

VIRGINIA :

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

WILLIAM C. GREGORY,

Plaintiff,

v.

Case No. 20-2441-6

RALPH S. NORTHAM,  
in his official capacity as Governor of Virginia,  
Patrick Henry Building  
1111 East Broad Street  
Richmond, VA 23219,

JOSEPH F. DAMICO,  
in his official capacity as Director, Virginia Department of General Services,  
1100 Bank Street, Suite 420  
Richmond, VA 23219

Defendants.

FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE  
RELIEF

Plaintiff, by counsel, states the following as his first amended complaint for declaratory judgment and temporary and permanent injunctive relief:

1. This is a proceeding pursuant to the Declaratory Judgment Act, Va. Code §§ 8.01-184 *et seq.*, to obtain a judicial declaration that Defendants, in attempting to remove the statue of Robert E. Lee on Monument Avenue in the City of Richmond and allowing the defacing of such statue and its pedestal, are exceeding their legal authority, violating their obligations to enforce the law, and willfully violating binding covenants in the deed conveying the statue, pedestal, and the land on which they sit to the Commonwealth.

2. Plaintiff also seeks to enjoin Defendants' further violations of the deed covenants and the laws of Virginia, pursuant to Va. Code § 8.01-620.

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

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

5. The Robert E. Lee Monument is a twenty-one foot tall bronze equestrian statue on a forty foot high granite base, or pedestal, located at the center of a 200 foot diameter circular plot of land at the intersection of Monument and Allen Avenues (the "Lee Monument"). It is described in the National Register of Historic Places registration (2006) as "a masterpiece of the internationally renowned academic sculptor Marius Jean Antonin Mercié" and that it "remains the culmination of a beautiful composition and urban amenity." The Lee Monument has national and international artistic, cultural, and historical significance.

6. The Lee Monument was donated to the Commonwealth after a private fundraising process lasting twenty years. The cost was \$77,500, which is equivalent to at least \$2,000,000 today. The current replacement cost would be far more. The Virginia Museum of Fine Arts recently acquired a much smaller equestrian sculpture, "Rumors of War," for \$2,000,000.

7. The deed conveying the Lee Monument to the Commonwealth was made on March 17, 1890 (the "1890 Deed"). An earlier deed, made on July 15, 1887 (the "1887 Deed"), conveyed the 200 foot diameter circular plot of land at the intersection of Monument and Allen Avenues (the "Lee Circle") to the Lee Monument Association, predecessors in title to

the Commonwealth. The 1890 Deed with Library of Virginia transcription is attached hereto as Exhibit A, and the 1887 Deed as Exhibit B.

8. The 1890 Deed was signed on behalf of the Commonwealth of Virginia by P. W. McKinney, who was then Governor of Virginia, pursuant to a Joint Resolution of the General Assembly dated December 19, 1889, Acts of Assembly 1889, ch. 24 (the "Joint Resolution"), attached as Exhibit C, and is therefore binding on the Commonwealth.

9. In the 1890 Deed, the Commonwealth of Virginia, "acting by and through the Governor of the Commonwealth and pursuant to the terms and provisions of the Special Statute herein before mentioned [i.e., the Joint Resolution] executes this instrument in token of her acceptance of the gift and of her guarantee that she will hold said Statue and pedestal and Circle of ground perpetually sacred to the Monumental purpose to which they have been devoted and that she will faithfully guard it and affectionately protect it."

10. In the 1887 Deed the Lee Monument Association covenanted to hold the Lee Circle "as a site for the Monument to General Robert E. Lee" and "said Association also executes this conveyance, in testimony of its approval thereof, its recognition of the use and purpose to which the said piece of land is to be held, and its agreement and covenant to carry out said purpose, and to hold the said property only for the said use."

11. As a covenantor and grantee of the 1890 deed, the Commonwealth is bound by the covenants in the 1890 Deed, and as successor in interest to the Lee Monument Association, the Commonwealth is bound by the covenants in the 1887 Deed. The heirs of William C. Allen, namely Otway S. Allen and Mary McDonald Allen, Roger Gregory and Bettie F. Allen Gregory, and N. M. Wilson and Martha Allen Wilson (the "Allen Heirs" or "Allen

Family”) were the original grantors under the 1887 Deed, and parties and signatories to the 1890 Deed.

12. Plaintiff William C. Gregory is 69 years old and has been a citizen of Virginia his whole life. He is the great-grandson and an heir to Roger Gregory [April 3, 1833- Sept. 12, 1920] and Bettie F. Allen Gregory [Aug. 22, 1842-Oct. 14, 1919]. Removal of the Lee statue would result in irreparable harm to the Plaintiff. For 130 years his family has taken pride in the Lee Monument and their role in the placement of the Monument on land originally belonging to his family and given to the Commonwealth in consideration for the Commonwealth’s guarantee that it would perpetually care for and protect the Monument.

13. As a child Mr. Gregory would with his father visit his grandmother, Alice M. Gregory [March 5, 1882-Sept. 15, 1963], who owned a boardinghouse at the Lee Circle. At that time, she was the widow of the plaintiff’s grandfather, Roger Gregory, Jr. [Aug. 10, 1864-Aug. 14, 1940] who was the son of Roger and Bettie F. Allen Gregory, two of the grantors of the 1887 and 1890 deeds. The Plaintiff’s father would walk him around the statue discussing its history as related to his family. Later, as a student at the University of Richmond, the Plaintiff would ride around the statue with friends and tell them of his family’s connection.

14. The Plaintiff has a large framed old plat of the subdivision in which the Lee Circle is located displayed prominently on the living room wall of his home. He retrieved this plat from his grandmother’s cedar chest after her death in 1963.

15. The Plaintiff periodically visits the Monument and has been greatly saddened to see how it has been defaced. The defacement and vandalism of the Lee Monument which has occurred and is continuing to occur because of Defendants’ failure to discharge their legal

obligations under the 1890 deed, and the possibility of the Lee statue being removed, are especially emotionally distressing to Mr. Gregory because of his family connection to the Lee Monument.

16. Pursuant to the wills of the grantors, Bettie F. Gregory and Roger Gregory, copies of which are attached as Exhibits D and E respectfully, their enforcement rights as covenantees of the 1887 and 1890 deeds passed among other heirs to their son, Roger Gregory, Jr.

17. Roger Gregory, Jr. married Alice M. Gregory. He died a resident of the City of Richmond August 10, 1940 intestate. She died a resident of the City of Richmond September 15, 1963 intestate. Attached as Exhibit F is a certificate of qualification of Administrator of her intestate estate. As a result of their combined intestacies, their rights as heirs of the covenantees of the 1887 and 1890 deeds passed to their heirs, one of which was another Roger Gregory, Jr., their son.

18. Roger Gregory, Jr., the son of Roger Gregory, Jr. and Alice M. Gregory, married Emma Edwards Gregory. This Roger Gregory, Jr. died in 1991, and left his entire estate to his wife, Emma Edwards Gregory. A copy of his will is attached as Exhibit G. Emma Edwards Gregory died in 2012, and by her will attached hereto as Exhibit H, left her residuary estate to her six children, one of whom is the Plaintiff.

19. Va. Code § 2.2-2402.B applies to “any bridge, arch, gate, fence, or other structure or fixture intended primarily for ornamental or memorial purposes, . . .” The second sentence provides that “No existing structure of the kinds described in this subsection, owned by the Commonwealth, shall be removed, remodeled or added to, . . .” The Lee Monument is an “existing structure or fixture intended primarily for ornamental or memorial purposes.” Va.

Code § 2.2-2402.B. does not provide an exception to the prohibition on removal of an existing structure intended primarily for memorial purposes. Accordingly, removal of all or part of the Lee Monument would be a violation of Va. Code § 2.2-2402.B.

20. Defendant Ralph S. Northam has a duty under the Constitution of Virginia to assure that the laws of the Commonwealth, including Va. Code § 2.2-2402.B, are faithfully executed. Article V, § 7. He also has the duty, under the 1887 Deed and the 1890 Deed, to assure that the Commonwealth complies with its obligations to hold perpetually sacred for the memorial purpose to which it has been devoted the Lee Circle and to protect and guard the Lee Monument.

21. Defendant Joseph F. Damico has a duty to comply with Va. Code § 2.2-2402.B, to comply with the 1887 Deed and the 1890 Deed, to prevent the removal of the Lee statue, and to protect and guard the Lee Monument.

22. On Thursday, June 4, 2020, at a press conference, Governor Northam announced that he had ordered the Department of General Services to remove the Lee statue “as soon as possible.” A June 22, 2020 article in the *Washington Post* subsequently reported that Governor Northam’s chief of staff said that an attempt to take the statue down quietly before the announcement had been made, but no Virginia-based crane company would take the job. Neither before nor since his announcement has Governor Northam given any indication that he has consulted with or solicited the views of the Virginia Art and Architecture Review Board, the Virginia Department of Historic Resources, the U.S. Department of the Interior, or any other organization with an artistic, cultural, or historical preservation mission, regarding removal of the Lee Monument.

23. If the temporary injunction is dissolved, the Defendants will be allowed to breach their legal and contractual obligations to the Plaintiffs with impunity.

WHEREFORE, your Plaintiff prays for judgment declaring that the attempts of Defendants to remove the statue of Robert E. Lee and the failure of Defendants to guard and protect the Lee Monument violate the provisions of the 1890 Deed, the 1887 Deed, the Constitution of Virginia, and Virginia law; for judgment that the Plaintiff is entitled to enforce the covenants in the 1890 Deed and the 1887 Deed; for temporary and permanent injunctive relief barring Defendants from removing the Lee statue; and for such other relief as the Court deems proper.

William C. Gregory

By   
Of Counsel

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**VERIFICATION**

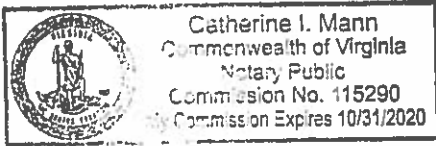
  
William C. Gregory

COMMONWEALTH OF VIRGINIA,  
City of Richmond, to-wit:

This day personally appeared before me William C. Gregory, and who, under penalty of perjury, made oath that the allegations set forth in the foregoing amended complaint are, according to the best of his knowledge, information and belief, true and correct.

Subscribed and sworn to before me this 8<sup>th</sup> of July, 2020.

My commission expires: 10/31/2020  
My notary registration number is: 115290



Catherine I. Mann  
Notary Public

**CERTIFICATE**

I certify that on this 8<sup>th</sup> day of July, 2020, a true copy of the foregoing document was sent by regular mail, postage prepaid, and by email to Jacqueline C. Hedblom, Assistant Attorney General, Manager, Office of the Attorney General, 202 N. Ninth St., Richmond, VA 23219 [jhedblom@oag.state.va.us](mailto:jhedblom@oag.state.va.us) and by email to:

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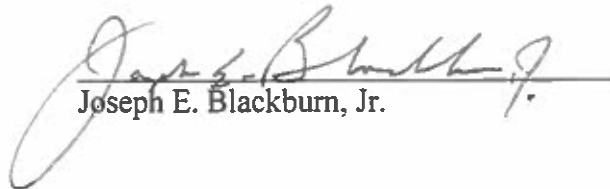


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