

**IN THE SUPREME COURT
FOR THE STATE OF GEORGIA**

Case No. S14A0792

ANTHONY AVERY and SUSAN M. WILKINS,

Appellants,

v.

STATE OF GEORGIA, PAULDING COUNTY AIRPORT AUTHORITY, and
PAULDING COUNTY, GEORGIA,

Appellees.

**BRIEF OF GEORGIA TAXPAYER ALLIANCE, INC.
AMICUS CURIAE IN SUPPORT OF APPELLANTS' MOTION FOR
RECONSIDERATION**

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The Court's June 30, 2014 Opinion should be a matter of high concern for any citizen who believes that taxpayers should have some say before public officials commit them to substantial, long-term economic burdens. If the Court's Opinion stands, the Court will have dealt a near fatal blow to two crucial constitutional protections—the Debt Clause and the Lending Clause—that, for decades, have protected the interests of taxpayers in Georgia. The Opinion turns the Intergovernmental Contracts Clause, Art. IX, Sec. III, Para. I—a once narrow exception to the Debt Clause's requirement of a referendum for any new public debt—into a virtually unrestricted license for local governments to obligate taxpayers on a long-term basis with no direct input from the public. Equally alarming to Georgia's taxpayers, the Opinion concluded that the Lending Clause does not prohibit a county from extending its credit to guarantee the obligations of a private business. But if the Lending Clause does not preclude even the most straightforward extensions of public credit for the benefit of private parties, there is no reason to believe that it imposes any restrictions at all.

The Opinion, in short, all but eliminates two well-established constitutional protections to the detriment of taxpayers across the state. Accordingly, Amicus Curiae Georgia Taxpayer Alliance, Inc., files this brief in support of Appellants' Motion for Reconsideration and respectfully urges the Court to vacate its June 30, 2014 Opinion.

STATEMENT OF INTEREST

The Georgia Taxpayer Alliance, Inc., is a grassroots, all-volunteer organization that informs citizens of the State of Georgia about tax issues and advocates on behalf of taxpayers on issues of local government. The Court’s Opinion undermines the rights and interests of its members, volunteers, and ultimately, the taxpayers of Georgia.

ARGUMENT

I. The Court’s Interpretation of the Intergovernmental Contracts Clause Effectively Eliminates the Requirement of a Referendum Approving New Local Debt

The Constitution of the State of Georgia has long recognized that in local decisions affecting taxpayers, “representative democracy should be reduced to its most elemental form—the undiluted voice of the people.” *Dep’t of Transp. v. City of Atlanta*, 255 Ga. 124, 128 (1985). Consistent with that foundational principle, the Debt Clause of the Constitution requires that the incurrence of any new local debt be approved in a voter referendum. Ga. Const. Art. IX, Sec. V, Para I(a). For decades, this referendum requirement has ensured that taxpayers have a direct say over whether additional public debt will be incurred.

While the law recognizes a few, carefully considered exceptions to the referendum requirement, the exceptions were never intended to do away with the referendum requirement altogether. Nor were they intended to allow local governments to readily and routinely bypass voters in obligating taxpayers

financially. That is why the exceptions to the Debt Clause's referendum requirement have been narrowly and carefully construed.

Without acknowledgment of these well-established principles, the Court's Opinion effectively eliminates the referendum requirement by drastically expanding the intergovernmental contracts exception to the Debt Clause. The Opinion provides that an agreement qualifies as a contract for "services" or "use of facilities" within the meaning of the Intergovernmental Contracts Clause, simply by: (1) obligating one governmental entity to make payments or (2) relating to some generalized public use or benefit. This decision effectively eliminates the express constitutional requirement and runs counter to the long-standing decisions of this Court establishing that valid intergovernmental contracts be contracts for "services" or the "use of facilities."

If the standard in the Court's Opinion were the law, virtually every governmental contract involving a public project would qualify for the intergovernmental contract exception. After all, any public contract that would normally be subject to the Debt Clause (because it involves new debt) involves a governmental entity's agreement to make some sort of payment. Since public contracts would qualify as valid intergovernmental contracts almost as a matter of default under the Court's Opinion, the referendum requirement would be rendered largely, if not entirely, irrelevant. The intergovernmental contracts exception, in

other words, would swallow the rule, eroding the protection intended for Georgia's taxpayers.

The Constitution's protection of taxpayer rights should not be discarded. Absent a constitutional amendment, the Debt Clause remains the general rule, and taxpayers should receive the protection against unwanted public debts that the Constitution provides through the public referendum requirement. The Georgia Taxpayers Alliance thus requests that the Court reconsider and vacate the Opinion's unprecedented expansion of the intergovernmental contracts clause and its abandonment of the Debt Clause.

II. A County's Agreement to Guarantee a Private Business's Payment Obligations Violates the Lending Clause.

The Lending Clause prohibits a county from "lend[ing] its credit" to any private entity, "except for purely charitable purposes." Paulding County's agreement to make payments on the Paulding County Airport Authority's Bond, in the event that Silver Comet is unable to do so, is a clear-cut example of a county "lend[ing] its credit" to a private entity. A finding of "public benefit" does nothing to negate Paulding County's plain violation of the Lending Clause.

The record in this case shows that Silver Comet and the Paulding County Airport Authority entered into a contract which Silver Comet acknowledged in the agreement was "essential" for its business. Therefore, Silver Comet agreed to pay debt service on the bonds that the Airport Authority proposed to issue. Paulding

County, in turn, entered an agreement with the Airport Authority to pay debt service on the bonds if the Authority did not have money (from Silver Comet) to make the payments. The County's guarantee of the Airport Authority's bonds is important because, without out it, prospective purchasers of the bonds would be less likely to buy them.

The Court found that Paulding County's guarantee of Silver Comet's payment obligations was not a violation of the Lending Clause—again with virtually no discussion—leaving the taxpayers of Georgia to wonder whether anything remains of the Lending Clause. While the Court's Opinion may be premised on nothing more than an easily correctable misunderstanding of the financial arrangement at issue, it bears noting that for the Lending Clause to have any meaning at all, a loan of public credit as plain and unmistakable as Paulding County's guarantee of Silver Comet's payment obligations must constitute a prohibited loan of public credit. The Georgia Taxpayers Alliance therefore requests that the Court reconsider its Opinion as it relates to Paulding County's unlawful loan of public credit to Silver Comet.

III. The Findings of Fact in the Validation Order of the Court below did not include Any Findings of Fact that the amount of the proposed Bonds was not statutorily excessive.

Article 9, § 5, ¶ 1 of the Georgia Constitution sets forth that

(a) The debt incurred by any county, municipality, or other political subdivision of this state, including debt incurred on behalf of any special district, shall never exceed 10 percent of the assessed value of all taxable property within such county, municipality, or political subdivision; *and* no such county, municipality, or other political subdivision shall incur any new debt without the assent of a majority of the qualified voters of such county, municipality, or political subdivision voting in an election held for that purpose as provided by law. [emphasis added]

The court's failure to make such a finding renders its order invalid.

IV. The Court in its ruling of June 30, 2014, continued its historical misinterpretation of the plain language of Article 9 § 3, ¶ 1(a) of the Georgia Constitution which does not allow incurring public debt for the creation and building of facilities but only for the leasing of existing facilities.

Article 9 § 3, ¶ 1(a) was approved by the voters of Georgia as a way to facilitate intergovernmental cooperation in the use of *existing* facilities, and clearly not as a way to nullify the Debt Clause. It must be narrowly read so as not to conflict with the Debt Clause, and such a narrow reading is not only possible but also mandated by its unambiguous language, to wit:

(a) The state, or any institution, department, or other agency thereof, and any county, municipality, school district, or other

political subdivision of the state may contract for any period not exceeding 50 years with each other or with any other public agency, public corporation, or public authority for joint *services*, for the provision of *services*, or for the joint or separate *use* of facilities or equipment; but such contracts must deal with activities, services, or facilities which the contracting parties are authorized by law to undertake or provide.

The clear language of the Article allows intergovernmental leasing, and even then such leasing is restricted to the leasing of facilities that the contracting parties can legally provide. To build facilities requires either funds saved or collected from current revenues *or* the incurring of voter-approved Debt..

There is no finding in this case that Paulding County is merely carrying out a renovation or a repair. Manifestly it is proposing to *build* something grandiose and obligate future taxpayers to pay for it whether or not it is financially viable or even desired by the public.

Paulding County cannot *legally* provide a debt-financed big airport to be leased by itself any more than it can build a big debt-financed brothel to be leased by its airport authority under the guise of providing jobs and promoting tourism .

CONCLUSION

For the reasons stated above, the Georgia Taxpayers Alliance respectfully urges the Court to grant Appellants' Motion for Reconsideration and vacate the June 30, 2014 Opinion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I filed the “**Brief of the Georgia Taxpayers Alliance, Inc., as *Amicus Curiae* in Support of Appellants**” by filing the same through the Court’s electronic filing system. I further certify that I have caused to be served a true and correct copy of the aforementioned upon counsel of record by email and by depositing the same in the United States mail, first-class postage prepaid, addressed to:

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