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COURTS Juries: Provide the State and the Accused with the Same Number of Peremptory Challenges in Misdemeanor, Felony, and Death Penalty Cases and in Challenging Alternative Jurors; Provide the Manner in Which Peremptory Challenges are Made; Change the Size of the Jury Panel in Felony and Death Penalty Cases; Provide the State with an Equal Number of Additional Peremptory Challenges in Trials for Jointly Indicted Defendants; Provide an Exemption from Jury Duty for a Primary Caregiver of a Child Who Is Four Years of Age or Younger; Provide an Exemption

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from Jury Duty for a Primary Teacher of Children in a Home Study Program; and for Other Purposes

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COURTS

Juries: Provide the State and the Accused with the Same Number of Peremptory Challenges in Misdemeanor, Felony, and Death Penalty Cases and in Challenging Alternative Jurors; Provide the Manner in Which Peremptory Challenges Are Made; Change the Size of the Jury Panel in Felony and Death Penalty Cases; Provide the State with an Equal Number of Additional Peremptory Challenges in Trials for Jointly Indicted Defendants; Provide an Exemption from Jury Duty for a Primary Caregiver of a Child Who Is Four Years of Age or Younger; Provide an Exemption from Jury Duty for a Primary Teacher of Children in a Home Study Program; and for Other Purposes

BILL NUMBER:

HB 1227

SUMMARY:

In 2004, the Georgia General Assembly considered a bill designed to exempt home-school teachers and certain primary caregivers from jury duty. The Senate amended the bill to provide the State and the accused with an equal number of peremptory challenges in death penalty, felony, and misdemeanor cases.

History

Georgia is among the minority of states that do not allow the State and the accused an equal number of peremptory jury strikes in misdemeanor, felony, and capital cases.¹ Georgia law gives the defense twelve peremptory strikes and the State six in felony and misdemeanor cases.² In death penalty cases, the defense may peremptorily challenge twenty jurors, and the State may peremptorily

1. See Brian Russell, *Prosecutors Vow to Continue to Fight for Equal Strikes*, ALBANY HERALD, Apr. 22, 2004, available at <http://albanyherald.net/frontsarchive/0404/front042204.html> (last visited May 9, 2004).

2. 1992 Ga. Laws 1981, § 2, at 1982 (codified at O.C.G.A. § 15-12-165 (2001)).

challenge ten.³ In recent years, allowing an equal number of jury strikes has become a hotly contested issue.⁴ With the consideration of HB 1227, equal jury strikes came closer to becoming a reality in Georgia than ever before.⁵ However, the bill's inclusion of a provision for equal jury strikes in death penalty cases may have prevented it from passing the House of Representatives.⁶

Since 1996, Georgia legislators have introduced a number of equal strikes bills, and in most cases, those bills ultimately failed to pass either the House or the Senate. In 1996, the Senate considered SB 527, which would have amended Code section 15-12-165 to provide for equal peremptory strikes in felony, misdemeanor, and capital cases.⁷ The Senate only read the bill once.⁸ In 1997, legislators introduced two Senate bills related to peremptory jury strikes: SB 64, which included equal strikes in all cases, and SB 114, which also called for equal strikes in all cases and would have amended Code section 15-12-160 to decrease the number of jurors impaneled in felony and death penalty cases.⁹ HB 1090, which the House considered first in 1997 and read for a second time in 1998, mirrored SB 114, but the House failed to vote on it.¹⁰ Moreover, SB 690, which was also identical to SB 114, never made it to the Senate floor in 1998 because it was withdrawn.¹¹ Finally, Senators introduced SB 158 in 2001.¹² The Lieutenant Governor referred the bill to the Senate

3. *Id.*

4. *See* Russell, *supra* note 1.

5. *Id.*

6. *See* Audio Recording of House Proceedings, Apr. 7, 2004 (remarks by Rep. Jim Stokes), at http://www.georgia.gov/00/channel_title/0,2094,4802_6107703,00.html [hereinafter House Audio]; *see also* Audio Recording of Senate Proceedings, Apr. 1, 2004 (remarks by Sen. Steve Henson), at http://www.georgia.gov/00/channel_title/0,2094,4802_6107703,00.html [hereinafter Senate Audio].

7. *See* SB 527, as introduced, 1996 Ga. Gen. Assem.

8. *Id.*

9. SB 64, as introduced, 1997 Ga. Gen. Assem.; SB 114, as introduced, 1997 Ga. Gen. Assem. The Senate read SB 64 only once. State of Georgia Final Composite Status Sheet, SB 64, Jan. 15, 1997 (Mar. 28, 1997). SB 114 passed the Senate, and the House read it twice. State of Georgia Final Composite Status Sheet, SB 114, Feb. 24, 1997 (Mar. 28, 1997).

10. HB 1090, as introduced, 1997 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, HB 1090, Mar. 28, 1997 (Mar. 19, 1998); State of Georgia Final Composite Status Sheet, HB 1090, Jan. 12, 1998 (Mar. 19, 1998).

11. *See* SB 690, as introduced, 1998 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, HB 690, Feb. 27, 1998 (Mar. 19, 1998).

12. SB 158, as introduced, 2001 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, SB 158, Feb. 12, 2001 (Apr. 12, 2002).

Judiciary Committee, but it never made it back to the Senate floor for a vote.¹³

Recent Legislation

In 2003, Senators introduced SB 27.¹⁴ SB 27, as passed by the Senate, would have amended Code section 15-12-165 to reduce the number of jurors that the defense may challenge; the bill would have reduced the number from twelve to six in felony cases and from twenty to ten in death penalty cases.¹⁵ Thus, the bill would have given both the State and the defense the same number of peremptory strikes.¹⁶ The Senate Judiciary Committee favorably reported on the bill, and the Senate passed it by a vote of 45 to 10.¹⁷ However, SB 27 ultimately stalled in the House Judiciary Committee and never reached the House floor for a vote.¹⁸

In the 2004 legislative session, legislators introduced a total of four bills dealing with equal jury strikes—not including HB 1227, which, as introduced, only dealt with jury exemptions.¹⁹ HB 1657 included a section that called for equal strikes in misdemeanor, felony, and death penalty cases.²⁰ The House first read the bill on March 1, 2004.²¹ However, the inclusion of equal strikes in death penalty cases incited opposition from numerous groups and members of the General Assembly who cited racial inequities inherent in these cases.²² Therefore, the day after Representatives Mike Boggs, Tom Bordeaux, and Tom Campbell of the 145th, 125th, and 39th districts, respectively, introduced HB 1657, Representatives Boggs and

13. See State of Georgia Final Composite Status Sheet, SB 158, Apr. 12, 2002 (Apr. 12, 2002).

14. State of Georgia Final Composite Status Sheet, SB 27, Jan. 28, 2003 (May 19, 2004); SB 27, as introduced, 2003 Ga. Gen. Assem.

15. See SB 27 (SCS), 2003 Ga. Gen. Assem.

16. See *id.*

17. State of Georgia Final Composite Status Sheet, SB 27, Feb. 11, 2003 (May 19, 2004); Georgia Senate Voting Record, SB 27 (Feb. 13, 2003).

18. See State of Georgia Final Composite Status Sheet, SB 27, Feb. 17, 2003 (May 19, 2004).

19. See HB 1678, as introduced, 2004 Ga. Gen. Assem.; HB 1657, as introduced, 2004 Ga. Gen. Assem.; HB 1739, as introduced, 2004 Ga. Gen. Assem.; SB 412, as introduced, 2004 Ga. Gen. Assem.; HB 1227, as introduced, 2004 Ga. Gen. Assem.

20. See HB 1657, as introduced, 2004 Ga. Gen. Assem.

21. State of Georgia Final Composite Status Sheet, HB 1657, Mar. 1, 2004 (May 19, 2004).

22. See Rachel Tobin Ramos, *DAs Could Win Big on Jury Strikes, Habeas Limit: Prosecutors Also Hoping for Legislative OK on \$12,000 Raise*, FULTON COUNTY DAILY REP., Mar. 31, 2004, at 1 [hereinafter *DAs Could Win*].

Bordeaux introduced HB 1678, which contained nearly identical language to that of HB 1657 but did not include equal strikes in death penalty cases.²³ Neither HB 1657 nor HB 1678 ever made it to the House floor for a vote.²⁴

Bill Tracking of HB 1227

As introduced, HB 1227 exempted primary caregivers of children four years of age or younger and primary teachers of children in a home study program from jury duty.²⁵ On March 17, 2004, the House passed HB 1227 without any substitutes or amendments.²⁶ That same day, the Senate read HB 1227, and the Lieutenant Governor referred the bill to the Rules Committee.²⁷ On March 19, 2004, the Senate sent the bill to the Judiciary Committee, which added equal jury strikes onto the bill as a Committee substitute.²⁸

During the Senate debate on April 1, 2004, senators proposed four floor amendments.²⁹ Floor amendment 3 passed, but it had nothing to do with the bill, dealing with terms of superior courts in four counties.³⁰ Senator Steve Henson of the 41st district stated that the purpose of floor amendment 1 was to gather information identifying any patterns that may exist relating to race, gender, or national origin in the use of peremptory challenges.³¹ Senator Ed Harbison of the 15th district then introduced amendment 2, which would have amended the Senate Committee substitute by taking out language that called for equal strikes.³² Senator Seth Harp of the 16th district took the well in strong opposition to both amendments 1 and 2, stating that

23. Compare HB 1657, as introduced, 2004 Ga. Gen. Assem., with HB 1678, as introduced, 2004 Ga. Gen. Assem.

24. See State of Georgia Final Composite Status Sheet, HB 1657, Mar. 2, 2004 (May 19, 2004); State of Georgia Final Composite Status Sheet, HB 1678, Mar. 4, 2004 (May 19, 2004).

25. HB 1227, as introduced, 2004 Ga. Gen. Assem.

26. State of Georgia Final Composite Status Sheet, HB 1227, Mar. 17, 2004 (May 19, 2004).

27. See *id.*

28. See State of Georgia Final Composite Status Sheet, HB 1227, Mar. 19, 2004 (May 19, 2004). Compare HB 1227, as introduced, 2004 Ga. Gen. Assem., with HB 1227 (SCS), 2004 Ga. Gen. Assem.

29. See HB 1227 (SCSFA), 2004 Ga. Gen. Assem.; Failed Senate Floor Amendment to HB 1227, introduced by Sen. Steve Henson, Apr. 1, 2004; Failed Senate Floor Amendment to HB 1227, introduced by Sen. Ed Harbison, Apr. 1, 2004; Failed Senate Floor Amendment to HB 1227, as introduced by Sen. Vincent Fort, Apr. 1, 2004; see also State of Georgia Final Composite Status Sheet, HB 1227, Apr. 1, 2004 (May 19, 2004).

30. See HB 1227 (SCSFA), 2004 Ga. Gen. Assem.

31. See Senate Audio, *supra* note 6 (remarks by Sen. Steve Henson).

32. See *id.* (remarks by Sen. Ed Harbison).

the Senate Judiciary Committee had agreed on the substitute and that the Senate should not amend the bill.³³ Senator Vincent Fort of the 39th district sponsored the fourth floor amendment.³⁴ The amendment sought to exclude death penalty cases from the equal strikes language in HB 1227.³⁵ Stating that he had very strong feelings on the issue, Senator Fort spoke out against the use of equal strikes and referred to the history of racism in the courtroom.³⁶ Amendments 1, 2, and 4 ultimately failed, and the version of HB 1227 that passed the Senate on April 1, 2004 was the Senate Judiciary Committee substitute as amended by floor amendment 3.³⁷

After passing the amended bill, the Senate sent the bill back to the House for approval.³⁸ On April 7, 2004, the last day of the 2004 legislative session, Representative Boggs motioned to agree to HB 1227 as passed by the Senate.³⁹ Representative Jim Stokes of the 72nd district took the well in response to the motion and spoke in opposition to the bill for more than 15 minutes.⁴⁰ In his speech, Representative Stokes mentioned a number of reasons for his opposition to HB 1227.⁴¹ One of his main reasons was that the present system protects minority defendants in death penalty cases from the racism that is not always apparent from the jurors' faces.⁴² He also mentioned the political dealings behind the addition of the provision to HB 1227.⁴³ According to Representative Stokes, some legislators had made agreements to keep the equal strikes language out of the bill, and those legislators were not upholding their agreements.⁴⁴

Following Representative Stokes's speech, Representative Warren Massey of the 86th district made a substitute motion to agree to the

33. *See id.* (remarks by Sen. Seth Harp).

34. *See* Failed Senate Floor Amendments to HB 1227, introduced by Sen. Vincent Fort, Apr. 1, 2004.

35. *See id.*

36. *See* Senate Audio, *supra* note 6 (remarks by Sen. Vincent Fort).

37. *See* HB 1227, as passed by the Senate, 2004 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, HB 1227, Apr. 1, 2004 (May 19, 2004).

38. *See* State of Georgia Final Composite Status Sheet, HB 1227, Apr. 1, 2004 (May 19, 2004).

39. *See* House Audio, *supra* note 6 (remarks by Rep. Mike Boggs).

40. *See id.* (remarks by Rep. Jim Stokes).

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

Senate substitute as amended by the House.⁴⁵ The House amendment struck the language in paragraph five of the bill relating to jury strikes.⁴⁶ The motion failed by a vote of 52 to 109.⁴⁷ Following this vote, Representative Doug Teper asked the Speaker of the House to rule on the germaneness of adding equal strikes to a caregiver relief bill.⁴⁸ In response, the Speaker postponed debate on HB 1227 until he could speak with a lawyer about the issue.⁴⁹ This occurred at 9 p.m. on April 7, 2004, the last day of the 2004 regular session. Subsequently, the House moved on to budget matters and never voted on the bill; thus, the bill died without making it through another session.⁵⁰

The activity surrounding HB 1227 on the last day of the session angered both supporters and opponents of equal jury strikes.⁵¹ The Speaker's failure to call for a vote in the House disturbed supporters.⁵² Opponents did not appreciate the process by which legislators hastily added the equal strikes provision—a major change in existing law—to HB 1227 in an attempt to quickly push the bill through the House.⁵³

Analysis

The debate over equal strikes does not center on legal issues. In *Stilson v. United States*, the Supreme Court held that there is no constitutional right to a specific number of peremptory challenges.⁵⁴ Presently, 47 states have equal strikes in misdemeanor cases, 44 states provide for equal strikes in felony cases, and 38 states use equal strikes in death penalty cases.⁵⁵

45. See House Audio, *supra* note 6 (remarks by Rep. Warren Massey).

46. *Id.*

47. Georgia House of Representatives Voting Record, HB 1227 (Apr. 7, 2004).

48. See House Audio, *supra* note 6 (remarks by Rep. Doug Teper).

49. See *id.* (remarks by Speaker Terry Coleman).

50. See Rachel Tobin Ramos, *Lawmakers Fail to Mandate Equal Jury Strikes for DAs*, FULTON COUNTY DAILY REP., Apr. 9, 2004, available at Westlaw 4/9/2004 FULTONDAILY 1 [hereinafter *Lawmakers Fail*].

51. See *id.*

52. *Id.*

53. See Telephone Interview with Rep. Jim Stokes, House District No. 72 (Apr. 21, 2004) [hereinafter *Stokes Interview*].

54. *Stilson v. United States*, 250 U.S. 583, 586 (1919).

55. Russell, *supra* note 1.

Without a constitutional guarantee, the real issue seems to be one of fairness. The Supreme Court in *Ross v. Oklahoma* stated that “peremptory challenges are not of constitutional dimension. They are a means to achieve the end of an impartial jury.”⁵⁶ Neither supporters nor opponents of equal strikes would disagree. The question then becomes whether legislation can ensure a fair trial even after giving both sides the same number of strikes.

Prosecutors argue that equal strikes are necessary to ensure fairness to the victims of crime when the accused goes to trial.⁵⁷ They argue that equal strikes level the judicial playing field between victims and defendants.⁵⁸ Legislators gave examples during the floor debates of instances in which a hung jury kept the State from a conviction.⁵⁹ Supporters argue that, if the prosecution has the same number of peremptory strikes, this would not have happened.⁶⁰ State Attorney General Thurbert E. Baker noted, “As prosecutors, we’re not looking for advantages, simply a level playing field.”⁶¹ Representative Boggs, a major supporter of equal jury strikes felt that “there is absolutely no reason whatsoever to afford a defendant with an absolute advantage in drawing a jury when so many other rights are afforded the defendant to ensure a fair trial.”⁶²

Opponents of equal strikes characterize the issue of fairness somewhat differently. They believe that it is disingenuous to suggest that the current system affords the defense an unfair advantage at trial and that equal strikes are a measure to protect victims of crimes.⁶³ Georgia already has one of the highest conviction rates in the nation, with some studies estimating it to be around “92 to 95%.”⁶⁴ One out of every fifteen people in Georgia is either in prison, on parole, or on probation.⁶⁵ If, in fact, the defense receives an advantage from unequal jury strikes, it does not seem to create any measurable

56. *Ross v. Oklahoma*, 487 U.S. 81, 88 (1988).

57. Russell, *supra* note 1.

58. *See id.*; Electronic Mail Interview with Rep. Mike Boggs, House District No. 145 (May 25, 2004) [hereinafter Boggs Interview].

59. *See, e.g.*, Senate Audio, *supra* note 6 (remarks by Sen. Seth Harp).

60. *See id.*

61. Russell, *supra* note 1 (quoting Thurbert E. Baker, Georgia Attorney General).

62. Boggs Interview, *supra* note 58.

63. *See* Senate Audio, *supra* note 6 (remarks by Sen. Ed Harbison).

64. *See id.*

65. *DAs Could Win*, *supra* note 22.

disparity in the conviction rates.⁶⁶ However, given the differences in resources available to the defendants and the prosecution in most criminal cases, supporters view equal strikes as a way of leveling the playing field.⁶⁷

Opponents pointed to the recent Marcus Dixon case as a prime example of why legislators should seriously consider an equal strikes provision before passing it into law.⁶⁸ Prosecutorial discretion, in some people's opinion, needs limits.⁶⁹ Representative Stokes, who spoke out in opposition to HB 1227, stated that "there has been gross insincerity towards the families of people who [have been] wrongly accused There are some examples of extreme prosecutorial decisions that result in some cases being tried that some prosecutors in the State would not even think to try."⁷⁰ Representative Stokes believes that a comprehensive assessment of criminal law is necessary before the legislature gives equal strikes to the prosecution.⁷¹

The main reason equal strikes met so much opposition in both houses was the provision's inclusion in death penalty cases.⁷² The statistics surrounding race and the death penalty are alarming. In Georgia, 65% of homicide victims are African-American; yet, in cases where the State executed the defendant, the victims were white 90% of the time.⁷³ This is also true on the national level, where more than 80% of defendants with death sentences involved white victims, even though only 50% of homicide victims are white.⁷⁴ One recent study shows that, for crimes involving interracial murder, states have executed 188 black defendants when the victim was white, but only 12 white defendants when the victim was black.⁷⁵ Presently, Georgia

66. See Senate Audio, *supra* note 6 (remarks by Sen. Ed Harbison).

67. Russell, *supra* note 1.

68. See Stokes Interview, *supra* note 53.

69. *Id.*

70. *Id.*

71. See *id.*

72. See House Audio, *supra* note 6 (remarks by Rep. Jim Stokes); see also Senate Audio, *supra* note 6 (remarks by Sen. Vincent Fort).

73. SOUTHERN CENTER FOR HUMAN RIGHTS, DEATH PENALTY STATISTICS IN GEORGIA, available at <http://www.geocities.com/gfadp/dpstats.html> (last visited May 9, 2004).

74. DEATH PENALTY INFORMATION CENTER, FACTS ABOUT THE DEATH PENALTY, available at <http://www.deathpenaltyinfo.org/article.php?scid=9&did=188#state> (last modified Mar. 24, 2004).

75. *Id.*

has the ninth highest number of inmates on death row with 114 sentenced for death.⁷⁶

Opponents of equal strikes used these statistics to demonstrate the need for allowing the defense more peremptory strikes than the prosecution.⁷⁷ To ensure that a minority defendant gets a fair trial, the judicial system must afford him or her an impartial jury; public defenders argue that the use of peremptory strikes is one way to bolster the chances of removing racist jurors.⁷⁸

In light of the fact that there are good arguments on both sides, the future of equal strikes depends not so much on legal challenges but on how sympathetic the members of the General Assembly are to either side of the debate.

Jonathan Poole

76. *Id.*

77. *See Stokes Interview, supra* note 53.

78. *See id.*