

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE, VIRGINIA

FREDERICK W. PAYNE, JOHN BOSLEY)	
YELLOTT, JR., et al.,)	
Plaintiffs,)	
)	
v.)	Case No. CL17-000145-000
)	
CITY OF CHARLOTTESVILLE,)	
VIRGINIA, CHARLOTTESVILLE CITY)	
COUNCIL, et al.,)	
Defendants.)	

**CITY DEFENDANTS’ RESPONSE TO PLAINTIFFS’ VERIFIED MOTION
FOR PARTIAL DISSOLUTION OF PERMANENT INJUNCTION**

COME NOW your Defendants City of Charlottesville, Virginia and Charlottesville City Council (together, the “City”), by counsel, and make their response to the Plaintiffs’ “Verified Motion for Partial Dissolution of Permanent Injunction” filed June 5, 2020 (“Motion”), as follows:

1. It is the City’s contention that the Charlottesville Circuit Court was without statutory authority or jurisdiction to enter both the Order: Declaratory Judgment (10/15/2019) and the related Order: Permanent Injunction (10/15/2019)¹; therefore, the Circuit Court is also without statutory authority or jurisdiction to take action under any of the provisions of Va. Sup. Ct. Rule 1:1B cited within Plaintiffs’ Motion.

2. Within their Motion, Plaintiffs cite no statutory authority of the Charlottesville Circuit Court to enter a “partial dissolution” of the Order: Permanent Injunction (October 15, 2019) as described in the Motion or within Plaintiffs’ Points and Authorities in support of the Motion, filed June 25, 2020.

¹ The City’s Petition for Appeal is filed with the Clerk of the Virginia Supreme Court, and it presents these jurisdictional arguments.

3. Based on the allegations within paragraphs (8), (10), (11) and (12) of Plaintiffs' June 5, 2020 Motion, the request for a "partial dissolution" appears to be an attempt by the Plaintiffs to circumvent political and statutory decision making processes reserved for the City's local government.

4. New legislation enacted by the General Assembly (2020 Acts of Assembly, ch. 1101), effective July 1, 2020, expressly grants to every locality the **sole authority** to determine the final disposition of a monument or memorial, after the locality has satisfied certain procedural prerequisites [emphasis added]. The new statutory provisions do not authorize any civil action for declaratory judgment to "clarify what the City can and cannot legally do, in advance" under the new law (Motion ¶12), or any anticipatory injunction. Plaintiffs' request for the Circuit Court to bring the Order: Permanent Injunction "in line with the changing law and evolving facts" (Motion ¶12) amounts to a request for an advisory opinion from the Circuit Court regarding statutory interpretation of the new legislation, and a request for the Court to step in and substitute its judgment for the City's as to the proper disposition of the Lee and Jackson Statues. No provisions within the new law confer jurisdiction upon a circuit court to assume the role of a broker of a "constructive resolution" (Motion, ¶12). All of these requests by Plaintiff exceed the scope of actions contemplated by Rule 1:1B during the pendency of the City's petition for appeal.

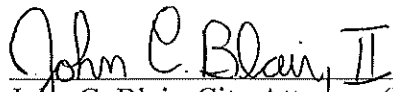
5. The level of Circuit Court involvement sought by Plaintiffs, as referenced in Paragraph (12) of their Motion, if undertaken by the court, would run afoul of the provisions of Article III of the Virginia Constitution, which require a separation of legislative and judicial functions.

WHEREFORE, the City Defendants request the Circuit Court to deny Plaintiffs' Motion, without any hearing(s).

Respectfully submitted,

CITY OF CHARLOTTESVILLE, VIRGINIA, and
CHARLOTTESVILLE CITY COUNCIL, by counsel,

By:



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CERTIFICATE OF SERVICE

I hereby certify that, on June 26, 2020, a paper copy of the foregoing document was mailed by U.S. mail, first class, postage pre-paid, to Ralph E. Main, Jr., at the address given below, and electronic copies of the foregoing document were also sent via electronic mail to all of the following counsel of record, at the addresses given below:

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