



## FORUM

# Protecting the First Amendment in Stopping Cop City: Unconstitutional Overbreadth in Georgia’s RICO Laws

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In March 2021, then-Atlanta Mayor Keisha Lance Bottoms alongside the Atlanta Police Foundation announced plans to build the Atlanta Public Safety Training Center—a massive \$90 million police training facility boasting shooting ranges, explosives testing grounds, and a mock city for urban warfare training, bestowing the project with its popular nickname, “Cop City.” Since then, Cop City has been the subject of over two years of ongoing opposition from activists concerned about environmental degradation and racial discrimination. The project has destroyed 85 acres of Atlanta’s 300-acre Weelaunee Forest, a valuable public green space in one of Atlanta’s largest minority communities. Concerns have also surfaced over Cop City’s costly and expansive role in a continued push towards stronger policing in the city’s minority communities, a trend that has risen in Atlanta following the police-centered unrest that took place in the city in 2020. The collective opposition of these groups has come to form “Stop Cop City,” a decentralized movement that has gone on to wage two years of extensive and controversial protests in the Weelaunee Forest and the wider city of Atlanta.

Stop Cop City’s protests commenced following the announcement of Cop City in 2021, with the most notable example being the continued camping of activists in the wooded construction site. This specific form of protest has resulted in regular run-ins with the law over their occupation of the forest, some violent, with one

early 2023 altercation resulting in the death of an activist and the wounding of a Georgia state trooper. The act further inflamed Stop Cop City protests, with several charges of arson and domestic terrorism arising after construction equipment for the project was set on fire by protestors. However, legal action against Stop Cop City was just beginning and would soon take a drastic turn.

On August 29, 2023, Georgia Attorney General Chris Carr released a legal indictment charging 61 Defend the Atlanta Forest protestors of racketeering under the state's Racketeer Influenced and Corrupt Organizations statute, commonly referred to as RICO. Under Section 4 of Georgia's RICO statute, racketeering is defined as an act of conspiracy between one or more people to maintain "interest in or control of any enterprise, real property, or personal property of any nature, including money," or to "participate in any such enterprise through a pattern of racketeering activity." Under Section 3 of the statute, the enterprises controlled by racketeers include property, interests, and institutions, and the racketeering activities can be any crime pertaining to the maintenance of the enterprise. The laws were originally made to target gang and mob activity, connecting individual crimes to larger group-motivated ones, but in the case of the Stop Cop City indictment, Carr maintained that Defend the Atlanta Forest protestors held an interest in stopping the building of Cop City, using racketeering activities including arson, domestic terrorism, and money laundering.

These allegations and the unique usage of RICO laws have elicited extensive debate. While RICO laws were originally made to target organized crime in the case of gangs and mobs, concerns have risen over the fact that Carr's usage of RICO laws allows them to target protest movements as well. Critics of Carr's decision hold that using RICO laws against protesting movements is a direct attack on the First Amendment right to peaceful protest, with Odette Yousef of NPR reporting that the indictment is "chilling First Amendment activity" amongst citizens of Atlanta. However, Carr maintains that the protests were not peaceful and deserve to be held accountable for the crimes that the "violent anarchists" committed. The use of RICO laws to go about this accountability in the event of a protest, though, is unprecedented for Georgia.

Similar usage of federal RICO laws, however, took place when they were applied against anti-abortion protestors in the 1993 Supreme Court case *National Organization of Women (NOW) v. Schiedler*. The Court found that the protestors could be labeled as racketeers, claiming that the anti-abortion protestors acted in organized crime against the abortion clinics. The case effectively established that under federal RICO laws, unruly protesting could be a "predicate act" for racketeering, or

an individual crime contributing to a larger one. Similar to the Stop Cop City case, this usage of RICO laws was controversial. University of Idaho JD Jillian Christensen argues that the usage of federal RICO laws against protesting represents a substantial “clash” between the gang and mob-related racketeering crimes that federal RICO laws were formed to target and their usage against protestors at the time of writing. She cites *NOW* as setting a precedent for RICO laws to be used beyond their intended purpose against the Black Lives Matter and Antifa movements of 2020 and perhaps future movements. In the greater context of constitutional law, I interpret Christensen’s arguments to claim that the usage of federal RICO laws against protesting represented unconstitutional overbreadth—a type of constitutional infringement that occurs when a statute is used substantially beyond its original intentions. By targeting protestors, federal RICO laws are being used substantially beyond their original intentions of targeting gang and mob-related crimes. By extension, this argument can be applied to the Stop Cop City indictment in Georgia.

When evaluating Attorney General Carr’s usage of Georgia’s RICO against Stop Cop City protestors, unconstitutional overbreadth is apparent and must be acknowledged. As shown in *NOW v. Scheidler*, overbroad usage of federal RICO laws allows for protesting to be used as a predicate act for racketeering, condemning any protests that can be connected to any sort of crime to the possibility of overbroad racketeering indictments. The same can be seen in Georgia, wherein overbroad usage of RICO laws allowed 61 protestors from Defend the Atlanta Forest to be indicted for racketeering on the grounds that they maintained interest in an act of protest against a political issue. But, as Yousef pointed out, where is the line drawn between the political issue of protesting and racketeering activities? And if this is allowed to happen with Stop Cop City protestors, what precedent does it set for future protests in Georgia? The result of unconstitutionally overbroad usage of RICO laws allows for the First Amendment right for groups to peacefully assemble and protest to be lumped into the criminal equivalent of gang activity if any crime is committed by an individual protestor. The line between protestor and racketeer, therefore, needs to be distinguished for the sake of protecting the right to protest in Georgia, as well as ensuring constitutionality in Carr’s usage of RICO laws.

To effectively draw this line, I propose that Georgia’s courts should acknowledge the unconstitutionally overbroad use of RICO laws toward protestors in Carr’s Stop Cop City indictment and instead focus on criminalizing the individual crimes within the movement. As suggested by Christensen in addressing the overbroad use of federal RICO laws, courts can potentially achieve a greater

distinction between protesting and racketeering by restricting protesting from being used as a predicate act in RICO cases. Protesting can be distinguished from racketeering through its constitutional definition and is generally defined as an act of speaking out in public forums, typically organized. A line could subsequently be drawn between acts of organized protesting and acts of organized crime associated with mobs or gangs. This would restrict RICO laws from unconstitutionally tying Stop Cop City protestors into the criminal equivalents of gang and mob-related crimes, while still allowing Carr to hold individual instances of unruly crime within the protests accountable. This would also set a healthy precedent for future protests, ensuring that future protests within the state are protected from overbroad usage of RICO laws while maintaining RICO laws' strength against organized crime in the cases of mobs and gangs.

Going forward, the inherent overbreadth of Georgia's RICO laws must also be acknowledged. As noted by the Atlanta Journal Constitution's Tamar Hallerman, Georgia's state-level RICO laws are notoriously broad and allow for even broader usage than federal ones. Georgia's RICO laws accomplish this by containing more predicate acts to racketeering compared to federal ones, creating the potential for instances of unrelated individual crimes to be lumped into the larger crime of racketeering. This suggests that the overbroad usage of Carr in the case of his Stop Cop City indictment was facilitated by the laws' broad nature. The overbroad nature of RICO statutes could therefore encourage overbroad usage. If overly broad RICO laws are allowing for acts of protest to be extended to the criminal equivalent of gang and mob-related organized crimes, then for the sake of the First Amendment, protesting's usage as a predicate act for racketeering should be formally restricted from any RICO laws that allow it. *NOW* has already received negative treatment for the unconstitutional breadth it gave federal RICO laws. While the broad nature of RICO laws in the context of *NOW* has not yet been held to be unconstitutional at the time of writing, Georgia's RICO laws are objectively broader than the national ones used in RICO, and therefore hold the potential to allow for greater overbreadth in their lumping of individual crimes into racketeering—an overbreadth already noted by the American Civil Liberties Union of Georgia's condemnation of the laws' "overbroad" usage. Prevailing evidence then dictates that Georgia's RICO laws require closer observation of their constitutionally—and potentially, resolutions towards their overbreadth. A clear and beneficial resolution would be to formally exclude protesting from being a predicate act to racketeering, effectively ensuring constitutionality by ridding the laws of their overbreadth at the time of writing.

By acknowledging Carr's overbroad usage of laws against Stop Cop City protesters and limiting further overbreadth in Georgia RICO laws, greater freedoms would be ensured for not only the Stop Cop City movement but for future protesting movements. Carr could argue that protests should be held accountable for group-motivated crimes, however, it can also be seen that his indictment effectively provides a pipeline for protesting to be charged as the criminal equivalent of gang activity. Limiting the usage of Georgia's RICO laws would still hold protests accountable for individual crimes committed by unruly protestors—it would simply protect protesting and freedom of speech from being lumped in with racketeering crimes that should be reserved for gang and mob activity. Still, it must be noted that any movement against Georgia RICO laws at the time of writing would be highly controversial considering the current climate of their use against famous rappers and the nationally popularized indictment of former president Donald Trump. Nevertheless, acknowledging the unconstitutional overbreadth of Carr's usage of RICO and limiting RICO's use against protesting remains the best solution not only for the Stop Cop City movement, but for the future of First Amendment-protected demonstrations in Georgia as a whole.

Under the usage of state RICO laws at the time of writing, Georgians face difficult questions regarding their First Amendment rights for the future. The Stop Cop City movement has continued despite Attorney General Chris Carr's broad indictment of the protestors, and as long as opposition to the planned police training facility continues, the rights of the peaceful protestors within that opposition ought to be protected. The evidence presented in the indictment overwhelmingly shows that the usage of Georgia's RICO laws by Carr is unconstitutionally overbroad and that future usage of the laws should be restricted and returned to targeting mob and gang-related crimes. Indeed, one defendant in Carr's Cop City indictment is challenging the constitutionality of the state RICO law at this time for many of the reasons outlined in this argument. Yousef warns that though the state's conservative court is unlikely to consider the defendant's claim, the court's decision will set a national precedent for how RICO will be used against protestors in the future. For this reason, Georgia courts must find Carr's usage of the state's RICO statute unconstitutionally overbroad and reconsider how it should be used in the future—if not for the sake of Georgia, then for the sake of our nation's Constitution.