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SB 77 - Protection for Monuments

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STATE GOVERNMENT

State Flag, Seal, and Other Symbols: Amend Section 1 of Chapter 3 of Title 50 of the Official Code of Georgia Annotated, Relating to State Flag, Seal, and Other Symbols, so as to Provide Additional Protections for Government Statues, Monuments, Plaques, Banners, and Other Commemorative Symbols; Provide Definitions; Provide for Related Matters; Provide an Effective Date; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. § 50-3-1 (amended)
BILL NUMBER:	SB 77
ACT NUMBER:	57
GEORGIA LAWS:	2019 Ga. Laws 57
SUMMARY:	The Act prohibits persons and entities from destroying, concealing, or relocating any publicly or privately owned monument. Monuments may only be relocated when necessary for construction, expansion, or alteration to a site of equal prominence within the same municipality. Violators of this legislation are subject to treble the amount of the cost to repair or replace such monument, exemplary damages, attorney’s fees, court costs, and being charged with a misdemeanor.
EFFECTIVE DATE:	April 26, 2019

History

“Several recent years ago,” a cemetery in Chickamauga, Georgia was vandalized.¹ Several monuments and gravestones were

1. Video Recording of Senate Floor Debate at 36 min., 57 sec. (Mar. 5, 2019) (remarks by Sen. Jeff Mullis (R-53rd)), <https://livestream.com/accounts/26021522/events/7940809/videos/188321940> [hereinafter Senate Floor Debate]; see *Lawmakers 2019* (GPTV broadcast Mar. 19, 2019) (remarks by Sen. Jeff Mullis (R-53rd)) (on file with the Georgia State University Law Review) [hereinafter *Lawmakers*].

destroyed, much to the chagrin of Chickamauga residents.² Chickamauga native, Senator Jeff Mullis (R-53rd), after hearing about the incident from his city manager, made it his mission to spearhead a movement dedicated to resolving these types of incidents.³ His opposition to the event came in the form of Senate Bill (SB) 77.⁴

SB 77 prevented the removal, concealment, and destruction of monuments.⁵ Before this bill's introduction, Georgia law protected all military monuments and memorials from being removed, desecrated, or destroyed.⁶ Senator Mullis, however, wanted to expand upon this law by amending Code section 50-3-1 to include all monuments, public and private.⁷ At the time of the Chickamauga cemetery's destruction—and until the enactment of SB 77—Georgia's statute limited protected monuments to the following:

[A]ny publicly owned monument, plaque, marker, or memorial which is dedicated to, honors, or recounts the military service of any past or present military personnel of this state, the United States of America or the several states thereof, or the Confederate States of America or the several states thereof.⁸

Essentially, the purpose of SB 77 was to broaden this statute and create a harsher punishment to deter the destruction of monuments.⁹

Proponents of this bill insisted that its essential purpose was to preserve history, “good, bad[,] or indifferen[t].”¹⁰ They contended the bill was needed to protect all monuments, despite their offensiveness and the “terrible” historic notions associated with them, because history ought to be preserved at all costs—not

2. *Lawmakers*, *supra* note 1 (remarks by Sen. Jeff Mullis (R-53rd)).

3. *Id.*

4. *Id.*

5. *See* SB 77, as introduced, 2019 Ga. Gen. Assemb.

6. O.C.G.A. § 50-3-1(b)(1)(B) (2013 & Supp. 2019)

7. *Lawmakers*, *supra* note 1.

8. O.C.G.A. § 50-3-1(b)(1)(C)(2) (Supp. 2019).

9. Senate Floor Debate, *supra* note 1.

10. Video Recording of Senate Government Oversight Committee Meeting at 8 min., 10 sec. (Feb. 14, 2019) (remarks by Sen. Jeff Mullis (R-53rd)), <https://livestream.com/accounts/26021522/events/8751687/videos/194243379>.

concealed, removed, or destroyed.¹¹ Opponents of the bill reject the assertion that the bill is not centered on protecting Confederate monuments in particular.¹² They contend that SB 77 was a direct attempt to stunt House Bill 426, Georgia's first hate crime bill, and a response to 2018 Georgia gubernatorial candidate Stacey Abrams's initiative to remove the Confederate monuments.¹³ Additionally, opponents believed the legislation was introduced to pander to citizens who will keep SB 77 supporters in office.¹⁴ The proponents' direct response to those who say the bill perpetuates hate is that the bill is supposed to be about "inclusion, diversity, [and] tolerance."¹⁵ Bill supporters consider destroying a monument a "hate crime in itself," reasoning the destruction is an obstruction of First Amendment rights and "leads . . . to more crimes."¹⁶ Opponents would seemingly find this response laughable because they feel the legislation's true intent is to intimidate people.¹⁷

Proponents of SB 77 also insisted that the preservation of monuments is important because they account for some of the economic gain in Georgia.¹⁸ Representative Alan Powell (R-32nd) asserted that 13 million Georgia tourists specifically visit to enjoy the monuments and memorials, thereby boosting the state's economy—especially in Savannah, Georgia.¹⁹ He thereafter established that there were no studies or comparative analyses confirming the monuments contributed to any economic impact in Georgia.²⁰

In March 2019, members and supporters of Beacon Hill Black Alliance for Human Rights gathered in downtown Decatur and at Decatur High School to discuss SB 77.²¹ Their main purpose and

11. Video Recording of House Floor Debate at 1 hr., 38 min., 50 sec. (Mar. 28, 2019) (remarks by Rep. Sharon Cooper (R-43rd)), <https://www.youtube.com/watch?v=X9PVw5FPVOM> [hereinafter House Floor Debate].

12. *Id.*

13. *Lawmakers*, *supra* note 1.

14. Electronic Mail Interview with Rep. Jasmine Clark (D-108th) (May 24, 2019) (on file with the Georgia State University Law Review) [hereinafter Clark Interview].

15. House Floor Debate, *supra* note 11.

16. *Id.*

17. Clark Interview, *supra* note 14; *see also* *Lawmakers*, *supra* note 1.

18. House Floor Debate, *supra* note 11.

19. *Id.*

20. *Id.*

21. Taylor Robins, *Students Rally Against Confederate Monuments*, CHAMPION NEWSPAPER (Mar. 8, 2019), <http://thechampionnewspaper.com/news/local/students-rally-against-confederate-monuments/>

goal was to pressure legislators to vote against SB 77 and inform SB 77 advocates that their views on the Confederacy and the Confederate monuments were offensive.²² Additionally, high school students wanted to express their displeasure of having to soon pay taxes to maintain monuments that depict hate and hate crimes against their ancestors.²³ The group met at the Capitol and discussed the bill with Representatives Erica Thomas (D-39th) and Renitta Shannon (D-84th), two members of the Democratic Caucus and opponents of SB 77.²⁴ However, their efforts were unsuccessful.²⁵ Bills like SB 77 have been introduced before and are considered “redundant” in the General Assembly.²⁶ SB 77 has proven itself, unlike the others, not to be a failure.

Bill Tracking of SB 77

Consideration and Passage by the Senate

SB 77 was introduced by Senators Jeff Mullis (R-53rd), Steve Gooch (R-51st), Butch Miller (R-49th), Mike Dugan (R-30th), and Burt Jones (R-25th).²⁷ The Senate read the bill for the first time on February 8, 2019, and committed the bill to the Government Oversight Committee.²⁸ The Government Oversight Committee’s substitute included the majority of the introduced bill’s text, merely changing the text of a few subsections.²⁹ The Government Oversight Committee favorably reported the bill by substitute on March 1, 2019.³⁰ On March 4, 2019, the Senate read the bill for the second time.³¹ The Senate read the bill for a third time on March 5, 2019,

[<https://perma.cc/MN8T-5QXX>].

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Lawmakers*, *supra* note 1.

27. SB 77, as introduced, 2019 Ga. Gen. Assemb.

28. State of Georgia Final Composite Status Sheet, SB 77, May 22, 2019.

29. SB 77 (SCS), 2019 Ga. Gen. Assemb.

30. *Id.*

31. *Id.*

and it adopted and passed the committee substitute by a vote of 34 to 17.³²

Consideration and Passage by the House

Representative Powell sponsored SB 77 in the House.³³ The House read the bill for the first time on March 7, 2019, and committed it to the Governmental Affairs Committee.³⁴ The House read the bill for the second time on March 8, 2019.³⁵ The Committee added “civil rights” monuments to the bill in an effort to make the bill all-inclusive.³⁶ On March 14, 2019, the Governmental Affairs Committee favorably reported the bill by substitute.³⁷ On March 28, 2019, the House read the bill for a third time, and it adopted and passed the substitute by a vote of 100 to 71.³⁸ The Senate agreed to the House’s version of the bill, as amended, on March 29, 2019, by a vote of 33 to 17.³⁹ The Senate sent the bill to Governor Brian Kemp (R) on April 9, 2019.⁴⁰ The Governor signed the bill into law on April 26, 2019, and the bill became effective on April 26, 2019.⁴¹

The Act

The Act amends Title 50 of the Official Code of Georgia Annotated to provide additional protection for monuments.⁴² Section 1 of the Act amends subsection (b) of Code section 50-3-1.⁴³ Section

32. Georgia Senate Voting Record, SB 77, #119 (Mar. 5, 2019).

33. *Id.*

34. *Id.*

35. *Id.*

36. Video Recording of House Governmental Affairs Committee Meeting at 42 min., 52 sec. (Mar. 13, 2019) (remarks by Former Rep. Ed Rynders (R-152nd)), <https://www.youtube.com/watch?v=cY1Yjnae2rc> [hereinafter House Governmental Affairs Committee Meeting].

37. *Id.*

38. Georgia House of Representatives Voting Record, SB 77, #321 (Mar. 28, 2019); House Governmental Affairs Committee Meeting, *supra*, note 36.

39. Georgia Senate Voting Record, SB 77, #350 (Mar. 29, 2019).

40. State of Georgia Final Composite Status Sheet, SB 77, May 22, 2019.

41. *Id.*

42. 2019 Ga. Laws 57.

43. 2019 Ga. Laws 57, § 1, at 268–70.

2 states that the Act becomes effective immediately.⁴⁴ Section 3 repeals all prior law found to be in conflict with the Act.⁴⁵

Paragraph (b)(1) provides a separate section defining the terms “agency,” “monument,” and “officer” as used in subsection (b).⁴⁶ Agency is notably broad in scope, going so far as to specifically include local boards of education and the University System of Georgia.⁴⁷ Monument is also broadly defined to include plaques, markers, flags, banners, and even structure names that were constructed “with the intent of being perpetually maintained.”⁴⁸ Monuments must be dedicated to historical “military, religious, civil, civil rights, political, social, or cultural events” or entities, including the military service of Georgia, the United States, and the Confederate States.⁴⁹

Paragraphs (b)(2) and (3) prohibit the destruction, defacement, relocation, and concealment of publicly-owned monuments by anyone.⁵⁰ Paragraph (b)(4) provides that anyone who violates these provisions, even by losing a monument, is liable for treble damages, legal costs, and potentially exemplary damages.⁵¹ The monument in question must be repaired or replaced after damages have been collected from the party in violation.⁵² Paragraph (b)(5) creates a cause of action for “a public entity owning a monument or any person, group, or legal entity” to recover damages, with the suit to be filed in superior court in the county where the monument is located.

Paragraph (b)(6) prohibits the destruction, defacement, relocation, and concealment of privately-owned monuments without authority.⁵³ However, this provision does not apply to persons storing privately-owned monuments; they are still allowed to maintain the stored monuments out of sight and to relocate them when they no longer require storing.⁵⁴ Finally, paragraph (b)(7) provides an

44. 2019 Ga. Laws 57, § 2, at 270.

45. 2019 Ga. Laws 57, § 3, at 270.

46. O.C.G.A. § 50-3-1(b)(1) (Supp. 2019).

47. *Id.* § 50-3-1(b)(1)(A).

48. *Id.* § 50-3-1(b)(1)(B).

49. *Id.* § 50-3-1(b)(1)(B)(i)(ii).

50. *Id.* § 50-3-1(b)(2)–(3).

51. *Id.* § 50-3-1(b)(4).

52. O.C.G.A. § 50-3-1(b)(4) (Supp. 2019).

53. *Id.* § 50-3-1(b)(6).

54. *Id.*

exception for the relocation of both public and private monuments when necessary for construction projects, provided the monument is relocated to a “site of similar prominence, honor, visibility, and access” in the county.⁵⁵ However, a monument may not be relocated to museums, cemeteries, or mausoleums unless the monument was in such a location originally.⁵⁶

Analysis

Constitutional Concern: Does SB 77 Violate the Home Rule Clause?

This Act may run afoul of the Georgia Constitution’s home rule clause.⁵⁷ The home rule clause provides that the General Assembly “shall not pass any local law to repeal, modify, or supersede any action taken by a county governing authority” except for a specified list of matters.⁵⁸ The list of exceptions includes laws related to: (1) elections and salaries of county governing authorities, (2) criminal offenses, (3) taxes, (4) business regulation, (5) eminent domain, (6) courts and court personnel, (7) public school systems, and (8) laws that preempted the county’s action.⁵⁹ Critics say that the Act violates the constitution by taking away local control and preventing local elected officials from governing local matters.⁶⁰ However, supporters of the Act contend that local control is often used conveniently, twisted to fit the goals the proponent is pursuing at the time.⁶¹

55. *Id.* § 50-3-1(b)(7).

56. *Id.*

57. House Floor Debate, *supra* note 11, at 1 hr., 53 min., 59 sec. (remarks by Rep. William Boddie (D-62nd)).

58. GA. CONST. art. IX, § 2, para. 1(a).

59. GA. CONST. art. IX, § 2, para. 1(c).

60. House Floor Debate, *supra* note 11, at 1 hr., 55 min., 1 sec. (remarks by Rep. William Boddie (D-62nd)).

61. Interview with Sen. Jeff Mullis (R-53rd) (May 15, 2019) (on file with the Georgia State University Law Review) [hereinafter Mullis Interview].

What Comes Next: Will SB 77 Have Unexpected Side Effects?

The Act expands the definition of monuments to include such things as structure names and even flags.⁶² This raises some concern about the capacity for changing the name of a building that has been dedicated to a historical figure or event, or switching out flags that are subject to damage from the weather.⁶³ Senator Mullis stated that the expanded definition of monuments was copied from a different Code section of Chapter 50, and the intention is not to prevent changing out flags.⁶⁴ However, the potential windfall of treble damages may yet prove a draw for filing suit in court by enterprising individuals.⁶⁵

Looking forward, the law may eventually need to be amended again to resolve a number of outstanding issues related to space. Senator Mullis stated that the legislature may need to develop a process for allowing the movement of monuments to museums in the future.⁶⁶ Smaller communities with limited spaces of prominence may have difficulty relocating monuments during construction and renovation work as more monuments are erected in the years ahead.⁶⁷ For now, supporters of the Act are satisfied with amending the rule as needed to address issues as they arise in the future.⁶⁸

Rise Up: Does SB 77 Give Standing to Anyone?

The Act gives a cause of action to “a public entity owning a monument *or any person, group, or legal entity*” (emphasis added).⁶⁹ This may open the door for a “race to the courthouse” wherein anyone could bring suit regardless of their relationship to the monument, depending on whether they have standing.⁷⁰ Georgia law

62. O.C.G.A. § 50-3-1(b)(1)(B) (Supp. 2019).

63. House Floor Debate, *supra* note 11, at 1 hr., 51 min., 54 sec. (remarks by Rep. Robert Trammell (D-132nd)).

64. Mullis Interview, *supra* note 61.

65. *See* § 50-3-1(b)(4).

66. Mullis Interview, *supra* note 61.

67. House Governmental Affairs Committee Meeting, *supra* note 36, at 48 min., 50 sec. (remarks by Rep. Renitta Shannon (D-84th)).

68. Mullis Interview, *supra* note 61.

69. § 50-3-1(b)(5).

70. House Governmental Affairs Committee Meeting, *supra* note 36, at 54 min., 55 sec. (remarks by

on standing follows federal law,⁷¹ which provides that a plaintiff must have suffered an injury that was caused by the defendant's conduct and that may be redressed by the court.⁷² An injury must be "concrete and particularized" and "actual or imminent."⁷³

Proponents of the Act contend that only the owner of the monument would be able to show injury for standing purposes.⁷⁴ However, injury encompasses more than just physical injury to owned property.⁷⁵ The Supreme Court has stated that "the desire to use or observe . . . even for purely esthetic purposes, is undeniably a cognizable interest for purpose of standing."⁷⁶ With the creation of a cause of action not just for the public entity owner of the monument but "any person, group, or legal entity," it is possible that any person with an interest in viewing a monument may have legal standing to sue under the Act.⁷⁷

Alternatively, critics of the Act suggest it may result in no one having standing because the Supreme Court has specifically rejected moral harm as a basis for standing, and there is "no good explanation for why the harm here will be specific to any one person and nobody else."⁷⁸ The Act may thus result in everyone or no one being able to show standing.⁷⁹ In other laws that create a cause of action, sufficient limitations, such as giving only the first person to file the right to sue, have prevented such a result.⁸⁰ Accordingly, the ultimate outcome of the Act is yet to be seen, and only time will tell if duplicative complaints will inundate the courts.

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Rep. Robert Trammell (D-132nd)).

71. House Floor Debate, *supra* note 11, at 1 hr., 24 min., 13 sec. (remarks by Rep. Josh McLaurin (D-51st)).

72. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1997).

73. *Id.* at 560.

74. House Governmental Affairs Committee Meeting, *supra* note 36, at 55 min., 13 sec. (Mar. 13, 2019) (remarks by Rep. Barry Fleming (R-121st), Chairperson, House Judiciary Committee).

75. *See Lujan*, 504 U.S. at 560–61.

76. *Id.* at 562–63.

77. O.C.G.A. § 50-3-1(b)(5) (Supp. 2019).

78. House Floor Debate, *supra* note 11, at 1 hr., 24 min., 45 sec. (remarks by Rep. Josh McLaurin (D-51st)).

79. *Id.*

80. *Id.*

