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6-1-2004

## Fifteen Famous Supreme Court Cases from Georgia

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### Repository Citation

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# Fifteen Famous Supreme Court Cases from Georgia



By Hosch Professor Dan T. Coenen

*Editor's Note: The New Georgia Encyclopedia is a recently launched, wholly online treatment of our state's history, geography, politics, literature, commerce and other related subjects. Last summer, John Inscoe, UGA professor of history and editor of the encyclopedia, invited Hosch Professor Dan T. Coenen to contribute a series of essays on the most significant U.S. Supreme Court cases that originated in the state of Georgia. The following article, which proposes an unranked top 15 list, is built on this work. Coenen invites readers to*

*share any reactions to this essay by passing along comments – especially about other cases that would be proper candidates for this listing – to coenen@uga.edu. He said, “Don’t hesitate to be critical because I surely have overlooked some important information, and there is always room for helpful discussion and disagreement about any listing of this kind. Certainly, I can imagine no better set of consultants, particularly on this subject, than the graduates of Georgia’s premier law school.”*

All Supreme Court decisions are important, and they are important for different reasons. Some decisions establish society-shaping precedents or sharply alter the direction of the development of the law. Other rulings respond to or trigger critical historical events. Some Supreme Court cases are important because they involve matters of life or death for the litigants and perhaps, as a practical matter, for large numbers of others as well. It is impossible to compare the importance of these different types of decisions or even to speak of them as if they are tied together by a common thread. It is also impossible to say with

confidence that all cases selected for a list of this kind do in fact merit inclusion. Other informed observers will surely disagree with some of my choices. (In fact, a number of my colleagues already have.)

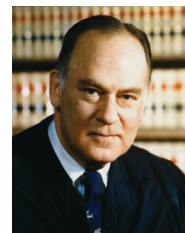
The inevitably controversial nature of this sort of listing reveals an important truth. The decisions of the Supreme Court touch the lives of Americans in a wide range of powerful ways, and they have done so from the first days of the republic. The 15 decisions identified here illustrate the complexity, the variety and the significance of the Supreme Court’s work as well as the key role that controversies rooted in Georgia have played in shaping our nation’s history.

I have not listed these cases in an order designed to suggest my sense of their relative importance. Instead, I have tried to arrange them in a way that highlights how they relate to one another and how they fit into the broader tapestry of the court’s work. The 15 cases are:

*West Façade of the Supreme Court Building*

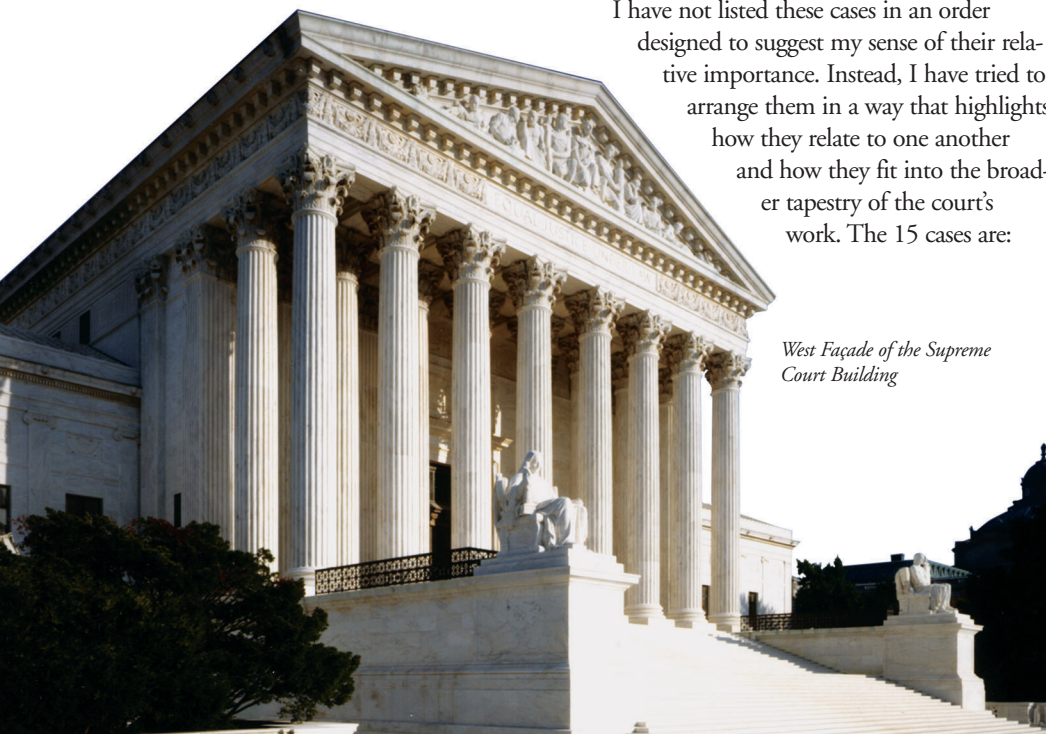
## **Furman v. Georgia (1972)**

Before 1972, Georgia and other states that provided for capital punishment used systems that afforded broad discretion to juries in deciding whether to impose the death penalty on persons convicted of death-eligible offenses. In *Furman*, the court struck down this feature of Georgia’s capital sentencing scheme and in effect invalidated the death penalty, as then administered, throughout the United States. The court, in a five-to-four decision, reasoned that capital sentencing based on the unguided discretion of juries offends the Cruel and Unusual Punishment Clause of the Eighth Amendment because it permits juries to impose the distinctively profound sentence of death on some convicted defendants while other juries impose the far different sentence of life imprisonment on far larger numbers of similarly situated defendants



*Justice Potter Stewart*

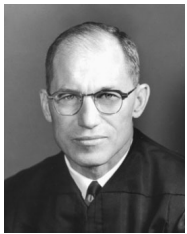
convicted of the same crime. There was no majority opinion in *Furman*, but Justice Potter Stewart captured the thought of a critical group of justices when he wrote: “These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual.” The Eighth Amendment, he explained, “cannot tolerate the infliction of a sentence of death under legal systems that permit this unique



penalty to be so wantonly and so freakishly imposed.”

### **Gregg v. Georgia (1976)**

Some observers predicted that *Furman* would spell the end of the death penalty in the United States. Many states, including Georgia, however, responded to the *Furman* ruling by enacting new death penalty statutes. Some state legislatures reformed their laws to deal with the problem of undue jury discretion by mandating capital punishment for all persons convicted of first-degree murder. The Georgia General Assembly sought to deal with concerns about arbitrariness by adopting a so-called “guided discretion” capital-sentencing scheme. Under this scheme, if the defendant was convicted of first-degree murder or another death-eligible offense, the prosecutor could ask the court to conduct a second “penalty stage” of the trial. Following this second proceeding, the jury could impose the death sentence only if it found that the prosecution had proven a statutorily specified “aggravating circumstance” (such as that the murder was motivated by financial gain or directed at an on-duty correctional officer or a judge). In addition, even if the prosecution proved an aggravating circumstance, the jury could decline to impose the death sentence, and impose a life sentence instead, if it found that “mitigating evidence” (such as emotional difficulties or childhood abuse of the defendant) warranted leniency in the particular case. In *Gregg*, the court, by a seven-to-two vote, upheld Georgia’s guided-discretion approach to capital punishment, while in



Justice Byron R. White



Justice John Paul Stevens

companion decisions the court invalidated other states’ mandatory death-penalty statutes as “unduly harsh and unworkably rigid.” The decisive opinion in *Gregg*, joined by justices Stewart, Byron R. White and John Paul Stevens, reasoned that Georgia had adequately addressed the problem of unfettered jury discretion that had triggered the court’s finding of a constitutional violation in *Furman*. The court

added that “respect for the ability of a legislature to evaluate, in terms of its particular state, the moral consensus concerning the death penalty and its social utility as a sanction require us to conclude that [it] is not unconstitutionally severe.” The “guided discretion” approach to the death penalty, upheld by the court in *Gregg*, has been adopted in a large majority of states and continues to control capital sentencing in murder cases throughout the nation to the present day.

### **McCleskey v. Kemp (1987)**

In the wake of *Gregg*, litigants continued to challenge capital sentences, and the most far-reaching challenge came in the *McCleskey* case. Warren McCleskey was an African-American man convicted of murdering a white police officer in Fulton County. In attacking his death sentence, McCleskey brought before the court an expert statistical study that indicated that juries in Georgia are far more likely to impose the death penalty if the victim is white and most likely to impose the death penalty if the victim is white and the murderer is black. This evidence showed, according to McCleskey, that Georgia’s guided-discretion scheme was so fraught with race discrimination in its real-world operation that it violated both the Eighth Amendment and the Equal Protection Clause of the 14th Amendment. The court, however, rejected this argument, thus saving Georgia’s capital sentencing scheme from potentially insuperable constitutional difficulties. Writing for a five-justice majority, Justice Lewis F. Powell Jr. noted that McCleskey had offered “no evidence specific to his own case that would support an inference that racial considerations played a part in his sentence” and added that “[w]here the discretion that is fundamental to our criminal process is involved, we decline to assume that what is unexplained is invidious.”



Justice Lewis F. Powell Jr.

### **Coker v. Georgia (1977)**

Despite the rejection of sweeping attacks on capital sentencing in *Gregg* and *McCleskey*, litigants have successfully challenged particular features of state death-penalty laws in a number of Supreme Court cases. A particu-

larly significant ruling came in *Coker v. Georgia*, which invalidated Georgia’s effort to extend eligibility for the death penalty to persons convicted of the crime of rape. In finding this feature of the Georgia death-penalty law unconstitutional, the Supreme Court reasoned that punishments violate the Eighth Amendment if they are “excessive in relation to the crime committed,” that determinations about excessiveness are properly informed by “country’s present judgment,” and that the Georgia law could not survive this type of inquiry because no other state subjected persons convicted of the rape of an adult woman to execution. *Coker* has been read to establish that governments may not extend the death penalty to most, and perhaps all, non-murder offenses. In addition, the court has invoked the underlying excessiveness rationale of *Coker* in later cases to invalidate death sentences even for death-related crimes, such as murders committed by persons who are mentally retarded or younger than 16 years old.

### **Heart of Atlanta Motel v. United States (1964)**

Many path-breaking Supreme Court cases have grown out of Georgia’s long and tragic history of race discrimination. Critical decisions have concerned racially motivated murders and beatings, deprivations of voting rights, and governmental segregation of parks and other public facilities. Perhaps no decisions have had a greater practical impact, however, than *Heart of Atlanta Motel* and its companion case from Alabama, *Katzbach v. McClung*, in which the Supreme Court upheld the public accommodations provisions of the Civil Rights Act of 1964. By 1964, it was well settled that the Equal Protection Clause barred almost all state-imposed racial classifications that disadvantaged African Americans. Discrimination in the private sector, however, remained widespread. Under the leadership of President Lyndon B. Johnson, in the wake of the Kennedy assassination, Congress mustered the will to proscribe in broad terms racial discrimination by many private service providers, including hotels, motels and restaurants that sold food that had moved across state lines. The constitutional difficulty was that none of Congress’ enumerated powers unequivocally supported the enactment of the 1964 Civil Rights Act, and challengers



assailed the legislation as impinging on state prerogatives to regulate local matters free from federal interference. A unanimous court, however, found that the law was a proper exercise of Congress' Article I, Section 8, power to "regulate Commerce ... among the several States." In effect, the court reasoned that race discrimination by even very localized businesses, when viewed in the aggregate, had such far-reaching negative effects on the interstate movement of people and products that Congress could remove these impediments to commerce whether or not its underlying motives arose out of moral condemnation. Ensuing enforcement of the Civil Rights Act led to the dismantling of most overt forms of racial discrimination, which in turn contributed to the emergence of the "New South" and the explosion of economic activity that spread through the Sun Belt in future decades.

### **United States v. Darby (1941)**

The decisions in which the court upheld the Civil Rights Act of 1964 built on Commerce Clause precedents handed down during the presidency of Franklin D. Roosevelt. During his first term of office, President Roosevelt sought to respond to the Great Depression by pushing through Congress a program of reform that deeply injected the federal government into regulation of such matters as working conditions in local facilities. Relying on constitutional arguments about state autonomy, the Supreme Court invalidated several of these laws during 1935 and 1936. Following President Roosevelt's landslide reelection in 1936, however, the court dramatically shifted direction and began to reject states-rights challenges to federal initiatives founded on the commerce power. A critical juncture came in the *Darby* case, which involved the prosecution of a lumber manufacturer located in Statesboro for violating the minimum-wage and maximum-hour protections put in place by the recently enacted federal Fair Labor Standards Act. Overruling earlier precedent, the court held that the law was a proper exercise of the congressional commerce power, including in its application to local manufacturing concerns. The rationale of *Darby* ushered in an era of such extreme judicial deference to assertions of congressional authority that no federal law was found to exceed the commerce power for the next 54 years.

### **Screws v. United States (1945)**

Congress' enumerated powers reach beyond the Commerce Clause, and a particularly important grant of authority permits federal legislators to enact "appropriate legislation" to enforce the 14th Amendment's prohibition on state action that deprives persons of "equal protection" or "life, liberty or property without due process of law." Close on the heels of the ratification of the 14th Amendment, Congress passed several civil rights statutes pursuant to this power, including one that makes it a federal crime for a person "willfully" to deprive another of "any rights, privileges, or immunities secured by the Constitution" if the deprivation occurs "under color" of state law. Although this statute had long lain dormant, the federal Justice Department invoked it in the *Screws* case to prosecute three Baker County law enforcement officers who allegedly killed an African American suspected of stealing a tire by "beating him with their fists and with a solid-bar blackjack" in the absence of any provocation. After the defendants were convicted in federal court, the Supreme Court in *Screws* ordered a new trial on the ground that the trial judge had not given accurate



Justice William O. Douglas

instructions to the jury on the meaning of the statutory term "willfully." (Justice William O. Douglas observed that "[e]ven those guilty of the most heinous offenses are entitled to a fair trial." Notably, upon retrial, all three defendants were acquitted.) The key precedent established by the case, however, came in the court's declaration that the taking of the victim's life had occurred "under color" of state law so that a prosecution under the federal civil rights statute was permissible. Three dissenting justices argued that the beating did not meet the under-color-of-state-law requirement because the defendants had violated, rather than adhered to, state law according to the prosecution's own evidence. The dissenters also urged that permitting a federal prosecution for what they viewed as a local murder would bring about "a revolutionary change in the balance of the political relations between the National Government and the States." The majority, however, concluded it sufficed to meet the

under-color-of-state-law requirement that "the officers of the State were performing official duties," whether or not "the power they were authorized to exercise was misused." In so ruling, the court opened the door for sweeping invocations of the long-unused Reconstruction-era federal civil rights statutes in ensuing decades. The majority's ruling also bespoke something more – a rising willingness within the court to address issues of racial injustice that would, within a decade, produce the seminal school-desegregation decision in *Brown v. Board of Education*.

### **Gray v. Sanders (1963)**



Chief Justice Earl Warren

Chief Justice Earl Warren once said the most important judicial pronouncements of his tenure were not the momentous school-desegregation decisions, but the Supreme Court's rulings that compelled states throughout the

nation to reconfigure their electoral processes pursuant to the principle of "one person,



one vote.” The very first of many Supreme Court decisions that applied this principle came as a result of a legal challenge brought by James Sanders, a voter in Fulton County, that targeted Georgia’s county-unit voting system in its application to elections for senator, governor and other officers chosen on a statewide basis. The problem with the system, according to Sanders, was that it gave residents of small counties far more voting power than residents of more populous counties. Indeed, the favoritism shown to rural areas was so great that counties that were home to only one-third of Georgia’s population held a majority of county-unit votes for purposes of selecting each of these elected officials. In striking down this voting scheme under the Equal Protection Clause, the court insisted, in an opinion by Justice Douglas, that the American “conception of political equality ... can only mean one thing - one person, one vote.” In its 1964 ruling in *Wesberry v. Sanders*, another case out of Georgia, the court built on *Gray* to hold that all federal congressional districts within a state had to be made up of a roughly equal number of voters. In so ruling, the court radically altered how state

legislatures would thereafter configure congressional districts, which until then often reflected long-established groupings of counties that ignored intervening urbanization and other major shifts in population. Within four months of *Wesberry*, the court ruled in its most famous reapportionment decision, *Reynolds v. Sims*, a case out of Alabama, that the Constitution required the equal valuation of votes in all elections for representatives who served in either chamber of any state legislature. As a result, the court scuttled the legislative electoral systems of most states, including often-used “little federalism” systems that, following the model of the Constitution’s treatment of the U.S. Senate, structured districts for one house of the state legislature according to geography, rather than population. The Warren court’s reapportionment decisions, beginning with *Gray*, dramatically reshaped the nature of representative government in Georgia and throughout the nation. No less important, the principle of electoral equality that underlies these cases has continued to generate important decisions in more recent times – most prominently the Supreme Court’s ruling in *Bush v. Gore*, which brought an end to the spirited legal challenges triggered by the presidential election of 2000.

### ***City of Rome v. United States (1980)***

Race-based discrimination with respect to voting has pervaded American history, and Congress aggressively attacked this wrong by adopting the Voting Rights Act of 1965. At issue in the *City of Rome* case was the most controversial provision of this statute, which requires federal Justice Department approval of any change in any voting practice put in place by a locale marked by a history of discrimination if that change has either “the purpose [or] the effect of denying or abridging the vote on account of race or color.” This case grew out of an effort by Rome to alter both the city’s electorate and its electoral system by annexing neighboring areas and adopting an at-large voting scheme for the selection of city commissioners. Rome offered evidence that it had not pursued these changes with any racially discriminatory purpose, but Justice Department approval was denied nonetheless on the ground that the reforms would have an adverse effect on the ability of African Americans to secure local represen-

tation. Confronted with a constitutional challenge to Congress’ authority to adopt this effects-based standard, the court sided with the Justice Department and blocked Rome’s effort to reconfigure its method of self-governance. In recognizing Congress’ power under the 15th Amendment to attack the racially discriminatory effects of voting changes, even in the absence of a racially discriminatory purpose, the court both sustained and illustrated the power of the most far-reaching feature of modern federal voting rights legislation.

### ***Chisholm v. Georgia (1793)***

*Chisholm v. Georgia* is the most famous and the most important of the Supreme Court’s eighteenth-century decisions. The court’s ruling arose out of an action brought in federal court by a citizen from South Carolina to recover on a debt allegedly owed to him by the state of Georgia. Upon receiving notice of the action, Georgia refused to appear. It asserted that, as a sovereign state, it possessed immunity from suit, absent its consent, even though the Constitution specifies that federal courts have jurisdiction to decide cases “between a State and citizens of another State.” Citing this text, the Supreme Court rejected Georgia’s sovereign-immunity argument and ordered Georgia to pay the South Carolina plaintiff the money damages he sought. In the wake of this decision, howls of protest rose throughout the country. Within five years, Congress had proposed and the states had ratified the 11th Amendment, which overturned the principle of *Chisholm* by providing that “[t]he judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State ... .” To this day, *Chisholm* stands as one of only a handful of Supreme Court rulings that have been overturned by constitutional amendment. Even more important, the Supreme Court has built on the repudiation of *Chisholm* to hold that the 11th Amendment exemplifies a sovereign-immunity principle that sweeps well beyond the amendment’s text. Invoking this principle, the court has sheltered states from almost all money-damage actions brought in any court, even when initiated by a state’s own residents based on clear violations of federal statutory law.

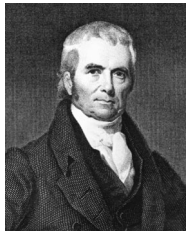


View of the east wall, bench and frieze of the courtroom where the Supreme Court has sat since 1935.



## **Worcester v. Georgia (1832)**

Prior to the forced removal from Georgia of thousands of Native Americans on the infamous Trail of Tears, Reverend Samuel A. Worcester was convicted in a Georgia court for settling in the territory of the Cherokee Nation without obtaining the required state license to do so. In a decision that over-



Chief Justice John Marshall

turned this conviction, Chief Justice John Marshall laid down cardinal principles regarding the relationship of Native American tribes, the nation and the states. As he observed: "The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force ... but with the assent of the Cherokees themselves, or in conformity with the treaties, and with the acts of congress." *Worcester* is well known largely because it was in response to this decision that President Andrew Jackson supposedly made his ominous observation: "John Marshall has made his decision, now let him enforce it." Even more important, the ruling and reasoning of *Worcester* – and, in particular, its conception of Native American Nations as possessing important elements of sovereignty – has been drawn on in hundreds of ensuing cases. To be sure, a theoretical commitment to this principle of sovereignty has often done little to protect Native American Nations from the worst forms of oppression. Such protections as the institutions of American government have afforded those nations, however, sprung primarily from notions of tribal integrity that trace their roots to *Worcester*.

## **Fletcher v. Peck (1810)**

The *Fletcher* case arose out of the Yazoo land scandal that came to light after bribed members of the Georgia legislature voted in January of 1795 to sell for a bargain-basement price the vast frontier that comprises most of modern-day Alabama and Mississippi. A rescinding act adopted by a later and more upright Georgia legislature resulted in a constitutional challenge to the act's divestiture of title from prior buyers as well as third-party purchasers who had bought parcels of the tract from the original

grantees. In Chief Justice Marshall's opinion in *Fletcher*, the court sustained this challenge, establishing – as Professor Robert G. McCloskey has written – "the first clear precedent for the general proposition that the Supreme Court is empowered to hold state laws unconstitutional." (The court's earlier and more famous decision in *Marbury v. Madison* had recognized the court's ability to strike down acts of Congress, without specifically considering the court's power to invalidate state laws.) *Fletcher* is important for other reasons as well. The case laid the basis for the important principle that the limitations imposed by the Impairment of Contract Clause extend to governmental, as well as private, contractual obligations. Even more important, the court's opinion in *Fletcher* hinted at the notion that Americans may possess judicially enforceable rights rooted not so much in the specific language of the Constitution as in "general principles, which are common to our free institutions." Picking up on this theme, much of the court's most controversial work during the remaining course of its history has explored the extent to which the court may protect human rights that do not find clear expression in the constitutional text.

## **Doe v. Bolton (1973)**

The court in *Fletcher* may have flirted with the notion of unenumerated individual rights in part because the original Bill of Rights applied only to the federal government and not to the states. One consequence of the Civil War, however, was the adoption of the 14th Amendment, which broadly (but obliquely) stipulated that: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law ... ." After the Privileges and Immunities Clause was given a narrow interpretation in 1872, the court turned its attention to the Due Process Clause. In a key line of cases, the court concluded that virtually all of the Bill of Rights guarantees – such as the rights to a jury trial, to the assistance of counsel and to confront one's accusers – had been "incorporated" into the Due Process Clause and thereby made applicable to the states. These incorporation decisions did not concern only the procedural safeguards afforded to

criminal defendants. They also barred the states from, for example, interfering with the substantive rights of free speech and the free exercise of religion protected by the First Amendment. The question next arose whether this so-called "substantive due process" principle embraced fundamental liberties that lay outside of the express protections of the Bill of Rights. In a series of decisions, dating back nearly a century, the court held that such protections do exist. Perhaps the most well known of these cases, *Roe v. Wade* – as well as its companion case out of Georgia, *Doe v. Bolton* – established the principle that the Due Process Clause affords broad constitutional protection to a woman's decision to terminate a pregnancy, in consultation with her doctor, prior to the



Justice Harry A. Blackmun

period of fetal viability. In *Doe*, Justice Harry A. Blackmun, writing for seven members of the court, held that the Constitution rendered invalid not only absolute bans on abortion but more qualified prohibitions as well – here, a statute that, while generally outlawing abortion, authorized the procedure upon approval of a hospital committee in cases that involved serious threats to the pregnant woman's health, risks of serious birth defects if the fetus were carried to term, or a pregnancy that had resulted from rape. Rejecting in particular the states' committee-review requirement, the court spoke broadly of "[t]he woman's right to receive medical care in accordance with her licensed physician's best judgment."

## **Stanley v. Georgia (1969)**

In another leading substantive-due-process case, the court in the *Stanley* case held that an individual has a constitutional right to possess obscene materials even though obscenity does not ordinarily enjoy protection under the First Amendment's Free



Justice Thurgood Marshall

Speech and Free Press Clauses. In an opinion by Justice Thurgood Marshall, the court declared that "fundamental is the right to be free, except in very limited circumstances, from unwanted governmental

## Georgia Law Students Attend Pledge Case as Guest of Supreme Court Justice

In late March, third-year student Kevin A. Gooch and second-year student Kira Y. Fonteneau traveled to Washington, D.C., to sit in on the U.S. Supreme Court hearing of the *Elk Grove Unified School District v. Michael A. Newdow, et al.* case as personal guests of Supreme Court Associate Justice Clarence Thomas. Later this year, the court will rule on whether the Pledge of Allegiance should be banned from public schools for its use of the words “under God.” To the right, Fonteneau (l.) and Gooch (r.) are pictured on either side of Thomas.



intrusions into one’s privacy,” particularly the “right to satisfy [one’s] intellectual and emotional needs in the privacy of his home.” Drawing on earlier decisions, the court emphasized the “right to receive ideas regardless of their social worth” and declared that the “makers of our Constitution ... conferred, as against the Government, the right to be let alone – the most comprehensive of rights and the right most valued by civilized man.” Cutting a channel for future legal developments, the court also suggested that a constitutional claim of the right to privacy “takes on an added dimension” when it involves activity “in the privacy of a person’s own home.”

### ***Bowers v. Hardwick* (1986)**

Relying on the place-centered rationale of

*Stanley*, Michael Hardwick brought an action that challenged the application of Georgia’s criminal sodomy law to acts of homosexual intimacy between consenting adults that occur within the home. In a five-to-four decision, the Supreme Court rejected Hardwick’s argument, reasoning that the court “comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or design of the Constitution.” The court acknowledged that “the cases are legion” in which it had construed the Due Process Clause to protect important substantive personal interests. The court, however, found that none of those cases mandated invalidation of Georgia’s ban on consensual sodomy. The court distinguished *Roe* and *Doe*, for exam-

ple, as involving the distinctively profound and life-altering choice of whether “to beget or bear a child” and reasoned that *Stanley* was “firmly grounded in the First Amendment.” The court’s decision in *Bowers*, however, hardly ended debate about the proper scope of constitutional liberty possessed by homosexuals and other American citizens. Justice Powell, who had provided the critical fifth vote in *Hardwick*, said of the case after his retirement from the bench: “I think I probably made a mistake in that one.” And, in 2003, a new five-justice majority, overruled the *Bowers* decision in *Lawrence v. Texas*, declaring that a general ban on consensual adult sodomy “furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual.” ■

*The New Georgia Encyclopedia can be found at [www.georgiaencyclopedia.org](http://www.georgiaencyclopedia.org).*

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