

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

SHERRY BOSTON,

Plaintiff,

v.

THE STATE OF GEORGIA,

Defendant.

Civil Action File No: 26CV007975

**STATE OF GEORGIA'S MOTION TO DISMISS
AND BRIEF IN SUPPORT**

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INTRODUCTION

Plaintiff Sherry Boston, the District Attorney of Dekalb County, seeks a declaratory judgment that HB 369 is unconstitutional, and an injunction against its enforcement or implementation. Complaint, Prayer for Relief, pp. 15-16. HB 369 provides for the nonpartisan election of county officers and district attorneys in “consolidated law enforcement counties,” which means “any county where the elected office of county coroner has been abolished.” DeKalb County is one such county.

As a duly enacted statute, HB 369 is entitled to a strong presumption of constitutionality. This Court should refuse to declare HB 369 unconstitutional for several reasons.

First, Plaintiff lacks standing because she cannot demonstrate a cognizable injury. Further, no waiver of sovereign immunity can be found because the claims she raises are not suitable for imposition of a declaratory judgment because Plaintiff lacks uncertainty as to any future act. Second, HB 369 does not violate the Georgia Constitution’s Uniformity Clause. Further, HB 369 meets a rational basis standard and does not violate either the U.S. or Georgia Constitutions’ Equal Protection Clauses. Finally, HB 369 does not violate the Georgia Constitution’s Rejected Bills Clause because HB 369 is not the same bill as SB 573.

FACTUAL BACKGROUND

In its 2026 regular session, the Georgia General Assembly passed HB 369. Compl., Prelim. Stmt., p. 1. HB 369 provides that elections for county officers (including

district attorneys) shall be nonpartisan in any “consolidated law enforcement county.” HB 369, §2. A consolidated law enforcement county is defined as “any county where the office of county coroner has been abolished.” O.C.G.A. § 21-2-140(a)(1)(as amended by HB 369 §2). In Georgia, five counties meet the definition of “consolidated law enforcement counties”: Clayton, Cobb, DeKalb, Fulton and Gwinnett counties. Compl., ¶42.

Plaintiff Sherry Boston (“Boston”) has been the elected district attorney of DeKalb County since January 2017. Compl., ¶ 4. She has run as a Democrat in each election since the 2016 general election. *Id.*, ¶¶ 5, 6. In 2016, she defeated the incumbent district attorney in the Democratic primary election, then ran unopposed in the general election. *Id.* at ¶5. In 2020 and 2024, she faced no challengers in either the Democratic primary or general elections. *Id.* at 6.

Boston avers that she is registered to vote in DeKalb County, and endeavors to vote in all general and special elections. *Id.* at ¶ 7. She does not allege in the complaint that she plans to run again for district attorney in 2028. She claims generally that “candidates for district attorney” in the five consolidated law enforcement counties “will no longer be able to affiliate themselves with a political party that will support their campaign for office” (Compl., ¶ 57), though she cites no law or regulation that would prohibit a candidate for a nonpartisan office from affiliating themselves with a political party or receiving support for their campaigns from a political party. She also contends that “candidates for the office of district attorney” will be subject to lower fundraising limits than those running in counties that are not “consolidated law enforcement

counties,” as they will no longer compete in primary elections and will therefore only be able to raise funds towards the general election, instead of both the primary and general elections. Compl., ¶58. But she offers no explanation as to how fundraising limits applying to district attorney candidates from other counties could impact her own reelection campaign (should she choose to have one) given that any future opponent she may have will also be subjected to the very same fundraising limits that would apply to her potential future campaign.

Before passing HB 369, the Georgia General Assembly considered a similar, but not identical, bill (SB 573) that provided that “all candidates to fill the office of a district attorney for a judicial circuit comprised solely of a medical examiner county shall be elected in nonpartisan elections.” Compl., Ex. A. A “medical examiner county” was defined as “any county in which the governing authority...appoints a medical examiner in lieu of an elected coroner.” *Id.*

SB 573 also stated that nonpartisan elections for both county officers and district attorneys would be “conducted in conjunction with the general primary ... without a prior nonpartisan primary.” O.C.G.A. § 21-2-150 provides that when a “political party holds a primary to nominate candidates for public offices to be filled in the ensuing November election, such primary shall be held on the Tuesday of the twenty-fourth week prior to the November general election.” Practically speaking, therefore, this would have meant that county officers and DAs in Fulton, Cobb, Clayton, Gwinnett, and DeKalb counties would be elected in “conjunction with” these primaries, during the month of May. SB 573 was voted on by the Senate in March but failed to pass by a 24-29 vote. Compl., ¶ 20.

SB 573 was co-sponsored by Senator Ed Seltzer, who spoke with members of the Senate Committee on Ethics on March 2, 2026¹. Sen. Setzler stated that “[SB 573] recognizes that in a lot of ... our major local governments around the state,” including the city and county governments of Augusta, Richmond, Macon, Bibb, Columbus, Muskogee, Athens, and Clark, “there’s been a ... move ... in the direction of ... nonpartisan governance.” And for counties that are “complex enough in their operations [and] demands ... that they would’ve ... eliminated their elected coroner and put in place a medical examiner ... those counties also ... have consolidated law enforcement powers under the commission. It’s no longer the sheriff that does ... you know, patrolling, um, they have police forces themselves.” Recognizing that these counties have “a concentration of power[s]” related to law enforcement, Sen. Setzler stated that “it’s wise [to have nonpartisan elections] in these ... counties.”²

Sen. Setzler further explained that a county’s decision to replace its county coroner with a medical examiner indicated that there was “a volume” and “a complexity” to those counties’ operations, such that “a medical examiner was ... seen as being more appropriate for that.” And in counties of that “size, [and] complexity, and, you know, being the seat of government, a lot of ... issues emerge.” In particular, Setzler was referring to fierce political passions surrounding policing incidents and police training,

¹ Georgia State Senate, 03/02/2026 Senate Committee on Ethics, Vimeo, <https://vimeo.com/1168651518>. The Court may take judicial notice of public records capable of accurate and ready determination by references to sources whose accuracy cannot reasonably be questioned at any state of the proceeding. *Riley v. Ga. Ass’n of Club Execs.*, 313 Ga. 364, 366 (2022); O.C.G.A. § 24-2-201(b).

² *Id.* at (21:33–24:00)

and his opinion that for nonpartisan entities such as the Atlanta City Council, “the frenetic nature of that debate was able to be solved and resolved.”³

Setzler also noted the particularly high population in the Atlanta metropolitan area and the presence of the Braves stadium and Hartsfield Airport in those counties, and expressed a concern that the “politicization of prosecution has become an issue,” particularly in these large urban areas.⁴ Setzler was then asked the logic of the bill should be expanded to the Attorney General as well, “given the complexity of the nature of [his] job.” He answered that it was something that could be revisited in future years, and this bill was an “important first step.”⁵

HB 369 differs from SB 573 in many ways. It applies to “consolidated law enforcement count[ies]” where SB 573 applied to “medical examiner count[ies].” It changed district attorney elections from May to November for the purpose of complying with the Constitution. *Compare* Compl., Ex. A with Compl., Ex. B. Additionally, it removed SB 573’s exception for offices of local boards of education. *Id.*

ARGUMENT AND CITATION OF AUTHORITY

This Court should dismiss this case because Plaintiff lacks standing and because Plaintiff cannot demonstrate that the State’s sovereign immunity has been waived to allow her to bring this action. Plaintiff has not alleged an individualized injury that violates her legal rights. She does not claim that she intends to run for reelection in 2028,

³ *Id.* at (24:00–26:52).

⁴ *Id.* at (27:31–29:29).

⁵ *Id.* at (29:29–30:12).

and asserts only generic and speculative claims as to how HB 369 might cause injury to district attorney candidates generally. Plaintiff also has not alleged that she faces any uncertainty as to her future conduct, meaning that her claims are not a proper basis for imposition of declaratory relief and therefore do not fall within the waiver of sovereign immunity for declaratory judgment actions found in Art. I, § 2, ¶ V of the Georgia Constitution.

Even if Plaintiff were able to demonstrate that she had standing to pursue her claim and a waiver of sovereign immunity could be found, the Complaint fails to state a claim upon which relief may be granted. HB 369 does not violate the Uniformity Clause because it is a law of general application that applies uniformly throughout the state. Even if HB 369 were construed as a special law, it is not in conflict with any general law of this State and does not violate any of Plaintiff's private rights. Nor does HB 369 violate the Equal Protection clauses of the Georgia and U.S. Constitutions. Finally, the Rejected Bills Clause of the Georgia Constitution does not bar operation of HB 369 because SB 587 is materially different from HB 369.

I. PLAINTIFF LACKS STANDING TO PURSUE THIS ACTION.

Georgia courts have the power to resolve “only genuine controversies,” and for a genuine controversy to exist, a plaintiff must have standing. *Rep. Nat’l Comm. v. Eternal Vigilance Action, Inc.*, 321 Ga. 771, 775 (2025). Standing “is a jurisdictional requirement, mandating that a plaintiff show that he has a legal ‘right at stake that requires adjudication to protect it.’” *Id.*, quoting *Black Voters Matter Fund, Inc. v. Kemp*, 313 Ga. 375, 381 (1) (870 SE2d 430) (2022).

As the party seeking to invoke a court’s jurisdiction, the plaintiff bears the burden of establishing its constitutional standing as to each claim of relief sought. *Lucid Group USA, Inc. v. State of Ga.*, 323 Ga. 601, 620 (2026)(citing *Eternal Vigilance*, 321 Ga. at 775). Courts cannot exercise judicial power to decide a case in which a plaintiff lacks a cognizable injury. *Sons of Confederate Veterans v. Henry County Bd. of Commr’s*, 316 Ga. 69, 43 (2022). A plaintiff has a “cognizable injury” only if the plaintiff “assert[s] a violation of [the plaintiff’s] legal rights – a legal injury.” *Lucid Group*, 323 Ga. at 620 (citing *Wasserman v. Franklin County*, 320 Ga. 624, 638-39 (2025)). The Supreme Court of Georgia “has long held that Georgia courts may not decide the constitutionality of statutes absent an individualized injury to the plaintiff.” *Sons of Confederate Veterans*, 315 Ga. at 54(2)(c), n. 13.

Plaintiff’s main claim of injury is that the change from partisan to nonpartisan elections would impair the ability of district attorney candidates in consolidated law enforcement counties to raise money because they may only be able to raise funds toward the general election, instead of both the primary and general election. Compl., ¶58. But Plaintiff does not expressly allege that she will be one of those candidates. Even if she is, any opponent she may have will be subject to the very same spending limits that apply to her campaign. Plaintiff has not made any claim that she has any particular need to raise funds through primary campaigning to support her own future candidacy.

Plaintiff also complains that future district attorney candidates in consolidated law enforcement counties may be harmed because they will “no longer be able to affiliate themselves with a political party that will support their campaign for office.” Complaint,

¶ 57. Again, Plaintiff does not make the claim that she will be one of those candidates. Further, while Georgia law dictates that candidates in nonpartisan races cannot have a party label printed next to their name on the official ballot (*see* O.C.G.A. § 21-2-285.1), Plaintiff does not cite to any law or regulation that would operate to prohibit candidates in nonpartisan races from publicizing partisan enforcements or from receiving campaign help outside of the ballot box⁶. While Plaintiff may prefer to have a party designation to appear beside her name on the ballot if she does in fact choose to run in 2028, there is no legal precedent suggesting that she has a legal right to such designation, and no credible claim of injury that would stem from having to run on a nonpartisan ballot rather than a partisan one.

Any claim of injury Plaintiff might raise in this action is inherently speculative. To find an injury, the Court would have to speculate as to whether or not Plaintiff will in fact choose to run for reelection in 2028 and if so, what political party support and fundraising needs she may have in that election and how HB 369 could conceivably cause her harm when her opponents are subject to identical limitations. Such speculative injuries are insufficient to form a basis for constitutional standing. *See Parker v. Leeuwenburg*, 300 Ga. 789, 797 (2017) (“When no injury is threatened or impending, a future injury is speculative and insufficient to constitute an injury in fact.”). Accordingly, Plaintiff lacks standing to maintain this action and it should be dismissed.

⁶ Indeed, the Democratic Party of Georgia recently was reported to have spent \$8 million to support the campaigns of two candidates in the nonpartisan election for Georgia Supreme Court justice. *See* <https://georgiarecorder.com/2026/06/04/democrats-invested-millions-to-challenge-supreme-court-justices-is-it-a-sign-of-whats-to-come/>.

II. PLAINTIFF CANNOT OBTAIN A DECLARATORY JUDGMENT BECAUSE SHE LACKS ANY UNCERTAINTY WITH REGARD TO APPLICATION OF HB 369.

Even if Plaintiff had constitutional standing, she cannot obtain a declaratory judgment because she does not face the requisite uncertainty about future decisions she may face. The purpose of the Declaratory Judgment Act is to “settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations[.]” O.C.G.A. § 9-4-1. The Act is designed to “give additional protection to persons who may become involved in an actual justiciable controversy, in that they differ between themselves as to what their rights are, and who wish to find them out before taking some dangerous step which might or might not be authorized.” *Cobb County v. Floam*, 319 Ga. 89, 96 (2024)(*quoting Shippen v. Folsom*, 200 Ga. 58, 67(1) (1945)). Therefore, a petition for declaratory relief will lie only when needed “in order to guide and protect the *petitioner* from uncertainty and insecurity with respect to the propriety of some future act or conduct which is properly incident to his alleged rights, and which future action without such direction might reasonably jeopardize his interest.” *Id.* at 97 (*quoting Aldridge v. Fed. Land Bank of Columbia*, 203 Ga. 285, 291 (3)(1948)(citations and punctuation omitted; emphasis added)).

Therefore, as the *Floam* court noted, the holdings of the Georgia Supreme Court have “repeatedly rejected claims for declaratory judgment when a declaration of rights would not direct the plaintiff’s *future* conduct or involved only a determination of rights that have already accrued.” *Id.* at 97 (emphasis supplied). Here, Boston may dislike the

results of the application of HB 369 to a possible future campaign, but she faces no uncertainty about those results. If she decides to run for reelection as district attorney for DeKalb County in 2028, there is no decision for her to make about how to qualify for that office; she will qualify for this nonpartisan election by paying a qualifying fee and completing a notice of candidacy and affidavit. *See* O.C.G.A. § 21-2-130(2)(E). There is no decision for her to make about what fundraising limits will apply to her campaign; those limits are set forth by O.C.G.A. §21-5-41. There is no decision for her to make about how her name would appear on the ballot as a nonpartisan candidate; O.C.G.A. § 21-2-285.1 provides that “[n]o party designation or affiliation shall appear beside the name of any candidate for nonpartisan office.” Although Plaintiff may prefer a different electoral scheme, she faces no uncertainty about how to qualify for office or raise funds for her campaign should she choose to run again in 2028.

The Declaratory Judgment Act is not meant to resolve mere disagreement about “the abstract meaning or validity of a statute, rule, or ordinance.” *Eternal Vigilance*, 321 Ga. at 791 (*citing Leitch v. Fleming*, 291 Ga. 669, 670(1)(2012)). But this is precisely the nature of Plaintiff’s case. She seeks a declaration that HB 369 is “unconstitutional” and therefore invalid. *See* Complaint, Prayer for Relief, pp. 15-16. This is not a proper use of the Declaratory Judgment Act. Its purpose is to “remove the cloud of uncertainty ‘with regard to the propriety of some future act or conduct, which is properly incident to his alleged rights and which if taken without direction might reasonably jeopardize his interest.’” *Eternal Vigilance*, 321 Ga. at 791 (*quoting Baker v. City of Marietta*, 271 Ga. 210, 214(1)(1999)). If a declaration of rights “would not direct the plaintiff’s future

conduct or would merely determine rights that had already accrued, relief under the act is unavailable.” *Id.* (citing *Floam*, 319 Ga. at 97-99(2)(collecting cases)). Plaintiff is not under any cloud of uncertainty about any of her own future conduct if she chooses to run for reelection. She has no “decision to make about” how to qualify for office, how the ballot will appear, or what her fundraising limits will be is not “asking for guidance with respect to actions [she] might take or alleging that [she risks] taking some dangerous step that may or may not be authorized.” *Floam*, 319 Ga. at 100). Instead, she simply takes issue with the changed pathway that she must traverse to run for reelection in 2028. This is not a proper case for application of the Declaratory Judgment Act, and the Court should therefore dismiss her claims.

III. SOVEREIGN IMMUNITY BARS ANY REMAINING CLAIMS FOR INJUNCTIVE RELIEF.

The Georgia Constitution’s sovereign immunity waiver found in Art. I, § II, ¶V expressly applies only to “actions in the superior court *seeking declaratory relief* from acts of the state ... outside the scope of lawful authority or in violation of the laws or the Constitution of this state or the Constitution of the United States.” (emphasis added). It does not contemplate a wholesale waiver of sovereign immunity as to any and all claims that a legislative enactment violates the Constitution or state laws. While incidental injunctive relief is encompassed by Paragraph V’s waiver, such relief may be awarded “only after awarding declaratory relief.” This waiver does not broadly waive sovereign immunity for every case in which a plaintiff contends that a legislative enactment violates the Constitution or a law. Therefore, to the extent that Plaintiff has not stated a valid

claim for declaratory relief because of the lack of uncertainty as to any of her potential future acts, there has been no waiver of sovereign immunity as to any other sort of claim. Any remaining claims or contentions that may be found in Plaintiff's complaint must be dismissed on the grounds that sovereign immunity bars those claims.

IV. PLAINTIFF'S COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

Even if this Court were to find that Plaintiff had alleged a sufficient injury to form a basis for standing and had made a claim for which sovereign immunity had been waived, this Court should nevertheless dismiss this case because Plaintiff has failed to state a claim upon which relief may be granted. HB 369 is a general law of uniform statewide application that does not violate the Uniformity Clause of the Georgia Constitution, and even if HB 369 were construed as a "special law," it is not in conflict with any existing general laws, nor does it violate any private right belonging to Plaintiff. Nor does HB 369 violate the Equal Protection Clauses of the Georgia and U.S. Constitutions, as it treats all similarly situated candidates equally and survives rational basis review. Finally, the Rejected Bills Clause of the Georgia Constitution does not apply to HB 369, as HB 369 differs from SB 573 in material respects.

A. HB 369 does not violate the Uniformity Clause of the Georgia Constitution.

HB 369 does not violate the Uniformity Clause of the Georgia Constitution (Ga. Const. Art. III, § 6, ¶IV(a)) because it is a "general law" with statewide application. It sets forth a statewide classification scheme for determining whether or not district

attorney elections are conducted on a partisan or nonpartisan basis. Although Plaintiff contends that HB 369 is an improper “special law” that “arbitrarily singl[es] out counties” (Compl., ¶65), the statute applies uniformly to *all* counties, determining whether or not their district attorney elections are nonpartisan on an objective, statewide criterion – whether they are a “consolidated law enforcement” county.

A “general law” is a law that is “framed in general terms” and applies to a “[non]arbitrary” class of “objects” that “are distinguished by characteristics sufficiently marked and important to make them a class by themselves” with respect to the legislation’s “subject-matter” and “purpose.” *Sasser v. Martin*, 101 Ga. 447, 455–57 (1897) (quotation marks omitted) (noting that a general law draws “a substantial distinction, having reference to the subject-matter of the proposed legislation, between the objects or places embraced in such legislation and the objects or places excluded” (quotation marks omitted))

The fact that a law may create different classifications to which different rules apply does not mean that the law is a special law and not a general one. “Uniformity does not mean universality.” *Citizens & Southern Nat’l Bank v. Mann.*, 234 Ga. 884, 889 (1975). The Uniformity Clause “does not mean that general laws may have no exceptions. A law operating uniformly throughout the state, but from which the General Assembly excepts certain persons or things is still a general law.” *McAllister v. American Nat’l Red Cross*, 240 Ga. 246, 248 (1977). It is necessary only that the law applies uniformly to the class or classes of persons or things affected by it, and that “the classes

included or excluded from its general effect are reasonable and not arbitrary.” *Id.* at 248-49.

The classification of counties as “consolidated law enforcement counties” is reasonable and not arbitrary. The counties that have chosen to replace the office of county coroner with a county medical examiner may be considered to be among the most “law enforcement intensive” counties in Georgia and have highly concentrated law enforcement powers. The General Assembly rationally concluded that nonpartisan elections in these counties would contribute to safer and more efficient law enforcement. HB 369 applies uniformly to the entire class of district attorney candidates in those counties, as each candidate will qualify as a nonpartisan candidate and be subject to the same fundraising limits as any other candidate from that county.

Even if this Court were to find that the General Assembly’s classification of “consolidated law enforcement counties” was an arbitrary classification, this would not mean that HB 369 violates the Uniformity Clause. If a law creates arbitrary classifications, that does not mean that the law is *per se* invalid; it simply means that the law is a special law rather than a general one. *See Lucid Air*, 323 Ga. at 616 (“...Lucid’s theory of why the Direct Sales Prohibition violates this provision is that the law ‘creates ... arbitrary classifications’ — a theory that, if successful, would show only that the Direct Sales Prohibition is a special law.”) Special laws remain permissible under the Uniformity Clause so long as it does not conflict with a “provision [which] has been made by an existing general law.” Ga. Const. Art. III, § VI, Para. IV(s). No general law

exists that would conflict with HB 369, and HB 369 therefore does not violate the Uniformity Clause even if it is considered a “special law.”

Plaintiff’s Complaint cites several electoral code sections, none of which conflict with HB 369. O.C.G.A. §21-2-9 provides that district attorneys shall be elected in the November election next preceding the expiration of the term of office and does conflict with HB 369, which reaffirms that district attorneys in consolidated law enforcement counties will continue to be elected in November elections. O.C.G.A. § 21-2-130 describes the various procedures for qualification of candidates generally; HB 369 is entirely consistent with 21-2-130(2)’s provisions for qualification of nonpartisan candidates. O.C.G.A § 21-2-139 provides for nonpartisan election of judges of probate courts, offices of local boards of education and offices of consolidated governments; it says nothing about whether district attorneys should or should not be elected in partisan or nonpartisan elections and poses no conflict with HB 369. Finally, O.C.G.A. § 21-2-151 sets forth procedures for conducting political party primaries and is simply inapplicable to elections for nonpartisan offices. Therefore, because HB 369 does not conflict with any existing general law, it does not violate the Uniformity Clause even if it is a “special law.”

Finally, HB 369 does not violate Paragraph IV(c)’s provision that “[n]o special law relating to the rights or status of private persons shall be enacted.” As the Georgia Supreme Court recently reaffirmed in *Lucid Group*, if HB 369 is a general law for the purposes of Paragraph IV(a), it is also a general law for the purposes of Paragraph IV(c). 323 Ga. at 615 (“Our precedent clarifies that the term “special law” carries the same meaning in

Paragraph IV(c) as it does in Paragraph IV(a).”) (*citing Gliemmo v. Cousineau*, 287 Ga. 7, 10 (2010); *State v. Martin*, 266 Ga. 244, 246, 466 S.E.2d 216 (1996)). As HB 369 is a general law and not a special law, Paragraph IV(c) is not implicated and there is no violation of the Uniformity Clause.

Even if it were a special law, Plaintiff possesses no private rights that would implicate Paragraph IV(c). Private rights are “confined to such rights, when applied to property, as persons may possess unconnected with, and not essentially affecting, the public interest, or growing out of a public institution of society.” *Board of Educ. & Orphanage v. State Bd. of Educ.*, 186 Ga. 200 (1938). Whether an office is elected on a partisan or nonpartisan basis is a matter of the public interest, and an individual candidate for office has no private right to qualify for office as a political party candidate or to have a party designation by their name on a ballot. Just as political parties do not have a right to use the ballot itself to send a particularized message to its candidate and the voters about the nature of its support for the candidate, the candidate similarly does not have the right to express her party affiliation on the ballot; ballots “serve primarily to elect candidates, not as forums for political expression.” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 363 (1997). Because Plaintiff has no private right to dictate the manner in which she may qualify to run for office or to have her party affiliation reflected on the ballot, there is no violation of Paragraph IV(c). Therefore, Count I of Plaintiff’s Complaint should be dismissed.

B. HB 369 does not violate the Equal Protection Clauses of the Georgia and U.S. Constitutions.

The Georgia Constitution's Equal Protection Clause is coextensive with that of the U.S. Constitution. *Democratic Party of Ga., Inc. v. Perdue*, 288 Ga. 720, 728 (2011) (Georgia's clause is generally "coextensive" with and "substantially equivalent" to the federal equal protection clause, and "we apply them as one.")(quotations omitted). Election laws that affect candidacy or election structure and that do not involve suspect classifications or fundamental rights are subject to rational basis review. *Clements v. Fashing*, 457 U.S. 957 (1982). The Court has held that "the existence of barriers to a candidate's access to the ballot does not of itself compel close scrutiny." *Id.* at 963. (quotations omitted). Here, Boston does not even allege that she's being denied access to the ballot; she merely would not have her party affiliation listed along with her name on the ballot. Nor does Boston allege that HB 369 involves a suspect classification or breaches any fundamental right.

Even when it comes to those challenges to state laws that do restrict access to the ballot, "constitutional adjudication is a matter of degree, and involves a consideration of the facts and circumstances behind the law, the interests the State seeks to protect by placing restrictions on candidacy, and the nature of the interests of those who may be burdened by the restrictions." *Id.* "Election regulations that impose a severe burden on associational rights are subject to strict scrutiny, and [the Court] uphold[s] them only if they are narrowly tailored to serve a compelling state interest." *Washington State Grange*

v. Washington State Republican Party, 552 U.S. 442, 451–52 (2008) (quotation omitted).

“If a statute imposes only modest burdens, however, then the State’s important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions” on election procedures.” *Id.* (quotation omitted).

The government’s interests here are strong. The Supreme Court has recognized that States have a “strong interest in the stability of their political system” that permits them to enact laws which “temper the destabilizing effects of ... excessive factionalism.” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 367 (1997). And the Georgia Constitution has long required nonpartisan elections for at least judicial offices.⁷ The State has a similarly strong interest in establishing nonpartisan elections for *other* offices, should it choose to do so. These arguments can be buttressed by the unique law enforcement and public safety needs of the affected counties.

However, by prohibiting candidates from having a party designation associated with their name on the ballot, Plaintiff might argue that it burdens candidates’ associational rights. But the associational burden of nonpartisan elections, by itself, is relatively weak: “That a particular individual may not appear on the ballot as a particular party’s candidate does not severely burden that [individual’s] associational rights.” *Timmons*, 520 U.S. at 359; *see also id.* at 363 (“[b]allots serve primarily to elect candidates, not as forums for political expression.”); *Washington State*

⁷ Ga. Const. art. VI, § VII, Par. I (“[a]ll superior court and state court judges shall be elected on a nonpartisan basis ... [a]ll Justices of the Supreme Court and the Judges of the Court of Appeals shall be elected on a nonpartisan basis.”)

Grange, 552 U.S. at 454 n.7. And nothing in HB 369 prevents political parties from endorsing the candidates of their choice, campaigning for them, or raising funds for them. *Cf.* Op. 131, Judicial Qualifications Commission of Georgia, <https://gajqc.gov/advisory-opinions/opinion-131/> (candidates for nonpartisan judicial elections may “attend partisan political functions and seek the support / endorsement of these organizations.”). Those candidates “have various alternative means to exercise their associational rights.” *Ohio Council 8 American Federation of State v. Brunner*, 24 F.Supp.3d 680, 693 (2014). Accordingly, HB 369 is an election law that imposes only “modest” burdens on candidates’ associational rights and should therefore not receive strict scrutiny. *See Timmons*, 520 U.S. at 358.

Moreover, this is not a First Amendment challenge, but an Equal Protection challenge. And “[t]he Equal Protection Clause does not forbid classifications. It simply keeps governmental decisionmakers from treating differently persons who are in all *relevant* respects alike.” *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992) (emphasis added); *see also Vacco v. Quil*, 521 U.S. 793, 799 (1997) (the EPC “embodies a general rule that States must treat like cases alike but may treat unlike cases accordingly”). It is therefore only concerned with classifications that treat persons differently from one another on an arbitrary basis—not on the abstract burdens of compliance for those covered by the classification. *See Engquist v. Oregon Dep’t of Agr.*, 553 U.S. 591, 601–02 (2008).

In this context, cases ordinarily address “classification[s] that impose special burdens on minority political parties or independent candidates,” rather than across-the-board prohibitions on party primaries, and focus on whether a “challenged restriction[]

operate[s] as a mechanism to exclude certain classes of candidates from the electoral process.” *Clements*, 457 U.S. at 964–65. Here, however, all candidates for office in HB 369’s “consolidated law enforcement counties” are treated alike, and all have the same “political opportunity.” That persons in *other counties* may run in partisan elections is not an equal-protection violation because such persons are not similarly situated in the relevant respect—they are not seeking office in a high crime, high density urban area. Plaintiff could only succeed by showing some arbitrary classification that imposes differential burdens, but the law’s “consolidated law enforcement county” distinction is a rational one that furthers legitimate state interests, such as “temper[ing] the destabilizing effects of ... excessive factionalism” in areas where that is a rising concern. *Timmons*, 520 U.S. at 367. And because Plaintiff cannot show any differential treatment between herself and persons who are similarly situated in relevant respects, this claim fails.

C. The “Rejected Bills Clause” does not bar application of HB 369.

Article III, Section 5, Par. XII of the Georgia Constitution provides that “[n]o 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.” A plain-text reading confirms that the provision operates on a previously rejected “bill or resolution”—the *entire* piece of proposed legislation—and not on overlapping legal content.

It appears that the Supreme Court of Georgia has never construed this provision. That alone is strong evidence that it does not apply merely because two bills feature

overlapping content—a commonplace of legislative compromise. Other states have similar constitutional provisions,⁸ and tend to interpret the provision liberally. For example, the Texas Court of Civil Appeals determined that two bills concerning judicial salaries were not the "same substance" because there was a \$400 difference in salary. *King v. Terrell*, 218 S.W. 42, 43-44 (Tex. Ct. Civ. App. 1920). Similarly, the Tennessee Supreme Court held that two bills were not of the "same substance" because though the provisions were largely identical, the bills were local laws dealing with two different counties. *Herrell v. Simpson*, 133 S.W.2d 463, 465 (Tenn. 1939). And though they had the same language, the Tennessee Supreme Court reasoned that these counties could have had different needs. *Id.*

Notes from the drafting committee of the Georgia Constitution also shed some light on the purpose of the provision. One member stated that it was meant to "put[] an awful burden on a member who has a bill he wants to bring up again" and "keep a guy from introducing a bill every day." State of Georgia, Subcommittee Meeting on Oct. 2, 1979, Transcripts of Meetings of the State of Georgia Constitutional Revision Committee to Revise Article III, Vol. I, at 128 (1983)⁹. So, in line with its text and persuasive

⁸ See, e.g., La. Const., art. III, § 15(E) ("No bill rejected by either house may again be introduced or considered during the same session by the house which rejected it without the consent of a majority of the members elected to that house."); Tenn. Const., art. II, § 19 ("After a bill has been rejected, no bill containing the same substance shall be passed into law during the same session."); Tex. Const., art. III, § 34 ("After a bill has been considered and defeated by either House of the Legislature, no bill containing the same substance, shall be passed into a law during the same session. After a resolution has been acted on and defeated, no resolution containing the same substance, shall be considered at the same session.").

⁹ https://digitalcommons.law.uga.edu/ga_constitutions/59/

precedent, the Clause appears to exist to prevent harassment and annoyance by other legislators through repetitive tactics—not to thwart the General Assembly from reconsidering a similar but non-identical bill.

As noted above, HB 369 is materially different from SB 573: It changed district attorney elections from May to November for the purpose of complying with the Constitution, and it removed SB 573’s exception for offices of local boards of education. Because these are therefore not the same bill, the Rejected Bills Clause does not apply.

CONCLUSION

For the foregoing reasons, the State of Georgia respectfully requests that the Court dismiss Plaintiff’s Complaint in its entirety.

Respectfully submitted, this 20th day of July, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be electronically filed the foregoing **STATE OF GEORGIA'S MOTION TO DISMISS AND BRIEF IN SUPPORT** with the Clerk of Court using the electronic filing system, which will send notification of such filing to all parties of record via electronic notification.

This 20th day of July, 2026.

/s/ Elizabeth T. Young
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Senior Assistant Attorney General