IN THE SUPREME COURT OF THE STATE OF GEORGIA

Case No.: S24G1346

CHRISTINA GUY

Appellant,

- vs -

HOUSING AUTHORITY OF THE CITY OF AUGUSTA

Appellee.

APPELLANT'S BRIEF

From the Cout of Appeals
Case No.: A24A0080

By:

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

The issue under review is whether the Housing Authority of the City of Augusta is entitled to sovereign immunity. In this Brief, Appellant argues the answer to this question is "No." This is because there is no authority in the Georgia Constitution or within the statutory laws of this state that expressly or implicitly confers sovereign immunity to local housing authorities, including the Appellee. Ms. Guy maintains that sovereign immunity should only be granted to entities when such immunity is directly supported by the text of the Georgia Constitution or an enactment of the General Assembly. Such legislative support for the Housing Authority is lacking in this case.

The expansion of sovereign immunity to local housing authorities without supporting text in the Constitution or legislative enactment is unprecedented, and now threatens to expose thousands of Georgia residents to the negligence or neglect of their landlords by eliminating any legal means of seeking redress for their landlord's negligence. The public importance of this issue is underscored by the well-established public policy in Georgia of holding landlords liable for injuries and

damages caused by a landlord's negligent failure to keep rented housing reasonably safe and in good repair.

II. STATEMENT OF JURISDICTION

The Supreme Court of Georgia may review "cases in the Court of Appeals which are of gravity or great public importance." Ga. Const. Art. VI, § VI, Para. V. "The writ of certiorari shall lie from the Supreme Court to the Court of Appeals as provided by Article VI, Section VI, Paragraph V of the Constitution of this state." O.C.G.A. § 5-6-15.

On January 14, 2025, this Honorable Supreme Court passed an order granting the writ of certiorari in this case. This Brief of Appellant is timely submitted because it is filed within twenty (20) days of the order granting the writ of certiorari.

III. STATEMENT OF MATERIAL FACTS AND OF PROCEEDINGS BELOW

Appellant Christina Guy filed this action after she was the victim of a shooting and attempted armed robbery at the Dogwood Terrace apartments, which is a public housing facility owned and operated by the Housing Authority of the City of Augusta (hereafter, the "Housing Authority"). Ms. Guy was a resident of Dogwood Terrace, having moved

into public housing on July 10, 2020, and vacating her unit by May of 2022. (R. 51, Affidavit of Sandra Smith ¶ 9).

Ms. Guy filed a suit against the Housing Authority on June 21, 2022, asserting causes of action for premises liability and negligent security. (Compl. at ¶ 19.) On July 25, 2022, the Housing Authority filed an Answer denying negligence and asserting the defense of sovereign immunity. (Def's Ans. at Defenses 2 and 4). On October 5, 2022, the Housing Authority moved for summary judgment, arguing it was immune from liability under the doctrine of sovereign immunity. On May 1, 2023, the trial court granted summary judgment for the Housing Authority on grounds of sovereign immunity. On July 2, 2024, the Court of Appeals affirmed summary judgment also on grounds of sovereign immunity.

Ms. Guy submitted a Petition for Writ of Certiorari on July 22, 2024, which the Honorable Supreme Court of Georgia granted by order passed on January 14, 2025. Ms. Guy now respectfully asks this Court to review the applicable law and hold that the Housing Authority does not have sovereign immunity, reversing the decisions of the lower courts.

IV. ISSUE PRESENTED

"Is the Housing Authority of the city of Augusta entitled to sovereign immunity? Compare Ga. Const. of 1983, Art. I, Sec. II, Par. IX and Ga. Const. of 1983, Art. IX, Sec. II, Par. IX." (Order granting writ of certiorari, passed on Jan. 14, 2025.)

V. ARGUMENT AND CITATION OF AUTHORITY

A. Standard of Review

"In reviewing a grant or denial of summary judgment, this Court conducts a de novo review of the evidence. To prevail at summary judgment under O.C.G.A. § 9-11-56, the moving party must demonstrate that there is no genuine issue of material fact and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law." *Files v. The Hous. Auth. of Douglas*, No. A23A0506 (Ga. Ct. App. June 27, 2023).

B. Legislative Background: The Housing Authorities Law

In 1937, the General Assembly passed the Housing Authorities Law, O.C.G.A. § 8-3-1, in recognition of the prevalence of "unsanitary and unsafe" dwelling accommodations throughout the state in which

persons of low income were forced to reside. The Housing Authorities Law (hereafter, the "Law") provides,

> In each city and in each county of the state there is created a public body corporate and politic to be known as the "housing authority" of the city or county; provided, however, that such authority shall not transact any business or exercise its powers under this article until or unless the governing body of the city or the county, as the case may be, by proper resolution shall declare at any time hereafter that there is need for an authority to function in such city or county.

O.C.G.A. 8-3-4.

The Law provides that a housing authority "exercis[es] public and essential governmental functions." O.C.G.A. § 8-3-30 (a). It declares property owned by the Authority to be "public property used for essential public and governmental purposes and not for purposes of private or corporate benefit and income." O.C.G.A. § 8-3-8. Housing authorities are "exempt from all taxes and special assessments of the city, the county, and the state or any political subdivision thereof." *Id.*

The Housing Authority was activated by the Mayor and Council of the City of Augusta by a local resolution adopted in 1937.

The Law establishes that housing authorities serve a public purpose and exercise public and perhaps essential governmental functions. However, contrary to the position taken by Appellee, the Law stops short of establishing that the Housing Authority is a municipal corporation with the same status and privileges afforded to the municipal cities and towns in which they are located. Similarly, though the Law identifies ways in which local government and housing authorities may work together to achieve the authority's public purpose, it does not allow for the local authority to be used as an instrumentality of the local governments in the area the housing authority serves. Nor are housing authorities placed under the direct supervision or control of local government. Rather, the Law establishes that the Appellee Housing Authority was created by the General Assembly as a separate entity, wholly apart from the City of Augusta or Richmond County, and without direct oversight or control from local government.

C. *The Georgia Constitution does not grant sovereign immunity to the Housing Authority.*

The State's and a municipality's sovereign immunity derive from different principles and separate sections of the Georgia Constitution. State sovereign immunity applies to "the state and all of its departments and agencies" under Article I of the Georgia Constitution, Ga. Const. of 1983, Art. I, Sec. II, Par. IX. Municipal sovereign immunity is found under Article IX of the Georgia Constitution and applies to "counties, municipalities, and school districts." Const. of 1983, Art. IX, Sec. II, Par. IX. Thus, the sovereign immunity granted under Article I is separate and distinct from that granted under Article IX. The two Articles address separate immunities and different levels of government. They are not interchangeable.

The Supreme Court of Georgia has adopted a textual analysis to evaluate whether an entity is conferred with sovereign immunity under Article I, as a department or agency of the state. For example, in *Miller v. Georgia Ports Authority*, 266 Ga. 586 (1996), the Court evaluated the definition of the term "agency," comparing it with the port authority's enacting legislation and the Georgia Tort Claims Act. The Court followed a similar analysis in *Youngblood v. Gwinnett Rockdale Newton*

Community Service Board, 273 Ga. 715 (2001), and *Kyle v. Georgia Lottery Corporation*, 290 Ga. 87 (2011), comparing in each case the language of the applicable enacting legislation with the phrase "departments and agencies" as used within under Article I of the Georgia Constitution.

Though *Miller*, *Youngblood*, and *Kyle* involved this Court's analysis of the specific phrase "departments and agencies," that phrase has always been limited – and must be rationally limited – to the immunity conferred to the state and its departments and agencies under Article I of the Georgia Constitution. This is because the phrase "departments and agencies" appears only in Article I, and not in Article IX. There is no other constitutional text or authority that would extend such analysis as applicable to "departments and agencies" to the sovereign immunity of counties, municipalities, and school districts under Article IX. *See* Const. of 1983, Art. IX, Sec. II, Par. IX.

In the proceedings below, the Court of Appeals improperly applied the analysis used for state-based sovereign immunity to define a new category of immune entity, proclaiming the Housing Authority is entitled to sovereign immunity as the "instrumentality of a municipal

corporation." But there is no support for extending sovereign immunity under Article IX to entities beyond "counties, municipalities, and school districts." The analysis applicable to addressing "departments and agencies" of the state under Article I is not supported by the text of Article IX, which contains no such expansive language.

Ms. Guy maintains that the omission of any extension of sovereign immunity to "instrumentalities," "departments," or "agencies" of the counties, municipalities, and school districts referenced in Article IX is decisive in determining the issue presented. Unlike the extension of state immunity to state "departments and agencies," there is no textual authority supporting such an extension to the Housing Authority as an "instrumentality" of local government.

D. The Housing Authority is not entitled to sovereign immunity as a county, municipality, or school district.

Georgia has long recognized local authorities as distinct and separate entities from the state, counties, and municipalities in the areas they serve. *See McLucas v. State Bridge Bldg. Auth.*, 210 Ga. 1, 6 (1953) (state authority "is not the State, nor Part of the State, nor an agency of the State. It is a mere creature of the state having a distinct corporate entity."); *Stegall v. Southwest Georgia Reginal Housing*

Authority, 197 Ga. 571, 587 (1944) (the housing authority "must be treated as a corporate entity. It is not . . . by the terms of the statute, a county, municipal corporation, or political subdivision within the meaning of the stated constitutional provision.").

The Supreme Court of Georgia previously addressed whether sovereign immunity extends to local hospital authorities, explaining again "there is a clear distinction between a political subdivision such as a county and a corporate body such as a [public] authority, which is a creation of the county." *Thomas v. Hosp. Auth*, 264 Ga. 40, 41 (Ga. 1994). The Supreme Court further explained that statutes providing for the enabling of public authorities are intended to allow local governments "to create public agencies having a corporate entity, so as to contract with the county, but without those powers which are generally inherent in the concept of a political subdivision." *Id.* at 41.

The Housing Authority has argued the opposite, claiming that its designation as a public corporate body in its enabling legislation confers upon it the same powers and privileges, including the grant of sovereign immunity, afforded to local governments. This position is not supported

by the text of the Law, by any statute, the Georgia Constitution, or even any precedent in Georgia's appellate courts.

Addressing a similar issue in a case involving a local water authority, the Court of Appeals elaborated on the distinction between a municipality and a local authority in the case *City of Jonesboro v. Water Authority*, 136 Ga. App. 768 (1975):

> [An entity] may be designated as a municipal corporation for the purposes of one statute and not for another. McQuillin, Municipal Corporations, § 2.27a. Thus the fact that authorities were granted the same status as municipal corporations by the Revenue Bond Law (Code Ann. § 87-801 et seq.), does not mean that authorities have "municipal dignity" for all legislative enactments. On the contrary, Code Ann. § 69-1601 provides: "Whenever the words `city,' `town' or `municipality' appear in the statutory laws of Georgia, they shall be construed as synonymous and the General Assembly so declares this to be its intention in the use of these words, and such words shall be held to mean a municipal corporation as heretofore defined by statutory law

> and judicial interpretation." Thus there is no basis for the assertion that Code Ann. § 69-202 applies to authorities. See Stegall v. Southwest Ga. Housing Authority, 197 Ga. 571 (4) (30 S.E.2d 196), wherein it was held that an authority is not a municipal corporation, county or political subdivision so as to come within the meaning of Code Ann. § 2-5501 (§ 2-6001).

City of Jonesboro v. Water Authority, 136 Ga. App. 768, 774-75 (Ga. Ct. App. 1975); *see also* O.C.G.A. § 36-30-1 (former Code Ann. § 69-1601).

The same code section providing the word "municipality" under Georgia law should be interpreted synonymously with "city", "town", or "village" is now found at O.C.G.A. § 36-30-1. The current statute states:

> Wherever the words "city," "town," "municipality," or "village" appear in the statutory laws of this state, such words shall be construed as synonymous, and the General Assembly declares this to be its intention in the use of these words; such words shall be held to mean a municipal corporation as defined by statutory law and judicial interpretation.

O.C.G.A. § 36-30-1.

Housing authorities therefore are not within in the list of entities included within our statutory code's definition of a "municipality." Local authorities are also conspicuously absent from the legislative enactment providing for the grant of sovereign immunity to municipal cities and towns under O.C.G.A. § 36-33-1. That code section provides:

> (a) Pursuant to Article IX, Section II, Paragraph IX of the Constitution of the State of Georgia, the General Assembly, except as provided in this Code section and in Chapter 92 of this title, declares it is the public policy of the State of Georgia that there is no waiver of the sovereign immunity of municipal corporations of the state and such municipal corporations shall be immune from liability for damages. A municipal corporation shall not waive its immunity by the purchase of liability insurance, except as provided in Code Section 33-24-51 or 36-92-2, or unless the policy of insurance issued covers an occurrence for which the defense of sovereign immunity is available, and then only to the extent of the limits of such insurance policy. This subsection shall

> not be construed to affect any litigation pending on July 1, 1986.
>
> (b) Municipal corporations shall not be liable for failure to perform or for errors in performing their legislative or judicial powers. For neglect to perform or improper or unskillful performance of their ministerial duties, they shall be liable.

O.C.G.A. § 36-33-1.

Notably, O.C.G.A. Sec. 36-33-1 refers to sovereign immunity conferred to state municipal corporations in the exercise of their legislative and judicial powers. Clearly, the statute is not referring to local housing authorities, which lack legislative or judicial powers. Most importantly, nothing in the text of the statute supports the position that sovereign immunity was intended to be granted to local authorities as "instrumentalities" of local government.

If the General Assembly had intended to extend sovereign immunity to local housing authorities, or include such local authorities within the statutory definition of "municipalities" with sovereign immunity under Article IX of the Georgia Constitution, it could have

done so through a clear legislative enactment. *Compare, Henderman v. Walton Cnty. Water & Sewerage Auth.*, 271 Ga. 192, 192 (1999) (enabling legislation for water authority expressly granted the authority the same immunity as applicable to the local county); *see also*, Ga. Laws 2023 at 3789-3790 ("'The [Henry County Water Authority' shall enjoy the same immunity from suit as that enjoyed by Henry County"); Ga. Laws 2022 at 5762 ("The [Lower Chattahoochee Regional Transportation Authority] shall have the same immunity and exemptions from liability for torts and negligence as" various counties); Ga. Laws 2021 at 346 ("the [Chattooga County Public Facilities Authority] shall have the same immunity…").

In the present case, however, there is no indication whatsoever from the General Assembly, the government of the City of Augusta or Augusta-Richmond County, the Georgia Constitution, nor within any other legislative enactment that directly supports extending sovereign immunity to the Housing Authority. Appellant maintains the position that it is improper to extend sovereign immunity to a new class of entity without any clear legislative or public mandate.

E. The Housing Authority does not have sovereign immunity as an instrumentality of local government.

In the present matter, the Housing Authority has acknowledged in its briefing that its operating budget is comprised of money earned from the rent charged to its tenants, and through funding it receives from the federal government. (Appellee's Brief in the Court of Appeals, pp. 12-13.) There is no similar funding by local government. Similarly, the Housing Authority has acknowledged that it is subject to direct regulation and oversight by HUD, while the authority is lacking any similar oversight by local government. *Id.* at 10-13. The Housing Authority has not identified any legislation that demonstrates any degree of control by the local governing body of Augusta-Richmond County, nor any legislation or other materials that would show the Housing Authority is entwined with the local government of Augusta-Richmond County that it should be entitled to assert the same legal privileges as the local governing body.

Additionally, under precedent from this Honorable Court, the mere fact that a local authority was initially created or enabled by a resolution passed by local government does not automatically render the authority an instrumentality of local government. *See Thomas v.*

Hospital Auth. of Clarke Cnty., 264 Ga. 40, 42 (1994) (local hospital authority not entitled to sovereign immunity despite being created under authority of local government); *see also, Kyle v. Ga. Lottery Corp.*, 280 Ga. 87 (2011) (explaining a hospital authority "is clearly not a municipal corporation as such") (quoting *Cox Enters. vs. Carroll City/County Hosp. Auth.*, 247 Ga. 39, 45 (1981)).

The U.S. District Court for the Southern District of Georgia recently rejected a local wastewater authority's motion to dismiss on sovereign immunity grounds for similar reasons. *Johnson v. 3M*, 563 F. Supp. 3d 1253, 1317 (N.D. Ga. 2021). The District Court explained in its decision that the wastewater authority "provide[d] no authority in support of [the] contention that sovereign immunity is automatically extended to a separate local entity because it is formed by a court or municipality, or both." *Johnson v. 3M*, 563 F. Supp. 3d 1253, 1317 (N.D. Ga. 2021). Like the authority in *Johnson*, the Housing Authority in the present case has not provided legislative or constitutional authority that supports extending the defense of sovereign immunity to local housing authorities.

F. Extending sovereign immunity to the Housing Authority is contrary to good public policy.

"The General Assembly has consistently expressed the public policy of this state as one in favor of imposing upon the landlord liability for damages to others from defective construction and failure to keep his premises in repair." *Thompson v. Crownover*, 259 Ga. 126, 128 (1989); O.C.G.A. § 44-7-14 ("landlord is responsible for damages arising from defective construction or for damages arising from the failure to keep the premises in repair); *see also*, O.CG.A. § 51-3-1 (owner or occupier of land liable for failure to exercise ordinary care in keeping the premises safe).

Expanding the doctrine of sovereign immunity to include local housing authorities exposes thousands of Georgia residents and families to the negligence or neglect of their landlords, without any means of redress for injuries or damages arising from a housing authority's failure to keep the leased premises reasonably safe and in good repair.

Moreover, the public policy in this state should support the notion that the grant of sovereign immunity to any new class of entities should require the express authority and intention from the elected

representatives of the General Assembly, rather than through newly made interpretations of long-standing law by the Courts.

For these reasons, the Appellant respectfully asks this Honorable Supreme Court to reverse the decisions of the lower courts and hold that the Housing-Authority is not entitled to assert the defense of sovereign immunity.

Respectfully submitted, this 3rd day of February 2025.

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

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CERTIFICATE OF SERVICE

This is to certify that on this day I served a copy of the foregoing, *Brief of Appellant Christina Guy*, upon counsel of record for Appellee prior to the time of filing and in compliance with Rule 18 of the Rules of the Supreme Court of Georgia. Service was made to the following mailing and e-mailing address:

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Respectfully submitted this 3rd day of February 2025.

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