

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

FREDERICK W. PAYNE, *et al.*,
Plaintiffs,

v.

Case No. CL 17 - 145

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

ORDER: DAMAGES

This cause having come on for trial before this Court on September 11, 12, and 13, 2019, Plaintiffs having appeared by Counsel, Ralph E. Main, Jr., and S. Braxton Puryear, and Defendants City of Charlottesville and Charlottesville City Council having appeared by Counsel, Lisa Robertson and Richard H. Milnor, and the Court having received evidence including testimony and exhibits and having heard argument, and the Court having stated its ruling as to damages from the bench, the Court doth

Therefore **ADJUDGE, ORDER, AND DECREE** that the transcripts filed with the Court of the September 11, 12, and 13, 2019 trial proceedings, and in particular the Court's statement of its ruling from the bench on September 13, 2019 as to damages, are incorporated in this Order by reference, and it is,

Further, **ADJUDGED, ORDERED, AND DECREED** that for the reasons stated from the bench, while the Plaintiffs established harm and loss flowing from the encroachment upon, and inability to view the monuments at issue while they were covered with tarps, the harm and loss do not give rise to damages recoverable under the terms of Va. Code §15.2-1812.1, and ac-

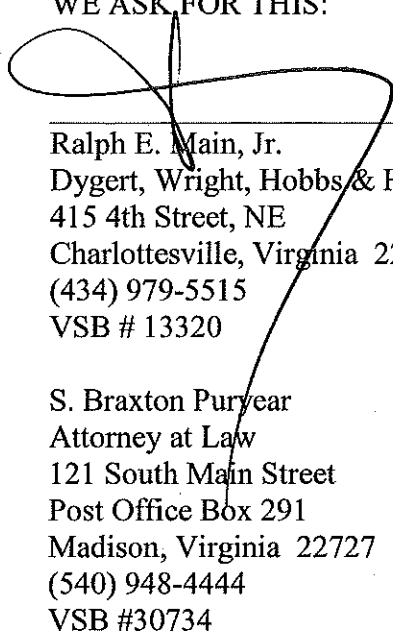
cordingly the Court hereby **DENIES** Plaintiffs' Request for Relief as to damages for the inability to view the monuments during the time they were covered.

The Clerk will forward certified copies of this Order to Counsel.

It is so Ordered:

ENTER: *Richard E. Moser*
DATE: 10/15/19

WE ASK FOR THIS:



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Counsel for Plaintiffs

The foregoing Order: Damages is **SEEN AND AGREED** by Defendants City of Charlottesville and Charlottesville City Council, as to: (i) the Court's finding that Plaintiffs did not establish damages recoverable under the provisions of Virginia Code §15.2-1812.1, and (ii) as to other findings and rulings stated from the bench which are favorable to the Defendants.

But the Order is, only in part, Seen and Objected to for the reasons set forth following below:

By: _____



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DEFENDANTS' OBJECTIONS AND EXCEPTIONS TO ORDER: DAMAGES

In accordance with Va. Code §8.01-384, *Chawla v. Burger Busters*, 255 Va. 616, 622 (1998):

To the extent, if any, that the foregoing "Order: Damages" does not dispose entirely of the issue of damages in this case,

- (1) Plaintiffs may not recover any damages beyond those specified within an *ad damnum* clause within the Revised Second Amended Complaint;
- (2) Defendants (Def's) object and take exception to any finding that any damages claimed by Plaintiffs within the Revised Second Amended Complaint are recoverable in Virginia—including, without limitation, the damages sought by Plaintiffs under Va. Code §15.2-1812.1;
- (3) Def's incorporate here by reference the arguments and legal authority made and cited within their 9/10/2019 Memorandum of Points and Authorities on the Recoverability of Attorney's Fees and Litigation Costs by the Plaintiffs in this case' their 7/24/2019 Notice and Cross Motion for Summary Judgment on Count I of the Revised Second Complaint (*ref.* Cross-Mot. Sections (1), (2), (3), (5) and (6)); and their 7/24/2019 Notice and Cross-Motion for Summary Judgment on Count II and Count II of the Revised Second Amended Complaint (*ref.* Cross-Mot. Section (2)); and
- (4) Def's object and take exception to any finding that Plaintiffs established actual, individualized, pecuniary loss or harm as a result of actions referenced in the Revised Second Amended Complaint ¶¶ 1, 28, 29, 30, 30B, 30D, 30F, and 30H, *see Virginia Marine Resources Comm'n v. Clark*, 281 Va. 679, 686-687, 709 S.E.2d 150, 154-155 (2011).

A COPY TO THE
LLEZELLE DUGGINS, CLERK
DEP. CLERK

