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The Supreme Court today authorized today the parents of three Kent State University students killed by National Guardsmen in 1970 to sue a former Governor of Ohio and Guard officers for damages.

Reversing two lower courts that had held the state officials immune from such lawsuits, the Justices voted without dissent to uphold the right of the estates of the three students to a trial on the merits of charges that their civil rights had been violated in the campus demonstrations.

A total of \$11-million in damages is being sought on behalf of the three slain students and a half-dozen others who were injured when guardsmen opened fire during a protest rally touched off when the United States sent troops into Cambodia.

Chief Justice Warren E. Burger, writing for the Court, stressed repeatedly that the ruling did not determine whether any of the defendants might be liable but merely provided the students' parents what they had been denied before, a chance to prove their case in court.

"We intimate no evaluation whatever as to the merits of the petitioners' [parents] claims or as to whether it will be possible to support them by proof," Chief Justice Burger said. "We hold only that, on the allegations of their respective complaints, they were entitled to have them judicially resolved."

The high court rejected the conclusions of lower courts that the action violated the constitutional ban on suing a state, and that state officials were immune from damage suits for discretionary acts within the scope of their executive authority.

The vote on the two cases (No. 72,914 Scheuer v. Rhodes and No. 72-1318, Krause v. Rhodes) was 8 to 0, with Associate Justice William O. Douglas not participating in the decision.

Justice Douglas, who heard arguments in the case last December, withdrew because a relative of one of the students killed at Kent State later visited him and held him "a heart-

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ending story," according to

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Barrett McGurn, the Court's public information officer.

Justice Douglas makes a practice of not voting on a case if someone with an interest in the result approaches him before the final decision, Mr. McGurn said.

Named as defendants in the suits that the Supreme Court revived today were the following men (the titles given are those they held in May, 1970): Gov. James A. Rhodes, Adj. Gen. Sylvester Del Corso of the Ohio National Guard, Assistant Adj. Gen. Robert Canterbury, Ma. Harry D. Jones, Capt. John E. Martin and Capt. Raymond J. Srp, all of the National Guard, and Robert I. White, president of Kent State University.

The suits are also directed at unnamed and unknown officers and enlisted men of the National Guard, whose identity would presumably be established at the trial.

Mrs. Martin Scheuer, the mother of one of the slain students, told The Associated Press that she was "very pleased that we're finally getting something done." Mrs. Bernard Miller, the mother of another slain student, said in a statement issued through her attorney, "We're delighted that the Supreme Court has proved once again that our system of justice, while not perfect, is very alive and well."

Mr. Del Corso said that he was "not worried, but I'm not elated."

"We were all agents of the State of Ohio," he said. "We did not act as individuals."

Chief Justice Burger said it was well established that the constitutional prohibition against using a state "provides no shield for a state official confronted by a claim that he has deprived another of a Federal right under the color of state law."

In this case, the Chief Justice continued, the Kent State parents were not suing Ohio but "seeking to impose individual and personal liability on the named defendants" for a violation of the Federal civil rights laws that resulted in the students' deaths.

Chief Justice Burger concluded that state officials do not enjoy absolute immunity from lawsuits for their acts but only a qualified immunity "dependent upon the scope of discre-

tion and responsibilities of the office and all the circumstances as they reasonably appeared at the time."

Federal civil rights guarantees, he said, "would be drained of meaning were we to hold that the acts of a Governor or other high executive officer has 'the quality of supreme and unchangeable edict, overriding all conflicting rights of property and unreviewable'" by the Federal courts.

Chief Justice Burger said that the Supreme Court was unable to explore the issue of the scope of immunity for state officials because no record of evidence had been accumulated in the lower courts.

A Federal District Court dismissed the suit by the parents of Allison Krause, Jeffrey G. Miller and Sandra Scheuer before Governor Rhodes or any of the other defendants had filed an answer, on the ground that the court lacked jurisdiction because of the constitutional ban on suing a state.

The United States Court of Appeals for the Sixth Circuit affirmed that ruling, supplementing the constitutional objection with a finding that the state officials from the Governor on down enjoyed absolute immunity from civil suit.

The two lower courts, Chief Justice Burger said, "erroneously accepted as a fact the good faith of the Governor and took judicial notice that a mob rule existed at Kent State University."

"There was no opportunity afforded petitioners to contest the facts assumed in that conclusion," he added.

"There was no evidence before the court," Chief Justice Burger continued, "from which such a finding of good faith could be properly made and, in the circumstances of these cases, such a dispositive conclusion could not be judicially noticed. We can readily grant that declaration of emergency by the chief executive of a state is entitled to great weight, but it is not conclusive."

The Chief Justice concluded that the Kent State parents had properly raised a number of issues that should now be decided by a trial court, among them the following:

¶ Whether Governor Rhodes and his subordinates directing the National Guard "were acting within the scope of their duties" at the time of the campus shootings under the Ohio constitution and state law.

¶ Whether the same officials "acted within the range of discretion permitted the holders of such office under Ohio law."

¶ Whether they "acted in good faith in proclaiming an emergency and as to the actions taken to cope with the emer-

gency so declared."

¶ Whether lower officers and enlisted guardsmen "acted in good faith obedience to the order of their superiors."