

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

Case No. 3:20-cv-634

Sons of Confederate Veterans

Save Southern Heritage, Inc. Florida

Rick Hobbs

Jane Doe

John Doe

Plaintiffs

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' COMPLAINT WITH INJUNCTIVE RELIEF SOUGHT

PARTIES

1. Plaintiff, HK Edgerton, is past president of the NAACP in Asheville, NC. He has been a civil rights activist for a half century and was part of the Civil Rights movement. He turned his attention to oppressed civil rights of descendants of veterans of the Southern Armed Forces in the conflict of 1861-1865 and has featured prominently in efforts to protect the rights of school children, "his babies". Edgerton has been an expert witness in a Federal freedom of expression First Amendment lawsuit on this subject. He has taken an particular interest in the preservation of the "Our Dead" Plaza de La Constitution Cenotaph ("Cenotaph", "Our Dead", "Plaza Cenotaph") because of his research and visit to the graves of some of the local veterans, 'people of color' who he asserts the Cenotaph memorializes. He has travelled from North Carolina on multiple occasions to promote the preservation of the Cenotaph and has expended funds on those trips, including Sales taxes in the City of St. Augustine. He has requested, on multiple occasions, an opportunity to present the 'other side' of the history when the City Council took up business involving the Cenotaph, but at each time he was rejected. His particularized interest is his financial investment in defending the Cenotaph's right to emit his Honorific and political Speech, which represents for the Black Confederate soldier who "Comrades Mourned" and for the "Dead" into perpetuity, unfringed, and the fact that he identifies with the "black confederates" as he himself is a "black man". Mr. Edgerton is a Christian, whose Father was a Christian Pastor, and mother was a 'good Christian woman" who was honored with a "Confederate State Funeral" in her home town. He, himself, is descendant of a Black Confederate soldier and has been subject to civil rights infringement as he attempts to honor his own Confederate ancestor.

2. Plaintiff, Willam C. McRea aka “William Mayhem the Pirate Magician of St. Augustine” is a historical re-enactor and theatrical performer and derives one hundred percent of his income from the tourist industry, primarily in St. Augustine. He also pays city sales tax, parking fees and other costs and fees during his work hours.
3. Plaintiff, the Saint Augustine Tea Party, Inc. is a Florida not for profit Corporation based in the City of St. Augustine whose purpose is to advocate for American Constitutional Liberties and who has challenged governmental authorities in other free speech infringement complaints and whose particularized interest is the free speech rights the Cenotaph represents.
4. Plaintiff, the Ladies Memorial Association, Inc., is the reconstituted entity that originally erected the Cenotaph and it its successor in interest. Its particular interest is that it is continuing the original work of memorializing the war “Dead” honored through the Cenotaph’s speech. The LMA members comprise ladies whose families are memorialized on this Cenotaph and other memorials and cenotaphs around the State. Organizational costs paid to the State of Florida, combined with costs associated with memorial observances at the Cenotaph, most recently a public wreath placement in observance of Confederate Memorial Day, April 26, 2020, comprise both a financial and non-financial particular interest in this case.

Plaintiff, General William Wing Loring Camp 1316, Sons of Confederate Veterans (“SCV” and “Camp”), based in St. Augustine, is a subdivision of the Florida Division Sons of Confederate Veterans, Inc., who is a member of the Sons of Confederate Veterans, Inc., an international organization, whose purpose is to ‘vindicate the cause’ for which the Confederate Veteran fought. The SCV is the successor organization to the United

Confederate Veterans, the organization of the soldiers and sailors who served for the Southern Confederacy during the War of 1861-1865 and are male descendants of the armed forces of the Southern Confederacy. The Camp has members who reside in the City of St. Augustine. This is the only local organization with this membership and mission, and as such, has a particular interest in this case.

5. Plaintiff, Veterans' Monuments of America, Inc. is a non-profit corporation that is organized under the laws of the State of Florida whose purpose is to protect and preserve Memorials to American veterans. Their specialized interest is that their efforts are directed to all military monuments, not those of any particular war or any particular veteran. They are the only local organization with such purpose. Its filing fees with governmental entities comprise a financial interest in this complaint.
6. Plaintiff, Save Southern Heritage, Inc. is a South Carolina non-profit corporation whose purpose is to preserve the history of the south for future generations. The Florida Branch's purpose is to fulfill the organization's purpose throughout the State of Florida. This Plaintiff has a particular interest in the Plaza de la Constitution Cenotaph, because it's provenance dates it as the earliest of the efforts of Floridians to memorialize their fallen family and community members after the cessation of the armed conflict of 1861-1865, and because it utilizes the Cenotaph as part of its Confederate Memorial Day Observance, most recently on April 26, 2020, where a memorial wreath was purchased and placed by its members and supporters.
7. Plaintiff, Rick Hobbs is a descendant of one of the honorees, Estubio Pacetti, who is memorialize on the "Our Dead" Plaza de la Constitucion Cenotaph. His particular interest is a blend of financial, religious and free speech. He views his inheritance, and that of his progeny, as this public place of commemoration to his family member. His religious beliefs,

and his Honorific imperative based on his religious beliefs to honor her father and mother. . . . He feels that his minority honorific speech is being oppressed by a tyrannical government who he alleged has no regard for his first amendment rights by smearing his family's good name through the "contextualization's" re-meaning of the Cenotaph's memorial speech and potential elimination of the Cenotaph's free expression should it be removed from its prominent public location. He also has a particularized financial interest in that he has purchased fuel and paid City of St. Augustine parking fees near the Plaza de la Constitucion to pay his respects at the Cenotaph.

8. Plaintiff Jane Doe is a descendant of one of the honorees on the Plaza de la Constitucion Cenotaph. Her particular interest is a blend of financial, religious and free speech. She views her inheritance and that of her prodigy is this public place of commemoration to her family member. Her religious beliefs, and her Honorific imperative based on her religious beliefs to honor her father and mother. She also has a particularized interest in that she has purchased fuel and paid City of St. Augustine parking fees to pay her respects at the Cenotaph.
9. Plaintiff, John Doe, is a citizen taxpayer of the City of St. Augustine. His particular interest is the pro-rata cost of the contextualization of the Plaza de la Constitucion Cenotaph, and the potential pro-rata cost of removal/demolition of the Cenotaph.
10. Defendant, Tracy Upchurch, is Mayor of the City of St. Augustine and is being sued in his official capacity as well as individually.
11. Defendant, John Reagan, is City Manager of the City of St. Augustine and is being sued in his official capacity as well as individually.

12. Isabelle C. Lopez is the City Attorney of the City of St. Augustine and is being sued in her official capacity as well as individually.
13. Defendant Leanna Freeman, is Commissioner of the City of St. Augustine and is being sued in her official capacity as well as individually.
14. Defendant Roxanne Horvath, is Commissioner of the City of St. Augustine and is being sued in her official capacity as well as individually.
15. Defendant Nancy Sikes-Kline, is Commissioner of the City of St. Augustine and is being sued in her official capacity as well as individually.
16. Defendant Neville, is former Vice-Mayor of the City of St. Augustine and is being sued individually.
17. John Valdes, is Commissioner of the City of St. Augustine and is being sued in his official capacity.
18. Defendant, Marquis Halback, Individually and in his Official Capacity as President of Marquis Latimer + Halback, Inc., a Florida for profit Corporation.
19. Defendant, Laurel Lee, is Secretary of the State of Florida and is being sued Individually and in her official capacity.

JURISDICTION

20. The Court has jurisdiction over this lawsuit, because this action arises under the Constitution, laws, or treaties of the United States. 28 U.S.C. § 1331. Pursuant to the First and Fourteenth Amendments to the U.S. Constitution “Congress shall make no law . . . abridging the freedom of speech” . . . “[n]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.” This Court has jurisdiction over the state law claims asserted herein under the doctrine of pendent jurisdiction.

VENUE

21. Venue is proper in the Middle District under 28 U.S.C. § 1931(B)(2), because all of the events or omissions giving rise to this claim occurred in the Middle District and because all of the injury to the plaintiffs occurred in the Middle District. Plaza de la Constitución and the Plaza de la Constitución “Our Dead” Cenotaph are located in the Middle District, and the defendants’ illegal and unconstitutional actions occurred in the Middle District when they ordered the unlawful and unconstitutional alterations of the Plaza de la Constitución “Our Dead” Cenotaph.

FACTS

22. The City of St. Augustine was founded in 1565 by the nation of Spain. Its continuous existence makes it the oldest permanent European settlement on the mainland of North America, in what is now the contiguous forty-eight United States.

23. The City would become the Capital City of the Spanish Colony of “East Florida”. By Spanish Royal Ordinances in 1573, a +/- one acre parcel of land was designated the “Plaza” for government, church, and public use. This Plaza is the oldest public space in America, predating the American Colonial Declaration of Independence from England, the American Revolution, the adoption of the Constitution of the United States of America, self-governance of Florida as a Territory, and Florida’s admission into the United States of America as a State.
24. In 1812-1813, the Plaza took on even more significance when, by Orders from Spain, it was renamed “Plaza de la Constitution” and a monument was erected as a testament to the new ‘liberal’ Spanish Constitution that reduced the power of the Spanish monarchy. This new constitution was inspired by the governmental reformations that had been achieved by the American Colonists in their rejection of a monarchical form of government in favor of a representative government and ‘natural rights’ that was spreading around the world.
25. The “Constitution Monument” was dedicated on February 13, 1814 in a large and grand public ceremony. The Constitution Monument was an obelisk eighteen feet in height in a classic architectural style and surfaced in local coquina stucco.
26. Coquina stucco is made from the natural resource of sedimentary coquina rock from compressed coquina clam shells quarried by the early Spanish military for the construction of historic Castillo de San Marcos, the fort built for the defense of the Colonial city of St. Augustine, and used as a common building material in the oldest structures in St. Augustine, and is today prized and protected as a non-renewable natural resource.
27. Later, when Spanish King Ferdinand VI restored his power, the Constitution Plaza monument was ordered destroyed. However, the St. Augustinians defied the order and the inscription tablets were detached, and safely stored. Undoubtedly this was a nod by the people of the City

to their understanding of the significance of the history the landmark represented in their City's then two and a half century history, and document a long standing Policy of Historic Preservation in the City

28. Later, when King Ferdinand VI finally swore allegiance to the Constitution, the St. Augustinians restored the hidden inscription tablets. These Constitution Monument with its inscribed tablets survive in situ today making the Constitution Monument in Plaza de la Constitution Plaza the ONLY remaining landmark marking the progress of the Spanish People from subjugation to a Spanish monarch in the Western Hemisphere.
29. The City would change flags several times over the centuries, and would see war and upheaval. Eventually it become part of the US Territory of Florida in 1821. Florida was later admitted to the union of states, the United States of America, in 1845.
30. In May 1860, when the swords of war again began to rattle over perceived suppression of liberties that caused the American Colonists to sever ties with its English governments, the Saint Augustine Blues ("Blues"), a local militia unit, was formed. The Blues were comprised of men and boys of St. Augustine and surrounds who volunteered for Florida's homeland defense. The Blues were comprised of approximately 124 men. The Blues were a multi-racial, multi-ethnic, multi-sectarian group comprising descendants of northern and southern Europe, including Spain, Minorca and Italy, as well as freed African immigrants. The Blues' roster included names still recognized in the City today including Lopez, Masters, Llambias, Mickler, Pacetti, Papy, and Ponce. The Blues included three known black St. Augustinians: Isacc Papino, Anthony Welters and Emanuel Osborne. The Blues adopted a flag for their

unit with the wording “ANY FATE BUT SUBMISSION”.

31. On January 10, 1861, in Convention, the State of Florida seceded from the United States of America, joining several other states in rapid succession. On April 15, 1861, US President Abraham Lincoln issued a Presidential Proclamation calling for the state militias to provide the sum of 75,000 troops in order to “suppress the rebellion” of Florida and her sister states. On April 22, 1861, Florida was admitted to the newly formed confederacy of southern states known as the Confederate State of America.

32. Florida Governor John Milton commissioned the “Blues” and the unit which would be mustered in as Company B of the 3rd Florida Infantry Regiment on April 10, 1861. Company B was originally based in St. Augustine, Florida but was ordered to Tennessee in Early August of 1862 along with the rest of the Regiment and went into camp near Lookout Mountain.

33. On March 11, 1862, the US Military seized the City of St. Augustine and it was occupied during most of the rest of the war. So, while the “Blues” were away at war the local citizenry were subject to military law which limiting the ability of the local citizenry to express their patriotism for their fallen family and friends in any meaningful public way for fear of retribution. Many, including the town’s women, evacuated beyond the occupied City to avoid oppression.

34. The 3rd Florida was then assigned to the Army of Tennessee under command of Gen. Edmund Kirby Smith. As armed hostilities ensued between the United State of America and the Confederate States of America, the Blues were engaged in major battles from mid 1862

until the cessation of hostilities including Murfreesborough, the Battle of Chickamauga, the Battle of Atlanta, and the Battle of Franklin, to name a few. These Blues participated in some of the bloodiest engagements in a war that would kill more Americans than all of other of America's wars combined up to the Global War on Terror.

35. As the war waged on, more men of the area would enlist in service for Florida, and some estimates suggest that Florida's total supplied combatants in homeland defense exceeded 15,000, with one third of them perishing. The human cost on the community was grave and heartbreaking for both sides. Over 600,000 Americans would perish in the conflict, and many more would become disabled through injury or debilitation in prisoner of war camps. The men of the Blues would be no exception, as one in ten men on the original muster role perished.

36. The economic impact of the War and its aftermath was also extreme. The war and reconstruction was arguably the most catastrophic event in the City's history. In the National Register Application for the St. Augustine Historic District, the War period was described as follows: "By 1865 the city was physically dilapidated and economically deteriorated. The Civil War had cut off the seasonal tourist trade and further disrupted local agriculture. Many of the male residents of the area abandoned their farms and joined the Confederate Army. Following the war St. Augustine retained a backward economy based largely on subsistence agriculture. Its economic development was inhibited by geographic isolation, a lack of marketable cash crops, and the absence of adequate transportation facilities. As a measure of conditions there, while the population of Florida increased by one-third between 1860 and 1870, the population of St. Augustine declined, totaling less than that of 1830. Florida was re-admitted to the Union on June 25, 1868 after an oppressive period of military

‘reconstruction’ under military law that continued until 1877. “

37. The impact on the civilian population, especially the women was devastating. Be it suffering from of the hardship and oppression of living in an occupied city, rights suppressed, during war time; disruption of life to live in exile out of harm’s way; the death of a family member; dismemberment, disfiguration, or emotional impact (now known as PTSD) of a loved one, or simply the economic impact ensuing from the deprivations of mounting a war effort, and loss of livelihood form disruption of farming activities to name a few. One example was Miss Anna Dummett, an unmarried woman, and immigrant to Florida in 1830, who moved to St. Augustine in 1845. Miss Dummett found herself suddenly responsible for her late sister’s four children when their father, Gen. William Hardee, entered Florida military service. In her memoirs she wrote in 1861 “I have been following William and the unit he commands watching over his four children. On top of that I have volunteered as a nurse to treat the wounded. Although this war is less than a year old, the carnage is already unimaginable.” Later in 1866 she writes ”The war has been over for eighteen months....the damage throughout [the South] is breaking. I have since returned to the city of St. Augustine, which is now under martial law.”

38. In 1866, the ladies of the town who had suffered lost love ones and friends united as the “Ladies Memorial Association” (“LMA”) with the goal of erecting a public memorial. Miss Dummett said of the effort “I have taken it upon myself to organize a group of loyal Confederate women with the goal of honoring our fallen local boys in some way. We have agreed on calling our group the Ladies Memorial Association of St. Augustine. We have established our main goal of erecting a monument that will simply be dedicated to our boys, “Our Confederate Dead.”

These ladies undoubtedly understood the “Honorific Commandment” enumerated in the Hebrew bible and incorporated in the Christian bible “Honor Thy Father and Thy Mother”.

39. Miss Dummett was installed as the first president of the association, and retained that post until her death in 1899. Other members included: Miss M.J. Llambias, Miss Lucy Abbott, Mrs. Juila Gibbs, wife of Col. George Gibbs, Miss Isabel Benet and Miss Anna Humphrey.

40. The ladies confronted many obstacles in their objective. First, was accumulating the funds necessary for its construction. In Herbert Greenleaf’s “History of the Confederate Monument” he states “Raising the money was difficult and mostly in the smallest sums. Often a half dozen or more of the ladies would contribute, from their meager food supply, the ingredients of a cake, and when it was baked it would be sold and the money placed in the memorial fund. The ladies did bits of sewing for money; children practiced for plays to raise money...and anything and everything that would bring in a penny for the monument fund. We who think it hard to raise money for a monument fund today, may well be put to shame by the example set by these devoted ladies”.

Second was governmental permission for the tribute to the ‘dead boys’ (“Our Dead” Cenotaph) erection in the Plaza. Greenleaf states “The military governor of the city, Colonel Sprague, objected to the monument being placed on any city ground. It was through his influence and power that the city council refused the land necessary for the placing of the monument in the ‘Plaza’”. Florida historians William B. Leeds and Frederick P. Gaske, familiar with Florida’s collection of military monuments and memorials during this conflict note “it is not surprising that a Reconstruction-era city council overseen by a military district headquartered in St. Augustine denied this monument, which paid homage to the Confederacy, a place on city property”.

41. Alas, the ladies were forced to submit to the oppression of rights their husbands, fathers, brothers and nephews took up arms to defend, at a time when they themselves had no political voice. They had no political rights either. Their Cenotaph erection project predated woman's suffrage by a half century. At the time of the decision by the City Commission women in the City of St. Augustine and in the State of Florida did not have the right to vote, as the 19th Amendment to the U.S. Constitution had neither been proposed nor ratified. The LMA members were suffering dis-enfranchisement from the political process in America. Nonetheless, they expressed what rights they did have by erecting a landmark that has stood, emanating their intended speech, in the only way they could speak it for 140 years.
42. But, the ladies were not deterred in their "sacred objective" their Judeo-Christian "Honorific Commandment", the imperative to honor their "Dead" as soon, and as publically, as possible. They requested and obtained permission to erect a Cenotaph on an alternate private site near Plaza de la Constitucion, on the grounds of the home of Catholic bishop Augustin Verot, three blocks south of the Plaza.
43. Plans proceeded and the design included inscribed marble tablets that could, at some point in the future, be detached, like the old Constitution Monument tablets that the St. Augustinians protected and preserved a half century before. It was constructed by Joseph Llambias, whose brother was honored on the Cenotaph. The Cenotaph ("Original Cenotaph") was completed in April 1872.
44. Like the Constitution Monument in the Plaza, the "Our Dead" Cenotaph was surfaced in coquina rock stucco.
45. The coquina faced structure was embellished with artfully inscribed by the ladies with marble tablets including the two containing the names of the forty four (44) "Dead"

memorialized by the Cenotaph. A shaft emerged from the middle of the base that was broken at the top signifying life cut short. Two Latin crosses of marble were erected on either side of the shaft. On the shaft was a simple marble tablet inscribed with the words “Our Dead”.

46. The forty-four honoree names were inscribed on two marble tablets.

- Peter Masters
- John M. Llambias
- Antonio Mickler
- Jacob Mickler
- Joseph Noda
- Eusebio Pacetti
- Frank Papy
- Marine Papy
- Edward Papy
- Bartola Pinkham
- Nathaniel Powers
- Jon Ponce
- Thomas Ponce
- R. Jenckes Reid
- Richard Russell
- Felix Rante
- Henry Bryan
- Samuel Buffington

- Napiano Capalla
- Gaspar Capparas
- John Stevens
- Hanaro Triay
- James Walton
- Frank W. Weems
- J. Westcott Willard
- Archibald Gould
- Joseph Andreu
- Francis Bay
- Casmiro Benet
- Henry Bridier
- Ouis Bridier
- James Hanson
- William J. Hardee
- James Hulburt
- Edward C. Humphries
- Jose Irwin
- R. Francis Dancy
- Henry G. Dunham
- Abraham Dupont
- Andrew Floyd
- Phillip Gomez

- Antonio Lopez
- Anfonse Lopez
- William Dupont

Of note: of the honorees:

- 20 of the honorees have Hispanic surnames;
- All died in service;
- 17 were killed in action;
- 15 died as prisoners of war; and
- 14 were casualties

In reading the names of the “Dead” inscribed tablets, “The Economist” (a weekly political, literary and general newspaper based in London, England) remarked in its Tuesday March 16, 1880 issue that “The long list of names on the tablet of his monument shows the many bright examples of self-sacrifice and heroic devotion to duty of old St. Augustine’s sons”.

47. The Original Cenotaph was dedicated on May 10, 1872 and would go down in history as the FIRST memorial to Florida’s war dead in the bloody conflict. The date of dedication was chosen as it was the birth date of the Southern war hero Gen. Thomas J. “Stonewall” Jackson, and whose last words were inscribed on one of the Cenotaph’s removable tablets. The featured speaker at the dedication ceremony was Wilkinson Call of Jacksonville, who himself was a veteran of the war and had been elected to represent Florida in the US Senate,

but was prevented from taking office in Washington, DC due to his military service to the South during the war, leaving Florida unrepresented in Washington during the period of Reconstruction.

48. Though the Cenotaph on private church ground was erected, the passage of time did not divert the ladies from continuing to press for their original objective of public memorial to their "Dead" in a non-sectarian public venue in the Plaza de la Constitucion.

49. As Military Occupation and Reconstruction came to a close, in 1879, the ladies re-applied to the City of St. Augustine to place their "Our Dead" Cenotaph in the Plaza. This time the fresh air of liberty was in the air and the ladies were successful. The City of St. Augustine finally approved the request for a new memorial to be erected in the public square, the Plaza de la Constitucion.

50. Miss Dummett in her 1879 memoirs recalls: "Finally the awful Reconstruction occupation of the Union is now over. The locals were once again in control of the government and the Ladies Memorial Association of St. Augustine was no longer oppressed. The monument to "Our Confederate Dead" swiftly received a plot in the Plaza in the Hart of the city....The title of the monument remained constant. On the sides were dedications to those who made the ultimate sacrifice to the confederate cause as well as 44 local men who made that sacrifice in the war. Out of those forty-four one is of significant importance to me: William J. Hardee. He was the son of my close brother-in law William and was my nephew. He was tragically killed in the waning days of the war at only seventeen years old. He is a prime example of sacrifice for the southern cause. I am proud to honor him on our grand monument, along with the fort-three other names which now stand in the heart of the city of St. Augustine".

51. The Plaza “Our Dead” Cenotaph was finally erected to be massive two-story twenty five foot tall, estimating to exceed 100 tons. It was an obelisk of Classic architectural style similar in design to the Constitution Monument. The Cenotaph was square at the base with two marble riser foundations and comprising three coquina stuccoed levels, and the ladies adorned each with two insets described as follows:

- West face (front) :
 - on the top level inset the “Our Dead” tablet was re-installed;
 - on the middle level inset a marble inscribed shield shaped tablet with the wording: “IN MEMORIAM OUR LOVED ONES WHO GAVE THEIR LIVES IN THE SERVICE OF THE CONFEDERATE STATES” was re-installed;
 - on the lower level insert one of the two marble inscribed tablet that contains the names of twenty-two (22) of the “Dead” was re-installed.
- South face:
 - on the middle level inset an ornate Latin cross;
 - on the lower level inset an inscribed marble tablet was installed poetic verse:
“THEY DIED FAR FROM THE HOME THAT GAVE THEM BIRTH BY
COMRADES HONORED AND BY COMRADES MOURNED.”
- North face:
 - on the middle level inset is an ornate Latin cross;
 - on the lower level inset the other of the two marble inscribed tablet with an homage to the dying last order of Lt. Gen. Thomas J. ‘Stonewall’ Jackson

“THEY HAVE CROSSED THE RIVER AND REST UNDER THE SHADE
OF THE TREES”

- East face:
 - an inscribed marble table with the words “Erected by the Ladies Memorial Association of Saint Augustine, in May of 1872” was re-installed.

52. The Plaza Cenotaph immediately began making a contribution to the post war economic recovery of the town, sparking a burst of historical tourism. Author Constance Fenimore Woolson and the noted poet Sidney Lanier visited the Cenotaph and mentioned it in their writings. Travel guides mentioned the Cenotaph in their promotional literature and President Grover Cleveland visited it during his 1888 visit to the city.

A “Letter from Florida” published in the Friday, December 22, 1882 issue of “Miami Republican” newspaper from Paola, Miami County, Kansas includes the Plaza Cenotaph as one of the sites to see when visiting St. Augustine. An article entitled “Two Montgomerians in Florida” published in the April 8, 1875 issue of “The Weekly Advertiser” extolls the thrill of a March 31, 1884 visit to St. Augustine: “This venerable city, with its cobwebs of ancient ruins...is situated on the shining shores of the broad Atlantic, and filled with the speaking emblems of antiquity, no intelligent Southern traveler fails to visit St. Augustine, probably the oldest city on a continent... A feeling of reverential awe, akin to that which possesses the beholder on his first visit to the tomb of Washington, overcomes the visitor when he comes to realize that the fact that his feet really press the soil of this olden time and most historic of cities, with a Ponce de Leon flowing in its heart. You stand amid the venerable ruins of the old cathedral whose masses have been chanted by the Spanish priest

or modern prelate for more than three centuries of time and gaze in retrospection upon the Spanish inscribed upon the Plaza de la Constitution. And then the matchless sea wall promenade swept by the freshest Atlantic breezes, and kissed along its lovely length by the splashing wavelets that have dashed themselves in sterner form against it for a hundred years in vain. Here you catch the glow of chivalry from the old Castilian days of Spain, amid the vivid antiquities of old Fort Marion [v] which was begun in 1620 and completed in 1750. The labor on it was performed by Indians and Mexican convicts, the former being compelled to work on it for sixty years. It is one of the strongest fortifications in this country, requiring and armament of one hundred guns, and one thousand men as a garrison. It has never been taken by a besieging enemy. The monument in the Plaza was erected in 1812 to commemorate the Spanish Liberal Constitution. It is eighteen feet high. The Spanish inscription translated is "Plaza of the Constitution promulgated in the city of St. Augustine, East Florida, on the 17th day of October in the year 1812. Being then Governor, the Brigadier, D. Sebastian Kindelan, Knight of the Order of Santiago. For eternal remembrance, the Constitutional City Council erected the monument under the supervision of D. Fernando de la Plaza Arrendondo, the young municipal officer, oldest member of the corporation, and Francis Bobira, Attorney and Recorder". The Confederate monument erected by the Ladies Memorial Society, in memory of St. Augustine soldiers lost in the war, stands opposite the Spanish monument, and in addition to the names of the soldiers, bears the following inscriptions: "Our dead. Erected by the Ladies Memorial Association of St. Augustine. In Memoriam." On the other sides, "Our loved ones, who gave their lives in the service of the Confederate States. They died far from home that gave them birth.

They have crossed “The river and rest under the shade of the trees.”

It was this type of publicity that helped the City needed to nose out of the post war economic depression. Henry Flagler first visited St. Augustine, just 8 years after the Plaza Cenotaph Dedication, undoubtedly after reading about the grand dedication of the first War Memorial to be erected in Florida that was frequently discussed in travel promotions. The City benefitted greatly from the newspaper reports on the dedication and celebrity visits to the Cenotaph, which contributed to putting St. Augustine ‘on the map’ as a tourist destination.

53. In 1872, the Ladies would sign a 99 year lease for the Cenotaph’s 20 foot by 20 foot plot for one dollar per year. In 1883, the city reportedly conveyed the plot to the LMA, for which the LMA paid the remaining \$95 on the lease. The City afterward donated the payment back to the LMA.

54. After 18 years the LMA’s purpose of erecting a public memorial to their ‘Dead’ fulfilled, the LMA could abide in the knowledge that the Cenotaph and the speech emanating from it was secure into posterity. The year of her death (1899), Miss Dummett would write in her memoirs “This is the 20th anniversary of the erection of our grand monument in the center of the city. For twenty years now, our confederate dead have been remembered and honored by the monument we raised in the Plaza. Although I am now 82 years of age, I am still the president of the Ladies Memorial Association and very proud of it. Our memorial seems to be one of the few that is not dedicated to a Confederate general. Ours is instead in memory of our local

boys who fought selflessly in the war for the southern cause. Am grateful that I was able to erect a monument in memory of our boys, as they deserve to be remembered. Although the Confederates were not successful, these boys fought for the cause they believed in and that is deserving of honor. I am very fortunate that I was instrumental in giving them the recognition they deserved.” Miss Dummett, though not wealthy, has been recognized in 2000 as a “Great Floridian”, and undoubtedly was one of the most prominent women in the history of the city of St. Augustine. Miss Dummett, at her death, still did not have the political right to vote.

55. For many, many years to come, the City and its residents would enjoy the civic benefit of the Plaza Cenotaph. The news about St. Augustine spread, and it, as well as the Flagler railroad and the acceptance of Florida, made St. Augustine a premier ‘Heritage/Historical Tourism’ and a “destination location”.

56. The Cenotaph, the only public memorial to the “Dead” erected by the ladies would take its place in this civic landscape and was a focal point for colorful Confederate Memorial Day observances in the town as a part of the multi-cultural, multi-generational American historical “mecca” St. Augustine would become.

57. History is important. And not just for economic reasons. The preservation of history is important for many reasons:

- History shows people how to understand our nation and our state and how they came into being.
- History helps people understand the nature of our laws, customs, and governmental institutions.
- History causes people to appreciate and honor the sacrifices made by many for the freedoms and the way of life we have today.

- History helps shape our identity as a state and nation.
- History develops critical thinking skills as we relate the events and personages of history to movements and ideas.
- History is valuable economically as a tourism attraction.
- History inspires people to civic action, making them realize they are part of a bigger picture of ongoing history.
- History motivates people to serve their state (and nation) and to sacrifice for it, even their lives, knowing that future generations will remember them as we now remember soldiers of the past.
- History encourages people to become civic leaders, seeing the recognition given to leaders of the past.
- History helps people understand the mistakes and even evils of the past and points people toward finding ways to avoid making those mistakes in the future. "Those who cannot remember the past are condemned to repeat it."
- History causes people to study toward understanding why others believed and acted as they did and why people believe and act as they do. (As David Hume said, history's "chief use is only to discover the constant and universal principles of human nature." Man is explicable by nothing less than all his history.")
- History provides a timeline to measure civilization's progress (or regression) from a point in the past.

58. International, United States, State and Local policies have been set, laws have been enacted, and actions taken to protect and preserve world history and cultures.

59. One notable case when the world community came together to preserve history was in World War II. Totalitarian Nazi Germany posed an immense threat to European culture through its efforts to “cleanse” the European landscape of culture and art and artifacts deemed to be “offensive”. The Reich Ministry of Public Enlightenment and Propaganda compiled and extensive list of items for totalitarian cultural purge and in doing so waged a war on the freedom of expression, history and culture of the peoples in Europe. The art community sounded an alarm and the Allies came together to establish a special multi-national military and civilian team of 345 men and women including art historians and soldiers who would go down in history as the “Monuments Men”. On 29 December 1943, United States President Eisenhower issued an Order 2512 which directed his commanders to protect cultural in the war zone and explained why: “Today we are fighting in a country which has contributed a great deal to our [America’s] cultural inheritance, a country rich in monuments which by their creation helped and now in their old age illustrate the growth of the civilization which is ours. We are bound to respect those monuments...”
60. But this was not the only recent threat to culture, art, and, in fact, “history”. More recent acts of historical destruction on the world stage prompted the United Nations in 2016 to sound an alarm stating “Cultural diversity is under grave threat around the globe.” They described a war on “history” and culture stating “Who could fail to be outraged by the destruction of the magnificent Buddhas of Bamiyan, the monuments of Palmyra, the mosques and cultural artifacts of northern Mali? This wanton vandalism is not collateral damage. It is part of a ruthless wave of cultural and ethnic cleansing, inseparable from the persecution of the communities that created these cultural gems. It is also part of a cycle of theft and profit that

finances the activities of extremists and terrorists. As a human family, we cannot let them erase our history and identity. Any loss of cultural heritage is a loss of our common memory. It impairs our ability to learn, to build experience and to apply the lessons of the past to the present and the future. Culture is also one of the strongest driving forces for building societies and imbuing them with values. It knits communities together with a sense of continuity. Extremists and terrorists have known this throughout the ages. They have always understood that by attacking and destroying cultural artifacts, buildings and monuments, they can divide people, erase their common values, shred the social fabric and create greater fragility and vulnerability to their cynical ideology.”

61. As we saw in Nazi occupied Europe, recently in the middle east and now in the United States, unfortunately there are forces in the world that seek to eradicate history, particularly aspects of history deemed by some as “offensive” or that don’t agree with the current government or popular option that are in conflict with the “Democracy of the Dead”, the instructive voices of the past that inform the future. G. K. Chesterton discussed the importance of Historic voices writing "Tradition means giving votes to the most obscure of all classes, our ancestors. It is the democracy of the dead." This “Democracy of the Dead” that protects and preserves the history of a culture and a people is recognized in time in memoriam.

62. The United States of America has a substantial interest in preserving American History and Tradition. All three branches of the federal government and state and local governments as well, have recognized the value of historical memorials and monuments and have made provisions for their creation and preservation. At the federal level, Congress adopted the

American Antiquities Act of 1906 "to preserve for present and future generations the historic, scientific, commemorative, and cultural values of the archeological and historic sites and structures on these lands. It also authorizes the President to protect landmarks, structures, and objects of historic or scientific interest by designating them as National Monuments." The Executive Branch preserves historical monuments, usually through the Department of Interior which includes the National Park Service, but also through the Department of Defense and other branches. The U.S. Supreme Court has recognized the value of historic preservation. In *Penn Central Transportation Company v. New York City*, 438 U.S. 104 (1978), the Court upheld New York City's Landmarks Preservation Law and the restrictions it imposed on developing property that has historic significance, against the property rights of those whose property the Law prohibited from development.

63. Other cases that recognize the importance of historic preservation include *Maher v. City of New Orleans*, 516 F.2d 1051 (5th Cir. 1975), *A-S-P Assoc. v. City of Raleigh*, 298 N.C. 207, 258 S.E.2d 444 (1971), and *Figarsky v. Historic District Commission*, 171 Conn. 198, 368 A.2d 163 (1976).

64. And most recently two public monument cases, the judiciary has made it clear that "history and tradition" re vital components to an analysis of First Amendment rights (*Amanda Kondrat'yev v. City of Pensacola* 949 F.3d. 1319 (11th Cir. 2020) and *American Legion et al. v. American Humanist Assn. Et. Al.* 139 S. Ct. at 2080-82, 2081 n. 16, 2087. The latter opinion states that "for those with a knowledge of history, the image of monuments being taken down will be evocative, disturbing and divisive". The Court found that ordering destruction

of the cross would not be perceived as a religiously neutral act and viewed the Fourth Circuit's suggested remedy in that case of "amputating the arms of the Cross" as "profoundly disrespectful".

65. The US Government has a particular interest in St. Augustine History. The National Register of Historic Places Application for the St. Augustine Historic District ("District") which was approved on June 4, 1896 ("Application") states "St. Augustine is one of the most historically significant cities in the United States". Furthermore "The St. Augustine Historic District (where the Plaza Cenotaph is located) numbers among Florida's most architecturally significant areas" in the District.
66. In discussing the long span of history displayed in the District, the Application states "It contains the greatest concentration of colonial buildings in the state and additional significant buildings from the Flagler and Florida Land Boom Periods of the last nineteenth and early twentieth centuries....Beyond its architecture, the significance of the St. Augustine District is based on its association with the individuals and groups who resided within its limits or who were responsible for its development. These individuals are too numerous to list comprehensively, but include Pedro Menendez de Aviles, the town's founder, Governor Mendez Canco, who laid out its present plan, and Henry Flagler, who revitalized it during the late nineteenth century..... Its historic district contains properties which have historical, architectural and archaeological significance up to a national level.' In its approval of the district the application states "[the St. Augustine Historic District] has significance in the areas of archaeology – historic, architecture, politics/government. It has significance at the local, state and in some instances the national level. Its extant historic buildings date from c. 1682

until 1935...They are associated with events and individuals important to the historical development of the community, and individually and collectively represent several important periods of architecture.”

67. The United States has a particular interest in the Plaza de la Constitucion and the Plaza Cenotaph, as well. Continuing from the Application: “The plaza area is still another distinctive area of the district. The concept of plaza or public square has been central to Spanish urban planning in the New World since the late sixteenth century. According to 1563 and 1573 royal ordinances, the plaza was to function as the principal recreational and meeting area in the community and was to be surrounded by the most important governmental and ecclesiastical buildings. The St. Augustine plaza dates from this period, although only one of the stipulated buildings, the Governor's House, actually fronted the plaza before the early eighteenth century. In the eighteenth and early nineteenth centuries, the plaza became surrounded by a cluster of newer civic and religious structures, including the Bishop's House (later the British Statehouse and Spanish provisional church) at the corner of St. George and King, the Accountancy and Treasury building at the corner of Cathedral and Charlotte, the public school at the corner of St. George and Cathedral, and the parish church (now the Basilica-Cathedral). The plaza itself contained several colonial structures, most notably the non-extant stone guardhouse at the eastern section and still standing Constitution Monument in the center of the square. Construction of Trinity Episcopal Church and the Public and Fish markets were major changes introduced in the 1820s and 1830s, although the "Public Square" went only as far as Aviles (Hospital) Street just west of the above markets. In the 1870s trees, plants, and fountains were added to beautify the “Plaza de la Constitucion, ” a Confederate monument was erected, and the plaza was extended east to Charlotte Street. By the late 1880s, the plaza was ringed by

large buildings, notably the St. Augustine Hotel. Smaller commercial buildings replaced the hotel after the devastating fire destroyed the hostelry and severely damaged the Public Market and Cathedral in 1887. In 1893, Cathedral Place was extended from St. George Street to Cordova Street, thus forming a smaller plaza to the west of Government House”.

Clearly, the Plaza Memorial is part of the multi-layer mosaic of St. Augustine’s civic landscape, and the peoples who it memorializes part of the melting pot of cultures of historic significance to our Nation.

68. Over the past 50 years, all 50 States and over 500 municipalities have enacted laws to encourage or require the preservation of buildings and areas with historic or aesthetic importance. These nationwide legislative efforts have been precipitated by two concerns. The first is recognition that, in recent years, large numbers of historic structures, landmarks, and areas have been destroyed without adequate consideration of either the values represented therein or the possibility of preserving the destroyed properties for use in economically productive ways. The second is a widely shared belief that structures with special historic, cultural, or architectural significance enhance the quality of life for all. Not only do these buildings and their workmanship represent the lessons of the past and embody precious features of our heritage, they serve as examples of quality for today.

69. Florida has articulated its own state policy for protecting its “ancient landmarks” by adopting its State Policy Relative to Historic Properties. Florida Statute § 267.061(1)(a) provides: “The rich and unique heritage of historic properties in this state, representing more than 10,000 years of human presence, is an important legacy to be valued and conserved for present and future generations. Destruction of these nonrenewable historical resources will engender a significant

loss to the state's quality of life, economy, and cultural environment." Accordingly, one of the Executive Branch's enumerated duties, as administered by the Secretary of State, thereunder is to "[p]rovide leadership in the preservation of the state's 'Historic Resources.'" Florida's definitions of "historic property" and "historic resource" include monuments and memorials. See Fla. Stat. § 267.021(3).

70. The Florida Division of Historical Resources, which is an office of the Florida Secretary of State is pursuant to Florida Statue Chapter 267.013 is empowered to "Take such other actions necessary to appropriate, to locate, acquire, protect, preserve, operate, interpret, and promote the location, acquisition, protection, preservation, operation and interpretation of historic resources to foster an appreciation of Florida history and culture."

71. The State of Florida further understands the Honorific Commandment of its Judeo-Christian population when it established Florida Statue Title XLVI Chapter 852.2: **"872.02 Injuring or removing tomb or monument; disturbing contents of grave or tomb; penalties.—**

(1) A person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if he or she:

(a) Willfully and knowingly destroys, mutilates, defaces, injures, or removes any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure or thing placed or designed for a memorial of the dead, or any fence, railing, curb, or other thing intended for the protection or ornamentation of any tomb, monument, gravestone, burial mound, earthen or shell monument

containing human skeletal remains or associated burial artifacts, or other structure before mentioned, or for any enclosure for the burial of the dead; or

(b) Willfully destroys, mutilates, removes, cuts, breaks, or injures any tree, shrub, or plant placed or being within any such enclosure, except for a person performing routine maintenance and upkeep.

(2) A person who willfully and knowingly excavates, exposes, moves, removes, or otherwise disturbs the contents of a grave or tomb commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) This section does not apply to any person acting under the direction or authority of the Division of Historical Resources of the Department of State, to cemeteries operating under chapter 497, any cemeteries removing or relocating the contents of a grave or tomb as a response to a natural disaster, or to any person otherwise authorized by law to remove or disturb a tomb, monument, gravestone, burial mound, or similar structure, or its contents, as described in subsection (1).

(4) For purposes of this section, the term "tomb" includes any mausoleum, columbarium, or belowground crypt.

(5) Notwithstanding subsections (1) and (2), an owner, officer, employee, or agent of a cemetery exempt from regulation pursuant to s. 497.260 may relocate the contents of a grave or tomb:

(a) After receiving a written authorization from a legally authorized person as defined in s. 497.005(43); or

(b) After public notice is posted as required in this paragraph, if a legally authorized person cannot be located after conducting a reasonable search or after 75 years or more have elapsed

since the date of entombment, interment, or inurnment. The public notice must be published once a week for 4 consecutive weeks in a newspaper of general circulation in the county where the cemetery is located. The public notice must contain the name of the cemetery; the name, address, and telephone number of the cemetery representative with whom objections may be filed; the reason for relocation of the contents of the graves or tombs; the names of the human remains to be relocated; the approximate date of the initial entombment, interment, or inurnment; the proposed site of relocation; and the proposed date of relocation. The proposed date of relocation may not be less than 30 days from last date of publication. If no objection from a legally authorized person is received within 30 days from the last date of publication of the public notice, the cemetery may proceed with relocation.

(6) If a legally authorized person refuses to sign a written authorization, as provided in paragraph (5)(a), or if a legally authorized person objects, as provided in paragraph (5)(b), a public hearing shall be held before the county commission of the county where the cemetery is located, or the city council, if the cemetery is located in a municipality, and the county commission or the city council shall have the authority to grant a request for relocation of the contents of such graves or tombs.”

72. The State of Florida has recognized the Plaza and the Plaza Cenotaph in its Master Site File.

The Plaza de la Constitucion Cenotaph is the ONLY “monument” listed in St. Augustine in the State of Florida’s widely-circulated “Florida Civil War Heritage Trail”. Since its original publication, many of the historical monuments listed, are no longer available to the public.

The Plaza Cenotaph, itself, as Plaintiffs allege, is in jeopardy of extinction.

73. St. Augustine, recognizing its importance in American, and even world history, and its special role in protecting and preserving history, has adopted a series of Historical Protection ordinances including City Ordinance Sec. 28-181: “ Purpose. - The historical heritage of the city is one of its most valued and important assets. It is therefore the purpose of the historic district regulations: (1)To safeguard the heritage of the city by preserving the district(s) which reflect noteworthy elements of the cultural, educational, social, economic, political and/or architectural history. (2)To educate the citizen to realize, understand, and appreciate the city's rich heritage. (3)To stimulate a greater awareness and sense of pride in the founding of the city and the contributions it has made to the state and nation. (4)To develop an atmosphere and feeling of old, historic St. Augustine by encouraging the preservation and restoration of historic structures within the districts. (5)To improve the environmental quality and overall livability of the historic section of St. Augustine. (6)To stabilize and improve property values in the district and to allow uses that encourage the restoration and conservation of historic sites and structures. (7)To promote the use and preservation of the district for the education, welfare and pleasure of residents of St. Augustine and St. Johns County, and of the state and nation as well. (8)That these aforementioned goals and objectives of the historic district be achieved and implemented through the establishment of and enforcement of the general district guidelines and specific district regulations.” Despite the passage of time from the early days of the Spanish City when, rather than destroy its own history of the landmark of the Spanish Constitution Monument, the St. Augustinians chose to defy the tyrannical king and protect and preserve the Constitution Monument and its plaques.

74. St. Augustine's history includes people of many cultures, ethnicities and creeds. Today St. Augustine is recognized by the tourism industry and promotes itself as a "451 year old melting pot [which] bubbles over with cultures near and far." The cultures create a mix of architectural styles and points of view that have co-existed in a multi-cultural mosaic of layers of time spanning centuries and despite political upheaval, war, and change of flags, one thing that has continued to survive, until now, has been the respect for the city's history. Arguably, there is no city in America that more represents the long and diverse history of America, than St. Augustine.

75. First may have come Jamestowne and Plymouth. But here still stand St. Augustine - it is the Nation's oldest continuously occupied City in America, dating to September 8, 1565. In 2015, the City celebrated 450 years of existence in "Celebrate 450!" St. Augustine's History with the United States is unique and important. The City has parlayed its rich and history into an economic and historical tourism engine that drives the local economy. Heritage Tourism is big business. In 2000, travel and tourism contributed \$5,834.3billion to the US economy, much of that coming from foreign tourists; it is the 3rd largest industry in the US. Countrywide, in 2008 \$42 million in sales tax revenue was generated by visitor purchases, and 12,000 jobs were created by St. John's County residents. It is estimated that the tourism industry accounts for between 40 and 50% of the employment in St. Augustine and in 2003 generated \$525,268, 826 in tourism dollars. In 2005, 6.3 million visitors came to St. Augustine, arguably most to experience the City's centuries of history.

76. The City of St. Augustine also understands the historical significance of its Plaza and has as specific Ordinance, Article 1; Sec. 22-9. which Governs the Placement of monuments, plaques and memorials on city property.

77. It shall be unlawful for any person to place a plaque, memorial or monument on any city right-of-way or city owned property, except in conformity with the following requirements:

(a)Approval of city commission. No plaque, memorial or monument may be placed upon any city property without the approval of the city commission first obtained. (b)Application. An application for placement of a plaque, memorial or monument shall be filed with the city manager on a form as designated by him which shall require the following information to be provided:(i)A statement of significant historical, cultural or civic contributions to, or acts of patriotism and bravery relating to, the City of St. Augustine.(ii)Agreement by the applicant to pay the cost of construction, placement and any repairs required for the plaque, memorial or monument.(c)Review by city manager. The city manager will review the application and provide his recommendation to the city commission as to the suitability of placement of the plaque, memorial or monument. No plaque, monument or memorial is to be recommended to the city commission by the city manager for placement in the City Commons otherwise known as Plaza de la Constitucion, unless the plaque, monument or memorial commemorates a significant activity or event which occurred prior to February 22, 1821 or unless the plaque, monument or memorial commemorates the service to the city of citizens leading and participating in the civil rights movement in St. Augustine. Absent unusual circumstances, which shall be set forth in the recommendation, any other recommendation shall be for placement of a plaque, meeting uniform standards promulgated by the city manager, on the interior loggia columns of the Alcazar Hotel Building. Each of the City of St. Augustine Defendants as well as the Secretary of State

Defendant took the Oath of Office prescribed by Article II Section 5(b) of the Florida Constitution to wit: “I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of [title of office]on which I am now about to enter, so help me God.

78. The City of St. Augustine is chartered as a sub-division of the State of Florida and as such must comply with the Laws of the State of Florida. Article III Sec. 3.01 of the City’s Code states” “ARTICLE III. - POWERS AND DUTIES Sec. 3.01. - General state laws. All general laws of the state applicable to municipal corporations, now or which may hereafter be enacted, and which are not in conflict with the provisions of this charter or with the ordinances and resolutions hereafter enacted by the city commission, shall be applicable to this city; provided, however, that nothing contained in this charter shall be construed as limiting the power of the city commission to enact any ordinance or resolution not in conflict with the constitution of the state or with the express provisions of this charter.”

79. During the Civil Rights era in St. Augustine, Andrew Young, a lieutenant of Rev. Dr. Martin Luther King, would march only a few paces from the two Plaza monuments, the “Plaza Cenotaph” and the “Constitution Monument”, both of which represented landmarks in the City’s long and diverse history. Mr. Young has not commented on this particular cenotaph publicly, but when questioned in an episode of “Meet the Press” in 2017 about the embattled iconic symbol of the Confederate soldier at that time, Young said “turn down the emotions and turn on the mind”. “I think it’s too costly to refight the Civil War. We have paid too great a

price in trying to bring people together..." Mr. Young, undoubtedly, in these comments recalled Dr. King's visionary "Table of Brotherhood". He went on to say "I personally feel that we made a mistake in fighting over the Confederate flag... Or that that was an answer to the problem of the death of nine people – to take down the Confederate flag in South Carolina".

80. The City installed a landmark, the "Andrew Young Walk" in the Plaza. This "Civil Rights" memorial is viewed by many as a touchstone to remind us of our history, good and bad, and the progress of our humanity.

81. Through the establishment and continual reaffirmation of the City of St. Augustine's Historic Preservation Policy, the listing of the Plaza and the "Our Dead" Cenotaph on the National Register of Historic Places, and State of Florida's multiple recognitions over decades, the City of St. Augustine been a good trustee and guardian of the history of the city and, in fact, America's history. The City has not de-commissioned or de-certification any of the resources in the District, but in fact, has added to it with the Civil Rights memorial and plans to add new public monuments and memorials to landmark events in the long history of the City including a "Lynching Monument", and a "Footsoldier" monument to black troops who served as part of the occupying US Army in St. Augustine during the armed conflict of 1861-1865 and through Military Occupation. City residents, and indeed the world, have come to rely upon St. Augustine to welcome visitors and expose to the City's "Authentic history" first hand - all of if.

82. For fourteen decades the Plaza Cenotaph has been a prominent feature of the City's landscape, and was featured on tourist literature and picture post cards of the town, silently emanating its honorific and other expressive speech. It stood for generations emanating its Honorific speech,

is the only public Cenotaph in the City descendants can go where they can publicly pay their respects at memorial to Confederate “Dead”. Some informed on the subject may have another meaning, viewing the Cenotaph as a landmark for woman’s rights at a time when women had few. It is a testimony to perseverance to express their speech, today, and is the embodiment of “the Democracy of the Dead” the embodiment of history and tradition.

83. The City of St. Augustine’s course of dealing changed on at a City Commission meeting July 9, 2018, despite its written polices and Ordinances remaining the same. In response to complaints from a tiny number of city residents, fueled by out of town agitators coming from north and west of St. Johns County, who harassed the City officials with the demand to “tear down” the “Our Dead” Cenotaph. The decision was made on Monday, a few short days after the 4th of July, when many residents were dis-engaged from the political process in observance of our Nation’s founding.

84. City Manager John Regan ‘hand-picked’ “Contextualization Committee” (“Committee”) candidates of intellectual elite academics, some who had been publicly hostile to the memorial intent of the LMA, and who are blatantly biased against the political and memorial speech the Cenotaph emits, whose names were ‘rubber stamped’ by the City Commission. Applications from family members and other Cenotaph stakeholders were not including in Mr. Regan’s recommendation to the Commission.

85. This Committee was empowered to develop a Plan to ‘contextualize’ (“Contextualization Plan”) or, in layman’s terms, decide how to try to ‘re-mean’ the monument to appease the complainers. Stakeholders and family members were allowed brief remarks at the various meetings of the Committee, but Committee members were generally dismissive and appeared to be dis-interested in their opinions. One Committee member in particular, Prof. Butler from

the local college, was particularly intent on including incendiary and demeaning terms such as “White Supremacy” in the “Our Dead” Cenotaph Contextualization Plan, and was successful in demanding its inclusion in the Committee’s final recommendations

86. At its meeting on July 9, 2018 the City Manager Reagan presented and the City Commission accepted the recommendation of the Committee’s Contextualization Plan over objections from disparate groups and individuals.
87. During the meeting, the City Attorney was questioned if the City’s Ordinance Section 22-9 relating to Monuments and Memorials, did not apply, and Ms. Lopez retorted saying that “The City could do anything they wanted [to do]”.
88. Speakers who wished to present at the meeting were also prevented, including Plaintiff HK Edgerton who travelled from North Carolina to speak, but was told he could not do so.
89. The commissioners who voted for the Contextualization Plan included: Leanna Freeman, Commissioner Roxanne Horvath, Commissioner Nancy Sikes-Kline, and then Vice Mayor Neville. One member, Mayor Nancy Shaver voted against the proposed “Contextualization”.
90. After the “Contextualization” decision, many appeals were made to the City Commission to ‘re-consider’ the Contextualization, one of the most detailed was by the plaintiff, the Sons of Confederate Veterans, who presented to the City a 22 page written analysis of the Contextualization Plan entitled “Statement on City of St. Augustine Plaza de la Constitucion “Our Dead” Cenotaph “Contextualization” Plan – July 16, 2018 along with a request for re-consideration. The Plaintiff received no response from the City.
91. To the stakeholder’s and Plaintiff’s horror the ‘contextualization’ language was ‘written in stone’ and the planned footstones materialized at base abutting the, Cenotaph within its 20

foot by 20 foot plot when it was installed in the middle of the night on July 9, 2018. All costs were paid by City of St. Augustine taxpayers.

92. Undoubtedly the City hoped that its ‘compromise’ was sufficient to appease the complainers, but that was not been the case. Their effort to barter “Authentic History” for “peace” was transitory. Since the installation of the “Conxtualization” footstones, calls for removal of the “Our Dead” Cenotaph have increased, to the point that Plaintiffs are concerned the City will reverse its decision to keep the Cenotaph but ‘contextualize’ it and, in fact, take it down altogether in its June 22, 2020 meeting.

93. Press reports indicate that defendant, City Mayor Upchurch has decided to take down the Cenotaph. This is amplified by the current hostile environment towards historical statues and memorial including public removals of Christopher Columbus statues, as well as other historical figures both in the United States and overseas, and the widespread calls to cleanse the civic landscape of all nature of American history including sculptures of United States President Abraham Lincoln, and even the Washington Monument on the National Mall in Washington, D.C., all in contravention of worldwide acceptance of the importance of Historic Preservation.

ALLEGATIONS REGARDING 1ST AMENDEMENT ABUSES

94. The public square venue, the Plaza de la Constitucion, had always been the site sought for their “Our Dead” Cenotaph, by the Ladies Memorial Association and its members but their

Honorific Speech had been originally censored and suppressed by the City during post-war Military Occupation.

95. When, over 140 years ago, the City finally approved agreed to the re-erection of the “Our Dead” Centaph in the Plaza de la Constitution it was in agreement with the method and manner of the Ladies Memorial Association’s Cenotaph’s and its members, donors and supporters, speech.
96. The City undoubtedly knew the nature of the Cenotaph’s speech when it approved its re-erection in the Plaza, as the Original Monument elements: the poetry, art, crosses and roster of “Our Dead” would be transferred from the Original Cenotaph to the new Plaza Cenotaph and would not be new elements to the LMA’s Cenotaph’s Honorific Speech.
97. City allowed and, in fact, supported placement of the Cenotaph in the historic Plaza with full knowledge the ladies intended it to be the permanent installation.
98. The Plaza, the central Public Forum, was the gathering and meeting place of not only the City but surrounds for generations. Thus, there is no place that freedom of speech should be more valued and protected in the City of St. Augustine than in this forum. The ladies undoubtedly knew this and is why they were so desirous of the Plaza as the location for their perpetual Honorific Speech.
99. After 17 years of speech suppression, when finally granted permission to place the Cenotaph in the Plaza by the City of St. Augustine, the Ladies Memorial Association and its members, undoubtedly had the expectation of permanence. The decision to re-erect the “Our Dead” Cenotaph from private property onto their long desired location in the long-recognized public forum of the Plaza de la Constitucion, where the City’s other historic ‘landmark’ the Constitution Monument survived despite adversity, undoubtedly was based on the absolute

expectation that this would be the ultimate permanent public location satisfying their tireless quest to fulfill their Honorific imperative spanning two decades.

100. The City allowed and, in fact, supported placement of the Cenotaph with full knowledge it was to be a permanent installation.
101. The LMA and the Citizens of St. Augustine toiled and spent treasure with the expectation of permanence of the Plaza “Our Dead” Cenotaph. Once permission is granted for such erection, their rights to continue the Monument’s speech is expected to continue after the erectors have departed their existence. Thus the circle of life and civilization advances rather than regresses. The City of St. Augustine is trustee of the Cenotaph and as such, under law, is required to protect it and preserve it for the benefit of the City yesterday, today and tomorrow. Any action to suppress or eliminate historical artifacts in arguably America’s most important Historic District is an affront not only to the people of St. Augustine but to the world because St. Augustine is such an important repository of our Nation’s and in fact, world history. Supression or elimination of Authentic History in St. Augustine, the “Alpha and Omega” of American History, is tantamount to a crime against humanity. Undoubtedly the United Nation’s statement regarding loss of cultural heritage applies here.
102. The ladies’ expectation came to fruition, as for 14 decades, three or more generations, even after the original 99 year lease term would have expired, the City, until now, continued to respect the speech emitted by the Cenotaph, caring for it, protecting and preserving the speech and expression emanating from it for another 40 years - for a total of 140 years, since its erection. Generations of St. Augustinians, Floridians, Americans and international visitors have viewed the Cenotaph and pondered the message it emanates, and if appropriate paid their respects and fulfilled their Honorific Commandment.

103. Plaintiffs allege that the by installation of the “Contextualization” tablets the speech and expression emanating from the Cenotaph was suppressed by the City Defendants and is now experiencing “hostility” instead of neutrality against the protected speech.
104. Also, based on this the Plaintiffs believe they are in imminent peril of having the speech and expression eliminated in the wholesale removal of the Cenotaph from public view by the City Defendants, This is based in part on the increased complaints for removal since the “Contextualization” was installed, public “hostile” remarks toward the Cenotaph’s Speech expressed by City Officials, as well as the current fashion of purging other historic statues and monuments.
105. With its Honorific Message, and Latin cross embellishments, and phrases about mourning, the Cenotaph clearly reflected expressions of public mourning, honor and respect for dead veterans on public property the ladies sought to express, and was repressed during Military Reconstruction by the City. The Court must not allow the free City of St. Augustine to return to “Military Reconstruction” attitudes by suppressing or extinguishing the speech the ladies worked to express and have expressed through “Democracy of the Dead” by way of the Cenotaph..
106. With its Classical architecture sculpture, commemorative messages, artistic shields and embellished crosses with the interesting and unusual coquina stucco shell surface, the cenotaph also has the status of public art and art expression and, as such, its potential removal jeopardizes free expression through art. The footstone ‘Contextualization’ also diminished the aesthetics of the artist’s rendition of the ladies’ design. The LMA is particularly sensitive to this issue as the commissioner of the sculpture.

107. Plaintiffs further allege that both Contextualization infringement on free speech and expression and potential removal deny their expression of free speech, from a Southern perspective about their family's history who served the Confederacy during the war of 1861-1865 which has emanated from the Plaza Cenotaph during their life time, and rob them of their inheritance to pass the Cenotaph's emanating speech on to their children and they unto their children into posterity. Other plaintiffs, including LMA, HK Edgerton, Rick Hobbs, and Jane Doe, the William Wing Loring Camp of the Sons of Confederate Veterans, and Save Southern Heritage, Florida identify with the Cenotaph and its expression which emanated from the Cenotaph.
108. Plaintiffs further allege that the City's contextualization of the Cenotaph is denying them their memorial expression to publically honor their family members at this Memorial Cenotaph as their family members have done for generations without being confronted without offensive 'contextualization' being incorporated into the Cenotaph's Speech which includes "Committee" 'opinions' rather than facts, which they assert slander their family's good name. They consider this tantamount to the Veterans Administration funding a request from the North Vietnamese to place a plaque inscribed 'baby killer' on the footstone on a Vietnam Veteran graves in Arlington National Cemetery. Defendants LMA, HK Edgerton, Rick Hobbs, Jane Doe, and the William Wing Loring Camp of the Sons of Confederate Veterans are particularly sensitive to this issue.
109. Plaintiffs recognize the importance of protecting all speech, especially minority speech, and wish to assert the Cenotaph's right to continue speaking the political aspects of its message into posterity, whether deemed 'majority' or 'minority', or even 'offensive' depending on the

social fashion of the day. They allege that the Cenotaph's mere existence, with its perpetual emanation of speech, stands in witness to the Constitutional principles that in America, free expression is tolerated not suppressed nor eliminated. Plaintiffs allege the elected and non-elected city officials who approved, facilitated and allowed the contextualization to remain are also guilty of violation of free speech rights, and believe another violation is imminent in the wholesale removal of the Cenotaph from public view. Plaintiffs allege that the City of St. Augustine's decision to 're-mean' the Cenotaph with Contextualization footstones abutting the Cenotaph suppresses the political speech expressed by the Cenotaph, and removing the Cenotaph all together would be content discrimination and is tantamount to prohibition of political speech in a public forum under its control. The Plaza is a traditional public forum, immemorially held in trust for the use of the public and that they have no right to censor speech in the Plaza. The St. Augustine Tea Party and Veterans' Monuments of America, Inc. are particularly interested in the political speech aspect of the issue. Furthermore, Veterans' Monuments of America, Inc. is particularly interested in political speech, as so many Americans have shed so much blood to defend the right of Americans to express unpopular views.

The fact that what once might have been, and may now again be construed to be political speech as memorialized in monuments and statues, does not take away from their value.

110. Plaintiffs allege that now, after 140 years, the City should not be allowed to suppress or silence the assemblages of speech and rights emanating for the cenotaph (art, religious,

political) because Southern history, and Southern veterans, Christianity, American History, Veterans or American patriotism may have become unpopular or even offensive to some.

111. The Plaintiffs allege the City is now suppressing speech through the “Contextualization” tablets abutting the “Our Dead” Cenotaph, and are grievously concerned that speech will be eliminated by the City’s planned consideration of a wholesale removal of the only speech in the city that expresses the speech emanating from the Plaza de la Constitucion “Our Dead” Cenotaph.

ALLEGATIONS REGARDING VIOLATIONS OF DUE PROCESS

112. Plaintiffs allege that from the beginning even before the decision to “contextualize” the Cenotaph, the Defendants interfered with their due process rights. The important meeting about “what to do about the Confederate Monument in the Plaza” was held at a Monday meeting on the heels of a popular vacation week, July 4th, leaving most residents dis-engaged in the political process and with very short notice. After the decision to “contextualize” the Cenotaph, selection of the Committee members specifically excluded stakeholders whose opinions were suppressed and discarded at Committee meetings. Authoritative speakers and stakeholders with divergent views from the pro-demeaning Committee members, were prohibited from making a meaningful counterargument to the Commission, or presenting facts about the wrong-headedness about the decision to Contextualize the Cenotaph at all.

113. The Plaintiffs further allege that as the City’s decision “Contextualization” decision violated due process, there is no reason to expect the process of the Cenotaph’s removal to be different.

ALLEGATIONS REGARDING OATH OF OFFICE

114. Plaintiffs allege that the following defendants violated their oath of office when they ‘contextualized’ or caused the Plaza de la Constitution Cenotaph to be contextualized by violating their 1st Amendment Rights, and by violating the City’s Historic Protection Ordinance 28-181 and 22-9.

Commissioner Leanna Freeman, Commissioner Roxanne Horvath, Commissioner Nancy Sikes-Kline, and Former Vice Mayor Neville, City Manager John P. Regan, City Attorney Isabel C. Lopez.

115. Plaintiffs allege preemptively that IF the following defendants remove or cause to be removed the Plaza de la Constitution Cenotaph it will further violate their 1st Amendment Rights:

City Mayor Tracy Upchurch, Commissioner Leanna Freeman, Commissioner Roxanne Horvath, Commissioner Nancy Sikes-Kline, Commissioner John Valdes, City Mayor John P. Reagan, and City Attorney Isabel C. Lopez.

116. Plaintiffs allege that the following defendants violated their oath of office when they “contextualized” the “Our Dead” Plaza Cenotaph, by violating City Ordinance Sec. 22-9. which governs the Placement of monuments, plaques and memorials on city property: Commissioner Leanna Freeman, Commissioner Roxanne Horvath, Commissioner Nancy Sikes-Kline, and Former Vice Mayor Neville, City Manager John P. Regan, City Attorney Isabel C. Lopez.

117. Plaintiffs allege that the following defendants violated their oath of office when they “contextualized” the “Our Dead” Plaza Cenotaph by violating City Ordinance Sec 3.20 (p) when they became de facto ‘trustee’ for the Cenotaph and instead of preserving and maintaining the said monument landmark, in fact debased the historic asset: Commissioner Leanna Freeman, Commissioner Roxanne Horvath, Commissioner Nancy Sikes-Kline, and Former Vice Mayor Neville, City Manager John P. Regan, City Attorney Isabel C. Lopez.

COUNTS

COUNT 1 – VIOLATION OF 1ST AMENDMENT CONSTITUTIONAL RIGHTS

118. The City of St. Augustine’s decision to ‘contextualize’ the Plaza de la Constitution Cenotaph by causing ‘footstone’ inscribed tablets to be placed abutting the base of the Cenotaph represents an infringement of the Plaintiff’s Constitutional freedom of expression rights, and suppresses the speech emitting from the Cenotaph under the 1st Amendment to the United States Constitution.

119. The City of St. Augustine officials abridged Plaintiffs’ right to free speech and equal protection by deciding to suppress the speech of the Cenotaph and discriminated against the content of speech it was emanating, which communicated minority political speech in a public forum where it had emanated for 140 years. The state does not have a free hand to regulate individual or organizational speech on government property, especially in the traditional public forum like the Plaza de la Constitution. Courts long ago recognized that members of the public

retain strong free speech rights when they venture into public streets and parks, which have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. The City had previously approved the form and nature of the Cenotaph's Speech and accepted donations and private citizen action.

120. This case is distinguished from *Pleasant Grove City v. Summum* (55 U.S. 460) in that Summum related to a new monument in a new park created as a monument park. This is not the case here, as this is not a new "Park" but a 450 year old 'public forum' and Cenotaph is not new, but has been speaking its message for nearly a century and a half.

121. This case is distinguished from *Walker v. Texas Division, Sons of Confederate Veterans, Inc.*, (575 U.S (2015) in that Walker related to speech as private, non-government speech in the forum of a commercial license plate. This is not the case here. Plaza de la Constitution is not private area, in fact it is the oldest, longest standing public forum in America. Censoring, suppressing or removing political speech from this forum is tantamount to a knife in the heart of the 1st Amendment to the Constitution attacking political speech and other aspects of speech the Cenotaph emits.

122. Municipalities, as political subdivisions of the state, do have the ability to engage in "Government Speech" but these are not the same Constitutional speech rights granted to individuals and corporations. This distinction was fully explained in a recent Alabama Supreme Court Decision (*State of Alabama vs. City of Birmingham* 2019 WL 6337424, -- So. 3d --, (Ala. Nov. 27, 2019)). The "Government Speech" expressed in the "Footstone" tablets is not protected speech under the United States or Florida Constitutions, and it cannot interfere or infringe on protected free speech defended by the US and Florida Constitutions.

123. The Alabama Supreme Court rejected the proposition that municipalities act as amplified voices of their constituents and that the marketplace of ideas would be unduly restricted if municipalities could not voice their concerns. City of Birmingham reminds u that municipalities are “mere instrumentalities of the state” and possess “only such powers as may been delegated to them by the legislature”. Neither the United States Congress nor the Florida have granted to the City of St. Augustine right to speech equivalent to the first Amendment rights protected in the 1st Amendment to the United States Constitution.
124. Plaintiffs urge this Court to acknowledge that the municipal power to engage in "government speech" is not conveyed to the City of St. Augustine by the First Amendment. In recent decisions, the U.S. Supreme Court has discussed "government speech" and suggests that government speech is not subject to the same forum analysis and content/viewpoint analysis that is applied to individual speakers. See Sumnum. The right to free speech is part of the "liberty" recognized in the Declaration of Independence as having been endowed on "all men" by the Creator. The First Amendment guarantees that liberty to individuals and sometimes to associations of individuals, but state actors do not have liberties granted to persons by God. Rather, Americans are suspicious of government tyranny and established governments through constitutions which enumerated and limit their powers and protect the natural God given rights of individuals. The power of a city to engage in government speech is part of the city's plenary power to act for the safety and welfare of its constituents, but not to suppress, repress or eliminate 1st Amendment speech.
125. Plaintiffs argue that recent Supreme Court and 11th Circuit Court’s decisions can also be utilized in deciding this case. American Legion and *Kondrat'yev, et al v. City of Pensacola No. 17-13025, (11th Cir. Feb. 19, 2020*. American Humanists wanted the removal of the

public long-standing Bladensburg Cross military memorial claiming its status on public property was unconstitutional. The American Legion, who erected the memorial, in the shape of a large Latin cross, sought to preserve it, and the Supreme Court ruled in their favor citing “history and tradition” as their reasons.

In this case, the City of St. Augustine has usurped the Constitutional rights of the erectors, those who identify with it, and in fact the message emanating from the Cenotaph. Plaintiffs are suing because they believe removing the historic Cenotaph with its century and a half of traditions, Judeo-Christian message and Latin crosses is Unconstitutional. The Decision clearly signals that “History and Tradition” are Constitutional when it comes to monuments. To wit: ‘when time’s passage imbues’ a monument with “familiarity and historical significance, removing it may appear hostile rather than neutral toward religion”

The same is true in 11th Circuit Court’s recent decision regarding the Bay View Cross Memorial in Pensacola, Florida (*Amanda Kondrat'yev v. City of Pensacola, Florida*, 949 F.3d 1319 (11th Cir. 2020)). The Court made application of American Legion. To wit: Even though the Pensacola Bay View Cross is “undoubtedly” a Christian symbol, “That fact should not blind us to everything else that the Bladensburg cross has come to represent”. See *American Legion* at 2090. The Plaza Cenotaph includes icons of a Latin cross, as in Bladensburg, an “undoubtedly Christian symbol. But its religious speech is only one aspect of the monument. It too is a “symbolic resting place for ancestors who never returned home”.

Justice Alito, author of the plurality opinion in American Legion noted a “presumption of

constitutionality for longstanding monuments, symbols, and practices.” See *Pensacola* at 1326 quoting *American Legion 139 S. Ct. at 2080-82, 2081 n. 16, 2087*. The plurality emphasized the mandate of interpreting the Establishment Clause with reference to “historical practices and understandings.” *Pensacola* at 1327 quoting *American Legion*. Here the Plaza Cenotaph, dedicated in 1897, standing 62 years longer than the Pensacola Cross (1941 – wooden, 1969 – concrete) and 46 years longer than the Bladensburg Cross (1925) upon which American Legion was based.

126. The suppression and censorship of speech through alteration of the “Our Dead” Cenotaph and potential removal represents a return to the censorship and abuse of rights the ladies of the LMA experienced when they first sought to memorialize their “Dead” during the City’s period of Military Occupation and before woman’s suffrage. If any person should be protected by this Court, it is a one who has a history of oppression by the state, as in the position of the LMA in this case.

127. The alteration (contextualization) of and or removal of the “Our Dead” Plaza Cenotaph represents an injury to Compelled and Symbolic speech. As evidenced in *United States v. O’Brien, Turner Broadcasting Sys., Inc. v. FCC, 512 U.S. 622, 622, 114 S. CT 2445, 129 L. Ed 2d497 (1994)* cited in *Foley v. Orange County 6:12-cv-269-Orl-37KRS (M.D. Fla. Dec. 4, 2012)*, the City’s action is profoundly not content neutral, and in fact, through their actions, compelling the public to express beliefs that they do not hold by publically, emphatically stifling one point of view. But for the political motives and views of the Defendants, and the complaints about the content, there would be no reason to believe that the City would have

acted at all. Additionally, the Ladies Memorial Association and its members, successors as patron for the artists who devised the art including the sculpture, carved marble tablets, and poetry, free speech rights are being infringed by the alteration or removal of the Cenotaph from the Public Square. In *Desmond v. Harris* (No. 1:16-cv-01206-DAD-BAM) an artist sued the State of California over its expulsion of his painting that included a Confederate Flag from public display. The State acquiesced and settled the case and allowed display of the art.

128. Further violations would ensue if the City acts to remove the Cenotaph completely from public view. This threat is imminent in that the City is expected to take action at its June 22, 2020 Commission meeting, and other venues, such as Manatee County, Florida, Historic Courthouse Confederate Cenotaph which was removed under cover of darkness and broke in three places during the removal, the Confederate Cenotaph in Gadsden County, Florida and State of Kentucky Jefferson Davis Capital Memorial to name three, have executed removals the same day or in the days immediately following such removal decision. Additionally, in the City of Jacksonville, Mayor Lenny Curry used Executive Authority to remove a Historic Monument in his City, which Hemming Plaza monument was moved immediately in the cover of darkness. Consequently, plaintiffs have reason to believe that the City of St. Augustine, in a further attempt to appease complainers, will act expeditiously to remove the Cenotaph once a decision has been made.

129. Plaintiffs finally argue that Speech emanating from the “Our Dead” Cenotaph is protected Constitutional Speech. It represents the “History and Tradition” and the “Voices of Democracy” where the speech of generations long ago still speak into posterity trough

permanent monuments and memorials. Consequentially, the emanating Speech, even if Plaintiffs are not granted Standing by this Court, is protected as Constitutional Speech based on the “History and Tradition” aspects of American Legion, based on its century and a half old Honorific Speech in the Plaza.

COUNT 2 - VIOLATION OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983

130. Contextualizing the Cenotaph by installing abutting inscribed footstones on the memorial’s base further constitutes a violation of United States Constitution actionable under 42 U.S.C. § 1983. Specifically, the City’s decision to ‘contextualize’ i.e. ‘re-mean’ the Cenotaph was done under the color of law as an official action of the City, a state entity (as a chartered municipality), and deprived Plaintiffs of rights, privileges or immunities secured by the federal Constitution and laws.

131. Plaintiffs also seek their reasonable attorney and expert’s fees as part of their costs in bringing their 42 U.S.C. §1983 claim against the defendants pursuant to 42 U.S. C. §1988.

COUNT 3 – VIOLATION OF EQUAL PROTECTION UNDER THE 14th

AMENDMENT

132. The City of St. Augustine has not “re-meant” through “Contextualization” or removed any other monuments or memorials in the Plaza. Only the “Our Dead” Cenotaph to the

Southern war dead who served Florida during her affiliation with the Confederate States of America has been singled out for censorship. This represents the abuse of plaintiffs 14th Amendment rights for equal protection of their Constitutional Rights.

COUNT 4 – BREACH OF DUE PROCESS

UNDER 28 U.S. C. 2201

133. The City is obligated to provide Plaintiffs and other like-minded Florida and American citizens due process, including reasonable notice, an opportunity to be heard and a hearing before a neutral arbiter, before modifying any historical sites in the City. In this case, the meeting deciding on the fate of an important Historical Resource in arguably the most historic city in America, was held at a Monday meeting with very little notice and on the heels of one a frequent vacation week, July 4th with citizenry di-engaged from news and the political process.. Then, the City prohibited meaningful stakeholder participation in the “Contextualization Committee”; anti-contextualization and anti-removal speakers were prevented from providing detailed information to refute the Contextualization Committee’s recommendations. Mr. Edgerton is particularly sensitive to him because, despite several requests, he was prohibited from testifying about the role of Blacks in the Southern armed forces and the St. Augustine men in the St. Augustine Blues, and because turned away from speaking at a meeting despite a 1000 mile round trip journey to be heard. The Sons of Confederate Veterans is also particularly sensitive to this as they analyzed the Plan and were not given a hearing to present their analysis to the City.

134. Additionally, the City disregarded its own City Ordinance Section 22-9 relating to Monuments and Memorials. Specifically, 1) No application was made to the City for the placement of the “contextualization” plaques pursuant to City ordinance. The cost were paid by the City and not my any applicant. Additionally, 2) no ‘significant activity or event occurring prior to February 22, 1821, or memorializing “service to the city of citizens leading and participating in the civil rights movement in St. Augustine” was commemorated on the “contextualization” plaques. The city does have the provision for “unusual circumstances” which must be set forth in a “Review” of the Application by the City Manager.

135. A Declaration to this effect is sought pursuant to 28 U.S. C. 2201. Plaintiffs also seek attorney’s fees and costs in conjunction with their declaratory judgment claim.

COUNT5 - BREACH OF BAILMENT AGREEMENT

When the City originally approved the Ladies Memorial Association’s request to install the “Our Dead” Cenotaph in the Plaza, a bailment agreement was created with an expectation of permanency. Neither entity has lapsed, having successors in interest, and without the novation of both parties, the bailment agreement extends into perpetuity. The LMA has neither asked for the Cenotaph to be returned, nor waived its interest in having the Cenotaph remain in place. Arbitrary and unilateral action by the City is an anticipatory breach of the Bailment Agreement.

COUNT 6 – VIOLATION OF PUBLIC TRUST

136. When the City breached the Bailment Agreement with the LMA, it abridged the public's ability to publicly mourn, pay respects to, memorialize and communicate the Southern point of view about the war and the sacrifice of American veterans, including those who served for the Confederacy during the War. This Violation affects the plaintiffs John and Jane Doe, the Sons of Confederate Veterans, and others like them, as descendants and family members of "Our Dead" inscribed on the Cenotaph, as well as all persons who were intended to benefit from the Agreement, including Save Southern Heritage, the Veterans Monuments Association of America, Inc., as well as all other like-minded Florida and American citizens who wish to honor history from a Southern perspective as well as American veterans.
137. When the City violated its own Historical Protection ordinances, it abridged the public's confidence in its ability and willingness to observe its own proscribed rule of law.
138. By deciding to demean the "Our Dead" Honorific Speech through "Contextualization", jeopardizes the City's reputation as the American Mecca of "Authentic History". It is tantamount to a slap in the face to generations of St. Augustinians who have always respected and protected their unique history. Let us not forget the day more than 200 years ago, when courageous St. Augustinians chose to protect the Constitution Monument and its tablets in defiance of the King of Spain. William Mayhem the Pirate Magician of St. Augustine is particularly sensitive to this as the attraction to St. Augustine by tourists from around the world is the display of and acceptance of the City's "Authentic History" – all of it – for good or for bad.
139. Plaintiffs allege the City failed to fulfill its duty as Trustee of the Plaza Cenotaph to preserve and maintain the historical landmark monument for the general public, and in failing to do so violated public trust in accordance with their Ordinance Section 28-181.

140. Plaintiffs allege that when the City ‘contextualized’ the Cenotaph they stepped upon a ‘slippery slope’. The City’s Appeasement Policy by offering up historical ‘trinkets’ to complainers to quiet them will accelerate in St. Augustine like the horrific spectacle played out in recent days with the municipal elimination of other Spanish and American History, and ignite a binge of historical destruction that will avalanche into the removal of more and more of St. Augustine’s “Authentic History” until, the “Appeasement Dividend” will be paid through the elimination and eradication of Authentic Historical Resources. Its removal would be tantamount to a “Declaration of War” on St. Augustine’s “Authentic History”. William Mayhem the Pirate Magician of St. Augustine is particularly sensitive to this as his entire livelihood is from the Authentic Historical Tourism industry.
141. Plaintiffs allege that if the City removed the Plaza Cenotaph, based on the fragile coquina stucco shell applied over the underlying structure, that restoration of the Cenotaph itself would not be possible. It could be replicated, but the coquina surface that has witnessed hundreds of millions of visitors to the Plaza, and participated in generations of thousands of family member’s honorific tributes, would be destroyed by any relocation attempt. In situ, it is a historic resource, but alteration diminishes and squanders its value as a Historical Resource.

**COUNT 7 – VIOLATION OF CITY OF ST. AUGUSTINE’S HISTORIC
PRESERVATION ORDINANCE**

In deciding to contextualize the “Our Dead” Cenotaph the City of St. Augustine knowingly and intentionally violated its own Historic Preservation Ordinances Sections 22-9 and 28-181.

COUNT 8 – VIOLATION AND COLLUSION TO VIOLATE FLORIDA

STATUTES 872.02

142. By taking steps to install “Contextalization” to the “Our Dead” Cenotaphs, defendants Commissioner Leanna Freeman, Commissioner Roxanne Horvath, Commissioner Nancy Sikes-Kline, and Former Vice Mayor Neville, City Manager John P. Regan, City Attorney Isabel C. Lopez and, Marquis Halback, colluded with intent to violate Florida Statue 872.02(1)(a) and commit a felony of the third degree when the shell structure/ monument “Our Dead” Cenotaph was disturbed by the abutting footstones and the objectionable anti-honorific inscriptions.

143. Furthermore, City Mayor Tracy Upchurch, Commissioner Leanna Freeman, Commissioner Roxanne Horvath, Commissioner Nancy Sikes-Kline, Commissioner John Valdes, City Mayor John P. Reagan, and City Attorney Isabel C. Lopez.D, and are in anticipatory violation if they cause the “Our Dead” “shell structure” or “monument to the dead” Cenotaph to be removed.

COUNT 9 – VIOLATION OF FLORIDA STATUTES 267.013

144. Defendant Secretary Lee violated Florida Statue 267.031 (Division of Historical Resources; powers and duties) when she neglected to fulfill her duty to take such actions necessary to “protect” and “preserve” a Historic Resource in St. Augustine, a subdivision of the State of Florida. The Defendant is neglecting her affirmative duty to the detriment of the citizens of Florida whose precious, perishable Historic Resources are being diminished under her administration, such duty to be exercised without regard to political influence or content expression. Secretary Lee cannot arbitrarily choose parts of the Florida Statutes to which she

chooses to comply. This is a clear violation of the Equal Protection Clause of the 14th Amendment to the United States Constitution. The Plaza "Our Dead" Cenotaph, as an Object in the Constitution Plaza National Register Historic District, as certified by the State of Florida, is self-evident to be a Historic Resource protected by the Secretary of State.

COUNT 10 – VIOLATION OF OATH OF OFFICE

They State and City Defendants, individually, have violated their Oath of Office to "protect and defend the Constitution of The United States and State of Florida" through their actions to abuse the Constitutional Rights of Plaintiffs, specifically 1st Amendment and 14th Amendment rights.

J. CONCLUSION

145. Plaintiffs have proper jurisdiction and venue to appear before the Court and request relief.
146. The United States has an interest in protecting American history and culture and protection of the speech emitting from historical monuments and memorials as evidenced by the Judiciary in two recent federal cases. These cases recognize that monuments and memorials must be protected and preserved because they inform us of our American "history and tradition". The Courts understood that monuments stand as inter-generational voices, what G.K. Chesterton called the "Democracy of the Dead" by which history lives on in remembered tradition. This monument may be a lone voice of dissent, representing speech that is unpopular. Possibly a nagging reminder to the politically-correct orthodoxy and those who blindly adhere to it, that there was a time when people thought maybe the same as today, or maybe differently. May this voice not be silenced, either by the vandal's sledgehammer or by the official's crane. No society can long endure that teaches its children to hate their antecedents and be ashamed of

their heritage, or have it erased from public view, and that such removals are “Profoundly disrespectful” to the informed public, at large.

147. The United States has an interest in upholding the Constitutional rights of its citizenry including Speech and Equal Protection.

- a. The Natural Right of free speech is a fundamental underpinning of our Nation. Recognition of these God given natural rights are what is so exceptional about America in world history. Speech is one of the natural rights codified in our founding documents and must be protected. Non-controversial speech needs less protection. Through controversy, knowledge and understanding is gained. Expression and speech must not and cannot be allowed to be censored by the State.
- b. A Commandment given to believers in the Judeo-Christian tradition is to “Honor thy Father and Mother”. Religious speech and expression is one important Honorific method, recognized in the Constitution as religious freedom. The Government speech of ‘Re-meaning the Cenotaph by “Contextualization” stifles and censors the protected Honorific Speech of the Plaintiffs which emanate from the Cenotaph and those expressed by Plaintiffs, thus infringing of the free expression. This is particularly egregious case of speech suppression because the City’s “Context”, is placed as part of the Cenotaph in the 20’ X 20’ plot reserved for and allocated to the LMA for its own Honorific Speech.
- c. The Constitution grants Equal Protection: “Equal Justice Under Law.” Yet, the City has chosen only to censor, suppress, “re-mean” through ‘contextualization’ the “Our Dead” Cenotaph’s Honorific Speech, and that of these Plaintiffs.

- d. Plaintiffs argue that the Cenotaph's Emanating Speech, even if Plaintiffs are not granted Standing by this Court, is protected as Constitutional Speech based on the "History and Tradition" aspects of American Legion, based on its century and a half old Honorific Speech in the Plaza.

148. The City official Defendants have violated their oath of office by ignoring the Constitutional Free Speech rights guaranteed in the US and Florida Constitutions, and when acting to violate laws and ordinances of Florida and their City, which they took an oath to obey.

149. The City official Defendants violated Constitutional Due Process Rights and, in so doing, violated the trust, not only of the citizens of their City, but of the whole American People, who benefit from the existence of this historical resource, part of one of the most important historic resources in our Nation.

150. The City of St. Augustine and its Defendant officials have violated Due Process by violating its own Ordinances, and also the governing Laws of the State of Florida by causing the "Our Dead" Cenotaph to be Contextualized , and would again do so if they cause it to be removed.

151. Finally, the Defendants, Halback, Lopez and Regan, and others seem to be in a conspiracy to violate Florida State Law that prevents altering a Memorial site

152. Plaintiffs' Constitutional liberties, already abridged, are in imminent peril of elimination from a tyrannical local government who has violated State Law and its own Ordinances. The

Plaintiffs are particularly sensitive to the issues raised in this Complaint and uniquely suitable as plaintiffs due to their connections, agreements, missions, and lineage and financial interests.

153. This Federal Court has the ability to grant injunctive relief to Plaintiffs who are concerned that the Defendants may move swiftly and unilaterally to eradicate freedom of expression all together by removing the 140 year old Plaza Cenotaph, in so doing, that the plaintiffs will suffer irreparable harm by the removal and potential destruction of the “Our Dead” Plaza de la Constitucion Cenotaph if emergency injunctive relief is not immediately granted.

154. This Federal Court has the proper jurisdiction to discipline an officer of the State and require him to do his duty, and it is the Federal Court which has the highest duty to protect the rights of speech and due process which were violated by City Official Defendants, and Secretary of State Lee.

K. PRAYER

155. For these reasons, Plaintiffs ask that the Court do the following:
- a. Order that the City not remove the Historic “Our Dead” Plaza de la Constitution Cenotaph from its 1879 historic location or alter or damage it in any way;
 - b. Order that City removed the previously installed “Contextualization” footstones which abut and infringe on the speech emitting from the Historic “Our Dead” Plaza de la Constitution Cenotaph and refrain from doing so again in any way on the future;
 - 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.

Plaintiffs further ask the Court for any and all relief to which Plaintiffs may show they are entitled.

Respectfully submitted,

By: David R. McCallister

DAVID RHODES MCCALLISTER,

Trial Counsel, for all Plaintiffs

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STATE OF FLORIDA

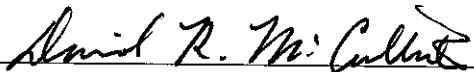
PASCO COUNTY

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 First Amended Original Complaint with Injunctive Relief Sought are within my personal knowledge and are true and correct.

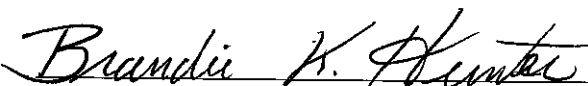
2. I have been reading news articles, talking with witnesses, and reading statements made by the parties in this matter."



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