IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

LINDSAY D. HOLLIDAY,	)	
	)	
Plaintiff,	)	CIVIL ACTION
	)	FILE NO. 12-CV-58472
v.	)	
	)	
GEORGIA DEPARTMENT OF TRANSPORTATION,	)	
	)	
Defendant.	)	
	)	

PLAINTIFF LINDSAY D. HOLLIDAY'S CLOSING ARGUMENT IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Before the Court is Defendant Georgia Department of Transportation's ("GDOT") Motion to Dismiss based on sovereign immunity. Pursuant to the Court's direction at the conclusion of the April 19, 2013 hearing, Plaintiff Lindsay D. Holliday ("Plaintiff') hereby submits his written closing argument. Because the evidence establishes that GDOT has acted arbitrarily and capriciously in its decision to widen the northern segment of Forest Hill Road, GDOT's Motion must be denied. In support, Plaintiff states as follows:

I. PRELIMINARY STATEMENT

Plaintiff brings this action to enjoin GDOT from widening the northern segment of Forest Hill Road (the "Project"), where there exists no rational basis to support GDOT's stated safety justification for proceeding with the Project. At this stage of the proceeding, only a single, limited issue is before the Court: whether GDOT's asserted sovereign immunity defense requires an early dismissal of this lawsuit. For reasons that were clear at the evidentiary hearing on April 19, 2013, and for the reasons set forth below, the answer is no – GDOT has waived any

sovereign immunity by proceeding with the Project without adequate justification – *i.e.*, arbitrarily and capriciously.

It is uncontested that the Court has authority to enjoin GDOT where, as here, it undertakes a road improvement project in an arbitrary and capricious manner. Although this case is still in its infancy, Plaintiff has adduced evidence establishing that GDOT's *current, stated* basis for the Project is its claim that the **northern** segment of Forest Hill Road (between Wimbish Avenue and Northside Drive) is "unsafe." GDOT's sole basis for these asserted "safety concerns" is crash data involving the **southern** segment of Forest Hill Road (between Vineville Road and Wimbish Avenue) – a segment of the Road not currently slated for construction and for which entirely different plans are proposed.

This evidence is more than sufficient to deny GDOT's Motion. Indeed, the Georgia Supreme Court has found that GDOT has acted arbitrarily and capriciously in similar contexts. *See Southern R. Co. v. State Highway Dep't*, 219 Ga. 435, 440 (1963) (allegations that GDOT's predecessor acted arbitrarily and capriciously in widening a highway where the existing highway was already safe were sufficient to survive a motion to strike – a motion reviewed under a standard similar to a motion to dismiss). And federal courts have enjoined construction of highways where the underlying justification for the construction was based on erroneous crash data. *See, e.g., W. N.C. Alliance v. N.C. DOT*, 312 F. Supp. 2d 765 (E.D.N.C. 2003).

The same result is warranted here. Because GDOT's sole justification for the Project is based on unsupported safety concerns, GDOT's actions are the very definition of "arbitrary." Accordingly, GDOT's assertion that sovereign immunity bars this lawsuit is without merit, and its Motion to Dismiss should be denied.

Alternatively, the Court should defer ruling on GDOT's Motion to Dismiss until the record is fully developed. Georgia courts are clear that where, as here, issues of subject matter jurisdiction and waiver of sovereign immunity are "factually intertwined" with the merits of the case, the trial court should defer ruling on these issues until trial in order to avoid deciding the merits of the case at the outset. *DOT v. Dupree*, 256 Ga. App. 668, 672 (2002).

Here, the facts necessary to determine GDOT's sovereign immunity defense and the merits of Plaintiff's requested injunctive relief are one and the same: both the defense and the merits depend entirely on whether GDOT acted arbitrarily and without justification. Plaintiff should not be required to develop and prove the merits of his lawsuit on an extraordinarily expedited basis – a mere four weeks after obtaining counsel, subject to a three-week limited discovery period.[1] Tellingly, GDOT has vigorously opposed *any* discovery by Plaintiff, repeatedly invoking O.C.G.A. § 9-11-12(j) since filing its Motion to Dismiss in January 2013. Accordingly, the Court alternatively should defer ruling on GDOT's Motion until trial to allow full and complete development of the facts under the standard discovery processes of the Civil Practice Act.

II. FACTUAL AND PROCEDURAL BACKGROUND[2]

A. Factual Background

The Project involves a proposed widening of Forest Hill Road in Macon, Georgia. For purposes of GDOT's proposed construction, Forest Hill Road consists of two segments: (i) the

[1] The difficulties of preparing and developing his entire case in a three-week period are exemplified by Plaintiff's difficulty in obtaining a corporate witness from GDOT to provide testimony on GDOT's stated justification for the Project and the data that supports that justification notwithstanding GDOT's obligation to do so pursuant to O.C.G.A. § 9-11-30(b)(6). Instead, GDOT identified 16 witnesses who may have knowledge about the allegations in Plaintiff's complaint – rendering it impossible to conduct complete discovery and fully develop his case in the truncated three-week time frame.

[2] Plaintiff did not have access to the transcript of the April 19, 2013 hearing in preparing this closing argument. Where possible, Plaintiff cites to exhibits admitted at the hearing. Plaintiff will provide a more complete recitation of the facts in the event the Court denies GDOT's Motion (or defers ruling on it).

northern segment, which involves the Project at issue here; and (ii) the southern segment, which is not at issue in this lawsuit.[3] Plaintiff owns property abutting the northern segment of Forest Hill Road. His mother also owns property adjacent to that segment of the Road.

The northern segment consists of a two-lane road located in a residential area. In contrast, the southern segment consists of a two-lane road running through a largely commercial area. Unsurprisingly, the uncontroverted evidence shows that the southern segment has a significantly higher volume of traffic than the northern segment. The southern segment also has a much higher crash rate than the northern segment.

As part of the Project, GDOT seeks to widen the northern segment adding a continuous bi-directional turn lane, transforming it into a three-lane road. At an unspecified date in the future, GDOT also seeks to widen the southern segment into a four-lane road, though it has not yet begun work on that section.

Throughout the Project's long history, GDOT's stated justification for the Project has been a moving target. Initially, GDOT claimed the Project was justified for traffic capacity reasons. But when Macon citizens demonstrated that GDOT's traffic growth calculations were fundamentally flawed, GDOT reversed course, and instead claimed that the extra lane was needed solely for safety purposes.

In fact, as GDOT representatives have repeatedly asserted, the Project is not intended to accommodate additional traffic capacity. For example, Mr. Etheridge, a program manager at GDOT's consultant, Moreland Altobelli Associates ("Moreland"), expressly testified that the Project "was really not a capacity project. It was not designed to have for future need of traffic .

[3] The northern segment of Forest Hill Road consists of approximately 1.8 miles beginning at the intersection of Forest Hill Road and Wimbish Road and ending at the intersection of Forest Hill Road and Northside Drive. The southern segment of Forest Hill Road consists of approximately 0.8 miles beginning at the intersection of Forest Hill Road and Forsyth Road and ending at the intersection of Forest Hill Road and Wimbish Road. A map depicting Forest Hill Road was admitted into evidence as Plaintiff's Exhibit 1.

. . it was more of a safety project." Etheridge Depo. at 32:7-9; 15; *see also* 100:9-20; 107:25-108:1-16. GDOT's corporate representative Michael Murdoch confirmed that the Project was driven by purported safety concerns. *See* Murdoch Depo., 54:2-7; *id.* at 54:11-16; 55: 5-19.

In support of these stated safety concerns, GDOT relies on crash data purportedly demonstrating that Forest Hill Road has a higher crash rate than the state-wide average. *See, e.g.*, 2012 EA Reassessment, admitted into evidence as Defendant's Exhibit 7. As the testimony at the recent hearing demonstrates, however, that data is misleading and incomplete and, thus, irrelevant. In fact, according to GDOT's own data, the majority of the crashes occur on the ***southern*** segment of Forest Hill Road – an entirely different project that has no impact on the ***northern*** segment of Forest Hill Road that Plaintiff challenges here. As such, GDOT's sole justification for the northern Project – safety – is based entirely on irrelevant data.

As GDOT's witnesses at the hearing repeatedly testified, GDOT considers it important and necessary that the underlying data be both correct and support GDOT's stated need and purpose for a particular project. GDOT's own data does neither here.

Moreover, GDOT's contention that the continuous bi-directional turn lane is necessary for safety is belied by Moreland, its own consultant responsible for developing the Project under GDOT's supervision and approval. In response to citizen outcry to the Project, Moreland itself proposed a two-lane design alternative substantially similar to an alternative plan favored by Plaintiff and other concerned Macon citizens. *Cf.* Exhibit 6 at 130 to Exhibit 10. Given that its own consultant proposed a two-lane option – the same consultant who now favors the three lane option – GDOT cannot contend that the three lane option is necessary for safety purposes.

B. Procedural Background

Plaintiff filed his *pro se* lawsuit on December 14, 2012. Plaintiff obtained counsel, who appeared in this action on March 20, 2013, one day before the initial hearing on GDOT's Motion to Dismiss. At that initial hearing, the Court granted Plaintiff's request for a temporary restraining order and granted the parties twenty-one days to conduct expedited discovery on the limited issue of sovereign immunity. Plaintiff made the most of that limited time, conducting six depositions[4] and defending two others. In fact, counsel for the parties conducted depositions every business day from April 11 to April 16, 2013, two days before the scheduled April 18, 2013 hearing. (At the Court's request, the hearing was re-scheduled to April 19, 2013). The parties also exchanged voluminous documents and other written discovery.

At this early stage in the case, however, discovery is far from complete. For example, even assuming all relevant documents have been produced, counsel could not have possibly analyzed them all in time for the April 19, 2013 hearing. Moreover, GDOT still has not provided adequately-prepared corporate representatives on certain key topics, despite Plaintiff's properly noticed deposition. Rather, GDOT simply replied that it no longer employed individuals with knowledge as to the topics in Plaintiff's notice. That response does not come close to satisfying GDOT's discovery obligations. GDOT also produced witnesses who were not adequately prepared to provide testimony on these critical topics, further hindering Plaintiff's ability to develop fully his case on the merits given the tight time constraints in this case.

[4] Plaintiff noticed two depositions: (i) one of Dallas Van Etheridge, a Moreland employee who submitted a lengthy, substantive affidavit in support of GDOT's Motion; and (ii) one of GDOT pursuant to O.C.G.A. § 9-11-30(b)(6), for which GDOT produced multiple witnesses.

III. LAW AND ARGUMENT

A. Georgia Law is Clear that GDOT May Not Hide behind Sovereign Immunity Where It Acts Arbitrary and Capriciously

As the Court recognized at the recent hearing – and as GDOT concedes in its Motion to Dismiss – sovereign immunity does not protect agency actions that are arbitrary and capricious. Indeed, there "has long been an exception to sovereign immunity where a party seeks injunctive relief against the state or a public official acting outside the scope of lawful authority." *IBM v. Ga. Dep't of Admin. Servs.*, 265 Ga. 215, 216 (1995); *see also In re A.V.B.*, 267 Ga. 728, 728 (1997) ("Sovereign immunity does not protect the state when it acts illegally and a party seeks only injunctive relief").[5] In other words, where a state agency "has acted arbitrarily and capriciously in its decisionmaking" the doctrine of sovereign immunity is waived and will not bar injunctive relief. *IBM*, 265 Ga. at 217.

Georgia courts have applied this reasoning in cases involving GDOT and its predecessor, the State Highway Department. *See, e.g., Southern R. Co. v. State Highway Dep't*, 219 Ga. 435, 440 (1963) ("A court of equity will not interfere with the discretionary action of the State Highway Department in locating, grading, and improving a proposed State-aid highway, within the sphere of their legally designated powers, **unless such action is arbitrary and amounts to an abuse of discretion** . . . .") (emphasis added); *see also State Highway Dep't v. Macdonald*, 221 Ga. 312, 317 (1965) ("The petition alleges a lack of authority to close the road, and if this were true it would be an abuse of discretion to close it . . . ."); *Marks v. State Highway Dep't*, 167 Ga. 792, 801 (1929) (enjoining GDOT predecessor from relocating a county road where it lacked authority to do so under governing statutes).

[5] The primary purpose of sovereign immunity is to protect "state coffers." *In re A.V.B.*, 267 Ga. at 728. Where, as here, a plaintiff seeks equitable, rather than monetary relief, the public policy concern is not implicated. *Id.*

Georgia courts broadly define "arbitrary" as including agency action that is: "fixed or done capriciously or at pleasure; **without adequate determining principle**; not founded in the nature of things; non-rational; **not done or acting according to reason or judgment**; depending on the will alone; absolutely in power; capriciously; tyrannical; despotic." *Sawyer v. Reheis*, 213 Ga. App. 727, 730 (1994) (citation omitted) (emphasis added). Similarly, the United States Supreme Court has held that federal agency decisions will be vacated as arbitrary where the agency "entirely failed to consider an important aspect of the problem" or "offered an explanation for its decision that runs counter to the evidence" before the agency. *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 658 (2007) (citation omitted). The evidence establishes that GDOT's decision to move forward with the Project lacked justification, and thus is precisely the type of arbitrary conduct that sovereign immunity will not shield.

B. The Uncontroverted Evidence Demonstrates that GDOT Acted Arbitrarily and Capriciously in Moving Forward with the Project

Although GDOT's stated justification for the Project has continually changed throughout the Project's history, GDOT's testimony at the hearing makes clear that GDOT currently justifies the Project on the grounds that the northern segment of Forest Hill Road is "unsafe." GDOT's safety assertion suffers from a fundamental flaw: it is based entirely on erroneous, irrelevant, and misleading crash data.

As Plaintiff's expert Chester Chellman – a road design expert with extensive experience designing roads in the United States and internationally – demonstrated at the hearing, the vast majority of the accidents on Forest Hill Road occur on the southern, commercial segment of the Road – *i.e.*, the segment not at issue here. After proper analysis of GDOT's own data and excluding those crashes that occur on the southern segment, the data shows that the northern

segment of Forest Hill Road is actually *much safer* than the average comparable road in Georgia. *See, e.g.*, Plaintiff's Exhibit 2.[6]

Importantly, Mr. Chellman further testified that GDOT's three-lane proposal would in fact render the northern segment of Forest Hill Road ***less safe***: it will increase potential for vehicle speeding and head-on collisions; and the additional width will increase the danger to pedestrians crossing the Road. GDOT should not be permitted to increase safety risks on the Road, especially when its asserted safety justification is contradicted by its own data.

In similar contexts, courts have held that such evidence and allegations are sufficient to show GDOT acted arbitrarily and capriciously. The Supreme Court of Georgia's decision in *Southern R. Co. v. State Highway Dep't* is particularly instructive. 219 Ga. 435. There, GDOT's predecessor, the State Highway Department, sought to condemn plaintiff's property for the purpose of widening an existing highway. The plaintiff objected, alleging that the proposed widening would neither improve traffic nor safety on the existing highway. *Id.* at 437-38. The plaintiff further alleged that the existing highway was actually safer without the proposed widening. *Id.* The Court concluded that these allegations clearly demonstrated "arbitrary, capricious, discriminating and unwarranted action" by the Department. *Id.* at 440.

Similarly, federal courts have enjoined construction of highways where, as here, the underlying justification for the construction was based on erroneous crash data. For example, in *W. N.C. Alliance v. N.C. DOT*, the plaintiff sought to enjoin the North Carolina DOT from widening a highway from four lanes to six lanes. 312 F. Supp. 2d 765 (E.D.N.C. 2003). In

[6] GDOT offered only one witness, L.N. Manchi, to rebut Mr. Chellman's testimony identifying GDOT's inaccurate and misleading crash data. However, Mr. Manchi acknowledged that he had no idea how his "opposing" statistics were calculated, what data they considered, or how even a "crash rate" is calculated. The Court properly excluded GDOT's proffered evidence (offered as Defendant's Exhibit 18) on this issue and should not consider Mr. Manchi's testimony in reliance on that evidence, since he had no idea how it was created or what it contained. Mr. Chellman's testimony and analysis remain unrebutted.

connection with the expansion, the NCDOT prepared an environment assessment ("EA") pursuant to the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* ("NEPA"), much like what GDOT prepared here.[7] Much like here, the stated purpose for the project in the EA was to improve safety. *Id.* at 776. The EA attempted to justify these safety concerns by citing crash data purportedly showing that the highway was significantly less safe than similar North Carolina highways. *Id.* But that data was incorrect. In reality, the data demonstrated that the highway was considerably *safer* than comparable interstates. *Id.* at 777. Accordingly, the Court enjoined construction, holding that the failure to include accurate data in the EA was arbitrary and violated NEPA's requirements. *Id.*

This Court should reach the same result. GDOT's stated purpose for the Project – safety – is based entirely on misleading, erroneous crash data purporting to show that the northern section of Forest Hill Road is less safe than similar Georgia roads (when it is, in fact, ***more*** safe based on GDOT's own criteria). And Plaintiff has produced evidence that Forest Hill Road is safer as it exists today than it will be if GDOT moves forward with the Project. At the motion to dismiss stage, this evidence is sufficient to show that GDOT's sovereign immunity argument is meritless, and that this Court has subject matter jurisdiction to consider Plaintiff's claims.

C. Nothing in NEPA Precludes the Relief Plaintiff Seeks Here

Based on the reasoning in *W. N.C. Alliance* and other cases, Plaintiff may well have a viable cause of action under NEPA and the federal Administrative Procedure Act ("APA"). But that does not mean NEPA provides Plaintiff's exclusive avenue of relief. As the Court

[7] Many of the documents before the Court were prepared pursuant to NEPA. The reason for this is straightforward: these documents provided a logical context for GDOT to clearly state its purpose in constructing the Road. As explained below, Plaintiff has not brought a NEPA claim in this lawsuit, and nothing in NEPA prevents him from seeking to enjoin GDOT in state court. GDOT's repeated allusion to the fact that certain federal agencies approved these NEPA documents also misses the point. Nothing in the federal NEPA review relieves GDOT of its obligation to refrain from acting arbitrarily and capriciously. GDOT also proffered no evidence regarding the nature of federal review of GDOT's own documents, other than that the federal government approved federal funding for the Project.

recognized at the hearing, Georgia law is clear that the Court may enjoin GDOT where it acts arbitrarily and capriciously, notwithstanding any potential federal remedies. Indeed, plaintiffs often allege both NEPA and state law claims in federal court, yet those courts do not find that NEPA precludes the state law claims. *See, e.g., Yorkshire Towers Co., L.P. v. United States DOT*, No. 11 Civ. 1058, 2011 U.S. Dist. LEXIS 137965, at *19 (S.D.N.Y. Dec. 1, 2011). Plaintiffs may also bring NEPA claims in federal court after bringing state law claims in state court. *See Morningside-Lenox Park Asso. v. Volpe*, 334 F. Supp. 132, 137-38 (N.D. Ga. 1971).

Contrary to GDOT's belated assertion, nothing in NEPA changes this result. Indeed, NEPA simply does not preempt state law. *See Jasso v. Citizens Telecomms. Co. of Cal., Inc.*, No. CIV S-05-2649, 2007 U.S. Dist. LEXIS 54866, at *19-21 (E.D. Cal. July 30, 2007) (As a procedural statute that only applies to federal agencies, nothing in NEPA preempts state law tort claims). GDOT has the burden to prove federal preemption, and it has not even attempted to meet that burden here. *Wet Walls, Inc. v. Ledezma*, 266 Ga. App. 685, 686-687 (2004).

Instead, GDOT merely argues that Plaintiff must exhaust administrative remedies before bringing a NEPA claim. *See* GDOT's Letter Brief (citing *Chattooga Conservancy v. Jacobs*, 373 F. Supp. 2d 1353, 1369 (N.D. Ga. 2005)). It is undisputed that Plaintiff has brought his concerns to GDOT's attention throughout the NEPA process. Thus, Plaintiff has fully satisfied any exhaustion requirement and could potentially file a NEPA claim if he chose to do so. *See, e.g., Pac. Coast Fed'n. of Fishermen's Ass'ns v. United States DOI*, No. 1:12-CV-01303, 2013 U.S. Dist. LEXIS 32598, at * 10-14 (E.D. Cal. 2013). That Plaintiff does not challenge NEPA in this action is wholly irrelevant to whether this Court can enjoin GDOT under state law. Accordingly, GDOT's Motion to Dismiss should be denied, notwithstanding GDOT's meritless NEPA argument.

D. Alternatively, the Court should Wait to Decide the Merits of Plaintiff's Claims Given that this Lawsuit is still in its Infancy

Alternatively, the Court should postpone ruling on GDOT's Motion to Dismiss, as a final adjudication on that Motion would be premature at this early stage of the case because determination of GDOT's Motion is inextricably tied up with the merit of Plaintiff's claims. Pursuant to O.C.G.A. § 9-11-12(d), the Court has discretion to defer ruling on issues of sovereign immunity and subject matter jurisdiction until trial. *DOT v. Dupree*, 256 Ga. App. 668, 672, n. 1 (2002).[8] This is particularly true, where, as here, the merits of the case and GDOT's sovereign immunity defense are inextricably intertwined. *Id.* at 672. In fact, "such deferral would constitute the **better practice** to avoid the merits of the case." *Id.* at 672 (emphasis added).

Georgia appellate courts have repeatedly affirmed trial court rulings denying GDOT's sovereign immunity arguments raised in motions to dismiss. *See Dupree*, 256 Ga. App. at 672; *see also Steele v. Ga. DOT*, 271 Ga. App. 374, 381 (2005) (reversing in part trial court order granting GDOT motion to dismiss based on sovereign immunity); *cf. Ctr. for a Sustainable Coast, Inc. v. Ga. Dep't of Natural Res.*, 319 Ga. App. 205, 209 (2012) (trial court erred in dismissing suit seeking injunction based on sovereign immunity because plaintiff alleged that department acted *ultra vires*, a well-recognized exception to sovereign immunity).

The framework adopted in *DOT v. Dupree* is particularly relevant here. 271 Ga. App. 374. There, the plaintiff alleged that GDOT negligently widened a highway from two to five lanes without providing a traffic control device. *Id.* at 669-70. GDOT moved to dismiss the suit

[8] Under Georgia law, the sovereign immunity issue does not address the merits of the case, but instead merely implicates the Court's subject matter jurisdiction. *DOT v. Dupree*, 256 Ga. App. 668, 671 (2002). In some unique cases such as this one, however, the determination of subject matter jurisdiction and waiver of sovereign immunity are wholly coextensive with the determination of the merits of the case.

based on sovereign immunity. *Id.* at 671. The trial court held a § 9-11-12(d) hearing, and after considering the evidence, denied GDOT's motion to dismiss. *Id.*

The Georgia Court of Appeals affirmed, finding that whether GDOT acted negligently went to the heart of plaintiff's claim on the merits, as well as GDOT's sovereign immunity argument. Because the evidence suggested that a "waiver of sovereign immunity had possibly occurred," the trial court did not err in allowing the suit to proceed to trial. *Id.* at 672, 676 ("[W]here the issues of liability and subject matter jurisdiction are so intertwined that to decide subject matter jurisdiction requires determination of the merits, [the trial court should] make a preliminary determination and defer any final decision until trial on the merits.").[9]

Assuming the Court does not outright deny GDOT's Motion to Dismiss, it should follow *Dupree* and postpone ruling on GDOT's sovereign immunity argument until Plaintiff has had a full and fair opportunity to develop the merits of his case. Despite Plaintiff's considerable efforts during the twenty-one day discovery period, substantial factual and legal development and analysis remains to be completed before Plaintiff can fully try his case on the merits. At this preliminary stage, Plaintiff has produced substantial evidence demonstrating that GDOT acted arbitrarily in failing to provide sufficient justification for the Project. At a minimum then, Plaintiff should be permitted to develop his claims further through discovery and trial.

[9] *Dupree* involved an exception to sovereign immunity under the Georgia Tort Claims Act. Its reasoning and analysis is equally applicable here, however. Just as the facts supporting the *Dupree* plaintiff's cause of action were coextensive with GDOT's sovereign immunity based on the Tort Claims Act, Plaintiff's claim here that GDOT acted arbitrarily and capriciously with respect to the Project is coextensive with GDOT's sovereign immunity argument that it did not act arbitrarily and capriciously. *See Dupree*, 256 Ga. App. at 673-74. As such, *Dupree* is directly on point and controlling.

IV. CONCLUSION

For the foregoing reasons and authorities, Plaintiff Lindsay D. Holliday respectfully requests that the Court deny GDOT's Motion to Dismiss based on sovereign immunity, or alternatively, postpone ruling on that argument until trial according to the practice and process endorsed by *DOT v. Dupree*.

Respectfully submitted this 23rd day of April, 2013.

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STATE OF GEORGIA

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing PLAINTIFF LINDSAY D. HOLLIDAY'S BRIEF IN OPPOSITION TO DEFENDANT'S SOVEREIGN IMMUNITY ARGUMENT upon all counsel of record in the above-styled case by electronic mail and by depositing a copy of same into the United States Mail, with proper postage affixed thereto, and addressed as follows:

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