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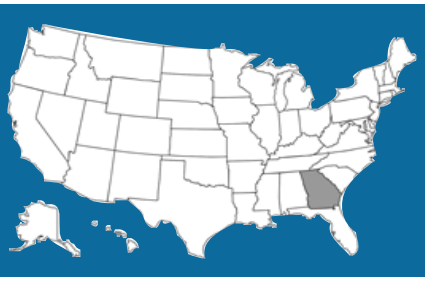

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As we move into fall, Georgians may have many percolating questions on their minds. Some of these questions hinge on the November elections and its subsequent fallout; other questions stem from the many unknowns that will come with a new administration and a new legislative session – an altogether new era of Georgia politics. But while the future is unknown, we in the Senate are already preparing for whatever's next.

Hence, though we are still months away from session, we're working hard at the Capitol to prepare proposed legislation before January 2019. This means meeting and talking with industry experts, as well as with lobbyists and policy wonks and, of course, with citizens. Many of next year's approaching issues are presently being addressed by 18 study committees that are meeting up to and through December. You can follow the progress of our study committees on the Senate website.

At Issue is likewise committed to staying ahead of the curve. In this issue, we review some of the Federal topics that are sure to be of note this session. Among these are foster care reform, partisan gerrymandering and sports gambling. Obviously, these subjects, which are currently hot topics in the national news, have a direct effect on legislation in Georgia.

I hope that you find this edition of *At Issue*: Federal Edition helpful. These articles were written to help you understand and grasp the circumstances and implications of certain policy, so that when the time comes for us to debate them in the Legislature, you are ready to be a part of the conversation. After all, we have been entrusted to represent your interests and to voice your thoughts and concerns.

I look forward to hearing your opinions on these topics, and as always, please do not hesitate to reach out to me if you have topics you would like future editions of *At Issue* to cover.

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Federal Funding

Putting Families First with Foster Care Reform

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With the passage of the Bipartisan Budget Act in February 2018, comes what is being called the "most extensive overhaul to foster care in nearly four decades." The Family First Prevention Services Act (Act) could provide hope for over 400,000 kids in the foster care system in the United States by keeping families together and avoiding the uncertainty that arises when placed in foster care. The Act allows federal reimbursement for preventative services, seeks to improve the well-being of children already in the foster system, and benefits kin caregivers.

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Overview of the Act

The largest area of reform in the Act is seen in the financing stream of the Title IV-E of the Social Security Act. Currently, child welfare agencies have to wait and spend this allotted money after the child has entered into the foster care system, but the Act allows agencies to be proactive and provide preventative services relating to mental health treatment, substance abuse prevention and treatment, and in-home parenting skill-based programs to families with children who are at risk of entering the child welfare system. These preventative services are available for 12 months to eligible children who are identified as candidates for foster care, children in foster care who are pregnant or parenting, or parents and kinship caregivers where services are needed to prevent the child's entry into foster care. States must identify and maintain a written prevention plan for the child to live at home, live temporarily with a kin caregiver, or permanently with a kin caregiver and will be reimbursed fifty percent of the amount spent on preventative services until 2026.

Also, the Act helps ensure that children are placed in the least-restrictive, most family-like setting possible. In 2015, the U.S. Department of Health and Human Services (HHS) issued a report showing that forty percent of teens in group homes had no clinical reason to be there rather than a family setting. Thus, the Act requires the federal government to limit reimbursement for group home services to two weeks, unless the child is in a qualified resident treatment program, in a setting that specializes in prenatal or parenting support, or a supervised independent living for youth over the age of 18.

Further, the Act eliminates the time limit for family reunification services, and allows for these services to be provided for fifteen months after reunification. Such reunification services can include educational programs, advocacy, and treatment for substance abuse which can help mend families who have experienced separation due to a child being placed in the welfare system. Also, the Act requires states to implement an electronic interstate case processing system to expedite the placement of children. In addition to reauthorization of the Adoption and Legal Guardianship Incentive Payment Program and other child welfare services programs, the Act appropriates eight million dollars for grants to recruit and retain high quality foster families.

Kinship Caregivers and the Opioid Epidemic

With the opioid crisis overwhelming the foster care system, more grandparents are stepping in to raise grandchildren that have been removed from their homes because of an addicted parent or parents. According to HHS, the number of children in foster care increased eight percent in four years from 397,000 to 428,000. Data is not available for the past two years, but experts say that number has increased dramatically due to being at the height of the opioid epidemic. Typically these children are outside of the foster care system and aid for their kinship caregivers is limited and varies widely state-by-state.

Currently, a grandparent that is caring for a grandchild out of the foster care system is not eligible to receive foster care payments. Generations United, an organization that advocates on behalf of "grandfamilies," has found that many grandparents caring for their grandchildren are on a fixed income, hovering near the poverty line, and the children in their care may be in need of counseling and medical care for psychological and physical trauma. This Act funds approved kinship navigator programs that can provide assistance to grandparents with counseling services, housing assistance, and other supports, when the child is not in the formal welfare system.

Another way that grandparents and other kinship caregivers could benefit from this Act is by the improvement of the Model Licensing Standards (Standards) regarding the placement of a child. Currently, these Standards aim to license family caregivers so they can benefit from the financial assistance and support services in place for foster families, but are typically vague and vary state by state. This lack of uniformity in the Standards causes confusion and may be a barrier for a person wanting to become a licensed caregiver. According to Pew Charitable Trusts, uniformity will improve the process for kinship caregivers to become licensed foster parents and provide the ability to take advantage of the financial support system in place within the foster care system. Thus, the Act requires HHS to establish Standards, and by April 1, 2019 states will have to report whether their Standards are in accordance or not with the Standards implemented by HHS.

Georgia Connections

The State of Georgia is one of the top three states that has seen a significant increase of children in the foster care system. Governor Nathan Deal made ease and access to adoption one of his top priorities of the 2018 Legislative Session. House Bill 159, passed by the Georgia General Assembly in 2018 and signed into law on March 3, 2018, reformed Georgia's outdated adoption process and procedures. By—among other reforms—reducing adoption wait times, banning middlemen who profit from arranging adoptions, and simplifying the out-of-state adoption process, Governor Deal stated that this bill "gives children, including the 13,500 children in foster care, renewed hope for a forever family."

One of the most impactful ways that House Bill 159 helps families in Georgia is by giving parents another option rather than exposing a child to an unhealthy or harmful environment or risking losing their child to the Division of Family and Children Services (DFCS). The Supporting and Strengthening Families Act bridges this gap and allows for parents to give temporary legal guardianship of their child to a friend or family member for up to one year. These placements help keep children out of the foster care system which can have affect children for years to come. Similar legislation has been enacted in other states and has helped parents after crisis regain custody of their children without using government assistance.

Along with the funding for preventative services and the programs implemented or reauthorized by the Family First Services Prevention Act, Georgia and other states are making great strides toward reformation of their foster care system. By giving families an option for their children's care, providing educational and financial support, and easing the adoption process, states are addressing foster care in a more comprehensive approach. Although we will not know how this new Act will fully affect the foster care system until October, when HHS will release compliance guidelines, advocates for foster care reform and all families can celebrate the passage of the Family First Prevention Services Act. - *LV*

Senate Budget and Evaluation Office Spotlight

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The Families First Prevention Act will change the ways in which states can make use of Foster Care IV-E federal funds. The clear policy intent in Family First is to incentivize states to use child caring institutions (CCIs) less by eliminating IV-E reimbursement for most uses of CCIs. Instead, "evidence based" program models for prevention activities will be eligible for partial IV-E funding. Since states still need to place children, it will put more pressure on states to find and support relative and foster home placements. If states do not succeed in building the capacity of their relative and foster care placement systems, they will be forced to provide a higher level of state funding support to CCIs as federal IV-E revenue drops. These Families First Prevention Act changes mean that approximately $15 million in IV-E funding is in flux here in Georgia.

Out-of-Home Care Program Fund Sources	FY2019
Adoption Assistance CFDA93.659	$239,636
Foster Care Title IV-E CFDA93.658	$49,182,486
State General Funds	$276,561,451
Temporary Assistance for Needy Families Grant CFDA93.558	$48,850,460
	$374,834,033

Increasing state general funds to support foster care placements Out-of-Home Care Program	FY2019
Increase funds for growth in Out-of-Home Care utilization.	$15,104,050
Complete the $10 per day increase for relative foster care by fully funding Phase II to meet the southeastern average cost for raising a child.	$14,924,850
Complete the $10 per day increase for child placement agency (CPA) foster parents by fully funding Phase II to meet the southeastern average cost for raising a child.	$5,346,928
Increase funds for child caring institution (CCI) per diem rates by 2.5 percent.	$2,426,667
Increase funds for child placement agency (CPA) administrative costs by 2.5 percent.	$1,170,954

In terms of HB 159, it was a modernization of adoption law. Many of the changes are procedural and involve deadlines, forms, processes. The law does allow for expanded temporary legal guardianships; there may be specific cases that never come to the attention of the child welfare system because of temporary legal guardianships. It is expected that the impact on the number of foster care placements will be modest and therefore only have modest budgetary impact.

Federal Regulations and Policy

Supreme Court Punt Could Prove as Critical Pass on Partisan Gerrymandering

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While the idea of gerrymandering in the United States is as old as our country itself, the Supreme Court's willingness to venture into this ever-evolving, politically-charged thicket is relatively new. The idea of drawing political districts was well known to our founding fathers, but was not coined until Massachusetts Governor, and future Vice President of the United States, Elbridge Gerry drew his now infamous, "salamander" district. Traditionally, the Supreme Court has been slow to wade into ruling on the issue of gerrymandering, only recently consistently holding that drawing district lines in an attempt to disadvantage a minority race is not allowed. The Court has since been more reluctant to hold the same conclusion regarding maps drawn to disadvantage an opposing political party.

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In fact, prior to 1986, the Court had considered cases of partisan gerrymandering to be non-justiciable, or unsuitable to hear and decide on the merits. It was that year that the Court finally held partisan gerrymandering to be a justiciable issue in *Davis v. Bandemer.* However, the Court still rejected the challenge to the maps as they were drawn. The Court again reviewed a partisan gerrymander challenge in the 2004 case *Vieth v. Jubelirer*, but again rejected the challenge to the maps. It was in this case that Justice Kennedy, while siding with the majority in rejecting the challenge, split to uphold the view that cases of partisan gerrymandering should remain justiciable. Justice Kennedy stated that while such challenges are justiciable, a remedy for the issue was yet to be proposed. Particularly, there remained missing a standard to determine when a map too far disadvantaged the opposing party; when a map could be deemed so politically gerrymandered that it is unconstitutional.

Last year, critics of partisan gerrymandering regained hope that the practice would finally be put in check when the Court agreed to hear challenges in two separate cases to states' maps. The Court heard arguments challenging the legislative map drawn by Wisconsin Republicans in October and heard arguments challenging a single federal congressional district drawn by Maryland Democrats in March, raising speculation that a monumental decision could be on the horizon for the summer. Most notably, the plaintiffs in the Wisconsin case, *Gill v. Whitford,* based their argument on a new standard to measure the effects of a redistricting plan on the respective political parties known as the "efficiency gap." The efficiency gap was designed to provide a measure based on the number of votes a political party "wastes" in a given election to determine whether either party enjoyed a systematic advantage. Votes cast for losing candidates, along with votes cast for winning candidates in excess of that required to win, are considered to be wasted. The two parties' wasted votes are then netted and divided over the total number of votes cast to provide a workable percentage known as the efficiency gap. Many hoped that the efficiency gap would finally answer Justice Kennedy's call for a judicial standard regarding political gerrymandering.

After months of anticipation, the Court released a decision in *Gill v. Whitford* on June 18, 2018. However, in a relatively rare unanimous decision, the Court did not touch on the merits of the case, instead deciding the plaintiffs lacked standing to bring the lawsuit, and allowed the case to be remanded for further findings. A plaintiff must have "standing" under Article III of the Constitution to bring a suit in federal court. Among three necessary elements to prove standing, a plaintiff must show "injury in fact." This is shown by alleging the plaintiff suffered an "invasion of a legally protected interest" that is "concrete and particularized." The Court reasoned that the plaintiffs challenging the Wisconsin maps based their challenge on the theory that the maps caused their votes to be diluted, or carry less weight than it otherwise would in a different, hypothetical district. The remedy for this type of harm is not to invalidate an entire state's map, but instead to fix individual districts. While the plaintiffs argued they were harmed by the gerrymandered maps through the composition and policymaking of the legislature as a whole, the Court stated that this is not the type of individualized harm required to convey standing. The Court's decision focused on the plaintiffs needing to challenge their individual districts, instead of the state's map as a whole.

While the Court's decision in *Gill v. Whitford* was viewed by many as a metaphorical punt on the issue of partisan gerrymandering, this decision will undoubtedly have lasting effects moving forward. While the merits of the case were not touched by the Court, the decision will affect the method in which plaintiffs in partisan gerrymandering cases must present their challenge. The Court notably did not rule that partisan challenges to state maps lacked standing, but instead that standing was not correctly argued in this instance. This distinction leaves open the possibility that future plaintiffs could rely on other theories to challenge state maps. In a concurring opinion authored by Justice Kagan, two possible theories for challenges were presented. First, plaintiffs could argue that a state map was so widely gerrymandered that to fix each affected district would result in redrawing the entire map. Second, the plaintiffs could argue that the maps violated their right of association under the First Amendment. These theories are likely to be tested as Gill returns to be argued in lower courts, or in other states such as North Carolina, where a redistricting case was ordered to be returned to the lower court for a finding on the issue of standing in light of Gill. Undoubtedly, critics of partisan gerrymandering will view this case as a missed opportunity as the Court's composition continues to change. In just over a week following the announcement of the decision in *Gill v. Whitford*, Justice Kennedy announced his retirement from the Court. Justice Kennedy's retirement provides uncertainty on the issue of partisan gerrymandering moving forward as he previously provided a critical swing vote that kept the issue justiciable while the search for a judicial standard continued. - *RB*

Federal Regulations and Policy

SCOTUS: When It Comes to Sports Gambling, Don't Bet Against the 10th Amendment

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On May 14, 2018, national media erupted with the news that the United States Supreme Court had legalized sports gambling nationwide. The ruling immediately caused a storm of commentary and punditry regarding the now imminent economic, regulatory, and moral effects that opening the proverbial "barn door" to sports betting will have on the country.

However, as is so often the case with headlines, a large part of the big news being widely reported about sports gambling was and is actually only partly accurate. The purpose of this article is to look into the actual ruling of the Supreme Court in *Murphy v. National Collegiate Athletic Association* and to examine what the High Court said, and perhaps more importantly for Georgia, what it did not say.

Gambling, and especially sports gambling, is, and always has been, a topic that makes Americans' blood run hot. Sports gambling is, in and of itself, a marriage of two of our most intense national passions: sports and money. The fusion of these two elements has led to some of the most flamboyant schemes and scandals in our country's history. The most famous of these incidents is remembered as the infamous "Black Sox" scandal of 1919. That year, "Shoeless Joe" Jackson and the Chicago White Sox lost the World Series to the Cincinnati Reds before having eight players indicted for conspiracy to commit fraud and banned from baseball for allegedly fixing the series at the behest of gambling syndicates. As a side-note, it must be mentioned that Shoeless Joe Jackson, the biggest star of the scandal, was never actually proven to be involved in the gambling scheme. In fact, he set the World Series record that year for hits in a series. In the court of public opinion however, he was found guilty by association.

1919 Chicago White Sox
Source: National Baseball Library

In 1951, 33 players for the defending college basketball national champion City College of New York Beavers, as well as the University of Kentucky Wildcats, and six other schools were convicted for participating in a point-shaving scheme backed by organized crime syndicates.

In 1963 the 'Golden Boy,' Paul Hornung, a Hall of Fame running back for the Green Bay Packers was suspended from the NFL for a year for gambling on outcomes of games in which he was a participant.

In 1979, members of the Boston College men's basketball team were caught 'point shaving' at the behest of Mafiosi.

In 1989, the great Pete Rose was permanently banned from Major League Baseball for betting on games as a manager. Hence, not unlike Shoeless Joe, but sans any case for the defense, baseball's all-time hit leader stands outside the Hall of Fame, looking in.

In recent years, serious rumors have swirled that even the famous 'Battle of the Sexes' in which female tennis legend Billie Jean King defeated male tennis star Bobby Riggs, was fixed by mobsters.

And, yet, despite the scandals that have rocked the sporting world, there has always been a little bit of Claude Raines in the indignation – in fact, the two, sports and money, have almost always gone hand-in-hand. Off-shore gambling 'houses' pepper the internet. And it's hard to find a college campus without competing sports books. News outlets – and, today, ESPN – even publish lines for most major sporting events. This ubiquitous legacy has its origins in the desert, where, in 1949, the state of Nevada first began to allow legal sports betting, and continues to allow betting on individual outcomes of single games. (Montana, Delaware, and Oregon also allow limited forms of gambling on sports.) Today, the Vegas-led industry is rumored to be worth billions of dollars. That it is only rumored to be worth so much stems from the illegality of it in most states. For many – and the popular interpretation of the law – is that this illegality was cemented by a 1992 Congressional measure led by NBA legend-turned Senator Bill Bradley, along with the National Football League (NFL), the National Basketball Association (NBA), the National Hockey League (NHL), Major League Baseball (MLB), and the National Collegiate Athletic Association (NCAA), passed the Professional and Amateur Sports Protection Act, also known as both "PASPA" and the "Bradley Act"). The Act states:

> "It shall be unlawful for—
>
> (1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or
> (2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity,
>
> a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games" 28 U.S.C § 3701.

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(SCOTUS: When it Comes to Sports Gambling, Don't Bet Against the 10th Amendment - continued from page 5)

In passing the Bradley Act, Congress prohibited any state not already authorizing sports gambling from ever doing so in the future. The four states already allowing the practice were permitted to continue unimpeded by the new law via a "grandfather" provision within the Act. The Act also included a carve-out for the state of New Jersey, which, at the time, was considering legalizing sports betting. This provision would have allowed New Jersey to authorize gambling on sports within one year from the passage of the Act. However, New Jersey failed to pass the requisite legislation within a year, and subsequently forfeited the caveat created by the Act.

It is crucially important to note that the Act did not criminalize the practice of sports betting. The Bradley Act simply forbade any new state from authorizing the practice, prohibited any private individual from acting upon any state law that may be passed in defiance of the Bradley Act, and created a cause of action whereby any state attempting to do so might be sued in federal court.

The Bradley Act remained largely unchallenged until 2012, when the New Jersey Legislature, backed by then-governor Chris Christie, passed legislation which authorized sports betting at casinos and horseracing tracks within the state. Immediately, the NCAA (joined by the NFL, NHL, and NBA), sued Governor Christie and New Jersey in federal court under the Bradley Act, in order to prevent New Jersey's new law from going into effect.

The Third Circuit Court of Appeals agreed with the NCAA, and struck down the New Jersey statute. Not to be discouraged, the New Jersey Legislature almost immediately passed a similar measure authorizing sports betting in 2014. The NCAA sued again, and won again. This time, however, New Jersey appealed the Third Circuit's decision to the Supreme Court of the United States, claiming that the Bradley Act violated the 10th Amendment of the United States Constitution.

The 10th Amendment states that, "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

This doctrine of "duel-sovereignty" created by the 10th Amendment has since come to be known as the "anti-commandeering principle." Under this principle, the states are considered themselves to be sovereign entities within the nation as a whole, and as such, may not be forced by Congress to take any action that is not specifically enumerated within Constitution.

The Supreme Court granted certiorari to New Jersey's petition, and heard oral arguments in *Murphy v. National Collegiate Athletic Association* in late 2017.

On May 14, 2018, the Court issued its opinion. Justice Alito, writing for a 6-3 majority, noted that "a healthy balance of power between the States and the Federal Government reduces the risk of tyranny and abuse from either front" 584 U.S. ____ (2018). The Court then struck down the Bradley Act, agreeing with New Jersey that Congress had overstepped its bounds, and that "a more direct affront to state sovereignty is not easy to imagine."

Justice Alito was, however, careful to state that the Court's ruling should not be interpreted to be either an approval or legalization of sports gambling, and stated clearly that Congress does have the authority to pass legislation directly regulating sports gambling. However, Congress may not force states to regulate or prohibit gambling in its place.

In the weeks following the Supreme Court's landmark decision, states across the country have rushed to push through legislation legalizing sports gambling. New Jersey's sports betting law became effective on June 11, 2018. Delaware, one of the original states permitting limited sports betting before the passage of the Bradley Act, has already passed a bill legalizing gambling on individual sporting events which became effective on June 5, 2018. Further, New York, West Virginia, Pennsylvania, and Mississippi have also passed laws legalizing various forms of sports gambling which will soon become effective.

How does *Murphy v. NCAA a*ffect Georgia? For the time being at least, it does not. The state's constitutional prohibition against any form of gambling remains safely intact. However, should Georgia's citizens ever choose to change their minds on the subject, the Supreme Court has placed the ball directly in our court. - *TB*

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