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CONSTITUTION OF THE STATE OF GEORGIA A Resolution: Amend the Constitution of the State of Georgia to Prevent Discrimination in the Public Funding of Social Services by Allowing Religious or Sectarian Organizations to Receive Public Aid, Directly or Indirectly, for the Provision of Such Services; to Provide for the Submission of This Amendment for Ratification or Rejection; and for Other Purposes

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CONSTITUTION OF THE STATE OF GEORGIA

A Resolution: Amend the Constitution of the State of Georgia to Prevent Discrimination in the Public Funding of Social Services by Allowing Religious or Sectarian Organizations to Receive Public Aid, Directly or Indirectly, for the Provision of Such Services; to Provide for the Submission of This Amendment for Ratification or Rejection; and for Other Purposes

CODE SECTION:	GA CONST. art. I (amend)
BILL NUMBER:	SR 49
SUMMARY	The amendment would have amended the Georgia Constitution to allow religious and sectarian organizations to receive state funding for social services. Currently, such organizations cannot receive state funding for social services.

History

Faith and family organizations provide social services to many throughout the State of Georgia, including children and the elderly.¹ These organizations do not receive state funding because the Georgia Constitution forbids such use of state funds.² Proponents of SR 49, including Governor Sonny Perdue, contend that this restriction unfairly limits religious and sectarian organizations that provide a “level of care that state government cannot match.”³ Additionally, since President Bush has provided federal funding for faith-based organizations that provide social services, Georgia organizations are losing \$16 million in federal grant money.⁴ Governor Perdue

1. Georgia Governor Sonny Perdue, Prepared Remarks of Governor Sonny Perdue State of the State Address (Note: The governor sometimes deviates from prepared remarks), (Jan. 14, 2004) (transcript available at, http://www.gov.state.ga.us/speeches/2004_speeches/Jan14_2004.shtml).

2. GA. CONST. art. I, § 2, ¶ VII.

3. Georgia Governor Sonny Perdue, *Issues: Faith and Family Services*, http://gov.state.ga.us/issues_gov/faith.shtml (last visited June 11, 2005).

4. Telephone Interview with Sen. Seth Harp, Senate District No. 29 (Apr. 14, 2005) [hereinafter Harp Interview].

presented this resolution in the 2004 legislative session.⁵ Though the Senate passed the resolution with a two-thirds majority, the House did not consider the legislation, and it died in committee.⁶

Legislative Tracking of SR 49

Consideration by the Senate

Senators Seth Harp, David Shafer, Judson Hill, Nancy Schaefer, and Chip Pearson of the 29th, 48th, 32nd, 50th, and 51st districts, respectively, sponsored SR 49.⁷ The Senate first read the resolution on January 28, 2005, and the Senate Rules Committee favorably reported the resolution on February 1, 2005.⁸

The Resolution, As Introduced

The Georgia Constitution prohibits state funding for religious or sectarian organizations, stating that “[n]o money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, cult, or religious denomination or of any sectarian institution.”⁹ As introduced, the resolution would strike Paragraph VII entirely and insert in lieu thereof the following:

Separation of church and state. Except as permitted or required by the United States Constitution, as amended, no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, cult, or religious denomination or of any sectarian institution.¹⁰

5. Press Release, Georgia Governor Sonny Perdue, Supporters Rally Behind Faith and Family Services Amendment, (Jan. 28, 2005), <http://www.gov.state.ga.us/press/2005/press677.shtml>.

6. *Id.*

7. See SR 49, as introduced, 2005 Ga. Gen. Assem.

8. See State of Georgia Final Composite Status Sheet, SR 49, Jan. 28, 2005 (May 11, 2005); State of Georgia Final Composite Status Sheet, SR 49, Feb. 1, 2005 (May 11, 2005).

9. GA. CONST. art. I, § 2, ¶ VII.

10. SR 49, as introduced, 2005 Ga. Gen. Assem.

Floor Debates and Amendments

During the floor debate, several senators spoke in favor of the resolution.¹¹ Senator Seth Harp of the 29th district, one of the resolution's sponsors, discussed the true intent in passing this amendment—to correct the mistake Georgia made when it adopted the discriminatory Blaine Amendment in the 19th century.¹² The Blaine Amendment was an attempt to introduce an amendment to the U.S. Constitution that would discriminate against the Roman Catholic denomination.¹³ While the United States did not adopt the amendment, several southern states did, including Georgia.¹⁴ Senator Harp stated that the purpose of SR 49 was to align the Georgia Constitution with the United States Constitution and remove this discriminatory clause.¹⁵

Senator David Shafer of the 48th district, another co-sponsor of the resolution, reaffirmed the need to right a past wrong.¹⁶ By passing SR 49, the legislature would be “[uplifting] our state constitution to meet the promise of our founding fathers . . . [and] discarding a standard born of irrational hatred and fear, and enshrining the First Amendment with its promise of freedom of religion.”¹⁷ Senator Shafer showed how the clause intentionally discriminated towards Catholics by pointing out that the word “sectarian” used in the Georgia Constitution referred to Roman Catholics in the 19th century.¹⁸ He stated that this amendment was necessary because the “Blaine Amendment . . . was not intended to separate church and state; it was intended to oppress a religious minority.”¹⁹ Senator Shafer also discussed the fact that he believes faith-based organizations could provide social services better than a government bureaucracy, but “liberal lawsuit bringers” threaten these services by

11. See Audio Recording of Senate Proceedings, Feb. 10, 2005, http://www.georgia.gov/00/article/0,2086,4802_6107103_33091490,00.html [hereinafter Senate Audio].

12. See *id.* (remarks by Sen. Seth Harp).

13. *Id.*

14. *Id.*

15. *Id.*

16. See *id.* (remarks by Sen. David Shafer).

17. See Senate Audio, *supra* note 11 (remarks by Sen. David Shafer).

18. *Id.*

19. *Id.*

using the Blaine Amendment to challenge them, claiming the organizations are using public funds to provide the services.²⁰

While no one expressed dissent regarding the need to remove a discriminatory clause, some members raised concern that the amendment could allow school vouchers for religious-based schools.²¹ Therefore, several senators introduced amendments to prevent that from occurring.²² Senator Doug Stoner of the 6th district introduced three amendments.²³ In his first amendment, he provided that the text of the proposed resolution should be struck from line one of page one, and he inserted the following text:

(a) Except as provided in subparagraph (b) of this Paragraph, no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, cult, or religious denomination or of any sectarian institution.

(b) The General Assembly is authorized to provide by general law for the public funding of social services to be provided pursuant to a contract between the State of Georgia of any department or agency of the state and any separate charitable affiliate of a religious or sectarian organization. Each such contract shall be subject to the following terms and conditions:

(1) No public funds received pursuant to such contract shall be used or expended, either directly or indirectly, by any such separate charitable affiliate of a religious or sectarian organization for sectarian worship, religious instruction, or proselytizing;

(2) Any such separate charitable affiliate of a religious or sectarian organization which receives such public funds shall provide an annual accounting of the use of such funds in such manner as provided by law and shall be subject to audit by the state regarding the expenditure of such funds;

20. *Id.*

21. *See id.* (remarks by Sen. Doug Stoner).

22. *See* SR 49 (SFA1, SFA2, SFA3, SFA4), 2005 Ga. Gen. Assem.

23. *See* SR 49 (SFA1, SFA2, SFA4), 2005 Ga. Gen. Assem.

(3) No public funds provided pursuant to such contract shall be used to pay tuition or other expenses at any private, religious, or parochial school for grade one through grade 12 education;

(4) No contract shall be entered by the state or any department or agency of the state with any separate charitable affiliate of a religious or sectarian organization that advocates or promotes the overthrow of the government of the United States of America or the principles upon which the United States of America was founded;

(5) No contract shall be valid or effective until and unless the state funds for such contract have specifically been appropriated in a general appropriations Act or supplemental appropriations Act by line item appropriation specifically identifying and describing such contract;

(6) Such contract must require that the separate charitable affiliate of a religious or sectarian organization provide actual and valuable services and consideration to the state or its department or agency in return for such public funds;

(7) Such separate charitable affiliate of a religious or sectarian organization receiving such funds must be exempt from federal income taxes under the provisions of 26 U.S.C. Section 501(c)(3); and

(8) Such separate charitable affiliate of a religious or sectarian organization receiving such funds shall not discriminate on the basis of religious affiliation, belief, or exercise in the delivery or purchase of services or goods or in its employment practices.²⁴

Senator Stoner stated he feared certain actions that future governors and legislators may take using the resolution as introduced,

24. See SR 49 (SFA1), 2005 Ga. Gen. Assem.

and this amended language was necessary to protect illegitimate uses, such as school vouchers.²⁵

Addressing these charges, Senator Harp stated that this certainly was not an amendment intended to create school vouchers.²⁶ He stated the amendment was what he described as an “enabling statute” that would require the legislators to enact legislation restricting the use of faith-based funding.²⁷ Senator Eric Johnson of the 1st district claimed that the argument that the amendment would create school vouchers is irrational because school vouchers already exist under the Georgia Code.²⁸ However, Senator Horacena Tate of the 38th district challenged Senator Johnson’s argument that vouchers currently exist in state law.²⁹

Additionally, Senator Judson Hill of the 32nd district challenged Senator Stoner’s amendment, stating that the clauses requiring state audits are unnecessary because procedures for auditing charitable organizations already exist in the Georgia Code.³⁰ Senator Stoner responded that it was necessary to restate this to prevent future governors and legislatures from taking inappropriate actions.³¹

Another opponent of the resolution expressed concern that commingling government and religious organizations will only create corruption within the religious organizations.³² Senator Steve Thompson of the 33rd District reminded the Senate of Thomas Jefferson’s writings concerning the potential danger created when a state erodes the separation of church and state.³³

Amendment 1 to the resolution did not pass the Senate.³⁴ Amendments 2 through 4 attempted to create restrictions on vouchers in similar manners, but each of these amendments failed as well.³⁵ Amendments 2 and 3 were far simpler than Amendment 1, essentially providing only a one-sentence restriction on school vouchers, but

25. See Senate Audio, *supra* note 11 (remarks by Sen. Doug Stoner).

26. See *id.* (remarks by Sen. Seth Harp).

27. *Id.*

28. See *id.* (remarks by Sen. Eric Johnson).

29. See *id.* (remarks by Sen. Horacena Tate).

30. See *id.* (remarks by Sen. Judson Hill).

31. See Senate Audio, *supra* note 11 (remarks by Sen. Doug Stoner).

32. See *id.* (remarks by Sen. Steve Thompson).

33. See *id.*

34. Georgia Senate Voting Record, SR 49 (Feb. 10, 2005).

35. *Id.*

failed nonetheless.³⁶ On March 11, 2005, SR 49 failed to pass by a vote of 21 to 32.³⁷ The Senate also failed to pass SR 49 with any of the four proposed amendments when reconsidered on March 11, 2005.³⁸

Analysis

The debate over SR 49 exemplifies a strictly partisan divide.³⁹ Republican supporters of the proposed constitutional amendment, led by Governor Purdum, claim that the real mission of the resolution is “to let the churches do what they’re called to do, and do it better than the government has in the past.”⁴⁰ Democrats opposed the resolution for fear of school vouchers.⁴¹ Democratic Senator Doug Stoner surmised, “If we pass [SR 49] the way it is worded now, you’ve just enabled school vouchers in [Georgia].”⁴² This theme carried on throughout the debates and into the final vote dismissing the resolution in the Senate on March 11, 2005.⁴³

The 2005 legislative session ended without a constitutional amendment allowing for public funding of faith-based organizations.⁴⁴ Both Democrats and Republicans generally support such funding, but until legislators resolve the debate over vouchers, the stalemate is likely to carry over into future legislative sessions.⁴⁵ Democratic Senator Tim Golden, along with several other Democratic senators, sponsored a separate resolution (SR 42) that would allow for the public funding of social services provided by religious organizations.⁴⁶ As introduced, SR 42 amended Article I, Section II of the Georgia Constitution by striking Paragraph VII in its entirety and inserting a new Paragraph VII to read as follows:

36. See SR 49 (SFA2 & SFA3), 2005 Ga. Gen. Assem.

37. Georgia Senate Voting Record, SR 49 (Mar. 11, 2005).

38. *Id.*

39. See discussion *supra* Floor Debates and Amendments.

40. Sonji Jacobs, *Religious Funding Plan Fails: Perdue Measure Loses by 3 Votes in Senate*, ATLANTA J. CONST., Feb. 11, 2005, at E1 (quoting Senate President Pro Tempore Eric Johnson).

41. *Id.*

42. *Id.*

43. See Georgia Senate Voting Record, SR 49 (Mar. 11, 2005).

44. See *id.*

45. See *supra* Floor Debates and Amendments.

46. See SR 42, as introduced, 2005 Ga. Gen. Assem. Senators Stoner, Golden, Butler, Powell, Meyer von Bremen, and Brown co-sponsored SR 42. *Id.*

“Except as provided in subparagraph (b) of this Paragraph, no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, cult, or religious denomination or of any sectarian institution.”⁴⁷ Subparagraph (b) provides:

The General Assembly is authorized to provide by general law for the public funding of social services to be provided pursuant to a contract between the State of Georgia or any department or agency of the state and any separate charitable affiliate of a religious or sectarian organization. Each such contract shall be subject to the following terms and conditions: (1) No public funds received pursuant to such contract shall be used or expended, either directly or indirectly, by any such separate charitable affiliate of a religious or sectarian organization for sectarian worship, religious instruction, or proselytizing; (2) Any such separate charitable affiliate of a religious or sectarian organization which receives such public funds shall provide an annual accounting of the use of such funds in such manner as provided by law and shall be subject to audit by the state regarding the expenditure of such funds; (3) No public funds provided pursuant to such contract shall be used to pay tuition or other expenses at any private, religious, or parochial school for grade one through grade 12 education; (4) No contract shall be entered by the state or any department or agency of the state with any separate charitable affiliate of a religious or sectarian organization that advocates or promotes the overthrow of the government of the United States of America or the principles upon which the United States of America was founded; (5) No contract shall be valid or effective until and unless the state funds for such contract have specifically been appropriated in a general appropriations Act or supplemental appropriations Act by line item appropriation specifically identifying and describing such contract; (6) Such contract must require that the separate charitable affiliate of a religious or sectarian organization provide actual and valuable services and consideration to the state or its department or agency in return for such public funds;

47. See SR 42, as introduced, 2005 Ga. Gen. Assem.

(7) Such separate charitable affiliate of a religious or sectarian organization receiving such funds must be exempt from federal income taxes under the provisions of 26 U.S.C. Section 501(c)(3); and (8) Nothing in this Paragraph shall be construed to authorize an entity receiving or contracting for such public funds to discriminate against any person on the basis of race, religion, sex, or national origin in connection with providing the services on behalf of the state pursuant to such contract.⁴⁸

The fact that SR 42 received almost no consideration lends support to the Democrats' suspicions that SR 49 could enable school vouchers in Georgia.⁴⁹ Senator Tim Golden echoed the concerns of Democrats by observing that if SR 49 is not really about vouchers, there is no reason not to support SR 42, which provides for public funding of religious social services, but specifically disallows school vouchers.⁵⁰ Senator Golden remarked, "Governor Purdue says it's not about school vouchers, but what about future governors."⁵¹ In other words, Governor Purdue can say SR 49 is not about school vouchers, but that does not change the fact that the language of SR 49 inherently authorizes their use.⁵² When asked why he opposes school vouchers, Golden said that vouchers undermine the public education system.⁵³ He explained, "If I want to send my son to private school, I should be the one paying for it, not the taxpayers."⁵⁴

Meg Smothers, Executive Director of the League of Women Voters of Georgia, also expressed support for religiously-affiliated organizations that receive state dollars, but at the same time, shared the concern over school vouchers.⁵⁵ She noted that SR 42 would allow the use of public funds, but it provided language preferable to SR 49 that would establish the "oversight, accountability and

48. *Id.*

49. *See* Telephone Interview with Sen. Tim Golden, Senate District No. 8 (Apr. 14, 2005) [hereinafter Golden Interview]. Senator Golden suggested that the school voucher issue is one of the only plausible explanations for the lack of Republican support for SR 42 or the amendments proposed for SR 49. *Id.*

50. *Id.*

51. *Id.*

52. *See id.*

53. *Id.*

54. *See* Golden Interview, *supra* note 49.

55. *See* Electronic Mail Interview with Meg Smothers, Executive Director of the League of Women Voters of Georgia (Apr. 25, 2005).

protection of public funds” the League of Women Voters feels is necessary.⁵⁶

Until future legislation reveals otherwise, school vouchers will likely remain the crux of the debate over the public funding of religious organizations providing social services in Georgia. Until Georgia resolves that issue, Georgia organizations will continue to lose millions of dollars in federal grant money.⁵⁷

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56. *Id.*

57. *See Harp Interview, supra note 4.*