

C.A.

Nov. 16, 1971

Park Brief Asks Volpe Decision

Plaintiffs in the Overton Park expressway case submitted a post-trial legal brief in federal court yesterday, asking that United States Dist. Judge Bailey Brown remand the case to Secretary of Transportation John Volpe for a new decision.

John W. Vardaman of Washington and Charles F. Newman of Memphis, attorneys for the Citizens to Preserve Overton Park and other plaintiffs, specifically asked that Mr. Volpe approve an alternative route utilizing the L&N Railroad right-of-way north of the park. Or, if the park route is upheld, they ask that it be totally depressed and housed in a cut-and-cover tunnel.

The 82-page legal brief, citing previous environmental cases and points of law, asks that Mr. Volpe be required to review the case in light of the "proper standards" and decide whether there are feasible and prudent alternatives to the park route.

The legal briefs were requested by Judge Brown at the conclusion of a 25-day trial Nov. 5. United States Atty. Thomas F. Turley Jr. and J. Alan Hanover, attorneys for the state and federal governments, must also submit briefs later this month.

The brief filed yesterday argued that no testimony or written records show that Mr. Volpe made a decision based on the Parklands Statute, and that if he did, his interpretation of the statute was at odds with the Supreme Court's interpretation. It said the government has always given an "overriding emphasis in the case" to cost considerations.

They claimed federal officials did not seriously consider an alternative route using the L&N right-of-way. And they said any problems stemming from use of an L&N route, such as decreased traffic service or community disruption, are either insignificant or justified to preserve park land.

Judge Brown indicated several times during the lengthy trial he is in favor of remanding it to Mr. Volpe.

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