IN THE SUPREME COURT
STATE OF GEORGIA

CASE NO. S16C0750

SIX FLAGS OVER GEORGIA II, L.P. and
SIX FLAGS OVER GEORGIA LLC,

Petitioners,

v.

JOSHUA MARTIN,

Respondent.

AMICUS CURIAE BRIEF OF THE GEORGIA DEFENSE LAWYERS ASSOCIATION

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AMICUS CURIAE BRIEF OF THE GEORGIA DEFENSE LAWYERS ASSOCIATION

COMES NOW the Georgia Defense Lawyers Association ("GDLA") and files this Brief as *amicus curiae* in the above-styled appeal, showing this honorable Court as follows:

I. INTRODUCTION AND STATEMENT OF INTEREST

The GDLA is an association of approximately 900 Georgia lawyers, including sole practitioners and members of law firms of all sizes, who engage in litigation, primarily for defendants in civil lawsuits. The GDLA is dedicated to, among other purposes, supporting and improving the civil defense bar, improving the adversary system of jurisprudence in our courts, eliminating court congestion and delay in litigation, and otherwise promoting improvements in the administration of justice.

The GDLA and its members hope to ensure that basic principles of premises liability are clearly defined and uniformly applied. Property owners, occupiers, and proprietors throughout the state should be held liable when they knowingly subject invitees to hazards on the premises. Owners and occupiers of property and business operators in Georgia are entitled to know precisely what constitutes an "approach" to their property under the law. All persons and business are entitled to know the precise circumstances under which an owner or occupier of property may be subjected to liability and the potential of a large jury verdict for a criminal act committed by third parties on someone else's property.

Furthermore, all owners and occupiers of property within Georgia should be subject to the same definition of "approach" and the same related duty under O.C.G.A. § 51-3-1. The duty that applies to owners of large parcels of property must be same as applies to owners of small parcels. The duty of owners and occupiers to keep premises safe should not be unreasonably expanded by redefining a property's "approaches" to allow property owners and occupiers to be held liable for intentional, criminal acts committed by third parties on someone else's property, based on the size of the property or the revenue presumably derived by its owner.

As is true in the great majority of cases in this Court, the outcome of this case has broad implications. Through its decision in this case, the Court of

Appeals has fundamentally redefined "approach" to include property that is not owned by a defendant, is not managed or operated by the defendant, and is not contiguous to the defendant's property. The Court of Appeals' decision in this case disregards precedent and establishes a separate rule for some businesses and properties. The precise bounds of the new rule announced by the Court of Appeals are unclear and, frankly, the Court of Appeals' decision offers little guidance for the trial courts as the new rule is amorphous and malleable. The extent and nature of tort liability imposed on property owners and occupiers must be consistent, fair, reasonable, and predictable—not just with respect to the types of acts or omissions that will result in such liability but also as to the specific location of the incident.

Quite simply, the holding of the Court of Appeals in this case extends the definition of an "approach," literally and metaphorically, to places it has never been before. No prior Georgia appellate case supports, let alone demands, the result below in this case. Most importantly, defining the bus stop at issue in this case to be an "approach" to Six Flags' amusement park is a significant departure from the definition of "approach" set forth by this Court more than 20 years ago. This Court should reverse the decision below and reaffirm that an "approach" to a property must be "directly contiguous, adjacent to, and touching" the premises and "within the last few steps taken by invitees" prior to entering the premises.

II. ARGUMENT AND CITATION OF AUTHORITY

This case arises from an incident outside but in the vicinity of an amusement park owned and operated by the defendants/appellants (collectively referred to as "Six Flags"). Plaintiff/appellee Martin was assaulted without apparent provocation by several individuals at a Cobb County Transit bus stop some 200 feet beyond Six Flags' property.[1] Prior to trial, the trial court incorrectly interpreted the word "approaches" in O.C.G.A. § 51-3-1 as allowing a jury to determine that a property owner or occupier has a duty to prevent third-party intentional, criminal acts at a bus stop about 200 feet away from the Six Flags amusement park. The trial court then refused to apply the plain language of O.C.G.A. § 51-12-33 and, instead, precluded the jury from considering the fault of the nonparty criminal perpetrators in rendering its verdict.

The result was a large verdict returned against Six Flags, from which Six Flags appealed. On appeal, the Court of Appeals affirmed the trial court's interpretation of "approaches" but reversed and remanded for a new trial due to the trial court's inexplicable failure to apply the nonparty apportionment procedure mandated by O.C.G.A. § 51-12-33. Six Flags and Martin both petitioned this Court for *certiorari* as to the Court of Appeals' decision. One of the primary issues raised by Six Flags on appeal to this Court is the Court of

[1] R-1503, 4584; T-804, 815, 861, 976; *Six Flags Over Ga., L.P. v. Martin*, 335 Ga. App. 350, 370 (2015) (Andrews, P.J., dissenting).

Appeals' determination that the bus stop constituted an "approach" as to which Six Flags had a duty to prevent apparently unprovoked criminal acts by third parties.

On September 6, 2016, this Court granted *certiorari* in this case. In doing so, the Court stated that it was interested only in the following issue:

> Did the Court of Appeals err in determining in Division 1 that the jury was authorized to find petitioner liable for damages resulting from respondent's injuries?

The unfairness and confusion that will result from the Court of Appeals' decision in this case is manifest in the verdict below, and it is also likely to be repeated unless this Court intervenes. Because the definition of an "approach" to Six Flags' property in this case is at odds with common sense, fairness, and prior precedent, this Court should reverse the Court of Appeals' decision in that respect.

A. <u>This is a premises liability case, and the chief issue here is whether the CCT bus stop where Martin was attacked is an "approach" to Six Flags' amusement park within the meaning of O.C.G.A. § 51-3-1</u>.

In the parties' briefs to this Court, there is discussion and argument regarding whether the criminal perpetrators were Six Flags employees. Martin apparently used that argument to great effect at the trial of this case; but it has absolutely no relevance to the questions of whether Martin was an invitee to Six

Flags' amusement park at the time of the attack and whether the location where he was attacked was an "approach" to Six Flags' property under O.C.G.A. § 51-3-1. Even if it could be argued that Six Flags had superior knowledge of an alleged hazard due to the involvement of one or more of its employees, that would, of course, not change the definition of "approach" under the law. Plaintiff failed to present a *respondeat superior* argument to the jury in the case below, and he cannot rely on such an argument now to support the verdict on his premises liability claim.

Likewise, the question is not, as Martin tries to convince this Court, whether Six Flags could be held liable if the assault had occurred on Six Flags' property or whether Martin's attackers first saw or made contact with him at the amusement park. Martin even goes so far as to contend that Six Flags could properly be held liable in this case under O.C.G.A. § 51-3-1, "regardless of where [Martin] was attacked **and even assuming [Martin] did not suffer his injuries on any approach**."[2] In support of that argument, Martin cites a single Court of Appeals decision, *Wilks v. Piggly Wiggly Southern, Inc.*, 207 Ga. App. 842 (1993).[3]

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[2] Appellee's Brief, § B.2., at 20-21.

[3] Notably, the Court of Appeals and one federal court have noted that *Wilks* turned on a single, defining fact, "the defendant store in Wilks knowingly permitted the attackers to loiter on its premises, lying in wait for their victims." *Padgett v. Kmart Corp.*, No. CV 315-48, 2016 U.S. Dist. LEXIS 158036, at *18-19 (S.D. Ga. Nov. 15, 2016); *Hillcrest Foods v. Kiritsy*, 227 Ga. App. 554, 558

Both Martin's argument and the Court of Appeals' opinion in that lone decision seem to forget the word "premises" in "premises liability."

Pretermitting the problems such an argument would face on the matter of proximate cause, whether Martin and the criminal perpetrators first saw Martin on Six Flags' property or had an argument with him there cannot reasonably be considered in determining what amounts to an "approach" to the property. If that were permissible, the definition of "approach" would include the language, "or any other location to which an invitee may be followed from the defendant's property." An "approach" would then include anywhere the bus that Martin and his friends were waiting to board might eventually travel, as well as the bus itself while in transit, and even Martin's own home, should the criminal attackers have decided to follow him that far.[4] O.C.G.A. § 51-3-1 does not impose a duty on property owners to provide personal security to invitees to ensure they are not being followed off the premises.

The issue before the Court in this appeal is whether the evidence supported a verdict based on premises liability, which in this case depends on

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(1997)("We reversed the trial court's grant of the property owner's motion for summary judgment, however, because the property owner had allowed the attackers to loiter on his premises waiting for victims.").

[4] By its decision in this case, the Court of Appeals decision has effectively adopted the argument that the "entire route from home to the store was a part of [the plaintiff's] 'approach,' and argument that it expressly rejected in *Elmore of Embry Hills, Inc. v. Porcher*, 124 Ga. App. 418, 419 (1971).

whether the area where Martin was attacked constituted an "approach" to Six Flags' property. The question of what is an "approach" truly is a binary concept, and nothing about Martin's status, the identity of his assailants, or the lead-up to the assault impacts that determination.

To be clear, regardless of whatever else may have been decided by the Court of Appeals in the case below, the language in the Court of Appeals' opinion regarding what amounts to an "approach" to property warrants special attention from this Court. The GDLA respectfully urges this Court to revisit and correct the lower court's improper interpretation and redefinition of "approach" for purposes of premises liability under O.C.G.A. § 51-3-1.

Indeed, Martin's arguments in this case, and the Court of Appeals' holding, continues a trend of expanding the liability of property owners and occupiers for criminal acts of others, now even further expanding that liability to third-party criminal acts perpetrated *near* their property. All of this flies in the face of the long-standing pronouncement that a "landowner is not the insurer of an invitee's safety."[5] In this case, the trial court and the Court of Appeals held that a public bus stop on county-owned property not contiguous to Six Flags' property and used by persons not going to or from Six Flags' amusement park was an "approach" to the park under O.C.G.A. § 51-3-1. This case, thus, involves

[5] *Watson v. Citizens & S. Bank*, 103 Ga. App. 535, 536 (1961).

two fundamental questions of great importance to owners and occupiers of property throughout the state:

(1) At what point is the location where a plaintiff is injured **so far removed from a person's property**, whether by distance or some other objective measure, that it cannot be considered an "approach" to the property?

(2) What actions by a landowner or occupier will amount to **sufficient "exercise of dominion" over someone else's property** to render it an "approach" to the owner's/occupier's property?

As to both questions, the Court of Appeals' decision in this case continues a troubling trend of converting property owners and proprietors into absolute insurers of the safety of invitees and licensees. Though Georgia law does not require property owners and proprietors to take affirmative steps to search for and to eliminate all possible hazards on their premises, that is the duty now being argued by plaintiffs, permitted by trial judges, and applied by juries in many cases. The longstanding admonition by this Court that property owners and proprietors are not "insurers" of their invitees' safety has become hollow and meaningless as that is exactly the standard to which they are held in many cases.

This trend has been particularly striking in those case where a plaintiff seeks to hold a property owner or occupier liable for third-party crimes. In recent

years, plaintiffs have been increasingly successful in arguing that criminal assaults, rapes, and even murders are not the fault of the criminal perpetrators but, rather, are proximately caused by the failure of the unrelated owner or occupier of the premises to prevent the crimes from occurring. Although the criminal perpetrator is undisputedly criminally liable, civil responsibility is allocated to the premises owner because he has the ability to pay.

In this case, the imposition of such an incorrectly and unreasonably heightened and expanded duty imposed on Six Flags is reflected in the arguments made by Martin at the trial below, the trial judge's inexplicable refusal to follow clear Georgia law regarding apportionment of fault to nonparties, the ultimate verdict of the jury, and even the Court of Appeals' decision. Unlike most prior third-party criminal act premises liability cases, however, this case involves an assault that did not occur on the defendants' premises. In this case, setting aside the ingenious rationalizations put forth by Martin and the Court of Appeals' majority and cutting to the chase, the fact is that Six Flags was held liable for intentional, criminal acts committed by others on someone else's property. That is, the Court of Appeals imposed on Six Flags a

duty to protect Martin from a criminal act by third parties on property owned by Cobb County.[6]

With the Court of Appeals' decision in this case, the rapidly disappearing distinction between the duty "to keep the premises and approaches safe" and serving as an absolute insurer of invitees' safety has been carried off the proprietor's property and extended to essentially any area that persons might use to access or leave that property. Ignored by the Court of Appeals' decision in this case is this Court's explicit holding more than 20 years ago in *Motel Properties, Inc. v. Miller* that an "approach" consists typically of "the last few steps" taken by invitees as they enter the property.[7] With the decision below, there is essentially no logical limit to what may be considered an "approach" to property, particularly if the business is large or profitable enough.[8]

This Court must decide whether the law applies a different standard to property owners and businesses depending on their size or presumed revenue.

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[6] At times, Martin alleged that the assault occurred on premises owned by Lanier, which owned and operated adjacent parking lots. See, e.g., R-1503, 1976-77; T-976. In any event, it is undisputed that Six Flags did not own the CCT bus stop. T-504.

[7] 263 Ga. 484, 486 (2) (1993).

[8] See *Martin*, 335 Ga. App. at 359 (1) (expressly stating that the Court of Appeals applied a broader definition of "approach" to the Petitioners in this case because "unlike cases involving a single grocery store, restaurant, or motel, Six Flags is a 290-acre theme park with a high volume of patrons entering and exiting its premises (10,000 on a slow day)" (emphasis supplied)).

Does the definition of "approach" change where the defendant, rather than operating a large amusement park, instead is the proprietor of a small, family-owned retail store or a house of worship whose members regularly use the bus to attend religious services? Would the definition of "approach" have been different in this case if the attack had occurred at a county-owned bus stop several feet away from a small hardware store or church?

According to the Court of Appeals' opinion in this case, the answer to each of those questions is "yes." **And according to Martin, it does not even matter whether a plaintiff was attacked on the defendant's premises or approach, as long as he can somehow tie a sequence of events to his earlier presence on the defendant's property.** But that is not and has never been the meaning of O.C.G.A. § 51-3-1, and the Court should make clear the extent to which a property owner or proprietor is liable for the criminal acts of others on someone else's property. Certainly, the defendant's duty in a premises liability case should not vary because the business is large or its owner is presumed to have the ability to pay a large judgment. Perhaps even more importantly, though, this Court should disapprove *Wilks v. Piggly Wiggly* and reaffirm that premises liability is limited to the defendant's premises and approaches.

After all, by its own terms, O.C.G.A. § 51-3-1 limits a landowner's duty to invitees only to his "premises and approaches." These are not terms of art and

must be given their plain meaning. "It is well settled that where the language of a statute is plain and unambiguous, judicial construction is not only unnecessary but forbidden. In the absence of words of limitation, words in a statute should be given their ordinary and everyday meaning."[9] The term "approaches" cannot logically be said to have the plain and ordinary meaning assigned by the Court of Appeals in this case. "Courts may not rewrite the language of a statute in the guise of interpreting it in order to further what they deem to be a better policy than the one [the Legislature] wrote into the statute."[10] The Court of Appeals erred by rewriting the plain language of O.C.G.A. § 51-3-1 to include the attack in this case. Accordingly, the undersigned respectfully contend that this Court should reverse the lower courts' incorrect interpretation of the meaning of "approach" under O.C.G.A. § 51-3-1 in this case.[11]

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[9] *Norred v. Teaver*, 320 Ga. App. 508, 512 (2013) (quotations and citation omitted).

[10] *Norelus v. Denny's, Inc.*, 628 F.3d 1270, 1300-01 (11th Cir. 2010). See also *Artuz v. Bennett*, 531 U.S. 4, 10, 121 S. Ct. 361 (2000) ("Whatever merits these and other policy arguments may have, it is not the province of this Court to rewrite the statute to accommodate them.").

[11] In Case no. S16C0743, Martin contends that the Court of Appeals erred in reversing and remanding for a new trial due to the trial court's refusal to permit the jury to consider the fault of—and apportion fault to—nonparty criminal perpetrators who assaulted Martin. This was obvious error in light of the plain meaning and purpose of O.C.G.A. § 51-12-33 and this Court's decisions in *Couch v. Red Roof Inns, Inc.*, 291 Ga. 359 (1) (2012), *Zaldivar v. Prickett*, 297 Ga. 589 (1) (2015), and *Walker v. Tensor Machinery, Ltd.*, 298 Ga. 297 (2015). The error cannot be presumed harmless given the importance of the substantive right and the fact that placement of additional nonparties on the verdict form would have reduced

B. <u>The trial court and the Court of Appeals incorrectly held that a CCT bus stop could be deemed an "approach" for which Six Flags could be liable for the intentional, criminal acts of third parties</u>.

Premises liability in Georgia is rooted in the principle that an owner or occupier of land should not knowingly expose invitees to hazards on the property. "Where an owner or occupier of land, by express or implied invitation, induces or leads others to come upon his premises for any lawful purpose, he is liable in damages to such persons for injuries caused by his failure to exercise ordinary care in keeping the premises and approaches safe."[12] The owner or occupier is "not an insurer of the invitee's safety" but, instead, must "exercise ordinary care to protect the invitee from unreasonable risks of harm of which the owner/occupier has superior knowledge."[13] "The owner/occupier is not required to warrant the safety of all persons from all things, but to exercise the diligence toward making the premises safe that a good business person is accustomed to use in such matters."[14]

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the verdict in proportion to the nonparties' fault. This Court discussed and reaffirmed the absolute right and entitlement of defendants in tort cases to seek apportionment of fault to nonparties in great detail in *Zaldivar* and *Walker*.

[12] O.C.G.A. § 51-3-1.

[13] *Robinson v. Kroger Co.*, 268 Ga. 735, 740 (1) (1997), <u>citing</u> *Lau's Corp. v. Haskins*, 261 Ga. 491 (1) (1991).

[14] *Id.*, <u>citing</u> *Alterman Foods, Inc. v. Ligon*, 246 Ga. 620, 624 (1980).

Georgia's appellate courts have held that a third-party criminal act may be a "risk of harm" for which an owner or occupier of land may be liable, but only if the owner or occupier had superior knowledge that the criminal act would occur.[15] "[W]ithout foreseeability that a criminal act will occur, no duty on the part of the proprietor to exercise ordinary care to prevent that act arises."[16] Foreseeability of the criminal act may be shown through evidence that the owner or occupier had knowledge of prior "substantially similar" criminal acts.[17]

Although the applicable language of O.C.G.A. § 51-3-1 is quite old, this Court first defined the physical scope of "approaches," as used in O.C.G.A. § 51-3-1, in the 1993 case of *Motel Properties v. Miller*:

> We construe "approaches" to mean that property **directly contiguous, adjacent to, and touching** those entryways to premises under the control of an owner or occupier of land, through which the owner or occupier, by express or implied invitation, has induced or led others to come upon his premises for any lawful purpose, and through which such owner or occupier could foresee a reasonable invitee would find it necessary or convenient to traverse while entering or exiting in the course of the business for which the invitation was extended. By "contiguous, adjacent to, and touching," **we mean that property within the last few steps taken by invitees**, as opposed to "mere pedestrians," as they enter or exit the premises.[18]

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[15] *Days Inns of Am., Inc. v. Matt*, 265 Ga. 235, 235-36 (1995)

[16] *Id.*, citing *Lau's Corp.*, 261 Ga. at 493 (1).

[17] See *Doe v. Prudential-Bache/A.G. Spanos Realty Partners, L.P.*, 268 Ga. 604 (1997); *Sturbridge Partners, Ltd. v. Walker*, 267 Ga. 785 (1997).

[18] 263 Ga. 484, 486 (2) (1993) (internal citations omitted).

The Court specifically emphasized that "[i]t is only within the confines of this limited approach that [Georgia law] imposes a duty on a landowner to exercise ordinary care over property not within the landowner's control."[19]

The Court did identify an exception to the general definition of an "approach" for those circumstances where a "landowner extended the approach to his premises by some positive action on his part, such as constructing a sidewalk, ramp, or other direct approach."[20] But the Court also cautioned that "a landowner's positive exercise of dominion over a public way or another's property is necessary in order to avoid imposing upon invitors an unknowable and impossible burden for maintaining an undefined circumference of properties."[21] Furthermore, this Court was no doubt mindful of disincentivizing property owners from maintaining the areas around their properties.

The attack at issue in this case occurred at the Cobb County Transit bus stop, about 200 feet from Six Flags' property.[22] Prior to the attack, Martin and two friends had left Six Flags' amusement park and walked about 200 feet down

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[19] *Id.*

[20] *Id.* at 486 (3) (internal quotations omitted), quoting *Elmore of Embry Hills, Inc. v. Porcher*, 124 Ga. App. 418 (1971).

[21] *Id.* at 486 (3), n. 6.

[22] R—815, 819, 826, 975-76, 1438, 1503, 1583, 4584; Petitioners' Reply to Respondent's Opposition to Petition for Writ of *Certiorari* at 4-6.

a public street.[23] They then walked down another public street to a hotel (which was not owned or operated by Six Flags) to use the restroom.[24] Martin and his friends then walked back up a public street to the CCT bus stop to wait for the bus, at which time Martin was attacked.[25] Neither the bus stop itself nor the CCT bus line that served the bus stop was owned or operated by Six Flags, and the bus stop served businesses other than the amusement park.[26]

Nonetheless, Martin contends that Six Flags converted the CCT bus stop into an "approach" to Six Flags' amusement park. In particular, there was evidence at the trial below that Six Flags used barricades and signs to direct pedestrian and vehicular traffic along Six Flags Parkway adjacent to the bus stop; worked with Cobb County to cut grass and pick up trash to maintain the appearance of the road and adjacent public property; and sometimes had Six Flags' employees as well as Cobb County police officers direct traffic on roads leading to the amusement park.[27] Under existing Georgia precedent, however, none of those things amounts an assertion of dominion over anything, much less the non-contiguous CCT bus stop.

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[23] T—802-03, 861.

[24] *Id.*

[25] T—804, 815, 861, 976.

[26] T—504, 536-37, 803, 861.

[27] R—4541-73, 4584; *Martin*, 335 Ga. App. at 377 (Andrews, P.J., dissenting).

Making it easier or more aesthetically pleasing for invitees to use an existing road simply is not the same as building a sidewalk or similar means of access to a property. At most, this evidence could only render the road itself an "approach" to the amusement park; there remains a conceptual (and physical) distance from any assertion of dominion over the CCT bus stop itself, which would be required to render the bus stop an "approach" to the amusement park.

The types of "exceptions" identified by this Court in *Motel Properties* regarding when the physical extent of an "approach" may be expanded contemplate a situation in which a property owner has created a method for invitees to access his property or, at the very least, has redirected invitees from one potential entrance or approach to another. Under the Court of Appeals' decision in this case, a property owner, by taking any action at all with respect to noncontiguous property, will render it an "approach" for all potential hazards.

Nothing in the rationale or holding of *Motel Properties* supports imposing a duty on an owner or occupier to prevent third-party criminal acts at a bus stop some 200 feet away from the owner/occupier's property, nor would it be reasonable to do so. Indeed, the specific location alleged to be an "approach" to the defendant's property in *Motel Properties* is instructive here. In that case, the plaintiff fell on a patch of rip-rap while attempting to walk from the defendant's

motel to take a late-night walk on the beach.[28] The plaintiff reached the area by walking along a sidewalk that began at the motel's lobby and ran 200 feet toward the rip-rap.[29] The plaintiff then walked 27 feet more before falling and injuring himself.[30] The location where the plaintiff fell was approximately 196 feet from the edge of the property occupied by the defendant motel.[31]

Given those facts, this Court held that even assuming, without deciding, that the sidewalk constituted an "approach," the motel operator still could not be held liable for an injury occurring 27 feet away from the end of the sidewalk:

> No exception to the contiguous approach definition applies in this case because even assuming, arguendo, that the sidewalk past the motel's property constituted an extension of the approach to the motel, it is uncontroverted Miller's fall did not occur on the sidewalk but instead occurred on rocks some 27 feet past the end of the sidewalk at a location over which the motel exercised no positive control. **We reject the argument that the duty imposed on owners and occupiers of land by O.C.G.A. § 51-3-1 extends to what at best is an approach to an approach.**[32]

The language used by Justice Hunstein in *Motel Properties* reflects precisely what happened in this case—Six Flags has been subjected to liability for a

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[28] *Motel Props.*, 263 Ga. at 484-85 (1).

[29] *Id.* at 484 (1).

[30] *Id.*

[31] *Id.* at 486 (4).

[32] *Id.* at 487 (4). The fact that the area at issue in *Motel Properties* would only appear likely to be used as an exit from the defendant's property, rather than to enter it, is irrelevant since in both cases, the plaintiff was using the alleged "approach" to exit the defendant's premises. See *Id.* at 484 (1).

criminal act perpetrated by several third parties at a bus stop that "at best is an approach to an approach." Furthermore, the facts of this case cannot be what was contemplated by this Court when it used the phrase "a positive exercise of dominion over a public way or another's property" in *Motel Properties*. The majority opinion in that case stated that a landowner may increase the physical extent of an "approach" to his property by taking affirmative steps to create a way across someone else's property to allow invitees to access the landowner's property. That makes sense, since it would be unfair to allow a landowner to assert dominion over another's property for his own benefit while not imposing a corresponding duty on the landowner to persons he invites to use that area.

But there must be reasonable limits on the distance and scope to which such an assumed duty under O.C.G.A. § 51-3-1 can extend. This Court recognized those limits in *Motel Properties*, holding that the definition of "approaches" does depend at least in part on physical distance.[33] In this case, the Court of Appeals jettisoned that instruction, going far beyond any other holding to hold that an approach may be as far as 200 feet away.[34]

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[33] Cf. *Motel Props.*, 263 Ga. at 487 (Hunt, P.J., dissenting) (disagreeing that "distance is the, or even a, determinative factor in the resolution" of what is an "approach").

[34] See *Robinson v. Kroger Co.*, 284 Ga. App. 488 (2007) (affirming summary judgment for store owner where plaintiff fell in the parking lot at least 44 feet from sidewalk adjacent to store and 60 feet from door); *Food Lion, Inc. v. Isaac*, 261

The Court of Appeals also ignored its own precedent in reaching its decision in this case. In *Harris v. Inn of Lake City*, a pair of hotel guests fell into a tide pool after traversing a set of steps in walking from their hotel to the beach.[35] The Court of Appeals held that the steps, which were on county property, did not constitute an "approach" to the hotel's property even though the hotel's front desk staff directed the plaintiffs to take that route to the beach.[36] The Court of Appeals also has held at least twice, including one case involving a third-party criminal assault, that "an approach to a grocery store includes the sidewalk immediately in front of and adjacent to the premises, but it does not include the landlord owned and maintained parking lot adjacent to the sidewalk."[37]

In *Rischack v. City of Perry*,[38] another *en banc* Court of Appeals opinion, the plaintiff fell while crossing a city-owned strip of grass between the driveway of a

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Ga. App. 311, 312-313 (2003) (*en banc*) (affirming summary judgment for store owner where plaintiff fell at least 37 feet from entrance); *Rischack v. City of Perry*, 223 Ga. App. 856, 858 (1996) (*en banc*) (affirming summary judgment where plaintiff fell 40 feet from defendant's property); *Combs v. Atlanta Auto Auction, Inc.*, 287 Ga. App. 9, 16, 650 S.E.2d 709, 717 (2007) (holding that only last 30 to 45 feet of public road could be considered "approach"); *Motel Props.*, 263 Ga. 484 (reversing the denial of summary judgment where fall occurred 27 feet past the sidewalk leading to the defendant's property).

[35] 285 Ga. App. 521 (1) (2007).

[36] *Id.* at 522-23 (1).

[37] *Drayton v. Kroger Co.*, 297 Ga. App. 484, 485 (2009); *Food Lion, Inc. v. Isaac*, 261 Ga. App. 311, 313 (2003) (*en banc*).

[38] 223 Ga. App. 856, 856 (1996).

hotel and a public street where the plaintiff's car was parked. The Court of Appeals held that the public, city-owned property was not an "approach" to the hotel even though "the hotel voluntarily performed all routine aesthetic work such as mowing the grass and sweeping the sidewalk in the area where [the plaintiff] fell."[39] Expressly relying on *Motel Properties*, the Court of Appeals held that "because the undisputed evidence showed that the portion of the grass strip where [the plaintiff] fell was not contiguous and [was] more than a few steps from the hotel driveway, such property did not meet this definition of 'approach.'"[40] Since "[t]he [grass strip of] property where [the plaintiff] fell was not directly contiguous to the hotel property," it could not be deemed an "approach," despite the fact that the plaintiff "accessed the sidewalk by walking across the grass strip."[41] Otherwise, the court aptly noted, "any property crossed to access an approach would also be deemed part of the approach."[42] That, of course, would lead to the very problem this Court cautioned against in *Motel Properties*: "imposing upon invitors an unknowable and impossible burden for maintaining an undefined circumference of properties."[43]

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[39] *Id.* (emphasis supplied).

[40] *Id.* at 858 (1).

[41] *Id.* at 857 (1).

[42] *Id.*

[43] 263 Ga. at 486 (3), n. 6.

This case is analogous to *Rischak*, *Harris*, and *Drayton*, and the Court of Appeals should have reached a consistent holding in this case. More importantly, the Court of Appeals should have followed this Court's binding holding and sensible reasoning in *Motel Properties*. Instead, the Court of Appeals created a different rule for large amusement parks on what is an "approach" to property. The Court of Appeals' decision imposes an unknowable, indeterminate burden on property owners and occupiers and expands the meaning of "approach" to an unreasonable and undefinable extent. Furthermore, this Court should determine that the question of what amounts to an "approach" under the law does not change based on the type of crime, who owns the property, or the courts' perception of the owner's ability to pay. The Court of Appeals should have followed *Motel Properties*, *Rischak*, *Harris*, and *Drayton*, and this Court should reverse the Court of Appeals' decision below as to the meaning of "approach."

III. CONCLUSION

The trial court and the Court of Appeals erred in holding that a Cobb County Transit bus stop on a street leading to Six Flags' amusement park was an "approach" to the amusement park under O.C.G.A. § 51-3-1. In doing so, the lower courts ignored binding precedent from this Court and from the Court of Appeals. In addition to resulting in a large verdict against the defendants in this case, the Court of Appeals' decision already has begun to cause confusion

throughout the state regarding the definition of an "approach" to property. This Court should reaffirm its own prior decisions and those of the Court of Appeals as to what constitutes an approach and whether the answer differs based on the use of the property or the size or nature of any business on the property.

Respectfully submitted this 1st day of February, 2017.

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