Mercer Law Review

Volume 75
Number 1 *Annual Survey of Georgia Law*

Article 23

12-2023

Mama Knows Best: *Raffensperger v. Jackson* Ushers In a New Framework for Professional Licensing Challenges and Recognizes a Right to Work for Lactation Providers Under the Georgia Constitution's Due Process Clause

A. Tyler Kelly

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I. INTRODUCTION

"State constitutionalism . . . is . . . vital yet underdeveloped[.]"[1] The right to pursue one's chosen profession free from unreasonable government interference is inherent in the Georgia Constitution's Due

*Soli Deo Gloria. I cannot begin these acknowledgements without first thanking my wife, Erin Kelly, for her unwavering support throughout the writing of this Casenote. Erin, thank you for always encouraging, trusting, and choosing me. I would like to thank Stephen Greenway for investing in my legal journey. It is an honor to be published in a book with you at the helm. Many thanks to Jaimie Cavanaugh for her invaluable insight, to Katie Anderson and Professor Jim Fleissner for their draft comments, to Alkesh Patel for introducing me to this case, and to the members of the *Mercer Law Review* for their camaraderie. Finally, to my parents, Sean and Robins Kelly, thank you for instilling in me the value of education and for working so hard to provide for me the means to continue learning. Dad, "[f]or those reasons, [your] presence has inspired me to lead by example and continue my education to the most logical conclusion[.]" Sean Kelly, *A Case Study Examining Teacher Responses to Principal Feedback of Class Observations* (Oct. 2014) (Ed.D. dissertation, Kennesaw State University), https://digitalcommons.kennesaw.edu/cgi/viewcontent.cgi?article=1000&context=educleaddoc_etd [https://perma.cc/UY5P-A8T8].

1. Clint Bolick, *Principles of State Constitutional Interpretation,* 53 ARIZ. ST. L.J. 771, 771 (2021).

Process Clause,[2] and a recognition of such economic liberty reappears throughout the jurisprudence of the Supreme Court of Georgia.[3] With the passage of the Patient Protection and Affordable Care Act (ACA)[4] in 2010, the federal government delegated to the states the responsibility of navigating new policy which led insurance companies to reimburse a host of medical services from licensed professionals.[5] At the time of the ACA's passage, Georgia faced an epidemic in infant mortality, maternal morbidity, and premature births.[6] People like Mary Jackson, a hospital-employed Certified Lactation Counselor, and organizations such as Reaching Our Sisters Everywhere, Inc. (ROSE), served on the front lines, supporting and assisting mothers with lactation care and breastfeeding.[7]

With the goal of regulating the education and training of lactation care providers throughout the state,[8] the Georgia General Assembly passed the Georgia Lactation Consultant Practice Act (the Act)[9] in 2016—a sweeping regulatory overhaul of Georgia lactation care providers. The Act required all lactation care providers to possess licensure as an International Board Certified Lactation Consultant (IBCLC).[10] The passage of the Act harmed lactation care providers like Jackson, who was trained as a Certified Lactation Counselor (CLC). Under the Act, Jackson would have been precluded from practicing her chosen profession as a

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2. GA. CONST. art. I, § 1, para. 1.

3. Raffensperger v. Jackson, 316 Ga. 383, 388, 888 S.E.2d 483, 490 (2023) ("*Jackson II*").

4. 42 U.S.C. § 18001–18122 (2010).

5. GPB Lawmakers, *GA House Day 17—Monday, February 8, 2016*, YouTube (Aug. 2, 2016), https://www.youtube.com/watch?v=MilHTxw9BaQ&list=PLtnbuO1Wh9L6PHtwyzb9DxvTR3kSylenD&t=6402s [https://perma.cc/9L7B-8VL6].

6. *Id.* Issues of infant mortality, maternal morbidity, and premature births continue to exist in Georgia today. *2023 March of Dimes Report Card for Georgia*, MARCH OF DIMES, https://www.marchofdimes.org/peristats/reports/georgia/report-card [https://perma.cc/X5P7-HY75] (last visited Nov. 19, 2023) (awarding Georgia an "F" among pre-term births and above the national average in infant mortality and maternal morbidity).

7. *Jackson II*, 316 Ga. at 386–87, 888 S.E.2d at 489.

8. GPB Lawmakers, *supra* note 5; see also Georgia Occupational Regulation Review Council, *House Bill 363: Georgia Lactation Consultant Practice Act*, GOVERNOR'S OFFICE OF PLANNING AND BUDGET, (Dec. 2013), https://opb.georgia.gov/sites/opb.georgia.gov/files/related_files/site_page/HB%20363%20Final%20Combined%20%28PUBLISHED%29.pdf [https://perma.cc/GD9A-NVYY]. Note that the report from the Georgia Occupational Regulation Review Council is from 2013, when the Georgia Lactation Consultant Practice Act was initially proposed as legislation but was not enacted into law.

9. O.C.G.A. § 43-22A-1 to -13 (2016).

10. *See, e.g.,* O.C.G.A. § 43-22A-3(6) (2016) (defining lactation consultant as a healthcare professional who has the IBCLC credential).

CLC.[11] Organizations like ROSE, which Jackson co-founded and now serves as the Vice President, that provide breastfeeding support for lower-income populations, would not have been able to continue paying its non-IBCLC employees for their work in the community.[12] As a result, Jackson and ROSE filed suit, alleging that the Act violated their right under the Georgia Constitution's Due Process Clause to freely pursue their chosen profession free from government interference.[13] Under a new framework for analyzing constitutional challenges to occupational licensing statutes, the Georgia Supreme Court in *Raffensperger v. Jackson* ("*Jackson II*") reaffirmed economic liberty as inherent in the Due Process Clause of the Georgia Constitution, and potentially signaled its viewpoint on future challenges of the same nature.[14] Ultimately, the court ruled in Jackson's and ROSE's favor and held that the Act unconstitutionally burdened the lactation care profession writ large, and that the state's interest in promulgating the Act was insufficient as to justify the enumerated restrictions.[15]

II. FACTUAL BACKGROUND

Lactation care providers (LCs) assist women engaged in breastfeeding children by providing breastfeeding education, support, and counseling.[16] LCs cannot diagnose or treat medical conditions.[17] LCs can complete trainings to earn a Certified Lactation Counselor (CLC) or International Board Certified Lactation Consultant (IBCLC) credential. Both

11. The Act never actually took effect because the Secretary of State agreed to stay enforcement of the Act during the litigation. *Jackson II*, 316 Ga. at 383 n.1, 888 S.E.2d at 486 n.1.

12. "[ROSE] could keep training people and they could keep offering free services (the Act had an exception for volunteers)[.]" Correspondence with Jaimie Cavanaugh, Attorney & Legislative Counsel, Institute for Justice, to A. Tyler Kelly (Oct. 15, 2023 09:51 EST) (on file with author). Jaimie Cavanaugh served as counsel for Jackson and ROSE over the course of litigation.

13. *Jackson II*, 316 Ga. at 388, 888 S.E.2d at 489. Jackson and ROSE also alleged that the Act violated their rights under the Georgia Equal Protection Clause. *Id.* at 383, 888 S.E.2d at 487. Because the Act was struck down as a violation of due process, the equal protection issue is not discussed herein. *Id.*

14. *Id.* at 390–93, 888 S.E.2d at 491–93.

15. *Id.* at 398–99, 888 S.E.2d at 496–97.

16. *Id.* at 384, 888 S.E.2d at 487.

17. Jackson v. Raffensperger, 308 Ga. 736, 737, 843 S.E.2d 576, 578 (2020) ("*Jackson I*"). For an analysis on *Jackson I*, *see* Laney Ivey, Casenote, *State-Mandated Occupational Licenses, Harmful or Helpful? A Look at the Due Process and Equal Protection Principles Surrounding the Constitutionality of Occupational Licensing Regulation*, 72 MERCER. L. REV. 693 (2021), https://digitalcommons.law.mercer.edu/jour_mlr/vol72/iss2/8/ [https://perma.cc/R8EA-RWU6].

credentials are obtainable through private accrediting agencies. The CLC certification presents a modest registration fee and consists of a fifty-two-hour course, demonstration of competency in substantive breastfeeding knowledge, and passing an examination. In contrast, the IBCLC certification is more expensive and mandates college-level health sciences courses, ninety-five hours of lactation-specific education, and three-hundred clinical hours, in addition to an examination. Alternatively, LCs can obtain free breastfeeding education from nonprofit organizations, such as ROSE, who provides a sixteen-hour course to develop LC-related skills.[18]

Shortly after the passage of the ACA, the Georgia General Assembly passed the Act,[19] requiring LCs statewide to obtain licensure through the Secretary of State.[20] The Act singled out only LCs possessing IBCLC certification as eligible licensure candidates.[21] As a result, Mary Jackson, a hospital-employed CLC, who, "provid[es] services . . . within the Act's definition of 'lactation care and services,'" along with the approximately 735 CLCs throughout Georgia, were forced to change job responsibilities or give up practicing the LC profession altogether.[22] Furthermore, the Act effectively rendered the education of the approximately 1,000 participants who completed ROSE's breastfeeding curriculum useless in their ability to hold out their services as LCs to the public.[23] In response, Jackson and ROSE sued Secretary of State Brian P. Kemp,[24] alleging that the Act failed to "protect the health, safety, and welfare of the public by providing for the licensure . . . of persons engaged in lactation care and services" due to a lack of empirical evidence demonstrating public harm

18. *Jackson II*, 316 Ga. at 384–85, 888 S.E.2d at 487–88.

19. O.C.G.A. § 43-22A-1 to -13 (2016).

20. *See* O.C.G.A. § 43-22A-11 (2016) ("*[N]o person* without a license as a lactation consultant issued pursuant to this chapter shall . . . practice lactation care and services[.]") (emphasis added).

21. *See* O.C.G.A. § 43-22A-3(6) (2016) (defining lactation consultant as a healthcare professional who is an IBCLC); O.C.G.A. § 43-22A-6 (2016) (requiring presentation of an applicant's IBCLC certification, with no mention of valid alternative certifications, for consideration to receive a license to practice lactation care and services in Georgia); O.C.G.A. § 43-22A-7 (2016) (enumerating the four elements required of license applicants, the first element requiring achievement of the IBCLC standards, and the second element requiring successful completion of the examination to become on IBCLC).

22. *Jackson II*, 316 Ga. at 385–87, 888 S.E.2d at 488–89.

23. *Id.* at 385, 888 S.E.2d at 488 ("Approximately 1,000 individuals have participated in ROSE's training course.").

24. As mentioned in both *Jackson I* and *Jackson II*, then-Secretary of State Brian P. Kemp was the original defendant. After Kemp became Governor, Jackson and ROSE substituted Secretary of State Brad Raffensperger as the new defendant. *Jackson I*, 308 Ga. at 737 n.1, 843 S.E.2d 578 n.1; *Jackson II*, 316 Ga. at 383 n.1, 888 S.E.2d at 486 n.1.

from non-IBCLC LCs.[25] More importantly, Jackson and ROSE asserted that the Act violated the Georgia Constitution's Due Process Clause because the Act's stringent licensure requirement forbade them from pursuing their chosen profession free of burdensome government interference.[26]

Before the trial, the Secretary of State filed a motion to dismiss.[27] The Superior Court of Fulton County granted that motion, finding that Jackson and ROSE failed to state adequate claims that the Act violated due process, "because the Georgia Constitution does not recognize a right to work in one's chosen profession[.]"[28] Writing for the Supreme Court of Georgia, Justice Boggs in *Jackson v. Raffensperger* ("*Jackson I*") reversed and remanded the trial court's grant of the motion to dismiss for reconsideration, stating that the Georgia Constitution and its interpretation thereof emphatically provides citizens with the liberty to practice a lawful vocation without unreasonable government overreach.[29]

On remand, the Secretary of State withdrew its motion to dismiss and filed a motion for summary judgment.[30] Mary and ROSE also filed a motion for summary judgment. The trial court granted the Secretary's motion under the Georgia Due Process Clause, but granted Mary and ROSE's motion under the Georgia Equal Protection Clause.[31] The parties then filed cross-appeals.[32]

Before the Georgia Supreme Court for a second time, now-Chief Justice Boggs, on behalf of the court, reversed the trial court's grant of the Secretary's motion, and in so doing reaffirmed the "consistent and definitive" and "long recognized" construction of the Georgia Due Process Clause to include individual economic liberty.[33] Under a newly created framework for evaluating constitutional challenges to occupational licensing, the Georgia Supreme Court wholly invalidated the Act, holding that the Act violated the due process rights of Jackson and ROSE by imposing a burden upon the pursuit of lactation care provider as a chosen profession.[34] Accordingly, the Georgia Supreme Court declined to accept the Secretary of State's suggested basis for the Act's licensing restrictions

25. O.C.G.A. § 43-22A-2 (2016); *Jackson II*, 316 Ga. at 383, 888 S.E.2d at 486–87.
26. *Jackson II*, 316 Ga. at 383, 888 S.E.2d at 487.
27. *Id.*
28. *Jackson I*, 308 Ga. at 736, 843 S.E.2d at 578.
29. *Id.* at 740–42, 843 S.E.2d at 580–81.
30. *Jackson II*, 316 Ga. at 383, 888 S.E.2d at 487.
31. *Id.* at 383–84, 888 S.E.2d at 487.
32. *Id.* at 384, 888 S.E.2d at 487.
33. *Id.* at 384, 388, 888 S.E.2d at 487, 489–90.
34. *Id.* at 390, 396, 399, 888 S.E.2d at 491, 495, 497.

as well as whether the trial court had decided the equal protection claim correctly.[35]

III. LEGAL BACKGROUND

A. The Georgia Lactation Consultant Practice Act

1. The Act's Purpose

The passage of the Patient Protection and Affordable Care Act (ACA)[36] in 2010 outlined new policy for health insurance companies to provide minimum coverage for youth preventive services.[37] This policy included what Georgia eventually defined as "lactation care and services" under the Georgia Lactation Consultant Practice Act (the Act).[38] Approximately 130,000 babies are born each year in Georgia.[39] However, at the time of the ACA's passage, the state ranked 49th in maternal morbidity rates, 43rd in premature births, and 40th in infant mortality.[40] Empirical evidence shows a strong correlation between breastfeeding and the reduction of adverse effects to infants.[41] The Georgia General Assembly sought to pass the Act to "give mothers another option . . . to someone who is a clinically-trained specialist [in lactation care]" and to "increase the number of mothers choosing breastfeeding across the state."[42] The

35. *Id.* at 398–99, 888 S.E.2d at 496–97.

36. 42 U.S.C. § 18001–18122 (2010).

37. The ACA amended the Public Health Service as follows:

> A group health plan and a health insurance issuer offering group or individual health insurance coverage shall, at a minimum provide coverage for and shall not impose any cost sharing requirements . . . with respect to infants, children, and adolescents, evidence-informed preventive care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Services Administration.

42 U.S.C. § 300gg-13(a)(3) (2010). *See also Women's Preventive Services Guidelines*, HEALTH RESOURCES & SERVICES ADMINISTRATION, (Dec. 2022), https://www.hrsa.gov/womens-guidelines#:~:text=WPSI%20recommends%20comprehensive%20lactation%20support,initiation%20and%20maintenance%20of%20breastfeeding [https://perma.cc/AKQ4-QTYE] (recommending coverage for, "[breastfeeding] consultation; counseling; education by clinicians and peer support services; and breastfeeding equipment and supplies").

38. O.C.G.A. § 43-22A-3(5) (2016) (defining "[l]actation care and services" to include assessment, the creation of a lactation care plan, coordination with primary health care providers, evaluation, the provision of lactation education, and the suggestion of assistive devices).

39. GPB Lawmakers, *supra* note 5.

40. *Id.*

41. *Id.*

42. *Id.*

Act was first considered in 2013,[43] but failed to make it out of committee after the Georgia Occupational Regulation Review Council (the Council)[44] opposed the bill, asserting that "House Bill 363 [] would not improve access to care for the majority of breastfeeding mothers."[45] The Act passed in 2016 without the Council's review.[46]

2. The Act's Structure

The Act itself was quite comprehensive and purported to "protect the health, safety, and welfare of the public by providing for the licensure and regulation of the activities of persons engaged in lactation care and services."[47] Most importantly, the Act prohibited the practice of lactation care and services without valid licensure.[48] Additionally, the Act narrowed licensure eligibility to individuals possessing IBCLC certification.[49] The General Assembly included a "catch-all" list of exceptions to the licensure requirement, allowing the majority of medical professionals, doulas and childbirth educations (so long as the title "licensed lactation consultant" is not used), students, government employees in their official capacities, individual volunteers providing free assistance (and not holding themselves out as LCs), and nonresident IBCLCs in special circumstances to continue providing lactation care and services.[50] The Act also created a "Lactation Consultant Advisory Group" staffed with "persons familiar with the practice of lactation care and services" in order to "provide the Secretary with expertise and assistance in carrying out his or her duties . . ."[51]

B. Economic Liberty in the Georgia Constitution

The Supreme Court of Georgia's recognition of economic liberty is not a novel interpretation of the Georgia Constitution's Due Process Clause. The court in *Jackson II* explained that, since its addition in 1861, the words of the Due Process Clause, "[n]o person shall be deprived of life,

43. *See* Ga. H.R. Bill 363, Reg. Sess. (2013).

44. O.C.G.A. § 43-1A-5(a)(1), the statute establishing the Georgia Occupational Regulation Review Council, was repealed in 2023. *Jackson II*, 316 Ga. at 385 n.5, 888 S.E.2d at 488 n.5.

45. Georgia Occupational Regulation Review Council, *supra* note 8, at 17; *Jackson II*, 316 Ga. at 385, 888 S.E.2d at 488.

46. *Jackson II*, 316 Ga. at 385, 888 S.E.2d at 488.

47. O.C.G.A. § 43-22A-2 (2016).

48. O.C.G.A. § 43-22A-11 (2016).

49. O.C.G.A. § 43-22A-7(1)–(2) (2016).

50. O.C.G.A. § 43-22A-13(1)–(7) (2016).

51. O.C.G.A. § 43-22A-4(a)–(b) (2016).

liberty, or property except by due process of law,"[52] conveyed a "consistent and definitive" commitment to the right of Georgians to pursue lawful work without "unreasonable government interference."[53]

1. The Limits of Police Power

Judicial inquiry regarding economic liberty in Georgia first surfaced in 1896, when the Georgia Supreme Court in *Odell v. Atlanta*[54] upheld a municipal ordinance deeming horse-betting an unnecessary profession.[55] The court reasoned that neither the common-law nor the Georgia Constitution supported the right to bet on horse racing.[56] Early in its economic liberty jurisprudence, the Georgia Supreme Court recognized that challenges to the General Assembly's authority to outlaw certain professions raise important questions about the scope of the state's police power, under which the General Assembly may only limit rights by "reasonable necessity for the protection of public health, safety, morality, or other phase of the general welfare[.]"[57] For example, in *Bazemore v. State*,[58] the Georgia Supreme Court affirmed the refusal to grant a new trial in a misdemeanor conviction under a statute that required a purchaser of seed cotton to obtain the written consent of the owner of the land where the cotton was produced, as well as the written consent of the agent of the owner, prior to completion of the transaction.[59] Despite the court's acknowledgement that "[a]n integral and essential element [of constitutional liberty] is the right to use all one's powers of mind and body[] to engage in any lawful occupation upon such terms as he [or she] may choose, and to make contracts with other citizens who are as free as himself[]", the statute, which imposed its regulation squarely on members of the seed cotton profession, was upheld because it protected the public from fraud and theft.[60]

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52. GA. CONST. art. I, § 1, para. 1.

53. *Jackson II*, 316 Ga. at 388, 888 S.E.2d at 490; *Jackson I*, 308 Ga. at 740, 843 S.E.2d at 580. *See* Elliot v. State, 305 Ga. 179, 184, 824 S.E.2d 265, 270 (2019) (holding that a constitutional clause gathering a consistent and definitive construction carries the presumption of having the same meaning as that consistent construction, regardless of the clause's readoption into a new constitution).

54. 97 Ga. 670, 25 S.E. 173 (1895).

55. *Odell*, 97 Ga. at 671, 25 S.E. at 174.

56. *Id.*

57. Bramley v. State, 187 Ga. 826, 835, 2 S.E.2d 647, 651 (1939).

58. 121 Ga. 619, 49 S.E. 701 (1905).

59. *Bazemore*, 121 Ga. at 621, 49 S.E. at 701.

60. *Id.* Although *Bazemore* is an important opinion in Georgia's economic liberty jurisprudence, *Bazemore* concerned a specific class of occupations that afford "peculiar opportunit[y] for imposition and fraud." *Bazemore*, 121 Ga. at 620–21, 49 S.E. at 701. The

Alternatively, occupational regulations that are discriminatory cannot be upheld under the Georgia Due Process Clause.[61] The Georgia Supreme Court confronted this issue head on in *Southeastern Electric Company, Inc. v. City of Atlanta*,[62] which concerned an ordinance regulating electrical installation contracting.[63] The ordinance required all electrical contractors to obtain licensure, administered through an examination by the Electrical Examining Board (the Board) that required contractors to pass an exam with at least a 70% score. Additionally, the ordinance vested substantial power in the Board, such that the Board arbitrarily chose to require examination of electrical contractors servicing new buildings with original installation, yet exempted electrical contractors acting in more of a maintenance capacity in servicing buildings with existing installation.[64] The court in *Southeastern* determined that these distinctions were without merit because the insubstantial difference between electrical installations did not justify burdening one set of contractors but exempting the other.[65] In other words, if electricians caused a true health or safety threat, they did so whether they were working on new or existing structures.[66] The Georgia Supreme Court invalidated the ordinance on due process grounds, holding that the broad powers of the Board "deny an electrical contractor the right to pursue his business[.]"[67]

In turn, disparate treatment against certain classes within a profession is not the violation of the Georgia Due Process Clause itself, but instead serves as evidence of a constitutional violation.[68] The Georgia Supreme Court clarified this principle in *Jenkins v. Manry*,[69] holding that requiring an examination by a statutory-established occupational board violates the Georgia Due Process Clause.[70] The statute in question established a Board of Examiners entrusted with assessing the character and fitness of master plumbers and steam fitters and recommending licensure for satisfactory performance on the examination, along with the

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occupation of lactation care provider does not fall into this category. *Jackson II*, 316 Ga. at 396 n.17, 888 S.E.2d at 495 n.17.

61. *See* Southeastern Elec. Co. v. City of Atlanta, 179 Ga. 514, 176 S.E. 400. (1934).
62. *Id.*
63. *Id.* at 514, 176 S.E. at 402.
64. *Id.* at 514, 176 S.E. at 400, 401.
65. *Id.* at 514, 176 S.E. at 402.
66. *Id.* at 514, 176 S.E. at 401.
67. *Id.* at 514, 176 S.E. at 402.
68. *Jackson II*, 316 Ga. at 390, 888 S.E.2d at 491.
69. 216 Ga. 538, 118 S.E.2d 91 (1961).
70. *Jenkins*, 216 Ga. at 541, 118 S.E.2d at 94.

collection of licensing fees.[71] As in *Southeastern*, the statute in *Jenkins* applied unequally to different occupational classes. Plumbers and steam fitters holding contracts for partnerships or corporations were not subject to the examination requirement. Plumbers and steam fitters without those contracts, however, such as the sole proprietor in *Jenkins*, faced the examination requirement and licensing fee, regardless of experience or competency.[72] The Georgia Supreme Court structured its analysis almost identically to its opinion in *Southeastern*, stating that the partisanship of the examining board facilitated arbitrary refusal of licensure by requiring an examination and license fees for one class, but exempting from the same class other practitioners "pursuing the same business in the same way."[73] Further, the Georgia Supreme Court explained that no material difference existed amongst the classes of plumbers or steam fitters, and that the effect on public health from the actions of each class were equal in scope.[74] Finding no reasonable basis for the statute's "unjust discrimination," the Georgia Supreme Court declared the statute unconstitutional and void.[75]

The balancing between the "ever-widening horizon" of the state's police power to protect the general welfare by regulating lawful businesses against the right to pursue a chosen lawful profession free from unreasonable requirements continues to feature in the opinions of the Georgia Supreme Court.[76] Despite a long line of caselaw, Georgia trial courts prior to *Jackson II* were without a uniform framework for determining that a profession is unlawful.

IV. COURT'S RATIONALE

Georgia Supreme Court precedent affirms the right of Georgians to freely pursue the lawful occupation of their choosing.[77] Additionally, precedent also communicates the constitutional bounds of regulating lawful occupations in light of protecting "public health, safety, morality, or [any] other phase of the general welfare[.]"[78] These bounds are overstepped when the relation of the occupational restriction is too attenuated to the state's police power.[79] Despite its familiarity with

71. *Id.* at 542–43, 118 S.E.2d at 94–95.
72. *Id.* at 541, 118 S.E.2d at 94.
73. *Id.*
74. *Id.* at 546, 118 S.E.2d at 96.
75. *Id.*
76. *Bramley*, 187 Ga. at 836, 2 S.E.2d at 652.
77. *Id.* at 834–35, 2 S.E.2d at 651–52.
78. *Id.* at 835, 2 S.E.2d at 651.
79. *Id.*

constitutional challenges to occupational licensing, the Supreme Court of Georgia continues to wade through murky waters when determining on which side of the constitutional line to rule in any given contest to economic liberty. In recognizing its opportunity to synthesize decades of case law, the Georgia Supreme Court in *Raffensperger v. Jackson* endeavored to formulate a "specific framework" to consider the challenge at bar and future licensing disputes under the Georgia Constitution.[80] Applying its newly-created framework to the present case, the Georgia Supreme Court held that the Act imposed an unconstitutional burden on the due process rights of Jackson and ROSE that precluded their practice as lactation care providers (LCs).[81] Moreover, the Georgia Supreme Court invalidated the Secretary of State's interest in imposing the licensing restrictions, given the "consistent and definitive" understanding of the scope of Georgia's historical legal analysis of the due process right to practice a chosen lawful profession without government overreach.[82]

A. The Test

The test formed in *Jackson II* is three-pronged in its approach, and is built out of caselaw fragments from decades of the Georgia Supreme Court's constitutional interpretation of the Georgia Due Process Clause as applied to state occupational licensing.

1. Step One: The Challenger Bears the Burden of Showing "Manifest Infring[ment]"

To establish a violation under the Georgia Constitution of an individual right to pursue a chosen occupation free from unreasonable government interference, the challenger must show that the legislation, "'manifestly infringes upon a constitutional provision or violates the rights of the people'" by establishing two "indispensable" criteria.[83] The first criterion is a "but for" requirement; the occupation in question must be lawful "but for" the statutory or regulatory limitation.[84] Second, the

80. *Jackson II*, 316 Ga. at 390, 888 S.E.2d at 491.

81. *Id.* at 396, 888 S.E.2d at 495.

82. *Id.* at 398, 888 S.E.2d at 496.

83. *Id.* at 390–91, 888 S.E.2d at 491 (quoting Brodie v. Champion, 281 Ga. 105, 106, 636 S.E.2d 511, 512 (2006)); *see also* Zarate-Martinez v. Echemendia, 299 Ga. 301, 305, 788 S.E.2d 405, 410 (quoting JIG Real Estate, LLC v. Countrywide Home Loans, Inc., 289 Ga. 488, 490, 712 S.E.2d 820, 823 (2011) for the principle that to overcome the presumption that statutes are constitutional, the challenging party must prove the contrary).

84. *Jackson II*, 316 Ga. at 391, 888 S.E.2d at 491. For examples of the Georgia Supreme Court reversing a trial court's interpretation of the Georgia Constitution as barring individuals from pursuing a lawful occupation of their choosing, *see, e.g.*, *Southeastern*, 179

challenger must show that the law or policy unreasonably interferes with its right to economic liberty.[85] Both of these criteria establish the prima facie case on behalf of the challenger.

2. Step Two: The State Must Respond with An Adequate Justification for the Use of Its Police Power to Regulate the Occupation

The state's interest in regulating a citizen's right to pursue a lawful occupation must meet the "consistent and definitive" limits under the Georgia Due Process Clause in providing the ability to burden the practice of a lawful occupation only in purposes "reasonably necessary to advance an interest in health, safety, or public morals."[86] In other words, regulating economic liberty "is not an open-ended exercise in interest-balancing," but rather is defined by the contours of the "well-settled limits" of economic liberty as textually defined in the Georgia Constitution.[87] Regulating beyond this interest will likely lead to the regulation's demise.[88] Additionally, by prescribing interests that are sufficient to justify the state's regulation, the inverse is also proven. Put differently, there are state interests that are insufficient to justify the imposition of a burden on the ability to practice a lawful occupation.[89] The Georgia Supreme Court singles out economic protectionism,[90] and

Ga. at 514, 176 S.E. at 400 (electrical contractors); *Bramley*, 187 Ga. at 833, 839–40, 2 S.E.2d at 654 (photography); *Jenkins*, 216 Ga. at 546, 118 S.E.2d at 96 (plumbers and steam fitters); Waller v. State Const. Indus. Licensing Bd., 250 Ga. 529, 530–31, 299 S.E.2d 554, 556 (1983) (more plumbers); *but cf. Odell*, 97 Ga. at 671, 25 S.E. at 174 (enabling bets on horse racing is not an occupation deserving of inherent constitutional protections).

85. *Jackson II*, 316 Ga. at 391, 888 S.E.2d at 491.

86. *Jackson II*, 316 Ga. at 391, 888 S.E.2d at 492; *see Bramley*, 187 Ga. at 835, 2 S.E.2d at 651 (defining the limits of the state's police power by the bounds of health, safety, and public morals); *Jenkins*, 216 Ga. at 540, 118 S.E.2d at 93 ("'The right to work and make a living . . . . may be abridged . . . only to the extent[] that is necessary reasonably to insure the public peace, safety, health, and like words of the police power.'") (quoting Richardson v. Coker, 188 Ga. 170, 175, 3 S.E.2d 636, 640 (1939)).

87. *Jackson II*, 316 Ga. at 391, 888 S.E.2d at 492.

88. *Id.*

89. *Id*. at 392, 888 S.E.2d at 492.

90. "The protection of domestic businesses and industries against foreign competition by imposing high tariffs and restricting imports." *Protectionism*, BLACK'S LAW DICTIONARY (11th ed. 2019). In contrast to Georgia, "[s]ome federal circuits . . . say that economic protectionism alone is a legitimate reason for the government to create an occupational license." Correspondence with Jaimie Cavanaugh, *supra* note 12, at 19. *See*, *e.g.*, Powers v. Harris, 379 F.3d 1208, 1221 (10th Cir. 2004) (holding that "absent a violation of a specific constitutional provision or other federal law, intrastate economic protectionism constitutes a legitimate state interest").

the generic interest of quality or honesty of goods and services[91] as the primary examples.[92]

In so holding, the Georgia Supreme Court explicitly dispelled one of the elephants in the room—whether or not this new test is the same as the federal rational basis test.[93] Specifically, challengers in Georgia now have to disprove every reasonably conceivable justification for an occupational license to win a challenge.[94]

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91. The Georgia Supreme Court understood this concern to mean, "when the given profession does not create special need to deal with the quality or honesty of goods and services, but shares those risks on the same terms as some other businesses not so regulated." *Jackson II*, 316 Ga. at 392, 888 S.E.2d at 492. Importantly, were the court to "accept[] general quality as a justification for licensure, then any occupation could be licensed based on that reason." Correspondence with Jaimie Cavanaugh, *supra* note 12, at 19; *Jackson II*, 316 Ga. at 392, 888 S.E.2d at 492 (quoting *Bramley*, 187 Ga. at 837, 2 S.E.2d at 652–53) ("If [generic interests in quality] should be held to be a sound argument, the police power could be used to law upon any business, however unrelated to the general welfare . . . burdensome and unreasonable . . . restrictions.").

92. *Jackson II*, 316 Ga. at 392, 888 S.E.2d at 492; *see, e.g.*, *Bramley*, 187 Ga. at 837, 2 S.E.2d at 652–53 (using the business of photography as an illustration that although business of any kind is susceptible to adverse public interests, that possibility does not extend the State's police power the right to layer burdensome restrictions upon that industry separate from the interests of general welfare); Moultrie Milk Shed v. City of Cairo, 206 Ga. 348, 352, 57 S.E.2d 199, 202 (1950) ("If free enterprise is to mean more than mere words, it must not become the victim of arbitrary and discriminatory legislation.").

93. *Jackson II*, 316 Ga. at 391–92, 888 S.E.2d at 492. The rational basis test (or rational basis review) is the minimum standard of review that appellate courts employ to determine the validity and constitutionality of a statute or ordinance. In its most basic form, a statute or ordinance may be upheld under the rational basis test if the law is "*rationally related to any legitimate government purpose*." Erwin Chemerinsky, *The Rational Basis Test is Constitutional (and Desirable)*, 14 GEO. J. L. & PUB. POL'Y 401, 401 n.6. (summarizing various examples from the United States Supreme Court which analyze laws under the rational basis test). As such, the rational basis test is by default deferential to the government, and most statutes facing rational basis review are upheld. *Id.*

94. *Jackson II*, 316 Ga. at 392, 888 S.E.2d at 492. The Georgia Supreme Court pointed to Fed. Communications Comm. v. Beach Communications, Inc. for an articulation of the rational basis test. 508 U.S. 307, 313 (1993) ("In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection [or due process] challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification."). *See also* Cooper v. Rollins, 152 Ga. 588, 593–94, 110 S.E. 726, 729 (1922) ("The classification must have some reasonable relation to the subject-matter of the statute. There must be a legitimate ground for differentiation. Arbitrary or capricious discriminations are not permissible under the Constitution."). For example, where an examining board created by statute allocates licensure based upon its opinion of "the necessary moral qualifications," that level of subjectivity is likely arbitrary and capricious. *Bramley*, 187 Ga. at 838–39, 2 S.E.2d at 655 (photography); *see also Jenkins*, 216 Ga. at 541, 118 S.E.2d at 94 (involving the same situation in the context of plumbers and steam fitters).

3. Step Three: The Challenger Must Ultimately Prove Unreasonable Interference

In Georgia, a tried and true canon of statutory interpretation is the principle that statutes hold the presumption of constitutionality until proven otherwise.[95] To overcome the presumption of constitutionality, the challenging party carries the burden to demonstrate a "clear and palpable" conflict with the constitution.[96] The Georgia Supreme Court adopted this principle in the third prong by requiring a party to prove an "unreasonabl[e] interfere[nce] with [his or] her right to practice the occupation of [his or] her choosing."[97]

B. The Test Applied

In applying the test, the Georgia Supreme Court determined that the Act was unconstitutional and violated the due process rights of Jackson and ROSE to practice the occupation of lactation care provider.[98]

1. The Act Imposes Significant Burdens on the LC Profession

The Act states that only IBCLC-certified LCs may practice "[l]actation care and services," which are defined broadly as "the clinical application of scientific principles and . . . evidence . . . regarding lactation care and services."[99] To make a determination of whether the Act burdened the LC profession, the Georgia Supreme Court first had to decide if the vocational responsibilities of Jackson and ROSE amounted to "lactation

95. *Jackson II*, 316 Ga. at 393, 888 S.E.2d at 493.

96. *Id.* This principle is constantly being updated in its authority, and is not absent from Georgia precedent surrounding occupational licensing. *See* Session v. State, 316 Ga. 179, 191–92, 887 S.E.2d 317, 327 (2023) (citing Ammons v. State, 315 Ga. 149, 163, 880 S.E.2d 544, 554 (2022)); *Cooper*, 152 Ga. at 590–91, 110 S.E. at 727–28 (explaining that while the content of the regulation and its application to specific industries are state-level questions, the Georgia Constitution speaks authoritatively to those questions by providing the parameters of the state's police power, namely, the "clear and palpable" standard); *Bramley*, 187 Ga. at 832, 2 S.E.2d at 650 (same).

97. *Jackson II*, 316 Ga. at 393, 888 S.E.2d at 493. Importantly, the Georgia Supreme Court noted that "rational" regulations survive the test. *Id. See, e.g.*, *Cooper*, 152 Ga. at 593, 595, 110 S.E. at 729 (upholding an occupational regulation of barbers because it prevented the spread of disease). *But see*, *e.g.*, *Richardson*, 188 Ga. at 175, 3 S.E.2d at 640 (finding unreasonable an ordinance requiring an electrical contractor to submit to an examining board his ability to satisfactorily complete contracts with his clients).

98. *Jackson II*, 316 Ga. at 393–99, 888 S.E.2d at 493–97.

99. O.C.G.A. § 43-22A-3(5) (2016).

care and services" under the Act.[100] Employing a textualist analysis,[101] the Georgia Supreme Court focused on the plain meaning of the word "clinical" to determine that lactation care encompasses direct support to breastfeeding mothers.[102] The evidence supported the court's conclusion that the work of Jackson and ROSE involved direct support to mothers in the various areas of education, assessment, evidence-based development, and evaluation, all enumerated under the Act.[103] Training as a CLC, IBCLC, or the free training provided by ROSE was not dispositive, because under the plain meaning of the Act Jackson and the employees of ROSE provided lactation care and services as defined by the Act.[104] Accordingly, the Georgia Supreme Court determined that the Act imposed significant burdens on Jackson and ROSE.[105]

2. The State Lacks Sufficient Interest in Regulating the LC Profession through the Act

While the Act declares its legislative purpose to be "protect[ing] the health, safety, and welfare of the public," the Georgia Due Process Clause "requires more than a talismanic recitation of an important public

100. *Jackson II*, 316 Ga. at 394, 888 S.E.2d at 493–94.

101. Textualism is the method of legal interpretation that asserts that the goal of interpretation is to ascertain and apply the original public meaning of the words and phrases comprising a legal text, outside of subjectivity, and in consideration of history and context. Nels S.D. Peterson, *Principles of Georgia Constitutional Interpretation*, 75 MERCER L. REV. 1, 4 (2023). For an in-depth discussion on textualism as defined and implemented in the jurisprudence of the Georgia Supreme Court, *see id.* at 4–8.

102. *Jackson II* at 394–95, 888 S.E.2d at 494. When analyzing a statutory text, the Georgia Supreme Court begins with the text itself, reading the text, "in its most natural and reasonable way, as an ordinary speaker of the English language would." Zaldivar v. Prickett, 297 Ga. 589, 591, 774 S.E.2d 688, 691 (2015) (citing FDIC v. Loudermilk, 295 Ga. 579, 588, 761 S.E.2d 332, 340 (2014)). Engaging in this level of statutory analysis requires searching through both general dictionaries and legal dictionaries at the time the statute was passed in order to discern the common meaning of a word as it was understood by ordinary English language speakers at the time of enactment. *Jackson II*, 316 Ga. at 394 n.14, 888 S.E.2d at 494 n.14; *see, e.g.*, State v. Henry, 312 Ga. 632, 637, 864 S.E.2d 415, 420 (2021) (using dictionaries to determine the meaning of the word "justifiable"). In *Jackson II*, the Georgia Supreme Court interpreted the word "clinical" to mean "involving direct observation of the patient [or] . . . based on or characterized by observable and diagnosable symptoms" and "pertaining to or founded on actual observation and treatment of patients[.]" *Jackson II*, 316 Ga. at 394–95, 888 S.E.2d at 494 (using both general and medical dictionaries to define "clinical"). By contrast, the trial court concluded that "clinical" excluded lactation care and service. *Jackson II*, 316 Ga. at 395, 888 S.E.2d at 494.

103. *Jackson II*, 316 Ga. at 395, 888 S.E.2d at 494; O.C.G.A. § 43-22A-3(5)(A)–(F) (2016).

104. *Jackson II*, 316 Ga. at 396, 888 S.E.2d at 494–95.

105. *Id.* at 396, 888 S.E.2d at 495.

interest."[106] Therefore, under the newly-created test, the Georgia Supreme Court instead took up the task of analyzing the sufficiency of the Secretary of State's proposed interest in the Act: increasing the accessibility of licensed lactation care.[107]

First, the Secretary of State admitted that breastfeeding care is safe.[108] The record showed that there was no evidence that anyone in Georgia had ever been harmed by an unlicensed lactation consultant.[109] Likewise, the Secretary of State also admitted he had no evidence of harm to the public from non-IBCLCs either before or after the Act was passed.[110]

Second, at oral argument counsel for the Secretary of State attempted to make a connection between receiving poor care from an unlicensed lactation care provider leading to a mother stopping breastfeeding early, which *might* deprive an infant of essential nutrients or result in feeding the baby more than necessary.[111] The court noted that this connection was speculative in its entirety, and could not hold weight against the substantial evidence to the contrary, including the fact that lactation care by non-IBCLC practitioners is safe and helpful.[112]

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106. O.C.G.A. § 43-22A-2 (2016); *Jackson II*, 316 Ga. at 396, 888 S.E.2d at 495. *Compare Bramley*, 187 Ga. at 839, 2 S.E.2d at 654 (striking down a licensing law concerned with potential fraud from unskilled photographers did not harm the general welfare) *and Richardson*, 188 Ga. at 173–75, 3 S.E.2d at 640 (striking down a licensing law which vested authoritative power in an examining board to determine licensure for electricians did not harm the general welfare) *with* City of Lilburn v. Sanchez, 268 Ga. 520, 522–24, 491 S.E.2d 353, 355–57 (1997) (upholding an ordinance requiring the housing of pet pot-bellied pigs on lots greater than one acre where evidence demonstrated that pigs housed on less than one acre caused harm to the health and welfare of the neighbors) *and Bazemore*, 121 Ga. at 620–21, 49 S.E. at 701–02 (upholding a law requiring written consent in the seed cotton trade so as to prevent theft).

107. *Jackson II*, 316 Ga. at 396–97, 888 S.E.2d at 495.

108. *Id.* at 398, 888 S.E.2d at 496.

109. *Id.*

110. Findings of the lack of any harm stemming from lactation providers were substantiated by the Lactation Consultant Advisory Group established under the Act, as the Group had not yet, "received any complaints regarding untrained or incompetent providers of lactation care and services." *Jackson II*, 316 Ga. at 398, 888 S.E.2d at 496. Rather, the Review Council's report identified removing CLCs from the pool of licensure candidates as the true source of potential harm. Georgia Occupational Regulation Review Council, *supra* note 8, at 13.

111. *Jackson II*, 316 Ga. at 399, 888 S.E.2d at 496–97.

112. *Id.* at 399, 888 S.E.2d at 497. The Georgia Supreme Court had seen the "incompetent practitioner" argument–that regulation of lawful occupations prevents "incompetent practitioners" from reducing public access to those occupations–before in *Bramley*, where the Georgia Supreme Court in 1939 disapproved of licensing photographers because of the potential that decision would have in opening the floodgates to allow for the

Ultimately, the Georgia Supreme Court held that the State did not offer a sufficient interest in regulating the LC profession, but rather the Act restricted the employment of LCs by imposing burdensome regulations.[113]

3. The Means Do Not Justify the Ends

The Georgia Supreme Court's discussion of the third prong was brief. Under the third prong, Jackson and ROSE had to establish that the Act did not advance its public purpose of "promoting access to quality care" and protecting the "health, safety, and welfare of the public by providing for the licensure and regulation of . . . lactation care and services."[114] As to the state, the means of regulation chosen must justify the end result. Because the Secretary of State failed to proffer evidence of harm under the second prong, then the state cannot restrict the ability of Jackson and ROSE to work as lactation providers.[115] Therefore, the Georgia Supreme Court declared the Act unconstitutional.[116]

V. IMPLICATIONS

A. A Framework for Analyzing Constitutional Challenges to Occupational Licensing Statutes Finally Exists in Georgia, But Now What?

The Supreme Court of Georgia in *Raffensperger v. Jackson* announced a framework to apply in considering occupational licensing challenges under the Georgia Constitution's Due Process Clause.[117] As a result, injured parties now know how to challenge future licensing laws that violate their right to economic liberty. However, the parameters of the test have yet to be defined, as a challenge to an occupational license under the *Jackson II* framework has yet to be brought before the Georgia courts. The opportunities to flesh out the *Jackson II* framework are abundant, as Georgia boasts 42 licensed professions, with 41 remaining as potential contenders for disputes.[118] While Georgia case law will

licensing of virtually any profession without addressing due process. *Jackson II*, 316 Ga. at 399 n.19, 888 S.E.2d at 497 n.19; *Bramley*, 187 Ga. at 838, 2 S.E.2d at 653.

113. *Jackson II*, 316 Ga at 398, 888 S.E.2d at 496.

114. *Id.* at 385, 393, 398, 888 S.E.2d at 488, 493, 496.

115. *Id.* at 398–99, 888 S.E.2d at 496.

116. *Id.* at 399, 888 S.E.2d at 497.

117. *Id.* at 390, 888 S.E.2d at 491.

118. *See Georgia Licensing Boards*, GEORGIA SECRETARY OF STATE BRAD RAFFENSPERGER, https://sos.ga.gov/page/georgia-licensing-boards [https://perma.cc/2EVU-FKRE] (last visited Nov. 8, 2023).

provide a foundation for which professions have been subject to greater oversight,[119] further litigation will ultimately determine how stringent Georgia's economic liberty standard will be.

Perhaps the most interesting development under the *Jackson II* framework will come when, unlike this case, the state is able to show sufficient interest in regulating a lawful profession. Where the state *can* show harm to the public absent the regulation, the challenger will have to rely on a unique mix of policy and factual support to meet their burden of showing that the means of the regulation is not adequate to address the ends of the state's purpose in regulating the profession.[120] It is in the interest of injured parties seeking to challenge licensing laws to have solid ground on this point prior to commencing litigation.

B. Georgia Did It, You Can Too! State Constitutions Can Provide More Protections to Economic Liberty than the U.S. Constitution

In *Jackson II*, the Georgia Supreme Court made an explicit distinction between the second prong of its test—the government's burden to provide an adequate justification in regulating an occupation—and federal rational basis review.[121] Although it may be overlooked, the court's decision[122] reflects the growing trend of states resorting to state constitutional interpretation as the arbiter and defender of state

119. The Institute for Justice maintains a comprehensive report entitled *License to Work: A National Study of Burdens from Occupational Licensing*, which tracks and compares licensing requirements for 102 lower-income occupations across all fifty states. INSTITUTE FOR JUSTICE (Nov. 2022), https://ij.org/report/license-to-work-3/ [https://perma.cc/PDZ2-AYX5]. The report measures the burdens that states impose on workers through licensing by looking at five common types of licensing requirements: fees, education and experience, exams, minimum grade completed in school, and minimum age. *Id.* at 9. Such lower-income occupations may become some of the first candidates to challenge a licensing law under the *Jackson II* framework.

120. *See, e.g., Richardson*, 188 Ga. at 173–74, 3 S.E.2d at 640 (holding that regulating the installation of electrical wiring protected the public from the risk of fire in defective installation). In *Richardson*, the challenger alleged that the ordinance in question was unreasonable because it was the "system of inspections" by city officials that protected citizens against dangerous electrical installation. *Id.* at 171, 3 S.E.2d at 638. Essentially, the regulation imposed by the city was an improper means of achieving public safety, and instead promoted the ends of reducing competition in the electric trade. *Id.*

121. *Jackson II*, 316 Ga. at 391–92, 888 S.E.2d at 492. *See supra* notes 93–94 and accompanying text.

122. *Jackson II*, 316 Ga. at 392 n.11, 888 S.E.2d at 492 n.11. ("*None* of our prior cases resolving state due process challenges to occupational licensing statutes *expressly adopted the federal due process test* . . . . our prior cases applying that test to state due process challenges in other contexts are not controlling here.") (emphasis added).

economic liberty.[123] It is true that the Georgia's *Jackson II* test might be subject to more scrutinized restrictions over time. However, what *Jackson II* echoes throughout the opinion is that its framework is nothing like the federal rational basis test. The *Jackson II* framework asks the government to provide insight on the harm the legislature is trying to address in promulgating licensing regulations, and forces the courts to address the factual evidence in the record before them.[124] In contrast, injured parties challenging laws imposing restrictions on economic liberty in federal court do not have as much of a fighting chance, as the federal rational basis test substitutes the factual record for acceptance of a government's legislative judgment.[125] The *Jackson II* framework provides state courts with more ownership.[126] In this regard, "federalism could be a solution . . . . about which rights to recognize, [through] a renewed focus on state constitutions as a meaningful source of rights protection[.]"[127] As for now, lactation care providers in Georgia join an "underdog" group of professions securing wins in the name of economic liberty including, "casket makers in Louisiana, eyebrow threaders in Texas, property managers in Pennsylvania, and end-of-life doulas in California."[128]

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123. In other words, "[b]y adopting a more rigorous approach protective of economic rights, Georgia bucked the trend of state courts mapping the federal Constitution onto state constitutions and treating the guarantees as co-extensive." Jack Fitzhenry, *For "Lactation Consultants," Georgia Now a Land of (Breast) Milk and Honey*, THE HERITAGE FOUNDATION (Jun. 15, 2023), https://www.heritage.org/courts/commentary/lactation-consultants-georgia-now-land-breast-milk-and-honey [https://perma.cc/VXE7-ADFW].

124. *See Jackson II*, 316 Ga. at 391–92, 888 S.E.2d at 492; Correspondence with Jaimie Cavanaugh, *supra* note 12, at 20, 30.

125. *See, e.g.*, Tiwari v. Friedlander, 26 F.4th 355, 363–64 (6th Cir. 2022) (holding that Kentucky's certificate-of-need law had a legitimate interest in furthering healthcare, and that a rational connection existed between the law's means and ends–increasing cost efficiency, quality of care, and the health infrastructure in the state).

126. Correspondence with Jaimie Cavanaugh, *supra* note 12, at 30. *See* also *Jackson II*, 316 Ga. at 397–98, 888 S.E.2d at 495–96 (providing examples of where the Georgia Supreme Court declined to extend the State's police power).

127. Fitzhenry, *supra* note 123 (quoting Jeffrey S. Sutton, 51 IMPERFECT SOLUTIONS: STATES AND THE MAKING OF AMERICAN CONSTITUTIONAL LAW ix (2018)).

128. Renée Flaherty, *Licensed Consultants Are Resisting Rational-Basis Review in Court*, BLOOMBERG LAW, (Jul. 26, 2023), https://news.bloomberglaw.com/us-law-week/licensed-consultants-are-resisting-rational-basis-review-in-court [https://perma.cc/T2JH-JNKJ]; St. Joseph Abbey v. Castille, 712 F.3d 215 (La. 2013); Patel v. Texas Dept. of Licensing and Regulation, 469 S.W.3d 69 (Tex. 2015); Ladd v. Real Estate Commission, No. 321 M.D. 2017, 2022 WL 19332047 (Pa. Commw. Oct. 31, 2022); Full Circle of Living and Dying v. Sanchez, No. 2:20-cv-01306-KJM-KJN, 2023 WL 373681 (E.D. Cal. Jan. 24, 2023).