



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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IN THE MATTER OF CLAUD L. MCIVER, III (S18Y1161)

The Supreme Court of Georgia has accepted a petition from **Claud “Tex” McIver** to suspend his law license pending his appeal. McIver, a lawyer, was recently convicted in **Fulton County Superior Court** of murdering his wife, Diane McIver, and on May 23, 2018, he was sentenced to life in prison. McIver has filed a motion requesting a new trial and intends to appeal his conviction to the state Supreme Court if that motion is denied. “Because we agree that such a suspension is appropriate, we accept McIver’s petition,” today’s opinion in this disciplinary matter says. “Accordingly, McIver hereby is suspended from the practice of law in this State until further order of this Court.”

Attorney for Appellant (McIver): Donald Samuel

Attorneys for Appellee (State Bar of Georgia): Paula Frederick, General Counsel, State Bar of Georgia, Jenny Mittelman, Dep. Gen. Counsel

TUCKER V. ATWATER ET AL. (S18C0437)

The Supreme Court of Georgia has denied a petition to appeal a decision by the Georgia Court of Appeals involving a **Tift County** public schools teacher who disparaged the Black Lives Matter movement on Facebook.

Kelly Tucker engaged in a heated Facebook debate about the movement, posting a lengthy message on Facebook that was dismissive of the movement and derogatory of “thugs.” Some people who disagreed with her viewpoint complained to Tucker’s principal and the local school superintendent, resulting in her five-day suspension and requirement that she attend diversity training. Tucker sued the superintendent and school board chair, alleging that the

punishment violated her First Amendment rights. The trial court refused to dismiss the case, and the defendants appealed to the Court of Appeals, the state's intermediate appellate court.

The Court of Appeals reversed the trial court's decision, ruling that the school officials were protected by the legal doctrine of "qualified immunity," which protects government employees from lawsuits in their personal capacities. They were immune from being sued, the Court of Appeals ruled, because they did not violate any clearly established law that would put them on notice that their actions were illegal.

In a concurrence to the one-sentence order denying Tucker's petition to appeal to the state Supreme Court, **Justice Nels S.D. Peterson** writes that he agrees "that there does not appear to be any clearly established law in this jurisdiction that the school officials violated." As a result, he agrees that the school officials are entitled to "qualified immunity," and he agrees with the high court's refusal to hear Tucker's appeal. However, "I write separately to express my grave concerns that the school officials may well have violated Tucker's First Amendment rights," writes Peterson, who is joined by Chief Justice P. Harris Hines and Justice Keith R. Blackwell.

The Court of Appeals observed in its decision that the balancing test laid out in the U.S. Supreme Court's 1968 decision in *Pickering v. Board of Education* would apply to First Amendment claims by government employees like Tucker. That test balances the employee's interest in speaking against the government employer's interest in not having its employees' speech disrupt government's efficient functioning. "But it's not obvious to me that the *Pickering* balancing test applies to public employee speech cases when the employee speaks on his or her own time about matters unrelated to his or her employment," Peterson writes in the concurrence.

"American courts have long been jealous guardians of the right to free speech," the concurrence says. And, "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable," the concurrence says, quoting the U.S. Supreme Court's 1989 decision in *Texas v. Johnson*.

"This 'bedrock principle' is difficult to reconcile with allowing government to punish its employees for viewpoints they communicate wholly unrelated to their employment," Peterson writes. "Government employers clearly have authority to control their employees in the course of their employment. But is something else entirely to hold that government employers can punish their employees based on viewpoints expressed in private speech, as the school officials did here."

HOECHSTETTER ET AL. V. PICKENS COUNTY (S17G1500)

The Supreme Court of Georgia has ruled in favor of a group of **Pickens County** neighbors who sued the county government over a zoning decision they opposed.

With today's unanimous opinion, written by **Justice Keith R. Blackwell**, the high court has reversed a Georgia Court of Appeals decision, ruling that the Pickens County Board of Commissioners decided a zoning matter without giving neighbors a meaningful opportunity to be heard.

According to the facts of the case, in August 2015, Doug and Lynda Tatum, who owned about 75 acres of property in Pickens County, submitted a zoning request seeking approval of a conditional use permit that would allow them to use their property near Jasper, GA for special

events. In October 2015, the Pickens County Planning Commission held a public hearing on the permit application. The County gave notice of that hearing in compliance with the state's Zoning Procedure Law (Georgia Code § 36-66-4). That law states that a "local government taking action resulting in a zoning decision shall provide for a hearing on the proposed action. At least 15 but not more than 45 days prior to the date of the hearing, the local government shall cause to be published...a notice of the hearing." The purpose is to allow citizens an opportunity to be heard. Following the hearing, where several neighbors objected to the application, the planning commission recommended to the Pickens County Board of Commissioners that it grant the permit. Three months later, at its Jan. 21, 2016 meeting, the Board of Commissioners granted the Tatums' permit application.

Kurtis Hoehstetter and 10 other neighbors who opposed the Tatums' request for a permit to allow special events to be held on their property appealed to the superior court. They argued the permit was invalid because the notice requirements under the law were not met. Although proper notice was given prior to the planning commission's meeting, no additional notice was given prior to the Board's meeting when the decision was actually made, they contended. They asked the trial court for "summary judgment" in their favor. A trial judge grants summary judgment after deciding that a trial is unwarranted because the facts are undisputed and the law clearly favors one side or the other. The trial court denied summary judgment, and the neighbors then appealed to the Court of Appeals. But the intermediate appeals court also ruled against them, finding that the Georgia Supreme Court – the highest court in the state – has interpreted the phrase, "taking action resulting in a decision" in § 36-66-4 to mean the "entire process of changing or adopting a zoning ordinance." "Under this interpretation, a hearing is required at only one point during the process, but not at every stage," the Court of Appeals ruled. Hoehstetter and the other neighbors then appealed to the state Supreme Court, which agreed to review the matter to determine whether the Court of Appeals ruled correctly.

"We issued a writ of certiorari to review the decision of the Court of Appeals, and we now reverse," today's opinion says.

"The problem with the decision below is that it rests upon the premise that the October 2015 hearing before the Planning Commission (and the notice of that hearing) was enough to satisfy the notice-and-hearing requirements of the Zoning Procedure Law," the opinion says. "It is true, as the Board notes, that a hearing is not required at every stage of the process that leads up to a zoning decision, and 'what the statute requires is one hearing during the continuous course of a zoning matter before the local government.' But the whole point of the statutory notice-and-hearing requirements is to afford interested citizens a *meaningful* opportunity to be heard on a proposed zoning decision."

Here, the Planning Commission had no authority to make a final zoning decision and could only make a recommendation to the Board. Had there been an adequate record of the hearing before the Planning Commission, the hearing before the Planning Commission might have satisfied the law's requirements. But there was not an adequate record, only a one-page memorandum that was prepared nearly a month after the hearing and disclosed only that the Planning Commission had heard "testimony from the applicant and considerable objections from the surrounding neighborhood in attendance," the opinion says. "The memorandum fails to disclose even the general nature of those 'considerable objections,' and as such, we fail to see

how the memorandum informed the Board in a meaningful way of what happened at the hearing.”

“Accordingly, it cannot be said that the hearing before the Planning Commission afforded interested citizens a meaningful opportunity to be heard by the Board on the application for a conditional use permit, and the October 2015 hearing does not satisfy the notice-and-hearing requirements of the Zoning Procedure Law,” the opinion says.

Attorney for Appellants (Hoechstetter): John Capo

Attorney for Appellees (County): Phillip Friduss

IN OTHER CASES, the Supreme Court of Georgia has upheld **murder** convictions and life prison sentences for:

- * Montrella Baskin (Fulton Co.) ** **BASKIN V. THE STATE (S18A0148)**
- * Sean Nalls (Fulton Co.) ** **NALLS V. THE STATE (S18A0147)**
- * Stevie Lamar Garner (Floyd Co.) **GARNER V. THE STATE (S18A0799)**
- * Willie J. Terrell (Fulton Co.) **TERRELL V. THE STATE (S18A0478)**

** Baskin and Nalls were co-defendants

IN DISCIPLINARY MATTERS, the Georgia Supreme Court has **disbarred** the following attorney:

- * George W. Snipes **IN THE MATTER OF: GEORGE W. SNIPES (S18Y0921)**

The Court has accepted a petition for **voluntary surrender of license** – tantamount to disbarment – from attorneys:

- * Prince A. Brumfield, Jr. **IN THE MATTER OF: PRINCE A. BRUMFIELD, JR. (S18Y1167)**
- * Shannon Briley-Holmes **IN THE MATTER OF: SHANNON BRILEY-HOLMES (S18Y0717)**

The Court has accepted a petition for voluntary discipline and ordered the **six-month suspension** of attorney:

- * S. Quinn Johnson **IN THE MATTER OF: S. QUINN JOHNSON (S18Y0833, S18Y0834, S18Y0835, S18Y0836, S18Y0837)**