

No. _____

In the Supreme Court of Georgia

ROBERT DONALD GARRETT, SR., SARAH V. GARRETT, WILLIAM
BLAINE SMITH, HELEN DIANE SMITH, MARVIN SMITH, JR., PATRICIA
SMITH, JOEL BRADFORD REED, KATHY LYNN REED, LEO JOHN
BRIGGS, GEORGIA ANN BRIGGS, SALLY G. WELLS, DONNA N. GAR-
RETT, VERNE G. HOLLIS, HERUS ELLISON GARRETT, and THOMAS
AHMAD LEE,

Petitioners,

v.

SANDERSVILLE RAILROAD COMPANY,

Respondent.

On Appeal from the Court of Appeals of Georgia
Case No. A26A0275

PETITION FOR WRIT OF CERTIORARI

William Maurer*
INSTITUTE FOR JUSTICE
600 University St.
Suite 2710
Seattle, WA 98101
Tel: (206) 957-1300

Elizabeth L. Sanz*
Michael Greenberg*
INSTITUTE FOR JUSTICE
901 North Glebe Rd.,
Suite 900
Arlington, VA 22203
Tel: (703) 682-9320

Grant E. McBride,
Ga. Bar No. 109812
SMITH, WELCH, WEBB &
WHITE, ATTORNEYS AT LAW
280 Country Club Drive
Stockbridge, GA 30281
Tel: (770) 957-3937

Counsel for Petitioners

*Pro Hac Vice Applications Forthcoming

QUESTIONS PRESENTED

Georgia law requires a railroad to receive permission from the Georgia Public Service Commission before it may condemn private property. The Sandersville Railroad Company obtained that approval to take Petitioners' land. Petitioners challenged the taking, arguing, among other things, that it was unconstitutional because the line Sandersville plans to build will not be open to all as of right and on equal terms. On appeal, the Court of Appeals declined to reach Petitioners' constitutional challenge to the taking. The court instead construed this Court's transfer order, which concluded that the case fell outside this Court's exclusive jurisdiction, to mean that the Court of Appeals could not consider Petitioners' constitutional challenges to the taking at all. The Court of Appeals then affirmed the PSC on statutory grounds by deferring to the PSC's interpretation of the law. App'x 11 (“[W]e lack the authority to substitute ou[r] judgment’ for that made by the PSC here.” (citation omitted)). The questions presented are:

1. Whether the Georgia Constitution permits a private railroad to condemn land for a rail line not open to all as of right—one for which the railroad keeps the power to exclude customers, refuse to haul certain materials, and serve only those who agree to its individually negotiated contracts.

2. Whether OCGA § 22-1-1(9)'s designation of the “providing of channels of trade” as a public use displaces the constitutional public-use requirement that a rail line be open to all as of right.

3. Whether this Court's determination that an appeal does not invoke its exclusive jurisdiction—because it requires only the application of well-settled constitutional principles—bars the Court of Appeals from reaching the constitutional challenges to a taking.

4. Whether public use is a question of law that courts must decide de novo, rather than a question of fact on which courts must defer to the determinations of the Public Service Commission.

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INTRODUCTION

For over a century, Georgia courts have conditioned a railroad's exercise of eminent domain on the resulting line being open to everyone as of right. A railroad that can exclude customers, refuse certain cargo, and pick its shippers serves a private use, not a public one. The Court of Appeals abandoned that requirement. This Court should grant review to protect the long-cherished right to hold land free from a private company's seizure for purely private gain.

Respondent Sandersville Railroad Company seeks to condemn land belonging to the Garrett, Smith, Reed, and Briggs families ("Petitioners") to build a 4.5-mile spur track that will primarily serve a private quarry. The PSC's own hearing officer found as fact that "Sandersville would not be offering its services as a common carrier." V13:15-16. That makes its line a private use. Georgia constitutional law has long said so.

The Court of Appeals reached the opposite conclusion by making two significant errors. First, it refused to apply constitutional principles, limiting its review to "statutory questions"—even though this Court's Transfer Order directed it to apply the "well-settled" constitutional public-use standard. Second, it deferred to the PSC's public-use determination as a factual finding rather than deciding it as a legal question, placing the constitutional protection Georgia law guarantees property owners at an agency's whims.

Without this Court’s intervention, the Court of Appeals’ decision will cement a precedent severely weakening protections for private property—and the ability to invoke constitutional protections at all—throughout this state. This Court should grant this Petition and reinvigorate the property-rights protections that are of great concern, gravity, and importance to every Georgia property owner.

JURISDICTION

I. Basis for this Court’s Jurisdiction.

This Court has jurisdiction to review the Court of Appeals’ decision pursuant to Ga. Const., Art. VI, Sec. VI, ¶ V, and OCGA §§ 50-13-20, 15-2-8, and 5-6-15.

II. Filing Dates.

The Court of Appeals issued its decision (App’x 1-14) on April 15, 2026. It issued its order denying Petitioners’ motion for reconsideration (App’x 15) on May 26, 2026. Under Rule 38, this Petition is timely filed within twenty days of that order.

STATEMENT OF THE CASE

A. Factual Background

1. Sandersville Is a Private Railroad That Reserves For Itself the Right to Exclude Customers.

Sandersville is a private short-line railroad operating ten miles of mainline track in Sandersville, Georgia—about 25 miles from Petitioners’ land near Sparta. V12:236; V5:31-32. It provides contract switching services connecting a handful of

industrial customers to a larger Norfolk Southern line in Washington County and has no operations in or near Sparta. V5:31-32.

Sandersville seeks to build a new rail line, the “Hanson Spur,” connecting the Hanson Quarry to a larger CSXT rail line in Hancock County, just outside of Sparta. V5:33-35. The plan is for the quarry to serve as the primary user of the spur, with four other companies having also “commit[ted] to using” it. V5:35. Sandersville would operate the line “as a private switch carrier” to connect potential users with the larger CSXT line. V5:35; V12:108. “In this more limited scope of operation,” shippers can use the line only if they “negotiate a contract rate on mutually satisfactory terms” with Sandersville. V12:108; *see also* V5:112, V5:181-182. “Sandersville would not be offering its services as a common carrier” on the proposed Hanson Spur. V13:15-16 (PSC Hearing Officer’s undisputed finding). Unlike a traditional utility, Sandersville may refuse service to any would-be customer, restrict what it hauls, and discriminate freely in its terms and rates.

2. Petitioners and Their Land.

Petitioners are members of the Garrett, Smith, Reed, and Briggs families, whose properties lie in Hancock County. The Smiths’ great-grandmother was born into slavery on land her descendants now own. V9:84. The Garretts have held their land since just after the Civil War; by the time this case began, Don Garrett had lived there 72 of his 76 years. V9:214-215. Joel Reed hunts and fishes on his property with

his sons and grandchildren. V9:330-331. Leo and Georgia Briggs have kept their property in its natural state for 26 years. V9:178. Sandersville’s taking “will destroy many attributes of [Petitioners’] remaining property,” V13:10 (PSC Hearing Officer finding), including mostly orphaning the back halves of Petitioners’ parcels, V9:223.

3. Sandersville’s Proposed Line Is For Economic Development.

Before filing its petition for approval to condemn Petitioners’ land, Sandersville publicly—and to Petitioners—promoted the Hanson Spur as purely for economic development V9:126, V9:232, V9:240, V9:244. Yet Georgia law expressly prohibits takings for “[e]conomic development.” OCGA § 22-1-1(9)(B). Sandersville’s PSC petition and pre-filed testimony never used the term “channels of trade”—the statutory “public use” it would later claim it qualified as—nor cited the statute defining “channels of trade” as a public use. V1:116-122; V5:30-41; OCGA § 22-1-1(9)(A)(iii).

Apparently realizing it was promoting the line for a purpose Georgia law forbids, Sandersville shifted course midway through the hearing, suddenly invoking “channels of trade” in rebuttal testimony, using the phrase ten times when it had never used it before. *Compare* V5:30-41, *with* V12:84-114. Nothing in the substance of the project changed.

B. Procedural History

Georgia law requires railroads to obtain PSC approval before condemning private property. OCGA § 46-8-121. Sandersville filed its PSC petition in March 2023. After a four-day hearing, the hearing officer approved the Spur as a “channel of trade” and legitimate “public purpose,” V13:13-19, despite finding “Sandersville would not be offering its services as a common carrier” on the Spur. V13:15-16. The PSC adopted the hearing officer’s findings and conclusions on September 12, 2024. V14:30-31.

Petitioners sought judicial review in the Fulton County Superior Court, which acknowledged at oral argument that it rarely reversed an agency. It then gave “great weight” to the PSC’s legal interpretations. V22:199; Supp. V23:74-75. The court affirmed on February 4, 2025, holding that neither the United States nor the Georgia Constitution prohibited the taking. V22:201-209. Petitioners appealed directly to this Court on February 27, 2025. V1:1-2.

This Court transferred the case to the Court of Appeals on July 17, 2025. The Transfer Order acknowledged Petitioners had defended against the taking by arguing it would not serve a public use or purpose under the federal and state Takings Clauses. Transfer Order 1. But because their arguments did not “challenge ... the constitutionality of any *statute*” and the trial court had not “constru[ed]—or perform[ed] any independent analysis of the original public meaning of—any

constitutional provision,” *id.* (emphasis added), the principles underlying those arguments were “well settled.” *Id.* at 2. For those reasons, this Court concluded the appeal fell outside its exclusive appellate jurisdiction and transferred the case to the Court of Appeals—with instructions that the case requires the “application ... of well settled constitutional principles to the facts of [t]his case.” *Id.*

The Court of Appeals affirmed on April 15, 2026. It expressly limited its analysis to “statutory questions,” however, declining to consider Petitioners’ constitutional arguments. App’x 6.¹ It then treated the legality of the taking as a factual question and applied the “any evidence” standard of review to the PSC’s conclusions rather than deciding the legal question *de novo*. App’x 10-11. The court concluded that Petitioners’ “only remaining remedy ... must lie with either the General Assembly ... or the public, who elect the members of the PSC.” App’x 11. The Court of Appeals denied reconsideration on May 26, 2026. This petition follows.

¹ Because the Court of Appeals refused to reach any constitutional arguments, it failed to address Petitioners’ claims under not only the Georgia Constitution, but under the Fifth Amendment too. Even Sandersville recognizes the Transfer Order did not foreclose the Court of Appeals’ consideration of Petitioners’ federal claims: “The Transfer Order leaves Condemnees with the following arguments before this Court ... Whether Sandersville’s taking violates the U.S. Constitution because it purportedly involves exercise of eminent domain for the purpose of a ‘one-to-one transfer of property.’” Appellees’ Motion File Supp. Br. 7-8 (Jan. 9, 2026). If nothing else, this Court should grant this Petition, vacate the decision below, and remand this case for consideration of Petitioners’ federal claims.

ARGUMENT

Under Rule 40, certiorari is appropriate when the decision below “conflict[s] with other decisions of the Court of Appeals or decisions of this Court” in “cases of great concern, gravity, or importance to the public.” This case satisfies both marks. The Court of Appeals broke with a century of this Court’s (and the Court of Appeals’) precedent by weakening the constitutional test for whether a taking is for public, rather than private, use (Part I). Along the way, it broke with this Court’s precedent twice more: It declined to consider Petitioners’ constitutional arguments entirely, contrary to this Court’s decisions governing appellate jurisdiction and preservation of constitutional issues (Part II). And it treated public use as a *fact* question—erroneously deferring to an administrative agency on a *legal* question in conflict with this Court’s administrative-law precedent (Part III).

These errors are of grave public concern; if uncorrected, they will harm more than just Petitioners (Part IV). “Individual freedom finds tangible expression in property rights.” *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 61 (1993). The decision below subjects all Georgians’ private-property rights to private companies’ and agencies’ whims, undermining protections, both constitutional and statutory, the people have enacted. Indeed, if left standing, the decision below will make *all* constitutional rights more difficult to assert. Certiorari is warranted.

I. The decision below conflicts with precedent from this Court and the Court of Appeals by declining to apply the Georgia Constitution’s standard that a “public use” must be open to everyone as of right.

A. Georgia case law holds that railroads may only condemn property for projects open to all as of right.

This Court has never held a use to be public where the condemnor kept the power to select who could use the resulting service. Just the opposite: the public nature of a use “rests upon the fact that everybody who has occasion to use it may lawfully and *of right* do so.” *Harrold Bros. v. Mayor & Council of Americus*, 142 Ga. 686, 688 (1914) (emphasis added). Whether courts phrase it as “common carriage” or otherwise, the core question is the public’s right of use—“one of the essential and constituent obligations upon the part of the individual who attempts to exercise the right of eminent domain.” *Jones v. N. Ga. Elec. Co.*, 125 Ga. 618, 627 (1906) (holding electricity provider’s condemnation was for a public use because it would “serve all of the public fairly and without discrimination”).

Abandon that obligation and the use is no longer public. In *Mayor of Macon v. Harris*, a railroad held the power to take property for “transport[ing] passengers or freight or both for all the people,” but instead used that line in “a private arrangement for the benefit of two private corporations.” 73 Ga. 428, 436 (1884). That was not a public use. *See id.* at 435 (“The general assembly granted no such authority ... over private property If it had done so, it would have gone beyond its own constitutional powers[.]”). The lesson is simple: had all the people enjoyed a right of

use, the taking of property was lawful; because only a “private corporation” could use it, the taking was not a public use and thus unlawful. *Id.*

Bradley v. Lithonia & A.M.R. Co. teaches the same lesson. 141 Ga. 741, 742 (1914). A railroad, the Court there explained, “may ordinarily condemn private property ... to enable it to serve the public as a common carrier.” *Id.* In contrast, “the construction of a spur track ... for the purpose of serving an individual enterprise only is not a public purpose.” *Id.*; see also *Atlanta, S.M. & L.R. Co. v. Bradley*, 141 Ga. 740 (1914) (upholding injunction against railroad condemnation “for the purpose of constructing a spur track ... to afford transportation facilities for the owners of an individual enterprise”).

For a full century, neither this Court nor the Court of Appeals has strayed from these precedents. See *Tift v. Atl. Coast Line R.R. Co.*, 161 Ga. 432, 441-42 (1925) (“If the track is opened to the public, to be used on equal terms by all who may at any time have occasion to use it, so that all persons who have occasion to do so can demand that they be served without discrimination, not merely by permission, and if the track is subject to governmental control under general laws, and in the same manner as are the main lines of a railroad, then the use is a public one.”); *City of Doraville v. S. Ry. Co.*, 227 Ga. 504, 505, 508, 512 (1971) (describing a railroad as “quasi[-]public” after emphasizing several times that the railroad was a “common carrier”); *Cent. of Ga. R.R. v. Ga. Pub. Serv. Comm’n*, 257 Ga. 217, 218 (1987)

(reaffirming *City of Doraville* and citing its discussion of the “conduct of the railroad’s business *as a public carrier*” (emphasis added) (cleaned up)); *Dep’t of Transp. v. Livaditis*, 129 Ga. App. 358, 362-63 (1973) (finding the test of the purpose for condemnation is “the right of the public to use it,” and remanding for trial court to reconsider its finding of private use when no facts showed the company that would primarily use the condemned land “had the power to exclude others from its use”); *Emery v. Chattooga County*, 325 Ga. App. 587, 588 (2014) (affirming condemnation for road when “there [was] nothing to show that the general public would not have the *right* to use the road” (emphasis added)).

B. The Hanson Spur fails that test and the Court of Appeals’ failure to hold this taking unconstitutional creates a split in precedent.

Georgia law has thus never held a use to be public where the condemnor retained power to exclude the public, and neither has the Court of Appeals. Until now.

Here, the Hanson Spur will not be open to all as of right. The PSC’s own hearing officer found “Sandersville would not be offering its services as a common carrier,” V13:15-16, and Sandersville does not dispute that. That finding should have been fatal. The test demands “that every body who has occasion to use it may lawfully and of right do so.” *Hightower v. Chattahoochee Indus. R.R.*, 218 Ga. 122, 124-25 (1962) (equating the standard with whether the railroad is “planned as a common carrier”).

The court below nonetheless affirmed the PSC’s public-use finding on evidence that Sandersville “would allow anyone who contracts with it to use the Spur.” App’x 10. But Sandersville’s inclusion of only those parties with whom it chooses to contract is different from being open to all as of right. The latter would let customers “demand that they be served without discrimination, not merely by permission.” *Tift*, 161 Ga. at 442. Here, instead, Sandersville keeps the right to accept or reject customers, set case-by-case rates and terms, and discriminate freely among shippers. V5:35, V5:109-10, V5:181-82; V12:108; V13:15. That is not use as of right, open to the public, and that means this taking is not a public use.

In holding that it was, the Court of Appeals broke not just with this Court’s precedent but its own. *See, e.g., Livaditis*, 129 Ga. App. at 363; *Emery*, 325 Ga. App. at 588. Its decision thus creates two contradictory standards: one in which a condemner must include the public and one in which it may exclude it. Compounding the problem is that both standards exist in the same statutory landscape. The legislature’s latest act touching on public use is the Landowner’s Bill of Rights and Private Property Protection Act of 2006. *See* 2006 Ga. L. Act 444 (H.B. 1313). The Court of Appeals’ 2014 decision in *Emery* post-dates the Act. So does the decision below. Left as they are, these differing decisions create uncertainty about the meaning of that law that this Court should resolve.

C. The Court of Appeals split from precedent by holding that a statutory definition can overrule the constitutional requirement that the line be open to all as of right.

The Court of Appeals’ failure to apply the proper standard does not mean it ignored that standard entirely. The court did acknowledge, in passing, that this Court “held long ago” that “the public nature” of a spur track “rests upon the fact that everybody who has occasion to use it may lawfully and of right do so.” App’x 9 (quoting *Harrold Bros.*, 142 Ga. at 686). Then it changed the subject. The court turned to a different rule, drawn from OCGA § 22-1-1, where the legislature defined uses qualifying as “public.”

As the Court of Appeals recounted, among the legislature’s enumerated public uses is “the providing of channels of trade or travel.” App’x 8 (emphasis omitted) (quoting OCGA § 22-1-9(A)). The court then affirmed the PSC’s approval of the taking under that test—that the Hanson Spur “would amount to a ‘channel of trade’ and thus constituted a ‘public use.’” App’x 10.² Among the reasons the Court gave for concluding the Hanson Spur was a “channel of trade” was that anyone who “contracts” with Sandersville could use it. *Id.* But, as is discussed above, letting anyone who reaches a “contract” with Sandersville use the railroad is not the same as the

² Although the Court of Appeals limited its analysis to the statutory definition of “public use,” *see* p. 15, *infra*, its holding that a line not open to the public is nonetheless a public use because it provided a channel of trade will inform, and severely weaken, the constitutional requirement that takings be for a public use.

use being “of right.” It thus never applied that longstanding rule to the proposed taking here. Had it done so, Sandersville’s retention of the power “to exclude others” from the Hanson Spur would have been fatal to the condemnation. *Livaditis*, 129 Ga. App. at 363.

The Court of Appeals erred in treating the phrase “channel of trade” as overriding, displacing, or modifying the established rule. The historic standard and the statute fit together: the legislature meant to count as “public” only those “channels of trade” the public can access “of right.” This Court has long presumed that the legislature “enact[s] all statutes with full knowledge of the existing condition of the law and with reference to it.” *Summerlin v. Ga. Pines Cmty. Serv. Bd.*, 286 Ga. 593, 594 (2010). That includes “common law,” constitutional law, “and decisions of the courts.” *Id.* So, when the legislature defines a term (including “public use”), it is presumed to have “intended courts to apply the legal definition of that term as developed under common law and our existing jurisprudence.” *Id.* at 595; *accord, e.g., State v. Wierson*, 321 Ga. 597, 602-03 (2025) (interpreting Georgia’s newer statutory insanity defense to comport with “the decisional law” applying “this longstanding defense” “for more than a century”).

Other canons confirm the court’s error. The eminent-domain power is “dangerous and extraordinary,” so this Court has long demanded that “statutes under which it is claimed” be “strictly construed.” *Botts v. S.E. Pipe-Line Co.*, 190 Ga.

689, 693, 705 (1940). A strict reading—one that tracks the decisional law behind the term—is even more warranted here, because Section 22-1-1(9)’s public-use definition was adopted as “part of the Landowner’s Bill of Rights and Private Property Protection Act of 2006.” *City of Marietta v. Summerour*, 302 Ga. 645, 649-50 & n.1 (2017). That act’s “text, structure, and history,” this Court has explained, “reveals a remedial purpose of protecting property owners against abuse of ... eminent domain.” *Id.* at 654; *see id.* at 650 n.1 (explaining the act was “largely [a] response” to the U.S. Supreme Court’s capacious interpretation of the federal constitution’s Public Use Clause in *Kelo v. City of New London*, 545 U.S. 469 (2005)). Against that backdrop, reading Section 22-1-1(9) to lighten a condemnor’s burden of proving public use makes no sense. Yet that is exactly what the decision below does.

Even if all of that were wrong, though, the Constitution must win. This Court has said so for over a century. *Jones*, 125 Ga. at 624 (explaining that takings “for other than public purposes” would be unconstitutional). Indeed, the legislature itself instructed courts not to enforce statutes that “authoriz[e] the taking of property for private use rather than public use.” OCGA § 22-1-3. Other state high courts have recently done just that, invalidating takings by entities claiming the mantle of a traditional utility but not in fact serving *the public*. *See Wolfe v. Reading Blue Mountain*, 320 A.3d 1164, 1175-79 (Pa. 2024) (railroad); *Plaquemines Port Harbor & Terminal Dist. v. Nguyen*, 429 So. 3d 210, 213-17 (La. 2026) (port). The General

Assembly cannot declare a private use to be a public one and courts must reject any attempt by a condemnor to use a statutory designation to circumvent the constitutional requirement that a use be public before using eminent domain.³

Thus, the Court of Appeals should have interpreted OCGA § 22-1-1(9)'s definition of public use to incorporate the traditional, constitutional requirement that all comers be able to use the property as of right—or, in the alternative, it should have held Sandersville's proposed taking is unconstitutional. It did neither. This Court should grant this Petition and affirm a standard that has protected Georgia property owners for over 100 years.

II. The Court of Appeals set harmful precedent for every litigant in Georgia by equating this Court's lack of exclusive constitutional-question jurisdiction with the lack of a constitutional issue to decide at all.

Of course, the Court of Appeals' error extended only to its consideration of the statutory definition of "public use." That is because the Court of Appeals concluded the Transfer Order limited its analysis only to "the statutory questions ruled on by the trial court." App'x 6. It expressly declined to address the constitutional arguments that Petitioners had raised throughout the proceedings. Thus, the court never analyzed whether the Georgia Takings Clause or the Fifth Amendment impose

³ The Court of Appeals did not rely on the portion of OCGA § 22-1-1 that defines "railroads" as "public utilities" (with "public utilities" being "public uses"). OCGA § 22-1-1(9)-(10). If it had, the same analysis would govern: the statute reaches only those "railroads" traditionally seen as public uses (or "public utilities")—those open to all, free from discrimination, as of right.

requirements beyond what the PSC found sufficient. It never examined whether deferring the “public use” question to an elected administrative agency aligns with the judicial power assigned to courts by the Georgia Constitution. It never resolved whether Sandersville had satisfied the *constitutional* requirement that the line be “open to all.” Instead, it ignored Petitioners’ constitutional arguments, believing it lacked jurisdiction to consider them. This error is significant enough to require this Court to clarify the difference between “exclusive jurisdiction” and “no jurisdiction” before other litigants lose their right to have their constitutional claims considered.

A. Appellate jurisdiction exists in the Court of Appeals even when this Court does not have exclusive jurisdiction.

The Georgia Constitution splits appellate jurisdiction over constitutional arguments between this Court and the Court of Appeals. This Court has exclusive jurisdiction when constitutional “construction” is required—when the case raises constitutional principles “of first impression” or a statute faces a constitutional attack for the first time. *State v. Davis*, 303 Ga. 684, 687-88 (2018). But when a case calls only for “the mere application of well-settled constitutional principles to the facts of [the] case,” jurisdiction rests exclusively with the Court of Appeals. *Woods v. State*, 310 Ga. 358, 359 (2020). In the latter cases, if the appellant is “dissatisfied with the decision of the Court of Appeals,” they may then “seek review via certiorari” in this Court. *Id.*

This Court determined that deciding whether this taking is for “public purposes” requires no “construction” of the Georgia Takings Clause. Transfer Order 1-2. In the railroad context, that is true: “The test ... rests upon the fact that every body who has occasion to use it may lawfully and of right do so.” That question has been settled for generations. *Hightower*, 218 Ga. at 124-25; see Argument I.A., *supra*. This Court thus held that Petitioners’ arguments about “Georgia’s takings provision ... ‘require the mere application of well settled constitutional principles to the facts of [t]his case.’” Transfer Order 2 (quoting *Woods*, 310 Ga. at 359) (alterations in original). The case thus fell within the Court of Appeals’ appellate jurisdiction. *Id.*

B. The Transfer Order did not remove Petitioners’ constitutional arguments from the case.

The Court of Appeals did not do as the Transfer Order required. It refused to discuss “constitutional principles” at all. Limiting its analysis to the “statutory question[]” of whether the Hanson Spur was a “channel of trade,” App’x 6, the court ignored this Court’s instruction that the case “require[s] ... application of well settled constitutional principles to the facts of [t]his case.” Transfer Order 2 (citation omitted). The Transfer Order does not require that abdication.

To avoid Petitioners’ constitutional arguments, the Court of Appeals relied on the Transfer Order’s statement that Petitioners had “made no challenge to the constitutionality of any statute, ordinance, or constitutional provision.” App’x 6. But that statement explains only why this Court lacked exclusive jurisdiction. It does not

say, as the court below assumed, that Petitioners raised no constitutional arguments against the taking. As the Transfer Order explained, this Court’s exclusive jurisdiction attaches when a case “involve[s] *either* a construction of some federal or state constitutional provision,” *or* a first-time “attack upon the constitutionality of some law ... or ... ordinance.” Transfer Order 1 (emphasis added) (quoting *Zepp v. Mayor & Council of Athens*, 255 Ga. 449, 450 (1986)). And again quoting the Transfer Order, Petitioners “assert[ed]” as error a constitutional issue outside those two buckets: “that the condemnation was [not] for a ... public purpose under ... Ga. Const. of 1983, Art. I, Sec. III, Par. I.” *Id.*

Courts routinely consider constitutional principles without any attack on the underlying statute. *See, e.g., Premier Health Care Investments, LLC v. UHS of Anchor, L.P.*, 310 Ga. 32, 48 (2020) (“[T]he canon of constitutional doubt ‘militates against not only those interpretations that would render the statute unconstitutional, but also those that would even raise serious questions of constitutionality.’” (citation omitted)). Petitioners have urged that kind of interpretation of OCGA § 22-1-1(9) in arguing that the only channels of trade the provision contemplates are those open to all as of right, as the Georgia Constitution has historically demanded.

Petitioners also invoked the Constitution as a shield against the taking itself. *See* Transfer Order 1. That, too, is ordinary—less than two months ago, this Court agreed to hear just such a challenge. *See, e.g., Order, City of Albany v. S. Ga. Rails*

to *Trails Inc.*, No. S25C1419 (Ga. Apr. 21, 2026) (explaining that the city raised the state constitution’s Gratuities Clause as a defense to a breach-of-contract claim and ordering the constitutional challenge be heard on the merits). The Court of Appeals was wrong to conflate the absence of a constitutional challenge to a statute with the absence of any constitutional issue to decide.

C. A trial court’s failure to construe or independently analyze a constitutional provision does not render the constitutional issue unpreserved.

The Court of Appeals also emphasized this Court’s statement that the trial court did not “perform any independent analysis of the original public meaning of” Georgia’s takings provision. App’x 6. The Court of Appeals read this to mean the issue was not preserved—not raised and distinctly ruled upon in the trial court. App’x 6 (“We therefore limit our analysis to the statutory questions ruled on by the trial court.”); *In re K.R.S.*, 284 Ga. 853, 853 (2009) (explaining the “raised and distinctly ruled upon” preservation requirement). But this Court said nothing about preservation, and the trial court’s ruling (unlike the Court of Appeals’ ruling) did reach the constitutional issues.

Begin with the Transfer Order. This Court recounted Petitioners’ “assert[ion]” that the taking is not “for a public use or public purpose under ... Georgia’s takings provision,” and instructed that their “arguments [] require the [] application of well settled constitutional principles to the facts of this case.” Transfer Order 1-2 (cleaned up). That was true, because Petitioners had invoked Georgia’s takings provision and

its open-to-all rule before both the PSC and the trial court. V12:279-280, V12:267-270; V18:111-113. The trial court then explicitly disposed of that argument—in an order Sandersville drafted, V22:209-210—by holding the Georgia Takings Clause analysis “synonymous” with the federal Fifth Amendment analysis and rejecting the constitutional challenge. V22:206-209.

So, the Court of Appeals erred in saying that the “trial court” had “limit[ed]” its ruling to “statutory questions.” App’x 6. The trial court distinctly rejected the claim that the taking violated Georgia’s Takings Clause. V22:206-209. That it did so without “perform[ing] any independent analysis of the original public meaning” of that provision (Transfer Order 2) makes it no less a ruling. This Court has repeatedly held that a trial court’s “substantive analysis of the issue” is unnecessary; “the distinct-ruling requirement may be met by a summary or implicit ruling on the relevant constitutional question.” *Albany Order at 2* (citing *Wilkes & McHugh, P.A. v. LTC Consulting, L.P.*, 306 Ga. 252, 256-57 (2019), and *Rouse v. Dep’t of Nat. Res.*, 271 Ga. 726, 728 (1999)); *see also In re K.R.S.*, 284 Ga. at 853 (similar); *Barzey v. City of Cuthbert*, 295 Ga. 641, 643 (2014) (satisfied by “vague references” to constitutional provisions without “meaningful constitutional analysis”). A contrary rule would allow “superior court[s]” to “effectively ... deny[] the litigant the right of review” on “constitutional issues.” *Rouse*, 271 Ga. at 728.

*

The Court of Appeals badly erred when it refused to consider Petitioners' constitutional arguments. That refusal conflicts with this Court's Transfer Order, with its decisions allocating appellate jurisdiction, and with its decisions on preserving constitutional issues. Because this Court frequently transfers cases to the Court of Appeals, this confusion demands this Court's correction.

III. The Court of Appeals erroneously construed legal questions as questions of fact on which the Public Service Commission is owed deference.

The Court of Appeals compounded these errors by deferring to the PSC at every turn on the argument it did reach: whether this taking comports with Georgia's statutes. Throughout its statutory public-use analysis, the court stressed its limited role "on questions of fact," refused to "substitute [its] judgment" for the PSC's, and insisted it must uphold the PSC's public-use conclusion on "any evidence." App'x 10, 11 (emphases omitted). Applying that limited review, the court held not that the Hanson Spur *was* a public use, but that "the evidence ... was sufficient to support" the PSC's decision that it was. App'x 10. Were the court to "trade places" with the PSC and "sit as the trier of fact" on the public-use question, it insisted, it "may very well have ... reached a different outcome." App'x 11 (citation omitted). By treating public use as a question of fact and reviewing it for "any evidence" rather than *de novo*, the court broke with settled administrative-law and public-use principles alike.

Courts review an agency's factual findings for "any evidence," but its legal conclusions "*de novo*." *Al-Bari v. Pigg*, 319 Ga. 825, 830 (2024). "Thus, judicial

review of an administrative decision does not end with the determination that the findings of fact have evidentiary support,” because “the judicial branch” keeps “the ultimate authority to construe” the law behind the agency’s conclusion. *Handel v. Powell*, 284 Ga. 550, 552-53 (2008). These principles carry special force here, where the legislature has commanded that “[p]ublic use is a matter of law to be determined by the court.” OCGA § 22-1-2(a). That command sits atop the longstanding canon that eminent-domain statutes be “strictly construed.” *State Hwy. Dep’t v. Hatcher*, 218 Ga. 299, 302 (1962).

That is, the court’s “judgment”—not the PSC’s—decides whether Sandersville’s taking is for a public use. *Contra* App’x 11. That determination demands a critical look at the taking. Whether the statute incorporates the constitutional test or the Constitution controls directly, the test is the same: the railroad must be “available for use by the public as a matter of right.” *Dougherty County v. Burt*, 168 Ga. App. 166, 169 (1983); Argument I.A., *supra*. The PSC did not apply that rule. *Compare* V12:278-279 (presenting the rule), *with* V13:15-16 (declining to impose a “serve the public requirement” and approving the taking despite agreeing “Sandersville would not be offering its services as a common carrier”). The Court of Appeals then affirmed not because it thought the PSC correct, but under the misimpression that it “lack[ed] the authority to substitute” its “judgment” for the PSC’s. App’x 11. Not

so: especially in determining public use, an agency’s “legal conclusions” are reviewed “*de novo*.” *Bellinger v. Thompson*, 373 Ga. App. 383, 384 (2024).

The PSC’s genuine factual findings get “any evidence” review. So, for instance, the court rightly credited the PSC’s finding that Sandersville “would allow anyone who contracts with it to use the Spur.” App’x 10. But the “conclusion[] of law drawn from [that] finding[] of fact”—public use or not—gets reviewed “*de novo*.” *Al-Bari*, 319 Ga. at 830. A finding that Sandersville will serve those with whom it *chooses* to contract does not establish as a matter of law that the line will serve the public as of *right*. V5:35, V5:110-111, V5:182-183; V12:108. Had the court applied the right framework *de novo*, it would have “weighed the evidence ... differently” and “reached a different outcome.” App’x 11 (citation omitted). Its treatment of public use as a question of fact—binding it to the PSC’s legal framework—conflicts with Section 22-1-2(a) and Georgia administrative-law precedent.

The court’s deference likewise led it to shirk its responsibility to decide the “true reason” for the taking. *Earth Mgmt., Inc. v. Heard County*, 248 Ga. 442, 446-47 (1981); *Brannen v. Bulloch County*, 193 Ga. App. 151, 155 (1989). Petitioners argued that Sandersville’s true purpose was the (statutorily prohibited) one of “economic development.” See Statement of Facts A.3., *supra*. But in deferring to the PSC, the court never grappled with whether that improper intent drove the taking.

Permitting an agency to issue binding legal determinations that no court will independently review violates both Georgia precedent and the separation of powers. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024) (holding courts must exercise their own independent judgment in determining the meaning of law). The principle applies with even greater force because OCGA § 22-1-2(a) explicitly assigns “public use” to courts as a matter of law—not to administrative agencies subject to deferential judicial confirmation. In declining to make that determination—instead deferring to the PSC under an “any evidence” standard, the Court of Appeals erred and abdicated the statutory and constitutional function assigned to it.

IV. Correcting these errors is of great statewide importance.

These errors decided Petitioners’ appeal. Left uncorrected, they will sow confusion among judges and inflict injustice on litigants for years to come. This Court should therefore intervene.

The taking’s merits are of special statewide concern. At stake is “[o]ne of the most sacred and cherished rights of the citizens of this State.” *Bailey v. Hous. Auth.*, 214 Ga. 790, 792 (1959). The decision below conflicts with prior public-use decisions regarding the open-to-all standard and interprets the Landowner’s Bill of Rights to make it easier to take property for private use and economic development. Under the correct rules, Petitioners—and those like them—will retain the “right of private ownership of [their] property.” *Id.* Under the court’s framework, their land

can be taken and handed to “private individuals so[l]ely for private use and private gain.” *Hous. Auth. v. Johnson*, 209 Ga. 560, 562-63 (1953).

The public’s post-*Kelo* alarm over flimsy or pretextual assertions of “public use” makes this Court’s intervention more urgent. After blessing the PSC’s sweeping “public use” reading, the Court of Appeals told Petitioners their “only remaining remedy” lay with “the General Assembly, which passed the statutory scheme.” App’x 11. As shown above, the court refused to read the legislature’s public-use definition (OCGA § 22-1-1(9)) against the constitutional decisional law that preceded it.

It ignored more than that, and the Court of Appeals’ decision has severely weakened important reform the public demanded. Again, Section 22-1-1(9) is “part of the Landowner’s Bill of Rights and Private Property Protection Act of 2006.” *Summerour*, 302 Ga. at 649-50. The Act was “largely [a] response to the decision ... in *Kelo v. City of New London*,” where a narrow U.S. Supreme Court majority read the federal Takings Clause to give only “limited protections” against takings “by private industry.” *Id.* at 650 n.1. That ruling “sparked widespread concern throughout the nation” over “the misuse of eminent domain,” including “in Georgia.” *Id.* Georgia answered that alarm with a “statutory scheme” built “to protect property owners from abuse of the power of eminent domain.” *Summerour*, 302 Ga. at 652. Against that backdrop, it defies belief that the legislature meant to push public-use

protection *below* the historical norm Georgia’s courts have always enforced. Yet that is exactly what the decision below suggests. Petitioners’ remedy should not be to trek back to the legislature to ask for protection that body—in response to public outcry—has already enacted. Instead, this Court should intervene to enforce the protections the law already provides.

Next consider the court’s refusal to consider Petitioners’ constitutional arguments. App’x 6. State constitutional rights are “meant to be and remain genuine guarantees against misuse of the state’s governmental powers.” *Elliott v. State*, 305 Ga. 179, 188 (2019). Yet litigants and judges alike struggle to find the right forum for appeals that raise those rights. This Court transfers cases filed in the Court of Appeals here, *State v. Newsom*, 319 Ga. 607, 609 (2024), and transfers those filed here (like this case) to the Court of Appeals. Other times, whether to transfer a case sharply divides even the members of this Court. *Williams v. Regency Hosp. Co.*, 318 Ga. 145, 147-50 (2024). So long as the construction-versus-application distinction stands, wrong-court filings and transfers are inevitable. When they happen, the Court of Appeals must treat them as what they are—transfers of jurisdiction—not a license to dodge constitutional issues entirely. Transfer-order boilerplate should not limit appellate review.

The court made another mistake. It read this Court’s remark that the trial court had not “perform[ed] any independent analysis of the original public meaning of ...

Georgia’s takings provision” to mean the provision was not at issue at all. Transfer Order 1. That mistake will recur—as the cases with “vague,” “summary,” or “implicit” trial-court constitutional rulings show. P. 20, *supra*; see Nels S.D. Peterson, *Principles of Georgia Constitutional Interpretation*, 75 Mercer L. Rev. 1, 52 (2023) (“Georgia trial courts generally lack the time and resources to do this kind of interpretation themselves[.]”). This Court should intervene before the decision below becomes the blueprint for a constitution-free zone.

Finally, last month’s enactment of HB 1247, the “Georgia Bureaucratic Deference Elimination Act,” magnifies the harm of the court’s deference. “When interpreting this state’s Constitution” or “statutes,” the new law provides, “a court ... shall not defer to a state agency’s determination or interpretation.” 2026 Ga. L. Act 718. The General Assembly now demands courts “substitute [their] judgment” for agencies’. *Contra* App’x 11. Courts were already supposed to do that: an “agency’s interpretation of statutes is not binding on the courts, which have the ultimate authority to construe statutes.” *Al-Bari*, 319 Ga. at 830 (cleaned up). Now that the General Assembly has commanded it, correcting the Court of Appeals’ error matters even more.⁴

⁴ Because this act changes only the mode of judicial review—not substantive rights—it applies to already-pending cases (like this one). See OCGA § 1-3-5; *S. States Chem., Inc. v. Tampa Tank & Welding, Inc.*, 316 Ga. 701, 709 (2023) (“[T]here are no vested rights in any course of procedure.” (cleaned up)).

CONCLUSION

The decision below conflicts with this Court's precedent in three different ways. Each legal error is of great public concern. The petition should be granted.

CERTIFICATION OF WORD COUNT

This submission does not exceed the word-count limit imposed by Rule 20.

Dated: June 15, 2026

/s/ Grant E. McBride
Grant E. McBride
(GA Bar No. 109812)
SMITH, WELCH, WEBB & WHITE,
ATTORNEYS AT LAW
280 Country Club Drive
Stockbridge, GA 30281
(770) 957-3937
gmcbride@smithwelchlaw.com

Counsel for Petitioners

*Pro hac vice applications forthcoming

Respectfully submitted,

William R. Maurer*
INSTITUTE FOR JUSTICE
600 University Street, Ste. 2710
Seattle, WA 98101
(206) 957-1300
wmaurer@ij.org

Elizabeth L. Sanz*
Michael Greenberg*
INSTITUTE FOR JUSTICE
901 N. Glebe Rd., Ste. 900
Arlington, VA 22203
(703) 682-9320
bsanz@ij.org
mgreenberg@ij.org

CERTIFICATE OF SERVICE

I hereby certify that on this date, I have served a copy of the foregoing *Petition for Writ of Certiorari* on all parties to this action by United States mail, and per prior agreement of the parties, by electronic mail in a PDF format addressed as follows:

Steven L. Jones
MCKAGEN JONES
1441 Dunwoody Village Pkwy
Ste 100,
Atlanta, Georgia 30338
slj@mjlawfirm.com

Robert S. Highsmith, Jr.
Laura E. Flint
Andre Hendrick
Kristen M. Vigilant
HOLLAND & KNIGHT LLP
1180 West Peachtree St., NW,
Ste. 1800
Atlanta, GA 30309
robert.highsmith@hklaw.com
laura.flint@hklaw.com
andre.hendrick@hklaw.com
kristen.vigilant@hklaw.com

Paul A. Cunningham
HARKINS CUNNINGHAM LLP
1750 K St., N.W., Suite 300
Washington, D.C. 20006-3804
pac@harkinscunningham.com

Jeffrey W. Stump
Nathan R. Stuckey
D. Garrett White
Christopher M. Carr
Robin J. Leigh
OFFICE OF THE ATTORNEY
GENERAL
40 Capitol Square, SW
Atlanta, GA 30334-1300
jstump@law.ga.gov
nstuckey@law.ga.gov
gwhite@law.ga.gov

This 15th day of June, 2026.

/s/ Grant E. McBride
Grant E. McBride
(GA Bar No. 109812)
SMITH, WELCH, WEBB & WHITE,
ATTORNEYS AT LAW
280 Country Club Drive
Stockbridge, GA 30281
(770) 957-3937
gmcbride@smithwelchlaw.com

Counsel for Petitioners

APPENDIX

**FIRST DIVISION
BARNES, P. J.,
MARKLE and HODGES, JJ.**

**NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed.
<https://www.gaappeals.us/rules>**

April 15, 2026

In the Court of Appeals of Georgia

A26A0274, A26A0275. GARRETT et al. v. SANDERSVILLE
RAILROAD COMPANY et al.; and vice versa.

BARNES, Presiding Judge.

These companion appeals are taken from the trial court's affirmance of the Georgia Public Service Commission ("PSC")'s approval of the Sandersville Railroad Company's petition to obtain the privately owned land at issue by condemnation. On appeal in Case No. A26A0275, members of the Garrett, Smith, Reed, and Briggs families ("the landowners") argue that the trial court erred in affirming the PSC's decision because the proposed taking is not an authorized "public use" and because the PSC violated the law in making its findings and conclusions. In the cross-appeal, Case No. A26A0274, the Railroad argues that the trial court erred when it stayed the enforcement of its order pending appeal. We affirm in both cases.

A superior court is authorized to reverse or modify the final decision of the PSC only under the circumstances laid out in the Georgia Administrative Procedures Act, OCGA § 50-13-1 et seq., as follows:

The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1)[i]n violation of constitutional or statutory provisions; (2) [i]n excess of the statutory authority of the agency; (3) [m]ade upon unlawful procedure; (4) [a]ffected by other error of law; (5) [*c*]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) [a]rbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

OCGA § 50-13-19 (h) (emphasis supplied). “Under the APA, the Commission is the finder of fact and weighs the credibility of the evidence,” and the trial court “shall not substitute its judgment for that of the [Commission] if there is any evidence to support its findings.” *Ga. Pub. Serv. Comm’n. v. Southern Bell*, 254 Ga. 244, 246 (327 SE2d 726) (1985) (on appeal from a superior court’s grant of an interlocutory injunction as to a PSC decision) (citation modified).

Thus viewed in favor of the PSC’s decision, the record shows that the Railroad is a “short-line” company operating 10 miles of track in Sandersville, about 25 miles from Sparta. The Railroad currently provides switching services connecting businesses to the Norfolk Southern rail system and to the proposed route for the so-called “Hanson Spur,” a new line that would run from the Hanson Quarry to the CSXT rail system. The Spur would require a 200-foot swath across the landowners’ property, some of which has remained in these families for decades and which they use for living, farming, timber harvesting, hunting, and other recreating.¹

After an unsuccessful effort to buy the properties, the Railroad asked the PSC for permission to proceed with condemnation² in March 2023 for the “public purpose” of economic redevelopment in Hancock County. The Railroad’s amended

¹ For example, a Smith great-grandmother was born into slavery on property now owned by her descendants, and one of the Garretts has lived on his family’s property for 72 of his 76 years.

² See Ga. Comp. R. and Regs. 515-16-16-.01 - .03 (repealed as of Oct. 20, 2025) (requiring Commission approval before the filing of a condemnation action concerning the “construction of rail facilities”; if the PSC determines that the condemnation serves a “public purpose,” the railroad is authorized to file a condemnation action in superior court).

petition repeated this claim and added the names of several prospective shippers for the Spur.

After the hearing officer required the Railroad to produce documents as to costs, rates, and community support, a hearing was held in November 2023 at which the landowners' expert witness pointed out the lack of any economic feasibility study and drew the conclusion that the Spur would take decades to recover its costs and was not economically feasible. In response, the Railroad's representative provided some capital cost estimates and testified that the company had "a good handle on [its] costs," that he "feel[s] like [he] knows [his] business," and that he just "kn[e]w it's going to work." In the course of the hearing, the Railroad shifted its justification of the Spur from economic development to providing a "channel[] of trade," which amounts to a "public use" under OCGA § 22-1-1 (9) (A) (iii) of the eminent domain statutes, OCGA § 22-1-1 et seq., as amended in 2017. See Ga. L. 2017, § 22, p. 774.

After the conclusion of the hearing, the hearing officer filed an "initial decision" that the Spur was necessary for the accommodation of the Railroad's business, which was "providing the transportation service of connecting industries by rail and connecting rail traffic with larger rail networks." The hearing officer credited

evidence that without the Spur, the Railroad could not offer connections with the CSXT rail system, and that five of its current and prospective customers wanted the service proposed by construction of the Spur. The hearing officer also found that the Spur was “reasonably expected to have cash flow sufficient to continue as an ongoing concern” and that it would amount to a public use, both as an aid in the functioning of a public utility and as a channel of trade.

The PSC affirmed, adopting the hearing officer’s decision in its entirety. Both parties filed for judicial review by the Fulton County Superior Court, which also affirmed the PSC’s decision, finding (inter alia) that the Spur was necessary for the proper accommodation of the Railroad’s business; that the Spur served a “public purpose” because it would provide for the functioning of the Railroad as a utility, “and *separately* because it will open a channel of trade” (emphasis in original); and that the PSC’s decision was consistent with the law. The trial court continued its earlier stay of any further condemnation proceedings pending further appeal, however, “out of an abundance of caution” and given “the great impact upon [the landowners] and their homesteads[.]”

The landowners then appealed to the Supreme Court of Georgia, which transferred the cases to this Court. See OCGA § 50-13-20 (providing for appellate “review of any final judgment of the superior court” under the APA). In its transfer order, our Supreme Court specifically found that the landowners had “made no challenge to the constitutionality of any statute, ordinance, or constitutional provision” and that the trial court “did not construe – or perform any independent analysis of the original public meaning of – any constitutional provision[.]” We therefore limit our analysis to the statutory questions ruled on by the trial court. See *Woods v. State*, 310 Ga. 358, 359 (850 SE2d 735) (2020).

Case No. A26A0275

1. The landowners first argue that the PSC and the trial court erred in finding that the Spur amounts to a “public use” sufficient to justify condemnation. This assertion requires us to consider the extensive statutory context.

Under OCGA § 46-8-120 (a), a railroad is authorized

(1) To reconstruct its lines or tracks, to build one or more additional main tracks, to relocate any line or portions of a line, and to build, as a substitute for trestles, embankments upon which tracks may be laid or to widen cuts where necessary for proper construction or maintenance;

(2) For obtaining gravel and other material, to take as much land as may be necessary for the purpose of construction, operation, and maintenance of such road;

(3) To cut any trees that may be in any danger of falling on the tracks or obstructing the right of way, making compensation therefor as provided by law;

(4) To build and maintain such additional depots, tracks, and terminal facilities as may be necessary for the proper accommodation of the business of the company; and

(5) To construct, maintain, and operate tracks for the purpose of connecting two or more lines of railroad operated by the same company not more than ten miles apart.

And under OCGA § 46-8-121, a railroad seeking to construct new facilities on land it does not own “may” acquire the land by condemnation, “provided that the right of condemnation . . . shall not be exercised until the commission, under such rules of procedure as it may provide, first approves the taking of the property.”³

³ See *Dept. of Transp. v. City of Atlanta*, 255 Ga. 124, 125 (3) (337 SE2 327)(1985) (Art. I, Sec. III, Par. I of the Georgia Constitution, recognizing the state’s power of eminent domain, “relates by its own terms to private property” and “serves to ratify the limitation placed upon the state’s inherent right of eminent domain by the individual citizens’ right to own property”).

The principal question posed in this appeal is whether the Railroad’s proposed Spur amounts to a “public use,” a term from OCGA § 22-1-2, which provides:

(a) The right of eminent domain is the right of this state, through its regular organization, to reassert, either temporarily or permanently, its dominion over any portion of the soil of this state on account of public exigency and for the public good. . . . Notwithstanding any other provisions of law, except as provided in Code Section 22-1-15 [concerning “blighted property”], neither this state nor any political subdivision thereof nor any other condemning authority shall use eminent domain unless it is for *public use*. *Public use is a matter of law to be determined by the court and the condemnor bears the burden of proof.*

(Citation modified.) And OCGA § 22-1-1 (9) (A) defines “public use” as including “(i) [t]he possession, occupation, or use of the land by the general public or by state or local governmental entities; (ii) [t]he *use of land for the creation or functioning of public utilities*; [or] (iii) [t]he opening of roads, the construction of defenses, or *the providing of channels of trade or travel.*” (Citation modified.) The same statute specifies that “[t]he public benefit of economic development shall *not* constitute a public use.” *Id.* at (9) (B) (emphasis supplied). And OCGA § 22-1-1 (10) defines a “public utility” as

any publicly, privately, or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil products, water, steam, clay, waste, storm water not connected with highway drainage, and other similar services and commodities . . . which directly or indirectly serve the public. . . . *This term shall also include common carriers and railroads.*

(Emphasis supplied.)

As the landowners concede, “the fact that private interests may benefit from [a] taking does not negate the public character of the condemnation.” As our Supreme Court held long ago, moreover, “the public nature of a siding or spur track does not depend on the number of people that it accommodates, or who uses it, but rests upon the fact that everybody who has occasion to use it may lawfully and of right do so.” *Harrold Bros. v. Americus*, 142 Ga. 686, 688 (83 SE2d 534) (1914); see also *Hightower v. Chattahoochee I. R.*, 218 Ga. 122, 124-125 (2) (126 SE2d 664) (1962) (even when a railroad had only one prospective customer for a proposed rail line, the Court was required to “keep in mind the prospective as well as the presently planned use” of the railroad’s facilities; a trial court did not abuse its discretion in denying the property owner’s request for an injunction because “the present benefit of only one industry

. . . does not necessarily negative the public character of the use”) (quotation marks omitted).

Here, the evidence summarized above was sufficient to support the decisions of the hearing officer, the PSC, and the trial court that the Spur would amount to a “channel of trade” and thus constituted a “public use.” Specifically, the Railroad presented evidence that it would allow anyone who contracts with it to use the Spur, that the Spur will offer connection to the CSXT rail network in the area for the first time, and that the Railroad could generate revenue immediately upon completion of the Spur. As we recently repeated,

[j]udicial review of an administrative decision requires the court to determine that the agency’s findings of fact are supported by any evidence and to examine the soundness of the conclusions of law that are based upon the findings of fact. *A reviewing court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.* Our duty is not to review whether the record supports the superior court’s decision but whether the record supports the final decision of the administrative agency.

Sawnee Elec. Membership Corp. v. Pub. Svc. Comm’n., 371 Ga. App. 267, 268-269 (899 SE2d 708) (2024) (affirming the PSC’s decision that an electric vehicle charging

station was utilized by only one “consumer” and was permissible under the “large load” exception of the Georgia Territorial Electric Service Act) (citation modified).

As we recently observed in another case requiring deference to a factfinder, “were we to trade places . . . and sit as the trier of fact, we may very well have weighed the evidence differently and reached a different outcome.” *Junior v. Graham*, 374 Ga. App. 497, 501 (911 SE2d 241) (2025). But “that is not our job, and we lack the authority to substitute our judgment” for that made by the PSC here. See *id.* On this record, the PSC did not err when it concluded that the Spur amounted to a “public use” authorizing the PSC to exercise the State’s power of eminent domain to condemn the properties at issue. OCGA § 22-1-2 (a). It follows that the trial court did not err in affirming the PSC’s decision. *Sawnee Elec.*, 371 Ga. App. at 274 (2) (affirming the trial court and the PSC when there was some evidence to support the PSC’s conclusions). The only remaining remedy for the landowners must lie with either the General Assembly, which passed the statutory scheme laid out above, or the public, who elect the members of the PSC charged with applying that scheme. See OCGA § 46-2-1 (a) (providing for the election of five PSC members).

2. The landowners also argue that the Railroad's initial failure to comply with the Commission's subpoena and the hearing officer's failure to "fully enforce" that subpoena "severely diminished" their right to present evidence against the Railroad. The landowners have not pointed to any specific evidence in support of this contention, however, and thus have not shown that they were prejudiced by the hearing officer's handling of the evidence in the case, which included an order that the Railroad produce additional evidence as to costs, rates, and community support. There was no error here. See *Pate v. Sadlock*, 345 Ga. App. 591, 596 (2) (814 SE2d 760) (2018) (mother failed to show an abuse of discretion in a trial court's bar on testimony at hearing when she did not make any proffer of testimony she would have offered).

3. In light of our holdings in favor of the PSC's decision, the landowners' contention that they are owed attorney fees and costs under OCGA § 22-1-12 (1) lacks merit. See *id.* (authorizing award of "reasonable costs and expenses," including "reasonable attorney [and other] fees," if "[t]he final judgment is that the condemning authority cannot acquire the real property by condemnation").

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4. In the companion appeal, which was docketed in this Court before the docketing of the landowners' appeal on the merits, the Railroad argues that the trial court erred when it stayed further proceedings, including the filing of a condemnation petition pursuant to OCGA § 22-1-2 (a), pending appeal.⁴

As our Supreme Court has noted, subsection (d) of OCGA § 50-13-19, governing judicial review of an administrative agency's decision, "provides that filing of a petition for judicial review does not stay the agency decision but that 'the agency may grant, or the reviewing court may order, a stay upon appropriate terms *for good cause shown.*'" *Southern Bell*, 254 Ga. at 247, quoting OCGA § 50-13-19 (d) (emphasis supplied). Here, the trial court was functioning as an appellate court when it reviewed the PSC's decision, and we cannot say that it abused its discretion when it determined that a stay pending appeal was "good cause" under these circumstances, which involve what it assessed as the "great impact" of the PSC's decision on the landowners. See *Green Bull Ga. Partners v. Register*, 301 Ga. 472, 474-475 (801 SE2d 843) (2017) (affirming both the trial court's setting aside of an interlocutory injunction

⁴ Shortly after docketing in this Court, we denied the Railroad's motion to expedite the appeals and to lift the stay because "the [Railroad] has not shown the existence of extraordinary circumstances that might justify" either remedy.

and its entry of an injunction pending the resolution of an appeal as within its discretion; “that the trial court found the case close enough to warrant an injunction pending appeal – notwithstanding its determination that an interlocutory injunction pending final judgment was not appropriate – is unremarkable”).

Judgments affirmed. Markle and Hodges, JJ., concur.

Court of Appeals of the State of Georgia

ATLANTA, May 26, 2026

The Court of Appeals hereby passes the following order

**A26A0275. ROBERT DONALD GARRETT, SR. et al v. SANDERSVILLE RAILROAD
COMPANY et al.**

Upon consideration of the APPELLANT'S Motion for Reconsideration in the above styled case, it is ordered that the motion is hereby DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, May 26, 2026.

*I certify that the above is a true extract from the minutes
of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court hereto
affixed the day and year last above written.*

Christina Coley Smith, Clerk.