IN THE SUPREME COURT
STATE OF GEORGIA

WILLIAM GOODELL *Appellant/Defendant,* v. MAGGIE MOULTON, *Appellee/Plaintiff.*	Case No: S25G1418 Court of Appeals Case No.: A25A0273

APPELLANT'S BRIEF

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I. INTRODUCTION

This case involves what this Court has **repeatedly** recognized as a fundamental Constitutional right – a Georgia citizen's privacy interest in his or her medical records and information. As this Court has recognized, the bedrock constitutional right to privacy, recognized for more than a century as being enshrined in the Georgia Constitution, extends to protect "the personal medical records of this state's citizens," *King v. State*, 272 Ga. 788, 790 (2000) (*King I*), including the "information contained within." *Gates v. State*, 317 Ga. 889, 892 (2023) (citing *King I* and collecting cases).

This Court granted *certiorari* to examine the extent to which a civil litigant should ever be permitted to use the civil discovery process to obtain the private medical information of an opponent who has neither consented to the disclosure, nor waived his constitutionally protected right to medical privacy.

The top-line takeaway is this: A civil litigant in this State – **involuntarily** pulled into a lawsuit – cannot be compelled over objection to produce personal medical records and information, even if arguably relevant to contested issues in a litigation, absent a waiver of

that constitutional privacy right. The reason is that any abrogation of a person's fundamental right to medical privacy must be narrowly tailored to serve such a compelling interest, and civil discovery as a general matter does not constitute such an interest. So the disclosure of an unconsenting, non-waiving litigant's private medical information in a civil matter should be permitted – if ever – only in rare and unusual circumstances.

This is not such a case.

In the litigation below, Appellant **William Goodell** has been forced to defend his medical privacy rights against intrusion by his disgruntled former mistress, Appellee **Maggie Moulton**. After their break-up, Moulton sued Goodell, leveling all manner of derogatory allegations against him in support of such frivolous claims as breach of the promise to marry her and fraudulent inducement, via the funding of her lavish lifestyle. Although most of Moulton's claims have been dismissed, a few remain, including the count giving rise to the issue here.

In that count, Moulton has accused Goodell of infecting her with the herpes virus. Armed with this allegation, Moulton now claims

entitlement to the discovery of more than a decade's worth of Goodell's medical records. Not surprisingly, Goodell has objected to this unwelcome and unwarranted intrusion into his private medical history.

Although the trial court rejected Moulton's efforts to compel the disclosure of Goodell's medical information, the Court of Appeals vacated that ruling, concluding that the trial court had "misappl[ied] the law." But what "law" the Court of Appeals was referring to is unclear; prior to the Court of Appeals' decision, there was **no authority** holding that a civil litigant who objects to the disclosure of his private medical information and who has not waived his right to medical privacy can nonetheless be compelled to produce his medical information in civil discovery.

Recognizing the implications of the Court of Appeals' ruling on this first-impression issue, this Court granted a writ of *certiorari* and posed four questions to bring focus to the framework. The answers to these questions, taken together, yield the conclusion that the abrogation of an individual's fundamental right to medical privacy, through the compelled disclosure of private medical information as to which he has not waived his privacy right, must satisfy strict scrutiny – a high hurdle

that a litigant in a civil matter will rarely, if ever, surmount.

In this case, Moulton has not come even vanishingly close to surmounting that hurdle. For that reason, Goodell's fundamental medical privacy right remains intact, and the trial court correctly held that his information was shielded from compelled disclosure.

II. STATEMENT OF JURISDICTION

The Georgia Constitution authorizes this Court to "review by certiorari cases in the Court of Appeals which are of gravity or great public importance." Ga. Const. of 1983, Art. VI, § VI, Par. V. Pursuant to that authority, this Court granted the writ of certiorari in this case on January 21, 2026.[1]

III. CERTIORARI QUESTION

In its Order granting the writ of certiorari, this Court posed the following questions:

1. What is the nature and scope of the right to privacy at issue in this case?

2. What is the substantive standard a trial court should apply in determining when, if ever, that right should give

[1] On February 5, 2026, this Court granted Appellant's motion for an extension of time to file his Appellant's Brief, extending his deadline for filing to March 2, 2026. *See* Exhibit A.

way to other interests? What is the burden of proof on the party asserting those other interests?

3. Assuming that such a right should ever give way to those other interests, what limitations must be placed on the use of information otherwise protected by the right?

4. Assuming that the information at issue here would otherwise not be subject to disclosure to the plaintiff, has the defendant waived his right to protect the information from disclosure to the plaintiff?

Appellant's answers to these questions are set forth in detail below.

IV. STATEMENT OF THE CASE

A. Moulton's Complaint

On September 22, 2023, Moulton filed her Complaint against Goodell, asserting six substantive counts, plus counts for attorneys' fees and punitive damages. V2-33-73.

As detailed in the Complaint, Moulton and Goodell maintained a romantic relationship for more than 12 years. V2-34-35, 45 (Complaint, ¶¶ 5-13, 92). During that entire time period, Goodell was married to his wife of more than 40 years, who lives in New York, the couple having been romantically and physically separated for years. V2-34, 45 (Complaint, ¶¶ 9-10, 92). Moulton knew that Goodell was married from early on in the parties' relationship. V2-34 (Complaint, ¶ 8); V4-488-89.

Moulton herself is a veteran of marriage, having been married and divorced four times, with several relationships in between. V4-653-69 (history of at least four marriages; claims of total abstinence before and between marriages); 720-24 (other relationships involving sexual disease exposure, prior to meeting Goodell).

During their relationship, Goodell loaned Moulton $500,000 to purchase a luxury condominium in Buckhead. V2-36-37 (Complaint, ¶¶ 23-26). Later, the parties moved in together, as divorce proceedings were initiated between Goodell and his wife. V2-38-39 (Complaint, ¶¶ 35, 42). In 2021, Goodell and Moulton got engaged. V2-42-43 (Complaint, ¶¶ 71-72). But in June 2023, Moulton ended the relationship. V2-45 (Complaint, ¶ 93). Some three months later, she filed this lawsuit. V2-33.

In Count I of the Complaint, Moulton alleged that the $500,000 loan Goodell made to her was "exploitative" and thus violated the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1000, *et seq.*[2] V2-45-

[2] Moulton later amended the Complaint to add a count alleging in the alternative that the loan was in fact a "gift," which would make her first version of events wholly frivolous. V2-151-52.

47. In Counts II and III, Moulton alleged that Goodell breached his promise to divorce his wife and marry her and fraudulently induced her to stay in the relationship by, among other things, paying "essentially all of [her] personal expenses." V2-47-51 (quoted language at Complaint, ¶ 128). Count IV alleged promissory estoppel, in that Moulton relied to her detriment on Goodell's promise to "provide for all of her financial needs for the rest of their lives,"[3] and Count V alleged unjust enrichment, in that Goodell was the beneficiary of Moulton's "services as a home decorator and hostess" as well as her "encouragement and support." V2-51-54 (quoted language at Complaint, ¶¶ 133, 146, 148). And finally, in Count VI – seemingly, almost as an afterthought, Moulton alleged that Goodell transmitted the herpes virus to her. V2-54-55.[4]

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[3] The "detrimental" part of Moulton's reliance, it seems, is that because Goodell gave her too much money and too lavish a lifestyle, Moulton was lulled into a life of luxury in which she foreswore entering the employment market, and thus forfeited some unbeknownst eventual Social Security benefits she might have received.

[4] Perhaps needless to say, Moulton's scattershot complaint was sent over before suit was filed, along with a demand for money in exchange for burying the issues. That demand was refused.

After filing his Answer, Goodell moved to dismiss Counts I through V for failure to state a claim. V2-127-49. The trial court granted the motion as to Counts II through V, finding that the purported "promise to marry" was unenforceable because Moulton knew Goodell was already married; the Complaint failed to allege any actionable false representation or an intent to deceive; and Moulton could not justifiably rely on the unenforceable promise to marry. V2-179-90.

B. Moulton's Efforts to Obtain Goodell's Medical Information

Her claims winnowed, Moulton set her sights on Goodell's medical information.[5] Three weeks after the dismissal order was entered, Moulton filed a Motion to Compel. The target of that Motion involved Goodell's responses to various interrogatories, requests for production,

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[5] Discovery would later reveal that Moulton had been gathering Goodell's prescription medications from their bathroom, and photographing them as evidence, for **years** before the couple broke up. Along the way, Moulton helped herself to several private medical records (paper summaries of office visits, for example) and kept a record of those as well. One can speculate as to the purpose behind such surreptitious behavior, as Moulton had no explanation why she would need to gather and keep such information in any normal relationship.

and requests for admission, but boiled down to medical records and information ostensibly pertaining to Goodell's alleged herpes diagnosis — discovery requests to which Goodell had objected on privacy grounds. V2-191-271. These requests sought the identification of **all** of Goodell's primary care providers since 2010 and **all** medical labs where he had undergone testing since 2020, and the production of records from **all** medical visits since 2010 and **all** lab reports since 2020. *See* A24I0246, Application Exh. 4, at pdf page numbers 23 (Interrogatory Nos. 1 & 2); 28 (Requests for Production Nos. 1 & 2). The appetite for pursuing those overbroad requests quickly died out.

The following month, Moulton filed a Motion for Qualified Protective Orders to seek records from two of Goodell's specific health care providers. V3-305-91. Moulton also sent a subpoena to one of Goodell's physicians. *See* V2-274-75. Goodell responded in opposition to Moulton's motions and moved to quash the subpoena. V2-272-304; V3-416-27.[6]

[6] The Motion to Quash has not been included in the record transmitted to this Court, but the fact of its filing is noted at V2-275 and V3-305.

Following a hearing, V8, the trial court denied Moulton's motions, finding that the information Moulton was seeking was protected by Goodell's right to medical privacy and that Goodell had not waived that right, either by virtue of (a) his past cohabitation with Moulton, (b) his having appointed her, for a period of time, as his health care agent if he were incapacitated and unable to care for himself, or (c) his denial of the allegations in Count VI of the Complaint. V3-437-43. Moulton filed an application for interlocutory appeal in the Court of Appeals, which was granted.

C. The Court of Appeals' Opinion

The Court of Appeals vacated the trial court's order in part[7] and remanded. *Moulton v. Goodell*, 375 Ga. App. 739 (2025). The Court reasoned that, because the information Moulton sought was (a) relevant to a cause of action recognized under Georgia law and (b) not subject to any statutory privilege, *see* O.C.G.A. § 24-5-501 (a), it was discoverable, and "the trial court should have issued orders narrowly tailoring the

[7] The portion of the order that was left undisturbed related to certain of Goodell's financial information, which was not at issue in the appeal.

discovery to the necessary information." 375 Ga. App. at 471. In other words, the Court held that a plaintiff's right to discovery effectively trumps the defendant's right to medical privacy whenever the medical information sought is relevant to a claim recognized as a tort under Georgia law.

In reaching this conclusion, the Court of Appeals pointed out that this State recognizes a cause of action for the tortious transmission of herpes[8] and determined, in essence, that the existence of this cause of action necessarily gives rise to a plaintiff's right to obtain the information needed to prove such a claim. 375 Ga. App. at 741. As to the constitutional right to medical privacy, the Court opined that "this right is protected by the prohibition of disclosure of records without either consent of the subject or due process via a hearing at which the subject of the records has a right to object." *Id.* at 742.

Essentially, the Court concluded that because Goodell had the right to object and seek court review before being compelled to hand

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[8] *See generally Long v. Adams*, 175 Ga. App. 538, 539 (1985) (holding as a matter of first impression that an unmarried person who contracts genital herpes from his unmarried sexual partner could sue for damages under traditional negligence principles).

over his information, his constitutional right to medical privacy was afforded adequate protection — even if ultimately he would be forced, unwillingly, to produce the information.

Put more starkly, the Court of Appeals concluded that Georgia **courts**, in recognizing a claim in tort for the intentional or negligent transmission of herpes, intended to abrogate the medical privacy rights of any citizen unfortunate enough to be accused — groundlessly or not — of committing that tort.

V. ARGUMENT AND CITATION TO AUTHORITIES

A. Standard of Review

Although the order giving rise to the appeal underlying the granted *certiorari* petition is a discovery order that would ordinarily be reviewed for an abuse of discretion, *see Alexander Props. Grp., Inc. v. Doe*, 280 Ga. 306, 307 (2006), because the dispute turns on the resolution of a constitutional question, the proper standard of review is *de novo*. *See Premier Pediatric Providers, LLC v. Kennesaw Pediatrics, P.C.*, 318 Ga. 350, 356 n.3 (2024) (noting that "mixed question[s] of constitutional law . . . generally call[ ] for de novo review."

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B. The right to medical privacy is a broad guarantee, rooted in the Due Process Clause of the Georgia Constitution, that protects the confidentiality of information about the physical state of one's body from disclosure without consent.

1. The Right to Privacy Generally

For more than a century, Georgia courts have recognized that Georgia citizens have "liberty of privacy" guaranteed by the Due Process Clause of the Georgia Constitution. *Powell v. State*, 270 Ga. 327, 329 (1998). In the seminal decision recognizing this right, this Court opined:

> The right of privacy has its foundation in the instincts of nature. It is recognized intuitively, consciousness being the witness that can be called to establish its existence. Any person whose intellect is in a normal condition recognizes at once that as to each individual member of society there are matters private and there are matters public so far as the individual is concerned. Each individual as instinctively resents any encroachment by the public upon his rights which are of a private nature as he does the withdrawal of those of his rights which are of a public nature. A right of privacy in matters purely private is therefore derived from natural law.
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> The right of privacy within certain limits is a right derived from natural law, recognized by the principles of municipal law, and guaranteed to persons in this State by the constitutions of the United States and of the State of Georgia, in those provisions which declare that no person shall be deprived of liberty except by due process of law.

Pavesich v. New England Life Ins. Co., 122 Ga. 190, 194, 197 (1905). *See* Georgia Const. of 1983, Art. I, Sec. I, Par. I ("No person shall be deprived of life, liberty, or property except by due process of law.").[9]

Pavesich was in fact the first decision in the nation from a state court of highest resort to recognize a constitutional right to privacy. *Powell*, 270 Ga. at 329; *Gouldman-Taber Pontiac v. Zerbst*, 213 Ga. 682,

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[9] The constitutional guarantees of due process have not changed, either before or after the *Pavesich* decision in 1905, or in the versions of the Georgia Constitution before or since. *See Raffensperger v. Jackson*, 316 Ga. 383, 388 (2023) (noting recognition of rights bestowed under "each successive Constitution following the addition of the Due Process Clause in 1861"); *see generally* 1983 Georgia Constitution, Art. I, § I, ¶ I ("No person shall be deprived of life, liberty, or property except by due process of law"); *Current and Historical Georgia Constitutions & Related Materials* 54" https://digitalcommons.law.uga.edu/ga_constitutions/54 (confirmed March 2, 2026); *compare* 1861 Constitution, Art. I, § 4891 ("Rights of Citizens" - "No citizen shall be deprived of life, liberty, or property, except by due process of law") (available at https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1012&context=ga_constitutions (confirmed March 2, 2026). *See also Atlanta Indep. Sch. Sys. v. Lane*, 266 Ga. 657, 658 (1996) ("It is an established rule of constitutional construction that, where a provision has received a settled judicial interpretation and is then incorporated into a new constitution, it will be presumed to have been retained with the knowledge of the previous construction and the courts will be bound to adhere thereto.").

682 (1957).[10] During the century-plus since then, "the Georgia courts have developed a rich appellate jurisprudence . . . which recognizes the right of privacy as a fundamental constitutional right, 'having a value so essential to individual liberty in our society that (its) infringement merits careful scrutiny by the courts.'" *Powell*, 270 Ga. at 329 (quoting *Ambles v. State*, 259 Ga. 406, 408 (1989)).

This "liberty of privacy" inhabits various incarnations, including the right to "withdraw from the public gaze at such times as a person

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[10] The theoretical origins for recognition of the privacy right were first collected and explored in the late nineteenth century:

> The legal concept of a right to privacy was first espoused in an article in 4 Harvard Law Review 193, in 1890, entitled, "The Right to Privacy," by Samuel D. Warren and Louis D. (later U. S. Supreme Court Justice) Brandeis. It has been said that this one article "enjoys the unique distinction of having synthesized at one stroke a whole new category of legal rights and of having initiated a new field of jurisprudence." After the authors had discussed earlier efforts of the law to protect personal rights of the individual, as the "right to life," they concluded that the scope of such right had been broadened "to mean the right to enjoy life -- the right to be let alone . . ." 4 Harv. L. R. at 193.

Macon-Bibb Cty. Water & Sewerage Auth., 165 Ga. App. 348, 350 (1983) (citation omitted); *see also Gouldman-Taber Pontiac*, 213 Ga. at 683 (noting that the Warren/Brandeis law review article was the privacy right's "chief impetus to recognition as an independent right").

may see fit," *id.*; the right to be free from "the publicizing of one's private affairs," *Gouldman-Taber Pontiac v. Zerbst*, 213 Ga. at 683; the right "to define one's circle of intimacy," *Macon-Bibb Cty. Water & Sewerage Auth. v. Reynolds*, 165 Ga. App. 348, 350 (1983); and the right to protection from the "wrongful intrusion into [one's] private life," *Georgia Powers Co. v. Busbin*, 149 Ga. App. 274, 277 (1979); *see also Fincher v. State*, 231 Ga. App. 49, 53-54 (1998) (describing right to privacy as consisting of "two inter-related strands; one protects an individual's interest in avoiding disclosure of personal matters (the confidentiality strand) and the other protects an individual's interest in making certain personal decisions free of government interference (the autonomy strand)"). The scope of that right and liberty interest is, in fact, "far more extensive" than that of the privacy right guaranteed under the United States Constitution. *Powell,* 270 Ga. at 330.

2. The Right to Medical Privacy

More recently in the lineage of our privacy jurisprudence, our courts have recognized that the right to privacy encompasses an individual's right to maintain the confidentiality of his or her medical information. That incarnation of the privacy right was first recognized

by this Court more than a quarter-century ago in *King v. State* ("*King I*"), which declared without qualification that "the personal medical records of this state's citizens clearly are protected by th[e] right [to privacy] as guaranteed by our constitution." 272 Ga. 788, 790 (2000). Since then, this and other Georgia courts have repeatedly acknowledged the importance of this right. *See Gates*, 317 Ga. at 891(holding that defendant "had a constitutional right to privacy in his medical records" even against the State's claim of necessity); *Armstead v. State*, 293 Ga. 243, 245 (2013) ("This Court has held that Georgia citizens enjoy a state constitutional right of privacy to their medical records."); *Arby's Restaurant Grp., Inc. v. McRae*, 292 Ga. 243, 246 (2012) ("This Court has vigilantly protected the privacy rights of our citizens in their confidential health information and will continue to do so."); *King v. State*, 276 Ga. 126, 127 (2003) ("*King II*") ("individuals have a state constitutional right to privacy in their personal medical records"); *Gerguis v. Statesboro HMA Med. Grp., LLC*, 331 Ga. App. 867, 870 (2015) ("[p]ersonal medical records are protected by Georgia's constitutional right of privacy"); *Ussery v. Children's Health Care of Atlanta, Inc.*, 289 Ga. App. 255, 269 (2008) ("[p]ersonal medical records

are protected by Georgia's constitutional right of privacy"); *see also Nayani v. Bhatia*, 371 Ga. App. 44, 47-48 (2024) (recognizing that cause of action for invasion of privacy may lie for one's unauthorized accessing of another's medical information).

The medical privacy right protects not just one's tangible medical records but rather extends to **the information** contained in those records. As this Court stated in *King I*, "the patient . . . has a reasonable expectation of privacy in the **information** contained [in his or her medical records], since that data reflects the physical state of his or her body." 272 Ga. at 790 (emphasis added); *accord Gates*, 317 Ga. at 892 (quoting *King I* in this regard); *Scarbrough v. Columbus Consol. Gov't*, No. 4:10-CV-33 (CDL), 2011 U.S. Dist. LEXIS 78064, at *20-21 (M.D. Ga. July 19, 2011) (cleaned up) ("The Georgia Supreme Court recognizes that a patient's medical **information**, as reflected in the records maintained by his or her medical providers, is certainly a matter which a reasonable person would consider to be private.") (emphasis added).

The right to medical privacy operates to prohibit the unconsented-to disclosure of personal medical information except where its

production is "required by" State law. *King I*, 272 Ga. at 790 (individual's medical records "cannot be disclosed without her consent unless their production is **required by** the law of Georgia") (emphasis added); *Ussery*, 289 Ga. App. at 269 ("Personal medical records are protected by Georgia's constitutional right of privacy and cannot be disclosed without the consent of the patient unless their production is otherwise **required by** Georgia law.") (emphasis added). And as discussed below, as with any State action that infringes on a fundamental constitutional right, any law purporting to require the disclosure of an individual's medical information without consent must, in order to pass constitutional muster, satisfy strict scrutiny.

C. Abrogation of the right to medical privacy is permissible only if pursuant to a law that is narrowly tailored to serve a compelling state interest.

1. Strict Scrutiny Review

As a basic tenet of constitutional law, State action that interferes with the exercise of a fundamental right is subject to strict scrutiny, meaning that it can be justified "only when it is sufficiently related to a compelling state interest." *Nicely v. State*, 291 Ga. 788 (2012). "Substantive due process requires that state infringement on

fundamental rights be narrowly tailored to serve a compelling state interest." *State v. Jackson*, 269 Ga. 308, 310-11 (1998) (citing *Reno v. Flores*, 507 U.S. 292, 301-02 (1993)).

Because the right to privacy is a fundamental right, any authority permitting the abrogation of a person's right to privacy will pass constitutional muster only if it "is shown to serve a compelling state interest and to be narrowly tailored to effectuate only that compelling interest." *Powell*, 270 Ga. at 333 (invalidating anti-sodomy law as violative of right to privacy); *accord Phagan v. State*, 268 Ga. 272, 274 (1997) ("The right to privacy is a fundamental right and a government-imposed limitation on that right must undergo strict judicial scrutiny to determine whether the impingement serves a compelling state interest").

This is as true in the medical privacy context as in other privacy realms. *See King II*, 276 Ga. at 127-28 (medical privacy case; "When an individual challenges the State's action for violating the fundamental right to privacy, the State must show that its intrusion into the individual's private life serves a compelling state interest and is narrowly drawn to achieve that interest."); *King I*, 272 Ga. 788, 790

(criminal defendant's right to privacy in her medical records could be abrogated by prosecution only upon a showing that "it acted pursuant to a statute which effectuates a compelling state interest and which is narrowly tailored to promote only that interest").

2. Application in Criminal Cases

In a trio of cases, this Court has examined attempts to encroach upon medical privacy rights in the criminal context. In *King I*, the Court held that O.C.G.A. § 24-9-40(a)[11] – a statute setting forth the circumstances in which health providers were authorized to release a patient's medical information – could not constitutionally be applied to authorize the use of a subpoena to obtain an accused's blood-alcohol test results from a hospital without her knowledge. 272 Ga. at 792-94. Analyzing the statute's application under strict scrutiny, the Court had little trouble determining that "enforcement of the criminal laws" was a compelling state interest. *Id.* at 791. But the Court concluded that the statute, as applied, was not sufficiently narrowly tailored to justify the abrogation of the individual's privacy rights. *Id.* at 792; *see also King II*,

[11] This statutory provision is now found at O.C.G.A. § 24-12-1(a).

276 Ga. at 128 (explaining *King I*: "The problem in that case was that the statutory authority for the subpoena had no defined limits and, therefore, was not narrowly drawn to effectuate the State's compelling interest in enforcing criminal laws.").[12]

In *King II*, the Court held that the State's use of a search warrant **was** a constitutionally permissible means of obtaining an accused's medical records from a hospital. 276 Ga. at 126, 129. The Court reasoned that, unlike the subpoena in *King I*, the procedures required to obtain a search warrant – imposed both by the State and federal Constitutions and by Georgia law, *see* O.C.G.A. §§ 17-5-20 through 17-5-32 – were "narrowly tailored to satisfy the State's compelling interests." *Id.* at 128.

In the third case in the trio, *Gates v. State*, the Court held that an *ex parte* subpoena, issued under the authority of O.C.G.A. § 24-12-1 – the successor to the statute at issue in *King I* – was not a permissible

[12] This Court has recently cast doubt on some of the reasoning in *King I*, to the extent it "mixed language sounding in both substantive and procedural due process borrowed from federal law." *Gates*, 317 Ga. at 893 n.11. At the same time, however, the Court did not question *King I*'s core holding. *Id.*; *see also id.* at 894 (applying *King I*'s analysis).

means of obtaining an accused's medical records for use in a criminal prosecution. 317 Ga. at 894. This was so, the Court held, because – like the subpoena in *King I* and unlike the search warrant in *King II* – the procedure for obtaining an *ex parte* subpoena was not sufficiently narrowly tailored. *Id.*

The upshot of these cases is that (1) promoting public safety through the enforcement of criminal laws is unquestionably a compelling state interest that may justify the abrogation of medical privacy rights; but (2) any mechanism the State seeks to employ for that purpose will be closely scrutinized to ensure that the abrogation is both necessary to serve that interest and sufficiently limited in scope through robust procedural safeguards.

3. Application in Civil Cases

The above principles are instructive for the civil context, in which this Court is now asked to write on what is essentially a blank slate. To the extent any statute or other legal authority is relied on to justify a civil litigant's attempt to obtain the private medical information of her litigation adversary, that authority must be closely scrutinized for both the State interest it is purported to serve and the extent to which it is

tailored to serve that purpose. *See generally State of Ga. v. SisterSong Women of Color Reproductive Justice Collective*, 317 Ga. 528, 561 (2023) (Ellington, J., dissenting) (court must "interrogate, and not assume as a given, the state's claimed interest").

To be sure, the State does have some interest in promoting the efforts of litigants seeking redress for civil wrongs, but that interest is less weighty than its interest in maintaining public safety through the enforcement of criminal laws. *See generally Pavesich*, 122 Ga. at 199 (noting that searches of one's home or papers "for the purpose of enforcing a claim of one individual against another in a civil proceeding," were "never" sanctioned at common law, whereas such searches in "cases of public prosecutions" were permitted); O.C.G.A. § 17-5-20 (search warrant may issue only to law enforcement officers and not "upon the application of a private citizen or for his aid in the enforcement of personal, civil, or property rights"). So it is not at all a given that the pursuit of civil discovery is a sufficiently compelling State interest, at least in the abstract, to satisfy the first prong of any strict scrutiny analysis.

That being the case, although it is possible to identify one or more

statutory authorities under which a civil litigant might seek to compel the disclosure of her adversary's private medical information, the problem is that there is no apparent state interest sufficiently compelling to justify the application of such statutes under circumstances that would allow the abrogation of the medical privacy right.

For example, one potential basis for compelling the disclosures sought here is O.C.G.A. § 24-12-1(a), which Moulton has cited in support of her bid for Goodell's information. This Code section provides in relevant part that

> any physician, hospital, or health care facility releasing information . . . pursuant to law, statute, or lawful regulation, **or under court order** or subpoena shall not be liable to the patient or any other person.

(Emphasis added.)[13] Another potential basis is O.C.G.A. § 9-11-34(c)(2),

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[13] Notably – and as this Court has observed – on its face this statute only governs the circumstances under which health care providers are authorized to release medical information without liability; it does not provide an affirmative right for litigants to obtain that information. *See King I*, 272 Ga. at 791 (in discussing the virtually identical predecessor to O.C.G.A. § 24-12-1(a), observing, "[t]here is some doubt whether this enactment can even be construed as affirmative authority for a litigant to [obtain] the medical reports of an opposing party . . . . Arguably, the statute provides only a protective shield to those health care providers who release a patient's medical records" in accordance with the statute).

which – although not relied on by Moulton – does expressly authorize litigants in civil discovery to seek medical information from third-party health providers, subject to certain procedural requirements. But, again, in the absence of any authority supporting the notion that general civil discovery is a compelling state interest, any attempt to employ either of these statutory mechanisms must fail.

Moulton might attempt to argue that there is a compelling state interest in seeking relief for the recognized cause of action for tortious transmission of a sexually transmitted disease, and that one or both of these statutes, as applied here, would serve that purpose. This argument falls apart quickly, however, when it is considered that (1) the tort claim being pursued here is the product of a judicially crafted extension of general negligence principles, **not** a legislative determination on public policy grounds, *see generally Commonwealth Inv. Co. v.* Frye, 219 Ga. 489, 499 (1963) ("the legislature, and not the courts, is empowered by the Constitution to decide public policy, and to implement that policy by enacting laws"); and (2) none of the cases recognizing this tort confronted the issue of medical privacy at all. *See Long*, 175 Ga. at 539 (first recognizing the tort; no analysis of any

issues regarding access to medical records or medical privacy); *Beller v. Tilbrook*, 275 Ga. 762 (2002) (similarly, involving no analysis of the discoverability of private medical information); *Doe v. Roe*, 362 Ga. App. 23 (2021) (also involving no mention of medical privacy issues). For a court to effectively abrogate constitutional rights by recognizing a particular cause of action would be a gross usurpation of legislative power – a result it can be assumed none of the *Long*, *Beller*, or *Doe* courts intended. *See generally Ga. Dep't of Human Servs. v. Addison*, 304 Ga. 425, 434 n.9 (2018) ("[A] question which merely lurks in the record and is not to be considered as having been so decided as to constitute precedent.").

In sum, in the absence of a state interest sufficiently compelling to justify the abrogation of one litigant's medical privacy rights in service of his opponent's desire for civil discovery, such abrogation is simply not permitted under Georgia law.

D. Any abrogation of the right must be narrowly limited as to both scope of information and uses to which information may be put.

As a hypothetical matter, if there ever were a state interest sufficiently compelling to justify abrogation of a litigant's medical

privacy rights, the demands of strict scrutiny militate that the means of such abrogation must be narrowly tailored to promote only the interest to be served. *King I*, 272 Ga. at 790. What that might look like is unclear. One might look to the procedural safeguards prescribed under the federal Health Insurance Portability and Accountability Act ("HIPAA") for guidance. *See* 45 C.F.R. § 164.512(e)(1)(v) (providing for "qualified protective orders" under which litigants are prohibited from using or disclosing protected health information for purposes other than litigation and required to return or destroy such information upon the litigation's conclusion).[14] One could also employ other confidentiality protections typically found in protective orders of all stripes, including the sealing of filing to prevent public disclosure and requiring of

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[14] It should be noted that the "qualified protective order" mechanism does not afford any substantive basis for abrogating the constitutional right to medical privacy. Rather, a qualified protective order is simply a device provided for under HIPAA to limit the scope of information released and the permissible uses of such information, **after the subject of the information has already waived his right to privacy** by placing his medical condition or treatment at issue. *See Baker*, 288 Ga. at 337-40. It is a shield against impermissible uses and disclosures of a litigant's medical information once the right to privacy has been waived, **not** a sword by which an opposing party can extract the medical information of a litigant who has not waived his privacy right. *See id.*

agreements by third parties to maintain confidentiality.

But it should be noted that procedural protections are of **no value** in assessing the threshold question of whether a sufficiently compelling state interest exists to justify the abrogation of a fundamental right in the first place. Absent such an interest, no amount of procedural protections will suffice to justify the abrogation of the right. *See generally Venticinque v. Lair*, 323 Ga. 169, 177 n.7 (2025) (highlighting distinction between substantive and procedural due process rights); *Gates*, 317 Ga. at 893 n.11 (recognizing that substantive and procedural due process are not interchangeable).

E. Goodell has not waived his constitutional right to medical privacy through his conduct, either before or during this litigation.

1. Waiver Generally

The notion that an individual may waive his right to privacy is well recognized in both case law and statute. O.C.G.A. § 24-12-1(a) (allowing for release of medical information in judicial proceedings upon "waiver by the patient"); *Moreland v. Austin*, 284 Ga. 730, 732 (2008) (recognizing waiver doctrine); *Pavesich*, 122 Ga. at 199 ("The right of

privacy . . . like every other right that rests in the individual, may be waived by him[.]").

> This waiver may be either express or implied, but the existence of the waiver carries with it the right to an invasion of privacy **only to such an extent as may be legitimately necessary and proper in dealing with the matter which has brought about the waiver. It may be waived for one purpose and still asserted for another;** it may be waived in behalf of one class and retained as against another class; it may be waived as to one individual and retained as against all other persons.

Pavesich, 122 Ga. at 199 (emphasis added); *accord McDaniel v. Atlanta Coca-Cola Bottling Co.*, 60 Ga. App. 92, 100 (1939).

In the medical privacy arena, waiver most commonly occurs when and "to the extent that the patient places his or her care and treatment or the nature and extent of his or her injuries at issue in any judicial proceeding." O.C.G.A. § 24-12-1(a). The law is clear that a **plaintiff** who puts his medical condition at issue by virtue of filing a lawsuit implicating his condition or treatment has waived any right to privacy in information that is the subject of his or her claims. *See Moreland*, 284 Ga. at 732 ("Georgia law is clear that a **plaintiff** waives his right to privacy with regard to medical records that are relevant to a medical condition **the plaintiff placed at issue** in a civil or criminal

proceeding.") (emphasis added); *Harris v. Tenet Healthsystem Spalding, Inc.*, 322 Ga. App. 894, 896 (2013) ("Georgia law has long held that once a **plaintiff puts her medical condition at issue** in a case, she waives her right to privacy with regard to any medical records that are relevant to that medical issue.") (emphasis added); *Orr v. Sievert*, 162 Ga. App. 677, 680 (1982) (right to privacy "was waived by Mrs. Orr **when she filed suit**") (emphasis added); *see also Baker v. Wellstar Health Sys.*, 288 Ga. 336, 338 (2010) (examining the scope of waiver by plaintiff in medical malpractice action).[15] It has also been held that a criminal defendant who asserts the affirmative defense of insanity effectively waives his right to medical privacy in his mental health records. *See Armstead*, 293 Ga. at 246 (noting that right of medical privacy may be waived "if the accused **affirmatively** places his mental capacity in issue in a civil or criminal proceeding" (emphasis added)).[16]

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[15] Similarly the Worker's Compensation Act provides that workers compensation claimants waive their right to privacy in medical information related to their claim. *See McRae*, 292 Ga. at 244 (citing O.C.G.A. § 34-9-207(a)).

[16] *Accord Rogers v. State*, 282 Ga. 659, 664 (2007) (criminal defendant who raised claim of "mental retardation" put his mental capacity at issue and thus waived privilege), *overruled on other grounds by Lane v. State*, 308 Ga. 10, 23 (2020); *accord Perkinson v. State*, 279

Together, these authorities establish that waiver by placing one's medical condition at issue requires that the individual affirmatively assert his medical treatment or condition as the basis for a legal claim or defense. That certainly has not happened here. And although there may be other ways for an individual to waive his right to medical privacy, Goodell has not done so here.

2. Goodell has not placed his medical condition at issue in this litigation.

Obviously, Goodell is not the plaintiff here, and he has asserted no affirmative defense that has anything whatsoever to do with his medical condition. Moulton, however, has contended that by **denying** the allegation that he has the herpes virus, Goodell has somehow placed his medical condition at issue. But Moulton has cited **no authority** in support of this proposition. That's because there isn't any.

As just discussed, all of the authority regarding an individual's placing his medical condition at issue involves the individual's **affirmatively asserting** his medical condition as the basis for a legal

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Ga. 232, 236 (2005); *Trammel v. Bradberry*, 256 Ga. App. 412, 424 (2002) (assertion of "affirmative defense[s]" putting mental capacity at issue waived privilege).

claim or defense – whether by filing a medical malpractice action or worker's compensation claim, *see, e.g., Baker*, 288 Ga. at 337 (waiver by filing medical malpractice suit); *McRae*, 292 Ga. at 244; or asserting an affirmative defense of insanity. *See Armstead*, 293 Ga. at 246. In such cases, the waiver is effectuated when the individual makes an affirmative assertion about his medical condition or treatment as the basis for a claim or defense.

But the undersigned is aware of no authority supporting the idea that a defendant in a civil suit somehow waives his right to medical privacy merely by answering the allegations in a suit filed against him.[17] Here, Goodell has done nothing more than answer the allegations

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[17] Other jurisdictions agree that privileges and constitutional rights are not waived upon unfounded accusation. *See*, *e.g.*, *Kraima v. Ausman*, 850 N.E.2d 840, 846 (Ill. App. 2006) (rejecting plaintiff's claim that defendant had placed his physical condition at issue so as to allow disclosure of his disability file; "In order for this exception to apply, the patient, *i.e.,* Dr. Ausman, not plaintiff, must have **affirmatively placed his physical condition in issue**"); *Pritchard v. Swedish-American Hosp.*, 547 N.E.2d 1279, 1288-89 (Ill. App. 1989) ("[P]laintiffs do contend that medical information pertaining to [Defendant] Dr. Runstrom is discoverable . . . since his physical condition has been placed in issue by virtue of plaintiffs' complaint. However, plaintiffs ignore the fact that for this exception to apply, the patient, Dr. Runstrom, rather than plaintiffs, must have **affirmatively placed his physical condition in issue**. Here, Dr. Runstrom has not affirmatively placed his condition in issue and, therefore, has not

in Count VI of the Complaint, as he was required to do under the Civil Practice Act. His doing so did not waive his right to medical privacy.[18]

3. Goodell did not waive his right by conduct during the relationship.

Moulton has also contended that Goodell nonetheless has waived his claim to medical privacy by virtue of certain conduct during their relationship. Specifically, she has asserted that he waived his medical privacy rights by sharing certain medical records with her, allowing her to accompany him to some of his medical appointments, and executing a Georgia Advance Directive for Health Care naming her as his health

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consented to the disclosure of this confidential medical information.") (cleaned up).

[18] The hypotheticals are something close to endless. A plaintiff could sue a defendant for fraud, claiming that the defendant was a habitual liar, and then demand the defendant's psychiatric records.

Or another plaintiff might sue for assault and battery, then demand a defendant's rehab records to fish around for an imagined anger management issues.

Or an auto accident victim, hoping to tack on a punitive damages claim, might go fishing for a defendant driver's record from any rehab stays.

It is simply the rule that medical records are protected until a **patient** waives any protection. That did not happen here.

care agent.[19] She has also claimed that he waived any claim of privacy as to his medications because they were "in plain view" in the parties' bathroom.[20] But again, there is no authority supporting the contention that any of these acts, whether alone or in combination, operate to waive an individual's medical privacy such that the disclosure of the individual's medical information may be compelled in litigation.[21]

With regard to the Advance Directive, it should be noted that Moulton's authority to act as Goodell's health care agent — and her

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[19] Not surprisingly, Goodell revoked that Advance Directive after Moulton ended their relationship.

[20] As an aside, these arguments, based on Moulton's ready access to Goodell's medical information and prescription medication — including Valcyclovir, a medication routinely prescribed to treat herpes — belie the premise underlying Count VI, that she was unaware of Goodell's health condition until her own diagnosis in May 2023. V2-54 (Complaint, ¶¶ 150-53). Despite her access to these various sources of information, Moulton admitted in her deposition that not until May 2023 did she ever ask Goodell — who never during their nearly 13 years together wore a condom during sex — whether he had ever been diagnosed with any sexually transmitted diseases. V4-481, 500-01, 505-06, 713-14. These facts expose the unseriousness of Count VI — a count obviously tacked on to enhance the embarrassment quotient of this lawsuit for Goodell.

[21] Of course, just because there has been no waiver does not mean Moulton must "unsee" or "unhear" what she personally witnessed during her relationship with Goodell, and she is free to testify about whatever information is within her personal knowledge.

authority to obtain his medical records — was to become effective "**only** if [he was] unable or [chose] not to make or communicate [his] own health care decisions," V2-254 (emphasis added) — a circumstance that never occurred. And if Moulton had ever had a right of access to Goodell's records as his health care agent, her authority to use and disclose them would not have extended to **using that information against him** in litigation, as the Advance Directive was clear that her access to his records and authority to disclose them was for the purpose only of his "ongoing health care." V2-246 As already noted, the law is clear that a waiver for one purpose does not operate as a general waiver, forevermore. *See Pavesich*, 122 Ga. at 199 (medical privacy right "may be waived for one purpose and still asserted for another"); O.C.G.A. §§ 24-12-11 ("The disclosure of confidential or privileged medical matter . . . pursuant to limited consent to disclosure, shall not serve to destroy or in any way abridge the confidential or privileged character thereof, **except for the purpose for which such disclosure is made**.") (emphasis added); 24-12-12 ("Persons to whom confidential or privileged medical matter is disclosed in the circumstances described in Code Section 24-12-11 shall utilize such

matter **only in connection with the purpose or purposes of such disclosure** and thereafter shall keep such matter in confidence.") (emphasis added); *see also Multimedia WMAZ v. Kubach*, 212 Ga. App. 707, 709 (1994) (noting, in context of tort of invasion of privacy, that the right of privacy "may be waived for one purpose and still asserted for another" and that "the scope of the waiver is related to and limited by the scope of the actions on which the waiver is based").

In sum, Goodell has not waived his fundamental constitutional right to medical privacy through any of his conduct, either before this litigation, or in the course of it.

VI. CONCLUSION

Simply being named as a defendant does not throw open the gates of rights otherwise walled off by the Georgia Constitution and decades of this Court's precedent. Litigants like William Goodell should not be forced to relinquish their fundamental right to the privacy of their medical information simply by defending themselves against a tort claim — even a claim to which that information might be relevant. Absent any applicable statutory or other legal basis that satisfies strict scrutiny, Goodell's medical privacy right cannot be abrogated. This

Court should conclude as much, reverse the Court of Appeals' decision, and remand the case with direction to affirm the judgment of the trial court.

Respectfully submitted, this 2nd day of March, 2026.

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

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of March 2026 filed a PDF copy of the foregoing via filing on the Court's SCED system, making it available to the Court, Clerk, and all counsel or parties registered with that platform. In addition, I have served via email PDF copies of the foregoing to the following counsel of record at the noted e-mail addresses, given the existence of a prior agreement that such mode of service will suffice to comply with Supreme Court Rule 14:

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EXHIBIT A

SUPREME COURT OF GEORGIA
Case No. S25G1418

February 5, 2026

The following order was passed:

WILLIAM GOODELL v. MAGGIE MOULTON.

Your request for an extension of time to file an appellant's brief in the above case is granted. An extension is given until March 2, 2026. A copy of this order MUST be attached as an exhibit to the document for which an extension is received.

Additionally, oral argument in this case is advanced from the May 2026 calendar to the June 2026 oral argument calendar. A copy of the June oral argument calendar will issue at least 20 days before the scheduled argument date.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.
Witness my signature and the seal of said court hereto affixed the day and year last above written.

, Clerk