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MONUMENTS - GEORGIA

Sons of Confederate Veterans v. Henry County Board of Commissioners

Supreme Court of Georgia - October 25, 2022 - S.E.2d - 2022 WL 14147669

Organizations brought action for injunctive relief against first county board of commissioners, alleging that board voted to remove a Confederate monument from courthouse square in violation of statute concerning such monuments.

Board moved to dismiss. The Superior Court granted motion. Organizations appealed. Individual and organizations also brought separate actions against second county board of commissioners based on similar allegations. The Superior Court consolidated and then dismissed actions for lack of standing. Organizations and individual appealed. Appeals were consolidated and the Court of Appeals affirmed. Organizations and individual petitioned for certiorari, which was granted.

The Supreme Court held that:

- Requirement that plaintiffs have a cognizable injury is a standing requirement arising from the Georgia Constitution;
- Individual alleged cognizable injury, as required to establish standing to bring claim for injunctive relief; and
- Organizations failed to allege that they suffered cognizable injuries, and thus failed to establish independent, direct standing to bring claim for injunctive relief.

The constitutional limitations on judicial power, which require that an actual controversy must exist in order to sue, prevent the Georgia Supreme Court from rendering advisory opinions on Georgia law, but the Court does have the power to issue advisory opinions regarding the Georgia Rules of Professional Conduct, which govern lawyers, and the Georgia Code of Judicial Conduct, which governs judges; the Georgia Constitution vests in the Court as an incident of the judicial power the exclusive power to regulate the practice of law and to promulgate the Code of Judicial Conduct.

Because the Georgia Constitution vests the “judicial power” in state courts, and the nature of judicial power has long been understood as limited to resolving those controversies in which there is a cognizable injury, the requirement that plaintiffs have a cognizable injury in order to invoke the power of the courts is a standing requirement arising from the Georgia Constitution.

By alleging that she was citizen of county, individual alleged cognizable injury as result of county board of commissioners’ vote to move public Confederate monument from display, as required to establish standing to bring claim for injunctive relief under statute governing preservation and protection of certain public monuments and memorials.

Organizations failed to allege that they suffered cognizable injuries as result of county boards of commissioners’ decisions to move public Confederate monuments from display, and thus failed to establish independent, direct standing to bring claim for injunctive relief under statute governing preservation and protection of certain public monuments and memorials, where organizations failed

to allege that they were citizens, residents, or taxpayers of counties that they sued or that they were community stakeholders, such that duty created by statute was one owed to them.

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