



**IN THE CIRCUIT COURT OF THE 10<sup>TH</sup> JUDICIAL CIRCUIT  
JEFFERSON COUNTY, ALABAMA**

**STATE OF ALABAMA EX. REL.  
ATTORNEY GENERAL STEVE  
MARSHALL**

*Plaintiff,*

**v.**

**CITY OF BIRMINGHAM; WILLIAM  
BELL, IN HIS OFFICIAL CAPACITY AS  
MAYOR OF THE CITY OF  
BIRMINGHAM**

*Defendants.*

**Civil Action No.**

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**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 defendants because they reside in Jefferson County. Venue is proper in this Court because the defendants reside in Jefferson County and the activities giving rise to this lawsuit occurred in Jefferson County.

**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).

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

4. Defendant William Bell is the mayor of the City of Birmingham. He is sued in is official capacity only.

### **GENERAL ALLEGATIONS**

5. Under the Alabama Constitution, cities in Alabama exist as “mere creatures of the legislative power, established as political agencies for the more convenient administration of local government, with such powers . . . as the [legislature] may, from time to time, see fit to confer.” *Hare v. Kennerly*, 3 So. 683, 684 (Ala. 1888) (citing *Meriwether v. Garrett*, 102 U.S. 472 (1880)). Alabama cities are prohibited from “pass[ing] any laws inconsistent with the general laws of this state.” Ala. Const. art. IV, § 89; *see also* Ala. Code § 11-45-1 (authorizing cities to “adopt ordinances” except as “inconsistent with the laws of the state”). The Legislature routinely enacts general preemption laws. It has set uniform state policies on all manner of issues, from licensure of barbers (Ala. Code § 34-5-5) and mortgage brokers (*id.* § 5-25-4) to the taxation of aviation fuel (*id.* § 40-17-357).

6. In 2017, the Legislature enacted, and the Governor signed into law, the Alabama Memorial Preservation Act (“the Act”), which can be found at Section 41-9-231 et seq. of the Alabama Code. 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)

7. The Act establishes a committee to review proposals to remove or alter monuments that are less than 40 years old. But the committee has no power to approve the alteration or removal of a monument over 40 years old.

8. 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.” Ala. Code § 41-9-235(d).

9. A memorial to soldiers and sailors who died in the Civil War was erected and dedicated in approximately 1905 in what is now Linn Park in the City of Birmingham (“Linn Park memorial”). On information and belief, the Linn Park memorial is an approximately 50-foot-tall obelisk that was erected using private funds. On information and belief, the Linn Park memorial is over one hundred years old and of independent historical and cultural significance.

10. On August 15, 2017, Mayor William Bell directed City of Birmingham employees to cover the Linn Park memorial with tarps. Mayor Bell later directed City of Birmingham employees to erect plywood coverings around the memorial. Upon information and belief, Mayor Bell intends for the monument to remain covered indefinitely.

11. A photograph of the Linn Park memorial as of August 16, 2017 is attached as **Exhibit A** to this complaint.

### **COUNT 1—DECLARATORY JUDGMENT**

12. Paragraphs 1 through 11 above are incorporated and realleged herein.

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

14. Because the Linn Park memorial has been located on public property for over 40 years, it may not be relocated, removed, altered, renamed, or otherwise disturbed.

15. By affixing tarps and placing plywood around the Linn Park Memorial such that it is hidden from view, the Defendants have “altered” or “otherwise disturbed” the memorial in violation of the letter and spirit of the Alabama Memorial Preservation Act.

16. 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.

17. The Court should enter a judgment declaring that the City is in violation of the Act. *See* Ala. Code 6-6-220 et seq.

### **COUNT II—\$25,000 FINE FOR EACH VIOLATION**

18. Paragraphs 1 through 16 above are incorporated and realleged herein.

19. The Attorney General has determined that the Defendants have “altered” or “otherwise disturbed” the Linn Park memorial.

20. The Defendants must pay “twenty-five thousand dollars (\$25,000) for each violation.” Ala. Code § 41-9-235(d).

21. Each day that the Defendants continue to “alter” or “otherwise disturb” the memorial is a unique violation with a corresponding \$25,000 fine.

## 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 for each day that the Linn Park memorial has been altered or otherwise disturbed;
- 3) Ordering such other and further relief as this Court deems appropriate.

Respectfully submitted,

STEVE MARSHALL (MAR083)  
*Attorney General*

s/ James W. Davis  
James W. Davis (DAV003)  
*Deputy Attorney General*

Brad A. Chynoweth (CHY001)  
*Assistant Attorney General*

### OF COUNSEL:

Office of the Attorney General  
501 Washington Avenue  
Post Office Box 300152  
Montgomery, AL 36130-0152  
(334) 242-7300  
(334) 242-4890 – FAX

### PLEASE SERVE:

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

Hon. William Bell, Mayor  
The City of Birmingham  
710 Twentieth Street North  
Birmingham, AL 35203



Exhibit A



Exhibit A