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Commissioners Shoot for the Moon, Citizens Land Among the Stars: The Supreme Court of Georgia Affirms Citizen Referendum Power in *Camden County v. Sweatt*

J. Bailey Hotard*

I. INTRODUCTION

Georgia citizens possess few direct democratic mechanisms to check the power of their local governments.¹ One available tool is the referendum power proscribed by the Home Rule Provision of the Constitution of the State of Georgia.² Under this provision, county and municipal citizens may petition their local governing authorities for referendum when a legislative decision is largely unpopular.³ Relying on

* Thank you to my mom, Tiffany Mundy, for keeping books in my hands and encouraging me to dream big. Thank you to my dad, Chris Hotard, for teaching me the value of hard work and perseverance. Thank you to my grandparents, Linda and Johnie Mundy, for their endless prayers and support. Thank you to my best friends for encouraging me and keeping me laughing through the good and bad days. Thank you to my community in and around Pine Mountain Valley for cheering me on. Finally, I would like to extend a special thank you to Professor Daisy Hurst Floyd, who challenged me to be the best legal writer I could be from my first day of law school and gave much-needed shape to this Note.

1. See Brief for Ben Goff & Jacqueline Eichhorn, et al., as Amici Curiae Supporting Intervenors-Appellees, *Camden County v. Sweatt*, 315 Ga. 498, 883 S.E.2d 827 (2023), 1, 24–26 (2022) (explaining the need for direct democracy checks on local government powers given the concentration of power within local governing bodies as compared to the Georgia General Assembly).

2. See GA. CONST. art. IX, § 2, para. 1(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 . . . ”).

3. See GA. CONST. art. IX, § 2, para. 1(b)(2). Operational realities of citizen referendum power differ between municipalities and counties, Georgia’s two forms of local government systems. See *infra* Section III.B.

originalism and textualism,⁴ the Supreme Court of Georgia interpreted the Home Rule Provision broadly in *Camden County v. Sweatt*,⁵ a decision that ran counter to a twenty-five-year precedent.⁶ This court's recent interpretation of the Home Rule Provision allows citizens to directly counteract county commissioners' resolutions in addition to local ordinances and municipal charters.⁷

The petition process is by no means simple, but if it is successful, a resulting referendum may have a significant impact within a community.⁸ In 2022, the citizens of Camden County, Georgia leveraged their referendum power to overturn their Board of Commissioners' authorization to construct a rocket launch site near residential homes and federally protected land.⁹ The following year, citizens of DeKalb County, Georgia employed the same tactic to halt the construction of "Cop City," a police and firefighter training center approved by their Board of Commissioners.¹⁰ Though the fate of the training center is not yet determined, the Georgia Supreme Court's approach to local referendum power indicates that the DeKalb referendum may be just as effective as the referendum held in Camden County. Success for Camden and DeKalb County residents could usher in a new era of direct democracy in Georgia.

II. FACTUAL BACKGROUND

Camden County is a coastal community situated in the southeastern corner of Georgia.¹¹ Camden County's Board of Commissioners entered

4. See generally Nels S.D. Peterson, *Principles of Georgia Constitutional Interpretation*, 75 MERCER L. REV. 1 (2023).

5. 315 Ga. 498, 511, 883 S.E.2d 827, 838 (2023).

6. See *Kemp v. Claxton*, 269 Ga. 173, 176, 496 S.E.2d 712, 715 (1998) (holding that referendum power under the Municipal Act must be strictly construed to only change city charters).

7. See *Camden Cnty.*, 315 Ga. at 510, 883 S.E.2d at 837 (2023) ("This language in subparagraph (b)(2) plainly grants repeal and amendment powers to the electorate for "ordinances, resolutions, or regulations adopted pursuant to subparagraph (a)" in addition to "such local acts" as referred to in the introductory text and subparagraph (b)(1).").

8. See Brief for Ben Goff & Jacqueline Eichhorn, et. al., *supra* note 1, at 5 (explaining that citizens vetoed commissioners' authorization of the spaceport).

9. *Id.* at 18 (discussing citizen concerns about the proximity of the spaceport to homes and federally protected land).

10. See R.J. Rico, 'Stop Cop City' petition campaign in limbo after signatures presented to Atlanta officials, AP NEWS, <https://apnews.com/article/atlanta-cop-city-referendum-signatures-4b617a220807b6701c9f46745e4762c4> [<https://perma.cc/5P93-KCZ9>] (last visited Oct. 15, 2023).

11. *About Camden County*, CAMDEN COUNTY GEORGIA, <https://www.co.camden.ga.us/490/About-Camden-County> [<https://perma.cc/FF7J-6YFJ>] (last visited Sept. 4, 2023).

into an Option Agreement¹² with Union Carbide Corporation on June 3, 2015, for the purchase of land on which a rocket launch facility would be built.¹³ Rockets launched from this “spaceport” were projected to travel over Cumberland Island National Seashore,¹⁴ which is a largely undeveloped federal preserve managed by the U.S. Department of the Interior.¹⁵ Critics of the project raised safety and environmental concerns.¹⁶ Citizens feared that “fiery debris” would rain down onto Cumberland Island’s forty residential homes and surrounding protected wilderness.¹⁷ Environmental groups echoed citizens’ anxieties.¹⁸

In response to these ecological and safety concerns, Camden County citizens launched an opposition campaign culminating in a popular

12. An “option agreement” is defined as “[a] share-transfer restriction that commits the shareholder to sell, but not the corporation or other shareholders to buy, the shareholder’s shares at a fixed price when a specified event occurs.” *Option Agreement*, BLACK’S LAW DICTIONARY (11th ed. 2019).

13. See *Camden Cnty.*, 315 Ga. at 499, 883 S.E.2d at 830.

14. See *Coastal Georgia voters reject plan for spaceport, but the fight may continue in court*, THE ASSOCIATED PRESS, <https://www.wjcl.com/article/spaceport-camden-georgia-voters/39382504#> [<https://perma.cc/DKW2-5T2F>] (last visited Sept. 4, 2023) (“Critics, including the National Park Service, say rockets exploding soon after launch could rain fiery debris onto Little Cumberland Island, which has about 40 private homes, and neighboring Cumberland Island, a federally protected wilderness . . .”).

15. See *Cumberland Island*, NATIONAL PARK SERVICE, <https://www.nps.gov/cuis/index.htm> [<https://perma.cc/QB7W-96DM>] (last visited Sept. 4th, 2023) (“Cumberland Island is . . . home to over 9,800 acres of Congressionally designated Wilderness.”).

16. See Stanley Dunlap, *Union Carbide wants out of land deal for coastal spaceport*, THE GEORGIA RECORDER, <https://georgiarecorder.com/brief/union-carbide-wants-out-of-land-deal-for-coastal-spaceport/> [<https://perma.cc/22BX-DAMH>] (last visited Sept. 5, 2023). Proponents of the spaceport initiative believed the enterprise would become a \$450 billion local economic asset by supplying new jobs and promoting scientific and technological research. *Id.*

17. See *Coastal Georgia voters reject plan for spaceport, but the fight may continue in court*, *supra* note 14.

18. See Dunlap, *supra* note 16. The National Park Service feared that rocket explosions could ignite wildfires and contaminate the surrounding ecosystems. *Id.* The nonprofit One Hundred Miles sued Camden County and contested the spaceport licensure, claiming that the Federal Aviation Administration did not properly assess the ecological risks related to rocket explosions. *Id.* The Southern Environmental Law Center (SELC) sued Camden County on behalf of One Hundred Miles. *Id.* In their suit, the SELC alleged that the county concealed requested public records related to Union Carbide’s 2015 Option Agreement. *SELC, One Hundred Miles fight efforts to continue keeping spaceport dangers concealed from the public*, SOUTHERN ENVIRONMENTAL LAW CENTER, <https://www.southernenvironment.org/press-release/selc-one-hundred-miles-fight-efforts-to-continue-keeping-spaceport-dangers-concealed-from-the-public/> [<https://perma.cc/E3ZP-APVN>] (last visited Sept. 5, 2023).

referendum on March 8, 2022.¹⁹ Citizens first employed peaceful protest tactics to dissuade the Board from pursuing spaceport construction.²⁰ When citizens raised their concerns during the Board's public meetings, the citizens felt that their concerns were never adequately addressed.²¹ Only one commissioner attended a citizen-led meeting where opponents voiced their concerns.²² Despite citizen disapproval, the five-member Board authorized spaceport construction in a three-to-two vote.²³

The Board's spaceport authorization did not extinguish citizen opposition efforts.²⁴ While spaceport adversaries attempted to engage with their representatives in the years leading up to construction authorization, they simultaneously labored towards an alternate solution to defeat spaceport development: a referendum vote on the Board's decision.²⁵ For more than two years, Camden County citizens worked to collect the requisite ten percent of registered voter signatures necessary to file a petition seeking a special election for referendum in the Probate Court of Camden County.²⁶ On December 14, 2021, citizens filed their petition for referendum on the Board's spaceport construction authorization.²⁷

The county subsequently filed a caveat to the citizen's petition, alleging that the petition failed to meet the signature requirement due to duplicate and inconsistent voter signatures.²⁸ The probate court ultimately found that the petition met the signature requirement and granted the referendum.²⁹ Before the special election could occur, however, the county filed a Petition for Writ of Prohibition and Other Relief in the Superior Court of Camden County seeking writs of

19. See Brief for Ben Goff & Jacqueline Eichhorn, et. al., *supra* note 1, at 1 (explaining that the referendum occurred after years of citizen organizing); *Camden Cnty.* 315 Ga. at 499, 883 S.E.2d at 830.

20. See Brief for Ben Goff & Jacqueline Eichhorn, et. al., *supra* note 1, at 2. Concerned citizens wrote letters and emails to the Board, approached the commissioners individually, vocalized concerns during the public comment portion of the Board's meetings, and made both written and vocal appeals requesting assistance from the Federal Aviation Authority and U.S. Coast Guard. *Id.* The Board did not constructively engage with citizens about their concerns. *Id.*

21. *Id.* at 2.

22. *Id.*

23. *Id.* at 24.

24. *Id.* at 3–4.

25. *Id.*

26. *Id.* The group collected more than 3,500 signatures in total. *Id.* at 5.

27. See *Camden Cnty.*, 315 Ga. at 499, 883 S.E.2d at 830.

28. *Id.*

29. *Id.*

prohibition³⁰ and mandamus³¹ against the probate court judge for allegedly exceeding the probate court's jurisdiction.³² Additionally, the county "sought a declaratory judgment that the Electors' Petition was invalid, the Referendum Order was a nullity, and the Referendum was unauthorized."³³

On March 4, 2022, the Camden County Superior Court denied the county's petition.³⁴ Four days later, Camden County citizens held their referendum.³⁵ Sixteen percent of Camden County's registered voters assembled at the polls, seventy-two percent of which opposed the spaceport land purchase.³⁶ Based on this majority vote, Camden County's electorate defeated the Board's spaceport construction authorization.³⁷ The Board appealed the referendum vote, asserting that Board resolutions are outside the scope of citizen referendum power granted by Georgia's Home Rule Provision.³⁸ The Supreme Court of Georgia disagreed, holding that the ability to repeal Board resolutions fits squarely within the scope of citizen referendum powers.³⁹

III. LEGAL BACKGROUND

A. *Development of Citizen Referendum Power*

An individual's right to petition was established with the ratification of the First Amendment to the Federal Constitution.⁴⁰ Citizens directly petitioning the government to redress grievances became prominent throughout the late 1800s and early 1900s.⁴¹ Capitalizing on their

30. A "writ of prohibition" is defined as "[a]n extraordinary writ issued by an appellate court to prevent a lower court from exceeding its jurisdiction or to prevent a nonjudicial officer or entity from exercising a power." *Prohibition*, BLACK'S LAW DICTIONARY (11th ed. 2019).

31. A "writ of mandamus" is defined as "[a] writ issued by a court to compel performance of a particular act by a lower court . . . to correct a prior action or failure to act." *Mandamus*, BLACK'S LAW DICTIONARY (11th ed. 2019).

32. *See Camden Cnty.*, 315 Ga. at 500, 883 S.E.2d at 830–31.

33. *Id.* at 500, 883 S.E.2d at 831.

34. *Id.*

35. *Id.*

36. *See* Brief for Ben Goff & Jacqueline Eichhorn, et. al., *supra* note 1, at 1.

37. *Id.*

38. *See Camden Cnty.*, 315 Ga. at 498, 506 883 S.E.2d at 829, 835.

39. *Id.* at 513, 883 S.E.2d at 839.

40. *See* U.S. CONST. amend. I. ("Congress shall make no law . . . abridging . . . the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.")

41. *See* Brief for Ben Goff & Jacqueline Eichhorn, et al., *supra* note 1, at 15.

constitutional rights, citizens used ballot initiatives, recalls, and referenda to counteract the efforts of government interest groups.⁴² Referenda were used to place proposed or enacted legislation on ballots for the electorate to reject or repeal by popular vote.⁴³

States challenged citizens' right to referenda in the early 1900s, claiming these referenda violated states' constitutional guarantee to a republican form of government.⁴⁴ However, in 1912, the Supreme Court of the United States declined to rule on the issue of whether the public's right to referendum impedes upon state sovereignty.⁴⁵ Without a decision from the Supreme Court, states were left to determine for themselves whether to recognize the right to a petition and referendum process.⁴⁶ In the states that do permit the referendum process, the Supreme Court held that state action to unduly restrict petitioners violates the First Amendment.⁴⁷

Some form of direct democracy check on state power, such as the right to referendum, is available in every state.⁴⁸ In Georgia, state court interpretations of state constitutional provisions are not required to comport with federal court interpretations of similar federal constitutional provisions.⁴⁹ Federal jurisprudence related to Georgia constitutional interpretation is persuasive when the history of the state and federal decisions were guided by the "same text, history, and context."⁵⁰ Georgia Home Rule Powers,⁵¹ which encompass this right of

42. *Id.*

43. See Stephen Shapiro, *The Referendum Process in Maryland: Balancing Respect for Representative Government with the Right to Direct Democracy*, 44 U. BALT. L.F. 1, 6 (2013) (explaining how "a competing form of 'direct democracy'" developed in the states at the turn of the 20th century, allowing citizens to place proposed legislation on the ballot for either direct adoption or direct repeal). *Id.* Activists successfully employed this strategy in support of women's suffrage, alcohol prohibition, and the civil rights movement. See Aaron H. Caplan, *Review Essay—the First Amendment's Forgotten Clauses*, 63 J. LEGAL EDUC. 532, 547 (2014).

44. See Shapiro, *supra* note 43, at 8; U.S. Const. art. IV, § 4 ("The United States shall guarantee to every State in this Union a Republican Form of Government . . .").

45. See Shapiro, *supra* note 43, at 8. The Court claimed it lacked jurisdiction over the matter. *Id.*

46. See Shapiro, *supra* note 43, at 8.

47. *Id.*

48. See Brief for Ben Goff & Jacqueline Eichhorn, et. al., *supra* note 1, at 13.

49. See Peterson, *supra* note 4, at 19 (citing *Elliott v. State*, 305 Ga. 179, 187–88 824 S.E.2d 265, 272–73) ("Decisions of the United States Supreme Court interpreting a federal provision are merely persuasive authority for interpreting a Georgia equivalent.")

50. *Id.* (citing *Elliott*, 305 Ga. at 188, 824 S.E.2d at 273).

51. See GA. CONST. art. IX, § 2, para. 1 (authorizing and providing for Home Rule Power in counties); GA. CONST. art. § 2, para. 2 (authorizing Home Rule Power in municipalities); O.C.G.A. § 36-35-1 (1998) (enacting the Municipal Home Rule Act of 1965).

referendum, developed in the 1960s after decades of state lawmakers' staunch resistance to allocating self-governing powers to local government bodies.⁵² Georgia Home Rule Power emanates from two authorities, one legislative and one constitutional.⁵³ This unique history surrounding the development of Georgia Home Rule Powers provided the Georgia Supreme Court with a distinctive context through which it has interpreted local referendum mechanisms in *Camden County*.⁵⁴

B. The Development of Georgia Home Rule Power

Home Rule Power encompasses much more than citizen referendum authority; it defines the separation of powers between state and local governments.⁵⁵ At its core, Home Rule Power is state constitutional authority delegated to local governments to direct specifically enumerated affairs.⁵⁶ There are two categories of Home Rule Power: (1) Legislative Home Rule, wherein the state constitution indirectly grants state legislatures the ability to vest power in local governments, and (2) Constitutional Home Rule, wherein state constitutions directly vest power in local governments.⁵⁷ States adopt variations of these two general systems.⁵⁸ Georgia's Home Rule Power combines both the legislatively and constitutionally enacted systems.⁵⁹

1. Georgia's Municipal Home Rule Act

In 1954, the Georgia electorate voted to constitutionalize a legislative-styled home rule system for municipalities, known as the

52. See R. Perry Sentell, Jr., *The Georgia Home Rule System*, 50 MERCER L. REV. 99, 104 (1998) ("Few jurisdictions equaled Georgia's adamant resistance to the home rule movement. The state's historic devotion to legislative supremacy held strong for many centuries. Eventually, however (some ninety years following Missouri's bold experiment), a rather unique home rule system took its place in the corpus of Georgia local government law.")

53. *Id.* at 106 (describing the legal authorities for Home Rule Power under Georgia law: the Municipal Home Rule Act and the Home Rule Provision of the Georgia Constitution).

54. *Id.* See also Peterson, *supra* note 49 and accompanying text.

55. See Sentell, Jr., *supra* note 52, at 103 ("Indeed, home rule . . . is seen as a full delegation of autonomy to local government . . . [F]rom its inception municipal home rule has been primarily directed at freeing cities from irksome legislative control.") (internal quotations omitted).

56. *Id.* at 104.

57. *Id.* at 103–04 (introducing the municipal and county systems of Home Rule Power).

58. *Id.* at 103 ("There are considerable variations in the constitutional language and home rule statutes.") (internal quotations omitted).

59. *Id.* at 106.

Home Rule Provision of the Georgia Constitution.⁶⁰ In its modern text, the Home Rule Provision for municipalities authorizes that “[t]he [Georgia] General Assembly may provide by law for the self-government of municipalities and to that end is expressly given the authority to delegate its power so that matters pertaining to municipalities may be dealt with without the necessity of action by the General Assembly.”⁶¹ These municipality governing powers were not defined until eleven years later when the General Assembly enacted The Municipal Home Rule Act of 1965 (the Municipal Act).⁶² While the constitutional amendment delegated the General Assembly the power to establish municipal governments, the Municipal Act defined the purpose and scope of municipal Home Rule Powers.⁶³

The Municipal Act delegates specific self-managing powers to municipalities.⁶⁴ Under the Municipal Act, municipalities have two distinct legislative functions.⁶⁵ First, municipalities are authorized 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 are not inconsistent with the Constitution or any charter provision applicable thereto.”⁶⁶ In other words, the Municipal Act vests municipal governing authorities with the power to make laws specific to its jurisdiction.⁶⁷ Second, municipalities are authorized to amend their charters either through properly adopted ordinances or successful voter petitions for a referendum.⁶⁸ Notably, the Municipal Act limits voter referendum power to amending municipal charters.⁶⁹

60. GA. CONST. art. IX, § 2, para. 2. *See* Sentell, Jr., *supra* note 52, at 107.

61. GA. CONST. art. IX, § 2, para. 2.

62. *See* O.C.G.A. § 36-35-1 (1965); Sentell, Jr., *supra* note 52, at 106.

63. *See* Sentell, Jr., *supra* note 52, at 107 (“The Home Rule Act expressly delegates a number of specific powers to municipalities.”).

64. *Sadler v. Nijem*, 251 Ga. 375, 378, 306 S.E.2d 257, 260 (1983) (holding that “[t]hat act was intended to allow municipalities to exercise certain power themselves . . .”).

65. *See* Sentell, *supra* note 52, at 108.

66. O.C.G.A. § 36-35-3(a) (1998).

67. *Id.*

68. *See* O.C.G.A. § 36-35-3(b)(1)–(2) (1998).

69. *See* O.C.G.A. § 36-35-3(b). Charters are founding documents that establish municipal governments and grant municipal governing bodies the power to legislate. *City Charters*, GEORGIA MUNICIPAL ASSOCIATION, <https://www.gacities.com/Resources/GMA-Handbooks-Publications/City-Clerk-Handbook/City-Charters.aspx> [<https://perma.cc/Y2KY-39PH>] (last visited Oct. 7, 2023).

2. Georgia's County Home Rule Provision

In 1966, Georgia's electorate voted to amend the Georgia Constitution and expand Home Rule Power to include county governing bodies,⁷⁰ which are generally known as the county's board of commissioners.⁷¹ Since County Home Rule Power is constitutional, county governing authority emanates directly from the Georgia Constitution rather than from a legislative act.⁷² The County Home Rule Provision of the Georgia Constitution largely mirrors the Municipal Act.⁷³ The County Provision delegates specific law-making powers to each county's board of commissioners.⁷⁴ Counties may "adopt clearly reasonable ordinances, resolutions, or regulations" with restrictions similar to municipalities.⁷⁵ Counties may also "amend or repeal the local acts applicable to its governing authority" through either properly adopted ordinances or successful voter petitions for referendum.⁷⁶ While citizen referendum power in municipalities is reserved for amending municipal charters, referendum power allotted to county citizens is much more broad.⁷⁷ The plain language of the County Home Rule Provision authorizes the electorate to affect *local acts* through referendum.⁷⁸

Paragraph 1(b)(2) of the County Home Rule Provision details the procedure through which an electorate may amend these local acts.⁷⁹ First, the electorate must file a petition that sets out the exact language

70. See Sentell, Jr., *supra* note 52, at 110 ("In order to provide for counties, rather, the legislature was limited to proposing a constitutional amendment. With the voters' ratification of that amendment in 1966, counties drew their home rule status directly from the constitution itself.")

71. See *Georgia's County Governments*, NEW GEORGIA ENCYCLOPEDIA, <https://www.georgiaencyclopedia.org/articles/counties-cities-neighborhoods/georgias-county-governments/> [https://perma.cc/KP2V-J88K] (last visited Oct. 7, 2023) ("In 1868 the state began creating the position of county commissioner to administer the general operations of the county. Today every county has a commissioner; many have a board of commissioners (BOC). As part of general county operations, the BOC must finance county programs and pay the salaries of constitutional officers.")

72. See Sentell, Jr., *supra* note 52, at 110.

73. *Id.*

74. *Id.* at 111.

75. GA. CONST. art. IX, § 2, para. 1(a).

76. GA. CONST. art. IX, § 2, para. 1(b).

77. Compare O.C.G.A. § 36-35-3(b) ("... a municipal corporation may, as an incident of its home rule power, *amend its charter* by following either of the following procedures . . .") with GA. CONST. art. IX, § 2, para. 1(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 . . .") (emphasis added).

78. See GA. CONST. art. IX, § 2, para. 1(b)(2).

79. *Id.*

of the proposed repeal with the county probate court, and that petition must include a predetermined number of signatures that total a certain percentage of the county's registered voters.⁸⁰ The probate judge will then determine whether the petition is valid between ten and sixty days after the petition is filed.⁸¹ If valid, the judge will set the referendum election between sixty and ninety days after the petition was filed.⁸² A referendum vote on an amendment or repeal may only be held once per year.⁸³

Before the election may occur, the probate judge must publish the proposed repeal text in "an official organ of the county once a week for three weeks immediately preceding such date," and the judge must provide a copy of the text to anyone who requests a copy.⁸⁴ After the three-week time period, the county may hold their special election.⁸⁵ If more than one-half of the votes approve of the proposed action, then the measure is given full force and effect.⁸⁶ When voting ends, the probate judge must canvass, declare, and certify the results to the Georgia Secretary of State.⁸⁷ The county in which the vote occurs is responsible for all referendum-related expenses.⁸⁸ Referenda are governed by Georgia's special election rules and regulations in addition to the procedures articulated in the Home Rule Provision.⁸⁹

C. Home Rule Power Development in the Georgia Supreme Court

There are few precedent cases in Georgia jurisprudence providing interpretation for the Home Rule Provision at issue in *Camden County*; therefore, the Georgia Supreme Court's rationale largely rests on constitutional interpretation.⁹⁰ Two cases within the court's jurisprudence provide helpful context for understanding the court's decision in *Camden County*, even though they are adjacent to the issue at hand.⁹¹ This section of this Note will begin with a discussion of the

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. See *Camden Cnty.*, 315 Ga. at 509, 883 S.E.2d at 836.

91. See *Board of Commissioners of Miller County v. Callan*, 290 Ga. 327, 720 S.E.2d 608 (2012); *Kemp*, 269 Ga. 173, 496 S.E.2d 712.

Georgia Supreme Court’s method of constitutional interpretation. Next, this Note turns to *Board of Commissioners of Miller County v. Callan*,⁹² wherein the Georgia Supreme Court defined the proper two-tiered application of County Home Rule Power.⁹³ Finally, this section concludes with *Kemp v. City of Claxton*,⁹⁴ where the Georgia Supreme Court clarified the scope of citizen referendum power within the context of municipalities based on the plain language of the Municipal Act.⁹⁵

1. Originalism and Textualism: The Georgia Supreme Court’s Tools of Constitutional Interpretation

When the Georgia Supreme Court engages in constitutional interpretation, it focuses on determining a provision’s common understanding by employing original public meaning and textualism.⁹⁶ Original public meaning is the school of originalist thought that seeks the common understanding of the provision reached by the public and lawmakers at the time that the provision was adopted into the Georgia Constitution.⁹⁷ Dictionaries published at the time of the provision’s adoption are commonly used by the court to inform its understanding of original public meaning.⁹⁸ Textualism, or the analysis of a statute’s text, structure, and context, also supports the court’s interpretation of the state constitution.⁹⁹ The court applied these tools in *Callan*, when it explained how the Home Rule Provision should be interpreted

92. 290 Ga. 327, 720 S.E.2d 608.

93. *Id.* at 328–29, 720 S.E.2d at 610–11.

94. 269 Ga. 173, 496 S.E.2d 712.

95. *Id.* at 175, 496 S.E.2d at 715.

96. Peterson, *supra* note 4, at 4.

97. *See* *Olevik v. State*, 302 Ga. 228, 235, 806 S.E.2d 505, 513 (“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.”); *Elliott*, 305 Ga. 179, 180, 824 S.E.2d at 267–68 (“ . . . legal developments in the United States and specifically in Georgia in the years leading up to and around the time of the adoption of the 1877 Constitution demonstrate that the original public meaning of the 1877 Constitution’s precursor to Paragraph XVI (the “1877 Provision”) did preclude the admission of such evidence.”).

98. *See* *State v. Sass Group, LLC*, 315 Ga. 893, 898, 885 S.E.2d 761, 767 (2023) (“One place to look for ordinary meaning is contemporaneous dictionaries from around the time when the text was adopted.”).

99. *See* *Elliott*, 305 Ga. at 186, 824 S.E.2d at 272 (“When we determine the meaning of a particular word or phrase in a constitutional provision or statute, we consider text in context, not in isolation.”).

generally,¹⁰⁰ and in *Camden County*, in which it delved deeper into the Provision to determine the scope of referendum powers.¹⁰¹

2. *Callan*: Defining the Two-Tiered Authority of the County Home Rule Provision

While *Callan* focused on a citizen-initiated lawsuit against county commissioners rather than a citizen-initiated referendum, the Georgia Supreme Court's rationale illustrates that Home Rule Power operates as a two-tiered system.¹⁰² In *Callan*, Miller County citizens sued their county commissioners, alleging that recently adopted ordinances were unconstitutional.¹⁰³ In its rationale, the court highlighted the two-tiered powers of the County Home Rule Provision and cautioned lower courts against blurring the lines between the powers granted in subsections (a)¹⁰⁴ and (b).¹⁰⁵ Tier one is subsection (a), which empowers the governing authority "to adopt measures for its municipality or county that do not rise to the level of affecting state legislation."¹⁰⁶ In contrast, the second tier, or subsection (b), "constitutes the system's most extensive grant of local 'legislating' power; it comprises, no less, the essence of Georgia's home rule complex."¹⁰⁷ With this power, counties may modify or amend local statutes through adopted ordinances or successful voter referendum.¹⁰⁸

The Superior Court of Miller County applied subsection (a) to the Miller County issue and held that the relevant ordinances were unconstitutional.¹⁰⁹ The Georgia Supreme Court reversed, finding that

100. *See Callan*, 290 Ga. at 328–29, 720 S.E.2d at 610–11.

101. *See Camden Cnty.*, 315 Ga. at 510, 883 S.E.2d at 837.

102. *See Callan*, 290 Ga. at 328–29, 720 S.E.2d at 610 (quoting Sentell, Jr., *supra* note 52, at 133, 136) (explaining that, under the first tier, the local government can make laws for its jurisdiction without impacting existing state law, and under the second tier, local governments may alter existing state law).

103. *See Callan*, 290 Ga. at 329, 720 S.E.2d at 610.

104. GA. CONST. art. IX, § 2, para. 1(a) ("[County commissioners may] 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."). *Id.*

105. GA. CONST. art. IX, § 2, para. 1(b) ("Except as provided in subparagraph (c), 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."). *See Callan*, 290 Ga. at 328–29, 720 S.E.2d at 610.

106. *Callan*, 290 Ga. at 328, 720 S.E.2d at 610 (quoting Sentell, Jr., *supra* note 52, at 133).

107. *Id.* at 329, 720 S.E.2d at 610 (quoting Sentell, Jr., *supra* note 52, at 136).

108. *See Callan*, 290 Ga. at 329, 720 S.E.2d at 610; GA. CONST. art. IX, § 2, para. 1(b).

109. *See Callan*, 290 Ga. at 329, 720 S.E.2d at 611.

because the ordinances at issue amended sections of a local act, subsection (b) provided the proper legal standard to determine their constitutionality.¹¹⁰ The court concluded by reemphasizing the importance of maintaining the distinction between the functions of the two tiers: “First-tier delegations are subservient to local statutes. Second-tier delegations (by either procedure) are employed to change local statutes.”¹¹¹

3. *Kemp*: The Georgia Supreme Court’s Narrow Interpretation of Home Rule Citizen Referendum Power within Municipalities

Subsection (b)(2) of the Municipal Act grants citizen referendum power within municipalities.¹¹² In *Kemp*, the Georgia Supreme Court established limits to this referendum power.¹¹³ *Kemp* is distinguishable from *Camden County* on two grounds: first, *Kemp* concerned the Municipal Act, which is a statutory provision rather than a constitutional provision, and second, the court’s rationale relied heavily on legislative intent rather than plain meaning.¹¹⁴ However, *Kemp*’s inclusion in this analysis is important to illuminate the court’s starkly contrasting interpretations of citizen referendum power within a twenty-five-year timespan.¹¹⁵

This conflict between citizens and their local government began when the City of Claxton’s Mayor and City Council issued a resolution to close unreasonably dangerous railroad crossings.¹¹⁶ The plaintiffs sued for injunctive relief, barring railroad crossing closure. The Superior Court of Evans County granted a temporary injunction and set a hearing for the issue of a permanent injunction. Subsequently, the plaintiffs submitted petitions to amend by referendum two prior municipal resolutions. The City Clerk refused to accept their petitions, asserting that subsection (b)(2) only allows citizens to hold referenda on issues relating to the city charter. The plaintiffs amended the complaint to allege that subsection (b)(2) authorized petitions to amend or repeal resolutions, and

110. *Id.*

111. *Id.* (quoting Sentell, Jr., *supra* note 52, at 137).

112. O.C.G.A. § 36-35-3(b)(2).

113. *See Kemp*, 269 Ga. 176–77, 496 S.E.2d 716.

114. *Id.* at 175, 496 S.E.2d at 715 (“The cardinal rule of statutory interpretation is to ascertain the legislative intent . . . Moreover, a statute is to be read as a whole, and the spirit and intent of the legislation prevails over a literal reading of the language.”) (internal citations omitted).

115. *Compare Kemp*, 269 Ga. at 176–77, 496 S.E.2d at 716 (interpreted municipal referendum powers narrowly in 1998) *with Camden Cnty.* 315 Ga. at 511, 883 S.E.2d at 838 (interpreted county referendum power broadly in 2023).

116. *Kemp*, 269 Ga. at 173, 496 S.E.2d at 714.

they also added the City Clerk as a defendant. While the Evans County Superior Court agreed that the plaintiffs possessed the right to petition for referendum under subsection (b)(2), it refused to issue mandamus forcing the City Clerk to accept the petition. The plaintiffs then submitted two petitions for referendum to repeal by popular vote the railroad crossing closure resolution. Again, the City Clerk refused to accept the petitions. The Evans County Superior Court issued a writ of mandamus obliging the City Clerk to accept the petitions.¹¹⁷

Among other issues presented on cross-appeal, the Georgia Supreme Court addressed whether the Evans County Superior Court erred in granting mandamus.¹¹⁸ Because the petitions for referendum affected *resolutions*, the city alleged that citizens had no power of referendum over this matter.¹¹⁹ Rather, the city claimed that citizen referendum power was limited to charter amendments under subsection (b)(2).¹²⁰ The court's rationale was informed by the legislative intent of the Municipal Act and by its textual analysis of subsection (b).¹²¹

Relying on the Municipal Act's legislative intent determined by the court in *Sadler v. Nijem*,¹²² the court held that the Municipal Act delegated charter amending powers to municipality governments with the purpose of relieving the General Assembly of this duty.¹²³ The court's decision was based, in part, on the Act's structure.¹²⁴ In the Municipal Home Rule Act, subsection (b) is "prefaced by a statement that what follows are the methods by which a municipal corporation may 'amend its charter.'"¹²⁵ The court reasoned that subsections (b)(2)'s position underneath the umbrella of the preface statement indicates that citizen referendum may only be used to amend the city charter and not for any other legislative purpose.¹²⁶ With the statutory structure in mind, the court returned to legislative intent and emphasized that the Municipal Act is a delegation of legislating powers to local governing authorities, which are defined as the Mayor and City Council.¹²⁷ Combining legislative intent with statutory structure, the court held that the

117. *Id.* at 173–174, 496 S.E.2d at 714.

118. *Id.* at 174, 496 S.E.2d at 715.

119. *Id.*

120. *Id.*

121. *Id.* at 175–76, 496 S.E.2d at 715–16.

122. 251 Ga. 375, 376, 306 S.E.2d 257, 259 (1983).

123. *Kemp*, 269 Ga. at 175, 496 S.E.2d at 715.

124. *Id.* at 176, 496 S.E.2d at 715.

125. *Id.*

126. *Id.*

127. *Id.* at 176, 496 S.E.2d at 716.

electorate did not have the power to repeal municipal government resolutions by referendum.¹²⁸ The court reversed the superior court's writ of mandamus requiring the City Clerk to accept the citizen petition for referendum.¹²⁹

While the court in *Callan* emphasized the importance of subsection (b) in citizens' rights to redress issues through Home Rule Powers, the court in *Kemp* restricted that power.¹³⁰ Though *Kemp* only addressed citizen referendum power through the Municipal Act, the court's decision implied that the general Home Rule referendum concept should be narrowly construed under Georgia law.¹³¹ The court did not address the issue of citizen referendum power under the County Home Rule Provision until *Camden County v. Sweatt*, twenty-five years after *Kemp*.¹³²

IV. COURT'S RATIONALE

A. Justice McMillian's Majority Opinion

The issue presented in *Camden County*, among others, was whether the County Home Rule Provision's electorate referendum in subsection (b)(2) grants citizens the authority to repeal or amend local government resolutions.¹³³ Justice McMillian delivered the opinion of the Georgia Supreme Court, relying heavily on the text of the County Home Rule Provision.¹³⁴ While *Kemp v. Claxton* was instructive on the referendum issue, the court limited its holding to the municipality context.¹³⁵

The court began by analyzing subsection (a) of the County Home Rule Provision, and determined that the county was well within its power to authorize the Option Agreement with Union Carbide.¹³⁶ For subsection (b), the court abandoned its lens of legislative intent through

128. *Id.*

129. *Id.*

130. *See Callan*, 290 Ga. at 328, 720 S.E.2d at 611; *Kemp*, 269 Ga. at 176, 496 S.E.2d at 716.

131. *See Camden Cnty.*, 315 Ga. at 512–13, 883 S.E.2d at 838–39 (“Nevertheless, we note that in reaching the holding in *Kemp*, this Court dismissed some of the canons of construction we apply in this case, stating, instead, that ‘the spirit and intent of the legislation prevails over a literal reading of the language,’ and ‘[t]he legislative intent will be effectuated even if some language must be eliminated.’”) (quoting *Kemp*, 269 Ga. at 175–76, 496 S.E.2d at 715).

132. *See Camden Cnty.*, 315 Ga. at 511, 883 S.E.2d at 838.

133. *Id.* at 506, 883 S.E.2d at 835.

134. *Id.* at 498, 509, 883 S.E.2d at 829, 836.

135. *Id.* at 512–13, 883 S.E.2d at 838–39.

136. *Id.* at 508, 883 S.E.2d at 836.

which it interpreted the Municipal Home Rule Act in *Kemp* and instead construed subsection (b) according to its plain meaning.¹³⁷ Relying on *McInerney v. McInerney*,¹³⁸ the court set out its analytical framework for constitutional interpretation:

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.¹³⁹

In other words, the court sought to discern and apply the meaning of the Provision as it would have been understood by ordinary Georgians when the Provision was adopted.¹⁴⁰ The court explained that constitutional interpretation is distinguishable from statutory interpretation because the people of Georgia, not the General Assembly, are the “‘makers’ of the Georgia Constitution.”¹⁴¹

Additionally, the court emphasized that a constitutional provision should be read to make its individual parts harmonize and render none of the language superfluous.¹⁴² The court explained that “[i]t is a basic rule of construction that a statute [or constitutional provision] should be construed to make all its parts harmonize and to give a sensible and intelligent effect to each part, as it is not presumed that the [drafters]

137. *Id.*

138. 313 Ga. 462, 464, 870 S.E.2d 721, 724 (2022).

139. *Id.* at 509, 883 S.E.2d at 836 (quoting *McInerney*, 313 Ga. 462, 464, 870 S.E.2d 721, 725) (internal citations omitted).

140. *Camden Cnty.*, 315 Ga. at 509, 883 S.E.2d at 836 (“In other words, we look for the meaning the people understood a provision to have at the time they enacted it.”) (internal quotation and citation omitted).

141. *Id.* (quoting *Olevik*, 302 Ga. at 238, 806 S.E.2d at 515). While the Georgia General Assembly may propose constitutions and their amendments, the people ratify these proposals. See Peterson, *supra* note 4, at 5. Therefore, the people of Georgia, not their lawmakers, are the authority binding citizens of Georgia under these provisions. *Id.* The court’s interpretation comports with “the understanding of the text by reasonable people familiar with its legal context that is important, not whether every citizen understood the particular meanings of a constitutional provision.” *Id.* (internal citation and punctuation omitted).

142. *Camden Cnty.*, 315 Ga. at 509, 883 S.E.2d at 836–37. When the court assesses a provision through the tool of textualism, the context of the provision is an important factor. See Peterson, *supra* note 4, at 7. Context includes the provision’s grammar and punctuation, its structure, and related provisions. *Id.* at 8. Because the text must be read within its context, rather than in isolation, the “[e]stablished rules of constitutional construction prohibit [the court] from any interpretation that would render a word superfluous or meaningless.” *Gwinnett County School District v. Cox*, 289 Ga. 265, 271, 710 S.E.2d 773, 779 (2011).

intended that any part would be without meaning.”¹⁴³ With these analytical tools, the court determined that subsection (b) must be interpreted synonymously with its meaning at the time it was adopted, and it should not be interpreted in isolation from other subsections within the provision.¹⁴⁴

The court then applied its tools of constitutional interpretation in an analysis of subsections (b)(1) and (b)(2).¹⁴⁵ The plain language of subsection (b)(1) outlines the process through which the local governing authority may amend or repeal “[s]uch local acts.”¹⁴⁶ The court focused on the term “such,” relying on the dictionary definition of the word at the time the Provision was enacted: “‘such’ was defined to mean ‘[o]f this kind having [a] particular quality or character specified . . . [S]uch represents the object as already particularized . . . and is a descriptive or relevant word, referring to the last antecedent.’”¹⁴⁷ Based on this definition, the court interpreted “such local acts” to mean “the local acts applicable to its governing authority.”¹⁴⁸

In contrast, subsection (b)(2) authorizes the electorate to repeal or amend “ordinances, resolutions, or regulations adopted pursuant to [subsection] (a)’ in addition to ‘such local acts’” of the local government as set out in subsection (b)(1).¹⁴⁹ The county argued that subsection (b)(2) should be properly interpreted as a coextensive power to subsection (b)(1), an interpretation that would minimize the power of the electorate to petition for referendum regarding “ordinances, resolutions, or regulations adopted pursuant to [subsection] (a).”¹⁵⁰ The court rejected the county’s reading of the Provision because its interpretation would render the constitutional text superfluous, and as a result, distort the text’s original public meaning.¹⁵¹

Moreover, the court rejected the county’s contention that a broad reading of the Provision would lead to an undue burden on the Secretary

143. *Camden Cnty.*, 315 Ga. at 509, 883 S.E.2d at 836–37 (internal citation and punctuation omitted).

144. *See Camden Cnty.*, 315 Ga. at 510, 883 S.E.2d at 837.

145. *Id.*

146. *Id.*

147. *Id.* at 510, 883 S.E.2d at 837 (quoting *Such*, BLACK’S LAW DICTIONARY (4th ed. 1951)). The court determines a provision’s original public meaning by consulting sources elucidating the text’s meaning to the public at the time the provision was adopted. Peterson, *supra* note 4, at 6. Dictionaries used during the time period when the provision was ratified are helpful resources in this endeavor. *Id.*

148. *Camden Cnty.*, 315 Ga. at 510, 883 S.E.2d at 837.

149. *Id.*

150. *Id.* at 510, 883 S.E.2d at 837.

151. *Id.*

of State and would cause a stagnant legislative loop between citizens and their local government.¹⁵² The county asserted that under a broad interpretation, subsection (g) of the County Home Rule Provision¹⁵³ requires the Secretary of State to publish all such amendments, which unduly burdens the Secretary.¹⁵⁴ The court rejected this argument and reasoned that the plain language of subsection (g) only requires the Secretary of State to publish repeals or amendments to local acts, which are decidedly distinct from ordinances, resolutions, or regulations.¹⁵⁵

Additionally, the court dispelled the theory that its broad interpretation would lead to a cycle of local government gridlock, in which valid acts passed by local governments were subject to endless popular referenda.¹⁵⁶ The court reasoned that elections serve as checks on county commissioners, disincentivizing them from reenacting unpopular legislation.¹⁵⁷ Additionally, subsection (b)(2) inherently limits this cycle since the electorate may only hold a referendum on a specific amendment once per year.¹⁵⁸

Finally, the court acknowledged the tension between its holdings in *Camden County* and *Kemp*.¹⁵⁹ The court's holding in *Camden County* set forth a broader interpretation of referendum Home Rule Powers that contradicted *Kemp*'s holding that the Powers should be narrowly construed.¹⁶⁰ Instead of overruling *Kemp*, the court determined that *Kemp* did not control its analysis because, in *Camden County*, a constitutional provision was at issue, not a legislative act.¹⁶¹ According to the court, the two Home Rule Powers are "completely separate legal

152. *Id.* at 511, 883 S.E.2d at 837–38.

153. The County Home Rule Provision provides:

No amendment or revision of any local act made pursuant to subparagraph (b) of this section shall become effective until a copy of such amendment or revision, a copy of the required notice of publication, and an affidavit of a duly authorized representative of the newspaper in which such notice was published to the effect that said notice has been published as provided in said subparagraph has been filed with the Secretary of State. The Secretary of State shall provide for the publication and distribution of all such amendments and revisions at least annually.

GA CONST. art. IX, § 2, para. 1(g).

154. *See Camden Cnty.*, 315 Ga. at 510, 883 S.E.2d at 838.

155. *Id.* at 510, 883 S.E.2d at 838.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.* at 512, 883 S.E.2d at 838–39.

provision[s].”¹⁶² Ultimately, the court affirmed the electorate’s successful referendum vote to repeal the County Commissioners’ spaceport building authorization.¹⁶³ Notably, the court acknowledged that it erred in reaching *Kemp*’s holding by relying on the Municipal Act’s legislative intent rather than the original public meaning and the superfluidity canon.¹⁶⁴

B. Justice Bethel’s Concurring Opinion

Justice Bethel, joined by Chief Justice Boggs, concurred dubitante.¹⁶⁵ While Justice Bethel agreed that the court properly interpreted subsection (b)(2), he argued that the faulty construction of the Provision was “decidedly unhelpful.”¹⁶⁶ Justice Bethel noted that the distinct inclusion of broader areas of local government decisions for which citizens may hold a referendum in subsection (b)(2) confused the limited “local acts” boundary set out in the introductory paragraph of subsection (b).¹⁶⁷ Further, Justice Bethel addressed the confusion surrounding subsection (b)(2)(g), which requires the referendum certification to be filed with the Secretary of State but does not indicate the scope of the secretary’s duty upon receiving the certification.¹⁶⁸ Finally, while Justice Bethel agreed that the majority’s interpretation of the Provision was proper, he argued that the court’s holding departed from the court’s prior ruling in *Kemp*.¹⁶⁹ Given the broader grant of referendum power now afforded to citizens under the court’s holding, Justice Bethel expressed concern that this direct democracy authority could empower interest groups with limited political support to assert a plethora of referenda as a means to thwart the will of the governing majority.¹⁷⁰

162. *Id.*

163. *Id.* at 512–13, 883 S.E.2d at 839.

164. *Id.*

165. The term dubitante “indicat[es] that the judge doubted a legal point but was unwilling to state that it was wrong.” *Dubitante*, BLACK’S LAW DICTIONARY (11th ed. 2019). *Camden Cnty.*, 315 Ga. at 517, 520, 883 S.E.2d at 842, 843 (Bethel, J., concurring dubitante).

166. *Camden Cnty.*, 315 Ga. at 517, 883 S.E.2d at 842 (Bethel, J., concurring dubitante).

167. *Id.* at 518–19, 883 S.E.2d at 842 (Bethel, J., concurring dubitante).

168. *Id.* at 519, 883 S.E.2d at 843 (Bethel, J., concurring dubitante).

169. *Id.* at 519–20, 883 S.E.2d at 843 (Bethel, J., concurring dubitante).

170. *Id.* at 520, 883 S.E.2d at 843 (Bethel, J., concurring dubitante).

V. IMPLICATIONS

A. Returning Power to the People

The Georgia Supreme Court's decision in *Camden County v. Sweatt* affirmed an important check on local government powers.¹⁷¹ In Georgia, the local government lawmaking process is much less rigorous than the General Assembly's process at the state level.¹⁷² State legislation must pass through bicameral legislative chambers in a 236-member General Assembly.¹⁷³ Citizen interests are expressed by a broad swath of representatives, which ensures more refined legislation.¹⁷⁴ By contrast, the legislative process at the county level is much more direct.¹⁷⁵ Generally, a small group of county commissioners enact local legislation in a one-time vote.¹⁷⁶ In Camden County, a body of five county commissioners¹⁷⁷ make legislative decisions affecting 57,013 people.¹⁷⁸ Only three of Camden County's five board members authorized the spaceport construction project,¹⁷⁹ a decision not insignificantly unpopular with the county's citizens from its inception.¹⁸⁰ By leveraging their referendum power provided by the Georgia Constitution, citizens of Camden County were successful in protecting their local community from an environmental and safety hazard.

Citizen referendum power allows Georgia communities to assert their interests when community leaders are unresponsive to local concerns.¹⁸¹ Although Justice Bethel's concurrence speculated that upholding this broad referendum power could harmfully impede local government representatives' decision-making authority,¹⁸² this fear is unfounded

171. *Id.* at 510, 883 S.E.2d at 838 (Bethel, J., concurring dubitante).

172. *See* Brief for Ben Goff & Jacqueline Eichhorn, et. al., *supra* note 1, 22 ("Process-wise, there is also much greater need for a voter referendum "check" on "first-tier" county governance than on the Georgia General Assembly's adoption of "local acts" applicable to a particular county.").

173. *Id.*

174. *Id.*

175. *Id.* at 23–24.

176. *Id.* at 24.

177. *Id.*

178. *See Quick Facts Camden County, Georgia*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/camdencountygeorgia/PST045222> [<https://perma.cc/5DTX-5YS5>] (last visited Sept. 9, 2023).

179. *See* Brief for Ben Goff & Jacqueline Eichhorn, et. al., *supra* note 1, at 24.

180. *Id.* at 3–4.

181. *Id.* at 18.

182. *See Camden Cnty.*, 315 Ga. at 520, 883 S.E.2d at 843 (Bethel, J., concurring dubitante) ("I worry that a considerable minority group or groups within a community will

given the complexity of the referendum process. For example, Camden citizens spent two years collecting the requisite ten percent of voter signatures required just to petition the court for a referendum.¹⁸³ Should a petition for referendum succeed, then at least one-half of the votes must be in favor of the proposal.¹⁸⁴ If the vote fails, then citizens are barred from petitioning for a referendum on the issue for one year.¹⁸⁵ Given the amount of time and effort required to petition for a referendum, and the Home Rule Provision's limitation barring efforts for one year if the measure fails, local referenda cannot operationally displace local governing bodies' authority. Notably, Camden County's citizens resorted to the referendum process only after their local representatives refused to authentically hear and address citizens' concerns.¹⁸⁶ The Georgia Supreme Court's decision in *Camden County* serves as a reminder to local governing bodies that they are elected representatives of the people, and as such, their actions should reflect the will of the people rather than their own desires.

B. Current Litigation on Local Referendum Power

Modeling the Camden County approach, residents of DeKalb County, Georgia resorted to a Home Rule petition for referendum opposing the construction of a police and firefighter training center.¹⁸⁷ Proponents of this 'Stop Cop City' movement will have overcome substantial political resistance by the City of Atlanta to the referendum process if the DeKalb referendum is successful.¹⁸⁸ In July 2023, the United States District Court for the Northern District of Georgia ordered that the City of Atlanta could not restrict petition circulators to residents of DeKalb County.¹⁸⁹ The district court reasoned that limiting petitioners to

be empowered to regularly subject their local community to the expense of a series of referenda as a means of either protest or in an attempt to thwart the will of a fatigued majority in a low turnout election. I hope I am wrong.”).

183. See Brief for Ben Goff & Jacqueline Eichhorn, et. al., *supra* note 1, at 4–5.

184. See GA. CONST. art. IX, § 2, para. 1(b)(2).

185. See GA. CONST. art. IX, § 2, para. 1(b)(2).

186. See Brief for Ben Goff & Jacqueline Eichhorn, et. al., *supra* note 1, at 2–3.

187. See Rico, *supra* note 10. Opponents have protested Cop City out of concern that its construction would degrade a historically significant forest and its mission would further militarize police operations in the area. See Brentin Mock, *Atlanta's 'Stop Cop City' Neighbors Have No Voting Rights to Stop It*, BLOOMBERG, <https://www.bloomberg.com/news/features/2023-10-04/-cop-city-referendum-aims-to-repeal-planned-atlanta-police-training-center> [https://perma.cc/3BBR-YKB3] (last visited Nov. 6, 2023).

188. See Rico, *supra* note 10.

189. See Jozsef Papp & Jeremy Redmon, *Judge issues order in favor of Atlanta public safety training center opponents*, ATLANTA-J. CONST., <https://www.ajc.com/news/crime/>

in-county residents unconstitutionally restricted core political speech.¹⁹⁰ The district court's order gave citizens sixty days to collect around 70,000 opponent signatures.¹⁹¹ After organizers submitted their petition with 116,000 signatures, officials claimed that organizers missed their August 21, 2023 deadline, even though the district court extended the deadline to September 1, 2023.¹⁹² Currently, organizers and DeKalb city officials await a ruling from the United States Court of Appeals for the Eleventh Circuit to determine whether the district court's deadline extension was lawful.¹⁹³

If, in the wake of *Camden County*, the Eleventh Circuit follows the lead of the Georgia Supreme Court in adopting a broad view of citizen referendum power, then the court may affirm the district court's deadline extension and the referendum petition process.¹⁹⁴ Even though the training center largely affects residents of the unincorporated section of DeKalb County—who are therefore unable to vote in the referendum—petitioners were still able to collect well over the threshold of required resident signatures in under sixty days.¹⁹⁵ That impressive effort indicates the unpopularity of this measure.

The Georgia Supreme Court's decision in *Camden County* reinforces the important principle of local self-government rooted in the Georgia Constitution's unique text. Under the court's interpretation of the Home Rule Provision, if commissioners are unwilling to consider and act upon opponents' concerns, then popular referenda are available as a peaceful method of recourse. With referenda, a community may maintain a sense of self-determination in deciding whether to implement largely controversial measures, such as rocket launch facilities near federally

dekalb-residents-allowed-to-collect-referendum-signatures-60-day-clock-restarted/KNZEJPCPXBG3PARQKLP47QQDI/ [https://perma.cc/EDG4-NPT6] (last visited Oct. 15, 2023).

190. *Id.* See generally *Chandler v. City of Arvada, Colorado*, 292 F.3d 1236, 1243–44 (10th Cir. 2002) (“Even still, the Ordinance is not narrowly tailored to meet the City’s compelling interest in policing its petition process. Ordinance No. 3590 is substantially broader than necessary to ensure the petition process’ integrity and is therefore unconstitutional. The City could achieve its interest without wholly banning nonresidents from circulating petitions in Arvada.”).

191. See Papp & Redmon, *supra* note 189.

192. See Mock, *supra* note 187.

193. See Rico, *supra* note 10.

194. See *Camden Cnty.*, 315 Ga. at 510, 883 S.E.2d at 837 (“This language in subparagraph (b) (2) plainly grants repeal and amendment powers to the electorate for “ordinances, resolutions, or regulations adopted pursuant to subparagraph (a)” in addition to “such local acts” as referred to in the introductory text and subparagraph (b) (1).”).

195. See Mock, *supra* note 187.

protected lands¹⁹⁶ or law enforcement training centers near residential neighborhoods.¹⁹⁷

196. See Brief for Ben Goff & Jacqueline Eichhorn, et. al., *supra* note 1, at 8.

197. See Mock, *supra* note 187.