IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA v. 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.	CASE NO. 23SC188947

STATE'S RESPONSE TO DEFENDANT POWELL'S SPECIAL DEMURRER

I. INTRODUCTION

Defendant Sidney Powell's Special Demurrer contains a scattershot assortment of arguments, most of which are never fully developed. These arguments are characterized by the assertion of inapplicable federal authority, a disregard of binding Georgia authority and inaccurate characterizations of the indictment.

Powell's Special Demurrer should be overruled in its entirety.

II. ARGUMENT AND CITATION OF AUTHORITY

A. The indictment properly alleges a nexus.

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

First, Powell'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 'over act' was taken in furtherance of a conspiracy to commit a substantive crime.").

Second, even if a connection between a pattern of racketeering activity and an enterprise is an element of a RICO conspiracy violation—and it is not—the indictment in this case satisfies any such requirement. As *Kimbrough* itself acknowledges, there are no specific "magic words" required to allege a connection between an enterprise and a pattern of racketeering activity: "[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 some 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 (emphasis added).

That is not the situation here. The indictment in this case alleges that the defendants knowingly and willfully joined a conspiracy to unlawfully change the outcome of the 2020 presidential election in favor of Trump.[1] In the language of *Kimbrough*, this was the "raison d'étre"[2] 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 designed and intended to further the conspiracy's objective of unlawfully changing the outcome of the election in favor of Trump. The indictment identifies the manner and methods by which the conspirators sought to further the enterprise's goals, setting forth eight categories of conduct. Each category of conduct was intended to either facilitate or achieve unlawfully changing the outcome of the election or to conceal efforts to do so. These actions 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.[3] The indictment lays out in detail by category and specific

[1] Indictment at 14.
[2] "The most important reason or purpose for someone or something's existence." New Oxford American Dictionary (3rd Edition).
[3] Indictment at 15.

act (the later in chronological order) the manner and methods used by the defendants and other members and associates of the enterprise to further its goals and achieve its purposes. *Id.* at 16.

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

Time and again the conspirators made false statements and used false writings in an effort to persuade someone in power to change the outcome of the election in favor of Trump. Theses false statements and writings, and the other acts related to them, all focused on creating a false 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,[4] knowing and willful misrepresentations regarding felons voting illegally, underage people voting, illegally registering to vote, unregistered persons casting votes, persons illegally using post office boxes to cast votes, dead people voting and election workers ordering poll watchers and members of the media to leave a tabulation area,[5] knowing and willful misrepresentations regarding a video taken at the State Farm Arena,[6] and false statements made and false writings regarding the supposed fraudulent counting of certain ballots.[7] Conspirators then corruptly solicited Georgia legislators to unlawfully appoint their own

[4] *Id.* at Act 24.
[5] *Id.* at Act 25.
[6] *Id.* at Act 56.
[7] *Id.*

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." *Id.* 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.[8] 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.[9] Like the false statements 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.[10]

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.[11] 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.

---

[8] *Id.* at Act 113.
[9] *Id.*
[10] *Id.* at Act 112.
[11] *Id.* at 17, and Acts 87, 88, 119, 121.

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 illegally accessing secure voting equipment and voter data in Coffee County, Georgia.[12]

Conspirators created false Electoral College documents and recruited individuals to convene and cast false Electoral College votes at the capitol.[13] 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.[14] 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.[15] 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.

In many respects, this case is reminiscent of *Dorsey v. State,* 279 Ga. 534 (2005). In *Dorsey,* an elected official—the incumbent Sheriff of Dekalb County—was defeated in an election sought to remain in office by murdering his elected successor, so that a special election would be necessary and he would be re-elected Sheriff. *Id.* at 535. As in this case, the indictment set forth categories of activity in which Dorsey engaged in furtherance of his objective. *Id.* at 539. The Supreme Court held that the acts need only be related to each other—which they could be even if

[12] *Id.* at 18 and Acts 144-155.
[13] *Id.* at 17.
[14] *Id.*
[15] *Id.*

they had different objectives—and that one or more of the acts result in the defendant acquiring or maintaining the prohibited control. *Id.* at 540. These included acts in furtherance of the effort to murder the newly-elected Sheriff, such as planning, surveillance, obtaining firearms and discussing alibis. *Id.* at 541. Here the overt acts—including acts of racketeering activity—were intended to help Trump in office and that connection is sufficient for a RICO violation.

If a nexus is required in a conspiracy case, these allegations are more than sufficient to satisfy that requirement.

B. Allegation of an enterprise is not an element of a RICO conspiracy offense, but in any event the indictment sufficiently alleges an enterprise.

A conviction for RICO conspiracy does not require proof that a substantive offense was committed:

> It is elementary that a conspiracy may exist and be punished whether or not the substantive crime ensues, for the conspiracy is a distinct evil, dangerous to the public, and so punishable in itself.

Salinas v. United States, 522 U.S. 52, 65 (1997). Based on *Salinas*, "establishment of an enterprise is not an element of the RICO conspiracy offense." *United States v. Applins,* 637 F.3d 59, 75 (2d Cir. 2011). *Accord, United States v. Rich*, 14 F.4th 489, 492-493 (6th Cir. 2021); *United States v. Harris*, 695 F.3d 1125, 1133 (10th Cir. 2012) ("just as the Government need not prove that a defendant personally committed or agreed to commit the requisite predicate acts to be guilty of § 1962(d) conspiracy, neither must the Government prove that the alleged enterprise actually existed.").

Powell contends, citing *Boyle v. United States,* 556 U.S. 938 (2009), that a RICO enterprise must have at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's

purpose.[16] If the existence of an enterprise is an essential element of a Georgia RICO conspiracy violation—and it is not—the indictment is sufficient and indeed tracks the very language from *Boyle* that Powell invokes:

> The Defendants and other members and associates of the enterprise had connections and relationships with one another and with the enterprise. The 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. The enterprise operated in Fulton County, Georgia, elsewhere in the State of Georgia, in other states, including but not limited to Arizona, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin, and in the District of Columbia. The enterprise operated for a period of time sufficient to permit its members and associates to pursue its objectives.

Indictment, at 15.

Powell also ignores *Boyle*'s emphasis on the breadth of an association-in-fact enterprise:

> 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.

556 U.S. at 948.

Also contrary to Powell's argument, it is well established that the State need not allege or show that each conspirator agreed with all other conspirators, knew his fellow conspirators, or knew all the details of the conspiracy in order to prove a RICO conspiracy. *United States v. Pepe*, 747 F.2d 632, 659-60 (11th Cir. 1984). Instead, the State must only prove that a RICO conspirator had knowledge of the essential nature of the plan. *United States v. Elliott*, 571 F.2d 880, 903-04 (5th Cir. 1978).

[16] Special Demurrer at 5, quoting *Boyle,* 556 U.S. at 946.

Powell also contends that the RICO count fails because there is no allegation that the enterprise was illegal. Here again, Powell ignores the text of this statute and binding case law. O.C.G.A. § 16-14-3(3), containing the definition of "enterprise," specifically provides that an enterprise may be licit or illicit. *Faillace v. Columbus Bank & Trust Co.,* 269 Ga. App. 866, 869 (2004) ("It is worth noting at the outset that an 'enterprise' itself need not be illicit in order for RICO liability to attach the racketeering conduct of an individual employee or associate . . .."). Indeed, our Supreme Court has unanimously held that RICO applies to "a re-election campaign by the holder of public office in which 2 or more similar or interrelated predicate offenses specified in the [RICO] act are committed." *Caldwell v. State,* 253 Ga. 400, 402 (1984).

C. Defendants' assertion that this State must prove that she committed or agreed to commit acts of racketeering activity is incorrect in a RICO conspiracy case.

Powell incorrectly argues that a RICO conspiracy violation requires proof that she commit or agree to commit two acts of racketeering activity and that those acts of racketeering activity amount to, or otherwise constitute a threat of continuing racketeering activity. The short answer to Powell's demurrer is that a pattern of racketeering activity is not an element of a RICO conspiracy violation. Powell's argument that the RICO conspiracy claim requires an allegation that she engaged in a pattern of racketeering activity conflicts with the text of O.C.G.A. § 16-14-4(c). In contrast to the substantive violations set forth in subsections (a) and (b) of O.C.G.A. § 16-14-4, each of which requires a pattern of racketeering activity, subsection (c) contains no reference to racketeering activity or a pattern of racketeering activity. Instead, subsection (c) requires that one or more of the conspirators commit "any overt act to effect the object of the conspiracy." O.C.G.A. § 16-14-4(c)(1). If the General Assembly intended to make a pattern of racketeering activity an element of a conspiracy violation it would simply have incorporated that term into the text of subsection (c), as it did in subsections (a) and (b). But it did not. In subsection (c), instead

of requiring a pattern consisting of at least two acts of racketeering activity from each defendant, the General Assembly required one overt act,[17] which may be committed by any coconspirator,[18] and need not itself be a crime.[19]

In contrast to subsections (a) and (b), where a pattern of racketeering activity is part of the gravamen of the violation, under subsection (c) "a person may be found guilty of a RICO conspiracy 'if they knowingly and willfully join a conspiracy which itself contains a common plan or purpose to commit two or more predicate acts.'" *Cotman v. State*, 342 Ga. 569, 585 (2017) (citation omitted). [20] Or, as the Eleventh Circuit put it, the "touchstone of liability is an agreement to participate in a RICO conspiracy . . .." *United States v. Browne*, 505 F.3d 1229, 1264 (11th Cir. 2007).

As it should, the caselaw reflects the text. Georgia courts have repeatedly held that a defendant need not engage in a pattern of racketeering activity as a prerequisite to RICO

---

[17] The reference in O.C.G.A. § 16-14-4(c)(1) is to "any overt act." Use of the singular "act" establishes that no pattern is required.

[18] *Pasha v. State*, 273 Ga. App. 788, 790 (2005).

[19] Georgia and federal cases are in harmony on this point. *See, McCright v. State*, 176 Ga. App. 486, 487 (1985) ("Of course, the overt act need not be a crime in itself."); *Iannelli v. United States*, 420 U.S. 770, 785 n.17 (1975) ("The overt act requirement in the conspiracy statute can be satisfied much more easily. Indeed, the act can be innocent in nature, provided it furthers the purpose of the conspiracy."); *Braverman v. United States*, 317 U.S. 49, 53 (1942) ("The overt act, without proof of which a charge of conspiracy cannot be submitted to the jury, may be that of only a single one of the conspirators and need not be itself a crime.") (citation omitted); *Pierce v. United States*, 252 U.S. 239, 243-44 (1920) ("[Y]et the overt act need not be in and of itself a criminal act; still less need it constitute the very crime that is the object of the conspiracy.") (citation omitted).

[20] Georgia courts have consistently used this formulation in RICO conspiracy cases. *See, e.g., McArthur v. Beech Haven Baptist Church of Athens,* 368 Ga. App. 525, 532 (2023); *Z-Space, Inc. v. Dantanna's CNN Center, LLC,* 349 Ga. App. 248, 253 (2019); *Wylie v. Denton,* 323 Ga. App. 161, 165 (2013). Federal courts have also used this formulation in analyzing Georgia RICO conspiracy cases, *see Rosen v. Protective Life Ins. Co.,* 817 F.Supp.2d 1357, 1382 (N.D. Ga. 2011), and federal RICO conspiracy cases. *Southern Intermodal Logistics v. D.J. Powers Co.,* 10 F.Supp.2d 1337, 1361 (S.D. Ga. 1998) (analyzing federal RICO and citing *Salinas v. United States,* 522 U.S. 52 (1997)).

conspiracy liability. For example, *Faillace v. Columbus Bank & Trust Co.,* 269 Ga. App. 866 (2004), rejected the contention of the defendants in that case that "each of them must have committed at least two predicate acts in order to have the requisite intent for RICO conspiracy." *Id.* at 870. In reaching that holding, *Faillace* quoted the United States Supreme Court's ruling in *Salinas v. United States,* 522 U.S. 52, 65 (1997):

> The interplay between [federal RICO enterprise liability] and [federal RICO conspiracy liability] does not permit us to excuse from the reach of the conspiracy provision an actor who does not himself commit or agree to commit the two or more predicate acts requisite to the underlying offense.

269 Ga. App. at 870 (brackets added by *Faillace*).[21]

Faillace's adoption of *Salinas* is instructive. In *Salinas* the petitioner challenged his federal RICO conspiracy conviction because the jury was not instructed that it had to find he committed or agreed personally to commit two predicate acts. 522 U.S. at 63. In discussing general principles of conspiracy law, the Court noted that "[i]t is elementary that a conspiracy may exist and be punished whether or not the substantive crime ensues, for the conspiracy is a distinct evil, dangerous to the public, and so punishable in itself." *Id.* at 65.

Salinas also relied on another foundational principle of conspiracy law:

> A conspiracy may exist even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense. The partners in the criminal plan must agree to pursue the same criminal objective and may divide up the work, yet each is responsible for the acts of each other. If conspirators have a plan which calls for some conspirators to perpetrate the crime and others to provide support, the supporters are as guilty as the perpetrators.

522 U.S. at 63-64 (citations omitted). *Salinas* then concluded that the proposition that each conspirator must himself commit or agree to commit two or more predicate acts "cannot be sustained as a definition of the conspiracy offense, for it is contrary to the principles we have

[21] Powell does not cite *Faillace* or *Salinas*.

discussed." *Id*. at 66.[22] Requiring the State to prove a pattern of racketeering activity in a conspiracy case would subsume RICO's conspiracy provision into its substantive provisions. In an analysis equally applicable to Georgia RICO, federal courts have recognized that this would be inappropriate:

> If the government were required to identify, in indictments charging violation only of section 1962(d), specific predicate acts in which the defendant was involved, then a 1962(d) charge would have all of the elements necessary for a substantive RICO charge. Section 1962(d) would thus become a nullity, as it would criminalize no conduct not already covered by sections 1962(a) through (c). Such a result, quite obviously, would violate the statutory scheme in which conspiracy to engage in the conduct described in sections 1962(a) through (c) is itself a separate crime."

United States v. Glecier, 923 F.2d 496, 501 (7th Cir. 1991).

Georgia decisions subsequent to *Faillace* confirm that a defendant's personal commission of two or more acts of racketeering activity is not an element of a Georgia RICO conspiracy violation:

> Furthermore, while Pasha argues that he was not adequately charged with the predicate offenses, he misapprehends what is central to conspiracy, namely, that each actor in a conspiracy is responsible for the overt actions undertaken by all the other co-conspirators in furtherance of the conspiracy. . . .Thus, Pasha's argument is unavailing, since *there is no requirement in a conspiracy case that the State prove that Pasha personally committed the underlying predicate offenses*.

Pasha, 273 Ga. App. at 790 (citation omitted; emphasis added).[23] As *Pasha* holds—and subsequent cases confirm—a Georgia RICO conspiracy defendant's liability may and often will

[22] Despite *Salinas*, defendants in federal RICO cases still sometimes argue, as Powell does here, that they cannot be convicted of a RICO conspiracy charge if the government does not introduce evidence sufficient to support a substantive RICO offense. This argument should receive the same short shrift here as it has been given in the federal courts. *See*, *e.g.*, *United States v. Fowler*, 535 F.3d 408, 420-21 (6th Cir. 2008) ("This argument misstates the law because the elements of the two offenses are plainly different. Unlike a substantive RICO charge, a RICO conspiracy charge does not require proof that the defendant committed any predicate acts.").

[23] Powell does not cite *Pasha* or *Whaley*.

rest upon the acts of other conspirators. *Whaley,* 343 Ga. App. at 704 (any act by any conspirator is the act of every conspirator and they are all responsible for that act); *Overton v. State,* 295 Ga. App. 223, 230 (2008) ("The evidence was also sufficient for a reasonable trier of fact to have found Kendric Dudley guilty beyond a reasonable doubt of the RICO violation, as it showed Dudley was involved in planning the murders of Arroyo and Singh and that he participated in the groups' other crimes alleged in the RICO indictment."), *id.* at 230-31 ("The evidence showed that Overton was present and was involved in the planning of the murders of Arroyo and Singh.").[24] In reaching this conclusion, both *Pasha* and *Whaley* followed general principles of Georgia conspiracy law that:

> If two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written, or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incident to and growing out of the original purpose, so long as they are a natural and probable consequence of the conspiracy.

Whaley, 343 Ga. App. at 704, quoting *Hicks v. State,* 295 Ga. 268, 272 (2014) (omitting citations, punctuation and emphasis from *Hicks*). *See Salinas*, 522 U.S. at 63-64 (once persons become partners in a criminal plan "each is responsible for the acts of each other.").

A pattern of racketeering activity is not an essential element of a RICO conspiracy case: the State is required only to prove commission of one overt act, which can be an act by any defendant. The indictment alleges 161 overt acts. Under no version of Powell's argument is the State left having failed properly to allege at least one overt act by a conspirator.

[24] Powell does not cite *Pasha, Whaley* or *Overton*.

D. Continuity is not a requirement of any Georgia RICO violation.

As set forth above, a pattern of racketeering activity is not an element of a Georgia RICO conspiracy violation. But even if it was, Powell's general demurrer fails because continuity is not a requirement for a pattern of racketeering activity under *any* provision of Georgia RICO.

1. 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 . . .."[25] 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 . . .."[26] 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 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.[27] Consequently, under Georgia RICO, proof of two related predicate acts satisfies the pattern element.

---

[25] 18 U.S.C. § 1961(5) (emphasis added).

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

[27] 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

To the extent that Powell 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, she is wrong. Federal RICO was enacted in 1970.[28] Georgia RICO was enacted in 1980,[29] 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 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.[30] Second, the General Assembly did not adopt the federal language, it changed it in a material way. And third,

---

word 'means' implies that the legislature intended the definition to be complete and self-contained.").

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

[29] Ga. L. 1980, p. 405, § 1.

[30] 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.").

"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.[31]

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),[32] subject to the coverage of our RICO statute two crimes, 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).[33]

Any suggestion that there is uncertainty about whether the *Dover* court considered a continuity or length-of-time requirement for proof of a RICO pattern, ignores the uninterrupted chain of cases subsequent to *Dover* confirming that there is no continuity requirement under Georgia RICO. For example, 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

---

[31] 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.

[32] 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).

[33] 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.

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.").[34] Additional decisions further confirmed that no more than two acts of racketeering activity are required to establish a RICO pattern.[35] And if 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[36] and federal district courts

---

[34] 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.

[35] *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.").

[36] *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*).

in Georgia have repeatedly recognized that Georgia RICO does not require allegations of proof of continuity.[37] No one other than Powell claims any doubt about the answer to this question.[38]

2. 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 Powell 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.[39] 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

[37] *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). Given that Powell cites federal decisions from the First, Second, Sixth, Seventh and Eleventh circuits, as well as a blog and a case from the Southern District of Florida, it is impossible to believe that he somehow missed all of these decisions construing Georgia RICO contrary to his position.

[38] Any argument that a single scheme with a discreet goal cannot establish continuity fails for three reasons. First, as noted above, Georgia RICO conspiracy violation does not require proof of a pattern of racketeering activity. Second, continuity is not a requirement of a pattern under Georgia RICO. Third, even if a pattern was required, it can be satisfied by a single scheme, as here again the language of Georgia RICO differs from that of the federal statute. *Mbigi v. Wells Fargo Home Mortg.*, 336 Ga. App. 316, 323 (2016). True to form, Powell fails to cite *Mbigi*.

[39] *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). Powell failed to cite any of these cases.

> specifically stated what the term *means*, rejecting the use of the word *requires* as 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.[40]

[40] 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.

E. The federal operation or management test does not apply to Georgia RICO.

Powell invokes *Reves v. Ernst & Young,* 507 U.S. 170 (1993) to argue that a RICO defendant must operate or manage the enterprise. She is wrong for three reasons. First, Powell ignores the fact that this is a conspiracy case and federal courts have concluded that the *Reves* test does not apply to a federal RICO conspiracy case. *United States v. Starrett,* 55 F.3d 1525, 1547-1548 (11th Cir. 1995).[41]

Second, the text of the federal provision that resulted in the *Reves* test, 18 U.S.C. § 1962(c), is materially different from its Georgia counterpart, O.C.G.A. § 16-14-4(b). Section 1962(c), makes it unlawful for a person employed by or associated with an enterprise "to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern or racketeering activity or collection of unlawful debt." In *Reves,* the United States Supreme Court attached great significance to the fact that Congress chose to use the word "conduct" twice in federal RICO, leading it to conclude that "both [as] a noun and a verb in this subsection 'conduct' requires an element of direction." *Reves,* 507 U.S. at 178. But Georgia RICO is different from

[41] Numerous other federal circuits are in agreement. *See, e.g., Smith v. Berg,* 247 F.3d 532, 536 n.8 (3d Cir. 2001); *Napoli v. United States,* 45 F.3d 680, 683-684 (2d Cir. 1995); *United States v. Quintanilla,* 2 F.3d 1469, 1484-1485 (7th Cir. 1993).

the federal statute. Georgia RICO does not contain the second usage of the word "conduct": it uses "conduct" only as a noun.

In *Faillace v. Columbus Bank & Trust Co.,* 269 Ga. App. 866 (2004), the Court of Appeals rejected defendants' argument that plaintiff had to show that each of them conducted the enterprise through their own individual patterns of racketeering activity. 269 Ga. App. at 869. *Faillace* further held that nothing in O.C.G.A. § 16-14-4(b) suggested "that each participant must hold a directorial or managerial position concerning that activity before criminal liability attaches. *In this respect, the Georgia statute is significantly broader than the federal statute on which it was modeled.*" *Id.* at 869. In reaching this holding *Faillace* specifically distinguished *Reves*' requirement that some part in directing the affairs of the enterprise is required. *Id.*[42]

Courts that have analyzed provisions of other state RICO statutes with the same language as Georgia RICO have concluded that by not using "conduct" as a noun

> "[T]he Legislature wrote the Indiana Act to mean what the *Reves* court said Congress could have written but didn't: a statute that extends liability beyond just those who conduct the racketeering enterprise's affairs to reach those who assist the enterprise below the managerial or supervisory level. By imposing liability not just on a person who "conducts . . .the activities" of a racketeering enterprise but also on a person who "otherwise participates in the activities" of a racketeering enterprise, we think it clear that [the] scope of liability under the Indiana Act is broader than under the Federal Act.
>
> In summary, the Federal Act imposes liability on persons who *conduct or participate in the conduct of* a racketeering enterprise. The Indiana Act goes further to impose liability both on persons who *conduct the activities of* a racketeering enterprise and on those who *otherwise participate in the activities of* a racketeering enterprise. We conclude that the Legislature intended for the Indiana Act to reach persons "below the managerial or supervisory level" as well as those who "exert control or direction over the affairs of a racketeering enterprise,' . . . *i.e.* to reach a racketeering enterprise's in "foot soldiers" as well as its "generals" . . ..

[42] O.C.G.A. § 16-14-4(b) provides that: "It is 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."

Keesling v. Beegle, 880 N.E.2d 1202, 1206 (Ind. 2008) (citations omitted) (emphasis in original). Notably, in reaching its conclusion *Keesling* looked to *Faillace*, as well as the decisions of other state's statutes contain the single use of the word "conduct." *Keesling,* 880 N.E.2d at 1207-08, citing *Faillace* and *State v. Siferd,* 789 N.E.2d 237 (Ohio 2003).

F. Powell's suggestion that overt acts must be crimes is incorrect.

Powell suggests that the overt acts against her are not criminal and therefore ineffective. Powell is wrong for two reasons. First, the indictment charges her with numerous overt acts that are also acts of racketeering activity. *See* Indictment at Acts 146-155.

Second, Powell's argument ignores well-established Georgia and federal law that an overt act need not itself be a crime. *See, McCright v. State*, 176 Ga. App. 486, 487 (1985) ("Of course, the overt act need not be a crime in itself."); *Iannelli v. United States*, 420 U.S. 770, 785 n.17 (1975) ("The overt act requirement in the conspiracy statute can be satisfied much more easily. Indeed, the act can be innocent in nature, provided it furthers the purpose of the conspiracy."); *Braverman v. United States*, 317 U.S. 49, 53 (1942) ("The overt act, without proof of which a charge of conspiracy cannot be submitted to the jury, may be that of only a single one of the conspirators and need not be itself a crime.") (citation omitted); *Pierce v. United States*, 252 U.S. 239, 243-44 (1920) ("[Y]et the overt act need not be in and of itself a criminal act; still less need it constitute the very crime that is the object of the conspiracy.") (citation omitted).

G. Counts 32 through 37 contain sufficient detail to put Powell on notice of what conduct she must be prepared to defend and are not subject to special demurrer.

Powell states that Counts 32 through 37 of the indictment are void for various reasons and are subject to demurrer. She states that the allegations in those counts are factually inaccurate, that a grand jury could not have possibly returned the indictment in one day, and that the counts do not give her enough information to prepare a defense.

The State has previously fully addressed the first two grounds in responses to other pleadings but briefly addresses them here. First, the allegation that Counts 32 to 37 are factually inaccurate is an improper speaking demurrer. A speaking demurrer is one which "attempts to add facts not otherwise apparent on the face of the indictment by means of stipulation. … Such a demurrer presents no question for decision and should never be sustained. Speaking demurrers present no legal authority for quashing an indictment. Speaking demurrers are void." *State v. Givens*, 211 Ga. App. 71, 72 (1993) (internal quotations omitted). Second, the allegation that a grand jury could not have returned an indictment in one day improperly attempts to inquire into the evidence upon which the grand jury returned the indictment and is forbidden by Georgia law. "Where a competent witness is sworn properly and testifies before the grand jury, and where the defendant is thereafter found guilty beyond a reasonable doubt by a trial jury, the sufficiency of the evidence to support the indictment is not open to question." *Young v. State*, 305 Ga. 92, 99 (2019). The Defendant's motion should be denied as to those grounds.

The Defendant also contends that the indictment fails to allege sufficient information to allow her to prepare a defense. This argument must fail. Specifically, the Defendant contends that the indictment "does not allege when Powell signed a contract for Coffee County and where she did so," "does not specify when or how Powell contacted SullivanStrickler or took any other step to request their team travel to Coffee County," "does not allege how, when, or by whom the Coffee County forensic effort on January 7, 2021, was intended to be or was used as part of the 'enterprise' to overturn the 2020 election," and "does not advise how access to the machines was unauthorized for SullivanStricklerLLC [sic] to image the machines, and by what means it was unauthorized." Special Demurrer at 11. This level of factual specificity is not required under Georgia law.

"When determining whether an indictment is sufficient to withstand a special demurrer, the applicable standard is 'not whether the indictment could have been made more definite and certain, but whether it contains the elements of the offense intended to be charged, and sufficiently apprises the defendant of what he must be prepared to meet … .'" *Hairston v. State*, 322 Ga. App. 572, 575 (2013) (quoting *State v. Barnett*, 268 Ga. App. 900, 900-901 (2004). When a defendant is charged with a conspiracy violation, there is "no authority requiring the indictment to set forth the particulars of the overt act. … All that is required is a reference to the overt act alleged by the State." *Bradford v. State*, 283 Ga. App. 75, 78-79 (2006).

Counts 32 through 37 each charge the Defendant and co-conspirators with various conspiracies to commit felony violations of Georgia law. Each count alleges that the Defendant, together with other persons, conspired to commit specific crimes; each count sets forth the essential elements of those crimes; and each count alleges that the Defendant "entered into a contract with SullivanStrickler LLC in Fulton County, Georgia, delivered a payment to SullivanStrickler LLC in Fulton County, Georgia, and caused employees of SullivanStrickler LLC to travel to Fulton County, Georgia, to Coffee County, Georgia, … which were overt acts to effect the object of the conspiracy." Indictment (Count 32). As alleged, each count properly contains the elements of the offenses charged and each sufficiently apprises the Defendant of what she must be prepared to defend at trial. *See Hairston*, 322 Ga. App. at 575. Further, each count properly references that the Defendant committed specific overt acts in Fulton County, Georgia, in furtherance of the conspiracies charged. *See Bradford*, 283 Ga. App. at 79. Georgia law does not require that the State allege in the indictment every detail of the offense it intends to prove at trial.

Accordingly, the Defendant's motion as to Counts 32 through 37 should be denied.

H. Act 159 is not "defective."

Powell's argument that Act 159 is "defective" is incorrect for four reasons. First, as noted above, an overt act need not be an act of racketeering activity or even a crime. Second, an overt act need not be alleged in the same detail as a separate offense. As noted above, for conspiracy crimes, "the indictment [need not] set forth the particulars of the overt act." *State v. Pittman,* 302 Ga. App. 531, 535 (2010) (quoting *Bradford v. State*). In fact, "the government is not required to prove the overt act specified in the indictment." *Nordahl v. State*, 306 Ga. 15, 26 (2019). Only one overt act by one co-conspirator must be proved. *Thomas v. State*, 215 Ga. App. 522, 523 (1994). Consequently, Powell's arguments that Act 159 is not a predicate act, and that it is insufficiently alleged to state an overt act misplaced.

Third, Act 159 contains details sufficient for Powell to defend herself. The date of Powell's testimony is given, the body to whom her testimony was given is identified and the false testimony is quoted. Powell cites no authority—Georgia or federal—suggesting that this is inadequate for an overt act in a conspiracy charge.

Fourth, the fact that Powell lied to a congressional committee about her involvement in the activities in Coffee County is germane to her criminal intent and her role in the conspiracy.[43]

III. CONCLUSION

Powell's Special Demurrer must be overruled and denied in its entirety.

Respectfully submitted this 10th day of October 2023,

FANI T. WILLIS
District Attorney
Atlanta Judicial Circuit

/s/ John E. Floyd

[43] Powell's real argument appears to be that evidence of her false testimony would be unduly prejudicial under O.C.G.A. § 24-4-403. That is an argument for trial, not a special demurrer.

John E. Floyd
Georgia Bar No. 266413
Special Assistant District Attorney
Fulton County District Attorney's Office
136 Pryor Street SW, Third Floor
Atlanta, Georgia 30303
floyd@bmelaw.com

/s/ F. McDonald Wakeford
F. McDonald Wakeford
Georgia Bar No. 414898
Chief Senior Assistant District Attorney
Fulton County District Attorney's Office
136 Pryor Street SW, Third Floor
Atlanta, Georgia 30303
fmcdonald.wakeford@fultoncountyga.gov

/s/ John W. "Will" Wooten
John W. "Will" Wooten
Georgia Bar No. 410684
Assistant District Attorney
Fulton County District Attorney's Office
136 Pryor Street SW, Third Floor
Atlanta, Georgia 30303
will.wooten@fultoncountyga.gov

/s/ Alex Bernick
Alex Bernick
Georgia Bar No. 730234
Assistant District Attorney
Fulton County District Attorney's Office
136 Pryor Street SW, Third Floor
Atlanta, Georgia 30303
Alex.bernick@fultoncountyga.gov

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 POWELL'S SPECIAL DEMURRER upon all counsel who have entered appearances as counsel of record in this matter via the Fulton County e-filing system.

This 10th day of October 2023,

FANI T. WILLIS
District Attorney
Atlanta Judicial Circuit

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

Deputy District Attorney
Fulton County District Attorney's Office
136 Pryor Street SW, 3rd Floor
Atlanta, Georgia 30303
will.wooten@fultoncountyga.gov