No. S22Q0097

In the
SUPREME COURT OF GEORGIA

Nikema Williams, et al.,
Plaintiff-Appellants,

v.

Colin Powell, et al.,
Defendant-Appellees.

Certified Question from the United States District Court
Northern District of Georgia
Case No. 1:20-CV-4012-MHC

PLAINTIFF-APPELLANTS' AMENDED BRIEF ON CERTIFIED QUESTION

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INTRODUCTION AND SUMMARY OF ARGUMENT[1]

The constitutionality of O.C.G.A. § 16-11-34.1 is governed by the United States Constitution and by the Georgia Constitution. The United States District Court for the Northern District of Georgia ("District Court") has asked this Court to opine as to whether O.C.G.A. § 16-11-34.1 violates the Georgia State Constitution. Specifically, the District Court framed the following proposed certified question:

> Does O.C.G.A. 16-11-34.1, in whole or in part, violate Article I, Section I, Paragraphs V or IX (or any other provision) of the Georgia Constitution?

This Court, in *State v. Fielden*, struck down a similar statute under the overbreadth doctrine. 280 Ga. 444, 629 S.E.2d 252 (2006). The decision in *Fielden* appeared to be decided on overbreadth grounds under the United States Constitution, but this Court also recognized that "'[t]he 1983 Constitution of Georgia provides even broader protection.'" *Id.* at 445 (quoting *State v. Miller*, 260 Ga. 669, 671, 398 S.E.2d 547 (1990)).

If this Court views the Georgia Constitution as co-extensive with the United States Constitution as to the overbreadth doctrine, this Court can return

[1] Plaintiff-Appellants submit this Amended Brief on Certified Question to add a Table of Authorities and Table of Citations.

the issue to the District Court for review under the United States Constitution with a statement that the Georgia Constitution's overbreadth analysis is co-extensive with the United States Constitution.

If this Court views the Georgia Constitution as providing greater rights under the overbreadth doctrine, then Plaintiffs submit that O.C.G.A. § 16-11-34.1 is unconstitutional, at minimum, under the reasoning of *Fielden*, where this Court interpreted a very similar statute and held that the statute at issue in *Fielden* was constitutionally overbroad.

Alternatively, this Court may address the broader questions of whether O.C.G.A. § 16-11-34.1 is unconstitutionally overbroad under both the United States and Georgia Constitutions.

Section I below sets out the Plaintiffs' arguments as to § 16-11-34.1(a) — the problematic subsection that aligns with *Fielden*. Section II addresses other subsections of § 16-11-34.1 that present further overbreadth and additional constitutional concerns. Section III illustrates how the Georgia Constitution may possibly provide greater overbreadth rights than the United States Constitution in this context.

ARGUMENT AND CITATION OF AUTHORITY

I. O.C.G.A. § 16-11-34.1(a) IS FUNCTIONALLY IDENTICAL TO THE CODE SECTION THIS COURT STRUCK DOWN IN FIELDEN AS FACIALLY OVERBROAD, DESPITE APPLICATION TO DIFFERENT MEETINGS.

A. Both Statutes have Identically Problematic Overbroad Language

The substantive portion of O.C.G.A. § 16-11-34 ("Disturbance of meeting, gathering or procession") that is addressed in *Fielden* reads:

> (a) A **person who recklessly or knowingly commits any act which may reasonably be expected to prevent or disrupt** a lawful meeting, gathering, or procession is guilty of a misdemeanor. (Emphasis added).

O.C.G.A. § 16-11-34.1(a), which is challenged here, reads:

> (a) It shall be unlawful for any **person recklessly or knowingly to commit any act which may reasonably be expected to prevent or disrupt** a session or meeting of the Senate or House of Representatives, a joint session thereof, or any meeting of any standing or interim committee, commission, or caucus of members thereof. (Emphasis added).

The only difference between the two provisions is the type of meetings covered.

This Court declared O.C.G.A. § 16-11-34 "unconstitutional and void" in *Fielden*, utilizing the overbreadth doctrine. In reaching its conclusion, this Court examined decisions of other states involving similar statutes and raising similar overbreadth challenges. This Court joined those other states' courts in recognizing a "legitimate concern" that "unruly" assertions of rights may cause

interference with other citizen's rights to "association and discussion." *Id*. at 447. Yet, this Court also recognized the need to "balance" the rights of those "expressing opposing points of view." *Id.* at 446.

In striking that balance, this Court compared O.C.G.A. § 16-11-34(a) to a Tennessee statute and concluded that Georgia's law was overbroad because Georgia's statute did not have two key limiting terms: (1) an intent to disrupt the meeting; and (2) a showing that "the committed act substantially impair[ed] the ordinary conduct of the meeting." *Id*. at 447. This Court concluded that the statute could only pass muster if it were **legislatively** narrowed to only criminalize "those activities **intended** to prevent or disrupt a lawful meeting **and** which either **cause the untimely termination** of the lawful meeting or **substantially impair the conduct** of the lawful meeting." *Id.* (emphasis added).[2]

[2] "The severity of criminal sanctions may well cause speakers to remain silent rather than communicate even arguably unlawful words, ideas, and images." *Reno v. ACLU,* 521 U.S. 844, 871 (1997); *see also Lewis v. City of New Orleans*, 415 U.S. 130 (1974) (holding that an ordinance making it unlawful to "curse or revile or to use obscene or opprobrious language" toward police was unconstitutionally overbroad); *District of Columbia v. Guery*, 376 A.2d 834, 838-39 (D.C. App. 1977) (deciding that an order barring disruption at meetings could only stand if narrowly interpreted to require that the "loud, threatening, or abusive language be **disruptive, or nearly so**," and to require that the actions were commenced with the "specific **intent** of causing disruption.") (emphasis added); *see also Survivors' Network for those Abused by Priests, Inc. v. Joyce*, 779 F.3d 785 (8th Cir. 2015) (ruling facially unconstitutional a Missouri statute that prohibited profane language that disrupts a house of worship).

This Court reasoned:

> O.C.G.A. § 16-11-34 does not require proof of a person's intent to disrupt or prevent a lawful meeting as an element of the offense. Nor does it require that the committed act substantially impair the ordinary conduct of the meeting. Under the literal language of the statute, the only proof required is that the person recklessly or knowingly committed any act that may reasonably be expected to prevent or disrupt a lawful meeting, gathering or procession. It does not matter under the statute where or when the accused commits the proscribed act; **it does not even matter whether the act, upon its commission, results in any actual prevention or disruption**. Any recklessly or knowingly committed act that could reasonably be expected to prevent or disrupt a lawful meeting, gathering or procession is a misdemeanor, **regardless where it is committed, how trivial the act, its impact, or the intent of the actor other than the intent to commit the act itself**. O.C.G.A. § 16-11-34 thus applies to the reckless or knowing commission of such acts as heckling a referee at a sports venue, leaving on the audible ringer of a cellphone during a business symposium, changing lanes into a funeral procession on a rainy day, even playing the stereo loudly in an apartment while a neighbor hosts a dinner party. These examples demonstrate that **the literal language of O.C.G.A. § 16-11-34 reaches conduct that is at once innocent and protected by the guarantees of free speech, thereby affecting and chilling constitutionally protected activity**.
>
> We recognize that where conduct and not merely speech is involved, "the overbreadth of a statute must not only be real but substantial as well, judged in relation to the statute's plainly legitimate sweep." Based on our analysis of the statutory language in O.C.G.A. § 16-11-34, **we conclude that it significantly impacts constitutionally permitted conduct without the requisite narrow specificity and fails to balance in a reasonable way the First Amendment rights of those desiring to express opposing points of view**. Accordingly, we find its overbreadth is both real and substantial.

280 Ga. at 447 (citations omitted) (emphasis added).

This Court also provided a specific roadmap to legislatively cure the constitutional overbreadth:

> Our review of cases in our sister states reveals that they have often been able to cure their disruption of lawful meeting statutes by narrowing them in such a manner that the statutory proscription extends only to constitutionally unprotected activities, i.e., those activities intended to prevent or disrupt a lawful meeting and which either cause the untimely termination of the lawful meeting or substantially impair the conduct of the lawful meeting. *Id.* at 448.

While this Court considered whether a judicially created limiting construction would be possible, it rejected that path because "curing the overbreadth . . . would be less a matter of reasonable judicial construction than a matter of substantial legislative revision." *Id*.

The two primary maladies of *Fielden*'s O.C.G.A. § 16-11-34 also dog the identical language of O.C.G.A. § 16-11-34.1(a). First, O.C.G.A. § 16-11-34.1(a), exactly like O.C.G.A. § 16-11-34, is silent as to an **intent to "prevent or disrupt"** General Assembly meetings. Second, O.C.G.A. § 16-11-34.1(a), exactly like O.C.G.A. § 16-11-34, also fails to limit its scope to activities that "**either cause the untimely termination of the lawful meeting or substantially impair the conduct of the lawful meeting**." *Fielden*, 280 Ga. at 448.

Defendants argue that O.C.G.A. § 16-11-34.1(a) is not overbroad because it covers different types of meetings than O.C.G.A. § 16-11-34, despite the identical problematic language existing in both Georgia statutes. However, there are even

greater free-speech implications with O.C.G.A. § 16-11-34.1(a) because O.C.G.A. § 16-11-34.1(a) targets speech at the Georgia State Capitol, the epicenter of two of the three branches of Georgia Government and a locus of free speech.

> As a matter of course, Georgia grants private speakers equal and unimpeded access to the Rotunda, a designated public forum. Its citizens may come and go, speak and listen, applaud and condemn, and preach and blaspheme as they please. Georgia neither approves nor disapproves such conduct, no matter how sordid or controversial it might be. Instead, the state remains aloof; it is neutral toward, and uninvolved in, the private speech.

Chabad-Lubavitch of Georgia v. Miller, 5 F.3d. 1383, 1388 (11th Cir. 1993) (*en banc*).

Regardless, *Fielden*'s holding did not rest on the type of meeting covered or the type of meeting at issue. Rather, the focus is the common language between the statute at issue in *Fielden* and the one at issue here; specifically, both statutes fail to limit the scope of the prohibited conduct to "those activities intended to prevent or disrupt a lawful meeting and which either cause the untimely termination of the lawful meeting or substantially impair the conduct of the lawful meeting." 280 Ga. at 448.[3]

[3] While Defendants argue that O.C.G.A. § 16-11-34.1(a) has not been struck down by the Georgia Supreme Court "in the nearly 15 years since *Fielden*," [Doc. 9 at 18], they fail to show that such a challenge has ever been made or entertained by this Court or any other—much less that the statute has been ratified by any court.

If the legislature were to make the appropriate modifications to O.C.G.A. § 16-11-34.1(a) according to the roadmap established by this Court in *Fielden*, intentional and actual disruptions of the orderly proceedings of the General Assembly would still be subject to criminal sanctions. Notably, the Georgia General Assembly has not seen fit to amend O.C.G.A. § 16-11-34 since *Fielden*.

In contrast, many states have constitutional limits on disruptive activities at public meetings that strike the right constitutional balance.[4]

B. Overbreadth is Substantial

On multiple occasions, Georgia citizens' speech has been chilled or speakers faced arrest under O.C.G.A. § 16-11-34.1 in circumstances where they neither intended to cause disruption nor caused any disruption to any proceedings. Plaintiffs' criminal cases, as well as other incidents, illustrate the substantial overbreadth of the statute. Plaintiffs were all arrested in the Rotunda area even though no General Assembly proceeding was disrupted. [Doc 1 ¶¶ 36-57], [Doc 1 ¶¶ 53-54]. Some of the Plaintiffs that were arrested were simply

[4] *See* Tenn. Code Ann. § 39-17-306 (discussed in *Fielden*); *see also* S.C. Code Ann. § 30-4-70 ("This chapter does not prohibit the removal of any person who wilfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised."); *see also* N.C. Gen. Stat. § 143-318.17 ("A person who willfully interrupts, disturbs, or disrupts an official meeting and who, upon being directed to leave the meeting by the presiding officer, willfully refuses to leave the meeting is guilty of a Class 2 misdemeanor.").

standing in the Rotunda; they did not speak. [Doc 1 ¶¶ 42, 51]. No Plaintiff used any amplification. [Doc 1 ¶ 52].

At a later gathering at the Rotunda on March 8, 2021, a citizen chose to sit and did not speak at all, fearing arrest after being handed a copy of the O.C.G.A. § 16-11-34.1(a) by Georgia State Capitol Police. [Doc 26-1]. And in a third incident, a Georgia State Representative was arrested when she knocked on Governor Kemp's office door.[5]

There are also numerous other protected forms of expression that may subject citizens to arrest under the statute. Simply "leaving on the audible ringer of a cellphone," specifically mentioned by this Court in *Fielden*, or even coughing, at a General Assembly committee meeting could also lead to arrest under O.C.G.A. § 16-11-34.1(a). *See* 280 Ga. at 447; *see also, e.g., Freeman v. State,* 302 Ga. 181, 185, 805 S.E.2d 805 (2017) (upholding as constitutional O.C.G.A. § 16-11-39(a)(1) because it is specifically limited to expressive conduct "that amounts to 'fighting words' or a 'true threat.'"). In the inevitable and sometimes contentious meetings at the Georgia State Capitol, there is a very significant possibility that

[5] *See* Mark Niesse, et al., "Georgia representative arrested after governor signs elections bill," ATLANTA JOURNAL CONSTITUTION (Mar. 25, 2021), *available at* https://www.ajc.com/politics/georgia-representative-arrested-after-governor-signs-elections-bill/OTVKYHMIYBHRBOVYY5M6HRIVYI/.

strongly spoken contrary viewpoints could be considered a violation of O.C.G.A. § 16-11-34.1(a).[6]

To the extent there is a constitutional difference between public meetings under § 16-11-34 and meetings of the General Assembly under § 16-11-34.1, there is perhaps greater cause for overbreadth concerns inside the Capitol. While O.C.G.A. § 16-11-34 applied to any "lawful" public meeting, § 16-11-34.1 applies to not just official meetings of the full General Assembly, but also to "any" meeting of any committee, commission, or even caucus. Official public meetings, like city council meetings, are readily identifiable by the public. But the "meetings" described in § 16-11-34.1 may take place in *ad hoc* form and may not be readily identifiable to the public as such. "Caucuses," in particular, may be loosely organized by nature, small in membership, and may "meet" informally in hallways or by chance. Such a broad swath of purportedly shielded meetings, combined with the loose *mens rea* requirements common to both statutes, creates a significant likelihood that the civically engaged public would unwittingly

[6] *See e.g.*, *Acosta v. City of Costa Mesa*, 718 F.3d 800, 815 (9th Cir. 2013) ("Accordingly, a comment amounting to nothing more than bold criticism of City Council members would fall in this category, whereas complimentary comments would be allowed. Nothing guarantees that such a comment would rise to the level of actual disruption.").

commit a criminal offense by engaging in protected speech in a traditional public forum.

Like O.C.G.A. § 16-11-34, O.C.G.A. § 16-11-34.1(a) is facially overbroad. Moreover, as explained below, O.C.G.A. § 16-11-34.1 (f) and (g) further exacerbate the overbreadth and are likewise facially unconstitutional.

II. O.C.G.A. § 16-11-34.1(f) AND (g) ARE UNCONSTITUTIONAL.

Plaintiffs also challenge subsections (f) and (g) of the statute on the ground that these provisions are facially unconstitutional because they proscribe speech without any evidence of an intent to disrupt, or any actual disruption, which are the twin maladies this Court identified in *Fielden*. Further, these provisions are vague and overbroad under United States Supreme Court precedent because they are drafted in such a way that significant constitutionally protected speech is purportedly prohibited while failing to apprise a person of ordinary intelligence about what conduct is proscribed. The fundamental problem is that both subsections broadly purport to make it a crime "to utter loud, threatening, **or** abusive language **or** engage in any disorderly or disruptive conduct in such buildings or areas." (Emphasis added).

The repeated use of "or" makes it textually permissible to arrest someone for being "loud," "abusive," **or** "disorderly," without any guidance or

explanation of what those terms mean. The First Amendment requires far more specificity before an individual can be arrested for speaking.

First, volume alone, without additional disruptive conduct, is not a sufficient reason to arrest a person for their speech,[7] especially where, as here, there are no standards to determine what speech is loud enough to be criminal[8] and no requirement that anything be disrupted. Further, it is clear that even highly "abusive" speech is clearly constitutionally protected,[9] which is even

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[7] *Wilkerson v. Seymour*, 736 F.3d 974, 978 (11th Cir. 2013) (holding that the First Amendment does not permit "officers to arrest disagreeable individuals who may be exercising their constitutionally protected rights to free speech, albeit in a loud manner.").

[8] *Cf. City of Chicago v. Morales*, 527 U.S. 41, 57 (1999) (deciding that because "the city cannot conceivably have meant to criminalize each instance a citizen stands in public with a gang member, the vagueness that dooms this ordinance is not the product of uncertainty about the normal meaning of 'loitering,' but rather about what loitering is covered by the ordinance and what is not.").

[9] *Gooding v. Wilson*, 405 U.S. 518 (1972) (striking down Georgia disorderly conduct statute as facially invalid where not proscribed to speech properly classified as "fighting words"); *Lewis v. City of New Orleans*, 415 U.S. 130, 138 (striking down a disorderly conduct conviction for calling a policeman "you goddamn m. f. police"); *Wilkerson v. Seymour*, 736 F.3d 974, 978 (11th Cir. 2013) (affirming the denial of summary judgment where the plaintiff spoke in a loud voice to officers while in the parking lot of a sports bar and used the words "hell" and "damn" when objecting to an officer's request that she move her parked car); *Merenda v. Tabor*, 506 Fed. App'x 862, 866 (11th Cir. 2013) (holding an arrestee's comment to a police officer that he was a "fucking asshole" did not give rise to arguable probable cause to make an arrest for disorderly conduct in Georgia); *Berger v. Lawrence*, 1:13-CV- 03251, 2014 WL 12547268, at *8 & n.3 (N.D.

more true in a traditional public forum such as the Georgia Capitol.[10] Additionally, even a detailed definition of "disorderly" was found to lack sufficient specificity in *Gooding v. Wilson*, 405 U.S. 518 (1972), because the definition failed to require that conduct threaten an imminent breach of the peace. *See also Freeman,* 302 Ga. at 185 (holding that Georgia's disorderly conduct statute was not facially overbroad because "as applied to expressive conduct, the statute **only** reaches expressive conduct that amounts to "fighting words" or a "true threat.") (emphasis in original).

Defendants gave two responses to the District Court. First, the statute struck down in *Gooding* applied only to spoken speech, whereas O.C.G.A. § 16-11-34.1 applies to a broader swath of expressive conduct. [Doc. 9 at 18–19]. Second, Defendants asserted that *Gooding* does not apply because it governed "random exchanges," including interactions "on a public street," whereas the challenged statute applies to a traditional public forum. Neither contention has merit. Indeed, both considerations cut **against** Defendants' argument that O.C.G.A. § 16-11-34.1(f) and (g) are constitutional.

Ga. Sept. 19, 2014) (ruling that the undisputed evidence that plaintiff yelled at officer to "go fuck yourself" was insufficient justification to arrest).

[10] *See Chabad-Lubavitch of Georgia v. Miller*, 5 F.3d. 1383, 1388 (11th Cir. 1993) (en banc) (recognizing that the Georgia Capitol is a traditional public forum).

As to Defendants' first argument, the fact that O.C.G.A. § 16-11-34.1 applies to an even broader swath of expressive conduct, rather than just spoken words, makes the statute even more overbroad and less constitutional. The overbreadth doctrine permits the facial invalidation of laws that inhibit the exercise of First Amendment rights if the impermissible applications of the law are substantial when "judged in relation to the statute's plainly legitimate sweep." *Broadrick v. Oklahoma*, 413 U.S. 601, 612–615 (1973). Defendants have not pointed to any expressive, but not spoken, speech activity that might be deemed "loud" or "abusive" or "disorderly," but it would appear that such expressive conduct would likely be constitutionally protected until it ran afoul of a separate criminal statute.[11] Such conduct (e.g. mean signs, dancing, rude gestures, etc.) is generally constitutionally protected. That such expressive conduct is purportedly criminalized under O.C.G.A. § 16-11-34.1(f) and (g) makes those provisions more, not less, unlawful.

Secondly, Defendants argue that *Gooding* applied generally, whereas O.C.G.A. § 16-11-34.1 is limited to the Capitol. Defendants assert that "statutes

[11] *See id.* at 615 (deciding that the overbreadth doctrine "attenuates as the otherwise unprotected behavior that it forbids the State to sanction moves from 'pure speech' toward conduct and that conduct—even if expressive—falls within the scope of otherwise valid criminal laws that reflect legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct.").

aimed at regulating random exchanges on a street simply cannot be viewed in the same manner as statutes aimed at regulating conduct in a place of employment, which in this case also happens to be the seat of the Georgia Legislature." [Doc. 9 at 19–20].

Plaintiffs agree that these forums are not "viewed in the same manner." In fact, Plaintiffs remind this Court that the Capitol is a traditional public forum, which means speech there is afforded **greater** protections than in many other locations. "The 'traditional' or 'quintessential' public forum, consists of places such as streets or parks which 'have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.'"[12] Such fora are entitled to significantly greater First Amendment protections. *See Lavite v. Dunstan*, 932 F.3d 1020, 1028 (7th Cir. 2019) ("Governments have the least amount of latitude in restricting access to traditional public fora."). In contrast, "[e]ntire **classes** of speech thus may be excluded from a nonforum. Those classes may be identified by content, as long as the exclusion is reasonable

[12] Rodney A. Smolla, 1 *Smolla & Nimmer on Freedom of Speech* § 8:4 (quoting *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983)); *see also id.* at § 8.7 ("If the government treats a piece of public property as if it were a traditional public forum, intentionally opening it up to the public at large for assembly and speech, then it will be bound by the same standards applicable to a traditional public forum.").

in light of the purpose of the forum, and there is no discrimination among viewpoints **within** a class." 1 Smolla & Nimmer on Freedom of Speech § 8:8 (emphasis added). Because the Capitol is a traditional public forum, any scrutiny on abridgements of speech must be heightened rather than diminished.

Defendants have put forward no compelling rebuttal to Plaintiffs' substantial showing that O.C.G.A. § 16-11-34.1(f) and (g) are facially unconstitutional as stated in *Fielden* and as articulated in their preliminary injunction briefing. This Court should clarify that these provisions are not lawful.

III. IN THIS CONTEXT, THE GEORGIA CONSTITUTION MAY PROVIDE GREATER PROTECTIONS THAN THE FIRST AMENDMENT.

This Court has frequently announced that the Georgia Constitution provides "even broader protection" for free speech than the First Amendment. *See, e.g.*, *State v. Miller*, 260 Ga. 669, 671, 398 S.E.2d 547 (1990). In at least one line of cases, this Court has specifically departed from federal First Amendment jurisprudence to provide for concrete additional protection for free expression in Georgia. *See Statesboro Pub. Co. v. City of Sylvania*, 271 Ga. 92, 95, 516 S.E.2d 296, 299 (1999) (adopting least restrictive means test for regulations of content-neutral speech in an explicit departure from federal law).

Elsewhere, however, the Court has noted that the oft-repeated proclamation from *Miller* is "dictum" that lacks "any discussion of the text, history, or case law regarding the protection of free speech provided in the 1983 or previous Georgia Constitutions." *Grady v. Unified Government of Athens–Clarke County*, 289 Ga. 726, 728–29, 715 S.E.2d 148 (2011). And in some other corners of free-expression doctrine, courts have recognized that Georgia interprets its constitution in lockstep with the federal constitution. *See Kennedy v. Avondale Estates*, 414 F. Supp. 2d 1184, 1216 (N.D. Ga. 2005) (analyzing sign ordinances and noting "no analytical distinction between the state and federal constitutions.").

Here, however, it is possible that the Georgia Constitution does, in fact, provide for greater protection for free speech than the First Amendment. The rule from *Statesboro Publishing* is that the "least restrictive means" test applies "to laws that **directly** regulate the time, place, and manner of protected expression (such as the ordinance in that case, which prohibited the distribution of free printed material in driveways and yards), as opposed to regulations that have only an **incidental** effect on protected speech." *Oasis Goodtime Emporium I, Inc. v. City of Doraville*, 297 Ga. 513, 523 n.12, 773 S.E.2d 728, 737 (2015) (emphasis in original). It appears that O.C.G.A. § 16-11-34.1 is a quintessential time, place, and manner regulation (especially with regard to place—the Capitol).

Thus, under Georgia law, the burden is on the State to show that the statute is the least restrictive means of protecting the government's interest. Because O.C.G.A. § 16-11-34.1 lacks the heightened *mens rea* requirement and further lacks any requirement of actual disruption, as described in *Fielden*, the statute is not the least restrictive means of furthering the government interest. Accordingly, O.C.G.A. § 16-11-34.1 would fail the *Statesboro Publishing* test particular to Georgia's heightened scrutiny of laws abridging freedom of speech.

CONCLUSION

Plaintiffs have set forth their possible answers to the certified question and broader questions herein.

Respectfully submitted, this the 15th day of October, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2021, I served Plaintiff-Appellants' Brief on Certified Question to the following:

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