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AT ISSUE

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A Message from Senator Shafer

It is my privilege to present you with the latest edition of *At Issue*, a publication of the Georgia State Senate offering in-depth analysis of statewide and national issues. Each month, this publication will profile court cases, newly enacted legislation, and study committee work in an effort to keep Senators and staff members up-to-date on newsworthy matters.

I would like to thank the Senate Research Office for their insightful analysis of these important issues, as well as the Senate Press Office for their design and layout work. These departments will continue this partnership for future editions of *At Issue*.

I invite you to use this publication as a resource to keep informed about topics that concern the future and our state and country.

Landmark Supreme Court Decision

Supreme Court Upholds "Ceremonial Prayer" at Public Meetings

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In early May, the U.S. Supreme Court ruled in *Town of Greece v. Galloway* that a town's practice of opening its public council meetings with prayer does not violate the Establishment Clause of the First Amendment. The divided court ruled 5-4 in favor of the town of Greece, New York with Justice Anthony Kennedy joining the four conservative members of the court to form the majority.

Background

The plaintiffs, represented by the Americans United for Separation of Church and State, argued in their 2008 lawsuit that the town's regular practice of inviting a chaplain to lead a prayer and devotion before town meetings violated the First Amendment, as the chaplains selected were almost exclusively Christian. The plaintiffs, Susan Galloway (who is Jewish) and Linda Stephens (who is an atheist), argued that this practice made them feel excluded from the town's business and argued instead that opening prayers should be limited to "inclusive and ecumenical prayers" that referred only to a "generic God."

According to undisputed facts set forth in the *Galloway* opinion, prior to 1999, Greece town council meetings began with a moment of silence. Throughout much of the period between 1999 and 2010, each meeting of Greece's town council began with a prayer or invocation. Each month, the person chosen to lead the council's opening invocation was selected by a town employee from a list of clergy that had expressed a willingness to serve as chaplain. The clergy were contacted from a local registry of churches. *(Continued - page 2)*

CALENDAR

6/12/14 **Child Welfare Reform Council - Meeting #2**
Emory University
Details TBA

8/5/14 **Child Welfare Reform Council - Meeting #3**
Children's Healthcare of Atlanta Office Park
Details TBA

Information related to upcoming study committee meetings will be listed once details are available.

Gov. Nathan Deal speaks at the first Child Welfare Reform Council Meeting
(gov.georgia.gov)

Child Welfare Reform Council Holds First Meeting

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The Governor's Child Welfare Reform Council convened on May 1, 2014. It was created and appointed by Governor Nathan Deal in March 2014; Governor Deal stated that it will be modeled after the Criminal Justice Reform Council by conducting a comprehensive review of the Division of Family and Children Services.

The Council stems from the efforts of Lt. Governor Cagle's Foster Care Reform Initiative Working Group, which was created to study the current state of Georgia's foster care program and chaired by Senator Fran Millar. The Child Welfare Reform Council is comprised of public and private sector individuals who deal directly with Georgia's most vulnerable children.

Melissa D. Carter, Executive Director of the Barton Child Law & Policy Center at Emory Law School provided a detailed overview of the child welfare system in Georgia; it included a historical analysis since 2000 when the Terrell Peterson tragedy shocked Georgia and the nation. Data showed the number of Georgia children in foster care hit a peak of 42,000 in the first quarter of 2004. *(Continued - page 6)*

(Supreme Court Decision - continued from page 1) This registry did not include places of worship maintained by non-Christian denominations. However, both Galloway and Stephens testified at the trial level that they were not aware of any non-Christian places of worship in the Town of Greece, a municipality of roughly 94,000 people, as it was an overwhelmingly Christian community.

The town maintained in its response to the lawsuit that it at no point excluded or denied an opportunity for anyone to lead the monthly prayer, stating that a minister or layperson of any faith, including an atheist, could provide the invocation. The town's leadership stated that it did not make an advance review of the prayers to be given and did not provide any guidance as to the tone or content of the prayer that should be delivered.

Following complaints by Galloway and Stephens in early 2008, four of the council's twelve monthly meetings that year were opened by non-Christians, including a member of the local Jewish laity, the head of the local Baha'i faith, and a Wiccan priestess. Despite these changes to the prayer program, Stephens and Galloway continued with their lawsuit. However, the district court ruled in favor of the town, finding that the town did not intentionally exclude non-Christian residents or ministers from offering the council's opening invocation and had in fact opened the prayer program "to all creeds and excluded none."

The district court also emphasized that the content of the prayers offered in the invocations was not at issue, because the prayers were not offered in an effort to evangelize or to speak out against other religious faiths. The district court also found that the Christian identity of most of the prayer givers reflected the "predominantly Christian identity of the town's congregations and that the town was not required to invite clergy from out-of-town congregations to achieve religious diversity."

The district court also rejected the plaintiffs' argument that all legislative prayers must be non-sectarian, citing an earlier Supreme Court ruling, *Marsh v. Chambers*, which permitted prayer in state legislatures by a state-paid chaplain so long "as the prayer opportunity was not 'exploited to proselytize or advance any one, or to disparage any other, faith or belief.'" The court found that, with respect to opening prayers offered in Greece town council meetings, "references to Jesus, and the occasional request that the audience stand for the prayer, did not amount to impermissible proselytizing."

The Second Circuit disagreed and reversed the district court's decision. While noting *Marsh*, the Second Circuit found that the town's practice of having exclusively Christian prayers offered at numerous consecutive town council meetings over a period of several years was equivalent to an endorsement of Christian faith. The court held that "some aspects of the prayer program, viewed in their totality by a reasonable observer, conveyed the message that Greece was endorsing Christianity." The Second Circuit determined that the town's failure to "promote the prayer opportunity to the public or to invite ministers from congregations outside the town limits all but ensured a Christian viewpoint."

The Supreme Court agreed to review the case in light of its apparent conflict with the 1983 *Marsh* decision. Twenty-four state attorneys general, including Georgia Attorney General Sam Olens, joined in filing an amicus brief with the Court, siding with the Town of Greece. Attorney General Olens was the chairman of the Cobb County Commission when, in 2005, the commission's practice of opening its meetings with prayer was challenged by some local residents. The Eleventh Circuit ultimately ruled in favor of the commission's practice in its *Pelphrey v. Cobb County* decision, holding that opening prayers do not violate the Establishment Clause as long as a government entity provides the opportunity for prayer without advocating on behalf of a particular religious faith.

Supreme Court Majority Backs Opening Prayers

In overturning the Second Circuit's decision and ruling in favor of the town, the court's *Galloway* opinion, written by Justice Kennedy, emphasized that, despite the overwhelming Christian majority in the area, it was not the policy of the town to only hold Christian prayers or to have invocations given only by Christian ministers or chaplains, noting that the town had provided the opportunity for anyone in the town to lead the opening prayer at the governing meeting, regardless of their religious beliefs, if any.

Kennedy's opinion emphasized that the town's official practice was non-sectarian and was not designed to exclude or disparage any residents of the town. "The inclusion of a brief, ceremonial prayer as part of a larger exercise in civic recognition suggests that its purpose and effect are to acknowledge religious leaders and the institutions they represent, rather than to exclude or coerce non-believers," the opinion states. Kennedy also rejected the notion that legislative bodies or courts should seek to define the content or parameters of an invocation in an effort to strip legislative prayers of sectarian references or language. Noting the difficulty of determining which religious references would be acceptable and those which would not, the Court stated:

> *[G]overnment may not seek to define permissible categories of religious speech. Once it invites prayer into the public sphere, government must permit a prayer giver to address his or her own God or gods as conscience dictates, unfettered by what an administrator or judge considers to be non-sectarian.*

In addition, citing *Marsh*, the majority reflected upon what Justice Kennedy described as a long-held American tradition of public prayers to open legislative and government meetings. "The Congress that drafted the First Amendment would have been accustomed to invocations containing explicitly religious themes of the sort [Galloway and Stephens] find objectionable." Because of this tradition, the Court followed its earlier reasoning in *Marsh* that "legislative invocations are compatible with the Establishment Clause" and not an exception to it. The Court's opinion notes specifically that "ceremonial prayer is but a recognition that, since this nation was founded and until the present day, many Americans deem that their own existence must be understood by precepts far beyond that authority of government to alter or define."

Dissenters Focus on Christian Nature of Prayers

Other justices were more skeptical of the town's outreach efforts and the usefulness of the *Marsh* decision. Writing in dissent, Justice Kagan argued that, despite its professed willingness to allow adherents of other faiths to lead the regular invocation, the Town of Greece did not "involve, accommodate, or in any way reach out to adherents of non-Christian religions." Justice Kagan's dissent further noted that each month:

> *[F]or over a decade, prayers steeped in only one faith, addressed toward members of the public, commenced meetings to discuss local affairs and distribute government benefits . . . [T]hat practice does not square with the First Amendment's promise that every citizen, irrespective of her religion, owns an equal share in her government.*

This argument seems to have held little weight with the majority. "Adults often encounter speech they find disagreeable," noted Kennedy's opinion.

Kagan also distinguished prayers offered at the start of a state's legislative session from those offered at a town meeting. "Greece's town meetings involve participation by ordinary citizens, and the invocations given—directly to those citizens—were predominantly sectarian in content." Unlike prayers given to open sessions of a state legislature or the Congress, where the elected officials seated in the chamber are the intended audience, in Greece, New York "the prayers there are directed squarely at the citizens," the dissent argues.

When offered directly before members of the public exercise their rights to petition their government, the dissenters argue that such prayers place considerable pressure on members of the public, who do not share the religious views of the person offering the prayer, to appear to be in conformity with other members of the audience who do share those views. The majority countered this point by noting that plaintiffs Galloway and Stephens had offered no evidence that:

> *[T]own leaders allocated benefits and burdens based on participation in the prayer, or that citizens were received differently depending on whether they joined the invitation or quietly declined. In no instance did town leaders signal disfavor toward non-participation or suggest that their stature in the community was in any way diminished.*

Such an instance, the majority argued, would present a different case from that in *Galloway*, particularly "If circumstances arise in which the pattern and practice of ceremonial, legislative prayer is alleged to be a means to coerce or intimidate others."

Immediate Impact: *Galloway* Keeps *Pelphrey* Decision in Place

As the Court did not limit its ruling specifically to town meetings, the decision is likely to have an immediate impact on prayer and invocation practices at all levels of government. (*Continued - page 6)*

Georgia's New Motor Vehicle Title Fee

Farewell to the Birthday Tax

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If paying property taxes in Georgia seems like understanding Latin, then you might be on to something. Taxing property in Georgia is based upon an "ad valorem" system which is a Latin term based "upon the value" of the interest held by the taxpayer; simply, an owned good was taxed according to its value, and this applied to both real and personal (or tangible) property. Georgia has a long history of strong county and city governments under our unique "home rule" provision in the State Constitution, and these governments are vested with the power to collect ad valorem taxes on land and automobiles, for example. The constitutional authority to tax property is founded in Art. VII, §1, ¶3 of The Georgia Constitution.

Who Taxes Real and Personal Property? Policy makers determined in 2010 that Georgia should no longer levy its own ad valorem tax on real property; the consideration was based on the policy that the State should not be in the business of taxing land ownership. The State's "quarter mill" tax will be phased out completely by 2016 (under House Bill 1055). Local governments and school systems continue to levy and collect an ad valorem tax on real property.

What Is The Birthday Tax? The part of this taxing scheme that everyday people did understand was that their motor vehicle ad valorem tax was due annually--on their birthday, for this was widely known in Georgia as the 'birthday tax." Ad valorem taxation balances percentages of value and rates per thousand against the fair market value which is assessed by local tax assessors. The annual birthday tax was officially axed under the broad tax reform legislation passed in 2012.

What Did Tax Reform Do? House Bill 386 made numerous, substantial changes to Georgia's tax policy including the elimination of the annual ownership tax on automobiles, but this applies only to vehicles commercially and casually purchased in 2012 and thereafter. Vehicles purchased before that will continue to pay the annual birthday tax. This new law also removed the sales tax due on new and used vehicles purchases, but the lost revenue is replaced with a new Title Ad Valorem Fee due at the time of purchase or when the vehicle is registered with the local tax commissioner's office. This is a one time title fee which is calculated by multiplying the fair market value of the motor vehicle by a title fee rate of 6.75 percent in 2014 (it was 6.5 percent in 2013); however, this rate increases to 7 percent in 2015 and thereafter. Counties will continue to collect the birthday tax on ineligible vehicles and other personal property like boats, but these collections will continue to decrease over time as the vehicles are sold by which they become subject to the new title fee.

How Are Vehicle Values Set? The Georgia Department of Revenue uses a state motor vehicle assessment manual to establish the fair market value along with retail sales prices for vehicles. These values are appealable by the vehicle owner, but the title fee must be paid prior to the formal appeal.

Where Does The Title Fee Revenue Go? The funds collected from this fee are divided between the state and local governments; the various counties, cities, and school systems are guaranteed to be refunded with a certain amount of revenue from the title fee which is tied to local sales tax collections made in 2012. There were too many loopholes in the old tax system where sales taxes were not paid and the birthday tax was avoided or cheated by altering the location of the vehicle registration. This is why a local homestead exemption eligibility is tied to correct vehicle registrations. Counties collect the title fee from vehicle sales, then submit to the State its share. Counties are guaranteed continued revenue under a "hold harmless" provision which begins in 2016 based upon the data from 2015. Depending upon the relationship between actual title fee revenues collected and the applicable revenue benchmarks, the percentage allocation between the state and the local governments may automatically adjust and the rate may fluctuate in 2016. Consider that, using all vehicle registrations for each county, the top five counties (Fulton, Gwinnett, Cobb, DeKalb, and Chatham) comprise about 30 percent of the entire statewide total; however, the smallest five counties (Taliaferro, Quitman, Webster, Clay, and Baker) make up just .002 percent of total statewide registrations. This disparity generally reflects population totals, but local governments do not receive revenue based upon total persons living there. The State of Georgia provided over $1.1 billion to the local governments for 2013 under the new title fee law.

Can Too Much Revenue Be Collected? Excess sums are divided three ways for the local school system, LOST and SPLOST. Some counties may not enjoy surplus sums because of the varied sales tax bases and commercial centers among the many counties.

Can Too Little Revenue Be Collected? Counties collect the title fee and send the state its share. Counties are guaranteed of their revenue under a "hold harmless" provision which begins 2016, based upon the data from 2015. The title fee could be raised above 7 percent, if necessary; that would require a statutory change by the Legislature. Depending upon the relationship between actual title fee revenues collected and the applicable revenue benchmarks, the percentage allocation between the state and the local governments may automatically adjust and the rate may fluctuate in 2016.

When Is The Title Fee Not Collected? There are some important exceptions to the new title fee when it will not be due: 1) transfer of ownership between immediate family members (spouse, parent, child, sibling, grandparent, or grandchild) or because of death will only be charged a nominal title fee; 2) salvage vehicles will only be charged a 1 percent title fee; 3) new residents who have moved into Georgia will only be required to pay 50 percent of the title fee upon moving into the state, and they will have 12 months after that to pay the remaining 50 percent; 4) the title fee will not apply to corrected titles, replacement titles, or titles reissued to the same owner which reflect satisfaction of liens; and 5) disabled veterans, Purple Heart recipients, and former Prisoners of War who own vehicles that are exempt from ad valorem taxes will be exempt from the new title fees. It is important to remember that vehicles purchased out-of-state must be properly registered in the owner's county of resident, and that is when the title fee will have to be paid. Leased vehicles are subject to the title fee; however, there is no longer a monthly sales tax collected on the lease.

Is This Still A Tax? No; it is a fee based upon a title transfer. Because newly acquired vehicles are no longer subject to an ad valorem tax, taxpayers who itemize their federal taxes cannot deduct that sum in order to set an adjusted gross income; however, the ad valorem tax on real property remains deductible.

Will The Title Fee Be Changed? House Bill 729 was the latest adjustment to the title fee, and it achieved final passage by the General Assembly during the 2014 Legislative Session. The intent of the legislation was to close up loop holes which were allowing some to avoid paying the title fee; however, the bill was vetoed by Governor Deal on April 30, 2014, for the following reason:

> *"Georgia's existing Title Ad Valorem Tax law ("TAVT"), enacted March 1, 2013, eliminated the "birthday tax" and substituted it with a one-time payment upon the transfer of the vehicle title. I support the main effort of this bill, which sought to ensure there was no gaming of the vehicle trade-in valuations during the purchase and trade-in of a used car. However, the inclusion of the language regarding a lease finance company being eligible for a trade-in reduction at the end of a leased term significantly changes the trade-in definition. Current law states that local governments must receive a base amount and the first recalibration of the disbursements is Jan. 1, 2016. The first recalibration of the state target collection is July 1, 2015, which will determine if the tax rate requires a change. The negative effects of the lease provision on the state and local collections would be addressed in both recalibrations. I am vetoing this legislation because I believe it is too soon to implement a law that adversely affects revenue, thus, leaving the state of Georgia TAVT taxpayers in a more unstable position as the split between the state and local governments share of this revenue. Accordingly, I VETO HB 729."*

Do Other States Tax Vehicles? There is no uniform method regarding the mechanism used by other states to tax motor vehicles. As seen in the chart below, states vary widely in their approach to taxing vehicles. North Carolina levies a 3 percent Highway Use Tax which is collected every time a title is transferred for the maintenance of roads and highways. This is an interesting approach to funding state roads and highways, considering that a gas tax is becoming less effective as vehicles become more fuel efficient. While New York collects no personal property tax (vehicles, jewelry, etc.), it does collect taxes on real property (real estate). *- BJ/JC*

State	Annual Vehicle Tax	One Time Tax at Title Transfer	Tax Rate	Explanation
North Carolina		X	The North Carolina Highway Use Tax on vehicles is 3%.	North Carolina collects a Highway Use Tax (HUT) on vehicles instead of a state sales tax. The tax is assessed each time a title is transferred. Money that is collected for the Highway Use Tax goes to the NC Highway Trust Fund and the State's General Fund. That money is then used to improve the roads of North Carolina.
Alabama		X	Class IV Motor Vehicles - 15%: This class includes all private passenger motor vehicles, including private passenger motor vehicles under lease-purchase option contractual agreements, and motor vehicles registered in the name of a beneficiary of a trust.	Ad valorem taxes on motor vehicles are assessed and collected forward on a current basis to coincide with the collection of motor vehicle registration fees. All accrued ad valorem tax on a motor vehicle must be collected prior to the vehicle registration.
South Carolina	X		Tax rates vary and are determined by the county auditor in each county.	In South Carolina, payment of personal vehicle property taxes is required before a license plate can be issued or renewed. The taxes are paid directly to the county treasurer.
New York				Unlike many states, there is no personal property tax in New York. Rather than taxing items such as jewelry and vehicles, only real property is taxed. The property tax is an ad valorem tax, meaning that it is based on the value of real property. Real property (commonly known as "real estate") is land and any permanent structures on it.
Virginia		X	Virginia levies a 4% Motor Vehicle Sales and Use (SUT) Tax based on the vehicle's gross sales price or $75, whichever is greater.	For the purposes of the Motor Vehicle Sales and Use Tax collection, gross sales price includes the dealer processing fee. The Motor Vehicle Sales and Use Tax is collected at the time of titling whenever a vehicle is sold and/or ownership of the motor vehicle changes.
Ohio		X	The state sales and use tax rate is 5.75 percent.	When a motor vehicle title is transferred, the price of the vehicle is reported to a Clerk of Courts Title Office and sales tax is paid on the price of the vehicle.
Indiana	X		When you purchase a vehicle in Indiana, you must pay a 7 percent sales tax.	Whether registering your vehicle for the first time or renewing your registration, you will pay an excise tax fee and a registration fee.

(Supreme Court Decision continued from page 3) According to the *Washington Times,* on the afternoon the Court's decision was released, a county in Maryland reinstituted its practice of holding prayer before its county commission meetings. Earlier this year, a court had ruled that the county's practice of opening commission meetings with Christian prayer was unconstitutional.

Cobb County, Georgia is one part of the country that is unlikely to be immediately impacted by the Court's decision. The *Galloway* decision largely tracks reasoning adopted by the Eleventh Circuit Court of Appeals which, in 2008 in *Pelphrey,* upheld the Cobb County Commission's practice of opening its meetings with prayer, the constitutionality of which was challenged by several Cobb residents. However, the Eleventh Circuit, in overturning the ruling of the U.S. District Court that had sided with the plaintiffs, noted that courts do not have a role in regulating the content of public prayers so long as they do not advance a particular religion or disparage another. Justice Kennedy used similar language in the *Galloway* decision when he argued that if invocations were required to be non-sectarian, legislatures and courts would be required to "act as supervisors and censors of religious speech."

Other Establishment Clause Controversies Remain Unresolved

While the *Galloway* decision impacts invocation practices at all levels of government, it is unlikely to lay to rest other controversial Establishment Clause issues, including disputes regarding the constitutionality of religious displays on public or government property or acknowledgement of religious holidays by public officials or employees. While perhaps signaling a willingness by the Court's majority to embrace traditional Judeo-Christian religious practices in the public forum, because Kennedy's opinion relies heavily on the historic nature of the practice of opening legislative meetings with prayer and invocation, and does not rely on other tests the Court has established in regard to the Establishment Clause, the *Galloway* and *Marsh* opinions may be of limited value to Establishment Clause jurisprudence outside the legislative prayer context.

In addition, Kennedy's opinion in *Galloway* specifically distinguishes the Court's rulings on legislative prayer from its decision in *Lee v. Weisman*, in which the Court found that a religious prayer offered by a Rabbi before a high school graduation, at the school's request, violated the Establishment Clause. In *Galloway*, the Court noted that adults who attend town council meetings are not dissuaded from leaving meetings during the time of prayer, or from choosing not to participate in the prayer. In contrast, the Court in *Lee* found school-sanctioned prayer to have a much more coercive effect, particularly on students and younger members of the audience who might feel less free to protest or leave the proceedings.

By distinguishing *Marsh* and *Galloway* from *Lee*, and by signaling that *Galloway* might not apply in situations where legislative invocations are shown to deliberately isolate or exclude certain groups in the community, the Court appears to be signaling that the "coercion test" applied in the Lee decision remains the standard by which most challenges to government actions, on the basis of the Establishment Clause, will be judged. *- BV*

(Governor's Child Welfare Reform Council - continued from page 3)

Gov. Nathan Deal and Council Chair Stephanie Blank *(gov.georgia.gov)*

Further, Georgia ranks relatively low (about 50 percent of the national rate) in the number of children in foster care and recurrence of intakes, which is the subsequent removal of a child from their home. In FY 2013, there were 13,675 children served by the foster care system with an average age of 7.6 years old; moreover, the median length of stay in foster care was 11.6 months.

Commissioner Keith Horton of the Department of Human Services highlighted services provided by DHS, noting the Division of Family and Children Services has about 6,000 employees serving 2.2 million Georgia customers and utilizes 180 offices statewide. The average caseload per DFCS case manager has increased to 19 open cases as of January 2014.

Since September 2013, there have been more children entering foster care than leaving care; as of March 2014, there were 8,385 children in Georgia foster care. Children In Need Of Services (CHINS) is a new paradigm for interacting with status offenders; this is the result of House Bill 232 (2013). CHINS covers actions like truancy, running away or being ungovernable.

The Governor's Child Welfare Reform Council will meet again on June 12 and August 5, 2014. *- BJ*

Further information can be found online:
https://gov.georgia.gov/child-welfare-reform-council

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