IN THE SUPREME COURT OF GEORGIA

THE STATE OF GEORGIA, Appellant, v. SHADE MILLER, JR., Appellee.	)	CASE NO. S90A1172

APPEAL FROM THE STATE COURT OF GWINNETT COUNTY

AMICI CURIAE BRIEF
of
THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH
THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
THE AMERICAN HELLENIC EDUCATIONAL PROGRESSIVE ASSOCIATION

Respectfully submitted,

THE ANTI-DEFAMATION LEAGUE
OF B'NAI B'RITH

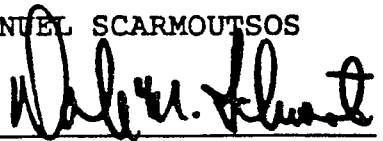
JUSTIN J. FINGER
JEFFREY P. SINENSKY
STEVEN M. FREEMAN
MEYER EISENBERG
CHARLES F. WITTENSTEIN
STEVEN J. MATZ

THE NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE

DENNIS COURTLAND HAYES

THE AMERICAN HELLENIC EDUCATIONAL
PROGRESSIVE ASSOCIATION

MANUEL SCARMOUTSOS

By: 
DALE M. SCHWARTZ
GA BAR# 631000
Attorney for Amici

Please serve:

DALE M. SCHWARTZ
TROUTMAN, SANDERS,
LOCKERMAN & ASHMORE
1400 CANDLER BLDG.
ATLANTA, GA 30303-1810
(404) 658-8097

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COME NOW the undersigned amici who respectfully file this Brief in support of the position of the State of Georgia in these proceedings and who urge this Court to uphold the constitutionality of the Georgia Anti-Mask law, O.C.G.A. § 16-11-38 (1989).

PART I.

A. STATEMENT OF INTEREST OF THE AMICI CURIAE

1. THE ADL.

The Anti-Defamation League of B'nai B'rith ("ADL") is one of the country's oldest human rights organizations, founded in 1913 to advance good will and mutual understanding among all races and religions. As set out in ADL's charter, the organization's objective is:

> To stop, by appeals to reason and conscience, and if necessary, by appeals to law, the defamation of the Jewish people. Its ultimate purpose is to secure justice

and fair treatment to all citizens alike and to put an end forever to unjust and unfair discrimination against and ridicule of any sect or body of citizens.

For over seventy-seven years, ADL has been committed to fighting racial and religious discrimination in employment, housing, education, and public accommodations, and to ensuring that every individual receives equal protection under the law. ADL believes that only when all members of society are free from bigotry and discriminatory treatment will the civil rights of any particular group be fully protected.

As part of this commitment, ADL has been actively involved in monitoring and counteracting extremist activity on both ends of the political spectrum in the belief that such activity often threatens the democratic process and interferes with the peaceful exercise of constitutional rights by citizens of the United States, especially citizens who are members of social, religious, and ethnic minorities. The founding of ADL in 1913 took place shortly after and partially as a result of the anti-Semitism attendant to the murder conviction of Leo M. Frank in Atlanta. Some of the members of the mob that lynched Leo Frank were among the group that revived the Invisible Empire, Knights of the Ku Klux Klan (the "KKK") in a ceremony on Stone Mountain, Georgia, in 1915. The Invisible Empire is virulently anti-Semitic as well as racist, and it has implemented its ideology repeatedly by force, violence and intimidation against Jews, African-Americans, Catholics and foreignborn residents of America. ADL has periodically issued reports and assessments of KKK activities and strength, and is

considered by law enforcement agencies, journalists and academics to be one of the foremost authorities on the organization, and Charles F. Wittenstein, Southern Counsel and Southern Civil Rights Director of the ADL, testified in the proceedings herein as an expert witness on the Klan.

In 1949, the Southern office of ADL in Atlanta published a pamphlet admitted into evidence in this case entitled "How to STOP Violence! Intimidation! in your community - `The Legal Approach'" by Morris B. Abram, a Georgia attorney, and Alexander F. Miller, former Southern Regional Director of ADL. One of the principal recommendations of that ADL program was the adoption of an Anti-Mask Law. The Georgia Anti-Mask Law before this Court in this case is based on the model proposed in that 1949 ADL pamphlet.

2. THE N.A.A.C.P.

The National Association for the Advancement of Colored People ("NAACP") is a non-profit membership corporation with substantial numbers of members nationwide. The NAACP has chartered affiliates in the State of Georgia and in the other forty-nine states. The principal goal of the NAACP is to insure the political, educational, social, and economic quality of African-American citizens of the United States and to remove all barriers of racial discrimination.

The NAACP has sought throughout its history to promote goodwill and mutual understanding among all Americans and to combat racial hatred and racially motivated violence against black Americans. The Ku Klux Klan (KKK), since its formation, has

utilized intimidation tactics and terroristic acts, including lynchings, bombings, assassinations, and castrations to achieve its aims of white supremacy and subjugation of the black race.

The NAACP's fight against the Commission of these atrocities is legendary. During the Civil Rights Movement of the 1960's and 1970's, the NAACP played a pivotal role in thwarting KKK intimidation of civil rights workers and demonstrators across the country, but particularly within the Southern states. More recently, there has been a resurgence in KKK intimidation and terrorism against blacks. As will be shown in the instant amici curiae brief, unmasking Klansmen is imperative if efforts to combat such violence against blacks is to succeed.

3. THE ORDER OF AHEPA.

The American Hellenic Educational Progressive Association ("AHEPA") is an international fraternal with local chapters in the United States and elsewhere. While membership is open to all, the Order of AHEPA is composed largely of people of Greek descent. AHEPA was founded in Atlanta, Georgia in 1922 to assist Greek immigrants in achieving American citizenship through schools of instruction in the principles of American government, to assist in the increased fluency in the English language, and to facilitate assimilation by encouraging members to actively participate in the civic life of their respective American communities.

Since its inception, AHEPA has actively and vigorously fought prejudice against ethnic, religious, and racial minorities, and has promoted mutual understanding, benevolence, and tolerance.

Amici respectfully request leave to participate in these proceedings as amici and to file this brief in support of the position of the State of Georgia in this litigation. Amici urge this Court to uphold the constitutionality of the Georgia Anti-Mask Act.

B. ENUMERATIONS OF ERROR

The trial court erred in holding that O.C.G.A § 16-11-38 (1989) is unconstitutional, and further erred in finding (i) that the Ku Klux Klan is a "persecuted group," and (ii) that the wearing of a mask along with the Klan robe and hood is "symbolic speech."

C. STATEMENT OF FACTS

On February 28, 1990, Appellee Shade Miller, Jr., an unemployed truck driver (T-18) and the "Great Knight-Hawk" for the Invisible Empire, Knights of the Ku Klux Klan of Georgia (T-12), was arrested for violating the Georgia Anti-Mask Law, O.C.G.A. § 16-11-38 (1989). (T-15-16) Mr. Miller, at the time of his arrest in downtown Lawrenceville, Georgia, was wearing the traditional regalia of the KKK, a white robe and a pointed dunce cap, along with a "diaper-like" mask which covered his face and concealed his identity.

Appellee Shade Miller, Jr. challenged the constitutionality of the Anti-Mask Act as being violative of the First and Fourteenth Amendments of the Constitution of the United States and of Art. I, Sec. I, Paragraphs 2, 5, 9, and 28 of the Constitution of the State

of Georgia. A hearing was conducted in the State Court of Gwinnett County, after which the trial court declared the Anti-Mask Act unconstitutional. This appeal followed.

D. THE HISTORY OF THE KKK WHICH GAVE RISE TO THE PASSAGE OF THE ANTI-MASK ACT.

A review of the history of the KKK assists in understanding why the General Assembly of Georgia enacted the Anti-Mask statute in 1951. The legislature was concerned with the increasing trend of violence directed at the citizens of Georgia by masked Klansmen.[1]

1. The Klan's History Prior to 1951.

Six Confederate soldiers formed the first Ku Klux Klan on Christmas Eve, 1865, in Pulaski, Tennessee. Hate Groups, at 75. The Klan movement spread rapidly throughout the South, and three years later had an estimated membership of 550,000. Id. at 76. At the height of its power in 1925, the group claimed nearly 5 million active members throughout the country. Id. at 78. The original Klan, splinter groups and independent orders have the same basic ideology of "white supremacy," which fuels hatred of and violence against blacks, Jews, and immigrants. Id. at 75-86.

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[1] Much of the following history of the KKK is extracted from the ADL publication, Hate Groups in America: A Record of Bigotry and Violence (1988) (hereinafter cited as "Hate Groups"), excerpts from which are attached to this brief as an Appendix for the aid of the Court.

The violence instigated by the Klan, though not always well documented, is clearly evident.[2] Indeed, in the weeks before the 1868 presidential election, at least 2,000 blacks had been killed or wounded in Louisiana, 75 killed in Georgia, and 109 killed in Alabama. Id. at 75. The Klan emerged again in the 1920's, shortly after the lynching of Leo M. Frank near Atlanta, and drew support from beyond the borders of the Old Confederacy.[3] The Second Klan directed its animosity towards Catholics and foreigners as well as its traditional targets, blacks and Jews.[4] Id. at 76. The upsurge in Klan membership also brought money, and in 1922 Klan leader William Joseph Simmons estimated the hooded order's income from dues and the sale of paraphernalia at $45,000 per day.[5] Id. at 77. During this era the United States Supreme Court took judicial notice of the fact that the Klan was a terrorist organization. People of the State of N.Y. ex rel. Bryant v. Zimmerman, 278 U.S. 63, 49 S.Ct. 61 (1928) (a fact that was held by the Court to be "not subject to reasonable dispute").

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[2] In 1871, a federal general in Texas reported: "Murders of Negroes are so common as to render it impossible to keep accurate accounts of them." Hate Groups, supra., n.2 at 75.

[3] The Klan held power in New Jersey, Indiana, Colorado, Oregon, Texas, Oklahoma, Louisiana, Maine, Kansas, and New York. Hate Groups at 77.

[4] Tom Watson became a major spokesman of this racism through the periodical he owned and through political connections he made while a U.S. Senator from Georgia (1920-22) Id. at 76.

[5] Annual total from dues alone totalled $7,000,000. Id. at 77.

During the 1930's and 1940's, even though the Klan's membership significantly declined, its propensity toward violence increased. Id. at 79-80. Floggings, beatings, lynchings and cross burnings by masked Klansmen were not uncommon events throughout the South. Id. In April, 1949, the Association of Georgia Klans was declared a subversive organization by the Attorney General of the United States, and the summer of 1949 experienced a huge surge of Klan-related violence throughout Georgia. Id. at 80. It was against this sordid background that the General Assembly of Georgia passed the Anti-Mask Act.

2. The KKK: 1951-1990.

After the enactment of anti-mask laws by a number of states and local governments, support for the Klan ebbed until the late 1940's when the emerging civil rights movement stirred resistance among whites, particularly because of the move to desegregate schools following Brown v. Board of Education in 1954. Id. The strongest of the new groups, the U.S. Klans, Knights of the Ku Klux Klan, Inc., was incorporated in Georgia and was led by Atlantan Eldon Lee Edwards. Id. In 1956 Edwards drew 3,000 supporters to a rally at Stone Mountain, Georgia. Id. His and other groups competed for members and brutality by Klanmen increased.[6] Id. at 81. The Klan continued to resist equality for minorities and its membership grew again in the 1960s as the civil rights movement

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[6] In Birmingham in 1957, Klan members castrated and then poured hot turpentine on the wounds of Judge Aaron, a black handyman, who lived to see six members of the Alabama Confederate Knights be convicted for the crime. Id. at 81.

progressed. Id. at 82. The historic Greensboro, North Carolina sit-in helped prompt the organization of a "National Klan Committee" in Atlanta to give some coordination to the various Klan groups and the loose confederation became known as the "National Knights of the Ku Klux Klan."[7]

In recent years, Klan members have tried to hide their identities and mask the true purpose of their Klaverns.[8] Id. at 84. The new image of the Klan portrayed in public is not paralleled in private -- this xenophobic, racist, and religiously-intolerant organization continues to abuse and kill people whom it sees as "a threat to the purity of the white race." Id. at 14-17. In 1985, at least 84 Klan members were prosecuted for racially - motivated violence. Id. at 5. In 1987, the United Klans of America lost a $7 million civil suit to the family of Michael Donald, a black teenager killed in 1981. Id. at 7. Recently in Georgia the federal courts ordered the Southern White Knights of the KKK and the Invisible Empire, Knights of the KKK to pay compensatory and punitive damages of more than $800,000, when four hundred Klan-led protestors threw rocks and bottles at 75 Martin Luther King Jr. Day marchers in Forsyth County.[9] Because of this

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[7] The National Knights showed their strength by a coordinated night of cross burnings; more than 1,000 burning crosses were reported on March 26, 1960. Id.

[8] Many Klaverns call themselves "fishing clubs," "sportsmen's clubs," or even "civic and betterment associations." Id. at 84.

[9] Williams v. Southern White Knights of the Ku Klux Klan, No. 89-8092, 11th Cir., Oct. 27, 1989 (unpublished opinion), cert. denied, U.S. Sup. Ct., No. 89-1558, May 29, 1990.

increased personal liability for Klan members and strict law enforcement, fewer people have joined the Klan as official members. The Klan, nevertheless, is still a significant threat despite its decreased numerical strength, and the Klan has supporters who share its attitudes and praise its activities without becoming official, dues-paying members.[10] "A relatively small number of violent racists can have an inordinate impact."[11] Thus, the need for an anti-mask law today is an important deterrent to Klan-sponsored violence and intimidation, just as it was in 1951. The Klan, while smaller in number, is today even more violent, and the need for the law remains.[12]

PART II.

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[10] The Anti-Defamation League estimated Klan membership in 1988 at 4,500 - 5,500, its lowest total in 15 years. Id. at 23.

[11] Id. at 23.

[12] The Eleventh Circuit found that "There is uncontradicted evidence that violent racism has become the Klan's hallmark and has not subsided to any appreciable extent since the Klan's founding shortly after the Civil War. McMullen v. Carson, 754 F.2d 936, 938 (11th Cir. 1985). The Court described the Klan "as a violent, criminal, and racist organization dedicated to the sowing of fear and mistrust between white and black Americans." Id. at 938; see also, Marshall v. Bramer, 828 F.2d 355, 363-64 (6th Cir. 1987) (same); Shelton v. U.S., 404 F.2d 1292 (D.C. Cir. 1968); Vietnamese Fisherman's Ass'n v. Knights of Ku Klux Klan, 543 F.Supp. 198 (S.D. Tex. 1982); U.S. v. Original Knights of Ku Klux Klan, 250 F.Supp. 330 (E.D. La. 1965); U.S. v. U.S. Klan Knights of the Ku Klux Klan, 194 F.Supp. 894 (M.D. Ala. 1961).

Often courts in Georgia have been called upon to enjoin the Klan from violence and intimidation. E.g., Thomas v. Invisible Empire Knights of the Ku Klux Klan, No. 86-15-ATH (M.D. Ga. Mar. 20, 1986); State v. Invisible Empire Knights of the Ku Klux Klan, No. 86-M-1565-G, Hart Co. Sup. Ct., June 24, 1986.

ARGUMENT AND CITATION OF AUTHORITY

The court below declared that the Georgia Anti-Mask Act was unconstitutional as violative of the First Amendment's prohibition against the making of any law "abridging the freedom of speech... or the right of the people to peacefully assemble...."[14] Amici submit that the Anti-Mask Act is a valid and constitutional attempt by our General Assembly to carry out its responsibility "...to enact such laws as will protect [citizens and residents] in the full enjoyment of the rights, privileges, and immunities due to such citizenship." Ga. Const., Art.1, § 1, ¶ 7 (1983).

Amici submit that the wearing of a mask in conjunction with a Klan robe and hood on public property is neither protected "speech" nor "symbolic speech;" that the Anti-Mask statute is neither overly broad nor vague; that the Anti-Mask Act advances a rational and legitimate government interest without exposing a protected group to governmental harassment, and with only incidental restrictions on expressive conduct; and that, therefore, the act meets all standards of constitutionality set forth by this Court and the United States Supreme Court.

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[14]The First Amendment's prohibitions are extended to the states by the Fourteenth Amendment to the Constitution of the United States. U.S. Const., Amend. XIV; Fiske v. Kansas, 274 U.S. 380, 47 S.Ct. 655, 71 L.Ed. 1108 (1927). The Constitution of the State of Georgia contains similar language: "No law shall be passed to curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish sentiments on all subjects but shall be responsible for the abuse of that liberty." Ga. Const., ART. I, § 1, ¶ 5 (1983).

A. THERE IS A STRONG PRESUMPTION THAT THE ANTI-MASK ACT IS CONSTITUTIONAL.

Even in the determination of the constitutionality of a criminal statute, there is a strong presumption favoring its constitutionality. "It is an established rule in Georgia that all presumptions are in favor of the constitutionality of an [A]ct of the legislature. Kirton v. Biggers, 232, Ga. 223 (206 S.E.2d 33) (1974); Mayes v. Daniel, 186 Ga. 345 (198 S.E. 535) (1938)." Culpepper v. Veal, 246 Ga. 563, 564 (272 S.E.2d 316, 317 (1986) (interpreting a criminal statute). "The fact that an act might be administered in an arbitrary manner by those charged with its enforcement does not make the act itself unconstitutional." Jenkins v. Manry, 216 Ga. 538, 543, 118 S.E.2d 91, 95 (1961) (emphasis added)(citations omitted).

In situations even where an act is of doubtful meaning and may be susceptible of more than one interpretation, one constitutional and the other not, the act should be interpreted as consistent with the Constitution. Lassiter v. Ga. Pub. Svc. Com'n, 253 Ga. 227, 319 S.E.2d 824 (1984); City of Macon v. Smith, 244 Ga. 157, 259 S.E.2d 90 (1979); City of Columbus v. Rudd, 299 Ga. 568, 198 S.E.2d 11 (1972); Planned Parenthood Ass'n of Atlanta Area, Inc. v. Harris, 670 F. Supp. 971 (N.D. Ga. 1987).

B. THE CLEAR LEGISLATIVE INTENT OF THE GENERAL ASSEMBLY WAS TO PUNISH ONLY THOSE WHO USED MASKS IN CONNECTION WITH COMMITTING ACTS OF VIOLENCE, THREATS AND INTIMIDATION AGAINST OTHERS.

Appellee argues that the Anti-Mask Act is unconstitutional because it might be applied in situations in which the wearer of a mask was doing so for totally legal and innocent reasons. Brief of Appellee, 16-22, 30. Yet not a single instance has been cited where the Act was used to prosecute a wearer of a mask in public except as part of the Klan regalia in a context of fear, threats, or terror. We have found no reported instance in Georgia in which the Anti-Mask Act was used against any person for wearing a mask, other than in conjunction with a Klan robe and hood.

Given the strong presumption of the constitutionality of the Anti-Mask Act, it is appropriate to look at the intent of the General Assembly in enacting the statute. This Court has long recognized that in interpreting statutes a "cardinal rule of statutory construction is that courts must look to the purpose and intent of the legislature and construe statutes so as to implement that intent. Wilson v. Board of Regents, 246 Ga. 649, 650, 272 S.E.2d 496 (1980)." Enfinger v. International Indem Co., 253 Ga. 185, 186, 317 S.E.2d 816, 817, cert. denied 105 S.Ct. 433 469 U.S. 1018, 83 L. Ed.2d 360 (1984). It is the duty of the courts in Georgia, as elsewhere, to "look diligently for the intention of the General Assembly, keeping in view at all times the old law, the evil, and the remedy...." Barrett & Caswell v. Pulliam, 77 Ga. 552,

554 (1886); Int'l Indem. Co. v. Bakco Acceptance, 192 Ga. App. 28, 30 (1), 322 S.E.2d 78 (1984).

Given the historical background of the Klan and other terrorist groups in the era immediately prior to the enactment of the Anti-Mask Act in Georgia in 1951, see Part I, Section D, supra, the evil which the General Assembly sought to address was clear: The terroristic threats, violence and criminal activities by robed, hooded, and masked "Knight Riders" directed at blacks, Jews, Catholics, and other minorities.

(1) The Intent of the General Assembly is Clear from the Statute Itself, Especially When Read in Conjunction with the Original Statement of Public Policy.

"When looking to the intent of a statute, the most significant provisions for this court are those wherein the statute itself defines its intent." Fender v. Fender, 249 Ga. 765, 767, 294 S.E.2d 472, 474 (1982); Freeman v. W.O.W. Life Ins. Society, 200 Ga. 1, 26 S.E.2d 81 (145).

Section 1 of the Anti-Mask Act clearly sets forth the intent of the General Assembly in passing this legislation:

"Section 1. Statement of Public Policy.

All persons residing in the state are entitled to the equal protection of their lives and property.

The law protects all, not only against actual physical violence but also against threats and intimidations from any person or group of persons.

The General Assembly cannot permit persons, known or unknown to issue either actual or implied threats, against other persons in the State.

> Persons in this State are and shall continue to be answerable only to the established law as enforced by legally appointed officers."

Id. at 9-10.[15]

Thus it is clear from the Statement of Public Policy, especially when read in conjunction with the Act's numerous exceptions for the wearing of masks in lawful circumstances, that the legislature intended to prohibit the wearing of a mask only in situations where the concealment of identity was effected in connection with the commission or threat of terroristic or otherwise illegal activity. Id.

Appellees argument ignores the Statement of Public Policy contained in Section 1 of the Anti-Mask Act, Brief of Appellee, 2, but then asserts that the Act is void for vagueness, id. at 14-23, since it is alleged, that "men of common intelligence must guess at its meaning and differ as to its application." Id. at 14.

Amici submit that persons of common intelligence would have no difficulty in reading the Anti-Mask Act and concluding that the Act only prohibits concealment of identity in conjunction with the commission or threat of other crimes or illegal terroristic activity. The Statement of Public Policy contained in the original Act is an authoritative expression of legislative intent, and aids

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[15] As originally enacted in 1951, the Anti-Mask Act contained a number of provisions designed to protect citizens of this state from racial and ethnic intimidation and terrorist activity. In addition to the prohibition against the wearing of masks under certain circumstances, the Act made criminal other types of conduct, such as the burning of crosses on private property without obtaining the written permission of the landowner or occupier of the property. Ga. L. 1951, 9-12.

in determining what masked activity is prohibited by the Act. Fender, supra; see, also, Bentley v. State Board of Medical Examiners, 152 Ga. 836, 839, 111 S.E. 379, 381 (1922); Illusions on Peachtree St., Inc. v. Young, 257 Ga. 142, 143, 356 S.E.2d 510, 511 (1987). A statement of legislative policy or a preamble has "been said to be a key to open the understanding of a statute." Coosaw Min. Co. v. South Carolina, 144 U.S. 550, 563, 12 S.Ct. 689, 692, 36 L.Ed. 537 (1892); see also, Price v. Forrest, 173 U.S. 410 428 19 S.Ct. 434, 440, 43 L.Ed. 749 (1899).

In the case at bar, the General Assembly has spotlighted the purpose of the Act -- not in the form of a mere preamble, but with its own clear Statement of Public Policy in Section 1 of the Act. Thus, if it is argued that the statute in question, Section 16-11-38 of the Georgia Code, is "vague and overboard," i.e. ambiguous, then the Statement of Public Policy should be considered in determining the intention of the General Assembly as to what type of conduct was to be prohibited. IA N. Singer, Sutherland on Statutory Construction § 20.04 (4th ed. 1984); see, e.g., Dayton-Goose Creek R. Co. v. U.S., 263 U.S. 456 44 S.Ct. 169, 68 L.Ed. 388 (1924).

2. The Statute Is Not Vague.

The trial court found the Anti-Mask Act was void for vagueness. Order, 10. This holding is contrary to the standards for determining vagueness established by the United States Supreme Court and this Court.

No reasonable person would read the Anti-Mask Act and believe that any concealment of identity, other than in connection with the commission of other illegal activity, or activity designed to violate the civil and constitutional rights of others, would be prosecuted as violative of the Act. Ridley v. State. 232 Ga. 646, 208 S.E.2d 466 (1974).

In Grayned v. City of Rockford, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972), the Supreme Court determined the standards against which vagueness is measured:

1. The statute must give fair warning of the proscribed conduct so that innocent persons may steer clear of violating the law;

2. The statute must provide explicit standards for those who enforce the law; and

3. The statute must not chill the exercise of First Amendment freedoms.

Id. This Court has similarly defined vagueness:

> "[A statute is not unconstitutionally vague so as to infringe on a defendant's guarantee of due process of law if] the statute is sufficiently definite so as to appraise a person of ordinary intelligence of the conduct which is forbidden by the statute."

Lemon v. State, 235 Ga.74, 76, 218 S.E.2d 818, 820 (1974); Ridley v. State, 232 Ga. 646, 208 S.E.2d 466 (1974).

The provisions of the Anti-Mask Act are clear, especially when the Act is read in its entirety. Since the Act limits its application to those situations in which a mask is publicly worn in a threatening, intimidating, or otherwise criminal context, no

person of ordinary intelligence could read the act and not be aware of the conduct which is forbidden. Bell v. State, 252 Ga. 267, 313 S.E.2d 678 (1984).[16] The Act is therefore not vague. Id.

(3) The Trial Court Misinterpreted Judge Williams' Testimony.

The Court below erred in allowing the deposition testimony of Judge Osgood O. Williams to be admitted at the hearing on appellee's Special Demurrer, even though the testimony was tendered without objection. In addition, it is submitted by amici herein that the court below erred in assigning any probative value to Judge Williams' testimony with regard to the intent of the General Assembly in its enactment of the Anti-Mask law.

Judge Williams, a respected Senior Judge of the Atlanta Judicial Circuit, served in the General Assembly of Georgia in 1951 and 1952. He was the legislative sponsor, at the request of the ADL, of the Anti-Mask law. Deposition of Osgood O. Williams, 19-25. Judge Williams testified in the hearing below that his purpose in sponsoring the legislation was to "unmask the Ku Klux Klan." Id. at 32. The court below seized upon Judge Williams' testimony to find that" ... the true legislative intent was to unmask a dissident group." Order, 7. Amici submit that the real purpose of the General Assembly in enacting the Anti-Mask law was that of protecting the public," ... not only against actual physical

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[16] In fact, even the trial judge below stated, "The Court agrees that a person of common intelligence could read the statute and determine, under which circumstances a mask could be worn." Order, 9. But inexplicably the Court went on to hold that the statute was "vague." Id. at 10.

violence but also against threats and intimidations from any person or group of persons." Ga.L. 1951, 10, § 1.

In addition, it is clear from the language of the statute that the legislature was not attempting to unmask "dissident groups," but rather was prohibiting the use of masks by any terrorist group which utilized masks to ensure anonymity in carrying out their illegal and clandestine purposes. The General Assembly did not attempt to suppress the right of the Klan to spread its ideology or inhibit its right to free speech, but merely acted to protect the citizens of Georgia from terrorism inflicted by masked vigilantes.[17] Judge Williams' testimony does not fully articulate the legislative purpose, which is made clear in the Act's own policy statement.

In any event, a legislator's statements of personal intent should not be admitted. Indeed, "the private and unformulated influences which may work upon legislation are not open to judicial probing." McGowan v. State of Maryland, 366 U.S. 420, 469, 81 S.Ct. 1153, 1158 (1961). A court may not inquire into the motives which induced the legislature to exercise constitutionally-conferred power. Id.; see Sonzinsky v. United States, 300 U.S. 506, 513-514, 57 S.Ct. 554, 556 81 L.Ed. 772 (1937) (The court could not inquire into legislators' underlying motives); Arizona

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[17] But even if the General Assembly's motive was to suppress the Klan and similar terrorist organizations, "It is a familiar principle of constitutional law that this Court will not strike down an otherwise constitutional statue on the basis of an alleged illicit legislative motive." U.S. v. O'Brien, 391 U.S. 374, 383, 88 S.Ct. 1673, 1682 (1968).

v. California, 283 U.S. 423, 455, 51 S.Ct. 522, 526, 75 L.Ed. 1154 (1931); Oklahoma ex rel. Phillips v. Guy F. Atkinson Co., 313 U.S. 508, 528, 61 S.Ct. 1050, 1061, 85 L.Ed. 1487 (1941).

In Georgia, "[I]n a judicial proceeding, the testimony of a legislator, with respect to the legislative intent underlying the enactment of a particular piece of legislation, is inadmissible." Jackson v. Delk, 257 Ga. 541, 543, 361 S.E.2d 370, 372 (1987); Stewart v. Atlanta Beef Co., 93 Ga. 12, 18 S.E. 981 (1893) (legislator's and Comptroller General's testimony inadmissible in construing a statute); Southern Ry. v. A.O. Smith Corp., 134 Ga. App. 219, 219 S.E.2d 903 (1975). A legislator's testimony is inadmissible, not only because this method "cannot ... receive the sanction of any fair mind," but also because legislators may differ as to what an act means; their testimony thus creating more confusion than it solves. Stewart, supra, 92 Ga. at 18, S.E. at 985. Courts must ignore this type of testimony, even if no objection thereto was interposed, since the testimony has no probative value. Mackenzie v. Snow, 675 F.Supp. 1333 (N.D. Ga. 1987); see, e.g., Mallard v. Colonial Life & Acc. Ins. Co., 173 Ga. App. 276, 326 S.E.2d 6, 7 (1985), Pearce Furniture Co., Inc. v. Jackson, 145 Ga. App. 719, 720, 244 S.E.2d 637, 638 (1978); Pugmire Lincoln Mercury, Inc., v. Sorrells, 142 Ga. App. 444, 446, 236 S.E.2d 113, 115 (1977).

Thus, Judge Williams' testimony as to his intent in authoring the Anti-Mask Act is not controlling, even if given the cramped reading of his testimony by the court below. Only the General

Assembly's expressed policy in passing of the Act is controlling. Those reasons are clear from the Act itself -- the General Assembly was not trying to unmask a "dissident group," but rather was attempting to protect the citizens of the State of Georgia from violence, terrorism, and intimidation.

C. THE KLAN MASK, WHEN WORN WITH A HOOD AND ROBE IN A PUBLIC PLACE, REPRESENTS NEITHER PROTECTED FREE SPEECH NOR SYMBOLIC SPEECH.

Shade Miller, Jr. testified at the hearing below that he wore the mask only to conceal his identity (T-10-11), and that the lack of a mask would not inhibit him from doing or saying anything he wanted or from otherwise fully expressing himself (T-21, 24, 31). As evidence of the fact that the Klan mask is not symbolic speech, Mr. Miller himself testified as follows:

> "Q. If you go out to Lawrenceville on the Square right now wearing this [Klan robe and hood], what is it that you cannot do as a Klan member that you could do if you had the mask on?
>
> A. Nothing."

(T-31). When asked if the mask has any symbolic meaning to him, Mr. Miller said only that "It makes me feel very good. I like it." (T-32).[18]

As a threshold matter, the Court must determine whether the wearing of a Klan mask in conjunction with a robe or hood is "speech" or "symbolic speech," for if it is neither, then the free

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[18] Edward R. Fields, an editor, publisher, and former State Organizer for the KKK testified below in an identical fashion. (T-45-47). He stated that the "sole purpose" of the Klan mask was to conceal the identity of the wearer. (T-46-47).

speech provisions of the First and Fourteenth Amendments would not apply. Spence v. Washington, 418 U.S. 405, 94 S.Ct. 2727, 41 L.Ed.2d 842 (1974). "It is therefore necessary to determine whether [the] activity was sufficiently imbued with elements of communication to fall within the scope of the First and Fourteenth Amendments, for as the Court noted in United States v. O'Brien, 391 U.S. 367, 376, 88 S.Ct. 1673, 1678, 20 L.Ed.2d 672 (1968), '[w]e cannot accept the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea.'" Id. at 418 U.S. 409, 94 S.Ct. at 2730. The Supreme Court, in deciding whether particular conduct possesses sufficient communicative elements to invoke the First Amendment's prohibitions, inquires whether "[a]n intent to convey a particularized message was present, and [whether] the likelihood was great that the message would be understood by those who viewed it." Id. at 418 U.S. 410-411, 94 S.Ct. 2730.

Under this standard, the courts have held that various types of conduct constituted symbolic speech. E.g., U.S. v. Eichman, 110 S.Ct. 2404 (1990)(flag burning); U.S. v. Grace, 461 U.S. 171, 103 S.Ct. 1702, 75 L.Ed.2d 736 (1983)(picketing); Schacht v. U.S., 398 U.S. 58, 90 S.Ct. 1555, 26 LEd.2d 44 (1970)(wearing military uniforms in war protests); Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969)(the wearing of black armbands to protest the Vietnam war); Brown v. Louisiana, 383 U.S. 131, 86 S.Ct. 719, 15 L.Ed.2d 637

(1966)(sit-in demonstrations to protest racial segregation). Amici submit that, unlike the obvious communicative nature of certain symbols such as the American flag, Texas v. Johnson, 491 U.S. __, 109 S.Ct. 2533, 105 L.Ed 2d 342 (1989), the wearing of a Klan mask in conjunction with a Klan hood and robe conveys no additional particularized message not already conveyed by the Klan robe and the hood alone. The wearer of the Klan mask, along with the Klan regalia, only intends to threaten or terrorize others and does not want his identity to be known so he can escape prosecution. Any ordinary person, upon seeing a robed and hooded Klansmen, obviously receives whatever statement or message the Klansmen wishes to convey[19] (no matter how objectionable or offensive his constitutionally-protected message might be),[20] whether the wearer of the Klan regalia is masked or not.

Thus, the conclusion is inescapable that the wearing of the Klan mask, along with the hood and robe in intimidating and threatening circumstances, is criminal activity and is no more protected by the First Amendment as symbolic free speech than is the pointing of a loaded gun or the wearing of a mask to conceal

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[19] Mr. Charles F. Wittenstein, Southern Civil Rights Director and Southern Counsel for the ADL, testified at the hearing below as an expert witness with over 30 years experience in monitoring Klan activities, that "African-Americans and Jews understand, they know, they feel that the man wearing the mask in conjunction with the hood and the robe is a threat to them and to their exercise of their constitutional rights." (T-111).

[20] "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." Johnson, supra, at 104 S.Ct. 2544.

identity during an armed robbery. The Klan mask conveys no separate opinion, no information, no symbolic statement -- just the terrified realization of the public victim who sees it that he or she will likely not be able to identify the person about to assail him or her and cause deprivation of constitutional rights. (T-126-127)[21]

Since "... it is the obligation of the person desiring to engage in assertedly expressive conduct to demonstrate that the First Amendment even applies," Clarke v. Community for Creative Non-Violence, 468 U.S. 288, at 293, n.5, 104 S.Ct. 3065, at 3069, n.5, 82 L.Ed.2D 221 (1984), the court below should be overruled on this ground, first and foremost, since Shade Miller, Jr. did not establish that his wearing of a Klan mask was expressive conduct which constitutes symbolic speech. Id. He totally failed to carry this burden and the First Amendment is therefore inapplicable.[22]

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[21]Nowhere is this point better illustrated than in Hosea Williams v. Southern White Knights of the Ku Klux Klan, supra, n.10, wherein the KKK and a number of individual Klan members suffered a judgement of over $800,000 for physically abusing and injuring civil rights marchers in Forsyth county, Georgia. Id. If the defendant Klansmen had been masked, how would the injured participants have known whom to sue? In that case, like many others, the Anti-Mask Act was of direct and substantial benefit to the citizens of this state who were the victims of Klan violence and harassment. It is submitted that the Klan mask worn alone (without the Klan robe and hood), conveys no constitutionally-protected message whatsoever, and is therefore not symbolic speech.

[22] Appellee can likewise take no comfort from either Tinker v. Des Moines Independent School Dist., supra, or Collin v. Smith, 578 F.2d 1197 (7th Cir. 1978), cited by him. Brief of Appellee, 7. Collin involved the wearing of Nazi uniforms in a local demonstration, but no identity concealment was involved. Id. The Tinker protestors wore black arm bands which were held to be symbolic of the anti-Vietnam war movement, but did not

D. THERE IS NO FIRST AMENDMENT GUARANTEE OF ANONYMITY WHICH WOULD APPLY TO THE WEARING OF A KLAN MASK.

Notwithstanding Appellee's assertion that anonymity is "essential to the exercise of constitutional rights," Brief of Appellee, 7, there is no absolute guarantee of anonymity in exercising First Amendment rights, except to the narrow extent that the persons exercising such legitimate rights require protection from the government in order to do so. N.A.A.C.P. v. Alabama, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). No such showing of need was established in the case at bar.

1. There Is No General First Amendment Right to Anonymity.

Counsel have not been able to uncover a single case, state or federal, which holds that there is an absolute, or even general, right to anonymity in connection with the exercise of First Amendment rights.[23] To the contrary, numerous decisions suggest that the right to anonymity is indeed very limited.

Since 1861, federal civil rights statutes have made it an actionable offense

> "If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons

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conceal their identities. Amici stipulate for the purpose of argument herein only that the wearing of the Klan robe and hood, without a mask, is protected symbolic speech. Collin, supra.

[23] The trial court below agreed with this principle in stating, "There is clearly not an absolute right to anonymity." Order, 3.

> of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any state of territory from giving or securing to all persons within such State or Territory the equal protection of the laws ...."

8 U.S.C. § 1985(3)(1981)(emphasis supplied). This section has been held to be constitutional, Griffin v. Breckenridge, 403 U.S. 88, 91 S.Ct. 1790, 29 L.Ed.2d 338 (1971), and this prohibition has been codified as well in the federal criminal statutes. 18 U.S.C. § 241 (1969 and 1990 Supp.).[24] This statute was recently applied to convict an unmasked Georgia Klansmen who, along with other KKK members who were masked, terrorized and beat a woman who they said was associating with "niggers." U.S. v. Wood, 780 F.2d 955 (11th Cir. 1986).[25]

Similarly, while supporting and contributing money to candidates and political parties have been held to be valid activities within the ambit of the First Amendment, campaign finance disclosure laws which require the disclosure of names of those who contribute to campaigns or pay for the distribution of political literature or advertisements have been held not to violate the First Amendment. E.g., Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 68 (1974)(Ga. Campaign Financing

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[24] This criminal provision was found to be constitutional in a case arising in Georgia. U.S. v. Guest, 383 U.S. 745, 86 S.Ct. 1170, 16 L.Ed.2d 239 (1966).

[25] The victim identified the unmasked Klansman when she saw him on a television news program several months later. Wood, at 780 F.2d 957. Had the Klansman been masked, no such identification would have been possible. Id.

Disclosure Act) (any alleged right to anonymity "must yield to the public's right to know who is 'behind the scene.'")

2. The Trial Court's Reliance Upon N.A.A.C.P. v. Alabama And Ghafari v. Municipal Court Was Misplaced, Since The Klan Is Not A Persecuted Group.

The court below found that the position of the Klan in Georgia in 1990 was analogous to the position of the N.A.A.C.P. in Alabama in 1956 and to Iranian students in California who wished to demonstrate against the Shah in 1976, Opinion, 4, and thus the Klan was held to be a "persecuted group" entitled to anonymity in order to exercise its First Amendment rights. Id. The trial court's failure to adequately distinguish the factual circumstances involved in the cases upon which it relied from the facts in the instant case led to its erroneous conclusion that the Klan is entitled to anonymity.

The leading decision in this area of the law, and the case upon which the trial court heavily relied, is that of N.A.A.C.P. v. Alabama, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). In 1956 the State of Alabama brought suit to enjoin the N.A.A.C.P. from conducting further activities in that state, due to the fact that the Association had not properly registered as a foreign organization doing business in Alabama. Id. at 76 S.Ct. 1166-67. While the case was pending, the Attorney General of Alabama moved for the production of certain N.A.A.C.P. records, including a list of the names and addresses of all Alabama members and agents. Id. at 1167. When the Association refused to comply with the discovery

requests upon First Amendment grounds, the state court adjudged it to be in civil contempt and levied a substantial fine. Id.

The United States Supreme Court took special note of the fact that the record was clear that on past occasions revelation of the N.A.A.C.P.'s members led to economic reprisal, loss of employment, threat of physical coercion, and "other manifestations of public hostility." Id. at 1172. Under those circumstances the Supreme Court held that the N.A.A.C.P. was entitled to anonymity. Id. In its ruling, the Supreme Court was careful to distinguish its prior holding in the seminal case of New York el rel. Bryant v. Zimmerman, 278 U.S. 63, 49 S.Ct. 61, 73 L.Ed. 184 (1928). The Court noted that the New York statue which it had upheld in Bryant required the registration of certain organizations and the disclosure of the names and address of their members and officers. Id. at 1173. The Supreme Court explicitly distinguished Bryant and held

> "In its opinion, the [Bryant] Court took care to emphasize the nature of the organization which New York sought to regulate. The decision was based on the particular character of the Klan's activities, involving acts of unlawful intimidation and violence, which the Court assumed was before the state legislature when it enacted the statute, of which the Court itself took judicial notice."

Id. (emphasis supplied).

Not only does the Supreme Court decision in N.A.A.C.P. v. Alabama not support the ruling of the lower Court in the case at bar, but it demands its reversal. The trial court stood reality on its head in failing to recognize, as the Supreme Court recognized in Bryant and as have numerous other courts have

recognized in the past, see n.12 supra, that the members of the Klan are the persecutors -- not the victims of persecution, and are not therefore entitled to anonymity. N.A.A.C.P. v. Alabama, supra.

The second case relied upon by the trial court is that of Ghafari v. Municipal Court, 87 Cal. App. 3d 255, 150 Cal. Rptr. 813, 2 ALR 4th 1230 (1978), in which Iranian students, who in 1978 wished to demonstrate against the government of the Shah of Iran outside the Iranian Consulate in San Francisco, were determined to have the right of anonymity to protect themselves from the clear danger of reprisal by their government. Id.[26] The Court of Appeals of California held that the penal code provision which prohibited the wearing of masks in public (with certain limited exceptions) was unconstitutional. Id.

There are two primary reasons why the holding in Ghafari is inapposite to the case at bar. First and foremost, Ghafari presented a situation in which the alleged victims of potential persecution were attempting to exercise their constitutional rights. They were in the same posture as the members of the N.A.A.C.P. in Alabama in 1956, and to that extent the holding in Ghafari is correct, since they chose to conceal their identities for their own protection -- a lawful purpose. They were not, like the Klan, attempting to hide their identities so that they could, as they have historically done, intimidate their victims and inflict violence and terror upon others. Secondly, the state

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[26] Their uncontroverted testimony was that they would not have been able to demonstrate if their identities were known. Id.

statute in Ghafari was neither as narrowly drawn, nor was as specific as to the intent of the legislature to only make criminal the wearing of a mask in threatening or intimidating situations, as is the Georgia Anti-Mask Act. For these reasons, Ghafari and similar cases[27] are distinguishable from the case at bar and should not have been relied upon by the trial court.

Given the violent and sordid history of the KKK as set forth in the record in this case and in the cases cited herein, it was clear error for the trial court to find that the Klan was a "persecuted group," not unlike the Iranian students in Ghafari, or the N.A.A.C.P. in Alabama in 1956. Merely because the KKK is monitored by the F.B.I. and state and local police authorities (as are other criminal groups), does not mean that the Klan is being persecuted. If this were not so then a masked and fleeing bank robber belonging to an "Organized Crime" family could claim "persecution" by the authorities merely because of his membership in an organization whose purposes included illegal activities. Such a holding defies credulity, cannot be a basis for the finding of First Amendment violations, and should be reversed by this Court.

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[27] E.g., Aryan v. Mackety, 462 F.Supp. 90 (N.D. Tex. 1978), in which Iranian students were allowed to demonstrate with masks on a college campus; The Knights of the Ku Klux Klan v. Martin Luther King, Jr. Worshippers, 735 F.Supp. 745 (M.D. Tenn. 1990)(ordinance prohibiting use of masks in parades = unconstitutional); Robinson v. Fla., 393 So.2d 1076 (1981)(Fla. mask law containing no exceptions declared unconstitutional), but, c.f., City of Pineville v. Marshall, 299 S.W. 1072 (Ct.App. Ky. 1927)(mask law = constitutional).

E. EVEN IF THE COURT SHOULD DETERMINE THAT THE WEARING OF A MASK BY A KLANSMEN CONSTITUTES SYMBOLIC SPEECH, THE ANTI-MASK LAW FURTHERS A VALID AND SUBSTANTIAL GOVERNMENTAL INTEREST, JUSTIFIES INCIDENTAL LIMITATIONS ON FIRST AMENDMENT FREEDOMS, AND IS NOT OVERBROAD.

The United States Supreme Court recently stated that "The Government generally has a freer hand in restricting expressive conduct than it has in restricting the written or spoken word." Texas v. Johnson, supra, 109 S.Ct. at 2540. Since the wearing of the Klan mask is neither oral speech nor writing, "It is, in short, not simply the verbal or nonverbal nature of the expression, but the governmental interest at stake, that helps to determine whether a restriction on that expression is valid." Id.

With regard to the issue of regulating symbolic speech within a constitutional framework, the U.S. Supreme Court has decreed that such regulation is valid if it meets the following four-pronged test:

1. The regulation is within the constitutional power of the Government and it furthers an important or substantial governmental interest;

2. The governmental interest is unrelated to the suppression of free expression; and

3. The incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest; and

4. There is a sufficient nexus between the restriction and the interest.

United States v. O'Brien, 391 U.S. 374, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968)(draft card burning statute held constitutional); Tinker v. Des Moines Community School Dist., 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969).

There has been no suggestion in the case at bar that the General Assembly did not have the constitutional authority to regulate criminal activity in this state. As to whether the Anti-Mask Act furthers an important or substantial governmental interest, the General Assembly itself stated in the statute that it was seeking to protect its citizens from anonymous violence and intimidation Ga.L. 1951, 9-10. This constitutes an important and substantial governmental interest. Clarke v. Community for Creative Non-Violence, supra; Tinker v. Des Moines Community School Dist., supra; U.S. v. O'Brien, supra. Thus, the first prong of the O'Brien test is clearly met.

It is equally clear that the State's interest in suppressing anonymous violence and intimidation is totally unrelated to the suppression of free speech. The State has in no way attempted to stifle the Klan from speaking out or writing on any issue. In fact, Shade Miller, Jr. and his witness testified that they were not inhibited in exercising their rights under the First Amendment by not wearing the Klan mask. (T-21, 24, 31, 34). The evidence elicited at trial proved that the KKK continues to operate, continues to exercise its rights to free speech, and continues its long history of violence to this day. The statute does not attempt to regulate the Klan's traditional clothing -- the robe and the

dunce cap-- but only the wearing of a mask in conjunction with the Klan regalia. As argued above, the Klan mask, when worn with the Klan costume, makes no additional statement not made by the robe and hood alone. Thus, the statute is content-neutral, because it does not target the Klan symbols of the robe and hood, but only targets the mask in threatening or intimidating contexts. Therefore, any alleged harm in regulating the wearing of the Klan mask is incidental and not one resulting from any message or symbolic speech that the mask conveys, and is not protected by the First Amendment, since it is a noncommunicative aspect of the Klan costume. O'Brien, supra, at 319 U.S. 376. O'Brien's second test is thus met. Texas v. Johnson, supra, 109 S.Ct. at 2541.

As to the third prong of O'Brien, the alleged incidental restriction is surely no greater than is essential to the legislature's expressed intention to protect the citizens of this State from violence and intimidation by anonymous masked terrorists. The legislature did not ban the wearing of the Klan costume, but only proscribed the wearing of a mask in public as part of the regalia, so that the public would not have to suffer obvious fear if confronted by masked individuals. Courts have frequently in the past taken judicial notice of the violence spread by masked Klansmen, as discussed above, and it was the public unmasking of the Klan by statutes similar to the Anti-Mask Act that led to some diminution in Klan-led violence toward minorities.

Hate Groups, supra, at 80.[28] Thus, the minor inconvenience in not being able to wear a Klan mask is more than outweighed by the protection to the public that the Anti-Mask Act provides, and the third prong of the Supreme Court test is satisfied.[29]

Finally, the fourth test, established by Tinker asks whether there is a sufficient nexus between the restriction and the governmental interests at stake. Since the Act distinguishes between intimidating and threatening mask-wearing and legitimate uses of a mask, it is obvious that the Act furthers the state's interest in protecting the public from intimidation and violence. Given the history of the Klan and Klan-like groups in Georgia in their use of masks to hide identity while committing violent acts against minorities, the nexus between the ban on masks and the state's interest is obvious. People of the State of N.Y. ex rel. Bryant v. Zimmerman, supra.

Given a substantial governmental interest in prohibiting the public wearing of masks with Klan costumes, such that any incidental First Amendment restrictions are justified, we must next address the issue of whether the Act is overbroad. The Supreme Court has long recognized that a facial challenge to the overbreadth of statutes may be made when the law "may cause persons

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[28] Earl T. Shinholster, S.E. Regional Director of the N.A.A.C.P. testified that the Anti-Mask Act "lessened the quantitative amount of violence." T-95-96.

[29] We also note that the legislature did not ban all mask wearing. Klansmen may wear masks on private property (with the owner's permission), and the statute allows numerous exceptions to the public wearing of masks.

not before the Court to refrain from engaging in constitutionally-protected speech or expression." Young v. Am. Mini Theaters, 427 U.S. 50, 60, 96 S.Ct. 2440, 2447 49 L.Ed.2d 310, (1976). Here there has been no showing that anyone has refrained from any constitutionally-protected speech or expression because of the Anti-Mask Act. Furthermore, the Supreme Court held that "a statute should not be deemed facially invalid [as overbroad] unless it is not readily subject to a narrowing construction by the state courts, see, Dombrowski v. Pfister, 380 U.S. 479, 497 (1965), and its deterrent effect on legitimate expression is both real and substantial." Erznoznik v. City of Jacksonville, 422 U.S. 205,216, 95 S.Ct. 2268, 2276, 45 L.ed.2d 125 (1975). If this Court finds that the Anti-Mask Act was intended only to prohibit the public wearing of masks in threatening, intimidating, or violent situations, then the requisite narrowing of the statute will have occurred and the statute can be upheld against an overbreadth attack.[30] Erznoznik, supra.

CONCLUSION.

If there is one overriding precept that governs our nation, it is that all citizens are to be allowed to enjoy the freedom of our country without fear of violence and intimidation from anonymous terrorists who seek to deprive them of the free exercise

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[30] This Court has declared that "one whose own conduct may be constitutionally proscribed will not be heard to challenge a law because it may conceivably be applied unconstitutionally to others." Hubbard v. State, 256 Ga. 637, 638 352 S.E.2d 383, 384 (1987).

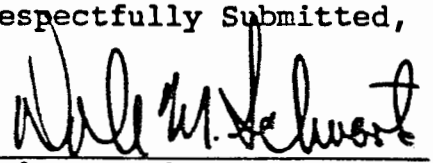
of their constitutional rights. It was against a nearly 100-year history of violence and terrorism directed at minority group members by masked vigilantes that the General Assembly enacted the Anti-Mask Act.

In the few months since that decision, we have already experienced the rebirth of masked Klansmen marching once again in Georgia. As the Attorney General eloquently argues, "The clock should not be allowed to be turned back to an embarrassing era."

The Klan mask is neither speech nor symbolic speech, but serves only as an instrument of terror. The Anti-Mask Act is a reasonable and constitutionally-permissible attempt to protect the citizens of our state from violence and terror.

For the reasons stated herein, amici request that this Court overrule the State Court of Gwinnett County and hold that the Anti-Mask Act is constitutionally valid.

Respectfully Submitted,



Dale M. Schwartz
Ga. Bar# 631000

Attorney for Amici

Troutman, Sanders,
Lockerman & Ashmore
1400 Candler Bldg.
Atlanta, GA 30303-1810
(404) 658-8000

H:ADL\amicus.bri

The record of Klan-related violence and lawlessness throughout the country from 1980 to the present includes the following incidents:

January, 1980, Alabama—Two Klansmen pleaded guilty to charges of intimidating and injuring two Black ministers who were patrons of a restaurant in Muscle Shoals. Ricky L. Creekmore and Charles J. Puckett were sentenced to a year in prison.

February, 1980, New Jersey—Rifle shots were fired into the Barnegat Township home of a Black couple, Joseph and Shirley Sanders. In January, 1981, former KKK organizer Aaron Morrison and former Klan member Karl Hand pleaded guilty to attempting to cause bodily harm with a weapon. Morrison later changed his plea to not guilty. Morrison's step-brother, James, pleaded guilty to a lesser offense, was fined and given a brief jail term.

March, 1980, Alabama—Dulon Doug Hogeland, an Alabama KKK member, was indicted for participating in a raid on a house in Hayden, Alabama, occupied by a racially mixed couple, and for injuring a Black man. Hogeland was subsequently sentenced to eighteen months in prison (twelve months suspended) and five years probation.

March, 1980, California—In a street clash between Klansmen and anti-Klan demonstrators, in Oceanside, the Klansmen dressed as riot police, armed with guns, shields, knives, and mace. Heckled by bystanders throwing rocks and bottles, the Klansmen flew into the crowd in riot formation. When the police moved in, the Klansmen used their clubs against the police. Seven persons were reported injured.

April, 1980, Tennessee—Three KKK members were arrested in Chattanooga for wounding four Black women by shotgun blasts from a passing car. Two of the three were acquitted; the third was convicted and sentenced to twenty months in jail.

July, 1980, Tennessee—Larry Owens, National Titan of the United Empire, Knights of the KKK, was arrested with two other Klansmen after they were seen discarding explosive materials from their car in a Chattanooga area already tense from the earlier shootings of four Black women. Owens and one of the others, Rocky Coker, were subsequently found guilty of possessing explosives and conspiring to commit an illegal act. Owens was sentenced to three to six years on each charge. Coker received two to four years on each charge.

[5] See also "The American Farmer and the Extremists," ADL Special Report, January 1986, and "Extremist Group Outreach to Rural Americans," ADL Special Edition, June 1986.

September, 1980, Missouri—James McKinney, Illinois Grand Dragon of the Invisible Empire of the Klan, and Klansman Robert Scott Hansen were charged with burglary after police seized explosives, guns, gasoline, and items believed stolen in at least a dozen burglaries in seven Illinois counties. McKinney was sentenced to two concurrent three-year terms for burglary and theft. Hansen was ordered to serve six months in jail, placed on four years probation, and fined $4,000.

November, 1980, New Jersey—James Ralph Slater of New Egypt was arrested on a weapons charge after ammunition, a grenade, a loaded pistol, and KKK paraphernalia were found in his car. He was convicted and received a prison sentence.

November, 1980, Michigan—Three Klan members—Ronald R. Bishop, Jr., Raymond Echlin, and Donald Johnson—pleaded guilty to conspiring to shoot a Black man for drinking in a "white" bar in Detroit. A fourth, Richard Johnson, pleaded guilty to conspiracy in harassing and intimidating a Black family to drive them from their Romulus home. The four subsequently received jail terms of from one to four years.

November, 1980, Utah—Joseph Paul Franklin, a former member of the Ku Klux Klan and the American Nazi Party, pleaded not guilty to charges that he deprived two young Black men of their civil rights by killing them as they jogged in a park in Salt Lake City. Franklin was later convicted of the federal civil rights violations.

February, 1981, Texas—The Knights of the KKK sponsored a rally on a tract of land near Santa Fe, Texas, in support of Galveston Bay shrimp fishermen involved in quarrels with Vietnamese refugee shrimpers. Several hundred persons attended and watched as two dozen Klansmen armed with rifles and shotguns set fire to a 30-foot cross. Texas Grand Dragon Louis Beam, who described the cross-burning as a holy Christian ceremony, climaxed his speech by raising his hand in a Nazi salute and shouting, "White Power! We will fight!" In an obvious gesture of intimidation, the Klansmen also burned a mock Vietnamese fishing boat. Three weeks later, Houston radio station KTRH reported that some 50 Texas fishermen were planning a four-day military training exercise with Klansmen at the invitation of the Grand Dragon.

In March, 1981, a number of the local fishermen, including a number of Klansmen, equipped one of their shrimp boats with a small cannon and a figure hung in effigy. Several of the men were armed and wore Klan robes and hoods. The boat sailed around Galveston Bay, firing the cannon and stopping at the house of one Vietnamese fisherman. The Vietnamese Fishermen's Association ("VFA") alleged that some of the Klansmen set fire to boats owned by Vietnamese and burned crosses at or near their docks and homes. In addition, a dock-owner testified that she received threats, one signed by the Knights of the Ku Klux Klan, that her dock and house would be burned and that she would die if she continued to allow Vietnamese fishermen to use her dock. Members of the VFA testified that Klansmen also threatened them and their families with guns.

On April 10, 1981, the [illegible] from continuing its harassment and lawless behavior. On May 4, 1981 the [illegible] the court to enjoin the Klan's operation of paramilitary training camps in Texas. On May 14, 1981 Judge McDonald of the U.S. District Court for the Southern District of Texas issued a broad preliminary injunction ordering the Klan to cease engaging in unlawful acts of violence or intimidation against the plaintiffs, including the burning of crosses and gathering in Klan robes in the presence of the plaintiffs. On September 17, 1981 Judge McDonald approved a final resolution of these matters which had been agreed to by the parties and which forbade the Klan from committing violence and intimidation against the Vietnamese.

February, 1981, Tennessee—William Seward, a former Klan member, reported that he had been kidnapped by a group of Klansmen, covered with yellow paint and feathers and pushed from a car after the Klansmen had accused him of being a government informer. A week later Seward was secluded under police protection after police officials received a tip that a "contract" had been issued on the ex-Klansman's life. Two Klan members were arrested and charged with kidnapping.

March, 1981, North Carolina—Six neo-Nazis and Klansmen were indicted by a federal grand jury in Asheville on charges of conspiring to blow up portions of the city of Greensboro. The indicted were accused of planning to conduct the bombings if their comrades, who were tried on charges of murdering five Communist Workers Party members on November 3, 1979, were convicted. Sites to have been blown up included a shopping mall and other downtown public places. All six defendants were subsequently convicted of the charges and sentenced to five years in prison, but the sentences of three were suspended. Those ordered incarcerated were Frank L. Braswell, Josepn G. Pierce and Raeford M. Caudle.

April, 1981, Louisiana—Don Black, successor to David Duke as Imperial Wizard of the Knights of the Ku Klux Klan, was one of eight Americans and two Canadians—at least six of them Klansmen—arrested by federal authorities in Slidell, Louisiana, and charged with plotting to invade the Caribbean island republic of Dominica and overthrow its government. The ten men were apprehended as they were about to embark on their mission. Seized also was a vanload of weapons, mostly automatic rifles and handguns, and 20 sticks of dynamite. The government of Dominica charged that a number of persons on the island, including the former prime minister, were involved in the plot. In addition to Imperial Wizard Black, another of those arrested was Wolfgang Droege of British Columbia, who has been the West Coast director of the Canadian Knights of the Ku Klux Klan (affiliated with Black's KKKK) and also has been active in the Western Guard, a Canadian neo-Nazi group. Four others were identified as Klan members or were involved in Klan activity, and at least three had been active in neo-Nazi organizations. The ten were held for a total of $4.6 million bail and were indicted on seven counts of violation of federal law. Seven of the defendants pleaded guilty; two, including Don Black, were convicted, and one was acquitted. Sentences of three years were meted out to all nine guilty defendants.

May, 1981, Maryland—A series of raids by Treasury agents in Maryland, Pennsylvania, Delaware, and New Jersey resulted in the arrest of 10 persons on firearms charges in connection with an alleged plot to firebomb the Baltimore headquarters of the NAACP. Charles William Sickles, leader of the small Adamic Knights of the KKK, was indicted by a federal grand jury in Wilmington in June on 20 counts involving firearms violations. Others indicted included Alfred Charles Weakland, a county leader of the Adamic Knights, and Paul Stillings, a New Jersey Klansman. Sickles was convicted in a U.S. District Court in October, 1981 and sentenced to five years in prison. Weakland, who pleaded guilty, was sentenced to four months. In a separate trial which grew out of the same group of Treasury Department raids, the leader of another Maryland Klan, Richard Lee Savina, was convicted on three counts of attempting to bomb an NAACP office. He was sentenced to fifteen years in federal prison.

May, 1981, Tennessee—Six persons were arrested following an attempt to plant dynamite in a Jewish house of worship, The Temple, in Nashville, and in connection with an additional alleged conspiracy to blow up a television tower and a number of Jewish-owned shops. One of those arrested was Gladys Girgenti. Mrs. Girgenti and another defendant, Klansman Bobby Joe Norton, were found guilty and sentenced to prison terms of 15 and 5 years, respectively.

January, 1982, Michigan—Three Detroit Klansmen were found guilty of attempting to murder a Black man, Gordon Stewart, who frequented a predominantly white bar in Detroit. The three, Ronald Bishop, Raymond Echlin and Donald Johnson had pleaded guilty in January of 1981 to charges that they violated Stewart's civil rights.

January, 1982, Mississippi—Two Ku Klux Klan Klansmen, Kenneth Painter and Larry Walker, were charged with "shooting into a dwelling that is usually occupied." Painter shot more than 100 rounds of ammunition into the offices of the **Jackson Advocate**, Mississippi's major Black newspaper. Painter pleaded guilty and was sentenced to 18 months in prison. Walker was sentenced to ten years in prison.

February, 1982, California—The founder of a KKK unit in Richmond, Michael Mendosa, was sentenced to six years in prison for engaging in a shooting spree in a predominantly Black housing project. His actions, said the presiding judge, were part of a pattern in "which he seeks to advance one group over another through violence." The shooting episode occurred after Mendosa led a truckload of Klansmen through the housing project.

February, 1982, Tennessee—In the first private lawsuit initiated under the Civil Rights Act of 1870, an anti-Klan terrorism statute, five elderly Black women were awarded $535,000 in damages in connection with a 1980 shooting. The background of this important case is worth detailing:

a corner shotgun blasts suddenly boomed out from a passing [redacted]. Opal Lee Jackson, 46, and Viola Ellison, 64, were treated at a local hospital and released. The other two, Lela Mae Evans, 66, and Kathryn O. Johnson, 48, required further hospitalization. Three blocks before, one blast from the same shotgun shattered three windows of a parked car, spraying glass slivers into Fannie Crumsey. Arrested that night and charged in the shootings were three members of the Ku Khux Klan, all of whom had been riding in the car from which the shotgun was fired. Each was charged with five counts of assault with intent to commit first-degree murder.

News of the shootings quickly spread through Chattanooga's Black community. The president of the local chapter of the National Association for the Advancement of Colored People, George Key, received phone calls urging retaliation but he urged calm and told the callers to trust the courts to do their job. "The NAACP believes in the American system," Key said. "We believe it can work." He praised the police department for its quick action in making the arrests.

In July of 1980 a criminal court jury found two of the three Klansmen not guilty and convicted the third, Marshall Thrash, on three counts of assault and battery. Thrash was sentenced to twenty months in the workhouse and fined $225. Testimony at the trial revealed that on the evening of the shooting, the three men had attended a Klan meeting and then lighted crosses in the Black section of town. Chattanoogans generally were dismayed at the verdict, and the Black community was outraged. The **Chattanooga Times** editorialized: "This community was shocked by the incident and had every reason to expect a different outcome."

On the night of the verdict, a riot erupted in Chattanooga's Black community and continued for several days, leading Mayor Charles A. Rose to impose a curfew. (Local Black leaders said that while the outcome of the trial had triggered the riot, underlying grievances over jobs and housing had fueled it.)

Into the conflagration rode Bill Wilkinson, Imperial Wizard of the Invisible Empire, Knights of the Ku Klux Klan. Speaking in Chattanooga while the riot was still raging, Wilkinson announced: "If the police aren't aggressively trying to stop the rioting, then the Klan will stop it." He added that local officials were "scared to death of Negroes," and said of the Black community, "We're a threat to their happy-go-lucky burning days." Several hours after Wilkinson's arrival in town, three men wearing Klan emblems and carrying weapons and bomb-making equipment were arrested by the police.

In the aftermath of these events, organizers for various KKK groups roamed through Tennessee, Alabama, and Georgia, soliciting new recruits by urging whites to join the Klan and put an end to Black rioting. The initial incident and its long aftermath pointed to typical Klan operation and strategy—violence and the subsequent exploitation of counterviolence.

April, 1982, Maryland—Former Ku Klux Klan member William Aitcheson was ordered to pay $26,000 in damages to three cross-burning victims—a Black family in College Park, and two Jewish organizations in Prince George's County.

February, 1983, Tennessee—Two Klansmen were arrested for assaulting a 71-year-old Black man in Knox County. According to the victim, a retired janitor, the two put a pistol to his nose and threatened to kill him because "they just didn't like my color." Defendants Douglas Wagner Solock and Carl Edwin Solock were convicted of aggravated assault and given suspended sentences with four year probations.

February, 1983, Colorado—Charles Howarth, a self-proclaimed Klan leader, pleaded guilty to a single count of unlawful possession of explosives and incendiary devices. Howarth, at that time a Colorado Springs resident, was sentenced to two years in prison.

May, 1983, North Carolina—Two members of Miller's Carolina Knights were reported to have burned a cross in front of the Moore County house of a Black prison guard who had filed a discrimination complaint against prison officials. According to the prison guard, Bobby Person, this was but the beginning of a series of harassments which included physical threats to him and his family and vandalism of his property.

November, 1983, North Carolina—Following a rally near Silver City, Klan activist James Holder shot and killed another Klansman; Holder was convicted of second degree murder and sentenced to life in prison.

February, 1984, Colorado—A Black family settled a lawsuit out of court for $40,000, that resulted from a 1980 incident in which the family rented a townhouse across the street from Klansmen Fred Wilkins. They sued for "emotional horror" caused them by Wilkins.

February, 1984, Alabama—Henry Hays and James Knowles, members of the United Klans of America (UKA) klavern in Mobile, were convicted of the 1981 murder of 19-year-old Michael Donald. (An expanded discussion of this case is found earlier in this chapter.)

April, 1984, Georgia—A robed and hooded member of the Knights of the KKK assaulted Tim Carey, an 18-year-old Black man, at a Klan roadblock in Cedartown. No arrests were made.

August, 1984, Georgia—Klansmen associated with the Knights of the KKK were arrested on federal charges of breaking and entering into homes in Tallapoosa and Waco to attack William Cokley, a Black man married to a white woman, and a white woman Peggy Jo French who they claimed was associating with Blacks. Indicted were Mailon Paul Wood, a former Invisible Empire Kleagle in Paulding County; Kenneth E. Davis, of Tallapoosa; Winford Wood of Mableton; and William Deering of Bremen. The Knights were associated with Edward Fields, a longtime

hatemonger who has been a Klan organizer and a leader of the Georgia-based National States Rights Party (see Chapter III). Mailon Wood and Kenneth Davis were convicted of conspiracy. William Deering was convicted on state burglary charges in connection with the Cokley attack and also convicted on perjury charges. Deering was sentenced to 15 years in prison and fined $30,000. Mailon Wood was sentenced to forty years in prison and fined $40,000. Winford Wood was sentenced to twenty years in prison and fined $20,000. Kenneth Davis was sentenced to forty years in prison and fined $40,000. The Wood brothers and Davis were also ordered to pay the $1,082.97 in medical costs Cokley incurred from the injuries related to the beating.

February, 1985, Alabama—William P. Riccio, Alabama State Organizer for the Knights of the Ku Klux Klan Klan and an Aryan Nations member, was arrested for firearms violations. (Two others were arrested on drug charges.) At the time of the arrest, deputies also confiscated a cache of weapons, terrorist literature and a "hit list of officials." In April, 1985, Riccio was convicted on two federal firearms charges and was sentenced to two concurrent 2-year sentences.

Possession of the firearms was a violation of Riccio's parole. Prior to his arrest he had served another federal prison term for illegal possession of firearms.

February, 1985, Alabama—Two Ku Klux Klan members and a sympathizer pleaded guilty in a Montgomery Federal Court to a two-count charge accusing them of conspiring to threaten, oppress and intimidate members of a Black organization represented by the Southern Poverty Law Center.

April, 1985, Florida—Five members of the United Klans of America were arrested by the St. Petersburg Police Department and the Pinellas County Sheriff's office and charged with planning and training for terrorist acts against minorities. One year later, two pleaded guilty and two were convicted by a jury for violating Florida's paramilitary training statute (based on ADL's model legislation). The goal of the group, according to a police informant, was to incite Blacks to riot so that whites would turn to the Klan for leadership. In addition to training with guns intended to be used against minorities, members of the group were instructed in the making of incendiary devices.

June, 1985, New York—The Anti-Defamation League revealed that John A. Walker, Jr., later convicted of spying for the Soviet Union, participated in a Klan recruitment drive among Navy personnel in the Norfolk, Virginia area in 1980.

June, 1985, North Carolina—Dr. Martha Nathan, widow of Dr. Michael Nathan who was shot to death in a 1979 anti-Klan rally in Greensboro, was awarded $355,100. Three Ku Klux Klansmen, three neo-Nazis and two Greensboro policemen were ordered to pay Dr. Nathan. Four of the defendants were also ordered to pay $38,360 to Paul Bermanzohn, wounded in the demonstration and two of the four to pay $1,500 for assault and battery to a clerk also wounded.

August, 1985, Florida—Barry Robinson, a Ku Klux Klan member, was ordered to pay approximately $100,000 to three Black men for injuries they sustained when they were attacked in the Escambia County jail in 1980. Robinson was accused of engineering the November, 1980 attack. In a plea bargain, Robinson pleaded no contest to three misdemeanor counts of battery.

September, 1985, Ohio—A federal grand jury indicted Ohio "Grand Dragon" Dale Reusch on 10 counts of illegal purchases of and interstate transportation of 83 pistols and rifles. Government officials alleged that Reusch was stockpiling weapons for KKK activity.

In April, 1986 Reusch pleaded guilty on one count of illegally transporting firearms across state lines. The 9 other gun violation charges were dropped. Reusch was fined $5,000, sentenced to three years' probation, given a suspended five-year prison sentence and ordered to destroy his cache of weapons at his own expense.

September, 1985, North Carolina—Nine Ku Klux Klan members were indicted on federal charges involving cross burnings and shooting into the homes of interracial families in 1982 and 1983. During December, 1986 and January, 1987, the defendants pleaded guilty to federal civil rights violations

March, 1986, Georgia—Daniel Carver, a "Grand Titan" of the Knights of the Invisible Empire, was charged with making "terroristic threats" against a Black man as the Klan protested alleged drug dealing. Consequently, Carver was fined $1,000, sentenced to jail for thirty days and has been prohibited from donning Klan regalia or attending rallies for four years.

June, 1986, North Carolina—Three United States Marines stationed at Camp LeJeune were discharged for participating in paramilitary exercises of the White Patriot Party.

CERTIFICATE OF SERVICE

This is to certify that I have this day served the within and foregoing BRIEF OF AMICUS CURIAE, prior to filing the same, by either depositing a copy thereof, postage prepaid, in the United States Mail, properly addressed, or by hand delivery thereof, as indicated below, upon or to:

Michael R. Hauptman, Esq.
Hauptman & Rothstein
22nd Floor
First American Bank Tower
34 Peachtree Street
Atlanta, GA 30303
(By Hand Delivery)

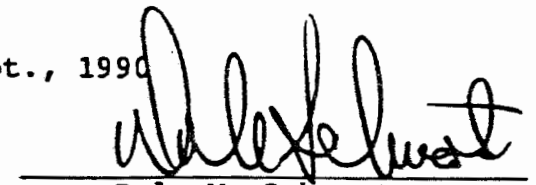
Michael J. Bowers, Atty. Gen.
Daryl A. Robinson,
Sr. Asst. Atty. Gen.
John L. Jones,
Sr. Asst. Atty. Gen
132 State Judicial Bldg.
40 Capitol Square
Atlanta, GA 30334
(By Hand Delivery)

Gerald N. Blaney, Jr. Solicitor
David M. Fuller,
Chief Asst. Solicitor
Gwinnett State Court
75 Langley Drive
Lawrenceville, GA 30245
(By Hand Delivery)

Cathleen Connealy, Esq.
4051 Broadway
Kansas City, MO 64111
(By U.S. Mail)

Ralph Goldbery, Esq.
233 Mitchell Street
Suite 400
Atlanta, GA 30303
(By Hand Delivery)

This 5th day of Sept., 1990



Dale M. Schwartz
Ga. Bar# 631000
Attorney for Amici

Troutman, Sanders,
Lockerman & Ashmore
1400 Candler Bldg.
Atlanta, GA 30303-1810
(404) 658-8097