Exhibits
Ex. 12

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

ROY L. PERRY-BEYand
RONALD M. GREEN,

Plaintiffs,

v. **Docket No.: CL19-3928**

CITY OF NORFOLK, et al.

Defendants.

ORDER ON MOTION TO QUASH

On May 20, 2019, the Court received a Motion to Quash filed by counsel on behalf of:

- Kenneth Cooper Alexander, a member of the Norfolk City Council and Mayor of the City of Norfolk (hereinafter the "City");
- Martin A. Thomas, Jr., a member of the Norfolk City Counsel and vice Mayor for the City;
- Paul R. Riddick, a member of the Norfolk City Council;
- Thomas R. Smigiel, a member of the Norfolk City Council;
- Angela Williams Graves, a member of the Norfolk City Council;
- Mamie B. Johnson, a member of the Norfolk City Council;
- Andria P. McClellan, a member of the Norfolk City Council;
- Courtney Doyle, a member of the Norfolk City Council;
- Douglas Smith, the appointed City Manager for the City and its chief executive officer
- Richard A. Bull, the appointed Clerk for the City;

- Bernard A. Pishko, the appointed City Attorney for the City who is representing the City in the instant case;
- Adam D. Melita – Deputy City Attorney for the City who is representing the City in the instant case; and
- Heather Ann Mullen – Deputy City Attorney for the City who is representing the City in the instant case

(hereinafter "Subpoenaed Persons"). Plaintiffs caused to be served on each of the Subpoenaed Persons a witness subpoena for them to appear on June 3, 2019, at 2:00 pm in the Norfolk Circuit Court for a hearing on the Plaintiffs' Motion for Preliminary Injunction in the above-mentioned case.

The Court's review of Plaintiff's Complaint for Declaratory Judgment and Petition for Preliminary Injunction suggests that legal, and not factual, issues will control the outcome of this case. It does not appear that many of Plaintiffs' alleged facts will be contested. Determination of these issues are not likely to turn on testimony from witnesses but on legal issues, including, *inter alia*, the Court's subject matter jurisdiction over this controversy, the authority of the judicial branch of government to compel a city to perform a legislative function, and the applicability of Virginia Code §15.2-1812 to the City's authority to take the action sought by Plaintiffs. None of the witnesses under subpoena on whose behalf a motion to quash has been filed, are likely to present any testimony that touches on any of these issues. Before the Court will allow these pro se plaintiffs to interrupt the busy schedules of more than a dozen leaders of this City to present testimony that is likely unnecessary and not controverted, the Court requires Plaintiffs to prepare a written proffer of the factual testimony that they expect to elicit from each such witness. That proffer shall be presented to the City Attorney's office and to the Court on or before May 28, 2019. The motion to quash will be under advisement until that proffer is received and the City

has presented any additional pleadings regarding the same. The Court anticipates that most of the relevant facts can be stipulated.

The Clerk is DIRECTED to email a copy of this Order to all unrepresented parties and to counsel of record.

Endorsements by counsel and/or the parties are waived.

It is so ORDERED.

ENTER: 21 May 2019

MARY JANE HALL, JUDGE

Exhibits

Ex. 13

NORFOLK

Office of the City Attorney

BERNARD A. PISHKO
City Attorney
ADAM D. MELITA
HEATHER A. MULLEN
JACK E. CLOUD
DEREK A MUNGO
TAMELE Y. HOBSON
NADA N. KAWWASS
ANDREW R. FOX
MICHELLE G. FOY
MATTHEW P. MORKEN
HEATHER L. KELLEY
ERIKKA M. MASSIE
ZACHARY A. SIMMONS
KARLA J. SOLORIA
ALEX H. PINCUS
MICHAEL A. BEVERLY
MARGARET A. KELLY
KATHERINE A. TAYLOR
KRISTOPHER R. McCLELLAN

Direct Dial: (757) 664-4366

October 10, 2019

VIA USPS - CERTIFIED

Hon. Douglas B. Robelen, Clerk
Supreme Court of Virginia
100 North 9th Street, 5th Floor
Richmond, VA 23219

CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
OCT 15 2019
RICHMOND, VIRGINIA

Re: Roy Perry-Bey, et al. v. City of Norfolk, et al.
Record No.: 191235

Dear Mr. Robelen:

Please find enclosed one (1) original and three (3) copies of the CITY OF NORFOLK'S MOTION TO DISMISS, which I ask to be filed with the papers of the above-mentioned case.

Thank you for your attention to this matter.

Respectfully Submitted,

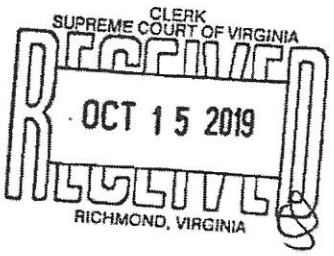
Adam D. Melita
Deputy City Attorney

ADM:lsb
Enclosures

cc: Roy Perry-Bey, *pro se*
Ronald M. Green, *pro se*
Jacqueline C. Hedblom, Assistant Attorney General

810 Union Street, Suite 900 • Norfolk, VA 23510
(757) 664-4529 • Fax: (757) 664-4201

IN THE SUPREME COURT OF VIRGINIA



ROY L. PERRY BEY and
RONALD M. GREEN

Appellants,

v.

CITY OF NORFOLK, VIRGINIA, et al.

Appellees.

Record No: 191235

CITY OF NORFOLK'S MOTION TO DISMISS

Comes now the Appellee City of Norfolk (hereinafter "City"), by counsel, and says that this Court should not take any further cognizance of the Amended Petition for Appeal filed in this matter, dated September 25, 2019, by reason of the following:

1. The ruling of the trial court that the Appellants seek to appeal was rendered following a hearing held in open court on July 15, 2019. Notwithstanding the presence of a court reporter who transcribed the proceedings, the Appellants failed to file either the transcript from the hearing or a statement in lieu of transcript, as required by Rule 5:11. Because the Appellants cannot present any argument on appeal that they did not present to the trial court, *Martin v. Ziherl*, 269 Va. 35, 39 (2005), a record of what arguments they made at the hearing is essential to the determination of

whether any assignment of error listed in their Petition is or is not being presented for the first time in this Court. The requirement to file a transcript or statement in lieu of transcript is mandatory, *see Towler v. Commonwealth*, 216 Va. 533, 534-35 (1976), and the Appellants' failure to file anything summarizing the proceedings below requires that their Petition be dismissed.

2. While the Appellants' Petition purports to include two assignments of error, (Pet. for App. 1), there is nothing to indicate where in the record each error was preserved in the trial court. Rule 5:17(c) expressly requires that the Petition include "an exact reference" to the page or pages in the transcript (which was not filed), the statement in lieu of transcript (which was not filed), or the record where the error is preserved. Because no such references are included in the Petition, the would-be assignments of error are insufficient and the Petition must be dismissed, pursuant to Rule 5:17(c)(1)(iii).

3. Substantively, the two paragraphs listed under the heading "assignments of error" in the Petition fail to address any ruling or finding of the trial court. Rather, they merely state that the trial court's judgment "conflicts with" certain principals of law. (*See* Pet. for App. 1). Because the

assignments of error are insufficient, the Petition must be dismissed, pursuant to Rule 5:17(c)(1)(iii).

4. To the extent this Court were to read the fifteen numbered paragraphs that appear below the heading "Questions Presented" in the Petition, (Pet. for App. 2-3), as constructive assignments of error, these too are insufficient, since every one of them fails to include any reference to the page in the record where the error was preserved in the trial court.

5. The Petition fails to include several clear, mandatory requirements for it to be considered compliant with Rule 5:17(c). Specifically, it contains:

(a) No statement of the nature of the case (required by Rule 5:17(c)(4));

(b) No statement of facts that relate to the assignments of error (required by Rule 5:17(c)(5)); and

(c) No legal argument (required by rule 5:17(c)(6)).

Because these necessary elements are missing, the Petition is defective and should not be considered by this Court.

For all of the foregoing reasons, the Appellee City of Norfolk moves this Court to find that the Petition filed in this case is defective and that no appeal has been perfected, wherefore this matter shall be dismissed.

CITY OF NORFOLK,

By _____
Adam D. Melita
Deputy City Attorney

Adam D. Melita, Deputy City Attorney
Virginia State Bar No.: 41716
900 City Hall Building
810 Union Street
Norfolk, Virginia 23510
Phone: (757) 664-4529
Fax: (757) 664-4201
E-mail: adam.melita@norfolk.gov
Counsel for Appellee City of Norfolk

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of October, 2019, one original and three copies of this Motion to Dismiss were sent, postage prepaid, via certified mail to be filed with the Clerk of the Supreme Court of Virginia and additional copies were sent, postage prepaid, via first-class mail to the following:

Roy L. Perry-Bey, *pro se*
89 Lincoln Street, #1172
Hampton, Virginia 23669
E-mail: ufj2020@gmail.com

Ronald M. Green, *pro se*
5540 Barnhollow Road
Norfolk, Virginia 23502
E-mail: RonaldPreppie@aol.com

Jacqueline C. Hedblom
Office of the Attorney General
202 North 9th Street
Richmond, Virginia 23219
Phone: (804) 692-0598
Fax: (804) 371-2087
E-mail: JHedblom@oag.state.va.us.

Adam D. Melita
Deputy City Attorney

Exhibits
Ex. 14

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

ROY L. PERRY-BEY and RONADL M. GREEN	)	
vs.	)	Docket No.: CL19-3928 (MJH)
CITY OF NORFOLK and NORFOLK CITY ATTORNEYS OFFICE	)	

PROFFER OF FACTUAL TESTIMONY OF WITNESSES

Pursuant to order on May 21, 2019, the Court required plaintiffs to prepare a written proffer of factual testimony they expect to elicit from each witness in a proceeding pending in Court on June 3, 2019, as follows:

1. The connecting relevant factual testimony of each witness pursuant Rule 2:104 (a)(b), which shall be necessary information to be tried:

2. Bernard A. Pishko, as the appointed City Attorney for the City and Norfolk City Attorneys Office and necessary witness representing the City in this instant case, does it presents a serious and unethical conflict of interests, in violation of Rules of the Supreme Court of Virginia, Part 6, § II Rule 3.7(a),(c).

3. Adam D. Melita, as the appointed Deputy City Attorney for the City and Norfolk City Attorneys Office and necessary witness representing the City in this instant case, does it presents a serious and unethical conflict of interests, in violation of Rules of the Supreme Court of Virginia, Part 6, § II Rule 3.7(a),(c).

4. Heather Ann Mullen, as the appointed Deputy City Attorney for the City and Norfolk City Attorneys Office and necessary witness representing the City in this instant case, does it presents a serious and unethical conflict of interests, in violation of Rules of the Supreme Court of Virginia, Part 6, § II Rule 3.7(a),(c).

5. Bernard A. Pishko, based on the plain language of Resolution 1,678, is the City Confederate Monument at issue in this litigation, a monument to a war, conflict, engagement, or war veterans, and is covered by Virginia Code § 15.2-1882.

6. Adam D. Melita, based on the plain language of Resolution 1,678, is the City Confederate Monument at issue in this litigation, a monument to a war, conflict, engagement, or war veterans, and is covered by Virginia Code § 15.2-1882.

7. Heather Ann Mullen, based on the plain language of Resolution 1,678, is the City Confederate Monument at issue in this litigation, a monument to a war, conflict, engagement, or war veterans, and is covered by Virginia Code § 15.2-1882.

8. Bernard A. Pishko, based on the plain language of Resolution 1,678, does Virginia Code § 15.2-1882, apply retroactively to the monument at issue in this litigation, which was erected in the City of Norfolk "a municipality" in 1889 on busy Commercial Place, at the gateway for the ferries running between Norfolk and Portsmouth.

9. Adam D. Melita, based on the plain language of Resolution 1,678, does Virginia Code § 15.2-1882, apply retroactively to the monument at issue in this litigation, which was erected in the City of Norfolk a "municipality" in 1889 on busy Commercial Place, at the gateway for the ferries running between Norfolk and Portsmouth.

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1. The witness subpoena has bearing upon the testimony of legal facts and the Plaintiffs First Amendment and Fourteenth Amendment causes of actions in this case, without deference and restraint due to their prose status or interruption of the busy schedules of the witness or number of witnesses, should not be broadly quashed because the subpoena is allowed by Va. Code § 8.01-407; 161-265; Supreme Court Rules: 1:4, 4:5. see also Harlow v. Fitzgerald, post, p.457 U.S. 800).

10. Heather Ann Mullen, based on the plain language of Resolution 1,678, does Virginia Code § 15.2-1882, apply retroactively to the monument at issue in this litigation, which was erected in the City of Norfolk a "municipality" in 1889 on busy Commercial Place, at the gateway for the ferries running between Norfolk and Portsmouth.

11. Bernard A. Pishko, does the City Confederate Monument content or speech honor the Confederate States of America at issue in this litigation or violate the First Amendment, Fifth Amendment and Fourteenth Amendment to the Constitution of Virginia and the Constitution of the United States of America and laws.

12. Adam D. Milita, based on the City Confederate Monument content or speech honor the Confederate State of America at issue in this litigation or violate the First Amendment, Fifth Amendment and Fourteenth Amendment to the Constitution of Virginia and the Constitution of the United States of America and laws.

13. Heather Ann Mullen, does the City Confederate Monument content or speech honor the Confederate States of America at issue in this litigation or violate the First Amendment, Fifth Amendment and Fourteenth Amendment to the Constitution of Virginia and the Constitution of the United States of America ans laws.

14. Bernard A. Pishko, does the circuit court of the Commonwealth have jurisdiction in this litigation, over the subject matter of the controversy under Virginia Code § 8.01-581.014.

15. Adam D. Melita, does the circuit court of the Commonwealth have jurisdiction in this litigation, over the subject matter of the controversy under Virginia Code § 8.01-581.014.

16. Heather Ann Mullen, does the circuit court of the Commonwealth have jurisdiction in this litigation, over the subject matter of the controversy under Virginia Code § 8.01-581.014.

17. Kenneth Cooper Alexander, was the City of Norfolk established by law, a body politic and corporate to be known and designated as the city of Norfolk, may sue and be sued under Va. Code § 15.2-1404 and the Courts shall have jurisdiction provided by law, and exclusive jurisdiction subject in each case only by admiralty jurisdiction of the United States. (1918, c. 34), § 1 Norfolk City Charter.

18. Martin A. Thomas, Jr., was the City of Norfolk established by law, a body politic and corporate to be known and designated as the city of Norfolk, may sue and be sued under Va. Code § 15.2-1404 and the Courts shall have jurisdiction provided by law, and exclusive jurisdiction subject in each case only by admiralty jurisdiction of the United States. (1918, c. 34), § 1 Norfolk City Charter.

19. Paul R. Riddick, was the City of Norfolk established by law, a body politic and corporate to be known and designated as the city of Norfolk, may sue and be sued under Va. Code § 15.2-1404 and the Courts shall have jurisdiction provided by law, and exclusive jurisdiction subject in each case only by admiralty jurisdiction of the United States. (1918, c. 34), § 1 Norfolk City Charter.

TAKE JUDICIAL NOTICE: There is no factual issues in dispute that the City's Confederate monument conveys government hate speech, directed at the Plaintiffs, and denigrate them and members of their race as persons of lesser worth. In addressing this legal issue, the Court has to determine whether the City is engaging in it's "own expressive conduct" or "providing a forum for private Confederate hate speech" or religious white supremacy in violation of law.

20. Thomas R. Smigiel, was the City of Norfolk established by law, a body politic and corporate to be known and designated as the city of Norfolk, may sue and be sued under Va. Code § 15.2-1404 and the Courts shall have jurisdiction provided by law, and exclusive jurisdiction subject in each case only by admiralty jurisdiction of the United States. (1918, c. 34), § 1 Norfolk City Charter.

21. Angela Williams Graves, was the City of Norfolk established by law, a body politic and corporate to be known and designated as the city of Norfolk, may sue and be sued under Va. Code § 15.2-1404 and the Courts shall have jurisdiction provided by law, and exclusive jurisdiction subject in each case only by admiralty jurisdiction of the United States. (1918, c. 34), § 1 Norfolk City Charter.

22. Mamie B. Johnson, was the City of Norfolk established by law, a body politic and corporate to be known and designated as the city of Norfolk, may sue and be sued under Va. Code § 15.2-1404 and the Courts shall have jurisdiction provided by law, and exclusive jurisdiction subject in each case only by admiralty jurisdiction of the United States. (1918, c. 34), § 1 Norfolk City Charter.

23. Andria P. McClellan, was the City of Norfolk established by law, a body politic and corporate to be known and designated as the city of Norfolk, may sue and be sued under Va. Code § 15.2-1404 and the Courts shall have jurisdiction provided by law, and exclusive jurisdiction subject in each case only by admiralty jurisdiction of the United States. (1918, c. 34), § 1 Norfolk City Charter.

24. Courtney Doyle, was the City of Norfolk established by law, a body politic and corporate to be known and designated as the city of Norfolk, may sue and be sued under Va. Code § 15.2-1404 and the Courts shall have jurisdiction provided by

law, and exclusive jurisdiction subject in each case only by admiralty jurisdiction of the United States. (1918, c. 34), § 1 Norfolk City Charter.

25. Douglas Smith, was the City of Norfolk established by law, a body politic and corporate to be known and designated as the city of Norfolk, may sue and be sued under Va. Code § 15.2-1404 and the Courts shall have jurisdiction provided by law, and exclusive jurisdiction subject in each case only by admiralty jurisdiction of the United States. (1918, c. 34), § 1 Norfolk City Charter.

26. Richard A. Bull, was the City of Norfolk established by law, a body politic and corporate to be known and designated as the city of Norfolk, may sue and be sued under Va. Code § 15.2-1404 and the Courts shall have jurisdiction provided by law, and exclusive jurisdiction subject in each case only by admiralty jurisdiction of the United States. (1918, c. 34), § 1 Norfolk City Charter.

27. Bernard A. Pishko, was the City of Norfolk established by law, a body politic and corporate to be known and designated as the city of Norfolk, may sue and be sued under Va. Code § 15.2-1404 and the Courts shall have jurisdiction provided by law, and exclusive jurisdiction subject in each case only by admiralty jurisdiction of the United States. (1918, c. 34), § 1 Norfolk City Charter.

28. Adam D. Melita, was the City of Norfolk established by law, a body politic and corporate to be known and designated as the city of Norfolk, may sue and be sued under Va. Code § 15.2-1404 and the Courts shall have jurisdiction provided by law, and exclusive jurisdiction subject in each case only by admiralty jurisdiction of the United States. (1918, c. 34), § 1 Norfolk City Charter.

29. Heather Ann Mullen, was the City of Norfolk established by law, a body politic and corporate to be known and designated as the city of Norfolk, may sue and be sued under Va. Code § 15.2-1404 and the Courts shall have jurisdiction provided by law, and exclusive jurisdiction subject in each case only by admiralty jurisdiction of the United States. (1918, c. 34), § 1 Norfolk City Charter.

30. Kenneth Cooper Alexander, based on the plain language of the provisions of §§ 2 and Chapter 27-2 *et seq.,* of the Norfolk City Charter does it explicitly authorize the city in this litigation, as a matter of law, to remove, relocate or otherwise dispose of the City Confederate monument or declare it a "nuisance" in the city and detrimental to the public health, safety or welfare or the environment.

31. Martin A. Thomas, Jr., based on the plain language of the provisions of §§ 2 and Chapter 27-2 *et seq.,* of the Norfolk City Charter does it explicitly authorize the city in this litigation, as a matter of law, to remove, relocate or otherwise dispose of the City Confederate monument or declare it a "nuisance" in the city and detrimental to the public health, safety or welfare or the environment.

32. Paul R. Riddick, based on the plain language of the provisions of §§ 2 and Chapter 27-2 *et seq.,* of the Norfolk City Charter does it explicitly authorize the city in this litigation, to remove, relocate or otherwise dispose of the City Confederate monument or declare it a "nuisance" in the city and detrimental to the public health, safety or welfare or the environment.

33. Thomas R. Smigiel, based on the plain language of the provisions of §§ 2 and Chapter 27-2 *et seq.,* of the Norfolk City Charter does it explicitly authorize the city in this litigation, to remove, relocate or otherwise dispose of the City

Confederate monument or declare it a "nuisance" in the city and detrimental to the public health, safety or welfare or the environment.

34. Angela Williams Graves, based on the plain language of the provisions of §§ 2 and Chapter 27-2 *et seq.,* of the Norfolk City Charter does it explicitly authorize the city in this litigation, to remove, relocate or otherwise dispose of the City Confederate monument or declare it a "nuisance" in the city and detrimental to the public health, safety or welfare or the environment.

35. Mamie B. Johnson, based on the plain language of the provisions of §§ 2 and Chapter 27-2 *et seq.,* of the Norfolk City Charter does it explicitly authorize the city in this litigation, to remove, relocate or otherwise dispose of the City Confederate monument or declare it a "nuisance" in the city and detrimental to the public health, safety or welfare or the environment.

36. Andria P. McClellan, based on the plain language of the provisions of §§ 2 and Chapter 27-2 *et seq.,* of the Norfolk City Charter does it explicitly authorize the city in this litigation, to remove, relocate or otherwise dispose of the City Confederate monument or declare it a "nuisance" in the city and detrimental to the public health, safety or welfare or the environment.

37. Courtney Doyle, based on the plain language of the provisions of §§ 2 and Chapter 27-2 *et seq.,* of the Norfolk City Charter does it explicitly authorize the city in this litigation, to remove, relocate or otherwise dispose of the City Confederate monument or declare it a "nuisance" in the city and detrimental to the public health, safety or welfare or the environment.

38. Douglas Smith, based on the plain language of the provisions of §§ 2 and Chapter 27-2 *et seq.,* of the Norfolk City Charter does it explicitly authorize the city in this litigation, as a matter of law, to remove, relocate or otherwise dispose of the City Confederate monument or declare it a "nuisance" in the city and detrimental to the public health, safety or welfare or the environment.

39. Bernard A. Pishko, based on the plain language of the provisions of §§ 2 and Chapter 27-2 *et seq.,* of the Norfolk City Charter does it explicitly authorize the city in this litigation, to remove, relocate or otherwise dispose of the City Confederate monument or declare it a "nuisance" in the city and detrimental to the public health, safety or welfare or the environment.

40. Adam D. Melita, based on the plain language of the provisions of §§ 2 and Chapter 27-2 *et seq.,* of the Norfolk City Charter does it explicitly authorize the city in this litigation, to remove, relocate or otherwise dispose of the City Confederate monument or declare it a "nuisance" in the city and detrimental to the public health, safety or welfare or the environment.

41. Heather Ann Mullen, based on the plain language of the provisions of §§ 2 and Chapter 27-2 *et seq.,* of the Norfolk City Charter does it explicitly authorize the city in this litigation, to remove, relocate or otherwise dispose of the City Confederate monument or declare it a "nuisance" in the city and detrimental to the public health, safety or welfare or the environment.

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11. The Constitution of the United State of America requires loyalty to America, the City's Confederate monument is a symbol of Confederacy, and requires divided loyalty, which the "City" maintains, endorses and promotes in furtherance of religious white supremacy in violation of the United State Constitution, the Constitution of Virginia and existing law or laws.

42. Bernard A. Pishko, is a vote by a council member prosecutable under the criminal statute Virginia Code § 15.2-137, at issue in this litigation.

43. Adam D. Melita, is a vote by a council member prosecutable under the criminal statute Virginia Code § 15.2-137, at issue in this litigation.

44. Heather Ann Mullen, is a vote by a council member prosecutable under the criminal statute Virginia Code § 15.2-137, at issue in this litigation.

45. Bernard A. Pishko, does the context and language of Virginia Code § 15.2-137, make it clear the relocation of the City Confederate Monument at issue in this litigation, is not a removal under the statute.

46. Adam D. Melita, does the context and language of Virginia Code § 15.2-137, make it clear the relocation of the City Confederate Monument at issue in this litigation, is not a removal under the statute.

47. Heather Ann Mullen, does the context and language of Virginia Code § 15.2-137, make it clear the relocation of the City Confederate Monument at issue in this litigation, is not a removal under the statute.

48. Bernard A. Pishko, does Virginia Code § 15.2-137 or § 15.2-1882, violate the First Amendment's freedom of speech clause, because the restriction is based on the content of the monument or violate the Fifth Amendment because it deprives the city of the right to convey it's own speech or use its property how it wants.

Virginia's Rules of Evidence require that the proponent "make known" "the substance of the evidence to the court by proffer. Rule 2:103(a)(2); see Ray v. Commonwealth, 55 Va.App. 647, 650 n. 1, 688 S.E.2d 879, 881 n. 1 (2010). Id.

49. Adam D. Melita, does Virginia Code § 15.2-137 or § 15.2-1882, violate the First Amendment's freedom of speech clause, because the restriction is based on the content of the monument or violate the Fifth Amendment because it deprives the city of the right to convey it's own speech or use its property how it wants.

50. Heather Ann Mullen, does Virginia Code § 15.2-137 or § 15.2-1882, violate the First Amendment's freedom of speech clause, because the restriction is based on the content of the monument or violate the Fifth Amendment because it deprives the city of the right to convey it's own speech or use its property how it wants.

51. The factual testimony they expect to elicit from each witness will affirm defendants give Confederacy legitimacy, a weight, that plaintiffs are not obliged to acknowledge.

52. Plaintiffs without limiting the foregoing proffer of factual testimony they expect to elicit from each witness have submitted a sufficient written proffer..

May 28, 2019.

Respectfully Submitted,

/s/MR. RONALD M. GREEN
5540 BARNHOLLOW
NORFOLK, VA 23502
(757) 348.0436

/s/MR. ROY L. PERRY-BEY
89 LINCOLN STREET #1772
HAMPTON, VA 23669
(804) 362.0011

Exhibits
Ex. 15

MR. ROY L. PERRY-BEY
89 LINCOLN STREET #1772
HAMPTON, VA 23669
(804)362-0011
ufj2020@gmail.com

July 12, 2019

The Honorable George E. Schaefer, III,
Clerk Law Division
Norfolk Circuit Court Clerk's Office
150 St Paul's Blvd. 7th Floor
Norfolk, VA 23510
(757)793-3506

Re: **#CL19-3928**, Roy L. Perry-Bey, and Ronald M. Green v. City of Norfolk, Virginia, *et al.*,

Dear Mr. Schaefer, III:

Enclosed please find the plaintiffs motion objecting to June 15, 2019, proceeding to be filed in the above referenced matter, which I ask that you please present to the Hon. Mary Jane Hall, Judge.

Thank you for your kind assistance in this matter.

Very truly yours,

Mr. Roy L. Perry-Bey

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

ROY L. PERRY-BEY and
RONALD M. GREEN

Docket No.: CL19-3928-MJH

vs.

CITY OF NORFOLK, VIRGINIA ET AL.

MOTION OBJECTING TO PROCEEDING

NOW COME, Plaintiffs Roy L. Perry-Bey and Ronald M. Green, hereby seek leave of court to make an objection to the June 15, 2019, hearing, on the basis that Adam D. Melita, Deputy City Attorney employee and defendant, is not permitted to represent himself or the following defendants:

The City of Norfolk, Norfolk City Council, Norfolk City Council members, Bernard A. Pishko, Norfolk City Attorney, and Heather Ann Mullen, Deputy City Attorney. The Defendant is prohibited from filing any motions, signing pleadings, other papers, making representations and appearances as "COUNSEL OF RECORD" to this Court.

TAKE JUDICIAL NOTICE: "A government lawyer in a civil action or administrative proceeding has the responsibility to seek justice and to develop a full and fair record, and he should not use his position or the economic power of the government to harass parties or to bring about unjust settlements or results." People ex rel Clancy v. Superior Court, 39 Cal. 3d at 746.

The Demurrer, Motion to Suspend Discovery, and Response to Subpoena Duces Tecum filed by the City of Norfolk, *circa* June 25, 2019, in bad faith, is not proper before this Court that should be stricken from the docket, and **Judgment by Default** granted in favor of the Plaintiffs as a matter of law:

If the Court proceeds in the City matter when the City Attorney's Office is conflicted from handling over my objection, based on conflict of interests, standards of professional conduct, professional ethics, professional neglect, professional malpractice, and impermissible or egregious transaction or filings, dual appearances and divided loyalty or violation §§33.1-86 through 33.1-93 of the Code of the City of Norfolk, Virginia, 1979, as amended, entitled "Ethics in Public Contracting," and Rule 1:7 *et seq.*, note my appeal.

Respectfully Submitted,

By _____
MR. ROY L. PERRY- BEY
89 LINCOLN STREET #1772
HAMPTON, VIRGINIA 23669

By R M. Green
MR. RONALD M. GREEN
5540 BARNHOLLOW ROAD
NORFOLK, VA 23502

ATTACHMENT B - ETHICS IN PUBLIC CONTRACTING

Sec. 33.1-86. - Purpose.

The provisions of this chapter supplement, but do not supersede, other provisions of law including but not limited to, the State and Local Government Conflict of Interests Act (Virginia Code, § 2.1-639.1 et seq.), the Virginia Governmental Frauds Act (Virginia Code, § 18.2-498.1 et seq.), and Articles 2 (Virginia Code, § 18.2-438 et seq.) and 3 (Virginia Code, § 18.2-446 et seq.) of Chapter 10 of Title 18.2 (related to bribery). The provisions of this article apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

(Ord. No. 33,095, § 1, 9-11-84; Ord. No. 34,573, § 2, 6-30-87)

Sec. 33.1-87. - Proscribed participation by public employees in procurement transactions.

Except as may be specifically allowed by provisions of the State and Local Government Conflict of Interests Act (Virginia Code, section 2.1-639.1 et seq.), no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:

(1) The employee is contemporaneously employed by a bidder, offer or or contractor involved in the procurement transaction; or

(2) The employee, the employee's partners, or any member of the employee's immediate family holds a position with a bidder, offer or or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five (5) percent; or

(3) The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or

(4) The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offer or or contractor.

(Ord. No. 33,095, § 1, 9-11-84; Ord. No. 34,573, § 3, 6-30-87)

Sec. 33.1-88. - Solicitation or acceptance of gifts.

No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offer or, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The city may recover the value of anything conveyed in violation of this section.

(Ord. No. 33,095, § 1, 9-11-84)

Sec. 33.1-89. - Disclosure of subsequent employment.

No public employee or former public employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the city unless the employee, or former employee, provides written

notification to the city manager prior to commencement of employment by that bidder, offeror or contractor.

(Ord. No. 33,095, § 1, 9-11-84)

Sec. 33.1-90. - Gifts by bidders, offers, contractors or subcontractors.

No bidder, offer or, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

(Ord. No. 33,095, § 1, 9-11-84)

Sec. 33.1-91. - Kickbacks.

(1) No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

(2) No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.

(3) No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.

(4) If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the city and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

(Ord. No. 33,095, § 1, 9-11-84)

Sec. 33.1-92. - Purchase of building materials, supplies or equipment from architect or engineer prohibited.

Except in cases of emergency, no building materials, supplies or equipment for any building or structure constructed by or for the city shall be sold by or purchased from any person employed as an independent contractor by the city to furnish architectural or engineering services, but not construction, for such building or structure, or from any partnership, association, or corporation in which such architect or engineer has a pecuniary interest.

(Ord. No. 33,095, § 1, 9-11-84)

Sec. 33.1-92.1. - Participation in bid preparation; limitation on submitting bid for same procurement.

No person who, for compensation, prepares an invitation to bid or request for proposals for or on behalf of the city shall:

(i) Submit a bid or proposal for that procurement or any portion thereof; or

(ii) Disclose to any bidder or offeror information concerning the procurement that is not available to the public. However, the city may permit such person to submit a bid or proposal for that procurement or any portion thereof if the city determines that the exclusion of the person would

limit the number of potential qualified bidders or offers in a manner contrary to the best interests of the city.

(Ord. No. 43,223, § 2, 9-9-08)

Sec. 33.1-92.2. - Certification of compliance required; penalty for false statements

(1) The city may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this article.

(2) Any public employee required to submit a certification as provided in subsection (1) who knowingly makes a false statement in the certification shall be punished as provided in section 33.1-95.

(Ord. No. 43,223, § 2, 9-9-08)

Sec. 33.1-92.3. - Misrepresentations prohibited.

No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry.

(Ord. No. 43,223, § 2, 9-9-08)

Sec. 33.1-93. - Penalty for violation.

Willful violation of any provision of this article shall constitute a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

(Ord. No. 33,095, § 1, 9-11-84)

State Law reference— Similar provisions, Code of Virginia, § 11-80.

Sec. 33.1-94—33.1-100. - Reserved.

Initial: _____

CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2019, a true copy of the foregoing was mailed Defendants c/o Erin R. McNeill, Assistant Attorney General, Office of the Attorney General 202 North 9th Street Richmond, VA 23219, and Mathew P. Morken, Deputy City Attorney, City of Norfolk, City Hall Building, 9th Floor, 810 Union Street Norfolk, VA 23510.

By R.M. Green

MR. RONALD M. GREEN
5540 BARNHOLLOW ROAD
NORFOLK, VA 23502

Exhibits

Ex. 16

IN THE SUPREME COURT OF VIRGINIA

Record No. CL19-3928
SCV #191235

ROY L. PERRY- BEY, and RONALD M. GREEN

Appellant,

v.

CITY OF NORFOLK, VIRGINIA, and MARK R. HERRING, for the COMMONWEALTH OF VIRGINIA, in his official capacity,

Appellee,

OBJECTION TO APPELLEE MOTION TO DISMISS AND APPEARANCE

Mr. Roy L. Perry-Bey
89 Lincoln Street #1772
Hampton, VA 23669

R.M. Green

Mr. Ronald M. Green
5540 Barnhollow Road
Norfolk, VA 23502

IN THE SUPREME COURT OF VIRGINIA

Record No. CL19-3928
SCV #191235

ROY L. PERRY-BEY and RONALD M. GREEN

Appellant,

v.

CITY OF NORFOLK, VIRGINIA, MARK R. HERRING, for the COMMONWEALTH OF VIRGINIA, in his official capacity,

Appellee,

OBJECTION TO APPELLEE MOTION TO DISMISS AND APPEARANCE

COMES NOW, Appellant's herein the above entitled cause of action and hereby moves the Court for leave to file an objection to Appellee's motion to dismiss and appearance, request Court to consider ruling of trial Court, for good cause shown or to enable the Court to attain the ends of justice. **Va. Sup. Ct. R. 5A:18,** says as follows:

MOTION TO DISMISS AND IMPROPER OR PROHIBITED APPEARANCE

1) This Court should not permit an improper motion or prohibited appearance by Adam D. Melita, acting as lawyer, client, employee, necessary witness and defendant or making an appearance on behalf of the Appellee/Client (the "City of Norfolk"), before it the subject of the appeal. ***Richmond Ass'n of Credit Man v. Bar Assoc.*, 167 Va. 327 (1937).**

2) Appellee's actions are in contradiction with established rules of professional conduct, harmful to Appellants, the Court and the Appellee (the "City of Norfolk"), attorney-client privilege one of the oldest common law privileges sanctioned by the courts. ***Upjohn Co. v. United States, 449 U.S. 383, 389 (1981).***

3) This is so because "'[t]he wisdom of hindsight should be avoided' in applying the appropriate objectively reasonable standard of review." Gilmore, 259 Va. at 467 (quotation omitted)). See ***Flora, 262 Va. at 220*** (citing ***Gilmore v. Finn, 259 Va. 448, 467 (2000)).***

4) Appellant's complied with the requirements of **Rule 5A:18** by making appropriate motions and other requests for judicial actions, arguments, and contemporaneous objections with reasonable certainty at the trial and other proceedings in the Court.

5) The requirements of **Rule 5A:18** are applied in all cases - including divorce matters. ***Lee v. Lee, 12 Va. App. 512, 514, 404 S.E.2d 736, 737 (1991).*** In ***Lee,*** the Court of Appeals affirmed the trial court's ruling in a divorce matter because the questions raised on appeal were not preserved for appellate review. On appeal, counsel for both parties agreed that it was their local practice not to object with specificity to a trial court's final decision in a divorce case. Local practice also provided that counsel would not include specific objections in the final order.

6) The Court of Appeals explained the Rules of the Supreme Court may not be disregarded based upon local practice or the agreement of counsel. "Economy, both of litigation costs and of judicial time, requires that we enforce **Rule 5A:18** in all cases." ***Lee v. Lee, 394 S.E.2d 490, 491 (Va. Ct. App. Jun. 5, 1990), aff'd en banc Lee v. Lee, 12 Va. App. 512, 404 S.E.2d 736 (1991).***

7) The purpose behind Rule 5A:18 "is to require that objections be promptly brought to the attention of the trial court with sufficient specificity that the alleged error can be dealt with and timely addressed and corrected when necessary." ***Brown v. Commonwealth, 8 Va. App. 126, 131, 380 S.E.2d 8, 10 (1989).*** "The purpose of this rule is to allow correction of an error if possible during the trial, thereby avoiding the necessity of mistrials and reversals. To hold otherwise would invite parties to remain silent at trial, possibly resulting in the trial court committing needless error." ***Gardner v. Commonwealth, 3 Va. App.***

418, 423, 350 S.E.2d 229, 232 (1986). "A perhaps more compelling reason for the rule is that it is unfair to the opposing party, who may have been able to offer an alternative to the objectionable ruling, but did not do so, believing there was no problem." ***Lee v. Lee, 394 S.E.2d at 491.***

8) In most cases, you can comply with the requirements of **Rule 5A:18** by stating your objection at the time of the ruling; stating the objection in a motion to strike; stating the objection in closing argument; stating the objection in a motion to reconsider; or including the objection in the final order. See **Lee 12 Va. at 515-16, 404 S.E.2d at 738.** However, objections to the admissibility of evidence must be made when the evidence is presented. "A litigant may not, in a motion to strike [the evidence], raise for the first time a question of admissibility of evidence. Such motions deal with the sufficiency rather than the admissibility of evidence." **Bitar V. Rahman, 272 Va. 130, 140, 630 S.E.2d 319, 325 (2006).**

9) The record reflects the trial court was aware of Appellant's objections and had an opportunity to rule on them before the twenty-one day time period of **Rule 1:1** expired.

10) Appellants assert the contemporaneous objection exception in Virginia **Code § 8.01-384(A):**

11) "[I]f a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection shall not thereafter prejudice him on motion for a new trial or on appeal." **Va. Code Ann. § 8.01-384.**

12) If a litigant, through no fault of his own, does not have an opportunity to object to a ruling when it is made, it is not necessary to file a motion to reconsider to preserve an issue for appellate review. See ***Commonwealth v. Amos, 287 Va. 301, 306-307, 754 S.E.2d 304, 307 (2014).***

13) The trial court failed, refused or ignored Appellant's request for a timely ruling on their motions to preserve the issue for appeal. See ***Brandon v. Cox, 284 Va. 251, 255-256, 736 S.E.2d 695, 697 (2012).***

TAKE JUDUCIAL NOTICE: Virginia Code § 8.01-384(A) "Formal exceptions to rulings or orders of the court shall be unnecessary; but for all purposes for which an exception has heretofore been necessary, it shall be sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objections to the action of the court and his grounds therefor."

14) Appellants assert the ends of justice exception because an error at trial is clear, substantial and material, that a miscarriage of justice has occurred. See ***Michaels v. Commonwealth, 32 Va. App. 601, 608, 529 S.E.2d 822, 826 (2000).***

15) Appellant's Objection was not waived because it was included in Assignments of Error. See Rule **5A:20(c);** ***Fox v. Fox, 61, Va. App. 185, 202, 734 S.E.2d 662, 670 (2012).***

WHEREFORE, Appellants pray the court deny Appellee's motion to dismiss and prohibited appearance and consider ruling of trial court, for good cause shown or to enable the Court to attain the ends of justice. **Va. Sup. Ct. R. 5A:20(e); Va. Sup. Ct. R. 5A:18.**

October 16, 2019

Respectfully Submitted,

By _____

MR. ROY L. PERRY- BEY
89 LINCOLN STREET #1772
HAMPTON, VIRGINIA 23669

By R. M. Green

MR. RONALD M. GREEN
5540 BARNHOLLOW ROAD
NORFOLK, VA 23502

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2019, a true copy of the foregoing was mailed to Defendants Adam D. Melita, Deputy City Attorney, City of Norfolk, City Hall Building, 9th Floor, 810 Union Street Norfolk, VA 23510 and Mark E. Harring Attorney General, Commonwealth of Virginia, Office of the Attorney General, 202 North Ninth Street, Richmond, Virginia 23219 .

By _____

MR. ROY L. PERRY- BEY
89 LINCOLN STREET #1772
HAMPTON, VIRGINIA 23669

Exhibits
Ex. 17

CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
SEP 18 2019
RICHMOND, VIRGINIA

oral/in person
$50 mo

IN THE SUPREME COURT OF VIRGINIA

Record No. CL19-3928

ROY L. PERRY- BEY, and RONALD M. GREEN

Appellant,

v.

CITY OF NORFOLK, VIRGINIA, and MARK R. HERRING, for the COMMONWEALTH OF VIRGINIA, in his official capacity,

Appellee,

AMENDED PETITION FOR APPEAL AND HEARING EN BANC

Mr. Roy L. Perry-Bey
89 Lincoln Street #1772
Hampton, VA 23669

Mr. Ronald M. Green
5540 Barnhollow Road
Norfolk, VA 23502

IN THE SUPREME COURT OF VIRGINIA

Record No. CL19-3928

ROY L. PERRY-BEY and RONALD M. GREEN

Appellant,

v.

CITY OF NORFOLK, VIRGINIA, MARK R. HERRING, for the COMMONWEALTH OF VIRGINIA, in his official capacity,

Appellee,

AMENDED PETITION FOR APPEAL AND HEARING EN BANC UPON APPEAL FROM NORFOLK CIRCUIT OF VIRGINIA

COMES NOW, Appellant's herein the above entitled cause of action and hereby moves the Court for leave to file an amended Petition for Appeal and Hearing En Banc to set aside the judgment rendered on the 31st day of May 2019 and 22nd day of July 2019, says as follows:

JURISDICTION

1) a. This Court has jurisdiction to review the final order or decree.

ASSIGNMENT OF ERROR

The judgment conflicts with a decision of the Virginia Supreme Court holding that it would be improper for any attorney employee of a corporation to assist the corporation in the unauthorized practice of law and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions. ***Richmond Ass'n of Credit Man v. Bar Assoc.*, 167 Va. 327 (1937).**

The judgment conflicts with a decision of the Virginia Supreme Court; Professional Guidelines and Rules of Conduct finding that a lawyer may not act as an advocate in an adversarial proceeding in which the lawyer is likely to be a necessary witness related to a contested issue and disqualification didn't work hardship on the client and the testimony did not relate to the nature and value of his legal services.

QUESTIONS PRESENTED

2. Whether the Court erred or [A]bused its discretion allowing Adam D. Melita, an attorney employee, defendant and necessary witness to represent defendants or make appearances in violation of Professional Guidelines and Rules of Conduct, Virginia Code **§ 8.01-271.1** and **§§ 33.1-86** through **33.1-93** of the Code of the City of Norfolk, Virginia, 1979, as amended, entitled "Ethics in Public Contracting," and **Rule 1:7** through **Rule 1.9** ***et seq.,*** in its refusal to disqualify attorney Melita.

3. Whether the Court erred or [A]bused its discretion allowing Adam D. Melita, an attorney employee, defendant and necessary witness to use his position or the economic power of the government to represent himself or make appearances on his behalf in violation of Professional Guidelines and Rules of Conduct, the Virginia Code § 8.01-271.1 and §§ 33.1-86 through 33.1-93 of the Code of the City of Norfolk, Virginia, 1979, as amended, entitled "Ethics in Public Contracting," and Rule 1:7 through Rule 1.9 *et seq.,*

4. Whether the Court erred or [A]bused its discretion in allowing Adam D. Melita, an attorney employee, defendant and necessary witness to represent another lawyer Bernard A. Pishko, attorney employee, defendant and necessary witness or make appearances in violation of Professional Guidelines and Rules of Conduct, Virginia Code § 8.01-271.1 and §§ 33.1-86 through 33.1-93 of the Code of the City of Norfolk, Virginia, 1979, as amended, entitled "Ethics in Public Contracting," and Rule 1:7 through Rule 1.9 *et seq.,*

5. Whether the Court erred or [A]bused its discretion in allowing Adam D. Melita, an attorney employee, defendant and necessary witness to represent another lawyer Heather Ann Mullen, attorney employee, defendant and necessary witness or make appearances in violation of Professional Guidelines and Rules of Conduct, Virginia Code § 8.01-271.1 and §§ 33.1-86 through 33.1-93 of the Code of the City of Norfolk, Virginia, 1979, as amended, entitled "Ethics in Public Contracting," and Rule 1:7 through Rule 1.9 et seq.,

6. Whether the Court erred or [A]bused its discretion in sustaining demurrers and special pleas filed by Adam D. Melita, an attorney employee, defendant and necessary witness in violation of Professional Guidelines and Rules of Conduct, Virginia Code § 8.01-271.1 and §§ 33.1-86 through 33.1-93 of the Code of the City of Norfolk, Virginia, 1979, as amended, entitled "Ethics in Public Contracting," and Rule 1:7 through Rule 1.9 et seq.,

7. Whether the Court erred or [A]bused its discretion in sustaining defendants demurrers and special pleas, motion to suspend discovery and response to subpoena duces tecum filed by Adam D. Melita, in violation of Professional Guidelines and Rules of Conduct and Rule 1:7 through Rule 1.9 *et seq.,*

8. Whether the Court erred or [A]bused its discretion in sustaining defendants demurrers and special pleas in ignoring or failing to rule on Appellant's procedural motions they would not be prejudice or had no impact on the judicial proceedings.

9. Whether the Court erred or [A]bused its discretion in ignoring or failing to rule on Appellant's Motion for Default Judgment and Necessary Witness Subpoenas had no adverse impact on the judicial proceedings.

10. Whether the Court erred or [A]bused its discretion in denying Appellant's in Court Motion to Stay pending appeal to allow Appellant's to respond to Virginia Attorney General had no adverse impact on the judicial proceedings.

11. Whether the Court erred or [A]bused its discretion in denying Appellant's Motion to continue proceedings to allow Appellant's to amend or respond to all defendants had no adverse impact on the judicial proceedings.

12. Whether the Court erred or [A]bused its discretion in denying Appellant's claims pursuant to the First and Fourteenth Amendments to the United States Constitution, Article I § 12 of the Constitution of Virginia, and **42 U.S.C. § 1983** had no adverse impact on the judicial proceedings. ***City of Cleburne v. Cleburne Living Ctr., Inc.***, 473 U.S. 432, 439 (1985); See ***Hayden v. County of Nassau,* 180 F. 3d 42, 48 (2d Cir. 1999).**

13. Whether the Court erred or [A]bused its discretion in denying Appellant's claims pursuant to 42 U.S.C. § 1983 would not be prejudice or had no adverse impact on the judicial proceedings.

14. Whether the Court erred or [A]bused its discretion in ignoring or failing to rule on Appellant's challenge to the Constitutionality and/or applicability of Virginia Code **§ 15.2-1812** (hereinafter "the Protection Statute"), unlawful restraint on free speech or overbroad limitation on free speech as applied to Appellee's the City of Norfolk, Virginia.

15. Whether the Court erred or [A]bused its discretion or its decision constitute a manifest injustice.

WHEREFORE, Appellant's pray the court's final judgment is reversed and vacated and, the cause is remanded.

September 25, 2019

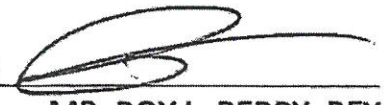
Respectfully Submitted,

By _____
MR. ROY L. PERRY- BEY
89 LINCOLN STREET #1772
HAMPTON, VIRGINIA 23669

By R. M. Green
MR. RONALD M. GREEN
5540 BARNHOLLOW ROAD
NORFOLK, VA 23502

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2019, a true copy of the foregoing was mailed to Defendants Adam D. Melita, Deputy City Attorney, City of Norfolk, City Hall Building, 9th Floor, 810 Union Street Norfolk, VA 23510 and Mark E. Herring Attorney General, Commonwealth of Virginia, Office of the Attorney General, 202 North Ninth Street, Richmond, Virginia 23219 .

By 

MR. ROY L. PERRY- BEY
89 LINCOLN STREET #1772
HAMPTON, VIRGINIA 23669

Exhibits
Ex. 18

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 2nd day of April, 2020.

Roy L. Perry-Bey, et al. Appellants,

against Record No. 191235
Circuit Court No. CL19-3928

City of Norfolk, et al. Appellees.

From the Circuit Court of the City of Norfolk

On March 9, 2020, came the appellants, who are self-represented, and filed a motion to stay the mandate in this case.

Upon consideration whereof, the Court denies the motion.

A Copy,

Teste:

Clerk

Exhibits
Ex. 19

No. 79-886
U.S.

Upjohn Co. v. United States

449 U.S. 383 (1981) · 101 S. Ct. 677
Decided Jan 13, 1981

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 79-886.

Argued November 5, 1980 Decided January 13, 1981

When the General Counsel for petitioner pharmaceutical manufacturing corporation (hereafter petitioner) was informed that one of its foreign subsidiaries had made questionable payments to foreign government officials in order to secure government business, an internal investigation of such payments was initiated. As part of this investigation, petitioner's attorneys sent a questionnaire to all foreign managers seeking detailed information concerning such payments, and the responses were returned to the General Counsel. The General Counsel and outside counsel also interviewed the recipients of the questionnaire and other company officers and employees. Subsequently, based on a report voluntarily submitted by petitioner disclosing the questionable payments, the Internal Revenue Service (IRS) began an investigation to determine the tax consequences of such payments and issued a summons pursuant to 26 U.S.C. § 7602 demanding production of, *inter alia*, the questionnaires and the memoranda and notes of the interviews. Petitioner refused to produce the documents on the grounds that they were protected from disclosure by the attorney-client privilege and constituted the work product of attorneys prepared in anticipation of litigation. The United States then filed a petition in Federal District Court seeking enforcement of the summons. That court adopted the Magistrate's recommendation that the summons should be enforced, the Magistrate having concluded, *inter alia*, that the attorney-client privilege had been waived and that the Government had made a sufficient showing of necessity to overcome the protection of the work-product doctrine. The Court of Appeals rejected the Magistrate's finding of a waiver of the attorney-client privilege, but held that under the so-called "control group test" the privilege did not apply "[t]o the extent that the communications were made by officers and agents not responsible for directing [petitioner's] actions in response to legal advice . . . for the simple reason that the communications were not the `client's.'" The court also held that the work-product doctrine did not apply to IRS summonses.

Held:

1. The communications by petitioner's employees to counsel are covered by the attorney-client privilege
384 insofar as the responses to the *384 questionnaires and any notes reflecting responses to interview questions are concerned. Pp. 389-397.

(a) The control group test overlooks the fact that such privilege exists to protect not only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to give sound and informed advice. While in the case of the individual client the provider of information and the person who acts on the lawyer's advice are one and the same, in the corporate context it will frequently be employees beyond the control group (as defined by the Court of Appeals) who will possess the information needed by the corporation's lawyers. Middle-level — and indeed lower-level — employees can, by actions within the scope of their employment, embroil the corporation in serious legal difficulties, and it is only natural that these employees would have the relevant information needed by corporate counsel if he is adequately to advise the client with respect to such actual or potential difficulties. Pp. 390-392.

(b) The control group test thus frustrates the very purpose of the attorney-client privilege by discouraging the communication of relevant information by employees of the client corporation to attorneys seeking to render legal advice to the client. The attorney's advice will also frequently be more significant to noncontrol employees than to those who officially sanction the advice, and the control group test makes it more difficult to convey full and frank legal advice to the employees who will put into effect the client corporation's policy. P. 392.

(c) The narrow scope given the attorney-client privilege by the Court of Appeals not only makes it difficult for corporate attorneys to formulate sound advice when their client is faced with a specific legal problem but also threatens to limit the valuable efforts of corporate counsel to ensure their client's compliance with the law. Pp. 392-393.

(d) Here, the communications at issue were made by petitioner's employees to counsel for petitioner acting as such, at the direction of corporate superiors in order to secure legal advice from counsel. Information not available from upper-echelon management was needed to supply a basis for legal advice concerning compliance with securities and tax laws, foreign laws, currency regulations, duties to shareholders, and potential litigation in each of these areas. The communications concerned matters within the scope of the employees' corporate duties, and the employees themselves were sufficiently aware that they were being questioned in order that the corporation could obtain legal advice. Pp. 394-395.

2. The work-product doctrine applies to IRS summonses. Pp. 397-402.

(a) The obligation imposed by a tax summons remains subject to the traditional privileges and
385 limitations, and nothing in the language *385 or legislative history of the IRS summons provisions suggests an intent on the part of Congress to preclude application of the work-product doctrine. P. 398.

(b) The Magistrate applied the wrong standard when he concluded that the Government had made a sufficient showing of necessity to overcome the protections of the work-product doctrine. The notes and memoranda sought by the Government constitute work product based on oral statements. If they reveal communications, they are protected by the attorney-client privilege. To the extent they do not reveal communications they reveal attorneys' mental processes in evaluating the communications. As Federal Rule of Civil Procedure 26, which accords special protection from disclosure to work product revealing an attorney's mental processes, and *Hickman* v. *Taylor*, 329 U.S. 495, make clear, such work product cannot be disclosed simply on a showing of substantial need or inability to obtain the equivalent without undue hardship. P. 401.

600 F.2d 1223, reversed and remanded.

REHNQUIST, J., delivered the opinion of the Court, in which BRENNAN, STEWART, WHITE, MARSHALL, BLACKMUN, POWELL, and STEVENS, JJ., joined, and in Parts I and III of which BURGER, C. J., joined. BURGER, C. J., filed an opinion concurring in part and concurring in the judgment, *post*, P. 402.

Daniel M. Gribbon argued the cause and filed briefs for petitioners.

Deputy Solicitor General Wallace argued the cause for respondents. With him on the brief were *Solicitor General McCree, Assistant Attorney General Ferguson, Stuart A. Smith*, and *Robert E. Lindsay*.-

– Briefs of *amici curiae* urging reversal were filed by *Leonard S. Janofsky, Leon Jaworski*, and *Keith A. Jones* for the American Bar Association; by *Thomas G. Lilly, Alfred F. Belcuore, Paul F. Rothstein*, and *Ronald L. Carlson* for the Federal Bar Association; by *Erwin N. Griswold* for the American College of Trial Lawyers et al.; by *Stanley T. Kaleczyc* and *J. Bruce Brown* for the Chamber of Commerce of the United States; and by *Lewis A. Kaplan, James N. Benedict, Brian D. Forrow, John G. Koeltl, Standish Forde Medina, Jr., Renee J. Roberts*, and *Marvin Wexler* for the Committee on Federal Courts et al.

William W. Becker filed a brief for the New England Legal Foundation as *amicus curiae*.

386 *386

JUSTICE REHNQUIST delivered the opinion of the Court.

We granted certiorari in this case to address important questions concerning the scope of the attorney-client privilege in the corporate context and the applicability of the work-product doctrine in proceedings to enforce tax summonses. 445 U.S. 925. With respect to the privilege question the parties and various *amici* have described our task as one of choosing between two "tests" which have gained adherents in the courts of appeals. We are acutely aware, however, that we sit to decide concrete cases and not abstract propositions of law. We decline to lay down a broad rule or series of rules to govern all conceivable future questions in this area, even were we able to do so. We can and do, however, conclude that the attorney-client privilege protects the communications involved in this case from compelled disclosure and that the work-product doctrine does apply in tax summons enforcement proceedings.

I

Petitioner Upjohn Co. manufactures and sells pharmaceuticals here and abroad. In January 1976 independent accountants conducting an audit of one of Upjohn's foreign subsidiaries discovered that the subsidiary made payments to or for the benefit of foreign government officials in order to secure government business. The accountants so informed petitioner Mr. Gerard Thomas, Upjohn's Vice President, Secretary, and General Counsel. Thomas is a member of the Michigan and New York Bars, and has been Upjohn's General Counsel for 20 years. He consulted with outside counsel and R. T. Parfet, Jr., Upjohn's Chairman of the Board. It was decided that the company would conduct an internal investigation of what were termed "questionable payments." As part of this investigation the attorneys prepared a letter containing a questionnaire which was
387 sent to "All Foreign General and Area Managers" over the Chairman's signature. The letter *387 began by noting recent disclosures that several American companies made "possibly illegal" payments to foreign government officials and emphasized that the management needed full information concerning any such payments made by Upjohn. The letter indicated that the Chairman had asked Thomas, identified as "the company's General Counsel," "to conduct an investigation for the purpose of determining the nature and magnitude of any payments made by the Upjohn Company or any of its subsidiaries to any employee or official

of a foreign government." The questionnaire sought detailed information concerning such payments. Managers were instructed to treat the investigation as "highly confidential" and not to discuss it with anyone other than Upjohn employees who might be helpful in providing the requested information. Responses were to be sent directly to Thomas. Thomas and outside counsel also interviewed the recipients of the questionnaire and some 33 other Upjohn officers or employees as part of the investigation.

On March 26, 1976, the company voluntarily submitted a preliminary report to the Securities and Exchange Commission on Form 8-K disclosing certain questionable payments.[1] A copy of the report was simultaneously submitted to the Internal Revenue Service, which immediately began an investigation to determine the tax consequences of the payments. Special agents conducting the investigation were given lists by Upjohn of all those interviewed and all who had responded to the questionnaire. On November 23, 1976, the Service issued a summons pursuant to 26 U.S.C. § 7602 demanding production of:

[1] On July 28, 1976, the Company filed and amendment to this report disclosing further payments.

> "All files relative to the investigation conducted under the supervision of Gerard Thomas to identify
> 388 payments to employees of foreign governments and any political *388 contributions made by the Upjohn Company or any of its affiliates since January 1, 1971 and to determine whether any funds of the Upjohn Company had been improperly accounted for on the corporate books during the same period.
>
> "The records should include but not be limited to written questionnaires sent to managers of the Upjohn Company's foreign affiliates, and memorandums or notes of the interviews conducted in the United States and abroad with officers and employees of the Upjohn Company and its subsidiaries." App. 17a-18a.

The company declined to produce the documents specified in the second paragraph on the grounds that they were protected from disclosure by the attorney-client privilege and constituted the work product of attorneys prepared in anticipation of litigation. On August 31, 1977, the United States filed a petition seeking enforcement of the summons under 26 U.S.C. § 7402 (b) and 7604(a) in the United States District Court for the Western District of Michigan. That court adopted the recommendation of a Magistrate who concluded that the summons should be enforced. Petitioners appealed to the Court of Appeals for the Sixth Circuit which rejected the Magistrate's finding of a waiver of the attorney-client privilege, 600 F.2d 1223, 1227, n. 12, but agreed that the privilege did not apply "[t]o the extent that the communications were made by officers and agents not responsible for directing Upjohn's actions in response to legal advice . . . for the simple reason that the communications were not the `client's.'" *Id.*, at 1225. The court reasoned that accepting petitioners' claim for a broader application of the privilege would encourage upper-echelon management to ignore unpleasant facts and create too broad a "zone of silence." Noting that Upjohn's counsel had interviewed officials such as the Chairman and President, the Court of Appeals remanded to the District Court so that a determination of who
389 was *389 within the "control group" could be made. In a concluding footnote the court stated that the work-product doctrine "is not applicable to administrative summonses issued under 26 U.S.C. § 7602." *Id.*, at 1228, n. 13.

II

Federal Rule of Evidence 501 provides that "the privilege of a witness . . . shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in light of reason and experience." The attorney-client privilege is the oldest of the privileges for confidential communications known

to the common law. 8 J. Wigmore, Evidence § 2290 (McNaughton rev. 1961). Its purpose is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice. The privilege recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client. As we stated last Term in *Trammel* v. *United States*, 445 U.S. 40, 51 (1980): "The lawyer-client privilege rests on the need for the advocate and counselor to know all that relates to the client's reasons for seeking representation if the professional mission is to be carried out." And in *Fisher* v. *United States*, 425 U.S. 391, 403 (1976), we recognized the purpose of the privilege to be "to encourage clients to make full disclosure to their attorneys." This rationale for the privilege has long been recognized by the Court, see *Hunt* v. *Blackburn*, 128 U.S. 464, 470 (1888) (privilege "is founded upon the necessity, in the interest and administration of justice, of the aid of persons having knowledge of the law and skilled in its practice, which assistance can only be safely and readily availed of when free from the consequences or the apprehension of disclosure"). Admittedly complications in the application of the privilege arise when the client is a corporation,
390 which in theory is an artificial creature of the *390 law, and not an individual; but this Court has assumed that the privilege applies when the client is a corporation, *United States* v. *Louisville Nashville R. Co.*, 236 U.S. 318, 336 (1915), and the Government does not contest the general proposition.

The Court of Appeals, however, considered the application of the privilege in the corporate context to present a "different problem," since the client was an inanimate entity and "only the senior management, guiding and integrating the several operations, . . . can be said to possess an identity analogous to the corporation as a whole." 600 F.2d, at 1226. The first case to articulate the so-called "control group test" adopted by the court below, *Philadelphia* v. *Westinghouse Electric Corp.*, 210 F. Supp. 483, 485 (ED Pa.), petition for mandamus and prohibition denied *sub nom. General Electric Co.* v. *Kirkpatrick*, 312 F.2d 742 (CA3 1962), cert. denied, 372 U.S. 943 (1963), reflected a similar conceptual approach:

> "Keeping in mind that the question is, Is it the corporation which is seeking the lawyer's advice when the asserted privileged communication is made?, the most satisfactory solution, I think, is that if the employee making the communication, of whatever rank he may be, is in a position to control or even to take a substantial part in a decision about any action which the corporation may take upon the advice of the attorney, . . . then, in effect, *he is (or personifies) the corporation* when he makes his disclosure to the lawyer and the privilege would apply." (Emphasis supplied.)

Such a view, we think, overlooks the fact that the privilege exists to protect not only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to give sound and informed advice. See *Trammel, supra*, at 51; *Fisher, supra*, at 403. The first step in the resolution of any
391 legal problem is ascertaining the factual background and sifting through the facts *391 with an eye to the legally relevant. See ABA Code of Professional Responsibility, Ethical Consideration 4-1:

> "A lawyer should be fully informed of all the facts of the matter he is handling in order for his client to obtain the full advantage of our legal system. It is for the lawyer in the exercise of his independent professional judgment to separate the relevant and important from the irrelevant and unimportant. The observance of the ethical obligation of a lawyer to hold inviolate the confidences and secrets of his client not only facilitates the full development of facts essential to proper representation of the client but also encourages laymen to seek early legal assistance."

See also *Hickman* v. *Taylor*, 329 U.S. 495, 511 (1947).

In the case of the individual client the provider of information and the person who acts on the lawyer's advice are one and the same. In the corporate context, however, it will frequently be employees beyond the control group as defined by the court below — "officers and agents . . . responsible for directing [the company's] actions in response to legal advice" — who will possess the information needed by the corporation's lawyers. Middle-level — and indeed lower-level — employees can, by actions within the scope of their employment, embroil the corporation in serious legal difficulties, and it is only natural that these employees would have the relevant information needed by corporate counsel if he is adequately to advise the client with respect to such actual or potential difficulties. This fact was noted in *Diversified Industries, Inc.* v. *Meredith*, 572 F.2d 596 (CA8 1978) (en banc):

> "In a corporation, it may be necessary to glean information relevant to a legal problem from middle management or non-management personnel as well as from top executives. The attorney dealing with a complex legal problem is thus faced with a "Hobson's choice". If he interviews employees not having
392 "the very highest authority", *392 their communications to him will not be privileged. If, on the other hand, he interviews *only* those employees with "the very highest authority", he may find it extremely difficult, if not impossible, to determine what happened." *Id.*, at 608-609 (quoting Weinschel, Corporate Employee Interviews and the Attorney-Client Privilege, 12 B. C. Ind. Com. L. Rev. 873, 876 (1971)).

The control group test adopted by the court below thus frustrates the very purpose of the privilege by discouraging the communication of relevant information by employees of the client to attorneys seeking to render legal advice to the client corporation. The attorney's advice will also frequently be more significant to noncontrol group members than to those who officially sanction the advice, and the control group test makes it more difficult to convey full and frank legal advice to the employees who will put into effect the client corporation's policy. See, *e. g., Duplan Corp.* v. *Deering Milliken, Inc.*, 397 F. Supp. 1146, 1164 (SC 1974) ("After the lawyer forms his or her opinion, it is of no immediate benefit to the Chairman of the Board or the President. It must be given to the corporate personnel who will apply it").

The narrow scope given the attorney-client privilege by the court below not only makes it difficult for corporate attorneys to formulate sound advice when their client is faced with a specific legal problem but also threatens to limit the valuable efforts of corporate counsel to ensure their client's compliance with the law. In light of the vast and complicated array of regulatory legislation confronting the modern corporation, corporations, unlike most individuals, "constantly go to lawyers to find out how to obey the law," Burnham, The Attorney-Client Privilege in the Corporate Arena, 24 Bus. Law. 901, 913 (1969), particularly since compliance with the law in this area is hardly an instinctive matter, see, *e. g., United States* v. *United States*
393 *Gypsum Co.*, 438 U.S. 422, 440-441 (1978) ("the behavior proscribed by the [Sherman] Act is *393 often difficult to distinguish from the gray zone of socially acceptable and economically justifiable business conduct").[2] The test adopted by the court below is difficult to apply in practice, though no abstractly formulated and unvarying "test" will necessarily enable courts to decide questions such as this with mathematical precision. But if the purpose of the attorney-client privilege is to be served, the attorney and client must be able to predict with some degree of certainty whether particular discussions will be protected. An uncertain privilege, or one which purports to be certain but results in widely varying applications by the courts, is little better than no privilege at all. The very terms of the test adopted by the court below suggest the unpredictability of its application. The test restricts the availability of the privilege to those officers who play a "substantial role" in deciding and directing a corporation's legal response. Disparate decisions in cases applying this test illustrate its unpredictability. Compare, *e. g., Hogan* v. *Zletz*, 43 F.R.D. 308, 315-316 (ND Okla. 1967), aff'd in part *sub nom. Natta* v. *Hogan*, 392 F.2d 686 (CA10 1968) (control group includes managers and assistant

managers of patent division and research and development department), with *Congoleum Industries, Inc.* v. *GAF Corp.*, 49 F.R.D. 82, 83-85 (ED Pa. 1969), aff'd, 478 F.2d 1398 (CA3 1973) (control group includes only division and corporate vice presidents, and not two directors of research and vice president for production and
394 research). *394

[2] The Government argues that the risk of civil or criminal liability suffices to ensure that corporations will seek legal advice in the absence of the protection of the privilege. This response ignores the fact that the depth and quality of any investigations to ensure compliance with the law would suffer, even were they undertaken. The response also proves too much, since it applies to all communications covered by the privilege; an individual trying to comply with the law or faced with a legal problem also has strong incentive to disclose information to his lawyer, yet the common law has recognized the value of the privilege in further facilitating communications.

The communications at issue were made by Upjohn employees[3] to counsel for Upjohn acting as such, at the direction of corporate superiors in order to secure legal advice from counsel. As the Magistrate found, "Mr. Thomas consulted with the Chairman of the Board and outside counsel and thereafter conducted a factual investigation to determine the nature and extent of the questionable payments *and to be in a position to give legal advice to the company with respect to the payments."* (Emphasis supplied.) 78-1 USTC ¶ 9277, pp. 83,598, 83,599. Information, not available from upper-echelon management, was needed to supply a basis for legal advice concerning compliance with securities and tax laws, foreign laws, currency regulations, duties to shareholders, and potential litigation in each of these areas.[4] The communications concerned matters within the scope of the employees' corporate duties, and the employees themselves were sufficiently aware that they were being questioned in order that the corporation could obtain legal advice. The questionnaire identified Thomas as "the company's General Counsel" and referred in its opening sentence to the possible illegality of payments such as the ones on which information was sought. App. 40a. A statement of policy accompanying the questionnaire clearly indicated the legal implications of the investigation. The policy statement was issued "in order that there be no uncertainty in the future as to the policy with respect to the practices which are the
395 subject of this investigation." *395 It began "Upjohn will comply with all laws and regulations," and stated that commissions or payments "will not be used as a subterfuge for bribes or illegal payments" and that all payments must be "proper and legal." Any future agreements with foreign distributors or agents were to be approved "by a company attorney" and any questions concerning the policy were to be referred "to the company's General Counsel." *Id.*, at 165a-166a. This statement was issued to Upjohn employees worldwide, so that even those interviewees not receiving a questionnaire were aware of the legal implications of the interviews. Pursuant to explicit instructions from the Chairman of the Board, the communications were considered "highly confidential" when made, *id.*, at 39a, 43a, and have been kept confidential by the company.[5] Consistent with the underlying purposes of the attorney-client privilege, these communications must be protected against compelled disclosure.

[3] Seven of the eighty-six employees interviewed by counsel had terminated their employment with Upjohn at the time of the interview. App. 33a-38a. Petitioners argue that the privilege should nonetheless apply to communications by these former employees concerning activities during their period of employment. Neither the District Court nor the Court of Appeals had occasion to address this issue, and we decline to decide it without the benefit of treatment below.

[4] See *id.*, at 26a-27a, 103a, 123a-124a. See also *In re Grand Jury Investigation*, 599 F.2d 1224, 1229 (CA3 1979); *In re Grand Jury Subpoena*, 599 F.2d 504, 511 (CA2 1979).

[5] See Magistrate's opinion, 78-1 USTC ¶ 9277, p. 83,599: "The responses to the questionnaires and the notes of the interviews have been treated as confidential material and have not been disclosed to anyone except Mr. Thomas and outside counsel."

The Court of Appeals declined to extend the attorney-client privilege beyond the limits of the control group test for fear that doing so would entail severe burdens on discovery and create a broad "zone of silence" over corporate affairs. Application of the attorney-client privilege to communications such as those involved here, however, puts the adversary in no worse position than if the communications had never taken place. The privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney:

> "[T]he protection of the privilege extends only to *communications* and not to facts. A fact is one thing
396 and a communication concerning that fact is an entirely different *396 thing. The client cannot be compelled to answer the question, `What did you say or write to the attorney?' but may not refuse to disclose any relevant fact within his knowledge merely because he incorporated a statement of such fact into his communications to his attorney." *Philadelphia* v. *Westinghouse Electric Corp.*, 205 F. Supp. 830, 831 (ED Pa. 1962).

See also *Diversified Industries*, 572 F.2d, at 611; *State ex rel. Dudek* v. *Circuit Court*, 34 Wis.2d 559, 580, 150 N.W.2d 387, 399 (1967) ("the courts have noted that a party cannot conceal a fact merely by revealing it to his lawyer"). Here the Government was free to question the employees who communicated with Thomas and outside counsel. Upjohn has provided the IRS with a list of such employees, and the IRS has already interviewed some 25 of them. While it would probably be more convenient for the Government to secure the results of petitioner's internal investigation by simply subpoenaing the questionnaires and notes taken by petitioner's attorneys, such considerations of convenience do not overcome the policies served by the attorney-client privilege. As Justice Jackson noted in his concurring opinion in *Hickman* v. *Taylor*, 329 U.S., at 516: "Discovery was hardly intended to enable a learned profession to perform its functions . . . on wits borrowed from the adversary."

Needless to say, we decide only the case before us, and do not undertake to draft a set of rules which should govern challenges to investigatory subpoenas. Any such approach would violate the spirit of Federal Rule of Evidence 501. See S. Rep. No. 93-1277, p. 13 (1974) ("the recognition of a privilege based on a confidential relationship . . . should be determined on a case-by-case basis"); *Trammel*, 445 U.S., at 47; *United States* v. *Gillock*, 445 U.S. 360, 367 (1980). While such a "case-by-case" basis may to some slight extent undermine
397 desirable certainty in the boundaries of the attorney-client *397 privilege, it obeys the spirit of the Rules. At the same time we conclude that the narrow "control group test" sanctioned by the Court of Appeals in this case cannot, consistent with "the principles of the common law as . . . interpreted . . . in the light of reason and experience," Fed. Rule Evid. 501, govern the development of the law in this area.

III

Our decision that the communications by Upjohn employees to counsel are covered by the attorney-client privilege disposes of the case so far as the responses to the questionnaires and any notes reflecting responses to interview questions are concerned. The summons reaches further, however, and Thomas has testified that his notes and memoranda of interviews go beyond recording responses to his questions. App. 27a-28a, 91a-93a. To the extent that the material subject to the summons is not protected by the attorney-client privilege as disclosing communications between an employee and counsel, we must reach the ruling by the Court of Appeals that the work-product doctrine does not apply to summonses issued under 26 U.S.C. § 7602.[6]

[6] The following discussion will also be relevant to counsel's notes and memoranda of interviews with the seven former employees should it be determined that the attorney-client privilege does not apply to them. See n. 3, *supra*.

The Government concedes, wisely, that the Court of Appeals erred and that the work-product doctrine does apply to IRS summonses. Brief for Respondents 16, 48. This doctrine was announced by the Court over 30 years ago in *Hickman* v. *Taylor*, 329 U.S. 495 (1947). In that case the Court rejected "an attempt, without purported necessity or justification, to secure written statements, private memoranda and personal recollections prepared or formed by an adverse party's counsel in the course of his legal duties." *Id.*, at 510. The Court noted
398 that "it is essential that a lawyer work with *398 a certain degree of privacy" and reasoned that if discovery of the material sought were permitted

> "much of what is now put down in writing would remain unwritten. An attorney's thoughts, heretofore inviolate, would not be his own. Inefficiency, unfairness and sharp practices would inevitably develop in the giving of legal advice and in the preparation of cases for trial. The effect on the legal profession would be demoralizing. And the interests of the clients and the cause of justice would be poorly served." *Id.*, at 511.

The "strong public policy" underlying the work-product doctrine was reaffirmed recently in *United States* v. *Nobles*, 422 U.S. 225, 236-240 (1975), and has been substantially incorporated in Federal Rule of Civil Procedure 26(b)(3).[7]

> [7] This provides, in pertinent part:
>
> "[A] party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation."

As we stated last Term, the obligation imposed by a tax summons remains "subject to the traditional privileges and limitations." *United States* v. *Euge*, 444 U.S. 707, 714 (1980). Nothing in the language of the IRS summons provisions or their legislative history suggests an intent on the part of Congress to preclude application of the work-product doctrine. Rule 26(b)(3) codifies the work-product doctrine, and the Federal Rules of Civil
399 Procedure are made applicable *399 to summons enforcement proceedings by Rule 81(a)(3). See *Donaldson* v. *United States*, 400 U.S. 517, 528 (1971). While conceding the applicability of the work-product doctrine, the Government asserts that it has made a sufficient showing of necessity to overcome its protections. The Magistrate apparently so found, 78-1 USTC ¶ 9277, p. 83,605. The Government relies on the following language in *Hickman:*

> "We do not mean to say that all written materials obtained or prepared by an adversary's counsel with an eye toward litigation are necessarily free from discovery in all cases. Where relevant and nonprivileged facts remain hidden in an attorney's file and where production of those facts is essential to the preparation of one's case, discovery may properly be had. . . . And production might be justified where the witnesses are no longer available or can be reached only with difficulty." 329 U.S., at 511.

The Government stresses that interviewees are scattered across the globe and that Upjohn has forbidden its employees to answer questions it considers irrelevant. The above-quoted language from *Hickman*, however, did not apply to "oral statements made by witnesses . . . whether presently in the form of [the attorney's] mental impressions or memoranda." *Id.*, at 512. As to such material the Court did "not believe that any showing of

necessity can be made under the circumstances of this case so as to justify production. . . . If there should be a rare situation justifying production of these matters, petitioner's case is not of that type." *Id.*, at 512-513. See also *Nobles, supra*, at 252-253 (WHITE, J., concurring). Forcing an attorney to disclose notes and memoranda of witnesses' oral statements is particularly disfavored because it tends to reveal the attorney's mental processes, 329 U.S., at 513 ("what he saw fit to write down regarding witnesses' remarks"); *id.*, at 516-517
400 ("the statement would be his [the *400 attorney's] language, permeated with his inferences") (Jackson, J., concurring).[8]

[8] Thomas described his notes of the interviews as containing "what I considered to be the important questions, the substance of the responses to them, my beliefs as to the importance of these, my beliefs as to how they related to the inquiry, my thoughts as to how they related to other questions. In some instances they might even suggest other questions that I would have to ask or things that I needed to find elsewhere." 78-1 USTC ¶ 9277, p. 83,599.

Rule 26 accords special protection to work product revealing the attorney's mental processes. The Rule permits disclosure of documents and tangible things constituting attorney work product upon a showing of substantial need and inability to obtain the equivalent without undue hardship. This was the standard applied by the Magistrate, 78-1 USTC ¶ 9277, p. 83,604. Rule 26 goes on, however, to state that "[i]n ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation." Although this language does not specifically refer to memoranda based on oral statements of witnesses, the *Hickman* court stressed the danger that compelled disclosure of such memoranda would reveal the attorney's mental processes. It is clear that this is the sort of material the draftsmen of the Rule had in mind as deserving special protection. See Notes of Advisory Committee on 1970 Amendment to Rules, 28 U.S.C. App., p. 442 ("The subdivision . . . goes on to protect against disclosure the mental impressions, conclusions, opinions, or legal theories . . . of an attorney or other representative of a party. The *Hickman* opinion drew special attention to the need for protecting an attorney against discovery of memoranda prepared from recollection of oral interviews. The courts have steadfastly safeguarded against disclosure of lawyers'
401 mental impressions and legal theories . . ."). *401

Based on the foregoing, some courts have concluded that *no* showing of necessity can overcome protection of work product which is based on oral statements from witnesses. See, *e. g., In re Grand Jury Proceedings*, 473 F.2d 840, 848 (CA8 1973) (personal recollections, notes, and memoranda pertaining to conversation with witnesses); *In re Grand Jury Investigation*, 412 F. Supp. 943, 949 (ED Pa. 1976) (notes of conversation with witness "are so much a product of the lawyer's thinking and so little probative of the witness's actual words that they are absolutely protected from disclosure"). Those courts declining to adopt an absolute rule have nonetheless recognized that such material is entitled to special protection. See, *e. g., In re Grand Jury Investigation*, 599 F.2d 1224, 1231 (CA3 1979) ("special considerations . . . must shape any ruling on the discoverability of interview memoranda . . .; such documents will be discoverable only in a `rare situation'"); cf. *In re Grand Jury Subpoena*, 599 F.2d 504, 511-512 (CA2 1979).

We do not decide the issue at this time. It is clear that the Magistrate applied the wrong standard when he concluded that the Government had made a sufficient showing of necessity to overcome the protections of the work-product doctrine. The Magistrate applied the "substantial need" and "without undue hardship" standard articulated in the first part of Rule 26(b)(3). The notes and memoranda sought by the Government here, however, are work product based on oral statements. If they reveal communications, they are, in this case, protected by the attorney-client privilege. To the extent they do not reveal communications, they reveal the

attorneys' mental processes in evaluating the communications. As Rule 26 and *Hickman* make clear, such work product cannot be disclosed simply on a showing of substantial need and inability to obtain the equivalent without undue hardship.

While we are not prepared at this juncture to say that such material is always protected by the work-product
402 rule, we *402 think a far stronger showing of necessity and unavailability by other means than was made by the Government or applied by the Magistrate in this case would be necessary to compel disclosure. Since the Court of Appeals thought that the work-product protection was never applicable in an enforcement proceeding such as this, and since the Magistrate whose recommendations the District Court adopted applied too lenient a standard of protection, we think the best procedure with respect to this aspect of the case would be to reverse the judgment of the Court of Appeals for the Sixth Circuit and remand the case to it for such further proceedings in connection with the work-product claim as are consistent with this opinion.

Accordingly, the judgment of the Court of Appeals is reversed, and the case remanded for further proceedings.

It is so ordered.

CHIEF JUSTICE BURGER, concurring in part and concurring in the judgment.

I join in Parts I and III of the opinion of the Court and in the judgment. As to Part II, I agree fully with the Court's rejection of the so-called "control group" test, its reasons for doing so, and its ultimate holding that the communications at issue are privileged. As the Court states, however, "if the purpose of the attorney-client privilege is to be served, the attorney and client must be able to predict with some degree of certainty whether particular discussions will be protected." *Ante*, at 393. For this very reason, I believe that we should articulate a standard that will govern similar cases and afford guidance to corporations, counsel advising them, and federal courts.

The Court properly relies on a variety of factors in concluding that the communications now before us are privileged. See *ante*, at 394-395. Because of the great importance of the issue, in my view the Court should
403 make clear now that, as a *403 general rule, a communication is privileged at least when, as here, an employee or former employee speaks at the direction of the management with an attorney regarding conduct or proposed conduct within the scope of employment. The attorney must be one authorized by the management to inquire into the subject and must be seeking information to assist counsel in performing any of the following functions: (a) evaluating whether the employee's conduct has bound or would bind the corporation; (b) assessing the legal consequences, if any, of that conduct; or (c) formulating appropriate legal responses to actions that have been or may be taken by others with regard to that conduct. See, *e. g., Diversified Industries, Inc.* v. *Meredith*, 572 F.2d 596, 609 (CA8 1978) (en banc); *Harper Row Publishers, Inc.* v. *Decker*, 423 F.2d 487, 491-492 (CA7 1970), aff'd by an equally divided Court, 400 U.S. 348 (1971); *Duplan Corp.* v. *Deering Milliken, Inc.*, 397 F. Supp. 1146, 1163-1165 (SC 1974). Other communications between employees and corporate counsel may indeed be privileged — as the petitioners and several *amici* have suggested in their proposed formulations- — but the need for certainty does not compel us now to prescribe all the details of the privilege in this case.

– See Brief for Petitioners 21-23, and n. 25; Brief for American Bar Association as *Amicus Curiae* 5-6, and n. 2; Brief for American College of Trial Lawyers and 33 Law Firms as *Amici Curiae* 9-10, and n. 5.

Nevertheless, to say we should not reach all facets of the privilege does not mean that we should neglect our duty to provide guidance in a case that squarely presents the question in a traditional adversary context. Indeed, because Federal Rule of Evidence 501 provides that the law of privileges "shall be governed by the principles

Exhibits
Ex. 20

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

ROY PERRY-BEY and
RONALD M. GREEN,

Plaintiffs,

v. **Docket No.: CL19-3928**

CITY OF NORFOLK, et al.

Defendants.

ORDER SUSTAINING DEMURRERS

This is a suit by two citizens seeking an order directing the City of Norfolk to relocate a Confederate monument from Commercial Place in downtown Norfolk to a city cemetery. Plaintiffs allege that they appeared before the Norfolk City Council in 2017 asking that it relocate the monument and that the Council in fact passed a unanimous resolution to do so. The City Council has delayed acting on that resolution while legal issues involving Confederate monuments around the state are resolved. The Amended Complaint before the Court seeks a wide variety of relief, including money damages against each of the fourteen individual government officials named as defendants. The Court agrees with Defendants that the Amended Complaint fails to state any claim upon which relief can be granted and accordingly sustains the demurrers.

Procedural Posture

The litigation began with a *pro* se Complaint by Mr. Perry-Bey and Mr. Green on March 22, 2019, against the Norfolk City Council. That litigation was nonsuited on April 29, 2019, and immediately refiled in substantially similar form.

On June 3, 2019, Plaintiffs filed an Amended Complaint with the Court adding fourteen individual government officials as defendants and adding claims for money damages under 42 U.S.C. §1983. On June 21, 2019, all Defendants except the Attorney General collectively filed a

Demurrer and Special Plea. On July 3, 2019, the Attorney General, by counsel, filed a Special Plea, Motion to Dismiss and Demurrer. On July 15, 2019, all parties presented their oral arguments before the Court.

Factual Background

Plaintiffs Roy L. Perry-Bey and Ronald M. Green are residents of the Cities of Newport News and Norfolk, respectively. (Am. Compl. ¶2-3) Plaintiffs have named as Defendants the City of Norfolk, the Norfolk City Council, the Attorney General of Virginia, the Mayor and Vice Mayor of the City of Norfolk, each member of the Norfolk City Council, the Norfolk City Manager, the Norfolk City Clerk, the Norfolk City Attorney, and two lawyers in the City Attorney's Office. (*Id.* ¶4-10)

Plaintiffs allege that the display of the Confederate monument erected in 1898 (hereinafter "Monument") conveys and endorses a visual message of secession, representation of the Confederacy, slavery, lynching, violence, racial segregation, political intimidation, white supremacy, domestic terrorism, hate, crimes against humanity, the White League, Norfolk's White Citizens' counsel, and antisemitism. (*Id.* ¶18, 21, 29) Plaintiffs assert that these messages not only offend the Plaintiffs but represent a past and future danger to both the Plaintiffs' and the public's safety. (*Id.*)

Plaintiffs claim that they have to come into direct and unwelcome contact with the Monument and white supremacist hate groups, which give them offense, during their frequent public protests to remove the Monument. (*Id.* ¶19) They claim that have experienced a "special burden" and have altered their behavior to avoid contact with the Monument during their "business or visits downtown." (*Id.* ¶20) They claim to have suffered and continue to suffer injury as a result of the "illegal display" of the Monument on public property and Defendants' maintenance of this

"unconstitutional display of government regulated private hate speech from 1998 until present...for the express purpose to promote segregation and incite violence or prejudicial actions against the Plaintiffs, to disparage or intimidate, which also affects the public order and the peace and dignity of the City of Norfolk." (*Id.* ¶ 21, 22, 24)

Plaintiffs assert claims pursuant to 42 U.S.C. §1983. (*Id.* ¶ 1) This statute creates liability for any "person who, under color of [law], subjects...any citizen of the United States...to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983. Plaintiffs also seek declaratory and injunctive relief as well as compensatory and punitive damages against each Defendant. (*Id.* ¶ 46-48)

I. Demurrer: Failure to Identify a Constitutional Violation

All Defendants except Attorney General Herring have demurred to the Amended Complaint for failure to state any claim upon which relief could be granted. They argue that Plaintiffs have failed to identify any right, privilege, or immunity secured by the Constitution and laws which has been deprived to them by any action of a Defendant.

The activity that is alleged to have caused injury to Plaintiffs is the continuous display of the visual message expressed by the Monument at its downtown location. Plaintiffs interpret the Monument to communicate a message of reverence for the Confederate cause, which they consider odious and offensive. These allegations regarding the nature of the Monument fully reflect the Monument's legal status as an instrument for government speech. As the United States Supreme Court held in *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460 (2009):

> Governments have long used monuments to speak to the public. Since ancient times, kings, emperors, and other rulers have erected statues of themselves to remind their subjects of their authority and power. Triumphal arches, columns, and other monuments have been built to commemorate military victories and sacrifices and other events of civic importance. A monument, by definition, is a structure that is designed as a means of expression. When a government entity arranges for the

> construction of a monument, it does so because it wishes to convey some thought or instill some feeling in those who see the structure... A monument that is commissioned and financed by a government body for placement on public land constitutes government speech.

Id. at 470.

As offended as Plaintiffs undoubtedly are by this prominent reminder of a long history of racial oppression, they nonetheless have no First Amendment right to challenge the Monument based on any message that it conveys because the Free Speech clause does not regulate government speech. "The Free Speech Clause restricts government regulation of private speech; it does not regulate government speech." *Id.* at 467.

The Free Speech Clause restricts government regulation of private speech; it does not regulate government speech. *See Johanns v. Livestock Marketing Assn.*, 544 U.S. 550, 553 (2005) ("[T]he Government's own speech ... is exempt from First Amendment scrutiny"); *Columbia Broadcasting System, Inc. v. Democratic National Committee,* 412 U.S. 94, 139, n. 7 (1973) (Stewart, J., concurring) ("Government is not restrained by the First Amendment from controlling its own expression"). A government entity has the right to "speak for itself." *Board of Regents of Univ. of Wis. System v. Southworth,* 529 U.S. 217, 229 (2000); *National Endowment for Arts v. Finley,* 524 U.S. 569, 598 (1998) (Scalia, J., concurring in judgment) ("It is the very business of government to favor and disfavor points of view"). Based on all this controlling precedent, the Court rejects Plaintiffs' assertions about a legal right to freedom from an unwelcome government message. (*e.g.,* Am. Compl. ¶ 28) Such a right may be protected not by a lawsuit but by the political process and the ballot box: "If the voters do not like those in governance or their government speech, they may vote them out of office or limit the conduct of those officials by law, regulation, or practice." *Sutliffe v. Epping,* 584 F.3d 314, 332 n.9 (1st Cir. 2009)(citing *Bd. of Regents v. Southworth,* 529 U.S. 217, 235 (1999)).

Next, Plaintiffs assert claims that their Fourteenth Amendment rights have been violated, as follows:

> The continued governments [*sic*] sponsorship and maintenance of the Confederate monument, the Seal of the Confederate States of American Monument, Confederate Standard-Bearer and engraved Confederate flag Display, constitutes white supremacy, segregation, religious bigotry, hate speech, antisemitism, and political or religious white supremacy practices in violation of the Supremacy Clause of the First Amendment and Fourteenth Amendment of the Constitution of the Virginia and of the Constitution of the United States of America and laws.

(Am. Compl. ¶ 29)

The procedural due process right guaranteed by the Fourteenth Amendment provides that no person shall be deprived of life, liberty or property without due process of law. Plaintiffs have failed to allege a deprivation of any liberty or property interest within the meaning of the Due Process clause. Plaintiffs have alleged that each of them has "altered their behavior to avoid direct and unwelcome contact" with the Monument but allege no facts detailing that they have had a life, liberty or property interest that has been impaired by actions of any of Defendants. (Am. Compl. ¶2-3)

The Fourteenth Amendment also prohibits states from denying any person the equal protection of laws. The Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439 (1985). Under the Equal Protection Clause, in order to state a race-based claim, Plaintiffs must allege that a government actor intentionally discriminated against them on the basis of their race. *See Hayden v. County of Nassau*, 180 F.3d 42, 48 (2d Cir.1999).

Plaintiffs have not alleged that the display of the Monument has subjected them to unequal protection of laws. Likewise, they have not alleged conduct by any Defendant that could be interpreted as intentional discrimination based on race. As a result, Plaintiffs have not alleged

that anything about the display of the Monument deprives the Plaintiffs of any right protected by the Due Process or Equal Protection clauses of the Fourteenth Amendment.

Additionally, in paragraphs 30-34 of the Amended Complaint, Plaintiffs include certain references to religion that the Court interprets as invoking a claim under the Establishment Clause of the First Amendment. They allege, "[t]he Display fosters an excessive entanglement between government religion and private hate speech." (Am. Compl. ¶ 34) The use of the phrase "excessive entanglement between ...religion" quotes the third prong of the three-part test articulated in *Lemon v. Kurtzman*, 403 U.S. 602 (1971) for determining whether a challenged government action violates the Establishment Clause: "[T]he statute must not foster 'an excessive entanglement with religion.'" *Id.* at 613 (citing *Walz v. Tax Commission*, 397 U.S. 664, 668 (1970)).

Plaintiffs characterize the Monument as a religious display promoting the religion of "White supremacy." (Am. Compl. ¶ 32-22) The Court does recognize that Confederate symbols have been embraced by proponents of white supremacy. The horrifying events of Charlottesville 2017 and Charleston 2015 represent two recent examples of violence by white supremacists who displayed Confederate battle flags. The Court would not, however, conclude that belief in the supremacy of white people is a "religion" within the meaning of the Establishment Clause. Admittedly, courts have struggled to define which beliefs are "religious" beliefs for purposes of the Establishment Clause. *See, e.g., United States v. Seeger*, 380 U.S. 163, 176 (1965) ("a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God"); *Welsh v. United States*, 398 U.S. 333, 339 (1970) ("sincere and meaningful beliefs that ... need not be confined in either source or content to traditional or parochial concepts of religion").

The Court need not resolve whether white supremacy constitutes a religion to consider whether the Monument violates the Establishment Clause. In the recent decision of *Am. Legion v. Am. Humanist Assn.*, 139 S.Ct. 2067 (2019), the Plaintiffs argued that a granite cross erected in 1925 that has served as a memorial to forty-nine Maryland citizens killed in the First World War, represented a religious display that violated the Establishment Clause. The plaintiffs had sued the Maryland National Capital Park and Planning Commission eighty-nine years after the Bladensburg Peace Cross was dedicated, claiming that they are offended by the sight of its presence on public land and that the expenditure of public funds to maintain it violated the Establishment Clause. *Id.*

Ruling that the display and maintenance of the cross did not offend the Constitution, the Court retreated from the *Lemon* test for cases that involve the use of religiously-associated words or symbols for ceremonial, celebratory, or commemorative purposes. The Court instead suggested favoring a "presumption of constitutionality for longstanding monuments, symbols, and practices." *Id.* at 2082.

The Court reasoned that "these cases often concern monuments, symbols, or practices that were first established long ago, and in such cases, identifying their original purpose or purposes may be especially difficult." *Id.* The Court noted that "as time goes by, the purposes associated with an established monument, symbol, or practice often multiply . . . even if the original purpose of a monument was infused with religion, the passage of time may obscure that sentiment." *Id* at 2083. The Court concluded:

> These ... considerations show that retaining established, religiously expressive monuments, symbols, and practices is quite different from erecting or adopting new ones. The passage of time gives rise to a strong presumption of constitutionality.

Id. at 2085.

The association between a cross and Christianity is much closer than any association between a Confederate symbol and a religion, yet the Supreme Court determined that the display of a cross as a historical war memorial did not offend the Establishment Clause. Therefore, this Court rules that the City's maintenance and display of the Monument, whether it has religious connotations or not, likewise does not offend the Establishment Clause.

II. Additional Grounds for Dismissing Section 1983 Claims

Defendant Herring raises additional and different grounds in support of his demurrer. In the style of the case, Plaintiffs list each of Defendants' names and at the end of the list state "In Their Official Capacities." (Am. Compl. p.1). Also, in paragraphs 2-10 of the Amended Complaint, Plaintiffs detail the official capacities of each of the named Defendants. The Amended Complaint includes no allegation of any individual or personal act or omission by any Defendant that caused harm to Plaintiffs.

The United States Supreme Court has held that "a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. As such, it is no different from a suit against the State itself." *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989). A suit cannot, however, be brought against a state official or a state itself pursuant to 42 U.S.C. § 1983 because "a State is not a person within the meaning of § 1983" and a state has sovereign immunity from suit under § 1983. *Id.* at 64, 67. A suit may only be brought against a government official pursuant to 42 U.S.C. § 1983 when sued in his official capacity, if the official has "some degree of personal involvement in the alleged deprivation of rights." *McDonald v. Dunning*, 760 F. Supp. 1156, 1160 (E.D. Va. 1991) (citing *Vinnedge v. Gibbs*, 550 F.2d 926, 928-29 (4th Cir. 1977)).

As the Court has detailed *supra*, Plaintiffs have not alleged any personal involvement of any Defendant in depriving the Plaintiffs of any rights. The Amended Complaint lacks any allegation describing any conduct by any individual Defendant that could be construed as harmful to Plaintiffs. For this additional reason, the Plaintiffs' claim under 42 U.S.C. § 1983 fail.

III. Plaintiffs have no individual standing

Defendant Herring additionally relies on his argument that Plaintiffs lack standing to assert any alleged claims relating to the Monument. The Court has concluded that the Amended Complaint fails to state a cause of action for which relief may be granted, as argued by the other Defendants. To the extent, however, that it could be interpreted as including actionable claims, the Court agrees with the Attorney General that Plaintiffs nonetheless have no standing to assert such claims.

In determining whether a plaintiff has standing, which is a threshold issue and a question of law, courts consider the factual allegations as true. *Howell v. McAuliffe*, 292 Va. 320, 330, (2016)(citing *Virginia Marine Res. Comm'n v. Clark*, 281 Va. 679, 686–87, (2011)). Thus, "[i]t is incumbent on petitioners to allege facts sufficient to demonstrate standing." *Howell v. McAuliffe*, 292 Va. 320, 330, (2016)(citing *Friends of the Rappahannock v. Caroline Cty. Bd. of Supervisors*, 286 Va. 38, 50, 743 S.E.2d 132, 138 (2013)).

> The concept of standing concerns itself with the characteristics of the person or entity who files suit. The point of standing is to ensure that the person who asserts a position has a substantial legal right to do so and that his rights will be affected by the disposition of the case. In asking whether a person has standing, we ask, in essence, whether he has a sufficient interest in the subject matter of the case so that the parties will be actual adversaries and the issues will be fully and faithfully developed.

Cupp v. Board of Supervisors of Fairfax County, 227 Va. 580, 589 (1984) (internal citation omitted); *see also Grisso v. Nolen*, 262 Va. 688, 693 (2001); *Goldman v. Landsidle*, 262 Va. 364, 371 (2001).

Under Virginia law, a party has standing if it can "show an immediate, pecuniary, and substantial interest in the litigation, and not a remote or indirect interest." *Harbor Cruises, Inc. v. State Corp. Comm.*, 219 Va. 675, 676 (1979) (per curiam). In other words, without "a statutory right, a citizen or taxpayer does not have standing to seek...relief ... unless he [or she] can demonstrate a direct interest, pecuniary or otherwise, in the outcome of the controversy that is separate and distinct from the interest of the public at large." *Goldman v. Landsidle*, 262 Va. 364, 373 (2001). The Supreme Court has firmly rejected the notion that offense alone qualifies as a "concrete and particularized" injury sufficient to confer standing. *Diamond v. Charles*, 476 U.S. 54, 62 (1986). "Offended observer standing is deeply inconsistent, too, with...the rule that generalized grievances' about the conduct of Government" are insufficient to confer standing to sue." *Am. Legion v. Am. Humanist Assn.*,139 S.Ct. 2067, 2100 (2019) (Gorsuch, J., concurring) (citing *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 217, 94 S.Ct. 2925, 41 L.Ed.2d 706 (1974)). All of Plaintiffs' alleged injuries result from the mere existence of the Monument and are not "separate and distinct from the public at large." *Goldman*, 262 Va. at 373. The harms alleged could also be claimed by any member of the public who walks by the Monument.

CONCLUSION

The source of the injuries claimed by Plaintiffs is the continued display of the Monument, which the Court rules is a form of government speech. Because government speech is not subject to constitutional challenge under either the First or Fourteenth Amendments, the Amended

Complaint fails to state an actionable claim. To the extent that any such claim could be discerned from the pleading, none of the defendants named herein have participated personally in depriving Plaintiffs of any constitutional right; and the causes of action under 42 U.S.C. § 1983 therefore fail. Finally, Plaintiffs lack standing to assert claims of injury based on the continued presence and display of a Monument that has stood in the same location for more than a century.

The Demurrers of all Defendants are SUSTAINED. The Amended Complaint is DISMISSED.

The Clerk is directed to mail a copy of this Order to the unrepresented parties and to all counsel of record.

Pursuant to Rule 1:13, endorsements are waived. Plaintiffs and counsel may submit written Objections to this Order within ten days.

It is so ORDERED.

ENTER: 22 July 2019

Mary Jane Hall

MARY JANE HALL, JUDGE

NORFOLK CIRCUIT COURT CLERK'S OFFICE

The Foregoing Document Copy Teste:
George E. Schaefer, Clerk
Norfolk Circuit Court
BY
Tracey Staples, Deputy Clerk
Authorized to sign on behalf
of George E. Schaefer, Clerk
Date: July 23, 2019

Exhibits
Ex. 21

MR. ROY L. PERRY-BEY
89 LINCOLN STREET #1772
HAMPTON, VA 23669
Tel: (804) 362-0011
ufj2020@gmail.com

May 6, 2019

The Honorable George E. Schaefer, III,
Clerk Law Division
Norfolk Circuit Court Clerk's Office
150 St Paul's Blvd. 7th Floor
Norfolk, VA 23510
793-3506

Re: # CL19-3928 Roy L. Perry-Bey, and Ronald M. Green vs. City of Norfolk, and Norfolk City Attorneys Office

Dear Mr. Schaefer, III:

Enclosed is the plaintiffs MOTION TO DISQUALIFY NORFOLK CITY ATTORNEYS OFFICE, and all others to be filed in the above referenced matter, which I ask that you please present to the Honorable Mary Jane Hall Judge for an Order.

Thank you for your kind assistance in this matter.

Very truly yours,

Mr. Roy L. Perry-Bey

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

ROY L. PERRY-BEY and
RONALD M. GREEN

Case No: CL19-3928

vs.

CITY OF NORFOLK

PLAINTIFFS' MOTION TO DISQUALIFY NORFOLK CITY ATTORNEYS OFFICE AND ALL OTHERS ON BEHALF OF CITY OF NORFOLK AND NORFOLK CITY ATTORNEYS OFFICE

Pursuant to applicable Local Rules of Civil Procedure and Local Rule of the Court, the Plaintiffs, respectfully moves this Court to resolve this matter without a hearing and for an Order (a) to disqualify Defendant, Norfolk City Attorneys Office and all others, as **"COUNSEL OF RECORD"** for the above referenced Defendants in violation of Local Rules of Civil Procedure and Local Rule of the Norfolk Circuit Court; states as follows:

1). Defendant Norfolk City Attorneys Office, representation of multiple clients, in this matter, its employer the CITY OF NORFOLK, the "client" "knows or should known it cannot nor their employer provide legal services or advice to its employer if allowed presents a serious and unethical conflict of interests, Norfolk City Attorneys Office and all others is a Defendant and is likely to be a material witness for the Defendant, the CITY OF NORFOLK, it's employer the "client," and that it must act through duly licensed attorneys.

2). Norfolk City Attorneys Office is a necessary witness to the facts and circumstances giving rise to the controversy under which the defendant Norfolk has used as justification for its groundless, unreasonable delay removing its (**"symbol of injustice"**)and (***"public nuisance"***), Confederate monument material to the determination of the issues being litigated.

3). Norfolk City Attorney Office potential representation in this matter of it's employer, CITY OF NORFOLK, the "client" "knows or should know it cannot provide legal services/advice to their employer, it presents a serious and unethical conflict of interests, Norfolk City Attorneys Office and all others is a Defendant and is likely to be a material witness for Defendant, the CITY OF NORFOLK, its employer the "client," and that it must act through duly licensed attorneys.

4). Norfolk City Attorneys Office and all others is likely to be called to give evidence material to the determination of the issues being litigated.

5). The evidence cannot be obtained elsewhere;

6). The testimony is prejudicial or may be potentially prejudicial to the testifying attorneys "clients" CITY OF NORFOLK, and NORFOLK CITY ATTORNEYS OFFICE.

7). The relation of attorney and client is that of master and servant in a limited and dignified sense, and it involves the highest trust and confidence.

8). It cannot be delegated without consent, and it cannot exist between an attorney employed by a corporation to practice law for it and a client of the corporation. See: **In re Richmond Title, etc., Co., 2 Va. L. Reg. (n.s.) 772 (1917).**

9). A corporation or other lay agency cannot practice law or hire lawyers to practice for it. See: **West Virginia State Bar v. Early, 144 W. Va. 504, 109 S.E. 2d 420 (1959).**

10). Lawyers may not act as advocates in "adversarial proceeding" if the lawyer is "likely to be a necessary witness" (Rule 3.7(a).

11). Plaintiffs assert the entire government law office should face disqualification because they are likely to be called to give evidence material to the determination of the issues being litigated.

12). Virginia's Disciplinary Rules of Professional Conduct provide that a lawyer shall not accept or continue employment in a proceeding if the lawyer knows or believes that the lawyer is or may be a witness necessary to establish an essential fact on behalf of the lawyer's client.

13). As the above referenced case can not proceed under any legal basis, without resolution of the Defendant's planned improper appearances and disqualification, as a matter of justice, legal ethics and Law.

WHEREFORE, Plaintiffs moves the court to resolve the matter without a hearing and for an order Disqualifying Defendant(s), based on the witness/advocate rule governing all members of the Norfolk City Attorney's Office to act as legal counsel, that an actual conflict of interest exists between members of the Norfolk City Attorney's Office and City of Norfolk, because the NORFOLK CITY ATTORNEYS OFFICE is a defendant and all of its members are necessary witnesses in the above referenced matter. in accordance with Rules of the Supreme Court of Virginia, Part 6, §II Rule 3.7(a),(c).

Monday, May 6, 2019

Respectfully Submitted,

By _____

MR. ROY L. PERRY- BEY
89 LINCOLN STREET #1772
HAMPTON, VIRGINIA 23669

By _____

MR. RONALD M. GREEN
5540 BARNHOLLOW ROAD
NORFOLK, VA 23502

CERTIFICATION OF SERVICE

I hereby certify that a true copy of the foregoing was mailed on this 6th day of May, 2019 to Defendants Bernard A. Pishko, Norfolk City Attorney, City of Norfolk, City Hall Building, 9th Floor, 810 Union Street Norfolk, VA 23510.

By_____

MR. ROY L. PERRY- BEY
89 LINCOLN STREET #1772
HAMPTON, VIRGINIA 23669

By_____

MR. RONALD M. GREEN
5540 BARNHOLLOW ROAD
NORFOLK, VA 23502

Exhibits
Ex. 22

MR. ROY L. PERRY-BEY
89 LINCOLN STREET #1772
HAMPTON, VA 23669
Tel: (804) 362-0011
ufj2020@gmail.com

May 16, 2019

The Honorable George E. Schaefer, III,
Clerk Law Division
Norfolk Circuit Court Clerk's Office
150 St Paul's Blvd. 7th Floor
Norfolk, VA 23510

Re: #CL19-3928 - Roy L. Perry-Bey, and Ronald M. Green v. City of Norfolk, and Norfolk City Attorneys Office

Dear Mr. Schaefer, III:

Enclosed please find plaintiffs motion to expedite ruling on their motion to disqualify and motion to compel discovery to be filed in the above referenced matter, which I ask that you please present to the Hon. Mary Jane Hall, Judge.

Thank you for your kind assistance in this matter.

Very truly yours,

MR. ~~ROY L.~~ PERRY-BEY

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

ROY L. PERRY-BEY and RONADL M. GREEN	)	
vs.	)	Docket No.: CL19-3928 (MJH)
CITY OF NORFOLK and NORFOLK CITY ATTORNEYS OFFICE	)	

MOTION TO EXPEDITE RULING ON THE MOTION TO DISQUALIFY BEFORE RESPONSIVE PLEADINGS AND MOTION TO COMPEL DISCOVERY AND EXPEDITE CONSIDERATION OF THIS MOTION

NOW COME, Plaintiffs Roy L. Perry-Bey and Ronald M. Green, and moves this Honorable Court for an expedited ruling on their motion to disqualify the Norfolk City Attorneys Office, filed May 6, 2019, and its motion to compel discovery, filed May 11, 2019, states as follows:

1. Plaintiffs understand that an expedited ruling may be granted only under extraordinary circumstances and asserts the following in support therefore:

2. The denial of an expedited ruling could result in substantial adverse effects on the plaintiffs and their ability to prosecute case as follows: Plaintiffs could be forced to waste unnecessary resources and time responding to defendants improper representation in the above referenced matter.

3. The denial of an expedited ruling could result in substantial adverse effects on the plaintiffs and their ability to respond as follows: Defendant Norfolk City Attorneys Office, and all others representation of multiple clients, in this matter, its employer the CITY OF NORFOLK, the "client" "knows or should known it cannot nor their employer provide legal services or advice to its employer if allowed presents a serious and unethical conflict of interests, Norfolk City Attorneys Office and all others is a Defendant and is a material witness for the Defendant, the CITY OF NORFOLK, it's employer the "client," and that it must act through duly licensed attorneys.

4. The denial of an expedited ruling could result in substantial adverse effects on the plaintiffs rights as follows. Plaintiffs have suffered and continue to suffer injury as result of the illegal use of the Display and the public property on which it is placed conveying municipal endorsement of specific support of its explicitly ("White Supremacy") message.

5. The denial of an expedited ruling could result in substantial adverse effects on the plaintiffs as follows: Defendants are attempting to keep Plaintiffs from developing their case, for plaintiffs to prove, the removal or relocation of Monuments through Va. Code § 15-2-1812 and its predecessor statutes going back to 1904, those restrictions do not appear to apply to most Monuments put up in municipalities as here prior to 1998.

6. The denial of an expedited ruling could result in substantial adverse effects on the plaintiffs as follows: Plaintiffs must be granted discovery to prove the removal or relocation of a Monument put up in a municipality, especially if put up by order of a municipal governing body or a private entity with the permission of that governing body, would not implicate Va. Code § 18.2-137 (the statute imposing criminal penalties for removal, etc. of war monuments)."

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2. **TAKE JUDICAL NOTICE**: The City Attorneys Office ("Defendant"), signing any pleadings, motions, and other papers; or representations to the Court; and prohibited appearances of **"DEFENDANT"** could be construed as unauthorized practice of law. See **Richmond Ass'n of Credit Men v. Bar Assoc., 167 Va. 327 (1937)**, the opinion further conclude that it would be improper for any attorney employee of a corporation to assist the corporation in the unauthorized practice of law. See "UPL Op. No. 1983-#167.

7. The denial of an expedited ruling could result in substantial adverse effects on the plaintiffs as follows: The Plaintiffs must be permitted to present evidence they are harmed as result of these laws, and Display, and entitled to freedom of and from government sponsored or endorsed Confederacy, in furtherance of ("White Supremacy"), is a fundamental right under the First Amendment and Fourteenth Amendment; and the use and display of Defendants symbol of inhumanity, and incitement of violence and hate directed at them.

8. The denial of an expedited ruling could result in substantial adverse effects on the plaintiffs as follows: Plaintiffs seeks an expedited ruling on the motion to compel discovery and the motion to disqualify the Norfolk City Attorneys Office (the "Defendant"), to identify counsel for the defendants, and because of the importance of the questions presented for review and the urgent need for their prompt resolution, that bear on their ability prepare for critical per-trail defense.

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3. The Norfolk City Attorneys Office and all others is a necessary witness to the facts and circumstances giving rise to the controversy.

9. The denial of an expedited ruling could result in substantial adverse effects on the plaintiffs as follows: Plaintiffs can not proceed in the above referenced matter without a timely determination.

10. Plaintiffs assert defendants will not be prejudiced by granting their expedited motion for determination and all other legal defenses not specifically stated herein in support.

11. Defendants have been notified of plaintiffs intent to ask Court to disqualify the Norfolk City Attorneys Office (the "Defendant"), and need to identify counsel for the defendants: The City defendants to date, have failed or refused to respond or oppose in the above referenced matter.

May 16, 2019

Respectfully Submitted,

By_____
MR. ROY L. PERRY- BEY
89 LINCOLN STREET #1772
HAMPTON, VIRGINIA 23669

By RM Green
MR. RONALD M. GREEN
5540 BARNHOLLOW ROAD
NORFOLK, VA 23502

https://www.wavy.com/news/norfolk-civil-rights-group-plans-march-to-city-council-over-confederate-monument/1099799402

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2019, a true copy of the foregoing was mailed to Defendants Bernard A. Pishko, Norfolk City Attorney, City of Norfolk, City Hall Building, 9th Floor, 810 Union Street Norfolk, VA 23510.

By _____
MR. ROY L. PERRY-BEY
89 LINCOLN STREET #1772
HAMPTON, VIRGINIA 23669

By _____
MR. RONALD M. GREEN
5540 BARNHOLLOW ROAD
NORFOLK, VA 23502

Exhibits
Ex. 23

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

ROY L. PERRY-BEY and RONADL M. GREEN	)	
vs.	)	Docket No.: CL19-3928 (MJH)
CITY OF NORFOLK, et al.	)	

MEMORANDUM IN SUPPORT OF REPLY IN OPPOSITION TO DEFENDANTS' DEMURRER

COMES NOW the Plaintiffs, pursuant to the First Amendment and Fourteenth Amendment of the United States Constitution and the Constitution of Virginia, has invoked both state and federal jurisdiction subject matter, because their underlying claims arouse under federal and state law and files this Memorandum in Support of its Reply in Opposition in this case by reason of the following opposition.

1. The Plaintiffs have as a matter of law stated a valid claim against the City ("Defendants") declaring that the City and their agents directed hate speech at them constitute a violation of their constitutional rights upon which relief can be granted.

2. The Plaintiffs have as a matter of law stated a valid claim of the violation of Plaintiffs' civil and constitutional rights.

3. The Plaintiffs have as a matter of law has the right to be free from government entanglement with, and endorsement of religious matters, in maintaining a *public nuisance,* hate speech, directed or targeting Plaintiffs and the right to due process and equal protection.

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

ROY L. PERRY-BEY and RONADL M. GREEN	)	
vs.	)	Docket No.: CL19-3928 (MJH)
CITY OF NORFOLK, et al.	)	

MEMORANDUM IN SUPPORT OF REPLY IN OPPOSITION TO DEFENDANTS' DEMURRER

COMES NOW the Plaintiffs, pursuant to the First Amendment and Fourteenth Amendment of the United States Constitution and the Constitution of Virginia, has invoked both state and federal jurisdiction subject matter, because their underlying claims arouse under federal and state law and files this Memorandum in Support of its Reply in Opposition in this case by reason of the following opposition.

1. The Plaintiffs have as a matter of law stated a valid claim against the City ("Defendants") declaring that the City and their agents directed hate speech at them constitute a violation of their constitutional rights upon which relief can be granted.

2. The Plaintiffs have as a matter of law stated a valid claim of the violation of Plaintiffs' civil and constitutional rights.

3. The Plaintiffs have as a matter of law has the right to be free from government entanglement with, and endorsement of religious matters, in maintaining a *public nuisance,* hate speech, directed or targeting Plaintiffs and the right to due process and equal protection.

4. The Plaintiffs have a right to challenge the Constitutionality, under state and federal law, the Municipality's placement of a massive 80 foot Confederate monument conveying hate, an inscribed Confederate flag and Seal of the Confederate States of America, a hate speech symbol originating from the Confederate flag designer William T. Thompson April 23, 1863, and the Confederate Vice President Alexander Stephens, (Commonly and collectively) referred to as Confederacy, our new government was founded on slavery. Its cornerstone rests, upon the great truth that the Negro is not equal to the white man; that slavery, submission to the superior race, is his natural and normal condition. "As a people we are fighting to maintain the heaven-ordained supremacy of the white man over the inferior or colored race; A white flag would thus be emblematical of our cause. Upon a red flag would stand fourth our southern cross, gemmed, preserving in beautiful contrast the red white and blue," referred to herein as the ("Display"). Ex. 6 & 6*.

5. The Display was placed on the public right-away of the City of Norfolk ("Norfolk") which plaintiffs contend is a violation of the Establishment Clause of the First Amendment and the Due process and Equal Protection Clause of the Fourteenth Amendment. The Display is over 80 foot tall and appears to be made of stone.

25. The history of Tidewater localities and the Monuments of Norfolk is beyond the restrictions in Va. Code § 15.2-1812 and Va. Code § 18.2-137. Norfolk has not served as a county seat since at least 1846. (As of 1846 the seat of Norfolk County was in present-day Portsmouth.) No Monument has been put up in a municipality since.

6. The Display is inscribed with the Confederate flag across its face, a symbol of slavery, white supremacy, religious bigotry, intimidation, fear, envy and hate. Along the south side of its base a large **"SEAL OF THE CONFEDERATE STATES OF AMERICA."** Ex. U.

7. Atop the massive 80 foot Display facing north a Confederate Standard Bearer with flag to the Southern Confederacy. No other historic icons are exhibited with the Display. Ex. V.

8. The Display is inscribed with **CSA** and "Our Confederate Dead" on the northeast side of the Confederate monument in honor of the Southern Confederate States of America. Ex. Q.

9. The approval to erect the Confederate Monument in 1889 by the City Council constitutes"… a law respecting an establishment of religion "White Supremacy" in violation of the First Amendment.

10. The Plaintiffs have as a matter of law stated a valid claim under the First Amendment and Fourteenth Amendment to redress the deprivation under color of State and Federal law of rights, privileges, and immunities secured by the Constitution of the United States and of the Constitution of Virginia, and laws; Va. Code 8.01-184, Va. Code 8.01-191 (Declaratory relief); the provisions of §§ 2 and 15 (further relief) against the named Defendants. These claims are predicated on violations of the Plaintiffs First Amendment and Fourteenth Amendment rights and laws.

11. The Fourteenth Amendment of the United States Constitution prevents the passage of laws which respect the establishment of religion.

13. The Fourteenth Amendment provides for due process and equal protection of the laws and also makes the First Amendment applicable to a body politic and municipal corporation, created by a state such as the Defendants, through its due process clause.

14. The Constitution of Virginia and Section 1 provides that all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive their posterity; namely the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

15. The Constitution of Virginia Section 11 provides no person shall be deprived of life, liberty, or property without due process of law; and right to be free from any governmental discrimination based upon religious conviction, race, color, sex, and national origin shall not be abridged.

16. The Constitution of Virginia Section 14 provides that the people have a right to uniform government; and, therefore, that no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof.

17. The Display and its endorsement of the treasonous outlawed Southern Confederate States of America, amounts to erecting or establishing a separate government, conveying religious bigotry and hate at Plaintiffs, based on their, religion, race, sex, and national origin in violation of their rights, Section 14 of the Constitution of Virginia.

18. The Plaintiffs have stated an actual controversy pursuant § 8.01-184, within the scope of the Court jurisdiction and no action or proceeding shall be open to objection on the ground that a judgment order or decree merely declaratory of right is prayed for.

19. The Plaintiffs asserts the controversy herein, involves the constitutionality, and interpretation of other instruments of writing, statutes, municipal ordinances and other governmental regulations, that may be so determined, and this enumeration does not exclude other instances of actual antagonistic assertion and denial of right.

20. The Plaintiffs asserts they are entitled to relief pursuant to Virginia Code 8.01-191, from the uncertainty and insecurity attendant upon controversies over their legal rights.

21. The Plaintiffs have as a matter of law stated a valid claim under Virginia Code 15.2-1812 *et seq.* upon which relief can be granted.

22. The Plaintiffs without limiting the foregoing sentence, have stated a valid claim under under Va. Code 15.2-1812 *et seq.* for the following reasons:

23. Virginia Code 15.2-1812 was not in effect at the time the monument was erected in 1889 by the City. Section 15.2-1812 does not apply to this monument. The statute does not, therefore, impose any limitations on the City's ability to remove or relocate the monument.

24. Virginia Code 15.1-270 was not in effect at the time the Confederate monument was erected in 1889 by the City. Based on its plain meaning, § 15.1-270 did not apply to this monument at the time of the monument erection. Section 15.1-270 does not, therefore, impose any limitations on the City's ability to remove or relocate the Confederate monument.

25. Virginia Code 15.1-270 was amended and reenacted as Virginia Code 15.2-1812 in **1997**. It subsequently was amended. Non of those amendments apply retroactively to the Confederate monument in this case. Section 15.2-1812 does not, therefore, impose any limitations on the City's ability to remove or relocate the Confederate monument.

26. The Confederate monument at issue in this case is not a monument to a war, conflict, engagement, or war veterans. It is a monument of historical significance to the outlawed Southern Confederate States of America. Section 15.2-1812 does not apply

to this monument. The statute does not, therefore, impose any limitations on the City's ability to remove or relocate the Confederate monument.

27. The Confederate monument is inscribed with a Confederate flag is part of the monument at issue in this case. The monument consists of the Confederate flag, Bronze Seal of the Confederate States of America an 80 foot granite base with a 15-foot bronze figure of a Confederate standard bearer with flag on top of the Monument. Section 15.2-1812 does not apply to this monument. The statute does not, therefore, impose any limitations on the City's ability to remove or relocate the Confederate monument.

28. The Display is inscribed with **CSA** and "Our Confederate Dead" on the northeast side of the monument honoring the Southern Confederate States of America is part of the monument at issue in this case. Section 15.2-1812 does not apply to this monument. The statute does not, therefore, impose any limitations on the City's ability to remove or relocate the Confederate monument.

29. The Confederate Bronze Seal of the Confederate States of America is part of the monument at issue in this case. The monument consists of the Bronze Seal of the Confederate States of America February 22, 1862, at the southern base of monument. Section 15.2-1812 does not apply to this monument. Ex. Q.

30. The statute does not, therefore, impose any limitations on the City's ability to remove or relocate the Confederate monument.

31. The Confederate standard bearer with flag on top of the Monument is part of the monument at issue in this case. The monument consists of a 15-foot bronze figure of a Confederate standard bearer with flag on top of the Monument. Section 15.2-1812 does not apply to this monument. The statute does not, therefore, impose any limitations on the City's ability to remove or relocate the Confederate monument.

32. The Confederate monument is inscribed with "61st and Final Reunion" of the **UCV** at Norfolk, May 30 to June 3, 1951 is part of the monument at issue in this case. The United Confederate Veterans was an American Civil War veterans' organization headquartered in New Orleans, Louisiana. It was organized on June 10, 1889, by White Supremacists and held its sixty-first and final reunion in Norfolk, Virginia, from May 30 to June 3... "61st and final **UCV** reunion in 1951". Section 15.2-1812 does not apply to this monument. The statute does not, therefore, impose any limitations on the City's ability to remove or relocate the Confederate monument.

33. The Plaintiffs have as a matter of law stated a valid religious freedom or government regulated private hate speech or religious bigotry claim upon which relief can be granted.

34. Plaintiffs without limiting the foregoing sentence, plaintiffs have stated a valid claim City's failure to enforce its authority or unreasonable delay or refusal for the following reasons:

35. Pursuant to §§ 2 and 15 Power of the city the City's Charter authorizes the municipality to acquire by purchase, gift, devise, condemnation or otherwise, property, real or personal, or any estate or interest therein within or without the city or State and for any of the purposes of the city; and to hold, improve, sell, lease, mortgage, pledge or otherwise dispose of the same or any part thereof.

36. **Resolution No. 1,678** was a means by which the City requested and accepted the expedited legal opinion of the Virginia Attorney General to remove or relocate its Confederate monument honoring white supremacy on behalf the Southern Confederate States of America, (the "Confederacy").

37. **Resolution No. 1,678** does, as a matter of law, pursuant to § 15 effective date of ordinances and resolutions. Emergency Measures of the Norfolk City's Charter, all ordinances and resolutions passed by Council shall be in effect from and after thirty days from the date of their passage. Ex. A.

38. **Resolution No. 1,678** does, as a matter of law, expressly contain all of the requisite elements of an affirmative majority vote by Council providing for the authorized disposal, sale, removal or relocation of the City's Confederate monument after thirty days and, crate or constitute a legal duty to act. Ex. A.

1. Where a municipality creates or permits a nuisance as here by non-feasance or misfeasance it is guilty of tort and like a private corporation or individual and to the same extent is liable for damages in a civil action to any person suffering injury therefrom, irrespective of the question of negligence, and such liability cannot be avoided on the ground that the municipality was exercising government power. West v. Brockport, 16 N.Y. 161 (1857); see also Niese v. City of Alexandria, 264 Va. 230, 238 (2002). Taylor v. City of Charlottesville, 240 Va. 367, 372 (1990).

39. All ordinances and resolutions of the council may be read as evidence in all courts and in all proceedings in which it may be necessary to refer thereto, either from a copy thereof certified by the city clerk or from the volume of ordinances printed by authority of council.

40. The Plaintiffs have alleged they have suffered damages or harm as result of the City's unconstitutional Display honoring the Confederacy, and conveying private content of white supremacy, terrorism, hate, lynchings, crimes against humanity, religious bigotry, racial violence, intimidation, segregation, slavery, rapes, assaults, antisemitism, deceptive propaganda, deprivation of citizenship, justice, equality, civil rights, constitutional rights and discrimination's directed at the Plaintiffs.

41. **Resolution No. 1,678** involved lawmaking in its essential features and most important, as a matter of law, was approved and executed as required by state law, as alleged in the Complaint, and therefore, is enforceable. Ex. A.

42. The Plaintiffs have as a matter of law stated a valid claim for declaratory judgment upon which relief can be granted.

43. Without limiting the foregoing sentence, plaintiffs have stated a valid claim for declaratory judgment because plaintiffs right to bring a judicial action can be enforced in a declaratory judgment action. Kiser v. A.W. Chesterton Co., 285 Va. 12, 736 S.E. 2d 910, 915 (2013)(quoting Roller v. Basic Constr. Co., 238

Va. 321, 327, 384 S.E. 2d 323, 326 (1989)). Substantive laws includes the Constitution of Virginia, laws enacted by the General Assembly, and historic common-law principles recognized by our courts. A "right of action" is a legally recognized "remedial right" to "enforce a cause of action", which is simply the set of operative facts" that causes a claimant to assert his claim. Id. 44. Defendants' attempts to recast the facts alleged in the complaint contradicts the record, and is inappropriate when considering the motions, exhibits and facts not in dispute.

Subject Matter Jurisdiction

45. **JURISDICTION** is conferred in the complaint by the First and Fourteenth Amendment, and (civil rights violations); § 1 City Charter, Va. Code 8.01-184, Va. Code 8.01-191, and Va. Code § 17.1-513. State of Rhode Island v. Com. of Massachusetts, 37 U.S. 657, 718 (1838); Marbury v. Madison 5 U.S. (1803).

46. The Plaintiffs' causes of action arise under the United States Constitution, and the Constitution of Virginia to redress the deprivation under color of State and Federal law of rights, privileges, secured by the Constitution of the United States and the Constitution of Virginia and laws; Va. Code 8.01-184, Va. Code 8.01-191 (declaratory relief); against the named Defendants provided by Monell v. Department of Social Services, 436 U.S. 658 (1978), holding that a local government is a "person" subject to suit. see *TVA v. Hill*, 437 U.S. 153 (1978).

47. The Plaintiffs have stated as a matter of law a valid First and Fourteenth Amendment claim of deliberate indifference or tacit authorization of the City and all others "employees" on behalf of the City's offensive practices, endorsement and maintenance of a public nuisance or unconstitutional Display honoring the Confederacy, conveying content of religious white supremacy, domestic terrorism, hate, lynchings, crimes against humanity, religious bigotry, racial violence, envy, intimidation, segregation, slavery, rapes, assaults, bigotry, antisemitism, deceptive propaganda, deprivation of citizenship, enjoyment, justice, equality, constitutional rights and discrimination's directed at the Plaintiffs. See, e.g., Fletcher v. Baltimore & P.R. Co., 168 U.S. 135, 138 (1897). see also Alan O. Sykes, The Boundaries of Vicarious Liability: An Economic Analysis of The Scope of Employment Rule and Related Legal Doctrines, 101 Harv. L. Rev. 563, 582 (1988). The employer may therefore avoid liability when an employee acts independently or in a manner that does not serve any goal of the employer.

48. The Plaintiffs have a First Amendment right to challenge the sufficient definiteness of the City's Display in honor of Jim Crows laws, and conveying private content of white supremacy, domestic terrorism, private hate speech, crimes against humanity, religious bigotry, racial violence, public segregation, slavery, rapes, assaults, antisemitism, deprivation of citizenship rights,

justice, equality, constitutional rights, discrimination's, on behalf of the outlawed Confederacy directed at Plaintiffs. Under government speech doctrine, the City has the right to determine the content of its own message. See Walker v. Tex. Div., Sons of Confederate Veterans, Inc,. 135 S. Ct. 2239 (2015); Pleasant Grove City v. Summum, 555 U.S. 460 (2009).

49. The Plaintiffs' causes of action arises under the United States Constitution, and Constitution of Virginia are violated because City's Display in honor of Jim Crows laws, conveying private content of religious white supremacy, domestic terrorism, hate,crimes against humanity, religious bigotry, racial violence, lynchings, segregation, slavery, rapes, assaults, antisemitism, deprivation of citizenship, justice, equality, constitutional rights, discrimination's, directed at Plaintiffs.

50. The Plaintiffs allege Government speech must comport with the Establishment Clause. Governments are entities strictly limited in their ability to regulate private speech in traditional public fora. Cornelius v. NAACP Legal Defense & Ed. Fund, Inc., 473 U.S. 788, 800. see also Friends of the Rappahannock, 286 Va. At 38, 743 S.E. 2d at 135 (citation omitted). Hawthrone v. VanMarter, 279 Va. 566, 577, 692 S.E. 2d 226, 233 (2010)(citations omitted). See also Aswad v. Norfolk S. Ry. Co., 2006 Va. Cir. LEXIS 43, at *15-16, 2006 WL 1063297 (Portsmouth Cir. Ct. Apr. 18, 2006).

51. But content based restrictions must satisfy strict scrutiny, i.e., they must be narrowly tailored to serve a compelling government interest, see Cornelius, supra, at 800.

52. The Defendants have made no reasonable argument in support of the government continued sponsorship and maintenance of its Confederate monument of unconstitutional regulated private hate speech, religion, religious bigotry, religious speech, injustice, antisemitism, violence and racial hate directed at the Plaintiffs.

53. The Virginia Legislature's enactment of Va. Code 15.2-1812 and Va. Code 18.2-137 and Defendants' policies and practices are not narrowly tailored to promote any compelling, overriding or legitimate governmental interest. Ex. X & Y.

54. The principal or primary purpose of the Display is to advance a particular perpetual content, bias, antisemitism, intimidation, doctrine, religion, religions doctrine, christian identity, racial segregation, discrimination, Jim Crow laws, hate, white power and "white supremacy" directed at the Plaintiffs.

Separation of Powers and Controversy

55. The Plaintiffs have as a matter of law stated a valid claim the Virginia Legislature's enactment of Va. Code 15.2-1812 and Va. Code 18.2-137 does not, therefore, impose any limitations on the City's ability to relocate the monument and Defendants' policies and practices are not narrowly tailored to promote a compelling, overriding or legitimate governmental interest.

56. The Plaintiffs have as a matter of law stated a valid Display civil rights claim or controversy pursuant § 8.01-184, and this court within the scope of its respective jurisdiction it shall have power to make binding adjudications of right, whether or not consequential relief is, or at the time could be, claimed and no action or proceeding shall be open to objection on the ground that a judgment order or decree merely declaratory of right is prayed for.

57. The Plaintiffs claims involves the interpretation of other instruments of writing, statutes, municipal ordinances and other governmental regulations, may be so determined, and this enumeration does not exclude other instances of actual antagonistic assertion and denial of right. Id.

58. The Plaintiffs contrary to Defendants wild-bald assertion, contend the code section or other instruments of writing, statutes, municipal ordinances and governmental regulations does not as a matter of law prohibit the City of the right to relocate its Confederate monument and § 15.1-270 do not retroactively limit the City's property rights.

Where the General Assembly employees the term "reenacted" in its legislation, "the changes...are effective prospectively unless the bill expressly provides that such changes are effective retroactively on a specified date." Va. Code Ann. § 1-238 (2014). see also Berner v. Mills,265 Va. 408, 413, 579

S.E. 2d 159, 161 (2003); Adams v. Techsystems, 261 Va. 594, 559, 554 S.E. 2d 354, 356 (2001) (As we have previously observed, 'retrospective laws are not favored, and a statute is always to be construed as operating prospectively, unless a contrary intent is manifest.'''). The General Assembly employed the term "reenacted" in 1997 when it amended Section § 15.1-270 and recodified Title 15.1 as Title 15.2. See Excerpt of 1997 Va. Acts Ch. 587, attached hereto as Exhibit F.

59. The Plaintiffs have alleged facts to show, and even infer, that the City Council believes that, at the time of filing this suit, the governing state law clearly does not prohibit the removal or relocation of the Monument. See attached hereto as Exhibits G, H and I. Id.

60. The public interest weighs in favor of sustaining the plaintiffs Declaratory Judgment and Preliminary Injunction. There is no better expression of the public interest in this case than the Resolution adopted by a majority of the elected members of City Council. See Historic Neighborhood Ass'n, 64 Va. Cir. at 85.

61. The public, like the City, has an interest in seeing that ordinances or resolutions validly enacted by the locality's governing body are implemented and enforced.

60. Smith & Usaha, supra note 2, at 116, citing Wilton, 515 U.S. at 288; Green v. Mansour, 474 U.S. 64, 72-74 (1985); Rickover, 369 U.S. 111 at 112-13; Public Service Commission of Utah v. Wycoff Company, 344 U.S. 237, 243-47 (1952).

62. The Plaintiffs has presented an actual "case or controversy" and have satisfied the requirement of Article III, pursuant the "Declaratory Judgment Act" that is substantial and concrete, and touch the legal relations of Defendants with adverse interests, subject to specific relief through a decree of conclusive character. see also *TVA v. Hill*, 437 U.S. 153 (1978).

63. The Plaintiffs in seeking relief under the Act has satisfied the three requirements for constitutional standing and the facts show, and even infer, that an "immediate and definite" policy continues to affect a "present interest" that affects not only the named Plaintiff but also others, despite the absence of a certified Plaintiff class. Super Tire Engineering Company v. McCorkle, 416 U.S. 115, 125-26 (1974); Halkin v. Helms, 690 F.2d 977, 1008 (D.C. Cir. 1982).

64. The Plaintiffs has alleged facts to show, and even infer, that the state law violates the Supremacy Clause because it reflects a policy contrary to Congress' view that state actors, municipal and county governments and quasi-governmental bodies or agencies are liable for money damages when they violate federal constitutional rights under color of state law. Haywood, 556 U.S. at 736-37.

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41. **Resolution No. 1,678, 1997 Va. Acts Ch. 587, Norfolk City Attorney opinion, Commonwealth Attorney opinion, Attorney General's opinion, public pronouncements and Mayor Alexander public pronouncements are attached as Exhibits 1, 2, A, F, 9, B, E, G, H, I, O, 7, 10, 25, Y and M, N and D to the Complaint, Factual Witness Testimony, Take Judicial Notice and Preliminary Injunction. They are, therefore, part of plaintiffs' pleadings.See Va. Supp. Ct. R. 1:4(I).**

Standing

65. The Plaintiffs alleged the government is subsidizing white supremacy, through the use of the Display and the public property on which it is placed, because of the appearance of government approval of religious white supremacy, segregation, bigotry, hate speech and discrimination against the Plaintiffs, by reason the defendants give Confederacy perpetual legitimacy, a weight, `they are not obliged to acknowledge; deprives them equal protection and equal treatment and likely to be redressed by the requested relief. Spokeo, 136 S. Ct. at 1547 (quoting Steel Co. v. Citizens for Better Environment, 523 U.S. 83, 103 (1998))(describing the other two requirements as causation and redressability). A wrong suffered by a party is only an injury in fact if it is sufficiently "concrete and particularized." Id. at 1545 (quoting Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., 528 U.S. 167 180-81 (2000)) (emphasis in original). These are separate criteria which must both be satisfied. Id. And when a party seeks injunctive relief, as Griffin does, there is the additional requirement of a "real or immediate threat" that the party will suffer an injury in the future. City of Los Angeles v. Lyons, 461 U.S. 95, 111 (1983).

65. **In 1964, President Lyndon B. Johnson signed the Civil Rights Act, which legally ended discrimination and segregation that had been institutionalized by Jim Crow laws. And in 1965, the Voting Rights Act ended efforts to keep minorities from voting.**

Cause of Action

66. The plaintiff' claims injury in fact as direct result of the defendants depriving plaintiffs due process and equal protection, and the right to be free from government entanglement with, and endorsement of religious matters, regulated hate speech, in maintaining a public nuisance, Display conveying unprotected governmental regulated hate speech on behalf of the Confederacy ("White Supremacy") intentionally with malice or aforethought Directed at Plaintiffs in violation of their rights guaranteed or secured by the First and Fourteenth Amendments to the United States Constitution and Constitution of Virginia and laws, while acting under color of state law. In deciding what intangible injuries are concrete, we consult the "judgment of Congress" because "Congress is well positioned to identify intangible harms that meet minimum Article III requirements." Id. See also Moore v. Blibaum & Associates, P.A., 693 Fed. Appx. 205, 206 (4th Cir. 2017) ("In particular, the injury-in-fact requirement is not limited simply to financial or economic losses."). Dignitary harms or "stigmatic injur[ies]," while not tangible, may be sufficiently concrete to constitute injury in fact, Allen v. Wright, 468 U.S. 737, 754-55 (1984), and therefore may constitutionally be protected by statute. Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1857).

https://youtu.be/8YGsXmOCnOc

Conclusion

67. For these reasons, the defendants demurrer has failed to state a valid claim of lack of subject matter jurisdiction and separation of powers and should be denied. "In general, a resolution deals with matters of a special or temporary character, while an ordinance prescribes some permanent rule of conduct or government to continue in force until the ordnance is repealed. An ordinance is distinctively a legislative act; a resolution is simply an expression of opinion or mind concerning some particular item of business coming within the legislative body's official cognizance...." International Ass'n of Firefighters Local 1596 v. Lawrence, 14 Kan. App. 2d 788, 794, 798 P. 2d 960, 966, (1990).

68. The Plaintiffs allege the City's unreasonable delay or failure to comply with procedural requirements of statute rendered local legislative action void, defendants claims and remedies sought in this matter shall be unavailable because they fail as a matter of law. Richard L. Deal & Associates, 224 Va. at 623, 299 S.E. 2d at 348. The Resolution should be construed as intended and as written. Id.

69. It is respectfully requested that the Court deny the City's Demurrer and grant plaintiffs relief they seek to which they are entitled. They are entitled to a declaratory judgment as a matter of law.

Plaintiffs Have Stated A Claim For Declaratory Judgment.

70. The Plaintiffs allege they have undertaken a special burden or has altered their behavior to avoid direct and unwelcome contact with the government Display of private hate speech and suspended their public protests to take it down, which represents a danger to the plaintiffs, the public and law enforcement from extremists and white supremacist. Cupp v. Board of Supervisors, 227 Va. 580, 592, 318 S.E. 2d 407, 413 (1984) ("The intent of the declaratory judgment statutes is not to give parties greater rights than those which they previously possessed, but to permit the declaration of those rights before they mature"). Here Plaintiffs claims and rights have not fully matured.

71. The defendants **Resolution 1,678** is consistent with the relief sought, declaratory judgment because it desires the Main Street Confederate monument ("Display") be located to Elmwood Cemetery as soon as the governing state law clearly permits it, ("Fully Matured"). Ex. 24.

72. The Plaintiffs are clearly seeking a declaration of rights before they mature. They are not seeking to determine a disputed issue. See Green v. Goodman-Gable-Gould Co., 268 Va. 102, 597 S.E. 2d 77 (2004). Thus, plaintiffs have stated a valid claim for declaratory judgment.

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4. The Declaration states, "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness...."

ADDITIONAL DEFENSES

73. Their are no facts in disputes the plaintiffs have clearly demonstrated they will suffer irreparable harm commencing their public "take it down" mass demonstrations in the absence of preliminary relief. See Historic Neighborhood Ass'n, 64 Va. Cir. at 84 (plaintiffs must show injury unique to them) citing Riverton Inv. Corp., 50 Va. Cir. at 412). The Resolution expressly does not prohibit or curtail individuals associated with hate groups from open carry in public or inciting violence on public property.

74. The City has an interests in expressing its preferred messages from its speech Displays. See Walker v. Tex. Div., Sons of Confederate Veterans, Inc., 135 S. Ct. 2239 (2015); Pleasant Grove City v. Summun, 555 U.S. 460 (2009). Sustaining plaintiffs Motion for Preliminary Injunction would not deprive the City of its speech rights. Summum 555 U.S. at 467-68 ("A government entity has the right to speak for itself....is entitled to say what it wishes, and to select the views that it wants to express".) Sustaining plaintiffs' Motion for Preliminary injunction would not compel the City to place its official imprimatur on a divisive symbol it has conceded exists that many in the community oppose. See Page v. Lexington County Sch. Dist. One, 531 F. 3d 275, 280-81, 287 (4th Cir. 2008)(school board may convey its message and cannot be compelled to

disseminate opposing messages); Griffin v. Dep't of Veterans Affairs, 274 F.3d 818, 822(4th Cir. 2001)("The government is entitled to promote particular messages and to take legitimate and appropriate steps to ensure that its messages [are] neither garbled nor distorted")(internal quotation and citation omitted) (upholding restrictions on flying flags of Confederacy at national cemetery); Ill. Dunesland, 584 F.3d at 725("the mere display of [plaintiff's] pamphlet would give it a legitimacy, a weight, that defendants are not obliged to acknowledge"). Ex.G 75. The Plaintiffs reserves all other available defenses which it may have to defendants' Demurrer. The Plaintiffs incorporates by reference into this Memorandum Reply Opposition the defenses and arguments contained in its Preliminary Injunction in Support of Declaratory Judgment and in Opposition to Defendants Demurrer.

WHEREFORE, the Plaintiffs, respectfully requests that this Court sustain its Declaratory Judgment with prejudice and award such other relief, as this Court deems appropriate.

May 30, 2019

Respectfully Submitted,

MR. RONALD M. GREEN
5540 Barnhollow
NORFOLK, VA 23502
(757) 348.0436

MR. ROY L. PERRY-BEY
89 LINCOLN STREET #1772
HAMPTON, VA 23669
(804) 362.0011

CERTIFICATION OF SERVICE

I hereby certify that on the 30th day of May, 2019, a true copy of the foregoing was mailed, postage prepaid, via USPS to Adam D. Melita, Deputy City Attorney, City of Norfolk, City Hall Building, 9th Floor, 810 Union Street Norfolk, VA 23510.

By _____

/s/MR. ROY L. PERRY-BEY
89 LINCOLN STREET #1772
HAMPTON, VIRGINIA 23669

By R M Green

/s/MR. RONALD M. GREEN
5540 BARNHOLLOW ROAD
NORFOLK, VA 23502

Exhibits
Ex. 24

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

ROY L. PERRY-BEY and
RONALD M. GREEN

vs. Docket No.: CL19-3928 (MJH)

CITY OF NORFOLK, VIRGINIA *ET AL.*

NORFOLK CIRCUIT COURT
2019 JUL -3 PM

MOTION FOR DEFAULT JUDGMENT

COMES NOW Plaintiffs Roy y L. Perry-Bey and Ronald M. Green, move this court for a judgment by default in this action, and show that the amended complaint in the above case was filed in this court on May 28, 2019; and approved by this court on June 3, 2019; ordering the defendant to respond within 21 days; the summons and complaint were duly served on the Defendant, Mark R. Herring on June 12, 2019; no answer or other defense has been filed by the Defendant; default should have been entered in the civil docket in the office of this clerk on July 2, 2019.

Wherefore, plaintiffs moves that this court make and enter a judgment against defendant without delay as a matter of law.

Respectfully submitted,

Mr. Roy L. Perry-Bey

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I sent a true and correct copy of the foregoing this 3rd day of July, 2019, by USPS mail, postage prepaid, to Mark R. Herring, Attorney General, Commonwealth of Virginia, Office of the Attorney General, 202 North Ninth Street, Richmond, Virginia 23219, and Mathew P. Morken, Deputy City Attorney, City of Norfolk, City Hall Building, 9th Floor, 810 Union Street Norfolk, VA 23510.

By _____
MR. ROY L. PERRY- BEY
89 LINCOLN STREET #1772
HAMPTON, VIRGINIA 23669

cc: Mr. Ronald M. Green

Exhibits
Ex. 25

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

ROY L. PERRY-BEY and
RONADL M. GREEN)
)
vs.) Docket No.: CL19-3928 (MJH)
)
CITY OF NORFOLK, et al.)

OBJECTION TO DEFENDANTS COURT'S ORDER SUSTAINING MOTION TO QUASH

COMES NOW Plaintiffs, Roy L. Perry-Bey, and Ronald M. Green, respectfully, object to Defendants and the Court's findings and decree as follows:

1. Plaintiffs questions seek factual testimony in dispute based on the witnesses public statements and writings, or communications in the media and Court, that waived attorney client privilege; these facts clearly before the Court.

2. Privileged communications do not become discoverable simply because they are related to issues raised in the litigation." (Transamerica Title Ins. Co. v. Superior Court (1987) 188 Cal. App. 3d 1047, 1052-1053.)

3. Attorneys acting as both a witness and advocate for the client must also consider the Rule of Professional Conduct Rule 3.7(a)'s prohibition on attorneys acting as an advocate in adversarial contested proceeding allowed in this case.

4. Defendants asserting an 'advice of counsel' defense generally constitutes a waiver of attorney client privilege.

5. The Defendants wild-bald assertion the proffer was not presented to the City Attorney's office is frivolous.

6. The Defendants assertion that unethical or conflict of interests are not relevant to any claim, the Court should have rejected, because the Court is not obligated to consider legal conclusions, even if they are faulty or omitted.

7. The Plaintiffs have loss confidence in the Court safeguarding of their constitutional right to a fair or impartial forum.

Friday, May 31, 2019

Respectfully Submitted,

MR. ROY L. PERRY-BEY
89 LINCOLN STREET #1772
HAMPTON, VA 23669
(804) 362.0011

CERTIFICATION OF SERVICE

I hereby certify that a true copy of the foregoing was mailed on this 31st day of May, 2019 to Adam D. Melita, Deputy City Attorney, City of Norfolk, City Hall Building, 9th Floor, 810 Union Street Norfolk, VA 23510.

By _____

MR. ROY L. PERRY- BEY
89 LINCOLN STREET #1772
HAMPTON, VIRGINIA 23669.

Exhibits
Ex. 26

MR. ROY L. PERRY-BEY
89 LINCOLN STREET #1772
HAMPTON, VA 23669
Tel: (804) 362-0011
ufj2020@gmail.com

July 26, 2019

The Honorable George E. Schaefer, III,
Clerk Law Division
Norfolk Circuit Court Clerk's Office
150 St Paul's Blvd. 7th Floor
Norfolk, VA 23510
793-3506

FILED
2019 JUL 26 AM 10:01
NORFOLK
CIRCUIT COURT CLERK
BY: _____ D.C.

Re: **CL19-3928**- Roy L. Perry-Bey, and Ronald M. Green v. City of Norfolk, Virginia, *et al.*

Dear Mr. Schaefer, III:

Enclosed please find plaintiffs motion and objections to the Court's Order dated July 22, 2019, to be filed in the above referenced matter, which I ask that you please present to the Hon. Mary Jane Hall, Judge.

Thank you for your kind assistance in this matter.

Very truly yours,

Mr. Roy L. Perry-Bey

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

ROY L. PERRY-BEY and
RONALD M. GREEN

Docket No.: CL19-3928-MJH

vs.

CITY OF NORFOLK, VIRGINIA *et al.*

PLAINTIFFS' MOTION AND OBJECTIONS TO COURT ORDER

The Plaintiffs Roy L. Perry-Bey and Ronald M. Green, respectfully object to the Court's Order dated July 22, 2019, improper dismissal.

In support of this objection, Plaintiffs respectfully submit.

1. The Court's hearing and for dismissal of the Plaintiffs cause of action based on the governments Demurrers and "City" defendants improper or prohibited appearances is contrary to the rule of law.

2. The Plaintiffs were not given enough notice and the "State" defendant failed to confer with Plaintiffs on an agreed hearing date.

3. Plaintiffs were denied a fair or impartial hearing on their procedural motions or opportunity to amend Complaint and/or file a response contrary to law.

4. Based on the facts and legal contentions adequately presented in the materials and arguments before the Court.

5. Plaintiffs may submit written Objections to this Court's Order within ten days.

6. The judge consciously disregarded the law and permitted the City's lawyers, employees, defendants, clients and witnesses to appear and grant dismissal on prohibited appearances or representations that she knew was not permitted as a matter of law.

7. The dismissal displays a profound misapprehension of the proper role and responsibilities of a judge.

8. The Court erred or abused its discretion as a matter of law.

9. Plaintiff assert all other legal defenses or grounds not specifically stated herein in support.

Respectfully Submitted,

MR. ROY L. PERRY-BEY
89 LINCOLN STREET #1772
HAMPTON, VIRGINIA 23669
(804) 362-0011

MR. RONALD M. GREEN
5540 BARNHOLLOW ROAD
NORFOLK, VA 23502
(757) 348-0436

CERTIFICATION OF SERVICE

I hereby certify that a true copy of the foregoing was mailed postage paid USPS on this 26th day of July, 2019 to Mathew P. Morken, Deputy City Attorney, City of Norfolk, City Hall Building, 9th Floor, 810 Union Street Norfolk, VA 23510.

MR. ROY L. PERRY-BEY
89 LINCOLN STREET #1772
HAMPTON, VIRGINIA 23669
(804) 362-0011

MR. RONALD M. GREEN
5540 BARNHOLLOW ROAD
NORFOLK, VA 23502
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RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
C. PROCEDURE FOR FILING AN APPEAL FROM A TRIAL COURT

Rule 5:11. Record on Appeal: Transcript or Written Statement.

(a) *Effect of Non-compliance.*

(1) Obligation of the Petitioner/Appellant. It is the obligation of the petitioner/appellant to ensure that the record is sufficient to enable the Court to evaluate and resolve the assignments of error. When the appellant fails to ensure that the record contains transcripts or a written statement of facts necessary to permit resolution of appellate issues related to the assignments of error, any assignments of error affected by the omission shall not be considered.

(2) Obligation of the Respondent/Appellee. It is the obligation of the respondent/appellee to ensure that the record is sufficient to enable the Court to evaluate and resolve any assignments of cross-error. When the respondent/appellee who assigns cross-error fails to ensure that the record contains transcripts or a written statement of facts necessary to permit resolution of appellate issues related to the assignments of cross-error, any assignments of cross-error affected by the omission shall not be considered.

(b) *Transcript.* The transcript of any proceeding in the case that is necessary for the appeal shall be filed in the office of the clerk of the trial court no later than 60 days after entry of judgment.

(c) *Notice of Filing Transcript.*

(1) Within 10 days after the transcript is filed or, if the transcript is filed prior to the filing of the notice of appeal, within 10 days after the notice of appeal is filed, counsel for appellant shall (i) give written notice to all other counsel of the date on which the transcript was filed, and (ii) file a copy of the notice with the clerk of the trial court. There shall be appended to the notice either a certificate of counsel for appellant that a copy of the notice has been mailed to all other counsel or an acceptance of service of such notice by all other counsel.

(2) When multiple transcripts are filed, the 10 day period for filing the notice required by this Rule shall be calculated from the date on which the last transcript is filed, or from the date on which the notice of appeal is filed, whichever is later. The notice of filing transcripts shall identify all transcripts filed and the date upon which the last transcript was filed. If the notice of appeal states that no additional transcripts will be filed and identifies the transcripts that have been filed, if any, then no additional written notice of filing of transcripts is required and the notice of appeal will serve as the notice of filing transcripts for purposes of this Rule.

(3) Any failure to file the notice required by this Rule that materially prejudices an appellee will result in the affected transcripts being stricken from the record on appeal. For purposes of this Rule, material prejudice includes preventing the appellee

from raising legitimate objections to the contents of the transcript or misleading the appellee about the contents of the record. The appellee shall have the burden of establishing such prejudice in the brief in opposition or, if no brief in opposition is filed, in a written statement filed with the clerk of this Court within the time fixed by these Rules for the filing of a brief in opposition.

(d) *Supplementation, Correction, or Modification of Transcript.* If anything material to any party is omitted from or misstated in the transcript, or if the transcript or any portion thereof is untimely filed, by omission, clerical error, or accident, the filing may be supplemented, corrected, or modified at any time within 70 days from the entry of judgment appealed from. Notice as provided in paragraph (c) of this Rule must be given for any such supplementation, correction, or modification. Thereafter, such supplementation, correction, or modification may be made, by order of this Court sua sponte or upon motion of any party, if at least two Justices of this Court concur in a finding that any such supplementation, correction, or modification is warranted by a showing of good cause sufficient to excuse the deficiency.

(e) *Written Statement in Lieu of Transcript.* A written statement of facts, testimony, and other incidents of the case, which may include or consist of a portion of the transcript, becomes a part of the record when:

(1) within 55 days after entry of judgment a copy of such statement is filed in the office of the clerk of the trial court. A copy must be mailed or delivered to opposing counsel on the same day that it is filed in the office of the clerk of the trial court, accompanied by notice that such statement will be presented to the trial judge no earlier than 15 days nor later than 20 days after such filing; and

(2) the statement is signed by the trial judge and filed in the office of the clerk of the trial court. The judge may sign the statement forthwith upon its presentation to him if it is signed by counsel for all parties, but if objection is made to the accuracy or completeness of the statement, it shall be signed in accordance with paragraph (g) of this Rule.

(f) The term "other incidents of the case" in subsection (e) includes motions, proffers, objections, and rulings of the trial court regarding any issue that a party intends to assign as error or otherwise address on appeal.

(g) *Objections.* Any party may object to a transcript or written statement on the ground that it is erroneous or incomplete. Notice of such objection specifying the errors alleged or deficiencies asserted shall be filed with the clerk of the trial court within 15 days after the date the notice of filing the transcript (paragraph (c) of this Rule) or within 15 days after the date the notice of filing the written statement (paragraph (e) of this Rule) is filed in the office of the clerk of the trial court or, if the transcript or written statement is filed before the notice of appeal is filed, within 10 days after the notice of appeal has been filed with the clerk of the trial court. Counsel for the objecting party shall give the trial judge prompt notice of the filing of such objections. Within 10 days after the notice of objection is filed with the clerk of the trial court, the trial judge shall:

(1) overrule the objections; or

(2) make any corrections that the trial judge deems necessary; or

(3) include any accurate additions to make the record complete; or

(4) certify the manner in which the record is incomplete; and

(5) sign the transcript or written statement.

At any time while the record remains in the office of the clerk of the trial court, the trial judge may, after notice to counsel and hearing, correct the transcript or written statement.

The judge's signature on a transcript or written statement, without more, shall constitute certification that the procedural requirements of this Rule have been satisfied.

Promulgated by Order dated October 31, 2018; effective January 1, 2019.

Exhibits
Ex. 28

MR. ROY L. PERRY-BEY
89 LINCOLN STREET #1772
Hampton, VA 23669

October 31, 2019

VIA US MAIL DELIVERED
Douglas B. Robelen, Clerk
Supreme Court of Virginia
SUPREME COURT BUILDING
P.O. Box 1315
100 NORTH 9TH STREET, 5TH FLOOR
RICHMOND, VIRGINIA 23219
Phone - (804) 786-2251

Re: ROY L. PERRY-BEY and RONALD M. GREEN v. CITY OF NORFOLK, VIRGINIA, and MARK R. HARRING, ATTORNEY GENERAL OF VIRGINIA
Record No.: CL19-3928 - SCV #191235

Dear Mr. Robelen:

Please find enclosed appellants amended notice of appeal in the above-referenced matter. Kindly, present to the Honorable Court and file same accordingly.

Thanking you, in advance for processing appropriately,

Very truly yours,

Mr. Roy L. Perry-Bey
89 Lincoln Street #1772
Hampton, VA 23669

Enclosures

IN THE SUPREME COURT OF VIRGINIA

ROY L. PERRY-BEY and RONALD M. GREEN	)	
vs.	)	Docket No.: CL19-3928 (MJH) Record No. CL19-3928
CITY OF NORFOLK, VIRGINIA *and* MARK R. HARRING, ATTORNEY GENERAL OF VIRGINIA	)	

AMENDED NOTICE OF APPEAL

Plaintiffs Roy L. Perry-Bey, and Ronald M. Green, hereby moves this Court to amend notice of appeal of all aspects of the lower Court's judgment entered on May 31, 2019, and judgment entered on July 22, 2019, following oral argument held in that Court on July 15, 2019.

A transcript, statement of facts, testimony, orders or other incidents of the case has been filed contemporaneously herewith.

Thursday, October 31, 2019

Respectfully Submitted,

MR. ROY L. PERRY-BEY
89 LINCOLN STREET #1772
HAMPTON, VIRGINIA 23669
(804) 362-0011

MR. RONALD M. GREEN
5540 BARNHOLLOW ROAD
NORFOLK, VA 23502
(757) 348-0436

CERTIFICATION OF SERVICE

I hereby certify that on October 31, 2019, a true copy of the foregoing was mailed to Adam D. Melita, Deputy City Attorney, City of Norfolk, City Hall Building, 9th Floor, 810 Union Street Norfolk, Virginia 23510 and Mark E. Herring Attorney General, Commonwealth of Virginia, Office of the Attorney General, 202 North Ninth Street, Richmond, Virginia 23219.

MR. ROY L. PERRY-BEY
89 LINCOLN STREET #1772
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(804) 362-0011

MR. RONALD M. GREEN
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Exhibits
Ex. T

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Vol. 119, No. 15 $1.50
April 11, 2019 - April 17, 2019

Norfolk Monument Is Closer To Removal From Downtown

By Leonard E. Colvin
Chief Reporter
New Journal and Guide

Twenty months ago, Norfolk approved a resolution to move its Confederate Monument to Elmwood Cemetery.

Twenty months ago the city of Norfolk approved a resolution to move its downtown Confederate Monument to Elmwood Cemetery "as soon as the governing state law clearly permits it."

A state code forbade the city from moving the monument without the state's permission, if it was built on public lands and if the city was not obligated to any deed restricting its removal by a group or individual.

It seems the city, thanks to a suit filed by two activists serving as their own attorney, had that pathway laid before it last week.

As a result of a Circuit Court hearing on April 4, the Norfolk City Attorney will file a challenge to the law in state court.

According to Norfolk City Attorney Bernard Pishko, the crux of the city's challenge will be threefold: state law denying the city its freedom of speech; the U.S. Constitution; and a ruling established in the Danville court, Pishko said the state law violates the United States Constitution and the 1st Amendment's freedom of speech clause because the restriction is based on the content of the monument. He said it also violates the 5th Amendment because it deprives the city of the right to use its property how it wants.

Pishko said because Norfolk's Confederate statue "has an expression," it is saying something; thus, "it is speech."

The Perry-Bey/Green suit, filed by activists Roy Perry-Bey and Ronald Green, points out the "expression" concept.

...see **Monument**, page 4

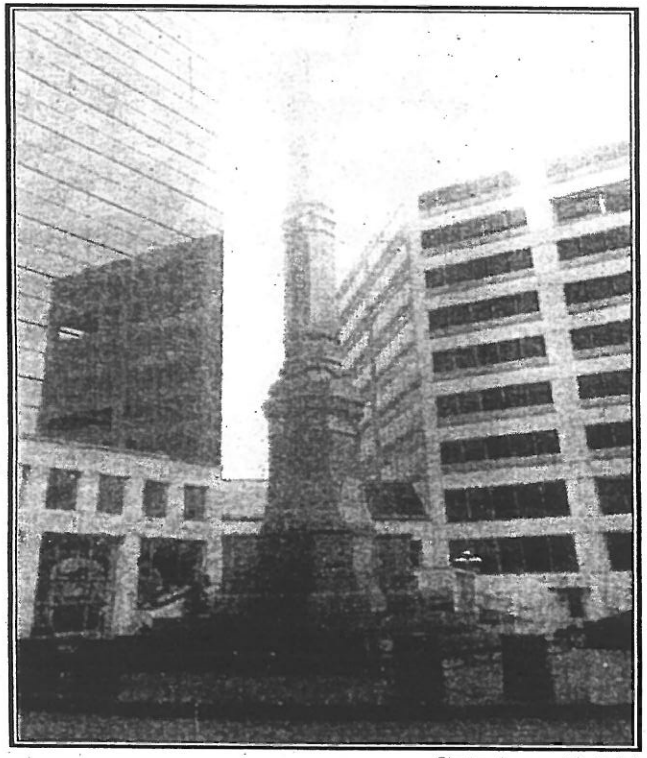


Photo: Leonard E. Colvin
Norfolk's Confederate Monument in downtown district.

Gov. Shows Support For Bills Addressing Va.'s Racial Disparities

By Leonard E. Colvin
Chief Reporter
New Journal and Guide

During the 2019 session of the Virginia General Assembly, Black lawmakers and their allies proposed a number of bills to address the economic, social and educational disparities facing Virginia's African-American community.

The members of the Virginia Legislative Black Caucus have enlisted a reliable ally to make laws addressing those disparities a reality: Virginia Governor Ralph Northam.

Seven weeks ago, most of the state's Black and white political leaders and civil rights advocates were calling for Northam's resignation after images surfaced on his 1985 EVMS yearbook page of one white student in Blackface and another clad in a KKK costume.

He rejected calls for him to step down. And, unable to run for another term, Northam declared he would use his tenure to address issues of racial and economic disparities in the state's racial legacy since slavery.

Gov. Ralph Northam

"I am going to do everything to really bring some good from these events which happened six weeks ago," he said. "Actions speak louder than words."

To that end, the Governor recently signed a number of bills introduced by members of the Black Caucus which will take effect July 1.

...see **Bills**, page 4

DISAPPROVAL REMAINS; BUT VOTERS WANT

Continued from page 1

It states, "Plaintiffs are likely to continue to suffer irreparable harm from the Confederate Monument's historical public display directed at them as White Supremacy, legal segregation, discrimination, disenfranchisement, slavery, violence, hate, lynching, and intimidation ..."

"The city painted itself into a corner, with all of its excuses and delay tactics used to keep that confederate monument standing," Roy Perry-Bey told the GUIDE.

"The city council voted to approve a resolution to remove that monument. It is an insult to the Black community, sitting in the heart of the city's business district."

The 80-foot structure was constructed on East Main Street in 1899 at Commercials Place (once known as Markets Square) at the height of the retrenchment period designed to dismantle political gains made by Blacks after the Civil War.

Starting in 1889, the city, which donated the land, and the Daughters of the Confederacy, after ten years, had raised the funds to erect the monument. The original structure did not include the statue called the "Standard Bearer."

That statue was placed atop it in 1907. It was later named "Johnny Reb," and sits atop the monument now.

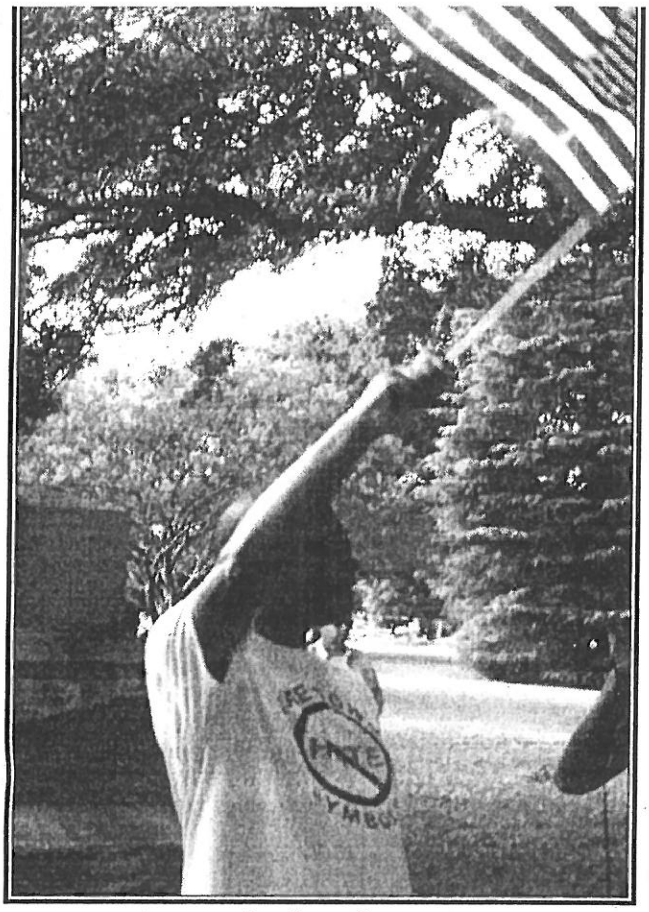
Virginia, like other southern states, wrote its "redemption Constitution" in 1902 which reinforced white supremacy and neutralized progressive Reconstruction-era laws giving African Americans political and legal rights.

Two years later, the state legislature imposed a law requiring locales, especially counties, to get permission from the state before it could remove monuments dedicated to people who died in battle, including the Civil War.

Norfolk built its monument on land at Commercial Place (Market Square) which was, during the era of slavery, a multiple block complex of government and privately owned buildings downtown.

Captured slaves were jailed, auctioned off and placed on ships waiting in the Norfolk harbor bound for various destination southward.

Many southern cities built such monuments at the site of their old slave market areas.



Roy Perry-Bey

There were several efforts, especially in the 1950s to remove Norfolk's Confederate Monument after it was finally completed, but the Daughters of the Confederacy fought against it.

It was removed from its original site in 1965. The city was readying land to construct the Virginia National Bank Building, which later housed Bank of America and now is the Icon Apartments.

The base of the monument was placed in city storage. The "Standard Bearer", which was not placed on the original structure in 1899, was placed in front of the Chrysler Museum. In 1971, the monument was re-erected at its current spot. Renamed "Johnny Reb" the statue of the Confederate soldier carrying the flag was placed back on top of it.

In a court hearing in Danville in 2015, the judge ruled that any monument erected in a Virginia city before 1898 was not protected by the law passed in 1904. That is when the state imposed its law that counties had to secure permission to remove any monuments. In 1997, the state legislators expanded the law to include cities.

The Virginia Supreme Court declined to review the Danville court's ruling, so it stood.

The Danville case and the Norfolk resolution were prompted by the Charlottesville White Supremacist protest march "Unite The Right" in August 2017.

During that event, activist Heather Heyer was killed when she was struck by a car by a White Supremacist who has been tried and sentenced for murder.

Norfolk joined other cities and locales around Virginia, which has been called the "cradle of the Confederacy," to move their most well-known monuments.

Perry-Bey has led several demonstrations at the base of the Norfolk Monument, calling for it and others in the region to be removed.

Perry-Bey has filed petitions with the city council demanding the removal of the monument as far back as 2015.

On March 24, 2019, activists Roy Perry-Bey and Ronald Green filed a suit to impose an injunction to force the city to move forward on relocating the monument. It claimed the city was deliberately delaying its August 2017 Resolution.

Perry-Bey/Green Vs. the city of Norfolk also challenges the state's statute barring cities from taking down such structures.

restricted the removal imposed on Norfolk as a county seat, a fact that has not existed, since 1846 when it became an independent city."

Since Norfolk owns the Confederate Monument according to the suit, "The only restrictions on local governments' removal that are applicable to the pre-1997 law, to protect the monuments are those found within the original grants of authority, those imposed by localities on themselves or deeds associated (with an individual or group) and not the Virginia code.

"Further, the old code restricted the removal imposed on Norfolk as a county seat, a fact that has not existed, since 1846 when it became an independent city.

According to the suit, the state code now "does not apply to any monuments or memorials constructed prior to 1904 when lawmakers said that locales must get permission from the state to remove such structures.

Further, the suit cites that Attorney General Mark R. Herring issued an advisory opinion that "cities can remove or relocate Confederate monuments as long as there are no individual laws or restrictions governing those particular monuments."

Herring's opinion, Perry-Bey and Green said, provided them with the legal avenue and weapon they needed to force the city to pursue legal action to remove "Johnny Reb."

If the Perry-Bey/Green suit plays out and the city attorney is successful, Norfolk, in accordance to the August 2017 resolution passed by city council, will move the Confederate Monument to Elmwood Cemetery.

Pishko said his office will file its claim in the next several weeks.

Circuit Court Judge Mary Jane Hall will hear arguments on April 29 on a mandatory or preliminary.injuction in the law suit.

CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2020, a true copy of the foregoing was mailed to The Honorable Donald W. Lemons, Chief Justice, Supreme Court of Virginia, 100 N 9th St, Richmond, VA 23219, Adam Daniel Melita, Deputy City Attorney, City of Norfolk, City Hall Building, 9th Floor, 810 Union Street Norfolk, VA 23510, and Jay Heytens Office of the Attorney General 202 North 9th Street Richmond, VA 23219, and

By_____
MR. ROY L. PERRY- BEY
89 LINCOLN STREET #1772
HAMPTON, VIRGINIA 23669