Supreme Court of Georgia
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SUMMARIES OF OPINIONS

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NORMAN ET AL. V. XYTEX CORPORATION ET AL. (S19G1486)

The Supreme Court of Georgia has ruled in favor of a couple who sued a sperm bank, alleging that they chose a donor based on false pretenses about his health, educational, and criminal background and that their child subsequently inherited his serious medical and psychological problems.

With today's ruling, the high court has partially reversed a decision by the Georgia Court of Appeals that had affirmed a **Fulton County** judge's dismissal of all but one of 13 causes of action the couple asserted in their lawsuit.

In today's opinion, **Justice Nels S.D. Peterson** writes for a unanimous court that while some of the couple's claims are barred, "claims arising from the existence of specific

impairments caused or exacerbated by defendants' alleged wrongs may proceed, as may other claims that essentially amount to ordinary consumer fraud."

According to the facts of the case, **Wendy Norman** was artificially inseminated with sperm she and her partner, **Janet Norman**, purchased from **Xytex Corporation**, a sperm bank. In 2002, Wendy gave birth to a son, "A.A." As A.A. grew up, the Normans discovered he had an inherited blood disorder and a number of emotional and mental health disorders, including suicidal and homicidal ideations that have required multiple periods of extended hospitalizations. A.A. regularly sees a therapist for his anger and depression, and takes ADHD, anti-depressant, and anti-psychotic medications.

In November 2017, the Normans sued Xytex (Xytex International and Xytex Corporation, a subsidiary), Dr. J. Todd Spradlin, medical director at the Atlanta location, and Mary Hartley, an employee, alleging they had misrepresented Xytex's process for reviewing and screening donors, and falsely represented the medical and educational history of their donor. They sought damages for fraud, negligent misrepresentation, battery, negligence, unfair business practices, false advertising, unjust enrichment, and other wrongdoing. They also sought "specific performance" to require Xytex to release information about the donor.

In their complaint, the Normans alleged that Xytex had procured the sperm with which Wendy was inseminated from Donor # 9623, whom Xytex had promoted as one of its "best" sperm donors and whom Xytex represented as having a clean mental health history, no criminal background, an IQ of 160, and multiple college degrees. In fact, Donor # 9623 had lied about his mental health on his Xytex questionnaire and had been diagnosed with psychotic schizophrenia, narcissistic personality disorder, and significant grandiose delusions. The donor had been hospitalized repeatedly for mental health problems, arrested for burglary and other crimes, and spent eight months in custody for a residential burglary. He had no college degree at the time Xytex sold his sperm to the Normans.

In response to the Normans' lawsuit, Xytex filed a motion to dismiss the suit, arguing that it alleged claims for "wrongful birth," which is not a legally recognized cause of action in Georgia. The trial court granted Xytex's motion to dismiss all counts in the Normans' complaint except for the specific performance count, finding that the complaint amounted to an impermissible cause of action for wrongful birth. The Normans appealed to the Court of Appeals, the state's intermediate appellate court, but that court upheld the trial court's decision, ruling that the Normans were asserting claims for wrongful birth, which are not recognized under the Georgia Supreme Court's 1990 decision in *Atlanta Obstetrics & Gynecology Group v. Abelson*. The Court of Appeals quoted *Abelson* in its decision, stating that an "action for 'wrongful birth is brought by the parents of an impaired child and alleges basically that, but for the treatment or advice provided by the defendant, the parents would have aborted the fetus, thereby preventing the birth of the child.'" The Court of Appeals explained that the Normans' claims "directly relate to the fact that, had they known the health, educational, and criminal history of Donor # 9623, they would not have purchased his sperm from the Appellees (i.e. Xytex)." And, as the Supreme Court stated in *Abelson*, "we are unwilling to say that life, even life with severe impairments, may ever amount to a legal injury," the Court of Appeals concluded. The Normans then appealed to the Georgia Supreme Court.

Today's 27-page opinion begins by pointing out that this Court has repeatedly refused to allow damages in cases that "presume that life itself can ever be an injury."

"We reaffirm that rule today," the opinion says. "But that rule does not fully resolve this appeal, which is about what sort of damages the rule actually bars."

The Court of Appeals "erred in applying *Abelson* broadly to bar nearly all of their claims," the opinion says. "The Court of Appeals did not consider whether the Normans pursued other damages that do not necessarily state their child's birth as an injury."

In one of their many allegations, the Normans said they would not have purchased sperm from Donor # 9623 had Xytex revealed the true facts about him. "This is a classic wrongful birth claim because the necessary and direct result of not buying Donor # 9623's sperm is that A.A. would not exist," today's opinion says. "Georgia law does not allow such a claim, and so it is barred. Other claims that derive from A.A.'s life would also be barred."

"Because the Normans wished to conceive a child, allowing them to recover the costs of child birth or the expenses incurred by raising A.A. would impermissibly transform A.A.'s birth into a legal injury," the opinion says. "But those principles do not create blanket immunity for reproductive service providers and do not preclude all claims relating to the birth of a child. Damages may be recoverable as long as plaintiffs sufficiently prove that the Defendants caused the alleged injuries (other than the life of A.A.). For example, the Normans alleged that they relied on Xytex's representations that it screened the medical and mental health history of its donors."

"The Normans also allege a consumer protection claim that does not depend on life as an injury," the opinion says. They brought a cause of action under Georgia's Fair Business Practice Act, alleging that Xytex misrepresented the quality of its goods and services.

"Given the allegations in the complaint, the Normans have asserted at least some damages that are not necessarily dependent on recognizing A.A.'s life as an injury."

"The Court of Appeals failed to recognize that some of the damages sought by the Normans would not require a recognition of A.A.'s life as an injury," today's opinion concludes. "Therefore, we reverse the Court of Appeals's judgment that *Abelson* barred nearly all of the Normans' claims, and remand with instruction for the trial court to determine in the first instance whether and to what extent the Normans have adequately pled claims for relief that do not derive their injury from A.A.'s life itself."

Attorneys for Appellants (Normans): James McDonough, III, Nancy Hersh, Kate Hersh-Boyle, David Newdorf

Attorneys for Appellees (Xytex): Thomas Lavender, III, Alison Currie, Andrew King

ATLANTA WOMEN'S SPECIALISTS, LLC ET AL. V. TRABUE ET AL. (S19G1138)
ANGUS V. TRABUE ET AL. (S19G1140)
ANGUS V. TRABUE ET AL. (S19G1141)
ANGUS V. TRABUE ET AL. (S19G1142)
ATLANTA WOMEN'S SPECIALISTS, LLC ET AL. V. TRABUE ET AL. (S19G1143)

As a result of an opinion today by the Georgia Supreme Court, a $46 million verdict in a medical malpractice lawsuit will be upheld. At issue in these appeals is whether the law requires that the damages awarded to the husband of a woman who suffered brain damage following childbirth be apportioned, or divided up, according to the degree of fault of the parties.

In August 2009, 38-year-old Shannon Marie Trabue was admitted to Northside Hospital where she was scheduled to have a cesarean section due to her hypertension. While at the

hospital, she was treated by physicians who were employees of **Atlanta Women's Specialists, LLC**, including **Dr. Stanley R. Angus** and Dr. Rebecca Simonsen. Within days of the birth of a baby girl, Shannon suffered a catastrophic brain injury as a result of pulmonary edema that led to full cardiac arrest. Shannon's brain was deprived of oxygen for 10 minutes, and the damage to her brain left her totally disabled, with the mentality of a child, and requiring constant and expensive medical care.

On Aug. 18, 2011, **Keith Trabue**, Shannon's husband and conservator, filed a medical malpractice lawsuit in **Fulton County** State Court, naming as defendants only Angus and Atlanta Women's Specialists, although the complaint contained allegations regarding Dr. Simonsen's conduct and alleged that Atlanta Women's Specialists was vicariously responsible for the actions and omissions of both Dr. Angus and Dr. Simonsen.

A two-week trial took place in February 2017. At the close of evidence, Dr. Angus and Atlanta Women's Specialists argued that the verdict form should ask the jury to assess the relative fault of both Dr. Angus and Dr. Simonsen and to apportion the damages between Dr. Angus and Atlanta Women's Specialists on that basis. The jury entered its verdict in favor of Trabue. On a special verdict form, the jury found that negligence by both Dr. Angus and Dr. Simonsen negligence was a contributing proximate cause of Shannon's injuries. However, the trial court denied the request to require the jury to divide the damages, which totaled nearly $46 million, between Dr. Angus and the Atlanta Women's Specialists based on the percentages of fault of Dr. Angus and Dr. Simonsen. The trial court denied the request in part based on a provision of the apportion-of-damages statute that requires the filing of a motion at least four months before trial asking that the jury assess the fault of someone who has not been named as a party to the lawsuit.

In April 2017, Dr. Angus and the Atlanta Women's Specialists filed a motion for new trial, alleging among other things that the trial court erred by failing to require the jury to divide up the damages award between Dr. Angus for his own conduct and Atlanta Women's Specialists for Dr. Simonsen's conduct. The trial court agreed and ordered a new trial as to apportionment only. The parties then appealed to the Georgia Court of Appeals, the state's intermediate appellate court, which ruled that "the trial court erred by granting a new trial as to apportionment" and reversed that portion of the trial court's order. The appellate court found that apportionment involving Atlanta Women's Specialists was "not proper" because "AWS's liability to the plaintiffs was purely vicarious in nature for the acts of [Dr. Simonsen]." The appellate court also found that Dr. Simonsen was a "nonparty" and that the defendants had "waived their right to apportion damages" by not giving "the mandatory notice" required under the state's apportionment statute that they would seek to apportion fault based on Dr. Simonsen's conduct. Dr. Angus and Atlanta Women's Specialists then appealed to the Georgia Supreme Court.

In today's 32-page opinion, written by **Justice Michael P. Boggs**, the high court has upheld the Court of Appeals' ruling. Dr. Angus and Atlanta Women's Specialists argued that the plaintiffs did not sufficiently plead a claim for vicarious liability against Atlanta Women's Specialists based on Dr. Simonsen's conduct. "We disagree," the majority opinion says. "Here, the operative complaint contained 27 paragraphs of 'Factual Allegations,' three of which explicitly focused on Dr. Simonsen's conduct."

"As the Court of Appeals correctly explained, the operative complaint 'specifically identified Dr. Simonsen as an agent or employee of Atlanta Women's Specialists, acting within the scope of her employment or agency, such that her acts and omissions are imputed to Atlanta Women's Specialists, which is vicariously liable for the resulting injuries and harm to Shannon, and the [complaint] set forth factual allegations to support the plaintiffs' vicarious liability claim against Atlanta Women's Specialists for Dr. Simonsen's actions,'" the opinion says.

Dr. Angus and Atlanta Women's Specialists also argued that the Court of Appeals erred in holding that to obtain an assessment of Dr. Simonsen's relative fault and apportionment of the damages award based on the relative fault of Dr. Simonsen, who was not a named party, the defendants were required to comply with Georgia Code § 51-12-33 (d) by filing a pretrial notice of nonparty fault. In today's opinion, the high court assumed, but did not hold, that damages imposed for vicarious liability are subject to division under the apportionment statute, and said that even assuming that to be correct, "we hold that a defendant employee like Dr. Angus, who wants to reduce a potential damages award against him by having the jury apportion damages between him and his defendant employer based on an assessment of the fault of a nonparty co-employee, would have to comply with the requirements of subsection (d) of the apportionment statute." That subsection says that the negligence or fault of a nonparty "shall be considered if the plaintiff entered into a settlement agreement with the nonparty or if a defending party gives notice not later than 120 days prior to the date of trial that a nonparty was wholly or partially at fault," by "filing a pleading in the action designating the nonparty," providing contact information, and including "a brief statement of the basis for believing the nonparty to be at fault."

"It is undisputed that Plaintiffs did not enter into a settlement agreement with Dr. Simonsen and that neither Dr. Angus nor Atlanta Women's Specialists filed a pretrial pleading alleging that Dr. Simonsen was wholly or partially at fault for Shannon's injuries," the majority opinion says.

In a partial dissent, **Justice Charles J. Bethel** writes that he agrees with the bulk of the majority's opinion. "I must respectfully dissent, however, because while it is true that Atlanta Women's Specialists' liability is based on its employees' negligent conduct, Atlanta Women's Specialists is itself a named party." The dissent argues that subsection (b) of Georgia Code §51-12-33 – and not subsection (d) – applies to the apportionment of damages between Dr. Angus and Atlanta Women's Specialists. Subsection (b) states that where an action is brought against more than one person for injury to person or property, the jury shall "apportion its award of damages among the persons who are liable according to the percentage of fault of each person…." "As the Court's opinion correctly notes, Dr. Angus, by his own choice, could not seek apportionment between himself and Dr. Simonsen, who was not named as a party in this case," the dissent says. "Atlanta Women's Specialists, however, was a named defendant whose potential and actual liability extended beyond that of Dr. Angus, and I see no basis in the statute's text for determining that the provision related to apportionment with nonparties – subsection (d) (1) – prevents apportionment between Dr. Angus and Atlanta Women's Specialists." The majority "appears willing to assume without deciding that Dr. Simonsen's fault is imputed to Atlanta Women's Specialists for liability purposes," the dissent says. "Accordingly, even though Dr. Angus was also found to be at fault and liable, as a named party

in the suit, he should be able to assert Georgia Code §51-12-33 (b) with respect to Atlanta Women's Specialists' liability for Dr. Simonsen's professional negligence."
Attorneys for Appellants (Angus, Atlanta Women's Specialists, LLC): David Flint, Michael Flint, Jamie Kastler, Laurie Webb Daniel, Colin Delaney, Daniel Huff, Leah Ward Sears, Taylor Tribble, Matthew Friedlander, Philip George
Attorneys for Appellees (Trabue, Advocacy Trust of Tennessee, LLC): Michael Terry, Naveen Ramachandrappa, William Stone, Michael Regas, II, Ryals Stone, James Stone

EDVALSON V. THE STATE (S19G1516)

In an opinion today, the Supreme Court of Georgia has ruled that under Georgia statutory law, a man found guilty of 22 counts of sexual exploitation of children for possessing 11 digital images of child pornography may only be found guilty of a single count.

With today's opinion, the high court has reversed a decision by the Georgia Court of Appeals, the state's intermediate court, which had upheld a **Gwinnett County** court ruling.

The State charged **Thomas Edvalson** with possessing an extensive collection of digital images depicting child pornography. He was arrested when a network of law enforcement agencies isolated his IP address and executed search warrants on his home and electronic equipment. Edvalson was charged with 22 violations of Georgia Code §16-12-100, Georgia's statute criminalizing Sexual Exploitation of Children. The 22 counts arose from 11 distinct images; for each image, Edvalson was charged with one count of possession, and one count of possession with intent to distribute. In March 2017, a Gwinnett County jury convicted him of all charges.

At sentencing, the trial court merged the 11 convictions for possession into the 11 convictions for possession with intent to distribute for sentencing purposes. The judge then sentenced Edvalson on 11 counts to a total of 60 years, with the first 19 to be served in prison. Edvalson appealed to the Georgia Court of Appeals, the state's intermediate appellate court, arguing among other things that the trial court erred in failing to merge his convictions into a single count. The Court of Appeals, however, upheld the trial court's ruling. Edvalson then appealed to the state Supreme Court, which agreed to review the case to determine whether the Court of Appeals erred in failing to merge his convictions into a single conviction under §16-12-100 (b) (5).

In today's opinion, "we conclude that the plain language of §16-12-100 (b) (5) interpreted in the context of the entire statute is unambiguous and permits only one prosecution and conviction for a single act of possession of child pornography, regardless of the number of images depicted therein," **Justice Michael P. Boggs** writes for a unanimous court, referring to the Court's 2018 decision in *Coates v. State.* Today's opinion notes in a footnote that the State concedes that the Court of Appeals erred.

"Where, as here, we are presented with the question of whether a single course of conduct can result in multiple convictions and sentences under the same statute, the doctrine of substantive double jeopardy is implicated, and the 'unit of prosecution,' or the precise act criminalized by the statute, must be identified," the opinion says. "The Double Jeopardy Clause imposes few limits upon the legislature's power to define offenses. Whether a particular course of conduct involves one or more distinct 'offenses' under the statute depends on this legislative choice. As we have said numerous times, the text of the statute itself best reflects that legislative

choice."

Georgia Code §16-12-100 (b) (5) states that, "It is unlawful for any person knowingly to create, reproduce, publish, promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute *any visual medium* which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct."

The Court of Appeals did not read this subsection in the context of the entire statute "so as to avoid rendering any portion of the statute meaningless, but observed only that the legislature's frequent use of the word 'any' throughout the statute suggests a lack of restriction or limitation with respect to the statute's intended scope," the opinion says. "This reading was incorrect, as it did not take into account the multiple meanings of the word 'any' in the statute construed as a whole. A proper analysis produces a result similar to that reached in *Coates*."

The word, "any," in the phrase, "any visual medium," "must be interpreted as a quantitative term, implying no specific quantity and having no limit," the opinion says. "As in *Coates,* the offense is the possession of any prohibited 'visual medium' at all, whether one or one hundred."

"For these reasons, the Court of Appeals erred," the opinion concludes. "Accordingly, we reverse the Court of Appeals' decision and remand this case for the Court of Appeals to vacate Edvalson's convictions and sentences for the 11 counts under §16-12-100 (b) (5) and to return the case to the trial court for resentencing consistent with our opinion."

Attorney for Appellant (Edvalson): Jess Johnson

Attorneys for Appellee (State): Daniel Porter, District Attorney, Samuel d'Entremont, Asst. D.A.

AULD ET AL. V. FORBES ET AL. (S20G0020)

AULD ET AL. V. FORBES ET AL. (S20G0021)

Under an opinion today by the Georgia Supreme Court, a wrongful death claim that was part of a lawsuit stemming from the drowning of a **Cobb County** teenager may not go forward. At issue in these related appeals is whether Georgia law or the law of another country applies in determining whether the lawsuit was filed within the within the required time frame.

Tomari Jackson, 14 years old, drowned on Feb. 13, 2016 in the Sibun River during a field trip to Belize. The trip was sponsored by his Cobb County high school, and when the boy drowned, he was on a property, Monkey Bay Wildlife Sanctuary, that was owned by Matthew Miller, a Georgia citizen. On March 24, 2017, Tomari's mother, **Adell Forbes**, filed a lawsuit in Cobb County State Court against Monkey Bay, Miller, Cobb County Government, Cobb County School District, and the six chaperones, who included **James Auld** and three other Cobb County teachers, as well as two retired teachers. Forbes subsequently dismissed her claims against Cobb County Government. The trial court then dismissed the lawsuit against the school district on the grounds the district was protected by sovereign immunity. The trial court later also granted the motions to dismiss the lawsuit filed by the remaining defendants, finding that the teacher chaperones were entitled to official immunity and that the one-year limitation period in the Belize Law of Torts Act barred all of Forbes's claims against all defendants because Forbes failed to file her lawsuit within the one-year deadline.

Forbes appealed the decision to the Georgia Court of Appeals, the state's intermediate appellate court, which reversed the lower court's ruling. It determined that Georgia law applied

to the case because a Belizean limitation period cannot apply in Georgia as a matter of public policy. Under Georgia law, the limitation period for filing wrongful death claims is two years. Therefore, under Georgia law, Forbes filed her lawsuit in time, the Court of Appeals found, and therefore the lawsuit could go forward. Auld and the others then appealed to the Georgia Supreme Court, which agreed to review the case to determine whether the Court of Appeals erred in holding that Georgia law, and not Belize law, controlled the limitation period governing the wrongful death claim.

"Because we hold instead that Belize's limitation period applies to Forbes's wrongful death action, we reverse the Court of Appeals' decision as to that issue," **Justice Charles J. Bethel** writes in today's unanimous opinion.

"When a civil tort action is brought in a Georgia court for a harm that was sustained in an out-of-state jurisdiction, the Georgia Court must determine which jurisdiction's laws apply to the claim," the opinion says. Georgia law determines which law will apply to the case through the doctrines of "lex loci delicti" (which in Latin means the law of the place where the injury was sustained) and "lex fori" (which in Latin means the law of the forum state or the law of the jurisdiction where the case is pending).

"For over 100 years, the state of Georgia has followed the doctrine of lex loci delicti in tort cases, pursuant to which 'a tort action is governed by the substantive law of the state where the tort was committed,'" the opinion says. The place where the tort – or civil wrong – was committed "is the place where the last event necessary to make an actor liable for an alleged tort takes place." Forbes argued on appeal that because the school trip where Jackson drowned was planned in Georgia without sufficient safety precautions, her wrongful death claim could be brought under Georgia law. "However, it is clear that the 'last event necessary' to make the defendants liable for the alleged tort of wrongful death – that is, Jackson's drowning – took place in Belize, and that Belize was where the injury was suffered."

In this case, "the doctrine of lex loci delicti requires application of Belize's substantive limitation period, unless doing so would violate Georgia public policy," today's opinion says.

There is a public policy exception to lex loci delicti, which states that "the Georgia court will not apply the law of the place where the injury was sustained if it would conflict with Georgia's public policy," the opinion says. "However, the public policy exception applies only if the out-of-state law is so 'radically dissimilar to anything existing in our own system of jurisprudence' that it would 'seriously contravene' the policy embodied in Georgia law. A mere difference in law is not sufficient to justify this exception."

"Application of Belize's limitation period here does not violate Georgia's public policy," the opinion says. "Georgia law affords a remedy for wrongful death in Georgia, but no remedy at all for a wrongful death that occurs outside the state. Although it may differ in several particulars, Belize law affords a remedy for a wrongful death in Belize. Thus, although wrongful death claims recognized under Belize law provide a somewhat different remedy than wrongful death claims brought under Georgia law and have a shorter limitation period, Belize's wrongful death law is not so radically dissimilar that it cannot be applied by Georgia courts."

Therefore, "we hold that the doctrine of lex loci delicti calls for the application of Belize law to the dispute in this case and that Georgia's public policy exception does not prevent the application of Belize's wrongful death law, including its limitation period, to this case. Accordingly, we reverse the judgment of the Court of Appeals to the extent it held to the

contrary."
Attorneys for Appellants (Auld et al.): Lee Clayton, Jennifer Nichols, Leigh Wilco
Attorneys for Appellee (Forbes): Michael Terry, Amanda Seals, Tricia Hoffler, Robert Arrington, Jr., Latif Oduola-Owoo, Katrenia Collins

BOARD OF COMMISSIONERS OF LOWNDES COUNTY V. MAYOR AND COUNCIL OF THE CITY OF VALDOSTA ET AL. (S20G0472)

The Supreme Court of Georgia has ruled in favor of the **Lowndes County Board of Commissioners** and reversed a decision by the Georgia Court of Appeals that would have blocked the County's lawsuit against the commissioner and board members of the state Department of Community Affairs on sovereign immunity grounds.

Sovereign immunity is a doctrine that protects state government and its agencies from being sued without the State's consent. The Lowndes County Superior Court dismissed the County's claims for injunctive and declaratory relief based on sovereign immunity, and on appeal, the Court of Appeals upheld the ruling.

But in today's unanimous decision, "we conclude that the Court of Appeals erred by affirming the dismissal of the County's claims against the State Defendants in their individual capacities on sovereign immunity grounds," **Justice Nels S. D. Peterson** writes for the Court.

The case involves the Georgia Service Delivery Strategy Act (Georgia Code § 36-70-1) and a dispute between the Lowndes County Board of Commissioners and the cities within Lowndes County, including the **City of Valdosta**. The Act promotes coordination among municipal governments to "minimize inefficiencies resulting from duplication of services and competition between local governments and to provide a mechanism to resolve disputes over local government service delivery, funding equity, and land use."

The County and the Cities operated under a service delivery strategy agreement they signed in 2008. In June 2016, the chairman of the Lowndes County Board of Commissioners circulated a new draft Strategy Agreement to the Mayors of the Cities of Valdosta, Dasher, Hahira, Lake Park, and Remerton. On Nov. 1, 2016, when the Department had not received communication from the County and Cities that they had agreed either to revise their agreement or extend the existing one, it notified the County and Cities that they would be ineligible for state-administered financial assistance, grants, loans, or permits until the Department could verify that Lowndes County and the Cities had done so.

In January 2017, Lowndes County sued the Department of Community Affairs, its commissioner, Camila Knowles, and the mayors and councils of the Cities. The petition argued that the 2008 Strategy Agreement remained in effect, and that the County and Cities remained eligible for state-administered financial assistance, grants, loans, and permits. After the Department and Knowles filed a motion to dismiss the case, the County amended its petition, adding members of the Board of the Department of Community Affairs as defendants. The amended complaint sought "declaratory" relief against the State Defendants in their individual capacities – seeking a declaration from the court that the County and Cities remained eligible for financial assistance. The amended complaint also sought "injunctive" relief against Knowles and the Department of Community Affairs Board members in their individual capacities – seeking an injunction from the court that ordered Knowles and the board members to direct the Department

to stop notifying state departments and agencies that the County and Cities were ineligible for state financial support and permits. The amended complaint removed the Department as a party.

Knowles and the DCA board members filed a motion to dismiss the amended petition on the basis that sovereign immunity barred the claims for injunctive and declaratory relief. They argued that those claims actually sought to order Knowles and the DCA board members to take action in their official capacities, rather than in their individual capacities. The trial court dismissed the claims, concluding they were really claims against the State.

On appeal, the Georgia Court of Appeals affirmed the lower court's judgment, writing that it was clear that the Department, not Knowles and the department's board members, "is the real party in interest," and that the relief sought would "control the actions of the State" and could "only be granted by the State," whereas Knowles and the board members have no authority in their individual capacities under the Service Delivery Strategy Act to direct the Georgia Department of Community Affairs to do anything. The Lowndes County Board of Commissioners then appealed to the Georgia Supreme Court, which agreed to review the case to address the complex sovereign immunity issues.

Today's opinion makes clear that while sovereign immunity "bars claims against the State, its departments and agencies, and its officers and employees when sued in their *official* capacities," sovereign immunity generally "does not apply to *individual*-capacity claims for prospective declaratory and injunctive relief against state officers and employees alleged to be acting without legal authority."

"The Georgia Constitution allows only the General Assembly to waive the State's sovereign immunity," the opinion says. "We have repeatedly refused invitations to invent exceptions to that rule. But that rule requires waiver only for claims that sovereign immunity actually bars. And, as we have repeatedly explained, sovereign immunity has never barred most individual-capacity claims against state employees and officials for prospective injunctive and declaratory relief based on allegations that those defendants are acting beyond their legal authority. At least some of the claims in this case are precisely those kinds of claims."

One of the limitations on such claims, however, is that the State cannot be the "real party in interest," the opinion points out. Here, the Court of Appeals concluded that the State was actually the real party in interest because a county was seeking relief against state officials that would control the actions of the State and potentially affect state expenditures.

"But the real-party-in-interest limitation is not so broad; our case law has applied it primarily when the claimed relief would control or take the State's real property or interfere with contracts to which the State is a party," today's opinion says. "No such relief is sought here, and applying the limitation as broadly as the State seeks would eviscerate Georgians' well-established rights to seek redress against their government. We therefore reverse the Court of appeals and hold that sovereign immunity does not bar the claims at issue in this case."

Attorneys for Appellant (Lowndes County Board of Commissioners): Walter Elliott, James Elliott

Attorneys for Appellees (Knowles, Board Members of DCA): Christopher Carr, Attorney General, Julie Jacobs, Dep. A.G., Logan Winkles, Sr. Asst. A.G.

Attorneys for Appellees (Cities): Andrew Welch, III, Warren Tillery, Brandon Palmer, George Talley, Timothy Tanner

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IN OTHER CASES, the Supreme Court of Georgia has upheld **murder** convictions and life prison sentences for:

* Andre Bridgewater (Fulton Co.)	**BRIDGEWATER V. THE STATE (S20A1014)**
* James Eggleston (Stewart Co.)	**EGGLESTON V. THE STATE (S20A1258)**
* Roshun Gray (Fulton Co.)	**GRAY V. THE STATE (S20A0884)**
* Donald Griffin (Forsyth Co.)	**GRIFFIN V. THE STATE (S20A0967)**
* Otis Hill, Jr. (Fulton Co.)	**HILL V. THE STATE (S20A0781)** (The Supreme Court has upheld Hill's convictions and life-without-parole prison sentence for malice murder, felony murder, attempted murder, kidnapping, and other offenses for shooting Christina and Marshall Wellington after they were unable to pay a drug debt. Christina was killed; Marshall survived but lost an eye. However, because there was no evidence that Hill committed aggravated assault independent of the act which was intended to cause Marshall's death, the count of aggravated assault should have been merged with the conviction for attempted murder for sentencing purposes. For the same reason, the aggravated battery charge also should have been merged with the attempted murder conviction. Therefore, the high court has vacated Hill's convictions and sentences for aggravated assault and aggravated battery.)
* Antavian Love (Newton Co.)	**LOVE V. THE STATE (S20A0802)**
* Jim Edward Lowery (Bleckley Co.)	**LOWERY V. THE STATE (S20A0597)** (The Supreme Court has upheld Lowery's murder conviction and life-without-parole prison sentence for the 2015 death of Montgomery County Sheriff Ladson Lamar O'Connor who was killed in a wreck during a high-speed pursuit of Lowery.)
* Anthony Lumpkin (Gwinnett Co.	****LUMPKIN V. THE STATE (S20A0734)** (The Supreme Court has upheld Lumpkin's murder conviction and life-without-parole prison sentence for the 2012 shooting death of 15-year-old Nicholas Jackson, II during a home invasion of the home of Jackson's father for the purpose of committing armed robbery. In a joint trial, Lumpkin and Eddie Green were convicted of the boy's murder and a number of related crimes. Green was sentenced to

life in prison with the possibility of parole for felony murder based on armed robbery. Five other co-defendants were also charged and received various sentences. Two pleaded guilty to less serious crimes and testified against Lumpkin and Green at their trial. Three others were tried individually and found guilty of various offenses arising from the incident for which they were sentenced.)

* Eddie Green (Gwinnett Co.)	****GREEN V. THE STATE (S20A0879)**
* Patrick Satterfield (Muscogee Co.)	**SATTERFIELD V. THE STATE (S20A0878)**
* Todd Welch (Clayton Co.)	**WELCH V. THE STATE (S20A1010)** (The Supreme Court has upheld Welch's convictions for murder and other crimes and his life-without-parole prison sentence in connection with the 2014 shooting death of Christopher Brown and the aggravated assault of Darrell Agee. However, the trial court erred by failing to merge Welch's aggravated assault sentence for shooting Agee into his aggravated battery sentence for shooting Agee. The lower court also erred by failing to merge one of Welch's two sentences for possession of a firearm during commission of a crime relating to Brown. In today's opinion, the high court therefore has vacated the convictions and sentences for the two counts that should have merged.)

** Lumpkin and Green were co-defendants who were tried and convicted in a joint jury trial.

IN LAWYER DISCIPLINARY MATTERS, the Georgia Supreme Court has accepted a petition for **voluntary surrender of license** – tantamount to disbarment – from attorney:

* Pamela S. Stephenson	**IN THE MATTER OF: PAMELA S. STEPHENSON (S21Y0081)**

The Court has **rejected a third petition for voluntary discipline** from attorney:

* Timothy Walter Boyd	**IN THE MATTER OF: TIMOTHY WALTER BOYD (S20Y1503)**