

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA

Case No:

Division:

JILL M. PACETTI, individually
and as a representative of the group
of lineal descendants of the fallen
soldiers listed on the Confederated
Obelisk; The VETERANS COUNCIL
of ST. JOHNS COUNTY, INC., a
Florida Corporation and the MILITARY
OFFICERS ASSOCIATION of AMERICA,
Ancient City Chapter, a Florida Corporation.

Petitioners,

vs.

CITY OF ST. AUGUSTINE, FLORIDA,
A MUNICIPALITY,

Respondent,

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Complaint for Declaratory and Injunctive Relief

Come now the Plaintiffs, lineal descendants of confederate soldiers named
on the Confederate Memorial Obelisk; The Veterans Council of St. Johns County,
Inc., a Florida Corporation, and the Military Officers Association of America,
Ancient City Chapter, a Florida Corporation, a veteran of the United States
military and requests injunctive and declaratory relief. To seek injunctive relief in
Florida the Petitioner must prove: (1) a substantial likelihood of success on the

merits, (2) a lack of an adequate remedy at law, (3) the likelihood of irreparable harm absent the entry of an injunction, and (4) that injunctive relief will serve the public interest. See Scott v. Trotti, 283 So.3rd 340 (1st DCA 2018). Based upon the foregoing, the Petitioner believes that their cause of action meets these judicial requirements as follows:

1. Not unlike many other cities that were, for just over four years during the Nineteenth Century, part of the Confederate States of America, the City of St. Augustine (hereinafter “City”) maintains a Confederate Memorial Obelisk commemorating soldiers who died fighting for the Confederacy, which is on display to the public (hereinafter “Monument”). This monument was a communal effort, public art, and social history. Ex-soldiers and politicians had a difficult time raising funds to erect monuments so the task mostly fell to the women, the mothers, widows, and orphans, the bereaved fiancées and sisters of the soldiers who had lost their lives. Many ladies' memorial associations were formed in the decades following the end of the Civil War. In this case the Monument was commissioned by the Ladies' Memorial Association and was erected in 1872. It was first located on the east side of St. George Street and was moved to the Plaza de la Constitucion in 1879. It is 30 feet high. The Monument is the oldest Confederate Civil War monument in Florida.

2. Unlike other cities, St. Augustine’s Monument is located at the Plaza de

la Constitucion, an area designated as a National Historic Landmark in 1970, and part of its inventory of historic monuments. The Monument presents its message of remembrance exclusively to viewers living, working, staying, traveling and touring in St. Augustine.

3. The City of St. Augustine is a member of the Certified Local Government (CLG) Program which was enacted as part of the National Historic Preservation Act Amendments of 1980. The program links three levels of government-federal, state and local-into a preservation partnership for the identification, evaluation and protection of historic properties. Designation as a CLG, either as a municipality or a county, makes historic preservation a public policy through passage of a historic preservation ordinance. The CLG designation requires that each City establish a historic preservation board (in this case the Historic Architectural Review Board or "HARB") to develop and oversee the functions of its historic preservation program. This CLG designation will permit each participating city to apply for grants to assist in historic preservation.

4. On the urging of Mayor Tracy Upchurch, the HARB process was ignored, and he requested that the Commission have a discussion on whether to move the Monument to a cemetery, private property or other similar location. The context of the Commission discussion was "a national reckoning over racial inequality." After about 10 hours spent on the issue at City Hall, St. Augustine

Commissioners decided by a slim majority of 3-2 on June 22, 2020 to move the Monument from the Plaza de la Constitucion.

5. The Plaintiffs believe that the St. Augustine Commissioners acted improperly by not consulting with the HARB before deciding to move the Monument. The HARB advises property owners and government agencies concerning the maintenance, protection, enhancement, and preservation of historic resources. The board reviews applications for Certificates and Opinions of Appropriateness, Certificates of Demolition or Relocation, and may designate historic landmarks. HARB also reviews applications associated with the historic preservation property tax (ad valorem) exemption for the City of St. Augustine and St. Johns County. The HARB's input would be invaluable to assess the feasibility of moving the Monument.

6. The purpose of this suit is to protect the Monument from inadvertent destruction. In the passion of the moment, the City Commission by a slim majority has ordered the movement of the Monument without proper consultation with the HARB and or other experts or authorities to determine the feasibility and manner of movement of the Monument.

JURISDICTION AND VENUE

7. This lawsuit is brought pursuant Florida Statute 86.011 which permits the circuit court to declare rights, status, and other equitable or legal relations

whether or not further relief is or could be claimed.

8. The Petitioners seek declaratory relief stating that the City Commission commit to use any and all resources necessary to safely move the Monument under a plan directed and conceived by the HARB, and, furthermore, seek injunctive relief barring the City Commission from taking any further action related to the movement of the Monument without first establishing to this Court that they have a plan that ensures the safe movement of the Monument without inadvertent damage or destruction of the Monument.

THE PARTIES

9. The Family Petitioners: Jill Pacetti is a lineal descendent of **Eusebio Pacetti** one of the fallen veterans listed on the Monument. Jill Pacetti was also selected to be a representative of the lineal descendants of eight other men listed on the Monument, specifically **Abraham Dupont, Joseph Noda, Andrew Floyd, Antonio Lopez, John Stevens, William DuPont, Peter Masters** and **Bartolo Pinkham**. Many still reside in St. Augustine or St. Johns County, and are fearful that a rushed, unstudied attempt to move the Monument can result in irreparable damage or destruction of the Monument. The names and addresses of all the family members represented by petitioner Jill Pacetti is attached hereto as Exhibit "A." The Veterans Groups: The Veterans Council of St. Johns County, Inc. and the Military Officers Association of America, Ancient City Chapter ("MOAA")

are an active group of military veterans in St. Johns County that oppose the movement of the Monument. The Veterans Council and MOAA believes that the Monument is important because it acts as a historical touchstone. It links the past to the present and enables people to remember and respect the sacrifice of those who died, fought, participated or were affected by war.

10. The St. Augustine City Commission is the legislative body of the City and is endowed with all power and authority, except as otherwise provided in the City's Charter, to exercise all of the powers conferred upon the City. The City Council is a continuing body that has, during its history, appropriated funds to contribute to the maintenance of the Monument, and now without study or consultation with any experts in the field of relocating such Monuments, by a slim majority vote of 3-2 expressed its desire to relocate the monument elsewhere.

THE MONUMENT

11. The Monument is a 30 foot tall obelisk with the inscription "Our Dead. In Memoriam, our Loved Ones Who gave up Their Lives in the service of The Confederate States." The Monument is a form of expressive speech with a message related to the War Between the States and does not include Confederate markings. The expressive speech and message projected by the Monument is generally understood to be from the mothers, sisters and widows of the war dead. The petitioners are the lineal descendants of these mothers, sisters and widows,

and would suffer irreparable harm should the memorial to their relatives be damaged or destroyed. The Veterans Council and MOAA will suffer irreparable harm, because these veterans groups universally believe that all soldiers that fought bravely for their cause should be honored for their courage and sacrifice. It is analogous to the universal fair treatment of captured enemy combatants, where all parties understand that there is a code that military personnel live by...fair treatment of prisoners and respect for the fallen.

12. The City Commission is mindful that this civil war monument is very different than the “Jim Crow” era memorials that contain confederate symbols and tries to vindicate the lost cause of the Civil War. Attached hereto is Exhibit B, a letter dated August 28, 2017 where the City Commission was advised by experts in archaeology and preservation concerning the unique messaging of the Monument. Based upon these experts, the Monument presents a unique message from the Reconstruction Period that is worthy of display and is in the public interest to preserve because it is **not** a “Jim Crow” Confederate Memorial. The Ladies of St. Augustine in 1872 were trying to present a message of great personal loss and sorrow from war. It is in the public interest to preserve this very powerful message. Moreover, these experts expressed skepticism that the Monument could withstand the rigors of a relocation.

13. The petitioners believe that injunctive relief is proper because they have

no remedy at law, and they believe that since the City Commission has not expressed to the public how and where they are going to relocate the Monument, they have a great probability of success on the merits of this cause of action.

STATEMENT OF RELIEF REQUESTED

14. The Petitioners hereby request that this Court:

(a) Enter a declaratory judgment that the relocation of the Monument without consultation of the HARB experts endangers the Monument;

(b) Enter a temporary injunction prohibiting the City Commission from ordering the relocation of the Monument without first receiving a feasibility study from the HARB;

(c) Permit the Petitioners as friends of the City to obtain expert opinions on the feasibility of relocating the Monument;

(d) Keep the temporary injunction in place until the Court is satisfied that the relocation plan will preserve intact the structural integrity of the Monument;

(d) Grant such other relief as the nature of the case and the Court deem just and proper.

BY: /s/ John Terhune, Esquire
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St. Augustine, FL 32092

Victoria Boston (Andrew Floyd)
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Lake City, FL 32024

Mark Pomar (Antonio Lopez)
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St. Augustine FL 32084

Deborah Pacetti (Eusebio Pacetti)
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Exhibit "A"

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Pahrump, Nevada 8904

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327 Shamrock Rd
St. Augustine, FL 32086

Suzanne Vandiver (Joseph Noda)
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Hastings, FL 32145

Shannon Mier (Andrew Floyd)
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Jacksonville, FL 32246

Charles D Pacetti (Eusebio Pacetti)
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Bostwick, FL 32007

Daniel V Pacetti (Eusebio Pacetti)
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Jason Davis (Peter Masters)
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Hastings, FL 32145

Laura Harrison (Peter Masters & Bartolo Pinkham)
5796 CR 551 A
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Scott Harrison (Peter Masters & Bartolo Pinkham)
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Crystal River, FL 34228

Marc Say (Peter Masters & Bartolo Pinkham)

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Cocoa, FL 32926

Marie Fox (Eusebio Pacetti)
3119 Pacetti Road
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Jeannette Say-Henry (Peter Masters & Bartolo Pinkham)
3869 Crossline Drive
Spring Hill, FL 34609

Christopher Behan (Peter Masters & Bartolo Pinkham)
331 Bobs Creek Road
Zirconia, NC 28790

Brian K Mier (Andrew Floyd)
10033 Patterson Circle North
Jacksonville, FL 32225

Bradley Mier (Andrew Floyd)
1816 Jefferson Rd
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Emily Coppola (Peter Masters)
54 Blue Hills Dr
Guilford, CT 06437

Jason Pomar (Antonio Lopez)
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Vero Beach, FL 32966

Jaxon Pomar (Antonio Lopez)
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Jordon Pomar (Antonio Lopez)
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Simpsonville, SC 29687

Lauren McCutcheon-Pomar (Antonio Lopez)
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Jessica Pomar (Antonio Lopez)
836 23rd Ave

Vero Beach, FL 32960

Jacob Melton (Antonio Lopez)
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Amanda Pomar Stroud (Antonio Lopez)
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St. Augustine, FL 32086

Evan Stroud (Antonio Lopez)
118 Wisteria Road
St. Augustine, FL 32086

Elizabeth Masters (Peter Masters)
22 Sevilla Street
St. Augustine, FL 32084

August 28, 2017

St. Augustine City Commission:
Mayor Nancy Shaver
Vice Mayor Todd Nelville
Commissioner Roxanne Hovarth
Commissioner Leanna Freeman
Commissioner Nancy Sikes-Kline
St. Augustine City Commission
PO Box 210 (75 King Street)
St. Augustine, FL 32085

Dear Commissioners of the City of St. Augustine,

It is an honor to offer comments to the commissioners of the City of St. Augustine in regards to your deliberations about the future of the monument to Civil War dead (Confederate monument), in Plaza de la Constitucion. Our comments are based on insights from our comprehensive study of all Civil War monuments in Florida published as *Recalling Deeds Immortal, Florida Monuments to the Civil War* (UPF 2014), as well as by remaining current with recent state and national events concerning Civil War monuments and Confederate symbolism.

Not all Confederate monuments in Florida are the same. The oldest, erected in 1871, now in DeFuniak Springs, and the second oldest, originally erected in 1872 and later reconstructed in 1879 in St. Augustine, are both memorials to fallen soldiers from their respective local areas who died during the Civil War in camp, hospital, or on the battlefield. Neither of these monuments aggrandize or purposefully vindicate the cause of the Confederacy. Rather, their original purpose was to recognize the ultimate sacrifice given by individuals, their families, and their communities during our great national tragedy, the Civil War. The individuals named on these monuments probably rest in unmarked and possibly unknown graves far from home; with few exceptions these monuments certainly remember those who died and whose bodies were never returned home for a proper burial in a local cemetery.

The names engraved on the St. Augustine monument reference 46 individuals who died during the Civil War; their very names reflect the diverse cultural heritage of St. Augustine. Reading the names drives home a truth of the Civil War, of immense local loss, and of immense loss to those families with surnames repeated twice or more times within the 46.

Other inscriptions on the monument read, "OUR DEAD," "IN MEMORIAM OUR LOVED ONES WHO GAVE THEIR LIVES IN THE SERVICE OF THE CONFEDERATE STATES," "ERECTED BY THE LADIES MEMORIAL ASSOCIATION OF ST. AUGUSTINE, FLA, A.D. 1872," "THEY DIED FAR FROM THE HOME THAT GAVE THEM BIRTH BY COMRADES HONORED AND BY COMRADES MOURNED," and "THEY HAVE CROSSED THE RIVER AND REST UNDER THE SHADE OF THE TREES." The monument contains no "Confederate symbols," such as the Battle Flag or reference to Confederate leaders. Importantly, it does not contain verbiage typical of later monuments in Florida and elsewhere that promote vindication of Southern loss and the Southern cause in the Civil War (the so-called "Lost Cause" narrative). The monument does make clear in passing that the memorialized dead were Confederate soldiers, but it is not a monument, per se, to the Confederacy or its failed cause.

The St. Augustine monument is important historically as an early Civil War monument. It reflects the reality of the Reconstruction-era government of Florida, which as elsewhere in the south did not

EXHIBIT "B"

allow erection of monuments to Confederate dead or the Confederacy on public property. The St. Augustine monument was for that reason originally erected on church property and was only moved to public property in 1879 after the end of Reconstruction. It has remained as an important part of one of the Nation's most important historical landscapes ever since.

The St. Augustine monument should be conceived as a memorial to Civil War soldier dead and not confused with "Lost Cause" style monument that became common in the 1880s and 1890s. The sponsors of later monuments, to varying degrees, sought to overtly vindicate southern loss, and these monuments carry Confederate symbols, promote the valor of the Confederate soldier, and carry messages that are implicitly or overtly out of step with the values of our country.

Because of the nature of this monument, which focuses on specific soldier dead and which does not carry Confederate symbols or the "Lost Cause" message, it would be both appropriate and easy to contextualize with one or more historical waysides which clearly explains all of this, and to begin referring to this as a memorial to the City's Civil War dead rather than the "Confederate Monument." Waysides could also discuss the death and burial of Union soldiers in the St. Augustine area during the Federal occupation beginning in 1862 and through the end of Reconstruction in 1878.

Civil War and Reconstruction history is difficult, some say "uncomfortable," but it remains important especially as we continue to grapple with its aftermath and what these periods mean for our state and nation today. Properly done, monuments honoring Confederate soldier dead such as that in St. Augustine can become an important teaching tool.

Finally, we understand that removal of Confederate monuments for storage or relocation has been undertaken elsewhere in Florida and the nation. Because of the nature of the St. Augustine monument and its construction, we question whether this monument could be successfully removed for either storage or for relocation elsewhere.

We are available to answer any questions Commissioners may have, or to assist with any efforts to properly contextualize this memorial.

Sincerely,

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