

Brian Charles Vaeth  
3320 Orlando Avenue  
Baltimore, Maryland 21234

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

Brian Charles Vaeth  
3320 Orlando Avenue  
Baltimore, Maryland 21234

*Plaintiff*

v

Mayor & City Council of Baltimore  
100 N. Holliday Street  
Baltimore, Maryland 21202

Catherine Pugh, in her individual capacity  
100 N. Holliday Street  
Baltimore, Maryland 21202

The State of Maryland  
100 State Circle  
Annapolis, MD 21401

Larry Hogan, in his individual capacity  
100 State Circle  
Annapolis, MD 21401

*Defendants*

**COMPLAINT  
(EMERGENCY RELIEF REQUESTED)**

**PARTIES**

1. Plaintiff, Brian Charles Vaeth, is a resident of Baltimore City, located at 3320 Orlando Avenue, Baltimore, Maryland 21234.
2. Defendant, the Mayor and City Council of Baltimore City, a municipal corporation, is located at 100 N. Holliday Street, Baltimore, Maryland 21202. Catherine Pugh is the Mayor of Baltimore City and is being sued in her official capacity, as well as an individual.

3. Defendant, the State of Maryland is the capital of state government and is located at 100 State Circle, Annapolis, Maryland 21401. Lawrence Hogan is the Governor of the State of Maryland and is being sued in his official capacity, as well as an individual.
4. Each of the Defendants, their employees and agents, participated personally in the unlawful conduct challenged herein and, to the extent that they did not personally participate, authorized, acquiesced, set in motion, or otherwise failed to take necessary steps to prevent the acts that resulted in the unlawful conduct and the harm suffered by Plaintiffs. Each acted in concert with each other. The challenged acts caused the violation of Plaintiffs' rights.

#### **JURISDICTION & VENUE**

5. This is an action for injunctive relief and damages pursuant to 42 U.S.C. § 1983 based upon the continuing violations of Plaintiffs' rights under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution. Jurisdiction exists pursuant to 28 U.S.C. § 1331 and 1343 based on 42 U.S.C. §1983 and questions of federal constitutional law. Jurisdiction also exists under the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202 and the Antiquities Act, 16 USC 431.
6. Venue is proper in that the events and conduct complained of herein all occurred in the District of Maryland.

#### **INTRODUCTION**

7. This action is a direct result of the horrific events that unfolded in Charlottesville, Virginia on August 12, 2017. On that day, divergent sides converged in a public place and clashed amid the shadows of a statue dedicated to Confederate General Robert E. Lee. This began as a lawful assembly being conducted by citizens for protection from the removal of that statue. The ensuing violence left one-person dead and many more civilians injured. The demonstration that precipitated the violence was focused on our constitutional right of freedom of speech. It is not the intent of this complaint to place blame, nor is it to investigate the root cause for the violence. The cause is obvious. We must condemn all hate groups equally and the abhorrent cause they all represent, racism. May this complaint serve as my condemnation of those hate groups. May it

also serve as a condemnation to the unconstitutional actions of the Governor of Maryland, the Mayor of Baltimore City, and those officials unknown at the present time who assisted them in depriving citizens of their rights under federal law by removing several historically significant statues in the City of Baltimore and in Annapolis, Maryland.

### **BACKGROUND**

8. On May 21, 1924, the City of Charlottesville, Virginia dedicated a bronze equestrian statue of Confederate General Robert E. Lee and his horse Traveller in a location named Emancipation Park. In an open-air press conference beside the Robert E. Lee statue in March of 2016, Charlottesville, Virginia's vice mayor called on the Charlottesville City Council to remove the statue and rename the location Lee Park.
9. In April 2016, the City Council decided to appoint a special commission, named the Blue-Ribbon Commission on Race, Monuments and Public Spaces, to recommend to city officials how to best handle issues surrounding statues of General Thomas Jonathan Jackson in Court Square and General Robert Edward Lee in Lee Park, as well as other landmarks and monuments. Early in November 2016, the Blue-Ribbon Commission voted 6–3 to let both statues remain in place. On November 28, 2016, it voted 7–2 to remove the Lee statue to McIntire Park in Charlottesville and 8–1 to keep the Stonewall Jackson statue in place, delivering a final report with that recommendation to Charlottesville City Council in December.
10. On February 6, 2017, Charlottesville's five-member City Council voted three votes to two to remove the General Lee statue and, unanimously, to rename Emancipation Park as Lee Park. In response, a lawsuit was filed on March 20 by numerous plaintiffs, including the Monument Fund Inc, the Sons of Confederate Veterans, and descendants of the statue's donor and sculptor, to block the removal of the Lee statue and another of Stonewall Jackson that the city also plans to remove. The lawsuit sought a temporary injunction to halt the removal, arguing that Charlottesville City Council's decision violated a state law designed to protect American Civil War monuments and memorials of the War Between the States, and that the council had

additionally violated the terms of the gift to Charlottesville of the statue and the land for Lee Park. The city responded by asking that the temporary injunction be denied, arguing that the two statues were not erected to commemorate the Civil War and therefore the Virginia statute protecting war monuments did not apply.

11. In April 2017, the City Council voted three to two that the statue be removed completely from Charlottesville and sold to whoever the Council chooses. On May 2, 2017, the court issued a temporary injunction blocking the removal of the Robert E. Lee statue for six months, in the public's interest, pending a court decision in the suit.

12. Following several highly publicized protests around the statue and in Emancipation Park, the actions related to August 12, 2017 occurred, causing the senseless death of a young lady and injuring dozens more through a despicable perpetrated by one of those protestors. As a result, heightened awareness surrounding the rising demonstration of instances of racism and hate, has led to the removal of statues in cities across the United States. Maryland, with particularity to Annapolis, the State's Capital, and Baltimore City, has not been immune from this taking place.

#### **MARYLAND'S GOVERNOR AND THE MAYOR OF BALTIMORE CITY'S ACTIONS**

13. On Sunday August 13, 2017, Baltimore City Councilman Brandon Scott said that he was going to introduce a resolution to the Baltimore City Council that called for the removal of Confederate monuments in the City and that he wanted them to be destroyed. On Monday August 14, 2017, Baltimore Mayor Catherine Pugh announced that she wanted the monuments removed and was in the process of appointing a working group of staffers to guide the process.

14. That evening it was reported that the Baltimore Bloc threatened to take action. Others online were reported to have made the same vow. A #doitlikedurham hashtag began circulating on social media. In the early morning hours of Tuesday August 15, 2017, under the cloak of darkness not unlike when the Baltimore Colts were moved to Indianapolis in the dead of night and without warning, statues of Robert E. Lee, the Confederate Soldiers and Sailors Monument, the Confederate Women's Monument, and the Statue of former Chief Justice to the Supreme Court

Roger B. Taney. Those statues were then transported to a City owned location where they remain under protective tarps and under police security.

15. On August 15, 2017, Governor for the State of Maryland Larry Hogan, announced

16. *“As I said at my inauguration, Maryland has always been a state of middle temperament, which is a guiding principle of our administration. While we cannot hide from our history – nor should we – the time has come to make clear the difference between properly acknowledging our past and glorifying the darkest chapters of our history. With that in mind, I believe removing the Justice Roger B. Taney statue from the State House grounds is the right thing to do, and we will ask the State House Trust to take that action immediately.”*

### **THE MATTER BEFORE THIS COURT**

17. The Board of the Maryland Historical Trust designates local monuments to be submitted to the national registry for inclusion. Smaller commissions are appointed and operate to preserve monuments in Baltimore City. Former Baltimore City Mayor Stephanie Rawlings-Blake created a Special Commission to review all Baltimore City Confederate monuments, as a result of heightened national awareness of racism embedded in government culture. In the past year, racial tensions have increased between citizens and the government. This action questions whether the mayor of Baltimore City may legally authorize the removal of historically protected Confederate monuments when removal constitutes deprivation of a property interest. The citizens satisfy enacted state criteria in order to be beneficiaries of historical and educational monument preservation, creating a legitimate claim to the continued receipt of those acknowledged benefits. This action also questions whether Baltimore City and the Mayor of Baltimore’s actions violated procedural due process protections afforded to citizens’ property interests.

### **BACKGROUND**

18. Baltimore has gained the notoriety of being known as “Monument City” due to the number of monuments within the City. Maryland was the first municipality in the United States to implement a comprehensive program for the preservation of its monuments. The Maryland Code recognizes the preservation of monuments in several places, the land use and real property article,

and the finance and procurement article. The two statutory references identify two different bodies governing Maryland historical preservation. The finance article governs the Maryland Historical Trust and, in pertinent part, the Trust's board, which examines, prepares, and suggests the designation of historical monuments on a national scale. Maryland jurisdictions, such as Baltimore City, have the power to elect commissions to determine and designate local historical monuments. In 1964, Article Six of the Baltimore City Municipal Code established the Commission for Historical and Architectural Preservation ("CHAP") through the Department of Planning. CHAP's members are appointed by the mayor and work in the City's Department of Planning. CHAP adopted new rules and regulations for historic preservation and historic preservation guidelines pursuant to the City code requirements. CHAP's adopted mission statement is to "enhance and promote the culture and economy of Baltimore through the preservation of buildings, structures, sites, and neighborhoods that have aesthetic, historic, and architectural value" in ways including, but not limited to, conserving monuments, providing preservation-oriented recommendations to the local government, and coordinating with other City agencies. CHAP's rules embody the statutory policy of preservation by enacting additional procedural safeguards, such as hearings, to further protect historical material.

### **CONSTITUTIONALLY PROTECTED PROPERTY INTERESTS**

19. The Due Process Clause of the Fifth Amendment provides that "no person shall be deprived of life, liberty, or property, without due process of law." Due process requirements are equally applied to the states through the Fourteenth Amendment, as well as through due process provisions in state constitutions. The creation of an individual property interest protected by procedural due process begins with affirmative and independent state action. The U.S. Supreme Court has been hesitant to explicitly define the state action required to create a property interest, but has established a required that a valid property interest must meet. Property interests sufficient to invoke the Due Process Clause require "more than an abstract need or desire for it.

He must have more than a unilateral expectation. He must, instead, have legitimate claim of entitlement to it.”

## **ISSUE**

### **WHETHER HISTORIC MONUMENTS PROVIDE BENEFITS SUFFICIENT TO CREATE A VALID AND CONSTITUTIONALLY PROTECTED PROPERTY INTEREST FOR BALTIMORE AND ITS CITIZENS**

20. The U.S. Supreme Court has continuously held that legitimate property interests have existed where an individual was “receiving. . .benefits under statutory and administrative standards defining eligibility . . . has an interest in continued receipt of those benefits that is safeguarded by procedural due process.” The government benefits from historical preservation are codified in Maryland’s land use article as “the preservation and appreciation of those sites, structures, and districts for the education and welfare of the residents of each local jurisdiction.” Maryland statute extends these benefits with other eligibility requirements that proposed monuments must meet in order to gain the protection benefit associated with historic preservation.

### **WHETHER REMOVAL OF HISTORIC MONUMENTS AND ITS BENEFITS VIOLATES A VALID AND CONSTITUTIONALLY PROTECTED PROPERTY INTEREST FOR BALTIMORE AND ITS CITIZENS**

21. Baltimore City has enacted CHAP’s rules and regulations which contain criteria to become a member of CHAP. Baltimore City, pursuant to and in accordance with the land use article of the Maryland code, has enacted statutory criteria to determine eligibility for the benefits of historic preservation. The citizens not only meet CHAP’s member criteria, but also meet the statutory requirements of local residents with a direct interest in local economy, tradition, education, culture, and welfare, rendering them eligible to receive the benefits associated with historic preservation. The citizens, as individuals and a whole, meet incorporated requirements to participate in CHAP, gaining those educational and cultural benefits associated with a public dialogue on historical preservation. This action seeks to clarify whether the City’s removal of the monuments implicates and denies the citizens property interest in continuing to receive those benefits.

**THE DISPARITY BETWEEN THE CITY'S ACTIONS, POLICY IN SUPPORT OF  
HISTORIC PRESERVATION, AND THE SPECIAL COMMISSION'S  
RECOMMENDATION TO REMOVE HISTORICAL CONFEDERATE MONUMENTS**

22. Baltimore City has repeatedly acknowledged and reaffirmed the benefits associated with monument preservation by Baltimore's explicit recognition of the citizens' benefits by not only their place in CHAP's newly adopted regulations, but also in the City and State code. The Due Process Clause provides that no persons may be denied their life, liberty, or property without due process. Baltimore City's affirmative action in maintaining these benefits impacts the application of due process when removal of the monuments constitutes city action removing existing government benefits. Both CHAP and the Special Commission are governed by the land use article of the Maryland code on historic preservation. Clear legislative intent mandates commission operation under a policy of preservation, not of removal. Although the Special Commission's recommendation is subject to the mayor's final decision, the Special Commission's recommendation to remove the monuments is in direct contrast with codified public policy as well as CHAP's recently enacted mission statement. Even in the absence of a constitutional violation, there is a glaring disparity between Maryland's unwavering policy in support of historical preservation and the Special Commission's recommendation to the mayor.

**THE MUNICIPALITY OF BALTIMORE CITY AND ITS CITIZENS BOTH HAVE THE  
STANDING REQUIRED TO BE PARTIES TO A CIVIL CLAIM OF  
UNCONSTITUTIONAL GOVERNMENT ACTION**

23. In order to successfully assert a claim of unconstitutional action, not only must Baltimore citizens have standing to bring a claim, but also assert that Baltimore City is amenable to be sued. Valid citizen standing exists pursuant to Section 1983 of the United States Code, providing any person deprived of constitutional rights through state action with the remedy of a civil claim. Following codification, the U.S. Supreme Court has struggled to determine whether the provided remedy allows a claim to be brought against a state or municipal government. The U.S. Supreme Court conducted extensive inquiries into legislative intent and the statute's overall history. Following the Court's decision in *Monell v. Department of Social Services of City of New York*, a local

government entity has no qualified immunity “when implementation of its official policies or established customs inflicts the constitutional injury” and may be subject to suit as a result.

Baltimore City’s charter explicitly defines itself as a corporate entity with the capacity to sue and be sued.

**BALTIMORE CITY HAS REPEATEDLY ACKNOWLEDGED THE SOCIAL,  
EDUCATIONAL, AND CULTURAL BENEFITS STEMMING FROM MONUMENT  
PRESERVATION**

24. The preservation of history serves multiple purposes. In memorializing significant aspects and figures from the past, the present develops context and insight for those depicted. Arguably, one of the most important reasons for historic preservation is in favor of future insight and development. By preserving both the good and bad parts of history, the present society is not only informed of historical achievements, but also aware of mistakes once made and to be avoided in the future. The ethical benefits to cities and citizens alike confirm the need for the protection of landmarks and other historical markers, specifically monuments. Confederate monuments, as standing reminders of all implications of the Civil War, provide the benefits of historical education, social understanding, and cultural inheritance.
25. The existing government benefits from historic preservation are recognized by the City’s continuous efforts in conservation and protection. In the last fifty years, Baltimore City, both by its own actions through the mayor and CHAP, has undertaken multiple campaigns and fundraising efforts to promote historical preservation and protection. Following its founding in 1964, CHAP worked with various Baltimore City Mayors for the specific purpose of preserving and protecting historical monuments. CHAP’s 1977 inventory of Baltimore City’s monuments and historic buildings found 123 monuments within the municipal borders. Between 1980 and 1986, Baltimore City and CHAP jointly funded and executed “The Baltimore Bronze Project” in efforts to preserve and rehabilitate the City’s forty-five bronze historical monuments. CHAP’s authority merged with the Baltimore City Department of Planning in 2004 to specifically dedicate more funds to historic monument preservation. CHAP’s recent efforts reiterate not only the City’s

understanding of the importance of preservation, but also the understanding of its citizens. In 2007, Baltimore citizens volunteered in conjunction with the City to establish “a new City-wide Adopt-A-Monument Program, intended to supplement the City’s investment in monument conservation.” The citizens most recently used their Adopt-A-Monument program for the “Lady Baltimore” project, funding both the removal and preservation of the original sculpture and the creation of a replica sculpture on the Baltimore Battle Monument. The continued actions of Baltimore City and its citizens to preserve historic monuments indicate mutual recognition of the historical, educational, and cultural benefits resulting from their conservation.

26. The benefits of historic preservation are codified in the Maryland code, the Baltimore City code, and CHAP’s rules and regulations. State action regarding the preservation of historical monuments is given significant statutory weight in its codified public purpose: “to preserve sites, structures, and districts of historical, archaeological, or architectural significance and their appurtenances and environmental settings.” The land use article of the Maryland code provides the option to elect commissions to further achieve that purpose. In addition to membership and appointment requirements, the code specifically defines the purpose and powers of all commissions. The public purpose of a commission is “to preserve sites, structures, and districts of historical. . . significance.” An identical provision is enacted in the subtitle of the Baltimore City code governing CHAP. On December 8, 2015, the Baltimore City Department of Planning approved CHAP’s proposed rules and regulations. In addition to internal rules and procedures for committee action, CHAP established “Criteria for Evaluation” to evaluate potential subjects of historic preservation.<sup>88</sup> In determining historical significance, CHAP considers what, if any, benefit the monument provides in its preservation:

27. The quality of significance in Baltimore history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, public interiors, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

28. That are associated with events that have made a significant contribution to the broad patterns of Baltimore history; or
29. That are associated with the lives of persons significant in Baltimore's past; or
30. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
31. That have yielded or may be likely to yield information important in Baltimore prehistory or history.
32. Based on standards set by the National Park Service for the National Register of Historical Places, CHAP initially adopted these considerations in their 2012 publication of Baltimore's historic landmarks. CHAP differentiates the designation of historic landmarks and districts from monuments. However, CHAP identically incorporated these factors into their new rules and regulations that specifically address the historic preservation of public art and monuments. By doing so, CHAP reinforces the need for monuments to provide beneficial memories of significant contributions, persons, periods, or information within Baltimore's history.
33. The Taney and Lee-Jackson monuments provide the citizens of Baltimore with City-recognized benefits that would cease if the monuments were permanently removed. The City's rationale justifying monument preservation specifically indicates the purpose and benefit of historical context. CHAP's standards consider historical value on the basis of the depiction of a significant event, person, period, or information. The use of the word "or" indicates that in order to qualify, a monument is permissively worth historical value even if it only satisfies one of the considerations. Absent from any published standard or regulation is a provision demanding that historical value be contingent on its acceptability in the present social landscape. Justice Taney was a significant person to Baltimore both as a Maryland citizen elected to the U.S. Supreme Court and in his authorship of the decision in *Dred Scott v. Sandford*. While that decision has since been overturned, Justice Taney and his depiction now represent "how history has changed,

interpreted, and has progressed throughout the centuries” as well as “the historical perspective of the 19th century.” Justice Taney’s monument meets CHAP’s historical considerations for preservation in its depiction of not only a significant person, but also of a significant event in Baltimore history. Confederate Generals Lee and Jackson were responsible for the majority of wartime decisions in the Confederacy, in which Maryland was included. In addition to depicting persons significant to Maryland’s role in the Civil War, the monument was the sole double equestrian monument in both the United States and Europe when installed in 1948, fulfilling CHAP’s mission through the preservation of highly distinct and masterful artistic values. Historic preservation of these monuments has provided Baltimore City and its citizens with the benefits of historic education, tradition, information, and social context. The citizens of Baltimore have a valid property interest in the continued receipt of these benefits. In recommending and instituting a process to remove the monuments without permitting public input on the decision denied the citizens of the benefits associated with historical preservation. Established property interests are afforded constitutional protection. If government action implicates a property interest, the infringement is valid only when it is done in accordance with procedural due process of law. Baltimore City created the Baltimore citizens’ constitutionally protected property interest when it created standards of eligibility for the citizens to receive the benefits associated with historic preservation.

**AN INDIVIDUAL PROPERTY INTEREST IN THE CONTINUED RECEIPT OF  
BENEFITS SUBJECT TO DUE PROCESS IS CREATED WHEN AN INDIVIDUAL IS  
ELIGIBLE FOR THE BENEFIT BASED ON STATE-CREATED CRITERIA**

34. An individual’s property interest requires property, a benefit stemming from the property, and the individual’s “legitimate claim of entitlement” to receive the benefits. The U.S. Supreme Court has noted that property exists in many different forms, including in the form of an existing receipt of government benefits. While the designation of property does not require positive or negative economic value, CHAP’s preservation of the City’s monuments creates benefits of honor, protection, expert review, and economic tax incentives according to CHAP’s 2012 Designated

Landmark List. The recognized benefits that stem from the preservation of Baltimore City's monuments therefore satisfy the threshold requirement of "property" in determining whether a property interest has been created. In order to foster a legitimate claim of entitlement, an individual must show what elements of state law support eligibility to receive a benefit that is reasonably expected based on "rules or understanding [from state law] that secure certain benefits and that support claims of entitlement to those benefits." Once an individual's interest is established, there is an inherent constitutional protection of a property interest in the continued receipt of the benefit.

35. Baltimore City, through CHAP and the Special Commission, created benefit eligibility criteria in CHAP's rules and regulations on membership CHAP's rules and regulations govern procedural elements including, but not limited to, the committee's role, meetings, and membership requirements. The mayor of Baltimore appoints thirteen citizens to serve as committee members, each eligible for two four-year terms. CHAP members also have the discretionary power to appoint committees "for special purposes or study." This power, in conjunction with the mayor's power of member appointment, allowed the creation of the seven-member Special Commission, four of whom are current CHAP members. Based on the criteria established in the rules and regulations, any citizen of Baltimore meets CHAP's membership requirements and is eligible for a committee position. The eligibility to be elected to CHAP vests Baltimore citizens with direct access to the benefits of historical preservation. Because all citizens are eligible, a valid basis exists to claim an interest in the benefits stemming from CHAP's historical preservation.
36. The Baltimore City code, governed by Maryland statute, created benefit eligibility criteria in historic preservation statutes Title Eight of Maryland's Land Use statutes govern historic preservation. Maryland general provisions outline the purpose of state historic preservation as well as the importance for local governments to achieve such preservation. The statute allows local jurisdictions to enact legislation or other legal safeguards for the purpose of historic preservation. In defining the purpose of these safeguards, the Maryland statute recognizes the

benefits of historic preservation as well as implicitly creating criteria to receive those benefits. The statutory criteria require that eligible recipients be reflective of local heritage, subject to the local property and economy, and residents of the local jurisdiction. As a result of eligibility, recipients receive the codified benefits. Pursuant to Maryland's statutory historic preservation title, the Baltimore City code adopted and incorporated similar regulations. Article Six of the code governs local historic and architectural preservation and contains provisions comparable, if not identical, to the Maryland code. In explicitly detailing the purpose of historic preservation, the Baltimore City code similarly and implicitly adopts criteria for receiving the benefits of preservation. The criteria require that preservation benefits go directly to local residents with an implicit interest in their local education, culture, economy, and general welfare.

37. Baltimore citizens have a legitimate property interest in the monuments that are subject to procedural due process. The U.S. Supreme Court has continuously maintained that the threshold showing for a property interest is a legitimate individual claim of entitlement. The citizens of Baltimore City meet every element of government established criteria to receive the benefits stemming directly from historical preservation. Any citizen of Baltimore City is eligible to become a member of CHAP, meeting criteria in CHAP's rules and regulations as an individual or as a collective group. Additionally, Baltimore citizens meet every element of implicit state and municipal criteria to be eligible for historic preservation benefits. The citizens are local residents with a direct interest in their local economy and education. As a result, the citizens are subject to all local historical context, tradition, and welfare. Because the citizens have met substantive criteria, their interest in the associated historical, educational, and social benefits rises above an abstract need or unilateral expectation. A legitimate claim of entitlement is supported by the citizens' eligibility at the state, municipal, and municipal agency level. City residents have a legitimate claim of entitlement to the benefits stemming directly from the preservation of Baltimore's Confederate monuments.

**BALTIMORE CITY AND THE SPECIAL COMMISSION'S MEETINGS TO  
DETERMINE THE REMOVAL OF THE TANEY AND LEE-JACKSON MONUMENTS  
VIOLATE THE PROCEDURAL DUE PROCESS RIGHTS AFFORDED TO A  
CONSTITUTIONALLY PROTECTED PROPERTY INTEREST**

38. Procedural due process requires a prior notice and an opportunity for a pre-deprivation hearing

The Fifth and Fourteenth Amendments' protection of property interests allows individuals to rely on a sense of security. Because the citizens have met state-determined requirements, due process affords reliance on the continued receipt of government benefits. In determining whether procedural due process has been afforded, the right of the individual is weighed against "whether the government has sufficient justification for taking away a person's . . . property." In weighing those interests, procedural due process generally requires a hearing when government denial implicates a significant property interest. If Baltimore City's historically designated monuments are removed, not only will Baltimore City residents be denied the benefits of their property interest, but also be unconstitutionally denied the protections of procedural due process.

39. Baltimore City, through CHAP and the Special Commission, violated procedural due process

when it failed to hold sufficient hearings. The U.S. Supreme Court has held that a hearing is required when removal of a government benefit would deny the recipient of an essential or fundamental necessity. In the context of welfare benefits, a recipient was entitled to a hearing because his reliance on the income was a foundation of his daily life. The monuments do not provide the citizens of Baltimore any monetary benefit. However, the equitable and unique benefits of the monuments are foundational to the daily lives, existence, culture, and education of every citizen. These benefits are so essential that they have been recognized in Maryland statute, Baltimore City code, and through the creation of CHAP. Having demonstrated the degree to which the monuments and their benefits are essential, the citizens of Baltimore are entitled to procedural due process of law. Determining a potential violation of due process requires that the interests of the government be weighed against the interests of the citizen(s). The amount of procedure sufficient to satisfy due process is directly related to the amount of injury, loss, or

equitable denial to the individual. Baltimore City's Confederate monuments provide benefits so fundamental that they are protected by the State and City regulations. While the monetary support of welfare is limited, the monuments provide citizens with a fundamental understanding of history, culture, and education that is fundamental to their autonomy. The citizens of Baltimore, having demonstrated a legitimate claim of entitlement to those benefits, are therefore due substantial legal process in the form of a hearing before Baltimore City may remove the monuments and terminate their associated benefits. The United States Court of Appeals for the Sixth Circuit has broadly outlined the ways in which a plaintiff may prevail on a procedural due process claim against a municipality.

- i. Under circuit precedent, a § 1983 plaintiff can prevail on a procedural due process claim by demonstrating that the property deprivation resulted from either: (1) an established state procedure that itself violates due process rights, or (2) a "random and unauthorized act" causing a loss for which available state remedies would not adequately compensate the plaintiff. . . . If . . . the City's action was the result of an established state procedure, then the question would be whether that procedure violated due process rights.

40. Following the sixth circuit's approach, the citizens of Baltimore certainly may bring forth a claim arising under the first factor. Founded on the lack of opportunity for public testimony and the inadequacy of the meetings to qualify as hearings, they surely would succeed on a claim for the violation of their procedural due process rights.

**IN THE ALTERNATIVE, BALTIMORE CITY AND THE SPECIAL COMMISSION'S  
NON-COMPLIANCE WITH THE MARYLAND OPEN MEETINGS ACT VIOLATES  
THE PROCEDURAL DUE PROCESS RIGHTS AFFORDED TO A  
CONSTITUTIONALLY PROTECTED PROPERTY INTEREST**

41. The Maryland Open Meetings Act establishes procedure affording protections equivalent to procedural due process Maryland recently enacted the Open Meetings Act, ("the Act"), effective October 1, 2014. The policy of the Act highlights the importance of the public's role and observation of government action. The Act also recognizes the essential nature of the effectiveness of public involvement by stating that "[t]he conduct of public business in open

meetings increases the faith of the public in government and enhances the effectiveness of the public in fulfilling its role in a democratic society.” While emphasizing the need for a continuous conversation between the public and the government, the Act proposes policy mirroring the protections of procedural due process. The similarities in rationale are further legitimized by the Act’s requirement of public notice and an open session for the public, a direct comparison to the constitutional rights of notice and opportunity to be heard.

**BALTIMORE CITY, CHAP, AND THE SPECIAL COMMISSION ARE GOVERNED BY THE MARYLAND OPEN MEETINGS ACT**

42. The Act applies to “a public body meeting to consider. . . a special exception, variance, conditional use, or zoning classification, the enforcement of any zoning law or regulation, or any other zoning matter.” CHAP and the Special Commission are contained in the City’s Department of Planning, rendering a zoning matter such as monument removal subject to the Act. The Special Commission is sitting as a public body, therefore subjecting it to the control of the Act. The Act specifically lists criteria necessary to be a public body subject to the Act. A public body must be more than two people, and the body must be “created by. . . a county or municipal charter,. . . an ordinance, a rule. . . or an order of the chief executive authority of a political subdivision of a state.” Sitting as seven individuals representative of the municipality of Baltimore City, the Special Commission is a public body governed by the Act. Further support for the Act’s jurisdiction over the Special Commission is CHAP’s incorporation by reference of the Act in their recently adopted rules and regulations. The Special Commission, consisting of four CHAP members and created through CHAP, is legally required to hold proceedings in compliance with the Act.

**BALTIMORE CITY AND THE SPECIAL COMMISSION VIOLATED BALTIMORE CITIZENS’ PROCEDURAL DUE PROCESS RIGHTS WHEN THEY VIOLATED THE MARYLAND OPEN MEETINGS ACT**

43. The Act requires not only that public body general conduct be held openly, but also that the public have sufficient access to the deliberations, rationale, and assertion of their role in a

democratic society. In support of the citizens' role in public decisions, the Act states, "it is the public policy of the State that the public be provided with adequate notice of the time and location of meetings of public bodies, which shall be held in places reasonably accessible to individuals who would like to attend these meetings." However, the limited access to meetings considered in conjunction with the minimal amount of citizen opinion ultimately solicited denies the public an opportunity to be heard. By violating the Act, the Special Commission denies the citizens of Baltimore an opportunity to voice a legitimate claim to their property interests in the monuments. When the Confederate monuments and their recognized benefits are removed, Baltimore City, through the Special Commission, will have denied every citizen of Baltimore of their constitutionally protected rights.

### **CONCLUSION**

44. Historical monuments provide the benefits of historical context, education, tradition, and information. Regardless of the embodied context or message, historical monuments provide an undeniable benefit: Many people have a romantic view of a past that they believe was less hurried and more relaxed than the time in which they live. They now minimize or ignore the hardships of the past—hardships that, by the way, are seldom interpreted at the sites. Instead, visitors contrast the best of the past with some of the worst of our own jet-paced, plastic, and computerized age. For many visitors, then, the historic site is a form of escape. The historical capacity of a monument provides benefits—statutorily recognized benefits—to Baltimore citizens regardless of race, ideology, or culture. Since the monuments' installation, citizens of Baltimore have received these benefits and integrated them into not only an understanding of belonging, but into their everyday autonomy and awareness. The constitutional right to procedural due process protects the continued receipt of fundamental benefits, especially when they are inherent in an individual's life. These inherent benefits rise above a unilateral desire or abstract need, supporting a legitimate claim of entitlement to a property interest. Presently, the Special Commission has not shown Baltimore citizens the consideration that due process not only affords, but guarantees. Absent

increased public involvement or other Special Commission's actions to rectify the present, they have denied the citizens of Baltimore the procedural due process of law afforded at the local, state, and federal levels.

**PRAYER FOR INJUNCTIVE RELIEF**

45. Defendants' acts alleged above violate established constitutional rights and Defendants could not reasonably have thought that the conduct of their agents and employees was lawful.

WHEREFORE, Plaintiff prays as follows:

1. For a temporary restraining order, preliminary and permanent injunction, enjoining and restraining Defendants from engaging in the conduct complained of herein;
2. For a declaratory judgment that Defendants' policies, practices and conduct as alleged herein violate Plaintiff's rights under the United States and Maryland constitutions and the laws of Maryland;
3. For an order directing Defendants to replace the statues, or in the alternative, to replace the statues with a covering that obscures it from view, or in the alternative still, to retain custody of them and prevent their being sold, disassembled, or otherwise destroyed until the public can have an opportunity to hear options, provide comments, and play a role in determining the future usefulness of these monuments related to our historical and contextual interest in them.  
and;
4. For such other relief as the Court deems just and proper.

Submitted,

Brian Charles Vaeth  
3320 Orlando Avenue  
Baltimore, Maryland 21234

**AFFIDAVIT**

I, Brian Charles Vaeth, in proper person, hereby solemnly affirms, under the penalty of perjury, that the contents of the foregoing complaint is true to the best of my knowledge, information, and belief this 21<sup>st</sup> day of August 2017.

Submitted,

Brian Charles Vaeth  
3320 Orlando Avenue  
Baltimore, Maryland 21234

**CERTIFICATE OF SERVICE**

I, Brian Charles Vaeth, Plaintiff in proper person in the above captioned matter do hereby solemnly affirm that the contents of the enclosed Complaint has been forwarded on to the defendants by US mail on the 21st day of August 2017., first class, postage prepaid.

Submitted,

Brian Charles Vaeth  
3320 Orlando Avenue  
Baltimore, Maryland 21234