No. S24A0591

In the

# Supreme Court of Georgia

Nikema Williams, et al.,
*Appellants,*
v.

Colin Powell, et al.,
*Appellees.*

On Appeal from the Superior Court of Fulton County
Superior Court Case No. 2022CV373299

## BRIEF OF APPELLEES

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# TABLE OF CONTENTS

**Page**

Table of Authorities ..... iii

Introduction ..... 1

Statement ..... 4

A. Statutory Background ..... 4

B. Factual Background ..... 5

C. Proceedings Below ..... 8

1. Federal Suit ..... 8

2. State Suit ..... 10

Summary of Argument ..... 11

Argument ..... 16

I. O.C.G.A. § 16-11-34.1, which prohibits conduct that disrupts official business in the Capitol, is facially constitutional. ..... 16

A. Subsection (a) is not overbroad or vague. ..... 16

B. Subsections (f) and (g) are not overbroad or vague. ..... 29

II. Representative Cannon's as-applied challenge fails. ..... 34

III. Georgia's free-speech clause provides no greater protection than the federal First Amendment. ..... 38

Conclusion ..... 41

# TABLE OF AUTHORITIES

**Page(s)**

**Cases**

*Ark. Educ. Television Comm'n v. Forbes*,
523 U.S. 666 (1998) .... 17

*Broadrick v. Oklahoma*,
413 U.S. 601 (1973) .... 32

*Bullock v. City of Dallas*,
248 Ga. 164 (1981) .... 34

*Camden County v. Sweatt,*
315 Ga. 498 (2023) .... 31

*Cameron v. Johnson*,
390 U.S. 611 (1968) .... 27

*Catoosa County v. R.N. Talley Props., LLC*,
282 Ga. 373 (2007) .... 13, 26

*Chabad-Lubavitch of Georgia v. Miller*,
5 F.3d 1383 (11th Cir. 1993) .... 19

*Chaplinsky v. New Hampshire*,
315 U.S. 568 (1942) .... 40

*Cornelius v. NAACP*,
473 U.S. 788 (1985) .... 15, 36

*Ex parte Tucci*,
859 S.W.2d 1 (Tex. 1993) .... 40

*Final Exit Network, Inc. v. State*,
290 Ga. 508 (2012) .... 12, 20, 21, 25

*Freeman v. State*,
302 Ga. 181 (2017) .... 13, 27

*Gitlow v. New York*,
268 U.S. 652 (1925) ............................................................................. 40

*Gooding v. Wilson*,
405 U.S. 518 (1972) ....................................................................... 32, 33

*Grayned v. City of Rockford,*
408 U.S. 104 (1972) ................................................................ 13, 28, 33

*Great Am. Dream, Inc. v. DeKalb County*,
290 Ga. 749 (2012)............................................................................... 17

*In re D.H.*,
283 Ga. 556 (2008)............................................................................... 29

*In re K.S.*,
303 Ga. 542 (2018)............................................................................... 30

*Int'l Soc. for Krishna Consciousness, Inc. v. Lee*,
505 U.S. 672 (1992) ................................................................ 11, 16, 17

*Lathrop v. Deal*,
301 Ga. 408 (2017)............................................................................... 30

*Major v. State*,
301 Ga. 147 (2017)......................................................................... 18, 24

*Make the Road by Walking, Inc. v. Turner*,
378 F.3d 133 (2d Cir. 2004) ................................................................ 37

*Martin v. Struthers of Ohio,*
319 U.S. 141 (1943) ............................................................................. 35

*Maxim Cabaret, Inc. v. City of Sandy Springs*,
304 Ga. 187 (2018)............................................................................... 39

*Minn. Voters All. v. Mansky*,
585 U.S. 1 (2018) ................................................................................. 33

*New York v. Ferber*,
458 U.S. 747 (1982) ....................................................................... 20, 23

*Nordahl v. State*,
306 Ga. 15 (2019) ........................................................................ 14, 31

*Oasis Goodtime Emporium I, Inc. v. City of Doraville*,
297 Ga. 513 (2015) ............................................................ 15, 16, 38, 41

*Paramount Pictures Corp. v. Busbee*,
250 Ga. 252 (1982) ............................................................................ 40

*Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*,
460 U.S. 37 (1983) ........................................................................ 16, 17

*Rasman v. Stancil*,
No. 1:18-cv-1321 (N.D. Ga. Mar. 29, 2018) ........................................ 20

*Rodriguez v. State*,
284 Ga. 803 (2009) ............................................................................ 22

*Rubin v. Young*,
373 F. Supp. 3d 1347 (N.D. Ga. 2019) ............................................... 20

*Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*,
547 U.S. 47 (2006) ........................................................................ 35, 36

*Satterfield v. State*,
260 Ga. 427 (1990) ............................................................................ 34

*Scott v. State*,
299 Ga. 568 (2016) ........................................................................ passim

*Smallwood v. State*,
310 Ga. 445 (2020) ........................................................................ 33, 34

*State v. Boone*,
243 Ga. 416 (1979) .......................................................................... 1, 18

*State v. Fielden*,
280 Ga. 444 (2006) ........................................................................ passim

*State v. Linares*,
232 Conn. 345 (1995) ...................................................................... 18, 30

*Statesboro Publ'g Co. v. City of Sylvania*,
271 Ga. 92 (1999).......................................................................... 15, 38

*Stone Mountain Mem'l Ass'n v. Zauber*,
262 Ga. 661 (1993)..........................................................................passim

*Texas v. Johnson*,
491 U.S. 397 (1989) ................................................................... 15, 35, 36

*United States v. Bader*,
698 F.2d 553 (1st Cir. 1983) ............................................................... 37

*United States v. Gilbert*,
920 F.2d 878 (11th Cir. 1991) ............................................................. 37

*United States v. Hansen*,
599 U.S. 762 (2023) .............................................................................. 19

*United States v. Kokinda*,
497 U.S. 720 (1990) .............................................................................. 36

*United States v. O'Brien*,
391 U.S. 367 (1968) .............................................................................. 35

*United States v. Williams*,
553 U.S. 285 (2008) ..........................................................................passim

*Williams v. Powell*,
No. 1:20-cv-4012, (N.D. Ga. Apr. 6, 2021)........................................ 9, 20

**Statutes**

O.C.G.A. § 16-11-34 ............................................................................ 27

O.C.G.A. § 16-11-34.1 ........................................................................passim

**Other Authorities**

Allan Smith, *Protesters demanding 'count every vote' arrested in Georgia as governor's race remains unsettled*, NBC News (Nov. 13, 2018), https://nbcnews.to/43yHioN.......................................................... 6

*American Dictionary of the English Language* (rev. ed. 1841)....... 38, 39

Doug Richards, *Gov. Kemp signs controversial GOP elections bill into law*, 11Alive News (Mar. 25, 2021), https://bit.ly/4cdpYJH................ 7

United States Capitol Police, *Building Access & Hours*, https://bit.ly/3TAjUn7. ........................................................................ 1

*Webster's Ninth New Collegiate Dictionary* (9th ed. 1983)............. 38, 39

**Constitutional Provisions**

Ga. Const. art. I, § I, ¶ V ............................................................ 38, 39, 41

Ga. Const. of 1861, art. 1, ¶ VIII.............................................................. 39

Ga. Const. of 1976, art. 1, § 1, ¶ IV......................................................... 41

U.S. Const. amend. I........................................................................... 38

## INTRODUCTION

"The state, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated." *State v. Boone*, 243 Ga. 416, 420 (1979). And because the State Capitol is "lawfully dedicated" to the business of state government, the State would be entitled to sharply control public access to the building. By comparison, the federal government has done so with the U.S. Capitol, which is open only for guided tours and visitors with official business appointments. *See* United States Capitol Police, *Building Access & Hours*, https://bit.ly/3TAjUn7.

Georgia has taken a different path, keeping the State Capitol generally open to the public. In particular, people are allowed to gather in the Capitol Rotunda—an open space under the central dome—for a wide range of cultural, educational, and political events, including demonstrations and protests. This degree of access is necessarily conditional: the public is welcome so long as visitors do not disrupt the actual work of the General Assembly or the many other government employees in the building. Towards that end, the State has enacted an anti-disruption law, O.C.G.A. § 16-11-34.1, which makes it unlawful for anyone to intentionally or recklessly engage in conduct that can be expected to disrupt official government business. This arrangement has been a success. Only a tiny fraction of the Capitol's many thousands of visitors are warned to discontinue their behavior, and even fewer are actually charged under the disruption statute.

This case arises from two of the rare exceptions in which Capitol Police officers were forced to make arrests under the statute. The first involved a raucous, widely covered protest during a special legislative session shortly after the 2018 election. Protests that began with chanting "count every vote" devolved into angry shouting that could be heard from the legislative chamber, where the General Assembly was meeting. Capitol Police officers issued several warnings for the protesters to quiet down; when they refused, the officers arrested a number of the protesters, including Plaintiffs here. In a separate incident three years later, Capitol Police arrested Plaintiff (and State Representative) Park Cannon after she knocked loudly and repeatedly on a door to the Governor's office, forcing the Governor to cut short a press conference.

Plaintiffs sued in both federal and state court, alleging, as relevant here, that three subsections of § 16-11-34.1 are facially overbroad and vague and also that Plaintiff Cannon's arrest was an unconstitutional application of the statute. Both the federal district court and state superior court rejected these arguments and upheld the constitutionality of the statute. Plaintiffs now repeat the same arguments on appeal, but they are no more valid the third time around.

Nothing in O.C.G.A. § 16-11-34.1 warrants the "strong medicine" of facial invalidation. *United States v. Williams*, 553 U.S. 285, 293 (2008). Plaintiffs have not come close to showing that it prohibits a "substantial amount of protected speech" beyond its legitimate and

narrow application to activities that interrupt the business of the General Assembly. *Id.* at 292. To the contrary, despite frequent protests in the Rotunda, Capitol Police make arrests under the statute in only those very rare incidents—like the ones at issue here—where visitors persist in actually disrupting government business despite repeated warnings to cease the disruptive activity. The statute is not preventing anyone from engaging in protected speech.

Nor is the statute vague. It uses everyday terms that are understandable to a person of ordinary intelligence, and it bears little resemblance to the sort of utterly open-ended language courts have ruled unconstitutionally vague. Plaintiffs hardly attempt to argue to the contrary.

Finally, Representative Cannon's as-applied challenge fails for the simple reason that her conduct did not implicate free-speech protections at all. While some conduct is so inherently expressive that it is treated as speech, Cannon's knocking was simply … knocking. It would convey no obvious message to an observer without accompanying speech. But even if knocking *could* amount to protected expression, the Governor's office is not a public forum. It is a workplace, and the State can impose access, conduct, or even pure-speech restrictions in these sorts of nonpublic settings as long as they are reasonable. And it was plainly reasonable for Capitol Police to prevent someone from disrupting the work of the office by continually pounding on the door.

Code Section 16-11-34.1 is constitutional both on its face and as applied here. This Court should affirm.

## STATEMENT

### A. Statutory Background

Unlike many government buildings—including, for instance, the U.S. Capitol—the Georgia State Capitol is generally open to the public. At the same time, it is a workplace. To ensure that the public's access does not disrupt the ordinary business of the legislators and officials who use the building, the General Assembly enacted O.C.G.A. § 16-11-34.1. That statute provides, in relevant part:

> (a) It shall be unlawful for any person recklessly or knowingly to commit any act which may reasonably be expected to prevent or disrupt a session or meeting of the Senate or House of Representatives, a joint session thereof, or any meeting of any standing or interim committee, commission, or caucus of members thereof.
>
> * * *
>
> (f) It shall be unlawful for any person willfully and knowingly to enter or to remain in any room, chamber, office, or hallway within the state capital building or any building housing committee offices, committee rooms, or offices of members, officials, or employees of the General Assembly or either house thereof with intent to disrupt the orderly conduct of official business or to utter loud, threatening, or abusive language or engage in any disorderly or disruptive conduct in such buildings or areas.
>
> (g) It shall be unlawful for any person to parade, demonstrate, or picket within the state capitol building or any building housing committee offices, committee rooms, or offices of members, officials, or employees of the General Assembly or either house

> thereof with intent to disrupt the orderly conduct of official business or to utter loud, threatening, or abusive language or engage in any disorderly or disruptive conduct in such buildings or areas.

O.C.G.A. § 16-11-34.1(a), (f), (g).

### B. Factual Background

On November 13, 2018, Plaintiffs were among a group that congregated in the State Capitol to protest the November 6, 2018, gubernatorial election. R-11, 23. The Georgia House of Representatives was in a special session at the time. R-99. Before the protest started, Captain James Wicker of the Georgia State Patrol informed Plaintiff Jade Brooks, whom he understood to be one of the leaders of the group, of the rules concerning public access to the State Capitol; he also provided her with a copy of O.C.G.A. § 16-11-34.1, the statute governing disruptions of the General Assembly. *Williams v. Powell*, No. S22Q0097 (Feb. 15, 2022), R-121.

Captain Wicker informed Brooks that gathering, speaking, and carrying signs were permissible in the Capitol, but "loud and raised voices" were not because they would be "disruptive to the ongoing special session." *Id.* Although Brooks indicated that she understood Captain Wicker's instructions, the group nonetheless began chanting and yelling. *Id.* They initially "packed themselves" into the lobby of the Secretary of State's office, but because they could not all fit in the lobby, the crowd overflowed into the hallways. *Id.* Those in the office chanted loudly, and those outside blocked the hallway entirely. *Id.*

Even as State Troopers tried to make the hallway passable, no one made the group or any individual protester leave the building. *Id.*

After chanting in the Secretary of State's office, the group headed to the Rotunda, but in the process of doing so, blocked ingress and egress at the Capitol's Washington Street entrance while continuing to chant. *Id.* at 122. Once the group reached the Rotunda, Plaintiff Mary Hooks addressed the group and appeared to encourage them to respond with more loud chanting. R-23; S22Q0097 R-29, 122. Both Georgia State Troopers and Capitol Police officers repeatedly warned the crowd about reducing excessive noise level, without effect. R-100. At that point, officers began to arrest some members of the group who continued to yell and chant despite the warnings. S22Q0097 R-30, 122. Officers nevertheless allowed the protest to continue even after those arrests. *Id.* at 122.

Eventually, though, the protest "devolved into loud and boisterous chanting and yelling" that could clearly be heard from "immediately outside the House chamber," where members were in legislative session. *Id.* at 93, 122. Video of the incident shows a large group of protesters filling an entire wing of the ground floor and shouting and chanting loudly. *Id.* at 93 n.3; Allan Smith, *Protesters demanding 'count every vote' arrested in Georgia as governor's race remains unsettled*, NBC News (Nov. 13, 2018), https://nbcnews.to/43yHioN.

Captain Wicker ordered the group to disperse over a bullhorn, reading the language of § 16-11-34.1 as part of the order. S22Q0097 R-

122. Although many members of the group complied with the order and dispersed, some remained and continued to chant. S22Q0097 R-122–23. Representative Williams locked arms with other protesters to physically block officers from carrying out their duties. R-103–04. She also physically resisted instructions to cease blocking the officers. S22Q0097 R-134. The protesters who remained and continued to disrupt the session were arrested for violating O.C.G.A. § 16-11-34.1. *Id.* at 133–34. Officers made the arrests "not because of the content of the speech or expressive activity, but instead because of the disruptive noise level" the group exhibited, which continued to "disrupt[] the ongoing special session." *Id.* at 93, 123. All charges against Defendants were ultimately dismissed. R-28.

In a separate incident, State Representative Park Cannon was arrested on March 25, 2021, after knocking on a secure door to the Governor's office, purportedly seeking "information directly … regarding when SB 202 was going to be signed." R-32, 110. At the time, Governor Kemp was giving a press conference following the signing, and Cannon's knocking was so disruptive that the Governor was forced to cut his remarks short. Doug Richards, *Gov. Kemp signs controversial GOP elections bill into law*, 11Alive News (Mar. 25, 2021), https://bit.ly/4cdpYJH. Though instructed to cease by law enforcement, Cannon continued to knock on the restricted-access door. R-110. The officers eventually arrested Cannon, who continued to resist their efforts to escort her out of the building. *Id.*

The 2018 and 2021 arrests followed Plaintiffs' uniquely disruptive conduct. As Georgia Capitol Police Commander Gary Langford stated, "[a]rrests under O.C.G.A. § 16-11-34.1 are neither routinely nor hastily made." R-278. They occur only in the "unusual event" that a group or individual becomes "excessively noisy while a legislative session or meeting is taking place." *Id.* Even then, arrests are limited to disruptions that are "clearly and obviously disruptive." *Id.* And they typically occur only after the group or individual "continues to be loud and boisterous" despite verbal warning and request to disperse. *Id.* All of Plaintiffs' arrests followed such disruptive conduct and numerous verbal warnings. *Id.* at 100; S22Q0097 R-122.

### C. Proceedings Below

#### 1. Federal Suit

On September 29, 2020, nearly two years after their arrests, Plaintiffs filed a § 1983 lawsuit in the Northern District of Georgia. S22Q0097 R-21. Their complaint alleged unlawful seizure and asserted that O.C.G.A. § 16-11-34.1 violates the free-speech and right-to-petition clauses of the United States and Georgia Constitutions. *Id.* at 36–41.

The district court initially certified to this Court the question of whether the statute violates the Georgia Constitution, but this Court declined to answer the certified question on the ground that resolution of the immunity disputes could make any answer to the certified question unnecessary. No. S22Q0097, Feb. 15, 2022 Order.

Back in federal court, Plaintiffs abandoned all claims under the Georgia Constitution. *Williams v. Powell*, No. 1:20-cv-4012, Doc. 30. There, as here, Plaintiffs based their facial challenge on O.C.G.A. § 16-11-34.1's purported similarity to the anti-disruption statute held unconstitutional in *State v. Fielden,* 280 Ga. 444 (2006). Doc. 3-1 at 9–11.

On September 26, 2023, the district court granted Defendants' motion to dismiss in large part. Doc. 46 at 14. As relevant here, the court dismissed Plaintiffs' facial challenges to O.C.G.A. § 16-11-34.1, concluding that its provisions were neither overbroad nor vague. The court rejected Plaintiffs' analogy to *Fielden,* noting that the statute at issue there was "fundamentally different" from § 16-11-34.1. *Id.* at 29–31. The court concluded the challenged provisions are narrowly tailored to serve the government's "significant" interest in "ensuring that the proceedings of the Georgia General Assembly are carried out in an orderly, efficient, and effective manner," and they leave ample alternative channels of communication, namely, "all speech and expressive conduct that is not intended to disrupt" the business of the General Assembly or its employees. *Id.* at 31–32, 39. The district court also rejected Plaintiffs' vagueness challenges to §§ 16-11-34.1(f) and (g); the language, "read in the context of the entire statute[,] is more than enough to enable a person of common intelligence to read this law and understand the protected conduct." *Id.* at 36–37.

The remaining federal claims are stayed pending resolution of this appeal. Doc. 50.

**2. State Suit**

After Plaintiffs voluntarily dropped their state-law claims from their federal action, they filed suit in Fulton County Superior Court. R-10. They alleged that O.C.G.A. § 16-11-34.1 is overbroad, unconstitutionally vague, and unconstitutional as applied to Plaintiffs under the Georgia Constitution. *Id.* at 36–37, 40. Plaintiffs sought declaratory and injunctive relief barring O.C.G.A. § 16-11-34.1's enforcement. *Id.* at 40.

One day after the federal court's ruling discussed above, the superior court granted Defendants' motion to dismiss the state-constitutional challenges to O.C.G.A. § 16-11-34.1. *Id.* at 300. The court again rejected Plaintiffs' comparison to *Fielden*, explaining that where the *Fielden* statute covered "*any* … lawful meeting [or] gathering," O.C.G.A. § 16 11-34.1 covers only "sessions or meetings of members of the Georgia General Assembly." *Id.* at 295 (quotation omitted and emphasis added). The court concluded that the statute did not prohibit a substantial amount of protected speech relative to the "plainly legitimate sweep of prohibiting conduct likely to prevent or disrupt legislative business." *Id.* at 295–96. On Plaintiffs' vagueness challenge to subsection (a), the court held that that provision "identifies with more specificity the particular types of meetings a person may not recklessly or knowingly prevent or disrupt" than the statute at issue in

*Fielden,* which this Court upheld against a vagueness challenge. *Id.* at 298. The court likewise held that subsections (f) and (g) were not unconstitutionally vague because they prevent "loud," "abusive," or "disorderly" conduct—the terms Plaintiffs challenged as unclear—only when made "with the intent to disrupt the orderly conduct of official business," which would be enough for the person of average intelligence to understand what conduct is prohibited. *Id.* at 298–99. Finally, the court held that Representative Cannon had failed to state a claim for relief under the Georgia Constitution because forcefully knocking on the door to the Governor's office during a bill signing was not protected expression. *Id.* at 299–300.

Plaintiffs then appealed to this Court. *Id.* at 1–4.

## SUMMARY OF ARGUMENT

The superior court correctly dismissed Plaintiffs' constitutional claims.

**I.A.** O.C.G.A. § 16-11-34.1(a) is not facially overbroad. A statute is overbroad where it sweeps in a "substantial" amount of protected speech "relative to its plainly legitimate sweep." *Scott v. State,* 299 Ga. 568, 570 (2016) (quotation omitted). That is not the case here. The State is afforded greater leeway to regulate speech in its role as a property owner than as a lawmaker. *Int'l Soc. for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678 (1992) (*ISKC*). In the context of designated public forums like the Capitol Rotunda, the State

can impose content-neutral time, place, and manner regulations as long as they are "narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *Stone Mountain Mem'l Ass'n v. Zauber*, 262 Ga. 661, 662 (1993) (quotation omitted). Subsection (a) more than satisfies this requirement. It does not single out speech of any kind (it targets only conduct), and its narrow application and *mens rea* requirement eliminate the possibility of an inadvertent violation. And the statute provides significantly more than "ample alternative channels of communication"—it allows for *all* otherwise lawful forms of communication as long as they are not so loud or distracting that they would disrupt the business of the General Assembly.

Plaintiffs cannot demonstrate a "real and substantial" deterrent effect on legitimate expression beyond the statute's legitimate application. *Final Exit Network, Inc. v. State*, 290 Ga. 508, 511 (2012) (quotation omitted). Their examples of actual overbreadth amount to no more than "fanciful hypotheticals," *Scott*, 299 Ga. at 577 (quotation omitted), such as the potential for arrests based on cellphone ringers, which do not support invalidation for overbreadth.

Plaintiffs rely on the supposed similarities between § 16-11-34.1 and the meeting-disruption statute at issue in *State v. Fielden,* 280 Ga. 444 (2006), but that comparison is inapt. The *Fielden* statute was exponentially broader in scope: it applied on its face to "*any* … lawful meeting, gathering or procession" of people in *any* setting, under *any*

circumstances, no matter "where or when the accused commit[ted] the proscribed act." 280 Ga. at 447 (emphasis added). The scope of § 16-11-34.1(a), by contrast, is so much narrower than it raises none of the concerns flagged in *Fielden*.

Nor is subsection (a) void for vagueness. Plaintiffs cannot assert a facial vagueness challenge to begin with, because "one whose own conduct is clearly proscribed cannot complain of the vagueness of a law because it may conceivably be applied unconstitutionally to others." *Catoosa County v. R.N. Talley Props., LLC*, 282 Ga. 373, 375 (2007). And much of their alleged conduct—e.g., blocking the entrance to the Secretary of State's office, screaming chants despite repeated warnings to lower the volume—squarely fall within the statute. Regardless, Plaintiffs' vagueness challenge fails on the merits. "A statute is unconstitutionally vague if it fails to give a person of ordinary intelligence notice of the conduct" it prohibits "and encourages arbitrary and discriminatory enforcement." *Freeman v. State*, 302 Ga. 181, 183 (2017) (quotation omitted). Here, subsection (a) uses everyday, nontechnical language that make its meaning clear: individuals cannot intentionally or recklessly engage in conduct that will likely disrupt the business of the General Assembly. This Court and others have repeatedly upheld virtually identical language against vagueness challenges, *see, e.g.*, *Fielden*, 280 Ga. at 445; *Grayned v. City of Rockford,* 408 U.S. 104, 111–12 (1972), and Plaintiffs offer no

explanation why the language of subsection (a) should be treated any differently.

**B.** Plaintiffs also challenge O.C.G.A. § 16-11-34.1(f) and (g), which prohibit various activities (like protests or sit-ins) in the State Capitol "with intent to disrupt the orderly conduct of official business or to utter loud, threatening, or abusive language or engage in any disorderly or disruptive conduct in such buildings or areas," on overbreadth grounds, but this claim likewise fails. While Plaintiffs contend that these subsections contain no scienter requirement, they are incorrect—the terms "loud," "disruptive," etc., viewed in the context of the surrounding text and statute as a whole, plainly deal with acts that are intended to disrupt the business of the General Assembly. And even if these provisions were susceptible of more than one interpretation, the Court should construe the statute in a way that obviates any constitutional concerns. *See Nordahl v. State*, 306 Ga. 15, 20 (2019). Yet even assuming statute *is* as broad as Plaintiffs read it, it still would not be constitutionally overbroad. Plaintiffs are again able to offer no evidence about the statute's supposed overbreadth.

And Code Sections 16-11-34.1(f) and (g) are not unconstitutionally vague. Even assuming Plaintiffs can assert a facial vagueness challenge given the circumstances of their arrest, these subsections use easily understandable language that in no way resemble the sorts of utterly undefined criminal statutes this Court has held vague.

**II.** Representative Cannon's as-applied challenge fails for two reasons. First, knocking is not inherently expressive conduct because it would require accompanying speech to convey a particular message to an observer. *See Texas v. Johnson*, 491 U.S. 397, 404 (1989). But even if Cannon's knocking were protected expression, it wouldn't matter. The State is entitled to "exercise control over access to the … workplace in order to avoid interruptions to the performance of the duties of its employees." *Cornelius v. NAACP*, 473 U.S. 788, 805-06 (1985). And the Governor's office is a nonpublic workplace subject to any "reasonable" speech or access restrictions. *Id* at 806; *Zauber,* 262 Ga. at 663–64. Cannon's loud and repeated knocking caused a disruption in the Governor's office—the Governor himself cut short a press conference due to the distraction. So it was eminently reasonable for Capitol Police to prevent Cannon from continuing this disruption.

**III.** Finally, Plaintiffs' suggestion that the Georgia Constitution's free-speech clause "may provide greater protections than the First Amendment," Br. at 25, in this context is incorrect. This Court has "cast serious doubt on the provenance and validity of" *Statesboro Publ'g Co. v. City of Sylvania*, 271 Ga. 92, 95 (1999) (mandating a least-restrictive-means test), the case on which Plaintiffs base their argument. *Oasis Goodtime Emporium I, Inc. v. City of Doraville*, 297 Ga. 513, 523 n.12 (2015). Moreover, the text and history of the Georgia free-speech clause show that its scope is, at most, the same as the First Amendment's. In any event, the scope question is ultimately irrelevant

here, because even assuming the *Statesboro Publishing* test remains good law, it "applies only to laws that directly regulate the time, place, and manner of protected expression … as opposed to regulations that have only an incidental effect on protected speech." *Id.* Section 16-11-34.1 falls squarely in the latter category, so *Statesboro Publishing* is inapplicable.

## ARGUMENT

### I. O.C.G.A. § 16-11-34.1, which prohibits conduct that disrupts official business in the Capitol, is facially constitutional.

#### A. Subsection (a) is not overbroad or vague.

**1.** The right to free speech "does not guarantee access to property simply because it is owned or controlled by the government." *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n,* 460 U.S. 37, 46 (1983). And "the government need not permit all forms of speech on property that it owns and controls." *ISKC*, 505 U.S. at 678. So when the State "is acting as a proprietor, managing its internal operations, rather than acting as lawmaker with the power to regulate or license, its action will not be subjected to the heightened review to which its actions as a lawmaker may be subject." *Id.* Regulations of government property can, for example, account for "the nature of the property or … the disruption that might be caused by the speaker's activities." *Zauber*, 262 Ga. at 663–64 (quotation omitted).

The extent of permissible speech regulation depends on the nature of the government property at issue. Designated public forums are

areas "that the State has opened for expressive activity by part or all of the public." *ISKC*, 505 U.S. at 678. The Rotunda fits this description. In these settings, the State can enforce content-neutral time, place, and manner regulations if they are "narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *Perry,* 460 U.S. at 45; *Zauber*, 262 Ga. at 662 (same). Similarly, a content-neutral regulation that has an incidental effect on protected speech is valid "if it furthers an important government interest; if the government interest is unrelated to the suppression of speech; and if the incidental restriction of speech is no greater than is essential to the furtherance of that interest." *Great Am. Dream, Inc. v. DeKalb County*, 290 Ga. 749, 752 (2012) (quotation omitted).

The Capitol, "like most government property …, is a mixed forum" in which not all areas are public. *Zauber,* 262 Ga. at 663. Other areas—everywhere else but the Rotunda—are nonpublic forums, or not forums at all. *Ark. Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 677 (1998). Regulation of nonpublic forums is appropriate "if the restrictions are 'reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view.'" *Zauber,* 262 Ga. at 664 (quoting *Perry,* 460 U.S. at 46).

Code Section 16-11-34.1, which regulates *conduct* in these areas, easily satisfies these standards. "The state, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated." *State v. Boone*, 243 Ga.

416, 420 (1979) (quotation omitted). And the State "has a significant interest in ensuring that the General Assembly, whether sitting in a session, meeting, proceeding or committee, has the opportunity to fulfill its mandate free from objectively unreasonable interferences." *State v. Linares*, 232 Conn. 345, 372 (1995). Subsection (a) does just that, while not singling out speech of any kind, or for that matter, speech *at all*—the statute speaks only in terms of conduct. O.C.G.A § 16-11-34.1(a). It rules out inadvertent violations by prohibiting only "recklessly" or "knowingly" acting in a way that can be reasonably expected to "prevent or disrupt" legislative business. *Id.* Criminal recklessness requires *actual knowledge* that an event is substantially likely to occur, *Major v. State*, 301 Ga. 147, 150 (2017), meaning that one is never liable under the statute for merely making a mistake. *See id.* (holding that statute penalizing both actual and reckless threats of violence was not overbroad because recklessness is a "knowing act").

The statute eliminates any potential for confusion through its narrow scope. It targets conduct, applies in exceedingly narrow circumstances, and requires a high *mens rea*. Indeed, it is difficult to imagine how the statute could be *less* restrictive and still ensure that the General Assembly can still go about its business without disturbances. The obvious alternative would be to shut down public access to the Capitol altogether—a result no one wants.

Additionally, the statute affords visitors to the Rotunda multitudinous possibilities for expression. Visitors in the Rotunda are

permitted to hold events, stage protests, give press conferences, erect religious displays, and engage in virtually *any* form of otherwise lawful expression. *Chabad-Lubavitch of Georgia v. Miller*, 5 F.3d 1383, 1386–87 (11th Cir. 1993) (en banc). This expression is permitted under "a content-neutral, equal access policy ... on a first-come, first-serve basis to all interested parties." *Id.* The one qualification is that visitors cannot conduct themselves in a way that is so loud or distracting that it disrupts the work of lawmakers or their employees. That is the *least* the State can ask of visitors to the Capitol; it more than satisfies the requirement to "leave open ample alternative channels of communication." *Zauber,* 261 Ga. at 662. The statute is plainly constitutional in nearly all, if not all, its applications.

**2.** To circumvent the statute's many obvious valid applications, Plaintiffs advance a facial overbreadth challenge. They argue that, while the statute has legitimate applications, it "punishes so much protected speech that it cannot be applied to *anyone,* including [them]." *United States v. Hansen,* 599 U.S. 762, 769 (2023). The statute does nothing of the sort.

"Invalidation for overbreadth is 'strong medicine' that is not to be 'casually employed.'" *Williams*, 553 U.S. at 293. It requires a finding that a "substantial" amount of protected speech is implicated, "not only in an absolute sense, but also relative to [its] plainly legitimate sweep." *Scott v. State,* 299 Ga. 568, 570 (2016) (quoting *Williams,* 553 U.S. at 292). And where, as here, a statute aims to regulate conduct and not

merely speech, its overbreadth must be not only be substantial, but *real*, before a court will invalidate the statute. *New York v. Ferber*, 458 U.S. 747, 770 (1982). A statute should not be invalidated "unless it is not readily subject to a narrowing construction ... and its deterrent effect on legitimate expression is both real and substantial." *Final Exit Network, Inc. v. State*, 290 Ga. 508, 511 (2012).

Plaintiffs have not overcome these high bars here. All they have to offer is a handful of incidents that mostly have nothing to do with the statute. For example, one March 2018 episode involving a protestor holding a sign, Br. at 5, stemmed from an "ad hoc" ban, not an application of § 16-11-34.1(a), *see Rasman v. Stancil*, No. 1:18-cv-1321 (N.D. Ga. Mar. 29, 2018), ECF Doc. 2-1 at 4, 9 n.4, 10, and a March 2019 incident involving a profane button, Br. at 6, stemmed from application of O.C.G.A. § 16-11-39, not § 16-11-34.1, *see Rubin v. Young*, 373 F. Supp. 3d 1347 (N.D. Ga. 2019). Plaintiffs also refer to a January 2019 incident involving students in the legislative gallery—not the Rotunda—and a February 2020 episode with signs, but do not explain how either occurrence involved or even implicated § 16-11-34.1(a). Br. at 6. Beyond that, Plaintiffs cite an affidavit by a woman whom they say "chose to sit and … not speak at all" for fear of arrest after being handed a copy of the statute by Capitol police, Br. at 6, even though she admits has "protested about a dozen times in the Rotunda and inside the Georgia State Capitol," apparently without incident, *Williams v. Powell*, No. 1:20-cv-4012, (N.D. Ga. Apr. 6, 2021),

ECF Doc. 26-1 at ¶¶ 4,6. It is telling that, out of the hundreds of thousands of visitors who have passed through the Capitol in the decades since the passage of § 16-11-34.1, Plaintiffs can point to nothing more. Whatever this evidence shows, it bears no resemblance to a "real and substantial" prohibition of protected speech. *Final Exit,* 290 Ga. at 511.

Beyond that, Plaintiffs rely on hypothetical cases that are imaginary. Plaintiffs speculate that expressing "strongly spoken contrary viewpoints" during a meeting of the General Assembly, or even engaging in protected speech that interrupts an informal "[c]aucus" in a hallway could amount to criminal violations under the statute. Br. at 16, 18, 19.[1] That would not be covered, absent an indication that the speaker was knowingly attempting to disrupt the General Assembly's business. Anyway, overbreadth requires more than these sorts of "fanciful hypotheticals." *Scott*, 299 Ga. at 577–78. "The mere fact that one can conceive of some impermissible applications of a statute is not sufficient to render it susceptible to an overbreadth challenge." *Williams*, 553 U.S. at 303 (quotation omitted). Plaintiffs must instead show that "these scenarios are sufficiently numerous or likely to warrant the statute's wholesale

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[1] Plaintiffs also mention the possibilities of leaving on an audible cellphone ringer or coughing during a committee meeting, Br. at 16, but neither of those actions constitutes protected expression (again, assuming the statute would reach them at all). *See Williams*, 553 U.S. at 292 (noting that overbreadth concerns "protected speech").

invalidation." *Scott*, 299 Ga. at 578. They have not come close to doing so.

Plaintiffs ultimately rely almost entirely on the supposed similarities between O.C.G.A. § 16-11-34.1(a) and the meeting-disruption statute the Court deemed facially overbroad in *Fielden*. This approach is backwards: overbreadth analysis starts with a presumption of constitutionality, not *un*constitutionality. *See Rodriguez v. State*, 284 Ga. 803, 804 (2009). Regardless, the comparison with *Fielden* actually undermines Plaintiffs' argument, as any similarity in language is superficial, to say the least.

The *Fielden* statute had an exponentially broader sweep: it prohibited conduct likely to disrupt "*any* … lawful meeting, gathering or procession" of people in *any* setting, under *any* circumstances, no matter "where or when the accused commit[ted] the proscribed act." 280 Ga. at 447 (emphasis added). Such conduct amounted to a misdemeanor under the statute "regardless of where it [wa]s committed, how trivial the act, its impact, or the intent of the actor other than the intent to commit the act itself." *Id.* The statute had the perverse effect of prohibiting acts as far reaching as "heckling a referee at a sports venue, leaving on the audible ringer of a cellphone during a business symposium, changing lanes into a funeral procession on a rainy day, even playing the stereo loudly in an apartment while a neighbor hosts a dinner party." *Id.* The Court thus concluded that "the literal language of the statute is so overbroad in its scope that it leads

to an absurdity manifestly not intended by the legislature." *Id.* at 448 (quotation omitted). The Court was obviously correct—it is hard even to imagine a more overbroad statute, outside of one that simply prohibits all speech.

Section 16-11-34.1(a), by contrast, has an infinitely narrower reach. It extends only to conduct reasonably expected to prevent or disrupt sessions or meetings of members of the Georgia General Assembly; it is necessarily limited to conduct that occurs in and around the offices and chambers in which the legislature conducts its business. Section 16-11-34.1(a)'s reach and, accordingly, the extent to which it may deter any protected speech, are thus *far* narrower than the statute at issue in *Fielden*, which prohibited disruption of *any meeting* by *anyone*, *anywhere*. "While a sweeping statute, or one incapable of limitation, has the potential to repeatedly chill the exercise of expressive activity by many individuals, the extent of deterrence of protected speech can be expected to decrease with the declining reach of the regulation." *Ferber*, 458 U.S. at 772.

And § 16-11-34.1(a) is also much more closely tied to the underlying legislative objective—*i.e.*, ensuring the orderly, efficient, effective and dignified meetings of its legislative body—than the *Fielden* statute, which, on its face, swept in a truly staggering amount of everyday conduct that the legislature would have had no reason to regulate. *See* 280 Ga. at 447–48. Without a statute like § 16-11-34.1, it

is quite likely that the State would simply have to close the Capitol entirely, lest legislators and officials have no ability to work at all.

Plaintiffs argue that O.C.G.A. § 16-11-34.1(a) somehow poses greater overbreadth concerns than the *Fielden* statute, Br. at 18, but that is risible. They contend that the *Fielden* statute "applied to any 'lawful' public meeting," and that "[o]fficial public meetings, like city council meetings, are readily identifiable to the public," while § 16-11-34.1(a), applies to meetings, including informal caucuses. Br. at 18–19. This, they reason, creates a higher likelihood that a member of the public would "unwittingly" violate the latter. *Id.* This is wrong many times over. For one, subsection (a) does not penalize *unwitting* violations at all. It is targeted only at "knowing" or "reckless" conduct, and as discussed above, this Court has made clear that a criminally reckless defendant is "not merely careless." *Major,* 301 Ga. 151. Rather, criminal recklessness requires a "knowing act." *Id.* The Court focused on this point in *Major* when it rejected a defendant's similar argument that the recklessness scienter in the State's former criminal-threats statute was overly broad. *Id.* at 150. So too here.

Moreover, as this Court and both the federal and superior courts below have explained, the statute at issue in *Fielden* was not in any way limited to formal public meetings. Rather, it swept in any meeting of any sort, anywhere, and was not limited to government meetings. *Fielden,* 280 Ga. at 447–48. It is nonsensical to suggest that a statute limited to disruptions of a single, identifiable, governmental entity—

almost entirely limited to a single well-known building—poses more overbreadth concerns than a statute covering *all* interactions between *anyone* in the state.

And even assuming that § 16-11-34.1(a) extends to "study committees that meet all over the state," Br. at 17 (quoting Peterson, J.), Plaintiffs have put forward no evidence that the statute has been enforced at all in these settings, let alone improperly. If officials *did* improperly enforce the statue against unwitting defendants in that context, that could give rise to an as-applied suit. But speculating about the mere possibility does nothing to establish "real and substantial" overbreadth. *See Final Exit*, 290 Ga. at 511.

Plaintiffs also point to the *Fielden* Court's reliance on the lack of a stronger *mens rea* requirement or a requirement of "actual" disruption. Br. at 9–13. In Plaintiffs' view, O.C.G.A. § 16-11-34.1(a) should fall because it, too, requires only recklessness and an expectation of disruption, rather than specific intent and actual disruption. *Id*. But this argument misses the forest for the trees. The reason that the lack of any specific-intent or actual-disruption requirement was problematic in *Fielden* was because of the overwhelming breadth of the statute. Of course a statute that prohibits *any* conduct that might disrupt *any* meeting of *any* kind is suspicious when it requires so little on the part of a potential violator.

But the scope of O.C.G.A. § 16-11-34.1(a) is much, much narrower. A visitor to the State Capitol who recklessly acts in a way

that can be expected to disrupt legislative affairs is in a far different position than one who disrupts a meeting of dog owners in the park. By way of analogy, in a statute that criminalizes *any* trespass, *anywhere*, one would expect a strong *mens rea* requirement. But a statute that criminalizes trespass onto a plainly visible *nuclear facility* would surely be reasonable even if it included only a recklessness *mens rea*. Simply put, the universality of the statute in *Fielden* precludes any meaningful comparison between that case and the present case. Plaintiffs have been able to point to little else, and the Court should reject their argument.

**3.** Plaintiffs also make a cursory argument that subsection (a) is void for vagueness. Br. at 19–20. They contend that the phrase "'any act which may reasonably be expected to prevent or disrupt' fails to provide notice because it is unclear what conduct is forbidden by the phrase." Br. at 20. Plaintiffs also argue that the "recklessly or knowingly" *mens rea* "is determined by the subjectivity of the arresting officer, leaving citizens all the more vulnerable to arrest." *Id.*

Plaintiffs are wrong again. To start, it is well-established that "one whose own conduct is clearly proscribed cannot complain of the vagueness of a law because it may conceivably be applied unconstitutionally to others." *Catoosa County*, 282 Ga. at 375. Here the record evidence shows that many—if not all—of the Plaintiffs *did* engage in conduct that is undisputedly covered by the statute, such as blocking access to the Secretary of State's lobby and continuing to

chant loudly in the Capitol despite repeated warnings that the excessive noise was disrupting the special legislative session. S22Q0097 R-120–24.

If Plaintiffs *can* raise a facial challenge, it fails anyway. "A statute is unconstitutionally vague if it fails to give a person of ordinary intelligence notice of the conduct" it prohibits "and encourages arbitrary and discriminatory enforcement." *Freeman*, 302 Ga. at 183 (quotation omitted). Even for laws that potentially burden speech, "perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity." *Williams*, 553 U.S. at 304 (quotation omitted). "When the phrase challenged as vague has a commonly understood meaning, then it is sufficiently definite to satisfy due process requirements." *Freeman*, 302 Ga. at 183 (quotation omitted).

Here, the challenged language is perfectly understandable to a member of the general public. It uses "widely used and well understood word[s]"—knowingly, recklessly, prevent, disrupt—that "clearly and precisely delineate[] its reach in words of common understanding." *Cameron v. Johnson*, 390 U.S. 611, 616 (1968). These terms make its meaning clear: individuals cannot intentionally or recklessly engage in conduct that will likely disrupt the business of the General Assembly.

This very same language was at issue in *Fielden*—indeed, it is one example where the two statutes actually *are* functionally identical. *Compare* O.C.G.A. § 16-11-34(a) ("recklessly or knowingly commits any

act which may reasonably be expected to prevent or disrupt a lawful meeting, gathering, or procession"), *with* § 16-11-34.1(a) ("recklessly or knowingly to commit any act which may reasonably be expected to prevent or disrupt a session or meeting of the Senate or House of Representatives ...."). Yet this Court, which was otherwise deeply critical of the *Fielden* statute, held that this language was "clear and unambiguous" and "provides a sufficiently definite warning to a person of ordinary intelligence of the prohibited conduct." 280 Ga. at 444–45. As the superior court noted, § 16-11-34.1(a) is "at least as clear as, if not clearer than, the statute at issue in *Fielden,* because it identifies with *more* specificity the particular types of meetings a person my not recklessly or knowingly prevent or disrupt." R-298 (emphasis added).

This reasoning is consistent with numerous other decisions upholding similarly worded statutes against vagueness challenges. For example, in *Grayned,* the U.S. Supreme Court rejected a vagueness challenge to a similarly worded ordinance that prohibited "willfully mak[ing] or assist[ing] in the making of any noise or diversion which disturbs or tends to disturb the peace or good order of such school," reasoning that the "prohibited disturbances are easily measured by their impact on the normal activities of the school." 408 U.S. at 107–12. And this Court held in *In re D.H.* that language stating students could not "knowingly, intentionally, or recklessly disrupt or interfere with the operation of any public school," O.C.G.A. § 20-2-1181(a), was

sufficiently clear because it "contains words of ordinary meaning that give fair notice as to the statute's application." 283 Ga. 556, 557 (2008).

Plaintiffs do not attempt to explain what in the language of § 16-11-34.1(a) is any different than these sorts of cases, nor can they. If anything, the highly specific context of the subsection makes the law *clearer* than the statutes discussed above. The Court should affirm.

**B. Subsections (f) and (g) are not overbroad or vague.**

Plaintiffs also challenge O.C.G.A. § 16-11-34.1(f) and (g), which prohibit various activities (like protests or sit-ins) in the State Capitol "with intent to disrupt the orderly conduct of official business or to utter loud, threatening, or abusive language or engage in any disorderly or disruptive conduct in such buildings or areas." Plaintiffs argue this language is overbroad, and they fleetingly suggest it is unconstitutionally vague. Neither charge succeeds.

**1.** Plaintiffs argue that the prohibition of "loud, threatening, or abusive language" is overbroad, Br. at 20–25, but as with subsection (a), they miss the mark. Again, it is possible (though not obvious) that subsection (f) or (g) would be unconstitutional as applied in certain instances, but the basic sweep of these provisions prohibits intentionally disruptive conduct. That plainly legitimate sweep far outweighs any minimal as-applied problems with the statute.

Plaintiffs read the statute too broadly, arguing that there is no scienter required to violate the statute by uttering "loud, threatening, or abusive language." Br. at 21. In Plaintiffs' view, the various intent

requirements in these provisions ("willfully and knowingly," "with intent to disrupt") do not apply to the prohibition of loud, threatening, or abusive language. *Id.*

But these terms—"loud," "disruptive," etc.—should not be read in isolation. *See, e.g.*, *In re K.S.*, 303 Ga. 542, 543–44 (2018); *Lathrop v. Deal*, 301 Ga. 408, 429 (2017). Subsections 16-11-34.1(f) and (g), viewed in their entirety and in their context, plainly deal with acts that are intended to disrupt the business of the General Assembly. The title of the statute is "Disruption of Senate or House of Representatives," and each of the statute's subsections prohibiting certain actions expressly ties those actions to their impacts on the General Assembly's proceedings or security in general. With this context, a person of average intelligence would be hard pressed to read the "loud language" clauses of subsections (f) and (g) as freestanding prohibitions against all loud or threatening language in the Capitol, regardless of intent or circumstances. Simply put, "this statute is clearly related only to the disruption of official legislative proceedings." *See Linares*, 232 Conn. at 356.

Indeed, reading the "loud language" clauses as freestanding prohibitions would contradict basic principles of statutory interpretation. The language is duplicated in subsections (f) and (g). So if these clauses are not tied to the preceding language of the subsections—i.e., subsection (f)'s "enter or … remain in any room" and subsection (g)'s "parade, demonstrate, or picket"—that would render

one of the clauses entirely superfluous. But we do not "presume that the legislature intended that any part [of the statute] would be without meaning," so courts generally "avoid a construction that makes some language mere surplusage." *Camden County v. Sweatt,* 315 Ga. 498, 509 (2023) (quotation omitted). Plaintiffs' reading would do just that.

And even if the provisions at issue here were susceptible of more than one interpretation, the Court should construe the statute in the way that is consistent with the Constitution. *See Nordahl,* 306 Ga. at 20. Here, there is a reasonable and readily discernible interpretation of the statute that minimizes any possible constitutional questions: subsections (f) and (g) prohibit only actions made "with intent to disrupt the orderly conduct of official business" rather than "loud" or "disorderly" speech in the abstract. The Court need not strain to read the statute in a manner that would result in greater constitutional uncertainty.

Regardless, even if the statute *were* as broad as Plaintiffs assert, it would still not be overbroad. Some applications might be problematic (as would be true of most prohibitions meant to maintain decorum and allow for employees to work uninterrupted). But not many. Again, these supposedly unconstitutional applications must be real and substantial, but Plaintiffs point to no such applications. *See Scott*, 299 Ga. at 578 ("[T]he 'mere fact that one can conceive of some impermissible applications of a statute is not sufficient to render it

susceptible to an overbreadth challenge.'") (quoting *Williams*, 553 U.S. at 303).

Lastly, Plaintiffs point to *Gooding v. Wilson*, 405 U.S. 518 (1972), Br. at 24–25, but that case is inapposite. *Gooding* concerned a statute that punished only speech—specifically, it prohibited the use of "opprobrious words or abusive language, tending to cause a breach of the peace" in the presence of another. 405 U.S. at 519–20. But here the challenged provisions do not target speech; rather, they are part and parcel of a statute aimed at prohibiting *conduct* likely to impede and disrupt the work of the legislative branch of state government. *See Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973) (overbreadth concern "attenuates as the otherwise unprotected behavior that it forbids the State to sanction moves from 'pure speech' toward conduct"). Section 16-11-34.1 applies, moreover, when the activity itself, not its expressive component, threatens the orderly conduct of legislative business. And unlike the *Gooding* statute, Georgia courts have not interpreted O.C.G.A. § 16-11-34.1 or any of its subsections to prohibit merely offensive speech.

Plaintiffs' reliance on *Gooding* is flawed for another reason: The ordinance challenged there was, again, staggeringly broad, as it prohibited "abusive language" uttered virtually *anywhere* in public to *anyone* who chanced to listen. 405 U.S. at 519. But subsections (f) and (g) regulate only conduct undertaken in the State Capitol and its offices. The government's interests, and whether the restriction at

issue is sufficiently tailored to further them, cannot be evaluated in a vacuum, and the extremely limited scope of this statute removes it from the purview of cases like *Gooding*. *See Grayned*, 408 U.S. at 116 ("The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time."). For instance, the Supreme Court has recognized that a State may exclude certain "forms of advocacy" from "polling place[s]" that would be entirely "nondisruptive" in "more mundane settings." *Minn. Voters All. v. Mansky*, 585 U.S. 1, 15 (2018). Surely a speaker could be disruptive inside the State Capitol in ways that would not meet the test of actual breach of the peace on a public street, as in *Gooding*, *see* 405 U.S. at 526–27.

**2.** Plaintiffs also briefly suggest that subsections (f) and (g) are unconstitutionally vague because they are susceptible to arbitrary enforcement. Br. at 21–22. But they do not explain *why* this is the case, apart from a conclusory statement that the subsections "provide officers no guidance at all and give an impermissible level of discretionary authority to make determinations about what conduct could be disruptive" under the statute. *Id.* at 22.

The challenged provisions are not vague. "Vague statutes invite arbitrary and selective enforcement by allowing law enforcement officers to charge a crime where there was no crime …." *Smallwood v. State,* 310 Ga. 445, 449 (2020). But subsections (f) and (g) do nothing of the sort. All of their terms are common, non-technical words used in

their everyday sense. Collectively, they "define[] specific standards sufficient for enforcement without bias, discrimination, or arbitrariness," *id.* at 450, specifically: whether the defendant entered or remained, § 16-11-34.1(f), or paraded, demonstrated, or picketed, § 16-11-34.1(g), with intent to disrupt. These provisions in no way resemble the sorts of utterly undefined criminal statutes this Court has held vague. *See, e.g., Satterfield v. State*, 260 Ga. 427, 427 (1990) (statute criminalizing "indecent" and "disorderly" conduct was unconstitutionally vague because it defined neither term, and thus impermissibly delegated basic policy matters to law enforcement, judges, and juries on an ad hoc, subjective basis); *Bullock v. City of Dallas*, 248 Ga. 164, 168 (1981) (anti-loitering ordinance was unconstitutionally vague where "the tests for ascertaining the line separating guilty from innocent acts" were purely "speculative" (quotation omitted)).

## II. Representative Cannon's as-applied challenge fails.

One of the Plaintiffs, Representative Park Cannon, also advances an as-applied challenge based on the incident in which she was arrested for banging on the doors of the Governor's office. Br. at 26. The superior court dismissed this claim as well on the ground that Cannon's arrest was based solely on her conduct, not any protected expression. R-300. Plaintiffs' sole argument on appeal is that "[t]he United States Supreme Court has repeatedly addressed knocking on doors as expressive conduct." Br. at 27. That is wrong, but even if it

weren't, the government has wide leeway to restrict even protected speech in nonpublic workplaces like the Governor's office.

**A.** There is no support under either Georgia or federal law for the notion that that knocking on doors is inherently expressive. Plaintiffs' sole support for that proposition, *Martin v. Struthers of Ohio,* 319 U.S. 141 (1943), says nothing of the sort. The plaintiff in *Martin* was a Jehovah's Witness who knocked on doors and rang doorbells in order to distribute leaflets advertising a religious meeting. *Id.* at 142. But the free-speech right at issue in the case was not a right to "door knocking," as Plaintiffs contend—it was "the right to distribute literature" and "the right to receive it." *Id.* at 143 (describing "door to door distributors of literature" as "engaged in the dissemination of ideas in accordance with the best tradition of free discussion").

That makes sense. While some forms of "symbolic speech" are constitutionally protected, the Supreme Court has "rejected the view that conduct can be labeled speech whenever the person engaging in the conduct intends thereby to express an idea." *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 65–66 (2006) (quoting *United States v. O'Brien,* 391 U.S. 367, 376 (1968)) (quotation marks omitted). Rather, conduct is "inherently expressive," *id.* at 66, and thus protected, when it shows "an intent to convey a particularized message," so that "the likelihood was great that the message would be understood by those who viewed it." *Johnson,* 491 U.S. at 404 (holding that burning the American flag was sufficiently expressive to warrant

First Amendment protection). But if "explanatory speech is necessary" to convey the significance of the conduct, that "is strong evidence that [it] is not so inherently expressive that it warrants [constitutional] protection." *Rumsfeld,* 547 U.S. at 66.

Cannon's conduct fits squarely in the latter category. According to the complaint, she was knocking on the door in an effort to "get information directly from the Governor's Office regarding when SB 202 was going to be signed." R-32. No observer would infer any "particularized message" from this knocking, absent some explanatory speech. *See Johnson,* 491 U.S. at 404. Because Cannon's conduct was not expressive, she has no free-speech claim.

**B.** But even assuming Cannon's conduct *was* inherently expressive, that would not change the outcome. The Governor's office is a workplace, which "like any place of employment, exists to accomplish the business of the employer." *Cornelius*, 473 U.S. at 805. Unlike the Rotunda, it is not a public forum. The State can "exercise control over access to the … workplace in order to avoid interruptions to the performance of the duties of its employees." *Id.* at 806. Any such restrictions are permissible so long as they are viewpoint neutral and reasonable. *Id.*; *Zauber,* 262 Ga. at 663.

Courts have thus uniformly rejected free-speech challenges from individuals who disrupted government workplaces. *See United States v. Kokinda*, 497 U.S. 720 (1990) (plurality) (post office could prohibit solicitation on adjacent sidewalk because it would disrupt postal service

business); *United States v. Gilbert*, 920 F.2d 878 (11th Cir. 1991) (policy of prohibiting demonstrators in interior of Richard B. Russell Federal Building was "eminently reasonable"); *Make the Road by Walking, Inc. v. Turner*, 378 F.3d 133 (2d Cir. 2004) (upholding exclusion of advocacy organizations from waiting room of welfare office where advocates could disrupt government business and disturb clients); *United States v. Bader*, 698 F.2d 553, 555 (1st Cir. 1983) (explaining, in upholding the removal of protestors from a federal courthouse, that "the need to safeguard the normal functioning of public facilities is a 'substantial government interest' sufficient to warrant reasonable restrictions on 'pure speech,' let alone symbolic conduct").

This case is no different. Representative Cannon was arrested for knocking on a side door of the Governor's office loudly enough that the Governor was forced to cut short a press conference. She continued to do so despite multiple warnings from Capitol Police that she needed to stop. Under these circumstances, it was "eminently reasonable" for Capitol Police to remove her from the premises in order to prevent ongoing disruption. *See Gilbert,* 920 F.2d at 886. Plaintiffs do not even attempt to argue otherwise on appeal, nor could they. Cannon was no more entitled to cause a disruption at the Governor's office than she would be at any other workplace around the State.

## III. Georgia's free-speech clause provides no greater protection than the federal First Amendment.

Plaintiffs briefly argue that the Georgia Constitution "may provide greater protections than the First Amendment" in this context, and they suggest that the Court could analyze O.C.G.A. § 16-11-34.1 under the least-restrictive-means test this Court mentioned in *Statesboro Publishing Co. v. City of Sylvania*, 271 Ga. 92, 95 (1999). Br. at 25–26. But this Court has since "cast serious doubt on the provenance and validity of *Statesboro Publishing* and its limited progeny." *Oasis Goodtime Emporium I, Inc. v. City of Doraville*, 297 Ga. 513, 523 n.12 (2015). And for good reason: the text and history of the Georgia free-speech provision show that its scope is no broader than its federal counterpart.

First, the text. The prohibitions in the First Amendment and Article I, Section I, Paragraph V of the Georgia Constitution are nearly identical. The First Amendment states that "Congress shall make no law … abridging the freedom of speech, or of the press," U.S. Const. amend. I. Paragraph V mirrors this language: "No law shall be passed to curtail or restrain the freedom of speech or of the press," Ga. Const. art. I, § I, ¶ V. The only difference in the prohibitions is the First Amendment's use of "abridge" and Paragraph V's use of "curtail" and "restrain." But these words were synonyms in the 1870s and remain so today. *See, e.g.*, *Abridge*, *American Dictionary of the English Language* (rev. ed. 1841) ("to make shorter" or "to lessen; to diminish"); *Abridge*, *Webster's Ninth New Collegiate Dictionary* (9th ed. 1983) ("to reduce in

scope; [d]iminish"); *Curtail, American Dictionary*, *supra* ("[t]o shorten" or "to abridge; to diminish"); *Curtail, Webster's, supra* ("to make less by or as if by cutting off or away some part"); *Restrain*; *American Dictionary, supra* ("[t]o hold back," "suppress," "hinder or repress," or "abridge"); *Restrain, Webster's, supra* ("to limit, restrict, or keep under control" or "to moderate or limit … full exercise of" or "to deprive of liberty").

Paragraph V's second sentence has no textual equivalent in the First Amendment, but that sentence *limits* the right. It states: "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, § I, ¶ V. This qualification is what makes "[t]he text of the Georgia Constitution's Speech Clause … quite different from the Speech Clause of the First Amendment." *Maxim Cabaret, Inc. v. City of Sandy Springs*, 304 Ga. 187, 196 (2018) (Peterson, J., concurring). This additional wording seems to authorize *more* government regulation of speech.

The history confirms that Georgia's Paragraph V is no broader than the federal First Amendment. The free-speech clause first appeared in the 1861 Constitution, and its phrasing—including its warning about being responsible for the abuse of that liberty—was common at the time. Ga. Const. of 1861, art. 1, ¶ VIII. Indeed, twenty-four states had constitutions with similar provisions by 1861 and thirty-one states had similar provisions by 1877 when Georgia ratified

its first post-Reconstruction Constitution. *See generally Ex parte Tucci*, 859 S.W.2d 1, 37–58 (Tex. 1993) (Phillips, C.J., concurring) (Compendium of State Free Speech Clauses). There is no historical indication that any of these states used similar or identical words to somehow *differentiate* their protections. If anything, it was widely understood that the States' authority to regulate speech *exceeded* the federal government's. *Id.* at 21.

The text of Georgia's constitutional speech protection remained largely unchanged between 1877 and the lead-up to its 1983 Constitution. *Id.* at 42–43. During this time frame the United States Supreme Court applied the First Amendment to the states, *see Gitlow v. New York*, 268 U.S. 652 (1925), and greatly expanded the First Amendment's reach, *see, e.g.*, *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 n.3 (1942) ("The protection of the First Amendment, mirrored in the Fourteenth, is not limited to the Blackstonian idea that freedom of the press means only freedom from restraint prior to publication.").

Despite that federal expansion, before the 1983 Constitution was ratified, this Court expressly stated that the First Amendment's "analytical framework, which is well settled in the federal courts, is equally applicable to the Georgia free speech clause." *Paramount Pictures Corp. v. Busbee*, 250 Ga. 252, 255 n.5 (1982). Far from unsettling this settled understanding, the 1983 Constitution kept the text the same except that it changed the phrase from "liberty of speech" to "freedom of speech," thus more closely *mirroring* the federal First

Amendment. Ga. Const. of 1976, art. 1, § 1, ¶ IV; Ga. Const. art. I, § I, ¶ V.

In any event, the Court need not reach this question here because it would not impact the outcome. Even assuming *Statesboro Publishing* were somehow good law, it does not apply here. That test "applies only to laws that directly regulate the time, place, and manner of protected expression (such as the ordinance in that case, which prohibited the distribution of free printed material in driveways and yards), as opposed to regulations that have only an incidental effect on protected speech." *Oasis,* 297 Ga. at 523 n.12. Section 16-11-34.1 falls squarely in the latter category: it regulates any conduct that disrupts the business of the General Assembly and impacts speech only incidentally.

The Court should affirm.

## CONCLUSION

For the reasons set out above, the Court should affirm the ruling of the Fulton County Superior Court.

Respectfully submitted.

*This submission does not exceed the word count limit imposed by Rule 20.*

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## CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2024, I served this brief via email, per prior agreement of the parties, addressed as follows:

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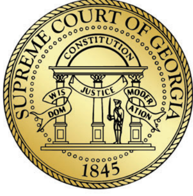


SUPREME COURT OF GEORGIA
Case No. S24A0591

February 21, 2024

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

NIKEMA WILLIAMS, CONGRESSWOMAN et al. v. COLIN POWELL et al.

Your request for an extension of time to file the brief of appellee in the above case is granted until March 15, 2024.

A copy of this order **MUST** be attached as an exhibit to the document for which the appellee received this extension.

**SUPREME COURT OF THE STATE OF GEORGIA**
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

[signature], Clerk