

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: EQUAL PROTECTION**

This 11th day of September, 2019 came the Plaintiffs, by Counsel, and Defendants City of Charlottesville and Charlottesville City Council, by counsel, Plaintiffs having filed on June 11, 2019 a Motion for Summary Judgment on the Defendants' Equal Protection Defenses raised in the Defendants' consolidated Plea in Bar, Demurrer, Answer, Affirmative and Other Defenses to the Revised Second Amended Complaint filed May 6, 2019 ["Equal Protection"], and Plaintiffs having filed a Memorandum of Law Supporting Motion for Summary Judgment on Equal Protection Defenses on June 24, 2019, and the Defendants having filed their Opposition to Plaintiffs Motion for Summary Judgment on July 3, 2019, and Defendants having filed a Notice and Cross-Motion for Summary Judgment (Equal Protection Violation) on July 24, 2017, and the parties having appeared by Counsel and the Court having considered the motions and having heard argument on July 10 and July 31, 2019, and the Court having stated its ruling from the bench on September 11, 2019, the Court doth

Therefore **ADJUDGE, ORDER, AND DECREE** that the transcripts filed with the Court of the July 10, 2019 hearing, the July 31, 2019 hearing, and the September 11, 2019 ruling from the bench on Equal Protection, are incorporated in this Order by reference; and it is,

Further, **ADJUDGED, ORDERED, AND DECREED** that, for the reasons stated from the bench on September 11, 2019, the Plaintiffs' Motion for Summary Judgment on the Defendants' Equal Protection Defenses is **GRANTED**; and it is,

Further, **ADJUDGED, ORDERED, AND DECREED** that, for the reasons stated from the bench on September 11, 2019, the Defendants' Notice and Cross-Motion for Summary Judgment (Equal Protection Violation), is **DENIED**. And it is,

Further, **ADJUDGED, ORDERED, AND DECREED** that the Defendants' Equal Protection Defenses are denied and dismissed.

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

It is so Ordered:

ENTER: \_\_\_\_\_

DATE: \_\_\_\_\_

*Ralph E. Main, Jr.*

10/15/19

WE ASK FOR THIS:

Ralph E. Main, Jr.  
Dygart, Wright, Hobbs & Heilberg  
415 4th Street, NE  
Charlottesville, Virginia 22902  
(434) 979-5515  
VSB # 13320  
Counsel for Plaintiffs

S. Braxton Puryear  
Attorney at Law  
121 South Main Street  
Post Office Box 291  
Madison, Virginia 22727  
(540) 948-4444  
VSB #30734

Counsel for Plaintiffs

The preceding "**Order: Equal Protection**" is SEEN AND OBJECTED TO by Defendants, for the reasons set forth following below:

By: \_\_\_\_\_

John C. Blair, City Attorney (VSB#65274)

Lisa A. Robertson, Chief Deputy City Attorney (VSB#32486)

605 East Main St., P.O. Box 911

Charlottesville, VA 22902

Telephone: (434) 970-3131

Email: [robertsonl@charlottesville.org](mailto:robertsonl@charlottesville.org)

Richard H. Milnor (VSB #14177)

Zunka, Milnor & Carter, Ltd.

P.O. Box 1567 (414 Park Street)

Charlottesville, Virginia 22902

Tel. (434) 977-0191

Email: [rmilnor@zmc-law.com](mailto:rmilnor@zmc-law.com)

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

**DEFENDANTS' OBJECTIONS AND EXCEPTIONS TO  
ORDER: EQUAL PROTECTION**

In accordance with Va. Code §8.01-384 and *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, because the Court did not conduct the inquiry required by the U.S. Supreme Court's decisions in *Schuette v. Coalition to Defend Affirmative Action*, 572 U.S. 291, 294 (2014), *Romer v. Evans*, 517 U.S. 620, 633 (1996) and *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 266-267 (1977)(establishing that the historical background of a legislative enactment is a source of evidence as to invidious discriminatory purpose). The Court should have applied heightened scrutiny to the provisions of Virginia Code §15.2-1812 that protect "Confederate monuments", because, (i) in enacting that statute, the General Assembly overrode the ordinary state Constitutional requirement that permanent restrictions on locally-owned real estate must be approved by a local governing body, pursuant to Article VII, Section 9, of the Virginia Constitution, and (ii) this deviation from the norm of local decision-making as to local real estate, together with the context in which the substantive protection of Confederate monuments was originally enacted, justifies application of heightened scrutiny to Va. Code §15.2-1812. The the *Exxon Corp. v. Eagerton* decision cited as the basis for the opinion in *Advanced Towing Co., LLC v. Fairfax Cnty. Bd. Sup'rs* is inapplicable in the context of this case.
- (2) Plaintiffs' arguments, and the Court's ruling, focus almost entirely on First Amendment analysis, including *Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353 (2009) and *American Legion v. American Humanist Association*, Sup. Ct. of the U.S., No. 17-1717, 588 U.S. \_\_\_ (slip op. June 20, 2019), which are inapposite to the Equal Protection analysis currently required under circumstances covered by *Schuette* and cases cited in *Schuette* (including *Romer*).

A COURT CLERK  
LLEZELLE \_\_\_\_\_, DEP. CLERK