

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' VERIFIED MOTION
FOR
PARTIAL DISSOLUTION OF PERMANENT INJUNCTION

Plaintiffs, by Counsel, move this Honorable Court to dissolve in part its Order: Permanent Injunction entered October 15, 2019 ["Injunction"] to meet changed circumstances, the grounds for which are set forth below, with Points and Authorities later to be filed here incorporated by reference.

(1) Virginia Code § 8.01-625 gives the Circuit Court ongoing authority to dissolve an injunction "at any time when the injunction is in force." The Supreme Court of Virginia's Rule 1:1B provides that even after a notice of appeal has been filed and the appellate court has taken jurisdiction of the case, the "circuit court retains concurrent jurisdiction for the purposes specified in this Rule, including acting upon any of the matters set forth in subparts (a)(3)(A)–(H) of this Rule." Rule 1:1B(a)(1). One of the purposes for which the circuit court retains jurisdiction is "taking any other action authorized by statute or Rule of Court to be undertaken notwithstanding the expiration of the 21-day period prescribed by Rule 1:1." Rule 1:1B(a)(3)(H). The only condition is that the party requesting the action must comply with "the applicable time limitation in the statute or Rule

authorizing such action.” *Id.* That condition is satisfied because Virginia Code § 8.01-625 provides that “[a]ny court wherein an injunction has been awarded may at any time when such injunction is in force dissolve the same after reasonable notice to the adverse party.”

(2) **Existing injunction:** The Injunction currently in force *inter alia* prohibits the Defendants from removing Charlottesville's Confederate General Robert E. Lee and Lt. Gen. Thomas Jonathan "Stonewall" Jackson monuments.

(3) The Injunction was based on the Court's legal interpretations of Virginia Code §§15.2-1812, 1812.1 and 18.2-137 in opinion letters and orders (collectively the "law") as of October 2019, as well evidence regarding the balance of harm and the citizens' right to view public monuments, adduced in hearings from May 2, 2017 through September 26, 2019 (the "facts").

(4) **New law:** In its 2020 session the Virginia General Assembly Senate and House of Delegates negotiated and compromised on amendments to Va. Code §§15.2-1812, 1812.1 and 18.2-137. The Governor signed the final bill April 11, 2020 [the "2020 compromise"]. It will take effect July 1, 2020.

(5) The 2020 compromise will give localities the authority to remove war monuments or veterans' memorials ["monuments"].

(6) However, the 2020 compromise did not confer on localities the authority to "alter" or "destroy" monuments. Those words were removed from early drafts of the legislation.

(7) The 2020 compromise also prescribes a process which localities must follow to remove and relocate monuments, including published notice and a public hearing, and specifies places to relocate them: "any museum, historical society, government, or military battlefield."

(8) **New facts:** Exercising their new authority, Plaintiffs have reason to believe that the Defendants City and City Council ["City"] will hold meetings in June and July 2020 on monument relocation and may issue a Request for Proposals.

(9) However, budget shortfalls resulting from the 2020 COVID-19 emergency may limit City funds available for moving the monuments.

(10) Plaintiff Monument Fund, Inc. ["Monument Fund"] recently received an offer from a generous donor to fund moving the Confederate General Robert E. Lee monument, and possibly the Jackson monument. Several locations comporting with the new law are under consideration.

(11) The proposed move would not alter or destroy the monuments, but rather, re-erect them in a respectful and suitable manner and allow public access, in accord with the requirements of the 2020 compromise as well as the Injunction.

(12) **The public interest** is served by partially dissolving the injunction, which will:

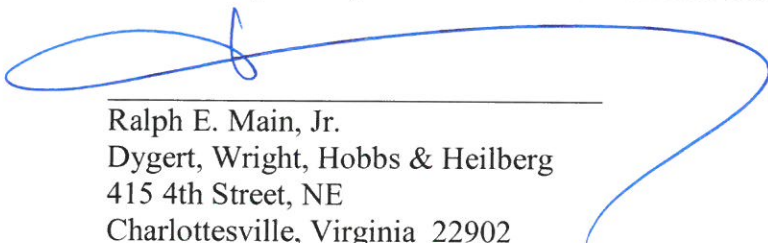
- bring its strictures in line with the changing law and evolving facts; and
- clarify what the City can and cannot legally do, in advance; and,
- remove an obstacle to a constructive resolution.

(13) The Court may convene a hearing *ore tenus*, or by video conference or teleconference in accord with the Virginia Supreme Court's Fifth Order Modifying and Extending Judicial Emergency dated 1 June 2020, encouraging means that do not involve in-person contact.

REQUEST FOR RELIEF

Plaintiffs respectfully request this Honorable Court to hold a hearing, whether in person or by video conference, on dissolving in part its Order: Permanent Injunction entered October 15, 2019, to reflect the changed circumstances in 2020.

Respectfully submitted for the Plaintiffs this 5th day of June 2020:



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

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203 Richmond Way
Richmond, VA 23173
(804) 287-6018
VSB # 70340
Counsel for Plaintiff, The Monument Fund, Inc.

VERIFICATION

City of Charlottesville, Commonwealth of Virginia ss:

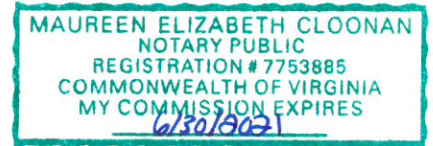
I am John B. Yellott, Jr. aka Jock Yellott, a Plaintiff in the above-captioned matter, and Executive Director of the Monument Fund, Inc., which is also a Plaintiff. I verify that I have reviewed the foregoing Plaintiffs' Verified Motion for Partial Dissolution of Permanent Injunction and that it is true and accurate to the best of my knowledge, information and belief.

John B. Yellott, Jr. *6/5/2020*
John B. ("Jock") Yellott, Jr. date

Mr. John B. ("Jock") Yellott, Jr., who is personally known to me, subscribed and swore to the truth and accuracy of the foregoing before the undersigned, a notary public in and for the City and Commonwealth aforesaid, this *5* day of *June*, 2020.

BY: *Maureen E. Cloonan* [SEAL]

My Commission expires:



CERTIFICATE OF GOOD FAITH EFFORT

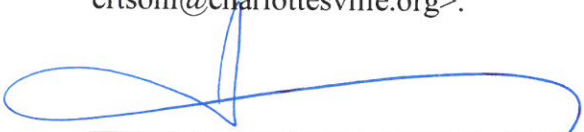
I certify that I notified Counsel for the Defendants, Lisa A. Robertson, Esq., by email, of the filing of Plaintiffs' Verified Motion for Partial Dissolution of Permanent Injunction, and the possibility of submitting a joint agreed order for the Court's consideration, to avoid the necessity of a hearing. It remains under consideration as of the date of the Certificate of Service below.

Ralph E. Main, Jr.
Ralph E. Main, Jr., VSB# 13320
email: *rmain@charlottesvillelegal.com*

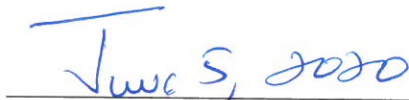
CERTIFICATE OF SERVICE

I certify that I caused a true and exact copy of the foregoing Plaintiffs' Motion for Partial Dissolution of Permanent Injunction to be served by email in accord with the Virginia Supreme

Court's Covid-19 Emergency Orders, specifically Paragraph 3 of the Fifth Order Modifying and Extending Judicial Emergency dated June 1, 2020 on use of video conferencing, telephone, teleconferencing, email, or other means that do not involve in-person contact, to Lisa Robertson, Esq., Charlottesville Deputy City Attorney, Counsel for the Defendants, at her email address of <robertsonl@charlottesville.org>.



Ralph E. Main, Jr., VSB # 13320
email: rmain@charlottesvillelegal.com



(date)