

Friday, March 22, 2024 at 13:19:50 Eastern Daylight Time

Subject: RE: Open Records Request (GA-AG-24-0150)
Date: Thursday, March 21, 2024 at 4:00:23 PM Eastern Daylight Time
From: Jotonna Tulloch
To: AO Records
Attachments: image001.jpg, image002.png, image003.png, GA-AG-24-0150.pdf

EXTERNAL SENDER

We have completed the attached Open Records request. We have shared the file with you through our secure file-sharing system, Kiteworks. You should have received an email with instructions on how to access the file.

We withheld records exempt from release as confidential attorney work product under *O.C.G.A. § 50-18-72(a)(42)*.

We redacted records containing personal email addresses under *O.C.G.A. § 50-18-72 (a)(20)(A)*.

We redacted meeting and phone conference identification codes and passcodes.

Under *O.C.G.A. § 50-18-71(c)(1)*, the cost associated with this request totaled **\$100.13**, which is based on **4.33** hours of administrative time at \$20 per hour and **.22** hours of attorney management time at \$61.50 per hour.

Please mail a check or money order for **\$100.13**, payable to the Georgia Department of Law with **matter number 1210532** referenced.

*Georgia Department of Law
Ground Level Library
244 Washington St. SW
Atlanta, Georgia 30334
Attn: Jotonna Tulloch, Open Records*



Jotonna Tulloch
Open Records Officer | Paralegal
Office of the Attorney General Chris Carr
Executive Office
(404) 458-3707
jtulloch@law.ga.gov



Georgia Department of Law
40 Capitol Square SW
Atlanta, Georgia 30334

From: AO Records <records@americanoversight.org>
Sent: Tuesday, February 27, 2024 4:08 PM
To: Open_Records <Open_Records@LAW.GA.GOV>
Subject: Open Records Request (GA-AG-24-0150)

You don't often get email from records@americanoversight.org. [Learn why this is important](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Open Records Officer:

Please find attached a request for records under Georgia's Open Records Law.

Sincerely,

Marwah Adhoob | She/Her
Paralegal | American Oversight
records@americanoversight.org
www.americanoversight.org | @weareoversight

ORR: GA-AG-24-0150

From: JWatson@LAW.GA.GOV
Sent: Thursday, January 5, 2023 4:23 PM
To: john.kennedy@senate.ga.gov; steve.gooch@senate.ga.gov;
randy.robertson@senate.ga.gov; jason.anavitate@senate.ga.gov;
matt.brass@senate.ga.gov
Subject: FW: Carr: Georgia Joins National Opioid Settlements with CVS, Walgreens, Teva and Allergan

FYI. Let me know if you have any questions gentlemen.



Jordan Watson
Dir. External Affairs & Policy
Office of the Attorney General Chris Carr
Executive Office
(404) 458-3492
jwatson@law.ga.gov
Georgia Department of Law
Atlanta, Georgia

From: Georgia Attorney General <Georgia_AG@public.govdelivery.com>
Sent: Thursday, January 5, 2023 2:34 PM
To: Jordan Watson <JWatson@LAW.GA.GOV>
Subject: Carr: Georgia Joins National Opioid Settlements with CVS, Walgreens, Teva and Allergan

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

[View as a webpage](#)



Carr: Georgia Joins National Opioid Settlements with CVS, Walgreens, Teva and Allergan

State stands to receive more than \$181 million in total base payments

January 5, 2023

ATLANTA, GA – Attorney General Chris Carr today announced that the State of Georgia has joined national settlements with CVS, Walgreens, Teva and Allergan to resolve allegations that the companies contributed to the opioid crisis. By simply joining the settlements, Georgia stands to receive more than \$181 million in total base payments to help fund critical treatment, prevention, reduction and recovery services.

“No Georgia community is a stranger to the devastating effects of the opioid crisis, and we must do all we can to support those who are struggling,” said Carr. “Today’s announcement is another step forward in our ongoing efforts to combat this epidemic and address the widespread damage its caused. Our top priority is to protect our fellow Georgians, and joining these settlements will ensure that our state receives much-needed resources to help expand critical treatment and recovery services.”

CVS and Walgreens

The national settlements require CVS to pay \$5 billion and Walgreens to pay \$5.7 billion, for a total of \$10.7 billion. CVS and Walgreens, [along with Walmart in a settlement announced last month](#), have also agreed to court-ordered injunctive relief that requires the pharmacies to monitor, report, and share data about suspicious activity related to opioid prescriptions.

Georgia officially joined the settlements with CVS and Walgreens on Dec. 21, 2022. By doing so, the state is positioned to receive a base payment of \$50.1 million from CVS and \$58.7 million from Walgreens.

CVS and Walgreens were not defendants in Georgia’s ongoing litigation involving opioid distributors. Instead, the companies approached the state with these settlement offers, which Georgia then accepted.

Teva and Allergan

The national settlements require Teva to pay \$4.25 billion and Allergan to pay \$2.37 billion, for a total of \$6.6 billion. Teva and Allergan have also agreed to strict limitations regarding the marketing, promotion, sale and distribution of opioids.

Georgia officially joined the settlements with Teva and Allergan on Dec. 19, 2022. By doing so, the state is positioned to receive a base payment of \$44.9 million from Teva and \$27.4 million from Allergan.

Teva and Allergan were defendants in Georgia’s litigation involving opioid manufacturers.

Local governments have 90 days from the sign-on date to join the settlements with CVS, Walgreens, Teva and Allergan.

Press Contact:

Kara Richardson - Communications Director

kmrichardson@law.ga.gov

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This email was sent to jwatson@law.ga.gov using GovDelivery Communications Cloud, on behalf of: Georgia Office of the Attorney General · 40 Capitol Square, SW · Atlanta, Ga 30334



From: Farmer, Ali <Ali.Farmer@senate.ga.gov>
Sent: Tuesday, January 31, 2023 8:47 AM
To: Jordan Watson
Subject: RE: Sen Robertson Meeting Dates [*** External Email ***]

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

That works on our end! I have it on the calendar.

From: Jordan Watson <JWatson@LAW.GA.GOV>
Sent: Tuesday, January 31, 2023 8:26 AM
To: Farmer, Ali <Ali.Farmer@senate.ga.gov>
Subject: Re: Sen Robertson Meeting Dates [*** External Email ***]

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

If today at 2:30 still works, we would like to come by then. It will be 3 of us total.

Sent from my iPhone

On Jan 30, 2023, at 4:56 PM, Farmer, Ali <Ali.Farmer@senate.ga.gov> wrote:

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Here are some options for meeting times with Senator Robertson:

Tomorrow, 1/31 at 8:30 AM and 2:30PM
Thurs. 2/2 at 2:30

Do any of those times work? If not, I can look at next week.

Thanks!

Ali Cecile Farmer
Legislative Assistant
Majority Caucus Leadership Office | State Capitol, Suite 421
Senator Randy Robertson, 29th District
Senator John Albers, 56th District
Phone: 404-656-0064 | Ali.Farmer@senate.ga.gov
<image001.png>

From: JWatson@LAW.GA.GOV
Sent: Monday, March 20, 2023 3:37 PM
To: randy.robertson@senate.ga.gov
Subject: hb 590: protect cops

Importance: High

<https://www.legis.ga.gov/legislation/64850>



Jordan Watson
Dir. External Affairs & Policy
Office of the Attorney General Chris Carr
Executive Office
(404) 458-3492
jwatson@law.ga.gov
Georgia Department of Law
Atlanta, Georgia

From: JWatson@LAW.GA.GOV
Sent: Thursday, March 23, 2023 11:12 AM
To: randy.robertson@senate.ga.gov
Subject: Georgia General Assembly - HB 590

<https://www.legis.ga.gov/legislation/64850>

Sent from my iPhone

From: JWatson@LAW.GA.GOV
Sent: Friday, March 31, 2023 12:17 PM
To: randy.robertson@senate.ga.gov
Subject: Settlement MOU

Importance: High

Mr. Whip,

Congrats on a great session.

Per our ongoing discussions I wanted to share with you the terms that will apply to the 5 pharmaceutical settlements before us. Please review and confirm that the essential terms outlined below are to your satisfaction. If you have any concerns or questions, please make them known **today** if possible.

Local Government Direct Share: 25%

State Government Direct Share: 75% ("State Funds")

1. After satisfaction of State of Georgia opioid litigation costs and fees as applied to the State Funds, the remaining State Funds ("Net State Fund Proceeds") are then allocated as follows:
 1. **Regional Allocation:** 40% of the Net State Fund Proceeds are remitted by the receiving state agency to the opioid trust and are distributed pursuant to the previously agreed to Regional Allocation in the 2022 MOU.
 2. **Appropriation of State Funds:** 60% of the Net State Fund Proceeds are remitted by the receiving state agency through OPB to the State treasury, and are then distributed pursuant to the legislative appropriation process in such manner as consistent with the MOU and respective opioid settlements.



Jordan Watson
Dir. External Affairs & Policy
Office of the Attorney General Chris Carr
Executive Office
(404) 458-3492
jwatson@law.ga.gov
Georgia Department of Law
Atlanta, Georgia

From: JWatson@LAW.GA.GOV
Sent: Thursday, April 13, 2023 9:46 AM
To: randy.robertson@senate.ga.gov
Subject: FW: Invitation: Anti-Gang Network Meeting April 17th

Would love to have you attend.



Jordan Watson
Dir. External Affairs & Policy
Office of the Attorney General Chris Carr
Executive Office
(404) 458-3492
jwatson@law.ga.gov
Georgia Department of Law
Atlanta, Georgia

From: Maureen Rhodes <MRhodes@LAW.GA.GOV>
Sent: Monday, April 10, 2023 4:59 PM
Subject: Invitation: Anti-Gang Network Meeting April 17th

Good afternoon,

Attorney General Chris Carr would like to invite you or a representative of your office to attend a local meeting of the Georgia Anti-Gang Network on Monday, April 17th, in Columbus. The purpose of this meeting is to discuss combatting gangs, protecting Georgia's youth from being recruited by gangs, and ways the state can assist in these matters. Please see the meeting details below.

DATE: Monday, April 17, 2023
TIME: 2:00 PM-3:30 PM
WHERE: Columbus State University
Elizabeth Bradley Turner Center
4110 E Lindsay Drive
Columbus, GA 31907

RSVP: Please RSVP to Maureen Rhodes at mrhodes@law.ga.gov no later than 5:00 PM on Thursday, April 13th. A meeting agenda will follow. More information regarding the Georgia Anti-Gang Network can be found here: <https://law.georgia.gov/key-issues/gang-activity>.

Please note that b-roll footage will be recorded during the meeting. We want to mention that in case you or your representative need to remain off camera. Thank you.

Best regards,

Maureen



Maureen Rhodes
Director of Strategic Projects
Office of the Attorney General Chris Carr
Executive Office
(404) 458-3697
mrhodes@law.ga.gov
Georgia Department of Law
40 Capitol Square SW
Atlanta, Georgia 30334

From: JWatson@LAW.GA.GOV
Sent: Monday, July 31, 2023 11:27 AM
To: randy.robertson@senate.ga.gov
Subject: FW: Carr: Two Alleged Gang Members Indicted for Fatal Drive-By Shooting in Muscogee County



Jordan Watson
Dir. External Affairs & Policy
Office of the Attorney General Chris Carr
Executive Office
(404) 458-3492
jwatson@law.ga.gov
Georgia Department of Law
Atlanta, Georgia

From: Georgia Attorney General <Georgia_AG@public.govdelivery.com>
Sent: Thursday, July 27, 2023 9:48 AM
To: Jordan Watson <JWatson@LAW.GA.GOV>
Subject: Carr: Two Alleged Gang Members Indicted for Fatal Drive-By Shooting in Muscogee County

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Carr: Two Alleged Gang Members Indicted for Fatal Drive-By Shooting in Muscogee County

July 27, 2023

ATLANTA, GA – Attorney General Chris Carr today announced the indictment of Marquise Hawkins and Kendaryl Rogers for their alleged involvement in a fatal drive-by shooting that occurred on Aug. 6, 2020, in Columbus, Georgia. The defendants are charged with Felony Murder, Malice Murder, Aggravated Assault, and Violation of the Street Gang Terrorism and Prevention Act, among other offenses. Hawkins and Rogers are alleged members of a local criminal street gang known as Drive By Hustle Boys, which primarily aligns itself with the Rollin’ 60’s Neighborhood Crips.

“Our Gang Prosecution Unit has indicted three separate cases in Muscogee County, and each one involves a fatal shooting that should have never occurred,” said Carr. “This type of senseless violence will not be tolerated in our state. Our top priority is to ensure the safety of all Georgians, and we will continue working with our law enforcement partners to put a stop to criminal gang activity wherever it occurs.”

This case was investigated by the Columbus Police Department, the Muscogee County Sheriff’s Office, and the Georgia Bureau of Investigation’s (GBI) Gang Task Force.

“Criminal street gang members continue to commit violent acts and wreak havoc in Georgia communities,” said Incoming GBI Director Chris Hosey. “The GBI’s Gang Task Force remains committed to diligently investigating gang crimes and working with our local and state partners to disrupt these criminal networks.”

“The Muscogee County Sheriff’s Office values the long-standing support from Governor Kemp and Attorney General Chris Carr, along with the Gang Prosecution Unit that the Attorney General’s Office has provided to make an impact in criminal gang activity,” said Muscogee County Sheriff Greg Countryman. “The Muscogee County Sheriff’s Office stands committed to staying in this fight to ensure those committing gang crimes are prosecuted to the fullest extent of the laws of Georgia.”

“The Columbus Police Department appreciates partnering with the Attorney General’s Gang Prosecution Unit to obtain the gang indictment in this brutal case in our city,” said Columbus Police Chief Stoney Mathis. “The hard work of the investigative team and the prosecutors are what it will take to make our city and communities safer. This is a strong example of teamwork and building working relationships with everyone involved in the process to obtain the best results for our community. Thank you to Attorney General Carr for his dedication to the prosecution of gang offenders and the safety of all Georgians.”

The Attorney General’s Gang Prosecution Unit presented evidence to a Muscogee County Grand Jury, resulting in the indictment* of the two defendants on July 25, 2023. The charges are listed below.

Marquise “Lil Hawk” Hawkins, 29, of Columbus:

- 1 count of Felony Murder – O.C.G.A. § 16-5-1(c)
- 1 count of Malice Murder – O.C.G.A. § 16-5-1(a)
- 2 counts of Aggravated Assault – O.C.G.A. § 16-5-21(a)
- 1 count of Aggravated Battery – O.C.G.A. § 16-5-24(a)
- 5 counts of Violation of the Street Gang Terrorism and Prevention Act – O.C.G.A. § 16-15-4(a), O.C.G.A. § 16-15-4(b), and O.C.G.A. § 16-15-4(e)
- 2 counts of Possession of a Firearm During the Commission of a Felony – O.C.G.A. § 16-11-106(b)(1)
- 1 count of Criminal Damage to Property in the First Degree – O.C.G.A. § 16-7-22(a)(1)

Kendaryl “KD” Rogers, 30, of Columbus:

- 2 counts of Felony Murder – O.C.G.A. § 16-5-1(c)
- 1 count of Malice Murder – O.C.G.A. § 16-5-1(a)
- 2 counts of Aggravated Assault – O.C.G.A. § 16-5-21(a)
- 1 count of Aggravated Battery – O.C.G.A. § 16-5-24(a)
- 6 counts of Violation of the Street Gang Terrorism and Prevention Act – O.C.G.A. § 16-15-4(a) and O.C.G.A. § 16-15-4(b)
- 2 counts of Possession of a Firearm During the Commission of a Felony – O.C.G.A. § 16-11-106(b)(1)
- 2 counts of Possession of a Firearm by a Convicted Felon During a Crime – O.C.G.A. § 16-11-133(b)(1)
- 1 count of Possession of a Firearm by a Convicted Felon – O.C.G.A. § 16-11-131(b)
- 1 count of Criminal Damage to Property in the First Degree – O.C.G.A. § 16-7-22(a)(1)

A copy of the indictment can be found [here](#). No further information about the indictment or the investigation may be released at this time.

About the Attorney General’s Gang Prosecution Unit

Last year, with the support of Governor Brian Kemp and members of the General Assembly, [Attorney General Chris Carr created Georgia’s first statewide Gang Prosecution Unit](#).

Since it began its historic work on July 1, 2022, the Gang Prosecution Unit has indicted 85 alleged gang members in Athens-Clarke, Barrow, Bryan, Cobb, Dougherty, Gwinnett, Muscogee, and Thomas counties.

The Gang Prosecution Unit is housed in the Attorney General’s Prosecution Division, which also includes Carr’s Human Trafficking Prosecution Unit and his Public Integrity and White Collar Crime Unit.

The statewide Gang Prosecution Unit is based in Atlanta, with regional, satellite prosecutors and investigators in Albany and Augusta, Georgia.

**Members of the public should keep in mind that indictments contain only allegations against the individual against whom the indictment is sought. A defendant is presumed innocent until proven guilty, and it will be the government’s burden at trial to prove the defendant guilty beyond a reasonable doubt of the allegations contained in the indictment.*

Press Contact:

Kara Richardson - Communications Director

kmrichardson@law.ga.gov

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This email was sent to jwatson@law.ga.gov using GovDelivery Communications Cloud, on behalf of: Georgia Office of the Attorney General · 40 Capitol Square, SW · Atlanta, Ga 30334



From: JWatson@LAW.GA.GOV
Sent: Friday, January 13, 2023 2:32 PM
To: Erin.Alford@senate.ga.gov
Subject: Re: Meeting with Senator Gooch [*** External Email ***]

Hi Erin.

Just want to make sure the 23rd works.

Thank you

Sent from my iPhone

On Jan 10, 2023, at 4:17 PM, Alford, Erin <Erin.Alford@senate.ga.gov> wrote:

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Okay great, I will talk to Senator Gooch tomorrow about clarifying that date and time and I will get back to you about confirming the meeting. Thank you!

Sincerely,

Erin Alford
Legislative Assistant
Senator Steve Gooch, 51st District



421 State Capitol, SW
Atlanta, GA 30334
404-656-5039

From: Jordan Watson <JWatson@LAW.GA.GOV>
Sent: Tuesday, January 10, 2023 4:14 PM
To: Alford, Erin <Erin.Alford@senate.ga.gov>
Subject: Re: Meeting with Senator Gooch [*** External Email ***]

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

I think 1:00 pm on January 23rd works!

Sent from my iPhone

On Jan 10, 2023, at 3:03 PM, Alford, Erin <Erin.Alford@senate.ga.gov> wrote:

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Dear Jordan,

After looking at Senator Gooch's calendar, January 23rd and 24th at 1 pm will work. Please let me know if that will work for Attorney General Carr. Thank you!

Sincerely,

Erin Alford
Legislative Assistant
Senator Steve Gooch, 51st District



421 State Capitol, SW
Atlanta, GA 30334
404-656-5039

From: Alford, Erin
Sent: Tuesday, January 10, 2023 2:04 PM
To: 'jwatson@law.ga.gov' <jwatson@law.ga.gov>
Subject: Meeting with Senator Gooch

Dear Jordan,

I have looked at Senator Gooch's calendar and he has asked to meet with Attorney General Carr on Thursday, January 19th at 11 am. Please let me know if that works with Attorney General Carr's schedule. Thank you!

Sincerely,

Erin Alford

Legislative Assistant
Senator Steve Gooch, 51st District



421 State Capitol, SW
Atlanta, GA 30334
404-656-5039

From: Alford, Erin <Erin.Alford@senate.ga.gov>
Sent: Monday, January 23, 2023 1:46 PM
To: Jordan Watson
Subject: RE: Meeting with Senator Gooch [*** External Email ***] [*** External Email ***] [*** External Email ***]

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Great, see ya'll then!

From: Jordan Watson <JWatson@LAW.GA.GOV>
Sent: Monday, January 23, 2023 1:17 PM
To: Alford, Erin <Erin.Alford@senate.ga.gov>
Subject: RE: Meeting with Senator Gooch [*** External Email ***] [*** External Email ***] [*** External Email ***]

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Yes ma'am. Works for us.



Jordan Watson
Dir. External Affairs & Policy
Office of the Attorney General Chris Carr
Executive Office
(404) 458-3492
jwatson@law.ga.gov
Georgia Department of Law
Atlanta, Georgia

From: Alford, Erin <Erin.Alford@senate.ga.gov>
Sent: Monday, January 23, 2023 10:23 AM
To: Jordan Watson <JWatson@LAW.GA.GOV>
Subject: RE: Meeting with Senator Gooch [*** External Email ***] [*** External Email ***]

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Jordan,

Senator Gooch is going to need to reschedule the meeting with AG Carr for the following week if possible. Could we schedule a new meeting for Wednesday, February 1st at 2:30. Thank you!

Sincerely,

Erin Alford
Legislative Assistant
Senator Steve Gooch, 51st District



236 State Capitol, SW
Atlanta, GA 30334
404-656-5039

From: Jordan Watson <JWatson@LAW.GA.GOV>
Sent: Wednesday, January 18, 2023 11:00 AM
To: Alford, Erin <Erin.Alford@senate.ga.gov>
Subject: RE: Meeting with Senator Gooch [*** External Email ***] [*** External Email ***]

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

We will be there.



Jordan Watson
Dir. External Affairs & Policy
Office of the Attorney General Chris Carr
Executive Office
(404) 458-3492
jwatson@law.ga.gov
Georgia Department of Law
Atlanta, Georgia

From: Alford, Erin <Erin.Alford@senate.ga.gov>
Sent: Wednesday, January 18, 2023 9:51 AM
To: Jordan Watson <JWatson@LAW.GA.GOV>
Subject: RE: Meeting with Senator Gooch [*** External Email ***]

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Jordan,

Senator Gooch has asked to meet with the AG Carr on January 24th at 11 am. Please let me know if that works with the AG. Thank you!

Sincerely,

Erin Alford
Legislative Assistant
Senator Steve Gooch, 51st District



236 State Capitol, SW
Atlanta, GA 30334
404-656-5039

From: Jordan Watson <JWatson@LAW.GA.GOV>
Sent: Tuesday, January 10, 2023 4:14 PM
To: Alford, Erin <Erin.Alford@senate.ga.gov>
Subject: Re: Meeting with Senator Gooch [*** External Email ***]

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I think 1:00 pm on January 23rd works!

Sent from my iPhone

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Dear Jordan,

After looking at Senator Gooch's calendar, January 23rd and 24th at 1 pm will work. Please let me know if that will work for Attorney General Carr. Thank you!

Sincerely,

Erin Alford
Legislative Assistant
Senator Steve Gooch, 51st District



421 State Capitol, SW
Atlanta, GA 30334
404-656-5039

From: Alford, Erin
Sent: Tuesday, January 10, 2023 2:04 PM
To: 'jwatson@law.ga.gov' <jwatson@law.ga.gov>
Subject: Meeting with Senator Gooch

Dear Jordan,

I have looked at Senator Gooch's calendar and he has asked to meet with Attorney General Carr on Thursday, January 19th at 11 am. Please let me know if that works with Attorney General Carr's schedule. Thank you!

Sincerely,

Erin Alford
Legislative Assistant
Senator Steve Gooch, 51st District



421 State Capitol, SW
Atlanta, GA 30334
404-656-5039

From: JWatson@LAW.GA.GOV
Sent: Friday, March 31, 2023 12:02 PM
To: steve.gooch@senate.ga.gov; ben.jarrard@senate.ga.gov
Subject: Settlement MOU

Importance: High

Gentlemen,

Congrats on a great session. Thanks for all you do.

Per our ongoing discussions I wanted to share with you the terms that will apply to the 5 pharmaceutical settlements before us. Please review and confirm that the essential terms outlined below are to your satisfaction. If you have any concerns or questions, please make them known **today** if possible.

Local Government Direct Share: 25%

State Government Direct Share: 75% ("State Funds")

1. After satisfaction of State of Georgia opioid litigation costs and fees as applied to the State Funds, the remaining State Funds ("Net State Fund Proceeds") are then allocated as follows:
 1. **Regional Allocation:** 40% of the Net State Fund Proceeds are remitted by the receiving state agency to the opioid trust and are distributed pursuant to the previously agreed to Regional Allocation in the 2022 MOU.
 2. **Appropriation of State Funds:** 60% of the Net State Fund Proceeds are remitted by the receiving state agency through OPB to the State treasury, and are then distributed pursuant to the legislative appropriation process in such manner as consistent with the MOU and respective opioid settlements.



Jordan Watson
Dir. External Affairs & Policy
Office of the Attorney General Chris Carr
Executive Office
(404) 458-3492
jwatson@law.ga.gov
Georgia Department of Law
Atlanta, Georgia

Subject: Call w/ AG's Office Re: Review Commission Meeting
Location: [REDACTED] #

Start: Wed 9/6/2023 2:00 PM
End: Wed 9/6/2023 2:30 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Amanda Rutherford

Required Attendees steve.gooch@senate.gov; chuck.efstration@house.ga.gov

Dial [REDACTED] Conference ID: [REDACTED] or tap [REDACTED], [REDACTED] # from your mobile phone.

Subject: Canceled: Call w/ AG's Office Re: Review Commission Meeting
Location: [REDACTED] #

Start: Wed 9/6/2023 2:00 PM
End: Wed 9/6/2023 2:30 PM
Show Time As: Free

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Amanda Rutherford

Required Attendees [REDACTED]

Dial [REDACTED] Conference ID: [REDACTED] or tap [REDACTED], [REDACTED] # from your mobile phone.

From: Boortz, Gracie <Gracie.Boortz@senate.ga.gov>
Sent: Friday, September 8, 2023 10:11 AM
To: Jordan Watson
Subject: Email

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Hi Jordan –

I spoke with Ben Jarrard (Chief of Staff for Senator Gooch) about an email Senator Gooch should have received earlier this week. I am not able to find it.

If you could forward that back to his email, that would be great!

Thanks so much!

Gracie Boortz | Legislative Assistant
Office of the Majority Leader
Senator Steve Gooch | District 51
236 State Capitol Building
404-656-5039
Gracie.Boortz@senate.ga.gov

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

From: Burns, Max <Max.Burns@senate.ga.gov>
Sent: Thursday, January 25, 2024 9:34 PM
To: Jordan Watson
Subject: Fwd: SB 358 Constitutionality Clarification
Attachments: Carr Letter Clairfy SB 358.doc; Morelli Letter Clairfy SB 358.doc

You don't often get email from max.burns@senate.ga.gov. [Learn why this is important](#)

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FYI

Sent to LG this afternoon before my office sent to AG and Leg Counsel.

Not a 'hit' piece. A request for clarification.

Not intended for AJC or any other news source. Do not know how they would have had access.

Max Burns
Senator, District 23
912.425.9137 c

Sent from my mobile office.

Begin forwarded message:

From: "Burns, Max" <Max.Burns@senate.ga.gov>
Date: January 25, 2024 at 2:33:00 PM EST
To: "Vaughan, Brad" <Brad.Vaughan@ltgov.ga.gov>
Cc: "Paradise, Loree Anne" <la.paradise@ltgov.ga.gov>
Subject: **SB 358 Constitutionality Clarification**

Brad,

FYI, here is the draft letters to Stuart Morelli and Chris Carr requesting clarification of the Constitutionality of SB 358.
Will communicate this afternoon.

Max

Max Burns, Senator District 23
Chairman, Ethics

max.burns@senate.ga.gov

CLOB 327A

404.463.1376 o

912.425.9137 c

SENATOR MAX BURNS
District 23

P.O. Box 203
Sylvania, GA 30467
Cell (912) 425-9137

327-A Legislative Office Building
18 Capitol Square, SW
Atlanta, Georgia 30034
Tel (404) 463-1376
E-mail: Max.Burns@senate.ga.gov



The State Senate
Atlanta, GA 30334

COMMITTEE ASSIGNMENTS:

Ethics, Chairman
Higher Education, Vice-Chairman
Agriculture and Consumer Affairs
Appropriations, Ex-Officio
Children and Families
Transportation, Ex-Officio

January 25, 2024

Mr. Chris Carr
Attorney General
PO Box 18055
Atlanta, GA 30316

Dear Mr. Carr,

As we considered SB 358 in the Ethics Committee on January 23, the Committee received communication from the Secretary of State's Counsel that the legislation providing the State Elections Board investigative and oversight responsibilities of the Secretary of State may be in violation of the Georgia Constitution (letter attached). The Secretary of State's Office cited a 2005 Attorney General opinion (AG Official Opinion 2005-3).

I request that you review this opinion and clarify the Constitutionality of SB 358.
I look forward to your response.

Sincerely,

Max

Max Burns, Senator District 23
Chairman, Ethics

max.burns@senate.ga.gov

CLOB 327A
404.463.1376 o
912.425.9137 c

Cc: Burt Jones, Lt. Governor
John Kennedy, President Pro Temp
Steve Gooch, Majority Leader

SENATOR MAX BURNS
District 23

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Ethics, Chairman
Higher Education, Vice-Chairman
Agriculture and Consumer Affairs
Appropriations, Ex-Officio
Children and Families
Transportation, Ex-Officio

January 25, 2024

Mr. Stuart Morelli
Deputy Legislative Counsel
316 State Capitol
Atlanta, GA 30334

Dear Mr. Morelli,

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I request that you review this opinion and clarify the Constitutionality of SB 358.
I look forward to your response.

Sincerely,

Max

Max Burns, Senator District 23
Chairman, Ethics

max.burns@senate.ga.gov

CLOB 327A
404.463.1376 o
912.425.9137 c

Cc: Betsy Howerton, Legislative Counsel
Burt Jones, Lt. Governor
John Kennedy, President Pro Temp
Steve Gooch, Majority Leader

From: Jackson, Tarika <Tarika.Jackson@senate.ga.gov>
Sent: Friday, January 26, 2024 6:12 AM
To: Travis Johnson
Cc: Jordan Watson
Subject: RE: Request legal opinion
Attachments: AG- Carr - Legal input.pdf

Some people who received this message don't often get email from tarika.jackson@senate.ga.gov. [Learn why this is important](#)

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Per Chairman Burns of the Senate Committee on Ethics. Please see attached.

Hard copy has been mailed.



Tarika M. Jackson

Executive Legislative Assistant to
Senator Max Burns, 23rd District

&

Senator Rick Williams, 25th District

404-463-1376 Office

404-656-0082 Office

327 Coverdell Office Building

Atlanta, Georgia 30334

www.senate.ga.gov

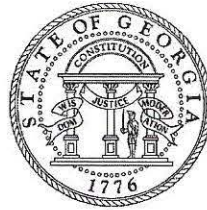
"The difference between successful people and others is not a lack of strength, not a lack of knowledge, but rather in a lack of will"

~Vince Lombardi

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District 23

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The State Senate
Atlanta, GA 30334

COMMITTEE ASSIGNMENTS:

Ethics, Chairman
Higher Education, Vice-Chairman
Agriculture and Consumer Affairs
Appropriations, Ex-Officio
Children and Families
Transportation, Ex-Officio

January 25, 2024

Chris Carr, Attorney General
Office of the Attorney General
40 Capitol Square, SW
Atlanta, GA 30334 US

Dear Attorney General Carr,

As we considered SB 358 in the Ethics Committee on January 23, the Committee received communication from the Secretary of State's Counsel that the legislation providing the State Elections Board oversight and investigative responsibility of the Secretary of State may be in violation of the Georgia Constitution. The Secretary of State's Office cited a 2005 Attorney General opinion (cite).

I request that you clarify the Constitutionality of this legislation.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Max Burns".

Senator Max Burns
23rd District of Georgia
912.425.9137 c

Enclosure: 2

tmj



Office of the Secretary of State

Brad Raffensperger
SECRETARY OF STATE

Charlene McGowan
GENERAL COUNSEL

January 23, 2024

Senator Max Burns
District 23
Chairman, Senate Committee on Ethics
327-A CLOB
Atlanta, Georgia 30334

Re: Senate Bill 358

Dear Chairman Burns,

Please accept these comments from the Office of the Secretary of State on Senate Bill 358, which purports to grant the State Election Board investigative and oversight authority over the Secretary of State and his office. **There are several significant legal problems with the bill that the Committee should consider before taking further action.**

First and foremost, **Senate Bill 358 would violate the Georgia Constitution if enacted.** The Secretary of State is an executive office created by the Constitution and elected by the People of Georgia. GA. CONST. art. V, § III, par. I. The Constitution gives the Secretary certain authority over elections, the most important of which is to receive and certify election results. GA. CONST. art. II, § II, par. I.

The State Election Board, on the other hand, was created by statute and is made up of volunteer political appointees. The board's authority is limited by statute, and its members are not elected and are not accountable to the People of Georgia. There is nothing in the law that allows the State Election Board to oversee, investigate, or otherwise control constitutional officers such as the Secretary of State in the performance of their executive duties. This is expressly stated in an Official Opinion by the Office of the Attorney General directly addressing this issue. See AG Official Opinion 2005-3. That Official Opinion states, "**There is no indication in the law that the constitutional and statutory authority of [the Secretary] should be limited or substantively controlled by a board of political appointees who are not**

answerable to the electorate for their actions,” and that to do so would violate the separation of powers in the Constitution. *Id.*

The Georgia Constitution already provides checks and balances for state executive officers in the performance of their executive powers and duties. These apply to every constitutional executive officer, including the Governor, Lt. Governor, Secretary of State, Attorney General, and others. There is no precedent for an unelected board of political appointees to have oversight authority over members of the executive branch.

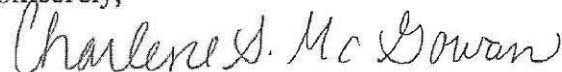
Giving a board of unelected bureaucrats unchecked power over the state’s executive branch is a dangerous policy proposal. This authority could easily be weaponized by political activists seeking to use the State Election Board to punish political opponents or prevent the lawful certification of election results, harming the integrity of Georgia’s elections. In fact, this proposal is being pushed by a small group of activists who continue to seek de-certification of the 2020 presidential election results, with the apparent intent of giving the State Election Board the ability to interfere with or even prevent the Secretary from certifying the results of the 2024 presidential election.

Of course, Secretary Raffensperger does not claim to be immune from scrutiny or accountability. He is without a doubt the most heavily scrutinized Secretary of State in America, in both the court of public opinion and courts of law. He has successfully defended his actions in court time and time again, including prevailing in 20 legal challenges to the 2020 election. Most importantly, he is accountable to the voters, who chose to re-elect him to office in 2022 by the largest margin of any statewide officer.

The Secretary’s focus is ensuring that the 2024 election is as safe, secure, and accurate as the 2022 and 2020 elections. His top priority is preventing non-citizens from voting in the 2024 General Election, which is a very real risk due to the open borders policies of the federal government. **To that end, he is calling on the General Assembly to approve a constitutional amendment banning non-citizens from voting in Georgia elections. We hope you will join us in supporting this critical legislation.**

In conclusion, I respectfully ask the Committee to consider whether it is in the best interest of the integrity of Georgia’s elections for a board of unelected bureaucrats to be given power over the certification of election results in a contentious presidential election year. At a minimum, the voters of Georgia should be given a say in whether they approve of this fundamental change to Georgia’s constitutional structure by presenting this in the form of a constitutional amendment.

Sincerely,



Charlene S. McGowan
General Counsel

_____ offers the following
substitute to SB 358:

A BILL TO BE ENTITLED
AN ACT

1 To amend Subpart 1 of Part 1 of Article 2 of Chapter 2 of Title 21 of the Official Code of
2 Georgia Annotated, relating to the State Election Board, so as to remove the Secretary of
3 State from the board; to authorize the board to investigate the Secretary of State; to provide
4 for the hiring of investigators; to require the Secretary of State to cooperate with certain
5 investigations; to provide for related matters; to repeal conflicting laws; and for other
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Subpart 1 of Part 1 of Article 2 of Chapter 2 of Title 21 of the Official Code of Georgia
10 Annotated, relating to the State Election Board, is amended in Code Section 21-2-30, relating
11 to creation, membership, terms of service, vacancies, quorum, bylaws, meetings, and
12 executive director, by revising subsections (d) and (f) and paragraph (2) of subsection (k) as
13 follows:

14 ~~"(d) The Secretary of State shall be an ex officio nonvoting member of the board. Three~~
15 ~~voting members of the board shall constitute a quorum, and no vacancy on the board shall~~
16 ~~impair the right of the quorum to exercise all the powers and perform all the duties of the~~

17 board. The board shall adopt a seal for its use and bylaws for its own government and
18 procedure."

19 "(f) If any member of the board, ~~other than the Secretary of State~~, shall qualify as a
20 candidate for any public office which is to be voted upon in any primary or election
21 regulated by the board, that member's position on the board shall be immediately vacated
22 and such vacancy shall be filled in the manner provided for filling other vacancies on the
23 board."

24 "(2) With the approval of the board, employ and fix the compensation of personnel,
25 including investigators, as determined necessary to assist the executive director in his or
26 her duties;"

27 SECTION 2.

28 Said subpart is further amended in Code Section 21-2-31, relating to duties of the State
29 Election Board, by revising paragraph (5) as follows:

30 "(5) To investigate, or authorize the Secretary of State to investigate, when necessary or
31 advisable the administration of primary and election laws by the Secretary of State and
32 local election officials and frauds and irregularities in primaries and elections and to
33 report violations of the primary and election laws either to the Attorney General or the
34 appropriate district attorney who shall be responsible for further investigation and
35 prosecution. Nothing in this paragraph shall be so construed as to require any
36 complaining party to request an investigation by the board before such party might
37 proceed to seek any other remedy available to that party under this chapter or any other
38 provision of law;"

63

SECTION 5.

64

All laws and parts of laws in conflict with this Act are repealed.

From: Jackson, Tarika <Tarika.Jackson@senate.ga.gov>
Sent: Friday, January 26, 2024 6:38 AM
To: Jordan Watson
Subject: RE: Request legal opinion [*** External Email ***]

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CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

This is the original email. The original letter was mailed to the Attorney General as there was no email listed on our agency contact list for him. Only yours and Travis, which is why you received the email version.

I hope this helps your efforts.

From: Jordan Watson <JWatson@LAW.GA.GOV>
Sent: Friday, January 26, 2024 6:25 AM
To: Jackson, Tarika <Tarika.Jackson@senate.ga.gov>
Subject: Re: Request legal opinion [*** External Email ***]

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Good morning, ma'am. Thank you so much for sharing.

At your convenience, do you mind sharing with me the original email you sent to the Attorney General?

Thank you and have a good day.

Get [Outlook for iOS](#)

From: Jackson, Tarika <Tarika.Jackson@senate.ga.gov>
Sent: Friday, January 26, 2024 6:11:39 AM
To: Travis Johnson <TJohnson@LAW.GA.GOV>
Cc: Jordan Watson <JWatson@LAW.GA.GOV>
Subject: RE: Request legal opinion

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Per Chairman Burns of the Senate Committee on Ethics. Please see attached.

Hard copy has been mailed.



Tarika M. Jackson

Executive Legislative Assistant to
Senator Max Burns, 23rd District
&

Senator Rick Williams, 25th District
404-463-1376 Office
404-656-0082 Office
327 Coverdell Office Building
Atlanta, Georgia 30334
www.senate.ga.gov

"The difference between successful people and others is not a lack of strength, not a lack of knowledge, but rather in a lack of will"

~Vince Lombardi

From: Burns, Max <Max.Burns@senate.ga.gov>
Sent: Friday, February 9, 2024 12:58 PM
To: Jordan Watson
Cc: Leverett, Rob; LaHood, John
Subject: FW: SB 358 Constitutionality Clarification
Attachments: Carr Letter Clairfy SB 358.doc; Morelli Letter Clairfy SB 358.doc

You don't often get email from max.burns@senate.ga.gov. [Learn why this is important](#)

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Jordon,

Can you provide a status on this request?
SB 189 is in House Government Affairs.

If possible, we would like the AG's insights before we move this bill further.

Thanks,

Max

Max Burns, Senator District 23
Chairman, Ethics

max.burns@senate.ga.gov

CLOB 327A

404.463.1376 o

912.425.9137 c

From: Burns, Max <Max.Burns@senate.ga.gov>
Sent: Thursday, January 25, 2024 9:34 PM
To: Jordan Watson <jwatson@law.ga.gov>
Subject: Fwd: SB 358 Constitutionality Clarification

FYI

Sent to LG this afternoon before my office sent to AG and Leg Counsel.

Not a 'hit' piece. A request for clarification.

Not intended for AJC or any other news source. Do not know how they would have had access.

Max Burns
Senator, District 23
912.425.9137 c

Sent from my mobile office.

Begin forwarded message:

From: "Burns, Max" <Max.Burns@senate.ga.gov>
Date: January 25, 2024 at 2:33:00 PM EST
To: "Vaughan, Brad" <Brad.Vaughan@ltgov.ga.gov>
Cc: "Paradise, Loree Anne" <la.paradise@ltgov.ga.gov>
Subject: SB 358 Constitutionality Clarification

Brad,

FYI, here is the draft letters to Stuart Morelli and Chris Carr requesting clarification of the Constitutionality of SB 358.
Will communicate this afternoon.

Max

Max Burns, Senator District 23
Chairman, Ethics

max.burns@senate.ga.gov

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SENATOR MAX BURNS
District 23

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Atlanta, Georgia 30034
Tel (404) 463-1376
E-mail: Max.Burns@senate.ga.gov



The State Senate
Atlanta, GA 30334

COMMITTEE ASSIGNMENTS:

Ethics, Chairman
Higher Education, Vice-Chairman
Agriculture and Consumer Affairs
Appropriations, Ex-Officio
Children and Families
Transportation, Ex-Officio

January 25, 2024

Mr. Chris Carr
Attorney General
PO Box 18055
Atlanta, GA 30316

Dear Mr. Carr,

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I look forward to your response.

Sincerely,

Max

Max Burns, Senator District 23
Chairman, Ethics

max.burns@senate.ga.gov

CLOB 327A
404.463.1376 o
912.425.9137 c

Cc: Burt Jones, Lt. Governor
John Kennedy, President Pro Temp
Steve Gooch, Majority Leader

SENATOR MAX BURNS
District 23

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Higher Education, Vice-Chairman
Agriculture and Consumer Affairs
Appropriations, Ex-Officio
Children and Families
Transportation, Ex-Officio

January 25, 2024

Mr. Stuart Morelli
Deputy Legislative Counsel
316 State Capitol
Atlanta, GA 30334

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Max

Max Burns, Senator District 23
Chairman, Ethics

max.burns@senate.ga.gov

CLOB 327A
404.463.1376 o
912.425.9137 c

Cc: Betsy Howerton, Legislative Counsel
Burt Jones, Lt. Governor
John Kennedy, President Pro Temp
Steve Gooch, Majority Leader

From: Burns, Max <Max.Burns@senate.ga.gov>
Sent: Friday, February 9, 2024 1:01 PM
To: Jordan Watson
Subject: FW: RE: Legal Input - SB 358
Attachments: Letter to Senator Burns re SB 358.pdf

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Jordan,

Leg Counsel provided this feedback on our request.
The AG may wish to consider their position on this issue as he formulates his response.

Thanks for your help.

Max

Max Burns, Senator District 23
Chairman, Ethics

max.burns@senate.ga.gov

CLOB 327A
404.463.1376 o
912.425.9137 c

From: Morelli, Stuart <Stuart.Morelli@legis.ga.gov>
Sent: Monday, February 5, 2024 1:59 PM
To: Burns, Max <Max.Burns@senate.ga.gov>
Cc: Jackson, Tarika <Tarika.Jackson@senate.ga.gov>
Subject: RE: RE: Legal Input - SB 358

Mr. Chairman, attached please find a copy of the requested opinion letter regarding the constitutionality of SB 358. I'll place the original of this letter in your file in our office.

Please don't hesitate to contact me if you've got any questions or if I can be of further assistance.

D. Stuart Morelli
Deputy Legislative Counsel

Georgia General Assembly
316 State Capitol Building
Atlanta, Georgia 30334
stuart.morelli@legis.ga.gov
T: [404 656 5000](tel:4046565000) | F: [404 651 9292](tel:4046519292)



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From: Jackson, Tarika <Tarika.Jackson@senate.ga.gov>
Sent: Friday, January 26, 2024 6:02 AM
To: Morelli, Stuart <Stuart.Morelli@legis.ga.gov>
Subject: RE: Legal Input

Per Burns.



Tarika M. Jackson

Executive Legislative Assistant to
Senator Max Burns, 23rd District

&

Senator Rick Williams, 25th District

404-463-1376 Office

404-656-0082 Office

327 Coverdell Office Building

Atlanta, Georgia 30334

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~Vince Lombardi

Betsy Howerton
Legislative Counsel



316 State Capitol, S.W.
Atlanta, Georgia 30334
(404) 656-5000

Office of Legislative Counsel
General Assembly of Georgia

February 5, 2024

Honorable Max Burns
Senator, 23rd District

RE: SB 358 Authorizing State Election Board to investigate the Secretary of State

Senator Burns:

You have requested an opinion as to the constitutionality of SB 358 (LC 47 2735S), which authorizes the State Election Board ("the Board") to investigate the administration of Georgia election laws by the Secretary of State ("the Secretary"), authorizes the Board to hire investigators, removes the Secretary as an ex-officio nonvoting member of the Board, and directs the Secretary to cooperate with the Board in enforcement of state election laws. The Secretary, relying upon an opinion of the Attorney General, 2005 Op. Att'y Gen. No. 2005-3 ("the 2005 Opinion"), has stated that SB 358 is unconstitutional. After reviewing the 2005 Opinion and researching applicable law on the matter, while it does not appear that the Georgia Supreme Court has ever addressed the matter of a statewide elected executive officer being subject to oversight by an appointed board within the executive department, it also does not appear that SB 358 violates any provisions of constitutional law, but is instead a valid exercise of the General Assembly's constitutional legislative powers.

The 2005 Opinion represents an in-depth analysis and review of Georgia election laws, constitutional and statutory, related to the administration of elections and the duties and powers of both the Secretary and the Board. It concluded with the finding that:

Georgia law anticipates a symbiotic relationship between the Office of the Secretary of State and the State Election Board, but does not provide either entity with authority over the day-to-day operations of or the ability to exercise direct control over the substantive or policy-making role of the other agency. *** However, the Board has no authority,

beyond this defined statutory scope, to direct the policy and activities of the Secretary of State as a statewide elected constitutional officer.

At its core, the 2005 Opinion is based upon the statutory powers, duties, and relationship that existed in 2005 between the Secretary and the Board. However, the 2005 Opinion is just a snapshot in time, and it has since become outdated due to changes in the statutory relationship between the Secretary and the Board.

In recent years, Chapter 2 of Title 21 of the Official Code of Georgia Annotated ("the Election Code") has been revised so as to make the Board more independent of the Secretary and to increase its role in overseeing the administration of election laws. In particular, in 2021, with the adoption of SB 202 (Ga. L. 2021, p. 14), the Secretary was removed as the chairperson of the Board and made an ex-officio nonvoting member. The Secretary serving as the chairperson of the Board was apparently a significant factor in the statutory interpretation at the heart of the 2005 Opinion. SB 202 also increased the role that the Board had in supervising local election superintendents, and provided procedures whereby the Board could temporarily remove such superintendents.¹ Furthermore, last year's SB 222 (Ga. L. 2023, p. 563) further separated the Board from the Secretary by making the Board an independent budget unit, attached to the Secretary's office for administrative purposes only. State law now provides that the Board "shall neither be under the jurisdiction of the Secretary of State nor shall it be considered a division of the office of the Secretary of State." O.C.G.A. § 21-2-30(g). Senate Bill 222 also authorized the Board to hire its own staff, including an executive director, instead of the Board's prior reliance upon the Secretary. Therefore, recent changes in the Election Code have significantly revised the powers, duties, and relationship between the Board and the Secretary to the extent that it is questionable whether such relationship is still the symbiotic one found to be a cornerstone of the 2005 Opinion.²

In addition to reviewing the statutory relationship between the Board and the Secretary, the 2005 Opinion also notes that the Secretary has some elections duties that arise from the Georgia Constitution. A close review of the constitutional provisions regarding the Secretary's role in elections indicate that most of those provisions are related to the Secretary receiving documents that others are required to send to that office.³ However, to the extent that the Constitution places a

¹O.C.G.A. §§ 21-2-33.1, -33.2, and -105 through -108.

² A number of paragraphs of the 2005 Opinion also analyze the meaning of "supervise" as that term was used in an earlier version of O.C.G.A. § 21-2-31(1). However, that Code section was revised in 2008 to remove that term; further indication of that subsequent statutory changes distinguish current election law from those relied upon in the 2005 Opinion.

³ ● Art. II, Sec. II, Par. I provides that the General Assembly "shall provide by law for a procedure whereby returns of all elections by the people shall be **made to** the Secretary of State" (bolding added). Despite the assertion raise in the Secretary's letter to you, this provision does not confer upon the Secretary any duty to certify elections. Instead, the Secretary's duty to certify various elections arises from statutory law. See O.C.G.A. §§ 21-2-50, -497, -499, and -

couple of duties in the hands of the Secretary, nothing in current or proposed state law, would empower the Board to investigate or override decisions made by the Secretary arising from such constitutional duty.

One point made in the 2005 Opinion that is undisputable is that the vast and overwhelming majority of the Secretary's election duties arise from statutory laws enacted by the General Assembly. The people of Georgia have vested the General Assembly with broad powers to enact laws governing elections in this state; such powers are in addition to the general grant of legislative powers to the General Assembly provided for by Article III of the Constitution, which itself is an enormous grant of power. "Elections by the people shall be by secret ballot **and shall be conducted in accordance with procedures provided by law.**" Art. II, Sec. I, Par. I (bolding added). Article II of the Constitution regarding voting and elections provides at least seven grants of specific authorities to the General Assembly to enact laws regarding elections, but only mentions the Secretary once. And while the Secretary's office is created by the Constitution, the Constitution also provides that the General Assembly shall prescribe the powers and duties of that office. Art. V, Sec. III, Par. III. Therefore, other than the handful of limited, mostly archival, duties the Constitution provides to the Secretary, all of the election duties of the Secretary are subject to legislative change enacted by the General Assembly. The General Assembly at its sole discretion can expand, contract, transfer, or make subject to oversight by other entities within the executive branch virtually all of

502. See also *Broughton v. Douglas County Bd. of Elections*, 286 Ga. 528, 529 (2010).

Extensive discussions occurred during the drafting of this constitutional provision and they revolved around the necessity of making sure that local election returns were sent to some statewide office for record keeping and which returns needed to be sent to the state. While it was decided that the Secretary was the appropriate person to make such returns to, no discussions occurred as to this provision providing any election related powers to the Secretary beyond the archival duty of having returns made to him or her. See Select Committee on Constitutional Revision, 1977-1981, Committee to Revise Article II, Meeting of July 17, 1977, pages 40-65, and Meeting of August 4, 1977, pages 74-85.

- Art. V, Sec. II, Par. VII provides that when 3/5 of the members of each chamber of the General Assembly certify to the Governor in writing that an emergency exists that requires a special session, "a copy" of such certification shall be given the Secretary.

- Art. IX, Sec. II, Par. I requires probate judges to certify the results of referendums regarding home rule changes to county enabling acts or ordinances "to" the Secretary. This same paragraph goes on to require notices of county home rule amendments to be published in a newspaper and that a notice of such publication be "filed" with the Secretary. Finally, it provides that the Secretary "shall provide for the publication and distribution of such amendments." This third provision represents the first of two constitutional election duties of the Secretary that require more than having a document filed, returned, or sent to him or her.

- Art. X, Sec. I, Par. II, provides that the Secretary, working with the Attorney General and Legislative Counsel, "shall prepare" summaries of each proposed constitutional amendment submitted to the voters for their approval.

- Art. X, Sec. II, Par. V created a special commission to determine which amendments to the 1976 Constitution ratified by the people at the same time as the people approved the 1983 Constitution were to be added to the 1983 Constitution and further provided that the commission was to "deliver to" the Secretary the updated Constitution.

the election duties currently held by the Secretary.

Despite the broad constitutional powers that the people of Georgia have placed in the General Assembly to legislate on election procedures and the powers and duties of the Secretary, the 2005 Opinion raises a potential separation of powers issue with the Board investigating or overseeing the Secretary. However, while raising the question, the opinion cites no constitutional provision that establishes such an issue. In fact, the only citation to any authority whatsoever is a citation to a Georgia Supreme Court case that says nothing about the General Assembly making an elected official subject to investigation or oversight by an appointed board. *Perdue v. Baker*, 277 Ga. 1 (2003). Instead, the issue in the *Perdue* case was a dispute between the Governor and the Attorney General as to which officer had the power to direct litigation on behalf of the state, and the Supreme Court ultimately found that the Constitution and the General Assembly, through the granting of statutory powers, had given both officers responsibilities for enforcing state laws.

This overlapping responsibility is also consistent with the existing practice in state government. Most important, it provides a system of checks and balances within the executive branch so that no single official has unrestrained power to decide what laws to enforce and when to enforce them.

Id. at 6. As such, instead of supporting the proposition that it is unconstitutional for one part of the executive branch to oversee or investigate another part, the *Perdue* case supports the proposition that, so long as such oversight or investigation is authorized by statutory law, it is constitutional unless there is an explicit provision of the Constitution prohibiting the same.

As it relates to the nature of the Board, the 2005 Opinion implies that the Board, composed at the time of two members appointed by the General Assembly, was legislative, and therefore could not oversee the Secretary without violating the strict separation of powers provided for by Art. I, Sec. II, Par. III of the Constitution. However, the Board, even today with three out of five members being appointed by the General Assembly, is not legislative in nature or function, but it is part of the executive branch. The Supreme Court has long held that when it comes to constitutional separation of powers, function supersedes form. "Our separation of powers provision deals with the 'powers' and 'functions' of each branch - not the formal organization of the branches themselves." *In Re: Prosecuting Attorney Qualification Commission Rules and Code of Conduct*, November 22, 2023. See also *Roberts v. Cuthbert*, 317 Ga. 645, 653 (2023), and *Greer v. State*, 233 Ga. 667, 668-669 (1975). "The executive branch of government is authorized to carry laws into effect, including laws that regulate official conduct. We see no violation of the separation of powers in the statute." *DeKalb County School District v. Georgia State Board of Education*, 294 Ga. 349, 369 (2013). As the Board undisputably carries out executive functions regarding the investigation and enforcement of election laws, there is no constitutional separation of powers issue with the Board using such executive powers to oversee and investigate the Secretary.⁴

⁴The 2005 Opinion also implies there is an issue with two members of the Board being appointed by the Governor from nominations provided by the executive committees of the two

In the years since the 2005 Opinion was published, the Georgia Supreme Court has opined a number of times on the constitutional foundations of government that the Attorney General referenced in his opinion, and those rulings have interpreted the Constitution in a manner to support the provisions of SB 358 empowering the Board to investigate the Secretary. In the *DeKalb County School District v. Georgia State Board of Education*, 294 Ga. 349 (2013), the Georgia Supreme Court upheld the authority of the General Assembly to provide by law for the removal from office of constitutional officers.⁵ The Court started by noting that the Constitution grants the General Assembly the legislative powers of the state, that such powers are plenary. *Id.* at 352.

The inherent powers of our State General Assembly are awesome... [The General Assembly] is absolutely unrestricted in its power to legislate, so long as it does not undertake to enact measures prohibited by the State or Federal Constitution.

Id., quoting *Sears v. State*, 232 Ga. 547, 553-554 (1974). The Court then held that strong presumption must be made that the exercise of the legislative power is proper, and that such presumption can only be overcome by a showing of a "clear and palpable" conflict with the Constitution. *Id.* at 353.

When reviewing the constitutionality of a law removing elected school board members from office, the Court found that the strong presumption of constitutionality was "especially sound" as

it is a fundamental principle of our constitutional tradition that **no public officer — whether constitutional or only statutory — is above the law.** See *United States v. Lee*, 106 U. S. 196, 220 (1 SCt 240, 27 LE 171) (1882) ("No man in this country is so high that he is above the law. **No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it.**"). See also *State ex rel. Low v. Towns*, 8 Ga. 360, 368 (1850) ("This is a government of laws and not of men"); *Bonner v. State ex rel. Pitts*, 7 Ga. 473, 481 (1849) ("**Every officer, from the highest to the lowest, in our government is amenable to the laws of his country... . When the voice of the people speaks in the form of a**

political parties. While it is undisputed that private organizations cannot directly appoint people to boards exercising governmental powers, see *Delay v. Sutton*, 304 Ga. 338 (2018), there are questions as to whether or not this prohibition would apply to the members of the Board nominated by a political party. As an initial matter, O.C.G.A. § 21-2-30(c) provides that the political party members of the Board shall be appointed by the Governor, who is undisputably a governmental actor, even if they were nominated by a political party. However, even if the political party nominees to the Board are unconstitutional, an operating quorum of the Board would still exist to exercise the duties of the Board, including those proposed in SB 358. See *Greer* at 670.

⁵ While the constitutional officers at issue in the case were locally elected, the opinion highlights that Georgia's history in the past has supported similar findings related to statewide constitutional officers. *Id.* at 354, 358, and 361.

legislative enactment, all are bound to obey the mandate”). But, as we have explained, this fundamental principle would be “entirely nugatory and inoperative, if there was no remedy provided to enforce obedience to [the law].” *Bonner*, 7 Ga. at 483 (emphasis in original). Consequently, **the law long has acknowledged that the power to provide the means by which a public officer might be suspended or removed at law from office for a failure to satisfy the qualifications of the office, for malfeasance in office, or for misfeasance in office is a power that necessarily inheres in the legislative power**, except to the extent that the Constitution provides otherwise.

Id., *bolding added*. If the General Assembly has an awesome and inherent legislative power to provide for the removal of constitutional officers, then it must unquestionably also have the lesser inherent power to provide for the investigation and oversight of such constitutional officers unless explicitly prohibited by the Constitution. Since there is no provision of the Constitution prohibiting the investigation of the Secretary by an appointed board, such legislation must be within the legitimate power of the General Assembly.

Furthermore, having the Board investigate and oversee the Secretary's administration of statutory election laws is consistent with other state laws giving appointed boards or commissions the power to investigate elected officials. In *Delay v. Sutton*, 304 Ga. 338 (2018), the Supreme Court invalidated provisions of a local law establishing the DeKalb County Board of Ethics. At the time, a majority of the members on the county ethics board were appointed by private entities, and the Supreme Court found that such appointments by private entities violated Art. I, Sec. II, Par. I and II of the Constitution, which provide for the origin and foundation of government and the object of government. But in deciding the *Delay* case, the Supreme Court made no indication that having an elected official subject to an appointed ethics board with the power to investigate and punish them would also violate the foundations of government in Georgia. The problem was the private appointment, not an appointed official overseeing an elected one.⁶ *Delay* at 341. And while *Delay* addressed a local law regarding locally elected officials, the constitutional principles the case is based on apply equally to state officials, even statewide elected executive officials. Finally, Title 21 of the Official Code of Georgia Annotated already provides for every state office holder in the state, from the Governor and members of the General Assembly to the Secretary, to be subject to investigation by an appointed board - the State Ethics Commission. See O.C.G.A. § 21-5-50. Accordingly, it does not appear that there is any Georgia law establishing that it is unconstitutional

⁶ While Board members are not subject to election, each Board member is subject to removal from office by governmental actors. See O.C.G.A. § 21-2-30(b) authorizing each chamber of the General Assembly by majority vote to remove its appointee to the Board and subsection (c) authorizing the removal of Board members nominated by a political party. And while this Code section does not specify who would remove the chairperson or a political party nominee, Georgia law is clear that when "the tenure of the office is not fixed by law, and no other provision is made for removals ... it is ... a sound and necessary rule to consider the [appointing authority's] power of removal as incident to the power of appointment." *Kautz v. Powell*, 297 Ga. 283, 284 (2015), quoting *Holder v. Anderson*, 160 Ga. 433, 437 (1925).

for an executive branch board, composed of members appointed by governmental actors, to investigate the administration of executive powers by an elected official - even if such elected office is created in the Constitution.

Based on the foregoing, SB 358 does not appear to be in clear and palpable conflict with any provision of the Georgia Constitution, nor does it contravene any of the Supreme Court's interpretations of the Constitution. Instead, SB 358 appears to be a valid exercise of the constitutional power that the people of the State of Georgia have placed in the General Assembly to enact laws governing administration of elections and providing powers and duties to the Secretary of State.

Regards,

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 Approved