

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

Plaintiffs' Motion for Partial Summary Judgment

The Plaintiffs by Counsel, move this Honorable Court for partial summary judgment establishing the statue of Confederate General Robert E. Lee, and the statue of Confederate General Thomas Jonathan Jackson, are monuments or memorials to veterans of the War Between the States under Va. Code §15.2-1812, 1812.1 and 18.2-137, for the following reasons:

(1) Summary judgment is appropriate when no material facts are genuinely disputed. Va. Sup. Ct. Rule 3:20 (admissions may serve as basis for summary judgment); see e.g. *Macaulay v. Home Beneficial Life Ins. Co.*, 235 Va. 649, 369 S.E. 2d 420 (1980) (upholding summary judgment on answers to requests for admission establishing no facts genuinely disputed).

(2) After this Honorable Court forced the Defendants to respond fairly to Plaintiffs' Requests for Admissions, on November 5, 2018 all Defendants admitted sufficient facts to support the legal conclusion that the Lee and Jackson statues are memorials to veterans of the War Between the States, as set forth below. [Exhibit 1].

(3) The Defendants admitted that "General Robert E. Lee, hereinafter also referred to as 'Lee' and 'General Lee,' was the commander of the Confederate Army of Northern Virginia, and after February 1865 supreme commander of all Confederate forces, during the War Between the States." [Exhibit 1 Rq. for Adm. # 1 italics in original omitted].

FILED
11-13-18 10:33am
(Date & Time)
City of Charlottesville
Circuit Court Clerk's Office
Liezelle A. Dugger, Clerk
By *[Signature]*
Deputy Clerk

(4) The Defendants admitted General Lee "surrendered to Union General Ulysses P [sic] Grant at Appomattox Court House on April 9, 1865, precipitating the end of the War Between the States." [Exhibit 1 Rq. for Adm. # 5 italics in original omitted].

(5) The Defendants admitted the statue "is an historically accurate statue of General Lee, in his military dress uniform, with his rank insignia and ceremonial sword, mounted on his war horse Traveller. His uniform and equipment, as depicted on the [statue] are consistent with his service to the Confederate States of America during the War Between the States as a Confederate Officer." [Exhibit 1 Rq. for Adm. # 7 italics in original omitted].

(6) The Defendants admitted "as a matter of general historical knowledge, Thomas Jonathan Jackson was born in and around 1824; died in and around 1863; and was an officer in the Confederate States Army during the War Between the States." [Exhibit 1 Rq. for Adm. # 14].

(7) The Defendants admitted "a statue at issue in this litigation is bronze, depicts Thomas Jonathan Jackson; and is located in what was previously known as 'Jackson Park.'" [Exhibit 1 Rq. for Adm. # 15].

(8) The Defendants refused to admit either statue is a "monument" or "memorial," despite the City Council resolution passed unanimously, creating the Blue Ribbon Commission on Race *Memorials* and Public Spaces, calling both the Lee and Jackson statues "*memorials*" and "*Confederate monuments*." [Exhibit 2, p. 2, emphasis added].

(9) Nonetheless, the Defendants have admitted that Lee and Jackson were military officers in the War Between the States and also admitted the statues depict Lee and Jackson. That suffices to establish as fact that the statues commemorate veterans of the War Between the States.

(10) This Honorable Court's October 23, 2017 opinion letter on the Defendants' first Demurrer stated that "the pleading that the statue of Robert E. Lee is a Confederate monument or memorial is a conclusion of law . . . " [Exhibit 3 p. 15].

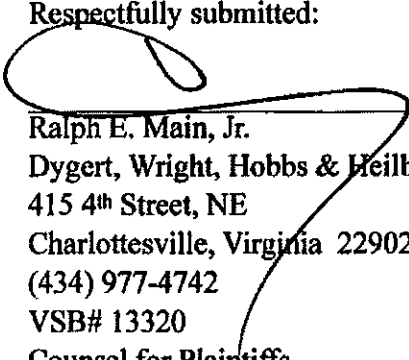
(11) The Defendants' admissions are sufficient to support summary judgment on the conclusion of law that both the Lee and Jackson monuments are memorials to veterans of the War Between the States, within Virginia Code §§15.2-1812, 1812.1 and 18.2-137.

Request for Relief

Plaintiffs respectfully request this Honorable Court to grant partial summary judgment, holding that the statues of General Robert E. Lee in the formerly named Lee Park and General Thomas Jonathan "Stonewall" Jackson in the formerly named Jackson park are monuments and memorials to veterans of the War Between the States, within Virginia Code §§15.2-1812, 1812.1 and 18.2-137.

Damages, allocation of damages among the Defendants, permanent injunctive relief, and litigation costs including but not limited to attorneys fees, will remain to be determined in further proceedings.

Respectfully submitted:


Ralph E. Main, Jr.
Dygert, Wright, Hobbs & Heilberg
415 4th Street, NE
Charlottesville, Virginia 22902
(434) 977-4742
VSB# 13320
Counsel for Plaintiffs

(date) November 13, 2018

S. Braxton Puryear
Attorney at Law,
121 South Main Street
Madison, Virginia 22727
(540) 948-4444
VSB #30734
Counsel for Plaintiffs

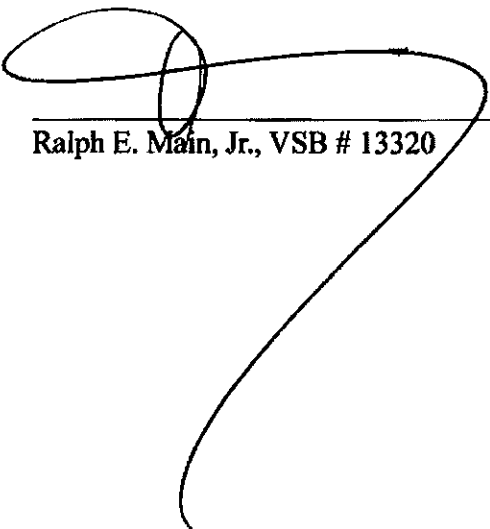
Exhibit 1 -- Defendants' Supplemental Objections and Responses to Plaintiffs' First Requests for Admissions

Exhibit 2 -- City Council Resolution Creating Blue Ribbon Commission on Race Memorials and Public Spaces

Exhibit 3 -- *Payne et al v. City of Charlottesville et al*, Opinion Letter Oct. 3, 2018, Hon. Richard E., Moore, [excerpts, pp. 1 & 15-16].

CERTIFICATE OF SERVICE

I certify that I caused a true and exact copy of the foregoing Motion for Partial Summary Judgment to be hand delivered to the offices of Lisa Robertson, Esq., Charlottesville Deputy City Attorney, at her office address of 605 East Main Street, Charlottesville, Virginia 22902 and to the office of Richard Milnor, Esquire, at Zunka, Milnor & Carter, LTD, Counsel for Defendants, at his office address of 414 Park Street, Charlottesville, and by email to William O'Reilly, Esq., Jones Day, 51 Louisiana Ave. N.W. Washington DC 20001, at his email address of <woreilly@jonesday.com> and in addition by first class mail, postage prepaid to William O'Reilly, Esq., Jones Day, 51 Louisiana Ave. N.W. Washington DC 20001, all of the above being Counsel for the various Defendants, this 13th day of November 2018.



Ralph E. Main, Jr., VSB # 13320

Exhibit 1

**Defendants' Supplemental Objections and Responses
to Plaintiffs' First Requests for Admissions**

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE, VIRGINIA

FREDERICK W. PAYNE, JOHN BOSLEY
YELLOTT, JR., et al.,

Plaintiffs,

v.

CITY OF CHARLOTTESVILLE,
VIRGINIA, CHARLOTTESVILLE CITY
COUNCIL, et al.,

Defendants.

Case No. CL17-000145-000

NOTICE OF SERVICE


I hereby give notice that on this date the following papers were served to Plaintiffs'

counsel in this case:

1. Defendants' (City of Charlottesville, Charlottesville City Council, and Robert Fenwick)
Supplemental Objections and Responses to Plaintiffs' First Requests for Admissions, and
2. Defendants (Wesley Bellamy, Kathleen Galvin, Michael Signer and Kristin Szakos)
Supplemental Objections and Responses to Plaintiffs' First Requests for Admissions.

Respectfully submitted,
CITY OF CHARLOTTESVILLE, VIRGINIA,
CHARLOTTESVILLE CITY COUNCIL, et al.,

By counsel:


John C. Blair, City Attorney (VSB #65274)
Lisa A. Robertson, Chief Deputy City Attorney (VSB# 32486)
Sebastian Waisman, Asst. City Attorney (VSB #91665)
P.O. Box 911, 605 E. Main Street, 2nd Floor (City Hall)
Charlottesville, Virginia 22902
Tel. (434)970-3131
Email: robertsonl@charlottesville.org
Counsel for all Defendants

CERTIFICATE OF SERVICE

I hereby certify that on Nov. 5, 2018, the foregoing document was sent via electronic mail, and was also sent by U.S. mail, first-class, postage-prepaid, to counsel of record at the addresses given below:


Ralph E. Main, Jr.
Dygart, Wright, Hobbs & Heilberg
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Richard H. Milnor
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Lisa A. Robertson

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

FREDERICK W. PAYNE, *et al.*,

Plaintiffs,

v.

CITY OF CHARLOTTESVILLE, VIRGINIA,
et al.,

Defendants.

Case No.: CL 17-000145-000

**DEFENDANTS' SUPPLEMENTAL OBJECTIONS AND RESPONSES TO
PLAINTIFFS' FIRST REQUESTS FOR ADMISSIONS**

Pursuant to Rule 4:11 of the Rules of the Supreme Court of Virginia, Defendants Michael Signer, Wesley Bellamy, Kathleen Galvin, and Kristin Szakos ("Defendants"), by undersigned counsel, provide supplemental objections and responses to Plaintiffs' First Requests for Admissions.

PRELIMINARY STATEMENT

Defendants respond to these Requests subject to the General Objections and any specific objections set forth within any individual response.

The following objections are given without prejudice to Defendants' right to produce evidence of subsequently discovered facts that Defendants may later recall. Defendants accordingly reserve the right to change any and all objections and responses herein as additional facts are ascertained, analyses are made, legal research is completed, and contentions are made. The objections and responses contained herein are made in a good-faith effort and after reasonable inquiry, but should in no way be to the prejudice of Defendants in relation to further discovery, research, or analysis. Defendants expressly reserve their right to supplement or

modify these objections and responses with relevant information as they may hereafter discover and they will do so to the extent required by the Rules of the Supreme Court of Virginia.

Defendants object and respond to these Requests based on their interpretation and understanding of the Requests set forth therein. If Plaintiffs subsequently assert an interpretation of any Request that differs from the understanding of Defendants, Defendants reserve the right to supplement and modify their objections and responses. Defendants reserve the right to object on any ground at any time to other discovery requests that Plaintiff may propound involving or relating to the same subject matter of these Requests.

GENERAL OBJECTIONS

Each of Defendants' Responses, in addition to any specifically stated objections, is subject to and incorporates the following General Objections. The assertion of the same, similar, or additional objections, or a partial response to any individual request, does not waive any of Defendants' General Objections.

1. Defendants object to each Request to the extent that it is inconsistent with or seeks to impose obligations beyond those imposed by the Rules of the Virginia Supreme Court, any applicable orders of this Court, or any stipulation or agreement of the parties. Accordingly, in responding to the Requests, Defendants shall follow the Rules of the Virginia Supreme Court, any applicable orders of this Court, and any stipulation or agreement of the parties.

2. Defendants object to each Request to the extent that such Request seeks a response in violation of legislative immunity, or any response subject to the attorney-client privilege, attorney work product doctrine, legislative privilege, and/or any other applicable privilege or immunity, or to a protective order and/or stipulation of confidentiality between a defendant and any third party. Defendants assert all such privileges, protections, and immunities from discovery.

3. Defendants object to each Request as being unreasonably cumulative or duplicative, in light of the Responses already given by Defendants to the Amended Complaint. Further, Defendants object to each Request to the extent that it requires Defendants to undertake an unreasonable inquiry into matters not reasonably within any individual Defendant's own knowledge or information, without adequate guidance as to whether or not the difference in terminology between any of the RFAs and any statements of fact asserted within the Amended Complaint are significant.

4. Defendants object to each Request to the extent that such Request seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

5. Defendants object to each Request to the extent that it seeks to obtain admissions of matters of law or legal conclusions, rather than matters which relate solely to statements or opinions of fact or of the application of law to fact.

6. For the reasons expressed in Defendants' expert materials and for the reasons discussed at the October 26, 2018 hearing, Defendants object to the term "War Between the States." Hr'g. Tr. 41:25-46:3; 63:12-21. Nevertheless, Defendants respond to these Requests using the term "War Between the States" with the understanding that it means the American Civil War.

7. A partial response by Defendants relative to a given Request that has been objected to in whole or in part is not a waiver of that objection. By asserting various objections, Defendants do not waive other objections that may become applicable.

8. Each of these General Objections is incorporated by reference into each of the responses set forth below, and each response set forth below is made without waiving any of these General Objections.

**SPECIFIC OBJECTIONS AND RESPONSES TO
PLAINTIFFS' FIRST REQUESTS FOR ADMISSIONS**

REQUEST FOR ADMISSION NO. 1:

Admit that Robert E. Lee (1807-1870) was a General Officer in the Confederate States Army during the War Between the States.

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Subject to the General Objections herein stated, Defendants admit to, by incorporation, their Answers to Paragraphs 21(A) and 21(B) of the Amended Complaint, as if set forth herein verbatim (including, without limitation admission of the following: "*General Robert E. Lee, hereinafter also referred to as "Lee" and "General Lee", was the commander of the Confederate Army of Northern Virginia, and after February 1865 supreme commander of all Confederate forces, during the War Between the States."*).

REQUEST FOR ADMISSION NO. 2:

Admit that Robert E. Lee was the Commander of the Army of Northern Virginia during the War Between the States.

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Subject to the General Objections herein stated, Defendants admit to, by incorporation, their Answers to Paragraphs 21(A) and 21(B) of the Amended Complaint, as if set forth herein verbatim (including, without limitation admission of the following: "*General Robert E. Lee, hereinafter also referred to as "Lee" and "General Lee", was the commander of the*

Confederate Army of Northern Virginia, and after February 1865 supreme commander of all Confederate forces, during the War Between the States.”).

REQUEST FOR ADMISSION NO. 3:

Admit that Robert E. Lee was General in Chief of the Army of the Confederate States of America.

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Subject to the General Objections herein stated, Defendants admit to, by incorporation, their Answers to Paragraphs 21(A) and 21(B) of the Amended Complaint, as if set forth herein

verbatim (including, without limitation admission of the following: “General Robert E. Lee, -----

hereinafter also referred to as “Lee” and “General Lee”, was the commander of the

Confederate Army of Northern Virginia, and after February 1865 supreme commander of all Confederate forces, during the War Between the States.”).

Defendants deny this Request to the extent, if any, it seeks to present statements of fact different from those within Paragraphs 21(A) and 21(B) of the Amended Complaint.

REQUEST FOR ADMISSION NO. 4:

Admit that Robert E. Lee surrendered to Ulysses S. Grant on 9 April 1865.

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Subject to the General Objections herein stated, Defendants admit to, by incorporation, their Answer to Paragraph 21 of the Amended Complaint, as if set forth herein verbatim (including, without limitation admission of the following: [Robert E. Lee] “surrendered to Union General Ulysses P. Grant at Appomattox Court House on April 9, 1865, precipitating the end of the War Between the States”).

REQUEST FOR ADMISSION NO. 5:

Admit that the Bronze statue, located in what was previously known as "Lee Park", which is marked "Robert Edward Lee" is a Statue of Confederate General Robert E. Lee.

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Subject to the General Objections herein stated, Defendants admit that a statue at issue in this litigation is bronze; depicts Robert E. Lee; and is located in what was previously known as "Lee Park." See also responses to RFA Nos. 1, 2 and 3, above, incorporated herein by reference as if set forth herein verbatim.

REQUEST FOR ADMISSION NO. 6:

Admit that the stone pedestal or plinth that the bronze on which the statue of Robert E. Lee rests on is a part of the monument or memorial.

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Defendants object to this Request to the extent that it seeks to obtain admissions of matters of law or legal conclusions, rather than matters which relate solely to statements or opinions of fact or of the application of law to fact.

Subject to the General and Specific Objections herein stated, Defendants admit that a statue at issue in this litigation is bronze and depicts Robert E. Lee. Defendants deny the balance of this Request.

REQUEST FOR ADMISSION NO. 7:

Admit that the bronze statue of Robert E. Lee, located in what was previously known as "Lee Park", depicts him in the uniform and accoutrements of a Confederate officer.

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

Subject to the General Objections herein stated, Defendants admit to, by incorporation, their Answers to Paragraphs 21(A) and 21(B) of the Amended Complaint, as if set forth herein

verbatim (including, without limitation admission of the following: *[the statue] "is an historically accurate statue of General Lee, in his military dress uniform, with his rank insignia and ceremonial sword, mounted on his war horse Traveller. His uniform and equipment, as depicted on the [statue] are consistent with his service to the Confederate States of America during the War Between the States as a Confederate officer"*).

REQUEST FOR ADMISSION NO. 8:

Admit that the bronze statue of Robert E. Lee, located in what was previously known as "Lee Park", depicts him on "Traveller", a horse that he rode during the War Between the States.

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

Defendants hereby incorporate by reference their Response to RFA No. 7, preceding above, as if set forth herein verbatim.

REQUEST FOR ADMISSION NO. 9:

Admit that the bronze statue of Robert E. Lee, located in what was previously known as "Lee Park", is a monument.

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

Defendants object to this Request to the extent that it seeks to obtain admissions of matters of law or legal conclusions, rather than matters which relate solely to statements or opinions of fact or of the application of law to fact.

Subject to the General and Specific Objections herein stated, Defendants admit that a statue at issue in this litigation is bronze; depicts Robert E. Lee; and is located in what was previously known as "Lee Park." Defendants deny the balance of this Request.

REQUEST FOR ADMISSION NO. 10:

Admit that the bronze statue of Robert E. Lee, located in what was previously known as "Lee Park", is a monument to the War Between the States.

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Defendants object to this Request to the extent that it seeks to obtain admissions of matters of law or legal conclusions, rather than matters which relate solely to statements or opinions of fact or of the application of law to fact.

Subject to the General and Specific Objections herein stated, Defendants admit that a statue at issue in this litigation is bronze; depicts Robert E. Lee; and is located in what was previously known as "Lee Park." Defendants deny the balance of this Request.

REQUEST FOR ADMISSION NO. 11:

Admit that the bronze statue of Robert E. Lee, located in what was previously known as "Lee Park", is a memorial.

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

Defendants object to this Request to the extent that it seeks to obtain admissions of matters of law or legal conclusions, rather than matters which relate solely to statements or opinions of fact or of the application of law to fact.

Subject to the General and Specific Objections herein stated, Defendants admit that a statue at issue in this litigation is bronze; depicts Robert E. Lee; and is located in what was previously known as "Lee Park." Defendants deny the balance of this Request.

REQUEST FOR ADMISSION NO. 12:

Admit that the bronze statue of Robert E. Lee, located in what was previously known as "Lee Park", is a memorial to a veteran.

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

Defendants object to this Request to the extent that it seeks to obtain admissions of matters of law or legal conclusions, rather than matters which relate solely to statements or opinions of fact or of the application of law to fact.

Subject to the General and Specific Objections herein stated, Defendants admit that a statue at issue in this litigation is bronze; depicts Robert E. Lee; and is located in what was previously known as "Lee Park." Defendants deny the balance of this Request.

REQUEST FOR ADMISSION NO. 13:

Admit that the bronze statue of Robert E. Lee, located in what was previously known as "Lee Park", is a memorial to a veteran of the War Between the States.

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

Defendants object to this Request to the extent that it seeks to obtain admissions of matters of law or legal conclusions, rather than matters which relate solely to statements or opinions of fact or of the application of law to fact.

Subject to the General and Specific Objections herein stated, Defendants admit that a statue at issue in this litigation is bronze; depicts Robert E. Lee; and is located in what was previously known as "Lee Park." Defendants deny the balance of this Request.

REQUEST FOR ADMISSION NO. 14:

Admit that Thomas Jonathan Jackson (1824-1863) was a General Officer in the Confederate States Army during the War Between the States.

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

Subject to the General Objections herein stated, Defendant admits that, as a matter of general historical knowledge, Thomas Jonathan Jackson was born in and around 1824; died in

and around 1863; and was an officer in the Confederate States Army during the War Between the States.

REQUEST FOR ADMISSION NO. 15:

Admit that the bronze statue, located in what was previously known as "Jackson Park", which is marked "Thomas Jonathan Jackson" is a Statue of Thomas Jonathan Jackson.

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Subject to the General Objections herein stated, Defendants admit that a statue at issue in this litigation is bronze; depicts Thomas Jonathan Jackson; and is located in what was previously known as "Jackson Park."

REQUEST FOR ADMISSION NO. 16:

Admit that the stone pedestal or plinth on which the bronze statue of Thomas Jonathan Jackson rests on is a part of the monument or memorial.

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Defendants object to this Request to the extent that it seeks to obtain admissions of matters of law or legal conclusions, rather than matters which relate solely to statements or opinions of fact or of the application of law to fact.

Subject to the General and Specific Objections herein stated, Defendants admit that a statue at issue in this litigation is bronze and depicts Thomas Jonathan Jackson. Defendants deny the balance of this Request.

REQUEST FOR ADMISSION NO. 17:

Admit that the bronze statue of Thomas Jonathan Jackson, located in what was previously known as "Jackson Park", depicts him in the uniform and accoutrements of a Confederate officer.

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

Defendants object to this Request to the extent it requires expert testimony on the subject of "uniform and accoutrements of a Confederate officer." Defendants further object to this Request because they are without personal knowledge of what may constitute "uniform and accoutrements of a Confederate officer" and object that a response to this aspect of the Request would require unreasonable inquiry.

Subject to the General and Specific Objections herein stated, Defendants admit that a statue at issue in this litigation is bronze; depicts Thomas Jonathan Jackson; and is located in what was previously known as "Jackson Park." Defendants deny the balance of this Request.

REQUEST FOR ADMISSION NO. 18:

Admit that the bronze statue of Thomas Jonathan Jackson, located in what was previously known as "Jackson Park", depicts him on his horse, "Little Sorrel", a horse that he rode during the War Between the States.

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

Subject to the General Objections herein stated, Defendants admit that a statue at issue in this litigation is bronze; depicts Thomas Jonathan Jackson; depicts a horse and that, according to publically available historical information, one of the horses used by Thomas Jonathan Jackson during his lifetime was named "Little Sorrel"; and that said statue is located in what was previously known as "Jackson Park." Defendants deny the balance of this Request.

REQUEST FOR ADMISSION NO. 19:

Admit that the bronze statue of Thomas Jonathan Jackson, located in what was previously known as "Jackson Park", is a monument.

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Defendants object to this Request to the extent that it seeks to obtain admissions of matters of law or legal conclusions, rather than matters which relate solely to statements or opinions of fact or of the application of law to fact.

Subject to the General and Specific Objections herein stated, Defendants admit that a statue at issue in this litigation is bronze; depicts Thomas Jonathan Jackson; and is located in what was previously known as "Jackson Park." Defendants deny the balance of this Request.

REQUEST FOR ADMISSION NO. 20:

Admit that the bronze statue of Thomas Jonathan Jackson, located in what was previously known as "Jackson Park", is a monument to the War Between the States.

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

Defendants object to this Request to the extent that it seeks to obtain admissions of matters of law or legal conclusions, rather than matters which relate solely to statements or opinions of fact or of the application of law to fact.

Subject to the General and Specific Objections herein stated, Defendants admit that a statue at issue in this litigation is bronze; depicts Thomas Jonathan Jackson; and is located in what was previously known as "Jackson Park." Defendants deny the balance of this Request.

REQUEST FOR ADMISSION NO. 21:

Admit that the bronze statue of Thomas Jonathan Jackson, located in what was previously known as "Jackson Park", is a memorial.

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

Defendants object to this Request to the extent that it seeks to obtain admissions of matters of law or legal conclusions, rather than matters which relate solely to statements or opinions of fact or of the application of law to fact.

Subject to the General and Specific Objections herein stated, Defendants admit that a statue at issue in this litigation is bronze; depicts Thomas Jonathan Jackson; and is located in what was previously known as "Jackson Park." Defendants deny the balance of this Request.

REQUEST FOR ADMISSION NO. 22:

Admit that the bronze statue of Thomas Jonathan Jackson, located in what was previously known as "Jackson Park", is a memorial to a veteran.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Defendants object to this Request to the extent that it seeks to obtain admissions of matters of law or legal conclusions, rather than matters which relate solely to statements or opinions of fact or of the application of law to fact.

Subject to the General and Specific Objections herein stated, Defendants admit that a statue at issue in this litigation is bronze; depicts Thomas Jonathan Jackson; and is located in what was previously known as "Jackson Park." Defendants deny the balance of this Request.

REQUEST FOR ADMISSION NO. 23:

Admit that on or about September 26, 1999, the Robert E. Lee and Thomas Jonathan Jackson statues, were rededicated and unveiled at a ceremony which included Confederate reenactors in reproduction Civil War military uniforms and accoutrements which took place in then Lee Park.

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

Defendants object to this Request to the extent that it seeks to obtain admissions of matters of law or legal conclusions, rather than matters which relate solely to statements or opinions of fact or of the application of law to fact. Defendants further object to this Request to the extent that it seeks information that is neither relevant to the subject matter of this action nor

reasonably calculated to lead to the discovery of admissible evidence. Indeed, the Court ruled that "discussion of restoration of the statue[s] done in the late 1990s" was irrelevant to the issues before the Court. Hr'g. Tr. 98:21-99:10; 104:5-8, October 26, 2018.

Subject to the General and Specific Objections herein stated, Defendants admit to, by incorporation, their Answer to Paragraph 21 of the Amended Complaint, as if set forth herein verbatim. Defendants deny this Request to the extent, if any, it seeks to present statements of fact different from those within Paragraph 21 of the Amended Complaint.

REQUEST FOR ADMISSION NO. 24:

Admit that Parks and Recreation Department employee Doug Ehman estimated the costs of recovering the Lee and Jackson Statues as follows (not counting his own overtime):

Tarps \$8,754.90

Tape \$583.43

On Call Pay \$5,511.50

Labor \$3,766.94

Total \$18,616.77.

RESPONSE TO REQUEST FOR ADMISSION NO. 24:

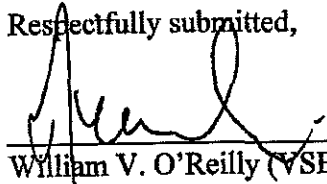
Defendants object to this Request to the extent it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Defendants also object to this Request to the extent it requires Defendants to inquire into matters outside their own knowledge.

Subject to the General and Specific Objections herein stated, Defendants state that after making a reasonable inquiry, they have been provided with a copy of a public record of the City of Charlottesville, attached to this Response, containing a statement made by a City employee

named Doug Ehman. The document speaks for itself, but this is not a statement made by or attributable to any Defendant. Defendants deny the balance of this Request.

Dated: November 5, 2018

Respectfully submitted,



William V. O'Reilly (VSB No.: 26249)

woreilly@jonesday.com

Esha Mankodi (Admitted Pro Hac Vice)

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JONES DAY

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Telephone: (202) 879-3939

Facsimile: (202)626-1700

*Counsel for Defendants Signer, Bellamy, Galvin,
and Szakos*

Attachment 1 (Referenced in RFA Response No. 24)

From: Daly, Brian
Sent: Friday, March 02, 2018 5:43 PM
To: Wheeler, Brian; FOIA
Cc: Murphy, Mike; Jones, Maurice; Ehman, Doug
Subject: FW: Tarp Costs

Brian --

Here is our very best estimate on the costs for tarping and re-tarping the statues. Please let me know if this is sufficient or if you need further details.

Thanks, Brian

From: Ehman, Doug
Sent: Friday, March 02, 2018 2:24 PM
To: Daly, Brian
Subject: Tarp Costs

So here it is:

Tarps	\$8,754.90
Tape	583.43
On Call Pay	5,511.50
Labor	3,766.94

Total \$18,616.77

Labor costs do not include Danny or I since we're exempt and routinely work more than 40 hours. Did some averaging on labor and it might be a smidgen low but it's defensible. We're figuring we recover 26 times. We did some re-tapes and did not figure those in. About 10 minutes when we did it.

Let me know if you have any questions.

Doug Ehman CPRP, CPO, CPSI
Parks Division Manager
1300 Pen Park Road
Charlottesville, Virginia 22901
(434) 970-3021 Office
(434) 981-5595 Cell
(434) 907-3889 Fax

CERTIFICATE OF SERVICE

I hereby certify that on Nov. 5, 2018, the foregoing document was sent via electronic mail, and was also sent by U.S. mail, first-class, postage-prepaid, to counsel of record at the addresses given below:

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Exhibit 2

City Council Resolution Blue Ribbon Commission on Race Memorials and Public Spaces

RESOLUTION
Blue Ribbon Commission on Race, Memorials and Public Spaces

WHEREAS, Council seeks to address questions that have been raised regarding race, memorials and public spaces in Charlottesville; and

WHEREAS, Council created the Human Rights Commission in 2013 to address issues of discrimination and carry on the work of the Dialogue on Race;

NOW THEREFORE, BE IT RESOLVED, that City Council does hereby authorize the creation of an ad hoc blue ribbon commission on race, memorials and public spaces and tasks the commission with the mission to provide Council with options for telling the full story of Charlottesville's history of race and for changing the City's narrative through our public spaces;

BE IT FURTHER RESOLVED, that the blue ribbon commission shall have nine members to be appointed by Council, including six at-large members and one representative each from the PLACE Design Task Force, Human Rights Commission, and Historic Resources Committee;

BE IT FURTHER RESOLVED, that the blue ribbon commission is charged with providing options to Council for specific ways in which our public spaces are used, or could be used, to address race, including, but not limited to:

- Relocating, or adding context to, existing Confederate statues;
- Augmenting the slave auction block at Court Square;
- Completing the Daughters of Zion cemetery;
- Providing a further narrative for the Vinegar Hill community in conjunction with the ongoing work of the African American Heritage Center;
- Highlighting and linking existing historic places, such as the Tonsler House and the Drewary Brown Memorial Bridge;
- Commissioning a new memorial or memorials to an African-American leader;
- Identifying naming opportunities;
- Identifying additional opportunities within the City to enhance a holistic reflection of our history;

BE IT FURTHER RESOLVED, that the blue ribbon commission is tasked with the following goals:

- 1) Amply engage with the Charlottesville/Albemarle community through public hearings, forums, etc.;
- 2) Evaluate and advise Council on the full range of options within the mission;
- 3) Coordinate with the City Attorney's office to provide full legal review of options;
- 4) Identify and communicate with other efforts underway relating to its mission*;

*including, but not limited to, the Governor's commission, African American Heritage Center, Historic Resources Committee, Human Rights Commission, Drewary Brown Committee, Daughters of Zion, UVA Commission on Slavery, UVA ad Hoc group on the monuments, PLACE, Board of Architectural Review, Parks and Recreation, and University and Community Action for Racial Equity (UCARE).

BE IT FURTHER RESOLVED, that Council shall appoint members to the blue ribbon commission who meet the following criteria:

- Commitment to the mission
- Open-mindedness
- Respected in their area of expertise or representation
- Principled and collegial
- Diverse and reflective of our community
- Strong affiliation with the Charlottesville/Albemarle area;

BE IT FURTHER RESOLVED, that Council charges the blue ribbon commission with providing a written report by no later than November 30, and after robust opportunities to gather public comment, which will advise on costs, revenue, sites and siting, and fundraising, related to the following:

- Recommend to Council how best to complement the previous and ongoing work of the groups identified above in telling the full story of Charlottesville's history of race and changing the City's narrative through our public spaces, either through a policy or a specific plan to implement the recommendations, and determine appropriate locations where memorials may be relocated, if applicable.
- Research, evaluate and advise Council on the full range of options regarding disposition of the two large Confederate monuments in Lee and Jackson Parks, including moving the memorials to a museum or historical site, changing their context to reflect current values, or adding new memorials:
 - Make a recommendation as to the course of action Council should take
 - Estimate the costs involved and any revenue that might be anticipated from such action
 - Develop a fundraising strategy for any relocation effort
- Specify any recommendations involving the erection of additional monuments, memorials or historical markers;

BE IT FURTHER RESOLVED, that Council will reserve \$10,000 from the Council Strategic Initiatives Fund for the operating costs of the blue ribbon commission, with expenditures approved by the City Manager and reported to Council at regular intervals.

Approved by Council
May 2, 2016



Sarah Brazelton
Clerk of Council's Office

Exhibit 3

Payne et al v. City of Charlottesville et al,
Opinion Letter Oct. 3, 2018, Hon. Richard E., Moore,
[excerpts, pp. 1 &15-16].

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October 3, 2017

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Re: Frederick W. Payne et al. v. City of Charlottesville, et al. — Ruling on Demurrer (corrected)
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 1.¹

¹ 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 a there is no *ultra vires*

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And I gave great consideration to this point since Virginia is a notice pleading jurisdiction. The test of a demurrer from an adequacy of pleading point of view, is whether, if every fact pleaded is proved, allowing for reasonable inferences, that party would prevail. However, the case law is replete that it must be specific facts pleaded, and not just conclusions of law. Friends of the Rappahannock v. Caroline County, 286 Va. 38, 44 (2013), citing Arlington Yellow Cab Co. v. Transportation, Inc., 207 Va. 313, 319 (1966); Bell v. Saunders, 278 Va. 49, 53 (2009); Fox v. Custis, 236 Va. 69, 71 (1988), citing Ames v. American National Bank, 163 Va. 1, 37-38 (1934). Plaintiffs argue that just pleading Robert E. Lee is sufficient because everyone knows that he was the Commanding General of the Army of Northern Virginia, and *de facto*, at the end of the Civil War, of the entire Confederate forces and later the preeminent symbol of the Confederacy. However, I conclude that pleading that it is a statue of General Robert E. Lee, by itself, is simply not enough. If we were dealing, for example, with a statue of him in Lexington, Va., in civilian clothes, in his later years, or a statue of him as a young First Lt. in the U.S. Army when he was an engineer at Fort Monroe, in Hampton, Va., or when he was Superintendent of the U.S. Military Academy at West Point, none of those statues, if proved, would show it was a memorial or monument to the Civil War or a veteran thereof. Nothing in the pleadings or attachments makes any reference, with regard to the Lee statue, to the War Between the States, the Civil War, or to any other war, for that matter, or to him being a veteran thereof. (The same is not true as to the Jackson statue or property.) There is one reference in Exhibit I to a "Civil War site" as an alternative location, but I find that is not enough.

In the Court's view, the pleading that the statue of Robert E. Lee is a Confederate monument or memorial is a conclusion of law, or at best is an inference to be drawn from pleaded facts. But I find the pleaded facts insufficient. In paragraph 1 of the Complaint, it is stated that "both monuments [Lee and Jackson] are memorials of the War Between the States and to veterans of that war", and in paragraph 22, "Confederate monuments and memorials of the War Between the States" and "memorials to veterans". (Also see paragraph 31.) But that, in fact, is something to be proved under the statute. It is not an underlying fact. I do not think it can be assumed. Saying so does not make it so. That would be one of the disputed assertions of the case. Plaintiffs simply have not pleaded enough specific facts to support the stated allegations. It simply is asking too much to assume it is such a monument or memorial because of his name.

So I will sustain the demurrer as to the third point, and in keeping with this Court's practice in such cases, I will allow Plaintiffs 21 days to file an amended complaint, since it is a matter of pleading and notice, and the defect is one that is amenable to being cured, and not a matter of not being able to prevail as a matter of law. Bibber, above, 194 Va. at 397. Also, while I find there are not sufficient specific facts pleaded to withstand the demurrer on this point,

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Defendants clearly know what Plaintiffs intend to prove and (in light of the attachments and briefs and the earlier hearing) how they intend to do so, so I find that it does not prejudice the defendants to allow Plaintiffs to file an amended Complaint and plead more specific facts, if they can.¹⁰

Conclusion

So I will overrule the demurrer on the first two points, and sustain it on the third, with leave granted to Plaintiffs to file an amended Complaint within 21 days if they be so advised. The case or Complaint is not dismissed, and the injunction is still in effect until November, and such shall remain in effect, unless Plaintiffs do not file an amended complaint within 21 days of entry of the order, or unless such deadline is modified by further order of this court. Since Plaintiffs prevailed on two of the three points, I ask Mr. Main to prepare an order reflecting the Court's ruling in this matter, and circulate it to Defendants' Counsel for their endorsements over their objection and noting their exception to the Court's ruling, unless the parties agree that Defendants' counsel shall draft the order, in which case the Court would defer to them.

To be clear, as you know, this decision on the Demurrer does not dictate the outcome of the case. It simply allows the case to proceed to trial or for further proceedings.

I thank you for your excellent and thorough presentations and briefs in this matter.

Very Truly Yours,



Richard E. Moore

¹⁰ Evidence was presented in the injunction hearing on this point, and facts were mentioned in Plaintiffs' brief, but a demurrer is confined to the pleadings, and I must not consider evidence outside of the pleadings and attachments thereto unless such is stipulated or conceded by the opposing party, and no one has agreed or conceded that I could consider such. Briefs are not a part of the pleadings.