [the representative's] actions were legislative." *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (emphasis added).

Without speculating about Senator Graham's intent or motives, the District Attorney cannot show that the Senator's actions here were anything but "legislative."

Legislative acts extend to anything "generally done in a session of [Congress] by one of its members in relation to the business before it." *Kilbourn*, 103 U.S. at 203–04. They thus; include "every [] act resulting from the nature and in the execution of the [Senator's] office." *Id.* (collecting historical sources).

"The power to investigate plainly [thus] falls within th[e] definition" of 'Speech or Debate.'" *Eastland*, 421 U.S. at 504. Investigations, formal and informal, "are an established part of representative government." *Tenney*, 341 U.S. at 377; *accord Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031 (2020); *see also AAPS v. Schiff*, 518 F. Supp. 3d 505, 517–19 (D.D.C. 2021), *aff'd* 23 F.4th 1028 (D.C. Cir. 2022) (collecting cases of informal investigations being protected). Investigations "resulting from the nature and in the execution of the [Senator's] office" are protected. *Kilbourn*, 103 U.S. at 203–04; *see Eastland*, 421 U.S. at 508.

Every objective fact—"stripped of all considerations of intent and motive," *Bogan*, 523 U.S. at 54–55—shows that Senator Graham's phone calls were part of a legislative investigation. To quote the District Attorney, Senator Graham called

"Secretary Raffensperger and his staff" to inquire about "absentee ballots cast in Georgia" and about "allegations of widespread voter fraud in the November 2020 election in Georgia." Doc. 2-3, ¶ 2. He had a certainly impending vote on certifying the election under the Electoral Count Act—a vote that the public record reflects was informed by his investigation. Doc. 2-1 at 12–16. He co-sponsored legislation to amend the Electoral Count Act to correct flaws he discovered during his investigation.[8] He served as Chair of the Judiciary Committee, which reviews election-related issues. And he was investigating possible "national standards" for mail-in voting,[9] in keeping with the Constitution's empowering of "Congress [to] at any time by Law make or alter [voting] Regulations," U.S. Const. art. I, § 4, cl. 1. This is thus practically the definition of a topic "on which legislation may be had." *Eastland*, 421 U.S. at 508. And it was therefore an immunized investigation, based only on the allegations and objective facts. No questioning into the calls or the motives behind them is permitted. *Eastland*, 421 U.S. at 508 (Speech or Debate Clause immunizes "acts that occur in the regular course of the legislative process and [] the motivation for those acts").

2. The district court nevertheless permitted questioning because of a dispute about *why* Senator Graham engaged in this investigation. *See* App. 7a–29a. That dispute is not with the *factual content* of the calls—the District Attorney's own

[8] *See* https://www.lgraham.senate.gov/public/index.cfm/co-sponsored-bills.

[9] NBC News, Video, https://www.nbcnews.com/politics/2020-election/georgia-secretary-state-raffensperger-says-sen-graham-asked-him-about-n1247968 (Senator Graham statement regarding these calls).

petition establishes that they are legislative—but with the *speculated motives* behind them. The District Attorney (and the district court) does not claim to have concrete evidence about the Senator's motivations—she alleges nothing concrete about them. Instead, she points to the speculation by one state official (Secretary Raffensperger) about what the official inferred from Senator Graham's investigative questions. Doc. 9 at 2. Secretary Raffensperger thought that Senator Graham was asking questions not to investigate for his Electoral Count Act vote but instead to help President Trump.

But the longstanding and venerable Speech or Debate immunity cannot be lost on inferences and suggestions about motives. The People who ratified the Constitution ensured that Senators would not "be subjected to the cost and inconvenience and distractions of [questioning] upon a conclusion of the pleader"—or someone's "speculation as to motives." *Tenney*, 341 U.S. at 377. In applying the Speech or Debate Clause, therefore, courts may not consider the motives of the legislator, even if faced with a "deluge" of evidence showing that the facially legislative activity is "mere pretext" for some ulterior motive. *Comm. on Ways & Means*, 45 F.4th at 331–33. In short, "[t]he claim of an unworthy purpose does not destroy" Speech or Debate immunity. *Tenney*, 341 U.S. at 377. And so Secretary Raffensperger's "speculation as to motives" does not pierce Senator Graham's immunity from questioning about his legislative investigation. *Id.* Instead, the Speech or Debate Clause immunizes the testimony the District Attorney seeks.

Because the facts uniformly reveal "a legitimate legislative purpose that [] require[d] information to accomplish," "it is not [a court's] place to delve deeper than this." *Ways & Means*, 45 F.4th at 333. "The mere fact" that a local prosecutor alleges that Senator Graham had "political motivations as well as legislative ones"—the political motivation to help President Trump—"is of no moment. Indeed, it is likely rare that an individual member of Congress would work for a legislative purpose without considering the political implications." *Id.* Or, as this Court has plainly put it: "[W]e do not look to the motives alleged to have prompted" an objectively legislative act like Senator Graham's investigation. *Eastland*, 421 U.S. at 508. Courts may "not go beyond the narrow confines of determining that a [legislator's] inquiry may fairly be deemed within [his] province," *Tenney*, 341 U.S. at 378—which even the district court acknowledged these calls were, *see* App. 60a n.6.

This Court is thus highly likely to reverse the district court's holding that, because a state official on the calls "suggested that Senator Graham was seeking to influence" the outcome of the election (rather than legitimately investigate), there must be further "probing" into the Senator's "motives" to determine whether the calls were "in fact" or "actually" legislative. App. 58a–61a n.5. It is simply "not consonant with our scheme of government for a court to inquire into the motives of legislators." *Tenney*, 341 U.S. at 377. Courts may "not go beyond the narrow confines of determining that a [legislator's] inquiry *may fairly be deemed within [his] province*." *Id.* at 378 (emphasis added). The district court did, meaning there is at

least "a fair prospect that a majority of the Court will vote to reverse." *Hollingsworth*, 558 U.S. at 190.

3. The district court was wrong, also, to think that any other lines of hypothetical questioning would be permissible. The subpoena and accompanying certificate made clear that any questioning about "other" topics (such as communications with the Trump campaign) were simply backdoor ways to question Senator Graham about his motives behind his legislative investigation, so that any other sought-after topics rise and fall with the phone calls themselves. After all, even facially non-legislative activity cannot be used "to reveal [a representative's] subjective motivations" for taking legislative action. *Texas v. Holder*, No. 12-128, 2012 WL 13070060, at *2 (D.D.C. June 5, 2012) (three-judge district court). Indeed, the District Attorney *admitted* that she sought information about Senator Graham's contacts with President Trump, for example, *so as to ascertain* "the motivation, preparation, and/or aftermath of those calls." Doc. 9 at 26.

At any rate, the District Attorney offered no evidence for testimony unrelated to the calls or the motives behind them. She thus has not met her burden of piercing the Senator's immunity. The district court independently erred by inverting the burden. It required Senator Graham to submit to questioning to prove that he was engaged in activity protected from questioning. That makes no sense. "Just as it is not reasonable to destroy a village in order to save it, neither is it reasonable" to require a Senator to lose his immunity in order to gain it. *Edwards v. Niagara Credit Sols., Inc.*, 584 F.3d 1350, 1353–54 (11th Cir. 2009). The burden must fall on the

party seeking to pierce the constitutional (and jurisdictional) immunity, not on the Senator invoking it. *See Rangel*, 785 F.3d at 22; *AAPS*, 518 F. Supp. 3d at 517; *see also Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (party invoking jurisdiction has burden of proving facts establishing it). Placing the burden on the legislator instead would allow, as here, a local prosecutor to demand questioning of a legislator based only on her *speculations* into his supposedly bad motives, and then would force the legislator to prove that he, in fact, had good motives for his legislative activity. *Contra Tenney*, 341 U.S. at 378 (prohibiting this speculative inquiry). An immunity should not be self-defeating.

This Court is therefore likely to reject the district court's holding that the District Attorney may question Senator Graham on topics other than the phone calls or even beyond his investigation. Indeed, any effort to question Senator Graham on those topics would only confirm this is nothing more than a fishing expedition. The Speech or Debate Clause would serve no real purpose if it could be bypassed through an unsubstantiated reference to non-legislative activity. But either way, a stay would be independently warranted by the district court's decision to allow questioning concerning the phone calls, because that aspect of the order alone erroneously threatens irreparable harm to Senator Graham's constitutional immunity.

Likelihood of review.

The district court's reasoning for allowing the questioning to go forward only *strengthens* the likelihood of this Court granting review. Recall that the district court allowed that the prosecutor may "prob[e]" into the Senator's "motive[s]" to determine

whether his apparently legislative activity was "in fact" or "actually" legislative, App. 59a–61a n.5. If the Eleventh Circuit were to adopt the district court's reasoning, this case will involve at least two circuit splits.

First, there is a split about whether courts may look beyond the face of an act to determine whether it is *actually* legislative. The Fourth and D.C. Circuits expressly "forbid[] inquiry into acts which are purportedly or apparently legislative"—as is true of Senator Graham's actions, *see supra* at 18–19—"even to determine if they are legislative in fact." *Dowdy*, 479 F.2d at 226 (4th Cir. 1973); *accord, e.g.*, *Ways & Means*, 45 F.4th at 333); *McSurely v. McClellan*, 753 F.2d 88, 106 (D.C. Cir. 1985). But the district court instead relied on two contrary Third Circuit cases that expressly "decline[d] to follow" that holding and thus *permitted* "inquiry into purportedly legislative acts for the purpose of determining whether the acts are, in fact, legislative." *Gov't of V.I. v. Lee*, 775 F.2d 514, 524 (3d Cir. 1985); *see also, e.g.*, *United States v. Menendez*, 831 F.3d 155, 167–68 (3d Cir. 2016) (discussing the various circuits' opinions). The Third Circuit said that the Second Circuit agrees with it. *Menendez*, 831 F.3d 155, 167–68 (citing *United States v. Biaggi*, 853 F.2d 89, 103 (2d Cir. 1988)). And the Eleventh Circuit here, if it affirms, would make this split at least 3–2.

Second, if the Eleventh Circuit abides by the district court's holding that the burden falls on Senator Graham to *disprove* allegations that he engaged in non-legislative (unprotected) activity, it will have created a circuit split. The Speech or Debate immunity is jurisdictional, and thus courts hold that the burden falls on the

on the party seeking to pierce the immunity. *See, e.g.*, *Rangel*, 785 F.3d at 22. That party must come forward with objective evidence showing that the legislator engaged in some non-legislative act; the party cannot just allege as much and flip the burden to the legislator to rebut the allegation. *See RNC*, 2022 WL 1294509, at *6; *cf. Tri-State Hosp. Supply Corp. v. United States*, 341 F.3d 571, 575 (D.C. Cir. 2003) (same for sovereign immunity). Yet under the district court's (and apparently Eleventh Circuit's) approach, Senator Graham must face questioning to show he is immune from questioning.[10]

These splits, not to mention the critically important and incorrect decision on the merits, creates a "reasonable probability"—indeed, a strong probability—that four justices will grant certiorari. *Hollingsworth*, 558 U.S. at 190. That is all that is needed for a stay. *Id.*

2. Sovereign Immunity

Sovereign immunity—not even mentioned by the Eleventh Circuit in its stay denial—is an independent issue on which there is "a reasonable probability that four

[10] The Eleventh Circuit and district court each suggested that a third circuit split is implicated—on whether informal investigations by legislators can *ever* be protected by the Speech or Debate Clause. *E.g.*, Doc. 38. Compare, *e.g.*, *Lee*, 775 F.2d at 521 ("[F]act-finding, information gathering, and investigative activities are essential prerequisites to the drafting of bills and the enlightened debate over proposed legislation" and "[a]s such" are protected "by legislative immunity."); *Miller v. Transamerican Press, Inc.*, 709 F.2d 524, 530 (9th Cir. 1983) (refusing to "permit[] a Congressman to be catechized about the manner in which he obtained information," even if informally), with *Bastien v. Off. of Sen. Ben Nighthorse Campbell*, 390 F.3d 1301 (10th Cir. 2004), which the district court read as refusing to "extend protection to informal information gathering" by "individual members of Congress." In its stay ruling, the Eleventh Circuit did not address that issue but instead assumed without deciding that such investigations should be covered. App. 1a–6a. The presence of this issue—and the opportunity for this Court to provide clarity—creates yet another reason this Court is likely to grant review.

Justices will . . . grant certiorari" and "a fair prospect that a majority of the Court will vote to reverse the judgment below." *Hollingsworth*, 558 U.S. at 190.

The caption reveals the first reason why: A local state prosecutor seeks involuntary questioning *in state court* from a United States Senator *in his official capacity*, without even alleged waiver of the United States' sovereign immunity. Many cases from many circuits—simply ignored by the district court and again not mentioned by the Eleventh Circuit—hold that "[t]he doctrine of sovereign immunity precludes . . . [a] federal court which gained limited jurisdiction upon removal from exercising jurisdiction to compel [a federal official] to testify." *E.g.*, *Boron Oil Co. v. Downie*, 873 F.2d 67, 70 (4th Cir. 1989); *see also, e.g.*, *Hous. Bus. J., Inc. v. Off. of Comptroller of Currency*, 86 F.3d 1208, 1211 (D.C. Cir.1996). These cases thus rely on sovereign immunity "to quash a subpoena of a federal employee," as Senator Graham requested here. *Moore v. Armour Pharm Co.*, 129 F.R.D. 551, 555 (N.D. Ga. 1990), *aff'd*, 927 F.2d 1194 (11th Cir. 1991) (collecting cases). With the district court (and apparently the Eleventh Circuit) splitting from this uniform authority—without citing any contrary authority—the first two stay factors are readily met. *See Hollingsworth*, 558 U.S. at 190.

The only reason the district court disagreed is because it did not think there were directly "analogous" cases—though it did not explain why that was so. There is no explanation. Among the cases quashing subpoenas like the one here are cases applying sovereign immunity in the context of state criminal proceedings, which is what the District Attorney (incorrectly) claims is at issue here. *See, e.g.*, *Smith v.*

Cromer, 159 F.3d 875, 879–81 (4th Cir. 1999); *Louisiana v. Sparks*, 978 F.2d 226, 234–35 (9th Cir. 1992). And also included are cases applying sovereign immunity to Congress. *Keener v. Cong. of U.S.*, 467 F.2d 952, 953 (5th Cir. 1972). Nor, at any rate, would the silence the district court saw in the cases help the District Attorney pierce sovereign immunity—for the *District Attorney*, not Senator Graham, has the burden on that issue. *Batsche v. Price*, 875 F.3d 1176, 1177 (8th Cir. 2017). And any other cases the District Attorney could cite (the district court cited none) would be distinguishable. *See, e.g.*, *Trump v. Vance*, 140 S. Ct. 2412 (2020) (permitting a subpoena of the accountant of an official sued in his *private* capacity).

The District Attorney's latest line—that "the logical endpoint of the Senator's argument is absolute immunity for Senators from state grand juries, in all circumstances, without exception," Opposition to Emergency Motion to Stay, *Fulton Cnty. Special Purpose Grand Jury v. Graham* No. 22-12696 (11th Cir. Aug. 22, 2022) ("CA11 Stay Opp.")—is hyperbole. She misses that sovereign immunity applies only to *official-capacity* testimony. And so the caption of this case again reveals the District Attorney's error. Here (unlike in, say, *Trump v. Vance*) she has subpoenaed not citizen Graham, but Senator Graham. The doctrine thus applies, and this Court is likely to grant review and reverse.

* * *

This Court is likely to grant review and reverse on at least one of issues. *Hollingsworth*, 558 U.S. at 190. If that were all there was to the case, a stay would be warranted. *See, e.g.*, *Am. Rivers*, 142 S. Ct. at 1347–48. But "[p]erhaps the most

compelling justification" for the requested relief still remains: Senator Graham's irreparable injury absent a stay, and specifically that the upcoming grand-jury questioning would effectively "moot" this case. *John Doe Agency*, 488 U.S. at 1309 (Marshall, J., in chambers).

B. Senator Graham Will Suffer Irreparable Harm Absent A Stay, And The Equities Favor This Relief.

The equities, which went unmentioned by the Eleventh Circuit, "do not justify withholding interim relief." *NFIB*, 142 S. Ct. at 666. Much to the contrary, they "clearly weigh[] in favor of a stay." *John Doe Agency*, 488 U.S. at 1308 (Marshall, J., in chambers).

1. Senator Graham will suffer irreparable harm without a stay of proceedings pending appeal.

First, Senator Graham needs a stay of proceedings "to prevent the loss of [his] right to appeal." *Chafin*, 568 U.S. at 178. Here, "the normal course of appellate review might otherwise cause the case to become moot," making "issuance of a stay is warranted." *Id.* When faced with similar (and similarly unusual) circumstances, this Court has not hesitated to grant stays. *See, e.g.*, *John Doe Agency*, 488 U.S. at 1309 (Marshall, J., in chambers) (loss of appellate review is "[p]erhaps the most compelling justification" for the requested relief); *Roche*, 448 U.S. at 1317 (Brennan, J., in chambers) (granting a stay to avoid causing to "moot [the] claim of right" being litigated); *Garrison*, 468 U.S. at 1302 (Burger, C.J., in chambers) (granting stay of state criminal trial because "the normal course of appellate review might otherwise cause the [federal] case to become moot"). It should do so here too, where the appeal

will be mooted when, in less than a month and well before this appeal can run its course, Senator Graham suffers the injury he is appealing to prevent: being forced to sit for questioning before the special grand jury.

Second, as the district court recognized (and as neither the District Attorney nor the Eleventh Circuit has disputed) if Senator Graham "is correct on the merits," he will "suffer irreparable harm by being subjected to questioning before the grand jury." App. 42a. Because "it is the very act of questioning that triggers the protections of the Speech or Debate Clause," *In re Grand Jury*, 587 F.2d 589, 598 (3d Cir. 1978), there is no repairing the harm. Thus, "if these proceedings continue" in state court as the issued subpoena commands, Senator Graham "may well suffer a deprivation of constitutional [immunities] which can never be adequately redressed." *Patterson*, 420 U.S. at 1302 (1975) (Douglas, J., in chambers). "The loss of [constitutional] rights for even a short period constitutes irreparable harm." *Yeshiva Univ. v. Yu Pride All.*, No. 22A184, 2022 WL 4232541, at *2 (U.S. Sept. 14, 2022) (Alito, J., dissenting) (regarding the First Amendment); *see Elrod v. Burns*, 427 U.S. 347, 373 (1976) (threat of deprivation of constitutional rights necessarily irreparable harm). And this is to say nothing of the irreparable harm Senator Graham will face by having to leave his duties as Senator, on a legislative day, to travel to Georgia to sit for the unconstitutional questioning.

This clear irreparable harm absent a stay means all three factors weigh in favor of a stay of proceedings pending appeal. *See Hollingsworth*, 558 U.S. at 190.

2. The remaining "equities here [also] support preserving the status quo while the [Senator's] appeal proceeds," *Paulson*, 548 U.S. at 1303: Granting a stay of proceedings appeal will not harm the District Attorney and would serve the public interest. "Compared to the irreparable harm of [losing the right to an appeal and subjecting Senator Graham to constitutionally prohibited questioning], the harm in a brief delay pending the Court of Appeals' expedited consideration of the case seems slight," *id.*—especially given the District Attorney's statement that she is "not in a rush" to finish her investigation,[11] to which she has not responded in her briefing. Indeed, the District Attorney once agreed to a stay: She agreed to postpone Senator Graham's appearance until this appeal is resolved, until an about-face in a 4:40 am, Friday morning email that forced an emergency motion by Senator Graham. And while the District Attorney has suggested that respecting constitutional immunities will delay her investigation (CA11 Stay Opp. at 10–11), that cannot change the equity calculus. That is because Senator Graham asserts *constitutional immunities*. In this situation, then, the Framers have already established the public interest: protecting Senators from being hauled into court by a county prosecutor for doing their jobs. In other words: Respecting the Constitution and laws is always in the public interest, *cf. NFIB*, 142 S. Ct. at 666, and this case is no exception.

[11] Blayne Alexander, *Fulton County DA: Expect More Subpoenas of Trump Associates*, NBC NEWS (July 6, 2022), available at https://nbcnews.to/3PyPIDK.

C. This Court Should Stay The District Court's Order And Enjoin The Grand Jury From Questioning Senator Graham, Though Either Form Of Relief Would Suffice.

This Court may both stay the district court's order and enjoin the grand jury's proceedings pending this statutorily guaranteed appeal.

The most straightforward way to do this is to stay the district court's order, something this Court of course regularly does. Although that order "remanded" the case, no one suggests that precludes a stay. When, as here, "a remand order is reviewable" on appeal, courts have "jurisdiction to issue a stay [even when the district court] has already sent a certified copy of its remand Order to [the] state court." *Maui Land & Pineapple Co. v. Occidental Chem. Corp.*, 24 F. Supp. 2d 1083, 1085 (D. Haw. 1998); *see, e.g.*, *Cong. of Racial Equal. v. Town of Clinton*, 346 F.2d 911, 914 (5th Cir. 1964). Thus, because Senator Graham "has a right to an appeal from [the district] Court's Order," Doc. 36 at 7; *see* 28 U.S.C. § 1447(d), this Court may stay the district court's order on the emergency motion to quash.

Though it should be unnecessary upon entry of a stay, this Court may also and out of an abundance of caution enjoin the grand jury from acting on the subpoena while the case is on appeal. A "court of the United States" may "grant an injunction to stay proceedings in a State court [when] expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction." 28 U.S.C. § 2283. Congress has expressly authorized halting state proceedings in removed cases. *See Mitchum v. Foster*, 407 U.S. 225, 234–38 & n.12 (1972); *see also* 17A Fed. Prac. & Proc. Juris. § 4224 (3d ed. Apr. 2022 update). And, regardless, pausing the state-court

proceedings as to Senator Graham is "necessary in aid of [federal-court] jurisdiction." 28 U.S.C. § 2283. Otherwise, Senator Graham will suffer the injury his appeal seeks to avoid. The injunction is thus necessary "to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case." *Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 295 (1970); *see, e.g.*, *McNeill v. N.Y.C Hous. Auth.*, 719 F. Supp. 233, 256 (S.D.N.Y. 1989). This Court has done similar things before, too. *See, e.g.*, *Lucas*, 486 U.S. at 1304–05 (Kennedy, J., in chambers) (enjoining a Georgia election pending appeal); *Patterson*, 420 U.S. at 1302 (Douglas, J., in chambers) (staying state grand-jury proceedings).

CONCLUSION

For these reasons, this Court should grant this application and stay the district court's order pending appeal and, if it deems necessary, enjoin the Georgia "special grand jury" from questioning Senator Graham until final resolution of his appeal.

Date: October 21, 2022

Respectfully submitted,

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