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All laws specifically codified by the General Assembly of the State of Georgia through the 2025 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through May 12, 2025. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through May 12, 2025.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
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Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice Forms Annotated.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Seventh Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2025 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2025 supplement pamphlets and in the bound volumes of the Code.

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CONSTITUTION OF THE
STATE OF GEORGIA

Article

- I. Bill of Rights.
- II. Voting and Elections.
- III. Legislative Branch.
- VI. Judicial Branch.
- VII. Taxation and Finance.
- VIII. Education.

Law reviews. Teaching Constitutional Law,” see 74
For article, “The Enduring Crisis in Emory L. Rev. 48 (2025).

ARTICLE I
BILL OF RIGHTS

Section

- I. Rights of Persons.
- II. Origin and Structure of Government.

RESEARCH REFERENCES

ALR. 2022 to 2023 A.L.R. United States Su- parents in termination of parental rights
preme Court Review, 83 A.L.R.7th 1. proceedings, 87 A.L.R.7th 7.
“Quick take” condemnation, 83 Application of anti-SLAPP (Strategic
A.L.R.7th 5. Lawsuit Against Public Participation)
Circumstances posed by virtual hear- statutes to defamation claims brought by
ings that may violate due process rights of persons accused of sexual misconduct, 93
A.L.R.7th 3.

SECTION I
RIGHTS OF PERSONS

Paragraph

- XXX. Rights of certain individuals.

Law reviews. Large Gatherings Statewide,” see 37 Ga.
For article, “First Amendment: Execu- St. U.L. Rev. 197 (2020).
tive Order by the Governor Limiting

For annual survey of criminal law, see 71 Mercer L. Rev. 967 (2020).

Paragraph I. Life, liberty, and property.

Cross references.

Antisemitism protected class, § 50-1-12.

Law reviews.

For article, “Untangling the Market and the State,” see 67 Emory L.J. 243 (2017).

For article, “Exploring the Right to Die in the U.S.,” see 33 Ga. St. U.L. Rev. 1021 (2017).

For article, “Unbefriended and Unrepresented: Better Medical Decision Making for Incapacitated Patients Without Healthcare Surrogates,” see 33 Ga. St. U.L. Rev. 923 (2017).

For article, “Ending-Life Decisions: Some Disability Perspectives,” see 33 Ga. St. U.L. Rev. 893 (2017).

For article, “Distinctive Factors Affecting the Legal Context of End-Of-Life Medical Care for Older Persons,” see 33 Ga. St. U.L. Rev. 869 (2017).

For note, “Workin’ 9:00-5:00 for Nine Months: Assessing Pregnancy Discrimination Laws in Georgia,” see 33 Ga. St. U.L. Rev. 771 (2017).

For article, “Sex Crimes in the 21st Century: Human Trafficking, Pornography, and Prostitution Church, State and Sex Crimes: What Place for Traditional Sexual Morality in Modern Liberal Societies?,” see 68 Emory L.J. 837 (2019).

For article, “Sex Crimes in the 21st Century: Human Trafficking, Pornography, and Prostitution the Problems with Pornography Regulation: Lessons from History,” see 68 Emory L.J. 867 (2019).

For article, “Sex Crimes in the 21st Century: Human Trafficking, Pornogra-

phy, and Prostitution Changing Faces: Morphed Child Pornography Images and the First Amendment,” see 68 Emory L.J. 909 (2019).

For article, “Sex Crimes in the 21st Century: Human Trafficking, Pornography, and Prostitution Therapeutic Expression,” see 68 Emory L.J. 939 (2019).

For comment, “State Constitutions as a Check on the New Governors: Using State Free Speech Clauses to Protect Social Media Users from Arbitrary Political Censorship by Social Media Platforms,” see 69 Emory L.J. 111 (2019).

For article, “Transcript: Free Speech and Freedom of Religion,” see 35 Ga. St. U.L. Rev. 937 (2019).

For annual survey on criminal law, see 71 Mercer L. Rev. 69 (2019).

For article, “SB 47: Eligibility Expansion for the Georgia Special Needs Scholarship Program,” see 38 Ga. St. U.L. Rev. 83 (2021).

For note, “Facebook, Crime Prevention, and the Scope of the Private Search Doctrine Post-Carpenter,” see 56 Ga. L. Rev. 787 (2022).

For article, “The ‘Weaponized’ First Amendment at the Marble Palace and the Firing Line: Reaction and Progressive Advocacy Before the Roberts Court and Lower Federal Courts,” see 72 Emory L.J. 1143 (2023).

For article, “First Amendment Protections for ‘Good Trouble,’” see 72 Emory L.J. 1187 (2023).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

NECESSITY FOR NOTICE AND HEARING

POLICE POWER — BUSINESS

POLICE POWER — PROPERTY

2. TAKING PROPERTY FOR PUBLIC USE

4. ZONING

APPLICATION

3. EMPLOYMENT RELATIONSHIPS AND EMPLOYEES

4. FAMILY ISSUES

CRIMINAL CASES

2. PRE-TRIAL

4. SPECIFIC CRIMES

General Consideration

Due process clause does not expressly or by implication afford right of action against government. — Suit by physicians against state officials alleging that O.C.G.A. § 31-9B-1 et seq., regulating abortions, violated the state constitution, was barred by sovereign immunity under Ga. Const. 1983, Art. I, Sec. II, Para. IX, because there was no consent to such a suit. The Due Process Clause, Ga. Const. 1983, Art. I, Sec. I, Para. I, did not provide a private remedy for its enforcement, and the Judicial Review Clause, Ga. Const. 1983, Art. I, Sec. II, Para. V, did not conflict with sovereign immunity. *Lathrop v. Deal*, 301 Ga. 408, 801 S.E.2d 867, 2017 Ga. LEXIS 529 (2017).

Necessity for Notice and Hearing

Failure to provide notice and hearing before taking control over property. — In an action alleging a public nuisance, the trial court erred in granting the ex parte order appointing the receiver because the court violated the property owner's due-process rights under U.S. Const., amend. V and XIV and Ga. Const. 1983, Art. I, Sec. 1, Para. I and II, to notice and a hearing before granting the receiver virtually unfettered control over all aspects of the property's management. *Green Meadows Hous. v. Macon-Bibb County*, 372 Ga. App. 724, 906 S.E.2d 430, 2024 Ga. App. LEXIS 352 (2024).

Police Power — Business

Certification of lactation care providers. — Georgia Lactation Consultant Practice Act, O.C.G.A. § 43-22A-1 et seq., violated the plaintiffs' due process rights to practice their chosen profession of lactation care provider because the Secretary of State's proffered interest in promoting access to quality care was an insufficient basis upon which to authorize only International Board Certified Lactation Consultants to provide lactation care and services for

compensation given the court's consistent and definitive understanding of the scope of the due process right to practice one's chosen profession free from unreasonable government restrictions. *Raffensperger v. Jackson*, 316 Ga. 383, 888 S.E.2d 483, 2023 Ga. LEXIS 114 (2023).

Police Power — Property

2. Taking Property for Public Use

Insufficient compliance with O.C.G.A. § 22-1-9. — In a condemnation action, the court vacated the trial court's order adopting the special master's return as to the property value because none of the city's offers prior to 2014 satisfied the dictates of O.C.G.A. § 22-1-9(3) and the city took several years to comply with § 22-1-9(3). Because the city failed to comply with O.C.G.A. 22-1-9(3), and the owner did not acquiesce in or waive strict compliance with the statute, the city acted outside its authority by condemning the property, and its condemnation petition was dismissed. There is no need for the question of bad faith and to the extent that the Court of Appeals directed the trial court to do so on remand, the judgment is reversed. *City of Marietta v. Summerour*, 302 Ga. 645, 807 S.E.2d 324, 2017 Ga. LEXIS 927 (2017).

4. Zoning

Adequate state remedy for procedural irregularities in adoption of new zoning ordinance. — Trial court did not err in granting the city's motion for judgment on the pleadings on the plaintiffs' procedural due process claims as Georgia's Zoning Procedures Law (ZPL) provided the plaintiffs with an adequate state remedy for alleged procedural irregularities committed by the city in the adoption of a new zoning ordinance because the ZPL required local governments to provide property owners with a meaningful opportunity to be heard before enacting a zoning ordinance, not simply mere notice of a hearing, as the ZPL required that a local government conduct

Police Power — Property (Cont'd)

4. Zoning (Cont'd)

a public hearing on a proposed zoning ordinance before its adoption; and, if no public hearing was held, aggrieved property owners could sue to have the ordinance declared invalid. *Schumacher v. City of Roswell*, 344 Ga. App. 135, 809 S.E.2d 262, 2017 Ga. App. LEXIS 590 (2017).

Application

3. Employment Relationships and Employees

Requirement of state professional license. — Lactation care provider's due process and equal protection challenge to the Georgia Lactation Consultant Practice Act, O.C.G.A. § 43-22A-1 et seq., which required such providers to obtain a state license, was improperly dismissed; the Georgia Constitution recognized a substantive due process right to work in one's chosen profession. *Jackson v. Raffensperger*, 308 Ga. 736, 843 S.E.2d 576, 2020 Ga. LEXIS 344 (2020).

4. Family Issues

Grandparent visitation statute unconstitutional. — Order granting a grandparent visitation rights to the child of the grandparent's deceased son under O.C.G.A. § 19-7-3(d) was reversed because the statute was unconstitutional under the Georgia Constitution as violating the right of parents to the care, custody, and control of their children since the statute did not require clear and convincing evidence of imminent harm to the child. *Patten v. Ardis*, 304 Ga. 140, 816 S.E.2d 633, 2018 Ga. LEXIS 455 (2018).

Challenging abortion statute. — Dismissal of plaintiffs' suit was upheld because plaintiffs failed to show that they suffered an actual, particularized injury resulting from the Living Infants Fairness and Equality (LIFE) Act, 2019 Ga. Laws 711, § 1, as the LIFE Act regulates abortion, but neither plaintiff was pregnant when the complaint was filed; indeed, the complaint made clear that one plaintiff was not of childbearing age when the lawsuit commenced. *Doe v. Broady*, 369

Ga. App. 493, 893 S.E.2d 857, 2023 Ga. App. LEXIS 478 (2023), overruled in part, *Wasserman v. Franklin Cnty.*, 320 Ga. 624, 911 S.E.2d 583, 2025 Ga. LEXIS 15 (2025).

Judicial review of LIFE Act. — The Georgia Supreme Court must not assess the constitutionality of the LIFE Act (Georgia Living Infants Fairness and Equality Act (LIFE), 2019 Ga. Laws 711 (2019 Ga. HB 481)) based on what the United States Constitution meant when the LIFE Act was enacted in 2019, not based on Dobbs's 2022 constitutional analysis, and must not hold that the LIFE Act was void because it was inconsistent with "court interpretations of that period," namely, Roe-era precedents. *State of Ga. v. SisterSong Women of Color Reproductive Justice Collective*, 317 Ga. 528, 894 S.E.2d 1, 2023 Ga. LEXIS 234 (2023).

Criminal Cases

2. Pre-Trial

Miranda like warnings not required for persons arrested for DUI before asking to submit to breath test. — Supreme Court of Georgia held that neither Georgia's right against compelled self-incrimination, Georgia's right to due process, nor Georgia's statute prohibiting compelled self-incrimination, O.C.G.A. § 24-5-506, requires law enforcement to provide Miranda warnings to persons arrested for DUI before asking a person to submit to a breath test. *State v. Turnquest*, 305 Ga. 758, 827 S.E.2d 865, 2019 Ga. LEXIS 320 (2019).

Right to privacy in blood-alcohol tests. — In an action arising out of an automobile accident where the defendant was charged with, inter alia, DUI per se, the state violated the defendant's right to privacy by obtaining the defendant's medical records via an ex parte court order because the defendant had a constitutional right to privacy in the medical records, including the blood alcohol content test results. *Gates v. State*, 317 Ga. 889, 896 S.E.2d 536, 2023 Ga. LEXIS 261 (2023).

4. Specific Crimes

Disrupting meetings and other official business of the General Assembly. — O.C.G.A. § 16-11-34.1(a), which criminalizes conduct that is likely to

disrupt meetings and other official business of the General Assembly and its members and employees, was not unconstitutionally overbroad as it only regulated expression in the context of legislative meetings by a discrete group of elected officials, rather than all

gatherings; therefore, any infringement on protected expression was not substantial relative to its legitimate sweep. *Williams v. Powell*, 320 Ga. 221, 908 S.E.2d 599, 2024 Ga. LEXIS 257 (2024).

RESEARCH REFERENCES

ALR.

Clothing worn by criminal defendant in photograph in array shown by police to witness as factor in determination of whether circumstances of witness's identification of defendant, as person in photograph, were impermissibly suggestive as matter of state constitutional law, 60 A.L.R. 7th 4.

Police statements as factor in determination of whether circumstances of witness's identification of criminal defendant, as person in photograph within array, were impermissibly suggestive as matter of state constitutional law, 61 A.L.R.7th 5.

Mug shot and other distinctive characteristics of criminal defendant's photograph as factor in determination of whether circumstances of witness's identification of defendant in photographic array shown by police to witness were impermissibly suggestive as matter of state constitutional law, 62 A.L.R.7th 1.

Treatment or manner of display of photographs of defendant, or presence of defendant in prior physical show-up, physical lineup, or surveillance video, or police officer's nonverbal cues as factor in determination of whether circumstances of witness's identification of defendant in photographic array shown by police to witness were impermissibly suggestive as matter of state constitutional law, 63 A.L.R.7th 2.

Witness's identification of criminal defendant, as person in photograph shown by police, as resulting from impermissibly suggestive circumstances, as matter of federal constitutional law, where police showed single witness fewer than six photographs in one session, 1 A.L.R.7th 6.

Clothing worn by criminal defendant in photograph in array shown by police to witness as factor in determination of

whether circumstances of witness's identification of defendant, as person in photograph, were impermissibly suggestive as matter of federal constitutional law, 2 A.L.R.7th 2.

Distinctive quality of criminal defendant's photograph in array shown by police to witness as factor in determination of whether circumstances of witness's identification of defendant, as person in photograph, were impermissibly suggestive as matter of federal constitutional law, 3 A.L.R.7th 5.

Criminal defendant's hair color or style as factor in determination of whether circumstances of witness's identification of defendant in photographic array shown by police to witness were impermissibly suggestive as matter of federal constitutional law, 5 A.L.R.7th 5.

Criminal defendant's race or skin color as factor in determination of whether circumstances of witness's identification of defendant in photographic array shown by police to witness were impermissibly suggestive as matter of federal constitutional law, 6 A.L.R.7th 5.

Criminal defendant's facial hair as factor in determination of whether circumstances of witness's identification of defendant in photographic array shown by police to witness were impermissibly suggestive as matter of federal constitutional law, 7 A.L.R.7th 4.

Manner in which photographic array shown by police to witness is displayed, or police officer's alleged nonverbal cues, as factor in determination of whether circumstances of witness's identification of criminal defendant, as person in photograph within array, were impermissibly suggestive as matter of federal constitutional law, 8 A.L.R.7th 5.

Police statement, other than one that photographic array shown to witness con-

tained or might contain criminal suspect or known criminal, as factor in determination of whether circumstances of witness’s identification of criminal defendant, as person in photograph within array, were impermissibly suggestive as matter of federal constitutional law, 9 A.L.R.7th 3.

Witness’s identification of criminal defendant, as person in photograph shown by police, as resulting from impermissibly suggestive circumstances, as matter of federal constitutional law, where police showed single witness photographs on more than one occasion, 10 A.L.R.7th 5.

Witness’s identification of criminal defendant, as person in photograph shown by police, as resulting from impermissibly suggestive circumstances, as matter of federal constitutional law, where police showed photographs to multiple witnesses, 11 A.L.R.7th 3.

Police statement that photographic array shown to witness contained or might contain criminal suspect or known criminal as factor in determination of whether circumstances of witness’s identification of criminal defendant, as person in photograph within array, were impermissibly suggestive as matter of federal constitutional law, 12 A.L.R.7th 3.

Paragraph II. Protection to

Law reviews.

For note, “Workin’ 9:00-5:00 for Nine Months: Assessing Pregnancy Discrimination Laws in Georgia,” see 33 Ga. St. U.L. Rev. 771 (2017).

For comment, “A Fresh Look’: Title VII’s New Promise for LGBT Discrimination Protection Post-Hively,” see 68 Emory L.J. 1101 (2019).

For article, “Age, Time, and Discrimination,” see 53 Ga. L. Rev. 845 (2019).

Witness’s identification of criminal defendant in photographic array shown by police, as resulting from impermissibly suggestive circumstances, as matter of federal constitutional law, where police showed two or more photographs of defendant in same array, 15 A.L.R.7th 4.

Mug shot characteristics of criminal defendant’s photograph as factor in determination of whether circumstances of witness’s identification of defendant in photographic array shown by police to witness were impermissibly suggestive as matter of federal constitutional law, 16 A.L.R.7th 3.

Offense of human trafficking of minor under state laws, 77 A.L.R.7th 3.

Malpractice of nurse practitioners, 80 A.L.R.7th 3.

Eminent domain: construction and application of “reasonable necessity” under state law for taking of property — Twenty-first century cases, 80 A.L.R.7th 6.

Restrictions on ownership, possession, or sale of weapons as infringing federal constitutional right to travel, 3 A.L.R. Fed. 3d 8.

Use of informant by federal law enforcement agencies as infringement of defendant’s rights to due process, 36 A.L.R. Fed. 3d Art. 1.

person and property; equal protection.

For article, “The ‘Weaponized’ First Amendment at the Marble Palace and the Firing Line: Reaction and Progressive Advocacy Before the Roberts Court and Lower Federal Courts,” see 72 Emory L.J. 1143 (2023).

For article, “First Amendment Protections for ‘Good Trouble,’” see 72 Emory L.J. 1187 (2023).

JUDICIAL DECISIONS

ANALYSIS

PROTECTION OF PROPERTY
EQUAL PROTECTION

Protection of Property
Deprivation of property is denial of constitutional protection.

In an action alleging a public nuisance, the trial court erred in granting the ex parte order appointing the receiver because the order violated the property owner’s due-process rights under U.S. Const., amend. 5 and XIV and Ga. Const. 1983, Art. I, Sec. 1, Para. I and II, to notice and a hearing before granting the receiver virtually unfettered control over all aspects of the property’s management. *Green Meadows Hous. v. Macon-Bibb County*, 372 Ga. App. 724, 906 S.E.2d 430, 2024 Ga. App. LEXIS 352 (2024).

Equal Protection
Individuals who perform same work are similarly situated for equal

protection purposes. — Lactation care provider’s equal protection challenge to the Georgia Lactation Consultant Practice Act, O.C.G.A. § 43-22A-1 et seq., which required such providers to obtain a state license, was improperly dismissed; the Act treated similarly situated individuals differently in that the Act recognized certification of providers as International Board Certified Lactation Consultants (IBCLC) but not certification as Certified Lactation Consultants (CLC), while both performed the same services. *Jackson v. Raffensperger*, 308 Ga. 736, 843 S.E.2d 576, 2020 Ga. LEXIS 344 (2020).

RESEARCH REFERENCES

ALR.
Change of gender or sex on government id, records, or forms, 77 A.L.R.7th 2.
Products liability and warranties: bows and crossbows, 79 A.L.R.7th 7.
Pay equity claims under state equal pay laws, 86 A.L.R.7th 2.

Right of intervention in bankruptcy adversary proceedings under 11 U.S.C.A. § 1109(b), 81 A.L.R. Fed. 3d 2.
When does wrongful death claim accrue in maritime case under 46 U.S.C.A. § 30106, 83 A.L.R. Fed. 3d 7.

Paragraph III. Freedom of conscience.

Cross references.
Teaching of divisive concepts in education, § 20-1-11.
Law reviews.
For article, “The ‘Weaponized’ First Amendment at the Marble Palace and the Firing Line: Reaction and Progressive Ad-

vocacy Before the Roberts Court and Lower Federal Courts,” see 72 Emory L.J. 1143 (2023).
For article, “First Amendment Protections for ‘Good Trouble,’” see 72 Emory L.J. 1187 (2023).

RESEARCH REFERENCES

ALR.
Constitutional claims of persons placed on federal government’s no-fly list or other terrorist watch lists, 5 A.L.R. Fed. 3d 5.

Application of federal constitutional guarantees or federal statutory provisions to discipline or punishment of students with disabilities, 12 A.L.R. Fed. 3d 1.

Paragraph IV. Religious opinions; freedom of religion.

Cross references.
Georgia Religious Freedom Restoration Act, § 50-15A-1.
Elective course in history and literature

of the Old and New Testaments, § 20-2-148.
Georgia Religious Freedom Restoration Act, § 50-15A-1.

Law reviews.

For article, “Revisiting a Classic Problem in Statutory Interpretation: Is a Minister a Laborer?,” see 36 Ga. St. U.L. Rev. 491 (2020).

For comment, “To Prohibit Free Exercise: A Proposal for Judging Substantial Burdens on Religion,” see 72 Emory L.J. 723 (2023).

For article, “The ‘Weaponized’ First Amendment at the Marble Palace and the Firing Line: Reaction and Progressive Advocacy Before the Roberts Court and Lower Federal Courts,” see 72 Emory L.J. 1143 (2023).

For article, “First Amendment Protections for ‘Good Trouble,’” see 72 Emory L.J. 1187 (2023).

RESEARCH REFERENCES

ALR.

Comment note: ineffective assistance of counsel in removal proceedings — particular acts, 59 A.L.R. Fed. 2d 151.

Validity, application, and construction of religion-based challenges to health insurance contraceptive coverage mandated by Patient Protection and Affordable Care Act preventive services requirement, 42 U.S.C.A. § 300gg-13(a)(4), and its regulations, 82 A.L.R. Fed. 2d 585.

Prisoner beard regulations as religious discrimination under first amendment or

Religious Land Use and Institutionalized Persons Act, 93 A.L.R. Fed. 2d 439.

Constitutional claims of persons placed on federal government’s no-fly list or other terrorist watch lists, 5 A.L.R. Fed. 3d 5.

Application of federal constitutional guarantees or federal statutory provisions to discipline or punishment of students with disabilities, 12 A.L.R. Fed. 3d 1.

Free exercise clause of first amendment — U.S. Supreme Court cases, 37 A.L.R. Fed. 3d Art. 12.

Paragraph V. Freedom of speech and of the press guaranteed.

Cross references.

Teaching of divisive concepts in education, § 20-1-11.

Forming Open and Robust University Minds Act, P. 1D, A. 2, Ch. 3, T. 20.

Social media platforms on state computers, § 50-29-20 et seq.

Law reviews.

For comment, “State Constitutions as a Check on the New Governors: Using State Free Speech Clauses to Protect Social Media Users from Arbitrary Political Censorship by Social Media Platforms,” see 69 Emory L.J. 111 (2019).

For comment, “Cameras Down, Hands Up: How the Supreme Court Chilled the Development of the First Amendment Right to Record the Police,” see 71 Mercer L. Rev. 1125 (2020).

For article, “The Protection of Freedom of Expression from Social Media Platforms,” see 73 Mercer L. Rev. 523 (2022).

For article, “The ‘Weaponized’ First Amendment at the Marble Palace and the Firing Line: Reaction and Progressive Advocacy Before the Roberts Court and Lower Federal Courts,” see 72 Emory L.J. 1143 (2023).

For article, “First Amendment Protections for ‘Good Trouble,’” see 72 Emory L.J. 1187 (2023).

For article, “‘Known Adversary’: The Targeting of the Immigrants’ Rights Movement in the Post-Trump Era,” see 72 Emory L.J. 1245 (2023).

JUDICIAL DECISIONS

ANALYSIS

APPLICATION

- 1. IN GENERAL
- 2. CRIMINAL MATTERS

4. SEXUAL EXPRESSION

Application

1. In General

Non-disparagement clause was not a restraint on free speech. — Interlocutory injunction enforcing a non-disparagement clause in the parties' agreement was not an impermissible prior restraint on free speech because the parties could waive the free speech protections. *Wood v. Wade*, 363 Ga. App. 139, 869 S.E.2d 111, 2022 Ga. App. LEXIS 54 (2022).

2. Criminal Matters

Restricting internet as condition of probation. — Trial court did not abuse the court's discretion by declining to modify a probation condition that restricted the defendant's internet access because the condition did not unduly burden the defendant's free speech rights as the defendant had used the internet to facilitate the commission of the offense by communicating online with the supposed underage girl in order to solicit sexual acts from the girl. *Rutledge v. State*, 360 Ga. App. 824, 861 S.E.2d 793, 2021 Ga. App. LEXIS 399 (2021).

Prohibition on possessing pornography as probation condition. — Trial

court did not abuse the court's discretion by declining to modify the probation condition that prohibited the defendant from possessing pornography because the defendant pled guilty to attempt to commit aggravated child molestation, the basis for the plea included the fact that the defendant had sent pornographic images to someone the defendant believed was a 13-year-old child and, therefore, the condition was rationally related to the circumstances of the offense and the rehabilitative goals of probation. *Rutledge v. State*, 360 Ga. App. 824, 861 S.E.2d 793, 2021 Ga. App. LEXIS 399 (2021).

4. Sexual Expression

Ordinance prohibiting sale of alcohol in adult entertainment establishments. — Nightclub's first amendment challenge to a city's ordinances restricting the sale of alcohol in nude dancing establishments was rejected because under intermediate scrutiny, the ordinances furthered important government interests of preserving the quality of urban life and reducing criminal activity. *Maxim Cabaret, Inc. v. City of Sandy Springs*, 304 Ga. 187, 816 S.E.2d 31, 2018 Ga. LEXIS 435 (2018).

RESEARCH REFERENCES

ALR.

Constitutionality of restricting public speech in street, sidewalk, park, or other public forum — characteristics of forum, 70 A.L.R.6th 513.

Constitutionality of restricting public speech in street, sidewalk, park, or other public forum — manner of restriction, 71 A.L.R.6th 471.

Constitutional challenges to compelled speech — general principles, 72 A.L.R.6th 513.

Constitutional challenges to compelled speech — particular situations or circumstances, 73 A.L.R.6th 281.

Expectation of privacy in and discovery of social networking web site postings and communications, 88 A.L.R.6th 319.

Provisions of divorce, child custody, or child support orders as infringing on fed-

eral or state constitutional guarantees of free speech, 2 A.L.R.7th 6.

Invasion of privacy by use of plaintiff's name or likeness in advertising — First amendment cases, 15 A.L.R.7th 6.

Validity under First Amendment of statutes limiting automatic dialing and announcing device (ADAD) and robocalls, 48 A.L.R.7th Art. 1.

Validity under first amendment of state disclosure or reporting requirements of political contributions or expenditures by private individuals or entities, 51 A.L.R.7th 1.

State law liability and relief for "revenge porn," 54 A.L.R.7th 2.

First amendment protection for school principals subjected to demotion, transfer, or reassignment because of speech, 4 A.L.R. Fed. 3d 5.

Constitutional claims of persons placed on federal government’s no-fly list or other terrorist watch lists, 5 A.L.R. Fed. 3d 5.

Application of federal constitutional guarantees or federal statutory provisions to discipline or punishment of students with disabilities, 12 A.L.R. Fed. 3d 1.

University code or policy forbidding speech or conduct that is offensive, degrading, or the like as violative of First Amendment Rights, 13 A.L.R. Fed. 3d 2.

Partisan gerrymandering as violation of first amendment, 37 A.L.R. Fed. 3d Art. 7.

First amendment protection against curtailment of access to, or retaliation for communications on, social media, 38 A.L.R. Fed. 3d Art. 5.

Status and effect of public access channels as “public forums” under first amendment, 38 A.L.R. Fed. 3d Art. 8.

What constitutes “antecedent debt” in bankruptcy preference statute, 11 U.S.C.A. § 547(b)(2), 39 A.L.R. Fed. 3d Art. 4.

Extraterritorial application of bankruptcy code’s fraudulent transfer provisions (11 U.S.C.A. §§ 548, 550), 39 A.L.R. Fed. 3d Art. 5.

Protection of mail between attorney and prisoner under First and Sixth Amendments — federal appellate cases, 79 A.L.R. Fed. 3d 9.

Paragraph VII. Citizens, protection of.

Law reviews.

For article, “The ‘Weaponized’ First Amendment at the Marble Palace and the Firing Line: Reaction and Progressive Advocacy Before the Roberts Court and Lower Federal Courts,” see 72 Emory L.J. 1143 (2023).

For article, “First Amendment Protections for ‘Good Trouble,’” see 72 Emory L.J. 1187 (2023).

RESEARCH REFERENCES

ALR.

Associational discrimination or retaliation under state civil rights statutes, 78 A.L.R.7th 7.

Paragraph VIII. Arms, right to keep and bear.

Cross references.

Firearms industry nondiscrimination, § 10-1-439 et seq.

Law reviews.

For note, “Education Under Fire?: An Analysis of Campus Carry and University Autonomy in Georgia,” see 54 Ga. L. Rev. 387 (2019).

For article, “Proposed Constitutional Carry Act of 2019: To Amend Title 12 of the Official Code of Georgia Annotated, Relating to the Use or Possession of Any Handgun in Parks, Historic Sites, or Recreational Areas; and to Amend Title 16 of the Official Code of Georgia Annotated, Relating to the Definition of Carrying and Possession of Firearms & Executive Order by the Governor Temporarily Extending Renewal Requirements for Weapons Carry Licenses,” see 37 Ga. St. U.L. Rev. 219 (2020).

JUDICIAL DECISIONS

Officer had reasonable suspicion warranting investigation. — Officers had a reasonable, articulable suspicion to detain defendant for further investigation because the evidence showed that defendant was walking in the vicinity of a crime at 4:15 a.m. and defendant fled without provocation prior to the deputy making any form of contact with defendant. Farmer v. State, 370 Ga. App. 886, 899 S.E.2d 465, 2024 Ga. App. LEXIS 101 (2024).

Sovereign immunity did not bar statutory claim. — In an applicant’s

challenge to the Georgia Board of Public Safety's denial of relief from the prohibition on the possession of firearms by convicted felons, the trial court erred finding sovereign immunity barred the applicant's statutory claim under O.C.G.A. § 16-11-131(d) as the claim specifically asserted that the Board's act of denying the application violated the laws of the State of Georgia; thus, the claim came within the constitutional waiver of sovereign immunity. *Kuhlman v. State*, 317 Ga. 232, 892 S.E.2d 753, 2023 Ga. LEXIS 189 (2023).

Denial of carry license. — After the plaintiff filed an action for damages against the probate judge who denied the plaintiff a Georgia weapons carry license (GWCL), the plaintiff's claim that the judge violated the plaintiff's fundamental right to bear arms was properly dismissed as the U.S. Supreme Court had held that the right was not absolute and lawful regulatory measures were permissible, and the Georgia Supreme Court permitted the state to regulate the right to carry weapons to some extent. Further, the plaintiff's claims were barred by the doctrine of judicial immunity as determining whether to issue a GWCL was unquestionably a normal function of a probate judge. *Hise v. Bordeaux*, 364 Ga. App. 138, 874 S.E.2d 175, 2022 Ga. App. LEXIS 275 (2022).

Interpretation of private property under O.C.G.A. § 16-11-127(c). — Su-

preme Court of Georgia determined that for purposes of O.C.G.A. § 16-11-127(c), property may be considered private only if the holder of the present estate in the property is a private person or entity. *GeorgiaCarry.Org, Inc. v. Atlanta Botanical Garden, Inc.*, 306 Ga. 829, 834 S.E.2d 27, 2019 Ga. LEXIS 639 (2019).

If the city, a public entity, was the holder of a present estate under the lease, the leased premises was not private property within the meaning of O.C.G.A. § 16-11-127(c), thus, the garden would have no right to exclude the carrying of firearms on the leased premises because it was not in legal control of private property through a lease; however, since the lease was not in the record on appeal the garden was not entitled to summary judgment. *GeorgiaCarry.Org, Inc. v. Atlanta Botanical Garden, Inc.*, 306 Ga. 829, 834 S.E.2d 27, 2019 Ga. LEXIS 639 (2019).

Motion to suppress search of bag improperly denied. — Search of defendant's bag was not supported by reasonable, articulable suspicion and, therefore, the trial court erred by denying the defendant's motion to suppress, because the officers immediately searched the bag after detaining the defendant, and there was no evidence that the defendant was questioned, searched, or subjected to further investigation prior to the search of the bag. *Farmer v. State*, 370 Ga. App. 886, 899 S.E.2d 465, 2024 Ga. App. LEXIS 101 (2024).

RESEARCH REFERENCES

ALR.

Construction and application of United States Supreme Court holdings in *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008) and *McDonald v. City of Chicago, Ill.*, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010) respecting Second Amendment right to

keep and bear arms, to state or local laws regulating firearms or other weapons, 64 A.L.R. 6th 131.

Validity of state gun control legislation under state constitutional provisions securing right to bear arms — convicted felons, 85 A.L.R.6th 641.

Paragraph IX. Right to assemble and petition.

Law reviews.

For article, "The 'Weaponized' First

Amendment at the Marble Palace and the Firing Line: Reaction and Progressive Ad-

vocacy Before the Roberts Court and Lower Federal Courts,” see 72 Emory L.J. 1143 (2023).

RESEARCH REFERENCES

ALR.

State constitutional right of freedom to assembly provisions, 41 A.L.R.7th Art. 7.

Partisan gerrymandering as violation of first amendment, 37 A.L.R. Fed. 3d Art. 7.

First amendment protection against curtailment of access to, or retaliation for communications on, social media, 38 A.L.R. Fed. 3d Art. 5.

Status and effect of public access chan-

nels as “public forums” under first amendment, 38 A.L.R. Fed. 3d Art. 8.

What constitutes “antecedent debt” in bankruptcy preference statute, 11 U.S.C.A. § 547(b)(2), 39 A.L.R. Fed. 3d Art. 4.

Extraterritorial application of bankruptcy code’s fraudulent transfer provisions (11 U.S.C.A. §§ 548, 550), 39 A.L.R. Fed. 3d Art. 5.

Paragraph X. Bill of attainder; ex post facto laws; and retroactive laws.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

RETROACTIVE LAWS

LAWS IMPAIRING OBLIGATION OF CONTRACTS

General Consideration

Expert affidavit requirement in medical malpractice cases did not extend special privileges and immunities. — O.C.G.A. § 24-7-702(c)(2)(A), governing expert qualifications in medical malpractice cases, was not unconstitutionally vague, did not violate equal protection, separation of powers, or the right to jury trial, did not make irrevocable grants of special privileges and immunities, and was not a special law; however, the trial court erred in rejecting an expert simply because the expert had not performed the specific procedure at issue. The proper consideration was the expert’s level of knowledge. Zarate-Martinez v. Echemendia, 299 Ga. 301, 788 S.E.2d 405, 2016 Ga. LEXIS 450 (2016).

County’s resolution deciding not to commercialize airport was not state legislative action. — Contractor who argued that a county violated the Contracts Clause of the federal and state constitutions when the county passed a

resolution withdrawing the county’s consent to an FAA application to expand the county’s airport failed to allege any state legislative action and, thus, there could be no violation of the Contracts Clause. Avery v. Paulding County Airport Auth., 343 Ga. App. 832, 808 S.E.2d 15, 2017 Ga. App. LEXIS 566 (2017).

Retroactive Laws

Retroactive application of statute of limitations held constitutional.

Former statute reviving the daughter’s civil claims for childhood sexual abuse did not violate Georgia’s constitutional ban on retroactive laws under the state constitution as, ordinarily, there was no constitutional impediment to giving retroactive effect to statutes that governed only procedure of the courts. Harvey v. Merchan, 311 Ga. 811, 860 S.E.2d 561, 2021 Ga. LEXIS 469 (2021).

Retroactive ordinance enforcement not permitted. — Trial court’s order dismissing the homeowner’s criminal citation for violating the county’s

amended zoning ordinance by renting out the lake house for a week was affirmed because the zoning ordinance in effect at the time the homeowner began renting the lake house for short periods was unconstitutionally vague as applied, meaning that use of the house for such rentals was grandfathered and not subject to an amended ordinance’s explicit prohibition of short-term rentals for fewer than 30 days. *Morgan County v. May*, 305 Ga. 305, 824 S.E.2d 365, 2019 Ga. LEXIS 105 (2019).

Laws Impairing Obligation of Contracts

County’s suit barred by sovereign immunity. — In a suit between a county and state agency, the trial court properly ruled that sovereign immunity barred the county’s breach of contract and injunctive relief claims since the county failed to show the agency was authorized by law to provide fire protection services, rendering the purported contract invalid, and the

ruling that the contract did not apply to the agency did not violate the impairment clause since the county did not have a vested contractual right that was injuriously affected. *Baldwin County v. Dep’t of Behavioral Health & Developmental Disabilities*, 371 Ga. App. 762, 903 S.E.2d 146, 2024 Ga. App. LEXIS 218 (2024).

Impairment of teachers’ right to notice before reducing pension funding.

— In a suit by teachers against the county school district and board alleging breach of contract, summary judgment for the defendants was error because by adopting a promise to give two years’ notice before reducing funding of a retirement plan as board policy, the notice provision became part of the teachers’ contracts, protected by the prohibition on impairment of contracts, Ga. Const. 1983, Art. I, Sec. I, Para. X. *Gold v. DeKalb County Sch. Dist.*, 346 Ga. App. 108, 815 S.E.2d 259, 2018 Ga. App. LEXIS 319 (2018), *aff’d*, 307 Ga. 330, 834 S.E.2d 808, 2019 Ga. LEXIS 706 (2019).

RESEARCH REFERENCES

ALR.

Construction and application of U.S. Const. art. I, § 9, cl. 3, proscribing federal bills of attainder, 62 A.L.R. 6th 517.

Construction and application of U.S. Const. art. I, sec. 10, cl. 1, and state constitutional provisions proscribing state bills of attainder, 63 A.L.R. 6th 1.

Paragraph XI. Right to trial by jury; number of jurors; selection and compensation of jurors.

Law reviews.

For article, “Medical Malpractice as Worker’s Comp: Overcoming State Consti-

tutional Barriers to Tort Reform,” see 67 *Emory L.J.* 975 (2018).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

RIGHT TO TRIAL BY JURY

2. CIVIL CASES

3. CRIMINAL CASES

PUBLIC TRIAL BY IMPARTIAL JURY

1. PUBLIC TRIAL

3. SPEEDY TRIAL

General Consideration

Claim for punitive damages not within scope of right to jury trial. —

Appellant offered no evidence that English juries in 1776 or Georgia juries in 1798 could award punishment damages for a claim that a defendant acted with an “entire want of care,” and appellant therefore failed to show that the punitive damages sought were within the scope of Georgia’s constitutional right to a jury trial. *Taylor v. Devereux Foundation*, 316 Ga. 44, 885 S.E.2d 671, 2023 Ga. LEXIS 63 (2023).

Right to Trial by Jury

2. Civil Cases

Expert affidavit requirement in medical malpractice cases did not violate jury trial right. — O.C.G.A. § 24-7-702(c)(2)(A), governing expert qualifications in medical malpractice cases, was not unconstitutionally vague, did not violate equal protection, separation of powers, or the right to jury trial, did not make irrevocable grants of special privileges and immunities, and was not a special law; however, the trial court erred in rejecting an expert simply because the expert had not performed the specific procedure at issue. The proper consideration was the expert’s level of knowledge. *Zarate-Martinez v. Echemendia*, 299 Ga. 301, 788 S.E.2d 405, 2016 Ga. LEXIS 450 (2016).

No right to trial by jury in election contest. — In an election contest under O.C.G.A. § 21-2-522 regarding a race for lieutenant governor, the small number of irregularities involved with the direct-recording electronic (DRE) voting system and the lack of evidence of misconduct by any election official was insufficient to overcome the winner’s margin of victory of 123,172 votes. Further, the trial court did not err in limiting discovery of the DRE machines or in denying the challengers’ motion for a continuance and jury trial demand. *Martin v. Fulton County Bd. of Registration & Elections*, 307 Ga. 193, 835 S.E.2d 245, 2019 Ga. LEXIS 724 (2019).

3. Criminal Cases

Notice of indictment. — For purposes

of a speedy trial claim, because there were no charges pending at the time of the defendant’s departure from the United States, the defendant was under no obligation to apprise the court of a change of address; thus, the 2009 notice sent to a prior address of the defendant was not proof that the defendant had notice of the indictment, and the remaining evidence supported the trial court’s conclusion that the defendant was first apprised of the pending charges in 2013. *State v. Wood*, 338 Ga. App. 181, 790 S.E.2d 84, 2016 Ga. App. LEXIS 464 (2016).

Assertion of speedy trial right. — Defendant was not precluded from even asserting a constitutional speedy trial right on the basis of being out of the reach of the court system by being in another country because the federal case law on that issue was only persuasive, and not binding, authority; and it was dicta. *State v. Wood*, 338 Ga. App. 181, 790 S.E.2d 84, 2016 Ga. App. LEXIS 464 (2016).

Public Trial by Impartial Jury

1. Public Trial

Closure of court room while victim testified. — Despite sufficient evidence supporting the defendant’s convictions for incest, statutory rape, and other crimes committed against the defendant’s stepdaughter, a new trial was ordered because the trial court erred by closing the courtroom when the stepdaughter testified without making findings adequate to support the closure, including a consideration of reasonable alternatives, and the only remedy was a new trial. *Jackson v. State*, 339 Ga. App. 313, 793 S.E.2d 201, 2016 Ga. App. LEXIS 619 (2016).

Partial closure while child victim testified. — Closing of the courtroom during the victim’s testimony did not violate defendant’s constitutional rights because it was only a partial closure and was statutorily permitted given that the victim was under the age of 16. *Hicks v. State*, 366 Ga. App. 599, 884 S.E.2d 16, 2023 Ga. App. LEXIS 52 (2023).

Closure of courtroom must be supported by specific findings. — Although the trial court cursorily mentioned protecting the minor victim’s privacy, the

trial court's findings must be specific enough that a reviewing court can determine whether the closure order was properly entered and the trial court's conclusory statement that the court had considered the alternatives to closure and found the alternatives to be insufficient under the circumstances of the case was not specific enough to enable the court to determine that the closure order was entered properly. *Spikes v. State*, 353 Ga. App. 454, 838 S.E.2d 121, 2020 Ga. App. LEXIS 22 (2020).

Speculation insufficient to establish prejudice. — Defendant failed to show that defendant was prejudiced by trial counsel's failure to object to the partial closure of the courtroom during the minor victims' testimony about defendant's abuse because defendant's suggestion that had defendant's parents remained in the courtroom the victims might have testified differently was mere speculation that was insufficient to establish prejudice. *Alexander v. State*, 313 Ga. 521, 870 S.E.2d 729, 2022 Ga. LEXIS 63, cert. denied, 143 S. Ct. 114, 214 L. Ed. 2d 29, 2022 U.S. LEXIS 4070 (2022).

3. Speedy Trial

Statute regarded as aid and implementation of constitutional right.

Defendant's motion to dismiss the indictment on constitutional speedy trial grounds was improperly granted as the trial court erred when the court concluded that there was no evidence of efforts to extradite the defendant and in failing to assign any weight to the trial delay caused by the defendant's actions in challenging extradition because, in the motion to dismiss, the defendant specifically acknowledged that the United States government executed an extradition request to Finland; the defendant's admission was binding for purposes of resolving the defendant's motion to dismiss; and, had the trial court correctly considered the evidence before the court, it was possible that the court would have weighed the reason for delay factor differently. *State v. Wood*, 338 Ga. App. 181, 790 S.E.2d 84, 2016 Ga. App. LEXIS 464 (2016).

Error in applying Barker test.

State court erred in granting the defendant's plea in bar and motion to dismiss

due to a violation of the defendant's right to a speedy trial because, although 45 months passed between the defendant's arrest and the dismissal of the charges against the defendant, the state court failed to account for the seven months between the defendant's scheduled arraignment and the beginning of the judicial emergency caused by the COVID-19 pandemic and the slightly more than five months between the end of the judicial emergency and the entry of the state court's order, and the state court failed to address whether either of those delays should be weighed against either party. *State v. Adams*, 364 Ga. App. 864, 876 S.E.2d 719, 2022 Ga. App. LEXIS 359 (2022).

Speedy trial rights violated. — Defendant's motion for discharge and acquittal for a violation of the defendant's constitutional right to a speedy trial was properly granted because the two-and-a-half year delay from the date of indictment was presumptively prejudicial; although the pretrial delay was partially attributable to the defendant, in light of the defendant's efforts to secure a better plea agreement and defense attorney's unavailability during some of the plea negotiations, a large part of the delay was attributable to the government as the state offered no explanation for the delay between the indictment or the arraignment; and the death of a potentially critical witness prejudiced the defendant as the deceased witness took sole responsibility for the crime. *State v. Bonawitz*, 339 Ga. App. 299, 793 S.E.2d 191, 2016 Ga. App. LEXIS 616 (2016), cert. denied, No. S17C0556, 2017 Ga. LEXIS 409 (Ga. May 15, 2017).

Speedy trial rights not violated.

Trial court did not abuse the court's discretion in concluding that the speedy trial factors weighed against the defendant and in denying the defendant's motion to dismiss based on constitutional speedy trial grounds because, although the 16-month delay was presumptively prejudicial, and the cause of delay factor weighed in the defendant's favor, the defendant had no articulable reason for the 16-month delay in asserting the defendant's right to a speedy trial; and the

Public Trial by Impartial

Jury (Cont'd)

3. Speedy Trial (Cont'd)

defendant presented no evidence that the defendant suffered anxiety or concern, and the defendant made no showing that the delay affected the defendant's ability to present a defense. *McDougler v. State*, 339 Ga. App. 225, 793 S.E.2d 511, 2016 Ga. App. LEXIS 601 (2016).

Defendant's motion for discharge and acquittal based on a violation of the defendant's constitutional right to a speedy trial was properly denied because, although the delay of approximately two and a half years was presumptively prejudicial, the reasons for delay factor weighed heavily against the defendant as the defendant filed numerous motions that were time-consuming and hampered the readiness of the case to move forward to trial; and the trial court weighed the prejudice to the defendant factor heavily against the defendant as the defendant failed to present specific evidence of how the delay impaired the defendant's ability to defend. *Wimbush v. State*, 345 Ga. App. 54, 812 S.E.2d 489, 2018 Ga. App. LEXIS 174 (2018).

Findings that the defendant's speedy trial rights were not violated were not clearly erroneous and supported the trial court's determination that the delays in the case were primarily attributable to the defendant as the defendant had intentionally postponed and procrastinated in regard to whether the defendant would obtain counsel and the co-defendant's granted continuances were not attributable to the state. *Burney v. State*, 309 Ga. 273, 845 S.E.2d 625, 2020 Ga. LEXIS 469 (2020).

Although more than two years elapsed between the defendant's arrest and the start of trial, the trial court did not abuse its discretion in concluding that there were no speedy trial violations because the majority of the delays were caused by issues with the defendant securing suitable trial counsel, the defendant made no showing that the defendant was subjected to any unusual oppression as a result of his incarceration, and the defendant did not show that the defendant's ability to

present a defense was affected by the delay. *Williams v. State*, 362 Ga. App. 383, 867 S.E.2d 819, 2022 Ga. App. LEXIS 6 (2022).

COVID-19 delays. — Appellant's constitutional right to a speedy trial was not violated considering the balancing of the Barker-Doggett factors, including the length of delay, the reasons for delay, the assertion of the right, and the lack of prejudice to appellant because the delay was primarily due to the COVID-19 pandemic and neutral reasons, appellant's assertion of the right was not timely but weighed only lightly against appellant, and there was no specific prejudice to appellant's defense. *Smith v. State*, 373 Ga. App. 33, 907 S.E.2d 327, 2024 Ga. App. LEXIS 383 (2024).

Trial court did not abuse the court's discretion by finding that there was no violation of defendant's constitutional right to a speedy trial, even though the delay was over five-and-a-half years, because there was no evidence that the state intentionally delayed prosecuting defendant as a substantial portion of the delay was caused by the COVID-19 pandemic and the Supreme Court of Georgia's emergency orders. In addition, defendant did not assert the defendant's speedy trial right between the defendant's October 2017 arrest and the defendant's February 2023 motion to dismiss. *Shriver v. State*, 371 Ga. App. 580, 901 S.E.2d 721, 2024 Ga. App. LEXIS 190 (2024).

Prejudice from delay must be shown. — Defendant's right to a speedy trial was not violated as the trial court did not abuse the court's discretion in weighing the prejudice factor in the state's favor because, while the defendant's pre-trial incarceration was excessive, the defendant was also being held on other, unrelated charges during the same time period; and the defendant never testified about the defendant's speedy trial claim, never offered any evidence regarding the defendant's level of anxiety or concern, and never presented any evidence that the defense of the defendant had been impaired by the delay. *Epperson v. State*, 340 Ga. App. 25, 796 S.E.2d 1, 2016 Ga. App. LEXIS 701 (2016).

Six year delay presumptively preju-

dicial. — While the nearly six year delay in bringing the defendant to trial was presumptively prejudicial, the defendant's speedy trial rights were not violated because the defendant waited over four years to assert the right and failed to show prejudice due to the delay. *Gray v. State*, 347 Ga. App. 235, 817 S.E.2d 723, 2018 Ga. App. LEXIS 479 (2018), cert. denied, No. S19C0214, 2019 Ga. LEXIS 271 (Ga. Apr. 15, 2019).

Six year delay found not prejudicial despite assumptions. — Trial court did not err by denying defendant's plea in bar which was asserted on constitutional

speedy trial grounds because, even though it properly presumed prejudice from the over six-year pretrial delay, defendant did not assert the right to a speedy trial until five years and six months after defendant's arrest. Defendant also failed to show any actual prejudice because defendant had not met with any expert to evaluate the state of defendant's mental health and defendant did not present any probative evidence supporting defendant's claim of being 70% disabled. *Labbee v. State*, 362 Ga. App. 558, 869 S.E.2d 520, 2022 Ga. App. LEXIS 64 (2022).

RESEARCH REFERENCES

ALR.

Due process afforded in drug court proceedings, 78 A.L.R.6th 1.

Recovery of fees and costs for jury consultation, focus group, or mock trial, 78 A.L.R.7th 4.

Construction and application of Sixth Amendment right to speedy trial — Supreme Court cases, 17 A.L.R. Fed. 3d 4.

Seventh Amendment right to trial by

jury — Supreme Court decisions, 57 A.L.R. Fed. 3d 2.

When defendant's Sixth Amendment speedy trial rights (U.S. Const., amend. VI) attach if indictment is initially filed under seal, 68 A.L.R. Fed. 3d 9.

Conduct constituting innocent or non-willful copyright infringement under 17 U.S.C.A. § 504(c)(2), 77 A.L.R. Fed. 3d 3.

Paragraph XII. Right to the courts.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

SELF-REPRESENTATION

RIGHT TO BE PRESENT

General Consideration

Right to be present not violated.

Defendant's right to be present was not violated because the short portion of the trial in which the defendant was not present was not a critical phase of the proceedings as the only issue discussed was a procedural question about a witness that the court never had to rule on because it was resolved by the parties once the defendant was present. *Pitt v. State*, 337 Ga. App. 436, 787 S.E.2d 782, 2016 Ga. App. LEXIS 350 (2016), cert. denied, No. S16C1778, 2017 Ga. LEXIS 118 (Ga. Feb. 27, 2017).

No violation when defendant attended sentencing via video conference.

— Trial court did not violate the defendant's right to be present by sentencing the defendant via video conference as the defendant could see and hear the proceedings, had access to counsel, and did not object when discussing the sentencing with the court. *Richardson v. State*, 373 Ga. App. 252, 908 S.E.2d 234, 2024 Ga. App. LEXIS 415 (2024).

Self-Representation

Request untimely. — In an action for rape, aggravated sodomy, kidnapping, theft, and aggravated assault with intent

Self-Representation (Cont'd)

to rape, the defendant was not denied the right to self-representation at trial since the defendant's request was made after the jury was impaneled and, thus, was untimely. *Simpson v. State*, 357 Ga. App. 883, 852 S.E.2d 590, 2020 Ga. App. LEXIS 678 (2020).

Voluntary, knowing, and intelligent waiver of right to counsel. — Trial court did not abuse the court's discretion by allowing the defendant to self represent prior to trial because the record supported the court's finding that the defendant knowingly and voluntarily waived the defendant's right to counsel as the court held two Faretta hearings, during which the defendant showed that the defendant knew the elements and maximum penalties of the offenses, the trial court advised the defendant of the potential consequences of proceeding pro se, and the court appointed standby counsel. *Stinson v. State*, 352 Ga. App. 528, 835 S.E.2d 342, 2019 Ga. App. LEXIS 594 (2019).

Failure to make unequivocal request for self-representation.

Because the defendant never unequivocally asserted the right to self-representation but only filed a motion seeking appointment of new counsel, the defendant's right to self-representation under the federal and state constitution was not violated. *Oliver v. State*, 305 Ga. 678, 827 S.E.2d 639, 2019 Ga. LEXIS 287 (2019).

Trial court was not obligated to hold a Faretta hearing prior to trial because the defendant's brief colloquy with the trial court did not amount to an unequivocal request for self-representation and when the trial court denied the defendant's continuance, the defendant affirmatively accepted the ruling and never mentioned a desire to self represent again. *Cooper v. State*, 350 Ga. App. 365, 829 S.E.2d 433, 2019 Ga. App. LEXIS 304 (2019).

Defendant was not entitled to a new trial where the trial court failed to conduct a Faretta hearing because the defendant's written pro se motion to "dismiss" the defendant's lawyer contained no assertion of the right to self-representation under Ga. Const. 1983, Art. I, Sec. I,

Paras. XII, XIV, and the defendant's oral request was equivocal. *Leaphart v. State*, 372 Ga. App. 524, 905 S.E.2d 4, 2024 Ga. App. LEXIS 325 (2024).

Right to be Present

No right to be present when trial court addressed summoned prospective jurors. — Defendant did not have a right to be present when the trial court addressed summoned prospective jurors before the trial started. *Neale v. State*, 344 Ga. App. 448, 810 S.E.2d 621, 2018 Ga. App. LEXIS 50 (2018), cert. denied, No. S18C0820, 2018 Ga. LEXIS 520 (Ga. Aug. 2, 2018).

In-chambers hearing. — Defendant did not have a right to be present in chambers when the defendant's former counsel was discussing potentially privileged information pertaining to counsel's prior representation of one of the state's witnesses in chambers with the trial judge; further, the defendant waived the defendant's objection by acquiescing to the proceeding being held without the defendant. *Williams v. State*, 307 Ga. 689, 838 S.E.2d 314, 2020 Ga. LEXIS 42 (2020).

Voluntary absence from trial. — Defendant's right to be present at all critical stages of the trial was not violated when two potential jurors were dismissed in a bench conference at which the defendant was not present because the defendant acquiesced to the defendant's absence as the transcript showed that there had been a discussion about excusing jurors for cause, the jury strike list in the record showed that the jurors were excused in open court, defense counsel explicitly put on the record that at the conference they had agreed to strike for cause two jurors, and there was no indication that the defendant expressed any concern or objection to the procedure used to excuse the jurors. *Heath v. State*, 349 Ga. App. 84, 825 S.E.2d 474, 2019 Ga. App. LEXIS 110 (2019), aff'd, 308 Ga. 836, 843 S.E.2d 801, 2020 Ga. LEXIS 362 (2020).

Right to be present during juror questioning on illness. — Defendant was entitled to a new trial because the defendant's right to be present was violated when the trial court discussed with counsel about excusing a juror who was in

pain following surgery and eventually released the juror from returning to court as the trial court conducted a portion of the jury selection outside the defendant's presence. *Burch v. State*, 343 Ga. App. 474, 806 S.E.2d 863, 2017 Ga. App. LEXIS 516 (2017).

No waiver of right. — Defendant's right to be present under the Georgia Constitution was violated as the defendant was absent from critical parts of the defendant's trial and there was no evidence of a waiver of the defendant's right to present because the defendant made it known that the defendant wanted to return to court and finish the defendant's trial testimony. *Bland v. State*, 363 Ga. App. 268, 870 S.E.2d 823, 2022 Ga. App. LEXIS 143 (2022).

Right to be present not violated by court's ex-parte questioning of juror on hardship. — Trial court's preliminary

questioning of potential jurors to gather information about hardships that could affect their ability to serve as trial jurors, including any such ex parte questioning of a juror who was dismissed in the defendant's case, did not violate the defendant's right to be present at every critical stage of his trial. *Kendrick v. State*, 368 Ga. App. 633, 889 S.E.2d 417, 2023 Ga. App. LEXIS 292 (2023).

Harmless error for judge's contact with jury.

Appellant's convictions for malice murder and other crimes was upheld because the trial court's ex parte communication with the jury during its deliberations by responding to a note from the jury without informing the parties did not contribute to the convictions, so any violation of appellant's rights was harmless. *Mayo v. State*, 319 Ga. 34, 901 S.E.2d 522, 2024 Ga. LEXIS 117 (2024).

RESEARCH REFERENCES

ALR.

Due process afforded in drug court proceedings, 78 A.L.R.6th 1.

Construction and application of booking question exception to *Miranda*, 81 A.L.R.6th 505.

Permissibility under Fourth Amendment of detention of motorist by police, following lawful stop for traffic offense, to investigate matters not related to offense — state cases post *Rodriguez v. U.S.*, 40 A.L.R.7th Art. 5.

Paragraph XIII. Searches, seizures, and warrants.

Cross references.

Display of identification in electronic format is not consent to search, § 40-5-106.

Law reviews.

For note, "To Deceive or not to Deceive: Law Enforcement Officers Gain Broader Approval to use Deceptive Tactics to Obtain Voluntary Consent," see 69 *Mercer L. Rev.* 627 (2018).

For comment, "The Reasonableness and Unreasonableness of Delays in Obtaining Search Warrants," see 71 *Mercer L. Rev.* 1149 (2020).

For article, "How the Fourth Amendment Frustrates the Regulation of Police Violence," see 70 *Emory L.J.* 521 (2021).

For note, "Facebook, Crime Prevention, and the Scope of the Private Search Doctrine Post-Carpenter," see 56 *Ga. L. Rev.* 787 (2022).

For article, "First Amendment Protections for 'Good Trouble,'" see 72 *Emory L.J.* 1187 (2023).

For article, "Crimes of Suspicion," see 72 *Emory L.J.* 1429 (2023).

JUDICIAL DECISIONS

ANALYSIS

FOURTH AMENDMENT RIGHTS

SEARCHES AND SEIZURES

- 1. IN GENERAL
- 2. SEARCHES
- 3. CONSENT SEARCHES
 - a. IN GENERAL
 - b. CONSENT SEARCHES OF PEOPLE
 - c. CONSENT SEARCHES OF PLACES

SEARCH WARRANTS

- 1. IN GENERAL
- 4. EXCEPTIONS TO WARRANT REQUIREMENT
 - a. APPLIED TO VEHICLES
 - b. APPLIED TO PEOPLE

EVIDENCE

Fourth Amendment Rights

Basic field sobriety test. — Although it is a close question, the Georgia Supreme Court concludes that a basic field sobriety test is not a search implicating Fourth Amendment, U.S. Const., amend. IV, protections. *Mitchell v. State*, 301 Ga. 563, 802 S.E.2d 217, 2017 Ga. LEXIS 545 (2017), overruled in part, *State v. Turnquest*, 305 Ga. 758, 827 S.E.2d 865, 2019 Ga. LEXIS 320 (2019).

Searches and Seizures

1. In General

Standing to challenge wiretap recordings could be established through state’s evidence. — In the defendant’s motion to suppress the contents of intercepted telephone calls in which the defendant allegedly set up a drug deal with the target of wiretapping warrants, the trial court erred in concluding that the defendant could not rely on the state’s evidence to establish standing; the defendant should have been permitted to rely on a sergeant’s testimony that the defendant was the speaker on the call in an attempt to establish standing. *Bourassa v. State*, 306 Ga. 329, 830 S.E.2d 189, 2019 Ga. LEXIS 450 (2019).

Independent source doctrine. — When applying the independent source doctrine, the court was bound to follow *Murray v. U.S.*, 487 U.S. 583 (1988) and, therefore, must consider whether the

state’s decision to seek a warrant for evidence previously obtained through unlawful means was prompted by the prior unlawful search. *Tatum v. State*, 319 Ga. 187, 903 S.E.2d 109, 2024 Ga. LEXIS 137 (2024).

2. Searches

Breath test admissible in DUI. —

Defendant’s motion in limine excluding the results of the defendant’s breath test was improperly granted because the evidence, including the videotape of the stop, did not show that the officers used fear, intimidation, threat of physical punishment, or lengthy detention to obtain the defendant’s consent to the test; the defendant’s intoxication, youth, lack of education, or low intelligence did not somehow negate the voluntariness of the defendant’s consent; the implied consent notice read to the defendant informed the defendant of the choice of either agreeing or refusing to submit to chemical testing, and the possible consequences for each choice; and the defendant immediately agreed to submit to the breath test. *State v. Young*, 339 Ga. App. 306, 793 S.E.2d 186, 2016 Ga. App. LEXIS 615 (2016).

Breath test as search incident to arrest. — Implied consent statute was not unconstitutional under the Fourth Amendment or Ga. Const. 1983, Art. I, Sec. I, Para. XIII because, even if the statute were coercive, police could obtain a breath test without a warrant as a

search incident to arrest. *Fazio v. State*, 302 Ga. 295, 806 S.E.2d 544, 2017 Ga. LEXIS 887 (2017).

Admission of buccal swab harmless. — In a murder case, any violation of Ga. Const. 1983, Art. I, Sec. I, Para. XIII and XVI, due to the admission of DNA evidence obtained from a buccal swab performed on the defendant without a warrant while the defendant was in custody was harmless because the DNA evidence obtained from the defendant's buccal swab did not match any of the DNA found at the crime scene or inculcate the defendant in any other way. *Ellison v. State*, 309 Ga. 810, 848 S.E.2d 113, 2020 Ga. LEXIS 601 (2020).

3. Consent Searches

a. In General

Videotape demonstrated consent to search given. — Trial court did not err by denying the defendant's motions to suppress because the court properly determined that the search was consensual as the videotape of the traffic stop showed that the defendant was not in handcuffs prior to the search, there was no evidence that the defendant was being threatened in any way, misled, or subject to a lengthy detention before giving consent, and the defendant never withdrew the consent given. *Batten v. State*, 341 Ga. App. 332, 801 S.E.2d 57, 2017 Ga. App. LEXIS 194 (2017).

b. Consent Searches of People

Suppression of breath tests. — Trial court erroneously suppressed the breath-test evidence obtained when the defendant was arrested for, inter alia, driving under the influence of alcohol because there was no evidence that the officer used fear, intimidation, threat of physical punishment, or a lengthy detention to obtain the defendant's consent to the breath test; there was no evidence that the defendant's age, intelligence, or level of education hindered the defendant's ability to understand the implied-consent notice; the notice, as read to the defendant, made it clear that the defendant had the right to refuse testing; and the defendant was advised of the various consequences of the

defendant's refusal to consent to any testing. *State v. Jacobs*, 342 Ga. App. 476, 804 S.E.2d 132, 2017 Ga. App. LEXIS 361 (2017).

Blood test results. — In a case charging the defendant with driving under the influence (DUI) to the extent it was less safe for the defendant to drive and DUI per se, the motion to suppress the results of the state-administered test of the defendant's breath was properly granted as the defendant lacked the capacity to consent to the breath test based upon the defendant's confusion and high level of intoxication; the state was only able to show that the defendant acquiesced to the officer's request that the defendant submit to a breath test but was unable to show actual consent; and the trial court was not expressly required to address in its order each relevant factor in determining if the defendant's consent was voluntary. *State v. Jung*, 337 Ga. App. 799, 788 S.E.2d 884, 2016 Ga. App. LEXIS 408 (2016).

Consent to blood test despite use of word "yank". — Defendant voluntarily consented to the blood test after being informed that the defendant would lose the defendant's driver's license if the test were not taken and the trooper's use of the word "yank" did not amount to coercion. *State v. Baddeley*, 348 Ga. App. 844, 823 S.E.2d 373, 2019 Ga. App. LEXIS 37 (2019), cert. denied, No. S19C0904, 2019 Ga. LEXIS 758 (Ga. Nov. 4, 2019).

Blood test results inadmissible when actual consent not obtained. — On remand from the Supreme Court, the defendant's motion to suppress the state-administered blood test, taken without a search warrant, was properly granted as the state was able to show that the defendant acquiesced to the officer's request that the defendant submit to the state-administered blood and urine tests but was unable to show actual consent because the trial court found that the defendant's communications with the officer during the field sobriety evaluations indicated that the defendant was confused, and that evidence brought the defendant's mental capacity into question and showed that the defendant appeared highly intoxicated; and, at the hospital, the defendant had to lean on the officer for support.

Searches and Seizures (Cont'd)

3. Consent Searches (Cont'd)

b. Consent Searches of People (Cont'd)

State v. Williams, 337 Ga. App. 791, 788 S.E.2d 860, 2016 Ga. App. LEXIS 403 (2016).

c. Consent Searches of Places

Search of motel room. — Because the motel room registration of the woman the defendant was staying with had run out at 11:00 A.M., neither the defendant nor the woman was a guest after that time due to their failure to pay for another night's stay and, thus, the defendant had no legal possession or control of the room and no expectation of privacy where the drugs were found since the officers entered and searched the motel room after 11:00 A.M. Lindsey v. State, 353 Ga. App. 231, 836 S.E.2d 563, 2019 Ga. App. LEXIS 623 (2019).

Search Warrants

1. In General

Sufficient particularity. — Although the search warrant authorized officers to search for and seize a generalized class of electronic information the warrant enumerated each class of item seized from the house and the language at the end of the warrant limited those enumerated classes of evidence to only that which was potentially relevant to the crime being investigated. Smerk v. State, 374 Ga. App. 590, 913 S.E.2d 712, 2025 Ga. App. LEXIS 95 (2025).

4. Exceptions to Warrant Requirement

a. Applied to Vehicles

Reasonable suspicion to stop car.

Trial counsel was not ineffective for failing to file a motion to suppress the evidence obtained as a result of the traffic stop because the police officers had reasonable suspicion to do so, as an undercover officer posing as a 14-year-old girl set up a meeting with defendant at a park, defendant texted that he was on his way, and defendant's truck entered the trash

dump area even though its truck bed was empty, quickly made a u-turn and exited. Baggett v. State, 367 Ga. App. 851, 888 S.E.2d 636, 2023 Ga. App. LEXIS 246 (2023).

Length of traffic stop. — Traffic stop of defendant's vehicle was not unlawfully prolonged because only about 10 minutes elapsed between the time the officer stopped defendant and the time defendant was arrested, and defendant's acknowledgement that defendant had mostly likely been pulled over for "messing with someone defendant shouldn't have" gave the officer reasonable suspicion to prolong the traffic stop. Baggett v. State, 367 Ga. App. 851, 888 S.E.2d 636, 2023 Ga. App. LEXIS 246 (2023).

b. Applied to People

Breath test was search incident to arrest. — In the defendant's DUI trial, O.C.G.A. § 40-6-391(a)(1), because a breath test was permitted as a search incident to the defendant's DUI arrest, the defendant's refusal to take the breath test was not the exercise of the constitutional right against unreasonable searches and seizures, and evidence of the defendant's refusal was properly admitted under O.C.G.A. § 40-5-67.1(b). Cherry v. State, 345 Ga. App. 409, 813 S.E.2d 408, 2018 Ga. App. LEXIS 116 (2018), cert. denied, No. S18C1104, 2018 Ga. LEXIS 720 (Ga. Oct. 22, 2018), superseded by statute as stated in Garrison v. State, 319 Ga. 711, 905 S.E.2d 629, 2024 Ga. LEXIS 178 (2024).

Breath test authorized as search incident to arrest. — Warrantless test of the defendant's breath was authorized by the search-incident-to-arrest exception to the warrant requirement under both the Fourth Amendment and Ga. Const. 1983, Art. I, Sec. I, Para. XIII, irrespective of whether the defendant's consent was freely and voluntarily obtained for the breath test. MacMaster v. State, 344 Ga. App. 222, 809 S.E.2d 478, 2018 Ga. App. LEXIS 7 (2018), cert. denied, No. S18C0750, 2018 Ga. LEXIS 492 (Ga. Aug. 2, 2018).

Search of probationer's residence. — Trial court properly denied the defendant's motion to suppress because the

court did not err in determining that the law-enforcement officers who searched the defendant's home had reasonable suspicion to suspect criminal activity or violations of probation based on the probation officer's concerns that the defendant was using drugs and attempting to avoid detection; thus, the search was conducted for probationary purposes, rather than for law-enforcement purposes. *Whitfield v. State*, 337 Ga. App. 167, 786 S.E.2d 547, 2016 Ga. App. LEXIS 286 (2016).

Evidence

Blood test results admissible. — In a DUI per se case, the trial court did not err

in denying the defendant's motion to suppress the results of a chemical testing of the defendant's blood because the defendant freely and voluntarily consented to the test as the defendant gave an affirmative response to the officer's question pursuant to the implied consent notice; the officer did not employ shows of force; and, at the fire station, the defendant reaffirmed the defendant's assent before the medic drew the defendant's blood. *Jacobs v. State*, 338 Ga. App. 743, 791 S.E.2d 844, 2016 Ga. App. LEXIS 539 (2016), cert. denied, No. S17C0439, 2017 Ga. LEXIS 356 (Ga. May 1, 2017).

RESEARCH REFERENCES

ALR.

Construction and application of Supreme Court's holding in *Arizona v. Gant*, 129 S. Ct. 1710, 173 L. Ed. 2d 485, 47 A.L.R. Fed. 2d 657 (2009), that police may search vehicle incident to recent occupant's arrest only if arrestee is within reaching distance of passenger compartment at time of search or it is reasonable to believe vehicle contains evidence of offense — pretextual traffic offenses and other criminal investigations, 56 A.L.R.6th 1.

Necessity of rendering medical assistance as circumstance permitting warrantless entry or search of building or premises, 58 A.L.R.6th 499.

Propriety of execution of no-knock search warrant, 59 A.L.R.6th 311.

Validity of search of wireless communication devices, 62 A.L.R.6th 161.

Search and seizure: reasonable expectation of privacy in backyards, 62 A.L.R.6th 413.

Adequacy of defense counsel's representation of criminal client regarding search and seizure issues — pretrial motions — suppression motions where no warrant involved, 71 A.L.R.6th 1.

Adequacy of defense counsel's representation of criminal client regarding search and seizure issues — pretrial motions — suppression motions where warrant was involved, 72 A.L.R.6th 1.

Reverse-franks claims, where police arguably omit facts from search or arrest

warrant affidavit material to finding of probable cause with reckless disregard for the truth — underlying homicide and assault offenses, 72 A.L.R.6th 437.

Adequacy of defense counsel's representation of criminal client regarding search and seizure issues — pretrial motions — motions other than for suppression, 73 A.L.R.6th 1.

Reverse-franks claims, where police arguably omit facts from search or arrest warrant affidavit material to finding of probable cause with reckless disregard for truth — underlying drug offenses, 73 A.L.R.6th 49.

Reverse-franks claims, where police arguably omit facts from search or arrest warrant affidavit material to finding of probable cause with reckless disregard for the truth — underlying sexual offenses, 74 A.L.R.6th 69.

Reverse-franks claims, where police arguably omit facts from search or arrest warrant affidavit material to finding of probable cause with reckless disregard for truth — underlying weapons offenses, 75 A.L.R.6th 443.

Construction and application of *Illinois v. Lidster*, 540 U.S. 419, 124 S. Ct. 885, 157 L. Ed. 2d 843 (2004), governing validity of police roadblock, checkpoint, or other detention of vehicle for gathering of information, 78 A.L.R.6th 213.

Construction and application by state courts of protective sweep doctrine recognized in *Maryland v. Buie*, 494 U.S. 325,

110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990) — warrantless search of house for dangerous persons, 78 A.L.R.6th 297.

Permissibility under Fourth Amendment of Terry stop to investigate completed misdemeanor, 78 A.L.R.6th 599.

Construction and application by state courts of protective sweep doctrine recognized in *Maryland v. Buie*, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990) — warrantless search of apartment or other non-house dwelling for dangerous persons, 79 A.L.R.6th 1.

Reverse-franks claims, where police arguably omit facts from search or arrest warrant affidavit material to finding of probable cause with reckless disregard for truth — underlying vehicular offenses, 79 A.L.R.6th 325.

Validity of “reach-in” searches, 79 A.L.R.6th 631.

Reverse-franks claims, where police arguably omit facts from search or arrest warrant theft and burglary offenses, 80 A.L.R.6th 239.

Reverse-franks claims, where police arguably omit facts from search or arrest warrant affidavit material to finding of probable cause with reckless disregard for the truth — underlying miscellaneous offenses, 81 A.L.R.6th 257.

Permissibility under Fourth Amendment of investigatory traffic stop based solely on anonymous tip reporting drunk driving, 84 A.L.R.6th 293.

Expectation of privacy in and discovery of social networking web site postings and communications, 88 A.L.R.6th 319.

Admissibility, in state probation revocation proceedings, of evidence obtained through illegal search and seizure, 92 A.L.R.6th 1.

Construction and application by state courts of federal and state constitutional standards governing police orders to passengers in car lawfully pulled over for traffic stop, 92 A.L.R.6th 171.

Sufficiency of search warrant for DNA sample, 93 A.L.R.6th 275.

Validity of search of digital camera and associated memory cards, 94 A.L.R.6th 525.

Search and seizure: what constitutes abandonment of real property within rule that search and seizure of abandoned

property is not unreasonable, 99 A.L.R.6th 397.

Application of collective knowledge doctrine or fellow officers’ rule under Fourth Amendment in prosecution for prostitution, pornography, or other sexually based offense — state cases, 101 A.L.R.6th 299.

Application of collective knowledge doctrine or fellow officers’ rule under Fourth Amendment in murder, homicide or manslaughter prosecution — state cases, 101 A.L.R.6th 331.

Application of collective knowledge doctrine or fellow officers’ rule under Fourth Amendment in prosecution for robbery, burglary, larceny, or other theft offense — state cases, 103 A.L.R.6th 347.

Whether police scan of magnetic strip on credit or debit card violates reasonable expectation of privacy under fourth amendment, 5 A.L.R.7th 1.

Construction and application of supreme court’s holding in *Florida v. Jardines*, that canine sniff on front porch of home constitutes “search” for purposes of fourth amendment in subsequent similar factual circumstances, 15 A.L.R.7th 3.

Validity of search and seizure warrant, and execution thereof, to disclose records and electronic communications relating to specific e-mail address, 15 A.L.R.7th 5.

Use of medical marijuana as defense to driving offense or challenge to search of motor vehicle and occupants, 43 A.L.R.7th Art. 4.

Construction and application by federal courts of protective sweep doctrine recognized in *Maryland v. Buie*, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990) — warrantless search of house for dangerous persons, 67 A.L.R. Fed. 2d 159.

Construction and application of Fourth Amendment exclusionary rule — Supreme Court cases, 68 A.L.R. Fed. 2d 303.

Construction and application by federal courts of protective sweep doctrine recognized in *Maryland v. Buie*, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990) — warrantless search of apartment or other nonhouse dwelling for dangerous persons, 69 A.L.R. Fed. 2d 241.

Racial profiling by law enforcement officers in connection with traffic stops as infringement of federal constitutional rights or federal civil rights statutes, 91 A.L.R. Fed. 2d 1.

Validity of use of cellular telephone or tower to track prospective, real time, or historical position of possessor of phone under fourth amendment, 92 A.L.R. Fed. 2d 1.

Application of fourth amendment to evidence seized in foreign jurisdiction, 3 A.L.R. Fed. 3d 4.

Expectation of Right to Privacy in Rental Vehicles Under Fourth Amendment, 27 A.L.R. Fed. 3d 3 (2018).

Assessment of constitutionality of officer's entry into home to execute arrest warrant under *Payton v. New York* framework — Federal appellate cases, 36 A.L.R. Fed. 3d Art. 4.

Determinations whether federal agency actions relating to mining operations constituted major federal actions for purposes of § 102(2)(C) of National Environmental Policy Act (NEPA) (42 U.S.C.A. § 4332(2)(C)), 37 A.L.R. Fed. 3d Art. 9.

Determinations whether federal agency actions relating to oil and gas extraction constituted major federal actions for purposes of § 102(2)(C) of National Environmental Policy Act (NEPA) (42 U.S.C.A. § 4332(2)(C)), 37 A.L.R. Fed. 3d Art. 11.

Hobby Protection Act, 15 U.S.C.A. §§ 2101 et seq., and regulations thereunder, 39 A.L.R. Fed. 3d Art. 1.

Permissibility under fourth amendment of detention of motorist by police, following lawful stop for traffic offense, to investigate with canine matters not related to

offense — Federal cases post *Rodriguez v. U.S.*, 39 A.L.R. Fed. 3d Art. 6; 53 A.L.R. Fed. 3d 8.

Requirement that transfer be “for the benefit of” particular creditor within meaning of preferences section of bankruptcy code, which permits trustee to avoid certain transfers of an interest of debtor in property to or for benefit of creditor, 11 U.S.C.A. § 547(b)(1), 39 A.L.R. Fed. 3d Art. 8.

Constitutionality of Warrantless Use of Pole Cameras, 75 A.L.R. Fed.3d 3.

When Does Police Officer's Use of Non-Deadly Force During Arrest Constitute Violation of Fourth Amendment Rights—Federal Appellate Cases Post-*Chauvin*, 78 A.L.R. Fed.3d 5.

Warrantless Search by Government Employer of Employee's Workplace Locker, Desk, Phone, or the like as Violation of Fourth Amendment Privacy Rights (U.S. Const. Amend. IV)—Federal Cases, 78 A.L.R. Fed.3d 8.

Application of *Kingsley* to Acts or Conditions Constituting Punishment for Pretrial Detainees, 78 A.L.R. Fed 3d 3.

Supreme Court Jurisprudence on Governmental Use of Excessive Force as Violation of Constitutional or Civil Rights, 80 A.L.R. Fed. 3d 3.

Evidence of Officer's Actions Leading Up to Use of Excessive Force in Federal Excessive Force Cases, 84 A.L.R. Fed. 3d Art. 4.

Paragraph XIV. Benefit of counsel; accusation; list of witnesses; compulsory process.

Law reviews.

For article, “The Right to Two Criminal Defense Lawyers,” see 69 Mercer L. Rev. 675 (2018).

For article, “Privileging Public Defense

Research,” see 69 Mercer L. Rev. 771 (2018).

For article, “Raising the Bar: Indigent Defense and the Right to a Partisan Lawyer,” see 69 Mercer L. Rev. 697 (2018).

JUDICIAL DECISIONS

ANALYSIS

BENEFIT OF COUNSEL

1. IN GENERAL
2. PROCUREMENT OF COUNSEL
 - A. APPOINTMENT OF COUNSEL
4. RIGHT TO BENEFIT OF COUNSEL

- 5. EFFECTIVE ASSISTANCE OF COUNSEL
 - B. OBLIGATIONS OF COUNSEL
 - C. USE OF EXPERTS
 - G. OTHER EXAMPLES
- 6. CRITICAL STAGES
- 7. WAIVER
- RIGHT TO CONFRONTATION
 - 1. IN GENERAL

Benefit of Counsel

1. In General

Failure to make unequivocal request for self-representation. — Trial court was not obligated to hold a Faretta hearing prior to trial because the defendant’s brief colloquy with the trial court did not amount to an unequivocal request for self-representation and when the trial court denied the defendant’s continuance, the defendant affirmatively accepted the ruling and never mentioned a desire to self represent again. *Cooper v. State*, 350 Ga. App. 365, 829 S.E.2d 433, 2019 Ga. App. LEXIS 304 (2019).

2. Procurement of Counsel

A. Appointment of Counsel

Request for new counsel on day of trial. — Trial court did not abuse the court’s discretion in denying the defendant’s request for a continuance to obtain new counsel because the trial was scheduled and no further continuances were allowed and the defendant waited until the day of trial to advise the court of the desire to hire new counsel after appointed counsel had engaged in discovery and trial preparation for three months and announced that counsel was ready to try the case. *Bass v. State*, 372 Ga. App. 510, 904 S.E.2d 699, 2024 Ga. App. LEXIS 320 (2024).

4. Right to Benefit of Counsel

Conflict of interest not proven.

Defendant did not establish a successful ineffective assistance of counsel claim based on a conflict of interest because the fact that attorneys from one public defender’s office were representing the defendant and the accomplice was not sufficient, standing alone, to show an impermissible conflict of interest; nothing

in the record indicated that counsel bypassed any meritorious defenses, that the accomplice’s plea bargain was negotiated at the expense of the defendant, or that counsel’s ability to cross-examine the accomplice was constrained; and there was no evidence that the defendant’s counsel shared any privileged or confidential information with or obtained such information from the attorney representing the accomplice. *Williams v. State*, 302 Ga. 404, 807 S.E.2d 418, 2017 Ga. LEXIS 936 (2017).

5. Effective Assistance of Counsel

B. Obligations of Counsel

Joint representation. — Trial counsel’s joint representation of both defendant and defendant’s husband did not give rise to a conflict of interest because any potential conflict of interest was waivable, the evidence showed that defendant waived defendant’s right to conflict-free counsel, and defendant’s waiver was knowing, voluntary, and intelligent. Defendant had received more than two years of legal training, defendant executed a written waiver, and each co-defendant had consulted with independent counsel. *Rosenbaum v. State*, 320 Ga. 5, 907 S.E.2d 593, 2024 Ga. LEXIS 229 (2024).

C. Use of Experts

Testimony of medical examiner allowed despite destruction of medical records. — Trial court did not err in denying the defendant’s motion to exclude the testimony of the medical examiner as to the cause of the murder victim’s death due to the destruction of the medical records reviewed because although the testimony partially depended on hearsay contained in the medical records, such records were the type of evidence on which an expert could rely and no Brady viola-

tion occurred as the defendant was notified of the testimony prior to trial. *Burney v. State*, 309 Ga. 273, 845 S.E.2d 625, 2020 Ga. LEXIS 469 (2020).

Counsel not ineffective with fingerprint evidence. — When trial counsel moved to exclude the fingerprint database report as hearsay, thoroughly cross-examined the state’s fingerprint expert, argued to the jury about the lack of evidence linking the defendant to the crimes, and discounted the significance of the fingerprint evidence, noting that the defendant lived in the house and could have left the print at any time, the defendant could not then successfully show that trial counsel was ineffective. *Arnold v. State*, 321 Ga. 434, 2025 Ga. LEXIS 91 (2025).

G. Other Examples

Conflict of interest. — Defendant’s right to the effective assistance of counsel was not violated due to trial counsel’s previous representation of a victim in an unrelated criminal matter because there was no actual conflict where there was no evidence that counsel had any pecuniary interest in receiving future business from the victim, there was no evidence counsel obtained privileged information from the victim that prevented her from conducting a thorough cross-examination of the victim at trial, and counsel’s decisions regarding the scope and extent of her cross-examination of the victim and how best to present evidence of a relationship between the victim and the murder victim were objectively reasonable under the circumstances. *Moss v. State*, 312 Ga. 202, 862 S.E.2d 309, 2021 Ga. LEXIS 578 (2021).

6. Critical Stages

Merger of counts for sentencing not required. — Trial court did not err by failing to merge sentencing for aggravated assault into criminal attempt to commit a felony (murder) or aggravated assault because the defendant’s act of placing the defendant’s hands around the victim’s neck satisfied the assault elements whereas both attempted murder and aggravated assault involved the use of a handgun; thus, the conviction on aggravated assault was not based on the same

conduct and the rule of lenity did not apply. *Gonzalez v. State*, 352 Ga. App. 83, 833 S.E.2d 727, 2019 Ga. App. LEXIS 528 (2019).

7. Waiver

Effective waiver of counsel. — Defendant’s motion for new trial, arguing the defendant’s waiver of counsel was erroneously accepted, was properly denied because the trial court conducted a detailed colloquy with the defendant; the defendant knowingly, voluntarily, and intelligently waived the right to counsel; pretermitted whether the trial court’s statement that once the trial began the defendant could not change the defendant’s mind and decide that the defendant wanted to be represented by a lawyer was erroneous or misleading, the defendant waived appellate review by failing to object to the statement; and the defendant never asked to be represented by counsel during the course of the trial or re-visited the issue regarding the trial court’s statement. *Kelly v. State*, 344 Ga. App. 433, 810 S.E.2d 197, 2018 Ga. App. LEXIS 45 (2018).

No waiver established. — Defendant’s convictions for driving under the influence (DUI) to the extent it was less safe to drive, DUI per se, and improper lane change were vacated because the record did not demonstrate that the defendant knowingly and intelligently waived the defendant’s right to counsel. *Leggett v. State*, 354 Ga. App. 877, 842 S.E.2d 313, 2020 Ga. App. LEXIS 244 (2020).

Right to Confrontation

1. In General

Admission of co-defendant’s statement not plain error. — Statement of a co-defendant, who did not testify at trial, did not violate Bruton because the statement did not incriminate the defendant and, thus, the trial court did not err, much less plainly err, in admitting the statement as rather than implicate the defendant, the co-defendant instead refused to acknowledge having any information about who attacked and robbed the victim. *Shelton v. State*, 350 Ga. App. 774, 830 S.E.2d 335, 2019 Ga. App. LEXIS 401 (2019).

Right to Confrontation (Cont'd)
1. In General (Cont'd)

Confrontation of medical examiner when evidence marginally relevant.

— Trial court did not violate the defendant's right to confrontation when the court restricted defendant's questioning of the medical examiner who conducted the victim's autopsy because evidence that the medical examiner was disciplined for telling an inappropriate joke was, at best, marginally relevant to the issue of the medical examiner's potential bias in favor of the state. *Summerville v. State*, 320 Ga. 60, 907 S.E.2d 604, 2024 Ga. LEXIS 240 (2024).

No violation of right to confrontation. — Because the informant's recorded statements provided context for the defendant's portion of the telephone conversation, the informant's statements were not hearsay as the statements entailed admissions of a party opponent, and the Confrontation Clause did not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted, the trial court did not err in admitting the recording. *Jones v. State*, 339 Ga. App. 95, 791 S.E.2d 625, 2016 Ga. App. LEXIS 559 (2016), cert. denied, No. S17C0590, 2017 Ga. LEXIS 411 (Ga. May 15, 2017).

Co-defendant's jailhouse statements to a fellow inmate to get advice about the co-defendant's false alibi did not violate the defendant's right to confrontation because the statements were not made to establish evidence for use in a future prosecution. *Hampton v. State*, 308 Ga. 797, 843 S.E.2d 542, 2020 Ga. LEXIS 356 (2020).

Witness's first offender plea inadmissible. — In the defendant's murder trial, the trial court did not err in excluding an eyewitness's first offender plea to forgery because the eyewitness had completed the eyewitness's probation and been discharged; even if a first offender plea was probative of bias in favor of the state, the defendant made no proffer explaining a relationship between the witness's prior discharge and the eyewitness's testimony in the defendant's case. *Jones v. State*, 305 Ga. 653, 827 S.E.2d 254, 2019 Ga. LEXIS 235 (2019).

Audiotape of 9-1-1 calls non-testimonial.

— Victim's statements during the 9-1-1 call did not violate the defendant's constitutional right to confront the defendant's accusers because the victim's statements in the 9-1-1 call were non-testimonial as the statements were made while the family violence battery incident was ongoing and the statements were made for the primary purpose of preventing the continuation of the domestic violence that was apparently occurring at that time, not for the purpose of establishing a past fact; and because the statements were admissible under the present sense impression exception to the hearsay rule. *Legree v. State*, 344 Ga. App. 793, 812 S.E.2d 68, 2018 Ga. App. LEXIS 139 (2018).

Confrontation rights were violated.

— Although the admission of the 9-1-1 recording into evidence and the police officer's testimony concerning the injuries the officer observed on the victim at the scene was sufficient to support the defendant's conviction, the appellate court could not definitively say that the error in admitting the victim's and minor child's out-of-court statements to the police officer during the officer's investigation of the incident was harmless as the trial court specifically relied on the victim's and the minor child's out-of-court statements to the police officer in rendering the court's judgment of conviction. *Legree v. State*, 344 Ga. App. 793, 812 S.E.2d 68, 2018 Ga. App. LEXIS 139 (2018).

Defendant's constitutional right to confront the defendant's accusers was violated because the state failed to show that the victim and the minor child were unavailable to testify at trial; and because the victim's and minor child's out-of-court statements to the police officer at the scene were testimonial in nature as, during the time the victim and minor child were being questioned by the police officer, the defendant remained at the residence at the officer's request and posed no apparent threat to anyone; and the victim and the minor child made statements to the officer under circumstances which objectively indicated that the primary purpose of the interrogation was to establish the facts necessary for criminal prosecution.

tion. *Legree v. State*, 344 Ga. App. 793, 812 S.E.2d 68, 2018 Ga. App. LEXIS 139 (2018).

Limit to cross-examination. — Trial court did not err in disallowing cross-examination of a witness about the witness's immigration status as the notion that the witness was influenced in any

way as to testimony by immigration status was speculative, such evidence had little probative value, and the defendant was not prohibited from cross-examining the witness about the witness's bias or partiality toward the prosecution. *Lucas v. State*, 303 Ga. 134, 810 S.E.2d 491, 2018 Ga. LEXIS 100 (2018).

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Conditions interfering with accused's view of witness as violation of right of confrontation, 61 A.L.R. 7th 2.

Ineffective assistance of counsel in relation to mitigation expert, 71 A.L.R.7th 1.

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What constitutes "custodial interrogation" by police officer within rule of *Miranda v. Arizona* requiring that suspect be informed of federal constitutional rights before custodial interrogation — at nonpolice vehicle for other than traffic stop, 57 A.L.R.6th 83.

What constitutes "custodial interrogation" by police officer within rule of *Miranda v. Arizona* requiring that suspect be informed of federal constitutional rights before custodial interrogation — where unspecified as to precise location of roadside questioning by law enforcement officers, 58 A.L.R.6th 215.

What constitutes "custodial interrogation" within rule of *Miranda v. Arizona* requiring that suspect be informed of federal constitutional rights before custodial interrogation — at suspect's place of employment or business, 58 A.L.R.6th 439.

What constitutes "custodial interrogation" within rule of *Miranda v. Arizona* requiring that suspect be informed of federal constitutional rights before custodial interrogation — at school, 59 A.L.R.6th 393.

What constitutes "custodial interrogation" within rule of requiring that suspect be informed of his or her federal constitutional rights before custodial interroga-

tion — at border or functional equivalent of border, 68 A.L.R.6th 607.

Adequacy of defense counsel's representation of criminal client regarding search and seizure issues — pretrial motions — suppression motions where no warrant involved, 71 A.L.R.6th 1.

Adequacy of defense counsel's representation of criminal client regarding search and seizure issues — pretrial motions — suppression motions where warrant was involved, 72 A.L.R.6th 1.

Reverse-franks claims, where police arguably omit facts from search or arrest warrant affidavit material to finding of probable cause with reckless disregard for the truth — underlying homicide and assault offenses, 72 A.L.R.6th 437.

Adequacy of defense counsel's representation of criminal client regarding search and seizure issues — pretrial motions — motions other than for suppression, 73 A.L.R.6th 1.

Reverse-franks claims, where police arguably omit facts from search or arrest warrant affidavit material to finding of probable cause with reckless disregard for truth — underlying drug offenses, 73 A.L.R.6th 49.

Reverse-franks claims, where police arguably omit facts from search or arrest warrant affidavit material to finding of probable cause with reckless disregard for the truth — underlying sexual offenses, 74 A.L.R.6th 69.

Construction and application by state courts of supreme court's ruling in *Padilla v. Kentucky*, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010), That defense counsel has obligation to advise defendant that entering guilty plea could result in deportation, 74 A.L.R.6th 373.

Reverse-franks claims, where police arguably omit facts from search or arrest

warrant affidavit material to finding of probable cause with reckless disregard for truth — underlying weapons offenses, 75 A.L.R.6th 443.

Due process afforded in drug court proceedings, 78 A.L.R.6th 1.

Construction and application of Illinois v. Lidster, 540 U.S. 419, 124 S. Ct. 885, 157 L. Ed. 2d 843 (2004), governing validity of police roadblock, checkpoint, or other detention of vehicle for gathering of information, 78 A.L.R.6th 213.

Reverse-franks claims, where police arguably omit facts from search or arrest warrant affidavit material to finding of probable cause with reckless disregard for truth — underlying vehicular offenses, 79 A.L.R.6th 325.

Reverse-franks claims, where police arguably omit facts from search or arrest warrant theft and burglary offenses, 80 A.L.R.6th 239.

Reverse-franks claims, where police arguably omit facts from search or arrest warrant affidavit material to finding of probable cause with reckless disregard for the truth — underlying miscellaneous offenses, 81 A.L.R.6th 257.

Construction and application of booking question exception to Miranda, 81 A.L.R.6th 505.

Necessity or propriety of court's provision of cocounsel to criminal defendant who is already represented by counsel — state prosecutions, 83 A.L.R.6th 465.

Construction and application by state courts of federal and state constitutional standards governing police orders to passengers in car lawfully pulled over for traffic stop, 92 A.L.R.6th 171.

Propriety and prejudicial effect of compelling accused to wear prison clothing at jury trial — state cases, 99 A.L.R.6th 295.

Criminal defendant's age or height as factor in determination of whether circumstances of witness's identification of defendant in photographic array shown by police to witness were impermissibly suggestive as matter of federal constitutional law, 102 A.L.R.6th 365.

Adequacy, under Strickland standard, of defense counsel's representation of client in sentencing phase of state court death penalty case — investigation of, and presentation of evidence regarding, cli-

ent's brain damage or abnormality, 102 A.L.R.6th 417.

Adequacy of defense counsel's representation of criminal client — Daubert or Frye challenge to expert witness or testimony, 103 A.L.R.6th 247.

Witness's identification of criminal defendant, as person in photograph shown by police, as resulting from impermissibly suggestive circumstances, as matter of federal constitutional law, where police showed single witness fewer than six photographs in one session, 1 A.L.R.7th 6.

Adequacy, under Strickland standard, of defense counsel's representation of client in sentencing phase of state court death penalty case — allegedly deficient preparation of witness or presentation of evidence regarding client's mental illness or dysfunction, 2 A.L.R.7th 1.

Clothing worn by criminal defendant in photograph in array shown by police to witness as factor in determination of whether circumstances of witness's identification of defendant, as person in photograph, were impermissibly suggestive as matter of federal constitutional law, 2 A.L.R.7th 2.

Application of Crawford Confrontation Clause rule to alcohol and drug forensic analysis and related documents, 3 A.L.R.7th 4.

Distinctive quality of criminal defendant's photograph in array shown by police to witness as factor in determination of whether circumstances of witness's identification of defendant, as person in photograph, were impermissibly suggestive as matter of federal constitutional law, 3 A.L.R.7th 5.

Criminal defendant's hair color or style as factor in determination of whether circumstances of witness's identification of defendant in photographic array shown by police to witness were impermissibly suggestive as matter of federal constitutional law, 5 A.L.R.7th 6.

Adequacy under Strickland standard of defense counsel's representation of client in sentencing phase of state court death penalty case — investigation of, and presentation of evidence regarding client's low intelligence or mental retardation, 5 A.L.R.7th 6.

Adequacy, under Strickland standard, of defense counsel's representation of cli-

ent in sentencing phase of state court death penalty case — counsel's purported complete failure to investigate client's mental illness or dysfunction, 6 A.L.R.7th 3.

Criminal defendant's race or skin color as factor in determination of whether circumstances of witness's identification of defendant in photographic array shown by police to witness were impermissibly suggestive as matter of federal constitutional law, 6 A.L.R.7th 5.

Adequacy, under Strickland standard, of defense counsel's representation of client in sentencing phase of state court death penalty case — failure to present evidence regarding client's mental illness or dysfunction, other than as result of lack of investigation, 7 A.L.R.7th 3.

Criminal defendant's facial hair as factor in determination of whether circumstances of witness's identification of defendant in photographic array shown by police to witness were impermissibly suggestive as matter of federal constitutional law, 7 A.L.R.7th 4.

Manner in which photographic array shown by police to witness is displayed, or police officer's alleged nonverbal cues, as factor in determination of whether circumstances of witness's identification of criminal defendant, as person in photograph within array, were impermissibly suggestive as matter of federal constitutional law, 8 A.L.R.7th 5.

Police statement, other than one that photographic array shown to witness contained or might contain criminal suspect or known criminal, as factor in determination of whether circumstances of witness's identification of criminal defendant, as person in photograph within array, were impermissibly suggestive as matter of federal constitutional law, 9 A.L.R.7th 3.

Adequacy, under Strickland standard, of defense counsel's representation of client in sentencing phase of state court death penalty case — allegedly deficient investigation of, other than counsel's purported complete failure to investigate, client's mental illness or dysfunction, 9 A.L.R.7th 4.

Witness's identification of criminal defendant, as person in photograph shown

by police, as resulting from impermissibly suggestive circumstances, as matter of federal constitutional law, where police showed single witness photographs on more than one occasion, 10 A.L.R.7th 5.

Witness's identification of criminal defendant, as person in photograph shown by police, as resulting from impermissibly suggestive circumstances, as matter of federal constitutional law, where police showed photographs to multiple witnesses, 11 A.L.R.7th 3.

Adequacy, under Strickland standard, of defense counsel's representation of client in sentencing phase of state court death penalty case — deficient presentation of evidence, or failure to present evidence, regarding client's drug or alcohol use, other than as result of lack of investigation, 11 A.L.R.7th 4.

Police statement that photographic array shown to witness contained or might contain criminal suspect or known criminal as factor in determination of whether circumstances of witness's identification of criminal defendant, as person in photograph within array, were impermissibly suggestive as matter of federal constitutional law, 12 A.L.R.7th 3.

Witness's identification of criminal defendant in photographic array shown by police, as resulting from impermissibly suggestive circumstances, as matter of federal constitutional law, where police showed two or more photographs of defendant in same array, 15 A.L.R.7th 4.

Mug shot characteristics of criminal defendant's photograph as factor in determination of whether circumstances of witness's identification of defendant in photographic array shown by police to witness were impermissibly suggestive as matter of federal constitutional law, 16 A.L.R.7th 3.

Adoption and use of Justice Kennedy's concurrence in *Missouri v. Seibert* concerning "two-stage" or "question-first" interrogation procedure, 46 A.L.R.7th Art. 1.

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Ineffective assistance of counsel in removal proceedings — legal bases of en-

titlement to representation and requisites to establish prima facie case of ineffectiveness, 58 A.L.R. Fed. 2d 363.

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Amendment confrontation clause — Supreme Court cases, 83 A.L.R. Fed. 2d 385.

Whether petitioner denied right to counsel in immigration proceeding must demonstrate prejudice or substantial prejudice, 79 A.L.R. Fed. 3d 1.

Paragraph XV. Habeas corpus.

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For article, “Racial Justice and Federal Habeas Corpus as Postconviction Relief from State Convictions,” see 69 Mercer L. Rev. 453 (2018).

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lief, Cause I Try, and I Try, and I Try, and I Try,” see 70 Mercer L. Rev. 1135 (2019).

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Paragraph XVI. Self-incrimination.

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JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

RIGHT AGAINST SELF-INCRIMINATION

CLAIM OF PRIVILEGE

WAIVER OF PRIVILEGE

EVIDENCE

2. ADMISSIBLE

3. INADMISSIBLE

General Consideration

Constitutionality of implied consent notice. — Ga. Const. 1983, Art. I, Sec. I, Para. XVI was held to protect against compelled breath tests and affords individuals a constitutional right to refuse testing. Submitting to a breath test implicates a person’s right against compelled self-incrimination and prior decisions holding otherwise are overruled. *Olevik v. State*, 302 Ga. 228, 806 S.E.2d 505, 2017 Ga. LEXIS 898 (2017).

Trial court’s denial of defendant’s motion to suppress was reversed because Georgia Supreme Court concluded that Ga. Const. Art. I, Sec. I, Para. XVI precluded admission of evidence that suspect refused to consent to breath test, thus, O.C.G.A. §§ 40-5-67.1(b) and

40-6-392(d) were unconstitutional to the extent that they allow defendant’s refusal to submit to a breath test to be admitted into evidence at criminal trial. *Elliott v. State*, 305 Ga. 179, 824 S.E.2d 265, 2019 Ga. LEXIS 112 (2019) (decided under former version of Code Sections 40-5-67.1 and 40-6-392).

Georgia Supreme Court concluded that Ga. Const. Art. I, Sec. I, Para. XVI precluded admission of evidence that suspect refused to consent to a breath test, thus, O.C.G.A. §§ 40-5-67.1(b) and 40-6-392(d) were unconstitutional to extent that they allow defendant’s refusal to submit to breath test to be admitted into evidence at criminal trial. *Elliott v. State*, 305 Ga. 179, 824 S.E.2d 265, 2019 Ga. LEXIS 112 (2019) (decided under

former version of Code Sections 40-5-67.1 and 40-6-392).

No violation as defendant consented to breath test. — Because the defendant freely and voluntarily consented to the state-administered breath test and was not compelled to undergo that test, the defendant's right against self-incrimination was not violated. *MacMaster v. State*, 344 Ga. App. 222, 809 S.E.2d 478, 2018 Ga. App. LEXIS 7 (2018), cert. denied, No. S18C0750, 2018 Ga. LEXIS 492 (Ga. Aug. 2, 2018).

Sobriety tests not based on threat or coercion. — Defendant's right against self-incrimination was not violated because there was no threat or coercion by the officer asking the defendant to perform a HGN or breath test since the officer began most sentences with requests such as "I am going to ask you to" or "Do me a favor and". *Woods v. State*, 361 Ga. App. 844, 864 S.E.2d 194, 2021 Ga. App. LEXIS 521 (2021).

Defendant's right against self-incrimination was not violated because there was no threat or coercion by the officer asking the defendant to perform a HGN or breath test where the officer began most sentences with requests such as "I am going to ask you to" or "Do me a favor and". *Woods v. State*, 361 Ga. App. 844, 864 S.E.2d 194, 2021 Ga. App. LEXIS 521 (2021).

Miranda warnings not required for persons arrested for DUI before asking to submit to breath test. — Supreme Court of Georgia held that neither Georgia's right against compelled self-incrimination, Georgia's right to due process, nor Georgia's statute prohibiting compelled self-incrimination, O.C.G.A. § 24-5-506, requires law enforcement to provide Miranda warnings to persons arrested for DUI before asking a person to submit to a breath test. *State v. Turnquest*, 305 Ga. 758, 827 S.E.2d 865, 2019 Ga. LEXIS 320 (2019).

Defendant's motion to suppress the results of the defendant's state-administered chemical breath test, taken at police headquarters following the defendant's arrest, was properly denied as the defendant's consent to the breath test following the implied consent warning was volun-

tary because the traffic stop did not appear to be unreasonable or needlessly extended at any point; the officer made no effort to deceive the defendant into consenting to the test and, in fact, went to some length to clarify the defendant's choice in the matter; and the record did not support an inference that the defendant did not understand what the defendant was being asked to decide or that the defendant was pressured into consenting to the test. *Oh v. State*, 345 Ga. App. 729, 815 S.E.2d 95, 2018 Ga. App. LEXIS 263 (2018).

Admission of colloquy from first trial. — Defendant failed to demonstrate plain error in the admission of the colloquy from the first trial, citing no legal authority that supported the novel argument that the admission of the colloquy violated the defendant's rights under the Fifth Amendment and Ga. Const. 1983, Art. I, Sec. I, Para. XVI, because the evidence enabled the jury to unfavorably contrast the defendant's election to testify at the first trial with the defendant's election not to do so at the second trial. *Thomas v. State*, 354 Ga. App. 815, 841 S.E.2d 458, 2020 Ga. App. LEXIS 223 (2020).

Right Against Self-Incrimination

No ineffective assistance in aid to pro se defendant. — Defense counsel did not provide ineffective assistance by failing to revive the defendant's pro se motion to suppress the DNA evidence obtained through buccal swabs of the defendant's mouth because the defendant could not make a strong showing that, if counsel had filed a motion to suppress raising the self-incrimination argument the defendant asserted on appeal the trial court would have granted the motion. *Stinson v. State*, 352 Ga. App. 528, 835 S.E.2d 342, 2019 Ga. App. LEXIS 594 (2019).

Failure to give notice of implied consent rights. — Trial court's judgment denying the defendant's motion to suppress was reversed and the case remanded for the court to further consider the totality of the circumstances surrounding the defendant's breath test as, although the trial court did consider some of the circumstances surrounding the de-

Right Against**Self-Incrimination** (Cont'd)

fendant's consent, the court did not consider whether the officer's misleading statement affected the defendant's decision to take the breath test, having already determined that specific issues as to the defendant's consent were moot. *Holland v. State*, 347 Ga. App. 601, 820 S.E.2d 442, 2018 Ga. App. LEXIS 570 (2018).

Right to refuse breath test. — Because the defendant had the right to refuse to provide incriminating evidence by performing a breath test, an affirmative act, the admission of evidence of the defendant's refusal violated the state constitutional right against self-incrimination. *State v. Bradberry*, 357 Ga. App. 60, 849 S.E.2d 790, 2020 Ga. App. LEXIS 560 (2020).

Refusal to take breath test. — Because the appellate court could not determine from the record before it whether the trial court erred in finding that the defendant voluntarily consented to the breath test, on remand, the trial court could consider the defendant's suppression argument in light of the case law and Ga. Const. 1983, Art. I, Sec. I, Para XVI, which precluded admission of evidence that the defendant refused to consent to a breath test. *Leggett v. State*, 354 Ga. App. 877, 842 S.E.2d 313, 2020 Ga. App. LEXIS 244 (2020).

Refusal to provide urine sample. — Because the defendant had a right to refuse the state's request that the defendant provide a urine sample in a collection container, the trial court properly granted the defendant's motion to suppress evidence of the defendant's refusal to submit to the test. *Awad v. State*, 313 Ga. 99, 868 S.E.2d 219, 2022 Ga. LEXIS 10 (2022).

Error in requiring defendant to stand harmless. — Even if the trial court violated the defendant's rights against self-incrimination by requiring the defendant to stand in front of counsel table at the pretrial hearing so the cab driver could observe the defendant's height and build, the error was harmless because the cab driver recognized the defendant's face but nothing else about the defendant and,

thus, requiring the defendant to stand was harmless. *Thomas v. State*, 355 Ga. App. 111, 843 S.E.2d 1, 2020 Ga. App. LEXIS 267 (2020).

Roadside questioning not custodial situation. — Generally, mere roadside questioning during traffic stop does not constitute a custodial situation. *Licata v. State*, 305 Ga. 498, 826 S.E.2d 94, 2019 Ga. LEXIS 150 (2019).

Miranda warnings for field sobriety tests were required only when a person is in custody; therefore, because the defendant was not in custody before being asked to undergo field sobriety tests, the police were not required to give any Miranda warning. *Licata v. State*, 305 Ga. 498, 826 S.E.2d 94, 2019 Ga. LEXIS 150 (2019).

Police officers were not required to give the defendant a Miranda warning before asking the defendant to submit to the breath test; thus, the trial court did not err in that regard but because the trial court did not consider the deficiency in the implied consent notice as a factor in the court's totality of the circumstances analysis, the denial of the defendant's motion to suppress was reversed. *Fofanah v. State*, 351 Ga. App. 632, 832 S.E.2d 449, 2019 Ga. App. LEXIS 460 (2019).

Boat operator's self incrimination rights not violated. — Department of Natural Resources officer who observed the defendant's boat operating with its docking lights improperly illuminated, O.C.G.A. § 52-7-11(b)(2), had the authority to detain the defendant and make a brief safety inspection under O.C.G.A. § 52-7-25(b)(4); the defendant was not in custody during the stop and Miranda warnings were not required prior to field sobriety tests. *Pedersen v. State*, 337 Ga. App. 159, 786 S.E.2d 535, 2016 Ga. App. LEXIS 278 (2016), cert. denied, No. S16C1641, 2016 Ga. LEXIS 828 (Ga. Dec. 8, 2016), overruled in part, *State v. Turnquest*, 305 Ga. 758, 827 S.E.2d 865, 2019 Ga. LEXIS 320 (2019).

No violation by taking of blood sample. — Trial court erred in granting defendant's motion to suppress on the basis that case law precluded the state from introducing at trial evidence that a DUI suspect refused to submit to a blood

test because such refusal constitutes the exercise of the right against self-incrimination. *State v. Dias*, 321 Ga. 261, 914 S.E.2d 291, 2025 Ga. LEXIS 61 (2025).

Measurement of blood alcohol content is incriminating. — Measurement of blood alcohol content based on a breath test requires the cooperation of the person being tested and compelling a defendant to perform an act that is incriminating in nature is precisely what Ga. Const. 1983, Art. I, Sec. I, Para. XVI prohibits. *Olevik v. State*, 302 Ga. 228, 806 S.E.2d 505, 2017 Ga. LEXIS 898 (2017).

No coercion by requiring consent or refusal of breath test before allowing phone call. — Trial court's grant of the appellee's motion in limine to suppress the results of a breath test was reversed because refusing to allow the appellee to make a phone call did not constitute coercion as there was no evidence to support the trial court's finding that the appellee's consent to the breath test was obtained after the DUI officer told the appellee that the call to the appellee's daughter could not be made unless the appellee took a breath test, so that finding was clearly erroneous. *State v. Council*, 348 Ga. App. 497, 823 S.E.2d 817, 2019 Ga. App. LEXIS 32 (2019).

Claim of Privilege

Civil suit as to discovery requests. — Trial court's protective order was vacated and the case remanded with instructions for the trial court to reconsider the renter's invocation of a Fifth Amendment privilege as the privilege pertained to each individual discovery request because the trial court did not evaluate the privilege with respect to requests to produce and such was necessary since the privilege can, but did not automatically apply to the act of producing documents. *U-Haul Co. v. Rutland*, 348 Ga. App. 738, 824 S.E.2d 644 (2019).

Waiver of Privilege

Driver did not waive privilege for purposes of civil proceeding by speaking to investigators. — In a widow's wrongful death suit arising out of a vehicle accident in which the defendant

driver was charged, the driver did not waive the defendant's Fifth Amendment privilege by speaking to insurance investigators in the accident prior to the lawsuit being brought. *U-Haul Co. of Arizona v. Rutland*, 348 Ga. App. 738, 824 S.E.2d 644, 2019 Ga. App. LEXIS 87 (2019).

Evidence

2. Admissible

Admission of buccal swab harmless. — In a murder case, any violation of Ga. Const. 1983, Art. I, Sec. I, Para. XIII and XVI, due to the admission of DNA evidence obtained from a buccal swab performed on the defendant without a warrant while the defendant was in custody was harmless because the DNA evidence obtained from the defendant's buccal swab did not match any of the DNA found at the crime scene or inculcate the defendant in any other way. *Ellison v. State*, 309 Ga. 810, 848 S.E.2d 113, 2020 Ga. LEXIS 601 (2020).

Consent and subsequent refusal for search of home. — Admission of evidence regarding the defendant's consent and then refusal to allow law enforcement's request to search the defendant's home on the night of the charged murder was not plain error; the defendant's attempt to analogize to the *Elliott* decision that breath tests violated the privilege against self-incrimination was an argument for an extension of existing law, and could not be plain error. *Dunbar v. State*, 309 Ga. 252, 845 S.E.2d 607, 2020 Ga. LEXIS 461 (2020).

3. Inadmissible

Prior refusal of breath test for DUI not admissible. — Trial court did not err by denying the state's request to introduce evidence of the defendant's prior refusal to take a state-administered breath test during the defendant's DUI trial because the Supreme Court of Georgia has previously held that a defendant's refusal to submit to a breath test may not be admitted into evidence at a subsequent criminal trial. *State v. Voyles*, 355 Ga. App. 903, 846 S.E.2d 170, 2020 Ga. App. LEXIS 409 (2020).

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What constitutes “custodial interrogation” by police officer within rule of *Miranda v. Arizona* requiring that suspect be informed of his or her federal constitutional rights before custodial interrogation — in nonpolice vehicle for traffic stop, 56 A.L.R.6th 323.

What constitutes “custodial interrogation” by police officer within rule of *Miranda v. Arizona* requiring that suspect be informed of federal constitutional rights before custodial interrogation — at nonpolice vehicle for other than traffic stop, 57 A.L.R.6th 83.

What constitutes “custodial interrogation” by police officer within rule of *Miranda v. Arizona* requiring that suspect be informed of federal constitutional rights before custodial interrogation — where unspecified as to precise location of roadside questioning by law enforcement officers, 58 A.L.R.6th 215.

What constitutes “custodial interrogation” within rule of *Miranda v. Arizona* requiring that suspect be informed of federal constitutional rights before custodial interrogation — at suspect’s place of employment or business, 58 A.L.R.6th 439.

What constitutes “custodial interrogation” within rule of *Miranda v. Arizona* requiring that suspect be informed of federal constitutional rights before custodial interrogation — at school, 59 A.L.R.6th 393.

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Fifth amendment privilege against self-incrimination as applied to compelled disclosure of password or production of otherwise encrypted electronically stored data, 84 A.L.R.6th 251.

Criminal defendant’s refusal to participate in reenactment, 68 A.L.R.7th 3.

Propriety of using otherwise inadmissible statement, taken in violation of *Miranda* Rule, to impeach criminal defendant’s credibility — federal cases, 85 A.L.R. Fed. 2d 77.

Application of National Environmental Policy Act (NEPA) antisegregation principle to projects in national forests, 46 A.L.R. Fed. 3d Art. 1.

U.S. Supreme Court Jurisprudence on Federal Sentencing Guidelines, 46 A.L.R. Fed. 3d Art. 2.

Use of fifth amendment privilege against self-incrimination in bankruptcy proceedings, 46 A.L.R. Fed. 3d Art. 5.

Federal communication commission rules governing limits on television, radio, and news ownership, 46 A.L.R. Fed. 3d Art. 6.

Causation under Retaliation Provision of Fair Housing Act (42 U.S.C.A. § 3617), 46 A.L.R. Fed. 3d Art. 7.

Insurance implications of invoking fifth amendment right against self-incrimination, 85 A.L.R. Fed. 3d Art. 2.

Paragraph XVII. Bail; fines; punishment; arrest, abuse of prisoners.

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For note, “Three Strikes and You’re Still In? Interpreting the Three-Strike Provision of the Prison Litigation Reform Act in the Eleventh Circuit,” see 68 Mercer L. Rev. 1161 (2017).

For article, “Bail and Mass Incarceration,” see 53 Ga. L. Rev. 238 (2018).

For note, “A ‘Critical’ Question of State Law: Georgia’s Ambiguous Treatment of

Initial Appearance Hearings and the Implications of Bail Reform,” see 54 Ga. L. Rev. 363 (2019).

For note, “Pretrial Detention of Indigents: A Standard Analysis of Due Process and Equal Protection Claims,” see 54 Ga. L. Rev. 707 (2020).

For article, “Distinguishing Plea Discounts and Trial Penalties,” see 37 Ga. St. U.L. Rev. 261 (2021).

JUDICIAL DECISIONS

ANALYSIS

BAIL

CRUEL AND UNUSUAL PUNISHMENT

Bail

\$100,000 bond not excessive in family violence case. — Trial court did not abuse the court's discretion in setting defendant's bond at \$100,000, and therefore it did not err by denying defendant's motion to reduce bond, because the court considered defendant's ability to pay the bond and found that the amount was needed to secure defendant's appearance given the seriousness of the charges (35 charges, including criminal attempt to commit murder and numerous counts of aggravated battery (family violence), aggravated assault, and cruelty to children in the first degree) and defendant's prior conviction. *Colemon v. State*, 361 Ga. App. 901, 865 S.E.2d 842, 2021 Ga. App. LEXIS 558 (2021).

Cruel and Unusual Punishment

20-year sentence for 15-year old convicted of statutory rape upheld. —

Defendant's sentence of 20 years' imprisonment for statutory rape under O.C.G.A. § 16-6-3(b) did not meet even the threshold inference of gross disproportionality under Ga. Const. 1983, Art. I, Sec. I, Para. XVII, and U.S. Const., amend. VIII; the 13-year-old victim refused to have sex until the defendant brandished a knife and threatened to kill the victim's father. *Conley v. Pate*, 305 Ga. 333, 825 S.E.2d 135, 2019 Ga. LEXIS 140 (2019).

Permissible punishment. — Imposition of three concurrent five-year probated sentences as a first offender was not grossly disproportionate to the gravity of the offense of felony sexual battery and, thus, the defendant's claim that the sentence amounted to cruel and unusual punishment failed. *Jones v. State*, 307 Ga. 505, 837 S.E.2d 288, 2019 Ga. LEXIS 833 (2019).

RESEARCH REFERENCES

ALR.

Due process afforded in drug court proceedings, 78 A.L.R.6th 1.

Propriety of holding prisoner in isolation, 96 A.L.R.6th 269.

Retroactive application, in post-conviction proceedings, of constitutional rule of *Miller v. Alabama*, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), that mandatory life sentence without parole for those under age of 18 at time of their homicide crimes violates Eighth Amendment's prohibition of cruel and unusual punishments, 102 A.L.R.6th 637.

Prison inmate's or pretrial detainee's eighth amendment rights, or rights related to claims of "deliberate indifference," with respect to pregnancy, 5 A.L.R.7th 7.

Adequacy, under Strickland standard, of defense counsel's representation of client in sentencing phase of state court

death penalty case — investigation of client's drug or alcohol use, 10 A.L.R.7th 3.

Construction and application of rule announced in *Miller v. Alabama* that sentences of life without parole for persons under 18 at time of committing homicide offense violate Eighth Amendment if mandatory and imposed without considering youth-related factors, 16 A.L.R.7th 4.

Construction and application of Eighth Amendment's prohibition of cruel and unusual punishment — U.S. Supreme Court cases, 78 A.L.R. Fed. 2d 1.

Comment note: propriety of holding prisoner in isolation — federal cases, 82 A.L.R. Fed. 2d 315.

Partial surrender of collateral ("dirt-for-debt") as providing secured creditor with "indubitable equivalent," under 11 U.S.C.A. § 1129(b)(2)(A)(iii), of secured claim or portion thereof, 41 A.L.R. Fed. 3d Art. 1.

Claims of sentencing factor manipulation and sentencing entrapment under federal sentencing guidelines in prosecutions other than for drugs and weapons, 41 A.L.R. Fed. 3d Art. 2.

Liability of prison guard, official, or supervisor for rape or sexual abuse of inmate in violation of Eighth Amendment “deliberate indifference” standard, post-

Farmer cases — federal appellate opinions, 41 A.L.R. Fed. 3d Art. 7.

COVID-19 related litigation: claims of deliberate indifference to inmates’ Eighth Amendment rights — federal appellate cases, 67 A.L.R. Fed. 3d 10.

Application of Kingsley to Acts or Conditions Constituting Punishment for Pre-trial Detainees, 78 A.L.R Fed 3d 3.

Paragraph XVIII. Jeopardy of life or liberty more than once forbidden.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

SEPARATE OFFENSES

DOUBLE JEOPARDY

- 1. IN GENERAL
- 3. SAME TRANSACTION TEST

JEOPARDY AND TRIAL PROCEDURE

- 1. IN GENERAL
- 2. MISTRIALS
- 3. NEW TRIALS

General Consideration

Refusal of breath test inadmissible. — Georgia Supreme Court held defendant had right to refuse to perform preliminary breath test and field sobriety tests under the Georgia Constitution, and evidence of the defendant’s refusals could not be introduced at trial. *Ammons v. State*, 315 Ga. 149, 880 S.E.2d 544, 2022 Ga. LEXIS 295 (2022).

Separate Offenses

Dismissal of counts improper even if multiplicitous. — Trial court erred by dismissing 47 counts of defendant’s indictment at the pretrial stage of the proceedings because the substantive bar on double jeopardy applied only after a defendant was found guilty and, therefore, it did not warrant the pretrial dismissal of the child pornography charges against the defendant, even if those charges were multiplicitous. *Williams v. State*, 307 Ga. 778, 838 S.E.2d 235, 2020 Ga. LEXIS 50 (2020).

Double Jeopardy

1. In General

Subsequent prosecution not barred since prosecutor had no earlier knowledge. — Trial court erred in dismissing the defendant’s charge for DUI, O.C.G.A. § 40-6-391(k), on double jeopardy grounds under O.C.G.A. § 16-1-7(b) based on the prior disposal online of a separate seat belt citation; there was no showing that the solicitor had actual knowledge of the DUI charge at the time the seat belt charge was handled. *State v. Garlepp*, 338 Ga. App. 788, 790 S.E.2d 839, 2016 Ga. App. LEXIS 524 (2016), cert. denied, No. S17C0485, 2017 Ga. LEXIS 340 (Ga. May 1, 2017).

3. Same Transaction Test

Same transaction established.

Defendant’s plea in bar on double jeopardy grounds was improperly denied as to the offense of use of a communication facility in committing a crime under the

Fulton County indictment because the state agreed to nolle pros the Forsyth County indictment; and the county and city detectives' testimony confirmed that the communications charged were one and the same. *Laghaeifar v. State*, 360 Ga. App. 843, 861 S.E.2d 808, 2021 Ga. App. LEXIS 403 (2021).

Because the reduced possession of marijuana charge to which the defendant pled guilty in Forsyth County arose from the seizure of 11 pounds of marijuana in the parking lot of a hotel in Forsyth County on the morning of April 4, 2018, while Count 2 of the Fulton County indictment arose from the discovery of additional marijuana at the defendant's home pursuant to the execution of a search warrant later that same day, it was proper to charge each offense separately. *Laghaeifar v. State*, 360 Ga. App. 843, 861 S.E.2d 808, 2021 Ga. App. LEXIS 403 (2021).

Special demurrer regarding description of weapon improperly denied. — Special demurrer to counts two and three charging possession of illegal weapons was improperly denied as the weapons, which were referred to as a “sawed-off shotgun” and a “sawed-off rifle,” were not described with sufficient particularity and had to be described with greater particularity, such as their appearance or color, make, model, caliber, exact barrel measurement, serial number, and any other distinguishing characteristics; the indictment did not apprise the defendant of what the defendant had to be prepared to defend against; and the indictment did not show with accuracy to what extent the defendant could plead a former acquittal or conviction should other proceedings be taken against the defendant for a similar offense. *Thomas v. State*, 366 Ga. App. 738, 884 S.E.2d 120, 2023 Ga. App. LEXIS 72 (2023).

Jeopardy and Trial Procedure

1. In General

No prior prosecution when defendants entered pretrial intervention program. — Prosecution of the defendants for theft by taking and criminal trespass in Calhoun County, O.C.G.A. §§ 16-7-21(b) and 16-8-2, was not

prohibited by double jeopardy based on their prior entry into a pretrial intervention program under O.C.G.A. § 15-18-80(b) following charges of theft by receiving stolen property, O.C.G.A. § 16-8-7(a), in Irwin County because there was no prosecution in Irwin County within the meaning of O.C.G.A. §§ 16-1-3(14) and 16-1-8(a)(1)-(2). *Palmer v. State*, 341 Ga. App. 433, 801 S.E.2d 300, 2017 Ga. App. LEXIS 219 (2017).

2. Mistrials

No double jeopardy when mistrial proper. — There was no double jeopardy violation, as the trial court's decision to grant a mistrial was authorized, even if the mistrial was not strictly necessary, because under the totality of the attendant circumstances, reasonable judges could differ as to the type of disposition required to protect the fair trial rights of the parties after the case went longer than expected, requiring either a mistrial or a three-week continuance, which upset many jurors, who would likely have blamed one of the parties. *Laguerre v. State*, 301 Ga. 122, 799 S.E.2d 736, 2017 Ga. LEXIS 330 (2017).

Return of jury's verdict invalidated mistrial. — Trial court's declaration of a mistrial as to the malice murder count was a nullity because the jury's verdict had already been returned before the mistrial was declared and, thus, the jury's verdict precluded a retrial on the malice murder count under the double jeopardy clause. *Medina v. State*, 309 Ga. 432, 844 S.E.2d 767, 2020 Ga. LEXIS 453 (2020).

Mistrial from COVID judicial emergency. — Trial court did not abuse the court's discretion by declaring a mistrial based on manifest necessity or in denying the defendant's plea in bar because of the COVID-related judicial emergency, the 30-day prohibition on jury service in the county, and the potentially COVID-related health concerns among the trial's participants. *Hightower v. State*, 315 Ga. 399, 883 S.E.2d 335, 2023 Ga. LEXIS 6 (2023).

Retrial was barred. — Denial of the plea in bar, which asserted double jeopardy grounds after the first trial of the defendant ended with the trial judge's sua

**Jeopardy and Trial
Procedure** (Cont'd)
2. Mistrials (Cont'd)

sponte declaration of a mistrial due to a violation of the sequestration rule, was erroneous as there was no manifest necessity for a mistrial because there was no evidence that the rule was violated; even if two defense witnesses could have heard testimony from the witness stand, there was no evidence of prejudice from any presumed overhearing of testimony as there was no evidence showing that either of the witnesses would have changed their testimony to match that of other witnesses; and the mere absence of an objection to the mistrial, without more, did not constitute consent to the mistrial. *Brown v. State*, 354 Ga. App. 493, 841 S.E.2d 125, 2020 Ga. App. LEXIS 199 (2020), cert. denied, No. S20C1448, 2021 Ga. LEXIS 96 (Ga. Mar. 1, 2021).

Mistrial based on outside influences on jury did not bar retrial. — In

the defendant's trial for malice murder and felony murder arising out of the shooting death of a drug dealer, the trial court did not abuse the court's discretion in declaring a mistrial over the defendant's objection out of manifest necessity given that a juror had consulted with outside sources and shared legally inaccurate information with the jury. The mistrial did not bar the defendant's retrial on the charges. *Blake v. State*, 304 Ga. 747, 822 S.E.2d 207, 2018 Ga. LEXIS 798 (2018).

3. New Trials

No bar to second trial when motion for new trial granted. — Trial court did not err by denying the defendant's plea in bar because the trial court did not acquit defendant of indecent exposure as the court twice denied defendant's directed verdict motions, and the defendant was granted a new trial. *Onyeka v. State*, 374 Ga. App. 504, 913 S.E.2d 377, 2025 Ga. App. LEXIS 81 (2025).

RESEARCH REFERENCES

ALR.

What constitutes accused's consent to court's discharge of jury or to grant of motion for mistrial which will constitute waiver of former jeopardy plea — silence

or failure to object or protest, 103 A.L.R.6th 137.

Double jeopardy considerations in state criminal cases — Supreme Court cases, 77 A.L.R. Fed. 2d 477.

Paragraph XX. Conviction, effect of.

RESEARCH REFERENCES

ALR.

Inheritance under slayer statute by per-

son determined to have acted in self-defense, 80 A.L.R.7th 5.

Paragraph XXII. Involuntary servitude.

JUDICIAL DECISIONS

Maintenance obligations of HOA not involuntary servitude. — Grant of summary judgment to a county was upheld because the maintenance obligations imposed by the Declaration did not constitute involuntary servitude as both the homeowners' association (HOA) and individual lot owners consented to various

obligations and covenants set forth in the Declaration and the HOA had specific authority under certain circumstances to enter a lot owner's property and perform maintenance. *Polo Golf & Country Club Homeowners Ass'n v. Cunard*, 310 Ga. 804, 854 S.E.2d 732, 2021 Ga. LEXIS 30 (2021).

RESEARCH REFERENCES

ALR.

Application of Section 1 of 13th Amendment to United States Constitution, U.S. Const. amend. 13, § 1, prohibiting slavery and involuntary servitude — labor required as punishment for crime, 87 A.L.R.6th 109.

Application of Section 1 of 13th Amendment to United States Constitution, U.S. Const. amend. 13, § 1, prohibiting slavery and involuntary servitude — labor required by law or force not as punishment for crime, 88 A.L.R.6th 203.

Paragraph XXIX. Enumeration of rights not denial of others.

Law reviews.

For article, “Baby Ninth Amendments and Unenumerated Individual Rights in

State Constitutions Before the Civil War,” see 68 Mercer L. Rev. 389 (2017).

JUDICIAL DECISIONS

Grandparent visitation statute unconstitutional. — Order granting a grandparent visitation rights to the child of the grandparent’s deceased son under O.C.G.A. § 19-7-3(d) was reversed because the statute was unconstitutional under the Georgia Constitution as

violating the right of parents to the care, custody, and control of their children since the statute did not require clear and convincing evidence of imminent harm to the child. *Patten v. Ardis*, 304 Ga. 140, 816 S.E.2d 633, 2018 Ga. LEXIS 455 (2018).

Paragraph XXX. Rights of certain individuals.

(a) For the purpose of this Paragraph, a victim shall be considered an individual against whom a crime has allegedly been perpetrated, including crimes alleged as delinquent acts. Such victims shall be accorded the utmost dignity and respect and shall be treated fairly by the criminal justice system of this state and all agencies and departments that serve such system. When the crime is one against or involving the person of the victim or is a felony property crime, such victim shall be afforded the following specific rights:

- (1) The right upon request to reasonable, accurate, and timely notice of any scheduled court proceedings involving the alleged act or changes to the scheduling of such proceedings;
- (2) The right upon request to reasonable, accurate, and timely notice of the arrest, release, or escape of the accused;
- (3) The right not to be excluded from any scheduled court proceedings involving the alleged act;
- (4) The right upon request to be heard at any scheduled court proceedings involving the release, plea, or sentencing of the accused; and
- (5) The right to be informed of his or her rights.

(b) A victim described in subparagraph (a) of this Paragraph shall have the right to assert the rights enumerated in subparagraph (a) of this Paragraph. The General Assembly shall provide by general law the process whereby such victim may assert the rights provided by subparagraph (a) of this Paragraph by motion within the same criminal or delinquency proceeding giving rise to such rights. At the hearing on such motion, such victim may be represented by an attorney, but neither the state nor any of its political subdivisions shall be obligated to appoint an attorney to represent him or her. The General Assembly shall provide by general law the process whereby a family member, guardian, or legal custodian of a victim when he or she is a minor, legally incapacitated, or deceased may assert the rights of such victim.

(c) This Paragraph shall not:

(1) Create any cause of action against the State of Georgia; any political subdivision of the State of Georgia; any officer, employee, or agent of the State of Georgia or of any of its political subdivisions; or any officer or employee of the court;

(2) Confer upon any victim the right to:

(A) Appeal any decision made in a criminal or delinquency proceeding;

(B) Challenge any verdict or sentence entered in a criminal or delinquency proceeding; or

(C) Standing to participate as a party in a criminal or delinquency proceeding other than to file a motion as provided in subparagraph (b) of this Paragraph;

(3) Restrict the authority of the General Assembly, by general law, to further define or expand upon the rights provided in this Paragraph or to regulate the reasonable exercise thereof; or

(4) Restrict the inherent authority of the courts to maintain order in the courtroom.

History.
Ga. Const. 1983, Art. 1, § 1, Para. 30, approved by Ga. L. 2018, p. 1139, § 1/SR 146.

2018, p. 1139, § 1/SR 146), which added this Paragraph, was ratified at the general election held on November 6, 2018.

Editor’s notes.
The constitutional amendment (Ga. L.

SECTION II

ORIGIN AND STRUCTURE OF GOVERNMENT

Paragraph
V. What acts void.

Paragraph I. Origin and foundation of government.

JUDICIAL DECISIONS

Private entities cannot appoint county board of ethics members. — Trial court correctly granted the writ of quo warranto as to the four challenged members appointed to the county board of ethics by private entities as those appointments were unconstitutional as the private entities did not answer to the people as required by the Georgia Constitution and were, therefore, not authorized to wield the power to appoint public officials to the board. *Delay v. Sutton*, 304 Ga. 338, 818 S.E.2d 659, 2018 Ga. LEXIS 581 (2018).

Sovereign immunity not bar to condemnation and trespass claims. — Trial court did not err by finding that the property owner’s claims for inverse condemnation and trespass were not barred by sovereign immunity because a claim that a city has improperly destroyed a building seemed to fit within the sort of affirmative action that could constitute such a taking. *City of Atlanta v. MLK Properties, LLC*, 372 Ga. App. 210, 904 S.E.2d 79, 2024 Ga. App. LEXIS 281 (June 27, 2024).

Property owner’s claim for injunctive relief was not barred by sovereign immunity because it alleged that the destruction of its building constituted a taking and that the city improperly placed a lien on its property, interfering with the owner’s rights. *City of Atlanta v. MLK Properties, LLC*, 372 Ga. App. 210, 904 S.E.2d 79, 2024 Ga. App. LEXIS 281 (June 27, 2024).

Certificate of need a private property right. — Rights conferred by a certificate of need (CON) were held to include traditional property rights, like the right to use one’s property in a particular way, and those rights are private rights conferred on and held by individuals, rather than public rights held in common, so authorizations under a CON program confer private rights capable of vesting. *Kennestone Hosp. v. Emory Univ.*, 318 Ga. 169, 897 S.E.2d 772, 2024 Ga. LEXIS 29, rev’d, 373 Ga. App. 114, 906 S.E.2d 854, 2024 Ga. App. LEXIS 361 (2024).

Paragraph II. Object of government.

JUDICIAL DECISIONS

Private entities cannot appoint county board of ethics members. — Trial court correctly granted the writ of quo warranto as to the four challenged members appointed to the county board of ethics by private entities as those appointments were unconstitutional as the pri-

vate entities did not answer to the people as required by the Georgia Constitution and were, therefore, not authorized to wield the power to appoint public officials to the board. *Delay v. Sutton*, 304 Ga. 338, 818 S.E.2d 659, 2018 Ga. LEXIS 581 (2018).

Paragraph III. Separation of legislative, judicial, and executive powers.

Law reviews.

For article, “Transcript: Federalism and

Separation of Powers,” see 35 Ga. St. U.L. Rev. 1003 (2019).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
LEGISLATIVE POWERS
JUDICIAL POWERS

General Consideration

No separation of powers violation. — The very nature and operation of OCGA § 51-12-5.1(g) was different from the nature of the judicial remittitur power and did not infringe on the judicial power as appellant contended and thus, appellant's claim that § 51-12-5.1 (g) was a violation of the separation of powers required by the Georgia Constitution failed. *Taylor v. Devereux Foundation*, 316 Ga. 44, 885 S.E.2d 671, 2023 Ga. LEXIS 63 (2023).

Processing weapons carry license not judicial power. — Georgia General Assembly waived sovereign immunity for claims brought under O.C.G.A. § 16-11-129(j) and the Separation of Powers Provision of Ga. Const. 1983, Art. I, Sec. II, Para. III was not implicated by the recovery of costs, including reasonable attorney's fees, against a probate judge pursuant to O.C.G.A. § 16-11-129(j) because processing a weapons carry license does not involve the exercise of judicial power. *Roberts v. Cuthpert*, 317 Ga. 645, 893 S.E.2d 73, 2023 Ga. LEXIS 207 (2023).

Granting or denying a weapons carry license was held not a judicial function as the application for a weapons carry license does not involve the resolution of a dispute between parties or anything else inherent to the judicial role. *Roberts v. Cuthpert*, 317 Ga. 645, 893 S.E.2d 73, 2023 Ga. LEXIS 207 (2023).

Habeas court violated separation of powers by revoking sentence while petitioner in custody of parole board. — Habeas court erred by revoking the petitioner's remaining portion of the original sentence while the petitioner was in the legal custody of the Georgia Board of Pardons and Paroles as such action was in violation of the separation of powers provision of Ga. Const. 1983, Art. I, Sec. II, Para. III. *Hayward v. Danforth*, 299 Ga.

261, 787 S.E.2d 709, 2016 Ga. LEXIS 427 (2016).

Applicability to county governments.

In a suit challenging redistricting of a county's commission district boundaries, plaintiffs had standing because community stakeholders can sue to enforce public duties and the county's duty to follow state law or home rule authority was a public duty, but plaintiffs did not show uncertainty about future conduct necessary for declaratory relief as past injury from voting in wrong district did not show future uncertainty. *Cobb County v. Floam*, 319 Ga. 89, 901 S.E.2d 512, 2024 Ga. LEXIS 109 (2024).

Challenge to statute governing sealing of court records not viable. — Because an appeal of the denial of a motion to seal a criminal record under O.C.G.A. § 35-3-37(m) failed to present a viable challenge to the statute's constitutionality, Ga. Const. 1983, Art. VI, Sec. VI, Para. II(1), because the challenge (a separation of powers argument, Ga. Const. 1983, Art. I, Sec. II, Para. III, based on the Supreme Court's record-keeping authority under Ga. Const. 1983, Art. VI, Sec. IX, Para. I, and Ga. Unif. Super. Ct. R. 21.4) was not raised below, jurisdiction was properly before the Court of Appeals, pursuant to O.C.G.A. § 5-6-34(a)(12). *Doe v. State*, 303 Ga. 237, 811 S.E.2d 413, 2018 Ga. LEXIS 126, transferred, 347 Ga. App. 246, 819 S.E.2d 58, 2018 Ga. App. LEXIS 501 (2018).

Termination of administrative procedure did not violate separation of powers. — O.C.G.A. § 48-5-311(g)(2), requiring a county board of tax assessors to schedule a settlement conference within 45 days of the taxpayer's notice of appeal, and providing that the taxpayer's stated value be adopted if the board elected not to schedule a conference, did not usurp the superior court's jurisdiction

or violate the separation of powers clause, Ga. Const. 1983, Art. I, Sec. II, Para. III. *Hall County Bd. of Tax Assessors v. Westrec Props.*, 303 Ga. 69, 809 S.E.2d 780, 2018 Ga. LEXIS 42 (2018).

Legislative Powers

Creation of private right of action from criminal statute. — Trial court erred in awarding civil damages to a girlfriend under O.C.G.A. § 16-11-90, which criminalized the transmission of photography or video depicting nudity or sexually explicit conduct of an adult without his or her consent, because it was a criminal statute that did not provide for a private right of action; further, creation of such a right from the statute would violate the separation of powers clause, Ga. Const. 1983, Art. I, Sec. II, Para. III, and also O.C.G.A. § 9-2-8(a). *Somerville v. White*, 337 Ga. App. 414, 787 S.E.2d 350, 2016 Ga. App. LEXIS 343 (2016).

Judicial Powers

DFCS investigator’s determination of child abuse registry listing. — Under the Child Protective Services Informa-

tion System, O.C.G.A. § 49-5-180 et seq., an alleged child abuser has the right to a hearing before an administrative law judge, who makes the final agency decision after hearing evidence and argument from the alleged abuser and from DFCS. The role of the abuse investigator in the determination of whether an incident should be in the child abuse registry does not violate the constitutional principle of separation of powers. *Ga. Dep’t of Human Servs. v. Steiner*, 303 Ga. 890, 815 S.E.2d 883, 2018 Ga. LEXIS 446 (2018).

Discipline of judge. — Constitution sets forth in general terms the conduct for which a judge may be disciplined, and the Code of Judicial Conduct sets forth the particularized standards. The Code, by its terms, applies to judges and judicial candidates, so once the judge became a judicial candidate, the judge was required to abide by that Code, even if the judge was also a legislator for some portion of that time; that does not violate separation of powers principles. *Inquiry Concerning Coomer*, 315 Ga. 841, 885 S.E.2d 738, 2023 Ga. LEXIS 59 (2023).

OPINIONS OF THE ATTORNEY GENERAL

Service as a legislator and deputy sheriff. — A member of the General Assembly may not also serve as a deputy sheriff because simultaneously serving as a legislator and a deputy sheriff violates

the Georgia Constitution’s separation of powers provision and potentially violates other constitutional provisions and common law rules governing conflicts of interest. 2018 Op. Att’y Gen. No. U18-3.

Paragraph V. What acts void.

(a) Legislative acts in violation of this Constitution or the Constitution of the United States are void, and the judiciary shall so declare them.

(b)(1) Sovereign immunity is hereby waived for actions in the superior court seeking declaratory relief from acts of the state or any agency, authority, branch, board, bureau, commission, department, office, or public corporation of this state or officer or employee thereof or any county, consolidated government, or municipality of this state or officer or employee thereof outside the scope of lawful authority or in violation of the laws or the Constitution of this state or the Constitution of the United States. Sovereign immunity is further waived so that a court awarding declaratory relief pursuant to this Paragraph may, only after awarding declaratory relief, enjoin such

acts to enforce its judgment. Such waiver of sovereign immunity under this Paragraph shall apply to past, current, and prospective acts which occur on or after January 1, 2021.

(2) Actions filed pursuant to this Paragraph against this state or any agency, authority, branch, board, bureau, commission, department, office, or public corporation of this state or officer or employee thereof shall be brought exclusively against the state and in the name of the State of Georgia. Actions filed pursuant to this Paragraph against any county, consolidated government, or municipality of the state or officer or employee thereof shall be brought exclusively against such county, consolidated government, or municipality and in the name of such county, consolidated government, or municipality. Actions filed pursuant to this Paragraph naming as a defendant any individual, officer, or entity other than as expressly authorized under this Paragraph shall be dismissed.

(3) Unless otherwise provided herein, this Paragraph shall not affect the power or duty of a court to dismiss any action or deny relief based on any other appropriate legal or equitable ground or other limitation on judicial review, including, but not limited to, administrative exhaustion requirements, ante litem notice requirements, sanctions for frivolous petitions, standing, statutes of limitation and repose, and venue. The General Assembly by an Act may limit the power or duty of a court under this Paragraph to dismiss any action or deny relief.

(4) No damages, attorney's fees, or costs of litigation shall be awarded in an action filed pursuant to this Paragraph, unless specifically authorized by Act of the General Assembly.

(5) This Paragraph shall not limit the power of the General Assembly to further waive the immunity provided in Article I, Section II, Paragraph IX and Article IX, Section II, Paragraph IX. This Paragraph shall not constitute a waiver of any immunity provided to this state or any agency, authority, branch, board, bureau, commission, department, office, or public corporation of this state or officer or employee thereof or any county, consolidated government, or municipality of this state or officer or employee thereof by the Constitution of the United States.

History.

Ga. Const. 1983, Art. 1, § 2, Para. 5; Ga. L. 2020, p. 917, § 1/HR 1023.

Editor's notes.

The constitutional amendment (Ga. L. 2020, p. 917, § 1/HR 1023), which amended this Paragraph, by designating the existing language as subparagraph (a)

and adding subparagraph (b), was ratified at the general election held on November 3, 2020.

Law reviews.

For article with annual survey on local government, see 73 Mercer L. Rev. 193 (2021).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

DETERMINATION OF CONSTITUTIONALITY

1. IN GENERAL
3. PROCEDURE

General Consideration

“Action”. — “Action” as used in Ga. Const., 1983, Art. I, Sec. II, Para. V referred to an entire case or lawsuit. Because plaintiffs’ suit named a defendant for whom a waiver was not provided by this paragraph, the Constitution required the suit be dismissed. *State v. Sass Group*, 315 Ga. 893, 885 S.E.2d 761, 2023 Ga. LEXIS 64 (2023).

Application of Roe-era precedent.

— The Georgia Supreme Court is not at liberty to apply Roe-era precedent in determining whether the LIFE Act (Georgia Living Infants Fairness and Equality Act (LIFE), 2019 Ga. Laws 711 (2019 Ga. HB 481)) was void ab initio. *State of Ga. v. SisterSong Women of Color Reproductive Justice Collective*, 317 Ga. 528, 894 S.E.2d 1, 2023 Ga. LEXIS 234 (2023).

Action must be brought exclusively against State of Georgia or relevant local government. — When plaintiffs rely on Ga. Const. 1983, Art. I, Sec. II, Para. V’s waiver of sovereign immunity, they must comply strictly with its requirements and bring the action exclusively against and in the name of the State of Georgia or the relevant local government, and by failing to name the State of Georgia or relevant local governments as defendants, plaintiffs did not comply with Paragraph V. *Lovell v. Raffensperger*, 318 Ga. 48, 897 S.E.2d 440, 2024 Ga. LEXIS 5, cert. denied, 144 S. Ct. 2689, 219 L. Ed. 2d 1302, 2024 U.S. LEXIS 2767 (2024).

By naming defendants as the Secretary of the State of Georgia by name, not the State of Georgia, and local boards of election and the board members, not the relevant counties, plaintiffs’ failed to comply with Ga. Const. 1983, Art. I, Sec. II, Para. V, and plaintiffs’ lawsuits were properly dismissed. *Lovell v. Raffensperger*, 318

Ga. 48, 897 S.E.2d 440, 2024 Ga. LEXIS 5, cert. denied, 144 S. Ct. 2689, 219 L. Ed. 2d 1302, 2024 U.S. LEXIS 2767 (2024).

Since plaintiffs named both a county and a private entity as defendants, the entire lawsuit was barred by sovereign immunity because plaintiffs violated the exclusivity requirement of Ga. Const. 1983, Art. I, Sec. II, Para. V, therefore, sovereign immunity was not properly waived, and the entire lawsuit had to be dismissed. *South River Watershed Alliance v. DeKalb County*, 373 Ga. App. 285, 908 S.E.2d 204, 2024 Ga. App. LEXIS 413 (2024), overruled in part, *Warbler Invs., LLC v. City of Social Circle*, 321 Ga. 125, 913 S.E.2d 674, 2025 Ga. LEXIS 50 (2025).

In a zoning case, the trial court properly dismissed the complaint because, on its face, the landowner impermissibly brought claims for substantive relief against the County Board of Commissioners and the county, thus violating the exclusivity provision of Ga. Const. 1983, Art. I, Sec. II, Para. V. *Tussahaw Reserves, LLC v. Butts County*, 373 Ga. App. 322, 908 S.E.2d 292, 2024 Ga. App. LEXIS 433 (2024).

Clause did not grant action against state officials otherwise immune.

— Suit by physicians against state officials alleging that O.C.G.A. § 31-9B-1 et seq., regulating abortions, violated the state constitution, was barred by sovereign immunity under Ga. Const. 1983, Art. I, Sec. II, Para. IX, because there was no consent to such a suit. The Due Process Clause, Ga. Const. 1983, Art. I, Sec. I, Para. I, did not provide a private remedy for its enforcement, and the Judicial Review Clause, Ga. Const. 1983, Art. I, Sec. II, Para. V, did not conflict with sovereign immunity. *Lathrop v. Deal*, 301 Ga. 408, 801 S.E.2d 867, 2017 Ga. LEXIS 529 (2017).

Determination of Constitutionality

1. In General

Source of constitutional meaning. — 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 (Georgia Living Infants Fairness and Equality Act (LIFE), 2019 Ga. Laws 711 (2019 Ga. HB 481)) 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. As a result, the trial court erred in concluding that, even though the LIFE Act complies with the United States Constitution today, the LIFE Act violated the United States Constitution when the LIFE Act was enacted. *State of Ga. v. SisterSong Women of Color Reproductive Justice Collective*, 317 Ga. 528, 894 S.E.2d 1, 2023 Ga. LEXIS 234 (2023).

O.C.G.A. § 16-5-9 violated confrontation right. — O.C.G.A. § 16-15-9 was declared unconstitutional on the statute’s face under the Sixth Amendment’s confrontation clause to the extent that the statute authorized the admission of the convictions of non-testifying non-parties

as evidence of a criminal street gang; the exclusion of other alleged gang members’ convictions in the defendant’s trial was upheld. *State v. Jefferson*, 302 Ga. 435, 807 S.E.2d 387, 2017 Ga. LEXIS 931 (2017).

3. Procedure

Despite application of waiver of sovereign immunity, action barred by res judicata. — In a second suit challenging a county’s ordinance regulating adult establishments, although the constitutional waiver of sovereign immunity contained in Ga. Const. 1983, Art. I, Sec. II, Para. V, applied to the store’s lawsuit, its suit was barred by res judicata because the constitutional issues it raised could have been raised in defending against the county’s earlier counterclaim, which was adjudicated on the merits. *Starship Enterprises of Atlanta, Inc. v. Gwinnett County*, 319 Ga. 293, 903 S.E.2d 55, 2024 Ga. LEXIS 142 (2024).

Curing failure to comply with naming requirement. — Action brought pursuant to Ga. Const. 1983, Art. I, Sec. II, Para. V(b)(1) that does not comply with the naming requirement of Paragraph V(b)(2) may be cured by dropping or adding parties using the procedure established by O.C.G.A. § 9-11-21, and dismissal is not mandated. *Warbler Invs., LLC v. City of Social Circle*, 321 Ga. 125, 913 S.E.2d 674, 2025 Ga. LEXIS 50 (2025).

Paragraph VIII. Lotteries and nonprofit bingo games.

Cross references.

Savings promotion raffles,
§ 7-1-239.10.

Paragraph IX. Sovereign immunity and waiver thereof; claims against the state and its departments, agencies, officers, and employees.

Law reviews.

For note, “Publicly Funded Private Security: A Critical Examination of Georgia Law Pertaining to the Private Employment of Off-Duty Police Officers,” see 51 Ga. L. Rev. 879 (2017).

For annual survey on local government law, see 70 Mercer L. Rev. 177 (2018).

For annual survey on zoning and land use law, see 70 Mercer L. Rev. 301 (2018).

For annual survey on local government law, see 71 Mercer L. Rev. 189 (2019).

For note, “Shoot at Me Once: Shame on You! Shoot at Me Twice: Qualified Immunity. Qualified Immunity Applies Where Police Target Innocent Bystanders,” see 71 Mercer L. Rev. 1171 (2020).

For article with annual survey on local government, see 73 Mercer L. Rev. 193 (2021).

For annual survey on local governments, see 74 Mercer L. Rev. 197 (2022).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATIONS

WAIVER

APPLICATION OF TORT CLAIMS ACT

OFFICIALS AND THEIR FUNCTIONS

APPLICATION

General Considerations

Applicability of sovereign immunity to action between city and county on taxation of alcoholic beverages. — In a case involving taxation of alcoholic beverages, the city’s claims against the county were not barred by sovereign immunity since the city and county were merely exercising their own respective home rule powers by collecting tax revenues for their own purposes, and neither was acting on behalf of the State of Georgia; thus, there was no sovereignty to be maintained. *City of College Park v. Clayton County*, 306 Ga. 301, 830 S.E.2d 179, 2019 Ga. LEXIS 438 (2019).

Suit challenging carrying weapon in school safety zone properly dismissed. — Trial court properly dismissed the plaintiffs’ suit challenging the enforcement of O.C.G.A. § 16-11-127.1(b)(1), making it a crime to carry a firearm in a school safety zone, by the school that the plaintiffs’ child attended because the school had sovereign immunity against state law claims and the threat of arrest if the plaintiff brought a weapon in the school safety zone did not constitute a Fourth Amendment violation to be remedied by the suit. *Evans v. Gwinnett County Public Schools*, 337 Ga. App. 690, 788 S.E.2d 577, 2016 Ga. App. LEXIS 395 (2016).

Tax waiver statute did not provide waiver as to school district. — Taxpayer’s suit against a school district seeking a refund was barred by immunity under Ga. Const. 1983, Art. I, Sec. II, Para. IX(e) and Ga. Const. 1983, Art. IX, Sec. II, Para IX;

O.C.G.A. § 48-5-380 provided for tax refunds by counties and municipalities but not school districts and, therefore, did not constitute a waiver of the school district’s immunity. *City of Dublin Sch. Dist. v. MMT Holdings, LLC*, 346 Ga. App. 546, 816 S.E.2d 494, 2018 Ga. App. LEXIS 414 (2018), dismissed, 351 Ga. App. 112, 830 S.E.2d 487, 2019 Ga. App. LEXIS 399 (2019).

Sovereign immunity for suits against the sheriff. — When detention officers who worked for the sheriff brought FLSA collective action alleging the county improperly calculated their overtime wages, the district court properly dismissed the case because Georgia law indicated that the sheriff acts on behalf of the state, not the county, when making compensation decisions for the sheriff’s employees under Ga. Const. 1983, Art. IX, Sec. II, Para. I(c)(1); the sheriff was entitled to Eleventh Amendment immunity when making compensation decisions for the sheriff’s employees. Georgia retained its Eleventh Amendment immunity from suits in federal court for breach-of-contract claims because no statute or constitutional provision expressly consents to suits in federal court. *Austin v. Glynn Cnty.*, 80 F.4th 1342, 2023 U.S. App. LEXIS 24485 (11th Cir. 2023), cert. denied, 144 S. Ct. 1060, 218 L. Ed. 2d 242, 2024 U.S. LEXIS 1342 (2024).

Determination of state administered financial assistance and board members sovereign immunity. —

County’s claims against the Georgia Department of Community Affairs (DCA)

General Considerations (Cont'd)

commissioner and board members in their individual capacities were not barred by sovereign immunity; the county sought a declaration that under O.C.G.A. § 36-70-25.1(f) and the county's service delivery agreement, the county and its cities were eligible for state-administered financial assistance and that denial of such assistance was not in accordance with law. *Bd. of Comm'rs of Lowndes County v. Mayor & Council of Valdosta*, 309 Ga. 899, 848 S.E.2d 857, 2020 Ga. LEXIS 671 (2020).

Immunity of government officials.

— Government officials were not entitled to immunity from claims brought against the officials by a former government employee because the employee sufficiently alleged that the defendants acted with actual malice by conspiring to have the employee's employment terminated by undermining the employee's dignity and professional reputation with false, sexually charged ridicule to the employer and others, and by threatening the employer with withdrawal of financial support if the employee's employment was not terminated. *Lee v. Christian*, 98 F. Supp. 3d 11265 (S.D. Ga. 2015).

Uniform Deceptive Trade Practices Act did not waive sovereign immunity.

— Trial court erred in denying the Georgia Lottery Corporation's motion to dismiss the appellee's claim under Georgia's Uniform Deceptive Trade Practices Act (UDTPA), O.C.G.A. § 10-1-370 et seq., as the appellee's UDTPA claim for injunctive relief against the Georgia Lottery Corporation was barred by sovereign immunity because the UDTPA did not expressly waive the state's sovereign immunity; did not specifically create a cause of action against the state; and exempted conduct in compliance with a statute administered by a state agency, and the Georgia Lottery Corporation was a state agency created by statute to administer the lottery. *Ga. Lottery Corp. v. Patel*, 353 Ga. App. 320, 836 S.E.2d 634, 2019 Ga. App. LEXIS 688 (2019).

Summary judgment not available in case involving suicide by inmate held in county detention. — Georgia has no bright line rule under which the

doctrines of assumption of the risk and comparative negligence always bar recovery in cases of suicide; to the contrary, determining a person's assumption of the risk when that person has killed himself or herself can be a fact-intensive inquiry appropriate for a jury. *Brantley v. Jones*, 363 Ga. App. 466, 871 S.E.2d 87, 2022 Ga. App. LEXIS 146 (2022).

Immunity extends to counties.

Trial court properly applied sovereign immunity to bar the plaintiffs' claims against the county because the plaintiffs' pleadings did not establish that there was a contract between the county and the bank intended for the plaintiffs' benefit. *Small v. Chatham County*, 360 Ga. App. 500, 861 S.E.2d 437, 2021 Ga. App. LEXIS 377 (2021).

Immunity does not extend to counties. — Both the county and the county's sheriff were entitled to sovereign immunity against the state-law tort of conversion because the plaintiffs could not show that sovereign immunity had been waived. The sovereign immunity waiver provision of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., does not extend to a county. *Carter v. Butts Cnty.*, 821 F.3d 1310, 2016 U.S. App. LEXIS 8010 (11th Cir. 2016).

Consent to suit required for constitutional questions on abortion statute. — Suit by physicians against state officials alleging that O.C.G.A. § 31-9B-1 et seq., regulating abortions, violated the state constitution in several respects, was barred by sovereign immunity under Ga. Const. 1983, Art. I, Sec. II, Para. IX, because there was no consent to such a suit in any statute or in the state constitution. *Lathrop v. Deal*, 301 Ga. 408, 801 S.E.2d 867, 2017 Ga. LEXIS 529 (2017).

Scope of trial court's authority under Service Delivery Strategy Act.

— Trial court's ruling that sovereign immunity did not bar claims under the Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., specifically O.C.G.A. § 36-70-25.1(d)(2), was affirmed because sovereign immunity was waived only to the extent of the statute, which extends no further than the remedies specifically authorized by the Act and the trial court

could not exceed the scope of § 36-70-25.1(d)(2) by granting relief not provided therein for claims brought under the Act. *City of Union Point v. Greene County*, 303 Ga. 449, 812 S.E.2d 278, 2018 Ga. LEXIS 185 (2018), overruled in part, *City of College Park v. Clayton County*, 306 Ga. 301, 830 S.E.2d 179, 2019 Ga. LEXIS 438 (2019).

County's sovereignty for tax refund claims was waived only for three-year window. — Because O.C.G.A. § 48-5-380(b) limited taxpayer recovery to overpayments made within three years of a written claim for refund, the county's sovereign immunity was waived only for the improper payments made within that three-year window. In a class action, the class members' three-year window was determined as of the date of filing the action. Mandamus and equity were unavailable to circumvent this limitation. *Coleman v. Glynn County*, 344 Ga. App. 545, 809 S.E.2d 383, 2018 Ga. App. LEXIS 20 (2018), cert. denied, No. S18C0869, 2018 Ga. LEXIS 566 (Ga. Aug. 20, 2018), cert. denied, No. S18C0881, 2018 Ga. LEXIS 572 (Ga. Aug. 20, 2018).

Waiver

No legislative act providing for waiver found. — O.C.G.A. § 50-3-1(b), which prohibits removal of publicly owned monuments, was held not to contain an explicit waiver of sovereign immunity for municipalities. *Lewis v. City of Brunswick*, 375 Ga. App. 56, 913 S.E.2d 755, 2025 Ga. App. LEXIS 100 (2025).

Waiver via contract.

To the extent that *Handex of Florida, Inc. v. Chatham County*, 268 Ga. App. 285, 602 S.E.2d 660 (2004) can be interpreted as creating a waiver of sovereign immunity for a breach of contract claim solely as a result of the parties' course of conduct, that case is disapproved. *Georgia Department of Labor v. RTT Associates, Inc.*, 299 Ga. 78, 786 S.E.2d 840, 2016 Ga. LEXIS 392 (2016).

To the extent *DOT v. Dalton Paving & Construction, Inc.*, 227 Ga. App. 207, 489 S.E.2d 329 (1997) can be interpreted as creating a waiver of sovereign immunity for a breach of contract claim as a result of the parties' course of conduct, that case is

disapproved. *Georgia Department of Labor v. RTT Associates, Inc.*, 299 Ga. 78, 786 S.E.2d 840, 2016 Ga. LEXIS 392 (2016).

By its terms, O.C.G.A. § 20-2-2062(1) incorporated the provisions of the Charter Schools Act, O.C.G.A. § 20-2-2060 et seq., into a charter agreement between a charter school and the county school district; because Ga. Const. 1983, Art. I, Sec. II, Para. IX(c) waived sovereign immunity for contract actions, the charter school's breach of contract action arising out of alleged funding deficiencies was not subject to dismissal. *Cobb County Sch. Dist. v. Learning Ctr. Found. of Central Cobb*, 348 Ga. App. 66, 821 S.E.2d 127, 2018 Ga. App. LEXIS 631 (2018), cert. denied, No. S19C0442, 2019 Ga. LEXIS 558 (Ga. Aug. 5, 2019).

Trial court did not err by finding that a lottery ticket was a written contract sufficient to waive sovereign immunity because by buying a ticket a lottery player accepted the Georgia Lottery Corporation's (GLC) offer of a chance to win a prize under the terms printed on the ticket, and by issuing and selling the ticket the GLC assented to the terms of the contract. A Georgia lottery ticket was an express written contract because the intention of the parties and the terms of the agreement were expressed in writing on the ticket. *Ga. Lottery Corp. v. Vasaya*, 353 Ga. App. 52, 836 S.E.2d 107, 2019 Ga. App. LEXIS 655 (2019).

Trial court did not err when the court concluded that the retirees in a class action suit had not established a waiver of sovereign immunity under the ex contractu provision of the Georgia Constitution because no adoption or modification of any State Health Benefit Plan benefit could amount to a waiver of sovereign immunity since the subsidy provided did not create a contract. *Kelly v. Bd. of Cmty. Health*, 352 Ga. App. 716, 835 S.E.2d 824, 2019 Ga. App. LEXIS 651 (2019), cert. denied, No. S20C0521, 2020 Ga. LEXIS 434 (Ga. June 1, 2020).

Trial court did not abuse the court's discretion granting the nonprofit corporation's motion for interlocutory injunction prohibiting resumption of execution of death sentences in Georgia after

Waiver (Cont'd)

COVID-19 pandemic because the state waived sovereign immunity by entering into an agreement to meet certain conditions, which was memorialized in e-mail exchange. *State of Ga. v. Fed. Defender Program, Inc.*, 315 Ga. 319, 882 S.E.2d 257, 2022 Ga. LEXIS 325 (2022).

Georgia Supreme Court sees no reason under general principles of contract law why contract cannot be memorialized in e-mail for purposes of determining whether state has waived sovereign immunity. *State of Ga. v. Fed. Defender Program, Inc.*, 315 Ga. 319, 882 S.E.2d 257, 2022 Ga. LEXIS 325 (2022).

Because the appellees' claims arising from the alleged violation of the Charter Schools Act, O.C.G.A. § 20-2-2060 et seq., and the charter agreement sounded in contract they were not barred by sovereign immunity under Ga. Const. 1983, Art. I, Sec. II, Para. IX and O.C.G.A. § 50-21-1(a) *DeKalb County School District v. DeKalb Agriculture Technology & Environment, Inc.*, 2023 Ga. App. LEXIS 534 (November 2, 2023).

Plaintiff showed the existence of a written employment contract with defendant on which the defendant's complaint for breach of contract was based and, therefore, the defendant showed a waiver of sovereign immunity because the contract had a definite written subject matter on which it could operate, specifically plaintiff's employment as a state trooper, both parties were able to contract, both parties gave their written assent to the terms of the contract, and the offer letter's inclusion of a stated salary in return for plaintiff's training and service as a state trooper was sufficient consideration. *Ga. Dep't of Pub. Safety v. Justice*, 320 Ga. 149, 907 S.E.2d 817, 2024 Ga. LEXIS 250 (2024).

No waiver without written contract. — In *Board of Regents v. Tyson*, 261 Ga. 368, 404 S.E.2d 557 (1991), the Georgia Supreme Court held that even if a contract with a state agency is formed by the parties' conduct, if it is not a written contract the state's sovereign immunity is not waived. *Georgia Department of Labor v. RTT Associates, Inc.*, 299 Ga. 78, 786 S.E.2d 840, 2016 Ga. LEXIS 392 (2016).

Where a company attempted to obtain financial contribution from the county towards the cost to repair a detention pond, the complaint was properly dismissed based on sovereign immunity because the easement that ran with the company's land contained no explicit language imposing a duty on the county to financially contribute towards any repairs or maintenance necessitated by the county's usage of its stormwater drainage easement. Further, the appellate court would not acknowledge an implicit contractual duty to repair and maintain the servient estate and the improvements used in the enjoyment of a servitude for the first time and simultaneously find that such a newly judicially recognized duty constituted a waiver of sovereign immunity. *Centennial Vill., LLC v. Fulton County Sch. Dist.*, 359 Ga. App. 616, 859 S.E.2d 582, 2021 Ga. App. LEXIS 250 (2021).

Waiver not found with regard to negligent inspection of intersection claim. — In a wrongful death action, the dismissal of plaintiffs' negligent-inspection claim was reversed because plaintiffs showed a waiver of sovereign immunity to the extent that the state department of transportation's role included inspection of the state roadway and intersection itself to detect hazards or to determine compliance with laws, regulations, codes, or ordinances. *Munro v. Ga. Dep't of Transp.*, 368 Ga. App. 785, 890 S.E.2d 349, 2023 Ga. App. LEXIS 337 (2023).

Application of Tort Claims Act

Use of PIT maneuver by officers. —

When the plaintiff alleged that an officer negligently implemented a Georgia Department of Public Safety (DPS) policy, and performed an unjustified PIT maneuver by using a patrol vehicle to intentionally strike the plaintiff's vehicle, causing the plaintiff to lose control, strike a tree, and suffer injuries, the trial court abused the court's discretion by deferring until a trial on the merits the determination of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., exception to the waiver of sovereign immunity for losses resulting from an assault or battery as the factors controlling the court's exercise of discretion were clearly balanced in favor

of a prompt pre-trial determination of the DPS's motion to dismiss for lack of subject matter jurisdiction. Dep't of Public Safety v. Johnson, 343 Ga. App. 22, 806 S.E.2d 195, 2017 Ga. App. LEXIS 436 (2017).

Trade secrets claim under Tort Claims Act. — Public relations firm's claim against a state university board for misappropriation under the Trade Secrets Act, O.C.G.A. § 10-1-760 et seq., was barred by sovereign immunity; however, because a violation of the Act constituted a tort and the state waived sovereign immunity for torts, the firm could bring suit pursuant to the Tort Claims Act, § 50-21-20 et seq. Bd. of Regents of the Univ. Sys. of Ga. v. One Sixty Over Ninety, LLC, 351 Ga. App. 133, 830 S.E.2d 503, 2019 Ga. App. LEXIS 409 (2019), cert. denied, No. S19C1521, 2020 Ga. LEXIS 118 (Ga. Feb. 10, 2020).

Officials and Their Functions

Action against officer or agent of state permitted. — Trial court erred by dismissing the plaintiffs' complaint for failure to state a claim against the school superintendent because the plaintiff sufficiently pled facts invoking the limited exception to qualified immunity based on allegations that the superintendent maliciously and intentionally injured the plaintiff by firing the plaintiff after seeing the superintendent and another engage in illegal activities. Everson v. DeKalb County Sch. Dist., 344 Ga. App. 665, 811 S.E.2d 9, 2018 Ga. App. LEXIS 40 (2018).

Scope of immunity granted public official. — In action asserting defendants misused positions to impose stop work orders and take other actions that harmed plaintiffs, trial court erred holding that immunity shielded defendants from claims for prospective injunctive relief as there was an understanding in American law generally that personal immunities of public officers typically did not extend to prospective relief. Mommies Properties, LLC v. Semanson, 366 Ga. App. 153, 880 S.E.2d 376, 2022 Ga. App. LEXIS 513 (2022).

Violation of police manual did not make decision ministerial act. — District court erred when the court denied the police officers' motion to dismiss claims a

demonstrator filed against the officers pursuant to 42 U.S.C. § 1983 and state law, which alleged that the officers violated the demonstrator's rights under the First and Fourth Amendments to the U.S. Constitution and Georgia law when the officers arrested the defendant for violating Georgia's mask statute, O.C.G.A. § 16-11-38, during a demonstration in Atlanta in 2014; the officers had qualified immunity from liability on the demonstrator's claims under federal law because the officers had probable cause to arrest the demonstrator when the officers saw the demonstrator wearing a "V for Vendetta" mask after the police directed demonstrators to remove masks the demonstrators were wearing, and official immunity under Ga. Const. 1983, Art. I, Sec. II, Para. IX. Gates v. Khokhar, 884 F.3d 1290, 2018 U.S. App. LEXIS 6164 (11th Cir. 2018), cert. denied, 586 U.S. 1071, 139 S. Ct. 807, 202 L. Ed. 2d 575, 2019 U.S. LEXIS 403 (2019).

Immunity when probation officer assisting local law enforcement in pursuit. — In a suit by a passenger against a Department of Corrections (DOC) probation officer whose vehicle collided with the passenger's vehicle during a police chase because the officer's actions were consistent with DOC's non-defective policy, which allowed the officer to assist law enforcement, DOC had sovereign immunity under O.C.G.A. § 50-21-24(6). Britt v. Jackson, 348 Ga. App. 159, 819 S.E.2d 677, 2018 Ga. App. LEXIS 529 (2018), cert. denied, No. S19C0483, 2019 Ga. LEXIS 539 (Ga. Aug. 5, 2019).

Escaping inmates committed assault and battery with no liability on part of deceased correctional officers. — Trial court's dismissal of a personal injury case on grounds of sovereign immunity was upheld because the plaintiffs' losses were the result of an assault and battery on the part of the escaping inmates and not any sort of public nuisance created by the correction officers' conduct before the correctional officers were murdered. Beasley v. Ga. Dep't of Corr., 360 Ga. App. 33, 861 S.E.2d 106, 2021 Ga. App. LEXIS 303 (2021).

Suit in official capacity. — Plaintiffs, challenging the plaintiffs' name place-

Officials and Their Functions (Cont'd)

ment on the Child Abuse Registry could not sue the state and the state's employees in the employees' official capacities because sovereign immunity barred those claims, but the plaintiffs' suit against the employees in the employees' individual capacities was not barred by sovereign immunity, however, and those claims were the only ones that remained for the court to address. *Ga. Dep't of Human Servs. v. Addison*, 304 Ga. 425, 819 S.E.2d 20, 2018 Ga. LEXIS 602 (2018).

Discretionary duties found. — Trial court erred by finding a genuine issue of material fact as to the existence of a ministerial duty on the part of the defendants because the operative duty involved was the duty to inspect and identify a hazard, and the duty to report and remove arose only upon a hazard being identified, which had not occurred. *Lowe v. Etheridge*, 361 Ga. App. 182, 862 S.E.2d 158, 2021 Ga. App. LEXIS 422 (2021).

Negligent performance of ministerial duty. — In a detainee's suit against a sheriff, county, and city arising out of the detainee's improper detention, the defendants' motion to dismiss was denied as to the sheriff's individual liability for violations of federal law, and for failure to update the detainee's criminal record as required by O.C.G.A. § 42-4-7 and bring the detainee before a judicial officer; however, claims against the city and county were dismissed based on immunity under Ga. Const. 1983, Art. I, Sec. II, Para. IX(d) and Ga. Const. 1983, Art. IX, Sec. II, Para. IX. *Purvis v. City of Atlanta*, 142 F. Supp. 3d 1337, 2015 U.S. Dist. LEXIS 151530 (N.D. Ga. 2015).

Unclear if discretionary function applied to child services worker failing to investigate abuse allegations. — In a suit against the state arising out of the death of an infant at the hands of the infant's drug-addicted parents, dismissal of claims for battery on the child was proper under the assault and battery exception to the state's waiver of sovereign immunity, O.C.G.A. § 50-21-24(7); however, more information was needed to

determine if the discretionary function exception, § 50-21-24(2), applied. *Cowart v. Ga. Dep't of Human Servs.*, 340 Ga. App. 183, 796 S.E.2d 903, 2017 Ga. App. LEXIS 32 (2017).

County animal control officers entitled to immunity. — In a suit arising out of a dog killing, the county animal control employees were entitled to official immunity under Ga. Const. 1983, Art. I, Sec. II, Para. IX(d), because their duties in responding to complaints about dangerous dogs under the Lowndes County, Ga., Animal Control Ordinance to investigate, inquire, and classify complaints regarding dangerous dogs were discretionary in nature, and there was no showing of the employees' actual malice. *Wyno v. Lowndes County*, 305 Ga. 523, 824 S.E.2d 297, 2019 Ga. LEXIS 108 (2019).

Sovereign immunity barred suit against judge brought by gun organization. — Trial court did not err in finding that sovereign immunity barred the appellants' request for declaratory relief against a judge in the judge's official capacity because the trial court made no finding about whether the appellants' request for a writ of mandamus would be barred by sovereign immunity as the court dismissed the mandamus claims as moot and the entire action asserted by the open carry organization since the entity lacked standing to bring that action. *GeorgiaCarry.Org, Inc. v. Bordeaux*, 352 Ga. App. 399, 834 S.E.2d 896, 2019 Ga. App. LEXIS 581 (2019).

Sovereign immunity not applicable when action in contract. — Because the appellees' claims arising from the alleged violation of the Charter Schools Act, O.C.G.A. § 20-2-2060 et seq., and the charter agreement sounded in contract they were not barred by sovereign immunity under Ga. Const. 1983, Art. I, Sec. II, Para. IX and O.C.G.A. § 50-21-1(a). *DeKalb County School District v. DeKalb Agriculture Technology & Environment, Inc.*, 369 Ga. App. 829, 894 S.E.2d 646, 2023 Ga. App. LEXIS 534 (2023), overruled in part, *Pollard v. Great Dane, LLC*, 371 Ga. App. 872, 903 S.E.2d 338, 2024 Ga. App. LEXIS 236 (2024).

Application

Whether immunity barred personal injury suit had to be determined.

Dismissal of the driver's personal injury suit against a county and its employee based on official immunity was reversed because the trial court's analysis was not clear from its order, and the record contained no evidence submitted by either the driver or the county employee, in the form of affidavits, deposition transcripts, or verified discovery responses, on the threshold question of official immunity. *McCloud v. Lowndes County Board of Commissioners*, 369 Ga. App. 756, 894 S.E.2d 505, 2023 Ga. App. LEXIS 526 (2023).

Immunity extends to counties. —

Trial court erred in denying the county's motion for summary judgment on the plaintiffs' premises liability lawsuit against the county because the Recreational Property Act (RPA), O.C.G.A. § 51-3-20 et seq., including the charge exception, did not waive the county's sovereign immunity because the charge lacked specific language providing for a waiver of sovereign immunity and the extent of such waiver as the RPA simply acted as a limitation of liability for land owners who allowed others to use their land for recreational purposes, and the charge exception simply provided that the limitation of liability did not apply when the land owner charged a fee. *Macon-Bibb County v. Kalaski*, 355 Ga. App. 24, 842 S.E.2d 331, 2020 Ga. App. LEXIS 249 (2020).

Sovereign immunity applied to city.

— In a wrongful death action against the Georgia Department of Public Safety in which the decedent died from injuries sustained in a high-speed chase with the Georgia State Patrol officers, the Department's motion to dismiss for want of subject matter jurisdiction was properly granted based on sovereign immunity because the officer's actions during the pursuit were objectively reasonable and in compliance with the Department's pursuit policy, and the execution of the Precision Immobilization Technique was done in compliance with the policy; the officer considered the factors set forth in the policy in deciding to continue the pursuit; and

none of the circumstances that would have prohibited a pursuit under the policy existed. *James v. Ga. Dep't of Pub. Safety*, 337 Ga. App. 864, 789 S.E.2d 236, 2016 Ga. App. LEXIS 423 (2016).

No contractual agreement established with city through statutes or ordinances. — In a suit brought by taxi cab companies, the trial court properly granted the city's motion to dismiss because the taxi cab companies failed to establish that the statutes permitting the issuance of Certificates of Public Necessity and Convenience (CPNC), or the city's ordinances, created a clear and unequivocal intent by the city to create a contractual or franchise agreement that prevented the city allowing personal transportation network companies to operate in the city. *Atlanta Metro Leasing, Inc. v. City of Atlanta*, 353 Ga. App. 785, 839 S.E.2d 278, 2020 Ga. App. LEXIS 81 (2020), cert. denied, No. S2000994, 2020 Ga. LEXIS 845 (Ga. Sept. 28, 2020).

DOT duty to monitor for hazardous conditions. — In a wrongful death action, the trial court properly granted the motion to dismiss based on sovereign immunity filed by the Georgia Department of Transportation (GDOT) because it was clear from a review of the agency agreement and the GDOT Policy that the plaintiffs' claims for failing to monitor I-16 for hazardous conditions were barred since neither policy imposed any duty on the GDOT to monitor roadways for hazardous conditions. *Grant v. Ga. Forestry Comm'n*, 338 Ga. App. 146, 789 S.E.2d 343, 2016 Ga. App. LEXIS 444 (2016), cert. denied, No. S17C0003, 2017 Ga. LEXIS 127 (Ga. Feb. 27, 2017), cert. denied, No. S17C0037, 2017 Ga. LEXIS 153 (Ga. Feb. 27, 2017).

Fire inspector directing pedestrian traffic. — In a suit brought by a pedestrian struck by a vehicle while crossing a parkway following attendance at a sporting event, the fire inspector's motion to dismiss was properly denied because issues of fact existed on the record as to whether the fire inspector was performing official functions so as to cloak the fire inspector with qualified immunity when directing post-game pedestrian traffic. *Siegrist v. Herhold*, 365 Ga. App. 828, 880

Application (Cont'd)

S.E.2d 336, 2022 Ga. App. LEXIS 508 (2022).

High-speed pursuit. — After the plaintiffs were injured when a speeding car driven by a suspect who was fleeing law enforcement crashed into the plaintiffs' car, the trial court properly granted summary judgment to the Lamar Sheriff as the plaintiffs' claims against the Lamar Sheriff were barred as a matter of law by sovereign immunity because, by the time the plaintiffs were injured by the fleeing driver, the Lamar deputy's patrol car was immobile and inoperative on the side of the road approximately 20 miles away as the result of a blown tire; thus, the plaintiffs' injuries did not arise out of the "use" of the patrol car, and the sovereign immunity of the Lamar Sheriff was not waived. *Wingler v. White*, 344 Ga. App. 94, 808 S.E.2d 901, 2017 Ga. App. LEXIS 578 (2017), cert. denied, No. S18C0651, 2018 Ga. LEXIS 467 (Ga. Aug. 2, 2018), cert. denied, No. S18C0649, 2018 Ga. LEXIS 522 (Ga. Aug. 2, 2018), overruled in part, *McBrayer v. Scarbrough*, 317 Ga. 387, 893 S.E.2d 660, 2023 Ga. LEXIS 221 (2023).

In a personal injury action wherein plaintiffs were injured when, during a police pursuit, plaintiffs' vehicle was struck by the fleeing vehicle, the law enforcement exception to Georgia's waiver of sovereign immunity applied because the state trooper acted reasonably and followed department policy during the pursuit. *Shackelford v. Ga. Dep't of Pub. Safety*, 371 Ga. App. 117, 898 S.E.2d 883, 2024 Ga. App. LEXIS 75 (2024).

Sheriff's department. — Deputy and sheriff were entitled to official immunity because there was no evidence that they acted with actual malice or intent to injure in obtaining arrest warrants. Plaintiff did not allege, and there was no evidence to show, that the deputy and the sheriff were motivated by a "personal animus" toward the plaintiff or that they manufactured evidence or knowingly presented perjured testimony to obtain the arrest warrants. *Taylor v. Taylor*, 649 F.3d 737 (11th Cir. 2016).

Immunity extends to school boards. — Trial court correctly ruled that the claims against the members of a county

board of education were barred by sovereign immunity because the former board chair's suit against the board members in the members' official capacities was in reality a suit against the state that was barred by sovereign immunity unless such immunity had been waived by the General Assembly; however, the former board chair failed to meet the burden of establishing a waiver of sovereign immunity as the former board chair did not point to anything in the constitution or to any act by the General Assembly waiving sovereign immunity in the current case. *Cook v. Smith*, 349 Ga. App. 16, 825 S.E.2d 439, 2019 Ga. App. LEXIS 104 (2019).

School superintendent. — Trial court erred by dismissing the plaintiffs' complaint for failure to state a claim against the school superintendent because the plaintiff sufficiently pled facts invoking the limited exception to qualified immunity based on allegations that the superintendent maliciously and intentionally injured the plaintiff by firing the plaintiff after seeing the superintendent and another engage in illegal activities. *Everson v. DeKalb County Sch. Dist.*, 344 Ga. App. 665, 811 S.E.2d 9, 2018 Ga. App. LEXIS 40 (2018).

Immunity extends to school district employees. — In a suit by a deceased high school student's parents against the teacher for leaving the classroom unsupervised, the teacher's act was a discretionary act entitled to official immunity under Ga. Const. 1983, Art. I, Sec. II, Para. IX(d), although an unambiguous school policy prohibited leaving students unsupervised; the teacher asked a teacher in an adjoining classroom to listen out for the students, demonstrating some discretion. *Barnett v. Atlanta Independent School System*, 339 Ga. App. 533, 792 S.E.2d 474, 2016 Ga. App. LEXIS 661 (2016), *aff'd* in part, vacated in part, 302 Ga. 845, 809 S.E.2d 813, 2018 Ga. LEXIS 41 (2018).

Teacher was entitled to official immunity because the parents could not show that the school's policy stating that students were never to be left in the classroom unsupervised was so clear, definite, and certain in directing the teacher's actions that the policy established a minis-

terial duty requiring no exercise of discretion whatsoever, particularly given the principal's testimony that teachers could leave a classroom unsupervised in an emergency or to run to the restroom or something. *Barnett v. Caldwell*, 302 Ga. 845, 809 S.E.2d 813, 2018 Ga. LEXIS 41 (2018).

Georgia Forestry Commission. — In a wrongful death action, the trial court erred in finding that the Georgia Forestry Commission (GFC) was not negligent in carrying out the Commission's duty to advise Georgia State Patrol (GSP) of a fire and that the Commission was entitled to sovereign immunity on that ground because the record showed that an agency agreement imposed a separate and independent duty on GFC, regardless of visibility conditions, to advise GSP of the existence of any large controlled burns or wildfires in the vicinity of state roadways. *Grant v. Ga. Forestry Comm'n*, 338 Ga. App. 146, 789 S.E.2d 343, 2016 Ga. App. LEXIS 444 (2016), cert. denied, No. S17C0003, 2017 Ga. LEXIS 127 (Ga. Feb. 27, 2017), cert. denied, No. S17C0037, 2017 Ga. LEXIS 153 (Ga. Feb. 27, 2017).

Georgia Lottery Corporation. — Plaintiff's claim for statutory interest was improperly denied as sovereign immunity did not bar the plaintiff's breach of contract claim against the Georgia Lottery Corporation and, thus, it did not bar the award of prejudgment interest in the plaintiff's breach of contract action; how-

ever, whether the plaintiff made a sufficient demand for prejudgment interest and was otherwise entitled to recover interest were questions to be resolved on remand. *Patel v. Ga. Lottery Corp.*, 350 Ga. App. 883, 830 S.E.2d 393, 2019 Ga. App. LEXIS 396 (2019).

No waiver without written contract. — Developer failed to meet the developer's burden of showing waiver of sovereign immunity because even if the parties' conduct after the expiration of the contract could be found to demonstrate that the developer was to continue to perform under the original contract, as a matter of law, neither that conduct nor the internal documents created by a state agency after the contract expired established a written contract to do so and without a written contract, the state's sovereign immunity was not waived. *Georgia Department of Labor v. RTT Associates, Inc.*, 299 Ga. 78, 786 S.E.2d 840, 2016 Ga. LEXIS 392 (2016).

Actual malice not shown. — Officer was entitled to official immunity under Georgia law because no evidence in the record suggested that the officer intended to cause the harm suffered by the appellant when the officer threw a "flashbang" into a dark room occupied by two sleeping individuals, without first inspecting the room. *Dukes v. Deaton*, 852 F.3d 1035, 2017 U.S. App. LEXIS 1367 (11th Cir.), cert. denied, 583 U.S. 817, 138 S. Ct. 72, 199 L. Ed. 2d 23, 2017 U.S. LEXIS 5083 (2017).

SECTION III

GENERAL PROVISIONS

Paragraph I. Eminent domain.

Law reviews.

For annual survey on zoning and land use law, see 70 *Mercer L. Rev.* 301 (2018).

For note, "The Georgia Condominium

Act's Authorization of Private Takings: Revisiting *Kelo* and *Bitter* with the Sweet," see 55 *Ga. L. Rev.* 395 (2020).

JUDICIAL DECISIONS

ANALYSIS

LIABILITY OF COUNTIES AND OTHER GOVERNMENTAL ENTITIES

WHAT IS COMPENSABLE

- 3. COMMERCIAL LOSSES
- 4. INTERFERENCE WITH RIGHT OF INGRESS AND EGRESS
- 6. INTERFERENCE WITH RIGHTS OF LESSORS AND LESSEES
- 12. EFFECT OF ZONING AND LAND USE REGULATIONS

PROCEDURE

- 6. FINALITY OF JUDGMENT AND APPEAL

Liability of Counties and Other Governmental Entities

When sovereign immunity waived for claims seeking injunctive relief. —

Georgia Supreme Court concluded the Just Compensation Provision, Ga. Const. 1983 Art. I, Sec. III, Para. I(a), waived sovereign immunity for claims seeking injunctive relief in two circumstances: (1) when the Just Compensation Provision’s requirement of prepayment before a taking or damaging applied and has not yet been met; or (2) when the authority effecting a taking or damaging had not invoked the power of eminent domain. DOT v. Mixon, 312 Ga. 548, 864 S.E.2d 67, 2021 Ga. LEXIS 638 (2021).

Waiver under the Just Compensation Provision allowed an injunction only to stop the taking or damaging until such time as the authority fulfilled its legal obligations that were conditions precedent to eminent domain. DOT v. Mixon, 312 Ga. 548, 864 S.E.2d 67, 2021 Ga. LEXIS 638 (2021).

What is Compensable

3. Commercial Losses

Public necessity established for condemnation. — Record supported that the condemnation of the buffer property would serve a public purpose and that the county did not act in bad faith because failing to disclose the extent of methane migration provided no financial benefit for the county since at no time did the county discount the price the county was offering the property owner for the buffer property due to ignorance of the status of methane migration. Morgan County v. Gay, 352 Ga. App. 555, 834

S.E.2d 576, 2019 Ga. App. LEXIS 531 (2019), cert. denied, No. S20C0495, 2020 Ga. LEXIS 390 (Ga. May 4, 2020), cert. denied, No. S20C0331, 2020 Ga. LEXIS 380 (Ga. May 4, 2020).

No inverse condemnation shown as to taxi cab certificates of public necessity. — Dismissal of the city taxi cab drivers’ complaint for failure to state a cause of action that the 2015 amendment of O.C.G.A. § 36-60-25(a) resulted in an unconstitutional taking and inverse condemnation was affirmed because no law prohibited the city from increasing the Certificates of Public Necessity and Convenience (CPNC) limit and no property interest the drivers may have in their respective CPNCs extended to exclusivity or a limited supply of CPNCs. Abramyan v. State of Ga., 301 Ga. 308, 800 S.E.2d 366, 2017 Ga. LEXIS 385 (2017).

Taxicabs have been the subject of frequent and intensive regulation in the State of Georgia, and O.C.G.A. § 36-60-25(a) does not take business property for a public use, the statute merely requires an already regulated business to adjust its property to the new law. Abramyan v. State of Ga., 301 Ga. 308, 800 S.E.2d 366, 2017 Ga. LEXIS 385 (2017).

4. Interference with Right of Ingress and Egress

Impact of interference considered. — In a condemnation case, the jury instructions as a whole were correct in informing the jury that where the owner’s access to a public road was taken, the deprivation should be compensated, but the jury could consider whether the owner

had any alternative access when determining the amount of damages due to the deprivation of access. *Curry v. DOT*, 341 Ga. App. 482, 801 S.E.2d 95, 2017 Ga. App. LEXIS 215 (2017), cert. denied, No. S17C1786, 2017 Ga. LEXIS 905 (Ga. Oct. 16, 2017).

6. Interference with Rights of Lessors and Lessees

Holder of rent contract has compensable interest. — Courts of Georgia have drawn distinctions between the rights of a holder of a usufruct and those of a title holder. A usufruct is not subject to ad valorem taxation pursuant to O.C.G.A. § 48-5-3, and the usufruct interest does not authorize the tenant to seek an easement by necessity, pursuant to O.C.G.A. § 44-9-40(b). However, the usufruct holder's possessory rights may constitute a property interest for which just compensation is payable under Ga. Const. 1983, Art. I, Sec. III, Para. I(a). *The Stuttering Foundation, Inc. v. Glynn County*, 301 Ga. 492, 801 S.E.2d 793, 2017 Ga. LEXIS 526 (2017).

12. Effect of Zoning and Land Use Regulations

Justification required for zoning

classification. — Zoning classification that substantially burdens a property owner may be justified if the classification bears a substantial relation to the public health, safety, morality, or general welfare. Lacking that kind of justification, the zoning may be set aside as arbitrary or capricious. If a land-use regulation is arbitrary and capricious then the regulation cannot stand. *Diversified Holdings, LLP v. City of Suwanee*, 302 Ga. 597, 807 S.E.2d 876, 2017 Ga. LEXIS 951 (2017).

Procedure

6. Finality of Judgment and Appeal

Effect of right of review.

In a case involving just and adequate compensation to property owners, the court upheld the jury verdict awarded to the property owners because the Georgia Department of Transportation (Department) did not preserve its evidentiary objections for ordinary appellate review, the trial court never definitively denied the motion in limine in which the Department raised the objections, and the Department did not object contemporaneously to the evidence when it was presented. *DOT v. 0.095 Acres of Land*, 368 Ga. App. 426, 890 S.E.2d 301, 2023 Ga. App. LEXIS 338 (2023).

RESEARCH REFERENCES

ALR.

Loss or impairment of landowner's access to existing controlled-access road or highway as compensable taking absent government condemnation or occupation of landowner's realty, 93 A.L.R.6th 363.

Determination whether exaction for property development constitutes compensable taking, 8 A.L.R.7th 7.

Nondisclosure or Confidentiality Agreements in Cases Involving Products Liability, 40 A.L.R.7th Art. 2.

Measure of Just Compensation in Taking of Wetland, 40 A.L.R.7th Art. 7.

Eminent domain: construction and application of "reasonable necessity" under state law for taking of property — Twenty-first century cases, 80 A.L.R.7th 6.

Paragraph II. Private ways.

JUDICIAL DECISIONS

Attempt to enforce right to obtain private way. — Trial court erred by characterizing the property owner's argument that the court was exercising the court's constitutional right by attempting to obtain a private way to the owner's land-

locked property as a new claim not raised in the complaint. The complaint brought pursuant to O.C.G.A. § 44-9-40 et seq. was necessarily an attempt to enforce the owner's constitutional right to obtain a private way and the statute existed for the

sole purpose of providing a procedure to enforce rights preserved by Ga. Const. 1983, Art. I, Sec. III, Para. II. Dehco, Inc. v. Bd. of Regents of the Univ. Sys. of Ga., 350 Ga. App. 760, 830 S.E.2d 333, 2019 Ga. App. LEXIS 380 (2019).

SECTION IV
MARRIAGE

Law reviews.
For article, “Cohabitation Worldwide Today,” see 35 Ga. St. U.L. Rev. 299 (2019).

Paragraph I. Recognition of marriage.

Law reviews.
For article, “Judging Congressional Elections,” see 51 Ga. L. Rev. 359 (2017).

ARTICLE II
VOTING AND ELECTIONS

- Section
- II. General Provisions.
 - III. Suspension and Removal of Public Officials.

Cross references.
Subpoena and audit of voting records, § 35-3-4.5.

RESEARCH REFERENCES

ALR. political contributions or expenditures by private individuals or entities, 51 A.L.R.7th 1.
Validity under first amendment of state disclosure or reporting requirements of

SECTION I

METHOD OF VOTING; RIGHT TO REGISTER AND VOTE

Law reviews. Trigger for Purging Voters?,” see 69 Mercer L. Rev. 947 (2018).
For article, “Black and White Make Gray: Common Cause v. Kemp, What’s the

Paragraph I. Method of voting.

Law reviews. For note, “Election Spotlight: Nearly Twenty Years After Hanging Chads, Problems Persist in Florida,” see 71 Mercer L. Rev. 895 (2020).
For article, “Election Emergencies: Voting in the Wake of Natural Disasters and Terrorist Attacks,” see 67 Emory L.J. 545 (2018).

Paragraph II. Right to register and vote.

Law reviews.

For article, “Racially Neutral in Form, Racially Discriminatory in Fact: The Implications for Voting Rights of Giving Disproportionate Racial Impact the Constitutional Importance It Deserves,” see 71 Mercer L. Rev. 811 (2020).

For comment, “Voter Suppression Post-*Shelby*: Impacts and Issues of Voter Purge and Voter ID Laws,” see 71 Mercer L. Rev. 857 (2020).

SECTION II

GENERAL PROVISIONS

Paragraph

V. Vacancies created by elected officials qualifying for other office.

Law reviews.

For article, “Constitutional Text, Founding-Era History, and the Indepen-

dent-State-Legislature Theory,” see 57 Ga. L. Rev. 539 (2023).

Paragraph V. Vacancies created by elected officials qualifying for other office.

The office of any state, county, or municipal elected official shall be declared vacant upon such elected official qualifying, in a general primary or general election, or special primary or special election, for another state, county, or municipal elective office or qualifying for the House of Representatives or the Senate of the United States if the term of the office for which such official is qualifying for begins more than 30 days prior to the expiration of such official’s present term of office. The vacancy created in any such office shall be filled as provided by this Constitution or any general or local law. This provision shall not apply to any elected official seeking or holding more than one elective office when the holding of such offices simultaneously is specifically authorized by law.

History.

Ga. Const. 1983, Art. 2, § 2, Para. 5, approved by Ga. L. 1983, p. 972, § 1/HR 30.

SECTION III

SUSPENSION AND REMOVAL
OF PUBLIC OFFICIALS

Paragraph

I. Procedures for and effect of suspending or removing public

officials upon felony indictment.

Paragraph I. Procedures for and effect of suspending or removing public officials upon felony indictment.

(a) As used in this Paragraph, the term “public official” means the Governor, the Lieutenant Governor, the Secretary of State, the Attorney General, the State School Superintendent, the Commissioner of Insurance, the Commissioner of Agriculture, the Commissioner of Labor, and any member of the General Assembly.

(b) Upon indictment for a felony by a grand jury of this state or by the United States, which felony indictment relates to the performance or activities of the office of any public official, the Attorney General or district attorney shall transmit a certified copy of the indictment to the Governor or, if the indicted public official is the Governor, to the Lieutenant Governor who shall, subject to subparagraph (d) of this Paragraph, appoint a review commission. If the indicted public official is the Governor, the commission shall be composed of the Attorney General, the Secretary of State, the State School Superintendent, the Commissioner of Insurance, the Commissioner of Agriculture, and the Commissioner of Labor. If the indicted public official is the Attorney General, the commission shall be composed of three other public officials who are not members of the General Assembly. If the indicted public official is not the Governor, the Attorney General, or a member of the General Assembly, the commission shall be composed of the Attorney General and two other public officials who are not members of the General Assembly. If the indicted public official is a member of the General Assembly, the commission shall be composed of the Attorney General and one member of the Senate and one member of the House of Representatives. If the Attorney General brings the indictment against the public official, the Attorney General shall not serve on the commission. In place of the Attorney General, the Governor shall appoint a retired Supreme Court Justice or a retired Court of Appeals Judge. The commission shall provide for a speedy hearing, including notice of the nature and cause of the hearing, process for obtaining witnesses, and the assistance of counsel. Unless a longer period of time is granted by the appointing authority, the commission shall make a written report within 14 days. If the commission determines that the indictment relates to and adversely affects the administration of the office of the indicted public official and that the rights and interests of the public are adversely affected thereby, the Governor or, if the Governor is the indicted public official, the Lieutenant Governor shall suspend the public official immediately and without further action pending the final disposition of the case or until the expiration of the officer’s term of office, whichever occurs first. During the term of office to which such officer was elected and in which the indictment occurred, if a nolle prosequi is entered, if the public official is acquitted, or if after conviction the conviction is later overturned as a result of any direct

appeal or application for a writ of certiorari, the officer shall be immediately reinstated to the office from which he was suspended. While a public official is suspended under this Paragraph, the officer shall not be entitled to receive the compensation from his or her office. If the officer is reinstated to office, he or she shall be entitled to receive any compensation withheld under the provisions of this Paragraph.

(c) Unless the Governor is the public officer under suspension, for the duration of any suspension under this Paragraph, the Governor shall appoint a replacement officer except in the case of a member of the General Assembly. If the Governor is the public officer under suspension, the provisions of Article V, Section I, Paragraph V of this Constitution shall apply as if the Governor were temporarily disabled. Upon a final conviction with no appeal or review pending, the office shall be declared vacant and a successor to that office shall be chosen as provided in this Constitution or the laws enacted in pursuance thereof.

(d) No commission shall be appointed for a period of 14 days from the day the indictment is received. This period of time may be extended by the Governor. During this period of time, the indicted public official may, in writing, authorize the Governor or, if the Governor is the indicted public official, the Lieutenant Governor to suspend him or her from office. Any such voluntary suspension shall be subject to the same conditions for review, reinstatement, or declaration of vacancy as are provided in this Paragraph for a nonvoluntary suspension.

(e) After any suspension is imposed under this Paragraph, the suspended public official may petition the appointing authority for a review. The Governor or, if the indicted public official is the Governor, the Lieutenant Governor may reappoint the commission to review the suspension. The commission shall make a written report within 14 days. If the commission recommends that the public official be reinstated, he or she shall immediately be reinstated to office.

(f) The report and records of the commission and the fact that the public official has or has not been suspended shall not be admissible in evidence in any court for any purpose. The report and record of the commission shall not be open to the public.

(g) The provisions of this Paragraph shall not apply to any indictment handed down prior to January 1, 1985.

(h) If a public official who is suspended from office under the provisions of this Paragraph is not first tried at the next regular or special term following the indictment, the suspension shall be terminated and the public official shall be reinstated to office. The public official shall not be reinstated under this subparagraph if he or she is not so tried based on a continuance granted upon a motion made only by the defendant.

History.

Ga. Const. 1983, Art. 2, Sec. 3, Para. 1, approved by Ga. L. 1984, p. 1719, § 1/SR 268; Ga. L. 1986, p. 1614, § 1/HR 505; Ga. L. 2021, p. 939, § 1/SR134.

Editor’s notes.

The constitutional amendment (Ga. L. 2021, p. 939, § 1/SR134), which amended this Paragraph in subparagraph (b), by deleting “and until initial conviction by

the trial court, the officer shall continue to receive the compensation from his office. After initial conviction by the trial court” following “While a public official is suspended under this Paragraph” and inserting “or her” and “or she”; by inserting “or her” in subparagraph (d); and by inserting “or she” in subparagraphs (e) and (h), was ratified at the general election held on November 8, 2022.

ARTICLE III
LEGISLATIVE BRANCH

Section
IX. Appropriations.

SECTION I
LEGISLATIVE POWER

Paragraph I. Power vested in General Assembly.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Delegation of powers. — Delegation of the power to tax, and the laying of a tax, are two things. The constitutional provision requiring revenue bills to originate in the House applies to an Act which lays a tax, and does not apply to an Act which merely delegates the power to tax. *Harper v. Commonwealth of the Town of Elberton*, 23 Ga. 566, 1857 Ga. LEXIS 312 (1857).

Administrative rule attempting to add statutory list could violate non-delegation doctrine. — Department of Community Health’s Psychiatric Rule,

governing certificates of need for psychiatric beds, raised serious doubts about the constitutionality of the General Assembly’s delegation of authority. An expansive interpretation of O.C.G.A. § 30-6-40(a) could violate the non-delegation doctrine. The Department, through the rule, had attempted to add to an already established statutory list an additional category of new institutional health service for which a CON was required. *Premier Health Care Invs., LLC v. UHS of Anchor, L.P.*, 310 Ga. 32, 849 S.E.2d 441, 2020 Ga. LEXIS 736 (2020).

SECTION II
COMPOSITION OF GENERAL ASSEMBLY

Law reviews.

For article, “*Rucho for Minimalists*,” see 71 Mercer L. Rev. 695 (2020).

Paragraph II. Apportionment of General Assembly.

Law reviews. ing in Georgia,” see 52 Ga. L. Rev. 1060
For article, “The History of Redistrict- (2018).

Paragraph IV. Disqualifications.

Law reviews. ‘Emolument’ in the Constitution,” see 36
For article, “Using Empirical Data to Ga. St. U.L. Rev. 465 (2020).
Investigate the Original Meaning of

SECTION IV
ORGANIZATION AND PROCEDURE OF THE
GENERAL ASSEMBLY

Law reviews. Primaries Through the Pandemic,” see 37
For article, “Elections: Elections and Ga. St. U.L. Rev. 241 (2020).

Paragraph IX. Privilege of members.

RESEARCH REFERENCES

ALR. tion Concerning Discriminatory Intent, 76
Legislative Privilege of Federal and A.L.R. Fed.3d 4.
State Officials from Discovery of Informa-

SECTION V
ENACTMENT OF LAWS

Paragraph II. Bills for revenue.

JUDICIAL DECISIONS

Delegation of powers. — Delegation tax, and does not apply to an Act which
of the power to tax, and the laying of a tax, merely delegates the power to tax. Harper
are two things. The constitutional provi- v. Commonwealth of the Town of Elberton,
sion requiring revenue bills to originate in 23 Ga. 566, 1857 Ga. LEXIS 312 (1857).
the House applies to an Act which lays a

Paragraph III. One subject matter expressed.

JUDICIAL DECISIONS

ANALYSIS

SPECIFIC LAWS
5. MUNICIPAL ORDINANCES

Specific Laws

5. Municipal Ordinances

Legislation creating municipality and community improvement districts valid. — HB 839 (2022 Session), which created the City of Mableton and authorized the creation of community improvement districts (CIDs) within Mable-

ton, did not violate the “Single Subject Rule” of Ga. Const. 1983, Art. III, Sec. 5, Para. 3 because it had a logical connection to the subject matter of incorporating Mableton, as CIDs allowed Mableton to finance infrastructure improvements necessitated by development. *White v. City of Mableton*, 320 Ga. 685, 911 S.E.2d 570, 2025 Ga. LEXIS 12 (2025).

SECTION VI
EXERCISE OF POWERS

Paragraph I. General powers.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
SPECIFIC CASES

General Consideration

Private entities cannot appoint county board of ethics members. — Trial court correctly granted the writ of quo warranto as to the four challenged members appointed to the county board of ethics by private entities as those appointments were unconstitutional as the private entities did not answer to the people as required by the Georgia Constitution and were, therefore, not authorized to wield the power to appoint public officials to the board. *Delay v. Sutton*, 304 Ga. 338, 818 S.E.2d 659, 2018 Ga. LEXIS 581 (2018).

Specific Cases

State could authorize municipali-

ties to impose infrastructure fees. — Imposition of infrastructure fees under the Enterprise Zone Employment Act did not violate Ga. Const. 1983, Art. IX, Sec. II, Para. VII(c), the Community Redevelopment Provision; rather the General Assembly had the power to authorize municipalities to levy fees under Ga. Const. 1983, Art. III, Sec. VI, Para. I; nothing in the Community Redevelopment Provision prohibited, precluded, or limited the exercise of such powers. *Franzen v. Downtown Dev. Auth. of Atlanta*, 309 Ga. 411, 845 S.E.2d 539, 2020 Ga. LEXIS 462 (2020).

Paragraph IV. Limitations on special legislation.

Law reviews.

For annual survey on local government law, see 68 Mercer L. Rev. 199 (2016).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
SPECIAL LAWS

General Consideration

Statutory interpretation of salary statute as to cost-of-living adjustments. — According to the plain language of O.C.G.A. § 15-6-88, the 2007 Local Act does not establish \$56,000 as the salary for the clerk. It simply states that the clerk’s salary may not be less than \$56,000; consequently, it is not inconsistent on its face with the terms of the general statute requiring a clerk to be paid no less than the amount set by the county population schedule set forth in the statute, and is not unconstitutional. *Chatham County v. Massey*, 299 Ga. 595, 791 S.E.2d 85, 2016 Ga. LEXIS 622 (2016).

Special Laws

Payment of clerk’s salary based on local act versus general statute. —

2007 Local Act was not unconstitutional based on the fact that subsection (a) of the 2007 Local Act authorized the superior court clerk to be paid less than what was

required by O.C.G.A. § 15-6-88 because, according to the statute’s plain language, the 2007 Local Act did not establish \$56,000 as the salary for the clerk as the statute simply stated that the clerk’s salary could not be less than \$56,000; thus, it was not inconsistent on the statute’s face with the terms of the statute requiring a clerk to be paid no less than the amount set by the county population schedule set forth in § 15-6-88. *Chatham County v. Massey*, 299 Ga. 595, 791 S.E.2d 85, 2016 Ga. LEXIS 622 (2016).

Annexations properly invalidated.

— Judgment invalidating the City of Atlanta’s attempted annexation of five areas was affirmed because the trial court correctly held that the annexations were invalid since at the time the annexations would have become effective, the areas in question were already part of the newly incorporated City of South Fulton and thus ineligible for annexation by Atlanta. *City of Atlanta v. Mays*, 301 Ga. 367, 801 S.E.2d 1, 2017 Ga. LEXIS 453 (2017).

Paragraph V. Specific limitations.

Law reviews.

For article, “Nearly a Decade Later:

Surveying Georgia’s ‘New’ Noncompete Law,” see 26 Ga. St. B.J. 18 (Oct. 2020).

JUDICIAL DECISIONS

ANALYSIS

CONTRACTS TO DEFEAT COMPETITION

2. COVENANTS NOT TO COMPETE

b. ANCILLARY TO CONTRACT OF EMPLOYMENT

REGULATION OF PUBLIC UTILITIES

1. IN GENERAL

Contracts to Defeat Competition

2. Covenants Not to Compete

b. Ancillary to Contract of Employment

Non-solicitation of patients clause unenforceable. — Non-solicitation covenant in physicians’ pre-2011 employment contracts would prevent the physicians from having any communication with the employer’s patients, even if those patients sought out the physicians, which was unreasonable and unenforceable, but geo-

graphic limitations were not unreasonable and were enforceable. *Burson v. Milton Hall Surgical Associates, LLC*, 343 Ga. App. 159, 806 S.E.2d 239, 2017 Ga. App. LEXIS 458 (2017).

Regulation of Public Utilities

1. In General

Judicial review on “illegal taxes”. — Ga. Const. 1983, Art. III, § VI, Para. V(d) did not preclude the court from reviewing the plaintiffs’ claims that a city’s mandatory charges for utilities

Regulation of Public
Utilities (Cont'd)

1. In General (Cont'd)

constituted “illegal taxes”; even if the provision pertained to the judicial branch, which it did not, the plaintiffs’ claims did not require the trial court to “regulate or

fix” the utilities charges as a matter of discretionary policy making, so that the provision had no bearing on the trial court’s judicial power to determine whether or not the charges were in fact taxes in the first place. *Hollis v. City of LaGrange*, 320 Ga. 451, 910 S.E.2d 211, 2024 Ga. LEXIS 296 (2024).

RESEARCH REFERENCES

ALR.

Suits or claims for rescission of franchise agreements for retail and service

businesses other than restaurants and car dealerships, 77 A.L.R.7th 4.

Paragraph VI. Gratuities.

JUDICIAL DECISIONS

ANALYSIS

SPECIFIC CASES

Specific Cases

County bond transactions valid. —

In four related appeals, the superior court did not err in validating the taxable revenue bonds because each of the petitions include their stated purpose, and the superior court heard evidence that the bonds would serve the public interest; and the bond transactions did not violate the Gratuities Clause as the county would derive a substantial benefit from the projects at issue as the projects would improve the county’s infrastructure, create hundreds of jobs, expand the tax rolls, and bring economic development. *Bene v. State*, 362 Ga. App. 73, 865 S.E.2d 249, 2021 Ga. App. LEXIS 563 (2021).

No violation when project benefited county. — Superior court did not err in concluding that the projects provided a substantial benefit for the county, and thus the bond transactions did not

result in an unconstitutional gratuity in violation of the Gratuities Clause, Ga. Const. 1983, Art. III, Sec. VI, Para VI. *Bene v. State*, 362 Ga. App. 73, 865 S.E.2d 249, 2021 Ga. App. LEXIS 563 (2021).

Revenue bond does not violate this paragraph. — In four related appeals, the superior court did not err in validating the taxable revenue bonds because each of the petitions include their stated purpose, and the superior court heard evidence that the bonds would serve the public interest; and the bond transactions did not violate the Gratuities Clause, Ga. Const. 1983, Art. III, Sec. VI, Para. VI, as the county would derive a substantial benefit from the projects at issue as the projects would improve the county’s infrastructure, create hundreds of jobs, expand the tax rolls, and bring economic development. *Bene v. State*, 362 Ga. App. 73, 865 S.E.2d 249, 2021 Ga. App. LEXIS 563 (2021).

SECTION IX

APPROPRIATIONS

Paragraph

VI. Appropriations to be for specific sums.

Paragraph VI. Appropriations to be for specific sums.

(a) Except as hereinafter provided, the appropriation for each department, officer, bureau, board, commission, agency, or institution for which appropriation is made shall be for a specific sum of money; and no appropriation shall allocate to any object the proceeds of any particular tax or fund or a part or percentage thereof.

(b) An amount equal to all money derived from motor fuel taxes received by the state in each of the immediately preceding fiscal years, less the amount of refunds, rebates, and collection costs authorized by law, is hereby appropriated for the fiscal year beginning July 1, of each year following, for all activities incident to providing and maintaining an adequate system of public roads and bridges in this state, as authorized by laws enacted by the General Assembly of Georgia, and for grants to counties by law authorizing road construction and maintenance, as provided by law authorizing such grants. Said sum is hereby appropriated for, and shall be available for, the aforesaid purposes regardless of whether the General Assembly enacts a general appropriations Act; and said sum need not be specifically stated in any general appropriations Act passed by the General Assembly in order to be available for such purposes. However, this shall not preclude the General Assembly from appropriating for such purposes an amount greater than the sum specified above for such purposes. The expenditure of such funds shall be subject to all the rules, regulations, and restrictions imposed on the expenditure of appropriations by provisions of the Constitution and laws of this state, unless such provisions are in conflict with the provisions of this paragraph. And provided, however, that the proceeds of the tax hereby appropriated shall not be subject to budgetary reduction. In the event of invasion of this state by land, sea, or air or in case of a major catastrophe so proclaimed by the Governor, said funds may be utilized for defense or relief purposes on the executive order of the Governor.

(c) A trust fund for use in the reimbursement of a portion of an employer's workers' compensation expenses resulting to an employee from the combination of a previous disability with subsequent injury incurred in employment may be provided for by law. As authorized by law, revenues raised for purposes of the fund may be paid into and disbursed from the trust without being subject to the limitations of subparagraph (a) of this Paragraph or of Article VII, Section III, Paragraph II.

(d) As provided by law, additional penalties may be assessed in any case in which any court in this state imposes a fine or orders the forfeiture of any bond in the nature of the penalty for all offenses against the criminal and traffic laws of this state or of the political subdivisions of this state. The proceeds derived from such additional

penalty assessments may be allocated for the specific purpose of meeting any and all costs, or any portion of the cost, of providing training to law enforcement officers and to prosecuting officials.

(e) The General Assembly may by general law approved by a three-fifths' vote of both houses designate any part or all of the proceeds of any state tax now or hereafter levied and collected on alcoholic beverages to be used for prevention, education, and treatment relating to alcohol and drug abuse.

(f) The General Assembly is authorized to provide by law for the creation of a State Children's Trust Fund from which funds shall be disbursed for child abuse and neglect prevention programs. The General Assembly is authorized to appropriate moneys to such fund and such moneys paid into the fund shall not be subject to the provisions of Article III, Section IX, Paragraph IV(c), relative to the lapsing of funds.

(g) The General Assembly is authorized to provide by law for the creation of a Seed-Capital Fund from which funds shall be disbursed at the direction of the Advanced Technology Development Center of the University System of Georgia to provide equity and other capital to small, young, entrepreneurial firms engaged in innovative work in the areas of technology, manufacturing, or agriculture. Funds shall be disbursed in the form of loans or investments which shall provide for repayment, rents, dividends, royalties, or other forms of return on investments as provided by law. Moneys received from returns on loans or investments shall be deposited in the Seed-Capital Fund for further disbursement. The General Assembly is authorized to appropriate moneys to such fund and such moneys paid into the fund shall not be subject to the provisions of Article III, Section IX, Paragraph IV(c) relative to the lapsing of funds. The General Assembly shall be authorized to provide by law for any matters relating to the purpose or provisions of this subparagraph.

(h) The General Assembly is authorized to provide by general law for additional penalties or fees in any case in any court in this state in which a person is adjudged guilty of an offense against the criminal or traffic laws of this state or an ordinance of a political subdivision of this state. The General Assembly is authorized to provide by general law for the allocation of such additional penalties or fees for the construction, operation, and staffing of jails, correctional institutions, and detention facilities by counties.

(i) The General Assembly is authorized to provide by general law for the creation of an Indigent Care Trust Fund. Any hospital, hospital authority, county, or municipality is authorized to contribute or transfer moneys to the fund and any other person or entity specified by the General Assembly may also contribute to the fund. The General

Assembly may provide by general law for the dedication and deposit of revenues raised from specified sources for the purposes of the fund into the fund. Moneys in the fund shall be exclusively used for primary health care programs for medically indigent citizens and children of this state, for expansion of Medicaid eligibility and services, or for programs to support rural and other health care providers, primarily hospitals, who disproportionately serve the medically indigent. Any other appropriation from the Indigent Care Trust Fund shall be void. Contributions and revenues deposited to the fund shall not lapse and shall not be subject to the limitations of subparagraph (a) of this Paragraph or of Article VII, Section III, Paragraph II. Contributions in the fund which are not appropriated as required by this subparagraph shall be refunded pro rata to the contributors thereof, as provided by the General Assembly.

(j) The General Assembly is authorized to provide by general law for the creation of an emerging crops fund from which to pay interest on loans made to farmers to enable such farmers to produce certain crops on Georgia farms and thereby promote economic development. The General Assembly is authorized to appropriate moneys to such fund and moneys so appropriated shall not be subject to the provisions of Article III, Section IX, Paragraph IV(c), relative to the lapsing of appropriated funds. Interest on loans made to farmers shall be paid from such fund pursuant to such terms, conditions, and requirements as the General Assembly shall provide by general law. The General Assembly may provide by general law for the administration of such fund by such state agency or public authority as the General Assembly shall determine.

(k) The General Assembly is authorized to provide by general law for additional penalties or fees in any case in any court in this state in which a person is adjudged guilty of an offense involving driving under the influence of alcohol or drugs or reckless driving. The General Assembly is authorized to provide by general law for the allocation of such additional penalties or fees to the Brain and Spinal Injury Trust Fund, as provided by law, for the specified purpose of meeting any and all costs, or any portion of the costs, of providing care and rehabilitative services to citizens of the state who have survived neurotrauma with head or spinal cord injuries. Moneys appropriated for such purposes shall not lapse. The General Assembly may provide by general law for the administration of such fund by such authority as the General Assembly shall determine.

(l) The General Assembly is authorized to provide by general law for the creation of a roadside enhancement and beautification fund from which funds shall be disbursed for enhancement and beautification of public rights of way; for allocation and dedication of revenue from tree

and other vegetation trimming or removal permit fees, other related assessments, and special and distinctive wildflower motor vehicle license plate fees to such fund; that moneys paid into the fund shall not lapse, the provisions of Article III, Section IX, Paragraph IV(c) notwithstanding; and for any matters relating to the purpose or provisions of this subparagraph. An Act creating such fund and making such provisions effective January 1, 1999, or later may originate or have originated in the Senate or the House of Representatives.

(m) There shall be within the Department of Agriculture a dog and cat reproductive sterilization support program to control dog and cat overpopulation and thereby reduce the number of animals housed and killed in animal shelters, which program shall be administered by the Commissioner of Agriculture. In order to fund the program, there shall be issued beginning in 2003 specially designed license plates promoting the program. The General Assembly shall provide by law for the issuance of such license plates and for the dedication of certain revenue derived from fees for such plates to the support of the program. All such dedicated revenue derived from special license plate fees, any funds appropriated to the department for such purposes, and any voluntary contributions or other funds made available to the department for such purposes and all interest thereon shall be deposited in a special fund for support of the program, shall not be used for any purpose other than support of the program, and shall not lapse. The General Assembly may provide by law for all matters necessary or appropriate to the implementation of this paragraph.

(n) The General Assembly may provide by law for the issuance and renewal of special motor vehicle license plates that motor vehicle owners may optionally purchase and renew for additional fees. The General Assembly may provide for all or a portion of the net revenue, as defined by the General Assembly, derived from the additional fees charged for any such special license plate to be dedicated to an agency, fund, or nonprofit corporation to implement or support programs related to the nature of the special license plate, as intended by the authorizing statute. Any dedication of funds enacted pursuant to the authority of this subparagraph may be in whole or in part for the ultimate use of a nonprofit corporation, without limitation by Article III, Section VI, Paragraph VI, if the General Assembly determines that the license plate program and such appropriation will benefit both the state and the nonprofit corporation. Any law enacted pursuant to the authority of this subparagraph may provide that funds dedicated pursuant to such law shall not lapse as otherwise required by Article III, Section IX, Paragraph IV(c). Any law enacted pursuant to the authority of this subparagraph shall be required to receive a two thirds' majority vote in both the Senate and the House of Representatives.

(o) The General Assembly may provide by general law for additional

penalties in any case in any court in this state in which a person is adjudged guilty of keeping a place of prostitution, pimping, pandering, pandering by compulsion, solicitation of sodomy, masturbation for hire, trafficking of persons for sexual servitude, or sexual exploitation of children and may impose assessments on adult entertainment establishments as defined by law; and such appropriated amount shall not lapse as required by Article III, Section IX, Paragraph IV(c) and shall not be subject to the limitations of subparagraph (a) of this Paragraph, Article III, Section V, Paragraph II, Article VII, Section III, Paragraph II(a), or Article VII, Section III, Paragraph IV. The General Assembly may provide by general law for the allocation of such assessments and additional penalties to the Safe Harbor for Sexually Exploited Children Fund for the specified purpose of meeting any and all costs, or any portion of the costs, of providing care and rehabilitative and social services to individuals in this state who have been or may be sexually exploited. The General Assembly may provide by general law for the administration of such fund by such authority as the General Assembly shall determine.

(p) The proceeds of any excise tax imposed by general law on the sale of fireworks or consumer fireworks in this state shall be dedicated to the provision of trauma care, fire services, and local public safety purposes in Georgia. The General Assembly shall provide by general law for the use, dedication, and deposit of revenues raised from any such excise tax on fireworks or consumer fireworks. Contributions and revenues deposited for such purposes shall not lapse and shall not be subject to the limitations of subparagraph (a) of this Paragraph or of Article VII, Section III, Paragraph II.

(q) The General Assembly is authorized to provide by general law that up to 80 percent of all moneys received by the state from the levy of a tax on the sale and use of goods and services, as defined by general law, collected by establishments classified under the 2007 North American Industry Classification Code 451110, sporting goods stores, in the immediately preceding fiscal year will be paid into and dedicated to the Georgia Outdoor Stewardship Trust Fund for the purpose of protecting and preserving conservation land, as more specifically provided for by general law. Any general law adopted pursuant to this Paragraph shall provide for automatic repeal not more than ten years after its effective date, provided that such repeal date may be extended for a maximum of ten additional years. The revenues dedicated pursuant to this subparagraph shall not lapse, the provisions of Article III, Section IX, Paragraph IV(c) to the contrary notwithstanding, and such revenues shall not be subject to the limitations of subparagraph (a) of this Paragraph or Article VII, Section III, Paragraph II(a).

(r)(1) Subject to the limitations in this subparagraph, the General Assembly may provide by general law for the creation or renewal and

dedication of revenues, in whole or in part, derived from fees or taxes to the public purpose for which such fees or taxes were intended; provided that the general law dedicating such fee or tax shall reference this provision of the Constitution, provide the specific public purpose for which the revenue derived from such fee or tax shall be used, identify the agency to administer such revenue, require annual reporting of the revenues and expenses by such agency, and include an automatic expiration of such fee or tax within a period not to exceed ten years. Any such general law may also be authorized to offset, in whole or in part, the costs to the state of implementing and administering such dedication of revenue.

(2) The General Assembly shall not be authorized to dedicate state revenues pursuant to this subparagraph when the total revenues dedicated hereunder, including any nonlapsed funds, are equal to or exceed one percent of the total state revenues based on the previous fiscal year's state revenues subject to appropriation.

(3) Any general law enacted pursuant to this subparagraph shall not be subject to the limitations of Article III, Section IX, Paragraph IV(c), relating to the lapsing of funds; Article III, Section IX, Paragraph VI(a), relating to allocation of proceeds; or Article VII, Section III, Paragraph II(a), relating to payment into the general fund of the state treasury.

(4) Any general law enacted creating or renewing and dedicating revenues shall not become effective unless approved by two-thirds of the members elected to each chamber of the General Assembly in a roll-call vote; provided, however, that such a general law may be repealed by a majority vote of the members elected to each chamber of the General Assembly in a roll-call vote. Except in the case of a financial emergency as provided in paragraph (5) of this subparagraph, no amendment to any general law enacted pursuant to this subparagraph shall become effective unless approved by two-thirds of the members elected to each chamber of the General Assembly in a roll-call vote.

(5) No revenues which are dedicated by a general law enacted pursuant to this subparagraph shall be subject to any further dedication, any rededication to another purpose, or any alteration

whatsoever through the general appropriations Act, or any amendment thereto, or any supplementary appropriations Act, or any amendment thereto, and any such further dedication, rededication to another purpose, or alteration shall be void and of no force and effect. If in the case of a financial emergency the Governor or General Assembly intends to suspend the dedication of revenues enacted pursuant to this subparagraph, the Governor or the General Assembly shall do so only in strict compliance with the following procedures:

(A) In the event the Governor declares a financial emergency in the state, where such financial emergency shall be deemed to exist only if the revenue collection in the most recently completed fiscal year decreased by three percent or more below the revenue estimate for such fiscal year or the state experiences three consecutive months of declining revenues during the current fiscal year, the Governor by executive order may temporarily suspend the dedication of any revenues enacted pursuant to this subparagraph, in whole or in part, and shall appropriate such revenues to maintain the fiscal integrity of the state. Such executive order and associated suspension and appropriation of dedicated revenues shall remain in effect until the fifth day of the session of the General Assembly immediately following the execution of such executive order. Any previously dedicated revenues which remain unspent as of the fifth day of such session may be appropriated in a supplemental appropriations Act for that same fiscal year. The Governor shall not exercise this executive privilege more than three times during any ten consecutive fiscal-year period or if the General Assembly has acted pursuant to subparagraph (5)(B).

(B) In the event the Governor declares a financial emergency in the state as provided in subparagraph (5)(A) or where a majority vote of the members elected to each chamber of the General Assembly in a roll-call vote approves a joint resolution finding a financial emergency, which shall be deemed to exist only if the revenue collection in the most recently completed fiscal year decreased by three percent or more below the revenue estimate for such fiscal year or the state experiences three consecutive months of declining revenues during the current fiscal year, the General Assembly may temporarily suspend the dedication of revenues enacted pursuant to this subparagraph, in whole or in part, and may appropriate such unspent revenues to maintain the fiscal integrity of the state. Such joint resolution shall not be effective for more than two consecutive fiscal years and may be adopted not more than three times in any ten consecutive fiscal-year period.

(6) No revenues which are dedicated pursuant to any other provision of this Constitution by a general law enacted pursuant to anyother provision of this Constitution shall be subject to any further dedication, any rededication to another purpose, or any alteration whatsoever unless specifically authorized pursuant to such other provision of the Constitution, and in the absence of such specific authorization, any such further dedication, rededication to another purpose, or alteration shall be void and of no force and effect.

History.

Ga. Const. 1983, Art. 3, § 9, Para. 6; Ga. L. 1986, p. 1631, § 1/SR 330; Ga. L. 1988, p. 2106, § 1/HR 552; Ga. L. 1988, p. 2125, § 1/SR 347; Ga. L. 1988, p. 2126, § 1/SR 350; Ga. L. 1990, p. 2441, § 1/HR 796; Ga. L. 1992, p. 3333, § 1/HR 840; Ga. L. 1998, p. 1683/SR 144; Ga. L. 1998, p. 1688/SR 559; Ga. L. 2002, p. 1503, § 1/HR 264; Ga. L. 2006, p. 1112, § 1/HR 1564; Ga. L. 2014, p. 887, § 1/HR 1183; Ga. L. 2015, p. 1497, § 1/SR 7; Ga. L. 2016, p. 877, § 1/SR 558; Ga. L. 2018, p. 1138, § 1/HR 238; Ga. L. 2020, p. 919, § 1/HR164.

Editor's notes.

The constitutional amendment (Ga. L. 2015, p. 1497, § 1/SR 7), which added the first subparagraph (o), was ratified at the general election held on November 8, 2016.

The constitutional amendment (Ga. L. 2016, p. 877, § 1/SR 558), which added the second subparagraph (o), was ratified at the general election held on November 8, 2016.

The constitutional amendment (Ga. L. 2018, p. 1138, § 1/HR 238), which added subparagraph (p), was ratified at the general election held on November 6, 2018.

The constitutional amendment (Ga. L. 2020, p. 919, § 1/HR164), which redesignated the second subparagraph (o), relating to the dedication of the excise tax on the sale of fireworks, as subparagraph (p), redesignated subparagraph (p), relating to the Georgia Outdoor Stewardship Fund, as subparagraph (q), and added subparagraph (r), was ratified at the general election held on November 3, 2020.

JUDICIAL DECISIONS

Mandamus relief improperly denied. — Plaintiffs' mandamus claims were improperly denied as the plaintiffs did not have an adequate legal remedy to challenge the constitutionality of Ga. L. 2015, pp. 236, 241-264, §§ 5-8 (HB 170) by pursuing a refund action because the plaintiffs did not argue that H.B. 170 illegally assessed taxes against the plaintiffs, but, rather, the plaintiffs argued that it violated the state constitution by allowing revenues from taxes on motor fuels to be apportioned for purposes other than on roads and bridges; thus, the relief the plaintiffs sought was broader than the relief provided by the statute, O.C.G.A. § 48-9-3, which was limited to a refund of the assessed taxes plus interest, and the trial court erred in concluding that the refund statute was an adequate legal remedy for the plaintiffs' claims. *Ga. Motor Trucking Ass'n v. Georgia Dep't of*

Revenue, 301 Ga. 354, 801 S.E.2d 9, 2017 Ga. LEXIS 457 (2017).

Local sales and use taxes not appropriate for public roads and bridges. —

Trial court did not err in dismissing the plaintiffs' complaint that local sales and use taxes on motor fuels were not allocated to the maintenance and construction of public roads and bridges as the Motor Fuel Provision revealed that motor fuel taxes were limited to per-gallon taxes on distributors of motor fuel, and did not include sales and use taxes imposed on retail sales of motor fuels because the local sales and use taxes authorized by Ga. L. 2015, pp. 236, 241-264, §§ 5-8 (HB 170) were separate and distinct from the taxes on distributors and were not "motor fuel taxes" as that term was used in the Motor Fuel Provision; and, as a result, the defendants had no duty to appropriate for public roads an amount of revenue equal

to the proceeds from local sales and use taxes. Ga. Motor Trucking Ass'n v. Georgia

Dep't of Revenue, 301 Ga. 354, 801 S.E.2d 9, 2017 Ga. LEXIS 457 (2017).

ARTICLE IV

CONSTITUTIONAL BOARDS AND COMMISSIONS

SECTION II

STATE BOARD OF PARDONS AND PAROLES

Paragraph I. State Board of Pardons and Paroles.

Law reviews.

For note, "Give It to Me, I'm Worth It: The Need to Amend Georgia's Record Re-

striction Statute to Provide Ex-Offenders with a Second Chance in the Employment Sector," see 52 Ga. L. Rev. 267 (2017).

Paragraph II. Powers and authority.

JUDICIAL DECISIONS

Habeas court violated separation of powers by revoking sentence while petitioner in custody of parole board.

— Habeas court erred by revoking the petitioner's remaining portion of the original sentence while the petitioner was in the legal custody of the Georgia Board of Pardons and Paroles as such action was in violation of the separation of powers provision of Ga. Const. 1983, Art. I, Sec. II, Para. III. *Hayward v. Danforth*, 299 Ga. 261, 787 S.E.2d 709, 2016 Ga. LEXIS 427 (2016).

Sex registration disability removed by pardon. — Inclusion on the sex of-

fender registry pursuant to O.C.G.A. § 42-1-12 was a legal consequence of the underlying criminal offense and a disability imposed by law and the defendant's pardon by the pardon's express terms removed all disabilities under Georgia law resulting from the defendant's conviction and relieved all the legal consequences thereof, and restored all of the defendant's civil and political rights, excepting only the defendant's firearm rights. *State v. Davis*, 303 Ga. 684, 814 S.E.2d 701, 2018 Ga. LEXIS 364 (2018).

RESEARCH REFERENCES

ALR.

Judicial investigation of pardon by governor, 101 A.L.R.6th 431.

ARTICLE V
EXECUTIVE BRANCH

SECTION I

ELECTION OF GOVERNOR AND LIEUTENANT GOVERNOR

Paragraph II. Election for Governor.

JUDICIAL DECISIONS

Authority of Attorney General. — The Attorney General has the authority under state law to appeal a court decision invalidating a state redistricting statute despite the Governor’s order to dismiss the appeal. Because there is constitutional authority for the General Assembly to vest the Attorney General with specific duties and a state statute vested the At-

torney General with the authority to litigate in the voting rights action, the Attorney General had the power to seek a final determination on the validity of the State Senate redistricting statute under the federal Voting Rights Act (now 52 U.S.C. § 10301). *Perdue v. Baker*, 277 Ga. 1, 586 S.E.2d 606, 2003 Ga. LEXIS 700 (2003).

SECTION II

DUTIES AND POWERS OF GOVERNOR

JUDICIAL DECISIONS

Authority of Attorney General. — The Attorney General has the authority under state law to appeal a court decision invalidating a state redistricting statute despite the Governor’s order to dismiss the appeal. Because there is constitutional authority for the General Assembly to vest the Attorney General with specific duties and a state statute vested the At-

torney General with the authority to litigate in the voting rights action, the Attorney General had the power to seek a final determination on the validity of the State Senate redistricting statute under the federal Voting Rights Act (now 52 U.S.C. § 10301). *Perdue v. Baker*, 277 Ga. 1, 586 S.E.2d 606, 2003 Ga. LEXIS 700 (2003).

Paragraph IV. Veto power.

RESEARCH REFERENCES

ALR. or approval with modifications, 87
Disapproval by governor of bill in part A.L.R.6th 633.

SECTION III

OTHER ELECTED EXECUTIVE OFFICERS

Law reviews. Acting Attorney General,” see 36 Ga. St. U.L. Rev. 699 (2020).
For article, “The Vacancies Act and an

Paragraph IV. Attorney General; duties.

JUDICIAL DECISIONS

Authority of Attorney General. —

The Attorney General has the authority under state law to appeal a court decision invalidating a state redistricting statute despite the Governor’s order to dismiss the appeal. Because there is constitutional authority for the General Assembly to vest the Attorney General with specific duties and a state statute vested the At-

torney General with the authority to litigate in the voting rights action, the Attorney General had the power to seek a final determination on the validity of the State Senate redistricting statute under the federal Voting Rights Act (now 52 U.S.C. § 10301). *Perdue v. Baker*, 277 Ga. 1, 586 S.E.2d 606, 2003 Ga. LEXIS 700 (2003).

ARTICLE VI

JUDICIAL BRANCH

Section

- I. Judicial Power.
- II. Venue.
- III. Classes of Courts of Limited Jurisdiction.
- IV. Superior Courts.
- VII. Selection, Term, Compensation, and Discipline of Judges.

SECTION I

JUDICIAL POWER

Paragraph

- I. Judicial power of the state.
- IV. Exercise of judicial power.
- V. Uniformity of jurisdiction, powers, etc.

Paragraph

- VI. Judicial circuits; courts in each county; court sessions.

Paragraph I. Judicial power of the state.

The judicial power of the state shall be vested exclusively in the following classes of courts: magistrate courts, probate courts, juvenile courts, state courts, superior courts, state-wide business court, Georgia Tax Court, Court of Appeals, and Supreme Court. Nothing in this paragraph shall preclude a superior court from creating a business court division for its circuit in a manner provided by law. Magistrate courts, probate courts, juvenile courts, and state courts shall be courts of limited jurisdiction. In addition, the General Assembly may establish or authorize the establishment of municipal courts and may authorize administrative agencies to exercise quasi-judicial powers. Municipal courts shall have jurisdiction over ordinance violations and such other jurisdiction as provided by law. Except as provided in this paragraph and in Section X, municipal courts, county recorder’s courts and civil

courts in existence on June 30, 1983, and administrative agencies shall not be subject to the provisions of this article. The General Assembly shall have the authority to confer “by law” jurisdiction upon municipal courts to try state offenses.

History.

Ga. Const. 1983, Art. 6, § 1, Para. 1; Ga. L. 1990, p. 2440, § 1/HR 861; Ga. L. 2018, p. 1130, § 1/HR 993; Ga. L. 2024, p. 1189, § 1/HR 598.

Editor’s notes.

The constitutional amendment (Ga. L. 2018, p. 1130, § 1/HR 993), which inserted “state-wide business court,” in the first sentence and added the second sentence, was ratified at the general election held on November 6, 2018.

The constitutional amendment (Ga. L. 2024, p. 1189, § 1/HR 598), which inserted

“Georgia Tax Court,” following “business court,” in the first sentence, was ratified at the general election held November 5, 2024.

Law reviews.

For annual survey on trial practice and procedure, see 70 Mercer L. Rev. 253 (2018).

For note, “The Case of the Vanishing Supreme Court Contest: *Barrow v. Raffensperger* Eliminates the Power of the People to Elect their Appellate, Superior, and State Court Judges,” see 72 Mercer L. Rev. 957 (2021).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Judicial Qualifications Commission was not authorized to pronounce the law in unsettled areas; therefore, the Commission’s formal advisory opinion regarding the unsettled areas regarding whether the right of public access to the courts extended to children, or whether inquiries by security personnel amounted to a closure of the courts, exceeded the Commission’s authority. The Commission was not vested with judicial power; rather, such power was vested in the state courts. In re Judicial Qualifications Comm’n Formal Advisory Opinion No. 239, 300 Ga. 291, 794 S.E.2d 631, 2016 Ga. LEXIS 777 (2016).

Standing. — Georgia Supreme Court held only plaintiffs with a cognizable injury can bring a suit in Georgia courts;

unlike federal law, however, that injury need not always be individualized; sometimes it can be a generalized grievance shared by community members, especially other residents, taxpayers, voters, or citizens. *Sons of Confederate Veterans v. Henry County Bd. of Comm’rs*, 315 Ga. 39, 880 S.E.2d 168, 2022 Ga. LEXIS 284 (2022).

Third party standing doctrine. — Court’s prior decision in *Feminist Women’s Health Center v. Burgess*, 282 Ga. 433 (2007), which adopted the federal third-party standing doctrine, was overruled and, as such, a plaintiff is required to assert a violation of their own legal rights, not just factual harm, to maintain an action in Georgia courts. *Wasserman v. Franklin Cnty.*, 320 Ga. 624, 911 S.E.2d 583, 2025 Ga. LEXIS 15 (2025).

Paragraph III. Judges; exercise of power outside own court; scope of term “judge.”

Law reviews.

For note, “The Case of the Vanishing

Supreme Court Contest: *Barrow v. Raffensperger* Eliminates the Power of the

People to Elect their Appellate, Superior, and State Court Judges,” see 72 Mercer L. Rev. 957 (2021).

Paragraph IV. Exercise of judicial power.

Each court may exercise such powers as necessary in aid of its jurisdiction or to protect or effectuate its judgments; but only the superior and appellate courts and state-wide business court shall have the power to issue process in the nature of mandamus, prohibition, specific performance, quo warranto, and injunction. Each superior court, state court, and other courts of record and the state-wide business court may grant new trials on legal grounds.

History.

Ga. Const. 1983, Art. 6, § 1, Para. 4; Ga. L. 2018, p. 1130, § 1/HR 993.

Editor’s notes.

The constitutional amendment (Ga. L. 2018, p. 1130, § 1/HR 993), which inserted “and state-wide business court” in the first sentence and inserted “and the

state-wide business court” in the second sentence, was ratified at the general election held on November 6, 2018.

Law reviews.

For annual survey on trial practice and procedure, see 70 Mercer L. Rev. 253 (2018).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Court lacked original jurisdiction to grant writ of mandamus. — Georgia Supreme Court lacked original jurisdiction to grant a petition for writ of mandamus as the petition was unconnected to the Supreme Court’s appellate jurisdiction. *Arnold v. Alexander*, 321 Ga. 330, 914 S.E.2d 311, 2025 Ga. LEXIS 63 (2025).

Juvenile denied due process when in contempt due to cell phone sounding. — Judgment of criminal contempt imposed against a juvenile after the juvenile’s cell phone sounded during a dependency hearing was reversed because the juvenile court judge did not include any finding that the juvenile was given an opportunity to speak on the juvenile’s own behalf or attempt to explain the juvenile’s actions before the juvenile was found in contempt; thus, the record did not show

that the juvenile was extended the minimum requirements of due process of law. *In re Williams*, 347 Ga. App. 189, 818 S.E.2d 260, 2018 Ga. App. LEXIS 483 (2018).

Constitutionality of Service Delivery Strategy Act. — Trial court erred by finding that the Service Delivery Strategy Act, O.C.G.A. § 36-70-20 et seq., specifically O.C.G.A. § 36-70-25.1(d)(2), was unconstitutional because it did not permit the trial court to direct that the parties enter into a particular agreement and, therefore, did not invade the province of the legislative branch by imposing a tax or allocating the proceeds of that tax. *City of Union Point v. Greene County*, 303 Ga. 449, 812 S.E.2d 278, 2018 Ga. LEXIS 185 (2018), overruled in part, *City of College Park v. Clayton County*, 306 Ga. 301, 830 S.E.2d 179, 2019 Ga. LEXIS 438 (2019).

Paragraph V. Uniformity of jurisdiction, powers, etc.

Except as otherwise provided in this Constitution, the courts of each class shall have uniform jurisdiction, powers, rules of practice and procedure, and selection, qualifications, terms, and discipline of judges. The provisions of this Paragraph, as related to the state-wide business court, shall be effective as provided by law.

History.

Ga. Const. 1983, Art. 6, § 1, Para. 5; Ga. L. 2018, p. 1130, § 1/HR 993.

Editor’s notes.

The constitutional amendment (Ga. L. 2018, p. 1130, § 1/HR 993), which rewrote the second sentence, was ratified at the

general election held on November 6, 2018.

Law reviews.

For annual survey on trial practice and procedure, see 70 Mercer L. Rev. 253 (2018).

Paragraph VI. Judicial circuits; courts in each county; court sessions.

The state shall be divided into judicial circuits, each of which shall consist of not less than one county. Each county shall have at least one superior court, magistrate court, a probate court, and, where needed, a state court, a juvenile court, and a business court division of superior court. The General Assembly may provide by law that the judge of the probate court may also serve as the judge of the magistrate court. In the absence of a state court or a juvenile court, the superior court shall exercise that jurisdiction. Superior courts shall hold court at least twice each year in each county.

History.

Ga. Const. 1983, Art. 6, § 1, Para. 6; Ga. L. 2018, p. 1130, § 1/HR 993.

Editor’s notes.

The constitutional amendment (Ga. L. 2018, p. 1130, § 1/HR 993), which substituted “a state court, a juvenile court, and a business court division of superior court”

for “a state court and a juvenile court” at the end of the second sentence, was ratified at the general election held on November 6, 2018.

Law reviews.

For annual survey on trial practice and procedure, see 70 Mercer L. Rev. 253 (2018).

Paragraph VIII. Transfer of cases.

JUDICIAL DECISIONS

Venue in quiet title action. — Although the lendeedid did not allege a proper basis for venue in Rockdale County for the quiet title action, as defendants did not reside there, the proper remedy was a transfer, not dismissal. *Richards v. Opteum Mortgage*, 364 Ga. App. 269, 874 S.E.2d 469, 2022 Ga. App. LEXIS 294 (2022).

Jurisdiction when Metropolitan Atlanta Rapid Transit Authority is defendant. — State court erred by not transferring the case against the Metropolitan Atlanta Rapid Transit Authority (MARTA) to the Fulton County Superior Court because to give effect to the clear meaning of Section 10(t) of the MARTA Act, suit had to be brought in the Superior

Court of Fulton County. MARTA v. Buho, 353 Ga. App. 466, 838 S.E.2d 130, 2020 Ga. App. LEXIS 21 (2020).

Paragraph IX. Rules of evidence; law prescribed.

JUDICIAL DECISIONS

Application to O.C.G.A. § 24-7-702. — O.C.G.A. § 24-7-702(c)(2)(A), governing expert qualifications in medical malpractice cases, was not unconstitutionally vague, did not violate equal protection, separation of powers, or the right to jury trial, did not make irrevocable grants of special privileges and immunities, and was not a special

law; however, the trial court erred in rejecting an expert simply because the expert had not performed the specific procedure at issue. The proper consideration was the expert’s level of knowledge. Zarate-Martinez v. Echemendia, 299 Ga. 301, 788 S.E.2d 405, 2016 Ga. LEXIS 450 (2016).

SECTION II

VENUE

Paragraph IX. Venue of state-wide business court.

Paragraph X. Venue of Georgia Tax Court.

Law reviews.

For note, “Tennessee v. FCC and the Clear Statement Rule,” see 51 Ga. L. 947 (2017).

For annual survey on trial practice and procedure, see 70 Mercer L. Rev. 253 (2018).

Paragraph I. Divorce cases.

JUDICIAL DECISIONS

ANALYSIS

REQUIREMENTS OF DIVORCE ACTIONS

Requirements of Divorce Actions

Transfer in a divorce case. — Georgia Supreme Court held that a superior court can transfer a divorce case to another proper venue under the doctrine of

forum non conveniens pursuant to O.C.G.A. § 9-10-31.1(a) without offending Ga. Const. 1983, Art. VI, Sec. II, Para. I. McInerney v. McInerney, 313 Ga. 462, 870 S.E.2d 721, 2022 Ga. LEXIS 66 (2022).

Paragraph II. Land titles.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Venue transfer should have been approved. — Trial court erred by denying the defendants’ motion to transfer venue because the action was not a suit respecting title to land but, instead, was

an equitable action as the plaintiffs were requesting the trial court to cancel a deed conveying land based upon allegations of fraud. *Henderson v. Fisher*, 363 Ga. App. 747, 872 S.E.2d 524, 2022 Ga. App. LEXIS 214 (2022).

Paragraph III. Equity cases.

Law reviews.

For annual survey on real property, see 71 Mercer L. Rev. 241 (2019).

JUDICIAL DECISIONS

ANALYSIS

PROPER VENUE

Proper Venue

Venue proper in county of any one of two or more defendants of different counties. — Trial court erred in denying the title company’s motion to dismiss because the land owner’s petition to quiet title was improperly brought in the county where the property was located rather than a county where either of the two Georgia defendants resided as required under Ga. Const. 1983, Art. VI, Sec. II, Para. III. *Republic Title Co. v.*

Andrews, 347 Ga. App. 463, 819 S.E.2d 889, 2018 Ga. App. LEXIS 546 (2018).

Venue in quiet title action. — Although the lendeer did not allege a proper basis for venue in Rockdale County for the quiet title action, as defendants did not reside there, the proper remedy was a transfer, not dismissal. *Richards v. Opteum Mortgage*, 364 Ga. App. 269, 874 S.E.2d 469, 2022 Ga. App. LEXIS 294 (2022).

Paragraph IV. Suits against joint obligors, copartners, or joint trespassers.

JUDICIAL DECISIONS

ANALYSIS

JURISDICTION

2. LOSS OF JURISDICTION

VENUE

1. IN GENERAL

2. JOINT TORTFEASORS

Jurisdiction

2. Loss of Jurisdiction

Metropolitan Atlanta Rapid Transit as defendant meant court without jurisdiction. — State Court erred by not transferring the case against the Metropolitan Atlanta Rapid Transit Authority (MARTA) to the Fulton County Superior Court because to give effect to the clear meaning of Section 10(t) of the MARTA Act, suit had to be brought in the Superior Court of Fulton County. *MARTA v. Buho*, 353 Ga. App. 466, 838 S.E.2d 130, 2020 Ga. App. LEXIS 21 (2020).

Georgia Court of Appeals held that when jurisdiction and venue are based on the Metropolitan Atlanta Rapid Transit Authority (MARTA), and not on a joint tortfeasor residing in a different county, the MARTA Act controls and the action must be filed in the Superior Court, not the State Court, of Fulton County. *MARTA v. Buho*, 353 Ga. App. 466, 838 S.E.2d 130, 2020 Ga. App. LEXIS 21 (2020).

Venue

1. In General

Dismissal on venue proper. — In suits by classes of former and current members of distribution electric membership corporations (EMCs) seeking to recover millions of dollars in patronage capital from two wholesale EMCs, in which the members lacked privity with the wholesale EMCs which were the only defendants as to whom venue was proper, dismissal of the distribution EMCs was proper. *Walker v. Oglethorpe Power Corp.*, 341 Ga. App. 647, 802 S.E.2d 643, 2017 Ga. App. LEXIS 261 (2017), overruled in part, *Hanham v. Access Mgmt. Group L.P.*, 305 Ga. 414, 825 S.E.2d 217, 2019 Ga. LEXIS 137 (2019).

Paragraph VI. All other cases.

Law reviews.

For article, “Georgia’s Unconstitutional Business Venue Provision: A Kingdom

2. Joint Tortfeasors

Suit against joint wrongdoers together and in county of either permissible. — In an automobile collision case, the trial court properly denied the known defendant’s motion to transfer venue to the known defendant’s home county because the John Doe defendant was alleged to have played a vital role in causing the plaintiffs’ alleged injuries; and, in a tort action, if venue in a particular county was proper as to one joint tort-feasor, it was proper as to the other joint tort-feasor as well; thus, because venue was proper in Bibb County as to the John Doe defendant, it was likewise proper as to the known defendant in that county. *Carpenter v. McMann*, 341 Ga. App. 791, 802 S.E.2d 74, 2017 Ga. App. LEXIS 280 (2017), *aff’d*, 304 Ga. 209, 817 S.E.2d 686, 2018 Ga. LEXIS 466 (2018).

Suits against joint obligors may be tried in the county wherein either defendant resides. — In a negligence suit against the Metropolitan Atlanta Rapid Transit Authority (MARTA) and a bus driver in DeKalb County following a vehicle collision, the motion to transfer venue to Fulton County was denied because, for purposes of the Georgia Constitution, MARTA and the driver were considered joint tortfeasors, venue was proper in either of the counties in which they were residents, and the driver was a resident of DeKalb County. *Metro. Atlanta RTA v. Ingram*, 360 Ga. App. 185, 860 S.E.2d 838, 2021 Ga. App. LEXIS 330 (2021).

Venue when one defendant an unknown. — Venue provisions of the uninsured motorist statute, O.C.G.A. § 33-7-11(d)(1), were held to apply in a suit related to an automobile collision brought against a known Georgia resident and an unknown defendant under a joint tortfeasor theory. *Carpenter v. McMann*, 304 Ga. 209, 817 S.E.2d 686, 2018 Ga. LEXIS 466 (2018).

with Impermissible Borders,” see 69 Mercer L. Rev. 433 (2018).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

DETERMINING VENUE

- 1. IN GENERAL
- 2. CIVIL ACTIONS
- 3. CRIMINAL ACTIONS

General Consideration

Dismissal of modification complaint. — Trial court did not err in declining to dismiss the mother’s modification complaint pursuant to O.C.G.A. § 19-9-24(b) because the mother filed the motion as a separate action in the father’s county of residence. *Dallow v. Dallow*, 299 Ga. 762, 791 S.E.2d 20, 2016 Ga. LEXIS 581 (2016).

Abandonment of issue on appeal. — In a breach of contract action, because the company failed to set forth any argument in the company’s appellate brief that the trial court erred in failing to transfer the case because it was not jointly liable with the resident co-defendants, either as joint tortfeasors or as joint obligors, the appellate court deemed the issue of venue abandoned on appeal. *Liberty Capital, LLC v. First Chatham Bank*, 338 Ga. App. 48, 789 S.E.2d 303, 2016 Ga. App. LEXIS 439 (2016).

Determining Venue

1. In General

Discretion of trial court on venue. — When a plaintiff brings suit in the same county on two claims arising from the same transaction and the Georgia Constitution designates that county as the venue for one of those claims, the trial court has the discretion to entertain both claims. *Liberty Capital, LLC v. First Chatham Bank*, 338 Ga. App. 48, 789 S.E.2d 303, 2016 Ga. App. LEXIS 439 (2016).

2. Civil Actions

Venue when one defendant an unknown. — Venue provisions of the uninsured motorist statute, O.C.G.A. § 33-7-11(d)(1), were held to apply in a suit related to an automobile collision

brought against a known Georgia resident and an unknown defendant under a joint tortfeasor theory. *Carpenter v. McMann*, 304 Ga. 209, 817 S.E.2d 686, 2018 Ga. LEXIS 466 (2018).

3. Criminal Actions

Venue not relevant to motion to suppress. — Grant of the defendant’s motion to suppress on the basis of venue was reversed because the state did not need to establish venue at the pretrial hearing on the defendant’s motion to suppress as it was not relevant to the issues raised in the motion, which challenged the reasonable basis for the traffic stop or whether the resulting search of the defendant and the defendant’s vehicle were supported by probable cause. *State v. Wallace*, 338 Ga. App. 611, 791 S.E.2d 187, 2016 Ga. App. LEXIS 510 (2016).

Proof of venue. — Sufficient evidence supported that venue was properly established in Bibb County, Georgia, with regard to the defendant’s aggravated assault, kidnapping, and rape convictions because although the two women were not sure where the defendant had driven them, the testimony of the camper whom one victim had found upon escaping established venue in Bibb County and the second area where the other victim was raped was only three minutes from the first. *Howard v. State*, 340 Ga. App. 133, 796 S.E.2d 757, 2017 Ga. App. LEXIS 26 (2017).

There was sufficient evidence for the jury to find beyond a reasonable doubt that the crimes were committed in DeKalb County, including the victim’s statement to police identifying the roadways the victim traveled, which included that area where a body was found, and the defendant’s statement to a probation officer that the defendant had committed crimes

against both victims in an area where the defendant stayed, to which DeKalb County authorities responded. *Faust v. State*, 303 Ga. 731, 814 S.E.2d 714, 2018 Ga. LEXIS 363 (2018).

Georgia Supreme Court corrected the Court's prior holdings of *Gosha v. State*, 56 Ga. 36 (1876) that a jury can never reasonably infer that a crime committed near a location in one county was committed in the same county and the same holding in *Jones v. State*, 272 Ga. 900 (2000) and expressly overruled all cases following those holdings in *Gosha* and *Jones* and disapproved all cases that have cited those holdings favorably. *Worthen v. State*, 304 Ga. 862, 823 S.E.2d 291, 2019 Ga. LEXIS 22 (2019).

Evidence was sufficient to support the jury's finding that venue for murder count (and the associated firearm count) was proved beyond a reasonable doubt to be Fulton County, Georgia as the record showed that police witnesses testified that 490 Angier Avenue was in Fulton County, which included the crime scene of the sidewalk or the street in front of the building where the appellant shot and killed the victim. *Worthen v. State*, 304 Ga. 862, 823 S.E.2d 291, 2019 Ga. LEXIS 22 (2019).

Jury could have reasonably inferred from the evidence presented that the victim's apartment was located in the county because it showed that the home was located in the county, the victim's body was located about 100 yards behind the home, and the address of the home intersected the address of the victim's apartment. *Sims v. State*, 312 Ga. 322, 862 S.E.2d 534, 2021 Ga. LEXIS 594 (2021).

Evidence of venue in fleeing and eluding case. — In a fleeing and eluding case under O.C.G.A. § 40-6-395, the evidence was sufficient to establish venue as required by Ga. Const. 1983, Art. VI, Sec. II, Para. VI and O.C.G.A. § 17-2-2(a), based on evidence that the chase originated in the county and continued there, including an eyewitness's testimony, dash cam footage, and a map. *Payne v. State*, 338 Ga. App. 677, 791 S.E.2d 451, 2016 Ga. App. LEXIS 526 (2016), overruled in part, *Worthen v. State*, 304 Ga. 862, 823 S.E.2d 291, 2019 Ga. LEXIS 22 (2019).

Inadequate showing of venue in murder conviction. — Georgia Supreme Court held that if a body is discovered in Georgia and it cannot be readily determined in what county the cause of death was inflicted, it shall be considered that the cause of death was inflicted in the county in which the dead body was discovered. *Hernandez v. State*, 304 Ga. 895, 823 S.E.2d 272, 2019 Ga. LEXIS 18 (2019).

Adequate showing of venue in murder trial. — Contrary to the appellant's contention, venue for the murder committed was properly established in DeKalb County, Georgia, because the victim's body was found there and it was not readily determinable where the appellant shot and killed the victim; thus, O.C.G.A. § 17-2-2(c) applied. *Hernandez v. State*, 304 Ga. 895, 823 S.E.2d 272, 2019 Ga. LEXIS 18 (2019).

Circumstantial evidence was sufficient to authorize a rational jury to find beyond a reasonable doubt that defendant's wife's murder might have been committed in DeKalb County because the jury could reasonably infer that the wife was strangled to death in the DeKalb County house, wrapped in a moving blanket kept in the house, carried to defendant's truck, and then driven away. Until defendant returned to Georgia with the wife's body and went to defendant's former co-worker's home in Clayton County, there was absolutely no evidence that Clayton County had any connection whatsoever to the wife's murder. *Allaben v. State*, 315 Ga. 789, 885 S.E.2d 1, 2023 Ga. LEXIS 54 (2023).

Adequate evidence of proper venue. — Defendant's challenge to venue failed because the testimony established that all of the acts the victim described were committed in the family home, which was located in Chatham County and there was no suggestion that any of the acts were performed in any other location but, instead, occurred when the victim's mother was out of the Chatham County house. *Miranda v. State*, 354 Ga. App. 777, 841 S.E.2d 440, 2020 Ga. App. LEXIS 220 (2020).

Evidence was sufficient to convict the defendant of rape and false imprisonment because venue in Fulton County was

Determining Venue (Cont'd)
3. Criminal Actions (Cont'd)

proper as the night club and the house the victim ran to after the rape were located there; the victim accepted a ride from two men who, against the victim's will, drove the victim to a nearby field and then, forcibly and against the victim's will, had sex with the victim; a sexual assault exam was performed, DNA samples were collected from the victim, and the rape kit was sent to the GBI crime lab; and, about 20 years later, the crime lab generated a profile of the male DNA which matched known DNA profiles of the defendant contained in an existing DNA database and in buccal swabs obtained from the defendant by search warrant. *Walker v. State*, 341 Ga. App. 742, 801 S.E.2d 621, 2017 Ga. App. LEXIS 268 (2017).

In the defendant's murder trial, there was sufficient evidence from which the jury could find that venue was properly laid in Upson County pursuant to Ga. Const. 1983, Art. VI, Sec. II, Para. VI, and O.C.G.A. § 17-2-2(c), including evidence that the crime occurred in Thomaston and the admission of evidence bags marked "Upson." *Raines v. State*, 304 Ga. 582, 820 S.E.2d 679, 2018 Ga. LEXIS 687 (2018).

Evidence established beyond a reasonable doubt that venue was properly in Houston County because the state presented testimony at trial establishing that the crimes against the victim culminating in the victim's murder were committed in Houston County as the place where the victim was severely beaten was in Hous-

ton County, the place where the victim was strangled to death was in Houston County, and the place where the victim's body was discovered was in Houston County; thus, the failure to prove venue was not a meritorious basis for granting directed verdicts of acquittal. *Pike v. State*, 302 Ga. 795, 809 S.E.2d 756, 2018 Ga. LEXIS 56 (2018).

Defendant's claim that there was insufficient evidence to establish venue for the crimes alleged to have occurred at the gas station lacked merit because the jury was authorized to conclude that the defendant stopped at a gas station in Fulton County when driving the victim from the victim's home located in Fulton County from a movie theater located in Fulton County. *Pavlov v. State*, 362 Ga. App. 831, 870 S.E.2d 449, 2022 Ga. App. LEXIS 109 (2022).

Jury instruction on venue in homicide cases. — Jury instruction in a murder case under O.C.G.A. § 17-2-2(c), that, if it could not be determined where the cause of death was inflicted, it "shall be considered" that it was inflicted in the county where the body was discovered, did not impermissibly shift the burden of proof to the defendant. As a result, the following cases are disapproved: *Napier v. State*, 276 Ga. 769(2), 583 S.E.2d 825 (2003), *Owens v. State*, 286 Ga. 821, 827(3), 693 S.E.2d 490 (2010), and *Owens v. McLaughlin*, 733 F.3d 320, 327 (11th Cir. 2013). *Shelton v. Lee*, 299 Ga. 350, 788 S.E.2d 369, 2016 Ga. LEXIS 452 (2016), cert. denied, 580 U.S. 1121, 137 S. Ct. 1066, 197 L. Ed. 2d 187, 2017 U.S. LEXIS 1286 (2017).

Paragraph VIII. Power to change venue.

JUDICIAL DECISIONS

Transfer in a divorce case. — Georgia Supreme Court held that a superior court can transfer a divorce case to another proper venue under the doctrine of *forum non conveniens* pursuant to

O.C.G.A. § 9-10-31.1(a) without offending Ga. Const. 1983, Art. VI, Sec. II, Para. I. *McInerney v. McInerney*, 313 Ga. 462, 870 S.E.2d 721, 2022 Ga. LEXIS 66 (2022).

Paragraph IX. Venue of state-wide business court.

All cases before the state-wide business court may conduct pretrial proceedings in any county as provided by law. Any trial of a case that is

before the state-wide business court shall take place in the county as is otherwise prescribed by this section.

History. 2018, p. 1130, § 1/HR 993), which added this section, was ratified at the general election held on November 6, 2018.
Ga. Const. 1983, Art. 6, § 2, Para. 9, approved by Ga. L. 2018, p. 1130, § 1/HR 993.
Editor’s notes.
The constitutional amendment (Ga. L.

Paragraph X. Venue of Georgia Tax Court.

All cases before the Georgia Tax Court may conduct pretrial proceedings in any county as provided by law. Any trial of a case that is before the Georgia Tax Court shall take place in the county as is otherwise prescribed by this section.

History. 2024, p. 1189, § 2/HR 598), which added this paragraph, was ratified at the general election held on November 5, 2024.
Ga. Const. 1983, Art. 6, § 2, Para. 10, approved by Ga. L. 2024, p. 1189, § 2/HR 598.
Editor’s notes.
The constitutional amendment (Ga. L.

SECTION III

CLASSES OF COURTS OF LIMITED JURISDICTION

Paragraph II. Jurisdiction of state-wide business court.	Paragraph III. Jurisdiction of Georgia Tax Court.
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Law reviews. procedure, see 70 Mercer L. Rev. 253 (2018).
For annual survey on trial practice and

Paragraph I. Jurisdiction of classes of courts of limited jurisdiction.

Law reviews. ministration, see 73 Mercer L. Rev. 281 (2021).
For article with annual survey on wills, trusts, guardianships, and fiduciary ad-

Paragraph II. Jurisdiction of state-wide business court.

The state-wide business court shall have state-wide jurisdiction as provided by law.

History. approved by Ga. L. 2018, p. 1130, § 1/HR 993.
Ga. Const. 1983, Art. 6, § 3, Para. 2,

Editor’s notes.

The constitutional amendment (Ga. L. 2018, p. 1130, § 1/HR 993), which added

this section, was ratified at the general election held on November 6, 2018.

Paragraph III. Jurisdiction of Georgia Tax Court.

The Georgia Tax Court shall have state-wide jurisdiction as provided by law.

History.

Ga. Const. 1983, Art. 6, § 3, Para. 3, Ga. L. 2024, p. 1189, § 1/HR 598.

2024, p. 1189, § 3/HR 598), which added this section, was ratified at the general election held on November 5, 2024.

Editor’s notes.

The constitutional amendment (Ga. L.

SECTION IV
SUPERIOR COURTS

Paragraph

I. Jurisdiction of superior courts.

Paragraph I. Jurisdiction of superior courts.

The superior courts shall have jurisdiction in all cases, except as otherwise provided in this Constitution. They shall have exclusive jurisdiction over trials in felony cases, except in the case of juvenile offenders as provided by law; in cases respecting title to land; and in divorce cases. They shall have concurrent jurisdiction with the state-wide business court and the Georgia Tax Court in equity cases. A superior court by agreement of the parties may order removal of a case to the state-wide business court or the Georgia Tax Court as provided by law. The superior courts shall have such appellate jurisdiction, either alone or by circuit or district, as may be provided by law.

History.

Ga. Const. 1983, Art. 6, § 4, Para. 1, Ga. L. 2018, p. 1130, § 1/HR 993; Ga. L. 2024, p. 1189, § 4/HR 598.

“and the Georgia Tax Court” following “business court” in the third sentence, and inserted “or the Georgia Tax Court” following “business court” in the fourth sentence, was ratified at the general election held November 5, 2024.

Editor’s notes.

The constitutional amendment (Ga. L. 2018, p. 1130, § 1/HR 993), which revised this section, was ratified at the general election held on November 6, 2018.

Law reviews.

For annual survey on trial practice and procedure, see 70 Mercer L. Rev. 253 (2018).

The constitutional amendment (Ga. L. 2024, p. 1189, § 4/HR 598), which inserted

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
CRIMINAL CASES
JUVENILE CASES

General Consideration

Subject matter jurisdiction over claims between coin-operated amusement machine licensees. — Superior court properly concluded that the company's claims were within the court's subject-matter jurisdiction because O.C.G.A. § 50-27-102(d) did not confer exclusive jurisdiction over claims between coin-operated amusement machine licensees to the Georgia Lottery Corporation (GLC); the General Assembly could have vested the GLC with exclusive jurisdiction, but it elected not to do so; and neither the legislature nor a judge could limit the jurisdiction of a superior court. *Alli v. Ultra Group of Cos., Inc.*, 366 Ga. App. 670, 883 S.E.2d 888, 2023 Ga. App. LEXIS 57 (2023).

Criminal Cases

Jurisdiction proper. — Because it

was undisputed that the defendant's crimes took place in Fulton County and that the defendant was tried in Fulton County, the defendant failed to demonstrate that the convictions were void for lack of jurisdiction or improper venue. *Brown v. State*, 346 Ga. App. 245, 816 S.E.2d 111, 2018 Ga. App. LEXIS 360 (2018).

Juvenile Cases

Court lacked jurisdiction as defendant was juvenile when offenses committed. — Superior court lacked jurisdiction to accept the defendant's guilty pleas and enter the subsequent adjudications of guilt because the defendant was a juvenile at the time of the offenses. *Bryan Cave Leighton Paisner, LLP v. Gebo Law, LLC*, 371 Ga. App. 341, 899 S.E.2d 244, 2024 Ga. App. LEXIS 153.

SECTION V

COURT OF APPEALS

Law reviews.

For article with annual survey on labor

and employment law, see 73 Mercer L. Rev. 137 (2021).

Paragraph III. Jurisdiction of Court of Appeals; decisions binding.

RESEARCH REFERENCES

ALR.

What Matters Not Contained in Pleadings may be Considered in Ruling on Motion to Dismiss Under Rule 12(b)(6) of Federal Rules of Civil Procedure or

Motion for Judgment on Pleadings Under Rule 12(c) without Conversion to Motion for Summary Judgment — Sixth Circuit, 77 A.L.R. Fed. 3d 2.

Paragraph IV. Certification of question to Supreme Court.

JUDICIAL DECISIONS

Certification of question of law. —

Because two conflicting decisions that governed a case regarding interpretation of O.C.G.A. § 15-11-521(b) were before the Supreme Court of Georgia on certiorari review, the court certified

resolution of the case to the Supreme Court via a certified question under Ga. Const. 1983, Art. VI, Sec. V, Para. IV. To await the Supreme Court's decision would run afoul of the two-term rule, Ga. Const. 1983, Art. VI, Sec. IX, Para. II. In the

Interest of J. F., 338 Ga. App. 15, 789 S.E.2d 274, 2016 Ga. App. LEXIS 427 (2016).

Appellate court could not certify question that would constitute decision of case. — If an answer by the Supreme Court of a question certified to it by the Court of Appeals would constitute a decision of the main case, the question cannot, under the Constitution, be answered. A certified question of law and

fact will not be answered and, even if the question certified is one of law only, it will not be answered if such answer would necessarily control the decision of the case. The Court of Appeals may not request that the Supreme Court review one of its own decisions. *Naar v. Naar*, 350 Ga. App. 21, 827 S.E.2d 711, 2019 Ga. App. LEXIS 233 (2019), cert. denied, No. S19C1229, 2019 Ga. LEXIS 856 (Ga. Dec. 23, 2019).

Paragraph V. Equal division of court.

JUDICIAL DECISIONS

Jurisdiction not found. — In a medical malpractice action where the trial court granted the physician summary judgment and the appellate court reversed, the court held that the case did not invoke its jurisdiction because all of the judges of the appellate court voted to either vacate or reverse the grant of summary judgment and therefore there was

no division of the appellate court. The judges only disagreed about why one of the two grounds for summary judgment was faulty, which affected only what should happen next in the trial court, not whether the trial court’s judgment had to be set aside. *Wilson v. Inthachak*, 317 Ga. 868, 896 S.E.2d 593, 2023 Ga. LEXIS 259 (2023).

SECTION VI

SUPREME COURT

Paragraph I. Composition of Supreme Court; Chief Justice; Presiding Justice; quorum; substitute judges.

JUDICIAL DECISIONS

Superior court retained jurisdiction when no transfer to juvenile court made. — Superior court erred in concluding that the superior court did not have jurisdiction and, therefore, erred by dismissing the child custody action because when the superior court did not

transfer the custody matter to the juvenile court, the superior court retained jurisdiction and erred by dismissing the aunt and uncle’s petition for permanent custody for lack of jurisdiction. *Kasper v. Martin*, 354 Ga. App. 831, 841 S.E.2d 488, 2020 Ga. App. LEXIS 228 (2020).

Paragraph II. Exclusive appellate jurisdiction of Supreme Court.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Jurisdiction based on judicial economy. — Supreme Court of Georgia did not have subject matter jurisdiction over the defendant's appeal of the defendant's convictions for aggravated assault. The court declined to exercise jurisdiction based on judicial economy because the defendant pointed to no statute or constitutional provision authorizing the court do to so, and stare decisis factors weighed in favor of overruling the court's precedents in which the court had exercised jurisdiction based on judicial economy. *Gilliam v. State*, 312 Ga. 60, 860 S.E.2d 543, 2021 Ga. LEXIS 467 (2021).

Federal preemption. — The preemption doctrine is a product of the Supremacy Clause, U.S. Const., Art. VI, Cl. 2, which invalidates state laws that interfere with, or are contrary to, federal law. The preemption argument invokes the Supreme Court of Georgia's constitutional question jurisdiction under Ga. Const. 1983, Art. VI, Sec. VI, Para. II (1). *RES-GA McDonough, LLC v. Taylor English Duma LLP*, 302 Ga. 444, 807 S.E.2d 381, 2017 Ga. LEXIS 930 (2017).

Question of federal preemption.

Supreme Court of Georgia properly has jurisdiction of an appeal that presents a question about the constitutionality of a statute, Ga. Const. 1983, Art. VI, Sec. VI, Para. II (1), namely, whether a Georgia statute is preempted by federal law. *Cnty. & S. Bank v. Lovell*, 302 Ga. 375, 807 S.E.2d 444, 2017 Ga. LEXIS 925 (2017).

Challenge to statute governing sealing of court records not viable. — Because an appeal of the denial of a motion to seal a criminal record under O.C.G.A. § 35-3-37(m) failed to present a viable challenge to the statute's

constitutionality, Ga. Const. 1983, Art. VI, Sec. VI, Para. II(1), because the challenge (a separation of powers argument, Ga. Const. 1983, Art. I, Sec. II, Para. III, based on the Supreme Court's record-keeping authority under Ga. Const. 1983, Art. VI, Sec. IX, Para. I, and Ga. Unif. Super. Ct. R. 21.4) was not raised below, jurisdiction was properly before the Court of Appeals, pursuant to O.C.G.A. § 5-6-34(a)(12). *Doe v. State*, 303 Ga. 237, 811 S.E.2d 413, 2018 Ga. LEXIS 126, transferred, 347 Ga. App. 246, 819 S.E.2d 58, 2018 Ga. App. LEXIS 501 (2018).

Inadequate showing that removal from office proper for error in appointment. — Trial court properly granted the judge's motion to dismiss for failure to state a claim in quo warranto and denied the challenger's leave to file an information against the judge because the challenger failed to show that removal from office through a proceeding in quo warranto was the proper remedy for an appointment that was not made promptly. *Floyd v. Stone*, 313 Ga. 16, 867 S.E.2d 92, 2021 Ga. LEXIS 728 (2021).

No preemption found by federal law. — Grant of summary judgment to a railroad was reversed as to the property owner's claim for inverse condemnation for the property located to the east of the railroad tracks because it could not be said that the claim would unreasonably interfere with or otherwise burden rail transportation, thus, the trial court erred when the court found that this claim was preempted by the Interstate Commerce Commission Termination Act of 1996, 49 U.S.C. § 10501 et seq. *Fox v. Norfolk S. Corp.*, 342 Ga. App. 38, 802 S.E.2d 319, 2017 Ga. App. LEXIS 310 (2017), cert. denied, No. S17C1931, 2017 Ga. LEXIS 987 (Ga. Dec. 11, 2017).

Paragraph III. General appellate jurisdiction of Supreme Court.

Law reviews.

For article, “Annual Survey of Georgia Law: June 1, 2015 — May 31, 2016: Special Contribution: Open Chambers Revisited: Demystifying the Inner Workings

and Culture of the Georgia Court of Appeals,” see 68 Mercer L. Rev. 1 (2016).

For annual survey on death penalty law, see 70 Mercer L. Rev. 73 (2018).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
CRIMINAL CASES
EXTRAORDINARY REMEDIES

General Consideration

Certification of question of law. —

Because two conflicting decisions that governed a case regarding interpretation of O.C.G.A. § 15-11-521(b) were before the Supreme Court of Georgia on certiorari review, the court certified resolution of the case to the Supreme Court via a certified question under Ga. Const. 1983, Art. VI, Sec. V, Para. IV. To await the Supreme Court’s decision would run afoul of the two-term rule, Ga. Const. 1983, Art. VI, Sec. IX, Para. II. In the Interest of J. F., 338 Ga. App. 15, 789 S.E.2d 274, 2016 Ga. App. LEXIS 427 (2016).

Criminal Cases

Supreme Court had jurisdiction over post conviction motion seeking transcript in murder case. — The Supreme Court of Georgia had jurisdiction over an appeal from a post-conviction motion seeking a transcript from a defendant’s original murder case under Ga. Const. 1983, Art. VI, Sec. VI, Para. III(8), and the motion was not a motion in the nature of mandamus subject to the Court of Appeals’ jurisdiction under O.C.G.A. § 15-3-3.1. *Henderson v. State*, 303 Ga. 241, 811 S.E.2d 388, 2018 Ga. LEXIS 145 (2018), overruled in part, *Arnold v. Alexander*, 321 Ga. 330, 914 S.E.2d 311, 2025 Ga. LEXIS 63 (2025).

Exercise of jurisdiction based on judicial economy. —

Supreme Court of Georgia did not have subject matter jurisdiction over the defendant’s appeal of the defendant’s convictions for aggravated assault. The court declined to exercise jurisdiction based on judicial economy because defendant pointed to no statute or constitutional provision authorizing the court do to so, and stare decisis factors weighed in favor of overruling the court’s precedents in which the court had exercised jurisdiction based on judicial economy. *Gilliam v. State*, 312 Ga. 60, 860 S.E.2d 543, 2021 Ga. LEXIS 467 (2021).

Extraordinary Remedies

Death penalty proceedings. —

Prisoner’s appeal in a suit seeking records from the prisoner’s criminal case, which was not filed under the criminal docket numbers but as a separate civil mandamus petition, was not within the Supreme Court of Georgia’s murder jurisdiction under Ga. Const. 1983, Art. VI, Sec. VI, Para. III(8); however, it was within the court’s jurisdiction over extraordinary remedies in death penalty proceedings under O.C.G.A. § 15-3-3.1(4). Still, the appeal was dismissed for failure to comply with O.C.G.A. § 42-12-8. *Brock v. Hardman*, 303 Ga. 729, 814 S.E.2d 736, 2018 Ga. LEXIS 353 (2018).

Paragraph IV. Jurisdiction over questions of law from state appellate or federal district or appellate courts.

JUDICIAL DECISIONS

Certification does not grant general jurisdiction to consider other questions. — Although the Supreme Court of Georgia has jurisdiction to answer questions certified by a district court, Ga. Const. 1983, Art. VI, Sec. VI, Para. IV,

the certification of questions does not give the Supreme Court jurisdiction over the case generally, which remains within the breast of the district court. *Bibbs v. Toyota Motor Corp.*, 304 Ga. 68, 815 S.E.2d 850, 2018 Ga. LEXIS 443 (2018).

Paragraph V. Review of cases in Court of Appeals.

JUDICIAL DECISIONS

Certification of question of law. — Because two conflicting decisions that governed a case regarding interpretation of O.C.G.A. § 15-11-521(b) were before the Supreme Court of Georgia on certiorari review, the court certified resolution of the case to the Supreme Court via a certified question under Ga.

Const. 1983, Art. VI, Sec. V, Para. IV. To await the Supreme Court’s decision would run afoul of the two-term rule, Ga. Const. 1983, Art. VI, Sec. IX, Para. II. In the *Interest of J. F.*, 338 Ga. App. 15, 789 S.E.2d 274, 2016 Ga. App. LEXIS 427 (2016).

Paragraph VI. Decisions of Supreme Court binding.

JUDICIAL DECISIONS

Court of Appeals has no authority to overrule or modify decision of the Supreme Court of Georgia, etc. Ex-husband was not entitled to a jury trial because the Supreme Court of Georgia has long held that a person is not entitled to a jury trial on the issue of

ability to pay or contempt for failure to pay alimony and child support and, therefore, the Court of Appeals did not have authority to do anything different. *Bernard v. Bernard*, 347 Ga. App. 429, 819 S.E.2d 688, 2018 Ga. App. LEXIS 535 (2018).

SECTION VII

SELECTION, TERM, COMPENSATION, AND DISCIPLINE OF JUDGES

Paragraph	Paragraph
I. Selection; term of office.	VII. Discipline, removal, and involuntary retirement of judges.
II. Qualifications.	
III. Vacancies.	
VI. Judicial Qualifications Commission; power; composition.	

RESEARCH REFERENCES

ALR.

Gender Bias on Part of Judge or Arbitrator, 55 A.L.R.7th 2.

Paragraph I. Selection; term of office.

(a) All superior court and state court judges shall be elected on a nonpartisan basis for a term of four years. All Justices of the Supreme Court and the Judges of the Court of Appeals shall be elected on a nonpartisan basis for a term of six years. The terms of all judges thus elected shall begin the next January 1 after their election. All other judges shall continue to be selected in the manner and for the term they were selected on June 30, 1983, until otherwise provided by local law.

(b) All state-wide business court judges shall serve a term of five years; provided, however, that the initial term of such judges shall be as provided by law. Such judges shall be appointed by the Governor, subject to approval by a majority vote of the Senate Judiciary Committee and a majority vote of the House Committee on Judiciary. Such judges may be reappointed for any number of consecutive terms as long as he or she meets the qualifications of appointment at the time of each appointment and is approved as required by this subparagraph. The state-wide business court shall consist of the number of judges as provided for by law. For purposes of qualifications, state-wide business court judges shall be deemed to serve the geographical area of this state.

(c) Each Georgia Tax Court judge shall serve a term of four years; provided, however, that the initial term of each such judge shall be as provided by law. Each Georgia Tax Court judge shall be appointed by the Governor, subject to approval by a majority vote of the Senate Judiciary Committee and a majority vote of the House Committee on Judiciary. Each judge may be reappointed for any number of consecutive terms so long as he or she meets the qualifications of appointment at the time of each appointment and is approved as required by this subparagraph. The Georgia Tax Court shall consist of the number of judges as provided for by law. For purposes of qualifications, Georgia Tax Court judges shall be deemed to serve the geographical area of this state.

History.

Ga. Const. 1983, Art. 6, § 1, Para. 1, Ga. L. 2018, p. 1130, § 1/HR 993; Ga. L. 2024, p. 1189, § 1/HR 598.

Editor’s notes.

The constitutional amendment (Ga. L. 2018, p. 1130, § 1/HR 993), which added subparagraph (b), was ratified at the general election held on November 6, 2018.

The constitutional amendment (Ga. L.

2024, p. 1189, § 5/HR 598), which added subparagraph (c), was ratified at the general election held November 5, 2024.

Law reviews.

For annual survey on trial practice and procedure, see 70 Mercer L. Rev. 253 (2018).

For note, “The Case of the Vanishing Supreme Court Contest: *Barrow v. Raffensperger* Eliminates the Power of the

People to Elect their Appellate, Superior, and State Court Judges,” see 72 Mercer L. Rev. 957 (2021).

JUDICIAL DECISIONS

State court judge’s salary decrease in subsequent term was not unconstitutional. — State court judge was not entitled to mandamus relief for additional compensation under a local law and a county ordinance because the judge received all compensation and allowances as provided by law, and the judge’s salary did

not decrease in any way during the judge’s term of office in violation of Ga. Const. 1983, Art. VI, Sec. VII, Para. V; rather, the salary decreased during a subsequent term as defined in Ga. Const. 1983, Art. VI, Sec. VII, Para. I(a). *Cowen v. Clayton County*, 306 Ga. 698, 832 S.E.2d 819, 2019 Ga. LEXIS 594 (2019).

Paragraph II. Qualifications.

(a) Appellate, superior, and state-wide business court judges shall have been admitted to practice law for seven years.

(b) State court judges shall have been admitted to practice law for seven years, provided that this requirement shall be five years in the case of state court judges elected or appointed in the year 2000 or earlier. Juvenile court judges shall have been admitted to practice law for five years.

(b.1) State-wide business court judges shall have such qualifications as provided by law.

(b.2) Georgia Tax Court judges shall have such qualifications as provided by law.

(c) Probate and magistrate judges shall have such qualifications as provided by law.

(d) All judges shall reside in the geographical area in which they are selected to serve.

(e) The General Assembly may provide by law for additional qualifications, including, but not limited to, minimum residency requirements.

History.

Ga. Const. 1983, Art. 6, § 7, Para. 2; Ga. L. 2000, p. 2002, § 1/HR 268; Ga. L. 2018, p. 1130, § 1/HR 993; Ga. L. 2024, p. 1189, § 6/HR 598.

Editor’s notes.

The constitutional amendment (Ga. L. 2018, p. 1130, § 1/HR 993), which substituted “Appellate, superior, and state-wide business court” for “Appellate and superior court” in subparagraph (a), and added subparagraph (b.1) to read: “State-wide

business court judges shall have such qualifications as provided by law.”, was ratified at the general election held on November 6, 2018.

The constitutional amendment (Ga. L. 2024, p. 1189, § 6/HR 598), which added subparagraph (b.2), was ratified at the general election held November 5, 2024.

Law reviews.

For annual survey on trial practice and procedure, see 70 Mercer L. Rev. 253 (2018).

Paragraph III. Vacancies.

Vacancies shall be filled by appointment of the Governor except as otherwise provided by law in the magistrate, probate, and juvenile courts. Vacancies in the state-wide business court shall be filled by appointment of the Governor, subject to approval as specified in subparagraph (b) of Paragraph (I) of this section. Vacancies in the Georgia Tax Court shall be filled by appointment of the Governor, subject to approval as provided for in subparagraph (c) of Paragraph (I) of this section.

History.

Ga. Const. 1983, Art. 6, § 7, Para. 3, Ga. L. 2018, p. 1130, § 1/HR 993; Ga. L. 2024, p. 1189, § 7/HR 598.

Editor’s notes.

The constitutional amendment (Ga. L. 2018, p. 1130, § 1/HR 993), which added the second sentence, was ratified at the general election held on November 6, 2018.

The constitutional amendment (Ga. L. 2024, p. 1189, § 7/HR 598), which added the third sentence, was ratified at the general election held November 5, 2024.

Law reviews.

For annual survey on trial practice and procedure, see 70 Mercer L. Rev. 253 (2018).

JUDICIAL DECISIONS

Resigning judge occupied office until time of resignation. — Because the resigning justice continued to occupy the office, the trial court erred in concluding that the justice’s office was vacant and, accordingly, the Governor’s appointment power had not yet arisen and the trial

court properly denied the petitions for a writ of mandamus requiring the Secretary of State to conduct that legally nugatory election. *Barrow v. Raffensperger*, 308 Ga. 660, 842 S.E.2d 884, 2020 Ga. LEXIS 343 (2020).

Paragraph V. Compensation and allowances of judges.

JUDICIAL DECISIONS

State court judge’s salary decrease in subsequent term was not unconstitutional. — State court judge was not entitled to mandamus relief for additional compensation under a local law and a county ordinance because the judge received all compensation and allowances as provided by law, and the judge’s salary did not decrease in any way during the judge’s term of office in violation of Ga. Const. 1983, Art. VI, Sec. VII, Para. V; rather, the salary decreased during a subsequent term as defined in Ga. Const. 1983, Art. VI, Sec. VII, Para. I(a). *Cowen v. Clayton County*, 306 Ga. 698, 832 S.E.2d 819, 2019 Ga. LEXIS 594 (2019).

Failure to pay supplement that had

been paid to predecessor. — In a dispute between a county and a county state court judge over a supplement to the judge’s salary, summary judgment for the judge was proper on the county’s claim for reimbursement of the judge’s salary supplement because the county failed to show that the supplement was paid with the total absence or want of power. Even if the supplement was paid in violation of the Open Meetings Act, O.C.G.A. § 50-14-1 et seq., the county’s counterclaim was filed well outside the 90-day limitation period in O.C.G.A. § 50-14-1(b)(2). *Heiskell v. Roberts*, 342 Ga. App. 109, 802 S.E.2d 385, 2017 Ga. App. LEXIS 320 (2017), cert. denied, No.

S17C1940, 2018 Ga. LEXIS 35 (Ga. Jan. 16, 2018).

Paragraph VI. Judicial Qualifications Commission; power; composition.

(a) The General Assembly shall by general law create and provide for the composition, manner of appointment, and governance of a Judicial Qualifications Commission, with such commission having the power to discipline, remove, and cause involuntary retirement of judges as provided by this Article. Appointments to the Judicial Qualifications Commission shall be subject to confirmation by the Senate as provided for by general law.

(b) The procedures of the Judicial Qualifications Commission shall comport with due process. Such procedures and advisory opinions issued by the Judicial Qualifications Commission shall be subject to review by the Supreme Court.

(c) The Judicial Qualifications Commission which existed on June 30, 2017, is hereby abolished.

History.

Ga. Const. 1983, Art. 6, § 7, Para. 6; Ga. L. 2016, p. 878, § 1/HR 1113.

Editor's notes.

The constitutional amendment (Ga. L. 2016, p. 878, § 1/HR 1113), which abol-

ished the existing Judicial Qualifications Commission and created a new Judicial Qualifications Commission, was ratified at the general election held on November 8, 2016.

JUDICIAL DECISIONS

Commission was not authorized to regulate judicial organizations. — Judicial Qualifications Commission's authority was limited to disciplining individual judges. Ga. Const. 1983, Art. VI, Sec. VII, Para. VI and VII, and did not extend to dictating whether the Georgia Council of State Court Judges could file an amicus brief in pending litigation; the Council was permitted to file such briefs pursuant to its duties and authority under Ga. Const. 1983, Art. VI, Sec. IX, Para. I, and O.C.G.A. § 15-7-26(b), although individual judges generally could not. In re Judicial Qualifications Comm'n Formal

Advisory Opinion No. 241, 301 Ga. 54, 799 S.E.2d 781, 2017 Ga. LEXIS 319 (2017).

Judicial Qualifications Commission was not authorized to pronounce the law in unsettled areas; therefore, its formal advisory opinion regarding the unsettled areas regarding whether the right of public access to the courts extended to children, or whether inquiries by security personnel amounted to a closure of the courts, exceeded its authority. In re Judicial Qualifications Comm'n Formal Advisory Opinion No. 239, 300 Ga. 291, 794 S.E.2d 631, 2016 Ga. LEXIS 777 (2016).

Paragraph VII. Discipline, removal, and involuntary retirement of judges.

(a) Any judge may be removed, suspended, or otherwise disciplined for willful misconduct in office, or for willful and persistent failure to

perform the duties of office, or for habitual intemperance, or for conviction of a crime involving moral turpitude, or for conduct prejudicial to the administration of justice which brings the judicial office into disrepute. Any judge may be retired for disability which constitutes a serious and likely permanent interference with the performance of the duties of office. The Supreme Court shall adopt rules of implementation.

(b)(1) Upon indictment for a felony by a grand jury of this state or by a grand jury of the United States of any judge, the Attorney General or district attorney shall transmit a certified copy of the indictment to the Judicial Qualifications Commission. The commission shall, subject to subparagraph (b)(2) of this Paragraph, review the indictment, and, if it determines that the indictment relates to and adversely affects the administration of the office of the indicted judge and that the rights and interests of the public are adversely affected thereby, the commission shall suspend the judge immediately and without further action pending the final disposition of the case or until the expiration of the judge's term of office, whichever occurs first. During the term of office to which such judge was elected and in which the indictment occurred, if a nolle prosequi is entered, if the public official is acquitted, or if after conviction the conviction is later overturned as a result of any direct appeal or application for a writ of certiorari, the judge shall be immediately reinstated to the office from which he was suspended. While a judge is suspended under this subparagraph and until initial conviction by the trial court, the judge shall continue to receive the compensation from his office. After initial conviction by the trial court, the judge shall not be entitled to receive the compensation from his office. If the judge is reinstated to office, he shall be entitled to receive any compensation withheld under the provisions of this subparagraph. For the duration of any suspension under this subparagraph, the Governor shall appoint a replacement judge. Upon a final conviction with no appeal or review pending, the office shall be declared vacant and a successor to that office shall be chosen as provided in this Constitution or the laws enacted in pursuance thereof.

(2) The commission shall not review the indictment for a period of 14 days from the day the indictment is received. This period of time may be extended by the commission. During this period of time, the indicted judge may, in writing, authorize the commission to suspend him from office. Any such voluntary suspension shall be subject to the same conditions for review, reinstatement, or declaration of vacancy as are provided in this subparagraph for a nonvoluntary suspension.

(3) After any suspension is imposed under this subparagraph, the suspended judge may petition the commission for a review. If the

commission determines that the judge should no longer be suspended, he shall immediately be reinstated to office.

(4)(A) The findings and records of the commission and the fact that the public official has or has not been suspended shall not be admissible in evidence in any court for any purpose.

(B) The findings and records of the commission shall not be open to the public except as provided by the General Assembly by general law.

(5) The provisions of this subparagraph shall not apply to any indictment handed down prior to January 1, 1985.

(6) If a judge who is suspended from office under the provisions of this subparagraph is not first tried at the next regular or special term following the indictment, the suspension shall be terminated and the judge shall be reinstated to office. The judge shall not be reinstated under this provision if he is not so tried based on a continuance granted upon a motion made only by the defendant.

(c) Upon initial conviction of any judge for any felony in a trial court of this state or the United States, regardless of whether the judge has been suspended previously under subparagraph (b) of this Paragraph, such judge shall be immediately and without further action suspended from office. While a judge is suspended from office under this subparagraph, he shall not be entitled to receive the compensation from his office. If the conviction is later overturned as a result of any direct appeal or application for a writ of certiorari, the judge shall be immediately reinstated to the office from which he was suspended and shall be entitled to receive any compensation withheld under the provisions of this subparagraph. For the duration of any suspension under this subparagraph, the Governor shall appoint a replacement judge. Upon a final conviction with no appeal or review pending, the office shall be declared vacant and a successor to that office shall be chosen as provided in this Constitution or the laws enacted in pursuance thereof. The provisions of this subparagraph shall not apply to any conviction rendered prior to January 1, 1987.

History.

Ga. Const. 1983, Art. 6, § 7, Para. 7; Ga. L. 1984, p. 1722, § 1/SR 267; Ga. L. 1986, p. 1619, §§ 1, 2/HR 506; Ga. L. 2016, p. 896, § 2/HR 1113.

Editor's notes.

The constitutional amendment (Ga. L. 2016, p. 896, § 2/HR 1113), which revised

subparagraph (4) of subparagraph (b) by designating the first sentence as subparagraph (A), and designating the second sentence as subparagraph (B) and adding "except as provided by the General Assembly by general law" at the end, was ratified at the general election held on November 8, 2016.

JUDICIAL DECISIONS

Actions taken before judge became judge or judicial candidate. — Judicial Qualifications Commission (JQC) Hearing Panel’s recommendation to remove the judge from the judge’s seat on the Court of Appeals was remanded because the JQC could not pursue charges against the judge arising from actions taken before the judge became a judge or judicial candidate; and it erroneously determined that negligent conduct outside the judicial capacity could warrant discipline even though the case law made it clear that conduct outside the judicial capacity had to be done with bad faith to warrant discipline. *Inquiry Concerning Coomer*, 315 Ga. 841, 885 S.E.2d 738, 2023 Ga. LEXIS 59 (2023).

None of the counts against the judge alleged anything about actions the judge took in a judicial capacity; accordingly, none of those counts permitted discipline on the ground that the judge’s conduct amounted to “willful misconduct in office.” Further, none of those counts would permit discipline for “conduct prejudicial to the administration of justice,” absent a finding of bad faith; however, the Judicial Qualifications Commission Hearing Panel’s report and recommendation was ambiguous as to whether the Panel found that the judge had acted in bad faith in committing any of the proved violations. *Inquiry Concerning Coomer*, 315 Ga. 841, 885 S.E.2d 738, 2023 Ga. LEXIS 59 (2023).

Commission was not authorized to regulate judicial organizations. — Judicial Qualifications Commission’s authority was limited to disciplining individual judges. Ga. Const. 1983, Art. VI, Sec. VII, Para. VI and VII, and did not extend to dictating whether the Georgia Council of State Court Judges could file an amicus brief in pending litigation; the Council was permitted to file such briefs pursuant to its duties and authority under Ga. Const. 1983, Art. VI, Sec. IX, Para. I, and O.C.G.A. § 15-7-26(b), although individual judges generally could not. *In re Judicial Qualifications Comm’n Formal Advisory Opinion No. 241*, 301 Ga. 54, 799 S.E.2d 781, 2017 Ga. LEXIS 319 (2017).

Supreme Court had authority to review Judicial Qualifications Commission’s advisory opinions. — Although a petition filed by a council of state court judges seeking review of the Judicial Qualifications Commission’s (JQC) formal advisory opinion regarding public access to courtrooms presented no justiciable controversy, the court had authority to review the opinion; Ga. Const. 1983, Art. VI, Sec. VII, Para. VII(a), vested the court with the authority to adopt rules for the JQC, and JQC Rule 22(b) required the JQC to reconsider its formal advisory opinions at the court’s request. *In re Judicial Qualifications Comm’n Formal Advisory Opinion No. 239*, 300 Ga. 291, 794 S.E.2d 631, 2016 Ga. LEXIS 777 (2016).

Bad faith shown. — Clear and convincing evidence supported the determination that the judge violated Ga. Code of Judicial Conduct Canons 1.1, 1.2(A), 1.2(B), and 2.2 and acted in bad faith by unjustifiably holding a petitioner in contempt and failing to advise the petitioner of the contempt charges, provide the petitioner a reasonable opportunity to respond to the charges, and permit the petitioner the assistance of counsel and the right to call witnesses. *Inquiry Concerning Judge Peterson*, 319 Ga. 316, 903 S.E.2d 645, 2024 Ga. LEXIS 148 (2024).

Clear and convincing evidence supported the determination that the judge violated Ga. Code of Judicial Conduct Canons 1.1, 1.2(A), 1.2(B), and 2.2 and acted in bad faith by requesting sheriff’s deputies to work throughout the night so that the judge could have after-hours access to the courthouse and using the panic button to summon a deputy to escort the judge to court, and in so doing failed to demonstrate the decorum and temperament required of a judge. *Inquiry Concerning Judge Peterson*, 319 Ga. 316, 903 S.E.2d 645, 2024 Ga. LEXIS 148 (2024).

Clear and convincing evidence supported the determination that the judge violated Ga. Code of Judicial Conduct Canons 1.1, 1.2(A), 1.2(B), and 2.2 and

acted in bad faith by telling two members of the judge's homeowners' association (HOA) board that the judge would dismiss the judge's lawsuit against the HOA and the board if the board held a special election because the judge, who was acting as the judge's own counsel in the matter, communicated and attempted to negotiate with parties to the lawsuit, even though the judge knew the parties were represented by counsel. Inquiry Concerning Judge Peterson, 319 Ga. 316, 903 S.E.2d 645, 2024 Ga. LEXIS 148 (2024).

Clear and convincing evidence supported the determination that the judge violated Ga. Code of Judicial Conduct Canons 1.1, 1.2(A), 1.2(B), and 2.2 and

acted in bad faith by permitting and considering ex parte communications because the judge accepted and considered the petitioner's daughter's emailed caveat, of which the petitioner and the petitioner's counsel had no notice. Inquiry Concerning Judge Peterson, 319 Ga. 316, 903 S.E.2d 645, 2024 Ga. LEXIS 148 (2024).

Judge's resignation caused removal petition to be moot. — Petition to remove a judge from office was dismissed because the judge resigned, which resignation was accepted by the Governor of Georgia; thus, the request to remove the judge from office became moot. Inquiry Concerning Johnson, 316 Ga. 876, 892 S.E.2d 1, 2023 Ga. LEXIS 159 (2023).

SECTION VIII

DISTRICT ATTORNEYS

Cross references.

Prosecuting Attorneys Qualifications Commission, § 15-18-32.

Paragraph I. District attorneys; vacancies; qualifications; compensation; duties; immunity.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION IMMUNITY

General Consideration

Limitation in O.C.G.A. § 5-7-1 on state's right to appeal applied only to prosecutors. — O.C.G.A. § 5-7-1 et seq., which limited appeals by the state in criminal cases, did not apply to the Department of Corrections (DOC) in the Department's appeal from an ex parte order sealing records of visits to inmates who were charged or witnesses in the murder of two prison guards; the statute applied to the prosecuting attorney responsible for the criminal case, not state entities and actors who had no control over prosecutions. State v. Rowe, 308 Ga. 806, 843 S.E.2d 537, 2020 Ga. LEXIS 345 (2020).

Appointment of district attorney for remainder of term. — In an election case involving appointees to the district attorney's office, the court concluded that O.C.G.A. § 45-5-3.2 conflicted with Ga. Const. 1983, Art. VI, Sec. VIII, Para. I(a), to the extent that § 45-5-3.2 authorized a district attorney appointed by the Governor to serve beyond the remainder of the unexpired four-year term of the prior district attorney without an election as required by the Georgia Constitution. Kemp v. Gonzalez, 310 Ga. 104, 849 S.E.2d 667, 2020 Ga. LEXIS 743 (2020).

District attorney's power to bind state to plea agreement. — Defendant's plea in bar and motion to dismiss the Fulton County charges was improperly

General Consideration (Cont'd)

denied because, once Clayton County initiated the prosecution of the defendant, Clayton County had jurisdiction of the prosecution to the exclusion of all other counties in Georgia; the Clayton County district attorney alone was vested with the power of the state to negotiate a universal resolution of the charges against the defendant; and the Clayton County district attorney bound the state to the agreement and barred all other subdivisions of the state from future prosecutions arising out of the defendant's criminal conduct. *Arnold v. State*, 352 Ga. App. 777, 835 S.E.2d 759, 2019 Ga. App. LEXIS 637 (2019).

Immunity

Standing to bring suit against district attorney. — Plaintiff had constitutional standing to bring an enforcement

action under the Open Records Act, O.C.G.A. § 50-18-70 et seq., against the district attorney in their official capacity as the custodian of public records and constitutional prosecutorial immunity conferred upon district attorneys did not bar plaintiffs' official-capacity claims against the district attorney, but may bar individual-capacity claims to the extent those claims pertained to actions arising from the performance of duties. *Gonzalez v. Miller*, 320 Ga. 170, 907 S.E.2d 859, 2024 Ga. LEXIS 245 (2024).

Application of Open Records Act to district attorneys. — Open Records Act (ORA), O.C.G.A. § 50-18-70 et seq., was held to apply to public records maintained by district attorneys' offices because the ORA defined agency to include offices of state and local government. *Gonzalez v. Miller*, 320 Ga. 170, 907 S.E.2d 859, 2024 Ga. LEXIS 245 (2024).

SECTION IX

GENERAL PROVISIONS

Paragraph I. Administration of the judicial system; uniform court rules; advice and consent of councils.

JUDICIAL DECISIONS

Commission was not authorized to regulate judicial organizations. — Judicial Qualifications Commission's authority was limited to disciplining individual judges. Ga. Const. 1983, Art. VI, Sec. VII, Para. VI and VII, and did not extend to dictating whether the Georgia Council of State Court Judges could file an amicus brief in pending litigation; the Council was permitted to file such briefs pursuant to its duties and authority under Ga. Const. 1983, Art. VI, Sec. IX, Para. I, and O.C.G.A. § 15-7-26(b), although individual judges generally could not. In re Judicial Qualifications Comm'n Formal Advisory Opinion No. 241, 301 Ga. 54, 799 S.E.2d 781, 2017 Ga. LEXIS 319 (2017).

Separation of powers challenge to statute governing sealing of court re-

cords not viable. — Because an appeal of the denial of a motion to seal a criminal record under O.C.G.A. § 35-3-37(m) failed to present a viable challenge to the statute's constitutionality, Ga. Const. 1983, Art. VI, Sec. VI, Para. II(1), because the challenge (a separation of powers argument, Ga. Const. 1983, Art. I, Sec. II, Para III, based on the Supreme Court's record-keeping authority under Ga. Const. 1983, Art. VI, Sec. IX, Para. I, and Ga. Unif. Super. Ct. R. 21.4) was not raised below, jurisdiction was properly before the Court of Appeals, pursuant to O.C.G.A. § 5-6-34(a)(12). *Doe v. State*, 303 Ga. 237, 811 S.E.2d 413, 2018 Ga. LEXIS 126, transferred, 347 Ga. App. 246, 819 S.E.2d 58, 2018 Ga. App. LEXIS 501 (2018).

RESEARCH REFERENCES

ALR.

Liability and regulation of food or grocery delivery app, 79 A.L.R.7th 3.

Paragraph II. Disposition of cases.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Certification of question of law. — Because two conflicting decisions that governed a case regarding interpretation of O.C.G.A. § 15-11-521(b) were before the Supreme Court of Georgia on certiorari review, the court certified resolution of the case to the Supreme Court via a certified question under Ga. Const. 1983, Art. VI, Sec. V, Para. IV. To await the Supreme Court’s decision would run afoul of the two-term rule, Ga. Const. 1983, Art. VI, Sec. IX, Para. II. In the Interest of J. F., 338 Ga. App. 15, 789 S.E.2d 274, 2016 Ga. App. LEXIS 427 (2016).

No power to enter stay when party files for bankruptcy. — In an action by an LLC’s president against the LLC and three officers/shareholders seeking indemnification for payment of a share of a settlement, the court could not decide the clear majority of the appeal because one of the officers had filed for bankruptcy while the appeal was pending, and the claims against the officers were inextricably intertwined. The court did not have power to grant a stay, requiring remand of the case for entry of the stay. *Ironwood Capital Partners, LLC v. Jones*, 355 Ga. App. 371, 844 S.E.2d 245, 2020 Ga. App. LEXIS 316 (2020).

ARTICLE VII

TAXATION AND FINANCE

Section

- I. Power of Taxation.
- II. Exemptions From Ad Valorem Taxation.

SECTION I

POWER OF TAXATION

Paragraph

- III. Uniformity; classification of property; assessment of agricultural land; utilities.

Paragraph I. Taxation; limitations on grants of tax powers.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
SOVEREIGN RIGHT OF TAXATION

General Consideration

Delegation of powers. — Delegation of the power to tax, and the laying of a tax, are two things. The constitutional provision requiring revenue bills to originate in the House applies to an Act which lays a tax, and does not apply to an Act which merely delegates the power to tax. *Harper v. Commonwealth of the Town of Elberton*, 23 Ga. 566, 1857 Ga. LEXIS 312 (1857).

Sovereign Right of Taxation

Exercise of taxing power for local

improvements. — The Memorandum of Agreement did not violate the Taxation Limitation Clause of the Georgia Constitution, Ga. Const. 1983, Art. VII, Sec. I, Para. I, and was not unreasonable or arbitrary in the financing of a portion of a mixed-use commercial development and economic development project. *Bene v. State*, 362 Ga. App. 73, 865 S.E.2d 249, 2021 Ga. App. LEXIS 563 (2021).

Paragraph III. Uniformity; classification of property; assessment of agricultural land; utilities.

(a) All taxes shall be levied and collected under general laws and for public purposes only. Except as otherwise provided in subparagraphs (b), (c), (d), (e), (f), and (h) of this Paragraph, all taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.

(b)(1) Except as otherwise provided in this subparagraph (b), classes of subjects for taxation of property shall consist of tangible property and one or more classes of intangible personal property including money; provided, however, that any taxation of intangible personal property may be repealed by general law without approval in a referendum effective for all taxable years beginning on or after January 1, 1996.

(2) Subject to the conditions and limitations specified by law, each of the following types of property may be classified as a separate class of property for ad valorem property tax purposes and different rates, methods, and assessment dates may be provided for such properties:

(A) Trailers.

(B) Mobile homes other than those mobile homes which qualify the owner of the home for a homestead exemption from ad valorem taxation.

(C) Heavy-duty equipment motor vehicles owned by nonresidents and operated in this state.

(3) Motor vehicles may be classified as a separate class of property for ad valorem property tax purposes, and such class may be divided into separate subclasses for ad valorem purposes. The General Assembly may provide by general law for the ad valorem taxation of motor vehicles including, but not limited to, providing for different rates, methods, assessment dates, and taxpayer liability for such class and for each of its subclasses and need not provide for uniformity of taxation with other classes of property or between or within its subclasses. The General Assembly may also determine what portion of any ad valorem tax on motor vehicles shall be retained by the state. As used in this subparagraph, the term “motor vehicles” means all vehicles which are self-propelled.

(c) Tangible real property, but no more than 2,000 acres of any single property owner, which is devoted to bona fide agricultural purposes shall be assessed for ad valorem taxation purposes at 75 percent of the value which other tangible real property is assessed. No property shall be entitled to receive the preferential assessment provided for in this subparagraph if the property which would otherwise receive such assessment would result in any person who has a beneficial interest in such property, including any interest in the nature of stock ownership, receiving the benefit of such preferential assessment as to more than 2,000 acres. No property shall be entitled to receive the preferential assessment provided for in this subparagraph unless the conditions set out below are met:

(1) The property must be owned by:

(A)(i) One or more natural or naturalized citizens;

(ii) An estate of which the devisee or heirs are one or more natural or naturalized citizens; or

(iii) A trust of which the beneficiaries are one or more natural or naturalized citizens; or

(B) A family-owned farm corporation, the controlling interest of which is owned by individuals related to each other within the fourth degree of civil reckoning, or which is owned by an estate of which the devisee or heirs are one or more natural or naturalized citizens, or which is owned by a trust of which the beneficiaries are one or more natural or naturalized citizens, and such corporation derived 80 percent or more of its gross income from bona fide agricultural pursuits within this state within the year immediately preceding the year in which eligibility is sought.

(2) The General Assembly shall provide by law:

(A) For a definition of the term “bona fide agricultural purposes,” but such term shall include timber production;

(B) For additional minimum conditions of eligibility which such properties must meet in order to qualify for the preferential assessment provided for herein, including, but not limited to, the requirement that the owner be required to enter into a covenant with the appropriate taxing authorities to maintain the use of the properties in bona fide agricultural purposes for a period of not less than ten years and for appropriate penalties for the breach of any such covenant.

(3) In addition to the specific conditions set forth in this subparagraph (c), the General Assembly may place further restrictions upon, but may not relax, the conditions of eligibility for the preferential assessment provided for herein.

(d)(1) The General Assembly shall be authorized by general law to establish as a separate class of property for ad valorem tax purposes any tangible real property which is listed in the National Register of Historic Places or in a state historic register authorized by general law. For such purposes, the General Assembly is authorized by general law to establish a program by which certain properties within such class may be assessed for taxes at different rates or valuations in order to encourage the preservation of such historic properties and to assist in the revitalization of historic areas.

(2) The General Assembly shall be authorized by general law to establish as a separate class of property for ad valorem tax purposes any tangible real property on which there have been releases of hazardous waste, constituents, or substances into the environment. For such purposes, the General Assembly is authorized by general law to establish a program by which certain properties within such class may be assessed for taxes at different rates or valuations in order to encourage the cleanup, reuse, and redevelopment of such properties and to assist the revitalization thereof by encouraging remedial action.

(e) The General Assembly shall provide by general law:

(1) For the definition and methods of assessment and taxation, such methods to include a formula based on current use, annual productivity, and real property sales data, of: “bona fide conservation use property” to include bona fide agricultural and timber land not to exceed 2,000 acres of a single owner; and “bona fide residential transitional property,” to include private single-family residential owner occupied property located in transitional developing areas not to exceed five acres of any single owner. Such methods of assessment and taxation shall be subject to the following conditions:

(A) A property owner desiring the benefit of such methods of assessment and taxation shall be required to enter into a covenant

to continue the property in bona fide conservation use or bona fide residential transitional use; and

(B) A breach of such covenant within ten years shall result in a recapture of the tax savings resulting from such methods of assessment and taxation and may result in other appropriate penalties;

(2) That standing timber shall be assessed only once, and such assessment shall be made following its harvest or sale and on the basis of its fair market value at the time of harvest or sale. Said assessment shall be two and one-half times the assessed percentage of value fixed by law for other real property taxed under the uniformity provisions of subparagraph (a) of this Paragraph but in no event greater than its fair market value; and for a method of temporary supplementation of the property tax digest of any county if the implementation of this method of taxing timber reduces the tax digest by more than 20 percent, such supplemental assessed value to be assigned to the properties otherwise benefiting from such method of taxing timber.

(f)(1) The General Assembly shall provide by general law for the definition, methods of assessment, and taxation, such methods to include a formula based on current use, annual productivity, and real property sales data, of “forest land conservation use property” to include only forest land of at least 200 acres in aggregate which lies within one or more counties, provided that such forest land is in parcels of at least 100 acres within any given county.

(2)(A) Any individual or individuals or any entity registered to do business in this state desiring the benefit of such methods of assessment and taxation for forest land conservation use property shall be required to enter into a covenant to continue the property in forest land use.

(B) All contiguous forest land conservation use property of an owner within a county for which forest land conservation use assessment is sought under this subparagraph shall be in a single covenant.

(C) A breach of such covenant within ten years shall result in a recapture of the tax savings resulting from such methods of assessment and taxation and may result in other appropriate penalties.

(D) The General Assembly may provide by general law for a limited exception to the 200 acre requirement in the case of a transfer of ownership of all or a part of the forest land conservation use property during a covenant period to another owner qualified to

enter into an original forest land conservation use covenant if the original covenant is continued by both such acquiring owner and the transferor for the remainder of the term, in which event no breach of the covenant shall be deemed to have occurred even if the total size of a tract from which the transfer was made is reduced below 200 acres.

(3) No portion of an otherwise eligible tract of forest land conservation use property shall be entitled to receive simultaneously special assessment and taxation under this subparagraph and either subparagraph (c) or (e) of this Paragraph.

(4)(A) The General Assembly shall appropriate an amount for assistance grants to counties, municipalities, and county and independent school districts to offset revenue loss attributable to the implementation of this subparagraph. Such grants shall be made in such manner and shall be subject to such procedures as may be specified by general law. For the years 2019, 2020, 2021, 2022, and 2023, the value of the assistance grants may be increased by general law beyond the amounts prescribed by this subparagraph.

(B)(i) If the forest land conservation use property is located in a county, municipality, or county or independent school district where forest land conservation use value causes an ad valorem tax revenue reduction of 3 percent or less due to the implementation of this subparagraph, in each taxable year in which such reduction occurs, the assistance grants to the county, each municipality located therein, and the county or independent school districts located therein shall be in an amount equal to 50 percent of the amount of such reduction.

(ii) If the forest land conservation use property is located in a county, municipality, or county or independent school district where forest land conservation use value causes an ad valorem tax revenue reduction of more than 3 percent due to the implementation of this subparagraph, in each taxable year in which such reduction occurs, the assistance grants to the county, each municipality located therein, and the county or independent school districts located therein shall be for the first 3 percent of such reduction amount, in an amount equal to 50 percent of the amount of such reduction and, for the remainder of such reduction amount, in an amount equal to 100 percent of the amount of such remaining reduction amount.

(C)(i) Such revenue reduction shall be determined by subtracting the aggregate forest land conservation use value of qualified properties from the aggregate forest land fair market value of

qualified properties for the applicable tax year and the resulting amount shall be multiplied by the millage rate of the county, municipality, or county or independent school district.

(ii) For purposes of this subparagraph, the forest land conservation use value shall not include the value of the standing timber located on forest land conservation use property.

(iii) For the purposes of this subparagraph, forest land fair market value means the fair market value of the forest land as determined in 2016, provided that such value shall change in 2019 and every three years thereafter to the fair market value of forest land as determined in such year.

(D) Notwithstanding subparagraph (a) of Paragraph VI of Section IX of Article III of this Constitution, the General Assembly may provide by general law for a fee, not to exceed 5 percent, to be deducted from such assistance grants and retained by the state revenue commissioner to provide for the costs to the state of administering the provisions of subparagraph (f.1) of this Paragraph.

(f.1)(1)(A) The General Assembly shall be authorized by general law to establish a separate class of property for ad valorem taxation purposes that includes only tangible real property that has as its primary use the production of trees for the primary purpose of producing timber for commercial uses and that meets such further requirements as may be prescribed by general law. Such property shall be known as “qualified timberland property.”

(B) The value of qualified timberland property shall be at least 175 percent of such property’s forest land conservation use value as determined pursuant to subparagraph (f) of this Paragraph.

(2) The only two purposes authorized by the subclassification of qualified timberland property as provided by this subparagraph shall be to allow the General Assembly by general law to:

(A) Provide that the Department of Revenue shall appraise qualified timberland property at its fair market value using any combination of appraisal methodologies otherwise provided by general law for establishing the fair market value of real property, provided that such methodology is not subject to an exception authorized by subparagraph (b), (c), (d), (e), (f), or (g) of this Paragraph; and

(B) Authorize the General Assembly to provide for a separate system by which to appeal appraisals of and determinations made related to qualified timberland property.

(g) The General Assembly may provide for a different method and

time of returns, assessments, payment, and collection of ad valorem taxes of public utilities, but not on a greater assessed percentage of value or at a higher rate of taxation than other properties, except that property provided for in subparagraph (c), (d), (e), or (f) of this Paragraph.

(h) The governing authority of each county, municipality, and consolidated government and the board of education of each independent and county school system in this state shall be authorized to grant temporary tax relief to properties within its jurisdiction which are severely damaged or destroyed as a result of a disaster and which are located within a nationally declared disaster area. The General Assembly shall provide by general law for the eligibility, procedures for obtaining, and all other matters regarding such temporary tax relief.

History.

Ga. Const. 1983, Art. 7, § 1, Para. 3; Ga. L. 1984, p. 1711, § 1/HR 589; Ga. L. 1988, p. 2119, §§ 1, 2/SR 265; Ga. L. 1990, p. 2437, §§ 1, 2/HR 836; Ga. L. 1992, p. 3336, § 1/HR 715; Ga. L. 1996, p. 1665, § 1/HR 734; Ga. L. 2002, p. 1504, § 1/HR 1111; Ga. L. 2008, p. 1209, §§ 1, 2/HR 1276; Ga. L. 2018, p. 1127, § 1/HR 51; Ga. L. 2022, p. 837, § 1/HR 594.

Proposed amendments.

Amendment of the Georgia Constitution proposed by Ga. L. 2025, p. 1081, § 1/HR 32, if ratified, would substitute “4,000 acres” for “2,000 acres” in the middle of subparagraph (e)(1).

Editor’s notes.

The constitutional amendment (Ga. L.

2018, p. 1127, § 1/HR 51), which rewrote subparagraph (f) and added subparagraph (f.1), was ratified at the general election held on November 6, 2018.

The constitutional amendment (Ga. L. 2022, p. 837, § 1/HR 594), which substituted “subparagraphs (b), (c), (d), (e), (f), and (h)” for “subparagraphs (b), (c), (d), (e), and (f)” in the second sentence of subsection (a) and added subsection (h), was ratified at the general election held November 8, 2022.

Law reviews.

For annual survey on local government law, see 69 Mercer L. Rev. 205 (2017).

For article, “The Greens’ Dilemma: Building Tomorrow’s Climate Infrastructure Today,” see 73 Emory L.J. 1 (2023).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
UNIFORMITY OF TAXATION

General Consideration

Counties required and did not have legislative authority to collect 911 tax. — Charge imposed under the Georgia Emergency Telephone 911 Service Act, O.C.G.A. § 46-5-120 et seq., was a tax as a matter of law, and counties did not have the required legislative authority under Ga. Const. 1983, Art. VII, Sec. I, Par. III(a), to sue telephone companies to recover charges not collected from

subscribers; neither the Act nor the tort statutes, O.C.G.A. §§ 51-1-6, 51-1-8, provided such authority. *Bellsouth Telecoms., LLC v. Cobb County*, 305 Ga. 144, 824 S.E.2d 233, 2019 Ga. LEXIS 106 (2019).

Uniformity of Taxation

Claim of increasing assessment values by “sales chasing” newly sold homes stated claim under tax refund statute. — County homeowners, who al-

leged that the assessors board engaged in “sales chasing” by selectively targeting recently sold properties for reappraisal at the increased sales price while leaving the assessed values of similar unsold properties unchanged, stated a tax refund claim under O.C.G.A. § 48-5-380; the procedure allegedly violated the uniformity and equalization requirements of Ga. Const. 1983, Art. VII, Sec. I, Para. III(a), and O.C.G.A. § 48-5-306(a). *Rice v. Fulton County*, 358 Ga. App. 1, 852 S.E.2d 860, 2020 Ga. App. LEXIS 681 (2020), cert. denied, No. S21C0644, 2021 Ga. LEXIS 561 (Ga. July 7, 2021).

Property valuation by method other than standard method. — Inasmuch as O.C.G.A. § 48-5-2(3)(B.1) exempted the low-income housing tax credits from consideration in determining the fair market value of the properties, the statute granted preferential treatment for ad valorem taxation purposes and created a subclass of

tangible property other than as permitted by the State Constitution, Ga. Const. 1983, Art. VII, Sec. I, Para. III (b), which ran afoul of the taxation uniformity provision. *Heron Lake II Apts., L. P. v. Lowndes County Bd. of Tax Assessors*, 299 Ga. 598, 791 S.E.2d 77, 2016 Ga. LEXIS 574 (2016).

Federal Tax Credits considered.

Low income housing tax credits awarded to taxpayers who owned low income housing properties did not constitute actual income for purposes of determining the value of the property under the income method, O.C.G.A. § 48-5-2(3)(B)(vii)(II), and neither (3)(B)(vii)(I) or (3)(B)(v)(II) violated the taxation uniformity provision under Ga. Const. 1983, Art. VII, Sec. I, Para. III(a). *Heron Lake II Apartments, LP v. Lowndes County Bd. of Tax Assessors*, 306 Ga. 816, 833 S.E.2d 528, 2019 Ga. LEXIS 627 (2019).

OPINIONS OF THE ATTORNEY GENERAL

Administrative caps on assistance grants prohibited. — Because neither Ga. Const. 1983, Art. VII, Sec. I, Para. III nor the Forest Land Protection Act, O.C.G.A. § 48-5-7.7, authorize or contemplate a cap on assistance grants based on the total exemption value of

forest land conservation use property, the Department of Revenue would not be authorized to impose an administrative cap on assistance grants issued pursuant to the Forest Land Protection Act of 2008 in the manner proposed. 2016 Op. Att’y Gen. No. 16-5.

SECTION II

EXEMPTIONS FROM AD VALOREM TAXATION

Paragraph

II. Exemptions from taxation of property.

Paragraph I. Unauthorized tax exemptions void.

RESEARCH REFERENCES

ALR.

Petitions to Detach Property from

School District and Annex to Another, 82 A.L.R.7th 5.

Paragraph II. Exemptions from taxation of property.

(a)(1) Except as otherwise provided in this Constitution, no property shall be exempted from ad valorem taxation unless the exemption is

approved by two-thirds of the members elected to each branch of the General Assembly in a roll-call vote and by a majority of the qualified electors of the state voting in a referendum thereon.

(2) Homestead exemptions from ad valorem taxation levied by local taxing jurisdictions may be granted by local law conditioned upon approval by a majority of the qualified electors residing within the limits of the local taxing jurisdiction voting in a referendum thereon.

(3) Laws subject to the requirement of a referendum as provided in this subparagraph (a) may originate in either the Senate or the House of Representatives.

(4) The requirements of this subparagraph (a) shall not apply with respect to a law which codifies or recodifies an exemption previously authorized in the Constitution of 1976 or an exemption authorized pursuant to this Constitution.

(a.1) In addition to the powers otherwise authorized by this Constitution, the General Assembly shall be authorized to provide by general law for a single state-wide homestead exemption from ad valorem taxes that is uniformly applicable to each county, consolidated government, municipality, or local school system beginning January 1, 2025; provided, however, that the General Assembly may:

(1) Limit the application of the homestead exemption to any such political subdivisions that do not already have certain existing homestead exemptions in effect;

(2) Prescribe a method by which any such political subdivision may opt out of said homestead exemption; and

(3) Prescribe a method by which any such newly created political subdivision may opt in to such homestead exemption.

(b) The grant of any exemption from ad valorem taxation shall be subject to the conditions, limitations, and administrative procedures specified by law.

History.

Ga. Const. 1983, Art. 7, § 2, Para. 2; Ga. L. 2024, p. 1191, § 2/HR 1022.

2024, p. 1191, § 2/HR 1022) added subparagraph (a.1), was ratified at the general election held November 5, 2024.

Editor’s notes.

The constitutional amendment (Ga. L.

Paragraph IV. Current property tax exemptions preserved.

Law reviews.

For article, “The Greens’ Dilemma:

Building Tomorrow’s Climate Infrastructure Today,” see 73 Emory L.J. 1 (2023).

SECTION IV

STATE DEBT

Paragraph I. Purposes for which debt may be incurred.

Law reviews.

For note, “If You (Pay To) Build It, They Will Come: Rethinking Publicly-Financed

Professional Sports Stadiums after the Atlanta Braves Deal with Cobb County,” see 53 Ga. L. Rev. 409 (2018).

Paragraph II. State general obligation debt and guaranteed revenue debt; limitations.

Law reviews.

For note, “If You (Pay To) Build It, They Will Come: Rethinking Publicly-Financed

Professional Sports Stadiums after the Atlanta Braves Deal with Cobb County,” see 53 Ga. L. Rev. 409 (2018).

ARTICLE VIII

EDUCATION

Section

VI. Local Taxation for Education.

SECTION I

PUBLIC EDUCATION

Paragraph I. Public education; free public education prior to college or postsecondary level; support by taxation.

Law reviews.

For article, “SB 47: Eligibility Expansion for the Georgia Special Needs Schol-

arship Program,” see 38 Ga. St. U.L. Rev. 83 (2021).

SECTION V

LOCAL SCHOOL SYSTEMS

Editor’s notes.

The constitutional amendment proposed in Ga. L. 2015, p. 1498, § 1/SR 287, which would have added a new Paragraph

VIII, relating to the creation of an Opportunity School District, was defeated in the general election held on November 8, 2016.

Paragraph I. School systems continued; consolidation of school systems authorized; new independent school systems prohibited.

JUDICIAL DECISIONS

Suit challenging carrying weapon in school safety zone properly dismissed. — Trial court properly dismissed the plaintiff’s suit challenging the enforcement of O.C.G.A. § 16-11-127.1(b)(1), making it a crime to carry a firearm in a school safety zone, by the school that the plaintiff’s child attended because the school had sovereign immunity against

state law claims and the threat of arrest if the plaintiff brought a weapon in the school safety zone did not constitute a Fourth Amendment violation to be remedied by the suit. *Evans v. Gwinnett County Public Schools*, 337 Ga. App. 690, 788 S.E.2d 577, 2016 Ga. App. LEXIS 395 (2016).

Paragraph VII. Special schools.

JUDICIAL DECISIONS

State Charter School Act conflicts with provision. — Dismissal of the whistleblowers’ complaint filed by two teachers against a charter school and the school’s chief executive officer was affirmed because the charter school was a public entity entitled to sovereign immunity and since the charter school was an

instrumentality of the state, the chief executive officer was entitled to official immunity. *Campbell v. Cirrus Education, Inc.*, 355 Ga. App. 637, 845 S.E.2d 384, 2020 Ga. App. LEXIS 361 (2020), cert. denied, No. S20C1514, 2021 Ga. LEXIS 222 (Ga. App. 5, 2021).

SECTION VI

LOCAL TAXATION FOR EDUCATION

Paragraph
IV. Sales tax for educational purposes.

Paragraph IV. Sales tax for educational purposes.

(a) The board of education of each school district in a county in which no independent school district is located may by resolution and the board of education of each county school district and the board of education of each independent school district located within such county may by concurrent resolutions impose, levy, and collect a sales and use tax for educational purposes of such school districts conditioned upon approval by a majority of the qualified voters residing within the limits of the local taxing jurisdiction voting in a referendum thereon. In addition, when a county school district has one or more independent school districts located within such county, the school district or combination of school districts that has a majority of the students enrolled within the county, based on the latest full-time equivalent

count, shall be authorized to call for a referendum to impose, levy, and collect a sales and use tax for educational purposes of such school districts conditioned upon approval by a majority of the qualified voters residing within the limits of the county voting in a referendum thereon. This tax shall be at the rate of 1 percent and shall be imposed for a period of time not to exceed five years, but in all other respects, except as otherwise provided in this Paragraph, shall correspond to and be levied in the same manner as the tax provided for by Article 3 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to the special county 1 percent sales and use tax, as now or hereafter amended. Proceedings for the reimposition of such tax shall be in the same manner as proceedings for the initial imposition of the tax, but the newly authorized tax shall not be imposed until the expiration of the tax then in effect.

(b) The purpose or purposes for which the proceeds of the tax are to be used and may be expended include:

(1) Capital outlay projects for educational purposes;

(2) The retirement of previously incurred general obligation debt with respect only to capital outlay projects of the school system; provided, however, that the tax authorized under this Paragraph shall only be expended for the purpose authorized under this subparagraph (b)(2) if all ad valorem property taxes levied or scheduled to be levied prior to the maturity of any such then outstanding general obligation debt to be retired by the proceeds of the tax imposed under this Paragraph shall be reduced by a total amount equal to the total amount of proceeds of the tax imposed under this Paragraph to be applied to retire such bonded indebtedness. In the event of failure to comply with the requirements of this subparagraph (b)(2), as certified by the Department of Revenue, no further funds shall be expended under this subparagraph (b)(2) by such county or independent board of education and all such funds shall be maintained in a separate, restricted account and held solely for the expenditure for future capital outlay projects for educational purposes; or

(3) A combination of the foregoing.

(c) The resolution calling for the imposition of the tax and the ballot question shall each describe:

(1) The specific capital outlay projects to be funded, or the specific debt to be retired, or both, if applicable;

(2) The maximum cost of such project or projects and, if applicable, the maximum amount of debt to be retired, which cost and amount of debt shall also be the maximum amount of net proceeds to be raised by the tax; and

(3) The maximum period of time, to be stated in calendar years or calendar quarters and not to exceed five years.

(d) Nothing in this Paragraph shall prohibit a county and those municipalities located in such county from imposing as additional taxes local sales and use taxes authorized by general law.

(e) The tax imposed pursuant to this Paragraph shall not be subject to and shall not count with respect to any general law limitation regarding the maximum amount of local sales and use taxes which may be levied in any jurisdiction in this state.

(f) The tax imposed pursuant to this Paragraph shall not be subject to any sales and use tax exemption with respect to the sale or use of food and beverages which is imposed by law.

(g) The net proceeds of the tax shall be distributed between the county school district and the independent school districts, or portion thereof, located in such county according to an agreement between the county school system and the independent school district or districts or, if no agreement can be reached, according to the ratio the student enrollment in each school district, or portion thereof, bears to the total student enrollment of all school districts in the county or upon such other formula for distribution as may be authorized by local law. For purposes of this subparagraph, student enrollment shall be based on the latest full-time equivalent count prior to the referendum on imposing the tax.

(h) Excess proceeds of the tax which remain following expenditure of proceeds for authorized projects or purposes for education shall be used solely for the purpose of reducing any indebtedness of the school system. In the event there is no indebtedness, such excess proceeds shall be used by such school system for the purpose of reducing its millage rate in an amount equivalent to the amount of such excess proceeds.

(i) The tax authorized by this Paragraph may be imposed, levied, and collected as provided in this Paragraph without further action by the General Assembly, but the General Assembly shall be authorized by general law to further define and implement its provisions including, but not limited to, the authority to specify the percentage of net proceeds to be allocated among the projects and purposes for which the tax was levied.

(j)(1) Notwithstanding any provision of any constitutional amendment continued in force and effect pursuant to Article XI, Section I, Paragraph IV(a) and except as otherwise provided in subparagraph (j)(2) of this Paragraph, any political subdivision whose ad valorem taxing powers are restricted pursuant to such a constitutional

amendment may receive the proceeds of the tax authorized under this Paragraph or of any local sales and use tax authorized by general law, or any combination of such taxes, without any corresponding limitation of its ad valorem taxing powers which would otherwise be required under such constitutional amendment.

(2) The restriction on and limitation of ad valorem taxing powers described in subparagraph (j)(1) of this Paragraph shall remain applicable with respect to proceeds received from the levy of a local sales and use tax specifically authorized by a constitutional amendment in force and effect pursuant to Article XI, Section I, Paragraph IV(a), as opposed to a local sales and use tax authorized by this Paragraph or by general law.

History.

Ga. Const. 1983, Art. 8, § 6, Para. 4, approved by Ga. L. 1996, p. 1668, § 1/HR 728; Ga. L. 2017, p. 857, § 1/SR 95.

2017, p. 857, § 1/SR 95), which amended subsections (a) and (g), was ratified at the general election held on November 6, 2018.

Editor's notes.

The constitutional amendment (Ga. L.

SECTION VII

EDUCATIONAL ASSISTANCE

Paragraph I. Educational assistance programs authorized.

Law reviews.

For article, “SB 47: Eligibility Expansion for the Georgia Special Needs Schol-

arship Program,” see 38 Ga. St. U.L. Rev. 83 (2021).

JUDICIAL DECISIONS

Rules for distribution by student scholarship organization. — O.C.G.A. § 20-2A-2 sets forth the rules by which each student scholarship organization (SSO) is to distribute the donations received for scholarships or tuition grants. Generally speaking, the SSO is required to distribute the donated funds as scholarships or tuition grants for the benefit of students who meet certain eligibility requirements under subdivision (1) of § 20-2A-2, and the parent or guardian of each recipient must endorse the award to the accredited private school of the parents’ choice for deposit into the school’s account under O.C.G.A.

§ 20-2A-5. *Gaddy v. Ga. Dep’t of Revenue*, 301 Ga. 552, 802 S.E.2d 225, 2017 Ga. LEXIS 541 (2017).

Dollar-for-dollar tax credits for donations to student scholarship organizations. — The tax credit statute, O.C.G.A. § 48-7-29.16, permits Georgia taxpayers to take a dollar-for-dollar credit against their Georgia income tax liability for donations to student scholarship organizations of up to \$1,000 per individual taxpayer or \$2,500 for married taxpayers filing jointly. *Gaddy v. Ga. Dep’t of Revenue*, 301 Ga. 552, 802 S.E.2d 225, 2017 Ga. LEXIS 541 (2017).

Paragraph III. Public authorities.

JUDICIAL DECISIONS

Rules for distribution by student scholarship organization. — O.C.G.A. § 20-2A-2 sets forth the rules by which each student scholarship organization (SSO) is to distribute the donations received for scholarships or tuition grants. Generally speaking, the SSO is required to distribute the donated funds as scholarships or tuition grants for the benefit of students who meet certain eligibility requirements under subdivision (1) of § 20-2A-2, and the parent or guardian of each recipient must endorse the award to the accredited private school of the parents’ choice for deposit into the school’s account under O.C.G.A.

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ARTICLE IX
COUNTIES AND MUNICIPAL CORPORATIONS

SECTION I
COUNTIES

Paragraph I. Counties a body corporate and politic.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Court clerk not subject to suit. — Trial court correctly dismissed a case against the clerk’s office on the basis that the office was not a legal entity subject to suit as there was no legal provision that

designated the trial court clerk’s office as either a person or corporation capable of being sued. Seibert v. Alexander, 351 Ga. App. 446, 829 S.E.2d 473, 2019 Ga. App. LEXIS 440 (2019), cert. denied, No. S20C0017, 2020 Ga. LEXIS 323 (Ga. Apr. 6, 2020).

Paragraph III. County officers; election; term; compensation.

JUDICIAL DECISIONS

ANALYSIS

COUNTY OFFICERS

- 1. IN GENERAL
- 2. COMPENSATION

County Officers

1. In General

Editor's notes.

Sovereign immunity to deputy. —

Deputy sheriff in the deputy's official capacity was entitled to sovereign immunity with respect to a former inmate's claims arising from denial of a dietary request; the sheriff's powers were derived from the state, and provision of food to county jail inmates was a state function. *Lake v. Skelton*, 840 F.3d 1334, 2016 U.S. App. LEXIS 19774 (11th Cir. 2016), cert. denied, 584 U.S. 931, 138 S. Ct. 1549, 200 L. Ed. 2d 741, 2018 U.S. LEXIS 2492 (2018).

2. Compensation

Bonuses properly not paid to unclassified service employees not in civil service system. —

Tax commissioner was properly prevented from paying bonus compensation to specified employees of the tax commission office whose jobs were undisputedly in the unclassified service because members of the unclassified service did not fall into the ambit of the civil service system. *Ferdinand v. Fulton County*, 358 Ga. App. 453, 855 S.E.2d 678, 2021 Ga. App. LEXIS 86 (2021).

OPINIONS OF THE ATTORNEY GENERAL

County Officers

County attorney not county officer.

— The courts of this state would hold that a county attorney, although being a “public officer,” did not hold a “county office” within the meaning of former Code 1933,

§ 92-6902 (see now O.C.G.A. § 48-5-292) and that a member of a county board of tax assessors would not be ineligible simultaneously to occupy the position of county attorney. 1969 Op. Att’y Gen. No. 69-454 (See *Lucus v. Woodward*, 240 Ga. 770 (1978)).

SECTION II

HOME RULE FOR COUNTIES AND MUNICIPALITIES

Law reviews.

For article, “Revisionist Municipal Liability,” see 52 Ga. L. Rev. 375 (2018).

Paragraph I. Home rule for counties.

Law reviews.

For article, “HB 286: Restricting Local and Municipal Governments’ Ability to

Reduce Police Department Funding,” see 38 Ga. St. U.L. Rev. 201 (2021).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

EXCEPTIONS TO COUNTY POWERS

General Consideration

When section applicable. — Georgia Supreme Court held that Home Rule Paragraph, Ga. Const. 1983, Art. IX, Sec. II, Para. I, authorized the county electors to pursue a referendum seeking repeal of the resolutions at issue and, accordingly, the judge acted within the probate court’s subject-matter jurisdiction and authority granted under the Home Rule Paragraph in calling for the referendum, and the superior court was correct in denying the county’s petition for a writ of prohibition. *Camden County v. Sweatt*, 315 Ga. 498, 883 S.E.2d 827, 2023 Ga. LEXIS 19 (2023).

County governing authority powers.

In a suit challenging redistricting of a county’s commission district boundaries, plaintiffs had standing because community stakeholders can sue to enforce public duties and the county’s duty to follow

state law or home rule authority was a public duty, but plaintiffs did not show uncertainty about future conduct necessary for declaratory relief as past injury from voting in wrong district did not show future uncertainty. *Cobb County v. Floam*, 319 Ga. 89, 901 S.E.2d 512, 2024 Ga. LEXIS 109 (2024).

Exceptions to County Powers

Sovereign immunity of deputy sheriff. — Deputy sheriff in the deputy’s official capacity was entitled to sovereign immunity with respect to a former inmate’s claims arising from denial of a dietary request; the sheriff’s powers were derived from the state, and provision of food to county jail inmates was a state function. *Lake v. Skelton*, 840 F.3d 1334, 2016 U.S. App. LEXIS 19774 (11th Cir. 2016), cert. denied, 584 U.S. 931, 138 S. Ct. 1549, 200 L. Ed. 2d 741, 2018 U.S. LEXIS 2492 (2018).

OPINIONS OF THE ATTORNEY GENERAL

Generally

Exemption from local zoning ordinances. — The state, as owner of the project site, and the company, as the de-

veloper and operator of the project site owned by the state, would be exempt from local zoning ordinances. 2022 Op. Att’y Gen. No. 2022-1.

Paragraph III. Supplementary powers.

Law reviews.

For article, “The Municipalization of Urban Counties in Georgia,” see 23 Ga. Bar. J. 18 (Dec. 2017).

For article, “‘Known Adversary’: The Targeting of the Immigrants’ Rights Movement in the Post-Trump Era,” see 72 Emory L.J. 1245 (2023).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
WATER SUPPLY

General Consideration

County was required to maintain easements it owned within a city; no contract required. — County that held an easement over a drainage system located on commercial property that was initially located in the county but was later annexed by the city had the respon-

sibility to repair and maintain the drainage system even after the property was annexed by the city. Although the Service Delivery Agreement provided that the city would perform stormwater services within the city’s boundary, the city performed repairs at the right of way, not on private property. *City of Norcross v.*

Gwinnett County, 355 Ga. App. 662, 843 S.E.2d 31, 2020 Ga. App. LEXIS 367 (2020), cert. denied, 310 Ga. 851, 854 S.E.2d 682, 2021 Ga. LEXIS 31 (2021).

Water Supply

City subject to antitrust restraints in providing water services. — Claim of state-action immunity did not entitle a city to dismissal of a suit alleging the city violated the Sherman and Clayton Acts by

tying its water-utility service to its natural-gas service for some customers because Georgia’s policy to displace federal antitrust law as to municipal anticompetitive conduct in providing water and sewage services does not have as an inherent, logical, or ordinary result that cities would use their water monopoly to increase their share of an unrelated market. *Diverse Power, Inc. v. City of Lagrange*, 934 F.3d 1270, 2019 U.S. App. LEXIS 24772 (11th Cir. 2019).

Paragraph VII. Community redevelopment.

JUDICIAL DECISIONS

City had authority to impose infrastructure fees to service bonds. — An intergovernmental agreement between a city and development authority was lawful under Ga. Const. 1983, Art. IX, Sec. II, Para. VII(c), despite the objectors’ claim that the city was not authorized to assess infrastructure fees and provide the fees as

payment for bonds; the city had statutory authority to impose the fees under the Redevelopment Powers Law, O.C.G.A. § 36-44-1 et seq., and O.C.G.A. § 36-88-6(g)(1) of the Enterprise Zone Employment Act. *Franzen v. Downtown Dev. Auth. of Atlanta*, 309 Ga. 411, 845 S.E.2d 539, 2020 Ga. LEXIS 462 (2020).

Paragraph VIII. Limitation on the taxing power and contributions of counties, municipalities, and political subdivisions.

Law reviews.

For annual survey on local government law, see 68 *Mercer L. Rev.* 199 (2016).

For note, “If You (Pay To) Build It, They

Will Come: Rethinking Publicly-Financed Professional Sports Stadiums after the Atlanta Braves Deal with Cobb County,” see 53 *Ga. L. Rev.* 409 (2018).

Paragraph IX. Immunity of counties, municipalities, and school districts.

JUDICIAL DECISIONS

Application to counties. — In a detainee’s suit against a sheriff, county, and city arising out of the detainee’s improper detention, the defendants’ motion to dismiss was denied as to the sheriff’s individual liability for violations of federal law, and for failure to update the detainee’s criminal record as required by O.C.G.A. § 42-4-7 and bring the detainee before a judicial officer; however, claims against the city and county were dismissed based on immunity under Ga. Const. 1983, Art. I, Sec. II, Para. IX(d) and

Ga. Const. 1983, Art. IX, Sec. II, Para. IX. *Purvis v. City of Atlanta*, 142 F. Supp. 3d 1337, 2015 U.S. Dist. LEXIS 151530 (N.D. Ga. 2015).

Insurance policy did not waive sovereign immunity. — In a suit brought after the drowning death of the plaintiff’s husband, the trial court judgment dismissing the complaint was upheld because the city’s purchase of an insurance policy did not amount to a waiver of sovereign immunity as the policy as a whole was clearly intended to preserve the city’s

right to use the defense of sovereign immunity. *Sharma v. City of Alpharetta*, 361 Ga. App. 692, 865 S.E.2d 287, 2021 Ga. App. LEXIS 536 (2021).

Recreational Property Act did not waive official immunities. — Trial court erred in denying the county's motion for summary judgment on the plaintiff's premises liability lawsuit against the county because the Recreational Property Act (RPA), O.C.G.A. § 51-3-20 et seq., including the charge exception, did not waive the county's sovereign immunity because the charge lacked specific language providing for a waiver of sovereign immunity and the extent of such waiver as the RPA simply acted as a limitation of liability for land owners who allowed others to use their land for recreational purposes, and the charge exception simply provided that the limitation of liability did not apply when the land owner charged a fee. *Macon-Bibb County v. Kalaski*, 355 Ga. App. 24, 842 S.E.2d 331, 2020 Ga. App. LEXIS 249 (2020).

Application to city. — In a dispute over compensation between firefighters and the city, regardless of any alleged course of conduct by the parties, that conduct was ineffective to waive sovereign immunity. *Shelnutt v. Mayor & Aldermen of Savannah*, 349 Ga. App. 499, 826 S.E.2d 379, 2019 Ga. App. LEXIS 190 (2019), cert. denied, No. S19C0999, 2019 Ga. LEXIS 807 (Ga. Nov. 18, 2019).

Trial court's dismissal of the plaintiff's negligence claim was affirmed because any alleged error by the trial court in finding that the plaintiff did not carry the burden to prove a waiver of municipal immunity by the purchase of insurance was due to the plaintiff's own conduct, and the plaintiff could not complain on appeal about a result that the plaintiff's own conduct brought about. *City of Alpharetta v. Vlass*, 360 Ga. App. 432, 861 S.E.2d 249, 2021 Ga. App. LEXIS 365 (2021).

Court of appeals incorrectly ruled that the city's insurance policy increased the sovereign immunity waiver notwithstanding the immunity endorsements, which expressly precluded coverage when a sovereign immunity defense applied, as the insurance contract between the city and

its insurer did not provide more than \$700,000 of coverage for the plaintiffs' claims because, while the statutory defenses of sovereign and governmental immunity were clearly not applicable to losses from the plaintiffs' claims up to \$700,000, pursuant to the endorsements, the insurance that the city purchased did not cover claims for damages to which the defenses of sovereign and governmental immunity did apply. *Atlantic Specialty Ins. Co. v. City of College Park*, 313 Ga. 294, 869 S.E.2d 492, 2022 Ga. LEXIS 22 (2022).

Characterization of city environment as nuisance did not equate to liability. — In plaintiffs' suit against the city following the death of their son at a bar, the city was correctly held to be immune from liability as to plaintiffs' nuisance claim because the altercation between the decedent and a bouncer occurred on private property that was controlled by a privately owned business; and, even to the extent the environment in that area of the city could accurately be characterized as having constituted a nuisance, the law was clear that the city could not be held liable for the city's discretionary decision not to act to abate a nuisance caused by a private party and maintained on private property. *Gatto v. City of Statesboro*, 312 Ga. 164, 860 S.E.2d 713, 2021 Ga. LEXIS 488 (2021).

City immune in action alleging negligence and maintenance of nuisance. — In an action alleging negligence and maintenance of a nuisance against the city, the trial court did not err in granting summary judgment to the city on the nuisance claim because the actions challenged, including disregarding alcohol violations, involved a governmental function to which sovereign immunity applied and because the insurance policy did not cover the claims, there was no legislative waiver of sovereign immunity. *Gatto v. City of Statesboro*, 353 Ga. App. 178, 834 S.E.2d 623, 2019 Ga. App. LEXIS 673 (2019), aff'd, 312 Ga. 164, 860 S.E.2d 713, 2021 Ga. LEXIS 488 (2021).

City immune from dock collapse when city had no notice of defect. —

Although a city could be liable under O.C.G.A. § 32-4-93(a) for failure to

maintain a dock that collapsed, injuring the plaintiffs, because the dock fell within the definition of “public road” in O.C.G.A. § 32-1-3, there was no evidence that the city had notice of any defect in the dock, and the plaintiffs’ expert affidavit did not identify any defect. Therefore, the city was properly granted summary judgment on immunity grounds. *Chatham Area Transit Auth. v. Brantley*, 353 Ga. App. 197, 834 S.E.2d 593, 2019 Ga. App. LEXIS 675 (2019).

Premises liability of local housing authority. — Trial court did not err by granting the Housing Authority of the City of Augusta, Georgia (Authority) summary judgment in a premises liability action filed by a resident of a low-income housing unit operated by the Authority because the Authority was entitled to sovereign immunity. Because the Authority was performing an essential public and governmental function on behalf of the city in its operation and management of low-income housing, it was acting as an instrumentality of the city. *Guy v. Housing Auth. of Augusta*, 372 Ga. App. 325, 904 S.E.2d 375, 2024 Ga. App. LEXIS 296 (2024).

Tax refund statute did not waive school district immunity. — Taxpayer’s suit against a school district seeking a refund was barred by immunity under Ga. Const. 1983, Art. I, Sec. II, Para. IX(e) and Ga. Const. 1983, Art. IX, Sec. II, Para IX;

O.C.G.A. § 48-5-380 provided for tax refunds by counties and municipalities but not school districts and, therefore, did not constitute a waiver of the school district’s immunity. *City of Dublin Sch. Dist. v. MMT Holdings, LLC*, 346 Ga. App. 546, 816 S.E.2d 494, 2018 Ga. App. LEXIS 414 (2018), dismissed, 351 Ga. App. 112, 830 S.E.2d 487, 2019 Ga. App. LEXIS 399 (2019).

Nuisance exception. — Trial court properly denied a city’s motion to dismiss based on sovereign immunity because the landowners asserted that the damage from the city’s drainage system amounted to an unlawful taking of their property for which sovereign immunity has been waived. *City of Greensboro v. Rowland*, 334 Ga. App. 148, 778 S.E.2d 409, 2015 Ga. App. LEXIS 590 (2015), cert. denied, No. S16C0305, 2016 Ga. LEXIS 154 (Ga. Feb. 8, 2016).

City was entitled to sovereign immunity under Ga. Const. 1983, Art. IX, Sec. II, Para. IX, against a claim by a decedent’s survivors that the city allowed a known nuisance in the form of an unauthorized and unlicensed nightclub to continue attracting drugs and crime, resulting in the decedent’s shooting death outside the nightclub. *City of Albany v. Stanford*, 347 Ga. App. 95, 815 S.E.2d 322, 2018 Ga. App. LEXIS 459 (2018), cert. denied, No. S19C0053, 2019 Ga. LEXIS 294 (Ga. Apr. 29, 2019).

SECTION III

INTERGOVERNMENTAL RELATIONS

Paragraph I. Intergovernmental contracts.

JUDICIAL DECISIONS

Contract between county and cities.

Plaintiff pled facts that could prove that the parties’ agreement was permissible under the Intergovernmental Contracts Clause, Ga. Const. 1983, Art. IX, Sec. III, Para. I (a), because the agreement involved a service that each contracting party was legally authorized to provide, the education of students within its public

schools. In addition, the agreement provided that, in furtherance of the purpose of providing that service, the parties would share tax revenue based on the taxes collected by and the number of students being educated by each party. *Jackson County Bd. of Educ. v. City of Commerce Bd. of Educ.*, 366 Ga. App. 762, 884 S.E.2d 147, 2023 Ga. App. LEXIS 78 (2023).

County’s suit barred by sovereign immunity. — In a suit between a county and state agency, the trial court properly ruled that sovereign immunity barred the county’s breach of contract and injunctive relief claims since the county failed to show the agency was authorized by law to provide fire protection services, rendering the purported contract invalid, and the

ruling that the contract did not apply to the agency did not violate the impairment clause since the county did not have a vested contractual right that was injuriously affected. *Baldwin County v. Dep’t of Behavioral Health & Developmental Disabilities*, 371 Ga. App. 762, 903 S.E.2d 146, 2024 Ga. App. LEXIS 218 (2024).

RESEARCH REFERENCES

ALR. Treaties Between United States and Indian Tribes — Supreme Court Jurisprudence, 51 A.L.R. Fed. 3d 4.

SECTION V

LIMITATION ON LOCAL DEBT

Paragraph I. Debt limitations of counties, municipalities, and other political subdivisions.

Law reviews. For note, “If You (Pay To) Build It, They Will Come: Rethinking Publicly-Financed Professional Sports Stadiums after the Atlanta Braves Deal with Cobb County,” see 53 Ga. L. Rev. 409 (2018).

SECTION VI

REVENUE BONDS

Paragraph III. Development authorities.

JUDICIAL DECISIONS

O.C.G.A. § 36-62-2(6)(N) did not violate uniformity provision. — Trial court erred in refusing to validate \$35 million in revenue bonds under O.C.G.A. § 36-62-2(6)(N) to finance a grocery store because the store was a traditional, for-profit business enterprise, and employment opportunities at the new grocery store were, therefore, opportunities resulting directly from the trade or commerce to be financed. The trial court also erred in holding paragraph (6)(N) as unconstitutional in violation of the uniformity provision of Ga. Const. 1983, Art. IX, Sec. VI, Para. III. *Dev. Auth. v. State of Ga.*, 306 Ga. 375, 829 S.E.2d 160, 2019 Ga. LEXIS 391 (2019).

Paragraph IV. Validation.

JUDICIAL DECISIONS

Validation not conclusive on issue of exemption from property tax. — Two bond validation orders pertaining to a hospital authority’s establishment of a continuing care retirement center did not conclusively determine, for purposes of O.C.G.A. § 48-5-41(a)(1)(A), that the property was public property exempt from

ad valorem taxation; remand was required for the trial court to address taxability. Columbus Board of Tax

Assessors v. Medical Ctr. Hosp. Auth., 302 Ga. 358, 806 S.E.2d 525, 2017 Ga. LEXIS 889 (2017).

ARTICLE X

AMENDMENTS TO THE CONSTITUTION

SECTION I

CONSTITUTION, HOW AMENDED

Paragraph II. Proposals by the General Assembly; submission to the people.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Amendment invalid as violating the single subject rule. — County’s 1979 local constitutional amendment entitled “Fulton County’s Taxation for Educational Purposes” was never properly adopted because its enactment violated the single

subject rule (currently Ga. Const. 1983, Art. X, Sec. I, Para. II) by prohibiting the county from levying school taxes in the city and by creating an industrial district. *Fulton County v. City of Atlanta*, 305 Ga. 342, 825 S.E.2d 142, 2019 Ga. LEXIS 132 (2019).

