

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

PATSY AUSTIN-GATSON, in her
Individual Capacity and in her Official
Capacity as the District Attorney for the
Gwinnett Judicial Circuit,

Plaintiff,

v.

THE STATE OF GEORGIA,

Defendant.

CIVIL ACTION FILE

26CV011821

NO. _____

COMPLAINT

Plaintiff Patsy Austin-Gatson is the elected district attorney for the Gwinnett Judicial Circuit. She files this Complaint, in her Individual Capacity and in her Official Capacity as District Attorney for the Gwinnett Judicial Circuit, against Defendant the State of Georgia for a declaration that HB 369 is unconstitutional and for an injunction preventing its enforcement and implementation.

BACKGROUND FACTS

In its 2026 regular session, the Georgia General Assembly passed HB 369, which makes elections for county offices (including district attorney) nonpartisan in any county that uses a medical examiner instead of a coroner. The coroner classification is a pretext for singling out the five metro Atlanta counties of Clayton, Cobb, DeKalb, Fulton, and Gwinnett—each of which has elected a Democrat as district attorney. In the rest of Georgia, district attorney elections will remain partisan. Changing the election rules only for metro Atlanta is unconstitutional in a number of ways.

HB 369's medical examiner distinction is arbitrary and has no rational relation to the partisan status of county elections. There is simply no reason why a county with a medical examiner should have a nonpartisan election for district attorney but a county with a coroner should have partisan elections for district attorney. That arbitrary classification causes HB 369 to violate the Georgia Constitution's Uniformity Clause, which prevents the kind of geographic discrimination adopted here by the General Assembly. HB 369 likewise violates the Equal Protection Clauses of the Georgia and U.S. Constitutions because it arbitrarily singles out candidates for certain elections, with no rational basis as to why they should have to run under different rules than candidates for the same office in other counties.

The procedure used to pass HB 369 was also unconstitutional. The proposal to make metro Atlanta county elections nonpartisan first came up in SB 573. After debate on the floor, the Senate rejected the bill by a vote of 24 in favor to 29 against. When a bill is voted down by the Senate or House, the Georgia Constitution requires two-thirds of the rejecting body to give consent before that same proposal can be reconsidered and passed during the same legislative session. After SB 573 was voted down, the sponsoring legislators stripped HB 369 of its substance—the bill had originally concerned safety standards for food trucks—and substituted in SB 573's language, in an attempted end-run around the Constitution's restrictions on rejected bills. During committee hearings, legislators acknowledged that the new HB 369 was just a continuation of SB 573; the two are substantively identical, just with some minor "technical cleanups" from legislative counsel. But the Senate did not vote to allow reconsideration of the previously rejected proposal to make metro Atlanta county elections nonpartisan. And the revised HB 369 passed with a mere majority. Because two-thirds of the Senate did not consent,

the General Assembly’s consideration and passage of HB 369 was unconstitutional, and the statute is thus unconstitutional.

Plaintiff requests that this Court declare that HB 369 is unconstitutional and enjoin its application or enforcement.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action for declaratory relief through O.C.G.A. §§ 9-4-2 and 9-5-1 and Articles I and VI of the Georgia Constitution.

2. Venue is proper in this Court because Fulton County is the site of the State Capitol and the “seat of government.” *Hoffman v. Dep’t of Corr.*, 218 Ga. App. 363, 363 (1995).

3. Under Article I, Section II, Paragraph V(b)(1) of the Georgia Constitution, Defendant has waived sovereign immunity in actions such as this one seeking declaratory relief.

PARTIES

4. Plaintiff Patsy Austin-Gatson is and has been the elected District Attorney of the Gwinnett Judicial Circuit since January 2021. When Austin-Gatson ran for the office of District Attorney in 2020, she did so as a Democrat, the political party with which she affiliates. In that election cycle, she participated in and won the Democratic primary election and defeated the Republican incumbent district attorney in the general election.

5. Austin-Gatson was re-elected in 2024.

6. Austin-Gatson is registered to vote in Gwinnett County.

7. Defendant the State of Georgia enacted the unconstitutional statute in this case. The State may be served through the Office of the Governor at 206 Washington Street, Ste. 201, State Capitol, Atlanta, Georgia, 30334 or through the Office of the Attorney General at 40 Capitol Square, SW, Atlanta, Georgia, 30334.

OPERATIVE FACTUAL ALLEGATIONS
District attorney elections before HB 369

8. There are 159 counties in Georgia and 51 judicial circuits. Sixteen of those circuits cover one county; the remainder span multiple counties. O.C.G.A. § 15-6-1.

9. 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. VI, § VIII, ¶ I(a).

10. Under Georgia law as it existed before HB 369, candidates for district attorney ran in partisan elections, meaning candidates qualified through political parties, were nominated through partisan primary elections before competing in general elections, and appeared on ballots with their party affiliation identified. This was true for every judicial circuit in Georgia.

11. Under Georgia law as it existed before HB 369, to appear on the general election ballot for every judicial circuit in Georgia, a candidate for district attorney had to first secure nomination through his or her political party’s primary election conducted pursuant to O.C.G.A. § 21-2-151.

12. A candidate seeking the nomination of a political party for district attorney had to file a notice of candidacy with the Secretary of State, pay a qualifying fee, and satisfy the relevant party’s qualifying requirements. *See* O.C.G.A. § 21-2-153.

13. After the primary election, the nominee of each qualifying political party appeared on the general election ballot with their party affiliation identified.

14. The identification of each candidate by party affiliation (or lack thereof) allowed voters to use party affiliation (or lack thereof) as a basis for their vote. *See* O.C.G.A. § 21-2-285.

The Senate rejects SB 573

15. In late February 2026, SB 573 was proposed in the Georgia Senate. Ex. A (SB 573). Per its preamble, the bill “provide[d] for the nonpartisan election for county officers and district attorneys in certain counties.” *Id.* at 1. Those certain counties were defined as “any county in which the governing authority of the county appoints a medical examiner in lieu of an elected coroner.” *Id.* at 2.

16. By local law, the General Assembly may authorize a county “to abolish the office of coroner and establish in lieu thereof the office of medical examiner.” O.C.G.A. § 45-16-80. The General Assembly has only passed such local laws for the five metro Atlanta counties of Clayton, Cobb, DeKalb, Fulton, and Gwinnett; all other counties continue to have an office of the coroner.

17. SB 573 provided that “all candidates to fill elected county offices” in the counties that use a medical examiner in lieu of a county coroner “shall be elected in nonpartisan elections.” Ex. A (SB 573) at 3. It exempted from this rule county sheriffs, local boards of education, and offices of county governing authorities established by local constitutional amendment. *Id.*

18. SB 573 likewise moved the election date for all affected offices from the November election to the May election.

19. The bill was heard by the Senate Ethics Committee on March 2, 2026. After debate and public comment, the Committee favorably reported SB 573 on a party-line vote.

20. The Senate took up the bill on March 6, 2026. SB 573 failed by a vote of 24 Yea to 29 Nay, with two senators not voting and one excused. Ex. B (Senate Vote #655).

The Senate passes HB 369

21. For its part, HB 369—which addressed safety standards for food trucks—was proposed in the House on February 10, 2025. Ex. C (HB 369 as passed by the House). The House passed the bill with minor amendments on March 4, 2025.

22. When it moved to the Senate side, HB 369 was assigned to the Senate Public Safety Committee, but no further action was taken on the bill in the 2025 legislative session. On March 16, 2026, HB 369 was withdrawn, replaced with the substance of SB 573, Ex. D (HB 369 substitute), and reassigned to the Senate Ethics Committee.

23. On March 19, 2026, the Ethics Committee took up HB 369. Senator John Albers—who had sponsored SB 573 and who was sponsoring HB 369 in the Senate—presented the bill to the committee. In his remarks, he noted that HB 369 was a “cleanup” of SB 573, as “there were some technical changes that needed to be made.”¹ In discussion with members of the committee, Senator Albers explained that a “technical cleanup” was necessary because SB 573 “had district attorneys at the wrong election date in May, and they should have been in November, so there was some technical cleanups with legislative counsel that had some senators who needed to understand to make sure that was right. We have made those technical corrections, so this [i.e., HB 369] is perfected and ready to go.”²

24. Though Senate committees typically take public comment on bills transmitted by the House, the Ethics Committee did not take public comment on HB 369 during the March 19

¹ The Senate Ethics Committee hearing is available to be viewed at <https://vimeo.com/1175284225>.

² SB 573 had provided that all impacted elections would be moved to the May primary. The “technical cleanup” made in HB 369 acknowledged that, unlike other county offices, district attorney elections are constitutionally required to be held during the November general election and so could not be moved to May. Ga. Const. art. VI, § VIII, ¶ I(a).

hearing. This was because the committee had already heard public comment on the same proposal during its hearing on SB 573 two weeks before.

25. The Senate Ethics Committee favorably reported the substitute for HB 369, again on a party-line vote.

26. Other than the “technical cleanup” of the election date for district attorneys, SB 573 and the substitute version of HB 369 are materially identical. Both single out the same group of five counties—defined as those that have abolished the office of elected coroner in lieu of an appointed medical examiner—and change the same county offices from a partisan election to a nonpartisan election. As multiple senators acknowledged during the Ethics Committee hearing and as is evident from the committee’s decision not to hold public comment on HB 369, the substituted HB 369 was the same proposal as SB 573.

27. On March 25, 2026, the Senate took up HB 369 and approved it by a vote of 32 Yea to 21 Nay. Ex. E (Senate Vote #803). On March 27, 2026, the House passed the Senate substitute version of HB 369 by a vote of 93 Yea to 64 Nay. Ex. F (House Vote #790); Ex. G (HB 369 As Passed).

28. On May 12, 2026, Governor Kemp signed HB 369 into law.

HB 369 creates nonpartisan elections in five of Georgia’s 159 counties

29. HB 369 amends Chapter 2 of Title 21 of the Georgia Code by revising O.C.G.A. § 21-2-132(c)(2) and adding the new § 21-2-140 (the “Statute”).

30. The Statute’s effective date is January 1, 2028. District attorneys are elected every four years, with the next election cycle taking place in 2028. HB 369 thus controls the rules for the next elections for district attorney.³

31. Even before the law officially goes into effect, candidates for those offices will have to adjust their fundraising and campaign conduct—which can begin more than a year before an election date and thus before January 1, 2028—to account for HB 369. That includes accepting campaign contributions only for one election, rather than for the two elections allowed for partisan offices, and refraining from affiliating with any political party in their campaign messaging and public appearances.

32. The intended effect of the Statute is to mandate nonpartisan elections for certain offices in just five metro Atlanta counties: Clayton, Cobb, DeKalb, Fulton, and Gwinnett.

33. The Statute accomplishes that by limiting its application to “consolidated law enforcement count[ies],” defined as “any county where the elected office of county coroner has been abolished.” O.C.G.A. § 21-2-140(a)(1).

34. The Statute then provides that, subject to certain enumerated exceptions, “all candidates to fill elected county offices in a consolidated law enforcement county shall be elected in nonpartisan elections.” O.C.G.A. § 21-2-140(b).

35. The Statute defines “county office” to mean “any office where the electors of a county elected the officeholder” and specifies that “county office” includes, but is not limited to, members of a county governing authority, tax commissioners, clerks of superior court, solicitors-

³ The same is true for other county offices, including solicitors-general, county clerks, and county tax commissioners.

general, and, where elected by county electors, clerks of state court and county surveyors.

O.C.G.A. § 21-2-140(a)(2).

36. The Statute exempts (1) the office of county sheriff and (2) offices of county governing authorities established pursuant to or authorized by a local constitutional amendment—meaning those elections will remain subject to partisan elections. O.C.G.A. § 21-2-140(c).

37. Under the Statute, elections for county offices that are changed to nonpartisan will be moved from the November election to the May election, similar to the way nonpartisan judicial elections are held. O.C.G.A. § 21-2-140(d).

38. Because district attorneys are constitutionally required to be elected in the general election, HB 369 provides that district attorneys in consolidated law enforcement counties will be elected by a nonpartisan election held in November, rather than in May like the other county office elections modified by HB 369. O.C.G.A. § 21-2-140(e).

39. Under the Statute, no candidate for district attorney in a consolidated law enforcement county “shall be nominated by a political party or by a petition as a candidate of a political body or as an independent candidate.” O.C.G.A. § 21-2-140(e).

40. The Statute repeals any existing local laws providing for the partisan election of district attorneys in consolidated law enforcement counties, replacing them with the Code sections setting forth nonpartisan election procedures. O.C.G.A. § 21-2-140(e); *see also* O.C.G.A. §§ 21-2-139, 21-2-284.1, 21-2-285.1.

41. The Statute’s key classification is to distinguish “consolidated law enforcement counties” from all others. As mentioned above, the Statute defines a “consolidated law

enforcement county” as “any county where the elected office of county coroner has been abolished.” O.C.G.A. § 21-2-140(a)(1).

42. The only five “consolidated law enforcement count[ies]” under the Statute are Clayton, Cobb, DeKalb, Fulton, and Gwinnett counties.

43. Historically, district attorney elections in Georgia have been conducted on a partisan basis in each of the state’s judicial circuits.

44. District attorney elections in the remaining 154 Georgia counties will continue to be held in a partisan manner in the November general election.

45. The five counties covered by HB 369 are, and have been for a number of election cycles, Democratic-leaning jurisdictions in which Democratic candidates regularly prevail in partisan county elections.

46. In each of these five counties, the current elected district attorney is a Black female Democrat.

47. In the modern political era, DeKalb, Fulton, and Clayton counties have routinely elected Democratic candidates for district attorney. In Cobb and Gwinnett counties, significant political and demographic changes have occurred over the last two decades, and no Republican has been elected district attorney in Gwinnett County or Cobb County in 10 years.

48. The next election for district attorney in each of the five counties targeted by HB 369 will occur in 2028.

49. After the passage of the Statute, district attorney candidates will no longer be nominated by parties or petitions in Clayton, Cobb, DeKalb, Fulton, or Gwinnett counties. Instead, the district attorney in those five counties will be elected during the November general

election without a partisan primary. Other county offices will now be elected in a nonpartisan election in May.

50. Beginning in 2028, as a result of the Statute, voters in Clayton, Cobb, DeKalb, Fulton, and Gwinnett counties will no longer see party affiliation listed on ballots for district attorneys and other county offices affected by the Statute.

51. As a result of the Statute, political parties will be unable to nominate candidates for district attorney and other county offices in the five metro Atlanta counties.

52. In partisan elections, Georgia law allows candidates to campaign and fundraise based on party affiliation. Because of the Statute, candidates for district attorney in the five metro Atlanta counties will no longer be able to affiliate themselves with a political party that will support their campaign for office. All other district attorney candidates in the state will remain able to do so.

53. As a result of the Statute, candidates for the office of district attorney in the five metro Atlanta counties will no longer be able to campaign or fundraise based on party affiliation. Their fundraising limits will also be lower, as they will only be able to raise funds towards the general election, instead of both the primary and general election.⁴ *See* O.C.G.A. § 21-5-41.

54. The ability to fundraise for only a general election rather than for a primary and general election impairs candidates' ability to raise money. Candidates who raise money for a primary election carry forward any unused money to be used in a general election. *Id.* § 21-5-

⁴ A runoff election would trigger an additional contribution limit for any candidate, whether running in a partisan or nonpartisan election. Regardless, candidates for county offices in metro Atlanta will still be subject to fewer elections, and therefore have lower campaign limits, than candidates in all other Georgia counties.

41(d). Candidates for the office of district attorney in the five metro Atlanta counties will no longer be able to do so because they can no longer raise money for a primary election.

55. Georgia law also allows candidates running for re-election to carry forward money from a prior election cycle. *See* O.C.G.A. § 21-5-33(b)(1)(D). While the candidates for the office of district attorney in the five metro Atlanta counties can still do so, the amounts they could carry forward will be limited because they cannot raise money for a primary election.

56. Over time, because of HB 369, candidates for re-election for the office of district attorney in the five metro Atlanta counties will be able to raise and carry forward significantly less campaign money than district attorney candidates in other counties.

57. Partisan elections also allow voters to use party affiliation as information when making electoral decisions. As a result of the Statute, voters in Clayton, Cobb, DeKalb, Fulton, and Gwinnett counties will no longer be able to use party affiliation to guide their decision making in voting for district attorney candidates.

COUNT I

Violation of Georgia's Uniformity Clause

58. Article III, Section 6, Paragraph IV(a) of the Georgia Constitution (the “Uniformity Clause”) provides:

Laws of a general nature shall have uniform operation throughout this state and no local or special law shall be enacted in any case for which provision has been made by an existing general law, except that the General Assembly may by general law authorize local governments by local ordinance or resolution to exercise police powers which do not conflict with general laws.

59. HB 369 violates this provision because it is either “a general law which lacks uniform operation throughout the state or a special law for which provision has been made by existing general law.” *Gliemmo v. Cousineau*, 287 Ga. 7, 8 (2010) (citation modified).

60. HB 369 is a special law because, by arbitrarily singling out counties “where the elected office of county coroner has been abolished,” it “only affects a limited area or class,” *Walker v. Cromartie*, 287 Ga. 511, 513 (2010), and “draws a legislative classification that is arbitrary or unreasonable in relation to the purpose of the legislation[.]” *Lucid Grp. USA, Inc. v. State*, 323 Ga. 601, 615 (2026) (citation modified).

61. There is no legitimate or rational reason why counties without an elected county coroner must now hold nonpartisan elections for county offices, while all other counties in Georgia continue to conduct partisan elections. The legislature’s “consolidated law enforcement county” criterion is a pretense to single out the metro Atlanta counties for partisan political gain.

62. Because its classifications are arbitrary, HB 369 is a special law. It violates the Uniformity Clause because general law already establishes the partisan status of county elections. *See, e.g.*, O.C.G.A. §§ 21-2-9, 21-2-130, 21-2-139, 21-2-151.

63. HB 369 also violates Paragraph IV(c)’s requirement that “[n]o special law relating to the rights or status of private persons shall be enacted.” HB 369 relates to the private rights of both candidates and voters by interfering with their rights to affiliate with partisan political organizations, including as a candidate identifying with a party or as a voter supporting a candidate of their preferred party. Because it is a special law, HB 369 cannot constitutionally do so.

64. In the alternative, to the extent HB 369 is found to be a general law, it violates the Uniformity Clause because, in application, it lacks uniform operation.

65. This Court should issue a declaration under O.C.G.A. § 9-4-2 that HB 369 is unconstitutional for violation of Article III, Section 6, Paragraph IV of the Georgia Constitution.

66. Subsequent to that declaration, this Court should enjoin any enforcement or implementation of HB 369 under O.C.G.A. § 9-4-3.

COUNT II
Violation of the Equal Protection Clauses

67. HB 369 singles out elected offices in counties that have abolished the office of coroner for disparate treatment, forcing candidates for those county offices to run in nonpartisan elections while similarly situated candidates in other counties run in partisan elections.

68. HB 369 harms affected candidates in a number of ways, including by limiting their ability to associate with the party of their choice, limiting their ability to communicate with voters, and limiting the amount of funds they can raise.

69. HB 369's distinction between so-called "consolidated law enforcement counties" and counties with an elected coroner is arbitrary and is not rationally related to any legitimate purpose of the law.

70. Accordingly, HB 369 violates Plaintiff's right to equal protection under the laws as guaranteed by Article I, Section 1, Paragraph II of the Georgia Constitution and by the Fourteenth Amendment to the United States Constitution.

71. This Court should issue a declaration under O.C.G.A. § 9-4-2 that HB 369 is unconstitutional for violation of the Georgia and federal Equal Protection Clauses.

72. Subsequent to that declaration, this Court should enjoin any enforcement or implementation of HB 369 under O.C.G.A. § 9-4-3.

COUNT III
Violation of Georgia's Rejected Bills Clause

73. Article III, Section 5, Paragraph XII of the Georgia Constitution (the "Rejected Bills Clause") provides:

No bill or resolution intended to have the effect of law which shall have been rejected by either house shall again be proposed during the same regular or special session under the same or any other title without the consent of two-thirds of the house by which the same was rejected.

74. On March 6, the Georgia Senate voted down SB 573, which would have made certain county-level elections nonpartisan in any counties that have abolished the office of coroner.

75. That same bill language was again “proposed during the same regular . . . session under . . . [another] title” when the Senate Ethics Committee inserted the language of SB 573 into HB 369.

76. The Rejected Bills Clause required consent of two-thirds of the Senate in order for that body to properly consider the substituted HB 369. But the Senate never held a vote on consent and certainly never obtained consent from two-thirds of its members. Yet the Senate held a final vote on HB 369, and it passed 32 Yea to 21 Nay.

77. HB 369’s consideration and passage by the General Assembly therefore violated the Rejected Bills Clause.

78. Accordingly, this Court should issue a declaration under O.C.G.A. § 9-4-2 that HB 369 is void and unenforceable under the Georgia Constitution.

79. Subsequent to that declaration, this Court should enjoin any enforcement or implementation of HB 369 under O.C.G.A. § 9-4-3.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for the following relief:

- a. A trial by jury on all such triable issues;
- b. Issuance of process so that Defendant the State of Georgia can be served as provided by law;

- c. A declaration that HB 369 is unconstitutional;
- d. Entry of a permanent injunction against enforcement or implementation of HB 369;
- e. Reasonable attorneys' fees, expenses, and costs of litigation; and
- f. Such other and further relief as the Court may deem just and appropriate.

Respectfully submitted this 21st day of August, 2026.

/s/ Michael B. Terry

Michael B. Terry

Georgia Bar No. 702582

Matthew R. Sellers

Georgia Bar No. 691202

Bondurant, Mixson & Elmore, LLP

1201 West Peachtree Street, N.W., Suite 3900

Atlanta, Georgia 30309

Tel: (404) 881-4100

Fax: (404) 881-4111

terry@bmelaw.com

sellers@bmelaw.com

Attorneys for Plaintiff