

CITIZENS TO PRESERVE OVERTON PARK, Inc.
192 Williford Street
Memphis, Tennessee 38112

from
CPOP, Inc.
file

CHRONOLOGY OF Litigation

Case of
Citizens To Preserve Overton Park, Inc., et al, *
vs.
Volpe and Speight

(Note- * W. W. Deupree, Sunshine Kidd Snyder,
National Audubon Society
Sierra Club)

Date	-	Filing	-	Court	-	Motion
Dec. 2, 1969	-	Filed in		U. S. District Court of District of Columbia	a -	MOTION for a PRELIMINARY INJUNCTION Complaint - DECLARATORY JUDGMENT, INJUNCTION & OTHER RELIEF.
						Motion was to enjoin defendant, Volpe, from taking further actions, or obligating or disbursing any funds to Tenn. Highway Dept. with respect to I-40 - I (90)3 (the Project)
Dec. 16, 1969	-	Court set this date for a Preliminary Hearing On Citizens' Motion filed 12-2-69.				
Dec. 12, 1969	-	Volpe had filed a Motion for CHANGE OF VENUE.				
Dec. 29, 1969	-	Hearing for Motion for change of Venue. This was argued on Venue, alone. Citizens Won. Case remained in Washington in District of Columbia U. S. District Court.				
		A Hearing date was set for Jan. 6, 1970, to hear our original Motion for Preliminary hearing and preliminary Injunction.				
Jan. 2, 1970	-	MOTION To DISMISS CASE - filed by VOLPE and Combined Opposition to Plaintiffs' Injunction. (the Swick affidavit was filed on this date, or soon thereafter) (filed by Volpe. This has been significant later in the case, especially after brief filed Dec. 1970 by the amici curiae - (the Committee of 100 of the Federal City with the Citizens TPOP, Inc				= "altera"? whom?
Jan. 6, 1970	-	Another Judge than the one who had heard the motion of Venue, met the attorneys. Since the Motion To Dismiss had been introduced, he decided that motion should be heard first before our original one; therefore, he set a new date to hear the Diss/Motion.				
January 23, 1970	-	Hearing on Motion to Dismiss Judge asked where the State was in the suit. Just before the Judge was going to Dismiss the case, as requested by Volpe, the Citizens' attorney, John W. Vardaman, Jr., who was arguing the case for plaintiffs', asked to move the case to Tennessee to bring the Tennessee Highway Dept. into the suit. Granted request, and the case was transferred to U. S. District Court of West Tennessee. Charles W. Speight, Commissioner of Highways, Tenn., was enjoined within a few days.				
January 27, 1970	-	Complaint amended to add Com. Speight, of Tenn. Hwy. Dept. as a party to defendant and to request relief against him as well as Sec'y Volpe.				

- Feb. 20, 1970 - Hearing in U. S. District Court of West Tenn. - Judge Bailey Brown .
Hearing, presumably to be on Citizens' original Motion of 12-2-69.
- Feb. 20, 1970 - MOTION for a SUMMARY JUDGMENT filed before the hearing opened, by
VOLPE and SPEIGHT.
The Court - Judge Brown - granted Summary Judgment and heard the
case on that Motion; not on our original motion.
- Feb. 26, 1970- The Court Dismissed the case on Summary Judgment, No Injunction granted.
- March 2, 1970 - Citizens To Preserve Overton Park, Inc., served Notice of an Appeal
and Moved for an Injunction Pending Appeal. (where? How is this done?)
- March 12, 1970 Hearing on CPOP, Inc., Request for Temporary Injunction, Pending
Appeal to U. S. Sixth Circuit Court (Cincinnati, Ohio)
Denied by Court several days later.
- March 31, 1970 - Filed Motion for Temporary Injunction in U. S. Sixth Circuit Court.
- April 10, 1970 - U. S. Sixth Circuit Court granted a strong Injunction pending a
hearing and Court Decision.
- June 15, 1970 - Hearing in Circuit Court Cincinnati (Appeals Court)
Argued before 3 Judges. (Granted a rebuttal).
- Sept. 29, 1970 - Decision Circuit Court (1) Affirmed U. S. District Court's
Grant of a Summary Judgment for Citizens' case, (2) Dissolved
the injunction on that date. (2-1)
Judge Anthony Celebrezze wrote Dissent Opinion.
- October 9, 1970 - Citizens filed Petition for a Re-hearing before a full court; also
asked the State of Tenn. Commissioner Speight for a Consent Injunction.
- ← October 20, 1970 - Citizens Applied For STAY (see attached note)
- October 27, 1970 - Motion filed For Leave to Appear as Amicus Curiae by Chamber of
Commerce of Memphis, Future, Memphis, Inc., Downtown Association,
in support of the State of Tenn. - Speight.
(Motion filed in the U. S. Sixth Circuit Court.)
- October 30, 1970 - U. S. Circuit Court Denied Citizens Petition for re-hearing & Stay.
(however,, we gained another Judge's vote)
- * November 5, 1970 - Citizens Filed Application for a Stay of Action to U. S. Supreme
Court Pending Filing a Petition For a Writ of Certiorari. Addressed to
Justice Potter Stewart, who is in charge of U.S. Sixth Circuit ct.
→ (A Contract was reported to have been awarded this day for work to
begin from Bon Air West to Lick Creek in Overton Park)
- November 6, 1970 - STAY OF ACTION GRANTED BY Justice Stewart Potter, U. S. Supreme Ct.
- November 20, 1970 - Supreme Court upheld Stay of Action and set a Hearing for Dec. 7,
1970, for our application on Stay. This was a rare procedure.
- * Oct. 30, 1970 - Bids were opened by Tenn. Hwy. Dept. for construction from Bon Air to
Lick Creek (in Ov. Pk.)

Added Note-

October 20, 1970 - Citizens Applied for STAY
Applied for same as issued 4-10-70 by Court of Appeals.
"Counsel for Appellants were told by Lurton Goodpasture,
Asst. Atty. General and one of the counsel for appellee Speight,
that no contract would be let and no work would begin.
SPOP had been told previously that State would not let a contract
or begin work if appellants petitioned the Supreme Court until
all proceedings had terminated in Supreme Court.
But Press-Scimitar on 10-20-70 stated State intended to award
contracts on Oct. 30. However, Asst. Atty. General said on
10-20 that he could not say whether contract would be awarded.

(Note: we offered the State an opportunity to sign a Consent
Injunction, but State did not sign.)

Please notice Oct. 20 filing on STAY.

Oct. 20, 1970, Citizens again said that if the State made a
statement in the Court that it would not award a contract,
Citizens would accept that.)

Dec. 1, 1970 - Filed MOTION of Amicus Curiae, City of Memphis, Memphis Chamber of Commerce, Future Memphis, Inc. & Downtown Association and MEMORANDUM in Opposition To Application for Stay.

Dec . 3, 1970- MOTION of the Committee of 100 on the Federal City, Inc., et al, for Amici Curiae with Citizens To Preserve Overton Park, Inc., et al, To File a Brief in the Case For Support of Application For Stay.

Dec. 7, 1970 - HEARING on PETITION FOR STAY OF ACTION before the U. S. Supreme Court (a rare hearing) 10 a.m.

That p.m. The Supreme Court Granted Stay and set a Date for Writ of Certiorari Hearing for Jan. 11, 1971.

Note:

→ The Court considered & granted our suggestion that Dec. 7 hearing on Stay also be considered Hearing on Petition of Writ of Certiorari

Jan. 11, 1971 - Writ of Certiorari Hearing before U. S. Supreme Court. U. S. Solicitor General argued for Volpe (had major portion of defendant's time) John W. Vardaman, Jr. for Citizens.....

Time allotted - one hour for entire hearing. We had half an hour. (This is routine & usual time.)

(Just before this hearing Volpe - Solicitor General for U. S. - filed 2 "papers" signed by former Secretary of Transportation Alan S. Boyd and present Secretary, John A. Volpe - short statements about the Record)

March 2, 1971 - Decision of U. S. Supreme Court: Reversed and remanded by unanimous decision. Remanded first by a 6-2 vote to U. S. District Court - West Tenn., (2 remanded to Volpe) but later made it officially unanimous. (Eight participating, as Justice Douglas had excused himself from the case). 2 Separate opinions written - brief in nature, but to the point in case of Black and Brennan's. Justice Blackmun wrote a separate one. Reversed and Remanded for a -
1. "a plenary (full) review" of Secretary Volpe's approval of I-40 through Overton Park,
2. "the reviewing court to engage in a substantial inquiry."
3. The administrative record, not included in previous court hearings, was ordered included in the coming District Court proceedings.

May 10, 1971 - Citizens Filed in U. S. Dist. Ct. of W. Tenn. - Judge Brown's Court, MOTION for AMENDED COMPLAINT - based on National Environmental Policy Act of 1969.

May 27, 1971 - State filed a vigorous objection. Volpe did not respond in writing. include

June 4, 1971 - The Court (Judge Brown) denied Citizens to file amended complaint.

June 7, 1971 - Citizens filed a Motion for ReHearing of their May 10 Motion.

June 10, 1971- " " " " " Injunction against construction work on I-40 from Bon Air west to Claybrook at Midtown Interchange;

cont'd. -

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June 10, 1971 - and against Tenn. Hwy. Dept. awarding a contract in opening bids
June 29, 1971, for paving, lighting, and signing on Bon Air east
to White Station Road.

June, 1971- State responded with Objection.

June 14, 1971 - Citizens To Preserve Overton Park, Inc., et al, filed MOTION -
SUPPLEMENTAL MEMORANDUM In Support of Citizens'....Motion for
Rehearing.
Supplemental Memorandum was based largely on the court's decision
in the Harrisburg Coalition Against Ruining the ~~Environment~~ vs.
Volpe, F. C. Turner, et al.

June 17, 1971 - The Court set a Hearing (oral) for June 24 9:30 a.m. on both
Citizens' Amended Complaint and on Injunctions.

June 24, 1971 - Hearing on amended complaint for inclusion of NEPA; & on 2 injunction
Injunctions denied from the bench during hearing.
NEPA inclusion - amended complaint - "taken under advisement".
(Hearing adjourned shortly after eleven; for lunch until 2 p.m. when
the Court reopened for other business.)
Announcement made in the afternoon to the Press-Scimitar News reports
that Citizens' Motion for Amended Complaint to include NEPA
was denied. (This is second denial)
((Citizens' Counsel had pointed out to the Court that Secy. Volpe had not filed
a written response to our first Motion of May 10. The Court - "
Judge Bailey Brown admitted that "Vardaman is technically correct,
-- there should be an answer (in the Court). The Judge addressed
his remarks to Federal Attorney, Mr. Thomas Turley, and asked
that a response be filed by July 15.

Note: that the Judge denied the second time even though there
was no response from Volpe. Note that Citizens' Counsel had
called the Court's attention to no response filed.))
(Parenthetical statements herein are for the author, Mrs.
Sternberg and not necessarily for publication.)

July 30

pre-trial conference

Setp. 27, 1971 - Hearing.....
(tentative)

John W. Vardaman, Jr., of Williams & Connolly, Washington, D. C., is in charge of
the case. He has argued all cases in the courts. Charles F. Newman of Burch, Porter
& Johnson is assisting him in preparations, conferring, contacts, locally, and
court filings, locally, and other work. Mr. Newman has attended all hearings and
has counseled at the court table during hearings. Has been very active in case since
the Appeals Court decision of last fall and since the Supreme Court hearings.