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MONUMENTS - ALABAMA

State v. City of Birmingham

Supreme Court of Alabama - November 27, 2019 - So.3d - 2019 WL 6337424

State brought action against city and its mayor, in his official capacity, for a judgment declaring that the city and its mayor, in his official capacity, violated the Memorial Preservation Act by having a plywood screen placed around a Civil War monument in a city park.

The Circuit Court entered summary judgment for city and mayor. State appealed.

The Supreme Court held that:

- Screen altered or disturbed the monument in violation of the Act;
- City lacked rights to free speech, due process of law, and equal protection pursuant to the United States Constitution so as to defeat State's claim;
- City lacked a right to free speech under the Alabama Constitution so as to defeat State's claim; and
- City and mayor, in his official capacity, were subject to a single \$25,000 fine for altering and disturbing the monument.

Plywood screen that city put up around Civil War monument in a public park altered or disturbed the monument, even though it did not touch the monument, and thus erecting the screen violated the Memorial Preservation Act, which prohibited altering or disturbing monuments that had been situated on public property for 40 years or more; the screen completely blocked the view of all inscriptions on the monument, and members of the public passing through the park had no way of knowing what the marble shaft rising from behind the plywood screen was intended to memorialize.

City lacked rights to free speech, due process of law, and equal protection pursuant to the United States Constitution, and thus such rights could not be a basis for city to defeat State's claim that city's erection of a plywood screen around a Civil War monument violated the Memorial Preservation Act, which prohibited altering or disturbing monuments that had been situated on public property for 40 years or more.

City lacked a right to free speech under the Alabama Constitution, and thus such a right could not be a basis for city to defeat State's claim that city's erection of a plywood screen around a Civil War monument violated the Memorial Preservation Act, which prohibited altering or disturbing monuments that had been situated on public property for 40 years or more; city was merely a political subdivision of the State, city could exercise such power as was conferred on it by law, and legislature had not conferred on city any right to have city's "government speech" fall within the Alabama Constitution's protections.

City lacked an "inherent right" to free speech, and thus such a right could not be a basis for city to defeat State's claim that city's erection of a plywood screen around a Civil War monument violated the Memorial Preservation Act, which prohibited altering or disturbing monuments that had been situated on public property for 40 years or more; argument asserting that city had "inherent rights" equated city with an individual citizen rather than a subdivision of the State, i.e., a governmental

entity.

City and mayor, in his official capacity, were subject to the penalty provision of the Memorial Preservation Act for altering and disturbing a Civil War monument in violation of the Act, despite argument that Act did not allow them to obtain a waiver since the monument in question had been situated on public property for 40 years or more; Act's penalty provision was intended to punish any entity that violated the generally applicable limitations set forth in the Act without first obtaining a waiver to do so.

City and mayor, in his official capacity, were subject to a single \$25,000 fine for altering and disturbing a Civil War monument in violation of the Memorial Preservation Act, which provided for a \$25,000 fine for each violation; city and mayor had improperly erected a plywood screen around the monument.