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 ROBERT DAVID CHEELEY'S JOINT GENERAL AND SPECIAL DEMURRER TO, PLEA IN BAR TO, AND MOTION TO QUASH THE INDICTMENT

COMES NOW, the State of Georgia, by and through Fulton County District Attorney Fani T. Willis, and responds in opposition to Defendant Robert David Cheeley's Joint General and Special Demurrer to, Plea in Bar to, and Motion to Quash the Indictment. The Defendant seeks dismissal of the indictment issued against him by a Fulton County grand jury on multiple grounds, many of which have already been expressly rejected by this Court, and all of which are unsupported by law. For the reasons set forth below, the Defendant's motion should be denied.

I. Federal law does not preempt state prosecution of the Defendant.

The Court is likely now well familiar with the argument, raised by several defendants, that the Electoral Count Act "contemplates that 'more than one return or paper purporting to be a return from a State [could] be [] received by the President of the Senate[.]'" Def.'s Mot. at 10. The Defendant argues that this somehow justifies his conduct and warrants dismissal of the indictment against him.[1] His logic is fundamentally flawed: that the Electoral Count Act *contemplates* that Congress could receive more than one certificate of vote from a state does not mean that the Act in any way *authorizes* individuals to transmit forged certificates of vote to Congress. By way of example, Georgia's criminal code contemplates that citizens might commit crimes, but that in no way authorizes citizens to commit crimes. The Electoral Count Act provides a procedure to resolve the problem caused by the transmission of multiple certificates of vote, just as Georgia's criminal code provides a procedure to resolve the problem caused by citizens committing crimes. The Defendant's argument that the Electoral Count Act authorizes fraudulent "presidential electors" to submit forged documents to Congress is without any support whatsoever.

Based on this flawed interpretation of federal law, the Defendant argues that the United States Constitution and the Electoral Count Act preempt the State's ability to prosecute crimes involving the electoral college, a proposition that this Court has already rejected. *See* Order on Def.'s Mots. to Dism. at *3, Oct. 18, 2023 ("Nothing in the ECA in its current or prior form

[1] The Defendant also relies on the 1960 presidential election in Hawaii as precedent to establish that he and his co-conspirators committed no crime. This reliance is flawed: (1) the facts and circumstances surrounding that election are materially different from the facts and circumstances surrounding the charges in this indictment; (2) there is no authority that establishes that the actions of the Democratic presidential electors in the 1960 Hawaii presidential election were lawful under Hawaii or federal law; and (3) that another group of individuals, 63 years ago, with a different prosecutor, under different laws, and under different circumstances, did not face prosecution is of no consequence here. The Court should disregard any comparison to or reliance on the 1960 presidential election in Hawaii.

expressly or implicitly preempts state law."). The Defendant raises no new arguments beyond what the Court has already considered and denied, and as with similar arguments raised before, the Court should deny his motion to the extent that he contends the prosecution is preempted.

As the Court previously held, Supremacy Clause preemption may apply "(1) where there is direct conflict between state and federal regulation; (2) where state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,' [cit.] or (3) where Congress has 'occupied the field' in a given area so as to oust all state regulation." *Aman v. State*, 261 Ga. 669, 671 (1991) (quoting *Exxon Corp. v. Ga. Assoc. of Petroleum Retailers*, 484 F. Supp. 1008, 1017 (N.D. Ga. 1979)). Preemption may be express or implied; express preemption occurs where the law is explicit in preempting state law whereas implied preemption, or "field" preemption, applies where a state law directly conflicts with federal law, or the reach of the law "indicates that Congress intended federal law to occupy a field exclusively." *Kansas v. Garcia*, 140 S. Ct. 791, 801 (2020).

Neither the Constitution nor the Electoral Count Act expressly preempt Georgia law. Nor do they impliedly preempt Georgia law. Federal law directing how Congress must count electoral college votes is fundamentally unrelated to Georgia's criminal statutes that prohibit fraud and corrupt practices, including in the context of a presidential election. Indeed, they serve entirely different functions. *See Kansas v. Garcia*, 140 S. Ct. at 805. Neither the Constitution nor the Electoral Count Act provide a mechanism for prosecuting fraud and corruption, and Georgia's criminal laws provide no mechanism for counting the nation's electoral college votes. Where the federal and state laws at issue serve entirely different purposes and in no way affect the operation of each other, there is no implied preemption. *Id*. Moreover, the Supreme Court has stated that in an implied preemption analysis, there is a strong presumption that a state retains its traditional

police powers "unless [preemption] was the clear and manifest purpose of Congress." *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (citation omitted).

"Pre-emption may also be found where state legislation would impede the purposes and objectives of Congress." *R.J. Reynolds Tobacco Co. v. Durham County*, 479 U.S. 130, 140 (1986). It is unimaginable that Georgia's criminal statutes that prohibit fraud could somehow impede the purposes and objectives of Congress in conducting an accurate count of electoral college votes. Indeed, the purpose of the Electoral Count Act is to provide for a lawful and orderly accounting of each state's electoral college votes to provide for a peaceful transition of power following each presidential election. Prosecuting those who seek to obstruct that process, under state criminal laws, is entirely consistent with the purposes and objectives of the Electoral Count Act.

Finally, there is no preemption where it is possible to comply both with the Electoral Count Act and the state criminal statutes under which the Defendant is charged. *See Kansas v. Garcia*, 140 S. Ct. at 806. Indeed, the actual duly elected and qualified electors from Georgia did just that. Accordingly, to the extent that the Defendant argues federal preemption bars his prosecution, his motion to dismiss should be denied.

II. The Defendant's as-applied constitutional challenge to the indictment is not yet ripe.

The Defendant argues that the indictment should be dismissed because his actions amounted to "core protected speech" and are protected from prosecution by the United States Constitution and the Georgia Constitution. His as-applied constitutional challenges to the indictment cannot be sustained: the issues are not yet ripe because a factual record has not been sufficiently developed. "Because [an as-applied constitutional] challenge asserts that a statute cannot be constitutionally applied in particular circumstances, it necessarily requires the development of a factual record for the court to consider." *Harris v. Mexican Specialty Foods, Inc.*,

564 F.3d 1301, 1308 (11th Cir. 2009) (citing *Siegel v. LePore*, 234 F.3d 1163, 1171 (11th Cir. 2000)). As this Court has already held, "Georgia precedent bars the consideration of an as-applied challenge here where the factual record, to the extent any yet exists, is incomplete and vigorously disputed. There have been no formal evidentiary hearings tested by cross-examination, and nothing is stipulated." Order on Def.'s Mots. to Dism. at 6, Oct. 18, 2023. "Thus, the caselaw and the circumstances of this case as it currently stands require a denial of the Defendants' request to consider an as-applied [constitutional] challenge." *Id.*

III. All of the Defendant's various challenges to Count 1 are without merit.

The Defendant contends that Count 1 should be demurred because the indictment does not allege pecuniary gain or economic or physical threat or injury, because the indictment fails to sufficiently allege an enterprise, because the indictment fails to allege continuity, because the indictment fails to allege a nexus between the enterprise and a pattern of racketeering activity, and because certain acts alleged in Count 1 are not racketeering activity. All of these arguments fail.

a. Legislative intent set forth in O.C.G.A. § 16-14-2 does not create additional elements of the offense and is irrelevant to the allegations in Count 1.

The Defendant essentially argues that the intent of the legislature in passing the Georgia RICO Act, as set forth in O.C.G.A. § 16-14-2, adds additional elements of the offense by requiring the State to allege that his actions were motivated by "pecuniary gain, or economic or physical threat or injury." Def.'s Mot. at 23. The Court has already rejected this argument. *See* Order on Def.'s Demurrers. at *6, Oct. 17, 2023. In any case, the Defendant's argument fails because that expression of legislative purpose does not create additional elements of a RICO violation. The Defendant is accused of violating O.C.G.A. 16-14-4(c), 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 specific RICO provision the Defendant 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.

The Defendant's demurrer does not rely upon a failure of the indictment to allege any element of O.C.G.A. 16-14-4(c)(1). Instead, the Defendant attempts to add an element by pointing to O.C.G.A. § 16-14-2, entitled "Findings and Intent of General Assembly." Specifically, the Defendant 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." The Defendant's argument fails for two reasons. The question is controlled adversely to him by cases—which the Defendant 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.

The Defendant'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 take over 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).

This 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, the Defendant 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-Dan'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).[2] This has led the Court repeatedly to

[2] 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).

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 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, which outlined RICO under 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). The same result should obtain here. Nothing in O.C.G.A. § 16-14-4(c) suggests a requirement that defendants conspire 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.[3]

[3] *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).

Finally, the language upon which the Defendant relies was added by amendment in 1997, 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.

The Defendant's attempt to add additional elements to the offense that appear outside the operative provisions of the RICO conspiracy statute must fail.

b. The indictment sufficiently pleads the existence of a RICO enterprise.

The Defendant's challenge to the State's enterprise allegations fails because it is based on a series of flawed arguments and mischaracterizations. First, the Defendant attempts to set up a straw man argument that relies on mischaracterizing the State's allegations. Contrary to the Defendant's mischaracterizations, the enterprise in this case does not include millions of Americans, nor does it seek to impose liability based upon mere belief. As regards the indictment, the State holds the pen, and the Defendant may not edit or alter the State's allegations. Contrary to the Defendant's straw man argument, the indictment charges persons who "knowingly and willfully joined a conspiracy to unlawfully change the outcome of the election in favor of Trump." Indictment at 14. This description does not encompass every person who voted for Trump, every person who believed Trump won, every person who was disappointed that he did not win, or every

person who questioned the outcome of the election. It *does* apply to people who associated for the purpose of unlawfully changing the outcome of the election.

Attempting to build on his mischaracterizations of the indictment, the Defendant contends that the State alleges an enterprise that "as currently pleaded could conceivably include tens of millions." Def.'s Mot. at 25. He argues that the enterprise actually consists of "millions of Americans, countless politicians …, members of the media, and hundreds of lawyers who peaceably, even if erroneously, protested or contested the 2020 presidential election … ." Def.'s Mot. at 24. Depending upon which part of his pleading one looks at, this means that (in ascending order of febrility) the enterprise he seeks to substitute for the one actually alleged in the indictment includes scores of United States Senators and Members of the House of Representatives, hundreds of legislators in various states, hundreds of thousands of Georgia citizens, and "tens of millions of people" across the United States whom the Defendant laments the State lumps into one massive criminal enterprise. Def.'s Mot. at 24. The Court has already heard and rejected similarly overwrought arguments from other defendants in this case, holding that the State need not "allege a 'hierarchical structure' or provide a full membership list." *See* Order on Def.'s Demurrers. at *11, Oct. 17, 2023. This Defendant's should receive the same treatment.

The Defendant relies on *Boyle v. United States* to support his contention that the indictment fails to allege the enterprise sufficiently. 556 U.S. 938 (2009). Defendant Boyle was a bank robber: one of a number of participants in a series of bank thefts that occurred in four states. *Id.* at 941. Participants in the bank thefts included a core group as well as others who were recruited from time to time for specific jobs. *Id.* The participants sometimes attempted bank robberies and burglaries of bank vaults, but they most often targeted cash-laden night-deposit boxes. *Id.* The group "was loosely and informally organized," without a leader or hierarchy. *Id.* The participants

never formulated any long-term master plan or agreement. Boyle himself joined the group after it had been formed and committed a number of night-deposit-box thefts. After joining the group, Boyle participated in numerous attempted night-deposit-box thefts and at least two attempted bank-vault burglaries. *Id.*

Boyle was convicted of conspiracy to violate the federal RICO statute (18 U.S.C. § 1962(d)), a substantive violation of that statute (18 U.S.C. § 1962(c)) and other non-RICO federal offenses. *Id.* at 941-42. Boyle's challenge to his RICO convictions relied on his contention that the trial court should have instructed the jury that the government was required to prove that the enterprise "had an ongoing organization, a core membership that functioned as a continuing unit, and an ascertainable structural hierarchy distinct from the charged predicate acts." *Id.* at 943. The trial court refused to give that instruction and the Supreme Court agreed, affirming Boyle's conviction. *Boyle* specifically recognized that the definition of enterprise "is obviously broad, encompassing '*any* . . . group of individuals associated in fact.'" *Id.* at 944. The Court further emphasized that the RICO statute mandates its terms are to be "liberally construed to effectuate its remedial purposes," *id.* (quoting Pub. L. No. 91-452 § 904(a), 84 Stat. 947 (1970))[4], and referred to its own substantial body of decisions recognizing breadth of the statute.[5]

Boyle urged the Court to read a wish list of requirements into the RICO statute,[6] but the Court comprehensively rejected his "let's make up a requirement" approach to RICO, holding that:

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[4] Georgia RICO also contains a liberal construction mandate O.C.G.A. § 16-14-2(b).

[5] 556 U.S. at 944, citing *National Organization for Women, Inc. v. Scheidler*, 510 U.S. 249, 257 (1994) ("RICO broadly defines 'enterprise'"), *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 497 (1985) ("RICO is to be read broadly"); *Russello v. United States*, 464 U.S. 16, 21 (1983) (noting "the pattern of the RICO statute in utilizing terms and concepts of breadth").

[6] This included requirements of structural "hierarchy," "role differentiation," a "unique *modus operandi*," a "chain of command," "professionalism and sophistication of organization," "diversity and complexity of crimes," "membership dues, rules and regulations," "uncharged or additional crimes aside from predicate acts," and "internal discipline mechanism," "regular

> Such a group need not have a hierarchical structure or a "chain of command"; decisions may be made on an *ad hoc* basis and by any number of methods–by majority vote, consensus, a show of strength, etc. Members of the group need not have fixed roles; different members may perform different roles at different times. The group need not have a name, regular meetings, dues, established rules and regulations, disciplinary procedures, or induction or initiation ceremonies. While the group must function as a continuing unit and remain in existence long enough to pursue a course of conduct, nothing in RICO exempts an enterprise whose associates engage in spurts of activity punctuated by periods of quiescence. Nor is the statute limited to groups whose crimes are sophisticated, diverse, complex, or unique; for example, a group that does nothing but engage in extortion through old-fashioned, unsophisticated, and brutal means may fall squarely within the statute's reach.

Id. at 948.

In this case, the State is no more accusing everyone who ever doubted the outcome of the 2020 election of being a member of a RICO enterprise than the federal government accused every bank robber in America of being a member of the enterprise in *Boyle.*

Second, *Boyle* is not Georgia law. But if it were to become so, the indictment in this case satisfies its requirements. The indictment alleges that the defendants and other members and associates of the enterprise "had connections and relationships with one another and with the enterprise." Indictment at 15. The indictment further alleges that "[t]he enterprise constituted an ongoing organization whose members and associates functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise." Indictment at 15. The indictment also identifies as a common purpose "to unlawfully change the outcome of the election in favor of Trump."[7] Indictment at 14. And finally, the indictment alleges that "[t]he enterprise operated for a

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meetings regarding enterprise affairs," and "enterprise 'name,'" and "induction or initiation ceremonies and rituals." *Id.* at 949. The Court rejected each of these purported requirements, finding that they had "no basis in the language of RICO." *Id.*

[7] This allegation that the objective of the enterprise was to *unlawfully* change the outcome of the election demonstrates that the indictment does not reach persons who merely supported Trump, voted for Trump, or questioned the result of the election. No defendant is charged based solely on such conduct.

period of time sufficient to permit its members and associates to pursue its objectives," Indictment at 15, describes the manner and method by which the defendants and other members and associates of the enterprise sought to further its goals and achieve its purposes, Indictment at 16-19, and then sets forth 161 overt acts committed to effectuate the objective of the enterprise. Indictment at 20-71. These allegations satisfy all requirements of existing Georgia law, as well as *Boyle*. 556 U.S. at 946. The Defendant's challenge to the State's enterprise allegations therefore fails.

c. Continuity is not required to establish a pattern of racketeering activity under Georgia RICO.

The Defendant further argues that the indictment must allege "continuity" to establish a pattern of racketeering activity. Def.'s Mot. at 25. The Court has already rejected this argument raised by other defendants. *See* Order on Def.'s Demurrers. at *9, Oct. 17, 2023. In any case, as set forth later in the State's response, a pattern of racketeering activity is not required in RICO conspiracy cases, but even if it were, continuity is not a requirement for a pattern of racketeering activity under *any* provision of Georgia RICO.

i. For at least 34 years Georgia courts have consistently held that two acts of racketeering activity constitute a pattern.

Federal RICO's definition states that a pattern of racketeering activity "*requires* at least two acts of racketeering activity … ."[8] Georgia's definition is different: it states that a pattern of racketeering activity "*means*: (A) Engaging in at least two acts of racketeering activity in furtherance of one or more incidents, schemes, or transactions … ."[9] The General Assembly's decision to use the word "means" in Georgia's pattern definition is significant. As the United States Supreme Court noted in *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 n.14 (1985), 18 U.S.C. § 1961(5) "states that a

[8] 18 U.S.C. § 1961(5) (emphasis added).

[9] O.C.G.A. § 16-14-3(4)(A) (emphasis added).

pattern '*requires* at least two acts of racketeering activity,' … not that it 'means' two such acts." (emphasis in original). Then, in *H.J. Inc. v. NW. Bell Tel. Co.,* 492 U.S. 229, 237 (1989), the Court recognized that this means 18 U.S.C. §1961(5) "does not so much define a pattern of racketeering activity as state a minimum necessary condition for the existence of such a pattern." This is important because the General Assembly took the approach that *Sedima* and *H.J. Inc*. recognized Congress did not: by using the word "means" it enacted a definition that is complete and self-contained.[10] Consequently, under Georgia RICO, proof of two related predicate acts satisfies the pattern element.

To the extent that the Defendant implies that in spite of the material differences in text between the federal and Georgia statute, the Georgia provisions must still mean the same thing as their federal counterparts, he is wrong. Federal RICO was enacted in 1970.[11] Georgia RICO was enacted in 1980,[12] and *H.J. Inc.* did not adopt the continuity requirement for federal RICO until 1989. At the time Georgia RICO was enacted, no decision of the former Fifth Circuit, the Eleventh Circuit, or any other federal circuit had adopted a continuity requirement. As a result, there is no possibility that the General Assembly intended Georgia RICO's pattern definition to codify a continuity requirement that no federal court had adopted prior to Georgia RICO's enactment. And while it is true that when the General Assembly selects statutory language not from a Georgia statute that has previously been interpreted by Georgia courts, but instead from a statute of another jurisdiction, "the construction placed upon such statute by the highest court of that jurisdiction will

[10] Several state supreme courts have recognized that a definition using the word "means" is "complete and self-contained." *See Jackson v. State*, 50 N.E.3d 767, 774 (Ind. 2016) (use of "means" renders definition complete); *People v. Chaussee*, 880 P.2d 749, 757 (Colo. 1994) (because of the use of the word "means," Colorado's definition of pattern is "complete and self-contained."); *Computer Concepts, Inc. v. Brandt*, 801 P.2d 800, 807 (Ore. 1990) ("The use of the word 'means' implies that the legislature intended the definition to be complete and self-contained.").

[11] Pub. L. No. 91-452, 84 Stat. 922 (1970), codified at 18 U.S.C. §§ 1961-68.

[12] Ga. L. 1980, p. 405, § 1.

be given such statute by the courts of this State," *Haley v. State*, 289 Ga. 515, 523 (2011), quoting *Wilson v. Pollard*, 190 Ga. 74, 80 (1940), this canon of construction does not apply here for three reasons. First, the highest court of the relevant jurisdictions—the United States Supreme Court—had not adopted a continuity requirement prior to Georgia RICO's enactment.[13] Second, the General Assembly did not adopt the federal language, it changed it in a material way. And third, "federal court interpretations of a federal statute do not, in the end, bind this Court's interpretation of a Georgia statute." *Haley.* 289 Ga. at 527.[14]

Georgia courts have consistently rejected arguments that a Georgia RICO pattern of racketeering activity requires more than two acts. This steady stream of rulings started with *Dover v. State*, 192 Ga. App. 429, 431-32 (1989). In *Dover*, the defendant pointed to *Sedima* and argued that Georgia RICO should be read to contain a continuity requirement. 192 Ga. App. at 431. After reviewing federal case law, including *Sedima* and *H.J. Inc.,* and noting the differences between the Georgia and federal statutes, *Dover* concluded that "our legislature intended to and did, by virtue of O.C.G.A. §§ 16-14-4(a) and 16-14-3(2),[15] subject to the coverage of our RICO statute two crimes,

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[13] Other courts analyzing state RICO pattern definitions have recognized that "the continuity element did not become firmly established [for purposes of federal RICO] until the Supreme Court of the United States' 1989 decision in [*H.J. Inc.*] *Northwestern Bell* [*Tel. Co.*, 492 U.S. 229 (1989)]" and therefore could not have influenced state statutes enacted before then. *Philadelphia Reserve Supply Co. v. Nowalk & Assocs., Inc.*, 864 F. Supp. 1456, 1465 (E.D. Pa. 1994). *See also*, *Computer Concepts*, 801 P.2d at 808 ("[W]e have found no decision, from any jurisdiction, predating the enactment of [Oregon] RICO [in 1981] that required a plaintiff to establish 'continuity' in the sense that defendants use the term: predicate acts over an extended period or a threat of future racketeering activity.").

[14] It is also worth noting that both *H.J. Inc.* and *Sedima* were heavily influenced by federal legislative history. *See, e.g., H.J. Inc.,* 492 U.S. at 239 (citing legislative history, including Senate report and Congressional record); *Sedima*, 473 U.S. at 496 n.14 (citing Senate Report and Congressional Record). Georgia courts do not presume that the Georgia legislature "is aware of, much less [that it] relies on, the legislative history or the 'purpose' of other sovereigns' statutes that it uses as a model." *Haley,* 289 Ga. at 526.

[15] At the time *Dover* was decided, Georgia RICO's pattern definition was found at O.C.G.A. § 16-14-3(2). It is now at O.C.G.A. § 16-14-3(4).

included in the statute as designated predicate acts, which are part of the same scheme, *without the added burden of showing that defendant would continue the conduct or had been guilty of like conduct before the incidents charged as a RICO violation.*" *Id.* at 432 (emphasis added).[16]

Two years after *Dover*, *Bethune v. State*, 198 Ga. App. 490 (1991) held that "[t]he State is not required in the first place to prove all the predicate offenses alleged in the indictment, *but is required to prove only two beyond a reasonable doubt*." *Id*. at 491 (citation omitted; emphasis added). Three years after *Dover,* the Court of Appeals decided *InterAgency, Inc. v. Danco Fin. Corp.*, 203 Ga. App. 418 (1992). In *InterAgency* the defendant complained that the plaintiff introduced evidence of acts of racketeering activity committed against third party victims, including acts committed after the filing of the complaint. The Court of Appeals rejected this argument holding that "the Georgia RICO statute allows for the introduction of after conduct as predicate acts by not imposing the added burden on plaintiff of showing like conduct before the incidents charged as a RICO violation." *Id*. at 423-24, citing *Dover*. *InterAgency* made it clear that two acts are sufficient to form a pattern, holding that proof of one act committed against the plaintiff, together with a second act committed against another victim, was sufficient to establish a pattern ("Only one of the third party transactions was needed as the second predicate act.").[17] Additional decisions further confirmed that no more than two acts of racketeering activity are required to establish a RICO pattern.[18] And if

[16] Importantly, *Dover* was decided *after H.J. Inc.*, as shown by the fact that *H.J. Inc.* is cited in *Dover*. 192 Ga. App. at 431-32.

[17] This does not mean, however, that additional acts are not relevant: "[a] third similar incident transpiring after filing of the action on trial, even if not qualifying as a predicate act, would be admissible as relevant to confirm and amplify the pattern of the alleged racketeering activity and to show its intentional continuation beyond the time the defendants knew of the allegations." *InterAgency*, 203 Ga. App. at 424.

[18] *See*, *e.g.*, *Jones v. State*, 252 Ga. App. 332, 333 (2001) ("Evidence of two predicate acts will sustain the RICO conviction."); *Davitte v. State*, 238 Ga. App. 720, 724 (1999) ("Accordingly, the evidence was sufficient to support the trial court's conclusion that Davitte committed at least two of the predicate acts charged against him, thereby establishing Davitte's RICO violation.").

any possible doubt remained, it was conclusively removed by the Supreme Court's decision in *Dorsey v. State*, 279 Ga. 534 (2005), which held that "proof of two but separate related acts is sufficient to establish a pattern of racketeering activity." *id.* at 541 (citing *Bethune*). Of course, subsequent decisions have adhered to *Dorsey* and the cases it approved[19] and federal district courts in Georgia have repeatedly recognized that Georgia RICO does not require allegations of proof of continuity.[20]

ii. Every state court of last resort to address the question has concluded that the use of the word "means" in a RICO statutes' pattern definition leaves no room for the imposition of an extratextual continuity requirement.

Additional authority further confirms that *Dover* and the many other cases the Defendant fails to cite are correct. Several other state RICO statutes also use the word "means" in their pattern definitions and each of the four state supreme courts to address the question has concluded that the use of the word "means" renders the definition complete and self-contained, leaving no room for the imposition of an extratextual continuity requirement.[21] These decisions are based upon multiple points of analysis that apply with equal force to Georgia RICO.

These courts agree that a state statute's use of the word "means" is a "critical linguistic distinction" from federal RICO's use of "requires." *Siragusa*, 971 P.2d at 810. As the Colorado Supreme Court put it in *People v. Chaussee*,

> We agree with the prosecution that the COCCA definition of "pattern of racketeering activity" is complete and self-contained. The legislature has specifically stated what the term *means*, rejecting the use of the word *requires* as

[19] *See e.g., Overton v. State*, 295 Ga. App. 223, 232 (2008) (citing both *Dorsey and Bethune*); *Carr v. State*, 350 Ga. App. 461, 466 (2019) (citing *Bethune*).
[20] *See, e.g., Turk v. Morris, Manning & Martin, LLP*, 593 F. Supp. 3d 1258, 1300 (N.D. Ga. 2022); *Chesapeake Employers' Ins. Co. v. Eades*, 77 F. Supp. 3d 1241, 1256 (N.D. Ga. 2015); *Marshall v. City of Atlanta*, 195 B.R. 156, 171 (N.D. Ga. 1996).
[21] *See Jackson v. State*, 50 N.E.3d 767, 774-775 (Ind. 2016); *Siragusa v. Browne*, 971 P.2d 801, 810-811 (Nev. 1998); *People v. Chaussee*, 880 P.2d 749, 756-759 (Colo. 1994); *Computer Concepts, Inc. v. Brandt*, 801 P.2d 800, 807-809 (Ore. 1990).

> found in the parallel definitional section of RICO, the statute after which COCCA was patterned. We must assume that the legislature departed from the RICO language advisedly and are persuaded by the United States Supreme Court's analysis in *H.J. Inc.* that this choice of words is highly relevant in the construction of the language defining "pattern of racketeering activity."

880 P.2d at 757 (emphasis in original). The Supreme Court of Oregon used the same analysis to reach the same conclusion. *Computer Concepts*, 801 P.2d at 807-808 ("The use of the word 'means' implies that the legislature intended the definition to be complete and self-contained. That is, a plaintiff whose allegations track the express requirements of the definition, without doing more, would sufficiently allege a pattern of racketeering activity.").

The Supreme Court of Indiana agreed:

> We agree with both the United States Supreme Court and other jurisdictions that have noted the clear and significant distinction between "means" and "requires" - that the former renders a definition complete, whereas the latter simply states a minimum necessary condition. The Indiana General Assembly's choice in using "means" in the Indiana RICO Act's definition of "pattern of activity" was an effective departure from the language used in the federal statute. In other words, while the legislature could have expressly adopted the Federal RICO Act's "requires" language, it did not.

Jackson, 50 N.E.3d at 774.

As did the Supreme Court of Nevada:

> In light of the clear distinction between "means" and "requires" noted by both the Supreme Court and other jurisdictions, the district court was incorrect in its assertion that "although Nevada's RICO statute does not use the word 'pattern', the language of 18 U.S.C. § 1961(5) is functionally no different than our requirement." Had the state legislature intended Nevada's RICO provisions to mirror the federal statute in this area, it would have expressly adopted the "requires" language of the federal statute.

Siragusa, 971 P.2d at 810-811.[22]

[22] The Superior Court of the Virgin Islands also followed this analysis. *People v. McKenzie*, 2017 WL 455737, at *8 (V.I. Super. Jan. 30, 2017).

While these decisions are not binding upon this Court, their analysis is persuasive because they are based upon state RICO statutes that, like Georgia, use the word "means" rather than the word "requires" in their pattern definitions. In other words, Georgia RICO is more similar to those statutes than it is to the federal statute and the conclusion of these state supreme courts that self-contained, complete definitions leave no room for an extratextual continuity requirement is consistent with and supports the Georgia decisions cited above. The Defendant's argument, which has already been rejected by the Court when raised by other defendants, must fail.

d. Because Count 1 charges a RICO conspiracy violation, neither a pattern of racketeering activity nor a nexus between the enterprise and such a pattern of racketeering activity are required to be pled, but even if they were, the indictment sufficiently alleges both.

Relying primarily upon *Kimbrough v. State*, 300 Ga. 878 (2017), the Defendant contends that the indictment fails to allege a nexus between the enterprise and the racketeering activity. Again, the Court has previously rejected this argument. *See* Order on Def.'s Demurrers. at *6, Oct. 17, 2023. In any case, the Defendant is wrong for multiple reasons. First, the Defendant'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 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 'overt 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 easily 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 ways." 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 Defendant Trump. Indictment at 14. In the language of *Kimbrough*, this was the "raison 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. Indictment at 15. The indictment lays out in detail by category and specific act (the latter 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. Indictment 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. Indictment 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." Indictment at 16.

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. These false statements and writings, and the other acts related to them, all focused on creating a false 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; 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, and dead people voting; election workers ordering poll watchers and members of the media to leave a tabulation area; knowing and willful misrepresentations regarding a video taken at the State Farm Arena; and false statements

made and false writings regarding the supposed fraudulent counting of certain ballots. Indictment at 25-26, 34, 47-48. 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. Indictment at 51. 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. Like the false statement to legislators, these were also aimed at unlawfully 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. Indictment at 50.

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. Indictment at 17. 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. Indictment at 18.

Conspirators created false Electoral College documents and recruited individuals to convene and cast false Electoral College votes at the Georgia State Capitol. Indictment at 17. 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. Indictment at 17. The false documents were intended to disrupt 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. Indictment at 17.

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.

e. The Defendant's arguments that Acts 34-37, 127, 102, 105, and 161 "do not constitute racketeering activity" are irrelevant and in no way support a demurrer.

The Defendant argues that Count 1 is subject to demurrer because Acts 34-37, 127, 102, 105 and 161 "do not constitute racketeering activity." The State agrees that Acts 34-37, 127, and 102 are not racketeering activity, but that fact is entirely irrelevant. As explained above, the Defendant is charged with RICO conspiracy in violation of O.C.G.A. § 16-14-4(c) based on a violation of O.C.G.A. § 16-14-4(b). To survive general demurrer, the indictment must allege that

the Defendant (1) while associated with an enterprise (2) conspired to conduct and participate in (3) such enterprise through a pattern of racketeering activity (4) and at least one co-conspirator committed an overt act to effect the object of the conspiracy. The indictment alleges exactly that, and with great detail. Indictment at 13.

As discussed above, because this case 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)—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 is irrelevant that certain overt acts alleged in the indictment are not themselves "racketeering activity." The indictment does not have to allege that even a single act of racketeering activity was actually committed. *See, e.g., United States v. Alonso,* 740 at 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."). Even if a pattern of racketeering activity *were* required, the indictment alleges 34 acts of racketeering activity as defined in O.C.G.A. § 16-14-3(5).

The Defendant also contends that certain overt acts are not pled with particularity or that certain overt acts are not alleged with sufficient facts to demonstrate a nexus between the overt acts and the RICO conspiracy. When read as a whole, the indictment clearly demonstrates how each overt act corresponds to the manner and methods by which the enterprise operated. Indictment at 16-19. Moreover, when a defendant is charged with a conspiracy violation generally, there is "no authority requiring the indictment to set forth the particulars of the overt. … All that is required

is a reference to the overt act alleged by the State." *Bradford v. State*, 283 Ga. App. at 78-79. Here, the indictment is more than sufficient to withstand demurrer.

Finally, the Defendant contends that Acts 105 and 161 are not racketeering activity. Notwithstanding that, again, there is no requirement that even a single act of racketeering activity must be pled in a RICO conspiracy, the Defendant's contention is wrong. Act 105, concerning a violation of O.C.G.A. § 16-10-20, is clearly racketeering activity as defined by O.C.G.A. § 16-14-3(5)(A)(xxii). The Defendant attempts to mislead the Court by omitting language from his recitation of that definition section. O.C.G.A. § 16-14-3(5)(A)(xxii) defines as racketeering activity "False statements and writings or false lien statements against public officers or public employees in violation of Code Section 16-10-20 or 16-10-20.1." The Defendant conveniently omitted the reference to O.C.G.A. § 16-10-20.1. When the definition is read as a whole, it is clear that O.C.G.A. § 16-14-3(5)(A)(xxii) concerns both false statements and writings in violation of O.C.G.A. 16-10-20 *and* filing false documents in violation of O.C.G.A. 16-10-20.1.[23] The Defendant's omission appears intentional and designed to mislead, and his argument is meritless.

The Defendant next contends that Act 161 is not racketeering activity because the indictment fails to articulate a nexus between the Defendant's perjury and the objectives of the enterprise. The indictment makes such a nexus clear: "Members of the enterprise, including several of the Defendants, filed false documents, made false statements to government investigators, and committed perjury in judicial proceedings in Fulton County, Georgia, and elsewhere in furtherance of and to cover up the conspiracy." Indictment at 19. Moreover, in *Dorsey*, the Supreme Court of Georgia recognized that "acts of racketeering activity may be related despite having different

[23] Until 2014, O.C.G.A. 16-10-20.1 was titled "Filing false liens or encumbrances against public employees." O.C.G.A. § 16-14-3(5)(A)(xxii) has apparently not been updated to reflect the amended title of O.C.G.A. 16-10-20.1.

objectives as is evidenced by the legislature's inclusion of such crimes as influencing witnesses, perjury, and tampering with evidence," all of which are crimes generally related to the cover up of other previously committed crimes. 279 Ga. at 541 (internal citations omitted).

The Defendant's arguments here are without merit, and his motion should be denied.

IV. Count 9 is sufficiently alleged to survive demurrer.

The Defendant contends that Count 9 fails to allege conspiracy to impersonate a public officer because presidential electors are federal officers, not state officers. This familiar argument is without support. First, O.C.G.A. § 16-10-23 applies to impersonating *any* public officer or employee, including city and county officers, state officers, federal officers, or officers from entirely fictitious agencies. In *Libri v. State*, the Court of Appeals of Georgia upheld the conviction of a defendant who impersonated an agent of the "Metro Atlanta Human Trafficking Task Force," an entity that was entirely fictitious. 346 Ga. App. 420 (2018). And in *Garrison v. State*, the Court of Appeals found that the evidence was sufficient to sustain a jury's verdict finding the defendant guilty of impersonating a public officer and other offenses for invading a home wearing a dark mask, brandishing guns, and shouting that he was a "federal agent[]." 276 Ga. App. 243, 243 (2005). *See also Lankford v. State*, 295 Ga. App. 590 (2009) (affirming conviction of co-defendant in *Garrison*, though sufficiency of the evidence was not raised on appeal). *Garrison* utterly defeats the Defendant's argument, and his analysis of the issue is irrelevant.

In any case, the Supreme Court long ago determined that, though presidential electors perform certain duties imposed by the United States Constitution, they are state officers:

> The sole function of the presidential electors is to cast, certify and transmit the vote of the State for President and Vice President of the nation. Although the electors are appointed and act under and pursuant to the Constitution of the United States, *they are no more officers or agents of the United States than are the members of the state*

> *legislatures when acting as electors of federal senators[24], or the people of the States when acting as electors of representatives in Congress*.

In re Green, 134 U.S. 377, 379 (1890) (emphasis added). The Defendant's argument must fail because O.C.G.A. § 16-10-23 applies to impersonating *any* public officer or employee, and in any case, presidential electors are state officers.

The Defendant also contends that Count 9 fails to allege "that Cheeley conspired to falsely hold anyone out as a presidential elector" or "that he intended to mislead anyone." Def.'s Mot. at 36. This is not accurate. Count 9 clearly states that the Defendant "conspired to cause certain individuals to falsely hold themselves out as the duly elected and qualified presidential electors from the State of Georgia" and wholly incorporates Count 8 by reference, which specifically names co-defendants David James Shafer, Shawn Micah Tresher Still, and Cathleen Alston Latham as those "certain individuals" who impersonated Georgia's presidential electors. Indictment at 76. Further, Count 9 alleges that the Defendant conspired "with intent to mislead the President of the United States Senate, the Archivist of the United States, the Georgia Secretary of State, and the Chief Judge of the United States District Court for the Northern District of Georgia." *Id.*

For these reasons, the Defendant's demurrer to Count 9 should be denied.

V. Counts 11 and 17 are sufficiently alleged to survive demurrer.

The Defendant contends that Counts 11 and 17 should be demurred because they fail to allege "(1) the forgery was made using a 'fictitious name'; (2) the writing purports to be from another person; or (3) was made by the authority of one who did not give such authority." Def.'s Mot. at 37. The Defendant also contends in a footnote that the counts should be demurred because

[24] United States senators were elected by state legislatures until the ratification of the Seventeenth Amendment in 1913, which provided for direct election of senators by the people.

they fail to set forth certain facts, making it "impossible for Cheeley 'to prepare his defense intelligently.'" *Id*. These arguments all fail.

A defendant can violate O.C.G.A. § 16-9-1(b) in one of several ways: by, with intent to defraud, making, altering, or possessing any writing, other than a check, (1) in a fictitious name, (2) in such manner that the writing as made or altered purports to have been made by another person, (3) in such manner that the writing as made or altered purports to have been made at another time, (4) in such a manner that the writing as made or altered purports to have been made with different provisions, or (5) in such a manner that the writing as made or altered purports to have been made by authority of one who did not give such authority, and uttering or delivering the writing. That State can proceed on any one of these ways of violating the statute and is not required to proceed on multiple theories, as the Defendant incorrectly suggests. Here, contrary to what the Defendant states, Counts 11 and 17 allege that "the writing as made purports to have been made *by the authority of the duly elected and qualified presidential electors from the State of Georgia, who did not give such authority*." Indictment at 77, 80 (emphasis added). This is sufficient to survive demurrer.

The Defendant further makes entirely circular arguments, relying on inapplicable caselaw. He seems to concede that Counts 11 and 17 do indeed allege that he and his co-defendants made a writing that purported to have been made by authority of the duly elected and qualified presidential electors from Georgia who did not give such authority, but he argues to the Court that this is insufficient. He relies on *Deutsche Bank Nat'l Trust Co. v. JP Morgan Chase Bank, N.A.*, 307 Ga. App. 307, 313 (2010), which mentions the "common law distinction between forgery and a fraudulent assumption of authority," but there are no common law crimes in Georgia. O.C.G.A. § 16-1-4 ("No conduct constitutes a crime unless it is described as a crime in this title or in another

statute of this state."). That case is inapplicable here. He also relies on *Ga. Cas. & Sur. Co. v. Seaboard Sur. Co.*, 210 F. Supp 644, 656, 657 (1962), which cites *Barron v. State*, 12 Ga. App. 342 (1913), a 110-year-old criminal case that applied a prior codification of the forgery statute, which itself did not even define what "forgery" meant. Thus, that case too is entirely inapplicable here.

As for the Defendant's argument that Counts 11 and 17 do not set forth precisely what overt acts he committed, such specificity in pleading is not required. When a defendant is charged with a conspiracy violation, there is "no authority requiring the indictment to set forth the particulars of the overt. … All that is required is a reference to the overt act alleged by the State." *Bradford v. State*, 283 Ga. App. at 78-79. A conspiracy charge brought under O.C.G.A. § 16-4-8 must simply allege (1) that the defendant conspired with one or more persons to commit any crime (2) and any one or more of such persons committed any overt act to effect the object of the conspiracy. *Sanders v. State*, 313 Ga. 191, 200 (2022) ("The elements of conspiracy to commit a crime are conspiring and the performance of an overt act to effect the crime."). An indictment is not required to contain every detail of the crime to withstand a special demurrer; instead, it must state the essential elements of the crime charged and "must allege the underlying facts with enough detail to sufficiently apprise the defendant of what he must be prepared to meet." *Kimbrough v. State*, 300 Ga. 878, 881 (2017). Moreover, when alleged deficiencies in one count of an indictment are addressed in another count, the indictment may be read "as a whole" to determine whether sufficient information has been pled to withstand a special demurrer. *Sanders v. State*, 313 Ga. 191, 196 (2022). Count 1 Acts 34-37 provide any required details by alleging that the Defendant communicated with co-defendants John Charles Eastman, David James Shafer, and others about the execution of the fake elector meeting. Indictment at 28.

Finally, the Defendant argues that the rule of lenity supports his demurrer. Def.'s Mot. at 39. The Court of Appeals of Georgia has unequivocally rejected the same argument in other cases:

> The rule of lenity applies when a statute, or statutes, establishes, or establish, different punishments for the same offense, and provides that the ambiguity is resolved in favor of the defendant, who will then receive the lesser punishment. *But [Huber] has provided no authority, and we have found none, for the proposition that the rule of lenity could subject to demurrer an otherwise sufficient indictment*.

Huber v. State, 368 Ga. App. 401, 403 (2023) (emphasis added) (citing *Raybon v. State*, 309 Ga. App. 365, 367 (2011)). The rule of lenity is a rule of sentencing once a defendant has been convicted. It has no application prior to trial, and the Court should disregard the Defendant's argument to the contrary.

For these reasons, the Defendant's demurrers to Count 11 and 17 should be denied.

VI. Count 26 is sufficiently alleged to survive demurrer.

The Defendant contends that Count 26 should be demurred because (1) statements to the General Assembly do not fall within the ambit of O.C.G.A. § 16-10-20 because the General Assembly is not a department or agency of state government; (2) statements to the General Assembly are protected by the First Amendment; (3) the Secretary of State and GBI have no jurisdiction over statements made to the General Assembly; (4) and that *mens rea* must be specifically alleged in the indictment. All of these arguments are without merit.

The Defendant is correct that the General Assembly is not a department or agency of state government, but that is irrelevant. O.C.G.A. § 16-10-20 does not require that a false statement be made to any person in particular; the false statement must simply concern "a matter within the jurisdiction" of a municipal, county, or state department or agency. *See Haley v. State*, 289 Ga. 515 (2011) (affirming conviction for making false statements when the false statements at issue were made in a public YouTube video and not made directly to any government department or agency).

It is of no consequence that the false statements alleged in Count 26 were made to members of the General Assembly, and the Court cannot grant a demurrer based on this argument.

The Defendant's as-applied constitutional challenge to Count 26 is not yet ripe, as this Court has already held, because a factual record has not been developed. "Georgia precedent bars the consideration of an as-applied challenge here where the factual record, to the extent any yet exists, is incomplete and vigorously disputed. There have been no formal evidentiary hearings tested by cross-examination, and nothing is stipulated." Order on Def.'s Mots. to Dism. at *6, Oct. 18, 2023. "Thus, the caselaw and the circumstances of this case as it currently stands require a denial of the Defendants' request to consider an as-applied [constitutional] challenge." *Id.*

The Defendant next argues that the Secretary of State and the Georgia Bureau of Investigation cannot exercise "jurisdiction" over statements made to the General Assembly. The Defendant ignores the plain meaning of O.C.G.A. § 16-10-20. It is only required that the government department or agency have jurisdiction over the subject matter of the false statement, not over the forum in which the statement was made. *See, e.g.*, *Haley v. State*, 289 Ga. at 529 (videos posted by the defendant contained clues referencing a Georgia missing person and location of missing person's body parts in Augusta, giving GBI jurisdiction). Given the many investigations into allegations of fraud in the November 3, 2020, presidential election in Georgia by the Georgia Secretary of State and the Georgia Bureau of Investigation, it is nonsensical to argue that these government agencies do not have jurisdiction over allegations of election fraud. More importantly, whether the agencies alleged in the indictment had jurisdiction is ultimately a matter for the jury to determine upon proof presented at trial—not a matter to be raised in a demurrer.

Finally, the Defendant's argument that Count 26 must specifically plead any particular *mens rea* requirement is without support. The count alleges, in conformity with the statute, that the

Defendant acted "knowingly" and "willfully." This is sufficient to allege intent. The Defendant argues that the statute "require[s] the defendant to have made the false statement in some intended relationship to a matter within the state or local agency's jurisdiction." Def.'s Mot. at 41. The Defendant confuses proof at trial required to support a conviction with allegations in an indictment sufficient to withstand demurrer. The two are not the same, as *Haley* itself demonstrates. The indictment in *Haley* charged that the defendant "did knowingly and willfully make a false and fictitious statement and representation in a matter within the jurisdiction of the Georgia Bureau of Investigation, a governmental agency, by calling himself the 'catchmekiller' and stating that he killed 16 people." *Haley v. State*, 289 Ga. at 518. The Georgia Supreme Court affirmed that this was sufficient to allege a violation of O.C.G.A. § 16-10-20, and the proof at trial was sufficient to support the defendant's conviction. *Id.* at 529.

For these reasons, the Defendant's demurrer to Count 26 should be denied.

VII. Counts 13 and 19 are sufficiently alleged to survive demurrer.

The Defendant contends that Counts 13 and 19 should be demurred because (1) the counts do not sufficiently allege *mens rea*, (2) because O.C.G.A. § 16-10-20 does not apply to statements made to the federal government, and (3) the rule of lenity requires demurrer. As set forth above, these arguments are meritless: (1) the counts allege that the Defendant acted "knowingly" and "willfully," which is all that is required, and the *mens rea* requirements wrongly suggested by the Defendant concern issues of proof sufficient to sustain a conviction that are not relevant prior to trial; (2) in a prosecution under O.C.G.A. § 16-10-20, it is irrelevant to whom the false statements are made, so long as they are within the jurisdiction of a municipal, county, or state government or agency; (3) and the rule of lenity is a rule of sentencing that has no application prior to trial.

For these reasons, the Defendant's demurrer to Counts 13 and 19 should be denied.

VIII. Counts 15 is sufficiently alleged to survive demurrer.

The Defendant contends that Counts 15 should be demurred because (1) the document at issue in Count 15 is not a "document" as defined by O.C.G.A. § 16-10-20.1(a); (2) the rule of lenity requires demurrer; and (3) because the count does not sufficiently allege the materiality of the false statement contained within the document. Each of these arguments, as set forth above, is meritless. The Defendant attempts to limit the definition of "document" to liens, encumbrances, documents of title, and other types of documents specifically set forth in O.C.G.A. § 16-10-20.1(a), but his argument ignores the immediately preceding words in the statute that define "document" as any "information that is inscribed on a tangible medium." Put differently, this means words written on paper. The document at issue in Count 15 is clearly a "document" within the statute's definition. Further, as set forth above, the rule of lenity is a rule of sentencing once a defendant has been convicted that has no application prior to trial.

Finally, the Defendant attempts to add elements of the offense that do not appear in the statute itself. The Defendant argues that Count 15 does not allege "(1) the nature of the proceeding in which Cheeley supposedly conspired to file this document, (2) the matters at issue in the proceeding, or (3) how the statement identified in the Indictment bears any material relationship to any specific matters at issue in that proceeding." Def.'s Mot. at 47. Yet O.C.G.A. § 16-10-20.1 does not require the State to prove that a false document was connected to a proceeding. As the Defendant himself points out, the statute contemplates prosecution for filing or recording of false liens, false encumbrances, false title documents, and false documents intended to record a security interest, none of which are necessarily filed or recorded in the context of a "proceeding." The narrow definition of materiality put forth by the Defendant is inapplicable, as it relates only to false statements made in the context of a judicial proceeding. Here, by contrast, "materially false

statement" must be given a broader meaning: a false statement concerning a fact of consequence. *See, e.g.*, *Massey v. Duke Builders, Inc.*, 310 Ga. 152, 156 n.5 (2020) (recognizing that filing "massively inflated" and "dishonest" liens is punishable by prosecution under O.C.G.A. § 16-10-20.1); *In the Matter of Palazzola*, 310 Ga. 634, 638 (2020) (holding that a lawyer's advertisement was "materially misleading" because it appeared to show the law firm had more employees than it actually had, it "unreasonably exaggerated" the legal experience of the lawyer and his associates, and it falsely stated the lawyer had law offices in multiple cities); *Davenport v. State*, 289 Ga. 399, 404 (2011) (defining "material witness" to mean a witness who can testify about matters having some logical connection with "consequential facts" in the context of the Uniform Act to Secure the Attendance of Witnesses from Without the State).

Here, Count 15 alleges that the Defendant and co-conspirators conspired to "knowingly file, enter, and record a document titled 'CERTIFICATE OF THE VOTES OF THE 2020 ELECTORS FROM GEORGIA,' in a court of the United States, having reason to know that said document contained the materially false statement, 'WE, THE UNDERSIGNED, being the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Georgia, do hereby certify the following,'" and that co-conspirators committed overt acts to effect the object of the conspiracy. Indictment at 79. The count alleges all of the statutory elements of the offense and specifies the specific document, the specific false statement, the court in which co-conspirators attempted to file, enter, and record the document, and the manner in which that attempt was made. This is more than sufficient to allow the Defendant to prepare an intelligent defense. Whether the false statement was "material" is a matter to be determined by the jury at trial and not a matter for the Court's inquiry prior to trial.

For these reasons, the Defendant's demurrer to Count 15 should be denied.

IX. Counts 23 is sufficiently alleged to survive demurrer.

The Defendant contends that Count 23 should be demurred because "it does not assert the terms of the oath allegedly violated" and because there is no nexus between appointing presidential electors from the State of Georgia and the official duties of Georgia legislators. Def.'s Mot. at 48. These arguments fail.

An indictment is not required to contain every detail of the crime to withstand demurrer; instead, it must state the essential elements of the crime charged and "must allege the underlying facts with enough detail to sufficiently apprise the defendant of what he must be prepared to meet." *Kimbrough v. State*, 300 Ga. at 881. Criminal solicitation has two essential elements: (1) that a person has intent that another person engage in conduct constituting a felony and (2) that he solicits, requests, commands, importunes, or otherwise attempts to cause that person to engage in that conduct." O.C.G.A. § 16-4-7 (a). Count 23 alleges that the Defendant "unlawfully solicited, requested, and importuned certain public officers then serving as elected members of the Georgia Senate … to engage in conduct constituting the felony offense of Violation of Oath by Public Officer, O.C.G.A. § 16-10-1, by unlawfully appointing presidential electors from the State of Georgia, in willful and intentional violation of the terms of the oath of said persons as prescribed by law, with intent that said persons engage in said conduct." Each count sufficiently alleges the essential elements of the offense and survives a general demurrer.

The Defendant claims that the State is required to allege in the indictment the terms of the oath allegedly violated. Def.'s Mot. at 48. The Defendant fails to recognize that the Defendant is charged not with violation of oath of office, but with s*olicitation* of violation of oath of office, which is an entirely different crime with entirely different elements. There is no support for the Defendant's contention that indictment must allege exactly which portion of the oath the Defendant

solicited legislators to violate. Put differently, there is no authority suggesting that one who solicits another to commit a crime must know exactly how the crime would be committed by that person or what specific provisions of a criminal statute would be violated. By way of example, there are at least four ways to commit aggravated assault in violation of O.C.G.A. § 16-5-21. If a defendant solicited another person to assault someone by paying them $10,000 and stating, "I want you to 'take care' of them, rough them up good, and make sure they are never a problem for me again," it would not be a defense that the defendant did not specify or did not know exactly how the assault would be accomplished. Whether the solicited person accomplished the assault with intent to murder, with a deadly weapon, with an object that resulted in strangulation, or by staging a drive-by shooting—all separate and distinct manners of violating O.C.G.A. § 16-5-21—the defendant would clearly still be guilty of solicitation of aggravated assault. An indictment charging criminal solicitation does not require the level of specificity suggested by the Defendant here.

Moreover, when alleged deficiencies in one count of an indictment are addressed in another count, the indictment may be read "as a whole" to determine whether sufficient information has been pled to withstand a special demurrer. Here, Count 1 of the indictment provides even more detail:

> Members of the enterprise, including several of the Defendants, appeared at hearings in Fulton County, Georgia, before members of the Georgia General Assembly on December 3, 2020, December 10, 2020, and December 30, 2020. At these hearings, members of the enterprise made false statements concerning fraud in the November 3, 2020, presidential election. The 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. Members of the enterprise corruptly solicited Georgia legislators instead to unlawfully appoint their own presidential electors for the purpose of casting electoral votes for Donald Trump.

Indictment at 16. Accordingly, the Defendant's argument that the State must allege "the terms of the oath allegedly violated"[25] is misguided because the Defendant is not charged with violation of oath of office, but instead he is charged with solicitation, and the indictment is sufficiently pled to withstand both general and special demurrer.

The Defendant's claim that there is no nexus between legislators' official duties and the unlawful appointment of presidential electors is without merit. The Defendant relies on *State v. Tullis*, which stands for the proposition that theft of a candy bar by a police officer cannot constitute a violation of office because there is no connection between the offense and the public officer's official duties. 213 Ga. App. 581, 582 (1994). The Defendant ignores the cases referenced in *Tullis* that provide examples of when there *is* a sufficient nexus between an offense and a public officer's official duties such that there has been a violation of an oath: *Poole v. State*, 262 Ga. 718 (1993) (police officer pawned a firearm seized during an automobile stop to pay his personal water bill); *Gober v. State*, 203 Ga. App. 5 (1992) (state trooper raped a motorist whom he arrested for DUI); *Freeman v. State*, 184 Ga. App. 678 (1987) (sheriff appropriated county funds for his own use); *Chastain v. State*, 177 Ga. App. 236 (1985) (tax commissioner appropriated public funds for his own use); *State v. Greene*, 171 Ga. App. 329 (1984) (court clerk did not collect and remit payments made to the court); *Nave v. State*, 171 Ga. App. 165 (1984) (district attorney charged with bribery).

Like here, in each of those cases, there was some connection between the defendant's office and the conduct that resulted in their conviction under O.C.G.A. § 16-10-1. In each of them, the defendant used his or her official position to further the commission of crimes in violation of their oaths of office. Here, the Defendant and his co-conspirators solicited members of the Georgia

[25] It should be noted that no portion of the oath was ever violated, as it relates to these counts, because neither chamber of the Georgia General Assembly agreed to go along with the Defendant's criminal scheme.

General Assembly to *use their position as legislators* to unlawfully "appoint" presidential electors from Georgia, invalidate the results of a lawful election after the fact, and divest every Georgian of their constitutional right to vote and have their voted counted. *See* GA. CONST. art. II, § I, para. I ("Every person who is a citizen of the United States and a resident of Georgia as defined by law, who is at least 18 years of age and not disenfranchised by this article, and who meets minimum residency requirements as provided by law shall be entitled to vote at any election by the people."). It is nonsensical to say that there is no connection between a legislator's official duties and an attempt to use purported legislative power to overturn a lawful election. Indeed, the Defendants solicited the legislators precisely because they believed the legislators could use the imprimatur of their office to further the Defendants' criminal scheme.

For these reasons, the Defendant's demurrer to Count 23 should be denied.

X. Counts 41 is sufficiently alleged to survive demurrer.

The Defendant contends that Counts 41 should be demurred because it "fails to allege any facts establishing that Cheeley's alleged perjurious statements were material." Def.'s Mot. at 50. This is incorrect. The indictment specifically alleges that the false statements made before the Fulton County Special Purpose Grand Jury were "material to the accused's own involvement in the December 14, 2020, meeting of Trump presidential elector nominees in Fulton County, Georgia, and to the accused's communications with others involved in said meeting, the issues in question." Indictment at 97. The indictment is sufficiently alleged to survive demurrer, and it is for the jury to determine whether the Defendant's false statements could have influenced any decisions of the Special Purpose Grand Jury in its investigation or in its final report.

XI. The Defendant's remaining arguments are either unsupported, not sufficiently particularized, or not yet ripe.

The final section of the Defendant's motion is a jumble of arguments piled together seemingly at random, with no meaningful application of law to facts. The Defendant invokes the rule of lenity, meanders through an inventory of various as-applied constitutional challenges, alleges that he faces selective prosecution, and accuses the State of invading the province of the General Assembly. As discussed above, the rule of lenity is a rule of sentencing that has no application prior to trial. The Defendant's constitutional challenges fail to specify exactly which statute or statutes are unconstitutional as applied and in what specific way they are unconstitutional as applied. The Defendant makes sweeping and disjointed claims, without applying the law to the particular facts of this case with specificity, and the State can in no way meaningfully respond.[26]

Moreover, as the Court has previously held and the State has previously argued, the Defendant's various as-applied constitutional challenges to the indictment are not yet ripe because a factual record has not been sufficiently developed. "Because [an as-applied constitutional] challenge asserts that a statute cannot be constitutionally applied in particular circumstances, it necessarily requires the development of a factual record for the court to consider." *Harris v. Mexican Specialty Foods, Inc.*, 564 F.3d 1301, 1308 (11th Cir. 2009) (citing *Siegel v. LePore*, 234 F.3d 1163, 1171 (11th Cir. 2000)). As this Court has already held, "Georgia precedent bars the consideration of an as-applied challenge here where the factual record, to the extent any yet exists, is incomplete and vigorously disputed. There have been no formal evidentiary hearings tested by

[26] It is notable that the Defendant suggests that the indictment should be dismissed because "no other person in Georgia, especially an attorney advocating for his client, has ever been charged with the crimes alleged here on the grounds alleged in the Indictment." Def.'s Mot. at 53. Indeed, there is little precedent for such a prosecution because, until the present case, no enterprise has ever conspired to unlawfully overturn the results of a presidential election in Georgia.

cross-examination, and nothing is stipulated." Order on Def.'s Mots. to Dism. at 6, Oct. 18, 2023. "Thus, the caselaw and the circumstances of this case as it currently stands require a denial of the Defendants' request to consider an as-applied [constitutional] challenge." *Id.*

The Defendant's remaining arguments, which also fail to apply the law to the particular facts of this case with specificity, are without support. The Defendant argues that the indictment should be dismissed because "if, by mistake or otherwise, [the General Assembly] has failed to provide for the punishment of a crime, it must go unpunished." Def.'s Mot. at 53. The indictment charges the Defendant and his co-conspirators with 41 violations of Georgia's criminal code. Each of the 41 criminal violations is listed on the first four pages of the indictment with citations to the relevant code sections provided by the General Assembly and signed into law by the governor. If the Defendant believes his conduct does not violate these criminal statutes, he will have the opportunity to present evidence and argument to a jury of his peers. He provides the Court with no authority to dismiss the indictment against him prior to trial because there is no such authority.

For the reasons set forth above, the Defendants motion should be denied.

Respectfully submitted this 17th day of November 2023,

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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.	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this STATE'S RESPONSE TO DEFENDANT ROBERT DAVID CHEELEY'S JOINT GENERAL AND SPECIAL DEMURRER TO, PLEA IN BAR TO, AND MOTION TO QUASH THE INDICTMENT 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 November 2023,

FANI T. WILLIS
District Attorney
Atlanta Judicial Circuit

/s/ John W. "Will" Wooten

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