**IN THE SUPERIOR COURT OF COBB COUNTY**
**STATE OF GEORGIA**

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| DAVID FLOAM and CATHERINE FLOAM<br><br>Plaintiffs,<br>v.<br><br>COBB COUNTY, GEORGIA,<br><br>Defendant. | ) | CIVIL ACTION FILE NO.<br><br>23-1-02428-56 |

## ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT



This action for Declaratory Relief was initiated on March 28, 2023. The plaintiffs have changed during the litigation.[1] Currently before the Court are the parties' cross motions for summary judgment. The sole issue is whether the Cobb County Board of Commissioners ("the County") had authority under the Georgia Constitution to amend a county-commission redistricting bill enacted by the Governor ("Act 562"). The Court finds the County's Amendment to Act 562 (the "Amendment" or "Amended Act") is an act excluded from the County's Home Rule authority granted in the Georgia Constitution, and therefore is void.

## INTRODUCTION

The relevant and undisputed facts began when Cobb County's local legislative delegation introduced two redistricting bills in the General Assembly to redraw Cobb County's commission district boundaries. The County's majority delegation introduced House Bill ("HB") 1256. The County's minority delegation introduced HB 1154, which was passed by the General Assembly

[1] The case was initiated by Plaintiff Keli Gambrill. On June 9, 2023, the Court granted Gambrill's Motion to add the Floams as additional plaintiffs. On August 16, 2023, the Court granted the Defendant's Motion to Dismiss against Plaintiff Gambrill.

and signed by the Governor as Act 562 on March 22, 2022.[2] In passing the minority delegation's redistricting bill instead of the bill proposed by the majority delegation, the General Assembly departed from its legislative tradition of extending "local courtesy" to pass redistricting bills proposed by a county's majority delegation.[3] Dissatisfied with Act 562, the Cobb County Board of Commissioners passed a resolution on October 25, 2022 to amend Act 562 and create new election boundaries identical to those proposed by the majority delegation's HB 1256.[4] There is no dispute that in passing the Amendment, the County complied with the procedural requirements to amend local legislation as set forth in the Home Rule provisions of the Georgia Constitution. *See Ga. Const. of 1983, Art. 1, Sec. 2, Par. I(b).*

These facts give rise to the question of law before the Court: whether Cobb County has authority under the Georgia Constitution's Home Rule provision to draw its own commission district boundaries used by voters to elect their county commissioners. Plaintiffs David Floam and Catherine Floam ("the Floams" or "Plaintiffs") seek summary judgment declaring the County's Amendment to Act 562 unconstitutional. Plaintiffs also seek a declaration that (unamended) Act 562 is valid and binding law. Cobb County seeks summary judgment denying Plaintiff's claim, asserting that the County's action fell within



[2] HB 1154 was passed by the House on February 14, 2022 and by the Senate on February 24, 2022.

[3] This tradition is not legally enforceable. "Local courtesy, however, is only a custom. It is not provided for in either the House or Senate rules and cannot be enforced should a member choose to challenge local legislation on the floor of the House or Senate." *DeJulio v. Georgia,* 127 F. Supp. 2d 1274, 1281 (N.D. Ga.), *aff'd in part, rev'd in part,* 276 F.3d 1244 (11th Cir. 2001), *opinion withdrawn and superseded on denial of reh'g,* 290 F.3d 1291 (11th Cir. 2002), and *aff'd,* 290 F.3d 1291 (11th Cir. 2002).

[4] A contested fact is whether HB 1154, which changed the district of an incumbent Commissioner, worked to draw that Commissioner out of her seat before her term expired, creating a vacancy that would require a special election to fill. As that fact is not material to a determination of the constitutionality of the Amendment, that dispute is not resolved here and does not preclude a ruling on summary judgment.

its authority to redistrict under Constitutional Home Rule. The Attorney General has filed pleadings as Amicus Curiae.[5]

## PROCEDURAL HISTORY

In the initial Complaint, Plaintiffs seek an Order declaring that the County's Amendment is unconstitutional and that Act 562 is legal and binding. In their Second Amended Complaint,[6] Plaintiffs seek additional relief, *to wit*: an order declaring that, until the validity of the Amendment is determined, a) the County should not hold elections; and, b) the County should compel the Board of Elections ("BOE") to withhold any new voter combination codes from the Secretary of State's office.[7]

The County filed Motions to Dismiss alleging a lack of subject matter jurisdiction. The Court's August 16, 2023 Order on those Motions found that the Floams had standing to proceed and Plaintiff Gambrill did not. Plaintiff Gambrill filed a Notice of Appeal of that ruling on September 15, 2023 and withdrew her Notice of Appeal on November 17, 2023. The Court heard oral argument on the summary judgment motions November 20, 2023, and the Attorney General filed a Reply brief that morning. The Court permitted the parties to file supplemental briefs in response to the Attorney General's Reply, and the parties did so timely. In reaching its decision, the Court considered the Complaint, Amended Complaint, Second Amended Complaint, the parties' pleadings related to the cross motions, supplemental briefs, and the Attorney General's Amicus pleadings.



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[5] The Attorney General filed an Amicus Curiae Brief on May 12, 2023. On November 20, 2023, the Attorney General filed a Reply Brief. Both have been considered by the Court.

[6] The First Amended Complaint added the Floams as plaintiffs.

[7] Notwithstanding that Plaintiffs seek a declaration regarding these additional claims, the specific relief requested – an order compelling or prohibiting certain acts by the County – is not appropriate for declaratory relief. *See* O.C.G.A. § 9-4-2; *see also Perdue v. Barron,* 367 Ga. App. 157, 164 (2023) (in declaratory judgment actions, court has the power to declare rights and other legal relations).

## LEGAL ANALYSIS

"To prevail at summary judgment under O.C.G.A. § 9-11-56, the moving party must demonstrate that there is no genuine issue of material fact and that the undisputed facts, viewed in a light most favorable to the non-moving party, warrant judgment as a matter of law.'" *Lau's Corp., Inc. v. Haskins*, 261 Ga. 491, 491 (1991). The burden of proof shifts when the moving party makes a prima facie showing it is entitled to judgment as a matter of law. *Trust Co. Bank v Stubbs*, 203 Ga. App. 557, 560 (1992). At that time the opposing party must come forward with rebuttal evidence or suffer judgment against him/her. *Id.* "Summary judgment is an extreme remedy and should be granted only in those cases where there is clearly no genuine issue to be tried." *State Farm & Cas. Co. v. Martin*, 174 Ga. App. 308, 308 (1985) (cit. omitted). As no material facts are disputed in this case, the Court considers whether the undisputed facts are sufficient to warrant summary judgment for either party.



### Home Rule Authority

Georgia's General Assembly maintained absolute legislative control until the mid-1960's, when it relinquished some legislative power to local government via home rule. It did so by enacting the Municipal Home Rule Act of 1965 and simultaneously proposing a constitutional amendment, which was ratified by Georgia voters in 1966. *Camden County v. Sweatt*, 315 Ga. 498, 506 (2023).[8]

This delegation of legislative power is currently enshrined in the Georgia Constitution and is entitled "Home Rule for Counties and Municipalities." *Ga. Const. of 1983, Art. IX, Sec. II.* Paragraph I of Section II, titled "Home rule for counties," confers legislative power directly to counties, independent of the General Assembly ("County Home Rule" or "Constitutional Home Rule"). *Id.* Paragraph II of that Section, titled "Home rule for municipalities," permits the

[8] An earlier constitutional amendment allowed for the passage of municipal home rule legislation, but it was not until the 1966 amendment that the same was allowed for counties. *Sweatt,* 315 Ga. at 506 fn. 16.

General Assembly to legislate self-governing provisions for municipalities, which it did when it passed the Municipal Home Rule Act of 1965, codified at OCGA § 36-35-3 ("Municipal Home Rule" or "Legislative Home Rule"). *Id.* Although the delegation of legislative power in both the Constitutional and Legislative Home Rule provisions contains similar structure and, at times, identical language, the distinction between their origins is important. If there is a conflict between the Constitution and legislation, the Constitution prevails as the foundation of government that originated "with the people." *Ga. Const. 1983, Art. 1, Sec. 2, Par. I.* At issue in this case is whether the County's Amendment to Act 562 was authorized by the legislative powers conferred under Constitutional Home Rule.

Georgia courts have recognized that Constitutional Home Rule grants two distinct forms of legislative power to counties, referred to as first-tier and second-tier powers. *Sweatt,* 315 Ga. at 507. First-tier authority has been described as "subservient to local statutes," whereas second-tier authority is "employed to change local statutes." *Board of Commissioners of Miller County v Callan,* 290 Ga. 327, 329 (2012); *see also Sweatt,* 315 Ga. at 507.

With the first tier, counties are permitted to adopt county-specific reasonable measures which do not rise to the level of affecting state legislation, so long as the county law "is not inconsistent with the Constitution or any local law applicable thereto." *Sweatt,* 315 Ga. at 507. The County Home Rule paragraph which confers first-tier power provides as follows:

> The governing authority of each county shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which is not inconsistent with this Constitution or any local law applicable thereto. Any such local law shall remain in force and effect until amended or repealed as provided in subparagraph b.

*Ga. Const. of 1983, Art. IX, Sec. 2, Par. I (a).*

A county's second-tier legislative power is located in subpart (b) of the same paragraph. Under the second tier, "a county may, as an incident of its

home rule power, amend or repeal local acts applicable to its governing authority by following either of the procedures hereinafter set forth." *Ga. Const. of 1983, Art. IX, Sec. 2, Par. I (b).*[9] However, this second-tier power, while an extensive grant of local legislating authority, is nevertheless subject to the exclusions described in subpart (c) of the County Home Rule provisions.

It is clear to this Court that the second-tier power of Constitutional Home Rule provides Cobb County with authority to amend local laws enacted by the Governor. The critical question is whether any of the constitutional exclusions prohibited the County from amending Act 562 in October of 2022 to replace the district electoral maps passed by the General Assembly with its own district maps. The Floams point to three exclusions from home rule authority which they contend prohibit the County from acting as it did.



**Exemptions from County Home Rule Authority Generally**

Paragraph I(c) of the County Home Rule provision sets forth, in relevant part, those matters to which a county's second-tier authority does not extend.

> The power granted to counties . . . shall not be construed to extend to the following matters or any other matters which the General Assembly by general law has preempted or may hereafter preempt, but such matters shall be the subject of general law or the subject of local acts of the General Assembly to the extent that the enactment of such local acts is otherwise permitted under this Constitution:
>
> (1) Action affecting any elective county office, the salaries thereof, or the personnel thereof, except the personnel subject to the jurisdiction of the county governing authority.
>
> (2) Action affecting the composition, form, procedure for election or appointment, compensation, and expenses and allowances in the nature of compensation of the county governing authority.

[9] Cobb County followed the first procedure, which requires adoption of a resolution by the County's governing authority and notice in the official county organ. *See Ga. Const. of 1983, Art. I, Sec. 2, Par. I(b).*

*Ga. Const. of 1983, Art. IX, Sec. 2, Par. I(c).* Looking to the above language, the Floams contend that the County was constitutionally prohibited from amending Act 562 because the Act involves:

a) a matter which the General Assembly by general law has preempted or may hereafter preempt under subpart (c) generally;
b) an action which affects any elective county office under subpart (c)(1);
c) an action which affects the composition, form, procedure for election or appointment of the county governing authority under subpart (c)(2).

The Court will analyze each of these arguments in turn.



**Exemption: Preemption Under Subpart (c)**

The Floams first contend that the General Assembly preempted the field of redistricting county election boundaries when it enacted O.C.G.A. § 28-1-14.1 in 2019. Title 28 is entitled "General Assembly," and Chapter One contains statutes generally related to the organization and operating procedures of the legislature. Section 14 of this chapter provides notice requirements that a member of the General Assembly must comply with before introducing a local bill. *See* O.C.G.A. §28-1-14. Section 14.1 is entitled "Requirements for revising districts; proposed plans submitted electronically; legislative requirements." It provides the General Assembly with the exclusive procedure to consider local bills that create or revise new districts for various local offices, including county boards of commissioners. *See* O.C.G.A. §28-1-14.1(a) ("a local bill for revising the districts of county boards of commissioners . . . shall not be considered by the General Assembly unless such bill meets the requirements of this Code section").

A member of the General Assembly may introduce a local bill with a redistricting plan which either has been drawn by the Legislative and Congressional Reapportionment Office ("Reapportionment Office") or has been prepared by another source and then certified by that Office. *See* O.C.G.A. §

28-1-14.1(b). For plans not prepared by the Reapportionment Office, the statute sets out a number of technical and statistical requirements the plan must meet when submitted to the Reapportionment Office for review. *See* O.C.G.A. § 28-1-14.1(d). As part of certifying plans from another source, the Reapportionment Office

> shall perform a technical review of the proposed plan to determine if the plan complies with federal and state constitutional requirements for such plans and the federal Voting Rights Act of 1965, as amended. Such office shall also review the plan to determine if such plan divides current voting precincts in a manner that could potentially compromise voter anonymity, leaves any geographic unassigned areas, maintains continuous geographic features, and any other concerns that such office may deem legally significant.

O.C.G.A. § 28-1-14.1(b)(3). Finally, if a member of the General Assembly chooses to proceed with a bill containing a redistricting plan which has been neither drawn by, nor certified by, the Reapportionment Office, the member must provide a letter from the Office explaining why such certification could not be done. *See* O.C.G.A. § 28-1-14.1(e).

The Floams contend that Section 14.1 is the exclusive method by which a county may create or revise districts, asserting that the General Assembly "completely exhaust[ed] the field" of redistricting and thus preempted the County from using its home rule authority to amend Act 562. *Plaintiff's Combined Motion for Summary Judgment and Brief in Support, filed August 31, 2023, p. 4.* Although the Floams do not indicate the type of preemption created by Section 14.1, Georgia law recognizes three forms of preemption: express, implied and conflict. *Franklin County v. Fieldale Farms Corp*, 270 Ga. 272, 273-74 (1998).



### 1. Express Preemption

A general law expressly preempts a local law when "the statutory text speaks to the need for statewide uniformity on the subject in question or to the lack of local authority to regulate the subject of the general law." *Gebrekidan v.*

*City of Clarkston*, 298 Ga. 651, 653 (2016). Here, the statutory text of O.C.G.A. § 28-1-14.1 codifies the procedure members of the General Assembly must follow when introducing a local bill to create or revise local districts, including local commission districts. It does not expressly prohibit counties from enacting their own districts, nor does it declare a statewide preemption of county districting. Nevertheless, it does speak to statewide concerns with redistricting which must be satisfied by the Reapportionment Office when drawing or certifying such plans. For example, the statute recognizes the need for any districting plan to comply with federal and state constitutional requirements (e.g., the 1965 Voting Rights Act). It also recognizes the need for any plan to avoid creating cognizable legal issues, such as unassigned geographic areas, non-contiguous geographic lines, and compromises to voter anonymity.

In considering the meaning of a statute, this Court "must afford the statutory text its plain and ordinary meaning, view the text in the context in which it appears, and read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would." *Deal v. Coleman*, 294 Ga. 170, 172 (2013) (cleaned up). No one disputes that the General Assembly has the power under the Georgia Constitution to redistrict county maps as it chooses. *See Ga. Const. 1983, Art. 3, Sec. 6, Par. I.* Historically it has done so, and it did so in this case when it passed HB 1154. But a plain reading of Section 14.1 finds no express language providing that the General Assembly possesses exclusive authority to district county boards of commissioners. Notably, the General Assembly has enacted general laws that reserve exclusive power to redistrict its own House and Senate districts as well as United States congressional districts. *See* O.C.G.A. §§ 28-2-1(a)(2) (regarding house districting), 28-2-2 (regarding senate districting), and 21-1-2 (regarding U.S. congressional districting).

Section 14.1 was enacted well after these statutes, and the Court must assume that it was passed with full knowledge of these statutes. Should the

legislature have intended to reserve exclusive power to itself to district for local boards such as county commission districts, it knew how to do so. *See Singletary v. State*, 310 Ga. App. 570, 572 (2011) (statutes are presumed to be enacted with full knowledge of existing law, and their meaning and effect are to be determined with reference to the constitution and other statutes). Accordingly, it is reasonable to conclude that the omission of express language reserving exclusive authority for county districting to the General Assembly was intentional.[10] The Court declines to find that the General Assembly has, by enacting O.C.G.A. § 28-1-14.1, expressly preempted counties from enacting their own local bills containing districting plans for their boards of commissioners.

**2. Implied Preemption**

As a general rule, "state statutes control over local ordinances on the same subject." *Gebrekidan,* 298 Ga. at 653. The doctrine of implied preemption recognizes that in some cases, the state legislature's intent to preempt local legislation on the same subject as a general law should be inferred from the comprehensive nature of the state statutory scheme. *Id.* at 654.

> In this context, the General Assembly speaks through its silence as well as its words; the broad scope and reticulated nature of the statutory scheme indicate that the legislature meant not only to preclude local regulations of the various particular matters to which the general law directly speaks, but also to leave unregulated by local law the matters left unregulated in the interstices of the general law.

*Id.*

In *Gebrekidan,* the state statutes which were found to impliedly preempt a local ordinance regarding coin operated amusement machines were quite extensive, filling some 35 pages of the Georgia Code. *See Gebrekidan,* 298 Ga. 657. Conversely, the state statute in *Fieldale Farms* regulating the application

[10] In contending that the General Assembly has exclusive constitutional power to redistrict, the Attorney General cites to Article 3, Section 2, Paragraph 2 of the Georgia Constitution. That paragraph does grant the General Assembly exclusive power to apportion and reapportion state legislative districts. However, it is silent with regard to local districting.

of sludge to land is only a couple of pages long, and within it, it directs the Board of Natural Resources to adopt technical and procedural regulations governing sludge land application. *Fieldale Farms,* 270 Ga. at 277. The Supreme Court described this statute and its related regulations as comprehensive in nature. *Id.*

In affirming the trial court's conclusion that state law impliedly preempted the county from enacting the local ordinance, the Supreme Court found other factors persuasive, notwithstanding the comparative brevity of the statute itself. First, the Court noted that the General Assembly expressly granted local governments limited power to act in the field of applying sludge to land: it permitted local governments to assess reasonable monitoring fees (and seek injunctions if those fees were not paid). *Id.* And second, the Court concluded that the General Assembly implicitly did not intend to give counties concurrent authority to regulate through its own permit system when it assigned the task of developing permit requirements directly to the State. *Id.*

O.C.G.A. § 28-1-14.1 is a relatively recent addition to some 19 general organizational, operational and procedural laws for the General Assembly contained in Chapter 1 of Title 28. Section 14.1 sets forth requirements that must be satisfied in order for the General Assembly to consider local bills dealing with the creation or revision of districts for a variety of county and municipal governing authorities, including county boards of commissioners. Similar to the statute under consideration in *Fieldale Farms,* the procedures in Section 14.1 for redistricting county offices, including boards of commissioners, are fairly concise. The statute grants local governments the authority to submit local bills with their own districting plans for their county commission districts. And it vests a state office – the Reapportionment Office – with the responsibility of insuring that redistricting plans comply with a broad range of constitutional and statutory requirements, both state and federal.[11]



[11] The homepage for the Reapportionment Office website notes that it is "a joint office of the Georgia General Assembly responsible for providing the General Assembly with redistricting services. The office uses data provided to the State of Georgia by the U.S. Census Bureau for

Then, and only then, may the General Assembly consider such redistricting bills. This is true for both county redistricting bills and bills to create districts for new municipalities. Under the reasoning of *Fieldale Farms*, these facts suggest that in enacting O.C.G.A. § 28-1-14.1, the General Assembly impliedly preempted counties from enacting their own local bills containing districting plans for their boards of commissioners.

Having said that, the Court cannot overlook the fact that Section 14.1 has almost identical procedural requirements for local bills that create districts for a new municipality. *See* O.C.G.A. § 28-1-14.1(c). And this is true notwithstanding that O.C.G.A. § 36-35-4.1 provides municipalities with concurrent power to redistrict.[12] At first blush, this would seem to leave the Court in the awkward position of reading Section 14.1 to impliedly preempt local enactment of redistricting, thereby rendering O.C.G.A. § 36-35-4.1 meaningless, an outcome which courts are to avoid. *See Sweatt,* 315 Ga. at 509 (in interpreting statutory text, avoid a construction that makes some language mere surplusage). However, a closer reading of the two statutes reveals a distinction between municipal *redistricting,* for which the state and municipalities share concurrent authority under O.C.G.A. § 36-35-4.1, and municipal districting in the *first* instance (i.e., districting for a new municipality), for which the state retains exclusive authority under O.C.G.A. § 28-1-14.1 (and for which new municipalities have no authority under O.C.G.A. § 36-35-4.1). Thus, it is possible to harmonize these statutes and avoid an interpretation that renders one meaningless, by finding implied preemption for



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the purpose of redistricting. In addition to providing the technical assistance to redistrict, the office provides an array of maps and up to date data reports which include information on demographics, precincts, and local redistricting." https://www.legis.ga.gov/joint-office/reapportionment.

[12] O.C.G.A. § 36-35-4.1 also contains specifications for municipal redistricting that largely echo those found in Section 14.1; e.g., the district must be composed of contiguous territory and comply with the one person – one vote constitutional requirement.

purposes of county redistricting, while maintaining concurrent authority for municipal *re*districting.

In any case, because of the conclusions the Court reaches with regard to the constitutional exceptions to Home Rule, as explained below, the Court does not find it necessary to definitively answer the question of implied preemption.

**3. Conflict Preemption**

The Floams also argue conflict preemption. Specifically, they contend state law may preempt local law on the same subject by conflict. *Fieldale Farms,* 270 Ga. at 274. However, there must be a genuine conflict between the local law and the general law. *Id.* There is no conflict between a local law and a general law when the local law does not impair the operation of the general law, but rather augments and strengthens it. *Rabun County High Voltage Line v. GTC,* 276 Ga. 81, 87 (2003); *Cobb County v. Crusselle,* 274 Ga. 78, 78 (2001). Most of the cases dealing with conflict preemption arise under the Constitution's Uniformity Clause, which provides an exception for preemption when a local government, by its own ordinance and resolution, exercises police powers in a manner which does not conflict with the state's general laws. *See Ga. Const. of 1983, Art. III, Sec. VI, Par. IV(a).*



The County submits that Section 14.1 provides one method for the introduction of redistricting bills by the General Assembly, but it does not require that redistricting bills be introduced exclusively by the Legislature. The Floams contend that the statutory procedures found in OCGA § 28-1-14.1 would be rendered duplicative and meaningless if a county has home rule authority to enact its own redistricting plan.

However, the Floams' argument fails to acknowledge that Section 14.1 applies not only to counties, but also to municipalities, notwithstanding the fact municipalities were granted authority to redistrict themselves by the General Assembly long before passage of Section 14.1 in 2019. As explained above, the Municipal Home Rule Act does not require municipalities to submit their local redistricting bills to the General Assembly. *See* O.C.G.A. § 36-35-

4.1. Assuming without deciding that Section 14.1 coexists in harmony with the alternative method of municipal self-redistricting found in O.C.G.A. § 36-35-4.1,[13] there is no reason to believe that a county's self-redistricting, if proper under its Constitutional Home Rule authority, could not also co-exist with Section 14.1. Thus, there is no genuine conflict between state and local law, and no preemption of the latter by the former.

In short, the Court finds that Cobb County's Amendment to Act 562 is not expressly preempted by § O.C.G.A. 28-1-14.1. Nor is it preempted by a genuine conflict with that statute. Whether preemption can be inferred from the nature of the statute remains an open question. However, the Court concludes that any question of preemption is mooted by its conclusions regarding the applicability of the specific constitutional exemptions to Constitutional Home Rule.



**Exemption (c)(1): Actions Affecting Any County Elective Office**

The Floams contend that the County's Amendment to Act 562 is specifically excluded by the home rule provision that prohibits a county from enacting legislation "affecting any elective county office." *Ga. Const. Art. 9, Sec. 2, Par. 1 (c)(1).* All parties agree that the language applies to county commissioners. And all agree the language of the exemption is clear and unambiguous. However, they disagree about the meaning of the term "office" and the scope of "actions affecting elective county office."

Determining the meaning of a constitutional provision requires a focus on the public meaning, not the subjective intent of the drafters, since the people are the ultimate "makers" of the Georgia Constitution. *Elliott v. State,* 305 Ga. 179, 182 fn. 4 (2019); *see also Georgia v. SASS Group,* 315 Ga. 893, 898 (2023) (constitutions "are the result of popular will, and their words are to be understood ordinarily in the sense they convey to the popular mind"). "In

[13] But see the tension noted previously between redistricting and districting in the first instance (i.e., districting for a new municipality).

determining the original public meaning of a constitutional provision, we consider the plain and ordinary meaning of the text, viewing it in the context in which it appears and reading the text in its most natural and reasonable manner." *Olevik v. State*, 302 Ga. 228, 236 (2017); *see also Georgia Motor Trucking Ass'n v. Ga. Dept. of Revenue*, 301 Ga. 354, 356 (2017).[14]

One place to look for the ordinary meaning of a text is contemporaneous dictionaries from around the time when the text was adopted. *SASS Group*, 315 Ga. at 898. In a contemporaneous dictionary, the word "office" is defined as "a special duty, charge or position conferred by an exercise of governmental authority and for a public purpose; a position of authority to exercise a public function and to receive whatever emoluments may belong to it." *Webster's Third New International Dictionary of the English Language* (3d ed. 1966) at 1567. It is also defined as "a position of responsibility or some degree of executive authority," and "the fact or state of holding a public position of authority." *Id.* In the same dictionary, "officeholder" is defined as "one holding a public office, esp. in the civil service." *Id.* However, dictionaries cannot be the definitive source of ordinary meaning in questions of textual interpretation because they are acontextual, and context is a critical determinant of meaning." *SASS Group,* 315 Ga. at 899.

Case law can also assist in determining the meaning and scope of the term "office." Georgia courts have recognized a distinction between office and officeholder. In *Lee v City of Villa Rica*, the mayor was elected, and the next year, the General Assembly passed local legislation that resulted in de-annexation of some portions of the city, including where the mayor lived. *Lee v. City of Villa Rica,* 264 Ga. 606, 608 (1994). The mayor contended that the de-annexation legislation violated O.C.G.A. § 1-3-11, which provides that "no office to which a person has been elected shall be abolished nor the term of the office shortened or lengthened by local or special act" during that person's term

[14] These same interpretive principles apply to both statutory and constitutional interpretation. *See Carpenter v. McMann,* 304 Ga. 209, 210 (2018).

except by referendum. *Id.* In rejecting his challenge, the trial court held that the mayoral office had not been abolished, nor had its term been modified. Instead, the de-annexation statute had only created a vacancy in the office. *Id. See also See Smith v Abercrombie,* 235 Ga. 741, 808 (1974) (holding that the recall of an officeholder does not abolish or modify the term of the office in violation of the constitutional provision which was the predecessor to the statute at issue in *Lee*).

In light of *Lee* and *Smith,* the Court finds the Floams' argument that Cobb County's Amendment to Act 562 might cause a vacancy in one of the commission seats, and thereby impact the office itself, to be unpersuasive. The Court finds those cases otherwise distinguishable in significant ways, and finds them ultimately not persuasive as to the meaning of the term "office" in the context of using County Home Rule to redistrict. First, neither *Lee* nor *Smith* involved a question of exercising districting authority under home rule. In *Lee,* de-annexation could only be accomplished by passage of local legislation through the General Assembly. *See Lee,* 264 Ga. at 606 fn. 1. And in *Smith,* it appears that the recall statute in question was enacted by the General Assembly. *See Smith,* 235 Ga. at 742. Moreover, the meaning of the term "office" was not discussed in the context of the de-annexation / recall processes in question, but only in terms of whether the office had been abolished or its term shortened in violation of a statute forbidding same. *See Lee,* 264 Ga. at 608; *Smith,* 235 Ga. at 749. Unfortunately, neither *Lee* nor *Smith* provides useful guidance in evaluating the meaning of the term "office" in the context of redistricting and the exemptions to home rule authority.

When considering the scope of the constitutional exclusion of "actions affecting any elective county office," the Georgia Supreme Court has concluded that an action could affect elective county office if it "negatively impacted on the ability of the elective county officer to perform the job." *Board of Commissioners of Miller County v. Callan*, 290 Ga. 327, 331 (2012) (ordinance granting commissioners the ability to conduct business with the county in

certain circumstances did not negatively impact the commissioners' ability to carry out their duties); *see also Stephenson v. Bd of Commissioners of Cobb County*, 261 Ga. 399, 401-402 (1991) (board of commissioners' selection of counsel to represent the elected clerk of court was not an action affecting elective county office or personnel thereof); *cf. Gray v Dixon*, 249 Ga. 159, 163 (1982) (eliminating the county commission chair's position as the county's chief executive officer, and transferring that position and its duties to a newly created position of county manager, were actions that affected elective county office). While the examples provided in these cases show the range of actions which are and are not "actions affecting elective county office," the Court finds them illustrative but not dispositive on the question of redistricting as an exercise of County Home Rule authority.

"Even if words are apparently plain in meaning, they must not be read in isolation and instead, must be read in the context of the regulation as a whole." *Elliott,* 305 Ga. at 187. The Court does find persuasive usage of the term "office" in related contexts. *See id.* (for context we may look to the broader context in which that text was enacted, including other law — constitutional, statutory, decisional, and common law alike). Notably, the redistricting statute itself, O.C.G.A. § 28-1-14.1, on which so much attention has been rightly focused, uses the term "office," and not "officeholder," when describing redistricting procedures:

> . . . [A] local bill for revising the districts of county boards of commissioners, county boards of education, independent boards of education, or municipal governing authorities, or creating districts for *such offices,* shall not be considered by the General Assembly unless such bill meets the requirements of this Code section. . . .
>
> (1) A plan to revise districts or to create districts for *existing offices* contained in a local bill described in subsection (a) of this Code section shall either . . .

O.C.G.A. § 28-1-14.1(a) and (b) (emphasis added).

The Court recognizes that it has a duty to interpret statutes so as to find them constitutional if possible. *S&S Towing & Recovery, Ltd. v. Charnota*, 309

Ga. 117, 118–19 (2020). However, it is hard to square the notion that redistricting is not a "matter affecting county elective office," within the meaning of the first exception to County Home Rule, when the statute which specifically addresses redistricting elective county offices, including county commissioners, refers to them as "such *offices*." The Court finds that redistricting affects the elective county office of county commissioner, not the holder of that office. Altering commission districts, and thus the citizens who can vote in that district and for that office, is a fundamental action affecting that elective office.[15] For all these reasons, the Court concludes that Cobb County's home rule authority does not encompass locally enacted redistricting bills, inasmuch as they constitute "actions affecting elective office," and are thus exempt from the County's authority under County Home Rule provisions.



**Exemption (c)(2): Matters Affecting the Composition, Form, Procedure for Election**

The Floams contend that the County's Amendment to Act 562 is specifically excluded by the home rule provision that prohibits the County from enacting legislation that affects "the composition, form, procedure for election or appointment ... of the county governing authority." *Ga. Const. 1983, Art. 9, Sec. 2, Par. 1(c)(2).* The Floams argue that the phrase "procedure for election" is a term of art, and should have the signification attached to it by subject matter experts. *See* O.C.G.A. § 1-3-1(b). They refer to a United States Election Assistance Communication Guide to Redistricting, which states that

[15] The Attorney General raised concerns that allowing a local government to frequently and at will redraw district lines enacted by the General Assembly would lead to voter confusion and potential abuse. The Court also appreciates that absent review by the Apportionment Office, locally-enacted redistricting plans would potentially give rise to even more legal challenges than already occur. However, these are all policy matters to be addressed by the General Assembly. The duty of this Court is to determine and apply the plain meaning of the constitutional provision. *Sweatt*, 315 Ga. at 511.

redistricting is the process by which seats are distributed.[16] From this they reason that the use of the word "process" in relation to redistricting is analogous to the constitutional provision of "a procedure for election," and thus they conclude that redistricting is exempted from County Home Rule authority. While the Court finds the Guide to Redistricting to be informative in describing the process required to successfully redistrict, the Court is not persuaded that "procedure for election" is a term of art.

Where terms of art are not involved, "the Court will look to the common and customary usages of the words and their context." *Couch v. Red Roof Inns, Inc.,* 291 Ga. 359, 361 (2012). In construing constitutional provisions, we "look to our traditional canons of constitutional and statutory construction for guidance." *McInerney v. McInerney,* 313 Ga. 462, 464 (2022). This means, among other things, that "we generally apply the ordinary signification to words." *Id.* And as noted previously, to determine the original meaning of a provision, we consider the text's plain and ordinary meaning, viewing it in context and reading it in its most natural and reasonable manner. *Olevik,* 302 Ga. at 236.

Cobb County argues that a map is not a procedure. However, the Court finds that this argument artificially truncates the process by which commission members are elected, and is an overly constrained, rather than plain, ordinary and natural reading of the phrase "action affecting the procedure for election." The Floams set forth in their brief (and the County does not disagree with) the basic process required to hold county commission elections, a process which of necessity begins with districting. Read in the most natural and reasonable way, and giving words their ordinary meaning within the text and context, the Court finds that redistricting is part and parcel of the procedures for an election.



[16] This Guide was attached to *Plaintiff's Combined Response to Defendant's Cross-Motion for Summary Judgment and Reply to Defendant's Opposition to Plaintiff's Motion for Summary Judgment.*

Regarding the "composition" or "form" of the Board, after the County's Amendment the Board continues to be composed of a chair and commissioners from four districts. The persons elected to those public offices may be altered by changing election boundaries and thus changing constituencies within existing boundaries. Nevertheless, the Court concludes that changes to constituencies or elected officials do not alter the fundamental composition or form of the Board itself. It remains a county governing body consisting of a chair and commissioners from four districts. Still, the procedures by which those constituencies are altered – redistricting – is reasonably and naturally understood as part of, and inextricably intertwined with, the procedure for election.

The Court and the parties agree that Georgia courts have not addressed the precise question before the Court: whether Cobb County's Amendment to Act 562 was a lawful exercise of its Constitutional Home Rule authority or whether it was in violation of one or more constitutional exemptions to that authority.

Other courts have not been silent on the matter. Two federal district courts have considered counties' constitutional home rule powers in the context of redistricting: *Smith v. Cobb County Bd. Of Elections & Registrations,* 314 F. Supp. 1274 (N. D. Ga. 2002) and *Bodker v. Taylor,* 2002 U.S. Dist. LEXIS 27447 (N. D. Ga. June 5, 2002) (unreported). In these cases, there had been a determination that the existing county commission district maps (and also the school board district map, in the case of *Smith),* were unconstitutional following the 2000 census. These cases arose after the General Assembly failed to enact redistricting maps for the commission and school board districts, leaving the matter in the lap of the federal courts. The question before the court in both cases was whether the federal judge, when drawing remedial districting maps, owed deference to the redistricting maps proposed by the county commissions and school board.

In *Smith,* proposed redistricting plans were submitted to, but never voted on, by the General Assembly.[17] In considering the extent of deference (if any) owed to the Cobb Commission's proposed redistricting plan, the court noted in *Smith* that "all the parties agree that neither the School Board nor the Commission has the legislative authority to act independently of the Georgia Legislature to create new voting districts. Accordingly, the School Board and the Commission are without any authority to change the boundaries of the existing districts before the upcoming election." *Smith,* 314 F.Supp.2d at 1281. Because neither party contended the county had authority to redistrict, the court did not analyze the question of whether the County could have legally enacted its own redistricting map.[18]

The background in *Bodker* is similar to *Smith*: the General Assembly failed to pass a redistricting map for the Fulton County Commission after the 2000 census rendered the prior map unconstitutional. The Fulton County Commission passed its own map by a majority vote and then presented it to the federal judge for consideration. *Bodker,* 2002 U.S. Dist. LEXIS 27447 at *4.

As in *Smith,* the court in *Bodker* noted at the outset that "the parties agree that the Georgia General Assembly is the state legislative body with 'the power and duty to enact, subject to the approval of the Governor, local legislation to reapportion the Fulton County Board of Commissioners.'" *Id.* at *2. The court went on to hold that the county's redistricting map was not entitled to deference as a legislatively enacted plan. *Id.* at *14. The court pointed to the specific constitutional exemptions from a county's home rule



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[17] The tradition of extending "local courtesy" to local bills, discussed earlier in this order, was absent in both the *Smith* and *Bodker* cases. In each case, the redistricting bill was passed by the Houe but never came up for a vote in the Senate. The session expired with the proposed bills languishing in committee. *Smith,* 314 F. Supp. at 1281; *see also Bodker,* 2002 U.S. Dist. LEXIS 27447 at *2.

[18] The map drawn by the district court in *Smith* was only an interim map, and notably, as the ultimate remedy, the Court directed the General Assembly, not Cobb County, to enact plans for redistricting the commission and school board districts. *Id.* at 1314.

authority and concluded that "since the state has explicitly withheld from county boards of commissioners the power to engage in 'action affecting any elective county office,' and 'action affecting the ... procedure for election ... of the county governing authority,' the Fulton County Board of Commissioners has no official legislative role to play in its redistricting." *Id.* at *12. The court went on: "In Georgia, the General Assembly is the *only* legislative body with the power to enact redistricting legislation for the counties, including Fulton County." *Id.* (emphasis in original).

In reaching its conclusion, the court in *Bodker* distinguished a Florida case relied on by Fulton County, noting that in Florida, unlike Georgia, the county commission had explicit statutory authority to self-redistrict.[19] The district court came down firmly against the county's position:

> It is the clear legislative judgment of the State of Georgia, as declared in its constitution, that the General Assembly shall be the sole legislative authority with the power to redistrict counties. In its sound legislative judgment, Georgia has withheld that power from the county boards of commissioners. For the court to defer to a redistricting plan proposed by the Fulton County Board of Commissioners, one that has not been considered by the General Assembly, would give to Fulton County that which the state of Georgia intended to retain, and in so doing would raise serious federalism concerns.

*Id.* at *13-14.[20] *See also Ga. State Conf. of the NAACP v. Fayette County Board of Commissioners,* 996 F. Supp. 1353, 1369 (2014) (recognizing that the Florida case, *Leon County,* has generally not been applied to Georgia counties because



[19] The Florida statute provided that "the board of county commissioners shall from time to time, fix the boundaries of the above districts so as to keep them as nearly equal in proportion to population as possible." *See* Fla. Stat. Ann. §§ 124.01,11., *as discussed in Tallahassee Branch of NAACP v. Leon County,* 827 F. 2d. 1436 (11th Cir. 1987).

[20] In a footnote, the district court recognized that the Board of Commissioners had a role in the redistricting process, by presenting a redistricting plan to the General Assembly or lobbying for a particular one under its consideration. The Court concluded that such an *ad hoc* approach could not be considered "legislative," and could not overcome the Board's "clear lack of statutorily granted power in this area." *Bodker,* 2002 U.S. Dist. LEXIS 27447 at * 12 fn. 2. Arguably, O.C.G.A. § 28-1-14.1 represents the kind of legislative component to which the *Bodker* court made reference almost 20 years earlier.

local-government redistricting is undertaken by the Georgia General Assembly rather than the counties).

This Court recognizes that *Smith, Bodker* and *Fayette County Bd. of Comm'rs* are not controlling and have little if any precedential value, since the question before this Court was conceded rather than litigated in those cases. *See Sembler Atlanta Development I, LLC v. URS/Dames & Moore,* 268 Ga. App. 7, 9 (2004). The Court also recognizes that federal courts are not authoritative when it comes to interpreting provisions of the Georgia Constitution. *Elliott,* 305 Ga. at 187. However, the Court does find them instructive.

In support of its position that Cobb County's Amendment to Act 562 is not an "action affecting the procedure for election," the County primarily relies on two cases interpreting the meaning and reach of the prior iteration of the municipal home rule act. In *Bruck v. Temple*, an unincorporated area of Carroll County was annexed into the city of Temple under the authority of a local annexation statute passed by the General Assembly. *Bruck v. Temple,* 240 Ga. 411, 411 (1977). After the annexation was confirmed by the voters, the city enacted an ordinance to amend its charter so as to include the newly annexed area in the city's electoral districts. *Id.* The city argued that in passing the ordinance, it was acting according to its powers under the municipal home rule act of Code Ann. § 69-1017, the predecessor to O.C.G.A. § 36-35-3. *Id.* at 415.

In turning back a challenge that the ordinance was unconstitutional, the court observed that the ordinance was not in contravention or derogation of the local annexation act, but merely served to implement it. *Id.* The court then held that the enactment of the ordinance was not an unauthorized exercise of municipal home rule power. *Id.* at 416. The appellate court offered no reasoned analysis for this conclusion; it merely cited to an earlier case, *Jackson v. Inman,* 232 Ga. 566 (1974), and compared the facts in *Bruck* to those in *Jackson*, wherein the court had determined that "drastic changes in the composition and form of city government and the election and terms of office of the members of the governing authority" could not be accomplished by

a municipality under its home rule authority. *Bruck,* 240 Ga. at 416. In response, the Floams point to the dissent in *Bruck,* which concluded, also with no analysis, that an ordinance which alters the city council election districts to include newly annexed areas was an "action affecting the composition, form, [and] procedure for election ... and thus [was] not allowed under home rule." *Bruck,* 240 Ga. at 416 (*J. Hill dissenting*).

The Court is not persuaded by *Bruck* and *Jackson.* The differing interpretations of the "procedure for election" set forth in *Bruck* and *Jackson* only delineate a range of fact-dependent interpretations. These cases interpreting the Municipal Home Rule Act provisions are informative, but not binding. They involve similar, but not identical, language contained in the Legislative Home Rule statute rather than the Constitutional Home Rule provisions. While that dissent in *Bruck* is not a holding of the Supreme Court and is not binding on this Court, its conclusion is consistent with opinions from the federal bench in Georgia that have directly confronted county redistricting issues, as well as in line with the positions taken by all parties in those federal cases. In consideration of the latter decisional law, and under a plain, ordinary and natural reading of the text in context, the Court finds that the County's Amendment to Act 562 was an "action affecting the procedure for election" of county governing authority, and thus one the County was not permitted under County Home Rule.



## CONCLUSION

For all of the foregoing reasons, the Court concludes that Cobb County's Amendment to Act 562 was an unconstitutional exercise of authority under its Constitutional Home Rule powers, inasmuch as this Court has found it was an action affecting an elective county office and affecting the procedure for election of the county governing authority. Plaintiff's Motion for Summary Judgment is

hereby **GRANTED,** and Defendant's Cross-Motion for Summary Judgment is hereby **DENIED.**

**SO ORDERED** this 8th day of January, 2024.

HONORABLE ANN B. HARRIS
Judge, Superior Court of Cobb County
Cobb Judicial Circuit

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served a copy of this document via PeachCourt e-file to the following email address(es):

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This 8 day of January, 2024.

Tammy Birchell, Judicial Calendar Coordinator
Cynthia L. Patton, Staff Attorney
to the Honorable Judge Ann B. Harris
Cobb County Superior Court
Cobb Judicial Circuit