

State Supreme Court Grants Cert in Sons of Confederate Veterans' Suit to Prevent Removal of Civil War Monument

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An advocacy group hoping to preserve the history of Confederate monuments through a string of lawsuits is starting to make headway in the state courts and now has been granted the opportunity to litigate before the Georgia Supreme Court.

That court has [granted writ of certiorari](#) to the Sons of Confederate Veterans in a case filed against the city of Decatur, hoping to reverse a 2020 order to remove a monument from the city square. After failures at both the district and appellate level, the Supreme Court gave it the green light after a partial reversal of a related case.

The decision was announced April 18, with all justices concurring except for Justice John J. Ellington.

The monument, an obelisk called "The Lost Cause," was dedicated "to the memory of the soldiers and sailors of the Confederacy." It was labeled a "public nuisance" by DeKalb County Superior Court Judge Clarence F. Seeliger in June 2020, ordering that it be relocated.

Decatur City Attorney Bryan A. Downs argued in his complaint against DeKalb County that the obelisk fueled outrage "leading to demonstrations and protests," which threatened the public and law enforcement to COVID-19, violence, injury or death.

The group filed under Georgia Code Title 50 Chapter 3 Article 1, posing that state law provides that "no publicly owned monument honoring Confederate soldiers shall be relocated, removed or altered in any fashion." Seeliger countered that the removal order was not meant to prevent the monument's public display but "instead is an appropriate measure" to protect it.

The Sons have been busy appealing similar orders throughout Georgia since 2020, filing another lawsuit against both the Newton County and Henry County Board of Commissioners for similar removal orders.

While the Supreme Court affirmed the dismissal of both, they later reversed in part the Newton County ruling, which informed their decision to grant cert in the Decatur case.

In October, the Supreme Court [reversed a lower court's ruling](#) in *T. Davis Humphries v. Newton County Board of Commissioners*, because Humphries was a resident of Newton County and therefore had standing, whereas the Sons did not include members who lived in either Newton or Henry counties.

Kyle King of Hodges, McEachern & King, Attorneys at Law in Peachtree City, who represents the Sons, deferred comments to Martin O'Toole, spokesman for the Sons' Georgia Division.

O'Toole told Law.com that the group was encouraged by two revelations coming out of the Supreme Court's decision: Federal Article III requiring a plaintiff to establish a cognizable injury to prove standing not applying to the Georgia Constitution and the cities' sovereign immunity defense not succeeding at the federal level.

"That was very good; That got rid of the defense upon which most of these cities and counties were relying," O'Toole said. "With the sovereign immunity repeal ... that knocks out another defense that was being raised in several cases."

"We still think we can defeat sovereign immunity in the cases that pre-date January 1, 2021, because there are three cases in Georgia that seem to indicate how we can do that," he added.

O'Toole says that he doesn't expect oral arguments to be necessary in the case, since the Supreme Court already ruled on it in October. In Gwinnett County, he deemed the Sons' claims against the municipality as possibly "the strongest of the cases" due to the Sons paying for the monument and building it pursuant to a contract with the city.

"We think maybe, of all the fact situations, that may be the best one right there," O'Toole said. "There is no doubt about what was done."

That case, along with a lawsuit filed against Rockdale County, is pending on appeal at the Court of Appeals after being dismissed by the respective superior courts.

The Sons' group has filed eight lawsuits in Georgia since August 2019, in response to efforts by local governments to censor Confederate displays, including flags and

monuments. A lawsuit filed against Alpharetta by Sons' members Richard Leake and Michael Dean was taken all the way to the U.S. Supreme Court, before being shot down by the U.S. Court of Appeals for the Eleventh Circuit in September 2021.

A lawsuit filed against Randolph County regarding the proposal to remove a Confederate monument has been stayed, pending the appellate courts' opinions. Another one filed in Glynn County has been dismissed and appealed to the Court of Appeals.

In Decatur's Old Courthouse lies the DeKalb History Center museum, which holds Civil War artifacts and materials tracing the town's local history in the war.

In July 1864, Union Gen. James B. McPherson occupied Decatur in efforts to destroy the Central of Georgia Railroad, a transportation line that supplied Atlanta and connected neighboring towns. The Confederate cavalry met him in battle near the Decatur courthouse.

O'Toole says the Sons' underlying mission is to cherish and preserve this history, so it is not lost in the public discourse.

"What we're trying to do is to make sure that the honor of the Confederate soldier still maintains a role in the public forum," he said. "That's the primary goal and objective of defending these monuments."

Downs, who is also the founding partner of Wilson, Morton & Downs, could not be reached for comment.