What's Next for the S.C. Heritage Act?

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Update - May 2021:

Last summer in our blog, Good to Know, we addressed the Heritage Act. This week the South Carolina Supreme Court heard arguments to do away with a divisive 2000 state law protecting some of the state's most controversial monuments and statutes, 21 years after lawmakers passed the law as a compromise to remove the Confederate flag from atop the State House.

Read more about this issue in this article.

On May 18, 2000, the S.C. Heritage Act was signed into law. The Act states that no monuments or memorials erected on public property of the state from certain historical wars be relocated, removed, disturbed or altered. Further, any street, bridge, structure, park, preserve, reserve, or other public area of the state dedicated in memory of or named for a historic figure or historic event may be renamed or rededicated. Any proposed change to the memorials, monuments, and buildings covered by the Act requires a two-thirds vote from both the S.C. Senate and House of Representatives for approval of the removal or change.

In 2000, the removal of the Confederate flag from the Statehouse dome to a nearby confederate monument was the catalyst for enactment of the S.C. Heritage Act. Fifteen years later, the flag was finally removed from the Statehouse grounds following the shooting of nine black members of the Charleston Mother Emanuel AME Church by a self-proclaimed white supremacist. Today, the S.C. Heritage Act continues to stand as a barrier to the removal and destruction of historical monuments and memorials.

In 2007, the S.C. Heritage Act was the subject of a constitutional challenge in a lawsuit brought by citizens of Greenwood, South Carolina in pursuit of their right to change a war memorial that listed soldiers separately as "white" and "colored." Local attorney, Armand Derfner, counsel for the citizens, told the Post and Courier that the S.C. Heritage Act was unconstitutional because it "…restricts debate about speech, and because the provisions of the law cannot be changed or repealed unless a bill receives a two-thirds vote in each branch of the general assembly." Although the court did not rule on the constitutionality of the S.C. Heritage Act in the Greenwood case, the court made it clear that the S.C. Heritage Act does not extend to monuments erected on the private property of a private organization.

In June of 2020, Mayor John Tecklenburg and the Charleston City Council unanimously voted to remove the John C. Calhoun statue in Marion Square 124 years after it was erected. The

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removal of the statue comes as a response to the local, national, and worldwide demonstrations supporting the Black Lives Matter movement spurred by the killing of George Floyd by policemen in Minneapolis. Tecklenburg supported the removal of the statue stating "I believe that we are setting a new chapter, a more equitable chapter, in our city's history…we are making the right step… It's just simply the right thing for us to do." The removal of the John C. Calhoun statue is the first of many changes to our local historical landscape that are occurring in an effort to help correct systemic social injustices and inequalities.

The statue was not destroyed but instead removed to be stored in a local museum or a higher education learning facility. Calhoun was plucked from his perch because the monument was not covered by the S.C. Heritage Act, as it was a privately-owned statute on private land which was being leased to the City of Charleston. The removal of the John C. Calhoun monument has led to other significant attempts to remove monuments, memorials and, named buildings that are protected by the S.C. Heritage Act, and ultimately has given rise to another constitutional challenge to the Act in a lawsuit filed in Columbia, South Carolina.

This recent lawsuit was filed in the S.C. Supreme Court by the widow of Clementa Pinckney, Emanual AME Church Pastor, slain by the self-avowed white supremacist in June 2015. The challenge asks the Supreme Court to find the Act unconstitutional, stating:

First, the act improperly restricts the General Assembly's lawmaking function by placing limits on the ability to amend or repeal the law. Next, the Act violates two separate constitutional prohibitions against special laws. Finally, the act disregards home rule for local government control over local matters. Each violation—independent of the others—should not allow the Heritage Act to stand.

The complaint alleges that the Act was enacted to pacify those opposed to the removal of the Confederate flag from atop the Statehouse dome. As demonstrations continue, pressure mounts to remove or alter the more than 200 Confederate monuments across South Carolina.

In recent years, colleges and universities in South Carolina; namely, University of South Carolina, Winthrop University, and Clemson University, have also taken efforts to change the names of campus buildings and remove pro-segregation monuments. Due to certain provisions of the S.C. Heritage Act, South Carolina colleges and universities need a two-thirds vote approving any removal, change or alteration to buildings and monuments which fall under the protection by the Act.

So, what comes next for the S.C. Heritage Act? There is clearly a public desire for the Act to be repealed as a petition to repeal it has secured over 100,000 signatures on Change.org. Similarly, nearly 50 lawmakers have voiced their support of repeal, and three universities have already sought permission to rename buildings on their campuses whose names stand as a testament to a history of racial injustice. Recently, on June 25, 2020, Alan Wilson, the Attorney

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General of South Carolina, issued a formal legal opinion regarding the Act, which ruled the two-thirds approval provision to be unconstitutional.

While there is no question that the future of S.C. Heritage Act is a prevalent political and legal question today, a decision on its fate will likely be stalled due to COVID-19. The General Assembly is currently under a *sine die* agreement, which dictates when, and for what purposes, lawmakers can go back to work. Although the S.C. Heritage Act is not included in the agreement, pressure from lawmakers, as well as the public, may push this topic to the forefront of issues when the worldwide pandemic passes. Certainly, the widespread debate over the question of whether the act will stand is not going away, even if the answer must wait until the Legislature returns to session in 2021.

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