

Georgia v. McCollum (1992)

505 U.S. 42

Thomas McCollum, William Joseph McCollum, and Ella Hampton McCollum, who were white, were charged with assaulting Jerry and Myra Collins, who were black. Before jury selection began, the trial judge denied the prosecutor's motion to prohibit the defendants from exercising their peremptory challenges to exclude all blacks from participating as jurors in the trial. The Georgia Supreme Court affirmed, distinguishing Edmonson v. Leesville Concrete Co. (1991), in which the US Supreme Court had held that private litigants cannot exercise peremptory challenges in a racially discriminatory manner, on the grounds that Edmonson involved civil litigants rather than criminal defendants. The US Supreme Court granted certiorari.

Opinion of the Court: Blackmun, Rehnquist, White, Stevens, Kennedy, Souter.

Concurring opinion: Rehnquist.

Concurring in the judgment: Thomas.

Dissenting opinions: O'Connor; Scalia.

JUSTICE BLACKMUN delivered the opinion of the Court.

For more than a century, this Court consistently and repeatedly has reaffirmed that racial discrimination by the State in jury selection offends the Equal Protection Clause. See, e.g., *Strauder v. West Virginia* (1880). Last Term, this Court held that racial discrimination in a civil litigant's exercise of peremptory challenges also violates the Equal Protection Clause. See *Edmonson v. Leesville Concrete Co.* (1991). Today, we are asked to decide whether the Constitution prohibits a *criminal defendant* from engaging in purposeful racial discrimination in the exercise of peremptory challenges....

Over the last century, in an almost unbroken chain of decisions, this Court gradually has abolished race as a consideration for jury service. In *Strauder v. West Virginia* (1880), the Court invalidated a state statute providing that only white men could serve as jurors. While stating that a defendant has no right to a "petit jury composed in whole or in part of persons of his own race," the Court held that a defendant does have the right to be tried by a jury whose members are selected by nondiscriminatory criteria.

In *Swain v. Alabama* (1965), the Court was confronted with the question whether an African-American defendant was denied equal protection by the State's exercise of peremptory challenges to exclude members of his race from the petit jury. Although the Court rejected the defendant's attempt to establish an equal protection claim premised solely on the pattern of jury strikes in his own case, it acknowledged that proof of systematic exclusion of African Americans through the use of peremptories over a period of time might establish such a violation.

In *Batson v. Kentucky* (1986), the Court discarded *Swain's* evidentiary formulation. The *Batson* Court held that a defendant may establish a *prima facie* case of purposeful discrimination in selection of the petit jury based solely on the prosecutor's exercise of peremptory challenges at the defendant's trial. "Once the defendant makes a *prima facie* showing, the burden shifts to the State to come forward with a neutral explanation for challenging black jurors."

Last Term, this Court applied the *Batson* framework in two other contexts. In *Powers v. Ohio* (1991), it held that in the trial of a white criminal defendant, a prosecutor is prohibited from excluding African-American jurors on the basis of race. In *Edmonson v. Leesville Concrete Co.* (1991), the Court decided that in a civil case, private litigants cannot exercise their peremptory strikes in a racially discriminatory manner.

In deciding whether the Constitution prohibits criminal defendants from exercising racially discriminatory peremptory challenges, we must answer four questions. First, whether a criminal defendant's exercise of peremptory challenges in a racially discriminatory manner inflicts the harms addressed by *Batson*. Second, whether the exercise of peremptory challenges by a criminal defendant constitutes state action. Third, whether prosecutors have standing to raise this constitutional challenge. And fourth, whether the constitutional rights of a criminal defendant nonetheless preclude the extension of our precedents to this case.

The majority in *Powers* recognized that “*Batson* ‘was designed to serve multiple ends,’” only one of which was to protect individual defendants from discrimination in the selection of jurors. As in *Powers* and *Edmonson*, the extension of *Batson* in this context is designed to remedy the harm done to the “dignity of persons” and to the “integrity of the courts.”

As long ago as *Strauder*, this Court recognized that denying a person participation in jury service on account of his race unconstitutionally discriminates against the excluded juror. While “[a]n individual juror does not have a right to sit on any particular petit jury, . . . he or she does possess the right not to be excluded from one on account of race.” Regardless of who invokes the discriminatory challenge, there can be no doubt that the harm is the same—in all cases, the juror is subjected to open and public racial discrimination.

But “the harm from discriminatory jury selection extends beyond that inflicted on the defendant and the excluded juror to touch the entire community.” One of the goals of our jury system is “to impress upon the criminal defendant and the community as a whole that a verdict of conviction or acquittal is given in accordance with the law by persons who are fair.” Selection procedures that purposefully exclude African Americans from juries undermine that public confidence—as well they should.

The need for public confidence is especially high in cases involving race-related crimes. In such cases, emotions in the affected community will inevitably be heated and volatile. Public confidence in the integrity of the criminal justice system is essential for preserving community peace in trials involving race-related crimes.

Be it at the hands of the State or the defense, if a court allows jurors to be excluded because of group bias, it is a willing participant in a scheme that could only undermine the very foundation of our system of justice—our citizens' confidence in it. Just as public confidence in criminal justice is undermined by a conviction in a trial where racial discrimination has occurred in jury selection, so is public confidence undermined where a defendant, assisted by racially discriminatory peremptory strikes, obtains an acquittal.

The fact that a defendant's use of discriminatory peremptory challenges harms the jurors and the community does not end our equal protection inquiry. Racial discrimination, although repugnant in all contexts, violates the Constitution only when it is attributable to state action. Thus, the second question that must be answered is whether a criminal defendant's exercise of a peremptory challenge constitutes state action for purposes of the Equal Protection Clause.

Until *Edmonson*, the cases decided by this Court that presented the problem of racially discriminatory peremptory challenges involved assertions of discrimination by a prosecutor, a quintessential state actor. In *Edmonson*, by contrast, the contested peremptory challenges were exercised by a private defendant in a civil action. In order to determine whether state action was present in that setting, the Court in *Edmonson* used the analytical framework summarized in *Lugar v. Edmonson Oil Co.* (1982).

The first inquiry is “whether the claimed [constitutional] deprivation has resulted from the exercise of a right or privilege having its source in state authority.” “There can be no question” that peremptory challenges satisfy this first requirement, as they “are permitted only when the government, by statute or decisional law, deems it appropriate to allow parties to exclude a given number of persons who otherwise would satisfy the requirements for service on the petit jury.”

The second inquiry is whether the private party charged with the deprivation can be described as a state actor. The Court in *Edmonson* found that peremptory challenges perform a traditional function of the government: “Their sole purpose is to permit litigants to assist the government in the selection of an impartial trier of fact.” And, as the *Edmonson* Court recognized, the jury system in turn “performs the critical governmental functions of guarding the rights of litigants and ‘insur[ing] continued acceptance of the laws by all of the people.’” These same conclusions apply with even greater force in the criminal context because the selection of a jury in a criminal case fulfills a unique and constitutionally compelled governmental function.

Respondents nonetheless contend that the adversarial relationship between the defendant and the prosecution negates the governmental character of the peremptory challenge. In exercising a peremptory challenge, a criminal defendant is wielding the power to choose a quintessential governmental body—indeed, the institution of government on which our judicial system depends. Thus, as we held in *Edmonson*, when “a government confers on a private body the power to choose the government’s employees or officials, the private body will be bound by the constitutional mandate of race neutrality.”

The fact that a defendant exercises a peremptory challenge to further his interest in acquittal does not conflict with a finding of state action. Whenever a private actor’s conduct is deemed “fairly attributable” to the government, it is likely that private motives will have animated the actor’s decision. Indeed, in *Edmonson*, the Court recognized that the private party’s exercise of peremptory challenges constituted state action, even though the motive underlying the exercise of the peremptory challenge may be to protect a private interest.

Having held that a defendant’s discriminatory exercise of a peremptory challenge is a violation of equal protection, we move to the question whether the State has standing to challenge a defendant’s discriminatory use of peremptory challenges. In *Powers*, this Court held that a white criminal defendant has standing to raise the equal protection rights of black jurors wrongfully excluded from jury service. While third-party standing is a limited exception, the *Powers* Court recognized that a litigant may raise a claim on behalf of a third party if the litigant can demonstrate that he has suffered a concrete injury, that he has a close relation to the third party, and that there exists some hindrance to the third party’s ability to protect its own interests. In *Edmonson*, the Court applied the same analysis in deciding that civil litigants had standing to raise the equal protection rights of jurors excluded on the basis of their race.

The State’s relation to potential jurors in this case is closer than the relationships approved in *Powers* and *Edmonson*. As the representative of all its citizens, the State is the logical and

proper party to assert the invasion of the constitutional rights of the excluded jurors in a criminal trial. Indeed, the Fourteenth Amendment forbids the State from denying persons within its jurisdiction the equal protection of the laws.... Accordingly, we hold that the State has standing to assert the excluded jurors' rights.

The final question is whether the interests served by *Batson* must give way to the rights of a criminal defendant. As a preliminary matter, it is important to recall that peremptory challenges are not constitutionally protected fundamental rights; rather, they are but one state-created means to the constitutional end of an impartial jury and a fair trial. This Court repeatedly has stated that the right to a peremptory challenge may be withheld altogether without impairing the constitutional guarantee of an impartial jury and a fair trial.

We do not believe that this decision will undermine the contribution of the peremptory challenge to the administration of justice. Nonetheless, "if race stereotypes are the price for acceptance of a jury panel as fair," we reaffirm today that such a "price is too high to meet the standard of the Constitution." It is an affront to justice to argue that a fair trial includes the right to discriminate against a group of citizens based upon their race....

We hold that the Constitution prohibits a criminal defendant from engaging in purposeful discrimination on the ground of race in the exercise of peremptory challenges. Accordingly, if the State demonstrates a *prima facie* case of racial discrimination by the defendants, the defendants must articulate a racially neutral explanation for peremptory challenges. The judgment of the Supreme Court of Georgia is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

THE CHIEF JUSTICE, concurring.

I was in dissent in *Edmonson v. Leesville Concrete Co.* (1991), and continue to believe that case to have been wrongly decided. But so long as it remains the law, I believe that it controls the disposition of this case on the issue of "state action" under the Fourteenth Amendment. I therefore join the opinion of the Court.

JUSTICE THOMAS, concurring in the judgment.

As a matter of first impression, I think that I would have shared the view of the dissenting opinions: A criminal defendant's use of peremptory strikes cannot violate the Fourteenth Amendment because it does not involve state action. Yet, I agree with the Court and the Chief Justice that our decision last term in *Edmonson v. Leesville Concrete Co.* (1991) governs this case and requires the opposite conclusion. Because the respondents do not question *Edmonson*, I believe that we must accept its consequences. I therefore concur in the judgment reversing the Georgia Supreme Court.

I write separately to express my general dissatisfaction with our continuing attempts to use the Constitution to regulate peremptory challenges. In my view, by restricting a criminal defendant's use of such challenges, this case takes us further from the reasoning and the result of *Strauder v. West Virginia* (1880). I doubt that this departure will produce favorable consequences. On the contrary, I am certain that black criminal defendants will rue the day that this court ventured down this road that inexorably will lead to the elimination of peremptory strikes.

In *Strauder*, as the Court notes, we invalidated a state law that prohibited blacks from serving on juries. In the course of the decision, we observed that the racial composition of a jury may

affect the outcome of a criminal case. We explained: “It is well known that prejudices often exist against particular classes in the community, which sway the judgment of jurors, and which, therefore, operate in some cases to deny to persons of those classes the full enjoyment of that protection which others enjoy.” We thus recognized, over a century ago, the precise point that Justice O’Connor makes today. Simply stated, securing representation of the defendant’s race on the jury may help to overcome racial bias and provide the defendant with a better chance of having a fair trial.

I do not think that this basic premise of *Strauder* has become obsolete. The public, in general, continues to believe that the makeup of juries can matter in certain instances. Consider, for example, how the press reports criminal trials. Major newspapers regularly note the number of whites and blacks that sit on juries in important cases. Their editors and readers apparently recognize that conscious and unconscious prejudice persists in our society and that it may influence some juries. Common experience and common sense confirm this understanding.

In *Batson*, however, this Court began to depart from *Strauder* by holding that, without some actual showing, suppositions about the possibility that jurors may harbor prejudice have no legitimacy. We said, in particular, that a prosecutor could not justify peremptory strikes “by stating merely that he challenged jurors of the defendant’s race on the assumption—or his intuitive judgment—that they would be partial to the defendant because of their shared race.” As noted, however, our decision in *Strauder* rested on precisely such an “assumption” or “intuition.” We reasonably surmised, without direct evidence in any particular case, that all-white juries might judge black defendants unfairly.

Our departure from *Strauder* has two negative consequences. First, it produces a serious misordering of our priorities. In *Strauder*, we put the rights of defendants foremost. Today’s decision, while protecting jurors, leaves defendants with less means of protecting themselves. Unless jurors actually admit prejudice during *voir dire*, defendants generally must allow them to sit and run the risk that racial animus will affect the verdict. In effect, we have exalted the right of citizens to sit on juries over the rights of the criminal defendant, even though it is the defendant, not the jurors, who faces imprisonment or even death. At a minimum, I think that this inversion of priorities should give us pause.

Second, our departure from *Strauder* has taken us down a slope of inquiry that had no clear stopping point. Today, we decide only that white defendants may not strike black veniremen on the basis of race. Eventually, we will have to decide whether black defendants may strike white veniremen. Next will come the question whether defendants may exercise peremptories on the basis of sex. The consequences for defendants of our decision and of these future cases remain to be seen. But whatever the benefits were that this Court perceived in a criminal defendant’s having members of his class on the jury, they have evaporated.

JUSTICE O’CONNOR, dissenting.

The Court reaches the remarkable conclusion that criminal defendants being prosecuted by the State act on behalf of their adversary when they exercise peremptory challenges during jury selection. The Court purports merely to follow precedents, but our cases do not compel this perverse result. To the contrary, our decisions specifically establish that criminal defendants and their lawyers are not government actors when they perform traditional trial functions.

It is well and properly settled that the Constitution's equal protection guarantee forbids prosecutors from exercising peremptory challenges in a racially discriminatory fashion. The Constitution, however, affords no similar protection against private action. "Embedded in our Fourteenth Amendment jurisprudence is a dichotomy between state action, which is subject to scrutiny under the Amendmen[t] ..., and private conduct, against which the Amendment affords no shield, no matter how unfair that conduct may be." *National Collegiate Athletic Assn. v. Tarkanian* (1988). This distinction appears on the face of the Fourteenth Amendment, which provides that "No State shall ... deny to any person within its jurisdiction the equal protection of the laws." The critical but straightforward question this case presents is whether criminal defendants and their lawyers, when exercising peremptory challenges as part of a defense, are state actors....

From arrest, to trial, to possible sentencing and punishment, the antagonistic relationship between government and the accused is clear for all to see. Rather than squarely facing this fact, the Court, as in *Edmonson*, rests its finding of governmental action on the points that defendants exercise peremptory challenges in a courtroom and judges alter the composition of the jury in response to defendants' choices. I found this approach wanting in the context of civil controversies between private litigants, for reasons that need not be repeated here. But even if I thought *Edmonson* was correctly decided, I could not accept today's simplistic extension of it. The unique relationship between criminal defendants and the State precludes attributing defendants' actions to the State, whatever is the case in civil trials.

That the Constitution does not give federal judges the reach to wipe all marks of racism from every courtroom in the land is frustrating, to be sure. But such limitations are the necessary and intended consequence of the Fourteenth Amendment's state action requirement. Because I cannot accept the Court's conclusion that government is responsible for decisions criminal defendants make while fighting state prosecution, I respectfully dissent.

JUSTICE SCALIA, dissenting.

I agree with the Court that its judgment follows logically from *Edmonson v. Leesville Concrete Co., Inc.* (1991). For the reasons given in the *Edmonson* dissents, however, I think that case was wrongly decided. Barely a year later, we witness its reduction to the terminally absurd: A criminal defendant, in the process of defending himself against the state, is held to be acting on behalf of the state. Justice O'Connor demonstrates the sheer inanity of this proposition (in case the mere statement of it does not suffice), and the contrived nature of the Court's justifications. I see no need to add to her discussion, and differ from her views only in that I do not consider *Edmonson* distinguishable in principle—except in the principle that a bad decision should not be followed logically to its illogical conclusion.

Today's decision gives the lie once again to the belief that an activist, "evolutionary" constitutional jurisprudence always evolves in the direction of greater individual rights. In the interest of promoting the supposedly greater good of race relations in the society as a whole (make no mistake that that is what underlies all of this), we use the Constitution to destroy the ages-old right of criminal defendants to exercise peremptory challenges as they wish, to secure a jury that they consider fair. I dissent.