

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

FREDERICK W. PAYNE , et al.  
Plaintiffs,

v.

CITY OF CHARLOTTESVILLE, VIRGINIA, et al.  
Defendants

Case No. CL 17 - 145

FILED

*March 14, 2018*

(Date & Time) *11:46 AM*

City of Charlottesville  
Circuit Court Clerk's Office  
Liezelle A. Dugger, Clerk

By *Antonia Spivey*  
Deputy Clerk

**Plaintiffs' Brief on Revisiting a Demurrer Ruling**

**Summary**

**(1) May the Court correct its decision about general damages on the previous demurrer?**

Only an order that disposes of the entire action and leaves nothing to be done becomes final and unchangeable. The Court retains control to revisit a ruling that was on its face tentative, not dispositive.

**(2) Are litigation costs recoverable as general damages?**

The statute says prevailing parties "shall be entitled to" damages for preserving monuments, including litigation costs. The Plaintiffs can plead litigation costs as damages.

**(1) The 2017 demurrer ruling was not a final order now unchangeable**

Sustaining a demurrer is not a final order subject to the 21 day change limitation in Virginia Supreme Court Rule 1:1, unless it ends the case. Super Fresh Food Markets of Virginia v. Ruffin, 263 Va. 555, 561, 561 S.E. 2d 734 (2002) (confirming Rule 1:1 applies only to final order that "disposes of the entire action and leaves nothing to be done"); Southern Ry. Co v. Anderson, 203 Va. 991, 994, 128 S.E. 2d 429 (1962) (stating order overruling a demurrer not final and subject to 21 day change limitation; to be final "[it] must go further and dismiss the case"); Bibber v.

McCreary 194 Va 394, 396, 72 S E 2d 382 (1952) (holding: “[t]he sustaining or overruling of a demurrer . . . is not final” unless it operates as a dismissal) [Bibber]. This Court’s decision on damages did not end the case; indeed it sustained the demurrer only in part, and invited a Complaint amendment. It was not a final order subject to Rule 1:1.

The Court acknowledged during the hearing February 27, 2018 that upon rereading the law, the earlier ruling against general damages appeared to err. The policy of finality undergirding Rule 1:1 does not require forbearance in revisiting an early, interim decision. As yet the ruling has had no reliance or consequence: it has not affected discovery; the trial is still months away. Persisting in an acknowledged error would invite an appeal, undercutting the very finality the Rule promotes.

The Defendants’ Demurrer to the Amended Complaint revisits damages in ¶¶ 1, 2, and 3. The Court may do likewise.

Moreover, the wording of the decision on the bench September 1, 2017, the October 3, 2017 opinion letter, and the October 4, 2017 order was provisional: “I don’t think any [physical harm] occurred yet,” a claim for damages is “premature.” Transcript, September 1, 2017 Demurrer Ruling pp. 7-8 [excerpts, Exhibit 1]; see also October 3, 2017 Opinion letter footnote 1 (hedged similarly with “premature”) [excerpt, Exhibit 2]; October 4, 2017 Order (terming damages “premature”)<sup>1</sup> The situation was in flux. The City covered both monuments in late August. 9/1 Trans. p. 10. The City resolved to remove Jackson, despite the injunction against removing Lee. 9/1 Trans. p 10, 12 & 14 -15. Counsel and the Court considered whether the City might rush to destruction before they could be stopped. 9/1 Trans. pp. 12 - 13 & 14 -15. With actual interference happening, and imminent harm threatened, the Court preserved the possibility of damages to be determined later. The order on its face lacked finality.

Finally, even if the Court leaves the existing ruling as it stands, there may be another ruling after the Complaint is further amended. Bibber 194 Va at 397 (reversing the denial of leave

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<sup>1</sup> The Demurrer Order subsequently entered December 6, 2017 incorporated by reference the Court’s October 3, 2017 opinion letter, but said nothing about damages. [Exhibit 3].

to amend: demurrer is not a final order); Gillespie v. Coleman et al., 98 Va. 276, 277, 36 S E 377 (1900) (holding “the case is still pending in the trial court . . . another amended declaration might be filed . . . so the demurrer was not a final order). Pleadings can be amended up to the time of trial. Virginia Sup. Ct. Rule 1:8 (leave to amend “shall be liberally granted”); Rule 1:19 (b) (pre-trial conference includes “whether any amendments to the pleadings are necessary.”) The Court may then revisit the damages question.

## **(2) Litigation costs are recoverable as damages**

The Court accurately reads the Monument Protection law to anticipate an award of damages for the cost of “preserving” a monument, including “litigation costs.” Virginia Code §15.2-1812.1 (A)

The law further states that “[t]he party who initiates and prevails in an action authorized by this section shall be entitled to an award of the cost of the litigation, including reasonable attorney's fees.” Virginia Code §15.2-1812.1 ( C ). The word “shall” is not discretionary; the law mandates an award of costs of litigation and attorneys’ fees. See Mozley v. Prestwould Bd. of Dirs., 264 Va 549, 556, 570 S.E. 2d 817 (2002) (stating statute saying “shall be entitled to recover reasonable attorney’s fees and costs” mandates litigation cost award, including appeal costs).

A statute expressly providing for litigation costs creates an exception to the general Virginia rule that such costs are not recoverable as damages. Moorehead v. State Farm Fire & Cas. Co., 123 F. Supp. 2d 1004, 1008 (W.D. Va. 2000) (construing bad faith insurance coverage denial provision Virginia Code 38.2-209 as creating exception, entailing awarding litigation costs as damages) [“Moorehead”]. The Plaintiff can recover as damages all litigation costs: not just attorneys fees (which were not at issue in the Moorehead case) but expert witness fees and other expenses. Moorehead, 123 F. Supp. 2d at 1008 & n.3.

The Monument Protection law tasks citizens with trying to beat City Hall. It must recompense citizens for the prodigious expense of time, labor, attorneys fees, and the risk involved.

Otherwise the imbalance of power and resources would render the law virtually unenforceable. An analogous law shifting the cost of litigating against a government, Virginia's Freedom of Information Act at Virginia Code §2.2-3700 *et seq.*, requires awarding full litigation costs even for "a single denial of the rights and privileges of the act." RF& P Corp v. Little, 247 Va 309, 322, 440 SE 2d 908 (1994).

### Request for Relief

The Plaintiffs respectfully request the Court to correct the acknowledged error, and determine that damages under Virginia Code §15.2-1812.1 shall include the cost of the litigation including (but not limited to) reasonable attorney's fees.

Respectfully submitted:

(date)

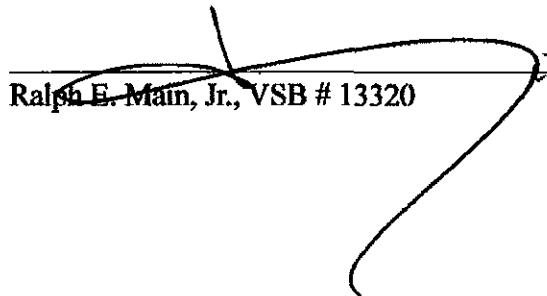
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### CERTIFICATE OF SERVICE

I certify that I caused a true and exact copy of the foregoing Plaintiffs' Brief on Correcting a Demurrer Decision to be hand delivered to the offices of Lisa Robertson, Esq., Charlottesville Acting City Attorney, at the office address of 605 East Main Street, Charlottesville, Virginia 22902 and to the office of John W. Zunka, Esq., at Zunka, Milnor & Carter, LTD, Counsel for Defendants, at the office address of 414 Park Street, Charlottesville, Virginia 22902 this 16<sup>th</sup> day of March 2018.

  
Ralph E. Main, Jr., VSB # 13320

1 just don't see anything in the case that says City  
2 Council can't rename Lee Park. And they already have.  
3 But this would not undo that.

4 As to the ultra vires claim, that's already  
5 acknowledged. That either rises or falls on whether  
6 1812 is retroactive. Or stated another way, whether I  
7 find that 1812 applies to the statutes that were  
8 already in existence at the time of its passing.

9 But if I find that 1812 does apply, then I  
10 would also find standing for the ultra vires count  
11 based on taxpayer standing alone, if I find that  
12 survives. So I'm just letting you know where I stand  
13 on that. If I find 1812 applies to the Lee statue,  
14 then their allegations about expenditures of  
15 significant funds without authority would survive. If  
16 I find 1812 does not apply to the existing statue, then  
17 the ultra vires count automatically fails, and standing  
18 is moot at that point.

19 I'm also going to sustain the demurrer as to  
20 the damages count for actual encroachment or damage to  
21 the statue. I believe that's under 1812.1. I think  
22 that the way I've read that all along, I think that the  
23 damage issue or the encroachment issues in 1812.1  
24 anticipates actual physical damage or encroachment. I  
25 don't think it's talking about theoretical or symbolic.

1 And the damages -- it talks about the cost of  
2 repairing. And I think it might talk about the cost  
3 of -- it talks about cost of repairing and maybe  
4 relocating or something. I've got it right here.

5 Talks about the costs necessary for  
6 rebuilding, repairing, preserving, or restoring such  
7 memorials. And it seems to me that's anticipated some  
8 physical damage having occurred. And I don't think  
9 any's occurred yet. But physical damage. I think that  
10 is premature, as the City has said, and I will sustain  
11 the demurrer as to that.

12 But as to the two main ones, the standing,  
13 particularly for the injunction, and the applicability  
14 of 1812 to the existing statue, I've got to take that  
15 under advisement because I've read some of the other  
16 authorities. I need to read a little more.

17 We will set a date as soon as we can.  
18 Best-case scenario would be I would get a decision  
19 within two to three weeks, but that might be overly  
20 optimistic. And I know it won't be next week just  
21 because of my schedule.

22 As to the cause of action, the demurrer as  
23 to the cause of action on whether it's a war memorial  
24 or a monument to veterans, I'm inclined to overrule the  
25 demurrer on that. I'm not ruling that today, but I'm

1 inclined to from what I've heard. At present it seems  
2 that they have pled enough facts from which adequate  
3 notice to defend would be given to defend this. I  
4 think clearly there's enough alleged. They know  
5 they're asking this to be protected as a war memorial  
6 or a memorial to veterans of wars.

7 I don't even think I have to go as far to  
8 say that it has to be a Confederate war memorial. I  
9 don't think that's true. I just have to determine that  
10 it's clear that it's a veteran of wars, and I know they  
11 have a different argument on that.

12 And again, I'm not going to make a final  
13 ruling on that until I've reviewed the other two  
14 because there may be some other things that I come  
15 across that will change my view. But I just want you  
16 to know that's my thinking on that.

17 There are two other matters which weren't  
18 addressed today, and it's late. But one was the  
19 recently filed injunction as to the removal of the  
20 Jackson statue. Because since that time, there's been  
21 further resolution by City Council that was not there  
22 when this was originally filed. And when we had the  
23 original injunction hearing, I specifically did not  
24 address that because it didn't seem to be imminent.

25 But plaintiffs have now filed a motion to



1 expand the injunction to include the Jackson statue.  
2 We're not going to argue that today, but we did address  
3 that prior to the hearing.

4 And then they're also asking for a temporary  
5 injunction to remove the coverings that have been  
6 placed on them because they believe that also violates  
7 the statue. That's also not for argument today. I  
8 think it was just filed yesterday or day before. I  
9 think I saw them yesterday for the first time. But we  
10 do need to decide when and how you want to address  
11 those.

12 So I'll hear from either of you -- any  
13 questions about that?

14 I'll ask y'all to prepare the order on what  
15 I have ruled on. Not everything's in your favor, but  
16 I've sustained a couple of those points. And so if  
17 you'll do the order and circulate it to counsel for  
18 endorsement.

19 Obviously the main issue, from the Court's  
20 point of view, is whether I find that 1812 applies. I  
21 had my views of that before I came in here today. I  
22 may or may not still have the same views. But I do  
23 think the arguments were good and were helpful. And I  
24 appreciate that.

25 Either way, it's one of these decisions that

1 I know people feel strongly about on either side, and  
2 I'm going to disappoint somebody. I may disappoint  
3 everybody. But I've got to at least satisfy me that  
4 I'm applying the law correctly. That's all I can say.

5 Anything else that you want to say or put on  
6 the record? Or any questions about the ruling, I  
7 guess?

8 MR. MAIN: Other than we note our exceptions  
9 to those rulings.

10 THE COURT: Certainly. Note your exception  
11 on all of those.

12 MR. MAIN: Did you want to set the date for  
13 the injunction?

14 THE COURT: Well, I wanted to see what your  
15 pleasure was. Now my assistant is long gone, and she's  
16 the keeper of the books. What probably would be best,  
17 since there's seven of you, for y'all to talk with each  
18 other and maybe come up with two or three or four  
19 suggested dates to address that. I know you're going  
20 to want a minimum amount of time to look at that.

21 MR. BROWN: Well, Judge, as you well know,  
22 and as the other side knows, on any request for  
23 injunctive relief, one of the key criteria is the  
24 likelihood of succeeding on the merits. That seems  
25 like that will be driven by your decision on the

1 demurrer. And I wonder if it's premature to schedule  
2 that before we have that ruling.

3 THE COURT: Well, it could be. I mean,  
4 obviously I already ruled at the initial injunction  
5 that I thought there was a likelihood of succeeding.  
6 So one view as to the actual removal of the Jackson  
7 statue -- one thought is I said on the record  
8 previously I might revisit that at any time. So I'm  
9 inclined to go ahead and extend that temporarily  
10 because I already made initial findings, and my current  
11 findings haven't been announced yet.

12 But the covering is a different issue. And  
13 not only is there likelihood to succeed as an issue,  
14 but there's irreparable harm issue on that. So I'm  
15 glad to hear what you think about that. But I think I  
16 left the door open for me to extend that at the last  
17 hearing. And certainly everything that applied from  
18 the Lee injunctions would apply to the Jackson  
19 injunction until I've ruled otherwise.

20 MR. BROWN: Although City Council has not  
21 taken any action with regard to the Jackson statue.

22 THE COURT: I thought they -- I thought they  
23 passed something that said they wanted to move both of  
24 them.

25 MR. BROWN: It's on the agenda next week.

1 THE COURT: Okay.

2 MR. PURYEAR: Judge, that's our concern is  
3 if it's on the agenda, if there's not an injunction to  
4 stop them from doing it, then they'll adopt it on a  
5 resolution --

6 THE COURT: What day is it on the agenda  
7 next week?

8 MR. BROWN: Tuesday. It's normally a Monday  
9 meeting.

10 THE COURT: Monday's a holiday.

11 MR. BROWN: That's why it's Tuesday.

12 MR. PURYEAR: Judge, we understand and  
13 appreciate that scheduling this is going to be a  
14 challenge. We also understand and appreciate it's  
15 going to take the Court some time to make a final  
16 decision. But if we wait until the Court makes a final  
17 decision and then the Court's schedule and seven  
18 attorneys -- we'd ask that we be able to schedule a  
19 hearing on the injunction sooner rather than later, and  
20 we would suggest there would be no harm to the  
21 defendants doing that.

22 But it's our concern that there would be  
23 irreparable harm done, and it's our position that  
24 there's irreparable harm being done as we speak.

25 THE COURT: I mean, frankly, from the last

1 proceeding, as I recall it, I specifically said there  
2 hasn't been any talk or effort to move Jackson. If  
3 it's on the agenda, somebody has made the motion.

4 MR. BROWN: But it may very well be a  
5 resolution which authorizes the removal of the Jackson  
6 statue contingent on getting a favorable ruling from  
7 the Court.

8 THE COURT: If you could assure me of that,  
9 that would resolve that for the time being.

10 MR. BROWN: That's what I anticipate.

11 THE COURT: Okay.

12 MR. PURYEAR: Judge, our concern is there's  
13 a possibility of appealing the Court's decision if we  
14 disagree with the Court's decision. And what we don't  
15 want is for the irreparable harm that is contemplated  
16 to be done without an injunction in place.

17 THE COURT: Right.

18 MR. PURYEAR: There's nothing hurt as far as  
19 the defendants are concerned with us having an  
20 injunction that protects both of these monuments. And  
21 we're also asking since --

22 THE COURT: Let me put it this way. I'm  
23 going to be here Tuesday and Wednesday. I won't be  
24 here Thursday and Friday. Monday's a holiday.

25 If the meeting is Tuesday, if there is

1 anything that goes in any direction like there's an  
2 actual risk that it's going to be damaged or moved and  
3 you don't have the language of "contingent on the  
4 Court's ruling," I'll hear you on Wednesday at any  
5 time. Because I've already -- it's already an issue  
6 from last time.

7 MR. BROWN: That's fair enough.

8 THE COURT: I don't think we need full  
9 notice on that.

10 MR. MAIN: That's fair.

11 MR. BROWN: We'll agree to that, Judge.

12 THE COURT: So we'll do that on Wednesday.  
13 I'll be here all day. You all just let me know.

14 The real question is down the road, the  
15 other -- the injunction based on covering is obviously  
16 not as big a concern to them. It is a concern. They  
17 filed on it. So we do need to set a time for that.

18 MR. PURYEAR: And sooner rather than later,  
19 Judge.

20 THE COURT: I mean, that's going to be a  
21 matter of scheduling with -- unfortunately,  
22 Ms. Runner's husband has been transferred by the Air  
23 Force, and I'm losing her in the next couple weeks. So  
24 Ms. Shepperd is taking over. But you can schedule with  
25 either one of them. Ms. Runner won't be here next

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Re: Frederick W. Payne et al. v. City of Charlottesville, et al. — Ruling on Demurrer  
Circuit Court file no. CL 17-145; Hearing date: Sept. 1, 2017

Dear Counsel:

This case comes before the Court on Defendants' Demurrer to the Complaint. The matter was argued by counsel on September 1, 2017. The Court has considered at length the authorities cited and arguments made.

### Procedural Background

Plaintiffs allege several grounds why City Council, under state law, may not move or remove the statue of Robert E. Lee from what was formerly Lee Park and is now Emancipation Park, and seek a declaratory judgment, injunctive relief, and damages. Defendants demur to every count of the Complaint.

The Court decided some issues relating to the Demurrer from the bench at the hearing on September 1.<sup>1</sup>

<sup>1</sup> The Court ruled that the Plaintiffs had not sufficiently pled any actual physical encroachment or damage to the statue, so any request for damages under §15.2-1812.1 is premature and speculative, that there is no *ultra vires*

Ralph E. Main, Jr., S. Braxton Puryear, Elliott Harding  
S. Craig Brown, Lisa Robertson, John Zunka, Richard Milnor, Ashley Pivonka  
October 3, 2017  
Page Two

There are three main issues remaining for the Court to address and decide. First, does Virginia Code §15.2-1812 apply in this case to statues in existence when the law was enacted. Second, do the Plaintiffs, or any of them, have standing to bring this matter before the Court. And third, have Plaintiffs sufficiently pleaded that the statue of General Robert E. Lee in what is now Emancipation Park and was heretofore Lee Park a memorial or monument to the Civil War (War Between the States) or to a veteran of that war.

### Legal Authority and Standard for Considering Demurrer

A demurrer tests the legal sufficiency of a pleading—not whether Plaintiffs will or should prevail at trial, but whether they may possibly prevail as pleaded. The issue is whether the Complaint states a cause of action for which relief may be granted. Pendleton v. Newsome, 290 Va. 162, 171, 772 S.E. 2d 759 (2015); Welding, Inc. v. Bland County Service Auth., 261 Va. 218, 226, 541 S.E.2d 909, 913 (2001); Grossman v. Saunders, 237 Va. 113, 119, 376 S.E.2d 66, 69 (1989). A Demurrer asserts that Plaintiffs cannot prevail in the matter as pleaded. The question is: does the Complaint contain sufficient legal grounds and factual recitations or allegations to support or sustain the granting of the relief requested and put the defendants on adequate notice to properly defend? If the court accepts all Plaintiff says as true, does Plaintiff then prevail? If so, the demurrer should be overruled. Put another way, given all that is alleged, is this a case where a jury or judge ought to be allowed to decide whether the allegations are true or have been proved?

In considering a demurrer the Court should not engage in evaluating evidence outside of the pleadings. A demurrer is not concerned with or dependent on the evidence—neither its strength nor a determination of whether the Plaintiff can prove its case. In ruling on a demurrer the Court does not consider the anticipated proof but only the legal sufficiency of the pleadings, and it considers the facts and allegations in the light most favorable to the plaintiff. Glazebrook v. Board of Supervisors of Spotsylvania County, 266 Va. 550, 554, 587 S.E.2d 589, 591 (2003); Welding, above, 261 Va. at 226, 541 S.E.2d at 913; Luckett v. Jennings, 246 Va. 303, 307, 435 S.E.2d 400, 402 (1993). A demurrer accepts as true and considers as admitted all facts expressly or impliedly alleged or that may fairly and justly be inferred from the facts alleged. Glazebrook, Luckett, Grossman, above; Cox Cable Hampt., Rds. v. City of Norfolk, 242 Va. 394, 397 (1991). So it is the facts as pleaded upon which the court must make its ruling. But any exhibit or attachment to the pleadings is considered part of the pleading.

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count apart from §15.2-1812, that the renaming of Lee Park was not prohibited by the statute even if it does apply to prevent the moving, removal, or damage of the statue, and that the terms of the Lee property deed only required that the property be used as a park and that no building be erected on it.



**VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE**

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

**v.**

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

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)  
) **Case No. CL17-000145-000**  
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**ORDER**

On September 1, 2017, this Court heard argument on Defendants' Demurrer to Plaintiffs' Complaint. Lisa Robertson and S. Craig Brown appeared for all Defendants, Ashleigh M. Pivonka and Richard H. Milnor appeared for Defendants City of Charlottesville and Charlottesville City Council, and Ralph E. Main, Jr., S. Braxton Puryear, and Elliot Harding appeared for Plaintiffs; and

On October 4, 2017, this Court entered an Order partially disposing of Defendants' Demurrer in accordance with the findings made by the Court from the bench on September 1, 2017, at which time several matters were taken under advisement; and

By letter opinion dated October 3, 2017, this Court issued its rulings on the matters previously taken under advisement,

NOW, THEREFORE, upon argument of counsel, and for the reasons expressed in the Court's letter opinion dated October 3, 2017, which is incorporated herein by reference, the Court doth hereby ORDER as follows:

1. Paragraph 1 of Defendants' Demurrer is SUSTAINED in part, in that this Court finds that all of the individual Plaintiffs, except for Plaintiffs Phillips, Fry, Amiss, Griffin and Earnest, and including Plaintiff Sons of Confederate Veterans, Virginia Division, have individual standing to bring this action under general principles of standing, while Plaintiff The Monument Fund has representative standing to bring this action.

2. Paragraphs 1 and 2 of Defendants' Demurrer are OVERRULED in part, in that this Court finds that all named Plaintiffs would have standing to bring an action for damages under Va. Code §15.2-1812.1, and also in that Plaintiffs Payne, Yellott, Tayloe, Amiss, Weber and Smith have taxpayer standing for pursuing Count II as to unauthorized expenditures of money to move the Lee statue, based on the Court's finding in Paragraph 3, following below; otherwise, Paragraph 2 of the Demurrer is SUSTAINED as to taxpayer standing.

3. Paragraph 3 of Defendants' Demurrer is OVERRULED, and this Court finds that Va. Code § 15.2-1812 is applicable to monuments or memorials covered by that statute and in existence within a city prior to 1997.

4. Paragraph 4 of Plaintiffs' Demurrer is SUSTAINED, and this Court finds that the Complaint fails to allege facts sufficient to support a conclusion that the Lee Statue is a monument or memorial to any of the wars or conflicts enumerated in Va. Code § 15.2-1812.

5. The Court hereby grants, *sua sponte*, leave to Plaintiffs to amend their Complaint. Plaintiffs shall have until October 25, 2017 to file an Amended Complaint.

This Court notes the Parties' objections to all rulings adverse as to them.

The CLERK is hereby ORDERED to forward certified copies of this Order to all counsel of record.

ENTERED: 12/6/17

JUDGE: Michael P. Moore

We ask for this, as to the Court's ruling sustaining the Demurrer as to Paragraph 1 (as to the part SUSTAINED), Paragraph 2 (as to the part SUSTAINED) and as to Paragraph 4 of the Demurrer; however, Defendants object to the Court's ruling on Paragraph 1 (as to the part OVERRULED), Paragraph 2 (as to the part OVERRULED) and Paragraph 3 of the Demurrer (as to the Court's overruling of the Defendants' assertion that Va. Code § 15.2-1812 does not apply to the Statutes and should not be applied retroactively, and in making their objections, the Defendants rely on arguments in their memoranda and those stated at the hearing of the Demurrer.

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**S. Braxton Puryear (VSB # 30734)**  
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**Madison, Virginia 22727**  
***Counsel for Plaintiffs***

**Elliott Harding (VSB # 90422)**  
**7 Locks Court**  
**Palmyra, Virginia 22963**  
***Counsel for Plaintiffs***

**Exceptions of Plaintiffs:**

1. **Plaintiffs except to ruling that Plaintiffs Phillips, Fry, Amiss, Griffin and Earnest do not have individual standing to bring this action under general principles of standing, and that Plaintiff Virginia Division, Sons of Confederate Veterans, does not have representative standing to bring this action.**
2. **Plaintiffs except to ruling that Paragraph 2 of demurrer is sustained except as set forth in foregoing paragraph 2 of order.**
3. **Plaintiffs except to sustaining of Paragraph 4 of demurrer. The complaint alleges sufficient facts to support conclusion that Lee Statue is a monument or memorial to a veteran of The War Between the States and to the War Between the States, a war or conflict enumerated in Virginia Code § 15.2-1812.**

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