Proposal: Scrutinizing Georgia's Reforms under an Empirical Lens as a National Model

1. Questions Addressed

This paper will address versions of the following questions on the Call for Papers while uniquely favoring depth over breadth by focusing on a single state.

a. How does agency adjudication work in the 50 states? In what ways does agency adjudication in the states differ from federal agency adjudication? Are there lessons for federal reform in state practice?
b. Justice Thomas' Axon concurrence seems to suggest that the combination of adjudication of private rights and back-end deference is the problem. Would it matter if deference (to facts, law, or both) went away?

- **We will explore this question empirically as a matter of Georgia state law**.

2. Preliminary Introduction/Abstract

As Ray Charles famously sang in the 1960s, "Georgia on my mind." In bringing this sentiment into a new context, this paper will seek to put recent Georgia reforms into the national spotlight in discussions surrounding agency adjudication. Unlike other state changes to administrative law spurred by constitutional amendment or judicial decision, Georgia has done so by legislative action. These reforms have been relatively uncontroversial on a state level, passing both state legislature chambers with commanding majorities. Accordingly, Georgia is a prime case study for an empirical analysis of the success or lack of legislative reforms to agency adjudication, which can serve as an example for productive reform nationally. In other words, if Georgia's reforms worked, why? If not, what elements of agency adjudication should be preserved or altered? What lessons can be learned?

Administrative reform does not occur in a vacuum so as not to miss the forest through the trees, this paper will help contextualize Georgia's reforms with a two-pronged empirical approach. Little scholarship has been written on the empirical consequences of both Georgia's 2018 ALJ structure and procedure aimed at promoting efficiency and an appearance of impartiality based on a state council's final report on the issue.

First Prong: HB 790

While Malcolm Rich and Alison Goldstein's 2019 article *The Need for a Central Pannel Approach to Administrative Adjudication: Pros, Cons, and Selected Practices* addresses this reform (to be outlined in this proposal), our paper will seek to take their discussion a step further by investigating some of the author's predictions and hypotheses in the context of state practice in the following years.

Below are some of the forecasts this paper will seek to shed light on:

1. **"**Hence, the new default rule would generally eliminate the two-tier system of review because an ALJ's decision would be final, automatically entitling the parties to seek judicial review upon the decision's rendition."
2. "Moreover, the single-tier system will increase the public's perception of justice in the administrative hearing process as a single tier of review lends a stronger appearance of impartiality and finality to the process."
3. "However, in its Final Report, the Council indicated that a possible disadvantage to the new system would be the reduction in 'agencies' authority over decisions directly affecting them.'"
4. "As such, prior to H.B. 790's enactment, parties seeking an administrative hearing were at the whim of agencies with regard to when their cases would be heard and even if their cases would be heard at all."
5. "In its Final Report, the Council indicated that one possible disadvantage of this new time constraint is that it may negatively impact an agency's ability to resolve the request outside of the hearing process."
6. "ALJs' augmented enforcement authority is anticipated to improve the efficiency of the administrative hearings process. 'Allowing for [the] imposition of sanctions lessens the need for parties to seek action in superior courts [for enforcement] while their case is ongoing.'...[T]his increased power of ALJs is predicted to discourage parties from seeking subpoenas for persons they know will not appear or submitting improper pleadings, both of which are calculated to delay the process, effectively functioning as unauthorized continuances."

Research Questions:

- Using Westlaw, and official interviews, if necessary and pragmatic, we will conduct an empirical study on the success of these reforms compared to pre-passage statistics (approximately three years).
- How has judicial review worked in practice? How has the timeline changed? Have these reforms been successful?
- What are analogs that could be adopted on the federal level? What was unique about the political situation in Georgia that bolstered these reforms?

Additionally, in 2019, the Georgia Supreme Court granted certiorari to determine whether administrative deference 'is in tension with [their] role as the principal interpreter of Georgia law." While they did not decide the issue in *City of Guyton v. Barrow*, this paper, through a comprehensive analysis of appellate decisions in the state, will seek to determine whether any correlation exists between the 2018 reforms and growing skepticism toward back-end state-level deference among the Georgia judiciary.

Second Pront: Relating to Back-End Deference

In 2021, Georgia's legislature adopted the following provision:

> "All questions of law decided by a court or the Georgia Tax Tribunal pursuant to this subsection, including interpretations of constitutional, statutory, and regulatory provisions, shall be made without any deference to any determination or interpretation, whether written or unwritten, that may have been made on the matter by the department, except such requirement shall have no effect on the judicial standard of deference accorded to rules promulgated pursuant to the Georgia Administrative Procedure Act."

Research Questions:

- Using Westlaw, we will seek to address an empirical question on this prong as well: How have Georgia courts adopted to the end of deference in this subsection of cases (with a comparison to approximately the preceding three years)?

- What lessons can legislators/scholars learn from the fallout regarding how back-end deference can be limited in other contexts? How has this changed case outcomes, empirically, where the state of Georgia is a party?
- How did the win-loss rate change?

Conclusion:

By conceptualizing the issue broadly, the paper will answer the following question: Can Georgia be a model for the nation? We will emphasize states as the laboratories for democracy to explore whether, even if they cannot be adopted federally, other state-level reforms are possible.

Our anticipated thesis positions Georgia as a nuanced example of how legislative reforms can change the system of administrative adjudication, which contributes to the larger discussion because Georgia's reforms, as an example for national solutions, have not been scrutinized empirically and have largely gone unnoticed. By putting this empirical evidence at the forefront of our approach, this paper will aid a national discussion over whether coercive agency adjudication should be ended because it revolves around what reforms are possible to minimize coercion that is successful on balance in both minimizing bias concerns and maximizing efficiency.

This paper will take a balanced view by exploring whether, if these robust reforms have yet to have sufficient empirical success in Georgia, administrative agency adjudication must be scrapped entirely. In other words, if Georgia's reforms did not work, can anything? Consequently, this paper will also address what sufficient success looks like. Does it vary from state to state?