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: Standing

Summary

The Defendants' Answer to The Plaintiffs' Motion for Temporary Injunction does not challenge the Plaintiffs' standing. But it does in paragraph 2 deny that Plaintiffs face a threat of irreparable harm. As will be stated below, any harm; even trifling, is sufficient for standing. Their Demurrer does challenge the Plaintiffs' standing to sue in paragraphs 1 and 2. To the extent the Demurrer may be considered to bear on the issue of a temporary injunction, if at all, we respond: the challenge fails. There are four forms of standing for the Plaintiffs to sue to forestall illegal action by city officials: statutory, taxpayer, individual, and representative.

1) Virginia's Monument Protection law confers statutory standing on all Plaintiffs as Virginia citizens protecting and preserving monuments.

2) The Plaintiffs have standing simply as taxpayers, to stop City Council from acting ultra vires.

3) The Complaint details the requisite individual particular interest for each Plaintiff to seek injunctive relief — even without statutory or taxpayer standing.

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4) The corporate Plaintiffs have both individual standing, and representative standing derived from the individual standing of their members.

Overview of standing: statutory, taxpayer, individual, and representative

Standing is a preliminary inquiry to determine whether a Plaintiff has skin in the game: a sufficient justiciable interest that "the parties will be actual adversaries and the issues will be fully and fairly developed." Livingston v. Department of Transp., 726 S.E. 2nd 264, 262, 284 Va. 140 (Va. 2012) (reversing demurrer denying standing: ownership rights impaired by flooding are a sufficiently strong justiciable interest) ("Livingston"); Westlake Properties v. Westlake Pointe, 639 S.E.2d 257, 273 Va. 107 (Va., 2007) (stating "[i]n asking whether a person has standing, we ask, in essence, whether he has a sufficient interest in the subject matter of the case"); State Water Control Board Dep't of Environmental Quality v. Crutchfield, 578 S.E. 2d 762, 768; 265 Va. 416 (2003), on remand 2004 WL 528000, aff'd 612 S.E. 2d 249, 45 Va. App. 546 (2008) (granting standing to contest degraded recreational and aesthetic interests: river fishing, swimming, and boating) ("Crutchfield").

Standing is only an early appraisal of the Plaintiff's interest; it has "no relation to the substantive merits of an action"[emphasis added]. See West Creek Med. Ctr., Inc. v. Romero (Record No. 0963-13-2) (Va. App., 2014) (holding West Creek had standing due to possible financial interest.) Whether the Plaintiff might prevail is irrelevant for standing. It will become pertinent only after the standing inquiry is satisfied and attention then turns to whether an injunction should issue. Compare Biddison v. Marine Res. Com'n, 680 S.E.2d 343, 346, 54 Va. App 521, 527 (2009) (noting standing is not concerned with whether plaintiff will prevail) ("Biddison") with G.G. ex rel. Grimm

v. Gloucester Cnty. Sch. Bd., 822 F.3d 709, 724 (4th Cir., 2016) (defining standards for injunction to include likelihood of success on the merits).

Merely a threat, the possibility of potential harm suffices for standing. One does not have "to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending that is enough." Chesapeake Bay Found. v. Com. ex rel. State Water Control Bd., 667 S.E.2d 844, 852, 52 Va. App. 807 (Va. App., 2008)(reversing demurrers that denied standing) ("Chesapeake Bay"); Reston Hospital Center LLC v. Remley, 717 SE 2d 417, 422, 59 Va. App 96 (2011) (holding the plaintiff had standing to contest a license award to a competing hospital, to avert the possibility of competitive harm) ("Reston").

And the harm need not be grievous, or even very noticeable for that matter: "an identifiable trifle will suffice." Crutchfield, 578 S.E. 2d at 768 (granting standing to contest degraded recreational and aesthetic interests: fishing, swimming, and boating); Chesapeake Bay., 667 S.E.2d at 852 (stating "identifiable trifle" of aesthetic value of the rivers as an educational resource suffices).

As will be discussed in detail below, statutory standing asks: who does the law invite to enforce it? See Philip Morris USA v. Chesapeake Bay Found., 643 S.E.2d 219, 226-28, 273 Va. 564 (Va., 2007) (exploring difference between statutory, individual, and representational standing) ("Philip Morris"); Mattaponi Indian Tribe v. Com., 541 S.E. 2d 920, 923, 261 Va. 366 (Va., 2001)(reversing Court of Appeals; holding an alliance of environmental associations and individual protesters have standing under water quality protection remedial legislation to seek judicial review of reservoir permit) ("Mattaponi"). Standing to thwart local officials acting without authority, ultra vires, requires only that Plaintiffs state they are taxpayers. Arlington County et al. v. White, et al., 528 SE 2d 706, 259 Va. 708 (2000) (recognizing taxpayer standing to challenge county

action as ultra vires) ("Arlington county"). Individual standing evaluates whether a plaintiff pleads a personal interest in the outcome, harm suffered different from that of the general public; while representative standing for a corporation derives from the individual standing of its members. Chesapeake Bay Found. v. Com. ex rel. State Water Control Bd., 628 S.E.2d 63, 74, 48 Va. App. 35 (Va. App. 2006) (discussing individual and representative standing; holding Virginia law does permit representational standing).

1) The Plaintiffs Have Statutory Standing Under the Monument Protection Law

Virginia's Monument Protection Law is relatively unusual because it invites citizens to stop their own local authorities from disturbing or interfering with (including removal of) monuments or memorials to wars or war veterans. Va Code § 15.2-1812 (barring "authorities of the locality" from disturbing or interfering with a monument or to prevent citizens from preserving it); Va Code § 15.2-1812.1(A)(1) (saying violation allows action for damages against local authorities by interested person); Va Code § 15.2-1812.1(C) (preserving rights of any person, organization, society, or museum to pursue any additional remedies).

Virginia's Attorney General explained the law offers unusual protections because -

> . . . the importance of honoring all our veterans, especially those that have given their lives and paid the ultimate sacrifice for us, our country and our freedoms, cannot be overstated. These brave men and women deserve our full support, and the General Assembly has chosen to extend certain protections to monuments honoring their service. Opinion 15-050 __ Op. Va. Att'y Gen.__(2015)(online http://ag.virginia.gov/files/Opinions/2015/15-050_Whitfield.pdf)("Atty General Opinion)"

The law provides two independent bases for statutory standing. The first is the original empowerment of citizens to preserve monuments, in Va Code §15.2-1812. The second is an after-the-fact action for damages in §15.2-1812.1 (added by an amendment in 2000).

For the first 96 years of the law's existence, the original remedy was the only one. See Plaintiffs' Brief: Virginia's Monument Protection Law, parts 1-5, here incorporated by reference. The elements for statutory standing are straightforward: the plaintiff must be 1) a "citizen," who is 2) "taking proper measures and exercising proper means for the protection, preservation, and care" of 3) monuments to specific, listed wars and conflicts.

This is a broad but not a blanket invitation to the courthouse. Like Virginia's Freedom of Information Act which offers all Virginia citizens a right of enforcement against government officials, the Monument Protection Law is a similar statutory right of enforcement afforded to Virginia citizens, just for being citizens. Compare Va. Code § 2.2-3700(B);(C) (stating Freedom of Information Act intended for the "people of the Commonwealth;" "citizens of the Commonwealth"); Va. Code § 2.2-3704 (public records open to "citizens of the Commonwealth") with Va. Code §15.2-1812 (stating "citizens" may take whatever measures necessary to protect a monument). It is not an open-ended right, though. Presumably a Maryland citizen could not invoke it. Nor could Virginia citizens sue to protect any and all plaques, placards, or flagpoles. The subject of the action must be a monument or memorial, one commemorating wars or veterans of wars specifically listed. There would be no statutory standing for a citizen suing to preserve say, a memorial for the Special Forces soldier killed in Syria in November 2016; nor for a memorial commemorating the 23 US troops who died in the 1989 invasion of Panama called "Operation Just Cause." Those conflicts are not on the list.

The standing to sue accrues when officials of a locality decide to violate the law. Va Code §15.2-1812 (stating it shall be unlawful for the authorities of the locality to disturb or interfere with any monuments or memorials) [emphasis added]. The Complaint avers that City Council purported to vote for a resolution to move Lee in February; now in April they've resolved to get rid of the monument by offering it for sale. They also resolved to obscure Jackson, a deliberate interference. Their stated decision; their resolve to commit an illegal act, not the act itself — is sufficient for standing. Chesapeake Bay, 667 S.E.2d at 852 (impending harm suffices for standing); Philip Morris 643 S.E.2d at 220 (stating threat of harm to river is sufficient for standing); Reston 717 SE 2d at 422 (saying standing may be based only on the forecast possibility of harm).

All Plaintiffs listed on the case caption are Virginia citizens seeking to preserve monuments: Payne, Yellott, Tayloe, Weber, Smith, and the corporate plaintiff The Monument Fund Inc. are citizens of Charlottesville, Va.; Fry, Amiss, and Marshall are citizens of Albemarle County, Va.; the corporate Plaintiff Sons of Confederate Veterans is a Virginia citizen. They all seek to stop city officials from removing Lee and interfering with Jackson, veterans of listed wars. Both Lee and Jackson were veterans of what the law calls the War Between the States, and the earlier Mexican War (1846-1848). Confederate memorials were the earliest types the law protected. 1904 Va. Acts Ch. 29; see Plaintiff's Brief: Virginia's Monument Protection Law. All Plaintiffs as citizens have statutory standing to seek an injunction to protect the Lee and Jackson monuments.

The Mattaponi decision is analogous. Like the one at bar, it involved Plaintiffs seeking to enforce remedial and preservation statutes, in that case water quality preservation laws. Mattaponi 541 S.E. 2d at 922. There as here, an amalgam of Plaintiffs banded together to protest governmental action: an unincorporated alliance of four organizations and individual riparian owners, including the Mattaponi Indians (a 1,100-

member unincorporated association); the Chesapeake Bay Foundation, Inc; Mattaponi and Pamunkey Rivers Association; the Sierra Club (collectively, the "Alliance"), see Mattaponi 541 S.E. 2d at 921 & 923. There as here, the injuries complained of included cultural diminishment: "the failure to consider cultural values" of the tribe as well as diminished "educational and recreational pursuits;" the protested water project would "interfere with the Mattaponi's traditional way of life, and will prevent the Tribe from maintaining its cultural and spiritual connections to the Mattaponi River." Mattaponi 541 S.E. 2d at 923. The court held the Plaintiffs met the statutory criteria and had standing in their individual capacity to challenge the King William Reservoir public water supply project permit at issue. 541 S.E. 2d at 921 & 926. Likewise here the Plaintiffs are protesting city action that would remove an historic monument, invoking a remedial statue intended to protect monuments, and they are the persons the statute anticipates will enforce it.

At this point we pause to reply to the City Attorney's position that it is too soon to invoke the Monument Protection law.[1] The City Attorney seems to think the law would be triggered only by physical damage. Under his reading, a citizen must placidly watch Lee get dragged out of his park, notify the City Attorney that the act was unlawful (he has already been notified and declined to do anything) wait 60 more days, and then file a lawsuit for money damages to drag Lee back under Va Code § 152.-1812.1. Until then — presumably — the City Attorney would object that the law has not (yet) been triggered, so it cannot (yet) confer statutory standing on anyone.

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[1] This position appears to undergird the Defendants' Answer to Plaintiff's Motion for a Temporary Injunction, as well as paragraph 5 of their Demurrer, and the City Attorney took this position in February 2017 correspondence when he declined to intervene to stop City Council from removing Lee and reconfiguring both memorial parks.

The City Attorney's position assumes of course that there is only one basis for statutory standing: the second one, the action for monetary damages added in the year 2000 in Va Code §15.2-1812.1. This argument ignores that for its first 96 years Va Code §15.2-1812 depended on citizen enforcement by an injunction, a venerable remedy explicitly preserved by Va Code §15.2-1812.1(C) (stating "the provisions of this section shall not be construed to limit the rights of any person, organization, society, or museum to pursue any additional civil remedy otherwise allowed by law"). The City Attorney's interpretation would mean that before the 2000 amendment the original law was unenforceable — and that a legislature which throughout the previous 96 years repeatedly confirmed, recodified, amended, and expanded this law, was engaged in a pointless exercise, rearranging empty words. See Plaintiff's Brief on Virginia Monument Protection Law (listing amendments); see also Scott v. Commonwealth, 416 S.E.2d 47, 14 Va.App. 294, 296 (Va. App., 1992) (holding a court must give effect to the legislative intent and the law's plain, obvious meaning).

Moreover, arguably the Plaintiffs can meet even the standards of the second, newer provision for statutory standing, the action for damages under Va Code §15.2-1812.1. The elements of that are: 1) a violation or encroachment upon a monument; 2) if no action is commenced within sixty days by the attorney of the locality, "any person having an interest in the matter" may sue for damages.

Here the violation is a violation of the law: unlawful City Council action. As one Plaintiff's attorney is fond of saying "the trigger is pulled, the bullet is headed down the barrel of a gun pointed at Lee." The City Attorney was formally notified about the illegality of the City's proposed action by Plaintiff Yellott's letter a year ago in March 2016, his second letter in October 2016; and a third letter from Attorney Fred Taylor in February 2017. The City Attorney took no preventative measures, and stated he was declining to do so. It is not necessary to wait another 60 days.

To have standing the Plaintiffs need not show that all the legal dominoes already fell, and we would today win damages on the merits. It bears repeating that standing is only a preliminary inquiry: whether the Plaintiffs have a legitimate issue to bring to the courthouse; regardless of whether once inside, they might win. Reston Hospital Center 717 SE 2d at 422 (stating "we are not concerned with whether the plaintiff will ultimately prevail on the legal merits of an issue"); see e.g. Crutchfield 578 S.E. 2d at 768 (though standing was confirmed, the Plaintiff lost on the merits); McIntire Park case (standing granted, but injunction denied on the merits).

The City Attorney's effort to restrict standing under the law to recovering massive after-the-fact damages would be prodigiously wasteful of both judicial and citizen resources. It would mean the illusion but not the reality of a citizen remedy against their own local authorities.

We cannot wait until irreversible harm occurs. As will be seen, Judge Swett denied an injunction in a similar case of citizens suing to stop an act by the city of Charlottesville precisely because they waited too long. A denial of statutory standing in advance of removal of Lee makes the only recourse suing for an incalculable sum: the cost of attempting the impossible. No amount of money can restore a unique work of art whose sculptor is long dead; uncrack a granite pedestal; regrow 100 year old trees. The city staff admitted in their April report to City Council that moving a monument is an operation so delicate their own employees could not make the attempt, without risk of damaging or destroying it.

The threat and consequent need for statutory standing and an injunction are manifest, even if the case for monetary damages remains inchoate. Crutchfield 578 S.E. 2d at 768 (threat of aesthetic injury is enough); Chesapeake Bay 667 S.E.2d at 852 (impending harm suffices). The purpose of the law is remedial, to protect monuments to veterans

against encroachment by anyone including local officials. It must be construed in accord with its purpose, which requires a finding of standing for all the citizen Plaintiffs who have committed considerable time, effort, and money to protect and preserve monuments against a City Council bent on vandalism. cf. Va Code §18.2-137 (prohibiting vandalism; defining removal of a statue as a crime); Board of Sup'rs of King and Queen County v. King Land Corp., 380 S.E.2d 895, 897, 238 Va. 97 (Va., 1989) (holding court must construe remedial law to "suppress the mischief and advance the remedy").

2) The Plaintiffs' standing as taxpayers to thwart city action that is ultra vires

Closely tied to the question of violating the Monument Protection Law is the Plaintiffs' standing as taxpayers to prevent unauthorized action: to stop local officials from illegal expenditure of taxpayer funds.

> [I]t shall be unlawful for the authorities of the locality, or any other person or persons, to disturb or interfere with any monuments or memorials so erected, or to prevent its citizens from taking proper measures and exercising proper means for the protection, preservation and care of same. For purposes of this section, 'disturb or interfere with' includes removal of, damaging or defacing monuments or memorials, or, in the case of the War Between the States, the placement of Union markings or monuments on previously designated Confederate memorials or the placement of Confederate markings or monuments on previously designated Union memorials. Va. Code §15.1-1812.

This is restrictive legislation: the General Assembly has gone out of its way to proscribe what local officials might do; stripped them of the authority to do it. Lamar Co. LLC v

City of Richmond, 756 SE 2d 444, 287 Va 348 (2014) (discussing difference between enabling legislation and restrictive). The Dillon Rule is a rule of strict construction: "if there is a reasonable doubt whether legislative power exists, the doubt must be resolved against the local governing body." Sinclair v. New Cingular Wireless PCS, LLC, 727 SE2d 40, 44 283 Va. 567 (holding Albemarle County slope ordinance waiver void for exceeding delegated authority under Dillon Rule.) Here there is no doubt whatever: the law is an absolute prohibition.

In addition to statutory standing discussed above, all Plaintiffs have standing to stop unauthorized acts by their local officials simply as taxpayers. Cf. Arlington County 528 SE 2d at 707. In Arlington County plaintiffs Andrew and Diana White and Wendell Brown asserted standing to sue to stop ultra vires action as county taxpayers. Just as taxpayers — the court referred to them throughout as "the Taxpayers" — they complained the county lacked authority under the Dillon Rule to extend health care coverage to domestic partners; the extra funds required would increase their taxes. The Circuit Court ruled in the Taxpayers' favor, and the Virginia Supreme Court affirmed. Arlington County 528 SE 2d at 709.

The rule that taxpayers — just as taxpayers — have standing to stop local officials from expending tax money outside their authority is long established and well settled. cf. Lynchburg & R. St. Ry. Co. v Dameron et al., 28 S.E. 951, 951, 96 Va. 545 (1898) (stating [t]he jurisdiction of a court of equity to restrain a municipal corporation and its officers from [levying taxes or issuing bonds without authority] upon the application of one or more taxpayers . . . who sue for the benefit of themselves and all others similarly situated, is too well settled to admit of dispute"); Johnson et al. v. Black et al. 49 S.E. 633, 103 Va. 477 (Va. 1905) (confirming the "well-established doctrine that courts of equity have jurisdiction to restrain the illegal diversion of public funds at the suit of a citizen and taxpayer"); cf. Burk v. Porter, 222 Va. 795, 798, 284 S.E.2d 602, 604 (1981)

(reversing demurrer on taxpayer standing to contest unlawful expenditure for junket); Armstrong v. Henrico County, 212 Va. 66, 76, 182 S.E.2d 35, 42 (1971) (finding taxpayer standing to challenge an allegedly invalid agreement for the issuance of local government bonds); Gordon v. Board of Supervisors, 207 Va. 827, 831, 153 S.E.2d 270, 273 (1967) (finding taxpayer standing to seek equitable relief to prevent local officials from lending governmental funds); Appalachian Elec. Power Co. v. Town of Galax, 173 Va. 329, 333, 4 S.E.2d 390, 392 (1939) (finding taxpayer standing to prevent the illegal issuance of local bonds); to like effect Vaughan v. Town of Galax, 173 Va. 335, 341, 4 S.E. 2d 386, 389 (1939).

The Demurrer (to the extent it is pertinent here if at all) asserts in paragraph 2 the Plaintiffs failed to state a specific expenditure of public funds. The main expenditure of tax funds to date, and to come, has been city staff and city councillor salaries and overhead costs expended on the illegal endeavor. See Arlington County 528 SE 2d at 708 (affirming taxpayer standing to challenge county policy as ultra vires because it would increase tax expenditures); see generally Plaintiff's Brief: Virginia's Veterans Monument Protection Law and the Dillon Rule, Section 6) Remedies for willful Dillon rule violation, and the summary of all remedies in the Conclusion). It can certainly be implied or fairly inferred from Complaint averments describing a series of City Council resolutions without authority, and a series of implementing city staff reports and recommendations — that taxpayer money was wasted. Rosillo v. Winters, 235 Va. 268, 270 367 S.E.2d 717, 717 (1988)(reciting that demurrer "admits the truth of all material facts properly pleaded; those expressly alleged, those which fairly can be viewed as impliedly alleged, and those "which may be fairly and justly inferred from the facts alleged"). Money is being wasted on city salaries, wasted on office overhead down to electricity and toner for the photocopier; and to be wasted on future RFP's to remove Lee and reconfigure Jackson park, will be wasted on future city council hearings and

decision making —not to mention tax money wasted on the present effort to prevent citizens from preserving monuments under the law.

The Complaint could not offer detailed accounting at this early juncture, and need not in any event as that is a question of damages. A reasoned approximation is the best we are likely to do. In an analogous situation of the claw-back of salary and benefits expended on illegal conduct by a corporation's employees, a reasoned approximation was held sufficient since it was impossible to quantify precisely the time and effort. See United States v. Fiorentino, 149 F. Supp. 3d 1352, 1359 (S.D. Fla., 2016)(holding "reasoned approximation" will do in clawing back salary for corporation's loss of honest services, since "it is impossible to quantify precisely how much of Defendants' efforts were devoted to their criminal scheme").

We cannot yet compute the exact amount. But we do know it was and is and will be tax money. One dollar spent doing or defending a willfully illegal endeavor is one dollar too much. The Plaintiffs Payne, Yellott, Tayloe, Amiss, Weber and Smith are city taxpayers, as is corporate Plaintiff The Monument Fund, Inc.[2] They have standing to contest misuse of tax money in direct contravention of a legislative prohibition.

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[2] As a matter of public record, the City of Charlottesville taxes and derives revenue as follows: real estate taxes directly on those who own city property, or indirectly through their landlord on those who rent; personal property taxes on those who own cars, or vehicle daily rental taxes if they must rent one; utility services consumer taxes on electric bills, and gas bills, and on top of city water bills; sales and use taxes for anything like groceries or socks or office supplies bought in local stores; meals tax on anyone who's bought lunch on the Downtown Mall; and also license fees which are nothing but renamed taxes including vehicle license fees, and business licenses. See Charlottesville City Budget, General Fund Revenues, online at http://www.charlottesville.org/home/showdocument?id=50741.

3) Individual standing: an interest particular to that plaintiff

If there were no Monument Protection law, and if the Plaintiffs were not taxpayers — then (as stated earlier) standing to enjoin the city would require a showing of an individual particularized interest, more than just a grievance shared by the public at large. cf. Biddison 680 S.E.2d at 346. To reiterate: there is no such thing as de minimis when it comes to that interest. "An identifiable trifle of some sort" suffices, so long as that trifle, that trivial interest, can be articulated and traced to a particular plaintiff. Chesapeake Bay #2 667 SE 2d at 852; Crutchfield 578 S.E. 2d at 768 (holding minor recreational use and aesthetic interest suffices).

In a local case, Coalition to Preserve McIntire Park, et al., v. City of Charlottesville, et al., Case No 9000084-00 (2009, unpublished, Swett, J.) [the "McIntire Park case;" excerpts on standing appended as an Exhibit] Judge Jay Swett found sufficient individual interest to grant standing to sue the city to some of a loose coalition of citizen activists who opposed paving what is now the Warner Parkway through McIntire Park, though he denied standing to others who showed no particularized injury. That case parallels the one at bar insofar as a group of individual Plaintiffs sued to stop city action; it differs in that theirs was a weaker case. They had no preservation law to enforce; we do.

In the McIntire Park case, the city (represented by Craig Brown) challenged the standing of all the Plaintiffs: six individuals (including now City Councillor Bob Fenwick). Together they called themselves the Coalition to Preserve McIntire Park; the North Downtown Residents' Association ("NDRA") was also a plaintiff. Judge Swett's opinion surveyed standing cases, concluding that standing requires "direct injury to the plaintiff." McIntire Park case pp. 6-8. He then turned to the facts and concluded that some Plaintiffs but not all had shown an injury direct enough for standing.

The objection that "the parkway may increase traffic in the downtown area" was not sufficiently particular to just one person, and for this reason he dismissed Richard Collins, a transportation consultant, and Colette Hall, President of the NDRA. McIntire Park case p 10. However, five individual Plaintiffs testified they personally hiked in McIntire Park, personally enjoyed the natural area and wildlife, or personally lived near enough to be affected by the road. Judge Swett decided they did have standing. He also confirmed representational standing for the unincorporated Coalition to Preserve McIntire Park, denying it to the NDRA (for reasons to be discussed below under "representational standing.") McIntire Park case p 10. There as here, individuals said they personally used and enjoyed the park. That was sufficient. Trifling though the interest might appear, it was a specific aesthetic use particular to them.

Judge Swett's standing determination was not challenged since the Plaintiffs later lost on the merits. The judge said that they had filing too late for an injunction to do any good; and delaying construction at that juncture could do considerable harm. One Plaintiff's pro se appeal was dismissed, also for being untimely. So the McIntire Park case trial court opinion stands, the primary Charlottesville Circuit Court jurisprudence on the pleading and proof required to grant standing to a coalition of individual Plaintiffs challenging a City Council decision.

Judge Swett's decision cited and is in accord with the more recent Virginia cases on standing, in particular two public interest cases involving the Chesapeake Bay Foundation. In one case, the Virginia Supreme Court reversed the circuit court judge's denial of standing. Chesapeake Bay, 667 S.E. 2d at 857. The Supreme Court concluded that Plaintiffs stating they use the affected area and "are persons for whom the aesthetic and recreational values of the area will be lessened," offered an adequate claim of particularized injury for standing. Chesapeake Bay, 667 S.E. 2d at 855 (reciting that impairing "aesthetic value of the rivers as an educational resource" sufficed as a threat

of harm). Thus this 2007 case at least when it comes to public interest lawsuits, would seem to have relaxed the rigid ruling in the much earlier 1986 Virginia Beach Beautification decision calling aesthetic harm shared by the general public, insufficient.[3] Likewise another case, Philip Morris, reversed a demurrer dismissing the Chesapeake Bay Foundation for lack of either individual or representational standing to challenge a state Water Control Board permit, a challenge for largely aesthetic reasons: its members used and enjoyed the James River for boating, kayaking, swimming and the like. Philip Morris 643 S.E.2d at 227. This, to be discussed further in the next section.

Each of the individual Plaintiffs has stated a particular and direct interest, specific harm that will happen to that plaintiff if Lee is removed and Jackson obscured.[4] In several cases there is a financial interest. For instance Plaintiffs Marshall, Smith, and Sons of Confederate Veterans, Inc. state they invested time and money in cleaning and restoration of the monuments, an investment wasted if the monuments are removed or obscured from view. Plaintiff Yellott has also invested his own time and money in working to preserve them, and he uses the monuments in history lectures; removal will

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[3] The 1980's case was Virginia Beach Beautification Comm'n v. Bd. of Zoning Appeals of the City of Virginia Beach, 344 S.E. 2d 899, 902-03, 231 Va. 415 (1986) (denying standing to a Plaintiff raising an aesthetic objection) ("Virginia Beach Beautification"). Chesapeake Bay and other cases have now held that in a public interest lawsuit, an aesthetic objection suffices so long as it was particularized to that plaintiff. The public interest in that case was environmental; here it is enforcing a law protecting monuments for veterans, and the memorial parks that frame them.

[4] The standard of direct interest was confirmed in Friends of the Rappahanock et al. v. Caroline County Bd. of Supervisors et al., 286 Va. 38, 743 S E 2d 132, 138 (2013) (sustaining demurer in land use case for lack of sufficient facts pleaded). However, the case differs from ours, because it concerned standards for a declaratory judgment contesting land use decisions: a zoning exception permit for sand and gravel mining with restrictions prohibiting exactly the kinds of harm the Plaintiffs complained of. Despite the opportunity to amend their complaint, the Plaintiffs failed to explain why the permit restrictions did not suffice to prevent the harm; they offered no factual basis for concerns about off-site effects, and so they were denied standing. 743 S E 2d at 138. Here there are no permit conditions to prevent the harm complained of; there is however, a law— and an irresponsible City Council flouting it.

cost him the opportunity to educate and cost tourists and others the opportunity to learn. Plaintiffs Yellott and Payne also plead use and enjoyment, which was sufficient for standing in the McIntire Park decision, and in the Chesapeake Bay cases.

Plaintiffs Tayloe, Weber, Earnest, and Griffin each are themselves veterans or affiliated with veteran organizations dedicated to the preservation of veterans' memorials, and state a special interest in preserving monuments to war veterans, including in particular Confederate war veterans Lee and Jackson. They too plead an individual interest apart from and beyond that of the general public.

Finally, while all Plaintiffs may have standing to raise the issue of violating the conditions of McIntire's gifts for the reasons stated above, two in particular have a special case to plead. They are Ms. Betty Jane Franklin Phillips, who is a collateral descendant of Paul Goodloe McIntire, and Edward Bergen Fry, a great-nephew of Henry Shrady the sculptor McIntire originally engaged to create the Lee monument. On behalf of their families and the estates of their relatives they would have a claim to the reversion of the monuments and the land for the parks, should the court determine that to be the consequence of the city's violation of the conditions of McIntire's gift. Reversion to heirs upon failure of a condition — no matter how old the condition — is so well accepted in the law that it is strange the Demurrer in paragraph 1b (again, to the extent it bears on a temporary injunction) would mistakenly suggest Fry and Phillips have "no legal right that will be affected by the outcome of the case." cf. Talbot v. Norfolk, 152 Va. 851, 148 S.E. 865 (Va, 1929) (upholding enforcement of seventy year-old condition in conveyance that if land ceased to be used for a bridge, it reverted to heirs of grantee — though finding the right of reversion had accrued forty years earlier, so enforcing it was beyond the statute of limitations); see generally Copenhaver v. Pendleton, 155 Va. 463, 155 S.E. 802, 77 A.L.R. 324 (Va, 1930) (discussing distinctions between remainders, vested and contingent, reversions, executory devises, and

possibilities of reverter); see also Virginia School of Arts, Inc. v. Eichelbaum, 493 S.E.2d 510, 254 Va. 373 (Va., 1997) (concluding if condition of charitable challenge grant unmet, school forfeits gift).

Again — it is not necessary now that the court decide the land or the monument will revert. For standing the court need only decide, who properly raises the question? Ms. Phillips and Mr. Fry have a special interest, a familial interest greater than that of the general public, in the possibility of a reversion. Accordingly they have standing.

Thus in addition to and apart from the statutory standing conferred by the Monument Protection law, and their standing as taxpayers, the Complaint states facts confirming each of the individuals has sufficient particular interest beyond that of the general public. Whether others might deem it a trifling interest manifestly it is not trifling to them, and it suffices. Crutchfield 578 S.E. 2d at 768 (saying trifling interest suffices).

4) Representational standing for corporations derives from individual standing

When the Plaintiff is an organization as opposed to an individual, the organization may sue in its individual capacity or in a representative capacity.

Standing to sue in an organization's individual capacity requires a pleading of impact on that organization; whether harm to it or a right infringed. See, e.g. Reston Hospital at 717 SE 2d at 523 (actual or potential harm specific to a corporate plaintiff sufficient for standing.)

Corporate representational standing is derivative: it depends on at least one member of the organization having standing in their individual capacity, from which the

organization then derives its standing. Philip Morris 643 S.E.2d at 577, 578.[5] Judge Swett in the McIntire Park case concluded that the unincorporated Coalition to Preserve McIntire Park derived representational standing from several of its individual members who had standing because of a direct personal interest. McIntire Park case pg. 10.

We note that the Virginia Supreme Court expressly rejected the premise asserted in Defendant's Demurrer paragraph 1(d) that "Virginia does not recognize representational standing unless authorized by statute." The Supreme Court in fact rejected it no less than three times in succession in one case; confirming corporate representative standing for the Chesapeake Bay Foundation based on the standing of its members — the third time saying the Defendants had "struck out." Cf. Chesapeake Bay Foundation, Inc. v. Commonwealth ex. rel. Va. State Water Control Bd., 46 Va.App. 104, 616 S.E.2d 39, 45 (2005) (rejecting assertion that Virginia does not recognize representational standing unless authorized by statute); Chesapeake Bay Found. Inc. v. Commonwealth ex rel. Virginia State Water Control Bd., 56 Va.App. 546, 695 S.E.2d 549. 553 (2010)(revisiting "again" representational standing five years later on an interlocutory appeal, and reconfirming it exists); Chesapeake Bay Found., Inc. v. Commonwealth ex rel. Va. Water Control Bd. (Va. App., 2014)(Record No. 1897-12-2) (Memorandum Opinion, unpublished)(rejecting yet again the challenge to representational standing, holding this third time the Defendants had "struck out.")(the "Chesapeake Bay cases").

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[5] While the 2007 Philip Morris case cautiously limited its holding to the situation at hand, that caveat had fallen by the wayside by 2010. The Virginia Supreme Court "later agreed representational standing exists in Virginia." Chesapeake Bay Found. Inc. v. Commonwealth ex rel. Virginia State Water Control Bd., 56 Va.App. 546, 695 S.E.2d 549. 553 (Va. App., 2010) (confirming representational standing for the Chesapeake Bay Foundation for the second time, on interlocutory appeal, reversing a demurer).

In our case, the corporate Plaintiffs: the Monument Fund, Inc. and the Virginia Division, Sons of Confederate Veterans, Inc., plead facts that establish both representative and individual standing.

The Monument Fund, Inc. derives representative standing from its members Marshall and Yellott, both of whom have standing in their own right, statutory standing, as taxpayers, and as individuals.[6] In addition the corporation has individual standing as aa taxpayer in its own right, and because the Complaint avers that purpose of The Monument Fund, Inc. 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. It has raised money for, and helped fund the instant litigation. The desecration of the memorial parks and monuments would be a particular harm to a corporation that the Commonwealth of Virginia granted Articles of Incorporation for conserving. In so doing the state recognized, endorsed, and conferred the power and privilege of undertaking that particular purpose. See generally Ry. Express Agency Inc v. Commonwealth Ex Rel. State Corp. Comm'n., 153 Va. 498, 150 S.E. 419, 423 (Va., 1929)(reviewing the purpose of state approval of Articles of Incorporation, to "secure to the . . . company certain powers, immunities, and privileges" which the corporation exercises by the "state's consent"[citations from multiple jurisdictions omitted].)

Likewise Plaintiff Virginia Division, Sons of Confederate Veterans, Inc., ("Sons") has both individual and representative standing. Its members Plaintiff Anthony M. Griffin and Britton Franklin Earnest, Sr. state a particular interest in preserving and protecting

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[6] The Philip Morris decision observed that while "at least one of its members" had to have standing, "at the pleading stage the Foundation is not required to name those members." Philip Morris at 578. Perhaps not. But we have done so, out of an abundance of caution and to avoid appeals stretching over years debating the sufficiency of the pleadings on representative standing. Cf. Chesapeake Bay cases cited on page 19.

the Lee and Jackson monuments and the parks in which they are located. The Sons of Confederate Veterans is a heritage organization with a longstanding, and direct, financial interest in both Lee and Jackson having contributed funds to the 1997-99 cleaning and restoration (money wasted if Lee is removed or Jackson obscured), and having raised and disbursed money for the instant litigation to protect and preserve them. Longstanding, because as a matter of historical record the Sons originally supervised the ceremonies celebrating the erection of the monuments, attended again the rededication in 1999, and as an organization and as individuals they take a direct and particular interest in honoring the memory of Confederate veterans.

Conclusion

For the foregoing reasons, the Court must deny Defendants' Demurrer, determine the Plaintiffs have standing, and proceed to address the merits of the case.

Respectfully submitted:

_____ (date) April 17, 2017

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Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that I had the foregoing Plaintiff's Brief: Standing hand delivered to the offices of Craig Brown, Esq., attorney for the City of Charlottesville and for the individual Defendants, on April 17, 2017.

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EXHIBIT

Plaintiff's Brief: Standing

Exhibit 1: Opinion, McIntire Park case, Swett, J., 15 July 2009 (excerpts, pp. 6-12)

CITY OF CHARLOTTESVILLE
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STAUDIN/G
EXHIBIT: 1
PAGE: cover letter

July 15, 2009

HAND-DELIVERED

Hon. Jay T. Swett, Judge
Charlottesville Circuit Court
315 East High Street
Charlottesville, VA 22902

Re: *Coalition to Preserve McIntire Park v. City of Charlottesville & VDOT*

Your Honor:

Enclosed for your consideration and endorsement is the final order in the above-styled matter. Should you have any questions regarding this order, please do not hesitate to contact this office or that of the Attorney General.

Thank you for your attention to this matter.

Sincerely,

Francesca Fornari

Francesca Fornari
Assistant City Attorney

enclosure

Rec 2-15-09

EXHIBIT 1
PAGE 1

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

COALITION TO PRESERVE MCINTIRE PARK,

NORTH DOWNTOWN RESIDENTS ASSOCIATION,

JOHN CRUICKSHANK,

PETER KLEEMAN,

STRATTON SALIDAS,

RICHARD COLLINS,

And

ROBERT FENWICK.

Plaintiffs,

Vs. CASE NO. CL 9000084-00

CITY OF CHARLOTTESVILLE

And

COMMONWEALTH OF VIRGINIA DEPARTMENT OF TRANSPORTATION

Defendants.

OPINION

This case arises out of the conveyance of an easement by the City of Charlottesville and the Charlottesville School Board to the Commonwealth of Virginia Department of Transportation related to the construction of a portion of what is known as the Meadow Creek Parkway. The plaintiffs are five individuals, a neighborhood association and an association

NOTE: EXCERPTS RUN FROM PAGE 6 TO PAGE 12

vote was in violation of Section 9 of Article VII of the Virginia Constitution. A hearing on the request for the temporary injunction was heard on March 18, 2009. This court denied the request for the preliminary injunction finding (1) that the plaintiff did not demonstrate a substantial likelihood that it would ultimately prevail on the merits, (2) that the plaintiff did not make an adequate showing of irreparable harm if the injunction were not granted, and (3) that the delay in bringing the request for the injunctive relief created a situation where defendant VDOT would experience considerable damage should the injunction be granted as compared to the threatened injury to the plaintiff. An expedited hearing was held on May 19, 2009. Prior to the hearing, with the consent of the defendants, six plaintiffs were added to the suit, namely the North Downtown Residents Association, John Cruickshank, Peter Kleeman, Stratton Salidas, Richard Collins and Robert Fenwick.

Standing of the Plaintiffs to Seek Relief

The City and VDOT contend that none of the plaintiffs have demonstrated sufficient standing to bring this suit. To address this contention, a brief review of the legal requirements for standing is appropriate.

The concept of standing in the law is founded upon the principle that the parties to a lawsuit must have a sufficient interest in a particular matter to ensure the parties will be actual adversaries and that the issues in the case will be fully and faithfully developed. *Andrews v. American Health & Life Ins. Co.*, 236 Va. 226 (1988). The inquiry has no relation to the substantive merits of the controversy, but is a preliminary jurisdictional matter that focuses solely on the status of the plaintiff or plaintiffs and whether they are the proper parties to proceed with the suit. *Cupp v Board of Supervisors of Fairfax County,* 227 Va. 580, 589, (1984). In

order to have standing, a party must "show an immediate, pecuniary, and substantial interest in the litigation, and not a remote or indirect interest." *Harbor Cruises, Inc. v. State Corp. Comm.*, 219 Va. 675, 676 (1979). The type of interest or injury necessary to have standing must be a one directly affecting the plaintiff. "[I]t is not sufficient that the sole interest of the [plaintiff] is to advance some perceived public right or to redress some anticipated public injury where the only wrong [the plaintiff] has suffered is in common with other persons similarly situated." *Virginia Beach Beautification Commission v. Board of Zoning Appeals of the City of Virginia Beach,* 231 Va. 415, 419 (1986).

Where the plaintiff is an organization as opposed to an individual, the organization may sue in its individual capacity or in a representative capacity. For an organization to have individual standing, it must show that it has been damaged by the actions of the defendant or that its rights were adversely affected by the defendant's conduct. For an organization to have representational standing, it must be shown that at least one member of the organization has standing to go forward with the claim in his or her own right. *Philip Morris USA Inc. v. Chesapeake Bay Foundation,* 273 Va. 564 (2007). Further, in a case where the claimed injury is one to the environment, it is not sufficient for the organization to allege that the defendant's conduct will harm the environment. Rather, the plaintiff must allege and prove that the government's actions directly impact on the plaintiff's use or enjoyment of the land or area at issue and are persons "for whom the aesthetic and recreational values of the area will be lessened by the challenged activity." *Philip Morris, supra*, p.578, quoting *Friends of the Earth, Inc. v. Laidlaw Envtl Servs. (TOC), Inc.* 528 U.S. 167, 183 (2000). It is under these and other principles that this court must measure whether some of all the plaintiffs have standing in the context of this suit.

The Coalition to Preserve McIntire Park is an unincorporated association whose members include individuals and other organizations which seek to preserve "the historic, aesthetic, recreational, educational and natural attributes of open space in Charlottesville and the surrounding area."[1] The individual plaintiffs are members of the Coalition. The Coalition has actively been involved in various preservation and transportation matters impacting Charlottesville and opposes the Meadow Creek Parkway because its eventual path will run through a portion of McIntire Park.

Plaintiff John Cruikshank is the organizer and coordinator of the Coalition to Preserve McIntire Park. Mr. Cruikshank testified that the purpose of the Coalition is, as its title suggests, to preserve McIntire Park and to see the park improved and enhanced. The organization was formed after the City passed the June 2008 ordinance to grant VDOT the construction easement. He also owns two rental properties in the City. Neither rental property is located in close proximity to the land at issue in this case.[2] With regard to the land near Melbourne Road at issue here, Mr. Cruickshank testified he may have walked on the land sometime in the past.

Plaintiff Stratton Salidas is a member of the Coalition. He testified that in the past 10 years, he has hiked on the City's land near the Charlottesville High School and football field approximately nine times. He indicated he has taken his nephews to visit the area to enjoy the natural setting and wildlife in the area.

Plaintiff Peter Kleeman is a member of the Coalition and lives approximately a mile from the location where the Meadow Creek Parkway will intersect with Melbourne Road. He has walked or visited the land impacted by the construction easement on a number of occasions. He

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[1] Amended Complaint, p.2.

[2] Mr. Cruickshank testified that one of his rental properties had over the years decreased in value in the amount of $13,000, but offered no evidence that the decrease was attributable to any action by the City in passing the Ordinance to convey the construction easement to VDOT.

has seen deer, beaver, and a variety of birds and considers the area as having abundant wildlife. Dr. Kleeman has a doctoral degree in environmental science and engineering. He has been an active opponent of the City's decision to convey the construction easement having run for Charlottesville City Council unsuccessfully twice in an effort to vote against the easement.

Plaintiff Richard Collins is a member of the Coalition. He has been active in transportation issues in the local area for a long period. This interest in transportation has led to a designation of him as special consultant under the Natural Preservation Act with a special emphasis as a consultant regarding the Meadow Creek parkway. Dr. Collins testified that since he has opposed the Meadow Creek Parkway for a long time, that if the parkway is constructed, it would diminish and harm his role as a consultant and that his opinions would be "irrelevant" in the future. He also testified that the Rivanna Trail which runs near the area of the Charlottesville football field will be adversely affected by the parkway.[3]

Plaintiff Bob Fenwick is a member of the Coalition. Mr. Fenwick testified that several years ago, he used the athletic field next to the Charlottesville High School football field. That field will be lost when the parkway crosses the school property.[4] His last use of the field was 5 years ago. He testified he frequently uses McIntire Park and believes his use of the Park will be adversely affected if the road is permitted to cross McIntire Park.

Ms. Colette Hall is the President of the North Downtown Residents Association. The Association represents residents who live in the downtown area of Charlottesville in the vicinity where the Meadow Creek parkway will intersect with McIntire Road. She testified that the Association opposes the Meadow Creek parkway because of the anticipated increase in traffic in

[3] The Rivanna Trail is a walking and hiking trail that runs near Meadow Creek and near the proposed location of the parkway. The path of the Meadow Creek parkway is such that it crosses Meadow Creek. Under the arrangement between the City and VDOT, the Rivanna Trail will be rebuilt for use by hikers and bicycle riders.

[4] Under the agreement between the City and VDOT, any athletic fields lost will be replaced.

the neighborhoods close to the proposed interchange. As do all the plaintiffs, Ms. Hall views the road as a single project. Thus, her Association opposes this portion of the parkway even though it alone will have no immediate impact on traffic in the north downtown area.[5]

In evaluating the evidence presented, it is my conclusion that some, but not all the plaintiffs have met the applicable standards of standing to continue as plaintiffs in this case. The case law suggests that the analysis of the principles applicable to standing have different areas of focus depending on the nature of the interests asserted. Thus, in the situation where the case comes to a circuit court on a writ of certiorari from a board of zoning appeals, the applicable statute requires that the party seeking review is a "person" who is "aggrieved" by a decision of the board of zoning appeals.[6] In *Virginia Beach Beautification Commission, supra,* a commission whose purpose was to keep the city of Virginia Beach "beautiful" lacked standing to challenge on appeal a zoning board decision to grant a hotel a setback variance for a sign along the Virginia Beach expressway. 231 Va. at 419. The Supreme Court found that the Commission did not own property in proximity to where the sign would be erected nor did the Commission demonstrate a substantial interest in the board decision to grant the variance. *Id.* at 420.

In a suit for declaratory judgment, to have standing a plaintiff must show a "justiciable interest" in the subject matter of the suit such that its rights would be affected by the outcome of the case. *W.S. Carnes, Inc. v. Board of Supervisors of Chesterfield County,* 252 Va. 377, 383 (1996). In *W.S. Carnes, Inc., supra,* an association of home builders had no standing to challenge a decision by the Chesterfield Board of Supervisors which passed an ordinance to

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[5] As previously noted, the construction of the parkway is in three separate phases. The land that is the subject of this suit is part of the first phase which terminates at Melbourne Road. The second phase will run from Melbourne Road through McIntire Park to the 250 bypass. The third phase is the interchange of the parkway where it will intersect McIntire Road at the bypass. Thus any increase in traffic caused by the Meadow Creek parkway would not occur until the third phase is completed.

[6] Virginia Code Sec. 15.1-497.

impose a $125 increase in the permit fee charged for new residential construction since the association did not build houses in Chesterfield County nor had it paid for any residential building permits for new construction. *Id.*, at 383.[7]

In *Philip Morris USA Inc., v. The Chesapeake Bay Foundation Inc.*, 273. Va. 564 (2007), the Chesapeake Bay Foundation appealed to the Circuit Court of Chesterfield County a decision of the State Water Control Board granting the renewal of a discharge permit to Philip Morris to discharge waste water into the James River. The circuit court found that the Foundation lacked standing to challenge the Board's decision on the grounds it lacked individual and representational standing because there was no allegation of a "particularized injury" to the Foundation or to its members.[8] The Virginia Supreme Court reversed the circuit court on the issue of standing. The Supreme Court found that the Foundation's petition included allegations that the discharge permit would result in excessively high levels of nitrogen and phosphorus discharged into the James River causing injury to the Foundation and its members who use the James River for swimming, boating, and other recreational and educational pursuits. The Supreme Court further found that the Foundation alleged that the discharge permit failed to comply with federal and state regulations that protected uses of waterways such as the James River.[9] The Supreme Court found these allegations sufficient to give the Foundation representational and individual standing to challenge the State Water Control Board's decision to renew the discharge permit.[10] In its discussion of the applicable principles, the Court referred to several federal decisions noting that a general allegation of an injury to the environment is not

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[7] The Supreme Court in *W.S. Carnes, Inc.*, also found that the home builders association could not sue in a representative capacity, i.e., on behalf of its members, because there was no statute authorizing it to do so. 252 Va. at 383.
[8] 273 Va. at 571.
[9] 273 Va. at 579.
[10] The Court's analysis of the standing question was in the context of Article III of the United States Constitution because of the language of Va. Code Sec. 62.1-44.29 incorporating the Article III standard as was required federal Clean Air Act. Thus, the Court's analysis of the standing question is applicable here.

sufficient to have standing because it is not a legally protected interest. On the other hand, where plaintiffs "aver that they use the affected area and are persons 'for whom the aesthetic and recreational values of the area will be lessened' by the challenged activity", then there is an adequate claim of injury for purposes of standing. *Philip Morris USA Inc., supra,* quoting *Laidlaw and Sierra Club v. Morton,* 405 U.S. 727 (1972).

Guided by these decisions, my conclusion is that an objection to the City's decision to pass the June 2008 ordinance granting VDOT a construction easement because it is part of the Meadow Creek parkway where the objection is based on a belief, however strongly held, that the parkway may increase traffic in the downtown area or is contrary to the views held by persons with significant expertise in transportation issues is not a sufficiently particularized injury to have standing in this case. On the other hand, a claim that the use of the land at issue here will directly impact the future use and enjoyment of the land or that the path of the parkway will be detrimental to McIntire Park when the planned construction continues through a portion of McIntire Park is a sufficient claim of an injury and one that may or will be impacted or affected by the issues in this case. Thus this court concludes that plaintiffs Stratton Salidas, Peter Kleeman, Robert Fenwick, John Cruickshank and the Coalition to Preserve McIntire Park have standing to proceed as plaintiffs in this action. For the reasons stated, it is my conclusion that plaintiffs Richard Collins, and the North Downtown Residents Association have not alleged a sufficiently particularized injury and, therefore, do not have standing to continue as plaintiffs in this suit.

- END EXCERPTS FROM McINTIRE PARK CASE -