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Attorney General Shapiro,

You may be aware of the ongoing dispute regarding the potential destruction or removal of artwork in Fairmount Park (Park). See <https://www.foxnews.com/us/philadelphia-dismantle-christopher-columbus-statue>. There is currently an emergency petition for injunctive relief pending in the Court of Common Pleas of the First Judicial District, June Term, 2020.

I am writing to bring to your attention several concerns attendant to this planned destruction or removal which fall within the purview of your office. I would request that you exercise jurisdiction, as the Commonwealth's top law enforcement official, to address these concerns.

FAIRMOUNT PARK COMMISSION

Any decision about the statue should be made by the Fairmount Park Commission. Philadelphia claims to have disbanded the Fairmount Park Commission, making it impossible for them to serve their statutory role. I would ask that you inform Philadelphia that it must reconstitute the Fairmount Park Commission as required by Pennsylvania law.

A number of Commonwealth statutes from the mid-1800s established the Fairmount Park Commission and set the bounds of its authority. Setting aside, for a moment, the First Amendment implications and other issues associated with destroying/removing artwork, those state statutes vest the authority to make such a decision with the Fairmount Park Commission. I believe it is imperative that the Fairmount Park Commission be reconstituted in order to:

- exercise its statutory responsibilities, and
- defend those statutory responsibilities from any other entity which seeks to usurp them.

While copies of all five of these statutes are enclosed, a short description of each may prove useful.

Act 525 of 1867

The Act of March 26, 1867, P.L. 547, No. 525 (Act 525), created a park “to be laid out and maintained forever as an open public space and park, for the health and enjoyment of the people ... and the preservation of the purity of the water supply of the City of Philadelphia.” Section 1.

Act 525 further created the Fairmount Park Commission, composed of “[t]he mayor, the presidents of the select and common councils, commissioners of city property, the chief engineer and surveyor, and the chief engineer of the water-works of said city, together with ten citizens of said city, who shall be appointed for five years, five of them by the district court, and five of them by the court of common pleas of said city.” Section 2.

The Commissioners were given responsibility for the care, management, improvement and maintenance of the Park. Sections 4 and 5 of Act 525.

Act 1020 of 1868

Just over a year later, the General Assembly enacted the Act of April 14, 1868, P.L. 1083, No. 1020 (Act 1020). A supplement to Act 525, Act 1020 established boundaries for the Park. Section 1 of Act 1020.

In addition to other changes, Section 5 of Act 1020, entitled “Grounds Subject to Control of Commissioners; Compensation,” reiterated that the Park was, as provide in Act 525, subject to the control of the Fairmount Park Commission. More importantly for today’s conversation, however, Act 1020 vested the Fairmount Park Commission, not the City, with the authority to accept artwork for the Park. Further, it was the Commission, not the City, which had to determine whether any restrictions or conditions prescribed by the donor were “satisfactory to the commission and compatible with the purposes of said park.” Section 17 of Act 1020.

If there were any confusion about the Fairmount Park Commission’s control over the Park, Section 19 of Act 1020 provided this additional clarity:

The said park commissioners shall have the power to govern, manage, lay out, plant and ornament the said Fairmount Park, and to maintain the same in good order and repair, and to construct all proper bridges, buildings, railways and other improvements, therein, and to repress all disorders therein under the provisions hereinafter contained.

The Fairmount Park Commission was empowered to license passenger railways and various other enterprises within the park, establish rules/regulations, employ park police, and appoint a solicitor. Sections 20 – 22, 27 and 28 of Act 1020.

Act 1189 of 1869

The Act of April 21, 1869, P.L. 1194, No. 1189 (Act 1189), established additional duties and responsibilities for the Fairmount Park Commission, including the care and management of other grounds appropriate for park purposes. Section 6 of Act 1189.

Act 70 of 1870

The Act of January 27, 1870, P.L. 93, No. 70 (Act 70), made a number of changes concerning park juries and reports as well as repealing/reenacting provisions related to a solicitor.

Act 338 of 1871

The last of what had become an annual exercise, the Act of March 15, 1871, P.L. 363, No. 338 (Act 338) empowered the Fairmount Park Commission to limit manufacturing and the sale of liquor.

Additional

The Fairmount Park Commission was statutorily created and imbued with broad powers to manage the Park. Although the statutes are well over a century old, their vintage does not lessen their vigor. It is the Fairmount Park Commission, of which the Mayor is a member, who would make the ultimate decision about tearing down artwork in the Park.

In order to fulfill its obligations and defend its prerogatives, I believe the Fairmount Park Commission should be reconstituted and would ask that you direct Philadelphia to do so.

CHARITABLE TRUSTS AND ORGANIZATIONS SECTION

As explained on your website, the Attorney General's "Charitable Trusts and Organizations Section protects the public's interest in all property committed to charitable purposes."

<https://www.attorneygeneral.gov/public-protection-division/>.

The statue of Columbus in Fairmount Park was reportedly the first statue of Columbus in the United States funded by public subscription.

<https://statues.vanderkrogt.net/object.php?webpage=CO&record=uspa01>. According to the inscriptions on the statue and its base, it was presented by "the Italian Citizens" and dedicated by the Christopher Columbus Monument Association on Oct. 12, 1876 "on the anniversary of the landing of Christopher Columbus Oct. 12, 1492, in commemoration of the First Centenary of American Independence, 1876."

It is imperative that your Charitable Trusts and Organizations Section investigate the planned removal or destruction of the Christopher Columbus statue to determine if it violates the intent of the donors who contributed to the statue's creation and erection.

CIVIL RIGHTS ENFORCEMENT SECTION

Your website also explains that the Civil Rights Enforcement Section "protects and advances the rights of Pennsylvanians through the enforcement of state and federal civil rights laws" including "[c]ivil injunctions or other equitable relief ... to protect persons or property against crimes motivated by hatred toward the race, color, religion or national origin of another individual or group." <https://www.attorneygeneral.gov/public-protection-division/>.

Columbus statue until you complete your work and reach conclusions about the motivations involved. Discrimination on the basis of national origin is as much a concern for Italian Americans as any other immigrant group.

CONCLUSION

Those who wish the destruction or removal of the Christopher Columbus statue in Fairmount Park, a proud symbol of Italian American heritage, seem willing to ignore both Commonwealth law and the donative intent of those who paid for the statue in order to fulfill their goal. Given the protection afforded national origin in statutory law, it is important to know whether some are motivated to "erase" Italian American history and contributions to the United States. On behalf of all Pennsylvanian's of Italian descent, I would ask that you take steps to protect our interests.

Thank you in advance for your attention to my requests.



Martina White
Pennsylvania State Representative
170th Legislative District

Enclosures

The Act of March 26, 1867, P.L. 547, No. 525.
The Act of April 14, 1868, P.L. 1083, No. 1020.
The Act of April 21, 1869, P.L. 1194, No. 1189.
The Act of January 27, 1870, P.L. 93, No. 70.
The Act of March 15, 1871, P.L. 363, No. 338.