IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

SAFER HUMAN MEDICINE, INC.,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 1:24-cv-
v.	)	00027-LAG
	)	
DECATUR COUNTY-BAINBRIDGE INDUSTRIAL DEVELOPMENT AUTHORITY,	)	
	)	
Defendant.	)	

MOTION TO INTERVENE BY THE STATE OF GEORGIA

Pursuant to Federal Rules of Civil Procedure 24(a) and 24(b), the State of Georgia (the "State"), through Joseph K. Mulholland, in his official capacity as District Attorney of the South Georgia Circuit, hereby moves the Court for an Order allowing the State to intervene in this action for the purpose of defending against Plaintiff Safer Human Medicine, Inc.'s ("SHM") claims that it is entitled to enforce certain contracts against multiple public entities, including Defendant County-Bainbridge Industrial Development Authority. SHM has repeatedly argued that the bond validation order that it is basing its arguments on was entered at the request of the State. Accordingly, the State should be permitted to intervene so it may defend its own interests in this litigation, as well as the interests of Decatur County and its citizens. The grounds for this motion are set forth in the concurrently filed

Memorandum of Law, the pleadings of record, and any other evidence the Court deems proper and just.

Dated: December 31, 2024

/s/Joseph K. Mulholland
Joseph K. Mulholland
Ga. Bar No. 527912
District Attorney
South Georgia Circuit
P.O. Box 1870
Bainbridge, GA 39818

CERTIFICATE OF SERVICE

I certify that on December 31, 2024, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to all counsel of record.

/s/Joseph K. Mulholland
Joseph K. Mulholland

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

SAFER HUMAN MEDICINE, INC., Plaintiff, v. DECATUR COUNTY-BAINBRIDGE INDUSTRIAL DEVELOPMENT AUTHORITY, Defendant.	)	Civil Action No. 1:24-cv-00027-LAG

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE BY THE STATE OF GEORGIA

The State of Georgia, through District Attorney Joseph Mulholland, files this memorandum in support of its Motion to Intervene, seeking to intervene in this lawsuit as of right, or in the alternative, under the permissive intervention standards of the Federal Rules of Civil Procedure.

I. Introduction

Plaintiff Safer Human Medicine, Inc.'s ("SHM") Complaint asks the Court to order Defendant Decatur County-Bainbridge Industrial Development Authority (the "Authority"), together with the City of Bainbridge (the "City"), Decatur County (the "County"), the Decatur County Board of Tax Assessors ("BOTA") and other public entities (collectively, the "Public Parties"), to perform obligations under two contracts, the PILOT Agreement and Project Agreement (collectively, the "Agreements"). The Agreements provide for the funding and development of a primate breeding facility ("Project Liberty"), which will ultimately house up to 30,000 primates in Decatur County, and that will be located directly adjacent to residential properties. SHM's Complaint is disingenuous and without merit, and the States desires to intervene to assert at least four arguments that demonstrate the Agreements are not enforceable.

First, SHM contends that the Agreements were validated under Georgia's Revenue Bond Laws, O.C.G.A. §§ 36-82-60, and therefore they are immune to collateral attack. However, that defense does not apply here because even if the Agreements were "validated," the Agreements (as "validated") contain language expressly requiring that the Public Parties adopt them pursuant to the Georgia Open Meetings Act, O.C.G.A. §§ 50-14-1 *et seq*. (*See* Compl. Ex. G at § 12.8 (ECF 1-9).) The Georgia Open Meetings Act requires that "[a]ny resolution . . . or other official action . . . adopted, taken, or made at a meeting which is not open to the public as required by the Act shall not be binding." O.C.G.A. § 50-14-1(b)(2). It is undisputed that at least some of the Public Parties have admitted they did not adopt the Agreement pursuant to the Open Meetings Act. *See Dollar v. City of Bainbridge*, Case No. 24CV00046 (Feb. 15, 2024) (the "State Lawsuit") (answers of the County and Decatur County Board of Tax Assessors ("BOTA") admitting Open Meetings Act requirements were not followed and the Agreements are not valid). The Public Parties are necessary parties to this action, yet SHM strategically elected not to include any of the Public Parties as defendants to hide these admissions from the Court.

Second, the instant lawsuit is a collusive suit, and therefore should be dismissed. *See United States v. Johnson*, 319 U.S. 302, 304 (1943) (collusive suits "do[] not assume the 'honest and actual antagonistic assertion of rights to be adjudicated—a safeguard essential to the integrity of the judicial process"). SHM and the Authority have schemed to secure a favorable order from this Court so that the Authority can in essence shrug its shoulders and say that it had no choice but to move forward with Project Liberty. If this was not the Authority's plan, the Authority would have already advised the Court that multiple Public Parties had already admitted to violations of the Open Meetings Act, which is an express requirement for enforceability, as stated in the Agreements. The Authority also would have called the Court's attention to Section 3.3 of the

Project Agreement, which states that the Project Agreement's term cannot be extended without the consent of the Public Parties. *See* Compl. Ex. G at § 12.8 (ECF 1-9).)

Third, the State, as a party to the Bond Validation Proceeding, filed a motion to reconsider the Bond Validation Order. (Compl. Ex. N (ECF 1-16).) Thereafter, the Authority voted to withdraw its participation from Project Liberty before the bonds were issued and then filed a pleading to that effect in the Bond Validation Proceeding. (Compl. Ex. Q (ECF 1-19).) The Authority's action to withdraw from Project Liberty prior to the issuance of the bonds is expressly permitted under Section 1.7 of the PILOT Agreement. (Compl. Ex. H at § 1.7 (ECF 1-19).) If this Court finds that the Agreements are enforceable, the State, as the party that first commenced the Bond Validation Proceeding to purportedly validate the Agreements, has an interest in ensuring that Section 1.7 of the PILOT Agreement, permitting termination of Project Liberty, is also enforced.

Fourth, the Court of Appeals recently dismissed the appeal of the Bonda Validation Order, and the State is seeking certiorari from the Georgia Supreme Court. SHM and the Authority have opposed the States's Petition of Certiorari, arguing that the State cannot appeal an order that it asked the trial court to enter, or contest the agreements that the trial court validated. (*See* SHM's Resp. in Opp'n to Pet., *State of Georgia v. Decatur County Ind. Dev. Auth., et al*., Supreme Court of Georgia, S25C0401, attached as Exhibit A; Authority's Resp. in Opp'n to Pet., *State of Georgia v. Decatur County Ind. Dev. Auth., et al*., Supreme Court of Georgia, S25C0401 attached as Exhibit B.) The State contests this argument, but if the bond validation is not vacated, then based on SHM and the Authority's own arguments, the State therefore must be permitted to intervene to assure that the agreements actually validated are enforced. To be clear, what SHM seeks to enforce is not what was validated or agreed to by any interested parties.

Thus, for the reasons set forth herein, the State should be permitted to intervene in this action to file its proposed Answer, attached hereto as Exhibit A, and to assert its defenses to SHM's Complaint to defend its interests in the outcome of this action.

II. Argument

Under Fed. R. Civ. P. 24, a non-party may intervene in a pending federal action either as of right or permissively. The State has grounds to intervene as of right because it "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede [its] ability to protect its interest" and no existing party adequately represents the State's interest. Fed. R. Civ. P. 24(a)(2). Alternatively, the State should be permitted to intervene because its defense against SHM's claims shares common questions of law and fact to this action, Fed. R. Civ. P. 24(b)(1), or because SHM's claims are based on the Bond Validation Order, which was improperly validated under the laws of the State. Fed. R. Civ. P. 24(b)(2).

A. The State Must Be Permitted to Intervene as of Right

A party seeking intervention as of right pursuant to Fed. R. Civ. P. 24(a)(2) must show that "(1) [its] application to intervene is timely; (2) [it] has an interest relating to the property or transaction which is the subject of the action; (3) [it] is so situated that disposition of the action, as a practical matter, may impeded or impair [its] ability to protect that interest; and (4) [its] interest is represented inadequately by the existing parties to the suit." *Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989). The State satisfies each of these elements.

1. The State's intervention is timely

The State's motion to intervene is timely given that this case is still in its early stages. Since February 26, 2024, the case has been stayed [ECF-10], and the Authority has not yet filed an Answer to SHM's Complaint. Discovery has not commenced, and no trial date has been set. *See*

Chiles, 865 F.2d at 1213 (finding motion to intervene timely when filed only seven months after complaint, three months after a motion to dismiss had been filed, and before discovery began). The State's intervention at the inception of this case will not cause delay or prejudice to the parties. In fact, the State is a necessary party to streamline resolution of claims relating to the Agreements that SHM seeks to enforce against the Authority and all Public Parties.[1]

2. The State has interests relating to the transaction central to this action

The State has substantial, protectable interests in this action. *First*, as the party that commenced the Bond Validation Proceedings, the State has an interest in presenting arguments as why the Agreements were not validated in the Bond Validation Proceeding, as SHM alleges. These issues are the subject of the State's recently-filed Petition for Writ of Certiorari. If the Agreements are ultimately validated, the State still has an interest in proving that the Agreements are not enforceable. And, even if the Agreements are found to be enforceable, the State has an interest in demonstrating to the Court that proper enforcement of the Agreements means that Project Liberty has terminated based on the Authority's vote to rescind its support of Project Liberty.

The State is likely to prevail on the defenses it will assert to protect its foregoing interests. As just an example, the explicit requirement of the Agreements is compliance with the Open Meetings Act. SHM has alleged that the Agreements are enforceable against the Authority and Public Parties, which contradicts the allegations and relief sought by residents of Decatur County in the State Lawsuit. In the State Lawsuit, the County and the BOTA have already admitted they did not comply with the Open Meetings Act and the County has requested entry of a consent judgment against enforcement of the Agreements. (*See, e.g.*, ECF 16-6.) The admissions of the

[1] Indeed, given the evidence of collusion between SHM and the Authority, without the State's intervention, any judgment in this case would be based on misrepresentations of law and fact and would likely be a result of a disingenuous consent motion between SHM and the Authority.

BOTA and County in the State Lawsuit, both of whom are necessary parties in this litigation, is inconsistent with the relief sought by SHM. The State is likely to prevail on this argument.

Also, even if the Bond Validation Order is not vacated by the Supreme Court of Georgia, the State will argue that the Authority's withdrawal of its participation from Project Liberty and the Authority's pleading filed in the Bond Validation Proceeding that reflects the decision to terminate participation in Project Liberty, means that the Agreements are extinguished. The State, as a party to the Bond Validation Proceeding, is likely to prevail on its argument that the Authority's decision to not proceed with the bond validation was expressly permitted under Section 1.7 of the PILOT Agreement, regardless of whether the bonds were validated.

Second, the State has an interest in protecting the integrity of the Revenue Bond Laws. Even if the Bond Validation Order is not vacated, the Authority still must comply with the law when issuing bonds. The Bond Validation Order only validates the documents as they exist at the time the order is issued. Here, pursuant to the express terms of the Project Agreement, any documents that were purportedly "validated" expired on February 29, 2024.[2] Because the time period of the validation has expired, the bonds cannot now be issued without a new validation proceeding filed by the State. The State is likely to prevail on its argument that the State plays a key role in the Revenue Bond Law process, and has an interest in intervening to protect that role.

Third, because there is significant evidence that the Authority has colluded with SHM to obtain a binding order from this Court as to the enforceability of the Agreements, the State must

[2] The only version of the Project Agreement validated by the Decatur County Superior Court expired on February 29, 2024. The State recognizes that this Court may extend deadlines for contracts, but those extensions are modifications to the contracts, which would require a second validation because validation is a power expressly reserved for the Superior Court in Georgia. *See* O.C.G.A. § 36-82-75.

be permitted to assert a defense that there is no justiciable controversy in this case between the two currently-named parties.

Fourth, the State also has substantial, protectable interest in (1) the prevention of fraud on the Court and the protection of it's the citizens of Decatur County, (2) expenditure of the County's tax income; (3) ensuring the lawful and proper administration of community funds and assets by local governments; (4) preventing further damage to property within the State; (5) keeping communities within the State safe and free of ongoing unlawful behavior that would result in transmittable diseases and pollution; (6) preventing unlawful enforcement of the Agreements and the Bond Validation Order that violate Georgia law; and (7) ensuring compliance with all laws of the State. The State also has a significant interest in protecting its interests in the issues presented in its Petition for Writ of Certiorari in appeal of the Bond Validation Order and avoiding an erroneous judgment here—based on incomplete or misrepresented facts—that may conflict with future appellate judgments regarding the Bond Validation Order.

3. <u>The disposition of the action may impede or impair the State's ability to protect its interests</u>

The State's ability to protect its interests will be impeded and impaired by a ruling in this litigation that conflicts with the matters raised by the State in its pending Petition for Writ of Certiorari. Moreover, the State will be impeded and impaired if it is not permitted to assert the defenses discussed above, some of which are dispositive of this action as a whole, and some of which are dispositive as to the Public Parties. Moreover, if the Bond Validation Order is upheld, SHM and the Authority cannot have it both ways – they cannot argue to the Georgia Supreme Court that the validation of the Agreements was exactly what the State wanted, and then prevent the State from intervening to make sure those exact Agreements are enforced. Also, the State has an interest in protecting its rights as the gatekeeper for proceedings brought under the Revenue

Bond Laws. Moreover, if the State is not permitted to intervene, its ability to protect and represent the interests of the citizens of Decatur County will be impaired because many have already suffered documented economic losses as a result of Project Liberty and face future potential environmental damages and health risks.

4. The State's interests are not represented

Finally, the State's interests in this action are not represented by the current parties. *See Chiles*, 865 F.2d at 1214 (stating that a non-party's interest is not adequately represented by existing parties if there is only a "minimal" showing "that representation of [one's] interest 'may be' inadequate"). The State has good cause to believe that the Authority will not raise any real defenses to SHM's claim, and that the Authority instead will consent to a judgment in this case so that development of Project Liberty may continue while limiting the public backlash it will face. Indeed, the Authority has actively worked with SHM to hamper progress in the Open Meetings Act litigation, and has filed a response in opposition to the States Petition for Writ of Certiorari arguing that the bond validation should be upheld.

B. In the Alternative, the Court Should Grant the State's Request for Permissive Intervention

Even if this Court decides that the State cannot intervene in this action as of right, the State should still be permitted to intervene under the permissive intervention standards established by Fed. R. Civ. P. 24(b)(1) or 24(b)(2).

1. The State should be permitted to intervene under Fed. R. Civ. P. 24(b)(1)

In general, permissive intervention is appropriate in cases where the movant has timely filed its motion and 'has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ P. 24(b)(1). The only showing required for permissive intervention is "an interest sufficient to support a legal claim or defense." *Nationwide Mut. Fire Ins. Co. v.*

Waddell, No. 5:04-CV-429, 2005 WL 2319698, at *3 (M.D. Ga. Sept. 22, 2005) (quoting *Laube v. Campbell*, 215 F.R.D. 655, 659 (N.D. Ala. 2003)). The State satisfies this standard.

Through this action, SHM seeks to enforce the Agreements against the Authority and all the Public Parties, all while failing to name the Public Parties as defendants. SHM seeks this Court's approval of Project Liberty despite the ongoing Appeal and State Lawsuit, both of which raise claims that the Agreements are not binding or enforceable because they fail to comply with Georgia law. And the State seeks to rely on and enforce the pleadings filed by the Authority in the Bond Validation Proceeding that effectively withdrew its participation in Project Liberty before it closed on the Bond Transaction, meaning the Agreements are no longer binding on the Authority or the Public Parties. Accordingly, any future bonds would require new validation, which must be commenced by the State under the Georgia Revenue Bond Laws. The State will raise these defenses against SHM's claims, each of which shares common questions of law and fact to the claims and defenses of this action. To deny the State's motion to intervene would result in prejudice to the State and would result in injustice and inconsistent and erroneous outcomes.

2. The State should be permitted to intervene under Fed. R. Civ. P. 24(b)(2)

Fed. R. Civ. P. 24(b)(2) provides a separate avenue of permissive intervention by a government officer or agency. Specifically, "on timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on: (A) a statute or executive order administered by the officer or agency; or (B) any regulation, order, requirement, or agreement issued or made under the statute or executive order."

Here, SHM's claims are based on the Bond Validation Order, made pursuant to the laws of the State. Thus, SHM's claims are based on an order made under the statute administered by this State. Further, "[a] party seeking to intervene under Rule 24(b)(2) must show that (1) its application to intervene is timely, and (2) [its] claim or defense and the main action have a question

of law or fact in common." *Chiles*, 865 F.2d at 1213; *Cox Cable Commc'ns v. United States*, 992 F.2d 1178, 1180 n.2 (11th Cir. 1993). For the reasons stated above, the State meets this standard.

III. Conclusion

The State meets the requirements for intervention as of right and permissive intervention. Intervention of the State conserves judicial resources and ensures consistent rulings on key issues across multiple lawsuits filed in separate courts and jurisdictions. Therefore, this Court should grant the State's motion to intervene in this matter.

Respectfully submitted this 31st day of December, 2024.

/s/Joseph k. Mulhollan
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CERTIFICATE OF SERVICE

I certify that on December 31, 2024, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to all counsel of record.

/s/Joseph K. Mulholland
Joseph Mulholland

IN THE SUPREME COURT
FOR THE STATE OF GEORGIA

SUPREME COURT CASE NO. S24CO401

STATE OF GEORGIA,

Petitioner,

v.

DECATUR COUNTY-BAINBRIDGE INDUSTRIAL DEVELOPMENT AUTHORITY and SAFER HUMAN MEDICINE, INC.,

Respondents.

SAFER HUMAN MEDICINE, INC.'S RESPONSE TO PETITION FOR CERTIORARI

On Appeal from the Georgia Court of Appeals
Case No. A24A1078

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I. INTRODUCTION

This case presents a question that has been answered for over 100 years: whether a party may petition a court for an order, receive that order, and then, despite having received everything for which the party asked, appeal that order. The answer has always been the same: No. In 1903, this Court remarked it has "ever been the law, both in this state and in other jurisdictions, that a party not aggrieved by the judgment of a trial court is without legal right to except thereto, since he has of it no just cause of complaint." *Lamar v. Lamar*, 45 S.E. 498, 499 (Ga. 1903). And in that vein, "[i]t is axiomatic that at the appellate level one cannot complain of a judgment, order, or ruling that his own procedure or conduct procured or aided in causing." *Waye v. Continental Special Risks, Inc.*, 289 Ga. App. 82, 84 (2007).

Applying these basic, well-settled rules, the Court of Appeals concluded the State had no standing to prosecute its appeal in this case, where the State is challenging an order the State asked the trial court to enter. *See* Order, *State v. Decatur Cty.-Bainbridge Indus. Dev. Auth.*, No. A24A1078, slip op. at 2–3 (Ga. Ct. App. Oct. 31, 2024). The State petitioned the trial court for relief, the trial court granted that relief, and the State could not an appeal an order for which it had asked.

As one might expect in a case involving a legal rule that has "ever been the law," and despite the State's breathless representations to the contrary,

this case does not raise legitimate issues of great magnitude, the Court of Appeals' Order is not a "vast departure from rulings of this Court," and nothing about the ruling below renders any law meaningless. Instead, the appeal presented a straightforward issue—whether a party can appeal an order it petitioned the court to enter—and the Court of Appeals provided a straightforward answer consistent with over a century of Georgia law. Even considering the hodgepodge of alleged "errors" the State contends the Court of Appeals committed relating to issues that court never addressed, this is not a case presenting issues of "gravity or great public importance." *See* Ga. Const. art. 6, § 6, para. V. None of those issues even present a basis for reversing the order entered by the trial court. This Court should deny the State's petition for a writ of certiorari.

II. JURISDICTIONAL STATEMENT

This Court would not have jurisdiction over this case as it does not present an issue of "gravity or great public importance" as required under Article 6, Section 6, Paragraph V of the Georgia Constitution and Supreme Court Rule 40. Safer Human Medicine Inc. ("SHM") does not contest the State's Petition is timely filed.

III. STATEMENT OF THE CASE

A. Factual Background

The critical fact to consider in resolving this petition is that the order the State is challenging is the very order the State asked the trial court to enter. (V2-3–19 ("Petition and Complaint" signed by Joseph K. Mulholland as District Attorney of the South Georgia Judicial Circuit).) Safer Human Medicine provides these other facts to help the Court understand how it came to be that the State is appealing that order.

On December 11, 2023, the Decatur County-Bainbridge Industrial Development Authority (the "Authority") adopted a "Bond Resolution" whereby the Authority agreed to issue, in one or more series, taxable revenue bonds in the maximum aggregate principal amount of $300,000,000.00 to finance the acquisition, construction, installation, and modification of a 1.75 million square foot animal-husbandry facility in Bainbridge, Georgia (the "Project"). (V2-25-191.) The animals being raised are primates to be used in scientific research.

Through various agreements contemplated in the Bond Resolution, SHM would obtain a usufruct interest in the Project, and SHM would make payments in lieu of taxes to various public entities. (V2-16-47.) The Authority approved and executed two of those agreements (the "Project Agreement" and the

"PILOT Agreement") on December 11, 2023, as did several other public entities: the City of Bainbridge, Decatur County, the Decatur County School District, the Decatur County Tax Commissioner, and the Decatur County Board of Tax Assessors (collectively with the Authority, the "Public Authorities"). (V2-24-191.) All told, the Project is expected to bring at least 263 high-paying jobs and hundreds of millions of dollars in investment to the Bainbridge/Decatur County area. There is also a critical need for these animals in the scientific community, which is currently dependent on foreign vendors.

B. Procedural Background

Under Georgia law, a governmental body (such as the Authority) seeking to issue revenue bonds must go through a statutory procedure to obtain confirmation and validation of a proposed bond issuance. *See* O.C.G.A. § 36-82-74 *et seq*. Complying with those procedures, the District Attorney for the South Georgia Judicial Circuit (the "District Attorney") filed, on behalf of the State of Georgia, a Petition and Complaint (the "Petition") in the Superior Court of Decatur County, Georgia (the "Superior Court") requesting the Superior Court issue an order finding the Authority had properly authorized and adopted the Bond Resolution and related documents (the "Bond Documents") and confirming and validating the Bond Resolution and the Bond Documents. (V2-3-19.) The Authority and SHM were named as defendants. (V2-3.)

After the filing of the Petition, the Superior Court issued a Rule Nisi Order setting a hearing on the Petition for January 2, 2024. (V2-193-97.) The order directed the Clerk of the Superior Court to publish a notice of hearing in *The Post-Searchlight*, the legal organ of Decatur County. (V2-194.)

The Superior Court held the hearing on January 2, 2024. (V2-220-21.) No member of the public moved to intervene, no party raised any objections or allegations of irregularities in the process, and the Court proceeded to enter its order (the "Bond Validation Order") confirming and validating the Bond Resolution and the Bond Documents "in each and every respect," just as the Petition requested (V2-226; *see also* V2-13–18.)

Regrettably, despite the approval of the Project by the Public Authorities, the lack of any party intervening or objecting at the hearing on the Petition, and the entry of the Bond Validation Order, the Public Authorities began walking back their support for the Project in the face of mounting political pressure after entry of the Bond Validation Order. Thus began a flurry of activity designed to stall the Project. On January 30, 2024, the District Attorney filed a paper in the Superior Court entitled, "Motion for Reconsideration or in the Alternative to Set Aside the Validation Order" (the "Motion for Reconsideration"). (V4-339-44.) The next day, January 31, 2024, the District Attorney filed a Notice of Appeal, appealing the Bond Validation Order to the Court of

Appeals. In light of the appeal, the Superior Court indefinitely postponed a hearing on the State's Motion for Reconsideration. (V6-10.)

At the Court of Appeals, the State, grasping for any basis to prevent the Project moving forward, enumerated four errors. However, the Court of Appeals did not address any of them, as it held the State lacked standing to challenge the Bond Validation Order because it had requested the Bond Validation Order when it filed the Petition. Order, *supra*, slip op. at 2 ("Because the State petitioned the trial court for the bond validation, it cannot bring an appeal from the trial court's order granting that petition.").

Now, the State has filed its petition for certiorari asserting five errors, only one of which concerns anything the Court of Appeals did below, in a further attempt to stall the Project. SHM has been ready to proceed with the Project since January 2, 2024, when the Superior Court confirmed and validated it in a proceeding where no one raised a single objection. This Court should deny the State's petition and allow the Project, now nearly a year in waiting, to proceed.

IV. ARGUMENT

A. The Court of Appeals correctly held the State had no standing to challenge the Bond Validation Order for which the State petitioned.

When the Court of Appeals dismissed the State's appeal, it applied a basic and well-settled principle of Georgia law: "[a] party may not complain on

appeal of a ruling that he contributed to or acquiesced in by his own action, trial strategy, or conduct." *Hornbuckle v. State*, 300 Ga. 750, 756 (2017). This principle, and its corollary that a party cannot complain of a judgment favorable to it, have been reaffirmed again and again for more than one hundred years. *See, e.g.*, *Kelly v. State*, 315 Ga. 444, 445 n.2 (2023); *Turner v. McGee*, 217 Ga. 769, 772 (1962); *Bennett v. Bennett*, 210 Ga. 721, 721 (1954); *Butler v. Tifton, T. & G. Ry. Co.*, 49 S.E. 763, 765 (Ga. 1905); *Brown v. City of Atlanta*, 66 Ga. 71, 76 (1880); *Studdard v. Satcher, Chick, Kapfer, Inc.*, 217 Ga. App. 1, 3 (1995); *Bagwell v. Hunt*, 174 Ga. App. 148, 148 (1985). Indeed, the rule is so foundational and uncontroversial this Court has previously dismissed an appeal on this basis in the middle of oral argument. *See Hudson v. Hudson*, 10 S.E. 1098, 1098–99 (Ga. 1890) (noting the Court "stopped the argument upon the merits of the case, and dismissed it" upon learning the appellant "was the prevailing party" below). A party not aggrieved by an order—a party who gets the order it asks for—cannot appeal it; such an appeal is, and always has been, void. *See Ga. Music Operators Ass'n v. Fulton Cty.*, 184 Ga. 348, 350 (1937). Because the State is such a party here, the Court of Appeals properly dismissed the appeal, and there is no issue of gravity or importance for this Court to address. The Court should deny the petition for certiorari. *See* S. Ct. R. 40(c) ("Certiorari will generally not be granted merely to correct an asserted error,

particularly where the asserted error concerns only…the application of a properly stated rule of law to the facts of a particular case.").

1. Section 36-82-77 does not allow the State to appeal the order it asked the court to enter.

The State contends the procedures for bond validation cases allow the State to appeal an order even when the State is the party that asked for the order, citing O.C.G.A. § 36-82-77, which provides that "any party [to the proceeding] who is dissatisfied with the judgment of the court confirming and validating the issuance of the bonds or refusing to confirm and validate the issuance of the bonds and the security therefor may appeal from the judgment." For a number of reasons, that language does not give the State nearly as broad of a power to appeal as the State claims.

First, as this Court has recognized, it has "ever been the law" that a party cannot appeal an order unless the order aggrieves the party. *See Lamar*, 45 S.E. at 499. If the General Assembly had intended to abrogate this basic common law rule, it would have done so explicitly. *See Heard v. Neighbor Newspapers, Inc.*, 259 Ga. 458, 458 (1989) ("Statutes in derogation of the common law are construed strictly.").

Second, and relatedly, this Court has already interpreted a materially similar statutory provision and concluded it did not allow appeals by a party who received the relief for which it prayed. In *Walker v. Hartford Accident and*

Indemnity Co., 196 Ga. 361 (1943), a plaintiff "obtained…all that she sued for" in her case before a justice of the peace. *Id.* at 363. Nevertheless, "for reasons satisfactory to herself…she was dissatisfied with the judgment." *Id.* at 363–64. Conscious of the prohibition on appealing orders that one asked for, the plaintiff asserted she was entitled to an appeal to a jury under a statute providing: "In any civil case in a justice's court either party dissatisfied with the judgment of the justice may, as of right, enter an appeal to a jury in said court…." *Id.* at 364. The plaintiff claimed, similar to the State here, that this reference to "either party" having the right to appeal gave her the right to appeal the judgment despite the fact she was the successful party. *Id.* This Court disagreed, holding the language in the statute "is predicated on the assumption that by the judgment complained of the appellant has failed entirely in the suit or has failed to recover the full amount sued for." *Id.* "The only reasonable construction of such language is that the appeal provided for, as a matter of right, is as to one who has obtained by the judgment in his favor something less than that for which he sues." *Id.* at 365. "To hold otherwise would be to run counter to the well-settled principle that no one will be heard to complain of a judgment, unless he has been injured or is aggrieved thereby." *Id.* Accordingly, as the plaintiff had "obtain[ed] all that [she] sue[d] for," her appeal "was without provision of law and was vain and nugatory." *Id.* at 365.

The same holds true here, where the State attempts to rely on substantially similar statutory language to avoid the prohibition on appealing an order the State asked the court to enter. Indeed, while the statute in *Walker* dealt with appeals to a jury from the decision of a justice of the peace, the Court expressly noted the rationale applied concerning any appeal: "The same reasoning which gives him no standing in appellate court, where he does not show injury, applies with equal force to a situation where in a justice's court the party appeals to a jury in that court from a judgment rendered after proof or confessed by his adversary." *Id.* There is no basis to interpret the statute governing bond validation appeals differently.

Consideration of the evolution of the text of O.C.G.A. § 36-82-77 further compels the conclusion the use of "any party" was not meant to abrogate the common law and allow a party to appeal an order the party asked for. As originally enacted, the statute stated, in relevant part, "any citizen of this State, resident of such municipality so desiring to issue such certificates, may become a party to said proceedings, and if dissatisfied with the judgment of the court confirming and validating the issuance of the certificates, and the security therefor, may except thereto." 1937 Ga. Laws 761, 771. As written, the statute only gave the right of appeal to a "citizen of this State" who intervenes in the proceeding and is dissatisfied with the court's order of validation. The statute

would not allow appeal by the parties who had sought validation if the court denied it.

In 1966, the General Assembly amended the statute to "clarify…the provisions relating to the persons who may…appeal from such judgment." 1966 Ga. Laws 48, 51. That amendment changed the statute to read, "any party thereto dissatisfied with the judgment of the court confirming and validating the issuance of said bonds, or refusing to confirm and validate the issuance of said bonds and the security therefor, may appeal from said judgment." *Id.* Particularly in the light of the Court's opinion in *Walker*, the only way to read the General Assembly's adding of the phrase "any party" and noting that a party may appeal when the court "refus[es] to confirm and validate the issuance of said bonds" is as a clarification that parties who sought validation of the bonds could appeal if the court denied validation. *See generally Seals v. State*, 311 Ga. 739, 740 (2021) ("The primary determinant of a text's meaning is its context, which includes the structure and history of the text and the broader context in which that text was enacted, including statutory and decisional law that forms the legal background of the written text."). The General Assembly was not abrogating the rule that a party cannot appeal an order it asked for.

2. The State's role does not allow the State to appeal an order it asked for.

Similarly unavailing is the State's assertion that its role as the party bringing the case and requesting the order is ministerial and compelled. To begin with, the State's assertion it was the powerless patsy of the Authority is contrary to its stated position it is "the gatekeeper of the validation process." Pet. for Cert. at 15. If the State's involvement is merely ministerial and compelled, it cannot exercise any role in "safeguard[ing] the procedure." *Id.* at 16. That is not what the General Assembly intended, and it is not the scheme it enacted.

District attorneys do, in fact, have an independent role to play in bond validation proceedings. O.C.G.A. § 36-82-75 requires the district attorney or the Attorney General to prepare and file the petition to validate the bonds. However, when one analyzes the statutory enforcement mechanism, O.C.G.A. § 36-82-81, it is clear that a district attorney or the Attorney General may, in certain circumstances, refuse to file the petition and be excused from doing so.

Under § 36-82-81, if the district attorney or the Attorney General does not timely file the petition after the governmental body passes its bond resolution, the governmental body may submit a writing to the court explaining that the failure to file a bond petition "has been without fault on the part of the governmental body." O.C.G.A. § 36-82-81. Upon receiving such a writing, the court has the duty and the power "to inquire into the facts and, upon being satisfied that the failure has not arisen from any fault or neglect on the part of

the governmental body, to pass an order authorizing and directing the district attorney or Attorney General to proceed…to file the petition." *Id.* Presumably, if the district attorney or the Attorney General was refusing to file the petition because the proposed bond issuance was not properly authorized, or if they had not been given proper notice of the petition, or if the bond issuance on its face contemplated illegal conduct, the court would conclude in the course of its inquiry into the facts that such issues causing the failure to file the petition were "the fault of the governmental body" in failing to follow proper procedures or issuing a bond validation that could not be validated. In such a situation, the court would decline to issue the order compelling the filing of the petition.[1]

Here, the District Attorney, an elected, constitutional officer, played that role, saw nothing wrong with the Petition, and filed it. If he had had issues—if he had felt unduly pressured, if he had not received everything he was supposed to receive—he could have raised those before filing the Petition and forced the Authority to initiate the court's inquiry under § 36-82-81. As he did not, the State is bound by the fact it filed the Petition. *Cf. State v. Federal Defender Program*, 315 Ga. 319, 356 (2022) (Bethel, J., concurring) (emphasis in original) ("*Everyone* should be able to count on the State to honor its word.").

[1] It is not necessary here to define the specific parameters of the inquiry or what would constitute sufficient cause to allow a district attorney or the Attorney General to refuse to file a petition. It is sufficient to note that there is a process by which those officers may do so, and thus they do not lack discretion in deciding whether to do so.

The bond procedure rules do not justify giving the State the power to appeal an order it has requested, a power no party has in any other setting.

3. The exception to the rule for situations involving fraud or mistake does not apply.

The State's final argument on the standing question is reliance on an exception to the rule where the party challenging an order claims fraud or mistake. However, the cases discussing such an exception involve consent orders, that is, the exception allows a party to challenge a consent order to which the party acquiesced if that consent "was obtained by fraud or mistake." *Brown v. Liberty Cty.*, 247 Ga. App. 562, 565 (2001); *see also Reiffel v. Reiffel*, 281 Ga. 891, 894 (2007) (addressing a maintenance consent order); *Imperial Massage & Health Studio, Inc. v. Lee*, 231 Ga. 482, 482 (1973) ("No fraud or mistake being shown, the appellants cannot complain of the judgment entered by consent…."). The State's decision to file the Petition was not a matter of mistaken or fraudulently obtained consent. The State chose to file the Petition and as such it cannot appeal the order granting the Petition. That was the holding of the Court of Appeals, and that straightforward application of settled law does not require this Court's certiorari review. *See* S. Ct. R. 40(c).

B. The State's remaining allegations of error are not error and do not merit this Court's review.

While the State attempted to raise a myriad of issues concerning the bond validation in the Court of Appeals, that court did not address any of those

arguments, focusing solely on the State's lack of standing. The Court of Appeals' decision not to opine on those issues alone is sufficient to justify denying certiorari on them. *See Benchmark Builders, Inc. v. Shultz*, 289 Ga. 329, 331 (2011) (declining to address an alternative argument the Court of Appeals did not consider).

What is more, the State does not even attempt to comply with the Court's requirement that petitioners explain how they have preserved their alleged errors below. *See* S. Ct. R. 19; *see also* S. Ct. R. 41 (requiring compliance with Rule 19 concerning petitions for certiorari). This is because the State presented none of these arguments to the Superior Court before the Bond Validation Order was entered. The State's references to the "undisputed facts in the trial record" are to statements and an exhibit in a motion to intervene filed by proposed intervenors below after the Bond Validation Order was entered. The trial court never heard argument on the State's issues, no testimony was ever presented, and therefore no record was ever developed. Statements in briefs are not facts and cannot be used to support a party's argument. *See Gramiak v. Beasley*, 304 Ga. 512, 516 (2018). As neither the trial court nor the Court of Appeals addressed any of these other issues, they do not provide a basis for this Court to grant certiorari. *See Brookfield Country Club v. St. James-Brookfield, LLC*, 287 Ga. 408, 413 413–14 (2010). And even if the Court were to consider them, they do not warrant the Court granting certiorari.

1. The alleged statutory violations do not justify granting certiorari in this case.

The State's first alternative error relates to the State's allegation the bond validation procedures and the Open Meetings Act, O.C.G.A. § 50-14-1 *et seq.*, were not followed. As it did below concerning this argument, the State makes a number of factual assertions, none of which are supported by evidence in the record because no party raised any of these issues below. No testimony was heard, no exhibits were tendered. As this Court cannot "consider factual representations in the appellant's brief which do not appear of record," *Coweta Bonding Co. v. Carter*, 230 Ga. 484, 586 (1973), the State's representations here are null. The only material in the record related to these allegations is the statement in the bond validation Petition, filed by the State, that the bond issuance was "duly authorized pursuant to the Constitution of the State and the various statutes of the State, including specifically the Revenue Bond Law and the Act," and that the Bond Resolution was "duly adopted by a majority of the members of the board of directors of the Authority…at a meeting properly noticed and held." (V2-6.) As the only evidence in the record supports the trial court's holding that the Bond Resolution complied with the law, there is nothing on which to base an allegation of error.

2. The notice concerning the waiver of the audit and review requirements was sufficient.

The State's next argument, similarly not raised in the trial court and not addressed by the Court of Appeals, boils down to quibbling over whether a notice issued by the Superior Court using bold print, but published by the county's legal organ in all-capital letters (*see* V2-207–07) substantially complies with the statutory requirement that the notice be printed "in bold print." *See* O.C.G.A. § 36-82-100(d). Unsurprisingly, it does. *See Thompson v. Municipal Electrical Auth. of Ga.*, 238 Ga. 19, 26 (1976) (holding the notice of a bond validation hearing substantially complied with the publishing requirements where defendants supplied the notice to the legal organ but the newspaper failed to publish it twice as required by statute); *see also Wimberly v. Twiggs Cty.*, 42 S.E. 478, 478–49 (Ga. 1902) (holding the notice requirements were "substantially complied with in all respects"). This easily resolved and minor question of statutory interpretation, not even addressed in the first instance by the trial court or the Court of Appeals, does not require this Court's intervention.

3. The Freeport Exemption applies to the Project.

The State's argument concerning application of the Freeport Exemption, O.C.G.A. § 48-5-48.2 (exempting certain property from ad valorem taxation), also fails. The State contends the Bond Validation Order's finding concerning the applicability of the Freeport Exemption was (a) not contemplated in the Petition, and (b) an inaccurate finding. Neither is correct.

First, the Petition contemplated the Bond Validation Order would validate the Project in all respects, including the finding related to the Freeport Exemption, when it requested the Superior Court confirm and validate the Bond Resolution and Bond Documents "in each and every respect." (V2-15.) The Project Agreement, one of the Bond Documents, expressly contemplated application of the Freeport Exemption to SHM's inventory of non-human primates. (V2-146–47) (Section 8.2 of the Project Agreement). Therefore, the Petition requested approval of the treatment of SHM's inventory as "tangible personal property" and "[i]nventory of goods in the process of manufacture or production" eligible for the exemption. (*Id.*) And because the State requested that approval, it cannot now complain the Superior Court granted it.

The State's alternative argument that the Freeport Exemption does not apply is just another occasion of the State's insistence on arguing fact-bound questions without any facts. There is no evidence in the record, apart from the allegations of the Petition, touching on whether the Freeport Exemption should apply. The State's conclusory statement that SHM's inventory could never qualify for the exemption ignores the statutory language and that SHM's inventory is not merely bred and shipped off, but fed, conditioned, enriched, and cared for so as to make the animals suitable for research purposes. (*See* V2-146–47.) If spraying peanut seeds with pesticide constitutes "substantial modification" that qualifies property for the exemption, *see* O.C.G.A. § 48-5-

48.2 (c)(1)(A), there is no basis to categorically exclude animals conditioned for use in medical research. Like the other issues the State presents, this fact-bound question, not addressed anywhere below, is not appropriate for this Court's review on certiorari.

4. There was no error in concluding the Project's rental agreement created a bailment for hire.

Concerning its final alleged "error," that the Project's rental agreement could not have created a bailment for hire as the Superior Court held, the State misleadingly represents the Court of Appeals' Order "conflicts with its prior decision" in *Joint Development Authority of Jasper Cty. v. McKenzie*, 367 Ga. App. 514 (3) (2023), and asks this Court to review the alleged "marked inconsistencies in the appellate court's interpretation of the exact same language in two different bond validation cases." Pet. for Cert. at 25–26. But the Court of Appeals dismissed the State's appeal because the State did not have standing; it did not address the bailment for hire issue at all. Accordingly, despite the State's attempt to manufacture a conflict between the decisions, none exists.

Furthermore, the issue of whether the Project constitutes a bailment for hire does not affect the ultimate correctness of the Bond Validation Order and provides no basis to reverse the trial court. To begin with, the Court of Appeals in *McKenzie* expressly stated its conclusion on whether a bailment for hire was created did "not impact [its holding] that the superior court erred in *refusing*

to validate the bonds on the grounds it did." 367 Ga. App. at 528 (emphasis added). Additionally, under the Constitution and laws of Georgia, the Authority pays no ad valorem tax on its interest in the property comprising the Project, and such tax exemption extends to the lessees of the Authority. *See* 1968 Ga. Laws 1780, 1785; *see also* 1985 Ga. Laws 3928; *Hart Cty. Bd. of Tax Assessors v. Dunlop Tire & Rubber Corp.*, 252 Ga. 479, 480 (1984). Therefore, whether the Bond Documents created a bailment or not does not affect the underlying tax-exempt status of the Project. The Court should not grant certiorari to address what is ultimately an immaterial issue that the Court of Appeals never addressed.

V. CONCLUSION

The Court of Appeals' Order applied a basic principle of law to resolve a straightforward question. Nothing about the Order suggests an issue of gravity or importance worthy of this Court's intervention, and nothing about the State's assortment of alleged "errors" does either. For the reasons set forth above, the Court should deny the petition for certiorari.

[*Certification and Signature on Following Page*]

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

Respectfully submitted this 10th day of December, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2024, I served a copy of the foregoing **Response to Petition for Certiorari** upon all counsel of record via U.S. Mail to:

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IN THE SUPREME COURT
STATE OF GEORGIA

APPEAL NO. A24A1078

STATE OF GEORGIA,

Appellant/Petitioner, v.

DECATUR COUNTY-BAINBRIDGE INDUSTRIAL DEVELOPMENT AUTHORITY and SAFER HUMAN MEDICINE, INC.,

Appellees/Respondents.

RESPONSE OF APPELLEE/RESPONDENT DECATUR COUNTY-BAINBRIDGE INDUSTRIAL DEVELOPMENT AUTHORITY TO STATE'S PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

This matter involves a request for discretionary review of an order from the Court of Appeals dismissing the State's appeal due to the State's lack of standing. The underlying matter involves the State's appeal of a Superior Court bond validation order for "Project Liberty." The Decatur County-Bainbridge Industrial Development Authority ("Authority") adopted a bond resolution, along with various additional related documents, and provided notice to the State of Georgia, through the District Attorney for the South Georgia Judicial Circuit. The State *voluntarily* filed a petition and complaint commencing the underlying Superior Court action seeking the validation of revenue bonds related to Project Liberty. Following a rule *nisi* order, notice, the filing of various additional pleadings, and a hearing, the validation proceeding concluded, and the Superior Court issued its final bond validation order. The State appealed. After full briefing and oral argument, the Court of Appeals issued an Order dismissing the State's appeal for lack of jurisdiction because "one cannot complain of a judgment, order, or ruling that his own procedure or conduct procured or aided in causing."[1]

STATEMENT OF THE CASE/MATERIAL FACTS

The Authority understands the State and Appellee/Respondent Safer Human Medicine, Inc., have provided each party's view of the Statement of the Case and the

[1] *State of Georgia v. Decatur County-Bainbridge Industrial Development Authority, et al.,* A24A1078, Order, *2-3 (Ga. Ct. App. Dated October 31, 2024).

Material Facts.

ENUMERATION OF ERRORS

The Authority understands the State has enumerated all errors in this cause, which the State thinks might convince this Court to review and upset the Court of Appeals' dismissal of an appeal for lack or jurisdiction and/or to convince this Court to upset the Superior Court's bond validation order.

ARGUMENT AND CONCLUSION

Particularly in light of the District Attorney's voluntary election not to participate in a bond validation,[2] the Authority is not aware of any interpretation that calls into question the Court of Appeals' ruling that "one cannot complain of a judgment, order, or ruling that his own procedure or conduct procured or aided in causing." A24A1078, Order, *2–3.

As a result, this Court need not review the Court of Appeals' ruling or the well-established standing and jurisdictional law of this State or any potential interaction between either the Court of Appeals' ruling or existing standing and jurisdictional law

[2] O.C.G.A. § 36-82-81 provides that if "the district attorney . . . fails to proceed within the time specified in Code Section 36-82-75, [then] it shall be competent for such governmental body to represent such facts in writing to the court and to represent further that the failure has been without fault on the part of the governmental body[, and i]n such case, it shall be the duty of the court and he shall have the power and authority to inquire into the facts and, upon being satisfied that the failure has not arisen from any fault or neglect on the part of the governmental body, to pass an order authorizing and directing the district attorney . . . to proceed within ten days to file the petition authorized by Code Section 36-82-75. Thereafter, the proceedings shall be had in the same manner as would have been followed had such petition been duly and promptly filed in the first instance."

and O.C.G.A. § 36-82-77(a) (discussing the right of a "party" to appeal a judgment in a bond validation matter).

The State's petition for discretionary review should be denied.

[SIGNATURE PAGE, CERTIFICATION, AND CERTIFICATE OF SERVICE FOLLOW]

Respectfully submitted,

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December 10, 2024.

CERTIFICATION

Counsel for the Authority certifies this Response of Appellee/Respondent Decatur County-Bainbridge Industrial Development Authority to State's Petition for Writ of Certiorari does not exceed the word count limit imposed by Supreme Court Rule 20(3).

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CERTIFICATE OF SERVICE

I hereby certify that December 10, 2024, I served, or caused to be served, a single, true, and correct copy of Response of Appellee/Respondent Decatur County-Bainbridge Industrial Development Authority to State's Petition for Writ of Certiorari, prior to its filing with this Court, on each counsel/firm for Appellant/Petitioner The State of Georgia and Appellee/Respondent Safer Human Medicine, Inc. by United States Postal Service as follows:

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