

**OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

DAVID FARRAR,
LEAH LAX,
CODY JUDY,
THOMAS MALAREN,
LAURIE ROTH,

Plaintiffs,

v.

BARACK OBAMA,

Defendant.

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:
: Docket Number: OSAH-SECSTATE-CE-
: 1215136-60-MALIHI
:

: Counsel for Plaintiffs: Orly Taitz

: Counsel for Defendant: Michael Jablonski
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:

DAVID P. WELDEN,

Plaintiff,

v.

BARACK OBAMA,

Defendant.

:
:
: Docket Number: OSAH-SECSTATE-CE-
: 1215137-60-MALIHI
:

: Counsel for Plaintiff: Van R. Irion

: Counsel for Defendant: Michael Jablonski
:
:

CARL SWENSSON,

Plaintiff,

v.

BARACK OBAMA,

Defendant.

:
:
: Docket Number: OSAH-SECSTATE-CE-
: 1216218-60-MALIHI
:

: Counsel for Plaintiff: J. Mark Hatfield

: Counsel for Defendant: Michael Jablonski
:
:

KEVIN RICHARD POWELL,

Plaintiff,

v.

BARACK OBAMA,

Defendant.

:
:
: Docket Number: OSAH-SECSTATE-CE-
: 1216823-60-MALIHI
:

: Counsel for Plaintiff: J. Mark Hatfield

: Counsel for Defendant: Michael Jablonski
:
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ORDER

In an Order dated December 20, 2011, the Court directed the parties as follows:

All parties must be prepared to submit Proposed Findings of Fact and Conclusions of Law by 5:00 PM, February 5, 2012. The parties are encouraged to limit their proposed order to twenty-five (25) or fewer pages, and only include pertinent facts and law. All citations will be reviewed carefully. Therefore, it would be injudicious to embellish the testimony of witnesses or points of law.

To assist the parties, attached is a decision issued by the Court in an unrelated matter. The parties are encouraged to use the same format as the attached decision when preparing Proposed Findings of Fact and Conclusions of Law.

SO ORDERED, this the 13th day of January, 2012.



MICHAEL M. MALIHI, Judge

**OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

BRIAN P. KEMP, in his official capacity as :
Secretary of State, :

Petitioner, :

v. :

ADRIENNE HUNTER-STROTHERS, :

Respondent. :

**Docket No. OSAH-SECSTATE
- CE-1104352-44-Malihi**

For Petitioner:

Thurbert E. Baker, Attorney General
Dennis R. Dunn, Deputy Attorney General
Stefan Ritter, Senior Assistant Attorney General
Ann S. Brumbaugh, Assistant Attorney General

For Respondent:

Mark G. Trigg, Esquire
Brooke R. Hardy, Esquire
Greenberg Traurig, LLP

DECISION

Petitioner, Secretary of State Brian Kemp, challenges Respondent Adrienne Hunter-Strother's qualifications to run for the Georgia Court of Appeals. The parties presented oral arguments on August 25, 2010, and the record closed on September 1, 2010.

Introduction and Findings of Fact

Respondent was admitted to practice law in New York eight years ago, on October 28, 2002.¹ She was admitted to practice law in Georgia five years ago, on June 23, 2005. Pursuant to the Georgia Constitution, "[a]ppellate and superior court judges shall have been admitted to practice law for seven years." Ga. Const., art. VI, § VII, ¶ II(a) ("Provision"). Petitioner contends that the provision "admitted to practice law for seven years" means admitted to practice law in Georgia. Respondent disagrees.

¹ The facts are not in dispute.

For the reasons stated below, the Court has determined that Respondent meets the Constitutional requirements to run for the Georgia Court of Appeals.

Conclusions of Law

The Georgia Constitution (“Constitution”) requires that “[a]ppellate and superior court judges shall have been admitted to practice law for seven years.” Ga. Const., art. VI, § VII, ¶ II(a). The Court concludes that the Provision must be read as it is written; and that, as it is written, it does not require that a candidate be admitted to practice for seven years in Georgia. The legislative history of the Provision supports this plain language interpretation. The cases cited by Petitioner are not controlling.

Construction of laws requires a careful eye and a measured hand. The process is guided by “several applicable rules of constitutional construction, all of which must be given full and equal effect.” Serv. Employees Int’l Union v. Perdue, 280 Ga. 379, 380, 628 S.E. 2d 589,591 (2006). In particular, the Court examines the plain language of the provision, see, e.g., Morrison v. Claborn, 294 Ga. App. 508, 512, 669 S.E.2d 492, 495 (2008); the legislative intent behind it, see, e.g., Hollowell v. Jove, 247 Ga. 678, 681, 279 S.E.2d 430, 433 (1981); and the case law interpreting it, see, e.g., In re J.N., 302 Ga. App. 631, 632, 691 S.E.2d 396, 398 (2010) (noting that provisions are construed in harmony with existing case law).

I. Plain Language Analysis

In 2006, the Georgia Supreme Court held,

Our duty is to construe and apply the Constitution as it is **now** written. This Court must honor the plain and unambiguous meaning of a constitutional provision. Where a constitutional provision is plain and susceptible of but one natural and reasonable construction, the court has no authority to place a different construction upon it, but must construe it according to its terms.

Serv. Employees Int’l Union v. Perdue, 280 Ga. at 380, 628 S.E.2d at 591 (emphasis added). The

Constitution demands only two qualifications for membership on the Court of Appeals: a judge must have been “admitted to practice law for seven years” and “shall reside in the geographical area in which [she is] selected to serve.” Ga. Const. art. VI, § VII, ¶ II(a), (d). The plain language of the Provision does not require that a candidate be admitted to practice law in Georgia for seven years.

A. Judicial Qualifications Provision

When the court construes a constitutional or statutory provision, the “first step . . . is to examine the plain statutory language.” Morrison, 294 Ga. App. at 512, 669 S.E.2d at 495. “Where the language of a statute is plain and unambiguous, judicial construction is not only unnecessary but forbidden. In the absence of words of limitation, words in a statute should be given their ordinary and everyday meaning.” Six Flags Over Ga. v. Kull, 276 Ga. 210, 211, 576 S.E.2d 880, 881 (2003) (citations and quotation marks omitted); Jove, 247 Ga. at 681, 279 S.E.2d 430, 433 (applying the principle to constitutional provisions). As the Georgia Supreme Court recognized in Jove,

[a]lthough the legislative intent prevails over the literal import of words, where a constitutional provision or statute is plain and susceptible of but one natural and reasonable construction, the court has no authority to place a different construction upon it, but must construe it according to its terms. In other words the language being plain, and not leading to absurd or wholly impracticable consequences, it is the sole evidence of the ultimate legislative intent.

Id., 279 S.E.2d at 433 (citations and quotations omitted).

The language of the Judicial Qualifications Provision is as plain as Jove requires. While the Provision requires that a potential judge live in Georgia at the time she is “selected to serve,” there is no requirement that her seven years of law practice be in Georgia. See Ga. Const. art. VI, § VII, ¶ II(a), (d). 281 Ga. 238, 240, 637 S.E.2d 396, 398 (2006). Because there is no other “natural and reasonable construction” of that language, the Court is “not authorized either to read

into or to read out that which would add to or change its meaning.” Blum v. Schrader, 281 Ga. 238, 240, 637 S.E.2d 396, 398 (2006) (quotation marks omitted). The Court cannot construe terms that are not there.

In State Bar of Ga. v. Haas, the Court of Appeals considered whether a statutory provision allowing admission to the Georgia Bar without examination to out-of-state applicants required that the entire minimum practice requirement be completed in the applicant’s state of bar admission. 133 Ga. App. 311, 314, 211 S.E.2d 161, 211 S.E.2d, 164 (1974). Concluding that the provision did not require such a narrow reading, the Court explained:

[The] State Bar is in essence asking this Court to engraft a requirement by judicial construction that all of the required prior practice must have been in the state of admission. **The statute, however, does not say that. For us to hold that would be for us to legislate. This we cannot do** as we may only interpret laws and may not change them.

Id. at 314–15, 211 S.E.2d at 164 (emphasis added); see also In re Clarkson, 125 Ga. App. 481, 188 S.E.2d 113, (1972) (concluding that, for purposes of comity admission, an applicant can lawfully practice the law of his state of bar admission while he is geographically located in another state). Like the Haas Court, this Court refuses to engraft a Georgia practice requirement onto a provision that contains none.

Respondent has been admitted to practice law for more than seven years. She lives in Georgia, which is the “geographical area” in which she would, as a Court of Appeals judge, be selected to serve. That is all the Constitution requires. Because the constitutional language governing Court of Appeals eligibility is plain and unambiguous, “judicial construction is not only unnecessary but forbidden” in this case. Kull, 276 Ga. at 211, 576 S.E.2d at 881. Reading each word in the Judicial Qualifications Provision with its “everyday meaning,” as the Court must, the Court finds that Respondent meets the constitutional minimum qualifications to run for

a seat on the Court of Appeals. Id., 576 S.E.2d at 881.

B. Similar Provisions: Attorney General and District Attorneys

The language of the Judicial Qualifications Provision clearly and unambiguously does not contain a Georgia practice requirement. Because, “the language being plain... is the sole evidence of the ultimate legislative intent,” the analysis could stop there. See Jove, 247 Ga. at 681, 279 S.E.2d at 433. But the Court is persuaded by additional indications that the drafters did not intend “in Georgia” to be read into the Provision.

Under the 1976 version of the Georgia Constitution, the provisions for Attorney General, district attorneys, and judges were contained in the same paragraph and used the same language to describe legal practice. See Ga. Const. of 1976, art. VI, § XIII, ¶ I (stating that each officer “shall have practiced law for [a specified number of] years”). But in 1983, the Georgia Legislature separated the qualification provisions. The Attorney General qualification provisions were moved to an entirely new Article (Art. V, § 3), and the district attorney provisions were moved to a different section (Art. VI, § 8). Additionally, the language in both the Attorney General and district attorney sections was changed from requiring mere “practice” to require that a candidate be an “active status member of the State Bar of Georgia.” (See Chart, infra, at 7.)

The new Attorney General qualifications provision now reads,

No person shall be eligible to the office of the . . . Attorney General . . . unless such person shall have been a citizen of the United States for ten years and a legal resident of the state for four years immediately preceding election or appointment and shall have attained the age of 25 years by the date of assuming office. . . . No person shall be Attorney General unless such person shall have been **an active-status member of the State Bar of Georgia for seven years.**

Ga. Const. art. V, § III, ¶ II. (emphasis added). Thus, while Court of Appeals judges must have been “admitted to the practice of law for seven years”, the Attorney General must have been “an active-status member of the State Bar of Georgia for seven years.” Similarly, the district

attorney qualifications provision states that,

No person shall be a district attorney unless such person shall have been an **active-status member of the State Bar of Georgia for three years** immediately preceding such person's election.

Ga. Const. art. VI, § VIII, ¶ I(b). (emphasis added).

The Attorney General and district attorney qualifications provisions were amended to require Georgia-specific legal practice. The Judicial Qualifications Provision was also amended, but no language was added to require that law practice occur exclusively in Georgia. The current Constitution contains a Judicial Qualifications Provision requiring admission to practice law, flanked by provisions requiring Georgia Bar membership.

**Comparison of 1976 and 1983 Versions of the Georgia Constitution, Illustrating the
Disparate In-State Practice Requirements for Judges, Attorney General, and District
Attorneys**

Georgia Constitution of 1976	
<i>ARTICLE 6: JUDICIARY</i>	
§ 13: <i>QUALIFICATIONS OF JUSTICES, JUDGES, ETC.</i>	No person shall be a Justice of the Supreme Court, a Judge of the Court of Appeals , or a Judge of Superior Courts, unless, at the time of his election, he shall have attained the age of thirty years, and shall have been a citizen of the State three years, and <u>have practiced law</u> for seven years. No person shall be Attorney General unless at the time of his election he shall have attained the age of twenty-five years, and shall have been a citizen of the State for six years next preceding his election, and <u>have practiced law</u> for seven years. No person shall be a district attorney , unless at the time of his election he shall have attained twenty-five years of age, shall have been a citizen of the State for three years, and shall <u>have practiced law</u> for three years next preceding his election.

Georgia Constitution of 1983	
<i>ARTICLE 5: EXECUTIVE BRANCH</i>	
§ 3: <i>OTHER ELECTED EXECUTIVE OFFICERS</i>	¶ 2 (b) No person shall be Attorney General unless such person shall have been an <u>active-status member of the State Bar of Georgia for seven years.</u>
<i>ARTICLE 6: JUDICIAL BRANCH</i>	
§ 7: <i>SELECTION, TERM, COMPENSATION, AND DISCIPLINE OF JUDGES</i>	¶ 2 (a): Qualifications. Appellate and superior court judges shall have been <u>admitted to practice law for seven years.</u>
§ 8: <i>DISTRICT ATTORNEYS</i>	¶ 1 (b): No person shall be a district attorney unless such person shall have been an <u>active-status member of the State Bar of Georgia</u> for three years immediately preceding such person's election.

Viewing the Judicial Qualifications Provision in the context of this revision shows that if the drafters of the Constitution had intended to include a Georgia practice requirement, they knew how to do so. Ford Motor Co. v. Reese, 300 Ga. App. 82, 86, 684 S.E.2d 279, 284 (2009) (saying, when the drafters “know[] how to do so[omething]” but fail to do it, courts interpreting the drafters’ intent “must presume that [their] failure . . . was a matter of considered choice.”); see also Williams v. Cates, 235 Ga. 651, 652, 221 S.E.2d 422, 424 (1975). “It is generally presumed that [the drafters] act[] intentionally and purposely when [they] include[] particular language in one section of [the Constitution] but omit[] it in another.” BFP v. Resolution Trust Corp., 511 U.S. 531, 537, 114 S. Ct. 1757, 1760 (1994) (alteration and citation omitted). Applying that presumption, the drafters’ decision to add the words “State Bar of Georgia” to the district attorney and Attorney General offices indicates clearly and unequivocally that their intent was to require in-state practice for some offices, but not for appellate judges. See id., 114 S. Ct. at 1760; Reese, 300 Ga. App. at 86, 684 S.E.2d at 284. And if the omission of “Georgia” from the Provision was intentional, only one conclusion can follow: the law practice requirement applicable to Court of Appeals candidates is not limited to only that practice occurring in this State.

Both in isolation and by comparison to the surrounding qualifications provisions, the plain language of the Judicial Qualifications Provision indicates that its drafters did not intend to impose a Georgia-specific practice requirement on Court of Appeals candidates. As mandated, the Court construes this Provision in accordance with that intent, Jove, 247 Ga. at 681, 279 S.E.2d at 433, and will not read words into the Provision that are not there. Blum, 281 Ga. at 240, 637 S.E.2d at 398. Thus, the Court finds that the Judicial Qualifications Provision means exactly—and only—what it says: a Court of Appeals candidate must have been admitted to

practice law for seven years.

II. Legislative History Analysis

The language of the Judicial Qualifications Provision is plain and does not lead to any absurd or impractical consequences. As such, there is sufficient support for the Court's construction of the Provision. See, e.g., Apollo Travel Servs. v. Gwinnett Cnty. Bd. of Tax Assessors, 230 Ga. App. 790, 791–92, 498 S.E.2d 297, 299 (1998). There is, however, additional evidence that the Provision's drafters did not intend an in-state practice requirement to be read into the specific words that they chose.

The Georgia Supreme Court has recognized that “in ascertaining the purpose of legislation, courts may look to the history of the legislation on the subject matter of the particular statute.” Ga. Mental Health Inst. v. Brady, 263 Ga. 591, 592, 436 S.E.2d 219, 221 (1993); see also Nelms v. Georgian Manor Condo. Ass'n, Inc., 253 Ga. 410, 412–13, 321 S.E.2d 330, 332–33 (1984) (reviewing the constitutionality of a statute by tracing the “constitutional history” of the governing constitutional language back to 1877 to determine its “purpose”). In fact, when confronted with a question about the drafters' intent or asked to determine the “purpose” behind a constitutional provision, Georgia courts have often looked to committee transcripts or other “legitimate and reliable record[s]” of the drafters' discussions for clarity. Smith v. Baptiste, 287 Ga. 23, 25–7, 694 S.E.2d 83, 86–87 (2010) (concluding that an earlier decision was justified in relying on a quotation from an unofficial but long-recognized-as-valid “stenographic report” of the 1877 Constitutional Convention to determine the reason a provision was adopted); Nelms, 253 Ga. at 412–13, 321 S.E.2d at 332–33.

One source of legislative history and intent Georgia courts use is transcripts of the many committee meetings held during the five-year effort to revise the 1976 Constitution. See, e.g.,

Perdue v. Baker, 277 Ga. 1, 7, 586 S.E.2d 606, 610–11 (2003) (citing and discussing the very Committee transcripts in which the Judicial Qualifications Provision’s legislative history is contained); Nelms, 253 Ga. at 412–13, 321 S.E.2d at 332–33; Atlanta Gas Light Co. v. Ga. Pub. Serv. Comm’n, 212 Ga. App. 575, 579 n.4, 442 S.E.2d 860, 864 n.4 (1994). The legislative history of the Judicial Qualifications Provision contained in those transcripts dispels any doubt about the plain meaning of its language.

A. The First Judicial Qualifications Provision

When the Judicial Qualifications Provision first appeared in 1868, it contained three components: a minimum age requirement, a minimum residency requirement, and a minimum practice requirement. The provision located in the “Judicial Department” Article, stated:

No person shall be judge of the supreme or superior courts, or attorney-general, unless at the time of his appointment he shall have attained the age of thirty years, and shall have been a citizen of this State three years, and **have practiced law for seven years.**

Ga. Const. of 1868, art. V, § 10, ¶ III.² (emphasis added). Even at the beginning of its life, then, the constitutional baseline of judicial eligibility did not require seven years of practice in Georgia.

B. The 1983 Revisions

Five versions and 115 years after judicial qualifications became part of the Constitution, the Provision underwent its first and only major revision.³ The Legislature omitted the minimum age and citizenship requirements, and modified the language of the practice requirement. Now,

² The provision did not apply to Court of Appeals judges when it first appeared in the Constitution in 1868 because the Court of Appeals did not yet exist. A 1906 Amendment established the Court of Appeals, 1906 Ga. Laws 24–28, and judges of that Court first appeared in the qualifications provision in the Constitution of 1945.

³ Minor revisions did occur between 1868 and 1983, but none of them involved judicial qualifications. Those revisions either moved the provision to other places in the Constitution or addressed other court officers, including the Attorney General, the Solicitor General, and district attorneys.

judicial candidates are not required to have “practiced law” for seven years; they must only “have been admitted to practice law” for that long. The 1983 version, in relevant part, provides:

Appellate and superior court judges **shall have been admitted to practice law for seven years**. . . . All judges shall reside in the geographical area in which they are selected to serve. [] The General Assembly may provide by law for additional qualifications, including, but not limited to, minimum residency requirements.

Ga. Const. of 1983, art. VI, § VII, ¶ II(a), (d), (e). (emphasis added).

Legal scholars have characterized the 1983 Georgia Constitution as “the most thorough revision . . . in modern history.” Melvin B. Hill, The Georgia State Constitution: A Reference Guide, Vol. 55, at 15 (1994). The judicial article underwent “serious” changes, and the judicial qualifications provision was streamlined and sub-sectioned. George D. Busbee, An Overview of the New Georgia Constitution, 35 Mercer L. Rev. 1, 10 (1983). For all its thoroughness, however, the revision left two things unchanged: it did not raise or lower the seven-year requirement for appellate and superior court judges, and it did not add any language limiting the practice requirement to experience gained in Georgia.

The effort to create the 1983 Constitution was fully documented. Hill, supra, at 20. Thus, the drafters’ reasons for including or excluding specific language in the 1983 Constitution have been preserved. Despite years of consideration and at least six different requests to add it⁴, the

⁴ See, e.g., State of Ga. Select Comm. on Const. Revision 1977–1981, Tr. of Meetings, Comm. To Revise Article VI, Vol. I, p. 143 (Dean L. Ray Patterson: “Do we mean practiced law in the State of Georgia for seven years? . . .” Dean Ray Phillips: “I think we should say that.”); id. at 144 (Judge Calhoun: “Well, you can say, ‘shall have practiced law in Georgia for seven years next preceding his election.’ That would take care of it.”); id. (Representative Wayne Snow: “Those in favor, say aye. . . . ‘Practiced law in Georgia for seven years next preceding his election.’”); id. at 148–49 (Executive Director J. Robin Harris: “What about . . . also adding another safeguard, which is not currently—go back to what he had said. ‘Shall have been a citizen of the State ten years and have practiced law for seven years.’” Rep. Snow: “He said ‘law in Georgia for seven years.’” Executive Director Harris: “I know. That comes next.”); State of Ga. Select Comm. on Const. Revision 1977–1981, Tr. of Meetings, Comm. To Revise Article VI, Vol. II, p. 69 (Dean Cole: “One cleanup thing. . . . [W]here we changed it from ‘practice of law’ to ‘active member of the State Bar,’ I think after the meeting we really intended to say ‘shall have been a citizen of this State and an active member of the State Bar of Georgia for seven years.’ Of this state and of Georgia were left out and I think that should be inserted.”); State of Ga. Select Comm. on Const. Revision 1977–1981, Tr. of Meetings, Legis. Overview Comm., Vol. III, p. 202 (Senator Littlefield: “Mr. Chairman, in the

drafters of the 1983 Constitution ultimately left out language that would have required all seven years of law practice to occur in Georgia.

C. The Committee Deliberations: 1977–1981

To ensure that every Article received individual attention during the revision process, the State of Georgia Select Committee on Constitutional Revision (“Select Committee”) appointed a separate committee to review each one. See Busbee, supra, at 3; Hill, supra, at 16. The Select Committee tasked the Committee to Revise Article VI (“Article VI Committee”) with reviewing the Judicial Branch Article. The Article VI Committee took up the judicial qualifications provision at one of its earliest meetings.

1. Article VI Committee Meeting, August 5, 1977

On August 5, 1977, one member of the Article VI Committee recognized that, as it was written, the provision made eligible candidates who had completed some of the seven-year practice requirement outside of Georgia. As Dean Ray Phillips of the University of Georgia School of Law noted:

Since we are talking about constitutional language . . . “have practiced law for seven years.” Now, it’s possible for a person to have been a citizen of the State under this language for only three years and have practiced law in Istanbul for four years. Is that what you intend? It says, practiced law.

State of Ga. Select Comm. on Const. Revision 1977–1981, Tr. of Meetings, Comm. To Revise Art. VI, Vol. I, Aug. 5, 1977, p. 141. Another member of the Committee, Judge Marcus Calhoun, agreed: “That’s what it says. I agree with you. I think it should have been a citizen of the State.” Id. Dean Phillips responded: “That’s why I broached the question about the fact that the person you’re talking about in these qualifications really doesn’t have to practice law in this State.” Id. at 142.

proposed draft where we have ‘admitted to practice law,’ change that in each and every instance so that it would be, so that it would read ‘have been an active status member of the state bar of Georgia.’ . . .”).

After further discussion, the Committee settled on a solution to the perceived problem; it decided to raise the minimum Georgia citizenship requirement from three years to ten years. Id. at 142–43. That amendment did not end the matter, however. Shortly after that language change, Dean L. Ray Patterson of Emory Law School noticed that the judicial qualifications provision still did not require that all seven years of law practice be in Georgia: “Do we mean practiced law in the State of Georgia for seven years? Is that what we mean?... I think we should say that.” Id. at 143.

The discussion continued, and more members of the Committee acknowledged that, under the then existing language of the provision, a candidate was eligible to be a Court of Appeals judge without having practiced law for seven years in Georgia. See id. at 143–49. While some members were concerned by that possibility, Dean John Cole of Mercer Law School noted that forcing a candidate to be a citizen of Georgia for ten years and practice law in the State for seven “sounds like a pretty stiff requirement.” Id. at 145. He continued:

A lot of people . . . may leave the state and come back and be very qualified—highly qualified people. Born and raised in Georgia and maybe practiced law in another State and been here three or four years. I would think there’d be no reason to bar them from the possibility of becoming a superior court judge in the Constitution.

Id.

The Executive Director of the Select Committee, J. Robin Harris, offered “sort of a compromise” requiring that a candidate have practiced law for seven years and have been a resident of the appropriate judicial circuit for the three years leading up to the election. See id. at 146. If a candidate met those two criteria, “conceivably, some of [his or her practice experience] could have been out of the State since he would only have to have been a resident of the circuit

for three years next preceding his selection.” Id. Judge Calhoun agreed with Harris that the compromise “seem[ed] to cover” the issue “all right.” Id.

The Committee ended its August 5, 1977 meeting with a provision full of requirements:

No person shall be a Justice of the Supreme Court, a Judge of the Court of Appeals, or a Judge of Superior Courts, unless, at the time of his election, he shall have attained the age of thirty years, and shall have been a citizen of the State ten years, and have practiced law for seven years, and any Judge of Superior Court shall have been a resident of the territory comprising the circuit for which he has been elected for the three years next preceding his election or appointment.

State of Ga. Select Comm. on Const. Revision 1977–1981, Tr. of Meetings, Comm. to Revise Art. VI., Vol. I, Oct. 15, 1977, p. 356.

Even with the October 15, 1977 provision’s size and scope, the Committee left some language out. Despite the previously expressed concern about counting out-of-state law practice toward the seven year requirement—and an explicit reminder from the Committee Chairman that some members had wanted to make the words “in Georgia” part of that requirement—the Committee did not include that phrase, or any language to that effect. See State of Ga. Select Comm. on Const. Revision 1977–1981, Tr. of Meetings, Comm. to Revise Art. IV, Vol. I, Aug. 5, 1977, p. 148; Vol. 1, Oct. 15, 1977, p. 354.

2. Article VI Committee Meeting, September 1, 1978

The Article VI Committee continued to struggle with whether to include an “in Georgia” component in the Judicial Qualifications Provision’s law practice requirement. At one point in the Committee negotiations, language expressing that intent found its way into a draft of the provision. On September 1, 1978, Dean Cole noted that the Committee had already changed the “practice of law” requirement to an “active member of the State Bar” requirement, but he suggested adding “one cleanup thing” to the provision: “I think after the meeting we really intended to say ‘shall have been a citizen of this State and an active member of the State Bar of

Georgia for seven years.’ ‘Of this state’ and ‘of Georgia’ were left out and I think that should be inserted.” State of Ga. Select Comm. on Const. Revision 1977–1981, Tr. of Meetings, Comm. to Revise Art. VI, Vol. II, Sept. 1, 1978, p. 69.

There were no objections to Dean Cole’s suggested amendment, so it was adopted. Thus, the draft Judicial Qualifications Provision considered at the public hearings on the Article VI revisions provided,

No person shall be a justice of the Supreme Court, a judge of the Court of Appeals, or a judge of a Circuit Court unless at the time of selection such person shall have attained the age of thirty years, and shall have been a citizen and an active member of the State Bar **of this State** for seven years, and any judge of a Circuit Court shall be domiciled in the circuit from which selected.

State of Ga. Select Comm. on Const. Revision 1977–1981, Tr. of Meetings, Comm. to Revise Art. VI, Nov 2. 1989 – Dec. 1, 1978, pp. 87–111 (emphasis added). A committee note summarizing the changes to the provision explained:

Qualifications for appellate and Circuit Court judges are generally retained as they presently exist, although state citizenship requirements have been increased from three to seven years and “active membership in the State Bar” for seven years substituted for seven years practice of law. Magistrates will be required to be licensed to practice law **in Georgia**.

Id. at 96–98 (emphasis added).

Thus, around the midpoint of the Article VI Committee’s work, a candidate was required to have been an active member of the Georgia State Bar for seven years to be a Court of Appeals judge. But the “in Georgia” requirement did not last.

3. Final Recommendations of the Article VI Committee, 1980

After some stylistic changes, the Article VI Committee made its final recommendation in October 1980. The Judicial Qualifications Provision the Committee recommended read, in relevant part:

All judges except those of magistrate or probate courts shall have been admitted to practice **in the Supreme Court** for seven years...All judges shall reside in the geographical area in which they are selected to serve. No judge shall engage in the practice of law.

State of Ga. Select Comm. on Const. Revision 1977–1981, Tr. of Meetings, Comm. to Revise Art.VI., Vol. III, Oct. 27, 1980, p. 259–68 (emphasis added).

Neither the Article VI Committee’s intent nor its words ever made it to the General Assembly for consideration. After the Assembly rejected several revised Articles in the 1980 session, the Select Committee altered its approach. Busbee, supra, at 5. Instead of allowing the individual Article Committees to try again to revise the Constitution for acceptance by the Assembly, the Select Committee created a new combined committee in 1981. Id. at 5–6. This group, the Legislative Overview Committee (“Overview Committee”), took the final recommendations of each Article Committee and molded them into a unified document that was offered to the Assembly at a session in August 1981. Id. at 6.

4. Meeting of the Overview Committee, August 7, 1981

On its way to creating a unified proposed Constitution, the Overview Committee made some changes to the final draft of the Judicial Qualifications Provision offered by the Article VI Committee. The Overview Committee changed the language from “shall have been admitted to practice before the Supreme Court” to “shall have been admitted to practice law.” State of Ga. Select Comm. on Const. Revision 1977–1981, Tr. of Meetings, Legis. Overview Comm., Vol. III, Aug. 7, 1981, p. 194–95.

Senator Bill Littlefield later made a motion to add the language “as an active status member of the state bar” after “practice law.” Id. at 198, 202. Explaining his proposed addition, Senator Littlefield noted that the “key is not how long you’ve been admitted to practice, but whether you have been . . . actively engaged in the practice of law in the state of Georgia.” Id. at

198. In the discussions that followed, Executive Director Harris noted that Senator Littlefield's suggestion was "a substantial change from the present law" because it "would set an in-state residency requirement of seven years." Id. at 202-03. Harris concluded: "If you require [a candidate] to be an active member of the state bar for seven years, then that's a substantive change from the present provision." Id. at 203. Governor George Busbee, who was presiding over the meeting, asked for a second to Senator Littlefield's motion. Id. When none came, the motion died. Id. The Overview Committee ended its discussion by adopting the following provision:

All judges except those of magistrate or probate courts **shall have been admitted to practice law**, appellate and superior court judges for seven years

Id. at 346-51. (emphasis added). The new provision deleted the Article VI Committee's requirement that a candidate be admitted to practice in the [Georgia] Supreme Court for seven years; it also contained no requirement that a candidate be admitted to practice law in Georgia, before the Supreme Court or elsewhere.

5. Meeting of the Overview Committee, August 12, 1981

The last substantive meeting of the Overview Committee took place on August 12, 1981. At that meeting, Executive Director Harris noted the "great deal of discussion . . . with respect to qualifications of all manners of judges" including "concern by Senator Littlefield...with respect to active status bar membership." State of Ga. Select Comm. on Const. Revision 1977-1981, Tr. of Meetings, Legis. Overview Comm, Vol. III, Aug. 12, 1981, p. 192. Harris suggested an alternative to the Judicial Qualifications Provision left over from the August 7 meeting. That alternative provided, in relevant part:

[(a)] [A]ppellate and superior court judges shall have been admitted to practice law for seven years . . . (d) . . . all judges shall reside in the geographical area in which they are selected to serve, and . . . (e) . . . the General Assembly may

provide by law for additional qualifications including minimum residency requirements.

Id. at 192–93. When asked by the Governor to reread the new provision, Harris reread and explained:

The General Assembly may provide by law for additional qualifications, comma, including minimum residency requirements, it being our belief that if matters such as those raised by Senator Littlefield, the active practice of law or active members of the bar or whatever **are more appropriately addressed by the General Assembly in legislation as against putting them in the constitution.**

Id. at 194 (emphasis added).

After some members of the Overview Committee expressed concern that the newly proposed provision might be moving back toward requiring all judges to be lawyers, a requirement that had been nixed during the August 7 meeting, Harris clarified:

All we're suggesting is . . . trying to broaden the General Assembly's authority with respect to additional qualifications that you might want to add **to cover the situation raised by Senator Littlefield** that they had to be active members of the bar or whatever, and to give you the authority to set additional qualifications including minimum residency requirements.

Id. at 198 (emphasis added). Harris' explanation was the final word. There was no further discussion about amending the subsection of the Judicial Qualifications Provision containing the law practice requirement, which remained unchanged. Id. at 198–202.

6. Final Judicial Qualifications Provision Adopted by Overview Committee

The Overview Committee met one final time to review and ratify the unified proposed Constitution it would send to the General Assembly. At that meeting, held on August 20, 1981, the Committee made no changes to the provision adopted on August 12. The General Assembly accepted the version submitted by the Overview Committee. E.g., 1981 Ga. Laws 143, 181–82.

Thus, the final Judicial Qualifications Provision sent to the voters in November 1982 as part of the proposed new Georgia Constitution of 1983 provided:

Paragraph II. Qualifications.

- (a) Appellate and superior court judges shall have been admitted to practice law for seven years.
- (b) State and juvenile court judges shall have been admitted to practice law for five years.
- (c) Probate and magistrate judges shall have such qualifications as provided by law.
- (d) All judges shall reside in the geographical area in which they are selected to serve.
- (e) The General Assembly may provide by law for additional qualifications, including, but not limited to, minimum residency requirements.

Id. The voters adopted the proposed constitution during the 1982 general election. Busbee, supra, at 6. It went into effect on July 1, 1983. Id. at 1. The Judicial Qualifications Provision of 1983 contained no indication, explicit or otherwise, that the “admitted to practice law” requirement could be fulfilled only through practice in Georgia.

D. The Drafters’ Intent

Since the 1983 revisions, there have been no changes to the parts of the Judicial Qualifications Provision applicable to Court of Appeals judges.⁵ Thus, the drafters’ words and intent apply with equal force today. As the legislative history above demonstrates, the drafters considered requiring seven years of law practice in Georgia. What both the express words of the Constitution and the legislative history show, however, is that they intentionally did not.

The drafters changed the words of the Provision many times between 1977 and 1981; at some points during that process, using phrases like “State Bar of this State” and “in the Supreme Court,” the drafters very clearly limited the kind of law practice that would satisfy the constitutional requirement of practice in Georgia. But the ultimate version of the Judicial

⁵ The only change to the Provision occurred in 2000, when subsection (b) was amended to require that state court judges “shall have been admitted to practice law for seven years” instead of the five years required in the 1983 Constitution.

Qualifications Provision adopted by voters in 1982 does not include any such limitation.

At the end, the Overview Committee decided that the best solution was to leave the lengthy in-state active practice requirement out of the Judicial Qualifications Provision and, instead, to “broaden the General Assembly’s authority . . . to set additional qualifications.” See State of Ga. Select Comm. on Const. Revision 1977–1981, Tr. of Meetings, Legis. Overview Comm., Vol. III, Aug. 7, 1981, pp. 198–215; State of Ga. Select Comm. on Const. Revision 1977–1981, Tr. of Meetings, Legis. Overview Comm., Vol. III, Aug 12. 1981, p. 198. That authority was memorialized in subsection (e) of the Provision, which explicitly gives the Assembly the right to “provide by law for additional qualifications.” Ga. Const. of 1983, art. VI, § VII, ¶ II(e). The Overview Committee was made up of members of the Assembly. Busbee, supra, at 6. Thus, the Assembly certainly knew that it had the authority to add a Georgia practice requirement to the provision if it ever wished to do so.

What the constitutional revision process of 1977 through 1982 signifies is that after many requests to add a Georgia practice requirement to the judicial qualifications, the drafters of the 1983 Constitution chose not to include one. Instead, the drafters reserved the power to add a Georgia practice requirement to the General Assembly. That decision conforms to the directive given to the revision committees when the constitutional revamp began: “to strive for greater legislative flexibility in the new” Constitution, which would “allow the General Assembly to deal with relatively minor matters by statute.”⁶ See Busbee, supra, at 4. The Court will not

⁶ The Court notes that the General Assembly has, in fact, made its intention to subject some offices to more specific practice requirements known by enacting a number of statutes doing just that. See, e.g., O.C.G.A. § 15–18–3 (requiring district attorneys to be “licensed to practice law in the superior courts”); O.C.G.A. § 15–18–62 (requiring solicitors-general to be “licensed to practice law in the State of Georgia”); O.C.G.A. § 15–18–21 (requiring attorney-employees of the district attorney to be “member[s] of the State Bar of Georgia”); O.C.G.A. § 9–9–66 (requiring medical malpractice arbitration referee to be an “active member of the State Bar of Georgia”); O.C.G.A. § 37–3–84 (requiring mental health hearing examiners to be “members of the State Bar of Georgia”); O.C.G.A. 50–13–40(b) (requiring that the Chief State Administrative Law Judge “shall have been admitted to the practice of law in this state for a period of at least five years”); O.C.G.A. 50–13–40(e)(1)(requiring that [e]ach assistant

override the drafters' judgment or the Assembly's decision now.

In Part I of this decision, the Court found that the language of the Judicial Qualifications Provision was unambiguous: it does not require Court of Appeals judges to “have been admitted to practice law for seven years” in Georgia. The legislative history of the Provision further reinforces the drafters' intent not to require all seven years of the law practice requirement to occur in Georgia. The Court finds that the drafters intended to create a broad, flexible Provision that could be supplemented by the General Assembly, if or when the Assembly wanted to address any of the issues—active bar membership status, minimum residency, or Georgia-specific practice—raised during the revision process.

III. Case Law Analysis

Petitioner argues that, despite the plain language of the Provision and its legislative history, because the Georgia Supreme Court has interpreted “admitted to practice law” to mean “in Georgia” in other contexts in other versions of the Constitution, this Court must now apply that interpretation to the current provision. Petitioner bases his argument on two principles of constitutional construction: first, that drafters “are presumed to be aware of the interpretation” the Supreme Court has “placed upon [a] predecessor provision,” and second, that “where a provision has received a settled judicial interpretation and is then incorporated into a new constitution, it will be presumed to have been retained with the knowledge of the previous construction and the courts will be bound to adhere thereto.” Atlanta Indep. Sch. Sys. v. Lane, 266 Ga. 657, 658, 469 S.E.2d 22, 25 (1996); see also In re J.N., 302 Ga. App. at 632, 691 S.E.2d at 398. Neither the Georgia Supreme Court cases nor the constitutional construction canons

administrative law judge shall have been admitted to the practice of law in this state for a period of at least three years”). The Assembly has also exercised its constitutional authority to enact additional requirements to supplement those in the constitutional provisions. See, e.g., O.C.G.A. § 15–6–4 (requiring additional qualifications of superior court judges); O.C.G.A. § 15–7–21 (requiring additional qualifications of state court judges).

support Petitioner's conclusion.

No Georgia court has addressed the particular question presented here: whether the law practice requirement found in Article VI, section VII, paragraph II(a) of the Georgia Constitution may be satisfied only by having been admitted to practice law in Georgia for seven years. The Georgia Supreme Court has evaluated related questions, including how to interpret similar language imposing a law practice requirement on district attorneys and whether a candidate for the Supreme Court must be a member of the Georgia Bar at all. Because each of those cases considered a law practice requirement contained in an earlier version of the Constitution, all three are immediately distinguishable from this matter on that ground alone.⁷

A. Wallace v. Wallace

The Supreme Court first considered constitutional language imposing a law practice requirement in Wallace v. Wallace, 225 Ga. 102, 166 S.E.2d 718 (1969). Wallace involved a candidate for Clayton County District Attorney whose candidacy was challenged as failing to “meet the constitutional requirement of three years of law practice.” Id. at 103, 166 S.E.2d at 719. At the time, the relevant constitutional provision provided that candidates for district attorney “shall have practiced law for the three years next preceding his [or her] election.” See id. at 104, 166 S.E.2d at 720 (quoting the portion of Ga. Const. of 1945, art. VI, § XIII, ¶ I, which was applicable to solicitor generals).

The Wallace Court did not rest its analysis on the Constitution alone. After acknowledging the constitutional requirements, the Court recognized that the General Assembly

⁷ Although an unofficial opinion of the Attorney General concluded that a probate court judge in a heavily populated county must have been a member of the Georgia Bar for seven years prior to his election, see Ga. Op. Att’y Gen. No. 08–1 (2008), that conclusion does not govern the Court’s analysis. First, as that opinion relies on the cases discussed above, it is distinguishable for the reasons discussed. Second, even official opinions of the Attorney General are not binding; the Court can consider them persuasive authority but also can disregard them altogether. See, e.g., Wheeler Cnty. Bd. of Tax Assessors v. Gilder, 256 Ga. App. 478, 481, 568 S.E.2d 786, 790 (2002).

had enacted additional statutory requirements governing the eligibility of district attorneys. See id., 166 S.E.2d at 720. The relevant statute required that candidates be “admitted and licensed to practice law **in the superior courts** for at least three years.” Id., 166 S.E.2d at 720 (emphasis added). Reading those two provisions together, the court concluded that the candidate was ineligible to be a district attorney. See id. at 103–04, 166 S.E.2d at 719–20.

In reaching that conclusion, the court noted that the “shall have practiced” requirement in the Constitution “means actual practice and, of course, contemplates lawful practice.” Id. at 104, 166 S.E.2d at 720. The candidate failed to meet that requirement, despite having been admitted to practice law in Georgia for more than three years before the election, because he had not registered with or paid fees to the State Bar of Georgia until “right before” he entered the race. Id. at 105, 166 S.E.2d at 720. Thus, according to the rules governing the Georgia Bar—which required a member to be in good standing before he could practice law in Georgia and to pay license fees to be in good standing—the candidate had not been “lawfully practicing” until he paid his fees several months before the election. Id., 166 S.E.2d at 720. And because the candidate had been lawfully practicing for only months, he did not meet the three-year requirement in either the statute or the Constitution. See id., 166 S.E.2d at 721.

Although Wallace did consider, in a broad sense, what type of practice could meet a constitutional practice requirement, it bears little resemblance to the question in this case. First, the Wallace Court based its decision on the fact that the candidate had not been lawfully practicing law, in Georgia or anywhere, for the required period of time. Thus, the most Wallace establishes is that, to meet a law practice requirement, the practice submitted for consideration must have been lawful when and where it was performed. See Haas, 133 Ga. App. at 315, 211 S.E.2d at 164 (recognizing that “all that Wallace held is that appellant . . . was not lawfully

practicing law sufficiently to qualify him for election to the office of solicitor general (district attorney)” and that “Wallace had absolutely nothing to do with out-of-state practice except that it properly may be inferred that Wallace does require that the out-of-state practice . . . must have been lawful”).

Wallace does not establish that lawful out-of-state law practice fails to satisfy the law practice requirement in a constitutional provision. It could not, as the candidate in Wallace was not asking the Supreme Court to decide, or even consider, whether out-of-state practice passed constitutional muster. “Whatever their opinions say, judicial decisions cannot make law beyond the facts of the cases in which those decisions are announced.” Watts v. BellSouth Telecomms., Inc., 316 F.3d 1203, 1207 (11th Cir. 2003); see also United States v. Aguillard, 217 F.3d 1319, 1321 (11th Cir. 2000) (“The holdings of a prior decision can reach only as far as the facts and circumstances presented to the Court in the case which produced that decision.” (quotations omitted)). This is true because “[a]ll statements that go beyond the facts of the case . . . are dicta.” Edwards v. Prime, Inc., 602 F.3d 1276, 1298 (11th Cir. 2010); see also Gonzalez v. Dep’t of Transp., 279 Ga. 230, 231, 610 S.E.2d 527, 528 (2005) (noting that because a particular “discussion was not essential to the decision . . . it constituted no ruling on the issue” and warning that an earlier decision “should be relied upon only for what was actually decided therein”).

Second, even if the Wallace Court had been asked to evaluate whether out-of-state practice met the law practice requirement and had decided it did not, that conclusion would not control the construction of the Provision. The broad constitutional provision in Wallace, which required only that a candidate have practiced law for three years immediately preceding his election, had been narrowed by statute. Id. at 104, 166 S.E.2d at 720. The General Assembly had

exercised its authority to require additional qualifications of district attorneys by imposing a statutory requirement that candidates be licensed in the superior courts for three years. The “licensed in the superior courts” language implicitly imposed a Georgia Bar membership requirement on candidates, as no person could be licensed to practice in superior court without first being a member of the Bar. Id. at 105, 166 S.E.2d at 720. It is reasonable to conclude, then, that had the Supreme Court read the language in Wallace to preclude out-of-state practice from satisfying the law practice requirement, the basis for that reading would have been the narrower statutory requirement—not a narrow construction of the Constitution.

While paragraph II(e) of the Judicial Qualifications Provision grants the Assembly a similar right to impose additional qualifications on Court of Appeals candidates, the Assembly has not done so. See generally O.C.G.A. §§ 15-3-1 to -13 (containing the statutes pertaining to the Court of Appeals). Without the benefit of a statute demonstrating the Assembly’s intent to subject Court of Appeals candidates to stricter requirements than those provided in the Constitution, it would be unreasonable to interpret the constitutional language so narrowly.

B. Whitmer v. Thurman

In Whitmer v. Thurman, 241 Ga. 569, 247 S.E.2d 104 (1978), the court once again weighed the eligibility of a district attorney candidate. In Whitmer, however, the Court was asked to consider whether out-of-state law practice satisfied the requirement. Id. at 570, 247 S.E.2d at 106. The Court decided that it did not. Id., 247 S.E.2d at 106.

The Whitmer court relied even more heavily than Wallace had on the additional statutory requirement imposed on district attorneys. Their narrow holding referred exclusively to the statute, saying, “the specific language in [the statute] requiring admission to practice ‘in superior courts’ means the Superior Courts of Georgia and does not include practice in courts of similar

jurisdiction in other states.” Id., 247 S.E.2d at 106. In reaching that conclusion, the Whitmer Court characterized Wallace as holding “that the language ‘shall have practiced’ contemplated lawful practice.” Id., 247 S.E.2d at 106. The Court also stated that Wallace “defined lawful practice as the practice of law as ‘an active member of the State Bar of Georgia in good standing.’” Id., 247 S.E.2d at 106.

The Court then considered Georgia policy. To read the statute broadly enough to encompass out-of-state law practice would “directly conflict[] with the judicial policy of Georgia that lawyers licensed to practice in other states will not be admitted to practice law in Georgia on the basis of comity.” Id., 247 S.E.2d at 106. Because of that judicial policy, the Court determined that the Assembly’s intent in imposing the additional statutory requirement was to ensure that district attorney candidates “would be experienced in the practice of law before the courts in which they would be required to perform their functions as district attorneys.” Id., 247 S.E.2d at 106. That intent would be frustrated if out-of-state practice counted toward the three-year minimum. Id. at 571, 247 S.E.2d at 106.

Whitmer does not control the construction of the Judicial Qualifications Provision for several reasons. First, as in Wallace, much of the Whitmer Court’s analysis focused on the additional requirement the General Assembly added to the constitutional district attorney qualifications provision by statute. Indeed, Whitmer’s actual holding is based exclusively on its reading of the statutory language: “We affirm the trial court’s holding that **the specific language in [the statute] requiring admission to practice ‘in the superior courts’** means the Superior Courts of Georgia and does not include practice in courts of similar jurisdiction in other states.” Id. at 571, 247 S.E.2d at 106 (emphasis added).

The special concurrence to Whitmer supports a conclusion that the majority's holding read only the statutory, and not the constitutional, language as excluding out-of-state practice. The special concurrence argues that the constitutional language "must be interpreted to mean the practice of law in Georgia." Id. at 571, 247 S.E.2d at 106 (Hill, J., concurring specially). Although the concurrence gives many reasons why that interpretation is the better one, those reasons are unimportant. What matters is the fact that the concurring judge felt the need to make that statement at all. Had the majority agreed with the concurring judge's view, there would have been no need for a special concurrence to make that point.

Concurrences, by definition, include reasoning that was not adopted by the majority opinion. That is why, unlike majority opinions, special concurrences lack precedential value. See, e.g., Pac. Indem. Co. v. N.A., Inc., 120 Ga. App. 793, 795, 172 S.E.2d 192, 194 (1969) ("Plaintiff places reliance on a special concurrence . . . which is, of course, not binding as precedent."); Fulton Cnty. Bd. of Tax Assessors v. Nat'l Biscuit Co., 296 Ga. App. 884, 887, S.E.2d 41, 44 (2009) (Andrews, P.J., concurring specially and in judgment only). Thus, the fact that the concurring judge felt compelled to write separately to add that the district attorney law practice requirement in the Constitution "must be interpreted to mean" practice in Georgia signifies that the majority opinion in Whitmer did not interpret the Constitution that way.

Because the Whitmer majority's holding was not based on its reading of the constitutional language, it is not binding precedent on the issue the Court now considers. See, e.g., Gonzalez, 279 Ga. at 231, 610 S.E.2d at 528. And because no additional statutory requirement colors the construction of the Judicial Qualifications Provision, the Whitmer majority's reasoning—to whatever extent it was based on the "superior court" language in the statute—is inapplicable to this case.

Second, while the Whitmer Court correctly, if broadly, summarized Wallace's holding that "shall have practiced" contemplates lawful practice, it mischaracterized how Wallace defined that phrase. The Wallace Court did not define lawful practice as requiring active, good-standing membership in the Georgia State Bar; in fact, it did not define lawful practice at all. All the Wallace Court did was quote from two State Bar of Georgia rules requiring that a person who wished to practice law in Georgia had to be an active, good-standing bar member and could not be currently suspended. Wallace, 225 Ga. at 105, 166 S.E.2d at 720.

While the Wallace Court did conclude that "no person can legally practice law without first registering and paying the license fee required," id., 166 S.E.2d at 720, that conclusion must be read in the context of the facts within which it was decided: Wallace involved a district attorney candidate who had been admitted to practice by a Georgia superior court and had been practicing in Georgia courts, though he was not a member of the Georgia Bar. Id. at 104, 166 S.E.2d at 720. There was no indication that the candidate had been admitted to the bar of another state. Thus, the Wallace Court was dealing with an exclusively Georgia lawyer practicing exclusively within Georgia. That is the exact kind of lawyer, and law practice, the Georgia Supreme Court intended the Georgia Bar to regulate.

Outside of reciprocal admission decisions, the Georgia Bar has no authority to evaluate whether law practice conducted in another state under the jurisdiction of another state's bar is lawful. Because Wallace does not involve a reciprocal admission decision, the Wallace Court's conclusion about what counts as lawful practice applies to only one kind of law practice: practice conducted in Georgia before Georgia courts by a Georgia-licensed attorney. See Haas, 133 Ga. App. at 315, 211 S.E.2d at 164 (recognizing that "Wallace had absolutely nothing to do with

out-of-state practice”). It cannot reach further than that; it cannot be used to render unlawful in the eyes of Georgia practice that was lawful where and when it was conducted.

Third, the Whitmer Court’s reliance on Georgia’s policy of refusing comity to out-of-state lawyers can no longer support the weight of even its limited conclusion that out-of-state practice cannot satisfy the language of the district attorney qualifications statute. Although comity was forbidden when Whitmer was decided in 1978, the Georgia Supreme Court has since reestablished reciprocal admission on motion with those states offering it to Georgia lawyers. See Reciprocity Order, Sup. Ct. of Ga. Office of Bar Admissions. Accordingly, Whitmer does not control this case.

C. Littlejohn v. Cleland

Both Wallace and Whitmer involved district attorney candidates; that fact alone makes them distinguishable from this case. The Georgia Supreme Court has addressed the law practice requirement in the context of judicial candidates only once, in Littlejohn v. Cleland, 251 Ga. 597, 308 S.E.2d 186 (1983). The candidate in Littlejohn was disqualified from seeking election as a Georgia Supreme Court Justice because he was not, either during the election or after it, a member of the Georgia Bar. Id. at 597, 308 S.E.2d at 187. Relying on its conclusion in Wallace that “only those persons who are members of the State Bar of Georgia may practice law,” the Supreme Court concluded that the candidate was not qualified to be a Justice. Id., 308 S.E.2d at 187.

The Littlejohn Court answered a narrow legal question: whether a person who “is not now nor has . . . ever been a member of the State Bar of Georgia” can hold an appellate judgeship. Id., 308 S.E.2d at 187. The candidate in Littlejohn did not offer any out-of-state experience to satisfy the constitutional law practice requirement. As a result, the Court was not

asked to, and did not decide whether out-of-state experience could meet the constitutional minimum qualifications. See, e.g., Watts, 316 F.3d at 1207; Gonzalez, 279 Ga. at 231, 610 S.E.2d at 528. The most Littlejohn establishes is that a candidate for an appellate judgeship must be a member of the Georgia Bar at the time of her election.

Conclusion

Based upon the foregoing discussion and analysis, the Court finds that Article V, Section VII, Paragraph II(a) of the Georgia Constitution means exactly what it says: to be eligible to sit on the Court of Appeals, a potential judge “shall have been admitted to practice law for seven years.” Ga. Const., art. VI, § VII, ¶ II(a). That provision does not require the law practice to occur in Georgia, and the Court declines to read in such a limitation. As a result, the Court also finds that Candidate/Respondent Adrienne Hunter–Strothers, who has been admitted to practice law for more than seven years, is constitutionally qualified to hold the office of Georgia Court of Appeals Judge. Whether Respondent is elected to the Court of Appeals is for voters to decide.

Wednesday, September 8, 2010.

MICHAEL M. MALIHI, Judge