FULTON COUNTY SUPERIOR COURT
STATE OF GEORGIA

STATE OF GEORGIA, V. SIDNEY KATHERINE POWELL ET AL., DEFENDANTS.	CASE NO. 23SC188947 JUDGE MCAFEE

POWELL'S GENERAL DEMURRER
AND MOTION TO DISMISS COUNT 1 (RICO)

On August 14, 2023, the State of Georgia filed a 98-page Indictment against 19 defendants, including Sidney Powell. Count 1 charges Ms. Powell with violations of Georgia's RICO Statute. The RICO charge of the Indictment must be dismissed. The Georgia statute is (i) unconstitutional as applied here, because there are no boundaries or limiting principles that foreclose it from reaching innocent conduct; and (ii) the events of January 7, 2021 in Coffee County and their related Acts are but one transaction as a matter of law under RICO.[1] The RICO charge against Ms. Powell must be dismissed for failure to connect her with two predicate acts. Because of the importance of this Motion, Ms. Powell requests a written response from the state within 5 days and that a hearing be set on this and the General Demurrer on Counts 32-37 at the Court's earliest convenience.

The RICO statute: (i) cannot be expanded to criminalize Ms. Powell's facially innocent conduct as alleged where, (ii) she was acting as a lawyer advising her clients

[1] Ms. Powell hereby joins Mr. Chesbro's Demurrer on Count 1 and Mr. Smith's Demurrer on Count 1.

or working on litigation, and (iii) there were no bribes, kickbacks, extortion, or pecuniary gain or threat of such. At bottom, the Georgia RICO is (i) unconstitutional as applied without a requisite element of financial gain or threat of injury, and (ii) because Powell had no fair warning of its boundaries. See *Skilling v. United States*, 561 U.S. 358 (2010); *Arthur Andersen LLP v. United States*, 544 U.S. 696, 703 (2005).

The State has used the RICO statute here to criminalize innocent conduct—even First Amendment protected speech, political speech and action, and other facially innocent conduct. There is no crime of "conspiracy to unlawfully change the outcome of the election in favor of Trump" Ind. at 14. Those were issues for courts and legislatures to decide—not grist for a criminal RICO charge by prosecutors.[2]

This is not a case about big business, organized crime, any prior definition of racketeering, violence, extortion, or being tough on crime. It is about freedom of speech, politics, lobbying, political activity, and the right to conduct one's life and law practice in a manner understood to be lawful, and to receive fair warning when the law is changed. No one in this Indictment had the "evil-meaning mind" or criminal intent necessary to justify criminal punishment, no one sought personal financial gain, and no one engaged in conduct previously punished as criminal.

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[2] The Coffee County Counts 32-37 and related alleged "acts" are addressed separately in Powell's General Demurrer to Counts 32-37 filed September 13, 2023, but there is sworn testimony from multiple witnesses that authority was given by Coffee County officials, thus defeating an essential element of the State's case and requiring their dismissal as well. *State v. Finkelstein*, 170 Ga.App. 608 (1984) (consent to conduct alleged as criminal required dismissal). Furthermore, Ms. Powell was not the lawyer overseeing or requesting that forensic work.

Rather, this unprecedented Indictment was brought by the overly-zealous, "headline-grabbing prosecutors" of which Justice Scalia warned,[3] and it is derived from an extremely troubling, well-funded, apparent public-private partnership of a prosecution to destroy any who dared challenge the 2020 election.[4] This prosecution has been brought at the expense of sound statutory interpretation, fair warning principles, Due Process, the First Amendment, and the basic goals and values of the criminal law.

It has done a great injustice to the people named and unnamed in it—persons who's previously sterling reputations have been dragged through the mud and their lives and those of their families irreparably altered by this baseless prosecution.[5]

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[3] *Sorich v. United States*, 555 U.S. 1204 (2009) (Scalia, J., dissenting from the denial of certiorari) ("Without some coherent limiting principle to define what 'the intangible right of honest services' is, whence it derives, and how it is violated, this expansive phrase invites abuse by headline-grabbing prosecutors in pursuit of local officials, state legislators, and corporate CEOs who engage in any manner of unappealing or ethically questionable conduct.").

[4] *First*, the District Attorney took the unprecedented step of hiring "an old friend" Nathan Wade to serve as a Special Prosecutor and paid him and colleagues hundreds of thousands of taxpayer dollars. Schafer Motion for Evidentiary Hearing Regarding Improper Contact by Special Prosecutor's Law Firm. *Second*, the far Left well-funded Brookings Institute has been working apparently on putting the entire case together for the District Attorney for at least two years, publishing two handbooks collecting the evidence and advising of "the crimes." https://www.brookings.edu/articles/fulton-county-georgias-trump-investigation/ (for 2021) and https://www.brookings.edu/wp-content/uploads/2022/11/11122022_GA_Investigation_Report_SecondEdition.pdf (the more complete version in 2022 with the aid of a former Deputy Solicitor General). *Third*, the parties in *Curling v. Raffensperger* went to work shortly after the grand jury was impaneled to take depositions of all the key people in the Coffee County charges, putting many in a position of asserting the Fifth Amendment. See Powell's General Demurrer on Counts 32-37.

[5] Ms. Powell's longstanding trusted traveler status has been revoked by TSA for "her criminal history"—in addition to other problems created by this wrongful indictment.

This Indictment casts a shroud over our entire free, and supposedly transparent, election process and the ability of citizens and lawyers to participate in its political activity. Especially troubling, it chills the willingness of counsel to represent clients and advise them how to protect their own rights in any controversial area of law. This remarkably novel and boundless application of RICO must be dismissed.

I. Background.

"For over two hundred years, one of the strengths of our democracy has been that citizens may question the results of an election." Amicus Brief of Rep. Conyers at 2, No. 04-2088, *Moss v. Bush*, 828 N.E.2d 994 (Ohio, filed Feb. 14, 2005), *available at* https://tinyurl.com/mwkde7uj. Elections have enormous consequences. It should hardly be surprising that citizens take them seriously—and always have. *See* Nicole Etcheson, *Bleeding Kansas: Contested Liberty in the Civil War Era* 1-2 & n. (2004) (describing the election-related violence that followed the failed promise of the Kansas-Nebraska Act).

"Many Americans are of the view that the 2020 election was not fully free and fair." *Costantino v. City of Detroit*, 950 N.W.2d 707, 709 (Zahra, J., concurring, joined by Markman, J.). The defendants herein were among those who challenged, litigated, questioned witnesses, or lobbied legislatures for further scrutiny of the 2020 election. This is no different than lawyers and citizens have done for decades, yet these defendants have been prosecuted for it.

Given the State's theory of a crime here, Georgia RICO would reach not only the thirty who are unindicted coconspirators (and apparently Senator Lindsey

Graham)[6], but also countless more: anyone who questioned any vote count; volunteers who canvassed neighborhoods; officials who refused to certify election results; and, those who testified in any of the legislative hearings and disputed the Biden victory. There is no limit. "Where inherently vague statutory language permits such selective law enforcement, there is a denial of due process." *Smith v. Goguen*, 415 U.S. 566, 576 (1974).

II. Ms. Powell Did Not Join a RICO Enterprise or Criminal Organization—*If* There was One.

The State has not adequately defined the "enterprise" or the "criminal organization," but Ms. Powell was not part of either. She never signed an engagement letter or agreed to represent President Trump or the campaign. Rather, she went her own way, represented electors, and filed four federal lawsuits on their behalf. Her comments at the RNC on November 19, 2020, were based on evidence she was receiving and made in the interest of American citizens who witnessed unprecedented and inexplicable anomalies in the 2020 election, including seeing vote totals roll backwards on live television and witnessing the vote count stop simultaneously across multiple swing states just as Trump was on the precipice of the magic number of electoral college votes.

She acted solely as a lawyer, collecting evidence within the confines of the law. Her discussion of matters within the purview of the President on December 18, 2020,

[6] Special Purpose Grand Jury Report, released pursuant to court order on September 8, 2023. https://d3i6fh83elv35t.cloudfront.net/static/2023/09/2022-ex-000024-ex-parte-order-of-the-judge-2.pdf

were focused on already-issued Executive Order 13848 and an FBI/CISA finding of foreign interference in the election by Iran.[7] Nothing even remotely illegal was discussed in that meeting, and at the President's request, she provided her legal opinion.[8]

The overt acts alleged include facially innocent actions, many even protected by the First Amendment. Ironically, Ms. Willis recognized the overt acts were innocent conduct, but included them as overt acts of a RICO conspiracy as combined.[9] All allegations of innocent conduct should be stricken from the Indictment so as not to criminalize plainly innocent or even protected conduct.

III. Count I Must Be Dismissed for Violation of Fundamental Constitutional Principles of Due Process and Fair Warning.

"To satisfy due process, 'a penal statute [must] define the criminal offense [1] with sufficient definiteness that ordinary people can understand what conduct is prohibited and [2] in a manner that does not encourage arbitrary and discriminatory enforcement.'" *Skilling*, 561 U.S. at 402-03 quoting *Kolender v. Lawson*, 461 U.S.

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[7] *See* Cybersecurity & Infrastructure Security Agency, CISA and FBI Release Joint Advisory on Iranian APT Actor Targeting Voter Registration Data, Oct. 30, 2020, https://www.cisa.gov/news-events/alerts/2020/10/30/cisa-and-fbi-release-joint-advisory-iranian-apt-actor-targeting-voter; *see also* Executive Order 13848, Sept. 12, 2018, https://www.govinfo.gov/content/pkg/FR-2018-09-14/pdf/2018-20203.pdf.

[8] https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000082296/pdf/GPO-J6-TRANSCRIPT-CTRL0000082296.pdf

[9] In her August 14, 2023 press conference, Willis stated that "overt acts are not necessarily crimes under Georgia law in isolation, but are alleged to be acts taken in furtherance of the conspiracy." C-SPAN, Aug. 14, 2023, https://www.c-span.org/video/?529926-1/georgia-district-attorney-news-conference-indictment-president-trump.

352, 357, 103 S.Ct. 1855, 1858 (1983). "The void-for-vagueness doctrine embraces these requirements." *Skilling*, 561 U.S. at 402–03; *Village of Hoffman Estates v. Flipside*, 455 U.S. 489, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982); *Smith v. Goguen*, 415 U.S. 566, 94 S.Ct. 1242, 39 L.Ed.2d 605 (1974); *Grayned v. City of Rockford*, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972); *Papachristou v. City of Jacksonville*, 405 U.S. 156, 92 S.Ct. 839, 31 L.Ed.2d 110 (1972); *Connally v. General Construction Co.*, 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322 (1926).

The Supreme Court has been clear. "[A] fair warning should be given to the world in language that the common world will understand of what the law intends to do if a certain line is passed. To make the warning fair, so far as is possible, the line should be clear;" and, "because of the seriousness of criminal penalties and because criminal punishment usually represents the moral condemnation of the community, legislatures and not courts, should define criminal activity. This policy embodies the instinctive distaste against men languishing in prison unless the lawmaker has clearly said that they should." *United States v. Bass*, 404 U.S. 336, 348 (1971) (quotations and citations omitted). Indeed, fair warning is "the first essential of due process of law." *Connally v. Gen. Const. Co.*, 269 U.S. 385, 391 (1926); *See United States v. Harriss*, 347 U.S. 612, 617 (1954) ("The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute.").

Although the "void for vagueness" doctrine focuses both on actual notice to citizens and arbitrary enforcement, the Supreme Court has recognized recently that

the more important "aspect of vagueness doctrine is not actual notice, but the other principal element of the doctrine—the requirement that a legislature establish minimal guidelines to govern law enforcement." *Smith,* 415 U.S. at 574, 94 S.Ct., at 1248. "Where the legislature fails to provide such minimal guidelines, a criminal statute may permit a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections." *Kolender* 461 U.S. at 58 (1983) (Supreme Court concluded statute "is unconstitutionally vague on its face because it encourages arbitrary enforcement by failing to describe with sufficient particularity what a suspect must do in order to satisfy the statute."). A law that "encourages arbitrary and erratic arrests and convictions" cannot stand. *Papachristou,* 405 U.S. at 162. This is exactly such a "standardless sweep" that allowed prosecutors "to pursue their personal predilections." *Kolender*, 461 U.S. at 358 (quotation omitted).

A crime defined by terms that are so indefinite that courts must change their meaning on a case-by-case basis is void for vagueness. *See Ashton v. Kentucky*, 384 U.S. 195, 198-99 (1966) ("[S]ince the law must be made on a case to case basis, the elements of the crime are so indefinite and uncertain that it … [leaves] to the executive and judicial branches too wide a discretion in its application.") (internal quotation marks and citations omitted); *NAACP v. Button*, 371 U.S. 415, 438 (1963) ("[W]e cannot assume that, in its subsequent enforcement, ambiguities will be resolved in favor of adequate protection of First Amendment rights.").

"[P]erhaps the most important factor affecting the clarity that the Constitution demands of a law is whether it threatens to inhibit the exercise of constitutionally

protected rights. If, for example, the law interferes with the right of free speech or of association, a more stringent vagueness test should apply." *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 99 (1982).

If the Georgia RICO statute reaches the conduct alleged here, then it is unconstitutionally vague. Already, its application has necessarily been decided on a case-by-case basis. It has enabled the District Attorney's office to make life-altering choices of those to indict—when thousands of people fall within the prosecutors' definition of RICO here. The State has even indicted First Amendment protected speech and conduct.[10]

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[10] "Where a statute's literal scope, unaided by a narrowing state court interpretation, is capable of reaching expression sheltered by the First Amendment, the [vagueness] doctrine demands a greater degree of specificity than in other contexts." *Smith v. Goguen*, 415 U.S. 566, 573 (1974) (Massachusetts law governing misuse of flag void for vagueness).

Even advocacy intended to affect the outcome of a proceeding is protected by the First Amendment. *See*, *e.g.*, *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972); *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 911-15 (1982). Georgia seeks to apply its statute here to completely protected core political speech and advocacy that has been perfectly lawful conduct prior to this indictment. Just as "evidence of anticompetitive intent or purpose alone cannot transform" protected speech into an antitrust violation, *Prof'l Real Estate Investors, Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 59 (1993), communication intended to persuade someone to do something legal does not lose First Amendment protection because the speaker's purpose is to influence an election, change its outcome, begin an investigation, or persuade a legislative body to engage in conduct within its power.

For example, the Supreme Court has not hesitated to reverse convictions for contempt by publication, even though the publishers plainly intended to affect the outcome of a judicial proceeding. *See*, *e.g.*, *Craig v. Harney*, 331 U.S. 367, 369-70, 374-75 (1947); *Bridges v. California*, 314 U.S. 252, 271-78 (1941). And, as the D.C. Circuit observed in *United States v. North*, attempting to persuade a member of Congress not to pursue an investigation [or presumably, to pursue one] is protected by the Constitution and is not corrupt even though it plainly involves "endeavoring

The only way the Georgia RICO statute can survive constitutional scrutiny is if the Court reads into it an element of criminal financial gain for the individual and enterprise, and the economic or physical threat or injury. The offense must be cabined with such parameters of criminal conduct to provide fair warning and Due Process. As Mr. Chesbro ably briefed in his General Demurrer, p.4:

> RICO itself states that "[i]t is the intent of the General Assembly . . . that [the RICO] chapter apply to an interrelated pattern of criminal activity motivated by or the effect of which is pecuniary gain or economic or physical threat or injury." O.C.G.A. § 16-14-2(b) (emphasis added). The statute further states that "[i]t is not the intent of the General Assembly that isolated incidents of misdemeanor conduct or acts of civil disobedience be prosecuted under this chapter." Id. The predicate acts in this indictment do not encompass any "physical threat or injury," nor do they allege any motivation for pecuniary gain.

The Georgia Supreme Court agrees that Georgia's "RICO Act was enacted by the Georgia legislature to impose criminal penalties against those engaged in an "interrelated pattern of criminal activity motivated by or the effect of which is pecuniary gain or economic or physical threat or injury." *Williams Gen. Corp. v. Stone*, 279 Ga. 428, 428, 614 S.E.2d 758, 759 (2005) citing OCGA § 16–14–2(b); *Five Star Athlete Mgmt., Inc. v. Davis*, 355 Ga. App. 774, 778, 845 S.E.2d 754, 757–58 (2020); see also *Waldschmidt v. Crosa*, 177 Ga. App. 707, 710, 340 S.E.2d 664, 667 (1986) (upholding a trial court's granting of summary judgment where the "the trial court acted in accordance with the legislative intent" that RICO requires the motive

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to impede or obstruct the investigation." *United States v. North*, 910 F.2d 843, 882 (D.C. Cir.), opinion withdrawn and superseded in part on reh'g, 920 F.2d 940 (D.C. Cir. 1990).

for pecuniary gain). *See Skilling v. United States*, 561 U.S. 358, 415 (2010) (vacating the Court of Appeals' ruling on conspiracy conviction under the new "honest services" statute (18 U.S.C. 1346) for lack of a limiting principle of bribery or kickbacks (personal gain to the defendant).[11]

Without such a reading, Georgia's RICO statute raises "grave and doubtful constitutional questions" of both overbreadth and vagueness. It allows punishment of speech and political conduct long and fully protected under the First Amendment. Whether conduct is criminal should never be debatable, or a surprise. Accordingly, if the statute is construed with parameters of pecuniary gain or economic or physical threat or injury, which render it capable of surviving a constitutional challenge, then the RICO count in this Indictment must be dismissed for its failures to meet any such limiting principles.

IV. The RICO Count Fails for Insufficient Predicate Offenses.

[11] Prosecutors have long tried to make new law by over-zealous, creative indictments that have criminalized innocent conduct. Both the Supreme Court and Circuit Courts have slapped them down repeatedly. For decades, until the *Skilling* decision, the government did substantial damage by trying to expand the wire fraud statute and the "honest services" statute to reach facially innocent conduct. See *Weyhrauch v. United States*, 561 U.S. 476 (2010); *Black v. United States*, 561 U.S. 465, 467 (2010) (Stating "the Government and trial court advanced an interpretation of § 1346 rejected by the Court's opinion in *Skilling*."). Many convictions were reversed for failing to have the same requisite limiting principles the State seeks to avoid here. *United States v. Cochran*, 109 F.3d 660, 667 (10th Cir. 1997) (even assuming §1346 reaches private actors in a commercial transaction, "it would give us great pause if a right to honest services is violated by every breach of contract or every misstatement made in the course of dealing"); *United States v. Czubinski*, 106 F.3d 1069, 1077 (1st Cir. 1997) (reversing; no bribes, no personal gain to defendant); *Bloom*, 149 F.3d at 656-57 (reversing; no personal gain).

"There are no constructive offenses; and before one can be punished, it must be shown that his case is plainly within the statute." *Fasulo v. United States*, 272 U.S. 620, 629, 47 S.Ct. 200, 202(1926). The Georgia RICO Act is modeled after the federal RICO statute and Georgia courts may look to decisions of the federal courts construing and applying the federal statute when considering the meaning and application of the Georgia RICO Act. *See Kimbrough v. State*, 300 Ga. 878, 882 n.13 (2017) (citing *Williams Gen. Corp. v. Stone*, 279 Ga. 428, 430 (2005)); *Chancey v. State*, 256 Ga. 415, 418 (1986). If an otherwise vague statute "can be made constitutionally definite by a reasonable construction of the statute, this Court is under a duty to give the statute that construction." *United States v. Harriss*, 347 U.S. 612, 618 (1954).

A. The State Must Allege and Prove Powell Agreed to Participate Through Two Predicate Offenses.

Not only does the RICO count fail for lack of any criminal financial gain, it fails for insufficient predicate offenses that implicate Ms. Powell. To "establish a RICO conspiracy violation . . . the government must prove that the [Ms. Powell] 'objectively manifested, through words or actions, an agreement to participate in the conduct of the affairs of the enterprise through the commission of two or more predicate crimes.'" *United States v. Starrett*, 55 F.3d 1525, 1543 (9th Cir. 1995) (quoting *United States v. Russo*, 796 F.2d 1443, 1455 (11th Cir. 1986)).

Georgia must prove that a defendant "knowingly and willfully join[ed] a conspiracy which itself contains a common plan or purpose to commit two or more predicate acts.'" *Wylie v. Denton*, 323 Ga. App. 161, 165 (2013) (construing O.C.G.A. § 16-14-4(c)) (quotation omitted); *see also Chancey*, 256 Ga. at 427 (finding that the

State was "required to prove that appellants' participation in the enterprise through a pattern of racketeering activity was knowing and voluntary," and that "concepts of intent and scienter were ingrained upon the statute").

B. Coffee County "Crimes" Constitute only One "Act" as a Matter of Law.

Even if the Indictment adequately defined a criminal "enterprise," it does not allege facts that constitute "a pattern of racketeering activity" in which Ms. Powell was involved. Here the alleged "predicate acts" are either too dissimilar and too disconnected to constitute a pattern of racketeering activity (electors, legislative efforts), or too similar to constitute more than one transaction (the computer charges). *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989) ("RICO's legislative history reveals Congress' intent that to prove a pattern of racketeering activity a plaintiff or prosecutor must show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity.") *H.J. Inc.*, 492 U.S. at 238 ("It is not the number of predicates but the relationship that they bear to each other or to some external organizing principle that renders them 'ordered' or 'arranged.'").

While "two alleged predicate incidents must be sufficiently 'linked' to form a RICO pattern," they must nevertheless be "sufficiently distinguishable so that they do not become 'two sides of the same coin.'" *McGinnis v. Am. Home Mortg. Servicing*, Inc., 817 F.3d 1241, 1253 (11th Cir. 2016) (quoting *S. Intermodal Logistics, Inc. v. D.J. Powers Co., Inc.*, 10 F. Supp. 2d 1337, 1359 (S.D. Ga. 1998) (quoting *Raines v. State*, 467 S.E.2d 217, 218 (Ga. Ct. App. 1996)). This is true even if a court "could technically ascribe more than one criminal offense to different aspects of the conduct."

Newton v. Brighthouse Life Ins. Co., No. 1:20-CV-02001-AT, 2021 WL 2604654, at *25 (N.D. Ga. Mar. 11, 2021) (citing *McGinnis v. Am. Home Mortg. Servicing, Inc.*, 817 F.3d 1241, 1253 (11th Cir. 2016)).

The only "acts of racketeering" alleged against Ms. Powell arise from the Coffee County forensic collection on January 7, 2021. Even if the Court assumes any validity to the charges in Counts 32-37 and Acts 142-155 regarding the computers in Coffee County, that is but one transaction for purposes of RICO. As a matter of law, those events are only one predicate act of racketeering, and the RICO count against Ms. Powell must be dismissed.

Courts interpreting Georgia's RICO Act have consistently held that "[t]he fact that elements of two crimes may have been present at two separate points in time does not create two predicate acts [for RICO purposes] out of what is in reality a single transaction." *Sec. Life Ins. Co. of Am. v. Clark*, 535 S.E.2d 234, 238 n. 22 (Ga. 2000) citing *Stargate Software Int'l, Inc. v. Rumph*, 224 Ga. App. 873, 877, 482 S.E.2d 498, 503 (1997). Particularly with respect to computer and related crimes, the Georgia Court of Appeals has held all the conduct is but one predicate offense for purposes of RICO allegations. *Stargate Software Int'l, Inc.*, 482 S.E.2d at503 (Ga. Ct. App. 1997) ("taking computers, data, and records, and then, at a separate time, using and altering them to [plaintiff's] injury" constituted a single transaction rather than two predicate acts, even though "elements of two crimes may have been present at two separate points in time"); *Raines v. State*, 219 Ga. App. 893, 894, 467 S.E.2d 217, 218 (1996) (one extended transaction), *cert. denied (*citing *Cobb v. Kennon Realty*

Svcs., 191 Ga.App. 740, 382 S.E.2d 697 (1989)). See also *Emrich v. Winsor*, 198 Ga.App. 333, 401 S.E.2d 76 (1991) (sale to two victims in "one isolated transaction" does not establish pattern of racketeering activity).

C. Other Acts Against Ms. Powell are not RICO Acts of Racketeering.

The only other Acts with which she is charged are First Amended protected speech, innocent conduct, are not sufficiently alleged to state a crime, and regardless, not one is a predicate act or "act of racketeering" under the Georgia RICO statute. These include:

- Act 3 (improperly identified as Act 2): the November 19, 2020 press conference at the RNC;
- Act 33: Entering a written agreement with Sullivan StricklerLLC on December 6, 2020 for forensic collection in Michigan.
- Act 90: The White House meeting on December 18, 2020, with President Trump and others.
- Act 91: a December 18, 2020, e-mail to the Chief Operations Officer of SullivanStrickler LLC, requesting only specific persons receive data from Michigan;
- Act 159: False statements in a deposition on May 7, 2022, with the January 6 congressional committee.
    1. That she 'didn't have any role in really setting up' efforts to access voting machines in Coffee County, Georgia, or Antrim County, Michigan;
    2. That she was aware there was an 'effort by some people' to get access to voting machines in Georgia but that she did not 'know what happened with that' and did not 'remember whether that was Rudy or other folks.'

These "overt acts" done in "furtherance of the conspiracy" include speech protected under the First Amendment, investigatory actions relating to another state

pursuant to a court order, and discussions with the then-President of the United States and White House Counsel concerning an FBI/CISA finding of foreign interference in the election, E.O. 13848 on cybersecurity, and their relevance following allegations of voter fraud relating to the 2020 election. None of these allege a crime or identify a criminal statute.

Furthermore, one of the alleged "overt acts" – Ms. Powell's testimony to the January 6 Committee – took place on May 7, 2022, long after President Biden was inaugurated. Ms. Powell testified for six and one-half hours, answering every question the committee had. The allegation fails to state the question asked, the full answer given, the context, or even explain how it is false. None sufficiently allege a crime.

The dispositive issue, however, is that these "overt acts" are not sufficient to establish violation of Georgia's RICO statute, because they are not "racketeering acts" as defined under Georgia law. Thus, even if the Court were to accept these accusations as true, the indictment would still be subject to a general demurrer. *See Kimbrough v. State*, 300 Ga. 878, 880 (2017). Accordingly, the RICO charge against Ms. Powell must be dismissed as a matter of law for insufficient predicate acts.

V. This Court Has Full Authority to Dismiss the Indictment.

In a criminal case the law is addressed to the court. *Poole v. State,* 100 Ga.App. 380, 383(2), 111 S.E.2d 265 (1959). This Court has the authority to dismiss this Count and others pretrial. *State v. Tuzman,* 145 Ga.App. 481, 483, 243 S.E.2d 675 (1978). See also *State v. Brannon,* 154 Ga.App. 285, 288, 267 S.E.2d 888 (1980). The State

has not alleged or cannot prove elements essential for the crimes alleged to pass constitutional muster. Even if it had adequately stated a RICO count that would pass constitutional scrutiny, there are insufficient predicate Acts to tie Ms. Powell to any purported RICO offense as a matter of law. Accordingly, this Court should dismiss Count 1 of the indictment. Such action will conserve the time of the court, the jury and counsel by eliminating the need for testimony when the state could not establish the offense charged as a matter of law. *State v. Finkelstein*, 170 Ga.App. 608, 317 S.E.2d 648 (1984).

V. Conclusion.

For these reasons, the Georgia RICO statute as applied here, is an unconstitutional and unbounded stretch of the statute. Without an element of pecuniary gain or economic or physical threat or injury, especially as applied to facially innocent conduct, fundamental principles of Due Process require the Court dismiss the RICO count. In addition, the predicate acts alleged against Ms. Powell, even if they were valid, state but one "act" when the statute requires two. They are legally insufficient to support the RICO charge. For all these reasons, in addition to those briefed separately in Ms. Powell's Motion to Dismiss Counts 32-37, the RICO count must be dismissed.

Respectfully submitted,

/s/ Brian T. Rafferty
BRIAN T. RAFFERTY
Georgia Bar No. 311903
Counsel for Defendant

RAFFERTY LAW, LLC
1575 Johnson Road NE
Atlanta, Georgia 30306
(912) 658-0912
brian@raffertylawfirm.com

FULTON COUNTY SUPERIOR COURT
STATE OF GEORGIA

STATE OF GEORGIA, V. SIDNEY KATHERINE POWELL ET AL., DEFENDANTS.	CASE NO. 23SC188947 JUDGE MCAFEE

CERTIFICATE OF SERVICE

I hereby certify the above styled **GENERAL DEMURRER AND MOTION TO DISMISS COUNT 1 (RICO)** has been served, this day, by electronic mail, upon all counsel who have entered appearances as counsel of record in this matter via the Fulton County e-filing system.

This the 15th day of September, 2023.

/s/ Brian T. Rafferty
BRIAN T. RAFFERTY
Georgia Bar No. 311903
Counsel for Defendant

RAFFERTY LAW, LLC
1575 Johnson Road NE
Atlanta, Georgia 30306
(912) 658-0912
brian@raffertylawfirm.com