IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,	
	INDICTMENT NO.:23SC188947
v.	
RUDOLPH LOUIS GIULIANI,	
DEFENDANT.	

DEFENDANT'S DEMAND FOR INDICTMENT PERFECT IN FORM AND SUBSTANCE, PRELIMINARY GENERAL AND SPECIAL DEMURRERS, AND MOTION TO QUASH

COMES NOW, Defendant, Rudolph Louis Giuliani, (hereinafter, "Defendant"), within ten (10) days of arraignment and files this Demand for an Indictment Perfect in Form and Substance, Preliminary General and Special Demurrers, and Motion to Quash the indictment, and in support of said motions shows this Honorable Court the following:

PREFACE

On August 14, 2023, the state returned a 98-page "Racketeering" indictment, charging 19 individuals with 41 counts of criminal conduct surrounding the unrest over the results of the 2020 presidential election. Of the 98 pages, 51 are devoted to what the state has indiscriminately described as "Acts of Racketeering Activity and Overt Acts in Furtherance of the Conspiracy". Nowhere in the indictment does the state identify, specifically, which of the purported acts of racketeering activity constitute the "predicate acts" to be used against the individual defendants to establish the pattern of racketeering activity necessary to violate the Statute as charged. (O.C.G.A. §16-14-4 (c)).

Part of the difficulty in identifying the specific conduct intended to be used against the individual defendants in this case, and discerning how it applies in establishing the essential

elements of the offenses charged, is that certain of the 161 "Acts" are alleged to be criminal in nature and others are not. Many of the alleged "acts" are statements, or portions of statements taken from phone calls, voice mails or "tweets", in and out of context, while others, again regardless of context, are taken from campaign speeches or press conferences. Nonetheless, how, when, and most importantly, where these overt acts and allegations of racketeering activity occurred is critical to the defense of these charges, because the knowing and intentional agreement to commit such acts in a criminal conspiracy, is essential in establishing one's willingness to join or remain a member of said conspiracy. In other words, it is the knowledge of these acts, and that they are to be committed, that affords a conspirator, or potential conspirator, the chance to decline to join, or to withdraw from, the conspiracy before it results in criminal conduct.[1]

The state's indictment also attempts to combine the essential elements of a conspiracy, generally, with the requisite racketeering activity for a §16-14-4 (c) violation specifically, by combining the potential rudiments for each into a conspiratorial bouillabaisse consisting of purported criminal acts, daily activities, and constitutionally protected speech.

[1] Critically in this regard, it must be noted that an overt act does not have to be criminal, while racketeering activity does. *See,* O.C.G.A. §16-14-3, which defines racketeering activity as: Commit[ing], attempt[ing] to commit, or to solicit, coerce, or intimidate another person to commit any crime … under the laws of this state". Furthermore, the 161 "Acts" indiscriminately listed in the indictment are there for different purposes. The overt acts are necessary to prove the conspiracy, while the Racketeering Activity is necessary to establish the 2 predicate acts and *pattern of criminal activity* for the RICO enterprise. Curiously though, each of the 161 "Acts" alleged, is designated as "an overt act in furtherance of the conspiracy", while 32 of that total are <u>*also*</u> alleged to be Racketeering Activity without identifying for which aspect of the complaint those "Acts" are included. And, among that number, the same purported *criminal conduct* is redundantly charged throughout the "Acts" listed, in clusters of succeeding paragraphs based upon the same criminal act. (See for context, "Acts" 81-84)

In short, because the state has comingled the alleged overt acts and purported racketeering activity without specifying the manner in which they are to be used, it is unclear which "Acts" it intends to prove Defendant engaged in to further the criminal enterprise. This dual purpose alleged for those 32 "Acts" places an undue burden on the Defendant to speculate as to what he must defend at trial. Additionally, this lack of specificity will only result in the jury being confused as to how to receive, and for what purpose to consider, this evidence. The end result being an unnecessary increase in the risk of a non-unanimous verdict.

Moreover, this Fulton County indictment does not limit the conduct charged to events occurring in Fulton County, or even in the state of Georgia. Instead, it includes an array of acts and conduct which allegedly occurred throughout the country[2] and have nothing to do with this purported racketeering conspiracy. In fact, the indictment here seems to be charging a violation of the federal RICO statute, much like the one alleged in the indictment returned in Washington, D.C. In so doing, the state is essentially acknowledging, regardless of the validity of the federal allegations, that the events charged here are not a racketeering enterprise in Georgia at all, but are instead, at best, a predicate act to a purported national scheme with the enterprise itself, if one exists, being in the nation's capital.

In the introduction to this indictment, the state opines that the conduct charged involved, "a conspiracy to ***unlawfully change*** the outcome of the election" by various means. (Emphasis added). In her allegations, the District Attorney fails to include the fact, which was apparently not presented to the grand jury that returned this indictment, that the Trump Campaign filed a

[2] As discussed more fully herein below, the use of alleged criminal conduct occurring in foreign jurisdictions around the country as "racketeering activity" or "predicate acts", in an effort to convict those indicted here of the RICO conspiracy alleged in Count 1, would implicate serious equal protection concerns under the Georgia Constitution.

lawsuit in the Superior Court of Fulton County, challenging the outcome of the Georgia election shortly after the results were announced. Unfortunately, a judge was never assigned to hear the case despite impending deadlines and repeated requests to the Chief Judge to designate one. Because no judge was assigned to hear the case, contrary to the litigation of election results in other states which were decided by their respective state and appellate courts, the plaintiffs in the Fulton County, Georgia suit never had their challenges to the election considered at all. Therefore, the state's needless inclusion of the information regarding the challenge of state election results adjudicated elsewhere is unnecessary, and the evidence of such would be irrelevant to the charges here. More importantly, the challenges and activities in other states are not overt acts establishing these conspiracies, nor are they evidence of criminal conduct which would establish the alleged racketeering conspiracy in this indictment.

In this regard it must be noted that in paragraph 3 of the introduction to the federal indictment returned in Washington, D.C., charging a conspiracy pertaining to the exact same conduct as that charged here, the government pointed out specifically that the conspirators there "had a right, like every American, to speak publicly about the election and even to claim, falsely, that there had been outcome-determinative fraud during the election and that [the incumbent president] had won." As to the term "falsely", obviously utilized in retrospect by the government in drafting the charges there, the right to express those grievances and bring challenges also existed after the election for those who believed, or had reason to believe at the time, that their allegations of impropriety in the election process were true. Conveniently, this point, and more importantly these constitutional protections, escaped the introduction to both indictments returned regarding these same issues.

Nonetheless, in the concluding sentence of paragraph 3 of the D.C. indictment, the government points out that, "[i]ndeed in many cases, the [d]efendant did [legitimately] pursue these methods of contesting the election results, … [although] [their] efforts to change the outcome … were uniformly unsuccessful." The exception to the uniformity alleged by the government in its indictment there, as pointed out herein above however, was that the Plaintiffs to the lawsuit in Fulton County, some of whom are the Defendants in this indictment now, were *denied* the right to "legitimately" pursue the methods of contesting the election results in Georgia, as their complaint was never heard prior to January 6, 2021.

ARGUMENT AND CITATION OF AUTHORITY

Under the 5th Amendment to the U.S. Constitution and the Due Process clause of the Georgia Constitution, (Art. I, Section I, Para. I), every defendant in a criminal case is entitled to a trial under an indictment perfect in form and substance. Kyler v. State, 94 Ga. App. 321, 323 (1956). The purpose of an indictment is to allow a defendant to prepare his defense intelligently and to protect him from double jeopardy. State v. Forthe, 237 Ga.App. 134, 136-137(1999), quoting State v. Eubanks, 239 Ga. 483, 484-485 (1977). Therefore, the true test of the sufficiency of the indictment is whether it contains all of the essential elements of the offense intended to be charged. More importantly, every count and relevant averment of an indictment, including the alleged: (1) "Acts of Racketeering Activity … (2) Overt Acts in Furtherance of the Conspiracy"; and most importantly, (3) the predicate acts necessary to establish the RICO allegations here, must "sufficiently apprise the defendant of what he must be prepared to meet". These constitutionally mandated requirements exist, so that if "any other proceedings are taken against him for a similar offense, … the record [will] show[] with accuracy to what extent he may plead a former acquittal or conviction." Bostic v. State, 173 Ga.App. 494 (1985); See also, Pasha v. State, 273 Ga.App.

788 (2005)(the test of the sufficiency of the indictment is whether the indictment apprises the accused of the charged crime ***and the manner in which he committed it***). (Emphasis added)

When a Motion to Quash or Special Demurrer is timely filed[3], the accused is entitled to an indictment that is "perfect in form and substance" and unambiguous as to the elements of each offense charged, including, specifically, notice as to the time, place and the personal circumstances to each defendant surrounding each allegation. The timely filing of a Motion to Quash, Special or General Demurrer, and/or any other legal challenge to a bill of indictment, mandates that the charging instrument be examined by the Court for any legal defect. See, Johnson v. State, 90 Ga. 441, 442, 16 S.E. 92 (1892); State v. Black, 149 Ga. App. 389, 254 S.E.2d 506 (1979); State v. Stamey, 211 Ga. App. 837, 440 S.E.2d 725 (1994) (overruled on other grounds by, State v. Forthe, 237 Ga. App. 134, 514 S.E.2d 890 (1999)).

Furthermore, by timely filing his preliminary Motion to Quash/Special Demurrer, demanding perfection in the charging instrument here, Defendant not only asserts that the allegations are fatally defective as drafted, and thus incapable of supporting a conviction, he also contends that these imperfections require more information to put him on notice as to what it is he must defend against at trial. See, State v. Eubanks, 239 Ga. 483, 485, 486, 238 S.E.2d 38 (1977); State v. Jones, 246 Ga. App. 482, 540 S.E.2d 622 (2000).

The deficiencies set out in Defendant's motions stem from the fact that the conduct charged in the instant indictment fails to: (1) properly allege the elements of the underlying criminal

[3] Defendant files these preliminary, particularized, challenges to the indictment within 10 days of his arraignment, as required by Georgia Law, based upon deficiencies identified on the face thereof. He currently has no discovery with which to identify additional potential defects. Although a scheduling order is expected from the judge in this case, Defendant has moved the Court in his waiver of arraignment for 30 days from the receipt of complete discovery, to file additional challenges or motions in this case.

offenses, (2) identify specifically the "predicate acts" Defendant himself is accused of engaging in and will be used to prosecute him; (3) give him fair notice as to what he is called upon to defend against in a Fulton County prosecution; and/or (3) adequately allege "the essential facts" constituting the conspiracies and/or racketeering activity charged, so as to protect against double jeopardy. United States v. Schmitz, 634 F.3d 1247 (11th Cir. 2011).

Moreover, while "an indictment is sufficient if it alleges an offense in the words of the statute[,] ... the words used in the indictment [must] 'fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offence.'" United States v. Brandon, 298 F.3d 307, 310 (4th Cir. 2002); United States v. Bobo, 344 F3d 1076 (11th Cir. 2003). When the words of a statute are used to describe the offense generally, however, they must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offense with which he is charged under the general description. (Bobo, at 1083)(Emphasis added); See also, Brandon, supra, (citing Hamling v. United States, 418 U.S. 87, 117-18 (1974)). These pleading requirements are necessary to avoid implicating the accused's rights to be free from double jeopardy, but more importantly to preclude the government from varying the allegations returned by the grand jury. United States v. Mollica, 849 F.2d 723 (2d Cir. 1988).

Simply put, when the counts of an indictment make general reference to the words of the statute, as is the case here in the racketeering and conspiracy counts, it "must also contain a statement of the essential facts constituting the offense charged" against the respective defendants. Id. (citing Fed. R. Crim. P. 7(c)(1)). Because those counts in the instant indictment fail to satisfy these fundamental pleading requirements, the racketeering and conspiracy counts must be

dismissed. United States v. Browne, 505 F.3d 1229 n.31 (11th Cir. 2007); United States v. Blitch, 2008 WL 5255558 (M.D. Georgia).

Here, upon a plain reading of this indictment, it is impossible to know how these Defendants are alleged to have breached their legal authority to challenge the election results in Georgia, and/or exercise their First Amendment right to express their opinions as to the legitimacy of those results, until the evidence is introduced at trial. The problem with this lack of specific notice prior to the commencement of trial is, that "after an indictment has been returned its charges may not be broadened through amendment except by the grand jury itself" regardless of how the evidence introduced at trial could constructively amend those charges. Stirone v. United States, 361 U.S. 212, 215-216 (1960) (citing Ex parte Bain, 121 U.S. 1 (1887)).

Constructive Amendment

A constructive amendment to an indictment occurs "when its terms are . . . altered by the presentation of evidence and jury instructions at trial, which so modify the essential elements of the offense charged, that there is a substantial likelihood the defendants may be convicted of an offense other than that charged in the indictment." Mollica, supra at 729. The danger in proceeding on such an imperfect indictment is that where the "variation between pleading and proof" is so great, the indictment "cannot fairly be read as charging" the conduct for which the accused may eventually be convicted at trial. Consequently, by allowing the state to proceed in such an imprecise manner, it would be "impossible to know that the grand jury would have been willing to indict that charge based upon the [evidence] presented at trial". Stirone, supra at 217.

Therefore, each count of the indictment returned must clearly identify, through statutory language or a factual predicate specific to the respective defendants: (1) how each knowingly and intentionally committed the crimes charged; and (2) with whom they are alleged to have acted in

concert. This type of specificity is necessary to avoid a variance from the indicted allegations at trial. The indictment returned in this prosecution fails to satisfy these requirements.

Equal Protection

Article I, Section I, Paragraph XVIII of the Constitution for the State of Georgia provides that, "[n]o person shall be put in jeopardy of life or liberty more than once for the same offense except when a new trial has been granted after conviction or in case of mistrial." See also O.C.G.A. §16-1-7(a).

Pursuant to Paragraph XVIII, the State of Georgia acknowledges that a citizen who is convicted of violating its RICO statute, may not be separately punished for the violation of acts which served as the predicate or underlying acts in the RICO prosecution. See Martin v. State, 189 Ga. App. 483, 495-96 (1988) cert. denied (1989). Similarly, where the citizen has already been convicted of either a RICO count or the acts which would serve as predicates to a RICO charge, subsequently indicting and/or prosecuting the other violates a defendant's right against double jeopardy. See State v. Bethune, 198 Ga. App. 490, 491(1991). Therefore, it is clear that the State of Georgia will only allow prosecutors "one bite at the apple" in prosecuting alleged racketeering conspiracies, in that they must elect to prosecute the accused for either the RICO violation, or the felonies it alleges underlie the predicate acts for the RICO charge. Martin, 189 Ga. App. at 486.

This rule of construction is not uniform throughout the United States, however. For instance, the State of Florida allows for the prosecution and punishment of both a RICO charge and its predicate offenses individually. See e.g. Carroll v. State, 459 So.2d 368, 370 (Fla. Ct. App. 1984). Similarly, Indiana's appellate courts have found that separate sentences for state RICO and predicate offense convictions did not violate the prohibition against double jeopardy. See Swedarsky v. State, 569 N.E.2d 740 (Ind. App. 1991).

It is important to note then, as to this prosecution, that the State has alleged conduct occurring in other states, "including but not limited to, Arizona, Michigan, Navada, New Mexico, Pennsylvania, [] Wisconsin, and the District of Columbia", which do not afford their accused the same level of jeopardy protection that Georgia does. The distinction is significant because the racketeering allegations in Count 1 of this indictment, rely specifically upon conduct in these foreign jurisdictions to establish the overt acts, racketeering activity and thus, the yet-to-be-identified predicate acts necessary to convict of Count 1 here. As a result, and contrary to Georgia law, in the unlikely event the State of Georgia punishes Defendant on the RICO charges in Count 1, he still stands subject to subsequent punishment in those foreign jurisdictions for the conduct enumerated in the "Acts" contained in this indictment.

By incorporating these foreign criminal offenses (which, if proven, would be crimes in these other states) into a Georgia indictment to establish the RICO violation here, the State has eliminated this defendant's constitutional protection against subjecting him to punishment for the same offenses twice. See Martin at 496. Clearly, the Georgia courts have expressed their disapproval of multiple punishment for both the RICO violations *and* the conduct underlying the predicate offenses necessary for a RICO conviction. Consequently, this Court cannot allow the state to try and convict these defendants of a purported RICO violation here, through the use of criminal conduct which allegedly occurred in a foreign jurisdiction. Allowing the state to do so, in addition to the double jeopardy concerns stated above, would also violate this Defendant's right to equal protection under the Fourteenth Amendment to the United States Constitution and Art. I, Sec. I, Para. II of the Georgia Constitution, when compared to other similarly situated individuals charged with RICO violations in the state of Georgia.

Other Procedural Difficulties

Defendant has made demand upon the State for discovery and investigative materials in this case in compliance with O.C.G.A. §17-16-1, et seq., and Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). In pertinent part, O.C.G.A. §17-16-4(a)(3) provides that:

> [t]he prosecuting attorney shall ... permit the Defendant at a time agreed to by the parties or ordered by the Court to inspect and copy ... papers, documents ... visual tapes, films and recordings ... which are within the possession, custody or control of the State or prosecution and are intended for use ... as evidence in the prosecution's case in chief or rebuttal at the trial.

Similarly, O.C.G.A. §17-16-7 compels the State to provide to Defendant certain items in its possession, custody or control regarding witnesses it intends to use at trial in its case in chief or in rebuttal. O.C.G.A. §17-16-1(1) clarifies the meaning of "possession, custody or control," by defining it as anything "within the custody or control of the prosecuting attorney or any law enforcement agency involved in the investigation of the case being prosecuted."

In this case, it seems that many of the state and federal investigating law enforcement agencies involved are in Arizona, Michigan, Navada, New Mexico, Pennsylvania, Wisconsin, and the District of Columbia, as no less than 50 of the 161[4] "Acts" listed in the indictment occurred in, or involved, calls to those jurisdictions from jurisdictions outside of Georgia, with no discussion of or relevance to the goings on in Georgia whatsoever. As a result, of those foreign agencies' investigative efforts, state and/or federal, they possess the bulk of the information regarding sealed indictments and/or other filed pleadings, non-prosecution agreements, investigative reports and supplemental reports, grand-jury testimony, interviews of witnesses, recordings and/or scientific

[4] It must be noted that there are two Acts listed as "Act 12", but no "Act" 13; two Acts listed as "Act 52" but no "Act 53; and two Acts listed as "Act 123", but no "Act 125". All of these Acts involve foreign jurisdictions.

reports, which has been obtained during the investigation of those "Acts" in those jurisdictions. All such items will need to be reviewed by the defense prior to the trial of this case, especially any items pertaining to any witnesses the State intends to call at trial. In this respect, it is important to note that the Witness List on page 98 of the indictment in this case lists only two witnesses, both being investigators for the Fulton County District Attorney's office, although the state has announced in a recent hearing that it intends to call 150 witnesses at trial.

Furthermore, in light of all of the criminal activity in those jurisdictions alleged in this indictment, if the state and federal law enforcement agencies and/or prosecutor's offices there have elected not to prosecute these enumerated criminal acts, it would be exculpatory to the defense to know why those prosecutions were foregone. More importantly, if those "Acts" were not prosecuted because it was determined that said conduct was not criminal in nature, those decisions would preclude the state from using that conduct in establishing predicate acts here, as it would no longer be "racketeering activity".

In this case, the State cannot guarantee access to files and other evidentiary items in the possession of the non-Georgia state and federal law enforcement agencies investigating the foreign predicate acts. Moreover, this Court would not have the authority to compel the production of these items in any of the aforementioned states, particularly if those investigations are still ongoing and have nothing to do with this Georgia investigation. The inaccessibility of the foreign files, law enforcement officials, and information would consequently render them totally unavailable to Defendant, contrary to Georgia law. See O.C.G.A. §17-16-1, et seq. See also, Touhy v. Ragen, 340 U.S. 462,468 (1951)

In this regard, the inability of the State to act on behalf of – or compel action by – the foreign State agencies to provide the information required by Georgia's discovery provisions will

considerably hamper its obligations there and under Brady v. Maryland, 373 U.S. 83 (1963). Brady obligates the State to turn over information favorable to the Defendant's case, whether in its files or in the files of the law enforcement agencies investigating the offenses alleged. See United States v. Sudikoff, 36 F. Supp.2d 1196, 1200 (C.D. Cal. 1999). The State's obligation is not limited to admissible evidence in the possession of the prosecutor or law enforcement, but "requires disclosure of exculpatory information that is either admissible or is reasonably likely to lead to admissible evidence." Sudikoff, 36 F. Supp.2d at 1200. See also United States v. Lloyd, 992 F.2d 348, 350-51 (D.D.C. 1993)(defining materiality to include information that could "play an important role in uncovering admissible evidence"); United States v. LaRouche Campaign, 695 F. Supp 1295, 1297 (D. Mass. 1988)(holding that exculpatory evidence under Brady doctrine includes not only documents or testimony admissible in evidence, but also inadmissible materials which, if defendant had access to them, might lead to admissible materials).

The State's obligation to provide exculpatory or potentially exculpatory information in discovery, or to provide the discovery due under Georgia law, requires the prosecutor to seek out the information, even when it is not in the prosecutor's possession, and it must then be given to the accused. See Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995). In Kyles, the United States Supreme Court explicitly enhanced the obligation of the prosecutor to extend his search for information beyond just his office, holding that prosecutors bear the responsibility for producing evidence discoverable to the defense, even when the investigating officers fail to bring such evidence to their attention. Thus, the rule requiring the State to disclose evidence discoverable to the accused even, "encompasses evidence known only to police investigators and not to the prosecutor." Strickler v. Greene, 527 U.S. 263, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999). As a result, unless the items demanded herein are provided at the time

scheduled by this Court in its Scheduling Order, the allegations set out in this indictment based upon said information must be eliminated from this indictment.

Jurisdiction

Georgia's RICO statute is modeled after the Federal RICO statute and, as such, can derive guidance from interpretations of the Federal statute. See Martin v. State, 189 Ga. App. 483, 485, (1989). Under the Federal RICO statute, where a RICO predicate offense is alleged to have occurred outside of the United States, but where preparatory acts had occurred within the United States, Federal courts do not have jurisdiction over the case. See Butte Mining, PLC v. Smith, 76 F.3d 287, 291 (9th Cir. 1996). See also Sinaltrainal v. Coca-Cola Co., 256 F.Supp.2d 1345, 1358-59 (S.D. Fla. 2003). In this regard, O.C.G.A. §17-9-4 states that a judgment rendered by a court which lacks jurisdiction over the person or the subject matter adjudged is a mere nullity. See State v. Williams, 214 Ga.App. 701, 704 (1994).

The rule derived from Butte Mining and Sinaltrainal, regarding offenses occurring in foreign jurisdictions, should also govern the case at bar here, where much of the actual criminal activity alleged, comprising most of the racketeering activity used in this indictment to establish the yet-to-be-identified predicate acts, took place outside of the State of Georgia. In Butte Mining, for instance, a group of individuals formed a corporation in Great Britain for the purpose of purchasing mining property in the State of Montana. 76 F.3d at 288-289. Various Defendants became involved in the venture, which ultimately placed the mining property in the hands of various holding corporations and sold stock in those corporations on the London Stock Exchange for inflated prices to non-North Americans. Butte Mining at 289. The Plaintiffs in the case brought suit in the United States District Court for the District of Montana, alleging securities fraud and violation of the RICO statute. Id. The Ninth Circuit held that Defendants' conduct within the

United States, which consisted of use of the mail and wires, paying a fair price for the mining property, forming corporations in Montana to buy and hold the property and paying the seller for the property, was, "'merely preparatory'" to any fraud that may have occurred in the case. Id. at 291. The court found that because the actual fraudulent acts took place wholly outside of the United States among persons who were not citizens of the United States, the Court lacked jurisdiction over the action.

Sinaltrainal had a similar fact pattern and result. In that case, the substantive events in controversy all took place in Columbia, South America, but the Plaintiffs attempted to bring a RICO claim in the Southern District of Florida, alleging that Defendants were controlling the actions of liable parties from the United States and, more particularly, the Southern District of Florida. Coca-Cola Co. at 1345. The court in that case found that it lacked jurisdiction to hear the RICO case, citing Jose v. M/V Fir Grove, 801 F.Supp. 349, 357 (D. Ore. 1997), which stated that, "procedural mechanisms contained within section 1965 are, on their face, limited to U.S. territory." The court further held that it could only take jurisdiction over such a RICO matter when, "conduct within the United States directly caused a foreign injury," which could not be established based on, "'mere preparatory activities and conduct far removed from the [injury].'" Coca-Cola Co. at 1359 (quoting Psimenos v. E.F. Hutten & Co., 722 F.2d 1041, 1046 (2d Cir. 1983)).

Although this case has been indicted in the Superior Court of Fulton County, Georgia, the State has alleged a vast number of acts constituting the underlying conduct for the soon-to-be-revealed predicate acts for the RICO charges in Count 1, that took place in other states. These "Acts" involved individuals not alleged to be citizens of the State of Georgia, and whose conduct had no discernibly direct impact upon the State of Georgia. As such, the allegations of foreign conduct underpinning the state's indictment here can be best described as allegations of preparing

to commit criminal acts elsewhere, none of which occurred within this Court's jurisdiction. Butte Mining, supra.

Therefore, this Court should dismiss and preclude the state from using this foreign conduct in its effort to convict these defendants of the RICO allegations set out in Count 1. Otherwise, any judgment rendered against Defendant here, based upon those acts, would be void on its face.

Alleged Violations of Oaths

Under Georgia law, different standards apply to special demurrers filed before trial and those raised on appeal after trial. In reviewing a pre-trial challenge to an indictment, the Court does not conduct a harmless error analysis to determine if the accused has actually been prejudiced by the alleged deficiencies therein. Rather, it must apply the rule that a defendant who has timely-filed a special pre-trial demurrer, is entitled to an indictment perfect in form and substance.

Throughout the allegations in the 41 counts of this indictment, there are 108 references to the violation of some public officer's "Oath", as contemplated by O.C.G.A. Section 16-10-1. See paragraph 2 of the "Manner and Methods of the Enterprise; "Acts" 7, 23, 42, 55, 102, 112, 123, 156, 160 and 161; and Counts 2, 5, 6, 23, 28, 38, and 41 of this indictment.
Nothing in the entirety of said indictment, however, offers any insight into which oath[5] it is that was allegedly violated.

[5] There are various "oaths" in the Georgia Code which must be taken by all public officials prior to assuming their government duties, including but not limited to the oath set out at: O.C.G.A. § 42-4-2 discussed herein; O.C.G.A. § 45-3-1, applicable to "every public officer"; 45-3-7 entitled "Oaths of Deputies", which has specific requirements to be satisfied "before proceeding to act";45-3-11 which requires that "all persons who are employed by any … "counties … throughout the entire state" which requires deputy sheriff's "to take an oath that they will support the Constitution of the United States and the Constitution of Georgia" as well as O.C.G.A. § 45-3-13, which sets out the language for the Loyalty Oath.

Similarly, each of the allegations of attempts to have others violate their "Oath", fails to identify the oath allegedly targeted for violation. Clearly, this, without more, is not sufficient to put the accused on notice as to what it is he must defend at trial. Nor does it allow anyone to determine whether the solicitations, testimony, and/or preparation of documents alleged to have been sought in the respective counts would have violated the unspecified oath in the first place.

Because a plain reading of this indictment shows that it fails to establish how any of the conduct allegedly engaged in by these defendants would have been a violation of the unspecified oaths of office alleged in the counts and "Acts" of this indictment, those counts and acts are subject to special demurrer and must be quashed.

CONCLUSION

Wherefore, for the reasons set out herein, Defendant moves this Court to quash the indictment against him, as it is not perfect in form and substance, fails to provide sufficient notice as to what he must defend against at trial, and the pleadings in said indictment are insufficient to protect him from double jeopardy in a separate prosecution. In the alternative, Defendant requests the Court set a date for an evidentiary hearing wherein the state can attempt to establish why the relief prayed for should not be granted.

Respectfully submitted, this the 8th day of September 2023

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STATE OF GEORGIA

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	INDICTMENT NO.:23SC188947
v.	
RUDOLPH LOUIS GIULIANI,	
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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing Defendant's Demand for an Indictment Perfect in Form and Substance, General and Special Demurrers, and Motion to Quash upon opposing counsel by Odyssey electronic filing, which will automatically send email notification to all parties of record.

Respectfully Submitted, this 8th day of September, 2023.

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