IN THE SUPREME COURT OF GEORGIA
STATE OF GEORGIA

CASE NO. S22A0837

CAMDEN COUNTY, GEORGIA,

Petitioner - Appellant,

v.

ROBERT C. SWEATT, JR.

Respondent – Appellee,

And

JAMES GOODMAN & PAUL A. HARRIS,

Intervenors – Appellees.

INTERVENORS-APPELLEES' RESPONSE TO PRINCIPAL BRIEF

APPEAL FROM THE SUPERIOR COURT OF CAMDEN COUNTY
CIVIL ACTION NO. SUCV2022000161

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INTRODUCTION

The case now before the Court is one of multiple attempts of Petitioner – Appellant Camden County ("the County") to subvert the rights and votes of its own electorate with respect to the County's attempted purchase of land for purposes of establishing a commercial spaceport.

On December 14, 2021, 3,850 Camden County electors ("Petitioners"), including Intervenors-Appellees James Goodman and Paul A. Harris ("Intervenors"), petitioned ("the Petition") for the repeal of all resolutions of the County authorizing the option agreement with Union Carbide Corporation ("the Option Agreement") and Camden County's right and option to purchase the property described therein and sought to enjoin the county's attempted purchase in a separate suit. On February 8, 2022, Judge Robert C. Sweatt, Jr. of the Camden County Probate Court determined the Petition to be constitutionally valid over the County's objections, which did not include the arguments the County raises here. The County did not appeal or otherwise seek direct modification of that order, and on Tuesday, March 8, 2022, County voters voted to repeal all resolutions permitting the County to buy the Union Carbide property. Petitioners achieved exactly what the Georgia Constitution gave them the right to seek: "repeals of such local acts or ordinances, resolutions, or regulations adopted pursuant to" county home rule authority. Ga. Const. art. IX, § 2, ¶ I.

Attempting to salvage its unpopular and now unauthorized purchase efforts, the County filed the underlying suit in Camden County Superior Court as an improper collateral attack on Probate Court authorization of the referendum pursuant to the Georgia Constitution. Despite the fact that the County both failed to raise in Probate Court the arguments it now makes to this Court and failed to appeal the Probate Court's decision, the County now asks this Court to declare Judge Sweatt derelict in the performance of his constitutional duties. The County also seeks to have this Court nullify an election and, in so doing, deny its own electorate rights expressly granted by our state constitution. The Superior Court rightfully saw the County's efforts as improper, and the County now attacks that decision as well, beseeching this Court to address issues the County failed to properly raise in the Probate Court proceeding, to ignore the plain language of the Georgia Constitution, and to overturn an election properly held pursuant to that Constitution.

Intervenors ask the Court to uphold the plain language and meaning of the Constitution, reject the County's appeal, and affirm the decision below.

I. BACKGROUND

On December 14, 2021, Petitioners, all electors of Camden County registered to vote in the 2021 general election, filed the Petition in Probate Court. On the same day, Intervenors sought an injunction in the Superior Court to last

through the special election authorized by the Georgia Constitution. *See* Generally Petition for Writ of Prohibition and Other Relief ("County Petition") at 9-10 (R-19 to 20) (discussing Petition and request for an injunction).

The County immediately sought to challenge its voters and their efforts to exercise an explicit constitutional right. On December 21, 2021, the County moved to dismiss the superior court action, asserting a panoply of arguments including the *Kemp v. City of Claxton*[1], 269 Ga. 173 (1998), argument that is the focal point of its appeal here. *See generally* County's Brief in Support of Motion to Dismiss Intervenors' Superior Court Action.[2]

On January 3, 2022, the County filed an unverified caveat to the Petition, challenging the Petition on the grounds that there were duplicate signatures and alleging that the Petitioners were engaging in "a deliberate attempt to mislead the Court as to the accuracy and sufficiency of the propounded signatures" and that the duplicate signatures amounted to "a fraud upon the Court." The County complained that there were photocopy signatures included instead of wet-ink only signatures and also that the methods of returning the signed petitions varied. *See* Caveat at 1-3 (R-51 to 53). Noticeably absent was any mention of their *Kemp*

[1] Intervenors refer herein to the County's "*Kemp* argument" as shorthand for the County's tier-based construction argument.
[2] Petitioners will file a motion to supplement the appellate record with this brief.

argument, despite the County's assertion of that argument in the Superior Court two weeks earlier.

Ultimately, the Superior Court denied the injunction sought by Intervenors on January 20, 2022. Particularly notable here, however, is the Superior Court's treatment of the County's *Kemp* argument in that it did "not reach the merits of [that] issue in the current posture of this case; **and [found] the issue to be more properly before the Probate Court in determining whether the Petition filed there is valid.**" Superior Court Order Denying Injunctive Relief at 9 (R-109) (emphasis added). The Superior Court thus directed the County to raise its *Kemp* argument before the Probate Court. The County did not act on this instruction.

On February 8, 2022, the Probate Court issued two orders simultaneously. One order denied the County's caveat. Judge Sweatt found that

> there is no legal authority for the filing of a caveat by Camden County to oppose a petition filed by its citizens to exercise constitutional rights provided under the Georgia Constitution. Even if there were such legal authority for such procedural vehicle, a Caveat under Georgia law must be verified and County's Caveat is not.

Order to Deny Caveat (R-92) (citation omitted). The second order considered the validity of the petition. Judge Sweatt determined that 3,482 petition signatures of electors registered to vote in the last general election were needed to trigger a referendum and that 3,516 were submitted to and verified by the Court.

Accordingly, the Probate Court determined a special election would be held. Order Validating Petition at 2 (R-95).

The County sought neither an appeal nor reconsideration of the Probate Court orders and in the nineteen days between the Superior Court directing the County to raise the *Kemp* issue in the Probate Court and the Probate Court issuing its orders on the County's caveat and on the validity of the Petition, the County did nothing to assert the *Kemp* argument in the Probate Court. Instead, on February 23, 2022, the County filed a new lawsuit in the Camden County Superior Court, a "Petition for Writ of Prohibition and Other Relief." The sole argument raised in its petition below is the one argument raised here: that Section (b)(2) does not allow the Petitioners to do what they did, consistent with *Kemp*. *See* County Petition at 2-8 (R-13 to 19). Relying on *Kemp*, the County sought prohibitory and mandamus relief commanding Judge Sweatt to stop the referendum and any canvasing of returns or certifying of results and to declare the Petition invalid. *See* County Petition at 13-20. The County also sought declaratory relief accomplishing the same purposes and otherwise declaring the Petition a nullity. In short, the County sought to keep Judge Sweatt from doing what the Constitution said he must do and the County sought to invalidate the votes of its electorate.

Intervenors intervened in the new matter on March 1.[3] *See* Motion to Intervene (R-122); Order Granting Motion to Intervene (R-127). On March 2nd, Intervenors simultaneously filed a response to and a motion to dismiss the County's petition. In the response, Intervenors raised several defenses, including the failure of the County to appeal in the Probate Court's orders of February 8th, the County's lack of a clear legal right to the relief requested, estoppel, laches, and the County's failure to comply with applicable statutory law. *See* Generally Intervenors' Response to Petition for Writ of Prohibition (R-145). In the motion, Intervenors raised the adequacy of the County's legal remedy in the form of an appeal from the Probate Court, the County's lack of a clear legal right to the relief sought, and the County's improper use of the declaratory judgment act as issues that defeated the County's petition and estopped it from re-litigating the validity of the Petition. *See generally* Intervenors' Brief in Support of Motion to Dismiss Petition (R-133).

On March 4th, the Superior Court issued an order denying the relief sought by the County. That order is the focal point of this appeal. *See* Order Denying County Petition (R-9).

[3] The County identified Intervenors in its petition at "interested parties for purposes of the declaratory relief pleaded in Count III" for whom intervention might be appropriate. *See* County Petition at 12 (R-23).

On March 8th, registered electors in Camden County, voting 4,168 (72.12%) in favor of repeal and 1,611 (27.88%) against, determined that the County's purchase of the Union Carbide property should not be allowed to go forward. The County filed a notice of appeal from the March 4th Superior Court order on March 7th, the day before the election.

II. ANALYSIS

The sole enumeration of error presented for this Court's consideration is that the Superior Court improperly denied the County's petition. The Court should affirm the decision below for four general reasons: (1) the appeal is moot to the extent it seeks to retroactively challenge the election itself, (2) the County failed to appeal Judge Sweatt's decision, (3) the Constitution explicitly allowed Petitioners to initiate a referendum regarding the Union Carbide property resolutions, and (4) the County's chosen procedural vehicles for relief are improper.

A. This appeal is moot to the extent it challenges the election.

Most of the relief prayed for by the County cannot be ordered by the Court.[4] The County sought, among other relief, to prevent the election and Judge Sweatt's certification of the results. But the election occurred successfully, and Judge Sweatt has certified the results. "To be clear: an appeal is moot when this Court can no longer provide the specific relief requested; election cases are no

[4] This ground for affirming would not apply to relief sought by the County that did not seek to stop the election or certification from happening in the first place.

exception." *Bell v. Raffensperger*, 311 Ga. 616, 619 (2021); *see also Randolph Cty. v. Johnson*, 282 Ga. 160, 160 (2007) ("This Court has acknowledged that the mootness doctrine applies to election contest cases when the general election has already taken place." (quotation omitted)).

The County's argument that this case presents a question "capable of repetition but evading review" rings hollow. "[W]hen a case contains an issue that is capable of repetition yet evades review, the issue is not moot because a decision in such a case would be based on existing facts or rights which affect, if not the immediate parties, an existing class of sufferers." *McAlister v. Clifton*, 867 S.E.2d 126, 129 (Ga. 2021) (quotation omitted). "Any time [an appropriate percentage of the electorate petitions for repeal pursuant to the Georgia Constitution], the opposing party may challenge the [validity of the petition] and the court may consider it, just as the [Probate] [C]ourt did in this case." *Id.* (applying this reasoning to a constitutional challenge to equitable caregiver statute and determining that there was no reason to believe that the challenge would evade review). The County could have chosen to appeal the Probate Court's decision, but chose not to do so, instead inappropriately bringing this matter in Superior Court in the procedural form of a writ. The County cannot maintain now that this is a case that evades review when it did not seek an appeal of the Probate Court decisions. Additionally, the County has not identified and cannot identify an

existing class of sufferers for whom there is a reasonable expectation that they would be subjected to this same action again. The County "does not represent, and has never represented, a class of persons" subject to exercise of the referendum provision for the repeal of resolutions. *In Int. of I.B.*, 219 Ga. App. 268, 276 (1995) (physical precedent only) (examining elements applied by United States Supreme Court in assessing this "exception" to mootness and finding appeal to be moot).

More importantly, there is nothing here "to indicate that this situation is likely to recur. The [County] has not indicated that this situation is anything other than an anomaly." *Randolph Cty.*, 282 Ga. at 161 (dismissing appeal from a writ of prohibition preventing the board of elections from conducting a hearing on the sufficiency of a candidate whose name was already placed on the ballot as moot where general election had already occurred and rejecting "evading review" argument). As the County recognizes, there appear to be no reported decisions of previous attempts to utilize this constitutional right in this matter. Moreover, the bar the citizens must clear before the petition process is even available is a high one under the requirements of the Georgia Constitution. Acquiring signatures from 10% of a county's registered electorate is no mean feat. In fact, it took Petitioners years to gather sufficient signatures in this matter. Nothing that happened here remotely substantiates the County's slippery-slope suggestions that

"[o]rdinary county business would never be settled if all such decisions are subject to referendum" and that "the misapplication of the petition and referendum procedure threatens core principles of a republican form of government." Application at 12-13. That Petitioners did what they did in the numbers they did is a testament to the singular unpopularity of the County's property acquisition. The County's claims thus are moot and should not be heard on appeal to the extent they challenge the election and certification.

B. The County's failure to appeal Judge Sweatt's decisions below bars its claims in this case.

The remaining grounds, both procedural and substantive, affect all of the County's claims for relief, not just those aimed at the election and certification. Pivotally and procedurally, the County's appeal here must be dismissed due to its failure to appeal the Probate Court matter. The County had the right to appeal the Probate Court matter but chose not to do so despite clearly being told by the Superior Court that challenges to the Petition's validity should be made in Probate Court. *See* O.C.G.A. § 5-3-2; *see also* Order on Injunction at 9 (R-109). The County now is trying to re-litigate the Probate Court matter and fix its mistake in not raising *Kemp* there. The County's procedural error, however, means that it now cannot raise its *Kemp* argument both as a matter of collateral estoppel and as failure of a prerequisite to its substantive claims.

1. Collateral estoppel bars the County's claims.

The Georgia Constitution is clear with respect to where the Petition's validity assessment was required to begin and end: the Probate Court. "The judge of the probate court shall determine the validity of such petition . . . ." Ga. Const. art. IX, § 2, ¶ I. And so it was here, where Petitioners brought their petition before Judge Sweatt. So what did the County do in response? It challenged the validity of the petition before the Probate Court by filing a procedurally improper unverified caveat. The County litigated the validity of the petition, but did so in a procedurally improper pleading and without ever raising its *Kemp* argument in that forum.

Collateral estoppel applies under these circumstances to bar the arguments the County raises here. The collateral estoppel doctrine

> precludes the re-adjudication of an issue that has previously been litigated and adjudicated on the merits in another action between the same parties or their privies. Like res judicata, collateral estoppel requires the identity of the parties or their privies in both actions. However, unlike res judicata, collateral estoppel does not require identity of the claim—so long as the issue was determined in the previous action and there is identity of the parties, that issue may not be re-litigated, even as part of a different claim. Furthermore, collateral estoppel only precludes those issues that actually were litigated and decided in the previous action, or that necessarily had to be decided in order for the previous judgment to have been rendered. Therefore, collateral estoppel does not necessarily bar an action merely because the judgment in the prior action was on the merits. Before collateral estoppel will bar consideration of an issue, that issue must actually have been decided.

Karan, Inc. v. Auto-Owners Ins. Co., 280 Ga. 545, 546 (2006) (quotation omitted). The County was a party to the Probate Court action, and the County litigated this matter there albeit through an improper procedural vehicle. The Petition's validity was necessarily decided by the Probate Court, as the Constitution makes clear it must be. Thus, the County cannot now re-litigate the validity of the petition.

The County now contends that it never had standing to appeal the Probate Court orders despite its full participation as a litigant in that proceeding and the Superior Court's direction to raise the *Kemp* issue in the Probate Court. The County insists that Intervenors' concern for the Constitution's mandate that the Probate Court determine the validity of the Petition and for well-established rules of Georgia procedure "is rather shallow" because the Judge Sweatt "dismissed the County's caveat in the case after concluding the County had no authority to intervene for want of mechanism provided in Paragraph 1(b)(2)." *Id.* Apparently agreeing with Judge Sweatt now in hopes of serving its present objectives, the County concludes that it "clearly lacked standing to even appeal the issue, just as Judge Sweatt concluded." *Id.* However, the County misconstrues Judge Sweatt's order, which determined that the County fouled up the proper procedure.[5] *See* Order to Deny Caveat (R-92). Nowhere in Judge Sweatt's Order is standing

[5] In this vein, the County could have and probably should have formally sought leave to intervene in the matter instead of leaping straight into its arguments and filing a caveat. *See* Unif. Probate Ct. R. 2.7(B).

mentioned. And even if the County were correct that the Probate Court concluded it had no standing to participate, the County participated in the case, litigated it, and made its arguments, and even filed a brief regarding some of its positions which were considered by the Probate Court. That participation renders the County in privity for purposes of collateral estoppel.

> To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.
>
> These interests are similarly implicated when nonparties assume control over litigation in which they have a direct financial or proprietary interest and then seek to redetermine issues previously resolved.

Montana v. United States, 440 U.S. 147, 153–54 (1979). This principle fits the County's position like a glove. The County assumed control over "defending" the Probate Court matter to protect its perceived financial interest in putting a spaceport on the Union Carbide property. It cannot now be allowed a mulligan to re-contest the Petition's validity. **The County's position here is even more perplexing because the Superior Court told the County to raise the sole argument it raises here before the Probate Court, and the County failed to do so.** Order on Injunction at 9 (R-109). The County's claims here are thus properly barred as a matter of collateral estoppel.

2. The extraordinary and declaratory relief sought by the County required that it appeal the Probate Court order, not bring an entirely new proceeding.

The County's failure to appeal also sabotaged its substantive claims as a matter of doctrine applicable to the claims themselves. Mandamus and prohibition are not available when adequate alternative remedies exist, one of which is appeal. *See Smith & Wesson Corp. v. City of Atlanta*, 273 Ga. 431, 433 (2001) ("Mandamus and its counterpart, prohibition, are extraordinary remedies available in limited circumstances to correct a clear abuse of discretion, where a duty imposed by law has been violated and where there is no adequate remedy by appeal."); *Ford Motor Co. v. Lawrence*, 279 Ga. 284, 285 (2005) ("[T]he availability of judicial review is an adequate legal remedy that eliminates the availability of mandamus relief."). Declaratory judgment is not substitute for an appeal. "The Declaratory Judgment Act is not intended to be used to set aside, modify, or interpret judicial decrees or judgments, nor does it authorize a petitioner to brush aside previous judgments of the same court, and seek a determination of his rights as if they had never been adjudicated." *Merch. L. Firm, P.C. v. Emerson*, 301 Ga. 609, 616 (2017).

"An appeal shall lie to the superior court from **any decision** made by the probate court, except an order appointing a temporary administrator." O.C.G.A. §

5-3-2 (emphasis added). The County's failure to appeal Judge Sweatt's orders converted them to final decisions. The County cannot now use mandamus, prohibition, and declaratory judgment in an effort to set aside those decisions and "seek a determination of [its] rights as if they had never been adjudicated." *Merch. L. Firm, P.C.*, 301 Ga. at 616.

C. The Georgia Constitution explicitly authorizes the referendum process for County resolutions.

Procedural shortcomings aside, the County is asking the Court to ignore the plain language of the Constitution. The County is more interested in the "'foundational essence' of Georgia's home rule system" (Appellant's Brief at 14) than it is in the actual language of Ga. Const. art. IX, § 2, ¶ I(b). Intervenors, however, focus on what the Constitution says and ask the Court to do the same.

1. The original public meaning of the text clearly supports the validity of the Petition.

"In construing these constitutional provisions and their interplay with [Georgia statutory law], we look to our traditional canons of constitutional and statutory construction for guidance." *McInerney v. McInerney*, No. S21A1068, 2022 WL 779591, at *2 (Ga. Mar. 15, 2022). "We interpret a constitutional provision according to the original public meaning of its text, which is simply shorthand for the meaning the people understood a provision to have at the time

they enacted it. This is not a new idea." *Olevik v. State*, 302 Ga. 228, 235 (2017). Stated differently,

> We generally apply the ordinary signification to words in construing a constitutional provision. This means we afford the constitutional text its plain and ordinary meaning, view the text in the context in which it appears, and read the text in its most natural and reasonable way, as an ordinary speaker of the English language would.

McInerney, 2022 WL 779591, at *2 (quotation omitted).

"In determining the original public meaning of a constitutional provision, we consider the plain and ordinary meaning of the text, viewing it in the context in which it appears and reading the text in its most natural and reasonable manner." *Olevik*, 302 Ga. at 236. "**When we consider the original public meaning, we necessarily must focus on objective indicators of meaning, not the subjective intent of particular individuals that the language mean something idiosyncratic.**" *Id.* at 237 (emphasis added). The Court has further recognized that, as opposed to statutory interpretation, "[o]ur objective focus is even more important when we interpret the Constitution. Unlike ordinary legislation, the people—not merely elected legislators—are the 'makers' of the Georgia Constitution." *Id.* at 238.

"This Court must construe the Georgia Constitution to make its parts harmonize and to give sensible meaning to each of them. If a statutory rule contradicts a constitutional rule, then the constitutional rule prevails." *McInerney*,

2022 WL 779591, at *2 (quotation and citation omitted). Constructions that "assign different meanings to the same words in consecutive sentences of [a] provision" are to be avoided. *Cf. Lathrop v. Deal*, 301 Ga. 408, 443 (2017) (rejecting constitutional interpretation in part on this ground).

With these general precepts in mind, it is time to turn to the starting and ending point of the analysis: the language of the Georgia Constitution. In pertinent part, it provides:

> (a) The governing authority of each county shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which is not inconsistent with this Constitution or any local law applicable thereto. . . . .
> (b) . . . [A] county may, as an incident of its home rule power, amend or repeal the local acts applicable to its governing authority by following either of the procedures hereinafter set forth:
>
> > (1) Such local acts may be amended or repealed by a resolution or ordinance duly adopted at two regular consecutive meetings of the county governing authority not less than seven nor more than 60 days apart. . . .
> > (2) Amendments to or **repeals of** such local acts or **ordinances, resolutions, or regulations adopted pursuant to subparagraph (a)** hereof may be initiated by a petition filed with the judge of the probate court of the county containing . . . in cases of a county with a population of more than 50,000, at least 10 percent of the electors registered to vote in the last general election . . . .

Ga. Const. art. IX, § 2, ¶ I(a) – (b). The plain language of the Constitution thus provides that the appropriate percentage of a county's registered electors may initiate a referendum for amendments or repeals of two classes of local laws: (1)

"such local acts" and (2) "ordinances, resolutions, or regulations adopted pursuant to subparagraph (a)." Indeed, Intervenors' understanding of what these words mean is not unique even as to the parties in this case. **Consider what the County said before the Superior Court:**

> The language of the phrase "(a)mendments to or repeals of … ordinances, resolutions, or regulations adopted pursuant to subparagraph (a)" at first blush appears to be a reference home rule actions of the county commission under first tier delegation, i.e. clearly reasonable ordinances, resolutions or regulations relating to the property, affairs, and local government of the county for which no provision has been made by general law and are not inconsistent with the Constitution or with local laws applicable to the county commission. **The language of the phrase indicates that an action under first tier delegation is subject to amendment or repeal by second tier delegation petition and referendum.** If this interpretation were taken literally, it would mean that no general exercise of power by the county commission could ever be 'final'. It could always be subject to citizen amendment or repeal.

County's Brief in Support of Motion to Dismiss Intervenors' Superior Court Action at 15-16 (emphasis added).[6]

This plain-language understanding is clearly supported by other language used in the county home rule provision. For example, consider the first part of (b) taken in conjunction with the first parts of both (b)(1) and (b)(2) with a different emphasis than that used above:

[6] This fluidity in positions asserted by the County in different courts at different times is similar to the County's position taken with respect to its ability to participate in the Probate Court proceeding discussed above. *See supra* Part II.**A**.*1*.

> [A] county may, as an incident of its home rule power, amend or repeal the local acts applicable to its governing authority by following either of the procedures hereinafter set forth:
>
> (b)(1) **Such local acts** may be amended or repealed by a resolution or ordinance duly adopted . . . .
>
> (b)(2) Amendments to or repeals of **such local acts** or ordinances, resolutions, or regulations adopted pursuant to subparagraph (a) hereof may be initiated by a petition . . . .

Ga. Const. art. IX, § 2, ¶ I(a) – (b). The word "such" here is important. "What does **such** mean? To the educated nonlawyer, it means 'of that kind.' To the lawyer, it means 'the very one just mentioned.'" Bryan A. Garner, Garner on Language and Writing 183 (2009) (admonishing against the "lawyer" use of "such"); *see also* Black's Law Dictionary 1570 (defining "such" to mean "1. Of this or that kind. . . . [or] 2. That or those; having just been mentioned."). Either meaning avails Intervenors. "Such" is used in both (b)(1) and in (b)(2) to modify "local acts." It is not used in (b)(2) to modify "ordinances, resolutions, or regulations." This must be the case because "such" appears in (b)(1) where "ordinances, resolutions, or regulations" are not mentioned. Thus "such" in (b)(2) makes it clear that "local acts" are distinct from "ordinances, resolutions, or regulations" and that (b)(2)'s use of the latter is not accidental, so that the previously mentioned local acts as well as "ordinances, resolutions, or regulations" are subject to potential referendum.

Consider also how the framers of this section of the Constitution chose to differentiate between local acts and ordinances, resolutions, or regulations for

purposes of Paragraph I(b). Local acts are "applicable to [a county's] governing authority." Ga. Const. art. IX, § 2, ¶ I(b). Ordinances, resolutions, or regulations adopted pursuant to Paragraph I(a), however, merely "relat[e] to [a county's] property, affairs, and local government." Ga. Const. art. IX, § 2, ¶ I(a). The Constitution clearly recognizes these as distinct concepts and intended a broader situation of power in the electorate than the County contends.

This should be where the Court's analysis ends. This language is clear, and Intervenors ask the Court to conclude that the Constitution means precisely what it says: that the referendum procedure applies to both "such local acts" and "ordinances, resolutions, or regulations adopted pursuant to subparagraph (a)." No additional construction here is required or permitted. *See Rayle Elec. Membership Corp. v. Cook*, 195 Ga. 734, 734 (1943) ("[W]here a constitutional provision or statute is plain and susceptible of but one natural and reasonable construction, the court has no authority to place a different construction upon it, but must construe it according to its terms.").

2. The County asks the Court to construe the Constitution impermissibly, to prioritize misunderstandings of extra-textual sources over the text itself, and to misconstrue the applicable text.

This is where County's argument runs off the rail. Insisting that construction is necessary and looking to the "'foundational essence' of Georgia's

home rule system" (Appellant's Brief at 13-14), the County absconds from the particular language of (b)(2) at issue here in favor of a broader appeal to the meaning of "home rule" and an abstract argument about tiered delegations of legislative authority. *See id.* at 13-15. Essentially, the County argues that because only a "second tier" delegation was intended in Paragraph 1(b) and not a "first tier" delegation, no "second tier" power was granted to county electorates in Paragraph (1)(b)(2).

There is no rule of constitutional interpretation or statutory interpretation that requires or even permits courts to skip over the plain language of the provision at issue in favor of an abstract appeal to general intent, as the County seeks to do here. Even if the context in which the referendum provision sits supported the County's interpretation (it does not), this Court has recognized in the context of statutory interpretation that

> [t]hough we may review the text of the provision in question and its context within the larger legal framework to discern the intent of the legislature in enacting it, where the statutory text is clear and unambiguous, we attribute to the statute its plain meaning, and our search for statutory meaning ends.

Patton v. Vanterpool, 302 Ga. 253, 254 (2017) (emphasis added) (quotation and citation omitted).

Furthermore, there is no text in Paragraph 1 that supports the tier argument as applied to Subparagraph 1(b)(2) and an electorate's ability to trigger a

referendum. Even a cursory review of the extra-textual sources relied upon by the County shows this. *In Bd. of Comm'rs of Miller Cty. v. Callan*, 290 Ga. 327, 328 (2012), the Court recognized that Paragraph I(b)(**1**) was an incident of second tier delegation through which a county governing authority could change existing state law by amendment through resolution or ordinance, which is what Miller County did in that case. Paragraph I(b)(2) was not at issue at all. *Miller* said nothing about the type of repeal at issue here, and even if *Miller* had it would have been dicta.

Professor Perry R. Perry Sentell, Jr.'s commentary on Georgia's home rule setup, upon which the Court appeared to base its tier-analysis in Miller, contains even less support for the County's positions. In his article on the Georgia home rule system that it cited in *Miller* and by the County in its brief, Professor Sentell states that Paragraph I(b)(2)'s reference to ordinances, resolutions, or regulations must be subsumed by a misapplication of the tier analysis or must only pertain to the changing of state instead of local county law. In referring solely to the municipal home rule statute and discussing the *Kemp* case, Professor Sentell recognized that "amendments to charters" and "amendments to or repeals of ordinances, resolutions, or regulations adopted pursuant to subsection (a)" were treated separately. R. Perry Sentell, Jr., *The Georgia Home Rule System*, 50 MERCER L. REV. 99, 141 (1998). He made no direct comment on whether non-charter amendments were permissible under the municipal home rule statute except

to summarize this Court's decision in *Kemp*. In fact, Professor Sentell appeared to criticize the *Kemp* decision in noting, again with respect to referendums under the municipal home rule, that "[w]hether the procedure is exercised as intended depends upon the court's perception of legislative spirit and purpose, rather than literal statutory language." *Id.* at 148.

That brings the discussion to *Kemp*, which is the focal point of all of the County's arguments. *Kemp* is inapposite because it was dealing with the municipal home rule statute, not the constitutional home rule provision. *See* Sentell, 50 MERCER L. REV. at 106 (distinguishing between "a system of indirect ('legislative') home rule for municipalities and a system of direct ('constitutional') home rule for counties."). But constitutional interpretation is different in significant ways from statutory interpretation. Looking at *Kemp* with those principles of constitutional construction in mind shows that *Kemp* actually hurts the County's position. *Kemp*'s reasoning suggests that ruling in the County's favor requires deletion of the language at issue here. *See Kemp*, 269 Ga. at 176 ("The legislative intent will be effectuated even if some language must be eliminated."). Recognizing that it needed to delete the operative language from the statute, the Court did so by relying on the facts that municipal corporations are creations of the state and that OCGA § 36–35–3 must be strictly construed as a delegation of legislative authority. But this case involves an original grant of authority to the

electorate. The County points to no law that authorizes deletion of constitutional language in favor of a strict construction against an explicit grant of power in the Georgia Constitution. In fact, the Court has made clear that an objective focus on the language is even more important in constitutional interpretation than it is in statutory interpretation. *Olevik*, 302 Ga. at 236-38.

The County's sparse attempts to engage the constitutional text are unpersuasive. First, the County does nothing to incorporate the pivotal language of subsection (b)(2) "or ordinances, resolutions, or regulations adopted pursuant to subparagraph (a)" except to attempt to dismiss it out of hand as "the vague phrase" and later as "a somewhat ambiguous phrase." Appellant's Brief at 13, 17; *see also id.* at 18-20 (arguing again that the phrase is vague). In fact, the County recognizes that the Court must effectively delete the language to reverse. *See* Appellant's Brief at 26 ("In other words, the phrase 'or ordinances, resolutions, or regulations' should—and must—be construed to mean something similar to the words that phrase is found to be associating with in the text: 'local acts applicable to [the county's] governing authority.'"). The County thus urges the Court to violate a well-recognized canon of interpretation. *See Gwinnett Cty. Sch. Dist. v. Cox*, 289 Ga. 265, 271 (2011) ("Established rules of constitutional construction prohibit us from any interpretation that would render a word superfluous or meaningless."). Second, the County reads through the language of subparagraphs (a) and (b),

pretending to tease "distinct limiting principles" from every nook and cranny in the text without actually saying much of substance. Appellant's Brief at 15-17. The Constitution's operation here is straightforward. Subparagraph (a) explicitly gives the governing authority of each county the legislative power to adopt local ordinances, resolutions, or regulations. Subparagraph (b) gives the **county**, a term which is not limited to the governing authority, the power to "amend or repeal the local acts applicable to its governing authority." Subsection (b)(2) gives the county electorate, clearly a subset of "county," the additional power of amending or repealing not only "such local acts" but also "ordinances, resolutions, or regulations adopted pursuant to subparagraph (a)." Understanding the Constitution to operate this way is simple, straightforward, and does not require any deletions or other alterations to the text. **Even the County thought that a plain reading and common-sense understanding of the text worked this way.** *See* County's Brief in Support of Motion to Dismiss Intervenors' Superior Court Action at 15-16.

Third, the County suggests that it is problematic that the Constitution vests "first tier" authority in the county governing authority in subparagraph (a) while also granting some "first tier" authority to the county electorate in subsection (b)(2). Appellant's Brief at 18-19, 23. But this is not problematic, especially considering that the "first tier" authority granted to the electorate is explicitly narrower than that granted to the governing authority given that the electorate may

only initiate an amendment or repeal of ordinances, resolutions, or regulations, while the governing authority may adopt them. The County complains that the framers should have used clearer language, but the language is clear enough, and again the County thought so in Camden County Superior Court.

Fourth, the County suggests that particulars of the referendum procedure's notice and publication provision in subparagraph (g) indicate that subparagraph (b)(2) cannot possibly apply to local resolutions. Appellant's Brief at 20-21. But here the County commits the same error it makes in misreading the rest of the home rule provision. Subsection (g) explicitly applies only to "amendment[s] or revision[s] of any local act made pursuant to subparagraph (b)," not to amendments or repeals of resolutions. Constitutional language is not vague simply because the County chooses to ignore it.

Finally, the County makes some additional miscellaneous and immaterial arguments. For example, in one such argument, the county claims that there would be more reported decisions dealing with the referendum provision if it could be used in the manner Petitioners used it here as proof that it should not be so used. Appellant's Brief at 23-24. The referendum procedure sets forth a difficult task for any electorate to force a referendum. It took years for Petitioners to gather sufficient signatures despite Camden County being in nearly the easiest constitutional position, population-wise, regarding the number of signatures

needed. *See* Ga. Const. art. IX, § 2, ¶ I(b)(2); Mary Landers, *Camden referendum on land deal gives county voters a voice*, THE CURRENT, Feb. 22, 2022, https://thecurrentga.org/2022/02/22/camden-referendum-on-land-deal-gives-county-voters-a-voice/. The County also contends that other constitutional questions may be generated by the Court's decision here, but Georgia courts exist to and are well-equipped for handling such controversies. Appellant's Brief at 24-25.

Finally, the County makes a slippery slope argument and worries that "county business would never be final" and "would be locked in a constant state of flux." That is the case regardless of availability of the referendum procedure, as the governing authority is clearly always able to change its collective mind. In any event, the Court should disregard this and the County's other policy arguments:

> Under our Constitution and legal tradition, judges are supposed to apply the law enacted by the legislature based on what a statute says, not based on whether the judges believe it "makes sense" to apply the statute to the case at hand or instead feel it would be "unfair" to do so.

Woodard v. State, 296 Ga. 803, 813 (2015). As with the County's other appeals, this plea is not based on the constitutional language at issue but is simply designed to distract from that language.

Nothing in the Constitution supports the County's position. The County wants the Court to read the operative language regarding resolutions out of subparagraph (b)(2) relying on misunderstandings of extratextual sources that do

not even support the County's position. The Court should reject the County's proposed construction and abide by subparagraph (b)(2)'s plain language.

D. The County is not substantively entitled to the extraordinary relief sought or to declaratory judgment.

The County's appeal is due to be denied for the final reason that the vehicles it chose to seek relief, mandamus, prohibition, and declaratory judgment, cannot accomplish the County's objectives. In order for a writ of prohibition or a writ of mandamus to issue, there must exist a clear legal right to the relief sought. *Bibb County v. Monroe County*, 294 Ga. 730, 735 (2014) ("The writ of mandamus is properly issued only if (1) no other adequate legal remedy is available to effectuate the relief sought; and (2) the applicant has a clear legal right to such relief."); *Trip Network, Inc. v. Dempsey*, 293 Ga. 520, 522 (2013) (applying this principle in case involving both mandamus and prohibition). Where the action involves the exercise of discretion, extraordinary relief will not lie to dictate the manner in which the action is taken or the outcome of the action. *Bibb County*, 294 Ga. at 736. For the reasons explained above, the County does not have a clear legal right to relief.

Furthermore, declaratory judgment cannot be used to prejudice the rights of nonparties to an action. *See* O.C.G.A. § 9-4-7(a). The County here directly seeks to prejudice the exercise of the voting rights of thousands of its own electorate by

attempting to invalidate the referendum. The County has pared an improper procedural vehicle with a normatively wrong goal.

E. The County gets the remedy wrong even if it prevails on appeal.

Finally, a brief word about the remedy sought by the County is appropriate. Even if the Court were to reverse the decision below, the appropriate remedy would not be for a remand "with appropriate instructions, including that the March 8 referendum be declared invalid." Appellant's Brief at 30. Instead, the case should play out properly in accordance with applicable procedural rules. A hearing occurred and the matter was decided before the time for Judge Sweatt (who was unrepresented at the time) to file an answer expired. No party has had the opportunity to conduct discovery. From even their first action in Superior Court, the County has denied Intervenors and its citizens access to the Option Agreement and its extensions despite the importance of these documents to the ongoing litigation, including litigation concerning open records requests regarding those same documents. Accordingly, the proper instruction in reversal would be to allow the litigation to play out in accordance with Georgia law, not to give the County all requested relief with the other parties not having the benefit of the process and procedure to which they are entitled by law.

CONCLUSION

The Constitution explicitly allows county electorates to seek repeal of county ordinances via referendum. The County's dispute with this principle finds no purchase in applicable law. The County has chosen a tortuous path and an improper collateral attack where a direct appeal would have been more appropriate. Similarly, the County hopes to indirectly subvert the text of the Constitution given that a direct approach (simply reading what the Constitution says) does not avail the County. Intervenors ask the Court to protect their constitutional rights and dismiss the County's appeal.

Respectfully submitted this 9th day of May, 2022.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served the following counsel of record with a true and correct copy of the foregoing **INTERVENORS-APPELLEES' RESPONSE TO PRINCIPAL BRIEF** as indicated below:

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This 9th day of May, 2022.

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