

Proskauer Files Amicus Brief in Support of Georgia Prosecutors Challenging Oversight Commission

Proskauer For Good on October 6, 2023

Proskauer, along with local counsel Canfield Law LLC, recently submitted an [amicus curiae brief](#) on behalf of the [Institute for Innovation in Prosecution at John Jay College](#) (“IIP”) in support of Georgia prosecutors who are challenging the constitutionality of a new prosecutorial oversight commission. The lawsuit, filed by four Georgia prosecutors and led by DeKalb County District Attorney Sherry Boston, seeks to invalidate Georgia Senate Bill 92 (“SB 92”) and its creation of a Prosecuting Attorneys Qualifications Commission (“PAQC”), which has the authority to investigate and remove local prosecutors and whose members are appointed by the Governor and other elected officials. Plaintiffs assert the legislature passed SB 92 in a transparent attempt to undermine the power of certain district attorneys to implement reform-minded agendas for which they were elected.

In the lawsuit, Plaintiffs argue that SB 92 and the PAQC violate the Georgia Constitution in numerous ways, including violating the separation of powers by interfering with prosecutors’ discretion, restricting their free-speech rights, improperly delegating authority to the PAQC to define what conduct would subject prosecutors to potential discipline, and violating their due process rights because of the vagueness of the law. Plaintiffs also contend that, in undermining prosecutors’ discretion, SB 92 threatens their ability to focus on the most serious crimes and decline to prosecute less serious crimes or resolve them in more efficient ways, such as through pretrial diversion programs.

IIP's amicus brief explains how prosecutorial discretion is fundamental to the role of the prosecutor and the operation of the criminal justice system. Prosecutors are not required to charge every crime for which there is probable cause or to charge the highest-level offense possible. By limiting this power, SB 92 ignores the practical reality that prosecutors must make decisions about whether and how to prosecute cases based upon a constellation of factors, including resource limitations, the needs and wishes of their communities, the personal history and characteristics of the alleged perpetrator, and the interests of justice.

An example provided in the brief illustrates this point about prosecutorial discretion. Although Georgia's antiquated laws against adultery, fornication, and sodomy remain on the books, decisions not to prosecute those crimes are not being deemed illegal by legislators, nor do they provide any basis to create a commission to investigate, discipline, and remove district attorneys who refuse to charge them. The brief further explains that the same principle applies when prosecutors determine that it would not be in the public interest to prosecute certain other categories of crime, such as marijuana possession or providing reproductive healthcare. The brief also argues that SB 92 is an impermissible intrusion into the executive branch's delegated powers and will chill prosecutors' ability to openly communicate their enforcement priorities to voters.

On September 29, 2023, Fulton County Superior Court Judge Paige Reese Whitaker denied the Plaintiffs' motion for a preliminary injunction to stop the PAQC from beginning its work on October 1, 2023. The lawsuit will continue and Plaintiff Sherry Boston has issued a statement saying the Court's denial of the injunction motion is "just the beginning of what we expect will be a long legal battle."

IIP is a nonpartisan thinktank that brings together prosecutors, policy experts, and the communities they serve to promote data-driven strategies, cutting-edge scholarship, and innovative thinking related to prosecution and criminal justice issues.

Proskauer's team included partner Robert Cleary, associates Russell Gorkin, Andrew Sherwood, Brooke Gottlieb and Christopher Spadaro, and paralegals Anna Brodskaya and Susanna Nagorny.

The case is *Boston et al. v. Cowart et al.*, No. 2023-CV-383558 (Super. Ct. Fulton Cty. Ga.).

[View original.](#)