



Georgia Prosecutors File Lawsuit Against the State To Challenge Governor Kemp's Oversight Commission

New lawsuit argues that Georgia's anti-democratic SB 92 law overrides the will of voters, threatens prosecutorial independence, and violates federal and state constitutions

(AUGUST 2, 2023) ATLANTA, GA — Four Georgia prosecutors are filing a lawsuit in Fulton County Superior Court today challenging the constitutionality of Senate Bill 92 (SB 92), a law enacted by Governor Brian Kemp during the 2023 legislative session aimed at curtailing the power of locally elected officials and usurping the will of voters.

SB 92 creates the Prosecuting Attorneys Qualifications Commission ("PAQC"), a commission with the authority to investigate and remove local prosecutors, and whose members are appointed by Governor Kemp and other partisan officials.

Led by **Stone Mountain (DeKalb County) District Attorney Sherry Boston**, the group of plaintiffs includes **Towaliga District Attorney Jonathan Adams**, **Augusta District Attorney Jared Williams**, and **Cobb District Attorney Flynn Broady**. Their lawsuit marks a crucial step in fighting back against a growing national trend of states threatening the independence of local prosecutors.

"SB 92 is not just an assault on prosecutors, it is an assault on our democracy," said **DA Sherry Boston**. "This law is a direct threat to every Georgian who exercises their right to vote – their right to choose the person who they think best represents their values in the courtroom. SB 92 says to voters, if the state doesn't like your choice, the state will choose for you."

The prosecutors in *Boston v. State of Georgia* are represented by [Public Rights Project](#) — a national nonprofit that works with local governments to protect civil rights — along with **Washington, Dreyer, and Associates**, and **Bruce P. Brown Law**.

"Prosecutors around the country are under attack for trying to represent the will of voters and implement reforms that make our criminal justice system more fair. Georgia is ground zero in that fight," said **Public Rights Project Legal Director Josh Rosenthal**. "SB 92 is an anti-democratic and unconstitutional intrusion into core powers of local prosecutors and must be halted."

The lawsuit argues that SB 92 undermines the fundamental structure of Georgia's constitution, which entrusts local communities to choose their own district attorneys. Prosecutors have constitutionally protected discretion to carry out the priorities of their constituents. The law also restricts the First Amendment free-speech rights of DAs as candidates and officials, and disempowers the communities that elect their prosecutors by limiting their ability to understand their philosophy.

“We should be encouraging district attorneys to be more transparent about their work, not less open and honest,” said **DA Jared Williams**. “SB 92 hurts prosecutors who want to have a dialogue with their constituents.”

Impact of SB 92 on Local Prosecutors

SB 92 threatens the ability of local prosecutors to create policies that use a full range of tools, beyond incarceration, to promote public safety in their communities.

Lack of resources and case backlogs have demanded that prosecutors find ways to focus on the most serious of crimes and use tools like pretrial diversion to resolve cases more efficiently. SB 92 creates new obligations for prosecutors to review every case in which probable cause exists; this requirement threatens the ability of prosecutors to handle their dockets efficiently and to focus on serious crimes most affecting public safety. For instance, prosecutors could be subject to discipline or lose their jobs for not prosecuting adultery, which is a crime under Georgia state law.

Further, the grounds for removal of a local prosecutor in SB 92 are broad and vague, including “[c]onduct prejudicial to the administration of justice,” which gives the PAQC extreme and essentially unchecked power to discipline prosecutors with whom they simply disagree. And if a DA is removed under SB 92, they cannot serve again for 10 years.

Unconstitutionality of New Law

The lawsuit alleges that SB 92 violates the Georgia Constitution in four ways:

1. **Separation of powers (interference with prosecutorial discretion).** The State Legislature does not have the authority to direct or undermine district attorneys’ exercise of prosecutorial discretion.
2. **Free speech under the federal and state constitutions.** The law restricts the First Amendment free-speech rights of DAs as candidates and officials, punishing prosecutors for articulating their prosecutorial philosophies and for being clear with their communities about how they will carry out justice.
3. **Improper delegation to the new commission to define the grounds of discipline.** The State Legislature improperly delegated power to the PAQC by providing vague and broad authority. In addition, the complaint argues that SB 92 does not provide local

prosecutors with fair notice about the types of statements, conduct, and policies that subject them to potential review and discipline by the PAQC.

4. **Violation of the due process clauses of the federal and state constitutions.** The U.S. and Georgia Constitutions require “fair notice of conduct that is forbidden or required” before the state can deprive someone of their elected office.

“Not only is SB 92 unconstitutional, this new Commission is also unnecessary and wasteful,” said **DA Boston**, “Georgia already provides other ways to address misconduct by prosecutors—including Bar discipline, impeachment, and ultimately, the ballot box.”

The prosecutors are asking the court to invalidate SB 92 or to at least to halt the PAQC from handling any complaints or disciplining any local prosecutors.

Shortly after filing the lawsuit, the plaintiff DAs will also seek to bar the new commission from investigating or taking disciplinary action against District Attorneys and Solicitor Generals for prosecutorial decisions, including non-prosecution policies, or for statements related to those decisions.

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