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FULTON COUNTY, GA

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

IN RE:)
SPECIAL PURPOSE GRAND JURY)
)
)

CASE NO.
2022-EX-000024

MOTION TO QUASH SUBPOENA ISSUED TO GOVERNOR BRIAN P. KEMP AND MEMORANDUM IN SUPPORT

Governor Brian P. Kemp, through undersigned counsel, respectfully moves this Court for an order quashing the Subpoena for the Attendance of Witness (the "Subpoena") issued to him by the District Attorney's Office (the "DA's Office") on August 4, 2022, because (1) it is barred by sovereign immunity; (2) it improperly seeks to invade established common law executive and attorney-client privileges; and (3) it is being pursued at this time for improper political purposes. In support thereof, the Governor submits this memorandum of law.

I. INTRODUCTION

Governor Kemp has ardently defended the rule of law in this State. Moreover, he welcomes opportunities to explain and defend his actions. However, the Subpoena ignores—and more importantly, the DA's Office has refused to account for—the serious privileges it implicates in relation to the testimony of a sitting Governor. Additional, through delay and artificial deadlines, the DA's Office has engineered the Governor's interaction with the investigation to reach a crescendo in the middle of an election cycle. This timing cannot be ignored given the Governor's repeated efforts to engage with the DA's Office prior to 2022 and even before announcing his re-election campaign. In fact, the Governor agreed to a voluntary interview to be held on July 25, 2022, but when counsel for the Governor asked reasonable questions of the DA's Office regarding the scope of that interview, the DA's Office unilaterally canceled the interview and issued the Subpoena. Why the DA's Office acted so abruptly is unclear.

Georgia courts have no authority to compel a sitting Governor to provide testimony about matters involving his official duties due to sovereign immunity. Even if that were not the centuries-old law of this State, the Subpoena at issue is improper, and due to be quashed, because its timing is neither driven by a genuine investigative need for information nor compliant with the established ethical rules governing prosecutors and election cycle investigations. Any one of these concerns, standing alone, is a sufficient reason the Subpoena should be quashed; considered together, they compel that outcome.

II. FACTUAL BACKGROUND

While the special purpose grand jury was only recently authorized, the DA's Office has been investigating the events surrounding the 2020 Presidential election for at least a year and a half. *The Fulton County District Attorney's Letter*, N.Y. TIMES (Feb. 20, 2021), https://www.nytimes.com/interactive/2021/02/10/us/politics/letters-to-georgia-officials-from-fulton-district-attorney.html. During that time, and well before the Subpoena was issued,[1] Governor Kemp consistently attempted to engage with DA's Office and to voluntarily provide it with relevant and appropriate information regarding its investigation. As outlined below, the DA's Office ignored, denied, or otherwise frustrated these attempts time and time again.

- On April 27, 2021, Raymond Baez, Deputy Chief Investigator for the DA's Office, informed counsel that the DA's Office was interested in meeting with Governor Kemp to discuss a telephone call between the Governor and former President Donald Trump. Investigator Baez stated that Chief Senior Assistant District Attorney Sonya Allen was running the investigation. Mr. Baez emphasized that the DA's Office needed to conduct this interview "***sooner rather than later.***"

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[1] The DA's Office issued a Subpoena purportedly requiring Governor Kemp to appear to testify before the Special Grand Jury on August 10, 2022. (Attached hereto as Ex. A). Investigator Michael Hill went to the Capitol to attempt to serve the Governor personally with this subpoena, despite counsel's engagement in this investigation for 16 months. Unfortunately, Investigator Hill engaged in subterfuge in attempting to effect service of the subpoena. Investigator Hill represented to the paralegal at the Office of the Governor that he had spoken to counsel and that they had approved service, but no such conversation *ever* occurred. The Parties subsequently attended a meeting with the Court to discuss conflicts with the August 10, 2022 date and the DA's Office agreed to adjust the date of compliance to August 18, 2022 and reissued the Subpoena thereafter. (Attached hereto as Ex. B).

- That same day, undersigned counsel called Ms. Allen who stated that she was interested in speaking with the Governor in an informal witness interview. Ms. Allen echoed that these interviews ***must occur promptly*** given the desire to expedite the investigation. Counsel for the Governor inquired whether it could provide documentary evidence and Ms. Allen stated that no such requests would be issued because she "was not even sure what documents he would have." Counsel for the Governor reiterated a willingness to engage in an email that same day. The DA's Office ***did not respond to this email.***

- Counsel sent another email to the DA's Office on June 16, 2021, reiterating the Office of the Governor's willingness to engage, requesting additional details about the specific topics that would be covered with Governor Kemp, and asking for confirmation that the substance of any statements "remain confidential." (Attached hereto as Ex. C).

- On June 21, 2021, the District Attorney responded stating "[w]e will be asking for an interview ***in August [2021]*** with Governor Kemp" and "***we expect to conclude all interviews of witnesses that do not need to go before a Grand Jury by September 30, 2021.***" The District Attorney assured counsel "the content of the conversation will not be leaked" and requested that our client and our firm not "even mention that such an interview is occurring." The September 30, 2021 deadline came and went ***without any communication*** from the DA's Office. (*Id.*)

- On October 5, 2021, Ms. Allen submitted an Open Records Act Request to the Office of the Governor despite counsel's previous offer to provide materials and Ms. Allen's rejection of that offer. (Attached hereto as Ex. D). The Office of the Governor produced over 1,000 pages of responsive materials ***yet received no responsive communication from the DA's Office.*** (Attached hereto as Ex. E).

- In January 2022, counsel proactively emailed Ms. Allen to inform the DA's Office of counsel's new contact information and to confirm the ongoing representation of the Office of the Governor. (*See* Ex. C).

- On January 20, 2022, counsel called Ms. Allen reiterating the Office of the Governor's willingness to engage, inquiring about dates for an interview, and voicing a concern that we were rapidly moving closer to a high-profile primary and general election cycle. (See email correspondence confirming telephone conference, attached hereto as Ex. F). ***The DA's Office did not provide any dates for an interview.***

- That same day, the DA's Office sought an order impaneling a special purpose grand jury "for the purpose of investigating the facts and circumstances relating directly or indirectly to possible attempts to disrupt the lawful administration of the 2020 elections in the State of Georgia." Letter from Fani T. Willis, District Attorney, Atlanta Judicial Circuit, to the Honorable Christopher S. Brasher, Chief Judge, Fulton County Superior Court (Jan. 20, 2022). (Attached hereto as Ex. G).

- Chief Judge Brasher authorized the request four days later on January 24, 2022, ordering the special purpose grand jury to begin on May 2, 2022, and to continue for a year thereafter (the "Special Grand Jury"). Order Approving Request for Special Purpose Grand Jury Pursuant to O.C.G.A. § 15-12-100, et seq. (Jan. 24, 2022). (*Id.*)

- Counsel emailed Ms. Allen to follow up on the request on February 7, 2022. (*See* Ex. F). ***She did not respond.***

- Counsel emailed Ms. Allen again on March 11, 2022 to inquire about the interview. (Attached hereto as Ex. H). ***She did not respond.***

- Finally on March 30, 2022, counsel was informed that Ms. Allen was no longer the appropriate "point of contact" within the DA's Office. Instead, Donald Wakeford, Assistant District Attorney, would oversee "a future interview with Governor Brian Kemp." Mr. Wakeford stated he would reach out "to make arrangements ***in the future***," but gave no indication of when this would be. Notably, this communication was ***six months after*** the initial September 30, 2021 deadline to complete witness interviews. (Attached hereto as Ex. I).

- Counsel emailed Mr. Wakeford on April 11, 2022, trying to discuss this "future interview" in more detail and to determine the timeline for said interview. (Attached hereto as Ex. J). ***Mr. Wakeford did not respond.***

- Counsel sent another email correspondence to Mr. Wakeford on April 25, 2022 seeking to discuss the interview. (*Id.*) Mr. Wakeford responded stating that there was ***"no information" the DA's Office "wish[ed] to discuss"*** and would not be calling Governor Kemp for a voluntary interview before June 1, 2022, the date which the Special Grand Jury would begin hearing witnesses (which is confusing given that no jurors would be present at an interview). (*Id.*)

- Counsel responded on May 10, 2022, seeking additional information regarding the interview. (*Id.*). Mr. Wakeford responded saying the DA's Office "definitely still intend[ed] to speak with the governor," but provided no specific information. (*Id.*)

- On May 12, 2022, counsel called and spoke with Mr. Wakeford to clarify the timing of the investigation, raise concerns about the proximity of the investigation to the primary and general election cycles in Georgia, and to reiterate the Office of the Governor's willingness to engage. Counsel ***requested the opportunity to conduct an attorney proffer*** prior to a witness interview in order to address any evidentiary or privilege concerns that might arise. Mr. Wakeford was very receptive to the idea. Counsel also ***requested the interview be conducted after the general election*** so as not to improperly interfere with an ongoing election. Mr. Wakeford indicated he needed to discuss that request internally.

- Mr. Wakeford emailed counsel shortly thereafter stating that the DA's Office was "***open to scheduling an attorney proffer***" and would "speak with [counsel] to find an agreeable date." (Attached hereto as Ex. K). However, Mr. Wakeford stated that the ***DA's Office was unwilling to interview Governor Kemp "past the date of the general***

election, but provided no explanation as to why. (*Id.*)

- On June 3, 2022, counsel had a call with Will Wooten, another Assistant District Attorney, who was now the appropriate point of contact rather than Mr. Wakeford or Ms. Allen. Several attorneys and investigators within the DA's Office were also present on the call. Mr. Wooten discussed the desire to finally arrange a witness interview ***and again agreed to an attorney proffer***. Counsel sent two date options for the attorney proffer (June 24 or June 27, 2022) and confirmed discussions with the Governor's scheduling team to find dates for his informal interview. (Attached hereto as Ex. L).

- Counsel emailed the DA's Office the following week providing dates for the Governor's interview (August 1, August 2, or August 4, 2022) and requesting confirmation of the attorney proffer date. Mr. Wooten responded on June 13, 2022, requesting a conference call. Counsel responded offering an available time, and Mr. Wooten responded with his availability. (Attached hereto as Ex. M).

- Before the conference call could take place, Nathan Wade, the Special Prosecutor to the DA's Office, called counsel abruptly that afternoon to inform them that he was the ***only*** individual in the DA's Office who had authority to enter into agreements pertaining to the investigation. ***Mr. Wade voided all previous agreements, including the attorney proffer, without any explanation***. Mr. Wade stated that the August dates provided were unacceptable, and Governor Kemp's interview date must be scheduled within the month of July. Mr. Wade threatened to immediately serve Governor Kemp with a grand jury subpoena if dates were not instantly provided or if there were no available date in July. Mr. Wade than stated he would wait on the call until counsel provided said dates. Counsel replied that they would need to consult with the Governor's scheduler, considering he was the active Governor, to identify dates. Counsel further stated they did not feel threatening a witness was necessary considering Governor Kemp's continued and prolonged engagement. Mr. Wade responded that it was not a threat, it was merely "a fact."

- Following this call, counsel emailed Mr. Wooten and the rest of the investigation team that had been coordinating with counsel to date, highlighting concerns with Mr. Wade's revocation of an attorney proffer agreement, unprovoked hostility, and unnecessary threat to the Governor. (Attached hereto as Ex. N). ***No one from the DA's Office responded.***

- As requested, on June 15, 2022, counsel emailed the DA's Office providing available July dates for the Governor's interview. Mr. Wade responded and confirmed that the DA's Office was amenable to a witness interview on July 25, 2022—***one week earlier than the untenable August 1, 2022 date***. Attached hereto as Ex. O).

- On June 22, 2022, Trina Swanson-Lucas, a senior investigator, attempted to serve a subpoena duces tecum for documents and a corresponding letter regarding the Governor's witness interview. (Attached hereto as Ex. P). Coincidentally, that same day, the Atlanta Journal-Constitution submitted a FOIA request seeking subpoenas sent to the Office of the Governor related to the investigation.[2]

- On July 20, 2022, in advance of Governor Kemp's voluntary interview, counsel requested that certain protections be put into place to protect the integrity of Governor Kemp's testimony and prevent the inadvertent disclosure of privileged information. (Attached hereto as Ex. Q). In response, ***the DA's Office unilaterally canceled the voluntary interview***—calling the requests, including the Court's recommendation of providing topics in advance of testimony, "utterly ludicrous"—and stated that Governor Kemp would now be subpoenaed in front of the grand jury in advance of the 2022 General Election as punishment for counsel's justified requests. (Attached hereto as Ex. R)

- Confoundingly, the DA's Office stated that the Office of the Governor has "purposely delayed to get us to our current date" and, as such, it is "meritless" to indicate that Georgia is in the midst of an election cycle. (*Id.*) It is abundantly clear—as outlined in great detail above—that the only delay throughout this investigation has been caused by the DA's Office and not Governor Kemp, the Office of the Governor, or his counsel. Furthermore, it is indisputable that Georgia is very much in an election cycle.

- The DA's Office also took the false position that only the Court can "outline issues of evidence and privilege." (*Id.*) Such an assertion violates both common practice and judicial economy.

- Notably, this stance is apparently only applied to the Office of the Governor. The "utterly ludicrous" request of identifying questions and topics in advance of the interview in order to proactively address evidentiary and privilege issues was not only agreed to, but was *suggested* by, the DA's Office as a reasonable parameter at the July 21, 2022 hearing held by this Court—less than 24 hours after the DA's Office had rejected the Office of the Governor's request for the same protection. At that hearing, the Court acknowledged that requesting identification of topics of questions to avoid implication of a legal privilege a fair request. Similarly, the Court previously suggested the DA's Office disclose and discuss topics and questions with counsel for the Office of the Governor during another meeting.

- Despite the gamesmanship of the grand jury process, as well as significant legal issues with the subpoena for documentary evidence, the Office of the Governor nonetheless ***voluntarily produced*** nearly 36,000 pages of materials between July 25, 2022 and July 27, 2022, another 84,000 pages of materials on August 2, 2022, and another 17,000 pages of materials on August 12, 2022. Providing over 40 bankers boxes of responsive materials—with more materials to come—clearly evidences a continued willingness to engage with the DA's Office. (*See* Production Cover Letters, attached hereto as Exs. S,

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[2] Tamar Hallerman, *Governor Will Deliver Sworn Recorded Statement Instead of Hearing Before Grand Jury*, THE ATLANTA JOURNAL-CONSTITUTION (June 23, 2022), at https://www.ajc.com/politics/breaking-kemp-to-testify-in-fulton-co-trump-probe/PXZ4ZEMJRJCSTCJJBYVU6IK7EU/?utm_source=Iterable&utm_medium=email&utm_campaign=campaign_4538916 (". . . according to a letter from the Fulton County District Attorney's office dated Wednesday and obtained by the AJC on Thursday").

T, U, & V).

- Following a meeting with the Court and the DA's Office, counsel emailed the Special Prosecutor on August 8, 2022 requesting that Governor Kemp's testimony, whether formal or informal, be postponed until after the November 2022 election. Counsel also suggested that an attorney proffer be conducted to identify potential evidentiary and privilege issues in advance of any testimony. The Special Prosecutor denied these requests. (Attached hereto as Exs. W and X).

III. ARGUMENT AND CITATION TO AUTHORITIES

The Subpoena fails on three fundamental levels. First, under the doctrine of sovereign immunity, this Court lacks jurisdiction to enforce the Subpoena. Second, a court may quash or modify a subpoena that seeks privileged information. *See In re N.S.M.*, 183 Ga. App. 398, 399-400 (1987). Here, large swaths of information that the DA's Office will likely seek to discuss are protected from disclosure by the executive privilege and attorney-client privilege. Furthermore, the DA's Office has already demonstrated a disregard for important privileges and refused to institute reasonable safeguards to protect witnesses from privileged disclosures. At a minimum, should the Court find it has jurisdiction to issue the Subpoena, the Court should issue an order prohibiting the DA's Office from questioning the Governor on matters invoking his important privileges. Third, the Court may quash or modify a subpoena that is unreasonable and oppressive. *See* O.C.G.A. § 24-13-23(b)(1). Here, the Subpoena is unreasonable and oppressive because it is without legal authority and was issued for political, rather than investigative, reasons in violation of prosecutorial guidelines.

A. Enforcement of the Subpoena Is Barred by the Doctrine of Sovereign Immunity

The Subpoena seeks to attach the compulsory process of this Court to compel the Governor to testify about acts undertaken in the performance of his official duties. It is the settled law of Georgia that, in the performance of his official duties, the Governor is "the State," and therefore beyond the jurisdiction of the Court absent an express waiver of the State's sovereign immunity.

Lathrop v. Deal, 301 Ga. 408, 420 (2017) (sovereign immunity bars claims against the Governor for declaration that a law was unconstitutional and for an injunction preventing enforcement of the law); *see also Georgia Dep't of Nat. Res. v. Ctr. for a Sustainable Coast, Inc.*, 294 Ga. 593, 599 (2014) (sovereign immunity applies to State and its officers and employees sued in their official capacities). No such waiver or exception applies to the Subpoena, and therefore it is void for lack of jurisdiction.

Sovereign immunity "protects all levels of governments from legal action unless they have waived their immunity from suit." *Conway v. Jones*, 353 Ga. App. 110, 111 (2019). Though the doctrine gained constitutional status in 1974, it has existed at common law in Georgia since the State's founding. *Lathrop*, 301 Ga. at 420. "Simply put, the constitutional doctrine of sovereign immunity forbids our courts to entertain a lawsuit against the State without its consent." *Id.* at 408. Sovereign immunity can only be waived in the Constitution or in a statute enacted by the General Assembly. *Id.* at 425; *Conway*, 353 Ga. App. at 111; *see also* Ga. Const. Art. I, § 2 (providing for waiver of sovereign immunity in specific circumstances). Furthermore, where it applies (as here), sovereign immunity is an absolute bar to the Court's authority over the State, because it is ***jurisdictional***. *McConnell v. Dep't of Lab.*, 302 Ga. 18, 19 (2017) (emphasis added) ("[T]he applicability of sovereign immunity is a threshold determination, and, if it does apply, a court lacks jurisdiction over the case and, concomitantly, lacks authority to decide the merits . . . ."); *Dep't of Pub. Safety v. Johnson*, 343 Ga. App. 22, 23 (2017) (noting suit barred by sovereign immunity should be dismissed for lack of subject matter jurisdiction). The Subpoena here is barred by sovereign immunity because the DA's Office is seeking to compel the Governor to submit to the Court's legal process, and the State has not waived immunity to such process.

The Subpoena is directed toward the Governor in his official capacity. The Subpoena seeks testimony in a state court legal proceeding regarding facts and circumstances relating directly or indirectly to possible attempts to disrupt the lawful administration of the 2020 elections in the State of Georgia. Any insight the Governor may have on these topics necessarily arises entirely from the performance of his official duties as Governor. *See, e.g.,* O.C.G.A. § 21-2-502 (establishing Governor and other executive officers' roles in tabulation of votes and certification of elections). The DA's Office has not asserted—nor could it truthfully assert—that the Governor acted at any time outside of the scope of his official duties in connection with those matters. *See Dennison Mfg. Co. v. Wright*, 156 Ga. 789 (1923) (holding suit was against comptroller general in his individual capacity because it involved alleged actions he committed without lawful authority and beyond the scope of his official power); *Romano v. Georgia Dep't of Corr.*, 303 Ga. App. 347, 350-51 (2010) (holding action was against state officers in their official capacities where complaint lacked allegations that they were acting outside the scope of their official duties); *Wang v. Moore*, 247 Ga. App. 666, 669 n.6 (2001) (holding that suit, regardless of how styled, was against state employees in their official capacities where the relevant actions allegedly took place while employees were administering their duties under color of authority). Whether styled as an action against the State or an individual, any action that "could result in a . . . decree that would in any manner affect or control the . . . action of the State, in a manner not prescribed by statute, is a suit against the State," and therefore subject to the jurisdictional proscription of sovereign immunity. *Roberts v. Barwick*, 187 Ga. 691, 695 (1939). Applying the compulsory power of the Court to "decree" the appearance of the Governor not only controls his action in his official capacity, but also requires mobilizing State offices and resources. Absent an express waiver for the DA's Office's issuance of the Subpoena and the Court's enforcement authority of same—for which none exists here—sovereign immunity forbids it.

Sovereign immunity prohibits the Subpoena regardless of whether the Governor is a nominal defendant being sued or a mere witness. As the history and purpose of sovereign immunity shows, the doctrine is not limited to shielding the State from claims for damages. Indeed, contrary to the idea that sovereign immunity is "principally about the protection of the public purse," "the doctrine at common law was understood more broadly as a principle derived from the very nature of sovereignty." *Lathrop*, 301 Ga. at 412–13; *see also id.* at 425 (noting common law doctrine of sovereign immunity has been constitutionally reserved and thus applies today as it would at common law). The doctrine thus applies to injunctive claims, *see Georgia Dep't of Nat. Res. v. Ctr. for a Sustainable Coast, Inc.*, 294 Ga. 593, 602 (2014), and claims for declaratory relief, *see Olvera v. Univ. Sys. of Georgia's Bd. of Regents*, 298 Ga. 425, 428 n.4 (2016), among others.

Because non-party subpoenas to State officers regarding actions within the scope of their official duties are akin to injunctions applying the force of judicial authority to compel the State to act, such actions are likewise barred. While the Georgia Supreme Court has not (yet) directly addressed the application of sovereign immunity in this context, the federal courts have. As the Fourth Circuit has explained:

> Even though the government is not a party to the underlying action, the nature of the subpoena proceeding against a federal employee to compel him to testify about information obtained in his official capacity is inherently that of an action against the United States because such a proceeding 'interfere[s] with the public administration' and compels the federal agency to act in a manner different from that in which the agency would ordinarily choose to exercise its public function.

Boron Oil Co. v. Downie, 873 F.2d 67, 70–71 (4th Cir. 1989) (quoting *Dugan v. Rank*, 372 U.S. 609, 620 (1963)) (reversing denial of motion to quash trial subpoenas to EPA employee); *see also Smith v. Cromer*, 159 F.3d 875, 879–81 (4th Cir. 1998) (affirming order quashing subpoenas directed to DOJ employees in state criminal prosecution based on sovereign immunity); *In re Elko Cnty. Grand Jury*, 109 F.3d 554, 556 (9th Cir. 1997) (holding sovereign immunity barred state court's enforcement of grand jury subpoena against federal employee); *Houston Bus. J., Inc. v. Off. of Comptroller of Currency, U.S. Dep't of Treasury*, 86 F.3d 1208, 1211–12 (D.C. Cir. 1996) (noting sovereign immunity bars state court's enforcement of document subpoena against federal agency). Because the federal government's authority—sovereign as it is—is derived wholly from (and limited to) the power given to it through the express consent of the States under the United States Constitution, it follows that the State of Georgia's interest in preserving its sovereignty is necessarily greater than the federal government's in each of these cases in which the federal courts have prohibited subpoenas to federal officials relating to their official activities.

Indeed, *Boron Oil*'s reasoning comports perfectly with Georgia law, where courts have explained the scope of the State's sovereign immunity in in the same way. Forcing the State to submit to judicial authority and take action (here, to provide forced testimony about the Governor's performance of official duties) without the State's consent is fundamentally inconsistent with the nature of sovereignty. *See Roberts*, 187 Ga. at 694; *see also Goolsby v. Regents of Univ. Sys. of Georgia*, 141 Ga. App. 605, 609 (1977), *disapproved of on other grounds by Deal v. Coleman*, 294 Ga. 170 (2013) (sovereign immunity "operates to withhold from the courts jurisdiction over the person of the state, ***without regard for the basis of the suit.***" (emphasis added)). This is particularly true where sensitive matters of executive communications and deliberations, which are essential to the official functions of the Office of the Governor, are at issue. *See infra* Part II.B.

The federal courts have also confirmed that, for purposes of determining whether sovereign immunity bars the courts' jurisdiction over a matter, a subpoena is itself a "suit," placing a subpoena squarely within sovereign immunity's definition as an "immunity from *suit*," *see McCobb v. Clayton Cnty.*, 309 Ga. App. 217, 217–18 (2011) (emphasis added). In determining that tribal sovereign immunity barred enforcement of a subpoena, the Tenth Circuit explained, "suit" necessarily includes legal proceedings or judicial process. *Bonnet v. Harvest (U.S.) Holdings, Inc.*, 741 F.3d 1155, 1159–60 (10th Cir. 2014). Of course, a subpoena is a form of judicial process; to have force and effect it necessarily must be supported by ***jurisdiction***. *Id.* "The logical conclusion, therefore, is that a subpoena duces tecum served directly on the Tribe, ***regardless of whether it is a party to the underlying legal action***, is a 'suit' against the Tribe, triggering tribal sovereign immunity." *Id.* at 1160 (emphasis added); *see also Alltel Commcn's, LLC v. DeJordy*, 675 F.3d 1100, 1105 (8th Cir. 2012) (similar). Likewise, under Georgia law, sovereign immunity applies to all "unconsented-to legal actions," *see Ctr. for a Sustainable Coast*, 294 Ga. at 598, which necessarily includes subpoena enforcement.

While the Governor respects the authority of the DA's Office to conduct its investigation, it must do so within the bounds of the law, including the centuries-old doctrine of sovereign immunity upon which the common law of the State was built, and the broad—but not unlimited—authority of the state courts was derived. No Georgia constitutional provision or statute has waived sovereign immunity for subpoenas to government officials seeking to compel testimony about their official activities, and particularly the sitting Governor. *See Georgia Lottery Corp. v. Patel*, 353 Ga. App. 320, 322 (2019) ("[W]here the plain language of a statute does not provide for a specific waiver of sovereign immunity and the extent of the waiver, ***the courts do not have the power to imply a waiver***." (emphasis added)). Through the Subpoena, the DA's Office asks the Court to subject the Governor, in his official capacity (*i.e.*, "the State"), to judicial process without the State's consent. The Court lacks jurisdiction to do that, and the Subpoena must be quashed. *See Lathrop*, 301 Ga. at 408 ("[T]he constitutional doctrine of sovereign immunity forbids our courts to entertain a lawsuit against the State without its consent.").