

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 to Amend Complaint**

Come now Plaintiffs, by Counsel, and move this Honorable Court for leave to file a Second Amended Complaint [which is hereto attached] for the following reasons:

(1) On October 4, 2017, this Honorable Court granted leave *sua sponte* for Plaintiffs to amend the original Complaint to plead facts identifying Robert E. Lee as a Confederate General, and the Robert E. Lee monument as a Confederate monument and memorial to a war veteran, and on October 11, 2017 the Plaintiffs filed an Amended Complaint limited to comporting with the Court's requirements.

(2) The Plaintiffs must now update the Complaint to take into account the Defendants' actions in the period August 2017 to date, so that this Court can grant appropriate relief at trial. The amendments are shown on the Second Amended Complaint in **boldface**.

(3) Amending the Complaint will avoid having to file a separate litigation to address the Defendants' actions including the threatened removal of the Jackson monument, the tarps on both monuments, changing park names, and the pending RFP for park transformations.

(4) There are no new causes of action and no new exhibits. The amendments only expand the facts under existing causes of action, and restate existing requests for relief, incorporating existing exhibits by reference. The added facts are already known to the Defendants, and most of them were developed during previous injunction and motion hearings in this matter. There is nothing in the proposed complaint which will surprise Defendants.

FILED  
4/25/18 1:53pm  
(Date & Time)  
City of Charlottesville  
Circuit Court Clerk's Office  
Liezelle A. Dugger, Clerk  
By Antonia Spivak  
Deputy Clerk

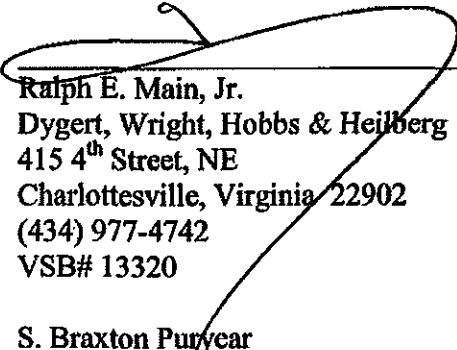
(5) All the Court's previous rulings on Demurrers and the Plea in Bar regarding the Lee monument will apply *mutatis mutandis* to the Jackson monument, in Counts One and Two. There are no changes to Count Three and the Court's previous Demurrer rulings still apply.

(6) Granting leave to amend is in furtherance of the ends of justice, since it will allow the Court to afford complete relief in this case. Virginia Sup. Ct. Rule 1:8 (stating leave to amend "shall be liberally granted in furtherance of the ends of justice"). Amendments are permitted up to the time of trial. Virginia Sup. Ct. Rule 1:19 (b) (saying pretrial conference includes "whether any amendments to the pleadings are necessary.")

#### **Request for Relief**

The Plaintiffs respectfully request the Court to grant leave to amend and accept among the papers in this cause the attached Second Amended Complaint, with existing exhibits to the Amended Complaint filed October 11, 2017 incorporated by reference.

Respectfully submitted:

  
Ralph E. Main, Jr.  
Dygert, Wright, Hobbs & Heilberg  
415 4<sup>th</sup> Street, NE  
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(434) 977-4742  
VSB# 13320

(date)

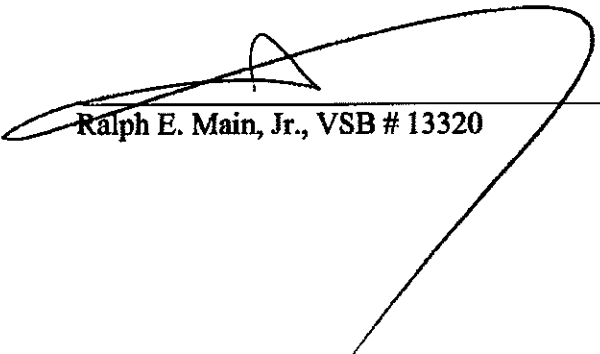
April 25, 2018

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

### **CERTIFICATE OF SERVICE**

I certify that I caused a true and exact copy of the foregoing Plaintiffs' Motion to Amend Complaint, and the Second Amended Complaint, to be hand delivered to the offices of Lisa Robertson, Esq., Charlottesville Acting City Attorney, at her office address of 605 East Main Street, Charlottesville, Virginia 22902 and to the office of John W. Zunka, Esquire, at Zunka, Milnor & Carter, LTD, Counsel for Defendants, at his office address of 414 Park Street, Charlottesville, Virginia 22902 this 25 day of April 2018.



Ralph E. Main, Jr., VSB # 13320

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

FREDERICK W. PAYNE  
JOHN BOSLEY YELLOTT, JR.  
(aka Jock Yellott)  
EDWARD D. TAYLOE, II  
BETTY JANE FRANKLIN PHILLIPS  
EDWARD BERGEN FRY  
VIRGINIA C. AMISS  
STEFANIE MARSHALL  
CHARLES L. WEBER, JR.  
LLOYD THOMAS SMITH, JR.  
VIRGINIA DIVISION, SONS OF  
CONFEDERATE VETERANS, INC.  
ANTHONY M. GRIFFIN  
BRITTON FRANKLIN EARNEST, SR.  
THE MONUMENT FUND, INC.,

Plaintiffs,

v.

Case No. CL17-145

CITY OF CHARLOTTESVILLE, VIRGINIA  
CHARLOTTESVILLE CITY COUNCIL  
ATRI MICHAEL SIGNER  
WESLEY JOMONT BELLAMY  
ROBERT FRANCIS FENWICK, JR.  
KRISTIN LAYNG SZAKOS  
KATHLEEN MARY GALVIN

Defendants.

**SECOND AMENDED COMPLAINT**

Come now Plaintiffs and represent unto this Honorable Court as follows, **incorporating**  
**by reference the exhibits to the Amended Complaint filed October 11, 2017:**

### **Jurisdiction**

1. That this complaint concerns two public parks and two public monuments located in the City of Charlottesville, Virginia. One park has been known as Lee Park for nearly 100 years, though in 2017 the City changed the name to Emancipation Park, and in 2018 is in the process of changing the name again, which park is improved by a statue of and monument to Confederate General Robert E. Lee. One park has been known for nearly 100 years as Jackson Park, though in 2017 the City changed the name to Justice Park, and in 2018 is reconsidering that name as well, which is improved by a statue of and monument to Confederate Lieutenant General Thomas Jonathan "Stonewall" Jackson. Both monuments are memorials of the War Between the States and to veterans of that War. The Parks and monuments were donated to the City by native son and benefactor, Paul Goodloe McIntire.

### **Parties**

2. That Plaintiff Frederick W. Payne (hereinafter "Payne") is a resident of the City of Charlottesville, Virginia. He is a registered voter in the City, owns real estate in the City, and pays City real estate taxes, personal property taxes and other taxes. He utilizes and enjoys both Lee Park and Jackson Park and the monuments erected therein on a regular basis.

3. That Plaintiff John Bosley Yellott, Jr., aka Jock Yellott (hereinafter "Yellott") is a resident of the City of Charlottesville, Virginia. He is a registered voter in the City and pays City personal property taxes. He is the Executive Director of Plaintiff The Monument Fund, Inc. Yellott has worked to preserve both the Lee and Jackson

monuments, has a financial interest in the outcome of the litigation, uses one or both Parks daily, and personally conducts history tours describing the monuments.

4. That Plaintiff Edward D. Tayloe, II (hereinafter "Tayloe") is a resident of the City of Charlottesville, Virginia. He is a registered voter in the City, owns real estate in the City, and pays City real estate taxes and personal property taxes. He is a combat veteran of the United States Army, having served in the Special Forces Group in Vietnam. He is a past president of The Lee-Jackson Foundation and has a special interest in the protection and preservation of war memorials and monuments located in the City, including those of Generals Lee and Jackson. The Lee-Jackson Foundation contributed money to the 1997-1999 restoration of the statues (see paragraph 21, *infra*).

5. That Plaintiff Betty Jane Franklin Phillips (hereinafter "Phillips") is a collateral descendant of Paul Goodloe McIntire. In the event of a reversion of the Lee and Jackson statues and Lee Park and Jackson Park, or an award of damages for the conduct of Defendants, she will represent the interests of the McIntire family.

6. That Plaintiff Edward Bergen Fry (hereinafter "Fry") is the great-nephew of Henry Shrady, the sculptor engaged by Paul Goodloe McIntire to create the Lee monument. He resides in Albemarle County, Virginia. He has an interest in protecting the Lee monument on account of his ancestral connection to the sculptor, and also because Henry Shrady is a sculptor of note who created the Ulysses S. Grant Memorial, which is located in Union Square, west of the United States Capitol Building.

7. That Plaintiff Virginia C. Amiss (hereinafter "Amiss") is a resident of the City of Charlottesville, Virginia. She is a registered voter in the City, owns real estate in the City, and pays City real estate taxes and personal property taxes.

8. That Plaintiff Stefanie Marshall (hereinafter "Marshall") is a resident of Albemarle County, Virginia. She is Chairman of Plaintiff The Monument Fund, Inc. She personally expended money and effort in cleaning and removing graffiti from the Lee monument in 2011 and in 2015.

9. That Plaintiff Charles L. Weber, Jr. (hereinafter "Weber") is a resident of the City of Charlottesville, Virginia. He is a registered voter in the City, owns real estate in the City, and pays City real estate taxes, personal property taxes and other taxes. He is a combat veteran of the United States Navy, having served as a fighter pilot in Vietnam. He has a special interest in the protection and preservation of war memorials and monuments located in the City, including those of Generals Lee and Jackson.

10. That Plaintiff Lloyd Thomas Smith, Jr. (hereinafter "Smith") is a resident of the City of Charlottesville, Virginia. He is a registered voter in the City, owns real estate in the City, and pays City real estate taxes, personal property taxes and other taxes. He is a combat veteran of the United States Marine Corps, having served in the Korean War. He has a special interest in the protection and preservation of war memorials and monuments located in the City, including those of Generals Lee and Jackson. He was the agent for a group of private citizens who donated money for the restoration of the Lee and Jackson monuments in 1997, 1998 and 1999 (see paragraph 21, *infra*). He personally negotiated with the City concerning the donation and the conditions associated with the donation.

11. That Plaintiff Virginia Division, Sons of Confederate Veterans, Inc., (hereinafter "Virginia Division, SCV") is a Virginia corporation. Its Commander is Plaintiff Anthony M. Griffin (hereinafter "Griffin"), a resident of the Commonwealth of

Virginia. Plaintiff Britton Franklin Earnest, Sr. (hereinafter "Earnest") is a member of the Board of Directors of Virginia Division, SCV, and serves as the Heritage Defense Coordinator for Virginia Division, SCV. He is a resident of the Commonwealth of Virginia. These Plaintiffs have an interest in preserving and protecting the Lee and Jackson monuments and the parks in which they are located. Plaintiff Virginia Division, SCV contributed funds to the 1997-1999 restoration of the statues (see paragraph 21, *infra*) and has also raised and disbursed money for this litigation.

12. That Plaintiff The Monument Fund, Inc. (hereinafter "Monument Fund"), is a non-profit 501(c)(3) corporation operating under the laws of the Commonwealth of Virginia, and has an interest in preserving and protecting the Lee and Jackson monuments. The purpose of the Monument Fund is to support historic preservation with a focus on monuments, memorials and statues, and the grounds that frame them, and where necessary, to fund litigation to protect and preserve them. Plaintiff Monument Fund has also raised and disbursed money for this litigation.

13. That Defendant City of Charlottesville, Virginia (hereinafter "City") is a municipal corporation and a political subdivision of the Commonwealth of Virginia. The City owns the Lee statue, Lee Park, the Jackson statue, and Jackson Park.

14. That Defendant Charlottesville City Council (hereinafter "City Council") is the governing body of the City. Its powers are conferred by the General Assembly of the Commonwealth of Virginia.

15. That Defendants Signer, Bellamy, Fenwick, Szakos and Galvin are the five (5) members of City Council.

**Monuments, Memorials And Parks**



16. That by letter of R. A. Watson, attorney for Paul Goodloe McIntire, dated February 5, 1918, to the Mayor of the City, Mr. Watson stated that Mr. McIntire wished to present to the City the "Venable Property" (now known as Lee Park) for the purpose of establishing a park, and that he would cause to be erected in the park an equestrian statue of General Robert E. Lee. This letter appears in Charlottesville Common Council Book E, and a copy is attached hereto as Exhibit A. By Resolution dated February 14, 1918, which was then approved by the City Common Council and the Board of Alderman, the gift was accepted. The Resolution noted that "an equestrian statue of our beloved hero, General Robert E. Lee", would be erected in the center of the park. A copy of the Resolution, which appears in City Ordinance Book 1, is attached hereto as Exhibit B. Nowhere does the Resolution accepting the gift or the deed reserve unto the City or its governing body the power to name or rename the park or to remove the Lee statue

17. That by deed dated June 14, 1918 and recorded in the Clerk's Office of the Circuit Court of the City of Charlottesville, Virginia in Deed Book 32 at Page 7, Paul Goodloe McIntire caused the land now known as Lee Park to be donated to the City for use as a public park. The deed is attached as Exhibit C. The deed stipulates that a statue of General Robert E. Lee will be erected on the property. The land and statue were officially dedicated to the City on May 21, 1924. The conveyance was made on the condition that no "buildings" be erected on the park, and gave the City the "right and power to control, regulate and restrict the use" of the property. Nowhere does the Resolution accepting the gift or the deed reserve unto the City or its governing body the power to name or rename the park or to remove the Lee statue. The City unconditionally accepted the gifts of the property and the statue.

18. That on or about May 21, 1924, University of Virginia President Edwin A. Alderman accepted McIntire's gift of the Lee statue on behalf of the City of Charlottesville and the County of Albemarle.

19. That by deed dated December 24, 1918 and recorded in the Clerk's Office of the Circuit Court of the City of Charlottesville, Virginia in Deed Book 32 at Page 240, Paul Goodloe McIntire caused the land now known as Jackson Park to be donated to the City for use as a public park. The deed is attached as Exhibit D. The deed stipulates that the property be known as "Jackson Park". The conveyance was made on the condition that no "buildings" be erected on the park, and also gave the "authorities" of the City the "right and power to control, regulate and restrict the use" of the property. The gift was accepted by the City on January 18, 1919. See Extract from Minutes of the Board of Aldermen held on January 13, 1919, a copy of which is attached hereto as Exhibit E. McIntire subsequently donated a statue of Confederate Lieutenant General Thomas Jonathan Jackson to the City and caused it to be placed in Jackson Park. The Park and statue were dedicated to the City on October 19, 1921. Neither the resolution accepting the gift nor the deed itself reserve unto the City or its governing body the power to name or rename the park or to remove the Jackson statue. The City unconditionally accepted the gifts of the property and the statue.

20. That in a Resolution dated January 18, 1926, thanking McIntire for the gifts of property that would become McIntire Park and Washington Park, City Council said as follows: "These new parks and play grounds together with the library, the parks and play grounds and statues already given to the City by Mr. McIntire have added

beauty to the City which is without equal and will stand as perpetual monuments and reminders to future generations of the greatest benefactor in the history of the City."

21. That on or about November 26, 1997, the City accepted the offer of \$43,750.00 in donated private funds to restore the statues of Generals Lee and Jackson. The City's acceptance included an agreement to maintain records of the restoration perpetually, to establish a program of periodic maintenance, and to present an appropriate ceremony celebrating the restoration. In May 1998 the City contracted bronze restorer Nicolas F. Veloz to clean and restore the bronze statues of Generals Lee and Jackson. On or about September 26, 1999 the City accepted the re-dedication of the cleaned and restored Lee monument in a ceremony at its unveiling.

21A. 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. He surrendered to Union General Ulysses P. Grant at Appomattox Court House on April 9, 1865, precipitating the end of the War Between the States. The General Robert E. Lee monument, located in the formerly named Lee Park (now renamed Emancipation Park) 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 monument, are consistent with his service to the Confederate States of America during the War Between the States as a Confederate officer. For these reasons, and those stated below in paragraphs 21B - 21G, it is a monument or memorial for the War Between the States (1861-1865), a

Confederate monument, and a monument, or memorial for a war veteran, under Virginia Code §15.2-1812 and 1812.1 as amended, and Virginia Code §18.2-137 as amended.

21B. Born the son of a Revolutionary War hero and a general officer in the Continental Army, Lee was appointed to the United States Military Academy at West Point in 1825. He graduated in 1829, second in his class, with one of the most distinguished academic records in the history of the Academy, and was commissioned an officer in the United States Army, Corps of Engineers. As an engineer, he supervised many innovative public works projects, rising to the rank of captain. When war broke out with Mexico, he commanded combat troops under General Winfield Scott, who later described him as "the very best soldier that I ever saw in the field." He returned from Mexico with the brevet rank of colonel. From 1852 to 1855 he served as superintendent of the Military Academy. In the latter year, he was awarded the permanent rank of lieutenant colonel in the newly raised Second Cavalry and served on the western frontier, rising to the rank of colonel. In 1861, he was offered command of all United States army combat forces by General Scott. Refusing to fight against Virginia, he resigned his United States Army commission on April 20, 1861, three days after Virginia seceded from the Union. Three days later, Governor Letcher appointed him commander of all military and naval forces of the Commonwealth. On May 14, 1861, after Virginia joined the Confederacy, Lee was commissioned a brigadier general, then the highest existing rank, in the regular Confederate Army, soon after being promoted full general. He served for the remainder of the War in several top positions, most notably as commander of the famous Army of Northern Virginia, and ultimately as the commander of the entire Confederate Army until his surrender at Appomattox Court House in 1865.

21C. The original sculptor Paul Goodloe McIntire commissioned for the Lee monument was Henry Shrady, who died before he could complete the project. After Shrady's death sculptor Leo Lentelli took over the project. Lentelli inspected Lee's Confederate uniform and measured its military insignia down to the chevrons on the sleeve, and also took measurements of the taxidermied remains of Traveller, to get the proportions exactly right. The monumental bronze sculpture displaying General Robert E. Lee in dress military uniform with his hat in hand, ceremonial sword at his side, and depicting Traveller at a stolid walk, represents Lee returning to his troops after his surrender at Appomattox, at which point the war had ended for Lee and his troops, and thus the monument is a memorial to a veteran of the War Between the States.

21D. The monument is also a memorial to the War Between the States itself, specifically to the end of that war, because the City of Charlottesville on February 19, 1918, while World War I was raging, in their acceptance of the gift of the monument depicting Lee after the surrender at Appomattox stated that they lauded the vision of the donor Paul Goodloe McIntire to "look beyond the dark chasm of War and with steady eye and clear vision behold the triumphant day when, freed from the curses and blighting the nations and people of the earth influence of war shall return to their peaceful pursuits."

21E. The City acknowledged that both the Lee and Jackson monuments are Confederate monuments and memorials to war veterans in its resolution dated May 2, 2016 creating a commission, describing both the Confederate General Lee and Confederate General Jackson monuments as "Confederate statues" and tasking the commission with deliberating the disposition of "the two large Confederate monuments

in Lee and Jackson Parks, including moving the memorials to a museum or historic site, changing their context to reflect current values, or adding new memorials . . . “ [emphasis added].

21F. In the approximate time period of 1998 to 1999, the City of Charlottesville acknowledged the monument honoring Confederate General Robert E. Lee was a memorial to a Confederate veteran by erecting in front of the Lee monument a Civil War Trails marker (which the City removed in July 2017) stating that the Lee monument was one of those that “memorialize those who fought for the Confederate cause.”

21G. That at the time of Paul Goodloe McIntire’s donation of the monument of General Robert E. Lee to the City of Charlottesville, the “Confederate veterans of Charlottesville and the county of Albemarle” passed a resolution thanking Mr. McIntire for the gift of a “beautiful equestrian statue of our great commander, General Robert E. Lee,” stating “[t]he old veteran, with bowed head, will come to this shrine to drop the tear of his affection . . . ” and “[i]n making our acknowledgments to Mr. Paul G. McIntire, we but voice the sentiments of every true soldier who followed Lee.” Thus Confederate veterans at the time of the donation acknowledged the monument to General Lee was a memorial to one of their own, a veteran of the War Between the States. McIntire’s response stated “I hope that when the monument is unveiled we will all be there to honor him who showed the world how he could be greater in defeat than in victory,” confirming the donor also considered it a monument to the postwar Lee, a memorial to a Confederate veteran.

**21 H. Born in 1824 in Clarksburg, Virginia, now West Virginia, Thomas Jonathan Jackson received an appointment to the United States Military Academy at West Point in 1842, and he served in the U.S. Army during the Mexican-American War of 1846-1848, was decorated for valor, and by the end of the war held the rank of brevet Major. From 1851 to 1861 he served as Professor of Natural and Experimental Philosophy and Instructor of Artillery at the Virginia Military Institute. When Virginia seceded from the Union in May 1861, Jackson accepted a commission as a colonel in the Confederate Army. He was quickly promoted to brigadier general, then in October 1861 commissioned a major general, and by October 1862 Jackson was promoted to lieutenant general in the Confederate Army.**

**21 I. Jackson commanded a brigade at the First Battle of Manassas on 21 July 1861. When he rushed his troops forward to fill a gap in the line, fellow General Barnard Elliott Bee rallied his own troops with: "There stands Jackson like a stone wall! Rally behind the Virginians!" originating the sobriquet "Stonewall" Jackson. During the 1862 campaigns in the Shenandoah Valley with an army of 18,000 troops or less, Jackson outmaneuvered and defeated Union armies of more than 60,000. During the Northern Virginia Campaign of 1862, Jackson's troops captured and destroyed a supply depot from Union General Pope's army. In August 1862 Jackson's troops withstood repeated Union assaults at the Second Battle of Manassas. Jackson's troops captured the town of Harper's Ferry in September 1862, which entailed the largest surrender of Union forces in the war. Jackson defended the Confederate Army's right flank at Sharpsburg on 17 September 1862. At Fredericksburg in December of 1862, Jackson's corps beat back**

a Union Army assault. At the battle of Chancellorsville April 30 to May 6, 1863 General Jackson's fast flanking maneuver routed a larger Union force. Historians consider the victory at Chancellorsville against a Union force twice the size of the Confederate forces the most notable Confederate victory in the War Between the States.

21 J. The battle of Chancellorsville was General Jackson's last. Personally scouting Union positions on horseback in woods after dark, Jackson was mistaken for enemy cavalry and shot by his own pickets. Jackson lost his left arm to amputation; weakened, he succumbed to complications from pneumonia eight days later. General Jackson died in combat from what we would now call friendly fire, and thus Charlottesville's monument erected to honor Jackson is a memorial to a veteran of the War Between the States.

21 K. Charlottesville's Jackson monument features a bronze sculpture of General Jackson in Confederate military uniform and accoutrements, with a sword, on his trotting war horse Little Sorrel. Chiseled at the top of the granite pedestal are the names of several of Jackson's engagements: the Valley Campaign, Manassas, and Chancellorsville. On the sides of the granite pedestal are his full name Thomas Jonathan Jackson, and his birth and death years 1824-1863. The front features carvings of two winged figures, a woman praying named Faith and a man holding a sword and shield bearing a Confederate emblem named Valor, both names inscribed in the ivy relief at their feet. The statue is therefore a monument or memorial to the War Between the States, as well a memorial commemorating a veteran of that war.



**21 L. Paul Goodloe McIntire gave the Jackson monument as a gift to the City of Charlottesville together with land for the park to frame it, stating in the conveyance that the name of the park was to be "Jackson Park," and McIntire personally directed the positioning of the monument in the park.**

**21 M. The Defendant City's Parks and Recreation website acknowledges that "[i]t was McIntire's wish that the local chapters of the Confederate Veterans, Sons of Confederate Veterans and the Daughters of the Confederacy should plan the celebration exercise for the unveiling of the Jackson monument," and that "[t]he statue was presented to the City of Charlottesville on October 19, 1921, during a Confederate reunion," and the website features a copy of the original invitation to the unveling by The John Bowie Strange Camp, U.C.V. [United Confederate Veterans]; Albemarle Chapter Number 1, U.D.C., [United Daughters of the Confederacy] The R.T.W. Duke Camp, S.C.V., [Sons of Confederate Veterans] stating "we invite you to attend the annual Reunion of the Grand Camp, U.C.V. and S.C.V. and the unveiling of the statue of Thomas Jonathan (Stonewall) Jackson," further indicating that the Jackson monument was considered at the time of its dedication to be a memorial to a veteran of the War Between the States, representing all veterans of that war.**

**21 N. Defendant City's Parks and Recreation website also states that the Jackson monument, sculpted by artist Charles Keck, is considered "among the finest equestrian sculptures in the nation."**

**Statutory Provisions**

22. That the Lee statue and the Jackson statue are Confederate monuments and memorials of the War Between the States protected by the provisions of Section 15.2-1812 of the Code of Virginia, 1950, as amended. Code Section 15.2-1812 provides in part as follows:

If such are erected, it shall be unlawful for the authorities of the locality, or any other person or persons, to disturb or interfere with any monuments or memorials so erected, or to prevent its citizens from taking proper measures and exercising proper means for the protection, preservation and care of same. For purposes of this section, "disturb or interfere with" includes removal of, damaging or defacing monuments or memorials,....

The Lee statue and the Jackson statue are also memorials to war veterans of the War Between the States.

23. That Section 15.2-1812.1 of the Code of Virginia, 1950, as amended, creates an additional private cause of action if any monument, marker or memorial for war veterans described in Code Section 15.2-1812 and Code Section 18.2-137 is "violated or encroached upon". The action may be undertaken by any person having an interest in the matter if the attorney of the locality in which the publicly owned monument, marker or memorial has not commenced action within sixty days following any such violation. Section 15.2-1812.1 allows recovery of punitive damages for "reckless, willful or wanton conduct resulting in the defacement of, malicious destruction of, unlawful removal of...monuments or statues on [sic] memorials for war veterans." This Code section also allows recovery of litigation costs, including reasonable attorney's fees, if the party who initiates the action prevails.

24. That Section 18.2-137 of the Code of Virginia, 1950, as amended, makes it a criminal offense to "unlawfully ... remove...any monument or memorial for war veterans described in § 15.2-1812."

25. That the Lee statue, Lee Park, the Jackson statue, and Jackson Park, are subject to and protected by the foregoing statutes.

26. That Defendants are required by law to protect and to preserve the aforesaid historic monuments, where Section 15.2-1812 of the Code of Virginia, 1950, as amended, proscribes the authorities of a locality, or any other person or persons, from disturbing or interfering with any monuments or memorials erected as monuments or memorials for any war or conflict, to include removal of, damaging, or defacing such monuments or memorials, such as the aforesaid monuments.

27. That Defendants are required by law to protect and to preserve the aforesaid monuments where Section 18.2-137 of the Code of Virginia, 1950, as amended, prescribes that if any person unlawfully destroys, defaces, damages, or removes ... any monument or memorial for war veterans described in Section 15.2-1812 of the Code of Virginia, 1950, as amended, shall be Guilty of a Class 3 misdemeanor, ... and that if any person intentionally causes such injury, he shall be guilty of ... a Class 6 felony if the value of or damage to the memorial or monument is \$1,000.00 or more.

#### **City Council Actions**

28. That on February 6, 2017 three (3) of the members of City Council purported to pass a Resolution that the City remove the statue of Robert E. Lee from the park currently known as Lee Park. Defendants Szakos, Bellamy and Fenwick voted for

the Resolution. Defendants Signer and Galvin voted against the Resolution. A copy of the Resolution is attached hereto as Exhibit F.

29. That on February 6, 2017 three (3) of the members of City Council purported to pass a Resolution that the park known as Lee Park in the City of Charlottesville be renamed. The votes for and against the Resolution were the same as alleged in foregoing paragraph 27. A copy of the Resolution is attached hereto as Exhibit G.

30. That on February 6, 2017 the members of City Council unanimously purported to pass a Resolution, among other things, to redesign and transform Jackson Park, to add a new memorial to Jackson Park, redesign Lee Park, and to support a renaming of Jackson Park. A copy of the Resolution is attached hereto as Exhibit H.

**30 A. On May 2, 2017, Charlottesville Circuit Judge Moore granted Plaintiffs' Motion for a temporary injunction against removing or selling the Lee monument, confirmed in an Order subsequently entered June 6, 2017.**

**30 B. On the night of August 21-22 2017, Defendants, acting without advance notice to the public during a City Council meeting lasting until after midnight, voted on a motion to conceal both the Lee and Jackson Monuments under covers, Defendant Szakos stating that "the purpose is covering or obscuring the statues immediately" and saying that in doing so they "should seek forgiveness rather than permission;" likewise Defendant Signer expressed the intent that the cover was for purposes of "concealment" and "[t]o be in such in perpetuity" and Defendant Szakos agreed the purpose was to put a cover on each Monument "and leave it there," and ostensibly Defendant City Council approved the motion by a**

**“vote” of 5 - 0, though the motion was not framed as either an ordinance or resolution.**

**30 C. Defendant City employees within 48 hours of the August 21- 22, 2017 “vote” covered both the Lee and Jackson Monuments with black plastic tarpaulins wrapped in place with duct tape, concealing them entirely from public view [the “covers”].**

**30 D. Despite the existing injunction against removing the Lee monument, at the City Council meeting September 5, 2017, the City Council purportedly passed a Resolution ordering “the removal of the statue of Stonewall Jackson from Justice Park as soon as possible, pending following the successful resolution of the current court case in favor of the City,” and all the individual Defendants voted in favor of the resolution: Ms. Szakos, Ms. Galvin, Mr. Signer, Mr. Fenwick, and Mr. Bellamy. City Council at that meeting also tasked City staff with creating a Request for Proposals [“RFP”] for redesigns for both parks in two phases: Phase One with the Lee and Jackson monuments still in the parks, and Phase Two without them.**

**30 E. During the last week of August 2017 and first two weeks of September 2017 the covers were repeatedly removed from the monuments by individual citizens, and each time the City immediately replaced them.**

**30 F. At the September 18, 2017 City Council meeting Mayor Signer “asked that options for more permanent concealment of the statue be presented as well for Phase 1” [of the RFP], according to the September 18 Meeting Minutes. Also according to the Minutes, during the Public Comment period at the close of the**

September 18, 2017 meeting at approximately 11pm, "Ms. Szakos said Council just discovered the Commonwealth Attorney is refusing to press charges as long as the tarps are not damaged, and she has problems with that approach. However, she supports erecting fencing and no trespassing signs. Mr. Jones said he has asked staff to do so first thing tomorrow morning." At the direction of City Manager Jones, on September 19, 2017, Defendant City employees surrounded both the Lee and Jackson monuments with orange plastic fence and signs saying "City Personnel Only No Trespassing."

30 G. At a hearing on October 1, 2017, this Honorable Court initially declined Plaintiffs' motion to enjoin the covers and order them removed from the two monuments, accepting the City's representation that the covers were temporary.

30 H. On November 6, 2017, Defendant City Council by a 4-1 vote (Councillor Fenwick voted no) passed a Resolution for a two-phase Request of Proposals ["RFP"] for transforming downtown parks [the "November 6 Resolution"] which stated and confirmed the Defendants' ongoing purpose of permanently "screening" the Monuments from view. The November 6 Resolution states Phase I including screening is to be "immediate," "to begin immediately;" and "will have immediate visual impact." Phase II will entail a complete redesign of the parks "after a date certain for the removal of the Lee and Jackson statues has been secured either through the Courts or the Virginia General Assembly." The November 6 Resolution funds the "completion, fabrication and installation" of Phase I including "screening" at up to \$1 million dollars, and it requires completion

of the physical changes to the parks within "12 months of contract signing." That RFP is now in progress, posted on the City's website.

30 I. On February 27, 2018, this Honorable Court responded to Plaintiffs' renewed motion to remove the covers, tendering to the parties an opinion letter dated February 23, 2018 confirmed the tarps were illegal interference under Virginia Code §15.2-1812, concluding there was no evidence the covers were meant to be temporary; all the evidence indicated they were meant to be indefinite. The Court ended the exception or exemption from the temporary injunction and ordered the covers removed.

30 J. Early the next morning, February 28, 2018, the Defendants removed the covers from both the Jackson and Lee monuments. The covers had remained in place for a total of 188 days, excepting short periods when citizens had pulled them off and the City immediately replaced them (according to the City) a total of nine times.

31. That the said members of City Council, in the aforesaid actions, voted to disturb or interfere with, to include removal of, damaging, or defacing, and to destroy, deface, damage, or remove, or alter the aforesaid monuments of Lee and Jackson, which constitute monuments or memorials for the War Between the States and monuments or memorials for war veterans, with no knowledge of or regard for the cost or the legality of their actions, and in total disregard of the language of Virginia Code Section 15.2-1812.

32. That the Defendants' unauthorized and illegal actions have already cost and will cost considerable expenditure of taxpayer funds. The City has paid for

multiple tarp covers, based on City Manager Maurice Jones's sworn testimony six to seven covers which including expedited transportation which according to City invoices dated 8/22/2017 and 2/6/2018 amounted to a total of \$6,345.51, and in addition the City has expended salaries paid to City employees including overtime for recovering the monuments nine times. Mr. Jones indicated to City Council that the estimated cost of removing and relocating the Lee monument, would be \$330,000.00. The report on which he relied is attached as Exhibit I. Exhibit H provides for a budget not to exceed \$1,000,000.00 to implement the provisions of the Resolution, and the City is budgeting \$1 million for changes within the parks for the Fiscal Year 2019 (which figure does not include an additional \$500,000 for removal of the two monuments). Whatever the costs of these unauthorized and illegal actions, and City salaries expended in furtherance of them, the cost has been borne and will be borne by the taxpayers of the City, including those of Plaintiffs who are City residents and taxpayers.

33. That the attorney for the City has not commenced an action for the violations alleged herein within sixty (60) days as provided in Code Section 15.2-1812.1 (A)(1). By letter dated February 15, 2017 to Fred D. Taylor, the Charlottesville City Attorney stated that he declined to commence an action pursuant to said Code Section. A copy of the letter is attached as Exhibit J.

34. That Plaintiffs are persons who have an interest in this matter. In addition, Plaintiffs have an interest in protecting and preserving the Lee and Jackson monuments and the parks in which they are situated.



**Causes Of Action**

**Count One**

**Statutory Violations**

35. That Plaintiffs incorporate herein and re-aver the allegations set forth in foregoing paragraphs 1 through 34.

36. That the purported action of members of City Council directing the removal of the Lee and Jackson monuments, as well as their action in directing covers placed on both statues in lieu of removal, were in direct violation of Virginia Code §§ 15.2-1812, thereby creating a cause of action for Plaintiffs against Defendants under Code Section 15.2-1812.1.

37. That the foregoing actions of City Council directing the removal of both statues, and putting covers over them, were a violation of Virginia Code §15.2-1812 and an encroachment by interfering with use, under Virginia Code §15.2-1812.1, as well as violating the City's own historic preservation ordinances, viz.: Charlottesville, Va. Code §§ 34-275 (requiring Board of Architectural Review ["BAR"] approval before altering a structure in an historic district, and prohibiting alterations "architecturally incompatible with the character of the . . . protected properly"); 34-275 (specifying standards for BAR review including material, texture, color, height, scale, mass and placement "visually and architecturally compatible with the site") and 34-276 (stating no "contributing structure located within a major design control district, and no protected property, shall be moved, removed, encapsulated or demolished" without a BAR Certificate of Appropriateness) and were illegal and unauthorized administrative acts, or in the

**alternative if deemed legislative acts, were arbitrary, capricious, and unreasonable for being illegal and unauthorized.**

**38. That at the time the members of City Council engaged in the foregoing actions, they were charged with knowledge of the applicable statutes (see paragraphs 22, 23 and 24, *supra*), of the provisions of the deeds gifting the parks and statues to the City, and of the agreements described in foregoing paragraph 21.**

**39. During the public deliberations of the members of City Council, there was discussion about obtaining an opinion from the Attorney General of the Commonwealth of Virginia before any action was taken as to the legality of their proposed actions. Upon information and belief, Plaintiffs allege that no such opinion was ever requested or issued. Several of the members of City Council acknowledged that the matter would likely precipitate litigation.**

**40. That in the foregoing actions violating Virginia Code §§ 15.2-1812, 15.2-1812.1 and Virginia Code §18.2-137, Defendants Szakos, Bellamy, Fenwick Signer and Galvin, acted in a grossly negligent, reckless, willful, wanton and intentional manner, and are thus subject to punitive damages. They are not immune from liability for intentional or willful misconduct or gross negligence under Section 15.2-1405 of the Code of Virginia, 1950, as amended, and other provisions of general law, for their conduct.**

**41. That Defendants Szakos, Bellamy, Fenwick, Signer and Galvin are further liable to Plaintiffs for their reasonable litigation costs and attorney's fees incurred in connection with this statutory violation (Code Section 15.2-1812.1).**

**Count Two**

**Ultra Vires**

42. That Plaintiffs incorporate herein and re-aver the allegations set forth in foregoing paragraphs 1 through 41.

43. That Defendants City, City Council, Szakos, Bellamy, Fenwick, Signer and Galvin **had no legal authority to remove the statues, nor to cover or permanently screen them, nor to rename the parks, nor to transform the parks, nor to place additional structures in them.**

44. **That the above described resolutions and other City actions on removing and covering monuments, violate the Dillon Rule, which narrowly defines the power of local governments and states that if there is any reasonable doubt whether a power has been conferred on a local government, then the power has not been conferred, and Virginia has not provided such home rule authority to its local governments,**

45. That therefore the individual members of City Council acted outside the scope of their lawful authority and are thereby subject in their individual capacities to claims for damages and other relief. **The City actions resulted in unauthorized City expenditures, and Plaintiffs are entitled to require reimbursement to the City of all such expenditures, including but not limited to the cost of the covers themselves as well as the expenses associated with City employees placing and repeatedly replacing the covers, including salaries pro rata, and the costs of litigation to force the covers' removal.**

46. That insofar as the Resolutions attached as Exhibits F, G and H and **other City actions cited herein** purport to address the matters set forth in foregoing paragraph 43, they are void and of no effect.

**Count Three**

**Violations Of Terms Of Gifts**

47. That Plaintiffs incorporate herein and re-aver the allegations set forth in foregoing paragraphs 1 through 46.

48. That the gifts of the Lee statue, Lee Park, the Jackson statue and Jackson Park were charitable gifts made to the City by Paul Goodloe McIntire.

49. That the City accepted the gifts.

50. That the City holds such gifts in trust for the use, benefit and enjoyment of its citizens, including Plaintiffs Payne, Yellott, Tayloe, Amiss, Weber and Smith.

51. That the City Council Resolutions attached hereto as Exhibits F, G and H violate the terms of the gifts.

52. That the City, City Council and the individual members of City Council do not have the legal authority to modify the terms of the gifts.

53. That the Resolutions attached hereto as Exhibits F, G and H (insofar as it applies to the Lee and Jackson statues and Parks) are therefore void and of no effect.

54. That the Resolutions, as alleged in preceding paragraph 52, violate the terms and intentions of the original gifts of the statues and Parks, thereby creating a cloud

on the titles to the Parks to the detriment of the residents and taxpayers of the City, including the individual Plaintiffs in this case.

Wherefore Plaintiffs pray that they be granted the following relief:

1. That the Court determine and declare that the Resolutions purported to be passed by City Council and other actions purportedly taken by City Council insofar as they affect removal of and covering of the Lee monument, and removal of and covering of the Jackson monument, and interference, disturbance, violation, or encroachment upon memorials to war veterans and monuments to the War Between the States, violate the laws of the Commonwealth of Virginia and therefore that they are void and of no effect.

2. That the Defendants be temporarily and permanently enjoined from removing either the Lee or Jackson monuments from their respective parks, renaming the parks, redesigning the parks, and that the Court determine and declare that the Plaintiffs in preserving the Lee and Jackson monuments by thwarting the City's attempted removal and sale, and by successfully enjoining against covers disturbing and interfering with, and violating and encroaching upon them, are entitled to recover the entire cost of the litigation including the value of time and services on either a salaried or per-hour basis, and costs expended, by the organizations and the private parties who brought this litigation; as well as attorneys fees, expert witness fees, court and transcript costs, and all other costs of the litigation, including any appeal, as general damages under Va Code §§15.2-1812 and 15.2-1812.1.

**3. That the Court declare the resolutions and other City acts to remove the Lee and Jackson monuments, and to cover the monuments, were unlawful and *ultra vires*, and the Plaintiffs shall recover and require reimbursement to the City of all moneys expended in the entire illegal endeavor, including all expenditures for the covers, and salaries of City Councillors and City employees attributed to the illegal endeavor *pro rata*.**

**4. That the Defendants be temporarily and permanently enjoined from removing or selling the Lee or Jackson monuments, or substantially altering or selling the parks that frame them, and enjoined from any change which interferes with the Lee or Jackson monuments by obscuring or covering them in whole or in part, or any disturbance or interference where they stand.**

**5. That Plaintiffs recover and have money judgments against each and all of the Defendants: City of Charlottesville, Charlottesville City Council, and the individual Defendants Szakos, Bellamy, Fenwick, Signer and Galvin for actual damages in an amount to be determined by the Court, but not less than \$500 for each Plaintiff, including such money damages for the disturbance and interference, violation and encroachments as described in this Complaint, as the Court may determine, including if ruled applicable punitive damages against each Defendant in the sum of \$100,000, with interest on said judgments at the legal rate from February 6, 2017.**

**6. That Plaintiffs recover from all Defendants their litigation costs including but not limited to attorney's fees as described above in paragraph 2, expended herein.**

7. That Plaintiffs have such other and further relief as the nature of their case may require.

Respectfully Submitted,

FREDERICK W. PAYNE  
JOHN BOSLEY YELLOTT, JR.  
EDWARD D. TAYLOE, II  
BETTY JANE FRANKLIN PHILLIPS  
EDWARD BERGEN FRY  
VIRGINIA C. AMISS  
STEFANIE MARSHALL  
CHARLES L. WEBER, JR.  
LLOYD THOMAS SMITH, JR.  
VIRGINIA DIVISION, SONS OF  
CONFEDERATE VETERANS, INC.  
ANTHONY M. GRIFFIN  
BRITTON FRANKLIN EARNEST, SR.  
THE MONUMENT FUND, INC.

By Counsel:

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(434) 979-5515  
VSB # 13320

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

VERIFICATION

\_\_\_\_\_(SEAL)  
FREDERICK W. PAYNE

STATE OF VIRGINIA AT LARGE

CITY/COUNTY OF \_\_\_\_\_, to-wit:

This day personally appeared before me, Frederick W. Payne, who is personally known to me, and who, under penalty of perjury, made oath that the allegations set forth in the foregoing amended complaint are, according to the best of his knowledge, information and belief, true and correct.

Subscribed and sworn to before me this \_\_\_\_\_ day of October, 2017.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Registration Number: \_\_\_\_\_

VERIFICATION



\_\_\_\_\_(SEAL)  
JOHN BOSLEY YELLOTT, JR.

STATE OF VIRGINIA AT LARGE

CITY/COUNTY OF \_\_\_\_\_, to-wit:

This day personally appeared before me, John Bosley Yellott, Jr., who is personally known to me, and who, under penalty of perjury, made oath that the allegations set forth in the foregoing amended complaint are, according to the best of his knowledge, information and belief, true and correct.

Subscribed and sworn to before me this \_\_\_\_\_ day of October, 2017.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Registration Number: \_\_\_\_\_

CERTIFICATE OF SERVICE

I hereby certify that on \_\_\_\_\_, 2018  
true and accurate copies of the foregoing Second Amended Complaint, with Exhibits  
attached, were hand-delivered to the following counsel for Defendants:

Lisa Robertson, Esq.  
Acting Charlottesville City Attorney  
City Hall  
605 East Main Street  
Charlottesville, Virginia 22902

and

Richard H. Milnor, Esq.  
Zunka, Milnor & Carter  
414 Park Street  
Charlottesville, Virginia 22902

By: \_\_\_\_\_  
Ralph Main VSB # 13320

**Dygert, Wright,  
Hobbs & Heilberg, PLC**

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*Attorneys At Law*

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Kelly A. Hobbs  
David L. Heilberg  
Leah Eads Hernandez – Se Habla Español*

*George H. Dygert, Retired  
Ralph E. Main, Jr., Of Counsel*

April 25, 2018

Llezelle A. Dugger, Clerk  
Charlottesville Circuit Court  
315 East High Street  
Charlottesville, Virginia 22902

***Via Hand Delivery***

Re: *Frederick W. Payne et al. v. City of Charlottesville et al.*  
Case No. CL17-145

Dear Llezelle:

Kindly file the enclosed motion for leave to file amended complaint in this case.

Thank you.

Very truly yours,

  
Ralph E. Main, Jr.

cc: Lisa Robertson, Esquire  
Richard H. Milnor, Esquire

*rec'd 4.25.18*