IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STONE MOUNTAIN JUDICIAL CIRCUIT DISTRICT ATTORNEY SHERRY BOSTON, TOWALIGA JUDICIAL CIRCUIT DISTRICT ATTORNEY JONATHAN ADAMS, AUGUSTA JUDICIAL CIRCUIT DISTRICT ATTORNEY JARED WILLIAMS, and COBB JUDICIAL CIRCUIT DISTRICT ATTORNEY FLYNN BROADY Plaintiffs, v. STATE OF GEORGIA, Defendant.	Case No. _____

COMPLAINT

PRELIMINARY STATEMENT

1. The Georgia Constitution provides for voters in each judicial circuit to elect a district attorney every four years. The district attorney has the duty "to represent the state in all criminal cases in the superior court of such district attorney's circuit." Ga. Const. Art. 6, § 8 ¶ III(d).

2. The district attorney's "duty is to seek justice, not merely to convict . . . because the prosecutor represents the sovereign and should exercise restraint in the discretionary exercise of governmental powers." *State v. Wooten*, 273 Ga. 529, 531 (2001). Every Georgia prosecutor must make decisions regarding how to best promote justice and public safety in their communities, amid scarce resources.

3. Discretionary decision-making is a daily feature of every prosecutor's office and affects every single case in the system from charging to detention to sentencing and post-conviction relief.

4. In recent years, Plaintiffs and other prosecutors throughout Georgia have been elected to pursue a comprehensive approach to public safety. Responsive to the particular challenges and needs of their judicial circuits, these prosecutors employ pretrial diversion, accountability courts, and other tools to address real public safety problems, treat victims and the accused fairly and with dignity, and focus attention on those prosecutions that will have the greatest effect on public safety.

5. In 2023, the General Assembly passed, and Governor Kemp signed into law, Senate Bill 92 ("SB 92"), which established an unprecedented means of disciplining and removing elected prosecutors: the Prosecuting Attorneys Qualifications Commission ("PAQC"). The PAQC has authority to investigate, discipline, and remove a prosecutor, including on several novel grounds. The law authorizes the PAQC to discipline prosecutors for their decisions on whether and how to prosecute any potential case, without providing meaningful standards to evaluate those decisions.

6. SB 92 further provides that the PAQC may investigate a complaint based on a "stated policy, written or otherwise, which demonstrates that the district attorney or solicitor-general categorically refuses to prosecute any offense or offenses of which he or she is required by law to prosecute."

7. The threat of discipline under SB 92 discourages prosecutors from exercising their discretion to address cases in the way that will best serve their communities.

8. By enabling the second-guessing of district attorneys' exercise of prosecutorial discretion, SB 92 intrudes on their inherent powers as constitutional officers in Georgia, in violation of

separation of powers principles. Further, the vague grounds for discipline fail to provide fair notice of the activities that could subject prosecutors to removal from office, in violation of the due-process protections of the Georgia and United States Constitutions. The vagueness of the SB 92 also constitutes an improper delegation of legislative authority to the PAQC.

9. Further, the explicit provision for a complaint based on a "stated policy" not to prosecute chills prosecutors from articulating their philosophies to their communities—but only if those approaches embrace the exercise of discretion. This violates prosecutors' free-speech rights under the Georgia and United States Constitutions and undermines the ability of voters in their districts to make informed decisions at the ballot box.

10. SB 92 imposes a top-down approach to law enforcement, overriding local choices about how to keep communities safe. While that may be the preferred outcome for the General Assembly and Governor Kemp, the system established by SB 92 runs afoul of constraints established by the People of Georgia and embodied in the Georgia Constitution.

11. For all these reasons, SB 92 should be declared void and the PAQC should be enjoined from its enforcement.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action for declaratory and injunctive relief through O.C.G.A. §§ 9-4-2, 9-5-1 and articles I and VI of the Georgia Constitution. Venue is proper, as Fulton County is treated as the "residence" of the State, pursuant to Ga. Const. Art. 6 § 2 and O.C.G.A. § 9-10-30.

13. Sovereign immunity is waived in superior court under the Georgia Constitution article I, section 2, paragraph V, extending to a declaration that a state agency violates the Georgia or

United States constitutions, as well as injunctive relief to enforce that declaration. The State of Georgia is the proper defendant in any proceeding brought pursuant to this provision.

PLAINTIFFS

14. Plaintiffs are elected District Attorneys representing 7 counties in Georgia, a total population of over 1.8 million Georgians.

15. Plaintiff Sherry Boston is District Attorney of Stone Mountain Judicial Circuit of DeKalb County, Georgia. She was elected to the position in 2016, taking office in January 2017. Prior to election as District Attorney, she served as DeKalb County Solicitor General for six years and served as a municipal court judge. DA Boston is a past chair of the Disciplinary Board and is a current member of the Board of Governors for the State Bar of Georgia and is a council member of PAC of Georgia.

16. Plaintiff Jonathan L. Adams is District Attorney of Towaliga Judicial Circuit encompassing Butts, Lamar, and Monroe Counties. He was elected to the position in 2016. DA Adams has been a career prosecutor for 20 years, while also serving within the Georgia Army National Guard. He serves as President of the District Attorney's Association of Georgia, a member of the Board of Governors of the State Bar of Georgia, and a council member for the Prosecuting Attorney's Council of Georgia.

17. Plaintiff Jared Williams is District Attorney of Augusta Judicial Circuit encompassing Burke and Richmond Counties. Born and raised in Augusta, DA Williams worked both in the District Attorney's Office and as a defense attorney prior to his District Attorney election in 2020. DA Williams is the first African American DA of the Augusta Judicial Circuit.

18. Plaintiff Flynn Broady, Jr. is District Attorney of Cobb Judicial Circuit for Cobb County, Georgia. Until he was elected District Attorney in 2020, DA Broady served in the Cobb County

Solicitor's Office, focusing on Veterans and Accountability Courts, starting after his retirement from the United States Army in 2008.

FACTUAL ALLEGATIONS

I. In Georgia, the District Attorney is a Locally Elected Constitutional Officer, with Broad Discretion to Administer Justice.

19. The Georgia Constitution establishes the office of district attorney "for each judicial circuit, who shall be elected circuit-wide for a term of four years." Ga. Const., Art. 6 § 8 ¶ I(a). District Attorneys bear the duty "to represent the state in all criminal cases in the superior court of such district attorney's circuit and in all cases appealed from the superior court and the juvenile courts of that circuit to the Supreme Court and the Court of Appeals." Ga. Const., Art. 6 § 8 ¶ I(d).

20. The office of District Attorney bears the responsibility to exercise "broad discretion in making decisions prior to trial about who to prosecute, what charges to bring, and which sentence to seek." *State v. Wooten*, 273 Ga. 529, 531 (2001). This duty extends to the investigatory stages of matters preparatory to the seeking of an indictment as well as the pendency of the case. *McLaughlin v. Payne*, 295 Ga. 609, 613 (2014).

21. The DA's exercise of her constitutionally protected authority is "inherent in [her] office and is of the utmost importance in the orderly administration of criminal justice." *State v. Kelley*, 298 Ga. 527, 530 (2016). Infringement of this authority "impermissibly interferes with the State's right to prosecute." *Id*.

22. The primary check on a district attorney is the will of the voters. When the voters are dissatisfied with a district attorney's performance, or have another candidate whose approach they favor more, they can vote them out of office at the end of the four-year term.

23. Additionally, district attorneys are subject to the jurisdiction of the State Bar and ultimately the Georgia Supreme Court, which enforce the Rules of Professional Conduct. These include Rule 3.8, which outlines special responsibilities of the prosecutor, which bar abuses of prosecutorial authority that would undermine the rights of the accused. Violations of the Rules of Professional Conduct, including Rule 3.8, may result in disbarment. Because a disbarred attorney may not serve as district attorney, this penalty also leads to removal from office.

24. District attorneys are also subject to impeachment by the General Assembly. O.C.G.A. § 15-18-26.

25. District attorneys who commit malfeasance or misconduct, violate the oath of office, fail to perform their ministerial duties or misappropriate public funds are also subject to recall. *See* O.C.G.A. § 21-4-1, *et. seq*.

26. In extreme cases of misconduct, a district attorney may also be subject to criminal prosecution herself. O.C.G.A. § 15-18-26.

II. Governor Kemp and the General Assembly Enact SB 92, Purporting to Impose New Duties on District Attorneys.

27. In recent years, the guiding philosophy of district attorneys across Georgia has shifted substantially. During their campaigns, a new class of district attorneys emphasized holistic solutions for community safety.

28. These changes did not go unnoticed by statewide elected officials. In the lead-up to the 2023 legislative session, Governor Kemp posted on Twitter, "Far-left local prosecutors are failing their constituents and making our communities less safe. I look forward to working with members of the General Assembly and [Attorney General Chris Carr] to address it this session."

29. During the 2023 legislative session, several bills were introduced in the General Assembly seeking to create new mechanisms to discipline and remove prosecutors,

notwithstanding the existing mechanisms of oversight including election, bar discipline, impeachment, and recall.

30. Several legislators raised concerns about the vague and novel grounds to discipline prosecutors in the bills that became SB 92, including concerns that the ambiguity would lead the PAQC to "write its own bill."

31. Nonetheless, SB 92 quickly passed both the House and the Senate, and Governor Kemp signed SB 92 into law on May 5, 2023.

32. At the signing ceremony, Governor Kemp announced that the law would crack down on "rogue or incompetent prosecutors" who, "driven by out-of-touch politics," allegedly "refuse to uphold the law."

33. Section 1 of SB 92 amends the statutory list of duties of a district attorney to add a new duty: "[t]o review every individual case for which probable cause for prosecution exists, and make a prosecutorial decision available under the law based on the facts and circumstances under oath of duty." O.C.G.A. § 15-18-6(4).

34. Section 3 of the law adds a parallel duty to the statutory list of duties of a solicitor general. O.C.G.A. § 15-18-66(b)(1).

35. Section 4 amends the recall statute to provide that district attorneys and solicitors general may be subject to recall for discretionary decisions, unlike all other Georgia officials. O.C.G.A. § 21-4-3(7).

36. Section 2 creates a new commission, the Prosecuting Attorneys Qualifications Commission ("PAQC"). The PAQC has "the power to discipline, remove, and cause involuntary retirement of appointed or elected district attorneys or solicitors-general." Ga. Code Ann. § 15-18-32(a).

37. The PAQC is composed of eight appointees, all appointed by the political branches. Two are appointed by the Governor, one by the Lieutenant Governor, three by the Speaker of the House of Representatives, and two by the Senate Committee on Assignments. O.C.G.A. § 15-18-32(d)(3), (4).

38. SB 92 enumerates certain grounds for discipline that may subject an elected prosecutor to investigation and disciplinary action, up to and including removal and disqualification from office for ten years. O.C.G.A. § 15-18-32(h), (p). Alongside well-understood grounds such as "mental or physical incapacity" or "willful misconduct while in office," O.C.G.A. § 15-18-32(h)(1), (h)(2), the statute adds the new, undefined ground of "[c]onduct prejudicial to the administration of justice which brings the office into disrepute." O.C.G.A. § 15-18-32(h)(6). The statute also provides for discipline based on "willful and persistent failure to carry out" the statutory duties of a district attorney—including the new individual-review duty created by SB 92. O.C.G.A. § 15-18-32(h)(6).

39. The PAQC consists of an Investigative Panel and a Hearing Panel. O.C.G.A. § 15-18-32(c)(1). The Investigative Panel is responsible for "[i]nvestigation of alleged conduct constituting grounds of discipline." O.C.G.A. § 15-18-32(c)(2)(B). The Panel may start an investigation either pursuant to a complaint or "on its own motion." O.C.G.A. § 15-18-32(i)(1). There is no limit in the statute on who may file a complaint, although the complainant must disclose "any interest the complainant may have in the outcome of the case." *Id.*

40. SB 92 sets out requirements before the PAQC may investigate a complaint that addresses a prosecutors' "charging decision, plea offer, opposition to or grant of a continuance, placement of a case on a trial calendar, or recommendation regarding bond." O.C.G.A. § 15-18-32(i)(2). Such a complaint may be investigated where evidence adduced by the complainant shows "it is

plausible that the district attorney . . . made or knowingly authorized the decision based on," among other factors: "A stated policy, written or otherwise, which demonstrates that the district attorney . . . categorically refuses to prosecute any offense or offenses of which he or she is required by law to prosecute" or "Factors that are completely unrelated to the duties of prosecution." O.C.G.A. § 15-18-32(i)(2).

41. The factors that are related or unrelated to the duties of prosecution are not defined by SB 92 or elsewhere in Georgia law, nor is there any explanation regarding what offenses a district attorney is required by law to prosecute.

42. Although the statute does not include a categorical policy regarding nonprosecution as a ground for discipline in subsection (h), its inclusion as a prerequisite for filing a complaint shows that a categorical policy would constitute "willful misconduct," "failure to carry out [statutory] duties," or "conduct prejudicial to the administration of justice."

43. It is left to the PAQC to "elaborate, define, or provide context" for the statute's grounds for discipline. O.C.G.A. § 15-18-32(c)(3).

44. Any prosecutor that is removed or involuntarily retired by the PAQC will be disqualified from being appointed or elected as a district attorney or solicitor general for ten years. O.C.G.A. § 15-18-32(p).

III. SB 92 Undermines the Operation of Judicial Circuits Throughout the State.

45. Across the state of Georgia, district attorneys must allocate scarce resources to investigate and prosecute the cases that arise in each circuit. These resources have been even more strained in recent years, as many offices struggle to hire and retain assistant district attorneys and investigators. Compounding these challenges, court closures resulting from the COVID-19 pandemic led to substantial case delays and backlogs in many circuits.

46. Prosecutorial resources are further strained by the limited resources of the law-enforcement agencies in their circuits, which have made their own discretionary choices to decline enforcement of certain crimes. For example, in light of limited resources, the Georgia Bureau of Investigation has announced that its crime lab will no longer test samples of less than an ounce of suspected marijuana and will not test a leafy material if it is found with another suspected controlled substance to be tested.

47. By targeting decisions not to prosecute, SB 92 discourages prosecutors from exercising their judgment to decline to pursue charges in a case, to pursue rehabilitative approaches, or to seek a lower sentence.

48. SB 92 also discourages prosecutors from articulating their approaches to prosecution. This undermines consistent prosecution within a district attorney's office by discouraging training on how line prosecutors should exercise discretion.

49. Separately from SB 92, the General Assembly has otherwise recognized the value of explicit policies to govern prosecutorial discretion, which support consistent application of discretion, provide clarity to victims and the accused, and allow for public accountability. The statute authorizing prosecutors to create pretrial diversion programs provides: "The prosecuting attorney implementing said program shall create written guidelines for acceptance into and administration of the program." O.C.G.A. 15-18-80(d).

50. The threatened punishment for "stated policies" discourages frank discussion of prosecutorial philosophy with the communities that elect them. SB 92 discourages certain prosecutors from explaining their philosophies, whether in community meetings, comment to the media, or on the campaign trail. This discouragement does not affect all prosecutors equally—

rather, those with less carceral, more holistic philosophies are subject to potential discipline, while more carceral prosecutors are not.

51. As a result of the chill on prosecutors' speech, voters are less able to understand their choices in prosecutorial elections. This undermines communities' ability to choose the prosecutorial approach that is most appropriate for them.

52. If a prosecutor is ultimately removed, the ten-year bar on election to a prosecutorial role further disempowers communities. In short, communities that would seek to elect a reform-oriented prosecutor risk having the state deprive them of the full ability to elect the candidate of their choice in future elections, as that candidate may be removed and barred from office.

IV. SB 92 Undermines the Operation of Plaintiffs' Judicial Circuits.

A. Stone Mountain Judicial Circuit

53. The Stone Mountain Judicial Circuit District Attorney handles felony and juvenile cases in DeKalb County. DA Boston supervises a full-time staff of 266 employees and 94 assistant district attorneys.

54. The mission of the Stone Mountain Judicial Circuit District Attorney's Office is "to safeguard our community through vigorous and fair prosecution of felony offenses" throughout the circuit. The Office "seek[s] to accomplish this goal by preserving the dignity and best interests of our victims while using smart prosecution strategies that balance offender accountability with prevention, intervention, and restorative justice."

55. This mission statement is further elaborated with an office-wide Bill of Values, designed to guide prosecutors' actions. The Values include a commitment to indict only those cases which can be proved beyond a reasonable doubt through admissible evidence, attention to victims' needs, and efforts to divert cases from the criminal justice system "where treatment, accountability, and safety for all parties can be accomplished."

56. More than 4,500 felony cases are opened in the Circuit each year. Compounding the already-heavy caseload, DA Boston inherited a backlog of several thousand of drug-related cases when she took office in January 2017.

57. The backlog of cases ballooned in 2020, as the COVID-19 pandemic closed courthouses and limited the ability to call grand juries. The office is still working out from under this backlog.

58. Given the size of the caseload, it is not feasible for DA Boston to individually review each decision in every case. Rather, she relies on the discretion of line prosecutors for many decisions, while certain more significant choices require approval by a department head. Only the most serious decisions, such as a decision not to prosecute a murder charge or on how to approach a substantial, multi-defendant conspiracy, are guaranteed to come before the DA herself.

59. DA Boston relies on documents that outlay general principles, such as the mission and vision statement, and informal conversations with her staff to ensure that prosecutors in her office would exercise their discretion consistently with her prosecutorial philosophy. She considers this consistency to be essential to respect the choice that DeKalb County voters made in electing her.

60. COVID-19 caused additional challenges. With the office's staff working remotely, it became more difficult for line prosecutors to consult informally with their supervisors about pending cases.

61. DA Boston adopted a written policy to address the COVID-19 backlog of cases. In developing the policy, her staff conducted extensive research. When she announced the policy, she also distributed it to various stakeholders, and it received the full support of the local public-safety community, including judges, police, and the defense bar.

62. The operative policy, as renewed in June 2022, instructs Assistant District Attorneys to decline to present a case to the grand jury or *nolle pros* a case that has already been subject to indictment if the defendant has been charged only with an offense covered under the policy's list of low-level felonies.

63. In dismissing such cases, ADAs are instructed to include the following language in the *nolle pros* or decline to present to grand jury document: "While there was probable cause for the arrest, the State declines to prosecute."

64. Before an ADA may decline to prosecute a case under the COVID-19 policy, the office must provide notice to any victims, or make at least three attempts to do so, in compliance with Marsy's Law and the Georgia Crime Victims Bill of Rights.

65. The COVID-19 policy is only one of several policies in the Stone Mountain Judicial Circuit to promote judicial economy and alternatives to incarceration.

66. DA Boston established a pretrial diversion program, pursuant to O.C.G.A. § 15-18-80, in April 2017. Consistent with the requirements of the statute, she promulgated a written set of guidelines for participation in the program.

67. Since the COVID-19 pandemic, DA Boston has altered the nature of the diversion program by waiving any requirement for participants to pay for participation in the program. She has also expanded the scope of offenses for which a defendant may be considered for participation.

68. DA Boston also established a program to address recidivism among young adults, called Stopping Trends of Repeat Incarceration through Diversion and Education, or STRIDE. The STRIDE program provides extensive programming for young people who have committed more

serious offenses or are at higher risk to recidivate than can be appropriately addressed in the statutory pretrial diversion program.

69. Each of DA Boston's diversion programs operate on the basis of written guidelines, which provide clear instructions to her staff and transparency for victims, the accused, and the public.

70. All of these policies serve the mission of safeguarding the community of DeKalb County, by focusing law-enforcement and prosecutorial resources on serious, violent crimes. This approach to prosecution has built an effective District Attorney's Office, with the highest murder-conviction rate in the Greater Metro Atlanta area.

71. Alongside her office's formal policies, DA Boston makes frequent public statements about her prosecutorial philosophy.

72. During her first campaign for District Attorney, DA Boston was frequently asked about her approach to real and hypothetical criminal activity. While she would not address existing cases, she regularly answered how she would address hypothetical situations. Those answers were essential to ensuring that voters understood the choice they were making at the ballot box.

73. DA Boston frequently attends community meetings. At these meetings, she continues to be asked about hypothetical criminal activity and her approach to various offenses.

74. DA Boston has also joined other prosecutors from around the country in making public statements on a variety of controversial issues which bear on her prosecutorial approach. These include commitments not to prosecute crimes related to abortion or gender-affirming care, as well as statements in favor of "sanctuary" policies, in favor of limiting homicide prosecutions in cases involving drug overdose deaths, and against prosecuting distribution of food and water in connection with voting.

75. DA Boston has also publicly stated, both in her current role and in her prior role as Solicitor General of DeKalb County, that she will not prosecute certain crimes that relate to private sexual activity, such as consensual sodomy, O.C.G.A. § 16-6-2(a)(1); fornication, O.C.G.A. § 16-6-18; and adultery, O.C.G.A. § 16-6-19.

76. SB 92 threatens to prevent DA Boston from fully exercising her discretion and carrying out the duties of her office in several ways.

77. DA Boston's commitment not to indict cases where the office believes that there is not sufficient admissible proof of guilt beyond a reasonable doubt may be considered a "stated policy," and the heightened standard may be considered a "factor[] unrelated to the duties of prosecution."

78. DA Boston's COVID-19 Backlog Policy may also be viewed as a "stated policy which demonstrates that the district attorney . . . categorically refuses to prosecute [a set of] offenses." Accordingly, it provides a basis for a complaint against her to the PAQC, exposing her to discipline and potential removal and disqualification from office if the PAQC determines that the policy is inconsistent with the individual-review duty or is "prejudicial to the administration of justice."

79. Without the ability to freely communicate with her staff regarding her prosecutorial approach, including through policies like the COVID-19 Backlog, DA Boston would not be able to carry out her duties as effectively or ensure consistent treatment of cases within her circuit.

80. DA Boston's public commitments not to prosecute abortion and statements on other controversial topics also constitute "stated policies" that expose her to complaints and discipline.

81. Due to concern about generating further opportunities for complaints against her based on additional "stated policies," DA Boston now hesitates to respond frankly to constituents who ask her about her approach to hypothetical circumstances.

B. Towaliga Judicial Circuit

82. The Towaliga Judicial Circuit District Attorney handles all misdemeanor, felony, and juvenile cases in Butts, Lamar, and Monroe Counties, in addition to criminal cases in the Probate Courts of Butts and Lamar Counties. DA Adams supervises a full-time staff of ten prosecuting attorneys, six legal assistants, two investigators, and four victim advocates.

83. The mission of the Towaliga Judicial Circuit District Attorney's Office is "[t]o prosecute professionally and competently; to treat all people courteously, and respectfully; to advocate for the rights of victims; and above all to make our community a safer place for all of its residents."

84. DA Adams's office has opened an average of 1886 criminal cases per year since DA Adams was sworn in, averaging 193 open cases per Assistant District Attorney. Cases are distributed to Assistant District Attorneys by type, divided into major felonies, drug crimes, and property crimes. DA Adams handles all death penalty and certain homicide cases. The types of cases most frequently handled by the Towaliga Judicial Circuit are Drug Crimes/DUI at 40%, followed by Violent Crimes at 23%.

85. This high proportion of drug- and alcohol-related crimes led to DA Adams's focus on a multi-pronged approach to drug and alcohol prosecution and accountability courts. Alongside Towaliga's Drug Accountability Court, one of the oldest in the state of Georgia, DA Adams recently worked with a coalition to establish a Mental Health Accountability Court and a Veterans Accountability Court.

86. The Towaliga Judicial Circuit uses pre-trial diversion pursuant to O.C.G.A § 15-18-80 for first-time offenders who have committed non-violent crimes.

87. When DA Adams first took office, pretrial diversion in the Circuit was informal and unstructured.

88. DA Adams worked with the misdemeanor probation supervision office to set up appropriate parameters for pretrial diversion that prioritize young, first-time offenders for non-violent, non-sexual offenses. The alternatives to incarceration include community service, restitution, anger management classes, and other forms of therapy.

89. In addition to the formal program, the assigned Assistant District Attorney may also divert cases that fall outside of eligibility criteria.

90. Nearly 30% of cases in the Circuit are resolved through pretrial diversion and accountability courts, dismissal for insufficiency of evidence, or dismissal in the interest of justice.

91. Over the last three years, DA Adams has created two sections in his employee handbook to guide the discretion of his office's prosecutors in making sentencing recommendations guideline documents for sentencing and drug crimes used by his office, with the expectation that his assistant district attorneys should use prosecutorial discretion in the course of each case.

92. In DA Adams's view, the hardest part of a prosecutor's job is determining the appropriate sentence.

93. The first guideline section of the handbook lays out sentencing guidelines for a wide array of first offenses, including murder, aggravated assault, theft by taking, drug distribution, and possession of a firearm by a convicted felon.

94. Line prosecutors are expected to seek a sentence in the range provided by the office's sentencing guidelines. However, line prosecutors do make exceptions, subject to approval by a

supervising deputy district attorney or, in the case of a significant deviation, by DA Adams himself.

95. The second guidelines section of the handbook provides sentencing guidelines specifically for drug offenses. These guidelines consider factors such as criminal history, type of drug, presence of a weapon, and evidence of intent to distribute. These guidelines were developed by the office's drug-crime prosecutors.

96. The purpose of the sentencing guidelines is to promote consistency and fairness across all cases within the Towaliga Judicial Circuit. DA Adams created the guidelines after learning of significant variation that had emerged within his office.

97. DA Adams's policies have proven critical to the efficient operation of the District Attorney's Office in light of two significant practical considerations.

98. First, COVID-19 created a significant backlog of open, stalled cases clogging the local court system. Expanding accountability courts and pre-trial diversion for non-violent offenses has allowed DA Adams to address the court backlog and prioritize prosecution of violent crimes.

99. Second, DA Adams has found it exceedingly difficult to prosecute low-level, marijuana-only offenses. The Georgia State Crime Lab will not test misdemeanor-level quantities of marijuana and has taken more than six months to report lab results. The Towaliga Judicial Circuit does not have the resources to operate its own crime lab.

100. Additionally, DA Adams has found it exceedingly difficult to empanel juries for marijuana prosecutions. A recent felony marijuana case in Towaliga Judicial Circuit resulted in dismissal of over 30 potential jurors who could not participate because they did not support prosecuting marijuana charges.

101. As a result, DA Adams has found that prosecution of low-level marijuana-only cases in his circuit is practically difficult, presents fairness concerns, and is rarely worth the necessary resources.

102. In his most recent annual report, DA Adams stated his belief that "There is no one solution to addressing crime in our community. . . . Our intention is to remove extremely violent individuals and sexual predators from our society through incarceration, but we also recognize that many defendants have the potential to live productive and fruitful lives if core issues with mental health and addiction are properly addressed."

103. In 2022, DA Adams authored a public memorandum to Magistrate Court Judge Buck Wilder, who sought advice on an adultery complaint brought before his court by a private citizen.

104. DA Adams sometimes receives requests from magistrate court judges in his circuit, who are not required by law to be attorneys but may consider criminal complaints by private citizens, asking him to clarify the applicability of statutes.

105. After reviewing the statute and precedent, DA Adams determined that "[b]ased on well settled law regarding the right of privacy and the above referenced statutes, the Office of the District Attorney for the Towaliga Judicial Circuit cannot prosecute" the following statutes: Sodomy - O.C.G.A. § 16-6-2, Adultery - O.C.G.A. § 16-6-19, and Fornication - O.C.G.A. § 16-6-18.

106. Though these offenses remain in the Georgia criminal code, precedent in both the Georgia Supreme Court and the U.S. Supreme Court protects the right to private, consensual and non-commercial acts of sexual intimacy. In DA Adams's view as an officer of the judiciary, prosecuting alleged violations of unconstitutional laws that improperly remain part of the

Georgia Criminal Code would violate the constitutional rights of Georgians and DA Adams's oath of office to uphold the federal and state Constitutions.

107. SB 92 threatens to prevent DA Adams from fully exercising his discretion and carrying out the duties of his office.

108. SB 92 infringes on DA Adams's prosecutorial discretion to create policies, guidelines, and memorandums like those discussed above that are essential to the efficient and just operations of the Towaliga Judicial Circuit.

109. Under the provisions of SB 92, DA Adams could be subject to a complaint, investigation, and discipline, up to and including removal and disqualification from office, because of any of the following discretionary policy decisions: his non-prosecution policy regarding adultery, fornication, and consensual sodomy; his sentencing guidelines documents, and regular practice of resolving cases through diversion or dismissal in the interest of justice.

110. Additionally, if DA Adams had to comply with any individual-review requirement under SB 92, he would find it difficult to discharge the duties of his office given the nearly 2,000 cases that his office opens per year.

111. SB 92 would also affect how DA Adams speaks to the public about his approach to prosecution in order to avoid making a statement that could be construed as a policy that could subject him to discipline under SB 92.

112. DA Adams has already received threats that members of the public plan to file superfluous, unsubstantial complaints against him under SB 92. This comes after DA Adams has received death threats and his home address was disseminated online by members of the public. These individuals are likely to continue their harassment through the mechanism of PAQC

complaints. DA Adams thus fears that SB 92 would force him to be accountable to the whims of fringe individuals, rather than the majority of his constituents.

C. Augusta Judicial Circuit

113. The Augusta Judicial Circuit District Attorney handles felony and juvenile cases in Richmond and Burke Counties. The Circuit is allocated funding for 26 assistant district attorneys, with funding through the American Rescue Plan Act for an additional 4 prosecutors. The office currently has 27 prosecutors.

114. The core values of the Augusta Judicial Circuit District Attorney's Office are "Integrity, Fairness, and Justice", with the following stated goals: to "provide the highest level of support to victims", to "reduce crime through smart policies that prevent repeat offenses," and to "lead a community-wide effort to address root causes of crime and keep kids out of the justice system."

115. The Augusta Judicial Circuit has approximately 5000 open cases, distributed between Superior and Juvenile court systems across two counties. Since DA Williams took office in 2021, the Augusta District Attorney's Office has opened 6879 cases, of which over 20 percent are violent felonies. Felony drug crimes make up over 23 percent of the docket in the past two years.

116. DA Williams took office with a significant pre-existing backlog, which only increased when COVID-19 closed down grand juries for an extended period. Moreover, many of the investigative agencies in his Circuit have experienced recruitment and retention issues since 2020, which have contributed to delays in investigation and charging of cases, particularly those involving serious, complex, or violent crimes. Making matters worse, the Circuit has experienced a spike in violent crime since COVID-19.

117. In light of the resource constraints facing his office and his partner agencies, DA Williams has taken several steps to prioritize the prosecution of serious violent crimes, while also promoting approaches that cultivate public safety in the long term. The focus on serious violent crimes was a major aspect of his campaign platform, which he has been proud to fulfill.

118. DA Williams restructured the office to create the Circuit's first Major Crimes Division, which is further organized into a Violent Crimes Unit and Special Victims Unit. The assistant district attorneys in these units focus their attention on serious violent felonies, sexual assaults, and other significant crimes, allowing them to develop expertise in these areas. Before the reorganization, every prosecutor had responsibility for a wide range of crimes of varying severity. The priority seemed to be on accumulating a higher number of convictions, regardless of the difficulty or seriousness of the underlying offenses.

119. More generally, DA Williams makes clear when staff are onboarded and through continuing communications that the office's priorities are to prosecute those felonies that pose the greatest risk to community safety, such as serious violent felonies or crimes that endanger children.

120. DA Williams also created the Circuit's first pretrial diversion program. As required by O.C.G.A §15-18-80, he developed and made publicly available a set of guidelines to govern admission to and participation in the program.

121. DA Williams is also in the process of creating the "Checks Over Stripes" program, designed to reduce recidivism among younger offenders. The program would offer specialized probation, tied to work opportunities and personal accountability, for youthful first-time felony offenders who might otherwise be at risk of incarceration.

122. DA Williams has also emphasized noncarceral approaches to the juvenile docket, through partnerships with community organizations to divert juveniles away from the court system, aligning with his unofficial campaign slogan that "kids belong in classrooms, not courtrooms." He launched the "Youth Diversion to the Arts" program in 2022 to allow selected juveniles to receive a structured environment for arts education and necessary counseling.

123. Beyond the formal diversion programs, DA Williams has committed to not prosecute cases without a belief that there is sufficient admissible proof of guilt beyond a reasonable doubt. While warrants are sought based on probable cause, prosecutors are required to prove cases in court by a higher standard, and DA Williams regularly communicates to his prosecutors the importance of adhering to that standard. Where there is insufficient proof of the crime alleged, the prosecutor assigned is authorized to decline to present it to the grand jury or *nolle pros* the case if previously indicted.

124. Furthermore, DA Williams recognizes the need for prosecutors to exercise discretion in cases where criminal proceedings can do more harm than good. Having been elected by his community to pursue justice and community safety, he takes on the responsibility to determine where those goals are best served without traditional prosecution.

125. The new individual-review duty in SB 92 will further take resources away from victims of serious crime by imposing a significant administrative burden on DA Williams's office. Because the nature of individualized review required by this novel duty is undefined, SB 92 encourages an unnecessary time, attention, and documentation of cases that do not merit prosecution—both to satisfy the duty itself and to establish a defense against meritless accusations before the PAQC. These efforts, which are exacerbated by the vague nature of the duty, will come at the expense of meritorious, higher priority cases.

126. SB 92 threatens to prevent DA Williams from fully exercising his discretion and carrying out the duties of his office in several ways.

127. DA Williams has noted that efforts to prove simple possession cases where the evidence suggests personal use, like marijuana cases, are costly burdens on the already limited time and resources of the DA's Office and partner agencies. Drug testing for certain substances is not readily available or cost-effective, relative to the limited benefit to the community of pursuing such a prosecution.

128. DA Williams prioritizes prosecuting murder over prosecuting marijuana. If not for SB 92, he would consider a non-prosecution policy regarding simple possession cases where resources are best deployed on crimes that threaten the safety of his citizens, or where there exist more effective means of correcting behavior, such as treatment for underlying substance use disorder. Such a policy would allow staff and law enforcement to have clear guidance to focus attention and resources on more serious crimes, in turn providing a greater level of service to victims. SB 92 undermines DA Williams's authority to adopt such a policy by exposing him to investigation and potential discipline under the act.

129. The threat of potential discipline under SB 92 leads DA Williams to avoid both formal and informal prioritization away from certain offenses that pose less risk to public safety.

130. DA Williams was elected in 2020 on a platform that he was free to communicate clearly with the voters in his circuit. In the upcoming 2024 election, another attorney has announced their candidacy for DA Williams's position. Accordingly, DA Williams has noted a more acute interest among the public in understanding his work while in office and his approach to prosecution.

131. Despite the public's interest in understanding the choice that will face them in the next election, DA Williams must avoid clear statements regarding his prosecutorial approach in community meetings and similar conversations if he wishes to avoid the threat the PAQC poses in construing such comments as "stated policies," exposing him to investigation, discipline, and potential removal.

D. Cobb Judicial Circuit

132. The Cobb Judicial Circuit District Attorney's Office handles felony and juvenile cases arising in Cobb County, the third-largest county in the state. Fifty-six attorneys work for Cobb Judicial Circuit, with senior leadership including two Co-Chief Assistant District Attorneys, three Deputy Chief Assistant District Attorneys, and eight Senior Assistant District Attorneys.

133. DA Broady established the mission for the Cobb Judicial Circuit District Attorney's Office "to enhance public safety and community well-being by supporting victims, holding people who commit crimes accountable, and engaging the community to prevent harm. We strive to enhance the quality of life for all persons in Cobb County by promoting greater public safety and well-being through data-driven approaches to criminal justice that recognize the dignity of all persons with whom we interact. We further seek to reduce recidivism and to end mass incarceration by prosecuting crimes fairly, honorably, and without regard to societal biases."

134. The Cobb Judicial Circuit receives approximately 6,500 new warrants a year, and DA Broady inherited a significant backlog of cases from the COVID-19 pandemic. Approximately 40% of cases are non-violent offenses, and drug cases make up approximately 25% of the overall caseload.

135. DA Broady identifies himself as a progressive prosecutor. By this, he means a prosecutor who focuses on restorative justice, rather than punitive justice. He seeks to further public safety by removing violent offenders from the community, while also returning nonviolent offenders to the community as productive citizens.

136. DA Broady is also reluctant to prosecute drug possession cases aggressively because of the practical inefficiencies inherent in such prosecutions. His office uses the State Crime Lab to test for drugs. Due to backlogs and limitations on testing, this significantly delays any case requiring testing. Accordingly, a defendant's case can sit for months or years for resolution, inhibiting their ability to return to a productive, law-abiding place in society. DA Broady thus seeks early intervention with pretrial diversion both to allow defendants to move on with their lives to lawful endeavors and to relieve the burdens on the judicial system.

137. DA Broady has implemented several changes to case management, pre-trial diversion, and accountability courts in Cobb Judicial Circuit. These changes make up his Restorative Justice Initiative.

138. In November 2021, DA Broady created the Early Intervention Court Management System. The system handled over 1,100 cases in its first year, over 23 percent of the total warrants issued by Cobb Judicial Circuit in that time period. Using both the Diversion Program and Accountability Courts, the Early Intervention Court identified and expedited drug cases for substance abuse treatment within 30 days of arrest. From this successful project, DA Broady developed the Alternative Resolution Court.

139. The Alternative Resolution Court Case Management System (ARC) expedites nonviolent cases for defendants who would benefit from immediate drug, alcohol, or mental health treatment. This Court was a collaboration between DA Broady and Chief Magistrate

Judge Brendan Murphy. Currently, all non-violent, victimless cases are first referred to ARC to determine their eligibility for diversion and accountability courts.

140. Beyond the ARC and Early Intervention, the Cobb Judicial Circuit Pre-trial Diversion Program focuses on providing treatment and education to low-risk offenders, along with early restitution for victims. Since DA Broady took office, Cobb Judicial Circuit has tripled the number of participants in the Pre-Trial Diversion Program, reporting an over 90% success rate in 2021.

141. There are five Accountability Courts in Cobb Superior Court: Drug Court; Intermediate Drug Treatment Court; Mental Health Court; Parental Accountability Court; and Veterans Court. There are also two Juvenile Accountability Courts: Drug Court and Rising, which focuses on youth at risk of gang involvement.

142. These accountability courts provide alternatives to traditional prosecution that focus on treatment, rehabilitation, and responsibility of participants.

143. Another policy DA Broady introduced is dismissing charges upon successful completion of an accountability courts or pre-trial diversion program. Dismissal of charges acts as an incentive to participants to complete the programs and removes criminal-history barriers to successful participation in society.

144. DA Broady took office amid substantial public distrust of the criminal justice system in Cobb County. There was a widespread perception that law enforcement officials could violate the law with impunity, while prior administrations prioritized easy convictions over the more challenging work of public safety.

145. When he first took office, DA Broady adopted a policy to treat all drug possession charges as if they were first offenses. Specifically, he made diversion and related treatment-

based programs available for all such charges, recognizing that such programs may not have been made available previously.

146. Having seen how many defendants' criminal histories begin with conviction and incarceration for drug possession, DA Broady believes that addressing the root cause of substance use disorder early can reduce recidivism for nonviolent crime and escalation to more serious offenses over time.

147. To rebuild trust in his office, DA Broady also dramatically expanded his communications with the public and Cobb County elected officials about his philosophy and activities. He appears before Cobb County residents and issues a quarterly update.

148. DA Broady has publicly stated that he believes that abortions fall within the exception to criminalization at O.C.G.A. § 16-12-141(c), necessary to fully preserve the health and life of the pregnant person. This belief is grounded in the experience of almost losing his wife during the birth of his daughter. After that experience, he recognizes the inherent danger of pregnancy, particularly in Georgia which has one of the highest maternal mortality rates in the country. This leads him to recognize that abortion is an inherently medical decision between a patient and their doctor. SB 92 threatens to prevent DA Broady from fully exercising his discretion and carrying out the duties of his office in several ways.

149. The new individual-review duty in SB 92 will further take resources away from victims of serious crime by imposing a significant administrative burden on DA Broady's office. Because the nature of individualized review required by this novel duty is undefined, SB 92 encourages an unnecessary time, attention, and documentation of cases that do not merit prosecution—both to satisfy the duty itself and to establish a defense against meritless

accusations before the PAQC. These efforts, which are exacerbated by the vague nature of the duty, will come at the expense of meritorious, higher priority cases.

150. SB 92 threatens investigation and discipline, up to and including removal and disqualification, based on DA Broady's extensive use of diversion and accountability courts to address nonviolent offenses. These approaches of first directing nonviolent offenses to review for diversion may constitute "stated policies" under the statute, and he has no knowledge of how the PAQC will construe "factors relevant to prosecution," as applied to his restorative-justice approach.

151. Because the grounds for discipline under SB 92 are ambiguous and the individual-review duty is practically challenging, DA Broady anticipates that people will submit complaints based on his self-description as a "progressive prosecutor."

152. DA Broady's stated opinions as to Georgia's maternal mortality rate and dangers of pregnancy will be viewed as a commitment not to prosecute abortion crimes, which also exposes him to investigation and discipline by the PAQC.

153. To avoid additional grounds for a complaint about a purported "stated policy" of his office, DA Broady now hesitates to share policy information with the public in writing for fear of reprisal under SB 92. He intends to limit the information that he provides in future quarterly updates and appearances before the Cobb County Commission and other audiences. This fear causes him to act counter to one of his guiding principle of transparency.

V. Plaintiffs Have Standing to Challenge the Constitutional Deficiencies of SB 92.

154. "[T]he only prerequisite to attacking the constitutionality of a statute is a showing that it is hurtful to the attacker." *Bo Fancy Prods., Inc. v. Rabun Cnty. Bd. of Comm'rs*, 267 Ga.

341, 344 (1996). This showing of standing can be established through "affirmative action . . . to seek to comply with [the statute] or to run afoul of its restrictions." *Id.*

155. Here, SB 92 is hurtful to the Plaintiffs in several ways.

156. The statute infringes on the inherent powers of the office of District Attorney. This dignitary harm to the office is sufficient injury in itself to establish standing.

157. Several of the Plaintiff District Attorneys intend to continue policies that may run afoul of SB 92, including but not limited to DA Boston's COVID-19 Backlog Policy and DA Broady's stated opinions as to Georgia's maternal mortality rate and the dangers of pregnancy.

158. All of the Plaintiff District Attorneys intend to change their behavior out of concern for discipline under SB 92. They will limit the transparency and frankness with which they articulate their prosecutorial philosophies within their office and with the public. DA Williams and DA Adams will not consider categorical approaches to drug-possession charges, to avoid creating new "stated policies."

159. These efforts to change behavior are further exacerbated by the vague nature of SB 92's grounds for discipline, leading the Plaintiff District Attorneys uncertain about how to comply with the statute.

COUNT I – SEPARATION OF POWERS

Ga. Const., Art. I, § II, ¶ III; Art. 6, § 8 ¶ III; and Ga. Const. Art. I. § II, ¶ V

160. Plaintiffs repeat and reincorporate the allegations above.

161. The Georgia Constitution establishes that "[t]he legislative, judicial, and executive powers shall forever remain separate and distinct; and no person discharging the duties of one shall at the same time exercise the functions of either of the others except as herein provided." Ga. Const., Art. 6 § 8 ¶ III. A statute violates the separation of powers "when the enactment

prevents [another] Branch from accomplishing its constitutionally assigned functions." *Perdue v. Baker*, 277 Ga. 1, 13 (2003) (cleaned up).

162. SB 92 prevents district attorneys from accomplishing their constitutionally assigned functions, by creating a novel duty "[t]o review every individual case for which probable cause for prosecution exists, and make a prosecutorial decision available under the law based on the facts and circumstances of each individual case." O.C.G.A. § 15-18-6(4). This duty is practically unworkable, limiting district attorneys' ability to define enforcement priorities and approaches and distracting from the prosecution of meritorious cases.

163. SB 92 further prevents district attorneys from accomplishing their constitutionally assigned functions by threatening investigation, discipline, and removal based on their exercise of prosecutorial discretion, i.e., "on the basis of a charging decision, plea offer, opposition to or grant of a continuance, placement of a case on a trial calendar, or recommendation regarding bond," in certain circumstances. O.C.G.A. § 15-18-32(i)(2).

164. The grounds on which a district attorney may be investigated or disciplined based on their exercise of discretion are not grounded in established law.

165. Plaintiffs ask this Court to declare that:

a. The General Assembly exceeded its constitutional authority by seeking to impose a duty on district attorneys "[t]o review every individual case for which probable cause for prosecution exists, and make a prosecutorial decision available under the law based on the facts and circumstances of each individual case." O.C.G.A. § 15-18-6(4). Accordingly, the individual-review duty is void and unenforceable, whether by the PAQC or through recall.

b. The General Assembly exceeded its constitutional authority by allowing the PAQC to investigate, discipline, or remove a district attorney "on the basis of a charging decision, plea offer, opposition to or grant of a continuance, placement of a case on a trial calendar, or recommendation regarding bond." Accordingly, the provision of SB 92 allowing for such investigations, discipline, and removal is void and unenforceable.

c. The PAQC may not constitutionally investigate or pursue discipline or removal against a district attorney on the basis of a charging decision, plea offer, opposition to or grant of a continuance, placement of a case on a trial calendar, recommendation regarding bond, or with respect to any policy relating to these decisions.

166. Plaintiffs further ask this Court to declare that these impermissible aspects of SB 92 are not severable from the remainder of the statute because removing them undermine "the main purpose that the legislature sought to accomplish" or the provisions are "mutually dependent on one another." *Union City BZA v. Justice Outdoor Displays*, 266 Ga. 393, 404 (1996). Accordingly, Plaintiffs ask the Court to declare the entire statute void.

167. Plaintiffs further ask this Court to issue a permanent injunction enforcing its declaratory judgment, by either prohibiting the PAQC from taking any action or, in the alternative, prohibiting the PAQC from taking any action to investigate, discipline, or remove a district attorney "on the basis of a charging decision, plea offer, opposition to or grant of a continuance, placement of a case on a trial calendar, or recommendation regarding bond."

COUNT II – FREEDOM OF SPEECH

First Amendment and Ga. Const. Art. I. § II, ¶ V.

168. Plaintiffs repeat and reincorporate the allegations above.

169. Under the First Amendment to the United States Constitution, "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I.

170. The First Amendment applies to states through the Fourteenth Amendment.

171. "It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys. . . The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 828-29 (1995).

172. SB 92 provides for the PAQC to investigate, discipline, and remove a prosecutor on the basis of a "stated policy, written or otherwise, which demonstrates that the district attorney or solicitor-general categorically refuses to prosecute any offense or offenses of which he or she is required by law to prosecute." O.C.G.A. § 15-18-32(i)(2)(E).

173. This provision penalizes statements by prosecutors on the basis of the viewpoint and content of that speech.

174. There is no valid governmental purpose for restricting prosecutors' speech regarding their governing philosophies. In fact, by limiting prosecutors' ability to articulate their approach to their office, the statute undermines core values of self-governance by weakening voters' ability to understand and choose among candidates.

175. This provision would chill a reasonable prosecutor from articulating less punitive prosecutorial philosophies and is chilling plaintiffs from accurately and completely articulating their prosecutorial approaches.

176. The Georgia Constitution provides that, "Legislative acts in violation of [the Georgia] Constitution or the Constitution of the United States are void, and the judiciary shall so declare them." Ga. Const. Art. I. § II, ¶ V.

177. Plaintiffs ask this Court to declare that O.C.G.A. § 15-18-32(i)(2)(E) violates the free-speech protections of the United States Constitution.

178. Plaintiffs further ask this Court to issue a permanent injunction, to enforce its declaratory judgment, prohibiting the PAQC from investigating, disciplining, or removing a prosecutor based on a "stated policy" or otherwise relying on a prosecutor's speech regarding their prosecutorial philosophy.

COUNT III – FREEDOM OF SPEECH

Ga. Const. Art. 1 § 1 ¶ V and Art. I. § II, ¶ V (2021).

179. Plaintiffs repeat and reincorporate the allegations above.

180. The Georgia Constitution provides, "No law shall be passed to curtail or restrain the freedom of speech." Ga. Const. Art. 1 § 1 ¶ V.

181. The Georgia "state constitution provides even broader protection of speech than the first amendment." *Statesboro Publ'g Co. v. City of Sylvania*, 271 Ga. 92, 95 (1999).

182. SB 92 provides for the PAQC to investigate, discipline, and remove a prosecutor on the basis of a "stated policy, written or otherwise, which demonstrates that the district attorney or solicitor-general categorically refuses to prosecute any offense or offenses of which he or she is required by law to prosecute." O.C.G.A. § 15-18-32(i)(2)(E).

183. This provision penalizes statements by prosecutors on the basis of the viewpoint and content of that speech.

184. There is no valid governmental purpose for restricting prosecutors' speech regarding their governing philosophies. In fact, by limiting prosecutors' ability to articulate their approach to their office, the statute undermines core values of self-governance by weakening voters' ability to understand and choose among candidates.

185. This provision would chill a reasonable prosecutor from articulating less punitive prosecutorial philosophies and is chilling plaintiffs from accurately and completely articulating their prosecutorial approaches.

186. The Georgia Constitution provides that, "Legislative acts in violation of [the Georgia] Constitution or the Constitution of the United States are void, and the judiciary shall so declare them." Ga. Const. Art. I. § II, ¶ V.

187. Plaintiffs ask this Court to declare that O.C.G.A. § 15-18-32(i)(2)(E) violates the free-speech protections of the Georgia Constitution.

188. Plaintiffs further ask this Court to issue a permanent injunction enforcing its declaratory judgment, by prohibiting the PAQC from investigating, disciplining, or removing a prosecutor based on a "stated policy" or otherwise relying on a prosecutor's speech regarding their prosecutorial philosophy.

COUNT IV – NONDELEGATION

Ga. Const. Art. 3, § 1, ¶ 1 and Art. I. § II, ¶ V

189. Plaintiffs repeat and reincorporate the allegations above.

190. To the extent that the General Assembly may enact laws that regulate district attorneys' exercise of their inherent discretion or speech relating to such exercise, SB 92 was

nonetheless an invalid enactment because it failed to provide meaningful guidelines to the PAQC, violating the nondelegation doctrine.

191. The Georgia Constitution entrusts the legislative power with the General Assembly alone. Ga. Const. Art. 3, § 1, ¶ 1. Accordingly, the legislature may not delegate to a commission, such as the PAQC, the authority to "define the thing to which the statute is to be applied." *HCA Health Services of Ga. v. Roach*, 265 Ga. 501, 503 (1995) (quoting *Sundberg v. State*, 216 S.E.2d 332, 333 (Ga. 1975)).

192. SB 92 created new grounds for discipline of prosecutors that are novel and inconsistent with prosecutors' historic exercise of discretion with no clear standards, leaving it to the PAQC to define the grounds for discipline and removal. Specifically, the PAQC is left to define:

a. What it means for a prosecutor to "make a prosecutorial decision available under the law based on the facts and circumstances of each individual case under oath of duty," O.C.G.A. § 15-18-6(4), and what "willful or persistent failure to carry out" that duty, O.C.G.A. § 15-18-32(h)(3), would entail;
b. How the concept of "conduct prejudicial to the administration of justice," O.C.G.A. § 15-18-32(h)(6), which historically applies to judicial conduct, applies to a district attorney;
c. What constitutes "factors unrelated to the duties of prosecution," O.C.G.A. § 15-18-32(i)(2)(D); and
d. What it means for a prosecutor to be "required by law to prosecute" an offense, O.C.G.A. § 15-18-32(i)(2)(E), such that a non-prosecution policy would be invalid.

193. Vesting the PAQC with the unilateral authority to define these grounds for discipline improperly delegates the Legislature's authority in violation of the Georgia Constitution.

194. The Georgia Constitution provides that, "Legislative acts in violation of [the Georgia] Constitution or the Constitution of the United States are void, and the judiciary shall so declare them." Ga. Const. Art. I. § II, ¶ V.

195. Plaintiffs ask this Court to declare that O.C.G.A. § 15-18-32(h)(3), (h)(6), (i)(2)(D), and (i)(2)(E) are unlawful delegations of legislative authority in violation of the Georgia Constitution and, accordingly, are void.

196. Plaintiffs further ask this Court to declare that these impermissible aspects of SB 92 are not severable from the remainder of the statute because removing them undermine "the main purpose that the legislature sought to accomplish" or the provisions are "mutually dependent on one another." *Union City BZA v. Justice Outdoor Displays*, 266 Ga. 393, 404 (1996). Accordingly, Plaintiffs ask the Court to declare the entire statute void.

197. Plaintiffs further ask this Court to issue a permanent injunction enforcing its declaratory judgment by prohibiting the PAQC either from taking any action or, in the alternative, from investigating, disciplining, or removing a prosecutor pursuant to O.C.G.A. § 15-18-32(h)(3), (h)(6), (i)(2)(D), and (i)(2)(E).

COUNT V – FAIR NOTICE

Fourteenth Amendment Due Process Clause and Ga. Const. Art. I. § II, ¶ V

198. Plaintiffs repeat and reincorporate the allegations above.

199. The Fourteenth Amendment to the United States Constitution guarantees that no "State [shall] deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV.

200. The "fundamental requisite[s] of due process of law" are notice of a potential deprivation of life, liberty, or property, and an opportunity to be heard in opposition to said deprivation. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970).

201. For the purposes of the Fourteenth Amendment, property interests "are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972).

202. Georgia law recognizes that an "elected . . . official who is entitled to hold office under state law has a property interest in his office which can be taken from him only by procedures meeting the requirements of due process." *City of Ludowici v. Stapleton*, 258 Ga. 868, 869 (1989).

203. Federal courts in Georgia have long recognized that an "official who is entitled to hold office under a state law has a property interest in his office which can be taken from him only by procedures meeting the requirements of due process." *Crowe v. Lucas*, 595 F.2d 985, 993 (5th Cir. 1979) (citing *Gordon v. Leatherman*, 450 F.2d 562, 565 (5th. Cir. 1971)).

204. The due process guarantee in the United States Constitution establishes that "[a] fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required" before the state can deprive persons or entities of life, liberty, or property. *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

205. Under the "void for vagueness" due process doctrine, a law "can be impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement." *Wollschlaeger v. Governor*, 848 F.3d 1293, 1319 (11th Cir. 2017) (en banc) (quoting *Hill v. Colorado*, 530 U.S. 703, 732 (2000)).

206. Especially "[w]hen speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech." *Wollschlaeger,* 848 F.3d at 1320 (quoting *Fox Television Stations*, 567 U.S. at 253-54). Accordingly, content-based regulations require "a more stringent vagueness test." *Id.* (quoting *Vill. of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982)).

207. As a result, due process "requires the invalidation of laws that are impermissibly vague" in this manner, *Fox Television Stations, Inc*., 567 U.S. at 254, particularly where the law threatens to punish "wrong guesses" about what it forbids with "severe [regulatory] consequences" imposed by a state oversight board, *Wollschlaeger*, 848 F.3d at 1319.

208. SB 92's vague grounds for discipline, which are left to the PAQC to define, fail to provide people of ordinary intelligence a reasonable opportunity to understand what constitutes prohibited conduct that may subject a duly elected prosecutor to investigation, disciplinary proceedings, and permanent removal and disqualification from holding office as a prosecutor for ten years.

209. Furthermore, the vagueness of these grounds for discipline, which are left to the PAQC to define, encourages arbitrary and discriminatory enforcement.

210. SB 92 thus fails to give fair notice of what the statute forbids and encourage arbitrary enforcement in violation of the United States Constitution's guarantee of due process.

211. The Georgia Constitution provides that, "Legislative acts in violation of [the Georgia] Constitution or the Constitution of the United States are void, and the judiciary shall so declare them." Ga. Const. Art. I. § II, ¶ V.

212. Plaintiffs ask this Court to declare that O.C.G.A. § 15-18-32(h)(3), (h)(6), (i)(2)(D), and (i)(2)(E) fail to provide adequate due process by failing to provide fair notice of what conduct will subject a prosecutor to sanction and encouraging arbitrary enforcement and thus are, accordingly, void under the United States Constitution's guarantee of due process.

213. Plaintiffs further ask this Court to declare that these impermissible aspects of SB 92 are not severable from the remainder of the statute because removing them undermine "the main purpose that the legislature sought to accomplish" or the provisions are "mutually dependent on one another." *Union City BZA v. Justice Outdoor Displays*, 266 Ga. 393, 404 (1996). Accordingly, Plaintiffs ask the Court to declare the entire statute void.

214. Plaintiffs further ask this Court to issue a permanent injunction enforcing its declaratory judgment by prohibiting the PAQC from taking any action or, in the alternative, from investigating, disciplining, or removing a prosecutor pursuant to O.C.G.A. § 15-18-32(h)(3), (h)(6), (i)(2)(D), and (i)(2)(E).

COUNT VI – FAIR NOTICE

Ga. Const. Art. 1, § 1, ¶ 1 and Ga. Const. Art. I. § II, ¶ V

215. Plaintiffs repeat and reincorporate the allegations above.

216. The Georgia Constitution provides that "[n]o person shall be deprived of life, liberty or property except by due process of law." Ga. Const. Art 1, § 1 ¶ I.

217. Georgia law recognizes that an "elected city official who is entitled to hold office under state law has a property interest in his office which can be taken from him only by procedures meeting the requirements of due process." *City of Ludowici v. Stapleton*, 258 Ga. 868, 869 (1989).

218. Though Georgia law "authorizes the General Assembly to provide for the procedures, grounds, and all other matters relative to" removing a district attorney from office, the General Assembly may not, "in doing so . . . deny an elected official due process." *Collins v. Morris*, 263 Ga. 734, 736 (1994). In the context of a statute that threatens to remove duly elected public officials, "the procedural rights afforded by the Due Process Clause of the Georgia Constitution . . . are the same as those afforded under the United States Constitution." *DeKalb Cnty. Sch. Dist. v. Ga. State Bd. of Educ*., 294 Ga. 349, 369 (2013).

219. When a civil statute is "so vague and indefinite that men of common intelligence must necessarily guess at its meaning and differ as to its application, it violates the first essential of due process of law." *Bryan v. Georgia Pub. Svc. Comm'n*., 238 Ga. 572, 574 (1977). Accordingly, a civil statute does not provide adequate due process if it fails to "provide[] fair notice to those to whom the statute is directed [or] enable one to determine from the provisions of the Act what the legislative intent was in enacting the Act." *Id*.

220. SB 92's vague grounds for discipline, which are left to the PAQC to define, fail to provide adequate notice of what constitutes conduct that may subject a duly elected prosecutor to investigation, disciplinary proceedings, and permanent removal and disqualification from holding office as a prosecutor for ten years.

221. Furthermore, the vagueness and indefiniteness of these grounds for discipline, which are left to the PAQC to define, make it impossible to determine their meaning.

222. SB 92 fails to provide adequate notice of what the statute forbids, as required by the Georgia Constitution's guarantee of due process.

223. The Georgia Constitution provides that, "Legislative acts in violation of [the Georgia] Constitution or the Constitution of the United States are void, and the judiciary shall so declare them." Ga. Const. Art. I. § II, ¶ V.

224. Plaintiffs ask this Court to declare that O.C.G.A. § 15-18-32(h)(3), (h)(6), (i)(2)(D), and (i)(2)(E) fail to provide adequate due process by failing to provide fair notice of what conduct will subject a prosecutor to sanction and obscuring the intent of the legislature and thus are, accordingly, void under the Georgia Constitution's guarantee of due process.

225. Plaintiffs further ask this Court to declare that these impermissible aspects of SB 92 are not severable from the remainder of the statute because removing them undermines "the main purpose that the legislature sought to accomplish" or the provisions are "mutually dependent on one another." *Union City BZA v. Justice Outdoor Displays*, 266 Ga. 393, 404 (1996). Accordingly, Plaintiffs ask the Court to declare the entire statute void.

226. Plaintiffs further ask this Court to issue a permanent injunction enforcing its declaratory judgment by prohibiting the PAQC from taking any action or, in the alternative, from investigating, disciplining, or removing a prosecutor pursuant to O.C.G.A. § 15-18-32(h)(3), (h)(6), (i)(2)(A), (i)(2)(D), and (i)(2)(E).

***

WHEREFORE, Plaintiffs respectfully request that the Court:

(1) Issue a declaration that SB 92 as a whole is void and unenforceable;

(2) In the alternative, issue a declaration that certain portions of SB 92 are void and unenforceable, as described above;

(3) Issue a permanent injunction prohibiting the PAQC from investigating or pursuing disciplinary action;

(4) Award Plaintiffs attorneys' fees under O.C.G.A. § 9-15-14, as appropriate; and

(5) Grant Plaintiffs any such other, further, and different relief as the Court may deem just and proper.

Respectfully submitted this 2nd day of August, 2023.

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**Pro hac vice* application forthcoming