



**ATTORNEY GENERAL MARSHALL FILES SUIT AGAINST CITY OF  
BIRMINGHAM AND MAYOR WILLIAM BELL FOR VIOLATING ALABAMA  
MEMORIAL PRESERVATION ACT**

(MONTGOMERY) – Attorney General Steve Marshall announced Wednesday that his office has filed suit in Jefferson County Circuit Court against the City of Birmingham and Mayor William Bell for violating state law by constructing barriers to deliberately obscure a historically significant monument in Linn Park.

“In accordance with the law, my office has determined that 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,” said Attorney General Marshall. “The City of Birmingham does not have the right to violate the law and leaves my office with no choice but to file suit.”

The Alabama Memorial Preservation Act, passed by the Alabama Legislature and signed into law in 2017, prohibits the relocation, removal, alteration, renaming, or other disturbance of any architecturally significant building, memorial building, memorial street, or monument located on public property which has been in place for 40 or more years. The Confederate Soldiers & Sailors Monument in Linn Park, which was dedicated in 1905, is older than the Jefferson Memorial in Washington, DC.

*A copy of the State’s lawsuit is attached to this release.*

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## AlaFile E-Notice

01-CV-2017-903426.00

To: JAMES W DAVIS  
JimDavis@ago.state.al.us

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

STATE OF ALABAMA V. THE CITY OF BIRMINGHAM ET AL  
01-CV-2017-903426.00

The following complaint was FILED on 8/16/2017 2:40:08 PM

Notice Date: 8/16/2017 2:40:08 PM

ANNE-MARIE ADAMS  
CIRCUIT COURT CLERK  
JEFFERSON COUNTY, ALABAMA  
JEFFERSON COUNTY, ALABAMA  
716 N. RICHARD ARRINGTON BLVD.  
BIRMINGHAM, AL, 35203

205-325-5355  
anne-marie.adams@alacourt.gov



State of Alabama  
Unified Judicial System  
Form ARCiv-93 Rev.5/99

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

Case: 01  
Date of Filing: 08/16/2017  
Judge Code:

**GENERAL INFORMATION**

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA**  
**STATE OF ALABAMA v. THE CITY OF BIRMINGHAM ET AL**

**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 Service

**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
- 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:**

DAV103      8/16/2017 2:40:04 PM      /s/ JAMES W DAVIS  
Date      Signature of Attorney/Party filing this form

**MEDIATION REQUESTED:**  YES  NO  UNDECIDED

**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:

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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