

BEFORE THE TENNESSEE HISTORICAL COMMISSION

IN THE MATTER OF:

STATE CAPITOL COMMISSION,

Petitioner

RE: REQUEST TO RELOCATE THE BUSTS
OF NATHAN BEDFORD FORREST,
DAVID GLASGOW FARRAGUT,
AND ALBERT GLEAVES

APD Case No. 04.48-204639A

FINAL ORDER

Findings of Facts

1. The Tennessee State Capitol Commission filed a petition for a waiver with the Tennessee Historical Commission on August 14, 2020, that would allow for the relocation of the busts of Nathan Bedford Forrest ("Forrest"), David Glasgow Farragut ("Farragut"), and Albert Gleaves ("Gleaves") from their current locations on the second floor of the Tennessee State Capitol building to the Tennessee State Museum, where they would be made part of an exhibit to be established honoring Tennessee's military heroes.

2. After considering the relocation of the Forrest bust several times in the past few years, the Tennessee State Capitol Commission met on July 9, 2020, and, after consideration of comments made by the public and deliberation among the members, voted to petition for a waiver to relocate the Forrest bust. Tennessee Governor Bill Lee appeared before the Commission at the July 9 meeting and spoke in support of the relocation of the bust to the Tennessee State Museum. The Commission also voted to include a request in the petition for waiver to relocate the Farragut

and Gleaves busts, with the intent that all three busts would be made part of an exhibit to be established in the Tennessee State Museum honoring Tennessee's military heroes.

3. The bust of Forrest was installed in 1978, in accordance with Tennessee Senate Joint Resolution Number 54, which was adopted May 4, 1973, and which directed a bust of Forrest be procured for display in the State Capitol. The bust sits on a stone pedestal upon which the following is written: Lieutenant General / Nathan Bedford Forrest / 1821 - 1877 / Confederate States Army. The bust includes no other historical context.

4. Beginning on the day of its installation, there have been numerous public protests of Tennessee residents against the Forrest bust, and in recent years, there have been requests by a number of Tennessee legislators for its removal. Previous Tennessee governor Bill Haslam also called on the Tennessee Capitol Commission during his tenure to request a waiver from the Tennessee Historical Commission to relocate the bust to the Tennessee State Museum. Members of Forrest's family have also indicated their preference for the bust to be moved to the Museum.

5. The bust of Farragut was placed in the State Capitol in or around 1946. It sits on a stone pedestal upon which is written the following: David Glasgow Farragut / 1801 – 1870 / First Admiral / United States Navy. The bust includes no other historical context. The bust of Gleaves was placed in the State Capitol sometime between 1939 and 1944. It sits on a stand upon which is written: Admiral Albert Gleaves / 1858 - 1937. The bust includes no other historical context.

6. In 1944, the Tennessee Historical Commission announced plans to create a gallery on the second floor of the State Capitol dedicated to Tennessee naval heroes, but the plans for the gallery never materialized. The bust of Farragut was commissioned to be part of the gallery and the bust of Gleaves was moved to the Capitol from a courthouse to be part of the gallery,

7. Forrest (1821 - 1877) was a slave trader who enlisted in the Confederate army during the Civil War as a private and rose through the ranks to become a lieutenant general. He was known as an expert cavalry leader and military strategist. In 1864, in what is now commonly referred to as the Fort Pillow massacre, troops under Forrest's command brutally killed a group of Union soldiers who many believe had already surrendered. Later, the Joint Committee on the Conduct of War investigated the incident and confirmed that Forrest's troops acted unjustly. After the war in 1867, it is believed that Forrest became the first national leader of the Ku Klux Klan, known as the grand wizard, although Forrest denied this claim in 1871.

8. Farragut (1801 - 1870) was an officer in the U.S. Navy who served in several wars, including the Civil War. He is known for capturing the city of New Orleans and for winning the Battle of Mobile Bay for the United States Union during the Civil War. In 1962, Congress created a new rank of rear admiral for the U.S. Navy, and Farragut was only one of 13 men honored with the title. In 1964, President Lincoln promoted him to vice admiral, making him the highest ranking officer in the U.S. Navy, and after the Civil War, he was promoted to full admiral, becoming the first U.S. Naval Officer to hold that rank.

9. Gleaves (1858 - 1937) was an admiral in the U.S. Navy who served in the Spanish-American War and World War I, and he was awarded the Distinguished Service Medal by the army and the navy for his leadership in the latter. He contributed significantly to the advancement of torpedo precision. Gleaves also became a noted naval historian, publishing *A History of the Transport Service* as well as biographies of James Lawrence, William H. Emory, and Stephen B. Luce.

10. More recent action of the Tennessee State Capitol Commission provides that placement of statues and memorials inside the State Capitol is not intended to be permanent.

“Tennessee State Capitol Commission Policy Regarding Criteria for Commemorative Works”, adopted on November 10, 2015, states that “[o]nce accepted, the memorial will be displayed in the Capitol building for a period of time deemed appropriate by the Capitol Commission, after which time they may be transferred to the Tennessee State Museum for periodic display within their assigned exhibit areas.”

11. The busts of Forrest, Farragut, and Gleaves are part of the Tennessee State Museum’s collection.

12. The Tennessee State Museum is able and willing to take the three busts and display them appropriately and with historical context.

13. Contextualization is one solution to the ongoing debate over Confederate memorials. It has gained support in Franklin, the site of one of the Civil War’s bloodiest battles and the location of a Confederate memorial on the public square. Contextualization is meant to provide accurate and honest historical interpretation of a memorial for the purpose of educating the public.

14. The removal of the Forrest bust as requested by the Capitol Commission serves the public interest. It is not a “historic” addition to the Capitol from the perspective of 2021, as it was added relatively recently in 1978. Many have commented on the hurtful nature of a symbol of the Confederacy being prominently placed in the Capitol, a truly unique place of ongoing symbolism and significance for our state and our Republic. The removal of the Farragut and Gleaves busts is meant to create a consistency within the Capitol as to military figures.

15. The proposed change has a reasonable relationship to the site, as the Capitol is the center of the State government and not a military museum.

16. The mission of the Tennessee State Museum is to procure, preserve, exhibit, and interpret objects which relate to the social, political, economic, and cultural history of Tennessee and Tennesseans, and to provide exhibitions and programs for the educational and cultural enrichment of the citizens of the state. The Tennessee State Museum has the means of educating the public not only on the three historic figures, but on the current debate relating to Confederate memorials. The State Museum can provide contextualization in a much more appropriate and convenient space than in the Capitol.

Conclusions of Law

1. Pursuant to Tenn. Code Ann. § 4-5-307 and the Tennessee Heritage Protection Act of 2016 found at Tenn. Code Ann. § 4-1-412, the Tennessee Historical Commission has provided formal notice of the commencement of a final hearing upon the above-referenced matter regarding the relocation of the busts of Forrest, Farragut, and Gleaves from the second floor of the Tennessee State Capitol to the Tennessee State Museum. A final hearing was held, in accordance with Tenn. Code Ann. § 4-1-412(c), in the presence of Administrative Law Judge Kim Summers and in the presence of the Tennessee Historical Commission on March 9, 2021, at 9:00 a.m. via WebEx.

2. Forrest, Farragut and Gleaves are all “historic figures” as defined by Tenn. Code Ann. §4-1-412(a)(5).

3. The busts are “memorials” as defined by Tenn. Code Ann. §4-1-412(a)(7)(B).

4. The Capitol is “public property” as defined by Tenn. Code Ann. §4-1-412(a)(8).

5. The matter was heard electronically, in accordance with Executive Orders 60, 71, and 78, issued by the Governor of Tennessee as a result of the emergency created by the COVID-19 pandemic. The Historical Commission determined that that conducting the meeting by

electronic means was necessary to protect the public health, safety, and welfare of Tennesseans in light of the COVID-19 outbreak.

6. As altered by the aforementioned Executive Orders, the procedures for a final hearing have been established as provided in Tenn. Code Ann. § 4-1-412, and the final hearing was conducted in a manner consistent with the provisions of the Uniform Administrative Procedures Act governing contested cases, when such provisions are not in conflict with Tenn. Code Ann. § 4-1-412.

7. In order for a waiver to be granted by the Historical Commission, 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 preserving the memorial.

8. At the final hearing, the Historical 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.

9. Pursuant to the Rules of the Tennessee Historical Commission found at Chapter 0400-70-01:

- (1) When an entity petitions the Tennessee Historical Commission for a waiver relative to Tennessee heritage protection the Tennessee Historical Commission shall evaluate the following considerations when rendering a decision:
 - (a) Whether the proposed change serves the public interest;
 - (b) Whether the proposed change has any commercial overtones;
 - (c) Whether the proposed change has a reasonable relationship to the site;

- (d) Whether the proposed change has demonstrated support or opposition from local residents;
 - (e) If a change in name or rededication is proposed, whether the change is in conformance with the character of the existing names or dedications in the area;
 - (f) If a change in name or rededication is proposed, whether the change is duplicative of other nearby site names or dedications;
 - (g) Whether the proposed change is offensive or has a derogatory or defamatory implications;
 - (h) Whether the proposed change detracts from or enhances the commemoration of the conflict, event, entity, figure, or organization previously commemorated;
 - (i) Whether the proposed change is expected to have a significant positive or negative economic impact;
 - (j) Whether the proposed change could cause confusion for visitors interested in the site;
 - (k) Whether the proposed change diminishes or enhances the historic integrity of the site;
 - (l) Whether the proposed change is relative to a historic site or memorial on the National Register of Historic Places or a national historic landmark; and
 - (m) If a relocation is proposed, whether the new location is appropriate.
- (2) The enumeration of the considerations in paragraph (1) of this rule does not prevent the Tennessee Historical Commission from taking into account other considerations.

Rule 0400-70-01-.01.

10. Based upon the exhibits submitted, the testimony given by Butch Eley, Chairman of the Tennessee State Capitol Commission and Commissioner of the Department of Finance and Administration, at the hearing, the testimony given by Dr. Derek W. Frisby, Middle Tennessee

State University Lecturer of History/Global Studies and Human Geography, at the hearing, and the Findings of Facts stated above, it has been established by clear and convincing evidence that the relocation of the Forrest bust to the Tennessee State Museum serves the public interest and has demonstrated support from local residents. These facts satisfy Tennessee Historical Commission rule found at Chapter 0400-70-01-.01(1)(a) and (d).

11. Based upon the testimony given by Dr. Derek W. Frisby at the hearing and by the Findings of Facts stated above, it has been established by clear and convincing evidence that the relocation of the Farragut and Gleaves busts to the Tennessee State Museum serves the public interest and enhances the commemoration of these two naval officers. These facts satisfy Tennessee Historical Commission rule found at Chapter 0400-70-01-.01(1)(a),(c),(d),(h), and (m).

12. Based upon the testimony given by Ashley Howell, Executive Director of the Tennessee State Museum, at the hearing and by the Findings of Facts in Paragraphs 11 and 12, it has been established by clear and convincing evidence that the Tennessee State Museum is an appropriate location for the Forrest, Farragut, and Gleaves busts. These facts satisfy Tennessee Historical Commission rule found at Chapter 0400-70-01-.01(1)(m).

13. Based on the clear and convincing evidence submitted during this hearing that a material or substantial need for a waiver based on historical or other compelling public interest exists, Petitioner's request that the Tennessee Historical Commission issue a waiver under the Tennessee Heritage Protection Act of 2016 allowing the relocation of the busts of Forrest, Farragut, and Gleaves currently located on the second floor of the Tennessee State Capitol building to the Tennessee State Museum is approved by two-thirds vote of all members.

Policy Reasons for this Decision

1. Approving the waiver satisfies both the historic or other compelling public interest requirements of the Tennessee Heritage Protection Act.
2. Approving the waiver for a removal to the Tennessee State Museum will enhance the commemoration of the three historical figures at issue, and therefore satisfies the requirement that the relocation be in the historic interest. The busts are legally part of the Tennessee State Museum's collection. The mission of the Tennessee State Museum is to procure, preserve, exhibit, and interpret objects which relate to the social, political, economic, and cultural history of Tennessee and Tennesseans, and to provide exhibitions and programs for the educational and cultural enrichment of the citizens of the state. The Tennessee State Museum has the means of educating the public not only on the three historic figures, but on the current debate relating to Confederate memorials. The State Museum can provide contextualization in a much more appropriate and convenient space than in the Capitol. Therefore, it is an appropriate place for relocation of the three busts. The Tennessee State Museum is able and willing to take the three busts and display them appropriately and with historical context.
3. Removal of the Forrest Bust also advances the compelling public interest of racial reconciliation, as the Capitol is a unique place of ongoing symbolism and significance for all citizens of Tennessee, regardless of race. The interest of commemorating a famous Tennessean who has been dead for over 140 years is outweighed by the interest of thousands of citizens who deem such commemoration in the State Capitol hurtful.

The Petition for Waiver is hereby GRANTED this 9th day of March 2021. It shall be effective one hundred twenty (120) calendar days after notice of the Commission's

determination is posted on the web site of the Commission. Tenn. Code Ann. § 4-1-412(c)(8)(B)

TENNESSEE HISTORICAL COMMISSION

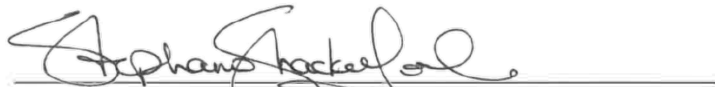
By: 
Derita Coleman Williams
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Approved as to form and legality:



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Filed in the Administrative Procedures Division, Office of the Secretary of State this
10th day of March 2021.


Administrative Procedures Division

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served upon Christy A. Allen, General Counsel, Department of General Services, Counsel to the State Capitol Commission via email to Christy.Allen@tn.gov on this 10th day of March, 2021.



E. Joseph Sanders