

Fulton Tax Suits Highlight Dispute

The legal showdown between the Fulton County Commission and the Georgia General Assembly over the county's vote to raise property taxes, laid out in two suits challenging the actions, has been simmering since last year when the Legislature voted to cap the tax rate until 2015.

On Wednesday, the same day commissioners voted 4 to 3 to pass a 17 percent millage increase, six members and one former member of the Georgia House of Representatives sued to block the tax hike. The suit was filed by House Speaker Pro Tem Jan Jones and reps. Wendell Willard, Lynne Riley, Joe Wilkinson, Harry Geisinger and Chuck Martin, along with former Rep. Ed Lindsey, who stepped down to launch an unsuccessful bid for Congress earlier this year. The seven Republicans sponsored last year's tax-cap legislation.

The complaint, filed in Fulton County Superior Court by **Robbins Ross Alloy Belinfante Littlefield** partner **Josh Belinfante**, seeks an injunction to prevent the county from implementing the tax hike until its legality can be litigated.

The second suit is a putative class action filed by local tax attorney Robert Proctor on behalf of his wife, Teresa Proctor, a Fulton County homeowner. It asks the court to declare the tax hike illegal and to impound any revenue generated by it for refund to county taxpayers.

The groundwork for the dispute lies in a 1951 amendment to the Georgia Constitution, passed by Fulton County voters, that gives the Legislature the authority to decide "the date and time when the fiscal authorities of such county shall make or fix the levy of ad valorem taxes and the amount of assessments and other charges to be made against property or property owners."

Only Fulton County's taxing authority is subject to such regulation.

With the passage of House Bill 604 last year, the Legislature barred any millage rate increase until next January, and also required that any vote to raise the rate be by a supermajority of five votes on the seven-member commission.

Last summer the Board of Commissioners voted 5 to 1 to declare HB 604 unconstitutional and to repeal it. The county ordinance declared that the Georgia Constitution grants taxing authority to a county's governing authority "as authorized by the Constitution or general law," and that the 1951 amendment "does not grant the General Assembly the authority to limit Fulton County's power to set ad valorem taxes."

As local legislation, the county's measure said, HB 604 "violates the constitutional provision prohibiting local laws that conflict with general laws," and is thus unconstitutional.

The ordinance also cited the state Constitution's Home Rule authority, which allows counties to repeal or amend local legislation that applies to them, and voted to repeal HB 604.

At the Aug. 6 meeting, Commission Chairman John Eaves joined commissioners Emma Darnell, Bill Edwards and Tom Lowe in voting to raise the millage rate; Commissioner Liz Hausmann, who had opposed the repeal measure last year, voted against the tax hike along with Joan Garner and Robb Pitts.

The petition for injunctive relief and supporting brief that Belinfante filed on behalf of the lawmakers said the tax hike is illegal.

"First, the State Constitution's text makes plain that the General Assembly is exclusively constitutionally empowered to establish the time and date Fulton County can raise the millage rate. Thus, any commission action that frustrates the state's authority is void," according to the brief. "Second, the new tax vitiates any meaning or effect of the 1951 amendment," rendering it "unenforceable surplusage that can be ignored by the very body it regulates."

"Third," it said, "even if some conflict exists between two constitutional provisions—(1) the 1951 amendment and (2) the Home Rule Authority—the only way to reconcile them is to give effect to the 1951 amendment and recognize that Fulton County's remedy lies (again) with a decision by the General Assembly and voters of Fulton County to change the procedures set forth in HB 604."

The suit asks the court to set a hearing for its motion for an interlocutory injunction, and order Tax Commissioner Arthur Ferdinand not to collect the additional taxes until a hearing can be held on their constitutionality.

Belinfante said the issues raised in the legislators' suit are simple.

"I think the question is whether, when the state constitution specifically empowers the General Assembly to set the time and rate for a millage increase, is that to be honored or ignored based on the county commission's actions?" he said.

"I read the minutes of the meeting in 2013 where they purportedly repealed the legislation; they said they could do it under the Home Rule authority," said Belinfante. But "the Home Rule authority not unlimited, it has to be exercised within the limits of the state constitution."

"The language of the 1951 amendment is exclusive," Belinfante said. "It empowers only the General Assembly to authorize a millage increase. That's as much a part of the Constitution as the Home Rule Act or freedom of speech. That's what takes it out of traditional Home Rule cases."

Belinfante said he hasn't been able to find any case law dealing with such a situation.

"There's case law under the Home Rule authority, but most of it deals with exceptions, not with direct conflict with a constitutional provision," he said.

Fulton County Attorney R. David Ware declined to comment on the pending litigation, but he did address the county commission's reasoning in passing the repeal and tax hike.

"Under the Home Rule authority, available to all 159 counties in Georgia, Fulton County officials repealed House Bill 604 in 2013," said Ware in an email. "It is abundantly clear that House Bill 604 was an

unconstitutional intrusion into the authority specifically vested in the Fulton County Board of Commissioners by the Georgia Constitution. Consistent with the constitutional authority granted to all Georgia counties, the board of commissioners acted in what was deemed to be the best interest of the citizens who duly elected them."

Commission Chairman Eaves released a statement saying he was "disappointed that several of our state's lawmakers have chosen to sue Fulton County for doing what every other city and county in this state has been allowed to do, which is to do everything a local government can do to keep itself on sound financial footing as it strives to maintain a consistent level of service to the constituents it serves."

"No other county should have its rights to govern its own affairs trampled upon by outside entities," said Eaves.

The cases are Jones v. Fulton County, No. 2014CV249914, and Proctor v. Ferdinand, No. 2014CV249913.

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