

**GEORGIA'S CONSTITUTION AND GOVERNMENT**  
**6<sup>th</sup> edition**

Arnold Fleischmann  
University of Georgia

and

Carol Pierannunzi  
Kennesaw State University

## Introduction

Colleges and universities across the United States offer numerous courses on American government and politics. Many of them cover only the national government despite the ways that state and local governments affect the daily lives of most U.S. citizens. These activities range from basic local services such as streets, water, and fire protection to state support for public schools and universities. State and local governments spent \$1.5 trillion in 2003, less than the federal government's \$2.1 trillion, but still a significant amount. Moreover, while the federal government had 2.7 million civilian employees in 2002, state governments employed 5 million workers; local governments such as cities, counties, and school districts had another 13.3 million employees.<sup>1</sup>

Georgia is among the states requiring students to know something about state and local government. Specifically, the legislature has passed a law requiring graduates of public colleges and universities to demonstrate proficiency with both the United States and Georgia constitutions. This monograph is intended to assist students in satisfying that requirement.

# 1. The U.S. Constitution and Federalism

Constitutions are important because they establish the basic “rules of the game” for any political system. They specify the authority of government, distribute power among institutions and participants in the political system, and establish fundamental procedures for conducting public business and protecting rights. Just as drawing up or changing the rules can affect the outcome of a game, individuals and groups battle over constitutions, which can help determine who wins or loses politically.

When it was ratified in 1789, the United States Constitution included federalism as one of its most important elements. Federalism is a type of political system that gives certain powers to the national government, others to the states, and some to both levels of government. This differs from a unitary system such as in Great Britain or France, where all authority rests with the national government, which can distribute it to local or regional governments. Federalism also stands in contrast to a confederation, where all power is in the hands of the individual states, and the national government has only as much power as the states give to it. The United States used such a system during 1781-1788 under the Articles of Confederation, as did the Confederate States of America. More recently, confederations were tried following the break-up of the former national governments in the Soviet Union and Yugoslavia.

The American federal system is not static; in fact, it has changed significantly over the years. Below, we will discuss four key features that have had a major influence on the way federalism has developed. Three of these are found in the U.S. Constitution: the principle of national supremacy, the 10<sup>th</sup> Amendment, and the 14<sup>th</sup> Amendment. The last feature, state constitutions, is covered in Part 2.

## **National Supremacy**

The U.S. Constitution's stability is due in large part to its broad grants of power and its reinterpretation in response to changing conditions. Article 1, section 8 grants Congress a series of "enumerated powers" such as taxing, spending, declaring war, and regulating interstate commerce. It also permits Congress to do whatever is “necessary and proper” to exercise the enumerated powers. This language is referred to as the “elastic clause” because of its flexible grant of authority. Article 6 reinforces the power of the national government by declaring that the Constitution and federal law are “the supreme law of the land.” This so-called supremacy clause thus identifies the U.S. Constitution as the ultimate authority whenever there is a need to resolve a dispute between the national government and the states.

In an 1819 case, *McCulloch v. Maryland*, the U.S. Supreme Court adopted a broad view of the national government’s powers when it decided that the elastic clause allowed Congress to exercise “implied powers” not mentioned explicitly in the U.S. Constitution but that could be inferred from the enumerated powers. The supremacy clause and implied powers have been cornerstones for the expansion of the national government’s powers. Congress occasionally has turned programs over to states, as with changes in welfare laws during the 1990s, and has imposed new requirements and costs on them, as under the No Child Left Behind Act adopted in 2002.

## **The 10<sup>th</sup> Amendment**

The constitutions, laws, and policies of the states cannot contradict the U.S. Constitution. Thus, federalism allows states many opportunities to develop in their own way, but it always holds out the possibility that the national government may act to promote uniformity for the country. Much of the debate over ratification of the U.S. Constitution focused on claims that the national government would be too powerful. This concern was reflected in proposals to add twelve amendments in 1789. Ten of the proposed changes were ratified by the states in 1791 and are commonly referred to as the Bill of Rights.

The 10<sup>th</sup> Amendment reads:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The amendment grants the states “reserved powers,” but it does not define them. As one might expect, this has produced conflicts between the national and state governments, many of which have had to be resolved by the U.S. Supreme Court. For much of the period from the 1890s through the mid-1930s, for instance, the Court restricted efforts by Congress to enhance the power of the federal government. Since then, the power of the national government has grown, although some recent court cases have favored the states.

### **The 14<sup>th</sup> Amendment**

The national government’s power over the states was strengthened by the 1868 addition of the 14th Amendment to the U.S. Constitution. One of three amendments designed to end slavery and grant rights to blacks after the Civil War, the 14<sup>th</sup> states in part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This language essentially restates the fundamental principle of dual citizenship: Americans are citizens of both the nation and their state, and they are governed by the constitutions of both governments. The U.S. Constitution guarantees minimum rights to citizens that may not be violated by the states. The states, however, may grant broader rights to their citizens than are guaranteed by the U.S. Constitution.

The 14<sup>th</sup> Amendment has had an interesting and controversial history. The U.S. Supreme Court generally has defined the amendment’s somewhat vague guarantees in terms of other provisions found in the U.S. Constitution. Since 1925, the Court has employed a process known as “selective incorporation” through which it incorporates into the meaning of the 14<sup>th</sup> Amendment the protections offered by the Bill of Rights. It does this selectively, that is, by applying these guarantees to the states on a case-by-case basis. Congress, too, has used the 14<sup>th</sup> Amendment in support of laws that restrict the power of state and local governments.

## 2. State Constitutions

States adopt their constitutions within the context of national supremacy; enumerated, implied, and reserved powers; dual citizenship; and the provisions of the 10<sup>th</sup> and 14<sup>th</sup> Amendments. Many state constitutions are modeled after the U.S. Constitution. Because state constitutions generally do not include implied powers, they tend to be more detailed and restrictive in defining the powers of government. State constitutions often include policies that seemingly could be decided by passing laws, as with Georgia's lottery. Putting such decisions in constitutions makes it harder for opponents to change them.

States also possess "police power," namely, the ability to promote public health, safety, morals, or general welfare. The police power is among the "reserved powers" in the 10<sup>th</sup> Amendment to the U.S. Constitution. Police powers are often delegated by states to local governments, which are covered in great detail in state constitutions, but are not mentioned at all in the U.S. Constitution.

### Basic Differences in State Constitutions

Unlike the U.S. Constitution, which has been amended only 27 times, state constitutions are amended frequently, often to make narrow policy changes. Numerous amendments, provisions about local governments, and the lack of implied powers are major reasons that many state constitutions are so long, in contrast to the 8,700 words in the U.S. Constitution.

Table 1 indicates the number, length, and amendments for each state constitution. Georgia is noteworthy in two ways. First, it has had ten constitutions, second only to Louisiana. Second, Georgia's current constitution took effect in 1983, making it among the second youngest. Only Rhode Island can be considered to have a newer constitution, following the 1986 adoption of a revised version of its 1842 constitution.

**Table 1**  
**State Constitutions as of January 1, 2005**

State	Number of Constitutions	Estimated Number of Words	Number of Amendments
Alabama	6	340,136	766
Alaska	1	15,988	29
Arizona	1	28,876	136
Arkansas	5	59,500	91
California	2	54,645	513
Colorado	1	74,522	145
Connecticut	4	17,256	29
Delaware	4	19,000	138 <sup>a</sup>
Florida	6	51,456	104
Georgia	10	39,526	63
Hawaii	1	20,774	104

Idaho	1	24,232	117	
Illinois	4	16,510	11	
Indiana	2	10,379	46	
Iowa	2	12,616	52	
Kansas	1	12,296	92	
Kentucky	4	23,911	41	
Louisiana	11	54,112	129	
Maine	1	16,276	169	
Maryland	4	46,600	218	
Massachusetts	1	36,700	120	
Michigan	4	34,659	25	
Minnesota	1	11,547	118	
Mississippi	4	24,323	123	
Missouri	4	42,600	105	
Montana	2	13,145	30	
Nebraska	2	20,048	222	
Nevada	1	31,377	132	
New Hampshire	2	9,200	143	
New Jersey	3	22,956	36	
New Mexico	1	27,200	151	
New York	4	51,700	216	
North Carolina	3	16,532	34	
North Dakota	1	19,130	145	
Ohio	2	48,521	161	
Oklahoma	1	74,075	171	
Oregon	1	54,083	238	
Pennsylvania	5	27,711	30	
Rhode Island	3	10,908	8	
South Carolina	7	22,300	485	
South Dakota	1	27,675	212	
Tennessee	3	13,300	36	
Texas	5	90,000	432	
Utah	1	11,000	106	
Vermont	3	10,286	53	
Virginia	6	21,319	40	
Washington	1	33,564	95	
West Virginia	2	26,000	71	
Wisconsin	1	14,392	133	Wyoming

<sup>a</sup>Amendments are not subject to voter approval.

Source: *The Book of the States: 2005 Edition*, pp. 10-11.

---

### **Amending State Constitutions**

The states vary in the methods used to amend their constitutions (see Table 2). Seventeen states require only a majority in their legislatures to submit a proposed amendment to voters; others are more restrictive. Georgia is among the 20 states requiring a two-thirds vote by its legislature. Some states face the obstacle of getting an amendment approved in two legislative sessions before it can be submitted to voters. Four states, but not Georgia, also limit the number of amendments submitted to the voters at one election.

In terms of voter approval, 39 states require that a majority vote “yes” on an amendment for it to be ratified. A few states require more than a simple majority, e.g., a two-thirds vote in New Hampshire. Some require a simple majority on most amendments, but larger majorities for certain types of amendments, as with a two-thirds requirement in Florida to approve new taxes or fees. Other states require approval by a majority of those voting in an election, not just those voting on the amendment. The latter procedure can be especially difficult when people vote for highly visible offices like governor but skip proposed amendments. In such cases, not voting on the amendment is the same as voting “no.”

The Georgia legislature can ask the state’s voters to create a convention to amend or replace the constitution. The General Assembly also can propose amendments if they are approved by a two-thirds vote in each legislative – a procedure like that at the national level. The governor has no formal role in this process, but may be influential in recommending amendments and mobilizing public opinion before voters go to the polls. It is also worth noting that Georgia is not among the 18 states whose constitutions allow amendments through the initiative process, in which voters circulate petitions to place proposed amendments on the ballot for voters to ratify or reject in a statewide referendum.

The U.S. Constitution requires ratification of amendments by legislatures or conventions in three-fourths of the states. In contrast, the Georgia Constitution requires ratification by a majority of the voters casting ballots on the proposed amendment. Such proposals are voted upon in the next statewide general election after being submitted to the electorate by the General Assembly (November of even-numbered years).

During 2004, 33 states considered a total of 113 constitutional amendments of statewide applicability, of which 81 (72 percent) were adopted. Thirty-two of the proposed amendments dealt with government finance, taxation, and debt. Voters in 11 states considered 31 initiatives placed on the ballot by petition and approved 17 (55 percent).<sup>ii</sup>

**Table 2**  
**Amending State Constitutions Through Their Legislatures<sup>a</sup>**  
**(Method in Georgia Marked with ✓)**

Procedure	Approval Required	Number of States
Vote in Legislature	Majority	18
	2/3	19 ✓
	3/5	9
	Other	4 <sup>b</sup>
Number of Legislative Sessions	One	38 ✓
	Two	12

Voter Approval Majority on Amendment	44 <sup>c</sup> ✓
Majority in Election	3
Other	3 <sup>d</sup>

<sup>a</sup>Eighteen states also allow their citizens to use the initiative process to place amendments on the ballot.

<sup>b</sup>Includes 3 states that require larger majorities if passed in one session, but only a majority if passed in two legislative sessions.

<sup>c</sup>Includes 5 states with different majorities for certain types of constitutional changes.

<sup>d</sup>Includes Delaware's constitution is amended by a two-thirds vote in two sessions of the legislature and does not require voter approval in a referendum.

Source: *The Book of the States: 2005 Edition*, pp. 12-14.

---



### 3. Constitutional Development in Georgia<sup>iii</sup>

Each of Georgia's ten constitutions can be considered a political response to some conflict, problem, or crisis. Replacing any state's constitution is a rare event, however. Amending a constitution is much more common. Both types of change, however, have produced long and often complicated documents. Such changes have also been linked to politics.

#### Politics and State Constitutions

Unlike the U.S. Constitution, most state constitutions include a wide range of very specific policies. Of course, legislatures normally enact policies by passing laws. Why "clutter up" state constitutions rather than limiting them to more fundamental issues? At least three reasons stand out: efforts to gain political advantage, state court decisions, and the requirements of the national government. Georgia's constitution has numerous examples of these processes.

**Efforts to Gain Political Advantage.** Many policies in state constitutions result from efforts by groups to gain a strategic advantage over their political opponents. If a group is able to get its position on an issue included in a state's constitution, it becomes much more difficult to change the policy. This is really a matter of taking advantage of the "rules of the game" by forcing the opposition to get its own amendment passed rather than simply getting a law enacted. Amendments that have added policies to Georgia's constitution deal with earmarking, tax breaks, morality issues, and limitations on decision making.

Like many state constitutions, Georgia's "earmarks" certain funds (identifies revenue sources that must be spent for designated purposes) that could benefit specific interests. The most significant are motor fuel taxes, which Article 3 requires to be spent "for all activities incident to providing and maintaining an adequate system of public roads and bridges" and for grants to counties. Moreover, this money goes for these purposes "regardless of whether the General Assembly enacts a general appropriations Act."<sup>iv</sup> Thus, the Constitution provides those interested in highway construction with a guaranteed source of funds.

In other cases, the Constitution merely permits the earmarking of funds.<sup>v</sup> For instance, the General Assembly can use taxes on alcoholic beverages for programs related to alcohol and drug abuse. The legislature is also allowed to create a variety of trust funds for programs ranging from prevention of child abuse to promotion of certain crops. The 1992 amendment creating the state lottery requires that net proceeds (after expenses and prizes) go to "educational programs and purposes," with the governor's annual budget including recommendations for using these funds.<sup>vi</sup> An amendment approved by voters in November 1998 further restricted the use of lottery funds.

The Constitution provides special tax treatment to various groups and activities. An example is the taxation of timber, one of Georgia's major industries. An amendment approved by voters in 1990 requires that timber be taxed at fair market value only at the time of its harvest or sale.<sup>vii</sup> Previously, it was taxed annually at market value. This change produced a major drop in property taxes for some counties and school districts. The Constitution also requires that certain agricultural land be assessed at 75 percent of its value<sup>viii</sup> and exempts part of the value of a disabled veteran's home from property taxes.<sup>ix</sup> Other sections of the Constitution authorize rather than require the General Assembly to provide certain types of tax preferences,

as with a 1988 amendment that applies to property on a historic register and a 1992 amendment that permits special treatment for heavy motor vehicles owned by nonresidents.<sup>x</sup>

Various groups often attempt to use state constitutions to establish their position on controversial social issues. This happened with the U.S. Constitution when the 18<sup>th</sup> Amendment was added in 1919 to ban the sale of alcohol. It was repealed, however, by the 21<sup>st</sup> Amendment in 1933. Similar provisions exist in the Georgia Constitution. The 1983 Constitution retained the prohibition against whipping as a punishment for a crime out of fear that the General Assembly might pass bills permitting whipping in schools or prisons.<sup>xi</sup> The 1983 Constitution, like all of its predecessors since 1868, prohibited lotteries. After being elected governor in 1990, Zell Miller convinced the General Assembly to submit a proposed amendment to voters to create state-run lotteries whose proceeds would be spent on education.

That amendment was ratified by a narrow majority in November 1992 following a vigorous campaign. In 2004, Georgia voters were asked by the legislature to vote on amendment that would define marriage as the “union of man and woman.” Even though Georgia already had a law banning the practice, the legislature voted to submit an amendment on the matter, which passed in every Georgia county and carried by 76-24% statewide.

Constitutions can also specify who gets to participate in key decisions, as well as limit the discretion of government agencies. For example, Article 4 creates six state boards and commissions, and Article 8 creates two more for education. The Constitution also establishes important political ties between the State Transportation Board and the General Assembly, thereby reducing the power of the executive branch over highways. The Georgia Constitution also empowers certain interests through residency requirements, as with membership from each congressional district on certain boards and commissions and the requirement that at least one member of the Board of Natural Resources be from one of six coastal counties.<sup>xii</sup> An example of constitutional limits on the discretion of government agencies is the requirement that veterans be given a preference in state civil service employment.<sup>xiii</sup>

**State Court Decisions.** A second reason for including policies in a constitution is to respond to a state court decision. For example, the Georgia Supreme Court might hold that a state law or an action by a local government violates the Georgia Constitution. Almost the only way to undo the court's action is to amend the state constitution. A 1994 amendment permits local governments to prohibit alcohol sales at clubs with nude dancing. This was a way to get around a Georgia Supreme Court ruling that nude dancing was expressive conduct protected by the Georgia and U.S. constitutions. Alcohol sales are not constitutionally protected, so regulating them is a way to try to drive nude dancing clubs out of business, which was subsequently considered allowable under the Georgia Constitution.<sup>xiv</sup>

Several decisions by the Georgia Supreme Court during the 1980s created confusion about sovereign immunity (the ability of citizens to sue the state or its local governments). As a result, an amendment was ratified in 1990 that attempted to clarify the matter.<sup>xv</sup> Similarly, the 1983 Constitution added language to clarify a somewhat confusing series of cases regarding the authority of the state, cities, and counties regarding planning and zoning.<sup>xvi</sup>

**National Government Requirements.** A third way in which politics affect state constitutions is to satisfy some requirement of the national government. For example, the Georgia Constitution was amended in 1988 and 1992 to create a trust fund to provide medical services for the poor through the federal Medicaid program. Without the trust fund, money unspent at the end of the budgetary year would have to go to the state's general fund and could

be used for any purpose, as specified elsewhere in the Constitution.<sup>xvii</sup> With the trust fund, the unspent money can be carried over to the next year to pay for medical care. Another example can be found in Article 3, which is written in order to satisfy federal court decisions about how legislative districts must be drawn.

### **A Brief Comparison of the U.S. and Georgia Constitutions**

It is useful at this juncture to compare the current U.S. and Georgia constitutions. Keep in mind, though, that constitutions are not static. Georgia has had ten constitutions, and the current one has been amended more than 60 times during its brief life. In addition, Georgia's constitutions have evolved because of the ways they have been interpreted by the courts.

**Similarities.** The most obvious similarity between Georgia and the national government is the presence of a bill of rights in each constitution. These guarantees were added as the first ten amendments to the U.S. Constitution, but the bill of rights is included prominently in Georgia's constitution as the first article. Both governments adopt separation of powers with distinct legislative, executive, and judicial branches. The president and Georgia's governor have substantial power to appoint officials and veto bills, although there are some important differences discussed below. Both the U.S. Congress and the Georgia General Assembly are bicameral, and each calls its two chambers the senate and house of representatives. Both governments allow judicial review (the power of courts to declare acts unconstitutional). Georgia courts are given this power in the state constitution,<sup>xviii</sup> while this authority at the federal level was laid down in 1803 by the Supreme Court itself in the case of *Marbury v. Madison*.<sup>xix</sup>

**Differences.** Perhaps the most visible difference between the two constitutions is how much longer Georgia's is, mainly because it includes many detailed policies. These range from specific taxes to sections on retirement systems, local government services, the state lottery, and even nude dancing.

The two constitutions also include differences in both procedures and the structure of government. One procedural distinction deals with constitutional amendments. Georgia voters must approve all amendments to the state's constitution. There is no comparable role for citizens in amending the U.S. Constitution, where amendments require a two-thirds vote in each house of Congress and then must be ratified by three-fourths of the states, in either their legislature or conventions. Another procedural difference is that the Georgia Constitution requires the state to have a balanced budget, but the U.S. Constitution imposes no such limitation on the federal government. The Georgia Constitution also grants the governor a line-item veto (the ability to kill a specific item in a spending bill), but the U.S. Constitution grants the president no such power over legislation passed by Congress.<sup>xx</sup>

There are striking structural differences among the three branches of governments. Unlike the national government, where judges are nominated by the president subject to Senate confirmation, Georgia elects almost all of its judges on a nonpartisan ballot. In addition, Georgia's attorney general issues advisory opinions, which generally have the force of law unless reversed by a court. There is no comparable process at the national level.

The legislative branches also exhibit some interesting differences. All legislators in Georgia (both the House and the Senate) serve two-year terms and are elected from districts based on population. This contrasts with the national government, where representatives serve two-year terms and senators are elected for six years. Moreover, while members of the U.S.

House are elected from districts based on population, two senators are elected from each state – the same for California and Wyoming – which builds in a bias in favor of less populous states.

The most glaring difference in the two executive branches is the lack of a cabinet system in Georgia. The president has the authority to appoint and fire heads of almost all major federal agencies. In contrast, Georgia's constitution requires that voters elect six department heads. This "plural executive" can make life difficult for a governor, who has limited authority over these independently elected officials, who may not share the same views or political party as the governor. The constitution also requires that several other department heads be chosen by boards and commissions rather than by the governor or the voters.

Perhaps the most noticeable structural difference between Georgia and the national government deals with local government. Georgia's constitution is quite specific about the organization of local governments, the services they can provide, the ways they can raise and spend money, and similar matters. It even limits the maximum number of counties at 159. The U.S. Constitution never mentions local government.

### **Georgia's Previous Constitutions**

In addition to substantive differences, Georgia's constitutions also vary in the methods used to draft and approve them (see Table 3). Seven were written by conventions composed of elected delegates. Two were prepared by bodies whose members were either appointed or included because they held specific offices. The 1861 constitution was the first to be ratified by voters. The Constitution of 1976 resulted from a request by Governor George Busbee to have the Office of Legislative Counsel prepare an article-by-article revision of the Constitution of 1945 for the General Assembly.

**Table 3**  
**Georgia's Ten Constitutions**

Year Implemented	Revision Method <sup>a</sup>	Major Characteristics
1777 <sup>b</sup>	convention	Separation of powers, with most in the hands of the unicameral legislature.
1789 <sup>b</sup>	convention	Bicameral legislature, which chose the governor; no bill of rights.
1798 <sup>b</sup>	convention	Popular election of governor; creation of Supreme Court; greater detail than predecessors.
1861	convention	Long bill of rights; first constitution submitted to voters.
1865	convention	Governor limited to two terms; slavery abolished; Ordinance of Secession repealed; war debt repudiated; some judges made elective.
1868	convention	Authorization of free schools; increased appointment power for governor; debtors' relief.
1877	convention	More restrictions on legislative power; two-year terms for legislators and governor; no gubernatorial succession; most judicial appointments by legislature.
1945	commission	Establishment of lieutenant governorship, new constitutional officers, new boards, state merit system; home rule granted to counties and cities.
1976	Office of Legislative Counsel <sup>c</sup>	Reorganization of much-amended 1945 constitution.
1983	select committee <sup>d</sup>	Streamlining of previous document, with elimination of authorization for local amendments.

<sup>a</sup>Group responsible for proposing new document.

<sup>b</sup>Not submitted to voters for ratification.

<sup>c</sup>State employees, attorneys.

<sup>d</sup>Almost exclusively leaders from the three branches of state government.

Source: Hill, *The Georgia State Constitution*, pp. 3-20.

---

Even before American independence in 1776, Georgians were exerting their independence from England. Colonial Georgia, dependent upon imports for most manufactured items, was hard hit by the various import taxes which had led to colonial protests. Public opinion in Georgia favored independence and citizens mobilized to break with England. The first self-government in Georgia was defined by the Rules and Regulations of 1776. This short and simple document was written hurriedly and adopted before the signing of the Declaration of Independence. All current laws were maintained except those in conflict with actions taken by the Continental Congress. It declared that governmental authority resided within the state, not with the British monarchy, and that power originated from the governed. While this document was not officially a state constitution, many have noted that it served as one. The Declaration of Independence prompted Georgians to establish a more permanent government, and the state adopted the first of its ten constitutions in 1777.

**The Constitution of 1777.** Georgia's first constitution included now familiar ideas such as separation of power among the legislative, executive, and judicial branches of government; proportional representation on the basis of population; and provisions for local self-government. This constitution, like the Rules and Regulations of 1776, included little expressed protection of individual liberties. Despite this omission, Georgia's political culture at the time was more liberal than other states, and the constitution was written to empower the "common man" (although only white males of 21 years who had paid property taxes in the previous year were permitted to vote). The Anglican Church was disestablished, and language in the document was easily understood. Local control of the judiciary was insured by the fact that no courts were established above the county courts.

The transition from the Rules and Regulations of 1776 to a new constitution in 1777 was little noted by citizens. This document governed the state until the demise of the Articles of Confederation. Georgia ratified the U.S. Constitution in January 1788 (the fourth state to do so) and redrafted the state constitution to reflect this monumental change in national government.

**The Constitution of 1789.** The Constitution of 1789 provided for a bicameral legislature. Although there were some accommodations made for representation on the basis of population in the House of Representatives, all legislative districts were drawn within counties, which could have from two to five representatives and one senator. Slaves were counted as three-fifths of a person, in accord with the U.S. Constitution and to meet the demands of landowners seeking to enhance representation for areas with large plantations. The state capital was moved to Louisville from Augusta,<sup>xxi</sup> provisions were included to mandate public education at the county level, and new counties were created to be represented in the legislature. In addition, the constitution authorized the legislature to elect the governor and most other state elected officials except the legislature itself. Restrictions on voting included race, age, residence, and the payment of taxes in the previous year.

**The Constitution of 1798.** The short life of the Constitution of 1789 can be attributed to a scandal over land speculation by legislators. The Constitution of 1798 was written by a

convention and retained much of the language of the previous document. However, it was much longer due to increased detail about the powers of the legislature. As time passed, this constitution was amended to permit more democratic requirements for voting, establish executive offices to handle some of the duties of the legislature, outlaw foreign slave trade, and establish local governments. This constitution proved to be more enduring than its predecessors and was in effect until the formation of the Confederacy in 1861.

**The Constitution of 1861.** Secessionist fever at the start of the Confederacy could hardly allow the state constitution to go untouched. T.R.R. Cobb, the main author of the Confederate Constitution, was also the author of the Georgia Constitution under the Confederacy. The size of the state legislature was reduced by permitting senators to represent more than one county, and the governor's power was increased significantly. Judicial review was institutionalized in this document, and state judgeships were established as elective offices.

The Constitution of 1861 was the first to be submitted to the voters for approval in a referendum. This was also the first Georgia constitution with an extensive list of personal liberties, including freedom of thought and opinion, speech, and the press. Citizens were warned, though, that they would be responsible for "abuses of the liberties" guaranteed to them. Naturally, the Georgia Constitution under the Confederacy included ideals of states' rights.

**The Constitution of 1865.** The Constitution of 1865 was drafted by reluctant Georgians in order to accommodate the demands of Congress for readmission to the Union. Only men who expressed moderate political beliefs before and after the war were permitted to work on the document, which included the abolition of slavery, repudiation of Civil War debt, and repeal of the acts of secession. This repeal was not met with great enthusiasm by the North, which had insisted that the ordinance of secession be declared void. Also absent was enfranchisement of the black population of the state, although this was not as likely to stir animosity in the North since blacks could only vote in six northern states at the time. These omissions put pressure on Georgia to rewrite the constitution just three years later in order to meet the requirements for reentry into the Union. The Constitution of 1865 was viewed largely as the work of northern "carpetbaggers" trying to make quick fortunes in the postwar South, or, worse yet in the eyes of many, "scalawags" (southerners willing to cooperate with Yankees).

**The Constitution of 1868.** When a constitutional convention was called in 1867, it was boycotted by most of Georgia's popular leaders. The state capital, at that time in Milledgeville, refused to accommodate many of the delegates, some of whom were black. Therefore, the convention was held in Atlanta, and the new constitution, perhaps in retaliation for the inhospitable treatment by the city of Milledgeville, specified Atlanta as the capital. The Constitution of 1868 met the requirements of Congress for readmission to the Union and eliminated all debts incurred prior to 1865. Public education was also provided for, to be funded by poll and liquor taxes, although it was some time before this policy actually was implemented. Black citizens were insured equal rights, at least on paper, and property rights for women were upheld. Moreover, some attempts were made to enhance the business climate in order to build a stronger tax base.

Due to the high representation of poor and black citizens at this convention, the Constitution of 1868 was a liberal document for the times, particularly after blacks were seated in the General Assembly in 1870. Overall, the new constitution was widely unpopular due to its

compliance with northern demands, which were symbolized by the presence of northern troops until 1876. It remained a symbol of southern defeat until replaced in 1877.

**The Constitution of 1877.** Georgia's post-Reconstruction constitution was a return to more conservative ideals. It reduced the authority of state officials and shifted power to counties, most of which were rural. Most noteworthy was its not-so-subtle disenfranchisement of blacks and poor whites through the mandate that only those who had paid all back taxes would be eligible to vote. As the Constitution of 1877 was being drafted, factionalism within the ranks of the Democratic party erupted. Many who were sympathetic to old southern culture were reluctant to compromise with those who called for economic development and progressive policies. An agreement was reached to comply with northern demands for reconstruction, as well as demands from more industrialized northern states that the South continue to supply raw materials. This compromise stirred up a faction of the Democratic party labeled Bourbons, who were dedicated to pre-Civil War agrarian economic and social norms, white supremacy, and local and state self-determination. The Republicans found that the compromise left them with little power in Georgia, and it would be quite some time before the Republican party reasserted itself in the state.

The Constitution of 1877 was not well suited to changing conditions. For example, it forbade public borrowing, thereby eliminating the possibility of large-scale improvements in transportation or education financed by the state. The constitution eventually included 301 amendments, many of which were temporary or dealt with local rather than statewide issues. Others made Supreme Court justices elected officials, established juvenile courts and a court of appeals, empowered an elected Public Service Commission to regulate utilities, and modified the boards overseeing education.

This constitution also codified the system of representation under which the six counties with the largest population were to be represented in the lower house of the legislature by three persons each, the next 26 most populous counties by two each, and the remaining counties by one member. This 3-2-1 ratio became the basis for the Democratic party's use of the county-unit system to elect statewide candidates—a custom that became state law in 1917 with passage of the Neill Primary Act.

Under the county-unit system, Democratic candidates for statewide office were chosen in primaries based on county-unit votes, which were similar to the electoral votes used to elect the U.S. president. Each county had twice as many unit votes as it had seats in the Georgia House of Representatives under the 3-2-1 formula. Beginning in 1920, the eight largest counties had six unit votes, the next 30 counties had four unit votes, and the remaining counties had two unit votes. Thus, Fulton County, which had more than 6,000 voters go the polls in 1940, had 6 unit votes; Quitman and Chattahoochee Counties, which each had fewer than 250 votes cast the same year, had 2 unit votes each. A county's unit votes were awarded on a winner-take-all basis, which meant that the candidate finishing first got all the unit votes. Under this system, candidates could concentrate their campaigns in rural areas and could win a primary without getting a majority of the popular vote. In 1940, the 121 counties with 2 unit votes had 43.5 percent of Georgia's population, but 59 percent of the unit votes. In contrast, Georgia's eight most populous counties, with 6 unit votes each, had 30 percent of the state's population but a mere 12 percent of the unit votes. In 1946, Eugene Talmadge finished second in the primary for governor by about 6,000 popular votes. He won the Democratic nomination, however, by besting his opponent 242 to 146 in unit votes.<sup>xxii</sup> The county-unit system remained intact until



1963, when the U.S. Supreme Court held that this underrepresentation of urban areas violated the “equal protection” clause of the 14<sup>th</sup> Amendment.

**The Constitution of 1945.** The Constitution of 1877 lasted until 1945, albeit in much amended form. A 23-member commission appointed by the governor to draft a new constitution was finally created because of dissatisfaction with the 1877 constitution, a careful study of the document in the 1930s, and prodding by Governor Ellis Arnall. The use of a commission rather than an elected convention reflects the governor’s wish to depoliticize the constitution and bring it up to date, as well as the General Assembly’s previous failure to muster the two-thirds vote to call a convention.<sup>xxiii</sup>

The new constitution included limited substantive changes. Its main effect was to condense its heavily amended predecessor. Perhaps the most notable changes were the creation of the office of lieutenant governor and new boards for corrections, state personnel, and veterans services. One contested issue was the ban against governors succeeding themselves, which the General Assembly retained in the draft submitted to the voters. The new constitution also authorized women to serve on juries and gave home rule to local governments, which increased their authority. The document also addressed the controversial issue of the poll tax.

With a turnout of less than 20 percent of those registered, voters approved the document by slightly more than a three-to-two margin following an active campaign on its behalf. Georgia thus became the first state to adopt a constitution proposed by commission rather than by an elected convention. The limits of this constitution emerged quickly. Within three years, the new constitution added its first amendments, with a total of 1,098 amendments proposed between 1946 and 1974. Voters ratified 826, of which 679 (82 percent) were local in nature.

**The Constitution of 1976.** An effort to revise the 1945 constitution occurred during the early 1960s, but a federal court ruling prevented voters from considering it during the 1964 general election. Another attempt died in 1970 when the House but not the Senate approved a document for submission to the electorate.

After assuming office in 1975, Governor George Busbee asked the Office of Legislative Counsel to draft a revision of the 1945 constitution in time for the 1976 election. The proposal included no real changes, but it did reorganize the constitution on an article-by-article basis so that it was easier to understand and interpret. After some revisions by the General Assembly, voters approved the document in November of that year. With no substantive changes in the new constitution, the General Assembly almost immediately set out to consider a more thorough revision, creating the Select Committee on Constitutional Revision during its 1977 session.

### **Georgia’s Current Constitution**

**Adoption.** Georgia’s 1983 constitution was neither easily written nor quickly adopted. In fact, the Constitution of 1983 is a good example of how factionalism can play a role in state politics. Because the 1945 and 1976 constitutions so restricted local governments, cities and counties often were forced to amend the constitution in order to make changes in taxation or municipal codes. Amendments were proposed by the legislature and approved through popular vote, with those proposals affecting the entire state appearing on the statewide ballot and those affecting only one county or city appearing on the ballot only in that jurisdiction.<sup>xxiv</sup> As a result, ballots were brimming with proposed amendments that often irritated voters.

Between 1946 and 1980, Georgians were asked to vote on 1,452 proposed amendments (1,177 of them purely local in nature) and ratified over 1,105. This created an unwieldy document understood by only the most diligent of constitutional students. Voters became so annoyed with the large number of proposals that they began to vote them down. In 1978, the statewide ballot included over 120 proposed changes in the state's constitution, one-third of which failed to pass.<sup>xxv</sup>

By the late 1970s, many were pleased when Governor George Busbee sought the rewriting of the constitution, although Busbee may not have realized the political difficulty of such a task. The proposed constitution was debated for three years by a Select Committee on Constitutional Revision whose members included the governor, lieutenant governor, speaker of the House, attorney general, and eight other elected officials. The Select Committee began work in May 1977 and appointed committees with broader citizen membership to revise individual articles of the constitution for consideration by the General Assembly and the electorate. In November 1978, two articles were submitted to voters, who rejected them.

Subsequent efforts by the Select Committee and the 1980 session of the legislature failed to produce a new constitution. During its 1981 session, though, the General Assembly created a Legislative Overview Committee on Constitutional Revision, with 31 members from each chamber, to work with the Select Committee. These efforts produced a document that was approved in a 1981 special session and modified at the 1982 regular session of the General Assembly before being submitted to the electorate.

Like constitutional revisions generally, this one was quite political. Lobbyists and others representing specific interests were quick to get involved in the process. The 1981 special session was also an expensive one, with one estimate that it cost \$30,000 per day.<sup>xxvi</sup> A confrontation occurred between the Speaker of the House of Representatives, Tom Murphy, and the governor over the powers to be granted to the legislature under the new constitution. This debate was fueled by the fact that governors had built up many informal powers under previous constitutions, including the naming of presiding officers of the House and Senate, as well as most legislative committee and subcommittee chairs. This practice ended with the 1966 election, when the legislature chose Lester Maddox as governor because no candidate got a majority of the popular vote. The General Assembly also organized itself without input from the governor and gained more power in subsequent years. Thus, by the early 1980s, legislators wanted to guard their political gains, but Governor Busbee favored the delegation of some powers to bureaucratic offices and state boards. The governor and the General Assembly also disagreed over taxes and gubernatorial term limits. At one point, Busbee asked legislators to forget the proposal and spend the remaining days of the session on other topics.<sup>xxvii</sup> Agreement was eventually reached, and voters approved the new constitution in November of 1982 by a nearly three-to-one margin. It took effect in July of 1983.

**Major Provisions of the 1983 Constitution.** The new constitution included eleven articles, many of them detailed and complicated. Still, the document was indeed much shorter than its predecessor and was written in simpler and gender-neutral language. Although it can be argued that the new constitution was one of evolution rather than revolution, it included many noteworthy changes:<sup>xxviii</sup>

- ✓ eliminating the requirement that local governments place changes in taxation, municipal codes, and employee compensation on the state ballot;

- ✓ establishing a unified court system, consolidating the duties of justices of the peace and small claims courts into magistrate courts, and strengthening the state Supreme Court;
- ✓ requiring nonpartisan election of state court judges;
- ✓ enhancing the power of the General Assembly to enact laws and authorize the appropriation of taxes;
- ✓ giving the Board of Pardons and Paroles power to stay death sentences;
- ✓ establishing an equal protection clause;
- ✓ reducing the total amount of debt that the state may assume;
- ✓ providing more open-to-the-public committee and legislative meetings; and,
- ✓ incorporating more formal separation of powers between the legislative and executive branches.

It is worth noting that the new constitution did not repeal the long list of local amendments in the old constitution. It simply allowed them to continue in force if approved by the General Assembly or the affected local government and “froze” them by prohibiting the addition of new local amendments.

**Constitutional Amendments.** The Georgia legislature can ask the state’s voters to create a convention to amend or replace the constitution. The General Assembly also can submit proposed amendments to voters by a two-thirds vote in the House and the Senate – a procedure like that at the national level. The governor has no formal role in this process, but may be influential in recommending amendments and mobilizing public opinion. The U.S. Constitution requires ratification of amendments by legislatures or conventions in three-fourths of the states. In contrast, the Georgia Constitution requires ratification by a majority of the voters casting ballots on the proposed amendment. Such proposals are voted upon in the next statewide general election after being submitted to the electorate by the General Assembly (November of even-numbered years).

Despite the relatively young age of the Georgia Constitution, efforts to amend it have become somewhat common, although the number of proposals has not reached the dizzying heights of the previous constitution. There were 83 proposed general amendments on the ballot between 1984 and 2004, and voters approved 63 (76 percent). The total includes at least two proposals each year, with a high of 15 in 1988.

The November 2000 election included seven proposed amendments. The only proposal defeated by voters (52 percent opposed) would have allowed changes in the way marine vessels are taxed. Three amendments were approved to allow benefits for law enforcement officials, firefighters, public school employees, and state highway employees killed or disabled in the line of duty. One allowed members of the General Assembly to be removed from office after conviction for a felony rather than after exhausting all of their appeals. Another amendment raised from five to seven years the amount of time that state court judges must

have been able to practice law before they can begin their judicial service. Finally, voters approved a measure related to property tax relief.

The 2002 election included six proposed amendments. Voters rejected two of these proposals. The first defeated proposal (54% opposed) would have established separate valuation standards and property tax rates for low-income residential developments. The other failed proposal (57% opposed) would have affected tax rates for commercial docksides used in the landing and processing of seafood. Of the four amendments approved by voters, two provided tax incentives for the redevelopment and clean-up of deteriorated or contaminated properties. Another amendment established a program of dog and cat sterilization funded by special license plates. Finally, voters approved a measure to prohibit individuals from holding state office if they have defaulted on their federal, state, or local taxes.

The November 2004 ballot included only two proposed amendments. One was a rather obscure question regarding the jurisdiction of the state supreme court. The other, however, was a contentious measure banning same-sex marriage.

**Table 4**  
**Proposed Amendments to the Georgia Constitution**

Year	Number of Amendments Submitted to Voters	Number Approved	
1984	11	10	
1986	9	8	
1988	15	6	
1990	9	8	
1992	8	7	
1994	6	5	
1996	5	4	
1998	5	3	
2000	7	6	
2002	6	4	
2004	2	2	
TOTAL	83	63	(76%)

Sources: for 1984-1992: Hill, *The Georgia State Constitution*, pp. 20-23; for 1994: *Georgia Laws 1995 Session*, vol. 3, pp. CCCXVII-CCCXIX; for 1996-2004: Georgia Secretary of State Elections Division, "Georgia Election Results" (available [www.sos.state.ga.us/elections/election\\_results/default.htm](http://www.sos.state.ga.us/elections/election_results/default.htm)).

## 4. Georgia's Governmental Institutions

Like most states, Georgia's constitution mirrors the separation of powers adopted by the framers of the U.S. Constitution. Perhaps the most important aspect of the Georgia Constitution is what Melvin Hill calls its status as "a power-limiting document rather than a power-granting document."<sup>xxix</sup> Thus, many provisions specify things that the state of Georgia and its local governments cannot do.

The Georgia Constitution spells out the organization and authority of the legislative branch in Article 3 and the judicial branch in Article 6. Beyond that, the organization of government looks a bit different than at the national level. Executive responsibilities are spread among provisions in Article 4, which covers six boards and commissions, and Article 5, which encompasses the governor, lieutenant governor, and the six elected department heads. Other provisions affecting administration and local government are found in Article 8, which considers Georgia's system of education. The framework for local government is in Article 9, which comprises almost 20 percent of the Constitution.

### The Georgia General Assembly

**Comparisons to Congress and Other State Legislatures.**<sup>xxx</sup> On the surface, there are few differences between the U.S. Congress and Georgia's legislature, which is officially named the Georgia General Assembly. Both are bicameral. The presiding officer of the house of representatives is called the speaker and is chosen by the members, but the leader of the senate (vice president of the United States and the lieutenant governor of Georgia) is elected independently of its members. Unlike Congress, where the entire House and one-third of the Senate are elected every two years, all 236 members of the General Assembly are up for election every two years. The General Assembly also meets for a very limited time each year and lacks the salary and staff support found in Congress.

The Georgia General Assembly has much in common with other state legislatures. Its members are charged with representing the people of their districts, reapportioning legislative seats following the census, enacting laws, adopting taxing and spending measures, overseeing enforcement of current laws, and interceding for constituents. Except for Nebraska, every state legislature is bicameral, elects its members on a partisan basis, and has an upper chamber called the senate. Forty-one states call their lower chamber the house of representatives, and Georgia and 41 other states convene regular legislative sessions annually. The fact that only eight state legislatures still meet biennially reflects the view that meeting once every two years may be too infrequent to keep up with problems in the modern world.

Differences do exist among legislatures, however. Size varies from a low of 49 in Nebraska's unicameral legislature to a high of 424 in the small state of New Hampshire. Georgia, with its 236 members, has the third-largest legislature. For the 49 bicameral legislatures, the average senate has 40 members, as compared to Georgia's 56. The average house of representatives has 109 members, much smaller than the 180 found in the Georgia House.<sup>xxxi</sup>

Qualifications such as minimum age, length of residence, and term limits vary. So do terms of office. Georgia is one of 11 states using only two-year terms. Members of Nebraska's unicameral legislature have terms of four years; four states have four-year terms for both chambers; the remaining 34 states elect their upper chamber to a four-year term and their lower

chamber for two years. Unlike fifteen other states, neither Georgia's constitution nor its laws limit the number of terms that someone can serve in the legislature.<sup>xxxii</sup>

Regular legislative sessions range from off-year limits of 30 calendar days in New Mexico and Virginia and 20 legislative days in Wyoming to unlimited length for annual sessions in 13 states. Georgia is somewhere in the middle, with an annual session of 40 legislative days. Leadership, procedures, and compensation also vary widely among the states.

**Representation.** Georgia's earliest legislatures were based on county representation, initially with at least one representative for each county, which meant that the size of the General Assembly fluctuated over the years. During the 1960s, for example, the House had over 200 members at one point. As population changed and the number of counties grew to 159, the legislature became relatively large, but sparsely populated counties were represented equally with larger ones. Senate districts had three counties, and each seat rotated among its three counties at the end of each term. With each senator serving only one term and then giving way to someone from a neighboring county, power in the legislative branch was concentrated in the House, where members could hold unlimited tenure.<sup>xxxiii</sup>

The Constitution of 1983 restricted the Senate to not more than 56 members, while the House must have at least 180 members (size can be changed by law within these limits). Reapportionment occurs following the U.S. census held every ten years. The General Assembly has substantial flexibility in drawing legislative districts. This authority became more limited beginning in the 1960s, however when federal courts ruled that all representation within state legislatures must be based on population rather than county and Congress adopted the Voting Rights Act.<sup>xxxiv</sup> The practice of rotating Senate seats among counties in a district also ended, which allowed senators to run as incumbents and increased the power of the Senate as a whole.

After the 1990 census, the legislature abandoned multi-member House districts, which elected several representatives within the same district, with candidates required to run for a designated seat. This contrasts with a single-member district, where voters elect only one legislator. For example, District 72 might have two seats and would therefore have twice the population of a single-member district. People running for District 72, Post 1 did not compete with candidates for District 72, Post 2, although the electorate consisted of the same voters. With over 8.2 million residents in 2000, the average Senate district had about 147,000 people living in it, and there were approximately 46,000 resident per House district. During its 2001 session on redistricting, the General Assembly created more than 20 large, multi-member House districts where voters would elect two, three, or four representatives. Subsequent litigation, however, modified the boundaries for seats in both the Senate and the House, which saw the replacement of its multi-member districts with single-member districts.

**Qualifications of Members.** Article 3, section 2 of the Georgia Constitution requires that persons seeking office in the General Assembly be registered voters, U.S. citizens, and Georgia citizens for at least two years. It also requires that representatives live within their districts for at least one year. Those elected to the Senate must be at least 25 years old, while members of the House must be 21 or older. Persons may not simultaneously run for more than one office or in the primaries of two political parties. Also ineligible are persons on active military duty, those who hold other elected or civil offices within the state (unless they resign), and convicted felons.

**Legislative Sessions.** The Georgia General Assembly meets annually in a regular session that begins on the second Monday of January and lasts up to 40 legislative days. These are not calendar days, but days that the General Assembly is in session (not in recess or adjourned). The General Assembly may be called into special session by the governor, who sets the agenda, or by agreement of three-fifths of the membership of each chamber. Special sessions may be called to deal with unexpected crises, such as natural disasters, budgetary shortfalls, or other state emergencies. Special sessions may not last longer than 40 days and generally cannot be used for matters unrelated to the official agenda.<sup>xxxv</sup>

**Legislative Leadership.** When members of the General Assembly arrive in Atlanta for the beginning of a new legislative session, their first priorities include selecting leaders and organizing committees. The Georgia Constitution provides for the selection of presiding officers in each chamber. In the Senate, the lieutenant governor serves as president, just as the vice president of the United States is formally the presiding officer of the U.S. Senate. Thus, the presiding officer of the Senate is chosen by Georgia's voters in a statewide election, although the winner is chosen independently from the governor. It is worth noting that 25 other states (including Nebraska's unicameral legislature) also make the popularly elected lieutenant governor presiding officer of the senate. In the remaining 24 states, the senate chooses its own presiding officer. The Georgia Senate also elects one of its members as president pro tempore should the need arise to replace the presiding officer.

In the House, the representatives elect a speaker from among their members, as do the lower houses in the other 48 bicameral legislatures and the U.S. House of Representatives. In Georgia, House members also elect a speaker pro tempore, as do 25 other states; the other 23 legislatures either have no such position or have their speaker appoint someone.<sup>xxxvi</sup> In the speaker's absence, the speaker pro tempore presides.

**Types of Legislation.** Article 3 of the Georgia Constitution includes several sections detailing the General Assembly's procedures and powers for enacting laws, conducting impeachments, and spending public money. Bills before the General Assembly can be classified as resolutions, general legislation, and local legislation. All currently enforceable statutes are published in the *Official Code of Georgia Annotated*, which is updated periodically to include both new laws and legal opinions on implementation of current law.

Much of what passes through the General Assembly is not intended to be implemented as statute. Some of the items brought up for consideration are intended as statements of legislative opinion and may be enforceable only on the membership of the legislature itself. For example, the legislature may wish to recognize individuals or a sports team, in which case the General Assembly might pass a "resolution" describing the honoree's achievements. Resolutions also might be used to create special committees, to determine compensation for citizens who have been injured or suffered damages by state actions, or to set requirements for legislative staff. The resolution would therefore have little impact on other citizens of the state. It does, however, express the approval of the state government.

Resolutions might be passed to require the General Assembly itself to behave in a specific manner, as with rules of conduct, scheduling, or agreements on budgetary matters. In some cases, resolutions are passed by one chamber to establish rules only for the membership of that body, but joint resolutions require passage through both chambers. Resolutions generally do not require the signature of the governor because they do not require implementation outside

the legislature itself. However, joint resolutions which are enforceable as law do require the governor's signature and may be vetoed.

General legislation has application statewide. Laws regarding election procedures or speed limits on state highways are examples. Local governments may not pass ordinances which contradict general law. Most general legislation intended to change existing law will specify exactly which statutes will be changed, but any new legislation supersedes past legislation.

Local legislation refers to those laws passed by the Georgia General Assembly which apply only to specific cities, counties, or special districts within the state. The General Assembly retains the power to govern localities through the passage of local legislation.<sup>xxxvii</sup> Local legislation may not contradict general legislation and may not be used to change the tenure of particular local officials. It can, however, be used to create or change political boundaries. The passage of local legislation differs in some ways from the passage of general law. Local bills must be preceded by a period of advertisement in which citizens of the jurisdiction concerned are notified of the potential law. This most often occurs in local newspapers.

**Consideration of Bills.** Only members of the General Assembly may introduce legislation, although by custom governors have had members introduce bills on their behalf. Bills generally are written by several persons and may be sponsored by multiple legislators. Bills may be introduced in either chamber of the General Assembly or at the same time in both chambers. One exception is legislation dealing with public revenues or appropriation of public money, which the Constitution requires to begin in the House of Representatives.<sup>xxxviii</sup>

Bills must adhere to a specific format dictated by the Constitution and the rules of each chamber. The title of the bill must relate directly to its content, and bills are constitutionally restricted to no more than one purpose. The Constitution mandates that all general legislation be read three times from the floor on three separate days. Because the title is required to be a summary of intent, reading the title only is substituted for the first reading of the entire bill. A second reading of the bill, which occurs on the second day after introduction, will also be of the title only. The Constitution forbids the introduction of bills which deal with specific individuals or which might limit the constitutional authority of the General Assembly. Population bills (those which apply to jurisdictions of a certain population) are also forbidden, as are bills that would have the effect of limiting business competition or creating monopolies within the state. Local legislation may be voted on after only one reading. The media may follow the passage of a bill, and the Constitution requires that floor action and committee meetings must be "open to the public," but this guarantee is not absolute.<sup>xxxix</sup>

Bills are passed by a simple majority of the entire membership of each chamber, although there are several exceptions to this rule. Tax legislation, proposed amendments to the constitution, veto overrides, punitive action taken against a member of the General Assembly, or motions to change the order of business require two-thirds majorities. Bills which have been rejected once in a legislative session also require a two-thirds majority to be reconsidered. Procedural changes may only require a majority of those members present. Once a bill has achieved a majority vote in one chamber, it must be passed in identical form by a majority vote in the other chamber in order to continue on the path to becoming a law.

**The State Budget.**<sup>xi</sup> The budget is a special type of lawmaking. The Georgia Constitution directs the governor to prepare the state's annual budget and submit it to the General Assembly



during the first five days of the regular legislative session. This leaves the governor with substantial authority in the early stages of budget formation. This is countered, however, by the legislature's virtually unlimited power to change the budget submitted by the governor. The Constitution also requires that the state adopt a balanced budget, something the federal government is not obligated to do. Georgia's governor can exercise a line-item veto in an attempt to remove specific spending without vetoing the entire budget. Like a regular veto, the line-item veto can be overridden by a two-thirds vote of the membership in each chamber of the General Assembly.<sup>xii</sup>

### **The Executive Branch**

One of the most striking differences between the U.S. and Georgia constitutions is the number of elected officials in the executive branch. The most visible in Georgia are the governor and the lieutenant governor. While they may be compared to the U.S. president and vice president, they are not elected together as a team and may represent different views and political parties.

Like the majority of states, Georgia has a plural executive, meaning that voters elect various department heads rather than having them picked by the governor like presidents choose the members of their cabinet. All but six states elect executive branch officials in addition to a governor (see Table 5).<sup>xiii</sup> In fact, voters around the country choose over 500 officials in statewide elections (a number virtually unchanged since the mid-1950s). Some of these officials are required to be elected by state constitutions; others are provided for by law. Their tasks vary significantly. Financial monitoring, for instance, is assigned to elected auditors, comptrollers, and treasurers, as well as appointed officials. Education is also diverse: seven states elect boards to govern public education, while Colorado, Michigan, and Nebraska voters elect the board of regents for their state universities.<sup>xiii</sup>

**The Governor.** Governors are generally the most powerful political figures in their states. Their political clout is based on the formal authority granted in a state's constitution, as well as several other sources of power, including laws, the media, public opinion, ties to political parties and interest groups, and personal characteristics. Professor Thad Beyle has compared the formal power of nation's governors, including their tenure potential, appointment powers, budgetary control, veto power, and the number of separately elected executive officials.<sup>xiv</sup>

The tenure potential (number of consecutive terms permitted for a governor) has been a contentious issue in Georgia's political history. The 1877 constitution limited the governor to two consecutive, two-year terms. A 1941 constitutional amendment provided for a four-year term, but prohibited governors from succeeding themselves in office. That was changed in 1976 to permit successive terms, but the lifetime limit for any governor was also two terms. The Constitution of 1983 permits two consecutive, four-year terms with no lifetime restriction on the time of a governor's service. That earned Georgia's governor a score of 4 on Beyle's 5-point scale for tenure potential. The most powerful tenure potential, which received a score of 5, exists in the nine states where governors face no limit on the number of four-year terms. At the opposite pole is Virginia, which does not allow governors to succeed themselves.<sup>xiv</sup> Unlike the governor, Georgia's other statewide elected officials face no constitutional limit on the number of consecutive terms they can serve, and some have served for decades.

**Table 5**  
**Executive Branch Officials Elected by the Public**

Office	Number of States Electing	Georgia
Governor	50	elected statewide
Lieutenant Governor	42	elected statewide
Attorney General	43	elected statewide
Secretary of State	36	elected statewide
Education Superintendent		14 <sup>a</sup> elected statewide
Agriculture Commissioner		13 elected statewide
Insurance Commissioner	11	elected statewide
Labor Commissioner	5	elected statewide
Utilities Commissioners	7 <sup>b</sup>	5 elected statewide
Treasurer	36	appointed by governor <sup>c</sup>
Auditor	23	chosen by the legislature

<sup>a</sup>Another 8 states elect their boards of education.

<sup>b</sup>As in Georgia, these are multi-member boards regulating matters such as quality and prices for services such as natural gas, telephone, and electricity.

<sup>c</sup>Tasks are performed by the director of finance.

Source: *The Book of the States: 2005 Edition*, pp. 233-238, 350-351.

In terms of appointment power, Beyle classifies Georgia's governor in the weakest category because of limited power in six key areas: health, education, transportation, corrections, public utilities regulation, and welfare. In each of these cases, top administrators are chosen by voters (school superintendent and members of the Public Service Commission) or by boards. Gubernatorial control over boards and commissions is weakened because terms are long and staggered, which means that it can take some time before a governor's appointees are in control. In the case of one board (Transportation), the governor does not even appoint the members – the General Assembly chooses them.

Perhaps the most important appointment power of Georgia governors is their constitutional authority to fill vacancies in the executive and judicial branches without Senate confirmation.<sup>xlvi</sup> In the case of elected positions, the governor picks someone who finishes an unexpired term, thus becoming the incumbent in the next campaign. By law, the governor also can fill vacancies at the local level when an official has been removed temporarily following an indictment.<sup>xlvii</sup>

Beyle's 1-5 scale of budgetary power assigned a value of 1 to a governor who prepared the budget with other officials and faced unlimited legislative ability to amend, while 5 was for a budget prepared by a governor whose legislature was prohibited from increasing it. Like 42 other states, the Georgia governor rated a 3 on budgetary powers: the governor has full responsibility for preparing the budget, but the legislature has unlimited ability to change it.

Using a similar 1-5 scale for veto power, Beyle rated Georgia's governorship a 5, meaning that the governor has both simple and line-item vetoes along with a requirement for a large majority of the legislature to override (two-thirds of the total membership of each chamber). Twenty-three states make it easier to override a gubernatorial veto: six require only a majority of legislators elected, five mandate three-fifths of those elected, and twelve specify three-fifths or two-thirds of those present for the override vote.<sup>xlviii</sup>

The governor's veto power is included in the legislative, not the executive, article of the Georgia Constitution.<sup>xlix</sup> The governor has authority to act on legislation passed by the General Assembly that would have the effect of law, except for changes in the Constitution. If the governor signs a bill, it becomes law on a specified date, usually with the start of the fiscal year on July 1. The governor has six days to act on a bill while the General Assembly is in session. If the General Assembly has adjourned for the session or for more than forty days (like a recess), the governor has forty days after adjournment to act. When vetoing a bill, the governor is required to return it to the chamber where it originated within three days during the session or sixty days after adjournment. Once the General Assembly has received a veto message, the originating chamber may consider the vetoed bill immediately. Those bills vetoed during adjournment can be overridden during the next legislative session, as long as an election has not intervened.

A bill also becomes law if the governor does nothing (neither signs nor vetoes it). If the governor fails to act on a bill, it will become law following a six-day waiting period for bills passed during the first thirty-four days of the legislative session, or following a forty-day waiting period for bills passed during the final six days of the session. Thus, bills may sit on the governor's desk after adjournment of the legislature and become law even if the governor does not sign them.

Georgia is among the 43 states that provide for two types of vetoes, full and line-item. A full veto is a rejection of an entire bill. Line-item vetoes are rejections of specific passages in appropriations bills, which give the governor the power to kill spending for specific projects without having to veto an entire state budget. Reconsideration of bills in which specific funding has been line-item vetoed is not necessary, and the governor's actions officially reduce the appropriation if not overridden. A successful override allows a bill to become law in spite of the governor's veto. If an override fails in either chamber of the Georgia General Assembly, a bill is dead.

**The Plural Executive.** The Georgia Constitution requires voters to elect six department heads in addition to the governor and lieutenant governor. Together, these eight officials are referred to as the state's "elected constitutional officers."<sup>i</sup> Like a majority of states, Georgia elects an attorney general and secretary of state. Georgia is among the few states, however, letting voters pick a state school superintendent and individuals to head departments of agriculture, insurance, and labor.<sup>ii</sup>

The six elected department heads possess power independent of the governor. They do so in part because of the prerogatives of their offices. The attorney general, for instance, exercises great discretion regarding the handling of litigation in which the state is a party and issues opinions on the legality or constitutionality of actions taken by the state.<sup>iii</sup> The insurance and agriculture commissioners have substantial power to regulate certain types of businesses. In addition to the power they derive from being elected separately from the governor, the narrow focus of their offices means that constitutional officers' natural constituencies (for votes and campaign money) are the interests affected most directly by their decisions. In fact, they are

often seen as advocates of the industries they oversee.<sup>liii</sup> Elected department heads may even be in conflict with one another. Thus, despite the image of the governor’s power in Georgia, executive power in the state is dispersed.

Georgia’s elected department heads must have reached the age of 25, been a U.S. citizen for at least ten years, and been a Georgia resident at least four years when they assume office. The attorney general also is required to have had seven years as an active-status member of the State Bar of Georgia, which supervises the legal profession in the state. The Constitution leaves it to the General Assembly to spell out the power and duties of these officers, to determine their salaries, and to fund their agencies.<sup>liv</sup> There is also a procedure under which four of the eight constitutional officers can petition the Georgia Supreme Court to hold a hearing to determine if a constitutional officer is permanently disabled and should be replaced.<sup>lv</sup>

**Constitutional Boards and Commissions.** States commonly assign decision making in certain policy areas to multi-member boards rather than departments headed by a single individual. Georgia is no exception. Eight boards have their authority spelled out in the Georgia Constitution (see Table 6) Others have been created by law or executive order.

The eight boards and commissions required by the Constitution are among the most powerful agencies in Georgia, in part because any changes in their basic authority and membership require a constitutional amendment rather than passage of a law by the General Assembly. Their power is also reflected in the resources they control. In fiscal year 2005, for instance, the University System Board of Regents had a budget of roughly \$3.5 billion, slightly less half of which was state funds. Some funds are earmarked in the Constitution: Article 3 requires that state motor fuel taxes, which were expected to total more than \$634 million in fiscal 2005, must be spent for “an adequate system of public roads and bridges.” That provides substantial power to the Department of Transportation, which had a total budget of more than \$1.6 billion in fiscal 2005.<sup>lvi</sup>

**Table 6**  
**Constitutional Boards and Commissions in Georgia**

Board/Commission	Members	Membership Selection
Public Service	5	Elected statewide on a partisan ballot for six-year terms.
Pardons and Paroles	5	Appointed by the governor to seven-year terms subject to Senate confirmation.
Personnel	5	Appointed by the governor to five-year terms subject to Senate confirmation.
Transportation	13 <sup>a</sup>	One member per congressional district elected by majority vote of General Assembly members whose districts overlap any of the congressional district.

Veterans Services	7	Appointed by the governor to seven-year terms subject to Senate confirmation.
Natural Resources	18 <sup>a</sup>	One member per congressional district and five at large (at least one of whom is from a coastal county) appointed by the governor to seven-year terms subject to Senate confirmation.
Education	13 <sup>a</sup>	One member per congressional district appointed by the governor to seven-year terms subject to Senate confirmation.
Regents	18 <sup>a</sup>	One member per congressional district and five at large appointed by the governor to seven-year terms subject to Senate confirmation.

<sup>a</sup>Membership can vary because it depends on the number of seats that Georgia has in the U.S. House of Representatives, which increased to 13 following the 2000 census and reapportionment.

Source: *Constitution of the State of Georgia*, art. 4 (for the first six boards); art. 8, sect. 2 (State Board of Education); art. 4, sect. 4 (Board of Regents).

---

The Constitution insulates these boards from political pressure to some degree by providing relatively long terms that are staggered. In the case of the State Board of Education and the University System Board of Regents, the governor is specifically prohibited from being a board member. Most constitutional boards and commissions use some geographical representation. Assigning one seat per congressional district has the effect of assuring South Georgia seats on boards that otherwise might be dominated by people from the Atlanta area. It also means that the size of a board can change as Georgia gets additional seats in the U.S. House of Representatives.

The Public Service Commission was originally created by statute in 1879 to regulate railroads. Today it is composed of five members who are elected statewide for staggered, six-year terms and regulates telephone services, utilities such as gas and electricity, communication networks, and transportation such as trucking and rail systems. The State Transportation Board may seem like the essence of pork-barrel politics, with one member chosen from each congressional district by the state legislators whose districts overlap it (and benefit from highway construction). Members of the remaining six boards are appointed by the governor, subject to confirmation by the Senate.

### **The Judicial Branch**

There are essentially 51 legal systems in the United States, one at the federal level and a distinct system in each of the 50 states. Like the federal government and other states, Georgia has an elaborate system of trial and appellate courts (see Figure 1). Trial courts apply laws to the facts in specific cases, as when they render a verdict in a criminal or civil case. Appellate

courts review the actions of trial courts to determine questions of law (whether statutes or constitutional questions were interpreted or applied correctly). Decisions in appellate courts are made by groups of judges with no witnesses or juries. The appellate courts rely on written and oral arguments by the parties in the case being appealed, although they can permit other parties to submit written briefs in support of either side in a case. Unlike the U.S. Constitution, which grants Congress broad authority regarding the legal system, Article 6 of the Georgia Constitution includes substantial detail about the operation of trial and appellate courts, the selection and conduct of judges, the election and performance of district attorneys, and a range of procedures.

The Georgia Constitution requires that state judges be elected, primarily on a nonpartisan ballot. Georgia's district attorneys, who are local officials responsible for criminal prosecutions, also are elected. This is quite different from the national level, where, subject to Senate confirmation, local prosecutors are presidential appointees under the authority of the U.S. Department of Justice, and judges are nominated by the president and can serve for life.

There is some link between Georgia's executive and judicial branches because the governor is permitted to appoint people to vacant or newly created judgeships.<sup>lvii</sup> One study calculated that 66 percent of superior court judgeships between 1968 and mid-1994 were filled by appointment. Because judges are routinely reelected in Georgia and so many vacancies are filled by appointment, judicial selection in Georgia is often seen as a system of gubernatorial selection, as when Governor Sonny Perdue appointed his top legal advisor to the Georgia Supreme Court in 2005.<sup>lviii</sup> Another practice not found at the national level is the ability of the attorney general to issue advisory opinions, which can have the force of law in Georgia unless overturned in court.

**Trial Courts.** Georgia is often characterized as one of the more complicated court systems, in large part because of the many trial courts of limited jurisdiction, some of which operate in only a few cities or counties rather than being uniform throughout the state. The Georgia Constitution grants the General Assembly discretion over the creation, jurisdiction, and operation of the state's courts, but it also requires that each county have at least one superior court, magistrate court, and probate court.<sup>lix</sup>

Superior court is the court of general jurisdiction, hearing a broad range of serious cases. The state is divided for administrative purposes into circuits that vary in population and size. Each county has its own superior court, but judges may handle cases in more than one county within a circuit. Superior courts hear divorces, felonies, most civil disputes, and similar matters. As workloads have increased, the General Assembly has added more judges and circuits.

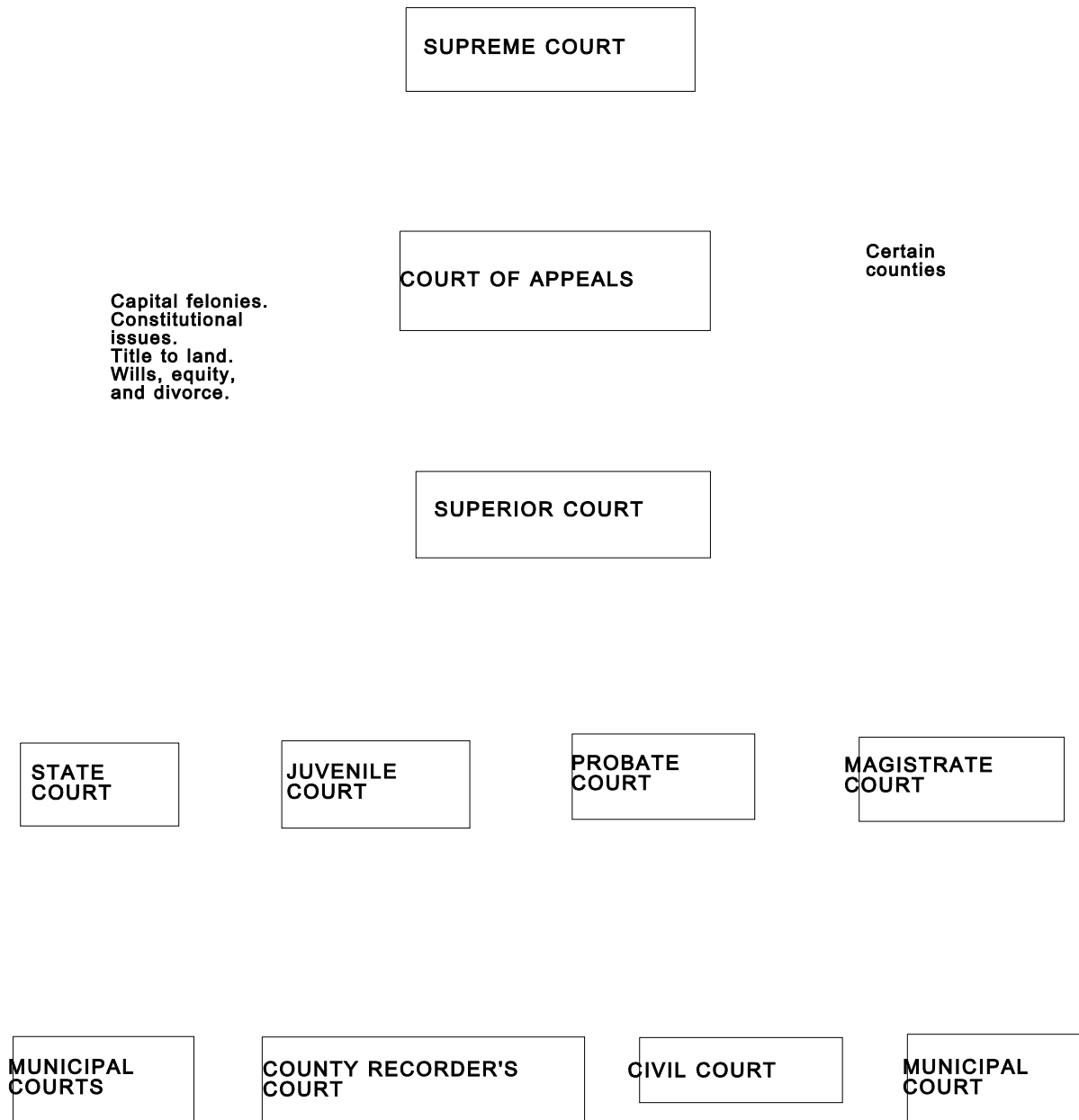
There are also trial courts of limited jurisdiction, which hear specialized cases that are usually less serious than those in courts of general jurisdiction. These are primarily municipal courts dealing with traffic laws, local ordinances, and other misdemeanors. They also process warrants and may conduct preliminary hearings to determine if "probable cause" exists in a criminal case. Local acts passed by the General Assembly set courts' jurisdiction and the requirements for selecting municipal court judges.

The probate court in each county deals with wills, estates, marriage licenses, appointment of guardians, and involuntary hospitalizations of individuals. Probate courts may also issue warrants in some cases. Magistrate courts deal with bail, misdemeanors, small civil complaints, and search and arrest warrants. They also may conduct preliminary hearings.

Some counties have state and juvenile courts. The General Assembly passes local legislation to create state courts, which hear civil cases, traffic violations, or other

misdemeanors. They may also hold preliminary hearings and act on applications to issue warrants. State courts operate in less than half of Georgia's counties and often have part-time judgeships. There may not be a separate juvenile court judge in small counties, where superior court judges often serve in juvenile court.

**Appellate Courts.** Like most states, Georgia has two levels of appellate courts. Cases decided by trial courts may be appealed to the Court of Appeals, except in cases reserved for other courts, such as the Georgia Supreme Court's exclusive jurisdiction over election contests. The Court of Appeals, which was created in 1907 to relieve some of the burden on the Supreme Court, is elected statewide on a nonpartisan basis for staggered, six-year terms. The Court of Appeals can be affected by state law, as when the General Assembly added a tenth



judge in 1996 to help with the increased work load. Another two positions were added in 1999, leaving a court with twelve judges. The court often hears appeals on child custody, worker's compensation, and criminal cases that do not involve the death penalty. Cases appealed to the Court of Appeals are usually heard by a panel of three judges. If one of the judges on a panel dissents, however, a case may be heard by the full Court of Appeals.<sup>lx</sup>

The Supreme Court is comprised of seven justices elected statewide on a nonpartisan basis to six-year terms. They choose whether to hear appeals from lower courts through the process of certiorari (request for information from lower courts). The Court has exclusive appellate jurisdiction over all cases regarding the Georgia Constitution, the U.S. Constitution (as it applies within the state), elections, and the constitutionality of laws. It also may hear cases on appeal from the Court of Appeals or may be called upon to decide questions of law from other state or local courts. It has authority to hear appeals for all cases in which a sentence of death may be given. The Supreme Court is also involved in administering the state court system and regulating the legal profession.<sup>lxi</sup>

**Selection of Judges.**<sup>lxii</sup> The 50 states employ five methods for choosing judges. Some states elect judges in partisan elections; others hold nonpartisan elections; others require that judges be appointed by the governor; three states have at least some judges elected by the legislature; still others allow for the selection of judges under a merit system of screening by nominating commissions that submit candidates to a state's governor for selection. Once in office, such judges stand periodically for election.

Georgia has a long-standing commitment to electing judges, although there are some qualifications about age, living in certain counties or circuits, and membership in the state bar. The Constitution requires that members of the Supreme Court and Court of Appeals be elected in statewide nonpartisan elections for six-year terms. The justices of the Supreme Court choose a chief justice from among themselves. Superior court judges are also elected in nonpartisan elections, but serve four-year terms and are elected by voters who live within their circuits. State court judges are elected in nonpartisan, countywide elections for four years. Juvenile court judges are appointed, not elected, by the superior court judges of the counties they serve. The Georgia Constitution requires that all appellate and superior court judges shall have been admitted to practice law for seven years prior to assuming their judicial positions. Voters approved an amendment to the Constitution in 2000 imposing a similar seven-year requirement for state court judges (it had been five years).

The methods for choosing probate judges, magistrates, and municipal court judges are determined by law and can vary widely. In Athens-Clarke County, for instance, the probate judge and magistrate are elected on a partisan ballot, but municipal court judges are appointed.

Unlike the rest of the judiciary, the Georgia Constitution does not require that probate judges, magistrates, or municipal court judges have been admitted to practice law for a minimum number of years. It leaves such matters for the General Assembly to specify by law, which means that non-lawyers could serve in such positions. This has often been a controversial issue, and state law does require certain training for those assuming such positions.

The Constitution allows the Judicial Qualifications Commission to suspend, remove, or discipline judges who have been indicted or convicted of a crime, cannot perform the duties of their office, or “for conduct prejudicial to the administration of justice which brings the judicial office into disrepute.” The Georgia Supreme Court must review the case before a judge is removed from office.<sup>lxiii</sup> Except in magistrate, probate, and juvenile courts, the Georgia Constitution authorizes the governor to appoint a replacement to serve the remainder of a



judge's term when a position becomes vacant for any reason. The Judicial Nominating Commission assists the governor in making such appointments, although the selection process includes input from political leaders and members of the legal profession.

**District Attorneys.**<sup>lxiv</sup> District attorneys are elected for four-year terms in each judicial circuit in Georgia. Qualifications for office include active membership in the State Bar of Georgia for three years. District attorneys represent the state as prosecutors in all criminal cases and in all cases heard by the Supreme Court and Courts of Appeals.

**Juries.**<sup>lxv</sup> The Georgia Constitution provides limited detail on juries, although it is significant that the matter is in Article 1 with the bill of rights rather than in the article on the judiciary, as it was in the Constitution of 1976. Citizens may be chosen to serve on grand juries or trial juries. While trial juries are the better known to the public because of media coverage of criminal cases, grand juries are important in determining how and if a case will proceed against a defendant.

Juries are not required for all trials in Georgia, but the size of the jury is determined by the level of the court. The Constitution specifies trial juries of 12 members, but allows the General Assembly to permit smaller juries and nonunanimous decisions in misdemeanor cases and in courts of limited jurisdiction. Magistrate courts and juvenile courts never hold jury trials, and other lower courts are not likely to use juries. Superior courts have juries of 12 members. State courts have six-member juries. Juries in civil cases consist of six or 12 members, depending on the dollar amount of damages sought and whether either party requests a jury of 12 rather than six members in state court. Unanimous decisions are required in criminal cases, where the decision to use a jury rather than a judge for the verdict rests with the defendant. The General Assembly has other authority over the composition of juries. In 2005, for instance, legislators passed a law that gave the defendant and the prosecutor in a criminal case an equal number of "strikes" to remove potential jurors from a jury pool. Previously, the prosecutor was allowed only half as many strikes as the defendant.<sup>lxvi</sup>

Grand juries are used by over half the states to issue an indictment (a formal charge accusing someone of a crime). Four states require grand juries for all indictments. Georgia is one of fifteen states that requires a grand jury for felony indictments. Six states require grand jury indictments for capital crimes, and the state of Pennsylvania does not empower the grand jury to indict. All other states make grand jury indictments optional, with the prosecutor filing an "information" in order to enter a formal charge against someone.

In deciding whether to issue an indictment, a grand jury must conclude that there is "probable cause" that the person committed the crime as charged. This a far less rigorous standard, however, than the "proof beyond a reasonable doubt" needed to convict the accused in a trial. Because the grand jury decides merely if sufficient evidence exists for an indictment, only the prosecution is heard, business is conducted in secret, and the defense has no right to cross-examine witnesses. Many have argued that this makes grand juries unnecessary and merely a "rubber stamp" for the prosecutor.

Grand juries in Georgia consist of 16-23 members. In addition to issuing indictments, grand juries have broad powers to study the records and activities of county governments, issue reports, and make certain decisions. For instance, grand juries in both counties had to review a request by some citizens to transfer the territory where they lived from Fulton County to Coweta County. Also, grand juries selected school boards in some counties until the Georgia Constitution was amended in 1992.

## Local Government in Georgia<sup>lxvii</sup>

In addition to allocating authority among the three branches of state government, the Georgia Constitution also establishes a framework for the operation of local government.<sup>lxviii</sup> This is especially important since the U.S. Constitution says nothing about the matter. Local government in Georgia includes a range of counties, cities, and special districts (see Table 7).

**Counties and Cities.** The Georgia Constitution is very detailed regarding local government, although it is somewhat more specific regarding counties than cities and special districts. Article 9 even restricts the number of counties to no more than 159, although no such limit applies to other local governments. The Constitution also requires all counties to have certain elected officials. These local “constitutional officers” include a clerk of the superior court, judge of the probate court, sheriff, and tax commissioner (or tax collector and tax receiver), each of whom is elected to a four-year term. The Constitution leaves it to state law to spell out the characteristics of local legislative bodies such as county commissions and city councils.

The Constitution goes to some length to prohibit counties from taking several types of actions, such as those affecting local school systems or any court. It also lists functions that cities and counties may perform, including public transportation, health services and facilities, libraries, and enforcement of building codes. This is especially important to counties, which were first authorized to provide urban services by a constitutional amendment ratified in 1972. Article 9 also allows counties and cities to use planning and zoning, take private property, make agreements with one another, and consolidate.

**Table 7**  
**Number and Type of Local Governments in Georgia, 1952-2002**

Year	Counties <sup>a</sup>	Municipalities <sup>a</sup>	School Districts	Special Districts
1952	159	475	187	154
1957	159	508	198	255
1962	159	561	197	301
1967	159	512	194	338
1972	159	529	189	366
1977	159	529	188	387
1982	159	532	187	390
1987	159	531	186	410
1992	159	534	183	421
1997	159	534	180	473
2002	159	528	180	581

<sup>a</sup>Following the mergers between Columbus and Muscogee County in 1970, Athens and Clarke County in 1991, and Augusta and Richmond County in 1995, the U.S. Census Bureau counted

the new governments as a municipality, not a county. This table treats each merged government as a county because of its organization and functions.

Sources: U.S. Bureau of the Census, *Census of Governments*, selected years.

---

**Special Districts.** A wide range of special districts is permitted by the Georgia Constitution, but their characteristics are covered by general laws. Probably the most visible special districts are local school systems. Policy making for education at the local level is the responsibility of elected school boards, who hire a superintendent as chief administrator. Prior to ratification of a constitutional amendment in November 1992, two-thirds of the county superintendents and 85 percent of the boards were elected.<sup>lxxix</sup>

Perhaps the most important characteristic of special districts is their relative independence from county and municipal governments. For instance, areas can set up "community improvement districts" under state law to tax themselves extra for services beyond what their city or county provides. There are districts for major malls in suburban Atlanta, plus one that collects \$1.7 million annually for services in downtown Atlanta.<sup>lxxx</sup>

In addition to districts that cover only part of a local government's area, larger ones have been established to deal with regional issues. For example, MARTA (Metropolitan Atlanta Regional Transportation Authority) provides bus and subway service in Fulton and DeKalb Counties. The Georgia Regional Transportation Authority (GRTA) was created by the General Assembly in 1999 to oversee transportation and major development decisions in areas not meeting federal clean air standards.<sup>lxxxi</sup> The General Assembly also created the North Georgia Metropolitan Water Planning District in 2001 to address water problems in 18 counties in the Atlanta area.<sup>lxxii</sup> As public needs and demands continue to arise, the General Assembly will undoubtedly use its constitutional power to establish local governments to create more special districts on top of the state's counties and cities.

**Home Rule.** The Georgia Constitution provides "home rule" for cities and counties. In most states, this means that a local government is granted broad powers to write and amend its charter (the equivalent of a local government's constitution) and to take any action not prohibited by the state. Home rule has proven more limited in Georgia, however. One study found that Georgia was one of 25 states in 1990 without a general law providing optional forms of government for counties, and one of 26 that did not grant them some autonomy in choosing their form of government. The same was true regarding municipalities, where Georgia was one of 13 states that did not have a general law regarding optional forms, and one of only ten that did not give cities any choice in their organizational structure. Unlike 30 states, Georgia did not divide its cities into "classes" (usually based on population), with different levels of authority granted to each class. Georgia does grant flexibility to cities and counties in carrying out local government functions.<sup>lxxiii</sup> Thus, Georgia grants its local governments some autonomy in day-to-day operations, but little authority to determine their own organizational structure.

A major reason for this limited local power is the Constitution itself, which places some restrictions directly on counties and cities. It also permits the legislature to adopt local acts, which are applied to specific cities, counties, and special districts. Local acts were 51 percent of the bills passed between 1970 and 1996 and can cover a wide range of topics. For example, it took action by the General Assembly to establish procedures for citizens to vote on merging

governments such as Athens-Clarke County and Augusta-Richmond County.<sup>lxxiv</sup> Many other state constitutions prohibit the adoption of local laws.

**Local Government Finances.**<sup>lxxv</sup> The Constitution generally leaves the question of how local governments can raise and spend money to the General Assembly. In contrast, debt is covered in substantial detail. Georgia employs several restrictions common among the states. One is that debt cannot exceed ten percent of the assessed value of taxable property within the jurisdiction. Second, the Constitution places an annual limit on the amount that can be borrowed on a short-term basis.

A third requirement is that voters must approve the issuance of new debt by a simple majority in an election. However, this applies only to general obligation debt (borrowing in which the local government pledges tax revenues to pay off bonds sold to raise money, usually for major construction projects). The required voter approval and debt limitation do not apply to revenue bonds, which are not backed by taxes, but by revenues from projects being financed by the bonds. Airport revenue bonds, for example, are generally paid off with parking fees, aircraft landing charges, rents from airlines and concessionaires, and the like. With all types of local government borrowing, though, the real limit is the willingness of investors to buy bonds issued by a local government. In addition, local governments are required by state law to adopt a balanced budget each year.<sup>lxxvi</sup>

Georgia, like most states, limits local tax rates, mainly through laws passed by the General Assembly. State law allows counties and municipalities to levy a one percent general sales tax in addition to the four percent state tax. They cannot levy the tax without the approval of their voters. Since 1985, counties have been permitted by law to use a one-percent special purpose local option sales tax (SPLOST). The SPLOST is temporary, must be approved in a referendum, and must finance specific projects such as streets and roads, bridges, landfills, and solid waste.

In November of 1996, Georgia voters ratified a constitutional amendment to allow school districts to use a one-percent sales tax for construction. This tax is similar to the SPLOST used by counties and must be approved by a school district's voters in a referendum. This new revenue source can generate millions of dollars of funds, especially in rapidly growing school systems, and help school boards reduce their debt and dependence on property taxes. Despite the narrow statewide majority ratifying the amendment, the tax quickly proved popular at the local level.<sup>lxxvii</sup>

## 5. Elections

Just as constitutions specify the ways in which political institutions are organized, they also establish processes considered essential for a democracy. These include procedures for conducting elections, which are found in Article 2 of the Georgia Constitution.

### Types of Elections

The Georgia Constitution provides basic ground rules for elections, such as the use of secret ballots and establishment of 18 as the minimum voting age (Georgia adopted this minimum age in the 1940s and was the first state to do so). Runoff elections and recalls are constitutionally established, as are procedures for removing and/or suspending public officials. However, the Constitution leaves most of the specifics regarding voter registration and election procedures to be decided by the General Assembly.

**Primary and General Elections.** All states have general elections in which voters choose from a number of candidates to fill an office. In most states, including Georgia, voters select party nominees from a group of potential candidates in a primary election. Some states also use party conventions to nominate candidates for certain offices. Primaries are not specified in the Georgia Constitution, but procedures are provided for by state law or political party rules.

**Runoffs.** In most states, the individual who receives the most votes in an election is declared the winner, but others require that the winner of a primary or general election receive over a certain percentage of the votes cast. Seven states, including Georgia, hold runoffs if no single candidate is able to capture 50 percent of the vote. North Carolina also employs runoffs, but reduced the threshold from 50 percent to 40 percent in 1989. Georgia's runoff was originally adopted in 1917, but has changed somewhat since then.

The logic behind the runoff system is based, in part, on the assumption that elections should reflect the will of the majority of the electorate. In places where there is a tradition of one-party politics with little or no opposition in the general election, candidates have faced their strongest opposition in primaries. If only a plurality were required, it would be possible to achieve elected office by finishing first in a primary with many candidates but still receiving well under 50 percent of the vote. To prevent that from occurring, the top two finishers face each other in a subsequent runoff, where the winner would be the candidate getting a majority in this two-person race.<sup>lxxviii</sup>

Traditionally, runoffs occurred after primaries, but in 1992 a runoff was held after a general election in Georgia between candidates for the U.S. Senate. In that instance, a third candidate prevented front-runner Wyche Fowler, the Democratic incumbent, from earning over 50 percent of the vote. His Republican opponent, Paul Coverdell, won the runoff. The General Assembly prevented this from occurring again when it adopted laws in 1994, 1996, 1997, and 1998 governing the use of such elections. A plurality (not a majority) is all that is needed to win a general election for a state office, except for the statewide constitutional officers, who still must achieve 50 percent. A majority remains required for party primaries and special elections, so runoffs could be common in such cases.<sup>lxxix</sup> Runoff requirements also remain a requirement in many local elections.

Runoffs have been criticized as being biased against minority candidates, who might finish first in an election but not get a majority. A minority candidate could then be defeated in a runoff

as whites voted in a bloc for the remaining white candidate. Runoffs have been the subject of litigation in Georgia. The U.S. Supreme Court permitted their continued use in 1999, however, when it refused to hear an appeal from a lower court, which had held that the law requiring primary runoffs was not racially discriminatory.<sup>lxxx</sup>

**Referendum Elections.** States also conduct elections in which candidates are not running for office. The most common is a referendum, in which legislative bodies place issues on the ballot for public approval. Critics often complain, though, that asking people to vote "yes" or "no" on a question is not a good way to decide complex issues. Georgia voters are accustomed to referenda on whether to amend the state constitution. In their communities, they can be asked to decide whether local governments should levy sales taxes or be permitted to go into debt to by selling bonds to pay for public improvements such as roads and buildings.

**Removal of Elected Officials.** Recalls are elections to remove public officials from office before their terms have expired. Recall of state officials is allowed in Georgia and 15 other states; recall of local officeholders is more widely permitted. Some states exempt certain officeholders, usually judges, from the recall process. In Georgia, all persons who occupy elected state or local offices, even if they were appointed to fill unfinished terms, are subject to removal. Recalls are placed on the ballot through a petition process established by law. If an office becomes vacant through recall, a special election is held to fill the position.<sup>lxxxii</sup>

The Constitution allows other means for removing public officials. The House of Representatives may impeach any executive or judicial officer of the state, as well as members of the General Assembly. If the House votes in favor of impeachment charges, a two-thirds vote in the Senate is required to convict and remove the official from office.<sup>lxxxiii</sup> The Constitution also includes procedures for the temporary suspension of the governor, the lieutenant governor, any of the other six constitutional officers, or a member of the General Assembly indicted for a felony by a grand jury.<sup>lxxxiii</sup>

### **Timing of Elections**<sup>lxxxiv</sup>

The 1983 Constitution set the dates for the first general elections after its implementation; it also gave the General Assembly power to change the dates. This has not occurred, so elections for state offices are held the first Tuesday after the first Monday in November of even-numbered years. The members of the General Assembly are elected for two-year terms, which means that elections for these offices are at the same time as the U.S. House of Representatives. The governor and other statewide officeholders have four-year terms and are elected in years when the presidency is not on the ballot, which can protect Georgia candidates if their political party has an unpopular presidential candidate.

The Constitution sets length of terms for other elected officials, but leaves it to the General Assembly to determine by law when judges and most local officials will be elected.<sup>lxxxv</sup> County elections in Georgia are generally at the same time as major state and national races, but most city elections are held at different times, usually in odd-numbered years.

### **Redistricting**

Like other states, Georgia redraws district boundaries for its legislature and the U.S. House of Representatives every ten years following the U.S. census. A similar process occurs

for city councils and county commissions whose members are elected from districts rather than at large. Gerrymandering (the practice of drawing districts in order to achieve political outcomes) is one method by which incumbents may protect their political careers, minority political parties may be prevented from gaining legislative seats, rural or urban districts may dominate, or the voting strength of minority groups may be diluted.

Although it did not originate in Georgia, the U.S. Supreme Court's 1962 decision in *Baker v. Carr*<sup>xxxvi</sup> affected Georgia profoundly. This landmark ruling and subsequent decisions forced states to draw legislative districts on the basis of population rather than political boundaries such as county lines. The "one person, one vote" standard required districts of equal population, although slight variation is tolerated. Based in part on crucial litigation in Georgia, the U.S. Supreme Court has also limited the use of race in drawing legislative districts (see below).

## 6. Rights and Liberties<sup>lxxxvii</sup>

Just as constitutions establish governmental institutions and basic processes such as elections, they also guarantee rights to individuals and regulate government's ability to interfere with people's liberties. Amending a constitution is normally a very difficult process. Therefore, including rights and liberties in a constitution is designed to protect them better than if such guarantees could be reduced or eliminated simply by passing a law. State constitutions may not infringe upon liberties and rights protected by the U.S. Constitution. Because of dual citizenship and the 14<sup>th</sup> Amendment to the U.S. Constitution, these federal guarantees are minimum standards, however, and states may grant their citizens broader rights.

Article 1 of the Georgia Constitution allows state courts to determine whether laws or actions comply with the state or U.S. constitutions.<sup>lxxxviii</sup> This process of judicial review is similar to that at the national level. Any law or administrative rule in Georgia, whether adopted by the state or by local governments, may be challenged in court. In addition, some private practices may be challenged, such as activities of businesses or individuals. Unlike the U.S. Constitution, which specifies most rights in amendments, Georgia's constitutions since 1861 have included a bill of rights as an integral part of the document. Article 1 in the 1983 Constitution included 28 paragraphs covering "Rights of Persons."

The discussion below covers some of the major provisions in Georgia's bill of rights. Under each heading, the first section describes how Georgia courts have applied these guarantees in specific cases. This is followed by a discussion of related federal court cases originating in Georgia. These cases are based on the U.S. Constitution and often brought about substantial changes not only in Georgia, but in the nation as a whole.

The first section covers civil rights, which are often thought of as the freedom to participate in the political system. It is generally linked to the guarantee of "equal protection" in the eyes of the law, which is the basis for much of the litigation on discrimination. The next three sections deal with civil liberties—the basic protection against unwarranted government intrusion into one's life. The fifth section deals with the right to privacy – a protection not written explicitly into either the U.S. or Georgia constitutions. Each section summarizes major federal court cases in a tables with full legal citations. Citations for decisions by Georgia courts are found in the endnotes.

### Equal Protection<sup>lxxxix</sup>

**Georgia Courts.** The second paragraph in Georgia's bill of rights guarantees that, "No person shall be denied the equal protection of the laws." This language mirrors the 14<sup>th</sup> Amendment to the U.S. Constitution. While the Georgia Supreme Court has held that the federal and state equal protection guarantees "coexist," the justices have acknowledged that the state may interpret the Georgia Constitution to offer broader rights than are available under the U.S. Constitution.

A great deal of the controversy over equal protection involves government's classification of groups, with the courts being most vigilant regarding sex and race. In 1984, the Georgia Supreme Court found unconstitutional a law that provided benefits to children whose mothers were wrongfully killed but did not afford the same protection to children whose fathers were wrongfully killed. The Court also struck down Atlanta's program to set aside a share of contracts for minority- and female-owned businesses because the city failed to demonstrate the need for a race-conscious program.<sup>xc</sup> Local governments have continued to adopt set-aside



programs, however, after studies to determine the effects of prior discrimination. Such policies remain highly contentious and must operate within guidelines laid out by the U.S. Supreme Court, which has become increasingly skeptical of such initiatives. Similar controversies have surrounded the use of affirmative action in admissions decisions at Georgia's public colleges and universities.<sup>xci</sup>

Perhaps more controversial have been several Atlanta ordinances dealing with gay rights. In 1995, the Georgia Supreme Court held that Atlanta could create a registry of unmarried couples (both heterosexual and homosexual) and forbid discrimination based on sexual orientation. However, the Court concluded that the city exceeded its authority by extending insurance benefits to the domestic partners of city employees.<sup>xcii</sup>

**Federal Courts and Discrimination.** On the surface, the 14<sup>th</sup> Amendment would seem to prohibit discrimination based on race. Yet Georgia, like other southern states, used a number of strategies to disenfranchise black citizens from the 1870s to the 1960s. These included the poll tax, the white primary, and other restrictions eventually eliminated by federal legislation and court decisions.<sup>xciii</sup>

The poll tax required citizens to pay an annual levy to be eligible to vote, thereby making it harder for the poor to vote. Georgia had used a poll tax earlier in its history, but it became particularly restrictive when the 1877 constitution made it cumulative, which meant that anyone falling behind in the annual tax had to make back payments. The poll tax was not repealed until 1945, when Governor Ellis Arnall made it a major issue during the legislative session. In other southern states, the poll tax lasted until the 24<sup>th</sup> Amendment to the U.S. Constitution banned it in 1964.

Perhaps the most blatant attempt to disenfranchise blacks was the white primary, which restricted voting in party primaries to whites only. Blacks could participate in the general election, but their votes were inconsequential because there was seldom Republican opposition on the ballot.

White primaries in Georgia were adopted in some counties by the 1890s. Beginning in 1900, only whites could vote in the Democratic party's primary elections. In a 1927 Texas case, the U.S. Supreme Court held that it was unconstitutional for state law to restrict primary voting on the basis of race. Virtually the entire South was controlled by the Democratic party then, and party leaders thereafter used party rules to enforce the white primary. Unlike general elections, which are processes of government, primaries could be regarded as activities of political parties, which are "private" organizations.

It was not until 1944 that the U.S. Supreme Court held that party rules enforcing a white primary also abridged the right to vote based on race. Georgia's white primary was overturned the following year by a federal appeals court in *King v. Chapman*. Perhaps the most immediate effect of this decision was in Atlanta, where business and political leaders began developing a coalition with the city's large black middle class.<sup>xciv</sup>

Three other restrictions were included in the Disenfranchisement Act of 1908, which voters approved as an amendment to the Georgia Constitution by a two-to-one margin:

The literacy test required that voters be able to read and explain any paragraph of the federal or state constitution; while the property qualification required ownership of 40 acres of land or property assessed at \$500. The grandfather clause enfranchised men who had served in the United States or Confederate military forces and their descendants; no one could register under that provision after 1914.<sup>xcv</sup>

Implementation of the literacy test was in the hands of local election officials, who exercised great discretion, especially their power to purge voter registration rolls of those judged to be unqualified.

As the momentum grew to desegregate during the 1950s and 1960s, the Georgia General Assembly produced an array of legislation to forestall the process.<sup>x cvi</sup> At one point, all state aid was removed from any public school that was integrated, and payments were authorized to parents of children who attended segregated private schools. In order to prevent blacks from attending college in the state, requirements for admission were set to include letters of recommendation from two former graduates of the institution to which a student was applying. Since no blacks had attended most of these institutions, such letters would be difficult to obtain.

Although most actions by the Georgia General Assembly were struck down as unconstitutional, white parents were able to move to different school districts or to send their children to private academies which did not admit blacks. Segregation was largely maintained until Congress passed the 1964 Civil Rights Act, but it continued in many respects long after that date. Local school districts also tried to prevent or minimize desegregation, including the Chatham County school board's unsuccessful effort to claim that integration would heighten black children's feelings of inferiority.<sup>x cvii</sup>

The Civil Rights Act of 1964 was designed to end discrimination in public accommodations (hotels, restaurants, transportation, etc.). In *Heart of Atlanta Motel v. United States*, the U.S. Supreme Court took a broad view of the U.S. Constitution's commerce clause and upheld the Civil Rights Act as a valid exercise of Congress's authority. The Court rejected the motel's claim that it was a local business. Because the motel served interstate travelers, its practice of refusing lodging to blacks was held to obstruct commerce, and the motel would therefore have to serve blacks.

Not all discrimination falls under the 14<sup>th</sup> Amendment. Congress has also passed laws dealing with characteristics such as religion, age, and disability. One of the leading cases regarding the disabled was based on the ways in which the Georgia Department of Human Resources had institutionalized people involuntarily after it was determined that such people could be placed in a community setting. In *Olmstead v. L.C.*, the U.S. Supreme Court held that such action violated the protection of the Americans with Disabilities Act of 1990.

**Table 8**  
**Major Federal Cases on Discrimination**

King v. Chapman 154 F.2d 450 (1946)	Building on a 1944 U.S. Supreme Court case covering Texas, the circuit court of appeals found that the rules of Georgia's Democratic party, which restricted voting in primary elections to whites only, violated the equal protection guarantee of the 14 <sup>th</sup> Amendment.
Heart of Atlanta Motel v. United States 379 U.S. 241 (1964)	Upheld constitutionality of Title 2 of the Civil Rights Act of 1964, which prohibited racial discrimination in public accommodations.
Olmstead v. L.C.	The state's practice of involuntarily institutionalizing

no. 98-536 (1999)	disabled individuals judged suitable to live in less restrictive settings violates the Americans with Disabilities Act of 1990.
-------------------	---

**Federal Courts and Equal Representation.** Since the early 1960s, federal courts have become increasingly active in the process of drawing districts for legislative bodies. The courts have interpreted the equal protection guarantee of the 14<sup>th</sup> Amendment to mean that one person’s vote should have the same weight in an election as another person’s; to do this requires districts of roughly equal population. In *Toombs v. Fortson*, the Court ruled that reapportionment for the General Assembly must be made on the basis of the population of the state rather than by county or other political boundaries. Each district must have roughly the same number of inhabitants. After four earlier challenges had failed, in *Gray v. Sanders*, the U.S. Supreme Court struck down the county-unit system as a violation of the 14<sup>th</sup> Amendment’s equal protection guarantee because the system malapportioned votes by underrepresenting urban residents. Other litigation also forced the General Assembly to redraw congressional districts in the state.<sup>xcviii</sup>

Questions of representation have become increasingly linked to race since Congress passed the Voting Rights Act (VRA) in 1965. The VRA suspended use of literacy tests, allowed for federal election examiners and observers, and required affected state and local governments to receive approval from the national government before making changes in their electoral systems. This “preclearance” by the U.S. Department of Justice is especially wary of changes which might dilute the voting strength of minorities.

The U.S. Department of Justice objected to congressional redistricting by the Georgia General Assembly following the 1990 census. After two unsuccessful attempts to redraw districts, state lawmakers finally satisfied federal guidelines to protect minority voting strength in the 1992 elections.<sup>xcix</sup> Ironically, in 1995 those districts were ruled unconstitutional in *Miller v. Johnson* because race was a “predominant factor” used in drawing the district lines.<sup>c</sup> Similar litigation occurred following redistricting based on the 2000 census: in *Georgia v. Ashcroft*, the U.S. Supreme Court again required Georgia to consider factors other than race in drawing legislative districts.

**Table 9**  
**Major Federal Cases on Representation**

Gray v. Sanders 372 U.S. 368 (1963)	Held that Georgia’s county-unit system violated the 14 <sup>th</sup> Amendment’s equal protection guarantee because it malapportioned votes among the state’s counties.
Fortson v. Toombs 379 U.S. 621 (1965)	Upheld a lower court’s 1962 decision that the 14 <sup>th</sup> Amendment required seats in the General Assembly to be apportioned with districts of roughly equal population rather than being based on county or other political boundaries.
Miller v. Johnson 515 U.S. 900 (1995)	Invalidated Georgia’s congressional redistricting following the 1990 census as a violation of the 14 <sup>th</sup> Amendment’s equal protection clause because race was the predominant factor in drawing district

	boundaries. The General Assembly had created three black-majority districts, with the eleventh district having a very irregular shape.
Georgia v. Ashcroft no. 02-182 (2003)	Held that courts reviewing redistricting under the Voting Rights Act have to consider all relevant factors affecting minority voters, not just the chance of electing minority candidates.

### **Right to Life, Liberty, and Property**<sup>ci</sup>

**Georgia Courts.** Life, liberty, and property are the first rights listed in the Georgia Constitution. Like guarantees in the U.S. Constitution, they cannot be abridged "except by due process of law." State courts have found this guarantee to be broader than under the U.S. Constitution.<sup>cii</sup> Georgia courts traditionally have found that the state has the power to regulate businesses so long as the regulation is applied equally to all who engage in the same types of businesses and has some "rational relationship" to a valid purpose. Only when litigants are able to show that their due process has been violated are they able to convince the courts that government regulation is "arbitrary" or "unreasonable." Thus, laws regulating the licensing and training of professionals have largely been upheld. The Georgia Supreme Court has held that a mandatory life sentence for a second drug conviction does not violate due process or equal protection despite statistical evidence that a larger percentage of blacks end up serving life sentences under the law.<sup>ciii</sup>

The Georgia Supreme Court has taken a broad view of government compensation owed to the owners of private property taken for public use. All states and the federal government have some power of eminent domain (the taking of private property for public use such as expanding a highway, constructing facilities, and laying water or sewer lines). While most Georgia court decisions have permitted government to determine the size and use of land taken, restrictions have been imposed on compensation for property. The courts also have applied the notion of "taking" to regulation of private property, i.e., government regulation may be so restrictive that it has the same effect as seizing someone's land. In this regard, the Georgia Supreme Court has reviewed a great many cases dealing with land-use regulation and has tended to favor property owners over cities and counties. There are no landmark federal cases from Georgia dealing directly with this issue, although the state has produced major cases dealing with the related question of privacy (see below).

### **Rights Related to Expression and Association**

Georgia's bill of rights includes a number of provisions designed to allow people to hold and express opinions, to associate with others, and to participate in the political process. These include two paragraphs on religion, as well as one on and the press, another on the right to assemble and petition, and one on libel, which is not mentioned in the U.S. Constitution.

**Georgia Courts and Freedom of Conscience and Religion.**<sup>civ</sup> Religious freedom was the earliest liberty to be addressed by Georgia's constitution drafters. Even the Rules and Regulations of 1776 included a provision for freedom of religion. The Georgia Constitution includes somewhat different language from the 1<sup>st</sup> Amendment to the U.S. Constitution. Perhaps the most striking difference is Georgia's limitation on religious practices: "but the right

of freedom of religion shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state."<sup>cv</sup> Thus, Courts in Georgia have at times limited freedom of religion, as when the Georgia Supreme Court found that freedom of religion did not include the distribution of literature in public. Nor has the Court extended freedom of religion to the use of controlled substances.

**Georgia Courts and Freedom of Speech and the Press.**<sup>cvi</sup> Georgia courts have adopted a broad interpretation of freedom of speech. For example, while the U.S. Constitution held that screening of movies was not in and of itself a violation of free speech, the Georgia Supreme Court found that an ordinance requiring approval of a censor before screening movies was unconstitutional in Georgia. The Court also held that it violated free speech to ban those between the ages of 18 and 21 from premises with sexually explicit performances.<sup>cvi</sup>

Free speech, as interpreted by the Georgia courts, includes limits. Indeed, the Georgia Constitution says that people "shall be responsible for the abuse of that liberty," as in cases involving incorrect publication of delinquent debt, inaccurate information regarding criminal activity, or use of photographs for advertising without the subjects' permission. The Georgia Supreme Court has upheld an injunction against anti-abortion protesters on the ground that the protest was limited by reasonable restrictions regarding time, place, and manner. The Court has held, however, that picketing was not protected free speech when the protest included an illegal strike. The Court also upheld the state's "Anti-Mask Act," which targets groups such as the Ku Klux Klan by prohibiting intimidating or threatening mask-wearing behavior, despite a claim that the law violates a person's freedom of speech.<sup>cvi</sup>

The press does not have a constitutional right to withhold a confidential news source.<sup>cix</sup> However, the media have been granted limited protection by a state law that allows reporters to be forced to turn over information from confidential sources when the evidence is material and relevant, is necessary for one of the parties to prepare a case, and cannot reasonably be gathered by other means.<sup>cx</sup> In terms of other publications, the Georgia Supreme Court has held that it violates free speech for a city to prohibit the distribution of printed materials to homes.<sup>cx</sup>

Controversies have swirled around language or behavior judged offensive by many people. For instance, the Georgia Supreme Court struck down a state law attempting to outlaw bumper stickers considered profane as being too vague and a violation of free speech. Even greater debates have involved sexually-oriented communication, particularly after the Georgia Supreme Court ruled that nude dancing was protected expression and overturned local regulations banning such entertainment as too broad or outside the authority granted to local governments. To reverse this action, Georgia voters approved a constitutional amendment in 1994 to increase local governments' control over nude dancing through their power to regulate alcoholic beverages. A number of local governments subsequently adopted ordinances to prevent clubs with nude dancing from serving alcohol. The Georgia Supreme Court has held that such alcohol regulations do not violate the free speech rights associated with such entertainment.<sup>cxii</sup>

**Federal Courts and Freedom of Speech and the Press.** The U.S. Supreme Court has considered many cases during the past 40 years dealing with the 1<sup>st</sup> Amendment's guarantees regarding religion, speech, the press, and association. Two major cases on obscenity originated in Georgia. In a 1969 decision, *Stanley v. Georgia*, the Court found that "the mere private possession of obscene matter cannot constitutionally be made a crime," which Georgia law had done. Police had a warrant to search Stanley's home for materials related to illegal

gambling, but they found allegedly obscene material. The state claimed that certain types of materials should not be possessed or read, and that obscene materials may lead to sexual violence or other acts. The Court rejected these claims, holding that the state asserted the “right to control the moral content of a person’s thoughts . . . but it is wholly inconsistent with the philosophy of the First Amendment.”

In a 1973 case, *Paris Adult Theatre I v. Slaton*, the Supreme Court was asked to determine whether the state could ban a commercial theater from showing films considered obscene. Here the Court reached an opposite result from *Stanley*, holding that the state had an interest in “stemming the tide of commercialized obscenity.” The Court held that it did not make a difference that the films in question were shown only to consenting adults and the business posted warnings of films’ content and prohibited minors from entering. Instead, the Court held that the state had a valid interest in “the quality of life and the total community environment, the tone of commerce in the great city centers, and, possibly, the public safety itself.”

*Cox Broadcasting Corp. v. Colin* dealt with Georgia’s law prohibiting publication of a rape victim’s name. Pitted against each other were the desire to protect the victim’s privacy and the freedom of the press. The Court held that it would violate press freedom to prohibit the publication of crime victims’ names obtained from public records.

**Table 10**  
**Major Federal Cases on Freedom of Speech and the Press**

Stanley v. Georgia 394 U.S. 557 (1969)	Overturned state law making private possession of obscene material a crime. The Georgia law was held to violate the 1 <sup>st</sup> and 14 <sup>th</sup> Amendments to the U.S. Constitution.
Paris Adult Theatre I v. Slaton 413 U.S. 49 (1973)	Banning the showing of allegedly obscene films to consenting adults in a commercial theater was held not to violate the 1 <sup>st</sup> Amendment or the right to privacy.
Cox Broadcasting Corp v. Colin 420 U.S. 469 (1975)	Overturned the Georgia law prohibiting publication of the name of a rape victim obtained from public records.
Forsyth County, Georgia v. Nationalist Movement 505 U.S. 123 (1992)	Invalidated a local ordinance requiring participants to pay law enforcement costs for demonstrations and empowering the county administrator to determine how much to charge a group seeking a permit for a demonstration. The court found

Forsyth County was the scene of several marches by civil rights supporters and countermarches by the Ku Klux Klan during the 1980s. To manage these events, the county commission adopted an ordinance requiring those seeking a demonstration permit to pay a fee for law enforcement protection. The county administrator had discretion about the size of the fee, which could not exceed \$1,000. One group refused to pay a \$100 fee and sued the county. In *Forsyth County, Georgia v. Nationalist Movement*, the U.S. Supreme Court found that the county ordinance contained no standards for the administrator to follow and was thus unconstitutional because it “contains more than the possibility of censorship through

uncontrolled discretion [and] the ordinance often requires that the fee be based on the content of the speech” of the group seeking the permit.

### **Rights of Those Accused and Convicted of Crimes**<sup>cxiii</sup>

The Georgia Constitution includes several provisions to protect people in dealing with the state’s legal system. These include conditions regarding searches, seizures, and warrants by law enforcement officials; access to the courts and the use of juries; the right to an attorney and to cross-examine witnesses in criminal cases; the right against self-incrimination; protection against excessive bail and “cruel and unusual” punishment; and a prohibition against double jeopardy. Most of these guarantees parallel those in the U.S. Constitution’s bill of rights, although Georgia has added other guarantees. For instance, the state bill of rights explicitly prohibits whipping and banishment from the state as punishment for crimes,<sup>cxiv</sup> imprisonment for debt,<sup>cxv</sup> and being “abused in being arrested, while under arrest, or in prison.”<sup>cxvi</sup>

**Georgia Courts.** One of the most notable distinctions between the Georgia and U.S. constitutions is that the state offers more protection to defendants against unreasonable searches and seizures by law enforcement authorities. In addition, Georgia has long recognized the right of indigents to have a lawyer appointed, although this right does not extend to civil cases.<sup>cxvii</sup> A major problem with providing attorneys to poor criminal defendants has been in appropriating sufficient funds to make the guarantee work well.

Arguments often are made that certain punishments are "cruel and unusual." Georgia courts have held that punishment exceeding the crime is, in some cases, constitutional. For example, fines larger than amounts taken by theft have been permitted. In some instances, defendants have been banished from certain counties, but the Georgia Supreme Court has not upheld banishment from the state as a whole. Georgia’s use of the death penalty was found to be unconstitutional in 1972 by the U.S. Supreme Court because the state did not have standards to protect against unequal application of capital punishment. Currently, Georgia law lists the conditions under which the death penalty may be sought and is in line with later U.S. Supreme Court rulings permitting executions. The Georgia Supreme Court, however, has considered it cruel and unusual punishment to execute someone who is mentally retarded,<sup>cxviii</sup> but reached the opposite conclusion when considering life in prison for a second conviction for selling cocaine.<sup>cxix</sup>

**Federal Courts and Search and Seizure.** Georgia has produced few major federal cases related to the search and seizure rights of criminal defendants in the U.S. Constitution’s 4<sup>th</sup> Amendment. In 1997, however, the U.S. Supreme Court overturned a Georgia law requiring candidates for state office to pass a drug test, which the General Assembly had passed as part of its anti-drug efforts during the 1980s. Walker Chandler filed to run as Libertarian party candidate for lieutenant governor in 1994 but refused to take the test. In *Chandler v. Miller*, the Court held that the drug tests did not fall within the category of constitutionally permissible suspicionless searches. Indeed, the Court found that the test was essentially “symbolic” rather than being directed at some identifiable problem that might demand such a search.

**Federal Courts and the Rights of Criminal Defendants.** The U.S. Constitution’s 6<sup>th</sup> Amendment includes the right to a fair trial, which is not spelled out in detail. Therefore, the courts have had to define what that right means in practice. Some of these cases have dealt

with the size of trial juries and whether they must reach a unanimous decision. In a 1973 Florida case, the U.S. Supreme Court had permitted six-member juries in civil cases. In *Ballew v. Georgia*, however, the Court ruled in 1978 that Georgia's use of five-person juries in misdemeanor cases violated the right to a fair trial, in part because of the reduced deliberation and bias in favor of the prosecution regarding hung juries. Georgia's current constitution allows the General Assembly to permit six-member juries in misdemeanor cases or in courts of limited jurisdiction.<sup>cxv</sup>

**Federal Courts and the Death Penalty.** Two appeals to the U.S. Supreme Court from Georgia during the 1970s became the landmark cases regarding the use of capital punishment in the United States. The first, *Furman v. Georgia* in 1972, effectively ended executions throughout the country. Four years later, *Gregg v. Georgia* allowed the state's rewritten capital punishment law to stand, thereby opening the door for states to resume executions.

What was different about these two cases? The members of the U.S. Supreme Court had a range of views regarding capital punishment, but the major concern was how the death penalty was applied. In *Furman*, the Court was concerned with both the lack of guidelines to use in deciding when to impose a death sentence and the wide variation in its use for similar crimes. The states then began revising their laws, and the Court decided several cases in 1976 based on the new statutes. In *Gregg*, the Court upheld Georgia's new capital punishment law, in part because it required specific findings by the jury regarding the facts of the crime and the character of the defendant; it also had a process for appellate courts to review death penalty cases.

**Table 11**  
**Major Federal Cases Affecting Those Accused or Convicted of Crimes**

Chandler v. Miller 520 U.S. 305 (1997)	Held that Georgia's requirement that candidates for state office pass a drug test violates the 4 <sup>th</sup> and 14 <sup>th</sup> Amendment protections against suspicionless searches.
Ballew v. Georgia 435 U.S. 223 (1978)	Held that a criminal trial using a jury of less than six members violated the 6 <sup>th</sup> and 14 <sup>th</sup> Amendment guarantees to a fair trial.
Furman v. Georgia 408 U.S. 238 (1972)	Held that Georgia's methods of administering the death penalty violated the 8 <sup>th</sup> Amendment's guarantee against cruel and unusual punishment. The decision effectively ended executions in the United States for more than a decade.
Gregg v. Georgia 428 U.S. 153 (1976)	Upheld Georgia's revised law on capital punishment, which limited the crimes for which the death penalty could be imposed and specified the factors to be considered and procedures to be used in deciding when to impose capital punishment.
Coker v. Georgia 433 U.S. 584 (1977)	Found that Georgia's imposition of the death penalty for the crime of rape was grossly disproportionate and thus a violation of the 8 <sup>th</sup> Amendment's ban on cruel and unusual punishment.



<p>McCleskey v. Kemp 481 U.S. 279 (1987)</p>	<p>Rejected the claim that racial differences in the imposition of the death penalty violated the equal protection guarantee of the 14<sup>th</sup> Amendment and amounted to cruel and unusual punishment in violation of the 8<sup>th</sup> Amendment.</p>
--	--

Two other cases tested the constitutionality of the conditions under which Georgia imposed the death penalty. In *Coker v. Georgia*, the U.S. Supreme Court held that the death sentence for the crime of rape was grossly disproportionate to the offense and thus violated the 8<sup>th</sup> Amendment ban on cruel and unusual punishment. In *McCleskey v. Kemp*, the Court confronted the issue of bias in imposing the death penalty. McCleskey presented a study showing that the use of the death sentence in Georgia was statistically related to the race of the murder victim and, to a lesser extent, the race of the defendant. This pattern, he argued, violated the 8<sup>th</sup> and 14<sup>th</sup> Amendments. The Supreme Court rejected these claims, citing appellate courts' review of cases with facts similar to McCleskey's case.

### The Right to Privacy

**Georgia Courts.** Like the U.S. Constitution, Georgia's does not mention a right to privacy. In 1904, though, Georgia became the first state to recognize a privacy right when the Georgia Supreme Court found this right in natural law and the guarantees of liberty found in the U.S. and state constitutions.<sup>cxxi</sup> Privacy has been extended to the right of a prisoner to refuse to eat, even to the point of starvation, and a person's right to refuse medical treatment even if it was certain to lead to death.

**Table 12**  
**Major Federal Cases on the Right to Privacy**

<p>Doe v. Bolton 410 U.S. 179 (1973)</p>	<p>This is the less famous Georgia case decided along with <i>Roe v. Wade</i>. It overturned Georgia's ban on abortions as a violation of a woman's right to privacy.</p>
<p>Bowers v. Hardwick 478 U.S. 186 (1986)</p>	<p>Held that the right to privacy did not protect consensual homosexual sex from prosecution under Georgia's sodomy law.</p>

**Federal Courts.** The U.S. Supreme Court first recognized a right to privacy in a 1965 Connecticut case dealing with government regulation of contraception. Since then, the courts have been forced to define the limits of privacy rights. These debates include two Georgia cases. *Doe v. Bolton* remains almost unnoticed today, but it was the challenge to Georgia's abortion law decided along with *Roe v. Wade*, the more widely known Texas case in which the Supreme Court held that the right to privacy included a woman's right to abortion.

The second Georgia case was *Bowers v. Hardwick*. In this case, Michael Hardwick challenged Georgia's sodomy law as a violation of the right to privacy in so far as it applied to

consensual conduct. He also argued that as a homosexual he faced constant threat of arrest and prosecution. The Supreme Court rejected Hardwick's claim and upheld Georgia's sodomy law, which prohibited certain acts but did not specify the gender or sexual orientation of the participants.

**Dual Citizenship and the Right to Privacy.** Georgia's sodomy law provides a good example of the way in which dual citizenship can produce different rights under state and U.S. constitutions. The Georgia Supreme Court reinforced the *Hardwick* decision in 1996, when it ruled, in *Christensen v. State*,<sup>cxxii</sup> that the state's sodomy law did not violate Georgia's right to privacy. That all changed in 1998, however. Based on facts involving a heterosexual couple, the Georgia Supreme Court, in *Powell v. State*, held, "insofar as it criminalizes the performance of private, non-commercial acts of sexual intimacy between persons legally able to consent, [the sodomy law] 'manifestly infringes upon a constitutional provision' . . . which guarantees to the citizens of Georgia the right to privacy."<sup>cxxiii</sup> Shortly thereafter, however, the Court rejected the claim that Georgia's right to privacy also protected commercial sexual activity.<sup>cxxiv</sup>

Thus, while any given state's law criminalizing sodomy would not violate the federal right to privacy as applied in *Bowers v. Hardwick*, state courts around the country could consider such a law in violation of broader rights guaranteed in their state constitutions. That possibility changed rather dramatically in 2003, however, when the U.S. Supreme Court's *Lawrence v. Texas* decision overturned sodomy laws in those states that still had them.<sup>cxxv</sup>

The most recent frontier in battles over privacy rights deals with medical treatment. For instance, a 1997 U.S. Supreme Court decision left the door open for states to either ban or allow doctor-assisted suicide. This produced a conflict when former U.S. Attorney General John Ashcroft attempted to keep Oregon from implementing its law allowing the practice.<sup>cxxvi</sup> Such disputes will undoubtedly continue to pit the states against the national government in the face of breakthroughs in medical treatment and research.

## 7. The Continuing Significance of Georgia's Constitution

A constitution is not some kind of sacred or unchanging blueprint for government. Constitutions are essentially political documents. That is why individuals, businesses, political parties, and interest groups often fight vigorously about interpreting and amending constitutions. For instance, lawsuits have attacked as racially biased the methods of selecting Georgia's judges and juries.<sup>cxxvii</sup> By approving an amendment to create a state-sponsored lottery in 1992, voters gave the governor, legislature, and bureaucracy millions of dollars to distribute to programs and individuals. They also paved the way for firms to profit from the production, sale, and marketing of lottery tickets. Another amendment granted a property tax break for growing timber,<sup>cxxviii</sup> although voters rejected a similar proposal for blueberries in 1994. The 1992 amendment requiring that local school board members be elected and superintendents be hired allows boards to recruit superintendents from anywhere. Under the old system of electing school superintendents in some counties, only local residents could run for the office.<sup>cxxix</sup>

As the preceding examples demonstrate, constitutions help distribute political and economic power. Constitutions also adopt policies that under other circumstances might be made simply by passing a law. Given the extensive detail in the Georgia Constitution, voters undoubtedly will face proposed amendments every even-numbered year as various interests try to modify the document to achieve their ends. If a large number of changes are ratified by voters, the Constitution might become so littered with amendments that it is unwieldy and difficult to interpret. A second possibility is that Georgians will become so annoyed with proposals on the ballot that they rebel by voting "no" on amendments. Finally, both groups and members of the General Assembly might regularly use constitutional change as just another way to achieve their political ends. If so, Georgians might treat amendment battles as just an ordinary part of the election process even though it would not be on the scale of western states using the initiative. None of these scenarios bodes well, however, for the durability of the 1983 Georgia Constitution.

## NOTES

---

<sup>i</sup> U. S. Bureau of the Census, *Statistical Abstract of the United States: 2004-2005* (Washington: Government Printing Office, 2005), Tables 426, 453, 461.

<sup>ii</sup> On procedures for amending state constitutions, see Janice C. May, "State Constitutional Developments in 2004," pp. 3-9 in Council of State Governments, *The Book of the States: 2005 Edition* [hereafter cited as *The Book of the States*] (Lexington, KY: Council of State Governments, 2005) [also see Table 1.6 on p. 18].

<sup>iii</sup> This section draws heavily from Melvin B. Hill, Jr., *The Georgia State Constitution: A Reference Guide* (Westport, CT: Greenwood Press, 1994). Rather than weigh down this section with extensive endnotes, specific references are used only when necessary. Readers are urged to consult Hill's exhaustive work for more detail.

<sup>iv</sup> *Constitution of the State of Georgia*, art. 3, sect. 9, para. 6b.

<sup>v</sup> *Constitution of the State of Georgia*, art. 3, sect. 9, para. 6c-j.

<sup>vi</sup> *Constitution of the State of Georgia*, art. 1, sect. 2, para. 8c.

<sup>vii</sup> *Constitution of the State of Georgia*, art. 7, sect. 2, para. 3e.

<sup>viii</sup> *Constitution of the State of Georgia*, art. 7, sect. 1, para. 3c.

<sup>ix</sup> *Constitution of the State of Georgia*, art. 7, sect. 2, para. 5.

<sup>x</sup> *Constitution of the State of Georgia*, art. 7, sect. 1, para. 3d. Also see Hill, *The Georgia State Constitution*, pp. 152-155.

<sup>xi</sup> Hill, *The Georgia State Constitution*, p. 49.

<sup>xii</sup> *Constitution of the State of Georgia*, art. 4; art. 8, sects. 2 and 4.

<sup>xiii</sup> *Constitution of the State of Georgia*, art. 4, sect. 3, para. 2.

<sup>xiv</sup> *Constitution of the State of Georgia*, art. 3, sect. 6, para. 7.

<sup>xv</sup> Hill, *The Georgia State Constitution*, pp. 56-59.

<sup>xvi</sup> Hill, *The Georgia State Constitution*, pp. 194-195; *Constitution of the State of Georgia*, art. 9, sect. 2, para. 4.

<sup>xvii</sup> Hill, *The Georgia State Constitution*, p. 99.

---

<sup>xviii</sup> *Constitution of the State of Georgia*, art. 1, sect. 2, para. 5.

<sup>xix</sup> 5 U.S. 137.

<sup>xx</sup> Congress passed a law in 1996 giving the president limited line-item veto authority. The U.S. Supreme Court ruled that this action was unconstitutional, however, after President Clinton used it with 11 laws. See *Clinton v. City of New York*, 524 U.S. 417 (1998).

<sup>xxi</sup> On the changing location of the state capital, see Kenneth Coleman, editor, *A History of Georgia* 2<sup>nd</sup> edition (Athens: University of Georgia Press, 1991), pp. 91, 96, 107, 208-209.

<sup>xxix</sup><sup>xxii</sup><sup>xxiii</sup> V.O. Key, Jr., *Southern Politics* (New York: Vintage, 1949), pp. 119-122; Hill, *The Georgia State Constitution*, pp. 224-225.

<sup>xxiii</sup> For a thorough account, see Harold P. Henderson, *The Politics of Change in Georgia: A Political Biography of Ellis Arnall* (Athens: University of Georgia Press, 1991), pp. 77-96.

<sup>xxiv</sup> For an example of the politics surrounding the use of local amendments, see the account of the 1970 consolidation of Columbus and Muscogee County in Arnold Fleischmann and Jennifer Custer. "Goodbye, Columbus," pp. 46-59 in *Case Studies of City-County Consolidation: Reshaping the Local Government Landscape*, edited by Suzanne M. Leland and Kurt Thurmaier (New York: M.E. Sharpe, 2004).

<sup>xxv</sup><sup>xxvi</sup><sup>xxvii</sup> Bill Montgomery, "New Constitution in Hands of Voters," *Atlanta Constitution*, November 2, 1982, p. 9A; Hill, *The Georgia State Constitution*, pp. 15-23.

<sup>xxviii</sup><sup>xxix</sup><sup>xxx</sup><sup>xxxi</sup> "A Constitutional Mess," *Atlanta Constitution*, August 28, 1981, p. 4A.

<sup>xxxii</sup><sup>xxxiii</sup><sup>xxxiv</sup><sup>xxxv</sup> Bill Shipp, "Do the State a Favor: Forget the New Constitution," *Atlanta Constitution*, August 15, 1981, p. 2B. On the shifting power of governors and the General Assembly, see Harold P. Henderson and Gary L. Roberts, editors, *Georgia Governors in an Age of Change* (Athens: University of Georgia Press, 1988), pp. 199-207, 234-237, 267-269.

<sup>xxxvi</sup><sup>xxxvii</sup> "Streamlined State Constitution," *Atlanta Constitution*, June 30, 1983, p. 22A; "New State Constitution Deserves Ratification" (editorial), *Atlanta Constitution*, October 24, 1982, p. 2C.

<sup>xxxix</sup> <sup>xxxx</sup><sup>xxxxi</sup> Hill, *The Georgia State Constitution*, p. 70.

<sup>xxxxii</sup> <sup>xxxxiii</sup> *Constitution of the State of Georgia*, art. 3. For comparisons to other states, see *The Book of the States*, chap. 3.

<sup>xxxxiv</sup> *The Book of the States*, pp. 130-131.

<sup>xxxxv</sup> Jennifer Drage Bowser, "The Effects of Legislative Term Limits," pp. 111-115 in *The Book of the States*.

- 
- <sup>xxxiii</sup> See Edwin L. Jackson and Mary E. Stakes, *Handbook for Georgia Legislators* 10th ed. (Athens: Carl Vinson Institute of Government, University of Georgia, 1988), pp. 1-10.
- <sup>xxxiv</sup> *Constitution of the State of Georgia*, art. 3, sect. 2, paras. 1 and 2.
- <sup>xxxv</sup> *Constitution of the State of Georgia*, art. 5, sect. 2, para. 7.
- <sup>xxxvi</sup> *Constitution of the State of Georgia*, art. 3, sect. 3. Although the president pro tempore can become president of the Senate, the lieutenant governorship is left unfilled until the next general election should the position become vacant (see art. 5, sect. 1, para. 5). On other states, see *The Book of the States*, pp. 136-141.
- <sup>xxxvii</sup> *Constitution of the State of Georgia*, art. 3, sect. 5, para. 8.
- <sup>xxxviii</sup> *Constitution of the State of Georgia*, art. 3, sect. 5, para. 2.
- <sup>xxxix</sup> *Constitution of the State of Georgia*, art. 3, sect. 4, para. 11.
- <sup>xl</sup> *Constitution of the State of Georgia*, art. 3, sect. 9.
- <sup>xli</sup> The line-item veto is not covered in the section dealing with appropriations in the *Constitution of the State of Georgia*, but in art. 3, sect. 5, para. 13, which covers use of the veto in the enactment of laws.
- <sup>xlii</sup> Table 5 excludes all judicial positions and some executive branch officials. Lieutenant governors are included despite their status as presiding officers in 27 legislatures because of their right to succeed governors and their executive responsibilities in several states.
- <sup>xliii</sup> *The Book of the States*, pp. 233-238.
- <sup>xliv</sup> Thad Beyle, "The Governors," pp. 194-231 in *Politics in the American States: A Comparative Analysis* 8<sup>th</sup> ed., edited by Virginia Gray and Russell L. Hanson (Washington: CQ Press, 2004).
- <sup>xlv</sup> See *Constitution of the State of Georgia*, art. 5, sect. 1; *The Book of the States*, pp. 215-216. For a brief history of the Georgia governor's office, see Edwin L. Jackson and Mary E. Stakes, *Handbook of Georgia State Agencies* 2<sup>nd</sup> edition (Athens: Carl Vinson Institute of Government, University of Georgia, 1988), pp. 38-39.
- <sup>xlvi</sup> *Constitution of the State of Georgia*, art. 5, sect. 2, paras. 8 and 9; art. 6, sect. 7.
- <sup>xlvii</sup> *Official Code of Georgia Annotated* [hereafter cited as OCGA], title 45, chap. 5.
- <sup>xlviii</sup> *The Book of the States*, pp. 161-165. Four states require larger majorities to override taxing, spending, or emergency measures.
- <sup>xlix</sup> *Constitution of the State of Georgia*, art. 3, sect. 5.

- 
- <sup>i</sup> *Constitution of the State of Georgia*, art. 5, sect. 4, para. 1.
- <sup>ii</sup> *Constitution of the State of Georgia*, art. 5, sect. 3.
- <sup>iii</sup> OCGA, title 45, chapter 15; Jackson and Stakes, *Handbook of Georgia State Agencies*, pp. 63-69.
- <sup>iiii</sup> Rhonda Cook, "Oink If You Know the Secret Menu for Legislature's Wild Hog Supper," *Atlanta Journal and Constitution*, January 10, 1993, pp. A1, A12; and "Legislators Being Feted in Daytona," *Atlanta Journal and Constitution*, February 13, 1993, pp. A1, A6.
- <sup>iv</sup> *Constitution of the State of Georgia*, art. 5, sect. 3.
- <sup>v</sup> *Constitution of the State of Georgia*, art. 5, sect. 4.
- <sup>vi</sup> Governor's Office of Planning and Budget, "Fiscal 2005 Budget-as-passed" (available <http://www.legis.state.ga.us/legis/budget/GEN05.htm>).
- <sup>vii</sup> *Constitution of the State of Georgia*, art. 6, sect. 7.
- <sup>viii</sup> Georgia Supreme Court Commission on Racial and Ethnic Bias in the Court System, *Let Justice Be Done: Equally, Fairly, and Impartially* (final report, August 1995), p. 56; Bill Rankin, "Perdue's Court Pick Historic," *Atlanta Journal-Constitution*, June 9, 2005, p. A1.
- <sup>ix</sup> *Constitution of the State of Georgia*, art. 6, sects. 1-4. For detail on Georgia's courts, see the web site for the Administrative Office of the Courts: <http://www.georgiacourts.org/>.
- <sup>x</sup> *Constitution of the State of Georgia*, art. 6, sects. 5 and 7; Court of Appeals of Georgia, "History of the Court of Appeals" (available <http://www.gaappeals.us/history/>).
- <sup>xi</sup> *Constitution of the State of Georgia*, art. 6, sects. 6 and 7.
- <sup>xii</sup> On differences in states' methods of selecting judges, see Henry R. Glick, "Courts: Politics and the Judicial Process," pp. 232-260 in *Politics in the American States*. On judicial selection in Georgia, see *Constitution of the State of Georgia*, art. 6, sect. 7.
- <sup>xiii</sup> On the Judicial Qualifications Commission, see <http://www.georgiacourts.org/agencies/jqc/index.html>.
- <sup>xiv</sup> *Constitution of the State of Georgia*, art. 6, sect. 8.
- <sup>xv</sup> On jury selection in Georgia, see OCGA, title 15, chap. 12, art. 5; on juries generally, see Henry R. Glick, *Courts, Politics, and Justice* 3<sup>rd</sup> edition (New York: McGraw-Hill, 1993), pp. 222-223.
- <sup>xvi</sup> Georgia General Assembly, "2005 Summary of General Statutes" (available

---

[http://www.legis.state.ga.us/legis/2005\\_06/05sumdocnet.htm](http://www.legis.state.ga.us/legis/2005_06/05sumdocnet.htm)) and the text of HB 170 (available [http://www.legis.state.ga.us/legis/2005\\_06/pdf/hb170.pdf](http://www.legis.state.ga.us/legis/2005_06/pdf/hb170.pdf)). Also see Jim Tharpe, "Parents' Grief Leads to a Victory," *Atlanta Journal-Constitution*, April 6, 2005, p. B1.

<sup>lxvii</sup> See Arnold Fleischmann and Carol Pierannunzi, *Politics in Georgia* (Athens: University of Georgia Press, 1997), chap. 9.

<sup>lxviii</sup> *Constitution of the State of Georgia*, art. 9, sects. 1 and 2; Hill, *The Georgia State Constitution*, pp. 184-200.

<sup>lxix</sup> *Constitution of the State of Georgia*, art. 3, sect. 5, paras. 1 and 2.

<sup>lxx</sup> Steve Visser, "A Taxing Decision," *Atlanta Constitution*, June 14, 1999, p. E7.

<sup>lxxi</sup> David Goldberg and Kathey Pruitt, "GRTA Occupies Hot Seat," *Atlanta Constitution*, June 4, 1999, pp. A1, A8; Lucy Soto, "Public Still Skeptical About Transportation Board," *Atlanta Constitution*, June 7, 1999, pp. E1, E4.

<sup>lxxii</sup> Charles Seabrook, "Water Planning District" *Atlanta Constitution*, March 26, 2001, pp. E1, E6.

<sup>lxxiii</sup> U.S. Advisory Commission on Intergovernmental Relations, *State Laws Governing Local Government Structure and Administration*, report M-186 (Washington: Government Printing Office, 1993), pp. 7-9, 17-22.

<sup>lxxiv</sup> On local acts, see Fleischmann and Pierannunzi, *Politics in Georgia*, pp. 157-159, 233-238; on consolidation in Georgia, see Leland and Thurmaier, editors, *Case Studies of City-County Consolidation: Reshaping the Local Government Landscape*, chaps. 3, 6, and 10.

<sup>lxxv</sup> Taxation, debt limits, and revenue bonds are covered in *Constitution of the State of Georgia*, art. 9, sects. 4-6. Also see OCGA, title 36: chap. 5 on the property tax, chap. 7 on the income tax, and chap. 8 on the sales tax.

<sup>lxxvi</sup> OCGA, title 36, chap. 81, sect. 3b.

<sup>lxxvii</sup> *Constitution of the State of Georgia*, art. 8, para. 4; also see James Salzer, "Georgia Voters Throw Weight Behind Desire for Better Schools with Sales Tax Approvals," *Athens Daily News and Banner-Herald*, October 19, 1997, p. 6A.

<sup>lxxviii</sup> In addition to Georgia, runoffs are held in Alabama, Florida, Mississippi, North Carolina, Oklahoma, South Carolina, and Texas. Virginia repealed the runoff requirement in 1969, and Louisiana abandoned the runoff in favor of a nonpartisan primary in 1975. Arkansas, Kentucky, Maryland, and Utah have also used the runoff in the past. Arizona adopted a runoff for statewide general elections in 1988. See Key, *Southern Politics*, pp. 416-23; Charles S. Bullock III and Loch K. Johnson, *Runoff Elections in the United States* (Chapel



---

Hill: University of North Carolina Press, 1992).

<sup>lxxix</sup>On the rules for runoffs in Georgia, see OCGA, title 21, chap. 2, sect. 501.

<sup>lxxx</sup>*Brooks et al. v. Miller et al.*, 158 F.3d 1230 (1998); *Brooks et al. v. Barnes et al.*, no. 98-1521, cert. denied May 24, 1999; Kathy Pruitt, "Majority Vote Still Needed in Primaries," *Atlanta Constitution*, May 25, 1999, p. B3.

<sup>lxxxi</sup>OCGA, title 21, chap. 4.

<sup>lxxxii</sup>*Constitution of the State of Georgia*, art. 3, sect. 7.

<sup>lxxxiii</sup>*Constitution of the State of Georgia*, art. 2, sect. 3.

<sup>lxxxiv</sup>*Constitution of the State of Georgia*, art. 3, sect. 2, para. 5; art. 5, sect. 1, paras. 2 and 3; art. 5, sect. 3, para. 1.

<sup>lxxxv</sup>*Constitution of the State of Georgia*, art. 6, sect. 7, para. 1; art. 8, sect. 5, para. 2; art. 9, sect. 1, para. 3.

<sup>lxxxvi</sup>296 U.S. 186 (1962).

<sup>lxxxvii</sup>It does not seem necessary to include detailed citations to Georgia court cases in a general work such as this. Therefore, each section will include a citation to the appropriate location in Hill's definitive work on the Georgia Constitution, plus updates from the *Official Code of Georgia Annotated*. Many of these cases are discussed in more detail, with full citations in the endnotes, in Fleischmann and Pierannunzi, *Politics in Georgia*, pp. 62-67.

<sup>lxxxviii</sup>*Constitution of the State of Georgia*, art. 1, sect. 2, para. 5.

<sup>lxxxix</sup>*Constitution of the State of Georgia*, art. 1, sect. 1, para. 2; Hill, *The Georgia State Constitution*, pp. 33-36.

<sup>xc</sup>*American Subcontractors Association v. City of Atlanta*, 259 Ga. 14, 376 S.E.2d 662 (1989).

<sup>xcj</sup>Doug Cumming, "Applicants Nervously Await Decisions," *Atlanta Constitution*, March 25, 1998, p. C5. Following years of litigation over policies at the University of Georgia, the U.S. Supreme Court gave support to the limited use of affirmative action in college admissions in two cases involving the University of Michigan: *Gratz v. Bollinger*, no. 02-516 (2003), and *Grutter v. Bollinger*, no. 02-241 (2003).

<sup>xcij</sup>Douglas A. Blackmon and Holly Morris, "Court Gives Split Ruling on Gay Rights," *Atlanta Constitution*, March 15, 1995, p. E1.

<sup>xciii</sup>On the right to vote, see Laughlin McDonald, Michael B. Binford, and Ken Johnson, "Georgia," pp. 67-102 in *Quiet Revolution in the South: The Impact of the Voting Rights*

---

*Act, 1965-1990*, edited by Chandler Davidson and Bernard Grofman (Princeton: Princeton University Press, 1994).

<sup>xciv</sup>For a thorough discussion, see Clarence N. Stone, *Regime Politics: Governing Atlanta, 1946-1988* (Lawrence: University Press of Kansas, 1989).

<sup>xcv</sup>William F. Holmes, "Part Five: 1890-1940," in *A History of Georgia 2<sup>nd</sup>* edition, edited by Kenneth Coleman (Athens: University of Georgia Press, 1991), p. 280.

<sup>xcvi</sup>For a good synopsis of postwar racial change, see Numan V. Bartley, "Part Six: 1940 to the Present," in *A History of Georgia 2<sup>nd</sup>* edition, edited by Kenneth Coleman (Athens: University of Georgia Press, 1991), pp. 361-74.

<sup>xcvii</sup>*Stell v. Savannah-Chatham County Board of Education*, 333 F.2d 55 (1964).

<sup>xcviii</sup>*Wesberry v. Sanders*, 376 U.S. 1 (1964).

<sup>xcix</sup>See Hill, *The Georgia State Constitution*, p. 225.

<sup>c</sup>Linda Greenhouse, "Justices, in 5-4 Vote, Reject Districts Drawn with Race the 'Predominant Factor'," *New York Times*, June 30, 1995, pp. A1, A13.

<sup>cici</sup>*Constitution of the State of Georgia*, art. 1, sect. 1, para. 1; Hill, *The Georgia State Constitution*, pp. 30-33.

<sup>cii</sup>*Suber v. Bulloch County Board of Education*, 722 F.Supp. 736 (S.D. Ga., 1989).

<sup>ciii</sup>*Stephens v. State*, 265 Ga. 356, 456 S.E.2d 560, cert. denied 516 U.S. 849 (1995).

<sup>civ</sup>*Constitution of the State of Georgia*, art. 1, sect. 1, paras. 3 and 4; Hill, *The Georgia State Constitution*, pp. 36-38.

<sup>cv</sup>*Constitution of the State of Georgia*, art. 1, sect. 1, para. 4.

<sup>cvi</sup>*Constitution of the State of Georgia*, art. 1, sect. 1, para. 5; Hill, *The Georgia State Constitution*, pp. 38-40.

<sup>cvij</sup>*State v. Café Erotica*, 269 Ga. 486, 500 S.E.2d 547 (1998).

<sup>cviii</sup>*State v. Miller*, 260 Ga. 669, 398 S.E.2d 547 (1990).

<sup>cix</sup>*Vaughn v. State*, 259 Ga. 325, 381 S.E.2d 30 (1989).

<sup>cx</sup>See OCGA, title 24, chap. 9, sect. 30.

<sup>cxii</sup>*Statesboro Publishing Co. v. City of Sylvania*, 271 Ga. 92, 516 S.E.2d 926 (1999).

- 
- <sup>cxii</sup> *Goldrush II v. City of Marietta*, 267 Ga. 683, 482 S.E.2d 347 (1997)
- <sup>cxiii</sup> *Constitution of the State of Georgia*, art. 1 sect. 1, paras. 11-24; Hill, *The Georgia State Constitution*, pp. 42-51.
- <sup>cxiv</sup> *Constitution of the State of Georgia*, art. 1, sect. 1, para. 21.
- <sup>cxv</sup> *Constitution of the State of Georgia*, art. 1, sect. 1, para. 23.
- <sup>cxvi</sup> *Constitution of the State of Georgia*, art. 1, sect. 1, para. 17.
- <sup>cxvii</sup> *Bergman v. McCullough*, 218 Ga. App. 353, 461 S.E.2d 544 (1995), cert. denied 517 U.S. 1141 (1996).
- <sup>cxviii</sup> *Fleming v. Zant*, 259 Ga. 687, 386 S.E.2d 339 (1989).
- <sup>cxix</sup> *Crutchfield v. State*, 218 Ga. App. 360, 461 S.E.2d 555 (1995).
- <sup>cxx</sup> *Constitution of the State of Georgia*, art. 1, sect. 1, para. 1b.
- <sup>cxxi</sup> *Pavesich v. New England Life Insurance Co.*, 122 Ga. 190, 50 S.E. 68 (1904).
- <sup>cxxii</sup> *Christensen v. State*, 266 Ga. 474, 464 S.E.2d 188 (1996).
- <sup>cxxiii</sup> *Powell v. State*, 270 Ga. 327, 510 S.E.2d 18 (1998).
- <sup>cxxiv</sup> *Morrisaon v. State*, 272 Ga. 129, 526 S.E.2d 336 (2000).
- <sup>cxxv</sup> *Lawrence v. Texas*, no. 02-102 (2003).
- <sup>cxxvi</sup> For the U.S. Supreme Court's view of assisted suicide and the right to privacy, see *Washington v. Glucksberg*, 521 U.S. 702 (1997) and *Vacco v. Quill*, 521 U.S. 793 (1997). On the Oregon conflict, see *Oregon v. Ashcroft*, 368 F.3d 1118 (2004), the case was appealed to the U.S. Supreme Court, which heard oral arguments on the appeal in October 2005.
- <sup>cxxvii</sup> See Mark Curriden, "Is Naming Judges Serving Justice?" *Atlanta Journal and Constitution*, November 29, 1992, pp. G1, G3; Andrew Kull, "The Slow Death of Colorblind Justice," *Atlanta Journal and Constitution*, November 29, 1992, pp. H1, H5; Mark Curriden, "Road to a Judicial Appointment Not Clear—Even to State's Judges," *Atlanta Constitution*, December 21, 1992, p. C3.
- <sup>cxxviii</sup> *Constitution of the State of Georgia*, art. 7, sect. 1, para. 3e.
- <sup>cxxix</sup> *Constitution of the State of Georgia*, art. 8, sect. 5, paras. 2 and 3.

Filename: Fleischmann 6th Edition.wpd  
Directory: T:\Joel Brennecke  
Template: C:\Documents and Settings\jbrennecke\Application  
Data\Microsoft\Templates\Normal.dot  
Title:  
Subject:  
Author: TL User  
Keywords:  
Comments:  
Creation Date: 3/12/2006 7:08:00 AM  
Change Number: 1  
Last Saved On:  
Last Saved By:  
Total Editing Time: 3 Minutes  
Last Printed On: 3/12/2006 7:11:00 AM  
As of Last Complete Printing  
Number of Pages: 59  
Number of Words: 22,680 (approx.)  
Number of Characters: 129,277 (approx.)