

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

TREVILLIAN STATION BATTLEFIELD FOUNDATION, INC.

and

**THE RATCLIFFE FOUNDATION,
Plaintiffs,**

vs.

Case No.

CITY OF CHARLOTTESVILLE,

by and through Lisa Robertson, Esq., in her capacity as City Attorney
605 E. Main Street, 2nd Floor
Charlottesville VA 22902

and

CHARLOTTESVILLE CITY COUNCIL

by and through Lisa Robertson, Esq., in her capacity as City Attorney
605 E. Main Street, 2nd Floor
Charlottesville VA 22902

and

JEFFERSON SCHOOL AFRICAN AMERICAN HERITAGE CENTER, INC.,

by and through its registered agent
Carlton S. Gregory
233 4th Street NW Suite A
Charlottesville Va 22903

Defendants.

**VERIFIED COMPLAINT
and
PETITION FOR INJUNCTION**

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

Summary

(1) The City of Charlottesville ["City"] issued a formal Solicitation for Offers ["Solicitation"] for contracts for services for the removal and relocation, and contextualization, of two monuments to veterans of the Civil War: statues of Confederate Generals Robert E. Lee ["Lee monument"] and Thomas Jonathan "Stonewall" Jackson ["Jackson monument"]. Trevillian Station Battlefield Foundation, Inc., ["Trevillian Battlefield"] and The Ratcliffe Foundation on behalf of one of its holdings Ellenbrook Museum ["Ratcliffe/Ellenbrook"], submitted offers to relocate the Lee and Jackson monuments. Defendant Jefferson School African American Heritage Center, Inc., ["Center"] also submitted an offer, proposing to arrange for a foundry to pick up the Lee monument from City storage and relocate it to the foundry premises to be melted down, and for an art studio to take and repurpose the granite pedestal.

(2) Without public announcement of offers; without vetting which offers qualified as responsive; without competitive negotiations; without a contract award; and without advance notice to the public -- Charlottesville City Council voted after midnight on December 7, 2021 on a motion for a resolution to accept the Center's melt-down offer ["Midnight Resolution"].

(3) The City can legally remove, relocate, contextualize or cover the Lee monument, but the General Assembly denied the City authority to alter or destroy it. And a foundry is not a museum, historical society, government, or military battlefield, which are the only lawful recipients for placement of a relocated monument. The City acted outside its authority. It also

flouted the Freedom of Information Act, the Virginia state procurement law, and its own procurement ordinances.

(4) This suit seeks to void the Midnight Resolution; to enjoin performance; to require the City to re-compete the Solicitation, and to debar the Center from competing with an illegal offer; or in the alternative equitable relief and an award of monetary damages as against the Defendants jointly and severally for restoration of the Lee monument as needed, and in addition award of all court costs, litigation expenses, and attorney's fees to the Plaintiffs.

Parties

(5) Plaintiff The Ratcliffe Foundation is a private foundation located in Tazewell, Va., which owns and manages the Ellenbrook Museum, located in Rosefield, Va. [together, "Ratcliffe/Ellenbrook"]. The Ratcliffe Foundation was an offeror or prospective offeror regarding the City Solicitation.

(6) Plaintiff Trevillian Station Battlefield Foundation, Inc. [Trevillian Battlefield"] is a 501(C)(3) nonprofit organization incorporated in Virginia which owns and manages over 2500 acres of battlefield at Travillion Station where the largest of all cavalry engagements in the Civil War was fought. Trevillian Station Battlefield Foundation, Inc. was also an offeror or prospective offeror regarding the City Solicitation.

(7) Defendant the City of Charlottesville is a municipal corporation, a locality which is a political subdivision of the Commonwealth of Virginia, chartered by the Virginia General Assembly. The City Council is its governing body, elected by the citizens of Charlottesville [together, the "City"].

(8) Defendant Jefferson School African American Heritage Center, Inc., is a 501(c)(3) corporation incorporated in Virginia, located in the City [the "Center"]. The Center's Executive Director and according to its 2019 IRS Form 990 its sole paid employee, is Andrea Douglas. Its registered agent according to State Corporation Commission records is Carlton S. Gregory.

Jurisdiction and Venue

(9) The Charlottesville Circuit Court has jurisdiction and it is the proper venue because the Defendants are the City itself and its City Council; the Center also is located in the City, and all City actions the Plaintiffs aver regarding the Solicitation, occurred within the City. Venue is proper in this Court as well for the petition for injunction under the Virginia Freedom of Information Act, per Va. Code § 2.2-3713 (stating venue properly in city from which the public body has been elected). In addition the Circuit Court has jurisdiction under Va. Code § 2.2-4364 (legal actions under Virginia Public Procurement Act) and Va. Code § 8.01-620 (general jurisdiction to award injunctions).

Facts

(10) Paul Goodloe McIntire gave the City land for a park and an equestrian statue of Confederate General Robert E. Lee ["Lee monument"] by deed dated June 14, 1918, recorded in City Deed Book 32 at page 7.

(11) The Lee monument was one of four statues by members of the National Sculpture Society McIntire donated to the City and to the nearby University of Virginia (within City limits but technically in Albemarle County according to the City Charter): Confederate General Robert E. Lee on his horse Traveller begun by sculptor Henry Shrady and finished after his death by Leo

Lentelli (erected 1924); Confederate Lt. General Thomas Jonathan "Stonewall" Jackson on his horse Little Sorrel by sculptor Charles Keck (erected 1921); Revolutionary War hero George Rogers Clark by sculptor Robert Ingersoll Aitkin (erected 1921), and Lewis, Clark and Sacagewea titled "Their First View of the Pacific," also by Charles Keck (erected 1918).

(12) The City's General Robert E. Lee monument is an historically accurate statue of the Confederate general (also referred to as "Lee" and "General Lee") in his military dress uniform, with his rank insignia and ceremonial sword, mounted on his war horse Traveller. His uniform and equipment as depicted on the monument, are consistent with his service to the Confederate States of America as a Confederate officer. General Lee was the commander of the Confederate Army of Northern Virginia, and after February 1865 supreme commander of all Confederate forces, during the War Between the States, also known as the Civil War. He surrendered to Union General Ulysses S. Grant at Appomattox Courthouse on April 9, 1865, precipitating the end of the war.

(13) The Lee monument in Lee park was a bronze sculpture atop a carved granite pedestal, depicting General Lee riding Traveller at a stolid walk, returning from the surrender at Appomattox hat in hand, ceremonial sword at his side, to tell his men the the war is over. For Lee and his men the war had ended, thus the Lee monument is a memorial of a veteran of the Civil War.

(14) The monument is also a memorial to the Civil War itself, and specifically to the end of that war, because the City on February 19, 1918, while World War I was raging, in their acceptance of the gift of the monument depicting Lee after the surrender at Appomattox stated that they lauded the vision of the donor McIntire to "look beyond the dark chasm of war with steady eye and clear vision behold the triumphant day when, freed from the blighting influence of war ... the nations and peoples of the earth shall return to their peaceful pursuits."

(15) The Lee monument is also a Civil War monument because at the time of its erection it was understood to pay tribute to all Confederate soldiers who fought in the war, as well as to Lee's personal dignity in defeat and his message of reconciliation: North and South, black and white, we are all Americans now. The Confederate Veterans of Charlottesville and Albemarle passed a resolution thanking McIntire for the gift "of a beautiful equestrian statue of our great commander, General Robert E. Lee," stating "[t]he old veteran, with bowed head, will come to this shrine to drop the tear of his affection ..." and "...we but voice the sentiments of every true soldier who followed Lee." McIntire's letter in response, original in the archive of the Charlottesville Albemarle Historical Society, stated "I hope that when the monument is unveiled we will all be there to honor him who showed the world how he could be greater in defeat than in victory," confirming the donor also considered it to be a monument to the postwar Lee, a memorial to a veteran of the Civil War.

(16) The City acknowledged that the Lee monument was a Confederate monument and a memorial to war veterans in its resolution dated May 2, 2016 creating a commission later called "the Blue Ribbon Commission" describing the monuments of both Confederate Generals Lee and Jackson as "Confederate statues," and tasking the Blue Ribbon Commission with deliberating the disposition of "the two large Confederate monuments..." including "moving the memorials to a museum or historic site...".

(17) The Lee and Jackson monuments are listed on the Virginia Historic Register, and on the National Register of Historic Places, which are state and federal public records describing the statues and their history.

Shifting public opinion alters the political and legal landscape

(18) The monuments at the outset were a source of civic pride; their unveiling an occasion for celebrations, speeches by local dignitaries, parades, parties and balls.

(19) On or about May 21, 1924, University of Virginia President Edwin A. Alderman accepted McIntire's gift of the Lee monument on behalf of the City of Charlottesville and the County of Albemarle. He was one of several speakers addressing a large crowd in what would come to be called Lee Park, during a full day of celebrations.

(20) Over the next ninety years city leaders, garden clubs, and citizen benefactors, cherished and maintained McIntire's donated monuments, tended and improved the gardens in the parks surrounding them, and warded off threats like a proposal in the 1950's to build underground parking under Lee park, according to records in the Albemarle Charlottesville Historical Society.

(21) For instance, City Council meeting minutes reflect that in the early 1990's City Councilor David Toscano -- later mayor, then minority leader in the House of Delegates -- obtained City Council approval to appropriate federal grant money to clean the Jackson statue. City Council meeting minutes indicate Councilor Maurice Cox, then the only African-American on City Council, speaking about the contemporaneous restoration of the City's statue of Sacagawea, Meriwether Lewis and William Clark using city money, said, "It is an important responsibility for the city to maintain the historic statues."

(22) Likewise in 1997, the City through its then City Manager Gary O'Connell accepted private donations amounting to \$43,750 for a two-year professional restoration for both the Lee and Jackson monuments, as reflected in City Council meeting minutes and records of the contract

in the City Attorney's office. The City's acceptance signed by Mr. O'Connell 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.

(23) In May 1998 the City contracted with bronze restorer Nicolas Veloz to clean and restore the bronze of the Lee monument. On or about September 26, 1999 the City gratefully accepted the re-dedication of the Lee monument.

(24) However, the favorable public attitude toward the Confederate monuments began to shift around the turn of the 21st century. Locally the revision, perhaps inversion of opinion about Charlottesville's monuments largely started to build after 2012.

(25) During the 2012 Charlottesville Festival of the Book in a presentation by historian Ed Ayers, community organizer and activist Kristin Szakos asked about removing Charlottesville's Lee monument. "By the gasps around me, you'd have thought I'd asked if it was OK to torture puppies," Szakos later said, as quoted in an article in C'ville Weekly. The astonished reaction confirms: local public opinion was then on the side of the monuments.

(26) But local public opinion began a dramatic shift in 2013 after the killing by George Zimmerman of Trayvon Martin and Zimmerman's acquittal, with the consequent founding of Black Lives Matter; 2015 when Dylann Roof shot worshippers at an African American church; and especially after the Unite the Right Rally of August 2017 in the City. The rally assertedly in support of the Lee monument brought violence to our streets in clashes between left and right

activists. It changed public perception of the "meaning" of the Lee monument according to former Mayor Mike Signer's book *Cry Havoc*.

(27) Before the August 12, 2017 Unite the Right rally roiled the City, a majority of locals (including a descendant of slaves) speaking before the Blue Ribbon Commission advocated keeping both the Lee and Jackson statues in their parks where they stood. But afterward, the winds of public opinion shifted and like a weathervane, so did the City's political leadership. Two City Councilors (Mayor Signer and Councilor Galvin) had voted against removing the Lee monument in February 2017. But Mayor Signer says in *Cry Havoc* while he regarded tearing down monuments as Orwellian censorship, after the August 2017 Unite the Right he reversed himself, voting to remove both the Lee and Jackson statues. Councilor Galvin joined him.

The amended law allowing four (and only four) dispositions and relocations

(28) Since at least 1904, Virginia law has protected certain war and veterans' memorials against desecration. Virginia's monument protection law derived from piecemeal 19th and early 20th century special legislation authorizing specific Virginia counties to erect Confederate war memorials at county seats. These one-at-a-time authorizations usually included language protecting the monument against removal once erected.

(29) In 1904 the legislature conveyed blanket authority for all Virginia counties to erect Confederate war memorials at their courthouses, and it prohibited even authorities of the locality disturbing or interfering with the monument once erected. A dozen amendments over the next 116 years expanded the law to include most conflicts: Algonquin (1622), French and Indian (1754-

1763), Revolutionary (1775-1783), War of 1812 (1812-1815), Mexican (1846-1848), Civil War (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-).

(30) In 2020 the Virginia General Assembly substantially amended the law, then codified at Va. Code §§15.2-1812 and 1812.1. The amendments, effective as of July 1, 2021, removed the prohibition on authorities of a locality disturbing or interfering, substituting new authority that "a locality may **remove, relocate, contextualize, or cover** any such monument or memorial on the locality's public property ... regardless of when the monument or memorial was erected" [Exhibit 1: 2020 Va. Acts Ch. 1101, from Virginia Legislative Information System] [emphasis added].

(31) The law as amended in 2020 requires that "[i]f 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.**" [Exhibit 1][emphasis added].

(32) While authorizing localities to undertake four possible actions regarding war or veterans monuments (remove, relocate, contextualize or cover) and in the case of relocation four possible dispositions (*placement* at a museum, historical society, government, or military battlefield) the General Assembly considered and twice rejected amendments authorizing localities

to alter or destroy them. [Exhibit 2: Legislative history from Virginia Legislative Information System].

(33) In the 2020 regular session of the General Assembly beginning in January 2020 Delegate McQuinn's HB 1537 as introduced in the House of Delegates included authority to "alter" and "destroy" monuments. Delegate McQuinn offered an amendment to her own bill to remove the word "destroy." Later the Senate Committee on Local Government at Senator Reeves's insistence removed the word "alter." The final bill omitted both the words "alter" and "destroy," substituting the word "cover" for "alter" [Exhibit 2].

(34) In the 2020 Special Session beginning in August 2020 Delegate McQuinn sponsored an amendment attempting again to add the authority to "alter" monuments, which passed the House. The Senate again rejected it: the Senate Committee on Local Government "passed by indefinitely" the McQuinn amendment on October 5, 2020 [Exhibit 2].

(35) In sum, the legislature's careful choice of words to include or exclude indicates a legislative grant to localities of limited authority allowing them to remove, relocate, contextualize or cover war and veterans' monuments -- but not to alter or destroy them. If relocated the legislature limited a locality's choices for disposition to **placement** at a museum, historical society, government, or military battlefield.

The City Solicitation of Offers for disposition of the Lee and Jackson monuments

(36) On or about September 22, 2021 the City published a Solicitation of Offers on its website, which "invites persons interested in acquiring ownership of Historic Bronze Sculptures Depicting Confederate Generals Robert E. Lee and Jonathan 'Stonewall' Jackson owned by the City of Charlottesville" [Exhibit 3: Solicitation].

(37) The Solicitation required offerors to contract to provide services including the "removal/relocation of the statues" with the Offeror "solely responsible for all such costs, including transportation." The requirement for a offeror to agree to the service of removal and relocation was absolute, and stated in two places: "[e]ach offer *must* set out detailed terms for the Offeror's acquisition and removal/relocation of the Statues," and "[e]ach Offer *must* confirm that the Offeror will be solely responsible for [relocation] costs, including transportation." [emphasis added] [Exhibit 3 ¶1.2 & 2.6].

(38) The Solicitation also detailed further mandated services: contextualization of relocated statues complying with City requirements of a "story narrative 'revealing their history of white supremacy;'" "an accurate description of the historic significance of the sculptures and the unique ability to convey an important -- although difficult and complex -- story about the statue's significance in Charlottesville's past and its legacy today"; and "clearly and unambiguously" rejecting "Jim Crow-era narratives..." The offers' contextualization services must use an "additive approach" [Exhibit 3 ¶¶ 1.2; 2.3; 2.5].

(39) The contextualization services the Solicitation mandated as part of the contract bargain for the statues were to be an ongoing obligation, "binding into the future, not only as to the Offeror, but also as to the Offeror's heirs, successors and assigns (i.e. anyone who purchases the property or land from the Offeror)" [Exhibit 3 ¶ 2.5].

(40) The Solicitation required "legally binding offers, signed by an individual who is authorized by the Offeror to bind it to the terms of the offer." The Solicitation also required not merely the name of the persons authorized to negotiate terms for the service contract but "documentation of the authority (a corporate resolution, etc.)" to bind the offeror to the contract terms [Exhibit 3 ¶¶2.1; 2.2; 2.7].

(41) The Solicitation in sum was for binding contracts for relocation services, with negotiated offers, acceptance, and consideration from both sides: from the offerors money paid to the City (even if only nominal consideration) as well as bearing the cost of relocation and then contextualization extending to perpetuity, in exchange for the City transferring to the offeror ownership of valuable historic statues by "internationally renowned sculptors." [Exhibit 3 ¶¶ 1,1; 1.2; 2.3; 2.5)

(42) For an idea of the value of the contract consideration the City gave in trading the Lee monument for the services of relocating and contextualizing it, that the comparable Lewis and Clark monument alone was worth at least \$350,000, as Councilor Snook said on the City Council dais. Even at \$325,000.00 Charlottesville's Lee monument was a bargain. News reports indicate a comparable statue of General Lee in Texas sold at an online auction in June 2019 for \$1.5 million.

The Richmond Museum of Fine Arts according to news reports paid \$2 million for the Kehinde Wilde statue called "Rumors of War" purchased in 2019, an equestrian bronze statue of approximately the same dimensions as the Lee monument.

(43) The Solicitation provided for a process for choosing offerors with whom to negotiate acceptance of the service contract: "the City Manager shall collect the submitted offers and present them at a regularly scheduled meeting of the City Council (with the intent for offers received by October 15 2021 to be considered by council at a future city council meeting. The City Council shall then instruct the City Manager how to proceed with negotiations with one or more offerors." [Exhibit 3 ¶5.1] (*sic*--there was no closing parenthesis in the original).

(44) The City's Solicitation reserved the right to "reject any or all offers received," and to "waive any defects or variations in the contents of an Offer from the requirement of this solicitation." Thus, even defective offers could be negotiated into qualifying offers, or the City might have waived variations -- if the City had followed regular Solicitation and procurement procedures, which it did not. [Exhibit 3 ¶5.2].

(45) Finally, the Solicitation also required the offer to "comply with all applicable statutes and laws of the United States and the Commonwealth of Virginia, the Charter and ordinances of the City of Charlottesville, and the applicable rules and regulations of the agencies of each." [Exhibit 3, ¶ 7.0].

(46) The Solicitation initial deadline for offers was October 15, 2021, which the City later extended to October 31, 2021.

The flawed -- or nonexistent -- offer qualification process

(47) According to a news report by Charlottesville Tomorrow, the City received six offers, the Ratcliffe/Ellenbrook offer among them. The news article makes no mention of the Trevillian Battlefield offer. The Charlottesville Tomorrow article is the only known list of offers. The City itself never announced the offers received, or told offerors which had qualified.

(48) Both Trevillian and Ratcliffe/Ellenbrook had offered to contract to provide the services required to relocate the Lee statue for placement on their properties. One is a battlefield, the other a museum, so both qualified as suitable sites for relocation and placement under Va Code §15.2-1812.

(49) The Center submitted an offer saying the Center had "consulted with a foundry that has agreed to pick up the Lee statue from its current location and transport it to its facilities, where the statue will be further disassembled and reconstituted as ingots". The Center had also arranged with a sculpture studio to "pick up the granite [of the pedestal] from city property and transport it to their facilities." [Exhibit 4: "Center Offer" pg. 2].

(50) Neither a foundry nor a sculpture studio is a museum, historical society, government, or military battlefield; the Center offer was not for relocation and placement, and altering or

destroying a monument was contemplated neither by Va Code §15.2-1812 nor by the Solicitation of Offers. The Solicitation only invited offers to relocate and contextualize.

(51) The City never vetted which offers were qualified or responsive.

(52) The City never informed the offerors whether their offers had qualified or how they fell short. Thus offerors and prospective offerors were denied the opportunity to negotiate to correct defects in their offers or to ask for waivers under Solicitation ¶5.1.

(53) Manifestly the City in effect waived Solicitation requirements to qualify the Center's melt down offer: specifically Solicitation ¶ 2.1 requiring at least "nominal consideration;" ¶ 2.7 requiring documentation of contracting authority; not to mention ¶ 7.0 requiring compliance with laws of the Commonwealth of Virginia. The Center offer was outside the City's authority to accept under Va. Code §15.2-1812(A) and (B).

(54) The City apparently has made and is making no written award or contract with the Center: thus the award includes none of the state mandated contract language as required in Va. Code §§2.2-4311.1 & 2; 2.2-4312. The City regards its Midnight Resolution as sufficient for the Center to take possession and arrange to melt down the Lee monument, as per the City Attorney's response to the offeror's bid protest cited below [Exhibit 7].

Plaintiffs' Bid Protest letter

(55) After receiving news reports of the December 7, 2021 City Council Midnight Resolution (again, there was not and never would be a public announcement) two offerors, Trevillian Battlefield and Ratcliffe/Ellenbrook sent the City a bid protest letter on December 14, 2021 [Exhibit 6: "Plaintiff's Bid Protest letter"].

(56) Plaintiff's Bid Protest letter raised two main points: that the City awarding the Lee Monument to the Center was illegal for being *ultra vires* and in violation of Va. Code §15.2-1812, and that the City process had flouted virtually every basic procurement requirement as well as Virginia's Freedom of Information Act [Exhibit 6].

(57) As to failing to comply with Virginia's procurement law and City ordinances, Plaintiff's Bid Protest letter noted that in the City's leadership vacuum the Solicitation devolved upon a new Deputy City Manager for Racial Equity and Inclusion, lacking delegated contracting authority, and ostensibly bereft of procurement training or experience. Thus:

- No public announcement of offers;
- No apparent vetting of qualified, responsive offers;
- No designated manager to oversee the process and negotiate;
- No competitive negotiations;

(and now, we learn in addition from the City Attorney) --

- No public contract award.

(58) Plaintiff's Bid Protest letter points out that the City Manager was supposed to manage the Solicitation. But the City has lost six City Managers and interim City Managers in four years, and the City has been without a City Manager since Chip Boyles tendered his resignation October 12, 2021. His final day was October 29, 2022 -- before the Solicitation deadline for offers expired.

(59) The City Charter mandates that the City elect a City Manager because under the City Manager form of government he alone has Executive powers, including managing city property. City Council is limited to general supervision.¹ Simply put, without a City Manager there was nobody with negotiating or contracting authority; nobody who knew what they were doing in charge of the Solicitation. There is still no City Manager as of this writing.

(60) In the confusion the City Council never knew of the Trevillian Battlefield's offer or prospective offer, let alone fairly considered either that or the Ellenbrook Museum offer.

¹ See City Charter Sec. 5 (e) (stating "city council *shall* elect a City Manager") [emphasis added]; Sec. 5.01 (City Manager shall have "full executive and administrative authority," subject only to "general control by the council"); City Ordinance Sec 2-154 (stating City Manager -- not City Council -- has "control of all real and tangible personal property"). Manifestly the City Manager or those to whom he delegates authority is the executive administering solicitations regarding City property -- even if City Council has the last word on its disposition. A City ordinance allows the City Manager to fill vacancies to prevent disruption. But there is no comparable provision when the City Manager's office itself is vacant -- other than the *mandate* that City Council elect one. Compare City Ordinance Sec 2-152 (as to City Manager filling vacant city offices) with Charter Sec. 5 (e) (cited above: City Council *shall* elect a City Manager).

(61) In addition to these shortcomings, Plaintiff's Bid Protest letter also noted violations of both the City's own meeting procedures, and Virginia's Freedom of Information Act, lapses that in effect denied required notice to the general public including the offerors.

(62) Specifically, regarding violations of Virginia's Freedom of Information Act during the December 6-7, 2021 meeting City Council did not publish the offers they were considering online. The City Council voted on a pre-drafted motion for a resolution accepting the Center's offer for melting down the Lee monument, evident from the City Council video (an official government record) at <https://boxcast.tv/channel/aleu4lbzxfhtewxk3e7d> starting at hour 5 minute 28 [compare the video to the text of Exhibit 5].

(63) Early in the meeting City Council had agreed to postpone consideration of offers to another meeting. Five hours later after concerted insistence of activists speaking during "matters by the public", the Mayor asked whether Council would vote on offers that evening, rather than postpone.

(64) The City Council video shows Councilor Hill saying at 5:29 she did not think waiting would affect the outcome. Hill also says "we have some specific language I think," and starts to call it up on her computer. Councilor Snook says "we were sent those earlier today" but couldn't immediately find it. Meanwhile Hill did find it, and reads into the record a pre-drafted motion for a resolution giving the Lee monument to the Center. She corrects herself the first time and re-reads it.

(65) The previously prepared detailed motion and text of the Midnight Resolution that Councilor Hill read into the record, bears little resemblance to the fill-in-the-blank form that the City Attorney's response to the offer's protest asserts was all that was provided to the Councilors before the meeting. In this, the City Attorney's letter is incorrect [Exhibit 6].

(66) Besides being evidence of a preconcerted decision, the pre-drafted motion that created the Midnight Resolution matters because Virginia's Freedom of Information law requires the City to provide materials to the general public at the same time the Councilors get them. Va Code §2.-3707 (F). Here the City did not do so. The Midnight Resolution, for lack of notice to the public at the same time councilors received it, was null and void under Va. Code § 2.2-3710(A).

(67) Plaintiff's Bid Protest letter also stated that offerors like Trevillian Battlefield and Ratcliffe Ellenwood were put at a competitive disadvantage by the City violating its own three day notice requirement (agendas for a Monday meeting provided the previous Wednesday). This particular agenda only went out Friday for a Monday meeting. Insiders including the Center's supporters knew of the agenda item and the preconcerted decision that the Center's proposal would win. That is why they insisted during public comment on a precipitous vote that evening. Outsiders without adequate notice had no opportunity to marshal support, or in Trevillian Battlefield's case, bring their lost or forgotten offer to the City's attention.

(68) As Plaintiff's Bid Protest letter concluded: the disastrously arbitrary process (if process there be) begot a capricious, illegal award. Instead of transparent: opaque. Instead of regular and

managed: improvised and lawless. Instead of careful and fair consideration: a short midnight conversation and a preconcerted decision.

(69) Plaintiff's Bid Protest letter requested the following relief:

(1) Immediate termination of any arrangements made with the Center, enjoining further action so the Lee statue remains undamaged, and,

(2) Re-compete the award, this time lawfully, after the City has the mandated competent management: a City Manager, a designated manager for the solicitation, and a proper procurement process considering only those responsive, responsible offers the City has authority to accept.

The City response to Plaintiff's protest letter: we wash our hands of it

(70) The City's response to the Plaintiff's Bid Protest letter dated December 17, 2021 from City Attorney Lisa Robertson to the bid protestors's counsel said essentially that they did not feel themselves bound by any procurement rules [Exhibit 7].

(71) The City asserted the Midnight Resolution donated the Lee monument and the Center officially accepted it, prior to the City's receipt of the protest, and claims the Center's ownership is now "fully vested." That too, had not been disclosed to the public.

(72) The City also asserted that the accepting the Center's formal offer responding to the Solicitation is not subject to procurement procedures and was just a donation -- even though the Solicitation itself required binding offers and mandated relocation services, contextualization

services, and "nominal consideration" even in the case of a donation [Exhibit 7; compare with Exhibit 3 Solicitation ¶2.2].

(73) The City response otherwise declined to address the protest. In essence the City washed its hands of further responsibility for the Lee monument, and suggested the protestors "negotiate with" the Center [Exhibit 7].

(74) The City's response was emailed Friday afternoon December 17, 2011; then on Monday afternoon December 20, 2011 Plaintiffs counsel were informed by counsel for the Center that the Lee monument has already been moved to the foundry and broken up, though apparently not yet melted down. It is possible to re-weld a disassembled bronze statue. Once melted down is destroyed utterly, and must be re-created *ab initio*.

(75) The City colluded with the Center in accepting under its Solicitation a nonresponsive offer proposing an act outside the law and beyond the City's authority. The secrecy, guile, and precipitous speed with which the City transferred the Lee monument to the Center, and the Center's foundry in turn took and broke up the monument, suggest an effort to pre-empt and thwart effective legal recourse.

(76) Without this Court's intervention the Lee monument, already altered and disfigured, is at risk of destruction.

Causes of Action

Count 1: The Midnight Resolution is void for being *ultra vires*.

(77) All previous paragraphs are here in Count 1 incorporated by reference.

(78) Virginia adheres to the Dillon Rule: a locality has no powers other than those the legislature granted in express words, and those necessarily implied: not simply convenient but indispensable. Any fair doubt is resolved against the locality, and the power is denied. Dillon, *Municipal Corporations* (5th Ed. 1911) Vol. I § 89.

(79) While the City has final say on the disposition of the Lee monument, Va. Code §15.2-1812 (A) limits its choices to four permitted dispositions and those four only: remove, relocate, contextualize or cover. For monument relocations Va. Code §15.2-1812 (B) limits the City to four dispositions, and four only: relocation and **placement** at a museum, historical society, government, or military battlefield.

(80) The Center offer explicitly stated that its acceptance would result in a foundry picking up the Lee monument from City storage and transporting it directly to its facilities, where the statue will be further disassembled and reconstituted as ingots; and transport of the granite of the pedestal to an art studio to be repurposed. The Deputy City Manager for Racial Equity and Inclusion, the City Attorney, and City Councilors were aware of the terms of the Center offer at the time City Council voted the Midnight Resolution. The City's agreeing to the Center offer, whether or not deemed a "donation," is not authorized under either Va. Code §15.2-1812 (A) or B).

(81) The City is without authority to dispose of the Lee monument by relocating it to a foundry that will alter or destroy it, nor by moving the granite to an art studio to be altered or destroyed, whether using its own employees, or by colluding with, contracting with, or donating to the Center. The City cannot do indirectly what it cannot do directly.

(82) Under these circumstances the Midnight Resolution to give the Lee monument to the Center is void for being *ultra vires*, illegal, and cannot operate to convey ownership.

Count 2: Abrogation of Lawful Procurement Process

(83) All previous paragraphs are here in Count 2 incorporated by reference.

(84) The City published a formal Solicitation of Offers for the services of relocating the Lee monument, and contextualizing it in its new location.

(85) Both Plaintiffs were offerors or prospective offerors.

(86) The City's formal Solicitation of Offers for services entailed offer, acceptance, and consideration: thus a contract for services. The City was bound by Virginia's Procurement Act, and the City's own procurement ordinances requiring transparency, regular procedure, and fair, diligent consideration of all offers.

(87) The City failed to give public notice of the offers received, failed to vet offers for qualifying as responsive; failed to notify any offerors or prospective offerors that it deemed nonresponsive so that they could negotiate a cure or a waiver of variations; failed even to publicly

designate a person managing the Solicitation after the departure of the City Manager; and failed to make a normal, public, contract award.

(88) Instead the City Council at the meeting to decide which offers to accept voted on a pre-drafted Midnight Resolution, awarding the Lee Monument in response to the Center offer. The Center offer proposed a foundry would "pick up the Lee statue from its current location and transport it to its facilities, where the statue will be further disassembled and reconstituted as ingots." The Center had also arranged with a sculpture studio to "pick up the granite [of the pedestal] from city property and transport it to their facilities." [Exhibit 4: "Center Offer" pg. 2]. No competing offers received even a cursory review or discussion, other than Councilor Snook's mention of a private individual in Texas offering \$325,000.00 for the Lewis and Clark statue.

(89) The process was arbitrary and the award unlawful and capricious and any City acceptance or agreement regarding the Center offer must be voided, and the offeror debarred.

Count 3: Violation of Freedom of Information Act

(90) All previous paragraphs are here in Count 3 incorporated by reference.

(91) The City failed to make all proceedings, records, contracts and other public records relating to the procurement transaction available to the public in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). Specifically they failed to make the offers available on their website at the same time City Council got them, failed also to make the pre-drafted motion for the Midnight Resolution available at the same time City Council got it; failed

to make public whatever subsequent arrangement the City made with the Center -- all contravening Va. Code §2.2-3707 (F), requiring "all materials furnished to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body."

(92) The City also acted arbitrarily and capriciously in abrogating its own agenda notice requirements, in failing to give notice on a Wednesday of the agenda for a Monday meeting. That contravenes Va. Code § 2.2-3708.2 (A) (3) (meetings held through electronic communication during emergencies: public must be afforded "opportunity to comment when comment is customarily received"). The City customarily gives three days' notice, and the opportunity to comment includes sufficient advance notice of what is being addressed.

(93) A single failure to comply with Virginia's Freedom of Information Act suffices for an injunction voiding an act by a public body. The Plaintiffs aver several.

(94) The Plaintiffs hereby petition for an injunction voiding the Midnight Resolution under Va. Code § 2.2-3713, and litigation expenses, costs, and attorneys fees as set forth below in the Requests for Relief.

Requests for Relief

(95) All previous Verified Complaint paragraphs are here in the Request for Relief incorporated by reference.

Request for Relief under Count 1:

(96) Plaintiffs as a remedy for the City violating the law in acting outside its authority, seek an order for a permanent injunction voiding the Midnight Resolution, and any resulting agreement with the Center, and requiring the Center to return to the City what is left of the Lee monument, and for the City to pay to repair and restore the Lee monument to the *status quo ante*.

(97) If the Lee monument is damaged beyond restoration, the remedy for deliberately violating the law is stated below under equitable remedies.

Request for Relief under Count 2:

(98) If the Lee monument can be restored, the Plaintiffs request an order for a permanent injunction Court requiring the City to re-compete the award after the City has complied with the Charter mandate of electing a City Manager and has designated a procurement manager with contracting authority, this time in a fair and regular process, with debarment of the Center for its unlawful offer; with any offers to alter or destroy monuments directly or indirectly, likewise disqualified.

(99) If the Lee monument cannot be restored, the relief for the procurement law violations is stated below under equitable remedies.

Request for Relief under Count 3:

(100) The Plaintiffs as petitioners under the Freedom of Information Act seek an order for a permanent injunction voiding the Midnight Resolution, and further relief as specified below under Equitable Request for Relief as a consequence of voiding the Resolution.

(101) The petitioners also seek reimbursement of the cost of the litigation, including costs and reasonable fees for expert witnesses, and attorney fees, per Va. Code § 2.2-3713 (D).

Equitable Request for Relief under all Counts:

(102) All previous Verified Complaint paragraphs are here incorporated by reference, and the Plaintiffs further pray that they have such other and relief as their case may demand, including equitable relief as follows.

(103) **Temporary injunction:** the Plaintiff request the Court to order the Center to cease and desist from any further altering of the Lee monument, and to afford the Plaintiffs' art expert an opportunity to investigate the feasibility of repairing the damage done to the bronze statue and its pedestal and to estimate and report to the Court the expense of restoring the Lee monument to the *status quo ante*.

(104) **Permanent injunction:** if the Lee monument can be repaired and restored, the City must bear the entire cost of repairs under the supervision of an expert restorer to return the Lee monument to the *status quo ante*. If it cannot be repaired and restored, the Court should deny the Defendants any benefit of the illegal bargain. Neither City or the Center may derive income from or in support of the illegal enterprise in any manner. The bronze ingots from the Lee monument shall be repurposed as Civil War cannon and donated for placement and display on Civil War battlefields; the granite from the pedestal as memorials for the Civil War and Southern soldiers killed in action.

(105) Further, the Plaintiffs are owed damages as an equitable remedy. Their offers were never seriously considered, and the procurement process proved to be sham and pretext for a preconcerted decision to alter and destroy the Lee monument. The Plaintiffs are owed restitution for the time and effort they put into preparing offers, and for the lost opportunity of acquiring an historic monument created by internationally renowned sculptors, worth at least \$325,000.00.

(106) Accordingly the Plaintiffs request an award of damages jointly and severally assessed against the Defendants and in addition reimbursement of costs and expenses of the litigation, and reasonable attorneys fees under all Counts as an equitable award, considering the City's manifest bad faith contriving deliberately to desecrate a monument to war and war veterans and colluding with the Center in doing so, together estimated not to exceed \$3 million.

(108) The Lee monument may end up necessarily altered, no longer the original historic work of art. But it will not be destroyed.

WHEREFORE the Plaintiffs pray for the injunctive relief as set forth above, and money damages for restoration of the Lee monument to be proved at trial, and in addition litigation costs including expenses, costs and attorneys fees for the entire litigation including appeals, in an amount not expected to exceed a total of \$3 million.

Respectfully requested on behalf of the Plaintiffs The Ratcliffe Foundation and Trevillian Station Battlefield Foundation, Inc. this 22nd day of DECEMBER, 2021:

VERIFICATION

John B. Yellott, Jr.
John B. Yellott, Jr.

On 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 Verified Complaint are, according to the best of his knowledge, information, and belief, true and accurate.

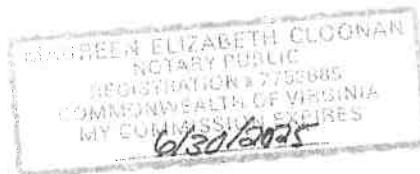
Subscribed and sworn before me this 12/22/2021

Maureen E. Cloonan

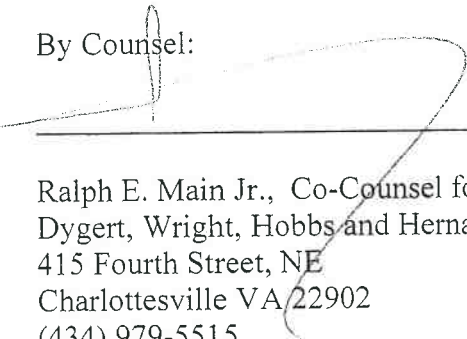
Notary Public [SEAL]

Registration Number: 7753885

My Commission expires 6/30/2025



By Counsel:



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Exhibit 1: 2020 Va. Acts Ch. 1101, from Virginia Legislative Information System

Exhibit 2: Legislative history from Virginia Legislative Information System

Exhibit 3: City Solicitation of Offers

Exhibit 4: Center Offer (letters of support omitted)

Exhibit 5: Midnight Resolution on Center offer

Exhibit 6: Plaintiffs' bid protest letter

Exhibit 7: City Attorney response to bid protest letter

**Exhibit 1: 2020 Va. Acts Ch. 1101, from Virginia Legislative
Information System**

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 pre-encroachment 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 2: Legislative history from Virginia Legislative Information System



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20102770D

HOUSE BILL NO. 1537

Offered January 10, 2020

A BILL to amend and reenact § 15.2-1812 of the Code of Virginia, relating to memorials for war veterans.

Patrons— McQuinn, Bagby, Kory, Lopez, Aird, Askew, Ayala, Boume, Carroll Foy, Carter, Cole, J.G., Guy, Hayes, Herring, Hope, Hudson, Jenkins, Kearn, Levine, Lindsey, Plum, Price, Rasoul, Samirah, Scott, Torian and Watts; Senators: Howell and McClellan

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-1812 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-1812. Memorials for war veterans.

A locality may, within the geographical limits of the locality, authorize and permit the erection of monuments or memorials for 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 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. A locality may remove, relocate, or alter any such monument or memorial, regardless of when erected.

The governing body may appropriate a sufficient sum of money out of its funds to complete or aid in the erection of monuments or memorials to the veterans of such wars. 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.



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(HB1537)

AMENDMENT(S) PROPOSED BY THE HOUSE

DEL. MCCUINN

1. Line 30, substitute, after removing

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insert

and

DEL. MCCUINN

2. Line 30, substitute, after relocating

strike

, or destroying

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HB 5030 Monuments and memorials for war veterans; authority of localities.
 Introduced by: [Delores L. McQuinn](#) | [all patrons](#) | [notes](#) | [add to my profiles](#)

SUMMARY AS PASSED HOUSE: (all summaries)

Monuments and memorials for war veterans; authority of localities. Changes the authority of a locality from the authority to "contextualize or cover" to the authority to "alter" a monument or memorial for war veterans located within the geographical limits of the locality, with the result that the locality has the authority to remove, relocate, or alter such monument or memorial. The bill removes the current requirement that the locality publish notice of its intent to remove, relocate, contextualize, or cover such monument or memorial in a newspaper having general circulation in the locality, allow a public hearing on the matter, and, if the governing body votes to remove the monument or memorial, offer, for a period of at least 30 days, the monument or memorial for relocation and placement to any museum, historical society, government, or military battlefield. In addition, an existing enactment clause that excludes "a monument or memorial located on the property of a public institution of higher education within the City of Lexington" from the application of this law is repealed.

FULL TEXT

 08/17/20 House: [Prefiled and ordered printed; offered 08/18/20 20200627D pdf](#)

 09/03/20 House: [Printed as engrossed 20200627D-E pdf](#)

 09/04/20 House: [Printed as reengrossed 20200627D-E2 pdf](#)

AMENDMENTS

[House committee, floor amendments and substitutes offered](#)
[Senate committee, floor amendments and substitutes offered](#)
[House amendments adopted](#)
[House amendments not adopted](#)

HISTORY

 08/17/20 House: [Prefiled and ordered printed; offered 08/18/20 20200627D](#)

 08/17/20 House: [Referred to Committee on Rules](#)

 08/27/20 House: [Reported from Rules with amendments \(13-Y 5-N\)](#)

 08/28/20 House: [Read first time](#)

 09/03/20 House: [Read second time](#)

 09/03/20 House: [Committee amendments #1 and #2 agreed to](#)

 09/03/20 House: [Committee amendment #3 rejected](#)

 09/03/20 House: [Pending question ordered](#)

 09/03/20 House: [Engrossed by House as amended HB5030E](#)

 09/03/20 House: [Printed as engrossed 20200627D-E](#)

 09/04/20 House: [Engrossment reconsidered by House](#)

 09/04/20 House: [Read second time](#)

 09/04/20 House: [Committee amendments #1 and #2 reconsidered](#)

 09/04/20 House: [Committee amendment #1 rejected](#)

 09/04/20 House: [Committee amendment #2 agreed to](#)

 09/04/20 House: [Reengrossed by House as amended HB5030E2](#)

 09/04/20 House: [Printed as reengrossed 20200627D-E2](#)

 09/08/20 House: [Read third time and passed House \(54-Y 43-N\)](#)

 09/08/20 House: [VOTE: Passage \(54-Y 43-N\)](#)

 09/09/20 Senate: [Constitutional reading dispensed](#)

 09/09/20 Senate: [Referred to Committee on Local Government](#)

 10/05/20 Senate: [Passed by Indefinitely in Local Government with letter \(14-Y 0-N\)](#)

Exhibit 3: City Solicitation of Offers

SOLICITATION OF OFFERS

**The City of Charlottesville invites persons interested
in acquiring ownership of Historic Bronze
Sculptures Depicting Confederate Generals Robert E Lee and
Jonathan “Stonewall” Jackson
Owned by the City of Charlottesville
Initial Deadline for Submission: Friday, October 15, 2021**

1.0 BACKGROUND

- 1.1** The City of Charlottesville is soliciting offers from entities interested in acquiring ownership of bronze figurative sculptures depicting the 19th century Confederate Generals Robert E Lee and Jonathan “Stonewall” Jackson. The Sculptures were created by the internationally renowned sculptors, Charles Keck (Jackson sculpture) and Henry Shradly and Leo Lentelli (Lee sculpture). Both sculptures are designed to sit atop tall rectangular granite bases. Together, the sculptures will be referred to as “the Statues”.
- 1.2** The City only will entertain offers that propose acquisition of the Statues, individually or as a pair, as well as their corresponding bases (together, the “Statues”). Each offer must set out detailed terms for the Offeror’s acquisition and removal/relocation of the Statues.
- 1.3** The Statues have been disassembled and are currently being stored at a City-owned Location that is easily accessed by trucks and moving equipment.

2.0 CONTENTS OF OFFER

- 2.1** Offers shall be legally binding offers, signed by an individual who is authorized by the Offeror to bind it to the terms of the offer. The Offer shall warrant that the terms of its offer will be and remain valid for a period of 120 days from the date of submission.
- 2.2** If a particular offer proposes that the City Council consider donating the Statues to the Offeror for nominal consideration, the Offer shall include detailed factual information documenting that the Offeror is an entity eligible to receive donations of property under the provisions of Virginia Code §15.2-953. In that

case, the Offer shall identify the specific charitable activity referenced in §15.2-953 that applies to the Offeror.

If an Offeror is NOT eligible to receive donations of property under the provisions of Virginia Code §15.2-953, the Offer shall contain the Offeror's opinion as to the fair market value (FMV) of the Statues, supported by such factual information as the Offeror deems relevant.

- 2.3** Each Offer shall describe in detail the Offeror's intended use of the Statues. If the Statues will be re-erected and displayed by the Successful Offeror at a new location, the offer shall include a description of the location to which the Statues will be re-erected, and will describe and illustrate the Offeror's plan to provide a recontextualization of the story narrative "revealing their history as symbols of white supremacy" (City of Charlottesville Blue Ribbon Commission on Race, Memorials, and Public Spaces, December 19, 2016). This description shall be noted as the Recontextualization Plan.
- 2.4** Each Offer shall describe the Offeror's Historic Statues and Artifact Experience (Indicate prior experience in owning, maintaining, and displaying historic Statues or artifacts). Further, each Offer shall articulate the Offeror's financial ability to carry out its proposed use and/or Recontextualization Plan, and any other terms of the Offer.
- 2.5** The Recontextualization Plan must include an accurate narrative of the historic significance of the sculptures and the unique ability to convey an important—although difficult and complex—story about the statue's significance in Charlottesville's past and its legacy today. Using an "additive" approach, this recontextualization's success would rely on the inclusion of new accurate historical information and transformation of the sculptures and their place in the city's evolution.

The recontextualization needs to be done clearly and unambiguously indicating the rejection of the Jim Crow-era narratives that dominated when the statues were erected. New design that deemphasizes the centrality of the sculpture and counters the Lost Cause narratives could achieve a real transformation of both space and

narrative.

The Recontextualization Plan shall also identify the means by which the Offeror's Plan will be made binding into the future, not only as to the Offeror, but also as to the Offeror's heirs, successors and assigns (i.e., anyone who purchases the property or land from the Offeror).

- 2.6 The City will not be liable for any costs associated with removal, relocation or re-erection of the Statues. Each Offer must confirm that the Offeror will be solely responsible for all such costs, including transportation. Once the Statues is conveyed to a successful Offeror, the Offeror will be solely responsible as to the means and methods, and any contractual services required, for moving, transporting and re-erecting the Statues.
- 2.7 Each Offer shall include the name(s) of the individual(s) authorized to negotiate on behalf of the Offeror and to bind the Offeror to the terms of the Offer, along with documentation of the authority (a corporate resolution, etc.). Each such individual shall be identified by their full name, and contact information (telephone number, email address).

3.0 EVALUATION CRITERIA

The Charlottesville City Council may sell or otherwise dispose of the Statues, as may be in the best interests of the public. In assessing what is in the public interest, City Council may consider any factors it deems relevant, including, without limitation, the following:

- 3.1 The Offeror's opinion of the fair market value of the Statues, and any financial benefits to be realized, or financial obligations incurred, in the event that the City Council were to accept the Offer.
- 3.2 The City Council's assessment of the quality and long-term sustainability of the Offeror's Recontextualization Plan.
- 3.3 City Council's assessment of the desirability of the Offeror's intended use of the Statues, and whether or not the intended use is consistent with City Council's core values.

4.0 SUBMITTAL REQUIREMENTS

4.1 Offers shall be submitted in an envelope labeled with the words “Confederate Statues Offer” and will contain documentation and information demonstrating how the Offer satisfies the criteria set forth within Sections 2 and 3, above. Offers shall be delivered to the Office of the City Manager at 605 East Main Street, Charlottesville, VA 22902, or mailed via U.S. Mail, first-class, postage prepaid, to the Office of the City Manager, P.O. Box 911, Charlottesville, Virginia, 22902; or via electronic mail at statues@charlottesville.gov. Offers received by 3:00 PM on Friday, October 15, 2021 will be considered by City Council at a meeting within 90 days thereafter.

4.2 Letter of Transmittal

Each offer shall be accompanied by a transmittal letter (in the same envelope). The transmittal letter will identify “Confederate Statues Offer” as the item proposed to be acquired by the Offeror. Each transmittal letter, and each Offer, shall be signed by an individual who is legally authorized to bind the Offeror to the terms of the Offer. The terms of the Offer shall be confirmed as being valid for a period of 120 days from the date of the Offer.

5.0 PROCEDURES FOR CONSIDERATION OF OFFERS

5.1 The City Manager shall collect the submitted offers and present them at a regularly scheduled meeting of the City Council (with the intent for offers received by October 15, 2021 to be considered by Council at a future City Council meeting. The City Council shall then instruct the City Manager how to proceed with negotiations with one or more Offerors.

5.2 The City reserves the right to reject any or all offers received, and to waive any defects or variations in the contents of an Offer from the requirements of this solicitation.

6.0 GENERAL TERMS AND CONDITIONS

6.1 It is the responsibility of the Offeror to assure that its Offer is received by the City Manager in the manner specified within this solicitation, on or before the date set for receipt of offer.

6.2 If any prospective Offeror has questions about this solicitation, the Offeror should

contact the City, via electronic mail at statues@charlottesville.gov no later than five (5) working days before the due date. All questions must be through email correspondence to statues@charlottesville.gov.

- 6.3 Offerors are advised that oral explanations or instructions given by City staff, the City Manager, or any City employees during this solicitation process, or at any time prior to action by City Council, shall be nonbinding. City Council is the sole decision-maker regarding the final disposition of the Statues.
- 6.4 The City may make such reasonable investigations as deemed proper and necessary to determine the ability of the Offeror to complete the purchase of the property as negotiated, and the Offeror shall furnish to the City all such information and data for this purpose as may be requested.
- 6.5 The Successful Offerors shall be allowed to personally and visually inspect the property by appointment, after being notified that their Offer has been selected for final consideration. Contact the City by email to set an appointment statues@charlottesville.gov.

7.0 CODES & STANDARDS

In preparing the details of its offer and its proposed plan for removal of the Statues, the Offeror, its officers, agents, employees, and any subcontractors, in the performance of this Agreement shall comply with all applicable statutes and laws of the United States and the Commonwealth of Virginia, the Charter and ordinances of the City of Charlottesville, and the applicable rules and regulations of the agencies of each.

Exhibit 4: Center Offer (letters of support omitted)

#3

October 15, 2021
Charlottesville City Council
605 E Main Street
2nd Floor
Charlottesville, VA 22902

Confederate Statues Offer: Robert E. Lee Statue

DEAR CHARLOTTESVILLE CITY COUNCIL,

The Jefferson School African American Heritage Center appreciates this opportunity to submit its offer, "Swords into Plowshares," to the City of Charlottesville. We request possession of the Shradys-Lentelli 1924 monument of Robert E. Lee for the purposes of melting it down and remolding it into a new work of public art that expresses the City's values of inclusivity and racial justice. This transformation will be informed by a collaborative and democratic process of community engagement that prioritizes the voices of descendants of enslaved people, extending the dialogues on race that have occurred locally since 2010. Using this statue's melted bronze material in a new way will be a powerful symbol of social change.

In its recently published "National Monument Audit," the Monument Lab defined monuments as "a statement of power and presence in public." Like many Confederate memorials throughout the country, Charlottesville's Lee statue was erected during the era of Jim Crow, a time when whites wanted to symbolically reinforce power against a flourishing black population.

The Lee statue became an international lightning rod of white supremacy when, in August 2017, neo-Nazi rioters descended on Charlottesville to intimidate our elected government from removing it from the park. The violence that engulfed our city became synonymous with globally-resurgent white nationalism. Heather Heyer was killed, and many were injured, when a Nazi-sympathizer drove his car into a crowd of anti-racist demonstrators.

Recontextualization is not enough. Even taken from its pedestal and removed from its central location in downtown Charlottesville, the social codes engendered by the Lee statue will allow it to remain an icon of violent white supremacy wherever it is placed.

Jefferson School
AFRICAN AMERICAN HERITAGE CENTER

233 4th St NW
Charlottesville, VA 22905
jeffersonschoolcenter.org

Transformation is different from destruction: the new piece of art will draw meaning from the fact that it will be formed from the very materials that were once used in the Lee statue. We believe our proposal will create an opportunity to move history forward and leave behind the false notion that such symbols are a fixed part of our community's shared heritage.

The Lee statue has been a singular source of harm to our community. Our proposed process of transformation may not be the right solution for every city that has inherited unwanted symbols of oppression. But it is the right solution for this city and this statue. The Jefferson School's "Swords into Plowshares" proposal offers Charlottesville the chance to transform this trauma into healing and renewal through art.

This offer is valid for 120 days.

Thank you for your consideration.

Sincerely,



DR. ANDREA DOUGLAS
EXECUTIVE DIRECTOR
JEFFERSON SCHOOL AFRICAN AMERICAN HERITAGE CENTER

SWORDS INTO PLOWSHARES PROPOSAL

"Swords Into Plowshares" (SIP) proposes to articulate Charlottesville, Virginia's 1924 monument of Robert E. Lee as a new work of public art that expresses the City's values of inclusivity and racial justice. Inspired by the prophetic vision of transforming "swords into plowshares" (Isaiah 2:4), SIP would fund the transportation, disassembly, and melting down of the statue; an extensive community engagement process; and ultimately, the commissioning of an artist-in-residence committed to that engagement to repurpose its bronze for a new piece or pieces of art. Upon completion, SIP would offer the completed artwork to the City for potential installation in a public place.

This proposal is submitted by the Jefferson School African American Heritage Center (JSAAHC), a Charlottesville nonprofit 501c3 organization, with support from the University of Virginia Democracy Initiative's Memory Project, Virginia Humanities, the Open Society Foundations, Descendants of Enslaved Communities at UVA, the Bridge Progressive Arts Initiative, along with other community groups, museums, and educational, arts and philanthropic organizations. This coalition believes that Charlottesville is uniquely positioned to make a bold statement that will recast the national conversation about monuments and public spaces. By selecting "Swords Into Plowshares," the Charlottesville City Council will give our community an opportunity to write a new and innovative chapter in our City's story.

Community input will be key to the artistic transformation of the Lee monument. SIP includes a plan for an extensive community engagement process that builds on earlier successes such as the Dialogue on Race, the Blue Ribbon Commission on Race, Memorials and Public Spaces, and the Memorial to Enslaved Laborers at UVA. In this new conversation, the community will collaborate to define the values that the new work of art should reflect and the criteria of its future placement. The conversation will be especially attentive to the voices of descendants of enslaved people: the same community that, a century ago, was excluded from shaping civic life and public spaces.

In the 20th century, Charlottesville was acclaimed (by those willing to ignore white supremacy's harms) for its collection of commissioned monuments which have recently been removed. In the 21st century, our city will again be distinguished for its leadership in public art--this time by pieces that express commitment to democratic values. SIP will extend the ideas reflected in UVA's highly regarded Memorial to Enslaved Laborers both geographically and thematically. We aspire for SIP to result in a work that receives equal critical acclaim, while giving Charlottesville its own artistic reckoning with our

town's racial politics that is distinct from the university's. SIP would further articulate the conversation about racial politics to address our present moment, connecting the Memorial to Enslaved Laborers's focus on slavery to contemporary struggles for equity and social justice. These monumental works will interact conceptually by embedding different aspects of our community's efforts at historical truth telling directly into the landscape.

Through the project's insistence that its outcomes be community driven, it "is consistent with City Council's core values," as described in the "C'ville Arts and Culture" section of the "Charlottesville City Council Vision - 2025":

Our community has world-class performing, visual, and literary arts reflective of the unique character, culture, and diversity of Charlottesville. Charlottesville cherishes and builds programming around the evolving research and interpretation of our historic heritage and resources."

PROPOSED PLAN & TIMELINE

STATUE REMOVAL & TRANSFORMATION

SIP is prepared to remove the Lee statue from City property immediately. The JSAAHC has consulted with a foundry that has agreed to pick up the Lee statue from its current location and transport it to its facilities, where the statue will be further disassembled and reconstituted as ingots. The ingots will be stored until the time comes to repurpose them as an art medium. A sculpture studio has agreed to pick up the granite from city property and transport it to their facilities. The contractors involved are enthusiastic about participating in such a transformative project.

COMMUNITY ENGAGEMENT

In January 2022, JSAAHC plans on inaugurating a six-month series of community dialogues and meetings facilitated by Frank Dukes and colleagues at UVA's Institute for Engagement + Negotiation. Dukes played a key role in mediating the Montpelier Board's recent shift to parity with its descendant community and led community engagement as a member of the design team for UVA's Memorial to Enslaved Laborers. He is well associated with the community as both a resident and the director of UCARE.

The process will consist of an extensive conversation with the community in traditional and non-traditional sites including the Jefferson School, churches, local schools, assisted living facilities, public libraries, cafés, beauty salons, and barber shops. Outreach will also occur virtually to ensure inclusion of community members with limited access to other

sites. For additional information about the community engagement plan, please see Appendix A of this application.

Based on the content of these sessions, we will compile the results of our findings to create a guiding document to be presented to the community by Fall 2022.

ARTIST RESIDENCY

In Winter 2022, we will announce an RFP and craft a jury process which will require interested artists to engage with the community in public forums as well as the guiding document created prior to artists' submission of their proposals. Our goal is for the jury to announce an artist or artists by 2024, the one-hundredth anniversary of the Lee statue's installation. They will be invited to an artist residency hosted at Visible Records, an artist-run gallery and studio space in Charlottesville. Ideally, the new art piece will be completed and installed before the 10-year anniversary of the Summer of Hate in 2027.

MANAGEMENT

Given the complexity and length of this project, SIP's budget includes funding for a project manager. This position will oversee the metal and stone contractors, staff the community engagement process, and interface with donors and the City as the process advances.

FINANCIAL FEASIBILITY & COST TO THE CITY

If the City accepts SIP, the City will not be liable for any costs associated with removal and transformation of the Lee statue. We confirm that the Jefferson School will be liable for all such costs, including transportation. SIP's aim is to offer the resulting transformed work of art to the City, ideally for installation on public land. SIP is willing to cover the cost of installation and welcomes conversation with the City about possible arrangements for land. Should the city accept the eventual donation of the piece of art, there could potentially be some financial obligations commensurate with normal upkeep of art in public spaces. If the City should in the future decline the donation, SIP plans on pursuing other placement options.

From removal to completed work of art, SIP will cost an estimated \$1.1 million. At the time of submission of this application, SIP has raised \$590,000--more than half that amount. Funders include the Memory Project at UVA's Democracy Initiative, Virginia Humanities, and Open Society Foundations. This application packet includes letters confirming

these organizations' pending commitments. Contractors have generously offered to provide services for this project at a discounted rate.

THE JEFFERSON SCHOOL AFRICAN AMERICAN HERITAGE CENTER

The JSAAHC is qualified to receive the statue under Virginia Code §15.2-953, which states "A locality may make like gifts and donations to any and all public and private nonprofit organizations and agencies engaged in commemorating historical events." The JSAAHC is a nonprofit 501c3 founded in 2013, whose mission is to honor and preserve the rich heritage and legacy of the African-American community of Charlottesville-Albemarle, Virginia and to promote a greater appreciation for, and understanding of, the contributions of African Americans and peoples of the Diaspora locally, nationally and globally.

The JSAAHC is the most appropriate recipient of the Lee statue. It has played a key role in Charlottesville's years-long process of re-envisioning public spaces. In 2011, JSAAHC helped to develop the Dialogue on Race's Vinegar Hill monument jury process that led to the selection of internationally known artist Mel Edwards. From 2013-2018 Dr. Douglas served on the University of Virginia's President's Commission on Slavery and was a member of the jury that selected the design team that designed UVA's Memorial to Enslaved Laborers. She presently serves as co-chair of the University's Commission on the Age of Segregation.

In 2016, she was appointed a commissioner of Blue Ribbon Commission (BRC) on Race, Memorials, and Public Spaces, which held public hearings for six months about Confederate monuments, many of which took place at the JSAAHC.

Dr. Douglas and the JSAAHC have experience owning, maintaining, and displaying historic artifacts. The JSAAHC maintains a museum exhibit and gallery space on its premises, which it stewards according to American Alliance of Museum guidelines. Dr. Douglas holds a Ph.D. in Art History and possesses twenty years of experience as a museum curator, including seven years at UVA's Fralin Museum of Art. She has served on numerous sculpture juries in Washington D.C., including the Katzen Art Center at American University. It is fitting to have African American leadership for this culminating disposition phase of our community's painful journey with these symbols of white supremacy. It behooves the City Council to select the Jefferson School -- the only local institution, and the sole African American organization to have applied.

CONTACT INFORMATION

As the JSAAHC's Executive Director, Dr. Andrea Douglas is authorized to negotiate this offer on behalf of the Jefferson School. Her contact information is:

Dr. Andrea Douglas

434-260-8724

director@jeffschoolheritagecenter.org

Exhibit 5: Midnight Resolution on Center offer

**RESOLUTION
APPROVING A FINAL DISPOSITION OF THE STATUE OF
CONFEDERATE GENERAL ROBERT E. LEE**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHARLOTTESVILLE that the statue of Robert E. Lee is hereby donated, and ownership transferred, to The Jefferson School African American Heritage Center, a charitable institution or organization, in accordance with the provisions of Virginia Code §15.2-953. This disposition is final.

I, Kyna Thomas, do hereby certify that the foregoing writing is a true, correct copy of a resolution duly adopted by the City Council of the City of Charlottesville, Virginia, by a vote as recorded below, at a regular meeting held on December 6, 2021.

Kyna Thomas
Clerk of Council, City of Charlottesville

	<u>Aye</u>	<u>Nay</u>
Mayor Walker	<u>x</u>	<u> </u>
Vice Mayor Magill	(absent)	<u> </u>
Councilor Hill	<u>x</u>	<u> </u>
Councilor Payne	<u>x</u>	<u> </u>
Councilor Snook	<u>x</u>	<u> </u>

Exhibit 6: Plaintiffs' Bid Protest letter

**Dygert, Wright,
Hobbs & Hernandez, PLC**
415 4th Street, NE (Upper Floor)
Charlottesville, Virginia 22902

Telephone (434) 979-5515
Telefax (434) 295-7785
E-mail: rmain@charlottesvillelegal.com

Attorneys At Law

Joseph W. Wright, III
Kelly A. Hobbs
Leah Eads Hernandez – Se Habla Español

George H. Dygert, Retired
Ralph E. Main, Jr., Of Counsel
Jordan Gerstner

December 14, 2021

Charlottesville City Council
c/o Lisa A. Robertson, Esq.
Charlottesville City Attorney
Email: robertsonl@charlottesville.org

Via Electronic Mail

Re: Bid Protest Letter: Award of Lee Statue

Dear Ms. Robertson:

I write to submit a bid protest letter under Va. Code §2.2-4360 on behalf of: Trevilian Station Battlefield Foundation, Inc., ["Trevilian Battlefield"] and The Ratcliffe Foundation, on behalf of one of their holdings, Ellenbrook Museum ["Ratcliffe/Ellenbrook"]. Both submitted offers for the City of Charlottesville's ["City"] Lee and Jackson monuments.

Award protested

The City solicited offers for entities interested in acquiring ownership of two monuments to veterans of the Civil War: the statues of Confederate Generals Robert E. Lee and Thomas Jonathan "Stonewall" Jackson. After City extensions, the deadline for offers was October 31, 2021.

Both Ratcliffe/Ellenbrook and Trevilian Battlefield had submitted offers to relocate the Lee monument. One operates a museum, the other

owns and maintains a battlefield, thus both are eligible recipients under Va. Code §15.2-1812 as amended in 2020 Va. Acts ch. 1101.

The Jefferson School African American Heritage Center ["Center"] submitted an offer stating it requests "possession of the Shradly-Lentelli 1924 monument of Robert E. Lee for purposes of melting it down . . . "

In the early morning hours of December 7, 2021, City Councilors voted 4-0 on a resolution to convey the Lee monument to the Center, knowing it was to be melted down.

Grounds for protest

(i) The award itself was illegal.

In amending the monument protection law, 2020 Va. Acts ch. 1101, now codified at Va. Code §§ 15.2-1812 and 1812.2, the legislature refused the City authority to alter or destroy a monument.¹ The City cannot do indirectly what it lacks authority to do directly.² The City and its employees including

¹ While allowing localities to remove, relocate, contextualize or cover monuments, the General Assembly considered and twice rejected amendments authorizing localities to alter or destroy them. The House proposed it and the Senate balked in February 2020 and again in the August- November 2020 Special Session. The City is without authority to dispose of a monument in a way that would alter or destroy it. Legislative history of 2020 Va. Acts ch. 1101 at <https://lis.virginia.gov/cgi-bin/> ; see *Tabler v. Board of Sup'rs of Fairfax County*, 221 Va. 200, 269 S.E.2d 358, 361 (1980) (ruling legislature twice rejecting proposals to confer authority for refunds on beverage containers shows "clearly and unambiguously that the legislature did not intend to grant local governing bodies the power..."). The maxim *expressio unius est exclusio alterius* is applicable: when a statute mentions specific items, an implication arises that items not present were not intended to be included within the scope of the statute. *Wise County Bd. of Sup'rs v. Wilson*, 250 Va. 482, 485, 463 S.E.2d 650, (1995).

² cf. *Int'l Paper Co. v. County of Isle of Wight*, 229 Va. 150, 847 S.E. 2d 507 (2020) (holding legislature may not do "indirectly, that which it is not empowered to do directly);" see also *Clinchfield Coal Co. v. Robbins*, 261 Va. 12,

the City Attorney, both Deputy City Managers, and all five City Councilors, had actual notice they lacked authority to accept the Center's melt-down proposal. Instead of winning, that offer should have been disqualified. The award fails, and the Lee statue procurement must be re-competed with only lawful offers allowed.

(2) The award process contravened Virginia's Open Government Law, the Public Procurement Act, and Charlottesville's own ordinances.

- There was no notice to the public of the pre-drafted resolution City Council voted on after midnight on Tuesday, December 7, 2021 to accept the Center offer. Councilor Snook said the resolution had been "sent [to Council] earlier today."³ The general public never saw or heard of the resolution before the vote, let alone having online access to it simultaneously with the Councilors earlier as the law requires.⁴ The vote on the resolution is null and void.⁵ Council's acceptance of the Center bid fails and for this reason too, the Lee statue procurement must be re-competed.

20, 541 S.E.2d 289 (2001) (holding that a commissioner of the revenue "may not do indirectly what he cannot do directly").

³ City Council December 6-7, 2021 video at 5:44:24 *et seq.* (Councilor Snook saying the Resolution was "sent [to councilors] earlier today"; Councilor Hill reading it from her computer screen into the record; correcting herself the first time and re-reading it).

⁴ See Va. Code §2.-3708.2(A)(3)(d) (requiring electronic meetings during declared emergencies "otherwise comply with the provisions of this chapter"); and Va. Code §2.-3707 (F) (requiring "all materials furnished to members of a public body shall be made available for public inspection at the same time such documents are furnished to the members of the public body").

⁵ Va. Code § 2.2-3710(A) (stating "no vote of any kind of the membership, or any part thereof, of any public body shall be taken to authorize the transaction of any public business, other than a vote taken at a meeting conducted in accordance with the provisions of [the Open Government law]"), see also Va. Freedom of Information Advisory Council Op. AO-06-17 (August 1, 2017) (citing Va. Code § 2.2-3710(A) and stating votes of public body ineffective if the notice defective); Op. Atty. Gen. Va. No. 08-114 (2009) (concluding a city council's vote to appoint a school board member was "null and void" because of insufficient notice).

- The City ignored the City's own notice procedures requiring agendas to be published with three working days' notice.⁶ An agenda including the item "disposition of statues" was published Friday Dec. 3 for a Monday Dec. 6 meeting. Initially the Councilors agreed to postpone that agenda item, in Councilor Magill's absence. But public comments at the end of the five hour meeting persuaded Council to reverse itself.⁷ After the conclusion of their regular agenda, Council then voted 4-0 to accept the Center's melt down offer. Council's willingness to bend to the will of insider activists after the late night public comment underscores the competitive disadvantage of outsiders deprived of advance notice. They had no opportunity to speak for their offers, or marshal support. Trevilian Battlefield could have brought their apparently ignored or forgotten offer to the City's attention (see footnote 11 below). For this reason as well, the Lee statue offer must be re-competed.
- The City acted unlawfully without a City Manager or interim City Manager, and with no designated manager for the Solicitation.⁸

⁶ Agendas are required to be published the previous Wednesday before a Monday meeting. Charlottesville City Council Meeting Procedures at <https://www.charlottesville.gov/691/Council-Meeting-Procedures> (requiring agendas to be published "no later than the Wednesday before the meeting"). See Va. Code § 2.2-3708.2 (A) (3) (meetings held through electronic communication during emergencies: public must be afforded "opportunity to comment when comment is customarily received"). The opportunity to comment includes sufficient advance notice of what is being addressed.

⁷ City Council December 6-7, 2021 video at 5:31:20 *et seq.* (starting with activist Kristin Szakos "pleading" for City Council to vote now rather than wait; others echoed her.)

⁸ See City Charter Sec. 5 (e) (stating "city council *shall* elect a City Manager") [emphasis added]; Sec. 5.01 (City Manager shall have "full executive and administrative authority," subject only to "general control by the council"); City Ordinance Sec 2-154 (stating City Manager -- not City Council -- has "control of all real and tangible personal property"). Manifestly the City Manager or one to whom he delegates authority is the executive administering solicitations

Without executive leadership authorized to act, the City Council should have postponed or cancelled the orphaned solicitation. Instead it fumbled along by inertia. According to one news report (the bidders' only source of information) the Solicitation devolved into the hands of a person with no delegated authority, ostensibly lacking procurement experience.⁹ No public opening or announcement of bids; no apparent vetting of qualified bids; no competitive negotiations as the law requires.¹⁰ In the confusion the City never knew of the Trevilian Battlefield offer, let alone seriously or fairly considered either that or the Ratcliffe/Ellenbrook offer.¹¹ The perfunctory discussion on the

regarding City property -- even if City Council has the last word on its disposition. A City ordinance allows the City Manager to fill vacancies to prevent disruption. But there is no comparable provision when the City Manager's office itself is vacant -- other than the *mandate* that City Council elect one. Compare City Ordinance Sec 2-152 (as to City Manager filling vacant city offices) with Charter Sec. 5 (e) (cited above: City Council *shall* elect a City Manager).

⁹ In the leadership vacuum after the departure of the City Manager apparently managing the Solicitation fell to a Deputy City Manager for Racial Equity, Diversity and Inclusion. Her position is new. She has been with the City less than nine months. Whatever her qualifications they do not include procurement training or experience. City Council neither delegated her management authority nor disclosed her role (whatever it was) to bidders. See Erin O'Hare, *City Council (tentatively) plans to decide the fate of Charlottesville's Confederate statues before the year's end*, Charlottesville Tomorrow (Nov. 4, 2021) (Deputy City Manager for Racial Equity, Diversity and Inclusion responding to Council's questions about offers; deadline for acceptance).

¹⁰ See City Ordinance on Procurement Chapter 22-4 (methods of procurement authorized: competitive sealed bidding or competitive negotiation; designated purchasing manager to oversee procurement and negotiate); and Va. Code §§ 2.2-4300 et seq., (requiring specific procurement procedures including competitive negotiated bidding).

¹¹ Both the City's failure to respond to Battlefield Foundation email inquiries, and a description of the offers the City received listing only six, theirs not among them, suggest the Battlefield Foundation offer was simply lost or ignored. See Erin O'Hare, *City receives just one local proposal for Confederate statue, and the organization wants to melt Lee down*, Charlottesville Tomorrow (Oct. 21, 2021) (listing and describing only six offers; omitting the Battlefield Foundation).

December 14, 2021

Page 6

dais during the hasty midnight vote; the very fact of a *pre-drafted resolution*, is damning. The fix was in for the Center's illegal proposal.

Conclusion and relief sought

The disastrously arbitrary process (if process there be) begot a capricious, illegal award. Instead of transparent: opaque. Instead of regular and managed: improvised and lawless. Instead of careful and fair consideration: a cursory midnight conversation and a preconcerted decision to flout the legislative limit on City Council's authority. Relief sought:

(1) The City must void the Center award (if any) and enjoin performance so the Lee statue remains undamaged, and,

(2) Re-compete the award, this time lawfully, after the City has the mandated competent **management**: a City Manager, a designated manager for the solicitation, and a proper **procurement** process considering only those responsive, responsible offers the City has authority to accept.

Submitted on behalf of the bidders Trevilian Station Battlefield Foundation, Inc., and The Ratcliffe Foundation this 14th day of December, 2021:

Very truly yours,

Ralph E. Main, Jr.

cc: Andrea Douglas, Executive Director of the Jefferson School African American Heritage Center (director@jeffschoolheritagecenter.org)

Exhibit 7: City Attorney response to bid protest letter



OFFICE OF THE CITY ATTORNEY
City of Charlottesville
P.O. Box 911 (605 East Main Street)
Charlottesville, Virginia 22902

Sent via e-mail to:

December 17, 2021

Ralph E. Main, Jr.
Dygert, Wright, Hobbs & Hernandez, PLC
rmain@charlottesvillelegal.com

Re: 12/14/2021 Bid Protest Letter: Award of Lee Statue

Dear Mr. Main,

I've reviewed the matters set forth within your correspondence of December 14, 2021 and based on my review of the statutory provisions cited, I offer the following comments.

Ownership of the statue is fully vested in the Jefferson School African American Heritage Center ("Center"). The Center officially accepted the donation prior to the City's receipt of your client's protest. I encourage you to contact and negotiate directly with the Center's leadership, as the Center has the right to take possession at any time.

The provisions of Virginia Code §2.2-4360 are part of a statutory process within the Virginia Public Procurement Act ("VPPA"), Va. Code §§2.2-4300 et seq. The VPPA applies to the City only when the City seeks to obtain goods and services (i.e., *acquisitions*). See Va. Code §2.2-4300. In this matter City Council made a disposition, by donation, of property that it already owned, and none of the procurement arguments presented in your correspondence is applicable.

The provisions of Virginia Code §15.2-1812(B) set forth an order of operations for local governing bodies to follow, nothing more. The statutory scheme does not create any private rights of action against the City for your clients' benefit. City Council satisfied the requirements of the statute earlier this year, and there is no restriction of City Council's authority to dispose of the statue following the conclusion of the 30-day period referenced in §15.2-1812(B). In fact, Virginia Code §15.2-1812(B) expressly states that "the **local governing body**¹ shall have sole authority to determine the final disposition...." (emphasis added). In legal parlance, the word "disposition" is defined as "the act of disposing, transferring to the care or possession of another, or the parting with, alienation of, or giving up of property", *Black's Law Dictionary*, 471 (6th ed. 1990). By the plain wording of the statute, the General Assembly delegated unrestricted

¹ Your suggestion that Council's action is invalid or unlawful without involvement of a city manager is without merit, by the plain language of the statute.

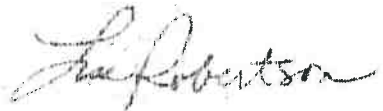
authority to City Council to transfer or convey ownership of the statute to any person. City Council's decision to donate the statue to the Center is within the lawful scope of the City Council's authority under Virginia Code §15.2-1812(B), §15.2-953, and the City Charter, which broadly confers upon City Council the power to "control and manage...all property, real and personal, belonging to the City."

Since the statutory language is unambiguous, no interpretation is required. Resort to the sort of extrinsic legislative history you cite in your correspondence, as opposed to the words of the statute as enacted, is inherently suspect, because Virginia does not keep an official legislative history. "Attempts to interpret statutes based on language the General Assembly did not adopt...are especially fraught with difficulty and uncertainty because the legislature's decision not to enact particular language can often support multiple, differing conclusions." 2016 Op. Va. Atty. Gen. (No. 16-046). In this case, the fact that the words "alter" or "destroy" do not appear in §15.2-1812(B) as an express restriction on governing bodies' sole authority to decide a final disposition is a clear indication that the General Assembly did not seek at the state level to control what happens to a statue following a transfer of ownership by the local governing body.

Finally, there was no pre-drafted resolution that contemplated a specific disposition of the statue to the Center, or any other particular entity. Attached to this letter are the blank, sample formats provided to City Council in advance of the meeting. I would not consider these to be "agenda materials", but even if they are: (i) the Virginia Freedom of Information Act (FOIA) does not prescribe how, or where, agenda materials are to be made available, and as a practical matter these were public records available for public inspection upon being created and sent to council, and (ii) FOIA does not include any express provision invalidating the City Council's action as an authorized remedy.

I will certainly consider any additional legal authority you may wish to offer, but at this time I cannot identify any "protest" procedure or other legal action that would be available to your clients.

Sincerely,



Lisa Robertson
City Attorney

Attachments (2)

**RESOLUTION
APPROVING A FINAL DISPOSITION OF
THE STATUE OF _____**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHARLOTTESVILLE that ownership of the statue of _____ is hereby conveyed to _____, in return for the monetary compensation offered within its proposal. This disposition is final.

I, Kyna Thomas, do hereby certify that the foregoing writing is a true, correct copy of a resolution duly adopted by the City Council of the City of Charlottesville, Virginia, by a vote as recorded below, at a regular meeting held on _____, 20__.

Clerk of Council, City of Charlottesville

	<u>Aye</u>	<u>Nay</u>
Mayor Walker	_____	_____
Vice Mayor Magill	_____	_____
Councilor Hill	_____	_____
Councilor Payne	_____	_____
Councilor Snook	_____	_____

**RESOLUTION
APPROVING A FINAL DISPOSITION OF
THE STATUE OF _____**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHARLOTTESVILLE that the statue of _____ is hereby donated, and ownership transferred, to _____, a charitable institution or organization, in accordance with the provisions of Virginia Code §15.2-953. This disposition is final.

I, Kyna Thomas, do hereby certify that the foregoing writing is a true, correct copy of a resolution duly adopted by the City Council of the City of Charlottesville, Virginia, by a vote as recorded below, at a regular meeting held on _____, 20__.

Clerk of Council, City of Charlottesville

	<u>Aye</u>	<u>Nay</u>
Mayor. Walker	_____	_____
Vice Mayor Magill	_____	_____
Councilor Hill	_____	_____
Councilor Payne	_____	_____
Councilor Snook	_____	_____

BEFORE THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

TREVILLIAN BATLEFIELD FOUNDATION, INC., et al.,
Plaintiffs,

v.

Case No.

CITY OF CHARLOTTESVILLE, et al.
Defendants.

Plaintiffs' Motion for Temporary Injunction

Come now the Plaintiffs, and move this Honorable Court to grant a Temporary Injunction.

Grounds for Motion

(1) The facts are set forth at length in Plaintiffs' Verified Complaint and Petition for Injunction ["Complaint and Petition"] filed herewith and here incorporated by reference.

(2) In sum, the facts in the Complaint and Petition establish that the Defendants City and City Council acted outside their authority in accepting the Defendant Center's illegal offer to alter or destroy the Lee Monument. The City also flouted the Freedom of Information Act, the Virginia Public Procurement Act, and the City's own procurement ordinances.

(3) The Complaint and Petition seek as final relief an injunction under the Freedom of Information Act, Va. Code § 2.2-3713; and under both Va. Code § 2.2-4364 (legal actions under Virginia Public Procurement Act); and Va. Code § 8.01-620 (general jurisdiction for injunctions).

(4) In the meantime, the Plaintiffs by this Motion seek a narrower temporary injunction, for the reasons argued in Plaintiff's Brief on Temporary Injunction ["Brief"], also filed herewith and here incorporated by reference.

(5) The temporary injunction is simply to preserve the *status quo ante*, so as to allow time for the Plaintiffs to obtain and the Court to receive information on the status of the Lee monument, and to give the Court the opportunity to consider the parties' evidence and arguments, decide the case, and if Plaintiffs prevail, to fashion appropriate relief.

(6) The facts and law in the Verified Petition and Brief establish Plaintiffs' equity: that Plaintiffs are likely to succeed on the merits, likely to suffer irreparable harm in the absence of preliminary relief; and that an injunction is in the public interest.


(7) There is no harm to the City if further damage to the Lee monument is temporarily enjoined, but irreparable harm to the Plaintiffs if it is not, and the Court may no longer be able to afford adequate relief.

Request for Relief

The Plaintiff request the Court to order the Center to cease and desist from any further altering of the Lee monument, and to afford the Plaintiffs' art expert an opportunity to investigate the feasibility of repairing the damage already done to the bronze statue and its pedestal, and to estimate and report to the Court the expense of restoring it to the *status quo ante*. Plaintiffs request that the injunction remain in effect for six months or until the Court has had an opportunity to rule on whether whether the Plaintiffs prevail, whichever is later, and if so to frame a permanent injunction affording appropriate relief.

Respectfully requested on behalf of the Plaintiffs The Ratcliffe Foundation and Trevillian Station Battlefield Foundation, Inc. this 22nd day of DECEMBER, 2021:

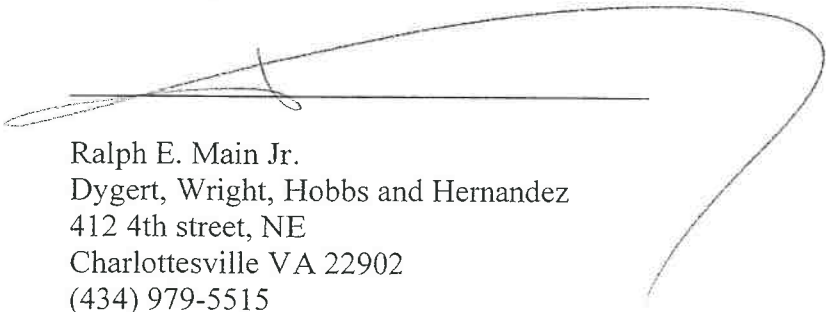
By counsel:



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VSB # 13320

CERTIFICATE OF SERVICE

I certify that I served by email the forgoing Plaintiff's Brief: Injunction, upon counsel for the City of Charlottesville and its City Council, City Attorney Lisa Robertson at RobertsonL@charlottesville.gov, and upon Counsel for the Center, Seth J. Ragosta at sjr@fplegal.com, in accord with Virginia Supreme Court Covid Emergency Orders, this 22nd day of November, 2021.



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BEFORE THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

TREVILLIAN BATLEFIELD FOUNDATION, INC., et al.,
Plaintiffs,

v.

Case No.

CITY OF CHARLOTTESVILLE, et al.
Defendants.

Plaintiffs' brief: temporary injunction

The statutory provisions the Plaintiffs invoke in the Verified Complaint and Petition for Injunction are straightforward: the Circuit Court has jurisdiction to grant an injunction under the Freedom of Information Act, Va. Code § 2.2-3713; and separate, additional jurisdiction to grant an injunction under both Va. Code § 2.2-4364 (legal actions under Virginia Public Procurement Act); and Va. Code § 8.01-620 (general jurisdiction for injunctions). The facts and law on the City's abrogation of the Public Procurement Act bear on whether Plaintiffs are likely to prevail on the merits under Va. Code §8.01-620. To avoid redundancy Plaintiffs address them together.

(A) Injunction under Virginia Freedom of Information Act

The Freedom of Information Act requires that Plaintiffs file a Petition for Injunction stating the denial of rights. Va. Code § 2.2-3713 (A) & (D). Plaintiffs averred two City violations of the Freedom of Information act in their Verified Complaint and Petition for Injunction.

- (1) The City failed to make available to the public records, including offers, and a pre-drafted motion for a resolution awarding the Lee monument to the Center, at the same time it provided them to City Councilors. That contravened Va. Code §2.2-3707 (F) (requiring "all materials furnished to members of a public body shall be made available

for public inspection at the same time such documents are furnished to the members of the public body").

- (2) The City failed to give the customary three day notice of City Council's agenda including voting on monument disposition. That contravenes Va. Code § 2.2-3708.2 (A) (3) (meetings held through electronic communication during emergencies: public must be afforded "opportunity to comment when comment is customarily received"). The opportunity to comment includes the customary advance notice of what City Council is going to address.

Either of these without anything more, establishes a denial of rights and privileges and grounds for an injunction. Va. Code §2.-3707 (D) (stating "[a] single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein) and (E) (stating "[a]ny failure by a public body to follow the procedures established by this chapter shall be presumed to be a violation of this chapter.") Even for video meetings during the City's declared Covid emergency, City Council is still required to comply with the Freedom of Information Act. Va. Code §2.-3708.2(A)(3)(d) (requiring electronic meetings during declared emergencies "otherwise comply with the provisions of this chapter").

The remedy for noncompliance is an injunction voiding the Midnight Resolution. Va. Freedom of Information Advisory Council Op. A0-06-17 (August 1, 2017) (stating votes of public body ineffective if the notice defective); *accord* Op. Atty. Gen. Va. No. 08-114 (2009) (concluding a city council's vote to appoint a school board member was "null and void" because of insufficient notice). The Virginia Freedom of Information Council is the state agency charged with interpreting the statute. Va. Code § 30-179 (1) (authorizing VFOIA Advisory Council to furnish opinions). In

view of its expertise its views are entitled to deference. Likewise the Virginia Attorney General's opinions are entitled to due consideration. See *Transparent GMU v. George Mason Univ.*, 835 S.E. 544 (2019) (stating while not binding, advisory opinions are entitled to due consideration). The Plaintiffs established a denial of rights warranting an injunction voiding the Midnight Resolution under the Freedom of Information Act.

In addition, if the Plaintiffs substantially prevail, they will "recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorney fees from the public body." Va. Code § 2.2-3713.

(B) Temporary Injunction under General Jurisdiction and Public Procurement Act

The Court has separate, additional jurisdiction to grant an injunction under Va. Code § 2.2-4364 (Virginia Public Procurement Act) and under Va. Code §8.01-620 (general jurisdiction for injunctions). Under the latter, immediate appellate review of a temporary injunction is available. Va. Code §8.01-626 (detailing prompt appeal; as of January 1, 2022 appeal goes directly to Court of Appeals).

Under Va. Code §8.01-628 the court must be satisfied of the "plaintiff's equity." Plaintiff's equity being a fairly broad inquiry, Virginia courts look to federal standards as guidelines. The Fourth Circuit follows the standard in *Winter v. NRDC*, 555 U.S. 7, 20 (2008) ("Winter"): that a Plaintiff is likely to succeed on the merits, likely to suffer irreparable harm in the absence of preliminary relief; and that an injunction is in the public interest. As noted in the introduction, to avoid redundancy Plaintiffs address the City's abrogation of the Public Procurement Act under whether Plaintiffs likely would prevail on the merits, below.

(1) Irreparable harm

Unless the temporary injunction is granted, Lee monument, apparently already damaged, is in imminent danger of being melted down. Even the City admits it is an "historic bronze sculpture," created by "internationally renowned sculptors ... Henry Shrady and Leo Lentelli." Solicitation title, and ¶1.1. It is a unique work of art, and valuable: Councilor Snook considered an offer of \$325,000.00 for the comparable Lewis, Clark and Sacagewea statue. See City Council December 6-7, 2021 video at 5:44:24, et seq. Councilor Snook's remarks cited in Verified Complaint. The destruction of a valuable, historic 100 year old sculpture created by internationally renowned artists long dead, is an act that cannot be undone: irreparable harm.

(2) Injunction in the public interest

The Virginia General Assembly defines the public interest and did so in Va. Code §15.2-1812 (A) and (B): monuments to wars and war veterans may only be moved, relocated, contextualized and covered; and if relocated, only to a museum, historical society, government, or military battlefield. The City arranging with the Center to have a foundry pick up the Lee monument from storage and relocate it directly to the foundry furnace to be altered and destroyed, is contrary to law. It is not in the public interest to let the City flout the law.

(3) Plaintiffs likely to succeed on the merits

Plaintiffs offer two main arguments (besides the City contravening the Freedom of Information Act): the City acted outside its authority, and in the process it abrogated the legally required procurement process. The facts and law on the City's abrogation of the Public

Procurement Act bear on whether Plaintiffs are likely to prevail on the merits. As noted in the introduction, to avoid redundancy they are treated together.

Va. Code §15.2-1812 as amended lists four things the City can do with a monument and four only (remove, relocate, contextualize, and cover), and it lists four allowed dispositions: four places to relocate a monument for *placement*, and four only (museum, historical society, government, or military battlefield). Va. Code §15.2-1812 (A) & (B). The plain language of the statute, as well as a maxim of statutory construction confirm that the City acted outside its authority. The maxim is *expressio unius est exclusio alterius*: when a statute mentions specific items, an implication arises that items not present were not intended to be included within the scope of the statute. *Wise County Bd. of Sup'rs v. Wilson*, 250 Va. 482, 485, 463 S.E.2d 650, (1995). Relocating a war monument to a foundry furnace for alteration and destruction is not on the list of what is permissible; not within the scope of the statute.

The City argues disposition includes transferring possession or even ownership. Plaintiffs do not disagree. Relocation could entail loaning a monument or selling one. So long as the loan or sale goes to a "museum, historical society, government, or military battlefield." Va Code §15.2-1812 (B). And the law limits dispositions to "relocation and *placement*" Id. [emphasis added]. Manifestly the museum, historical society, government, or military battlefield is expected to *place* the statue somewhere, not to destroy it.

Nor for that matter does the City Solicitation contemplate an offer to destroy a monument. The Solicitation insistence on contextualizing, binding heirs and assigns, indicates just the opposite. Cf. Solicitation 2.5. Wherever a monument is relocated and placed, it must stay

surrounded by contextualizing of the City's choosing, down through the generations forever. There is no contextualizing of something that no longer exists.

The City would have the Court ignore the legislative history confirming the City lacks authority to destroy a monument because the statutory language is clear. True in this sense: the statute clearly does not allow the City to do what they are doing. As to whether the Court must ignore legislative history: the Virginia Supreme Court thinks otherwise. That Court looked to legislative history in the *Tabler* case: holding that twice rejecting proposals to confer authority for refunds on beverage containers shows "clearly and unambiguously that the legislature did not intend to grant local governing bodies the power..." *Tabler v. Board of Sup'rs of Fairfax County*, 221 Va. 200, 269 S.E.2d 358, 361 (1980). Likewise here, the legislature twice denied the City authority to alter or destroy a monument, confirming the City lacks that authority.¹

As to the City's argument they can donate a monument to charity: they can give pencils to a school or sandwiches to a soup kitchen. But pencils or sandwiches have no law restricting what a City can do with them. War monuments and veterans memorials do: Va. Code §15.2-1812 (A) & (B). If relocating a monument to a war veteran to a foundry to be melted down is a charitable donation, it is not a charitable purpose the City can legally support.

¹ While allowing localities to remove, relocate, contextualize or cover monuments, in 2020 the General Assembly considered and twice rejected amendments authorizing localities to alter or destroy them. The House proposed it and the Senate balked in February 2020 and again in the August- November 2020 Special Session. The City is without authority to dispose of a monument in a way that would alter or destroy it. Legislative history of 2020 Va Acts ch 1101 at <https://lis.virginia.gov/cgi-bin/> reproduced as Complaint Exhibit 2.

The City cannot convey the Lee monument to the Center knowing the Center is not even taking possession of it, there is to be no placement at their museum. A foundry is picking it up, transporting it to the foundry premises, and the foundry will alter and destroy it. Apparently the foundry already altered it to some degree, if they have broken it up. The City cannot do indirectly what it lacks authority to do directly. *cf. Int'l Paper Co. v. County of Isle of Wight*, 229 Va. 150, 847 S.E. 2d 507 (2020) (holding legislature may not do "indirectly, that which it is not empowered to do directly);" see also *Clinchfield Coal Co. v. Robbins*, 261 Va. 12, 20, 541 S.E.2d 289 (2001) (holding that a commissioner of the revenue "may not do indirectly what he cannot do directly"). Collusion with others to do what the law prohibits is no alibi.

Finally, the City failure to follow the procedures of the Virginia Public Procurement Act Va. Code §2.2-4300 et seq. and its own ordinances on competitive negotiation Charlottesville Ord. §22-1 et seq. is so obvious as to need little discussion. No apparent vetting of qualified offers; no competitive negotiations as the law requires, and not even an authorized person in charge. See Va. Code §2.2-4302.2 (stating requirements for competitive negotiation) and Va. Code § 2.2-4302 (stating a public body may act through its "duly designated or authorized officers and employees"). The City does not pretend they met *any* negotiated offer procurement procedural requirements.

Instead the City argues the procurement rules are irrelevant. The City asserts its Solicitation was only an offer to sell, which *inter alia* allowed a charitable donation.

The charitable donation required the charity to provide "nominal consideration," which suggests a contract solicitation. Solicitation ¶2.2. The charity's offer must also comply with the requirement for detailing proposed relocation and contextualization. Solicitation 1.2; 2.6. This too suggests a contract. For its part, the City was offering valuable "historic monuments" by

"internationally renowned sculptors," as consideration for the relocation. This, too suggests a contract. A charitable donation involving offer, acceptance, and consideration -- is a contract. See *Virginia School of Arts, inc. v. Eichelbaum*, 254 Va. 373, 493 S.E.2d 510 (1997), citing *Galt v. Swain*, 50 Va. (9 Gratt.) 633, 635 (1853) (stating it is settled law that charitable subscription is governed by the law of contracts if supported by an offer, an acceptance, and consideration).

Virginia law and regulations recognize relocation as a form of services. Cf. Va Code § 55.1-2164 (concerning "relocation services" in condominium conversions); 24 Va. Admin. Code 30-41-120 (last resort housing needs arise in context of "relocation services"). Accepting a binding offer for relocation services (and monetary consideration even if only nominal) is a contract for services. When the City solicits offers for services, its services procurement procedure applies. Cf. Charlottesville Ordinance § 22-4 (services to be procured by competitive sealed bidding). The City ignored this, too.

The process was arbitrary and the decision capricious. "We have defined an act as arbitrary or capricious when it is willful and unreasonable and taken without consideration or in disregard of facts or law and without determining principle, or when the deciding body departed from the appropriate standard in making the decision." *Profl Bldg. Maint. Corp. v. Sch. Bd. of the Cnty of Spotsylvania*, 283 Va. Va 747, 725 S.E. 2d 543 (2021) (reversing demurrer on bid protest) citing *James v. City of Falls Church*, 280 Va. 31, 42, 694 S.E.2d 568 (2010).

The City would have the Court believe a transaction involving a donation inhabits a law-free zone where a solicitation for services is not a solicitation for services. Offer and acceptance with consideration is not offer and acceptance with consideration. A contract is not a contract. As

Judge Moore once said of the City's argument that Confederate monuments are not Confederate monuments: "it does no good pretending ..."²

Plaintiffs are likely to prevail on the merits.

CONCLUSION

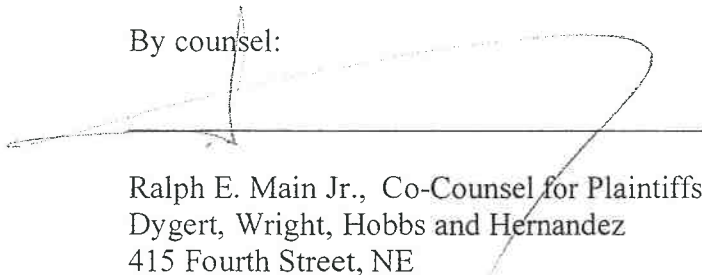
As to the temporary injunction, there is no harm to the City if further damage to the Lee monument is temporarily enjoined, but irreparable harm to the Plaintiffs if it is not. The temporary injunction is just that -- temporary. What the Defendants are doing is permanent. The Plaintiffs have established multiple grounds. The relief requested is narrow, and focused. And the Defendants can obtain fast appellate review. The Court should grant the Plaintiffs' temporary injunction.

The temporary injunction will also give the Court the opportunity to frame permanent injunctive relief. Without it, satisfactory permanent relief may be unavailable or ineffectual.

Respectfully requested on behalf of the Plaintiffs The Ratcliffe Foundation and Trevillian Station Battlefield Foundation, Inc. this 22nd day of November, 2021.

² *Payne v. City of Charlottesville*, Hon. Judge Richard Moore, Letter Ruling April 25, 2019, p. 5 (online at <http://statues.law.virginia.edu/document/letter-ruling-motion-partial-summary-judgment-regarding-statues-being-monuments-or>).

By counsel:

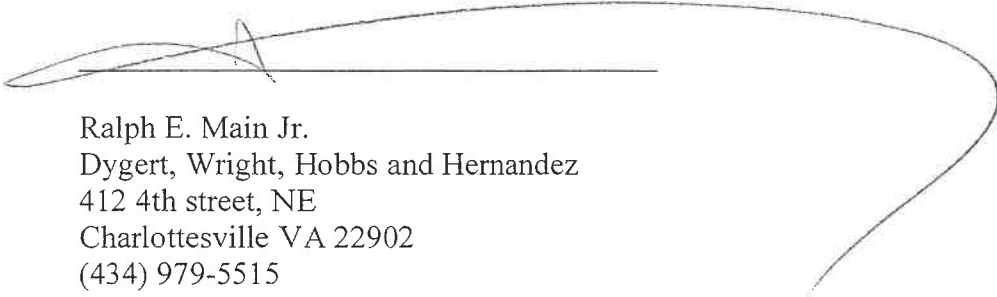


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CERTIFICATE OF SERVICE

I certify that I served the forgoing Plaintiff's Brief: Temporary Injunction upon counsel for the City of Charlottesville and its City Council, City Attorney Lisa Robertson by email at RobertsonL@charlottesville.gov, and upon Counsel for the Center, Seth J. Ragosta at sjr@fplegal.com, in accord with Virginia Supreme Court Covid emergency Orders, this 22nd day of December, 2021,



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