

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,	)	
	)	
Plaintiff,	)	
	)	CASE NO.:
v.	)	
	)	23SC189192
MARLON KAUTZ,	)	
	)	
Defendant.	)	

MARLON KAUTZ'S
GENERAL AND SPECIAL DEMURRERS TO
COUNT ONE OF THE INDICTMENT

A. Introduction

The indictment in this case is extraordinary in the breadth and depth of its inadequacies.

In this pleading, Defendants Kautz, MacLean and Patterson (hereinafter “defendants”) challenge Count One of the Indictment which purports to allege a RICO conspiracy pursuant to OCGA § 16-14-4(c). Count One fails to allege an offense and is subject to general and special demurrers because it:

- fails to properly allege the elements of the offense of a RICO conspiracy;
- fails to recite facts that identify the basis for the allegations;
- fails to adequately allege the dates of the offense and date that any conspirator, including Kautz, Patterson or MacLean, is alleged to have joined the conspiracy;
- fails to allege the identity of co-conspirators;
- fails to comply with the statutory requirements of OCGA § 17-7-54;¹

¹ OCGA § 17-7-54 provides: Every indictment of the grand jury which states the offense in the terms and language of this Code or so plainly that the nature of the offense charged *may easily be understood by the jury* shall be deemed sufficiently technical and correct. The form of every

- fails to properly allege either the elements or the factual basis for the alleged racketeering acts;
- fails to allege what conduct is alleged to be an overt act of the conspiracy as opposed to (or in addition to) being a racketeering act;
- alleges that certain conduct was criminal that was protected First Amendment activity (freedom of speech, freedom of assembly, and freedom to petition the government for redress of grievances);
- fails to adequately allege the relationship between the listed overt acts / racketeering acts and the alleged (but ill-defined) enterprise;
- fails to allege whether the defendants, individually, are alleged to have participated in overt acts, or racketeering acts, as principals, aiders and abettors, or conspirators;
- includes an abundance of statements in the introductory pages (pages 25 – 49) that are wholly inappropriate and unprecedented in an indictment, including: facts and circumstances that occurred centuries ago (literally); anonymous statements of unidentified (masked) people that are unrelated to the charges in the indictment; uncharged crimes committed by unnamed people wholly unrelated to this case; and activities of thousands of unidentified people who were undeniably engaged in protected First Amendment activities and assemblies. The recitation of the history of anarchism in America and throughout the world, and the claims regarding its followers' profligate and gratuitous use of violence has no place in an indictment in Fulton County.

indictment shall be substantially as follows [the traditional form of an indictment is then set forth in the code section].

B. Legal Basis For Special and General Demurrers

The basis for a general demurrer is the failure of the indictment to allege an offense. If, theoretically, a defendant could agree that every fact alleged in the indictment is true and still be innocent of the crime charged, a general demurrer would succeed. Often, a general demurrer is predicated on the failure of an indictment to allege the essential elements of an offense, but the failure to adequately allege the facts that demonstrate the satisfaction of an element also supports a general demurrer. The indictment must set forth the elements of the offense, as well as the facts that show that the defendant is culpable (as a party to the crime, as a conspirator, or as a principal) for the commission of each element. If an indictment alleges an offense, but the allegation violates the Constitution as applied (or if the criminal offense is facially unconstitutional), this, too, will support a successful general demurrer.

A special demurrer addresses the failure of the indictment to allege the facts with sufficient particularity: for example, the date of the offense (and in this case, the date that any individual defendant allegedly joined the conspiracy) is not revealed, or a date range is too broad; the identity of the victim of a crime is not identified, the location of an offense is not alleged. In these situations, a special demurrer acknowledges that a crime has been alleged, but the indictment is not “perfect in form and substance,” thus depriving the defendants of the ability to prepare their defense intelligently. The indictment is therefore subject to a pretrial special demurrer. *State v. Heath*, 308 Ga. 836 (2020).

If the court grants a general or a special demurrer, the result is the dismissal of the indictment. The prosecutor may not Hoover up inappropriate surplusage; or add a date; or allege an inadvertently omitted element. The grand jury returned the indictment and if it needs to be corrected, the grand jury must do so.

C. The Inadequacies of the Indictment

Appellate courts' decisions that address demurrers demonstrate that an indictment must do more than simply cite a statute, *Jackson v. State*, 301 Ga. 137, 800 S.E.2d 356 (2017); it must do more than just list the elements of the offense, *Henderson v. Hames*, 287 Ga. 534, 697 S.E.2d 798 (2010), it must allege the outlawed conduct in an unambiguous manner that is not exploiting an inherently vague statute, *Hall v. State*, 268 Ga. 89, 485 S.E.2d 755 (1997); it must allege *facts*, not just generic elements, *State v. Delaby*, 298 Ga. App. 723, 681 S.E.2d 645 (2009); and must provide the necessary information for each offense when the indictment alleges a compound offense, such as RICO, *Heath v. State*, 308 Ga. 836, 843 S.E.2d 801 (2020); and *Sanders v. State* 313 Ga. 191, 869 S.E.2d 411 (2022).

Though the precedents do not deal with the unique situation of an indictment (as in this case) that recites information totally unrelated to the crimes that are charged in the indictment (and allegations that are attributed to anonymous sources), it is obvious that reciting facts that have nothing to do with the charged offenses is as offensive as providing too little information. An indictment is not supposed to be a Wikipedia entry, or a high school term paper. Nor is an indictment a public relations script. Or a political manifesto.

As explained below, the indictment in this case not only includes 25 pages of introductory language that is entirely inappropriate for an indictment; it also alleges that various acts that are undeniably protected by the First Amendment were overt acts that contributed to the illegal goals of the enterprise. The indictment failed to provide a coherent description of the “enterprise” which is an essential element of any RICO prosecution – occasionally describing the enterprise as a “movement” and at other times as a “coalition.” Though the heart of any RICO indictment is the enterprise (hence the “O” in RICO stands for “Organization”), the skin and bones of a RICO

indictment are the racketeering acts. Yet, in this case, the indictment alleges overt acts but never identifies the actual racketeering acts that were the object of the agreement that any conspirator supposedly pursued. RICO is a compound offense; the racketeering acts are the underlying crimes and the Supreme Court has clearly held that the indictment must clearly set forth the elements of the underlying crimes in cases involving compound offenses. *Sanders v. State, supra*.

In the following pages, the Defendants argue that all these flaws in the indictment are individually, and certainly collectively, a basis for granting the demurrer. The prior Order entered by Judge Adams did not address a single one of these issues in the 6-page Order that was entered on May 13, 2025.

1. Failure to Identify or Properly Allege Any Racketeering Acts

General and Special Demurrer

A RICO conspiracy charge requires proof that a defendant conspired to participate in the affairs of an enterprise through the commission of at least two predicate (racketeering) acts. *Pasha v. State*, 273 Ga. App. 788, 616 S.E.2d 135 (2005); *State v. Pittman*, 302 Ga. App. 531, 690 S.E.2d 661 (2010). The defendant is not required to participate in the racketeering acts, but must agree to do so, or agree to endeavor to do so, or agree to aid and abet the commission of at least two racketeering acts. The indictment does not identify the specific two racketeering acts that any of the defendants allegedly conspired to commit. In fact, the indictment's flaw is more fundamental, because it does not even allege with specificity *any* racketeering acts. Instead, it alleges that a bedeviling list of 225 events are "overt acts" (those are the words that are attached to each of the 225 events). Yet, no act is explicitly identified as a racketeering act and there is no recitation of the elements of *any* offense (or the facts that satisfy the elements) that are the object of the RICO conspiracy.

On page 49 of the indictment, the indictment alleges (apparently) that all the 225 events are *both* racketeering acts and overt acts. This is obviously not true. Many of the 225 acts are not crimes at all, and do not “involve” a crime. *See* OCGA § 16-14-3(5)(A), (B), and (C), for the list of crimes that qualify as racketeering acts. For example, there are dozens of “events” that involve purchasing food, or camping, or kitchen supplies. One might assume that these are meant to be the “overt acts” of the conspiracy and are not alleged to be racketeering acts. But defendants are not required to “assume” that the indictment is proper. If the prosecution alleges that some of these 225 events are racketeering acts and other events are only alleged to be overt acts (the former must be crimes, the latter need not be crimes), the indictment must specifically identify which is which. Any event that is alleged to be a racketeering act must adhere to the requirement of *Heath* and *Sanders* that requires a full description of every element and the supporting facts for each offense in a compound crime. Not one of the 225 events properly alleges any predicate racketeering crime with any degree of specificity: not by the title of a statute, not by code section, and not by a list of elements. The failure to identify a single racketeering act (identify the crime, the elements, and the facts), necessitates granting this demurrer. If the blurring of overt acts and racketeering acts persists, the court will need to review each act under the general demurrer standard, and determine, one-by-one, whether the act alleges an offense with sufficient particularity that the court can determine it is an eligible racketeering act.

In addition, though the indictment alleges which defendant was a participant in (or responsible for) each event, there is no suggestion anywhere that any other defendant agreed or conspired to participate in that event. The defendants are left to guess whether any particular defendant is alleged to have conspired to commit any racketeering act in which he or she was not named.

In short, the indictment provides no notice what acts are alleged to be racketeering acts and which defendants are alleged to have agreed to participate in the affairs of the enterprise through the commission of which racketeering acts.

2. The Enterprise Is Inadequately Defined **General and Special Demurrer**

The “enterprise” element of the offense is not sufficiently described and for that reason, Count One does not allege an offense. The enterprise is initially defined (kind of) on pages 24-25 of the indictment, though its definition blurs the identification of the enterprise and the commission of various acts (some of which are crimes, some of which are clearly First Amendment protected activity). Nevertheless, the enterprise is apparently “Defend the Atlanta Forest.” The indictment alleges that Defend the Atlanta Forest (“DAF”) is a “self-identified” coalition (whatever that means). Nowhere does the indictment allege that DAF has any “self-identified” structure, or that it is an “association in fact” of the defendants (and others), or that it had a date when it was formed in its present state, or whether the “coalition” members know each other, meet together, or even conspire to commit crimes with one another. In fact, the indictment acknowledges that DAF is a “broad, decentralized, autonomous *movement*” (emphasis added) which “does not recruit from a single location, nor do all [its] members have a history of working together as a group in a single location.” *See* Indictment at 34. Elsewhere in the indictment DAF is also described as a “movement” as opposed to a coalition (page 25, 30). Although Georgia RICO does not require much to qualify as an “enterprise,” at a minimum it must have some structure that differentiates the enterprise from the description of the conduct of the defendants. *Boyle v. United States*, 556 U.S. 938 (2009). Many people drive too fast on the interstate, but all speeding drivers do not qualify as an enterprise. Many people sat at lunch counters when they were told not to do so by the proprietors; but they were not guilty of RICO, nor were they an “enterprise” that enveloped

them in a criminal case.

The indictment also alleges (utterly nonsensically) that Defend the Atlanta Forest had its “beginnings” a year before the City of Atlanta acquired the land to construct the training center (Indictment page 30). DAF, the indictment alleges, started with protests surrounding the George Floyd and Rayshard Brooks killings, and the tragic death of 8-year-old Secoria Turner in 2020 (page 30 – 31). Those events had nothing to do with either a training center, or a forest. Only two of the indicted defendants in this case were alleged to have been involved in an overt act in July of 2020 (page 49, Act #1). One of those individuals, Andrew Carlisle, is not identified in any other overt act in the indictment, defying the suggestion that membership in the enterprise requires any involvement in the training center protests.

Apparently, none of the other 59 defendants were involved in the DAF “coalition” or the “movement” in May of 2020, as those events certainly had nothing to do with a forest, or a training center.^{2 3} Nevertheless, demonstrating the incomprehensible description of the enterprise in this case, the conduct of those two defendants is alleged to have amounted to overt acts in connection with the DAF enterprise conspiracy that was designed to prevent the construction of the training center in a forest in Dekalb County.

In reality, the Attorney General’s description of the enterprise that is the subject of this indictment is not limited to the activities surrounding the training center but is actually comprised of “anarchists” who have a variety of specific goals and beliefs. The enterprise is not comprised of people whose mission is to stop the construction of the training center. Rather it is comprised

² The indictment dates the inception of the enterprise as May 25, 2020 (page 23, Count #1). Though not alleged in the indictment, the killing of George Floyd occurred on May 25, 2020.

³ This alleged act is but one example of how the indictment fails to demonstrate the relationship between the alleged overt acts and any alleged enterprise, as discussed in section 3 below.

of people who are (according to the indictment) unified in their beliefs about the government, the police, and the environment. Mere membership in the “movement” or the coalition – protected First Amendment activity – is enough, according to the indictment, to brand the member a conspirator in this RICO prosecution.

This attack on people’s beliefs and membership in a political party, or who adhere to a particular philosophy, violates the First Amendment, even if the defendant does engage in protest activity. *Dawson v. Delaware*, 503 U.S. 159 (1992); *Aptheker v. Secretary of State*, 378 U.S. 500, 507 (1964); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958). To put it simply, a person who joins the Communist Party, or the NAACP, or the National Lawyers Guild, or the Republican Party, is not a criminal, even if other members of the association commit crimes and even if the person agrees not only with the mission of the group, but with the methods the group uses to achieve their goals. *See N.A.A.C.P. v. Claiborne Hardware*, 458 U.S. 886, 919 (1982) (“Civil liability may not be imposed merely because an individual belonged to a group, some members of which committed acts of violence); *see also Scales v. United States*, 367 U.S. 203, 229 (1961) (noting that a “blanket prohibition of association with a group having both legal and illegal aims” would present “a real danger that legitimate political expression or association would be impaired.”); *United States v. Waters*, 627 F.3d 345 (9th Cir. 2010) (The defendant was charged with arson in connection with the destruction of certain property that was allegedly motivated by environmental concerns. The defendant was alleged to be a member of an environment terroristic group. At trial, the government introduced evidence of various articles promoting anarchist ideals that she gave to another conspirator. The Ninth Circuit held that the introduction of a defendant’s “reading material” will rarely be admissible to prove the defendant’s guilt of a crime. In this case, the evidence should have been excluded).

While various forms of speech are protected by the First Amendment (pornography, rap lyrics, politicians' absurd promises), the Petition Clause of the First Amendment protects speech that urges the government to change a policy, enact a law, or repeal an existing law. The Petition Clause is the essence of our republican (with a small "r") form of government. "Except in the most extreme circumstances citizens cannot be punished for exercising [the right to Petition] 'without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions.'" *De Jonge v. Oregon*, 299 U.S. 353, 364, 57 S.Ct. 255, 260 (1937).

In many Petition Clause cases, there is one petitioner on a mission to accomplish some goal. *See, e.g., McDonald v. Smith*, 105 S. Ct. 2787 (1985) (Petitioner castigated a nominee for U.S. Attorney in a letter to the President and when sued for libel, he argued that his "speech" was protected by the First Amendment Petition Clause). In other cases, however, like this case, there may be hundreds or thousands of citizens seeking redress of their grievances and in this context, the constitutional right to petition the government is launched with far more fuel: Where the citizenry in large numbers is seeking to guide the legislature in a particular direction or to address a perceived harm that affects thousands of people, the core First Amendment concern with facilitating the market of ideas and a forum for the citizens to discuss problems and urge their representatives to address these shared grievances is at its zenith. When a community of citizens is urging the legislature to take action, not only is the Free Speech Clause implicated (though it surely is); not only is the Petition Clause implicated (it surely is, as well); but the Right to Assemble is also implicated.

The indictment does not allege that any of the defendants are card-carrying "members" of the coalition, or when any person joined, or whether any person holds any particular status in the coalition, or whether any member had decision-making authority. Nor are any defendants

identified as having been members of the coalition for any particular length of time (some, for example, may have been members for one day, or for a couple hours – though the indictment does not say one way or another). The indictment does not allege that DAF had *any* identifiable members when it was formed, or whether it has any identifiable members today.

As far as this indictment reveals, many of the defendants apparently showed up one day, went to the training center location to protest, and then left. Some were arrested, some were not. That was the beginning and end of their membership in the coalition or the movement. This is the antithesis of an enterprise with an identifiable structure.

RICO is designed to prosecute “Corrupt Organizations”). It is not designed to prosecute people who commit misdemeanors, or who are aligned with certain political or social beliefs that motivate certain conduct, including civil disobedience: “It is not the intent of the General Assembly that isolated incidents of misdemeanor conduct or acts of civil disobedience be prosecuted under this chapter.” OCGA § 16-14-2.

The indictment alleges (albeit not with sufficient particularity) that many people committed a variety of crimes. But membership in an enterprise has not been properly alleged. The demurrer to this Count should be granted based on the failure to allege a violation of RICO, including the failure to allege a viable enterprise that is the core element of any RICO case.

3. The Indictment fails to allege a sufficient relationship between the overt acts and the enterprise

Special Demurrer

The indictment does not allege how most of the events (the 225 “overt acts”) related to the enterprise, or the alleged criminal goals. The various money-related events that address the conduct of Defendants Kautz, MacLean, and Patterson, do not allege the essential elements of a money laundering offense and fail to explain how any of the transactions had a relationship to the efforts

to deter the construction of the training center or to achieve the goals of the coalition.^{4 5} One can speculate about the reason that food, or kitchen supplies, were purchased, but an indictment is not supposed to leave the defendants speculating. Perhaps the court – and ultimately the jury – will assume the worst, but requiring the jury or the court to assume the worst is not the mission of an indictment. *See Kimbrough v. State*, 300 Ga. 878 (2017).

Regarding the allegations concerning communications in the “Scenes Blog,”⁶ the indictment provides insufficient facts to allege that these communications were criminal threats, fighting words (OCGA § 16-11-39), terroristic threats (OCGA § 16-11-37), or otherwise prosecutable conduct. No citation to any crime, nor a recitation of the elements of any offense is included in the various overt acts that relate to these communications. These overt acts also fail to adequately accuse the defendants of influencing a witness, because there is not even a suggestion that there was any pending proceeding or investigation that the defendants were intending to obstruct. OCGA § 16-10-93(b)(1)(B)(i).

Even if the prosecution labels the communications with Scenes Blog as “urging” people to riot, this type of activity is protected First Amendment speech. *Brandenburg v. Ohio*, 395 U.S. 444 (1969) (encouraging, advocating, or urging people to violate the law is not a crime; to prosecute such speech, the state must prove the defendant “incited” imminent lawless action); *United States v. Miselis*, 972 F.3d 518, 536-537 (4th Cir. 2020) (declaring unconstitutional portions of the federal

⁴ See, e.g., Overt Acts ## 3, 4, 16, 25, 26, 28, 29, 40, 42, 44, 46, 48, 50, 52, 58, 60, 62, 67 (and scores more).

⁵ As described in section 1, the other alleged crimes mentioned by name in Count 1 of the indictment suffer the same flaw.

⁶ See, e.g., Overt Acts ## 7, 17, 18, 19, 24 (and scores more).

“Anti-Riot” Act, 18 U.S.C. § 2101, *et seq.*, which outlaws encouraging, urging, or promoting others to riot).⁷ The right to protest is one of the load-bearing pillars of the First Amendment. To prosecute protestors as conspirators in a RICO indictment, even if they engaged in civil disobedience not only violates their First Amendment rights, it also chills the rights of others to come anywhere within hailing distance of such a protest. *See also* OCGA § 16-14-2, cited above.

This prosecution sends a clear message: “If you join a protest in Georgia, you are not just exposed to a misdemeanor trespass prosecution, you risk being prosecuted as a racketeer and face twenty years in prison.” This Court should enter an Order dismissing the indictment to refute that unconstitutional message. The Order entered by the previous judge in this case never addressed either the failure to properly allege an enterprise or any of the First Amendment issues raised in the defendants’ demurrers.

4. The Failure to Individualize the Allegations Or Specify Relevant Dates

Special Demurrer

The vagueness of the allegations that connect the overt acts to the conspiracy is exasperated by the failure to properly identify the individuals’ personal participation in the conspiracy. The defendants are individuals. They are being prosecuted individually and will be mounting individual defenses. If convicted, they will be punished individually. Yet, the indictment thrusts them all into

⁷ In *Land v. State*, 262 Ga. 898, 426 S.E.2d 370 (1993), the Supreme Court upheld a conviction for inciting a riot and relied on the testimony of the arresting officers who revealed what is required to support a conviction in this context: “The responding officers in the case at bar, well-versed in crowd control, described the crowd toward which appellant was directing his gesticulations as “very agitated” and “at the breaking point,” and were of the opinion that only their arrival had prevented the outbreak of violence. Since appellant's conduct constituted inciting to riot, his speech is not afforded any constitutional protection.” *Id. at 900*.

an overarching conspiracy and fails to reveal the specifics of what any individual defendant did.⁸ The defendants are not identified as being principals in the commission of any predicate offense, or aiders and abettors, or conspirators.

The indictment also fails to set forth when any defendant joined the conspiracy. The conspiracy is alleged to have started in May of 2020 (page 24 of the indictment), a year before there was any effort to construct a training center in Dekalb County. There are no overt acts that allegedly occurred in May of 2020, or any other evidence that this was a date of significance for the beginning of the conspiracy (or the movement or the coalition). Many of the defendants' acts occurred on one day and one day only. Yet, the indictment does not allege the date that any defendant joined the conspiracy. This deficiency means that no defendant knows what he or she will be held responsible for. To cure this deficiency, a special demurrer must be granted that requires the indictment to narrow the date range for the conspiracy, but more important, to specify the date that each defendant allegedly joined the conspiracy. *Herring v. State*, 334 Ga. App. 50, 778 S.E.2d 57 (2015); *Blanton v. State*, 324 Ga. App. 610, 751 S.E.2d 431 (2013); *Mosby v. State*, 319 Ga. App. 642, 738 S.E.2d 98 (2013).

5. The Irrelevant Background Information

Special Demurrer

⁸ Even the three defendants who are filing this Demurrer are grouped together as perpetrators of several dozen overt acts, as if they are one person. There is no explanation how the prosecution convinced the grand jury that Kautz, Patterson and MacLean together were the perpetrators of 98 of the overt acts. Defendants are left only to speculate. Is the indictment intending to allege that as alleged conspirators, they are responsible for the conduct of one another? Of course, that would mean that all 61 conspirators are responsible for all 225 overt acts. If so, then why are only three individuals listed for 98 of the overt acts? Alternatively, perhaps the prosecutor convinced the grand jury that as officers of the Atlanta Solidarity Fund, Kautz, Patterson, and MacLean are responsible on a theory of *respondeat superior*. But that can't be it either as that theory of guilt is not available in a criminal case.

The indictment does not begin with a concise recitation of the offense. Starting on page 25, and continuing through page 49, the indictment provides a history of anarchism both in America and abroad. Consider, for example, the following excerpts from the indictment, virtually none of which is relevant to any count in the indictment (or admissible in evidence at trial):

Anarchy is a philosophy that is opposed to forms of authority or hierarchy. Beginnings of anarchist ideals date back centuries, though usage of the term "anarchy" did not exist until the 1800s. Over time, various philosophical forms of anarchy have emerged. Numerous anarchist philosophies exist, though anarchists are not required to subscribe to one particular belief of anarchy. Rather, the notion of anarchy, being grounded in an anti-authority mindset, primarily targets government because it views government as unnecessarily oppressive. Instead of relying on a modicum of government structure, anarchy relies on human association instead of government to fulfill all human needs. Some of the major ideas that anarchists promote include collectivism, mutualism/mutual aid, and social solidarity, and these same ideas are frequently seen in the Defendant the Atlanta Forest movement.

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Collectivism is the idea that individual needs are subordinate to the good of the whole society. That is, decisions are made based upon what is best for the group and not necessarily what is best for individuals. In embracing collectivism, individuals are expected to sacrifice personal income, personal liberty, or personal property if it benefits society as a whole. The decision of whether an individual should sacrifice their own individual needs is not made by the individual. Rather, in a true collectivist society, the society as a whole decides whether the individual must forfeit their own needs or property if it is deemed to benefit the society. Nevertheless, in an ideal collectivist society, individuals already make the decision to donate to the collective without prompting from others.

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Mutual Aid is a term popularized by anarchists to describe individuals who exchange goods and services to assist other individuals in society without government intervention. Closely related to collectivism, mutual aid is not a new term, nor is it limited to anarchy. However, the major factor in anarchist mutual aid is the absence of government and the absence of hierarchy. Indeed, an anarchist belief relies on the notion that once government is abolished, individuals will rely on mutual aid to exist. In doing so, anarchists believe that individuals will work together and voluntarily contribute their own resources to insure that each individual has its own needs met.

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Social solidarity is another term that is embraced by anarchists that is tied closely to mutual aid and collectivism. Social solidarity is the idea that individuals can live together without government and can provide for each other. The notion of social solidarity relies heavily on the idea of human altruism; that is, individuals will voluntarily offer goods, services, and resources without anything compelling it. Anarchists often shorten the term "social solidarity" simply into the term "solidarity," and it is frequently woven into the speeches, statements, and writings of anarchists. In addition to the term "solidarity," and other anarchist terms, anarchists often weave the term "mutual aid" and "collective" into their jargon and writings.

Violence is part of the anarchism in some anarchist beliefs. Viewing their own violent acts as political violence, violent anarchists attempt to frame the government as violent oppressionists, thereby justifying the anarchists' own violence. Indeed, the belief is that the government is engaging in a form of violence by denying individuals basic needs through capitalism, government action, and law enforcement by police. Anarchists often point to law enforcement as one of the chief violent actors, and they accuse the government of using law enforcement to oppress societal change, and they view the structure of government as inherently oppressive and violent. As a result, violent anarchists often engage in violent activity towards law enforcement, and it is justified because of the anarchist belief that the ends justify the anarchist means.

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Historical anarchist and activist movements in the United States have included the creation of "autonomous zones" in which participants do not recognize the lawful authority of local, state, or federal government. Such examples include the 2020 movements in Portland, Oregon and Seattle, Washington, the latter known as the "Capitol Hill Autonomous Zone" (CHAZ) which received a high volume of national and international media attention. A second example is the previously mentioned autonomous zone in Atlanta during the George Floyd demonstrations. A sign reading "You are now leaving the U.S.A." is frequently featured in social media posts and blogs about Defend the Atlanta Forest and exemplifies the underlying anti-government and anti-authority ideology of Defend the Atlanta Forest.

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Defend the Atlanta Forest is made up of three primary ideologies. The first ideology is an anti-law enforcement ideology that attempts to push a narrative that all police are violent, militant individuals that frequently use excessive force and violence against innocent citizens. The goal of this ideology is the elimination of police forces in their entirety. The second ideology is protection of the environment at all

costs. This ideology promotes the belief that the environment has the same rights as humans, and therefore violence is acceptable to defend the environment.

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The United States Department of Homeland Security has classified the individuals as alleged Domestic Violent Extremists (DVE). In a bulletin posting, the Department of Homeland Security concluded that "alleged DVEs in Georgia have cited anarchist violent extremism, animal rights/environmental violent extremism, and anti-law enforcement sentiment to justify criminal activity in opposition to a planned public safety training facility in Atlanta. Criminal acts have included an alleged shooting and assaults targeting law enforcement and property damage targeting the facility, construction companies, and financial institutions for their perceived involvement with the planned facility."

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The indictment also quotes a "local anarchist" who supposedly supports the Stop Cop City movement (which, apparently, is the same "movement" as Defend the Atlanta Forest, but that is not explicit in the indictment). This anarchist is not alleged to be a defendant in this case, or a co-conspirator, or a coalition member. Nevertheless, the indictment offers a quote from this anonymous anarchist:

The movement's militant direct action, land occupation, and sabotage of construction machinery have not only kept the struggle alive, but shifted the Overton window when it comes to how even nonprofits are willing to engage the struggle. When asked about the sabotage of construction and police machinery, the referendum campaign – notably, headed by nonprofits and electoral organizers – has continuously reiterated its support for a diversity of tactics, in a stark departure from many nonprofits' more risk-averse approach to political action. Through a combination of tactics, the Stop Cop City has built a united front against Cop City that is willing to fight by any means necessary. Just as with tactics that directly engage the system, much of the militant direct action has also heightened contradictions and exposed hypocrisies, thrusting fundamental questions into public consciousness: Are we more concerned about the "violence" of destroying construction machinery and police property, or about the violence of capitalist exploitation, environmental devastation, and police murder? What do we do when it's liberal Democrats, rather than Republicans, who are leading the efforts to destroy an urban forest, suppress residents' right to vote, and expand the police state? Do we truly believe that Cop City is a matter of life and death, and, if we do, what are we willing to do to stop it?

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The indictment continues with more anonymous offerings from another unidentified source:

As noted by the anarchist above, the militant anarchists engage in violence to bring attention to their own political goals and their perceived government violence. But political violence is not simply a philosophy; Defend the Atlanta Forest has put the philosophy into action. Indeed, in one example, a known Defend the Atlanta Forest arsonist was recorded complaining that there were not enough violent members in protests against the Training Center.

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Another unidentified person's views are also described in the indictment:

In one video, a black-clad Defend the Atlanta Forest participant refers to historical insurgents or violent guerilla movements such as the Mexican Zapatistas and Syrian Revolution as a reference point for strategy and to anchor smaller movements to larger revolutions.

The black-clad Defend the Atlanta Forest participant states that "the fate of the Kurdish revolutionaries in Kobani and Sere Kanive, and all of these places, it was partially determined by the bloodbath in Damascus and Aleppo," and "I think that with the current movement here, it's clear to me that the fate of the South River, Weelaunee Forest will be determined in midtown Atlanta and it will be determined in Chicago and in New York and in Los Angeles and in Seattle."

The same black-clad Defend the Atlanta Forest participant goes on to detail the role of sabotage and militant actors in the Defend the Atlanta Forest movement by referencing US Department of Defense theory on the role of defense and offense. Specifically, that "the role of defense is to open the space for offense" and that,

"Defenders, of course, especially in an urban context, not only in an urban context, but a wooded urban context, will always have an inherent advantage, especially if they perceive their role as defensive and they're able to engage really on their own terms. They're just trying to open space for offense."

Page 37.

This unidentified person's views continue:

The black-clad Defend the Atlanta Forest participant justifies the property destruction and violence by stating that it is not an "existential attack on the company" because these companies have various of contracts and make of money elsewhere, and:

"The idea is, if you deal with the [Atlanta Police Foundation], you'll deal with us. For this one contract, people are coming to your house. For this one contract, people are visiting your church. For this one contract, people are flooding your phone lines, people are sending you faxes, people are visiting your office. Some people are vandalising your stores, are burning your equipment, for the one contract."

pages 37-38.

We do not know if the prosecution will argue at trial that this case is exempt from the Confrontation Clause of the Constitution and that the state should be permitted to introduce anonymous statements from "black-clad" people about the anarchists' goals and the beliefs that the anonymous speaker believe are shared by the defendants. The defense assumes that the court will conduct this trial in accordance with the United States and Georgia Constitutions, neither of which tolerate "anonymous" testimony, or lengthy descriptions of the "bloodbath in Damascus and Aleppo" and the Mexican Zapatistas and Syrian Revolutionaries and the "beginnings of anarchist ideals" before the American Revolution. All of this is included in the indictment. None of it should have been included in the indictment or presented to the grand jurors as if it had any bearing whatsoever on the alleged offenses in this case.

If the indictment is read to the jury – as the law generally requires – both before jury selection and prior to deliberations, is the court going to just provide the jury with excerpts? Will the indictment be provided to the jury during its deliberations? What is to become of page after page of irrelevant, inadmissible, anonymously-sourced (and in many cases untruthful) statements? Will the jury be told that the history of anarchism is an element of the RICO offense? Will the jury be told that during their deliberations they may consider the alleged comparison between the charged coalition/movement, and Middle Eastern terrorists?

What is the prosecution's plan? A cynical view would be that the prosecution designed this

pseudo-history of violent anarchism for public consumption, not for the courtroom. No court in America would tolerate the admissibility of evidence from anonymous sources about the activities of the defendants in this case and comparing them to terrorists in the Middle East, or cartels in Mexico. No court in America would permit a prosecutor in a drug prosecution to include a dozen pages in the indictment about the history of the War on Drugs, or the dangers posed by addiction. No court in America would permit a prosecutor in a firearm possession prosecution to include an anthology of sociological studies about the danger of guns in the home.

This indictment's improper effort to indoctrinate the jury about the evils of anarchism and the inscrutable comparison of the demonstrators in this case to terrorists in the Middle East and the cartels in Mexico violates any rational notion of fairness and Due Process.

The Order entered by Judge Adams never even hints that the problems with this indictment were considered by the court in the insouciant denial of the demurrer filed by the Solidarity Fund defendants. All of these issues were ignored.

The solution for the court in this case is easy and necessary: the court should grant a demurrer and require the prosecution to return to the grand jury with an indictment that conforms to the requirements of OCGA §17-7-54 and the Georgia and United States Constitutions. Let a newly empaneled grand jury decide whether the facts of this case deserve to be pursued in a criminal case in an American courtroom.

CONCLUSION

For the foregoing reasons, Defendants Kautz, MacLean, and Patterson urge the court to grant these general and special demurrers and dismiss the indictment.

This, the 30th day of May, 2025.

RESPECTFULLY SUBMITTED,

GARLAND, SAMUEL & LOEB, P.C.

/s/ Donald F. Samuel

DONALD F. SAMUEL, ESQ.

Georgia Bar No. 624475

Attorney for Defendant

3151 Maple Drive, N.E.

Atlanta, GA 30305

Tel.: 404-262-2225

Fax: 404-365-5041

Email: dfs@gslaw.com

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,	)	
	)	
Plaintiff,	)	
	)	CASE NO.:
v.	)	
	)	23SC189192
MARLON KAUTZ,	)	
	)	
Defendant.	)	

CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed this GENERAL AND SPECIAL DEMURRERS TO COUNT ONE OF THE INDICTMENT using the ODYSSEY eFileGA system which will automatically send email notification of such filing to all attorneys and parties of record.

This, the 30th day of May, 2025.

RESPECTFULLY SUBMITTED,

GARLAND, SAMUEL & LOEB, P.C.

/s/ Donald F. Samuel
DONALD F. SAMUEL, ESQ.
Georgia Bar No. 624475
Attorney for Defendant

3151 Maple Drive, N.E.
Atlanta, GA 30305
Tel.: 404-262-2225
Fax: 404-365-5041
Email: dfs@gslaw.com