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 POST-HEARING BRIEF REGARDING DEFENDANTS' RICO ARGUMENTS

Defendant Powell has submitted a post-hearing brief. As shown below, Powell's arguments are meritless.

ARGUMENT AND CITATION OF AUTHORITY

1. **Powell's Vagueness Arguments Fail**

In her post-hearing brief, Defendant Powell continues to assert that the Georgia RICO statute is void for vagueness because it has no "limiting principles." In so doing, Powell again ignores the fact that vagueness challenges to state and federal RICO statutes have been rejected by

the dozen across the fifty-three year history of federal RICO and that every state and federal court to address the question with respect to a state RICO statute has also rejected this argument.[1] In the end, Powell is asking the court to edit the Georgia RICO statute on her behalf, an invitation that should be declined.

To be sure, RICO is broad, and intentionally so. "RICO was an aggressive initiative to supplement old remedies and develop new methods for fighting crime." *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 498 (1985). To accomplish these goals, RICO uses "terms and concepts of breadth." *Russello v. United States,* 464 U.S. 16, 21 (1983). But the fact that a statute uses broad language is broad does not mean that it is vague. *United States v. Aleman*, 609 F.2d 298, 306 (7th Cir. 1979) ("Being broad in scope is not synonymous with being vague."). The vagueness doctrine is not "designed to convert into a constitutional dilemma the practical difficulties in drawing criminal statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited." *Colten v. Kentucky*, 407 U.S. 104, 110 (1972). In other words, "a statute is not unconstitutionally vague simply because potential uncertainty exists regarding the hypothetical reach of the statute in question." *United States v. Bennett*, 984 F.2d 597, 605 (4th Cir. 1993).

Tellingly, Powell does not identify any specific provision of RICO she says is overbroad, she simply argues that it is so broad that due process requires this Court to create limitations for the statute. Powell's insistence that RICO has no limiting principles fails because she ignores the language where those principles are found.

RICO's definitions limit its application and, tellingly, Powell makes no argument that the definitions used in the Georgia RICO statute are unconstitutionally vague. For example, she does

[1] Attached hereto as Exhibit A is a list of such decisions at the appellate level.

not challenge the definition of "racketeering activity,"[2] nor does she argue that any of the statutes setting forth the acts of racketeering activity in which she is alleged to have engaged in furtherance of the conspiracy are unconstitutionally vague.[3] Nor does she challenge the definitions of "pattern of racketeering activity,"[4] or "enterprise."[5] And never does Powell explain how any of these provisions are unconstitutionally vague in the sense that persons "of common intelligence must necessarily guess at [their] meaning and differ as to [their] application . . . ." *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1925).

Powell is charged with a conspiracy to violate O.C.G.A. § 16-14-4(b), in violation of O.C.G.A. § 16-14-4(c). "[U]nder Georgia law, a person may be found guilty of a RICO conspiracy 'if they knowingly and willfully join a conspiracy which itself contains a common plan or purpose to commit two or more predicate acts.'" *Cotman v. State*, 342 Ga. App. 569, 585 (2017). Powell does not contend that the statute is unconstitutionally vague as to what constitutes a conspiracy, nor could she. O.C.G.A. § 16-14-4(c)(1) closely tracks the language of O.C.G.A. § 16-4-8, Georgia's general conspiracy statute, which is itself very similar to the federal general conspiracy

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[2] O.C.G.A. § 16-14-3(5). This is dispositive. *Fort Wayne Books, Inc. v. Indiana,* 489 U.S. 46, 58 n.7 (1989) (observing that RICO is inherently *less* vague than any of the statutes criminalizing the alleged predicate acts because "a prosecution under the RICO law will be possible only where all the elements of [the underlying offense] are present, and then some.").

[3] *See* Indictment at Act 146 (Computer Theft in violation of O.C.G.A. § 16-9-93(a)), Act 147 (Computer Trespass in violation of O.C.G.A. § 16-9-93(b)), Act 148 (Computer Invasion of Privacy in violation of O.C.G.A. § 16-9-93(c)), Act 149 (Conspiracy to Defraud the State in violation of O.C.G.A. § 16-10-21). This is also dispositive. *See United States v. Korando*, 29 F.3d 1114, 1119 (7th Cir. 1994) ("Provided the statutes criminalizing the predicate acts are not unconstitutionally vague—and no one argues they are—the defendants are on adequate notice that they are committing crimes, and the fact that they may not be aware of the extent of their criminality and consequent exposure to punishment is a detail.") (quoting *United States v. Masters*, 924 F.2d 1362, 1367 (7th Cir. 1991)).

[4] O.C.G.A. § 16-14-3(4).

[5] O.C.G.A. § 16-14-3(3).

statute, 18 U.S.C. § 371.[6] Powell makes no argument that O.C.G.A. § 16-14-4(c)(1) is vague or incapable of understanding as stated or as interpreted by the Georgia courts.[7] There is no question that a RICO conspiracy is defined with respect to specific terms. It must be a conspiracy to violate a substantive provision of the statute and both substantive violations contemplate a pattern of racketeering activity. As noted above, "racketeering activity" and "pattern of racketeering activity" are defined terms, and Georgia courts regularly apply both definitions without difficulty.

The fact is that RICO is bound by terms defined by the statute and applied by the courts: "To assess the risk of violating the RICO statute, one need only assess the risk of repeatedly violating certain clearly enumerated state and federal laws." *United States v. Casillas*, No. 1:12-cr-132, 2019 WL 978893, at *9 (W.D. Mich. Feb. 28, 2019). *See also*, *Columbia Nat. Res., Inc. v. Tatum*, 58 F.3d 1101, 1109 (6th Cir. 1995) ("[T]here is a clear standard of conduct initially proscribed by the pattern requirement of RICO. . . . to avoid any possibility of falling under RICO's admittedly broad umbrella, one need only avoid committing an enumerated crime twice within ten years."); *Bennett*, 984 F.2d at 606-07 (upholding RICO's "pattern of racketeering activity" requirement against vagueness challenge because the statute provided defendants with adequate notice that acts of arson, fraud, attempted murder, perjury, and obstruction of justice that were committed to allow the enterprise to continue to defraud insurance companies "fell within those acts contemplated by a RICO enterprise and a RICO conspiracy to participate in the affairs of such

[6] "If two or more persons conspire . . . to commit any offense against the United States . . . in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both."

[7] To the extent that Powell suggests that this particular case is problematic due to the number of defendants, the answer is that "[w]hen a person embarks upon a criminal venture of indefinite outline, he takes his chances as to its content and membership, so be it that they fall within the common purposes as he understands them." *United States v. Elliott*, 571 F.2d 880, 904 (5th Cir. 1978) (internal quotations and citation omitted).

an enterprise."); *United States v. Uni Oil, Inc.*, 646 F.2d 946, 953 (5th Cir. 1981) (RICO's language "is more than sufficient to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute.") (internal quotations omitted).

Powell's argument that RICO is overbroad and that this court should fashion additional requirements to confine the statute is old and thoroughly discredited. Indeed, a substantial portion of the United States Supreme Court's decisions concerning federal RICO involve the rejection of some form of this approach. For example, in *Sedima*, the United States Supreme Court refused to create a requirement in federal RICO cases that a plaintiff must suffer a "racketeering injury" as a prerequisite to recovery of damages. *Sedima,* 473 U.S. at 493-500. No such requirement appears in the statutory text, leading the court to reject that invitation on the basis that it was not "a form of statutory amendment appropriately undertaken by the courts." *Id.* at 500. Addressing an argument similar to Powell's—that "RICO was being used against 'respected and legitimate enterprises'"—the Court concluded that "the fact that RICO has been applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth." *Id.* at 499.

Four years later the Court refused to impose a requirement that RICO apply when the racketeering activities alleged had a nexus with organized crime. *H.J. Inc. v. Nw. Bell Tel. Co.,* 492 U.S. 229 (1989). Quoting RICO's "self-consciously expansive language and overall approach," the Court "decline[d] the invitation to invent a rule that RICO's pattern of racketeering concept requires an allegation and proof of an organized crime nexus." *Id.* at 249.

These are just two of many examples of the Court refusing to invent limitations not found in RICO's operative provisions. The history of the Court's rejection of these invitations is summarized in *Boyle v. United States,* 556 U.S. 938 (2009):

> *Because the statutory language is clear*, there is no need to reach petitioner's remaining arguments based on statutory purpose, legislative history, or the rule of lenity. In prior cases, we have rejected similar arguments in favor of *the clear but expansive text of the statute*. See *National Organization for Women,* 510 U.S. [249] at 262, 114 S.Ct. 798 ("The fact that RICO has been applied in situations not expressly anticipated by Congress does not demonstrate ambiguity, it demonstrates breadth" (quoting *Sedima*, 473 U.S. at 499, 105 S.Ct. 3275; brackets and internal quotation marks omitted)); see also, [*United States v.*] *Turkette,* 52 U.S. [576] at 589-591, 101 S.Ct. 2524. "We have repeatedly refused to adopt narrowing constructions of RICO in order to make it conform to a preconceived notion of what Congress intended to proscribe." *Bridge v. Phoenix Bond & Indemnity Co.,* 553 U.S. 539, 660, 128 S.Ct. 2131, 2145, 170 L.Ed.2d 1012 (2008); see also *e.g.*, *National Organization for Women,* [*Inc. v. Scheidler*], *supra,* 510 U.S. [249], at 252, 114 S.Ct. 798 (rejecting the argument that "RICO requires proof that either the racketeering enterprise or the predicate acts of racketeering were motivated by an economic purpose."); *H.J. Inc. v. Northwestern Bell Telephone Co.,* 492 U.S. 229, 244, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989) (declining to read "an organized crime limitation into RICO's pattern concept"); *Sedima, supra,* at 481, 105 S.Ct. 3275 (rejecting the view that RICO provides a private right of action "only against defendants who had been convicted on criminal charges, and only where there had occurred a 'racketeering injury'").

556 U.S. at 950-51 (emphasis added). Consistent refusal to edit federal RICO's "clear but expansive text" is equally applicable to Georgia RICO, perhaps even more so because the General Assembly has mandated that RICO's operative provisions be liberally construed. O.C.G.A. § 16-14-2(b).

Nor do RICO's "clear but expansive" provisions leave judges and juries or law enforcement without standards to ascertain whether an offense has been committed. Powell invokes *Kolender v. Lawson*, 461 U.S. 352, 357 (1983), for the principle that a penal statute must define the criminal offense with sufficient definiteness that it does not encourage arbitrary and discriminatory enforcement, but par for the course, she fails to cite the cases that rejected vagueness challenges to RICO after considering *Kolender*.[8] And Powell's incantation of supposed "discriminatory and

[8] *See*, *e.g.*, *United States v. Dischner*, 974 F.2d 1502, 1510 (9th Cir. 1992); *United States v. Gaudreau,* 860 F.2d 357, 359-61 (10th Cir. 1989); *Beck v. Edward D. Jones & Co.,* 735 F.Supp. 903, 906 (C.D. Ill. 1990); *United States v. Bailin*, No.89 CR 668, 1990 WL 114741, at **4-6 (N.D. Ill. 1990).

arbitrary enforcement" similarly falls flat, because she presents no evidence of discrimination or arbitrary enforcement.[9]

Powell's related theme—that the application of RICO in this case is "unprecedented"—is inaccurate in three respects. First, as pointed out at oral argument, this is not the first time Georgia courts have previously dealt with RICO cases that involved or arose out of elections. *Caldwell v. State*, 253 Ga. 400 (1984), held that RICO applied to an effort to maintain control of a governmental entity—in that case the Georgia Department of Labor—by means of a reelection campaign in which the holder of a public office committed two or more predicate offenses. *Id.* at 707. And *Dorsey v. State*, 279 Ga. 534 (2005), affirmed the RICO conviction of an incumbent sheriff who responded to his unsuccessful reelection campaign by murdering his successor in hopes of winning a subsequent special election. So, the idea of a RICO case arising out of racketeering activity committed in connection with an election is not "unprecedented."

Second, although Powell tries to equate the two, an "unprecedented" use of a statute does not mean that statute is vague. If this case is unprecedented, it is because it responds to unprecedented misconduct. Perpetrators do not escape the reach of a law simply because they are the first to violate it in a particular fashion. By definition, the first time any crime, or any variation of that crime, is prosecuted, the case is "unprecedented," but that is not a basis for a demurrer.

Third, RICO is designed for crimes that are broad in scope[10] and involve multiple actors,[11] and it reaches acts intended to conceal or obstruct as effectively as those intended to perpetrate the

[9] The inflammatory nature of these accusations, coupled with the absence of any factual support for them, suggests they are directed towards audiences other than the court.
[10] *See* O.C.G.A. § 16-14-3(5) (defining racketeering activity) .
[11] *See Faillace v. Columbus Bank & Trust Co.*, 269 Ga. App. 866, 868 (2004) (recognizing that "the core purpose of the Act is to reach collective action").

core offense.[12]

2. Powell's First Amendment Arguments Fail

Powell's invocation of "petitioning activity" is misplaced. As noted above, Powell is alleged to have engaged in multiple felonies defined as racketeering activity, including Computer Theft, Computer Trespass, Computer Invasion of Privacy and Conspiracy to Defraud the State.[13] Powell does not attack the constitutionality of these statutes, nor does she explain how engaging in a crime like computer theft is petitioning activity. Powell's efforts to sweep 161 overt acts under the rubric of petitioning activity must fail because there is no circumstance under which every overt act alleged by the State can be described as such activity. RICO does not prohibit solicitation or speech, it merely recognizes pre-existing prohibitions established by the statutes violated by the conspirators. *Jund v. Town of Hempstead,* 941 F.2d 1271, 1282 (2d Cir. 1991) ("The defendant Committees are not being punished for their advocacy or their political position; they are being punished for a long standing coercive solicitation scheme . . .").

Powell invokes *State v. Cohen,* 302 Ga. 616 (2017), but that decision does her no good. *Cohen* affirmed the grant of a general demurrer to a charge of theft by extortion in violation of O.C.G.A. § 16-8-16(a)(3). As *Cohen* notes, extortion requires a person to *unlawfully* obtain property of or from another person by threatening to disseminate information tending to subject that person to hatred, contempt, or ridicule or to impair his credit or business dispute. 302 Ga. at 622, citing O.C.G.A. § 16-8-16(a)(3). In *Cohen*, however, the Court concluded that there was no allegation of an agreement to *unlawfully* obtain property from the victim by threatening him in any manner that could serve as a proper basis for a charge of extortion. For example, there was no

[12] *Dorsey*, 279 Ga. at 541 (noting the pattern include acts with the objective of concealment such as influencing witnesses, perjury and tampering with evidence).
[13] Indictment at Acts 146, 147, 148 and 149.

allegation that the lawsuit was based on events that never occurred. Instead, the only "threat" was to file a civil lawsuit, which is not, by itself, unlawful. This case is different because the indictment alleges conduct that *is* unlawful and defined as racketeering activity by the RICO statute.[14]

Powell's real First Amendment argument is that no statute can criminalize conduct as long as that conduct relates to a "presidential election challenge." That argument fails because nothing shields from prosecution a "presidential election challenge" that depends on criminal behavior to change the result of that election. More specifically, nothing in the First Amendment permits someone to solicit government officials to violate their oaths of office, lie to government officials in an effort to get them to reject votes or change results, forge documents that say the outcome of the election was different from what it actually was, intimidate witnesses in the hope that they will give false testimony, or steal ballots, voting software, voter records belonging to the State or steal software belonging to a private entity. This behavior is not protected petitioning behavior because it is not directed towards persuading government officials to address a legitimate grievance. Instead, it is intended to deceive those officials into doing the perpetrators' bidding or, deception having failed, intimidate them to do so. Nor are efforts to intimidate witnesses into giving false testimony in support of a false narrative protected by the First Amendment. "From 1791 to the present, however, the First Amendment has permitted restrictions upon the content of speech in a

[14] *See, e.g.,* Indictment at Act 24 (False Statements and Writings), Act 25 (False Statements and Writings), Act 56 (False Statements and Writings), Act 79 (Impersonating a Public Officer), Act 80 (Forgery in the First Degree), Act 81 (False Statements and Writings), Act 82 (Filing False Documents), Act 83 (Forgery in the First Degree), Act 84 (False Statements and Writings), Act 87 (Influencing Witnesses), Act 88 (Influencing Witnesses), Act 98 (False Statements and Writings), Act 103 (False Statements and Writings), Act 104 (False Statements and Writings), Act 105 (False Statements and Writings), Act 108 (Filing False Documents), Act 113 (False Statements and Writings), Act 120 (Solicitation of False Statements and Writings), Act 121 (Influencing Witnesses), Act 146 (Computer Theft), Act 147 (Computer Trespass), Act 148 (Computer Invasion of Privacy), Act 149 (Conspiracy to Defraud the State), Act 157 (False Statements and Writings), Act 158 (False Statements and Writings), Act 160 (Perjury), Act 161 (Perjury).

few limited areas, and has never included a freedom to disregard these traditional limitations." *United States v. Stevens,* 599 U.S. 460, 468 (2010), quoting *R.A.V. v. St. Paul*, 505 U.S. 377, 382-83 (1992) (internal quotations omitted). The Supreme Court has long "reject[ed] the contention" that "the constitutional freedom for speech and press withstands its immunity to speech or writing used as an integral part of conduct in violation of a valid criminal statute." *Giboney v. Empire Storage & Ice Co.,* 336 U.S. 490, 498 (1949). Indeed, "speech is not protected by the First Amendment when it is the very vehicle of the crime itself." *United States v. Varani,* 435 F.2d 758, 762 (8th Cir. 1970). Consequently, courts have found limitations on false speech permissible in at least three contexts in which the regulation implicated fraud or speech integral to criminal conduct: "[F]irst, the criminal prohibition of a false statement made to a Government official, 18 U.S.C. § 1001; second, laws punishing perjury; and third, prohibitions on the false representation that one is speaking as a Government official or on behalf of the Government, *see, e.g.,* [18 U.S.C.] § 912; § 709." *United States v. Alvarez,* 567 U.S. 709, 720 (2012). Each of these categories is at issue in this case and each is crucial to the functioning of government. False communications concerning official matters waste government resources. Perjury is "at war with justice" because is can cause a court to render a "judgment not resting on truth." *In re Michael,* 326 U.S. 224, 227 (1945). And statutes that prohibit impersonating a government officer also protect the integrity of government processes and maintain the general good repute and dignity of government service itself. *United States v. Lepowitch,* 318 U.S. 702, 704 (1943).

CONCLUSION

For the reasons set forth above, Powell's demurrers must be overruled and denied in their entirety.

Respectfully submitted this 17th day of October 2023,

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EXHIBIT A

Federal Decisions Rejecting Vagueness Challenges to the Federal RICO Statute

First Circuit:

United States v. Oreto, 37 F.3d 739, 752 (1st Cir. 1994) (rejecting as-applied challenge)

United States v. Angiulo, 897 F.2d 1169, 1179-80 (1st Cir. 1990) (rejecting as-applied challenge)

Second Circuit:

United States v. Burden, 600 F.3d 204, 228 (2d Cir. 2010) (rejecting as-applied challenge)

Bingham v. Zolt, 66 F.3d 553, 566 (2d Cir. 1995)

United States v. Coonan, 938 F.2d 1553, 1561-62 (2d Cir. 1991) (rejecting as-applied challenge)

United States v. Coiro, 922 F.2d 1008, 1016-17 (2d Cir. 1991) (rejecting as-applied challenge)

United States v. Ruggiero, 726 F.2d 913, 923 (2d Cir. 1984) (rejecting facial challenge)

United States v. Clemente, 640 F.2d 1069 (2d Cir. 1981) (rejecting as-applied challenge to RICO conspiracy charge)

United States v. Huber, 603 F.2d 387, 393 (2d Cir. 1979) (opinion does not specify whether challenge was facial, as-applied, or both)

Third Circuit:

United States v. Fattah, 914 F.3d 112, 167 n.20 (3d Cir. 2019) (rejecting as-applied challenge)

United States v. Pungitore, 910 F.2d 1084, 1102-05 (3d Cir. 1990) (rejecting as-applied challenge)

United States v. Woods, 915 F.2d 854, 862-64 (3d Cir. 1990) (rejecting as-applied challenge)

Fourth Circuit:

United States v. Barronette, 46 F.4th 177, 190-91 (4th Cir. 2022)

United States v. Gross, 199 Fed. Appx. 219, 234 n.4 (4th Cir. 2006) (rejecting as-applied challenge)

United States v. Abed, 2000 WL 14190, at *5 n.5 (4th Cir. Jan. 10, 2000) (rejecting as-applied challenge)

United States v. Bennett, 984 F.2d 597, 605-06 (4th Cir. 1993) (rejecting as-applied challenge)

United States v. Borromeo, 954 F.2d 245, 248 (4th Cir. 1992) (opinion does not specify whether challenge was facial, as-applied, or both)

Fifth Circuit:

United States v. Johnson, 825 Fed. Appx. 156, 169-171 (5th Cir. 2020) (rejecting facial and as-applied challenges)

United States v. Walker, 348 Fed. Appx. 910, 912 (5th Cir. 2009) (rejecting as-applied challenge)

United States v. Krout, 66 F.3d 1420, 1432 (5th Cir. 1995) (rejecting facial and as-applied challenges)

United States v. Aucoin, 964 F.2d 1492, 1497-98 (5th Cir. 1992) (rejecting facial and as-applied challenges)

Abell v. Potomac Ins. Co., 946 F.2d 1160, 1165-66 (5th Cir. 1991) (rejecting as-applied challenge)

United States v. Martino, 648 F.2d 367, 380-81 (5th Cir. 1981) (rejecting as-applied challenge)

United States v. Uni Oil, Inc., 646 F.2d 946, 953 (5th Cir. 1981) (rejecting as-applied challenge)

United States v. Elliott, 571 F.2d 880, 903-05 (5th Cir. 1978) (rejecting overbreadth challenge)

United States v. Hawes, 529 F.2d 472, 478-79 (5th Cir. 1976) (rejecting as-applied challenge)

Sixth Circuit:

Columbia Natural Resources, Inc. v. Tatum, 58 F.3d 1101, 1104-09 (6th Cir. 1995) (rejecting as-applied vagueness challenge)

United States v. Tripp, 782 F.2d 38, 41-42 (6th Cir. 1986) (rejecting facial challenge)

United States v. Morelli, 643 F.2d 402, 412 (6th Cir. 1981) (rejecting as-applied challenge)

Seventh Circuit:

United States v. Korando, 29 F.3d 1114, 1119 (7th Cir. 1994) (rejecting as-applied challenge)

United States v. Ashman, 979 F.2d 469, 487 (7th Cir. 1992) (rejecting as-applied challenge)

United States v. Sanders, 962 F.2d 660, 678 (7th Cir. 1992) (opinion does not specify whether the challenge was facial, as-applied, or both)

United States v. Glecier, 923 F.2d 496, 497 (7th Cir. 1991) (rejecting vagueness challenge)

United States v. Masters, 924 F.2d 1362, 1367 (7th Cir. 1991)

United States v. Aleman, 609 F.2d 298, 305 (7th Cir. 1989) (rejecting as-applied challenge)

United States v. Cappetto, 502 F.2d 1351, 1357-58 (7th Cir. 1974) (rejecting facial challenge)

Eighth Circuit:

United States v. Keltner, 147 F.3d 662, 667 (8th Cir. 1998) (opinion does not specify whether the challenge was facial, as applied, or both)

Ninth Circuit:

United States v. Dolgaard, 1995 WL 338806, at *6 (9th Cir. June 7, 1995) (rejecting facial challenge)

United States v. Mason, 1994 WL 266102, at *20-21 (9th Cir. June 15, 1994) (rejecting facial and as-applied challenges)

United States v. Blinder, 10 F.3d 1468, 1475 (9th Cir. 1993) (rejecting vagueness argument without specifying whether it was facial, as-applied or both)

United States v. Freeman, 6 F.3d 586, 597-98 (9th Cir. 1993)

United States v. Dischner, 960 F.2d 870, 876 (9th Cir. 1992) (rejecting facial and as-applied vagueness challenges)

United States v. DeRosa, 670 F.2d 889, 895 (9th Cir. 1982) (rejecting facial challenge) ("This claim has been rejected not only by this circuit, but also by every other circuit that has considered it. It merits no further discussions.")

United States v. Zemek, 634 F.2d 1159, 1170 n.15 (9th Cir. 1980) (rejecting as-applied challenge)

United States v. Campanale, 518 F.2d 352, 364 (9th Cir. 1975) (rejecting facial challenge)

Tenth Circuit:

United States v. Gaudreau, 860 F.2d 357, (10th Cir. 1989) (rejecting facial and as-applied challenges to Colorado commercial bribery statute alleged as racketeering activity)

Eleventh Circuit:

Cox v. Administrator U.S. Steel & Carnegie, 17 F.3d 1386, 1398 (11th Cir. 1994) (rejecting facial challenge)

United States v. Van Dorn, 925 F.2d 1331, 1334 n.2 (11th Cir. 1991) (finding argument that RICO is unconstitutionally vague "completely lacking in merit.")

D.C. Circuit:

United States v. Swiderski, 593 F.2d 1246, 1249 (D.C. Cir. 1978) (rejecting facial challenge)

State Decisions Rejecting Vagueness Challenges to State RICO Statutes

State v. Tocco, 750 P.2d 874, 876 -77 (Ariz. 1988) (rejecting facial and as-applied challenges)

State v. Bates, 933 P.2d 48 (Haw. 1997) (rejecting as-applied vagueness challenge and challenge to First Amendment freedom of association)

State v. Hansen, 877 P.2d 898, 903-04 (Idaho 1994) (rejecting as-applied challenge)

Flinn v. State, 563 N.E.2d 536, 540-42 (Ind. 1990) (rejecting as-applied challenge)

State v. Reed, 618 N.W.2d 327, 332-35 (Iowa 2000) (rejecting as-applied challenge)

State v. Ball, 661 A.2d 251, 265 (N.J. 1995) (rejecting facial and as-applied challenges)

State v. Johnson, 728 P.2d 473, 479-80 (N.M. Ct. App. 1986) (rejecting vagueness and overbreadth challenges)

State v. Rice, 659 N.E.2d 826, 836-37 (Ohio Ct. App. 1995) (rejecting facial challenge)

State v. Bell, 770 P.2d 100, 108 (Utah 1988) (rejecting overbreadth and vagueness challenges)

Federal Decisions Rejecting Vagueness Challenges to State RICO Statutes

Fort Wayne Books v. Indiana, 489 U.S. 46, 57-58 (1989) (rejecting vagueness challenge to Indiana RICO statute as applied to obscenity predicate offenses)

Harris v. Bartlett, 231 Fed. Appx. 616, 617 (9th Cir. 2007) (Oregon RICO statute not constitutionally vague)

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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.	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this STATE'S POST-HEARING BRIEF REGARDING DEFENDANTS' RICO ARGUMENTS, upon all counsel who have entered appearances as counsel of record in this matter via the Fulton County e-filing system.

This 17th day of October 2023,

FANI T. WILLIS
District Attorney
Atlanta Judicial Circuit

/s/ John W. "Will" Wooten
John W. "Will" Wooten
Georgia Bar No. 410684

Deputy District Attorney
Fulton County District Attorney's Office
136 Pryor Street SW, 3rd Floor
Atlanta, Georgia 30303
[redacted]