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' BRIEF IN OPPOSITION TO DEMURRER TO AMENDED COMPLAINT

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By ______
Deputy Clerk

SUMMARY

Liability: the only new arguments in the Demurrer to the Amended Complaint are sovereign and legislative immunity, which the Plaintiffs refute in Sections 1-5 below. The remainder of the Demurrer's arguments this Court already decided, as reviewed in Section 7.

Damages: Count One seeks the cost of the litigation to thwart the Defendants' violation of the law in the initial resolutions to remove and sell the Lee monument and to alter the Jackson monument, including attorneys' fees. Count Two, acts *ultra vires,* comprises all City expenditures in furtherance of the illegal and unauthorized enterprise. In Count Three, the Court ruled that only renaming Jackson Park remains for trial; damages will be expenditures for the renaming. Damages are discussed in Section 6.

Amendment: the Complaint was filed March 20, 2017. In October 2017, the Court *sua sponte* granted leave to amend, limited to facts establishing the Lee statue is a Confederate monument. The Plaintiffs anticipate the need further to amend the Complaint to include the resolution to remove the Jackson monument, the covers and barriers to access, the resolution on permanent screening, as well as any future illegal acts by the Defendants, and all consequent damages.

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1. There is no sovereign immunity for officials who step outside the law

The Defendants' Demurrer ¶7 to the Amended Complaint asserts "sovereign or governmental immunity."[1] The Plaintiffs respond: the law offers no protection to public officials who step outside it.

The Court must deem it admitted that the Defendants acted in the face of an absolute prohibition on that very act. The Amended Complaint charges the City, City Council, and the individual Defendants with wantonly, recklessly and deliberately flouting a law they are charged with enforcing, and it must be deemed true. Amended Complaint ¶¶ 22 - 34 and Counts One and Two; Glazebrook v. Board of Supervisors of Spotsvlvania County, 266 Va 550, 554, 587 S.E.2d 589, 591 (2003) (on a demurrer Court takes as true and considers admitted facts expressly pleaded) ["Glazebrook"]. To shield illegal conduct behind a privilege would put that conduct above the law, beyond redress.

(2) The Virginia Code explicitly denies sovereign immunity

Virginia Code § 15.2 -1404 states "every locality may sue or be sued in its own name in relation to all matters connected with its duties." This is an explicit waiver of immunity from suit for the City.

As for the individual Defendants, Virginia Code §15.2-1504, which Demurrer ¶8 cites is an apparent error: it addresses "use of tobacco products by government employees." Presumably they meant instead Virginia Code §15.2-1405. This provision offers only limited immunity to

[1] The Demurrer, the Plea in Bar, as well as the affirmative defenses in the Answer all assert the same sovereign immunity argument.

"members of the governing bodies of any locality," stating "the immunity granted by this section shall not apply to conduct constituting intentional or willful misconduct or gross negligence." Virginia Code §15.2-1405 [emphasis added]. The Amended Complaint asserts intentional and willful misconduct and gross negligence. Complaint ¶¶ 22, 23 & 24 (describing the law), 26 & 27 (on their duty to uphold and enforce the law), 28 - 33 (on their deliberate breach of the law) and Counts One and Two (on acting willfully, including refusing legal advice). The Amended Complaint must be taken as true. This statute explicitly strips the Defendant City Councillors of any immunity.

Further, Virginia Code §15.2-1405 excepts from immunity "the unauthorized appropriation or misappropriation of funds." The Amended Complaint states that the individual Defendants acted outside their authority in appropriating considerable tax money for an illegal enterprise (in addition, it is fairly construed from the Exhibits that city salaries have been expended as well). Complaint ¶¶ 32 & 45. Both the individual Defendants' acts, and the expenditures in furtherance of those acts, are outside statutory immunity by the explicit terms of the law.

(3) The Monument Protection law waives sovereign immunity

The explicit terms of Virginia Code §§15.2-1812, 1812.1, and §18.2-137 waive immunity for local officials whatever its source, whether statutory or common law. Virginia Code §15.2-1812 states ". . . 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." [emphasis added]. Authorities of a locality cannot claim exemption from a law that explicitly prohibits particular acts to "authorities of the locality."

Likewise Virginia Code §§15.2-1812.1(A)(1) allows "an action for recovery of damages" — "[i]f any monument, marker or memorial for war veterans as designated in §§ 15.2-1812 and 18.2-137 is violated or encroached upon" [emphasis added]. An "encroachment" includes as the Amended Complaint alleges, acts that "alter" and "transform" the monuments, that create a physical impediment to use by, as well as trespass against the rights of, Virginia citizens. Amended Complaint ¶ 30, 31, see e.g. City of Virginia Beach v. Green, 230 Va. 84, 87, 334 S.E.2d 570, (1985) (holding man-made obstructions an "encroachment" on public enjoyment of the oceanfront beach area of the Atlantic Ocean). The Defendants cannot claim immunity from a statute that explicitly envisions local officials might themselves be the transgressors, and authorizes "any person having an interest in the matter" to sue them.

Virginia Code §18.2-137 says if "any person" removes a protected monument, they are criminally liable [emphasis added]. This Honorable Court's October 3 Opinion Letter discussed Sussex Community Services Ass'n v. Virginia Soc. for Mentally Retarded Children, Inc., 251 Va. 240, 243, 467 S.E.2d 468 (1996) which said the word "any" in a statute means what it says: "[t]he word 'any' like other unrestrictive modifiers such as 'an' and 'all,' is generally considered to apply without limitation." Any person must include elected officials. The code section cites §15.2-1812, which in turn prohibits "authorities of the locality" from disturbing or interfering with or removing a monument. Authorities of the locality enjoy no immunity for criminal acts, under a statute that by explicit reference includes them.

If local officials were immune, then the Monument Protection law's explicit inclusion of "authorities of a locality" along with any "other person" would be unenforceable, merely empty words. To the contrary, the Court must construe a 114 year-old law amended now 12 times to give effect to the legislative purpose (as this Honorable Court observed in the October 3, 2017 opinion letter, pp. 6-7). See Carmel v. City of Hampton, 241 Va. 457, 460, 403 S.E.d 335 (1991) (stating "[r]emedial statutes are to be construed liberally to remedy the mischief to which they are directed") ["Carmel"]; Cape Henry Towers Inc. v. National Gypsum Co., 229 Va. 596, 600 &

01, 331 S.E. 2d 476 (1985) (stating statutes construed to give effect to their purpose) ["Cape Henry"].

The law's purpose is to protect standing monuments against desecration by "the authorities of the locality." The statute cannot be construed to hold only the municipal corporation accountable, and not the individual "authorities of the locality" to whom it explicitly refers.

(4) There is no common law immunity for proprietary functions

While acting without authority in the face of an absolute prohibition vitiates immunity — even had the City and the individual Defendants acted within the law, they are still not shrouded with immunity, under the case law distinction between proprietary (not shielded) and governmental (shielded) functions.[2]

The Demurrer states the City sought to "maintain, regulate and improve real property" in deciding to sell both monuments [Demurrer ¶6, emphasis added]. Maintenance of City property is a proprietary function for which neither the City nor its officials are shielded. See e.g. Robertson v. Western Va. Water Auth., 287 Va. 158, 160, 752 S.E.2d 875 (2014) (reversing summary judgement, holding sewer maintenance is proprietary and outside sovereign immunity); Woods v. Town of Marion, 245 Va. 44, 47, 425 S.E.2d 487 (1993) (holding street ice clearing and waterworks repair are maintenance and thus proprietary functions, not shielded); Hoggard v. City Of Richmond, 172 Va. 145, 157, 200 S.E. 610 (1939) (surveying law of proprietary vs. govern-

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[2] Virginia Code § 15.2-1404 (stating locality may sue or be sued) on its face seems to have eliminated sovereign immunity for cities. If so the proprietary/governmental distinction is a derelict leftover in the law. A useful overview of the "limited" sovereign immunity enjoyed by cities is Anthony and McMahon, Sovereign Immunity, Can The King Still Do No Wrong? Va. Lawyer Mag. April 2000, at http://www.vsb.org/docs/valawyermagazine/apr00anthony_mcmahon.pdf (noting "[t]he most common exceptions to the doctrine of sovereign immunity are acts outside the scope of employment, grossly negligent conduct, intentional torts, or acts characterized as bad faith).

mental functions; holding operation of municipal swimming facility is proprietary and not shielded) [emphasis added].

Likewise the City's decision to sell both monuments is clearly and unequivocally commercial in character, which under the case law is a proprietary function not shielded by sovereign immunity. Hoggard 172 Va. at 150, citing Bolster v. City of Lawrence, 225 Mass. 387, 388, 114 N.E. 722 (1917) (stating *inter alia* that an act is proprietary, and not shielded, if "voluntarily undertaken for [the city's] own profit and commercial in character"). The prospective sale of monuments reflected in City Council resolutions, is outside the shield of sovereign immunity.

Even if the City could claim immunity shields illegal acts — the individual City Councillors cannot. Amended Complaint ¶ 45 charges them with "acting outside the scope of their lawful authority and therefore subject in their individual capacities to claims for damages and relief." See Crabbe v. County School Bd. of Northumberland County, 209 Va. 356, 359-60, 164 S.E.2d 639 (1968) (holding even if School Board immune from liability, individual defendant shop teacher charged with negligence in performance of duties is not) ("Crabbe").

The case law is long settled that local authorities who step over the line of their legal authority are properly brought before the Court, enjoined from illegal acts, and required to recompense illegally diverted funds. See Burk v. Porter, 222 Va. 795, 797-798, 284 S.E.2d 602, 604 (1981) (reversing demurrer: taxpayers are entitled to sue Board of Supervisors members to reimburse moneys spent on junket) ["Burk"]; Lynchburg & R. St. Ry. Co v. Dameron, 95 Va. 545, 550, 28 S.E. 951 (1898) (sustaining injunction against city of Lynchburg, its officers and agents). Public officers must be held responsible for their own acts in the abuse or transgression of their authority in office. Johnson v. Black, 103 Va. 477, 484, 49 S.E. 633, 635 (1905) (holding taxpayers may compel aberrant county officials to repay salaries) ["Johnson"].

On a Demurrer the court must take as true averments that the individual Defendants abused their offices; spent tax money without authority; wantonly and with gross negligence. They can claim no immunity for illegal acts and unauthorized expenditures.

(5) There is no legislative immunity for acts that were not lawmaking

A Demurrer only addresses the Complaint and its exhibits. Glazebrook 266 Va. at 554 The Complaint cites and offers as an exhibit a resolution to remove the Lee monument, that violates the law on its face. There is no need — on a Demurrer— to go beyond the Complaint into what City Council or individual councillors intended or meant to do. Legislative privilege does not enter into it.

Still, Demurrer ¶ 8(A) cites "legislative immunity." We are constrained to repeat: there is no immunity, because there was no legislation.[3]

A City Council's function is sometimes executive or administrative, sometimes legislative, occasionally even judicial (for instance, adjudicating zoning variance decisions). cf. Isle of Wight County v. Nogiec, 281 Va. 140, 155, 794 S.E. 2d. 83 (2011) (stating "not all proceedings before [a local authority, like a Board of Supervisors] fall under the umbrella of legislative proceedings") ["Isle of Wight"]. An ordinance may be legislative; but a resolution, or a simple vote on a motion directing the City Manager to do something is not: that would be executive or administrative. See Virginia Code § 15.2-1435 (stating City Council is empowered to act by ordinance, resolution, or by vote). When City Council voted on its resolution in February 2017 to remove the Lee monument — and only the Lee monument — it was not enacting legislation.

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[3] The Defendants' legislative immunity argument repeated fives times in (1) the present Demurrer; (2) their Plea in Bar scheduled for April 11, 2018, (3) their Answer; (4) their discovery objection; and (5) their evidentiary objection Feb 5, 2018 — forces the Plaintiffs to respond to and the Court to address the question, unless and until the Court rules.

That was not lawmaking. It was law breaking. Legislative immunity does not "protect [officials] when they step outside the function for which their immunity was designed." Board of Supervisors of Fluvanna County v. Davenport Co LLC, 285 Va 580, 590, 742 S.E.2d 59 (2013)(stating legislative privilege applies only to acts "within the sphere of legitimate legislative activity") ["Davenport"].

In a case analogous to the one at bar, the court held that the "evidence does not demonstrate that the Board was acting in a legislative capacity . . . On the contrary, it shows that the Board was acting in a supervisory or administrative capacity. . . . Thus, because the Board was not acting in a legislative capacity . . . its meeting was not a legislative proceeding to which the public interest supports the attachment of an absolute privilege." Isle of Wight, 281 Va. at 155. Likewise here, a resolution to remove and sell the Lee monument (no others, just that one) was an executive and administrative function, not legislation.

Even if there were any applicable legislative privilege, the Monument Protection Law explicitly waived it, in stating "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 . . . " Virginia Code §15.2-1812; see Davenport, 285 Va at 590 (holding legislative immunity waived). To allow officials to act illegally and then shroud those acts in a privilege of any sort, would put them above the law.

Finally to the extent any privilege might have attached, it was also waived by nonassertion. The proponent of a privilege has the burden to establish that the information is privileged, and that the privilege was not waived by failing to assert it. Davenport, 85 Va at 590 (stating immunity waived if officials do not "at a proper time, and in a proper manner, claim the benefit of [the] privilege"). See also Walton v. Mid-Atlantic Spine Specialists, P.C. et al, 280 Va 113, 131, 694. S.E. 2d 545 (Va App. 2010) (holding attorney-client privilege waived by implication, by previous disclosure without effort to protect confidentiality). The City has failed to assert in previous proceedings, and therefore waived, any such privilege.

Neither zoning case the Defendants rely on in support of legislative immunity are unqualified: neither exempts even a legislative act such as a zoning change from judicial review.[4] To the contrary, the cases confirm the Court must decide whether the City acted within their authority and if so, whether the act was a reasonable exercise of that authority.

The first case, Ames v. Town of Painter, 239 Va. 343, 347, 389 S.E.2d 702 (1990) ["Ames"] says "[t]he presumption [that a use-permit decision or zoning ordinance is reasonable] is rebuttable, but it stands until surmounted by evidence of unreasonableness ... The litigant attacking the legislative act has the burden of producing probative evidence of unreasonableness. If he produces such probative evidence, the legislative act cannot be sustained unless the governing body (or in cases of this kind, the Board of Zoning Appeals) meets the challenge with some evidence of reasonableness." [emphasis added].

The older case the Defendants cite as "see also" is Blankenship v. City of Richmond, 188 Va. 97, 49 S.E.2d 321 (1948) ["Blankenship"] which concerned a change fro
business zoning. In Blankenship, the Plaintiffs asserted the notice given was
inter alia that one of the City Councillors had a conflict of interest: he pushed
build his gas station. Blankenship 188 Va. at 99. Without addressing the ques
Court simply decided that the remedy for a conflict of interest lies with the vo
Courts. Blankenship 188 Va. at 103.

Blankenship was decided in 1948, long before Virginia passed its C
Act now codified at Virginia Code §§ 2.2-3100 et seq., which was enacted in
were brought today, the law would require judicial review of evidence of the c
The Monument Protection Law likewise tasks the Court with reviewing wheth
are transgressing against the law.

In sum, if the City Councillors and City Manager acted within their authority the acts were ministerial; if not then *ultra vires*; in either event they are not shielded by legislative privilege. The fundamental question in this case is what the City did, and why, and such evidence

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[4] As of the filing of this brief these cases are the only authority the Defendants have offered.

annot be privileged. "[Without adequate information] the parties cannot properly litigate, the circuit court cannot properly adjudicate, and this Court cannot properly review the issues on appeal." Ames, 239 Va. at 348.

(6) Damages recoverable are the cost of thwarting illegal acts, and expenditures *ultra vires*

The Amended Complaint requests damages against the City and the individual Defendants for the illegal endeavor to remove the Lee monument and alter and obstruct the Jackson monument, all of which violated Virginia Code §15.2-1812, 1812.1, and was *ultra vires.* [Amended Complaint Counts One and Two, and Request for Relief ¶ ¶ 3 & 4].

As to damages under Count One, Virginia Code §§ 15.2-1812 and 15.2-1812.1 together envision a citizen remedy against local authorities. The City's resolution reproduced as Amended Complaint Exhibit F, used the word "remove." The "removal" of a monument is explicitly proscribed by §15.2-1812. The City deliberately forced a lawsuit. The damages are the considerable cost to individual citizens of litigating to thwart a whole City, with all its resources, embarked on an illegal enterprise. It would be anomalous if citizens had to wait for the irreparable physical damage of actual removal, rather than stopping it in advance. Virginia Code §15.2-1812.1 in Part C specifically includes "any additional civil remedy." The Plaintiffs under Count One are entitled to recover the cost of the lawsuit the City deliberately triggered: primarily attorneys' fees, expenses, and court costs. Amended Complaint ¶ ¶ 30, 31 & Request for Relief.

As to damages under Count Two (again, in the Amended Complaint as it stands), an illegal enterprise is clearly an unauthorized use of government resources, and the common law remedy for unauthorized expenditures by local officials is restitution of money improperly expended, including salaries. Amended Complaint ¶ 32; see Burk, 222 Va. at 798 (reversing demurrer: taxpayers are entitled to reimbursement of tax moneys spent on unauthorized junket); Johnson, 103 Va. at 492, (holding aberrant county officials must repay salaries); Booker v.

Donohoe, 95 Va. 359, 362, 28 S. E. 584, 586 - 588 (1897) (surveying cases from other jurisdictions; holding when county clerk office usurped by intruder, the intruder serving as clerk forfeits salary illegally received). It is well established doctrine that taxpayers may sue to "compel the restitution of public funds which have been illegally diverted" in the form of salaries paid outside Dillon rule authority. Johnson 103 Va. at 492; see e.g. United States v. Moore, 765 F. Supp. 1251 (E.D. Va., 1991) (holding government may recover salary illegally paid to defendant, the result of misusing his federal position); In re Petition to Suspend Burfoot (Norfolk Va. Cir., 2017) (Civil No.: CL16-13221) (p. 11) (requiring salary of city treasurer facing suspension for illegal acts to be held in separate account rather than paid to him until matter decided); City of Lynchburg v. Amherst County, 115 Va. 600, 80 S.E. 117, 119 (1913) (holding county did have authority to pay bridge watchman; but if inter-jurisdiction agreement on maintaining the bridge had been *ultra vires*, county would have had no such authority); State ex rel. Koontz v. Smith, 134 W.Va. 876, 62 S.E.2d 548, 552 (W.Va., 1950) (interpreting law allowing recovery against a person who in his official capacity willfully participates in an illegal expenditure to require allegation of willful act); See also City of Norfolk v. Bell, 149 Va. 772, 141 S.E. 844 (Va, 1928) (holding County lacked authority to pay tax assessors per diem after authority expired, even though work performed in good faith).

The Court's decision on the previous demurrer limits damages on Count Three to the cost of renaming of Jackson Park.

In sum, Counts One, Two and Three of the Amended Complaint suffice to allege damages against both the City and the individual Defendants, under the common law and under Va Code §§15.2-1812 and 15.2-1812.1.

(7) This Court already decided the Monument Protection Law applies, the Plaintiffs have standing, and the Amended Complaint suffices

This Honorable Court's October 3, 2017 Opinion Letter [attached as exhibit 1], October 4, 2017 oral ruling, October 28, 2017 Order, and December 6, 2017 Orders, as well as the Plaintiff's Brief on the first Demurrer filed August 1, 2017 are here incorporated by reference. In its first Demurrer decision the Court considered at length, researched, and decided, and then during subsequent hearings reconfirmed, that:

(A) Virginia Code §§15.2-1812, 1812.1, and 18.2-137 apply to war monuments and memorials erected in cities before 1997 [10/3 Opinion letter pp. 3-7; 12/6 Order B ¶ 4];

(B) All Plaintiffs have standing to enforce the Monument Protection law [10/3 Opinion letter; 12/6 Order B ¶ 1];

(C) All "individual Plaintiffs excluding only Phillips, Fry, Amiss, Griffin and Earnest, and including Plaintiff Sons of Confederate Veterans, Virginia Division, have individual standing to bring this action under general principles of standing" [10/3 Opinion letter pp 7- 14; 12/6 Order B ¶ 1]

(D) Plaintiffs Payne, Yellott, Tayloe, Amiss, Weber and Smith have taxpayer standing for pursuing Count II as to unauthorized expenditures of tax money. [10/3 Opinion letter pp 13- 14; 12/6 Order B ¶ 2].

(E) Complaint Count Three as to the renaming of Jackson Park moves forward to trial. Order 10/4 ¶ 1.

The Demurrer raises the same incorrect arguments about standing and applicability of the Monument Protection law that this Court already considered and rejected. The arguments cannot be relitigated at this point. "A decision of an issue of law on a demurrer is a decision on the mer-

its and constitutes *res adjudicata* as to any other proceedings where the same parties and the same issues are involved." Griffin v. Griffin, 183 Va. 443, 450, 32 S.E.2d 700 (1945); Miller-Jenkins v. Miller-Jenkins, 276 Va. 19, 26, 661 S.E.2d 822 (2008) (stating "law of the case" doctrine extends to "future stages of the same litigation").

Persisting in their effort to relitigate the Court's October 3, 2017 opinion letter, the Defendants rely on a criminal case, Martin v. Commonwealth, 224 Va. 298, 301, 295 S.E. 890 (1982) (holding conviction under cargo theft statute requires proof the car carried commercial cargo) ["Martin"]. Martin is inapposite: in a criminal case, as Martin observed, "[p]enal statutes are to be strictly construed against the Commonwealth." Martin 224 Va. at 300. The opposite is true here: a civil remedial statue is construed to "promote the ability of the enactment to remedy the mischief at which it is directed." Board of Sup's of King & Queen Cnty v. King Land Corp., 238 Va 97, 103, 280 S.E. 2d 895 (1989) (stating the "mischief rule," tracing its lineage to Elizabethan England) (cited in this Honorable Court's October 3, 2017 opinion letter, at note 3). The Court properly "presumed that every portion of [the] statute is purposeful and not of no effect," and construed the law to give effect to its purpose. (October 3, 2017 Opinion letter at p. 4.); see also Carmel 247 Va. at 460; Cape Henry, 229 Va at 600 (stating remedial statues are construed to give effect to their purpose).

As for Demurrer ¶ 4, which in denying any "cognizable legal right" appears to reassert the amended Complaint still does not adequately identify the Lee and Jackson statues as Confederate monuments or war memorials, on October 24, 2017 this Court entered an order enlarging the injunction to apply to both, extending its duration until the final order in the case. The predicate of that Order was a successfully amended Complaint. In granting the extension this Court already implicitly determined that the Complaint as amended suffices. It remains only to say so in so many words. See Pennsylvania-Little Creek Corp. v. Cobb, 215 Va. 44, 48, 205 S.E.2d 661 (1974) (reversing dismissal because of "substantial compliance with the trial court's decree permitting amendment").

The Amended Complaint states specific and incontrovertible facts for why both the monuments to Confederate General Robert E. Lee and Confederate General Thomas "Stonewall" Jackson are monuments or memorials for the War Between the States (1861-1865) and monuments or memorials for war veterans under Virginia Code §§15.2-1812 and 1812.1 as amended and Virginia Code §18.2-137 as amended. The Confederate General Lee statue is described at length in Amended Complaint ¶¶21 A-G. The Confederate General Jackson statue in addition to its expanded description in Amended Complaint ¶¶ 21 E, F, and G, was already more than adequately described as a memorial to a Confederate General in the original Complaint ¶¶ 1, 16, 17, 19, 21, & 22, and Exhibit I, describing the "Jackson and Lee Memorial Monuments." And the Amended Complaint averments include the Defendant City's admissions that both statues are Confederate monuments and war memorials (Amended Complaint ¶21E, citing May 2, 2016 Resolution describing both statues as "large Confederate monuments;" and ¶21F citing the City's Civil War Trail marker: the monuments memorialize "those who fought for the Confederacy").

This Court observed the purpose of a complaint is to give "proper notice to the Defendants as to the nature or basis of the claim." October 3, 2017 Letter Opinion at 3. The Amended Complaint certainly gives the City notice, even using the City's own words, that the statues are Confederate monuments protected by Virginia Code §§15.2-1812, 1812.1 and 18.2-137. The Amended complaint suffices as it stands, though Plaintiffs do contemplate an amendment to include events and City actions that have occurred since its filing.

Conclusion

The Plaintiffs respectfully request this Honorable Court to deny the Demurrer to the Amended Complaint, and further, in its Order, to make explicit the Court's previous implicit decision in enlarging the injunction, that the Amended Complaint suffices to describe the Lee and Jackson monuments as monuments or memorials to the War Between the States (1861-1865), Confederate monuments, and a monument or memorial for a war veteran, under the protection of Virginia Code §§15.2-1812, 1812.1 and Virginia Code §18.2-137.

Respectfully submitted this 20th day of February, 2018

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VSB # 30734

CERTIFICATE OF SERVICE

I certify that I caused a true and exact copy of the foregoing Plaintiffs' Brief in Opposition to Defendants Demurrer to Amended Complaint and its exhibit to be hand delivered to the offices of Lisa Robertson, Esq., Acting Charlottesville City Attorney, at her office address of 605 East Main Street, Charlottesville, Virginia 22902 and to the office of John W. Zunka, Esq., at Zunka, Milnor & Carter, LTD, Counsel for Defendants, at his office address of 414 Park Street, Charlottesville, Virginia 22902, this 20th day of February 2018.

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Ralph E. Main, Jr., VSB # 13320