

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 17-4384

RICHARD A. MARKSBURY

VERSUS

THE CITY OF NEW ORLEANS AND THE HON. MITCHELL J. LANDRIEU IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF NEW ORLEANS

FILED  
2017 MAY -8 A 11: 24

DIVISION CIVIL DISTRICT COURT

SECTION 8

FILED: \_\_\_\_\_

DEPUTY CLERK

**PETITION FOR TEMPORARY RESTRAINING ORDER**

**AND/OR INJUNCTIVE RELIEF UNDER LA.R.S. 41:1612(B)**

CLERK, CIVIL DISTRICT COURT  
421 LOYOLA AVENUE - ROOM 402  
NEW ORLEANS, LA 70112  
504-407-0000

NOW INTO COURT, through undersigned counsel, comes Richard A. Marksbury, a resident of the full age of majority of the Parish of Orleans, State of Louisiana, and respectfully represents as follows:

1.

Richard A. Marksbury Dean *emeritus* and Associate Professor of Asian Studies at Tulane

Univercity. He has been a resident of the City of New Orleans for more than 40 years.

**STANDING**

2.

Plaintiff has standing to assert the causes of action pled herein pursuant to the "citizens suit" provisions of La.R.S. 41:1612(B).

**DEFENDANTS**

3.

Defendant City of New Orleans is a municipal subdivision of the State of Louisiana. It can be served through Rebecca H. Dietz, City Attorney, 1300 Perdido Street, New Orleans, Louisiana 70112.

Receipt Date	05/02/17
Receipt Number	827290
Cashier	0040911
Register	0000CASH1
Case Number	2017-04384
Grand Total	\$ 578.00
Amount Received	\$ 578.00
Balance Due	\$ 0.00
Change Due	\$ 0.00
Payment / Transaction List	
Check #	47321 \$578.00

Item	Charged	Paid	Bal
Petition for Injunctive Relief	\$444.50	\$444.50	\$0.00
Judicial College	\$0.50	\$0.50	\$0.00
Building Fund Fee	\$25.00	\$25.00	\$0.00
Indigent Legal Fee	\$10.00	\$10.00	\$0.00
JSC	\$24.00	\$24.00	\$0.00
Exhibits (Paper)	\$74.00	\$74.00	\$0.00

4.

Defendant Hon. Mitchell J. Landrieu, who is sued in his official capacity, is Mayor of the City of New Orleans. He can be served through Rebecca H. Dietz, City Attorney, 1300 Perdido Street, New Orleans, Louisiana 70112.

#### VENUE

5.

Venue is proper in the Parish of Orleans because the historic artifacts and structure that are the subject of this litigation are located within this Parish. La.R.S. 41:1612(B).

#### SUBJECT MATTER OF THIS DISPUTE

6.

The General Beauregard Equestrian Statute (sometimes hereinafter "Beauregard Monument") is a priceless work of public art erected in New Orleans' City Park in 1915.

7.

City Park was created by Act 84 of the Extra Session of 1870, which was passed "to establish a Public Park for the city of New Orleans and to provide means therefor." The park was created from a parcel of land between Metairie Road and Lake Pontchartrain, and was initially named "The New Orleans Park." *City of New Orleans v. State*, 443 So.2d 562, 563 (La. 1983).

8.

Complete authority and control over The New Orleans Park (now City Park) was given to the Board of Commissioners of the Park, all of whom were appointed by the Governor:

Said park shall be under the exclusive control and management of a board of commissioners

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That the Governor will appoint the Board of Commissioners.

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That the said board shall have the full and exclusive power to govern, manage and direct the said park; to lay out and regulate the same; to pass ordinances for the regulation and government thereof ... and generally, all things in regard to said park; they shall possess all the power and authority now by law conferred or possessed by the Council of the city in respect of the public squares and places in said city.

9.

City Park is currently operated and managed by the New Orleans City Park Improvement Association.

**THE BEAUREGARD MONUMENT IS OWNED BY  
THE NEW ORLEANS CITY PARK IMPROVEMENT ASSOCIATION**

10.

The land on which the Beauregard Monument is erected was acquired by the New Orleans City Park Improvement Association on March 8, 1900 through an act of sale from Walter B. Mercier, on behalf of himself and others, to the New Orleans City Park Improvement Association.

11.

In July of 1910 the State of Louisiana appropriated the sum of \$500 "for the purpose of completing the erection of the Bronze Equestrian Statue to be erected to the memory of General P.G.T. Beauregard, at the City Park in the City of New Orleans, Louisiana."

12.

A 1904 transit map of the City of New Orleans demonstrates that the land on which the Beauregard Monument is erected lies within the boundaries of City Park.

13.

A 1940 map obtained from the New Orleans City Park Improvement Association locates the Beauregard Monument on land within City Park.

14.

The 1982 re-statement of the Articles of Incorporation of the New Orleans City Park Improvement Association states the eastern boundary of City Park extends beyond the Beauregard Monument to Bayou St. John. This places the Beauregard Monument within City Park.

15.

On April 21, 1997 Gary N. Solomon, President of the New Orleans City Park Improvement Association, executed a sworn affidavit attesting that the New Orleans City Park Improvement Association “is the true and only legal owner of the General Beauregard Equestrian Statue located in the New Orleans City Park.”

16.

On Sunday, May 7, 2017 the Hon. Billy Nungesser, Lt. Governor of Louisiana, whose office has direct authority over the New Orleans City Park Improvement Association, formally requested that the Association’s President, Steven Pettus, “immediately notify the Mayor in writing of your objection to his removal of the Beauregard monument.”

**THE CITY PARK IMPROVEMENT ASSOCIATION  
IS AN AGENCY OF THE STATE OF LOUISIANA**

17.

Pursuant to La. R.S. 36:209(O), effective August 1, 2016, the New Orleans City Park Improvement Association was transferred to the Louisiana Department of Culture, Recreation and Tourism, which became empowered to exercise and perform the powers, duties, functions, and responsibilities of the New Orleans City Park Improvement Association. Through this Act the property constituting City Park became owned by the State of Louisiana.

18.

In July, 2015 defendants announced their intention to remove four historic monuments, including the Beauregard Monument, from sites across the City, and place them in an unidentified storage facility. One such monument, the Liberty Monument, has already been removed, and defendant Hon. Mitchel J. Landrieu has promised the other three, including the Beauregard Monument, will be removed “sooner rather than later.”

19.

When defendants removed the Liberty Monument early on the morning of April 21, 2017 they employed haphazard methods and amateur workers rather than the highly qualified crane or rigging company they told other courts they would retain for the job.

**REMOVING THE BEAUREGARD MONUMENT  
WILL VIOLATE LA.R.S. 41:1601 *et seq.***

20.

The Louisiana Legislature has declared it to be the public policy of the State of Louisiana “to protect and preserve...historic properties, artifacts...and objects of antiquity which have historical value or which are of interest to the public, including but not limited to... properties... or other objects, or any part thereof relating to the history, government and culture of the state.” La. R.S. 41:1601.

21.

The Louisiana Archaeological Survey and Antiquities Commission is a State agency within the Louisiana Department of Culture, Recreation and Tourism. Its purpose is “to promote the goals and objectives of the Department of Culture, Recreation and Tourism and to act in an advisory capacity to that department...in matters relating to antiquities, archaeology, and other cultural resources.” La. R.S. 41:1602(A).

22.

The responsibilities of the Louisiana Archaeological Survey and Antiquities Commission include promulgation of reasonable rules and regulations concerning the study of “historic archaeological remains” relating to the inhabitants, history, government or culture on any lands belonging to the State of Louisiana. The term “remains” is defined to include “[a]ll historic sites, objects, and buildings.” La. R.S. 41:1604.

23.

The Secretary of the Department of Culture, Recreation and Tourism has the discretion and authority to issue a permit to allow any governmental agency or political subdivision of the state to recover archaeological materials on state-owned lands. La.R.S. 41:1606. Without such a permit, recovery of archaeological materials is prohibited.

24.

As set forth above, the Beauregard Monument is on land owned by the State of Louisiana.

25.

The Attorney General of the State of Louisiana may bring an action in the name of the State to enjoin violations or threatened violations of the Louisiana Archaeological Survey and Antiquities statute. La.R.S. 41:1612(A). However, if the Attorney General does not act, La.R.S. 41:1612(B) grants standing to “[a]ny citizen of Louisiana to bring an action in any court of competent jurisdiction for restraining orders and injunctive relief to restrain and enjoin violations or threatened violations of this Chapter.”

26.

The Secretary of the Department of Culture, Recreation and Tourism has not issued a permit to either the Mayor or the City of New Orleans allowing them to recover, disturb, move or remove the Beauregard Monument. Any attempt or effort by the defendants to recover, disturb, move or remove the Beauregard Monument is a violation of La.R.S. 41:1606. Thus any citizen of the State of Louisiana may bring an action to restrain and enjoin the defendants’ announced intention to violate the statute.

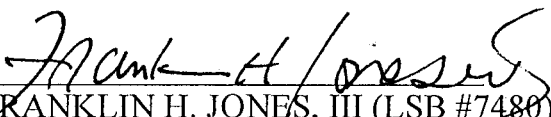
WHEREFORE, Plaintiff Richard A. Marksbury prays that this Honorable Court:

- 1) Issue a Temporary Restraining Order enjoining the Defendants from taking, altering, damaging, destroying, moving or removing the Beauregard Monument without first obtaining a permit from the Louisiana Department of Culture, Recreation and Tourism;
- 2) After due proceedings had, issue a Preliminary Injunction enjoining the Defendants from taking, altering, damaging, destroying, moving or removing the Beauregard Monument without first obtaining a permit from the Louisiana Department of Culture, Recreation and Tourism;
- 3) After additional proceeding had, issue a Permanent Injunction enjoining the Defendants from taking, altering, damaging, destroying, moving or removing the Beauregard Monument without first obtaining a permit from the Louisiana Department of Culture, Recreation and Tourism;

- 4) Enter a final judgment in favor of plaintiff; and
- 5) Grant plaintiff such other relief, in law or in equity, as this Court may deem just and proper.

Respectfully submitted,

McALPINE & COZAD

  
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Please Serve: