

Supreme Court, U.S.
FILED

DEC 15 2025

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No. 25- **832**

IN THE
Supreme Court of the United States

BONNIE MICHELLE SMITH,
Petitioner,

v.

SHIRLEY SMITH,
Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Georgia

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- 1) Does judicial activism violate the separation of powers?
- 2) Can the Court act as a super legislature that imposes its own policy preferences rather than the plain meaning of the rule of law as written?

LIST OF PARTIES

The parties in the proceeding are listed in the caption.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner discloses the following: there is no parent or publicly held company associated with this case.

RELATED PROCEEDINGS

Bankruptcy case, Shirley Ray Smith, Debtor, In the United States Bankruptcy Court, Middle District of Georgia, Case No. 23-11071-JTL

Will probate petition, Sumter County Probate Court; Estate of James A. Smith, Jr., Deceased; Case # P2023-4700. Bankruptcy Court

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TABLE OF AUTHORITIES

Cases

<i>Savannah Cemetery Group v. Depue-Wilbert Vault Co,</i> 307 Ga.App. 206, 704 S.E.2d 858, 2010 Daily Journal D.A.R. 3933.....	5
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Statutes

28 U.S.C. § 1254 (1).....	1
OCGA § 5-6-35(a)(1).....	1, 3

OPINION BELOW

The opinion of the Court of Appeals is unpublished, but available at the Georgia Court of Appeals at A25A1009, and at App 1. The Georgia Supreme Court denied the petition for certiorari, and the reconsideration of said denial on September 16, 2025.

JURISDICTION

The judgment of the Court of Appeals was entered on March 7, 2025. The Georgia Supreme Court denied the petition for review. Reconsideration was denied on September 16, 2025. The petition was timely filed within 90 days after judgment. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 7, United States Constitution
Article III, United States Constitution
OCGA § 5-6-35(a)(1), Georgia

STATEMENT OF THE CASE

Bonnie Michelle Smith petitioned to the Probate Court of Sumter County in Americus, Georgia for the right to bury her father, Vietnam War Veteran, James A. Smith, Jr. The controversy arose after the new wife, Shirley Smith denied Fairhaven Funeral Home to pick up the remains of James A.

Smith, Jr. Fairhaven Funeral Home had the preneed funeral arrangements of James A. Smith, Jr.

The funeral arrangements were made prior to Smith's death. James A. Smith Jr.'s medical power of attorney executed in 2005, designating his daughter, Bonnie Michelle Smith, medical power of attorney for healthcare that included the right to his remains after death.

The Probate Court and Superior Court both denied the daughter's petition, in short, because Georgia Courts favor policy decisions in favor of the spouse, over the adult children. "We always grant the body to the wife," said the Court.

At the time of the appeal, Georgia had a new petition for review procedure called a petition for review. The plain letter of the new law specifically stated that appeals from probate courts would vest in the Georgia Court of Appeals.

The appeal was sent to the Court of Appeals. The Court of Appeals accepted the appeal. Both sides fully briefed the issues of who was entitled to the body of James A. Smith, Jr. to the Court. Thereafter, the Court in a form of judicial dictatorship and judicial activism, sua sponte, on its own initiative, dismissed the appeal on an alleged technical ground that no side had previously brought up, in a total sham effort to grant custody of James A. Smith, Jr.'s body to his new wife.

To make matters more egregious, on the exact same day that the motion for reconsideration was filed with the Court, the wife, Shirley Smith, buried the body of James A. Smith Jr. without telling the children of the burial of their father. In total violation of the law and contrary to James A. Smith, Jr.'s

wishes, the children were not told or allowed at the burial of their father.

REASONS FOR GRANTING THE PETITION

Policy considerations should not be placed above the plain meaning of the law or the law as it is written. Personal preferences should not undermine the rule of law. When the Court encroaches on the law, "as written," substituting and advocating for its own policy preference, this amounts to judicial activism.

It is patently unfair to bend the text of the law to comport with the moral opinion of the "wife always gets the body." The rule of law must be based on impartiality and what is of record. Under OCGA §5-6-35 (a) (1) "Appeals from decision of the superior courts reviewing decisions of the State Board of Worker's Compensation, the State Board of Education, auditors, state and local administrative agencies, and lower courts by petition for review, however, that this provision *shall not apply* to decisions of the Public Service Commission and *probate courts* and to cases involving ad valorem taxes and condemnations." OCGA §5-6-35 (a) (1) Specifically, probate court petitions for review are excluded for requiring an application for appeal. The statute does not say, "Article VI Probate Courts."

The certified case record had been sent to the Court of Appeals from the Superior Court. The initial Appellant's brief and the Respondent's response brief had also been filed. Prior to the submission of the Appellant's reply brief, the Court sua sponte dismissed the appeal on the basis of jurisdiction. No

party had asserted jurisdiction as a defect and had waived all such arguments.

Yet because of the judicial activism of the Court, a sweeping dismissal was done on March 7, 2025 due to a moral compass that pointed to the wife having the right to the disposition of the remains versus what the law said in that regard.

What's worse, is the blasé attitude of the Respondent in completely circumventing the rule of law and then burying the body while the appeal was not yet complete and in secret. On March 14, 2025 on the date the motion for reconsideration was filed in the Georgia Appeals Court, just seven days after the Clerk sua sponte dismissed the petition on March 7, 2025, Petitioner's father was buried without her knowledge and without final order of the Court. She and her brother had to callously learn about the burial of their father's body at the end of the day, after it was over, through a third party.

Petitioner and her brother had to run through the cemetery looking for a freshly buried grave at Andersonville National Cemetery before closing time on March 14, 2025 to find their father's burial site. No one had called them. No one had told them. The order was not even final by operation of law for filing an appeal or reconsideration.

The new petition for review rules clearly included all probate courts. The case should have been decided on its merits before the Appeals Court. Yet in a sweeping stroke of judicial activism, the Court sua sponte dismissed the case to reach its own, cruel, morally aligned policy ends.

But for that dismissal, the case would have been decided in favor of the adult children and not the wife.

Overreaching by the dictatorship of the Court to reach the desired result for the wife was contrary to the law.

This case may seem like no one was hurt but two people: me and my brother. That isn't true. Yes, we were denied the right to be there for the burial of our father, a Marine, Vietnam War Veteran.

But this case is about more than us. Many people are hurt every day when Courts act as a super legislature and impose their own policy preferences rather than the plain meaning of the law as written. Judicial activism violates the separation of powers.

[I]n construing a legislative act, a court must first look to the literal meaning of the act. If the language is plain and does not lead to any absurd or impracticable consequences, the court simply construes it according to its terms and conducts no further inquiry." Moreover, statutory construction must square with common sense and reasoning. Also, the meaning of a statutory clause depends upon the intention with which it is used as manifested by its context and considered with reference to the subject matter to which it relates. And, statutes are to be construed in accordance with their real intent and meaning and not so strictly as to defeat the legislative purpose.

Savannah Cemetery Group v. Depue-Wilbert Vault Co, 307 Ga.App. 206, 704 S.E.2d 858, 2010 Daily Journal D.A.R. 3933.

If you do not like the law, you go to the legislature and change it. You can't end round the separation of powers and create policy that the

legislature could have written into the law. Our constitution was drafted with the premise that the three branches of government work independent from one another. No one branch is supposed to encroach upon another.

You can't super impose the result you want, even if you think two children do not have the right to carry out their father's last wishes. The sacrosanct of all wishes is how we handle the requests for the dead.

Don't refuse to take the case because I could dig up the body and bury Daddy again. That would be superimposing the belief that I should not do that. The Court cannot deny a right for fear I may exercise it.

Just because you can do something, doesn't mean you will. But the Court has no business taking away a right because I might. Judicial activism violates the separation of powers under the Constitution. The Court cannot and should not impose its own policy preference rather than the plain meaning of the law.

CONCLUSION

For all the foregoing reasons, Petitioner respectfully requests that the Supreme Court grant review of the matter.

Respectfully submitted,

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