Fulton County Superior Court
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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STONE MOUNTAIN JUDICIAL CIRCUIT DISTRICT ATTORNEY SHERRY BOSTON, and AUGUSTA JUDICIAL CIRCUIT DISTRICT ATTORNEY JARED WILLIAMS, Plaintiffs, v. STATE OF GEORGIA, Defendant.	CIVIL ACTION FILE NO.: 24CV004885

FINAL ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

This matter is before the Court on cross-Motions for Summary Judgment filed by Plaintiffs Stone Mountain Judicial Circuit District Attorney Sherry Boston and Augusta Judicial Circuit District Attorney Jared Williams (collectively, "Plaintiffs" or the "District Attorneys")[1], and Defendant the State of Georgia through the Prosecuting Attorneys Qualifications Commission ("Defendant", the "Commission", or "PAQC"). The Court received extensive briefing and conducted a hearing on the cross-motions on May 1, 2026. The Parties agree that there are no disputed issues of material fact and that the only issues for determination by this Court are matters of law.

For the reasons stated below and based on the record evidence and argument presented by the Parties, the Court hereby **DENIES** Plaintiffs' Motion for Summary Judgment and **GRANTS** Defendant's Motion for Summary Judgment on all Counts. This order is dispositive on all issues.

[1] Plaintiffs stipulated to dismissing claims brought by Towaliga Judicial Circuit District Attorney Jonathan Adams on April 23, 2026 since he resigned from his position to seek election as a superior court judge and his successor chose to withdraw as a plaintiff. (See Plaintiffs' Stipulation of Dismissal of Claims by Towaliga Judicial Circuit District Attorney).

BACKGROUND AND PROCEDURAL HISTORY

In this lawsuit, the Plaintiff District Attorneys sued in their official capacities and asked this Court to (1) declare legislation enacted by the General Assembly to be unconstitutional; and (2) declare the governing rules promulgated by the Commission to be unlawful and void.

The legislation at issue, Senate Bill 92 ("SB92"), created the Commission; enacted, and later revised, the laws governing the Commission; and added one provision to the duties of a prosecuting attorney. See O.C.G.A. §§ 15-18-32; 15-18-6(4). The rules at issue were passed by the Commission, and the parties agree that the rule-making was not in accordance with the Georgia Administrative Procedure Act ("APA").

STANDARD OF REVIEW

In order to prevail at summary judgment, the moving party must demonstrate that no genuine issue of material fact exists and that the undisputed facts, viewed in a light most favorable to the non-moving party, warrant judgment as a matter of law. O.C.G.A. § 9-11-56. This rule applies equally to cases like this one, where courts consider cross-motions for summary judgment. See Raffensperger v. Jackson, 316 Ga. 383, 387 (2023). Thus, a court must resolve the same issue of disputed fact against a party in its capacity as movant, and then for the same party when it is the non-movant. See White v. Gens, 348 Ga. App. 145, 146 (2018).

Plaintiffs bring facial challenges to the constitutionality of portions of O.C.G.A. § 15-18-32. Such challenges are the "most difficult challenge to mount successfully, since the challenge must establish that no set of circumstances exists under which the Act could be valid." Ga. Dep't of Hum. Servs. v. Steiner, 303 Ga. 890, 899 (2018) (citation omitted). A party generally may only challenge a statute's constitutionality as applied to his own rights, not its hypothetical application to third parties. Id. All presumptions favor a statute's constitutionality, and a court will not declare a statute unconstitutional unless the party challenging the statute meets its burden of showing that there is a "clear and palpable" conflict with the Constitution. Taylor v. Devereux Foundation, Inc., 316 Ga. 44, 52–53 (2023).

FINDINGS OF FACT

Having considered the record and with the benefit of oral argument, the Court finds the following facts to be undisputed for purposes of summary judgment:

I. The Parties

Plaintiff Sherry Boston is the District Attorney of the DeKalb Judicial Circuit (formerly Stone Mountain Judicial Circuit). (Boston Dep. 8:4–23; Compl. ¶ 19). Plaintiff Jared Williams is the District Attorney of the Augusta Judicial Circuit. (Compl. ¶ 21). Each Plaintiff brought this lawsuit in his/her official capacity as a district attorney. (Boston Dep. 21:12–15; Williams Dep. 16:1–7).

Prior to the passage of SB 92, DA Boston signed onto a Fair and Just Prosecution organization ("FJP") statement in her official capacity which says: "Criminalizing and prosecuting individuals who seek or provide abortion care makes a mockery of justice; prosecutors should not be part of that." (Def's SMF ¶ 74; Boston Dep. Ex. 17). Also, prior to the passage of SB 92, DA Boston made statements and posted articles which were on her public and campaign websites regarding her opposition to and commitment to not enforce criminal abortion laws. (Def's SMF ¶¶ 75–76; Boston Dep. (Boston Dep. 91:23–92:1; Exs. 18–20). DA Boston testified that she has not re-stated those public statements since the passage of SB 92 but has not removed or retracted any statement. (Boston Dep. at 93:13-24).

DA Boston also asserts that the existence of the Commission caused her to end the "Covid Backlog Policy" that her office used to manage pandemic-related case backlogs, which "provided guidelines for the expedited disposition of certain charges, including possession of personal use amounts of a controlled substance." (Boston Aff. ¶ 19). She states that she would "no longer feel comfortable" enacting such a policy in the future to deal with resource allocation problems for fear it could give rise to discipline under O.C.G.A. § 15-18-32(i)(2)(5)'s "stated policy" clause. (Boston Aff. ¶¶ 22–23).

In the past, DA Boston regularly joined FJP advocacy statements, including statements expressing opposition to prosecuting the distribution of food and water in connection with voting, and statements objecting to the criminalization of gender-affirming care. (Boston Aff. ¶ 30). Since the Commission was created, DA Boston is "no longer [] as willing to discuss hypothetical cases, for fear they will meet this definition," and "avoid[s] signing FJP and other public advocacy statements, for fear that the statement could be construed as a 'stated policy; for purposes of PAQC discipline." (Boston Aff. ¶¶ 28, 35).

DA Williams asserts that he has not pursued adopting policies to direct his staff and partner investigative agencies on how best to allocate their time and resources for fear of discipline under the challenged statute. (Compl. ¶ 99; Williams Aff. ¶ 19). He states that "[t]he prospect of being subjected to a lengthy investigation or disciplinary proceeding based on an exercise of prosecutorial discretion has deterred me from running my office in the manner I otherwise would." (Williams Aff. ¶ 13). He further asserts that he has refrained from developing a policy with respect to certain marijuana crimes, even as he believes such a policy could assist his office and partner enforcement agencies in effectively allocating their resources. (Williams Aff. ¶¶ 17–18). In a September 2025 article by The Jail Report titled "Drug Cases Disappearing," DA Williams is stated to have dismissed "dozens of drug cases regularly." (Williams Dep. Ex. 19; The Jail Report (Sept. 26, 2025)). DA Williams stated that these dismissals are part of a broader effort to focus on high-impact cases. (Williams Dep. 55:22–56:10).

On the campaign trail in 2024, DA Williams would "pause and temper" his responses to community members' questions to avoid statements that he thought could be construed as a "stated policy." (Williams Aff. ¶ 24). DA Williams has also "become much more cautious" about signing FJP policy statements, even when he agrees with the content. (Williams Aff. ¶ 30).

Based on the constitutional waiver of sovereign immunity in Article I, Section II, Paragraph V of the Constitution of Georgia, the Defendant is the State of Georgia. The real challenge here, however, is to the statute creating the Commission and to its rules.

II. Legislative Background and the Commission's Authority

In 2023, the Georgia General Assembly enacted, and Governor Kemp signed, SB 92. (Def's SMF ¶ 5). SB 92 made two principal changes to Georgia law. First, SB 92 amended O.C.G.A. § 15-18-6 to add a new subsection (4) that requires district attorneys "[t]o review every individual case for which probable cause exists and to make a prosecutorial decision available under the law based on the facts and circumstances of each individual case … ." (Def's SMF ¶ 7; O.C.G.A. § 15-18-6(4)). This new directive supplemented the pre-existing duty "to prosecute all indictable offenses." (Def's SMF ¶ 8; O.C.G.A. § 15-18-6(5) (2023)). Second, SB 92, citing Article VI, Section VIII, Paragraph II of the Constitution of Georgia in reference to district attorneys, also enacted O.C.G.A. § 15-18-32, *et seq*. (the "Act"), which created the Commission.

The Commission is composed of eight members, all appointed by the legislative and executive branches of state government. O.C.G.A. §§ 15-18-32(d)(3), (4). The Act also sets forth various grounds for discipline, a process for investigation of complaints, and a separate process for hearing the complaints. See generally O.C.G.A. § 15-18-32. The Plaintiffs focus the bulk of their attack on O.C.G.A. §§ 15-18-32(i)(2) and (i)(2)(E) (referred to as the "Challenged Subsection"). That provides, in relevant part:

> (2) The commission may not entertain a complaint on the basis of a charging decision, plea offer, opposition to or grant of a continuance, placement of a case on a trial calendar, or recommendation regarding bond unless the affidavits and any documents attached to the complaint show it is plausible that the district attorney or solicitor-general made or knowingly authorized the decision based on:
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> …
>
> (E) A stated policy, written or otherwise, which demonstrates that the district attorney or solicitor-general categorically refuses to prosecute any offense or offenses of which he or she is required by law to prosecute.

The Plaintiffs also challenge subsection (p) of the Act, which provides that whenever a district attorney or solicitor general is removed or involuntarily retired by the Commission, he or she is disqualified from serving as a district attorney or solicitor-general for ten years. O.C.G.A. § 15-18-32(p).

III. The Commission's Rulemaking Process

When passed, SB 92 required the Commission to promulgate rules and a code of conduct "no later than October 1, 2023," "with the assistance of the Prosecuting Attorneys' Council" ("PAC"). O.C.G.A. § 15-18-32(g) and (n) (2024). In anticipation of its role in assisting the Commission pursuant to O.C.G.A. § 15-18-32(g), PAC formed a SB 92 Rules Committee (the "PAC Committee"). (Def's SMF ¶ 17; Plfs' SMF Ex. 2, Mosley Aff. ¶ 9). Plaintiffs were not involved in the PAC Committee's work and lack first-hand knowledge of the communications between the PAC Committee and the Commission. (Def's SMF ¶¶ 22, 41). The parties appear to agree that the PAC Committee met multiple times to develop proposed rules and a code of conduct for the Commission. (Plfs' SMF ¶¶ 18–19).

On September 1, 2023, the Commission formally requested PAC's work product by September 8, 2023. (Def's SMF ¶ 23). PAC responded on September 5, stating that the PAC Committee "plan[ned] to have the completed work product delivered to the Commission no later than October 1, 2023" and attached a draft of the procedural rules while noting its work was not yet final, also requesting a meeting with the Commission. (Def's SMF ¶ 24, 27; Plfs' SMF ¶¶ 33, 34). The Commission did not respond to that request. (Plfs' SMF ¶ 35).

The parties agree that the members of the Commission reviewed PAC's September 5th draft proposals, though they disagree on the depth of the Commissioners' review. (Def's SMF ¶¶ 29–31, 42 and Plaintiffs' Responses thereto). The Commission used the PAC Committee's September 5 draft proposal as the working-document (*i.e*. "we took the Word document [the Commission] got from [PAC] and used it to make changes to come up with [the Commission's] final rules. So we actually took like the Word document that the PAC committee sent us, and that was like our working document.") (Def's SMF ¶ 30). The Commission edited PAC's proposals where it deemed them inconsistent with its enacting statute, O.C.G.A. § 15-18-32, or the enacting statute or rules of the Judicial Qualifications Commission, which it was using as a guide. (Def's SMF ¶ 31). It is undisputed that the Commission did not follow the Georgia Administrative Procedure Act's (the "APA's") procedures in adopting the Rules or Code of Conduct. (Def's SMF ¶ 32). On September 29, 2023, the Commission submitted its proposed rules and code of conduct to the Supreme Court,[2] and four minutes later, PAC transmitted its "final" proposals to the

[2] The original version of the legislation, which mirrored provisions of the Judicial Qualifications Commission statutes in several respects, provided that the Commission's "standards and rules shall be effective only upon review and adoption by the [Georgia] Supreme Court."

Commission. (Def's SMF ¶¶ 35 and 37, Ex. I) No party showed a comparison between the PAC Committee's "final" work product and the rules the Commission submitted to the Supreme Court.

Ultimately, the Supreme Court of Georgia declined to act on the Commission's proposed rules, citing separation of powers concerns and grave doubt that, in the absence of a constitutional grant of authority to it to do so, it had jurisdiction to exercise its judicial power to adopt standards and rules governing prosecutors, who likely exercise only executive power.[3] (In re Prosecuting Attorneys Qualifications Commission, Matter No. S24U0190, (Nov. 3, and 22, 2023).[4]

The next legislative session, the General Assembly passed Senate Bill 332 ("SB 332"), which removed the requirement for the Supreme Court to approve the Commission's rulemaking, and Governor Kemp signed it into law on March 13, 2024. (Compl. ¶ 13). At some point after September 29, 2023 but before March 25, 2024, the Commission reviewed, to at least some extent, the PAC's September 29th final proposals. (Def's SMF ¶ 42 and Plaintiff's Response thereto). On March 25, 2024, the Commission adopted its Rules and Code of Conduct—identical to those previously submitted to the Supreme Court and updated to reflect a prospective effective date. (Def's SMF ¶ 43).

The current lawsuit, which includes a challenge based on a failure to follow the APA, was filed April 16, 2024. The Commission has acknowledged that it did not follow the APA process set forth in O.C.G.A. § 50-13-4 (Def's SMF ¶ 32) and argues that it was not required to do so.

Since the Commission's rules became operational on April 1, 2024, the Commission has held no hearings on any investigations and no Plaintiff has been investigated, called before its hearing panel, disciplined, or removed by the Commission. (Id. ¶¶ 49–50). According to the

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[3] The Georgia Supreme Court later announced its "inescapable" conclusion that district attorneys exercise only executive power. Gonzalez v. Miller, 320 Ga. 170, 178-180 (2024).

[4] The Supreme Court's orders did not include any discussion of the APA.

record, the only action taken by the Commission was against a solicitor general, who voluntarily resigned. (Id. ¶ 51).

During the 2026 legislative session, the General Assembly enacted Senate Bill 218 ("SB 218"), which Governor Kemp signed into law on May 11, 2026. Through both additions and deletions, SB 218 revised several subsections of O.C.G.A. § 15-18-32, including subsection (n), by striking the October 1, 2023 rulemaking deadline and changing the date before which the Commission may not receive misconduct complaints from May 5, 2023 to April 1, 2024. SB 218 left unchanged the Commission's rulemaking procedure prescribed in subsection (g).[5]

IV. Procedural History

On April 16, 2024, the Plaintiffs filed this lawsuit.[6] Plaintiffs' Complaint includes six claims, alleging:

- **Count I** – The Commission's authority to investigate, discipline, or remove a district attorney violates the separation of powers provision of the Georgia Constitution. (Compl. ¶¶ 121–129 (citing Ga. Const. Art. I, § II, ¶ III and Art. VI, § VIII, ¶ III));

- **Counts II and III** – The Commission's authority to investigate, discipline, or remove a district attorney based upon a "stated policy, written or otherwise," which demonstrates a district attorney's categorical refusal to prosecute an offense he or she is required by law to prosecute, O.C.G.A. § 15-18-32(i)(2)(E), unconstitutionally infringes upon freedom of speech under the U.S. and Georgia Constitutions. (Compl. ¶¶ 130–156);

- **Count IV** – The ten-year bar on office holding following involuntarily retirement as a result of discipline imposed by the Commission, O.C.G.A. § 15-18-32(p), constitutes an unlawful qualification for office. (Compl. ¶¶ 157–165);

- **Count V** – The Commission failed to "seek, obtain, or accept" the assistance of the Prosecuting Attorney's Council in the course of promulgating the Code of Conduct

[5] At the May 1, 2026 hearing, the Parties acknowledged the impending 2026 changes to the statutes at issue and agreed that there are no additional claims or arguments being made with respect to those changes.

[6] Plaintiffs also brought a companion case against the Commission members in their individual capacities, asserting virtually identical claims. Boston, et al., v. Cowart, et al., No. 2024-CV-004942 (Fulton Cnty. Super. Ct. Apr. 16, 2024). That case was dismissed on sovereign immunity grounds on August 14, 2024, and not appealed. (See Final Order Granting Defendants' Motion to Dismiss Plaintiffs' Complaint).

and its Rules for Governance in contravention of O.C.G.A. § 15-18-32(g). (Compl. ¶¶ 166–173); and

- **Count VI** – The Code and Rules are invalid for failing to comply with the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1, *et seq.* (Compl. ¶¶ 174–187).

The Court denied the State's motion to dismiss this action on August 23, 2024, finding that the jurisdictional questions were "particularly intertwined" with the merits and deferring determination of subject matter jurisdiction accordingly. (Order at 2 (quoting James v. Ga. Dep't of Pub. Safety, 337 Ga. App. 864, 867–68 (2016))). The Court also denied Plaintiffs' request for interlocutory injunction by separate order entered July 23, 2024. Both parties filed cross-motions for summary judgment on December 19, 2025, pursuant to O.C.G.A. § 9-11-56. The Court conducted a hearing on May 1, 2026 (Am. Rule Nisi, Apr. 1, 2026) and now issues this Order on the cross-motions.

ANALYSIS AND CONCLUSIONS OF LAW

Count I: Separation of Powers.

As a threshold matter, the Court finds that Plaintiffs lack standing as to **Count I** and that this claim is not ripe for adjudication. This finding independently disposes of Count I, and the Court reaches its merits only in the alternative.

Standing is a constitutional and jurisdictional matter, and Georgia's appellate courts have held that it must be decided before proceeding to the merits. Stillwell v. Topa Ins. Co., 363 Ga. App. 126, 129 (2022). Plaintiffs bear the burden of establishing their standing. Republican Nat'l Comm. v. Eternal Vigilance Action, Inc., 321 Ga. 771, 775 (2025) ("RNC"). To establish standing, Plaintiffs must show at least a cognizable legal injury. Clark v. Skandalakis, 377 Ga. App. 18, 20 (2025). And the injury must be impending, not merely possible or hypothetical. RNC, 321 Ga. at 785. "[S]peculation which raises merely a conjecture or possibility is not sufficient to create even an inference of fact for consideration on summary judgment." Sheffield v. Jekyll Island State Park Auth., 369 Ga. App. 265, 266 (2023) (citations omitted).

On this separation of powers claim, Plaintiffs have no "legal 'right at stake that requires adjudication to protect it.'" RNC, 321 Ga. at 775. Plaintiffs have not identified any text in the State Constitution that is offended by the Act.[7] The State Constitution specifically empowers the General Assembly to impose on district attorneys "duties as shall be required by law." Ga. Const. Art. VI, Sec. VII, Par. I(d). And as discussed more fully below, the new duty imposed by SB 92 does not limit the exercise of prosecutorial discretion but rather requires its exercise. Further, the Georgia Constitution provides that "[a]ny district attorney may be disciplined, removed or involuntarily retired as provided by general law." Ga. Const. Art. VI, Sec. VII, Par. II. Under these circumstances, Plaintiffs have not identified a cognizable "legal 'right at stake.'" RNC, 321 Ga. at 775. And at the very least, Plaintiffs have not ruled out the possibility that the Act can be applied constitutionally, and this is fatal. See Steiner, 303 Ga. at 899. Summary judgment is, therefore, granted in favor of Defendants against Count I on standing.

Independent of standing, Plaintiffs have not stated a cognizable claim under the Declaratory Judgment Act. See O.C.G.A. §§ 9-4-1 through 9-4-11. The Act authorizes a declaration only "in cases of actual controversy," O.C.G.A. § 9-4-2(a), and only where a party is "in a position of uncertainty as to an alleged right" such that a declaration is needed to guide its future conduct. Avery v. Paulding Cnty. Airport Auth., 343 Ga. App. 832, 842 (2017). Absent that, the judgment would be advisory, and the Declaratory Judgment Act makes no provision for a judgment that would be 'advisory.'" Id. The relief sought "must have some immediate legal effect

[7] The General Assembly is empowered with plenary authority, meaning it can legislate in any manner not "prohibited by the State or Federal Constitution." DeKalb County Sch. Dist. v. Ga. State Bd. of Educ., 294 Ga. 349, 352 (2013) (citations omitted).

on the parties' conduct, rather than simply burning off an abstract fog of uncertainty." City of Atlanta v. Atlanta Indep. Sch. Sys., 307 Ga. 877, 880 (2020).

There are no rights for Count I currently at stake. No Commission action against these Plaintiffs is pending, and the discipline they fear—unreasonably in the Court's analysis—remains entirely hypothetical. Because Plaintiffs have not demonstrated an impending injury, they do not satisfy standing. The Court declines the invitation to render an advisory opinion on hypothetical legal questions. Atlanta Indep. Sch. Sys., 307 Ga. at 881. For this independent reason, Count I fails to state a claim for declaratory relief. See also Cheeks v. Miller, 262 Ga. 687, 688 (1993).

In the alternative, the Court examines the merits of Count I. Plaintiffs originally contended that the Act violates the separation of powers because the Commission, as an executive body, improperly supervises district attorneys' exercise of what Plaintiffs characterized as judicial power. Plaintiffs also contend the Act violates separation of powers because the Legislature—by foreclosing the ability to categorically refuse to enforce penal statutes—"goes too far," removing Plaintiffs' "core constitutional duty" of prosecutorial discretion. Whether Plaintiffs' contention is that the Act permits the Commission to venture outside its constitutional lane or that the Act represents an unconstitutional legislative encroachment into a different branch of government, Defendant is entitled to summary judgment.

The Act does not represent a breach of the State Constitution's requirement that the "legislative, judicial, and executive powers shall forever remain separate and distinct." Ga. Const. Art. I, Sec. II, Par. III. The Act creates no separation of powers problem between the Commission and the district attorneys because both are organs of the executive branch, and district attorneys exercise only executive power. Gonzalez, 320 Ga. at 180. When two entities are within the same branch, the action of one against another does not implicate separation of powers principles, which polices the boundaries between branches, not the allocation of authority within a single branch. Steiner, 303 Ga. at 904 (citing Ga. Const. of 1983, Art. I, Sec. II, Par. III).

Nor is there a separation of powers problem with the legislature promulgating the Act and its provisions governing district attorneys. Two provisions of the Georgia Constitution expressly authorize the General Assembly to impose duties on district attorneys and to determine grounds and procedures for their discipline and removal. See Ga. Const. Art. VI, Sec. VII, Paras. I(d) and II. A governmental body acting pursuant to an express constitutional provision cannot violate separation of powers. Dominguez v. Enterprise Leasing Co., 197 Ga. App. 664, 665 (1990). This is particularly true where, as here, Plaintiffs identify no competing constitutional text that the Act offends.

Third, contrary to the Plaintiffs' principal contention, the Act does not strip, prevent, or limit the exercise of prosecutorial discretion. Rather, new O.C.G.A. § 15-18-6(4) expressly preserves and requires individualized case-by-case discretion. The Act provides potential discipline only for a *categorical refusal to exercise* prosecutorial discretion.[8] The authority to decide what the law shall be—here, what to criminalize—is the purview of the legislature, not of individual prosecutors. Huber v. State, 234 Ga. 357, 359 (1975) (recognizing the General Assembly's exclusive authority to enact criminal laws). Enforcing those laws as written is the role of the executive branch, including prosecutors, and that duty existed prior to the enactment of the

[8] On this issue, Plaintiff's own arguments confirm as much: Plaintiffs argue that the duty to prosecute, which the legislature earlier imposed on prosecutors, and with which they do not take issue, "incorporates prosecutors' exercise of discretion in deciding how, whether, and when to prosecute a given potential case." (Plfs' MSJ, p. 16, citing *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978); *McCleskey v. Kemp*, 481 U.S. 279, 311–12 (1987) ("[T]he capacity of prosecutorial discretion to provide individualized justice is firmly entrenched in American law"); and other cases)). Prosecutorial discretion must be exercised in "a given potential case" in order to ensure "individualized justice." Nor is a decision based on resource allocation a "categorical" refusal to prosecute as its being based on resource allocation necessarily means that it is not categorical.

challenged statute. See O.C.G.A. § 15-18-6(5) (formerly 4) (requiring district attorneys "to prosecute all indictable offenses"). As existing law confirms, district attorneys are not constitutionally-authorized to nullify, through a categorical non-enforcement policy, duly-enacted laws, even those with which individual district attorneys may disagree. RNC, 321 Ga. at 798 (the executive cannot "say what the law shall be.").

For these reasons, Plaintiffs have not demonstrated the kind of "clear and palpable" conflict with the State Constitution required to prevail, and the Defendant is entitled to summary judgment on the merits of Count I. Taylor, 316 Ga. at 52–53.

Counts II and III: Free Speech Claims.

For the free-speech claims in Counts II and III, the standing determination and the merits determination turn on the same inquiry: whether O.C.G.A. § 15-18-32(i)(2)(E) (the "Challenged Subsection") impermissibly limits any speech the First Amendment protects. The answer determines both whether Plaintiffs suffer a cognizable injury and whether their claims succeed. For these claims, standing is significantly intertwined with the merits, so the Court resolves them together in its later merits analysis.

Plaintiffs claim the Challenged Subsection as an unconstitutional restriction on their speech under the First Amendment of the United States Constitution and Article I, Section I, Paragraph V of the Georgia Constitution. These claims both fail.[9] First, the speech at issue is unprotected government speech. Second, the Challenged Subsection addresses conduct. Third, the Challenged Subsection is not unconstitutionally overbroad or vague. Finally, even if strict scrutiny applied, the Challenged Subsection clears the hurdle.

[9] And, failing on the merits, these claims also fail on the intertwined ground of standing.

Government Speech.

The parties agree that government speech is not protected by the First Amendment. They dispute whether the government speech doctrine applies to elected officials rather than merely public employees. And they dispute whether the Challenged Subsection reaches beyond government speech to protected First Amendment speech.

The Free Speech Clause restrains the government's regulation of private speech; it does not restrain the government with respect to its own speech. See Pleasant Grove City, Utah v. Summum, 555 U.S. 469 (2009) (allowing government to regulate government speech). Whether expression is government speech turns on whether the government is the speaker and whether the public would reasonably attribute the message to the government. Walker v. Tex. Div., Sons of Confederate Veterans, Inc., 576 U.S. 200, 207 (2015). When a government official speaks in their official capacity, they are speaking as the government. And even in the context of an elected official, official capacity speech is not the same as private capacity speech.

A categorical office-wide policy not to prosecute an entire class of offenses satisfies both inquiries. Such a policy, as contemplated by the Challenged Subsection, would plainly be government speech. Merriam-Websters defines a "policy" as a "high-level overall plan embracing the general goals and acceptable procedures of a governmental body." Merriam-Webster Online Dictionary at https://www.merriam-webster.com/dictionary/policy. It would be adopted by a district attorney in the exercise of the office's enforcement authority and would set the office's official course of conduct. Such a policy would be plainly distinct from expressions of prosecutorial philosophy. The public would understand it as the position of the office (i.e. the government) rather than as the private viewpoint of the district attorney holding that office. As such, a categorical non-enforcement policy would be the government's own speech, and any regulation of such raises no free speech concerns, meaning that Defendant is entitled to summary judgment on Counts II and III because the only speech contemplated by the Challenged subsection is unprotected government speech.

Government Speech and Elected Officials

Whether the government speech doctrine applies to speech by elected officials is not dispositive because the Challenged Subsection authorizes discipline of an elected prosecutor only for *official speech and actions*, not for any potentially First Amendment-protected speech.

The Eleventh Circuit's discussion in Warren v. DeSantis, 90 F.4th 1115, 1130 (11th Cir. 2024) (vacated and dismissed as moot by 125 F.4th 1361 (11th Cir. 2025)), though not binding, is illustrative. There, Warren, an elected Florida state prosecutor, signed advocacy statements similar to some which Plaintiffs here have either made on the campaign trail, signed, or assert that but for the Challenged Subsection, they would have signed. Florida's governor suspended Warren, who sued, alleging a retaliatory suspension based on protected First Amendment speech.[10] On review of the district court's ruling upholding the suspension, the Eleventh Circuit reasoned that in signing the advocacy statements for which he was then suspended, Warren had engaged in private speech protected by the First Amendment and not unprotected government speech. Id. at 1128-1132.

Significant in the Eleventh Circuit's reasoning and conclusion, in this Court's view, is that (1) Warren adopted and promulgated numerous official policies to guide his Office's prosecutions; (2) a documented process was used to adopt any Policy; and (3) Warren's official and duly-adopted "Discretion Policy," "prioritized exercising individualized discretion in prosecutorial decisions." Id. at 1119. Yet Warren was suspended for speech made "outside the workplace [that] he never distributed … inside the workplace [he] never marshalled the statements through his process for

[10] Such a claim is of course analyzed under a specific framework not applicable here. Id., 90 F.4th at 1125 (citing Mount Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1977).

creating policies [and n]either statement referenced any Florida law that would go unenforced." Id. at 1132. Further, in seeking to defend the suspension, the governor was "'unable to identify even a single case in which' Warren's office failed to exercise individualized discretion." Id. at 1138. In fact, the record established that "the statements had no effect on the office's functions. Id. at 1134 (emphasis in original). In other words, the statements for which Warren was suspended were not the prosecutor's official policy and were not government speech.

Before the opinion was vacated as moot due to the end of Warren's elected term, the Eleventh Circuit had remanded the case to the district court to examine whether, upon removing the private protected speech from the equation, the suspension would nonetheless have occurred—and thus been permitted—based on Warren's *unprotected* activities, to wit: his performance in office and his official enacted policies. Id. at 1139.

It is that distinction which is the crux of the matter here. Here, the Challenged Subsection by its plain terms cannot result in discipline simply based on an elected prosecutor's campaign statements or signing of advocacy statements (the private capacity, First Amendment-protected speech at issue in Warren). The only speech the Challenged Subsection can reach is official capacity government speech, i.e., the *official* position—the "stated policy"—of a district attorney's office that it will categorically refuse to enforce a class of offenses. And even then, only when paired with conduct: an actual charging decision based on such policy of categorical refusal to prosecute an offense for which the law requires prosecution.[11] Hence, any fear/"chilling effect" on protected speech asserted by Plaintiffs is not a reasonable one.

[11] The plain language of the statute itself makes this clear: "The authority of the commission shall be limited to incapacity or discipline regarding the conduct of a district attorney or solicitor-general as a holder of such office." O.C.G.A. § 15-18-32(o) (emphasis added).

Wood v. Georgia, 370 U.S. 375 (1962), a First Amendment case examining elected officials' speech, confirms this understanding of the matter. There, an elected sheriff brought a First Amendment challenge to his contempt conviction for allegedly interfering with an ongoing grand jury investigation by issuing statements to the local press critical of the investigation. In reversing the contempt decision as a violation of the sheriff's Free Speech rights where there was no showing that the statements created a clear and present danger to the administration of justice, the Court recognized the sheriff's First Amendment right as an elected official "to enter the field of political controversy" and that elected officials must be "allowed freely to express themselves on matters of current public importance." Id., 370 U.S. at 394-395. However, the Court emphasized, and its holding relied in part on, the fact that the statements at issue were made the sheriff's capacity as a private citizen and not in his official capacity as sheriff. Id. at 382, 394. The Court ultimately concluded, however, that even if the sheriff's elected position was significant, his First Amendment rights prevailed under the circumstances of that case because

> [t]here is no evidence that the publications interfered with the performance of his duties as sheriff or with his duties, if any he had, in connection with the grand jury's investigation. We are not dealing with a situation where a sheriff refuses to issue summonses or to maintain order in the court building; nor, so far as the record shows, did the petitioner do any act which might present a substantive harm to the jury's solution of the problem placed before it. We are dealing here only with public expression.

Id., at 394 (emphasis added).

In other words, Woods, as well, recognizes the possibility of constitutionally-permissible curtailments of an elected official's *official* speech where such speech interferes with the *performance* of the elected official's duties or when it is *combined with conduct* incompatible with that elected official's duties.

The Challenged Subsection requires both prerequisites for even potential discipline.

The Act Requires Conduct

In Georgia, statutes must be read wholistically and based on their plain text. See, e.g., Deal v. Coleman, 294 Ga. 170, 172 (2013) (stressing the plain text approach); Hollowell v. Jove, 247 Ga. 678, 681 (1981) (providing each word in a statute must be given meaning). Doing so reveals that the Commission cannot sanction for speech alone, however speech is defined. Taken together, a district attorney must have "*made* or knowingly authorized [a charging] *decision* based on … (E) a stated policy, written or otherwise, which demonstrates that the district attorney … categorically *refuses to prosecute* any offense or offenses of which he or she is *required by law to prosecute*." O.C.G.A. § 15-18-32(i)(2) (emphasis added). In other words, at least one act—the making of a decision, in an actual case, not to prosecute—and never simply speech, is necessary for even a potential sanction. Plaintiffs acknowledged at oral argument that there need to be decisions made and not just speech said. (May 1, 2026 Hrg. Tr. 26:18–27:2 ("The statute establishes that DAs can be disciplined for making charging decisions based on, like we were talking about before, a stated policy, written or otherwise, that demonstrates a categorical refusal to prosecute an offense). (emphasis added).

While Plaintiffs continued by saying, "In other words, DAs can be disciplined in part because of their speech," the Court concludes differently. Accepting that a Plaintiff's campaign or individual speech might potentially be considered by the Commission as part of an evaluation of whether that Plaintiff had established an official, stated policy to categorically refuse to prosecute a type of offense for which the law required prosecution,[12] it remains that under the plain language of the statute, the Commission could not even engage in such an evaluation, much less

[12] See PAQC 30(b)(6) Dep. at 154:17-161:21, Deponent Randy McGinley discussing potential consideration of a DA's statements, in connection with other evidence - including actions actually taken with respect to a policy and case determination(s).

impose discipline, in the absence of *conduct* by the Plaintiff —namely a charging decision in a case.

Overbreadth and Vagueness

A statute may be overly broad, in the free speech sense, when "it stifles expression or conduct that is otherwise protected by the Constitution. The doctrine of overbreadth is particularly applicable where a statute infringes upon behavior protected by the First Amendment." Williams v. Powell, 320 Ga. 221, 225 (2024) (citing State v. Fielden, 280 Ga. 444, 445 (2006) (citations omitted)). The infringement must be "substantial," and here it is not. Scott v. State, 299 Ga. 568, 569 (2016). This is also a matter of statutory construction, and the constitutionality of a law is a question of law. Id. at 224–25 (citation omitted). That matters here, because overbreadth challenges turn on "what the statute actually covers." Scott, 299 Ga. at 570.

The Subsection reaches only one narrow category: official policies that (1) demonstrate a categorical refusal to prosecute an entire class of offense and that (2) are acted upon. O.C.G.A. § 15-18-32(i)(2)(E). Official policies, as discussed above, are government speech, and even if they were not, the pairing of the speech with conduct: decisions, and specifically, refusals to prosecute, means Plaintiffs cannot overcome their burden of showing a clear and palpable constitutional violation.[13] Any incidental effect on a district attorney's public speech would be the result of a valid regulation of professional conduct, not a restriction on speech itself. See Del Castillo v. Sec'y, Fla. Dep't of Health, 26 F.4th 1214, 1222 (11th Cir. 2022) (upholding professional

[13] The parties dispute whether the Plaintiffs' speech is chilled. Defendant shows continued reference to statements made by Plaintiffs that they say they no longer make. Given the posture of the case, the Court does not decide whether the speech is chilled or not chilled in either side's favor. This decision is based, instead, on the capacity of the Plaintiffs and the nature of the speech at issue. In other words, because the Commission acknowledges it cannot punish based on speech alone, and because the statute is at least reasonably (and based on its plain language, accurately) read that way, summary judgment in favor of Defendants on Counts II and III is proper.

regulation where "any inhibition of [First Amendment rights] is merely the incidental effect of observing an otherwise legitimate regulation").

Plaintiffs also contended that Challenged Subsection is unconstitutionally vague based on what they assert are ambiguities in the words "policy," "categorically," and "prosecute." (Compl. ¶¶ 135 and 147 (citing O.C.G.A. § 15-8-32(i)(2)(E))). The Court disagrees. Vagueness challenges are based on how an "ordinary person" would read the text. Williams, 320 Ga. at 230. Courts may not "resort[] to subtle and forced constructions, for the purpose of either limiting or extending [statutes'] operation." Earth Mgmt., Inc. v. Heard Cnty., 248 Ga. 442, 444 (1981). Accord Olevik v. State, 302 Ga. 228, 237 (2017) (The court "must focus on objective indicators of meaning, not the subjective intent of particular individuals that the language mean[s] something idiosyncratic."); City of Marietta v. Summerour, 302 Ga. 645, 649 (2017).

Strict Scrutiny

Because the Challenged Subsection neither involves protected speech nor is overbroad, strict scrutiny is not the controlling standard. See Scott, 299 Ga. at 569. Even in the alternative, if it were, Defendant remains entitled to summary judgment on Plaintiffs' claims. The State's compelling interest in law enforcement, public safety, and maintaining public confidence in the criminal justice system is well-established. King v. State, 272 Ga. 788, 791 (2000); Moran v. State, 268 Ga. 816, 819 (1997). The Challenged Subsection is narrowly tailored to reach only charging decisions based on official policies that demonstrate that a district attorney categorically refuses to prosecute any offense of which he or she is required by law to prosecute. It does not reach a prosecutor's personal opinions shared in any forum, campaign statements, advocacy, or public commentary which prosecutors make as a citizen and not as the office. The Challenged Subsection draws the line between official speech of the office and the private expressions of the individual prosecutors, which the First Amendment protects and which the present statute does not touch. Accordingly, the Challenged Subsection burdens, if at all, only unprotected government speech.

For all these reasons, the Defendant is entitled to summary judgment on Counts II and III. Because this conclusion turns on the scope of the Challenged Subsection, it equally forecloses any cognizable First Amendment injury. The result is the same whether the claims are viewed as a matter of standing or of the merits.

Count IV: Qualifications Clause.

As a threshold matter, Plaintiffs lack standing as to **Count IV**, and that this claim is not ripe for adjudication. This finding independently disposes of Count IV, and the Court reaches its merits only in the alternative.

As the parties agree, no one has been disciplined by the Commission except by consent. No one has had to face the question of a punishment that would bar them from serving as a district attorney for ten years, and there is no evidence that *these* district attorneys face any imminent harm. Except in some free speech cases, the rule in Georgia is that a "plaintiff must assert the violation of [their] *own* rights and cannot merely vindicate the rights of another." RNC, 321 Ga. at 775 (emphasis in original). This ends the inquiry. In addition, precedent also establishes that a "controversy is justiciable when it is definite and concrete, rather than being hypothetical, abstract, academic, or moot." Cheeks, 262 Ga. at 688. The legal right which Plaintiffs assert is being violated—and must be vindicated by striking down a duly-enacted statute—is purely hypothetical at this point. Consequently, it does not set forth a cognizable injury in fact for standing purposes. The Defendant is entitled to summary judgment against Count IV for this reason.

Independent of standing, Plaintiffs have again failed to state a cognizable claim under the Declaratory Judgment Act. As noted above, the Act authorizes a declaration only "in cases of actual controversy," O.C.G.A. § 9-4-2(a), and only where a party is "in a position of uncertainty as to an alleged right" such that a declaration is needed to guide its future conduct. Avery, 343 Ga. App. at 842. Absent that, the judgment would be advisory, which the Declaratory Judgment Act does not contemplate. Id. Here again, the relief sought would not have any "immediate legal effect on the parties' conduct, rather than simply burning off an abstract fog of uncertainty." Atlanta Indep. Sch. Sys., 307 Ga. at 880.

And as with Count I, there are no rights for Count IV at stake currently. No Commission action against these Plaintiffs is pending, and the discipline they fear remains entirely hypothetical. Because Plaintiffs have not demonstrated an impending injury, they do not satisfy standing and the Court declines to render an advisory opinion on hypothetical legal questions. Id. For this independent reason, Count IV fails to state a claim for declaratory relief. Cheeks, 262 Ga. at 688.

In the alternative, by granting summary judgment against Count IV, the Court concludes that Plaintiffs' theory is inconsistent with the methods of statutory interpretation that apply equally to provisions of the State Constitution. Plaintiffs contend that the ten-year penalty in O.C.G.A. § 15-18-32(p) adds an unconstitutional qualification for holding office to any person who is actually removed from office by the Commission. It does not. Plaintiffs are correct that Article II, Section II, Paragraph III of the State Constitution contains a list of qualifications for public office. "Not being removed by the Commission" is absent from the Georgia Constitution's list. If the State Constitution did not also explicitly empower the General Assembly to enact general laws for the removal or disciplining of district attorneys, Plaintiffs' theory might have survived summary judgment. But courts are required to read laws together and "in harmony whenever possible." Warbler Investments, LLC v. City of Social Circle, 321 Ga. 125, 133 (2025). Doing so here demonstrates that O.C.G.A. § 15-18-32(p) is the kind of general law authorized by Article VI, Section VIII, Paragraph II of the Georgia Constitution, and striking the statute based on only the qualifications provision in Article II would effectively read the provision in Article VI out of the State Constitution altogether. That is something this Court cannot do. The Defendant is, therefore, entitled to summary judgment on Count IV for these alternative reasons.[14]

Count V: PAC's Assistance.

Plaintiffs contend the Commission violated O.C.G.A. § 15-18-32(g) by failing to obtain PAC's assistance in promulgating the Rules and Code of Conduct. This claim also fails.

O.C.G.A. § 15-18-32(g) states, in relevant part: "The commission, with the assistance of the Prosecuting Attorneys' Council of the State of Georgia, shall promulgate standards of conduct and rules for the commission's governance…." The Act does not define "assistance," and that is not unusual. Dictionaries provide a good starting point in such circumstances. McBrayer v. Scarbrough, 317 Ga. 387, 394 (2023). By its plain dictionary meaning, "assistance" means the act of helping or help supplied. Webster's New Collegiate Dictionary (11th Ed. 2024). Subsection (g) imposes no specific procedural requirements such as meetings, joint drafting, or adoption of PAC's proposals, and courts may not read requirements into a statute that the legislature did not enact. Groover v. Johnson Controls World Serv., 241 Ga. App. 791, 793 (2000). Therefore, the operative issue for this Count is whether the Commission promulgated its rules and code of conduct with "assistance" from PAC.

[14] Georgia law already recognizes that statutory conditions on office-holding can coexist with the Constitution's enumerated qualifications. Whitmer v. Thurman, 241 Ga. 569, 570 (1978). The potential temporary post-removal disqualification (applicable only upon a finding of cause) is a permissible statutory condition consistent with the constitutional framework. And the Georgia Supreme Court has at least implicitly approved time-limited post-removal disqualifications as within the legislature's authority for constitutionally-created officers, and the question before the Court here is the same structural question already acknowledged as within legislative power for judges. See In re Inquiry Concerning Judge Robert M. Crawford, Matter No. S18Z1636, (Nov. 16, 2020) (Blackwell, J. concurring) (expressing doubt that a lifetime ban for judges would be constitutional but affirming that a *time-limited* ban of seven years as within the legislature's authority under the JQC's constitutional provision).

Here, no one disputes that PAC provided input to the Commission or that the Commission received and reviewed the PAC Committee's input. Instead, Plaintiffs posit that the Commission did not ultimately incorporate enough of what PAC offered. But that is not what the Act requires. The Commission needed only to receive "help" from the PAC Committee, and it did. It utilized the PAC's draft proposals in promulgating the rules and code of conduct that were submitted to the Supreme Court in 2023 and it reviewed the PAC's final proposals before adopting its present rules and code of conduct in 2024. Interpreting "assistance" as anything broader would judicially amend the statute, which is impermissible. See Groover, 241 Ga. App. at 793.

This is not a situation like that in Garden Club of Georgia v. Shackelford, 274 Ga. 653 (2002), where the statute at issue said that a "council shall" assist the Department of Transportation in formulating policies. There, the rules were invalid because the Department "promulgated its regulations without waiting for the appointment of the advisory council specified by the legislature." Id. at 655. Here, the assisting entity existed and in fact provided input, and Plaintiff's complaint is only about the quantity and degree of PAC assistance that the Commission accepted, considered, and then incorporated. Defendant is entitled to summary judgment as to Count V.

Count VI: Validity of the Commission Code and Rules.

Plaintiffs argue the Commission is subject to the APA and, because the Commission admittedly did not follow APA procedures, the Commission's Rules and Code of Conduct are invalid. Defendant argues that the legislature enacted a specific and separate rulemaking process for the Commission in O.C.G.A. § 15-18-32(g) which controls over the more general and earlier-established requirements of the APA and exempts the Commission from the APA's requirements. Defendant argues alternatively that even if the APA applies, Plaintiffs have failed to make the required showing under O.C.G.A. § 50-13-10(a) to challenge the validity of the Commission's Rules.

The initial issue for determination is whether the Commission is subject to the APA.

> Broadly speaking, the Georgia Administrative Procedure Act, is meant to provide a procedure for administrative determination and regulation where expressly authorized by law or otherwise required by the Constitution or a statute of this state. OCGA § 50-13-1. Among other things, the Act describes the procedures an agency must follow in order to adopt new rules and regulations… .

Ga. Gov't Transparency & Campaign Fin. Comm'n v. New Ga. Project Action Fund, 359 Ga. App. 32, 33 (2021) (citations and punctuation omitted). See also Corner v. State, 223 Ga. App. 353, 355 (1996) (strict compliance with the APA is necessary when a rule is being adopted).

The APA provides: "It is the intent of this Code section to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative rules. Except for emergency rules [not applicable here] the provisions of this Code section are applicable to the exercise of any rule-making authority conferred by any statute … ." O.C.G.A. § 50-13-4(c) (emphasis added). That same code section establishes procedural requirements for the adoption of any "rule" by an "agency".[15] O.C.G.A. § 15-18-32 indisputably confers rulemaking authority on the Commission. Further, while it is true that neither the statute nor any of the legislation creating and amending it specifically references the APA, it is also true that the Commission appears to meet the definition of "agency" set forth in the APA, O.C.G.A. § 50-13-2(1) and does not fall into any of the entities or categories listed there as excepted from that definition and therefore exempted from compliance with the APA. Id. See, e.g., Caldwell v. Amoco Fabrics Co., 165 Ga. App. 674 (1983) (noting the rules at issue in that case as "expressly exempted by O.C.G.A. § 50-13-2(6)(I) from the strict rule-making procedural requirements of O.C.G.A. § 50-13-4).

And the APA itself specifically contemplates the legislature imposing other rule-making requirements in addition to those in the APA (which it did here) while also requiring compliance

[15] See O.C.G.A. § 50-13-2(6) and (1) respectively for the definitions of "rule" (which includes standards that prescribe law or policy) and "agency."

with the provisions of the APA. See, e.g., O.C.G.A. § 50-13-4(c) ("nothing in this Code section repeals or diminishes additional requirements imposed by law or diminishes or repeals any summary power granted by law to the state or any agency thereof"); O.C.G.A. § 50-13-3(a) ("In addition to other rule-making requirements imposed by law, each agency shall …"). So it is clear that the mere act of the legislature imposing, as it did here, other rule-making requirements does not suffice to exempt the Commission from compliance with the APA. Nor are the requirements of O.C.G.A. § 155-18-32(g) in conflict with those of the APA, such that the rule of statutory construction touted by Defendant would come into play.

And while the legislature could have specifically exempted the Commission from the APA, that it did not do so here is instructive. "Certainly, our legislature is presumed to enact statutes with full knowledge of existing law … ." McIver v. State, 314 Ga. 109, 120 (2022) (citation and punctuation omitted). The legislature can and, in at least in one instance has, specifically excluded certain agency rules from the requirements of the APA. See O.C.G.A. § 35-3-155 exempting technical regulations of the Georgia Bureau of Investigation from the APA.

Given all of this, it appears the Commission is subject to the APA. However, that does not end the Court's analysis because a challenge to the validity of the Rules is itself governed by the APA.

O.C.G.A. § 50-13-4(d) provides:

> No rule adopted after April 3, 1978, shall be valid unless adopted in exact compliance with subsections (a) and (e) of this Code section and in substantial compliance with the remainder of this Code section. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this Code section must be commenced within two years from the effective date of the rule.

This section clearly contemplates the possibility of a proceeding to challenge the enactment of rules for failure to comply with the APA, as Plaintiffs have done here. O.C.G.A. § 50-13-10 then sets forth the means of bringing such a challenge: "The validity of any rule … may be determined in an action for declaratory judgment when it is alleged that the rule … or its threatened application interferes with or impairs the legal rights of the petitioner." O.C.G.A. § 50-13-10(a). Subsection (c) then provides: "Actions for declaratory judgment provided for in this Code section shall be in accordance with Chapter 4 of Title 9, relating to declaratory judgments."

Plaintiffs have in fact sought a declaratory judgment, as O.C.G.A. § 50-13-10 requires, to challenge the Rules of the Commission as invalid in their entirety due to the failure to comply with the APA, although they did not cite that code section. However, given the necessity that Plaintiffs assert that the Rules or their threatened application interfere with or impair Plaintiff's legal rights and the required showings applicable to declaratory judgments otherwise and specifically incorporated into O.C.G.A. § 50-13-10,[16] the Court concludes that it cannot issue the requested declaratory judgment with respect to the Rules.

Plaintiffs have not shown that the Rules interfere with or impair their legal rights in any way that is different from the injuries allegedly resulting from the statute itself, thereby severing any causal connection between the Commission's rulemaking procedure and Plaintiffs' alleged injuries, and the Court has already rejected Plaintiffs' claims of injury allegedly stemming from the statute itself. Plaintiffs have not made a sufficient showing that the interest is actual as opposed to merely academic, hypothetical, or colorable. Compare Black v. Bland Farms, LLC, 332 Ga. App. 653, 659-660 (2015) (where petitioner made such a showing because if it failed to comply with the new rule, "the Commissioner had statutory authority to impose civil and criminal penalties"). Here, the Court has concluded that nothing in the statute infringes on Plaintiffs'

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[16] See, e.g., Dep't of Transp. v. Peach Hill Props., Inc., 280 Ga. 624, 625 (2006) ("principles which ordinarily apply to declaratory judgment actions are not eliminated by [O.C.G.A. § 50-13-10].").

constitutionally-protected rights or subjects them to discipline for exercising those rights. Thus, there is no need for a declaration as to the Rules in order to protect Plaintiffs' rights.

And as noted above, no Commission action against either Plaintiff is pending, and the discipline they fear—without reason in the Court's analysis—remains entirely hypothetical, speculative, and contingent upon the happening of some future event. See, e.g., Patterson v. State, 242 Ga. App. 131 (2000) (no "actual controversy" when plaintiff had not been charged with a violation of the statute nor had there been any showing of intent by authorities to take any action pursuant to the statute). A ruling in Plaintiffs' favor on Count VI would have no immediate legal consequence.

This Count fails to state a cause for declaratory relief, and the Court thus declines to issue a declaratory judgement in Plaintiffs favor on this Count. The State is entitled to summary judgment as to Count VI.

CONCLUSION

For the reasons explained herein, the Court DENIES Plaintiffs' Motion for Summary Judgment and GRANTS Defendant's Motion for Summary Judgment.

SO ORDERED, this 8th day of July 2026.

The Honorable Paige Reese Whitaker
Superior Court of Fulton County

Service via e-filing system

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