

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

SHERRY BOSTON,

Plaintiff,

v.

THE STATE OF GEORGIA,

Defendant.

Civil Action File No: 26CV007975

ORDER DENYING MOTION TO DISMISS

Presently before the Court is Defendant the State of Georgia's Motion to Dismiss. Following consideration of all briefing related to the Motion, the record of this case, and arguments of counsel presented at a hearing on the Motion on September 18, the Court hereby **DENIES** the Motion and finds as follows:

BACKGROUND

Plaintiff Sherry Boston, the district attorney for the DeKalb Judicial Circuit, brings this lawsuit seeking to declare HB 369 unconstitutional and enjoin its enforcement. The following facts are taken from the allegations in Plaintiff's Complaint.

There are 159 counties in Georgia and 51 judicial circuits, each with a district attorney. O.C.G.A. § 15-6-1; Ga. Const. art. VI, § VIII, ¶ I(a). Prior to HB 369's enactment, elections for certain county offices—including district attorneys—were partisan. To appear on the general election ballot, a district-attorney candidate had to first secure nomination through her political party's primary election. *See* O.C.G.A. § 21-2-151. To do so, a candidate would 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. After the primary election, each qualifying

political party would submit its nominee, who would then appear on the general election ballot and be identified by party affiliation. *See* O.C.G.A. § 21-2-285(c).

During the 2026 legislative session, the General Assembly considered SB 573, which stated, in relevant part, that “all candidates to fill elected county offices in a medical examiner county shall be elected in nonpartisan elections” and “all candidates to fill the office of district attorney for a judicial circuit comprised solely of a medical examiner county shall be elected in nonpartisan elections.” Compl. Ex. A (“SB 573”) § 3. A “medical examiner county” was defined in SB 573 as “any county in which the governing authority of the county appoints a medical examiner in lieu of an elected coroner.” *Id.* at 2. The county coroner office has been abolished in only five counties: Clayton, Cobb, DeKalb, Fulton, and Gwinnett. Compl. ¶ 16. Each of those counties also comprises an entire judicial circuit. O.C.G.A. § 15-6-1(3), (10), (11), (14.1), (20). As a result, SB 573 would have made nonpartisan the elections for all district attorneys and county offices in those five counties, except for the offices expressly exempted by the bill: county sheriffs, local boards of education, and offices of county governing authorities established by local constitutional amendment. Compl. Ex. A at 2. On March 6, 2026, the Senate rejected SB 573 by a vote of 24 Yea to 29 Nay. Compl. ¶ 20.

As initially proposed, HB 369 was completely unrelated to HB 573; HB 369 addressed food-truck safety standards, not elections. *Id.* ¶ 21; Compl. Ex. C. The House passed the food-truck bill during the 2025 session, but the Senate had taken no action on it. Compl. ¶ 22. On March 16, 2026, HB 369 was re-assigned to the Senate Ethics Committee, where it was replaced with the substance of SB 573. *Id.*

Like SB 573, the revised HB 369 mandated nonpartisan elections for district attorney and other county offices in the same five counties that have replaced the county coroner with a medical

examiner (this time termed “consolidated law enforcement count[ies]”). Compl. Ex. G (“HB 369”) §§ 2(a)(1), (b), & (e). Sen. John Albers, the bill’s Senate sponsor, described the substitute version of HB 369 as a “technical cleanup” of SB 573. Compl. ¶¶ 23–24. The only modifications to HB 369 were (1) an adjustment to language about district attorney elections to conform to the Constitution’s requirement that those elections take place in November and (2) a removal of local election boards of education from the short list of offices exempt from the nonpartisan election change. *Compare* HB 369 §§ 1 & 2 *with* SB 573 §§ 2 & 3. Like SB 573, HB 369 switches certain elections only in Clayton, Cobb, DeKalb, Fulton, and Gwinnett Counties from partisan to nonpartisan. Compl. ¶¶ 26, 32–36. A simple majority of both chambers approved HB 369, and Governor Kemp signed it into law on May 12, 2026. *Id.* ¶¶ 26–28. It takes effect on January 1, 2028. HB 369 § 3.

On June 3, Plaintiff filed this lawsuit seeking a declaration that HB 369 is unconstitutional and an injunction against its enforcement. She brings this action in her capacities as the sitting District Attorney in DeKalb since January 2017, as a potential candidate in future elections for the office of the DeKalb District Attorney, and as a registered DeKalb County voter. Compl. ¶¶ 4–7.

LEGAL STANDARD

“A motion to dismiss for failure to state a claim upon which relief may be granted should not be sustained unless (1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought.” *Williams v. DeKalb Cnty.*, 308 Ga. 265, 270 (2020) (quoting *Anderson v. Flake*, 267 Ga. 498, 501 (1997)).

Where a motion to dismiss under O.C.G.A. § 9-11-12(b)(1) presents a facial challenge to subject matter jurisdiction, the trial court makes no factual findings; it instead takes the relevant

allegations of the complaint as true in deciding as a matter of law whether to grant the motion. *Dep't of Pub. Safety v. Johnson*, 343 Ga. App. 22, 26 (2017). A facial challenge to subject matter jurisdiction is governed by the same “demanding” standard as a dismissal for failure to state a claim, and any doubts regarding the complaint must be construed in favor of the plaintiff. *Dahlquist v. Morris*, 932 S.E.2d 683, 688 (Ga. Ct. App. 2026) (quoting *Norman v. Xytex Corp.*, 310 Ga. 127, 130–31 (2020)).

DISCUSSION

I. Plaintiff has standing to bring this lawsuit.

The State first argues that Plaintiff lacks standing because she has not alleged a cognizable injury. Mot. at 6–8. To challenge the constitutionality of a statute, a plaintiff must assert that the statute adversely affects her own legal rights. *See Sons of Confederate Veterans v. Henry Cnty. Bd. of Comm'rs*, 315 Ga. 39, 50 (2022). The Complaint satisfies that standard.

HB 369 singles out five of Georgia's 159 counties, including Plaintiff's, and restructures their elections for district attorney and other county offices. Compl. ¶¶ 42, 44. Plaintiff is one of five district attorneys in Georgia—out of 51—whose election will now be nonpartisan and conducted without a primary. Compl. ¶¶ 53–54, 57–58. Because there will no longer be a primary election, she may neither raise contributions toward a primary limit nor carry them forward to a general election. Compl. ¶¶ 59–61. As a result, her aggregate contribution limits for her campaign will be lower than those of candidates for the same office elsewhere in Georgia, for no reason other than the county in which she serves. Compl. ¶¶ 57–59, 61; *see also* O.C.G.A. § 21-5-41(d). A statute that subjects Plaintiff to a materially different—and materially more restrictive—electoral and fundraising regime than the one that governs the other district attorneys in the state adversely affects Plaintiff's legal rights. *See Moseley v. Sentence Rev. Panel*, 280 Ga. 646, 648 (2006) (sitting

district attorney had standing to challenge the constitutionality of a statute affecting the office of district attorney).

In addition, Plaintiff's rights as a voter in Dekalb County are independently affected. HB 369 eliminates primary elections in which Plaintiff would otherwise be entitled to vote, both for district attorney and for other county offices, and HB 369 changes what appears on her ballot in the general election. Compl. ¶¶ 54–55, 62. These too are adverse impacts on Plaintiff's rights that give her standing here. *See Cobb Cnty. v. Floam*, 319 Ga. 89, 89–90 (2024) (voters had standing to challenge a resolution that changed district lines); *Mead v. Sheffield*, 278 Ga. 268, 269, 272 (2004) (the contents of an official ballot are a “vitally essential element” of any election, which voters are “entitled to understand” (citation modified)); *see also Republican Nat'l Comm. v. Eternal Vigilance Action, Inc.*, 321 Ga. 771, 784 (2025) (“Because voting is a private right, a voter has standing to challenge a rule on the basis it violates his right to vote”); *Camp v. Williams*, 314 Ga. 699, 708 (2022) (“[V]oting rights are individually cognizable for litigation purposes, *even if* they are shared among the general public.”).

The State's two counterarguments fail. First, the State argues that Plaintiff lacks standing because the Complaint does not expressly allege that she will run for district attorney in 2028. Mot. at 7–8. But officeholders and prospective candidates have standing to challenge election laws without a pending campaign, which is particularly appropriate here, when Georgia is still in the 2026 election cycle. *See Bergland v. Harris*, 767 F.2d 1551, 1555–56 (11th Cir. 1985); *Harper v. Vance*, 342 F. Supp. 136, 139–40 (N.D. Ala. 1972). Moreover, the fact that Plaintiff has sought and won the office of district attorney in three consecutive elections, dating back to her election in 2016, supports the inference of a likelihood of her future candidacy. Compl. ¶¶ 4–6; *cf. Int'l Org. of Masters, Mates & Pilots v. Brown*, 498 U.S. 466, 473 (1991) (“Respondent has run for office

before and may well do so again.”); *Norman v. Reed*, 502 U.S. 279, 288 (1992) (election-related dispute not moot where there was “every reason to expect the same parties to generate a similar, future controversy”). The Complaint’s allegations regarding Plaintiff’s fundraising limits, her ballot, and her ability to participate in a primary as a voter are more than sufficient at this stage to establish her standing.

Second, the State argues that HB 369 does not injure Plaintiff because every candidate in the five affected counties—including any opponent Plaintiff may face—is subject to the same rules. Mot. at 7. But the Complaint does not allege that Plaintiff is disadvantaged relative to her own opponent in DeKalb County; it alleges that candidates and voters in the five targeted counties are disadvantaged relative to candidates and voters in the other 154 counties, which retain partisan primaries, higher campaign contribution limits, and ballots that include candidates’ party designation. Compl. ¶¶ 44, 57–61. That unequal treatment between the five targeted counties and the rest of Georgia is the constitutional injury that gives rise to the claims here and gives Plaintiff standing to bring this suit. See *Ne. Fla. Chapter of Associated Gen. Contractors v. City of Jacksonville*, 508 U.S. 656, 666 (1993) (the injury “is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit”).

Accordingly, the Court concludes that Plaintiff has standing to bring each of her claims.

II. Plaintiff states a claim for declaratory judgment.

The State next argues that Plaintiff cannot obtain a declaratory judgment because she faces no uncertainty about how HB 369 will operate, and without a valid declaratory-judgment claim, there is no waiver of sovereign immunity for her request for injunctive relief. Mot. at 9–11. The Court disagrees.

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. A

declaratory judgment action against the State is “the appropriate litigation mechanism for judicial review of statutes.” *Gwinnett Cnty. v. State*, 377 Ga. App. 595, 598 (2025) (citation modified). So long as “an actual controversy exists” as to the plaintiff’s future rights and conduct, declaratory judgment “is an available remedy to test the validity and enforceability of a statute.” *GeorgiaCarry.org v. Atlanta Botanical Garden, Inc.*, 299 Ga. 26, 29 (2016) (citation modified). Where a plaintiff challenges the constitutionality of a statute, the requisite uncertainty flows from whether she must comply with the “mandates expressly imposed on [her] by the allegedly unconstitutional [statute].” *Gwinnett Cnty.*, 377 Ga. App. at 597; *see also Women’s Surgical Ctr., LLC v. Berry*, 302 Ga. 349, 351 (2017); *Thomas v. Ga. Bd. of Dentistry*, 197 Ga. App. 589, 590 (1990) (“[D]eclaratory judgment is available to test the validity of an allegedly unconstitutional law” so that the plaintiff “may know whether he may proceed in disregard of the requirements of the law” or “must comply with it[]”).

Plaintiff has alleged such uncertainty. If the Statute is valid, Plaintiff must qualify through the nonpartisan process applicable to judicial elections; if it is not, she must seek her party’s nomination through a primary. Compl. ¶¶ 10–14, 39; O.C.G.A. §§ 21-2-132(c), 21-2-153. Those processes involve different filing windows and different fee structures. Without a declaration, Plaintiff must choose between disregarding HB 369 and risking exclusion from the ballot, or conforming her conduct to a statute she alleges is unconstitutional. Plaintiff likewise faces uncertainty about the extent to which she may lawfully solicit and accept campaign contributions, and about whether there will be a primary election for her office in 2028—a question that matters now for purposes of fundraising. Compl. ¶¶ 31, 58–60; O.C.G.A. § 21-5-41(d).

Thus, this is “not a case in which there is merely a disagreement about the abstract meaning of [HB 369] or in which [Plaintiff] is simply seeking a declaration that [HB 369] is unconstitutional

without any clarification of [her] own future conduct.” *Gwinnett Cnty.*, 377 Ga. App. at 598. Like the county officials in *Gwinnett County*, who were uncertain whether they were required to comply with a law they believed to be unconstitutional, Plaintiff is uncertain whether she must comply with HB 369 in making her own future decisions about qualifying for office and collecting campaign contributions. That uncertainty “authorizes a declaratory judgment clarifying [Plaintiff’s] future conduct based on whether [HB 369] is unconstitutional, as claimed by [Plaintiff], or whether it is constitutional, as claimed by the state.” *Id.* at 597–98.

The State relies on *Cobb County v. Floam*, 319 Ga. 89 (2024), but that case does not persuade the Court otherwise. In *Floam*, the plaintiffs alleged uncertainty concerning “the future actions of the County” but none about their own future conduct. *Id.* at 100. Here, nothing about Plaintiff’s claims depends on future conduct by the State; she seeks guidance from the Court as to her *own* future conduct.

Because Plaintiff has stated a claim for declaratory relief from acts of the State alleged to violate the Georgia and United States Constitutions, sovereign immunity is waived, and this Court may enjoin those acts to enforce its judgment. *See* Ga. Const. art. I, § II, ¶ V(b)(1); Compl. ¶ 3. The State’s argument that no waiver exists rests on the premise that Plaintiff has no valid declaratory-judgment claim. That premise fails, and so does the argument.

III. Plaintiff properly alleges that HB 369 violates the Georgia and U.S. Constitutions.

Plaintiff asserts three claims: violation of Georgia’s Uniformity Clause (Count I), violation of the Georgia and federal Equal Protection Clauses (Count II), and violation of Georgia’s Rejected Bills Clause (Count III). Each is adequately pled.

A. Count I states a claim under Georgia’s Uniformity Clause.

Article III, Section 6, Paragraph IV of the Georgia Constitution sets forth three distinct rules, “each of which concerns ‘general’ or ‘special’ laws, and each of which requires a different

analysis.” *Lucid Grp. USA, Inc. v. State*, 323 Ga. 601, 613 (2026). A law violates Paragraph IV(a) when it is a law “of a general nature” that lacks “uniform operation throughout this state,” or when it is a “special law . . . enacted in any case for which provision has been made by an existing general law.” Ga. Const. art. III, § VI, ¶ IV(a). A law violates Paragraph IV(c) when it is a “special law relating to the rights or status of private persons.” *Id.* ¶ IV(c). A general law is one “framed in general terms” that “applies to a nonarbitrary 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.” *Lucid Grp.*, 323 Ga. at 614 (citation modified). A special law, by contrast, “affects a limited area or class,” *Lasseter v. Ga. Pub. Serv. Comm’n*, 253 Ga. 227, 229 (1984), or “draws a legislative classification that is arbitrary or unreasonable in relation to the purpose of the legislation,” *Lucid Grp.*, 323 Ga. at 615 (citation modified). The Complaint pleads a violation under each of Paragraph IV’s rules.

1. If HB 369 is a general law, then it violates Paragraph IV(a) because it lacks uniform operation throughout the state.

The State contends that HB 369 is a general law. Mot. at 12–15. Assuming for now that the State is correct, the Complaint states a claim under Paragraph IV(a) because it alleges that HB 369 “in application lacks uniform operation.” *Lucid Grp.*, 323 Ga. at 615 (citation modified). A statute is uniform when it “operates alike on all who come within the scope of its provisions.” *Zarate-Martinez v. Echemendia*, 299 Ga. 301, 311 (2016) (citation modified); *see also Hix v. Ramey*, 214 Ga. 464, 465 (1958).

A general law affecting political subdivisions need not reach every county at the time of its passage, but “it is necessary that none should be excepted in such a way that it can never fall within its provisions.” *Shadrick v. Bledsoe*, 186 Ga. 345, 356 (1938) (citation modified). The Complaint alleges that HB 369 does precisely that. Membership in the class of “consolidated law

enforcement counties” does not turn on any condition a county may satisfy on its own; a county may abolish the office of coroner only if the General Assembly first passes a local law permitting it to do so. O.C.G.A. § 45-16-80(a); Compl. ¶ 16. The class is therefore fixed by the General Assembly rather than defined by neutral criteria that counties may come to satisfy over time.¹ On these allegations, HB 369 “purports” to apply statewide while operating on only five counties, and additional counties will “never fall within its provisions” unless the General Assembly so decides. *Shadrick*, 186 Ga. at 356. That renders HB 369 an unconstitutional general law.

Stewart v. Davidson, 218 Ga. 760 (1963), illustrates the point. There, a general school-funding law allocated funds county by county, but it treated DeKalb and Fulton Counties as a single unit, and so DeKalb received less than it would have as a standalone county. *Id.* at 762–63, 765. Although the law purported to apply uniformly statewide, its differential treatment of two counties “destroy[ed] uniformity[,] which is an indispensable requisite of all general laws.” *Id.* at 768–69. The Complaint alleges the same defect here.

2. If HB 369 is a special law, then it violates Paragraph IV(a) by addressing a subject matter already governed by general law.

The Complaint alleges in the alternative that HB 369 is a special law, both because it “affects a limited area or class,” *Lasseter*, 253 Ga. at 229, and because it “draws a legislative classification that is arbitrary or unreasonable in relation to the purpose of the legislation,” *Lucid Grp.*, 323 Ga. at 613 (citation modified). Compl. ¶¶ 65–67.

¹ The Complaint alleges that the mismatch is compounded for district attorney elections, which HB 369 makes nonpartisan only for a judicial circuit “comprised solely of a consolidated law enforcement county.” O.C.G.A. § 21-2-140(e). Because 35 of Georgia’s 51 judicial circuits contain more than one county, O.C.G.A. § 15-6-1; Compl. ¶ 8, those circuits would require *two* changes in state law before they could ever fall within HB 369’s nonpartisan election provision for district attorneys—first to change the bounds of the judicial circuit to encompass only one county, and second to allow that county to adopt a medical examiner.

On the question of arbitrariness, the State offers a justification, which it asks the Court to accept as a matter of law: that the affected counties “may be considered to be among the most ‘law enforcement intensive’ counties in Georgia,” such that nonpartisan elections there “would contribute to safer and more efficient law enforcement.” Mot. at 14. The Complaint alleges that this justification is merely a pretext, and it pleads specific reasons why the classification does not fit the asserted purpose, including that: the adoption of a medical examiner is not a unilateral county decision but the product of a local law passed by the General Assembly, gubernatorial approval, and a county referendum, and therefore says little about the complexity of a county’s law enforcement operations, O.C.G.A. § 45-16-80(a)–(b); Compl. ¶ 16; HB 369 exempts the county sheriff—an elected officer with substantial law enforcement duties—from the very change said to reduce partisanship in law enforcement, O.C.G.A. § 21-2-140(c); Compl. ¶ 36; and the Statute reaches only metro Atlanta while leaving untouched every other urban county in the state. Compl. ¶¶ 42, 44. The Complaint further alleges that the five targeted counties are Democratic-leaning jurisdictions whose district attorneys are Democrats and that the coroner classification was selected to capture those counties and no others. Compl. ¶¶ 45–47, 66. Whether the classification bears a rational relation to a legitimate legislative purpose is not a question the Court can resolve against Plaintiff on the pleadings.² It suffices at this stage that the Complaint alleges facts from which the classification could be found arbitrary, rendering HB 369 a special law.

² The Court further takes judicial notice of the facts that (1) HB 369 does not cover the counties with the second, third, fourth, fifth, and sixth most populous cities in the state, *see* Opp. Br. Ex. 2 (2020 Census Data); and (2) HB 369 does not cover the counties with the two highest crime rates in the state, *see* Opp. Br. Ex. 3 (GBI 2024 Summary Report). These statistics are “[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” O.C.G.A. § 24-2-201(b)(2). These facts further support Plaintiff’s allegation that HB 369 bears no reasonable relation to its purported objectives.

A special law is unconstitutional under Paragraph IV(a) if it is “enacted in any case for which provision has been made by an existing general law.” Ga. Const. art. III, § VI, ¶ IV(a). The State argues that HB 369 conflicts with no general law. Mot. at 14–15. But the test is not whether there is a direct conflict with a specific provision of general law; it is whether the special law addresses the same “subject matter of an existing general law.” *Lomax v. Lee*, 261 Ga. 575, 579 (1991). “[O]nce the legislature [has] entered a field by enacting a general law, that field must thereafter be reserved exclusively to general legislation and could not be open to special or local laws.” *City of Atlanta v. Hudgins*, 193 Ga. 618, 623 (1942). Even where a general law “is not exhaustive and fails to reach every minute element of the subject dealt with,” the “only constitutional remedy for a more exhaustive legislative treatment” is another general law; “[i]t cannot be done by amending or supplementing the general law by a special law.” *Id.*; see also *Gebrekidan v. City of Clarkston*, 298 Ga. 651, 654 (2016); *Pace v. City of Atlanta*, 135 Ga. App. 399, 400 (1975).

The methods of qualification for and the administration of elections is plainly a field occupied by general law. See *Shadstill v. Gary*, 216 Ga. 268, 269 (1960) (statute concerning primary elections for county officers that in effect applied to a single county was a special law that violated Paragraph IV). Georgia law sets out a detailed framework governing how candidates qualify, when elections are held, and which elections are nonpartisan. See, e.g., O.C.G.A. §§ 21-2-9, 21-2-130, 21-2-139, 21-2-151–158; Compl. ¶ 67. Before HB 369, every district attorney election in Georgia was partisan; HB 369 singles out elections in five counties and makes them nonpartisan. Compl. ¶¶ 10, 44. That is enough to state a claim that HB 369 is a special law enacted in a field for which provision has been made by existing general law, resulting in a violation of Paragraph IV.

3. If HB 369 is a special law, then it violates Paragraph IV(c) because it relates to the rights of private persons.

Again assuming that HB 369 is a special law, the Complaint alleges that it violates Paragraph IV(c), which provides that “[n]o special law relating to the rights or status of private persons shall be enacted.” Ga. Const. art. III, § VI, ¶ IV(c). A special law need not infringe private rights to offend this provision; it is enough that the law “relat[es] to” them. *See Olevik v. State*, 302 Ga. 228, 236 (2017) (courts consider “the plain and ordinary meaning of the text” and read it “in its most natural and reasonable manner”).

Private rights are “those belonging to an individual as an individual,” including “personal security,” “personal liberty,” “private property,” and “the right to vote.” *Wasserman v. Franklin Cnty.*, 320 Ga. 624, 630 (2025) (citation modified). Public rights, by contrast, are “those rights that are shared by the whole community, considered as a community, in its social aggregate capacity”—for example, the shared rights to use public highways and to enforce compliance with the penal law. *Id.* at 634 (citation modified). The State argues that HB 369 implicates only public rights. Mot. at 15–17. To be sure, the public may have a distinct interest in the administration of partisan primaries, but that is not the right the Complaint asserts. As a prospective candidate, Plaintiff has an individual right to associate with the political party of her choice and to raise funds for her campaign. *See Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 214 (1986) (“The freedom of association protected by the First and Fourteenth Amendments includes partisan political organization.”); *Buckley v. Valeo*, 424 U.S. 1, 65 (1976) (the right to “group association” includes “the right to pool money through contributions”). And as a DeKalb County voter she holds the private “right to vote,” *Wasserman*, 320 Ga. at 630, including in primary elections. HB 369 relates to each: it limits Plaintiff’s ability to associate with a party as a candidate, denies her the opportunity to fundraise for and run in a primary, and eliminates a primary election in which

she would be entitled to vote. Compl. ¶¶ 54–58, 62, 68. Count I therefore states a claim under Paragraph IV(c) as well.

B. Count II states a claim for violation of the Georgia and federal Equal Protection Clauses.

A law violates the guarantee of equal protection under both the Georgia and U.S. Constitutions when it draws a classification that is “arbitrary or irrational” and bears no “real relation to the object or purpose of the legislation.” *Regan v. State*, 317 Ga. 612, 616–17 (2023) (citation modified); see *Reed v. Reed*, 404 U.S. 71, 75–76 (1971) (a statute that affords different treatment on the basis of “criteria wholly unrelated to the objective of that statute” violates equal protection). The inquiry substantially overlaps with the special-law analysis: the General Assembly “lacks authority to pass a law if the classification of those affected is unreasonable.” *Lucid Grp.*, 323 Ga. at 617 (citation modified).

For the reasons already stated, the Complaint alleges that HB 369’s “consolidated law enforcement county” classification is arbitrary and unrelated to any legitimate purpose the Statute could serve. Compl. ¶¶ 66, 74. That is sufficient to state an equal-protection claim, and the Court need not reach at this stage whether HB 369 also burdens associational or ballot-access rights.

The State’s contention that all candidates within a consolidated law enforcement county are “treated alike,” Mot. at 20, does not answer Plaintiff’s allegation that candidates in the five covered counties are treated differently from candidates for the same office in the other 154 counties. Compl. ¶¶ 44, 72–73. Moreover, the Court rejects the State’s contention that candidates outside the five targeted counties are not similarly situated to Plaintiff because “they are not seeking office in a high crime, high density urban area.” Mot. at 20. The relevant question for purposes of an equal-protection claim is whether the law distinguishes between classes that are the same in all “relevant respects.” *Regan*, 317 Ga. at 617. The Complaint alleges that Plaintiff is

similarly situated in all relevant respects to every other candidate for district attorney in Georgia, and that geography alone is not a proper basis on which to discriminate between them. Compl. ¶¶ 43–44, 72–74; *see Richmond Cnty. v. Richmond Cnty. Bus. Ass’n*, 228 Ga. 281, 283 (1971) (invalidating an enactment that “classifie[d] geographically without any particular reason”); *City of Lithonia v. DeKalb Cnty. Bd. of Educ.*, 231 Ga. 150, 153 (1973). Accordingly, Plaintiff has properly alleged a claim as to Count II.

C. Count III states a claim under Georgia’s Rejected Bills Clause.

In Count III, Plaintiff alleges that HB 369 violates Georgia’s Rejected Bills Clause because the Senate rejected the same non-partisan elections proposal earlier in the session, and then passed essentially identical language in HB 369 without obtaining the consent of two-thirds of the Senate. Compl. ¶¶ 79–82; Ga. Const. art. III, § V, ¶ XII.

The State argues that the Clause cannot apply as a matter of law because SB 573 and HB 369 are not word-for-word identical. Mot. at 20–22. The authorities the State cites do not support so restrictive a reading. Three other states have rejected bills clauses: Texas, Louisiana, and Tennessee. There is very little case law on this issue but the parties and the Court found that in *King v. Terrell*, there was no violation where the legislature rejected a bill setting judicial salaries and then passed a version setting them \$400 higher, reasoning that the change reflected a considered difference in substance; the court took care to note that “[i]f there had been only a difference of \$1 or \$10, or other unsubstantial amount, . . . the two bills would have been of the same substance.” 218 S.W. 42, 43 (Tex. Civ. App. 1920). Further, *Herrell v. Simpson* likewise compared two enactments and found them “wholly different” because they addressed different counties. 133 S.W.2d 463, 465 (Tenn. 1939). Both decisions demonstrate that whether two bills are the same for purposes of a rejected-bills clause depends on the *degree* of similarity; they need not be completely identical to fall within the ambit of such constitutional provisions.

At the motion to dismiss stage, the issue of similarity cannot be resolved in the State's favor. The Complaint alleges that SB 573 and HB 369 are materially identical: both define the covered counties by the abolition of an elected coroner, both reach the same five counties, and both convert elections for the same county offices from partisan to nonpartisan. Compl. ¶¶ 26, 80. Plaintiff further alleges that HB 369's Senate sponsor described the bill as making only a "technical cleanup" to SB 573's language, necessitated by the constitutional requirement that district attorneys be elected in November. The Complaint also alleges that the Ethics Committee declined to take public comment on HB 369 because it had already taken comment on the same proposal during a hearing on SB 573. Compl. ¶¶ 23–24, 26. Unlike the enactments in *Herrell*, the two bills here address the same counties and the same offices; and unlike the salary change in *King*, the alterations the State identifies are alleged to have been made to conform the proposal to an independent constitutional command rather than to reflect a considered change of policy. Count III states a claim under the Rejected Bills Clause.

CONCLUSION

This Court is not deciding at this stage whether HB 369 is constitutional. It determines only that Plaintiff has standing, has presented a justiciable claim for declaratory relief, has invoked the applicable waiver of sovereign immunity, and has adequately pleaded each constitutional claim. For the reasons above, the State's Motion to Dismiss is **DENIED**.

SO ORDERED this 21st day of September, 2026.


Thomas A. Cox, Jr., Judge
Superior Court of Fulton County
Atlanta Judicial Circuit