

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.

**POINTS AND AUTHORITIES**  
**SUPPORTING**  
**PLAINTIFFS' VERIFIED MOTION FOR**  
**PARTIAL DISSOLUTION OF**  
**PERMANENT INJUNCTION**

Plaintiffs, by Counsel, submit these Points and Authorities and exhibits in support of the Motion filed June 5, 2020 asking this Honorable Court to dissolve in part its Order: Permanent Injunction entered October 15, 2019 ["Injunction"] to meet changed circumstances. The Exhibits are (1) proposed Order; (2) changes in the monument law effective July 1, 2020; (3) legislative history of the changes; (4) National Park Service battlefield monument policy statement. The points and authorities are keyed to paragraphs in the proposed Order, offered as Exhibit 1.

**¶1 The Court's ongoing jurisdiction to partially dissolve a permanent injunction.**

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'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." The only condition is the party requesting the action must comply with the "applicable time limitations in the statute or Rule authorizing such action." Rule 1:1B(a)(3)(H). That condition is satisfied because Va. Code §8.01-625 allows dissolution "at any time."

Plaintiffs have found no reported Virginia case construing Va. Code §8.01-625. But Federal cases including U. S. Supreme Court decisions confirm that courts have ongoing equitable jurisdiction to modify an injunction to meet changed circumstances. See e.g. *United States v. Swift Co. Am. Wholesale Grocers Ass., et al.*, 286 U.S. 106, 114 (1932) (observing "[w]e are not doubtful of the power of a court of equity to modify an injunction in adaptation to changed conditions [even] though it was entered by consent); *Nelson v. Collins*, 700 F. 2d 145, 147 (4th Cir. 1983) (holding injunction is a "continuing decree" court may alter if changes of fact or law warrant). There are also instances in which the Virginia Supreme Court annulled part of an injunction, leaving the rest intact. See. e.g. *Buxton, et al. v. Murch, et al.*, 249 Va. 502, 510, 457 S.E.2d 81, 85 (1995) (annulling "that portion of the injunction" Court ruled incorrect; leaving the remainder in force).

### **¶¶ 2 and 3 Changed circumstances warranting partial dissolution**

The changes in law Virginia Code §§15.2-1812, 1812.1 and 18.2 137 are shown on Exhibit 2, 2020 Va. Acts Ch. 1101. Responding to the changes in law Plaintiffs explored potential sites for relocating the monuments, and funding possibilities. Subsequent provisions in the proposed Order reflect the results.

#### ¶ 4 Allowing moving and removing under new procedures

These provisions of the proposed Order track changes in the law, most of them self-explanatory. The 2020 compromise prescribes a sequence that localities must follow to remove and relocate monuments, including published notice and a public hearing, and specifies suitable sites to relocate them.

We bring to the Court's attention two proposed interpretations to clarify the law.

First, the General Assembly denied localities the authority to "alter" or "destroy" monuments. House proponents of the bill sought to confer upon localities that authority. But the Senate balked, and House and Senate conference committee negotiations eliminated the words "alter" and "destroy" from the final bill. Compare Exhibit 1, 2020 Va. Acts Ch. 1101 (omitting "alter" and "destroy") with Exhibit 3, HB 1532 Amendment in the Nature of a Substitute February 7, 2020 (including "alter" and "destroy"). This raises the question whether dismantling a monument might impermissibly "alter" it. The Order clarifies that re-erecting it elsewhere intact so that the public can view it as it originally looked, is permitted, in ¶4 (d).

Second, the new law allows relocation to "military battlefields." 2020 Va. Acts Ch 1011 Sec.1, § 15.2-1812 (B) as amended. But the National Park Service informed Plaintiffs that "[w]ith regard to Civil War parks, new commemorative works will not be approved, except where specifically authorized by legislation," and called monument relocation to a national park battlefield "difficult, if not impossible." [Exhibit 4]. In amending the law to allow relocation to a battlefield "[w]e must assume that the legislature did not intend to do a vain and useless thing." *Williams v. Commonwealth*, 190 Va. 280, 293, 56 S.E.2d 537, 543 (1949) (construing amendments that simplified taking notice of regulations of A.B.C. Board). Accordingly, the Virginia

legislature must have meant battlefield land regardless of ownership or management. Order ¶4 (d) clarifies that military battlefields include land owned by conservation organizations such as the Shenandoah Valley Battlefields Foundation, the American Battlefield Trust, or Friends of Wilderness Battlefield. That assures donors and organizations that responding to a City RFP and undertaking the time and expense of arranging a monument relocation will not be wasted effort.

### **¶ 5 Contextualization**

The Court's injunction allowed contextualization at the discretion of the City. But the changed law now requires contextualization to comport with regulations to be promulgated by the Virginia Board of Historic Resources. Exhibit 1, 2020 Va. Acts Ch. 1101, Section 4 (stating "[t]hat the Board of Historic Resources shall promulgate regulations governing the manner in which any monument or memorial may be contextualized pursuant to the provisions of this act"). In this, the new law tightens rather than relaxes the Court's injunction, as reflected in Order ¶5.

### **¶6 Appropriations, and public/private partnerships**

The Court's May 2, 2017 ruling from the bench on the temporary injunction (in the context of organizational standing) mentioned that Va. Code §15.2-1812 anticipates public/private funding partnerships, in erecting a monument. The amended law allows also funding collaboration in moving or removing one. Exhibit 1, 2020 Va. Acts Ch. 1101, Va. Code 15.2-1812 (D), as amended. The injunction is partially dissolved and restated accordingly in Order ¶6.

## ¶ 7 Referendum if requested

The new law permits petitioning the Circuit Court for an advisory referendum. Exhibit 1, 2020 Va. Acts Ch. 1101, Va. Code 15.2-1812 (c), as amended. If the City seeks a referendum, a timely grant of the petition to get the matter on upcoming ballots could be hampered by this Court's limited hearing time, and constraints imposed by the Virginia Supreme Court's Covid-19 Emergency Orders. Accordingly, Order ¶7 states that the petition, if requested, will be granted -- so long as the City presents suitable language to the Court for approval.

## CONCLUSION

Plaintiffs respectfully request this Honorable Court to partially dissolve its Permanent Injunction in accord with the proposed Order, in the interest of judicial efficiency and to take into account changed circumstances both of law and of fact.

Respectfully submitted for the Plaintiffs this \_\_\_ day of \_\_\_\_\_ 2020:

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Counsel for Plaintiffs

### CERTIFICATE OF SERVICE

I certify that I caused a true and exact copy of the foregoing Plaintiffs' Points and Authorities in Support of Motion for Partial Dissolution of Injunction, and exhibits, 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 John C. Blair, Esq., Charlottesville City Attorney, at <blairjc@charlottesville.org>, and Lisa Robertson, Esq., Charlottesville Deputy City Attorney, Counsel for the Defendants, at <robertsonl@charlottesville.org>

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Ralph E. Main, Jr., VSB# 13320  
email: [rmain@charlottesvillelegal.com](mailto:rmain@charlottesvillelegal.com)

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(date)

**EXHIBIT 1**

**Proposed Order**

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.

**ORDER:**  
**PARTIAL DISSOLUTION OF**  
**PERMANENT INJUNCTION**

This matter comes before the Court upon Plaintiffs' Motion for Partial Dissolution of Permanent Injunction filed June 5, 2020 ["Motion"], Counsel for the parties having appeared, and the Plaintiffs having submitted to the Court Points and Authorities including a proposed Order which dissolves in part and otherwise restates this Court's Order: Permanent Injunction entered October 15, 2019 ["permanent injunction"] to reflect changed circumstances. Upon consideration of the Motion, Points and Authorities, and the proposed Order, the Court doth:

(1) **ADJUDGE, ORDER, AND DECREE** that the Court has jurisdiction pursuant to Va. Code §8.01-625 which confers upon the Circuit Court ongoing authority and jurisdiction over the dissolution of injunctions "at any time when the injunction is in force;" and Va. Sup. Ct. 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 certain purposes, including *inter alia* the partial dissolution of the permanent injunction. And it is, further,



(2) **ADJUDGED, ORDERED, AND DECREED** that changed circumstances in the interval since the Court granted the temporary injunction by Order entered June 6, 2017, subsequently enlarged, and then merged and incorporated by reference in the permanent injunction entered by Order dated October 15, 2019 which include (but are not limited to) amendments to Va. Code §§15.2-1812, 1812.1, and 18.2-137, negotiated between the Senate and House of Delegates with a final version set forth in 2020 Va. Acts Ch. 1101 signed by the Governor on April 11, 2020 and taking effect July 1, 2020 ("2020 amendments"). The parties have also brought to the Court's attention factual developments bearing on interpretation of the new law. And it is, further,

(3) **ADJUDGED, ORDERED, AND DECREED** that the Court's permanent injunction which *inter alia* prohibited the Defendants from removing Charlottesville's Confederate General Robert E. Lee and Lt. Gen. Thomas Jonathan "Stonewall" Jackson monuments, but permitted planning, and contextualization, is here incorporated by reference and partially dissolved and restated as set forth below. And it is, further,

(4) **ADJUDGED ORDERED AND DECREED** that changes in Va. Code §15.2-1812 (1) (A) include that "a locality may remove," and "relocate" specified war monuments or veterans memorials ["monuments"] though the legislative history confirms that the new law does not confer upon localities the authority to alter or destroy them, and further, it prescribes a process for removal or relocation. Accordingly, the Court finds as follows:

(a) If the City seeks to move a monument, the City shall first publish notice in a newspaper of general circulation stating in detail what the City intends to do with the monuments

[the "proposal"], and specifying the time and place of a public hearing at which interested persons may present their views on the proposal, not less than (but not limited to) 30 days after publication of the notice;

(b) After completion of the hearing, at its next meeting the City Council may vote on the proposal; and/or may make changes to take into account the public comments; and,

(c) If the City Council votes to remove or relocate, it shall for a period of at least (but not limited to) 30 days, offer the monuments to any museum, historical society, government, or military battlefield ("public use") as further described in (d) below with a Request for Proposals ("RFP") which shall comport with the Virginia Public Procurement Act, Va. Code §§2.2-4300 *et seq.*; and the City may extend the RFP response deadline based on public use letters of intent conditioned upon feasibility studies, architectural or landscape architectural designs, and availability of funding, which consent shall not be unreasonably withheld; and if no acceptable proposals are received, the City may revise and republish the RFP as needed;

(d) The Court expressly finds that dismantling and re-erecting intact a monument within a reasonable time at a new location suitable for public viewing, such as a public park, or upon the grounds of a museum, historical society, government or government affiliated institution such as Virginia Military Institute, or military battlefield including land owned by battlefield conservation organizations such as the Shenandoah Valley Battlefields Foundation; the American Battlefield Trust, or Friends of Wilderness Battlefield, is not an alteration, and is a public use that comports with the law and this Court's restated injunction, and further, it is,

(5) **ADJUDGED ORDERED AND DECREED** that changes in Va. Code §15.2-1812 (1) (A) and (4) allow a locality to "contextualize" a war monument or veterans memorial ["memorial"] so long as it follows regulations to be promulgated by the Virginia Board of Historic Resources "governing the manner in which any monument or memorial may be contextualized." Accordingly, the permanent injunction is partially dissolved, and restated to allow contextualization if (a) it does not alter or destroy a memorial; and (b) comports with regulations as promulgated by the Virginia Board of Historic Resources. And further it is,

(6) **ADJUDGED ORDERED AND DECREED** that changes in Va. Code §15.2-1812 (D) now authorize appropriation of funds of the locality for relocation and contextualizing, as well as collaborating with private persons or organizations for funding. The Court expressly finds that so long as the relocation does not alter or destroy the monument, and so long as contextualization comports with Virginia Department of Historic Resources regulations to be promulgated, such public/private funding is now expressly allowed. And further, it is,

(7) **ADJUDGED ORDERED AND DECREED** that if the City seeks an advisory referendum under new Va. Code §15.2-1812 (1) (C), in view of the impending deadlines for upcoming elections and COVID-19 Virginia Supreme Court Emergency Orders, the Court will grant the petition provided that within 45 days of this Order the City shall provide the Court and the parties with acceptable language stating the specific proposal upon which the City seeks an advisory referendum. If approved the Court shall then order an election to be held thereon at a time that is in conformity with Va. Code § 24.2-682. The ballots shall be prepared, distributed, and voted, and the results of the election shall be ascertained and certified, in the manner prescribed by Va. Code § 24.2-684; and further it is,

The **CLERK** shall forward copies of this signed **ORDER** by email to Counsel for the parties.

It is so ORDERED:

ENTER: \_\_\_\_\_

DATE: \_\_\_\_\_

**WE ASK FOR THIS:**

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**SEEN AND \_\_\_\_\_:**

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Counsel for the Defendants

**EXHIBIT 2**

**2020 Va. Acts Ch. 1101**

(amending Va Code §§15.2-1812, 1812.1 and 18.2-137)

# VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

## CHAPTER 1101

*An Act to amend and reenact §§ 15.2-1812, 15.2-1812.1, and 18.2-137 of the Code of Virginia and to repeal Chapter 119 of the Acts of Assembly of 1890, relating to war memorials for veterans.*

[H 1537]

Approved April 10, 2020

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 15.2-1812, 15.2-1812.1, and 18.2-137 of the Code of Virginia are amended and reenacted as follows:**

**§ 15.2-1812. Memorials for war veterans.**

A. A locality may, within the geographical limits of the locality, authorize and permit the erection of monuments or memorials for *the veterans of any war or conflict, or for any engagement of such war or conflict*, to include the following ~~monuments or memorials~~: Algonquin (1622), French and Indian (1754-1763), Revolutionary (1775-1783), War of 1812 (1812-1815), Mexican (1846-1848), ~~Confederate or Union monuments or memorials of the Civil War Between the States~~ (1861-1865), Spanish-American (1898), World War I (1917-1918), World War II (1941-1945), Korean (1950-1953), Vietnam (1965-1973), Operation Desert Shield-Desert Storm (1990-1991), Global War on Terrorism (2000- ), Operation Enduring Freedom (2001- ), and Operation Iraqi Freedom (2003- ). ~~If such are erected, it shall be unlawful for the authorities of the locality, or any other person or persons, to disturb or interfere with any monuments or memorials so erected, or to prevent its citizens from taking proper measures and exercising proper means for the protection, preservation and care of same. For purposes of this section, "disturb or interfere with" includes removal of, damaging or defacing monuments or memorials, 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.~~ *Notwithstanding any other provision of law, general or special, a locality may remove, relocate, contextualize, or cover any such monument or memorial on the locality's public property, not including a monument or memorial located in a publicly owned cemetery, regardless of when the monument or memorial was erected, after complying with the provisions of subsection B.*

B. *Prior to removing, relocating, contextualizing, or covering any such publicly owned monument or memorial, the local governing body shall publish notice of such intent in a newspaper having general circulation in the locality. The notice shall specify the time and place of a public hearing at which interested persons may present their views, not less than 30 days after publication of the notice. After the completion of the hearing, the governing body may vote whether to remove, relocate, contextualize, or cover the monument or memorial. If the governing body votes to remove, relocate, contextualize, or cover the monument or memorial, the local governing body shall first, for a period of 30 days, offer the monument or memorial for relocation and placement to any museum, historical society, government, or military battlefield. The local governing body shall have sole authority to determine the final disposition of the monument or memorial.*

C. *A locality may, prior to initiating the provisions of subsection B, petition the judge of a circuit court having jurisdiction over the locality for an advisory referendum to be held on the question of the proposal to remove, relocate, contextualize, or cover any monument or memorial located on the locality's public property. Upon the receipt of such petition, the circuit court shall order an election to be held thereon at a time that is in conformity with § 24.2-682. The ballots shall be prepared, distributed, and voted, and the results of the election shall be ascertained and certified, in the manner prescribed by § 24.2-684.*

D. *The governing body may appropriate a sufficient sum of money out of its funds to complete or aid in the erection, removal, relocation, contextualizing, or covering of monuments or memorials to the veterans of such wars or conflicts, or any engagement of such wars or conflicts. The governing body may also make a special levy to raise the money necessary for the erection or completion of any such monuments or memorials, or to supplement the funds already raised or that may be raised by private persons, Veterans of Foreign Wars, the American Legion, or other organizations. It may also appropriate, out of any funds of such locality, a sufficient sum of money to permanently care for, protect, and preserve such monuments or memorials and may expend the same thereafter as other funds are expended.*

**§ 15.2-1812.1. Action for damage to memorials for war veterans.**

A. *If any monument, marker or memorial for war veterans as designated in §§ § 15.2-1812 and 18.2-137 is violated or encroached upon damaged or defaced, an action for the recovery of damages may be commenced by the following as follows:*

1. For a publicly owned monument, ~~marker~~ or memorial, *such action may be commenced against a person other than a locality or its duly authorized officers, employees, or agents by the attorney for the locality in which it is located; or, if no such action has commenced within sixty days following any such violation or encroachment, by any person having an interest in the matter with the consent of the governing body or public officer having control of the monument or memorial; and*

2. For a privately owned monument, ~~marker~~ or memorial *on a locality's public property, such action may be commenced by the private organization, society or museum that owns it or any member of such organization, society or museum owner of such monument or memorial. No locality or its officers, employees, or agents shall be liable for damages pursuant to this section when taking action pursuant to § 15.2-1812 except for gross negligence by a duly authorized officer, employee, or agent of the locality.*

Damages may be awarded in such amounts as necessary for the purposes of rebuilding, repairing, preserving, and restoring such memorials or monuments ~~to preencroachment condition~~. Damages other than those litigation costs recovered from any such action shall be used exclusively for said purposes.

B. Punitive damages may be recovered for reckless, willful, or wanton conduct resulting in the defacement of, malicious destruction of, unlawful removal of, or placement of improper markings, monuments, or statues on memorials for war veterans.

C. The party who initiates and prevails in an action authorized by this section shall be entitled to an award of the cost of the litigation, including reasonable ~~attorney's~~ attorney fees. 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.

**§ 18.2-137. Injuring, etc., any property, monument, etc.**

A. If any person unlawfully destroys, defaces, damages, or removes without the intent to steal any property, real or personal, not his own, or breaks down, destroys, defaces, damages, or removes without the intent to steal, any monument or memorial for war veterans, *not his own*, described in § 15.2-1812; any monument erected ~~for the purpose of marking to mark~~ the site of any engagement fought during the Civil War ~~between the States, or for the purpose of designating any memorial to designate~~ the boundaries of any city, town, tract of land, or any tree marked for that purpose, he shall be guilty of a Class 3 misdemeanor; provided that the court may, in its discretion, dismiss the charge if the locality or organization *that owns or is* responsible for maintaining the injured property, monument, or memorial files a written affidavit with the court stating it has received full payment for the injury.

B. If any person *who is not the owner of such property* intentionally causes such injury, he ~~shall be~~ *is* guilty of (i) a Class 1 misdemeanor if the value of or damage to the property, memorial, or monument is less than \$1,000 or (ii) a Class 6 felony if the value of or damage to the property, memorial, or monument is \$1,000 or more. The amount of loss caused by the destruction, defacing, damage, or removal of such property, memorial, or monument may be established by proof of the fair market cost of repair or fair market replacement value. Upon conviction, the court may order that the defendant pay restitution.

**2. That Chapter 119 of the Acts of Assembly of 1890 is repealed.**

**3. That nothing in this act shall apply to a monument or memorial located on the property of a public institution of higher education within the City of Lexington.**

**4. That the Board of Historic Resources shall promulgate regulations governing the manner in which any monument or memorial may be contextualized pursuant to the provisions of this act.**



## **EXHIBIT 3**

**H. B.1537 (amendment in the nature of a substitute, Feb. 7, 2020)**  
(early version including authority to "alter" and "destroy")

20107987D

HOUSE BILL NO. 1537

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on Counties, Cities and Towns  
on February 7, 2020)

(Patrons Prior to Substitute—Delegates McQuinn and Hudson [HB 1625])

A BILL to amend and reenact §§ 15.2-1812, 15.2-1812.1, and 18.2-137 of the Code of Virginia and to repeal Chapter 119 of the Acts of Assembly of 1890, relating to war memorials for veterans.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-1812, 15.2-1812.1, and 18.2-137 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-1812. Memorials for war veterans.

A. A locality may, within the geographical limits of the locality, authorize and permit the erection of monuments or memorials for the veterans of any war or conflict, or for any engagement of such war or conflict, to include the following monuments or memorials: Algonquin (1622), French and Indian (1754-1763), Revolutionary (1775-1783), War of 1812 (1812-1815), Mexican (1846-1848), Confederate or Union monuments or memorials of the Civil War Between the States (1861-1865), Spanish-American (1898), World War I (1917-1918), World War II (1941-1945), Korean (1950-1953), Vietnam (1965-1973), Operation Desert Shield-Desert Storm (1990-1991), Global War on Terrorism (2000- ), Operation Enduring Freedom (2001- ), and Operation Iraqi Freedom (2003- ). If such are erected, it shall be unlawful for the authorities of the locality, or any other person or persons, to disturb or interfere with any monuments or memorials so erected, or to prevent its citizens from taking proper measures and exercising proper means for the protection, preservation and care of same. For purposes of this section, "disturb or interfere with" includes removal of, damaging or defacing monuments or memorials; 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. Notwithstanding any other provision of law, general or special, a locality may remove, relocate, contextualize, cover, or alter any such monument or memorial on the locality's public property upon the affirmative vote of its governing body, regardless of when the monument or memorial was erected.

B. Prior to removing, relocating, or destroying any such publicly owned monument or memorial, the local governing body shall first, for a period of 30 days, offer the monument or memorial for relocation and placement to any museum, historical society, government, or military battlefield. The local governing body shall have sole authority to determine the final disposition of the monument or memorial.

The governing body may appropriate a sufficient sum of money out of its funds to complete or aid in the erection, contextualization, covering, removal, relocation, or alteration of monuments or memorials to the veterans of such wars or conflicts, or any engagement of such wars or conflicts. The governing body may also make a special levy to raise the money necessary for the erection or completion of any such monuments or memorials, or to supplement the funds already raised or that may be raised by private persons, Veterans of Foreign Wars, the American Legion, or other organizations. It may also appropriate, out of any funds of such locality, a sufficient sum of money to permanently care for, protect, and preserve such monuments or memorials and may expend the same thereafter as other funds are expended.

§ 15.2-1812.1. Action for damage to memorials for war veterans.

A. If any monument, marker or memorial for war veterans as designated in §§ § 15.2-1812 and 18.2-137 is violated or encroached upon damaged or defaced, an action for the recovery of damages may be commenced by the following as follows:

1. For a publicly owned monument, marker or memorial, such action may be commenced against a person other than a locality or its duly authorized officers or employees by the attorney for the locality in which it is located; or, if no such action has commenced within sixty days following any such violation or encroachment, by any person having an interest in the matter with the consent of the governing body or public officer having control of the monument or memorial; and

2. For a privately owned monument, marker or memorial on a locality's public property, such action may be commenced by the private organization, society or museum that owns it or any member of such organization, society or museum owner of such monument or memorial. No locality or its officers, employees, or agents shall be liable for damages pursuant to this section when taking action pursuant to § 15.2-1812 except for gross negligence by a duly authorized officer, employee, or agent of the locality.

Damages may be awarded in such amounts as necessary for the purposes of rebuilding, repairing, preserving, and restoring such memorials or monuments to preencroachment condition. Damages other

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60 than those litigation costs recovered from any such action shall be used exclusively for said purposes.

61 B. Punitive damages may be recovered for reckless, willful, or wanton conduct resulting in the  
62 defacement of, malicious destruction of, unlawful removal of, or placement of improper markings,  
63 monuments, or statues on memorials for war veterans.

64 C. The party who initiates and prevails in an action authorized by this section shall be entitled to an  
65 award of the cost of the litigation, including reasonable ~~attorney's~~ attorney fees. The provisions of this  
66 section shall not be construed to limit the rights of any person, organization, society, or museum to  
67 pursue any additional civil remedy otherwise allowed by law.

68 **§ 18.2-137. Injuring, etc., any property, monument, etc.**

69 A. If any person unlawfully destroys, defaces, damages, or removes without the intent to steal any  
70 property, real or personal, not his own, or breaks down, destroys, defaces, damages, or removes without  
71 the intent to steal, any monument or memorial for war veterans, *not his own*, described in § 15.2-1812;  
72 any monument erected ~~for the purpose of marking to mark~~ the site of any engagement fought during the  
73 ~~Civil War between the States, or for the purpose of designating any memorial to designate~~ the  
74 boundaries of any city, town, tract of land, or any tree marked for that purpose, he shall be guilty of a  
75 Class 3 misdemeanor; provided that the court may, in its discretion, dismiss the charge if the locality or  
76 organization *that owns or is* responsible for maintaining the injured property, monument, or memorial  
77 files a written affidavit with the court stating it has received full payment for the injury.

78 B. If any person *who is not the owner of such property* intentionally causes such injury, he ~~shall be~~  
79 *is* guilty of (i) a Class 1 misdemeanor if the value of or damage to the property, memorial or monument  
80 is less than \$1,000 or (ii) a Class 6 felony if the value of or damage to the property, memorial or  
81 monument is \$1,000 or more. The amount of loss caused by the destruction, defacing, damage or  
82 removal of such property, memorial or monument may be established by proof of the fair market cost of  
83 repair or fair market replacement value. Upon conviction, the court may order that the defendant pay  
84 restitution.

85 **2. That Chapter 119 of the Acts of Assembly of 1890 is repealed.**

## **EXHIBIT 4**

**Nat. Park Service email to Monument Fund, Inc. June 8, 2020**

(stating "standing NPS policies would . . . make the movement of any monument to the park difficult, if not impossible.")

From: **Hennessy, John J** <[John\\_Hennessy@nps.gov](mailto:John_Hennessy@nps.gov)>  
Date: Mon, Jun 8, 2020 at 1:16 PM  
Subject: Re: [EXTERNAL] From NPS.gov: moving statues of Lee or Jackson to Chancellorsville  
To: [CvilleMonuments@gmail.com](mailto:CvilleMonuments@gmail.com) <[CvilleMonuments@gmail.com](mailto:CvilleMonuments@gmail.com)>

Good afternoon,

Thank you for your inquiry regarding the possible relocation of monuments to Fredericksburg and Spotsylvania National Military Park. .

You might be interested to know that the park received similar inquiries in 2016. Here is a summary of policies that shaped our response at that time, and would likely shape our response in the event of a similar request today.

Central to any discussion about relocating historic monuments or structures to or within NPS areas are the published NPS Management Policies, which can be read here: <http://www.nps.gov/policy/MP2006.pdf>

If you take a look at Section 9.6.2 - Interpretive Works That Commemorate - you'll notice that the policy states:

*"With regard to Civil War parks, new commemorative works will not be approved, except where specifically authorized by legislation. However, consideration may be given to proposals that would commemorate groups that were not allowed to be recognized during the commemorative period.*

*In those parks where there is legislative authorization to erect commemorative works, superintendents will prepare a plan to control their size, location, materials, and other factors necessary to protect overall integrity of the park. The plan may include a requirement for an endowment to cover the costs maintaining the commemorative work."*

Also of importance to this discussion are policies related to the relocation of historic structures. Again, NPS management policies state:

*"The Park Service will not acquire historic structures for relocation to parks unless those structures were removed from the park and are necessary to achieve the park purpose or authorized legislation."*

The National Park Service generally considers any resource over 50-years old as historic, and our policies consider monuments to be structures. Standing NPS policies would therefore make the movement of any monument to the park difficult, if not impossible..

I hope this information is helpful in your planning. If you have questions, I am happy to answer them, or feel free to contact Superintendent Kirsten Talken-Spaulding. Her email address is [kirsten\\_talken-spaulding@nps.gov](mailto:kirsten_talken-spaulding@nps.gov)

Sincerely,

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