Supreme Court of Georgia
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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Tuesday, September 15, 2020

10:00 A.M. Session

KEMP ET AL. V. GONZALEZ ET AL. (S21Q0068)

At issue in this case now before a federal court is whether voters in **Athens-Clarke** and **Oconee counties** will vote in November 2020 or November 2022 for District Attorney for the Western Judicial Circuit.

The case has come to the Georgia Supreme Court as a certified question by the United States Court of Appeals for the Eleventh Circuit. The state Supreme Court has agreed to expedite the proceedings in case the decision ultimately is to hold the election this November.

On March 6, 2020, former state representative **Deborah Gonzalez** attempted to qualify for the Nov. 3, 2020 election to the office of district attorney for the Western Judicial Circuit after Ken Mauldin resigned from the post effective Feb. 29. Georgia Secretary of State Brad Raffensperger determined that Gonzalez could not qualify for the November 2020 election for district attorney because under Georgia Code § 45-5-3.2 (a), there would not be an election for that position until November 2022. Georgia Code § 45-5-3.2 (a) states that the governor is to fill any vacancy in the office of district attorney, and the appointee "shall serve until January 1 of the year following the next statewide general election *which is more than six months after the date of the appointment*, even if such period of time extends beyond the unexpired term of the prior district attorney." Gonzalez called on **Governor Brian Kemp** to fill the vacancy before May 3, or less than six months after the date of the appointment so the election could be held Nov. 3, 2020. Instead, Sec. Raffensperger determined that the next election for district attorney for the Western Judicial Circuit would take place in November 2022 – the statewide general election immediately prior to the expiration of Gov. Kemp's (yet-to-be-named) appointee's term.

On May 18, 2020, Gonzalez and four registered voters sued Gov. Kemp and Sec. Raffensperger in the United States District Court for the Northern District of Georgia. They alleged that Georgia Code § 45-5-3.2 (a) violates Georgia Constitution Article VI, Section VIII, Paragraph I (a), which states: "There shall be a district attorney for each judicial circuit, who shall be elected circuit-wide for a term of four years. The successors of present and subsequent incumbents shall be elected by the electors of their respective circuits at the general election held immediately preceding the expiration of their respective terms. District attorneys shall serve until their successors are duly elected and qualified. Vacancies shall be filled by appointment of the Governor."

On May 25, 2020, Gonzalez and the four voters filed a motion for preliminary injunction, asking the federal district court to require Gov. Kemp and Sec. Raffensperger to move forward with the November 2020 election for the Western Judicial Circuit district attorney. The district court granted their request, finding that they likely would succeed on their federal due process claim because § 45-5-3.2 (a) conflicts with Georgia Constitution Article VI, Section VIII, Paragraph I (a). Specifically, the district court found that Georgia Constitution Article VI, Section VIII, Paragraph I (a) "requires the appointed district attorney to run for re-election at the general election prior to the expiration of the existing term of office" and that § 45-5-3.2 (a) conflicts with that provision and is therefore unconstitutional. In July, Gov. Kemp and Sec. Raffensperger appealed to the Eleventh Circuit Court of Appeals, which certified this question to the Georgia Supreme Court: "Does Georgia Code § 45-5-3.2 (a) conflict with Georgia Constitution Article VI, Section VIII, Paragraph I (a), or any other provision of the Georgia Constitution?"

Attorneys for Appellants (Kemp and Raffensperger): Christopher Carr, Attorney General, Andrew Pinson, Solicitor General, Bryan Webb, Dep. A.G., Russell Willard, Sr. Asst. A.G., Elizabeth Young, Asst. A.G., Miles Skedsvold, Asst. A.G.

Attorney for Appellees (Gonzalez et al.): Bruce Brown

KNIGHTON V. THE STATE (S20A1195)

In this **Newton County** case, **Quran Knighton** is appealing his malice murder and other convictions for stabbing to death 18-year-old Markice Harris following an argument via cell

phone messages. At the time, Knighton was 16 years old. He was sentenced to life plus five years in prison.
Attorney for Appellant (Knighton): Brian Steel
Attorneys for Appellee (State): Randy McGinley, Acting District Attorney, Bailey Simkoff, Sr. Asst. D.A.

LOWNDES COUNTY HEALTH SERVICES, LLC V. COPELAND ET AL. (S20G0425)

A South Georgia nursing home facility is appealing a Georgia Court of Appeals ruling that upheld a lower court's judgment in a wrongful death case in which the jury awarded more than $7.6 million in damages. The nursing home argues the judgment should be reversed because one of the prospective jurors was excused based on race in violation of the U.S. Supreme Court's 1985 decision in *Batson v. Kentucky*.

Bobby Copeland, 71, was a long-time resident at a skilled nursing facility known as Heritage Healthcare at Holly Hill, owned by **Lowndes County Health Services, LLC.** On Oct. 26, 2012, Copeland died in the emergency room of South Georgia Medical Center. The cause of death was cardiac arrest caused by acute respiratory distress syndrome, brought on by the aspiration of fecal material from vomiting as a result of an undiagnosed and untreated bowel obstruction. Copeland's son, **Gregory Copeland**, and the administrator of Copeland's estate sued Holly Hill and other parties for professional and ordinary negligence. A Lowndes County jury ruled in favor of Copeland and the estate administrator and awarded them more than $7.6 million. Jurors, however, allocated only 20 percent – or $1.5 million – of the fault to Holly Hill. Holly Hill appealed to the Court of Appeals, arguing that the trial court erred in denying its motion for new trial based on *Batson v. Kentucky* in its challenge of Copeland's decision to strike Juror No. 11 from the jury pool. In *Batson,* the U.S. Supreme Court prohibited the government from striking prospective jurors from a jury panel based on race. In the face of a *Batson* challenge, a court must conduct its analysis using a three-pronged test, which includes that the proponent of the strike must provide a "race-neutral" explanation for the strike.

At trial, Copeland's attorney used all six of their peremptory strikes against prospective jurors who were white. Holly Hill challenged the strikes under *Batson* as race-based. In response, Copeland's attorney gave the following explanation for striking Juror No. 11. "[Juror No. 11] works in a sheet metal factory. He works in South Lowndes County which based off of our demographic research of this group and with our discussions with other counsel who are – work in this area suggested that they may not be an area that is friendly to African Americans, which our client is; so we have concerns based off his blue collar employment, as well as his living demographic – the demographics of where he resides. He may have some innate prejudice toward our client." Holly Hill argued that Copeland's counsel openly admitted that Juror No. 11 was struck largely for race-based reasons.

The Court of Appeals rejected Holly Hill's argument and upheld the lower court's ruling that the explanation by Copeland's attorney was race-neutral. The Court of Appeals stated that, "We recognize that [Copeland's] counsel expressed a belief that individuals from south Lowndes County might not be 'friendly towards' an African-American claimant. But the explanation for the strike did not reference the race of south Lowndes County residents or Juror No. 11. It was race-neutral as to them."

Holly Hill now appeals to the Georgia Supreme Court, which has agreed to review the

case to determine whether the Court of Appeals erred in determining that Copeland's attorney's explanation for the exercise of their peremptory strike against Juror No. 11 was race-neutral.
Attorneys for Appellants (Holly Hill): R. Page Powell, Jr., Jeffrey Braintwain, Brian Mathis
Attorneys for Appellees (Copeland): John Hadden, Bret Moore, Kenneth Connor, C. Caleb Connor