

## CHAPTER 4

# The Georgia Constitution

Laws can be passed, amended, or even repealed by the vote of a majority of the Georgia General Assembly. Governors can veto bills, or even parts of bills. The courts can strike down statutes using the power of judicial review (an ancient practice from England that allows the court to interpret statutes in the context of higher law, to judge it unconstitutional). However, provisions of the state constitution escape attacks by courts. The constitution takes precedence over statute and is more difficult to change—though change is not impossible, as the case of Georgia demonstrates. The constitution sets out the basic rules under which the government will operate. For this reason, those who draft constitutions try to thwart hasty or insufficiently thought-out changes.

## CONTRASTING THE GEORGIA AND U.S. CONSTITUTIONS

Georgia's constitution serves much the same function as the U.S. Constitution, but the formats of the two documents differ markedly. The national Constitution, ratified at the end of the eighteenth century, remains in place. It has seven articles, has been amended twenty-seven times, and is only about 30 pages long. Georgia, on the other hand, operates under its tenth constitution. The current constitution contains 11 articles. The most recent version of the state constitution took effect in 1983, but it already has more than 70 amendments—more than twice as many as the U.S. Constitution, which was drafted 196 years before Georgia's latest effort.

Both the national and Georgia constitutions devote articles to the legislative, executive, and judicial branches. In contrast to the U.S. Constitution,

### 36 Part Two • Constitutions and Institutions

which largely describes the design of institutions and their general grants of authority, Georgia's constitution provides specific details absent from some legislation. For example, in Article VI, dealing with the judiciary, the state constitution specifies in which county a divorce action will be filed and in which county a challenge to a land title will be filed. Article III of the Georgia Constitution deals with the General Assembly and, among other topics, specifies how to handle disorderly conduct among members and has lengthy sections dealing with the appropriations process and management of the state's employee retirement system.

Some other topics not found in the national Constitution get extensive coverage in the Georgia document, such as Article VIII, which deals with education. One reason that the federal document has remained more concise, less frequently amended, and never replaced is because of its elastic clause (Article I, Section 8), which authorizes Congress "to make all laws which will be necessary and proper for carrying into execution the foregoing powers." Once the U.S. Supreme Court gave broad interpretation to that provision of Article I in *McCulloch v. Maryland*, it became possible to broaden the range of concerns addressed by federal statutes as the country matured, as technology developed, and as the economy became more complex (subject, of course to continued agreement from the Supreme Court). Georgia, rather than leaving it to the legislature interacting with the courts to address new problems as they arise, opted for precision in the grants of power included in the constitution. Efforts at precision explain why Georgia has rewritten its constitution more frequently than any state other than Louisiana and why it continues to add amendments every two years. (Lest one thinks that Georgia's ten constitutions are an extraordinary number, France, which overthrew the Bourbons at about the same time that Georgia became a state, has lived under 16 constitutions.)

## GEORGIA AND THE BILL OF RIGHTS

The ten amendments attached to the federal Constitution in 1791 are popularly termed the Bill of Rights and are designed to protect the rights of citizens against the national government. The Ninth and Tenth Amendments acknowledge the existence of rights beyond those explicitly enumerated, though they rarely find their way into debates over individual rights and liberties. The Tenth Amendment affirms that powers not explicitly granted to the national government are retained by the states or the people therein. This last provision has been historically advanced as a vehicle for states' rights and is usually in conflict with guarantees of individual liberties.

The first article of the current Georgia Constitution is also a Bill of Rights. Originally termed the Declaration of Fundamental Principles, these guarantees have grown from five to over 30 in various iterations of the constitution. Section 1 details the rights of persons and contains many of the same protections found in the federal Bill of Rights. The Georgia Bill of Rights guarantees freedom of speech and press, a right to bear arms, the right to assemble and petition the government, a right to trial by jury, and a right to counsel. Citizens

are protected against unreasonable searches and seizures and self-incrimination. In the following sections, we detail the evolution of these rights as well as other institutional features and grants of power through the ten Georgia constitutions, with a historic overview from the original trust colony charter.

## FROM TRUSTEE CHARTER TO CONSTITUTIONAL COLONY

From 1732 to 1752, Georgia was governed by a Board of Trustees operating under a charter from the government of Great Britain. The charter provided for a corporate body (the Trust) and an unspecified number of trustees in England who would govern the colony through an elected executive committee of 15. This charter guaranteed religious freedom except for Roman Catholics and Jews. The initial trust did not provide for slavery until 1750 and for the sale of rum until 1742. Trustees had to go to Parliament for most substantive policy changes, such as licensing trade with Indians. In 1750, the Trustees asked Georgians to elect delegates to a council that would advise the Trustees. Savannah was apportioned four delegates; Augusta, two; Ebenezer, two; and every other town one delegate each. The 16 delegates then met in Savannah, constituting the first representative assembly in Georgia. They immediately sought authority to enact local legislation. The next year, the Trust started to negotiate to turn Georgia over to the government.

From 1752 to 1776, Georgia was administered by the British Crown through the secretary of state. A royal governor was selected by the Crown, and a royal charter was crafted that was intended to be a model of colonial administration. The governor could call an assembly to pass laws, create courts, and engage in other administration. Each county had two representatives, and a council was created to serve as an “upper house,” infusing bicameralism into the colony. When colonial loyalties to Great Britain eroded to the point of revolution in July 1775, the delegates of the assembly called a provincial Congress, which assembled at Tondee’s Tavern in Savannah and agreed to join the revolution. This provincial Congress, in turn, authorized a Council of Safety, which usurped the authority of the royal governor. The colony then set about organizing a constitutional convention. By February 1777, the first constitution was completed and ratified.

## THE CONSTITUTION OF 1777

The preamble to the initial Georgia Constitution draws inspiration in part from Jefferson’s Declaration, declaring that “Whereas the conduct of the Legislature of Great Britain for many years past has been so oppressive on the people of America . . . conduct being repugnant to the common rights of mankind, hath obliged the Americans, as freemen, to oppose such oppressive measures, and to assert the rights and privileges they are entitled to by the laws of nature and reason.” Voiding the authority of the Crown and seeing no government otherwise constituted, the people of Georgia moved “to adopt such government as may . . . best conduce to the happiness and safety of their

### 38 Part Two • Constitutions and Institutions

constituents in particular and America in general.” The Georgia framers claimed their authority as “representatives of the people, from whom all power originates” to constitute the new government.

The initial constitution consisted of 63 articles. It established separate legislative, executive, and judicial functions, with most of the power in the legislature, terming the branches’ powers “separate and distinct” in Article I and noting that “neither exercise the powers properly belonging to the other.” The balance of the constitution dealt with those issues typical of American constitutions: creating institutions, making grants of authority, indicating suffrage, and delineating some rights and liberties:

Articles II through XV dealt with aspects of legislative powers, the apportionment of representatives, grants of authority, and procedures for the conduct of legislative business.

Articles XVI through XVIII dealt with matters of eligibility for office, Continental office, and forbade holding more than one “post of profit” under the state.

Articles XX through XXXIII dealt with the office of the governor and his executive council, interactions between the executive and the legislature, and grants of executive authority. The governor was elected for a term of one year.

Articles XXXIV and XXXV authorized and organized a militia.

Articles XXXVI through XLIX authorized the judiciary, designated courts and their jurisdictions, and provided for grand and petit juries, and also their selection and eligibility.

Articles L through LVI authorized and detailed the obligations of county government, including record keeping and the construction of jails.

Article LVII authorized the great seal of the state of Georgia.

Articles LVIII through LXII set forth rights and liberties of freemen. Among these were protection from excessive fines or bails (Article LIX), a guarantee that “the principles of the habeas corpus act shall be a part of this constitution” (Article LX), freedom of the press and the guarantee of jury trial “to remain inviolate forever” (Article LXI), and the exclusion of “clergyman of any denomination” from the legislature (Article LXII).

Georgia’s initial constitution created a strong legislature, a weak governor, a judiciary, local governments, and various protections that would later be included in the U.S. Constitution.

## THE CONSTITUTION OF 1789

Georgia ratified the U.S. Constitution in January of 1788 and then went to convention in Augusta to revise its constitution. Georgia’s new document, just 2,700 words long, was modeled on Madison’s document. It created a

bicameral legislature that had the authority to select the executive. Article II of the 1789 constitution provided that the “house of representatives shall . . . vote by ballot for three persons [for governor]; and shall make a list containing the names of the persons voted for, and of the number of votes for each person” and then deliver that list to the Senate, which “shall, on the same day, proceed, by ballot, to elect one of the three persons [governor by] a majority of the votes of the senators.” The governor was given broad veto power to revise “bills passed by both houses, before the same shall become laws” though his revisions could be overturned by a two-thirds vote within five days, presaging the strong line-item budget veto of current Georgia governors. There is little detail on the judiciary, but the document included a state bill of rights, as Article IV contained a variety of guarantees to citizens and inhabitants of the state, specifying suffrage and guaranteeing freedom of the press, trial by jury, habeas corpus, and free exercise of religion.

## THE CONSTITUTION OF 1798

The 1798 constitutional revision arose directly out of an episode of Georgia history known as the Yazoo Land Fraud. This event entailed the corrupt sale of most of present-day Alabama and Mississippi by the state of Georgia to four land speculation firms. The state, which held land claims over this territory, acted because of the efforts of U.S. Senator James Gunn (Federalist-Ga.) to coordinate bribery of state officials. Reaction from his Senate colleague James Jackson, a Jeffersonian Republican, led to the ouster of the Federalists from control of state government and the rescinding of the sale by the next legislature (the Rescinding Act of 1796). The subsequent constitutional convention was called to rein in the power of the legislature and also codify in a new constitution the Rescinding Act. As a result, the new constitution was twice as long as its predecessor, due largely to the detail related to the rescinding of the Yazoo land swindle.

Among the substantive revisions in the new constitution was the provision for the popular election of the governor, thereby removing the governor’s dependency on the legislature. The constitution authorized a state supreme court, but it would be 40 years before the legislature would create the Supreme Court and another decade after that before it was seated. The constitution continued the institution of slavery but prohibited importation of slaves after 1798. The 1798 constitution remained in force for 63 years, making it the second longest-lived constitution in state history.

## THE CONSTITUTION OF 1861

As much as the 1789 constitution was crafted to conform to and reflect the 1787 Philadelphia document, the 1861 Georgia Constitution was patterned after the Confederate Constitution. It was the first of *four* constitutions adopted by the state in less than two decades. It was also the first constitution to be submitted to a vote of the people. The major enhancement of this constitution

#### 40 Part Two • Constitutions and Institutions

is the detailed Bill of Rights titled the Declaration of Fundamental Principles, presented prominently at the front of the document as Article 1 with this introduction:

The fundamental principles of Free Government cannot be too well understood, nor too often recurred to. God has ordained that men shall live under government; but as the forms and administration of civil government are in human, and therefore, fallible hands, they may be altered, or modified whenever the safety or happiness of the governed requires it. No government should be changed for light or transient causes; nor unless upon reasonable assurance that a better will be established.

These principles continue into the current state constitution. Beyond previous guarantees such as jury trial and adherence to habeas corpus, among the numerous explicit guarantees appearing in the 1861 constitution are these:

Protection to person and property

An explicit guarantee of numerous due process rights, including a right to counsel for the accused, access to the accusation, ability to confront witnesses, protection from double jeopardy

The right to keep and bear arms

An enhanced freedom of speech and press, which cautions "while every citizen may freely speak, write and print, on any subject, he shall be responsible for the abuse of the liberty"

The right to petition and peaceable assembly

Also, the state constitution for the first time explicitly incorporated the concept of judicial review of legislative acts by the judiciary and granted the ability to nullify acts "in violation of the fundamental law."

The Georgia Constitution of 1861 reflects a literal thinking on rights and liberties: that these are conferred explicitly in the constitution, rather than being part of a larger body of rights that existed under the Fundamental Law even though they are not enumerated. This nod to literalism is also evident in the explicit incorporation of judicial review into the constitution. The concept existed at the federal level without explicit constitutional guarantee and had been previously practiced in the English system without benefit of a written constitution, indicating its origins as part of the function of courts in enforcing the fundamental law.

### THE CONSTITUTION OF 1865

To regain admission to the Union and secure removal of federal troops, Georgia had to adopt a new state constitution that included three important elements: a repeal of the 1861 secession ordinance, abolition of slavery, and repudiation of its debt from the Civil War. The constitution left the Declaration

## Chapter 4 • The Georgia Constitution 41

of Fundamental Principles largely unchanged. The only enhancement was the following, designed to win readmission:

The Government of the United States having, as a war measure, proclaimed all slaves held or owned in this State, emancipated from slavery, and having carried that proclamation into full practical effect, there shall henceforth be, within the State of Georgia, neither slavery nor involuntary servitude, save as a punishment for crime, after legal conviction thereof; provided, this acquiescence in the action of the Government of the United States is not intended to operate as a relinquishment, waiver, or estoppel of such claim for compensation of loss sustained by reason of the emancipation of his slaves, as any citizen of Georgia may hereafter make upon the justice and magnanimity of that Government.

The new document also incorporated a preamble largely modeled on that of the U.S. Constitution, declaring:

We, the people of the State of Georgia, in order to form a permanent Government, establish justice, insure domestic tranquility, and secure the blessings of liberty to ourselves and our posterity, acknowledging and invoking the guidance of Almighty God, the author of all good government, do ordain and establish this Constitution for the State of Georgia.

Other notable changes include the following: The governor was placed under a two-term limit, judges would be elected instead of appointed, and home rule for municipalities was expanded by granting localities the power to tax. When Georgia failed to ratify the Fourteenth Amendment to the U.S. Constitution, the national government unseated its congressional delegation and rejected the new constitution. Military forces returned to Georgia and did not leave until 1871.

## THE CONSTITUTION OF 1868

Once again under military occupation, Georgians met in convention for four months in the winter of 1867 to 1868 to craft a new constitution that might end Reconstruction. The Declaration of Fundamental Principles expanded from 21 sections in the rejected 1865 constitution to 33.

Much of this language captured the substance of the Fourteenth Amendment to the U.S. Constitution. Section 2 of the Declaration declared:

All persons born or naturalized in the United States, and resident in this State, are hereby declared citizens of this State, and no laws shall be made or enforced which shall abridge the privileges or immunities of citizens of the United States, or of this State, or deny to any person within its jurisdiction the equal protection of its laws.

## 42 Part Two • Constitutions and Institutions

Such amending of the state constitution made sense because the Fourteenth Amendment empowered Congress to regulate the states, so that they might not violate the rights and liberties of individuals. In other words, the guarantees and protections from governmental violation of liberties and rights under the Bill of Rights were also applied to the state, and Congress had the authority to enforce them through legislation.

Changes directed at the previous slave culture included the provision, required for readmission to the Union, that “[t]here shall be within the State of Georgia neither slavery nor involuntary servitude” (Section 4). Other changes directed at elements of the former slave culture included a declaration that “[t]he social status of the citizen shall never be the subject of legislation” (Section 11), and that “whipping, as a punishment for crime, is prohibited” (Section 22).

The Declaration also prohibited a state lottery; authorized a poll tax, though only for educational purposes; and permitted laborers to place liens on the property of employers to guarantee payment for labor or “material furnished.” This last provision protected in particular the ability of freedmen to obtain pay for their skilled or unskilled labor, though Jim Crow would make it ineffective.

The new constitution established universal male suffrage and called on the state to provide free general education to all children. The suffrage provisions provided for an oath taken by the voter, registration requirements, and both felon and “idiot” disfranchisement. All male citizens over 21 who had resided in the state for a year and had met all their tax obligations could vote.

To provide that secession would never happen again, the 1868 constitution affirmed the perpetual state of union between Georgia and the other United States, declaring that “Georgia shall ever remain a member of the American Union” whose people are part of the American nation, and who owe “paramount allegiance to the Constitution and Government of the United States.”

## THE CONSTITUTION OF 1877

Six years after exiting Reconstruction and four months after the bargain that made Rutherford Hayes the U.S. president, which also ended national government intervention in the South, 193 Georgians convened to replace the Reconstruction constitution of 1868, producing a document of 13 articles and 16,000 words. The document was much more explicit—and restrictive—with regard to the treatment of both individual rights and the grants of authority to the government.

The new constitution renamed the Declaration of Fundamental Principles as the Bill of Rights. The Bill of Rights was divided into five sections, largely incorporating the previous Declaration but including three important changes. First, in Section 2, Paragraph 5, the practice of lobbying the legislature was declared to be a crime enforceable by penalties prescribed by the legislature. In Section 5, the framers reasserted aspects of states’ rights, declaring that the “people of [Georgia] have the inherent, sole and exclusive right of

regulating their internal government, and the police thereof, and of altering and abolishing their Constitution whenever it may be necessary to their safety and happiness.” The second paragraph affirmed a less fundamental interpretation of the constitution than implied by the extensive Bill of Rights, declaring that “The enumeration of rights herein contained as a part of this Constitution, shall not be construed to deny to the people any inherent rights which they may have hitherto enjoyed.”

This constitution, eventually the longest lived in the history of Georgia at 68 years, began the tradition of excessive amending. The constraints on the legislature imposed by the constitution required extensive changes. The voters successfully altered the document over 300 times. Amending activity included a variety of changes to enforce the reestablishment of white supremacy, leading to an era of Jim Crow rule.

## THE CONSTITUTION OF 1945

Prompted by a decade of debate regarding the need for constitutional reform, in 1943 progressive Governor Ellis Arnall appointed a constitutional commission to follow up on the 1931 recommendations of the University of Georgia’s Institute for Public Affairs. The product, presented in January 1945 and ratified by the electorate in August, streamlined the 1877 constitution. Among the most notable changes were the creation of an elected lieutenant governor (which would lead to controversy within two years during the Three Governors’ Controversy), extending eligibility for jury duty to women, and enlarging the state supreme court. For the first time, it also provided for a state merit system and a public employee retirement system.

The new constitution continued the amended suffrage requirements of 1877. Voters had to be persons “of good character” and literate. The literacy requirement read:

All persons who can correctly read in the English language any paragraph of the Constitution of the United States or of this State and correctly write the same in the English language when read to them by any one of the registrars, and all persons who solely because of physical disability are unable to comply with the above requirements but who can understand and give a reasonable interpretation of any paragraph of the Constitution of the United States or of this State that may be read to them by any one of the registrars.

These provisions continued until suspended by the Voting Rights Act of 1965, and they were permanently abolished by Congress in 1970.

The 1945 constitution continued until 1976, when voters ratified a new constitution promoted by incumbent Governor George Busbee. Busbee had run for office on the promise of an “article-by-article” reorganization of the document. The Constitution of 1976 was just that—a reorganization of the existing articles of the 1945 constitution and its amendments, rather than a document that contained any substantively new content.

## THE CONSTITUTION OF 1983

Immediately after the ratification of the Constitution of 1976, the General Assembly created a Select Committee on Constitutional Revision chaired by former Governor Busbee that included major constitutional officers, lawmakers, and members of the judiciary. This committee fully revised the state constitution, which was initially approved by the legislature in special session in September 1981, amended in the 1982 regular legislative session, and sent to voters at the 1982 general election. The new constitution went into effect July 1, 1983.

The new constitution was less than half the length of its predecessor. It authorized the legislature to deal directly with matters previously requiring a vote of the people. The new constitution explicitly incorporated the federal equal protection clause, which finally brought Georgia into constitutional alignment with the national Constitution's Fourteenth Amendment and made judicial elections nonpartisan. Amendment became less common since that path was no longer required when the legislature regulated local governmental units. This eliminated the need to keep the state constitution in a loose-leaf notebook, although Georgia ratifies new amendments during each general election.

The new constitution contains a preamble (carried over from previous versions) and 11 articles:

*Article I:* Bill of Rights, which derives from the Declaration of Fundamental Principles in the Constitution of 1861, and is largely unchanged except for provisions added by the Reconstruction-era constitutions.

*Article II:* Voting and Elections, which describes qualifications for suffrage, procedures for registering to vote, and mechanisms for suspending public officials.

*Article III:* Legislative Branch, which establishes qualifications for office, legislative powers and grants of authority, impeachment authority, session length and timing, and apportionment of legislative seats.

*Article IV:* Constitutional Boards and Commissions, which deals with the creation of, and grants of authority to, the Public Service Commission, State Board of Pardons and Paroles, State Personnel Board, State Transportation Board, Veterans Services Board, and Board of Natural Resources.

*Article V:* Executive Branch, which deals with the election of the Governor and Lieutenant Governor, grants of authority to the Governor, grants of authority to other elected executives, and handling of disability of executive officers.

*Article VI:* Judicial Branch, which details the roles of the seven different types of courts, including their jurisdictions and grants of power, as well as the powers and authority of district attorneys.

*Article VII:* Taxation and Finance, which describes both the taxation powers of the legislature and limits thereon, exemptions to ad valorem and property taxes, grants from the state to local governments, and management of the state debt.

*Article VIII:* Education, which discusses public school systems, school boards, and taxation related to education.

*Article IX:* Counties and Municipal Corporations, which discusses the creation and role of counties; home rule; the creation of special districts; and the tax powers, debt, and bonding authority of municipalities.

*Article X:* Amendments to the Constitution, which describes the process of amending the constitution.

*Article XI:* Miscellaneous Provisions, which addresses a potpourri of issues arising from the transition from the old constitution to the new, including judicial review and the continuation of existing law under the new constitution.

## **AMENDING: U.S. CONSTITUTION VERSUS GEORGIA CONSTITUTION**

Several amendments to the national Constitution expanded suffrage, with the Fifteenth Amendment guaranteeing the right to vote to African Americans who previously had been held as slaves. The Nineteenth Amendment extended the suffrage to women. The Twenty-Fourth Amendment banned the poll tax as a prerequisite to voting, and the Twenty-Sixth Amendment lowered the age for voting to 18. Other amendments to the federal Constitution freed the slaves and extended most of the protections of the Bill of Rights to individuals in their dealings with their states through the due process clause of the Fourteenth Amendment. The Sixteenth Amendment authorized the income tax, and the Seventeenth Amendment provided for the popular election of senators. To the extent that the federal Constitution contains matters that might be thought of as trivial, the primary candidates would be the Eighteenth Amendment, which prohibited the manufacturing and consumption of alcoholic beverages, and the Twentieth Amendment, which repealed the Eighteenth Amendment after 14 years.

In contrast, the Georgia Constitution has been amended to provide for a variety of activities so unusual or mundane as to defy imagination. For instance, since 1950 the voters of Georgia have been asked to approve the following proposals via constitutional amendment:

To limit the ability of the city of Waycross to levy city taxes on property owned by persons over age 65 (1954)

To allow credit for work at a state prison to count against medical school loan debt (1964)

To “preserve the right to not associate” in order to preserve segregation through school choice (1962)

To allow cities and counties to clear slums (1962)

To approve an ad valorem tax exemption for fraternities and sororities (1958)

To allow recorders’ courts and police courts to dispose of cases of marijuana possession involving less than one ounce of pot (1980)

## 46 Part Two • Constitutions and Institutions

In addition, when the state constitution of 1983 was placed on the ballot, it was accompanied by four proposed amendments before it ever took effect.

Note that these seemingly trivial amendments were made to versions of the constitution prior to the current one. As noted, the present constitution sought to avoid the necessity of amendments to address local concerns.

### THE AMENDMENT PROCESS

To amend the Georgia Constitution, the proposal must be approved by two-thirds of the members of both chambers of the General Assembly. Then the proposal must be approved by a majority of the voters at the next general election. The brief explanations that accompany the amendments on the ballot, limited to a sentence or two, often leave voters uncertain as to what they have been asked to vote on. Having these items on the ballot can also slow down the process of voting, because many voters arrive at the polls unaware of the amendments. In one instance, the wording of an amendment was so confusing that it was later challenged in court. Opponents unsuccessfully sought to invalidate the ratification, claiming that the wording of the amendment relating to sovereign immunity made it appear that it would become easier to sue the state, when in fact the amendment made it more difficult to bring suit.

### MAKING CHANGE MORE DIFFICULT

One motivation for amending the constitution is to make policy changes more difficult. Thus, some amendments take provisions that are currently in statutes and convert them into provisions of the constitution. Two examples are worth mentioning. The first is the program that created the HOPE scholarships, which pay for college or vocational education for any Georgia high school graduate with a B or better average. Governor Zell Miller, who created this program by getting the legislature to authorize a lottery to pay for it, worried that his successors might not be as committed to limiting the use of the lottery money for HOPE scholarships and the pre-kindergarten program for four-year-olds. Therefore, coincident with the election of his successor in 1998, he persuaded the legislature to place on the ballot an amendment restricting lottery proceeds to these two programs.

The second example is the 2004 constitutional amendment prohibiting gay marriage. Although Georgia law already defined marriage as between a man and a woman, the Massachusetts Supreme Court decision that struck down a similar statute in the Bay State led legislators in Georgia and some other states to believe that if this were not written into their constitutions, courts might undo the legislative bans.

The amendment banning gay marriage passed with more than 70 percent of the vote. It also had the advantage, from the perspective of its supporters, of encouraging religious conservatives to turn out and vote. There may have also been some counter-mobilization in the gay and lesbian community,

but there are many more religious conservatives than gays or lesbians in Georgia. Therefore, the inclusion of this provision helped Republicans not only to carry the state for George Bush but also to win majorities in both chambers of the state legislature.

---

## BOX 4.1

### Amending the Constitution in 2010

Georgia voters confronted five amendments on the November 2010 ballot. Three passed with varying levels of support.

Amendment 1, to **allow competitive contracts to be enforced in Georgia courts**, changed Article III, Section VI, Paragraph V of the state constitution to allow for the enforcement of contracts and restriction of employees or contractors from leaving a contract to work with (or set up) a competing firm until the original contract has run its course. Characterized in the ballot summary as promoting competition, critics contended that the actual effect was to impede commercial competition. The amendment was referred out of the legislature with almost unanimous support and was approved by 67 percent of the voters.

Amendment 2, for **Georgia Trauma Care Funding**, would have authorized a \$10 per year automotive registration fee, generating an estimated \$80 million per year in funding for trauma care centers around the state. Polling indicated that the measure would have difficulty gaining approval of the voters; the measure was defeated, losing 47 percent to 53 percent. Supporters indicated that they will try to run the policy proposal via statute, asking that \$10 per existing car in tag fees be dedicated to trauma care funding.

Amendment 3, for **Georgia Transportation Contracts**, would have amended the constitution to allow the Georgia Department of Transportation (GDOT) to enter into multiyear construction agreements without a current appropriation for the entire project cost. GDOT can enter into multiyear agreements, but the legislature must appropriate funds for the entire project in advance. Amendment 3 was presented as a modernization proposal that did not require the state to commit existing moneys for expenditures down the road. The amendment lost by less than 4,000 votes.

Amendment 4, **Georgia Energy Project Contracts**, amended the state constitution to allow Georgia to enter into multiyear contracts supporting improved energy efficiency and conservation. The proposal was backed by a significant media campaign that included promises of the creation of 11,000 new jobs if passed. The amendment was approved by the voters 61 percent to 39 percent. It passed comfortably in the major suburban Republican counties (Cobb, Cherokee, Gwinnett) and even more decisively in Fulton and DeKalb Counties.

Amendment 5, to **allow owners of industrial-zoned property to choose to remove the industrial designation from their property**, modified an existing "local amendment" provision of the state constitution in Chatham County,

**48** Part Two • Constitutions and Institutions

allowing property owners to remove their property's industrial designation if the property was on an island. The amendment extended this provision to other industrial property, for the purpose of subsequent and irrevocable annexation into a municipality. Although it required a statewide vote, the amendment affected only designated industrial areas in Chatham County. As the Atlanta-based alternative weekly *Creative Loafing* opined, "Some people in Savannah [su]rb Garden City want to annex their property into an adjacent city. Oh, why not?" The amendment passed 64 percent to 36 percent.

---

**CONCLUSION**

Georgia has used ten constitutions. There are, generally speaking, three eras of constitution writing in the state. The first is at the time of the establishment of the colony as a state, as Georgia experimented, often unsuccessfully, with institutions and grants of power and authority to those institutions. The second era, surrounding the Civil War, arose out of efforts to enumerate individual rights and liberties while also dealing with the changing status of black Georgians, initially as slaves, later as freedmen, and then again as a political force to be contained by ascendant white Georgians after Reconstruction. This same era of constitution-writing entailed further experimentation with institutional power that made it very difficult for any state branch to exercise substantial authority. The last era, since World War II, has dealt with attempting to rein in the amending activity and reorganizing an arcane and cumbersome document into a modern functioning constitution for a modern, urbanizing state.

The product is a document still subject to frequent amending. Amendments increasingly deal with altering the constitution to accommodate policy initiatives or to attempt to enact as higher constitutional law policy priorities in order to make change more difficult in the future. Constitutional revision has eliminated many of the most arcane aspects of Georgia's governing document, but much of the constitutional structure of Georgia, including its institutions, guarantees of rights and liberties, and grants of institutional power, trace back at least 150 years.