



# MADSA

## MADSA Guide to 2020 Ballot Questions in Georgia

### Overview:

- 1) [Proposed Constitutional Amendment 1: HR 164](#)
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- 3) [Referendum A: HB 344](#)
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- 5) [Gwinnett County Transit Referendum: 2020-0766](#)

**Note:** See the Secretary of State's website for [official summaries](#) of proposed constitutional amendments and referenda.

- 1) [Proposed Constitutional Amendment 1: HR 164](#)

**What it does:** Currently, the only way by which the state legislature can dedicate money collected from specific fees or taxes to a particular purpose is by passing a constitutional amendment. This is because regular laws that claim to dedicate funds are not binding. If this amendment is passed, it would create a statutory (regular legislative) process for dedicating funds in a binding manner. Legislators would have to pass such laws with a  $\frac{2}{3}$  majority, but could repeal them with a regular majority.<sup>1</sup>

**Why it matters:** In the past couple decades, the state has often created fees with the intent of funding new programs that ultimately were not used to fund those programs. [For example](#), the state collected \$7.2 million from the new tire fee in 2017 with the intention of using those funds to clean tire dumps. However, only \$3.2 million of those funds were allocated towards that purpose. As a workaround to this issue, legislators have at times passed new fees through constitutional amendments so that they would be properly dedicated to funding a particular purpose. For example, in 2016, voters approved a fireworks tax that is dedicated to fire safety education.

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<sup>1</sup> The amendment would also correct a typo introduced by a 2016 amendment (there are two subparagraphs both labeled (o) in Article III, Section IX, Paragraph VI of the Constitution).

**Wording on ballot:** “Shall the Constitution of Georgia be amended so as to authorize the General Assembly to dedicate revenues derived from fees or taxes to the public purpose for which such fees or taxes were intended?”

Who supports it?	Who opposes it?
<ul style="list-style-type: none"> <li>● Every state senator</li> <li>● The vast majority of state representatives</li> <li>● <a href="#">The Coosa River Basin Initiative</a></li> </ul>	<ul style="list-style-type: none"> <li>● State representatives Renitta Shannon, Colton Moore, Matt Gurtler, and Philip Singleton</li> </ul>

Arguments for	Arguments against
<ul style="list-style-type: none"> <li>● Prevents the legislature from stealing funds from designated programs, such as environmental clean up efforts or criminal defense</li> </ul>	<ul style="list-style-type: none"> <li>● Could be used to lock away funds needed for emergencies or necessary to avoid budget crises (note that there is a provision allowing the governor to suspend fee dedication in emergencies)</li> <li>● Fees dedicated using this process would be more easily un-dedicated than fees dedicated using constitutional amendments</li> </ul>

## 2) [Proposed Constitutional Amendment 2: HR 1023](#)

**What it does:** Allows people to sue the government in state court when it violates the law, or when laws violate the state or federal constitution. Specifically, this amendment would allow what is known as “declaratory relief”, which is when a court declares (decides) whether something is legal or not. If the court decides the action or law is illegal/unconstitutional, it may provide “injunctive relief” as well, which means that it “enjoins” (stops/bans) the action or enforcement of the law.

**Why it matters:** In 2017, the state Supreme Court heard a lawsuit, *Lathrop v. Deal*, about a state law banning abortions after 20 weeks which was challenged by a group of medical professionals. The court held that since the state had not waived its sovereign immunity, the lawsuit had to be thrown out. In plain terms, in order for the medical

professionals to make their case to the court that the law was unconstitutional, the State would have needed to first agree to be sued.<sup>2</sup>

Since the ruling in *Lathrop v. Deal*, the Georgia General Assembly has twice passed laws that would waive sovereign immunity (allow the state to be sued) when a lawsuit argues that a law is unconstitutional, but both Governors Deal and Kemp vetoed those attempts. In 2020, the legislature instead passed a constitutional amendment to do the same thing, bypassing the governor by sending the question to voters. (The *Georgia Recorder* [explains](#) the contents of the last two paragraphs in more detail.)

There may be other ways to get around the inability of Georgians to sue the State. Notably, in September 2020, the court [explicitly stated](#) that sovereign immunity does *not* prohibit lawsuits against officials in their *individual* capacities that allege unlawful action. But the amendment would resolve the issue quite clearly.

**Wording on ballot:** “Shall the Constitution of Georgia be amended to waive sovereign immunity and allow the people of Georgia to petition the superior court for relief from governmental acts done outside the scope of lawful authority or which violate the laws of this state, the Constitution of Georgia, or the Constitution of the United States?”

Who supports it?	Who opposes it?
<ul style="list-style-type: none"> <li>● The Georgia ACLU (see the <i>Recorder</i> <a href="#">article</a>)</li> <li>● Every state legislator who voted on it</li> </ul>	<ul style="list-style-type: none"> <li>● Brian Kemp and Nathan Deal</li> </ul>

Arguments for	Arguments against
<ul style="list-style-type: none"> <li>● It provides a low cost way to challenge laws that we believe are unconstitutional (including laws relating to voter suppression, labor rights, the right to choose, etc.)</li> </ul>	<ul style="list-style-type: none"> <li>● The right may use this to attack progressive legislation, going hand-in-hand with their strategy to pack the courts</li> </ul>

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<sup>2</sup> *Lathrop v. Deal* built on the 2014 ruling in *Georgia Department of Natural Resources v. Center for Sustainable Coast, Inc.*, which held that claims for injunctive relief are barred by sovereign immunity, and the 2016 ruling in *Olvera v. Univ. System of Ga. Board of Regents*, which extended that ruling to claims for declaratory relief. But *Lathrop v. Deal* was the first time the court said that even claims of unconstitutionality cannot overcome sovereign immunity.

<ul style="list-style-type: none"> <li>• On principle, people should be able to sue the government to enforce their rights</li> </ul>	
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3) [Referendum A: HB 344](#)

**Wording on ballot:** “Shall the Act be approved which provides an exemption from ad valorem taxes for all real property owned by a purely public charity, if such charity is exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code and such real property is held exclusively for the purpose of building or repairing single-family homes to be financed by such charity to individuals using loans that shall not bear interest?”

Who supports it?	Who opposes it?
<ul style="list-style-type: none"> <li>• Habitat for Humanity; almost every state legislator</li> </ul>	<ul style="list-style-type: none"> <li>• State Rep. Matt Gurtler</li> </ul>

Arguments for	Arguments against
<ul style="list-style-type: none"> <li>• It was written to support Habitat for Humanity, which is a generally popular charity</li> </ul>	<ul style="list-style-type: none"> <li>• The money Habitat for Humanity would save comes out of property taxes, which local communities use for funding</li> <li>• There might be a potential for abuse by less scrupulous 501(c)(3)s</li> <li>• The exemption only applies to single-family homes</li> </ul>

### 5) [DeKalb County Ethics Referendum: HB 1243](#)

**What it does:** Changes how the DeKalb County Board of Ethics is appointed, and creates a new position of ethics administrator, separate from that of ethics officer.

**Why it matters:** In 2015, voters approved a law that gave outside groups (such as the local bar association) a majority of appointments to the DeKalb County Board of Ethics. This was intended to make the board more independent. In 2016, Commissioner Sharon Barnes Sutton, who had ethics complaints pending against her, sued the board, saying the new structure was unconstitutional. In 2018, the state Supreme Court [held](#) that the state’s ban on private organizations appointing public officials meant the new structure was indeed unconstitutional.

Since then, the ethics board has been unable to operate. In 2019, the county’s state legislators put a measure on the ballot that would have revised the appointment process to make it constitutional while also weakening the board; voters rejected it. This year, they [passed](#) a measure that fixes the appointment process without weakening the board – a so-called “clean fix”. If it passes, the board will be able to begin its work again; if it fails, legislators will have to go back to the drawing board. Unlike the 2019 proposal, this year’s referendum has seemingly been [uncontroversial](#).

**Wording on ballot:** “Shall the Act be approved which revises the Board of Ethics for DeKalb County?”

Who supports it?	Who opposes it?
<ul style="list-style-type: none"><li>• <a href="#">Several local groups</a>, including the DeKalb Citizens Advocacy Council, which led the opposition to the failed 2019 measure.</li></ul>	

Arguments for	Arguments against
<ul style="list-style-type: none"><li>• Ethics commission will be able to enforce county ethics laws again without losing power</li></ul>	

## 6) [Gwinnett County Transit Referendum: 2020-0766](#)

**What it does:** Funds the expansion of transit in Gwinnett by authorizing a 1% T-SPLOST (sales tax) for up to 30 years. See Appendix A of the resolution (linked below) for the full list of the 82 projects that would be approved if the T-SPLOST passes. Of the 82 projects, all would be operated by Gwinnett, except that the rail line connecting Jimmy Carter Boulevard to the Doraville MARTA station would be operated by MARTA.

**Why it matters:** It would [vastly](#) expand public transit in Gwinnett County. For decades, public transit in the Atlanta suburbs has been poorly funded, dating to the failed MARTA referendums in Cobb, Gwinnett, and Clayton a half-century ago. That history is tied to the longtime dominance of racist politics in the suburbs.

In a standalone March 2019 election, Gwinnett voters again rejected MARTA expansion, with “No” receiving 54.3% of the vote. The electorate then was small, at under 20% of registered voters, and over 60% white. The main change since then, besides the date of the election, seems to be that the plan is no longer to expand MARTA – it is to expand Gwinnett Transit. County leaders have [emphasized](#) that the proposal would retain “local control”.

**Full text of resolution:** [Gwinnett County Board of Commissioners Resolution 2020-0766](#).

**Wording on ballot:** “Shall a special one (1%) percent sales and use tax be imposed in the special district consisting of Gwinnett County for a period of time not to exceed thirty (30) years and for the raising of funds for transit projects?”

En español: “¿Deberá imponerse un impuesto especial del uno (1%) por ciento sobre las ventas y uso para el distrito especial compuesto por el Condado de Gwinnett por un período de tiempo que no exceda los treinta (30) años, para la recaudación de fondos para proyectos de tránsito?”

The county has put together a [website](#) advocating for the referendum.

Who supports it?	Who opposes it?
<ul style="list-style-type: none"><li>• A bipartisan group of local officials, including four of five county commissioners</li><li>• The <a href="#">Gwinnett Chamber of Commerce</a> (see also <a href="#">here</a>)</li></ul>	<ul style="list-style-type: none"><li>• Commissioner Tommy Hunter</li><li>• Joe Newton</li></ul>

Arguments for	Arguments against
<ul style="list-style-type: none"> <li>Gwinnett would have a serious public transit system</li> </ul>	<ul style="list-style-type: none"> <li>Some areas of the county are still rather underserved in the proposal</li> <li>Voters just rejected a similar plan</li> </ul>



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