

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

BRYAN A. DOWNS,)
in his official capacity as City Attorney)
of the City of Decatur, Georgia,)
Plaintiff,) CIVIL ACTION
v.) FILE NO. 20CV4505
DEKALB COUNTY,)
Defendant.)

COMPLAINT TO ABATE PUBLIC NUISANCE

COMES NOW BRYAN A. DOWNS, in his official capacity as City Attorney for the City of Decatur, Georgia, and, pursuant to O.C.G.A. § 41-2-2, files this Complaint to Abate Public Nuisance (“Complaint”).

I. INTRODUCTION

This case is not about policy issues of whether a granite obelisk installed on the Decatur Square in the early 1900’s to honor the “Lost Cause” should or should not remain on the Decatur Square. That issue has already been fully debated and decided—in favor of relocation. Rather, this case, at its core, is about public safety; it is about preventing injury or even death.

In October 2017, the Board of Commissioners of DeKalb County determined that the Confederate monument located on the Decatur Square “could easily become a rallying and flash point for violence as occurred in August of 2017 in Charlottesville, Virginia; thus, creating a public safety concern for the City of Decatur and Dekalb County.”

In January 2018, the Board of Commissioners confirmed that DeKalb County owned the Monument and the property on which it stands and directed that the Monument be relocated away from the Decatur Square, pursuant to requirements of Georgia law. The Board of Commissioners recognized that such relocation was “an appropriate measure for the preservation, protection and interpretation of the Confederate Monument and the public safety of the citizens of and visitors to the County and the City of Decatur.”

Despite diligent efforts by the County to relocate the Confederate Monument, two and a half years later the Monument remains exactly where it was: in the middle of the Decatur Square. In recent days, in the midst of historic, nationwide protests of the killings of unarmed black men, the Confederate Monument in Decatur has become exactly what the Board of Commissioners predicted: a focus of justifiable anger and frustration; an impetus for protests and rallies; and most importantly, an urgent, impending threat to public safety.

This Confederate Monument that the community does not want has become a figurative powder keg and thus a public nuisance that must be abated quickly. Relocating the Monument temporarily will prevent injury and unrest while at the same time protecting and preserving the Monument in compliance with -- and indeed fulfilment of -- Georgia law.

II. PARTIES

1.

Plaintiff Bryan A. Downs is the duly appointed City Attorney of the City of Decatur, Georgia (“Plaintiff”).

2.

This Complaint is filed, pursuant to the provisions of O.C.G.A. § 41-2-2, on behalf of the City of Decatur and its residents to abate a public nuisance within the City of Decatur.¹

3.

Defendant DeKalb County (“Defendant” or “DeKalb County”) is a Georgia county.

4.

DeKalb County may be served through its Chief Executive Officer, the Honorable Michael Thurmond, at the County’s offices located at 1300 Commerce Drive, Decatur, Georgia 30030.

5.

DeKalb County is the record owner of a granite monument that sits on County property within an area of downtown Decatur that is commonly referred to as the “Decatur Square.”

6.

The City of Decatur is the county seat of DeKalb County.

7.

One of the key principles of the City of Decatur’s most recent strategic plan is to encourage a diverse community. In 2018, Decatur was honored by the National Civic League as an “All-American City,” in part because of its “Better Together” initiative for creating an inclusive community and in part because of its community policing program.

¹ O.C.G.A. § 41-2-2 provides that a complaint to abate a public nuisance must be filed by the district attorney, solicitor-general, city attorney or county attorney on behalf of the public.

II. JURISDICTION AND VENUE

8.

This Court has jurisdiction over this action.

9.

Venue is proper in this Court.

III. FACTS

The Confederate Monument

10.

The subject monument, an approximately 30 foot tall obelisk made of granite (the “Confederate Monument”) is believed to have been erected between 1906 and 1908 by the Agnes Lee Chapter of the United Daughters of the Confederacy and the Clement A. Evans Camp of Confederate Veterans.

11.

Research by the Atlanta History Center, among others, establishes that Confederate monuments erected during this period were intended to perpetuate the “Lost Cause mythology,” “an alternative explanation for the Civil War developed by white Southerners after the war’s end,” which sought to “rationalize the Confederacy,” including “claims that slavery was not the central cause of the Civil War.” [<https://www.atlantahistorycenter.com/research/confederate-monuments>]

12.

In September 2017, shortly after the violent and deadly events in Charlottesville, Virginia arising in relation to that city’s decision to remove a confederate statue, the Decatur City

Commission took steps to address calls from numerous citizens to remove the Confederate Monument.

13.

The City of Decatur could not take any direct action to remove or relocate the Confederate Monument because the City does not own or control it. However, the City Commission made clear, in a unanimous vote, that it wanted the County to relocate the Monument away from the Decatur Square.

14.

On September 18, 2017, the Decatur City Commission adopted Resolution R-17-16, that resolved, in part, that the City Commission “support[s] action by the DeKalb County Board of Commissioners when so authorized to remove the Confederate Memorial to an alternative location within DeKalb County where it can be placed in context with the larger history of the times in which it was built.”

15.

A true and accurate copy of Resolution R-17-16 is attached hereto as Exhibit A.

The County’s decision to relocate the Monument

16.

On October 24, 2017, the Board of Commissioners of DeKalb County approved a resolution that, among other things, directed the County Attorney to determine if the Confederate Monument could be moved or relocated away from the Decatur Square.

17.

A true and accurate copy of the October 24, 2017 Resolution is attached hereto as Exhibit B.

18.

Members of the public voiced their positions on relocation of the Monument at the October 24, 2017 Board of Commissioners meeting; most were in favor, one was opposed.

19.

The October 24, 2017 Resolution noted that the “Confederate Monument has recently been vandalized on at least two occasions, and has been the focus of much debate and various rallies.”

20.

The October 24, 2017 Resolution also noted that the “Confederate Monument could easily become a rallying and flash point for violence that occurred in August of 2017 in Charlottesville, Virginia; thus, creating a public safety concern for the City of Decatur and DeKalb County.”

21.

In a November 29, 2017 written legal opinion that was disseminated publicly, the County Attorney concluded, after commissioning extensive title examination and historical research, that the Confederate Monument and the land on which it stands is owned by DeKalb County.

22.

The County Attorney also provided her opinion that Georgia law, specifically O.C.G.A. § 50-3-1(b)(1), authorizes the County to relocate the Monument to another location, so long as the “new location does not ‘conceal it from visible display.’”

23.

A true and accurate copy of the County Attorney’s November 29, 2017 written legal opinion, excepting attachments, is attached hereto as Exhibit C.

24.

In accordance with the County Attorney's legal opinion, on or about January 23, 2018, the Board of Commissioners approved a resolution that set forth a plan for the Confederate Monument to be relocated in a manner that complied with Georgia law.

25.

Members of the public voiced their positions on relocation at the January 23, 2018 Board of Commissioners meeting; once again, most were in favor, one was opposed.

26.

A true and accurate copy of the final version of the January 23, 2018 Resolution is attached hereto as Exhibit D.

27.

Like the prior Resolution, the January 23, 2018 Resolution again noted that the Confederate Monument had been vandalized and had been the focus of much debate and various rallies. The January 23, 2018 Resolution also again noted that the Confederate Monument "could easily become a rallying and flash point for violence ...;" thus, creating a public safety concern for the City of Decatur and DeKalb County."

28.

The January 23, 2018 Resolution directed that the "Confederate Monument shall be relocated to a place that allows it to be visibly displayed or ... transferred to a third party with a written requirement that such third party locate the Confederate Monument at an identified place which allows the Confederate Monument to remain visibly displayed."

29.

The January 23, 2018 Resolution specifically directed that the County's Executive Assistant solicit proposals for relocation and transfer and interpretation of the Confederate Monument within 30 days.

30.

The basis for the County's actions was set forth in the January 23, 2018 Resolution:

The Governing Authority hereby finds that this action to transfer and relocate or simply relocate is an appropriate measure for the preservation, protection and interpretation of the Confederate Monument and the public safety of the citizens of and visitors to the County and the City of Decatur.

*Two and a half years later, the Monument remains
in the same exact place*

31.

Upon information and belief, County staff made diligent efforts to fulfill the Board of Commissioners' directives. This included publishing requests for proposals and contacting numerous potential sites where the Monument might be relocated and publicly displayed, but these efforts were not successful.

32.

Over a year after the Board of Commissioners directed that the Confederate Monument be relocated away from the Decatur Square, it remained in the same exact place. In short, despite their efforts, County staff could not find any takers.

33.

Therefore, in March 2019, the Board of Commissioners decided to pursue another option: to have a contextualization statement placed on a marker next to the Confederate Monument.

34.

An agenda item summary document provided to the Board of Commissioners explained:

While it remains the adopted policy to move the Confederate monument, the County has been unable to find a suitable location. In the interim of relocating the monument, the attached resolution authorizes a contextualization statement of the monument.

35.

A true and accurate copy of the referenced agenda summary is attached hereto as Exhibit E.

As predicted, the Monument has become a flash point, a danger to the community, and a burden on the City of Decatur

36.

For the past three years, the Monument has been a frequent target of graffiti and vandalism. The Monument has been spray-painted, marked on, taped over, and, on at least one occasion, smeared with human feces.

37.

Every time such incidents of graffiti and vandalism occur, City resources are expended. This includes investigating potential criminal damage to property, coordinating clean-up efforts with the Monument's owner (DeKalb County), and responding to media inquiries.

38.

In recent years, City resources have also been expended preparing for possible protests directed at the Confederate Monument. For example, on multiple occasions off-duty Decatur police officers have had to be placed on on-call status because of reports that a protest focused on the Confederate Monument may materialize or that a protest scheduled elsewhere, such as Stone Mountain, may gravitate to the Decatur Square and the Confederate Monument.

39.

With the tragic killing of George Floyd by Minneapolis police on May 25, 2020, following on the heels of video being released of an unarmed Ahmad Arbery being killed by vigilantes in Brunswick, Georgia, the nation appears to have reached a tipping point, with unprecedented, historic levels of sustained protest arising across the country, in Atlanta, and in the City of Decatur.

40.

As the County seat and a center of commerce and government in a metropolitan region, the City of Decatur is a natural location for protests, demonstrations and rallies. The City of Decatur welcomes these gatherings where freedoms of speech, assembly and redress are exercised.

41.

The number one priority for the City Police Department during these events is the safety of the participants and other individuals. Ensuring such safety is no easy task and takes substantial planning, increased staffing, and coordination with other public safety agencies, including, most notably, partner agencies the DeKalb County Police Department and the DeKalb Sheriff's Office. The task is made even more challenging when events are scheduled on short notice or there is little if any coordination with the City by organizers.

42.

The City incurs substantial personnel and other costs for each protest and rally.

43.

Between June 3 and June 7, there have been four organized protests and rallies in the City of Decatur inspired by the Black Lives Matter movement and related movements. Two are

estimated to have had around 1,500 participants. Another is scheduled for June 10. These events have been peaceful and safe for participants.

44.

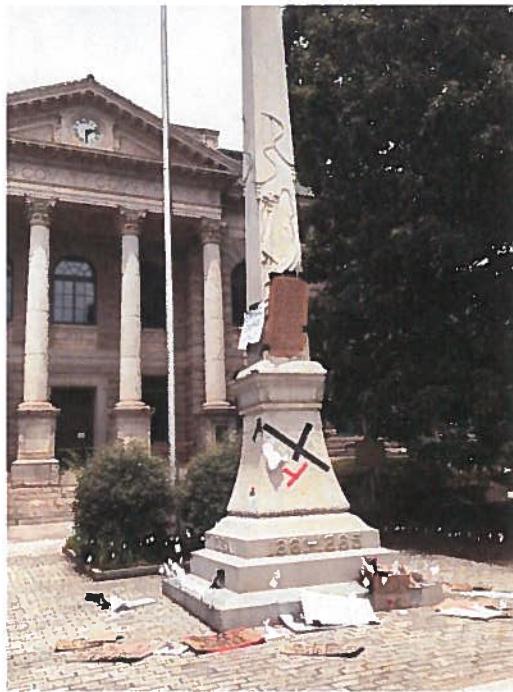
Increasingly, one of the motivating factors for having protests in the City of Decatur is the presence of the Confederate Monument.

45.

In the past few days, expressions of protest are being placed physically on and around the Confederate Monument in the form of notes, posters and banners. The Monument has had graffiti written on it with paint and permanent markers, including some that is vulgar.

46.

On June 6, a man was filmed ripping posters and signs off the Monument, apparently offended at what he considered desecration. Other individuals in the vicinity of the Monument were likewise offended by his actions. Fortunately, only words were exchanged.



Monument after signs ripped off on June 6, 2020

47.

The focus on the City of Decatur will likely continue with regional and even national media coverage of the Confederate Monument on the Decatur Square.²

48.

All of this is occurring in the midst of a deadly pandemic, with the City of Decatur officially closed and the Police Department operating pursuant to stringent and challenging changes in operations to ensure the safety of police personnel and the public.

49.

Despite the fact that protests and demonstrations in Decatur to date have been peaceful, there is a growing and highly reasonable concern that individuals might take matters into their own hands and attempt to tear down the Confederate Monument.

50.

One need only look to Birmingham to see the very real possibility of such actions. According to press reports, on the night of May 31, a crowd attempted to topple a similar obelisk commemorating the Confederacy, using a rope and a truck. Apparently, these individuals were guided and possibly inspired by instructions posted that day on Twitter by a professor of Egyptology at the University of Alabama at Birmingham. Birmingham's Mayor intervened to

² See, e.g., Atlanta-Journal Constitution "As Confederate Monuments Topple, Groups Target Decatur's" June 6, 2020, [<https://bit.ly/3f7gMs7>]; Washington Post "'Enough is Enough,' Atlanta Suburb Protest Brings Large Crowd" June 3, 2020 [https://www.washingtonpost.com/national/Enough-is-enough-atlanta-suburb-protest-brings-large-crowd/2020/06/03/bb4c34b8-a5fb-11ea-898e-b21b9a83f792_story.html].

stop the crowd and, citing the threat to public safety, subsequently ordered that the monument be removed by the City in a safe and controlled manner.³

51.

Three days after the Birmingham incident, the idea of individuals in Decatur taking matters into their own hands became an even more imminent possibility.

52.

On June 3, just hours before the start of a quickly organized protest on the Decatur Square that reportedly drew as many as 1,500 participants, the owner of the local news site Decaturish.com published an editorial, calling on local leaders to remove the monument “today before some freelance demolition expert does it.” The Decaturish.com editorial also included: “To Decatur and county leadership: Get this piece of crap monument out of the Square before someone in the community hurts themselves trying to do it for you.”

53.

Shortly after the Decaturish editorial was posted, a commenter informed readers that “[a]n Egyptologist posted advice on how to safely pull down obelisks on Twitter” and provided the link. This was the same May 31 Twitter thread that the crowd in Birmingham apparently used as a guide.

54.

The Twitter thread provides detailed instructions on how to pull down an obelisk, including: using chains, not rope; needing 40+ people for every ten feet of obelisk; positioning groups on both sides of the obelisk; and rocking the obelisk back and forth until it falls. One of

³<https://news.artnet.com/art-world/egyptologist-obelisk-instructions-1877613>;
<https://decaturish.com/2020/06/editorial-its-time-to-remove-decatus-monument-to-white-supremacy-from-the-square/>.

the final steps was to “GET THE %^&* OUT OF THE WAY IT WILL SMASH RUN AWAY FROM DIRECTION.”⁴

55.

Fortunately, no one has attempted to tear down the Confederate Monument on the Decatur Square, but emails to City officials and social media posts indicate that this is a real and valid concern among members of the public.

56.

In recent days, Confederate monuments in locations across the South have been vandalized and, in some instances, torn down. For example, on May 30, protesters in Nashville brought down a statue of an early 1900’s lawmaker who had racist views.⁵ On the night of June 6, demonstrators in Richmond used a rope to topple a statue of a Confederate general in a City park.⁶

57.

There is now nationwide press coverage of the Confederate Monument in Decatur and local officials’ and the community’s desire that it be removed. One need only think back to Charlottesville in August 2017 to realize that groups espousing violence may become agitated by developments in Decatur.

⁴ <https://twitter.com/indyfromspace/status/1267271817439346689>.

⁵ <https://www.timesfreepress.com/news/local/story/2020/may/30/nashville-protesters-topple-statue-racist-politician-gov-lee-deploys-national-guard/524221/>.

⁶ <https://www.al.com/news/2020/06/confederate-statue-toppled-by-protesters-in-virginia-capital.html>.

58.

The Southern Poverty Law Center reports on its website that on June 1, a caller told police in Birmingham, Alabama that he planned to kill police, protesters and the Mayor if the City proceeded with plans to remove Birmingham's Confederate monument (the one that the group tried to topple on May 31).⁷

IV. THE MONUMENT HAS BECOME A PUBLIC NUISANCE

59.

Two and a half years ago, the governing authority of DeKalb County, which owns the Confederate Monument, determined that the Monument should no longer remain in its current location because it needed to be preserved and protected and because it posed a threat to the public safety of the citizens of and visitors to DeKalb County and the City of Decatur.

60.

Prior to that determination by the County Board of Commissioners, the City Commission of Decatur, in whose public square the Confederate Monument stands, officially determined that it wanted the Confederate Monument to be relocated from its current location.

61.

The continued presence of the Confederate Monument in its current location has become an immediate "annoyance" to the public, as that term is used in O.C.G.A. § 41-2-1, because of what it stands for, because of the societal friction it engenders, and because it is increasingly the subject of acts of graffiti and vandalism.

62.

The continued presence of the Confederate Monument in its current location is “manifestly injurious to the public health and safety,” as those terms are used in O.C.G.A. § 41-2-1, as the Monument inspires outrage, leading to demonstrations and protests, which at minimum, potentially exposes the public and police officers to COVID-19 and forces the City to incur significant expenses, and which, in a worst case scenario, could result in substantial violence, injury and death to individuals, including those who may attempt to forcibly knock it down.

63.

The continued presence of the Confederate Monument in its current location “tends greatly to corrupt the manners and morals of the public,” as those terms are used in O.C.G.A. § 41-2-1, in that, among other things, the symbolism and message of the Monument are anathema to the City’s stated goals of diversity and inclusiveness.

64.

The granite monument has become a public nuisance, the public is entitled to have this nuisance enjoined and abated, Plaintiff is without an adequate remedy at law, and therefore resort must be had to equity for full and complete relief.

⁷ <https://www.splcenter.org/hatewatch/2020/06/04/bomb-threat-issued-birmingham-neo-confederates-react-monument-removal>.

V. THE PUBLIC NUISANCE CAN BE ABATED EXPEDITIOUSLY

65.

The plan for abating the nuisance was set by DeKalb County over two years ago: relocate the Monument to a place that allows it to be visibly displayed or transfer it to a third party with a written requirement that the third party locate the Monument at an identified place that allows the Monument to remain visibly displayed.

66.

The plan needs only to be modified slightly. Because no locations or transferees have been identified by the County, the Monument simply needs to be relocated temporarily to a County property away from the Decatur Square where it can be stored until such time as a permanent home can be located. In this manner, the Monument will be protected and preserved from continuing vandalism, defacement and possibly destruction.

67.

In the past few days, City officials have communicated with County leaders to ensure they are fully aware of the evolving situation with the Monument and to stress the imminent dangers presented. While expressing a desire to help remedy the situation, County leaders have stated a need to review the situation further, including determining what options are available under current State law.

68.

Because of the urgency of the situation and the imminent dangers presented, this action must move forward while long-term solutions continue to be explored.

WHEREFORE, Plaintiff prays:

1. That a rule nisi issue, setting a hearing at the earliest possible time for the entry of an interlocutory order to abate the nuisance;
2. That an interlocutory order to abate be issued, ordering Defendant to relocate the Monument to a temporary location away from the Decatur Square;
3. That the interlocutory order be made permanent upon a final hearing in this cause; and
4. That the Court grant such other relief it deems proper.

This 10th day June, 2020.

WILSON, MORTON & DOWNS, LLC

By: 

Bryan A. Downs
Georgia Bar No. 228437
Stephen G. Quinn
Georgia Bar No. 153012

Attorneys for Plaintiff

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Decatur, Georgia 30030
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IN THE SUPERIOR COURT OF DEKALB COUNTY

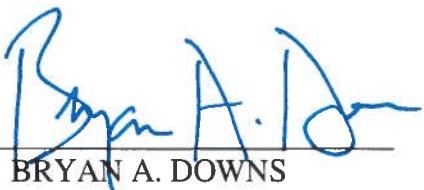
STATE OF GEORGIA

BRYAN A. DOWNS,)
in his official capacity as City Attorney)
of the City of Decatur, Georgia,)
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Plaintiff,) CIVIL ACTION
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v.) FILE NO. 20CV4505
)
DEKALB COUNTY,)
)
Defendant.)
)

VERIFICATION

Personally appeared before the undersigned officer, duly authorized to administer oaths in the State of Georgia, BRYAN A. DOWNS, who after being duly sworn, deposes and states that he is the Petitioner in the above-styled action, and verifies that the facts contained in the within and foregoing Complaint to Abate Nuisance are true and correct to the best of his personal knowledge and belief.

This 9th day of June, 2020.


BRYAN A. DOWNS

Sworn to and subscribed
before me this 9th day of
June, 2020.

Nancy M. Proctor
NOTARY PUBLIC



EXHIBIT A

RESOLUTION

WHEREAS, in 1908 a Confederate Memorial obelisk was placed on the DeKalb County Courthouse Square with an inscription around the four panels on its sides and the dates of the Civil War and "C.S.A" on its base; and,

WHEREAS, at the time of its placement, African Americans were legally prohibited or physically threatened and killed if they desired to exercise their rights to participate in the political or public process in the communities where they resided; and,

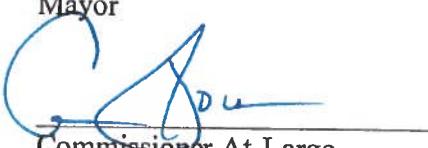
WHEREAS, while much progress has been made there remain opportunities to provide a society where minority populations are full participants in the political, economic, educational and social structures within communities; and,

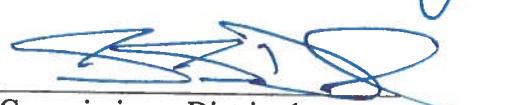
WHEREAS, the presence of the DeKalb County Confederate Memorial obelisk provides a presence within the community that hinders the ability to achieve inclusivity, equity and justice for all.

NOW, THEREFORE, BE IT RESOLVED, and it is hereby resolved, by the City Commission of the City of Decatur, Georgia, that:

- 1) The Georgia General Assembly is urged to amend O.C.G.A. § 50-3-1 to allow local governing bodies to make decisions regarding local monuments located within their jurisdiction; and,
- 2) The City Commission of the City of Decatur, Georgia does support action by the DeKalb County Board of Commissioners when so authorized to remove the Confederate Memorial to an alternative location within DeKalb County where it can be placed in context with the larger history of the times in which it was built.

This 18th day of September, 2017.

Atenia M. Danee
Mayor

Commissioner At-Large

Eric C. Bryant
Mayor pro tem

Commissioner District 1

Brian S. R.
Commissioner District 2

ATTEST: Peggy J. Morris
Acting City Clerk

EXHIBIT B



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Agenda Item

File #: 2017-1108

10/24/2017

File Status: Action

Public Hearing: YES NO Department: Board of Commissioners

SUBJECT:

Commission District(s): All Commission Districts

Resolution to Remove or Relocate the Confederate Monument on the Decatur Square

Information Contact: Mereda Davis-Johnson, Commissioner District 5

Phone Number: 404-371-4210

PURPOSE:

This resolution sets forth some of the current issues related to the Confederate Monument on the Decatur Square and expresses an intent to remove or relocate it at an appropriate time, once all the relevant information has been gathered from a variety of sources. This resolution further directs the Executive Assistant and the County Attorney to perform further due diligence and to provide the Governing Authority with legally valid options for the removal or relocation of this Monument.

There is some question as to ownership of the land and the Monument and staff is directed to try and resolve the various outstanding questions in the next thirty days.

NEED/IMPACT:

This item protects the public safety and welfare of the citizens of the County.

FISCAL IMPACT:

Not known at this time.

RECOMMENDATION:

Adopt the attached Resolution and authorize the Chief Executive Officer to execute all necessary documents.

RESOLUTION

A RESOLUTION BY THE GOVERNING AUTHORITY OF DEKALB COUNTY, GEORGIA, TO REMOVE OR RELOCATE THE CONFEDERATE MONUMENT ON THE DECATUR SQUARE, AND FOR OTHER PURPOSES

Whereas, a confederate monument is located on the Decatur Square adjacent to the rear of the DeKalb County History Center, formerly the DeKalb County courthouse (“Confederate Monument”);

Whereas, historical documents reflect that the Confederate Monument was erected in 1908 and its construction was directed by the A. Evans Camp of Confederate Veterans and Agnes Lee Chapter of the United Daughters of the Confederacy;

Whereas, at the time of its enactment in 1908, African Americans were prohibited from exercising the same first amendment and other constitutional rights as bestowed upon white Americans;

Whereas, the Confederate Monument contains an inscription which glorifies and praises soldiers of the confederacy, in part, because such soldiers “were of a covenant keeping race”;

Whereas, primary sources contemporary to the Civil War as well as events and laws of Jim Crow era provide evidence and context that refute the claims embodied in the inscription, and

Whereas, it is unclear if the Confederate Monument located is in fact publicly owned by DeKalb County;

Whereas, thus far no minutes of the County commission have been located which formally accepts the donation of the Confederate Monument;

Whereas, state law, O.C.G.A. 50-3-1 contains various regulations related to a publicly-owned Confederate monument; and

Whereas, the Confederate Monument has recently been vandalized on at least two occasions, and has been the focus of much debate and various rallies;

Whereas, the Confederate Monument could easily become a rallying and flash point for violence as occurred in August of 2017 in Charlottesville, Virginia; thus, creating a public safety concern for the City of Decatur and DeKalb County;

NOW, THEREFORE, BE IT RESOLVED, by the Governing Authority as follows:

1. The Governing Authority finds that the Confederate Monument may very well be owned by DeKalb County, but ownership is not definitively shown by a recent title report;
2. The Governing Authority finds that the Clerk to the Chief Executive Officer and the Board of Commissioners have diligently searched and have been unable to locate any County minutes showing formal acceptance of the Confederate monument in the early 1900's;
3. The Governing Authority finds that the Confederate Monument received media attention after its erection and historical documents reflect that the Confederate Monument was erected, and its construction was directed by the A. Evans Camp of Confederate Veterans and Agnes Lee Chapter of the United Daughters of the Confederacy;
4. The Governing Authority finds that at this point in time, it is not clear that the Confederate Monument is publicly owned;
5. The Governing Authority directs the Executive Assistant and the County Attorney to (1) obtain a survey of the property which should allow the title attorney to determine ownership of the land where the Confederate Monument sits and (2) continue to research the records to determine if the Confederate Monument was in fact accepted by the County in any sort of formal way;
6. The Governing Authority directs the County Attorney to determine, legally, if the Confederate Monument can be removed and to provide the Governing Authority with an analysis of the legal alternatives available to the County, including removal to a location appropriate for such an artifact, relocation or other alternatives within thirty days;
7. The Governing Authority directs the Presiding Officer of the Board of Commissioners to empanel a committee of historians to provide objective interpretative context for the monument, using primary source documents within 30 days, and
8. The Governing Authority directs the Executive Assistant to determine an appropriate location(s) for the Confederate Monument;
9. The Governing Authority plans to lobby for the full repeal of O.C.G.A. 50-13-1 by the Georgia General Assembly during the 2018 session and shall include such repeal as a priority in its legislative agenda for 2018.

October **ADOPTED** by the DeKalb County Board of Commissioners, this 24 day of



KATHIE GANNON
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

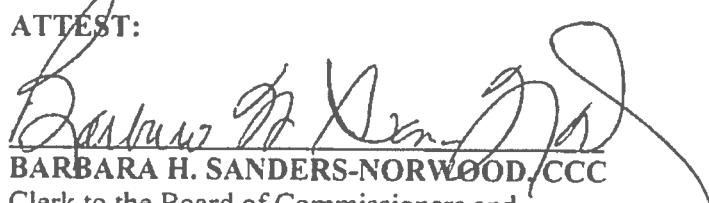
October 2A, 2017

October APPROVED by the Chief Executive Officer of DeKalb County, this 25 day of
2017.



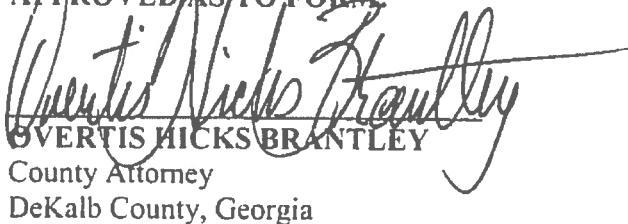
MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

ATTEST:



BARBARA H. SANDERS-NORWOOD, CCC
Clerk to the Board of Commissioners and
Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO FORM:



OVERTIS HICKS BRANTLEY
County Attorney
DeKalb County, Georgia

EXHIBIT C



MEMORANDUM

This communication is confidential and protected by the attorney-client privilege and attorney work product rule. It is intended only for the individual or entity to which it is addressed and should not be given to persons or entities not directly involved with the subject matter on behalf of the County. It expresses the professional judgment of the attorney(s) rendering the opinion regarding the legal issues expressly addressed herein. By rendering an opinion, the attorney(s) does not insure or guarantee any particular result or outcome of any transaction or lawsuit.

November 29, 2017
By pdf and hand delivery

To: Michael L. Thurmond, Chief Executive Officer
Members of the Board of Commissioners

From: O.V. Brantley, County Attorney

Subject: Decatur Square Confederate Monument
(Our File No. 02-0924)

This memorandum is intended to outline your options under state law regarding the monument memorializing the Confederacy (the "Monument"), which is located near the historic courthouse in downtown Decatur. Specifically, there has been discussion of possibly: (1) relocating the Monument,¹ (2) contextualizing the Monument with adjacent signage, (3) leaving the Monument "as is," (4) removing the Monument, (5) concealing the Monument, or (6) transferring the Monument to a third party to enable another individual or entity to relocate or conceal it.

In short, after an exhaustive investigation, it appears that DeKalb County owns both the Monument and land on which it lies. State law authorizes the County to relocate the Monument to another site where it would remain visibly displayed, or contextualize the Monument with

¹ The base of the Monument bears a written, engraved inscription with the following text: "Erected by the men and women and children of DeKalb County, to the memory of the soldiers and sailors of the Confederacy, of whose virtues in peace and in war we are witnesses, to the end that justice may be done and that the truth perish not. After forty two years another generation bears witness to the future that these men were of a covenant keeping race who held fast to the faith as it was given by the fathers of the Republic. Modest in prosperity, gentle in peace, brave in battle, and undespairing in defeat, they knew no law of life but loyalty and truth and civic faith, and to these virtues they consecrated their strength. These men held that the states made the union, that the Constitution is the evidence of the covenant, that the people of the State are subject to no power except as they have agreed, that free convention binds the parties to it, that there is sanctity in oaths and obligations in contracts, and in defense of these principles they mutually pledged their lives, their fortunes, and their sacred honor. How well they kept the faith is faintly written in the records of the armies and the history of the times. We who knew them testify that as their courage was without a precedent their fortitude has been without a parallel. May their prosperity be worthy."

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explanatory signage that puts the Monument in historical context. Of course, you are not required to take any action regarding the Monument under state law, and the status quo could be maintained by leaving the Monument in its current condition and location. Removal for the purpose of concealing the Monument by the County is not authorized under state law. Transfer of the Monument to a third party in order for it to remove or conceal the Monument, while not explicitly prohibited under the plain language of the law, would pose a risk of being found violative of the statute because it would seem to be an effort to circumvent the spirit and intent of the state legislation. Finally, I am of the opinion that you could transfer the Monument to a third party for it to be relocated and remain visibly displayed.

Determining ownership of the Monument itself, as well as the land upon which it rests, was a prerequisite undertaken prior to issuance of this opinion. This is because your options under state law vary considerably depending upon ownership of the land and the Monument.

Ownership of the Land

Outside counsel was hired to conduct a title search of DeKalb County's land records, which is the common way one determines who owns a particular piece of land. Because ownership of the land was not clearly stated in the County's land records, outside counsel requested a survey of the property. A surveyor was hired and the survey of the property has been completed. Based on the title examination and the survey, outside real estate counsel has opined that the Monument is located on land owned by the County.²

Ownership of the Monument

My staff has also tried to determine ownership of the Monument itself. In that regard, we obtained records from the DeKalb History Center.³ Records obtained from the History Center included media articles dating from 1908 describing the erection of the Monument and attributing its erection to the Agnes Lee Chapter of the United Daughters of the Confederacy and the Clement A. Evans Comp of Confederate Veterans.⁴

In an effort to identify any formal acceptance of the Monument in the early 1900's, the DeKalb County Superior Court Clerk and the Clerk to the Chief Executive Officer and the Board of Commissioners did an exhaustive search of their records and minutes from 1905 - 1912. No formal acceptance of the Monument by the County was located by either Clerk.

² A copy of the final survey and final title report issued by Sam Maguire, Esq. is attached to this opinion as Attachment 1.

³ We also contacted the Atlanta History Center but it did not have any relevant records related to the Monument. I would direct your attention to their website which contains a "Confederate Monument Interpretation Guide," <http://www.atlantahistorycenter.com/research/confederate-monuments>. The Atlanta History Center identifies the document as "a tool to help put Confederate monuments in historical perspective and foster dialogue about the future of these monuments." As you consider your options, you may want to have staff review this information.

⁴ Records from the DeKalb History Center are attached to this opinion as Attachment 2

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My staff has also talked with the archivist for the United Daughters of the Confederacy and individuals in the Georgia chapter of that organization. We have been provided minutes showing that in the early 1900's, the Agnes Lee Chapter of the United Daughters of the Confederacy contributed \$100.00 toward the erection of the Monument. We have been advised that the United Daughters of the Confederacy does not claim any ownership interest in the Monument.⁵ We also contacted the Sons of Confederate Veterans for relevant records concerning the erection of the Monument. This morning, we were advised that no relevant minutes concerning the Monument could be located.

My staff also met with an interested citizen whose deceased husband researched the ownership and historical nature of the Old Courthouse and the Decatur Square. She provided documents showing that the Historic County Courthouse was placed on the National Register of Historic Places. We obtained a copy of the application from the County's historic Senior Planner, David Cullison, and the Monument is specifically mentioned in the application.⁶ Finally, while maintenance records have not been located, County staff is of the belief that the County has maintained the Monument over the years, as necessary.

The fact that the Monument is located on County property leads me to the conclusion that the Monument itself is also owned by the County, given the lack of evidence to the contrary. Based on that conclusion, your resulting legal options are addressed below.

LEGAL ANALYSIS

O.C.G.A. § 50-3-1(b)⁷ is the sole legal limitation on the County's ability to remove, relocate, transfer, conceal or contextualize the Monument. Subsection (b) which governs "preservation and protection of certain military related public monuments and memorials" contains the following two (2) relevant subsections:

⁵ Relevant records from the United Daughters of the Confederacy are attached to this opinion as Attachment 3.

⁶ A copy of the historic designation application is attached to this opinion as Attachment 4

⁷ O.C.G.A. § 50-3-1(b)(1) ("It shall be unlawful for any person, firm, corporation, or other entity to mutilate, deface, defile, or abuse contemptuously any 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, and no officer, body, or representative of state or local government or any department, agency, authority, or instrumentality thereof shall remove or conceal from display any such monument, plaque, marker, or memorial for the purpose of preventing the visible display of the same. A violation of this paragraph shall constitute a misdemeanor."); O.C.G.A. § 50-3-1(b)(2) ("No publicly owned monument or memorial erected, constructed, created, or maintained on the public property of this state or its agencies, departments, authorities or instrumentalities in honor of the military service of any past or present military personnel of this state or the several states thereof, or the Confederate States of America or the several states thereof shall be relocated, removed, concealed, obscured, or altered in any fashion; provided, however, that appropriate measures for the preservation, protection, and interpretation of such monuments or memorials shall not be prohibited.")

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(b)(1) ...[N]o officer, body, or representative of state or local government or any department, agency, authority, or instrumentality thereof shall remove or conceal from display any [publicly-owned] monument, plaque, marker, or memorial [which honors or recounts military service of military personnel of the Confederacy] for the purpose of preventing the visible display of the same. A violation of this paragraph shall constitute a misdemeanor. (emphasis added).

(b)(2) No publicly owned monument or memorial erected, constructed, created, or maintained on the public property of this state or its agencies, departments, authorities, or instrumentalities [which honors or recounts military service of military personnel of the Confederacy] shall be relocated, removed, concealed, obscured, or altered in any fashion; provided, however, that appropriate measures for the preservation, protection, and interpretation of such monuments or memorials shall not be prohibited (emphasis added).

The somewhat subtle, but critical, highlighted language in the two subsections above must be carefully analyzed. When read together, O.C.G.A. § 50-3-1(b)(1) explicitly prohibits a county or county official from removing or concealing a publicly-owned confederate monument. O.C.G.A. § 50-3-1(b)(2) applies to monuments owned by the state, its departments, and instrumentalities and does not allow such monuments to be "relocated," but on its face this section of state law does not apply to monuments owned by counties for the following reasons.

Subsection (b)(1) applies to county officials, because it uses the term "local government."¹⁸ Subsection (b)(2) does not apply to county-owned monuments as the term "local government" is absent from subsection (b)(2). The omission of any reference to "local governments" indicates an intent by the state legislature that (b)(2) not apply to counties.⁹ Further, because the phrase "local government" is omitted from (b)(2), I am of the opinion that in this statute, counties are not "state agencies" or "instrumentalities of the state."¹⁰ Therefore, I conclude that county-owned

⁸ Counties are indisputably "local governments." See O.C.G.A. §§ 36-92-1, 50-8-2, 36-86-3

⁹ *Allen v. Wright*, 282 Ga. 9, 13-14 (2007) ("Georgia law provides that the express mention of one thing in an Act or statute implies the exclusion of all other things. Pursuant to the principle of statutory construction, '*Expressum facit cessare tacitum*' (if some things are expressly mentioned, the inference is stronger that those omitted were intended to be excluded) and its companion, the venerable principle, '*Expressio unius est exclusion alterius*' ([t]he express mention of one thing implies the exclusion of another), the list of actions in a statute is presumed to exclude actions not specifically listed, and the omission of additional actions from the statute is regarded by the courts as deliberate.") (internal quotation marks omitted) (internal citation omitted). Simplistically, if the General Assembly intended for (b)(2) to apply to local governments it would have used similar language to that used in (b)(1), so the omission must be deliberate.

¹⁰ See *Miller v. Georgia Ports Auth.*, 266 Ga. 586 (1996). See also O.C.G.A. §§ 50-5-82 and 50-21-22. In other contexts, a county has been considered a state department, agency or instrumentality. See Ga. Const. art. I, § 2, ¶ IX(c) and *Gilbert v. Richardson*, 264 Ga. 744, 747 (1994).

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monuments do not fall under the purview of subsection (b)(2).¹¹

As discussed below, these distinctions are critical because while subsection (b)(2) prohibits the relocation of such Monuments subject to a preservation exception,¹² subsection (b)(1) does not.¹³ As a consequence, DeKalb must comply with subsection (b)(1), but not (b)(2).¹⁴ With this legal determination in mind, the remainder of this opinion discusses the options available to the County vis-à-vis the Monument.

1. Removal and Concealment

The plain and clear language of subsection (b)(1) of O.C.G.A. § 50-3-1 prohibits “local governments” such as DeKalb County from “removing” such monuments. Therefore, removal by the County for the purpose of destruction is prohibited by the applicable legislation. Likewise, the plain and clear terminology of O.C.G.A. § 50-3-1(b)(1) forbids the “concealment” of qualifying monuments, so the County cannot take any action toward concealing the Monument.

2. Relocation

Under subsection (b)(1), DeKalb County as a “local government” would be authorized to “relocate” the “publicly owned” Monument, as long as its new location does not “conceal it from visible display.” As such, relocating the Monument to an appropriate site, such as a museum, cemetery, or property offered by a willing host, would be authorized under state law as long as the relocation does not “conceal” the Monument from those members of the public who might wish to view it.

Further, there does not appear to be any requirement that such a relocation would have to

¹¹ While not controlling, legislative counsel agrees with my interpretation and a letter to Senator Elena Parent is attached to this opinion as Attachment 5.

¹² Even if O.C.G.A. § 50-3-1(b)(2) were somehow construed by a court to apply to county-owned monuments, this state law allows an entity to adopt appropriate measures for the preservation, protection and interpretation of such monuments. Relocation of the Monument to an appropriate venue could be characterized as an act to preserve, protect and interpret the Monument. As you know, the Monument has recently been vandalized on at least two occasions, and has been the focus of much debate and various rallies. (The police report and pictures of recent vandalism are attached to this memorandum as Attachment 6.) The Monument could easily become a rallying and flash point for violence as occurred in August of 2017 in Charlottesville, Virginia; thus, also creating a public safety concern for the City of Decatur and DeKalb County.

¹³ Subsections (b)(1) and (b)(2) both prohibit the destruction of applicable monuments

¹⁴ It is also worth mentioning that while subsection (b)(2) applies only to “publicly owned monuments” that are also “located on public property,” subsection (b)(1) applies to “publicly owned monuments” regardless of their location. Regardless, as discussed above, while the land on which the Monument lies has been determined to be owned by the County to a high degree of certainty, the weight of evidence also indicates that the Monument itself is also owned by DeKalb County. As such, in order to insure compliance with state law, the County must comply with the requirements of subsection (b)(1) because the Monument is apparently “publicly owned.”

be to another site within DeKalb County, or even the state of Georgia, as long as the Monument remains available for visible display. However, if a local site is available, it would be recommended in lieu of an out-of-county or out-of-state location in order to avoid the appearance of attempting to "conceal" it from DeKalb or Georgia residents.

It is also worth noting that we have determined that the inclusion of the Historic County Courthouse on the National Register of Historic Places does not prevent you from relocating the Monument.¹⁵

3. Maintaining the status quo

A faction of the public is advocating for the status quo, or to leave the Monument "as is." This would be a lawful option under state law.

4. Contextualization

Between the options of leaving the Monument "as is" and relocating, or even removing it, is the option of leaving the Monument in its current location, but with some historic "contextualization." For example, an adjacent sign or plaque could be installed, stating that the Monument, its inscription on the sides of the base, and its apparent original purpose are no longer supported, but that the Monument solely serves as a historic reminder of a dark period in American history. Nothing in O.C.G.A. § 50-3-1(b) or any other applicable law would prohibit such "contextualization."

5. Transfer to a Third Party

Finally, some have suggested transferring the Monument to a third party in order to allow for another individual or entity to assume responsibility for the Monument. Under O.C.G.A. § 36-9-2, counties have authority to control and dispose of their property. However, as discussed above, the County has authority under O.C.G.A. § 50-3-1(b)(1) to "relocate" the Monument on its own.

Under the plain letter of the law, transfer of the Monument to a third party for its subsequent destruction or concealment appears to be authorized, but it would also seem to violate the obvious spirit and intent of the law. Because you have the option of relocating the Monument yourself, it is my recommendation that you do not take any action endeavoring to transfer it to a third party as an indirect method of achieving its removal or concealment. It does appear that you have the authority under state law to transfer the Monument to a third party for it to be relocated and remain visibly displayed.

¹⁵ 36 C.F.R. §60.14. The website for the National Register of Historic Places includes the following explanation concerning designated historic places: "From the Federal perspective (the National Register of Historic Places is part of the National Park Service), a property owner can do whatever they want with their property as long as there are no Federal monies attached to the property. You can find this on our website at: http://www.nps.gov/nr/national_register_fundamentals.htm."

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CONCLUSION

In conclusion, given the County's apparent ownership of the Monument and underlying land, it is my opinion that state law authorizes the County's relocation of the Monument to another visible site, or contextualization of the Monument. In my opinion, removal or concealment of the Monument by the County, however, does not appear to be authorized under state law. Leaving the Monument "as is" would be another lawful option. Meanwhile, transfer of the Monument to a non-governmental entity in order for it to be removed or concealed might be technically authorized under the plain language of the statute, but such action would pose a risk of a legal challenge as it would seem to contradict the spirit and intent of the law. Finally, I am of the opinion that state law authorizes you to transfer the Monument to a third party for it to be relocated and remain visibly displayed.

As you proceed, I would advise you to adopt and approve a written resolution which embodies your decision concerning the Monument. I and my staff will be glad to help you draft the appropriate Resolution. Please let me know if I may be of further assistance.

cc: Zachary Williams, COO
Antwyn Brown, Chief of Staff, BOC
La'Keitha Carlos, Chief of Staff, CEO
Delores Crowell, Integorvermental Affairs Manager
Viviane H. Ernstes, Deputy County Attorney
John E. Jones, Jr., Senior Assistant County Attorney

EXHIBIT D

RESOLUTION

**A RESOLUTION BY THE GOVERNING AUTHORITY OF DEKALB
COUNTY, GEORGIA, TO TRANSFER OR RELOCATE THE
CONFEDERATE MONUMENT ON THE DECATUR SQUARE, AND FOR
OTHER PURPOSES.**

Whereas, a confederate monument is located on the Decatur Square adjacent to the rear of the DeKalb County History Center, formerly the DeKalb County courthouse (“Confederate Monument”);

Whereas, historical media articles reflect that the Confederate Monument appears to have been erected in 1908 with its construction directed by the A. Evans Camp of Confederate Veterans and the Agnes Lee Chapter of the United Daughters of the Confederacy;

Whereas, at the time of its enactment in 1908, African Americans were prohibited from exercising the same first amendment and other constitutional rights as bestowed upon white Americans;

Whereas, the Confederate Monument contains an inscription which glorifies and praises soldiers of the confederacy, in part, because such soldiers “were of a covenant keeping race”;

Whereas, it appears that the Confederate Monument is owned by DeKalb County and is located on land owned by DeKalb County;

Whereas, state law allows a county or county official to relocate a confederate monument or transfer such a monument to a third party so long as the monument remains visibly displayed; and

Whereas, the Confederate Monument has recently been vandalized on at least two occasions, and has been the focus of much debate and various rallies; and

Whereas, the Confederate Monument could easily become a rallying and flash point for violence as occurred in August of 2017 in Charlottesville, Virginia; thus, creating a public safety concern for the City of Decatur and DeKalb County;

NOW, THEREFORE, BE IT RESOLVED, by the Governing Authority as follows:

1. The Governing Authority finds that the Confederate Monument is owned by DeKalb County and is located on land owned by DeKalb County;
2. The Governing Authority hereby finds that the Confederate Monument shall be relocated to a place that allows it to be visibly displayed or shall be transferred to a third party with a written requirement that such third party locate the Confederate Monument at an identified place which allows the Confederate Monument to remain visibly displayed;

3. The Governing Authority hereby finds that this action to transfer and relocate or simply relocate is an appropriate measure for the preservation, protection and interpretation of the Confederate Monument and the public safety of the citizens of and visitors to the County and the City of Decatur;
4. The Governing Authority directs the Executive Assistant to implement a publicly advertised process whereby he solicits proposals for (1) relocation and/or transfer and (2) interpretation of the Confederate Monument within 30 days of adoption and approval of this Resolution; and
5. The Governing Authority plans to lobby for the full repeal of O.C.G.A. 50-13-1 by the Georgia General Assembly during the 2018 session and shall include such repeal as a priority in its legislative agenda for 2018.

ADOPTED by the DeKalb County Board of Commissioners, this ____ day of
_____, 2018.

JEFF RADER
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this ____ day of
_____, 2018.

MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

BARBARA H. SANDERS-NORWOOD, CCC
Clerk to the Board of Commissioners and
Chief Executive Officer

APPROVED AS TO FORM:

VIVIANE H. ERNSTES
Interim County Attorney

EXHIBIT E



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Legislation Details (With Text)

File #: 2019-3283 **Version:** 1 **Name:**
Type: Resolution **Status:** Preliminary Item
File created: 1/30/2019 **In control:** Board of Commissioners
On agenda: 2/26/2019 **Final action:**
Title: Commission District(s): All Districts
A Resolution to Adopt a Contextualization Statement for the Confederate Monument
Indexes:
Attachments: 1. 2019 03.12 Item 2019-3283, 2. Resolution on Contextualization, 3. Contextualization Statement 2019-1-15, 4. 2017 10.24 Resolution to Remove or Relocate the Confederate Monument on the Decatur Square

Date	Ver.	Action By	Action	Result
3/12/2019	1	Board of Commissioners	approved substitute submitted from the floor	Pass
2/12/2019	1	OPS-County Operations Committee	recommended for approval.	Pass
2/12/2019	1	Board of Commissioners		
2/5/2019	1	Committee of the Whole	Substitute	

Public Hearing: YES NO

Department: Board of Commissioners

SUBJECT:

Commission District(s): All Districts

A Resolution to Adopt a Contextualization Statement for the Confederate Monument

Information Contact: Commissioners Gannon and Rader

Phone Number: 404 371 6353

PURPOSE:

The Board of Commissioners has previously adopted a resolution to move the Confederate monument from the Courthouse Square and a resolution authorizing contextualization. While it remains the adopted policy to move the Confederate monument, the County has been unable to find a suitable location. In the interim of relocating the monument, the attached resolution authorizes a contextualization statement of the monument.

NEED/IMPACT:

To authorize the attached narrative statement and to allocate the necessary funding.

FISCAL IMPACT:

\$3,000.

RECOMMENDATION:

To approve the resolution and authorize the chief executive officer to execute all necessary documents.....