

**IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA**

Georgia Division, Sons of)
Confederate Veterans, Inc.,)
a Georgia Corporation;)
The Confederate Memorial)
Camp #1432 of the Sons of)
Confederate Veterans;)
Richard Kevin Straut;)
Thomas M. McConnell;)
Eric Robert Howell;)
Joseph Newton;)
Philip J. Autrey)

Plaintiffs,)

V.)

BRYAN A. DOWNS,)
In his official capacity as)
City Attorney of the City of)
Decatur, Georgia,)

And)

ROBERT PATRICK, JEFF)
RADER, LARRY)
JOHNSON, STEVE)
BRADSHAW, MERIDA)
DAVIS JOHNSON,)
EDWARD TERRY, and)
LORRAINE COCHRAN-)
JOHNSON, Individually)
and in their official)
capacities as)
COUNTY COMMISSIONERS)
DEKALB COUNTY, GEORGI)

Defendants.

CIVIL ACTION

FILE NO. 21CV5239

**Waiver of Service under the provisions of
Georgia's Civil Practice Act, O.C.G.A. § 9-11-4(d)**

The undersigned Defendant above named hereby waives other and further service of Plaintiffs' Petition, Requests for Admissions, and First Interrogatories, and acknowledges receipt thereof and of the Summons filed on June 17, 2021, and shows that miniature copies thereof are attached hereto as Exhibit A.

By executing this waiver, the undersigned is not waiving any objection to the venue or to the jurisdiction of the court over the person of the defendant.

The undersigned recognizes that counsel for Plaintiffs is listed below and in the pleadings displayed in Exhibit A. The undersigned agrees and denominates the following to be his or her attorney of record in this case until further notice to the court:

Address: _____ >
Phone : _____.
Email: _____.

In witness whereof the undersigned signs this waiver as above set forth, this _____ of June, 2021.

_____.

Signed before me the *day of June*,
2021. _____, Notary
Public

Exhibit A: Initial pleadings (Petition, Interrogatories, Requests for Admissions)

**IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA**

| | | |
|------------------------------|---|--------------|
| Georgia Division, Sons of |) | |
| Confederate Veterans, Inc., |) | |
| a Georgia Corporation; |) | CIVIL ACTION |
| The Confederate Memorial |) | |
| Camp #1432 of the Sons of |) | FILE NO. |
| Confederate Veterans; |) | _____. |
| Richard Kevin Straut; |) | |
| Thomas M. McConnell; |) | |
| Eric Robert Howell; |) | |
| Joseph Newton; |) | |
| Philip J. Autrey |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| V. |) | |
| |) | |
| BRYAN A. DOWNS, |) | |
| In his official capacity as |) | |
| City Attorney of the City of |) | |
| Decatur, Georgia, |) | |
| And |) | |
| ROBERT PATRICK, JEFF |) | |
| RADER, LARRY |) | |
| JOHNSON, STEVE |) | |
| BRADSHAW, MERIDA |) | |
| DAVIS JOHNSON, |) | |
| EDWARD TERRY, and |) | |
| LORRAINE COCHRAN- |) | |
| JOHNSON, Individually |) | |
| and in their official |) | |
| capacities as |) | |
| COUNTY COMMISSIONERS |) | |
| DEKALB COUNTY, GEORGI |) | |
| |) | |
| Defendants. |) | |

**PETITION TO RESTORE HISTORIC MONUMENT TO THE
PUBLIC SQUARE OF DEKALB COUNTY
AND
TO SET ASIDE THE PREVIOUS ORDER OF THE SUPERIOR
COURT IN CIVIL ACTION 20CV4505-3**

COME NOW the Georgia Division, Sons of Confederate Veterans, Inc., a Georgia Corporation (“the S.C.V.”), The Confederate Memorial Camp #1432 of Sons of Confederate Veterans, Richard Kevin Straut, Thomas M. McConnell, Eric Robert Howell , Joseph Newton, Philip J. Autrey, Plaintiffs in the above styled action who move this Honorable Court pursuant to O. C. G. A. §9-11-60(d) (Section 60(d) of the Civil Practice Act) and files this, its Complaint to set aside the judgment entered in **CIVIL ACTION 20CV4505-3** whereby Defendants got the Superior Court of the County—*in just three days of supposed litigation*-- to order the removal of the Confederate monument (“the Obelisk”) that had stood upon the Courthouse Square (“the Square”) since 1908.

Plaintiffs show:

1.

Plaintiff S.C.V. is an organization that honors the patriotic military service of those Georgians who fought in the war of 1861-65 (“the War”). It has numerous local camps of which Plaintiff The Confederate Memorial Camp #1432 of the Sons of Confederate Veterans (hereinafter “Camp #1432) is active in DeKalb County is a sub-unit highly concerned with the preservation and protection of historical monuments and markers commemorating the histories and the valor of the citizens of DeKalb County.

2.

Plaintiffs Richard Kevin Straut, Thomas M. McConnell, Eric Robert Howell, Joseph Newton, Philip J. Autrey, are all members of Camp #1432; Plaintiffs Newton and Autrey are residents of DeKalb County.

3.

Defendants Robert Patrick, Jeff Rader, Larry Johnson, Steve Bradshaw, Merida Davis Johnson, Edward Terry, and Lorraine Cochran-Johnson are members of the Board of Commissioners of DeKalb County and are subject to the jurisdiction of this court.

4.

Defendant Bryan A Downs is the City Attorney of Decatur, Georgia, who was the Plaintiff in **CIVIL ACTION 20CV4505-3** , which said action was brought by him in his official capacity alleging that the Obelisk constituted a nuisance.

STANDING

5.

Plaintiffs have standing to bring this action pursuant to O.C.G.A. § 50-3-1 wherein historical monuments in Georgia are to be protected

and may not be moved, destroyed, concealed or otherwise disturbed except as provided in said section.

6.

Plaintiffs also have the right and standing to bring this action under the provisions of O.C.G.A. § 9-11-60 [Relief from judgments] (a), (b) and (d).

PROCEDURAL HISTORY

7.

On June 10, 2020 Defendant Downs filed the City of Decatur's Complaint against DeKalb County claiming that the Obelisk belonged to Defendant DeKalb County and had become a nuisance in that it was being vandalized and threatened by mobs. The case was duly docketed and assigned the number **CIVIL ACTION 20CV4505-3**.

8.

To the best of Plaintiffs' knowledge and belief, because of Covid-19 restrictions the public could not attend or participate in the video hearing that was held June 12, 2020, and the video conference was not advertised to the public.

9.

Plaintiffs and those similarly situated were given no opportunity to move to intervene and no discovery was conducted.

10.

DeKalb County filed no response to the Complaint but did participate in the said video conference with Defendant Downs and Superior Court Judge Clarence Seeliger on June 12, 2020. On that very day, Judge Seeliger issued the order of June 12, 2020, ("the Order") Plaintiff now seeks to set aside.

11.

The general public was not given notice of or the opportunity to give input and/or apply for joinder so they might forestall and warn against the aforesaid rush to judgment and the mistakes made by the Court in promulgating the Order.

12.

The trial court entered the Order wherein it found that the Obelisk that is the subject of this suit was and is a "public nuisance". However, there is not one scintilla of evidence that any member of the public – or indeed the public as a whole- has ever been harmed by any force, condition, or phenomenon- natural or unnatural- emanating or originating from the Obelisk and spreading out into the general public. Rather the claim of "public nuisance" has its basis in the intense dislike that many people have for the Obelisk because of its close association with the Confederate States of America ("The Confederacy"), a political entity that existed on this portion of the North American continent

from 1861 to 1865 and which the State of Georgia had joined after first passing its Ordinance of Secession on January 19, 1861.

13.

The Obelisk was moved off the Square around midnight on June 18, 2020. Plaintiffs presume that it has been in storage somewhere ever since.

14.

A set forth below, Plaintiffs are entitled to have the Defendants ordered to restore the Obelisk to its place of honor from which they had it removed.

COUNT ONE: O.C.G.A. 9-11-60[Relief from judgments]

15.

Plaintiffs have the right and standing to bring this action under the provisions of O.C.G.A. § 9-11-60 [Relief from judgments] (a), (b) and (d), as follows.

16.

O.C.G.A. § 9-11-60 **(a) Collateral attack.** [provides that] A judgment *void on its face* may be attacked in any court by *any* person. [Emphasis added]

The Order is void on its face in that the Court on the first page of the Order. After making no findings of fact as required by O.C.G.A. § 9-14-49 (2010), Judge Seeliger found the Obelisk to be “*public nuisance*” even though O.C.G.A. § 41-1-3 clearly states:

Nuisances are either public or private. A public nuisance is one which damages *all* persons who come within the sphere of its operation, though it may vary in its effects on individuals. A private nuisance is one limited in its injurious effects to one or a few individuals. [emphasis supplied]

17.

The Order is also void upon its face as being in direct violation of O.C.G.A. § 41-1-8, to wit:

(a) It is declared the public policy of this state to conserve, protect, and encourage the development of publicly owned cultural facilities. In order to encourage the establishment and maintenance of publicly owned cultural facilities, it is the purpose of this Code section to limit the circumstances under which a publicly owned cultural facility may be deemed to be a nuisance.

(b) Neither a publicly owned cultural facility nor a facility operated on lease from a publicly owned cultural facility nor any of the appurtenances thereof nor the operation thereof shall be or become a nuisance, either public or private, solely as a result of changed conditions in or around the locality of such cultural

facility if such cultural facility has been in operation for one year or more.

18.

O.C.G.A. § 9-11-60 **(b) Allows direct attack** to set aside the aforesaid void order, providing:

A judgment may be attacked by motion for a new trial or motion to set aside. Judgments may be attacked by motion only in the court of rendition.

19.

O.C.G.A. § 9-11-60 **(d) (1)** provides that a motion to set aside a judgment may be based upon:

(1) Lack of jurisdiction over the person or the subject matter;

Once the Court hit or should have hit the definition of a *public nuisance* [Paragraph 11 above] and the barriers to frivolous declarations thereof barred by O.C.G.A. § 41-1-8 it lost jurisdiction over the case as brought.

20.

O.C.G.A. § 9-11-60 **(d) (2)** provides that a motion to set aside a judgment may be based upon:

(2) Fraud, accident, or mistake or the acts of the adverse party unmixed with the negligence or fault of the movant;

While reluctant to allege fraud on the part of the Defendants, Plaintiffs show that the Defendants' alleged litigation in CIVIL ACTION 20CV4505-3 with each other was rushed, collusive, and was misbegotten by mistake in that it was a "lawyer-too-clever" way to misuse O.C.G.A. § 41-1-3 quickly to accomplish a political goal without having to run afoul of O.C.G.A. § 50-3-1 (b) (2).

21.

Plaintiffs further note that actual fighting occurred around the Square and along DeKalb Avenue in July of 1864, during the War when Georgia troops attacked United States troops encircling Atlanta and cutting its rail links to the East.

22.

Neither Plaintiffs-Movants in this case nor any or all of those groups and DeKalb County citizens similarly-situated were negligent, nor had they notice or opportunity to be involved in the rushed, alleged litigation between the Defendants in CIVIL ACTION 20CV4505-3.

23.

Plaintiffs cannot be deemed to have "mixed in" the creation of the legal mistakes made by the court in issuing the Order in CIVIL ACTION 20CV4505-3.

24.

The lawsuit that resulted in the *public nuisance* finding was clearly not an adversarial proceeding and even has the earmarks of a collusive action on behalf of the parties therein who are named Defendants in this case. As such CIVIL ACTION 20CV4505-3 was not a

“case or controversy” that the DeKalb County Superior Court was authorized to adjudicate, and it must now be dismissed because of that court’s lack of subject matter jurisdiction.

25.

Plaintiffs are entitled to have the Order in CIVIL ACTION 20CV4505-3 set aside.

**COUNT TWO: DEFENDANTS’ VIOLATIONS OF O.C.G.A.
§ 50-3-1 (b) (2)**

26.

All of the allegations set forth in the foregoing paragraphs of this Complaint are incorporated in this Count.

27.

The acts of Defendants aforesaid were and are in violation of O.C.G.A. § 50-3-1 (b) (2) prohibitions upon illegal hiding and removals of historic monuments.

28.

Plaintiffs are entitled to have Defendants ordered to restore the Obelisk to its former place of honor on the Square of DeKalb County.

29.

Plaintiffs are entitled to have Defendants ordered to reimburse them for the attorneys’ fees they incur in asserting these lawful claims.

WHEREFORE Plaintiffs pray that this Honorable Court grant this Motion to Set Aside and Annul the Order entered in **CIVIL ACTION 20CV4505-3** on June 12, 2020 and to grant them all other and further relief as to the court may appear just under the extraordinary circumstances of this case, including granting Plaintiffs reasonable attorneys’ fees.

This the 16th day of June, 2020.

Walker Chandler

Attorney for Plaintiffs

Georgia Bar No. 120675

101 Gleneagle Point

Peachtree City, GA 30269

Telephone: 770 468 6538

walker@chandlerandchandlerlaw.com

**IN THE SUPERIOR COURT OF DEKALB COUNTY
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Georgia Division, Sons of Confederate
Veterans, Inc., a Georgia Corporation;
The Confederate Memorial Camp
#1432 of the Sons of Confederate
Veterans;
Richard Kevin Straut;
Thomas M. McConnell;
Eric Robert Howell;
Joseph Newton;
Philip J. Autrey

Plaintiffs

V.

BRYAN A. DOWNS,
In his official capacity as City
Attorney
Of the City of Decatur, Georgia,
And

ROBERT PATRICK, JEFF RADER,
LARRY JOHNSON, STEVE
BRADSHAW, MERIDA DAVIS
JOHNSON, EDWARD TERRY, and
LORRAINE COCHRAN-JOHNSON,
Individually and in their official
capacities as
COUNTY COMMISSIONERS OF
DEKALB COUNTY,

Defendants.

CIVIL ACTION

FILE NO. _____.

PLAINTIFFS' FIRST AND CONTINUING INTERROGATORIES

Plaintiffs hereby serve upon each of the Defendants the following First Interrogatories, requiring an answer to them as required by law. These interrogatories are propounded pursuant to the provisions of O.C.G.A. § 9-11-33, as amended, and shall be continuing in nature, requiring supplemental answers as provided by law, prior to a trial of the case.

The following definitions and instructions are applicable to each Interrogatory unless negated by the context.

DEFINITIONS AND INSTRUCTIONS

(a) The words “You” or “Your” shall refer to you whether you were acting in you individual, official, or legislative capacity with respect to the subject matter of the interrogatory;

(b) Whenever in these Interrogatories there is a request to identify a person that is a natural person, set forth: (1) his or her full name; (2) his or her present or last known resident address and telephone number.

(c) Whenever in these Interrogatories there is a request to identify a person that is an organization or other entity not a natural person, set forth: (1) the full name of such organization; (2) the addresses of such organization; and (3) the form of such organization (e.g., corporation, partnership, joint venture, etc.).

Special definitions notes:

When used herein, the term the *Obelisk* refers to the monument to Confederate (Georgia) veterans that stood on the courthouse square of DeKalb County until it was removed during the summer of 2020.

The term *the Square* refers to the Courthouse Square of DeKalb County, Georgia. The term *the Action* refers to the 2020 DeKalb County Superior Court case denominated CIVIL ACTION 20CV4505-3 that was ruled upon by Judge Clarence Seeliger.

The term *the Order* refers to Judge Seeliger’s order of June 12, 2020, in the Action.

INTERROGATORIES

1.

Identify each person with whom you spoke concerning the Action before the Order was promulgated, including the dates and times of those conversations and the nature thereof.

2.

Identify your role in the Action that resulted in the Order being promulgated by Judge Seeliger.

3.

Please identify whether or not you opposed the City of Decatur’s attempt to get the Superior Court to declare the Obelisk to be a public nuisance.

4.

Please identify any speeches or appearances you made in the year 2020 in which you voiced support for or opposition to the Action’s attempt to get the Superior Court to declare the Obelisk to be a public nuisance.

5.

Identify the company and all individuals involved in the physical removal of the Obelisk on June 18-19, 2020.

6.

Identify where the Obelisk was initially placed on or after June 18th and 19th, 2020, and each and every place or facility where it has been stored or disposed of since.

7.

Identify where the Obelisk is now.

8.

Identify each and every police report made in the year 2020 and 2021 concerning the Obelisk.

9.

Identify each person you may call as a witness in the above styled case.

10..

Identify each person who assisted in preparing these responses.

11.

Identify each person whom you believe has any knowledge as to the claims and/or counterclaims in this case. For each such person, please identify their relationship to you and describe the knowledge this person may have.

12.

If you contend that the Obelisk prior to June 12, 2020, was a *public* nuisance as same is defined by O.C.G.A. § 41-1-3¹, please state each and every *fact* you may assert in support of that contention.

13.

Identify any person suffering any injury of any kind emanating in any form from the presence of the Obelisk on the Square since 2018.

14.

Please identify what treatments (medical, psychological, etc.), if any, any and all people identified in response to interrogatory #13 above has or have undergone as a result of such injury or injuries.

15.

Please identify any professional treating any injury identified in response to interrogatory #14 above.

So requested that you answer the foregoing, in writing, and serve all such responses upon the undersigned, this 16th of June, 2021.

Walker Chandler

Attorney for Defendant, Georgia Bar No. 120675

101 Gleneagle Pt., Peachtree City, Ga 30269

Tel. 770 468 6538 walker@chandlerandchandlerlaw.com

¹ O.C.G.A. § 41-1-3: Nuisances are either public or private. A public nuisance is one which damages *all* persons who come within the sphere of its operation, though it may vary in its effects on individuals. A private nuisance is one limited in its injurious effects to one or a few individuals. [emphasis supplied]

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BRYAN A. DOWNS,)
In his official capacity as City)
Attorney)
Of the City of Decatur, Georgia,)
And)
ROBERT PATRICK, JEFF)
RADER, LARRY JOHNSON,)
STEVE BRADSHAW, MERIDA)
DAVIS JOHNSON, EDWARD)
TERRY, and LORRAINE)
COCHRAN-JOHNSON,)
Individually and in their official)
capacities as)
COUNTY COMMISSIONERS OF)
DEKALB COUNTY, GEORGIA,)
Defendants.

PLAINTIFFS' FIRST REQUESTS FOR ADMISSIONS

COME NOW Plaintiffs and request pursuant to O.C.G.A. § 9-11-36(a) that each Defendant admit the matters set forth below, or deny same in writing as required by law within 45 days of the service of the Complaint upon you, or your acknowledgement of service, whichever is earlier] , and to serve a copy of all such responses upon the undersigned attorney for Plaintiffs at the address below given, said attorney hereby giving Defendants notice that should a Defendant fail either to admit or deny the following statements he or she will be held as a matter of law to have judicially admitted the truth of the Request, all accordance with the foregoing provisions of the Georgia Code.

Special definitions note:

When used herein, the term the *Obelisk* refers to the monument to Confederate(Georgia) veterans that stood on the courthouse square of DeKalb County until it was removed during June of 2020.

The term *the Square* refers to the Courthouse Square of DeKalb County, Georgia. The term *the Action* refers to the 2020 DeKalb County Superior Court case denominated CIVIL ACTION 20CV4505-3 that was ruled upon by Judge Clarence Seeliger.

The term *the Order* refers to Judge Seeliger's order of June 12, 2020, in the Action.

Each named Defendant is requested to admit as follows:

1. Defendant admits that the Court has jurisdiction over him.
2. Defendant admits that the Obelisk was and is an historic monument as defined by O.C.G.A. § 50-3-1 .
3. Defendant admits that the Obelisk stood on the Square for not less than 100 years.
4. Defendant admits that the presence of the Obelisk did not offend all of the people of DeKalb County in the year 2020.
5. Defendant admits that the Action was filed on June 10, 2020.
6. Defendant admits that the Action was brought by the City of Decatur against DeKalb County
7. Defendant admits that the Action was brought by the City of Decatur against DeKalb County as a nuisance complaint.
8. Defendant admits that DeKalb County filed no written response and did not defend the Obelisk from the claims of the City of Decatur.
9. Defendant admits that there was no public announcement prior to its occurrence of the June 12, 2020, hearing in the Action that resulted in the Order.
10. Defendant admits that only 2 days elapsed between the filing of the Action and Judge Seeliger's filing of the Order.
11. Defendant admits that the Board of Commissioners of DeKalb County cooperated with the City of Decatur to secure the Order.
12. Defendant admits that the Obelisk was removed from the Square on or about June 18, 2020.
13. Defendant admits that not one member of the public – or indeed the public as a whole- had ever been harmed by any force, condition, or phenomenon- natural or unnatural- emanating or originating from the Obelisk and spreading out into the general public.

14. Defendant admits that the claim that the Obelisk was a “public nuisance” had its basis in the intense dislike that some people had for the Obelisk because of its close association with the Confederate States of America (“The Confederacy”), a political entity that existed on this portion of the North American continent from 1861 to 1865.
15. Defendant admits that the Obelisk has been kept in an undisclosed location since June 19, 2020.
16. Defendant admits that the Obelisk has been either discarded or destroyed.
17. Defendant admits that the Order is void on its face as the Obelisk did not meet the legal definition of being a public nuisance.
18. Defendant admits that neither the Plaintiffs-Movants in this case nor any or all of those groups and DeKalb County citizens similarly-situated were negligent in failing to oppose the City of Decatur in the Action, nor had they notice or opportunity to be involved in the rushed “litigation” between the parties to the Action.
19. Defendant admits that should Plaintiffs prevail in this case they will be entitled to attorneys’ fees and to have DeKalb County put the Obelisk back on the Square.
20. Defendant admits that the General Assembly of Georgia passed an Ordinance of Secession in 1861.
21. Defendant admits that men of DeKalb County served as soldiers, marines, and sailors of the State of Georgia during the War of 1861-65.
22. Defendant admits that men of DeKalb County served as soldiers, marines, and sailors of the State of Georgia during the War of 1861-65 and that some of those men were of multiracial ethnicities.
23. Defendant admits that DeKalb County allowed the Obelisk to be placed on its Square to honor the soldiers, marines, and sailors who served the State of Georgia during the War.

So requested that you admit or deny the foregoing, this 16th of June, 2021.

Walker Chandler
Georgia Bar No. 120675
Attorney for Defendant
101 Gleneagle Pt., Peachtree City, Ga 30269
Tel. 770 468 6538
walker@chandlerandchandlerlaw.com