

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

GEORGIA v. MCCOLLUM ET AL.

CERTIORARI TO THE SUPREME COURT OF GEORGIA

No. 91–372. Argued February 26, 1992—Decided June 18, 1992

Respondents, who are white, were charged with assaulting two African-Americans. Before jury selection began, the trial judge denied the prosecution's motion to prohibit respondents from exercising peremptory challenges in a racially discriminatory manner. The Georgia Supreme Court affirmed, distinguishing *Edmonson v. Leesville Concrete Co.*, 500 U.S. ___—in which this Court held that private litigants cannot exercise peremptory strikes in a racially discriminatory manner—on the ground that it involved civil litigants rather than criminal defendants.

Held: The Constitution prohibits a criminal defendant from engaging in purposeful discrimination on the ground of race in the exercise of peremptory challenges. Pp.3-16.

(a) The exercise of racially discriminatory peremptory challenges offends the Equal Protection Clause when the offending challenges are made by the State, *Batson v. Kentucky*, 476 U.S. 79; *Powers v. Ohio*, 499 U.S. ___, and, in civil cases, when they are made by private litigants, *Edmonson, supra*. Whether the prohibition should be extended to discriminatory challenges made by a criminal defendant turns upon the following four-factor analysis. Pp.3-5.

(b) A criminal defendant's racially discriminatory exercise of peremptory challenges inflicts the harms addressed by *Batson*. Regardless of whether it is the State or the defense who invokes them, discriminatory challenges harm the individual juror by subjecting him to open and public racial discrimination and harm the community by undermining public confidence in this country's system of justice. Pp.5-7.

(c) A criminal defendant's exercise of peremptory challenges constitutes state action for purposes of the Equal Protection Clause under the analytical framework summarized in *Lugar v. Edmondson Oil Co.*, 457 U.S. 922. Respondents' argument that the adversarial relationship between the defendant and the prosecution negates a peremptory challenge's governmental

character is rejected. Unlike other actions taken in support of a defendant's defense, the exercise of a peremptory challenge determines the composition of a governmental body. The fact that a defendant exercises a peremptory challenge to further his interest in acquittal does not conflict with a finding of state action, since whenever a private actor's conduct is deemed fairly attributable to the government, it is likely that private motives will have animated the actor's decision. Pp.7-12.

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(d)The State has third-party standing to challenge a defendant's discriminatory use of peremptory challenges, since it suffers a concrete injury when the fairness and the integrity of its own judicial process is undermined; since, as the representative of all its citizens, it has a close relation to potential jurors; and since the barriers to suit by an excluded juror are daunting. See *Powers*, 499 U.S., at ___. Pp.12-14.

(e)A prohibition against the discriminatory exercise of peremptory challenges does not violate a criminal defendant's constitutional rights. It is an affront to justice to argue that the right to a fair trial includes the right to discriminate against a group of citizens based upon their race. Nor does the prohibition violate the Sixth Amendment right to the effective assistance of counsel, since counsel can normally explain the reasons for peremptory challenges without revealing strategy or confidential communication, and since neither the Sixth Amendment nor the attorney-client privilege gives a defendant the right to carry out through counsel an unlawful course of conduct. In addition, the prohibition does not violate the Sixth Amendment right to a trial by a jury that is impartial with respect to both parties. Removing a juror whom the defendant believes harbors racial prejudice is different from exercising a peremptory challenge to discriminate invidiously against jurors on account of race. Pp.14-16.

261 Ga. 473, 405 S.E.2d 688, reversed and remanded.

BLACKMUN, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, STEVENS, KENNEDY, and SOUTER, JJ., joined. REHNQUIST, C. J., filed a concurring opinion. THOMAS, J., filed an opinion concurring in the judgment. O'CONNOR, J., and SCALIA, J., filed dissenting opinions.