
Should Legislators Introduce Bills that Fail the "Constitutionality" Text?

Since Georgia law requires the Attorney General to be an "advisor to legislative counsel," is determining the constitutionality of legislation the duty of the Attorney General?

As is customary after each legislative session, the Legislative Services Committee and Office of Legislative Counsel compiled and released a *Summary of General Laws Enacted at the 2010 Session of the General Assembly of Georgia*¹. It includes a brief synopsis of bills that passed and lists Code Sections that are amended or repealed or created if those bills become laws.

The *Summary* is a very valuable tool. In addition to the above, it indicates which bills the governor vetoed within the allotted 40-day veto period that began April 29th – the last day of the 2010 session – and ended 40 days later on June 8th.

The *Constitution of the State of Georgia* authorizes the General Assembly to override a veto if two-thirds of the members of both House and Senate vote to do so. It, also, authorizes the next session of the General Assembly to override vetoes that occur during the last three days of the previous session, as well as vetoes enacted after the General Assembly adjourns sine die.

While the governor often chooses to host public signing ceremonies to indicate special support for certain legislation, all bills that pass become laws with or without his signature, *unless* he vetoes them. Of the 2,284 bills and resolutions that passed this year, the governor vetoed 23.

The Foreword of this year's *Summary* informs the reader of this very important fact:

"[T]he question of constitutionality has not been considered in any respect." (Emphasis added)

So, members of the Legislative Services Committee and the Office of Legislative Counsel compile and report bills that pass, but they do not determine the constitutionality of legislation poised to become law. However, Georgia law (O.C.G.A. 28-4-5) requires the attorney general to be "advisor" to legislative counsel. Does advising legislative counsel require him to screen legislation for constitutionality as they write it? If so, does he do it? If he does, when is it done?

How many of the 3,000+ bills introduced in the 2010 session would have been eliminated if only constitutional bills were written by legislative counsel or introduced by legislators or if the attorney general screened all bills and rejected legislation that failed the constitutionality test?

Also, the constitutionality of proposed legislation should be uppermost in the minds of senators and representatives, who cannot be seated in the Georgia General Assembly until after they take the following oath required by the Georgia Election Code, O.C.G.A. 28-1-4:

"I do solemnly swear or affirm that I will support the Constitution of this state and of the United States and, on all questions and measures which may come before me, I will so conduct myself, as will, in my judgment, be most conducive to the interests and prosperity of this state."

¹ Available online at www.legis.states.ga.us. Click on "Georgia Senate," then on "2010 Summary of General Statutes."

How Important Is the Constitutionality Of Laws?

To retain our form of government – a representative republic – all proposed legislation, as well as laws that are enacted, should conform to the Constitutions of the United States and of Georgia. The five vital principles necessary for Georgia laws to be constitutional are outlined in the *Constitution of the State of Georgia* Preamble, as follows:

“To perpetuate the principles of (1) free government, (2) insure justice to all, (3) preserve peace, (4) promote the interest and happiness of the citizen and of the family, and (5) transmit to posterity the enjoyment of liberty, we the people of Georgia, relying up-on the protection and guidance of almighty God, do ordain and establish this Constitution.”

– *Constitution of the State of Georgia*, Preamble (Numerals added.)

Therefore, no bill should pass if it makes government less free, shrinks justice, destroys peace, minimizes citizen and family tranquillity or fails to perpetuate liberty to the next generation.

Of important note is the mention of the framers’ reliance on “the protection and guidance of almighty God” in the creation of the Constitution. Combine that with the following verse from the Bible of almighty God:

“If the foundations be destroyed, what can the righteous do?”

– *The Holy Bible*, King James Version, Psalms 11:3

Since foundations are underpinnings on which structures rest, absent dependable foundations, there is no assurance structures will stand. Just so, governments with eroded, weakened, ignored or cast-aside constitutions leave law-abiding citizens and families without security or assurance of freedom, justice, peace or happiness and little hope of recourse or redress.

A former member of the Georgia General Assembly said, “We pass bills that are unconstitutional all the time.” If true, is it becoming to representatives and senators to defy the constitution? Shouldn’t they introduce only bills that are constitutional, considering the oath of office they are required to take? It’s in Georgia Election Code, O.C.G.A. 28-1-4, that states:

“I do hereby solemnly swear or affirm that I will support the Constitution of this state and of the United States and, on all questions and measures which may come before me, I will so conduct myself, as will, in my judgment, be most conducive to the interests and prosperity of this state.”

On the federal level, every Congressman takes an oath to “...preserve, protect and defend *The Constitution of the United States*,” although many laws Congress creates directly contradict that document.

That fact, surely, prompted Arizona Representative John Shadegg to introduce H.R. 450, the Enumerated Powers Act in 2009. The goal of that great effort – return law-making to the constitutional project it was intended to be – is obvious in the following sentence from the bill:

“Each Act of Congress shall contain a concise and definite statement of the constitutional authority relied upon for the enactment of each portion of that Act.”

Representative Shadegg and his co-sponsors should be commended for their optimism in proposing such a bill. Maybe they will try again, since H.R. 450 did not become law. If his resolution had passed, the bill to revamp the U.S. health care industry would have failed.

Judge for Yourself: No Restriction on A Constitutional Convention

Article V

TO AMEND THE CONSTITUTION

“The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the congress; Provided that no Amendment which may be made prior to the year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.”

– *The Constitution of the United States*



Some candidates for public office proclaim a Constitutional Convention (Con Con) as a great way to amend the U.S. Constitution. But, claims that a Con Con can be kept to one issue are not based on fact. The only authority for a Constitutional Convention lies within Article V, quoted above in its entirety. The ambiguity of Article V leaves innumerable unanswered questions about the conduct and outcome of a Con Con. After reading Article V, answer these:

Paragraph 1¹. Who presides over a Con Con? Must every state be invited to a Con Con? How many states must attend? How many delegates may attend? Must delegates be U.S. citizens? Where will a Con Con be held? Will it be open to the public? What rules of order will be followed, if any? Will delegates make their own rules? Would delegates meet during the day or during the night, full-time or part-time, seven days per week? How many issues will a Con Con address? How long may a Con Con last? Who pays for it? Are delegates paid per diem, plus expenses? May delegates be added during a Con Con? Are state rescissions valid?

Paragraph 2². Could a Con Con discard the current Constitution? Could the current U.S. form of government, a representative republic, be replaced with another form of government?

Georgia³. Since 1952, the Georgia General Assembly has passed nine Con Con calls, but all were rescinded in 2004 by H.B. 1343. Thus far, 12⁴ states have rescinded their calls.

¹ Paragraph 1: No one knows the answers! Article V authorizes the calling of a Con Con, but does not regulate it.

² Paragraph 2: The answer to both questions is, “Yes,” and history verifies that fact. The only Con Con ever held was called under the Articles of Confederation, the governing document at that time. Delegates discarded that document and installed *The Constitution of the U.S.* Soon the ten amendments comprising the Bill of Rights was added. Since then, 16 other additions have been made, for a total of 26 times the Constitution has been safely amended WITHOUT a Con Con.

³ H.B. 1343 passed in 2004 and rescinded all of Georgia’s proposals for a Con Con. The rescinded calls are as follows: **1952** Resolution Act 53 treaty powers; **1952** Resolution Act 61 limiting taxation; **1955** Resolution Act 2 independence of state schools; **1959** Resolution Act 45 independence of state schools; **1961** Senate Resolution 39 Supreme Court authority; **1965** Resolution Act 89 independence of state schools; **1967** Resolution Act 96 refunding federal taxes to states; **1976** Resolution Act 93 federal balanced budget; **1991** House Resolution 105 disrespecting U.S. flags and state flags. (Note: three separate proposals about state schools.)

⁴ Alabama, Florida, Louisiana, Idaho, Utah, N. Dakota, Arizona, Virginia, South Carolina, Georgia, Wyoming, Oklahoma

23 Bills the Governor Chose to Veto in 2010

“...[B]efore any bill or resolution shall become law, the Governor shall have the right to review ...veto, approve, or take no action”

– *Constitution of the State of Georgia*

S.B. 291 would have allowed persons with carry permits to carry their licensed firearm into areas of airports that are not regulated by the federal government. It revises methods for the issuance of licenses to carry weapons and *prohibits the seizure or registration of firearms or additional limits on carrying firearms during official states of emergency*¹.

S.B. 239 required all state-funded schools, colleges and universities to conduct an annual education program on the governing principles of the U.S. Constitution. It provided that new residents of a local school system register a child in school within 15 days of establishing new residency and established reporting violations of mandatory attendance requirements.

H.B. 907 revised provisions for organizing schools, middle school programs and scheduling, as well as methods for notifying parents of educational options for special needs children.

H.B. 1272 allowed voluntary contributions through income tax returns and other methods to benefit research on lupus, kidney disease and multiple sclerosis.

H.B. 417 designated English as the language to be used in disputes over material written in another language.

H.B. 321 changed the definitions of “group accident and sickness insurance” and “true association;” included in the definition of administrator self-insured plans and administrators under the prompt pay provisions; provided for health benefit response time to receipt of claims.

S.B. 373 authorized prior job data to be disclosed about applicants for peace officer jobs or certification.

H.B. 1236 required municipal court judges to be attorneys.

S.B. 519 modified definitions of low-speed vehicles; set minimum fines for impeding traffic; changed hours motorized carts could operate; allowed golf carts to make seasonal deliveries in residential areas.

H.B. 990 revised procedures for registering fleet vehicles; affected compliance of motor carriers’ financial responsibility and modified commercial vehicle equipment requirements to comply with federal safety rules.

S.B. 148 established the “Georgia Government Accountability Act” that gave appropriations committees the duty to review and evaluate state agencies’ productivity, efficiency and responsiveness.

H.B. 827 and S.B. 414 gave indemnification payments to parents or siblings of workers in certain dangerous jobs, if the worker is critically harmed or killed while on duty and has no unremarried spouse or dependent.

S.B. 480 created a State Council of Economic Advisors, identified members, qualifications, terms and pay.

S.B. 1 increased to 1/3 the number of state agencies to be scrutinized annually in zero-based budgeting.

S.B. 415 established jurisdiction, control and further regulation of Georgia’s Public Service Commission.

H.B. 1321 authorized using 9-1-1- funds for lease, purchase, or maintenance of hardware and software and exemption from certain audio recording disclosures.

H.B. 1028 changed provisions of ad valorem taxation of forest land conservation use property.

H.B. 1082 changed applications for and granting of freeport exemptions; providing for level 1 and level 2.

H.B. 1023 was the JOBS Act that affected the taxation of employers who hire employees.

H.B. 1251, Georgia Tourism Development Act, gave tax refunds to companies creating new tourism attractions.

H.B. 1407 provided a single dental service administrator for Medicaid recipients and PeachCare for Kids.

S.B. 374 created the Legislative Economic Development Council to review the state’s economic situation.

¹ The 5-4 Supreme Court decision concerning the right to keep and bear arms may prompt this bill’s reintroduction.