
IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

HK Edgerton

William C. McRea aka "William Mayhem the
Pirate Magician of St. Augustine"

St. Augustine Tea Party, Inc.

Ladies Memorial Association, Inc.

Veterans' Monuments of America, Inc.

William Wing Loring Camp #1316
Sons of Confederate Veterans

Save Southern Heritage, Inc. Florida

Rick Hobbs

Jane Doe

John Doe

Plaintiffs

Case No. 3:20-cv-634

v.

City of St. Augustine, Florida

Tracy Upchurch, Individually
and In his Official Capacity as Mayor
of the City of St. Augustine

John P. Regan, Individually
and In his Official Capacity of Manager
of the City of St. Augustine

Isabelle C. Lopez, Individually and
In her Official Capacity as City Attorney
Of the City of St. Augustine

Leanna Freeman
Roxanne Horvath
Nancy Sikes-Kline
John Valdes
Individually and In their Official Capacities as
Commissioners of the City of St. Augustine, FL

Todd Neville,
former Vice Mayor of St. Augustine, FL
individually

Marquis Halback, Individually and
In his Official Capacity as President of
Marquis Latimer + Halback, Inc.

Laurel Lee, Individually and
in her Official Capacity as Secretary of State of
the State of Florida

**PLAINTIFFS' APPLICATION FOR INJUNCTIVE RELIEF AND
REQUEST FOR EMERGENCY TEMPORARY RESTRAINING ORDER**

1. An Affidavit that proves the allegations in the application for injunctive relief and Temporary Restraining Order are attached and incorporated by reference.
2. The allegations of the Complaint herein are incorporated herein by reference as though fully set out.
3. **Plaintiffs will likely suffer imminent irreparable injury**, if the Defendants are not restrained from removing the "Our Dead" Cenotaph in Plaza de la Constitution in St. Augustine, Florida. Of four circa 1900 Cenotaphs that have been taken down in Florida, half were irreparably damaged during the process. Fed. R. Civ. P. 65(b)(1); *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22, 129 S. Ct. 365 (2008). The

Cenotaph itself is particularly susceptible to imminent irreparable physical injury as it, unlike the others, is constructed of bricks joined by aged mortar, and clad in a layer of coquina stucco which is a fragile material undoubtedly will be injured in any moving process, with the marble insets and plaques delicately bonded to the stucco. Basically, it will fall apart upon attempts to dismantle it. Any reconstruction would in reality only be a replica of the original, with a fraction of its value as an intact historical artifact. This is likened to a reconstruction of an Egyptian pyramid - it would be a replica, but not an Authentic Historical Egyptian pyramid.

4. There have been public statements by certain Defendants that the Cenotaph will come down and the Plaintiffs believe that the City will act immediately to take down the Cenotaph to American veterans and disavow the sacrifices of their families and extinguish the assemblage of Constitutional Liberties the Cenotaph represents without notice, because of previous statements and the pattern of conduct established in other Florida communities. It is believed that a contractor has been engaged without full bid process as was engaged in an County for the same purpose. Fed. R. Civ. P. 65(b)(1); *Winter*, 555 U.S. at 22. “The loss of First Amendment interests were either threatened or in fact are being impaired at the time relief was sought. The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673 (1976).

The City is a state actor who is ordaining the political meaning of political, religious and artistic expression in a public forum. This government determination of expression in a public

forum without a showing of any compelling interest in making the determination and without due process and without an independent arbiter is a continuing irreparable harm, as contemplated under *Texas v. Johnson*, 491 U.S. 397 (1989) and *Elrod v. Burns*.

5. There is no adequate remedy at law, because any legal remedy would be merely illusory. *Northern Cal. Power Agency v. Grace Geothermal Corp.*, 469 U.S. 1306, 105 S. Ct. 459 (1984). The denial of free speech and due process on a continuing basis cannot be readily reduced to monetary damages. The only adequate remedy to the abridgment of free speech is the injunctive demand to resume the abridged assemblage of Constitutional liberties and to provide the denied due process.
6. There is a substantial likelihood that the plaintiffs will prevail on the merits. *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931, 95 S. Ct. 2561 (1975). Defendants have expressly abridged the aforementioned assemblage of Constitutional rights represented by the Cenotaph and attempted to substitute a new interpretation of the Cenotaph's meaning. Case law on this issue clearly shows that government actors may not enforce their own interpretation of political messages on political symbols. *Johnson*, 491 U.S. at 415. The recent line of cases including *American Legion v American Legion et al. v. American Humanist Assn. Et. Al.* 139 S. Ct. at 2080-82, 2081 n. 16, 2087, *Alabama v City of Birmingham*, 2019 WL 6337424, So. 3d (Ala. Nov. 27, 2019), and *Kondrat'yev, et al v. City of Pensacola No. 17-13025*, (11th Cir. Feb. 19, 2020), show a consistent protection for long established military monuments. Plaintiffs are confident that the Court will agree that the Defendants are abridging the long-standing tradition of freedom of expression in a public

forum, strongly protected by the US Constitution, and removal and denial of the same by a state actor is subject to strict scrutiny, which should be remedied by the Court's authority.

7. The on-going harm to Plaintiffs outweighs any remote and theoretical harm that a temporary restraining order would inflict on the City of Lakeland *Winter*, Supra, at 24; *Yakus v. United States*, 321 U.S. 414, 440, 64 S. Ct. 660 (1944). Plaintiffs are already experiencing continuing harm by the decision to deny freedom of expression communicated by the Cenotaph and its inscriptions in bas-relief by improper, biased, and untruthful content interpretation contextualization plaques. *Elrod*, 427 U.S. at 373. The City and other Defendants will suffer no harm by allowing the Cenotaph to stay in place.
8. Issuance of a temporary restraining order would not adversely affect the public interest and public policy, because issuance of the order would serve the public interest. *See Winter*, 555 U.S. at 24-26. Indeed, the benefit to third parties would be enormous, as the display of the direct, factual inscriptions on the plinths, such as "Our Dead" would allow everyone in this public forum in the Public Square to appreciate that historic facts pose no actual harm. Indeed, the order would mark the end of the Orwellian terror that the City is attempting to inflict on the public and the plaintiffs.

Plaintiffs are willing to post a bond in the amount the Court deems appropriate. However, Plaintiffs are filing this cause in the public interest and request that the Court order no or a nominal bond. *Kaepa, Inc., v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996). Firstly, neither the City of St. Augustine nor any Defendant stands in financial risk by the issuance of the requested injunction. Secondly, Plaintiffs are suing in the public interest and stand to recover no damages in this action, or other compensation other than attorneys fees and costs under 42 U.S.C. §1988, 28 U.S.C. §2201.

9. The Court should enter this temporary restraining order without notice to the Defendants because Plaintiffs will likely suffer immediate and irreparable injury, loss, or damage if the order is not granted before this Action can be heard and there is no less drastic way to protect plaintiffs' interests. Fed. R. Civ. P. 65(b)(1); *Garcia v. Yonkers Sch. Dist.*, 561 F.3d 97, 106 (2d Cir. 2009); *see also Benchbook for U.S. District Court Judges*, at 239. The course of dealing in Florida has often been to remove public Memorials without notice and under cover of darkness. Plaintiffs have reason to believe that the City will once again, following these precedents, surreptitiously remove the Cenotaph without notice in the dead of night. Plaintiffs believe that were the City to receive notice that this Court was contemplating an injunction to protect the Cenotaph, the City would accelerate the removal of the Cenotaph.
10. The Cenotaph is surfaced in coquina stucco, with marble inserts or plaques. Coquina stucco is a material which is notoriously fragile. It is particularly susceptible to permanent injury, even more so than other monuments.
11. Plaintiffs ask the Court to set the request for Injunctive Relief in the form of a **Temporary Restraining Order, followed by Preliminary Injunction Hearing at the EARLIEST POSSIBLE TIME ON AN EMERGENCY BASIS.**

CONCLUSION

12. Plaintiffs assert this case is within the proper jurisdiction and venue to appear before the Court and the plaintiffs are proper parties to request injunctive relief. The Plaintiffs are in imminent danger of irreparable infringement of their 1st Amendments rights by the

Defendants. The City has breached their bailment agreement with the LMA, violated its trust with the Citizens of St. Augustine, violated state law and its own ordinances, and trampled on the assemblage of well-recognized Constitutional liberties enjoyed by the citizenry through the Historic Plaza de la Constitucion “Our Dead” Cenotaph. The Plaintiffs are particularly sensitive to the issues raised in this Complaint and uniquely suitable as plaintiffs due to their connections, agreements, missions, financial stake, political points of view, artistic sensibilities, and lineage.

In addition, the Secretary of State has violated Florida State Law by neglecting to protect the Historical Resource owned by the citizens of Florida under her statutory duties and obligations.

The Defendants merely hold the monument in trust for the citizens, the people of Florida, who have the beneficial ownership of the monument. Defendants are in ongoing violation of that fiduciary burden and trustee obligation.

Finally, the Defendants, and others, seem to be in a conspiracy to violate Florida State Law that prevents altering a Memorial site. This is a criminal violation.

This Federal Court has the proper jurisdiction to discipline an officer of the State of Florida and require him to do his duty, and it is the Federal Court which has the highest duty to protect the assemblage of Constitutional liberties affected by the removal of the Historic “Our Dead” Cenotaph at Plaza de la Constuticion.

Plaintiffs are concerned that the Defendants will move swiftly and unilaterally to eradicate freedom of expression and the plaintiffs will suffer irreparable harm by the removal of the Cenotaph if injunctive relief through a Temporary Restraining Order is not issued immediately.


For these reasons, Plaintiffs ask the Court to issue an emergency Temporary Restraining Order preventing Defendants the City of St. Augustine, or its agents, including any contractor, from removing any or all of the Historic Cenotaph or obscuring or infringing it in any way.

PRAYER FOR RELIEF

13. For these reasons, Plaintiffs ask that the Court do the following:

- a. Order that the City not take down the Historic “Our Dead” Cenotaph at Plaza de la Constitucion;
- b. Order that City does not infringe on the inscriptions or symbolism etched into the Historic Cenotaph in any way;
- c. Enter judgment for Plaintiffs;
- d. Award costs of suit to Plaintiffs; and
- e. Award attorney and expert’s fees pursuant to 42 U.S.C. §1988, 28 U.S.C. §2201.
- f. Plaintiffs further ask the Court for any and all relief to which Plaintiffs may show they are entitled.

Respectfully submitted,

By: 
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STATE OF FLORIDA
PASCO COUNTY

AFFIDAVIT OF DAVID RHODES MCCALLISTER

Before me, the undersigned notary, on this day personally appeared David Rhodes McCallister affiant, a person whose identity is known to me. After I administered an oath, affiant testified as follows:

1. "My name is David Rhodes McCallister. I am competent to make this affidavit. The facts stated in the Application for Temporary Restraining Order are within my personal knowledge and are true and correct.

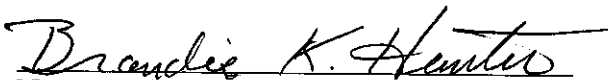
2. I have been reading news articles, talking with witnesses, and reading statements made by the parties in this matter."



DAVID R. MCCALLISTER

SWORN TO and SUBSCRIBED before me by David Rhodes McCallister on _____

June 22, 2020



Notary Public in and for
The State of Florida

