

SUPREME COURT OF THE UNITED STATES

No. 91-372

GEORGIA, PETITIONER v. THOMAS McCOLLUM,
WILLIAM JOSEPH McCOLLUM AND
ELLA HAMPTON McCOLLUM

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA
[June 18, 1992]

JUSTICE SCALIA, dissenting.

I agree with the Court that its judgment follows logically from *Edmonson v. Leesville Concrete Co., Inc.*, ___ U. S. ___ (1991). For the reasons given in the *Edmonson* dissents, however, I think that case was wrongly decided. Barely a year later, we witness its reduction to the terminally absurd: A criminal defendant, in the process of defending himself against the state, is held to be acting on behalf of the state. JUSTICE O'CONNOR demonstrates the sheer inanity of this proposition (in case the mere statement of it does not suffice), and the contrived nature of the Court's justifications. I see no need to add to her discussion, and differ from her views only in that I do not consider *Edmonson* distinguishable in principle—except in the principle that a bad decision should not be followed logically to its illogical conclusion.

Today's decision gives the lie once again to the belief that an activist, “evolutionary” constitutional jurisprudence always evolves in the direction of greater individual rights. In the interest of promoting the supposedly greater good of race relations in the society as a whole (make no mistake that that is what underlies all of this), we use the Constitution to destroy the ages-old right of criminal defendants to exercise peremptory challenges as they wish, to secure a jury that they consider fair. I dissent.

91-372—DISSENT

GEORGIA v. McCOLLUM