



## Supreme Court of Georgia

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## SUMMARIES OF OPINIONS

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### **STATE OF GEORGIA v. SISTERSONG WOMEN OF COLOR REPRODUCTIVE JUSTICE COLLECTIVE et al. (S23A0421)**

The Supreme Court of Georgia has reversed a **Fulton County** trial court's decision that certain provisions of the state's Living Infants Fairness and Equality (LIFE) Act were void *ab initio*, or null from the beginning, and has sent the case back to the trial court to consider the merits of the other challenges brought by opponents of the Act.

The Georgia General Assembly passed House Bill 481, also known as the LIFE Act, in 2019, and it was signed into law by the governor. At issue in this appeal are Sections 4 and 11 of the LIFE Act, which criminalize, with certain exceptions, certain abortion procedures (Georgia Code § 16-12-141) and require a physician who performs an otherwise illegal abortion procedure to report to the state Department of Health which statutory exception justified the procedure (Georgia Code § 31-9B-3).

In 2020, the United States District Court for the Northern District of Georgia concluded that the LIFE Act's ban on certain abortion procedures was in direct conflict with binding U.S. Supreme Court precedent, including *Roe v. Wade* from 1973 and *Planned Parenthood of*

*Southeastern Pennsylvania v. Casey* from 1992. The federal district court entered an order declaring portions of the LIFE Act unconstitutional and permanently enjoining the LIFE Act’s enforcement.

However, the U.S. Supreme Court overruled its past decisions in *Roe* and *Casey* in the 2022 case *Dobbs v. Jackson Women’s Health Organization*, holding that the U.S. Constitution does not confer a right to abortion. Following the *Dobbs* decision, the U.S. Court of Appeals for the Eleventh Circuit vacated the federal district court’s order that had halted enforcement of Georgia’s LIFE Act and reversed the district court’s judgment.

A coalition of Georgia-based physicians, reproductive health centers, and membership groups (**SisterSong Women of Color Reproductive Justice Collective et al.**) filed a lawsuit against **the State** that challenged certain provisions of the LIFE Act. The coalition claimed that the certain provisions of the LIFE Act were void *ab initio* under Georgia law because they violated the U.S. Constitution as interpreted by federal constitutional precedent in force at the time of the LIFE Act’s enactment (primarily *Roe* and *Casey*). The coalition also claimed that certain provisions of the LIFE Act were invalid under the due-process, equal-protection, and inherent-rights provisions of the Georgia Constitution.

In November 2022, following a bench trial, the trial court issued an order declaring Sections 4 and 11 of the LIFE Act void *ab initio* and enjoining the State from enforcing them. The trial court reasoned that “controlling Georgia precedent” required it to assess the LIFE Act’s constitutionality based on “the legal environment that existed when H.B. 481 was enacted”—that is, based on *Roe* and cases stemming from it, rather than based on *Dobbs*. The trial court further reasoned that, because Sections 4 and 11 of the LIFE Act violated the U.S. Constitution as interpreted by the *Roe* line of cases, those sections of the Act were unconstitutional when enacted and were therefore void *ab initio*.

The trial court did not make any decisions on the merits of the coalition’s claims under the due-process, equal-protection, and inherent-rights provisions of the Georgia Constitution, and those claims were not part of this appeal. The Supreme Court of Georgia subsequently stayed the trial court’s order enjoining enforcement of the LIFE Act, and the Court [heard oral arguments in the State’s appeal on March 28, 2023](#).

Today, the Supreme Court of Georgia has reversed the trial court’s judgment, holding that the trial court erred in concluding, based on since-overruled decisions of the U.S. Supreme Court, that the LIFE Act violated the U.S. Constitution when the Act was enacted.

“The holdings of United States Supreme Court cases interpreting the United States Constitution that have since been overruled cannot establish that a law was unconstitutional when enacted and therefore cannot render a law void *ab initio*,” states today’s majority opinion, authored by **Justice Verda M. Colvin**.

Today’s majority opinion notes that the trial court’s ruling “rests on a faulty premise—that, in *Dobbs*, the United States Supreme Court changed not only its interpretation of the United States Constitution but also the meaning of the Constitution itself.” This premise, the majority opinion writes, “conflict[s] with well-established, foundational principles of law that are essential to our system of government.”

As the majority opinion explains, “the United States Constitution, not the United States Supreme Court, is the source of the Constitution’s meaning; the United States Supreme Court has no power to amend the Constitution through interpretation; and the text of the United States

Constitution has not been amended since the LIFE Act was enacted. Thus, the United States Constitution means today what it meant when the LIFE Act was enacted in 2019, even if the United States Supreme Court’s interpretation of the Constitution has changed.”

Today’s majority opinion further explains that Georgia courts must follow the U.S. Supreme Court’s most recent pronouncement on the meaning of the U.S. Constitution when determining whether a statutory law violates that Constitution.

“While ‘[i]t is the role of this Court, not the United States Supreme Court, . . . to construe the meaning of the Georgia Constitution,’ the same cannot be said about the United States Constitution. ‘[I]t is a fundamental principle that this Court is bound by the Constitution of the United States as its provisions are construed and applied by the Supreme Court of the United States.’ Thus, when the United States Supreme Court announces its interpretation of the United States Constitution, we are bound to apply that interpretation unless and until the decision is overruled,” Justice Colvin writes. “And when the United States Supreme Court overrules its own precedent interpreting the United States Constitution, we are then obligated to apply the Court’s new interpretation of the Constitution’s meaning on matters of federal constitutional law. It is clear from these well-established principles of Georgia law that a Georgia court must look to *Dobbs*—not *Roe*—in determining whether the LIFE Act was void *ab initio*.”

“Doing so,” the majority opinion states, “‘is not an act of judgment on our part’ but rather a simple ‘act of obedience,’ which is required of us by virtue of our position in the constitutional order.”

**Justice John J. Ellington** has written a dissenting opinion, stating that he believes the 2019 Act is unenforceable under Georgia’s void *ab initio* doctrine, which is grounded in Georgia’s constitution, because the Act was in violation of the U.S. Constitution when enacted.

“As the trial court correctly held, Section 4 of the 2019 Act was void when passed because its ban on most abortions after embryonic cardiac activity can be detected, which the parties agree occurs at approximately six weeks after a woman’s last menstrual period, would unduly interfere with a woman’s then-protected right under the United States Constitution to terminate a pregnancy before viability,” he writes, and the reporting requirement in “Section 11 falls along with Section 4.”

Justice Ellington further states that an act that is void when enacted “cannot spring to life because of any subsequent change in the law,” such as that “wrought by the *Dobbs* decision.” The provisions of an act that is void *ab initio* can become effective, he writes, only by re-enactment. Were the Georgia General Assembly to pass new legislation restricting abortion, that post-*Dobbs* legislative action would not be subject to review under pre-*Dobbs* federal precedent.

“I freely concede that, after the United States Supreme Court overrules its own precedent interpreting the United States Constitution, Georgia courts must follow the United States Supreme Court’s most recent pronouncement on that Constitution’s meaning. But the General Assembly, under the Georgia Constitution, must *also* follow that Court’s most recent pronouncement on the United States Constitution’s meaning.”

The majority opinion counters the dissenting opinion, stating that it “fails to adequately explain why Georgia law permitted, much less required, the trial court to apply now-overruled *Roe*-era precedent.” Although “the dissenting opinion asserts that . . . Georgia law contains a constitutional ‘doctrine’ under which state courts must determine whether a statute was void *ab initio* based on ‘[b]inding decisional law’ that existed when the statute was enacted,” the

majority opinion states, “the dissenting opinion fails to cite any authority establishing the existence of such a doctrine.”

*(Presiding Justice Nels S.D. Peterson was disqualified from this case, and Justice Andrew A. Pinson did not participate.)*

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### **BELL v. THE STATE (S22G0747)**

The Supreme Court of Georgia has reversed an intermediate appellate court’s decision which held that the evidence against **Cortney Bell**, related to the killing of her infant daughter, Caliyah, in 2017, was legally sufficient to support her conviction for contributing to the dependency of a minor.

“Because we conclude based on the facts of this case that the evidence was insufficient to authorize a jury to conclude that Caliyah’s death was not proximately caused by Bell’s conduct as alleged in the indictment, we reverse the judgement of the Court of Appeals,” **Justice John J. Ellington** writes in today’s unanimous opinion.

Court records state that Bell lived with her boyfriend and her children’s father, Christopher McNabb. The two smoked methamphetamine together the night before their two-week-old daughter, Caliyah, was killed. On the morning of Oct. 7, 2017, the couple woke up at 5 a.m. to feed and dress Caliyah. Bell then fell back asleep and woke up twice—once at the sound of McNabb’s phone and later when the couple’s two-year-old child woke Bell to tell her that Caliyah was missing. Bell called 911 after she could not find Caliyah but found the baby’s pajamas on the bathroom floor. Caliyah’s body was discovered the next day in a wooded area close to the home.

A Newton County jury initially found Bell guilty of murder in the second degree, cruelty to children in the second degree, and felony contributing to the dependency of a minor as a result of Caliyah’s death. (McNabb also was charged with murder and other crimes, and a jury found him guilty of all charges. His convictions [were affirmed by the Supreme Court in May 2022.](#))

The Georgia Court of Appeals, the state’s intermediate appellate court, reversed Bell’s convictions for second-degree murder and cruelty to children, concluding the evidence was insufficient to support those charges. However, the Court of Appeals confirmed her conviction for contributing to the dependency of a minor, concluding that although Bell’s “acts of neglect were not the sole proximate cause of the victim’s death, the evidence played a substantial part in [the victim’s] death and that death was a reasonably probable consequence of that neglect.” In support of its conclusion, the Court of Appeals relied on evidence showing that Bell used methamphetamine and marijuana on a regular basis and allowed McNabb and others to do the same in her house, and that McNabb had hit Bell both before and after Caliyah was born.

The Supreme Court granted certiorari review and [heard oral arguments in the case on April 20, 2023.](#)

The Supreme Court has concluded that the evidence in this case was insufficient to authorize the jury to conclude that Bell’s failure to provide proper parental care, as alleged by the State, was the proximate cause of Caliyah’s death. (The State in this case is represented by the Alcovy Judicial Circuit District Attorney’s Office.)

The Supreme Court also has rejected the State’s second theory of Bell’s guilt—that Caliyah’s death, even though directly caused by McNabb, was foreseeable because Bell failed “to provide proper parental care” by choosing to live with McNabb, who had been violent towards Bell.

“In summary, the evidence here showed that Bell went to sleep one night, checked on Caliyah early the next morning, and went back to sleep for four and one-half hours. The evidence further showed that while Bell slept, McNabb committed a violent crime that the State conceded was the direct and immediate cause of Caliyah’s death,” Justice Ellington writes. “There was no evidence that Caliyah’s death was a reasonably foreseeable consequence of Bell’s drug use or drug use in the home by McNabb or others or that it was reasonably foreseeable that McNabb would commit the horrific crimes that resulted in Caliyah’s death. And there was no evidence presented that showed Bell was a party to McNabb’s crimes, that she heard McNabb striking Caliyah and did nothing to stop him, or that she refused to provide Caliyah with potentially life-saving medical treatment.”

*[Justice Andrew A. Pinson is disqualified from this case.]*

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## **EUBANKS v. THE STATE (S23A0519)**

The Supreme Court of Georgia has affirmed the murder conviction and life sentence of **Jessica Eubanks**, stemming from the 2019 death of Amy Hughes.

According to court records, Eubanks lived with her boyfriend, Shawn Hughes, and his 40-year-old sister, Amy, who had Down syndrome and an IQ of 42. Eubanks used heroin and methamphetamine and kept a large supply of heroin in the home. One evening when Shawn was out, Eubanks invited two people over to buy heroin, and, during the transaction, Eubanks spilled the drugs. After trying to clean up, Eubanks left the home and Amy stayed there alone. The next morning, Amy was found dead of heroin toxicity.

A **Forsyth County** jury found Eubanks guilty of felony murder and drug-related crimes.

On appeal, Eubanks argued that the evidence at trial was insufficient to support her convictions. She contended that the drug-related charge on which her felony murder conviction rested—possession of a controlled substance with intent to distribute—was not inherently dangerous and did not lead to the cause of Amy’s death.

Eubanks further argued that the trial court erred by failing to give the jury certain instructions, by not granting her special demurrer because the indictment lacked enough detail about the manner in which her heroin possession caused Amy’s death, by admitting a hearsay statement into evidence, and by allowing a collection of videos showing Amy’s life to be shown to jurors.

The Supreme Court heard [oral arguments in this case on May 17, 2023](#). **The State** in this case is represented by the Bell-Forsyth Judicial Circuit District Attorney’s Office and the Office of the Attorney General of Georgia.

“Although Eubanks’s conviction tests the limits our felony-murder statute places on that offense, we conclude based on our precedent and the unusual facts of this case that the evidence was sufficient to authorize her conviction,” **Justice Andrew A. Pinson** writes in today’s opinion.

“Eubanks’s possession of heroin with intent to distribute was dangerous to human life under the circumstances of this case because it was foreseeable that keeping a large amount of a deadly drug in a home where a highly vulnerable person lived, and engaging in drug transactions in areas that person could freely access, could lead to that person being fatally exposed to the drug,” Justice Pinson writes. “The evidence authorized the jury to conclude that just such an exposure, while Amy was left home alone for hours with access to where Eubanks had spilled the heroin during a drug transaction, was the proximate cause of her death. And the evidence also authorized the jury to conclude that Amy’s death was caused in the commission of the predicate felony, because on the night Amy was fatally exposed to the heroin, Eubanks still constructively possessed the drug in the home with the intent to distribute it.”

Eubanks’ remaining claims also fail, the Court has concluded.

The trial court did not err by failing to instruct the jury about circumstantial evidence, intent, accident, proximate cause, criminal negligence, and the requirement that a predicate crime for felony murder be inherently dangerous, because those instructions “either were not warranted in this case or addressed points of law that were substantially covered by other instructions,” Justice Pinson writes in today’s opinion.

Today’s opinion also states that the indictment of Eubanks was constitutionally sufficient because it informed Eubanks of the facts she must meet at trial and allowed her to prepare her defense.

Any error by the trial court in admitting Amy’s hearsay statement that Eubanks was “mean” to her was harmless because it was “cumulative of other evidence and did not support the State’s theory of the case,” Justice Pinson writes.

