

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA,

v.

KENNETH CHESEBRO *ET AL.*,

DEFENDANTS.

INDICTMENT No. 23SC188947

JUDGE MCAFEE

**PLEA IN BAR AS TO COUNT 15**<sup>1</sup>

COMES NOW, Kenneth John Chesebro, through undersigned counsel, and hereby petitions this Court to invalidate Mr. Chesebro's plea to Count 15.<sup>2</sup> This request is predicated on the Court's Order entered on September 12, 2024, which found Count 15 invalid.<sup>3</sup>

**Statement of Facts**

On August 14, 2023, Mr. Chesebro was indicted in the Superior Court of Fulton

---

<sup>1</sup> A plea in bar is a challenge to the validity of an indictment. See JOEL P. BISHOP, COMMENTARIES ON THE LAW OF CRIMINAL PROCEDURE § 420 (1866) (collecting common law sources and explaining that "[through] a plea in bar the defendant shows, by matter extrinsic of the record, that the indictment is not maintainable"). Count 15 of the Indictment in the case at bar is not a viable crime as alleged.

<sup>2</sup> Generally speaking, this Court continues to retain jurisdiction over Mr. Chesebro's case, as courts retain jurisdiction over defendants that are on active probation, pursuant to O.C.G.A. §§ 17-10-1, *et seq.*, 42-8-34(g), & 42-8-37.

<sup>3</sup> Article I, Section 17 of the 1861 Georgia Constitution provided that legislative acts in violation of the fundamental law are void, and the judiciary shall so declare them. See *also* GA. CONST. art. I, § II, ¶ V (1983) ("Legislative acts in violation of this Constitution or the Constitution of the United States are void, and the judiciary shall so declare them."). In applying this principle, our State's highest court has explained that if a law violates the constitution, then a court is bound to declare it void, and "has no discretion in the matter." *Aycock v. Martin*, 37 Ga. 124, 127 (1867). The Georgia Supreme Court further emphasized that "[a]n unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed." *Herrington v. State*, 103 Ga. 318, 318 (1898) (quoting *Norton v. Shelby County*, 118 U.S. 425, 442 (1886)).

County, Georgia, on seven felony counts (Indictment No. 23SC188947, Counts 1, 9, 11, 13, 15, 17 & 19).

On October 20, 2023, the District Attorney offered to dismiss six of the seven counts in exchange for Mr. Chesebro's guilty plea to Count 15, which would be entered under the First Offender Act, O.C.G.A. § 42-8-60. Mr. Chesebro agreed to this resolution, and his guilty plea was accepted and entered by the Court, to Count 15 only.<sup>4</sup>

### **ARGUMENT & CITATION OF AUTHORITY**

In Georgia, a defendant cannot plead guilty to a charge that does not constitute a crime. "By pleading guilty, [defendant] waived all defenses **except** that the indictment failed to charge him with a crime." *Wright v. Hall*, 281 Ga. 318, 319 (2006) (emphasis added). "In this regard, if a defendant can admit all the allegations contained in the indictment and still not be guilty of a crime, then the indictment has failed to sufficiently allege that the defendant committed a crime and the resulting plea is void." *Kemp v. Simpson*, 278 Ga. 439, 439–40 (2004); *see also Hilliard v. State*, 87 Ga. App. 769, 772 (1953) (stating that if "the defendant can admit every allegation in an indictment or accusation, and not be guilty of any act transgressing the laws of this State, [then] his motion in arrest of judgment and sentence should be sustained").

Although this motion is titled a *Plea in Bar*, another vehicle for relief is a *Motion in Arrest of Judgment*.<sup>5</sup> This vehicle is another mechanism to file a post-conviction challenge to the validity of the indictment. *Wood v. State*, 48 Ga. 192, 275, 303 (1871); *see also*

---

<sup>4</sup> A motion to dismiss Count 15 under the Supremacy Clause was previously filed on behalf of Mr. Chesebro, on September 5, 2023.

<sup>5</sup> However, O.C.G.A. § 17-9-61(b) states: "A motion in arrest of judgment must be made during the term at which the judgment was obtained."

*Johnson v. State*, 335 Ga. App. 886, 887, 889 (2016). A plea in bar is a challenge to the validity of the indictment. *Davis v. State*, 307 Ga. 784, 786–88 (2020). This mechanism can be utilized post-conviction. *Pierce v. State*, 294 Ga. 842, 843–44 (2014).<sup>6</sup>

Count 15 was a conspiracy count charged under O.C.G.A. § 16-4-8. The conspiracy was predicated on O.C.G.A. § 16-10-20.1(b)(1), which in relevant part purported to make it “unlawful for any person to . . . “[k]nowingly file, enter, or record any document in a public record or court of . . . the United States knowing or having reason to know that such document is false or contains a materially false, fictitious, or fraudulent statement or representation . . . .” Count 15 alleged that Mr. Chesebro was one of ten co-conspirators connected to the filing of a certificate of electoral votes with the Chief Judge of the U.S. District Court for the Northern District of Georgia.

On September 12, 2024, this Court held that Count 15, being predicated on O.C.G.A. § 16-10-20.1(b)(1), is unconstitutional as applied to the facts alleged in the indictment. The reason being that federal law “preempts the State’s ability to prosecute perjury and false filings in a federal district court,” thereby requiring that Count 15 be quashed. See Sept. 12, 2024 Order at 2. It is simply “beyond the jurisdiction of this State” to punish anyone for “filing certain documents” in a federal court, as a contrary holding “would enable a state to constrict the scope of materials assessed by a federal court and impair the administration of justice in that tribunal.” *Id.* at 20 (citing *In re Loney*, 134 U.S. 372, 375 (1890)).

---

<sup>6</sup> Regardless of the vehicle used in seeking relief, it should be the substance of the argument that matters, not the nomenclature. See *State v. Meadows*, 372 Ga. App. 748, 753 (2024) (“where the demurrer has been sustained, albeit for the wrong reason, the trial court will be affirmed if right for any reason”) (citation omitted).

Beyond the requirement of Georgia law that Mr. Chesebro's plea be voided, and Count 15 dismissed forthwith, a failure to grant the requested relief would violate the Due Process Clause of the Fourteenth Amendment. See, e.g., *Nazario v. State*, 293 Ga. 480, 487 (2013) (observing that to permit a defendant "to serve a sentence for a criminal conviction that has been identified as illegal and void would not comport with fundamental fairness and due process of law"); see also *Ex parte Siebold*, 100 U.S. 371, 376–77 (1879) ("An unconstitutional law is void, and is as no law. An offence created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void[.]"); *Adams v. Murphy*, 653 F.2d 224, 225 (5th Cir. 1981) ("Adams must go free. Florida has told us that he went to prison for an act that is not and has never been a crime under Florida law. . . . Nowhere in this country can any man be condemned for a nonexistent crime.").

WHEREFORE, Mr. Chesebro respectfully requests that this Court grant the requested relief as it pertains to his plea on Count 15.

Respectfully submitted, this 3<sup>rd</sup> day of December, 2024.

/s/ Manubir S. Arora  
Manubir S. Arora  
Georgia Bar No. 061641  
Attorney for Mr. Chesebro

Arora Law, LLC  
75 W. Wieuca Rd. NE  
Atlanta, GA 30342  
Office: (404) 609-4664  
[manny@arora-law.com](mailto:manny@arora-law.com)

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA,

V.

KENNETH CHESEBRO *ET AL.*,

DEFENDANTS.

INDICTMENT No. 23SC188947

JUDGE MCAFEE

**CERTIFICATE OF SERVICE**

I hereby certify that I have, on this 3<sup>rd</sup> day of December, 2024, served the within *Plea in Bar as to Count 15* upon all parties involved in the litigation via the Fulton County e-filing system.

*/s/ Manubir S. Arora*

Manubir S. Arora

Georgia Bar No. 061641

Attorney for Mr. Chesebro