Court of Appeals effectively repeals Georgia RICO Act

The good news is that one principled judge in Georgia finally followed the law and argued that State government officials are not above the law in connection with Georgia RICO actions brought against documented, admitted criminal activity within the University System of Georgia. The majority, however, are still defending the status quo.

With one dissenter, a panel of the Georgia Court of Appeals ruled there is no recourse against Georgia government officials who commit criminal acts to harm a citizen of this State. Presiding Judge Andrews, writing for the panel, said it was an “imaginative” notion that State agencies and officials could be held accountable, but that it was just that, “imagination.”

The Court held that sovereign immunity barred former Georgia Perimeter College President Anthony’s Tricoli’s claims based on breach of contract and tortious injuries, as well as criminal felonies committed to harm Tricoli.

Six members of the seven-judge panel ignored the fact that the same felonies, such as the admitted knowing falsification of budget reports at Georgia Perimeter College (resulting in more than $9 million in state and federal funds that still cannot be accounted for) also caused serious harm , not just to Tricoli, but to the State of Georgia and its citizens and taxpayers, as prohibited by the Georgia RICO Act.

Tricoli brought the majority of his claims under Georgia’s RICO statute—which allows for both criminal prosecution and a civil action against any person who commits a pattern of crimes which the Legislature determined also harm the State, as well as individuals.

Though Andrews wrote that it was purely imaginative to think this law applied against the State or State officials, the law quite specifically asserts that it does provide for such claims. Moreover, public officials such as State Labor Commissioner Sam Caldwell have previously been subject both to criminal prosecution and civil actions under the RICO Act. In the case against Commissioner Caldwell, the Georgia Supreme Court examined the language of the RICO statute and explained step by step why public officials are not immune. The Court of Appeals ignored this binding Georgia Supreme Court precedent in its opinion holding the exact opposite--that State officials may not be sued under the RICO statute for felony crimes committed in office.

Most tellingly, the Court, in denying Tricoli’s appeal, completely ignored his claims for an injunction brought under the Georgia RICO Act. For it is expressly written in the Georgia RICO Act (not in the imagination of Tricoli’s counsel) that injunctive relief may be had against “governmental entities,” where a pattern of criminal offenses listed in the statute can be shown.

The criminal felonies alleged in Tricoli’s lawsuit— the knowing falsification of state agency budget reports--are documented and admitted by the State. Those crimes serve as RICO predicate acts under the statute—because they also harmed the State, as well as Tricoli.

Without specifying which exceptions applied to which claims, the panel similarly held that the State was immune for all torts committed against Tricoli under exceptions to the Georgia Tort Claims Act. The principal tort claim Tricoli alleged was fraud, and there is no exception for fraud under the Tort Claims Act. The opinion actually admits that not all the tort claims fall under the exceptions, stating that “virtually all” of them do. For the claims that admittedly do not fall under any exception, Tricoli should, without question, have a viable lawsuit.

The Court of Appeals also held that the mutually-signed, written offer and acceptance letter stating terms of Tricoli’s employment, and making his employment specifically subject to the policies of the Board of Regents, did not constitute a written contract—once again, making the state immune from Tricoli’s claims for breach of contract.

The Court did not address the fact that the identical written offer and acceptance form used by the Board of Regents had been held to be a valid written contract, waiving the state’s sovereign immunity, by the very same Court of Appeals in a prior case for breach of contract against Georgia Tech.

To bolster the conclusion contradicting its own precedent, the Court of Appeals held that even if Tricoli had a written contract, it was at-will, allowing termination at any time for any reason—ignoring completely the application of the Board of Regents policies that put specific limitations on the termination of a college president. There is no denying that these Regents’ policies were violated in the ouster of Tricoli from Georgia Perimeter. In fact, the Regents’ own records show that they went back after the fact and changed the policies to conform to the actions already taken against Tricoli.

The Court of Appeals also conveniently overlooked the fact that Tricoli was coerced and tricked into resigning, after the Regents had already violated their own policies and breached Tricoli’s contract, by the release of false information about him to the media and the promise of another job in the University System if he would quietly resign under that pressure.

We believe the law is more correctly stated in the dissent by Presiding Judge Miller, following the language of the statutes enacted by the Legislature to prevent a privileged elite in State government from breaking the law with impunity to harm other citizens of this State. We will appeal the decision to the Georgia Supreme Court—in particular the appeals court’s total failure to address the issue of injunctive relief, on which the law is quite clearly written in the Georgia RICO statute, but was never even mentioned in the Court of Appeals majority opinion.