
The Georgia Confederate Flag Dispute

Author(s): J. Michael Martinez

Source: *The Georgia Historical Quarterly*, Summer 2008, Vol. 92, No. 2 (Summer 2008), pp. 200-228

Published by: Georgia Historical Society

Stable URL: <https://www.jstor.org/stable/40585055>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



is collaborating with JSTOR to digitize, preserve and extend access to *The Georgia Historical Quarterly*

JSTOR

The Georgia Confederate Flag Dispute

BY J. MICHAEL MARTINEZ

Few symbols incite as much passion or political controversy as the St. Andrew's cross design of the Confederate battle flag, which typically divides people into one of three camps—proponents of the emblem, opponents of the emblem, or persons who are indifferent. Setting aside those who are indifferent, the other two camps subscribe to divergent interpretations of southern history. For proponents, who are sometimes labeled “traditionalists,” for want of a better term, the Southern Cross recalls the valor of Confederate soldiers who fought and sometimes died on the battlefield as well as a romanticized view of the nineteenth-century South when the planter elite controlled state governments with a sense of noblesse oblige and white Southerners believed in small, localized governments and the fixed social position of the races. Yet even traditionalists are divided over the appropriate interpretation of the Confederate battle emblem. “Heritage preservation” traditionalists see themselves as guardians of the southern inheritance of honor and chivalry while a second group of traditionalists, most notably the Ku Klux Klan, espouses racist views.¹

¹Samuel A. Ashe, *A Southern View of the Invasion of the Southern States and War of 1861-65* (Raleigh, N.C., 1938); David M. Chalmers, *Hooded Americanism: The History of the Ku Klux Klan* (1965; rpt., Durham, N.C., 1981); Don Hinkle, *Embattled Banner: A Reasonable Defense of the Confederate Battle Flag* (Paducah, Ky., 1997); Kenneth T. Jackson, *The Ku Klux Klan in the City, 1915-1930* (Chicago, 1967); James Ronald Kennedy and Walter Donald Kennedy, *The South Was Right!* (Gretna, La., 1994); Louis D. Rubin, Jr., ed., *I'll Take My Stand: The South and the Agrarian Tradition* (Baton Rouge, La., 1977); Nancy MacLean, *Behind the Mask of Chivalry: The Making of the Second Ku Klux Klan* (New York, 1994); J. Michael Martinez, *Carpetbaggers, Cavalry, and the Ku Klux Klan: Exposing the Invisible Empire During Reconstruction* (Lanham, Md., 2007); James Ridgeway, *Blood in the Face: The Ku Klux Klan, Aryan Nations, Nazi Skinheads, and the Rise of a New White Culture* (New York, 1990); Wyn Craig Wade, *The Fiery Cross: The Ku Klux Klan in America* (New York, 1987).

MR. MARTINEZ is the author of *Carpetbaggers, Cavalry, and the Ku Klux Klan: Exposing the Invisible Empire During Reconstruction* (Lanham, Md., 2007) and editor (with William D. Richardson and Ron McNinch-Su) of *Confederate Symbols in the Contemporary South* (Gainesville, Fla., 2000).

THE GEORGIA HISTORICAL QUARTERLY
VOL. XCII, NO. 2, SUMMER 2008

For opponents, sometimes called “modernists,” the emblem is a rude reminder of a degrading, disgraceful period in American history when whites treated black slaves as subhuman. Even after the demise of slavery, the sharecropping system and the ruthless exploitation inherent in *de jure* segregation hobbled African Americans. The use of the Confederate battle emblem by ardent segregationists as a symbol of the days of Jim Crow unequivocally made it offensive and degrading in the eyes of many blacks. Even the modernist ranks are not in full accord; a small group of modernists recognizes the offensive nature of the symbol but contends that time and attention used to protest state displays of Confederate flags could be better spent addressing substantive issues in the black community.²

The dispute between traditionalists and modernists and their differing interpretations of the Southern Cross all but guaranteed that controversy would spring up when employing the emblem in the modern landscape. If the battle emblem had been left buried in the pages of history, it probably would have remained a symbol of the Confederate States, its meaning and interpretation inextricably linked to the Civil War. After World War II, however, some white Southerners rediscovered the emblem and began displaying it in a variety of contexts. Owing to its evolving uses and interpretations beginning in the 1940s, the emblem came to hold no fixed meaning. It was an all-purpose symbol—honorable to some, offensive to others, visible to all. Moreover, just as the resurrection of the Southern Cross altered the interpretation of its original, historical meaning (which was not precise in the first place), the

²*Atlanta Journal & Constitution*, March 19, 1995 (hereinafter cited as *AJC*); Eric Bates, “Look Away: Why Are Southerners Still Fighting Over the Confederate Flag?” *Southern Exposure* 2 (Spring 1990): 35-37; John M. Coski, “Battle Flag: A Brief History of America’s Most Controversial Symbol,” *North & South* 4 (September 2001): 48-61; John M. Coski, *The Confederate Battle Flag: America’s Most Embattled Emblem* (Cambridge, Mass., 2005), 193-201, 247-48, 296-97; John Walker Davis, “An Air of Defiance: Georgia’s State Flag Change of 1956,” *Georgia Historical Quarterly* 82 (Summer 1998): 315; James Forman, Jr., “Driving Dixie Down: Removing the Confederate Flag from Southern State Capitols,” *Yale Law Journal* 101 (November 1991): 505; George Schedler, *Racist Symbols and Reparations: Philosophical Reflections on Vestiges of the American Civil War* (Lanham, Md., 1998); Robert Holmes and M. Christine Cagle, “The Great Debate: White Support for and Black Opposition to the Confederate Battle Flag,” 284; and J. Michael Martinez and William D. Richardson, “Introduction: Understanding the Debate Over Confederate Symbols,” 6-8. The last two in J. Michael Martinez, William D. Richardson, and Ron McNinch-Su, eds., *Confederate Symbols in the Contemporary South* (Gainesville, Fla., 2000).

changing demographics of the New South during the latter part of the twentieth century, with an influx of residents born and reared outside the region, the increasingly urban nature of southern life, and the growing political power exercised by African Americans, virtually ensured that the emblem would be challenged in state legislatures and in the courts.³

The political, social, and economic controversy over public displays grew especially vehement in Georgia, where the Confederate emblem was featured prominently on the state flag from 1956 to 2001. In some southern states, a compromise on official displays of the Confederate flag was reached with relatively minor opposition and debate, but the controversy in Georgia presented an enormous, almost intractable, challenge because the issue was important to a large percentage of the public. As a result of its high profile and copious coverage by the mass media, the Georgia flag dispute became an object lesson on how to employ legislative and judicial methods to effect changes in public policy.⁴

The road from the creation of the Confederate battle emblem to the Georgia flag controversy proved long and meandering. The original battle flag adopted by the Army of Northern Virginia during the Civil War was square and featured a blue St. Andrew's cross on a red background with thirteen stars, but the Confederate States of America flew three national flags, two of which incorporated the battle design. The first national flag of the Southern Confederacy, colloquially referred to as the "Stars and Bars," resembled the American flag; accordingly, many Confederates considered it uninspiring. The Confederate Congress later adopted a pattern that incorporated part of the battle emblem. Nicknamed the "stainless banner," the second national flag first appeared above the Confederate capitol in May 1863. In the concluding months of the war, the Confederate Congress again changed the flag, creating the third national flag of the Confederacy, the "modified stainless banner." The new flag added a ver-

³Holmes and Cagle, "The Great Debate," 281-85; Martinez and Richardson, "Introduction: Understanding the Debate Over Confederate Symbols," 6-9.

⁴See, for example, Murray Edelman, *The Symbolic Uses of Politics* (Urbana, Ill., 1964); Martinez and Richardson, "Introduction: Understanding the Debate Over Confederate Symbols," 1-22; Chris Springer, "The Troubled Resurgence of the Confederate Flag," *History Today* 43 (June 1993): 7-9.

tical red stripe to the edge so the design would not resemble a white flag of surrender.⁵

After the war ended, most former Confederates packed away their flags, unfurling them only on special occasions such as veterans' reunions or monument dedication ceremonies. The battle emblem appeared periodically in political campaign literature or advertisements for businesses, but those uses were rare during the nineteenth century. In most instances when "misuse" occurred, heritage groups, especially the United Daughters of the Confederacy and the United Confederate Veterans, lodged protests. Some former Confederates viewed their flags as sacred symbols connoting the apex of southern life and culture; to use their symbols for political or commercial gain was profane. A large number of ex-rebels saw no need to resurrect symbols of the past.⁶

It was not until the 1940s that the battle emblem became well-known to a wide audience. Appearing especially at college football games in the South, miniature Confederate battle flags could often be seen waving in large, enthusiastic crowds. Such flags became a fad in the years that followed. The emblem took on political overtones when the States' Rights Democratic (Dixiecrat) party displayed it on a rectangular flag as a mark of defiance after Alabama and Mississippi delegates, incensed at the party's civil rights plank, stormed from the 1948 Democratic National Convention.⁷

During the 1950s, almost a century after the end of the Civil War, several southern state legislatures, including the Georgia General Assembly, adopted the Confederate battle emblem in the flag as part of a stand against federal intervention into state rights, especially regarding school integration. Later, the ubiquity of the symbol transformed the battle emblem into an ambiguous, iconic reflection of popular culture. The St. Andrew's cross appeared on

⁵Devereaux D. Cannon, Jr., *The Flags of the Confederacy: An Illustrated History* (Memphis, 1988), 51-52; Coski, *The Confederate Battle Flag*, 10-11; John M. Coski, "The Confederate Battle Flag in Historical Perspective" in Martinez et al., eds., *Confederate Symbols in the Contemporary South*, 97; G. Moxley Sorrel, *Recollections of a Staff Officer*, edited by Bell I. Wiley (Jackson, Tenn., 1958), 28-29; Kevin Thornton, "The Confederate Flag and the Meaning of Southern History," *Southern Cultures* 2 (Winter 1996): 233.

⁶Coski, *The Confederate Battle Flag*, 79-84.

⁷Coski, "The Confederate Battle Flag in Historical Perspective," 106-13; Coski, "Battle Flag: A Brief History of America's Most Controversial Symbol," 48-61; Springer, "The Troubled Resurgence of the Confederate Flag," 7-9.

signs, posters, bumper stickers, clothing, belt buckles, jewelry, and in numerous books, magazines, and throughout the entertainment media. By the 1950s the emblem was displayed to indicate pride in Confederate ancestry, a general rebelliousness toward powerful institutions, especially the federal government, a person's affiliation with a racist organization, or because the symbol was an aesthetically appealing slice of Americana.⁸

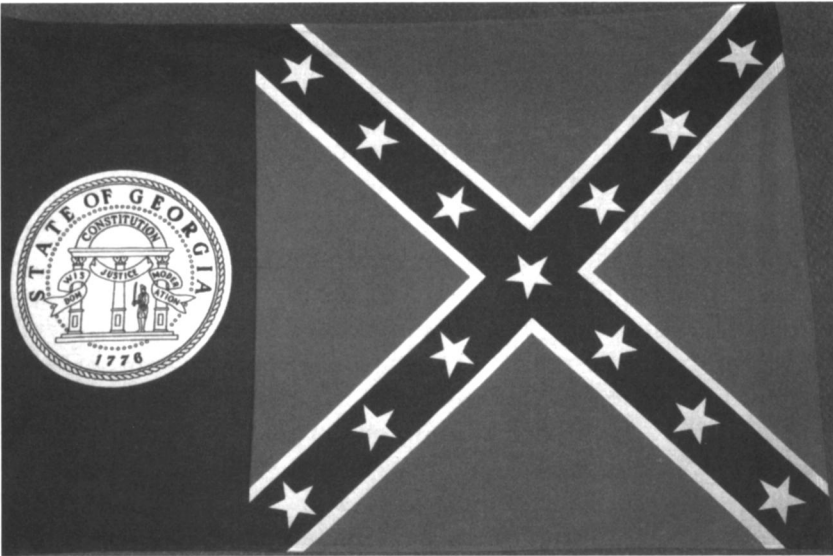
Prior to 1956, Georgia flew several unofficial flags, including the state seal on a blue background, until the legislature adopted a variation on the first Confederate national banner as the official flag in 1879. The state seal was added to that flag in 1905. The design, with minor modifications, remained in place for more than five decades, until Georgia state legislators began debating whether they should place the Confederate battle emblem on the flag. The debate became part of a larger discussion of federal court interference into state affairs. Georgia governor Marvin Griffin pledged in his 1956 state-of-the-state address that "there will be no mixing of the races in public schools, in college classrooms in Georgia as long as I am Governor." Later, during an address to the States' Rights Council of Georgia at the beginning of the 1956 session, he said that "the rest of the nation is looking to Georgia for the lead in segregation."⁹

Denmark Groover, floor leader of the Georgia House of Representatives, agreed that the state would support Governor Griffin's position and lead the fight against school integration. He famously remarked that a flag featuring the Confederate battle emblem "will have a deep meaning in the heart of every true Southerner." After the battle emblem had been inserted into the design, Groover remarked, "I am proud of the new flag and all true Georgians ought to be. . . . [It] will leave no doubt in anyone's mind that Georgia will not forget the teachings of [Robert E.] Lee and Stonewall Jackson."¹⁰

⁸Coski, *The Confederate Battle Flag*, 78-96; Coski, "The Confederate Battle Flag in Historical Perspective," 113-15.

⁹Quoted in *Coleman v. Miller*, 912 F. Supp. 522 (N.D. Ga. 1996), *aff'd* 117 F.3d 527 (11th Cir. 1997), 528. See also, Davis, "An Air of Defiance," 315, and Schedler, *Racist Symbols and Reparations*, 44-46.

¹⁰Quoted in Davis, "An Air of Defiance," 324. See also, *AJC*, February 10, 1956; *Tuscaloosa [Alabama] News*, February 11, 1956.



The state flag from 1956 until 2001 prominently featured the Confederate battle emblem. *Courtesy of the Georgia Capitol Museum, Office of the Secretary of State, Atlanta.*

The link between the battle emblem and opposition to school desegregation also was strengthened when John Sammons Bell, chairman of the Georgia Democratic party and an attorney for the Association of County Commissioners (ACC), offered a resolution at the ACC's annual convention in 1955 to add the Confederate pattern to the flag. The ACC adopted eleven resolutions that year. The second resolution stated: "*Whereas*, the flag of the state or nation is a symbol of loyalty and devotion of a people to that government and *Whereas*, such a flag should be distinctive and beautiful and yet symbolic of the tradition it represents," Georgia should change its flag to feature the Confederate battle emblem. The third resolution attacked the U.S. Supreme Court's decision to desegregate public schools in *Brown v. Board of Education* and concluded that it was "an affront and challenge to the traditions of our people."¹¹

Georgia legislators accepted the ACC's recommendations and incorporated the battle emblem into the Georgia state flag during the 1956 session. The new design displayed the red and blue St.

¹¹Quoted in Davis, "An Air of Defiance," 317. See also, Coski, *The Confederate Battle Flag*, 252-54.

Andrew's cross on the outer two-thirds of the state flag, and the state seal containing the words "Wisdom, Justice and Moderation" appeared on the remaining one-third. The new design was soon codified into state law.¹²

After the initial media coverage and legislative activity in 1956, the matter appeared to be forgotten; several decades passed before the flag again became a visible political issue in Georgia. Jane Merritt, a white state representative from Americus, attempted to resurrect the issue in 1969 when she offered several proposals to remove the battle emblem, but her proposals never garnered sufficient support to secure passage in the general assembly. It was not until January 1987 that the emblem again attracted public attention when a group of white supremacists waving the battle flag pelted a group of civil rights marchers in Forsyth County with rocks and bottles. A committee formed by Gov. Joe Frank Harris delved into the causes of the assault and concluded that the presence of the Confederate battle emblem on the flag exacerbated racial tensions. The committee recommended that the state should remove the St. Andrew's cross design from the flag. Concerned about the passions surrounding the episode, the governor never acted on the recommendations. A few months after the Forsyth County civil rights march, legislator Frank Redding introduced several proposals to change the design. As with Merritt's efforts in 1969, Representative Redding's original efforts "were never taken seriously."¹³

That same year, the National Association for the Advancement of Colored People's (NAACP) southeast regional organization passed a resolution at its thirty-fifth Annual Leadership Training Institute urging the removal of the battle flag from atop the state capitol domes in Alabama and South Carolina and the adoption of new flag designs in Georgia and Mississippi. Local NAACP branches circulated petitions against these "offensive symbols of racism and segregation." Historian John M. Coski has observed that Confederate flags "were apparent legacies of the era of 'mas-

¹²GA. Code Ann. § 50-3-1 (1956); *Coleman v. Miller*, 528; David L. Hudson, Jr., "Stars and Bars Wars: Confederate Flag Wavers, Many of Them Students, Storm the Courts Under a Banner of Free Expression," *ABA Journal* 86 (November 2000): 28.

¹³A/JC, January 12, February 7, 1993; Coski, *The Confederate Battle Flag*, 255-56; Holmes and Cagle, "The Great Debate," 295.

sive resistance' against integration." As other civil rights issues began receiving less media attention during the 1980s, vestiges of past discrimination became convenient targets and "reinforced the usefulness of the flag issue for the NAACP."¹⁴

For almost five years after the events of 1987, the flag controversy disappeared from the public forum in Georgia. On May 28, 1992, the flag again surfaced as a visible public issue when Democratic governor Zell Miller announced that he would sponsor legislation changing the state flag back to the pre-1956 design. Linking removal of the Confederate emblem to a desire to project a better image for Atlanta in the 1994 Super Bowl and the 1996 Summer Olympic Games, the governor said, "[t]he Georgia flag is a last remaining vestige of the days that not only are gone, but also days that we have no right to be proud of, days that should not be revered as one of the high points in the history of this state."¹⁵

Miller faced one of the toughest battles of his career, according to Lt. Gov. Pierre Howard, who was taken aback by the governor's bold action. "Some senators might feel they have to promise to vote against [it] if that is what most of their constituents want," he observed. Representative Jim Tyson Griffin, a Democrat from Tunnel Hill who opposed changing the flag, conceded that "[i]f the governor pushes it, it will have a chance." The chance was slight since a 1992 poll revealed that a majority of Georgians opposed a change.¹⁶

In his state-of-the-state address before the legislature on January 12, 1993, Governor Miller expressed his resolve to alter the flag despite the high political costs. "It is clear the flag was changed in 1956 to identify Georgia with the dark side of the Confederacy," he said. "I submit to you that this one issue, by its very nature, transcends this particular session and this particular climate of opinion. It goes to our identity as a state, and it goes to our legitimacy as public officials. . . . So that brings it down to a matter of sheer guts. Will you do the easy thing, or the right thing? My

¹⁴Coski, *The Confederate Battle Flag*, 192, 255-56; Holmes and Cagle, "The Great Debate," 293-95.

¹⁵*AJC*, May 29, 1992; Coski, *The Confederate Battle Flag*, 256-58.

¹⁶Steve Harvey, "Flag Issue Fans Political Flames; Miller's Call to Remove Symbol Tests His Clout," *AJC*, May 29, 1992. See also, March 29, October 25, 1992; Arnold Fleischmann and Carol Pierannunzi, *Politics in Georgia* (Athens, Ga., 1997), 76.

friends, you cannot lead with a finger raised to the wind and an ear to the ground—it's an undignified position."¹⁷

The governor's speech provoked a variety of reactions. Speaker of the Georgia house Tom Murphy, an influential Democrat from the small town of Bremen, said, "I am going to honor the will of the majority of my people. I would say 95 percent of my people do not want the flag changed." "This is bullshit," remarked Max Davis, a Republican representative from Atlanta, after he booed the governor's speech. House Rules Committee Chairman Bill Lee, a Democrat from Forest Park who opposed altering the flag, predicted that the governor's proposal faced a "long, rocky road."¹⁸

By contrast, Kip Klein, a Republican representative from nearby Marietta, lauded Miller's "political courage." "If we want to be the party of Lincoln, we ought to start acting like the party of Lincoln," he said. State attorney general Michael J. Bowers, considering his own gubernatorial bid, supported the proposal. Bowers announced that "I think he's done a very important thing. It is the right thing to do. He is to be commended by the people of this state, and I admire him for doing it." Representative Robert Holmes, an African-American Democrat from Atlanta, also expressed support for the governor's clarion call when he declared that the governor did "give a damn." Civil rights activists and key political leaders held a series of flag rallies. African-American clergymen threatened boycotts, while students from historically black colleges and universities publicly burned the flag.¹⁹

The governor soon realized he did not have enough votes in the assembly to change the flag. Facing probable defeat, he asked the legislature to table the measure, reasoning that if the matter were not put to a vote, perhaps he could preserve the issue for a more opportune time. Angry legislators reacted with a measure of their own. On February 9, 1993, 101 members of the 180-member House of Representatives supported a bill that threatened to discontinue funding for any local governments that did not display

¹⁷Zell Miller, "Will You Act as [an] Individual or Go with [the] Crowd?" *AJC*, January 13, 1993.

¹⁸Ben Smith III, "Flag Speech Both Inspires and Infuriates," *ibid.*, January 13, 1993.

¹⁹Steve Harvey, "Many Embarrassed by Link to Racism; Current State Flag Dates to '56 Battle over Desegregation," *ibid.*, May 29, 1992; Mark Sherman, "Little Applause for Miller's Call to Change the Flag; Lawmakers Give Chilly Reception to Governor's Impassioned Speech," *ibid.*, January 13, 1993.

the state flag on state property. A second bill would have made it a crime to deface Confederate monuments, punishable by up to seven years in prison for anyone convicted of the offense. Public officials who encouraged others to deface Confederate monuments could be sentenced to ten years in prison, fined ten thousand dollars, or both. The measures rapidly passed the house, but they died in the senate. Although they failed to change the law, the bills sent a clear message about "the sense of the House."²⁰

Atlanta Journal & Constitution columnist Tom Baxter observed that Miller's aborted efforts were aimed at publicizing his progressive gubernatorial administration as a symbol of the New South so he could impress Democratic party leaders. With the Summer Olympic Games on the schedule, this makeover as the "new and improved South" was especially important. Miller also may have leveraged support for his much-touted welfare reform package by garnering votes from African-American legislators in exchange for agreeing to lead the effort to change the flag design.²¹

For their part, traditionalists used the 1993 flag dispute as a marketing tool for recruiting new members. The Sons of Confederate Veterans (SCV), an organization comprised of descendants of Confederate veterans, proved especially successful. The group's ranks rose from approximately ten thousand members prior to 1991 to more than fifteen thousand at the height of the flag dispute in 1993. SCV spokesman P. Charles Lunsford claimed that

²⁰Some years later, reflecting on the 1992-1993 flag dispute in his memoirs, Governor Miller explained that he owed "a deep debt of loyalty to [his Confederate ancestors'] valor." Nonetheless, "as governor I owe loyalty to *all* the citizens of my state. And as a historian I owe loyalty to the truth. And the truth is, the Confederate battle flag under which my ancestors fought with honor was shamefully hijacked by segregationists nearly a century after Appomattox. Hatemongers added that symbol to our flag to show contempt for the court rulings that called for an end to segregation. They took a noble symbol and perverted it, using it to intimidate the powerless and divide Georgians. . . . I saw my fight to restore our flag as keeping faith with our true history, restoring the dignity of our past, ending the division of the present, and working toward unity in the future." Zell Miller, *Corps Values* (Atlanta, 1996), 103. See also, *AJC*, February 10, 1993; Coski, *The Confederate Battle Flag*, 258. For more on public attitudes about the flag in the aftermath of Miller's unsuccessful challenge in 1993, see, for example, John A. Clark, "Explaining Elite Attitudes on the Georgia State Flag," *American Politics Quarterly* 25 (October 1997): 482-96; and Beth Reingold and Richard S. Wike, "Confederate Symbols, Southern Identity, and Racial Attitudes: The Case of the Georgia State Flag," *Social Science Quarterly* 79 (September 1998): 568-80.

²¹Tom Baxter, "Run This Up the Flag Pole: What is Zell Doing?," *AJC*, January 13, 1993.

public opinion polls demonstrated overwhelming support for retaining the current design.²²

With legislative avenues for change unavailable in the wake of Governor Miller's efforts, opponents of the flag turned their attention to the courts. The leading case involving Confederate symbols in the 1990s was *Coleman v. Miller*, a challenge to the Confederate battle emblem incorporated into the Georgia flag. The black plaintiff, James A. Coleman, filed suit in federal court seeking an injunction "ordering the immediate removal of the Georgia flag from all state office buildings on the basis that both the legislation establishing the flag and the flag's design are discriminatory and racist in nature."²³

The attorney general's office, which represented the defendants, Governor Miller and the state of Georgia, filed a motion for summary judgment asking that the suit be dismissed for failure to state a justiciable cause of action. Judge Orinda D. Evans (an African-American woman) of the U.S. District Court for the Northern District of Georgia granted the motion. In Evans's view, the historical reasons for the incorporation of a Confederate symbol into the flag were ambiguous, and the plaintiff failed to show a "discriminatory impact." "The only statement about the flag that all may agree upon," she wrote, "is that the flag fails as a unifying symbol for citizens of Georgia. This fact does not subject the flag to judicial scrutiny absent specific and concrete examples that the flag has caused a disparate effect on African Americans." Because Coleman did not demonstrate that his legal rights had been infringed, as opposed to a more general political right, the case failed because it involved a political question more amenable to legislative redress.²⁴

²²Public opinion polls were conducted in January and February 1993, when Miller's flag proposal was under consideration; however, many of the polls were part of radio and television call-in shows and, therefore, of little validity. Of the dozens of polls conducted in the early to mid-1990s, only two were sufficiently scientific to be of use. In both cases, they indicated that white Georgians generally wished to retain the Confederate battle emblem in the flag, while a plurality of African Americans wanted a change. See, for example, *The Georgia State Poll: Quarterly Report* (Atlanta, Ga., 1992); and "South Polls: An Embattled Emblem," *Southern Cultures* 1 (Spring 1995): 393-98.

²³*Coleman v. Miller*, 527. See also, Laurence Baum, *The Supreme Court* (Washington, D.C., 1989), 240-43; Forman, "Driving Dixie Down," 526; Hudson, "Stars and Bars Wars," 28; *N.A.A.C.P. v. Hunt*, 891 F.2d 1555 (11th Cir. 1990), 1556.

²⁴*Coleman v. Miller*, 530, 532. See also, *Holmes v. Wallace*, 407 F. Supp. 493 (M.D. Ala. 1976), and *N.A.A.C.P. v. Hunt*, 1555.

Coleman raised several constitutional claims, including a Fourteenth Amendment equal protection argument. The equal protection clause of the Fourteenth Amendment provides that no state may “deny to any person within its jurisdiction the equal protection of the laws.” The U.S. Supreme Court has held that a case alleging an equal protection violation must demonstrate a discriminatory intent. Even a statute that appears neutral on its face may be held unconstitutional if it is found to have been racially motivated and results in a disparate effect visited on a minority group. Judge Evans concluded that the motivations of the state legislators who added the Confederate battle emblem to the state flag in 1956 were ambiguous.²⁵

To sustain his case, Coleman needed to show that the state display of the Confederate battle emblem resulted in a specific discriminatory effect on his interests. To overcome the burden of demonstrating a connection between an official display of a Confederate symbol and specific harm, plaintiffs in these types of lawsuits cited *Brown v. Board of Education*. This case held that harm to the plaintiff can include “feelings of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.” In *Brown*, the state statute in question was anything but clearly discriminatory. The law could be linked directly to the establishment of demonstrably inferior “separate but equal” schools. The strategy did not work in *Coleman*. Such harm was absent in *Coleman*, because the connection between the official display of a Confederate flag and damage to a plaintiff was tenuous, at best.²⁶

The next promising line of attack in *Coleman* was the due process clause. The Fourteenth Amendment provides that “[n]o State

²⁵U.S. Constitution, amend. XIV, §1; *Coleman v. Miller*, 530. The U.S. Supreme Court announced the requirements for a “discriminatory intent” analysis—in this case, pursuant to the Fifth Amendment—in *Washington v. Davis*, 426 U.S. 229 (1976). Although the *Washington* case relied on the Fifth Amendment, the analysis would be the same under the equal protection clause of the Fourteenth Amendment. Despite Judge Evans’s conclusion that the reasons for the legislators’ decision to add the Confederate battle emblem in 1956 were ambiguous, some scholars have argued that the record strongly points to racial animus as the prime motivation. See, for example, Forman, “Driving Dixie Down,” 507; Davis, “An Air of Defiance,” 306-308; *Hunter v. Underwood*, 471 U.S. 222 (1985); *N.A.A.C.P. v. Hunt*, 1555.

²⁶*N.A.A.C.P. v. Hunt*, 1565. The U.S. Supreme Court outlined the two-pronged equal protection test in two leading cases, *Personnel Administrators of Massachusetts v. Feeney*, 442 U.S. 256 (1979) and *McCleskey v. Kemp*, 481 U.S. 279 (1987). See also, *Brown v. Board of Education*, 347 U.S. 483 (1954), 483, 494.

shall . . . deprive any person of life, liberty, or property, without due process of law.” Modernists contend that the relationship between African Americans and Caucasians can be harmed by official public displays of the Confederate symbol because the use of such a symbol is a “wholesale incorporation of Dixie.” This offensive reminder of the bigotry and divisiveness of southern history makes blacks less likely to associate with Caucasians. Recognizing that “freedom of association receives protection as a fundamental element of personal liberty,” courts generally have rejected the argument that displaying a symbol directly harms relationships among groups of people. In *Coleman v. Miller*, Judge Evans observed that the plaintiff’s claim “that the flag has interfered with his association with Caucasians, a large, undifferentiated group, does not fit the ‘intimate relationship’ criteria for protection. More importantly, Plaintiff has provided no evidence demonstrating that his relationships with Caucasians have been hampered because of the flag’s existence.”²⁷

Coleman next turned to the Thirteenth Amendment as the basis for a constitutional challenge. This amendment provides that “[n]either slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” Courts have interpreted congressional authority under the amendment to include power to eradicate the incidents and badges of slavery through appropriate legislation. The Eleventh Circuit discussed this issue at some length in *N.A.A.C.P. v. Hunt*, a federal case analogous to *Coleman* in which a group of African-American plaintiffs challenged the flying of the Confederate flag above the Alabama capitol dome. The court held that “the NAACP’s sole argument in support of its claim that the state has violated the Thirteenth Amendment is that the Confederate flag, because of its inspirational power in the Confederate army during the Civil War and its adoption by the Ku Klux Klan, is a ‘badge and vestige of slavery.’ Standing alone, the Thirteenth Amendment does not forbid the badges and incidents of slavery. Congress has not utilized its Thirteenth Amendment enforcement authority to

²⁷U.S. Constitution, amend. XIV, §1; *Coleman v. Miller*, 531. See also, Forman, “Driving Dixie Down,” 526; *Roberts v. United States Jaycees*, 468 U.S. 609 (1984).

pass legislation forbidding the flying of the Confederate flag as a badge or incident of slavery.”²⁸

The First Amendment is another basis for a constitutional challenge. Modernists generally argue that an official governmental display of the Confederate flag “chills” the plaintiffs’ desire to exercise free speech, thereby limiting minority participation in the political process. This argument is difficult for plaintiffs to sustain since the amendment cuts both ways; the public display of a Confederate symbol may chill an individual’s free speech rights owing to the implicit “hate” message it conveys, but “hate” speech alone, absent accompanying conduct, is protected by the First Amendment.²⁹

Because institutions of government also engage in speech, some First Amendment cases focus on a unique category specifically designated as “government speech.” Although some exceptions exist, generally the First Amendment has been held to protect individuals’ freedom of speech from government intru-

²⁸U.S. Constitution, amend. XIII, §1; *N.A.A.C.P. v. Hunt*, 1564. See also, *Jones v. Alfred H. Mayer Company*, 392 U.S. 409 (1968).

²⁹This discussion of the First Amendment focuses on free speech only. An ancillary issue involves free speech coupled with disruptive conduct, especially in public schools. The leading case is *Melton v. Young*, 328 F. Supp. 88 (E.D. Tenn. 1971), *aff’d* 465 F. 1332 (1972). In *Melton*, a Tennessee high school student was suspended from school for wearing a shoulder patch depicting the Confederate battle flag, which the court deemed to be a “provocative symbol.” *Melton* initially seemed to contravene the landmark U.S. Supreme Court decision in *Tinker v. Des Moines School District*, 393 U.S. 503 (1969). In *Tinker*, the high court held that students could protest the Vietnam War by wearing black armbands, another provocative symbol. The *Melton* court, however, distinguished the case involving the patch of the Confederate battle flag from the black armbands in *Tinker*. Because a Tennessee public school principal had a statutory obligation to maintain discipline, and in this instance, he could not do so in light of prior “racial disorders” at the high school, the court found that the case involved free speech plus disruptive conduct. As a result, the principal had the requisite authority to prohibit the student from wearing the patch because the need to prevent disruptive conduct outweighed the student’s free speech rights. See also, *Smith v. St. Tammany Parish School Board*, 316 F. Supp. 1174 (1970), and *Augustus v. School Board of Escambia County*, 361 F. Supp. 383 (1973). The issue also is discussed in some detail in an article in the *AJC*, August 24, 1999. Ironically, First Amendment cases involving the Confederate battle flag often have involved traditionalists who wished to display the flag, not modernists who sought to bar state governments from using Confederate symbols on state flags. See, for example, *Sons of Confederate Veterans v. Glendening*, 954 F. Supp. 1099 (D.Md. 1997) (a state agency could not prohibit members of the Sons of Confederate Veterans from displaying the Confederate battle flag on vanity license plates owing to First Amendment protections); *Griffin v. Department of Veterans Affairs*, 129 F. Supp. 2d 832 (D.Md. 2001) (a refusal to allow a display of the Confederate battle flag at a national cemetery is a First Amendment violation); and *Sons of Confederate Veterans v. Holcomb*, 129 F. Supp. 2d 941 (W.D.Va. 2001) (striking down a ban on displaying a Confederate flag logo on a specialty license plate for the Sons of Confederate Veterans).

sion. Whether it also protects government speech is a more difficult problem. The courts have developed a three-pronged test for determining whether government speech is permissible. First, the issue is whether government speech abridges “equality of status in the field of ideas” by granting the use of public forums to some groups but not to others. Next, the inquiry is whether government speech drowns out other sources of speech by monopolizing the “marketplace of ideas.” Finally, the question is whether government speech compels “persons to support candidates, parties, ideologies or causes that they are against.”³⁰

In *N.A.A.C.P. v. Hunt*, the Eleventh U.S. Circuit Court of Appeals, which includes cases from Georgia, considered whether a state displaying the Confederate battle emblem above the capitol dome was a permissible form of government speech. The court decided that “[t]he capitol dome is not public property which ‘by tradition or designation [is] a forum for public communication.’ Thus, the state may reserve the dome for its own communicative purposes as long as that reservation is reasonable and is not an effort to suppress expression because the public officials oppose a speaker’s view. There is no evidence that the dome is reserved to the state in order to suppress controversial speech. Neither does the flag represent government monopolization of the marketplace of ideas.”³¹

The last portion of the First Amendment that modernists have used to attack the Confederate battle emblem is the establishment clause. The First Amendment states that “Congress shall make no law respecting an establishment of religion.” Some plaintiffs contend that the Ku Klux Klan adopted the Confederate battle flag as a symbol, and because the Klan’s modern origins were primarily as a secret religious society, a state’s adoption of the group’s religious symbol violated the establishment clause. This argument was set forth to no avail by the plaintiffs in *Hunt*. The Eleventh Circuit began by raising “the dubious question of whether the ideology of

³⁰See, for example, *Cinevision Corporation v. City of Burbank*, 745 F.2d 560 (9th Cir. 1984), cert. denied, 471 U.S. 1054 (1985); *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94 (1973); *Lathrop v. Donohue*, 367 U.S. 820 (1961); *Police Department of Chicago v. Mosley*, 408 U.S. 92 (1972); *Red Lion Broadcasting Company v. Federal Communications Commission*, 395 U.S. 367 (1969), 80; Steven Shiffrin, “Government Speech,” *U.C.L.A. Law Review* 27 (1980): 565-655.

³¹*N.A.A.C.P. v. Hunt*, 1566.

the Ku Klux Klan constitutes religion.” The court concluded that “[t]he flag does not violate the *Lemon* test. It is clear that whether the flag was hoisted to decry integration or to recognize history, the purpose in its hoisting was secular. It is also clear that the primary effect of the flag is not to promote religion; rather, it is to remind citizens, albeit offensively to some, of the controversial era in American history. To violate the establishment clause, the religious benefit may not be merely remote or incidental.”³²

In the absence of constitutional remedies, the plaintiff in *Coleman* relied on civil rights statutes, especially §1983 of federal law. In the *Hunt* case, the Eleventh Circuit outlined the inherent difficulty in a plaintiff’s §1983 cause of action involving the Confederate battle flag. “In order to state a cause of action under §1983,” the court wrote, “the NAACP must prove: (1) that the confederate flag is flown by individuals acting under the cloak of state authority; and (2) that the flying of the flag deprives them of some right, privilege, or immunity secured by the Constitution. There is no dispute regarding the ‘under color of state law’ requirement. It seems clear that a flag flown on the state capitol dome is flown under state authority. The parties dispute, however, the question of whether the NAACP has been deprived of any rights.”³³

The plaintiff relied on one final civil rights statute in *Coleman*. The Voting Rights Act of 1965 provides that “[n]o person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten or coerce any other person for the purpose of interfering with the right of such other person to vote.” Coleman argued that African Americans were so offended and horrified by the presence of the Confeder-

³²U.S. Constitution, amend. I; Martinez, *Carpetbaggers, Cavalry, and the Ku Klux Klan*, x, 250-51; *N.A.A.C.P. v. Hunt*, 1564. In *Lemon v. Kurtzman*, the U.S. Supreme Court articulated a three-pronged test for courts to determine whether state action is equivalent to “establishing” religion. State action is valid pursuant to the Lemon test if: (1) it has a secular purpose; (2) its principal or primary effect neither advances nor inhibits religion; and (3) it does not foster excessive government entanglement with religion. *Lemon v. Kurtzman*, 403 U.S. 602 (1971), 612-13. According to the *Hunt* court, the Confederate flag is not primarily a religious symbol, it neither advances nor inhibits religion, and it does not foster excessive government entanglement with religion. Accordingly, courts generally have not sustained claims against Confederate symbols based on the establishment clause.

³³*N.A.A.C.P. v. Hunt*, 1562. See, for example, 42 U.S.C.A. §1983 (governing the denial of a right, privilege, or immunity secured by the United States Constitution) or 42 U.S.C.A. §2000a (infringement on the right to full and equal enjoyment of public facilities).

ate emblem on the state flag design that they did not want to vote. The court disagreed, concluding that it is virtually impossible to establish a connection between the official use of a symbol and an impermissible interference with a statutorily protected right such as voting.³⁴

Judge Evans ultimately based her decision in *Coleman* on an old chestnut, the political question doctrine. “Political questions” historically have been defined as questions “of which courts will refuse to take cognizance, or to decide, on account of their purely political character, or because their determination would involve an encroachment upon the executive or legislative powers.” The doctrine was most famously articulated by Chief Justice John Marshall in *Marbury v. Madison* in 1803. “The province of the Court is, solely, to decide on the rights of individuals, not to inquire how the executive, or executive officers, perform their duties in which they have a discretion,” he wrote. “Questions in the nature political, or which are, by the Constitution and laws, submitted to the executive can never be made in this Court.” Evans concluded that the doctrine applied in the *Coleman* case. On appeal, the Eleventh Circuit affirmed her view that the Confederate flag issue “ultimately must rest in the hands of the General Assembly.”³⁵

Modernists understood from *Coleman*, *Hunt*, and similar precedents that judicial remedies were unavailable; thus, they would have to refocus their energies on lobbying the Georgia General Assembly. Despite continuing setbacks, modernists had learned a valuable lesson during the early 1990s. Their new strategy, unveiled in 2000, reflected their growing legislative sophistication. In the words of one commentator, “[a]s long as flag opponents presented the issue as a moral controversy, they were unable to mobilize Georgia citizens and were therefore unable to bring political pressure to bear on the legislature. By changing tactics in 2000, flag opponents were able to change the direction of the debate, recast the issue into economic terms, and mobilize Atlanta’s eco-

³⁴42 U.S.C.A. §1971(b) (1965). See, for example, *Harman v. Forssenius*, 380 U.S. 528 (1965); *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1964); and *Kramer v. Union Free School District No. 15*, 395 U.S. 621 (1969).

³⁵*Coleman v. Miller*, 530. The case was affirmed at 117 F.3d 527 (11th Cir. 1997). See also, *Black’s Law Dictionary* (1891; rpt., St. Paul, Minn., 1979), 1043; *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), 170.

nomic community.” Specifically, modernist groups shunned Governor Miller’s earlier call to “do the right thing;” instead, they urged athletic associations and business conventions to boycott the state if the assembly refused to remove the emblem from the flag. Such a boycott could seriously undermine Georgia’s booming tourism and convention business. Faced with such a substantial economic threat, legislators took efforts to change the flag design much more seriously than they had in the past.³⁶

Although a threatened boycott was a new strategy, the goal of changing the flag design had remained constant since Miller tabled the issue in 1993. Georgia’s new governor, Democrat Roy Barnes, initially seemed to shy away from the issue when he came into office in January 1999, but he knew it would not disappear from the legislative agenda. Sooner or later, Barnes would have to confront the matter directly.³⁷

Atlanta Journal-Constitution columnist Colin Campbell observed that the controversy could become “messy and dangerous,” but he believed the battle would be different during the 2001 legislative session. “The good news is that Georgia has grown tremendously since that last flag fight, and a new poll of state opinion shows a drop from 62 percent in 1992 to 49 percent today in those who want to keep the current flag,” he wrote in January 2001.³⁸ In another column, Campbell admitted that “I’m no expert on the topic, and I admit to having opinions (the flag should be changed),” placing himself decidedly in the modernist camp.³⁹

The editors of the Atlanta paper also called for a new flag design. “It’s time for courageous leadership on the Georgia state flag, and it’s unlikely to come from the Legislature,” an editorial

³⁶Quoted in Michael Bobic, “Changing Flags by Changing Strategy: The Georgia Flag Debate, 2001,” paper delivered at the Southern Political Science Association Meeting, Atlanta Georgia (November 10, 2000; revised in February 2001), 2. See also, *AJC*, January 23, 2001.

³⁷House Bill 84, introduced in 1995, would have replaced the 1956 version of the flag design with the 1879 design; however, the bill died in the house rules committee. Similarly, the companion measure, Senate Bill 44, died in the senate rules committee. Another house bill to revert back to the 1879 design, House Bill 615, also died in the rules committee later in the legislative session. In 1997, several Atlanta area representatives introduced House Bill 342, which also would have reinstated the 1879 design, but it failed in committee as well. Bobic, “Changing Flags by Changing Strategy,” 12. See also, *AJC*, December 28, 31, 2000, January 9, 2001; Coski, *The Confederate Battle Flag*, 260-61.

³⁸Colin Campbell, “Georgia’s Flag Fight Could Get Messy—Once Again,” *AJC*, January 9, 2001.

³⁹Colin Campbell, “The Georgia Flag Debate: A Newcomer’s Guide,” *ibid.*, January 21, 2001.

commented on January 23, 2001. "This means that leaders outside politics—business and religious leaders—will have to take up the crusade. Together, the business and religious communities offer the economic and moral clout to persuade Georgians that the state flag ought to be one that unified rather than divides citizens."⁴⁰ Editorial-page editor Cynthia Tucker echoed a similar refrain in a column that appeared the following day. "Surely, Georgians are smart enough to avert a meltdown over a flag," she declared. "With courageous moral leadership, Georgians will do the right thing. All it takes is ministers and business executives from around the state who are willing to provide it."⁴¹

"The legislative session of 2001 started with a bang, as Democratic lawmakers announced that they had prefiled HB 16 with the House Rules Committee during the break," wrote one political scientist. "This bill would radically alter the Georgia flag by making the State seal the dominant feature, would eliminate the Confederate symbol, and relegate it and five other historic flags to a banner below the State seal."⁴² The proposed design was an ingenious compromise. It removed the large Confederate emblem from the flag, replacing it with a smaller version of the 1956 Georgia flag (as well as other Georgia flags throughout history) at the bottom of the design. Governor Barnes engineered the compromise design with assistance of Cecil Alexander, an octogenarian architect and amateur vexillologist.⁴³

With this dramatic effort, the governor emerged after months of what detractors labeled "weak leadership" on the issue and revealed that he had been working behind the scenes for close to a year. Unlike the highly publicized 1992-1993 flag fight led by Zell Miller, Barnes kept his proposal secret until he was ready to have it introduced into the assembly, and this prevented traditionalists from marshalling political support against the change.⁴⁴

⁴⁰"Business, Church Leaders Must Demand Flag Change," *ibid.*, January 23, 2001.

⁴¹Cynthia Tucker, "State Flag: Open-minded Georgians Will See Need for Change," *ibid.*, January 24, 2001.

⁴²Bobic, "Changing Flags by Changing Strategy," 15.

⁴³Alexander, "New Flag Design Fulfills Function," *AJC* [letter to the editor], February 9, 2001. See also, January 30, February 3, 10, 2001; Coski, *The Confederate Battle Flag*, 261; Danny Hayes and Seth C. McKee, "Booting Barnes: Explaining the Historic Upset in the 2002 Georgia Gubernatorial Election," *Politics & Policy* 32 (December 2004): 708-38.

⁴⁴*AJC*, January 29, 2001; Hayes and McKee, "Booting Barnes," 717-18.



The compromise flag championed by Gov. Roy Barnes, which flew over the capitol from 2001 until 2003, replaced the Confederate battle emblem and depicted Georgia flags throughout history. *Courtesy of the Georgia Capitol Museum, Office of the Secretary of State, Atlanta.*

Barnes's supporters publicly revealed the terms of the bill on the morning of January 24, and his floor leaders immediately called for a vote that afternoon. Traditionalists were too stunned to offer much resistance as House Bill 16 passed the chamber by a 94-82 roll-call vote, three more than the required ninety-one votes needed to pass a measure in the 180-member House. All thirty-four African-American representatives supported the legislation, as did sixteen Republicans from metropolitan areas in the state. Virtually all of the twenty-six Democrats who voted against the change came from rural districts.⁴⁵

Supporters of the bill hailed the measure as a suitable compromise. Lt. Gov. Mark Taylor endorsed the proposed change, saying he was "hopeful that the Senate is going to accept this compromise. I'm absolutely working for it." "The flag, I believe, will unite us," said senate majority leader Charles Walker, a Democrat from Augusta who handled the senate version of the bill.

⁴⁵AJC, January 26, 2001; Bobic, "Changing Flags by Changing Strategy" 16; Hayes and McKee, "Booting Barnes," 718.

"This is a beautiful flag. This is a crossroads, and it's up to you to decide what road we travel." Rabbi Alvin Sugarman, a prominent Jewish leader in Atlanta, praised the "visionary legislators" who supported the bill. Referring to the new design, he announced: "We see this flag as being the epitome of what compromise is all about. We want to do whatever we can to foster dialogue [and] take us from a place of rancor, hatred and divisiveness."⁴⁶

Traditionalists opposed the change. SCV member P. Charles Lunsford remarked that "it doesn't take courage to slide a bill through fast when there isn't time for an outcry. Real courage is when you stand up to the bigots." Republican Lynn A. Westmoreland of Tyrone complained that "they had this thing greased. It was the old sneak attack." Jack West, a Democratic representative from the small community of Bowdon, voted against the flag change owing to what he viewed as Governor Barnes's "force-feeding tactics." Incensed at the proposal, Chickamauga Republican senator Jeff Mullins, a newly elected member of the state senate, explained that he would honor his constituents' views and vote against replacing the flag: "My only question is on the vote—do I push 'No,' or 'Hell, no'?"⁴⁷

Even some legislators who wanted to change the flag were dismayed at the governor's tactics. On February 12, after the flag change was a *fait accompli*, Gene Callaway, a state representative from District 81 who served as deputy whip in the house, sent a letter to his constituents explaining his vote against changing the design. After outlining the unusually rapid legislative process, the bill was introduced at 9:45 A.M. and voted on by 2:30 P.M. that same day, he discussed why he voted "no" on the change. "This is not the normal voting process," he pointed out. "Normally, we have a day to examine the merits of a bill before voting on it. By not allowing ample time, I was unable to get feedback from you."⁴⁸

The day after the bill passed the lower chamber, the Senate Committee on State and Local Government Operations began de-

⁴⁶*AJC*, January 26, 27, 2001.

⁴⁷Bobic, "Changing Flags by Changing Strategy," 16. See also, *AJC*, January 26, 27, 28, 2001.

⁴⁸Letter from Gene Callaway, Representative, District 81, to his constituents in Gwinnett County, February 12, 2001, explaining his reasons for his vote on legislation to change the state flag design. Copy in possession of the author.

bating the senate version. On January 26, the committee favorably reported the bill. It went to the full senate for a vote on January 30, less than a week after it was publicly announced for the first time.⁴⁹

Anticipating the vote, on January 30 an editorial writer in the Atlanta newspaper urged lawmakers to approve the bill. "The State Senate confronts a stark choice today when it votes on the state flag," the editorial began. "Approve the design and close this divisive chapter of Georgia history, or oppose the new flag and face a fiercer political storm the next time." It was only a matter of time before a new design passed. "We will change the flag now, or we will change it later," the editorial continued. "But it's going to be changed. And the difference for Georgia between doing it now and doing it later can be measured in lost jobs, lost reputation, racial divisiveness and a host of other injuries. So do it now."⁵⁰

The senate did exactly that. When the measure came to the floor on January 30, the members approved the measure 34-22, with twenty-eight Democrats voting in favor of replacing the flag and four voting against it. Six of the senate's twenty-four Republicans voted to change the flag. Senators representing metropolitan areas generally voted in favor of the change, and those from rural areas opposed it, just as the legislators had in the house. At 9:30 A.M. the following day, Barnes quietly signed the bill into law.⁵¹

A traditionalist from a rural area said that "I literally almost cried this morning when [television newscasters] broke in and showed them putting up the new flag at the Capitol. That's not my Capitol anymore. The new flag may as well be a Communist flag as far as I am concerned." One protestor outside of the capitol during the crucial vote sported a sign that read, "Judas. Nero."

⁴⁹Bobic, "Changing Flags by Changing Strategy," 16.

⁵⁰"Senators Can Usher in New Era Today," *AJC*, January 30, 2001.

⁵¹*AJC*, February 1, 2001; Bobic, "Changing Flags by Changing Strategy," 16. In addition to redesigning the flag, House Bill 16 made it "a misdemeanor to deface or prevent the visible display to a monument, plaque, marker, or memorial dedicated to past or present military personnel of the state, or the Confederate States of America. The Act also prohibits publicly owned monuments located on state property in honor of military personnel, including the Stone Mountain memorial, from being relocated, removed, concealed, obscured, or altered. The Act further requires any agency that is eligible to receive appropriated state funds to display the new state flag. The Act makes technical changes in the description of the great seal of the state." Accordingly, the statute amended O.C.G.A. §§50-3-1 and 50-3-30 and enacted O.C.G.A. §45-12-83.1, effective January 31, 2001. Legislative Services Committee, Office of Legislative Counsel, *Summary of General Statutes Enacted at the 2001 Session of the General Assembly of Georgia* (Atlanta, Ga., 2001), 47.

Arnold. Zell. Barnes. No Votes for Turncoats.” His T-shirt featured a motto: “If you don’t like our state flag then you can just leave our state.”⁵²

Modernists were equally as vocal. “I am so proud to be a Georgian,” a letter to the editor of the Atlanta newspaper exclaimed. “Gov. Roy Barnes and the leaders of the Georgia Senate and House who voted to change Georgia’s flag have proven themselves to be men and women of courage.” Another letter writer agreed. “As a former Georgian and an African American now living up north, I must say that I am very proud of the work done this week by the Georgia Legislature. Essential to the work of politics is compromise. The new flag reflects sensitivity and foresight.”⁵³

As the new law went into effect, it seemed as though passions would die as the issue passed from the scene. With the only major stumbling block the difficulty in ordering new state flags in sufficient quantities, Barnes tried to tackle his other legislative priorities. During the remainder of the legislative session, he focused his energies on incentives to rein in teenage drivers through curfews, education reforms to curb social promotions in public schools, and initiatives to ensure an adequate supply of clean drinking water for the Atlanta metropolitan area. Yet, much to his chagrin, the flag issue refused to die.⁵⁴

State school superintendent Linda Schrenko, a Republican considering a gubernatorial bid against Barnes in 2002, fired the opening salvo. During a speech she delivered on Georgia Public Television several days after the new flag design passed, she criticized the governor’s handling of the issue. Calling the secretive compromise measure “undemocratic,” Schrenko promised that if elected she would “revisit” the flag issue. “My personal feelings ought not to get in the way of what the people want. I would have done the will of the people.” It is difficult to say how much of Schrenko’s criticism of Barnes resonated with voters. She failed to capture the Republican gubernatorial nomination, although the eventual nominee, Sonny Perdue, who also promised to revisit the flag issue, upset Barnes in the November 2002 election. Political

⁵²Colin Campbell, “Oratory in Grand Style Alive at Capitol,” *AJC*, February 1, 2001.

⁵³“Courageous Move” [letter to the editor], *ibid.*, February 2, 2001; “Great Compromise” [letter to the editor], *ibid.*, February 2, 2001.

⁵⁴*AJC*, February 2, 3, 9, 2001.

scientists attributed Perdue's surprise win to a variety of factors, including the flag controversy.⁵⁵

Other flag supporters faced intense criticism as well, sometimes risking their political careers on their votes. Rep. Larry Walker of Perry, a Barnes supporter, remarked that, "I just made the longest walk that I have made in my 28-year career in this House. . . . Politically speaking, it might be one of the last walks that I will ever make." "Among Republicans, Seth Harp of Columbus may have stuck his neck out the most, although his vote will be heartily approved by that city's business community," wrote political columnist Tom Baxter. "An ex-Marine, he sat in tears at his desk after the vote and said he'd served his country this day just as he had the day he went to Vietnam." Richard Marable of Rome, who won his senate seat after a close race in 2000, voted to change the flag despite opposition voiced by all five house members whose districts overlapped his senatorial district. "It will not be without cost," he acknowledged. "But let's be honest with our-

⁵⁵*Ibid.*, February 3, 2001. The question of how much Barnes's decision to change the state flag influenced the outcome of the 2002 gubernatorial campaign remains an open question, although most commentators have concluded that the national Republican groundswell contributed more to his defeat than his stand on any single issue, including the state flag. Others contend that the state flag issue played a large part in Barnes's loss. *AJC*, February 2, 2001, November 6-7, 10, 13, December 11, 2002, January 26, February 23, 2003; Hayes and McKee, "Booting Barnes," 717-20. See also, several columns written by veteran political observers: Tom Baxter, "Georgia's Flag Debate May Never Get Started," February 20, 2003; Tom Baxter, "Primary Turnout May Sway Flag Vote," February 13, 2003; Colin Campbell, "Bottom Line on Flag: Georgians Sick of It," March 20, 2003; Cynthia Tucker, "He's Surely Not Free to Dodge Flag Stance," November 10, 2002. Barnes himself thought that the flag imbroglio played a major part in his defeat. Stories appeared in various *AJC* editions. (See November 13, 2002). In any event, Barnes's decision to champion a new state flag later earned him the John F. Kennedy award for his "political courage" (March 13, 2002). Perdue had campaigned on a platform that promised to hold a referendum on his predecessor's decision to change the flag. Recognizing that the flag design referendum was a source of controversy, the new governor-elect began to waffle after he won the election, although many Georgians called for a statewide vote on the issue (November 19, 27, December 19, 2002, January 2, 12, 2003). After he was inaugurated, Perdue recognized that he had to keep his pledge; he agreed to sponsor a statewide referendum on the flag design in March 2004 that would be "nonbinding but persuasive" (January 15, February 10, 12, 13, 16, March 7, 8, 2003). His face-saving compromise encountered fierce opposition from Democrats, especially African Americans who believed the governor was reopening old wounds despite promises to "promote healing" (February 14, 2003); Cynthia Tucker, "Miller's Words Make Clear Perdue's Duty" (February 19, 2003). An editorial cartoon by *AJC* staffer Mike Luckovich captured the controversy well when it depicted the governor impaling an African American on a flag pole sporting the Confederate battle emblem. "The good news is, I want you to heal," the cartoon Perdue assured his victim (February 14, 2003).

selves. The cost will be borne mainly by those of us who may not be here next time.”⁵⁶

René Kemp, a senator from rural Hinesville, may have “showed the most intellectual courage,” in Baxter’s words. A self-professed “reformed segregationist,” Kemp studied the 1956 flag change and concluded that the assembly had adopted the Confederate emblem precisely because it held segregationist connotations. “When I started reading and finding out what happened during the 1956 session, I realized that deep down inside I was a segregationist, because I would have done whatever was necessary to enforce the segregation laws of the state of Georgia in 1956. And I would have voted to change the state flag. There are some people who told me they would never vote for me again if I voted to change the flag,” he said in an interview. Yet he refused to waver in his insistence that the flag design must be changed. Although he did not support Miller’s efforts to redesign the flag in 1993, his opinion had evolved by the 2001 session. “It shows how much you can change your mind in a short period of time,” he added.⁵⁷

Several legislators complained of threats. In April 2001, fourteen legislators and Lt. Gov. Taylor received plain white envelopes without a postmark. The packages contained small rubber snakes accompanied by a message: “This flag won’t fly.” “If they don’t have enough nerve to sign their names to it, I don’t think a lot of them,” Representative Walker remarked. “I’m pretty comfortable about what I did. I feel like I did the right thing.”⁵⁸

Dan Lee, a Democratic senator from LaGrange, found not only a rubber snake but also a separate message that promised to “get you some other way.” “It bothers me. I’d be less than truthful to say it doesn’t,” he said. “These people are cowards . . . [but] there are some very capable kooks out in the world.” Faye Smith, a Democratic senator from Milledgeville, received a signed note and thirty dimes, signifying the thirty pieces of silver that Judas Iscariot received for betraying Jesus. “How could you equate a flag . . . with anything Christian, even the betrayal of Jesus?” she

⁵⁶Tom Baxter, “In Senate, Political Risks Taken,” *AJC*, February 1, 2001; Jim Wooten, “Flag Vote Will Alter Political Landscape,” *ibid.*, February 11, 2001.

⁵⁷*Ibid.*, February 4, 2001; Tom Baxter, “In Senate, Political Risks Taken.”

⁵⁸*Ibid.*, April 14, 2001.

asked. "No matter which way we went, we'd either be damned or we'd be heroes."⁵⁹

The potential for political controversy confronted the new governor as well. Perdue, the state's first Republican governor in more than one hundred and thirty years, was besieged as he entered office in January 2003. Recognizing that traditionalists expected him to honor his pledge to revisit the design, he tried to finesse the issue by calling for a referendum on the flag featuring a limited number of options. The contentious question was which choices to include. Five options were possible: (1) retain the "Barnes" flag adopted in 2001; (2) return to the 1956-2001 flag displaying the battle emblem; (3) return to the pre-1956 state flag design, which contained the lesser known Stars and Bars Confederate symbol; (4) return to some other state flag design from Georgia's history; or (5) design a completely new flag from scratch.⁶⁰

Perdue supported a proposal for offering voters a choice between options one and three. By rejecting options two, four, and five, the governor sought to find middle ground between traditionalists and modernists. "I think we've tried to bring this issue out in a spirit of healing," he said in April 2003. "I would love for this to be not only bipartisan, but certainly biracial."⁶¹

Ten months before the March 2004 referendum, Governor Perdue also agreed to support a legislative measure that would immediately replace the Barnes flag with a compromise featuring the pre-1956 flag design. Viewing Perdue's decision to reject the flag featuring the battle emblem as reneging on his campaign promises, traditionalists initially assailed the governor's new stance. "It stacks the deck against the people who want the previous state flag," Dan Coleman of the SCV remarked. For their part, many modernists also found the compromise flag distasteful. "I think it's a total slap in the face," said state representative LaNett Stanley-Turner, a Democrat from Atlanta. "I like to think Georgia is more advanced than Mississippi, but I'm not sure."⁶²

⁵⁹*Ibid.*

⁶⁰*Ibid.*, April 23, 27, May 3, 9, 11, 16, 2003.

⁶¹*Ibid.*, April 3, 8, 10, 11, 13, 18, September 21, 2003. See also, Jim Wooten, "Redistricting, Flag Issues Send Message," *AJC*, April 13, 2003; *The Red & Black* [University of Georgia student newspaper], April 10, 2003.

⁶²*AJC*, April 4, 5, 6, 9, 10, 12, 22, May 2, 8, 9, 13, 28, 2003, January 21, 29, 2004.

The reaction of most Georgians was perhaps best reflected in a mailing sent out by the Georgia Chamber of Commerce shortly before the referendum. Signed by the prominent Atlantan Andrew Young, a former civil rights activist and political leader in the state, the open letter to voters called for an end to the divisive flag debate. Young urged voters to “please vote for the new red, white and blue Georgia flag,” because with its passage “the flag debate is over.”⁶³

During the March 2 referendum, voters approved the governor’s choice of the pre-1956 Stars and Bars flag over the Barnes flag by a three-to-one margin. Summarizing the exhaustion that most citizens felt, state senator George Hooks, a Democrat from Americus, observed that “the flag debate is now a chapter in history. We need to move forward to critical issues we have on the table.” As of this writing, Georgia seems to have done exactly that.⁶⁴

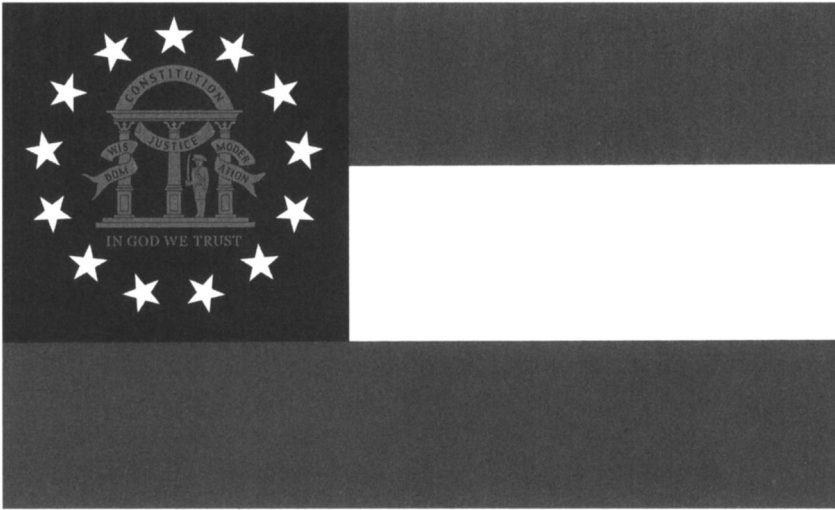
It is not surprising that an appeal to economic interests succeeded in resolving the flag issue when other efforts already had failed. As long as the Confederate flag debate was cast in emotional, moralistic terms, passions ruled the day. When the debate shifted to a discussion of economics, the focus altered dramatically. All parties recognized what French historian Alexis de Tocqueville had called in 1835, “self-interest properly understood.” The question of whether Georgia should display the Confederate battle emblem was no longer a question of black or white: it became a question of green. This was not the first time that an appeal to money and economic interests stabilized the American regime, and it will not be the last.⁶⁵

Even more important than economic interests, the debate over the Confederate battle emblem demonstrates the power of symbols to evoke visceral responses, especially in the emotionally charged political arena. It is little wonder that symbols evoke such strong reactions. Their meanings are seldom fixed and static but evolve over time as the context changes. Symbols are important re-

⁶³Georgia Chamber of Commerce, *Put the Focus on the Future . . . Not the Past* (Atlanta, Ga., February 2004).

⁶⁴*AJC*, March 3, 4, 2004; Coski, *The Confederate Battle Flag*, 262-63.

⁶⁵Alexis de Tocqueville, *Democracy in America*, trans. by Arthur Goldhammer (1835; rpt., New York, 2004), 611. This point is discussed in detail in Bobic, “Changing Flags by Changing Strategy,” 107.



The state flag adopted in 2003 closely resembled the first national flag of the Confederate States of America, colloquially referred to as the “Stars and Bars.” *Courtesy of the Georgia Capitol Museum, Office of the Secretary of State, Atlanta.*

mindings of public memory. The emblem remains a point of contention among people of good will owing to the two inextricable issues lurking beneath the surface: race and southern history.⁶⁶

For all of the strides made in the modern racial relations during the past half century, race remains a factor in the life of the polity, especially in the South. Historian V. O. Key once famously remarked that in “its grand outlines the politics of the South revolves around the position of the Negro.”⁶⁷ The South has changed in the years since Key wrote his book in the 1940s. After World War II, the old system of Jim Crow laws that had defined social relations between the races since the end of Reconstruction gradually eroded; the pace accelerated particularly in the 1960s with the marches, protests, and demonstrations of the civil rights movement, passage of the Civil Rights Act of 1964 and Voting Rights Act of 1965 as well as the adoption of the Twenty-fourth

⁶⁶Edelman, *The Symbolic Uses of Politics*. See also, John Bodnar, *Remaking America: Public Memory, Commemoration, and Patriotism in the Twentieth Century* (Princeton, N.J., 1992), 15-19; Wilbur Zelinsky, *Nation into State: The Shifting Symbolic Foundations of American Nationalism* (Chapel Hill, N.C., 1988), 175-222.

⁶⁷V. O. Key, Jr., *Southern Politics in State and Nation* (New York, 1949), 5.

Amendment, which outlawed poll taxes. Nonetheless, despite the dismantling of *de jure* segregation, no one can claim that the nation has embraced a “colorblind” Constitution, to paraphrase Justice John Marshall Harlan’s famous dissent in *Plessy v. Ferguson* in 1896.⁶⁸ Issues of race remain integral to any discussion of political and social life in the United States at the dawn of the twenty-first century.

In Georgia, the Confederate flag dispute proved to be contentious because it occurred at a pivotal time in history. During the 1980s and 1990s, the state experienced a surge of new residents, especially in and near Atlanta. Almost seven in ten Georgians lived in an urban area by the 1990s, up from just 56 percent in 1960. During the same period, black Georgians assumed leadership positions at the state and local levels in unprecedented numbers. By the dawn of the new millennium, all Georgians were better educated, more economically prosperous, and more politically savvy than ever before. These factors led to stronger support for removing symbols of the Old South such as the Confederate battle emblem and projecting a progressive image for the state. No longer could apologists for the Old South fall back on familiar symbols of yesteryear, secure in the knowledge that fellow citizens longed for a place where “old times there are not forgotten.” A new South had arrived, and with it came inhabitants who had no interest in retaining the provocative symbol of a bygone era.⁶⁹

⁶⁸Justice Harlan is quoted in *Plessy v. Ferguson*, 163 U.S. 163 U.S. 537 (1896), 559-60. See also, Jack Bass and Walter DeVries, *The Transformation of Southern Politics: Social Change and Political Consequences Since 1945* (Athens, Ga., 1995), 5-7; N. Lee Cooper, “President’s Message—The Harlan Standard: Former Associate Justice Can Teach Us the Value of Reasoned Dissent,” *ABA Journal* 83 (June 1997): 8; Cheryl I. Harris, “Symposium: Race Jurisprudence and the Supreme Court: Where Do We Go From Here? In The Shadow of *Plessy*,” *University of Pennsylvania Journal of Constitutional Law* 7 (February 2005): 889-901; Frederic Rodgers, “‘Our Constitution is Color Blind’: Justice John Marshall Harlan and the *Plessy v. Ferguson* Dissent,” *American Bar Association Judges’ Journal* 43 (Spring 2004): 15; Robert P. Steed and Laurence W. Moreland, “Southern Politics in Perspective,” in Martinez et al., eds., *Confederate Symbols in the Contemporary South*, 68-73.

⁶⁹Fleischmann and Pierannunzi, *Politics in Georgia*, 31-39.