

In The
Supreme Court of Virginia

Record No. 200195

HISTORIC ALEXANDRIA FOUNDATION,

Appellant,

v.

CITY OF ALEXANDRIA and VOWELL, LLC,

Appellees.

**BRIEF AS *AMICA CURIAE* OF
JOSEPHINE P. HALLAM
IN SUPPORT OF APPELLANT**

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INTEREST OF THE *AMICA CURIAE*

I am the granddaughter of Hugo L. Black. My mother, who died last year while this case was pending, was Josephine Black Pesaresi, his only daughter, who was named for his wife Josephine Black. So I am the third in succession of Josephines in the Black descent.

I am deeply concerned by the threatened destruction of the eighteenth-century house and garden that my grandfather depended on Virginia law to preserve, and by how such a loss would diminish the historic neighborhood of Alexandria that he sought to protect. My mother when she learned of this plan was no less offended than I, and before her death she personally urged the Alexandria City Council members to honor their responsibilities to enforce city and state law. Her letter to them of last year, see J.A. 89, is attached as an exhibit here. It was not mentioned or acknowledged by any City Council member or staff person. The Circuit Court threw out the case without seriously examining the law or the record.

Besides what it has meant to my mother and my grandparents, and to historians and students of the law, and to ordinary citizens visiting the city, the house and garden on Lee Street have a personal significance to me. As a young child, I played in the yard at Lee Street. I distinctly remember the smell of the roses in the summer air. I remember time well spent with my grandfather, aunts, uncles and cousins. As children, my cousins and I found it a magical place, where we could watch the fish swim in the pond, run around the tennis court, and taste the foods picked from grandfather's garden.

After the house reluctantly was sold, the gracious new owners regularly would invite all of grandfather's children, grandchildren and law clerks to come

back for reunions. This was something of a magical experience. We could feel my grandfather's presence still there. We were reunited in laughter, and reminisced about the memories we each held of Lee Street, while simultaneously admiring once more what Grandfather had restored, preserved, and made a part of American history.

STATEMENT OF THE CASE

Amica adopts the statement of the case in appellant's brief.

ASSIGNMENTS OF ERROR

Amica adopts the assignments of error in appellant's brief.

STANDARD OF REVIEW

Amica adopts the standard of review in appellant's brief.

ARGUMENT

I think that when you buy a home that you know has historical significance, you do so with the understanding that you are also buying many longstanding legal limitations that restrict actions that would alter or harm it. That is the limitation that is assumed in purchasing such a rare and historic property. 619 South Lee Street came with very specific legal restrictions spelled out to every purchaser, not only in the land records, but over and over again in multiple provisions of the City Code, and besides that in important statutes of Virginia—two of them, ironically,

drafted by one of Grandfather's former law clerks. Virginia Historic Resources Act, Va. Code § 10.1-2204; Virginia Open-Spaces Land Act, Va. Code § 10.1-1700 to -1705.

The property on Lee Street has long held double claims for protection:

1. The house dates from about 1790, making it one of the oldest structures in the city. My grandfather and grandmother, during his second year on the Supreme Court, moved there in 1939. By that time, several years before far-seeing Alexandria citizens enacted strict laws to stop deterioration of their heritage, it had fallen into disrepair, but Grandfather used some of the limited salary he earned as a Justice to bring it back as it was when George Washington and George Mason walked along Lee Street. He also purchased the land beside it to become a unique garden and tennis court, which I understand is now perhaps the largest private garden left in Alexandria.

2. Before long, however, the house and garden became a recognized part of our heritage because of the unusually prominent individual who lived there, and the events that happened there. Some of the most transforming decisions in American history were conceived and hammered out in that upstairs study and in that yard, and even on that clay court. For a few examples:

Soon after joining the Supreme Court, in *Chambers v. Florida*, 309 U.S. 227 (1940), he wrote the opinion in which the Court for the first time held that due process bars conviction using a coerced confession.

After playing a key role in the school-desegregation decisions, *Brown v. Board of Education*, 347 U.S. 483 (1954), and *Cooper v. Aaron*, 358 U.S. 1 (1958), he wrote for the Court in *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218, 234 (1964), the plain order that “[t]he time for mere ‘deliberate speed’ has run out”

He was the country’s champion of the Bill of Rights, often writing separately to emphasize additional points that would influence future decisions. *E.g.*, *New York Times Co. v. Sullivan*, 376 U.S. 254, 297 (1964) (concurring opinion; footnote omitted), underscoring that “[a]n unconditional right to say what one pleases about public affairs is what I consider to be the minimum guarantee of the First Amendment.”

His dissents time and again later became the law, as in:

—*Betts v. Brady*, 316 U.S. 455, 474 (1942) (Black, J., dissenting), *overruled* by *Gideon v. Wainwright*, 372 U.S. 335 (1963) (Court’s opinion by Black, J.), establishing the right to counsel for indigent defendants in felony trials.

—*Colegrove v. Green*, 328 U.S. 549, 566 (1945) (Black, J., dissenting),
overruled by Wesberry v. Sanders, 376 U.S. 1 (1964) (Court’s opinion by Black,
J.), holding that congressional districts must be approximately equal in population.

—*Adamson v. California*, 332 U.S. 46, 68 (1947) (Black, J. dissenting), was
his famous dissent urging that under the Fourteenth Amendment the Bill of Rights
applies to the states—as the Court subsequently has agreed one by one for nearly
every Bill of Rights provision, most recently in *McDonald v. City of Chicago*, 561
U.S. 742, 791 (2010), holding that the Second Amendment through the Fourteenth
binds the states. The Court explained that “[w]hile Justice Black’s theory was
never adopted, the Court eventually moved in that direction by initiating what has
been called a process of ‘selective incorporation’” 561 U.S. at 763.

In his very last published opinion, the Pentagon Papers case, Grandfather
was still ensuring that “[t]he Framers of the First Amendment . . . sought to give
this new society strength and security by providing that freedom of speech, press,
religion, and assembly should not be abridged.” *New York Times Co. v. United
States*, 403 U.S. 713, 719 (1971) (Black, J., concurring).

His Supreme Court legacy was, in all, 783 opinions, of which 442 were
delivered as opinions of the Court. Those magnificent opinions are forever
embedded in the bricks and soil of 619 South Lee Street.

So this house has been preserved as a Virginia Landmark not only for its early origin, but even more for who lived there and what later happened there. In much the same way, Mount Vernon is revered not only as an example of eighteenth-century plantation architecture, but also because George Washington lived there. The house is so historically and architecturally important that an entire book-length study was written about it. Ruth Lincoln Kaye, *The History of 619 South Lee Street* (1987). It is a mainstay of compilations of old Alexandria's greatest houses. For example, *Alexandria Houses 1750-1830* (1946), by Deering Davis, *et al.*, includes a floor plan and full-page illustrations of both the house and the garden, commenting that "Early builders paid much attention to fenestration and detail as is beautifully illustrated in this residence of Justice and Mrs. Hugo Black." J.A. 82, illustrations at J.A. 82-83. Another history notes that in the Civil War era it was the home of Edgar Snowden, Alexandria's mayor, member of the General Assembly, and longtime owner of the *Alexandria Gazette*. William Francis Smith and T. Michael Miller, *A Seaport Saga* 87 (1987). Those authors added that

"One of the first to become enchanted with the history and ambience of old Alexandria was Supreme Court Justice Hugo Black who bought and restored the old Snowden homestead at 619 South Lee Street." *Id.* at 186.

In that assessment they were exactly correct. For visitors he later recalled that in 1939 "my wife, who liked antiques very much, found this house. It was in

pretty bad condition.” *Justice Black and the Venerable House That He Presides Over*, NEW YORK TIMES, Jan. 24, 1970. He showed visitors its eighteenth-century features. He also treasured its garden, writing to Alexandria planning officials:

“One of the main charms about Alexandria homes is that nearly all of them, like most continental homes, have gardens, even if small, in which the occupants can enjoy flowers, shrubs and green grass.”

Hugo L. Black to Charles B. Moore, Jr., Feb. 25, 1969, J.A. 56. He urged that they should refrain from “permitting the erection of buildings to follow a course which is bound, in the long run, to take away a lot of the charm of living in Alexandria.” *Id.* State officials that year designated it a Virginia Historic Landmark. J.A. 55-57. Further, in accepting an easement to protect it in perpetuity under the new Virginia Open-Space Land Act, they expressed their “unanimous and unreserved opinion” that it manifested not only “architectural distinction” and “ample historical quality.” J.A. 57.

In 1973 the Black family conveyed the property to the late David Ginsburg, a Washington, D.C. attorney. Mr. and Mrs. Ginsburg assured that they would honor the commitment expressed in an easement to maintain the property in a way that preserved the house, tennis court and gardens. The Ginsburgs faithfully did so. They even held periodic gatherings at the house for former clerks and us members of the Black family. We were always impressed by the scrupulous care with which the Ginsburgs had preserved grandfather’s house, garden and tennis

court. Their daughter still cared enough that last year she attended the late-night City Council hearing in this case to testify against the proposal to destroy what both our families have cherished.

The Ginsburgs after thirteen years of loving care conveyed the property, and now it has come into the hands of the present owners, who propose to tear down a wall of the house and cover much of the yard with enormous modern-style additions. These new owners never contacted any of Grandfather's then-living children, or any of us of the next generation, even though none of us would have been difficult to find. My mother was hurt and disappointed when she learned about the plan, a few months before her death. She wrote to the City Council that "[a]s the only living child of Justice Hugo L. Black I have not received any notice that there was a request moving through the system to alter or demolish the yard, structures or any parts of the 619 South Lee Street property." She immediately filed a timely objection. Her submission to them is part of the record, but apparently received no attention. It is attached, and I urge you to read it, because it tells the story of the house from the memory of someone who grew up there, and was married there.

Her letter concludes: "So the question becomes: is my father's life and career important enough to immortalize by preserving his home?" If the destruction of this landmark property is allowed—with the old house partly


demolished, and hugely expanded by new modern construction spread all over the garden—then my grandfather’s legacy, which is cradled in that Alexandria house and yard in which he took so much pride, will be lost to history forever.

Nearly a century ago, in one of his earliest and favorite opinions, my grandfather expressed a commitment that “[u]nder our constitutional system, courts stand against any winds that blow” *Chambers v. Florida*, 309 U.S. at 241. I ask that you renew that pledge, enforce the laws that were enacted, and have respect for my grandfather’s unique contribution to this country, and recognize the historical significance of this honored place, by protecting it so that future generations will still be able to share a tangible piece of the heart and soul of a man who dedicated his life to a country and Constitution he so dearly loved.

CONCLUSION

For the reasons stated, the judgment of the Circuit Court should be reversed.

Respectfully submitted,



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CERTIFICATE OF SERVICE AND COMPLIANCE

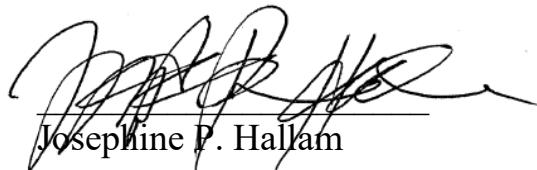
I certify that this 16th day of November 2020 I caused copies of the foregoing brief to be served electronically on each of the following:

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I further certify that I have caused an electronic copy of the foregoing brief to be filed with the Clerk of this Court via VACES. I also certify that the foregoing brief does not exceed fifty pages in length and that it complies with Rules 5:6, 5:26 and 5:30 of the Rules of this Court.


Josephine P. Hallam

Exhibit

Josephine Black Pesaresi
13835 North 51st Street
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April 4, 2019

RE: Appeal no. 2018-0041 and 00411

Mayor and City Council, Alexandria, Virginia,

My name is Josephine Black Pesaresi. I am the daughter of Justice Hugo L. Black. Unfortunately, I am the only remaining child named on the easement created by my father regarding the property located at 619 South Lee Street in Alexandria, Virginia.

As the only living child of Justice Hugo L. Black, I have not received any notice that there was a request moving through the system to alter or demolish the yard, structures or any parts of the 619 South Lee Street property.

I moved into the house at age 4, when my father was appointed to the United States Supreme Court by President Roosevelt. My father was President Roosevelt's first appointment to the Court. When my family bought the house on Lee Street, it was in a bad shape of disrepair. My mother and father spent years pouring their love into making the house, gardens and tennis court a sanctuary for my father during turbulent times in American history, and more specifically, during rounds of Court decisions that changed the course of American lives, but made my father a target of vitriol and hate. 619 South Lee Street and the property so carefully designed, planned and built were his true love and sanctuary--my father's place for peaceful reflection.

Although my mother would have preferred a property on Seminary Hill, on my father's salary, they could only afford a house in the more affordable places, and my parents loved the Lee Street house immediately as it was a block from the water.

My father bought the corner lot also and tore down the house located there to make for the yard they dreamed of. Plans were made for the gardens, rose bushes, fig trees, a pond and a peaceful refuge for tranquil walk-about. My parents also tore down the slave quarters behind the house to make room for the clay tennis court that became so central to my father's everyday existence.

My father built a tennis court because he started playing tennis late in life, and he spent countless hours on the court. Justice Black was known as the one Justice to remain in Washington to work at the Supreme Court in the Summer. He would field any calls, inquiries, or petitions that required immediate attention. The house, patio and yard are where he handled most matters that arose during the summer months. The tennis court was an integral part of his commitment to remain at the Supreme

Court in the summer months, as he believed it was a year-round job. His law clerks spent many hours with him, hitting balls back and forth, working on the logic of cases before them.

My father was a man of strict routine. He played tennis on the clay court every morning and again every night. One specific memory is seared into my brain of a historic moment that occurred during one of our tennis matches. As my father and I were hitting balls competitively back and forth, because it was always competitive with my father, our maid came to tell us that someone was at the door for the Justice. I went to see who it was, and was surprised to find the attorneys representing the Rosenbergs standing on our front stoop. Desperate for my father to give their clients a reprieve from their death sentence, they begged for me to have him come to the door. I returned to my father, still standing on the clay court, and explained the situation. With tears running down his face, he said, "Tell them I am sorry, but I have done all I can do." It was a heart-wrenching moment for him. My father knew in his heart that their execution would be wrong.

My father watered, rolled and maintained the tennis court himself until his death. Tennis was the love of his life, aside from the law. Law clerks who worked with my father spent hour upon hour on the court, neighborhood friends would come play matches on the weekend, and Vice President Henry Wallace was a frequent tennis opponent on the clay court on Lee Street. My father also had the pleasure of playing against tennis great Pancho Gonzales, who my father won a set against, and my father believed he had won that set fair and square until the day he died.

A large part of my father's life was spent in his oasis of his yard, patio and clay court. It meant a lot to him. I don't know what he would have done without the escape of his yard to work out the mental issues necessary to lead the Supreme Court through complex legal issues weighing on his intellect, day in and day out. The yard he designed, walked in, pruned bushes in, played tennis in, allowed him a place to work out the logic which would someday become the backbone of our country's legal jurisprudence.

Where the house ends, my father cherished a patch of rhododendrons which he faithfully came out to water by hand in his old tennis clothes each night after work. He never missed a night of tending to his rhododendrons. My father enjoyed doing his own gardening and yardwork. He planted, by hand, small fig trees, which years later began to bloom and produced voluminous figs, much to his delight and our neighbors dismay (as the figs filled up the neighbors pool.)

When I married my husband, my father walked me down the old wooden staircase at 619 Lee Street, and we were married in the living room by a Unitarian minister who was killed in the racial riots a year later in Montgomery, Alabama. My wedding reception was held in the gardens of our home on Lee Street, with the Justices of the Supreme Court walking around the patio, gardens and pond. It is one of the fondest memories we have in the yard and having his Brethren present when his only daughter was married meant the world to my father. Having his Brethren in the inner sanctum of his backyard was magical to him.

Many of the most important decisions in American legal history were sprouts of thoughts that began in the yard or on the clay tennis court of 619 South Lee Street. And when my father lay dying, at Bethesda Naval Hospital, he refused to let go of life until his private notes were burned. The notes he had written privately, between his Brethren, as they discussed cases and points of law. My father felt these notes were sacrosanct and no one should ever lay eyes on them. My brother, Hugo Black Jr. built a large fire pit, in that same back yard where my father's brilliance hatched many of the fundamental arguments held within those notes, and tossed the private papers into the fire one by one. Gideon. Brown v. Board of Education. New York Times v. Sullivan. It all went up into ashes in the backyard of 619 Lee Street.

So the question becomes: Is my father's life and career important enough to immortalize by preserving his home? His home included his house, yard and tennis court. I believe Alexandria should keep his home intact as an historic site. Is Justice Hugo L. Black an important enough part of American history to want to preserve this piece of him? That is the question this Council must answer, for you are the keepers and protectors of history.

Sincerely,


Josephine Black Pesaresi