

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

FREDERICK W. PAYNE, et al.
Plaintiffs,

v.

CITY OF CHARLOTTESVILLE, VIRGINIA, et al.
Defendants

Case No. CL 17 - 145 FILED

8.26.18 12:30am
(Date & Time)

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

By 
Deputy Clerk

Plaintiffs' Motion to Determine Sufficiency of Answers and Objections

The Plaintiffs by counsel, move this Honorable Court for a determination under Va. Sup. Ct. Rule 4:11 that the Defendants' Answers to Plaintiffs Requests for Admissions are insufficient, and for the relief requested below, as follows:

(1) Plaintiffs submitted 24 Requests for Admissions on July 24, 2018, identical in substance, to each of the Defendants: the City, City Council, and the five individual City Councillors [Exhibit 1 example: City].

(2) All Defendants responded on August 14, 2018 with largely identical objections, denials, and fragmented answers. One example represents all. [Exhibit 2 example: City].

(3) The repeated objection that the Requests for Admission did not define the words "general" "Confederate States army" "War Between the States" "commander" "Army of Northern Virginia," "Army of the Confederate States of America," "veteran," "stone pedestal," "plinth," "uniform and accoutrements of a Confederate officer," "monument," "memorial," "part of," "marked" "rededicated," "unveiled," "costs," "recovering," "tarps," "on call pay," and "labor," is without merit. There is no need of definitions when the words "are commonly used and each has an accepted meaning." Wells v. Commonwealth, 60 Va. App. 111, 123-124, 724 S.E. 2d 225 (2012) (declining to require jury instructions to define "fraud" or "fraudulent" since they are plain, ordinary words commonly used in general discourse); see also Brown-Forman

Corp. v. Sims Wholesale Co., Inc., 20 Va App. 423, 430, 457 S.E. 2d 426 (Va. App. 1995) (stating statutory construction looks to the “very ordinary definition of plain words, used nontechnically”).

(4) Moreover, the Defendants themselves used many of these words in their own resolutions, memos, websites, and official documents: for instance “Confederate,” “general,” “uniform,” “monument,” “memorial” and “veteran.” Pretending not to know the definitions of words they used themselves, does not fairly meet the substance of the requested admissions, and is insufficient.

(5) It is also no excuse that a Request for Admission presents a genuine issue for trial: “[a] party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 4:12(c), deny the matter or set forth reasons why he cannot admit or deny it.” Rule 4:11. The whole point of requiring stated reasons is to distinguish genuine issues from spurious ones, simplifying the case by reducing what must be tried.

(6) Likewise claiming that Request for Admission #24 is too vague and ambiguous to answer because it uses the words “tarp,” “tarping,” and “re-tarping,” when the Defendants provided an email using those very words, from City Parks Division Manager Doug Ehman to (then) City Manager Maurice Jones, assistant City Manager (now interim City manager) Mike Murphy, and Parks and Recreation Supervisor Director Brian Daly — and simply asserting the document speaks for itself, also does not fairly meet the substance of the requested admission, and is insufficient. Admitting the existence of a document is not the same as admitting the substance of what it says.

(7) All the Defendants admitted parts of the Plaintiffs’ Amended Complaint filed October 11, 2017 [Exhibit 3] in their Answer filed January 16, 2018 [Exhibit 4] — but seven months later August 14, 2018 deny what they previously admitted. The previous admissions are listed by Amended Complaint paragraph number below; facts they now deny shown in **boldface**:

1 Defendants called the term "monument" a "legal conclusion;" otherwise they admitted that "the Amended Complaint concerns two public parks and two public statues located the City of Charlottesville, Virginia. One park was known as Lee Park, and is now named Emancipation Park, and it is improved by a statue of . . . General Robert E. Lee. One park was known as Jackson Park, and is now named Justice Park, and is improved by a statue of . . . General Thomas Jonathan 'Stonewall' Jackson."

21 (A) Defendants denied only that the Lee statue is a "monument" again calling that a "legal conclusion;" denied that the term "war veteran" is used in the referenced statutes; otherwise they admitted all the rest of this paragraph including that Lee was a **Confederate General during the War Between the States.**

21 (B) Defendants admitted without reservation the entire paragraph describing Lee's military biography, including that **"Robert E. Lee was commissioned a brigadier general, then the highest existing rank, in the regular Confederate Army, soon after being promoted to full general,"** and that **"[h]e 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 courthouse in 1865."**

21 (C) Defendants again denied only the words "monument" or "memorial" calling that a "legal conclusion" — otherwise they admitted the entire paragraph including admitting the sculptor Leo Lentelli measured **Lee's military uniform** and the **"taxidermied remains of Traveller, to get the proportions exactly right,"** and that the sculpture of **"Robert E. Lee in dress military uniform with his hat in his 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 . . ."**

21 (D) Defendants denied only the words "monument" or "memorial" again calling that a "legal conclusion," otherwise they admitted all allegations including that **"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 . . . ” [emphasis added].

21 (E) Defendants admitted that the City Council adopted a resolution dated May 2, 2016 saying only it “speaks for itself.” What the resolution says is: both Confederate General Lee and Confederate General Jackson are “Confederate statues,” and the resolution tasks the “Blue Ribbon Commission on Race, Memorials, and Public Spaces” with deliberating disposition of the “two large Confederate monuments in Lee and Jackson Parks,” including moving “the memorials” to a museum or historic site” [emphasis added].

(8) Their previous Answer may change if the Motion to Amend the Complaint is granted, but the underlying facts haven’t changed. A Request for Admissions narrows what facts are genuinely disputed — which is evidently what the Defendants seek to avoid.

(9) The Defendants’ evasive non-answers and general objections, and denials of what they previously admitted, are proscribed by Va. Sup. Ct. Rule 4:11, which requires specificity, and responses that fairly meet the substance of a requested admission, stating in pertinent part:

. . . The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. . . .

(10) This Honorable Court’s orders and opinion letters repeatedly used the words “Confederate,” “General,” “monument,” “memorial,” “War Between the States,” and “tarps,”

as in the Temporary Injunction Order entered June 6, 2017 p. 2 (“Confederate,” “General Robert E. Lee,” “monument” and “memorial”); Demurrer Opinion Letter of October 3, 2017 pp. 2, 4 & *passim* (“General Robert E. Lee,” “memorial,” “monument” the “Civil War (War Between the States)”); and Injunction Enforcement Opinion Letter February 23, 2018 (“tarps” *passim*). The Defendants’ professed ignorance of these definitions at this late date, calls into question whether they consider themselves bound by the terms of this Court’s orders; either that or they did not respond to the Request for Admissions in good faith.

(11) The Defendants controvert the incontrovertible, profess ignorance of facts derived from their own official publications, websites, resolutions, minutes, and exhibits admitted into evidence without objection at previous hearings. Their shotgun objections evade being bound even by what little they do admit. Such obduracy will prolong this case; increase its cost; further burden this Court’s already overcrowded schedule — and if their captious carping over definitions of plain words succeeds, it puts at risk the ability to try this case even in three days.

REQUEST FOR RELIEF

The Plaintiffs request this Honorable Court either to strike all Defendants’ Objections and Responses to Plaintiffs’ First Request for Admissions, and deem all Defendants to have admitted Plaintiffs’ Request for Admissions in their entirety — or, in the alternative, to schedule a hearing to review each of the 24 Requests for Admission *seriatim*, to demand of the Defendants a good faith justification for each denial, and if they persist in denials to allow the Plaintiffs to demonstrate and prove the facts using the documents from which each Request was drawn.

And Plaintiffs further request that the Court determine that all the Defendants have failed to admit the truth of these matters as requested under Va Sup. Ct. Rule 4:11, and upon the Plaintiffs having proven the truth of these matters, to grant Plaintiffs’ application for an order requiring the Defendants to pay Plaintiffs reasonable expenses incurred in making that proof, including attorneys fees, pursuant to Va. Sup. Ct. Rule 4:12 (C), with details of reasonable attorneys fees and costs to be submitted for the Court’s review if this application is granted.

Respectfully submitted:

(date)

August 28, 2018

Ralph E. Main, Jr.

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(434) 977-4742
VSB# 13320
Counsel for Plaintiffs

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VSB #30734
Counsel for Plaintiffs

- Exhibit 1 Plaintiffs' Requests for Admissions [example: City & City Council]
- Exhibit 2 Defendants' Objections and Responses [example: City & City Council]
- Exhibit 3 Plaintiffs' Amended Complaint [excerpts]
- Exhibit 4 Defendants' Answer to Amended Complaint [excerpts]

CERTIFICATE OF GOOD FAITH EFFORT

I certify that I have in good faith conferred or attempted to confer with the Defendants' Counsel in an effort to reach an accommodation to resolve the matter, and after an exchange of emails including a draft of this Motion, concluded the matter cannot be resolved without court action.

Ralph E. Main, Jr., VSB # 13320

CERTIFICATE OF SERVICE

I certify that I caused a true and exact copy of the foregoing Plaintiffs' Motion to Determine Sufficiency of Answer and Objections 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 28th day of August 2018.



Ralph E. Main, Jr., VSB # 13320

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

Case No. CL 17 - 145

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

Plaintiffs' First Requests for Admissions

Come now Plaintiffs, by Counsel, pursuant to Rule 4:11 of the Rules of the Supreme Court of Virginia, as amended, and request Defendant, City of Charlottesville, for the purpose of the pending action, to admit the truth of the following statements or opinions of fact or of the application of law to fact, with said Requests for Admissions to be responded to in accordance with said Rule within twenty-one (21) days from service hereof.

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

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

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

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

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.

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.

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.

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.

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

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.

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

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.

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.

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

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.

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.

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.

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.

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

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.

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

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.

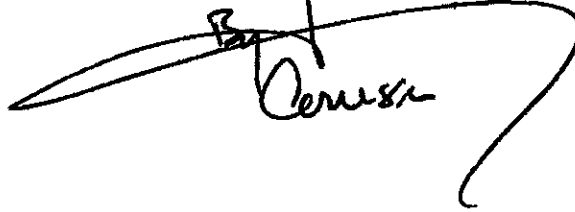
23. Admit that on or about September 26, 1999, the Robert E. Lee and Thomas Jonathan Jackson statues, were rededicated and unveiled at a ceremony which included Confederate re-enactors in reproduction Civil War military uniforms and accoutrements which took place in then Lee Park.

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.**

Respectfully Submitted,

FREDERICK W. PAYNE *et al.*



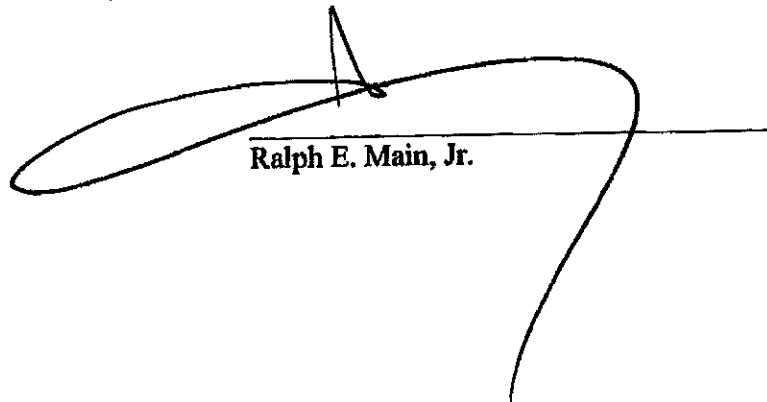
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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that I caused a true and exact copy of the foregoing Plaintiffs' First Requests for Admissions 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, Esq., at Zunka, Milnor & Carter, Ltd., Counsel for Defendants, at his office address of 414 Park Street, Charlottesville, Virginia 22902 this 24th day of July, 2018.



Ralph E. Main, Jr.

Exhibit 2

Defendants' Objections and Responses to Request for Admissions [City]

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

**OBJECTIONS AND RESPONSES TO PLAINTIFFS' FIRST REQUESTS FOR
ADMISSIONS, SUBMITTED BY DEFENDANTS CITY OF CHARLOTTESVILLE AND
CHARLOTTESVILLE CITY COUNCIL**

Pursuant to Rule 4:11 of the Rules of the Supreme Court of Virginia, Defendants City of Charlottesville and Charlottesville City Council ("Defendants"), by undersigned counsel, object and respond as follows to Plaintiffs' First Requests for Admissions.

PRELIMINARY STATEMENT

Defendants state that they are neither obligated to, nor purport to, respond to these Requests on behalf of any other party to this action or non-party individual or entity.

Defendants respond to these Requests subject to the accompanying General Objections and Specific Objections. Defendants have not fully completed their investigation of the facts relating to this case and have not fully completed their discovery in this action. Defendants anticipate that further discovery and investigation will supply additional facts, add meaning to the known facts, as well as establish new factual conclusions and legal contentions, all of which may lead to substantial additions to, changes in, and variations from the objections herein set forth.

The following objections are given without prejudice to Defendants' rights 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 each 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' Answers, 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 and every 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 answering 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 and every Request to the extent that such Requests seek responses that are subject to the attorney-client privilege, attorney work product doctrine, and/or any other applicable privilege or immunity, or to a protective order and/or stipulation of confidentiality between a Defendants and any third party. Inadvertent production of such knowledge shall not be deemed a waiver of any privilege or immunity. Defendants hereby assert all such privileges, protections, or immunities from discovery.

3. Defendants object to each and every Request as unduly burdensome and oppressive to the extent that such Requests purport to require Defendants to undertake an unreasonable inquiry or review of information and materials outside of their personal possession, custody, or control or not readily obtainable by Defendants.

4. Defendants object to each and every Request to the extent that such Requests seek 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 and every Request to the extent that the admissions sought are unreasonably cumulative or duplicative.

6. Defendants object to each and every Request to the extent that any term, phrase, or word used therein is vague and ambiguous, subject to varying interpretation, requires subjective knowledge by any party other than Defendants, or involves issues of law subject to resolution by the Court.

7. Defendants object to each and every Request to the extent they presume the existence or non-existence of a disputed fact, presume the outcome of any disputed legal

question, or contain any implicit averment of fact or legal conclusion. Except as expressly admitted in response to any given Request, no response or objection contained herein shall be construed as an admission of, assent to, or agreement with any statement of fact or law implicitly or explicitly contained in any given Request.

8. 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.

9. 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:

In addition to their General Objections, Defendants object to this Request to the extent that the terms "General Officer," "Confederate States Army," and "War Between the States" are not defined and, as used in the context of this Request, render this Request vague and ambiguous.

Subject to and without waiving their objections, Defendants admit only that, as a matter of general historical knowledge, Robert E. Lee was born in and around 1807; died in and around 1870; and was an officer in the Confederate army. Defendants deny the balance of this Request.

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:

In addition to their General Objections, Defendants object to this Request to the extent that the terms "Commander," "Army of Northern Virginia," and "War Between the States" are not defined and, as used in the context of this Request, render this Request vague and ambiguous. Further, the request is overly broad and provides no dates by which a response could be referenced.

Subject to and without waiving their objections, Defendants admit only that, as a matter of general historical knowledge, Robert E. Lee was an officer in the Confederate army. Defendants deny the balance of this Request.

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:

In addition to their General Objections, Defendants object to this Request to the extent that the terms "General in Chief" and "Army of the Confederate States of America" are not defined and, as used in the context of this Request, render this Request vague and ambiguous.

Subject to and without waiving their objections, Defendants admit only that, as a matter of general historical knowledge, Robert E. Lee was an officer in the Confederate army. Defendants deny the balance of this Request.

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:

In addition to their General Objections, 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.

Subject to and without waiving their objections, Defendants admit only that, as a matter of general historical knowledge, Robert E. Lee surrendered forces under his command to Ulysses S. Grant on April 9, 1865.

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:

In addition to their General Objections, Defendants object to this Request to the extent that the terms "marked" and "Confederate General" are not defined and, as used in the context of this Request, particularly when read in conjunction with RFA Nos. 1, 2 and 3, above, render this Request vague and ambiguous. Defendants further 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.

Subject to and without waiving their objections, Defendants admit that a statue at issue in this litigation depicts an individual; that said statue is located in what was previously known as "Lee Park"; and that the base on which such statue sits contains the words "Robert Edward Lee". See also responses to RFA Nos. 1, 2 and 3, above. Defendants deny the balance of this Request.

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:

In addition to their General Objections, Defendants object to this Request to the extent that the terms "stone pedestal," "plinth," "the bronze on which the statue...rests", "part of," "monument," and "memorial" are not defined and, as used in the context of this Request, render this Request vague and ambiguous. Defendants further 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 calls for a legal conclusion and seeks an admission regarding a genuine issue for trial. Defendants is not an expert regarding parts of statues and appellations of such parts and object to the Request to the extent it seeks information that requires expert testimony.

Subject to and without waiving their objections, Defendants admit only that a statue at issue in this litigation depicts an individual the base on which such statue sits contains the words "Robert Edward Lee"; that statue is located in what was previously known as "Lee Park"; and that the statue is affixed to a base of some appellation. 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:

In addition to their General Objections, Defendants object to this Request to the extent that the phrase "uniform and accoutrements of a Confederate officer" are not defined and, as used in the context of this Request, render this Request vague and ambiguous, even more so relative to the various terminology set forth within Request Nos. 1, 2, 3 and 5. Defendants is not an expert regarding military uniforms and object to the Request to the extent it seeks information that requires expert testimony.

Subject to and without waiving their objections, Defendants admit only that a statue at issue in this litigation depicts an individual in uniform; that said statue is located in what was previously known as "Lee Park"; and that the base on which such statue sits contains the words "Robert Edward Lee". Defendants deny the balance of this Request.

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 they rode during the War Between the States.

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

In addition to their General Objections, Defendants object to this Request to the extent that the term "War Between the States" is not defined and, as used in the context of this Request, renders this Request vague and ambiguous. Defendants further 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.

Subject to and without waiving their objections, Defendants admit only that a statue at issue in this litigation depicts an individual riding a horse; that said statue is located in what was previously known as "Lee Park"; and that the base on which such statue sits contains the words "Robert Edward Lee". Defendants admit that, according to publically available general historical information, one of the horses ridden by Robert E. Lee during their lifetime was a horse named "Traveller." Defendants deny the balance of this Request.

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:

In addition to their General Objections, Defendants object to this Request to the extent that the term "monument" is not defined and, as used in the context of this Request, renders this Request vague and ambiguous. Defendants further object to this Request to the extent it calls for a legal conclusion and seeks an admission regarding a genuine issue for trial.

Subject to and without waiving their objections, Defendants admit only that a statue at issue in this litigation depicts an individual; said statue is located in what was previously known as "Lee Park"; and that the base on which such statue sits contains the words "Robert Edward Lee". 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:

In addition to their General Objections, Defendants object to this Request to the extent that the terms "monument" and "War Between the States" are not defined and, as used in the context of this Request, render this Request vague and ambiguous. Defendants further object to this Request to the extent it calls for a legal conclusion and seeks an admission regarding a genuine issue for trial.

Subject to and without waiving their objections, Defendants admit only that a statue at issue in this litigation depicts an individual; that said statue is located in what was previously known as "Lee Park"; and that the base on which such statue sits contains the words "Robert Edward Lee". 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:

In addition to their General Objections, Defendants object to this Request to the extent that the term "memorial" is not defined and, as used in the context of this Request, renders this Request vague and ambiguous. Defendants further object to this Request to the extent it calls for a legal conclusion and seeks an admission regarding a genuine issue for trial.

Subject to and without waiving their objections, Defendants admit only that a statue at issue in this litigation depicts an individual; that said statue is located in what was previously

known as "Lee Park"; and that the base on which such statue sits contains the words "Robert Edward Lee". 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:

In addition to their General Objections, Defendants object to this Request to the extent that the terms "memorial" and "veteran" are not defined and, as used in the context of this Request, render this Request vague and ambiguous. Defendants also object to this Request to the extent it calls for a legal conclusion and seeks an admission regarding a genuine issue for trial, and also to the extent it seeks information that requires expert testimony.

Subject to and without waiving their objections, Defendants admit only that a statue at issue in this litigation depicts an individual; that said statue is located in what was previously known as "Lee Park"; and that the base on which such statue sits contains the words "Robert Edward Lee". 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:

In addition to their General Objections, Defendants object to this Request to the extent that the terms "memorial," "veteran," and "War Between the States" are not defined and, as used in the context of this Request, render this Request vague and ambiguous. Defendants further object to this Request to the extent it calls for a legal conclusion and seeks an admission

regarding a genuine issue for trial, and also to the extent it seeks information that requires expert testimony.

Subject to and without waiving their objections, Defendants admit only that a statue at issue in this litigation depicts an individual; that said statue is located in what was previously known as "Lee Park"; and that the base on which such statue sits contains the words "Robert Edward Lee". 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:

In addition to their General Objections, Defendants object to this Request to the extent that the terms "General Officer," "Confederate States Army," and "War Between the States" are not defined and, as used in the context of this Request, render this Request vague and ambiguous.

Subject to and without waiving their objections, Defendants admit only 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 army. Defendants deny the balance of this Request.

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:

In addition to their General Objections, Defendants object to this Request to the extent that the term "marked" is not defined and, as used in the context of this Request, renders this Request vague and ambiguous. Defendants further 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.

Subject to and without waiving their objections, Defendants admit only that a statue at issue in this litigation depicts an individual; said statue is located in what was previously known as "Jackson Park"; and said statue is affixed to a base that contains the words "Thomas Jonathan Jackson". Defendants deny the balance of this Request.

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:

In addition to their General Objections, Defendants object to this Request to the extent that the terms "stone pedestal," "plinth," "monument," "part of" and "memorial" are not defined and, as used in the context of this Request, render this Request vague and ambiguous. Defendants further 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 calls for a legal conclusion and seeks an admission regarding a genuine issue for trial. Defendants is not an expert regarding parts of statues and appellations of such parts and object to the Request to the extent it seeks information that requires expert testimony.

Subject to and without waiving their objections, Defendants admit only that a statue at issue in this litigation depicts an individual; that said statue is located in what was previously known as "Jackson Park"; and that said statue is affixed to a base that contains the words "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:

In addition to their General Objections, Defendants object to this Request to the extent that the phrase "uniform and accoutrements of a Confederate officer" is not defined and, as used in the context of this Request, render this Request vague and ambiguous, even more so relative to the various terminology set forth within Request Nos. 1, 2, 3, 5 and 14. Defendants further object to this request to the extent it seeks information that requires expert testimony. Defendants are not experts regarding military uniforms and object to the Request to the extent it seeks information that requires expert testimony.

Subject to and without waiving their objections, Defendants admit only that a statue at issue in this litigation depicts an individual; that said statue is located in what was previously known as "Jackson Park" and that said statue is affixed to a base that contains the words "Thomas Jonathan Jackson." 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 their horse, "Little Sorrel", a horse that they rode during the War Between the States..

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

In addition to their General Objections, Defendants object to this Request to the extent that the term "War Between the States" is not defined and, as used in the context of this Request, renders this Request vague and ambiguous. Defendants further 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.

Subject to and without waiving their objections, Defendants admit only that the statue at issue in this litigation depicts an individual riding a horse; that said statue is located in what was previously known as "Jackson Park"; that said statue is affixed to a base that contains the words "Thomas Jonathan Jackson"; and that, according to publically available general historical information, one of the horses used by Thomas Jonathan Jackson during his lifetime was named "Little Sorrel." 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:

In addition to their General Objections, Defendants object to this Request to the extent that the term "monument" is not defined and, as used in the context of this Request, renders this

Request vague and ambiguous. Defendants further object to this Request to the extent it calls for a legal conclusion and seeks an admission regarding a genuine issue for trial.

Subject to and without waiving their objections, Defendants admit only that a statue at issue in this litigation depicts an individual and that said statue is located in what was previously known as "Jackson Park"; and that said statue is affixed to a base that contains the words "Thomas Jonathan Jackson." 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:

In addition to their General Objections, Defendants object to this Request to the extent that the terms "monument" and "War Between the States" are not defined and, as used in the context of this Request, render this Request vague and ambiguous. Defendants further object to this Request to the extent it calls for a legal conclusion and seeks an admission regarding a genuine issue for trial.

Subject to and without waiving their objections, Defendants admit only that a statue at issue in this litigation depicts an individual; said statue is located in what was previously known as "Jackson Park"; and that said statue is affixed to a base that contains the words "Thomas Jonathan Jackson". 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:

In addition to their General Objections, Defendants object to this Request to the extent that the term "memorial" is not defined and, as used in the context of this Request, renders this Request vague and ambiguous. Defendants further object to this Request to the extent it calls for a legal conclusion and seeks an admission regarding a genuine issue for trial.

Subject to and without waiving their objections, Defendants admit only that a statue at issue in this litigation depicts an individual; said statue is located in what was previously known as "Jackson Park"; and that said statue is affixed to a base that contains the words "Thomas Jonathan Jackson". 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:

In addition to their General Objections, Defendants object to this Request to the extent that the terms "memorial" and "veteran" are not defined and, as used in the context of this Request, render this Request vague and ambiguous. Defendants further object to this Request to the extent it calls for a legal conclusion and seeks an admission regarding a genuine issue for trial, and also to the extent it seeks information that requires expert testimony.

Subject to and without waiving their objections, Defendants admit only that a statue at issue in this litigation depicts an individual; that said statue is located in what was previously

known as "Jackson Park"; and that said statue is affixed to a base that contains the words "Thomas Jonathan Jackson". 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:

In addition to their General Objections, Defendants object to this Request to the extent that the terms "rededicated," "unveiled," "uniforms and accoutrements" are not defined and, as used in the context of this Request, render this Request vague and ambiguous. Defendants further 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 undertake an unreasonable inquiry and review information and materials outside of their personal possession, custody, or control or not readily obtainable by Defendants. Defendants is not an expert regarding military uniforms and object to the Request to the extent it seeks information that requires expert testimony.

Subject to and without waiving their objections, Defendants states that they is unable to admit or deny this Request because, after making a reasonable inquiry, they lacks sufficient information or knowledge to admit or deny this Request. Defendants deny the balance of this Request.

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.

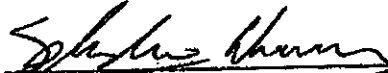
RESPONSE TO REQUEST FOR ADMISSION NO. 24:

In addition to their General Objections, Defendants object to this Request to the extent that the terms "costs," "recovering," "Tarps," "Tape," "On Call Pay," and "Labor" are not defined and, as used in the context of this Request, render this Request vague and ambiguous. Defendants further 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 undertake an unreasonable inquiry and review information and materials outside of their personal possession, custody, or control.

Subject to and without waiving their objections, Defendants state that, after making a reasonable inquiry, a copy of a public record of the City of Charlottesville, attached to this Response, contains 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 Defendants. Defendants deny the balance of this Request.

Dated: August 14, 2018

Respectfully submitted,



Lisa A. Robertson (VSB No. 32486)
Chief Deputy City Attorney
Sebastian Waisman (VSB No. 91665)
Assistant City Attorney
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Charlottesville, VA 22902
Telephone: (434) 970-3131

Email: robertsonl@charlottesville.org

*Counsel for Defendants City of
Charlottesville and Charlottesville City
Council*

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2018, pursuant to Rule 1:12 of the Rules of the Supreme Court of Virginia, I served a true copy of the foregoing document, by electronic mail (where an email address is indicated below) and also by U.S. Mail, first-class, postage pre-paid, to counsel of record, as follows:

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

Certified by:



Counsel for Defendants

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

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,

Case No. CL17-145

v.

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

Defendants.

AMENDED COMPLAINT

Come now Plaintiffs and represent unto this Honorable Court as follows:

Jurisdiction

1. That this complaint concerns two public parks and two public monuments located in the City of Charlottesville, Virginia. One park is known as Lee Park, which Park is improved by a statue of and monument to General Robert E. Lee. One park is

known as Jackson Park, which is improved by a statue of and monument to 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 Shradly, 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 Shradly 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 brevets 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.

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

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

ANSWER

TO AMENDED COMPLAINT

COME NOW your Defendants, by counsel, and submit their grounds of defense and answers to the allegations of the Amended Complaint filed by the Plaintiffs in this case, as follows:

1. Each of the defendants is immune from suit under the provisions of Virginia Code § 15.2-1405 and under the common law doctrines of legislative immunity, official immunity and/or sovereign or governmental immunity.

2. None of the Defendants' votes or actions violated any clearly established law; as a result, none of their votes or actions can constitute intentional or willful misconduct or gross negligence, nor can they be characterized as reckless, willful or wanton conduct. In fact: (i) the only previous state court opinion interpreting Virginia Code §15.2-1812 held that Virginia Code § 15.2-1812 cannot be applied retroactively to a monument erected within a city prior to 1997, *see Heritage Preservation Association, Inc. v. City of Danville, Virginia* (Danville Cir. Ct., Case No. CL15000500-00, Dec. 7, 2015); and (ii) the law is sufficiently unsettled that Virginia's Attorney General has recently acknowledged that, particularly within independent cities,

“...applying these rules of [statutory] construction to the multitude of amendments to [Va. Code § 15.2-1812] over the years shows that, while it does apply to some monuments, there is a range of potential outcomes for individual monuments.” (Op. Va. AG, August 25, 2017).

3. Pursuant to a proper Dillon's Rule construction of the provisions of Virginia Code §15.2-1800 and § 15.2-1806, and pursuant to express provisions of the deeds attached to the Amended Complaint, Defendants City of Charlottesville and the Charlottesville City Council have legal authority: to rename Lee [Emancipation] and Jackson [Justice] Parks, to re-design said parks, to remove existing statues, to add new statues or other works of art, or remove landscaping, signage or other improvements within said parks.

4. The current provisions of Virginia Code § 15.2-1812, § 15.2-1812.1 and § 18.2-137 do not prohibit the removal of the Lee Statue, and also would not prohibit removal of the Jackson Statue. Each Statue was erected in the 1920s. Neither Virginia Code § 15.2-1812 nor §18.2-137 applied to the Lee Statue or the Jackson Statue prior to 1997. Additionally:

a. Virginia Code §15.2-1812 (which is referenced in § 15.2-1812.1 and 18.2-137) does not apply retroactively to statues erected in cities prior to 1997;

b. Even if Virginia Code § 15.2-1812 (which is referenced in § 15.2-1812.1 and 18.2-137) is applied retroactively to the Lee and Jackson Statues, neither of those statues is a monument or memorial enumerated, designated or described in §15.2-1812;

c. Even if Virginia Code § 15.2-1812 (which is referenced in § 15.2-1812.1 and 18.2-137) is applied retroactively to the Lee and Jackson Statues, the Amended Complaint fails to allege any basis for finding that any of the Defendants has disturbed or

interfered with either statue, as the term "disturb or interfere with" is defined in § 15.2-1812;

d. None of the Defendants' actions, as set forth within the Amended Complaint, is conduct for which punitive damages are available under Virginia Code § 15.2-1812.2(B); and

e. On its face, Virginia Code § 18.2-137 does not apply to a locality that is the owner of a monument or memorial; further, Defendants' actions, as set forth within the Amended Complaint, have been undertaken under a bona fide claim of right.

4. Neither the Lee Statue or the Jackson Statue has been violated or encroached upon in a manner for which any damages may be awarded under Virginia Code § 15.2-1812.1(A). The ruling set forth in ¶ 3 of this Court's October 4, 2017 Order is incorporated here by reference.

5. Defendants are not answerable to any Plaintiffs who have no legal standing to assert the claims presented in the Amended Complaint.

6. Neither the Lee Statue nor the Jackson Statue is privately owned; therefore, even if they are subject to the provisions of Virginia Code § 15.2-1812, none of the organizations that are named Plaintiffs in this case may recover damages.

7. Virginia Code § 15.2-1812 does not permit an award of compensatory damages to any of the individual or entity/organizational Plaintiffs.

8. Virginia Code § 15.2-1812, as applied to the City in this case, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article I Section 11 of the Constitution of Virginia.

9. The terms "monument" and "memorial" are capable of multiple meanings, depending on the context in which used. Such terms, when used in common parlance, do not always refer to a specific thing. For example, a "monument" may be a marker, or a synonym for "statue". A "memorial" may be a commemoration of an individual, without being a reference to a group or movement of which such individual was a part. If Defendants, or any of them, have used the terms in statements, resolutions or correspondence, the use of such terms is not an admission that a statue is a monument or memorial to the specific things identified in Virginia Code § 15.2-1812, § 15.2-1812.1 or § 18.2-137.

10. Defendants cannot be enjoined, and are not liable for damages or punitive damages, because Virginia Code §§ 15.2-1812, 15.2-1812.1 and 18.2-137 contain no definitions that allow the Defendants to ascertain whether or not those statutes apply to either of the Statues, neither of which specifically identifies itself as a monument or memorial to the Confederacy, or to any wars or conflicts, or veterans of any wars or conflicts, referenced in the statutes. Unlike the City's Dogwood Vietnam Memorial, the Confederate Soldier Memorial at the Albemarle County Courthouse, and the Iwo Jima Memorial, the Lee and Jackson Statues contain no inscriptions identifying any specific intention or purpose.

FURTHER, Defendants' answers to the averments set forth within various paragraphs set forth within the Amended Complaint are as follows:

¶1. Admitted that the Amended Complaint concerns two public parks and two public statues located in the City of Charlottesville, Virginia. One park was known as Lee Park, and is now named Emancipation Park, and is improved by a statue of Robert E. Lee. One park was known as Jackson Park, and is now named Justice Park, and it is improved by a statue of Thomas

Jonathan "Stonewall" Jackson. Admitted that both parks and statues were donated to the City by Paul Goodloe McIntire. Statements identifying either of the statues as being a "monument" or "memorial" to a specific person, war, conflict of a war, or to veterans of such war or conflict, state legal conclusions and are denied.

¶2. Defendants are without personal knowledge of whether Plaintiff Payne utilizes and enjoys both parks and the statues erected therein on a regular basis; therefore, Defendants deny such allegations. The characterization of the statues in the parks as "monuments" is a stated legal conclusion and is denied. Otherwise the allegations of ¶ 2 are admitted.

¶3. Defendants are without personal knowledge of how Plaintiff Yellott has worked to preserve both the Lee and Jackson statutes, or whether Plaintiff Yellott has a financial interest in the outcome of the litigation, uses one or both parks daily, or personally conducts history tours describing the monuments; therefore, Defendants deny such allegations. The characterization of the statues in the parks as "monuments" is a stated legal conclusion and is denied. Otherwise the allegations of ¶ 3 are admitted.

¶4. Defendants admit that Plaintiff Tayloe is a resident of the City, a registered voter in the City, owns real estate in the City, and pays City real estate and personal property taxes. Characterizations of the Lee and Jackson Statues as "war memorials and monuments" state legal conclusions and are denied. Defendants are without personal knowledge of the other allegations of ¶ 4; therefore, they deny the same.

¶5. Defendants are without personal knowledge of the allegations set forth within ¶ 5 and therefore deny the same.

¶6. Defendants admit that Henry Shrady is a sculptor of note who created the bronze sculpture known as the "Ulysses S. Grant Memorial", which is located in Union Square, west of

the United States Capitol Building. Characterization of the Lee statue as a "monument" states a legal conclusion and is denied. Defendants are without personal knowledge of the other allegations in ¶ 6 and therefore deny the same.

¶7. The allegations in ¶ 7 are admitted.

¶8. Characterization of the Lee Statue as a "monument" states a legal conclusion and is denied. Otherwise, Defendants are without personal knowledge of the allegations in ¶ 8 and therefore deny the same.

¶9. Defendants are without personal knowledge of any "special interest" Plaintiff Weber may have in the Lee or Jackson Statues, and therefore deny the allegation that he has such interest. Characterization of the statues as "war memorials and monuments" states a legal conclusion and is denied. Otherwise, the allegations of ¶ 9 are admitted.

¶10. Defendants are without personal knowledge of any "special interest" Plaintiff Smith may have in the Lee or Jackson Statues, and therefore deny the allegation that he has such interest. Characterization of the statues as "war memorials and monuments" states a legal conclusion and is denied. Defendants admit that a group of private citizens donated money for the restoration of the Lee and Jackson statues 1997, but Defendants are without personal knowledge of Plaintiff Smith's agency relationship with any such citizens, and therefore deny that allegation. The individual Defendants were not participants in any negotiations between the City and any third party during the 1990s, and have no personal knowledge thereof, or of Plaintiff Smith's role therein. Otherwise, the allegations of ¶ 10 are admitted.

¶11. Characterization of the Lee and Jackson statues as "monuments" states a legal conclusion and is denied. Defendants are without personal knowledge of the other allegations in ¶ 11 and therefore deny the same.

¶12. Characterization of the Lee and Jackson statues as "monuments" states a legal conclusion and is denied. Defendants are without personal knowledge of the other allegations in ¶ 12 and therefore deny the same.

¶13. Admitted.

¶14. Admitted that the City Council is the governing body of the City. Admitted that the City has powers expressly granted by the General Assembly of the Commonwealth of Virginia, those necessarily or fairly implied from expressly granted powers, and powers that are essential and indispensable.

¶15. Admitted only that, as of the date of this pleading, Defendants Signer, Bellamy, and Galvin are members of City Council.

¶16. Defendants admit that Exhibit A is a letter from R.A. Watson dated February 5, 1918 to the Mayor of the City, and that the letter speaks for itself. Admitted that Exhibit B is a true copy of a Resolution approved by the City Common Council, and that the Resolution speaks for itself. Defendants are without knowledge as to what document Plaintiffs are referring to as "the deed" and deny any allegations purporting to characterize the contents of such deed.

¶17. Defendants admit that Exhibit C is a true copy of the deed recorded in the Circuit Court Clerk's Office in Deed Book 32 at Page 7, and that the Deed speaks for itself. The Resolution attached to the Amended Complaint as Exhibit A speaks for itself. Defendants are without knowledge or information as to who is alleged by Plaintiffs to have "officially dedicated" the land and statue on May 21, 1924, and as to the alleged significance of an "official dedication", and therefore denies the same.

¶18. None of your Defendants has first-hand knowledge of any facts alleged in Paragraph 18, and therefore they can neither admit or deny such allegations and they demand strict proof thereof.

¶19. Defendants admit that Exhibit D is a true copy of the deed recorded in the Circuit Court Clerk's Office in Deed Book 32 at Page 240, and that the Deed speaks for itself. The characterization of words within Exhibit D as "stipulating" that the property be known as Jackson Park states a legal conclusion and is denied. Admitted that Exhibit E is a true copy of an Extract from Minutes of the Board of Aldermen held on January 13, 1919, and that Exhibit E speaks for itself. Admitted that, after the date of Exhibit E, McIntire donated the Jackson Statue to the City and caused it to be placed in Jackson Park. Defendants are without knowledge or information as to who is alleged by Plaintiffs to have "dedicated" the park and statue to the City on October 19, 1921, and as to the alleged significance of any such "dedication", and therefore denies the same.

¶20. Allegations in ¶ 20 are admitted.

¶21. The Defendants are without knowledge or information as to who is alleged by Plaintiffs to have "re-dedicated" the Lee Statue to the City (as the statue was already owned by the City) on or about September 26, 1999, and deny that the alleged "re-dedication" has any legal significance. Characterization of the Lee Statue as a "monument" states a legal conclusion and is denied. Otherwise the allegations of ¶ 21 are admitted.

¶21A. Characterizations of the Lee Statue as a "monument" and as a "memorial" are statements of legal conclusions and are denied. Defendants deny that the Lee Statue is a monument or memorial, of any category or type listed within Virginia Code § 15.2-1812,

15.2-1812.1 or 18.2-137; further, Defendants deny that "war veteran" is a term used in any of the referenced statutes. Otherwise, the allegations in ¶ 21A are admitted.

¶21B. Admitted.

¶21C. Characterizations of the Lee Statue as a "monument" or "memorial" are statements of legal conclusions and are denied. Defendants deny that "war veteran" is a term used in Virginia Code § 15.2-1812, 15.2-1812.1 or 18.2-137. Otherwise, the allegations in ¶21C are admitted.

¶21D. Characterizations of the Lee Statue as a "monument" or "memorial" are statements of legal conclusions and are denied. Defendants deny that the Lee Statue is a monument or memorial to the War Between the States. Otherwise, allegations in ¶ 21D are admitted.

¶21E. Defendants admit that the Charlottesville City Council adopted a resolution dated May 2, 2016, and that the resolution speaks for itself. Defendants deny that the resolution contains any statement that either the Lee or Jackson statue is a monument to the Confederacy or a memorial to war veterans.

¶21F. Denied.

¶21G. Characterizations of the Lee Statue as a "monument" or "memorial" are statements of legal conclusions and are denied. None of your Defendants has first-hand knowledge of any facts alleged in Paragraph 21G, and therefore they can neither admit nor deny such allegations and they demand strict proof thereof.

¶22. Characterizations of either the Lee or Jackson Statues as a "Confederate monument" or "memorial of the War Between the States" or "memorial to war veterans of the

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Ralph E. Main, Jr., Of Counsel*

August 28, 2018

Via Hand Delivery

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

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

Dear Llezelle:

Kindly file the enclosed Motion to Determine Sufficiency of Answers and Objections among the papers in this case.

Thank you.

Very truly yours,



Ralph E. Main, Jr.

cc: Lisa Robertson, Esquire
Richard H. Milnor, Esquire
William V. O'Reilly, Esquire (by electronic and first class mail)

8.26.18