No. 19-5567 ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM

ON A PETITION FOR A WRIT OF CERTIORARI

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MS. DELORES NEELY [Mom]—PETITIONER

vs.

GEORGIA DEPARTMENT OF HUMAN SERVICES, et. al.—RESPONDENTS

TO THE UNITED STATES COURT OF APPEALS,
11TH CIRCUIT, ATLANTA GEORGIA

MS. DELORES NEELY

150 PEYTON PLACE, S.W. APT. 2407

ATLANTA, GEORGIA 30311

404- 751-6864

QUESTIONS PRESENTED

1. Can Congress abrogate a State's immunity from being sued in Federal court without its consent, under authority granted to Congress by the Fourteenth Amendment? Eleventh Amendment, constitutional provisions, Amendment XIV, Section 5?

2. Can Congress, when acting pursuant to enforcement clause of the Fourteenth Clause, can Congress abrogate Eleventh Amendment without State's consent. Can actions taken by Congress pursuant to its powers under Section 5, can override authority of State sovereignty embodied in the Eleventh Amendment. The duty of the Judiciary is to exercise the jurisdiction which Congress has conferred. It is not for us to say that litigation affecting State laws and State policies ought to be tried only in State courts. And, it is not for us to reject that which Congress has made the Laws of the Land?

3. Does 18 U.S.C.A, section 51 [now covered by 18 U.S.C.A., Section 241, denounces conspiracy to injure, oppress, threaten, or intimidate any Citizen in free exercise of, or enjoyment of right(s), or privilege(s) secured to him, or her by the Constitution of the U.S., or laws of the U.S., which were designed to punish offenses against rights secured by Amendment XIV, Section, subdivision 17?

4. Are States "persons", potentially liable under the Civil Rights Act of 1871, 42 U.S.C.A., Section 1983, for constitutional deprivations inflicted through official custom and policy? Are Defendants amenable to suit in their official capacities under 42 Section 1983, because the State and its officials are not "persons" within the meaning of the Section?

5. Whether a State is a "person" under Section 1983, this is a separate proposition from the other question of which is, whether a State may assert a defense of common-law sovereign immunity?

6. Is it not true, a State can waive its Eleventh Amendment immunity from suit in Federal Court, within the context of a State statute, or State Constitution? Such as, would be the Georgia Tort Claims Act – [O.C.G.A. Title 50-21-20 and Title 50-21-23], which states that the State be liable for the intentional torts of its employees? Has the State of Georgia "waived" its Eleventh Amendment Protection, by statute, from suit in Federal court? True or False?

7. Eleventh amendment may "bar" certain awards of damages paid from the State treasury, it does not "bar" awards" of Attorney Fees, or

expenses incurred in litigation seeking prospective relief. *Blake v. Kline, 612 F. 2d, 718, 721 @723*.....fees may also be available under Section 1988. *Hutto v. Finney, 437 U.S. 678 (1978).* U.S. Constitutional Amendment 11. Federal Courts>>>265. True?

8.) In an injunctive, declaratory action grounded in Federal law, the State's immunity can be overcome by naming State officials as Defendants. Monetary relief that is "ancillary" to injunctive relief also is not "barred" by the Eleventh Amendment. True? *Edelman v. Jordan, supra, at 667-668.*

9.) Does Georgia's Tort Claims Act, a Statute, allows an action(s) against the State for damages in cases surrounding "tort", if a like cause of action would be against a "private person?" Additionally, *"under common-law traditions"*, all Plaintiffs should be awarded full administrative and judicial reviews. True?

10.) The fact that the defense of sovereign immunity could be 'waived', does this supports the conclusion that the defense of sovereign immunity is one of immunity; and a separate proposal, one can say, the defense of sovereign immunity is one of subject-matter jurisdiction.

LIST OF PARTIES

The Plaintiffs in this case is Ms. Delores Neely, "Pro Se" Litigant and her next friend. The Defendants, et al., are the named Defendants parties. Only the parties named in the caption are parties on appeal. The Attorney General of Georgia accepts all service of processes for the Department of Human Services, and the State of Georgia.

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STATEMENT OF THE BASIS FOR JURISDICTION

Ms. Delores Neely, Plaintiff, Appellant, Mother, for self, and on behalf of her Son, Jerel Jay Neely, respectfully petitions the U.S. Supreme Court for a Writ of Certiorari to review a judgment of the United States Court of Appeals for the Eleventh Circuit, Atlanta, Georgia. Because, the State of Georgia does not enjoy Eleventh Amendment immunity from damage claims filed by individuals citizens, if the claim purports to arise from "due process" violations.

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CONSTITUTIONAL AND STATUTORY PROVISIONS

The Eleventh Amendment of the United States Constitution provides:

> **The judicial power of the United States shall not be construed to extend to any suit in law or in equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens of another State, or by Citizens, or subjects of any foreign State.**

U.S. CONST. Amend. XI.

The Fourteenth Amendment of the United States Constitution provides in part:

> **Section 1. All persons born, or naturalized in the United States, and subject to the jurisdiction thereof, are Citizens of the United States wherein they reside. No State shall make or enforce any law which shall abridge the privileges, or immunities of Citizens of the United states; nor shall any state deprive any person of life, liberty, or property, without 'due process' of law; nor deny to any person within its jurisdiction the equal protection of the laws.**

Section 5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of the Fourteenth Amendment.

U.S. CONST. Amend. XIV.

Title II of the American With Disabilities Act of 1990, or the Rehabilitation Act of 1973 provides in part:

(1) Public entity

The term "public entity" means;

(A) Any state or local government;

(B) Any department, agency, special purpose district, or other instrumentality of a State or State, or local government.

42 U.S.C., Section 12131

Title II further provides;

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

JURISDICTION

The initial judgment of the U.S. Court of Appeals was entered December 21, 2018. A timely Petition For A Rehearing was filed on January 11, 2019, which was 'denied', and an Order from a three-judge panel of the U.S. Court of Appeals, 11th Circuit; Atlanta, Georgia was entered on March 8, 2019 "DENIED". A mandate was issued by the U.S. Court of Appeals, 11th Circuit; Atlanta, Georgia, March 18, 2019. The jurisdiction of the U.S. Supreme Court is invoked under 28 U.S. C., Section 1251 1254(1).

OPINION BELOW

The amended opinion of the Court of Appeals, 11th Circuit; Atlanta, Georgia was reported as a mandate issued by the U.S. Court of Appeals, dated March 18, 2019, as a Judgment of the Court of Appeals, "the 11th Circuit Court of Appeals, Atlanta, Georgia lacked subject-matter jurisdiction, based upon the Eleventh Amendment." Judgment of the U.S. District Court, Atlanta, Georgia, a DISMISSAL, "the District Court lacked subject-matter jurisdiction based upon the Eleventh Amendment."

STATEMENT OF THE CASE

My name is Ms. Delores Neely, 67year old Black female, with a major permanent physical disability since 2002. I reside in a subsidized housing apartment at 150 Peyton Place, S.W., Apt. 2407; Atlanta, Georgia. Plaintiff is the Mother and next friend of Jerel Jay Neely, who is being unlawfully held by the Dekalb County Dep't of Family & Children [hereinout referred to as "D-DFACS"], and the State of Georgia. I am the fifth child of eight siblings, born in a medical clinic in the State of Mississippi. My Father was a farmer, my Mother was a housewife. I am a college graduate, with a B.S. and a major in (Pre-Med) Biological Sciences, with an emphasis in the Chemical Sciences, from Tougaloo Southern Christain College in Jackson, Mississippi, May 1973. ("See Resume, Personal Data Sheet, attached as, Appendix "C", Volume 3, Part 3, In the Supreme Court of Georgia- [Supporting Documents of the Plaintiff] and In the U.S. District Court, 2017"]. I am a retired Registered Nurse in the State of Georgia, though the original Nursing license was obtained in the State of Texas, May 1983, with a score above the national average, percentile, while working full-time.

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Definitions:

1. **Commissioner – means the Commissioner of Human Services.**
2. **County department - means a county, or district Department of Family and Children Services.**

A. **Department of Human Services, Official Code of Georgia, Title 49-1-2. All rules and regulations made by the Dep't of Human Services shall be binding on the counties and shall be compiled with the respective county departments.**

The Dep't of Human Services shall administer, or supervise all county departments of the State of Georgia, as provided in Chapter 3 of Official Code of Georgia, Title 49-2-6. O.C.G.A., Title 49-2-6(5) acts as the agent of the federal government in welfare matters of mutual concern in conformity with Title 49, and the administration of any federal funds granted to the State to aid in the furtherance of any functions of the Department of Human services. And, administer such programs and provide such services as maybe appropriate and necessary to strengthen family life. 2018 *Supplement, Vol. 38, 2013 Edition, Title 49 and Title 50 – State Government.*

Official Code of Georgia, Title 49-5-8, The Dep't of Human services is authorized and empowered, through its own programs of county and district Departments of Family & Children Services, to establish, maintain, extend, and improve throughout the State of Georgia, within the limits of funds appropriated for, programs that will provide.....2) child welfare services (caseworker services) for children and youths and for Mothers *having children out-of-wedlock*, whether living in their own home, or elsewhere, to help overcome problems that result in dependency, or delinquency.

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I. **Federal Rule of Civil Procedure, 2757, *(quoting)*;**

"Inherent authority of the federal courts to punish misconduct before them is residual authority, to be exercised sparingly, to punish, maybe misconduct **1.) occurring in litigation itself, not in events giving rise to litigation.", such as the spoken words,**

"Plaintiff lived in a boarding house with her Son." "Why, Plaintiff was not working?" Zapata Hermanos Sucesores v. Heartside Baking Co. 313 F. 3d 388 (7th Cir. 2002).

The U.S. Supreme Court could proceed with an action against a State because the U.S. Constitution specifically gave the Supreme Court jurisdiction of those type of cases. (Original Jurisdiction of the U.S. Supreme Court, Federal Practice & Procedure – 4042-4054). **The United States Supreme Court has original, trial court jurisdiction, and to determine the scope of that jurisdiction, there must be a "Statute", detailing the method of proceeding in such actions.** Art. III, Section *2. (PTA – FLA, Inc. v. ZTR USA, Inc. 844 F. #d 11299, 1304 (11th Cir. 2016).*

Jurisdiction under Section 1331 is determined by Congress. *Wigod v. Wells Fargo Bank, N.A., 673 F. 3d 547, 582 (7th Cir. 2012).* **The "original jurisdiction" of the U.S. Supreme Court is conferred not by Congress, but by the Constitution itself. And, this jurisdiction is self-executing, and needs no legislative implementation.** ***California v. Arizona, 440 U.S. 59, 65, 99 S. Ct. 919, 923, 59 L. Ed. 144 (1979).*** **Article III provides that in all cases within the judicial power of the U.S., the U.S. Supreme Court shall have appellate jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make. Within the boundaries of jurisdiction provided in Article III, Section 2, Congress has**

considerable discretion controlling and limiting the scope of jurisdiction of the lower federal courts. The jurisdiction of the U.S. Supreme Court is invoked pursuant to 28 U.S.C., Section 1331 and 1343, **to secure protection and redress deprivation of Plaintiff's rights secured by the Fourteenth Amendment to the U.S. Constitution, the Civil Rights Act of 1964, 42 U.S.C., Section 2000 et. seq. (as amended); and the Civil Rights Act of 1871, 42 U.S.C., Section 1983, 1985 and 1988.**

This is a civil action lawsuit that alleges tortious conduct by Defendants as stated in this lawsuit, in violation of Federal and State laws, and the Civil Rights Act. Plaintiff alleges the Defendants: the State of Georgia and its State officials (employees): the Department of Family & Children services, and Department of Child Support Enforcement & Recovery, under the supervision and management of the Department of Human Services, have deprived the Plaintiff, Appellant of her rights guaranteed by the Const. and laws of the United States, and laws of the State of Georgia such as, liberty interests: Defendants rob Plaintiff of her freedom to raise her own offspring, and rob Plaintiff of the freedom of due possession of her minor child, all of which are rights guaranteed by the laws of the U.S. Constitution, adopted by congressional legislation. Deprivation of rights that caused much mental anguish and emotional distress.

Additionally, defendants further failed in November 1995, to provide to Plaintiff, a *landlord-tenant administrative grievance hearing* where appropriate, which caused the Plaintiff and her minor child to suffer the incidents of homelessness, after the eviction from her apartment in 1995, public subsidized housing, the Perry Homes Housing Development; Atlanta, Georgia. The State of Georgia had knowledge of these violations, had the power to prevent, or aid in the prevention of these wrongs, and could had done so by reasonable diligence, but neglected or refused to do so.

A copy of the Complaint is attached in the record as Complaint in [(Appendix B, USDCA – A, Vol. 2, Part 2– Dkt. # 6 [4-65], Operative Complaint, In the U.S. District Court, Atlanta, Georgia, amended November 2, 2017)], detailing specific allegations; along with, a ["Notice of Appeals", filed January 2018, In the U.S. Court of Appeals, Atlanta, Ga.], that cites specific allegations concerning the rights of the Appellant.

II. **Will v. Michigan Dep't of State Police, 491 U.S. 58, 109 S. Ct. 2304, 105 L. Ed 2d 45 (1989). Civil Rights Act and whether a State is a "person".**

WHITE, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and O'CONNER, SCALIA, and KENNEDY, JJ., joined. BRENNAN, J. filed dissenting opinion, in which MARSHAL, BLACKMUN, JJ., and STEVENS JJ., joined, post, p.71.

Defendants make the in-depth statement that neither the State, nor State officials acting in their official capacities are susceptible to suit in Federal court because none are "persons", within the meaning of Section 1983. Plaintiff states that Defendants have misread the U.S. Supreme Court's ruling in the landmark case of *Will v. Michigan Dep't of State Police, 491 U.S. 58, 109 S. Ct. 2304, 105 L. Ed 2d 45 (1989).* Yet, it is true that neither a State, nor its officials acting in their official capacities are "persons" amenable to suit for monetary damages under Section 1983, but when a State official in his, or her official capacity, when sued for declaratory and injunctive relief, then they would become a "person" under Section 1983. *Kentucky v. Graham, 473 U.S. at 167, n. 14; Ex-parte Young, 209 U.S 123, 159-160 (1908).*

The 107th Congress stated, *"In our administration of Section 1983, we have relied upon "fiction" to protect the illusions, that a sovereign State,*

***absent its consent, may not be held accountable for its wrongs, or improper acts in Federal court, even when the equitable relief, a remedy that might require the expenditure of state funds.*" Milliken v. Bradley, 433 U.S. 267, *289 (1977).* So, yet the question remains whether the statutory language concerning Section 1983 *was constructed* to protect the "fiction" that one sovereign cannot be sued in the courts of another sovereign.

A State is not a "person" rests on previous history of judicial authority, the circumstances existing in America when early civil rights statutes were passed, that were viewed in connection with the events of the times, such as with a supremacy of radical Republicans in the Southern states, along with the Ku Klux Klan in 1866.

However, constitutional conversions were made close to the end of the war and 1870. On April 9, 1866, the Civil Rights Act of 1866, and the Fourteenth Amendment was proposed, and it was ratified in July 1868. Congress altered the balance between the States and the Federal Constitution. I am sure, Congress did not intend, to include the States, that they would not be liable under Section 1983, for the deprivations and the threats to America during the 19th century Congress. The Civil Rights Act

of 1871 was created, and it intended to provide a remedy, to be translated against all forms of official violation(s) of federally protected rights. *Monell v. New York City Dep't of Social Services, 436 U.S. at 700-701.* If, prospective relief can be awarded against State officials under Section 1983 and the State is the real party in interest in such suits, the State must be held liable under Section 1983, and therefore the State is a "person".

Every sovereign State of necessity is a "body politic and corporate", or an artificial person. *Cotton v. The U.S., 11 How. 229, 231 (1851),* just as a corporation, is an entity that can act only through its agents, and command only by laws. *Poindexter v. Greenhow, supra at 228.* Most States had ratified the Fourteenth Amendment by 1870, and Congress transformed the federal system. And, Congress did definitely intend to include the States, including those and others who might be liable under Section 1983.

Prospective relief, equitable relief against a State officer, to end continuing violations of federal law, outweigh the interests in State sovereignty and justify an award under Section 1983 of an injunction that operates against the State officers, or moreover, directly against the States themselves. *Milliken v. Bradley, 433 U.S. 267, 289 (1977).*

Liability on the merits and responsibility for fees go hand and hand. **So, who is the prevailing party? Yes, the Plaintiff and her child Jerel are the prevailing parties!! Defendants have been prevailed against, on the merits under an egregious litigation, expressing evil motivations, and evil intentions.**

A. **Conclusively stated, Section 1983 provides;**

- **"Every person who, under color of "any Statute", ordinance. regulation, custom, or usage, of any territory, or the District of Columbia, subjects, or causes to be subjected, any Citizen of the United States, *or any person* within the jurisdiction thereof to the deprivation(s) of any rights, privileges, or immunities secured by the Constitution and Laws shall be liable to the party injured in action at law, suit in equity, or other proper proceeding for redress."**

It is not necessary that the State be named as a Party, only that the named Party is, *in actuality the alter ego of the State. Stretton v. Disciplinary Bd. Of Supreme Court of Pennsylvania, Conclusions of Law (A)(6)(3), 763 F. Supp. 128, 135 (E.D. Pa. 1991)*, affirmed in part, vacated in part on other grounds, 94 F. 2d 137 (3rd Cir. 1991).

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Definitions:

1. **"Person" – means a natural person, a corporation, firm, partnership, association, or other such entity.**

2. **"State government entity – means a State office, agency, authority, Department, commission, board, division, instrumentality, or institution.**

The Civil Rights Act of 1871, now codified as 42 U.S.C. Section 1983, included the word "person" in Section 1 of the Act. The Statute is explicitly clear, directed at action (b) taken "under color of State law, supports rather than refutes the idea that the "persons" mentioned in the Statute included the States. And, the concept that a State is a "person" is not foreign to the 19th century Congress that enacted Section 1983.

A. Fourteenth Amendment to the U.S. Constitution, Section 1:

"All person born, or naturalized in the U.S., and subject to the jurisdiction thereof, are Citizens of the U.S and the State wherein they reside. No State shall make or enforce any laws which shall abridge the privileges, or immunities of the Citizens

of the U.S; nor shall any State deprive any person of life, liberty, or property, and the pursuit of happiness, without "due process of law", nor deny to any person within its jurisdiction the equal protection of the laws of the U.S."

Section 5, 14th Amendment to the U.S. Constitution:

"Congress shall have the power to enforce, by appropriate legislation, the provisions of Section 5. The 14th Amendment provides Congress with the power necessary to abrogate State's immunity. (**i.e.** A child is a protectable property right and to permit the State to "hold" Jerel, to infringe that property right, without redress for the Mother of that child, this would deprive the Mother of her property, and of property rights, without "due process".) [("See the case in the Juvenile Court of Dekalb County, Georgia, June 1996, attached as Appendix "E", Vol. 3, Part 3; and also Vol. 1 (D1-3), In the U.S. Court of Appeals.

III. "Tort Remedies" and the Fourteenth Amendment, Procedural "Due Process"–

Plaintiff, Appellant's claim is well-grounded in terms of State and Federal constitutional deprivations, and relief is sought under the Civil Rights Act of 1964, Section 1983, 504 of the Rehabilitation Act 1973, and Plaintiff alleges her rights were violated under the 14th Amendment to the U.S. Constitution, in that Plaintiff was deprived of her property, without "due process" of Law. All the above establish subject-matter substantive jurisdiction and federal question procedural jurisdiction. [("Attached as Appendices With Attachments", In the U.S. District Court, RBR-Building, Atlanta, Georgia, citing specific detail; and the "operative complaint"- Dkt# 6 [4-65], In the U.S. District Court, Nov. 2, 2017. *Goldberg v. Kelly, 397 U.S. 254 (1970)*

The State should require state employees to provide meaningful hearings before the deprivation(s) of any property takes place. If, this is not done, then this failure would violate the Due Process Clause of the 14th Amendment. The availability of "tort remedies" from the State of Georgia did not provide the "due process" that the Fourteenth Amendment

suggested. Because, if a claimant is deprived of "due process", regardless of a State's post-deprivations procedures, the claimant has suffered a "procedure due process violation", which is done with the actual taking of one's property, also as done through the disobedience of court orders, as seen with property and liberty deprivations done with the abstraction of privileges, and the elimination of payments contained in the 1993 Fulton County Juvenile Court Order coupled with the 1994 State Court Income Deduction Order. Indeed, Plaintiff has suffered a substantive and procedural violation of "due process". And, the Plaintiff claims that she has suffered substantive and procedural "due process" rights.

IV. Reasons For Granting the "Writ".

The Georgia Tort Claims Act, [Voluntary & Involuntary Waiver of Sovereign Immunity]

A State *can waive* it Eleventh Amendment immunity from suit in Federal Court in a State statute, or State Constitution. *Genentech Inc. v. Regents of University of California, 939 F. Supp. 639 (S.D. Ind. 1996), rev'd on other grounds 143 F. 3d 1446 (Fed. Cir. 1998).* Mico Monaco v. State of Washington, 45 F. 316, 319 (9th Cir. 1995). [See examples below]:

1. State Statute: Georgia Tort Claims Act, Waiver of Sovereign Immunity, Official Code of Georgia, 50-21-20, 50-21-23; (Code 1981, Title 50-21-20,

enacted by Ga. L. 1992, p. 1883, Section 1.)(O.C.G.A., Art. 2, Ch. 21, T. 50) O.C.G.A. 2018 Supplement, Vol. 38A, 2013 Edition, Title 50-21-23 – State Government (Chap. 13-40); with exceptions and limitations, O.C.G.A., Title 50-21-29(a)(b).

2. Art. 1, Section 1, Rights of Persons, Georgia State Constitution, Paragraph XVI, Self-Incrimination & Termination Of Parental Rights (In Creamer v. the State). A Psychologist, or Psychiatrist cannot perform a "psychological examination" without the Patient's, or client's consent, even if court-ordered, unless the court order satisfy the procedural requirements of "Due Process Clause" of the Fourteenth Amendment to the U.S. Constitution. Even after consent is given, the Patient, or client can always change his, or her mind, and **"refuse". No Affirmative Act On the Part Of The Individual. The Individual Is Neither Compelled To Take An Active Role.**

3. **Georgia Constitution, Section 2-116, Art. 1, Section 1, Paragraph XVI – Self- Incrimination. When evidence of probable cause for belief that Defendant had committed an offense not presented, evidence obtained "without a search warrant", through search of a Defendant, incident to his, or her arrest, IS NOT ADMISSIBLE AT TRIAL.** ***Peters v. State, 114 Ga App. 595, 152 S.E. 2d 647.***

4. **Aid-to-Families-With-Dependent Children, O.C.G.A., 49-4-100 through 49-4-119, Art. 5, "Statutory Entitlements" - Repealed by Ga. L. 1997, 1021, Section 5, effective April 22, 1997. Uniform Reciprocal Child Enforcement Act, Art. 2, Ga. L. 1958, p. 34, Section 34; 19-11- 43(5)..... *common-law marriages*; O.C.G.A., Title 19-11-43(6).....*children born out-of-wedlock.***

A. **The Georgia Statute: Tort Claims Act, Voluntary Waiver of Sovereign Immunity.**

This Georgia statute declaring that the State of Georgia is liable in "tort" actions in the same manner as a private individual, or corporation can be held to constitute a clear 'waiver' of the State's Eleventh Amendment immunity, as expressed in Plaintiff's Section 1981, 1983 civil rights violations suit. Because, Section 1981 and Section 1983 are all about "tort actions". Therefore, it is quite clear the State of Georgia has "partially waived" its Eleventh Amendment immunity by enacting its Tort Claims Act. ***New England Multi-Unit Housing Laundry Ass'n v. Rhode Island Housing and Mortg. Finance Corp., 893 F. Supp. 1180 (D.R.I. 1995)***

Congress intended to give a remedy to parties deprived of their constitutional rights, privileges, and immunities, by an official's abuse of his or her position. The statutory word "under color of "*any statute*",

ordinance, or regulation, custom, or usage, of any State, or Territory", and this does not exclude acts of an official or policeman who cannot, or does not have any authority under state law to do wrong, or who did indeed violate State laws, the State Constitution, and laws of the Federal Civil Rights Act and Section 1983.

This gives the Plaintiff's cause of action federal subject-matter jurisdiction and gives Plaintiff federal rights in federal court. And, Congress confers jurisdiction over Section 1983 claims on a U.S. District Court, found in U.S.C.A. Title 28, Section 1343 and to redress the deprivations under color of any State law, statute, ordinance, regulation custom, or usage, or any right, privilege, or immunity secured by the U.S. Constitution, or by any act of Congress, providing for equal rights of Citizens, or all persons within the jurisdiction of the United States of America.

V. ***Hall v. Towney, 621 F. 2d 607, 613 (CA 4 1980) and Bellows v. Dainack, 555 F. 2d 1105, 1106 n. 1 (CA 2 1977),* unauthorized failure of State procedures.**

Excessive force by a policeman during the course of an arrest, with kidnapping, constitutes a deprivation of "liberty", without "due process".) *("See Kimbrough v. O'Neil, 545 F. 2d 1059, 1061 (CA 7 1976) (en banc)).* A taking with intent and reckless disregard of the claimant property by a state agent, violates the Due Process Clause of the Fourteenth Amendment and is actionable under Section 1983. And, this "deprivation of property", under color of State law, was the result of some established State procedure, *as the result of the unauthorized failure of State procedures.*

And, the State of Georgia has a "tort claim" procedure which provides a remedy to persons who have suffered an injury due to a tortious loss at the hands of egregious, intentional poor behavior of malicious tortfeasors. State officials did not use, *which would had, could had* been sufficient to satisfy the requirements of "due process". And, Section 1983 should be read against the background of 'tort liability" that makes a man responsible for the natural consequences of his actions.

VI. A "Right", Existence of a Contract – Tortious Interference With A Contract.

Under Georgia Law to prevail on theory of "tortious interference with contractual relationships", Plaintiff claims existence of a "contract", such

as, the 1994 State Court Fulton County Income Deduction Order (including the alimony portion), which is a written contract, with (rights) statutory entitlements, and termination of these entitlements is in violation of the "Due Process Clause" of the Fourteenth Amendment. Defendants have/ had knowledge of this contract. Plaintiff suffered damages as a result of Defendant's interference(s). Therefore, the burden of proof and persuasion shift to the Defendants to demonstrate justification for such interference(s), interference(s) with non-performance, (i.e. any act which retards). **This also is a deprivation of the Plaintiff's rights, which also gives the case of the Plaintiff subject-matter jurisdiction, which gives case of the Plaintiff federal question jurisdiction, and "justiciability". Unbelievably, to this date, the language surrounding Section 1983 statute is indeed confusing.**

VII. Eleventh Amendment Immunity v. The U.S. Constitution, [Supreme Law of the Land]. (Involuntary Commitment)

1. The creation of Eleventh Amendment Immunity is 'ancient'. These notions were created years before the adoption of the U.S. Constitution of America. Neither the Eleventh Amendment, nor the broader scope of sovereign Immunity "bars" the U.S. Supreme Court from hearing appeals from the highest court of the States, concerning a claim against a State.

On one hand, yes, the states are sovereigns, and yes, they should be afforded respect, but on the other hand, Federal law is to be the Supreme law of the Land under the U.S. Constitution, and this does create conflict in the Federal courts, and this scenario is confusing, and this scenario does not support Federal constitutional laws.

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VIII. Ford Motor Co. v. Dep't of Treasury of Indiana, et al. – Certiorari to the Circuit Court of Appeals for the 11th Circuit – No. 75 – Decided Jan. 8, 1945.

A. **[This is a suit against State officials, through a proceeding that was authorized by Statutes under color of State Law]. Where, an action is authorized by Statute against a State officer in his, or her official-capacity and constituting an action against the State, then the Eleventh Amendment operates to "bar" suit, except in so far as the Statute "waives" State immunity from suit.** ***Smith v. Reeves, 178 U.S. 436; Great Northern Insurance Co. v. Read, 322 U.S. 47.***

The State's immunity statute is unconstitutional when it is applied to defeat a 'tort claim' arising under state law. Yes! State officials deprived Plaintiff of the possession of her minor child in violation of Plaintiff's

federal protected rights to life, liberty, freedom to bear and raise one's offspring, without interferences from the State. Conduct by persons acting under color of State law with action(s) under Section 1983 cannot be immunized by State law. *"And the construction of a federal statute which would permit a State immunity defense to have such a controlling effect would transform a "basis guarantee" into an "illusory promise".* Because, then a Plaintiff would had been deprived of constitutionally protected interests. Hence, the Defendants' immunity claim ****raises a question of federal law, which establishes federal subject-matter jurisdiction.

McLaughlin v. Tilendis, 398 F. 2d 287, 290 (7th Cir. 1968).

1. **Involuntary Commitment to a Hospital, or others places outside the jurisdiction of the Juvenile Court of Dekalb County, June 1998, whereby that Dekalb Juvenile Court decision must had been accompanied by appropriate protections for the Mother and her minor Child. The State relying on the opinion of a Psychiatrist, or Psychologist in the absent of the opinions from the Parents, these maneuvers extinguish the Mother and her Child's rights to be free from confinement, or imprisonment, nor do these opinions authorize the State to classify the minor Child as mentally ill, then transport the minor Child to unknown locations, without**

the Parents' consent, (probably, not in an ambulance), without affording Mother and her Child State mandated policies, procedures, and additional "due process" protections, such as the right to be provided with a qualified "indigent representation", to support a Mother who *may* had been unable to under-stand her rights, or to aid a Mother to prepare a legal defense. Only then, "due process" would had been exercised by the State, that would benefit the Mother and Child, so long as the Mother is provided with qualified and independent legal assistance. Due process does not always require a Law trained decision-maker, but may also be satisfied with a qualified and independent advisor. ***Parham v. J.R., 442 U.S. 584, 607 (1979).***

Without the Mother's consent to transfer her minor to an unknown-confined location was unconstitutional, without adequate notice and a hearing, or opportunity for a hearing, did deprived the Mother and Child of liberty without "procedural due process" of law, contrary to the Fourteenth Amendment to the U.S. Constitution. (quoting): ***Miller v. Votek, 437 F. Supp. 569 (Neb 1977)*** **(emphasis omitted).**

Yes, indeed a 'live' controversy exists, which satisfies federal subject-matter jurisdiction. And, this case is not 'moot!!! Another liberty interest protected by due Process Clause is the 'right' to be free from unjustified intrusions on personal security, recognized at common-law as being most essential to the orderly pursuit of happiness and the peaceful enjoyment of one's home. Additionally, if Plaintiff contends that the State's procedural requirements surrounding the Fourteenth Amendment *were inadequate* then this becomes matters for the federal courts. The Appellant concludes that Statutes governing the Federal Civil Rights Act determines the extent of procedural protections (liberty and property interests) afforded to the Plaintiff. Plaintiff bases her claim upon State and Federal statutes and Laws.

Statutorily created property interests such as, the right to possession of one's children, the right to bear and rear one's children, right to own and rent a house, deprivation of these interests could not be accomplished without 'notices and hearings', at any time, all times. The legislature cannot constitutionally authorize the deprivation of such property interests. A 'tort' action is a property interest which gives Plaintiff access to the courts.

2. The right to personal security, is also protected by the Fourth Amendment, which was made applicable to the States through the Fourteenth Amendment, because, the "*context of such concept of protection is viewed as orderly liberty.*" The Fourteenth Amendment's function is to protect personal privacy and dignity against unwarranted intrusion by the State. *Wolfe v. Colorado, 338 U.S. 25, 27-28 (1949). In Weeks v. U.S., 232 U.S. 383 stated, "evidence secured in violation of the Fourteenth Amendment is inadmissible in federal courts".* The security of one's privacy against arbitrary intrusion by the police is enforceable against the States through the Due Process Clause, *without the authority of law*, but mainly on the authority of a police officer, is inconsistent with the concept of human rights and orderly liberty.

The Plaintiff, Appellant holds the evidence, from the actions of police officers were the result of a trespass, without a warrant, upon Plaintiff and her minor Child by the Defendants while the Plaintiff resided at 1731 Westwood, Ave., S.W., and 80 Montgomery Street; Atlanta, Georgia, hence *any* evidence obtained should had been excluded, absent obedience of the rules of Federal and State laws. (No police report!!) If not, then the protections guaranteed by State and Federal Statutes, become an illusion.

[Those executing federal criminal laws to obtain convictions by means of unlawful 'searches and seizures', incriminating, incompetent evidence, illegal warrants in violation of one's federal rights, should not be allowed, or approved by the courts, courts who support the deprivation of one's constitutional rights]. (foggy illusions) (*quoting*: *Weeks v. U.S. 232 U.S. [id. 389]*). The right of people to be secure in their persons, houses, papers, and effects, against 'unreasonable searches & seizures', *should not be violated*, and no warrants shall issue, *but upon "probable cause"*, supported by oath, or affirmation, in particular that describes the place to be searched, and the persons or things to be seized.

IX.
Georgia Tort Claims Act and 'Waiver' of Sovereign Immunity.

1. Official Code of Georgia, Title 50-21-23, Limited Waiver of Sovereign of Immunity. (a)..."the State waives its Sovereign Immunity for the "torts" of State officers and employees while acting within the scope of their official duties or employment and shall be liable for such "torts" in the same manner as a 'private' individual, or entity would be liable under like circumstances. The State shall have no liability for losses resulting from conduct on the part of State officers, or employees which was not within the scope of their official duties, or employment."

X.

FEDERAL PRACTICE & PROCEDURE, JURISDICTION & RELATED MATTERS, VOL. 13, SECTION 3501-3530, (2018 SUPPLEMENT, SECTION 3524.5, DIRECT AND INDIRECT CONGRESSIONAL ABROGATION OF STATE'S SOVEREIGN IMMUNITY.

1. Section 5 of the Fourteenth Amendment – ***"a fundamental premise of the Federal system is that States, as sovereigns, are immune from suits for damages, but they may elect to 'waive' that defense."*** **An exception to this principle is that, Congress may abrogate the state's immunity from suit, pursuant to its power under Section 5 of the Fourteenth Amendment.** ***Colemen v. Court of Appeals of Maryland, 132 S. Ct. 1327, 1333, 182 L. Ed 2d 296 (2012). [n. 28].***

2. **[n. 68]** Congruence and Proportionality – "Eleventh Immunity is not 'unalterable'. *Bolmer v. Oliveira, 594 F. 3d 146-149.* "A 'waiver' of sovereign of immunity must be based upon unequivocal language in the statute that makes the 'waiver' clear and precise, appropriate relief language that clearly and unequivocally indicate that the 'waiver' extends to monetary damages, and not merely just the relief of State and Federal funds, when Congress abrogate Sovereign Immunity. *Cardinal v. Metrish, 564 F. 3d 794-801 (6th Cir. 2009).*

XI.
REASONS FOR GRANTING

U.S.C.A CODE ANNOTATED 2006, SUBDIVISION LIII, SUBSECTION 4835, AMENDMENT XIV, SECTION 1, VOLUME 6, Preponderance of the Evidence..... PROCEDURAL DUE PROCESS---Admissibility of Evidence—[Termination of Parental Rights, Domestic Relations], **and**

Georgia State's Standard of Proof (Code 1981, Code Section 15-11-303, and Code Section 15-11-310, enacted by Ga. L. 2013, p. 294, Section 1-1/H242)...*the standard of proof to be adduced to terminate parental rights shall be by clear and convincing evidence.*

1. **Preponderance of the Evidence Standard provided for in McKinney's N.Y. Family Court Act, Section 622, governing the termination of Parental Rights upon a finding that a Child is "permanently neglected" does not properly allocate "risk of error", between parent and child, and for natural parents. The consequences of 'erroneous' termination is unnecessary destruction of the natural family. Therefore, "due process" mandates standard of proof greater than fair preponderance of the evidence.** ***Santosky v. Kramer, U.S. N.Y. 1982, 102 S. Ct. 1388, 455 U.S. 745, on remand 453 N.Y. S. 2d, 942. Constitutional law>>274(5).*** **But rather a showing to be made by clear and convincing evidence then the parents would not had been denied procedural due process in the proceeding for termination of parental rights.** ***Alsages v. District Court of Polk County, Iowa (Juvenile division), S.D. Iowa 1975, 406 F. Supp. 10, adopted 545 F. 2d 545 F. 2d 1137.***

Constitutional Law>> 255(4). **(quoting** ***Santosky v. Karmer, Commissioner, Ulster County, Dep't of Social Services—Certiorari to the Appellate Division, Supreme Court of New York, 3rd Judicial Circuit—No: 80-5889—Decided March 24, 1982),*** **it was held "the fundamental liberty interests of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment, and this interest does not dissipate simply because the natural parents have not been model parents, or who have lost temporary custody of their child to the State". A parental right termination proceeding interferes with that substantive-liberty interest. (possession of one's children) When the State moves to destroy weakened familial bonds, the State must provide the "parents" with basic fair procedures, which satisfy the requirements of the Due Process Clause. The preponderance of the evidence standard violates the Due Process Clause of the Fourteenth Amendment. The Federal courts handles substantive and procedural due process cases, and;**

2. And, the State must prove that after a child has entered state custody, a year or more, the State agency should make diligent efforts to encourage and strengthen the parental relationship. Additionally, the

State must prove that during the above time, the child's natural parents failed "substantially and continuously or repeatedly to maintain contact with a plan for the future of the child. The State could not, and did not prove that the "parents" did not visit and that the parents had not "substantially planned" for the future of their child. Nonetheless, the state agency had not made diligent efforts to encourage and strengthen the parental relationship of Mother, Father, and Child. An example of this is when the State courts and agencies did not collect court-ordered child support payments.

3. *Lassiter v. Dep't of Social Services, 452 U.S. 18 (1981),* declared a natural parent's *"desire for and right to the companionship, care, custody, and management of his, her children is an "interest"",* is far more precious than any property right. When a State initiates a parental right termination proceeding, the State seeks not only to infringe upon that fundamental substantive-liberty interest. The State intentions are to end it. Strangely, if, the State prevails, then there is an enormous deprivation of life, and liberty. The State must constitutionally prove "parental unfitness', in order to terminate parental rights, done only with fact-

finding clear and convincing evidence, not erroneous fact-finding. [("Refer To: Bulk Appendix - Appendix C, Volume 3, Part 3, Enumeration of Errors, In the Supreme Court of Georgia)].

4. Defendants failed to comply with statutorily mandated procedures, which were *constitutionally inadequate, destroyed entitlements* of the Plaintiff, without affording Plaintiff proper procedural safeguards, hence Plaintiff contends that the above do not provide Plaintiff with adequate post-deprivation remedies, therefore damage awards are requested from the Defendants. Who is the prevailing party? The Plaintiffs are, because, the loss of property, is an individual entitlement grounded in State law, that cannot be removed except for "cause".

5. "Fourteenth Amendment guarantees process that is due when a claimant suffers, or suffered a deprivation of property within the Fourteenth Amendment, and terminating a claim where the "sovereign" thinks he cannot be sued in federal court for misconduct is incorrect. This rationale is not, available to the State's defense, that the abandonment of the Plaintiff's claim which required a determination on the merits of her claim would impose undue burdens on the State's administrative process. *Amendment XIV, Section 5 and 120 S. Ct. 631, 528 U.S. 62.*

Constitutional Law>>82 (6.1) [id., Subs. 8], **provides remedies and by deterring violations of rights guaranteed by the 14th Amendment. Congress has the responsibility for exercising judgment as to when this amendment is violated and the powers, in appropriate cases, to eliminate the violation.**

XII.
REASONS FOR GRANTING – INDIGENT INDIVIDUALS

1. **A Denial Of Due Process.** **The right to "due process" reflects a fundamental value in our American constitutional system, through an organized society with the enforcement of rules, defining the various right(s) and duties of its members, to enable them to settle their affairs and differences in an orderly and predictable manner. Those who wrote our original Constitution, and later then those who drafted the Fourteenth Amendment recognized the importance of the concept of "due process" and the judicial proceeding(s). Hence, a Statue, or a Rule maybe held unconstitutionally invalid when it operates to deprive an individual of a protected right, rights given to each individual which are characterized as "due". Destitute individuals must be afforded an adequate appellate review, just the same as individuals who have enough money. It is**

unjustifiable denial of a hearing, and therefore a denial of "due process", to close the courts to an indigent on the ground(s) of non-payment of a fee. Denial of a right to be heard is a violation of the Due Process Clause of the Fourteenth Amendment. And, the State cannot deny a free transcript to indigent. The rules are set out in the Constitution, which provides what is governmentally fair and what is not. The people are vested with the power to amend the Constitution. And, a judge's personal view of fairness could change the laws.

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XIII.
CONCLUSION
STATE OF GEORGIA'S VOLUNTARY AND INVOLUNTARY "WAIVER" OF SOVEREIGN IMMUNITY.
[ORIGINAL AND APPELLATE JURISDICTION]

Lower Federal Courts, Article III, Section 2, and U.S.C.A. Title 28, Section 1331. Federal Practice & Procedure – 4044 – Jurisdiction and Related Matters – Vol. 17 (2007). Jurisdiction Between Two Or More States

1. **All cases actually brought in the original jurisdiction of the U.S. Supreme Court arise out of the Constitutional provision for cases, *"in which a State shall be a Party."* The jurisdiction is well established for cases between two or more States. [28 U.S.C.A., Section 1251(a). Article III].**

Section 12519(a) of the Judicial Code, implements these provisions by making the original jurisdiction exclusive in controversies between two or more States, and the existence of this jurisdiction implies fundamental limitations on state sovereignty. The U.S. Supreme Court determines the rules of decision, and often apply its own independent rules by adopting the restrictive *rules of justiciability*. [28 U.S.C.A. 1251(a); Federal Practice & Procedure, Section 4045 – **Suits Between States, State As A Party. In proper original actions by one State against another State, the Eleventh Amendment is no barrier.** ***Texas v. New Mexico, 1987, 107 S. Ct. 2279, 2285, 482 U.S. 124.*** **If, the Constitution establishes jurisdiction beyond congressional control, the U.S. Supreme Court must have final authority over the procedure to be used.** [Federal Practice & Procedure Vol. 17, Section 4054].

Appellate jurisdiction, 28 U.S.C.A., Section 1251, the U.S. Supreme Court's appellate jurisdiction is rooted in Article III and defined by STATUTE. Any case that has been decide by a lower federal court can be reviewed in the U. S. Supreme Court, because this court has sweeping power over lower federal courts and federal question jurisdiction in the State courts, the most

basic constitutional and statutory questions, and questions of federal common law. The U.S. Supreme Court's appellate jurisdiction is "mandatory". *Oklahoma Telecasters Ass'n v. Crisp, 699 F. 2d 490, 495 & n. 4 (10th Cir. 1983), citing Wright, Miller & Cooper, judgment rev'd on other grounds, 467 U.S. 691, 104 S. Ct. 2694.*

COMPENSATORY DAMAGES AND COMPENSATORY INJURIES, *FEDERAL REPORTER, 3D SERIES, P. 786, COLEMAN V. RAHIJA, 114 F. 3D 778 (8TH CIR.1997).*

1. **Compensatory damages may include not only out-of-pocket losses and other monetary harms, but also such injuries as impairment of reputation, personal humiliation, and mental anguish, mental suffering and suffering due to an "exacerbation – aggravation agitation" of a pre-existing medical-physical condition", then to continually aggravate one physically-mentally-emotionally. This constitutes compensable injury under Section 1983. Carey v. Piphus, 435 U.S. 247, 264 and n. 2d 98 S. Ct. 35.**

Dated: August 9, 2019

Ms. Delores Neely

Plaintiff, Appellant

With Many Thanks,

Ms. Delores Neely, Mother
"Pro Se" *("Self")* Litigant
[Substitution of Counsel]

Ms Delores Neely

150 Peyton Place, S.W.
Apartment 2407
Atlanta, Georgia 30311

C/o: Clerk of the U. S. Supreme Court