

VIRGINIA:
IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

EVAN MORGAN MASSEY and
HELEN MARIE TAYLOR,

Plaintiffs,

v.

Case No.

LEVAR STONEY,
individually and in his official capacity as
Mayor of the City of Richmond,
CITY COUNCIL OF THE CITY OF RICHMOND,
CHRIS A. HILBERT,
ANDREAS D. ADDISON,
KRISTEN NYE LARSON,
CYNTHIA I. NEWBILLE,
KIMBERLY B. GRAY,
ELLEN F. ROBERTSON,
REVA M. TRAMMELL,
STEPHANIE A. LYNCH, and
MICHAEL J. JONES,

in their individual and official capacities,
Serve each Defendant at City Attorney,
900 East Broad Street, Suite 400
Richmond, VA 23219

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, by counsel, states the following for his Complaint:

1. This is a proceeding by a resident and taxpayer of the City of Richmond to obtain a declaratory judgment, as well as injunctive relief, against Defendants Levar Stoney, the City Council of the City of Richmond and its nine members, who have violated Article I, § 2 of the Constitution of Virginia, statutes of the Commonwealth, the City Charter issued to the City of Richmond by the General Assembly of Virginia, and provisions of the City's Zoning Ordinance

by ordering, in the case of Mr. Stoney, and agreeing to, in the case of City Council and its members, the removal of monuments protected by §§ 15.2-1812, 15.2-1812.1 and 18.2-137 of the Code of Virginia.

2. This Court has jurisdiction over the matter in controversy pursuant to Va. Code § 17.1-513.

3. Venue in this Court is proper, pursuant to Va. Code § 8.01-261 because the property involved is located in the City of Richmond, where each Defendant has an official office and regularly conducts official duties, and where each Plaintiff resides.

4. Plaintiffs Evan Morgan is a resident and taxpayer of the City who resides on Monument Avenue within the Monument Avenue Historic District.

5. Helen Marie Taylor is a resident and taxpayer of the City of Richmond who resides on Monument Avenue within the Monument Avenue Historic District. For more than fifty years, she has served as President of the Monument Avenue Association, which is dedicated to preserving the historic value of Monument Avenue. She has repeatedly testified at City Council hearings in defense of the historic features of the Monument Avenue Historic District. In recent weeks, she and members of her household have been assaulted and her residence and appurtenances have been vandalized and covered with obscene graffiti by protesters.

6. Defendant Levar Stoney is the Mayor of the City of Richmond, having been elected by the voters of the City in 2016 to serve a four-year term of office.

7. Defendant City Council of the City of Richmond is the governing body of the City.

8. Defendants Chris A. Hilbert, Andreas D. Addison, Kristen Nye Larson, Cynthia I. Newbille, Kimberly B. Gray, Stephanie A. Lynch, and Michael J. Jones are members of City Council who were elected by the voters of their respective election districts.

9. Mayor Stoney issued orders and negotiated a contract with a private business entity to remove numerous monuments, most of which had been erected more than a century before, including but not limited to the Stonewall Jackson monument, the Matthew Fontaine Maury monument, the J.E.B. Stuart monument, and the Confederate Soldiers' and Sailors' monument.

10. The City Council of the City of Richmond exercises the responsibility and authority to act with respect to all matters within the jurisdiction of the City unless responsibility and authority are specifically delegated elsewhere in the City Charter. Charter of the City of Richmond §§ 2.01 and 4.02.

11. Section 15.2-1401 of the Code of Virginia provides that "all powers granted to localities shall be vested in their respective governing bodies."

12. Section 2.03(h) of the City Charter provides that the City shall have the power to "control and regulate the use and management of all property of the city, real and personal."

13. Section 4.02 of the city Charter provides that all powers vested in the City shall be exercised by City council except as otherwise provided in the City Charter.

14. On information and belief, the City Director of Finance has not made the certification required by § 6.20 of the City Charter, which states:

Except as otherwise provided in § 13.06 of this charter, no payment shall be made and no obligation incurred by or on behalf of the city or the school board except in accordance with an appropriation duly made and no payment shall be made from or obligation incurred against any allotment or appropriation unless the director of finance or his designee shall first certify that there is a sufficient unexpended and unencumbered balance in such allotment or appropriation to meet the same. Every expenditure or obligation authorized or incurred in violation of the provisions of this charter shall be void. Every payment made in violation of the provisions of this charter shall be deemed illegal and every official who shall knowingly authorize or make such payment or knowingly take part therein and every person who shall knowingly receive such payment or any part thereof shall be jointly and severally liable to the city for the full amount so paid or received. If any officer, member of a board or commission, or employee of the city or of the school board, shall knowingly incur any obligation or shall authorize or make any expenditure in violation of the provisions of this charter or knowingly take part therein such action may be cause for his/her removal. Nothing in this section contained, however, shall prevent the making of contracts of lease or for services providing for the payment of funds at a time beyond the

fiscal year in which such contracts are made, provided the nature of such transactions will reasonably require, in the opinion of the council, the making of such contracts.

15. On November 5, 2007, this Court ruled that the order of then-Mayor Douglas Wilder requiring the Richmond School Board to vacate City Hall and remove its records from City Hall was invalid as beyond the powers granted to him as Mayor and that the power to exercise such powers resided in City Council. *School Board of the City of Richmond, Deborah Jewell-Sherman, Superintendent, City of Richmond Public Schools, and City Council of the City of Richmond v. L. Douglas Wilder, Mayor of the City of Richmond, and Harry E. Black*, 74 Va. Cir. 309, 328 (Nov. 5, 2007).

16. Mayor Stoney has asserted the right to remove the monuments at issue pursuant to Resolution No. 2020-R025, which was adopted by City Council on March 16, 2020, to respond to the Novel Coronavirus pandemic known as “COVID-19.” That resolution constitutes City Council’s purported consent to Mayor Stoney’s declaration that a local emergency exists “due to the potential spread of the 2019 Novel Coronavirus known as ‘COVID-19.’”

17. Removing monuments has no rational relationship to the purpose of Resolution No. 2020-R025, which was a measure designed to protect public health from the effects of a virus.

18. Mayor Stoney’s reliance on the emergency ordinance to justify his removal of the monuments at issue was arbitrary and unjustified. His decision to remove the monuments was based on his political calculation that such an action would benefit his reelection prospects, as he stated at the time the first monument, the Stonewall Jackson monument, was removed.

19. Mayor Stoney had available means to safeguard public safety within the Monument Avenue Historic District and in the locations in which the other monuments were located without removing the monuments at issue. Removal of the statues would not and did not enhance or protect public safety.

20. In August 2107, then-Governor Terry McAuliffe took proactive steps to avert violence and to preserve public safety in the area surrounding the Lee monument after an out-of-state organization, had announced that it would sponsor a rally at that monument on September 16, 2017. Mr. McAuliffe signed an Executive Order in August 2017 that banned protests at the Lee monument, prohibited the issuance of permits for demonstrations involving more than ten individuals at that location, and established a task force to draft permanent regulations governing demonstrations.

21. In November 2017, the permanent regulations prohibiting demonstrations at the Lee monument without a permit and limiting the size of permitted demonstrations to 500 people were promulgated. The Lee monument was ordered closed from sunset to sunrise, climbing on the monument was prohibited, and all vehicles, firearms and other weapons, tents and tables, bricks and stones, stick-holding placards, food and beverages, drones, portable and auxiliary lights, and penetrating the ground with any object were also banned. 1VAC30-150. Neither Defendant Stoney nor the state agencies charged with enforcement of those regulations have taken appropriate action to implement those regulations. Indeed, none of the seven general rules prescribed in 1VAC30-150-20 has been complied with in 2020, and the rules applicable to permitted events in 1VAC30-150-30 prohibiting certain activities and items allowed (*e.g.*, weapons, tents, tables, food and beverages, and lights) have been utterly ignored.

22. Defendants exhibited a lack of concern for the safety of protesters and bystanders as the City's contractor was removing the statue of Stonewall Jackson from its pedestal on July 1, 2020, during a severe storm in which there were reported lightning strikes within one mile of the statue. The standard response to such conditions is to instruct individuals to find appropriate

cover. In addition, Defendant Stoney did not undertake to assure that the contractor complied with applicable safety and health regulations during the removal of the Stonewall Jackson statue.

23. The monument to A.P. Hill on Hermitage Road in the City is situated upon his grave. It is a sepulture within the meaning of § 18.2-126 of the Code of Virginia.

24. In 2020, Mayor Stoney had received the advice and legal opinion of the City Attorney before the removals were undertaken that the Mayor lacked the authority to order removal of the monuments at issue. The City Attorney's role and responsibilities are set forth in § 4.17 of the City Charter. The City Attorney is appointed by City Council and serves as the chief legal advisor of the Mayor, City Council and all departments, boards, commissions and agencies of the City in all matters affecting the interests of the City. If the City Attorney determines that he is unable to render legal services to the Mayor due to a conflict of interest, the Mayor may employ special counsel. The City Attorney has not made such a determination of a conflict of interest regarding Defendants' powers and duties with respect to the monuments at issue.

25. Mayor Stoney refused to accept the legal opinion of the City Attorney regarding his lack of authority and procured the legal advice of private attorneys, who, according to published reports, advised the Mayor that he could exercise the power to order removal of the monuments at issue.

26. The stated justification for Mayor Stoney's invocation of emergency power to order removal of the monuments at issue was the need to preserve public safety. That justification was pretextual and arbitrary. Mayor Stoney had encouraged protests and participated in protests during the weeks before the removal of the monuments at issue involving hundreds of people who were not required to observe distancing protocols or to wear masks or face coverings.

27. There was no legitimate public safety justification for removing the monuments at issue because the City possesses the legal and practical ability to protect public safety and avert violence and assure the safety and health of City and visitors without removing the monuments.

28. Mayor Stoney either condoned the violent conduct of mobs that damaged public and private property or failed to take appropriate action to prevent and stop violence in the City at the location of the monuments at issue in the several weeks leading up to his order to remove those monuments.

29. Before the statue of Jefferson Davis was violently pulled down from its pedestal by criminal actors at the intersection of Monument Avenue and Davis Avenue the overnight of June 10-11, 2020, Mayor Stoney had advised the then-Chief of the Richmond Police Department, William Smith, that, based on statements by members of City Council that they would vote to authorize removal of the statue after authorizing legislation went into effect on July 1, 2020, allowing local governing bodies to do so, the monuments at issue had “a short life span.” Mayor Stoney also advised the same Police Chief before the Davis statue was illegally pulled down from its pedestal that he had contracted for the removal of that statue and others.

30. The Richmond Police Department took no action to prevent the illegal removal of the Davis statue from its pedestal on Monument Avenue overnight on June 10-11, 2020, and made no arrests of the individual perpetrators.

31. Criminal conduct by those demonstrating on Monument Avenue, including defacing the several monuments with paint, occurred in plain view for weeks during May, June and July 2020 without the appropriate response by the Richmond Police Department of arresting the perpetrators of vandalism, assaults, and other crimes. Defacing any monument or memorial for a war veteran constitutes a crime. Code of Virginia § 18.2-137. The monuments to Stonewall

Jackson, J.E.B. Stuart, Matthew Fontaine Maury, Fitzhugh Lee, the Confederate Soldiers and Sailors, Joseph Bryan, A.P. Hill, Jefferson Davis, the Richmond Howitzers, and the 1st Virginia Regiment are monuments or memorials for war veterans. Any willful or malicious damage to, or defacement of, statuary on public grounds constitutes a Class 6 felony. Code of Virginia § 18.2-138. All of the statues in the Monument Avenue Historic District are situated on public grounds.

32. Other conduct by protesters from May 29, 2020, to the present day has been in apparent violation of various other criminal laws. Much of that conduct occurred in view of the public. Numerous incidents that were reported to the Richmond Police Department were not promptly or aggressively investigated by that department.

33. Upon the resignation of Richmond Police Chief William Smith on June 16, 2020, William Blackwell became Interim Police Chief. At a news conference on June 17, 2020, Mr. Blackwell stated: “We, as a community, need to step up and take our community back because too many sit in silence.... We’re going to get the city back.” Mr. Blackwell was replaced by Mayor Stoney as the head of the Police Department eleven days later.

34. Mayor Stoney used the power and influence of his office to discourage officials charged with responsibility to enforce the criminal laws of the Commonwealth and ordinances of the City, including the Commonwealth’s Attorney for the City and the Richmond Police Chiefs, not to enforce those laws as they should have been enforced to protect public safety.

35. In one situation, police officers arrived at a Monument Avenue residence in response for a call for assistance after demonstrators assaulted members of the household, destroyed gates, threw objects at a bedroom window of the 96-year-old owner. The police officers refused to leave their vehicle stating that they were instructed not to go where they perceived a threat to

their safety. The actions of the demonstrators constituted violations of §§ 18.2-406 and 18.2-419 but no arrests were made.

36. In another situation, neither the Police Department nor the Richmond Fire Department responded to a property owner's request for assistance when violent demonstrators set fire to several of his commercial buildings at Lombardy Street and Broad Street in the City.

37. In repeated incidents in the Monument Avenue Historic District where several of the monuments were located, demonstrators assembled with the intent to pull down monuments, blocked streets, vandalized monuments and other properties, both public and private, without being arrested or prosecuted for violations of criminal laws. Demonstrators took control and occupancy of public places in the District without being arrested or prosecuted.

38. The measures that had been put in place by the City to prevent violence and to preserve public safety in September 2017 in anticipation of the rally at the Lee monument would have been entirely adequate to deal with any threat of violence in the spring and summer of 2020.

39. Mayor Stoney offered two reasons for ordering the removal of the monuments at issue. The first was that failing to remove the monuments posed a "severe and immediate threat to public safety" as protesters tried to remove the monuments on their own. The second was that immediate removal of the monuments "would expedite the healing process." Mayor Stoney's concern for the safety of "protesters" who commit criminal acts and regard for the viewpoint of only one faction of the citizenry regarding removal of the monuments is not a legitimate basis for ignoring applicable laws and ordinances governing the process of authorizing removal.

40. Mayor Stoney used his failure to carry out the duties of his office to see that the laws against violent conduct and the destruction of public property are properly executed as justification for his order to remove the monuments at issue. The illegal conduct that he tolerated

and even encouraged by his deliberate decisions not to see that the laws are enforced cannot and do not serve as a legitimate basis to bootstrap his order to remove the monuments.

41. City Council had no authority to act under the discretion granted to local governing bodies by legislation enacted by the General Assembly at its 2020 session by Acts of Assembly 2020 c. 1100 (§ 15.2-1812(B) of the Code of Virginia) until it complied with the procedural requirements set forth in § 15.2-1812(B), the City Charter, and the provisions of the Zoning Ordinance regarding consideration of the proposed removal by the City Planning Commission and the Arts Commission and mandated public hearings by those bodies and by City Council itself.

42. The requirements that City Council and other public bodies receive public input before making certain decisions are imposed by laws enacted by the General Assembly, including § 15.2-2204 of the Code of Virginia.

43. Consideration of the viewpoints of citizens is more than a procedural requirement. Article I, § 2 of the Constitution of Virginia provides: “That all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them.” The disregard by the Mayor and members of City Council of the views of the citizens and of the requirements that such viewpoints be received in an orderly manner through the public notice and public hearing processes before decisions are made by elected and appointed officials, as opposed to the violent and threatening actions of mobs, is a violation of the right of citizens at large to participate in their governance.

44. City Council members had no authority to permit Mayor Stoney to order removal of the monuments at issue or to contract with private entities for the removal of the monuments at issue until City Council had formally and officially voted to exercise the discretion granted by Acts of

Assembly 2020 c.1100 (§ 15.2-1812(B) of the Code of Virginia) and had complied with its requirements, and until the procedures prescribed by §§ 6.20, 17.01, 17.02, and 17.05 of the City Charter and §§ 30-930, 30-930.3, 30-1050.3, and 30-930.4 of the City Zoning ordinance have been complied with.

45. Despite the illegality of Mayor Stoney's orders to remove the monuments at issue and the advice provided to City Council by the City Attorney that removing the monuments at issue was a violation of the laws of the Commonwealth, the City Charter and ordinances adopted by City Council, members of City Council acquiesced in Mayor Stoney's decision to proceed with the removals in violation of their collective and individual responsibilities

46. Mayor Stoney's order to remove the monuments at issue exceeded his authority under the City Charter, the laws of the Commonwealth, and the emergency ordinance adopted by City Council and, therefore, was *ultra vires*, illegal and invalid.

COUNT ONE

47. The allegations contained in other paragraphs of this complaint are incorporated here by reference.

48. Section 15.2-1812(B) of the Code of Virginia requires that notice of a public hearing be published in a newspaper having general circulation in the City not less than 30 days before the hearing and that the governing body may not vote to remove any monument until after such public hearing.

49. Defendant City Council and the individual Council members joined as Defendants have violated § 15.2-1812(B) by not publishing notice of, and conducting, the public hearing required by that statute, the absence of which violates the mandate in Article I, § 2 of the Constitution of Virginia.

50. Defendant Stoney has violated § 15.2-1812(B) by ordering the removal of the monuments in question without the required authorization from City Council pursuant to that statute.

COUNT TWO

51. The allegations contained in other paragraphs of this complaint are incorporated here by reference.

52. Defendants have violated numerous provisions of the City Charter granted by the General Assembly, including §§ 2.08, 4.02, 6.20, 17.01, 17.02, and 17.05.

53. The City Charter is binding on Defendants, notwithstanding the resolution, Resolution No. 2020-R025, adopted by City Council on March 16, 2020, and the provisions of § 44-146.19(B) of the Code of Virginia.

COUNT THREE

54. The allegation contained in other paragraphs of this complaint are incorporated here by reference.

55. Resolution No. 2020-R025 does not authorize Defendant Stoney to order the removal of the monuments, including the pedestals on which statues were placed. The removal of monuments has no rational relationship to the purpose and effect of that resolution, which is to prevent the spread of a virus.

56. Defendant Stoney's reliance on Resolution No. 2020-R025 was in excess of any authority granted by City Council. His order to remove the monuments at issue is, therefore, invalid and illegal.

COUNT FOUR

57. The allegations contained in other paragraphs of this complaint are incorporated here by reference.

58. Any grant of power in Resolution No. 2020-R025 is not accompanied by standards and limiting conditions to preclude the arbitrary exercise of discretion by Defendant Stoney.

59. The requirement of adequate standards and limiting condition to accompany delegations of power is compelled by the Constitution of Virginia and decisions of the Supreme Court of Virginia construing the Constitution.

60. Resolution No. 2020-R025 is invalid due to its lack of adequate standards and limiting conditions on the exercise of the power delegated to Defendant Stoney.

61. Defendant Stoney's order to remove the monuments at issue is invalid and illegal because it is based on an invalid delegation by City Council.

COUNT FIVE

62. The allegations contained in other paragraphs of this complaint are incorporated here by reference.

63. If Resolution No. 2020-R025 has the effect of granting Defendant Stoney the power to remove the monuments at issue, he exercised that power in an arbitrary manner.

64. Defendant Stoney flagrantly disregarded measures that the Governor of Virginia and the State Health Commissioner had prescribed to prevent the spread of the COVID 19 virus at the location of the Lee monument in Richmond where hundreds of protesters were gathered without face coverings and the prescribed distance between protesters. Defendant Stoney himself attended without observing those prescriptions.

65. Defendant Stoney allowed crowds of protesters to assemble at some of the monuments, particularly the Lee monument, for many days without face coverings and without observing the prescribed distance between protesters.

66. The removal order included instructions to remove monuments, such as the two Confederate cannon, the Fitzhugh Lee monument, the Joseph Bryan monument and the pedestals of the Davis and Jackson monuments, which presented no reasonable threat of harm to protesters or bystanders if they were removed illegally by protesters.

67. The actions and statements of Defendant Stoney since May 29, 2020, related to the monuments, the protests, the riots, the widespread vandalism, and the conduct of the police provide ample evidence of his lack of concern about public safety and health.

68. Even if there were a potential threat of harm to protesters and bystanders if monuments were pulled down illegally by protesters, Defendant Stoney had the means available to the City to avert that threat, as had been demonstrated by the City in response to previous protests. Defendant Stoney arbitrarily issued his removal order without considering alternative responses.

69. Defendant Stoney's order to remove the monuments at issue is invalid and illegal because of the arbitrary manner in which he exercised the power granted to him.

COUNT SIX

70. The allegations contained in other paragraphs of this complaint are incorporated here by reference.

71. The language in Subsection C of § 44-146.19 of the Code of Virginia purports to give political subdivisions of the Commonwealth unrestricted power during a declared emergency to "protect the health and safety of persons and property."

72. That statutory provision is unaccompanied by any limiting conditions or adequate standards to preclude the arbitrary execution of the exceedingly broad discretion involved in that delegation of power.

73. The absence of any limiting conditions or adequate standards in Subsection C of § 44-146.19 renders that provision invalid under the Constitution of Virginia and applicable decisions of the Supreme Court of Virginia.

74. Defendants' reliance upon § 44-146.19(C) is, therefore, legally unavailing. Their actions involving the removal of the monuments at issue are and were illegal and invalid.

WHEREFORE, Plaintiffs request that the Court enter a declaratory judgment that Mayor Levar Stoney's order to remove the monuments to Stonewall Jackson, J.E.B. Stuart, Matthew Fontaine Maury, Fitzhugh Lee, Soldiers and Sailors erected on Libby Hill, Jefferson Davis, Joseph Bryan, A.P. Hill, the 1st Virginia Regiment, and the Richmond Howitzers, as well as the two Confederate canon and markers on Monument Avenue and any other monuments that may be added to Mayor Stoney's order, was illegal and invalid as being arbitrary and in excess of his lawful authority and that City Council exercises no authority to authorize the removal of those monuments until the requirements of § 15.2-1812(B) of the Code of Virginia, the City Charter and Zoning Ordinance that public hearings be held are complied with; enjoin Mayor Stoney from taking any action to remove monuments in the City without demonstrating the authority to do so; enjoin Defendants to restore the monuments that have been removed to their previous condition before removal and defacement; require Defendants to protect and safeguard the monuments; award Plaintiffs their costs incurred in this proceeding; and order such further relief as the Court deems appropriate in the circumstances.

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