IN THE COURT OF APPEALS
STATE OF GEORGIA

PUBLIX SUPER MARKETS, INC.	]	
	]	
Appellant,	]	
	]	
v.	]	Appeal No. A25A1018
	]	
COBB COUNTY,	]	
	]	
Appellee.	]	

BRIEF OF APPELLANT PUBLIX SUPER MARKETS, INC.

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INTRODUCTION

This is a case of governmental overreach. Cobb County hired mass-tort attorneys from out of state to sue Publix for public nuisance, notwithstanding that (1) a Georgia statute prohibits a private attorney from prosecuting a public nuisance claim on behalf of a county; (2) Georgia public policy prohibits a county from hiring a private attorney on a contingency fee basis in such an action; (3) a Georgia statute and the Rules of Professional Conduct prohibit a contingency fee arrangement when it's not in writing and entered into the minutes of county's public proceedings as happened here; and (4) the Georgia Constitution prohibits the type of debt the county incurred when it hired the private attorneys. On a motion to dismiss, the trial court dismissed Publix's declaratory-judgment claims on these issues and went even further, finding that the anti-SLAPP statute somehow protects the county from suit—an argument not even raised or advanced by the county. This Court should reverse the trial court's rulings on all counts.

JURISDICTIONAL STATEMENT

This Court has jurisdiction under O.C.G.A. §§ 5-6-31(a)(1) and 5-6-34(a)(13). The Georgia Supreme Court does not have exclusive jurisdiction under Article VI, Section VI, Paragraph II of the Georgia Constitution. Although this case involves applying the "new debt" provision in Georgia Constitution, art. IX, § V ¶ I, it does not involve the "construction of some constitutional provision

directly in question and doubtful either under its own terms or under the decisions" of the Georgia Supreme Court. *City of Decatur v. DeKalb Cnty*., 284 Ga. 434, 437 (2008).

Under O.C.G.A. § 5-6-38(a), Publix timely filed its notice of appeal on October 18, 2024, V2-1, within 30 days after the judgment entered on October 14, 2024, V2-6542.

ENUMERATION OF ERRORS

1. The trial court erroneously relied on Georgia's anti-SLAPP statute in dismissing this case.

2. The trial court erroneously dismissed Publix's claim for declaratory judgment when it held that the County does not violate Georgia public policy by using private attorneys hired on a contingency-fee basis to prosecute a public-nuisance action.

3. The trial court erroneously dismissed Publix's claim for declaratory judgment when it held that the County can cede to private attorneys the prosecution of public-nuisance actions despite O.C.G.A. § 41-2-2 mandating that a district attorney, solicitor-general, city attorney, or county attorney must bring such actions.

4. The trial court also dismissed Publix's claim for declaratory judgment erroneously because the County has no written agreement with the private

attorneys to bring any claims against Publix, no agreement is in the minutes of County proceedings, and thus its contingency-fee arrangement with the private attorneys is invalid and void pursuant to O.C.G.A. § 36-10-1.

5. The trial court erroneously dismissed Publix's claim for declaratory judgment when it held, for purposes of determining applicability of the requirements in Georgia Constitution, art. IX, § V ¶ I, that the County's open-ended contingency-fee arrangement with the private attorneys does not give rise to a "new debt" under the unambiguous and undisputed definition of that term set forth in *Greene County School District v. Circle Y Construction,* 291 Ga. 111, 112 (2012), and, more specifically, by basing its holding on a misapprehension of the contingency-fee arrangement's terms. The trial court also erred by finding the arrangement did not violate O.C.G.A. § 36-60-13(a).

STATEMENT OF THE CASE

I. Statement of Facts.

The following facts are deemed true. *Roberson v. Northrup*, 302 Ga. App. 405, 405 (2010).

A. Publix operates supermarket-based pharmacies in Cobb County.

Publix operates supermarkets throughout the southeastern United States. V2-4046, 4048. Publix has operated in Cobb County for over 30 years, serving millions of residents. *Id*. Publix owns properties in Cobb County, pays taxes there, and takes pride in being a contributing member of the community. V2-4048–50.

Many Publix supermarkets in Cobb County include Georgia-licensed pharmacies, V2-4048, 4051, where licensed pharmacists fill prescriptions for FDA-approved medications, including opioids. V2-4046, 4051. Publix knows misuse of opioids has affected some individuals in the communities where it operates. V2-4046. It knows the Drug Enforcement Agency has prosecuted enforcement actions against other pharmacies based on their distribution and/or dispensing of opioids. V2-4051. The DEA, however, never initiated an enforcement action against Publix. *Id*.

B. Private mass-tort attorneys convinced Cobb County to hire them on a contingency-fee basis and sued supermarkets and others for allegedly creating a public nuisance by dispensing opioid medications.

It's common knowledge that the over-manufacturing, misleading marketing, and misuse of opioid medications, in conjunction with the operation of so-called prescriber–dispenser-owned cash-based "pill mills," have led to a national crisis. *See Opioid Crisis*, U.S. Health Resources & Servs. Admin. (Dec. 2023), http://www.hrsa.gov/opioids (visited January 31, 2025). Private mass-tort lawyers have brought countless lawsuits for governmental entities to recover damages arising from the opioid crisis, and specifically reimbursement for costs incurred to provide public services. V2-4051–52; *see Opioids*, Nat'l Assoc. of Att'ys Gen., http://www.naag.org/issues/opioids/ (visited January 31, 2025). Billions of dollars have been paid in settlements. V2-4052.

Lured by promises of a financial windfall, in 2018 Cobb County agreed to pay out-of-state private mass-tort law firms a 25% contingency-fee to bring novel public-nuisance claims against manufacturers and distributors of opioids. V2-4051, 4059, 4063–64, 6354–60.[1] The engagement letter between Cobb County and the private law firms is governed by Georgia law, does not contemplate suing Publix, and authorizes only an "investigation and [a] Lawsuit." V2-6354, 6359. "Lawsuit" is defined to encompass claims against 14 specifically enumerated defendants: 11 manufacturers (*e.g.*, Purdue Pharma, L.P.) and the three largest drug distributors (*e.g.*, McKesson Corporation). *Id*. No other defendant, including Publix, falls within the definition of "Lawsuit." *Id*.

While the engagement letter vaguely suggests "there *may* be additional parties *sought* to be made responsible," V2-6354 (emphasis added), it in no way identifies local supermarkets or Publix as potential defendants in the "Lawsuit." V2-4063–64; V2-6354–55. Regardless, any modification to the definition of "Lawsuit" to add defendants requires written amendment. V2-6359. Neither this engagement letter, nor any other contemplating a lawsuit against Publix, was ever entered into

[1] Simmons Hanly Conroy LLC (New York and Illinois), Crueger Dickinson LLC (Wisconsin), and von Briesen & Roper, s.c. (Wisconsin). V2-4059; V2-6354–55.

the minutes of any Cobb County proceeding that was open to the public. V2-4062–64, 6348–6464.[2]

Cobb County's public-nuisance case was filed on June 12, 2018, and did not name Publix as a defendant. V2-77–78, 5169–5789. One month later, in July 2018, that case was transferred to a nationwide opioid multi-district litigation in federal district court in Ohio. V2-365–82. On March 15, 2019, the mass-tort lawyers—without participation by the County Attorney—filed the County's public nuisance case against Publix in the Ohio litigation. V2-384–23. Later, on July 14, 2021, the mass-tort attorneys, along with the Cobb County Attorney's Office, amended the action against Publix in the federal court in Ohio. V2-2425–656, 4051–52, 4057, 4059; *In re Nat'l Prescription Opiate Litig.*, Case No. 1:18-op-45817 (N.D. Ohio). That action continues in federal court.

The complaint against Publix asserts a novel theory under Georgia law—which no Georgia appellate court has ever recognized—that, by allowing licensed pharmacists to fill prescriptions written by physicians for FDA approved opioid-medications, Publix's licensed pharmacies have caused a "public nuisance." V2-

[2] Cobb County concedes, and the trial court assumed, that the terms of the arrangement to sue Publix are identical to those in the engagement letter. Publix does *not* concede the actual written engagement letter offered up by the County applies to suing Publix and asserts there is not any written engagement letter at all as to Publix.

5742–47; *cf. Walker Cnty. v. Tri-State Crematory*, 284 Ga. App. 34 (2007).[3] Before filing the lawsuit against Publix, neither Cobb County nor its mass-tort lawyers approached Publix to discuss any concerns about Publix's pharmacy operations. V2-4056–57.[4]

When the complaint against Publix was filed, Cobb County had not entered into any new engagement letter, had not entered into any written amendment to expand the scope of the existing engagement letter, and Cobb County's minutes did not reflect the existence of any engagement letter with the private attorneys, any amendment, or any approval to sue Publix. V2-4051–57.[5]

Long after suing Publix, Cobb County considered and approved, in November 2021, the County's participation in certain opioid-related settlement agreements. V2-1023–28. The settlements were with manufacturer and distributor defendants explicitly identified in the engagement letter with the mass-tort lawyers to

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[3] While not yet addressed directly in Georgia, other states' appellate courts have rejected the theory because it seeks to expand the public nuisance cause of action well beyond any reasonable limits, including to redress public policy matters best left to the legislature. *See Tri-State Crematory*, 284 Ga. App. at 37 (citing cases); *see, e.g., Koch v. Consol. Edison Co. of N.Y., Inc.*, 62 N.Y.2d 548, 560 (1984) ("The general rule is that public expenditures made in the performance of governmental functions are not recoverable.").

[4] The trial court took judicial notice of the federal complaint and content of the engagement letter, which are inherent to the amended complaint's allegations, without converting the motion to dismiss into a motion for summary judgment. V2-6548–51.

[5] These enumerated omissions continue to this day.

be targets of the "Lawsuit" (e.g., Johnson & Johnson/Mckesson). *Id*. The settlements did not involve Publix. The Cobb County Commission's resolution approving the settlements in November 2021 includes a boilerplate "ratification" clause. V2-1027, 4063.

The County claims, and the Superior Court concluded (notwithstanding the limited review allowed under the O.C.G.A. § 9-11-12(b)(6) standard) that the boilerplate ratification clause somehow amounts to an engagement of the mass-tort lawyers to sue Publix being reflected in an open-to-the-public meeting. It bootstrapped this result from a boilerplate ratification clause applicable to approval of settlements with unrelated defendants, even though there was still no engagement letter as to any defendant (let alone Publix) in the public record, neither the resolution nor its boilerplate "ratification" clause specifically referenced, let alone authorized, a lawsuit against Publix, and there still had not been any written modification of the original engagement letter authorizing suit against Publix. V2-1023–28, 4064, 6549.

II. Relevant Proceedings Below.

A. Publix filed this action seeking declaratory judgments and injunctive relief.

Publix filed this action in the Superior Court of Cobb County on February 27, 2023. V2-4. The operative complaint is the First Amended Complaint filed on May 5, 2023. V2-4045–69.

Publix pleads four counts, which seek declaratory judgments and related injunctive relief. *See* O.C.G.A. §§ 9-4-1, et seq.

First, among other relief, Publix requests a declaratory judgment that Cobb County is violating Georgia public policy by paying private attorneys to represent it on a contingency-fee basis, especially insofar as the private attorneys are bringing public-nuisance claims. This impermissibly elevates private interests over public interests. V2-4059–61.

Second, Publix requests a declaratory judgment that, under O.C.G.A. § 41-2-2, only the governmentally employed attorneys specifically enumerated in and empowered by the statute may bring public-nuisance actions. The mass-tort attorneys purporting to represent Cobb County here, on the other hand, are private attorneys, influenced by a private financial interest in the outcome, and otherwise are *not* identified in or empowered by the statute. V2-4061–62.

Third, Publix requests a declaratory judgment that Cobb County's purported contingency-fee arrangement with the private attorneys is invalid in relation to Publix. There is no written agreement that permits the private attorneys to bring public-nuisance or other claims against Publix. And in any event, there is no such written engagement contract entered in the minutes of open-to-the-public County proceedings. V2-4062–65. This violates O.C.G.A. 36-10-1, which voids the arrangement.

Fourth, Publix requests a declaratory judgment that Cobb County's open-ended contingency-fee arrangement with the private attorneys both (1) constitutes a "new debt" under the unambiguous and undisputed definition of that term set forth in *Greene,* 291 Ga. At 112, for which the County has not complied with the requirements of Georgia Constitution, art. IX, § V ¶ I, and (2) otherwise violates O.C.G.A. § 36-60-13(a) and O.C.G.A. § 36-30-3(a), which limit the kind of contracts counties may enter into. V2-4065–67.

B. The Superior Court dismissed the action under O.C.G.A. § 9-11-12(b)(6) and Georgia's anti-SLAPP statute, O.C.G.A. § 9-11-11.1.

On July 14, 2023, Cobb County moved to dismiss the amended complaint. V2-5118–55, 6471–508. Publix opposed it. V2-6294–334. On October 14, 2024, the trial court dismissed Publix's amended complaint. V2-6542–52.

The trial court held, adversely to Cobb County, that Publix has standing to bring its claims and that its claims are not barred by sovereign immunity. V2-6543–46. Cobb County has not cross-appealed any rulings adverse to it.

The trial court applied Georgia's anti-SLAPP statute, O.C.G.A. § 9-11-11.1, even though no party had raised it, holding that Cobb County may rely on it in relation to its retention of private counsel. V2-6546–47. The trial court went on to dismiss each of Publix's counts under O.C.G.A. § 9-11-12(b)(6) for failure to state a claim. V2-6548–51.

First, ignoring Georgia caselaw, and relying on California caselaw instead, the trial court held that governmental entities paying private counsel on a contingency-fee basis "is widely accepted and well-received by many states." V2-6548. It thus suggests that Cobb County's ongoing contingency-fee arrangement does not offend Georgia public policy.

Second, the trial court held that Cobb County is not violating O.C.G.A. § 41-2-2(a), which provides that a "complaint" for public nuisance "must be filed by the district attorney, solicitor-general, city attorney, or county attorney on behalf of the public." Because the Cobb County attorney had signed an amendment to the complaint against Publix, the trial court reasoned it did not matter that Cobb County had in fact ceded control over prosecution of the case to those mass-tort attorneys. V2-6548–49.

Third, the trial court acknowledged the Georgia Code requires that all contracts entered into by a county "shall be in writing and entered on its minutes." O.C.G.A. § 36-10-1. But it held that this requirement somehow was satisfied as to Publix when Cobb County resolved to participate in settlements with unrelated parties and publicly ratified earlier actions taken in furtherance of those settlements. V2-6549. The trial court so held even though the resolution purportedly ratifying the engagement letter never mentions any engagement letter, let alone one

applicable to Publix, and the written engagement letter Cobb County relies on was, in any event, never entered into the minutes of a public meeting.

Fourth, the Georgia Constitution, art. IX, § V ¶ I, provides that a county must not incur any "new debt" without a public vote. "Under this provision, 'new debt' is a liability that is 'not to be discharged by money already in the treasury, or by taxes to be levied during the year in which the contract under which the liability arose was made." *Fairgreen Cap., LLC v. City of Canton*, 335 Ga. App. 719, 720 (2016) (quoting *Greene*, 291 Ga. at 112 (2012)). The trial court held that the open-ended contingency-fee arrangement did not create a "new" debt because the county has to pay a percentage fee only in the event that it recovers a monetary settlement or judgment and that constitutes "money already in the treasury" even though received, if at all, years after the commitment was made. V2-6550–51.

This appealed followed. V2-1.

SUMMARY OF ARGUMENT

This appeal concerns governmental overreach and a failure of governmental transparency. Cobb County entered into a contingency-fee arrangement with private mass-tort lawyers in hopes of gaining a windfall through opioid litigation against specifically identified manufacturers and distributors of opioid medications. Subsequently, without modifying the contingency fee arrangement to add Publix as a defendant, the County sought more money by suing supermarkets with

pharmacies that serve its local community, including Publix. Yet the County never entered into a written contingency-fee agreement to sue Publix, nor did it ever introduce any written engagement agreement with private attorneys into the minutes of its public meetings to authorize such a lawsuit.

This is unlawful and disserves county residents, as well companies like Publix that have done business locally in the community for decades, own property there, and pay taxes to the County. Nonetheless, in hopes of making a profit, the out-of-state private lawyers sued Publix in an Ohio federal multi-district litigation for creating a "public nuisance." The County leaders passively stand by, waiting for the County to get its cut.

Publix has filed this lawsuit to challenge the County's unlawful conduct, including entering into a contingency-fee arrangement allowing private lawyers to control and prosecute a public-nuisance claim, failing to enter into a written agreement with its private lawyers to sue Publix, and failing to enter any such engagement agreement into its public minutes. Publix seeks declaratory judgments and other relief.

First, government-employed attorneys must pursue community interests and the common good. Here, a contingency-fee promised to the out-of-state mass tort lawyers creates perverse incentives elevating private economic gain over public and community interests. Illustrative is the fact the only remedy available under

public nuisance is abatement by way of an injunction, yet the lawyers here get paid only if money damages are recovered through settlement, or otherwise. The Court should follow other Georgia appellate court decisions and hold that the county's contingency-fee arrangement violates Georgia public policy. Only an hourly or flat-fee agreement ensures that public interests are not overridden by the private profit motive of out-of-state mass-tort lawyers.

Second, the arrangement violates O.C.G.A. § 41-2-2, which permits only specifically enumerated government-employed attorneys to litigate public-nuisance actions. The statute expressly disapproves of private persons interfering with public nuisance actions. Again, this is to prevent private profit motives from dictating local public policy and public action.

Third, the arrangement is invalid because the engagement letter Cobb County relies on never even mentions Publix and, regardless, it has never been entered in the minutes of open-to-the-public County proceedings. V2-4062–65. This violates O.C.G.A. 36-10-1, which voids the arrangement. The whole point of this statute is to promote public transparency and to ensure that the local public is aware of agreements with out-of-state private lawyers to sue members of the community, such as local supermarkets with pharmacies.

Fourth, the County cannot terminate the representation at any time without consequence. Instead, it must pay the private, contingency fee lawyers a reasonable

hourly fee, regardless of the amount of any subsequent recovery. And, because the contingency-fee arrangement is legally void under O.C.G.A. § 36-10-1, the lawyers are able to demand pay for their work pursuant to their statutory attorneys' lien. This amounts to incurring "new debt" without being authorized by a public vote in violation of Georgia Constitution, art. IX, § V ¶ I. It also violates the contracting requirements of O.C.G.A. § 36-60-13.

The courts should not condone private, out-of-state mass-tort lawyers convincing county governments to reach off-the-books side deals that elevate profit motive over the public good, while leaving the local community in the dark. The Court should reverse the trial court's dismissal of this action, declare the contingency-fee arrangement unlawful as to Publix, and remand for further proceedings.

ARGUMENT

I. The Superior Court Erred by Relying on Georgia's anti-SLAPP Statute.

A. Standard for deciding an anti-SLAPP motion.

Georgia's anti-SLAPP statute "encourage[s] participation by the citizens of Georgia in matters of public significance and public interest through the exercise of their constitutional rights of petition and freedom of speech." O.C.G.A. § 9-11-11.1(a). It offers litigants a means to obtain the quick, low-cost dismissal of lawsuits that have been filed solely for the purpose of "silencing and intimidating" the lawful exercise of First Amendment rights. *Geer v. Phoebe Putney Health Sys., Inc.*, 310 Ga. 279, 282 (2020).

The statute permits dismissal when a defendant proves the lawsuit at issue improperly attacks its exercise of constitutional rights of free speech and petitioning. O.C.G.A. § 9-11-11.1(b)(1). A two-step procedure governs. The defendant must show it has engaged in activity protected by the state. *Geer*, 310 Ga. at 284. If, and only if, the defendant does so, then the plaintiff must provide prima facie evidence showing it has stated a legally sufficient claim. *Id.*

This Court reviews the trial court's anti-SLAPP decision de novo, "viewing the pleadings and affidavits submitted by the parties in the light most favorable to the plaintiff (as the non-moving party)"—here, Publix. *See ACLU v. Zeh*, 312 Ga. 647, 652 (2021) (citations omitted).

B. The trial court erred by invoking the anti-SLAPP analysis.

The Court should reverse the judgment in its entirety because the trial erred by relying on the anti-SLAPP statute. V2-6546–47.[6]

Under the anti-SLAPP analysis, "the trial court must *first* determine whether the claim against which the motion is brought is subject to the anti-SLAPP statute." *Geer*, 310 Ga. at 284. It is the County's burden to show that "the challenged claim is one arising from protected activity under the statute." *Wilkes & McHugh,*

[6] The County raised the anti-SLAPP statute in its motion to dismiss the *original* complaint, V2-29–31, 56–60, emphasizing California caselaw. It consciously dropped this contention in its motion to dismiss the first amended complaint, so neither party briefed it, and it was thus not before the trial court.

P.A. v. LTC Consulting, L.P., 306 Ga. 252, 262 (2019). The "critical consideration is whether the cause of action is based on the defendant's protected free speech or petitioning activity." *Geer*, 310 Ga. 284 (citations omitted). If the County fails to establish this, then "the trial court's analysis ends." *Id*.

1. Cobb County lacks standing to rely on the anti-SLAPP statute.

The trial court erred because Cobb County is not a "citizen" or "person or entity" as contemplated by the statute.

The statute's purpose is "to encourage participation by the *citizens of Georgia* in matters of public significance and interest through the exercise of their constitutional rights of petition and freedom of speech." O.C.G.A. § 9-11-11.1(a) (emphasis added). Subsection (b)(1) provides that a "claim for relief against a *person or entity* arising from any act of such *person or entity* which could reasonably be construed as an act in furtherance of the *person's or entity's* right of petition or free speech" on a public matter is subject to dismissal under the anti-SLAPP statute. O.C.G.A. § 9-11-11.1(b)(1) (emphasis added). The County incorrectly reasoned that a county, a kind of municipal corporation, qualifies as an "entity," V2-6546. This improperly conflates *public* entities (*i.e.*, governmental entities) with *private* entities, such as corporations, which possess certain constitutional rights to free speech and petitioning when *governmental* entities do not.

Like natural "persons," corporations have standing to invoke certain constitutional rights, including due process. *Eckles v. Atlanta Tech. Grp., Inc.*, 267 Ga.

801, 803 (1997); *see Metro. Life Ins. Co. v. Ward*, 470 U.S. 869, 881 n.9 (1985). But *public* entities fit nowhere into this equation because public corporations like counties are themselves *the* State, not citizens of the State. "A county or municipal corporation[is] created by the legislature." *City of Atlanta v. Spence*, 242 Ga. 194, 195 (1978). "Although counties are corporations regulated by charter, they are parts of the sovereign power of the state, clothed with public duties which belong to the state, and, as such, are *mere political subdivisions of the state*." *Ga. Dep't of Corr. v. Chatham Cnty*., 274 Ga. App. 865, 866 (2005) (emphasis added).

For this reason, "[c]ounties, as corporations, stand upon an entirely different footing" than private corporations. *Tounsel v. State Highway Dep't of Ga*., 180 Ga. 112 (1935). Although "public corporations" can, for instance, enter into binding contracts, Ga. Const. art. VII, § IV ¶ IV, constitutional bills of rights apply only to private "citizens"—*i.e*., "individuals" or "natural persons" or the "people"—and, for some purposes, to private, artificial "persons," *i.e*. private corporations. *See generally* U.S. Const., amends. I–XVII; Ga. Const. art. I. It follows that, "[w]hether acting in a proprietary or governmental capacity, municipal corporations do not have personhood like private corporations do." 1 MCQUILLIN MUN. CORP. § 2:8 (3d ed.). The anti-SLAPP act thus extends no protection to governmental entities, such as Cobb County.

Moreover, the constitutional rights to speak freely and to petition government are designed primarily to protect citizens from governmental oppression, not the other way around. "The First Amendment … protects the right to be *free from government abridgment of speech*." *Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 358 (2009) (emphasis added). "Freedom of speech is one of the fundamental personal rights and liberties protected *from governmental intrusion* by the First and Fourteenth Amendments to the U.S. Constitution … and the Bill of Rights contained in Georgia's Constitution." *McKenzie v. State*, 279 Ga. 265, 266 (2005) (citing 1983 Ga. Const., art. I, § I ¶ V) (emphasis added).

Similarly, the First Amendment right to petition government prevents the government from quelling "the people's" right to express grievances to and about government. *See* U.S. Const. Amend. I ("Congress shall make no law . . . prohibiting . . . the right of the people peaceably to . . . petition the Government for a redress of grievances."); Ga. Const. art. I, § I ¶ IX ("The people have the right … to apply by petition or remonstrance to those vested with the powers of government for redress of grievances.").

Claims "not based on an act in furtherance of the rights of free speech or petition . . . do not fall under the anti-SLAPP statute and are not afforded its procedural protections." *Jubilee Dev. Partners, LLC v. Strategic Jubilee Holdings, LLC*, 344 Ga. App. 204, 206–08 (2018). This Court should hold that Cobb County lacks

standing under the anti-SLAPP statute for this simple reason: It is not afforded the constitutionally protected rights of free speech and petition.

2. Cobb County did not engage in protected activity.

Even if the County had standing to invoke the anti-SLAPP statute, there is no activity at issue here that genuinely constitutes the exercise of First Amendment rights. Such activity is statutorily defined. Three of the four categories require a written or oral statement or petition and so are inapposite here. O.C.G.A. § 9-11-11.1(c)(1)–(3). That leaves "[a]ny other *conduct in furtherance of the exercise of the constitutional right of petition or free speech* in connection with a public issue or an issue of public concern." O.C.G.A. § 9-11-11.1(c)(4). This subsection doesn't apply either.

Publix's declaratory judgment claims seek rulings concerning County misconduct, including its failure to enter into a written agreement and put that written agreement into public minutes as required by Georgia law, entering into an off-books contingency-fee arrangement with private attorneys in violation of Georgia public policy, and incurring a new debt in violation of the Georgia Constitution and a Georgia statute. None of this misconduct is "conduct in furtherance of the exercise of the constitutional right of petition or free speech." O.C.G.A. § 9-11-11.1(c)(4).

C. Even if the anti-SLAPP statute applies, the trial court misapplied its second step.

If the anti-SLAPP statute applies, then the trial court had to decide "whether [Publix] has established that there is a probability that [it] will prevail on the claim." *Geer*, 310 Ga. at 284. The "task in this second step is not to consider the evidence to determine whether it is more probable than not that [Publix] will prevail on the claim." *Equity Prime Mortgage v. Greene for Cong., Inc.*, 366 Ga. App. 207, 215 (2022) (citations omitted). Rather, "using a summary-judgment-like procedure," the Court must decide whether Publix "has stated and substantiated a legally sufficient claim" supported by prima-facie evidence. *Id*. (citations omitted). An anti-SLAPP motion should not be granted unless the plaintiff "fails to make this showing" or the defendant "produce[s] evidence defeating [the non-movant's] claims as a matter of law." *Id*. (citations omitted).

First, the trial court erred in dismissing Publix's amended complaint under the anti-SLAPP statute because it substituted the motion-to-dismiss standard of O.C.G.A. § 9-11-12(b)(1) for the standard applicable to the second step of the anti-SLAPP analysis. V2-6546–47.

Second, because it substituted the motion-to-dismiss standard, the trial court erred by not considering the "summary-judgment-like" evidence alternatively submitted by Publix. O.C.G.A. § 9-11-11.1(b)(2); *see* V2-6335–6464. This evidence includes, for example, various instances in which the Cobb County Attorney in fact

subordinated its authority to that of the private lawyers in relation to the federal lawsuit against Publix and others, V2-6340–42, and agreed to delegate its settlement decisions to a committee of other local governments, V2-6342, a committee that was expressly not bound to reach, and therefore would not necessarily reach, a settlement inuring to the public good of Cobb County.

The trial also erred in applying the 12(b)(6) standard.

II. Cobb County's Contingency-Fee Arrangement Violates Public Policy.

A motion to dismiss may be granted only when a complaint, viewed in the light most favorable to the plaintiff and with all doubts resolved in the plaintiff's favor, shows with certainty that the plaintiff "would not be entitled to relief under any state of facts that could be proven in support of his claim." *Mujkic v. Lam*, 342 Ga. App. 693, 694 (2017). This question is reviewed de novo. *Id.*

The Court should reverse the trial court's dismissal and hold that the hiring of private counsel to prosecute a public-nuisance claim on a contingency-fee basis violates public policy. V2-6548. Georgia courts have the statutory power to declare a contract void as against public policy, even if the contract does not fall among the categories of contracts expressly identified by statute. See O.C.G.A. § 13-8-2; *West v. Bowser*, 365 Ga. App. 517, 522 (2022). "A contract that is against the policy of the law cannot be enforced." *See* O.C.G.A. § 13-8-2(a). "'[C]ourts must exercise extreme caution in declaring a contract void as against public policy' and

may do so only 'where the case is free from doubt and an injury to the public clearly appears.'" *Innovative Images, LLC v. Summerville*, 309 Ga. 675, 681 (2020) (citation omitted). This is the case here.

As a preliminary matter, the private attorneys have no written engagement agreement with Cobb County that authorizes them to take any action (such as prosecuting a lawsuit) against Publix. The First Amended Complaint alleges that the engagement letter offered up by the County and referenced throughout does *not* permit the private attorneys to take any action against Publix. V2-6354–60. An unwritten contingency-fee agreement to engage private counsel to litigate against Publix violates the rules of professional conduct and public policy, as well as other laws as discussed below. *See* Ga. Bar R. 4-102, RPC Rule 1.5(c)(1).

Regardless, this Court has already said that the State's hiring of private counsel under a contingency-fee agreement is void as against public policy. *See Greater Ga. Amusements, LLC v. State*, 317 Ga. App. 118, 121–22 (2012) (physical precedent). In *Greater Georgia Amusements*, the district attorney hired two attorneys as special assistants to pursue civil claims against private parties. *Id.* at 118. The court held that these assistants could not properly be compensated on a contingency basis while acting on behalf of the public. *Id.* at 122. A contingency-fee arrangement "guarantees at least the appearance of a conflict of interest between [an attorney's] public duty to seek justice and his private right to obtain

compensation for his services." *Id.* at 121; *see also Sears, Roebuck & Co. v. Parsons*, 260 Ga. 824, 824 (1991) (deeming void county's hiring of a private auditing corporation to audit certain returns on a contingency-fee basis).[7]

Here, the private, mass-tort attorneys have a private financial interest in obtaining a settlement or judgment against Publix. If permitted, this arrangement incentivizes private mass-tort attorneys to continue soliciting counties and municipalities to sue businesses that serve their own communities, and counties to go along with it because they will get a cut. This offends public policy. "Fairness and impartiality are threatened where a private organization has [such] a financial stake" in county litigation. *Cf. Sears, Roebuck & Co*., 260 Ga. at 824. This threat is especially acute when it comes to public-nuisance actions, which may be litigated only by government-employed attorneys for the public good. O.C.G.A. § 41-2-2.

Indeed, contingency-fee compensation is antithetical to the public-nuisance statute. The sole remedy for public nuisance is abatement by way of injunction. *Green Meadows Hous. Partners, LP v. Macon-Bibb Cnty*., 372 Ga. App. 724, 733, (2024) ("[O]ur Supreme Court has explicitly held that "[i]n the absence of any statutory expansion of equity jurisdiction, a public nuisance may be abated in equity *by injunction only*." (citing *Davis v. Stark*, 198 Ga. 223, 230 (1944)), *cert. denied*

[7] Although *Greater Georgia Amusements* is physical precedent, its reasoning has been followed in subsequent opinions. *See, e.g., Amusement Sales, Inc. v. State*, 316 Ga. App. 727, 736 (2012).

(Jan. 28, 2025). But here, the private attorneys get paid only if they recover money damages on the County's behalf. Thus, they recover nothing if the outcome is only an injunction aimed at ceasing any alleged nuisance causing conduct—despite that being the goal of any public-nuisance action. As a result, the private attorneys here have been fixated on recovering monetary damages and ignoring more immediate and efficient options available to the County to address Publix's purported nuisance-causing conduct. Meanwhile, if the private attorneys are to be believed, grievous harm to the entire community continues every single day while the County is passively standing by.

The trial court, which merely points to other states and ignores Georgia caselaw, offers no persuasive analysis for why Georgia should permit counties to enter into contingency-fee engagements with private attorneys, especially in a public-nuisance action. V2-6548.

The trial court relies on California Supreme Court's opinion in *County of Santa Clara v. Superior Court*, 50 Cal. 4th 35, 54–56 (2010), which holds that contingency-fee engagements with counties are generally permissible in ordinary civil cases. For public-nuisance cases, however, the opinion says that "neutral government attorneys must retain and exercise the requisite control and supervision over both the conduct of private attorneys and the overall prosecution of the case." *Id*. at 61–62. "Retainer agreements providing for contingent-fee retention should

encompass more than boilerplate language regarding 'control' or 'supervision,' by identifying certain critical matters regarding the litigation that contingent-fee counsel must present to government attorneys for decision." *Id*. at 63.

Georgia should reject this position, instead holding—consistent with its *Greater Georgia Amusements* line of cases—that to avoid creating perverse incentives for profit, to the detriment of community participants, counties should be permitted to hire private attorneys only on an hourly or flat-fee basis for the prosecution of public-nuisance claims. But even if the Court were to agree with the trial court, the arrangement here allocates too much control to the mass-tort lawyers to pass muster even under California's more liberal caselaw adopted by the trial court.

Although the arrangement here gives the Cobb County Attorney the right to terminate the engagement, V2-5145, 6357–58, the private attorneys otherwise are authorized to "file a lawsuit" (in contravention of O.C.G.A. § 41-2-2(a)), to "prosecute the lawsuit" and "diligently pursue" it. V2-6354, 6358. The private attorneys are merely required to "keep [the] County reasonably informed of progress and respond to County's inquiries." V2-6354. Likewise, the engagement letter purports to give the County the right to reject or accept "any final settlement *amount*," V2-6494 (emphasis added), but there is no similar retention of authority over any of the remaining terms of any negotiated resolution including, for example, critical

terms outlining any specific injunctive relief designed to stop Publix's alleged nuisance-causing conduct or whether any such terms are even included in a settlement. And the County must proceed under threat that the private attorneys can terminate their representation in the event of "County's *failure to follow Counsel's advice on a material matter*." V2-6358 (emphasis added).

This delegates near total autonomy to the private attorneys on material, discretionary matters. The mere fact that the County Attorney's name appears on an amendment to the complaint thus does not mean he is exercising supervision or control over the litigation. By contract, he is not. And, more importantly for purposes of O.C.G.A. § 9-11-12(b)(6), Publix's complaint alleges the County attorneys *in fact* are not exercising control and have "outsource[d] all major decision-making" to the private attorneys. V2-4055. This, plus other facts about ceding control, including those stated above, more than suffice to survive at the motion-to-dismiss stage. *See* V2-4047, 4052–55; *see Mujkic*, 342 Ga. App. at 694.

The Court should thus hold that the claimed arrangement between Cobb County and the private attorneys is void. "A contract to do an immoral or illegal thing is void." O.C.G.A. § 13-8-1; *see Stockton v. Shadwick*, 362 Ga. App. 779, 785 (2022). Here, the "injury to the public interest clearly appears." *See Key v. Ga. Dep't of Admin. Servs.*, 340 Ga. App. 534, 538 (2017).

Finally, the Court also should deem void the terms of Cobb County's arrangement with the private attorneys to prosecute Publix because their object is to obtain monetary damages. V2-6354–60. Remedying a public nuisance—*i.e.*, abating it—focuses on seeking remedies other than compensatory damages. "A public nuisance action seeks abatement, rather than damages." 58 AM. JUR. 2d *Nuisances* § 250 (Jan. 2025). "Abatement" generally means "[t]he act of eliminating or nullifying," such as nuisance-causing conduct. *See Abatement*, BLACK'S LAW DICTIONARY (12th ed. 2024). To "abate" means to "to … end (a nuisance)." *Abate*, WEBSTER'S NEW WORLD DICTIONARY OF THE AMERICAN LANGUAGE 2 (1984).

Here, the private attorneys' attempt to turn O.C.G.A. § 41-2-2 into a damages remedy by focusing on recovering reimbursement for Cobb County's "costs" to provide public services due to the opioid crisis, V2-5369–73, 5438–39, violates the "free public services doctrine." *Walker Cnty. v. Tri-State Crematory*, 284 Ga. App. 34, 36–37 (2007). This doctrine "provides that absent specific statutory authorization or damage to government-owned property, a county cannot recover the "costs" of carrying out public services from a tortfeasor whose conduct caused the need for the services. By focusing on the recovery of monetary damages, rather

than "abating" the nuisance, the object of the arrangement is to further an improper purpose which likewise violates Georgia public policy. V2-6354–60.[8]

III. O.C.G.A. § 41-2-2 Prohibits Private Attorneys from Controlling the Prosecution of Public-Nuisance Actions.

The Court should reverse the trial court's dismissal of Publix's request for declaratory judgment that the County's ongoing use of private counsel to prosecute a public-nuisance action violates O.C.G.A. § 41-2-2. V2-6548. This issue is reviewed de novo. *Mujkic*, 342 Ga. App. at 694.

This statute prohibits non-governmental attorneys from filing a public-nuisance complaint on behalf of the community in general because they are not one of the government-employed attorneys empowered by the statute:

> Private citizens may not generally interfere to have a public nuisance abated. A complaint must be filed by the district attorney, solicitor-general, city attorney, or county attorney on behalf of the public. However, a public nuisance may be abated upon filing of a complaint by any private citizen specially injured.

[8] This Court was prescient, forewarning: "We likewise reject Walker County's argument that there should be an exception to the free public services doctrine when the costs are incurred as part of the abatement of a public nuisance. If such an exception were recognized, it would be the exception that swallows the rule, since many expenditures for public services could be re-characterized by skillful litigants as expenses incurred in abating a public nuisance. We decline to adopt such a "murky" exception that "could give rise to substantial litigation." *Tri-State Crematory*, 284 Ga. App. at 39. Unfortunately, that moment has now arrived.

O.C.G.A. § 41-2-2(a); *see also* O.C.G.A. § 41-2-2(b)(2) (referring to when "a district attorney, solicitor-general, city attorney, or county attorney on behalf of the public files a complaint pursuant to subsection (a) of this Code section …."). The verb to "file" includes to "commence a lawsuit." *File*, BLACK'S LAW DICTIONARY (12th ed. 2024).

The trial court departs from this statute's plain meaning by holding that a private attorney may prosecute a public-nuisance-abatement action as the County Attorney's "proxy"—a process absent from the statute. According to the trial court's interpretation, private counsel may represent a county in an action to abate a public nuisance so long as a county attorney initially "files" the complaint, even if he or she afterward stands aside, thus letting the private counsel control the prosecution. V2-6549; *see* V2-5146, 6496.[9]

This is an unreasonable outcome and inconsistent with the statute. First, even accepting the Court's overly literal view, the County Attorney did *not* file the original complaint against Publix—the mass-tort lawyers did it alone. V2-384–23. Second, more importantly, the statute manifests the intent that "[p]rivate citizens may not generally interfere to have a public nuisance abated." O.C.G.A. § 41-2-

[9] It is impossible to reconcile the trial court's ruling that (1) the private attorneys may prosecute Publix as the County Attorney's "proxy" with its ruling that (2) they may do so on a contingency-fee basis unburdened by the limitations that would prevent members of the County Attorney's Office from having a financial stake in the outcome of litigation in which it represents the County. *See infra* § 5.

2(a). The trial court's interpretation permits out-of-state private attorneys not only to "interfere" with the abatement of public nuisances in Georgia, but to control such proceedings entirely once one of the enumerated government-employed attorneys has done the ministerial task of affixing their signature to a complaint. Instead, the statute delegates such authority and control solely to the enumerated government-employed attorneys, specifically a "district attorney, solicitor-general, city attorney, or county attorney." O.C.G.A. § 41-2-2(a).

The point of the statute is to ensure that actions to abate public nuisances on behalf of a general population are controlled, from beginning to end, by *government-employed* attorneys whose interests are fully aligned with the public, untainted by the desire for personal profit and other private motives. Only expressly identified government-employed attorneys are permitted to control public-nuisance litigation, which is done "on behalf of the public." O.C.G.A. § 41-2-2(a).

The trial court's interpretation effectively renders the second sentence of § 41-2-2(a) meaningless. It "is the duty of the court to consider the results and consequences of any proposed construction and not so construe a statute as will result in unreasonable or absurd consequences not contemplated by the legislature." *Staley v. State*, 284 Ga. 873, 873–74 (2009) (citation omitted). And courts must also "avoid[ ] interpreting statutes in a manner that renders any portion of them surplusage or meaningless." *Wetzel v. State*, 298 Ga. 20, 28 (2015) (citation omitted).

Courts must "presume that the legislature says what it means and means what it says …." *Stock Bldg. Supply, Inc. v. Platte River Ins. Co*., 336 Ga. App. 113, 119 (2016). Public-nuisance actions are a narrow class of cases. To ensure that such actions are litigated in the public interest, litigating them is, by statute, restricted to government-employed Georgia attorneys. The Court should deem the County's arrangement with the private attorneys to prosecute Publix to be void, inasmuch as the County cedes control of the litigation to private counsel. *See* O.C.G.A. § 13-8-1; *Stockton*, 362 Ga. App. at 785.

Further, even if private attorneys are permitted to co-litigate public-nuisance claims with government-employed attorneys, the terms of the arrangement here violate O.C.G.A. § 41-2-2(a) because they provide that the "County hereby authorizes Counsel to *file* a lawsuit against one or all of the Opioid Manufacturers and Opioid Distributors …." V2-6354. This plainly contravenes the statute's requirement that a complaint for public nuisance "must be filed by the district attorney, solicitor-general, city attorney, or county attorney on behalf of the public …." O.C.G.A. § 41-2-2(a). And, as explained above, subsequent to such filing, the terms of the engagement require the County to abide by "the terms and conditions set forth herein"—*i.e.*, that the County attorneys must, to avoid having the contract terminated by private counsel, accede to the private counsels' "advice on a material matter." V2-6358.

IV. The County's Engagement with Private Mass-Tort Counsel Violates O.C.G.A. § 36-10-1.

The Court should reverse the trial court's dismissal of Publix's declaratory-judgment claim that the County's engagement violates O.C.G.A. § 36-10-1. V2-6549. This issue is reviewed de novo. *Mujkic*, 342 Ga. App. at 694.

The statute promotes openness in county government by requiring counties to have written agreements that are disclosed to the public: "All contracts entered into by the county governing authority with other persons in behalf of the county shall be in writing and entered on its minutes." O.C.G.A. § 36-10-1. "The purpose and reach of this law is stated in *Graham v. Beacham,* 189 Ga. 304, 305–306, 5 S.E.2d 775 (1939): 'This law is designed to keep the public's business *open to inspection*.'" *Cherokee Cnty. v. Hause*, 229 Ga. App. 578, 579–80 (1997) (emphasis added).

It is undisputed that the County did not enter into any written engagement letter with private counsel onto its public-meeting minutes. The trial court held that this defect was somehow cured when the County, in a resolution approving settlements with unrelated parties, included a boilerplate clause ratifying unspecified official conduct taken in connection with those settlements. V2-5148, 6549. But those settlements related to defendants that were specifically named in the County's engagement letter as targets of the "Lawsuit." The resolution did not mention Publix or any lawsuit against Publix, or suggest it was ratifying any

modification to the existing engagement agreement to add authority to pursue claims against Publix. Moreover, that resolution, which occurred long after the private attorneys first sued Publix, still did not involve putting into the public minutes any actual written engagement letter concerning a lawsuit against Publix. V2-1027, 4063–64. It thus fails to cure the statutory defect.

Even if the boilerplate ratification clause tied to the settlements with unrelated parties had some curative power, all the trial court could have found to be ratified were the terms of the existing engagement letter. But that engagement letter never expressly permits the private lawyers to sue *Publix*, and is instead limited to an investigation and the prosecution of a "Lawsuit" against 14 explicitly enumerated Opioid Manufacturer or Opioid Distributor defendants, none of which includes Publix. V2-6354.

Thus, even if the boilerplate ratification clause somehow could be viewed as putting the referenced engagement letter into the public minutes (it cannot), the public still would not know that *Publix* could be sued. That contravenes the policy of openness inherent in § 36-10-1.

The County's suggestion below, that § 36-10-1 applies only to public-works contracts based on its context in the Code, V2-5146–47, has no support in caselaw, as the County admitted below in reply. V2-6500. And various cases have applied the statute outside the public-works context. *See, e.g., Oceana Sensor, Inc. v.*

Fulton Cnty., Ga., No. 1:08-CV-2981-BBM, 2009 WL 10664811, at *1–3 (N.D. Ga. Aug. 27, 2009); *Maner v. Chatham Cnty*., 246 Ga. App. 265, 267 (2000); *Cherokee Cnty*., 229 Ga. App. at 580; *Smith v. Gwinnett Cnty*., 182 Ga. App. 875, 875 (1987). Where the statute has not been met, the contract is void.

Publix has standing to challenge the validity of the arrangement at issue here because it is a member of the Cobb County community, a taxpayer, and property owner—just as the trial court correctly held. V2-6545–46. Publix does not seek to enforce any contract or to benefit from it, and so it is not barred by the stranger doctrine. *Cf. Taylor v. AmericasMart Real Estate, LLC*, 287 Ga. App. 555, 558 (2007). Rather, Publix points out that the arrangement as to Publix is against public policy, and the written engagement letter has been improperly wielded to sue Publix when no suit against Publix is contemplated. A "contract that is against the policy of the law cannot be enforced"—such as a contract with a county that is not in writing and in the public minutes—and is thus inherently void. *See* O.C.G.A. § 13-8-2(a); *see also* O.C.G.A. § 13-8-1; *Stockton*, 362 Ga. App. at 785.

To avoid misleading the public, Cobb County should have made the engagement letter publicly available in connection with an agenda for a public meeting, and the engagement letter should have expressly stated the County was authorizing private mass-tort lawyers to sue Publix for allegedly creating a public nuisance in

Cobb County. This would have been simple to do. The fact that the County has still not done it speaks volumes about its intent.

V. The County's Arrangement with the Private Attorneys Violates the Georgia Constitution, art. IX, § V ¶ I and O.C.G.A. § 36-60-13.

The Court should reverse the trial court's dismissal of Publix's declaratory-judgment claim that the County's engagement violates Georgia Constitution, art. IX, § V, ¶ I. V2-6550. This issue is also reviewed de novo. *Mujkic*, 342 Ga. App. at 694.

First, to ensure community buy-in for the incurring of new county debt, the Georgia Constitution requires giving county residents an opportunity to vote. Ga. Const. art. IX, § V ¶ I(a). "Under this provision, what constitutes 'new debt' is undisputed and unambiguous: It is a liability that is 'not to be discharged by money already in the treasury, or by taxes to be levied during the year in which the contract under which the liability arose was made." *Fairgreen Cap., LLC v. City of Canton*, 335 Ga. App. 719, 720 (2016) (quoting *Greene Cnty. Sch. Dist. v. Circle Y Constr., Inc.*, 291 Ga. 111, 112 (2012)). "Therefore, if a municipality undertakes an obligation that extends beyond a single fiscal year, then a new 'debt' has been incurred within the meaning of the Georgia Constitution and requires voter approval." *Id.* (quoting *Barkley v. City of Rome*, 259 Ga. 355, 355 (1989)). "A contract incurring such 'new debt,' which is entered into by a municipality without

voter approval, is void as a matter of law." *Id.* (citing *Greene Cnty. Sch. Dist.*, 291 Ga. at 112).

The trial court misapplied *Greene's* standard, and held that the County's contingency-fee agreement with private attorneys does not constitute a "new debt" because the County has no obligation to pay unless and until the private attorneys have recovered money through a settlement or judgment. V2-6550. The money will enter and leave the treasury at the same time. *Id*.

But the receipt (and payment) of money in the future is neither money already in the treasury nor taxes levied during the year in which the contract under which the liability arose was made. *See Fairgreen Cap.*, 335 Ga. App. at 720.

Moreover, the trial court premised its conclusion on a fundamental misapprehension of the terms of Cobb County's arrangement with the private attorneys. Specifically, it assumed any recovery necessarily would exceed the amount of the private attorneys' fee entitlement. But this ignores that the County already has committed to pay fees based on a statutory attorneys' lien, *see* O.C.G.A. § 15-19-14, and quantum meruit if the County exercises its unrestricted right to terminate the engagement agreement at any time, but continues with the litigation and recovered something. V2-6357. This provision does not require Cobb County to obtain a monetary recovery of any particular amount, or even more than the fees that are owed—meaning that the amount of fees due under quantum meruit could

potentially far exceed the amount of any "recovery." *Id*. The County would thus be required to reimburse the private attorneys for their work on a reasonable hourly basis out of the public fisc. This is a "new debt." And it has been improperly incurred by the County without a county-wide vote to approve the arrangement.

Moreover, absent an agreement (because there is no legal agreement here), the private attorneys have a statutory lien against the County for their services. *See* O.C.G.A. § 15-19-14. They can enforce their lien and receive from the County a reasonable amount to be determined by a court in its discretion. *See McWay v. McKenney's, Inc*., 359 Ga. App. 547, 547 (2021). This also is a new debt which County residents have never voted to approve.

The Court should deem void the terms of Cobb County's arrangement with the private attorneys. *See* O.C.G.A. § 13-8-1 ("A contract to do an immoral or illegal thing is void."); *Stockton*, 362 Ga. App. at 785.

For the same reasons, and because it extends indefinitely in time, the engagement letter violates O.C.G.A. § 36-60-13(a), which applies to, among other kinds of contracts, "multiyear … purchase … contracts of all kinds for the acquisition of services …." *Id*. On its face, the statute applies to the terms of the arrangement by which the County is "purchasing" the legal "services" of the private attorneys to prosecute Publix in this multi-year litigation. That open-ended, contingency-fee arrangement with the County is for more than one year, but does not

terminate, § 36-60-13(a)(1), and does not state the total obligation of the County during the contract's term, § 36-60-13(a)(3). Only a flat-fee or capped hourly contract could comply with this statute.

CONCLUSION

The Court should reverse the judgment, hold that Publix has stated viable claims for declaratory judgment and other relief, and remand for further proceedings.

February 18, 2025

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this submission does not exceed the word count imposed by Rule 24.

This 18th day of February 2025.

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CERTIFICATE OF SERVICE

In accordance with Georgia Court of Appeals Rules 1, 6, I hereby certify that on the below date a genuine copy of the foregoing BRIEF OF APPELLANT PUBLIX SUPER MARKETS, INC. was sent by electronic mail and U.S. Mail, postage pre-paid, and via email to the following:

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