IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA v. RAY SMITH, III, et al., Defendants.	INDICTMENT NO. 23-SC-188947

DEFENDANT RAY SMITH'S DEMURRERS TO THE INDICTMENT

The defendant has a right to an indictment that is perfect in form and substance. *McKay v. State*, 234 Ga. App. 556, 507 S.E.2d 484 (1998). A general demurrer challenges an indictment on the basis that it fails to allege an offense. A special demurrer is the vehicle to challenge an indictment that lacks the requisite specificity.

The defects in this indictment are voluminous.

I. Count One Fails to Sufficiently Allege a Violation of Georgia's RICO Statute.

Count One alleges a conspiracy to participate in an enterprise through a pattern of racketeering activity, a violation of O.C.G.A. § 16-14-4(c)[1]. In an assortment of allegations, the indictment alleges that all nineteen defendants: (1) violated RICO; (2) conspired to violate RICO; and (3) endeavored to violate RICO. There are 161 "Acts" that are either (or both) overt acts to support the conspiracy charge, or racketeering acts, to allege the focus of the "endeavor."

[1] The count alleges that the conspiracy was to violate subsection (b) of Georgia's RICO statute.

Count 1 is subject to Demurrer for the following reasons: 1) it fails to sufficiently allege the existence of an enterprise, an essential element of the offense, 2) Count 1 seeks to punish protected First Amendment activity; 3) Count 1 seeks to punish Ray Smith for legitimate and immunized conduct that occurred in courts and at the legislature in pursuit of a client's cause. For all these reasons, Count 1 is subject to general and special demurrer.

A. The Insufficient Allegation of an Enterprise

Though alleging that there was an overarching "enterprise" that formed the basis for the RICO charge against 19 individuals, the allegations actually link the 19 defendants as an "association in fact" that includes millions of Americans throughout the country who believed (many of whom still believe) that the 2020 election for President of the United States resulted from miscounted ballots, fraudulent ballots, ineligible voters who cast ballots, and a variety of other flaws, all of which prompted state legislators and federal legislators (Senators and House Members) to seek to correct the results. In the Introduction on pages 14-25, the indictment acknowledges that the effort to overturn the election was a nationwide endeavor.

The Georgia RICO statute provides that an "enterprise" can be virtually anything: a person, a group of people, an "entity" of any kind. But the group's members must have joined together for the purpose of attaining a particular goal. They must have agreed to achieve the goal through the commission of racketeering activity (they either agree to do so as conspirators, or they "endeavor" to do so either individually, or in concert with others). And there must be some structure, or some cohesion, that links the members of the enterprise other than the fact that they all have a similar goal.

The "enterprise" element in Georgia RICO shares many of the same features as a federal RICO enterprise.[2] Though the breadth of the definition of an "enterprise" in a RICO case is staggering, as the United States Supreme Court explained in *Boyle v. United States*, 556 U.S. 938 (2009), the enterprise must have some identifiable structure apart from the fact that many people engaged in similar crimes. *See also United States v. Turkette*, 452 U.S. 576 (1981); *Chancey v. State*, 256 Ga. 415, 349 S.E.2d 717 (1986); *Martin v. State*, 189 Ga. App. 483, 376 S.E.2d 888 (1988). Thus, by way of illustration, there are probably thousands of bank robbers in America, but the mere fact that they all rob banks and have the same goal and many of the same methods of operation, does not mean that all American bank robbers constitute one RICO enterprise, despite the fact that they are people who commit the same crime, for the same reason.

The enterprise element in this case is not a trivial, non-essential element. It is an essential element of the offense. Thus, nonchalantly waving away any challenge because "the indictment alleges that everybody was part of an enterprise" without providing any explanation whatsoever about the scope or structure of the enterprise or how the enterprise related to the activities of its constituent members fails to honor the necessity that an indictment must set forth all the essential elements of the crime and the facts that support the allegation. *See Kimbrough v. State*, 300 Ga. 878, 799 S.E.2d 229 (2017) (granting demurrer and dismissing RICO indictment based on failure to adequately allege the elements of the offense).

What is required is not just a similar goal pursued by many people; what must be shown is "(1) There [was] an ongoing organization with some sort of framework, formal

[2] Undeniably, there are some features of a Georgia enterprise that would not pass muster in a federal RICO case.

or informal, for carrying out its objectives; and (2) the various members and associates of the association function[ed] as a continuing unit to achieve a common purpose." *Boyle*, 556 U.S. at 942.

The enterprise in this case was allegedly comprised of the nineteen indicted individuals, as well as another thirty individuals who are not identified by name but are known to the prosecutors. In fact, the definition of the enterprise that the indictment posits is virtually identical to the "American Bank Robbers" hypothesized, above. What the prosecution has essentially identified as the enterprise – apart from the racketeering acts they committed, or endeavored to commit, or conspired to commit – was comprised of millions of people throughout the country who engaged in various activities (some legal, some not; some protected by the First Amendment, some not) to expose the fraud in the election and to overturn the election results. This disparate group included people who decided to look through the information contained in voting machines in Coffee County, Georgia, but also in other states. Others lobbied the legislature in a dozen states to take action. Others decided to nominate an alternate set of electors in numerous states to stand ready in case a court granted relief in one of many pending court cases. All of these people, most of whom did not know each other, most of whom had no idea what any of the others were doing, were engaged in the same activities as people in Michigan, Wisconsin, Arizona, Pennsylvania, Nevada, and New Mexico. Rather than being the "American Bank Robbers" they were the "American Citizens Challenging Election Results." Neither set of Americans amount to an enterprise for RICO purposes regardless of whether both groups of Americans perpetrate crimes and are motivated to do so for similar reasons with similar goals in mind.

The prosecution in this case, in other words, has failed to identify any structure, or even the membership of the enterprise which is at the heart of Count One.

Undeniably, there were hundreds of thousands of citizens in Georgia who believed (and still believe) that a properly conducted election in Georgia would have resulted in a different winner. The same is true with citizens in Arizona, Wisconsin, Pennsylvania, and Michigan. Those are the states that were often referred to as "battleground" states. There were citizens in all fifty states who shared the belief that the election was "stolen." Prompted by that belief (and reciting the preliminary findings of experts), citizens and legislators throughout the country endeavored to remedy the wrong by devising what were believed to be credible and viable legal solutions. In this case, the "crimes" that Ray Smith has allegedly committed (i.e., the racketeering acts) are not properly alleged as crimes at all, a subject discussed in the following sections of these Demurrers.

The millions of people who believed the election was "stolen" or illegally conducted not only voiced their objections, but also devised various ways of solving the inequity, many of which were protected First Amendment activity, as discussed below. Perhaps the solutions which were necessarily hastily crafted over the course of several weeks were doomed to failure, perhaps not. But scores of United States Senators and Members of the House of Representatives voted *not* to certify the election results. Hundreds of legislators in various states challenged the election results and desperately used whatever methods they could devise to forestall what they believed to be a "stolen" election. If all of these efforts were crimes (i.e., based on lies), then our jails and prisons will need to muster most of the stadiums in the country to house the millions of racketeers.

Even if there were many people – perhaps thousands – who committed criminal acts by uttering false allegations in court, in affidavits, in speeches to legislators, or in

efforts to recruit protestors, they were not, by sharing goals, one enterprise. Some may have engaged in violent activities, including the January 6 assault on the Capitol. Some may have threatened local election workers. Some may have proposed legislative solutions that were clearly beyond the power of a legislature to enact.

But one overarching enterprise, they were not.

B. The First Amendment

This Demurrer addresses the impropriety of prosecuting one individual, Ray Smith, III, for his efforts on behalf of a client to advance the client's cause. Though branding him a "racketeer," the indictment does not satisfactorily allege his role in the alleged "enterprise" and does not sufficiently allege that he committed (or conspired to commit or endeavored to commit) any of the racketeering acts in Count 1, or any of the substantive crimes. He filed a lawsuit; he lobbied the legislature; he attended (and provided legal advice to) a meeting of a group of people who were invited to be "alternate" electors in the event a legal challenge to the election was successful. All his conduct occurred in public. His pleadings were filed in Superior Court; his lobbying efforts at the legislature were videotaped; his meeting with alternate electors was recorded by a television station and documented in a certified court reporter transcript and amounted to a three-sentence explanation why alternate electors were needed.[3]

[3] "We're – we're conducting·this as – as Chairman Shafer said, we're conducting·this because the contest of the election in Georgia is ongoing. And so we continue to contest the election of the electors in Georgia. And so we're going to conduct this in accordance with the Constitution of the United States, and we're going to conduct the electorate today similar to what happened in 1960 in Hawaii."

Using RICO to prosecute Ray Smith patently violates his First Amendment right to challenge the legitimacy of the election and his ethical duty to zealously represent his client. The prosecution's condemnation of Ray Smith's lobbying efforts and his candid expression of his beliefs is itself condemnable. He never advocated violence; he never cried "fire" in a crowded theater. If advocacy in court or the legislature is a crime – if it merits being branded a "racketeer" – there are very few people who will have the courage to risk engaging in such advocacy. And the rest of us will cowardly suffer. The First Amendment to the United States Constitution, as well as Art. I, § 1, ¶ V of the Georgia Constitution protects Ray Smith's advocacy. And even advocacy or speech that contains false statements is not necessarily beyond the scope of the Free Speech protections of both Constitutions. *See United States v. Alvarez*, 567 U.S. 709 (2012). Advocacy in the context of political speech is at the pinnacle of protected speech. *State v. Fielden*, 280 Ga. 444 (2006); *State v. Miller*, 260 Ga. 669 (1990); *Broadrick v. Oklahoma*, 413 U.S. 601 (1973); *NAACP v. Button*, 371 U.S. 415 (1963).

C. Immunized Legal Pleadings

In his pleadings – all of which are immunized from civil and criminal liability, regardless of their accuracy viewed in hindsight – Ray Smith recited what he believed were the facts about the election's flaws, including eyewitnesses' accounts who said they witnessed the improper counting of votes by the thousands.[4] In the legislature, he lobbied for legislative action to remedy the injustice (and recited what he had included in his

[4] "The filing of an action or defense or judicial action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery." State Bar of Georgia Rule 3.1, Comment 2.

pleadings in Superior Court), all of which were based on preliminary findings of experts who had documented numerous flaws in the election process and the counting of ballots. Experts testified at these legislative hearings and documented their preliminary findings.

As one commentator – an acquaintance of Ray Smith – wrote,

> Smith was doing exactly what lawyers are called on to do by the State Bar rules that govern Georgia lawyers (Rule 1.1 and 1.3); namely, to provide "competent representation" and to "act with reasonable diligence and promptness in representing a client." [The indictment's allegations} ignor[e] not only this professional rule, but also the warning in Rule 1.2 (b) that a lawyer's representation of a client "does not constitute an endorsement of the client's political, economic, social or moral views or activities." By attacking the lawyers who were representing Trump in court and before state officials, [the indictment] is attacking the very essence of our adversarial legal system and the way it works in ensuring that individuals are able to obtain legal representation.

Spakovsky, Destruction of the Rule of Law, Heritage Foundation, Daily Signal, August 15, 2023.

D. Statements Made at the Legislature in Response to Questions by the Members of the House and the Senate, as well as Engaging in Dialogue With Members, is Protected by the Georgia "Speech and Debate" Clause of the Constitution

The Georgia Constitution includes a version of the federal Speech and Debate Clause that fosters the free exchange of ideas in legislative proceedings. Ga. Const. Art. III, § 4, ¶ 9 is the Georgia analogue to the U.S. Constitution's Speech and Debate Clause. Though couched in terms of a privilege and immunity for the legislators, the protection afforded to the free flow of ideas under the Gold Dome would be pointless if only one person in a conversation was protected by this immunity. Like the proverbial "one hand clapping" analogy, if the uninhibited flow of advocacy in the legislature is the goal of the privilege and immunity enjoyed by the Members of the House and Senate, the protection must protect both participants in a conversation. The transcripts of the legislative

sessions that are the focus of the indictment reveal that the Members were actively debating and eliciting comments from the witnesses who appeared at the Senate and House Committee Hearings, including Ray Smith. These conversations and responses to questions from the legislators are entitled to full privilege and immunity protection, otherwise, the legislators will be stifled in their effort to hear what they need to hear to perform their function. If one hand clapping can be prosecuted, the other hand is rendered useless for any applause.

E. Conclusion

The efforts of United States Senators, United States Congressmen, State Senators and Legislators, State Governors and Election Officials, and millions of American citizens, to correct what was believed to be fraudulent election results, was not one identifiable criminal enterprise. Filing lawsuits, lobbying elected officials, providing legal advice to groups of individuals are not crimes. On the contrary, advocacy for any cause – pro-abortion, anti-abortion; pro "woke" policies, anti-"woke" policies; pro-transgender rights, anti-transgender rights; pro-vaccination, anti-vaccination – such advocacy occupies a heralded position in our country. Condemning the robust expression of opinions – even if such opinions have shaky factual support (or no support) – will result in stifling all expression.

If, as the Fulton prosecutors claim, somebody threatened physical harm to an election worker, that might (or should) be prosecuted as a crime. The same for stealing computers or information from a computer. The same for people who assaulted the Capitol. But these crimes were not perpetrated by a nationwide enterprise of criminals. Perhaps the perpetrator of these crimes shared the same goal as Ray Smith's clients, but

sharing the goal of correcting an injustice, is not the same as being members of criminal enterprise.

As demonstrated in the following sections of this Demurrer, the indictment does not sufficiently allege that Ray Smith committed *any* crime in filing a lawsuit, lobbying the legislature, or providing legal advice to a group of alternate electors. He is not sufficiently alleged to have engaged in *any* act of racketeering, or *any* overt act to accomplish *any* illegal goal of a RICO conspiracy.

The RICO allegation provides inadequate information to sufficiently allege the existence of an overarching criminal "association in fact" enterprise, or an overarching conspiracy (i.e., a criminal agreement to accomplish an unlawful goal). If such an enterprise existed, it is comprised of millions of Americans, including legislators, lawyers, government officials and ordinary citizens.

RICO was not enacted by the legislature to ensnare nearly half the American population in one alleged criminal enterprise based on their political beliefs and their advocacy on behalf of those beliefs.

II. False Statements and False Documents – O.C.G.A. § 16-10-20: Count 1, Acts 25, 104 Counts 4, 13, 19, 25

These Acts and Counts all address false statements that were made to legislators at committee hearings. Lying to a legislator is not a crime pursuant to OCGA § 16-10-20. That statute requires that the false statement must be made to a state or county "agency or department." The legislature is not listed as a "covered" entity. To avoid this problem, the indictment alleges that the defendant(s) lied to the legislature in a matter within the jurisdiction of the GBI and the Secretary of State. The GBI and the SOS are departments

or agencies of the state. But the defendants are not alleged to have lied to either the GBI or the SOS.

To support a conviction under OCGA §16-10-20 using the theory that a defendant who lies to a non-covered entity about matters that are being investigated by another agency, the defendant must know and intend that his false statement will come to the attention of a state or local department or agency with the authority to act on the information. In *Haley v. State*, 289 Ga. 515, 530, 712 S.E.2d 838, 848 (2011)., the defendant used social media to make various false statements "within the jurisdiction of the GBI"; the GBI was investigating the crime that the defendant lied about in the social media posts. Justice Nahmias affirmed the conviction with the observation that the defendant intended the false statements to throw off the GBI in its investigation and thus he was providing the false statements to the GBI, albeit indirectly. This does not require proof that the defendant made the false statement directly to the government agency; but the statute does require the defendant to have made the false statement in some intended relationship to a matter within the state or local agency's jurisdiction, that is, *the defendant must have contemplated that it would come to the attention of an agency with the authority to act on it. Id.*

Though the indictment lists the elements of the offense in the statute, it fails to include the requirement that the defendant intended that the statements to legislators would be heard by the GBI and that his statements were intended to be heard by the GBI and were designed to deceive the GBI. Simply alleging (1) Ray Smith made a false statement to "X"; and (2) the statement related to a matter within the jurisdiction of "Y" (a covered entity), is not sufficient to allege a crime if "X" and "Y" are not the same, unless the statement to "X" was knowingly destined to be heard by "Y."

Imagine a case in which a person is charged with a crime. He tells his wife that he did not commit the crime, he was actually in Anchorage (a lie) when the crime was committed. The crime is being investigated by the GBI, so his statement is within the jurisdiction of the GBI (i.e., the subject matter of the statement to his wife is a matter being investigated by the GBI). Absent an allegation that he intended the false statement he told his wife to be furnished to the GBI, he could not possibly be charged with providing a false statement to the GBI. Therefore, his intent that his wife communicate the false statement to the GBI must be an essential element of the offense. Here, the same with his intent to lie to the legislature. He must have intended that the statement would be heard or communicated to the GBI and SOS. That is an essential element of the offense. It must be alleged in the indictment, or the indictment fails to allege an offense. Otherwise, if Ray Smith lied to his wife about the number of illegal voters whose votes were counted, the prosecutors could allege his statements to his wife are a crime: "Ray Smith lied to his wife about the ineligible voters who voted, which is a matter within the jurisdiction of the GBI." Surely that does not allege a § 16-10-20 offense.

There are other examples in which the statutory language of an offense does not fully capture all the essential elements of an offense; and when an extra element or required fact has been added by the courts, it must be included in the indictment. *See, e.g., D'Auria v. State*, 270 Ga. 499 (1999); *Military Circle Pet Center v. State*, 181 Ga. App. 657 (1987); *State v. Delaby*, 298 Ga. App. 723, 681 S.E.2d 645 (2009); *Thomas v. State*, 366 Ga. App. 738 (2023); *Jackson v. State*, 301 Ga. 137 (2017); *Woods v. State*, 361 Ga. App. 844 (2021); *Henderson v. Hames*, 287 Ga. 534 (2010); *Newsome v. State*, 296 Ga. App. 490 (2009); *States v. Harris*, 292 Ga. App. 211 (2008); *Bilbrey v. State*, 254 Ga. 629 (1985).

An additional reason to grant a demurrer to these Acts and Counts is the immunity that protects a speaker for pleadings and other statements made in a judicial context. The statements made by Ray Smith at the legislature were recitations of what was contained in legal pleadings filed in Fulton County Superior Court. If the pleadings cannot form the basis for either civil or criminal liability, then simply repeating to the legislators what was written in the pleadings provides no basis for criminal liability.

As argued in the previous section, moreover, the Privileges and Immunities Clause of the Georgia Constitution also protects individuals who respond to legislators' inquiries during legislative committee hearings.

Finally, regarding Count 19: there is no allegation that the allegedly false document was "used" anywhere or delivered to any person. For all that is alleged, the document was written and deposited in somebody's desk drawer and never viewed by any person.

For the foregoing reasons, the Court should grant a demurrer to Counts 4, 13, 19, and 25 of the indictment, as well as Acts 23 and 104 in Count 1.

III. Soliciting Legislators to Violate Oath of Office: Count 1, Acts 23, 55, 102, Counts 2, 6, 23

These Acts and Counts allege that Ray Smith and others urged legislators to violate their oath of office by asking the legislators to use the alternate electors (with some variation in the different counts and acts).

The argument here is three-fold: 1) the indictment does not allege what the oath of office was, or what portion of the oath was violated, and is therefore subject to a special demurrer; 2) it is not a violation of the oath of office for a legislator to enact legislation that is unconstitutional, even knowingly; and 3) urging legislators to pass a law, or take

some other action that is inconsistent with the constitution does not equate to urging the legislator to violate the Constitution or to violate the legislators' oath to uphold the Constitution.

A. The Indictment Does Not Allege What The Oath Of Office Was, Or What Portion Of The Oath Was Violated.

In *State v. Haney*, Case No. CR-2000168 (Order Dated Sept. 23, 2020, Glynn County Superior Court),[5] the defendant was charged with violating his oath of office as a police officer. The trial judge granted a special demurrer, thus dismissing the indictment, because the indictment did not allege what portion of the oath was violated (in that case, like this case, what was missing from the allegation in the indictment was any designation of the portion of the U.S. Constitution that was allegedly violated).

The code section that sets forth the oath that every Senator and Representative is required to take is O.C.G.A. § 28-1-4. The statutorily prescribed oath is:

> (a) In addition to any other oath prescribed by law, each Senator and Representative, before taking the seat to which elected, shall take the following oath:
>
> "I do hereby solemnly swear or affirm that I will support the Constitution of this state and of the United States and, on all questions and measures which may come before me, I will so conduct myself, as will, in my judgment, be most conducive to the interests and prosperity of this state."

There is no allegation in the indictment that designates the portion of the oath that Ray Smith was soliciting the legislators to violate. Presumably, the argument will be that Ray Smith was urging the legislators to violate the U.S. Constitution or the State Constitution. But the prosecution must identify the paragraph and clause of either

[5] Attached hereto as Exhibit A.

Constitution that was the target of Ray Smith's solicitation to violate. And the prosecution cannot "expand" the scope of the Oath, either by proof that the oath given to the legislators was broader than the oath required by the statute, or by implying that the oath requires the legislator to abide by the laws of the state generally (i.e., do not violate *any* law).

To prove criminal liability for a Violation of Oath of Public Office under O.C.G.A. § 16–10–1, the State must show "that the defendant violated the terms of the oath actually administered and that those terms were from an oath 'prescribed by law,' that is, one that the 'legislature' required of a public officer 'before entering the duties of [his or her] office.'" *Bradley v. State*, 292 Ga. App. 737, 740 (2019), quoting *Jowers v. State*, 225 Ga. App. 809, 810–813(2) (1997); *Pierson v. State*, 348 Ga. App. 765, 775 (2019). The Court of Appeals has further explained that the phrase "prescribed by law" applies not only to the requirement of the oath itself, but "refers specifically to the *terms* of the oath." *Pierson*, 348 Ga. App. at 777. Moreover, "the terms of [the] oath as prescribed by law" specifically means "the terms required and codified by the Georgia legislature." *Id.*

Pierson and *Bradley* both rely on *Jowers*. In *Jowers*, a deputy sheriff faced a charge of violation of oath of office for allegedly raping a 16-year-old girl who was not in custody but voluntarily in police transit to her home. The jury acquitted the deputy of rape but convicted on violation of the oath. The sheriff testified for the state that the deputy had taken the oath prescribed specifically for sheriff's deputies in O.C.G.A. § 15–16–4 and § 45–3–7. The sheriff further testified that under this oath, the deputy was "sworn to uphold the laws of this state." *Jowers*, 225 Ga. App. at 812.

In reversing the conviction, the Court of Appeals noted that the phrase "uphold the laws of this state" is "not one expressly 'prescribed by law' for the oath a deputy sheriff must take." *Jowers*, 225 Ga. App. 812.

The *Jowers* court's holding indicates that criminal liability for a violation of oath of office can *only* arise from violations of those terms of an oath which the legislature has expressly prescribed by statute. Even if the meaning of such terms could expand to include implications of express terms (as the state argued in *Jowers*), the court upheld the longstanding rule of strict construction.

Assuming OCGA §16–10–1 is capable of two constructions—specifically, that only the violation of those terms of an oath which are expressly prescribed by statute will give rise to the violation of oath by public officer, and that the violation of those terms of an oath which are either expressly or impliedly prescribed by statute will give rise to such violation—the State still cannot prevail. "'[W]hen a criminal statute fairly and reasonably is subject to two constructions, one which would render an act criminal, the other which would not, the statute must be construed strictly against the State and in favor of the accused.'" *Asberry v. State*, 220 Ga. App. 40, 42, 467 S.E.2d 225. *Cf. State v. Tullis*, 213 Ga. App. 581, 445 S.E.2d 282, where this Court rejected the State's contention that the commission of a misdemeanor while on duty constitutes a violation of a police officer's oath of office, because he *implicitly* swore to uphold the laws of the State of Georgia. *Id.*

Either standard (express or implied) limits criminal liability to terms that are *statutorily* prescribed, not any which exceed or enhance statutory terms of any given oath.

B. It is Not a Violation of the Oath of Office for a Legislator to Enact Legislation that Is Unconstitutional, Even Knowingly

To be guilty of soliciting a person to commit a crime, the conduct that the "solicitor" proposes must actually be a crime.

The proposal to the legislators to pass legislation, or to engage in some other conduct that supposedly violates the Constitution (coronate the alternate electors) does

not amount to a violation of the legislators' oath of office, even if engaging in this conduct, or enacting such legislation would violate the state or federal constitution. There are countless examples of legislators enacting legislation that does not survive a constitutional challenge. Would the prosecution contend that each time a legislator voted for a law that was declared unconstitutional the legislator violated his or her oath of office? The prosecutor cannot respond, "If the legislator *knew* the law was unconstitutional, it would violate the legislators' oath of office," because that would mean the legislators who voted to outlaw abortion prior to the decision in *Dobbs* were guilty of a felony. And there are countless examples of legislators who are urging their colleagues to vote for some crazy (i.e., unconstitutional) bill. Are they all soliciting their colleagues to violate their oath of office by voting for some crazy unconstitutional bill? The answer is no. Thus, "soliciting" a legislator to take action – even action that is unconstitutional – is not a crime.

In addition, the Privileges and Immunities Clause of the Georgia Constitution prohibits punishing any legislator for any action – including most certainly enacting legislation – under the Gold Dome. Ga. Const. Art. III, §4, ¶9.

> The claim of an unworthy purpose does not destroy the privilege. Legislators are immune from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence but for the public good. One must not expect uncommon courage even in legislators. The privilege would be of little value if they could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives. . . . . Members of the General Assembly are entitled to immunity against the harrassment of any type of legal action against them in connection with the acts done by them in a strictly official capacity. *Village of North Atlanta v. Cook*, 219 Ga. 316, 319-320 (1963).

If the legislators cannot be prosecuted for enacting legislation, or conducting any other legislative activity, then soliciting them to do so cannot be a crime. Indeed, the Special Purpose Grand Jury ("SPGJ"), empaneled to investigate any and all facts and circumstances relating directly or indirectly to alleged violations of the laws of the State of Georgia, recommended[6] charging certain legislators with the same crimes Ray Smith is now facing based on the same alleged conduct; yet the State did not indict those legislators.

C. Urging Legislators to Pass a Law, or Take Some other Action That is Inconsistent with the Constitution does not Equate to Urging the Legislator to Violate the Constitution or To Violate the Legislators' Oath to Uphold the Constitution

Imagine that a defendant went to the legislature as a lobbyist and advocated that the legislators should pass a law making it a crime for any public library to have a book that mentioned the word "sex." Or advocated that the legislature should pass a law that White Supremacists should not be allowed to possess guns. Surely, the lobbyist could not be prosecuted for soliciting the legislators to pass a law that is unconstitutional (i.e., passing a law that fails to uphold the First Amendment or the Second Amendment of the U.S. Constitution, in violation of the legislators' oath to uphold the Constitution). But that is exactly what the allegation against Ray Smith is: the legislators were being urged to do something that the prosecution alleges is unconstitutional (coronate the alternate electors). How does the state distinguish the examples posed by the hypothetical lobbyist who urges banning books or guns from the allegations in the indictment?

[6] The unredacted Special Purpose Grand Jury report was released on September 8, 2023 pursuant to Judge McBurney's Order in 2022-EX-000024. Georgia Senator William Ligon, former U.S. senators Kelly Loeffler and David Perdue, and current U.S. Senator Lindsey Graham were all recommended for indictment on various charges.

In addition to the flawed premise of these counts, the Court should combine this argument with the argument that the constitution expressly guarantees the right to petition the government to change the law. If the allegations in this indictment are construed to limit the right of citizens to petition the government to alter its policies, or to petition the government to pass certain legislation, the indictment violates the First Amendment.[7] And if the indictment seeks to prosecute the defendants for conduct that is protected by the First Amendment, the prosectors' conduct in bringing the indictment would violate the prosecutors' oath of office to uphold the Constitution of Georgia and the Constitution of the United States and they, too, (according to their logic) would be subject to prosecution for violating *their* oath of office.[8]

Finally, as argued above, prosecuting witnesses who answer questions and engage in conversations with legislators at legislative committee hearings violates the Georgia Constitution protection for speech occurring at the legislature, Art. III, §4, ¶9.

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[7] The First Amendment guarantees the "right of the people...to petition the Government for a redress of grievances." The right to petition "is implicit in '[t]he very idea of government, republican in form.' " *McDonald v. Smith,* 472 U.S. 479, 482, 105 S.Ct. 2787 (1985). "A citizen's right to petition is not limited to goals that are deemed worthy, and the citizen's right to speak freely is not limited to fair comments." *Eaton v. Newport Board of Education,* 975 F.2d 292, 298 (6th Cir.1992). Additionally, "the right of access to courts is an aspect of the First Amendment right to petition the Government for redress of grievances." *Bill Johnson's Restaurants, Inc. v. NLRB,* 461 U.S. 731, 741, 103 S.Ct. 2161, 76 L.Ed.2d 277 (1983).

[8] They may defend on the basis of immunity, but that same argument apparently does not shield legislators who, according to the prosecutors, were being solicited to violate their oath, despite their legislative immunity.

IV. Count 15 – False Document Used in Federal Court

OCGA § 16-10-20.1 was enacted to address the problem of bad people placing liens on officials' property. That is the title of the statute. But if one reads the statute, it actually provides it is a crime to file *any* false record, or document in federal court. That is not what the legislature intended by this statute. But that is what the legislature wrote. Thus, Ray Smith is charged with filing a false document in the U.S. District Court: to wit, an alternate elector certification. The indictment does not identify the specifics of what was filed, or by whom, or whether it was included in the allegations in a pleading, or as an exhibit to a lawsuit. The second paragraph of the count in the indictment alleges that the false document was "mailed to the Chief Judge" (that was Judge Thrash in 2020). But whatever the allegation is, the statute cannot be construed to mean that *any* false document filed in federal court in Fulton County is a state crime (including for example, a lawyer's misleading reliance on precedent in a brief filed in federal court, or a misleading affidavit from a client).

The definition of a "document" in the statute includes various types of documents all of which involve liens, or encumbrances, though the definition also says "includes but is not limited to …" Here is what the statute, §16-10-20.1 says is the definition of "document:"

> [T]he term "document" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form and shall include, but shall not be limited to, liens, encumbrances, documents of title, instruments relating to a security interest in or title to real or personal property, or other records, statements, or representations of fact, law, right, or opinion.

The relevant rules of statutory construction favor the limitation proposed by the defense: (1) the rule of lenity, (2) *ejusdum generis* (where, in a statute, there are general

words following particular and specific words, the general words must be confined to things of the same kind as those specifically mentioned); (3) *noscitur a sociis* (the meaning of words or phrases in a statute may be ascertained from others with which they are associated and from which they cannot be separated without impairing or destroying the evident sense they were designed to convey in the connection used). A proper interpretation of this statute, utilizing the prescribed rules of statutory construction, requires that the "document" must involve some effort to encumber – improperly – another person's interest in property.

The closest analogy is the infamous *Yates* decision in the United States Supreme Court, where the Court held that a "tangible object" does not include *every* tangible object (such as fish) in the obstruction of justice statute. The Court warned that it is not appropriate to be so wedded to the broad statutory language in a criminal statute that one ignores what the law was clearly designed to accomplish. *Yates v. United States*, 574 U.S. 528, 135 S. Ct. 1074 (2015).

This is a great example in which "read the statute, read the statute, read the statute" are *not* the three most important rules of statutory construction. Yet that is the only argument the prosecution can make.

V. Counts 11 and 17 – Forgery of Documents

In these counts, the indictment fails to allege an essential element of the offense of forgery: that the document was used to defraud anybody in particular. The indictment alleges that the document was given to the Archivist of the United States but does not allege that it was provided to the archivist *to defraud* the archivist.

VI. Special Demurrers:

A special demurrer challenges the sufficiency of the form of the indictment by claiming that the charge is imperfect as to form or the accused is entitled to more information. *Kimbrough v. State*, 300 Ga. 878, 880-881 (2017). A defendant is entitled to an indictment perfect in form. The indictment must not only state the essential elements of the offense charged, but must also allege underlying facts with sufficient detail to sufficiently apprise the defendant of what he must be prepared to meet. The purpose of an indictment is to allow a defendant to prepare his defense intelligently. *Id.*

This indictment is deficient, and subject to a special demurrer, in the following ways:

1. In each "Act" and in each Count, the indictment fails to identify all "unindicted co-conspirators" and other unidentified individuals.
2. In each "Act" and in each Count that alleges a defendant solicited a legislator to violate his or her oath of office, the indictment fails to identify:

   (a) the oath that was taken by the legislator and

   (b) portion of the oath that was allegedly violated.

   (c) the specific statement of Ray Smith that amounted to "soliciting a violation of the oath."

3. In Count 1, Act 78, the indictment fails to identify what was the act of "encouragement" (what was said, or done to commit this encouragement offense)?
4. In Count 15, the indictment fails to identify how the document was placed in the federal court record (i.e., A separate filing? Included in a pleading? Attached as an Exhibit to a pleading?)

5. In Count 19, the indictment fails to identify how was the "false document" used? To whom was it delivered?

The following cases establish the propriety of granting special demurrers in this case:

- *State v. Cerajewski,* 347 Ga. App. 454, 820 S.E.2d 67 (2018): The defendant was charged with impeding a court officer, but the indictment provided insufficient information to identify what conduct was the focus of the charge. Merely alleging that the defendant made "threatening communications" is not enough. The special demurrer was properly granted.
- *Everhart v. State*, 337 Ga. App. 348, 786 S.E.2d 866 (2016): The indictment alleged that the defendant committed the offense of cruelty to children in the first degree when he willfully deprived the victim of necessary sustenance … by failing to seek medical attention for said child after noticing injury and illness to the child. But "timely medical care" is not the equivalent of "necessary sustenance" so the indictment was defective and subject to a general demurrer.
- *Jackson v. State*, 301 Ga. 137, 800 S.E.2d 356 (2017): An indictment that states that the defendant's conduct was in violation of a specific statute, but fails to set forth the elements of the offense is subject to demurrer. Simply stating that the defendant's conduct violated a specific identified statute is not sufficient to put the defendant on notice.
- *Kimbrough v. State*, 300 Ga. 878, 799 S.E.2d 229 (2017): The defendants were charged with violating the RICO Act. The indictment alleged the existence of an enterprise and the commission of various racketeering acts. The indictment also alleged that the enterprise was operated through the commission of the

racketeering acts. However, the indictment provided no specifics how the enterprise was run through the commission of the racketeering acts. The defendants filed a special demurrer, which was denied. The Supreme Court reversed. The enterprise was a clinic. The racketeering acts were alleged to be the acquisition of certain drugs in violation of the Controlled Substances Act. But the relationship of the defendants to the enterprise, or the connection between the acts and the enterprise were not even implicitly revealed. As written, the indictment failed to provide enough information to the defendants to prepare their defense intelligently.

- *State v. Delaby*, 298 Ga. App. 723, 681 S.E.2d 645 (2009): The indictment alleged that the defendant committed the offense of influencing a witness by using "intimidation." The Court of Appeals held that a special demurrer was properly granted by the trial court. The term "intimidation," even though it is one of the statutory methods of committing the offense, did not sufficiently apprise the defendant of the facts that the state would prove at trial. "Where the statutory definition of an offense includes generic terms, the indictment must state the species of acts charged; it must descend to particulars."
- *State v. Jones*, 246 Ga. App. 482, 540 S.E.2d 622 (2000): In this case, the defendant was charged with failing to stop his vehicle after receiving a visual signal by a police officer to do so. A "visual signal" is defined as including a hand or an emergency light. O.C.G.A. 40-6-395(a). The accusation did not specify what visual signal the state contended was made in this case. The defendant filed a special demurrer seeking this information and the trial court properly granted the demurrer. Following remand from the Georgia Supreme Court, the Court of

Appeals affirmed this ruling. 251 Ga. App. 192, 553 S.E.2d 631 (2001). *See also Scott v. State*, 207 Ga. App. 533, 428 S.E.2d 359 (1993).

CONCLUSION

For the foregoing reasons, Ray Smith urges the Court to grant these general and special demurrers to the indictment.

(signatures on following page)

Respectfully submitted on September 9, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed this DEFENDANT RAY SMITH'S DEMURRERS TO THE INDICTMENT using the Court's efiling system which will automatically send email notification of such filing to all attorneys and parties of record.

This, the 8th day of September, 2023.

GARLAND, SAMUEL & LOEB, P.C.

/s/ Amanda R. Clark Palmer
AMANDA R. CLARK PALMER
Georgia Bar No. 130608
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EXHIBIT A

IN THE SUPERIOR COURT OF GLYNN COUNTY

STATE OF GEORGIA

STATE OF GEORGIA	)	
	)	
vs.	)	CASE NO. CR-2000168
	)	
DAVID HASSLER, DAVID MATTHEW HANEY, BRIAN SCOTT, and JOHN POWELL,	)	
	)	
Defendants.	)	

ORDER

This case is before the Court on the General and Special Demurrers filed by Defendant David Michael Haney.[1] On February 27, 2020, the grand jury issued its indictment in this case, charging Haney with three counts of violation of oath by public officer (counts 2, 8, and 9) and four counts of perjury (counts 11, 12, 13, and 14). Where these counts fail to allege an offense, Haney argues, they are subject to a general demurrer. Even if they survive a general demurrer, he continues, they are nonetheless subject to a special demurrer.

1. **General Demurrer.**

In Georgia,

> [A] general demurrer challenges the sufficiency of the *substance* of the indictment, whereas a special demurrer challenges the sufficiency of the *form* of the indictment. An indictment shall be deemed sufficiently technical and correct to withstand a general demurrer if it states the offense in the terms and language of this Code or so plainly that the nature of the offense charged may easily be understood by the jury. In other words, if an accused would be guilty of the crime charged if the facts as alleged in the indictment are taken as true, then the indictment is sufficient to withstand a general demurrer; however, if an accused can admit to all of the facts charged in the indictment and still be innocent of a

[1] On August 7, 2020, Defendant David Hassler filed his General and Special Demurrers to the indictment. The pleading is virtually identical to that filed by Haney and ruled upon herein. Based on the same reasoning as set forth herein, Hassler's general demurrer as to the counts charging him with violation of oath by public officer is hereby **OVERRULED**, but his special demurrer as to said counts is hereby **SUSTAINED.**

crime, the indictment is insufficient and is subject to a general demurrer.[2]

To withstand a general demurrer, then, an indictment must:

> (1) recite the language of the statute that sets out all the elements of the offense charged, or (2) allege the facts necessary to establish a violation of a criminal statute. If either of these requisites is met, then the accused cannot admit the allegations of the indictment and yet not be guilty of the crime charged.[3]

A. *Violation of Oath by Public Officer – Counts 2, 8, and 9.*

These counts charge Haney with violation of oath by public officer, alleging that, between November 15, 2020 and November 20, 2020, Haney – a Glynn County Police Department ("GCPD") sergeant with supervisory responsibilities and former sergeant with Glynn-Brunswick Narcotics Enforcement Team ("GBNET") – willfully and intentionally violated the terms of his oath by failing to notify a superior officer or former GCPD Chief John Powell after being notified by Hope Cassada (count 2), GBNET Investigator James Cassada (count 8), and GBNET Investigator John "Dustin" Simpson (count 9) that Investigator Cassada was engaging in an inappropriate relationship with a confidential informant he and other GBNET officers were using to make drug cases.

These counts are subject to a general demurrer, Haney argues, because an officer's failure to immediately report another officer's misconduct to a superior officer is not an obligation existing by virtue of any statute, policy, constitutional amendment, or by the terms of his oath. As such, Haney argues, his alleged failure to report the information provided to him did not violate his oath of office and cannot be the basis for a criminal offense.

Under O.C.G.A. § 16-10-1,

> [a]ny public officer who willfully and intentionally violates the terms of his oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years.

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[2] *Stokes v. State*, 845 S.E.2d 305, 310 (2020) (citing *Smith v. State*, 340 Ga. App. 457, 458-459 (2017)).
[3] *Jackson v. State*, 301 Ga. 137, 141 (2017).

The oath allegedly administered to Haney is as follows:

> I do solemnly swear (or affirm) that I will uphold the constitution of the United States, the Constitution and statutes of the State of Georgia and the Ordinances of the County of Glynn. I will faithfully discharge my duties fairly and impartially as a police officer of Glynn County, so help me God.[4]

For the Court to sustain his demurrer, Haney must be able to admit all the facts alleged in these counts and still not have committed a crime.[5]

If Haney admits the facts alleged in these counts; to wit, that he willfully and intentionally violated his oath by failing to notify a superior officer that he had been informed by Investigator Cassada, Investigator Cassada's wife, and Investigator Simpson that Cassada may be engaging in an inappropriate personal relationship with a confidential informant being used by him and by other GBNET investigators to make drug cases, this Court finds such admission would constitute a crime. That Haney was not Cassada's immediate supervisor or involved in any of his cases does not change the Court's analysis in this regard.

Nor does the fact that the underlying conduct in question – the failure to report information – is not *per se* criminal under Georgia law. Though the majority of cases interpreting O.C.G.A. § 16-10-1 involve underlying criminal conduct by an officer, there is nothing in the language of the statute which restricts its application to only those circumstances where an officer has committed a criminal offense. Had the legislature intended the statute to be so restricted, it could have said so; but it did not. And this Court will not judicially legislate any such requirement. This is especially so where, as here, the underlying conduct alleged – though not criminal on its own – if proven to be true, would constitute, from this Court's perspective,

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[4] Indictment, Exhibit B.

[5] *State v. Greene*, 171 Ga. App. 329, 330 (1984) ("[a]n indictment is insufficient to withstand a demurrer if all of the facts which the indictment charges can be admitted and still the accused is innocent, but the indictment is sufficient, if taking the facts alleged as proven, the guilt of the accused follows as a legal conclusion.").

conduct not only grossly inconsistent with that imposed upon Haney by his oath as a police officer, but also going to the very heart of the obligations he assumed when he took that oath. Haney's general demurrer on this basis is hereby **OVERRULED**.[6]

Haney also contends that, as applied to him, O.C.G.A. § 16-10-1, read in conjunction with his oath, is unconstitutionally void for vagueness.

> The void for vagueness doctrine simply means that a person may not be held responsible for conduct which violates a rule where that person could not have reasonably understood that his contemplated conduct was proscribed.[7]

The due process clauses of our state and federal constitutions require an individual be informed as to what actions a governmental authority prohibits with such clarity that he is not forced to speculate at the meaning of the law.[8]

In *Poole*, a Lithonia police officer appealed his conviction for violating his oath, arguing the statute as applied was unconstitutionally vague.[9] According to the evidence presented, Poole confiscated a handgun during a traffic stop and pawned it weeks later to pay his personal water bill.[10] His oath of office provided as follows:

> I do solemnly swear that I will well and truly demean myself as Police Officer of the City of Lithonia and that I will faithfully enforce the charter and ordinances of said [City] to the best of my ability, without fear or favor, and will in all my actions as Police Officer act as I believe for the best interests of said city, so help me God.[11]

Conceding that infraction of a department rule may not, in all instances, constitute a violation of a police officer's oath, the *Poole* Court nonetheless found Poole's action in pawning the gun violated his oath to "well and truly demean [himself] as Police Officer of the City of

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[6] See *Reynolds v. State*, 334 Ga. App. 496, 500-501 (2015); see also *Brandeburg v. State*, 292 Ga. App. 191, 195 (2008).
[7] *Poole v. State*, 262 Ga. 718, 719 (1993).
[8] *Id.*
[9] *Id.* at 718.
[10] *Id.*
[11] *Id.*

Lithonia," and to act "for the best interests of said city."[12]

> Poole's conduct was so far outside the realm of acceptable police behavior that, despite arguably vague language in the oath, Poole had adequate notice that he could be prosecuted for that conduct. He could not reasonably have been surprised that his conduct violated his sworn duty as a police officer.[13]

Similarly here, though Haney's failure to report what he learned to a superior officer or to Powell may not constitute a crime, the Court finds it sufficiently "far outside the realm of acceptable police behavior" that, despite arguably vague language in the oath,[14] Haney had adequate notice he could be prosecuted therefor.[15]

> Thus, [the Court] need not reach the question whether O.C.G.A. § 16-10-1, read with the oath, might be vague as to some conduct since it is clear it is not vague in light of [Haney's] conduct.[16]

Where the Court finds that O.C.G.A. § 16-10-1 is not unconstitutionally vague as applied to Haney, it hereby **OVERRULES** Haney's general demurrer on this ground.

B. *Perjury – Counts 11, 12, 13, and 14.*

Count 11 of the indictment charges Haney with perjury as follows:

> [On or about March 5, 2019,] ... having been administered a lawful oath in the Superior Court of Glynn County in the State of Georgia, before the Honorable Roger B. Lane, ... in a judicial proceeding in the matter of [*State v. Gary Whittle*], did knowingly and willfully make a false statement material to the issue in question, to wit: said accused stated that he was unsure if [Cassada] ever went into a rehabilitation program.

Counts 12, 13, and 14 recite the same language as Count 11, the only differences being the allegedly false statements made. Counts 12, 13, and 14 charge Haney with falsely stating that he did not recall the content of any specific conversation he had with Investigator Cassada (count

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[12] *Id.* at 719.
[13] *Id.* (citing *Byrd v. City of Atlanta*, 709 F.Supp. 1148, 1153 (N.D. Ga. 1989)).
[14] As was the case in *Poole*; there are, no doubt, numerous instances in which reasonable persons might differ regarding whether certain conduct violates an officer's oath to "faithfully discharge [his] duties fairly and impartially." That the statute, read with the oath, might be unconstitutionally vague in other instances does not give Haney a right to challenge the statute as applied to him. See *Poole*, 262 Ga. 718, n. 3.
[15] See *id.* at 719.
[16] *Id.*

12), Investigator Simpson (count 13), and Hope Cassada (count 14) regarding any allegation that Investigator Cassada may have been having an inappropriate relationship with a confidential informant. Where none of these counts allege the specific question asked, false answer given, or the reason the answer given was false with the required degree of specificity, Haney argues, they are subject to his general demurrer.

Under O.C.G.A. § 16-10-70(a),

> [A] person to whom a lawful oath or affirmation has been administered commits the offense of perjury when, in a judicial proceeding, he knowingly and willfully makes a false statement material to the issue or point in question.

Where the Court finds that these counts sufficiently set forth the essential elements of perjury with such particularity as to fully apprise Haney of the exact nature of the offense and the manner in which it was committed, his general demurrer on this ground is hereby **OVERRULED**.[17]

2. Special Demurrer.

When an accused files a special demurrer, he claims

> not that the charge in an indictment is fatally defective and incapable of supporting a conviction (as would be asserted by a general demurrer), but rather that the charge is imperfect as to form or that [he] is entitled to more information. A defendant who has timely filed a special demurrer is entitled to an indictment perfect in form and substance.[18]

Even so, an indictment need not contain every detail of the crime to withstand a special demurrer.[19] Rather, under O.C.G.A. § 17-7-54(a), it

> shall be deemed sufficiently technical and correct if it states the offense in the terms and language of this Code or so plainly that the nature of the offense charged may easily be understood by the jury.[20]

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[17] See *Clackum v. State*, 55 Ga. 44, 48 (1936).
[18] *State v. Cerajewski*, 347 Ga. App. 454, 455 (2018) (citing *State v. Delaby*, 298 Ga. App. 723, 724 (2009)).
[19] *Kimbrough v. State*, 300 Ga. 878, 881 (2017) (citing *State v. English*, 276 Ga. 343, 346 (2003)).
[20] See *Kimbrough*, 300 Ga. at 881.

Consistent with these statutory directives,

> [courts] have held that an indictment not only must state the essential elements of the offense charged, but it also must allege the underlying facts with enough detail to sufficiently apprise the defendant of what he must be prepared to meet.[21]

When considering whether an indictment withstands a special demurrer, it is useful to recall that a purpose of the indictment is to allow a defendant to intelligently prepare his defense.[22]

A. *Violation of Oath by Public Officer – Counts 2, 8, and 9.*

By its terms, Haney's oath may be violated in a number of ways: failure to (1) uphold the United State constitution; (2) uphold Georgia's constitution; (3) uphold Georgia's state statutes; (4) uphold Glynn County's Ordinances; and/or (5) faithfully discharge his duties fairly and impartially as a police officer of Glynn County. None of the counts charging Haney with violation of oath by public officer identify in which of these ways Haney violated his oath.

Under Georgia law,

> [w]here a crime may be committed in more than one way, the failure to charge the manner in which the crime was committed subjects the indictment or accusation to a proper special demurrer.[23]

Although the Court finds that counts 2, 8, and 9 of the indictment set forth the facts alleged as the basis for the charge set forth therein in such a plain manner as to be easily understood by a jury and by Haney, Haney is entitled to know in which specific manner the State alleges he violated his oath so he can adequately prepare his defense.[24] As to these counts of the indictment, then, Haney's special demurrer is hereby **SUSTAINED**.

B. *Perjury – Counts 11, 12, 13, and 14.*

Where, as set forth above, the Court has found that counts 11, 12, 13 and 14 sufficiently

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[21] *Cerajewski*, 347 Ga. App. at 455-456 (citing *Kimbrough*, 300 Ga. at 881).
[22] *Id.* at 881-882 (citing *English*, 276 Ga. at 346).
[23] *State v. Jones*, 246 Ga. App. 482, 483 (2000) (citing *Haska v. State*, 240 Ga. App. 527 (1999)).
[24] See *Jones*, 246 Ga. App. at 483 (citing *State v. Kenney*, 233 Ga. App. 298 (1998)).

set forth the essential elements of perjury with such particularity as to fully apprise Haney of the offenses charged, Haney's special demurrer on this ground is hereby **OVERRULED**.

It is so **ORDERED**, this 23 day of September, 2020.

ANTHONY L. HARRISON
Judge, Superior Courts
Brunswick Judicial Circuit