

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

**SONS OF CONFEDERATE VETERANS,
VIRGINIA DIVISION,**

Plaintiff,

v.

**CITY OF LEXINGTON, VIRGINIA,
MARILYN E. ALEXANDER,
DAVID COX,
MIMI ELROD,
T. JON ELLESTAD,
MARY P. HARVEY-HALSETH,
BOB LERA,
GEORGE R. PRYDE,
CHARLES SMITH,**

Defendants.

Case No:

COMPLAINT AND PETITION FOR INJUNCTIVE RELIEF

COMES NOW the Sons of Confederate Veterans, Virginia Division, by counsel, and states as its Complaint and Petition for Injunctive Relief against the Defendants, the City of Lexington, and the members of Lexington City Council, the following:

I. THE PARTIES

1. The Plaintiff is an unincorporated, nonpolitical, fraternal organization of persons with residences in the Commonwealth of Virginia. The Plaintiff is a division of the Sons of Confederate Veterans, a national organization founded in Richmond, Virginia and currently headquartered in Columbia, Tennessee.
2. Defendant, City of Lexington, Virginia, is a city organized under the laws of the

Commonwealth of Virginia and geographically located within the Commonwealth of Virginia.

3. Defendant, Marilyn E. Alexander, is an individual, a member of Lexington City Council, a resident of Virginia, and is being sued in her official capacity.
4. Defendant, David Cox, is an individual, a member of Lexington City Council, a resident of Virginia, and is being sued in his official capacity.
5. Defendant, Mimi Elrod, is an individual, Mayor of the City of Lexington, a resident of Virginia, and is being sued in her official capacity.
6. Defendant, T. Jon Ellestad, is an individual, Lexington City Manager, a resident of Virginia, and is being sued in his official capacity.
7. Defendant, Mary P. Harvey-Halseth, is an individual, a member of Lexington City Council, a resident of Virginia, and is being sued in her official capacity.
8. Defendant, Bob Lera, is an individual, a member of Lexington City Council, a resident of Virginia, and is being sued in his official capacity.
9. Defendant, George R. Pryde, is an individual, a member of Lexington City Council, a resident of Virginia, and is being sued in his official capacity.
10. Defendant, Charles Smith, is an individual, a member of Lexington City Council, a resident of Virginia, and is being sued in his official capacity.

II. JURISDICTION AND VENUE

11. This Court has Jurisdiction over this lawsuit pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution, laws or treaties of the United States.

Specifically, this suit is brought pursuant to 42 U.S.C. § 1983 as an action for declaratory, injunctive and monetary relief for violations of the Plaintiff's First and Fourteenth Amendment rights under the United States Constitution.

12. This suit is also a lawsuit claiming violation of an injunction or Order of this Court, by the Defendants. The Plaintiffs specifically claim that the Defendants are in violation of, and therefore are in civil contempt of, the Consent Decree entered on August 13, 1993, in Case No. 93-0492-R, *Sons of Confederate Veterans, Virginia Division v. City of Lexington, Virginia, et al.*, Western District of Virginia, Roanoke Division (Wilson, J.).
13. Venue is appropriate under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the lawsuit occurred within the Western District of Virginia.

III. FACTUAL BACKGROUND

14. In 1993, the Plaintiff sued Defendant, City of Lexington, Virginia, and its officers, for alleged violations of the Plaintiff organization's rights of Free Speech guaranteed under the First Amendment of the United States Constitution.
15. On August 10, 1993, this Court entered a Consent Decree in that matter, *Sons of Confederate Veterans, Virginia Division v. City of Lexington, Virginia, et al.*, Western District of Virginia, Roanoke Division, Case No. 93-0492-R. A copy of that Consent Decree has been appended to this Complaint and made a part hereof as "**EXHIBIT A.**"

16. The Consent Decree provides that “a permanent injunction shall be entered under which neither the City of Lexington, nor any individual,” . . . “officer(s), agent(s)” . . . “may deny or abridge the right of the plaintiff organization or its members” . . . “to wear, carry, display or show, at any government-sponsored or government-controlled place or event which is to any extent given over to private expressive activity, the Confederate Flag or other banners, emblems, icons, or visual depictions designed to bring into public notice any logo of ‘stars and bars’ that ever was used as a national or battle flag of the Confederacy.”
17. In early 2010, the Plaintiff began planning and organizing a parade and accompanying events to be held in the City of Lexington in January, 2011.
18. In November of 2010, the Plaintiff requested the use of the flag standards owned by the City of Lexington in order to temporarily place various flags of the Confederacy on the parade route.
19. In response to Plaintiff’s request, Larry Mann, manager of the City of Lexington, prepared a memo to the City Council and Mayor concerning the request and the City’s policy regarding display of flags from flag standards affixed to light poles within the City. The memo recognized that the City had previously granted the request of the Kappa Alpha fraternity to fly flags of this organization from these standards.
20. In fact, the City had granted several requests of other organizations to fly flags from flag standards on light poles within the City.

21. In September 1994, requests were made on behalf of Washington & Lee University and the Virginia Military Institute to allow flags representing those organizations to be flown from the flag standards on five or six occasions each year. The City Council granted the requests and passed a resolution allowing these organizations to fly their flags from the flag standards on three occasions per year.
22. In 2005, Kappa Alpha Fraternity was granted permission by the City to fly its flag from the flag standards.
23. In 2009, Kappa Alpha, Sigma Nu and ATO were granted permission to fly their flags to honor the Lexington Triad in April of that year.
24. In response to the November 2010 request of the Plaintiff, the City of Lexington, through its City Council, agreed at its December 2, 2010 meeting to the placement of various flags of the Confederacy in the flag standards owned by the City of Lexington for use in January 2011 events associated with the parade and organized by the Plaintiff. The vote on the motion to allow the request was 5 to 1, with Defendant Lera voting against the motion.
25. At the City Council's December 20, 2010 meeting, Defendant Lera made a motion that the City adopt a flag/banner policy and that the City Attorney and City Manager be charged with developing the policy. The motion passed unanimously.
26. At the City Council's March 17, 2011, meeting, public comments were received expressing opposition to the display of the Confederate flag within the City and

requesting that the City adopt a policy regarding the display of flags on public property.

27. In September, 2011, the City of Lexington enacted amended ordinance § 420-205.

This amended ordinance has been appended to this Complaint and made a part hereof as “**Exhibit B.**”

28. Amended ordinance § 420-205 provides the following as it relates to use of the flag standards in the City of Lexington:

1. Only the following flags may be flown on the flag standards affixed to light poles in the City and no others:

- a. The national flag of the United States of America (the “American flag”).
- b. The flag of the Commonwealth of Virginia, Code of Virginia, Title 1, Chapter 5.
- c. The City Flag of Lexington.

2. The American flag, the flag of the Commonwealth of Virginia and the City Flag of Lexington may be flown by the City on the light poles that have standards affixed to them on dates adopted by City Council. A copy of the dates for the flying of said flags is available through the City Manager’s office or the office of the director of public works. Currently the holidays or designated days are as follows: Independence Day, Labor Day, Veterans Day, Flag Day, Martin Luther King Day, Memorial Day, Lee-Jackson Day, Presidents Day, and on the day of the annual Rockbridge Community Festival. On such dates or days the flag(s) may be flown for more than one day. No other flag shall be permitted. Nothing set forth herein is intended in any way to prohibit or curtail individuals from carrying flags in public and/or displaying them on private property.

IV. COUNT I: CIVIL CONTEMPT

29. All preceding paragraphs of this Complaint are hereby incorporated into Count I.
30. By making it a violation of an ordinance of the City of Lexington to display a Confederate Flag on the flag standards located within the City of Lexington, the Defendants have violated the provisions of the Final Order from Case No. 93-0492-R.
31. Specifically, the Order provides that the Defendants may not “deny or abridge the right of the plaintiff organization and its members . . . to . . . display or show [the confederate flag].”
32. The amended ordinance is in direct conflict with the Order in that by making it a violation of local law to display or show a confederate flag on a flag standard on one or more of the light poles within the City of Lexington, the Defendants have denied and/or abridged the rights of the Plaintiff as provided by the Order.
33. Upon information and belief, the enactment of the amended ordinance by the Defendants was done as a proximate result of the Plaintiff organization’s repeated requests over the years to display or show the confederate flag within the City of Lexington and in an effort to prevent them from requesting and/or exercising such privileges.
34. By enacting the amended ordinance, the Defendants are in civil contempt of the Court’s Order and are thereby liable to the Plaintiff for attorney’s fees, costs, and/or sanctions.

V. COUNT II: 42 U.S.C. § 1983

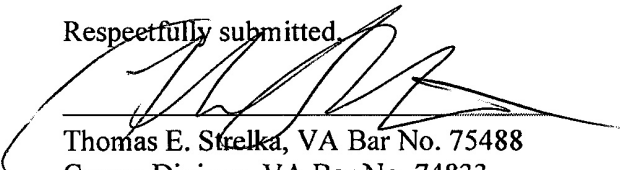
35. The City, by its prior practice of allowing the flag standards to be used by other organizations for the display of the flags of those organizations on occasions of significance to those organizations, created a forum for expression.
36. The City's adoption of amended ordinance § 420-205 was in response to the request of the Plaintiff to engage in expression within the flag standard forum for expression created and maintained by the City.
37. The City's adoption of amended ordinance § 420-205 was based upon its disapproval of the content and/or viewpoint expressed by the Plaintiff and the flags the Plaintiff flew from City flag standards in January of 2011.
38. The City's adoption of amended ordinance § 420-205 constituted discrimination against the Plaintiff and the expression of the Plaintiff on the basis of content and/or viewpoint.
39. The City's adoption of amended ordinance § 420-205 deprives the Plaintiff of its rights under the First Amendment to the United States Constitution, and Plaintiff is entitled to relief for this deprivation under 42 U.S.C. § 1983.

WHEREFORE, Plaintiff Sons of Confederate Veterans, Virginia Division prays for the following:

- A. Judgment against the Defendants and for equitable relief;
- B. A finding of civil contempt on the part of the Defendants;

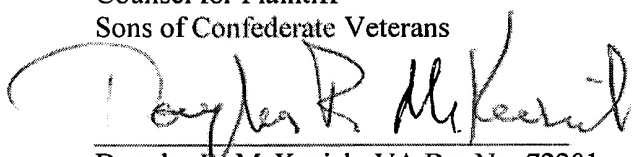
- C. Attorneys' fees under 42 U.S.C. § 1988, costs and sanctions;
- D. Compensatory, liquidated and punitive damages;
- E. For such other and further relief as may be just and equitable.

Respectfully submitted,



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