



## Supreme Court of Georgia

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## CASES DUE FOR ORAL ARGUMENT

### Summaries of Facts and Issues

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**Monday, March 20, 2017**

### **10:00 A.M. Session**

#### **CITY OF ATLANTA V. MAYS ET AL. (S17A0629)**

The City of Atlanta is appealing a court ruling that threw out its annexations of five unincorporated areas of **Fulton County**.

**FACTS:** In April 2016, Gov. Nathan Deal signed House Bill 514 into law, which provided for a November 2016 referendum so citizens could vote on whether to create a new City of South Fulton, whose boundaries were due to include most of the unincorporated territory in South Fulton County. Specifically, the language in House Bill 514 stated that, "The boundaries of the City of South Fulton shall include all unincorporated areas of Fulton County...as such exist on July 1, 2016," and "shall not include any territory that was annexed into another municipality before July 1, 2016." The City states that in the spring and summer of 2016, it received a number of applications from residents requesting annexation into Atlanta. The five annexation applications at issue in this case were from the communities of: Cascade Falls, the Northwest Cascade Business Corridor, Danforth Road, Cascade Manor, and Cottages at Cascade. State law (Georgia Code § 36-36-32) requires that for an area to be annexed, at least 60 percent of the property owners located in the area and 60 percent of the resident electors sign the petition agreeing to the annexation. The law requires that the City: investigate each application and ensure it is in compliance with the law; make plans to extend services to the annexed area;

and hold a public hearing to determine that annexation would be in the best interest of the residents and property owners. On June 21 and 28, 2016, the Atlanta City Council voted to adopt the annexation applications and annex the five areas into the City of Atlanta. On July 19, 2016, Emelyn Mays and five others – whom the City’s lawyers call “a few disaffected individuals” – sued the City, seeking a “declaratory judgment” in which the court would declare as invalid the City’s annexation of the five areas. Following a hearing, on Sept. 8, 2016, the trial court granted the citizens’ request, declaring Atlanta’s annexations null and void. Specifically, the Superior Court deemed the annexations as improper because under House Bill 514, each of the annexations was “untimely;” the Atlanta City Council did not follow state law when it voted to annex the territories; and the City Council could not determine whether the annexations were in the best interest of the residents because it admitted it did not know whether residents living in the annexed areas would still be part of the Fulton County school system or now be part of the Atlanta Public School system. The City now appeals to the Georgia Supreme Court.

**ARGUMENTS:** The City’s attorneys argue the trial court incorrectly ruled that House Bill 514 could prohibit Atlanta from exercising its statutory power to annex areas from June 1, 2016 until after the November 2016 referendum. “House Bill 514 is a local Act,” they argue in briefs. “As such, it cannot trump the general law that permits Atlanta and other municipalities in South Fulton County to annex. As interpreted and applied by the trial court, House Bill 514 is unconstitutional.” The Uniformity Clause of the Georgia Constitution “prohibits local acts regarding topics addressed by general law,” the attorneys argue. The Constitution states that, “Laws of a general nature shall have uniform operation throughout this state and no local or special law shall be enacted in any case for which provision has been made by an existing general law.” The state Supreme Court has held that “the legislature may not, without constitutional authority, enact a local act regarding any matter ‘for which provision has been made by an existing general law.’” Georgia’s Annexation Act (Georgia Code 36-36-37 (a)) provides that if a municipality satisfies certain, specific statutory requirements, then the subject property shall be annexed and become part of that municipality. “But the trial court’s Final Order is based on its legal conclusion that House Bill 514 established a ‘hold on Atlanta’s annexations’ that ‘block[s] municipalities from annexing,’” pending the referendum, the City’s attorneys argue. “This conclusion is incompatible with established Georgia law. If House Bill 514 amends, restricts, or even temporarily suspends the Annexation Act, it is unconstitutional.” “The trial court’s ruling that House Bill 514 invalidates Atlanta’s annexations because the local act trumps Atlanta’s exercise of its statutory powers granted by general law is error that vitiates the Uniformity Clause, invites major mischief by the General Assembly, and should be reversed,” the City’s attorneys contend. The trial court also erred in relying on the Georgia Court of Appeals 2014 decision in *City of Brookhaven v. City of Chamblee*. In that case, the appellate court cited the annexation statute in invalidating a municipal ordinance annexation because of a pending local act annexation referendum. But that case does not apply here, because it involved a local *annexation* act. “Here, of course, House Bill 514 is a local *incorporation* act, not an annexation act, and thus none of Atlanta’s annexations conflict with ‘the General Assembly’s authority to annex.’ The trial court here erroneously concluded that there is no material difference between annexation and incorporation. However, Georgia Code Georgia Code 36-36-10 reserves the General Assembly’s power to annex, but says nothing about incorporation, which is in an entirely different code section,” the attorneys argue. The trial court made several other

errors, including its ruling that Atlanta failed to “timely” validate the annexation petitions. The court ruled that the City Council “itself failed to determine that the annexation petitions were valid ‘not less than 15 days nor more than 45 days from the time’ of the public hearing on the proposed annexations.” First, the trial court erred in requiring the City Council to personally validate the petitions via its formal vote. Here, the City Council has delegated the verification responsibilities to professional staff. “When a Georgia statute requires a formal vote, it says so.” And the trial court erred in ruling that Atlanta did not and could not determine that the annexations were in the best interest of the residents and property owners. “The trial court’s ruling misunderstands Atlanta’s legislative decision-making,” the attorneys argue. Among other arguments, the trial court incorrectly held that the Cottages annexation failed to satisfy the 60 percent approval requirement among electors, the City’s attorneys contend.

The citizens’ attorneys argue that this appeal involves “the City of Atlanta’s rushed attempt to annex five territories that the General Assembly set aside to be part of the new City of South Fulton.” In its haste to meet the deadlines imposed by House Bill 514, however, “it made numerous procedural errors that render each of the void annexations null and ineffective,” the attorneys argue in briefs. The trial court’s decision should be upheld because the City “failed to meet its stout burden of showing a legislative act is unconstitutional because the General Assembly is constitutionally empowered to create new cities and, necessarily, the boundaries of those cities.” This case is now moot because the residents of the disputed territories are now considered part of the City of South Fulton, the attorneys contend. The evidence supports the trial court’s conclusions that 1) the City did not receive five annexation petitions showing that 60 percent of the resident electors and 60 percent of the property owners agreed to be annexed; 2) no elected official determined that the petitions complied with the “60/60 method” until the day the City Council voted to approve the annexation ordinances; and 3) the City Council admittedly lacked information it characterized as “critical” to deciding whether the annexations were in the best interest of residents, i.e. which school district would be theirs. While House Bill 514 provides that any annexations into the new city’s boundaries had to be complete before July 1, , “the borders had to be set when residents voted on the referendum,” more than two months earlier. Once the referendum passed, the disputed territories formally became part of the City of South Fulton. The trial court correctly ruled that House Bill 514 is constitutional. The City has failed to show “that local legislation, enacted by the General Assembly pursuant to its constitutional authority, is made unconstitutional when it temporarily limits the exercise of a delegated power by a local government,” the attorneys argue. “The Georgia Constitution establishes the General Assembly’s authority to establish the borders of municipalities.” The question related to House Bill 514’s constitutionality is “whether the General Assembly, when exercising its authority to create new cities and define new municipal boundaries, may place a temporary limitation on an adjacent municipality’s ability to annex into the new city’s borders,” the citizens’ attorneys argue. “The unqualified answer is ‘yes,’ and any other interpretation would frustrate the General Assembly’s authority to define new city boundaries.” Reversing the superior court’s ruling “would allow municipalities to frustrate and effectively destroy the legislature’s ability to create new cities’ boundaries by annexing them away before citizens can vote on whether to incorporate.” There is no conflict between House Bill 514 and Georgia law, the attorneys contend. The City had plenty of time to exercise its annexation rights, “but it sat on its hands until the time expired.” The superior court correctly decided that the City Council acted

“untimely.” First, the City Council itself violated the mandatory 15-day waiting period between when it must determine an annexation petition complies with the 60 percent thresholds and when it votes on the annexation ordinance. “Here, the City Council decided the annexation petitions complied with the 60/60 requirements on the same day it voted to approve the annexation ordinances,” the attorneys argue. “This procedural error rendered the annexation votes void.” Finally, the trial court correctly decided that the City admitted it lacked sufficient information to decide whether the annexations would be in the best interest of residents because it did “not know” whether children living in the disputed territories would be educated by the Atlanta Public Schools or the Fulton County Schools. And it correctly decided that the Cottages’ annexation petition did not satisfy the 60/60 requirement.

**Attorneys for Appellant (City):** Emmet Bondurant, David Brackett, Robert Ashe III, Robert Highsmith, Jr., Joseph Young

**Attorneys for Appellees (Mays):** Josh Belinfante, Kimberly Anderson

### **LAGUERRE V. THE STATE (S17A0646)**

A man on trial for murder in **Fulton County** is appealing a judge’s denial of his claim that he was subjected to double jeopardy when the judge called a mistrial eight days into his trial due to jurors’ concerns that the trial would cut into the Christmas holiday.

**FACTS:** In 2012, Verlaine Laguerre, and his co-defendant Prentice Baker, were indicted for malice murder, felony murder, aggravated assault with a deadly weapon, and possession of a firearm during commission of a felony. Jury selection began Dec. 9, 2014, and jurors were told the trial would last no more than nine days. On Dec. 11, State prosecutors called their first witness. By Dec. 16, the State was on its fifth witness, although prosecutors could not give a definite time when they would complete their case. On Wednesday, Dec. 17, the eighth day of the trial, the court held a continuation hearing to determine whether the trial should be “continued” (i.e. postponed) until after the holidays. At the hearing, the judge polled jurors, with a number saying they had upcoming holiday conflicts. The first day all jurors would be available after Dec. 17 was Jan. 8, 2015. The judge’s case manager said that jurors “did express some exasperation about the length of time. And when I asked about the following week, there was expressions (sic) of disgust. Someone slammed their notepad on the table and a general feeling of discord in the room regarding even the inquiry about their time in January.” The lawyer for Laguerre’s co-defendant expressed concern that a continuance could harm her client by making the jury averse to the entire process, and she reluctantly acquiesced to a mistrial. The State also agreed that a mistrial, as opposed to a long postponement until Jan. 8, would be the lesser of two evils. However, Laguerre’s attorney said she could not acquiesce to a mistrial. Asked by the judge if that meant she was objecting to a mistrial, she replied, “Yes, sir.” Following a hearing, the trial court declared a mistrial, stating that the State had the discretion to “try this case at a later date.” Laguerre’s attorney then filed a “plea of former jeopardy,” which on Aug. 17, 2015 the trial court denied. (“Double jeopardy” – or being convicted of the same crime twice – is prohibited by the 5th Amendment to the U.S. Constitution.) Laguerre’s attorneys now appeal that denial to the Georgia Supreme Court.

**ARGUMENTS:** The trial court abused its discretion in denying Laguerre’s plea of former jeopardy because “manifest necessity” did not authorize a mistrial over Laguerre’s objections, his attorneys for his appeal argue. The Georgia Court of Appeals recently addressed

this issue, restating well-settled law on the matter: “At the time an accused’s jury is impaneled and sworn, jeopardy attaches and the accused is entitled, under the double jeopardy provisions of both the state and federal constitutions, to have his trial proceed either to conviction or acquittal before that particular tribunal. Thus the declaration of a mistrial over the defendant’s objection will bar a retrial unless the record shows that the mistrial resulted from ‘manifest necessity.’” The United States Supreme Court has clarified that the (term) manifest necessity...cannot be interpreted literally, and that a mistrial is appropriate when there is a high degree of necessity.” Therefore, the question in this case is whether “manifest necessity” authorized the trial court’s termination of Laguerre’s trial over his objection. Under Georgia Code § 16-1-8 (e), a trial may be terminated if: 1) The accused consents to the termination or waives his right to object; or 2) The trial court determines it’s necessary to terminate the trial because: A) It is physically impossible to proceed with the trial; B) “Prejudicial conduct in or out of the courtroom makes it impossible to proceed with the trial without injustice to the defendant;” C) The jury is unable to reach a verdict; or D) False statements of a juror during jury selection prevent a fair trial. Here, the trial court did not terminate Laguerre’s trial for a reason of necessity listed in the statute. “The trial court terminated the trial because it was inconvenient for certain jurors to serve during the holiday season, and some jurors were upset because of the prospect of continuing with the trial after the holiday season – a continuance of less than three weeks,” the attorneys contend. “These circumstances do not constitute the ‘urgent circumstances’ that give rise to the manifest necessity to declare a mistrial.” The trial court also erred by not choosing the less drastic option of carrying on with the trial until Friday, Dec. 19, 2014 and then, if necessary, postponing it until Jan. 8, 2015, Laguerre’s attorneys argue. Furthermore, the trial court did not consider Laguerre’s right to have his trial completed before the already empaneled jury. “This was an abuse of discretion,” the attorneys argue. “A retrial is barred because a jury was impaneled and sworn, Appellant Laguerre objected to a mistrial, and the circumstances did not demonstrate ‘manifest necessity’ for a mistrial.”

The District Attorney’s office, representing the State, argues that the evidence and law support the trial court’s order denying Laguerre’s plea of former jeopardy. “Trial courts may declare a mistrial without barring retrial whenever, in their opinion, taking all circumstances into consideration, there is a manifest necessity for doing so,” the State argues in briefs. “‘Manifest necessity’ is not a standard to be interpreted literally, and it means a mistrial is appropriate when there is a ‘high degree of necessity.’ That high degree of necessity for a mistrial has been shown is a matter best judged by the trial court.” Here there were several reasons for granting a mistrial, based on this “high degree of necessity.” The first involved the ability of jurors to render a fair decision. The State indicated that the long holiday break would interfere with jurors’ ability to retain the evidence presented earlier. The second involved prejudice toward Laguerre and his co-defendant as a result of delaying the trial beyond the holiday. The co-defendant’s lawyer had indicated at the continuation hearing that she was concerned about the jurors’ building animosity at being kept in court so long. Contrary to Laguerre’s argument that the court met none of the criteria in § 16-1-8 (e) to call a mistrial, one of those criteria was “prejudicial conduct in or outside of the courtroom” that “makes it impossible to proceed with the trial without injustice to the defendant.” That prejudice toward the defendant could have been caused by the jurors’ frustration with the delay in the trial. In its 1987 decision in *Lumley v. State*, the Court of Appeals ruled that when faced with two options that may be prejudicial – or damaging – to a

defendant's case, the court may order a mistrial, allowing the State to retry the case, under the "manifest necessity" doctrine, the State argues. As the trial judge stated, "As the trial court was faced with a situation where no viable option for continuing the trial did not involve prejudice to defendant, it correctly concluded that termination was a manifest necessity," the State argues. The court had two options: delay the case until after the holiday break or start the trial over. "Acknowledging the jury's frustration with the trial's pace and the potential recommencement following an extensive, unanticipated break, the court acted within its discretion in granting a mistrial because the court could not foresee the jury delivering a fair verdict."

**Attorneys for Appellant (Laguerre):** Dana Norman, F. Renee Rockwell

**Attorneys for Appellee (State):** Paul Howard, Jr., District Attorney, Paige Whitaker, Dep. D.A., David Getachew-Smith, Sr.

### **FAUBERT-ROCHA V. BAUTISTA (S17A0643)**

A woman who lived with another woman before they separated, is appealing a **Bartow County** judge's ruling that found she had no legal right to bring a claim for custody of the 5-year-old child she had helped raise since his birth.

**FACTS:** Maribel Faubert-Rocha and Glenda Sochitl Perez Bautista lived together as a couple but were not married because the law at the time did not permit same-sex marriage. While together, Bautista was artificially inseminated and gave birth to a boy who is now 5. Together, Bautista and Faubert-Rocah executed a settlement agreement and parenting plan to govern their rights and obligations in raising the child. But after a number of years, they separated. In February 2016, Faubert-Rocha filed a Petition for Legitimation in court based on the private parenting agreement. She argued their contract was enforceable and she had the right to remain the child's parent. Faubert-Rocha subsequently amended her petition and requested a Declaration of Parentage and Establishment of Custody. Bautista filed a motion to dismiss the case, and following a hearing, the Bartow County judge granted the motion, ruling that under Georgia's legitimation statutes, Faubert-Rocha lacked "standing," meaning she lacked the right to make a legal claim. She now appeals to the Georgia Supreme Court.

**ARGUMENTS:** "This case involves a very important and new question regarding the private right to establish parental rights coupled with contract construction – a question applicable not only to the parties to this action and their minor child, but also to thousands of other couples raising children together, both homosexual and heterosexual, in Georgia," Faubert-Rocha's attorney argues in briefs. The trial court erred in ruling that Faubert-Rocha lacked standing to bring a claim to establish custody and enforce the terms of the private parenting agreement. She has standing both via statute (Georgia Code § 19-7-1 (b) (1)) and via contract, the attorney contends. "Under the parties' familial privacy rights, the State must take the family as it comes to it and does not have the power to alter the way in which the parties have chosen to structure their family." In Georgia, "parties are free to contract about any subject matter, on any terms, unless prohibited by statute or public policy, and injury to the public interest clearly appears," the attorney argues, citing a 2004 decision by the Georgia Court of Appeals. "Not only are contracts regarding parental rights permitted in Georgia, they are encouraged." Bautista was permitted to enter into a voluntary contract releasing a portion of her parental rights to the child's other parent, Faubert-Rocha, whose standing "is created by the powers bestowed upon her contained in the parenting agreement itself. Moreover, in Section 9 of the Parenting Agreement,

the parties agreed to incorporate the Agreement into a Final Order, thus signaling their intention to legalize their relationship as parents.” The parties “concluded that the agreement reflected their choices and was in the child’s best interest.” The court’s failure to enforce the agreement constitutes “an over-step by the State and is a violation of the familial realm of privacy,” Faubert-Rocha’s attorney contends. “The child’s relationship with [Faubert-Rocha] is no less real or important to him merely because it did not arise from a traditional family structure, and to hold otherwise would violate the child’s Fourteenth Amendment rights.” The agreement the parties signed “should be enforceable as a relinquishment of *some* parental power; establishing rights now in both parties as parents of the minor child,” the attorney argues. Finally, Georgia’s legitimation statute is unconstitutional as it violates Faubert-Rocha’s equal protection rights by preventing a woman from legitimizing her relationship with her son as a person with legal standing to do so. If she were a man, the right would not be challenged. Under the law, an unmarried man may legitimize a child without showing DNA proof that he is the child’s biological father. Faubert-Rocah “is similarly situated to the unmarried male,” her attorney argues. “Since the law still allows for legitimation by consent...the failure to allow [Faubert-Rocha] to do the same based purely upon her sex is unconstitutional as she is not afforded the same avenue as males are to establish her legal rights as a parent based upon her legitimate relationship with the child.” This matter should be remanded to the trial court “for a hearing on whether the parenting agreement entered into by the parties is, in fact, in the child’s best interest with instruction that the Superior Court may adopt and enforce the same as it would in any other custody matter.”

First of all, Bautista’s attorneys argue, this case should not be before the Supreme Court because Faubert-Rocah did not have the right to an automatic or “direct” appeal but instead was required to file an application to appeal from a lower court’s order denying a petition for legitimation. However, if the high court rules on the merits, the trial court’s decision was correct because under Georgia’s legitimation statutes, Faubert-Rocah lacked standing to bring a claim “and holding otherwise would equate to judicial usurpation of the legislative function,” the attorneys argue in briefs. Under Georgia Code § 19-7-21, which governs conception by artificial insemination, Faubert-Rocah lacks standing to bring a legitimation claim “because the parties were not married when the child was conceived and thus the trial court did not err in granting the motion to dismiss.” The statute says that, “All children born within wedlock or within the usual period of gestation thereafter...are irrebuttably presumed legitimate if both spouses have consented in writing to the use and administration of artificial insemination.” The statute only uses the word “spouses,” and not mother or father, “because its prerequisite is marriage,” the attorneys point out. It is true that this child was born in 2011, prior to Georgia’s recognition of same-sex marriage. “However, the parties were still able to travel to another state to marry.” Also, legitimation was not Faubert-Rocah’s only avenue to establish parental power. She could have adopted the child, as same-sex couples are legally able to do. While Faubert-Rocah argued that adoption was not an option because of the cost, the claim of expense does not allow her “to stretch and extend the reach of our statutes and legal remedies as they are today.” As to the parenting agreement, it did not meet the requirement of being incorporated into a final order because the case was dismissed. And, before being able to establish a parenting plan, parental power must first be established. The trial court also did not err in granting Bautista’s motion to dismiss the case because Faubert-Rocah’s claims for “Establishment of Custody and Declaration

of Parentage” do not exist under Georgia law as legal remedies, and she is “not authorized to create her own cause of action where the general Assembly has not acted.” Among other arguments, the legitimation statute is not unconstitutional and in violation of her rights to equal protection. Again, § 19-7-21 is not limited to gender due to the use of the term “spouses” instead of “mother” and “father.” Had they married, Faubert-Rocah “would have standing under § 19-7-21 for legitimating the minor child,” Bautista’s attorneys contend.

**Attorney for Appellant (Faubert-Rocah):** Denise VanLanduyt

**Attorneys for Appellee (Bautista):** Christina Stahl, Kimberly Hidir