



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

March 28, 2023

Governor Brian Kemp
206 Washington Street
Suite 203, State Capitol
Atlanta, GA 30334

Governor Kemp:

I write today on behalf of Citizens for Responsibility and Ethics in Washington (CREW) to urge you to oppose Georgia General Assembly Senate Bill 92 (“SB 92”) and House Bill 231 (“HB 231”), which targets and potentially undermines local prosecutors and their law enforcement decision-making. CREW is a nonprofit, non-partisan government ethics organization that works to keep public officials accountable to the people they serve. If signed into law, SB 92 and HB 231 would politicize the legal system, weaken prosecutorial independence, undermine the democratic process, and threaten the rule of law in Georgia.

SB 92 and HB 231 would allow state legislators to create and appoint members to an oversight commission to “discipline, remove, and cause involuntary retirement of appointed or elected district attorneys or solicitors-general” for “mental or physical incapacity,” “willful misconduct in office,” or “willful and persistent failure to carry out duties.”¹ These proposals come as local prosecutors like Western Judicial Circuit District Attorney Deborah Gonzalez are under attack for declining to prosecute certain low-level cases.² At the same time, Fulton County District Attorney Fani Willis is also reportedly considering bringing racketeering and conspiracy charges in her probe into former president Donald Trump’s attempts to subvert Georgia’s election results in 2020, including through organizing a slate of fake electors.³

The bills pose significant conflicts of interest between Fulton County prosecutors and the state officials supporting the bill who are implicated in the ongoing investigation. Under SB 92, Lieutenant Governor Burt Jones, who supported the bill and acted as a fake elector, would be able to appoint a member of the oversight board’s investigative panel despite being a target of Willis’s investigation.⁴ At least two state senators who voted to pass SB 92 are also

¹ Richard Fausset and Danny Hakim, *As Trump Inquiry Continues, Republicans Seek Oversight of Georgia Prosecutors*, New York Times, Mar. 5, 2023, available at <https://www.nytimes.com/2023/03/05/us/republicans-district-attorneys-trump.html>; Georgia General Assembly, Senate Bill 92 (accessed on Mar. 28, 2023), available at <https://www.legis.ga.gov/api/legislation/document/20232024/216780>.

² Jeff Amy, *Some Georgia prosecutors blast oversight, others support it*, Associated Press, Feb. 27, 2023, available at <https://apnews.com/article/georgia-state-government-crime-ae13973d4a15707554a816701361a09e>.

³ Don Lemon and Jason Morris, *Georgia prosecutors considering racketeering and conspiracy charges in probe of effort to overturn Trump’s 2020 loss, source says*, CNN, Mar. 20, 2023, available at <https://www.cnn.com/2023/03/20/politics/georgia-racketeering-conspiracy-trump-willis/index.html>.

⁴ Richard Fausset and Danny Hakim, *As Trump Inquiry Continues, Republicans Seek Oversight of Georgia Prosecutors*, New York Times, Mar. 5, 2023, available at <https://www.nytimes.com/2023/03/05/us/republicans-district-attorneys-trump.html>.

implicated in the fake electors scheme: Brandon Beach, who was named as a target of the investigation, and Shawn Still, who was listed as the secretary of the Georgia fake electors and was subpoenaed by the January 6 committee.⁵ We very much appreciate your leadership in opposing attempts to send fake electors to overturn the 2020 presidential election,⁶ but if you were to support these and similar bills, that support would undermine efforts to prevent these types of abuses from occurring again. Under these bills' expansive provisions, officials would be able to insulate themselves from potential indictments by appointing political allies to the commission in order to remove the prosecutors investigating them.

SB 92 and HB 231 also politicize the justice system and undermine prosecutorial independence and discretion. The provision of the bill that allows for the removal or discipline if a prosecutor "categorically refuses to prosecute any offense or offenses of which he or she is required by law to prosecute" could "preempt[] local control and ... deprive prosecutors of the discretion to pursue criminal charges."⁷ District Attorney Deborah Gonzalez appears to be targeted by these bills for her recommendations not to prosecute minor drug offenses.⁸ It is distressing that this new oversight is being spurred by a sudden concern over prosecutorial discretion against pursuing low-level offenses. State legislators ought to be more concerned about overzealous prosecutors who commit constitutional violations against persons accused of crime than they are about reform-oriented prosecutors who exercise compassion, restraint and fiscal responsibility by declining to file cases for low-level crimes. As a district attorney pointed out, the new proposals could also require prosecutors to enforce outdated laws still on the books such as those barring adultery.⁹ Worse still, the loosely defined grounds for removal and discipline could empower state executives, legislators, and their political appointees on the oversight commission to "chill investigations of the powerful and goad prosecutors into indicting lawmakers' political foes."¹⁰ If voters are concerned about the decisions being made by their locally elected prosecutors, they can voice those concerns directly or vote the prosecutors out of office. This attempt to override the rule of law and eliminate checks on partisan, anti-democratic actions must not be allowed to go forward.

⁵ Richard Fausset and Danny Hakim, *Prosecutor Warns Georgia Officials They May Face Charges in Trump Inquiry*, New York Times, Jul. 15, 2022, available at <https://www.nytimes.com/2022/07/15/us/georgia-investigation-trump.html>; Kira Lerner, *Trump's fake electors: Here's the full list*, Georgia Recorder, Feb. 1, 2022, available at <https://georgiarecorder.com/2022/02/01/trumps-fake-electors-heres-the-full-list/>.

⁶ Jeff Amy, *Georgia governor again rejects lawmakers replacing electors*, Associated Press, Dec. 6, 2020, available at <https://apnews.com/article/georgia-kemp-rejects-replacing-electors-170bb01fa21622846e6746d4db61a6e1>.

⁷ Greg Bluestein, *Georgia Republicans rally behind new oversight of prosecutors*, Atlanta Journal-Constitution, Mar. 2, 2023, available at <https://www.ajc.com/politics/georgia-republicans-rally-behind-new-oversight-for-prosecutors/BEAA4ZG6AFGLBO7UDO6SBRVX2E/>.

⁸ Stephen Fowler, *Lawsuit alleges Athens DA 'unable and unwilling' to do her job*, Georgia Public Broadcasting, Mar. 14, 2023, available at <https://www.gpb.org/news/2023/03/14/lawsuit-alleges-athens-da-unable-and-unwilling-do-her-job>.

⁹ Jeff Amy, *Some Georgia prosecutors blast oversight, others support it*, Associated Press, Feb. 27, 2023, available at <https://apnews.com/article/georgia-state-government-crime-ae13973d4a15707554a816701361a09e>.

¹⁰ Jennifer Rubin, *Georgia Republicans go after prosecutors – and the rule of law*, Washington Post, Mar. 8, 2023, available at <https://www.washingtonpost.com/opinions/2023/03/08/georgia-prosecutors-threaten/>.

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It is crucial for maintaining Georgia's strong commitment to democracy that you stand against these attempts to weaken the independence of the justice system and dilute the political power of Georgia's electorate. We strongly urge you to oppose SB 92 and HB 231.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Sherman", with a long horizontal flourish extending to the right.

Donald Sherman
Senior Vice President and Chief Counsel