

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

FREDERICK W. PAYNE, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	Case No. CL17-145
CITY OF CHARLOTTESVILLE,)	
VIRGINIA, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**SHOWING UP FOR RACIAL JUSTICE ACTION, INC.’S
MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE***

Comes now Showing Up for Racial Justice Action, Inc. (“SURJ Action”), by counsel, to respectfully request that the Court grant leave for SURJ Action to file a brief *amicus curiae* in support of the Demurrer to the Complaint filed by the Defendants in the above-captioned action. A copy of the proposed brief is filed herewith. In support of this motion, *amicus* states as follows:

1. SURJ Action is a grassroots nonprofit organization committed to ending policies and practices that uphold white supremacy. With 180 chapters across the United States, SURJ Action primarily organizes in white communities through bold advocacy, community-driven direct action, and strategic electoral engagement. Within the Commonwealth of Virginia, SURJ Action includes chapters in Charlottesville, Richmond, Northern Virginia, and the New River Valley.

2. As an organization devoted to building a racially just society and challenging policies and practices that facilitate racial discrimination and intimidation, SURJ Action has a strong interest in the above-captioned dispute regarding, *inter alia*, the decision by the

democratically elected Charlottesville City Council to remove the statue of Robert E. Lee at issue (the “Lee Statue”). The Charlottesville chapter of SURJ Action consists of over 400 members who are residents of Charlottesville and the surrounding area, including (like the Plaintiffs) property owners, taxpayers, and other individuals who visit the area’s public parks regularly, and more specifically the park containing the Lee Statue. The Charlottesville chapter has recently been engaged in public education and advocacy campaigns specifically with respect to removal of the statue and appreciating its historical and social context, such as organizing local residents to contact city officials and show up to City Council meetings and meetings of the Charlottesville Blue Ribbon Commission on Race, Memorials, and Public Spaces.

3. This case raises important issues regarding the proper interpretation of Virginia Code § 15.2-1812, including whether (1) the statue has retroactive application, and (2) the statue of Robert E. Lee constitutes a memorial to a “war” or to “war veterans” encompassed within that statute. SURJ Action suggests that its understanding and expertise with respect to the historical context of the Robert E. Lee statue and the legal questions at bar may be helpful to the Court. SURJ Action therefore respectfully requests that the Court permit it to file a brief *amicus curiae*.

5. SURJ Action has sought the consent of the parties to file this brief. Counsel for Defendants has stated that Defendants do not object to the filing.

6. Counsel for Plaintiffs has stated that Plaintiffs do not consent to an *amicus* submission, and has threatened to seek an award of attorneys’ fees and costs in connection with opposing the filing. Counsel for Plaintiffs did not provide any authority or basis for seeking such fees and costs, and SURJ Action considers it unfortunate—and telling—that Plaintiffs would resort to such a threat to prevent an organization representing the interests of hundreds of local residents from even seeking leave to being heard, and to potentially deprive the Court of other

reasoned and respectful arguments that it may wish to consider. If Plaintiffs are confident in their positions, they should welcome the opportunity to respond to such arguments.

7. While the Rules of the Supreme Court of Virginia do not expressly reference *amicus curiae* briefing at the Circuit Court level, the practice among the courts has been to consider such briefs by motion, and there are numerous instances in which *amicus* briefs have been received and considered by Circuit Courts. See, e.g., In re Dhanoa, 88 Va. Cir. 373, 374 (Va. Cir. Ct. 2013) (Fairfax County; noting that the court invited the ACLU of Virginia to file an *amicus* brief); Soering v. McDonnell, 84 Va. 564 (Va. Cir. Ct. 2012) (City of Richmond; expressly granting motion to appear as *amicus curiae*); Little Piney Run Estates, LLC v. Loudoun Cnty. Bd. of Supervisors, 74 Va. Cir. 400, 404 (Va. Cir. Ct. 2007) (Loudoun County; noting that a party was “permitted to appear and argue as *amicus curiae*”); Commonwealth of Virginia v. May, 62 Va. Cir. 360, 361 (Va. Cir. Ct. 2003) (Rockingham County; noting that “[a]n attorney of the local bar” was “permitted to file a legal brief as an *amicus curiae*”); Jones v. Caldwell, 61 Va. Cir. 408, 413 (Va. Cir. Ct. 2003) (City of Winchester; explaining that “[a]pppearance as an *amicus curiae* . . . may be granted where the party has no right to intervene”); Chapman v. Graninger, 6 Va. Cir. 234, 235 (Va. Cir. Ct. 1985) (City of Fredericksburg; referencing an “*amicus curiae* memorandum”); Commonwealth Life Ins. V. Clinch Valley Cmty. Hosp., 19 Va. Cir. 514, 515 (Va. Cir. Ct. 1982) (Tazewell County; stating that “Blue Cross was permitted to file a post-hearing brief as *amicus curiae*”). In light of the foregoing, it is deeply disconcerting that Plaintiffs’ counsel would suggest that SURJ Action should be punished for seeking leave of the Court to file an *amicus* brief.

WHEREFORE, for the foregoing reasons, SURJ Action respectfully requests that the Court grant its motion to file a brief *Amicus Curiae*.

Respectfully submitted, this 10th day of July, 2017



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