

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY

**SONS OF CONFEDERATE VETERANS,
TENNESSEE DIVISION, JOE JOHNSTON
CAMP #28**

Plaintiff,

v.

**THE TENNESSEE CAPITOL
COMMISSION, and the
STATE OF TENNESSEE**

Defendants.

Civil No:

**COMPLAINT FOR DECLARATORY JUDGMENT AND
VERIFIED PETITION FOR WRIT OF CERTIORARI**

The Sons of Confederate Veterans, Tennessee Division, Joe Johnston Camp 28 (hereinafter called "The Johnston Camp SCV" in this matter) bring this civil action against the Tennessee Capitol Commission and the State of Tennessee for the relief requested herein.

I. PARTIES

1. The Sons of Confederate Veterans ("the SCV") is a national organization comprised of male descendants of confederate soldiers. The SCV was founded in 1896 as a historical patriotic and non-political organization dedicated to ensuring that a true history of the 1861-1865 period is preserved for future generations. It has many state divisions and local camps. The Johnston Camp SCV was formed in the Nashville, Tennessee region and was recognized as camp of the SCV on June 22, 1898 and as a part of the Tennessee Division. The SCV, its divisions and camps raise funds to put commemorative markers, statues, artifacts and other works in public and private places to further its goal of preserving history. It raises funds to maintain and preserve historical sites and

monuments, including such memorials as dedicated to those who played a role in history as Confederate soldiers. The SCV, its divisions and camps also fund the marking of such sites so that they may be more easily located by those who have an interest in the history of that era. The SCV, its divisions and camps provide educational programs, historical research, publications, and other services to preserve history.

2. The Defendant, the State Capitol Commission, is a commission of the government of the State of Tennessee (hereafter referred to as “The Capitol Commission”). It was created by the Tennessee General Assembly in 1986 (T.C.A. §4-8-301) to formulate and develop a plenary master plan and program for the adoptive restoration and preservation of the Tennessee State Capitol, including the building and contiguous grounds.

3. The Defendant, the State of Tennessee, was formed by the Tennessee Constitution of 1796 having previously been a part of the State of North Carolina. It is the owner of the Tennessee Capitol.

4. Venue is appropriate in Davidson County pursuant to Tennessee Code Annotated § 20-4-101, *et seq.* because the cause of action arises in Davidson County, the real and personal property that is the subject matter of the action is in Davidson County and the Defendants are governmental entities operating in Davidson County.

5. This Court has subject matter jurisdiction pursuant to Tennessee Code Annotated § 27-8-101, *et seq.*, Tennessee Code Annotated § 27-9-101, *et seq.*, and Tennessee Code Annotated § 29-14-102, *et seq.*

II. STANDING

6. The Johnston Camp SCV brings this Complaint pursuant to the Tennessee Declaratory Judgment Act, §29-14-103 (2012).

7. The Johnston Camp SCV raised the funds to create the bust of Lt. General Nathan Bedford Forrest of the State of Tennessee which bust is presently located on the 2nd Floor of the Tennessee Capitol in the main hallway and which bust is the subject of this action.

8. The Johnston Camp SCV has participated in all the Capitol Commission hearings concerning the Forrest bust.

III. FACTS

9. In 1971, the Tennessee State Senate passed a Joint Resolution, with the concurrence of the House of Representatives, regarding the creation and placement of a historical bust of Confederate Lt. General Nathan Bedford Forrest (see attached Resolution marked Exhibit 1).

10. Senate Joint Resolution No. 54 specifically stated:

BE IT RESOLVED BY THE SENATE OF THE EIGHTY-EIGHTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE HOUSE OF REPRESENTATIVES CONCURRING, That the Tennessee Arts Commission is requested and directed to work with Jo Johnston Camp No. 28 of the Sons of Confederate Veterans, and any other person or organization which may be interested, toward procurement of a suitable heroic bust of General Nathan Bedford Forrest for display in an appropriate niche on the second floor of the Capitol.

11. Senate Joint Resolution No. 54 specifically directed that the bust of Tennessee General Nathan Bedford Forrest was to be placed “for display in an appropriate niche on the second floor of the Capitol.”

12. The Tennessee Legislature has its House and Senate chambers on the second floor of the Tennessee State Capitol and occupies substantially all, if not exclusively all, of the second floor for its official business and activities.

13. After the passage of Senate Joint Resolution No. 54 passed, the Johnston Camp SCV commenced private fund raising which took approximately 5 years for it to raise the funds for the creation of the Forrest bust.

14. In 1978, the Johnston Camp SCV presented to Senator Douglas Henry, a Democrat representing the citizens of Nashville, the bust of Confederate Lt. General Nathan Bedford Forrest of the State of Tennessee, in order that it should be placed as directed by Senate Joint Resolution No. 54 (1971) in a niche on the Second Floor of the Tennessee State Capitol.

15. The Forrest bust has remained in the hallway of the second floor of the Tennessee State Capitol.

16. In 2010, The Tennessee General Assembly enacted Tennessee Code Annotated § 4-8-101(a)(2) which provides as follows:

4-8-101. Care of buildings and fixtures - Preservation of order - Virtual Tour.

(a)(2) It is the duty of the department of general services, through the commissioner acting with approval of the speaker of the senate and the speaker of the house of representatives, to take care of and preserve the second floor of the state capitol, including all chambers, galleries, offices, rooms, hallways, balconies, storage areas and other spaces therein, and all associated furniture and fixtures and to keep the same in good order.

17. In August 2017, the Capitol Commission held a hearing on whether to move the Forrest bust from the second floor of the Capitol.

18. The Johnston Camp SCV participated in the hearing and opposed the removal of the Forrest bust.

19. On Thursday, February 20, 2020, the Capitol Commission held another hearing to discuss whether to move the Forrest bust not only from the second floor of the Capitol but to remove it entirely from the Capitol. Representatives of the SCV spoke against removal at that meeting.

20. During the February 20, 2020 Commission Meeting, a representative of the Johnston Camp SCV distributed copies of Tennessee Code Annotated § 4-8-101(a)(2) to the commission members and it was made a part of the Capitol Commission record of the meeting. (See Exhibit 2 - copy of Commission minutes.)

21. During the February 20, 2020 hearing, a representative of the Johnston Camp SCV asserted that pursuant to Tennessee Code Annotated § 4-8-101(a)(2), the Capitol Commission did not have jurisdiction or control over the second floor of the Capitol. (See Capitol Commission minutes dated February 20, 2020 and marked as Exhibit 2.)

22. On Thursday, July 9, 2020, the Capitol Commission held another hearing to determine whether to take action to remove the Forrest bust not only from the second floor of the Capitol but to remove it entirely from the Capitol.

23. The July 9, 2020, meeting of the Capitol Commission was held without adequate notice to the public. Further, the public was physically excluded from the meeting and only allowed to participate, if at all, by remote Zoom video conference participation.

24. At that July 9th, 2020 Capitol Commission hearing, the Johnston Camp SCV, through its attorney, spoke in opposition to remove the Forrest bust.

25. On Thursday, July 9, 2020, the Capitol Commission, voted 9-2 to petition the Tennessee Historical Commission for a waiver pursuant to Tennessee Code Annotated § 4-1-412 to relocate the bust of Confederate Lt. General Nathan Bedford Forrest from the second floor of the Tennessee State Capitol to the Tennessee State Museum.

COUNT I. DECLARATORY JUDGMENT

26. The Johnston Camp SCV incorporates by reference its allegations in all preceding paragraphs above as if fully set forth herein.

27. There presently exists a justiciable case or controversy involving the Capitol Commission, the State of Tennessee and the Johnston Camp SCV.

28. The Capitol Commission and the Johnston Camp SCV have adverse legal interests of sufficient immediacy to warrant the issuance of a declaratory judgment. The Capitol Commission apparently contends that it has authority under Tennessee Code Annotated § 4-6-301 *et.seq.* to give it jurisdiction to request a waiver from the Tennessee Historical Commission seeking to remove the Forrest bust.

29. The Johnston Camp SCV contends that the Capitol Commission lacks any jurisdiction over the Forrest bust or as to other matters related to the second floor of the Capitol.

30. The Johnston Camp SCV contends first that the Forrest bust, uniquely, was commissioned and its location directed by Senate Joint Resolution No. 54 (1971). In that the creation and placement of the Forrest bust on the second floor of the Capitol - the Legislature's floor - is a matter that was mandated by a Senate Joint Resolution, the Forrest bust cannot be removed unless a subsequent Senate Joint Resolution, with the concurrence of the House of Representatives, directs that such action be pursued. No such subsequent Senate Joint Resolution has been enacted or adopted. Therefore, because Senate Joint Resolution No. 54 mandated the creation and placement of the Forrest bust on the second floor of the Capitol, the Capitol Commission lacks all jurisdiction over the Forrest bust, its placement, removal or disposition.

31. Secondly and in addition to the foregoing, the Johnston Camp SCV contends that Tennessee Code Annotated § 4-8-10(a)(2) gives primary jurisdiction of the second floor of the

Capitol, including the placement and status of Forrest bust, to the Lt. Governor of the Senate and the Speaker of the House acting jointly. Further, to the extent that the action mandating the placement of the Forrest bust was a Senate Joint Resolution, with concurrence of the House, the Johnston Camp SCV submits that the Lt. Governor and Speaker must act in compliance with such a resolution or future resolution and may not exercise sole discretion over the matter in the absence of a relevant Senate Joint Resolution. As a result of this statute, the Capitol Commission did not have statutory jurisdiction over the Forrest bust and its vote on that matter is therefore null and void.

32. Third, the Heritage Protection Act, Tennessee Code Annotated § 4-1-412(c)(1) provides that “[a] public entity exercising control of a memorial may petition the commission for a waiver of subdivision (b)(1) or (b)(2), or both, if applicable.” As set forth herein, the Capitol Commission is not a “public entity” that has control over either the Forrest bust nor the contents or composition of the second floor of the Capitol and therefore lacks authority and it is not a proper party to adopt any action to seek a waiver from the Tennessee Historical Commission.

33. Fourth, to the extent that it may be determined that the Forrest bust is to be removed from the second floor of the Capitol by the State of Tennessee or any entity thereof, the Johnston Camp SCV seeks a ruling that a condition precedent to the donation of the Forrest bust by the Johnston Camp SCV to the State of Tennessee is that it would be forever displayed as directed by Senate Joint Resolution No. 54 (1971) and that if the Forrest bust is not so displayed by the State of Tennessee in its niche on the second floor of the Capitol that the Forrest bust must be returned by the State of Tennessee to the Johnston Camp SCV at the cost and expense of the State of Tennessee.

COUNT II. WRIT OF CERTIORARI

34. The Johnston Camp SCV incorporates by reference the allegations in all proceeding paragraphs above as if set forth herein.

35. Tennessee Code Annotated § 4-8-301 did not give the Capitol Commission jurisdiction to petition the Tennessee Historical Commission for a waiver to move or remove the Forrest bust.

36. Based upon Tennessee Code Annotated § 4-8-101(a)(2), the Tennessee Capitol Commission did not have jurisdiction of the second floor of the Capitol.

37. Based on Senate Joint Resolution No. 54 (1971) the Forrest bust and its placement were directed by direct legislative action and can only be altered by subsequent direct legislative action of equal or greater dignity.

38. Under Tennessee Code Annotated § § 4-1-412(c)(1) only a public entity that is “exercising control of a memorial” may petition the commission for a waiver. There is no express delegation of authority over either the Forrest bust or the second floor of the Capitol to the Capitol Commission. Therefore, the Capitol Commission is not a “public entity” that has control over either the Forrest bust nor the contents or composition of the second floor of the Capitol and it therefore lacks authority and it is not a proper party to adopt any action to seek a waiver from the Tennessee Historical Commission.

39. The Capitol Commission’s vote approving moving the Forrest bust by petition for waiver is null and void.

40. The action of the Capitol Commission to petition to move the Forrest bust exceeded its statutory authority and jurisdiction under applicable statutes as set out above.

41. The actions of the Capitol Commission were arbitrary, capricious and made with no basis in fact particularly in light of the requirements of the Heritage Protection Act, Tennessee Code Annotated § 4-1-412 that must be shown to justify a waiver.

42. The actions of the Capitol Commission occurred in a context where its actions violated the Open Meetings Act of the State of Tennessee and are therefore null and void. Specifically, there was inadequate notice to interested parties, there was inadequate or no opportunity to be heard or present evidence by interested parties, there were arbitrary and capricious time limits placed on some of those who were allowed to speak, including the representative of the Johnston Camp SCV, and interested public parties were excluded from the hearing and allowed to participate only by Zoom video conference whereas certain government witnesses including the Governor and members of the General Assembly were allowed to speak in person and without time limits.

WHEREFORE, premises considered, Plaintiff demands:

1. That proper process issue to the Tennessee Capitol Commission and the State of Tennessee requiring it to answer to the Complaint as required by law;
2. That this Court review the resolution and statutes in question and determine and declare which controls the second floor of the Tennessee State Capitol, specifically, the specific jurisdiction over the Forrest bust;
3. That this Court determine that the action of the Tennessee Capitol Commission on July 9, 2020, with respect to its approval of a petition for waiver to move the Forrest bust are null and void;
4. For an award of all costs, expenses and attorney fees;
5. For such general and further relief as may be appropriate.

OATH

I declare, certify, verify or state under penalty of perjury the foregoing factual allegations are true and correct. This is the first application for the *writ of certiorari*.

Paul R. White

Signature

Commander, Joseph E. Johnston, Camp # 28, Sons of Confederate Veterans

PAUL R. WHITE

Print Name

August 14, 2020

Date of signature

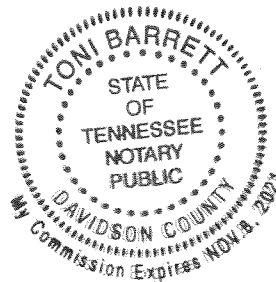
Sworn to and subscribed before me, the undersigned Notary Public, on this 14th day of August, 2020.

Toni Barrett

Notary Public

November 8, 2021

Commission expiration date



THIS IS THE FIRST APPLICATION FOR A WRIT OF CERTIORARI IN THIS MATTER.

Respectfully submitted:

/s/ Douglas E. Jones

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