

SUBJECT: Report on the Supreme Court Plaques Case

Yesterday, January 11th, the division was well represented in the Third Circuit Court of Appeals by our lawyer, Mr. Bill Kuhn. Present in the gallery was Texas Land Commissioner Jerry Patterson, Lt. Commander H.G. Manning, Division SJA Jim Farrar, Governmental Affairs Chairman Jerry Nelson, Public Relations Officer Marshall Davis, Virginia Kuhn and her daughter, and Mr. Terry Ayers.

The following is Bill Kuhn's summary of the arguments made by both him and Texas Attorney General Moorehead;

Attorney Arguments:

- a. We argued that neither the current or original plaques are covered by the language of the 2001 statute, either by common understanding of the wording, or by rules of interpretation such as being constitutional, keeping the Courts separate from the legislature, and considering the circumstances at time of the statute's enactment. Alternatively, if the 2001 statute applies, it requires the plaques be returned to "a place of prominence" since they were removed for "maintenance." This part of that law has been ignored by the State.
- b. We argued that the Constitutional amendment used to erect the government buildings using the Confederate Pension Fund, was also violated, and that, at a minimum, the Declaratory Judgment Act gives the Court jurisdiction to grant a Declaration of rights and award attorneys' fees.
- c. Attorney General Moorehead argued that anything regarding the plaques constitutes "removal, relocation, or alteration" under the 2001 law that we helped pass and, therefore, the Court has no jurisdiction because it is not an enumerated protective body under the statute. That is a true statement, however, I argued that we do not believe the 2001 law is germane to our case since the case predates the passage of that law and there was no grandfather clause included with the 2001 law. Had the legislature wanted the statute to preclude lawsuits such as ours then they could easily have included language to accomplish that. The fact that they did not seems to speak to the Will of the Legislature at the time of passage.
- d. Mr. Moorehead argued that the cornerstone in the foundation of the Supreme Court building sufficiently satisfies the dedication requirements of the Constitutional Amendment.

The Court's questions and comments were:

- a. Our Motion was dismissed as moot due to the jurisdictional ruling, which may mean that Motion goes back to the trial court, if we win the appeal, rather than being affirmatively decided by the appeals court.
- b. Separation of Powers and traditional court functions of law enforcement, as opposed to "judicial activism" were favorably discussed to our advantage.
- c. The judges understand that even if the cornerstone satisfies the Amendment (see 1.d above), the Defendants admittedly broke about five different laws, and this case comes down to how to interpret the 2001 statute.
- d. The judges, themselves, indicated that the THC and the Legislature are not the most appropriate bodies to protect historical markers or enforce laws relating to them.
- e. Mr. Morehead gave us great help by admitting that we have "thousands of markers" in this State, talking about a case that DOES NOT hold that a non-retroactive statute can deprive an existing litigant of his remedies, and seemed to say that if the President of UT wanted to remove the Jeff Davis statue, that a Court COULD enter an injunction. How that helps him with this case is beyond me since if courts have jurisdiction to protect the Jefferson Davis statue on the UT campus, then they have jurisdiction on all historical marker issues!
- f. I thought the Court seemed to nod approvingly when I discussed how ludicrous it would be to leave historical marker protection to the toothless THC or the legislature in the context of somebody in Texarkana or El Paso tearing down monuments. Also, in the discussion back and forth the fact that this statute was not made retroactive when passed was also argued positively.

Summary.

NOTE: In paragraph e above, Bill refers to the fact that Mr. Moorehead "seemed to say that the 2001 law would preclude the UT President from removing the Jefferson Davis statue". Actually, that is precisely what he said much to the surprise and utter enjoyment of those of us present at the proceedings. We attempted to get a recording or transcript of the proceedings but, alas, found that the court has neither for oral arguments. Still, the words were clearly stated in front of many witnesses. We WILL use them in the future should UT attempt to remove any of the statues on the south lawn of the campus.

The Texas Division, by continuing with the judicial process in the Plaques case, continues to seek redress for egregious acts by elected officials of this state against the citizens they swore to represent. It is our duty to see that monuments erected a mere fifty years ago are not now targets for removal on the altar of political correctness. The fight continues and I ask all our compatriots to remain stalwart and positive in the outcome of this effort. I continue to believe that we can yet prevail!