IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA	
	CASE NO.
v.	
	23SC188947
DONALD JOHN TRUMP,	
RUDOLPH WILLIAM LOUIS GIULIANI,	
JOHN CHARLES EASTMAN,	
MARK RANDALL MEADOWS,	
KENNETH JOHN CHESEBRO,	
JEFFREY BOSSERT CLARK,	
JENNA LYNN ELLIS,	
RAY STALLINGS SMITH III,	
ROBERT DAVID CHEELEY,	
MICHAEL A. ROMAN,	
DAVID JAMES SHAFER,	
SHAWN MICAH TRESHER STILL,	
STEPHEN CLIFFGARD LEE,	
HARRISON WILLIAM PRESCOTT FLOYD,	
TREVIAN C. KUTTI,	
SIDNEY KATHERINE POWELL,	
CATHLEEN ALSTON LATHAM,	
SCOTT GRAHAM HALL,	
MISTY HAMPTON a/k/a EMILY MISTY HAYES	
Defendants.	

STATE'S RESPONSE TO DEFENDANT CHESEBRO'S GENERAL DEMURRER TO COUNT 1 (RICO)

COMES NOW, the State of Georgia, by and through Fulton County District Attorney Fani T. Willis, and responds in opposition to Defendant Kenneth Chesebro's General Demurrer to Count 1 (RICO). Chesebro asks the Court to dismiss the indictment for failure to allege a pecuniary gain or economic or physical threat or injury, but controlling case law—which Chesebro fails to cite—holds that the provision containing the language upon which he relies does not create an element of the offense. Moreover, even if that language did create an element, this indictment sufficiently alleges it.

Chesebro also argues that the State has failed to allege a nexus between the enterprise and the racketeering activity and again, he is incorrect. The indictment more than sufficiently alleges facts showing a connection between enterprise and the overt acts (including acts of racketeering activity) engaged in by the defendants. For the reasons set forth below, the Court should deny the motion.

I. INTRODUCTION

Chesebro's general demurrer is characterized by three defects. First, it is a speaking demurrer therefore void as a matter of law. Chesebro cites to matters outside the record and suggests that because he asserts a different version of the facts, the indictment is somehow subject to a general demurrer. This is improper, as the premise of a general demurrer is that all of the allegations are true and there is no such thing as a motion for summary judgment in a criminal case.

Second, Chesebro fails to cite the controlling authority that defeats his argument that the State must allege a pecuniary gain or economic or physical threat of injury. Chesebro's failure to cite to controlling Georgia cases on this point is as inexplicable as is his failure to cite the decision of the United States Supreme Court rejecting the same argument with regard to the federal RICO statute.

Third, Chesebro's argument that the indictment fails to allege a nexus between the acts of racketeering activity and the enterprise is incorrect and relies upon ignoring or mischaracterizing the actual allegations of the indictment.

II. ARGUMENT AND CITATION OF AUTHORITY

A. Chesebro's motion is a speaking demurrer and must be denied on that ground.

Chesebro's general demurrer refers to matters outside the record, including communications with third parties—one identified and others not—that nowhere appear in the indictment.[1]

Extrinsic facts cannot be considered by the Court in connection with a general demurrer.[2] Presentation of these extraneous facts is improper and requires denial of the motion as a speaking demurrer. *Bullard v. State,* 307 Ga. 482, 486 n.5 (2019). A speaking demurrer is one which "attempts to add facts not otherwise apparent on the face of the indictment by means of stipulation. . . . 'Such a demurrer presents no question for decision, *and should never be sustained*.' Speaking demurrers present no legal authority for quashing an indictment. *Speaking demurrers are void.*" *State v. Givens*, 211 Ga. App. 71, 72 (1993) (quoting *Walters v. State*, 90 Ga. App. 360, 365 (1954) (emphasis added)). "A demurrer may properly attack only defects which appear on the face of the indictment, and a demurrer which seeks to add facts not so apparent but supply extrinsic matters must fail as a speaking demurrer." *State v. Holmes,* 142 Ga. App. 847, 848 (1977).

B. Chesebro cannot pursue summary judgment in a criminal case.

There is no such thing as a motion for summary judgment in a criminal case and Chesebro cannot avoid the strictures of a general demurrer by presenting extrinsic facts that he believes support his claim of innocence and asking the court to adjudicate the case on the merits at the pre-trial stage. Georgia law admits of no such process. As held in *State v. Henderson*, 283 Ga. App. 111 (2006):

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[1] General Demurrer at 1-3.

[2] The State does not stipulate or agree to the facts relied upon by Chesebro.

> Next, we address the State's assertion that the trial court improperly granted Henderson's motion. A criminal charge is generally dismissed only when there is a defect on the face of the indictment or accusation. Henderson, however, sought to have the charge at issue dismissed based on the existence of an affirmative defense, which required the consideration of facts extrinsic to the accusation. There is no basis in Georgia criminal practice for "what, in civil practice, would be termed a motion for summary judgment." Thus the trial court had no authority to dismiss the charge against Henderson prior to trial.

Id. at 112. There "is no authority" for attempting "to convert . . . [a] demurrer into what, in civil practice, would be termed a motion for summary judgment." *Givens,* 211 Ga. App. at 72. This is because a fundamental premise of a general demurrer is the assumption that all facts alleged in the indictment are true. *State v. Cohen,* 302 Ga. 616, 617 (2017) (quoting *Lowe v. State,* 276 Ga. 538, 539 (2003)). There is no place in a general demurrer for a defendant to controvert an indictment's allegations with his own contrary version of the facts.

Chesebro's speaking demurrer is void and must be denied on that ground.

C. There is no requirement that a RICO indictment allege a pecuniary gain or economic or physical threat or injury.

Chesebro attempts to use language contained in O.C.G.A. § 16-14-2(b), which expresses the General Assembly's legislative purpose, to add an element to RICO's conspiracy provision, O.C.G.A. § 16-14-4(c). His argument fails because that expression of legislative purpose does not create additional elements of a RICO violation.

Chesebro is accused of violating O.C.G.A. § 16-14-4(c)(1), which provides:

> (c) It shall be unlawful for any person to conspire or endeavor to violate any of the provisions of subsection (a) or (b) of this Code section. A person violates this subsection when:
>
> (1) He or she together with one or more persons conspires to violate any of the provisions of subsection (a) or (b) of this Code section and any one or more of such persons commits any overt act to effect the object of the conspiracy . . . .

The RICO provision Chesebro is charged with conspiring to violate is O.C.G.A. § 16-14-4(b), which provides:

> (b) It shall be unlawful for any person employed by or associated with any enterprise to conduct or participate in, directly or indirectly, such enterprise through a pattern of racketeering activity.

Chesebro's general demurrer does not rely upon a failure of the indictment to allege any element of subsection 16-14-4(c)(1). Instead, Chesebro attempts to add an element by pointing to O.C.G.A. § 16-14-2, entitled "Findings and Intent of General Assembly." Specifically, Chesebro relies upon a sentence in O.C.G.A. § 16-14-2(b) which states that "[i]t is the intent of the General Assembly, however, that this 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."

Chesebro's argument fails for two reasons. First, the question is controlled adversely to him by cases-which Chesebro does not cite-holding that O.C.G.A. § 16-14-2 does not add elements to the provisions of O.C.G.A. § 16-14-4. Second, even if § 16-14-2 did add a pleading requirement, the indictment in this case is sufficient to satisfy it.

Chesebro's attempt to derive a pleading requirement from the language of § 16-14-4(b) was first rejected thirty-five years ago in *State v. Shearson Lehman Brothers, Inc.*, 188 Ga. App. 120 (1988). In *Shearson*, the defendants challenged the State's complaint on the grounds that it did not allege according to language that was then part of O.C.G.A. § 16-14-2 that defendants were "organized criminal elements attempting to takeover the legitimate economy of this state." 188 Ga. App. at 121. The Court of Appeals rejected the argument, stating: "[w]e hold [] that the expression of legislative purpose in enacting Georgia's RICO Act is *not* an element of a civil cause of action under the Act, and reverse the grant of appellees' motion to dismiss for failure to state a claim." *Id.* (emphasis in original).

Chesebro's argument was rejected again in *Reaugh v. Inner Harbour Hospital, Ltd.*, 214 Ga. App. 259 (1994). In *Reaugh*, a hospital that operated a medical, psychiatric and educational counseling treatment program, argued that there could be no recovery for personal injury against it by the plaintiff, citing O.C.G.A. § 16-14-2(b)'s declaration that the legislative intent is to impose sanctions against the subversion of the economy by organized criminal elements. Citing *Shearson,* the Court of Appeals held: "*This argument is without merit*. The expression of legislative purpose in enacting Georgia's RICO Act is not an element of a civil cause of action under the Act." 214 Ga. App. at 265 (emphasis added).

Most egregiously, Chesebro fails to cite *Cotton, Inc. v. Phil-Dan Trucking, Inc.,* 270 Ga. 95 (1998) which rejected an argument that the trial court should not have entered a preliminary injunction because the plaintiff did not allege that the defendants were engaged in an organized criminal attempt "to take over the legitimate economy of this state," in accordance with the then existing language of O.C.G.A. § 16-14-2. The Court held unambiguously that "Phil-Dans's failure to allege a nexus between organized crime and the economy *is of no consequence.*" 270 Ga. at 95. *Cotton, Inc.* cited *Shearson* for the support of this holding. *Id.*

Cotton, Inc., Reaugh, and *Shearson* are also consistent with the United States Supreme Court's refusal to impose limitations on federal RICO that are not found in its operative or definitional sections. As with Georgia RICO, federal RICO "utiliz[es] terms and concepts of breadth." *Russello v. United States,* 464 U.S. 16, 21 (1983).[3] This has led the Court repeatedly to reject efforts to impose "a pinched construction" on the statute. *H.J. Inc. v. Northwestern Bell Tel. Co.,* 492 U.S. 229, 249 (1989). Thus, the Court concluded that "[RICO's] self-consciously

[3] Indeed, the Supreme Court of Georgia has recognized that Georgia RICO is in many respects even broader than its federal counterpart. *Chancey v. State,* 256 Ga. 415, 416-19 (1986) (giving examples).

expansive language and overall approach" left no room for the imposition of an "amorphous 'racketeering injury' requirement." *Sedima, S.P.R.L. v. Imrex Co.,* 473 U.S. 479, 495, 497-498 (1985). Similarly, the Court rejected an argument that the preamble to the Organized Crime Control Act of l970,[4] of which RICO formed Title IX, narrows federal RICO's application to cases involving organized crime. *H.J. Inc.,* 492 U.S. at 245. And in *National Org. for Women, Inc. v. Scheidler,* 510 U.S. 249 (1994), the Court rejected an effort, relying upon OCCA's preamble, to impose a requirement that acts of racketeering have an economic motive. The Court readily disposed of that argument, holding "the quoted statement of congressional findings is a rather thin reed upon which to base a requirement of economic motive neither expressed nor, we think, fairly implied in the operative sections of the Act." 510 U.S. at 249, 260 (1994).[5] The same result should obtain here. Nothing in O.C.G.A. § 16-14-4(c) suggests a requirement that defendants conspired to engage in criminal activity motivated by or the effect of which is being pecuniary gain or economic or physical threat or injury. Further, nothing in O.C.G.A. § 16-14-3(5)(A), defining "racketeering activity," suggests such a limitation and many of the offenses included in the definition of racketeering activity would not ordinarily involve such a motive or effect.[6]

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[4] Pub. L. No. 91-452, 84 Stat. 922.

[5] Like the United States Supreme Court and our Court of Appeals, the Supreme Court of Florida has held that the legislative preamble to Florida's RICO statute neither expands nor restricts the otherwise unambiguous language of the statute. *Dorsey v. State,* 402 So.2d 1178, 1180 (Fla. 1981).

[6] *See, e.g.,* O.C.G.A. § 16-14-3(5)(A)(xxii) (incorporating false statements and writings), (xxiii) (incorporating impersonation of a public officer or employee), (xxv) (incorporating perjury and false swearing); O.C.G.A. § 16-14-3(5)(B) (incorporating into the definition of racketeering activity any act or threat involving obstruction of justice); O.C.G.A. § 16-14-3(5)(C) (incorporating into the definition of racketeering activity any conduct defined as racketeering activity under 18 U.S.C. Section 1961(1), which includes offenses such as obstruction of justice, obstruction of criminal investigations, obstruction of state or local law enforcement, witness tampering, witness retaliation, and false statements, and application and use of a passport).

Chesebro cites four Court of Appeals cases which he represents hold that failure to plead in accordance with § 16-14-2(b) exposes an indictment to dismissal[7] but none of the cases he cites hold or even suggests such a rule. Nor, of course, could they because they could not overrule the Supreme Court's holding in *Cotton, Inc.*

Chesebro first cites *Overlook Gardens Properties, LLC v. Orix, U.S.A. LP*, 366 Ga. App. 820 (2023). While *Overlook Gardens* contains an extensive quote from *Najarian Capital v. Clark,* 357 Ga. App. 685, 693-94 (2020), that paraphrases section 16-14-2(b)'s reference to pecuniary gain or economic or physical threat or injury, *Overlook Gardens* went on to apply the language of the substantive RICO provision at issue, O.C.G.A. § 16-14-4(a). The defendant in *Overlook Gardens* was granted summary judgment because the plaintiff could not establish the alleged predicate acts of theft by deception, false swearing, and wire fraud, not because it failed to track the language of O.C.G.A. § 16-14-2(b).[8]

Chesebro then cites *Carr v. State*, 350 Ga. App. 461 (2019), which neither references O.C.G.A. § 16-14-2(b) nor paraphrases the language of that provision. Instead, *Carr* reviewed the sufficiency of the evidence and affirmed the defendant's RICO conspiracy conviction, the overruling of his general demurrer, and the denial of his motion for new trial.

Neither do *Moseley v. State*, 253 Ga. App. 710 (2002), or *Security State Bank v. Visiting Nurses Association of Telfair County, Inc.*, 256 Ga. App. 374 (2002), the other cases Chesebro cites, help him. *Moseley* affirmed a RICO conviction in the face of a challenge to the sufficiency of the evidence at trial, ruling that the evidence in the case supported "the jury's determination

[7] General Demurrer at 6.

[8] *Najarian Capital* granted to a motion to dismiss based upon a lack of standing, i.e., that the plaintiff had not suffered an injury that flowed directly from at least one of the predicate acts. *Id*. at 693-94. Of course, proximate cause, is not a requirement for a criminal RICO violation and *Najarian Capital* has no relevance to a general demurrer to an indictment.

beyond a reasonable doubt that Moseley committed at least two predicate offenses as charged in the indictment." 253 Ga. App. at 712. *Moseley* did not cite O.C.G.A. § 16-14-2(b), nor did it paraphrase its language. The sufficiency of the State's indictment was not at issue in *Moseley* and there is no reference to a demurrer or motion to dismiss of any kind in the opinion.

Security State Bank is equally inapposite. In that case summary judgment was entered against the plaintiff because her respondeat superior theory of recovery failed for want of evidence that the bank that employed her profited from the crimes she committed. 256 Ga. App. at 375. While *Security State Bank* does quote O.C.G.A. § 16-14-2(b), it does so only in the context of stating that RICO clearly applies whenever criminal activity is directed towards acquiring or maintaining something of pecuniary value, not that this is an element of the offense. Nothing in *Security State Bank* holds that an indictment or complaint can or should be dismissed for failure to track the language of O.C.G.A. § 16-14-2(b).

Finally, the language upon which Chesebro relies was added by amendment in 1997,[9] after both *Shearson* and *Reaugh* held that the expression of legislative purpose in § 16-14-2 does not create an element of a RICO violation. The General Assembly is presumed to have been aware of these decisions when it chose to amend § 16-14-2 in 1997. *Grange Mut. Cas. Co. v. Woodard,* 300 Ga. 848, 852 (2017) ("[A]ll statutes are presumed to be enacted by the legislature with full knowledge of the existing condition of the law and with reference to it. They are therefore to be construed in connection and in harmony with the existing law." (citation and punctuation omitted)). The fact that it added the language to § 16-14-2, and not to § 16-14-4, confirms that the General Assembly did not intend to add elements to a RICO violation.

Chesebro's general demurrer must be overruled for these reasons.

[9] Ga. L. 1997, p. 672 § 1.

D. Even if O.C.G.A. § 16-14-2(b) did create a pleading requirement, that requirement would be satisfied by this indictment.

O.C.G.A. § 16-14-2(b) does not create a pleading requirement, but even if it did, the indictment alleges conduct motivated by or the effect of which was pecuniary gain or physical threat or injury.

To begin with, the indictment alleges that the defendants "knowingly and willfully joined a conspiracy to unlawfully change the outcome of the [November 3, 2020] election in favor of Trump."[10] Had that conspiracy succeeded, it would have resulted in Trump becoming President, causing him to receive the salary and numerous benefits that come with that position, such as entertainment and travel accounts and a pension, which are collectively worth millions of dollars. The effect of this would have been to confer substantial pecuniary gain upon Trump.

Members of the enterprise also engaged in conduct that involved physical threats. Specifically, members of the enterprise made knowing and willfully false statements and representations regarding Ruby Freeman and her daughter, Shaye Moss.[11] Members of the enterprise traveled to Ms. Freeman's home and harassed and intimidated her.[12] Members of the enterprise also told Ms. Freeman that she "needed protection."[13] Of course, if Ms. Freeman needed protection, it was as a result of the threats she received because of false statements made by members of the enterprise regarding Fulton County election workers generally, and Ms. Freeman specifically.[14]

The actions of the conspirators also have the effect of economic injury. As set forth in the indictment, and specifically Acts 142-155, members of the enterprise, including Cathleen Alston

[10] Indictment at 14.
[11] *See id.* at Acts 56, 113 and Count 7.
[12] *Id.* at 17, Acts 87-89 and 116-119.
[13] *Id.* at Acts 119 and 121.
[14] *See id.* at Acts 25, 26, 27, 56, 100, 101, 103, 105, 106.

Latham, Scott Graham Hall, Sidney Katherine Powell, Misty Hampton and five unindicted co-conspirators unlawfully breached election equipment at the Coffee County Board of Elections & Registration Office, tampered with electronic ballot markers and tabulating machines, took official ballots, and appropriated information, data, and software that was the property of Dominion Voting Systems Corporation ("Dominion"). They also committed theft of voter data and subsequently accessed data copied from Dominion's equipment at the Coffee County Board of Elections & Registration Office in Coffee County, Georgia. For example, members of the enterprise engaged in computer theft, in violation of O.C.G.A. § 16-9-93(a), taking and appropriating information, data, and software belonging to Dominion.[15] After Dominion's software, data and information was taken by the conspirators, it was distributed to others without its permission.[16] Conspirators also made knowingly false statements asserting that Dominion equipment incorrectly recorded votes (Indictment at Acts 24, 56). These false accusations and theft were motivated by and had the effect of economic injury to Dominion.

E. The indictment alleges a nexus between the enterprise and the racketeering activity.

Relying primarily upon *Kimbrough v. State*, 300 Ga. 878 (2017), Chesebro contends that the indictment fails to allege a nexus between the enterprise and the racketeering activity. Chesebro is wrong for multiple reasons.

First, Chesebro's reliance on *Kimbrough* is misplaced. The indictment in *Kimbrough* alleged a violation of O.C.G.A. § 16-14-4(b). As the Supreme Court recognized, "[a]n essential element of this offense is a connection or nexus between the enterprise and the racketeering

[15] *Id.* at Act 146. Computer theft includes using a computer or computer network with knowledge that such use is without authority and with the intention of taking or appropriating any property of another. O.C.G.A. § 16-9-93(a)(1). "Property" includes "computers, computer networks, computer programs, data, financial instruments and services." O.C.G.A. § 16-9-92(13).

[16] Indictment at Act 155.

activity." 300 Ga. at 882. This case, however, is a conspiracy case and in contrast to O.C.G.A. § 16-14-4(a) and (b), the provision alleged to be violated in this indictment—O.C.G.A. § 16-14-4(c)(1)—contains no reference to a pattern of racketeering activity. Because a pattern of racketeering activity is not an essential element of a RICO conspiracy violation, it cannot be an essential element of a RICO conspiracy that there be a connection between an enterprise and a pattern of racketeering activity that is not required. *See, e.g., United States v. Alonso,* 740 F.2d 862, 871 (11th Cir. 1984) (a RICO conspiracy conviction does not require the government to prove that two acts of racketeering activity were actually committed: "The government need not prove in a conspiracy case that a substantive crime was actually committed, but instead need demonstrate that some 'over act' was taken in furtherance of a conspiracy to commit a substantive crime.").

Second, even if a connection between a pattern of racketeering activity and an enterprise is an element of a RICO conspiracy violation—and it is not—the indictment in this case satisfies any such requirement. There are no specific "magic words" required to allege a connection between an enterprise and a pattern of racketeering activity. Rather, as *Kimbrough* itself acknowledges, "[t]he connection between an enterprise and racketeering activity may be proved in a myriad of way." 300 Ga. at 883 n.16. All that is required is a connection between the enterprise and predicate acts committed by the defendants. *Dorsey v. State,* 279 Ga. 534, 540 (2005). Indeed, the indictment in *Kimbrough* was held insufficient only because it said "*nothing at all* about the nature of the connection." 300 Ga. at 884.

That is not the situation here. The indictment in this case alleges that the defendants knowingly and willfully joined a conspiracy to unlawfully change the outcome of the 2020 presidential election in favor of Trump.[17] In the language of *Kimbrough*, this was the "raison

[17] Indictment at 14.

d'étre" of the enterprise. *Kimbrough,* 300 Ga. at 883 n.16 (quoting *United States v. Starrett,* 55 F.3d 1525, 1548 (11th Cir. 1995) (connection existed between motorcycle club enterprise and predicate acts of drug distribution because the drug activity furthered the anti-social lifestyle that was the "raison d'étre" of the motorcycle club and monies earned from drug sales contributed to the purchase of a clubhouse for the enterprise.)).

The overt acts (including acts of racketeering activity) committed by the defendants were all designed and intended to further the objective of unlawfully changing the outcome of the election in favor of Trump. These included the making of false statements and writings, impersonating public officers, forgery, filing false documents, influencing witnesses, computer theft, computer trespass, computer invasion of privacy, conspiracy to defraud the State, and acts involving theft, and perjury.[18] The indictment lays out in detail by category and specific act (the later in chronological order) the manner and methods used by the defendants and other members and associates of the enterprise to further its goals and achieve its purposes. *Id.* at 16.

With regard to false statements, the indictment alleges that various defendants appeared before members of the General Assembly December 3, 2020, December 10, 2020, and December 30, 2020, during which members of the enterprise made false statements concerning allegations of fraud in the November 3, 2020 presidential election. *Id.* at 16. As alleged in the indictment, "[t]he purpose of these false statements was to persuade Georgia legislators to reject lawful electoral votes cast by the duly elected and qualified presidential electors from Georgia." *Id.*

Time and again the conspirators made false statements and used false writings in an effort to persuade someone in power to change the outcome of the election in favor of Trump. Theses false statements and writings, and the other acts related to them, all focused on creating a false

[18] Indictment at 15.

narrative that Trump had won the election when in fact he had lost. The false statements made and false writings used in these meetings concerned false statements and representations regarding mail-in ballots and voting equipment,[19] knowing and willful misrepresentations regarding felons voting illegally, underage people voting, illegally registering to vote, unregistered persons casting votes, persons illegally using post office boxes to cast votes, dead people voting and election workers ordering poll watchers and members of the media to leave a tabulation area,[20] knowing and willful misrepresentations regarding a video taken at the State Farm Arena,[21] and false statements made and false writings regarding the supposed fraudulent counting of certain ballots.[22] Conspirators then corruptly solicited Georgia legislators to unlawfully appoint their own presidential electors for the purpose of casting electoral votes for Trump. Indictment at 16. This conduct was directly related to and in furtherance of the "conspiracy to unlawfully change the outcome of the election in favor of Trump." Indictment at 14.

False statements were also made to other state officials. These include, for example, a telephone call in which Trump knowingly and willfully made false statements and representations directly to Georgia Secretary of State Brad Raffensperger, Georgia Deputy Secretary of State Jordan Fuchs, and Georgia Secretary of State General Counsel Ryan Germany.[23] These included false statements about the improper counting of ballots, unregistered voters casting ballots, fraudulent ballot counts, the voting of dead persons, ballot box stuffing, and other misconduct that never occurred.[24] Like the false statement to legislators, these were also aimed at unlawfully

[19] Indictment at Act 24.
[20] *Id.* at Act 25.
[21] *Id.* at Act 56.
[22] *Id.*
[23] *Id.* at Act 113.
[24] *Id.*

changing the outcome of the election in favor of Trump. For example, in connection with making these false statements, Trump unlawfully solicited, requested, and importuned Raffensperger, a public officer, to violate his oath as a public officer by unlawfully altering, unlawfully adjusting, and otherwise unlawfully influencing the certified returns for presidential electors for the November 3, 2020, presidential election in Georgia.[25]

Members of the enterprise also harassed poll workers such as Ruby Freeman, seeking to intimidate her into falsely confessing to elections crimes that she did not commit.[26] The objective of this effort was to discredit the vote count in Fulton County and provide a basis for the calling of a special legislative session or, if that effort was unsuccessful, to provide a basis for the Vice President to reject the electoral count and declare Trump the winner of the election.

This conduct, and the other conduct alleged in the indictment, was in furtherance of the conspiracy to unlawfully change the outcome of the election in favor of Trump. Other efforts to unlawfully change the outcome of the election included unlawfully accessing secure voting equipment and voter data in Coffee County, Georgia.[27]

Conspirators created false Electoral College documents and recruited individuals to convene and cast false Electoral College votes at the capitol.[28] After those false Electoral College votes were cast, conspirators transmitted the votes to the President of the United States Senate, the Archivist of the United States, the Georgia Secretary of State, and Chief of the Judge United States District Court for the Northern District of Georgia.[29] The false documents were intended to disrupt

[25] *Id.* at Act 112.
[26] *Id.* at 17, and Acts 87, 88, 119, 121.
[27] Indictment at 18 and Acts 144-155.
[28] *Id.* at 17.
[29] *Id.*

and delay the joint session of Congress on January 6, 2021, in order to unlawfully change the outcome of the November 3, 2020, presidential election in favor of Trump.[30]

These and the other overt acts-a substantial number of which also constitute acts of racketeering activity-were committed to further the purpose of the enterprise and unlawfully change the outcome of the election in favor of Trump. If a nexus is required in a conspiracy case, these allegations are more than sufficient to satisfy that requirement.

III. CONCLUSION

Chesebro's Demand for General Demurrer to Count 1 (RICO) must be overruled and denied in its entirety.

Respectfully submitted this 27th day of September 2023.

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[30] *Id.*

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this STATE'S RESPONSE TO DEFENDANT CHESEBRO'S GENERAL DEMURRER TO COUNT 1 (RICO) upon all counsel who have entered appearances as counsel of record in this matter via the Fulton County e-filing system.

This 27th day of September 2023,

FANI T. WILLIS
District Attorney
Atlanta Judicial Circuit

/s/ John W. "Will" Wooten

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