



AlaFile E-Notice

01-CV-2020-902021.00

To: Brad Alan Chynoweth
brad.chynoweth@alabamaag.gov

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

STATE OF ALABAMA EX REL. ALABAMA ATTORNEY GENERAL V. CITY OF BIRMINGHAM
01-CV-2020-902021.00

The following complaint was FILED on 6/2/2020 5:19:04 PM

Notice Date: 6/2/2020 5:19:04 PM

JACQUELINE ANDERSON SMITH
CIRCUIT COURT CLERK
JEFFERSON COUNTY, ALABAMA
JEFFERSON COUNTY, ALABAMA
716 N. RICHARD ARRINGTON BLVD.
BIRMINGHAM, AL, 35203

205-325-5355
jackie.smith@alacourt.gov



ELECTRONICALLY FILED

6/2/2020 5:19 PM

01-CV-2020-902021.00

CIRCUIT COURT OF

JEFFERSON COUNTY, ALABAMA

Case: 01 JACQUELINE ANDERSON SMITH, CLERK

Date of Filing:
06/02/2020

Judge Code:

State of Alabama
Unified Judicial System
Form ARCiv-93 Rev. 9/18

COVER SHEET
CIRCUIT COURT - CIVIL CASE
(Not For Domestic Relations Cases)

GENERAL INFORMATION

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
STATE OF ALABAMA EX REL. ALABAMA ATTORNEY GENERAL v. CITY OF BIRMINGHAM

First Plaintiff: ☐ Business ☐ Individual ☒ Government ☐ Other
First Defendant: ☐ Business ☐ Individual ☒ Government ☐ Other

NATURE OF SUIT: Select primary cause of action, by checking box (check only one) that best characterizes your action:

TORTS: PERSONAL INJURY

- ☐ WDEA - Wrongful Death
☐ TONG - Negligence: General
☐ TOMV - Negligence: Motor Vehicle
☐ TOWA - Wantonness
☐ TOPL - Product Liability/AEMLD
☐ TOMM - Malpractice-Medical
☐ TOLM - Malpractice-Legal
☐ TOOM - Malpractice-Other
☐ TBFM - Fraud/Bad Faith/Misrepresentation
☒ TOXX - Other: _____

TORTS: PERSONAL INJURY

- ☐ TOPE - Personal Property
☐ TORE - Real Property

OTHER CIVIL FILINGS

- ☐ ABAN - Abandoned Automobile
☐ ACCT - Account & Nonmortgage
☐ APAA - Administrative Agency Appeal
☐ ADPA - Administrative Procedure Act
☐ ANPS - Adults in Need of Protective Services

OTHER CIVIL FILINGS (cont'd)

- ☐ MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/Enforcement of Agency Subpoena/Petition to Preserve
☐ CVRT - Civil Rights
☐ COND - Condemnation/Eminent Domain/Right-of-Way
☐ CTMP - Contempt of Court
☐ CONT - Contract/Ejectment/Writ of Seizure
☐ TOCN - Conversion
☐ EQND - Equity Non-Damages Actions/Declaratory Judgment/Injunction Election Contest/Quiet Title/Sale For Division
☐ CVUD - Eviction Appeal/Unlawful Detainer
☐ FORJ - Foreign Judgment
☐ FORF - Fruits of Crime Forfeiture
☐ MSHC - Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition
☐ PFAB - Protection From Abuse
☐ EPFA - Elder Protection From Abuse
☐ FELA - Railroad/Seaman (FELA)
☐ RPRO - Real Property
☐ WTEG - Will/Trust/Estate/Guardianship/Conservatorship
☐ COMP - Workers' Compensation
☐ CVXX - Miscellaneous Circuit Civil Case

ORIGIN: F ☒ **INITIAL FILING**

A ☐ **APPEAL FROM DISTRICT COURT**

O ☐ **OTHER**

R ☐ **REMANDED**

T ☐ **TRANSFERRED FROM OTHER CIRCUIT COURT**

HAS JURY TRIAL BEEN DEMANDED? ☐ YES ☒ NO

Note: Checking "Yes" does not constitute a demand for a jury trial. (See Rules 38 and 39, Ala.R.Civ.P., for procedure)

RELIEF REQUESTED: ☒ **MONETARY AWARD REQUESTED** ☐ **NO MONETARY AWARD REQUESTED**

ATTORNEY CODE:

CHY001

6/2/2020 5:19:09 PM

Date

/s/ Brad Alan Chynoweth

Signature of Attorney/Party filing this form

MEDIATION REQUESTED: ☐ YES ☒ NO ☐ UNDECIDED

Election to Proceed under the Alabama Rules for Expedited Civil Actions: ☐ YES ☒ NO



IN THE CIRCUIT COURT OF THE 10TH JUDICIAL CIRCUIT
JEFFERSON COUNTY, ALABAMA

STATE OF ALABAMA EX. REL.
ATTORNEY GENERAL STEVE
MARSHALL

Plaintiff,

v.

CITY OF BIRMINGHAM

Defendant.

Civil Action No. _____

COMPLAINT

Comes now, the State of Alabama, by and through Attorney General Steve Marshall, and respectfully moves this Honorable Court for declaratory and other relief. The State of Alabama, in support of its Complaint, asserts the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the defendant because the City of Birmingham is located within Jefferson County, and the activities giving rise to this litigation occurred in Jefferson County. Venue is proper in this Court because the City of Birmingham is located within Jefferson County, and the activities giving rise to this lawsuit occurred in Jefferson County. *See* Ala. Code § 6-3-11.

PARTIES

2. Plaintiff is the State of Alabama by and through its Attorney General, Steve Marshall, who has standing to bring this action on behalf of the State. *See* Ala. Code § 36-15-12. The Attorney General is authorized to institute and prosecute, in the name of the state, all civil

actions and other proceedings necessary to protect the rights and interests of the state. *Id.* He is also required to “attend to all cases other than criminal that may be pending in the courts of this state, in which the state may be in any manner concerned.” Ala. Code § 36-15-1(2). The Attorney General is also specifically charged with the enforcement of the civil penalty provision of the Alabama Memorial Preservation Act. *See* Ala. Code § 41-9-235(a)(2)d.

3. Defendant City of Birmingham is a Class 1 municipality in the State of Alabama located in Jefferson County.

GENERAL ALLEGATIONS

4. In 2017, the Legislature enacted, and the Governor signed into law, the Alabama Memorial Preservation Act (“the Act”), codified at Ala. Code § 41-9-231 et seq. The Act provides that “[n]o architecturally significant building, memorial building, memorial street, or monument which is located on public property and has been so situated for 40 or more years may be relocated, removed, altered, renamed, or otherwise disturbed.” Ala. Code § 41-9-232(a). The Act defines “monument” as a “statue, portrait, or marker intended at the time of dedication to be a permanent memorial to an event, a person, a group, a movement, or military service that is part of the history of the people or geography now comprising the State of Alabama.” Ala. Code § 41-9-231(6)

5. The Act provides that “[i]f the Attorney General determines that an entity exercising control of public property has . . . relocated, removed, altered, renamed, or otherwise disturbed” a “monument from that public property without first obtaining a waiver from the committee as requested by this act . . . the entity shall be fined twenty-five thousand dollars (\$25,000) for each violation. The fine shall be collected by the Attorney General, forwarded by his or office to the State Treasurer, and deposited into the Alabama State Historic Preservation Fund.” Ala. Code § 41-9-235(a)(2)d.

6. This penalty provision applies to monuments that are more than forty years old. *See State v. City of Birmingham*, ___ So. 3d ___, 2019 WL 6337424 (Ala. Nov. 27, 2019).

7. The Confederate Soldiers and Sailors Monument (“Linn Park monument”) was completed and dedicated in 1905 as a memorial to soldiers and sailors who died in the Civil War in what is now Charles Linn Park in the City of Birmingham. The Linn Park monument was over one hundred years old and of independent historical and cultural significance.

8. The City of Birmingham was previously assessed with a \$25,000 fine for altering or disturbing the Linn Park monument after it placed a plywood screen around the monument. *See State v. City of Birmingham*, ___ So. 3d ___, 2019 WL 6337424 (Ala. Nov. 27, 2019).

9. On June 1, 2020, the City of Birmingham again violated the Act when employees of the City of Birmingham, or others acting on behalf of the City, removed the Linn Park monument under the direction of Mayor Randall Woodfin or other City officials.

COUNT 1—DECLARATORY JUDGMENT

10. Paragraphs 1 through 9 above are incorporated and realleged herein.

11. The Linn Park monument was a “monument” as that term is defined in the Alabama Memorial Preservation Act.

12. Because the Linn Park monument was located on public property for over 40 years, its removal subjects the Defendant to a \$25,000 fine.

13. It is the responsibility and duty of the Attorney General to protect the rights and interest of the state in the enforcement of its laws, including the Alabama Memorial Preservation Act.

14. The Court should enter a judgment declaring that the City is in violation of the Act because the City has “relocated, removed, altered . . . or otherwise disturbed” the Linn Park monument in violation of Alabama Code § 41-9-232(a). *See* Ala. Code 6-6-220 et seq.

COUNT II—\$25,000 FINE

15. Paragraphs 1 through 14 above are incorporated and realleged herein.

16. The Attorney General has determined that the Defendant has relocated, removed, altered, or otherwise disturbed the Linn Park monument.

17. The Defendants must pay “twenty-five thousand dollars (\$25,000) for each violation,” and thus should be assessed a second \$25,000 fine. *See* Ala. Code § 41-9-235(a)(2)d.

REQUEST FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the State of Alabama respectfully requests this Honorable Court enter an Order:

- 1) Declaring that the Defendants have acted in violation of the Alabama Memorial Preservation Act;
- 2) Imposing a fine of \$25,000;
- 3) Ordering such other and further relief as this Court deems appropriate.

Respectfully submitted this 2nd day of June, 2020.

Respectfully submitted,

STEVE MARSHALL (MAR083)
Attorney General

s/ Brad A. Chynoweth
James W. Davis (DAV103)
Brad A. Chynoweth (CHY001)
Assistant Attorneys General

OF COUNSEL:

Office of the Attorney General
501 Washington Avenue
Post Office Box 300152
Montgomery, AL 36130-0152
(334) 242-7300
(334) 353-8400 – FAX

PLEASE SERVE:

The City of Birmingham
710 Twentieth Street North
Birmingham, AL 35203