IN THE SUPREME COURT
STATE OF GEORGIA

GEORGIACARRY.ORG et al.,	**)**	**Supreme Court**
Appellants,	**)**	**Case No. S18G1149**
	)	
v.	**)**	**Fulton County**
	)	**Case No. 2014-CV-253810**
	)	
ATLANTA BOTANICAL GARDEN, INC.,	**)**	
	)	
Appellee.	**)**	

SUPPLEMENTAL BRIEF FOR THE APPELLEE

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SUPPLEMENTAL BRIEF FOR THE APPELLEE

The Atlanta Botanical Garden, Inc. (the "Garden") submits this Supplemental Brief in response to questions raised by the Court at oral argument on May 8, 2019. For the reasons herein and the reasons included in prior briefing and at oral argument, the Garden respectfully requests that the Court affirm the judgment in its favor.

A. The meaning of the word "person" as used in O.C.G.A. § 16-11-127(c) confirms the Garden's interpretation of the 2014 amendment.

At oral argument, Justice Peterson raised a concern about the Garden's position given that the Court "ordinarily read[s] the word 'persons' not to include 'government.'" (OA1:29:19–1:29:25.) Justice Nahmias later echoed that concern and asked the Garden's counsel this question:

> I'm trying to figure out what [the] 2014 [amendment] changed. . . . And you propose that what it changed is . . . that under 2010, a government could lease land from a private property owner, and then exclude gun owners. But "person" doesn't normally mean "government." . . . So how do you reconcile that? . . . You have to read "person" in 2010 as "government" for that theory to work. (OA1:44:09–1:45:00.)

The statute at issue in this appeal—O.C.G.A. § 16-11-127(c)—is in Title 16 of the Georgia Code. That title defines "person" to mean "an individual, a public or private corporation, an incorporated association, government, government agency, partnership, or unincorporated association." O.C.G.A. § 16-1-3(12). The principle

referenced by the Court at oral argument—that "ordinarily" the word "person" does "not include the sovereign" (*McBride v. Bd. of Corrections*, 221 Ga. App. 796, 797 (1996))—does not apply here as a result. That canon (sometimes called the "artificial-person canon") applies only when a statute is "without an express legislative declaration" to the contrary. *City of Atlanta v. Smith*, 99 Ga. 462 (1896); *see also* O.C.G.A. § 1-3-2 ("defined words shall have the meanings specified"); SCALIA & GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 273 (2012). But for decades, O.C.G.A. § 16-1-3(12) has had an "express declaration to the contrary" by defining "person" to encompass "government."

That definitional choice confirms the Garden's reading of the 2014 amendment to § 127(c). In three places, the amendment inserted the word "private" in front of the word "property," such that the phrase now reads "private property." *See, e.g.*, O.C.G.A. § 16-11-127(c) (2014) ("persons in legal control of private property through a lease . . . or any other agreement to control access to such private property shall have the right to exclude or eject a person who is in possession of a weapon or long gun on their private property") (emphasis added). "[W]e must presume that the legislative addition of language to the statute was intended to make some change in the existing law." *Wausau Ins. Co. v. McLreoy*, 266 Ga. 794, 796 (1996). The meaning of the word "person" in § 127(c)—which includes "government"—ensures that the 2014 amendment did effect a change in the law.

An illustration helps to prove the point. Under the 2010 version of the statute, the "government," "government agencies," and "public corporations" could preclude the carrying of guns on their leased property. They were "persons" in "legal control of property through a lease"—and the statute did not include any qualifiers about the type of property controlled under the lease. *See* O.C.G.A. § 16-11-127(c) (2010). But under the Garden's interpretation, the 2014 amendment changed that. Today, when these public entities lease property, they can no longer exclude gun carriers because the entities are not "in legal control of <u>private</u> property through a lease." *See* O.C.G.A. § 16-11-127(c) (2014) (emphasis added). The Garden's reading of 127(c) gives clear meaning to the 2014 addition of the word "private."[1]

B. Whether a private person can exclude gun carriers from property should not depend on the specific uses of the land.

At the conclusion of oral argument, Justice Blackwell asked the parties:

> Is it possible that private property has some kind of idiosyncratic sense or meaning in this particular statute, such that it doesn't squarely reflect the meaning used in any other statutory context, but could it perhaps mean public property is property that is both owned by the government and used in some public sense? Used for the public, which might exclude, for instance, the individual housing units of public housing, which are owned ultimately by the government but used in a very

[1] Moreover, the broad definition of "person" in title 16 confirms that courts should not look to the fee owner to determine whether property is public or private as Appellants propose. That interpretation would allow the government, government agencies, and public corporations—all "persons" under the statute—to exclude gun carriers from property that they lease from private fee owners.

> private way, intended to be used in a private way by individual families. And then that might raise a question about whether something like the Garden meets that test. But think about whether there's some idiosyncratic use of private property in this sense. (OA1:48:42–1:49:43.)

The Garden understood Justice Blackwell to be asking whether courts should look to how the property is being used in determining whether it is public or private property and provides its answer here.

The term "private property" should not be given different meanings depending on how the property is used by the lessee. The plain language of the statute demands this finding. Nothing in 127(c) contemplates consideration of how the property is used. Rather, it provides that "private property owners or persons in legal control of private property through a lease . . . shall have the right to exclude or eject a person who is in possession of a weapon . . . ." The property is either public or it is private, and no investigation into the property's use is necessary when the plain language reads as it does here.

In this framework, the *Coleman* decision demands a finding that the property leased by the Garden is private. This Court made clear in that case that "public property" becomes "private property" when the City of Atlanta leases it to a private entity. *Delta Air Lines Inc. v. Coleman,* 219 Ga. 16, 131 S.E.2d 768 (1963). The rule espoused under the majority's holding leaves no room for nuance or fact-specific balancing tests. Here, because the Garden is a private entity, the land that it

has leased from the City is private property. To find that the land leased by the Garden is not private would require a determination based on the fee owner of the land. As noted above, this does not make sense in this instance because focusing on the status of the lessor would allow any number of public entities to exclude gun carriers from leased land.

A fact-specific definition of "private property" depending on the use of the land also does not work because of the tremendous (and unnecessary) confusion it would create. As the Garden has argued previously, Appellants' interpretation of 127(c) would create a near impossible situation for gun owners who want to know where they can carry their guns in Georgia and would have to research title issues in order to know where they can do so. Defining "private property" based on its use takes that uncertainty a step further, opening up the possibility for litigation and extensive discovery in nearly every instance where the land is publicly owned but leased to a private person. It is illogical to think that the General Assembly wanted gun owners to have to take these steps in order to comply with the law. "It is elementary that in all interpretations of statutes, the courts shall look diligently for the intention of the General Assembly." *Spectera Inc. v. Wilson*, 294 Ga. 23, 26, 749 S.E.2d 704 (2013). There is no indication at all that the General Assembly intended a scenario where a case-by-case investigation was necessary to apply the statute at issue in this case.

If the Court nevertheless decides to fashion a rule based on use of the property, that record has not been developed in this case. But it will quickly become clear that the Garden uses the property it leases "in a very private way" to borrow Justice Blackwell's phrase. For example:

- Access to the botanical garden is limited to those persons who are either "members" of the Garden or have paid an admission fee to enter the Garden;
- Under its lease with the City, the Garden has exclusive control and management of the leased property, and it hires, compensates, and fires its staff without input from the City. They are not public employees.
- Certain parts of the Garden's property are "off limits" to the general public, including its laboratories for plant culture; and
- The Garden makes its facilities available to companies and other private groups who pay a charge for the use of its facilities, e.g., meeting rooms, wedding venues.

C. The Court may properly rely on case law interpreting other statutes and areas of law.

At oral argument, Justices Blackwell, Nahmias, Warren, and Peterson asked whether looking to case law from the tax context is too remote to supply guidance on the definition of "private property." But it is appropriate for the Court to look to case law from other contexts in making this determination. As counsel for the

Garden noted at argument, the Court does this somewhat regularly. Just this year, the Court looked to various contexts to determine whether the definition of "property" in Georgia's apportionment statute is restricted to tangible property. *FDIC v. Loudermilk*, 2019 Ga. LEXIS 186 (2019). The Court in *Loudermilk* examined the use of the word "property" in cases concerning statutes of limitation and the Georgia Constitution's eminent domain provision. *Id*. at *14-16. Those topics are no closer (i.e., more relevant) to the apportionment statute than the tax decisions are here. And it is not a stretch to refer to *ad valorem* tax decisions for guidance on an issue concerning public vs. private property. After all, the decisions concern a property tax, and we are looking for guidance on determining what is public vs. private property. That body of decisional property tax law is plainly relevant to the question presented here. It is therefore more than appropriate for the Court to look at the *Coleman* holding here, where the contextual connection is even closer than it was in the *Loudermilk* case.

CONCLUSION

For these reasons, the Garden asks that this Court affirm the judgment below.

Respectfully submitted this 15th day of May, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the within and foregoing SUPPLEMENTAL BRIEF FOR THE APPELLEE upon all counsel of record by U.S. Mail at the following address:

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Respectfully submitted this 15th day of May, 2019.

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