Supreme Court of Georgia
Jane Hansen, Public Information Officer
244 Washington Street, Suite 572
Atlanta, Georgia 30334
404-651-9385
hansenj@gasupreme.us

CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Monday, February 22, 2016

10:00 A.M. Session

CLARK ET AL. V. DEAL, GOVERNOR ET AL. (S16A0559)

Five citizens are appealing a ruling by a **Fulton County** judge denying their petition to declare unconstitutional a 2015 statute that allowed the governor to appoint three new judges to the Court of Appeals of Georgia.

FACTS: Last year, Gov. Nathan Deal signed into law House Bill 279, which increased the number of judges on the Court of Appeals from 12 to 15. A new subsection of Georgia Code section 15-3-4 states that the newly created judgeships "shall be appointed by the Governor for a term beginning January 1, 2016, and continuing through December 31, 2018, and until their successors are elected and qualified." On Oct. 29, the governor announced he was appointing Brian Rickman, a district attorney, Nels Peterson, a vice chancellor, and Amanda Mercier, a superior court judge, to fill the three new judgeships. Under the new law, the judges were to take office Jan. 1, 2016. On Nov. 16, 2015, five citizens – John Clark, Athens attorney Ivory Kenneth Dious, Georgia NAACP President Francys Johnson, Jr., Henry Ficklin and Darryl Momon – filed a petition in the Fulton County Superior Court seeking a declaratory judgment and injunction against the governor to prevent him from appointing the three new judges, arguing that under the state Constitution, they should be filled not by appointment but by a statewide election. Following a hearing, the judge ruled against them on Dec. 10, 2015, denying their

petition. The next day, the citizens filed an emergency motion in the Georgia Supreme Court to suspend the Fulton County court order and to stay any further actions by the governor to install the new appointees until the matter of whether the statute is constitutional could be heard and decided by this Court. This Court denied their motion, and subsequently, the judges were sworn in and have since taken office. The citizens now appeal to the state Supreme Court the December 2015 ruling denying their petition to declare the statute unconstitutional.

ARGUMENTS: The citizens' attorney argues that the trial court erred by denying their petition for declaratory judgment and injunctive relief. Article VI, Section VII, Paragraph I of the 1983 Georgia Constitution states that, "All Justices of the Supreme Court and the Judges of the Court of Appeals shall be elected on a nonpartisan basis for a term of six years." "There is no provision in the Georgia State Constitution which allows newly created judgeships on the Georgia Court of Appeals to be filled by appointment of the Governor," the attorney argues in briefs. No Georgia Constitution since the 1877 Constitution has ever given the governor the power to appoint persons to newly created seats on the Court of Appeals. Rather, "all provide for election of Appeals judges by popular vote," the attorney argues. House Bill 279, which provides for the governor's appointment to newly created seats, instead of providing they be elected by popular vote, "is void as being in contradiction of the Georgia State Constitution." At issue in this case is the definition of when a seat on the Court of Appeals is deemed to be "vacant." "Stated another way, the question is whether a newly created seat is vacant upon legislative creation, thereby triggering the appointment authority of the Governor under the Georgia constitution at Article VI, Section VII, Paragraph III, or is the seat only capable of being filled by popular election." Georgia Code section 45-5-1 "is the controlling law on the definition of when a seat is vacant under Georgia law," the attorney argues. "This definition of what state office is vacated, does not mention that a newly created seat is to be considered a vacated seat." It does, however, provide seven specific ways a seat becomes vacated such as death of the incumbent, but none is from a newly created seat. The first six judgeships of the Court of Appeals were initially selected through popular election of Georgia voters. "This history was noted but ignored by the trial court," the attorney argues. While it is true the next six were appointed by Governors Ernest Vandiver, Zell Miller and Roy Barnes, "no constitution in effect since creation of the Georgia Court of Appeals has ever authorized gubernatorial appointment of judges to the Court of Appeals for newly created positions on that court," the attorney argues. Rather the state's constitutions remained "resolute" in calling for the election of the appellate court judges "and never wavered in limiting the governor's appointment authority to filling 'unexpired terms' on the court." "The essential message from the trial court's order is that since previous Governors Vandiver, Miller and Barnes usurped the Georgia Constitution, then their accretion of unconstitutional power has somehow been ratified into legality," the citizens' attorney contends. "The take away from the court's rationale is that if you violate the constitution repeatedly, and over a span of years, then the unlawful acts become ratified into good law irrespective of the constitution and the laws that construe it."

Attorney for Appellants (Clark): Wayne Kendall

Attorney for Appellee (Deal): Samuel Olens, Attorney General, Dennis Dunn, Dep. A.G., Russell Willard, Sr. Asst. A.G., Susan Haynes, Asst. A.G.

DEKALB COUNTY POLICE OFFICER KLIESRATH ET AL. V. ESTATE OF DAVIS ET AL. (S15G1206)

Four **DeKalb County** police officers are appealing a court ruling that a wrongful death lawsuit against them – filed by the parents of a 29-year-old man who died after police tased him during a medical emergency – may proceed to a jury trial.

FACTS: On May 9, 2010, DeKalb County Fire Rescue responded to a 911 call made by employees of the Budgetel Inn on Chamblee-Tucker Road after they found a man convulsing in one of the rooms. Fire Rescue personnel found Audrecas Davis, a 6-foot, 6-inch tall man weighing 445 pounds, on the floor of a room with foam coming out of his mouth and feces covering the lower half of his body. According to his parents, Jimmy and Annie Davis, their son suffered from hypertension and was borderline diabetic. The parties dispute the facts of this case, with Davis's parents claiming that the evidence shows their son was having a medical emergency that caused him to be in a zombie-like state, and clearly he did not understand what was going on. According to State prosecutors, however, when a medic administered smelling salts, Davis became agitated and allegedly began to swing his arms. Due to Davis's size and weight, the medic requested additional Fire Rescue units for help to move him into the ambulance. Additional help arrived, and they attempted to roll Davis onto a stretcher and strap him to it. When Davis tore off the straps, Fire Rescue contacted dispatch and requested assistance from the DeKalb County Police. Nine officers responded to the scene, including Frank Kliesrath, Bernard Gales, Keith Cintron and Christopher Delon. Officers said they made various attempts to communicate with Davis while a medic tried to administer some Valium to calm him, but he did not appear to understand directions and became aggressive, physically resisting efforts to strap him to a backboard. According to State prosecutors, officers attempted to hold his arms to his side, but Davis was too strong. Two supervising officers then directed two of their officers to use their Tasers on Davis. Tasers, which fire electrified darts, are used to stun and immobilize a person. One officer eventually "Drive Stunned" Davis by holding his Taser directly against Davis's upper-right shoulder for one second. (The controversial Drive Stun mode does not involve firing projectiles, but rather is intended to cause pain to gain a person's compliance.) The officers continued trying to restrain Davis to get him into the ambulance. Due to his size, however, they were unable to handcuff him, and they claimed Davis continued to swing at them. Another officer deployed his Taser in the "dart mode," but Davis continued to resist and wrestle his arms away from officers. Only after the second injection of Valium were the officers able to restrain his arms using three pairs of handcuffs, but then Davis began kicking, according to the State, hitting one of the officers in the stomach. The officers continued to tase Davis, a total of at least six times. After they finally secured Davis face down on the stretcher, the medic noticed that his breathing was shallow. Davis was transported to DeKalb Medical Center and pronounced dead shortly after arrival.

Davis's parents sued a number of parties in DeKalb County State Court, including Officers Kliesrath, Gales, Cintron and Delon, claiming their actions violated Davis's constitutional rights and amounted to unreasonable and excessive force. The trial court ultimately dismissed from the lawsuit any of the parties that were not directly involved in the use of the Taser. The officers then filed a motion asking the court to grant "summary judgment" in their favor, arguing they were protected by "qualified immunity" and "official immunity" from being sued for the use of excessive force. A judge grants "summary judgment" only after

deciding that a jury trial is unnecessary because the facts are undisputed and the law falls squarely on the side of the party requesting it. In March 2014, the trial court denied summary judgment to the four officers who tased or supervised the tasing of Davis, ruling they were not entitled to immunity and the lawsuit against them should proceed to a jury trial. The judge concluded that a jury would be authorized to decide that the use of a Taser in this case was not justified, especially as it violated DeKalb County's policies on use of force. The judge also concluded there was a question of fact a jury should determine as to whether Davis's constitutional rights were violated by the use of unreasonable force. On appeal, the Georgia Court of Appeals upheld the trial court's ruling in a one-page opinion. The officers now appeal the Court of Appeals ruling to the state Supreme Court.

ARGUMENTS: Attorneys for Kliesrath and the other officers assert that the trial court erred in finding that their actions were not protected by qualified and official immunity. They argue that the evidence did not demonstrate a violation of Davis's constitutional rights, and point to a 1989 United States Supreme Court case, *Graham v. Connor,* which states that in determining "reasonable" action for the use of force, the determination "must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." Here, "the evidence shows that the escalating use of force by the officers in this situation was reasonable, proportional to and required by the situation facing them," the attorneys argue. They also argue that the officers were not only trying to act in their best interest in protecting themselves, but also in Davis's best interest, as he clearly needed immediate medical attention and presented a threat to himself.

Attorneys for Davis's parents argue that the Court of Appeals ruled correctly and that the ruling should be affirmed. They argue that the officers were not covered by qualified and official immunity, as their actions fell outside the scope of the behavior guidelines set forth by the DeKalb County Police Department. Specifically, the Department's manual on electric control devices states that they "shall not be used as a tool of coercion to intimidate an individual into compliance with simple requests of directives by an officer." Attorneys for Davis's parents argue their son was in the throes of a medical event that left him unable to comprehend his surroundings or follow instructions. Although he was not suspected of any criminal activity, police eventually used Taser weapons multiple times to compel Davis to get onto a stretcher so they could transport him, involuntarily, for medical treatment. But that is an improper use of their Taser, the parents' attorneys argue. One of the officers conceded that Davis had the right to refuse medical treatment, but nonetheless that it was Davis's refusal to lie down on the stretcher to receive such treatment that prompted the first tasing. The attorneys argue that issues that should be determined by a jury exist in this case, and the Supreme Court should therefore affirm the Court of Appeals ruling, and let the case go to trial.

Attorneys for Appellants (Kliesrath et al): Laura Johnson, Deputy County Attorney, Terri Gordon, Sr. Asst. County Attorney

Attorneys for Appellees (Davis et al): Darren Summerville, Angela Fox, Lance Lourie, Stephen Chance

REGENT v. THE STATE (S15G1829)

In this **Fulton County** case, a man convicted of aggravated battery and aggravated assault for attacking his girlfriend and cutting her throat twice is appealing his two consecutive prison sentences.

FACTS: According to testimony, in 2008, Regent, in a fit of rage, punched Margaret Fisher repeatedly, got a knife from the kitchen, and while she was lying on the floor, cut her throat twice, in quick succession. After Regent pleaded guilty to aggravated assault and aggravated battery, the judge sentenced him to 20 years for the aggravated assault count, 12 of which would be served in prison and the remaining eight on probation. On the aggravated battery count, the judge sentenced Regent to 10 years on probation to run consecutive to his punishment for aggravated assault. In 2009, representing himself pro se, Regent filed a Motion to Void and Vacate Illegal Conviction and Sentence on the aggravated assault count, claiming the trial court erred by failing to "merge" the aggravated assault count into the aggravated battery count for sentencing purposes. If a person is convicted of multiple crimes involving the same incident, courts are supposed to "merge" them into the most serious offense and treat them as a single crime for sentencing. The trial court denied Regent's motion, and on appeal, the Georgia Court of Appeals agreed with the trial court and upheld the lower court's ruling. Regent now appeals to the Georgia Supreme Court, which has agreed to review the case to determine "whether the Court of Appeals erred in its analysis of whether the convictions for aggravated battery and aggravated assault merge."

ARGUMENTS: Regent's attorneys argue that the Court of Appeals erred in its analysis and the two convictions should have been merged together in the sentencing phase. They argue that both of the charges stem from the same incident. They also argue that the Court of Appeals relied upon previous Court of Appeals rulings, which they contend are conflicting in their holdings regarding the merger of sentences. They argue that while the aggravated battery count required proof that Regent cut the victim's throat and the victim was disfigured, which was not a required showing for aggravated assault, the aggravated assault count did not require proof of any fact that was not also required to prove aggravated battery. Therefore, they argue that the two charges should have merged, as the evidence required was the same. They are asking this court to reverse the trial court's ruling in order to properly address the error.

Attorneys for the State argue the trial court and the Court of Appeals were both correct in determining that the two separate charges did not need to be merged. The Court of Appeals ruled correctly, stating that since "aggravated assault and aggravated battery are two separate offenses with different elements of proof, the charges do not merge, and it is irrelevant that both crimes stemmed from a single act or series of continuous acts." The State is asking that even if this Court would like to address how and when trial courts should merge convictions for sentencing purposes, Regent's convictions and sentences should be upheld.

Attorney for Appellant (Regent): Kenneth Kondritze and Tamara Crowford of the Atlanta Circuit Public Defender's Office

Attorneys for Appellees (State): Paul Howard, Jr., District Attorney, Paige Whitaker, Dep. D.A., and Michael Snow, Asst. D.A.

ZILKE v. THE STATE (S15G1820)

In this **Cobb County** case, a man is appealing a ruling by the Georgia Court of Appeals, arguing that his arrest by a Kennesaw State University police officer for Driving Under the Influence (DUI) and other traffic offenses was invalid because it occurred more than 500 yards off campus.

FACTS: In May of 2013, Bajrodin Zilke was stopped and arrested on Powder Springs Road in Marietta by a "POST-certified" (Peace Officer Standards and Training Council) police officer who was employed by Kennesaw State University. The officer charged Zilke with DUI, as well as other traffic violations. In the trial court, Zilke's attorney filed a motion asking the court to suppress the breath test taken by the officer when the court goes to trial, arguing that the officer had lacked jurisdiction, as the offense had not occurred on, or even near, the university's property. The trial court granted Zilke's motion, based on Georgia Code section 20-3-72, which states: "The campus policemen and other security personnel of the university system who are regular employees of the system shall have the power to make arrests for offenses committed upon any property under the jurisdiction of the Board of Regents and for offenses committed upon any public or private property within 500 yards or any property under the jurisdiction of the Board." However, on appeal, the Court of Appeals reversed the decision, citing another section of the Georgia Code, 17-4-23, which states that an "officer may arrest a person accused of violating any law or ordinance governing the operation...of motor vehicle...by the issuance of a citation, provided that the offense is committed in his presence...." The Court of Appeals held that this exception applied here, as the traffic violation occurred in the presence of the arresting officer. Zilke is now appealing the Court of Appeals ruling to the state Supreme Court, which has agreed to review the case to determine whether a campus policeman of the state's University System has the authority to make arrests for a traffic violation committed in his presence but more than 500 yards off campus.

ARGUMENTS: Zilke's attorneys argue that the Court of Appeals erred in this case and in others by interpreting Code section 17-4-23 as expanding the jurisdictional limitations applied to campus police in Code section 20-3-72. They argue that 20-3-72 is clearly written to limit the jurisdiction of campus police to no more than 500 yards off campus. For these reasons, among others mentioned in their brief, Zilke's attorneys are asking this Court to reverse the Court of Appeals' ruling, and uphold the trial court's grant of the motion to suppress.

Attorneys for the State argue the Court of Appeals was right, particularly due to the fact that Code section 20-3-72 deals only with "campus police officers," whereas the officer in this case was POST-certified, which gives him the same power to arrest as any other law enforcement officer. Under Code section 17-4-23, "a POST-certified campus law enforcement officer who witnesses a traffic offense has the authority to arrest said offender outside of the general territorial limitations of 20-3-72," the attorneys argue in briefs. The Court of Appeals was correct that Georgia Code section 17-4-23 applies to POST-certified campus police officers, and the Supreme Court should affirm the Court of Appeals' reversal of the trial court's ruling.

Attorney for Appellant (Murphy): David Willingham of the Willingham Law Firm, P.C., and Bimal Chopra and Steven Cook

Attorneys for Appellees (State): Barry Morgan, Solicitor-General, Mimi Scaljon, Asst. Solicitor-General, and Deborah Tatum, Dep. Chief Asst. Solicitor-General

2:00 P.M. Session

STATE OF GEORGIA ET AL. V. INTERNATIONAL KEYSTONE KNIGHTS OF THE KU KLUX KLAN, INC. (S16A0367)

The governor and commissioner of the Department of Transportation are appealing a **Fulton County** court ruling that allows the Ku Klux Klan to proceed with its lawsuit against the State for denying its application to participate in Georgia's "Adopt-a-Highway" program.

FACTS: The Adopt-a-Highway program was created in 1989 and is administered by the Georgia Department of Transportation. The program's purpose is to enlist volunteers to help remove litter from state roadsides. Volunteers accepted into the program adopt at least a one-mile stretch of highway and agree to remove litter from both sides of the road at least four times a year for a two-year period. According to the program's brochure, applicants include any "civic-minded organization, business, individual, family, city, county, state, or federal agency." In exchange for the volunteer work, the brochure states that to "show the community that you are doing your part to clean up Georgia, the department will erect a sign with the Adopt-a-Highway logo and your group's name." In May 2012, April Chambers and Harley Hanson, members of the International Keystone Knights of the Ku Klux Klan, submitted to Union County an application to participate in the Adopt-a-Highway program and remove trash along a portion of State Route 515. In their application, they requested that "Georgia IKK Ku Klux Klan" be the name listed on the signs that would be placed along both sides of the highway. A County Commissioner gave them trash bags and vests they could use to begin picking up the trash. Later that month, however, they received a letter stating they needed to apply instead directly to the DOT, which they did. On June 12, 2012, Chambers and Hanson received a letter from the then-Commissioner of Transportation, denying their application due to the Ku Klux Klan's "long-rooted history of civil disturbance" and the "potential for social unrest." The letter from the State said that "were the application granted, the goal of the program, to allow civic-minded organizations to participate in public service for the State of Georgia, would not be met." The same day, the State also published a press release announcing its denial of the Klan's application.

On Sept, 13, 2012, the KKK sued the State in Fulton County Superior Court, seeking among other things a permanent injunction prohibiting the State from denying the Klan an Adopt-a-Highway Permit and a "declaratory judgment" declaring that the State was wrong to deny the permit and that the Adopt-a-Highway program violated the state Constitution, as well as the Klan's right to free speech. The State filed a motion asking the court to dismiss the lawsuit on the ground that the Klan's claims for declaratory and injunctive relief were prohibited by the legal doctrine of sovereign immunity, which shields the State and its agencies from being sued. On May 31, 2013, the trial judge dismissed all the Klan's claims but the claims for a permanent injunction and the declaratory judgment. In March 2014, both sides filed motions for "summary judgment," which a judge grants after deciding a jury trial is unnecessary because the facts are undisputed and the law falls squarely on the side of one of the parties. In the judge's final order, the trial court partially granted the Klan's motion for summary judgment and denied the State's. Specifically, the judge rejected the State's argument that the claims were barred by sovereign immunity. In her ruling, the judge acknowledged the state Supreme Court's recent 2014 ruling in *Ga. Dept. of Natural Resources v. Center for a Sustainable Coast, Inc.*, which stated that sovereign immunity bars claims for injunctive relief. However, the judge held that this case was

different because the Klan was raising constitutional claims. The State now appeals to the Georgia Supreme Court.

ARGUMENTS: The Attorney General's office, representing the state, argues the Fulton County court ignored precedent and erred in ruling that a party may sue the State for injunctive relief and declaratory judgment based on constitutional claims. The Georgia Constitution specifically states that the "sovereign immunity of the state and its departments and agencies can only be waived by an Act of the General Assembly which specifically provides that sovereign immunity is thereby waived and the extent of such waiver." "In reaching its conclusion, the trial court ignored a litany of appellate cases, which plainly establish that a party may only maintain a suit against the State of Georgia if the sovereign immunity of the State of Georgia has been waived by an act of the General Assembly or the State Constitution," the State's attorneys argue in briefs. In this case, "neither the Georgia Constitution nor any statute enacted by the General Assembly provides for an express waiver of sovereign immunity for the KKK's claim for injunctive relief." And in its *Sustainable Coast* decision, this Court specifically ruled that "the plain language of [the state Constitution] explicitly bars suits against the State or its officers and employees sued in their official capacities, until and unless sovereign immunity has been waived by the General Assembly…the straightforward text of the 1991 amendment **does not allow for exceptions.**" "Even if the KKK's claims for declaratory and injunctive relief could be maintained against the State, which they cannot, said claims would still fail on the merits, as any speech implicated by the Adopt-a-Highway program is government speech that is not subject to First Amendment claims," the State argues. The state sign that would appear along the highway bearing the Klan's name would appear under the State seal. Rather than acknowledging the program as government speech, which entitles the State to choose between the messages with which it chooses to associate, the trial court incorrectly deemed the program a "forum" and held that the State must be neutral in picking participants. "There is a critical difference between the government's regulation of private speech, which is subject to First Amendment scrutiny, and government speech, which is not," the State argues. "It is clear that the government signs in this case, which are erected on government property, represent government speech. This is true even though the names of private entities appear on the State's signs." "The purpose of the Adopt-a-Highway program is to advance the State's message of litter control, not to open a forum for private expression." "The State has made no effort to silence the traditional free speech rights of the KKK. Rather, the State has simply exercised its own right to control the message it communicates with the public, by disassociating itself with messages and images it does not wish to propagate."

Attorneys for the Ku Klux Klan argue that the only applicant to the Adopt-a-Highway program ever denied participation is the Klan, whose application was denied because the State disagreed with its "ideology and history." The International Keystone Knights of the Ku Klux Klan "seeks to be heard on the merits of a constitutional claim, regarding its right to free speech, a civil liberty, and is entitled to bring such a claim to court," the attorneys argue in briefs. "Georgia case law supports this right for citizens to bring claims against the State when their constitutional rights have been violated….Accordingly, the doctrine of sovereign immunity may not protect the State from the Court hearing the [Klan's] constitutional claims." "Both federal and state courts have consistently ruled that the principle of a doctrine intended to financially protect the state, such as sovereign immunity, may not be extended to shield state agencies from

suit for their violations of constitutional rights." "In the cases that the state cites in support of its claim of sovereign immunity, no constitutional claims were decided." In this Court's *Sustainable Coast* decision, "this Court specifically noted that it was not addressing the constitutional claims made by the *Center for a Sustainable Coast."* "If this Court were to find sovereign immunity were a bar to the enforcement of constitutional rights afforded to citizens under the Georgia Constitution, such as the right to freedom of speech and the right to be free from unconstitutional takings, there would be no mechanism for citizens to defend or for courts to enforce these most cherished freedoms," the Klan's attorneys argue. The Adopt-a-Highway program does not involve government speech but rather involves the private speech of its participants, and the State's denial of the Klan's application violated the Klan's constitutional right to free speech. The Adopt-a-Highway program is a "forum," the attorneys contend, and once the government creates a forum, "it cannot discriminate against speakers based on the content of the speech, the viewpoint of the speech, or the identity of the speaker." The Georgia Supreme Court should uphold the Fulton County court ruling, the Klan's attorneys argue.
Attorneys for Appellants (State): Samuel Olens, Attorney General, W. Wright Banks, Jr., Dep. A.G., Julie Jacobs, Sr. Asst. A.G., Daniel Strowe, Asst. A.G., Brittany Bolton, Asst. A.G.
Attorneys for Appellees (KKK): Alan Begner, Cory Begner, Nora Benavidez

SCOTT v. THE STATE (S16A0323)

In this **Camden County** case, a man arrested for sexual exploitation of children is appealing the trial court's refusal to throw out his charges before his case goes to trial. He argues that the statute which criminalizes Internet contact of a sexual nature with a child violates his right to free speech and is therefore unconstitutional.

FACTS: Jack Bernard Scott was arrested in February 2014 for sexual exploitation of children, which allegedly occurred between November and December of 2013. Scott's indictment was filed in Camden County in January 2015. In June of that same year, Scott's attorneys filed a motion to dismiss and quash (or throw out) the indictment, arguing that Georgia Code section 16-12-100.2 (e) violated his First Amendment right to free speech and is overly broad. The statute makes unlawful Internet contact with a child involving "explicit verbal descriptions or narrative account of sexually explicit nudity, sexual conduct, sexual excitement, or sadomasochistic abuse that is intended to arouse or satisfy the sexual desire of either the child or the person." The trial court later denied the motion, letting the case against Scott stand and continue down the path to a jury trial. Scott now appeals to the state Supreme Court.

ARGUMENTS: Scott's attorneys argue that the trial court should have granted the motion to dismiss, and that it erred when it did not. Code section 16-12-100.2 (e) "is unconstitutionally overbroad in violation of the First Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment to the United States Constitution," the attorneys argue in briefs. The First Amendment, the attorneys argue, "allows an adult to talk dirty to a child as long as the dirty talk is not harmful or solicitive." Scott's attorney is asking the state Supreme Court to reverse the trial court's denial of the motion to dismiss, which would effectively end this current case against Scott under this statute.

Attorneys for the State argue that the trial court was correct in denying the motion to dismiss. "This case in not about merely offensive speech, or even sexual 'speech' between adults or between adults and children," the State argues in briefs. "Rather this is a case about explicitly

sexual internet contact knowingly made to the targeted child and intended to cause sexual arousal or satisfaction for the defendant or the child. The State has the right and the duty to protect children from this type of harmful contact." The statute at issue here stands both on the free speech challenge and on the challenge that it is overly board, and the Supreme Court should affirm the trial court's ruling and let the case continue forward, the State argues.

The National Center on Sexual Exploitation and Civil Lawyers Against World Sex-Slavery filed an Amici Curiae Brief ("Friend of the Court" Brief – where an interested party, who is not directly part of the lawsuit, is allowed to file a brief explaining its arguments and interest in the case). In their brief, they argue that "Georgia's obscene internet contact with a child statute is a constitutional protection for children from online sexual exploitation." They support the State's position in this case, and they support the current Georgia statute at issue.

Attorneys for Appellant (Scott): Mark Bennett of Bennett & Bennett, Cris Schneider of the Schneider Law Firm, and Jason Clark of Jason Clark, P.C.

Attorneys for Appellee (State): Jackie Johnson, District Attorney, Andrew Ekonomou, Asst. D.A., and Jay Sekulow, Spec. Asst. D.A. of the Brunswick Judicial Circuit District Attorney's Office

Attorneys for Amicus (National Center on Sexual): Elizabeth Hodges of Cohen, Pollock, Merlin & Small, P.C., and Patrick Trueman, Danielle Bianculli, and Brittany Conklin of the The National Center on Sexual Exploitation and Civil Lawyers Against World Sex-Slavery