

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

FREDERICK W. PAYNE
JOHN BOSLEY YELLOTT, JR.
(aka Jock Yellott)
EDWARD D. TAYLOE, II
BETTY JANE FRANKLIN PHILLIPS
EDWARD BERGEN FRY
VIRGINIA C. AMISS
STEFANIE MARSHALL
CHARLES L. WEBER, JR.
LLOYD THOMAS SMITH, JR.
VIRGINIA DIVISION, SONS OF
CONFEDERATE VETERANS, INC.
ANTHONY M. GRIFFIN
BRITTON FRANKLIN EARNEST, SR.
THE MONUMENT FUND, INC.,

Plaintiffs,

v.

Case No. CL17-145

CITY OF CHARLOTTESVILLE, VIRGINIA
CHARLOTTESVILLE CITY COUNCIL
M^{TR}I MICHAEL SIGNER
WESLEY JOMONT BELLAMY
ROBERT FRANCIS FENWICK, JR.
KRISTIN LAYNG SZAKOS
KATHLEEN MARY GALVIN

Defendants.

MOTION FOR EXTENSION OF TEMPORARY INJUNCTIONS
AND
NOTICE OF HEARING ON MOTION

To: City of Charlottesville *et al*, Defendants
c/o S. Craig Brown, Esquire
Charlottesville City Attorney
City Hall
605 East Main Street
Charlottesville, Virginia 22902

FILED
October 12, 2017
(Date & Time) 1:53 pm
City of Charlottesville
Circuit Court Clerk's Office
Llezzelle A. Dugger, Clerk
By Mitch Spivak
Deputy Clerk

and

c/o Richard H. Milnor, Esquire
Zunka, Milnor & Carter
414 Park Street
Charlottesville, Virginia 22902,

Counsel for Defendants.

PLEASE TAKE NOTICE that on **Tuesday, October 24, 2017 at 1 o'clock P.M.**, or as soon thereafter as counsel can be heard, Plaintiffs will appear before the Judge of the above-styled Court in his courtroom (or in conference room if courtroom is not available) and then and there request that the Court grant the relief prayed for in the following motion, in support of which Plaintiffs will produce evidence:

1. That by temporary injunction order entered on June 6, 2017, this Court enjoined each of Defendants as follows: "The Court doth therefore ADJUDGE, ORDER and DECREE that Defendants, and each of them, are hereby enjoined from removing or selling the statue of General Robert E. Lee from Lee Park in the City of Charlottesville, Virginia for a period of six (6) months from May 2, 2017, and to this extent the motion of Plaintiffs for a temporary injunction is granted."

2. That on October 4, 2017, after hearing evidence and argument on the motion of Plaintiffs to expand the injunction, the Court ruled as follows: "I do think that I should include the Jackson statue in that injunction against moving it, for the reasons that we discussed last time and now I've found that I do believe that 1812 does apply. I do believe, at least in the Jackson case, from the evidence offered today, there's a basis upon which to conclude it was a monument to the War Between the States or the Civil War—War Between the States is what the statute uses—and to a veteran of that war. There's plenty of evidence to support that...I'm just applying the original injunction to the Jackson statue." The relevant pages of the Court's ruling

are attached hereto. The order resulting from the October 4, 2017 hearing is being prepared by counsel for Defendants and has not yet been submitted to the Court.

3. That the foregoing temporary injunctions expire on November 2, 2017.

4. That Plaintiffs are concerned that without the injunctions in place, Defendants will move quickly to remove the Lee and Jackson statues from Lee Park (Emancipation Park) and Jackson Park (Justice Park), respectively. Even after the original injunction order was entered, Defendant City Council, at its August 21, 2017 meeting, with all individual Defendants voting in favor thereof, passed a motion to make immediate application to the BAR for a certificate of appropriateness for removal of the Lee and Jackson statues, and then further resolved, with all individual Defendants voting in favor thereof, to "order the removal of the statue of Stonewall Jackson from Justice Park as soon as possible, following the successful resolution of the current court case in favor of the City." Copies of those motions and actions are attached hereto as exhibits. Of particular concern to Plaintiffs is the statement made by Defendant Szakos during that meeting, in regard to the shrouding of the two monuments, that "the idea of we should seek forgiveness rather than permission on this one".

5. That the letter opinion of this Court dated October 3, 2017, finding that Virginia Code Section 15.2-1812 applies to the two monuments, subject to the filing of an amended complaint with respect to the Lee monument, which has been filed, indicates that the result of this case will not be successful for the Defendants. Plaintiffs are concerned that the possibility of an unsuccessful result will precipitate action by the Defendants to disturb or interfere with the monuments without the protection of a temporary injunction.

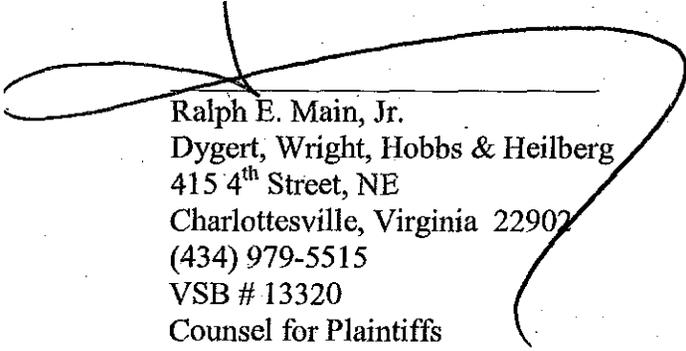
6. That thus far Defendants have opposed all requests for injunctive relief. If Defendants do not plan on taking any action regarding the two monuments until the case is

concluded, then Defendants should have no reason to object to or oppose extending the temporary injunctions.

Wherefore Plaintiffs pray that the Court extend the current temporary injunctions protecting the Robert E. Lee Monument in Lee Park (Emancipation Park) and the Stonewall Jackson Monument in Jackson Park (Justice Park) for the duration of this case, and to grant such other and further relief as may be necessary in the premises.

Respectfully Submitted,

FREDERICK W. PAYNE *et al*
Plaintiffs
By Counsel



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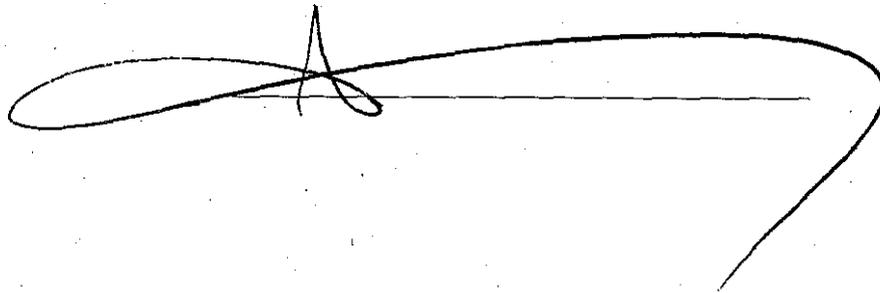
CERTIFICATE

I hereby certify that on October 12, 2017 true and accurate copies of the foregoing motion and notice of hearing, with exhibits attached, were hand-delivered to the following counsel for Defendants:

S. Craig Brown, Esquire
Charlottesville City Attorney
City Hall
605 East Main Street
Charlottesville, Virginia 22902

and

Richard H. Milnor, Esquire
Zunka, Milnor & Carter
414 Park Street
Charlottesville, Virginia 22902.

A large, stylized handwritten signature in black ink, consisting of a long horizontal line with a large loop at the end and a vertical stroke crossing it near the beginning.

1 (October 4, 2017:)

2 P R O C E E D I N G S

3 THE COURT: All right. Thank you,
4 Mr. Puryear.

5 Well, there's several things I would like to
6 touch on. I can go ahead and give you my decision on
7 this now, unlike the hearing on September 1st.

8 I don't think -- and I've already said this --
9 I should extend the injunction to moving the Lee statue
10 beyond November 2nd at this point in time.

11 I think it's premature and not necessary,
12 because if Plaintiff re-files a sufficient complaint
13 within twenty-one days -- and it's technically
14 twenty-one days from when the order is entered, but
15 nevertheless -- then that's time for me to take action
16 on that, to extend it on motion. If they don't, then
17 I'll dismiss the complaint and that will be enough
18 said.

19 I don't think that I need to extend that
20 today, nor do I think I should today. In a sense, I
21 guess I'll take that under advisement, but I'm not
22 going to extend it today.

23 I do think that I should include the Jackson
24 statue in that injunction against moving it, for all
25 the reasons that we discussed last time and now I've

1 found that I do believe that 1812 does apply. I do
2 believe, at least in the Jackson case, from the
3 evidence offered today, there's a basis upon which to
4 conclude it was a monument to the War Between the
5 States or the Civil War -- War Between the States is
6 what the statute uses -- and to a veteran of that war.
7 There's plenty of evidence to support that.

8 And I do believe, despite the representations
9 that City Council is not planning on moving it as long
10 as the matter is not resolved, nevertheless, they have
11 voted to do that and they voted to do that after the
12 original injunction. Frankly, that just gives the
13 Court some concern.

14 But if they weren't going to move it anyway,
15 then extending the injunction to the Jackson statue
16 doesn't bother the city. If they weren't going to move
17 it anyway, it's like, why complain about that? They've
18 already said they're not going to.

19 But I'm not going to do that past
20 November 2nd. I'm just applying the original
21 injunction to the Jackson statue. I just think that I
22 should, and it's appropriate at this point in time for
23 the same reasons that I previously addressed.

24 I still find a different matter with regard to
25 the coverings. I have lots of concerns. There's lots

CERTIFICATE OF AUTHENTICITY

I, Paige Rice, do hereby certify and aver as follows:

1. I am employed by the City of Charlottesville, a municipal corporation and political subdivision of the Commonwealth of Virginia, and my job is to serve as the Clerk to the Charlottesville City Council;
2. The documents attached to this Certificate of Authenticity are true and accurate copies of official records of the business of the City Council, as follows:
 - a. A one (1) page excerpt from the official minutes of the August 21-22, 2017 meeting of the Charlottesville City Council, setting forth the actual wording of a Motion presented by City Councilor Kristin Szakos, and approved by a unanimous affirmative vote of the City Council, for instituting an action to the BAR for a certificate of appropriateness for the removal of the Stonewall Jackson and the Robert E. Lee statues;
 - b. A Resolution presented by City Councilor Wes Bellamy, and approved on September 5, 2017 by a unanimous affirmative vote of the City Council; and
 - c. A Resolution presented by City Councilor Kathy Galvin, and approved on September 5, 2017 by a unanimous affirmative vote of the City Council.
3. The original records, of which the attached documents are true and accurate copies, are maintained in my office. The original records are within my custody. In my capacity as a custodian of these records, I am authorized to make this certification.

Paige Rice
Signature of Paige Rice

10/4/2017
Date

Excerpt from August 21, 2017 City Council meeting minutes

OTHER BUSINESS

Ms. Szakos moved to make an immediate application to the BAR for a certificate of appropriateness for the removal of the Stonewall Jackson and Robert E. Lee statue. As the statues are located in the design control district, technically Council needs a BAR certificate of appropriateness. Council does not have to wait until after the court ruling to apply for the certificate. Ms. Szakos requested a vote on the matter tonight.

Mr. Signer explained that due to the urgency for this action, a vote will be taken tonight.

Ms. Galvin seconded the motion. The motion passed. (Ayes: Ms. Szakos, Ms. Galvin, Mr. Signer, Mr. Bellamy, Mr. Fenwick; Noes: None;)

Yaigee Rice
Oct. 4, 2017

RESOLUTION

To remove and relocate the statue of Stonewall Jackson from Justice Park and expedite the removal of both the Jackson and Robert E. Lee statues pending final disposition

WHEREAS the monuments of Confederate generals Robert E. Lee and Stonewall Jackson that sit in Charlottesville's Emancipation and Justice Parks were erected not as war memorials after the Civil War, but as 20th Century testaments to a fictionalized, glorified narrative of the rightness of the Southern cause in that war, when the actual cause was an insurrection against the United States of America promoting the right of southern states to perpetuate the institution of slavery; and

WHEREAS the continued presence of these monuments conveys the visual message that Charlottesville supports the cause for which these generals fought; and

WHEREAS the Monuments of Confederate generals Robert E. Lee and Stonewall Jackson have become flashpoints for white supremacist violence throughout the summer of 2017, with white nationalist and Ku Klux Klan rallies at the Jackson monument and culminating in the armed invasion of Charlottesville during the "Unite the Right" rally "defending" the Lee monument; and

WHEREAS the continued presence of these monuments in Charlottesville's historic downtown district constitute a clear and continuing threat to public safety, both from continuing white supremacist defense of their presence and from anti-racist activists who may feel motivated to vandalize them; and

WHEREAS City Council voted on February 6, 2017, to remove the statue of Robert E. Lee from the park formerly known as Lee Park, and to change the name of the park;

NOW THEREFORE BE IT RESOLVED, that we, the City Council of Charlottesville, Virginia, order the removal of the statue of Stonewall Jackson from Justice Park as soon as possible, following the successful resolution of the current court case in favor of the City;

BE IT FURTHER RESOLVED, that upon the successful resolution of the current court case in favor of the City and until successful bids are accepted, both statues will be moved to a storage location pending final disposition, and successful bidders will be required to reimburse the cost of removal.

BE IT FURTHER RESOLVED, that if no responsive proposals are received, Council may consider donation of the statue to an appropriate venue; and

BE IT FURTHER RESOLVED, that the City of Charlottesville will issue a Request for Bids for disposition of the statue, and will advertise this RFB widely, including to organizations responsible for sites with historic or academic connection to Robert E. Lee, Stonewall Jackson or the Civil War, with the following criteria for award:

- The statue will not be displayed to express support for a particular ideology.

- The successful applicant will pay for or take responsibility for removal and transportation.
- The removal and transportation will be carried out in a manner that preserves the integrity of the sculpture.
- The display of the statue will preferably be in an educational, historic or artistic context.
- The purchaser will pay for any repair for any damage to the park incurred as a result of the removal.
- Some preference will be given to proposals that include a plan for maintenance of the statue's National Register of Historic Places listing

Approved by Council
September 5, 2017



Clerk of Council

RESOLUTION
(as AMENDMENTED)

To transform the City of Charlottesville's core public spaces in keeping with the recommendations of the Blue Ribbon Commission on Race, Memorials and Public Spaces (BRC) such that a more complete history of race is told and the City's commitment to truth, freedom and equity is affirmed.

WHEREAS the Charlottesville City Council made a clear commitment to reveal and tell the full story of race through our City's public spaces when it established the BRC in August 2016; and

WHEREAS the BRC's Final Report acknowledged that far too often our public spaces and histories have ignored, silenced or suppressed African American history, as well as the legacy of white supremacy and the unimaginable harms done under that cause; and

WHEREAS the public spaces of Charlottesville's Historic North Downtown and Court Square Districts contain the Robert E. Lee statue* in Emancipation Park, the Stonewall Jackson statue in Justice Park, the slave auction block and the Reconstruction era's Freedman's Bureau;

BE IT RESOLVED that the City Council of Charlottesville directs staff to:

- In consultation with community and stakeholder groups chosen at the discretion of the City Manager such as the Jefferson School African American Heritage Center, the PLACE Design Task Force, the Human Rights Commission, the University of Virginia and the Historic Resources Commission to write and issue (within 90 days of the adoption of this Resolution) a Request for Proposal (RFP) for professional design services in conjunction with expertise in art and history to create a Master Plan for the Historic North Downtown and Court Square Districts that would;
 - o Remove the Robert E. Lee and "Stonewall" Jackson statues* from Emancipation and Justice Parks, pending court decisions and/or changes in the Virginia Code,
 - o Provide near- and long-term park redesigns for both Justice and Emancipation Parks with and without the statues (as resolving the fate of these statues may take time, but the need to begin changing the narrative surrounding these statues is immediate),
 - o Redesign Justice Park including the addition of a new memorial** to Charlottesville's enslaved population while retaining its ability to function as a community gathering space,
 - o Redesign Emancipation Park, independent of the Lee statue including the addition of a new memorial** in keeping with the recommendations of the BRC and results of an extensive public engagement process while retaining its ability to function as a community gathering space,
 - o Replace the current plaque at the slave auction block with one that is legible,
 - o Identify and acknowledge the site of the Freedman's Bureau.
 - o Incorporate the work of the Equal Justice Initiative with regards to the placement and installation of the historical marker commemorating the lynching of John Henry Adams in Albemarle County.

BE IT FURTHER RESOLVED that all submissions through the RFP process shall:

- Provide for each park at least two preliminary Master Plan options (one with and one without the statues) of the above inclusive of new site plans, elevations and sections, 3D visualizations, and specifications for signage, commemorative plaques, lighting and landscape elements as appropriate throughout this historic precinct so as to create a coherent narrative.
- Engage the community at large in a manner that ensures that those underrepresented

communities were fulsomely included in the process, as well as the Board of Architectural Review (BAR) the Historic Resources Commission, the Human Rights Commission, the PLACE Design Task Force, the University of Virginia, Planning Commission and City Council.

- Provide preliminary cost estimates on all options.
- Establish a timeline to be completed within 12 months of contract signing.
- Allow for the development, design and implementation of a final Master Plan as adopted by City Council, through a total project budget not to exceed \$1,000,000.**
- Be given a three month extension for all submissions from the date of the adoption of these amendments.
- Be reviewed and rated by a community selection committee appointed by the City Manager, with representation inclusive but not limited to the above cited groups as well as external experts.
- Begin a process of working with the necessary parties to include the library as part of this plan.

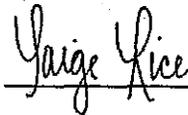
BE IT FURTHER RESOLVED that the Board of Architectural Review (BAR) shall meet as soon as possible to vote on the removal of both statues as required by Charlottesville City ordinances, so that there is no procedural delay in removing the statues should the courts find in the City's favor.

BE IT FURTHER RESOLVED, that the City Council of Charlottesville, Virginia, supports re-naming Jackson Park and hereby directs staff to bring Council a range of options on how and what to rename the park within 60 days of the adoption of this Resolution for its consideration.

* NOTE: The Robert E. Lee statue will be relocated as per a 3:2 majority vote by City Council on February 6, 2017. The "Stonewall" Jackson statue will be relocated as per the date of the adoption of these amendments.

**NOTE: Should the fabrication and installation of a new memorial for Charlottesville's enslaved population (and other memorials) exceed the established budget, additional grants and private funds shall be raised to supplement the City's contribution. The actual design of a new memorial to Charlottesville's enslaved population (and an as yet to be determined memorial in Emancipation Park) shall be determined by an independent process (including but not limited to a design competition.)

Approved by Council
September 5, 2017



Clerk of Council

(Resolution offered by Councilor Galvin, February 6, 2017 with amendments submitted by Councilor Galvin, on August 21, 2017 and on September 5, 2017)

**Dygert, Wright,
Hobbs & Heilberg, PLC**

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Attorneys At Law

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Kelly A. Hobbs
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Leah Eads Hernandez – Se Habla Español*

*George H. Dygert, Retired
Ralph E. Main, Jr., Of Counsel*

October 12, 2017

Llezelle A. Dugger, Clerk
Charlottesville Circuit Court
315 East High Street
Charlottesville, Virginia 22902

Via Hand Delivery

Re: *Frederick W. Payne et al v. City of Charlottesville et al*
Case No. CL17-145

Dear Llezelle:

Kindly file the accompanying motion for extension of temporary injunctions and notice of hearing on motion among the papers in this cause.

Also, kindly file the accompanying transcript of Judge Moore's ruling on October 4, 2017.

Thank you.

Very truly yours,

Ralph E. Main, Jr.

cc: S. Craig Brown, Esquire
Richard H. Milnor, Esquire

rec'd

10.12.17