VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

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

FILED
April 27 2017 3:42
(Date & Time)
City of Charlottesville
Circuit Court Clerk's Office
Liezelle A. Dugger, Clerk
By _____ Deputy Clerk

MEMORANDUM IN OPPOSITION TO THE MOTION FOR A TEMPORARY INJUNCTION

Defendants City of Charlottesville, Virginia and Charlottesville City Council, and individual Defendants Signer, Bellamy, Fenwick, Szakos and Galvin, by counsel, submit the following authorities in opposition to the Motion for Temporary Injunction filed by Plaintiffs herein.

I. Statement of Proceedings:

On March 23, 2017 eleven individuals and two organizations filed a three count Complaint against the City, the City Council and the individual members of Council, challenging the City's authority to control and regulate two City-owned parks. Count One alleges a violation of Virginia Code §15.2-1812, which the Plaintiffs allege creates "a cause of action for Plaintiffs against Defendants under Code Section 15.2-1812.1" (Complaint ¶ 36).[1] Count Two claims that City Council acted *ultra vires* and in violation of Dillon's Rule because it had no legal authority to order the removal of a statue of Robert E. Lee from Lee Park or to rename either Lee or Jackson Park, or to place additional monuments in Jackson Park. Count Three alleges that three Resolutions passed by City Council violated unspecified terms of the gifts of the Lee and

[1] Section 15.2-1812.1 authorizes a cause of action to recover damages resulting from a violation or encroachment upon a protected memorial or monument. Since there is no allegation of damage to either park or statue, an action pursuant to this Code section is premature.

Jackson statues and the Lee and Jackson Parks by Paul McIntire to the City. The Complaint requests a declaration that the City Council Resolutions are void, permanent injunctive relief and monetary damages. The Plaintiffs also filed a separate Motion for Temporary Injunction.

The Defendants have demurred to the Complaint on several grounds and asked that it be dismissed, and have filed an Answer to the Motion for a Temporary Injunction, stating that the Plaintiffs are not entitled to temporary injunctive relief.

II. Statement of Facts:

In 1918 the property that would become known as Lee Park was conveyed to the City of Charlottesville as a gift financed by Paul G. McIntire. According to the deed (Exhibit C to the Complaint), Mr. McIntire wanted to erect a statue of Robert E. Lee on the site "as a memorial to his parents, the late George M. McIntire and Catherine A. McIntire". Later that same year a second conveyance to the City was made on behalf of Mr. McIntire. (Complaint, Exhibit D) A "Whereas" clause in that second deed "requested that said property be conveyed to the said city and that it be known as 'Jackson Park'."[2] Each of the two deeds placed two, and only two, conditions on the conveyances: that the property conveyed be held and used in perpetuity by the City as a public park, and that no buildings be erected thereon. The deeds contained no other restrictions on the future use of either Park or any improvements therein. To the contrary, each deed expressly acknowledged that the "authorities of said city shall, at all times, have the right and power to control, regulate and restrict the use of said property". The statue of Thomas Jonathan Jackson was installed and dedicated in 1921, and the statue of Robert E. Lee was installed and dedicated in 1924.

[2] Paragraphs 17 and 19 of the Complaint mischaracterize the precatory language regarding the Lee statue and the name of Jackson Park as "stipulations" in the deeds.

At the regular City Council meeting on February 6, 2017, the Charlottesville City Council passed three Resolutions that are challenged in Plaintiffs' Complaint and Motion for Temporary Injunction.

- The first Resolution, referenced in paragraph 28 of the Complaint and attached to the Complaint as Exhibit F, states that Council will remove the statue of Robert E. Lee from Lee Park. The Resolution directs City staff to report back to City Council in the following 60 days with potential destinations for the statue.
- The second Resolution, referenced in paragraph 29 of the Complaint and attached to the Complaint as Exhibit G, states that Lee Park will be renamed. Similar to the first Resolution, the second Resolution directs City staff to report back to City Council in the following 60 days with options for selecting a new name for the Park.
- The third Resolution, referenced in paragraph 30 of the Complaint and attached to the Complaint as Exhibit H, is more detailed, but basically directs the development of a request for proposals ("RFP") for professional design services to create a master plan for the Historic North Downtown and Court Square Districts. The Resolution also states that Jackson Park will be renamed.

There are no allegations in either the Complaint or the Motion for Temporary Injunction of any actual physical change made by the City to Lee Park or Jackson Park or to the Lee or Jackson statues since passage of the Resolutions, nor that any such changes are imminent.

III. Standards for Temporary Injunctive Relief

Circuit courts in Virginia have followed federal court precedent in deciding whether a party has established a right to temporary injunctive relief:

> Although there are no Virginia Supreme Court cases on point, the United States Supreme Court has articulated what factors must be shown to establish the plaintiff's equity and

> allow the granting of a temporary injunction. A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.

K & K of Virginia, L.L.C. v. Brinkley, 87 Va. Cir. 4, 4 (Norfolk 2013); *accord*, CPM Virginia, L.L.C. v. MJM Golf, L.L.C., 2016 Va. Cir. LEXIS 176 (Chesapeake 2016); Fame v. Allergy & Immunology, PLC, 91 Va. Cir. 66, 67 (Roanoke City 2015); SanAir Technologies Laboratory, Inc. v. Burrington, 91 Va. Cir. 206, 207 (Chesterfield Co. 2015). **"All four requirements must be satisfied to obtain the "extraordinary remedy" of a preliminary injunction."** JAK Productions, Inc. v. Bayer, 616 Fed. Appx. 94, 95 (4th Cir. 2015) (emphasis added); *see also* Pashby v. Delia, 709 F.3d 307, 320 (4th Cir. 2013) (requiring that each preliminary injunction factor be "satisfied as articulated").

As stated by the court in SanAir Technologies Laboratory, *supra*, 91 Va. Cir. at 207, "the granting of an injunction is an extraordinary remedy and rests on sound judicial discretion to be exercised upon consideration of the nature and circumstances of a particular case" (citations omitted). A temporary injunction cannot, however, be awarded "unless the court shall be satisfied of the plaintiff's equity." Virginia Code § 8.01-628.

IV. Argument

(A) The Plaintiffs cannot establish that they are likely to succeed on the merits of their claims.

(1) Count One – allegations of "statutory violations".

Count One of the Complaint (¶¶ 35 -41) alleges that the planned removal of the statue of Robert E. Lee from Lee Park will violate Virginia Code §15.2-1812. That statute provides that "a locality *may . . . authorize and permit* the erection of monuments and memorials" for certain listed wars and conflicts, and "*if such are erected*, it shall be unlawful for the authorities of the

locality, or any other person or persons, to disturb or interfere with any monuments or memorials *so erected . . .*" (emphasis added). The plaintiffs will be unable to prevail on this claim because they are relying on a statute that was not in existence in 1924, when the statue of Robert E. Lee was placed in Lee Park.

The predecessor to §15.2-1812 that was in effect in 1924 was Chapter 17 of the 1910 Acts of Assembly[3], attached hereto as **Defendants' Exhibit A.** Section 1 of that Chapter provided in pertinent part as follows:

> Be it enacted by the general assembly of Virginia, That the circuit court of any county be, and it is hereby, empowered, with the concurrence of the board of supervisors of such county entered of record, to authorize and permit the erection of a Confederate monument upon the public square of such county at the county seat thereof. And if the same shall be so erected it shall not be lawful thereafter for the authorities of said county, or any other person or persons whatever, to disturb or interfere with any monument so erected. . .

At that time the law only applied to the erection of confederate monuments by a county in the "public square" at the county seat. Since it had no application to monuments erected in cities, the limitations and restrictions in Chapter 17 on disturbing or interfering with monuments has no application to the removal of the Lee statue.

In 1997 the entirety of Title 15.1 of the Virginia Code was replaced by Title 15.2. For the first time §15.2-1812 (previously §15.1-270) became applicable to cities and towns.[4] In Count One the Defendants are apparently arguing for a retroactive application of §15.2-1812, as enacted in 1997, to prevent the removal of a statue that was installed 73 years before the effective date of the statue. Presumably the Plaintiffs will concede that from 1924 to 1997 state law did not prevent the Defendants from removing or relocating the statue, and they were under no statutory obligation to maintain it. The argument that the Defendants lost the right of removal

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[3] This Act of Assembly was codified as Section 2742 in the Code of 1919.

[4] *See* Report of the Virginia Code Commission on the Recodification of Title 15.1 of the Code of Virginia, (Vol. 2 of Senate Document No. 5, pp. 506 – 507), attached hereto as **Defendants Exhibit B.**

in 1997, and were suddenly saddled with the duty of maintaining the statue in place, is contrary to settled rules of statutory construction that strongly disfavor the retroactive application of new legislation.

As noted by the Court in Landgraf v. Usi Film Products, 511 U.S. 244, 265-266 (1994),

> . . . the presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted. For that reason, the "principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal.". . . In a free, dynamic society, creativity in both commercial and artistic endeavors is fostered by a rule of law that gives people confidence about the legal consequences of their actions.

(Citations omitted).

Courts in Virginia have frequently recognized that Virginia law "does not favor retroactive application of statutes. . . [f]or this reason, we interpret statutes to apply prospectively 'unless a contrary legislative intent is manifest.' Bailey v. Spangler, 289 Va. 353, 358-359 (2015); *accord,* Berner v. Mills, 265 Va. 408, 413 (2003); Adams v. Alliant Techsystems, 261 Va. 594, 599 (2001). This rule of construction has enhanced application when necessary to protect public entities acting in the public interest. In City of Richmond v. Supervisors of Henrico County, 83 Va. 204 (1887), the Court applied this rule of statutory construction to allow a city to continue with the development of a hospital on property it had acquired in an adjacent county, without complying with conditions contained in subsequent legislation:

> A statute is never construed to be retroactive, except the intent that it shall so operate plainly appears upon its face. . . "Every statute which takes away or impairs a vested right, *acquired under existing laws* or creating a new obligation, imposes a new duty, or attaches a new disability in respect of transactions or considerations already past, must be deemed retrospective in its operation, and opposed to those principles of jurisprudence which have been universally recognized as sound." *Especially do courts shrink from holding an act retrospective when it affects public objects and duties, and, when it affects rights accrued and acts done by law for the public interest and necessities, it must be presumed that the law-makers of the new act did not intend it to be retrospective,* unless that intent be expressed in the language, or plainly appear upon the face of the act itself.

Id. at 212 (citations omitted, emphasis added).

The General Assembly gave no indication that it intended to apply Virginia Code §15.2-1812 retroactively to statues already in existence, when it extended the coverage of the law to cities in 1997. That was the conclusion of the City of Danville Circuit Court in Heritage Preservation Association, Inc., et al. v. City of Danville, Case No. CL15000500-00 (2015). In sustaining the City's demurrer to an alleged violation of section 15.2-1812, the court concluded that "As a matter of law, Virginia Code § 15.2-1812 does not apply retroactively to the monument at issue in this litigation, which was donated to the City of Danville in 1994 and erected on the grounds of the Sutherlin Mansion in 1995".[5]

At the 2016 Session of the General Assembly the legislature attempted to do what was not done in 1997: make §15.2-1812 operate retroactively. House Bill 587 struck the words "If such are erected", and added the sentence "The provisions of this subsection shall apply to all such monuments and memorials, regardless of when erected". The Bill was passed, but ultimately vetoed by Governor McAuliffe, who noted that it "overrides the authority of local governments to remove or modify monuments or war memorials erected before 1998".[6]

There is a second reason why the Plaintiffs are unable to show a likelihood of success on the merits of their statutory claim, even if § 15.2-1812 is applied retroactively. At this point in the proceedings the Complaint only contains a bare legal conclusion that the statue of Robert E. Lee[7] is a Confederate monument, or memorial or a memorial of the War Between the States, or a memorial to war veterans of the War Between the States. (Complaint ¶ 22). There is no

[5] A copy of the Final Order is attached as **Defendants Exhibit C.** The Danville Circuit Court also held that the monument in question, commemorating an historic house, was not protected by §15.2-1812. The Virginia Supreme Court found no reversible error and declined to hear the appeal.
[6] A copy of House Bill 587, as passed, and the Governor's Veto Statement are attached as **Defendants Exhibit D.**
[7] Since the City is not currently planning to move the Jackson statue, any debate regarding its protection under the statute would be hypothetical.

allegation that the Lee Park deed from McIntire to the City, or any inscription on the statue itself, contains any reference to the War Between the States, the Civil War, any engagement or battle of that war, any other veterans of that war, the Confederate Army or the Confederate States of America. There is no allegation that McIntire intended the statue to be a monument to the Civil War or to the Confederacy. To the contrary, Plaintiffs' own Exhibit C to the Complaint specifies that McIntire wanted to erect a statue of Robert E. Lee on the site "as a memorial to his parents". "Under Virginia law, a court may ignore factual allegations contradicted by authentic, unambiguous documents that properly are a part of the pleadings. Jeffery Financial Group, Inc. v. Four Seasons Development, LLC, 64 Va. Cir. 7, 12 (Fairfax Co. 2003).

The Plaintiffs can certainly attempt to show at trial that the Lee statue is, objectively, a monument or memorial for a war or conflict referenced in §15.2-1812. That may be a very complex question,[8] and at this point there is no reason to assume that the Plaintiffs are likely to succeed on this issue. *See* Fame v. Allergy & Immunology, PLC, 91 Va. Cir. 66, 68 (2015) (denying a request for a temporary injunction, because "[w]hile Plaintiff may ultimately prevail on the issue . . . at a hearing on the permanent injunction, the issue presently is in equipoise as between the parties".)

(2) Count Two – allegations of "ultra vires" actions.

The Plaintiffs have claimed that cities in Virginia do not have the authority to move monuments from public parks, to rename or redesign public parks, or to "redesign and transform" public parks. The Plaintiffs will be unable to show a likelihood of success on this

[8] As noted by the Supreme Court in Pleasant Grove City v. Summum, 555 U.S. 460, 475 – 476 (2009), "Consider, for example, the statue of Pancho Villa that was given to the city of Tucson, Arizona, in 1981 by the Government of Mexico with, according to a Tucson publication, "a wry sense of irony." Does this statue commemorate a "revolutionary leader who advocated for agrarian reform and the poor" or "a violent bandit"?"

count in their Complaint, which is apparently premised on the notion that municipal parks in Virginia are more sacrosanct than the United States Constitution.[9]

Every locality in Virginia has express authority to operate, maintain, and regulate the use of its real property, including property used as public parks, and to construct improvements on property it owns. Virginia Code §§ 15.2-1800 and 1806. Even the deeds from McIntire to the City (Plaintiffs' Exhibits C and D) expressly acknowledged that the "authorities of said city shall, at all times, have the right and power to control, regulate and restrict the use of said property".

(3) Count Three – allegations of "violations of terms of gifts".

As is readily apparent on the face of the two McIntire deeds, there were only two conditions on the conveyances: that the property conveyed be held and used in perpetuity by the City as a public park, and that no buildings be erected thereon. The deeds contained no other restrictions on the future use of either Park or any improvements therein, and the Complaint contains no allegation that either property will not be used as a public park, or that a building will be erected in either park.

The language within the "whereas" clauses of the deeds is merely prefatory. The Lee Park deed stated that McIntire "desires to erect thereon a statue of General Robert E. Lee", and the Jackson deed noted that McIntire "requested that said property be conveyed to the said city and that it be known as "Jackson Park". These statements of Mr. McIntire's desires or requests do not create binding terms or conditions:

> Quite often the premises of a deed, in addition to naming the parties therein, contain a recital of the circumstances explaining the reason for the transaction and the consideration which induced it. . . . Conditions subsequent or special limitations should not lightly be raised by implication from a mere declaration in a deed that the grant is made for a special or particular purpose, unless the declaration is clearly coupled with words appropriate to such condition

[9] Provisions in the United States Constitution can at least be repealed or amended.

> subsequent or special limitation. . . the well-recognized rule is stated to be that the mere declaration of the use to which the granted premises are to be applied does not ordinarily import a condition or limitation, but only in cases in which a reverter or forfeiture is expressly provided and in cases to which the intent to create a grant on condition or limitation is plain is the grant held to be one on condition or limitation.

Roadcap v. County School Board, 194 Va. 201, 205 - 206 (1952)

For the reasons cited herein the Plaintiffs are unable to establish that they are likely to succeed on the merits of their claims, and the Motion for a Temporary Injunction should be denied. *See* Fame v. Allergy, *supra*, 91 Va. Cir. at 69 ("Since Plaintiff is unable to demonstrate a likelihood of success on the merits, the Court need not discuss the threat of irreparable harm to Plaintiff, balance the equities, nor discuss the public interest".

(B) The Plaintiffs cannot establish that they are likely to suffer irreparable harm in the absence of preliminary relief.

A realistic threat of irreparable damage is essential to an award of temporary injunctive relief:

> As a general rule, proof of irreparable damage is absolutely essential to the award of injunctive relief. . . The concept of irreparable harm is premised on the lack of an adequate remedy at law. . . The party seeking relief must show that the alleged harm is imminent, and not merely speculative or potential.

Am-Cor.com, Inc. v. Stevens, 56 Va. Cir. 245, 250 (Warren Co. 2001) (citations omitted).

What is the imminent, irreparable harm in this case? If the Defendants have already acted in an *ultra vires* manner or violated the terms of the McIntire gifts, as alleged in Counts Two and Three of the Complaint, those transgressions can be remedied by court order, with no intervening loss or damage to the Plaintiffs. If the Plaintiffs somehow show a unique and personal entitlement to the continuation of the existing Park names (different from the interest of the public at large), the Court can order the reinstatement of the old names. The Complaint is devoid

of any allegations of a pecuniary or proprietary interest of any Plaintiff that would be irreparably harmed by the renaming of a Park.

With regard to Count One ("statutory violations"), there is no allegation of imminent action about to be taken by the City. There is no allegation that the Lee statue will be removed or relocated, or that Jackson Park will be transformed, prior to a final decision in this case. Further, even if such removal were to occur any harm suffered by the Plaintiffs would not be irreparable. The Defendants have raised on demurrer what may be a dispositive issue in the case: the retroactivity of Virginia Code §15.2-1812. If the Plaintiffs prevail on the issue of retroactivity the Defendants risk potential civil and criminal liability for moving the Lee statue. Section 15.2-1812.1 provides a specific legal remedy (damages) for an unlawful removal of a protected monument. *See, e.g.,* Christian Defense Fund v. Stephen Winchell & Associates, 47 Va. Cir. 148, 150 (Fairfax Co. 1998) ("It seems clear . . . that these monetary damages will suffice to cover any alleged harm. Thus, any alleged injury is not 'irreparable' as required to obtain the equitable remedy of injunction").

For the reasons stated above the Plaintiffs have failed to show that they are likely to suffer irreparable harm in the absence of temporary injunctive relief.

(C) The Plaintiffs cannot establish that the balance of equities tips in their favor.

Following an extended period of study and debate a closely divided City Council made the decision to remove the Robert E. Lee statue from its prominent location in Downtown Charlottesville. It was a discretionary policy decision, not compelled by any legal mandate. The Plaintiffs apparently have a very different opinion regarding the statue's purpose and meaning, and they object to the implementation of Council's policy. In this case the "balancing

of the equities" must give deference to the fact that it is the duly elected legislative body that makes policy decisions for the City of Charlottesville. As stated by the Court in Howell v. McAuliffe, 292 Va. 320, 326 (2016),

> The dominant role in articulation of public policy in the Commonwealth of Virginia rests with the elected branches. The role of the judiciary is a restrained one. Ours is not to judge the advisability or wisdom of policy choices. The Executive and Legislative Branches are directly accountable to the electorate, and it is in those political venues that public policy should be shaped.

Judicial restraint means that "all presumptions are in favor of the validity of the exercise of municipal power. . . the burden is upon one alleging the invalidity of an ordinance to establish such invalidity by clear and convincing proof". Riverton Investment Corp. v. Economic Development Authority, 50 Va. Cir. 404, 410 (Warren Co. 1999) (citations omitted).

What equities favor the Plaintiffs that would supersede the presumptively valid legislative action of the City Council? Defendants submit that none of the Plaintiffs' equities can be regarded as compelling when there are serious questions raised in the Defendants' Demurrer regarding the Plaintiffs' standing to even prosecute this action. In denying a request for a temporary injunction the court in Riverton Investment Corp., *supra*, 50 Va. Cir. at 411 – 412, stated as follows:

> Persons or corporations seeking to restrain the acts of public officials or corporations must have sufficient title or interest to enable them to maintain the suit . . . [O]rdinarily . . . private citizens or corporations must possess something more than a common concern for obedience to the law before they will be permitted to maintain injunctions suits against public officers. A private person who wishes to restrain an official must allege and prove damage to himself different in character from that sustained by the public generally.
> Some prospect of damage different from that of the public at large must be present in order to have standing to maintain a suit for an injunction against public officials. . . Without proof of damage particular to them of an irreparable character, the plaintiffs' standing to maintain this action is called into question.

Plaintiffs may have heartfelt objections to the decisions made by the City, but their remedy should be on Election Day. Whatever equities the Plaintiffs may assert, they do not outweigh those of the Defendants.

(C) A temporary injunction is not in the public interest.

Statues and monuments erected by public authorities are a means of communication. They convey a message. As noted by the United States Supreme Court,

> Governments have long used monuments to speak to the public. Since ancient times, kings, emperors, and other rulers have erected statues of themselves to remind their subjects of their authority and power. Triumphal arches, columns, and other monuments have been built to commemorate military victories and sacrifices and other events of civic importance. A monument, by definition, is a structure that is designed as a means of expression. When a government entity arranges for the construction of a monument, it does so because it wishes to convey some thought or instill some feeling in those who see the structure.

Pleasant Grove City, *supra*, 555 U.S. at 475.

Public statues and monuments convey different meanings to different people, and those subjective and perceived meanings change over time. As evidenced by this lawsuit there are wildly divergent opinions about the meaning of the Lee statue, and the message it conveys to the public. As long as the Lee statue remains in Lee Park those opinions will be owned by the City. If in future years the statue remains no one will attribute its meaning, whatever that may be, to the Plaintiffs, to the attorneys in this case, to the Court, or to the individuals who occupy seats on City Council from time to time. The statue, and the passions it generates, will continue to represent the City of Charlottesville:

> Public parks are often closely identified in the public mind with the government unit that owns the land. City parks—ranging from those in small towns, like Pioneer Park in Pleasant Grove City, to those in major metropolises, like Central Park in New York City--commonly play an important role in defining the identity that a city projects to its own residents and to the outside world. Accordingly, cities and other jurisdictions take some care in accepting donated monuments. Government decisionmakers select the monuments that portray what

> they view as appropriate for the place in question, taking into account such content-based factors as esthetics, history, and local culture. The monuments that are accepted, therefore, are meant to convey and have the effect of conveying a government message, and they thus constitute government speech.

Pleasant Grove City, *supra*, 555 U.S. at 475.

The issuance of a temporary injunction may be in the personal and individual interests of the Plaintiffs. A court order compelling the City to continue to convey a message, even temporarily, that so many find offensive is not in the public interest.

V. Conclusion

For the reasons cited herein the Defendants request that the Plaintiffs' Motion for Temporary Injunction be denied.

Respectfully submitted,

DEFENDANTS CITY OF CHARLOTTESVILLE, VIRGINIA, *et al.*

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Memorandum in Opposition to the Plaintiffs' Motion for Temporary Injunction was mailed first class postage prepaid and sent by electronic mail this 27th day of April, 2017 to the following counsel for Plaintiffs:

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S. Craig Brown
S. Craig Brown

EXHIBIT A

hundred and eight and nineteen hundred and nine, and the money expended thereby, for which the State made appropriations, for such work and care, to-wit:

Abingdon, Virginia, ten (10) dollars.
Appomattox, Virginia, twenty (20) dollars.
Ashland, Virginia, fifteen (15) dollars.
Bedford City, Virginia, twenty-five (25) dollars.
Blacksburg, Virginia, fifteen (15) dollars.
Bristol, Virginia, twenty-five (25) dollars.
Culpeper, Virginia, fifty (50) dollars.
Courtland, Virginia, ten (10) dollars.
Charlottesville, Virginia, fifty (50) dollars.
Danville, Virginia, twenty-five (25) dollars.
Emory, Virginia, twenty-five (25) dollars.
Farmville and High Bridge, Virginia, twenty-five (25) dollars.
Front Royal, Virginia, twenty (20) dollars.
Franklin, Virginia, ten (10) dollars.
Fredericksburg, Virginia, one hundred (100) dollars.
Gordonsville, Virginia, fifty (50) dollars.
Harrisonburg, Virginia, twenty (20) dollars.
Huguenot Springs, Virginia, fifteen (15) dollars.
Bethel Memorial Association, of York county, Virginia, ten (10) dollars.
Louisa, Virginia, twenty (20) dollars.
Leesburg, Virginia, twenty (20) dollars.
Lynchburg, Virginia, two hundred (200) dollars.
Manassas, Virginia, seventy-five (75) dollars.
Manassas Junction, Virginia, seventy-five (75) dollars.
Mount Jackson, Virginia, twenty (20) dollars.
Martinsville, Virginia, fifteen (15) dollars.
Montgomery White Sulphur Springs, Virginia, fifteen (15) dollars.
Norfolk, Virginia, one hundred (100) dollars.
Portsmouth, Virginia, twenty (20) dollars.
Petersburg, Virginia, five hundred (500) dollars.
Pulaski, Virginia, twenty (20) dollars.
Richmond, Virginia (Hollywood), five hundred (500) dollars.
Richmond, Virginia (Oakwood), five hundred (500) dollars.
Spotsylvania Courthouse, Virginia, one hundred and fifty (150) dollars.
Staunton, Virginia, fifty (50) dollars.
Suffolk, Virginia, twenty (20) dollars.
Woodstock, Virginia, twenty (20) dollars.
Wytheville, Virginia, twenty (20) dollars.
Winchester, Virginia, one hundred (100) dollars.

CHAP. 17.—An ACT to amend an re-enact an act entitled an act to empower the circuit court and board of supervisors of any county to authorize and permit the erection of a Confederate monument upon the public square at the county seat thereof, approved February 19, 1904, and to add thereto another section authorizing the board of supervisors to appropriate what-

ever sum or sums of money that may be necessary, out of any funds belonging to said county, or to make a special levy and appropriate the money derived therefrom for the completion of or the erection of a monument to the Confederate soldiers of said county upon the public square at the county seat, or elsewhere at the county seat, and to appropriate from time to time sufficient of the county funds to permanently care for, protect and preserve the same.

Approved February 9, 1910.

1. Be it enacted by the general assembly of Virginia, That the circuit court of any county be, and it is hereby, empowered, with the concurrence of the board of supervisors of such county entered of record, to authorize and permit the erection of a Confederate monument upon the public square of such county at the county seat thereof. And if the same shall be so erected it shall not be lawful thereafter for the authorities of said county, or any other person or persons whatever, to disturb or interfere with any monument so erected, or to prevent the citizens of said county from taking all proper measures and exercising all proper means for the protection, preservation and care of same.

2. And the board of supervisors of any county in this Commonwealth be, and they are hereby, authorized and empowered to appropriate a sufficient sum or sums of money out of the funds of any such county to complete or aid in the erection of a monument to the Confederate soldiers of such county upon the public square thereof, or elsewhere at the county seat; and they are also authorized to make a special levy to raise the money necessary for the completion of any such monument, or the erection of a monument to such Confederate soldiers, or to supplement the funds already raised or that may be hereafter raised by private persons, or by Confederate veterans, or other organizations, for the purposes of building such monuments; and they are also authorized and empowered to appropriate from time to time, out of any funds of such county, a sufficient sum or sums of money to permanently care for, protect and preserve the Confederate monument erected upon the public square of any such county, and to expend the same therefor as other county funds are expended.

3. An emergency existing by reason of the fact that many of the counties are ready to begin work on monuments and desire to make the appropriation at once, this act shall be in force from its passage.

CHAP. 18.—An ACT to amend and re-enact section 2357 of the Code of Virginia as heretofore amended in relation to how owner may correct mistakes and obtain an inclusive grant for lands.

Approved February 9, 1910.

1. Be it enacted by the general assembly of Virginia, That section twenty-three hundred and fifty-seven of the Code of Virginia as heretofore amended be amended and re-enacted so as to read as follows:

§2357. How owner may correct mistakes and obtain inclusive grant. If any person wishes to rectify mistakes or uncertainty in the courses or description of the bounds of his lands, or holds two or more tracts ad-

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CHAP. 19.—An ACT of
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Be it resolved by
curring):

1. Whereas, the re
a meeting held at the
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CHAP. 20.—An ACT to
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EXHIBIT B

REPORT OF THE
VIRGINIA CODE COMMISSION ON THE

RECODIFICATION OF TITLE 15.1 OF THE CODE OF VIRGINIA

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

SENATE DOCUMENT NO. 5

(VOLUME 2 OF 4)

COMMONWEALTH OF VIRGINIA
RICHMOND
1997

Drafting note: Repealed; this section is repealed as unnecessary.

Article 3.

Miscellaneous.

~~§ 15.1-269. Armory buildings and stables in certain cities.~~

~~Chapter 95 of the Acts of 1918, approved March 4, 1918, codified as § 3030a of Michie Code 1942, and continued in effect by § 15-695 of the Code of 1950, relating to the erection and maintenance of armory buildings, stables, etc., in cities having a population of from 65,000 to 100,000, is continued in effect.~~

Drafting note: Repealed; the repeal of this section, which references certain uncodified acts, will not repeal the referenced acts.

§ ~~15.1-270~~ 15.2-1812. Memorials for war veterans.

~~The circuit court of any county~~ A locality may~~, with the concurrence of the governing body of the county entered of record,~~ authorize and permit the erection of ~~Revolutionary War, War of 1812, Mexican War, Confederate, Spanish American War, World War I, World War II, Korean War and Viet Nam War~~ monuments or memorials for any war or engagement designated in § 2.1-21 upon ~~the public square of such county at the county seat~~ any of its property. If such are erected, it shall be unlawful for the authorities of the ~~county~~ locality, or any other person or persons, to disturb or interfere with any monuments or memorials so erected, or to prevent ~~the~~ its citizens ~~of the county~~ from taking proper measures and exercising proper means for the protection, preservation and care of same.

The governing body may appropriate a sufficient sum ~~or sums~~ of money out of ~~the~~ its funds ~~of the county~~ to complete or aid in the erection~~, in the public square or elsewhere at the county seat,~~ of monuments or memorials to the ~~county's~~ veterans of such wars. The governing body may also make a special levy to raise the money necessary for the erection or completion of any such monuments or memorials, ~~or the erection of monuments or memorials to such veterans,~~ or to supplement the funds already raised or that may be ~~hereafter~~ raised by private persons, the American Legion or other organizations~~, for the purpose of building such monuments or~~

~~memorials; and it.~~ It may also appropriate, out of any funds of such ~~county~~ locality, a sufficient sum ~~or sums~~ of money ~~permanently~~ to care for, protect and preserve such monuments or memorials and may expend the same thereafter as other ~~county~~ funds are expended.

Drafting note: No substantive change in the law; this section is expanded to include all localities. A code citation replaces the list of wars.

~~§ 15.1-282. Solid and hazardous waste management.~~

~~The governing bodies of counties, cities and towns are authorized in their discretion to acquire by lease, gift, purchase or condemnation, land, facilities or equipment to be utilized in solid and hazardous waste management as defined in § 10.1-1400. The governing bodies of counties, cities and towns are vested with the power of eminent domain insofar as the exercise of such power is necessary for the acquisition of lands for the purposes of this section and in the exercise of such power are vested with such powers and rights as are or which may hereafter be vested by law in the governing bodies of counties, cities and towns and the procedure in such condemnation suit or procedure shall be under the restrictions provided by the general statutes of this Commonwealth relative to the condemnation of land so far as the same may be applicable and are not in conflict with provisions of this section.~~

Drafting note: Repealed; local governments may acquire such land under the general authority given in § 15.2-1800.

~~§ 15.1-283. Drainage; condemnation for drainage systems.~~

~~The governing body of any county, city or town shall have power to provide for adequate drainage of any and all areas in the county, city or town, and to effectuate such power may install and maintain drainage systems, and acquire, by gift, purchase, lease, condemnation or otherwise, lands, buildings, structures or any interest therein and may appropriate money therefor. The power of eminent domain is vested in any such governing body to the extent necessary to effect such acquisition.~~

~~The provisions of this section as to the power of condemnation shall be subject to the provisions of § 25-233.~~

EXHIBIT C

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF DANVILLE

HERITAGE PRESERVATION ASSOCIATION, INC., DANVILLE CONFEDERATE MEMORIAL ASSOCIATION, INC., PITTSYLVANIA VINDICATORS CAMP NO. 828, SONS OF THE CONFEDERATE VETERANS, R. WAYNE BYRD, SR., HELEN HARRIS, FRANK HARVEY, and TONY L. LUNDY,	)	
Plaintiffs,	)	
v.	)	Case No.: CL15000500-00
CITY OF DANVILLE, VIRGINIA,	)	
Defendant.	)	

FINAL ORDER

On the 29th of October, 2015, the parties, by counsel, appeared before the Court on the plaintiffs' motion for temporary injunction and the defendant's demurrer and plea in bar.

The plaintiffs, by counsel, represented to the Court that they were withdrawing their motion for temporary injunction.

The Court then proceeded to consider the defendant's demurrer and plea in bar. Counsel previously filed memoranda on the issues presented, and counsel indicated they were prepared to proceed. The parties first presented evidence, including the agreed Stipulation of Evidence and exhibits filed on the day of the hearing and the testimony and exhibits offered by the plaintiffs. The parties then presented oral argument on the defendant's demurrer and plea in bar.

In ruling on the defendant's demurrer and plea in bar, the Court reviewed and considered the pleadings and memoranda filed in this action, the evidence presented by the parties, and the

arguments advanced by counsel on the record in open court. Based on the Court's consideration of the foregoing and for the reasons stated on the record in open court, the Court FINDS as follows:

1. As a matter of law, Resolution No. 94-9.1 is not a contract between the City of Danville and any of the plaintiffs, cannot bind future City Councils of the City of Danville, and cannot grant to any of the plaintiffs any right, interest or privilege in the City of Danville's property.

2. As a matter of law, Virginia Code § 15.2-1812 does not apply retroactively to the monument at issue in this litigation, which was donated to the City of Danville in 1994 and erected on the grounds of the Sutherlin Mansion in 1995.

3. Based on the plain language of Resolution No. 94-9.1, the monument at issue in this litigation is, as a matter of fact, a monument "commemorating the Sutherlin Mansion as the Last Capitol of the Confederacy," "recognizing the Sutherlin Mansion's historical status as the 'Last Capitol of the Confederacy,'" and "marking the Sutherlin Mansion as the Last Capitol of the Confederacy." The monument at issue in this litigation is not, as a matter fact, a monument "for any war or conflict, or for any engagement of such war or conflict" or for war veterans. As a monument to a building of historical significance rather than a monument to a war, conflict, engagement, or war veterans, the monument at issue in this litigation is not covered by Virginia Code § 15.2-1812.

Based on the above findings, the evidence and arguments presented by counsel, and for the reasons stated on the record in open court on October 29, 2015, it is ADJUDGED, ORDERED and DECREED as follows:

1. The allegations in the Complaint are insufficient as a matter of law to state a valid breach of contract claim against the City of Danville. Therefore, the Court SUSTAINS the defendant's demurrer and DISMISSES the plaintiffs' breach of contract claim with prejudice.

2. The allegations in the Complaint are insufficient as a matter of law to state a valid claim for violation of Virginia Code § 15.2-1812 against the City of Danville. Therefore, the Court SUSTAINS the defendant's demurrer and DISMISSES the plaintiffs' Virginia Code § 15.2-1812 claim with prejudice.

3. The monument at issue in this action is not covered by Virginia Code § 15.2-1812. Therefore, the Court SUSTAINS the defendant's plea in bar and DISMISSES the plaintiffs' Virginia Code § 15.2-1812 claim with prejudice.

4. The Clerk of this Court is directed to strike this matter from the active docket of this Court and to send certified copies of this Order to all counsel of record.

ENTER: This 7th day of ~~November~~ December, 2015.

Judge James J. Reynolds

WE ASK FOR THIS:

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Counsel for Defendant City of Danville, Virginia

SEEN AND OBJECTED TO for the reasons noted in Plaintiff's filings and pleadings with the Court, and for the reasons stated on the record at the Hearing on October 29, 2015, to include but not be limited to the following objections:

(1) Plaintiffs object to the Court's findings and decree as to paragraphs numbered 1 of this Order, as the determination of whether or not there was a contract between the parties should have been a determination of the trier of fact, and not dismissed by a Demurrer.

(2) Plaintiffs object to the Court's findings and decree as to paragraphs numbered 2 of this Order, as Code of Virginia § 15.2-1812 *does* apply retroactively to protect the monument at issue in this litigation; that the plain language of § 15.2-1812 affirms that the statute should apply retroactively; that the plain language of § 15.2-1812 references "previously designated Confederate memorials," which is language affirming such retroactive application; and that the intent of the General Assembly of Virginia was for § 15.2-1812 to apply retroactively, in that any other construction of the statute would manifest an absurd, irrational, and unreasonable result.

(3) Plaintiffs object to the Court's findings and decree as to paragraphs numbered 3 of this Order, as the monument at issue in this litigation *is* a monument of the War Between the States, a Confederate monument, *and* a monument to war veterans, and therefore protected by Code of Virginia § 15.2-1812.

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Counsel for Plaintiffs

A COPY TESTE:
GERALD A. GIBSON, CLERK
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EXHIBIT D

2016 SESSION

VIRGINIA ACTS OF ASSEMBLY -- CHAPTER

An Act to amend and reenact § 15.2-1812 of the Code of Virginia, relating to memorials and monuments.

[H 587]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § **15.2-1812** of the Code of Virginia is amended and reenacted as follows:

§ **15.2-1812.** Memorials for war veterans.

A. A locality may, within the geographical limits of the locality, authorize and permit the erection of monuments or memorials for any war or conflict, or for any engagement of such war or conflict, to include the following monuments or memorials: Algonquin (1622), French and Indian (1754-1763), Revolutionary (1775-1783), War of 1812 (1812-1815), Mexican (1846-1848), Confederate or Union monuments or memorials of the War Between the States (1861-1865), Spanish-American (1898), World War I (1917-1918), World War II (1941-1945), Korean (1950-1953), Vietnam (1965-1973), Operation Desert Shield-Desert Storm (1990-1991), Global War on Terrorism (2000-), Operation Enduring Freedom (2001-), and Operation Iraqi Freedom (2003-).

~~If such are erected, it~~ *B. It* shall be unlawful for the authorities of the locality, or any other person or persons, to disturb or interfere with any *such* monuments or memorials so erected, or to prevent its citizens from taking proper measures and exercising proper means for the protection, preservation and care of same. For purposes of this section, "disturb or interfere with" includes removal of, damaging or defacing monuments or memorials, or, in the case of the War Between the States, the placement of Union markings or monuments on previously designated Confederate memorials or the placement of Confederate markings or monuments on previously designated Union memorials. *The provisions of this subsection shall apply to all such monuments and memorials, regardless of when erected.*

C. The governing body may appropriate a sufficient sum of money out of its funds to complete or aid in the erection of monuments or memorials to the veterans of such wars. The governing body may also make a special levy to raise the money necessary for the erection or completion of any such monuments or memorials, or to supplement the funds already raised or that may be raised by private persons, Veterans of Foreign Wars, the American Legion or other organizations. It may also appropriate, out of any funds of such locality, a sufficient sum of money to permanently care for, protect and preserve such monuments or memorials and may expend the same thereafter as other funds are expended.

2016 SESSION

print version

(HB587)

GOVERNOR'S VETO

Pursuant to Article V, Section 6, of the Constitution of Virginia, I veto House Bill 587, which overrides the authority of local governments to remove or modify monuments or war memorials erected before 1998.

The rich history of our Commonwealth is one of our great assets. My administration strongly supports historic preservation efforts, including the preservation of war memorials and monuments. However, this legislation would have been a sweeping override of local authority over these monuments and memorials including potential ramifications for interpretive signage to tell the story of some of our darkest moments during the Civil War.

There is a legitimate discussion going on in localities across the Commonwealth regarding whether to retain, remove, or alter certain symbols of the Confederacy. These discussions are often difficult and complicated. They are unique to each community's specific history and the specific monument or memorial being discussed. This bill effectively ends these important conversations.

I am committed to supporting a constructive dialogue regarding the preservation of war memorials and monuments, but I do not support this override of local authority.

Accordingly, I veto this bill.