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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

THE STATE OF ARIZONA,

Plaintiff,

vs.

RUDOLPH GIULIANI (012),

Defendants.

Case No.: **CR2024-006850-012**

**RESPONSE RE: DEFENDANT
GIULIANI'S MOTION FOR A
COURT ORDER 1) DISCLOSING
GRAND JURY SELECTION
RECORDS AND MATERIALS AND
VOTER REGISTRATION CARDS
AND 2) TO DEPOSE THE JURY
COMMISSIONER**

(Assigned to the Hon. Bruce Cohen)

The State of Arizona responds to Defendant Rudolph Giuliani's request for this Court to order disclosure of numerous records related to state grand jury proceedings, and to depose the jury commissioner who oversaw the creation and impanelment of the 93rd

State Grand Jury. The State has disclosed the transcript from the grand jury impanelment (SGJ002812-SGJ003000), and will disclose the requested written application from the Attorney General for the 93rd state grand jury. As to the remaining items, the State requests the Court deny Giuliani's motion.

INTRODUCTION

On August 30, 2024, Giuliani moved, pursuant to Arizona Rule of Criminal Procedure ("Rule") 15.1(g), for numerous orders from this Court authorizing him to obtain the following materials and information regarding the selection and impanelment of the 93rd State Grand Jury:

1. A Deposition of the Jury Commissioner who oversaw the impanelment of the 93rd State Grand Jury;
2. Copies of the juror questionnaires completed by the prospective grand jury members of the 93rd State Grand Jury;
3. A verbatim record/transcript of the examination of each of the grand jurors under oath or affirmation;
4. A copy of any and all written applications submitted by the Attorney General for the State Grand Jury;
5. A complete and un-redacted copy of the "master jury list" used to select the prospective members of the 93rd State Grand Jury;
6. Copies of the voter registrations cards of each seated member of the 93rd State Grand Jury; and

7. A copy of the program utilized by the jury commissioner to randomly select prospective grand jurors.

Dckt. 1265, at 1-8. For the reasons set forth below, the State opposes the majority of Giuliani's requests, because (1) they amount to little more than a fishing expedition; (2) several items Giuliani seeks have already been or will be provided in the course of the State's disclosure to all defendants; and (3) numerous other items sought by Giuliani are overbroad or otherwise lack a basis for this Court to order they be disclosed.

DISCUSSION

I. Giuliani Has Not Established A Substantial Or Particularized Need for the Requested Discovery of Grand Jury Materials.

Although Giuliani outlines the law regulating discovery in criminal cases, the statutes governing the State Grand Jury selection process, and his right to challenge composition and selection of the grand jury, he makes no effort whatsoever to meet the standards set forth under Rule 15.1(g) of the Arizona Rules of Criminal Procedure.

As with all discovery outside the boundaries of Rule 15.1(a)-(f), a defendant seeking material or information related to the grand jury proceedings not automatically disclosed must show: (1) he has "a substantial need for the material or information to prepare [his] case; and (2) he "cannot obtain the substantial equivalent by other means without undue hardship." Ariz. R. Crim. P. 15.1(g). To meet this standard, the defendant must make some showing that the requested material or information will support a cognizable claim or defense; mere speculation, conjecture, and a hope that something will "turn up" is not sufficient. *See, e.g., State v. Fields*, 196 Ariz. 580, 582-83, ¶¶ 4-9 (App.

1999) (rejecting defendant’s request to access, occupy, and record crime lab’s operations when defendant failed to explain how such an order would support challenges to the testing conducted by the lab in their cases); *State v. Superior Court (Hoffman)*, 107 Ariz. 332, 334 (1971) (to justify court’s wide discretion concerning discovery, defendant “must show how the product of the requested evidence would aid in the presentation of his defense”); *State v. Hatton*, 116 Ariz. 142, 150 (1977) (“Discovery rules are not meant to be used for ‘fishing expeditions.’”) (quoting *State ex rel. Corbin v. Superior Court*, 103 Ariz. 465, 468 (1968)).

Moreover, in the context of materials and information related to grand jury proceedings or the grand jurors themselves, both statutory authority and caselaw heighten the showing required to obtain additional discovery. For example, § 13-2812(A) provides that it is unlawful for an individual to “knowingly disclose[] . . . any decision, result or other matter attending a grand jury proceeding, except . . . when permitted by the court in furtherance of justice.” *See also* A.R.S. § 21-312(A)-(B) (providing protections for juror names and biographical information); Ariz. R. Crim. P. 18.3(b) (providing juror information may not be disclosed “unless by order of the court for good cause shown”). And in *State v. ex rel. Ronan v. Superior Court*, 95 Ariz. 319, 330-31 (1964), the Arizona Supreme Court held that disclosure of grand jury materials under the “furtherance of justice” standard must be read in light of “the general public interest in preserving grand jury secrecy.” *See also State ex rel. Hastings v. Sult*, 162 Ariz. 112, 115 (1989). Thus, when evaluating any request for grand jury materials not available to a defendant as a matter of course, the defendant must demonstrate a “particularized need” for the

materials that outweighs “the societal interests in grand jury secrecy.” *State v. Bergin*, 256 Ariz. 462, 470, ¶ 29 (App. 2023) (applying this framework to a defendant’s request for a grand jury transcript of a prior grand jury proceeding that resulted in no indictment).

Applying this framework to Giuliani’s motion, it is clear that he wishes to engage in the exact type of fishing expedition that Rule 15.1(g) and the principles underlying discovery of grand jury materials prohibit. Giuliani offers only two bases for his request: (1) that he seeks the information to “investigate and determine whether a motion to challenge the [State Grand Jury], [State Grand Jury] Jurors, and [State Grand Jury] proceedings is warranted”; and (2) that he wishes to “determine whether or not the individual jurors were interested directly or indirectly in the matter under investigation, whether or not the jurors were biased or prejudiced in favor of the State, whether or not a juror should have been disqualified, and whether or not the jurors were ‘from a fair cross section of the community.’” Dckt. 1265, at 1, 7. These general statements, however, provide no detail concerning what specific claims he intends to raise, what evidence supports these claims, or how the broad, untailed swathe of information he requests will produce further evidence supporting them. Giuliani also makes no attempt to explain how the materials he has already been provided, including the transcripts of the impanelment and presentation of evidence during the state grand jury proceedings indicate additional discovery is warranted.

This case, therefore, closely mirrors the request considered and rejected by the Arizona Supreme Court in *Sult*. There, the Arizona Supreme Court reversed a superior court order authorizing the defendant’s attorney to “interview the grand jurors concerning

their qualifications and their knowledge of [the defendant].” 162 Ariz. at 114. In so holding, the court found the failure of defense counsel to make “any showing or hint of bias or prejudice on the part of the grand jurors,” coupled with his broad request to interview every grand jury member, revealed that he “did not have any articulable concerns about a given grand jury member; instead, he was simply searching for something he could call bias or prejudice.” *Id.* at 114-15. Likewise, Giuliani’s failure to make any “showing or hint” of any issue with respect to the selection of the grand jury or the bias or prejudice of any grand juror, combined with extremely broad nature of the material he seeks, demonstrate that Giuliani wishes to gain extraordinary access to information about state grand jury proceedings merely in the hopes of finding something he can characterize as error.

Finally, and perhaps most concerning, Giuliani makes no attempt to address how his requests are tailored to balance his right to present a complete defense with the public’s interest in the secrecy and efficacy of grand jury proceedings. “Secrecy insulates the grand jury from public pressure, protects witnesses and targets of grand jury investigations, and encourages witness cooperation.” *Bergin*, 256 Ariz. at 471, ¶ 34. In considering “the effects of disclosure on grand jury proceedings, the courts must consider not only the immediate effects upon a particular grand jury, but also the possible effect upon the functioning of future grand juries.” *Douglas Oil Co. v. Petrol Stops Nw.*, 441 U.S. 211, 222 (1979); *Bergin*, 256 Ariz. at 471, ¶ 34.

As discussed further below, several items requested by Giuliani—including a copy of the voter registration cards for the 93rd State Grand Jury members, a complete and un-

redacted copy of the master jury list—would subject the grand jurors who served on the 93rd State Grand Jury and the prospective grand jurors on the master jury list to needless invasions of their privacy and potential harassment. *Sult*, 162 Ariz. at 114 (observing that procedure permitting defense interviews of grand jurors “would waste vast amounts of time” and that grand jurors would “be needlessly harassed by a defendant’s attempt to find enough information to file a Rule [12.8 or 12.28] or 12.9 motion”). And although Giuliani’s request to depose the grand jury commissioner represents a more familiar pathway to investigating a grand-jury-selection claim, if his failure to outline a cognizable equal Protection or due Process claim were sufficient to justify such action, *any defendant* charged by indictment could do the same. *See Fields*, 196 Ariz. at 582-84, ¶¶ 5-10 (noting State’s argument that request to access and record operations of crime lab would lead to flood of similar defense claims).

In sum, because the law requires more before authorizing a defendant to receive discovery not contemplated by Arizona Rule of Criminal Procedure 15.1, particularly discovery related to grand jury proceedings, Giuliani’s motion is without merit.

II. The Remaining Materials and Information Giuliani Seeks Are Either Overbroad or Irrelevant.

The remaining requests should be denied because they are overbroad, seek irrelevant information, or are moot. *See Hoffman*, 107 Ariz. at 334; *State v. Tankersly*, 191 Ariz. 359, 367-68, ¶¶ 30-33 (1998) (court evaluating discovery request may consider whether it is unduly burdensome or unreasonable), *abrogated on other grounds by State*

v. Machado, 226 Ariz. 281, 283-84 ¶¶ 11-16 (2011); Ariz. R. Crim. P. 15.1(g)(1)-(2). The State will address each request in turn.

A. Deposition of Grand Jury Commissioner

Throughout the motion, Giuliani requests to take a deposition of the jury commissioner who oversaw the summoning of the 93rd State Grand Jury in order to ask numerous questions concerning whether the jury commissioner followed the correct law and procedures. Dckt. 1265, at 5-8. In the state grand jury context, the “jury commissioner in each county must assist the assignment judge in impaneling a state grand jury,” Ariz. R. Crim. P. 12.22(b), and the jury commissioner “in the county in which the assignment judge is serving” must assist the assignment judge in summoning the prospective grand jury, Ariz. R. Crim. P. 12.22(c); A.R.S. 21-423(B). The grand jury commissioner in this case, therefore, also serves as the jury commissioner for Maricopa County, the most populous county in the State. Given these facts and the principles outlined above, the Court should deny this request unless and until Giuliani can make some showing of a specific, cognizable claim related to the grand jury summoning and selection process.

B. Completed Grand Jury Questionnaires

Giuliani next requests copies of the “completed questionnaires of the grand jurors.” Dckt. 1265, at 5. Because Giuliani’s motion does not outline what claims he believes the completed questionnaires will support, he has not demonstrated either a substantial or particularized need to justify his request. And critically, Giuliani does not explain how the transcript of the impanelment is not sufficient to evaluate any potential

bias or prejudice of the grand jury members, or provide any evidence from the transcript of those proceedings that would give this Court a basis from which to evaluate his purported need for additional biographical information concerning the 93rd State Grand Jury. The Court should deny this request.

C. Written Application for Grand Jury Impanelment

Giuliani requests “a copy of any and all written applications from the AG for the SGJ.” Dckt. 1265, at 5. Under A.R.S. § 21-421(A), a new state grand jury is impaneled through a written application, made by the Attorney General, to the Chief Justice of the Arizona Supreme Court. The State assumes that by “SGJ,” Giuliani means the written application for the 93rd State Grand Jury, which the State will provide in its next supplemental disclosure, and not every written application the Attorney General’s office has ever submitted pursuant to A.R.S. § 21-421. If Giuliani did intend to request all written applications made under A.R.S. § 21-421, the request is overbroad; he has not made any showing to justify the need to review every instance in which any Attorney General has engaged in this ministerial function.

D. Master Jury List

Next, Giuliani seeks “a copy of the complete and unredacted master jury list that was used to select the [SGJ].” Dckt. 1265, at 6. Under A.R.S. § 21-301(A), the “master jury list” is comprised “of the names and addresses of eligible persons who reside in the county,” and includes persons (1) “on the voter registration list of the county,” (2) “other persons eligible for jury service who have been licensed pursuant to title 28, chapter 8, article 4 or 51,” (3) and “persons from other lists as determined by the supreme court.”

Based on publicly available information concerning the number of registered voters in Maricopa County alone, the master jury list at the time the 93rd State Grand Jury was impaneled would have likely contained the names and addresses of nearly 2.5 million individuals. *Maricopa Cty. Recorder's Information Systems Ctr. Bound Precinct Totals*, at 92 (April 2, 2023), https://elections.maricopa.gov/asset/jcr:0b7fdc93-886f-4a26-a693-ab7356a554b8/VM06R1.RPT2023-04-02_22_31_52_4776622.pdf. Additionally, based on discussions with representatives of the judicial branch, the current master jury list for Maricopa County contains the names and addresses for approximately 4.5 million individuals in total. And of course, a state grand jury is not selected from only the assignment judge's county; pursuant to Arizona Rule of Criminal Procedure 12.22(b), *each jury commissioner in each county* must submit "a specified number of prospective jurors selected at random."

In requesting a complete and un-redacted copy of the master jury list used to select the 93rd State Grand Jury, Giuliani appears to be essentially requesting the name and address of every registered voter in the State of Arizona, and more. If such a request was truly Giuliani's intent, it is difficult to imagine a clearer example of a fishing expedition. Thus, this request must be denied.

E. Voter Registration Card for State Grand Jury Members

Giuliani also seeks "a Court order for a copy of the voter registration cards" of the 93rd State Grand Jury. Dckt. 1265, at 7. The State has found no precedent authorizing such discovery, and Giuliani only cites the general grounds for disqualification of grand jurors to support his request. Ariz. R. Crim. P. 12.2. Nor is there any indication from the

law governing grand jury selection or any fact presented by Giuliani that an individual's political affiliation is relevant or even known by any official involved in the grand jury selection process. As explained above, the public has a compelling interest in "insulating the grand jury from public pressure" by protecting past, present, and future grand jurors from unnecessary intrusions into their privacy and harassment. *Bergin*, 256 Ariz. at 471, ¶ 34. As a result, even assuming that this Court can authorize a defendant or his counsel in a criminal case to be given copies of grand juror voter registration cards,¹ the balance between the defendant's right to present a complete defense and the public's interest in maintaining the secrecy of grand jury proceedings must weigh heavily against the defendant. Anything less presents far too great of risk of jeopardizing the grand jury's operations and chilling Arizonans' willingness to serve on a state grand jury.

Giuliani, however, has made no showing to support his request at all. He does not offer any proof whatsoever of systemic exclusion or bias in grand jury selection on the basis of political party affiliation or political belief. He points to no evidence in the grand jury transcripts, including the transcript of impanelment, to indicate that any prospective grand jurors were arbitrarily or purposefully discriminated against on the basis of politics, or that any juror was seated despite expressing bias or partiality based on their political beliefs. And Giuliani does not explain how learning the grand jury members' registered

¹ Voter information is subject to additional protections in Arizona. *See* A.R.S. § 16-168(C), (E), (F). Moreover, voter registration information is maintained by the Arizona Secretary of State and the County Recorders for each county, who undoubtedly have a substantial interest in preventing the unauthorized disclosure of voter information. Thus, if the Court is inclined to seriously consider Giuliani's request for voter information, these parties should be given the opportunity to intervene.

voting preference would reveal any relevant information concerning their bias, prejudice, or interest in the result of the grand jury proceedings. Indeed, any person living in the United States today knows that an individual's political affiliation may reveal a great deal about their beliefs, or nothing at all. Accordingly, this request must be denied. *See Wireman v. State*, 432 N.E. 2d 1343, 1347-48 (Ind. 1982) (“Defendant made much of the fact that he was in a political office and claimed there was a political conspiracy that was out to ‘get him’ and that these criminal charges were brought as a result of that conspiracy. There is no evidence whatever that the grand jury was selected in furtherance of any conspiracy or that it was handpicked in any manner to bring about a calculated result.”).

F. Copy of Jury Management Program

Finally, Giuliani requests a copy of the program used to randomly select the prospective state grand jury. Dckt. 1265, at 8. *See* A.R.S. § 21-313; Ariz. Code of Judicial Admin. § 5-203(B); Ariz. Code of Judicial Admin. § 1-501(A), (B). As with his other requests, Giuliani makes no showing as to how receiving a copy of the selection program will support whatever claims he wishes to raise concerning the grand jury selection. Moreover, based on discussions with representatives of the judicial branch, county jury commissioners use proprietary jury management systems provided by contracted vendors. The jury offices may not own the intellectual property rights to the system software or have the ability to share the software with third parties. Therefore, ordering the jury commissioners to disclose such information may expose them, and in turn the Superior Court, to liability for disclosure of proprietary information.

CONCLUSION

For the reasons set forth above, the State respectfully requests that this Court deny Giuliani's motion for additional discovery related to the State Grand Jury Proceedings.

Respectfully submitted September 25, 2024.

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ORIGINAL of the foregoing e-filed
this 25th day of September, 2024 with:

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The Honorable Bruce Cohen
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