

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: DECLARATORY JUDGMENT**

This cause having come 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 exhibits and testimony and having heard argument, and the Court having stated its ruling as to the Declaratory Judgment from the bench on September 11 and 13, 2019, the Court doth

Therefore **ADJUDGE, ORDER, AND DECREE** that that the Court's previous rulings interpreting Va. Code §§15.2-1812, 1812.1 and 18.2-137 are merged with and incorporated into this declaratory judgment order; and 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 rulings from the bench as to the declaratory judgment, are incorporated in this Order by reference; and it is,

Further, **ADJUDGED, ORDERED, AND DECREED** that the Court hereby **GRANTS** in part Plaintiffs' Request for Relief as to a Declaratory Judgment as set forth below; and it is,

Further, **ADJUDGED, ORDERED, AND DECREED** that the Court finds that the City Council Resolution of February 6, 2017 ["removal resolution"] in the first clause uses the word "remove" with regard to the Confederate General Robert E. Lee statue, and that removal is contrary to the explicit terms of Va. Code §15.2-1812, and accordingly the Court declares the first clause of the resolution to be *ultra vires*, and null and void *ab initio*; but the Court finds the second clause of the removal resolution calls only for a plan or design, and the Court declares the second clause was not *ultra vires*; and it is,

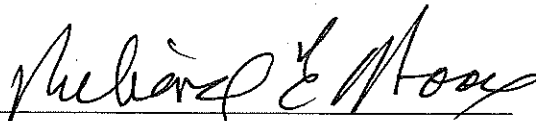
Further, **ADJUDGED, ORDERED, AND DECREED** that the Court finds the City Council September 5, 2017 resolution calling for a Request for Proposals for design services for removal of both the Confederate General Robert E. Lee and Confederate Lt. General Thomas Jonathan 'Stonewall' Jackson statutes "pending court decisions or and/or changes in the Virginia Code" was conditional, contingent on a favorable outcome for the Defendants in this case, and so the Court finds and declares it was not *ultra vires*; and it is,

Further, **ADJUDGED, ORDERED, AND DECREED** that the Court finds that the terms of the deeds require only that the properties be used as parks and that no buildings be erected upon them, and declares that renaming, redesigning, recontextualizing, putting signs up, or transforming the parks is not *ultra vires*; but the Court confirms its previous rulings and declares to be unlawful and *ultra vires* moving, removing, selling or giving away, damaging, or destroying, defacing, obscuring, interfering with, encroaching upon, or obstructing the public's right to view, the Confederate General Robert E. Lee and Confederate Lt. General Thomas Jonathan 'Stonewall' Jackson monuments in the parks; and it is,

Further, **ADJUDGED, ORDERED, AND DECREED** that the City action of August 21-22, 2017 insofar as it called for temporarily concealing the monuments at issue for purposes of mourning was not *ultra vires*, but that the following [then-Mayor Signer's] suggestion of permanent concealment recorded in the September 18, 2017 meeting minutes would be without authority, and would be *ultra vires*.

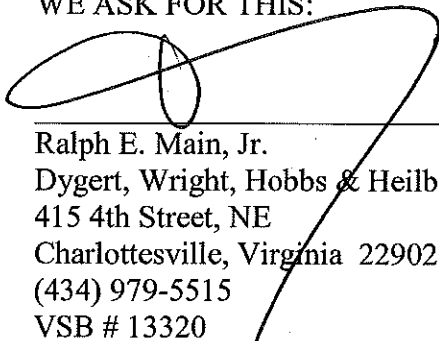
The Clerk will forward certified copies of this Order to Counsel.

It is so Ordered:

ENTER: 

DATE: 10/15/19

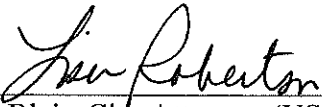
WE ASK FOR THIS:

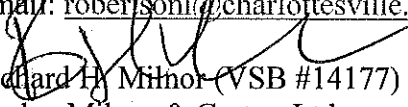
  
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Counsel for Plaintiffs

The preceding “**Order: Declaratory Judgment**” is Seen and Agreed as to the Court’s rulings, orders and decrees favorable to the Defendants, but is **SEEN AND OBJECTED TO** for the reasons set forth following below:

By:   
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*Counsel for Defendants City of Charlottesville and Charlottesville City Council (entity)*

**DEFENDANTS’ OBJECTIONS AND EXCEPTIONS TO  
ORDER: DECLARATORY JUDGMENT**

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

- (1) Defendants City of Charlottesville and Charlottesville City Council (“Def’s”) object and take exception to this order to the extent that the Order declares *ultra vires* action(s) not specifically authorized by Def’s. The Court’s declaration of “*ultra vires*” must be limited to some action(s) actually taken or authorized by a resolution Council referenced within the Revised Second Amended Complaint.
- (2) Def’s object and take exception to any granting of declaratory relief that “selling or giving away” either of the statues, because “selling or giving away” is not prohibited by Va. Code §15.2-1812 or §15.2-1812.1.
- (3) Def’s object and take exception to the Court’s grant of declaratory relief against Def’s, because: (i) Va. Code §15.2-1812 and §15.2-1812.1 do not apply in the circumstances of this case, and (ii) Def’s have sovereign immunity from this suit for declaratory relief—all, for the various reasons previously as set forth within:
  - a. Def’s 4/17/2017 Demurrer and the Brief (7/10/2017) filed in Support of Def’s Demurrer, the oral arguments presented in support of the Demurrer, and Def’s exceptions/objections noted within the Court’s Orders entered 10/4/2017 and 12/6/2017 (said Demurrer, Brief and arguments having been incorporated into Def’s 5/6/2019 Plea in Bar, Demurrer, Answer, Affirmative and other Defenses to Plaintiffs’ Revised Second Amended Complaint (“RSAC Response”));

- b. Def's 11/1/2017 Demurrer and Plea in Bar (PIB) to the Amended Complaint, Def's 2/20/2018 Brief in Support of Def's Demurrer to the Amended Complaint, Def's 3/9/2018 Brief in Support of the PIB to the Amended Complaint, the oral arguments presented in support of the Demurrer and PIB, and Def's exceptions/objections noted within the Court's Orders entered 6/19/2018 and 11/9/2018 (said Demurrer, PIB, Briefs and arguments having been incorporated into Def's 5/6/2019 Response to RSAC); and
- c. Def's 12/10/2018 Notice and Cross-Motion for Partial Summary Judgment, and their 8/28/2019 "Motion for Reconsideration of the Court's Ruling On Whether or Not the City did "Authorize and Permit" the Statues to be Erected as any of the Categories of Monuments Referenced in Va. Code §15.2-1812"; and
- d. Def's 7/24/2019 Notice and Cross-Motion for Summary Judgment on Count I of the RSAC, *ref.* Cross-Motion sections (4) and (6); and Def's 7/24/2019 Notice and Cross-Motion for Summary Judgment on Counts II and III of the RSAC, *ref.* Cross-Motion sections (1), (3), and (4); and Def's exceptions/ objections noted within the Court's Order entered 9/11/2019.

ACORN  
LEZZIE DODD, CLERK  
  
\_\_\_\_\_, DEP. CLERK