

Randall M Adams
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT OF GLYNN COUNTY
STATE OF GEORGIA

GLYNN COUNTY BOARD OF)	
COMMISSIONERS, and)	
GLYNN COUNTY, GEORGIA,)	CE20-00876
)	
Plaintiffs,)	
)	
v.)	
)	
BRAD RAFFENSPERGER, in his official)	
capacity as Secretary of State of the)	
State of Georgia and as Chair of the State)	
Election Board of Georgia, and individually;)	
PATRICIA GIBSON, SANDRA DEAN,)	
KEITH RUSTIN, TOMMY CLARK, and)	
PATRICIA FEATHERSTONE,)	
in their official capacities as members)	
of the Glynn County Board of Elections,)	
and individually, and GLYNN COUNTY)	
COUNTY BOARD OF ELECTIONS AND)	
REGISTRATION,)	
)	
Defendants.)	

**VERIFIED PETITION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY
AND PERMANENT INJUNCTIVE RELIEF, DECLARATORY RELIEF
AND MANDAMUS**

INTRODUCTION

1. This lawsuit is aimed at challenging Senate Bills 38 and 509, which are patently unconstitutional. These bills collectively seek to place a special election question on the ballot to be heard the same day as the 2020 November General Election in Glynn County on the issue of whether to abolish the Glynn County Police Department and transfer its functions and assets to

the Sheriff of Glynn County. SB 509 is a binding referendum question on that issue.¹

2. This lawsuit is a challenge to the legality and constitutionality of these Senate Bills, and also seeks enforcement of and adherence to the procedural requirements mandated by Georgia law regarding calling and administering special elections, such as the one at issue in SB 509.

3. This lawsuit does not seek to litigate any question related to the merits of abolishing the Glynn County Police Department, or the reasons that motivated the passage and enactment of these bills. This lawsuit also does not seek to question the ability of the current Sheriff to provide law enforcement services in Glynn County.

PARTIES, JURISDICTION, AND VENUE

4. This Court has jurisdiction over the causes of action asserted in this case and the parties to this action. This Court has jurisdiction based upon O.C.G.A. §§ 9-4-1 to 9-4-10 to grant declaratory relief; based upon O.C.G.A. §§ 9-5-1 to 9-5-11 to grant injunctive relief; and based upon O.C.G.A. §§ 9-6-20 to 9-6-28 to grant relief by way of issuing a writ of mandamus.

5. Venue is proper in this action as some of the above-named Defendants are considered residents of Glynn County, Georgia and Glynn County is the site of the proposed special election at issue in SB 509. *See* O.C.G.A. § 9-10-30.

6. Glynn County, Georgia is a political subdivision of the State of Georgia. It is a body corporate with the power to sue in any court. The Glynn County Board of Commissioners is the governing authority of Glynn County, Georgia. Glynn County, Georgia and the Glynn County

¹*See Stiles v. Earnest*, 252 Ga. 260, 261(1), 312 S.E.2d 337 (1984) (a referendum is a special election under Georgia law).

Board of Commissioners (collectively “Glynn County”) submit themselves to the jurisdiction of this Court.

7. The General Assembly authorized the creation of the Glynn County Board of Elections and Registration (“BOE”), which acts as the Election Superintendent in Glynn County. *See* O.C.G.A. §§ 21-2-2; 21-2-40. Patricia Gibson, Sandra Dean, Keith Rustin, Tommy Clark and Patricia Featherstone are members of the BOE and are sued in their official and individual capacities.

8. The BOE responsibilities for elections held in Glynn County include, *inter alia*: (1) preparing and publishing all notices and advertisements, in connection with the conduct of elections, which may be required by law, and transmitting immediately to the Secretary of State a copy of any publication in which a call for a special primary, election, or runoff is issued; (2) selecting and equipping polling places for use in primaries and elections; (3) purchasing, preserving, storing, and maintaining election equipment and procuring ballots and all other supplies for elections; (4) appointing poll officers and other officers to serve in primaries and elections; (5) making and issuing rules, regulations, and instructions, including the rules and regulations promulgated by the State Election Board, as necessary for the guidance of poll officers, custodians, and electors in elections; (6) instructing poll officers and others in their duties and inspecting the conduct of elections to ensure that they are honestly, efficiently, and uniformly conducted; (7) receiving from poll officers the returns of all elections, canvassing and computing the same, and certifying the results thereof to such authorities as prescribed by law; and (8) announcing publicly the results of all primaries and elections. *See* O.C.G.A. § 21-2-70.

9. The BOE is also required by law to publish the call of special elections. *See*

O.C.G.A. § 21-2-540.

10. Brad Raffensperger is Georgia's Secretary of State and is named in his individual and official capacities. The Secretary of State is the constitutional officer serving as Georgia's chief official who oversees and administers elections. *See* O.C.G.A. § 21-2-50. The Secretary of State is also the chairperson of the State Election Board. *See* O.C.G.A. § 21-2-30 (d). The State Election Board of Georgia is the representative body and governing authority in Georgia responsible for, *inter alia*: (1) promulgating rules and regulations to "obtain uniformity" in the practices and proceedings of elections officials, "as well as the legality and purity in all . . . elections"; (2) formulating, adopting, and promulgating rules and regulations "conducive to the fair, legal, and orderly conduct of primaries and elections"; (3) publishing and furnishing to primary and election officials primary and election laws and pertinent rules and regulations; (4) publishing and distributing explanatory pamphlets regarding the interpretation and application of primary and election laws that should be distributed to the electorate; (5) investigating the administration of primary and election laws; (6) making recommendation to the General Assembly as to the conduct and administration of primaries and elections; and (7) taking other action, consistent with law, that is conducive to the fair, legal, and orderly conduct of primaries and elections. *See* O.C.G.A. § 21-2-31.

FACTUAL ALLEGATIONS

11. Plaintiffs incorporate by reference each and every preceding paragraph as if set forth fully herein.

***The Mandatory Statutory Deadline for Calling the Special Election Question
set forth in SB 509 Cannot be Met***

12. On June 22, 2020, the General Assembly passed SB 38. SB 38 was sent to the Governor of the State of Georgia on June 29, 2020.

13. SB 38 amends by revising previously reserved O.C.G.A. § 36-8-6 to read, in pertinent part, as follows:

(a) After a county police department is created pursuant to this chapter, it may be abolished by:

- (1) A local Act of the General Assembly; or
- (2) A resolution of the governing authority of the county.

(b) A local Act or resolution of the county governing authority to abolish a county police department pursuant to subsection (a) of this Code section shall be conditioned upon approval of such local Act or resolution of the county governing authority by the electors of the county voting in a referendum.

(c) If such local Act or resolution of the county governing authority is approved by the electors of the county, the county police department shall be abolished 180 days following such referendum. At such time, all property, equipment, records, documents, funds, and other items in the possession or control of the county police department shall be transferred to the sheriff of the county.

(d) This Act shall be repealed by operation of law on January 1, 2022.

14. SB 38 was approved and signed into law by the Governor of the State of Georgia on August 5, 2020. (Ex. “A”).

15. On June 22, 2020, the General Assembly passed SB 504. (Ex. “B”). SB 504 sought to require a *non-binding* referendum on the issue of whether to abolish the Glynn County Police Department and transfer its functions and assets to the Glynn County Sheriff’s Department. SB

504 was sent to the Governor of the State of Georgia on June 25, 2020. SB 504 was vetoed by the Governor on August 5, 2020.

16. On June 23, 2020, the General Assembly passed SB 509. (Ex. “C”). SB 509 was sent to the Governor of the State of Georgia on June 25, 2020.

17. SB 509 requires the BOE to call and conduct a special election in Glynn County to take place on “the Tuesday next following the first Monday in November, 2020,” which is November 3, 2020, for the purpose of conducting a binding referendum on the following question:

Shall the Act be approved that abolishes the Glynn County Police Department and transfers the functions and assets of such department to the Sheriff of Glynn County.

18. SB 509 further provides that the election superintendent of Glynn County “shall issue the call and election as provided by general law.” *Id.*

19. The Governor of the State of Georgia approved and signed into law SB 509 on August 5, 2020. SB 509 was transmitted to the BOE on August 10th. (Ex. “D”).

20. SB 509 contemplates that the special election on the binding referendum to defund and abolish the Glynn County Police Department is to be held in conjunction with the state-wide general election on November 3, 2020.

21. The General Assembly adjourned *sine die* on or about June 26, 2020. Thus, because the General Assembly adjourned *sine die* prior to six days after transmittal of these bills to the Governor of the State of Georgia, pursuant to Art. 3, § 5, ¶ 8 of the Georgia Constitution, Senate Bills 38 and 509 would “become law if approved or not vetoed by the Governor within 40 days from the date of any such adjournment.”

22. August 5, 2020 was the 40th day from June 26, 2020, which was the day the

Governor signed SB 38 and 509, and vetoed SB 504. In other words, the Governor signed SB 38 and 509 on the very last permissible day prior to the enactment of the bills by operation of law.

23. Pursuant to O.C.G.A. § 21-2-540 (b):

Special elections which are to be held in conjunction with the presidential preference primary, a state-wide general primary, or state-wide general election shall be called at least 90 days prior to the date of such presidential preference primary, state-wide general primary, or statewide general election; provided, however, that this requirement shall not apply to special elections held on the same date as such presidential preference primary, state-wide general primary, or state-wide general election but conducted completely separate and apart from such state-wide general primary or state-wide general election using different ballots or voting equipment, facilities, poll workers, and paperwork.

24. August 5, 2020 was the 90th day prior to the 2020 November General Election date of November 3, 2020 – which is the date of the next state-wide general election in Georgia – and is the date of the “Tuesday next following the first Monday in November, 2020.”

25. Pursuant to O.C.G.A. § 21-2-2 (3):

‘Call’ or ‘the call,’ as used in relation to special elections or special primaries, means the affirmative action taken by the responsible public officer to cause a special election or special primary to be held. The date of the call shall be the date of the first publication in a newspaper of appropriate circulation of such affirmative action.

26. Because SB 38 and SB 509 did not become law until August 5, 2020 and because SB 38 and SB 509 were not transmitted to the BOE until August 10, 2020, the BOE could not meet their statutory deadline of calling the special election at least 90 days prior to the date of the November 3, 2020 state-wide general election. In fact, as of the date of the filing of this action, the special election question set forth in SB 509 has not been called by the BOE.

27. Even though SB 509 contemplated that the special-election question would be held

in conjunction with the state-wide general election on November 3, 2020, the BOE could not meet the statutory requirement that it call the election at least 90 days prior to the election date of November 3, 2020. As such, the BOE only had one option to hold the special election – conduct the special election separate and apart from the November 3, 2020 state-wide general election using different ballots or voting equipment, facilities, poll workers, and paperwork.

28. The BOE initially voted to hold the special election called for by SB 509 separate and apart from the state-wide general election, as required by law. This was the only option for the BOE since SB 509 was not signed and delivered to the BOE in sufficient time to place the special election question on the same ballot as the state-wide general election ballot.

29. The decision to hold the special election separate and apart from the state-wide general election would present insurmountable obstacles and create numerous problems because the BOE does not currently have the equipment, resources, funding, facilities and personnel to conduct a special election that is separate and apart from the November 3, 2020 state-wide general election using different ballots or voting equipment, facilities, poll workers, and paperwork. This is especially so given the inherent challenges faced by the BOE, and its individual members, in conducting a *single* state-wide general election on November 3, 2020 given the current global-health crises affecting this State and Glynn County. In fact, Georgia Secretary of State Brad Raffensperger is now pleading with civic groups, religious organizations and others to help recruit additional poll workers to meet the needs of counties for the state-wide election on November 3, 2020. Counties do not have enough poll workers at present to conduct a single election on November 3, 2020, much less two separate elections, at different facilities, using duplicate

equipment and additional poll workers.²

30. In order for the special election question at issue in SB 509 to be placed on the same ballot as the state-wide general election on November 3, 2020, it would have had to have been called at least 90 days prior to November 3, 2020. Because this was not done, the special election cannot take place and would be void if it were now placed on the same ballot as the state-wide general election on November 3, 2020.³

31. If the BOE were to hold the special election “completely separate and apart” from the state-wide general election, as it originally voted to do, it would still be required by law to adhere to the requirements for conducting the election as mandated by O.C.G.A. § 21-2-320 *et seq.*, and O.C.G.A. § 21-2-367.

32. The BOE uses optical voting machines as contemplated by O.C.G.A. § 21-2-367. In order to hold the special election at a facility separate and apart from the state-wide general election, it is required that “one voting booth or enclosure for each 200 electors therein, or fraction

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https://sos.ga.gov/index.php/elections/brad_ raffensperger_calls_on_local_groups_to_commit_to_poll_working_launches_poll_worker_recruitment_tools.

³In *Hughes vs. Griner*, 208 Ga. 47, 49 (1951) the Georgia Supreme Court held:

Failure to comply with the mandatory prerequisites to the holding of a special election, such as filing a petition to call the election as provided by law or advertising the election as required by law, renders the election void and equity will take jurisdiction and so decree. *Whittle vs. Whitley*, 202 Ga. 633 (44 S.E.2d 241); *Barrentine vs. Griner*, 205 Ga. 830 (55 S.E.2d 536).

Under Georgia law, if mandatory pre-election procedures are not followed, an election may be enjoined. See *Committee for New Cobb County Revenue v. Brown*, 228 Ga. 364, 369-71 (1971); *Richmond County Business Ass'n, Inc. v. Richmond County*, 223 Ga. 337 (1967); *Tolbert v. Long*, 134 Ga. 292, 67 S.E.2d 826 (1910).

thereof” be utilized. *Id.* This would require the BOE to obtain and use approximately 300 additional voting machines at separate facilities. Even if the voting machines were available – which they are not – it would cost about \$500,000.00 or more to purchase or obtain just the necessary voting machines to hold a separate election on the special-election question. The BOE does not have and cannot get the required number of optical voting machines to hold the special election called for by SB 509 prior to the November 3, 2020 election.

33. Further, as with any election – including the special election question called for by SB 509 – the BOE must adhere to the general requirements for voting machines as mandated by O.C.G.A. § 21-2-322, which it cannot do for the special election.

34. Further, as with any election – including the special election question called for by SB 509 – the BOE must adhere to the general requirements for preparation of voting machines, custodians of voting machines, inspections of voting machines and furnishing of supplies as mandated by O.C.G.A. § 21-2-327, which it cannot do for the special election.

35. Further, as with any election – including the special election question called for by SB 509 – the BOE must adhere to the general requirements for the delivery, set up, and sealing of properly furnished voting machines and the protection of voting machines as mandated by O.C.G.A. § 21-2-328, which it cannot do for the special election.

36. The special election called for by SB 509 cannot be held separate and apart from the state-wide general election as the BOE does not currently have the equipment, resources, funding, facilities and personnel to conduct a special election that is separate and apart from the November 3, 2020 state-wide general election using different ballots or voting equipment, facilities, poll workers, and paperwork.

37. Because of this intractable problem caused by the delay in the passage, signing and transmission of SB 509, the Georgia Secretary of State's office now realizes that the BOE has an unfortunate dilemma: The BOE can follow the law and attempt to hold the special election completely separate and apart from the state-wide general election even though it does not have the equipment, resources, funding, facilities and personnel to do so, or, alternatively, it can place the special-election question on the same ballot as the state-wide general election even though it did not timely call the special election and the result of the special election would be void. *See Hughes vs. Griner*, 208 Ga. 47, 49 (1951); *Whittle vs. Whitley*, 202 Ga. 633; *Barrentine vs. Griner*, 205 Ga. 830.

38. The Georgia Secretary of State also realizes the exorbitant cost and logistical nightmare associated with holding two entirely separate elections at different polling places, with different equipment and election personnel. The Georgia Secretary of State recognizes that doing so would result in voter confusion, low voter turnout, and potential voter disenfranchisement as a consequence of attempting to hold two separate elections on the same day. This is particularly the case given the inherent challenges faced by the BOE and Glynn County in conducting a *single* state-wide general election on November 3rd given the current global-health crisis critically impacting this State and Glynn County.

39. It is for these reasons that the Georgia Secretary of State's legal counsel has incorrectly represented in writing to the BOE that the referendum called for by SB 509 is not considered a special election. This position is contrary to law.

40. A referendum question to be placed on the ballot – like that posed by SB 509 – is considered a special election under Georgia law. *See Stiles v. Earnest*, 252 Ga. 260, 261(1), 312

S.E.2d 337 (1984) (a referendum is a special election under Georgia law); *City of Brookhaven v. City of Chamblee*, 329 Ga.App. 346, 352, 765 S.E.2d 33(2014)(a referendum is a special election that must proceed in accordance with O.C.G.A. § 21-2-540); *see also* O.C.G.A. § 48-8-111(d)(providing that on SPLOST referendum questions, “[t]he election superintendent shall hold and conduct the election under the same rules and regulations as govern special elections.”).

41. The Georgia Secretary of State’s legal counsel also incorrectly represented to the BOE that the referendum question called for by SB 509 did not need to be called by the BOE. This position is contrary to law. This new position also contradicts the Georgia Secretary of State’s prior instruction to the BOE that they should “move as quickly as possible to issue the call” of the referendum question.

42. The BOE is required to call the special-election question set forth in SB 509 in order to place it on the ballot.

42. In fact, notwithstanding that O.C.G.A. § 21-2-540 requires the call to issue 90 days prior to placement of SB 509 on the same ballot as the state-wide general election, SB 509 itself provides that the election superintendent of Glynn County “shall issue the call and election as provided by general law.” *Id.*

43. The Georgia Secretary of State’s legal counsel also incorrectly represented in writing to the BOE that because SB 509 contemplated that it be placed on the same ballot as the state-wide general election, the requirements of O.C.G.A. § 21-2-540 could be ignored because “the specific requirement set forth in SB 509 [to place it on the same ballot as the state-wide general election] would trump any ministerial requirement [in O.C.G.A. § 21-2-540].” This position is contrary to law. Even if SB 509 stated explicitly that the call and notice requirements

of O.C.G.A. § 21-2-540 did not apply – which it does not – general law, such as O.C.G.A. § 21-2-540, takes precedence over conflicting local legislation. *See* 1991 Ga. Op. Atty. Gen. 53 (Ga.A.G.), Ga. Op. Atty. Gen. No. 91-23, 1991 WL 498906 (finding that the uniform referendum dates established by O.C.G.A. § 21–2–540 take precedence over conflicting referendum dates established in local legislation).

44. Because the Georgia Secretary of State’s office incorrectly instructed the BOE that: (1) the referendum question posed by SB 509 was not a special election under Georgia law, (2) the BOE did not need to call the special election set forth in SB 509, and (3) that the special-election question could be placed on the same ballot as the state-wide general election, the BOE reversed its decision to hold the special election “separate and apart” from the general election as required by O.C.G.A. § 21-2-540.

45. On or about August 26, 2020, the BOE, on advice from the Secretary of State’s office, voted to place the special-election question on the same ballot as the state-wide general election. This act would violate state law.

SB 38 and SB 509 Violate the Georgia Constitution and Statutory Law

46. Plaintiffs incorporate by reference each and every preceding paragraph as if set forth fully herein.

47. SB 38 seeks to provide mechanisms by which county police departments can be abolished. Specifically, SB 38 seeks to permit a county police department to be abolished by a local Act so long as a resolution is approved by the electors of the county, irrespective of the home rule powers and obligations of the governing body in the county.

48. In other words, SB 38 seeks to permit a local representative to legislate whether a

police department should be defunded and abolished – so long as a majority of the electorate concurs – regardless of the desires of the elected county officials who are charged with providing police protection to their constituents under the Georgia Constitution. *See* Art. IX, Sec. II, Par. III(a)(1).

49. Under the “home rule” provisions of the Georgia Constitution, the “governing authority of each county shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which is not inconsistent with this Constitution or any local law applicable thereto.” Art. IX, Sec. II, Par. III (a).

50. Pursuant to this State’s home rule power granted by the Georgia Constitution, the “General Assembly shall not pass any local law to repeal, modify, or supersede any action taken by a county governing authority” unless specifically authorized by Art. IX, Sec. II, Par. I (c).

51. There are no enumerated limitations of this home rule power that are applicable to the creation, maintenance, modification, limitation, dissolution or abolishment of a county police agency.

52. To the contrary, one of the supplementary powers granted to counties under Art. IX, Sec II, Par. III(a)(1) of the Georgia Constitution is the ability to exercise the power to provide “police and fire protection.”

53. In addition to granting counties the power to provide police protection, the supplementary-powers provision of the Georgia Constitution provides that the General Assembly “may not withdraw [] such powers.” *See* Art. IX, Sec II, Par. III(a)(d). Thus, the General Assembly cannot pass a local Act that requires the abolishment of the police department without

the input of the county, which is granted constitutional authority to provide police protection, as doing so would effectively be a withdrawal of a county's power to provide police protection to its citizens.

54. The supplementary-powers provision of the Georgia Constitution further provides that if the General Assembly intends to regulate or limit – but not withdraw – the powers granted to counties to provide police protection, it must do so only by general law. *See* Art. IX, Sec II, Par. III(a)(d). SB 509 is not a general law, but rather is a local Act, and is the mechanism being used to abolish the Glynn County Police Department. Additionally, and as discussed below, SB 38, which purports to allow a local Act to abolish a county police department, is not a general law of uniform application, but is rather a local Act aimed solely at Glynn County.

55. Glynn County established the Glynn County Police Department, which has existed since at least 1909. If a county governing authority has established a county police agency, then the General Assembly has no authority to change such a decision by a local Act.

56. The General Assembly may pass general legislation of uniform application – not specifically targeting any one county – that regulates the manner in which counties exercise their control over county police agencies so long as it does not *withdraw* the power from counties.

57. SB 38 seeks to establish a procedure for abolishing a county police agency by local Act so long as the voters of a county vote in favor of doing so in a referendum. SB 509 is a local Act and the mechanism being used to defund and abolish the police department established long ago by Glynn County.

58. SB 38 and SB 509 are violative of the Georgia Constitution, Art. IX, Sec II, Par. III(c) in that they impermissibly seek to withdraw the power of Glynn County to establish and

maintain its police department.

59. SB 38 and SB 509 are also violative of the Georgia Constitution, Art. IX, Sec II, Par. III(d), which provides that the General Assembly shall act upon a county's supplemental powers – such as the power to provide police protection – “only by general law.”

60. Neither SB 38 nor SB 509 are general laws.

61. SB 38 is disguised as a general law, but is really a local Act aimed solely at Glynn County and passed only in an effort to defund and abolish the Glynn County Police Department. In other words, SB 38 is a local Act disguised in sheep's clothing as a general law.

62. During the House Judiciary Committee meeting on June 16, 2020, Chairperson Barry Fleming described the subterfuge being attempted in passing SB 38, as follows:

The question that arose for the senator and the house member who represent Glynn County, if you want to allow the people to vote to go back to a sheriff, there's no provision in our law to allow for that. They feel like, they would like, as I understand it, to pass a local bill, put a referendum on the ballot, and allow the people of Glynn County to decide in their area as to whether or not they would like to have the policing power back with the sheriff rather than a police department. So, my, when they mentioned this to me ... I said to them that I think it would be my preference that, if at all possible, and sometimes its not, I'd much rather you be able to do this by a local bill, but I know you can't. So I understand what you [Sen. Ligon] did is you made that change possible for y'all to pass a local bill to allow your citizens of Glynn County to vote to move the policing power back to the sheriff, but you put a sunset in this general law that we have to pass, basically such that, unless somebody else runs a local ad real quickly and does it this session, which I don't think is likely, this is basically going to affect yall, and if a future legislature wants to come in and allow this question to be opened up wider, we've set a template for them to do it but they'd have to come back and do it later.

(Video of House Judiciary Committee meeting, Ex. “E”, at 0:02:27).

63. In response to this admission that SB 38 is solely intended to affect Glynn County, and no other county, Senator William Ligon, the sponsor of SB 38 and SB 509, declared that this characterization was stated “perfectly.” *Id.*, at 0:04:09. In fact, Senator Ligon remarked as follows:

You [chairperson] have accurately stated the essence of the bill and we have worked to tailor this down so that it would only impact Glynn County. I know that there were some larger counties around the metro Atlanta area that didn’t like this and so we’ve addressed that concern and I feel that we have adequately taken that off the table.

Id., at 0:04:27.

64. The sunset provision of January 1, 2022 inserted into SB 38 was aimed at ensuring that SB 38 could only affect Glynn County and its police department. In discussing the sunset provision, Chairperson Fleming sought confirmation from Senator Ligon that SB 38 could not be used as a means of “messaging” with any other county’s police department.

So, let’s say we’re now into the ‘21 session, once again, a local bill would have to be filed and put on a general election, which would next time would be ‘22, but because this bill sunsets before then, that makes it really, for practical purposes, only apply to y’all and you’re not directly messing with anybody else’s police department.

Id., at 0:05:29. Senator Ligon responded, “Right, yes sir.” *Id.* Senator Ligon and Representative Don Hogan offered assurances to the Committee that this bill was aimed only at Glynn County, and it was noted that “[the] situation with the Glynn County Police Department [has] been going on for a long time.” *Id.*

65. Representative Burt Reeves noted his understanding that SB 38 only was aimed at Glynn County and could not affect other counties: “I understand the limiting nature of it [the bill]

with the sunset.” *Id.* at 0:11:55. Representative Reeves even noted that “abolishing it [the Glynn County Police Department] is the code red point, and if that is what y’all want and that is what your community wants then I am going to support that. . . .” *Id.*

66. During debate, Representative Rich questioned whether the sunset provision could have an earlier date, and Senator Ligon explained that, “We may be able to, I would have to talk with legislative counsel, but we need to have time for the transition [from the Glynn County Police Department to the Glynn County Sheriff’s Department] to occur so the bill cannot sunset before then.” *Id.* at 0:18:33.

67. Representative Mike Wilensky asked most directly during debate, the following: “Is this bill strictly for Glynn County?” *Id.* at 0:21:43. In response, Chairman Fleming replied:

... It is a statewide bill, representative Wilensky, however because of the sunset date and the need to pass a local bill, and they’ve [Glynn County] already got their local bill in the works and run their ad, in a practical effect, it could only possibly affect Glynn County is my understanding of it...

Id. Senator Ligon confirmed the Chairman’s understanding that SB could only affect Glynn County: “You stated it accurately. You stated it accurately, Mr. Chairman.” *Id.*

68. Representative Andy Welch expressed his concern that “while this [SB 38] is directed specifically at Glynn County and that’s your intention” that he did not want to create precedent that would allow a process for abolishing other police departments by “putting it on a ballot.” *Id.* at 0:24:25.

69. As to SB 38, another meeting of the House Judiciary Committee occurred on June 19, 2020 . At this meeting, Senator Ligon confirmed that SB 38 “really its for Glynn County although it is a general bill, to place a binding question on the November 2020 election for the

voters to determine whether or not they want the police power transferred from the Glynn County Police Department to the Glynn County Sheriff.” *Id.* at 0:41:17. Representative Hogan concurred: “I would like to point out that this general bill does have a sunset of 2022 so it will not impact the rest of the state.” *Id.* at 0:44:07.

70. Glynn County Representative Jeff Jones recognized the constitutional problems with the General Assembly withdrawing police protection in Glynn County: “This is legislation that would allow for the abolishment of the Glynn County Police Department by an action of the General Assembly. What this bill proposes is a contradiction, and direct violation of the home rule provisions of the Georgia Constitution.” *Id.* at 0:49:24.

71. During debate on SB 38 on June 22, 2020, Senator Ligon again admitted that SB 38 was aimed solely at Glynn County: “we’re doing this for Glynn County.” *Id.* at 1:25:54. Senator Ligon noted that the “genesis of this bill” began with a Glynn County grand jury report and that the purpose of the bill was to have a “question be placed before the people[,] the voters of Glynn County[,] to make the determination of how law enforcement within this County should be structured.” *Id.*

72. Thus, SB 38 is not a general law of uniform application, but rather serves as a local Act that, by virtue of the sunset provision, can only affect Glynn County. It is, therefore, unconstitutional.

73. SB 509 is transparently a local Act and is the vehicle by which the General Assembly seeks to use to defund and abolish the Glynn County Police Department. It is, therefore, also unconstitutional.

74. As noted in an written legal opinion from the Office of Legislative Counsel⁴ (“OLC”), a “compelling argument” can be made that the use of a local Act to abolish the Glynn County Police Department “runs afoul of Art. IX, Sec. II, Par. III(d) of the Constitution.” (Ex. “F”). According to the OLC, “[b]y utilizing a local Act as part of the procedure for the abolition [sic] of the county police agency in the general law, a court could find that such procedure is tantamount to the General Assembly acting by other than general law on the issue of police protection for the county.” *Id.* If that reasonable interpretation is reached, according to the OLC, “the court would find such provision to be violative of that constitutional provision.” It is for this reason that the OLC, “advise[d] caution in proceeding under this bill.”⁵ *Id.*

75. The General Assembly, including the sponsor of SB 38 and SB 509, proceeded ahead despite this stark warning from OLC as to the “compelling” unconstitutionality of these bills.

76. Pursuant to Art. I, Sec. II, Par. V of the Georgia Constitution, legislative acts in violation of the Georgia Constitution “are void, and the judiciary shall so declare them [so].” SB 38 and SB 509 are legislative acts in violation of the Georgia Constitution. This constitutional provision acts as an express waiver of sovereign immunity.

77. O.C.G.A. § 36-8-1(a) provides, in relevant part, that “[t]he county governing authority shall have the authority to elect or appoint such number of county police as in its discretion it deems proper, provided that the county governing authority complies with the

⁴The Office of Legislative Counsel is a joint office of the General Assembly of Georgia, created by statute in 1959. The office serves as legal counsel for the General Assembly.

⁵SB 38 was formerly introduced as SB 317.

provisions of this Code section.”⁶

78. In addition, O.C.G.A. § 36-8-2, which is a general law of uniform application, grants counties the power to abolish a county police force at any time. The power to abolish a police force is solely vested in counties in this State. The power to defund and abolish a police force is not vested in the General Assembly, particularly by way of local Act, nor is it vested in the electors of a county in a special election. In fact, O.C.G.A. § 36-8-2 provides that even if a county police force is created after approval by referendum of qualified electors pursuant to O.C.G.A. § 36-8-1(b), it is the “county governing authority” that has the power to abolish a county police force at any time, not the electors in a county.

79. SB 38 is the first attempt ever in the State of Georgia to create a policy that, by way of a local Act, allows a referendum to decide whether to defund and abolish a local service like police protection.

80. SB 38 and SB 509 are unlawful and unconstitutional attempts to usurp the power explicitly granted to counties by the Georgia Constitution and statutory law to provide police protection – including the sole power to abolish police protections – within their jurisdictions.

81. O.C.G.A. § 36-5-22.1(a), provides that the “governing authority of each county has original and exclusive jurisdiction over” certain subject matters, including: “The directing and controlling of all the property of the county, according to law, as the governing authority deems expedient.” O.C.G.A. § 36-5-22.1(a)(1).

⁶Glynn County is not subject to O.C.G.A. § 36-8-1(b), and it has no application to Glynn County, since its police department was created prior to January 1, 1992. O.C.G.A. § 36-8-1(b) allows for creation of a county police force by referendum, but does not address dissolution or abolishment of a county police force.

82. O.C.G.A. § 36-9-2 provides: “The county governing authority shall have the control of all property belonging to the county and may, by order entered on its minutes, direct the disposal of any real property which may lawfully be disposed of and make and execute good and sufficient title thereof on behalf of the county.” Thus, it is counties in the State of Georgia that are charged with the responsibility and power to dispose and transfer their property, such as assets of county police departments. Glynn County has the power to dispose and transfer assets of the Glynn County Police Department. The General Assembly and the local electorate do not have that power.

83. Pursuant to O.C.G.A. § 36-9-5(b), “The county buildings shall be erected and kept in order and repaired at the expense of the county under the direction of the county governing authority which is authorized to make all necessary contracts for that purpose.” Thus, it is counties in the State of Georgia that are charged with the responsibility and power to maintain their buildings – such as the facilities of county police departments. Glynn County has the power to maintain the facilities of the Glynn County Police Department. The General Assembly and the local electorate do not have that power.

84. Pursuant to O.C.G.A. § 36-9-8, “The public grounds and other county property are placed in the keeping of the sheriff of the county, subject to the order of the county governing authority; and it is his or her duty to preserve them from injury or waste and to prevent intrusions upon them.” Thus, county property, such as the assets of a county police department, that are transferred to the sheriff of a county, must only be done so by “order of the county governing authority.” The assets of the Glynn County Police Department cannot be transferred or placed in the keeping of the Sheriff of Glynn County without an order allowing that to be done by Glynn

County.

85. Not only is SB 509 violative of the Georgia Constitution, but it also violates statutory law in attempting to accomplish a transfer of county police facilities and assets by way of a referendum without approval of Glynn County.

CAUSES OF ACTION

COUNT 1 - TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTION

86. Plaintiffs incorporate by reference each and every preceding paragraph as if set forth fully herein.

87. As shown from the facts contained herein, unless Defendants are immediately restrained and enjoined from performing their duties described above to facilitate the calling and placement of SB 509 referendum question on the November 3, 2020 state-wide, general-election ballot in Glynn County, Plaintiffs will suffer immediate and irreparable injury. As recognized recently by the Georgia Supreme Court in *Barrow v. Raffensperger*, 842 S.E.2d 884, 899 (2020), there is harm and injury caused by holding a meaningless or void election:

There would be obvious practical detriment from holding such an election, including the costs to taxpayers and the burden on election officials of conducting a legally meaningless election, and the likelihood that voters and the public would be misled into believing that the election's result would have the legally binding result that elections normally have.

Glynn County is charged by law with the funding responsibilities for elections and will be harmed by expending funds and resources to hold a special election that is void and unconstitutional. Moreover, additional irreparable harm and injury will result to Glynn County if its police department were allowed to be dissolved and abolished by unconstitutional local legislation

without any input or say of Glynn County, thus depriving Glynn County of its constitutional rights to provide for police protections in Glynn County. Further, Glynn County will suffer immediate and irreparable harm if all of its police assets, equipment, and facilities are removed from it, without any input or directive from Glynn County, in violation of constitutional and statutory law. SB 509 is an unconstitutional local Act that seeks to withdraw the power of police protection specifically vested in counties pursuant to Art. IX, Para. II, Sec. III of the Georgia Constitution.

88. Specifically, Plaintiffs seek to immediately restrain and enjoin Defendant BOE, which acts as the Election Superintendent in Glynn County, and its individual members – Patricia Gibson, Sandra Dean, Keith Rustin, Tommy Clark and Patricia Featherstone sued in their official and individual capacities – from calling or holding the special election proposed by SB 509, or from certifying or publishing the results of the special election, because it violates the Georgia Constitution and State law, as described above.

89. If the special election is permitted to proceed, the BOE and its individual members should specifically be restrained and enjoined from publishing the call of the special election question at issue in SB 509, or from taking any action to place the special-election question on the same ballot as the state-wide general election.

90. Pursuant to O.C.G.A. § 21-2-540, the special-election question at issue in SB 509 was required to be called at least 90 days prior to the state-wide general election on November 3, 2020. August 5, 2020 was the 90th day prior to the November 3, 2020 and, as of the filing of this action, the special election question has still not been called.

91. Because the special election question at issue in SB 509 is required by law to have been called at least 90 days prior to November 3, 2020, and this was not done, the special election

cannot take place and would be void if it were now called, placed on the state-wide general election ballot and voted on by the electorate in Glynn County.⁷ Because this mandatory special election procedure was not followed, the special election is required to be enjoined.⁸

92. For these same reasons, as to the special election question at issue in SB 509, the BOE and its individual members should be restrained and enjoined from: (1) preparing and publishing notices and advertisements, in connection with the special election, including transmitting copies to the Secretary of State; (2) selecting and equipping polling places for the special election; (3) purchasing, preserving, storing, and maintaining election equipment and procuring ballots and other supplies for the special election; (4) appointing poll officers and other officers to serve in the special election; (5) making and issuing rules, regulations, and instructions, including the rules and regulations promulgated by the State Election Board, as necessary for the guidance of poll officers, custodians, and electors in reference to the special election; (6) receiving from poll officers the returns of the special election, canvassing and computing the same, and certifying the results; and (7) announcing publicly the results of the special election. *See* O.C.G.A. § 21-2-70.

93. Further, Plaintiffs also seek to immediately restrain and enjoin the Secretary of State, as the constitutional officer serving as Georgia's chief official who oversees and

⁷See *Hughes vs. Griner*, 208 Ga. 47, 49 (1951) (Failure to comply with the mandatory prerequisites to the holding of a special election, such as filing a petition to call the election as provided by law or advertising the election as required by law, renders the election void and equity will take jurisdiction and so decree.).

⁸See *Committee for New Cobb County Revenue v. Brown*, 228 Ga. 364, 369-71 (1971); *Richmond County Business Ass'n, Inc. v. Richmond County*, 223 Ga. 337 (1967); *Tolbert v. Long*, 134 Ga. 292, 67 S.E.2d 826 (1910).

administers elections. *See* O.C.G.A. § 21-2-50. The Secretary of State is also the chairperson of the State Election Board. *See* O.C.G.A. § 21-2-30 (d). The Secretary of State should be restrained and enjoined from overseeing and administering the special election at issue in SB 509 for the reasons set forth above.

94. As part of this request to restrain and enjoin Defendants, Plaintiffs are seeking prospective relief against Defendants named in their individual capacities and, as such, immunity does not bar these claims. *See Lathrop v. Deal*, 301 Ga. 408, 434-435 (2017). Moreover, the BOE is not an entity entitled to sovereign immunity on any claims and, even if it were, Art. I, Sec. II, Para. V of the Georgia Constitution – which states that “[l]egislative acts in violation of this Constitution or the Constitution of the United States are void, and the judiciary shall so declare them” – is an express waiver of immunity.

95. Attached hereto is the certificate showing efforts to give notice to Defendants of Plaintiffs’ request for a Temporary Restraining Order and reasons why notice should not be required.

COUNT 2 - DECLARATORY ACTION

96. Plaintiffs incorporate by reference each and every preceding paragraph as if set forth fully herein.

97. The calling of the special election question at issue in SB 509, and conducting the special election, certifying and publishing the results, and carrying out the results of the special election, will irreparably injure Plaintiffs as set forth above.

98. There is an actual and justiciable controversy presented by the facts stated herein, which creates uncertainty and insecurity on the part of Plaintiffs, with respect to their rights,

status, duties, obligations, and legal relations toward Defendants and others.

99. The controversies and issues that are ripe for a Declaratory Judgment by this Court include: (1) whether SB 38 is a general law or merely a local or special act; (2) whether SB 509, a local Act, can be used to withdraw the police protections in Glynn County; (3) whether the General Assembly can, by way of a local Act (SB 509) and without the approval of Glynn County, defund and abolish the Glynn County Police Department; (4) whether the General Assembly can, by way of a local Act (SB 509) and without the approval of Glynn County, require Glynn County to transfer the functions and assets of its police department to the Sheriff of Glynn County; (5) whether SB 38 and/or SB 509 violate the Georgia Constitution and existing statutory law; (6) whether – if SB 38 and SB 509 are found to be constitutional and not violative of Georgia law – the BOE is permitted to place the special-election question set forth in SB 509 on the November 3, 2020 ballot in Glynn County if it cannot call the election prior to 90 days before the state-wide general election as required by O.C.G.A. § 21-2-540; (7) whether – if SB 38 and SB 509 are found to be constitutional and not violative of Georgia law – the BOE must hold the special election “completely separate and apart” from state-side general election as required by O.C.G.A. § 21-2-540 and further must adhere to the requirements for conducting elections, including the voting machine requirements, as set forth in O.C.G.A. § 21-2-320 *et seq.*, and O.C.G.A. § 21-2-367 and O.C.G.A. § 21-3-367(b); (8) whether the BOE can be forced to conduct the special election at issue in SB 509 and whether they are required to undertake their responsibilities set forth in O.C.G.A. § 21-2-70 as to the special-election question at issue; and (9) whether the Secretary of State should oversee and administer the special election at issue in SB 509.

100. The facts stated herein set forth an immediacy of choice imposed upon Plaintiffs so

as to justify and require an adjudication of this controversy for the guidance and protection of Plaintiffs. Plaintiffs have no adequate remedy at law or otherwise. Plaintiffs are uncertain of their rights, obligations, and duties in regard to Defendants’ authority, rules, and regulations. Without a declaration of the rights, duties, and obligations of the parties, Defendants’ actions will result in irreparable harm as described above.

101. As part of this request for declaratory relief, Plaintiffs are seeking prospective relief against Defendants named in their individual capacities and, as such, immunity does not bar these claims. *See Lathrop v. Deal*, 301 Ga. 408, 434-435 (2017). Moreover, the BOE is not an entity entitled to sovereign immunity on any claims and, even if it were, Art. I, Sec. II, Para. V of the Georgia Constitution – which states that “[l]egislative acts in violation of this Constitution or the Constitution of the United States are void, and the judiciary shall so declare them” – is an express waiver of immunity.

COUNT 3 - MANDAMUS

102. Plaintiffs incorporate by reference each and every preceding paragraph as if set forth fully herein.

103. Mandamus is a remedy for “government[al] inaction—the failure of a public official to perform a clear legal duty.” *Southern LNG, Inc. v. MacGinnitie*, 294 Ga. 657, 661 (2014).

104. Mandamus is warranted when (1) a public official has a clear legal duty to perform an official act (as requested); (2) that the requesting party has a clear legal right to the relief sought or that the public official has committed a gross abuse of discretion; and (3) that there is no other adequate legal remedy. *See Bland Farms, LLC v. Georgia Dept. of Agriculture*,

281 Ga. 192, 193 (2006); *see also* *SJN Props., LLC v. Fulton County Bd. of Assessors*, 296 Ga. 793, 800 (2015); *Trip Network, Inc. v. Dempsey*, 293 Ga. 520, 522 (2013); *Goldman v. Johnson*, 297 Ga.115, 116 (2015).

105. Plaintiffs have a clear legal right to certain relief. In the event SB 38 and SB 509 are determined and declared to be constitutional, Plaintiffs have a clear legal right to an Order compelling the BOE to hold the special election “completely separate and apart” from state-side general election as required by O.C.G.A. § 21-2-540 and further compelling the BOE to adhere to the requirements for conducting elections, including the voting machine requirements, as set forth in O.C.G.A. § 21-2-320 *et seq.*, and O.C.G.A. § 21-2-367. In the event SB 38 and SB 509 are determined and declared to be constitutional, Plaintiffs also have a clear legal right to an Order compelling the Secretary of State to oversee and administer the special election at issue in SB 509 “completely separate and apart” from state-side general election as required by O.C.G.A. § 21-2-540 and further compelling the BOE to adhere to the requirements for conducting elections, including the voting machine requirements, as set forth in O.C.G.A. § 21-2-320 *et seq.*, and O.C.G.A. § 21-2-367.

106. Plaintiffs show they have no remedy, other than mandamus, to obtain the relief requested.

WHEREFORE, Plaintiff pray for the following:

(a) That the court issue a temporary restraining order prohibiting Defendants from taking the actions as set forth and requested in Count 1;

(b) That the court set down at the earliest possible time a hearing on an interlocutory injunction in this cause;

(c) That upon said hearing in this cause that the court issue an interlocutory injunction prohibiting Defendants from taking the actions set forth and requested in Count 1;

(d) That upon a final hearing in this cause, that said interlocutory injunction be made permanent;

(e) That a declaratory judgment be entered against Defendants as set forth and requested in Count 2;

(f) That this Court issue a Mandamus Nisi to Defendants requiring them to show cause at a time and place to be designated by this Court not less than ten days, nor more than thirty days from this date, why a mandamus should not be issued against them requiring them to take action as set forth and requested in Count 3, and that on the hearing the mandamus may be made absolute and the Defendants be required to take such action;

(g) For such additional and further relief that this Court deems just and proper.

Respectfully submitted this the 28th day of August, 2020.

BROWN, READDICK, BUMGARTNER,
CARTER, STRICKLAND & WATKINS, LLP

/s/ Richard K. Strickland
Richard K. Strickland
Georgia Bar No. 687830
rstrickland@brbcsw.com

/s/ Bradley J. Watkins
Bradley J. Watkins
Georgia Bar No. 740299
bwatkins@brbcsw.com

ATTORNEYS FOR PLAINTIFFS

P. O. Box 220
Brunswick, GA 31521-0220
(912) 264-8544

IN THE SUPERIOR COURT OF GLYNN COUNTY
STATE OF GEORGIA

GLYNN COUNTY BOARD OF)
COMMISSIONERS, and)
GLYNN COUNTY, GEORGIA,) CE20-00876
)
Plaintiffs,)
)
v.)
)
BRAD RAFFENSPERGER, in his official)
capacity as Secretary of State of the)
State of Georgia and as Chair of the State)
Election Board of Georgia, and individually;)
PATRICIA GIBSON, SANDRA DEAN,)
KEITH RUSTIN, TOMMY CLARK, and)
PATRICIA FEATHERSTONE,)
in their official capacities as members)
of the Glynn County Board of Elections,)
and individually, and GLYNN COUNTY)
COUNTY BOARD OF ELECTIONS AND)
REGISTRATION,)
)
Defendants.)

CERTIFICATION

The undersigned hereby certifies to the court that he is the attorney for the plaintiffs in the above-styled action and that this certification is given pursuant to O.C.G.A. § 9-11-65(b).

The attorney further certifies that the following efforts were made to give notice to defendants of this Petition for temporary restraining order: A copy of the Verified Petition seeking the temporary restraining order was provided to counsel for defendants and a copy was further provided to the Office of the Attorney General for the State of Georgia pursuant to O.C.G.A. § 9-4-7.

Respectfully submitted this the 28th day of August, 2020.

BROWN, READDICK, BUMGARTNER,
CARTER, STRICKLAND & WATKINS, LLP

/s/ Bradley J. Watkins

Bradley J. Watkins

Georgia Bar No. 740299

bwatkins@brbcsw.com

ATTORNEY FOR PLAINTIFFS

P. O. Box 220
Brunswick, GA 31521-0220
(912) 264-8544

IN THE SUPERIOR COURT OF GLYNN COUNTY
STATE OF GEORGIA

GLYNN COUNTY BOARD OF)
COMMISSIONERS, and)
GLYNN COUNTY, GEORGIA,)

Plaintiffs,)

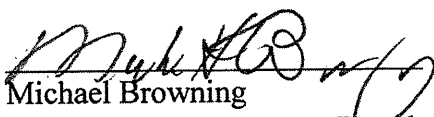
v.)

BRAD RAFFENSPERGER, in his official)
capacity as Secretary of State of the)
State of Georgia and as Chair of the State)
Election Board of Georgia, and individually;)
PATRICIA GIBSON, SANDRA DEAN,)
KEITH RUSTIN, TOMMY CLARK, and)
PATRICIA FEATHERSTONE,)
in their official capacities as members)
of the Glynn County Board of Elections,)
and individually, and GLYNN COUNTY)
COUNTY BOARD OF ELECTIONS AND)
REGISTRATION,)

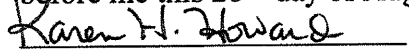
Defendants.)

VERIFICATION

Personally appeared before me, the undersigned notary public, Michael Browning, Chairman of the Glynn County Board of Commissioners, who, being duly sworn, states that the facts alleged in the foregoing **VERIFIED PETITION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, DECLARATORY RELIEF AND MANDAMUS** are true and correct to the best of my knowledge and belief.


Michael Browning
Chairman, Glynn County Board of
Commissioners

Sworn to and subscribed
before me this 28th day of August,


Notary Public

Notary Public, Glynn County, GA
My Commission Expires October 28, 2023

