

IN THE TENNESSEE HISTORICAL COMMISSION

IN RE: FORREST STATUE

THE DESCENDANTS OF NATHAN BEDFORD FORREST AND
SONS OF CONFEDERATE VETERANS
NATHAN BEDFORD FORREST CAMP # 215

VS.

NO. _____

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SECRETARY OF STATE

CITY OF MEMPHIS AND
MEMPHIS CITY COUNCIL; AND
MEMPHIS GREENSPACE, INC.

PETITION FOR DECLARATORY ORDER
PURSUANT TO TENN. CODE ANN. § 4-5-223,
AND § 4-5-224

TO: E. PATRICK McINTRYE, JR.
Executive Director and State historical Preservation Officer
2941 Lebanon Road
Nashville, Tennessee 37214

Comes Now your Petitioners, Walter Law Jr., Sidney Law, Brooks
Bradley, Thomas Jesse Bradley III, and Kevin Bradley, being the closest

living relatives of the late General Nathan Bedford Forrest and wife, Mary Ann Montgomery Forrest, hereinafter referred to as the Forrest Descendants, by and through their Attorney David M. Livingston; and Sons of Confederate Veterans, Nathan Bedford Forrest Camp # 215, by and through their Attorney, Douglas E. Jones, hereby Petitions the Tennessee Historical Commission pursuant to Tenn. Code Ann. § 4-5-224, and Tenn. Code § 4-5-223 which is as follows, to wit:

1. The jurisdiction of the Tennessee Historical Commission is embodied in the Tennessee Heritage Protection Act of 2016 codified in Tenn. Code Ann. § 4-1-412 which is as follows, to wit:

4-1-412. Tennessee heritage protection.

(a) For purposes of this section:

- (1) Commission means the Tennessee historical commission;
- (2) Historic conflict means any war, battle, or military conflict in which citizens of the United States or any state or territory of the United States have participated in, including, but not limited to, the French and Indian War, American Revolution, War of 1812, United States-Mexican War, the War Between the States, Spanish American War, the Mexican border period, World War I, World War II, the Korean War, the Vietnam War, Operation Urgent Fury (Grenada), Operation El Dorado Canyon (Libya), Operation Just Cause (Panama), Operation Desert Shield/Desert Storm (Persian Gulf War I), Operation Enduring Freedom (Afghanistan), and Operation Iraqi Freedom (Persian Gulf War II);
- (3) Historic entity means any entity recognized as having state, national, military, or historical significance;

(4) Historic event means any event recognized as having state, national, military, or historical significance;

(5) Historic figure means any individual who has been recognized as having served in any historic conflict, historic event, historic entity, public office, or in public service;

(6) Historic organization means any entity that has as one (1) or more of its material missions as the recognition or preservation of any historic conflict, historic entity, historic event, or historic figure;

(7) Memorial means:

(A) Any public real property or park, preserve, or reserve located on public property that has been named or dedicated in honor of any historic conflict, historic entity, historic event, historic figure, or historic organization; or

(B) Any statue, monument, memorial, bust, nameplate, plaque, artwork, flag, historic display, school, street, bridge, or building that has been erected for, named, or dedicated on public property in honor of any historic conflict, historic entity, historic event, historic figure, or historic organization; and

(8) Public property means all property owned, leased, rented, managed, or maintained by or under the authority of this state, any county, municipality, metropolitan government, or any other public entity that is created by act of the general assembly to perform any public function.

(b) (1) Except as otherwise provided in this section, no memorial regarding a historic conflict, historic entity, historic event, historic figure, or historic organization that is, or is located on, public property, may be removed, renamed, relocated, altered, rededicated, or otherwise disturbed or altered.

(2) Notwithstanding subdivision (b)(1), a public entity having responsibility for maintaining a memorial, or a nonprofit entity acting with permission of the public entity, shall have the authority to take proper and appropriate measures, and exercise proper and appropriate means, for the care, preservation, protection, repair, restoration, and renovation of the memorial.

(c) (1) A public entity exercising control of a memorial may petition the commission for a waiver of subdivision (b)(1).

(2) The petition for waiver shall be in writing and shall state the basis upon which the waiver is sought. The petition shall be supported by one (1) or more reports showing that there is a material or substantial need for a waiver based on historical or other compelling public interest. The petition shall also identify by name and address any private entities, groups, or individuals, including, but not limited to, descendants, that may have an interest in receiving notice of the petition. The petition for waiver shall be filed with the commission with proof of public notice as required by subdivision (c)(3).

(3) Prior to filing the petition for waiver, the public entity seeking a waiver shall publish notice of the petition for waiver on the web site of the public entity, if any, and in at least one (1) newspaper of general circulation serving the area of the memorial and one (1) in Davidson County. The notice shall state the basis on

which the waiver is sought and shall provide that a copy of the petition and all supporting reports will be provided to any interested party at no cost upon written request submitted to the public entity filing or intending to file the petition for waiver.

(4) An initial hearing before the commission on a petition for waiver shall be scheduled at any regular commission meeting no sooner than sixty (60) calendar days after a petition is filed. At the initial hearing, the commission shall determine which interested entities, groups, or individuals should be given written notice by the public entity, including copies of the petition and supporting reports. The public entity may be directed to provide supplemental notice by publication if deemed necessary by the commission. If an amendment to the petition is filed, the public entity shall provide supplemental notice. If supplemental notice is required either by the commission or as a result of an amendment, notice shall be given in the same manner as notice required pursuant to subdivision (c)(3).

(5) A final hearing before the commission on a petition for waiver shall be scheduled at any regular commission meeting no sooner than one hundred eighty (180) calendar days after a petition is filed; provided, that if an amendment to the petition is filed, then no final hearing shall be scheduled until at least one hundred eighty (180) calendar days have elapsed from the date of the filing of the amendment.

(6) An interested entity, group, or individual shall be afforded an opportunity to offer public comments regarding a petition for waiver at any commission hearing on a petition. An interested entity, group, or individual may file a memorandum, report, study, letter, or other document related to the petition for consideration by the commission prior to the final hearing on the petition. Upon providing written notice at least three (3) business days prior to a final hearing, an interested entity, group, or individual shall be allowed an opportunity to present relevant testimony or evidence at the final hearing on a petition.

(7) All hearings regarding a petition for waiver shall be recorded. Copies of the record and all exhibits shall be available to any interested entity, group, or individual at the cost of the public entity seeking the waiver.

(8) (A) In order for a waiver to be granted, the public entity seeking the waiver shall demonstrate by clear and convincing evidence that a material or substantial need for a waiver based on historical or other compelling public interest exists; provided, that if a memorial is designated as a national historic landmark or listed on the national register of historic places, there shall be a presumption in favor of preservation of the memorial.

(B) At the final hearing, the commission may grant a petition for waiver, in whole or in part, by a two-thirds (2/3) vote of the entire membership of the commission by roll call vote. The commission may include reasonable conditions and instructions to ensure that a memorial is preserved and remains publicly accessible to the greatest extent possible. Any petition for waiver that fails to receive a two-thirds (2/3) vote shall be denied. Within thirty (30) calendar days from the final hearing, the final determination of the commission shall be reduced to writing and shall state the commission's findings and the grounds on which the relief is granted or denied. The effective date of the determination shall be not less

than one hundred twenty (120) calendar days after notice of the commission's determination is posted on the web site of the commission. Copies of the final determination shall be sent to the public entity seeking the waiver and to each interested entity, group, or individual who testified or submitted evidence at the final hearing.

(9) A public entity seeking a waiver or interested entity, group, or individual who testified or submitted evidence at the final hearing who is aggrieved by the final determination of the commission on the petition for a waiver may file a petition for review in the chancery court of Davidson County or, alternatively, in the county in which the memorial is located or, in the case of a memorial that is located in multiple counties, the county in which the memorial is predominantly located. A petition for review shall be filed within sixty (60) calendar days after notice of the commission's determination is posted on the web site of the commission. The court shall conduct a de novo review on the record of the issues. The review shall be conducted without a presumption that the determinations and findings of the commission are correct. Additional evidence may be introduced and considered by the court.

(d) Any person who can demonstrate a real interest in a memorial through aesthetic, architectural, cultural, economic, environmental, or historic injury, or through administrative involvement in the waiver process, has standing to seek injunctive relief in chancery court of Davidson County to enforce this section. To the extent necessary to preserve the status of any memorial prior to a final determination by the commission or the chancery court, the court may issue an injunction to preserve the memorial and any related public property pending a final ruling on any request for injunctive relief. No bond shall be required for any injunction issued.

(e) (1) This section shall apply to any memorial in existence prior to January 1, 1970, and those lawfully created, erected, named, or dedicated on or after January 1, 1970.

(2) This section shall not apply to any memorial located on public property under the control of, or acquired by, the department of transportation which may interfere with the construction, maintenance, or operation of the public transportation system. The department shall strive to ensure that any memorial is preserved to the greatest extent possible.

(3) This section shall not apply to a memorial that has reached the end of its useful life and is approved for demolition by the state building commission in accordance with 4-15-102; provided, that, prior to any decision to demolish a memorial designated as a national historic landmark or listed on the register of historic places, the historical commission shall make comments to the state building commission in accordance with 4-11-111.

Acts 2013, ch. 75, 2; 2016, ch. 601, 2; 2017, ch. 201, 1, 2.

2. The Forrest Statue serves as the headstone of the graves of the Late Lt General Nathan Bedford Forrest and Ms Mary Montgomery Forrest and is a memorial, regarding a historical conflict, historic entity, historic event, historic figure or historic organization under the definition of Tenn. Code. Ann. § 4-1-412, and was located prior to December 20, 2017, on property owned by the City of Memphis and is protected by virtue of the Tennessee Historic Protection Act of 2016.
3. The statues of Jefferson Davis and Captain Waters are likewise memorials covered under the Tennessee Heritage Protection Act of 2016, and were located on property under the control of the City of Memphis, Tennessee, and by virtue of the same protected by the Tennessee Heritage protection Act of 2016.
4. On or about December 20, 2017, the City of Memphis illegally transferred the land referred to as Health Sciences Park in Memphis, Tennessee, by Warranty Deed and Bill of Sale recorded with the Registers Office of Shelby County, Tennessee, together with restrictive covenants, option to purchase, and other documents associated with said Health Sciences Park denoted herein as Exhibit #1 cumulative. The property

transferred in the transaction is listed on the National Registry of Historic Places and as such is significant for its architectural, archaeological, artistic, cultural or historical associations or significant for its natural, scenic or open condition. Thereafter, the said Memphis Greenspace Inc. removed the statues from their respective parks

5. The purposes clause of the non-profit corporation, Memphis Greenspace, Inc., is insufficient as to the requirement of Tenn. Code Ann. 12-2-501, in as, the purposes of the corporation has got to include preservation and conservation of the real and personal property conveyed.
6. On or about December 20, 2017, the City of Memphis illegally transferred the easement associated with the Mississippi River Park which contained therein a Bill of Sale to the said Jefferson Davis and Captain Waters memorials, which were likewise protected by the Tennessee Heritage Protection Act of 2016. (see Deed of Conveyance, Bill of Sale, Restrictive Covenants, Option to Purchase, and other documents associated with the said transfer of Mississippi River Park denoted as cumulative Exhibit # 2. The real and personal property in the Mississippi

River Park is significant for its architectural, archaeological, artistic, cultural, or historical associations or significant for its relationship to other property significant for architectural, archaeological, artistic, cultural, or historical associations, or significant for its natural, scenic or open condition as required under Tenn. Code a 12-2-501, which is as follows, to wit:

2-2-501. Disposal of real or personal property by private negotiation and sale.

Notwithstanding any rule, regulation or other law to the contrary, any county, metropolitan government, municipality or other political subdivision of this state, upon majority vote of the local legislative body, may dispose of real property or personal property by private negotiation and sale where:

(1) The real or personal property is significant for its architectural, archaeological, artistic, cultural or historical associations, or significant for its relationship to other property significant for architectural, archaeological, artistic, cultural or historical associations, or significant for its natural, scenic or open condition;

(2) The real or personal property is to be sold to a nonprofit corporation or trust whose purposes include the preservation or conservation of real or personal properties of architectural, archaeological, artistic, cultural, historical, natural or scenic significance; and

(3) A preservation agreement or conservation agreement is placed in the deed conveying the property from the county, metropolitan government, municipality or other political subdivision of this state to the nonprofit corporation or trust. The nonprofit corporation or trust shall only dispose of or use such real or personal property subject to covenants or other legally binding restrictions that will promote the preservation or conservation of the property, and, where appropriate, secure rights of public access.

Acts 2013, ch. 115, 1.

7. The transfers alluding to hereinabove are a sham and were solely for the purposes of evading the limitations of the Tennessee Heritage Protection Act of 2016, and are a fraud upon the citizens of Memphis and your Petitioners.
8. As to both transfers, the City of Memphis pursuant to Tenn. Code Ann. § 4-1-412 (b)(2) requires that the Public Entity having responsibility for maintaining a memorial, or a non-profit entity acting with the permission of a public entity, shall have the authority to take proper and appropriate measures, and exercise proper and appropriate means, for the care, preservation, protection, repair, restoration, and renovation of the memorials.
9. On or about December 20, 2017, Memphis Greenspace, Inc., a not for profit corporation, and the City of Memphis violated their responsibility of maintenance of the said memorials by selling and removing the monuments in question causing substantial damage in the removal and transportation of the said memorials.

10. The City of Memphis by and through its various departments assisted Memphis Greenspace, Inc., in accomplishing the removal of the said statues in violation of the duties of maintenance contained therein.
11. The said statues were removed to other property owned by the City of Memphis and housed on City property for a substantial period of time.
12. The said Memphis Greenspace, Inc., and the City of Memphis are substantially one in the same and as such the Tennessee Heritage Act of 2016, still protects the said statues from removing the same.
13. The said Memphis Greenspace, Inc. is another public entity that is created by the act of general assembly to perform public functions and as such is covered by the Tennessee Heritage Protection Act, Tenn. Code Ann. § 4-1-412 (a)(8).
14. The said memorials in question were in existence prior to January 1, 1970, and as such are protected by The Tennessee Heritage Protection Act codified in Tenn. Code. Ann. § 4-1-412 which protection continues as to the said statues regardless of

illegal actions of the City of Memphis and Memphis Greenspace Inc..

CAUSES OF ACTION:

1. DUTY TO MAINTAIN : The Transfers violate the duty of the public entity to maintain the statues codified in Tenn. Code Ann. § 4-1-412.
2. PROHIBITATION AGAINST MOVING: The Transfers and subsequent actions violate the Tennessee Heritage Protection Act by removing the statues in violation of Tenn. Code Ann. § 4-1-412 (b)(1) by removing, relocating, altering, or disturbing the said memorials.
3. IMPROPER CONVEYANCE: The Transfers and subsequent actions violate Tenn. Code Ann. § 12-2-501.
4. DESCREATION OF GRAVIES: The Transfer and subsequent actions by removal of the Forrest Statue from the gravies without a Court Order violates the Family Burial Grounds Protection Act codified in Tenn. Code Ann. § 46-8-102 and § 39-16-402.

5. The Memphis Greenspace Inc. is covered by the Tennessee Heritage Protection Act of 2016.
6. Official Misconduct: The actions of City Officials with the City of Memphis constitute Official Misconduct Codified in Tenn. Code Ann. § 39-16-402
7. Criminal Conspiracy: The concerted actions, agreements and Communications of City Officials, Representatives of Memphis Greenspace Inc., and Unnamed Officials with the State of Tennessee constitutes a Criminal Conspiracy codified in Tenn. Code Ann. § 39-12-103 to violate Tennessee Law as set out hereinabove.

Wherefore, the Petitioners pray that the Tennessee Historical Commission ruled as to the above averments and set the transfer violated Tennessee Law and should be set aside as illegally and fraudulent on the Petitioners, Citizens of Memphis and Citizens of the State of Tennessee and order the return of the Statues unharmed to their original locations at the cost to the City of Memphis Tennessee.

Respectfully Submitted,

*with
premium*

BY: *David M. Livingston*

By

D.M.

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