

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)
IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-24-00514

THOMAS WALLER, LARRY JACKSON,)
P. DALE KITTLES, CHARLES L. MAUS,)
and TERRY C. WEEKS)

Plaintiffs,

VS.

STATE OF SOUTH CAROLINA, HENRY)
MCMMASTER, Lt. Governor and President)
of the South Carolina Senate, JAY LUCAS,)
Speaker of the South Carolina House of)
Representatives, and ALAN WILSON,)
Attorney General of South Carolina,)

Defendants.

PLAINTIFFS' OPPOSITION TO MOTIONS TO DISMISS FOR MOOTNESS

All defendants have moved to dismiss the case for mootness because someone has replaced the original segregated-name plaques on the American Legion memorial with integrated-name plaques. The original plaques are still in existence and could be restored.

Defendants say the case is moot simply because the plaques have changed. They cite two cases holding, correctly, that there is a doctrine of mootness through “impossibility.” Under that doctrine, a case is moot where a decision would be purely academic because relief is impossible. Those cases have nothing to do with the instant dispute, which is as alive today as it was on the day this Court issued its ruling. The original plaques are still in existence and can be replaced at the drop of a hat. Attached hereto as Exhibit A is a newspaper article showing that when the Confederate flag was removed from the State Capitol by a private citizen – an act analogous to the private replacement of the Greenwood plaques – the flag was restored. Unauthorized.

reversible acts in facial violation of a law do not moot a case that challenges the validity of that law.

The continued life of this controversy is not only possible rather than impossible, but is essentially guaranteed. There is nothing hypothetical about this case, now as much as before. See the many cases denying mootness because the controversy remains possible or even potential. *E.g., S.C. Department of Revenue v. Club Rio*, 392 S.C. 636, 709 S.E.2d 690 (Ct. app. 2011); *Friends of the Earth v. Laidlaw, Inc.*, 528 U.S. 167 (2000).

WHEREFORE plaintiffs pray that the motions to dismiss for mootness be denied.

Respectfully submitted,

Date: July 9, 2018

s/Armand Derfner

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CERTIFICATE OF SERVICE

I hereby certify that this 9th day of July, 2018 a copy of **Plaintiffs' Reply in Opposition to Motions to Dismiss for Mootness** has been served upon the Defendants via e-filing:

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____s/Armand Derfner____
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Pair released on bond after removing Confederate flag at S.C. Capitol

Tony Santaella, WLTX, and Doug Stanglin USA TODAY

Published 7:35 a.m. ET June 27, 2015 | Updated 6:53 p.m. ET June 27, 2015

At least two people have been arrested after the Confederate flag was briefly removed from the South Carolina State House. The incident brought protesters, on both sides of the debate, to the area. VPC



(Photo: Ferguson Action)

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COLUMBIA, S.C. — A black female activist in a helmet and climbing gear scaled a flagpole in front of the South Carolina State Capitol Saturday morning and briefly removed a controversial Confederate battle flag.

The woman, who law enforcement identified as 30-year-old Bree Ann Byuarium Newsome, and a male companion were arrested and released later in the day after posting bond.

In a video of the incident, security officers can be heard yelling, "Ma'am come down off the pole."

Newsome can be heard saying, "You come against me in the name of hatred, repression, and violence. I come against you in the name of God. This flag comes down today."

After scaling the 30-foot pole and retrieving the flag, she and her companion were arrested by State Capitol police who waited for her at the bottom inside a small, wrought-iron fence.

As she was being led off in handcuffs, Newsome could be heard reciting the 23rd Psalm from the Bible.

The flag, which is protected by state law, was hoisted again about 45 minutes later. A pro-flag rally was previously planned at the site Saturday morning.

"We removed the flag today because we can't wait any longer. We can't continue like this another day," Newsome said in a statement issued around the time of her arrest. "It's time for a new chapter where we are sincere about dismantling white supremacy and building toward true racial justice and equality."

Sherri Jacobelli, a spokeswoman for the state Department of Public Safety, said that Newsome, and a companion, James Ian Tyson, 30, both from Charlotte, were charged with defacing monuments on state Capitol grounds. The misdemeanor charge carries a fine of up to \$5,000 and a prison term of up to three years or both.

A judge gave them each a \$3,000 bond and told them they were allowed to leave the state if they wished. Democratic state Rep. Todd Rutherford of Columbia, who also is attorney, will represent Newsome. Rutherford is minority leader of the state House of Representatives.

The activist group known as Ferguson Action released video of the incident on Twitter.

Activist Bree Newsome told police she was "prepared to be arrested" as she removed the Confederate flag flying in front of the South Carolina State House. Newsome scaled the 30-foot pole, retrieved the flag, and was promptly arrested. VPC

"The flag is gone," Ferguson Action said on Twitter, congratulating "local organizers" for the operation. It also tweeted a photo of the woman being taken away by police.

The flag has been at the center of a heated debate following the killing of nine black parishioners at a historic black church in Charleston on June 17.

Gov. Nikki Haley, a Republican, has called for the removal of the flag, and the state General Assembly has agreed to debate the issue next month.

Lonnie Randolph Jr., president of the South Carolina State Conference of the NAACP, said the two activists were apparently "well-intentioned," but he counseled that "impatience must always be tempered by purpose and prudence."

"This is not yet the time for civil disobedience, but a time for grieving over the tragedy in Charleston and a reflection on symbols and the hatred they fuel," he said in a statement. He also urged that opponents of the flag give the General Assembly the opportunity to address this issue in July "to at last remove this hurtful symbol from the people's State House."

Dylann Roof, the 21-year-old South Carolinian who has been charged with nine counts of murder in the attack on the Emanuel AME Church, was depicted online expressing white supremacist views and posing with the Confederate flag.



Michael Moore
@MMFlint

Friends of @BreeNewsome - I will pay her bail money or any legal fees she has. Please let her know this. #Charleston #TakeDownTheFlag

11:17 AM - Jun 27, 2015

10.2K 11.2K people are talking about this

President Obama used his eulogy Friday in Charleston for one of the victims of the shooting, Rev. Clementa Pinckney, to call for the removal of Confederate flags as symbols of honor.

"For many — black and white — that flag was a reminder of systemic oppression and racial subjugation. We see that now," Obama said.



Rev Jesse Jackson Sr
@RevJJackson

We thank God that @BreeNewsome had the courage to take the flag down! #KeepItDown #FreeBree

9:37 AM - Jun 27, 2015

654 876 people are talking about this

The activist group Ferguson Action, which calls on its supporters to "take action," was formed following the killing last August of an unarmed black teenager by a white police officer.

Liberal author and film director Michael Moore offered on Twitter to pay her bail and legal fees.