

No. S22A0837

IN THE SUPREME COURT OF THE STATE OF GEORGIA

CAMDEN COUNTY, GEORGIA,
Petitioner-Appellant,

v.

ROBERT C. SWEATT JR.,
Respondent-Appellee,

and

JAMES GOODMAN & PAUL A. HARRIS,
Intervenors-Appellees.

**BRIEF OF AMICI CURIAE BEN GOFF, JACQUELINE EICHHORN,
UNIVERSITY OF GEORGIA SCHOOL OF LAW FIRST AMENDMENT
CLINIC, AND THE GEORGIA FIRST AMENDMENT FOUNDATION
IN SUPPORT OF INTERVENORS-APPELLEES
JAMES GOODMAN AND PAUL A. HARRIS**

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INTRODUCTION

Pursuant to Rule 23 of the Georgia Supreme Court Rules, amici curiae Ben Goff (“Goff”), Jacqueline Eichhorn (“Eichhorn”), the First Amendment Clinic at the University of Georgia School of Law (“UGA First Amendment Clinic”), and the Georgia First Amendment Foundation (“GFAF”) respectfully submit this brief in support of Intervenor-Appellees James Goodman and Paul A. Harris (“Intervenors”).

This case calls upon the Court to decide a question of constitutional interpretation on an issue of first impression, the outcome of which will have profound effects on democratic governance in the State of Georgia. On March 8, 2022, a referendum vote was held in Camden County, Georgia (the “County”) pursuant to Ga. Const. art. IX, § 2, ¶ 1(b)(2). On that day, 16% of registered County voters cast their ballot on whether to repeal all resolutions of the Camden County Board of Commissioners (“the Commissioners”) approving purchase of land to build a facility (“the Spaceport”) for launching private, commercial space rockets over Cumberland Island National Seashore.¹ Seventy-two percent of the

¹By comparison, only 7% of the County electorate voted in the 2019 Special Purpose Local Option Sales Tax (SPLOST) initiative. *See* Syd Hoskinson, “Update: Camden County Voters Approve Extended Penny Sales Tax,” WJCT NEWS (Mar. 18, 2019), available at: <https://news.wjct.org/first-coast/2019-03-18/update-camden-county-voters-approve-extended-penny-sales-tax> (last visited

electorate who voted in this referendum supported repeal of the Commissioners' resolutions – i.e., they voted against purchasing the land to build the Spaceport.

This March 2022 referendum vote was the culmination of years of community organizing by County residents, including amici Goff and Eichhorn. They and other County electors had long opposed the Spaceport because of the damaging impact they believe it will have on Georgia's fragile coastal marsh, Cumberland Island National Seashore, and on the quality of life of County residents whose homes sit near or in the path of the envisioned rocket launches.

Prior to the referendum vote, Goff, Eichhorn, and others utilized every available channel of representative government to make their opposition to the Spaceport heard and heeded. County residents wrote letters to the editor of the County organ; spoke during public comment at Board of Commissioners' meetings; approached the Commissioners in-person individually; emailed the Commissioners; spoke out at public meetings held by the Federal Aviation Authority and U.S. Coastguard; and submitted written public comments to these same agencies. But the Camden County Commissioners turned a deaf ear to the voices of their constituents. Only one Commissioner deigned to attend a public meeting where County residents were voicing their concerns about the Spaceport

May 2, 2022). The Spaceport referendum garnered more than double the SPLOST's level of voter participation.

Authority. And when questioned about the Spaceport during public comment at Board of Commissioners' meetings, the Commissioners' response was always, in substance, "We will not comment back to you."

Refusing to engage with the people they were elected to represent, the Commissioners proceeded -- largely behind closed doors and with little-to-no transparency -- to move forward with the development of a Spaceport their constituents do not support and for which the Commissioners have already spent over \$10 million in county taxpayer funds.²

Shut out and ignored by their elected County Commissioners, amici Goff, Eichhorn, and others waged a grassroots campaign. Over the course of more than two years, they succeeded in collecting the signatures of 10% of registered County voters in support of a petition for a referendum vote on the Commissioners' decision to purchase land for the Spaceport. Clearing this hurdle was no small task. It required days, weeks, months and, ultimately, years of canvassing, tabling, and

² See "Coastal Georgia voters reject plan for spaceport, but the fight may continue in court," *The Associated Press* (last updated Mar. 9, 2022), available at: <https://www.wjcl.com/article/spaceport-camden-georgia-voters/39382504#> (last visited May 1, 2022). In further disregard for the will of County voters, the Commissioners have now also voted to move forward with purchase of the land for the Spaceport, despite the March 2022 voter referendum against it. See Mary Landers, "Camden rejects voters' will on spaceport but Union Carbide hesitates on deal," *The Current* (Apr. 14, 2022), available at: <https://thecurrentga.org/2022/04/14/camden-rejects-voters-will-on-spaceport-but-union-carbide-hesitates-on-deal/> (last visited May 9, 2022).

driving all over the County to talk with residents and collect the petition signatures of more than 3,500 registered voters.

In February 2022, the Camden County Probate Court reviewed and certified the signed petition, ordering that a referendum election be held. Given this opportunity to make their voices heard, voters resoundingly vetoed the Commissioners' approval of the Spaceport land purchase. Now, instead of adhering to the will of the people, Camden County challenges the constitutionality of the referendum election. The County argues that electors' referendum power to repeal or amend county-level legislative decisions should be limited to "local acts" passed by the Georgia General Assembly and that, despite the plain language of Ga. Const. art. IX, § 2, ¶ 1(b)(2), referendums should not apply to "ordinances, resolutions, or regulations" adopted by the county's governing authority "relating to [the county's] property, affairs, and local government for which no provision has been made by general law." *Id.* at ¶ 1(a). *See* Appellants' Brief at 15-21.

Despite the historical rarity of county referendums in Georgia, and the fact that the Camden County Spaceport referendum took years to organize, the County cries that havoc will result if Ga. Const. art. IX, § 2, ¶ 1(b)(2) is read to permit a voter referendum on "ordinances, resolutions, or regulations" adopted by the county's governing authority -- what the County calls "first tier" county home rule. *See* Appellants' Br. at 20 (claiming this would amount to "carte blanche legislative

power vested in the electorate”); *id.* at 25 (“county business would never be final . . . it would be locked in a constate [sic] state of flux”). Under the guise of avoiding this fictitious parade of horrors, the County resorts to analyzing Ga. Const. art. IX, § 2, ¶ 1(b)(2) as though it were a delegation-of-authority statute passed by the General Assembly, akin to the legislatively-created municipal home rule power. To the contrary, however, ¶ 1(b)(2) is a constitutional provision enacted by the people of Georgia. Therein, the people, in plain language, reserve for themselves a ballot veto over county governing authorities’ legislative decisions, if -- and only if -- a sufficient percentage of the county electorate petition for such a vote to be held. This petition-referendum procedure is consistent with the early history of the First Amendment right to petition and mirrors state constitutional ballot reform measures that are currently in place around the country.

Camden County’s restrictive interpretation of ¶ 1(b)(2) is not only contrary to a straightforward reading of the constitutional provision, it also deprives county voters of the ability to hold their commissioners accountable during non-election years and further flies in the face of democratic checks-and-balances. County governing authorities, not the General Assembly, are responsible for most of the county-level laws regulating residents’ existence. Yet few legislative safeguards exist at the county level, where decisions are made on the simple majority vote of a handful of commissioners – i.e., anywhere from 1 to 7, depending on the county.

By comparison, adoption of “local acts” by the General Assembly requires a bicameral majority in the 180-member House and 56-member Senate, and signature by the Governor. Thus, the need for a voter “check” on county governing authorities’ abuse of their legislative duties is far greater than the need for such a “check” on the General Assembly’s adoption of “local acts.” The facts of the Camden Spaceport referendum well illustrate this point, demonstrating why this Court must preserve a county electorate’s power to rescue itself when, as here, their representative government becomes broken. Amici therefore urge this Court to adopt the plain-language reading of Const. art. IX, § 2, ¶ 1(b)(2) set forth by the Intervenors and affirm the constitutionality of the March 2022 Camden Spaceport referendum.

IDENTITY & INTERESTS OF AMICI CURIAE

Ben Goff, Camden County Resident

Amici Ben Goff collected signatures for the Spaceport petition and helped get out the vote for the resulting referendum election. Goff has lived for 22 years in the Harrietts Bluff neighborhood in Camden County, located three to four miles from the projected Spaceport launch site. He reports that his spirit will be broken and he will no longer wish to live in the County, or even in Georgia, if the referendum is judicially overturned. Mr. Goff’s statement of interest is attached as Exhibit A.

Goff is an active participant in local government, having voted in every election for which he was eligible in the last 50 years and at one point having run for the Camden County Board of Commissioners as a write-in candidate. Goff, who is 77 years old, feels he has a responsibility to make things better for the people in his community who will come after him.

Goff objects to the Camden County Board of Commissioners' lack of transparency about how and why they have spent more than \$10 million of County taxpayers' money in connection with a Spaceport that will cause damage to the County's marshland and coastline ecosystems and deprive the people in his neighborhood of the peaceful enjoyment of their own homes. Goff worked for many months with his neighbors to collect the approximately 3,516 petition signatures that were certified in support of the Spaceport referendum. He later drove all over the County, meeting and talking with people to help get out the vote. He believes that representative democracy in Camden County, at least with respect to the Spaceport, has ceased to function. He views the petition and referendum as a last-resort means of redress.

Jacqueline Eichhorn, Camden County Resident

Amici Jacqueline "Jackie" Eichhorn also worked to collect signatures for the Spaceport petition. She has been actively opposing the Spaceport Camden Project since 2015. She fears for the future of democracy in Georgia if the electorate's

constitutional referendum power over county governing authorities is struck down. Eichhorn's statement of interest is attached as Exhibit B.

Eichhorn and her husband moved to Camden County in 1998 because of the beautiful natural landscape, particularly Cumberland Island and the Okefenokee National Wildlife Refuge. Eichhorn first learned of the Spaceport by reading about it in the papers and was surprised that, without any community input, the Camden County Commissioners signed a purchase option agreement to buy contaminated land from the Union Carbide chemical company to build the launch site.

The more Eichhorn read about the Spaceport and did her own research, the more concerned she became about its fiscal cost to taxpayers, the environmental damage it would cause to the County's coastline and sea islands, and how disruptive it would be to those living near or in the trajectory of the launch site.

In late summer of 2015, Eichhorn wrote her first of what would be many letters to the editor of Camden County's Tribune & Georgian newspaper, speaking out against the Spaceport. She also spoke at public meetings held by the Federal Aviation Authority and U.S. Coastguard and delivered public comment at County Board of Commissioners' meetings, expressing why she and other community members did not want the Spaceport. But the Commissioners never answered her concerns or anyone else's that she knows of. They were not forthcoming or

transparent with information; they just keep moving the project forward, ignoring the public's opposition and inquiries.

Stymied and stonewalled by her County Commissioners, Eichhorn signed the petition to hold a referendum on the County's Spaceport land-purchase resolutions. She carried the petition with her wherever she went, collecting others' signatures. In this way, she met other County residents who were equally frustrated with their Commissioners' unresponsiveness about their Spaceport concerns.

Eichhorn was elated when the referendum results were announced. She believes that having the option for a popular referendum is essential to holding her County Commissioners accountable more often than once every four years, particularly when – in between elections -- they ignore the will of the people they were elected to represent. As Eichhorn writes:

We do have a representative, rather than a direct, form of local government: But does [that] mean that citizen participation is, and should be, limited to a single event - voting for our district's county commissioner once every four years and then stuffing our annoying traps 'til the next election, whatever our 'representatives' are doing – in our name, and on our dime in the meanwhile? We don't elect them to represent themselves, with no interim accountability to citizens.

Exhibit B, ¶ 14.

Institutional Amici

The UGA First Amendment Clinic defends and advances expressive freedoms, including freedom of speech and the right to petition. The Clinic

accomplishes these goals through direct representation and advocacy on behalf of journalists, students, government employees, and public citizens as well as through community education that promotes free expression, open access to government, and the creation of a more informed citizenry.

The Georgia First Amendment Foundation is a not-for-profit, non-partisan organization which advocates for government transparency and free speech, including the public's right to petition for redress of grievances when they disagree with the decisions of those they have elected to represent them. For more than 25 years, GFAF has been providing educational services to citizens and public officials about Georgia's Open Meetings Act and Open Records Act, working to ensure public access to information about government operations throughout the state.

ARGUMENT

I. Democratic principles animating the First Amendment right to petition equally undergird the Georgia Constitution's county referendum power

The Georgia Constitution was created by and for the people of Georgia. The people voted to adopt the Constitution, and must approve any amendment to it.³

Ga. Const. art. IX, § 2, ¶ 1(b)(2), read in conjunction with ¶ 1(a), reserves to the

³³ Every state, except Delaware, requires that amendments to the state constitution be submitted to a statewide vote. Charles D. Gordon III and David B. Magleby, *Pre-election Judicial Review of Initiatives and Referendums*, 64 NOTRE DAME LAW REVIEW 298, 298–299 (1989).

registered voters in any given county the power to repeal or amend the “ordinances, resolutions, or regulations” adopted by that county’s governing authority by petitioning for a referendum vote. *See* Intervenor Br. at 15-28; Respondent-Appellee Robert C. Sweatt, Jr.’s Brief at 4-6.⁴

This county-level referendum mechanism is decidedly not a legislative delegation of power -- i.e., the Georgia General Assembly did not statutorily grant this power to county voters like it did when it authorized home rule for municipalities in O.C.G.A. § 36-35-3. Rather, the Georgia Constitution’s county-level referendum power is one the people have explicitly reserved for themselves. And it serves as an essential direct-democracy “check” on decisions made by elected county commissioners that are contrary to the will of the people who put them in office. *See City of Eastlake v. Forest City Enterprises, Inc.*, 426 U.S. 668, 673 (1976) (“The referendum [] is a means for direct political participation, allowing the people the final decision, amounting to a veto power, over enactments of representative bodies. The practice is designed to ‘give citizens a voice on questions of public policy.’”) (quoting *James v. Valtierra*, 402 U.S. 137, 141 (1971)).

⁴ Appellee Sweatt highlights that the Georgia Attorney General has twice issued opinions advising the Georgia Secretary of State that Ga. Const. art. IX, § 2, ¶ 1(b)(2) reserves referendum power to the county electorate over “first tier” county legislation. *See* 1985 Ga. Op. Atty. Gen. 122 (1985); 1984 Ga. Op. Atty. Gen. 3 (1984).

A. Georgia’s constitutional referendum power fits squarely within the historical context of both the First Amendment right to petition and direct democracy ballot reforms

State constitutional voter referendums arose as an extension of -- or as explained herein, a resurrection of -- the right to petition, which is constitutionally enshrined in the federal First Amendment. In colonial America, “petitions were a major source for legislative initiatives,”⁵ serving as a “tool of democratic mass politics”⁶ and were “the most widespread means for popular participation in the political process.”⁷ Hence, early in our nation’s history, petitioning for redress of grievances was a popular method of citizen participation in federal governance, including on such issues as creation of a national bank, the expulsion of native Americans from Georgia, and efforts to end slavery.⁸ The people’s frequent reliance on, and legislators’ careful attention to, popular petitions led to the enumeration of petitioning for grievances as a right protected by the First Amendment, which was ratified in 1791. *See* U.S. Const., Amend. 1 (“Congress

⁵ Gary Lawson & Guy Seidman, *Downsizing the Right to Petition*, 93 Nw. U. L. Rev. 739, 750 (1999).

⁶ Gregory A. Mark, *The Vestigial Constitution: The History and Significance of the Right to Petition*, 66 Fordham L. Rev. 2153, 2160 (1998).

⁷ Staff of H. Comm. on Energy & Commerce, 99th Cong., 2d Sess., *Petitions, Memorials and Other Documents Submitted for the Consideration of Congress*, March 4, 1789 to December 14, 1795, at 6.

⁸ K.K. DuVivier, *The United States as a Democratic Ideal? International Lessons in Referendum Democracy*, 79 TEMP. L. REV. 821, 827–29 (2006).

shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances.”). By 1844, however, the efficacy of petitions had dwindled. The United States Congress adopted the practice of referring them to committees for consideration, where the petitions would sit and gather dust until forgotten.⁹

Fast-forward to the late 1800s and early 1900s, when direct citizen participation in lawmaking resurged to counteract special interest groups’ control of the states’ legislatures. During this period, states began incorporating three types of ballot reform measures into their constitutions: initiatives (i.e., where voters affirmatively propose and adopt legislation), referendums (i.e., where voters accept or reject already-enacted legislation), and recalls (i.e., where voters may remove elected officials from office outside of the regularly scheduled election cycle).¹⁰

These direct-democracy measures are inextricably intertwined with First Amendment principles of speech and petition. *See Diaz v. Bd. of Cty. Comm'rs of*

⁹ DuVivier, *supra*, at 829–830.

¹⁰ *Id.* at 831. *See also* Thomas Goebel, *A Government by the People: Direct Democracy in America, 1890-1940* at 4 (2002) (direct democracy movement was viewed as response to concern that special interest groups had undue influence on legislatures); Jay M. Zitter, *Constitutionality of State and Local Recall Provisions*, 13 A.L.R.6th 661 (originally published in 2006) (discussing recall measures); BALLOTPEDIA, *Laws governing local ballot measures* (explaining voter initiative and referendum powers), available at: https://ballotpedia.org/Laws_governing_local_ballot_measures (last visited May 1, 2022).

Dade Cty., 502 F. Supp. 190, 193 (S.D. Fla. 1980) (“Citizens have the unquestioned right to petition their governments for redress of what they believe are grievances, and one means of preserving this right is through the procedures of initiative, referendum and recall.”). *Accord Krivanek v. Take Back Tampa Pol. Comm.*, 625 So. 2d 840, 843 (Fla. 1993) (noting that the city charter in question, which afforded “qualified voters” a referendum power to reconsider adopted ordinances, “is a form of democratic expression derived from the First Amendment of the federal constitution”). *See also New Progressive Party v. Hernandez Colon*, 779 F. Supp. 646, 658–59 (D.P.R. 1991) (voter “initiative and popular referendum enjoy First Amendment protection”).

Today, some form of a direct-democracy “check” on representative government is available to citizens in nearly every state.¹¹ The referendum power reserved to the county electorate by Ga. Const. art. IX, § 2, ¶ 1(b)(2) -- which references and therefore must be read in conjunction with ¶ 1(a) -- represents a conservative, narrowly tailored approach to such a “check.” By their plain language, these constitutional provisions authorize public referenda only to amend or repeal “ordinances, resolutions, or regulations,” *id.* at ¶ 1(b)(2), adopted by a

¹¹ James D. Gordon III, *Pre-Election Judicial Review of Initiatives and Referendums*, 64 NOTRE DAME L. REV. 298, 298-299 (1989) (noting that only three states do not authorize either voter initiatives and/or voter referendums at the local level).

county's governing authority "relating to [the county's] property, affairs, and local government for which no provision has been made by general law." *Id.* ¶ 1(a).

Under this cabined approach, Georgian county electors retain only veto power over their county legislators, not the ability to affirmatively propose and adopt county-level legislation. *Contra* Appellant's Brief at 20 (arguing that voters' ability to hold a referendum on "first tier" home rule decisions amounts to "carte blanche legislative power vested in the electorate").

Georgia's narrowly tailored constitutional referendum power further reserves a veto only to the people most directly impacted – i.e., only county electors may vote on whether to uphold or repeal legislative decisions by their own county commissioners. This centralization avoids the "tyranny of the majority" phenomenon that can arise with state-level ballot measures where residents in one part of a state may form a majority yet fail to reflect the interests of state residents elsewhere who will be primarily affected.¹² Thus, contrary to Camden County's alarmist refrain, ¶ 1(b)(2) as read by its plain language and in conjunction with the plain language of ¶ 1(a), provides only the most conservative direct-democracy safety valve for when, as in the case of the Camden County Spaceport, representative government has ceased to function.

¹² See Ivan Gaviria, *Tyranny of the Majority Lani Guinier*, 7 LA RAZA L.J. 180, 181-82 (1994).

B. The referendum power provides voters with a nuanced interim remedy during non-election years

The Georgia Constitution's county-level referendum power provides a nuanced approach to representative democracy by allowing citizens a less drastic alternative to entirely replacing an elected official when citizens are displeased with a single local decision. If voting a county commissioner out of office is the only recourse available to constituents who disagree with a commissioner's vote on an isolated matter or issue, those constituents must either abide by a legislative decision that is not representative of their will or entirely remove an official who they may otherwise believe is doing a good job. Absent the option of a referendum, citizens are forced either to operate as single-issue voters or to abandon redress for a decision they believe to be incorrect, dangerous, amoral, or otherwise improper.

Further, the referendum power reserved to the county electorate in Ga. Const. art. IX, § 2, ¶ 1(b)(2) affords a timelier, and therefore necessary, remedy compared to if voters are required to wait until the next regularly scheduled election to register their dissatisfaction at the ballot box. County commissioners in Camden and throughout Georgia typically serve four-year terms. This means there is a substantial period of time for these elected officials to act with impunity before they are cyclically held to account by voters. And where an incumbent commissioner is running unopposed, a regularly scheduled election every four years offers county voters no remedy at all.

In comparison, Georgia General Assembly members are subject to ouster for their decisions - including their adoption of “local acts” applicable to a specific county – every two years. *See* Ga. Const. art. III, § 2, ¶5. Thus, county voters have greater need of an interim remedy (i.e., referendum power) with respect to their commissioners, who are elected every four years, than with respect to their General Assembly legislators who are elected every two. As amicus Eichhorn explains, “[I]f public officials are doing something of disastrous, possibly irreparable, consequence to the public interest, you have to act. You can’t wait four years and then cast your vote. That is too long to go before taking corrective measures.” Exhibit B, ¶ 15.

II. Legislative checks-and-balances support that the county-level referendum power applies to “first-tier” legislative actions

Camden County’s constricted interpretation of Ga. Const. art. IX, § 2, ¶ 1(b)(2) makes little sense from the perspective of legislative checks-and-balances. The great bulk of county legislation impacting residents’ lives will be of the “first-tier” variety carried out by the county governing authority, and not by the General Assembly through “local acts.” This is because the Georgia Constitution reserves to county governing authorities the power to collect taxes, oversee elections, conduct courts of law, file official records, maintain roads, and provide for the welfare of citizens through, without limitation: police and fire protection; garbage and solid waste collection and disposal; public health facilities and services; parks,

recreational areas, facilities, and programs; water utilities; building codes; public housing; public transportation; libraries; air quality control; and planning and zoning.¹³ Laws creating, implementing, and governing these numerous aspects of civic life will be promulgated, not at the state level, but by the county's elected commissioners pursuant to their "first-tier" home rule power. Hence, most of the issues that impact county residents' daily life and well-being, and about which they may have strong enough views to organize a referendum, are governed by first-tier, county-enacted laws, not "local acts" passed by the Georgia General Assembly.

Process-wise, there is also much greater need for a voter referendum "check" on "first-tier" county governance than on the General Assembly's adoption of "local acts" applicable to a particular county. Passage of a "local act" or "local bill" by the 236-member General Assembly involves a multi-step, bicameral process that is notably absent from a county governing authority's enactment of law. Specifically, passage of a "local act" at the state level requires notice of the proposed bill by publication in the county newspaper; assignment of the bill to a committee in the initiating chamber; a favorable committee report on the bill; passage by a majority vote in both chambers comprised, respectively, of

¹³ Vyas, Ameer, *Georgia's County Governments*, NEW GEORGIA ENCYCLOPEDIA (last modified Oct 31, 2018), available at <https://www.georgiaencyclopedia.org/articles/counties-cities-neighborhoods/georgias-county-governments/> (last visited May 1, 2022).

180 House of Representatives members and 56 Senate members; and signature by the Governor.¹⁴ Additional rules and procedures apply when the “local act” by the General Assembly involves county redistricting.¹⁵

In contrast, each of Georgia’s 159 counties is governed by a county board of commissioners that ranges from seven members¹⁶ to as few as one member,¹⁷ with the majority of counties falling somewhere in the middle. Camden County, for example, has a five-member Board of Commissioners.¹⁸ Thus, a one-time vote of as few as three out of five commissioners -- or in sole-commissioner counties, the decision of one person -- can significantly and even drastically effect the conditions under which county voters reside.

¹⁴ See Ga. Const., art. III, § 5, ¶¶ VIII & IX; O.C.G.A § 28-1-14; Senate Rules 3-2.2, House Rule 18.1. GEORGIANS FOR A HEALTHY FUTURE, *Complete Overview of the Legislative Process* (stating number of members in each chamber), available at <https://healthyfuturega.org/get-involved/learn/how-the-legislature-works/complete-overview-of-the-legislative-process/> (last visited May 1, 2022).

¹⁵ See O.C.G.A § 28-1-14.1.

¹⁶ For instance, both Fulton and DeKalb Counties have seven county commissioners. See Fulton County, Board of Commissioners, available at: <https://www.fultoncountyga.gov/commissioners> (last visited May 1, 2022); DeKalb County Georgia, County Commissioners, available at: <https://www.dekalbcountyga.gov/board-commissioners/board-commissioners> (last visited May 1, 2022).

¹⁷ Georgia’s Barrow, Bleckley, Chatooga, Murray, Pulaski, Towns, and Union Counties each have a sole county commissioner. See Association of County Commissioners of Georgia (ACCG), *Georgia County Information*, available at: https://www.accg.org/about_counties2.php (last visited May 1, 2022).

¹⁸ Camden County Georgia, Commissioners, available at: <https://www.camdencountyga.gov/80/Commissioners> (last visited May 1, 2022).

In the case before this Court, the five-member Camden County Board of Commissioners voted 3-to-2 to authorize the creation of the contested Spaceport Authority,¹⁹ which aims to build a rocket launch site that critics warn could result in fiery debris raining down onto about 40 private homes on Cumberland Island as well as the island's federally protected wilderness area which is visited by tens of thousands of tourists each year.²⁰ Meanwhile, the Camden County Board of Commissioners have already approved more than \$10 million in taxpayer money being spent on the Spaceport project with no guarantee that, if it is ever built, it will attract even a single customer.²¹ These ill-considered, yet highly impactful, decisions made by as few as a three out of five Camden County Commissioners is precisely the type of situation where a voter referendum "check" makes sense -- far more so than when the majority of a 236-member General Assembly passes a "local act," which then must be approved by the Governor.

¹⁹ See Mary Landers, "Bill introduced to sunset spaceport Camden Authority," *The Current* (Mar. 22, 2022), available at: <https://thecurrentga.org/2022/03/22/bill-introduced-to-sunset-spaceport-camden-authority/> (last visited May 1, 2022).

²⁰ See "Coastal Georgia voters reject plan for spaceport, but the fight may continue in court," *The Associated Press* (last updated Mar. 9, 2022), available at: <https://www.wjcl.com/article/spaceport-camden-georgia-voters/39382504#> (last visited May 1, 2022).

²¹ *Id.* (noting that "more than half of licensed U.S. spaceports have never held a licensed launch" and that additional Federal Aviation Association safety and environmental evaluations will be needed before any rockets could be launched in Camden County).

With legislative governance in every Georgia county entrusted to the hands of so few county commissioners, and with scant procedural guardrails in place to avoid their adoption of unwise or unpopular “ordinances, resolutions, or regulations,” Ga. Const., art. IX, § 2, ¶ 1(a), the need for a voter referendum “check” is significantly more acute at the “first-tier” county home-rule level than at the General Assembly “local acts” level. This Court should therefore adopt the plain-language reading of ¶¶ 1(a) & (b)(2) endorsed by the Intervenors and uphold the constitutionality of the March 8, 2022 voter referendum repealing the County Commissioners’ resolutions to purchase land for their unpopular Spaceport. *Blum v. Schrader*, 281 Ga. 238, 239–40 (2006) (“In understanding a constitutional provision, we must be mindful that [c]onstitutions are the result of popular will, and their words are to be understood ordinarily in the sense they convey to the popular mind.”) (internal quotation and citation omitted); *Lowry v. McDuffie*, 269 Ga. 202, 206(3) (1998) (“[T]his Court must honor the plain and unambiguous meaning of a constitutional provision.”).

Finally, were this Court to entertain notions of ambiguity in the constitutional text, the First Amendment’s requirement to protect core political speech weighs heavily in favor of supporting -- not invalidating -- voters’ petition and referendum power over “first-tier” county enactments. *See Meyer v. Grant*, 486 U.S. 414, 421–22 (1988) (“The circulation of [a voter] initiative petition of

necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change. . . Thus, the circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’”); *James v. Valtierra*, 402 U.S. 137, 142–143 (1971) (extolling virtues of an affirmative voter referendum because it “ensures that all the people of a community will have a voice in a decision which may lead to large expenditures of local governmental funds . . . It gives them a voice in decisions that will affect the future development of their own community.”). *See generally* *McCutcheon v. Fed. Election Comm’n*, 572 U.S. 185, 209 (2014) (“[T]he First Amendment requires us to err on the side of protecting political speech rather than suppressing it.”) (quoting *Fed. Election Comm’n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 457 (2007)).

III. Camden County’s “parade of horrors” is a fiction

The County direly theorizes that adopting the Intervenors’ interpretation of ¶ 1(b)(2) would result in such frequent voter referendums that it would prevent county boards of commissioners from governing. Yet the County points to no evidence from Georgia or any of the other myriad states with referendum ballot measures to support this hypothesis. Rather, the historically scarce use of county referendums in Georgia, as well as the first-hand experiences of amici Goff and Eichhorn, reflect that the referendum power is not easily operationalized. Amici

and many others worked for over two years to collect the constitutionally-required number of petition signatures and then to get people out to vote – i.e., canvassing, tabling, talking to people, writing letters to the editor, driving all over the county, and enduring hours and days out in the elements. Goff equates the effort to running a marathon. *See* Exhibit A, ¶ 15. As Eichhorn explains, “you have got to be really agitated to get organized to do it.” Exhibit B, ¶ 13.

Moreover, the Court may safely assume that the drafters of the Georgia Constitution considered the requisite signature percentages set forth in ¶ 1(b)(2) to be a sufficient safeguard against frivolous petitions and referenda. *See* Louis J. Sirico, *The Constitutionality of the Initiative and Referendum*, 65 IOWA L.REV. 637, 659–63 (1980) (“a legislative act or state constitutional provision presumably sets the requirement [for the number of signatures necessary to place an initiative on the ballot] sufficiently high to limit the plebescite’s use to matters in which interest is sufficiently great to justify a check on the representative lawmakers”). *Accord Grant v. Meyer*, 828 F.2d 1446, 1455 (10th Cir. 1987), *aff’d*, 486 U.S. 414 (1988) (constitutional requirement that petition to place a state-wide voter initiative on the ballot include signatures from at least 5% of the registered electors who voted in the previous general election protects the State’s interest in requiring a broad base of popular support for the initiative).

Camden County further contends that the roughly 12% of the County electorate who voted to repeal the Commissioners' decision to purchase land for the Spaceport is too small to be of significance and calls into question the validity of the referendum. However, according to the figures cited at page 12 of the County's brief, a total of 5,782 people voted, constituting 16% of the 34,814 active electors. This is more than double the 7% of registered voters who turned out to vote in the County's 2019 SPLOST initiative, yet the County raised no objection to the validity of that ballot initiative.²² The County's argument here is revealing of the Commissioners' insular and tone-deaf approach to the Spaceport project that led to the referendum in the first place.

In sum, Camden County offers no evidence to support its catastrophizing view that voter referendum power over "first tier" county legislation will impair county authorities' ability to govern. This view is simply incompatible with the facts on the ground, which demonstrate not only the difficulty of implementing the referendum procedure, but also the degree to which the Spaceport is out of step with the will of the electorate. The significant turnout for the March 8, 2022 referendum (16% of registered voters) with 72% of those who voted opposing the purchase of land for the Spaceport, illustrates the need -- in limited circumstances -

²² Hoskinson, *supra*, FN 1. Notably, 7% of registered voters would fall well short of the number required for a constitutional petition for a referendum.

- for an off-cycle ballot measure to correct legislative action by county commissioners who are refusing to engage with or represent the interests of the electorate that put them in office.

CONCLUSION

Camden County’s five Commissioners were elected to represent the people who live in the County. Yet the Commissioners doggedly continued to pursue what residents view as an environmentally damaging and exorbitantly expensive Spaceport project, in persistent defiance of the drumbeat of public opposition. Amici Goff and Eichhorn, and many other County residents, worked tirelessly within available channels of representative government to change the Commissioners’ course, but to no avail. Only at that point – with all other options exhausted – did they resort to the narrow, direct-democracy “check” reserved to them by Ga. Const., art. IX, § 2, ¶¶ 1(a) & (b)(2).

Invalidating this direct-democracy safety valve embedded in our State’s Constitution will strip, not just the residents of Camden County, but the people in all 159 Georgia counties of their ability to hold their county commissioners accountable more than once every four years. While county commissioners are small in number, they wield tremendous power to legislatively affect the lives of their constituents. It is therefore imperative that the language of ¶¶ 1(a) & (b)(2) be taken at face value to mean that county voters, through their petition power, have

the ability to reject commissioners' legislative acts when those acts are contrary to the people's will. Amici therefore urge this Court to reject Camden County's anti-democratic interpretation of ¶¶ 1(a) & (b)(2), adopt the reading set forth by the Intervenors, and affirm the constitutionality of the March 8, 2022 referendum.

Respectfully submitted this 17th day of May, 2022.

/s/Clare R. Norins
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*Thank you to law student Liam Wall for his significant contributions to this brief.

CERTIFICATE OF SERVICE

I have this day caused a true and correct copy of the foregoing **Brief of Amici Curiae Ben Goff, Jacqueline Eichhorn, University of Georgia School of Law First Amendment Clinic, and the Georgia First Amendment Foundation in Support of Intervenors-Appellees James Goodman and Paul A. Harris** to be served on counsel for the Appellees and for Petitioner-Appellant by emailing and also placing a copy of same in the U.S. Mail via first class delivery, postage prepaid, addressed to the following:

<p><u>Counsel for Petitioner-Appellant:</u> John S. Myers John S. Myers, P.C. PO Box 99 Woodbine, Georgia 31569 countyattorney@co.camden.ga.us</p>	<p><u>Counsel for Respondent-Appellee:</u> Kellye C. Moore Walker, Hulbert, Gray & Moore, LLP PO Box 1770 Perry, Georgia 31088 kmoore@whgmlaw.com</p>
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This 17th day of May 2022.

/s/ Clare R. Norins
Clare R. Norins
Georgia Bar No. 575364

Exhibit A

Statement of Interest of Amicus Curiae Ben Goff

Statement of Interest of Ben Goff

1. My name is Ben Goff. I am 77 years old and reside in Camden County, Georgia.

2. I grew up in the south part of Georgia and served in the United States Navy. My only degrees are in hard knocks and dedication. I spent most of my post-military career working in the communications industry for Southern Bell, AT &T, and eventually my own communications technology consulting business. That work took me to Atlanta, Georgia and Charleston, South Carolina.

3. I moved to Camden County twenty-two years ago, thinking it would be my final drum roll. I live in the Harrietts Bluff neighborhood, which is a community dating back to the 1850s. It now has half-a-million-dollar houses across the street from former fishing shacks. Harrietts Bluff is about three or four miles down the road from the Spaceport Camden launch site.

4. I have long been involved in politics and local government. Over the past 50 years, I think I have voted in every election I was eligible for. In making my decisions, I always try to listen to the arguments on both sides. At one point, I ran as a write-in candidate for the Camden County Board of Commissioners just to show people that it did not always have to be the same people running things. Now at my age, I feel it is my responsibility to try to make a difference for the folks coming behind me. I understand that the guy who plants the tree may never sit in its shade, but someone else will.

5. Spaceport Camden was not the focus of my engagement with local government until the last couple years. I was more interested in issues with Camden County's Public Service

Authority and its management of county parks. But I would attend Camden County Board of Commissioners meetings and hear other County residents, including Steve Weinkle, talk about the Spaceport and concerns with the project.

6. My opinion of Spaceport Camden changed after I read *The World of the Salt Marsh* by Charles Seabrook. That book talked about what happened to the environment after the construction of Cape Canaveral's launch site and I worried about what would happen in Camden County. After that I did more research on the Spaceport project, read Steve Weinkle's blogs, and learned about the history of the 1971 explosion at Camden County's Thiokol chemical plant that killed nearly thirty people and injured many others. That plant had been constructed to build rocket launch motors for NASA.

7. I bought copies of *World of the Salt Marsh* off Amazon and gave one to each of the five Camden County Commissioners. I inscribed each copy: "From the citizens of South Point and Harrietts Bluff." One Commissioner told me he read the book but another told me he didn't have time to read it.

8. I believe that the Camden County Commissioners need to reconcile what they are doing with the opinion of the public. Historically it was a two-way street – if you took something to the Commissioners you would get a response. But that doesn't happen now. They let us speak at Board of Commissioners meetings during public comment, but they do not speak back to us or answer any of our questions. When I have tried to approach Commissioners individually at the end of meetings, it's the same story: I cannot get any answers from them. Whether it is about moving picnic tables in the park or the Spaceport, they give the distinct impression that they don't care what the people in the county think.

9. I am not so foolish to think I am right 100% of the time. But I do expect my elected officials to provide a logical explanation for why their idea is better than mine. We can agree to disagree, but elected officials should not ignore their citizens. A while back there was a public meeting where County residents were speaking about their concerns with the Spaceport Authority project. Only one Commissioner bothered to show up. And at one of the last Board of Commissioners meetings I attended, a constituent asked a question and the Commissioner Chairman responded that “we don’t comment back to you.” This pretty much sums up their entire attitude toward the community.

10. I am also frustrated with the way the County Commissioners use consent agendas and executive sessions to make decisions about the Spaceport project with no input from the people who it will directly affect. I understand that there are things the Commissioners have an obligation to discuss in private. But whenever they hold an executive session, they never come back and explain what subject matter was discussed and I don't ever recall anything discussed or mentioned regarding land purchase for the Spaceport. And there is no open discussion at all when a vote is decided using “consent agenda.” The community deserves to know how its money is being spent, especially to the tune of nearly \$11 million dollars. But the Commissioners conduct their meetings in a way that makes sure the public receives as little information as possible.

11. For these reasons, I do not believe the Board of Commissioners meetings have been conducted properly, so I bought copies of *Roberts Rules of Order for Dummies* and gave one to each Commissioner. I have a copy of the book and find it quite handy, but I don’t think they appreciated it.

12. As I understand it, the Georgia Constitution allows citizens to call a referendum if they want to veto a decision of their County Commissioners. I believe that the Spaceport project is a bad idea, and the County should not buy the property to build it. Since the Commissioners won't communicate with us about the project -- they just stonewall our efforts to get any answers about it and yet continue to spend our tax dollars on it -- this petition was our last-resort opportunity for redress. So, I decided to help Steve Weinkle and others collect signatures for the petition. This did not prove to be easy.

13. I like to tell people that I wore out three perfectly good pairs of tennis shoes collecting signatures. That may not actually be true, but I did work very hard at it. I took the petition to County Board of Commissioners meetings to see if other attendees wanted to sign it. Along with other volunteers, I took the petition to festivals and other gatherings in the county where we thought we could reach a large number of people. I've sat in in pouring rain and gale-force winds to collect signatures. I also set up a tent at the corner of I-95 and Harriets Bluff Road one day and stayed there for about six hours. I collected a total of about twenty signed petitions, during that 6 hours. As you can see, the whole process was time-consuming and slow-going.

14. About eighteen months into collecting signatures the COVID-19 pandemic hit and that pretty much shut us down for a while. So, I also tried to push things from a Facebook standpoint. I operate a couple of Facebook pages and would let people know about the petition there.

15. By 2021, we had collected about 2,000 signatures but needed to reach more people, so we sent out mailers to voters in Camden County. It was the mailer that really got us

there. We had over 3,500 signatures when we filed the petition with the probate court. I have never run a physical marathon race, but I suspect the feeling of elation and relief at the finish line would be the same as when we filed the petition and the court certified it and ordered that a referendum election take place. I wasn't physically exhausted, but I was emotionally jubilant that we had finally reached our goal of attaining a public vote on the County's Spaceport land purchase.

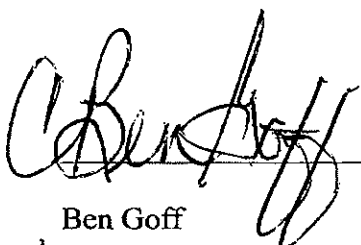
16. I also worked to get out the vote for the referendum election. I own a 1972 Volkswagen Beetle that I drove all over the county with campaign signs attached to the roof rack. I visited some of the outlying precincts like Tarboro and Waverly and met with people in the northern part of the county at the Ponderosa Restaurant.

17. I spent the first day of early voting for the referendum with my VW parked by the county annex building with other volunteers who had signs. I forgot my hat that day and ended up getting sun poisoning and bit by sand gnats. But it was well worth it because the referendum sent a clear message about what the people of the county want: to stop the Spaceport project.

18. When I heard that the Camden County attorney had filed suit against the probate judge over the referendum, I felt absolutely devastated that the "elected" officials of this County would fight the will of the people to this level. It is difficult to understand the County's rationale or its audacity in seeking to invalidate the referendum when 72% of the voters who turned out to cast their ballot expressed that they are against having the Spaceport in their county!

19. It will break my spirit if the Supreme Court overturns the outcome of the referendum. I worked so hard on that petition because I care about democracy and democracy is what this country is all about. What would have happened without the Boston Tea Party?

Representative government means our County Commissioners represent us, the citizens, and not a bunch of private consultants. But representative government in Camden County is broken. I have a right to vote to do something about that and those five Commissioners are treading on my right to vote. If the referendum gets reversed, I may move to Panama. And not Panama City.



 Ben Goff
 Clayton Bennie Goff

5-12-2022
 Date

Exhibit B

Statement of Interest of Amicus Curiae Jacqueline Eichhorn

Statement of Interest Jacqueline "Jackie" Eichhorn

1. My name is Jacqueline Eichhorn, but I go by "Jackie." I am originally from South Carolina and have lived many places. My husband and I bought a vacation home in Camden County in 1997 and we have lived here full time since 1998. We chose Camden County because of its natural beauty and proximity to Cumberland Island National Seashore and the Okefenokee National Wildlife Refuge. As residents, we have both the unique opportunity to enjoy these special places, and the responsibility to protect and preserve them.

2. In 2012, I first read about the possibility of Camden County building a commercial spaceport. There was little in the local paper about it at the time, but I read about it in the Atlanta, Georgia and Jacksonville, Florida papers. No public meetings were held in the County to get community input on the proposed project.

3. In June 2015, I read in the Tribune & Georgian newspaper, our local paper of record, that the Camden County Commissioners had signed a purchase option agreement to buy land from the Union Carbide chemical company to build the spaceport. This was surprising because, again, it happened without any community input.

4. But the option agreement required getting a license from the Federal Aviation Authority (FAA). I figured that once the FAA took a closer look, the project wouldn't proceed and that surely there would be opportunity for public comment before it became truly serious. Unfortunately, that never happened. The only public meetings about the spaceport were held by the FAA and by the U.S. Coastguard; none were held by Camden County that I recall.

5. Meanwhile, the County Commissioners were trying to spin the spaceport project as though it were a continuation of the County's history with the United States space program because Cumberland Island had been considered, but rejected, by NASA for the Apollo program. But the more I read about the spaceport, the more concerned I became about the economic cost of the project, the environmental damage it would do to the County's coastline and to Cumberland Island and Little

Cumberland Island, and how disruptive it would be to the County residents living nearby who would have to be evacuated for launches.

6. In late summer of 2015 I wrote my first of what would be many letters to the editor in The Tribune and Georgian, speaking out against the spaceport. I had never written a letter to the editor before. But since the County was already out-the-gate with a well-organized, taxpayer-funded, and strategized promotion plan, we citizens were desperately playing catch-up. A core group of us who were opposed to the spaceport used the letters to the editor as our best, and really our only, available tool to communicate with and educate a wide variety of local residents about what was going on. We tried to use, and find others to take, every editorial slot available to us.

7. We also participated in every federally organized public meeting that was held. The first was a scoping meeting held by the FAA in the Fall of 2015 where we spoke out. But we did not feel that they answered our questions. All they did was accept our comments.

8. In 2018, the FAA held another meeting regarding the draft Environmental Impact Statement (EIS) for the spaceport project. I learned through my own research that the Spaceport Camden EIS was very similar to the EIS for Elon Musk's private launch site in Boca Chica, Texas in that it used vague language about how the launch site would only be used intermittently and for short periods of time, downplaying its disruptive effect on the local community and environment. Again, a group of us all spoke against the spaceport and we sent in more extensive written comments expressing our opposition. We again got no response.

9. We also could not get any information about what was going on from the County. I attended County Board of Commissioners meetings and spoke during the time provided for citizen comment, but the Commissioners never spoke back to me or anyone else that I know of. They just keep moving the project forward, ignoring the public opposition. As I wrote in another of my letters to the editor published in the March 12, 2020 issue of the Tribune & Georgian, "Our expectations of good faith treatment from elected public servants acting in the public interest have sunk so low we barely

remember it's even possible.”

10. Stymied and stonewalled by our County Commissioners, Steve Weinkle, an active and resourceful participant in our group's efforts, began looking into what we could do to make our voices heard. He found provisions in the Georgia Constitution that allow residents to call a recall election on County Commissioners or hold a referendum to reverse one of their decisions. The number of signatures required to petition for a recall of our County Commissioners seemed insurmountable, but the number of signatures required for a referendum vote on the spaceport seemed more do-able.

11. So once the petition became available, I signed it right away. At the time, the petition seemed like a longshot but everything else had failed so it seemed worth trying. I wrote letters to the editor about the petition and carried copies of it around with me. That way whenever I ran into people who were interested, I could ask them to sign it. Through these efforts, I met more and more people who were just as frustrated as I was with how the County Commissioners were ignoring our concerns about the spaceport. I thought it was a very positive step we could take to hold the County Commissioners accountable. It was very invigorating to be a part of this effort.


12. On March 8, 2022, the day of the special election, I worked at a booth Steve Weinkle had set up at the Camden County Recreation Center. We really had no idea how many people opposed or supported the spaceport project, but I felt hopeful just seeing people finally have the opportunity to voice their opinion on the land purchase option by casting their vote.

13. When I found out the election results were almost three-to-one in our favor, I was elated. I thought, this is really something, we truly did it. It was very difficult to get all of those signatures; you have got to be really agitated to get organized to do it. I was very proud of all the work we put into the petition and so happy that we accomplished what we set out to do.

14. Having referendums is so important, especially for Camden County. The County Commissioners make you feel that the last time you get a say in how your government is run is when you vote for them. After that, you are stuck with what they do for the next four years. That is

ridiculous. As I explained in still another of my letters published in the July 16, 2020 issue of the Tribune and Georgian, "We do have a representative, rather than a direct, form of local government: But does that mean [that] citizen participation is, and should be, limited to a single event - voting for our district's county commissioner once every four years and then stuffing our annoying traps 'til the next election, whatever our 'representatives' are doing - in our name, and on our dime in the meanwhile? We don't elect them to represent themselves, with no interim accountability to citizens."

15. I believe that if public officials are doing something of disastrous, possibly irreparable, consequence to the public interest, you have to act. You can't wait four years and then cast your vote. That is too long to go before taking corrective measures. If the referendum is not available to check the actions of our County Commissioners it will create a gap in accountability that will be very dangerous for our democracy.


Jacqueline "Jackie" Eichhorn

5/11/2022
Date