Case No. S24G1346

IN THE SUPREME COURT
STATE OF GEORGIA

CHRISTINA GUY,

Appellant,

v.

HOUSING AUTHORITY OF THE CITY OF AUGUSTA, GEORGIA,

Appellee.

BRIEF OF THE HOUSING AUTHORITY OF MACON-BIBB COUNTY, GEORGIA; HOUSING AUTHORITY OF COLUMBUS, GEORGIA; AND THE HOUSING AUTHORITY OF THE CITY OF DECATUR, GEORGIA AS AMICI CURIAE

Jack P. Schley
GA Bar No.: 891829
James C. Clark, Jr.
GA Bar No.: 127145
Page, Scrantom, Sprouse,
Tucker & Ford, P.C.
1111 Bay Avenue, 3rd Floor
Columbus, GA 31902
(706) 324-0251
Counsel for the Housing Authority of Columbus, Georgia as Amicus Curiae

William B. McDavid, Jr.
GA Bar No.: 315114
Brandon A. Oren
GA Bar No.: 554277
Jones Cork, LLP
435 Second Street, Suite 500
Macon, GA 31201
(478) 745-2821
Counsel for the Housing Authority of Macon-Bibb County, Georgia as Amicus Curiae

(continuation of appearances on following page)

Scott Candler, IV
GA Bar No.: 480914
McCurdy & Candler, L.L.C.
160 Clairemont Avenue, Suite 550
Decatur, GA 30030
(404) 373-1612
Counsel for the Housing Authority of the City of Decatur, Georgia as Amicus Curiae

Roy E. Manoll, III
GA Bar No.: 469710
Fortson, Bentley & Griffin, P.A.
2500 Daniell's Bridge Road
Building 200, Suite 3A
Athens, GA 30606
Counsel for the Athens Housing Authority as Amicus Curiae

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Statutes

Other Authorities

I. INTRODUCTION

The Housing Authority of Macon-Bibb County, Georgia; the Housing Authority of Columbus, Georgia; and the Housing Authority of the City of Decatur, Georgia respectfully submit this brief as amici curiae in support of Appellee Housing Authority of the City of Augusta, Georgia ("AHA").

In 1937, the General Assembly deemed that private enterprise alone was unable to provide sufficient affordable housing that was safe and sanitary. O.C.G.A. § 8-3-2. The lack of such housing adversely affected Georgia's economy; adversely affected the health, safety, morals, and welfare of Georgia residents; and adversely impacted public funds by "necessitat[ing] disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection and other public services and facilities." *Id*. The General Assembly decided to address those problems by creating Housing Authorities as "public bod[ies] corporate and politic" that could acquire privately held land through the State's power of eminent domain and spend public money to provide affordable housing to low-income residents of Georgia. O.C.G.A. § 8-3-4. Now, 150 Housing Authorities across the state provide over 175,000 affordable housing units for Georgia families.

This Court historically recognized that these Housing Authorities are "instrumentalities" of the State. *Culbreth v. Sw. Ga. Reg'l Hous. Auth.*, 199 Ga. 183, 189 (1945) ("Since the Housing Authority is thus a public corporation, and is using this property exclusively for a declared public and governmental purpose, and not for private or corporate benefit or income, it is in effect an instrumentality of the State.")[1]; *Knowles v. Hous. Auth. of City of Columbus*, 212 Ga. 729, 730 (1956) (discussing *Culbreth*), *overruled on other grounds by Self v. City of Atlanta*[2], 259 Ga. 78 (1989). And in Georgia, instrumentalities of the State are entitled to sovereign immunity. *Kyle v. Georgia Lottery Corp.*, 290 Ga. 87, 91 (2011).

In two recent decisions, the Court of Appeals found that the Housing Authorities of Douglas, Georgia and Athens, Georgia had not shown they were entitled to sovereign immunity as state agencies or instrumentalities. *Files v. Hous. Auth. of City of Douglas*, 368 Ga. App. 455 (2023);

[1] *Culbreth* concerned a regional housing authority, but it was formed by several county housing authorities and succeeded to their rights and powers. *Culbreth v. Sw. Ga. Reg'l Hous. Auth.*, 199 Ga. 183, 189 (1945). Notably, the Court held the regional authority was immune not because it covered several counties, but rather because it was a public corporation that existed for a public purpose. As in *Miller v. Ga. Ports Authority*, 266 Ga. 586 (1996), the Court in *Culbreth* looked to how the statute defined the entity and whether its purpose was public or private.

[2] *Knowles* had also held that when the General Assembly gave a public entity the capacity to "sue and be sued", that waived sovereign immunity. The Court overruled that holding in *Self v. City of Atlanta*, 259 Ga. 78, 79 (1989), finding the City had sovereign immunity.

Pass v. Athens Hous. Auth., 368 Ga. App. 445 (2023). Part of that holding appeared to be based on the specific records and arguments of those cases—*see, e.g.*, *Files*, 368 Ga. App. at 464 (examining the record)—and the Court of Appeals declined to reach the question of whether a Housing Authority is entitled to sovereign immunity as a municipality or instrumentality of a municipality. *See Id.* at 457.[3]

In the case below, the court of appeals held that the AHA is entitled to sovereign immunity as a municipal corporation, and both Appellant's and Appellee's briefs focused on that issue. However, this Court can affirm a judgment that is right for any reason. *Pearce v. Tucker*, 299 Ga. 224, 229 (2016). Accordingly, amici respectfully submit that the Court correctly analyzed this issue in *Culbreth* and *Knowles* and that, consistent with those cases, Housing Authorities are instrumentalities of the State and are thus protected by sovereign immunity. Accordingly, this brief primarily argues that *state* sovereign immunity is the source of Housing Authorities' immunity. To the extent, if any, that this Court disagrees with the rationales of *Culbreth* and

[3] In a footnote, the Court of Appeals in *Files* and *Pass* distinguished the *Culbreth* and *Knowles* cases on the grounds that they were decided before the 1991 amendment to the Constitution and the Tort Claims Act. *Files*, 368 Ga. App. at 457 n.1 (2023); *Pass*, 368 Ga. App. at 446 n.1. That interpretation of the 1991 amendment diverged from this Court's repeated instruction that "the 1991 amendment carried forward the constitutional reservation of sovereign immunity at common law as it was understood in Georgia." *Lathrop v. Deal*, 301 Ga. 408, 422 (2017).

Knowles and holds that state sovereign immunity is inapplicable, then amici in the alternative adopt the reasoning of the court below and of AHA's brief.

If this Court rules there is no municipal immunity—thus stripping Housing Authorities of any governmental immunities—then it will vastly multiply the potential for litigation and potentially invite litigation against other state or municipal instrumentalities. The outcome of this case will significantly impact Housing Authorities' ability to fulfill the public purposes announced by the General Assembly in O.C.G.A. § 8-3-2, *supra*, and will significantly affect the availability of affordable housing in Georgia. For that reason, amici submit this brief.

II. ARGUMENT

"To determine whether an entity is an instrumentality of the state for sovereign immunity purposes, the Supreme Court of Georgia has said that the standard to be applied is the analysis set forth in *Miller v. Ga. Ports Auth.*, 266 Ga. 586 (1996). Under a *Miller* analysis, courts are to examine (1) the legislation creating the entity, and (2) the public purposes for which it was created." *Campbell v. Cirrus Educ., Inc.*, 355 Ga. App. 637, 642 (2020) (citation omitted). Both factors weigh heavily in favor of finding that Housing Authorities are instrumentalities of the State.

A. The legislation creating the Housing Authorities demonstrates they are governmental entities entitled to immunity

The legislative provision that created the Housing Authority is:

> "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. In construing a statute, "we must afford the statutory text its plain and ordinary meaning, we must view the statutory text in the context in which it appears, and we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would." *Smith v. Northside Hosp., Inc.*, 302 Ga. 517, 521 (2017). Courts may consult dictionaries as evidence of plain and ordinary meaning. *Id.* (consulting dictionaries to construe Georgia statute); *Abdel-Samed v. Dailey*, 294 Ga. 758, 763 (2014) (same).

Looking to the statutory language, it is undisputed the statute created a "body corporate." The issue is what type of corporation the General Assembly created. The General Assembly used two adjectives to define the type of corporate body created: a corporation "public" and "politic."

"Public" means "[o]f or pertaining to the people; related to, belonging to, or affecting, a nation, state, or community at large;--opposed to *private*; as, the *public* treasury, credit, good; *public* opinion, etc. The term public is used in designating the legal character of various acts, rights, occupations, etc., that affect or belong to the collective body of a state or community." Webster's International Dictionary (2d. ed.) (1953).[4] Similarly, when "public" is used to modify "corporation", Black's Law Dictionary defines it as "1. A corporation whose shares are traded to and among the general public . . . 2. A corporation that is created by the state as an agency in the administration of civil government.—Also termed *political corporation*." Given that a "public corporation" or "political corporation" would have been understood as an agency of the State, the General Assembly's decision to create a "public body corporate and politic" strongly suggests the State intended to create an agency or instrumentality of the State.

The other adjective chosen by the General Assembly to define housing authorities was "politic." If "politic" merely meant the same thing as "public,"

[4] Courts have often used Webster's International Dictionary as evidence of the meaning of words. *See, e.g.*, *Am. Nat. Prop. & Cas. Co. v. Amerieast, Inc.*, 297 Ga. App. 443, 447 (2009); *Seckinger v. City of Atlanta*, 213 Ga. 566, 569 (1957); *see also Massachusetts Lobstermen's Ass'n v. Raimondo*, 141 S. Ct. 979, 980 (2021); *Lorenzo v. Sec. & Exch. Comm'n*, 139 S. Ct. 1094, 1101 (2019) (citation omitted). Webster's International Dictionary, 2nd Edition (1953) is proximate in time to the statute's 1937 enactment. *See Olevik v. State*, 302 Ga. 228, 235–36 (2017) (Constitution and other instruments are to be construed in the sense in which they were understood at the time they were passed) (citation omitted).

it would be redundant, and courts must "avoid[] a statutory construction that will render some of the statutory language mere surplusage." *Kennedy v. Carlton*, 294 Ga. 576, 578 (2014). Accordingly, the statute must be construed for "politic" to add a meaning of its own.

The first definition for "politic" in Webster's International Dictionary (2d Ed. 1953) defines it as "Of or pertaining to polity, or civil government." Webster's International Dictionary (2d. ed.) (1953). And "polity" is defined as "1. Form or constitution of the government of a state, or, by extension, of any institution or organization similarly administered . . . 2. A politically organized community; a state." In context, because the form or constitution of the Housing Authority is not that of a state, but rather that of a corporation, the second meaning of "polity" is the applicable one. Thus "politic" in the statute means of or pertaining to the state, or civil government. This conclusion fits with the remainder of the statutory language: The Housing Authorities' governmental nature is confirmed by O.C.G.A. § 8-3-30(a), which states that they "exercis[e] essential public and governmental functions." In context, therefore, "body corporate and politic" strongly suggests that the Housing Authority is an instrumentality of government created by the State.

Furthermore, courts have treated Housing Authorities as state agencies or municipal corporations in other contexts. For example, in 1980 the Court of Appeals ruled in *Doe v. Sears*, 245 Ga. 83, 85 (1980) that Housing Authorities

are subject to the Open Records Act. At the time of that decision, the Open Records Act applied to "All State, county and municipal records." Georgia Laws 1959, p. 88, § 1. . The Court of Appeals held there was "no doubt" that the Atlanta Housing Authority was subject to the Open Records Act, citing, among other considerations, the Authority's nature as a "public body corporate and politic" that exercised "public and essential governmental functions." *Doe*, 245 Ga. at 121. For the same reasons, that language indicates they are instrumentalities of the state or municipal corporations.

In addition to the Open Records Act, other statutes treat Housing Authorities as governmental entities. Because these statutes have similar subject matter, the Court must construe them "together, and harmonize them whenever possible, so as to ascertain the legislative intendment and give effect thereto." *Montgomery v. Montgomery*, 287 Ga. App. 77, 79 (2007); *see also Macon Sash, Door & Lumber Co. v. City of Macon*, 96 Ga. 23 (1895) ("where such a construction can be placed upon statutes as to make them harmonize the one with the other, so that all may stand, the courts should so construe them"). Pursuant to this rule, the Court should construe the following statutes together to find Appellee is an instrumentality of the State entitled to sovereign immunity:

(1) O.C.G.A. § 50-18-70 (housing authorities are considered agencies of either the State or its political subdivisions (counties or municipalities) for purposes of the Open Records Act, making their records available for public inspection). *See Doe v. Sears*, 245 Ga. 83, 85 (1980) *supra*; *see also* O.C.G.A. § 50-18-70(b) *citing* O.C.G.A. § 50-14-1(a)(1)(A) (For purposes of Open Records Act, "'Agency' means ... every state ... authority" which "derives more than 33 1/3 percent of its operating budget from payments from such political subdivisions");

(2) O.C.G.A. § 50-14-1 (housing authorities are subject to the Open Meetings Act). *See Jersawitz v. Fortson*, 213 Ga. App. 796, 797-799 (1994) (the Atlanta Housing Authority is subject to, and violated, the Open Meetings Act); *see also* O.C.G.A. § 50-14-1(a)(1)(C) ("'Agency' means … Every department, agency, board … authority, or similar body of each county, municipal corporation, or other political subdivision of the state");

(3) O.C.G.A. § 50-21-20, *et. seq*. (the Georgia Tort Claims Act waives the State's sovereign immunity, but expressly excludes from the waiver "counties, municipalities, school districts … [and] housing and other local authorities" O.C.G.A. § 50-21-22(5)). Elsewhere in the code the General Assembly provides immunity for those excluded entities,

such that the General Assembly intended to preserve the immunity of those entities when it passed the Georgia Tort Claims Act. *See* O.C.G.A. § 36-1-4 (county immunity); *see also* O.C.G.A. § 36-33-1 (immunity for municipal corporations); *see also Evans v. Gwinnett County Public Schools*, 337 Ga. App. 690, 692 (2016) (sovereign immunity applies to school districts based on 1983 Ga. Const. Art I, § II Para. IX(e)). Harmonizing these code sections requires finding that the General Assembly intended to preserve the common law immunity of Housing Authorities when it enacted the Georgia Tort Claims Act;

(4) O.C.G.A. § 36-85-1(3) and (10) (for purposes of Chapter 85 (Interlocal Risk Management Agencies) of Title 36 (Local Government), "County" and "Municipality" are each defined to encompass "**any public authority** … which is created by local or general Act of the General Assembly …") (emphasis added). Therefore, the General Assembly defined counties and municipalities as including Housing Authorities for the purpose of that Chapter, both of which are forms of local government entitled to sovereign immunity; and

(5) O.C.G.A. §§ 22-1-2, 22-1-4 (eminent domain is a right of the State, and the General Assembly may exercise that right "directly through officers of the state" or indirectly through other entities) and O.C.G.A.

§ 8-3-31 (housing authorities have the right to use eminent domain to acquire real property for public purposes). Therefore, the General Assembly exercises the State's right of eminent domain through Housing Authorities like the Appellee in this appeal.

(6) O.C.G.A. § 8-3-14(e) (city and county housing authorities are expressly provided with "immunities") (discussed further in section B below).

Construing these statutes together with the Housing Authorities Law (O.C.G.A. § 8-3-1, *et. seq.*) and reading them so as to "harmonize the one with the other, so that all may stand" leaves no other option but to find that Appellee, as a Georgia Housing Authority, is an instrumentality of the State of Georgia entitled to sovereign immunity. In short, in every other legal context, Housing Authorities are treated as instrumentalities of the State, consistent with this Court's holdings in *Culbreth* and *Knowles*. That strongly suggests they are instrumentalities of the State. *See BMC Indus. v. Barth Indus.*, 160 F.3d 1322, 1337 (11th Cir. 1998) (referring to the "time-tested adage: if it walks like a duck, quacks like a duck, and looks like a duck, then it's a duck.").

B. The purpose of Georgia Housing Authorities supports a finding of sovereign immunity

As an initial matter, the Housing Authorities Law expressly states an intent for Georgia Housing Authorities to have "immunities …." *See* O.C.G.A.

§ 8-3-14(e) ("… a consolidated housing authority and the commissioners thereof shall … have the same functions, rights, powers, duties, privileges, *immunities*, and limitations as those provided for housing authorities of cities, counties, or groups of counties ….") (emphasis added). An original intent to extend immunity to housing authorities is consistent with the other expressed intentions of the Housing Authorities Law: that Housing Authorities "exercis[e] public and essential governmental functions[.]" O.C.G.A. § 8-3-30. That strongly supports a finding of immunity on the second *Miller* factor. *See Youngblood v. Gwinnett Rockdale Newton Cmty. Serv. Bd.*, 273 Ga. 715 (2001) ("Considering the public purpose for which community service boards were created, we find that the GRNCSB is a 'state department or agency' entitled to raise the defense of sovereign immunity under Article I, Section II, Paragraph IX of the Georgia Constitution."). This Court, too, has previously observed that a Housing Authority "exercises public and essential governmental functions, and its property is, by law, public property. The low-cost housing which the [Housing Authority] provides constitutes a public use and purpose for which public monies are spent. The entire character of the [Housing Authority] is public." *Doe v. Sears*, 245 Ga. 83, 85 (1980). Based on this Court's caselaw and the plain language of the governing statutes, the purposes of Housing Authorities strongly support a finding of sovereign immunity.

Further, the entirely public purposes that Housing Authorities serve would be badly undermined by stripping them of sovereign immunity. Housing Authorities do not operate for profit (O.C.G.A. § 8-3-11), and their income sources are limited to rent and grants from state and federal agencies. Since the 1970s, federal regulation has controlled the rents which public housing authorities are allowed to charge if they wish to qualify for federal funds. *See, e.g.*, 24 CFR § 5.630(b) (setting the minimum rent regardless of how many permissive income deductions are applied); *see also* Quality Housing Work Responsibility Act of 1998, codified at 42 U.S.C § 1437g(n) (establishing Public Housing Authority plan requirements for operations, planning, and management and requirements for PHAs to receive federal funds). Pursuant to these regulations, PHAs must fix rentals in accordance with federal regulations based on tenant income. A PHA's properties are public properties used for public and governmental purposes and not for purposes of private corporate benefit or income. *See* O.C.G.A. § 8-3-8.

Housing Authorities have limited ability to recover increased costs or liabilities through raising rent. *See* O.C.G.A. § 8-3-11. Accordingly, there is no extra money or extra revenue source to pay higher insurance premiums or a money judgment: those funds can only come out of Housing Authorities' operating budgets. The only way to pay higher insurance premiums or a money

judgment is to decrease the units of affordable housing offered, decrease the quality of services provided to tenants, or sell properties.

An adverse judgment in this case will impair the "essential governmental functions" performed by the Housing Authorities in Georgia. O.C.G.A. §§ 8-3-2, 8-3-4. Diminished affordable housing will, in the judgment of the General Assembly, "necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection and other public services and facilities," O.C.G.A. § 8-3-2, as well as increasing homelessness in cities and harming the welfare of Georgia residents who depend on state-subsidized housing.

Housing Authorities, therefore, are expressly declared in the statute to be serving public and governmental purposes, such that the second prong of the *Miller* analysis is easily satisfied. Those purposes—and the public purse[5]—

[5] The public purse is not expressly mentioned in the *Miller* analysis, and the Court has noted the contrast between "the popular, contemporary notion that sovereign immunity is principally about the protection of the public purse" and "the doctrine at common law [that] was understood more broadly as a principle derived from the very nature of sovereignty." *Lathrop v. Deal*, 301 Ga. 408, 412 (2017). To the extent, if any, that the public purse is a factor, that factor supports immunity because the statute confirms that the Housing Authorities' performance of their essential governmental functions involves spending public funds and protects other governmental entities from the expenditures identified in O.C.G.A. § 8-3-2.

will be significantly injured if this Court holds that they are not entitled to sovereign immunity.

III. CONCLUSION

Regardless of whether Housing Authorities are instrumentalities of the State or of municipalities, it is clear they are governmental entities exercising essential governmental functions for a public purpose. As such, they must be one or the other: an instrumentality of the State or of the municipality. There is no third option.

Because the Housing Authority of Macon-Bibb County, Georgia; the Housing Authority of Columbus, Georgia; and the Housing Authority of the City of Decatur, Georgia believe they have historically been protected by sovereign immunity and that their capacity to perform their essential governmental functions would be materially impaired by a ruling stripping that immunity, amici respectfully submit that the decision of the lower court should be affirmed.

Respectfully submitted, this 6th day of March, 2025.

[signature block on following page]

/s/ Jack P. Schley
Jack P. Schley
GA Bar No.: 891829
James C. Clark, Jr.
GA Bar No.: 127145
Page, Scrantom, Sprouse,
Tucker & Ford, P.C.
1111 Bay Avenue, 3rd Floor
Columbus, GA 31902
(706) 324-0251
Counsel for the Housing Authority of Columbus, Georgia as Amicus Curiae

/s/ William B. McDavid, Jr.
William B. McDavid, Jr.
GA Bar No.: 315114
Brandon A. Oren
GA Bar No.: 554277
Jones Cork, LLP
435 Second Street, Suite 500
Macon, GA 31201
(478) 745-2821
Counsel for The Housing Authority of Macon-Bibb County, Georgia as Amicus Curiae

/s/ Scott Candler, IV
Scott Candler, IV
GA Bar No.:
McCurdy & Candler, L.L.C.
160 Clairemont Avenue, Suite 550
Decatur, GA 30030
(404) 373-1612
Counsel for the Housing Authority of the City of Decatur, Georgia as Amicus Curiae

/s/ Roy E. Manoll, III
Roy E. Manoll, III
GA Bar No.: 469710
Fortson, Bentley & Griffin, P.A.
2500 Daniell's Bridge Road
Building 200, Suite 3A
Athens, GA 30606
Counsel for the Athens Housing Authority as Amicus Curiae

CERTIFICATION OF COMPLIANCE WITH RULE 20(7)

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

s/ William B. McDavid, Jr.
William B. McDavid, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on this day I served all parties in this case by United States mail and by email at the addresses listed below:

J. Kyle Califf
CALIFF LAW FIRM LLC
507 Courthouse Lane
Augusta, GA 30901
kcaliff@califflawfirm.com
Counsel for Appellant

Christopher A. Cosper
HULL BARRETT, P.C.
P.O. Box 1564
Augusta, Georgia 30903-1564
CCosper@HullBarrett.com
Counsel for Appellee

This 6th day of March, 2025.

/s/ William B. McDavid, Jr.
William B. McDavid, Jr.