

# **Letter of Complaint to the U.S. Senate Select Committee on Ethics**

**Request for Investigation of Senator Lindsey Graham (R-SC), Chairman of the Senate Committee on the Judiciary, for Alleged Ethics Violations**

**by Claire Finkelstein, Algernon Biddle Professor of Law and Professor of Philosophy, University of Pennsylvania Carey Law School, Richard Painter, S. Walter Richey Professor of Corporate Law, University of Minnesota Law School; and Walter Schaub, former Director, U.S. Office of Government Ethics**

**November 18, 2020**

**The views expressed in this writing are the authors' own and do not necessarily represent those of any university or organization.**

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November 18, 2020

Chairman James Lankford  
Vice Chairman Christopher Coons  
U.S. Senate Select Committee on Ethics  
220 Hart Building  
United States Senate  
Washington, DC 20510

*Via email to: [mailbox\\_office@ethics.senate.gov](mailto:mailbox_office@ethics.senate.gov)*

Re: Request for Investigation of Senator Lindsey Graham

Dear Chairman Lankford and Vice Chairman Coons:

We write to urge the Senate Select Committee on Ethics to investigate whether Senate Judiciary Committee Chairman Lindsey Graham (R-SC) called Georgia's Secretary of State, Brad Raffensperger, to discuss his ongoing count of votes for the office of president. We further urge the committee to investigate whether Senator Graham suggested that Secretary Raffensperger disenfranchise Georgia voters by not counting votes lawfully cast for the office of president. Finally, your Committee should demand clarity as to whether Senator Graham has threatened anyone with a Senate investigation of the Georgia vote tally and or taken steps to initiate such an investigation.

If these allegations are true, Senator Graham's conduct constitutes an abuse of office and conduct unbecoming of a senator. For the Chairman of the Senate Judiciary Committee to suggest to a state Secretary of State that he refrain from counting lawful votes threatens the electoral process and damages representative democracy. The Senate Select Committee should investigate this matter and, if it finds Chairman Graham committed the alleged misconduct, seek an appropriate sanction or any other appropriate remedy.

### ***Factual Background***

This complaint is based on allegations Secretary Raffensperger first raised in an interview with the *Washington Post*, on which he elaborated in a subsequent *CNN* interview. According to the *Washington Post*, Senator Graham "asked whether Raffensperger had the power to toss all mail ballots in counties found to have higher rates of nonmatching signatures," which would have included ballots legally cast by eligible voters.<sup>1</sup> The newspaper indicates that Secretary Raffensperger said he was "stunned" by Senator Graham's suggestion and was feeling "under increasing pressure" as a result of communications with Senator Graham and other Republican leaders.<sup>2</sup> In an interview with *CNN*'s Wolf Blitzer, Secretary Raffensperger explained that he took Senator Graham's message to mean "look hard and see how many ballots you could throw out."<sup>3</sup>

Additional reporting indicated there were witnesses to this exchange. *CNN* reported that a staffer for Secretary Raffensperger, Gabriel Sterling, has come forward and said "he participated in a controversial phone call with Sen. Lindsey Graham and claimed he heard Graham ask if state officials could throw out ballots."<sup>4</sup> Raffensperger appears to have told the *Wall Street Journal* that more than one staffer was on the call with him.<sup>5</sup>

Senator Graham denies the accusation, but he admits calling Secretary Raffensperger to discuss Georgia's vote counting efforts. Explaining his intention, he reportedly said, "The main issue for me is: How do you protect the integrity of mail-in voting, and how does signature verification work?"<sup>6</sup> On its face, this explanation suggests misconduct. Any call by a sitting chairman of the Senate Judiciary Committee to a state election official during an ongoing count of votes is inherently coercive and points to an attempt to influence the outcome of the ballot counting. The allegation that Senator Graham placed a behind-the-scenes call to a member of his own political party, without having launched a formal investigation, suggests that he hoped to act

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<sup>1</sup> Amy Gardner, *Ga. secretary of state says fellow Republicans are pressuring him to find ways to exclude ballots*, WASHINGTON POST, Nov. 16, 2020, <https://wapo.st/3kHdAWi>.

<sup>2</sup> *Id.*

<sup>3</sup> Caroline Kelly, Manu Raju and Sarah Fortinsky, *Georgia secretary of state says Lindsey Graham implied he should try to throw away ballots*, CNN, Nov. 17, 2020, <https://cnn.it/2Hc2w63>.

<sup>4</sup> Wes Bruer and Marshall Cohen, *Witness corroborates claim that Lindsey Graham asked about tossing ballots in Georgia*, CNN, Nov. 17, 2020, <https://cnn.it/2IOY2CW>.

<sup>5</sup> Alexa Corse, *Georgia's GOP Secretary of State at Odds With GOP Senator Graham Over Counting Ballots*, WALL STREET JOURNAL, Nov. 17, 2020, <https://on.wsj.com/36DM32Y>.

<sup>6</sup> *Id.*

out of public view. Even if your committee were to reject Secretary Raffensperger's allegation regarding the content of the communication, the conduct Senator Graham has admitted is deeply troubling. There can be no legitimate reason for the Judiciary Committee's chairman to call a top election official regarding an ongoing vote count.

### ***The Evidence Supports a Finding of Conduct Unbecoming a Senator***

In reviewing public reporting on the behavior of Senator Graham, as well as the interview and account of Georgia's Secretary of State Raffensperger, we find Secretary Raffensperger's allegations plausible. A senior staffer in the Secretary of State's office has substantially corroborated his account of Senator Graham's suggestion.<sup>7</sup> Others may soon come forward, for he has reportedly indicated that more than one staff member was on the call with him.<sup>8</sup> Secretary Raffensperger is a Republican elected official who says he supported President Trump in the election. He has said, "I was rooting for the Republicans to win."<sup>9</sup> Making up the claim about Senator Graham would harm his standing within his own party. As further disincentive, even acknowledging that the two discussed the ongoing vote count will subject him to heightened scrutiny.

Another factor supporting Secretary Raffensperger's account is the link between Senator Graham's alleged focus on signature matching and a similar focus on the part of President Trump, whom Senator Graham has ardently supported. President Trump tweeted: "Georgia Secretary of State, a so-called Republican (RINO), won't let the people checking the ballots see the signatures for fraud. Why? Without this the whole process is very unfair and close to meaningless. Everyone knows that we won the state."<sup>10</sup> The president posted this tweet on the same day that Secretary Raffensperger says Senator Graham called him about signature matching and allegedly suggested discarding legally cast votes to tilt the election in President Trump's favor.<sup>11</sup>

Even if the Senate Select Committee on Ethics were to reject Secretary Raffensperger's account, the conduct to which Senator Graham has overtly admitted is shocking from the standpoint of both professional and personal ethics. There was no legitimate reason for the Judiciary Committee's chairman to call a top election official regarding an ongoing vote count. In his defense, Senator Graham initially insisted on Tuesday that he called the Secretaries of State of both Arizona and Nevada.<sup>12</sup> It is not clear why Senator Graham thought that claiming he repeated the alleged misconduct would serve as a valid defense. In any case, both of these

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<sup>7</sup> Corse, *supra*, n.5.

<sup>8</sup> *Id.*

<sup>9</sup> Bruer and Cohen, *supra* n.4; Katie Shepherd, *Democrats bash Lindsey Graham over claims he pressured Georgia to discard ballots: 'Morally reprehensible'*, WASHINGTON POST, Nov. 17, 2020, <https://wapo.st/393ub4L>.

<sup>10</sup> Gardner, *supra*, n.1.

<sup>11</sup> *Id.*

<sup>12</sup> Karen Tumulty, *Lindsey Graham's Claim That He Wasn't Interfering in the Georgia Vote Doesn't Add Up*, WASHINGTON POST, Nov. 17, 2020, <https://wapo.st/32UhCER>.

elected officials have denied speaking to Senator Graham.<sup>13</sup> Their exposing Senator Graham's asserted defense as untrue undermines his credibility. Graham later claimed he had spoken to Arizona's governor but admitted he had not spoken to anyone in Nevada.<sup>14</sup>

Making matters worse, according to the *Washington Post's* reporting, Senator Graham acknowledged the potential for his call to have intimidated the state official: "If he feels threatened by that conversation, he's got a problem."<sup>15</sup> This flippant response about such serious charges is, itself, conduct unbecoming of a member of the Senate.

Secretary Raffensperger's account describes undemocratic conduct incompatible with service as a senator, much less as a committee chairman. Senator Graham has vowed to launch a Senate Judiciary Committee investigation into alleged irregularities in the 2020 general election.<sup>16</sup> On November 7, 2020, for example, he issued a statement in which he said, "as Chairman of the Senate Judiciary Committee, all credible allegations of voting irregularities and misconduct will be taken seriously."<sup>17</sup> The next day he credited "allegations of system failure, fraud" as the reason that President Trump lost the election.<sup>18</sup> In this regard, Senator Graham has thrown the weight of his position behind President Trump's allegations of voter fraud, and he has done so in his official capacity. Having threatened a Senate investigation, he himself obliterated the distinction between personal capacity political opinions and official actions with respect to this particular election controversy.

Even the conduct to which Senator Graham admits was highly improper and constitutes an abuse of his position in the Senate. As a result, he has brought disrepute on the Senate and engaged in campaign activity in his official capacity as a senator. Unless he is forced to stop this behavior, Senator Graham's unethical and illegal behavior will likely continue and may set a standard for others elected officials with regard to future elections.

### ***Conclusion and Request for Relief***

Senator Graham did not succeed in his attempt to disenfranchise thousands of Georgians in the November 2020 election, but had the Georgia Secretary of State had less integrity, he might have. If such was Senator Graham's intent, it is critical for the Ethics Committee to investigate his conduct. Under Committee Rule 2(b), we respectfully request the Committee initiate an investigation into Senator Graham's conduct. Pursuant to the Rules of Procedure of

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<sup>13</sup> Paul Kane, *Lindsey Graham's one-man voting probe prompts confusion*, WASHINGTON POST, Nov. 17, 2020, <https://wapo.st/3fcZgnA>; Graeme Massie, 'This is false': Arizona secretary of state denies Lindsey Graham spoke to her as voter fraud row intensifies Senator faces accusations of meddling in another state's election process, INDEPENDENT, Nov. 17, 2020, <https://bit.ly/3pCiw2s>.

<sup>14</sup> Kane, *supra*, n.13.

<sup>15</sup> Gardner, *supra*, n.1.

<sup>16</sup> See Celine Castronuovo, *Graham vows Senate Judiciary will investigate 'voting irregularities'*, THE HILL, Nov. 7, 2020, <https://bit.ly/2Kkct2t>.

<sup>17</sup> *Id.*

<sup>18</sup> Ronn Blitzer, *Graham: If GOP doesn't fight, there will 'never be another Republican president elected again'*, FOX NEWS, Nov. 8, 2020, <https://fxn.ws/38TQyth>.

the Select Committee on Ethics, Part II, Rule 3(b), “[t]he Committee shall promptly commence a preliminary inquiry whenever it has received a sworn complaint, or other allegation of, or information about, alleged misconduct or violations pursuant to Rule 2.” Rule 3(c) requires that “[t]he preliminary inquiry shall be of such duration and scope as is necessary to determine whether there is substantial credible evidence which provides substantial cause for the Committee to conclude that a violation within the jurisdiction of the Committee has occurred.”

We further request that while the investigation is ongoing Senator Graham be recused from any investigation or other Senate matter relating to alleged irregularities in the 2020 election.

Secretary Raffensperger’s allegation describes extreme misconduct and abuse of senatorial authority. This alleged attempt by Senator Graham to throw the election for President Trump after the fact by encouraging the very fraud he purports to be investigating threatens the fabric of our nation by undermining the very thing that makes it a republic, our elections. Even if the committee believes only Senator Graham’s account, his call to the state election official during an ongoing vote count amounts to misconduct. These alleged acts committed by Senator Graham bring discredit and dishonor upon the Senate and constitute conduct unbecoming of a United States Senator. Therefore, we urge the committee to open an investigation of Senator Graham at once and, if it finds the conduct occurred as alleged, take the strongest action within its authority to address misconduct by a member of the Senate.

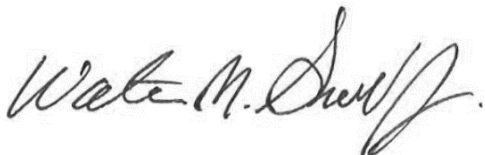
Respectfully,



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