CHRISTOPHER S. BRASHER
Judge, Superior Courts of Georgia
Atlanta Judicial Circuit

Education:

Furman University, Greenville, SC – Bachelor of Arts degree in Political Science awarded, May 1987.

Georgia State University College of Law, Atlanta, GA – *juris doctor* degree awarded, May 1991.

Professional Experience:

Judge, Superior Courts of Georgia, Atlanta Judicial Circuit - February 2006 – Present

- I presently serve as Chief Judge of the Family Division, and adjudicate family law cases in the Superior Court of Fulton County. I have disposed of approximately 4,000 family cases since joining the Family Division in January 2017. I have maintained the lowest caseload on the Family Division during my entire tenure. Prior to joining the Family Division bench, I adjudicated approximately 11,000 civil and criminal cases and presided over more than 200 jury trials. I have heard oral arguments and ruled on hundreds of motions in both civil and criminal cases. Additional duties have included: research and write orders in civil and criminal cases; conduct scheduling and pretrial calendars in civil and criminal cases; handle plea and arraignment calendars in criminal cases; conduct adoptions; review and adjudicate administrative and inferior court appeals; conduct judicially-hosted settlement conferences in civil cases; and, conducted jury trial in two cases where the death penalty was sought.

- I serve on the Court's Executive, Employment, Internal Governance and Joint Governance Committees.

- Former Member, Georgia Criminal Justice Coordinating Committee, and Chairman, Georgia Crime Victims Compensation Board (2007 – 2011)

- Registered Mediator, State of Georgia Commission on Dispute Resolution.

Senior Assistant Attorney General, Georgia Department of Law - October 1995 – February 2006

- Represented all state-level public safety agencies including the Georgia Department of Corrections, the State Board of Pardons and Paroles, the Georgia State Patrol, the Georgia Bureau of Investigation, the Criminal Justice Coordinating Council, the certifying agency for Georgia Peace Officers, Georgia's driver licensing agency, as well as the Georgia Boards of Public Safety and Corrections. Duties included civil litigation in state and federal trial and appellate courts, administrative rule-making, policy review and analysis, and training. Tried cases in all Georgia Federal District Courts and in more than 120 Georgia counties. Represented the State of Georgia in appeals of murder convictions before the Georgia Supreme Court, and in post-conviction habeas corpus actions in state and federal trial and appellate courts. Lead counsel in 70 reported appellate cases. Conducted approximately 30 oral arguments in the Georgia Court of Appeals, the Georgia Supreme Court, and the 11th Circuit Court of Appeals. Oral argument in the United States Supreme Court in January 2000.

Assistant District Attorney, Alcovy Judicial Circuit - September 1991- October 1995

- Prosecuted all manner of felony and misdemeanor offenses from preliminary hearing through trial and appeal in Newton and Walton Counties.

- Represented the Georgia Department of Human Resources, Office of Child Support Enforcement in the Alcovy Judicial Circuit in actions to establish paternity and collect child support, including actions in state and superior court, as well as in United States Bankruptcy Courts.

Married since 1989. Two adult children.

THIS QUESTIONNAIRE IS SUBMITTED IN CONNECTION WITH A VACANCY ON THE COURT OF APPEALS OF GEORGIA

1. Give your full name and position for which you are applying.

Christopher Samuel Brasher. I am applying for the position of Judge, Court of Appeals of Georgia which comes open on the passing of Judge Stephen S. Goss.

2. State both your office and home addresses.

Office: 185 Central Avenue, S.W.
Suite T-8905
Atlanta, GA 30303

Home: [redacted]

State your office telephone number, home telephone number, and cell phone telephone number.

Office: (404) 612-4335 Cell/Home: [redacted]

State your e-mail addr[redacted]

[redacted]

3. Give the date and place of your birth.

[redacted] Memphis, TN

4. If you are a naturalized citizen, please give the date and place of naturalization.

Not Applicable.

5. Indicate your marital status; if married, the name of your spouse; and the names and ages of your children.

I have been m[redacted]since August 5, 1989. We have two children: [redacted]

6. Indicate the periods of your military service, including the dates, and the branch in which you served, your rank or rate, and your serial number.

I have not served in the Armed Services. I registered for the Selective Service as required by law.

7. List each college and law school you attended, including the dates of attendance, the degree awarded, and your reason for leaving each school if no degree from that institution was awarded.

- Furman University, Greenville, SC – 8/83 through 6/87; earned Bachelor of Arts in Political Science.

- Georgia State University College of Law, Atlanta, GA – 8/88 through 6/91; earned *juris doctor* degree.

8. List all courts in which you are presently admitted to practice, including the dates of admission in each case. Give the same information for administrative bodies having special admission requirements.

Superior Courts of Georgia – June 1991
Court of Appeals of Georgia – October 1991
Supreme Court of Georgia – October 1991
U.S. District Court for the Middle District of Georgia – September 1997
U.S. District Court for the Northern District of Georgia – November 1997
U.S. District Court for the Southern District of Georgia – January 1998
U.S. Court of Appeals for the 11th Circuit – August 1997
United States Supreme Court – November 1999

9. Are you actively engaged in the practice of law at the present time? If you are connected with a law firm, a corporate law department or a governmental agency, please state its name and indicate the nature and duration of your relationship.

I have served as a Judge of the Superior Court of Fulton County, Atlanta Judicial Circuit, since February 2006. Thus, I am not presently actively engaged in the practice of law.

10. If in the past you have practiced in other localities or have been connected with other law firms, corporate law departments or governmental agencies, please give the particulars, including the locations, the names of the firms, corporate law departments or agencies and your relationship thereto, and the relevant dates. Indicate also any period in the past during which you practiced alone.

- <u>February 28, 2006 to Present:</u> Judge, Superior Courts of Georgia, Atlanta Judicial Circuit.

- <u>October 1995 to February 2006:</u> Assistant (later Senior Assistant) Attorney General, Georgia Department of Law, Atlanta, Georgia.

- <u>September 1991 to October 1995:</u> Assistant District Attorney, Alcovy Judicial Circuit, Covington and Monroe, Georgia.

11. Do you presently hold judicial office, or have you in the past held any such office? If so, give the details, including the court or courts involved, whether elected or appointed, and the period of service. Also state whether you have been an unsuccessful candidate for election to judicial office, stating the court and date involved.

Judge, Superior Courts of Georgia, Atlanta Judicial Circuit
February 28, 2006 to present.
Appointed on February 28, 2006.
Elected: November 7, 2006, November 2, 2010, May 20, 2014, and May 22, 2018.
I have never been an unsuccessful candidate for election to judicial office.

12. What is the general character of your practice? Indicate the character of your typical clients and mention any legal specialties which you possess. If the nature of your practice has been substantially different at any time in the past, give the details, including the character of such and the periods involved.

Presently, I am a Superior Court Judge in the Atlanta Judicial Circuit, Superior Court of Fulton County. I now serve as Chief Judge of the Family Division of the Superior Court, and my caseload consists of all manner of family law cases, including divorce, child custody, modification and contempt matters, as well as family violence petitions and contested adoption matters. Since joining the Family Division on January 1, 2017, I have adjudicated approximately 4,000 family law cases. I have maintained the lowest case count on the Family Division every month since joining the Division in January 2017, and have significantly reduced case processing time.

Prior to January 1, 2017, I maintained a "mixed docket" of cases, including all manner of civil cases (except domestic relations cases) as well as all manner of felony criminal cases. My activities as a judge with a mixed civil and criminal docket included jury trials in civil and criminal cases, bench trials in civil and criminal cases, sentencing hearings in criminal cases, motions hearings in civil and criminal cases, researching and writing orders in civil and criminal cases, conducting pretrial and scheduling conferences in civil and criminal cases, handling no service/default calendars in civil cases and plea and arraignment calendars in criminal cases, conducting adoptions, reviewing and deciding administrative and inferior court appeals, hearing applications for search warrants and court orders in criminal cases, and conducting judicially-hosted mediations in civil cases.

When I joined the Bench of the Fulton Superior Court in 2006 I inherited a docket of more than 1,200 criminal cases and 800 civil cases. Through diligence and good case management practices, I was able to reduce that pending case load by two-thirds over the next two years. That reduction was achieved despite the fact that I voluntarily took over 100 additional civil cases from a colleague who was deployed on military duty. I have never had a civil "calendar call" or "peremptory calendar," two practices which I believe to be monumental wastes of resources, both of the court and those it serves. Since joining the bench, I have handled more than 5,000 civil cases and adjudicated the charges against more than 5,000 criminal defendants.

From 1997 to 2006, as a Senior Assistant Attorney General, my practice was comprised of the general representation of all the public safety agencies in Georgia's state government. While at the Georgia Department of Law, I personally appeared and tried cases in all Georgia Federal District Courts, in more than 120 counties in Georgia, prepared and filed more than 70 appellate briefs as sole or lead counsel, and also conducted approximately 30 oral arguments in the Georgia Court of Appeals, Georgia Supreme Court, 11th Circuit Court of Appeals, and the United States Supreme Court.

I and the attorneys that worked under my supervision represented the Georgia Departments of Corrections, Public Safety, Motor Vehicle Safety (now Driver Services), and Natural Resources, the State Board of Pardons and Paroles, the Georgia Bureau of Investigation, the Criminal Justice Coordinating Council, the Governor's Office of Highway Safety, as well as many boards and commissions, including the Peace Officer Standards and Training Council, the Firefighter Standards and Training Council, the Board of Public Safety, and the Board of Corrections. My duties ran the gamut from representation in a myriad of litigation in state and federal trial and appellate courts, to administrative rule-making, policy review and analysis, and training.

In addition to providing primary representation to these entities on numerous general topics, I developed substantial specific expertise in the areas of: appellate litigation; the operation of the State's criminal justice system; Driving Under the Influence litigation and issues, including all manner of driver licensing, suspension and revocation issues; peace officer training and certification requirements and issues; open records and open meeting laws; and discovery in complex civil cases.

From 1995 to 1997, as an Assistant Attorney General, I represented the State of Georgia in appeals from murder convictions to the Georgia Supreme Court, and in post-conviction habeas corpus actions in state and federal court.

From 1991 to 1995, I served as an Assistant District Attorney in the Alcovy Judicial Circuit, prosecuting all manner of felony and misdemeanor crimes from preliminary hearing through trial and appeal in this eastern Metro-Atlanta two-county Circuit. I also represented the Office of Child Support Enforcement of the Georgia Department of Human Resources establishing paternity and enforcing child support obligations

13. (a) Have you regularly appeared in court during the past five years?

Yes. I have appeared in court (as a Judge) on an almost-daily basis for the past 13 years. Prior to that, as a Senior Assistant Attorney General, I appeared in court on at least a weekly basis. As a practicing attorney, I appeared in the Superior Courts of more than 120 of Georgia's counties, as well as all of Georgia's Federal District Courts.

(b) What percentage of your appearances in the last five years was in:

(1) Federal Courts (list each court): 0% for the past 13 years. Prior to that, approximately 10% of my court appearances were in Federal Courts, including Federal District Courts and Federal appellate courts.

(2) State Courts (list all courts): 100 % in Superior Court in the past 13 years. Prior to that, approximately 90% of my court appearances were in Superior Courts throughout Georgia, as well as filing many appellate briefs and presenting oral arguments before the Georgia Court of Appeals and Supreme Court.

(3) other courts (please list all states other than Georgia in which you have appeared): None in the past 13 years.

(c) What percentage of your court appearances in the last five years was:

(1) civil? 50% in the past 13 years. Prior to that, 80% civil.

(2) criminal? 50% in the past 13 years. Prior to that, 20% criminal.

(d) What percentage of your trials in the last five years was:

(1) jury? 60% in the past 13 years. Prior to that (in past five years), 0%.

(2) non-jury? 40% in the past 13 years. Prior to that (in past five years), 100%.

(e) State the approximate number of cases you have tried to conclusion in courts of record during <u>each</u> of the past five years, indicating whether you were sole, associate, or chief counsel.

Over the past 13 years as a Superior Court Judge, I have tried more than 200 jury trials. I have adjudicated approximately 4,000 family law cases, and more than 5,000 civil and 5,000 criminal cases. During my time on the bench, I have tried complex civil cases (including multi-party complex business litigation as well as complex multi-party tort cases), complex equitable petitions, and complex serious violent felony criminal cases. I tried death penalty cases in 2013 and 2015.

In the five years prior to joining the bench (as a Senior Assistant Attorney General) I tried approximately 50 cases to conclusion as sole or lead counsel.

(f) Describe five of the more significant litigated matters which you have handled.

(1) *Garner v. Jones*, 529 U.S. 244 (2000).

I was counsel of record and arguing counsel before the U.S. Supreme Court on this matter, successfully arguing the cause on behalf of the Georgia State Board of Pardons and Paroles. This was an Ex Post Facto Clause challenge to the Board's parole reconsideration schedule for life-sentenced inmates in Georgia.

(2) *Dozier v. Baker*, Civil Action No. 2006CV121243, affirmed at 283 Ga. 543 (2008).

Granted summary judgment denying a writ of quo warranto against Public Service Commissioner regarding allegations of improper residence. Unanimously affirmed on appeal

(3) *Adams, et al. v. Georgia Department of Corrections*, 274 Ga. 461 (2001).

Convinced the Georgia Supreme Court that a challenge to Georgia's means of execution could not be brought by a petition for writ of mandamus. Case redefined standing under Georgia's mandamus statute.

(4) *Benefield v. Georgia, ex rel. Baker, et al.* 276 Ga. 100 (2003).

Successfully set aside Judge's order declaring the Superior Courts Sentence Review Panel unconstitutional through a petition for writ of prohibition. Unanimously affirmed on appeal.

(5) *State of Georgia v. Old South Amusements, Inc., et al.*, 275 Ga. 274 (2002).

Successfully defended the State of Georgia's statutory ban on "video poker." Cases included two actions in U.S. District Court, two actions in Superior Court, and an appeal to the Georgia Supreme Court.

(g) State with reasonable detail your experience in adversary proceedings before administrative boards or commissions during the past five years.

None in the past 13 years as a Superior Court Judge. During that same period, however, I have ruled on scores of appeals from administrative boards and commissions on Petitions for Judicial Review filed in this Court pursuant to the Administrative Procedure Act and other authorities.

Previously, my practice entailed a significant amount of administrative litigation, virtually all of which took place before the Office of State Administrative Hearings. The types of contested matters that I handled included actions to decertify peace officers, disciplinary actions against state employees covered by the Georgia Merit System, and administrative license and privilege suspensions.

14. (a) Summarize your experience in court prior to the last five years. If during any prior period you appeared in court with greater frequency than during the last five years, indicate the periods during which this was so and give for such prior periods the same data which was requested in item 13 above.

During my tenure as a Senior Assistant Attorney General, I was in court a significant amount of the time, both in state and federal trial and appellate courts. While managing the Public Safety Section of the Georgia Department of Law, my practice was 80% civil and 20% criminal. Prior to that, while serving as an Assistant Attorney General in the Post-Conviction Litigation Section, I was also in court a significant amount of time in Superior Court, the Georgia Supreme Court, and Georgia's Federal District Courts. During that period of time (1995-1997), my practice was virtually 100% criminal.

During my tenure at the Georgia Department of Law, I personally appeared as sole or lead counsel and handled cases in more 120 of Georgia's counties, prepared and filed more than 70 appellate briefs, and delivered approximately 30 appellate arguments in the Georgia Court of Appeals, the Georgia Supreme Court, the 11th Circuit Court of Appeals and the United States Supreme Court.

As an Assistant District Attorney, my experience was likewise mostly appearing in court. While handling predominantly child support enforcement matters, my practice was 80% civil and 20% criminal. I appeared primarily in Superior Court, but also in State Courts and U.S. Bankruptcy Courts for collection actions. While exclusively handling criminal prosecutions, my practice was 100% criminal in Superior Court and in the Georgia Court of Appeals.

(b) Summarize your experience in adversary proceedings before administrative boards or commissions prior to the last five years.

Please see my response to Question 13(g), above.

15. Describe your appellate practice during the past five years in detail and give citations if your cases were reported.

As Superior Court Judge, I have engaged in no appellate practice during the past 13 years. I served by designation on the Supreme Court of Georgia in the consideration of *Final Exit Network, et al. v. State of* Georgia, 290 Ga. 508 (2012), including participating at oral argument and in the decision.

Prior to that, however, I conducted more than approximately 30 appellate arguments in the Georgia Court of Appeals, Georgia Supreme Court, 11th Circuit Court of Appeals and in the United States Supreme Court. I have prepared briefs as lead counsel in more than 70 appeals in state and federal appellate courts.

Below are listed my reported appellate cases as an attorney since the year 2000:

Dozier v. Pierce, 279 Ga. App. 464 (2006).
Dubose v. Hodges, 280 Ga. 152 (2006).
Davis v. Brown, 274 Ga. App. 48 (2005).
Griffin v. Keller, 278 Ga. 878 (2005).
White v. Ga. POST Council, 269 Ga. App. 747 (2004).
Horne v. Massey, 269 Ga. 886 (2004).
Roberts v. Scroggy, 278 Ga. 25 (2004).
Denson v. State, 267 Ga. App. 528 (2004).
Cooper v. State, 277 Ga. 282 (2003) (briefed and argued as *amicus curiae*).
Hightower v. Cervantes, 259 Ga. App. 562 (2003).
Hay v. Bright, 276 Ga. 154 (2003).
Benefield v. State, ex rel. Baker, 276 Ga. 100 (2003).
State v. Old South Amusements, Inc., 275 Ga. 274 (2002).
Massey v. State Bd. of Pardons & Paroles, 275 Ga. 127 (2002).
State v. Kachwalla, 274 Ga. 886 (2002) (briefed and argued as *amicus curiae*).
Dep't of Public Safety v. Robinette, 254 Ga. App. 884 (2002).
Spivey v. State Bd. of Pardons & Paroles, 279 F.3d 1301 (2002).
Parker v. State Bd. of Pardons & Paroles, 275 f.3d 1032 (2001).
Adams v. Ga. Dep't of Corrections, 274 Ga. 461 (2001).
Ray v. Barber, 273 Ga. 852 (2001).
Ayers v. State, 272 Ga. 733 (2000).
Miles v. Shaw, 272 Ga. 475 (2000).
Hamm v. Ray, 272 Ga. 659 (2000).
Miles v. Ahearn, 243 Ga. 741 (2000).
Garner v. Jones, 529 U.S. 244 (2000).

16. Please submit a representative sample of your writing (e.g. brief, order, opinion, opinion letter).

I include with this application a sample of my work as a judge, and one from my work as an attorney. I have attached my Final Order in *Third Sector Development, Inc., et al. v. Kemp*, Civil Action No. 2014CV252546, Superior Court of Fulton County, filed on October 28, 2014; and the Brief of Petitioners, filed in *Garner v. Jones*, 529 U.S. 244 (2000), filed on November 12, 1999.

17. Describe your practice other than trial practice during the past five years in some detail as it may relate to office and business practice, as well as any other phases of your practice.

Presently, I serve as the Chief Judge of the Family Division for the Superior Court of Fulton County. In that role, I am responsible for oversight of administration of the Court's judges, staff, and programming. Outside the Courtroom, I am responsible for the direct supervision of the employees assigned to my chambers, including all aspects of employment supervision. Additionally, I have been twice elected by my colleagues to serve on the Executive Committee of the Fulton Superior Court, and on the Joint

Governance Committee. I have also have served on the Employment Committee, the Internal Governance Committee (Chair), the Critical Response Management Team (Chair; security committee comprised of representatives from all Fulton County Court system agencies), and the Juvenile Court Committee (Chair). As part of serving on those committees, I perform various duties related to the administration of the Superior Court. As Chair of the Juvenile Court Committee, I was instrumental in developing and implementing the "Juvenile Court Nominating Commission" for Fulton County which greatly improved the confidence of the Bar and the public in the method by which Juvenile Court Judges are selected in Fulton County. I have also served on various other *ad hoc* committees to address issues of case management and workflow analysis within the Court.

From 2007 until 2011, I served on the State of Georgia Criminal Justice Coordinating Council, where I was as a member of the Executive Committee. I also served as the Chairman of the Georgia Crime Victim's Compensation Fund, which provides assistance to thousands of innocent victims of crime annually.

Previously, I ran the section of the Georgia Department of Law that provided primary representation to all of Georgia's Public Safety agencies and entities. Thus, in addition to my duties as legal advisor and representative of those agencies and entities, I was responsible for the management and direction of those attorneys whom I supervised, as well as support and clerical staff. Additional responsibilities included hiring and supervision of the work of attorneys, paralegals and administrative staff, as well as ongoing review of the attorneys' work prior to its submission or filing. Also, as legal counsel to the entities described above, my practice included a significant component of legal and policy analysis and review, as well as training and litigation prevention. My practice also included significant duties in administrative rule-making and open records compliance.

Finally, I was involved in two significant events in Georgia's not-so-distant past that bear directly on this question. One was the *Tri-State Crematory* case that arose in 2002 in Walker County, Georgia. In regard to that matter, I appeared in many state and federal court proceedings on behalf of the Georgia Bureau of Investigation and the Georgia Emergency Management Agency regarding their operations and recovery efforts. I also performed litigation and discovery management functions related to the voluminous and sensitive information obtained by those agencies during their investigation and recovery efforts. The other event was the G-8 Summit at Sea Island in 2004, where I was responsible for the legal aspects of Georgia's law enforcement and security operations. In addition to training more than 8,000 law enforcement officers, I provided on-the-scene, real-time legal advice to the G-8 Security Command before, during and after the Summit.

18. Have you ever been engaged in any occupation, business or profession other than the practice of law? If so, please give the details including dates.

I have not been engaged in any other occupation, business, or profession in my adult life other than the practice of law.

19. Are you presently acting in a fiduciary capacity? If so, state details.

I am not acting in a fiduciary capacity.

19. Have you ever held public office, other than judicial office, or have you ever been a candidate for such an office? If so, give the details, including the offices involved, whether elected or appointed, and the length of your service.

No.

20. Please describe your opinion of the role a law clerk or a staff attorney should serve with respect to assisting a judge.

Law clerks and staff attorneys are valuable assets to the bench when used appropriately. Law clerks and staff attorneys should never be permitted to act in the Judge's stead, nor should they assume the role of "junior judge," as I have unfortunately seen occur. Rather, law clerks and staff attorneys should be utilized by the judge to assist the court in "getting it right," whether that be in (of course) legal research, drafting opinions, orders or other decisions, or providing insight to, or a sounding board for, the judge.

As a trial court judge, my staff attorneys have a much more public-facing role because of their duties in dealing with scheduling and logistical matters. That role is diminished greatly in an appellate context. However, staff attorneys and law clerks in the Court of Appeals must assist the judge in assuring of a consistent application of the law across panels within the Court.

21. Please describe how a judge of the court for which you are applying might improve the efficiency and effectiveness of the legal system in administering justice.

Of course, any court is improved by the addition of a judge who comes to the bench with the right temperament, the intellectual curiosity necessary to find the right answer, a good understanding of the law and of appellate practice, a strong work ethic, a good sense of justice, and a good dose of humility. As for the Georgia Court of Appeals, all those traits are of critical importance given the large case load and the quick pace at which that Court must operate to serve Georgia's citizens. I have demonstrated those traits as a trial and appellate lawyer and as a trial court judge, and that I will bring all those qualities to this position.

I am especially keen to add my experience as a seasoned trial court judge to the mix of talents and abilities on our Court of Appeals.

22. Have you ever held elective office, other than judicial office, or have you ever been a candidate for such an office? If so, give the details, including the offices involved, whether elected or appointed, and the length of your service.

No.

23. Have you ever been sued by a client? If so, please give particulars.

No.

24. Have you ever been a party or otherwise involved in any other legal proceedings? If so, give the particulars. Do not list proceedings in which you were merely a guardian ad litem or stakeholder. Include all legal proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or a co-respondent, and any grand jury investigation in which you figured as a subject, or in which you appeared as a witness.

As a Senior Assistant Attorney General, I was named as a defendant on several occasions by inmates in Georgia's prison system who were displeased with me for (presumably) what they perceived to be my role in their continued incarceration. In each of those instances, the claims against me did not survive the frivolity review conducted by the court in which the action was filed.

Since I have been a judge, I have been named as a defendant in Petitions for Writ of Mandamus filed by disgruntled litigants. All the petitions were either denied filing as frivolous or dismissed. Also, since I have been a judge, I have been named in three actions pursuant to 42 USC §1983 by litigants in cases before me. Each of those actions was dismissed *sua sponte* by the Federal District Court pursuant to 28 U.S.C. §1915A. Rule 11 sanctions were imposed in at least one of those instances.

25. Have you published any legal books or articles? If so, please list them, giving the citations and dates.

I was a principal participant in the preparation of a handbook published cooperatively by the Georgia Department of Law and the Georgia First Amendment Foundation entitled "Georgia Law Enforcement and the Open Records Act: A Law Enforcement Officer's Guide to Open Records in Georgia," published in 2002.

26. List any honors, prizes, awards, or other forms or recognition which you have received.

- Registered Mediator, Georgia Commission on Dispute Resolution.
- Graduate, Advanced Mediation Course, National Judicial College, 2016.
- Graduate, Domestic Mediation Course, Justice Center of Atlanta, 2019.
- Graduate, Complex Commercial Litigation Course, National Judicial College, 2012.
- Graduate, Economics Institute for Judges, George Mason University School of Law

Judicial Education Program, 2012.
- Graduate, Advanced Evidence Course, National Judicial College, 2010.
- Featured in the Fulton Daily Report article "On the Rise," May 28, 2002.
- Received commendation resolution from Georgia State Board of Pardons and Paroles for my work on the *Garner v.* Jones matter, 2000.
- Received commendations from the Georgia Board of Public Safety, the Georgia Board of Corrections, Governor's Office of Highway Safety, and the Georgia Office of Homeland Security in recognition of my service to those entities while at the Georgia Department of Law.
- Elected to four-year terms as Superior Court Judge, November 2006, November 2010, May 2014, and May 2018.
- Elected by fellow judges to the Executive Committee for the Fulton County Superior Court for two terms.
- Elected by fellow Judges to the Joint Governance Committee to serve with judges from all courts in Fulton County.
- Regular presenter at annual CLE events on Ethics, Family Law, Professionalism, and Abusive Litigation.
- Profiled by the Fulton Daily Report, November 25, 2009.

27. List all bar associations and professional societies of which you are a member and give the titles and dates of any offices which you have held in such groups. List also chairmanships of any committees in bar associations and professional societies, and memberships on any committees which you believe to be of particular significance.

- State Bar of Georgia.
- Bench and Bar Committee
- Council of Superior Court Judges.
- North Fulton Bar Association (Board of Directors – 2008 to Present).
- Member and Executive Committee Member, Georgia Criminal Justice Coordinating Council, 2007-2011
- Chairman, Georgia Crime Victims' Compensation Committee, 2007-2011.
- Master, Lamar Inn of Court at Emory University School of Law.
- Master, Charles Weltner Family Law Inn of Court.
- Master-Student mentor, Emory University School of Law.
- Lawyers Club of Atlanta.
- Regularly judge moot court and mock trial competitions.
- Five years as Attorney-Coach of High School Mock Trial Team - Region Champions three times.
- Keynote speaker on Professionalism – Incoming "1st Years."
- Mentor to more than a dozen interns in my chambers from law schools, colleges and high schools.

28. Have you read and carefully studied the Code of Judicial Conduct?

Yes.

29. Will you adhere to the letter and the spirit of such Code should you be appointed as judge?

I have and will continue to do so.

30. You are requested to execute and transmit to the Chairman of the Commission two copies of the form of Authorization for Access to Information Concerning Disciplinary Matters included with this questionnaire.

See Attached.

31. If you are now an officer or director of any business organization or otherwise engaged in the management of any business enterprise, please give details, including the name of the enterprise, the nature of the business, the title of your position, the nature of your duties, and the term of your service. If it is not your intention to resign such positions and give up any other participation in the management of any of the foregoing enterprises, please so indicate, giving reasons. List all companies in which you, your spouse or minor children hold stock.

Not Applicable.

32. List the non-professional organizations to which you belong and civic and service activities in which you have participated in the past two years.

- Habitat for Humanity – Volunteer.
- North Fulton Community Charities – Volunteer.
- Muscular Dystrophy Association – Volunteer.
- Perimeter Church, Johns Creek, GA. – missions volunteer.
- Church greeter and usher.
- Neighborhood homeowners association – past President, Board Member, and volunteer.
- Boy Scouts of America – volunteer and presenter.

33. Have you ever been arrested, charged, or held by federal, state or other law-enforcement authorities for violation of any federal law, state law, county or municipal law, regulation or ordinance? If so, please give details. Do not include traffic violations for which a fine of $50.00 or less was imposed.

I received a speeding ticket in Franklin County, GA, in 1989. The fine was $80. I received a citation for disregard of a traffic signal in Cobb County, GA, in 2003. The fine was $75.

34. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, bar association, disciplinary committee, or other professional group? If so, please give the particulars.

On two occasions, former litigants have filed complaints against me with the Georgia Judicial Qualifications Commission, both of which were dismissed prior to investigation after I submitted a written explanation of what had occurred. One was in 2010 and the other in 2017.

35. The Governor's Ethics Order prohibits the appointment by the Governor of any person to fill a judicial vacancy:

(a) who has made a contribution to, or expenditure on behalf of, the Governor or the Governor's campaign committee at any time after the vacancy occurs; or

(b) who has made a contribution to, or expenditure on behalf of, the Governor or the Governor's campaign committee within the 30 days preceding the vacancy, unless such person requests and is granted a refund of such contributions or reimbursement of such expenditure.

36. Have you made a contribution or expenditure as described in 35(a) above?

No.

37. (a) Have you made a contribution or expenditure as described in 35(b) above?

No.

(b) If you answered yes to 37(a), have you been granted a refund or reimbursement?

Not Applicable.

References and Contact Information:

Judge Shawn Ellen LaGrua

Superior Court of Fulton County
Suite T-8855, Justice Center Tower
185 Central Avenue, SW
Atlanta, Georgia 30303
Tel. 404-612-8460

Colonel Mark W. McDonough

Commissioner
Georgia Department of Public Safety
959 United Ave SE
Atlanta, GA 30316
(404) 624-7477

Michael J. Bowers

Attorney at Law
Balch & Bingham, LLP
30 Ivan Allen, Jr. Blvd., N.W., Suite 700
Atlanta GA 30308
Tel. 404- 962-3535

Christopher S. Brasher

Date: October 22nd, 2019

BR - O

IN THE SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT
STATE OF GEORGIA

THIRD SECTOR DEVELOPMENT, INC., et al,

Petitioners,

v.

BRIAN P. KEMP, in his official capacity as Secretary of the State of Georgia; et al,

Respondents.

CIVIL ACTION FILE
NO. 2014CV252546

JUDGE BRASHER

FINAL ORDER

The above-styled case came before the Court on October 24, 2014 for a hearing to determine the merits of the Petitioners' request for a writ of mandamus against the Respondents. Because the Petitioners have not been denied the performance of a clear legal duty, and because, in some cases, the actions sought to be enforced by the Petitioners are premature, the Court rules as set forth herein.

Liberty cannot conceive of a call more important than that of the people to be heard. Likewise, liberty cannot conceive of a grievance more urgent in its need for redress than that the people's voice is not being heard. Indeed, "[t]he right to vote is fundamental, forming the bedrock of our democracy." *Favorito v. Handel,* 285 Ga. 795, 796, 684 SE2d 257, 260 (2009). It is imperative that the Courts guard the rights of individuals to cast their votes effectively, and to have their votes count in the electoral process. *See, e.g., Williams v. Rhodes,* 393 US 23, 30, 89 S. Ct. 5, 21 LEd2d 24 (1968). A person whose vote is not counted has the right to seek mandamus to have his vote count. *Thompson v. Willson,* 223 Ga. 370, 372-73, 155 SE2d 401, 403 (1967).

It is with these principles in mind that the Court has heard and ruled upon this case expeditiously, and it is against this backdrop that the Court reviews the petition before it.

New Georgia Project (the "NGP") has worked for some time to register new eligible voters in Georgia, particularly members of underrepresented classes of voters. According to NGP, it has collected registration forms from over 81,000 new registrants and has submitted the forms to the relevant county boards of election registrars for processing. All of this took place prior to the October 6, 2014 voter registration deadline for processing in advance of the November 4, 2014 elections. Of the registrations submitted, NGP alleges that approximately 36,983 were submitted to Fulton County, 11,308 to DeKalb[1], 6,742 to Chatham[2], 11,222 to Muscogee, and 3,157 to Clayton.

NGP claimed that as of the date of the filing of the instant Petition it could not find 56,001[3] applicants' names on the Secretary of State's list of eligible voters list, or list of pending applications, as follows: 26,916 received by Fulton County, 7,481 by DeKalb, 4,466 by Chatham, 6,899 by Muscogee, and 2,105 by Clayton.

The Georgia State Conference of the National Association for the Advancement of Colored People (the "Georgia NAACP") also conducted voter registration drives for the 2014 election cycle. It represented in the petition that it collected and submitted "thousands" of voter registration applications in advance of the October 6, 2014 registration deadline. The "Georgia NAACP is informed and believes and thereon alleges that it is likely that significant numbers of

[1] DeKalb County has been dismissed from this action.
[2] Chatham County has also been dismissed from this action.
[3] Petitioners assert that the total number is now, by extrapolation, 40,000. At the hearing, the Petitioners presented a handful of examples of applicants they say have been unable to register and have their names appear on the statewide elector list. Respondents disagree with these examples.

voter registration applicants who submitted registration forms during Georgia NAACP's registration drives are not on the State's voter registration list." (Petition, ¶24.)

As alleged by the Petitioners,

> Every person who is a citizen of the United States and a resident of Georgia as defined by law, who is at least 18 years of age and not disenfranchised by this article, and who meets minimum residency requirements as provided by law shall be entitled to vote at any election by the people. The General Assembly shall provide by law for the registration of electors.

GA Const, Art. II, Sec 1, Para 2.

This constitutional mandate is carried out via a statutory scheme enacted by the Georgia legislature. OCGA § 21-2-1, *et. seq.*, a/k/a the "Georgia Election Code." The Georgia Election Code provides that persons desiring to register to vote shall do so using one of the methods set out in OCGA § 21-2-220. The respective counties' boards of election registrars receive and process election registrations. *Id.*

> If an applicant fails to provide all of the required information on the application for voter registration with the exception of current and valid identification, the board of registrars shall notify the registrant in writing of the missing information. The board of registrars shall not determine the eligibility of the applicant until and unless all required information is supplied by the applicant. If the initial application is received prior to the close of voter registration prior to an election, if the applicant supplies the necessary information on or prior to the date of the election, and if the applicant is found eligible to vote, the applicant shall be added to the list of electors and shall be permitted to vote in the election and any run-off elections resulting therefrom and subsequent elections; provided, however, that voters who registered to vote for the first time in this state by mail must supply current and valid identification when voting for the first time as required in subsection (c) of this Code section. In the event the elector does not respond to the request for the missing information within 30 days, the application shall be rejected.

OCGA § 21-2-220(d).

Once fully processed, a qualified voter's name is placed on a list of official statewide electors maintained by the Secretary of State.[4] OCGA § 21-2-211. Interestingly, there is no express time limit for placement of a voter's name on the statewide qualified elector list. This is in direct contrast to the express statutory deadlines set out for 1) the deadline placed upon a potential elector to register to vote (OCGA § 24-2-224); and 2) the time limit during which a potential elector must respond to a county registrar's request for additional information in order to process an application (OCGA § 21-2-220(d)).

If for any reason a potential voter's name does not appear on the list of registered electors when he presents himself to vote, the voter is entitled to cast a provisional ballot. OCGA § 21-2-418(a). If the voter has received a letter requesting missing information as contemplated in OCGA § 21-2-220(d) and the election falls within the 30-day cure period, the voter may bring the missing items with him to the election. Otherwise, the voter may cast a provisional ballot and bring the missing items within three days of the election to have his ballot counted in the official election results. OCGA § 21-2-419(c)(1). This is yet another express statutory deadline placed upon a potential elector.

In all of this, the State and county officials are held to a standard of substantial compliance. *Banker v. Cole*, 278 Ga. 532, 533, 604 SE2d 165, 167 (2004). Where an election is held in substantial compliance with the law, it will not be rendered void unless it appears that the failures complained of changed the results of the election. *Id.*

[4] Counsel for the Secretary of State made clear at the hearing that, though maintained by the Secretary of State, the list of electors contemplated by OCGA § 21-2-211 is actually populated by action of the several county election officials completing the task of processing applications for registration, rather than by some actions of officials employed by the Secretary of State's office. In other words, when a county election official approves a potential voter, that voter's name is automatically added to the statewide list; it is not transmitted to the Secretary of State's office for separate addition to the list by that office.

As of September 17, 2014 the Secretary of State informed the Petitioners that over 50 of the voter registration applications submitted by NGP were either fraudulent or were suspected of being fraudulent. Approximately three weeks later, the Secretary of State informed the Petitioners that 134 applications were possibly fraudulent. Ultimately, by the time the Petition was filed, 50 applications were deemed to be fraudulent, 49 were suspicious, and 39 were legitimately submitted.

The Petitioners remind the Court and the Respondents that

> ¶33. The investigation of potentially invalid or suspect forms does not relieve the Secretary [of State] or the [county boards of election registrars] of the unequivocal and nondiscretionary duties to evaluate each application on its own merits and to notify applicants if their applications are deemed to have missing information in sufficient time for the applicants to supply the missing information and vote in the November 4 election.

NGP's concerns that these individual evaluations were not taking place led it, on October 3, 2014, to seek a meeting with the Secretary of State.

The Secretary of State declined NGP's invitation on October 6, 2014.

> As you are likely aware, all voter registration applications in Georgia are processed at the county level, including any registrations submitted by the New Georgia Project or any other third-party group. The investigation of the New Georgia Project does not in any way interfere with the processing of applications submitted by them or any other group. In fact, many of the confirmed forgeries that our office has identified have come to the counties' attention through voters whose applications were processed, who were sent communication from their county, and who contacted the county because they had not actually submitted an application. The voter then confirmed with our office that the signature on the submitted application was not his or her signature.
>
> All voter registration applications submitted to this office or to Georgia counties are handled the same way, including any applications submitted by the New Georgia Project. Georgia utilizes a verification procedure pursuant to the Help America Vote Act of 2002 ("HAVA"), 42 USC § 15483. The verification

> procedure was precleared by the United States Department of Justice in 2010. For the vast majority of voters, this verification process takes less than a day. For incomplete or illegible applications, the process can take longer, but the county still processes those applications and attempts to contact the applicant to clarify any issues needed to add the voter to the rolls. Any applicant that is placed in pending status due to an inability to verify their identifying information or citizenship status can still vote in the upcoming election, either by bringing the proper identifying information the polls or casting a provisional ballot and then clearing up any issues with the county elections office.
>
> *Georgia counties are continuing to process all applications they receive, and all voters who are eligible, who have completed and turned in an application, and who are verified through the precleared procedure will be able to cast a ballot for this election.*

(Emphasis supplied.)

The Petitioners were not satisfied with the Secretary of State's explanation of its procedures, or with the Secretary's assurances that all eligible voters would be able to cast a ballot for this coming election. The same day they received the Secretary of State's letter, the Petitioners responded.

> While you indicate in your letter that applicants would have an option to cast a provisional ballot, we do not consider that to be an adequate remedy for eligible Georgians who submitted timely and facially complete applications and have the right to cast a regular ballot.
>
> This is particularly true in light of the serious problems that occurred in Fulton County during the 2012 general election with respect to provisional ballots. These problems were described in detail during a December 17, 2013 State Election Board meeting and it appears that a large number of persons who were forced to cast provisional ballots were disenfranchised.

The Petitioners repeated their request for a meeting with the Secretary of State, at which meeting they expected assurances that all submitted registrations would be processed.

> The Secretary of State responded three days later, again by letter.

> The Secretary of State's office is in communication with the county election officials daily. Any applications that are received by the Secretary of State's office are immediately sent to the counties for processing and determination of eligibility. We are not aware of any county registrar who believes that his or her respective office will be unable to process all timely submitted applications in accordance with state and federal law – including any applications received from your client or any other third-party group. To date, we also have not received any indication from county election officials that any voter registration applicant who timely submitted an application and provided information necessary to determine eligibility will be left off the voter rolls.

The Secretary invited the Petitioners to submit any information they had to the contrary, and further particularized the procedures for supplementing incomplete or illegible registration applications. The Secretary also declined the Petitioners' request for a meeting, explaining that due to the "responsibilities in administering the election, a meeting regarding your generalized concerns is not possible until after this election cycle."

The Petitioners did not submit any information rebutting the Secretary's assurances that the applications were being processed. Instead, the Petitioners expressed their frustration at having their meeting requests rebuffed, and once again requested a meeting with representatives from the Secretary of State's office.

The Petitioners now bring this Petition for writ of mandamus, contending that the Respondents have breached the following clear unequivocal, and nondiscretionary legal duties: (a) the duties owed by the county boards of election registrars to process properly filed registrations, and to notify in writing those applicants whose applications are not properly filed of the relevant problems so that those problems can be timely remedied; and (b) the duty owed by the Secretary of State to place the names of all qualified voters on its official list of electors. The Petitioners seek a writ of mandamus ordering the Respondents to:

(a) Promptly process all pending applications for voter registration submitted by [NGP] and Georgia NAACP[;]

(b) Provide notice to applicants who have submitted their applications prior to the close of registration of the information that is missing from their applications in sufficient time for the applicants to submit missing information prior to the date of the election[;]

(c) If applicants supply the necessary information on or prior to the date of the election, and if the applicants are found eligible to vote, add the applicants to the list of electors and permit them to vote in the election taking place on November 4, 2014[; and]

(d) Add applicants who are eligible and qualified to be registered electors in Georgia to the Secretary of State's official list of electors used in all elections in Georgia.

The requirements for the issuance of a writ of mandamus are set out in OCGA § 9-6-20. "All official duties should be faithfully performed, and whenever, from any cause, a defect of legal justice would ensue from a failure to perform or from improper performance, the writ of mandamus may issue to compel a due performance if there is no other specific legal remedy for the legal rights." Thus, "[m]andamus is a remedy for improper government inaction -- the failure of a public official to perform a clear duty. The writ of mandamus is properly issued only if (1) no other adequate legal remedy is available to effectuate the relief sought; and (2) the applicant has a clear legal right to such relief." (Citations and punctuation omitted.) *Bibb Cnty. v. Monroe Cnty.*, 294 Ga. 730, 755 SE2d 760, 766 (2014).

(a) *No other adequate legal remedy.* Mandamus will not lie where the petitioner has another avenue for pursuing the relief sought that is equally convenient, complete and beneficial. ...

(b) *Clear legal right.* A clear legal right to the relief sought may be found only where the claimant seeks to compel the performance of a public duty that an official or agency is required by law to perform. Where performance is required

> by law, a clear legal right to relief will exist either where the official or agency fails entirely to act or where, in taking such required action, the official or agency commits a gross abuse of discretion.

(Citations omitted; Emphasis in original.) *Id.* To reiterate, in order to be entitled to a writ of mandamus, a party must have a clear legal right to have an act performed, which performance has been denied, and no other adequate legal remedy. *Bibb Cnty., supra. Bedingfield v. Adams,* 221 Ga. 69, 72, 142 SE2d 915, 918 (1965).

Notably, "[m]andamus will not be granted when it is manifest that the writ would, for any cause, be nugatory or fruitless, nor will it be granted on a mere suspicion or fear, before a refusal to act or the doing of a wrongful act." OCGA § 9-2-26.

In this case, for each Respondent, the Petitioners have failed to set out a denial of the performance of a clear legal duty which performance has been denied. Instead, they have merely set out suspicions and fears that the Respondents will fail to carry out their mandatory duties.

The Petitioners have failed to allege, much less show, the counties' registrars past or continued failure to process voter registration applications. The Petitioners assume that no Respondent is carrying out its mandatory duty because the Petitioners do not see a small sample of new voters' names appearing on certain lists. This assumption is not appropriate, is entirely devoid of evidentiary support, and cannot be used as a legal basis for the grant of a writ of mandamus. OCGA § 9-6-26.

Likewise, the Petitioners have failed to allege, much less show, the Secretary of State's past or continued failure to place eligible voters' names on the State's voter rolls. As with the County election registrars, the Petitioners ask this Court to presume that the Secretary has failed to carry out this mandatory duty because the Petitioners do not see new names appearing on the

state-wide elector list.[5] Yet once again, the Petitioners have failed to come forward with evidence showing that the Secretary of State has failed to carry out this duty, or even that this duty is ripe, since it can only be carried out after the various counties' election registrars register an eligible voter.

Not only is there no proof that the Respondents have failed to fulfill their duties, but there is also affirmative proof to the contrary. The Secretary of State and the county registrars have supplied evidence in their responsive pleadings, in their motions to dismiss, and at the hearing on this matter that they have fulfilled, and that they are continuing to fulfill, their mandatory statutory duties regarding newly-registered voters. In point of fact, attached to the petition itself is a letter from the Secretary of State stating that both it and the Respondent counties were carrying out their duties at the time of the pre-litigation discussion between the parties. Thus, even prior to filing suit the Petitioners knew, or reasonably should have known, that the Respondents were processing the subject applications.

The Petitioners have requested a meeting with the Secretary of State in order to receive assurance that the various counties are properly processing new voter registrations. The Secretary of State has declined to meet with the Petitioners. The Petitioners assert that by its actions the Secretary has invited this litigation. In fact, the Secretary of State does not have a legal duty to meet with the Petitioners. Though the Petitioners have not sought mandamus to compel this meeting, the Court notes that had the Petitioner sought such an Order, the request would have been denied. Where the law does not compel a duty, mandamus will not lie. *Bedingfield v. Adams,* 221 Ga. 69, 72, 142 SE2d 915, 918 (1965).

[5] On the contrary, the required presumption in Georgia law for the entirety of this State's jurisprudence has been that public officers are discharging their duties in compliance with the law where there is no proof to the contrary. *Doe v. Peeples,* 1 Ga. 1, 2 (1846).

The Petitioners have not proven that any discrepancy with the statewide elector roll is the fault of the Respondents.[6] In any case, these un-registered voters are not without remedy. Voters whose names do not appear on the list of qualified electors may cast provisional ballots, as discussed above. While the Petitioners do not consider this an adequate remedy, this is not for them or this Court to decide. Instead, it is a decision for the legislature. The existence of an alternate remedy alone mandates the denial of a petition for writ of mandamus. *Bibb Cnty.*, 294 Ga. at 730, 755 SE2d at 766. Furthermore, mandamus is improper because the undisputed evidence shows that the various government officials have carried out their mandatory duties in substantial compliance with the law in processing the registrations. *Banker*, 278 Ga. at 533, 604 SE2d at 167.

The Petitioners' request, at its core, is not just that the Respondents be ordered to perform their mandatory election-related duties. Through this petition the Petitioners seek to control how the Respondents' duties are carried out. The Petitioners consider the process designed and instituted by the Secretary of State to be unsatisfactory. They contend that where some applicants appear to be neither pending nor approved, there should exist some standards regarding the timeliness of the performance of the mandatory registration-processing duties. They further argue that the Secretary of State ought to rework this process to be error free and transparent. But mandamus is not available for compelling the manner of official action. Mandamus lies only the compelling of the legally mandated action itself. *Bland Farms, LLC v. Georgia Dept. of Agriculture*, 281 Ga. 192, 193, 637 SE2d 37 (2006). The manner of the Respondents' actions in carrying out their duties, as established by the legislature, cannot be

[6] It is possible that some registrations were incomplete when submitted to the county election registrars, letters were sent to the registrants requesting the missing information, but the missing information was not supplied within the 30-day time limit set out in OCGA § 21-2-220(d). This could have resulted in the rejection of the applications. *Id.*

reviewed here, as the manner of their actions is set out by statute. "Our responsibility, and the only authority this court has, is to interpret the law as it was written by the General Assembly. The wisdom of legislation rests in the General Assembly." (Citations omitted.) *Wilson v. Bd. of Regents of Univ. Sys. of Georgia*, 246 Ga. 649, 650, 272 SE2d 496, 497-98 (1980).

With regard to each of the Petitioners requests, the Court finds as follows:

(a) The Petitioners ask the Court to require the Respondents to process all pending applications. The evidence shows that the Respondents are already processing all pending applications. Therefore, the request for a writ of mandamus is unnecessary and is DENIED because there has been no failure of a clear legal duty.

(b) The Petitioners ask the Court to require the Respondents to provide notice to applicants who have submitted their applications prior to the close of registration of the information that is missing from their applications in sufficient time for the applicants to submit missing information prior to the date of the election. The evidence shows that the Respondents are already performing this duty. Therefore, the request for a writ of mandamus is unnecessary and is DENIED because there has been no failure of a clear legal duty.

(c) The Petitioners ask the Court to require the Respondents (the Court assumes this to be the Secretary of State) to add qualified voters to the list of electors and to permit them to vote in the November 4, 2014 election. The evidence shows that the Respondents are already performing this duty. Therefore, the request for a writ of mandamus is unnecessary and is DENIED because there has been no failure of a clear legal duty. Additionally, in some cases this request may not be ripe, since the initial burden lies with the various county boards of election registrars to determine whether a voter is qualified before the Secretary of State can add the

voters' names to the list of qualified electors. Thus, to the extent that the request is premature, it is also DENIED. *Voyles v. McKinney*, 283 Ga. 169, 170, 657 SE2d 193, 194 (2008).

(d) Finally, the Petitioners ask the Court to require the Respondents to add applicants who are eligible and qualified to be registered electors in Georgia to the Secretary of State's official list of electors used in all elections in Georgia. This request is identical to the previous request. For the same reasons, it is DENIED.

In sum, the Court has DENIED the Petition *in toto*, and the case stands DISMISSED.

This 28th day of October, 2014.

The Honorable Christopher S. Brasher
Fulton County Superior Court
Atlanta Judicial Circuit

cc:
V. Robert Denham Jr., Jennifer A. Adler Esq.
Robins, Kaplan, Miller & Ciresi, LLP
VIA EMAIL vrdenham@rkmc.com
VIA EMAIL jaadler@rkmc.com

Jerry Wilson, Esq.
Jerry Wilson, Attorney at Law
VIA EMAIL law office1998@gmail.com

Francys Johnson Jr., Esq.
The Johnson Firm, PC
VIA EMAIL info@francysjohnson.com

Dennis R. Dunn, Esq., Russell D. Willard, Esq.
Office of the Attorney General
VIA EMAIL ddunn@law.ga.gov
VIA EMAIL rwillard@law.ga.gov

C. Ryan Germany, Esq.
Secretary of State, Elections Division
VIA EMAIL rgermany@sos.ga.gov
Richard Robbins, Esq., Matt Brigman, Esq., Vincent Russo, Esq.
Robbins, Ross, Alloy, Belinfante, Littlefield, LLC
VIA EMAIL
richard.robbins@robbinsfirm.com
VIA EMAIL
matt.brigman@robbinsfirm.com
VIA EMAIL vrusso@robbinsfirm.com

Lori M. Brill, Esq.
DeKalb County Law Department
VIA EMAIL lmbrill@dekalbcountyga.gov

Jennifer Burns, Esq.
Chatham County Attorney's Office
VIA EMAIL jburns@chathamcounty.org

Shalanda Miller, Esq.
Office of the Fulton County Attorney
VIA EMAIL
shalanda.miller@fultoncountyga.gov

Dara Lindenbaum
Sandleer Reiff Lamb Rosenstein & Birkenstock, PC
VIA EMAIL lindenbaum@sandlerreiff.com

Thomas L. Hamlin, Esq.
Robins, Kaplan, Miller & Ciresi, LLP
VIA EMAIL tlhamlin@rkmc.com

No. 99-137

IN THE
SUPREME COURT OF THE UNITED STATES

J. WAYNE GARNER, former Chairman of the State Board of Pardons and Paroles of the State of Georgia, JAMES T. MORRIS, former Chairman of the State Board of Pardons and Paroles of the State of Georgia, GARFIELD HAMMONDS, JR., former Chairman of the State Board of Pardons and Paroles of the State of Georgia, BOBBY K. WHITWORTH, Member of the State Board of Pardons and Paroles of the State of Georgia, and TIMOTHY E. JONES, former Member of the State Board of Pardons and Paroles of the State of Georgia,

Petitioners,

v.

ROBERT L. JONES,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF OF PETITIONERS

CHRISTOPHER S. BRASHER
SENIOR ASSISTANT ATTORNEY GENERAL
Counsel of Record

THURBERT E. BAKER
ATTORNEY GENERAL

MARY BETH WESTMORELAND
DEPUTY ATTORNEY GENERAL

JACQUELINE F. BUNN
ASSISTANT ATTORNEY GENERAL

PLEASE SERVE:

CHRISTOPHER S. BRASHER
40 Capitol Square, SW
Atlanta, Georgia 30334-1300
(404) 657-3983

Petition For Writ of Certiorari Filed July 19, 1999
Certiorari Granted September 28, 1999

QUESTIONS PRESENTED

Georgia's State Board of Pardons and Paroles is constitutionally and statutorily created. The Board is vested with the power of executive clemency and has the power to grant reprieves, pardons, and paroles. Both the Supreme Court of Georgia and the United States Court of Appeals for the Eleventh Circuit have surveyed the relevant Georgia statutory and constitutional provisions and concluded that the Board, exercises "virtually unfettered discretion" with its clemency power.

The questions presented are:

1. Whether the ex post facto clause of the United States Constitution bars Georgia from applying its regulation governing the reconsideration schedule for life-sentenced inmates who have been denied parole, when the regulation has no effect on the sentence imposed, the substantive formula for consideration for parole, or the determination of eligibility for parole, or whether the change creates only "the most speculative and attenuated possibility of producing the prohibited effect of increasing the measure of punishment."

2. Whether the decision below conflicts with the decisions of other United States courts of appeals and the

appellate courts of the several states as to the meaning and import of this Court's decisions in California Department of Corrections v. Morales and Lynce v. Mathis.

PARTIES BELOW

The parties to the proceeding in the Eleventh Circuit Court of Appeals and in the District Court were as listed in the caption. For purposes of Respondent's claims for declaratory and injunctive relief, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, the Petitioners are Walter S. Ray, Chairman, Bobby K. Whitworth, Garfield Hammonds, Jr., Dr. Betty Ann Cook, and Dr. Eugene P. Walker, the current members of the Georgia Board of Pardons and Paroles.

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

PAGE

Cases

Statutes

Regulations

Ga. Admin. Comp. Ch. 475-3-.05

Ga. Admin. Comp. Ch. 475-3-.06

Constitutional Provisions

Ga. Const. Art. VI, § II, ¶ II (a)

Ga. Const. Art. IV, § II, § II

U.S. Const. Art. I, § 10

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is reported as Jones v. Garner, 164 F.3d 589 (11th Cir. 1999), and is printed and included in the appendix to the petition for a writ of certiorari ("Pet App. __ "). *See* Pet. App. A, 1a. The order on the merits by the United States District Court for the Northern District of Georgia, No, 1:95-CV- 3012-CAM (August 25, 1997) is unreported. *See* Pet. App. B, 20a.

JURISDICTION

The Eleventh Circuit entered its opinion and judgment on January 6, 1999 (Pet. App. A, 1a) and entered its denial of Petitioners' Motion for Rehearing and Suggestion of Rehearing En Banc on April 19, 1999 (Pet App. C, 30a). The petition for writ of certiorari was filed on July 19, 1999, and this Court granted the petition on September 28, 1999.

CONSTITUTIONAL AND OTHER PROVISIONS INVOLVED IN THE CASE

U.S. Const. Art. I, § 10:

> No State shall. . . pass any . . .ex post facto Law. . .

Ga. Comp. R. & Regs. r. 475 -3-.05(2) (*effective December 1, 1979*) (now superceded):

> Reconsideration of those inmates who have been denied parole shall take place at least every three years. The Board will inform inmates denied parole of the reasons for such denial without disclosing confidential sources of

information or possibly discouraging diagnostic opinions. (Text set out fully at J.A. 86-87).

Ga. Comp. R. & Regs. r. 475 -3-.05(2) (*effective September 12, 1993*) (Presently in effect):

Reconsideration of those inmates who have been denied parole shall take place at least every eight years. The Board will inform inmates denied parole of the reasons for such denial without disclosing confidential sources of information or possibly discouraging diagnostic opinions. (Text set out fully at J.A. 88-90).

STATEMENT OF THE CASE

This case stems from a change in the manner in which Georgia's Board of Pardons and Paroles ("Board") reconsiders life-sentenced inmates for parole after an initial denial of parole by the Board. No inmates in Georgia are ever entitled to parole. Life sentenced inmates are in a unique class because they are *never* given a tentative parole month. The Board is required according to regulations adopted pursuant to O.C.G.A. § 42-9-40(a) to initially review life-sentenced inmates for parole after they have served a fixed number of years.

Thus, no issue regarding parole eligibility arises herein. Rather, Respondent Jones complains about a change in the Board's regulations allowing them to reconsider him for parole less frequently after the Board initially denied him parole and denied him on reconsideration twice subsequently.

In the eighties and nineties, many offenders, who had committed heinous crimes that would have resulted in the imposition of the death penalty in the past, received life sentences and subsequently became statutorily eligible for parole. Thereafter, the Board amended its rules to decrease the frequency of mandatory reconsideration after an initial denial of parole in an effort to conserve and better utilize its finite resources for the review of other inmates who had a realistic likelihood of parole. Similarly, the Georgia General Assembly enacted the "Sentence Reform Act of 1994" to statutorily address this concern. 1994 Ga. Laws 1959. A review of the underlying facts and an explanation of the Board's structure provide the backdrop for the legal issues presented.

A. Factual Background

In the parole reconsideration process, the severity of the offense and prior criminal history are factors considered by the Board. Thus, the facts of the underlying crimes are significant. Respondent, Robert L. Jones, has been convicted of two separate murders. *See* Jones v. State, 234 Ga. 108, 214 S.E.2d 544 (1975); Jones v. State, 251 Ga. 361, 306 S.E.2d 265 (1983). At the time of the first murder, the victim, Jack Bell, lived in the same rooming house where Jones resided. *Id.* Jones gained entry to Bell's bedroom and "began cursing loudly" until Bell awoke. *Id.*

Jones demanded his car on which Bell had made repairs. Bell asked Jones to pay the $58.00 for the repairs, and, in response, Jones "raised a shotgun and shot the victim as he lay in the bed." *Id.* Jones was sentenced to life in prison after his conviction for this murder July 23, 1974. (J.A. 48). On November 24, 1979, Jones escaped from custody. (J.A. 48).

On March 26, 1982, Jones murdered his second victim, Frances Tutt Davis, who was a stranger to Jones. *Jones*, 251 Ga. at 361, 306 S.E.2d at 266. That afternoon, Ms. Davis was waiting to board a train in downtown Atlanta when Jones stabbed her to death with an ice pick. *Id.* Jones fled the scene, "leaving the ice pick embedded" in Ms. Davis' chest. *Id.* Jones was convicted of the murder of Ms. Davis and was sentenced to a second term of life imprisonment on August 20, 1982. (J.A. 48).

Respondent was initially considered for, and denied, parole in September 1989. (J.A. 48). He was reconsidered, and again denied, in September 1992. (J.A. 49). Respondent was considered a third time, and again denied parole, in September 1995. (J.A. 49). At that time, Respondent was advised that his next reconsideration would come within the next eight years. (J.A. 49).

B. Procedural Background

Unlike most states, Georgia's Board is vested with "the power of executive clemency, including the power to grant reprieves, pardons, and paroles; to commute penalties; to remove disabilities imposed by law; and to remit any part of a sentence for any offense against the state after conviction." Ga. Const. Art. IV, § II, ¶ II (a). Both the Supreme Court of Georgia and the United States Court of Appeals for the Eleventh Circuit have surveyed the relevant Georgia statutory and constitutional provisions and have concluded that the Board, in its exercise of clemency power has "virtually unfettered discretion." Jones v. Georgia State Board of Pardons and Paroles, 59 F.3d 1145, 1150 (11th Cir. 1995); *see also* Vargas v. Morris, 266 Ga. 141, 465 S.E.2d 275, *cert. denied sub nom.* Vargas v. Garner, 517 U.S. 1108 (1996).

Georgia's Board operates independently of the executive and judicial branches of government, and the General Assembly's statutorily articulated legislative policy is:

> In recognition of the doctrine contained in the Constitution of this state requiring the three branches of government to be separate, it is declared to be the policy of the General Assembly that the duties, powers, and function of the State Board of Pardons and Paroles are executive in character and that in the performance of its duties under this chapter, no other body is authorized to usurp or substitute its functions imposed by this chapter upon the board.

O.C.G.A. § 42-9-1. The Board is statutorily charged with "the duty of determining which inmates serving sentences imposed by a court of this state may be released on pardon and parole and fixing the time and conditions thereof." O.C.G.A. § 42-9-20. The Board must personally "study the cases of those inmates whom the board has the power to consider so as to determine their ultimate fitness for such relief as the board has power to grant." *Id.* Except as otherwise provided by law, inmates serving sentences of life imprisonment become statutorily eligible for the exercise of the Board's powers after the service of seven years' imprisonment. O.C.G.A. § 42-9-45(f). The Board is authorized to provide, by regulation, for eligibility for reconsideration of those inmates previously denied parole. O.C.G.A. § 42-9-45(a).

So that it could effectively exercise its considerable discretion, the Board promulgated rules and established policies with regard to the parole consideration process. Ga. Comp. R. & Regs. r. 475-3-.06 ("An inmate serving a life sentence, for which parole is authorized by law is automatically considered for parole on the date permitted by applicable constitutional and statutory law."), and Ga. Comp. R. & Regs. r. 475-3-.05 ("Reconsideration of those inmates serving life sentences who have been denied parole shall take place at least every eight years."). Once parole is denied to a life-sentenced inmate, the

Board's reconsideration policy is based upon its Rules and its policy statement regarding the "Interval for Reconsideration of Parole Denials in Life Sentence Cases," which provides that:

> All Life Sentence Cases denied parole may be set for reconsideration up to a maximum of eight years from the date of last denial when, in the Board's determination, it is not reasonable to expect that parole would be granted during the intervening years. Inmates set-off under this policy may receive expedited parole reviews in the event of a change in their circumstances or where the Board receives new information that would warrant a sooner review.

Board Policy Statement No. 4.110. (J.A. 55-7).

Prisoners convicted of crimes committed prior to the implementation of this policy challenged the application to them of the eight-year set off, and the United States Court of Appeals for the Eleventh Circuit found that the retroactive application of the amended regulation violated the ex post facto clause. Akins v. Snow, 922 F.2d 1558 (11th Cir.), *cert. denied*, 501 U.S. 1260 (1991). Thus, the Board amended its practices accordingly. (J.A. 49).

Subsequent to this Court's decision in California Department of Corrections v. Morales, 514 U.S. 499 (1995), and based upon advice from the Attorney General of Georgia that the Morales decision effectively overruled the Eleventh Circuit's holding in Akins, the Board resumed retroactive application of its amended regulation. (J.A. 49).

When the Respondent committed his second murder in 1982, the pertinent Board rule with regard to "Time-Served Requirements for Parole Consideration" provided:

> Persons serving felony sentences or combination felony and misdemeanor sentences of twenty-one or more years, including a life sentence, are eligible for parole consideration upon completion of the service of seven years.

Ga. Comp. R. & Regs. r. 475-3-.06(3). With regard to parole reconsideration, the rules provided in pertinent part, "Reconsideration of those inmates who have been denied parole shall take place at least every three years." Ga. Comp. R. & Regs. r. 475-3-.05(2). In 1985, and, again in 1993, Rule 475-3-.05(2) was amended to increase the maximum period for reconsideration of life-sentenced inmates from three to eight years. The Respondent challenges the application of this "eight-year rule" to his two sentences of life imprisonment.

C. Proceedings Below

After being advised that his parole reconsideration was being set-off for eight years by the Board, Respondent initiated suit under 42 U.S.C. § 1983 alleging that the retroactive application of the amendment violated the ex post facto clause of the United States Constitution. Respondent sought damages, as well as a declaratory judgment that the application of the

amended regulation in his case violated the ex post facto clause.

Following a period of discovery, the parties filed cross-motions for summary judgment. The District Court granted summary judgment to the Board, finding that, as in Morales, the amended regulation "creates 'only the most speculative and attenuated possibility of producing the prohibited effect of increasing the measure of punishment.'" (Pet. App. 27a).

On appeal, a panel of the Eleventh Circuit reversed and remanded. As a factual matter, the Circuit Court found that "Eight years is a long time." Jones v. Garner, 164 F.3d at 595. Also, the Circuit Court held that this "Court's reasoning in Morales and Lynce [v. Mathis, 519 U.S. 433 (1997)] reaffirms the correctness of our holding in [Akins]." Id. at 596. Finally, the Eleventh Circuit found that "there is a 'sufficient risk' that the amended Georgia regulation would 'increase the measure of punishment.'" The Circuit Court reversed the grant of summary judgment to the Board and remanded the case to the District Court. The Eleventh Circuit subsequently denied the Board's Motion for Rehearing with Suggestion for Rehearing En Banc.

SUMMARY OF ARGUMENT

The United States Constitution forbids the states from passing ex post facto laws. Art. I, § 10, ¶ 1. In order to establish that a regulation is an ex post facto law, one must show that the "change alters the definition of criminal conduct or increases the penalty by which a crime is punishable." California Department of Corrections v. Morales, 514 U.S. 499, 507, n. 3 (1995). It is not sufficient to merely demonstrate "disadvantage" from the retroactive application. Moreover, such showing cannot be "speculative or attenuated [Id., at 508-9]," but must rather demonstrate "with . . . certainty that the amended statutory scheme [is] more onerous than that at the time of the crime." Lynce v. Mathis, 519 U.S. 433, 446, n. 16 (1997).

Respondent challenged the application to him of an amendment to Georgia's parole reconsideration requirements for life sentenced inmates which allows the Board to "set-off" the parole reconsideration date of an inmate who has been initially denied parole for up to eight years, instead of the previous three years. The Regulation has no effect upon any inmate's parole eligibility, or upon the discretion of the Board as to whether it ever grants parole to life sentenced inmates.

Under Georgia's parole system, life sentenced inmates have no expectation of parole, as it is the Board alone which

ultimately determines whether they are ever released from confinement. No other entity within Georgia's government is constitutionally permitted to interfere with the exercise of the Board's discretion in determining whether to grant parole to inmates within its jurisdiction.

The Eleventh Circuit's holding in the case below that the instant regulation is an ex post facto law is erroneous. Underlying this erroneous ruling is the fallacious assumption by the lower court that more frequent mandatory parole reconsideration ultimately leads to earlier release from confinement. This assumption ignores the reality that Georgia's Parole Board retains the ultimate authority to decide whether Jones is ever paroled.

Thus, the Circuit Court misapplied this Court's rulings in Morales and Lynce by employing a perfunctory application of the factors examined by this Court in Morales, rather than focusing on the ultimate effect of whether the retroactive application "constitutes a 'sufficient risk of increasing the measure of punishment attached to the covered crimes.'" Morales, 514 U.S. at 509. Moreover, the Circuit Court erred in placing the burden of proof upon the Board.

Had the Eleventh Circuit focused upon the question of whether it could be shown, beyond mere speculation, that Jones sentences were increased by this retroactive change, it could not

have reached its erroneous conclusion. Those errors require this Court to reverse the decision of the Eleventh Circuit. Additionally, the record, statutes and other authorities available demonstrate that the District Court's grant of summary judgment to the Board was, indeed, correct.

ARGUMENT

I. GEORGIA'S APPLICATION OF ITS AMENDED REGULATION GOVERNING THE RECONSIDERATION SCHEDULE OF LIFE-SENTENCED INMATES WHO HAVE BEEN DENIED PAROLE DOES NOT VIOLATE THE EX POST FACTO CLAUSE OF THE UNITED STATES CONSTITUTION.

Article I, § 10 of the United States Constitution forbids the several states from passing any "ex post facto" law. Art. I, § 10, ¶ 1. "Although the Latin phrase 'ex post facto' literally encompasses any law passed 'after the fact,' it has long been recognized by this Court that the constitutional prohibition on ex post facto laws applies only to penal statutes which disadvantage the offender affected by them [cits. omitted]." Collins v. Youngblood, 497 U.S. 37, 41 (1990).

In his now-famous opinion in Calder v. Bull, 3 Dall. 386 (1798), Justice Chase described four categories of ex post facto laws:

> 1st. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action. 2d. Every law that aggravates a crime, or makes it greater than it was, when committed. 3d. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. 4th. Every law that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offense, in order to convict the offender.

Id. at 390.

This venerated exposition on what comprises ex post facto laws is still consistently cited by this Court as a cornerstone of its ex post facto jurisprudence. See, e.g., Miller v. Florida, 482 U.S. 423 (1987); Collins v. Youngblood, 497 U.S. 37 (1990); Morales, 514 U.S. 499 (1995); Lynce v. Mathis, 519 U.S. 433 (1997). Likewise, this Court's explanation of ex post facto laws in Beazell v. Ohio, 269 U.S. 167 (1925), has been characterized as a "formulation . . . faithful to our best knowledge of the original understanding of the Ex Post Facto Clause: Legislatures may not retroactively alter the definition of crimes or increase the punishment for criminal acts." Collins v. Youngblood, 497 U.S. at 43-44.

In Collins, this Court removed from the ex post facto lexicon the "procedural" versus "substantive" distinction which the Court noted had "imported confusion into the interpretation of the Ex Post Facto Clause." Id. at 45. In its place, this Court directed that the aforementioned Calder and Beazell definitions be used in analyzing alleged ex post facto laws. Id. at 50-51.

In California Department of Corrections v. Morales, 514 U.S. 499 (1995), this Court reviewed a legislative change to the frequency with which the California Board of Prison Terms reconsidered inmates who had been initially denied parole,

finding no ex post facto violation, but rather that the change created "only the most speculative and attenuated risk of increasing the measure of punishment . . . ." Id. at 514. Furthermore, in Morales, this Court reaffirmed its support for the Calder and Beazell definitions commended in Collins, stating that "[a]fter Collins, the focus of an ex post facto inquiry is . . . on whether any [legislative] change alters the definition of criminal conduct or increases the penalty by which a crime is punishable." Morales, 514 U.S. at 507, n. 3. This Court also removed from ex post facto consideration the question of whether retrospective laws merely "disadvantage" offenders, calling "that language . . . unnecessary to the results . . . and inconsistent with the framework developed in Collins v. Youngblood. [cit.]" Id.[1]

Thus, based upon this evolution of ex post facto jurisprudence, in order to prevail on a claim that a change in the law, as applied to an individual, is an ex post facto law, one must do more than to merely demonstrate "disadvantage." Indeed, there must be a showing that the "change alters the definition of criminal conduct or increases the penalty by which a crime is punished." Morales, 514 U.S. at 507, n. 3. Such

[1] Although this Court again used the term "disadvantage" in Lynce v. Mathis, 519 U.S. 433, 441 (1997), the Court was careful to remain true to the earlier definitions by cautioning, as it had in Morales, that the "relevant inquiry is whether the change alters the definition of criminal conduct or increases

showing cannot be "speculative or attenuated [Morales, 514 U.S. at 508-9]," but it must instead be demonstrated "with . . . certainty that the amended statutory scheme was more onerous than at the time of the crime." Lynce, 519 U.S. at 446, n. 16.

A. GEORGIA'S PAROLE BOARD IS INVESTED WITH BROAD AUTONOMY AND DISCRETION.

Unlike the California Board of Prisons Terms described by this Court in Morales, Georgia's Board of Pardons and Paroles is the sole seat of all executive clemency powers. Ga. Const., Art. IV, § II, ¶ II. Any attempt by the General Assembly to limit the discretion of the Board to parole inmates within its jurisdiction would violate the separation of powers provision of Georgia's Constitution. Id. See also, O.C.G.A. § 42-9-1.

The Eleventh Circuit has previously had occasion to review the constitutionality of Georgia's parole system. In Sultenfuss v. Snow, 35 F.3d 1494 (11th Cir.), *cert. denied* 513 U.S. 1191 (1995), the Eleventh Circuit, addressing whether the parole "grid system" used for non-life sentence cases created a "liberty interest," found that the Board, because of its constitutional and statutory autonomy under Georgia law, exercised "substantial discretion . . . [which] belies any claim to a reasonable expectation of parole." Id. at 1502.

---

the penalty by which a crime is punishable." Lynce, 519 U.S. at 443. Thus, it appears that the "disadvantage" standard is truly disfavored.

Similarly, in Jones v. Georgia State Board of Pardons and Paroles, 59 F.3d 1145 (11th Cir. 1995), the Eleventh Circuit found no ex post facto violation in the retrospective application of a change in the method of calculating a non-life sentence inmate's tentative parole month pursuant to the "grid system" because the Board exercised "virtually unfettered discretion" to deviate from those guidelines which it had established. Id. at 1150.

Georgia's General Assembly vested in the Board the authority to "promulgate rules and regulations, not inconsistent with" Georgia law. O.C.G.A. § 42-9-45(a). Pursuant to that authority, the Board adopted, and later amended, the regulation in question, Ga. Comp. R. & Regs. r. 475-3-.05(2), providing for the frequency of parole reconsiderations in life sentence cases after an inmate is initially denied parole. (J.A. 86, 88).

The Board further described its intentions regarding parole reconsideration schedules, after having amended its policy to allow a "set-off" of reconsideration for up to eight years, through its written policies and procedures. Those policies clearly indicate how the Board intends to exercise its "virtually unfettered discretion" by stating that "[a]t the time the members vote to deny parole in a life sentence case, the members will indicate the number of years the inmate must serve prior to being next considered." (J.A. 56).

The Georgia Board of Pardons and Paroles has exercised its considerable discretion to free itself from focusing upon those inmates, like Jones, whose heinous crimes and multiple-offender status gives them, in the Board's opinion, virtually no near-term opportunity for parole, and instead focus its limited resources and time upon those cases which do. The propriety of this change is borne out by the fact that, unquestionably, it is the Board which has, and will continue to have, the only authority to decide whether Jones is ever released from prison.

Thus, the Board, empowered as it is with the ultimate decision-making power as to Jones' parole, should not be prohibited from determining how to best utilize its resources by deferring parole reconsideration of this inmate whom it has clearly indicated has little or no likelihood of parole within the next eight years barring a significant change in circumstances. That, however, is exactly the effect of the Circuit Court's decision below.

Embodied in the state constitutional provisions, statutes, regulations and policies outlined above is the decision by the State of Georgia that its Pardons and Paroles Board should be the body which has the ultimate authority over the exercise of executive clemency. The regulation challenged in the trial court by Respondent Jones is, quite simply, the extension of that very decision.

The Board has, by and through that regulation and the accompanying policies and procedures, expressed its desire to bring its discretion to bear in a manner which is cost-effective and efficient, while still being fair and equitable to those inmates within its jurisdiction. Thus, inmates with no realistic near-term likelihood of parole (as determined by the ultimate decision-makers) are not caused to suffer the likely emotional stresses of being frequently considered, only to be frequently denied. Rather, those inmates are told, honestly and directly, that they cannot anticipate parole within the period of their "set-off," save for a "change in their circumstances or where the Board receives new information that would warrant a sooner review."

Apart from the above, this process has the additional salutary effect of encouraging inmates whose heinous crimes, lengthy criminal histories, or poor institutional records are tempered by no (or inadequate) attempts at rehabilitation to undertake such measures in hopes that those efforts will be viewed favorably by the Board at the inmate's next reconsideration. The ability of the Board to set off reconsideration on an individual basis also provides that inmate with an indication of how extensive those efforts must be.

Additionally, the ability of the Board to effectively direct the expenditure of its resources allows it to focus those

limited resources upon the inmates within its jurisdiction who do, in fact, have a realistic near-term likelihood for parole. Thus, the Board, faced as it and all other corrections-related entities are nationwide with burgeoning prison populations, is able to focus those resources where they can be most effective.

B. A CORRECT APPLICATION OF THIS COURT'S PRECEDENTS DEMONSTRATES THAT GEORGIA'S PAROLE RECONSIDERATION SCHEME DOES NOT VIOLATE THE EX POST FACTO CLAUSE.

What Petitioner seeks is an application by this Court of the ex post facto analysis which is set out above. By analyzing the effect of applying this change in the regulation to Jones, this Court should conclude that no effect, aside perhaps from the salutary ones set out above, can ever be conclusively demonstrated. Such analysis, free from the speculation urged by Jones and engaged in by the Court below, leads inexorably to the conclusion that Jones' two life sentences, coupled with the heinous crimes for which he received them and the multiple parole denials by the Board, has no basis to ever expect to be paroled. Thus, he can show nothing more than mere speculation in support of his claim.

In Morales, this Court noted that the Ex Post Facto "Clause is aimed at the laws that 'retroactively alter the definition of crimes or increase the punishment for criminal acts'," 514 U.S.

at 504, and found the relevant inquiry to be "whether any such change alters the definition of criminal conduct or increases the penalty by which a crime is punishable." Id. at 506, n. 3. Moreover, this Court warned the judiciary against "the micromanagement of an endless array of legislative adjustments to parole and sentencing procedures . . . ." Id. at 508. Such an approach, guided by the admonition of this Court to "[focus] on the effect of the [change in the] law on the inmate's sentence," Lynce, 519 U.S. at 444, yields a review based upon the regulation in question, not a comparison between two systems, as was engaged in by the Eleventh Circuit.[3] An appropriate application of those factors to the change in the frequency of parole reconsideration in Georgia, free from the speculation engaged in by the Circuit Court, can only yield the result that there is no ex post facto violation in the retroactive application of this rule change.

Respondent Jones complains that the change by the Board to its rule extending the maximum "set-off" period for parole

---

[2] The same is, of course, true of any inmate serving a life sentence in Georgia, although the Board is only applying this policy to a limited class of inmates.

[3] Such was the case in numerous other circuits and states that have applied those notions to parole system changes within their own jurisdictions and have found no violation of the Ex Post Facto Clause. See, e.g., Hill v. Jackson, 64 F.3d 163 (4th Cir. 1995); Roller v. Gunn, 107 F.3d 227 (4th Cir.), *cert. denied, 522 U.S. 874* (1997); Shabazz v. Gabry, 123 F.3d 909 (6th Cir.), *cert. denied, 522 U.S. 1019* (1997); Furnari v. Savaras, 914 P.2d 508 (Colo. 1996); Tuff v. State, 732 So. 2d 461 (Fla. 1990); Fletcher v. Williams, 179 Ill. 2d 225 (1997); Jordan v. Tennessee Board of Paroles, 1997 Tenn. App. LEXIS 27.

reconsideration to eight years is an ex post facto law. Neither the Circuit Court below nor Jones has ever pointed to any fact, statute, regulation, or policy that supports this claim. Instead, they rely upon the ***assumption*** that more frequent mandatory parole reconsideration leads to an earlier release date, and thus Jones' sentence is extended by the amended regulation; or, as stated by the Circuit Court, there is a "sufficient risk" that the amendment would "increase the measure of punishment attached to the crimes. [Cits. Omitted]." Jones v. Garner, 164 F.3d at 595.

The cornerstone of Jones' argument, this alleged nexus between reconsideration frequency and the length of incarceration, ***cannot be proven***. The Board has discretion over the ultimate question of whether Jones will ever within his life span be released from confinement, and the Board has clearly indicated in denying him parole in 1995 (as it had done twice previously) that "the main reasons for this decision cited by the Board . . . are [the] circumstances and nature of offenses, and multiple offenses." Jones v. Garner, 164 F.3d at 594, n. 7. Jones' assertion, and the Eleventh Circuit's decision, that the application to him of a change in parole reconsideration requirements is an ex post facto law is thus based solely upon "the most speculative and attenuated possibility of producing

the prohibited effect of increasing the measure of punishment." Morales, 514 U.S. at 509.[4]

Should this Court decide contrary to Petitioners in this cause, the effect will be to plunge the judiciary into the "micromanagement of an endless array of legislative adjustments to parole and sentencing procedures" warned of by this Court in Morales. 514 U.S. 508-9. Such predicted consequences are no mere hyperbole, as any observer of prisoner litigation is all too well aware.

The Board's policies and procedures clearly allow inmates to bring matters before the Board at any time when the inmate believes those matter warrant parole reconsideration. Likewise, the Board, pursuant to public information or its own investigation, might well *sua sponte* decide it necessary to reconsider inmates prior to their set-off reconsideration date. Thus, concerns regarding extended periods of "parole ineligibility" and "chances" for parole missed because of reconsideration set-offs are the true hyperbole in this case.

---

[4] Given the Circuit Court's previous holdings that Georgia's parole Board is empowered with such broad discretion, and the Constitutional and statutory provisions which undergird that conclusion, one is forced to speculate that the Court below has concluded that, although it cannot compel the Board to exercise its discretion to release any inmate, it can, and will, force the Board to consider inmates for parole on a schedule which it deems appropriate. This premise rests upon the fallacious nexus between frequent reconsideration and earlier parole.

C. THE ELEVENTH CIRCUIT'S ANALYSIS OF GEORGIA'S PAROLE RECONSIDERATION SCHEME WAS ERRONEOUS AND MISAPPLIED THIS COURT'S CLEAR PRECEDENTS.

The Eleventh Circuit erred in reversing the District Court's grant of summary judgment in favor of the Board, and further erred in concluding that this Court's decision in California Department of Corrections v. Morales, 514 U.S. 499 (1995), did not overrule the Circuit Court's previous decision in Akins v. Snow, 922 F.2d 1558 (11th Cir. 1991), but instead reaffirmed "the correctness of our holding in that case." Jones v. Garner, 164 F.3d at 596. A review of the Circuit Court's decisions in both the present case and in Akins reveals that the principal basis for the Court's erroneous rulings in these cases is its fundamental misunderstanding of the operation of Georgia's parole system.

The Eleventh Circuit's assumption in Akins, and later in its decision in the present case, that there is an inherent relationship between the frequency of mandatory parole reconsideration and how soon an inmate is released from confinement most clearly demonstrates its misunderstanding. [5]

[5] This notion has been specifically rejected by the Sixth Circuit Court of Appeals, which found that "there exists no legal nexus between the decrease of regularly scheduled parole hearings and eligibility for parole," based upon Morales. Shabazz v. Gabry, 123 F.3d 909, 914 (6th Cir), *cert. denied 522 U.S. 1019 (1997)*. The Court in Shabazz was openly critical of a lower court which "relied upon an assortment of anecdotal observations and speculation to conclude that the amendments may present sufficient risk of increased punishment[, finding that such a] holding is erroneous in light of [this Court's] explicit rejection in Morales of the expansive view that 'the

See, e.g., Jones v. Garner, 164 F.3d at 591, n. 4; Akins, 922 F.2d at 1562. The Court's misunderstanding of Georgia's parole system is further illustrated by its findings in Akins, which it later reaffirmed in Jones v. Garner, that "a parole reconsideration hearing is part of a prisoner's parole eligibility." Jones v. Garner, 164 F.3d at 591, n. 4 (quoting Akins, 922 F.2d at 1561-62).

Even assuming, *arguendo*, that parole eligibility is part of an inmate's sentence, that decision does not affect the inquiry here because Jones became eligible for parole after serving seven years of his second life sentence, at which time he was immediately reviewed for parole, and denied. The Board subsequently, based upon its clearly expressed policy, "set-off" its reconsideration of Jones for eight years.

The specific aspect of Georgia's parole system that the Court's premise fails to consider is that Jones became eligible for parole by operation of law after serving seven years of his 1982 life sentence, and he has remained eligible for parole since that date. The Court's conclusion that "eligibility in the abstract is useless," [Akins, 922 F.2d. 1562; Jones v. Garner, 164 F.3d at 591, n. 4] fails to reckon with the reality that, in life, we may be eligible for many positions, honors,

---

Ex Post Facto Clause forbids any legislative change that has any conceivable risk of affecting a prisoner's punishment'." Id. at 914-15.

awards, or accolades, but it is the discretion of the decision-making body that may "keep" us from them, not "ineligibility." Under the Eleventh Circuit's definition of parole eligibility, the only time an inmate would be eligible for parole is the precise moment when the inmate is actively being considered by the Board.

Here, it is the discretion of the Board, lawfully granted and lawfully exercised, that has kept Jones from parole, not the frequency or infrequency of his reconsideration. Any other conclusion strains credulity and is unsupported by the record. If the Court below had, as it claimed, focused upon "a prisoner's ultimate date of release . . . to determine whether the change constitutes a 'sufficient risk of increasing the measure of punishment attached to the covered crimes' [Jones v. Garner, 164 F.3d at 593]," it could not have reached its conclusion that the change in Georgia's parole reconsideration scheme was an ex post facto law.

Unfortunately, however, the Court engaged in precisely the type of "speculative and attenuated" reasoning which this Court has rejected. Morales, 514 U.S. at 509. As noted above, because the ultimate decision of whether Jones will ever, during the course of his natural life, be released from prison is now and will always be within the discretion of the Board, he cannot demonstrate beyond mere speculation that he will (or even may)

remain in prison longer because the Board changed its reconsideration schedule to allow themselves to review Jones as infrequently as every eight years. This fact is underscored by the further reality that the Board's particularized decision to "set-off" Jones' parole reconsideration for eight years was due to its determination, pursuant to its own policy, that "it is not reasonable to expect that parole will be granted during the intervening years." (J.A. 56).

The Court's fundamental misunderstanding of Georgia's parole system, as discussed above and made evident in its decision below and in Akins, has manifested itself in the Circuit Court misapplying this Court's decision in Morales to the facts of the instant case.

Even a cursory review of the Eleventh Circuit's decision below reveals that its analysis of this Court's rulings in Morales is limited to a perfunctory application of the factors deemed appropriate by this Court in that particular case. The court below engaged in that perfunctory review process when it "examine[d] the [Georgia] regulation in light of the factors discussed in Morales and [found] it to be wholly distinguishable from the statute at issue in that case." Id. at 553.

In reviewing the instant regulation, the Eleventh Circuit found that the "set of inmates whose parole consideration will be affected by [the Georgia regulation] is thus bound to be far

more sizeable than" the set in Morales. (Emphasis supplied). Id. at 594. The Circuit Court then went on to say that "[t]his set must . . . be comprised of many inmates who can expect at some point to be paroled [emphasis supplied]." Id.[6]

The fact that the Georgia regulation applies to all life-sentenced inmates is without significance. First, such criticism smacks of the "micromanagement" warned against by this Court in Morales, 514 U.S. at 508. Next, the Court below wholly disregarded the evidence in the record, in the form of the affidavit of the Board's Director of Legal Services, who averred that the Board's set-off policy was applied to "life sentenced inmates who have committed capital offenses and inmates serving life sentences under Georgia's Serious Violent Felony Recidivists laws." Also, as noted above in Petitioner's factual statement, the crimes for which Jones is incarcerated are equally horrific to those committed by Morales. Lastly, the Board is under no obligation to ever parole any inmate serving a life sentence.

The Court below described Ga. Comp. R. & Regs. r. 475-3-.05(2) as not "carefully tailored" to further the legitimate end

[6] As noted above, the Circuit Court has previously held that the "substantial discretion reserved by the Board belies any claim to a reasonable expectation of parole." Sultenfuss v. Snow, 35 F.3d 1494, 1502 (11th Cir.), cert. denied, 513 U.S. 1191 (1995).

of saving time and money and not increasing punishment.[7] That criticism was comprised of several aspects, including the "lack" of a requirement to make any particularized findings in its decision to "set-off" an inmate for a period beyond the previous three year interval, the "lack" of "any sort of hearing on this question," and that the "default" frequency under the Georgia regulation is "at least every eight years." Jones v. Garner, 164 F.3d at 595.

The Circuit Court's criticism stems, again, from a lack of understanding about Georgia's parole scheme. To hold that a Board which is under no requirement, either constitutional or statutory, to ever hold parole consideration hearings or make particularized findings regarding the decision to deny parole to an inmate should nonetheless be required to hold such hearings or make such findings supporting a decision to delay reconsideration for parole simply does not follow.[8] As the Court

---

[7] This inquiry seems to be in conflict with this Court's admonition in Lynce that "to the extent that any purpose might be relevant in this case, it would only be the purpose behind the" Board's 1995 amendments. Lynce, 519 U.S. at 433. An application of such mandate, mindful of the Board's broad discretion, leaves one to ask what possible purpose the Board could have had to promulgate such a regulation other than to relieve itself of the continual burden of reviewing inmates about whom it had determined "it is not reasonable to expect that parole would be granted during the intervening years," and focus upon the overwhelming remainder of those inmates under its jurisdiction.

[8] Note, however, that among the reasons for denying parole to Jones and setting off his reconsideration are the reasons stated in the Board's 1995 letter to him: i.e., the "circumstances and nature of the offense, and multiple offenses." Given the Board's reliance on such factors (which had been static for 15 years) in denying parole and setting off reconsideration, one wonders how Jones' term of confinement is actually increased by setting off his reconsideration for an additional five years, given his ability to

cites nothing in support of its apparent belief in the constitutional significance of this factor, it amounts only to the type of "speculative and attenuated possibility of . . . increasing the measure of punishment" which this Court held in Morales was insufficient "under any threshold we might establish under the Ex Post Facto Clause." Id. at 509.[9]

Also, the Court below characterized the Board's "default" reconsideration schedule as "at least every eight years." This conclusion is belied by Board procedure 4.110, which indicates that "[a]t the time the members vote to deny parole in a life sentence case, the members will indicate the number of years the inmate must serve prior to being next considered." (J.A. 55-7). Thus, there is no "default" set-off period, rather there is only the individualized determination by the Board as to how long that inmate's next parole consideration should be deferred. The Circuit Court's formulaic approach to this scheme is best summarized by its statement that "eight years is a long time." Jones v. Garner, 164 F.3d at 595. Given such an incredible conclusion, the Eleventh Circuit found the Board's specific policy, described above, to be inadequate.[10]

---

bring important changes to the Board's attention in the interim and request expedited review.

[9] See also, Shabazz v. Gabry, 123 F.3d 909, 915 (6th Cir.), *cert. denied, 522 U.S. 1019 (1997)* ("anecdotal observations and personal speculation" provide no basis for finding ex post facto violation).

[10] This conclusion clashes with the presumption in Georgia law, first stated by Justice Lumpkin of the Georgia Supreme Court in 1846 that "must not this

Although the Circuit Court below tacitly acknowledges this Court's later clarifications of Morales made in Lynce, the Eleventh Circuit fails to properly focus, as this Court directed, on the effect of the law on the inmate's sentence. Lynce, 519 U.S. at 444. Had the Circuit Court held true to that directive, it perhaps would have avoided the perfunctory application of the factors of California's law to that in Georgia's parole scheme. Instead, the Eleventh Circuit, bound as it was to the erroneous notion of a nexus between the frequency of parole reconsideration and the date of release, effectively limited this Court's decision in Morales to its facts. Such cannot be what this Court intended.[11]

The fact-bound interpretation of this Court's decision in Morales which was rendered by the Circuit Court below is inconsistent with a system of federalism which allows states the freedom to approach a problem from a variety of perspectives.

Court, in favor of Public Officers, presume that they discharged their duty, in compliance with the law, in absence of all proof to the contrary?" Doe, ex dem. Truluck, et al. v. Peeples, 1 Ga. 1 (1846). See also, Brantley v. Thompson, 216 Ga. 164 (1960); Jarrett v. City of Boston, 209 Ga. 530 (1953); Kirk v. State, 73 Ga. 620 (1884). Moreover, the Board's policies and procedures in this regard are essentially its own interpretation of the requirements upon it, which the Court below has previously held to be "entitled to great deference, unless clearly erroneous." Sultenfuss v. Snow, 35 F.3d 1494, 1503 (11th Cir.), *cert. denied*, 513 U.S. 1191 (1995).

[11] Other jurisdictions have applied the holding in Morales to parole scheme changes more broad than those in that case, and have found those changes not to be ex post facto laws. Thus, those decisions reject the limited application given Morales by the Court below. Indeed, the Fourth Circuit Court of Appeals has explicitly rejected such a limited interpretation of

The Circuit Court's interpretation further fails to recognize the organic nature of state law in a system of federalism. How can Georgia be expected, based upon its vastly different historical and constitutional underpinnings, to produce a parole system identical to California's? And, more importantly, why should it, in a system of federalism, be expected to do so?[12]

In comparing, by rote, the characteristics of the California statute in Morales to the Georgia parole scheme, the Circuit Court has espoused a view that any system not exactly like that reviewed in Morales is likely to be constitutionally infirm if it is forced by burgeoning prison populations, limited resources and limited time to change the frequency with which it reviews inmates for parole. Such a conclusion fundamentally misapplies this Court's decision in Morales.

Morales. Roller v. Gunn, 107 F.3d 227, 237 (4th Cir.), *cert. denied*, 522 U.S. 874 (1997); Hill v. Jackson, 64 F.3d 163 (4th Cir. 1995).

[12] This is not to say that the Court below erred in undertaking to review the present matter to determine whether the rule in question is an ex post facto law. Rather, the Court's error was in drawing from this Court's decision in Morales a command to conduct such an analysis in a perfunctory and fact-specific manner. To draw so little from this Court's opinion in Morales ignores the fact that, given the paucity of cases which this Court can consider each year, its decisions must be something more than mere fact-specific rulings from which no guidance can be drawn for other circumstances faced by inferior Courts in the future.

II. THE ELEVENTH CIRCUIT ERRONEOUSLY PLACED THE BURDEN OF PROOF UPON PETITIONERS, CONTRARY TO THIS COURT'S CLEAR DIRECTIVE IN MORALES.

The Eleventh Circuit reviewed the instant grant of summary judgment by the District Court *de novo*.[13] In so doing, however, the Court below erroneously placed the burden of proof upon the Board. See, *e.g.*, Jones v. Garner, 164 F.3d at 595-96.

At its essence, the opinion of the Circuit Court below finds that the Board has not carried its burden of proving that, in light of the Eleventh Circuit's previous opinion in Akins, the amended regulation in question does not violate the Ex Post Facto Clause. Thus, the Court below has apparently substituted its holding in Akins for the requirement that Jones bear the burden of proof, and has cast that burden, instead, upon the Board to "prove the negative" that there is no ex post facto violation in the retrospective application of that amended regulation to Jones.

As this Court stated in Morales, "we have never suggested that the challenging party may escape the ultimate burden of establishing that the measure of punishment itself has changed. Indeed, elimination of that burden would eviscerate the view of the Ex Post Facto Clause that [was] reaffirmed in [Collins v. Youngblood, 497 U.S. 37 (1990)]." 514 U.S. at 510, n. 6. Indeed, it is the presumption of the Circuit Court below (born,

as set forth above, from its misunderstanding of Georgia's parole scheme) that there is a nexus between the frequency of mandated parole reconsideration and the date of release from confinement which has been substituted herein below for the burden of proving "that the measure of punishment has changed." Id.

The evidence produced by the Board demonstrated that Jones had been considered for and denied parole in 1989, 1992, and 1995. Jones v. Garner, 164 F.3d at 590. Jones has never demonstrated that his confinement has been lengthened by the instant regulatory change. Indeed, as shown herein above, Jones cannot demonstrate beyond mere supposition that his confinement could be lengthened. Instead, in the proceedings below, it was the Circuit Court's assumption that was substituted for that proof, thereby shifting the burden to the Board. This was error.[14]

The only claim posited by Jones (or, on his behalf by the Circuit Court below) is the assumption, without proof, that the increased interval between parole reconsideration reviews

---

[13] Tackitt v. Prudential Ins. Co., 758 F.2d 1572 (11th Cir. 1985).

[14] In Johnson v. Gomez, 92 F.3d 964 (9th Cir. 1996), *cert. denied*, 520 U.S. 1242 (1997), the Ninth Circuit, applying this Court's reasoning in Morales, found that "[i]n this case, [the inmate] is similarly unable to demonstrate that an increase in his punishment actually occurred, because, like Morales, he had not actually been paroled under the old law." Johnson, 92 F.3d at 967.

lengthened his sentence.[15] Thus, the burden of proof has been erroneously shifted to the Board.

Had the Eleventh Circuit followed the mandate of this court in Morales and required of Jones the proof to support his claims it, too, would have reached the inevitable conclusion that any argument that the amendment in complained of herein is an ex post facto law as applied to Jones is necessarily premised upon supposition and assumption. That the Eleventh Circuit failed to properly place the burden of proof, and thus failed to reach that conclusion, is error requiring reversal.

[15] In Roller v. Gunn, 107 F.3d 227 (4th Cir.), *cert. denied*, 522 U.S. 874 (1997), the Fourth Circuit Court of Appeals rejected as "conjecture" an inmate's unsubstantiated claims that a decrease in the required frequency of parole reconsideration increased his punishment. Id. at 236. Such an approach is consistent with this Court's "sufficient risk of increasing the measure of punishment" analysis in Morales, 514 U.S. at 509, because the Fourth Circuit recognized that mere "conjecture" can never form the basis of a "sufficient risk."

CONCLUSION

WHEREFORE, for all the above and foregoing reasons, Petitioner prays that this Honorable Court reverse the judgment of the Eleventh Circuit Court of Appeals, and enter judgment in favor of Petitioner.

Respectfully submitted,

THURBERT E. BAKER 033887
Attorney General

MARY BETH WESTMORELAND 750150
Deputy Attorney General

CHRISTOPHER S. BRASHER 078330
Senior Assistant
Attorney General
Counsel of Record

JACQUELINE F. BUNN 748662
Assistant Attorney General

PLEASE ADDRESS ALL
COMMUNICATIONS TO:

CHRISTOPHER S. BRASHER
Senior Assistant Attorney General
40 Capitol Square, S. W.
Atlanta, GA 30334-1300
Telephone: (404) 657-398

STATE OF GEORGIA

COUNTY OF Fulton

The undersigned, being a nominee for appointment by the Governor of the State of Georgia, to a position of Judge in one of the courts in this State and being fully cognizant of the responsibility to the public, the Bench and the Bar of this State, lodged with the Judicial Nominating Commission of the State of Georgia in the selection of persons to be submitted to the Governor for any such appointment do hereby:

1. Authorize the State Bar of Georgia and its Disciplinary Board (and the disciplinary authority of any other state in which the undersigned may have practiced law) and/or the Judicial Qualifications Commission of the State of Georgia to answer any inquiries, questions or interrogatories concerning the undersigned which may be submitted to them by the Judicial Nominating Commission of the State of Georgia or its authorized representative, and to give full and complete information regarding the undersigned in any of their files and to permit said Commission or its authorized representative to inspect and make copies of any documents, records and other information concerning the undersigned and any complaint which might have been made against the undersigned at any time whatsoever:

2. Does hereby release and exonerate the Governor of the State of Georgia, the State Bar of Georgia, the Judicial Nominating Commission of the State of Georgia, the Judicial Qualifications Commission of the State of Georgia, and every other person, firm, officer, corporation, association, organization or institution which might be involved in complying with, or receiving information under, the authorization and request made herein from any and all liability of every nature and kind growing out of or in any wise pertaining to compliance with this authorization and request.

IN WITNESS WHEREOF the undersigned has set his/her hand and seal this 22nd day of October, 2019.

Please fill in: Date of birth [redacted]

State Bar Numbe[redacted]

Print Name Christopher S. Brasher

Subscribed before me this 22nd **day of** October, 20 19.

Max Arrechea
Notary Public

MAX ARRECHEA
NOTARY PUBLIC
FULTON COUNTY, GA

My Commission expires on May 2, 2022.

STATE OF GEORGIA

COUNTY OF Fulton

The undersigned, being a nominee for appointment by the Governor of the State of Georgia, to a position of Judge in one of the courts in this State and being fully cognizant of the responsibility to the public, the Bench and the Bar of this State, lodged with the Judicial Nominating Commission of the State of Georgia in the selection of persons to be submitted to the Governor for any such appointment do hereby:

1. Authorize the State Bar of Georgia and its Disciplinary Board (and the disciplinary authority of any other state in which the undersigned may have practiced law) and/or the Judicial Qualifications Commission of the State of Georgia to answer any inquiries, questions or interrogatories concerning the undersigned which may be submitted to them by the Judicial Nominating Commission of the State of Georgia or its authorized representative, and to give full and complete information regarding the undersigned in any of their files and to permit said Commission or its authorized representative to inspect and make copies of any documents, records and other information concerning the undersigned and any complaint which might have been made against the undersigned at any time whatsoever:

2. Does hereby release and exonerate the Governor of the State of Georgia, the State Bar of Georgia, the Judicial Nominating Commission of the State of Georgia, the Judicial Qualifications Commission of the State of Georgia, and every other person, firm, officer, corporation, association, organization or institution which might be involved in complying with, or receiving information under, the authorization and request made herein from any and all liability of every nature and kind growing out of or in any wise pertaining to compliance with this authorization and request.

IN WITNESS WHEREOF the undersigned has set his/her hand and seal this 22nd day of October, 2019.

Please fill in: Date of birth [redacted]

State Bar Numb[redacted]

Print Name Christopher S. Brasher

Subscribed before me this 22nd day of October, 2019

Notary Public

MAX ARRECHEA NOTARY PUBLIC FULTON COUNTY GA

My Commission Expires on May 2, 2022


MAX BRUECHEA
NOTARY
PUBLIC