

FULTON COUNTY SUPERIOR COURT
STATE OF GEORGIA

STATE OF GEORGIA,

V.

KENNETH CHESEBRO *ET AL.*,

DEFENDANTS.

CASE No. 23SC188947

JUDGE MCAFEE

**MOTION TO UNSEAL SPECIAL GRAND JURY TRANSCRIPTS,
RECORDINGS AND REPORT(S)**

As part of the pre-indictment investigation conducted in this case, a special purpose grand jury (“SPGJ”) was impaneled via Court order on 1/24/22 and dissolved on 1/9/23 (the “2 May 2022 Special Purpose Grand Jury”). The SPGJ consisted of 26 members (three of those were alternates).

Based on court filings and media reporting, numerous witnesses were subpoenaed to testify before the SPGJ, and in fact did testify. Upon information and belief, this includes co-Defendants, unindicted co-conspirators, and traditional witnesses.

Mr. Chesebro anticipates that many of these same people will testify at his trial. Therefore, any recordings, transcripts and SPGJ reports are critical for Mr. Chesebro to obtain in order to properly prepare for trial.

ARGUMENT AND CITATION TO AUTHORITY

SPGJs are impaneled in accordance with O.C.G.A. § 15-12-100 *et seq.* One of the key mandates of the SPGJ “requires periodic reports of the special grand jury’s progress, as well as a final report.” O.C.G.A. § 15-12-101.

The Judge presiding over the SPGJ “certified that it voted to recommend that [the Report] be published pursuant to O.C.G.A. § 15-12-80.”¹ The Judge noted that this “publication” statute “appears to apply to the work of special purpose grand juries” by virtue of the incorporation provision set forth at O.C.G.A. § 15-12-102, but also observed that it remained “unresolved” whether “the special purpose grand jury’s final report constitutes a presentment.” *Id.*

To further support disclosure, the Georgia Supreme Court, in *Olsen v. State*, 302 Ga. 288 (2017), remarked that “[n]otably, the oath of secrecy no longer extends to the State’s attorney, and even the grand jurors’ oath encompasses only deliberations and not all things occurring in the grand jury room.” *Id.* at 290-91. The Court explained that it presumed this was the intent of the General Assembly and therefore “decline[d] to extend the requirement of secrecy applicable to grand jury proceedings in Georgia beyond that which is currently imposed by statute.” *Id.*

Likewise, in *In re Gwinnett County Grand Jury*, 284 Ga. 510 (2018), the court held that the presentment made by a grand jury “is a court record under Uniform Superior Court Rule 21 that is available for public inspection unless public access is otherwise limited by law or by [Rule 21].” 284 Ga. 510, 513-514 (2018).

Finally, there is also an overarching due process concern that Mr. Chesebro have access to all prior testimony of witnesses who are expected to testify at trial (and made statements before the special purpose grand jury) in order to properly defend himself.

¹ O.C.G.A. § 15-12-80 provides as follows: “Grand juries are authorized to recommend to the court the publication of the whole or any part of their general presentments and to prescribe the manner of publication. When the recommendation is made, the judge shall order the publication as recommended.” *Id.*

WHEREFORE, for the foregoing reasons, Mr. Chesebro respectfully asks this Honorable Court to release all recordings, interim reports and the final report of the special purpose grand jury.²

This the 28th day of August, 2023.

/s/ Scott R. Grubman
SCOTT R. GRUBMAN
Georgia Bar No. 317011
Counsel for Defendant

CHILIVIS GRUBMAN
[REDACTED]
Dunwoody, Georgia 30338
[REDACTED]

/s/ Manubir S. Arora
MANUBIR S. ARORA
Georgia Bar No. 061641
Counsel for Defendant

ARORA LAW FIRM
[REDACTED]
Atlanta, Georgia 30342
[REDACTED]

² While Counsel for Mr. Chesebro recognizes that on August 28, 2023, Judge McBurney ordered the release of the SPGJ's Final Report, this motion is still relevant because Mr. Chesebro is asking for more than just the Final Report.

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CERTIFICATE OF SERVICE

The above **MOTION TO UNSEAL SPECIAL GRAND JURY TRANSCRIPTS, RECORDINGS AND REPORT(s)** has been served, this day, upon the following, by e-filing upon all parties:

This the 28th day of August, 2023.

/s/ Scott R. Grubman
SCOTT R. GRUBMAN
Georgia Bar No. 317011
Counsel for Defendant

CHILIVIS GRUBMAN
[REDACTED]
Dunwoody, Georgia 30338
[REDACTED]

/s/ Manubir S. Arora
MANUBIR S. ARORA
Georgia Bar No. 061641
Counsel for Defendant

ARORA LAW FIRM
[REDACTED]
Atlanta, Georgia 30342
[REDACTED]