

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

FREDERICK W. PAYNE

JOHN BOSLEY YELLOTT, JR.  
(aka Jock Yellott)

EDWARD D. TAYLOE, II

BETTY JANE FRANKLIN PHILLIPS

EDWARD BERGEN FRY

VIRGINIA C. AMISS

STEFANIE MARSHALL

CHARLES L. WEBER, JR.

LLOYD THOMAS SMITH, JR.

VIRGINIA DIVISION, SONS OF  
CONFEDERATE VETERANS, INC.

ANTHONY M. GRIFFIN

BRITTON FRANKLIN EARNEST, SR.

THE MONUMENT FUND, INC.,

Plaintiffs,

v.

Case No. CL17-\_\_\_\_\_

CITY OF CHARLOTTESVILLE, VIRGINIA  
Serve: S. Craig Brown, City Attorney  
City Hall  
606 East Market Street  
Charlottesville, Virginia 22902

(City of Charlottesville)

CHARLOTTESVILLE CITY COUNCIL

Serve: S. Craig Brown, City Attorney  
City Hall  
606 East Market Street  
Charlottesville, Virginia 22902  
(City of Charlottesville)

ATRI MICHAEL SIGNER

206 5<sup>TH</sup> Street, SW, Apt. E  
Charlottesville, Virginia 22903  
(City of Charlottesville)

WESLEY JOMONT BELLAMY

620 7 ½ Street, SW  
Charlottesville, Virginia 22903  
(City of Charlottesville)

ROBERT FRANCIS FENWICK, JR.

901 East Jefferson Street  
Charlottesville, Virginia 22902  
(City of Charlottesville)

KRISTIN LAYNG SZAKOS

1132 Otter Street  
Charlottesville, Virginia 22901  
(City of Charlottesville)

KATHLEEN MARY GALVIN

712 Lyons Avenue  
Charlottesville, Virginia 22902  
(City of Charlottesville),

Defendants.

**COMPLAINT**

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

### **Jurisdiction**

1. That this complaint concerns two public parks and two public monuments located in the City of Charlottesville, Virginia. One park is known as Lee Park, which Park is improved by a statue of and monument to General Robert E. Lee. One park is known as Jackson Park, which is improved by a statue of and monument to Lieutenant General Thomas Jonathan “Stonewall” Jackson. Both monuments are memorials of the War Between the States and to veterans of that War. The Parks and monuments were donated to the City by native son and benefactor, Paul Goodloe McIntire.

### **Parties**

2. That Plaintiff Frederick W. Payne (hereinafter “Payne”) is a resident of the City of Charlottesville, Virginia. He is a registered voter in the City, owns real estate in the City, and pays City real estate taxes, personal property taxes and other taxes. He utilizes and enjoys both Lee Park and Jackson Park and the monuments erected therein on a regular basis.

3. That Plaintiff John Bosley Yellott, Jr., aka Jock Yellott (hereinafter “Yellott”) is a resident of the City of Charlottesville, Virginia. He is a registered voter in the City and pays City personal property taxes. He is the Executive Director of Plaintiff The Monument Fund, Inc. Yellott has worked to preserve both the Lee and Jackson monuments, has a financial interest in the outcome of the litigation, uses one or both Parks daily, and personally conducts history tours describing the monuments.

4. That Plaintiff Edward D. Tayloe, II (hereinafter “Tayloe”) is a resident of the City of Charlottesville, Virginia. He is a registered voter in the City, owns real estate

in the City, and pays City real estate taxes and personal property taxes. He is a combat veteran of the United States Army, having served in the Special Forces Group in Vietnam. He is a past president of The Lee-Jackson Foundation and has a special interest in the protection and preservation of war memorials and monuments located in the City, including those of Generals Lee and Jackson. The Lee-Jackson Foundation contributed money to the 1997-1999 restoration of the statues (see paragraph 21, *infra*).

5. That Plaintiff Betty Jane Franklin Phillips (hereinafter “Phillips”) is a collateral descendant of Paul Goodloe McIntire. In the event of a reversion of the Lee and Jackson statues and Lee Park and Jackson Park, or an award of damages for the conduct of Defendants, she will represent the interests of the McIntire family.

6. That Plaintiff Edward Bergen Fry (hereinafter “Fry”) is the great-nephew of Henry Shrady, the sculptor engaged by Paul Goodloe McIntire to create the Lee monument. He resides in Albemarle County, Virginia. He has an interest in protecting the Lee monument on account of his ancestral connection to the sculptor, and also because Henry Shrady is a sculptor of note who created the Ulysses S. Grant Memorial, which is located in Union Square, west of the United States Capitol Building.

7. That Plaintiff Virginia C. Amiss (hereinafter “Amiss”) is a resident of the City of Charlottesville, Virginia. She is a registered voter in the City, owns real estate in the City, and pays City real estate taxes and personal property taxes.

8. That Plaintiff Stefanie Marshall (hereinafter “Marshall”) is a resident of Albemarle County, Virginia. She is Chairman of Plaintiff The Monument Fund, Inc. She

personally expended money and effort in cleaning and removing graffiti from the Lee monument in 2011 and in 2015.

9. That Plaintiff Charles L. Weber, Jr. (hereinafter “Weber”) is a resident of the City of Charlottesville, Virginia. He is a registered voter in the City, owns real estate in the City, and pays City real estate taxes, personal property taxes and other taxes. He is a combat veteran of the United States Navy, having served as a fighter pilot in Vietnam. He has a special interest in the protection and preservation of war memorials and monuments located in the City, including those of Generals Lee and Jackson.

10. That Plaintiff Lloyd Thomas Smith, Jr. (hereinafter “Smith”) is a resident of the City of Charlottesville, Virginia. He is a registered voter in the City, owns real estate in the City, and pays City real estate taxes, personal property taxes and other taxes. He is a combat veteran of the United States Marine Corps, having served in the Korean War. He has a special interest in the protection and preservation of war memorials and monuments located in the City, including those of Generals Lee and Jackson. He was the agent for a group of private citizens who donated money for the restoration of the Lee and Jackson monuments in 1997, 1998 and 1999 (see paragraph 21, *infra*). He personally negotiated with the City concerning the donation and the conditions associated with the donation.

11. That Plaintiff Virginia Division, Sons of Confederate Veterans, Inc., (hereinafter “Virginia Division, SCV”) is a Virginia corporation. Its Commander is Plaintiff Anthony M. Griffin (hereinafter “Griffin”), a resident of the Commonwealth of Virginia. Plaintiff Britton Franklin Earnest, Sr. (hereinafter “Earnest”) is a member of the

Board of Directors of Virginia Division, SCV, and serves as the Heritage Defense Coordinator for Virginia Division, SCV. He is a resident of the Commonwealth of Virginia. These Plaintiffs have an interest in preserving and protecting the Lee and Jackson monuments and the parks in which they are located. Plaintiff Virginia Division, SCV contributed funds to the 1997-1999 restoration of the statues (see paragraph 21, *infra*) and has also raised and disbursed money for this litigation.

12. That Plaintiff The Monument Fund, Inc. (hereinafter “Monument Fund”), is a non-profit 501(c)(3) corporation operating under the laws of the Commonwealth of Virginia, and has an interest in preserving and protecting the Lee and Jackson monuments. The purpose of the Monument Fund is to support historic preservation with a focus on monuments, memorials and statues, and the grounds that frame them, and where necessary, to fund litigation to protect and preserve them. Plaintiff Monument Fund has also raised and disbursed money for this litigation.

13. That Defendant City of Charlottesville, Virginia (hereinafter “City”) is a municipal corporation and a political subdivision of the Commonwealth of Virginia. The City owns the Lee statue, Lee Park, the Jackson statue, and Jackson Park.

14. That Defendant Charlottesville City Council (hereinafter “City Council”) is the governing body of the City. Its powers are conferred by the General Assembly of the Commonwealth of Virginia.

15. That Defendants Signer, Bellamy, Fenwick, Szakos and Galvin are the five (5) members of City Council.

### **Monuments, Memorials And Parks**

16. That by letter of R. A. Watson, attorney for Paul Goodloe McIntire, dated February 5, 1918, to the Mayor of the City, Mr. Watson stated that Mr. McIntire wished to present to the City the “Venable Property” (now known as Lee Park) for the purpose of establishing a park, and that he would cause to be erected in the park an equestrian statue of General Robert E. Lee. This letter appears in Charlottesville Common Council Book E, and a copy is attached hereto as Exhibit A. By Resolution dated February 14, 1918, which was then approved by the City Common Council and the Board of Alderman, the gift was accepted. The Resolution noted that “an equestrian statue of our beloved hero, General Robert E. Lee”, would be erected in the center of the park. A copy of the Resolution, which appears in City Ordinance Book 1, is attached hereto as Exhibit B. Nowhere does the Resolution accepting the gift or the deed reserve unto the City or its governing body the power to name or rename the park or to remove the Lee statue

17. That by deed dated June 14, 1918 and recorded in the Clerk’s Office of the Circuit Court of the City of Charlottesville, Virginia in Deed Book 32 at Page 7, Paul Goodloe McIntire caused the land now known as Lee Park to be donated to the City for use as a public park. The deed is attached as Exhibit C. The deed stipulates that a statue of General Robert E. Lee will be erected on the property. The land and statue were officially dedicated to the City on May 21, 1924. The conveyance was made on the condition that no “buildings” be erected on the park, and gave the City the “right and power to control, regulate and restrict the use” of the property. Nowhere does the Resolution accepting the gift or the deed reserve unto the City or its governing body the

power to name or rename the park or to remove the Lee statue. The City unconditionally accepted the gifts of the property and the statue.

18. That on or about May 21, 1924, University of Virginia President Edwin A. Alderman accepted McIntire's gift of the Lee statue on behalf of the City of Charlottesville and the County of Albemarle.

19. That by deed dated December 24, 1918 and recorded in the Clerk's Office of the Circuit Court of the City of Charlottesville, Virginia in Deed Book 32 at Page 240, Paul Goodloe McIntire caused the land now known as Jackson Park to be donated to the City for use as a public park. The deed is attached as Exhibit D. The deed stipulates that the property be known as "Jackson Park". The conveyance was made on the condition that no "buildings" be erected on the park, and also gave the "authorities" of the City the "right and power to control, regulate and restrict the use" of the property. The gift was accepted by the City on January 18, 1919. See Extract from Minutes of the Board of Aldermen held on January 13, 1919, a copy of which is attached hereto as Exhibit E. McIntire subsequently donated a statue of Confederate Lieutenant General Thomas Jonathan Jackson to the City and caused it to be placed in Jackson Park. The Park and statue were dedicated to the City on October 19, 1921. Neither the resolution accepting the gift nor the deed itself reserve unto the City or its governing body the power to name or rename the park or to remove the Jackson statue. The City unconditionally accepted the gifts of the property and the statue.

20. That in a Resolution dated January 18, 1926, thanking McIntire for the gifts of property that would become McIntire Park and Washington Park, City Council

said as follows: “These new parks and play grounds together with the library, the parks and play grounds and statues already given to the City by Mr. McIntire have added beauty to the City which is without equal and will stand as perpetual monuments and reminders to future generations of the greatest benefactor in the history of the City.”

21. That on or about November 26, 1997, the City accepted the offer of \$43,750.00 in donated private funds to restore the statues of Generals Lee and Jackson. The City’s acceptance included an agreement to maintain records of the restoration perpetually, to establish a program of periodic maintenance, and to present an appropriate ceremony celebrating the restoration. In May 1998 the City contracted bronze restorer Nicolas F. Veloz to clean and restore the bronze statues of Generals Lee and Jackson. On or about September 26, 1999 the City accepted the re-dedication of the cleaned and restored Lee monument in a ceremony at its unveiling.

### **Statutory Provisions**

22. That the Lee statue and the Jackson statue are Confederate monuments and memorials of the War Between the States protected by the provisions of Section 15.2-1812 of the Code of Virginia, 1950, as amended. Code Section 15.2-1812 provides in part as follows:

If such are erected, it shall be unlawful for the authorities of the locality, or any other person or persons, to disturb or interfere with any monuments or memorials so erected, or to prevent its citizens from taking proper measures and exercising proper means for the protection, preservation and care of same. For purposes of this section, “disturb or interfere with” includes removal of, damaging or defacing monuments or memorials,....

The Lee statue and the Jackson statue are also memorials to war veterans of the War Between the States.

23. That Section 15.2-1812.1 of the Code of Virginia, 1950, as amended, creates an additional private cause of action if any monument, marker or memorial for war veterans described in Code Section 15.2-1812 and Code Section 18.2-137 is “violated or encroached upon”. The action may be undertaken by any person having an interest in the matter if the attorney of the locality in which the publicly owned monument, marker or memorial has not commenced action within sixty days following any such violation. Section 15.2-1812.1 allows recovery of punitive damages for “reckless, willful or wanton conduct resulting in the defacement of, malicious destruction of, unlawful removal of...monuments or statues on [*sic*] memorials for war veterans.” This Code section also allows recovery of litigation costs, including reasonable attorney’s fees, if the party who initiates the action prevails.

24. That Section 18.2-137 of the Code of Virginia, 1950, as amended, makes it a criminal offense to “unlawfully ... remove...any monument or memorial for war veterans described in § 15.2-1812.”

25. That the Lee statue, Lee Park, the Jackson statue, and Jackson Park, are subject to and protected by the foregoing statutes.

26. That Defendants are required by law to protect and to preserve the aforesaid historic monuments, where Section 15.2-1812 of the Code of Virginia, 1950, as amended, proscribes the authorities of a locality, or any other person or persons, from

disturbing or interfering with any monuments or memorials erected as monuments or memorials for any war or conflict, to include removal of, damaging, or defacing such monuments or memorials, such as the aforesaid monuments.

27. That Defendants are required by law to protect and to preserve the aforesaid monuments where Section 18.2-137 of the Code of Virginia, 1950, as amended, prescribes that if any person unlawfully destroys, defaces, damages, or removes ... any monument or memorial for war veterans described in Section 15.2-1812 of the Code of Virginia, 1950, as amended, shall be Guilty of a Class 3 misdemeanor, ... and that if any person intentionally causes such injury, he shall be guilty of ... a Class 6 felony if the value of or damage to the memorial or monument is \$1,000.00 or more.

#### **City Council Resolutions**

28. That on February 6, 2017 three (3) of the members of City Council purported to pass a Resolution that the City remove the statue of Robert E. Lee from the park currently known as Lee Park. Defendants Szakos, Bellamy and Fenwick voted for the Resolution. Defendants Signer and Galvin voted against the Resolution. A copy of the Resolution is attached hereto as Exhibit F.

29. That on February 6, 2017 three (3) of the members of City Council purported to pass a Resolution that the park known as Lee Park in the City of Charlottesville be renamed. The votes for and against the Resolution were the same as alleged in foregoing paragraph 27. A copy of the Resolution is attached hereto as Exhibit G.

30. That on February 6, 2017 the members of City Council unanimously purported to pass a Resolution, among other things, to redesign and transform Jackson Park, to add a new memorial to Jackson Park, redesign Lee Park, and to support a renaming of Jackson Park. A copy of the Resolution is attached hereto as Exhibit H.

31. That the said members of City Council, in purporting to adopt the aforesaid Resolutions, voted to disturb or interfere with, to include removal of, damaging, or defacing, and to destroy, deface, damage, or remove, or alter the aforesaid monuments of Lee and Jackson, which constitute monuments or memorials for the War Between the States and monuments or memorials for war veterans, with no knowledge of or regard for the cost or the legality of their actions, and in total disregard of the language of Virginia Code Section 15.2-1812.

32. That implementation of the aforesaid Resolutions will involve considerable expenditure of taxpayer funds. The City Manager indicated to City Council that the estimated cost of removing and relocating the Lee monument would be \$330,000.00. The report on which he relied is attached as Exhibit I. Exhibit H provides for a budget not to exceed \$1,000,000.00 to implement the provisions of the Resolution. Whatever the cost, it will be borne by the taxpayers of the City, including those of Plaintiffs who are City residents and taxpayers.

33. That the attorney for the City has not commenced an action for the violations alleged herein within sixty (60) days as provided in Code Section 15.2-1812.1 (A)(1). By letter dated February 15, 2017 to Fred D. Taylor, the Charlottesville City

Attorney stated that he declined to commence an action pursuant to said Code Section. A copy of the letter is attached as Exhibit J.

34. That Plaintiffs are persons who have an interest in this matter. In addition, Plaintiffs have an interest in protecting and preserving the Lee and Jackson monuments and the parks in which they are situated.

### **Causes Of Action**

#### **Count One**

#### **Statutory Violations**

35. That Plaintiffs incorporate herein and re-aver the allegations set forth in foregoing paragraphs 1 through 34.

36. That the purported action of members of City Council directing the removal of the Lee statue from Lee Park is a direct violation of Code Section 15.2-1812, thereby creating a cause of action for Plaintiffs against Defendants under Code Section 15.2-1812.1.

37. That removal of the Lee statue from Lee Park is also both a violation of the statute and an encroachment upon the statue.

38. That removal of the Lee statue from Lee Park is also in violation of Code Section 18.2-137.

39. That at the time the members of City Council purported to pass the foregoing Resolutions, they were charged with knowledge of the applicable statutes (see paragraphs 22, 23 and 24, *supra*), of the provisions of the deeds gifting the parks and statues to the City, and of the agreements described in foregoing paragraph 21. During the

public deliberations of the members of City Council, there was discussion about obtaining an opinion from the Attorney General of the Commonwealth of Virginia before any action was taken as to the legality of their proposed actions. Upon information and belief, Plaintiffs allege that no such opinion was ever requested or issued. Several of the members of City Council acknowledged that the matter would likely precipitate litigation.

40. That in intentionally voting for the removal of the Lee statue from Lee Park, Defendants Szakos, Bellamy and Fenwick acted in a grossly negligent, reckless, willful, wanton and intentional manner, and are thus subject to punitive damages. They are not immune from liability for intentional or willful misconduct or gross negligence under Section 15.2-1405 of the Code of Virginia, 1950, as amended, and other provisions of general law, for their conduct.

41. That Defendants Szakos, Bellamy and Fenwick are further liable to Plaintiffs for their reasonable litigation costs and attorney's fees incurred in connection with this statutory violation (Code Section 15.2-1812.1).

## **Count Two**

### **Ultra Vires**

42. That Plaintiffs incorporate herein and re-aver the allegations set forth in foregoing paragraphs 1 through 41.

43. That Defendants City, City Council, Szakos, Bellamy, Fenwick, Signer and Galvin have no legal authority to remove the Lee statue from Lee Park, to rename Lee Park, to place additional monuments in Jackson Park, or to rename Jackson Park.

44. That the February 6, 2017 Resolutions to remove the Lee monument and to rename and to redesign Lee Park and to redesign and transform Jackson Park, violate the Dillon Rule, which narrowly defines the power of local governments and states that if there is any reasonable doubt whether a power has been conferred on a local government, then the power has not been conferred, and Virginia has not provided such home rule authority to its local governments.

45. That therefore the individual members of City Council acted outside the scope of their lawful authority and are thereby subject in their individual capacities to claims for damages and other relief.

46. That insofar as the Resolutions attached as Exhibits F, G and H purport to address the matters set forth in foregoing paragraph 43, they are void and of no effect.

### **Count Three**

#### **Violations Of Terms Of Gifts**

47. That Plaintiffs incorporate herein and re-aver the allegations set forth in foregoing paragraphs 1 through 46.

48. That the gifts of the Lee statue, Lee Park, the Jackson statue and Jackson Park were charitable gifts made to the City by Paul Goodloe McIntire.

49. That the City accepted the gifts.

50. That the City holds such gifts in trust for the use, benefit and enjoyment of its citizens, including Plaintiffs Payne, Yellott, Tayloe, Amiss, Weber and Smith.

51. That the City Council Resolutions attached hereto as Exhibits F, G and H violate the terms of the gifts.

52. That the City, City Council and the individual members of City Council do not have the legal authority to modify the terms of the gifts.

53. That the Resolutions attached hereto as Exhibits F, G and H (insofar as it applies to the Lee and Jackson statues and Parks) are therefore void and of no effect.

54. That the Resolutions, as alleged in preceding paragraph 52, violate the terms and intentions of the original gifts of the statues and Parks, thereby creating a cloud on the titles to the Parks to the detriment of the residents and taxpayers of the City, including the individual Plaintiffs in this case.

Wherefore Plaintiffs pray that they be granted the following relief:

1. That the Court determine and declare that the Resolutions passed by Council (Exhibits F, G and H), insofar as they affect Lee Park, the Lee monument, Jackson Park, and the Jackson monument, be declared in violation of the laws of the Commonwealth of Virginia and therefore that they are void and of no effect.

2. That Defendants be temporarily and permanently enjoined from removing the Lee monument from Lee Park, renaming Lee Park, redesigning Lee Park, and from redesigning and transforming and renaming Jackson Park.

3. That Plaintiffs recover and have monetary judgments against each of the Defendants Szakos, Bellamy, Fenwick, Signer and Galvin for actual damages in an

amount to be determined by the Court, but not less than \$500.00 for each Plaintiff, and for punitive damages against each such Defendant in the sum of \$100,000.00, with interest on said judgments at the legal rate from February 6, 2017.

4. That Plaintiffs recover from all Defendants their costs and attorney's fees expended herein.

5. That Plaintiffs have such other and further relief as the nature of their case may require.

Respectfully Submitted,

FREDERICK W. PAYNE  
JOHN BOSLEY YELLOTT, JR.  
EDWARD D. TAYLOE, II  
BETTY JANE FRANKLIN PHILLIPS  
EDWARD BERGEN FRY  
VIRGINIA C. AMISS  
STEFANIE MARSHALL  
CHARLES L. WEBER, JR.  
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VIRGINIA DIVISION, SONS OF  
CONFEDERATE VETERANS, INC.  
ANTHONY M. GRIFFIN  
BRITTON FRANKLIN EARNEST, SR.  
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VSB # 90442  
Counsel for Plaintiffs

VERIFICATION

\_\_\_\_\_(SEAL)  
FREDERICK W. PAYNE

STATE OF VIRGINIA AT LARGE

CITY/COUNTY OF \_\_\_\_\_, to-wit:

This day personally appeared before me, Frederick W. Payne, who is personally known to me, and who, under penalty of perjury, made oath that the allegations set forth in the foregoing complaint are, according to the best of his knowledge, information and belief, true and correct.

Subscribed and sworn to before me this \_\_\_\_\_ day of March, 2017.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Registration Number: \_\_\_\_\_

VERIFICATION

\_\_\_\_\_(SEAL)  
JOHN BOSLEY YELLOTT, JR.

STATE OF VIRGINIA AT LARGE

CITY/COUNTY OF \_\_\_\_\_, to-wit:

This day personally appeared before me, John Bosley Yellott, Jr., who is personally known to me, and who, under penalty of perjury, made oath that the allegations set forth in the foregoing complaint are, according to the best of his knowledge, information and belief, true and correct.

Subscribed and sworn to before me this \_\_\_\_\_ day of March, 2017.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Registration Number: \_\_\_\_\_

VERIFICATION

\_\_\_\_\_(SEAL)  
BRITTON FRANKLIN EARNEST, SR.

STATE OF VIRGINIA AT LARGE

CITY/COUNTY OF \_\_\_\_\_, to-wit:

This day personally appeared before me, Britton Franklin Earnest, Sr., who is personally known to me, and who, under penalty of perjury, made oath that the allegations set forth in the foregoing complaint are, according to the best of his knowledge, information and belief, true and correct.

Subscribed and sworn to before me this \_\_\_\_\_ day of March, 2017.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Registration Number: \_\_\_\_\_

