

STANDING TO CHALLENGE REMOVAL OF CONFEDERATE PARK MONUMENTS

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In general, the jurisdiction of federal courts is limited to hearing cases or controversies involving real legal injury or loss to particular individuals or groups based in federal law or the Constitution. Accordingly, the limited role of the federal courts will not provide legal redress for every social grievance. Political and policy grievances of a generalized nature are better left for consideration by the legislative branch, not the federal judiciary. As a result, many of these cases involving generalized public policy grievances are dismissed without any consideration of the merits of a particular claim by a federal court. In so doing, a federal court finds the parties bringing the claim lack the requisite individualized injury to establish the necessary legal "standing" to bring the lawsuit in the first place.

Removal of Confederate monuments and statues Confederacy from parks and public spaces has generated a lot of public debate and controversy. In April 2017, the City of New Orleans began removing several Confederate monuments from public land, including a statue of Robert E. Lee erected in 1884. In August 2017, a white nationalist demonstration against the proposed removal of another statue of Robert E. Lee from a Charlottesville Virginia park (erected in 1924) prompted a violent clash between protesters and counter protesters.

SEE: [Content-Based Park Permit Decisions Unconstitutional](http://cehdclass.gmu.edu/jkozlow/s/lawarts/10OCT17.pdf)
<http://cehdclass.gmu.edu/jkozlow/s/lawarts/10OCT17.pdf>

Following the violence in Charlottesville, the City of Baltimore began removing a number of Confederate monuments and statues which had been erected in public parks and spaces in the first half of the twentieth century.

In addition to demonstrations and protests, individuals and groups, in particular the Sons of Confederate Veterans (SCV), have sought legal redress in the federal courts to block the removal of these Confederate statues and monuments from public parks and spaces. In so doing, however, these individuals and groups must overcome a very substantial procedural hurdle before a federal court will even consider the merits of their claims to block the actions of their local government. As illustrated by the case described herein, a plaintiff seeking judicial review of actions by local governments must first establish "standing," i.e., a particularized injury to a vested individual legal right or interest.

CONFEDERATE MONUMENT REMOVAL

In the case of *Patterson v. Rawlings*, 2018 U.S. Dist. LEXIS 19873 (N.D. Tex. 2/7/2018), the federal district court had to determine whether an individual taxpayer and an organization could challenge the removal of a statue of General Robert E. Lee from City property in Dallas, Texas.

In 2017, the City's Mayor and City Council of Dallas adopted a resolution ("Resolution") directing the City Manager to immediately remove the Alexander Phimster Proctor monument of

MAY 2018 LAW REVIEW

Robert E. Lee at Lee Park, located on City property, and safely store it until a mayoral task force could make recommendations concerning the statue's disposition. The Resolution authorized the City Manager to transfer funds or appropriate funds from excess revenue to remove the Lee Statue and to take appropriate actions to seek private funding to reimburse the expenses associated with this action.

In addition to removing the Lee Statue, the City was also planning to remove the Confederate War Memorial in Pioneer Park Cemetery, the Confederate Memorial in Confederate Cemetery, and the Confederate public art in Fair Park.

Plaintiffs Hiram Patterson and Texas Division, Sons of Confederate Veterans, Inc. (hereinafter referred to collectively as "SCV") filed a lawsuit against the Mayor and City Council, in their official capacities (City), alleging violations of SCV's constitutional rights to free speech and due process and seeking a temporary restraining order (TRO) preventing the removal of the Lee Statue and proposed removal of other Confederate monuments from public parks and spaces in Dallas.

The court temporarily restrained the removal of the Lee Statue. However, at the conclusion of a hearing held the following day, the court concluded that SCV had failed to show that they were entitled to a restraining order and dissolved the TRO. A few days after the court dissolved the TRO, the City removed the Lee Statue and placed it in storage.

SCV alleged violation of their First Amendment free speech rights. In addition, SCV claimed the City had violated alleged SCV's property interest in the Lee Statue. SCV sought damages from the City and an injunction against the City's actions.

In response, the City brought a motion to dismiss all of the claims based on the plaintiffs' lack of "standing."

STANDING TO BRING LAWSUIT

As noted by the federal district court, "the irreducible constitutional minimum of standing contains three elements":

- (1) an injury-in-fact that is concrete and actual or imminent, not hypothetical;
- (2) a fairly traceable causal link between the injury and the defendant's actions; and
- (3) that the injury will likely be redressed by a favorable decision.

Moreover, in considering whether a particular plaintiff has legal standing to bring a particular claim, the court would consider the following:

whether a plaintiff's grievance arguably falls within the zone of interests protected by the statutory provision invoked in the suit, whether the complaint raises abstract questions or a generalized grievance more properly addressed by the legislative branch, and whether the plaintiff is asserting his or her own legal rights and interests rather than the legal rights and interests of third parties.

MAY 2018 LAW REVIEW

In this particular instance, SCV claimed legal "standing" because the City's removal of the statue of Robert E. Lee had produced an "injury in fact" to their "legal rights and interests" under the First Amendment, copyright law, and title to land.

FIRST AMENDMENT CLAIM

The City argued SCV lacked standing to bring a First Amendment claim because SCV had not alleged "any concrete and particularized or actual or imminent injury that has occurred or will occur to them caused by moving the Lee Statue." On the contrary, the City argued SCV had failed to allege "their injuries are different or distinct from the general public's."

In response, SCV claimed "a concrete injury-in-fact" sufficient to establish standing under the First Amendment because the City's removal of the Lee Statue from Lee Park and the planned removal of the Confederate War Memorial in Pioneer Park infringed on their "political viewpoint communicated by the monuments." Moreover, SCV claimed the alleged injury is particularized and distinct from the general public because "SCV membership is limited in number and restricted to males who can prove descent from, and blood kinship with, Confederate veterans." In addition, SCV claimed to be "uniquely injured because they have a dissenting political viewpoint that was communicated by the Lee Statue." Further, SCV claimed the City had "imputed repugnant (and erroneous) political viewpoints onto the Lee Statue" and removal of this and other Confederate monuments from Dallas parks would constitute "an impairment of viewpoint and denial of free speech" for SCV and its members.

The City, however, maintained "removal of the Lee Statue and other Confederate monuments is government speech to which the First Amendment Free Speech Clause does not apply."

SEE: [Government Controls Donated Park Monument Message](http://cehdclass.gmu.edu/jkozlow/lawarts/06JUN09.pdf)

<http://cehdclass.gmu.edu/jkozlow/lawarts/06JUN09.pdf>

Moreover, the City argued SCV lacked standing to bring a First Amendment claim because no possible infringement of free speech or possible harm had been alleged. According to the City, SCV and its members had not been "restricted in any way from exercising *their First Amendment* rights." Further, the City characterized SCV's "claim of harm is only a generalized grievance since plaintiffs do not assert that they have ever visited or ever saw any of the City's Confederate symbols." A generalized public grievance, as opposed to a unique particularized injury suffered by an individual plaintiff, would be insufficient to establish legal standing to pursue a claim in federal court.

POLITICAL VIEWPOINT INJURY

As characterized by the federal district court, SCV and Patterson claimed the removal of Confederate monuments from City property would somehow injure those who hold and communicate a particular political viewpoint, i.e., "the men who fought for the Confederacy in the Civil War deserve our respect."

MAY 2018 LAW REVIEW

SCV had argued that its organizational purpose was to "protect Confederate-American memorials, images, symbols, monuments, and gravesites for the communication of the political viewpoint that Confederate-American heroes sacrificed for a noble cause that the victors in the war have almost uniformly whitewashed from history." Further, according to the plaintiffs, Patterson, the SCV, and all SCV members "have made public affirmations of the values of the military service of their ancestors in the Civil War and in the restoration and reconciliation of the nation subsequently." According to SCV, the City's removal of Confederate monuments and statues would effectively suppress and unconstitutionally injure their long protected and political viewpoint communicated in the Lee Statue.

The federal district court acknowledged: "the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury" sufficient to satisfy the standing requirement. However, in this particular instance, the federal district court found no suggestion that Patterson and the SCV had been "deprived of any First Amendment freedom for any period of time." On the contrary, in the opinion of the federal district court, "the removal of Confederate monuments from City-owned property" would in no way "prevent Patterson from expressing *his* political viewpoint," viz., "the men who fought for the Confederacy in the Civil War deserve our respect."

In the opinion of the federal district court, the City's removal of Confederate monuments from Pioneer Park was merely "limited to an exercise of discretion with respect to the display of its own property" and in no way encroached on Patterson's and SCV's "right to communicate" their individual political viewpoint. As a result, the court concluded Patterson and SCV had "failed to plausibly allege that the City's removal of the Lee Statue and forthcoming removal of other Confederate monuments infringes *Patterson's* First Amendment free speech rights." Absent a credible claim that the City's message somehow infringed on Patterson's or SCV's speech, the federal district court concluded plaintiffs lacked legal standing to pursue a First Amendment claim.

COPYRIGHT CLAIM

With regard to the Alexander Phimster Proctor monument of Robert E. Lee at Lee Park, SCV had further alleged the City had "intentionally and with gross negligence destroyed and mutilated an artistic work of recognized international stature, thereby, infringing the sculptor's estate's copyright." Moreover, SCV claimed the "Proctor Estate" had orally agreed to assignment of title to the Lee Statue to SCV as well as "negotiating a written assignment of the Estate's copyright interest to the SCV." Accordingly, when the City "separated the pedestal from the bronze monument that had been one integral design of the sculptor and had been intended to remain in perpetuity," SCV alleged the City had violated SCV's rights under federal copyright law.

In response, the City claimed SCV did not have "even a potential interest in the copyright to the Lee Statue." In so doing, the City provided evidence that the Proctor Foundation had not agreed to be a party to SCV's lawsuit and was "not involved with any legal complaint against the City of Dallas." Having failed to rebut this evidence, or produce any evidence of an assignment of copyright, the City claimed SCV had no interest or even potential interest in the copyright to the Lee Statue. Since SCV had failed to show it had "suffered any injury-in-fact as a result of any

alleged copyright violation," the City contended SCV lacked legal standing on the copyright claim.

As noted by the federal district court, "only two types of claimants have standing to sue for copyright infringement under the Copyright Act: (1) owners of copyrights, and (2) persons who have been granted exclusive licenses by owners of copyrights."

SEE: [Author Generally Owns Copyright Unless Employee Or "Work For Hire"](http://cehdclass.gmu.edu/jkozlows/lawarts/04APR01.pdf)

<http://cehdclass.gmu.edu/jkozlows/lawarts/04APR01.pdf>

In this particular instance the federal district court found: "the undisputed evidence shows that plaintiffs do not own the copyright to the Lee Statue, have not been granted an exclusive license by the copyright owner, and are not in the process of negotiating any such ownership or license rights."

As a result, the federal district court granted the City's motion to dismiss SCV's copyright claim based on a lack of legal standing to bring such a claim.

LAND TITLE CLAIM

SCV also claimed the City had "breached the reversionary term in the grant of title in the Pioneer Park Cemetery." According to SCV, the City took title to Pioneer Park Cemetery from Tannehill Lodge No. 52 and Dallas Lodge No. 44 (the "Lodges"), with the understanding that the City would "use and maintain the property" as "Memorial Cemetery Park."

By "publicly announcing that it would remove the Confederate War Memorial in Pioneer Park Cemetery," SCV alleged the City had "refused and failed to use the memorial park for the purpose mandated in the transfer of title to the City." As a result, SCV contended, "title must revert to the Lodges." Moreover, SCV asked the court "enter judgment that quiets [i.e, confirms] title to Pioneer Century Park" in favor of SCV.

In response, the City argued SCV had no supporting evidence to show "any of the Lodges' interests or rights was ever transferred" to SCV. In particular, the City noted, "Dallas Lodge No. 44 expressly denies conveying any interest" in the land to SCV. Further, the City noted SCV had not alleged "the Confederate monument is located on the property previously owned by the Lodges and SCV had not produced any documents indicating the Confederate monument was placed on the local Lodges' former property." As a result, the City argued SCV lacked "standing for any claimed interest in Pioneer Cemetery Park."

The federal district court agreed with the City. In so doing, the court found SCV had "neither pleaded nor introduced any evidence showing that they have any interest in Pioneer Cemetery Park." The federal district court, therefore, granted the City's motion to dismiss based on SCV's lack of standing on the title to land claim.

QUIET TITLE TO LAND

MAY 2018 LAW REVIEW

In addition to claiming an interest in Pioneer Cemetery Park from the Lodges, SCV had also claimed an interest in the Confederate Cemetery as a successor to another association. According to SCV, "the Sterling Price Camp of the United Confederate Veterans—to which SCV is the successor association—gave the Confederate Cemetery to the Dallas Parks and Recreation Department in 1936." That being said, SCV claimed "no record exists of conveyance of title" to the City. As a result, SCV argued, "title still resides with the grantor," i.e., SCV as the successor association. SCV, therefore, requested the court to "enter judgment quieting [i.e., confirming] title to the Confederate Cemetery in their favor."

In response, the City produced evidence indicating that the property was indeed "conveyed to the City on November 17, 1936, and the warranty deed was recorded in the Dallas County land records." Further, the City had "performed the mowing, maintenance, and litter removal at the cemetery and has not authorized or approved anyone else's taking such action at the Confederate Cemetery." Moreover, the City maintained Sterling Price Camp Number 31, a unit of United Confederate Veterans, became inactive in 1917 and SCV was not formed until 2001. As a result, based on its corporate filings, SCV was not "a successor to Sterling Price Camp Number 31."

As a result, the federal district court found SCV had "failed to introduce any evidence that they have an interest in the Confederate Cemetery." The court, therefore, granted the City's motion to dismiss because SCV lacked standing to bring a claim based on an alleged interest in the land.

TAXPAYER STANDING

In filing a motion to dismiss this lawsuit, the City further claimed the named plaintiff in this case, Hiram Patterson, could not establish standing based simply on his status as a city taxpayer.

SCV claimed Patterson had had standing as a resident taxpayer of Dallas, and a descendent of Confederate veterans. However, for standing purposes, the federal district court found SCV could not merely allege, "Patterson is a taxpayer and that the City's conduct is unconstitutional." On the contrary, according to the court, "a plaintiff's status as a municipal taxpayer is irrelevant for standing purposes if no tax money is spent on the allegedly unconstitutional activity."

In this particular instance, SCV had alleged the Resolution, "directs the city manager to transfer funds to remove all public Confederate monuments." The federal district court disagreed. According to the court, "what the Resolution *actually* states is that the City Manager is *authorized* to transfer or appropriate funds from excess revenue to remove the Lee Statue, and that he is to seek private funding to reimburse the removal expenses. "

Moreover, the court found SCV had not alleged, "the City Manager used (or intends to use) tax revenues in connection with the removal of the Lee Statue or any other Confederate monuments" without full reimbursement from private funding. Having found SCV and Patterson had "failed to adequately plead that tax money was spent in connection with the removal of the Lee Statue or any other Confederate monument, the federal district court found "Patterson lacks taxpayer standing."

ASSOCIATION STANDING

MAY 2018 LAW REVIEW

SCV had also alleged that it had "associational standing" through Patterson and its members. As described by the federal district court, an association has standing to bring a suit on behalf of its members, if and only if:

(1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members.

In this particular instance, the federal district court found "SCV has failed to show representational standing because the only member it identifies is Patterson, who does not have standing to bring this suit." Moreover, in the absence of a credible First Amendment claim in this particular instance, the court held SCV had also failed to adequately plead that SCV had standing on its own behalf based on its organizational purpose.

DISMISS FOR LACK OF STANDING

Having found no legal basis for SCV's copyright, title to land, and First Amendment claims to challenge "the City's removal of the Lee Statue or the forthcoming removal of other Confederate monuments," the federal district court granted the City's motion to dismiss for lack of standing to bring this lawsuit.

YouTube videos for Pioneer Park Cemetery and removal of Confederate monuments in Dallas, Texas:

Dallas Confederate monuments removal to cost \$1.8 MILLION

https://www.youtube.com/watch?v=04qx0XJm_78

Crane Arrives To Remove Robert E. Lee Statue At Lee Park In Dallas

<https://www.youtube.com/watch?v=KO8Cfotx0nE>

https://www.youtube.com/watch?v=rVYZIN_PhE8

Pioneer Park Cemetery - Dallas, Texas

<https://www.youtube.com/watch?v=qG4nJtI8kkg>

https://www.youtube.com/watch?v=D3i_aYUuPC0

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