

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

THE STATE OF GEORGIA,

v.

JOHN CHARLES EASTMAN, et al.

Case No.: 23SC188947

Judge: Scott McAfee

**DEFENDANT JOHN EASTMAN’S SPECIAL DEMURRER
ON COUNT 1 (RICO)**

John Charles Eastman, through counsel file this Special Demurrer on Count 1 (RICO).

Defendants in Georgia are “entitled to a charging instrument that is perfect in form as well as substance.” *City of Peachtree City v. Shaver*, 276 Ga. 298, 300 (2003). The right to a perfect indictment “serves to satisfy the Sixth Amendment’s due process requirement that the defendant ‘be informed of the nature and cause of the accusation,’ and the Fifth Amendment’s indictment requirement ensuring that a grand jury return an indictment only when it finds probable cause to support all the essential elements of the offense.” *Sneiderman v. State*, 336 Ga. App. 153, 154 (2016) (citation omitted).

Defendants can challenge an indictment by general and special demurrers. A *general* demurrer “challenge[s] the sufficiency of the substance of the indictment.”

Green v. State, 292 Ga. 451, 452 (2013) (cleaned up). By doing so, the defendant argues that he “could admit each and every fact alleged in the indictment and still be innocent of any crime[.]” *Kimbrough v. State*, 300 Ga. 878, 880 (2017). “[T]o withstand a general demurrer, 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 violation of a criminal statute.” *Jackson v. State*, 301 Ga. 137, 141 (2017). If an Indictment “fails to allege all the essential elements of the ... crimes charged ... [it] violates due process, is void, and cannot withstand a general demurrer.” *State v. Mondor*, 306 Ga. 338, 341 (2019) (cleaned up).

A *special* demurrer challenges the charge’s form, contending it is “imperfect ... or that the [defendant] is entitled to more information.” *Kimbrough*, 300 Ga. at 880-81 (cleaned up). “[T]he test for determining the constitutional sufficiency of an indictment when faced with a special demurrer is whether it contains the elements of the offense intended to be charged [to] sufficiently apprise[] the defendant of what he must be prepared to meet[.]” *Sanders v. State*, 313 Ga. 191, 195 (2022) (quotation omitted). “[A]n 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.” *Kimbrough*, 300 Ga. at 881 (internal citations omitted).

Under *either* a general or specific demurrer, “[a]n indictment is to be strictly construed against the state when a demurrer has been filed against it.” *State v. Wright*, 333 Ga. App. 124, 126 (2015). The Court must “strictly” construe the underlying criminal statutes “against criminal liability” and interpret them in a manner that is “most favorable to” the defendant where the statutes are “susceptible to more than one reasonable interpretation[.]” *Jenkins v. State*, 284 Ga. 642, 645 (2008) (cleaned up).

Parroting the language of the statute, the indictment here alleges that Defendant Eastman (as well as the 18 other defendants, including the former President of the United States) “while associated with an enterprise, unlawfully conspired and endeavored to conduct and participate in, directly and indirectly, such enterprise through a pattern of racketeering activity in violation of O.C.G.A. § 16-14-4(b)....” Count 1, p. 13. The indictment claims that the “enterprise” was a “group of individuals associated in fact,” who “had connections and relationships with one another and with the enterprise,” but it does not describe what those connections and relationships were, either among the defendants or “with the enterprise.” The indictment further alleges that “[t]he enterprise constituted an ongoing organization whose members and associates functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise,” but it nowhere describes how the members of the “enterprise” “functioned as a continuing unit.” The indictment

is deficient, in that it provides no information to defendants as to what the enterprise was, or how the numerous disparate and unconnected acts taken by the defendants had a nexus to that supposed enterprise.

I. A RICO Enterprise, Even An “Associated in Fact” Enterprise, Must Have Some Structure; Here, No Structure Is Alleged.

The U.S. Supreme Court has held that, under the parallel federal RICO statute,¹ an “Associated in Fact” enterprise “must have a structure,” which the Court defined as “the way in which parts are arranged or put together to form a whole” and “the interaction or arrangement of parts in a complex entity.” *Boyle v. United States*, 556 U.S. 938, 945 (2009) (cleaned up; citations omitted). The “group of persons” must be “*associated together* for a common purpose of engaging in a course of conduct,” which can be “proved by evidence of an *ongoing organization*, formal or informal, and by evidence that the various associates *function as a continuing unit*.” *Id.* at 944-45 (quoting *United States v. Turkette*, 452 U.S. 576, 583 (1981), emphasis added).

¹ While there may be some differences between the federal and Georgia RICO statutes, the language at issue here is nearly identical in both, and the Georgia courts have interpreted the Georgia RICO statute in line with federal court interpretation of federal RICO. *Kimbrough*, 300 Ga. at 882 n.13 (citing *Williams Gen. Corp. v. Stone*, 279 Ga. 428, 430 (2005) and *Chancey v. State*, 256 Ga. 415, 418 (I), 349 S.E.2d 717 (1986), 799 S.E.2d 229, 233 (2017)). Indeed, the State in this very case has relied on the principal Supreme Court decisions interpreting federal RICO’s definition of “enterprise” in its prior briefing. *See* State’s Response to Powell’s General Demurrer (Sept. 27, 2023) at 6 (citing *Boyle v. United States*, 556 U.S. 938 (2009) and *United States v. Turkette*, 452 U.S. 576 (1981)).

Other than simply asserting the existence of an “enterprise,” the indictment makes no allegation as to whether the asserted “associated in fact” enterprise had any structure, much less a structure of an ongoing organization, or that the supposed associates of the organization – which apparently includes not only the 19 co-defendants and the 30 unindicted co-conspirators, but as much as half of the country’s voting population² – functioned as a *unit*, continuing or otherwise. In other words, there is nothing in the indictment that would apprise defendants as to what evidence they have to meet in their defense to the claim that they were associated with an “enterprise.” Defendants have no idea what the State’s claim is as to the structure, relationships, or continuing *unit* of this supposed enterprise. The special demurrer should be granted.³

² Defining the enterprise in such broad terms that it could essentially encompass millions of citizens affords to a single local district attorney an extraordinary amount of discretion as to which members of the supposed enterprise to indict. Such discretion is unconstitutional. *Cf. City of Chicago v. Morales*, 527 U.S. 41, 61, 64 (holding unconstitutional an anti-loitering ordinance that provided “absolute discretion to police officers”).

³ If “structure” is considered an element of what constitutes an “enterprise”, the lack of any allegation of structure would also subject the indictment to dismissal as a general demurrer. *Mondor*, 306 Ga. at 341. Defendant Eastman adopts Defendant Still’s January 5, 2024 General Demurrer, Part I, and Defendant Smith’s September 11, 2023 General Demurrer on this issue.

II. Predicate Acts Must Have Some Nexus to the Enterprise; Here, None Is Alleged.

The Georgia Supreme Court has held that “[a]n essential element of this [RICO] offense is a connection or nexus between the enterprise and the racketeering activity. *Kimbrough*, 300 Ga. at 882 (citing *Dorsey v. State*, 279 Ga. 534, 540(2)(b), (2005)). The same is true of federal RICO, on which the Georgia RICO is modeled. *United States v. Webb*, 656 F.2d 1039, 1062 (5th Cir. 1981) (“by the use of the word ‘through’ ” in the federal RICO statute, Congress intended “to require a sufficient nexus between the racketeering activities and the affairs of the enterprise”) (cited in *Kimbrough, supra*, at 882).

Although the lack of allegations regarding nexus between the alleged predicated acts and alleged enterprise was briefly raised as part of Defendant Chesebro’s September 7, 2023, and Defendant Powell’s September 13 *general* demurrers, and the contention rejected by the Court in its October 17 order denying the demurrers on the ground that *Kimbrough* was distinguishable, Defendant Eastman urges the Court to reconsider the relevance of *Kimbrough* in the context of his *special* demurrer. In both that case and this, an enterprise was alleged, and numerous acts in supposed furtherance of the enterprise were also alleged. But there were no allegations in that case, and there are none in this case, as to how the acts were

connected to the enterprise. They are simply asserted as acts that further a goal, not acts that have a nexus with an enterprise.

The enterprise in *Kimbrough* was a legal entity, not an “associated in fact” enterprise, as is alleged here, but it cannot be the case that merely by defining an enterprise by a goal shared by millions of people – without any evidence of “structure” or “unit”, see Part I, *supra* – that all actions taken in support of that goal meet the essential nexus requirement for RICO. Such would obliterate the nexus requirement altogether, rather than retain it as an “essential element” of a RICO offense, as *Kimbrough* requires. The special demurrer should be granted.

WHEREFORE, based on the above and foregoing Defendant John Charles Eastman requests this Court to grant his special demurrer as to Court 1 (RICO).

Respectfully submitted

/s/ Wilmer Parker
WILMER PARKER III
Georgia Bar No. 563550

1360 Peachtree St. NE,
Suite 1201
Atlanta, GA 30309
Phone: 404-872-2700
parker@mjplawyers.com

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing DEFENDANT JOHN EASTMAN'S SPECIAL DEMURRER ON COUNT 1 (RICO) by filing the same with the Clerk of Court using the Odyssey eFileGA electronic filing system, which will automatically send email notification of such filing to all parties of record.

This 8th day of January 2024.

/s/ Wilmer Parker
WILMER PARKER III
Georgia Bar No. 563550

1360 Peachtree St. NE,
Suite 1201
Atlanta, GA 30309
Phone: 404-872-2700
parker@mjplawyers.com