IN THE SUPREME COURT OF THE STATE OF GEORGIA

STATE OF GEORGIA,	)	**CASE NUMBER**
Petitioner,	)	_____
	)	
versus	)	**On petition for writ of certiorari to the Court of Appeals of Georgia Case Nos. A25A0395, A25A0396, A25A0397, A25A0398, A25A0399, A24A0400**
	)	
JOHN CHARLES EASTMAN,	)	
RAY STALLINGS SMITH III,	)	
DONALD JOHN TRUMP,	)	
ROBERT DAVID CHEELEY,	)	
MARK RANDALL MEADOWS,	)	
RUDOLPH WILLIAM LOUIS GIULIANI,	)	
Respondents.	)	

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

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	)	**certiorari to the Court**
JOHN CHARLES EASTMAN,	)	**of Appeals of Georgia**
RAY STALLINGS SMITH III,	)	**Case Nos. A25A0395,**
DONALD JOHN TRUMP,	)	**A25A0396, A25A0397,**
ROBERT DAVID CHEELEY,	)	**A25A0398, A25A0399,**
MARK RANDALL MEADOWS,	)	**A24A0400**
RUDOLPH WILLIAM LOUIS GIULIANI,	)	
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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

The State of Georgia hereby petitions for a writ of certiorari to review the opinion which the Court of Appeals of the State of Georgia entered in the above-cited cases, a copy of which opinion is attached to this petition and marked "State's Exhibit A." *See State v. Eastman*, 2025 Ga. App. LEXIS 13 (Case Nos. A25A0395-0400, Jan. 17, 2025).

QUESTIONS PRESENTED

1. Is an indictment charging an inchoate offense required to describe the "underlying," "predicate," or "target" offense with an equivalent or greater level of detail as would be required for a substantive charge of the underlying offense?

INTRODUCTION

Without providing any additional or original analysis of the questions at issue in this appeal, the opinion of the Court of Appeals below affirmed a trial court order proceeding from an unsupported, incorrect legal assumption and in so doing, the opinion set out new pleading requirements affecting not only the charges at issue in this appeal but an entire class of criminal offenses. The opinions below combine to conflate the pleading requirements of "compound crimes" such as felony murder with the requirements applicable to "inchoate crimes" such as solicitation, conspiracy, or attempt. The result is certainly incorrect in this specific case, where despite an abundance of factual detail and no doubt as to what specific conduct Respondents are expected to answer for, the trial court still granted special demurrers as to six counts of solicitation. However, because the opinion enshrines an entirely new pleading standard—the type of decision rightfully reserved for the consideration of *this* Court—and because its natural consequences result in a windfall unique to defendants accused of violating oaths to support the federal and state constitutions, the grant of certiorari is authorized both to correct the errors below and to prevent the likely effects of those errors on Georgia's criminal jurisprudence.

ARGUMENT & CITATION TO AUTHORITY IN SUPPORT OF REVIEW

This prosecution underlying this matter results from an indictment

alleging that Respondents and others participated in a conspiracy to unlawfully overturn the results of Georgia's 2020 presidential election. The indictment charges that Respondents made false statements, forged documents, stole voter information, committed perjury, and employed various other methods in their efforts to negate the lawful votes of millions of Georgians. Those criminal charges resulted from nearly three years of investigation, which included a separate Special Purpose Grand Jury that gathered evidence, heard testimony from dozens of witnesses, and ultimately recommended charges against nearly forty individuals. Each step of this process has been conducted under intense media scrutiny. Both the subject matter of the underlying prosecution and the resultant public interest make this case one of "great concern, gravity, or importance to the public" as understood in Rule 40(1) of this Court's Rules.

However, even if that were not true, the Court of Appeals' opinion would still imbue this case with the gravity necessary for the grant of certiorari. The Court of Appeals's opinion affirming the trial court's grant of several special demurrers created a new standard for the pleading of inchoate offenses, thus granting itself the authority of this Court to announce new standards and principles of law. *See* S. Ct. R. 40(1)(c). The trial court order rests on a series of unsupported or incorrect suppositions, and its result is out of step with authority of other jurisdictions.

A. Solicitation, violation of oath of public office, and the special demurrer standard

"A person commits the offense of criminal solicitation when, with intent that another person engage in conduct constituting a felony, he solicits, requests, commands, importunes, or otherwise attempts to cause the other person to engage in such conduct." O.C.G.A. § 16-4-7 (a). Solicitation consists of two elements: "[t]he crime of solicitation is complete when the accused, with intent, engages in the overt act of asking another to commit a felony." *English v. State*, 290 Ga. App. 378, 380 (2008) (citing *McTaggart v. State*, 225 Ga. App. 359, 368 (1997)). Solicitation belongs to a class of inchoate offenses that includes conspiracy and attempt. *Mizrahi v. Gonzales*, 492 F.3d 156, 160 (2d Cir. 2007) (citing Black's Law Dictionary 1111 (8th ed. 2004)).

The offense of violation of oath by public officer requires the State to "present evidence that the defendant violated the terms of the oath actually administered and that those terms were from an oath 'prescribed by law,'" that is, explicitly contained in the General Assembly's description of the applicable oath. *Bradley v. State*, 292 Ga. App. 737, 740 (2008); *see also Jowers v. State*, 225 Ga. App. 809, 812 (1997).

No Georgia case has ever set out the precise pleading requirements for a charge of solicitation of violation of oath by public officer, and only one case—*Sanders v. State*, 313 Ga. 191, 195 (2022)—has examined a special demurrer

to a solicitation charge of any kind. *Sanders* did not purport to examine the pleading requirements of inchoate crimes generally and held only that the failure "to allege *any underlying facts*" whatsoever was fatal to a solicitation charge.[1] *Id.* at 202 (emphasis added).

When a special demurrer is timely filed prior to trial, a defendant is entitled to an indictment "perfect in form . . . [but] an indictment does not have to contain every detail of the crime to withstand a special demurrer." *Kimbrough v. State*, 300 Ga. 878, 881 (2017) (cleaned up). "[T]he purpose of an indictment is to allow [the] defendant to prepare his defense intelligently and to protect him from double jeopardy." *Sanders*, 313 Ga. at 195 (citation omitted). An indictment satisfies due process where it alleges the underlying facts with enough detail to put "the defendant on notice of the crimes with which he is charged and against which he must defend." *Dunn v. State*, 263 Ga. 343, 345 (1993). The "primary function of a special demurrer is to ensure that the state provide sufficient information in the indictment about the 'manner in which the crime was committed.'" *Scott v. State*, 207 Ga. App. 533, 535 (1993). Ultimately, the test for whether an indictment is constitutionally sufficient:

[1] The solicitation charge in *Sanders*, in its entirety, averred merely that "on the 22nd day of January, 2018, with intent that another person engage in conduct constituting a felony, [Sanders] did request Chaz David Conley to commit the felony offense of Violation of the Georgia Controlled Substances Act: Possession of a Controlled Substance, contrary to the laws of said State, the good order, peace and dignity thereof."

> is not whether it 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, and, in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction.

Sanders, 313 Ga. at 195; *see also Cochran v. United States*, 157 U.S. 286, 290 (1895).

While each count of an indictment must within itself allege the essential elements of the crime charged, when considering a special demurrer, "the indictment is read as a whole," and factual details alleged in one count of the indictment can "provide[] the information [a defendant] complains is missing from" another count. *Sanders*, 313 Ga. at 196-97. Moreover, while a defendant "may desire greater detail about [a charge] … [i]t is not required that the indictment give every detail of the crime," and additional detail desired "may be supplemented … by the pretrial discovery [he] receives and any investigation [his] counsel conducts." *Id.* at 196. Details unnecessary for survival against a special demurrer include the prosecution's theory of proof, as "it is not necessary for the [S]tate to spell out in the indictment the evidence on which it relies for a conviction." *Stapleton v. State*, 362 Ga. App. 740, 747 (2021).

Critically, "the language of an indictment is to be interpreted *liberally in favor of the State*, while the accused's objections to the indictment, as presented

in a special demurrer, are strictly construed against the accused." *McGlynn v. State*, 342 Ga. App. 170, 175 (2017) (emphasis added). And a special demurrer has "no merit" when the indictment leaves "no question as to *what actions of [the defendant's* are] at issue." *Davis v. State*, 272 Ga. 818, 820 (2000) (emphasis added).

B. The indictment and the trial court's order

This petition concerns the grant of a special demurrer to Counts 2, 5, 6, 23, 28, and 38 of the indictment in the underlying case, each of which charge certain Respondents with solicitation of violation of oath by public officer. The charges contain extensive detail regarding the manner in which Respondents are alleged to have solicited criminal conduct. As the trial court acknowledged, when the charges are combined with the comprehensive descriptions of the overall conspiracy found elsewhere in the indictment, the indictment includes "an abundance" of factual allegations in support of the charges. (V6. 1234).[2]

Count 2 charged Respondents Giuliani, Eastman, and Smith for their conduct as follows:

> on the 3rd day of December 2020, unlawfully solicited, requested, and importuned certain public officers then serving as elected members of the Georgia Senate and present at Senate Judiciary Subcommittee meeting, including unindicted co-conspirator Individual 8, whose identity is known to the Grand Jury, Senators Lee Anderson, Brandon Beach, Matt Brass, Greg Dolezal, Steve Gooch, Tyler Harper, Bill Heath, Jen Jordan, John F. Kennedy,

[2] Citations are to the record in the docket of Respondent Ray Smith, case no. A25A0396.

> William Ligon, Elena Parent, Michael Rhett, Carden Summers, and Blake Tillery, to engage in conduct constituting the felony offense of Violation of Oath by Public Officers, O.C.G.A. § 16-10-1, by unlawfully appointing presidential electors from the State of Georgia, in willful and intentional violation of the terms of the oath of said persons as prescribed by law, with intent that said persons engage in said conduct, said date being material element of the offense.

(V2. 77).

Count 5 charged Respondent Trump for his conduct as follows:

> on or about the 7th day of December 2020, unlawfully solicited, requested, and importuned Speaker of the Georgia House of Representatives David Ralston, a public officer, to engage in conduct constituting the felony offense of Violation of Oath by Public Officer, O.C.G.A. § 16-10-1, by calling for special session of the Georgia General Assembly for the purpose of unlawfully appointing presidential electors from the State of Georgia, in willful and intentional Violation of the terms of the oath of said person as prescribed by law, with intent that said person engage in said conduct.

(V2. 79).

Count 6 charged Respondents Giuliani and Smith for their conduct as follows:

> on the 10th day of December 2020, unlawfully solicited, requested, and importuned certain public officers then serving as elected members of the Georgia House of Representatives and present at a House Governmental Affairs Committee meeting, including Representatives Shaw Blackmon, Jon Burns, Barry Fleming, Todd Jones, Bee Nguyen, Mary Margaret Oliver, Alan Powell, Renitta Shannon, Robert Trammell, Scot Turner, and Bruce Williamson, to engage in conduct constituting the felony offense of Violation of Oath by Public Officer, O.C.G.A. § 16-10-1, by unlawfully appointing presidential electors from the State of Georgia, in willful and intentional violation of the terms of the oath of said

> persons as prescribed by law, with intent that said persons engage in said conduct, said date being material element of the offense.

(V2. 79).

Count 23 charged Respondents Giuliani, Smith, and Cheeley for their conduct as follows:

> on the 30th day of December 2020, unlawfully solicited, requested, and importuned certain public officers then serving as elected members of the Georgia Senate and present at a Senate Judiciary Subcommittee meeting, including unindicted co-conspirator Individual 8, whose identity is known to the Grand Jury, Senators Brandon Beach, Bill Heath, William Ligon, Michael Rhett, and Blake Tillery, to engage in conduct constituting the felony offense of Violation of Oath by Public Officer, O.C.G.A. § 16-10-1, by unlawfully appointing presidential electors from the State of Georgia, in willful and intentional violation of the terms of the oath of said persons as prescribed by law, with intent that said persons engage in said conduct, said date being material element of the offense.

(V2. 89).

Count 28 charged Respondents Trump and Meadows for their conduct as follows:

> on or about the 2nd day of January 2021, unlawfully solicited, requested, and importuned Georgia Secretary of State Brad Raffensperger, a public officer, to engage in conduct constituting the felony offense of Violation of Oath by Public Officer, § O.C.G.A. l6-10-1, by unlawfully altering, unlawfully adjusting, and otherwise unlawfully influencing the certified returns for presidential electors for the November 3, 2020, presidential election in Georgia, in willful and intentional violation of the terms of the oath of said person as prescribed by law, with intent that said person engage in said conduct.

(V2. 92).

Count 38 charged Respondent Trump for his conduct as follows:

> on or about the 17th day of September 2021, unlawfully solicited, requested, and importuned Georgia Secretary of State Brad Raffensperger, a public officer, to engage in conduct constituting the felony offense of Violation of Oath by Public Officer, O.C.G.A. 16-10-1, by unlawfully "decertifying the Election, or whatever the correct legal remedy is, and announce the true winner," in willful and intentional violation of the terms of the oath of said person as prescribed by law, with intent that said person engage in said conduct.

(V2. 100).

Counts 2, 5, 6, 23, 28, and 38 thus plainly state (1) to whom the solicitations were made; (2) what conduct constituted the solicitations (sometimes with exact quotes); (3) when the solicitations were made; (4) where the solicitations were made; (5) for what purpose (i.e., why) the solicitations were made; and (6) how the solicitations were made. However, the indictment contains even more pertinent information elsewhere, alleging that Cross-Appellees and co-conspirators joined a conspiracy to "unlawfully change the outcome of the [November 3, 2020] election in favor of Trump." (V2.19). The operation of the conspiracy included the Respondents' appearances at several hearings of the Georgia General Assembly, where they "made false statements concerning fraud in the November 3, 2020, presidential election … to persuade Georgia legislators to reject lawful electoral votes cast by the duly elected and qualified presidential electors from Georgia." (V2. 21). The indictment also alleges that Respondents made "false statements" to public officers as they

"corruptly solicited Georgia officials, including … the Secretary of State, and the Speaker of the House of Representatives, to violate their oaths to the Georgia Constitution and to the United States Constitution by unlawfully changing the outcome of the November 3, 2020, presidential election in Georgia in favor of Donald Trump." *Id*. The Respondents' actions are described in even *further* detail through dozens of overt acts, forty-nine of which are acts in furtherance of solicitation of members of the General Assembly[3] and eight of which relate to solicitation of the Secretary of State.[4]

Supplied with this volume of specifics on the face of the indictment, Respondents argued they *still* lacked sufficient information to intelligently prepare their defenses and filed (or joined) special demurrers to the six counts described above. As the trial court observed, Respondents argued first that the charges were deficient because they did not cite the relevant oaths pertaining to each solicitee (V2. 224-25), an argument they quickly conceded as meritless (V8. 143-44) because only one statutory oath applied to each solicited public official. However, they further suggested that even if the pertinent oaths were readily apparent, the indictment should have specified the precise *terms* of the oaths which the public officers would have violated if they had acquiesced to

[3] *See* Acts 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 38, 40, 41, 42, 45, 55, 56, 68, 75, 95, 100, 101, 102, 103, 104, 105, 106, 123, and 132 of Count 1 of the indictment.

[4] *See* Acts 92, 93, 96, 112, 113, 114, 156, and 157 of Count 1 of the indictment.

the Respondents' solicitations. The only direct support for this argument, supplied by Respondent Smith (V2. 225, 239-46), was a Glynn County Superior Court order relying upon a case that had been vacated by this Court for twenty years.[5]

After extensive briefing and argument, the trial court held—despite the "abundance" of detailed factual allegations within the indictment, and despite finding both the relevant oaths *and* their relevant terms were ascertainable from the indictment—that the solicitation charges were too vague for Respondents to intelligently prepare their defenses. As a result, the charges could not withstand special demurrer. The Court of Appeals affirmed the trial court's order with a minimum of analysis, presenting the case as a straightforward application of the special demurrer standard as described by this Court in *Sanders*, which that Court described as

> focused on the standard for the grant of a special demurrer generally and whether the defendant could prepare her defense intelligently in the absence of additional information about the crime she was alleged to have solicited. Applying a similar analysis here, we find that the indictment fails to include enough detail to sufficiently apprise the defendants of what they must be prepared to meet so that they can intelligently prepare their defenses.

Eastman, 2025 Ga. App. LEXIS 13 at *10. The Court of Appeals then repeated,

[5] *See* Superior Court order in State v. Haney, Case No. CR-2000168 (Glynn Sup. Ct., Sept. 23, 2020). (V2-239-46). The portion of that order quashing a Violation of Oath by Public Officer count relied on *State v. Jones*, 246 Ga. App. 482 (2000), which was vacated by this Court. See *State v. Jones*, No. S01C0290, 2001 Ga. LEXIS 290 (Ga. 2001).

without additional analysis, the trial court's conclusions that

> the United States Constitution contains hundreds of clauses, any one of which can be the subject of a lifetime's study. Academics and litigators devote their entire careers to the specialization of a single amendment. To further complicate the matter, the Georgia Constitution is not a mere shadow of its federal counterpart, and although some provisions feature similar language, the Georgia Constitution has been interpreted to contain dramatically different meanings.

Id. at *10-11.

The trial court arrived at this conclusion in three steps, each of which lacks a basis in Georgia law. **First**, the trial court equated inchoate crimes such as solicitation to "compound crimes" such as felony murder, declaring that "[c]ompound crimes, like solicitation, are those which rely on an underlying or predicate offense," and that "precedent is clear that the allegations must either include every essential element of the predicate offense or charge the predicate offense in a separate count." (V6. 1233). The trial court cited no authority for this principle because none exists. No Georgia court has ever classified solicitation, or any inchoate offense, as a "compound offense" subject to the sort of pleading standards invoked by the trial court. The trial court simply concluded that the two categories were equivalent.

Second, proceeding from this unfounded supposition, the trial court moved to another. Assuming that the solicitation charges had to also include the essential elements of charges of violation of oath by public officer, the trial

court held that the pertinent *terms* of the officers' oaths must be set out in the indictment. (V6. 1233-34). It is true that in order to *prove* a violation of O.C.G.A. 16-10-1 at trial, "the State must present evidence that the defendant violated the terms of the oath actually administered and that those terms were from an oath 'prescribed by law,' that is, one that the 'legislature' required of a public officer 'before entering the duties of [his or her] office.'" *Bradley*, 292 Ga. App. at 740. The statute itself merely requires that (1) the defendant be a public officer subject to an oath prescribed by law and (2) the public officer willfully and intentionally engaged in certain conduct that violated the terms of that oath. O.C.G.A. 16-10-1. No precedent establishes a requirement that the pertinent terms of the oath appear on the face of the indictment when only a single statutory oath applies and the indictment contains an "abundance" of specific factual allegations concerning the public officer's conduct.[6]

While each of these conclusions is novel and, to one extent or another, without a basis in Georgia law, they still did not combine to authorize the grant

[6] In *Jowers v. State*, 225 Ga. App. 809 (1997), post-conviction case concerning the sufficiency of the evidence at trial, the Court of Appeals held that in order to convict under O.C.G.A. § 16-10-1, the State had to prove that there was an oath prescribed by law and that a public official had committed acts that violated the terms of that oath. *Id.* at 812. While *Jowers* states that the "'terms' of the oath averred to be violated are a necessary fact," that is in the context of a case where the parties disputed what "terms" had actually been sworn by the defendant. The State had averred the entirety of a specific oath that *implied*, but did not *explicitly state*, that sheriff's deputies were required to uphold the laws of Georgia. *Id.* The *Jowers* opinion simply clarifies that (1) the allegedly violated "terms" of an oath had to be specifically "prescribed by law"—that is, contained in a statute, and (2) where an oath or its terms is averred in an indictment, the averment had to be proved as charged. *Id.* at 812-13.

of Respondents' special demurrers. This is because the indictment contains sufficient information to meet even the exacting standards pronounced by the trial court. The charges detailed how and when the solicitations were made, to whom, and for what purpose; that the solicitees were each public officers; and that engaging in the solicited activities would have constituted "willful and intentional violation[s] of the terms of the oath of said persons as prescribed by law." And as the trial court observed, the pertinent terms of the oaths—that the public officers must support the United States and Georgia Constitutions—were readily ascertainable in the context of the indictment as a whole. (V6. 1233).

However, the trial court declared that this was *still* not enough. **Third**, trial court held that, where the term at issue requires a public officer to support the state and federal constitutions, "the incorporation of the United States and Georgia Constitutions is so generic as to compel this Court to grant the special demurrers." (V6. 1233). Respondents had ample details on their own pertinent conduct, the context of their actions, their alleged goals, the public officials they solicited, the activities they requested the officials to perform, the oaths to which those officials were subject, and the specific terms of those oaths that their solicited activities would have violated. The indictment did not go so far as to detail *how* those solicited activities would have violated their oaths to support the state and federal constitutions. This is apparently because, as the

trial court held and the Court of Appeals repeated, constitutions are complex. (V6. 1233-34). The trial court held that more information was required within the indictment as to *which specific provisions* of the Constitution the public officer's actions *would have* violated *if* they had acquiesced to Respondents' solicitations. As a result, "[a]s written, these six counts contain all the essential elements of the crimes but fail to allege sufficient detail regarding the nature of their commission, i.e., the underlying felony solicited." (V6. 1234).

This third and final conclusion, like the first two, is novel and finds no support in Georgia law, but it is also factually unsupported. Even as it acknowledged cases where charges withstood special demurrer because they "include[d] enough additional detail to create a much smaller universe of possibilities" or referred to crimes which could be perpetrated "in only a limited number of ways," (V6. 1234), the trial court ignored the limiting circumstances present in this case. The indictment details an overarching conspiracy with very specific goals—"to unlawfully change the outcome of the election in favor of Trump" (V2.19)—and alleges that Respondents solicited "Georgia legislators to reject lawful electoral votes cast by the duly elected and qualified presidential electors from Georgia . . . [and] instead to unlawfully appoint their own presidential electors [to] cast electoral votes for Donald Trump." (V2. 21) (emphasis added). These allegations make clear that any potential constitutional provision at issue must be one related to (1) elections; (2) more

specifically, presidential elections; or (3) even more specifically, the lawful manner in which Georgia's presidential electors are appointed.[7] Respondents need not worry about clauses such as those relating to taxation or the military that obviously do not apply. There is a confineable class of constitutional provisions for which Respondents are on notice. The trial court ignored this "smaller universe of possibilities" entirely, referring instead to the "dozens, if not hundreds, of distinct ways" that "the Defendants could have violated the Constitution and thus the statute." (V6. 1234).

In its analysis, the trial court purported to rely upon *Sanders*, the only Georgia case examining a special demurrer to a count of solicitation, to determine "that the elements of the underlying, predicate felony that is alleged to have been solicited cannot be so easily ignored." (V6. 1232). The trial court interpreted *Sanders* to hold that a special demurrer should have been granted "when an indictment failed to sufficiently allege the underlying felony solicited by the defendant." (V6. 1232, citing *Sanders*, 313 Ga. at 202). "In particular, for an allegation of solicitation of felony drug possession, the Court found the indictment should have averred the specific drug possessed and its quantity. Without this information, the Defendant could not prepare a defense intelligently as the crime could be committed 'in a number of possible ways.'"

[7] *See*, e.g., U.S. CONST. art. II, § 1, cl. 2; GA. CONST. art. II, § I, para. II.

(V6.1232).

As noted above, that does *not* describe this Court's holding in *Sanders*. This Court quashed the solicitation charge in that case because it failed "to allege *any facts* supporting the charged offense" and merely contained bare-bones statutory language. 313 Ga. at 201. The charge did not specify how the solicitation was performed, what form the defendant's "request" took, what the nature of the request was, or anything at all other than to say it requested someone to commit a Violation of the Georgia Controlled Substances Act: Possession of a Controlled Substance." *Id.* This Court certainly did not hold in *Sanders* that the indictment was required to allege each of the elements of the "underlying" felony as if they were an independent, substantive offense. Instead, this Court held only that, for a charge of solicitation, the failure to allege "*any underlying facts*" as to the solicited or "underlying" felony, coupled with the inability to glean any additional information from the indictment as a whole, would be fatally deficient. *Id.* at 202.

Sanders merely established the floor: there must be some kind of information—as opposed to none at all—regarding the underlying felony. Far from requiring that the underlying felony be alleged as if it were a substantive offense, the floor established in *Sanders* is quite low, as is appropriate for an analysis where "the language of an indictment is to be interpreted *liberally in favor of the State*, while the accused's objections to the indictment, as presented

in a special demurrer, are strictly construed against the accused." *McGlynn*, 342 Ga. App. at 175 (emphasis added). This last principle was not acknowledged by either the trial court or the Court of Appeals in their opinion affirming the grant of the special demurrers.

The trial court thus held, and the Court of Appeals affirmed, that where a defendant is accused of soliciting a public official to violate their oath to support the Constitution, the State is required to allege the elements of O.C.G.A. § 16-4-7, each of the elements of O.C.G.A. § 16-10-1, the specific terms of the relevant oath, *and* additional details clarifying *how* the solicited activities—which, of course, did not occur, and thus remained only hypothetical possibilities—would have violated an oath to support the state and federal constitutions. It did so despite an acknowledged "abundance" of factual detail (as opposed to indictments lacking "any underlying facts" at all) and despite the "smaller universe" of constitutional provisions in play. It misinterpreted *Sanders* and made interpretive leaps without any basis in Georgia law. As detailed below, these errors must be corrected, and the Court of Appeals' opinion affirming the trial court must be overturned.

C. <u>By affirming the trial court's order, the opinion of the Court of Appeals establishes a new standard for indicting inchoate offenses and creates a unique standard for public corruption cases that is more favorable than that afforded to defendants accused of any other crime.</u>

Review on certiorari is authorized because the errors within the trial

court's order, affirmed by the Court of Appeals without additional substantive analysis, create a pleading standard for inchoate offense such as solicitation that is equivalent to, or more stringent than, the standard for compound offenses. Thus, while the Court of Appeals presented its conclusion as a straightforward application of the special demurrer standard as presented by this Court in *Sanders*, the opinion below actually went further and created new law. The opinion adopted the trial court's conclusion that Respondents were entitled to more information about the "underlying" offenses within the solicitation charges *because*, the trial court assumed, underlying offenses must be set out with the same level of detail as the predicate offenses relied upon by compound crimes. As the trial court put it, its "concern is less that the State has failed to allege sufficient conduct of the Defendants—in fact it has alleged an abundance. However, *the lack of detail concerning an essential legal element* is, in the undersigned's opinion, fatal." (V6. 1234) (emphasis added).

If certiorari is denied and the opinions below are allowed to stand, the Court of Appeals has created precedent establishing that the required "level of detail" for charges such as those found in this case requires not just the identification of the specific "terms" of a pertinent statutory oath, but also the specific *provisions* of the state and federal constitutions encompassed *within* those terms. Indictments charging inchoate crimes would require the essential elements of those crimes, the essential elements of their "underlying" crimes,

and sufficient additional details as would be required if the underlying crime were charged *substantively*. Such a conflation of compound crimes with inchoate crimes will have profound effects upon pleading standards for the crimes of solicitation, attempt, and conspiracy.

As the State argued below, equating inchoate and compound crimes does not make sense. Solicitation and other inchoate offenses are complete before the underlying crime commences and often well before the underlying crime is fully considered or planned out, if it ever actually is. As a result, the majority of foreign jurisdictions have held that the underlying offense in an allegation of an inchoate crime such as solicitation does not need to be detailed as though it were the completed, substantive crime itself. Until the opinion below, neither this Court nor the Court of Appeals have ever attempted to set the pleading standards applicable to inchoate crimes. As set out more fully below, the State maintains that the opinions below are erroneous and entirely out of step with the great weight of authority. Regardless, if the pleading standards for inchoate crimes are going to be established by any court's opinion, those standards should be set be by a considered opinion of *this* Court and not by a Court of Appeals opinion that merely adopts the unsupported suppositions of a trial court order.

The opinions below do not harmonize with local or foreign authority. Georgia courts have certainly never gone as far as the opinions below in

requiring essential elements and exacting details regarding the underlying offenses of inchoate crimes. *See Adams v. State*, 229 Ga. App. 381, 384 (1997) (criminal solicitation not a lesser included offense of trafficking cocaine because essential elements of criminal solicitation are intent that another person engage in conduct constituting a felony and solicitation of the other person to engage in such conduct); *Dennard v. State*, 243 Ga. App. 868, 871-872 (2000) (indictment charging criminal attempt not required to allege elements of the target child molestation but instead must simply allege intent to commit a crime and a substantial step toward the commission of that crime); *Sanders v. State*, 313 Ga. at 196-97 (indictment charging conspiracy to commit aggravated assault sufficient where count alleges a conspiracy and at least one overt act; indictment not required to plead elements of aggravated assault).

Inchoate offenses necessarily involve factual scenarios that neither necessitate nor recommend the pleading standards of compound crimes. The harm from solicitation springs from the solicitation of unlawful conduct, not an injury to a specific person or persons. *See State v. Kenney*, 233 Ga. App. 298, 299 (1998) ("[I]n an accusation for soliciting for a prostitute the gist of the offense is the harm done society by such unlawful solicitation, and not an injury to the individual solicited."). The crime of solicitation is completed when the accused, with intent, engages in the act of asking or otherwise attempts to cause another to commit a felony. *English v. State*, 290 Ga. App. 378, 380

(2008). Thus, solicitation does not necessarily rely on the specifics of the underlying offense that would exist if it were actually completed, as such specifics might not yet be fully contemplated.

Solicitation only requires that the solicited conduct be the result, not that the entire plan or scheme is thought out or conveyed. *See Id.*; *State v. Johnson*, 202 Or. App. 478, 485, 123 P.3d 304 (2005) (in order to show defendant intended to "engage in specific conduct constituting a crime" as required under Oregon's solicitation statute, "the state needs to prove that a defendant has engaged another person, intending that the other person engage in any specific conduct that constitutes a crime."); *Gardner v. State*, 41 Md. App. 187, 201, 396 A.2d 303, 311 (1979) ("The crime of solicitation requires neither a direction to proceed nor the fulfillment of any conditions.").

Unlike solicitation, a compound offense necessarily depends entirely upon the completed commission of all the elements of some predicate crime. For example, felony murder (which the trial court wrongly analogized to criminal solicitation) is complete only once all the elements of some predicate felony have been committed and a death results. Accordingly, all the elements of the predicate felony *plus* the added element of the death of another must be alleged in the indictment. This is because "[p]roof of the elements of the offense of felony murder necessarily requires proof of the elements of the felony." *Woods v. State*, 233 Ga. 495, 501 (1975). Because felony murder requires the

completion of the predicate offense—unlike criminal solicitation, which requires only criminal intent and the commission of some overt act—a predicate felony must be alleged fully in the indictment. *Stinson v. State*, 279 Ga. 177, 178 (2005).

While *Sanders* is the only Georgia case discussing a special demurrer to a charge of solicitation, federal courts have examined similar issues with motions to dismiss or for bills of particulars numerous times. The analysis begins from the same point, as this Court adopted the same fundamental test first set forth nearly 130 years ago by the United States Supreme Court to determine whether an indictment is constitutionally sufficient to withstand a special demurrer. *Compare Sanders*, 313 Ga. at 195, *State v. Wyatt,* 295 Ga. 257, 260 (2014), and *English*, 276 Ga. at 346 with *Cochran v. United States*, 157 U.S. 286, 290 (1895). Where the bedrock principles underpinning challenges to an indictment are nearly identical under both Georgia and federal law, federal authority is instructive. Federal courts have held that solicitation charges are not required to be pleaded with exacting detail regarding the underlying offense. *See United States v. White,* 660 Fed. Appx. 779 (11th Cir. 2016); *United States v. White*, 610 F.3d 956 (7th Cir. 2010); *United States v. Hill*, No. 1:09-CR-199-TWT-CCH-1, 2009 U.S. Dist. LEXIS 123059 (N.D. Ga. Dec. 11, 2009). None of the indictments in these cases indicated how the solicited offense was to be performed, but each was upheld

as sufficient to allow the defendants to mount a defense. In each case, the factual details of the *request*, which demonstrated the intent to carry out the target crimes, were sufficient to satisfy due process and double jeopardy concerns.[8] The indictment here is consistent with this principle, as the requests as alleged provide the information necessary for Respondents to mount a defense and protect against duplicate charges. In any event, the standard authorized by the Court of Appeals opinion affirming the trial court's order is neither advisable nor necessary, but in any event, new pleadings standards should only be announced by the opinions of *this* Court.

Finally, certiorari is authorized in this case for another reason: the standards authorized in the opinions below require heightened pleading standards for cases involving public corruption. If allegations that a public official has violated their oath to support the United States or Georgia Constitutions require the averment of not merely the terms of the pertinent oath but also the actual constitutional provisions which the official violated, that official is required to receive a level of detail in an indictment that no other

[8] *See also Wong Tai v. United States*, 273 U.S. 77, 81 (1927) (underlying offenses in conspiracy charges not required to be alleged with detail equivalent to substantive offense). Other authorities agree with these principles. *See State v. Sinnott*, 72 S.D. 100, 104-05, 30 N.W.2d 455, 457 (1947) (adopting federal precedent that conspiracy indictments need not allege the contemplated crime with the accuracy requisite to the commission of the crime itself"); *People v. Teneroicz*, 266 Mich. 276, 285, 253 N.W.2d 296, 300 (1934); *State v. Polite*, 79 N.C. App. 752, 753-54, 340 S.E.2d 762, 762-63 (1986) (indictment for solicitation need not allege all of the elements of the crime solicited).

defendant enjoys. Prosecutions of public officials accused of violating the public's trust by failing to support the state and federal constitutions should not be uniquely required to set out what amounts to the State's theory of proof.

This is not an overstatement: Respondents have explicitly stated that they expect the State to provide them with its theory of proof on the face of the indictment. Indeed, Respondent Meadows explicitly demanded to know more detail concerning the State's "theory of criminal liability." Meadows Br. at 7. And Respondent Eastman insists that the Indictment must specify, presumably as a matter of law, "how the conduct being solicited would violate the legislators' oaths to uphold the state and federal constitutions." Eastman Br. at 8. Our jurisprudence has never required an indictment to specify legal theories upon which the State will rely for conviction, and it should not start in this case. However, once again, if such a change is to be announced in Georgia courts, it should come from this Court. A grant of certiorari is warranted, the errors below should be corrected, and the opinion of the Court of Appeals should be reversed.

CONCLUSION

The criteria for review on certiorari are met, and the State respectfully submits that review is necessary in order to safeguard both this case and the general administration of Georgia's criminal prosecutions from the results of the majority's opinion.

For the reasons stated above, the State of Georgia respectfully petitions this Honorable Court to **GRANT** the State's petition for a writ of certiorari to the Court of Appeals, to **REVIEW** and to **REVERSE** that Court's judgment in this case, to **HOLD** that the pertinent counts of the indictment withstand special demurrer, and to **GRANT** any and all other relief which is just and proper.

***

CERTIFICATION OF WORD COUNT

This submission does not exceed the word-count limit imposed by Rule 20.

Respectfully submitted this 6th day of February, 2025.

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IN THE SUPREME COURT OF THE STATE OF GEORGIA

STATE OF GEORGIA,	)	**CASE NUMBER**
Petitioner,	)	_____
	)	
versus	)	**On petition for writ of**
	)	**certiorari to the Court**
JOHN CHARLES EASTMAN,	)	**of Appeals of Georgia**
RAY STALLINGS SMITH III,	)	**Case Nos. A25A0395,**
DONALD JOHN TRUMP,	)	**A25A0396, A25A0397,**
ROBERT DAVID CHEELEY,	)	**A25A0398, A25A0399,**
MARK RANDALL MEADOWS,	)	**A24A0400**
RUDOLPH WILLIAM LOUIS GIULIANI,	)	
Respondents.	)	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the within and foregoing upon counsel of record for Respondents by emailing a PDF copy, as previously agreed upon, to suffice for service under Supreme Court Rule 14 to:

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This 6th day of February, 2025.

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Exhibit A

FIRST DIVISION
BROWN, J.,
MARKLE AND LAND, JJ.

January 17, 2025

In the Court of Appeals of Georgia

A25A0395. THE STATE v. EASTMAN.
A25A0396. THE STATE v. SMITH.
A25A0397. THE STATE v. TRUMP.
A25A0398. THE STATE v. GIULIANI.
A25A0399. THE STATE v. CHEELEY.
A25A0400. THE STATE v. MEADOWS.

BROWN, Judge.

In these consolidated cases arising out of an alleged conspiracy to unlawfully change the outcome of the 2020 presidential election, the State appeals from the trial court's order granting a special demurrer and quashing six counts of the indictment. The State asserts that the trial court applied the wrong legal standard when evaluating the special demurrer and that application of the correct standard requires this Court to reverse. We disagree and affirm.

"We review a ruling on a special demurrer de novo to determine the legal sufficiency of the allegations in the indictment." (Citation and punctuation omitted.) *Sanders v. State*, 313 Ga. 191, 195 (3) (869 SE2d 411) (2022). A special demurrer "challenges the sufficiency of the form of the indictment." (Citation and punctuation omitted.) *Moore v. White*, 320 Ga. 120, 125 (2) (907 SE2d 902) (2024). While "[a] defendant is entitled to be tried on a perfect indictment[,] . . . the test for determining the constitutional sufficiency of an indictment is not whether it could have been made more definite and certain[.]" (Citations and punctuation omitted.) *Sanders*, 313 Ga. at 195 (3). Instead,

> [t]he test . . . is whether it contains the elements of the charged offense, sufficiently apprises the defendant of what he must be prepared to defend against, and in case of another prosecution for a similar offense, enables him to determine whether he may plead a former conviction or acquittal.

Moore, 320 Ga. at 125 (2). "By filing a special demurrer, the accused claims not that the charge in an indictment is fatally defective and incapable of supporting a conviction (as would be asserted by general demurrer), but rather that the charge is imperfect as to form or that the accused is entitled to more information." (Citation

and punctuation omitted.) *White v. State*, 319 Ga. 367, 387 (5) (b) (903 SE2d 891) (2024). "It is useful to remember that the purpose of the indictment is to allow the defendant[s] to prepare [their] defense intelligently and to protect [them] from double jeopardy." (Citations and punctuation omitted.) *Sanders*, 313 Ga. at 195 (3). "An indictment does not have to contain every detail of the crime to withstand a special demurrer, but rather must allege the underlying facts with enough detail to sufficiently apprise the defendant[s] of what [they] must be prepared to meet." (Citation and punctuation omitted.) Id. at 197 (3) (a) (iii). Finally, an indictment is read as a whole, and this principle is often relied upon to withstand a special demurrer "where one count does not include sufficient details, but those details are provided in other counts of the indictment." *Powell v. State*, 318 Ga. 875, 882 (2) (901 SE2d 182) (2024).

In this case, the six challenged counts of the indictment (Counts 2, 5, 6, 23, 28, and 38) charge various defendants with the crime of solicitation, a felony punishable "by imprisonment for not less than one nor more than three years." OCGA § 16-4-7 (b). "A person commits the offense of criminal solicitation when, with intent that another person engage in conduct constituting a felony, he solicits, requests, commands, importunes, or otherwise attempts to cause the other person to engage in

such conduct." OCGA § 16-4-7 (a). The indictment alleges that the defendants at issue solicited conduct in violation of OCGA § 16-10-1, which provides: "Any public officer who willfully and intentionally violates the terms of his oath as prescribed by law shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years."

The record shows that defendant Ray Stallings Smith filed a timely special demurrer asserting that the solicitation counts failed to allege the specific oath of office or the portion of the oath violated.[1] The counts at issue assert that various defendants on certain dates "unlawfully solicited, requested, and importuned certain public officers," including members of the Georgia Senate and Georgia House of Representatives, the Speaker of the Georgia House of Representatives, and the Georgia Secretary of State, "to engage in conduct constituting the felony offense of Violation of Oath by Public Officer, OCGA § 16-10-1." The conduct solicited by various defendants and alleged to violate the oaths of office includes: "unlawfully appointing presidential electors from the State of Georgia, in willful and intentional

[1] Defendants Eastman, Trump, Giuliani, and Meadows subsequently adopted the arguments made by Smith pursuant to an order of the trial court allowing the defendants to adopt in whole or in part a motion filed by another defendant. Defendant Cheeley filed a separate special demurrer raising similar arguments.

violation of the terms of the oath of said persons as prescribed by law"; "calling for a special session . . . for the purpose of unlawfully appointing presidential electors from the State of Georgia, in willful and intentional violation of the terms of the oath of said person as prescribed by law"; "unlawfully altering, unlawfully adjusting, and otherwise unlawfully influencing the certified returns for presidential electors for the November 3, 2020, presidential election in Georgia, in willful and intentional violation of the terms of the oath of said person as prescribed by law"; and "'unlawfully decertifying the Election, or whatever the correct legal remedy is, and announce the true winner,' in willful and intentional violation of the terms of the oath of said person as prescribed by law."

After holding a hearing, the trial court issued an order rejecting the argument that these counts of the indictment must be quashed because they failed to specify the oath taken by the various public officials. In its view, the omissions were "legally harmless"[2] because the Georgia Code provides only one option relevant to each

[2] We note that with regard to special demurrers, "harmless error review is appropriate only in the post-conviction setting, not in pre-trial proceedings or on pre-trial appeal." *Wagner v. State*, 282 Ga. 149, 150 (1) (646 SE2d 676) (2007).

category of public official. See OCGA §§ 28-1-4 (a) and OCGA § 45-3-1. OCGA § 28-1-4 (a) provides:

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

(Punctuation omitted.) OCGA § 45-3-1 states:

> Every public officer shall:
>
> (1) Take the oath of office;
> (2) Take any oath prescribed by the Constitution of Georgia;
> (3) Swear that he or she is not the holder of any unaccounted for public money due this state or any political subdivision or authority thereof;
> (4) Swear that he or she is not the holder of any office of trust under the government of the United States, any other state, or any foreign state which he or she is by the laws of the State of Georgia prohibited from holding;
> (5) Swear that he or she is otherwise qualified to hold said office according to the Constitution and laws of Georgia;

> (6) Swear that he or she will support the Constitution of the United States and of this state; and
> (7) If elected by any circuit or district, swear that he or she has been a resident thereof for the time required by the Constitution and laws of this state.

Based on its identification of these Code provisions, the trial court "agree[d] with the State that the Defendants are sufficiently apprised of which [statutory] oath is [generally] at issue in each indicted count." It then looked to Count 1 of the indictment, which alleges a violation of the Georgia Racketeer Influenced and Corrupt Organization Act ("RICO"), to conclude that the particular oath at issue was "oaths to the Georgia Constitution and to the United States Constitution." Count 1 of the indictment spans 59 pages of the 98-page indictment; it describes "[t]he manner and methods" of the "the enterprise" as including, but not limited to, "corruptly solicit[ing]" various Georgia officials "to violate their oaths to the Georgia Constitution and to the United States Constitution by unlawfully changing the outcome of the November 3, 2020 presidential election in Georgia in favor of Donald Trump."

After finding a reference in Count 1 to the terms of the violated oaths, the trial court concluded that "the incorporation of the United States and Georgia Constitutions is so generic as to compel this Court to grant the special demurrers." It explained:

> The [c]ourt's concern is less that the State has failed to allege sufficient conduct of the Defendants — in fact it has alleged an abundance. However, the lack of detail concerning an essential legal element is . . . fatal. As written, these six counts contain all the essential elements of the crimes but fail to allege sufficient detail regarding the nature of their commission, i.e., the underlying felony solicited. They do not give the Defendants enough information to prepare their defenses intelligently, as the Defendants could have violated the Constitutions and thus the statute in dozens, if not hundreds, of distinct ways.

(Citation and emphasis omitted.) In its view, the reference in the indictment "incorporating the entirety of both the state and federal constitutions" distinguished the case from other indictments found sufficient to withstand a special demurrer. The legal analysis underpinning the trial court's ruling was its conclusion that solicitation is a compound crime that relies upon an underlying or predicate offense and that the indictment "must either include every essential element of the predicate offense or charge the predicate offense in a separate count." Accordingly, the trial court quashed

Counts 2, 5, 6, 23, 28, and 38 of the indictment, taking care to note that the State could seek a reindictment supplementing these six counts.

On appeal, the State contends that the trial court erred by equating the inchoate offense of solicitation with a compound offense, such as felony murder, and requiring the "solicitation charges [to] include details of the target felony with the same level of specificity required for compound crimes." The State contends that because "[s]olicitation belongs to a class of inchoate offenses that include[ ] conspiracy and attempt[,]" the trial court erred in imposing the "pleading requirements for compound crimes to the criminal solicitation counts of the indictment." In the State's view, the full details of the solicited felony need not be alleged because the crime of solicitation does not require that a defendant fully realize the plan or scheme of the solicited conduct. The defendants counter that they cannot prepare their defense intelligently or be apprised of what they must be prepared to meet if the indictment does not identify the portion of the Constitutions that the defendants intended and urged Georgia officials to violate.

The parties point to the Supreme Court of Georgia's decision in *Sanders*, supra, to support their respective positions. In *Sanders*, the defendant argued that a special

demurrer should have been granted because the indictment failed to allege any facts to support a charge of soliciting another to commit the felony offense of violating the Georgia Controlled Substances Act. 313 Ga. at 201-202 (3) (e). After noting that the indictment alleged that the defendant requested another to possess an unspecified amount of an unspecified drug, the Supreme Court concluded that the indictment as written did not give the defendant enough information about the solicitation charge to prepare her defense intelligently as the defendant could have violated the statute in a number of possible ways. Id.

The State contends that it was the lack of any underlying facts that rendered the indictment insufficient in *Sanders*, while the defendants point to the Supreme Court's focus on how the defendant could have violated the statute in a number of possible ways in the absence of an allegation of what quantity of what drug the defendant sought another to possess. In our view, the Supreme Court of Georgia's analysis did not rest upon whether the solicitation charge was properly classified as an inchoate or a compound offense. Rather, it focused on the standard for the grant of a special demurrer generally and whether the defendant could prepare her defense intelligently in the absence of additional information about the crime she was alleged to have

solicited. Applying a similar analysis here, we find that the indictment fails to include enough detail to sufficiently apprise the defendants of what they must be prepared to meet so that they can intelligently prepare their defenses. As the trial court pointed out in its order,

> the United States Constitution contains hundreds of clauses, any one of which can be the subject of a lifetime's study. Academics and litigators devote their entire careers to the specialization of a single amendment. To further complicate the matter, the Georgia Constitution is not a mere shadow of its federal counterpart, and although some provisions feature similar language, the Georgia Constitution has been interpreted to contain dramatically different meanings.

(Citation and punctuation omitted.) We therefore affirm the trial court's order granting the special demurrer and quashing Counts 2, 5, 6, 23, 28, and 38 of the indictment.

Judgment affirmed. Markle, J., and Land, J., concur.