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# Trouble with Treble Damages for Third Parties: The Georgia Streetgang Terrorism and Prevention Act

S. Meghan Pittman\*

## I. INTRODUCTION

### A. *Criminal Gang Activity: Nationwide*

Criminal gang activity creates an area of concern for both law enforcement officials and citizens regardless of the location in the United States. Officials tried numerous ways of combatting the steady increase in this activity, yet the threat of gang violence continues to persist. By the early 1990s, crime rates had continued on a steep upward climb.<sup>1</sup> From 1985 to the 1990s, gang activity involving handgun-related homicides had more than doubled.<sup>2</sup> As these statistics climbed, so did the fear and anguish of families residing close to areas of high-level activity.

Faced with this issue, states began to pass streetgang prevention acts. These acts varied from state-to-state. However, each act shared a common goal: to promote civil peace and deter acts of streetgang violence within neighborhoods.

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1. Matt Ford, *What Caused the Great Crime Decline in the U.S.?*, THE ATLANTIC (April 15, 2016), <https://www.theatlantic.com/politics/archive/2016/04/what-caused-the-crime-decline/477408/>.

2. Ford, *supra* note 1.

### *B. Criminal Gang Activity in Georgia: 1992*

In 1992, the Georgia legislature decided to pass a variety of statutes to deter criminal gang activity. At this time, gang activity was not considered to be a crisis within the State of Georgia. However, the Georgia legislature decided to pass these laws in response to the increase of gang activity in other states. Ironically, law enforcement officials did not even consider gang violence to pose a serious threat in Georgia.<sup>3</sup>

Despite these preventive efforts, Georgia's criminal gang activity has increased throughout the years. A report performed by the Georgia Bureau of Investigation ("GBI") in 1995 showed an increase in this activity.<sup>4</sup> The GBI's report showed that criminal gang activity was occurring throughout the state and not just in certain parts.<sup>5</sup> Notably, gang members from several larger cities out of the state were coming to form gangs in Georgia.<sup>6</sup>

### *C. Criminal Gang Activity in Georgia: Present Day*

Unfortunately, the proactive efforts of the Georgia legislature were not successful. Not only has gang activity increased in Georgia but also across the entire country.<sup>7</sup> Today, almost half of all violent crimes committed are gang-related.<sup>8</sup>

The Office of the Attorney General for the State of Georgia released statistics estimating that the state now has over 71,000 gang members and over 1,500 gang networks.<sup>9</sup> The Georgia Gang Investigators Association conducted a survey, which accounted for 157 counties, that

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3. See Adam P. Princenthal, *Crimes and Offenses: Street Gang Terrorism and Prevention: Enact the Georgia Street Gangs Act of 1998; Change Provisions Relating to Designated Felonies in Juvenile Court; Provide Procedures to Appoint Additional Assistant District Attorneys; Make Acts Designed to Prevent Information about Criminal Activities from Being Reported to Law Enforcement Unlawful; Make Certain Conduct Intended to Obstruct Justice Unlawful; Provide Enhanced Penalties for Terroristic Acts and Threats Done in Retaliation for Persons Having Cooperated with Law Enforcement*, 15 GA. S. U. L. REV. 80, 81, n.3, n.4 (1998) (telephone interview with former Atlanta Police Chief Eldrin Bell (Apr. 9, 1992)).

4. Record of the Proceedings in the House of Representatives (Feb. 5, 1998).

5. *Id.*

6. *Id.* (noting that specifically large cities such as Los Angeles, Miami, and Chicago were listed).

7. *Gang Activity*, OFFICE OF THE ATTORNEY GENERAL, <https://law.georgia.gov/key-issues/gang-activity> (last visited Nov. 12, 2021, 5:26 PM).

8. OFFICE OF THE ATTORNEY GENERAL, *supra* note 7.

9. OFFICE OF THE ATTORNEY GENERAL, *supra* note 7.

displayed a rise in gang activity.<sup>10</sup> This survey also reported 155 school districts with suspected gang activity.<sup>11</sup>

## II. THE FOUNDATION AND HISTORY GEORGIA'S GANG VIOLENCE STATUTE

### A. Legislative History of the Act

#### 1. 1992

The Georgia Street Gang Terrorism and Prevention Act was first enacted in 1992. The Georgia General Assembly modeled the Act after a California statute.<sup>12</sup> While the law was enacted to remedy gang violence, its effects were quite the opposite. Prosecutors and law enforcement officials both noted that the statute reduced penalties for gang violence and would likely be held unconstitutional.<sup>13</sup> State prosecutors were also unsuccessful in prosecuting any defendants under this law.<sup>14</sup>

#### 2. 1998

As a result, to remedy these concerns with the statute enacted in 1992, HB 1391 was introduced to the General Assembly on January 26, 1998.<sup>15</sup> HB1391 was carefully drafted by a variety of organizations, including the GBI and American Civil Liberties Union (“ACLU”) to ensure the bill would pass the exact statute which was intended.<sup>16</sup> On March 27, 1998, Governor Zell Miller signed the bill into law.<sup>17</sup>

HB 1391 did a variety of things to improve the Georgia Street Gang and Terrorism Prevention Act. Section 2 of the Act expanded the scope of felony acts which could be prosecuted under the juvenile code.<sup>18</sup> At the time, gang members had begun seeking out juvenile members to commit

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10. OFFICE OF THE ATTORNEY GENERAL, *supra* note 7.

11. OFFICE OF THE ATTORNEY GENERAL, *supra* note 7.

12. *See* Cal. Penal Code § 186.20 (1995).

13. OFFICE OF THE ATTORNEY GENERAL, *supra* note 7.

14. *See* Green v. State, 266 Ga. 237, 466 S.E.2d 577 (1996).

15. *See* Georgia Bill Tracking for HB 1391, Jan. 26, 1998.

16. Princenthal, *supra* note 3.

17. 1998 Ga. Laws 270, at 282.

18. O.C.G.A. § 15-11-37(a)(2) (1998).

the more violent crimes because juveniles would receive less serious penalties in juvenile court.<sup>19</sup>

However, Section 2 remedied this by imposing more serious penalties on juveniles who committed violent gang acts. The Act granted prosecutors the discretion to use rehabilitative measures when appropriate rather than more serious penalties.

HB 1391 also worked to prevent witness intimidation.<sup>20</sup> This was due to threats made on victims of gang activity who chose to cooperate with law enforcement agencies during a case.<sup>21</sup> The Bill also expanded the scope of racketeering activity to include threats made in connection with such victims and witnesses.<sup>22</sup>

Finally, Section 8 of HB 1981 became the heart of what has become the present “Georgia Street Gang Terrorism and Prevention Act” by replacing the previous laws enacted in 1992.<sup>23</sup> This section did a variety of things including remedying any issues of constitutionality and defining terms such as “criminal street gang” and “pattern of criminal gang activity.” These new definitions shift the focus from being a member of a streetgang to participating in streetgang activity altogether.<sup>24</sup>

The General Assembly also decided that forfeiture of property would be an “effective means of punishing and deterring the criminal activities of criminal street gangs.”<sup>25</sup> Thus, law enforcement was gifted with a new weapon by broadening the scope of the Act.

Most importantly, Section 8 of HB 1391 created a civil cause of action to assist in deterring gang activity.<sup>26</sup> Under this, a nuisance claim may be brought to close down premises used by gangs.<sup>27</sup> However, this cause of action may only be brought “by the district attorney, solicitor-general, prosecuting attorney of a municipal court or city, or county attorney.”<sup>28</sup> Prior to this, only a district attorney could bring the claim of public nuisance.<sup>29</sup> This expansion was modeled after a California law.<sup>30</sup>

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19. See Princenthal, *supra* note 3, at 84, n.33 (citing Telephone Interview with Rep. Ronald Crews, House District No. 78 (May 28, 1998)).

20. 1998 Ga. Laws 270, §4, at 271 (codified at O.C.G.A. § 16-10-32).

21. See Princenthal, *supra* note 3, at 85, n. 44 (citing to Telephone Interview with Rep. Ronald Crews, House District No. 78 (May 28, 1998)).

22. See 1998 Ga. Laws 270, § 7, at 245 (codified at O.C.G.A. § 16-14-3).

23. 1992 Ga. Laws 3236 (codified at O.C.G.A. § 16-15-1).

24. O.C.G.A. § 16-15-3(1) (2021).

25. O.C.G.A. § 16-15-2(d) (2021).

26. O.C.G.A. §16-15-7 (2021).

27. *Id.*

28. O.C.G.A. §16-15-7(b) (2021).

29. *Id.*

30. Cal. Penal Code § 186.22 (1995).

Furthermore, O.C.G.A. § 16-15-7(c) grants the right to a private cause of action for persons injured by gang activity. In doing so, a private person may recover treble damages as well as punitive damages.<sup>31</sup> To succeed with this claim, the finder of fact must find that the cause of action serves the intent of the General Assembly.<sup>32</sup> In addition, O.C.G.A. § 16-15-7(d) was drafted to provide another cause of action for injunctive relief for persons being harmed by gang activity.

### 3. 2010

Subsequently, O.C.G.A. § 16-15-7(d) was amended in 2010. This was the last amendment made to the Georgia Street Gang Terrorism and Prevention Act. Although it was minor, the amendment broadened the scope for persons seeking injunctive relief under O.C.G.A. § 16-15-7(d). Instead of allowing this cause of action for persons “aggrieved by a pattern of gang activity,” the subsection now allows “any person aggrieved by a criminal street gang or criminal gang activity.”<sup>33</sup> Thus, the burden is lowered in what must be proven and allows more opportunities to establish how the plaintiff was aggrieved.<sup>34</sup>

#### *B. The Scope of O.C.G.A § 16-15-7*

The scope of this statute was intended to be broad in order to allow anyone injured by criminal gang activity to have a civil cause of action. The legislature allowed this scope to be broadened in hopes that it would assist in deterring the prevalence of gang activities near neighborhoods. Specifically, the legislature hoped that this could also prevent injuries to innocent third-parties due to gang violence by allowing such remarkable damages to be sought.

Additionally, the scope of the Act was also broadened when the Georgia General Assembly chose to eliminate the requirement that the state must establish a pattern of criminal gang activity. The scope was further expanded in 2006 when the General Assembly broadened the definition of “criminal gang activity” to include more crimes than the Act previously listed.<sup>35</sup>

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31. O.C.G.A. § 16-15-7(c) (2021).

32. *Id.*

33. Ga. H.R. Bill 1015, Reg. Sess. (2009).

34. *Id.*

35. O.C.G.A. § 16-15-3 (2021).

*C. Operation of the Law*

While O.C.G.A. § 16-15-7 was intended to prevent injuries from and violence deter its existence, the legislature enacted several procedural obstacles that must be conquered in commencing this type of action.<sup>36</sup> The complaint must provide adequate particularity or a motion to dismissed must be granted.<sup>37</sup>

However, this motion to dismiss should rather be treated as a motion for a more definite statement of the facts and proceed forward on this basis.<sup>38</sup> O.C.G.A. § 16-15-2 expresses the legislative intent behind the Georgia Streetgang Terrorism and Prevention Act:

The General Assembly finds and declares that it is the right of every person to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals . . . . It is the intent of the General Assembly in enacting this chapter to seek the eradication of criminal activity by criminal street gangs by focusing upon criminal gang activity and upon the organized nature of criminal street gangs which together are the chief source of terror created by criminal street gangs. . . . The General Assembly further finds that an effective means of punishing and deterring the criminal activities of criminal street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by criminal street gangs.

The statute also requires that for a judgement to be awarded to the plaintiff, the finder of fact must determine that the cause of action is consistent with the intent of the General Assembly.<sup>39</sup>

While the legislature expressed its intent to deter gang violence, the statute also provides explicit language as to what the legislature does not intend to do with this Georgia Streetgang Terrorism and Prevention Act:

It is not the intent of this chapter to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The General Assembly recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to associate lawfully with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

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36. See O.C.G.A. § 16-15-7(c).

37. See 19 Ga. Jur. § 40:10.

38. See *Star Residential, LLC v. Hernandez*, 354 Ga. App. 629, 841 S.E.2d 392 (2020).

39. O.C.G.A. § 16-15-7.

Therefore, the fact finder must determine that any cause of action brought under O.C.G.A. § 16-15-2 works to protect citizens from the fear, intimidation, and physical harm created by streetgangs without punishing such members for their constitutional right to associate with similar beliefs.<sup>40</sup>

If the plaintiff succeeds and the judgement is awarded, the plaintiff has several possibilities for damages which can be recovered. First, the statute allows plaintiffs to recover “treble damages.” If a plaintiff is awarded treble damages, this means the plaintiff will recover three times the actual damages sustained. Additionally, the plaintiff may also be able to recover punitive damages.

However, “no cause of action may arise as a result of an otherwise legitimate commercial transaction between parties to a contract or agreement for the sale of lawful goods or property or the sale of securities regulated by statute or by the Federal Securities and Exchange Commission.”<sup>41</sup> The plaintiff also has the opportunity to recover attorney’s fees for both trial and appellate courts, costs of investigation and litigation which were reasonably incurred.<sup>42</sup>

O.C.G.A. § 16-15-7(a) also provides a cause of action for when any real property “erected, established, maintained, owned, leased, or used” by street gangs for the purpose of criminal activity. Under this cause of action, the real property will constitute as a public nuisance and may be abated.<sup>43</sup> However, this action must be brought by the district attorney, solicitor-general, prosecuting attorney of a municipal city, or county attorney.<sup>44</sup> This suit may be brought in either superior, state, or municipal court.<sup>45</sup> Furthermore, if the defendant was previously convicted for criminals streetgang activity, this conviction will stop the defendant from disputing evidence of this in any subsequent civil actions related to this issue.<sup>46</sup>

### III. DISCUSSION

#### A. Introduction

Georgia is not the only state to enact streetgang statutes to deter violence. As the battle against gang activity has continue through the

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40. See O.C.G.A. § 16-15-2.

41. 19 Ga. Jur. § 40:10

42. O.C.G.A. § 16-15-7(c).

43. See O.C.G.A. § 16-15-7(a).

44. O.C.G.A. § 16-15-7(b).

45. *Id.*

46. O.C.G.A. § 16-15-8 (2021).



years in the United States, several states have adopted their own version of these acts to deter the violence which gangs wreak. Such legislation has been enacted to prohibit recruitment of new members and intimidating or threatening by street gangs.<sup>47</sup>

While these statutes all work towards the same common goal, each differ as well, resulting in varying court opinions across the United States. For instance, the statutory definition of “gang” varies state to state. Some states choose to only refer to these criminal organizations as “gangs”, while others choose to refer to such organizations as “street gangs” or “criminal street gangs.”<sup>48</sup> Some states have even gone as far as to address gang-related apparel in their statutes.<sup>49</sup> This indicates that some states are prepared to take further steps to fight streetgang violence than other states may.

*B. The Statutory Interpretation and Court Opinions Concerning Other States’ Gang Violence Acts*

**1. Oklahoma**

Oklahoma is one of many states that have enacted legislation to prohibit the recruitment and threatening behavior of gangs.<sup>50</sup> Oklahoma’s statute was passed to “eradicate the terror created by criminal gangs by providing enhanced penalties [for gang members] and by eliminating the patterns, profits, proceeds, and instrumentalities of criminal gang activity.”<sup>51</sup> The law criminalized the participation in criminal street gang activity by creating the offense of “participating in a criminal gang.”<sup>52</sup>

Similar to the Georgia Streetgang Terrorism and Prevention Act,<sup>53</sup> the Oklahoma law also declares any buildings, premises, or real estate used by criminal streetgangs as a nuisance.<sup>54</sup> In doing so, the law allows the court to seek forfeiture of such property.<sup>55</sup> However, the General Assembly repealed the means for forfeiture in 2021.<sup>56</sup> Notably, the

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47. State laws and gang activity, Lentz School Sec. § 17:2 (2020).

48. *Id.*

49. See California Education Code § 35183.

50. See R.C. 2923.42.

51. State v. Bennett, 150 Ohio App.3d 450 (2002).

52. R.C. 2923.42.

53. O.C.G.A. § 16-15-7.

54. R.C. 2923.43; R.C. 3767.02.

55. *Id.*

56. OHIO REV. CODE ANN. § 2923.45.

Oklahoma streetgang statute does not provide a cause of action for private persons.

In *State v. Bennett*,<sup>57</sup> this Oklahoma statute was challenged for being unconstitutional for two reasons. First, the defendant asserted that the statute was unconstitutionally vague and “failed to establish standards for the police and public that [were] sufficient to guard against the arbitrary deprivation of liberty.”<sup>58</sup> Second, the defendant claimed the statute violated the Due Process Clause because it allowed a gang member to be convicted of “participating in a criminal gang” whenever the defendant committed any crime, regardless of the crime’s relation to the gang.<sup>59</sup>

Nonetheless, the Oklahoma Court of Appeals held that the gang statute was not void for vagueness and did not violate the Due Process Clause by providing for guilt by association.<sup>60</sup> Notably, the Court compared this statute to O.C.G.A. § 16-15-7 in its opinion when upholding the statute.<sup>61</sup>

## 2. Arkansas

The General Assembly in Arkansas enacted a similar set of laws to deter gang violence.<sup>62</sup> Similar to the Georgia Streetgang Terrorism and Prevention Act, the Arkansas General Assembly included the legislative intent behind its street gang act:

[t]he General Assembly finds and declares that it is the right of every person, regardless of race, color, creed, religion, national origin, sex, age, or handicap, to be secure and protected from fear, intimidation, and physical harm caused by the activities of groups engaging in random crimes of violence, and committing crimes for profit and violent crimes committed to protect or control market areas or “turf”. It is not the intent of this subchapter to interfere with the constitutional exercise of the protected rights and freedoms of expression and association.

Similar to Georgia, the Arkansas statute also provides civil remedies to eliminate the availability of premises used continually in criminal streetgang activity.<sup>63</sup> The intent behind this specific statute passed by

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57. *Bennett*, 150 Ohio App.3d at 450 (2002).

58. *Id.* at 456.

59. *Id.*

60. *Id.* at 463.

61. *See id.* at 104, n.3.

62. ARK. CODE ANN. § 5-74-102 (1995).

63. ARK. CODE ANN. § 5-74-109 (1995).

the Arkansas legislature is to eliminate the availability of the use of any premises for the continuing series of criminal offenses.<sup>64</sup>

A premise becomes a facility used in the commission after a series of three or more criminal offenses. These offenses must be declared to be detrimental to Arkansas citizens, in which point the premises becomes subject to an injunction.<sup>65</sup> The statute provides that attorney's fees may be covered by whomever brings the suit as well.<sup>66</sup> Notably, the statute does not allow for forfeiture of the premises though. This must be done under another area of Arkansas law if such law is found to apply.<sup>67</sup>

### 3. Florida

Georgia's neighboring state, Florida, passed a similar statute in 1990 called the "Criminal Gang Prevention Act."<sup>68</sup> Fla. Stat. Ann. § 874.02 provides the legislative findings and intent of the Florida General Assembly when it enacted the Criminal Gang Prevention Act, stating:

[t]he Legislature finds, however, that the state is facing a mounting crisis caused by criminal gangs whose members threaten and terrorize peaceful citizens and commit a multitude of crimes. These criminal gang activities, both individually and collectively, present a clear and present danger. . . . The state has a compelling interest in preventing criminal gang activity and halting the real and present danger posed by the proliferation of criminal gangs and the graduation from more primitive forms of criminal gangs to highly sophisticated criminal gangs. . . . It is the intent of the Legislature to outlaw certain conduct associated with the existence and proliferation of criminal gangs, provide enhanced criminal penalties, and eliminate the patterns, profits, proceeds, instrumentalities, and property facilitating criminal gang activity, including criminal gang recruitment.<sup>69</sup>

Similar to the Georgia Streetgang Terrorism and Prevention Act, the Florida statute provides the previously mentioned statute to ensure the intent and purpose of Florida's Criminal Gang Prevention Act is not ambiguous.

The State of Florida also criminalizes any recruitment of a potential gang member involving the commission of a crime by making the offense

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64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. FLA. STAT. ANN. § 874.01 (2008).

69. FLA. STAT. ANN. § 874.02 (2008).

of recruitment a third-degree felony.<sup>70</sup> This was done to deter the likelihood of gang members encouraging new initiates of a younger age to commit offenses just because the new members were likely to have a less severe penalty in juvenile court.

Similar to the Georgia act, Florida's Criminal Gang Prevention Act also provides a civil cause of action.<sup>71</sup> Under this law, if a plaintiff proves by clear and convincing evidence that "coercion, intimidation, threats, or harm" has occurred to that person or organization, then the plaintiff may recover for treble damages, an injunction, or any other appropriate relief in law.<sup>72</sup>

Additionally, Fla. Stat. Ann. § 874.06 provides a civil cause of action for the State of Florida against any person or organization. The State must prove by clear and convincing evidence that it has been injured by violation of the Criminal Gang Prevention Act.<sup>73</sup> The State of Florida will be allowed to recover for treble damages under this cause of action, but not for punitive damages.<sup>74</sup>

The State may also recover for reasonably incurred attorney's fees.<sup>75</sup> The Florida General Assembly went one step further by criminalizing any violations of an order or injunction issued under this law.<sup>76</sup> Florida also allows for the seizure and forfeiture of "all profits, proceeds, and instrumentalities of criminal gang activity and all property used or intended or attempted to be used to facilitate the criminal activity of any criminal gang."<sup>77</sup>

#### 4. Louisiana

In 1990, the Louisiana General Assembly passed the "Louisiana Street Terrorism Enforcement and Prevention Act."<sup>78</sup> Similar to the previous streetgang statutes mentioned, the Louisiana General Assembly declared that "it is the right of every person . . . to be secure and protected from fear, intimidation, and physical harm caused by activities off violent groups and individuals."<sup>79</sup>

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70. FLA. STAT. ANN. § 874.05 (2013).

71. FLA. STAT. ANN. § 874.06 (2008).

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. FLA. STAT. ANN. § 874.08 (2021).

78. LA. STAT. ANN. §15:1401 (1993).

79. LA. STAT. ANN. §15:1402 (2014).

The State of Louisiana also declared that it was in a state of crisis due to the “violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods.”<sup>80</sup>

Additionally, Louisiana enacted another statute which declared that any building or place used by gang members for the commission of a “pattern of criminal gang activity” shall be a nuisance.<sup>81</sup> Furthermore, as a nuisance, the private building or place maybe subject to an injunction, cause of action for damages, or for abatement of the nuisance.<sup>82</sup> Procedurally, the statute allows for any person to file a petition for injunctive relief of the premises. The plaintiff must prove that “the premises are being used by members of a criminal street gang for the commission of a pattern of criminal gang activity.”<sup>83</sup>

An injunction cannot be issued against someone solely because their premises were being used for criminal streetgang activity unless the plaintiff can show that the owner of the premises knew, should have known, or had been notified of such use.<sup>84</sup> A civil cause of action cannot grant a penalty which exceeds \$5,000 against any defendant either.<sup>85</sup> However, this statute does not preclude an aggrieved person form seeking other civil remedies if such remedies are provided by another area of Louisiana law.<sup>86</sup>

In addition, the Louisiana Street Terrorism Enforcement and Prevention Act provides a civil cause of action for the State and its political subdivisions.<sup>87</sup> A cause of action is created when the State of Louisiana or any political subdivision sustains “any damage, impairment, or harm [ ] proximately caused by the commission of a pattern of criminal gang activity.”<sup>88</sup>

The action goes against any criminal street gang and any person “who intentionally directs, participates, conducts, furthers, or assists in the commission of a pattern of criminal gang activity.”<sup>89</sup> Notably so, the Louisiana Street Terrorism Enforcement and Prevention Act does not

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80. *Id.*

81. LA. STAT. ANN. § 15:1405 (2021).

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. LA. STAT. ANN. § 15:1405.1 (1993).

88. LA. STAT. ANN. § 15:1405.1(A).

89. *Id.*

mention any actions for forfeiture again any premises used by a criminal street gang for the commission of a crime.

### 5. Mississippi

In 1997, Mississippi's General Assembly chose to also implement safeguards to deter gang violence by passing the "Mississippi Streetgang Act."<sup>90</sup> Similar to Georgia law, the Mississippi legislature chose to broadly collectively define the terms street gang, gang, organized gang, and criminal street gang. These terms are defined as "any combination, confederation, alliance, network, conspiracy, understanding, or other similar conjoining, in law or in fact, of three (3) or more persons with an established hierarchy that, through its membership or through the agency of any member, engages in felonious criminal activity."<sup>91</sup>

The Mississippi Streetgang Act creates a civil cause of action under Mississippi Code Annotated § 97-44-5. The statute allows the cause of action for any public authority, which in the process of expending money, allocating police, firefighting, emergency or other resources, has incurred any loss, injury, or damage due to any criminal activity.<sup>92</sup>

To do this, the public authority must show that the criminal activity proximately cause the damage.<sup>93</sup> The scope of whom this cause of action may be brought against is quite broad. The cause of action may be brought against:

- (a) Any streetgang in whose name, for whose benefit, on whose behalf or under whose direction the act was committed; and
- (b) Any gang officer or director who causes, orders, suggests, authorizes, consents to, agrees to, requests, acquiesces in or ratifies any such act; and
- (c) Any gang member who, in the furtherance of or in connection with, any gang-related activity, commits any such act; and
- (d) Any gang officer, director, leader or member.<sup>94</sup>

Furthermore, the public authority who may bring the cause of action must be either the Attorney General, the district attorney, or the county attorney.<sup>95</sup>

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90. MISS. CODE ANN. § 97-44-1.

91. MISS. CODE ANN. § 97-44-3(a).

92. MISS. CODE ANN. § 97-44-5 (1996).

93. MISS. CODE ANN. § 97-44-5 (1).

94. MISS. CODE ANN. § 97-44-5 (2).

95. *Id.*

Notably, Mississippi Code Annotated § 97-44-7 grants the right as well to any person who has suffered any injury under the Mississippi Streetgang Act to file a civil action in his/her name. Any person may file a petition as well against a premise which is being used in furtherance of a criminal gang for the commission of criminal offenses.<sup>96</sup> Likewise, Mississippi Code Annotated § 97-44-17 allows for forfeiture proceedings for property used by a criminal gang.<sup>97</sup>

## 6. Illinois

In 1993, Illinois's General Assembly passed the "Illinois Streetgang Terrorism Omnibus Prevention Act"<sup>98</sup> to create a civil cause of action to deter criminal activity. The Illinois General Assembly opted to create this act after finding that there were "several hundred streetgangs operating in [the State]."<sup>99</sup>

Specifically, the legislature noted that while terrorism was becoming a major issue in urban areas, streetgangs had begun to spread throughout suburban and rural areas of Illinois as well.<sup>100</sup> Under this statute,<sup>101</sup> the legislature also expressed the following:

These streetgangs' activities present a clear and present danger to public order and safety and are not constitutionally protected. No society is or should be required to endure such activities without redress. Accordingly, it is the intent of the General Assembly in enacting this Act to create a civil remedy against streetgangs and their members that focuses upon patterns of criminal gang activity and upon the organized nature of streetgangs, which together have been the chief source of their success.<sup>102</sup>

After expressing its legislative intent, the Illinois legislature created a civil cause of action.<sup>103</sup> Under this statute, any public authority has a claim which has expended money; allocated or reallocated police, firefighting, or emergency resources; incurred any loss, deprivation, or injury, or sustaining any injury.<sup>104</sup> Similar to other states' gang statutes, a public authority in Illinois who wishes to bring this action must show

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96. MISS. CODE ANN. § 97-44-15 (2001).

97. MISS. CODE ANN. § 97-44-17 (2001).

98. 740 ILL. COMP. STAT. ANN. 147/1 (1993).

99. 740 ILL. COMP. STAT. ANN. 147/5(b) (1993).

100. *Id.*

101. *Id.*

102. 740 ILL. COMP. STAT. ANN. 147/5(d).

103. 740 ILL. COMP. STAT. ANN. 147/15 (1993).

104. *Id.*

that these damages were proximately caused by a pattern of criminal activity.<sup>105</sup>

The Illinois Streetgang Terrorism Omnibus Prevention Act also allows for the forfeiture of any property used to facilitate streetgang related activity.<sup>106</sup> In addition, any real property may be treated as a public nuisance which has been “erected, established, maintained, owned, leased, or used by any streetgang for the purposes of conducting streetgang related activity.”<sup>107</sup>

An action to abate real property must be brought by the State’s Attorney for the county in which the property is located.<sup>108</sup> Most similar to Georgia’s Street Gang Terrorism and Prevention Act, Illinois law allows for a cause of action to provide treble damages for any person injured by streetgang related activity.<sup>109</sup>

### 7. California

One of the first states to enact gang violence statutes was California in 1988.<sup>110</sup> California passed the “California Street Terrorism Enforcement and Prevention Act” to promote a similar goal of civil tranquility and peace.<sup>111</sup> In passing this legislation, the California General Assembly noted:

[t]he Legislature finds that there are nearly 600 criminal street gangs operating in California, and that the number of gang-related murders is increasing. The Legislature also finds that in Los Angeles County alone there were 328 gang-related murders in 1986, and that gang homicides in 1987 have increased 80 percent over 1986.<sup>112</sup>

Due to this, the California legislature determined that “an effective means of punishing and deterring the criminal activities of street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by street gangs.”<sup>113</sup>

The California Act is similar to other states in that it allows for the abatement of premises used to facilitate criminal streetgang activity.<sup>114</sup>

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105. *Id.*

106. 740 ILL. COMP. STAT. ANN. 147/40 (2018).

107. 740 ILL. COMP. STAT. ANN. 147/45(a) (2013).

108. *Id.*

109. *Id.*

110. Cal. Penal Code. § 186.20.

111. *Id.*

112. Cal. Penal Code. § 186.21 (2011).

113. *Id.*

114. Cal. Penal Code. § 186.22(a) (2018).



However, the Act departs from the general consensus by allowing not only the abatement through a public nuisance claim but also through a private nuisance claim.<sup>115</sup>

### 8. Kentucky

The State of Kentucky has also passed its own set of statutes to deter gang related activity on its streets. The Gang Violence Prevention Act was passed by the Kentucky legislature in the 1990's.<sup>116</sup> At its inception, the primary goal of the Act was to prevent streetgang violence by prosecuting its affiliates for various criminal offense associated with a defendant becoming involved in criminal gang activity.<sup>117</sup>

In 2018, the Kentucky legislature decided to take the Gang Violence Prevention Act a step further by amending it to allow a civil cause of action for victims of streetgang violence.<sup>118</sup> Under this statute, a victim may bring suit if the victim has sustained any injuries due to the criminal actions of an organization or a person affiliated with a criminal gang.<sup>119</sup>

Unlike in other states, if a plaintiff prevails in this suit the plaintiff will be entitled to reasonable attorney's fees.<sup>120</sup> Additionally, the plaintiff will also be entitled to any nominal damages, punitive damages, and also compensatory damages.<sup>121</sup> Furthermore, a defendant who has been found guilty in a criminal proceeding may still be liable for civil remedies under this statute as well.<sup>122</sup>

### C. Georgia Court Opinions Addressing the Deterrence of Gang Violence

With such a wide variety of statutes addressing gang violence, statutory ambiguity easily arises in how a particular state will interpret holes in their laws. While the Georgia Street Gang Terrorism and Prevention Act has several similarities with other states' streetgang prevention acts, there are holes in it as well. O.C.G.A. § 16-15-7 provides a civil cause of action for which the plaintiff may receive treble damages.

However, unlike other states' legislation, the Georgia General Assembly did not mention against whom a plaintiff may or may not be able to recover treble damages from. Due to this, the Georgia court

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115. *Id.*

116. KY. REV. STAT. ANN. § 506.120 (2018).

117. *Id.*

118. KY. REV. STAT. ANN. § 506.180 (2018).

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*; see KY. REV. STAT. ANN. § 431.080.

system began to struggle with finding the correct interpretation of this statute.

**1. Wilcoxson v. Highlands at East Atlanta LP<sup>123</sup>**

A trial order issued in the Georgia State Court of Dekalb County illustrates the issues which began to arise in the interpretation and enforcement of O.C.G.A. § 16-15-7.<sup>124</sup> In this case, the plaintiffs brought the action on behalf of the estate of their daughter, Sariah Wilcoxson. Wilcoxson was killed by a longtime resident of the complex, Highlands at East Atlanta LP (“the Defendant”).<sup>125</sup>

Wilcoxson did not participate in gang activity and was an innocent bystander at the time of the shooting. The longtime resident was notoriously known for being a member of the Bloods street gang.<sup>126</sup> After Wilcoxson was killed as a victim of the resident’s criminal gang activity, the Plaintiffs brought this suit against the apartment complex, in which the gang member resided, for treble damages under O.C.G.A. § 16-15-7.<sup>127</sup>

The Plaintiffs alleged that the Defendants operated the facilities under a “shoestring budget” without providing adequate security or oversight for the notorious criminal gang activity which was occurring on the premises.<sup>128</sup> The Plaintiffs further alleged that because the Defendant’s complex was a public nuisance under O.C.G.A. § 16-15-7, the Defendants should be held liable for treble damages.<sup>129</sup>

The Plaintiffs argued that as a result of the Defendant’s public nuisance their daughter fell victim to criminal street gang activity. Therefore, the Plaintiffs were entitled to treble damages from the Defendant. The Plaintiffs’ interpretation of O.C.G.A. § 16-15-7 was that issuing such an award would be in line with the legislative intent of the Georgia General Assembly when the statute was enacted. By requiring the Defendant to pay these damages, an example would be set to other owners to maintain adequate security in order to deter criminal street gang activity.<sup>130</sup>

Nonetheless, the Defendant argued that a cause of action for treble damages may only be brought against the actual gangs or its members

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123. No. 16A:62169-4, 2020 WL 8268203, at \*1 (Ga. State Ct. Dec. 10, 2020).

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

who conducted the criminal act which caused the injury.<sup>131</sup> The Defendant argued that the legislative intent of the statute was not to require all citizens to take affirmative steps to assist in deterring criminal gang street activity, but rather to heighten the punishment against criminal streetgangs themselves in hopes that it would deter their criminal conduct and avoid harming innocent third parties such as Wilcoxson.<sup>132</sup>

Due to the silence in O.C.G.A. § 16-15-7 on who may be considered a proper defendant, the court was required to consider the statute's legislative intent before the court could whom the civil cause of action for treble damages may be brought against.<sup>133</sup> Ultimately, the trial court denied the Defendant's Motion for Judgement on the Partial Pleadings, reasoning that "[p]laintiff has alleged specific conduct on the part of Defendants to be remediated: the turning of a blind eye toward gang activity on their premises."<sup>134</sup> The trial court further elaborated that:

... to the extent that Georgia law may require any concert of action between the landlord and a criminal street gang, this Court cannot say that further development of Plaintiff's allegation of deliberate operation on a shoestring budget will not show any such facts, such as rent abatement or job opportunities for members or leaders of the criminal street gang.<sup>135</sup>

The trial order demonstrates the ambiguity and uncertainty that Georgia courts began to face as to whether O.C.G.A. § 16-15-7 opened an avenue for liability against third-party commercial property owners for the failing to protect its invitees against notorious criminal street gang activity being allowed on its premises.

## **2. The Lower Court's Opinion in *Star Residential, LLC v. Hernandez***<sup>136</sup>

In 2020, the Georgia Court of Appeals issued an opinion on the official statutory interpretation of O.C.G.A. § 16-15-7 as well. The facts in this case are not disputed. Hernandez ("the Plaintiff") was a tenant at an apartment complex owned by Brookhaven, LLC and operated by Star Residential, LLC ("the Defendants"). One evening as the Plaintiff approached his residence, he was shot from behind and robbed. The

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131. *Id.*

132. *Id.* at 2.

133. *Id.*

134. *Id.*

135. *Id.*

136. 354 Ga. App. 629, 854 S.E.2d 392 (2020).

attack was entirely unprovoked, and while the Plaintiff did survive, the Plaintiff was paralyzed from the waist down.<sup>137</sup>

Following this, the Plaintiff brought a cause of action against the Defendants under O.C.G.A. § 16-15-7 for treble damages, alleging that the Defendants operated a “public nuisance” in which criminal street gang activity was facilitated. The Defendants answered and filed a motion to dismiss the claims, citing to the Georgia Streetgang Terrorism and Prevention Act. After hearing both sides arguments, the trial court denied the Defendants’ motion. The Defendants proceeded to file an application for interlocutory review, which the Georgia Supreme Court granted.

The Defendants challenged the action brought under O.C.G.A. § 16-15-7, arguing that the language provided in the Georgia Streetgang Terrorism and Prevention Act does not apply to the Defendants because the Plaintiff did not allege that the Defendants were involved in the shooting which occurred. Instead, the Plaintiff merely alleged that the Defendants owned and operated the property.

Because of the statute’s silence on whom a claim for treble damages may be brought against, the court of appeals began its analysis by considering rules of statutory construction, quoting:

A statute draws its meaning, of course, from its text. Under our well-established rules of statutory construction, we presume that the General Assembly meant what it said and said what it meant. To that end, we must afford the statutory text its “plain and ordinary meaning,” we must view the statutory text in the context in which it appears, and we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would. Though we may review the text of the provision in question and its context within the larger legal framework to discern the intent of the legislature in enacting it, where the statutory text is clear and unambiguous, we attribute to the statute its plain meaning, and our search for statutory meaning ends.<sup>138</sup>

In considering this statutory rule, the Court also noted the plain language of subsection (c) of O.C.G.A. § 16-15-7. The statute clearly allows “any person who is injured by reason of criminal gang activity shall have a cause of action.” In addition the statute expressly requires that the fact finder must “determine[] that the action is consistent with

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137. *Id.* at 630.

138. *Id.* (citing *Ga. Lottery Corp. v. Tabletop Media, LLC*, 346 Ga. App. 498, 502, 816 S.E.2d 438, 442 (2018)).

the intent of the General Assembly” in order to award a judgement for a cause of action under O.C.G.A. § 16-15-7.

At the current stage of litigation, the Court reasoned that it must consider factors such as the statute’s silence on the intended defendants of the action, the facts alleged, and the broad definitions given for terms such as “criminal gang activity.” The court specifically mentioned that the facts must be construed in favor of the non-moving party, the Plaintiff. In doing so, the plaintiff alleged:

criminal activity and numerous shootings were the result of gang activity at his apartment complex; his apartment complex was used by criminal street gangs for the purpose of conducting gang activity; lack of adequate security provided by the Defendants “enabled criminal street gangs to overtake the property to the point that residents were exposed to living in an environment that was equivalent to a ‘war zone’” and as a proximate result of the dangerous conditions maintained by the Defendants at his apartment complex, Hernandez was injured by criminal street gang activity.

After assessing all of these factors, the court affirmed the trial court’s denial of the Defendants’ motion to dismiss the Plaintiff’s claims under the Georgia Streetgang Terrorism and Prevention Act.

In a concurring opinion, Justice Markle agreed with the essential holding by the majority opinion. However, Justice Markle emphasized the absurdity doctrine due to the absurd result reached from the majority’s interpretation of the statute. Due to the interpretation, a consequence shall arise in which the jury will need to “engaged in statutory interpretation and determine whether [a] landlord or property owner is proper defendant, even if there was no evidence the landlord or property owner participated in the gang activity.”<sup>139</sup>

However, Justice Markle agrees that this absurd result is not for the court to remedy. The statute expressly requires the fact-finder to determine if the action is in conformity with its legislative intent, not the court. If the Georgia General Assembly did not intend this result when the Georgia Streetgang Terrorism and Prevention Act was passed, then it is the legislature’s duty to fix this result.<sup>140</sup> Notably, Presiding Judge Doyle, who drafted the majority opinion, joined this special concurrence.<sup>141</sup>

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139. *Id.* at 398–99.

140. *Id.*

141. *Id.*

## IV. ANALYSIS

*A. The Supreme Court for the State of Georgia Grants Certiorari*

Following the Georgia Court of Appeal's decision to affirm the trial court, Star Residential filed a writ of certiorari review.<sup>142</sup> Following this, the Georgia Supreme Court granted Star Residential's (the Petitioner's) petition. The court was faced with whether the lower court was mistaken in holding that "whether to hold a property owner liable under O.C.G.A. § 16-15-7 (c) of the Gang Act for maintaining a public nuisance is always a question for the factfinder to decide, and not for the court."<sup>143</sup> The court cited to the lower court's specific language that:

O.C.G.A. § 16-15-7 provides for a cause of action for treble damages to persons injured by reason of criminal gang activity if the factfinder determines that the action is consistent with the . . . codified legislative intent [of the Gang Act]. . . . Thus, whether the present action is consistent with the intent set forth in OCGA § 16-15-2 is not a threshold issue for courts to resolve[.]<sup>144</sup>

In determining the proper operational meaning of the Georgia Streetgang Terrorism and Prevention Act, the court was correct in deciding to look at the plain language of the statute to determine its meaning.<sup>145</sup> Several times in the past the court has looked to the plain language of a statute when determining the proper meaning of a statute, and this was the proper method of analyzing the Georgia Streetgang Terrorism and Prevention Act. In considering the plain language of a statute, the court must presume that:

the General Assembly meant what it said and said what it meant. To that end, we must afford the statutory text its plain and ordinary meaning, we must view the statutory text in the context in which it appears, and we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would . . . [and] if the statutory text is clear and unambiguous, we attribute to the statute its plain meaning, and our search for statutory meaning is at an end.<sup>146</sup>

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142. *Star Residential, LLC v. Hernandez*, 311 Ga. 784, 860 S.E.2d 726 (2021).

143. *Id.* at 727.

144. *Id.* at 728.

145. *Id.*

146. *Id.*

*B. The Injured Party's Stance*

In the Brief of Appellee,<sup>147</sup> Hernandez (“the Respondent”) argued that the Court should adopt a different holding, rather than following the lower court’s exact holding. The adoption suggested to the Court was that:

O.C.G.A. § 16-15-7(a) designates real property used by gangs as a public nuisance, and thereby incorporates into the Gang Act the pre-existing law of public nuisance. As with other public nuisances, a person who suffers special damage from the nuisance may sue the property owner who maintains it. The treble-damages remedy of O.C.G.A. § 16-15-7(c) may be applied in that action if the trier of fact finds that liability is not inconsistent with the express statements of legislative intent found in O.C.G.A. § 16-15-2.<sup>148</sup>

If the Court were to adopt this approach, it would answer the concerns voiced by Justice Markle in his concurring opinion in the lower court’s opinion. Adopting this approach would avoid allowing the jury to “engage in statutory interpretation, or to determine as a legal matter who the proper parties to the action should be.”<sup>149</sup> While the Respondents requested the court to affirm the lower court’s holding, the Respondents agree that the factfinder should not be left to make decisions of law as to whether or not a defendant is the appropriate party for a suit under O.C.G.A. § 16-15-7 (c).<sup>150</sup>

Under the Respondent’s interpretation of the Georgia Streetgang Terrorism and Prevention Act, a plaintiff should be allowed to file a public nuisance claim for treble damages against a property for two reasons. First the statute specifically designates property used in furtherance of criminal gang activity as a “public nuisance.”<sup>151</sup> Second, public nuisance law generally allows a plaintiff to recover special damages against the owner who maintains such property.<sup>152</sup>

The Respondent’s argument for allowing the Petitioners to be properly named as defendants to the suit also incorporates statutory interpretation. As the court said in *Arby’s Restaurant Group, Inc. v. McRae* in 2012, the court must “presume the General Assembly meant

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147. Brief of Appellee at 1, *Star Residential, LLC, and Terraces at Brookhaven, LLC v. Manuel Hernandez*, 2020 WL 7867596 (2020) (No. S20G1214).

148. *Id.*

149. *Star Residential*, 354 Ga. App. at 629, 841 S.E.2d at 392.

150. Brief of Appellee at 1, *Star Residential, LLC, and Terraces at Brookhaven, LLC v. Manuel Hernandez*, 2020 WL 7867596 (2020) (No. S20G1214).

151. *Id.*

152. *Id.*

what it said and said what it meant.”<sup>153</sup> The statute should be interpreted by heavily considering the statute’s plain and ordinary meaning.<sup>154</sup>

Furthermore, the Respondents argue that the statute expressly incorporates the Georgia Streetgang Terrorism and Prevention Act into public nuisance law.<sup>155</sup> O.C.G.A. §16-15-7(a) provides that “[a]ny real property which is erected, established, maintained, owned, leased, or used by any criminal street gang for the purpose of conducting criminal gang activity shall constitute a public nuisance and may be abated as provided by Title 41, relating to nuisances.”<sup>156</sup> When considering this, the Respondents argue that it becomes clear that the legislature intended to allow owners to be incorporated into these suits just as they would be under public nuisance law generally.<sup>157</sup>

### *C. The Third-Party Commercial Property Owner’s Stance*

The Petitioner’s interpretation of O.C.G.A. § 16-15-7 reasons that “a civil cause of action for [treble] damages under the Georgia Streetgang Terrorism and Prevention Act against a defendant who has not alleged to have committed any act of ‘criminal gang activity’” should not be maintained.<sup>158</sup> The Petitioner also raised the fact that questions of legislative intent and statutory construction are questions of law, not fact, and therefore should not be left for the jury to decide.<sup>159</sup>

The Petitioner reasons that the lower court’s decision to allow a cause of action to exist against a person who is merely indirectly associated with criminal gang activity is unprecedented.<sup>160</sup> Under this interpretation, the Petitioner reasons that the only thing that would inhibit a naïve property owner from being liable under the Act is whether a trier of fact concludes that the claim is consistent with the General Assembly’s intent. Due to the lower court’s decision, the Act’s harsh civil penalties are now expanded to a “vast and wide-ranging pool of potential defendants who are not and cannot be alleged to have engaged in

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153. 292 Ga. 243, 245, 734 S.E.2d 55, 56–57 (2012).

154. *Id.*

155. Brief of Appellee at 1, *Star Residential, LLC, and Terraces at Brookhaven, LLC v. Manuel Hernandez*, 2020 WL 7867596 (2020) (No. S20G1214).

156. O.C.G.A. §16-15-7(a).

157. Brief of Appellee at 1, *Star Residential, LLC, and Terraces at Brookhaven, LLC v. Manuel Hernandez*, 2020 WL 7867596 (2020) (No. S20G1214).

158. Brief of Appellants at 2, *Star Residential, LLC and Terraces At Brookhaven, LLC, v. Manuel Hernandez*, 2020 WL 7295375 (2020) (No. S20C1214).

159. *Id.*

160. *Id.*



‘criminal gang activity.’”<sup>161</sup> Under the Petitioner’s interpretation, the statute’s plain language limits the recovery of treble damages to only those individuals who participate in activity which constitutes “criminal gang activity” under O.C.G.A. § 16-15-3.<sup>162</sup>

*D. The Court’s Holding*

The Georgia Supreme Court analyzed the O.C.G.A § 16-15-7 under a textualism approach.<sup>163</sup> Under such approach, the court chose to read the statute as a whole and incorporate the meanings provided from other areas of the Georgia Streetgang Terrorism and Prevention Act when interpreting the statute.<sup>164</sup>

The court chose to do this by citing to *Lyman v. Celchem Int’l, Inc.*<sup>165</sup> Specifically, the court reasoned that “in construing language in any one part of a statute, a court should consider the entire scheme of the statute and attempt to gather the legislative intent from the statute as a whole.”<sup>166</sup> O.C.G.A. § 16-15-7 provides in whole that:

- (a) Any real property which is erected, established, maintained, owned, leased, or used by any criminal street gang for the purpose of conducting criminal gang activity shall constitute a public nuisance and may be abated as provided by Title 41, relating to nuisances.
- (b) An action to abate a nuisance pursuant to this Code section may be brought by the district attorney, solicitor-general, prosecuting attorney of a municipal court or city, or county attorney in any superior, state, or municipal court.
- (c) Any person who is injured by reason of criminal gang activity shall have a cause of action for three times the actual damages sustained and, where appropriate, punitive damages; provided, however, that no cause of action shall arise under this subsection as a result of an otherwise legitimate commercial transaction between parties to a contract or agreement for the sale of lawful goods or property or the sale of securities regulated by Chapter 5 of Title 10 or by the federal Securities and Exchange Commission. Such person shall also recover attorney’s fees in the trial and appellate court and costs of investigation and litigation

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161. *Id.*

162. *Id.*

163. *Star Residential*, 860 S.E.2d at 728.

164. *Id.*

165. 300 Ga. 475, 477, 796 S.E.2d 255, 256 (2017).

166. *Id.*

reasonably incurred. All averments of a cause of action under this subsection shall be stated with particularity. No judgment shall be awarded unless the finder of fact determines that the action is consistent with the intent of the General Assembly as set forth in Code Section 16-15-2.

- (d) The state, any political subdivision thereof, or any person aggrieved by a criminal street gang or criminal gang activity may bring an action to enjoin violations of this chapter in the same manner as provided in Code Section 16-14-6 [Civil Remedies under the Georgia Racketeer Influenced and Corrupt Organizations Act].<sup>167</sup>

In reading this statute as a whole, the court noted that each cause of action created under the statute provides different remedies for different plaintiffs and defendants.<sup>168</sup> For instance, subsections (a) and (b) provide a cause of action for a public nuisance. It provides that a remedy for a nuisance be “abatement.”<sup>169</sup>

However, neither of the two subsections mention civil damages. Furthermore, subsection (b) limits who may bring the cause of action created under subsection (a).<sup>170</sup> The cause of action can only be brought by “the district attorney, solicitor-general, prosecuting attorney of a municipal court or city, or county attorney.”<sup>171</sup> The statute does not even mention allowing individual citizens to bring a public nuisance claim.<sup>172</sup>

Subsection (c) creates a private cause of action for individuals injured “by reason of criminal gang activity” for three times the actual damages sustained as well as punitive damages.<sup>173</sup> This means that the injury must be a result of criminal gang activity. Criminal gang activity is defined under O.C.G.A. 16-14-3 as “the commission, attempted commission, conspiracy to commit, or the solicitation, coercion, or intimidation of another person to commit any of the offenses provided for under the act.”<sup>174</sup> The court interpreted the language “by reason of” by relying on previous decision in similar statutory contexts.<sup>175</sup>

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167. O.C.G.A. § 16-15-7.

168. *Star Residential*, 860 S.E.2d at 728.

169. *See* O.C.G.A. § 16-15-7.

170. *Star Residential*, 860 S.E.2d at 729.

171. *Id.*

172. *See* O.C.G.A. § 16-15-7.

173. *Id.*

174. O.C.G.A. § 16-14-3.

175. *See Vernon v. Assurance Forensic Accounting, LLC*, 333 Ga. App. 377, 391–93, 774 S.E.2d 197 (2015).

In doing so, subsection (c) allows an individual to bring a claim against a defendant for treble damages if the defendant proximately caused the individual's injuries by reason of their criminal gang activity.<sup>176</sup> Therefore, a cause of action under subsection (c) requires an allegation that the defendant "committed, attempted to commit, conspired to commit, or solicited, coerced, or intimidated another person to commit" criminal gang activity which injured the plaintiff.<sup>177</sup>

Because there is no allegation that Star Residential did any such activity, the court held that as a matter of law an action cannot be maintained against Star Residential under subsection (c) of O.C.G.A. § 16-15-7.<sup>178</sup> The plain language of the statute, under the court's textualism approach, clearly demonstrates this.

The Georgia Court of Appeals erred in its holding that a plaintiff may maintain a nuisance cause of action under subsection (c) by merging the descriptions for the two separate causes of actions provided for under O.C.G.A. § 16-15-7.<sup>179</sup> The court refused to follow the lower court's decision to read beyond the plain language of O.C.G.A. § 16-15-7 and create a private cause of action for nuisance damages under subsection (c) because an action like this does not exist.<sup>180</sup>

The court found the lower court's interpretation of subsection (d) to be erroneous as well.<sup>181</sup> Under the lower court's interpretation, it becomes the factfinder's decision as to whether a cause of action under O.C.G.A. § 16-15-7 is consistent with the statute's legislative intent.<sup>182</sup> "As an initial matter, "[o]ur well established rules of statutory interpretation require courts to ascertain the legislature's intent in enacting the law in question."<sup>183</sup> Nothing in the statute's language shows a decision for the jury to "usurp the judiciary's role of determining the meaning of the statute out issue."<sup>184</sup>

Instead, the court interpreted the statute to mean that the factfinder is required to determine whether or not holding a defendant liable under a *legally appropriate* cause of action would be consistent with the statute's legislative intent.<sup>185</sup> In no way does the statute require the

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176. *Star Residential*, 860 S.E.2d at 729.

177. *Id.*

178. *Id.* at 730.

179. *Id.*

180. *Id.*

181. *Id.* at 731.

182. *Id.*

183. *Id.* (citing *Inagawa v. Fayette County*, 291 Ga. 715, 717, 732 S.E.2d 421 (2012)).

184. *Id.*

185. *Id.*

factfinder to determine the meaning behind subsection (c) and the statute should never be interpreted to require so. To require this would essentially reverse the factfinder's role with the courts.<sup>186</sup>

*E. The Long-Term Effects of the Court's Holding*

The textualism approach that the court took in this case was likely the proper interpretation. If the courts were to use a different approach for statutory interpretation, the result would likely be drastically different.

For instance, under a purposivist approach, the court likely would have affirmed the lower court's interpretation of O.C.G.A. § 16-15-7. Instead of focusing on a strict interpretation of the statute's plain language, the court would have considered the statute's overall purpose. The clear purpose of the Georgia Streetgang Terrorism and Prevention Act was to deter criminal gang activity by severely punishing any occurrences of it. If the original legislators had been confronted with this issue when the Act was initially passed, they would have likely allowed a cause of action to be maintained against third-parties if it appeared that the third-parties knew or had reason to know such violence would occur on their premises.

However, several issues would arise under such an interpretation. For example, it would be difficult for the court to determine the meaning of the statute under a more "activist" or "unintended" interpretation. Thus, the court would likely take up a more legislative role than originally intended. Furthermore, statutes rarely have a single purpose that can guide interpretations. While the main purpose is likely to deter criminal gang activity, there may be several other purposes which the court may omit consideration for such as economic impact, administrative costs, or gate-way liability.

Additionally, interpreting the statute to require third-parties to take an active role in deterring criminal gang activity as well under a purposivist approach may create an absurd result. If liability were to be expanded to third-parties as well, it would likely deter entrepreneurs from maintaining business in areas with high-crime rates. However, the use of the absurdity doctrine is only necessary under a textualist approach, not a purposivist. For these reasons, there is clearly a toss-up as to whether or not a purposivist approach may or may not have been a more suitable alternative than the textualism approach that the Court chose to take.

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186. *Id.*

*F. What Can the Georgia General Assembly Do Now?*

Moving forward, the Georgia General Assembly has several options on how they can address the Georgia Supreme Court's interpretation. While the court's interpretation may be the controlling authority presently, this interpretation can also be rectified by a new statute which may result in a different statutory interpretation under the judicial branch.

First, the Georgia General Assembly has the option to amend subsection (a) of O.C.G.A. § 16-15-7. While subsection (a) may not presently mention a remedy for a public nuisance claim other than abatement, the legislature could provide otherwise by specifically including terms such as "civil damages" or "treble damages" in that subsection. However, the issue still remains that the cause of action could only be maintained by a public official, but the damages could be returned to the state and still used as a tool for deterrence.

Second, the Georgia General Assembly has the option to amend subsection (b) of O.C.G.A. § 16-15-7. While subsection (b) limits who may currently bring a public nuisance cause of action under O.C.G.A. § 16-15-7, the scope of this subsection could still be broaden. In doing so, the legislature could include phrases such as "injured parties" or "private citizens" to the subsection to allow a citizen to at least maintain some sort of action against a commercial property owner whose property attracts criminal gang activity.

Third, and most simply, the Georgia General Assembly could amend subsection (c) of O.C.G.A. § 16-15-7. Under the subsection's current language, a cause of action can only be maintained against the party who proximately caused the injury due to their criminal gang activity. If the legislature were to broaden this subsection, a claim could be brought against third parties such as Star Residential. The legislature would need to include language such as "knew or had reason to know" of criminal gang activity which occurred, or language such as "had a duty to prevent or reasonably could have prevented" the criminal gang activity from occurring.

Lastly, the Georgia General Assembly could provide an additional subsection under O.C.G.A. § 16-15-7. While the statute currently provides a cause of action against a defendant who proximately caused the injuries to the plaintiff by participating in criminal gang activity, sometimes the defendant does not have adequate resources to remedy the situation. In such case, it would be helpful for a plaintiff to be able to maintain a claim against a third party such as Star Residential who could have reasonably prevented the harmful activity from occurring. While a new subsection may not necessarily provide for treble damages or punitive damages, the subsection could provide for the recovery of all

compensatory damages that the first defendant could not provide. This newly-amended subsection would be similar to a conjunction or premises liability and indemnification for the harmful activity which occurs on property an owner maintains.

#### V. CONCLUSION

As the Georgia Supreme Court has issued its final opinion on the Georgia Streetgang Terrorism and Prevention Act, several issues are now raised. While the interpretation of the statute appears to be correct, the question still arises of whether or not this interpretation is consistent with the legislative intent of this Act as a whole.

Clearly, the issue which the Act was enacted to prevent was harm to innocent third-parties by criminal streetgangs. While a commercial property owners may not be able to fully police the area in which their property is located, shouldn't these individuals be held to a standard at least to provide adequate security if these owners clearly are aware of the dangers imposed and attracted by their facilities?

However, the only option left is for the Georgia General Assembly to correct this legislation if it determines that it is not consistent with the Act's overall legislative intent. While other state statutes have not provided a means for this type of action yet, Georgia could still be a trailblazer in the arena.

The risk of harm to innocent third parties will greatly diminish by holding commercial property owners to a higher standard and protecting their tenants when they know, should have known, or have been notified of the use of their facilities by gangs. Furthermore, by re-drafting this legislation to do so would encourage other states to perhaps make the same implementation in their gang violence statutes as well.