

App. 1

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 18-50710

---

DAVID MCMAHON; STEVEN LITTLEFIELD;  
TEXAS DIVISION, SONS OF CONFEDERATE  
VETERANS, INCORPORATED,

Plaintiffs - Appellants

v.

PRESIDENT GREGORY L. FENVES,  
In His Official Capacity as President  
of the University of Texas at Austin,

Defendant - Appellee

\*\*\*\*\*

Consolidated with 18-50800

RICHARD BREWER; TEXAS DIVISION, SONS OF  
CONFEDERATE VETERANS, INCORPORATED,

Plaintiffs - Appellants

v.

RON NIRENBERG, Mayor of the City of San Antonio,  
In his Individual Capacity; ROBERTO TREVINO,  
San Antonio City Councilman in his Individual  
Capacity; WILLIAM SHAW, San Antonio City  
Councilman in his Individual Capacity; REBECCA  
VIAGRAN, San Antonio City Councilman in her  
Individual Capacity; REY SALDANA, San Antonio  
City Councilman in his Individual Capacity;  
SHIRLEY GONZALES, San Antonio City

App. 2

Councilman in her Individual Capacity; GREG BROCKHOUSE, San Antonio City Councilman in his Individual Capacity; ANA SANDOVAL, San Antonio City Councilman in her Individual Capacity; MANUEL PALAEZ, San Antonio City Councilman in his Individual Capacity; JOHN COURAGE, San Antonio City Councilman in his Individual Capacity; CLAYTON PERRY, San Antonio City Councilman in his Official Capacity; CITY OF SAN ANTONIO,

Defendants - Appellees

No. 18-50710 c/w

No. 18-50800

---

Appeals from the United States District Court  
for the Western District of Texas

---

(Filed Jan. 3, 2020)

Before CLEMENT, ELROD, and DUNCAN, Circuit  
Judges.

EDITH BROWN CLEMENT, Circuit Judge:

This consolidated case involves First Amendment and state-law challenges to the removal or relocation of Confederate monuments from a San Antonio park and on the University of Texas's Austin campus. In the University case, David McMahon, Steven Littlefield, and the Texas Division of the Sons of Confederate Veterans sued the University of Texas to reverse its decision to relocate several Confederate statues. In the San Antonio case, Richard Brewer and the Texas Division

## App. 3

of the Sons of Confederate Veterans first moved to temporarily restrain the City of San Antonio from removing a Confederate monument and two cannons from a City park and then moved to compel their reinstallation. Both district courts dismissed Plaintiffs' First Amendment claims for lack of standing and then declined to exercise supplemental jurisdiction over their state-law claims. Plaintiffs appealed. We affirm the district courts' dismissals.

### I.

In the early 1900s, Major George Littlefield, a Civil War veteran, donated funds to the University of Texas to build a "massive bronze arch over the south entrance to the campus," a statue of President Woodrow Wilson, and statues of five Confederate leaders: Jefferson Davis, Robert E. Lee, Albert Sidney Johnston, and John H. Reagan. The University placed the statues on its campus in the 1930s, but never built the arch.

About a century later, University President Gregory Fenves had the statues relocated. Plaintiffs David McMahon, Steven Littlefield, and the Texas Division of the Sons of Confederate Veterans sued to enjoin the University—first in state court and then in federal court in Austin—to reverse its decision to relocate the statues. *See McMahon v. Fenves*, 323 F. Supp. 3d 874 (W.D. Tex. 2018). The Texas trial court dismissed the suit for lack of standing; the Texas court of appeals affirmed; the Texas Supreme Court denied review. *See*

App. 4

*Bray v. Fenves*, No. 06-15-00075-CV, 2016 WL 3083539 (Tex. App.—Texarkana Mar. 24, 2016, pet. denied) (mem. op.).

Plaintiffs’ federal complaint alleges First Amendment and Texas Monument Protection Act violations and claims that the Board of Regents breached the bequest agreement and exceeded its authority over the University. The Sons of Confederate Veterans are a non-profit organization, and McMahon and Littlefield claim to be “descendant[s] of Confederate veterans,” with Littlefield a descendant of Major Littlefield. Fenves moved to dismiss for lack of subject-matter jurisdiction, arguing that Plaintiffs lacked standing because they did not suffer a concrete and particularized injury. The district court granted Fenves’s motion, holding that Plaintiffs’ familial ties to Confederate veterans did not mean that relocating Confederate statues, which allegedly silenced Plaintiffs’ political viewpoint, caused them a cognizable injury. *McMahon*, 323 F. Supp. 3d at 879-81. The court, citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 576 (1992), stated that “[o]ur system of governance assigns the vindication of value preferences to the democratic political process, not the judicial process.” *Id.* at 880. After the court dismissed Plaintiffs’ First Amendment claim, it declined to exercise supplemental jurisdiction over their remaining state-law claims. *Id.* at 881-82.

In the San Antonio case, the City Council gave the United Daughters of the Confederacy permission to erect a “Confederate Monument” in a City park in 1899. About ten years later, the City placed two

App. 5

cannons next to the monument. According to meeting minutes from the Albert Sidney Johnston Camp of the United Confederate Veterans, Congress donated the cannons “for the benefit of the Confederate Camp.”<sup>1</sup>

About a century later, the City Council passed an ordinance to remove the monument and cannons from the park. The Texas Division of the Sons of Confederate Veterans, this time with Richard Brewer, sued the City in federal court in San Antonio. *See Brewer v. Nirenberg*, No. SA:17-CV-837-DAE, 2018 WL 8897851 (W.D. Tex. Sept. 17, 2018). They moved for a temporary restraining order to prevent the City from removing the monument and cannons. The district court denied the motion, but ordered the City to remove the monument “in such a manner as to preserve [its] integrity,” and further, that it “be stored in a secure location in order to protect it from damage or from being defaced[,] pending resolution of this lawsuit.” *Id.* at \*1. Plaintiffs then amended their complaint, adding as Defendants the City Councilmembers in their individual capacities and alleging claims for First Amendment and Texas Antiquities Code violations, for rendering impossible a charitable gift’s purpose, and for conversion. The City moved for summary judgment on all Plaintiffs’ claims, and the individual Defendants moved to dismiss.

The district court granted the City’s summary-judgment motion on Plaintiffs’ First Amendment claim,

---

<sup>1</sup> Presumably, “Confederate Camp” refers to the Albert Sidney Johnston Camp.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.