

2023

The Afterlife of Confederate Monuments

Jess Phelps

The Lyme Timber Company, jphelps@vermontlaw.edu

Jessica N. Owley

University of Miami, jowley@law.miami.edu

Follow this and additional works at: <https://www.repository.law.indiana.edu/ilj>



Part of the [Civil Rights and Discrimination Commons](#), [Common Law Commons](#), [Law and Race Commons](#), [Law and Society Commons](#), and the [Property Law and Real Estate Commons](#)

Recommended Citation

Phelps, Jess and Owley, Jessica N. (2023) "The Afterlife of Confederate Monuments," *Indiana Law Journal*: Vol. 98: Iss. 2, Article 2.

Available at: <https://www.repository.law.indiana.edu/ilj/vol98/iss2/2>

This Article is brought to you for free and open access by the Maurer Law Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Law Journal by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

The Afterlife of Confederate Monuments

JESS PHELPS* & JESSICA OWLEY**

As communities increasingly remove Confederate monuments from public spaces, they must decide what to do with these troubled statues. Given the recent wave of monument removal, we consider how property law and other restrictions impact community decisions on the disposition of monuments removed from public spaces on two levels—by location and future owner. In considering the fate of removed monuments, we profile potential destinations including museums, battlefields, cemeteries, and even storage. Alongside these examples, we discuss how laws constrain (or fail to constrain) the options for new owners and the restrictions on where monuments can be relocated. Even where laws do not constrain their removal choices, communities may choose to relinquish ownership to a Confederate heritage organization (or to another governmental entity) to speed removal. While transferring ownership is initially appealing, surrendering ownership may not be the best long-term decision for a community. Communities can lose control over the display of transferred statues, which fails to address the root of the problem. Where possible, communities should retain ownership (and therefore control) of removed statues or consider how other property law tools, such as transfer agreements, can impose discipline on the new owners. Making considered decisions on both the future display and owner is critical to the overall removal movement and to ensure that the legacy of these troubled statues is properly addressed.

* Associate General Counsel, The Lyme Timber Company.

** Professor, University of Miami Law School. Thanks to Jason Risberg for research assistance. We would also like to thank Zachary Bray and Peter Byrne for their continued feedback and encouragement on this Article and on our research in this area.

INTRODUCTION.....	373
I. A BRIEF HISTORY OF CONFEDERATE MONUMENTS AND REMOVAL EFFORTS	377
II. THE DESTINATIONS/FATES OF REMOVED MONUMENTS	383
A. FACTORS INFLUENCING RELOCATION DECISIONS.....	384
1. COMMON LAW QUESTIONS	384
2. STATE STATUTE STATUTES	386
B. DESTROYED MONUMENTS	387
1. ASHEVILLE, NORTH CAROLINA: VANCE MONUMENT	388
2. CHARLOTTESVILLE, VIRGINIA: LEE MONUMENT	392
C. MONUMENTS CONVEYED TO PRIVATE PARTIES.....	393
1. ROCKVILLE MARYLAND: TRANSFER TO PRIVATE INDIVIDUAL	394
2. DALLAS, TEXAS: TRANSFER THROUGH AUCTION PROCESS.....	396
3. MONUMENT RELOCATIONS SHAPED BY CONFEDERATE-HERITAGE ORGANIZATION OWNERSHIP CLAIMS: LOUDOUN COUNTY, VIRGINIA, AND FRANKLIN, TENNESSEE.....	399
a. LOUDOUN COUNTY, VIRGINIA.....	402
b. FRANKLIN, TENNESSEE	403
D. MONUMENTS CONVEYED TO OTHER PUBLIC ENTITIES	404
1. KENTUCKY STATE CAPITOL: JEFFERSON DAVIS MONUMENT, TRANSFER TO A STATE HISTORIC SITE.....	404
2. LOUISVILLE, KENTUCKY: CONFEDERATE MONUMENT-TRANSFER TO ANOTHER COMMUNITY.....	405
E. MONUMENTS CONVEYED TO CEMETERIES	407
1. LOWNDES COUNTY COURTHOUSE, COLUMBUS, MISSISSIPPI	408
2. UNIVERSITY OF MISSISSIPPI, OXFORD, MISSISSIPPI	409
3. “FAME” STATUE—SALISBURY, NORTH CAROLINA	410
F. MONUMENTS TRANSFERRED TO MUSEUMS.....	412
1. COUNTY COURTHOUSE MONUMENT IN DENTON, TEXAS, TO COURTHOUSE MUSEUM	414
2. JEFFERSON DAVIS STATUE AT THE UNIVERSITY OF TEXAS TO CAMPUS HISTORY MUSEUM	415
3. RICHMOND’S ROBERT E. LEE STATUE TO THE VIRGINIA MUSEUM OF HISTORY AND CULTURE.....	416
4. HOUSTON’S SPIRIT OF THE CONFEDERACY STATUE TO THE HOUSTON MUSEUM OF AFRICAN AMERICAN CULTURE	416
G. MONUMENTS TO HISTORIC SITES.....	418
H. MONUMENTS RELOCATED TO STORAGE	419
III. EMERGING LEARNING FROM CONTEMPORARY RELOCATION DECISIONS	420
A. LEGISLATIVE RECOMMENDATIONS	421
B. RECOMMENDATIONS FOR COMMUNITY ACTION	421
1. CONSIDER THE PROCESS.....	421
2. THINK CAREFULLY ABOUT THE RECIPIENT	422
3. CONSIDER USING DEED RESTRICTIONS/TRANSFER AGREEMENTS	424
4. DISTANCE PRIVATE MONUMENTS	424
5. APPROPRIATELY ADDRESS THE MONUMENT’S FORMER LOCATION	425
CONCLUSION.....	426

INTRODUCTION

The past few years have witnessed an unprecedented effort to remove Confederate monuments from public spaces.¹ Over 200 monuments have been removed from public locations since the 2020 murder of George Floyd, a bellwether moment in advancing removals.² While many more monuments remain, recent removal efforts are significant.³ These removals reflect a shift in public opinion regarding these statues⁴—with the public increasingly viewing the monuments not as innocent vestiges of historic commemoration,⁵ but for the often centuries-old

1. See, e.g., Kimeko McCoy, *From Charleston to Minneapolis, America Grapples with Symbols of a Slave-Owning Past*, UNDEFEATED (May 18, 2021), [s://theundefeated.com/features/from-charleston-to-minneapolis-america-grapples-with-symbols-of-slave-owning-past/](https://theundefeated.com/features/from-charleston-to-minneapolis-america-grapples-with-symbols-of-slave-owning-past/) [<https://perma.cc/4J4S-TN29>]; Camila Domonoske, *Report: 59 Confederate Symbols Removed Since George Floyd's Death*, NPR (Aug. 12, 2020), <https://www.npr.org/2020/08/12http/901771780/report-59-confederate-symbols-removed-since-george-floyds-death> [<https://perma.cc/3DXD-X7PM>] (charting the uptick in monument removal); Aimee Ortiz & Johnny Diaz, *George Floyd Protests Reignite Debate Over Confederate Statues*, N.Y. TIMES (Nov. 5, 2021), <https://www.nytimes.com/2020/06/03/us/confederate-statues-george-floyd.html> [<https://perma.cc/K8HR-89ZV>] (examining the impact of George Floyd's murder on monument removal efforts).

2. Rachel Treisman, *Nearly 100 Confederate Monuments Removed in 2020, Report Says; More Than 700 Remain*, NPR (Feb. 23, 2021), <https://www.npr.org/2021/02/23/970610428/nearly-100-confederate-monuments-removed-in-2020-report-says-more-than-700-remain> [<https://perma.cc/A6VF-NAYR>]; see also AP, *160 Confederate Symbols Removed from Public Spaces in 2020, New Count Shows*, GUARDIAN (Feb. 23, 2021), <https://www.theguardian.com/us-news/2021/feb/23/160-confederate-symbols-removed-public-spaces-2020> [<https://perma.cc/8LVE-J8M8>]. At least eleven more monuments were removed in 2021. Alex J. Rouhandeh, *202 Confederate Monuments Have Been Removed or Relocated Since Death of George Floyd*, NEWSWEEK (Sept. 8, 2021, 1:57 PM), <https://www.newsweek.com/over-180-confederate-monuments-have-been-removed-relocated-since-death-george-floyd-1627186> [<https://perma.cc/S5WK-B38W>].

3. Kathleen Tipler, Tyler Johnson, Tyler Camarillo, Andrea Benjamin, Ray Block, Jr., Jared Clemons, Chryl Laird & Julian Wamble, *93 Percent of Confederate Monuments Are Still Standing. Here's Why*, WASH. POST (Dec. 16, 2019), <https://www.washingtonpost.com/politics/2019/12/16/percent-confederate-monuments-are-still-standing-heres-why/> [<https://perma.cc/K6PM-4SAF>] (estimating that, as of the end of 2019, only 139 of 1880 documented monuments had been removed); *Whose Heritage? Public Symbols of the Confederacy*, S. POVERTY L. CTR. (Feb. 1, 2019), <https://www.splcenter.org/20190201/whose-heritage-public-symbols-confederacy#historical-markers> [<https://perma.cc/PRU9-9YWK>]; Neil Vidgor & Daniel Victor, *Over 160 Confederate Symbols Were Removed in 2020, Group Says*, N.Y. TIMES (Feb. 23, 2021), <https://www.nytimes.com/2021/02/23/us/confederate-monuments-george-floyd-protests.html> [<https://perma.cc/E3NA-5KGE>] (examining the Southern Poverty Law Center's 2020 update on monument removal).

4. See, e.g., Andrea Benjamin, Ray Block Jr., Jared Clemons, Chryl Laird & Julian Wamble, *Set in Stone? Predicting Confederate Monument Removal*, 53 PS: POL. SCI. & POLS. 237, 237 (2020).

5. Zachary Bray, *From 'Wonderful Grandeur' to 'Awful Things': What the Antiquities*

messages they convey, and for what they currently represent to their communities.⁶ Once a community has decided to remove a Confederate monument from a public location,⁷ the next question is where it should go and to whom it should be conveyed.⁸ While politicians, activists, and scholars have discussed (and advocated for) monument removal,⁹ the fate of monuments once removed is only now being analyzed as a sufficient number of Confederate monuments have been removed to give an initial sense of what is happening after removal.¹⁰

Communities have grappled with removed Confederate monuments in a few primary ways. Many communities end up placing their monuments in storage while they consider the future of these statues.¹¹ Temporary storage measures often become

Act and National Monuments Reveal About the Statue Statues and Confederate Monuments, 108 KY. L.J. 585, 586 (2019) (noting that “unpleasant though it may be to consider or admit, the truth is that many remaining Confederate monuments embody aspects of their communities that remain vital into the present, and which they help to anchor and renew.”).

6. See Richard Schragger, *What is ‘Government’ Speech?: The Case of Confederate Monuments*, 108 KY. L.J. 665 (2019).

7. In our article, *Private Confederate Monuments*, we noted a shift from monuments in public spaces to monuments on private land. Jessica Owley, Jess Phelps & Sean W. Hughes, *Private Confederate Monuments*, 25 LEWIS & CLARK L. REV. 253 (2021) (charting the shift from public to private and exploring political and legal reasons for this move). We anticipate this shift will continue. See also Ian Bateson, *Is There a Place for the President of the Confederacy?*, N.Y. TIMES (Oct. 8, 2020), <https://www.nytimes.com/2020/10/08/arts/design/jefferson-davis-monument.html> [<https://perma.cc/22R5-JKKE>] (describing a UDC member purchasing a Confederate monument for her yard because of her concern that only private monuments will remain viable).

8. See, e.g., Noah Caldwell & Audie Cornish, *Where Do Confederate Monuments Go After They Come Down?*, NPR (Aug. 5, 2018), <https://www.npr.org/2018/08/05/633952187/where-do-confederate-monuments-go-after-they-come-down> [<https://perma.cc/J3KH-L85Y>].

9. See, e.g., Bray, *supra* note 5; Schragger, *supra* note 6.

10. We briefly dealt with this issue in our previous work on private monuments because of the trend of transferring public monuments into private hands. Owley, Phelps, & Hughes, *supra* note 7. The most helpful writing on this topic so far is from popular press accounts tracing the relocation of specific monuments. See, e.g., Natalie Alison, *The Bust of Nathan Bedford Forrest Is Out of the Tennessee Capitol. Here’s How It Happened*, NASHVILLE TENNESSEAN (July 23, 2021), <https://www.tennessean.com/story/news/politics/2021/07/23/tennessees-nathan-bedford-forrest-bust-has-been-moved-museum/80644680021> [<https://perma.cc/KV8B-ZT7V>]; see generally Caldwell & Cornish, *supra* note 8.

11. Alissa Skelton, *Virginia Beach Confederate Monument Will Remain in Storage While the City Weighs Relocation Options*, VIRGINIAN PILOT (Mar. 17, 2021, 8:13 AM), <https://www.pilotonline.com/government/local/vp-nw-vb-confederate-monument-0316-20210317-46ysbyfigfhtjkip4q2ouuwduwy-story.html> [<https://perma.cc/46RH-M4LV>]. Some monuments were removed quickly as public nuisances amid the protests after George Floyd’s murder, which left communities little time to produce a relocation plan. See Tyler Estep, *Confederate Group Sues Over Removal of the Decatur Monument*, ATLANTA J.-CONST. (June 21, 2021), <https://www.ajc.com/news/atlanta-news/confederate-group-sues-over-removal-of-decatur-monument/MQ7BY4PLRJHSFI5WFFDRXGUWDM/> [<https://perma.cc/ZS77->

long-term placement options as communities fail to agree on alternative destinations.¹² Communities often consider museums, cemeteries, battlefields, and private lands for the relocation of monuments.¹³ Sometimes these locations willingly accept removed monuments; but not always, sometimes they reject them. A few monuments have been destroyed—by later owners,¹⁴ protestors,¹⁵ or public officials.¹⁶ Other parties, such as Confederate heritage organizations, often oppose removal and assert ownership (with varying degrees of historical support) to gain control over a monument.¹⁷

Appropriately addressing the future of a monument after it has been removed from a public space is critically important.¹⁸ If not carefully considered, relocation can lead to unintended consequences.¹⁹ We encourage caution as communities

AKJC] (profiling litigation over the removal of the Decatur, Alabama, Confederate monument as a public nuisance).

12. Erin L. Thompson, *The South's Monuments Will Rise Again*, WASH. POST (Mar. 5, 2021), <https://www.washingtonpost.com/opinions/2021/03/05/confederate-monuments-removed-temporarily/> [https://perma.cc/PMG9-M9SM].

13. Caldwell & Cornish, *supra* note 8 (discussing relocation options generally).

14. In Charlottesville, the city elected to convey its controversial Robert E. Lee Monument to the Jefferson School African American Heritage Center to melt down and create new public art with the monument's bronze. Nora McGreevy, *Charlottesville's Robert E. Lee Statue Will be Melted Down, Transformed into New Art*, SMITHSONIAN MAG. (Dec. 10, 2021), <https://www.smithsonianmag.com/smart-news/robert-e-lee-statue-in-charlottesville-will-be-melted-for-new-art-180979189/> [https://perma.cc/S3AU-UD8S].

15. See, e.g., Michael Levenson, *Protestors Topple Statue of Jefferson Davis on Richmond's Monument Avenue*, N.Y. TIMES (June 11, 2020), <https://www.nytimes.com/2020/06/11/us/Jefferson-Davis-Statue-Richmond.html> [https://perma.cc/JRL9-SR3K].

16. See, e.g., AP, *Court Denies Motion to Halt Asheville Confederate Monument Demolition*, N.C. PUB. RADIO (May 24, 2021), <https://www.wunc.org/news/2021-05-24/court-denies-motion-to-halt-asheville-confederate-monument-demolition> [https://perma.cc/4EMD-C8N4] (profiling Asheville's decision to demolish, not relocate, a Confederate monument).

17. See, e.g., *Patterson v. Rawlings*, 287 F. Supp. 3d 632 (N.D. Tex. 2018) (rejecting Sons of Confederate Veterans's claims for title on standing grounds as the claimed successor to a different, defunct, Confederate heritage organization that had donated the Lee statue to the City of Dallas).

18. Zachary Bray, *Monuments of Folly: How Local Governments Can Challenge Confederate "Statue Statutes"*, 91 TEMP. L. REV. 1, 4–5 (2018) [hereinafter Bray, *Monuments of Folly*] (profiling the relocation of Louisville's Confederate monument to Brandenburg, Kentucky).

19. See, e.g., Mikaela Lefrak, *Montgomery County Moves Confederate Statue from Rockville to Private Land*, WAMU (July 25, 2017), <https://wamu.org/story/17/07/25/montgomery-county-moves-confederate-statue-private-land/> [https://perma.cc/WX5X-G5MB] (profiling Montgomery County, Maryland's relocation of a monument to private land within the county). This monument faced criticism for its relocated site and has now been removed again and relegated to storage by its private owner. Rebecca Tan, *A Confederate Statue Is Toppled in Rural Maryland, Then Quietly Stored Away*, WASH. POST. (July 4, 2020, 4:40 PM), https://www.washingtonpost.com/local/whites-ferry-confederate-statue/2020/07/04/e717b18e-bb3c-11ea-bdaf-a129f921026f_story.html [https://perma.cc/C3W3-5MHH].

consider what to do with removed monuments—particularly if they elect to transfer the statue to a third party.²⁰ Transferring a monument to a Confederate heritage organization may appear an attractive solution, but retaining ownership over monuments means maintaining control, which is important to ensuring that the messaging of these statues is appropriately contextualized and redressed.²¹

In earlier work, we examined the role that property law tools play in hindering removal efforts.²² Here we look beyond the questions of how to remove Confederate monuments and consider what becomes of these monuments once they have been taken down. To explore these issues, Section I summarizes both the history of these statues and the efforts to remove them. Section II presents an overview of what communities have done with their removed monuments and the lessons learned from their experiences. Last, Section III provides recommendations for communities grappling with these decisions. The removal of Confederate monuments from public spaces is critically important, but in the rush to remove a statue, longer-term concerns

20. Conveying a monument to a third party, particularly a Confederate heritage organization, has been one of the more common strategies for monument disposition. *See, e.g.,* David W. Blight, W. Fitzhugh Brundage & Kevin M. Levin, *A University's Betrayal of Historical Truth*, ATLANTIC (Dec. 9, 2019), <https://www.theatlantic.com/ideas/archive/2019/12/the-university-of-north-carolinas-payout-to-the-confederate-lost-cause/603253/> [<https://perma.cc/P59U-PM9J>] (criticizing the University of North Carolina's decision to convey that campus's monument (Silent Sam) to the Sons of Confederate Veterans with a multimillion-dollar endowment). This settlement was vacated and the future of the UNC monument remains unclear. *See* Anna Pogarcic, 'A Fictitious Narrative': Silent Sam Committee Had No Role in Settlements with SCV, DAILY TAR HEEL (Feb. 1, 2021, 10:22 PM), <https://www.dailytarheel.com/article/2021/02/silent-sam-lawsuit-update-0201> [<https://perma.cc/3V2J-LC7C>].

21. For more information about these organizations, see Jess Phelps & Jessica Owley, *Confederate Heritage Organizations*, WASH. U. J.L. & POL'Y (forthcoming Spring 2023).

22. In 2017, in the aftermath of Charlottesville, we began discussing issues around Confederate monuments. In *Understanding the Complicated Landscape of Civil War Monuments*, we detailed how these monuments exist on a spectrum ranging from private to public, with most monuments having both private and public attributes. We anticipated that this blurring of public/private interests would potentially complicate monument removal. Jessica Owley & Jess Phelps, *Understanding the Complicated Landscape of Civil War Monuments*, 93 IND. L.J. SUPP. 15 (2018). In *Etched in Stone*, we explored whether historic preservation laws might become an issue in removal efforts. Jess R. Phelps & Jessica Owley, *Etched in Stone: Historic Preservation Law and Confederate Monuments*, 71 FLA. L. REV. 627 (2019) [hereinafter Phelps & Owley, *Etched in Stone*]. We concluded that historic preservation laws would not generally be a barrier but could be a delaying tactic for monument supporters, and that advocates seeking removal should prepare for these challenges proactively to avoid delay. In *Private Confederate Monuments*, we charted an emerging trend—the shift from having Confederate monuments located on public lands to private lands, altering the legal options for removal efforts. Owley, Phelps, and Hughes, *supra* note 7. This privatization trend encompasses both monuments that have been removed from public spaces (and relocated to private lands) and some entirely new monuments. We also expanded our research to include detailed case studies highlighting how and when removal occurs. Jessica Owley & Jess Phelps, *The Life and Death of Confederate Monuments*, 68 BUFF. L. REV. 1393 (2020). As we had anticipated, many monuments have been returned to Confederate heritage organizations who asserted continuing ownership of these statues.

regarding the future of the statue must be carefully considered. Removal of a monument may not address root problems if it remains on display and local governments lose control over the monument's message and context.

I. A BRIEF HISTORY OF CONFEDERATE MONUMENTS AND REMOVAL EFFORTS

This Section provides a brief overview of the current state of Confederate monument removals. Although there have been tensions over these monuments throughout our nation's history,²³ public sentiment appears to be shifting in favor of removal. Regrettably, it has taken decades to reach this current momentum²⁴ despite a long history of opposition and resistance to these monuments by many community members.²⁵ In fact, there were really no removals to speak of until the 2015 murders by Dylann Roof.²⁶ Even the recent progress is uneven. For example, in Virginia, after recent legislation allowed local communities to vote to remove local monuments (removing a state law barrier to doing so),²⁷ residents in six rural communities overwhelmingly voted to retain their Confederate statues.²⁸

We need to understand the origin of Confederate monuments to understand the property disputes now taking place. Most Confederate monuments are part of a wider post-Civil War movement to reposition the South's role in the conflict²⁹ and to use

23. See KAREN L. COX, *DIXIE'S DAUGHTERS: THE UNITED DAUGHTERS OF THE CONFEDERACY AND THE PRESERVATION OF CONFEDERATE CULTURE* 61 (John David Smith, ed., 2003).

24. See, e.g., KAREN L. COX, *NO COMMON GROUND: CONFEDERATE MONUMENTS AND THE ONGOING FIGHT FOR RACIAL JUSTICE* 6–7 (2021) (explaining that the monument removal debate is at its most significant inflection point, but that far greater numbers of monuments remain standing).

25. See Blain Roberts & Ethan J. Kytte, *Looking the Thing in the Face: Slavery, Race, and the Commemorative Landscape in Charleston, South Carolina, 1865–2010*, 78 J.S. HIST. 639, 655–58 (2012) (profiling Black opposition to the installation of a monument to John C. Calhoun in Charleston in 1896).

26. Liz Vinson, *Six Years Later: 170 Confederate Monuments Removed Since Charleston Church Massacre*, S. POVERTY L. CTR. (June 17, 2021), <https://www.splcenter.org/news/2021/06/17/six-years-later-170-confederate-monuments-removed-charleston-church-massacre> [<https://perma.cc/B6QN-X38J>].

27. Mikaela Lefrak, *Virginia Grants Cities the Power to Remove Their Confederate Statues*, WAMU (Apr. 12, 2020), <https://wamu.org/story/20/04/12/virginia-grants-cities-the-power-to-remove-their-confederate-statues/> [<https://perma.cc/28TL-8VM7>].

28. Ned Oliver, *In Six Rural Virginia Counties, Residents Vote Overwhelmingly to Keep Confederate Monuments*, VA. MERCURY (Nov. 4, 2020, 12:57 AM), <https://www.virginiamercury.com/blog-va/in-six-rural-virginia-counties-residents-vote-overwhelmingly-to-keep-confederate-monuments/> [<https://perma.cc/BD6B-RXG4>] (profiling these votes, which ranged from fifty-five percent against removal in Charles City County to eighty-seven percent against removal in Tazewell County).

29. See Jocelyn J. Evans & William B. Lees, *Context of a Contested Landscape*, 102 Soc. SCI. Q. 979, 979 (2021). For an overview of these monuments from an artistic perspective (which also explores their mass production), see Sarah Beetham, *Confederate Monuments: Southern Heritage or Southern Art?*, PANORAMA (Spring 2020), <https://journalpanorama.org/article/little-of-artistic-merit/confederate-monuments/> [<https://perma.cc/75NH-D94Y>] (concluding that “it is clear that these works do not represent

the commemorative landscape to anchor this effort.³⁰ There were three general periods of Confederate monument construction.³¹ The earliest monuments were constructed in close proximity to the conflict.³² These monuments were often located in cemeteries or battlefields and generally had a funeral purpose—and were fairly limited in number.³³ Many prominent Confederate leaders, including Robert E. Lee, were reticent about any effort to commemorate the conflict and thought such efforts would be counterproductive and promote continued division.³⁴

During the Jim Crow period,³⁵ attitudes toward commemoration began to change and increasing numbers of Confederate monuments were built.³⁶ These monuments were funded by Confederate heritage organizations and governments (state and local), often in unison.³⁷ Beginning in the 1890s, advocacy groups, such as the United Daughters of the Confederacy (UDC)³⁸ and the Sons of Confederate Veterans

the lived experience of all Southerners, and that there may be other types of work by Southern artists that would better represent the region.”).

30. See Steven Hoelscher, *Making Place, Making Race: Performances of Whiteness in the Jim Crow South*, 93 ANNALS ASS’N AM. GEOGRAPHERS 657, 663 (2003).

31. See, e.g., Ryan Best, *Confederate Statues Were Never Really About Preserving History*, FIVETHIRTYEIGHT (July 8, 2020, 7:00 AM), <https://projects.fivethirtyeight.com/confederate-statues/> [<https://perma.cc/7KUL-KXF7>] (providing a graphical display of Confederate monuments by year of construction).

32. Christopher A. Cooper, Scott H. Huffmon, H. Gibbs Knotts & Seth C. McKee, *Heritage Versus Hate: Assessing Opinions in the Debate over Confederate Memorials*, 102 SOC. SCI. Q. 1098, 1099–100 (2021). Some monuments were also erected during the conflict (typically to commemorate the loss of a particular soldier) and were in battlefield cemeteries. See Michael W. Panhorst, “*The First of Our Hundred Battle Monuments*”: *Civil War Battlefield Monuments Built by Active-Duty Soldiers During the Civil War*, 20 S. CULTURES 22, 22–43 (2014) (profiling these monuments).

33. See Laura Itzkowitz, *What Should Happen to Confederate Statues in the U.S.*, ARCHITECTURAL DIG. (June 24, 2020), <https://www.architecturaldigest.com/story/what-should-happen-to-confederate-statues-in-the-us> [<https://perma.cc/FBY4-L7LM>] (quoting National Trust for Historic Preservation President Paul Edmondson as explaining that “[a]lthough some Confederate monuments were erected after the Civil War for reasons of memorialization, many were erected in subsequent years to serve to promote a Lost Cause mythology and to advance the ideals of white supremacy.”); John J. Winberry, “*Lest We Forget*”: *The Confederate Monument and the Southern Townscape*, 23 SE. GEOGRAPHER 107, 111 (1983).

34. See Lisa Desjardins, *Robert E. Lee Opposed Confederate Monuments*, PBS (Aug. 15, 2017, 1:55 PM), <https://www.pbs.org/newshour/nation/robert-e-lee-opposed-confederate-monuments> [<https://perma.cc/4C7A-GF8Z>].

35. See, e.g., Schragger, *supra* note 6, at 669 (placing these monuments in their historic context); see also JAMES GILL & HOWARD HUNTER, *TEARING DOWN THE LOST CAUSE: THE REMOVAL OF NEW ORLEANS’S CONFEDERATE STATUES* 62–75 (2021) (profiling monument construction in this former Confederate city).

36. See Best, *supra* note 31.

37. See, e.g., Tom Vincent, “*Evidence of Womans Loyalty, Perseverance, and Fidelity*”: *Confederate Soldiers’ Monuments in North Carolina, 1865-1914*, 83 N.C. HIST. REV. 61, 68 (2006).

38. See COX, *supra* note 23; see also Allen G. Breed, “*The Lost Cause*”: *The Women’s Group Fighting for Confederate Monuments*, GUARDIAN (Aug. 10, 2018, 12:17),

(SCV),³⁹ led many, if not most, of these efforts.⁴⁰ The UDC played a more prominent role in monument building, with a proclaimed goal of installing a Confederate statue in every Southern town,⁴¹ which they were fairly successful in achieving.⁴² “Estimates vary, but from 450 to 700 statues, markers, and buildings dot the landscape of the South and other parts of the United States as a result of the group’s efforts.”⁴³ Other organizations advocated for a specific memorial or area, contributing to the proliferation of Confederate monuments during this period.⁴⁴

Beyond merely increasing in number, the motivations of those behind the monuments also began to change.⁴⁵ There was a move to go beyond the funeral monuments that immediately followed in the conflict’s aftermath,⁴⁶ to public praise

<https://www.theguardian.com/us-news/2018/aug/10/united-daughters-of-the-confederacy-statues-lawsuit> [<https://perma.cc/S4RZ-B7UQ>] (explaining the current role of this organization). Notably, in 2020, protestors attempted to set the UDC’s Richmond headquarters on fire. Karen L. Cox, *Setting the Lost Cause on Fire*, PERSPS. ON HIST. (August 6, 2020), <https://www.historians.org/publications-and-directories/perspectives-on-history/summer-2020/setting-the-lost-cause-on-fire-protesters-target-the-united-daughters-of-the-confederacy-headquarters> [<https://perma.cc/9XT7-3N4P>] (exploring this event and the UDC’s reluctance to reflect on its troubled history).

39. See Heidi Beirich, *The Struggle for the Sons of Confederate Veterans: A Return to White Supremacy in the Early Twenty-First Century*, in *NEO CONFEDERACY: A CRITICAL INTRODUCTION* 280, 283 (Euan Hague et al. eds., 2008).

40. Adam Chamberlain & Alixandra B. Yanus, *Monuments as Mobilization? The United Daughters of the Confederacy and the Memorialization of the Lost Cause*, 102 *SOC. SCI. Q.* 125, 125, 127 (2021) (quoting M.B. POPPENEHEIM & J.L. WOODBURY, *THE HISTORY OF THE UNITED DAUGHTERS OF THE CONFEDERACY 1894-1955*, Volume 1, 49 (1856) (“The United Daughters of the Confederacy have been called monument builders, and rightly. . .’ because ‘[t]hey knew monuments would speak more quickly, impressively, and lastingly to the eye than the written or printed word—attract more attention.”)).

41. W. Fitzhugh Brundage, *Woman’s Hand and Heart and Deathless Love*, in *MONUMENTS TO THE LOST CAUSE: WOMEN, ART, AND THE LANDSCAPE OF SOUTHERN MEMORY*, 64, 64-82 (Cynthia Mills & Pamela Simpson eds., 2003).

42. Juliette Woodruff, *The Last of the Southern Belles*, 8 *STUDS. IN POPULAR CULTURE* 63, 64-70 (1985) (profiling the role, aims, and history of the UDC).

43. Caroline E. Janney, *United Daughters of the Confederacy*, *ENCYCLOPEDIA VA.*, <https://encyclopediavirginia.org/entries/united-daughters-of-the-confederacy/> [<https://perma.cc/9H4W-YK32>].

44. See Joy M. Giguere, “Young and Littlefield’s Folly”: *Fundraising, Confederate Memorialization, and the Construction of the Jefferson Davis Monument in Fairview, Kentucky, 1907-1924*, 115 *REG. KY. HIST. SOC’Y* 39, 39 (Winter 2016) (exploring the fundraising efforts behind this monument by the Jefferson Davis Home Association—formed by several Kentucky Confederate veterans).

45. Modupe Labode & Kevin M. Levin, *Reconsideration of Memorials and Monuments*, *HIST. NEWS* 7, 7-8 (2016) (explaining that “[i]n the late 1800s and early 1900s, anyone would have understood the connection between a Confederate statue and the ongoing economic, legal, social, and political subordination of African Americans.”).

46. See ROGER C. HARTLEY, *MONUMENTAL HARM: RECKONING WITH JIM CROW ERA CONFEDERATE MONUMENTS* 53 (2021); see also Irvin D. S. Winsboro, *The Confederate Monument Movement as a Policy Dilemma for Resource Managers of Parks, Cultural Sites, and Protected Places: Florida as a Case Study*, 33 *GEORGE WRIGHT F.* 217 (2016); Joe Heim,

of the Confederate cause.⁴⁷ The monuments are a foundational element of the Lost Cause movement.⁴⁸ Advocates for the Lost Cause argued: (1) that the South was just and heroic in the conflict; (2) that the South did not lose the war because of poor strategy, but was simply overwhelmed by superior Northern numbers and economic power; (3) that slavery was not the cause of the war but instead the conflict was to protect states' rights; and (4) that slavery was not as evil as portrayed.⁴⁹ To most historians, "[t]he Lost Cause is essentially a romantic sentimentality, a rationalization, and a cover-up; it was also revivalistic, seeking to restore a past rather than look toward the future."⁵⁰ The installation and dedication ceremonies for Confederate monuments were important to Confederate heritage organizations and

The Campaign to Erect Confederate Statues—and Preserve Confederate Values, WASH. POST (May 21, 2021, 8:00 AM), https://www.washingtonpost.com/outlook/the-campaign-to-erect-confederate-statues--and-preserve-confederate-values/2021/05/19/69b65b6a-8589-11eb-bfdf-4d36dab83a6d_story.html [<https://perma.cc/9JLK-7LFL>].

47. See Catherine W. Bishir, *Landmarks of Power: Building a Southern Past, 1885-1915*, 1 S. CULTURES 5, 13 (1993).

48. See Christopher A. Graham, *Lost Cause Myth*, 36 PARKS STEWARDSHIP F. 458, 459 (2020) (providing an overview of the Lost Cause); see also NICOLE MAURANTONIO, *CIVIL WAR MYTH AND MEMORY IN THE TWENTY-FIRST CENTURY* (2019) (arguing that neo-Confederates have used this historical repositioning of the Civil War to identify with their ideologies); see also Clint Smith, *Why Confederate Lies Live On*, ATLANTIC (May 10, 2021), <https://www.theatlantic.com/magazine/archive/2021/06/confederate-lost-cause-myth/618711/> [<https://perma.cc/2QHK-BXS2>] (explaining the continuing resonance of the Lost Cause).

49. *The Lost Cause: Definition and Origins*, AM. BATTLEFIELD TR. (Oct. 30, 2020), <https://www.battlefields.org/learn/articles/lost-cause-definition-and-origins> [<https://perma.cc/DYV3-8R8H>]; see also Alan T. Nolan, *The Anatomy of the Myth*, in *THE MYTH OF THE LOST CAUSE AND CIVIL WAR HISTORY*, at 13, 29 (Garry W. Gallagher & Alan T. Nolan eds., 2000). Robert E. Lee became one of the focuses of the Lost Cause movement and statues arose of him even during his lifetime. See *Memorialization of Robert E. Lee and the Lost Cause*, NAT'L PARK SERV. (Sept. 14, 2021), <https://www.nps.gov/arho/learn/historyculture/memorialization-of-robert-e-lee-and-the-lost-cause.htm> [<https://perma.cc/C5Q7-7G4H>].

50. Charles H. Wade, *Georgia's Barnsley Gardens: Preserving a Landscape of the Lost Cause*, 46 HIST. GEOGRAPHY 166, 186 (2018). Other monuments, such as "Loyal Slave" monuments also attempted to recast this history. See Kali Holloway, *'Loyal Slave' Monuments Tell a Racist Lie About American History*, NATION (Mar. 25, 2019), <https://www.thenation.com/article/archive/loyal-slave-confederate-monuments-civil-war-slavery/> [<https://perma.cc/G8N8-VPFC>]; Jeremy Miller, *Do Confederate Monuments Belong in National Parks?*, SIERRA (Sept. 24, 2017), <https://www.sierraclub.org/sierra/do-confederate-monuments-belong-national-parks> [<https://perma.cc/4JAX-HKP9>] (profiling a statue of a free Black resident of Harper's Ferry who was killed during John Brown's Raid on the federal arsenal (one of the events that precipitated the conflict) and corresponding plaque which is "a ham-fisted attempt to sell the idea that [B]lacks had a pretty good deal in the pre-Civil War South"). Another example of this reconstituted history are arguments that a substantial number of Black soldiers fought willingly for the Confederacy during the conflict. Recent scholarship has examined and rejected these revisionist claims. See KEVIN M. LEVIN, *SEARCHING FOR BLACK CONFEDERATES: THE CIVIL WAR'S MOST PERSISTENT MYTH* (Peter S. Carmichael et al. eds., 2019).

were often huge events—with an estimated 200,000 attending the dedication of a monument to Jefferson Davis in 1907 on Richmond’s Monument Avenue.⁵¹

Some additional monument building occurred during the 1960s.⁵² The Southern Poverty Law Center ties this activity to the “civil rights movement[, which] led to a backlash among segregationists.”⁵³ “These were not random acts of memorialization during a period of historical and patriotic fervor, but were instead part of a concerted effort to reinforce a white supremacist worldview in mainstream society.”⁵⁴ Monuments have continued to go up, even in recent years.⁵⁵ Sometimes these monuments are entirely new; but often these “new” monuments are previously public monuments moving to new homes on private land.

Black activists have long opposed the erection of these monuments,⁵⁶ which have always been divisive and controversial.⁵⁷ Efforts to remove these troubled statues were largely unsuccessful⁵⁸ until 2015.⁵⁹ That year, Dylann Roof walked into the

51. Charles Reagan Wilson, *The Religion of the Lost Cause: Ritual and Organization of the Southern Civil Religion, 1865-1920*, 46 J.S. HIST., May 1980, at 219, 227–28.

52. See, e.g., Jill Oglie Titus, *Fighting Civil Rights and the Cold War: Confederate Monuments at Gettysburg*, 71 HIST. NEWS, 12, 13–15 (2016) (exploring the origins of the 1960s South Carolina monument at Gettysburg and the messaging related to it).

53. BOOTH GUNTER & JAMIE KIZZIRE, S. POVERTY L. CTR., WHOSE HERITAGE?: PUBLIC SYMBOLS OF THE CONFEDERACY 9 (2019).

54. Richard Schragger & C. Alex Retzloff, *Confederate Monuments and Punitive Preemption: The Latest Assault on Local Democracy*, VA. PUB. L. & LEGAL THEORY RSCH. PAPER, No. 2019-54, Oct. 2019, at 2, 4, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3462746 [<https://perma.cc/QTW5-YAJ2>].

55. See, e.g., Jonathan I. Leib, *A Tale of Two Civil War Statues: Teaching the Geographies of Memory and Heritage in Norfolk, Virginia*, 52 SE. GEOGRAPHER 398, 402–07 (2012) (profiling the 2007 installation of a statue in a historic Norfolk cemetery in close proximity to one of the only monuments to Black soldiers in the South (which had been erected over a century earlier)).

56. Karen L. Cox, *Black Protestors Have Been Rallying Against Confederate Statues for Generations*, SMITHSONIAN MAG. (Apr. 12, 2021), <https://www.smithsonianmag.com/history/black-protestors-have-been-rallying-against-confederate-statues-generations-180977484/> [<https://perma.cc/PQ5D-T6MK>] (profiling the history of Black opposition to the erection of Confederate monuments).

57. See AM. CIV. WAR MUSEUM, *Monument Avenue: Why Now? A Historian Roundtable* (May 16, 2018), <https://acwm.org/blog/why-now-historian-roundtable/> [<https://perma.cc/BW5A-9PAB>] (exploring the history of Black opposition to these statues); see also David W. Blight, “*For Something Beyond the Battlefield*”: Frederick Douglass and the Struggle for the Memory of the Civil War, 75 J. AM. HIST. 1156, 1165–67 (1989) (exploring Douglas’s concerns, as early as the 1870s, regarding the Lost Cause and Southern attempts to recast the conflict).

58. See, e.g., Caroline Janney, *Why We Need Confederate Monuments*, WASH. POST (July 27, 2017, 6:00 AM), <https://www.washingtonpost.com/news/made-by-history/wp/2017/07/27/why-we-need-confederate-monuments/> [<https://perma.cc/UVC2-XKU4>] (explaining this history while arguing for the retention of monuments for their value in communicating views of the past).

59. See Anthony Michael Kreis, *The New Redeemers*, 55 GA. L. REV. 1483, 1501–03 (2021); see also Chamberlain & Yanus, *supra* note 40, at 125.

historic Emanuel African Methodist Episcopal church in Charleston, South Carolina, and murdered nine congregants.⁶⁰ Roof's social media noted that he drew inspiration from these monuments of the past.⁶¹ This horrific event focused the attention of advocates on monument removal and led to some early successes.⁶²

Then, in 2017, far right extremist and white nationalist groups rallied in Charlottesville (the Unite the Right rally)⁶³ against efforts to remove a statue of Robert E. Lee.⁶⁴ This rally, and the murder of Heather Hyer by a white nationalist who drove into a crowd of counterprotesters,⁶⁵ further fueled monument removal efforts.⁶⁶ In 2019, George Floyd's murder by Minneapolis police created unprecedented attention to these efforts.⁶⁷ This triggered the largest wave of monument removal—resulting in ninety-four removals in 2020.⁶⁸

Over 200 monuments have been removed since 2015.⁶⁹ The removed monuments range from prominent statues of high artistic merit by renowned artists to the more typical mass-produced statue of a solitary soldier, which were placed on hundreds of

60. David A. Graham, *The Stubborn Persistence of Confederate Monuments*, ATLANTIC (Apr. 26, 2016), <https://www.theatlantic.com/politics/archive/2016/04/the-stubborn-persistence-of-confederate-monuments/479751/> [<https://perma.cc/43YY-W87Y>] (exploring the Roof murders in context of the Confederate monument removal effort).

61. Neely Tucker & Peter Holley, *Dylann Roof's Eerie Tour of American Slavery at its Beginning, Middle and End*, WASH. POST (July 1, 2015, 1:02 PM), <https://www.washingtonpost.com/news/post-nation/wp/2015/07/01/dylann-roofs-erie-tour-of-american-slavery-at-its-beginning-middle-and-end/> [<https://perma.cc/HU3F-K3RV>].

62. See GUNTER & KIZZIRE, *supra* note 53.

63. Sarah E. Gardner, *What We Talk About When We Talk About Confederate Monuments*, ORIGINS (Nov. 2017), <https://origins.osu.edu/article/what-we-talk-about-when-we-talk-about-confederate-monuments> [<https://perma.cc/F7KZ-UKZM>].

64. Andrew Valls, *What Should Become of Confederate Monuments? A Normative Framework*, 33 PUB. AFFS. Q. 177, 177 (2019) (explaining the influence of Charlottesville on these efforts).

65. Richard C. Schragger, *When White Supremacists Invade a City*, 104 VA. L. REV. ONLINE 58, 62 (2018).

66. See, e.g., Alexander Tsesis, *Confederate Monuments as Badges of Slavery*, 108 KY. L.J. 695, 699–705 (2020) (providing overview of the Unite the Right Rally, its cause, and aftermath).

67. See Thomas J. Brown, *Iconoclasm and the Monumental Presence of the Civil War*, 11 J. CIV. WAR ERA 145, 145–56 (2021) (exploring the acceleration of monument removal in response to this murder—with at least eighty-five monuments being removed in the six months that followed). Events prior to 2015 could have led to public support for Confederate monument removal but did not do so. It is interesting to consider why these specific events galvanized public support at this specific time in our history. See Tiffany C. Fryer, La Vaughn Belle, Nicholas Galanin, Dell Upton, & Tsione Wolde-Michael, *As the Statues Fall: An (Abridged) Conversation About Monuments and the Power of Memory*, 62 CURRENT ANTHROPOLOGY 373 (2021); see also MAROUF A. HASIAN, JR. & NICHOLAS S. PALIEWICZ, MEMORY AND MONUMENT WARS IN AMERICAN CITIES: NEW YORK, CHARLOTTESVILLE AND MONTGOMERY 1–5 (2020).

68. Treisman, *supra* note 2 (noting that 168 symbols and ninety-four monuments were removed during 2020).

69. See Vinson, *supra* note 26.

courthouses and public squares across the South.⁷⁰ Communities have taken differing approaches in addressing these monuments.⁷¹ The majority of communities have still not taken action regarding their Confederate monuments.⁷² Others have decided to retain the monuments,⁷³ and some of those have tried to add context (through signage or adding additional monuments to tell a more diverse history of the area or region).⁷⁴ This Article examines Confederate monuments that have been removed from their historic locations. Removal and the decision of what to do with the monuments involve complicated issues of control and ownership that help to illustrate the private/public interests embedded in these statues.

II. THE DESTINATIONS/FATES OF REMOVED MONUMENTS

Once a community has made the decision to remove a monument, the issue becomes what to do with it.⁷⁵ This Section details issues that arise with disposition decisions, emphasizing how state laws and private agreements often dictate the fate

70. Lola Arellano-Fryer, *The North's Role in Supplying the South with Confederate Monuments*, HYPERALLERGIC (June 15, 2017), <https://hyperallergic.com/384776/the-norths-role-in-supplying-the-south-with-confederate-monuments/> [<https://perma.cc/9GWH-T8YY>]. Beyond removal of statues devoted to the Confederacy, other monuments that been targeted for removal—including a Washington, D.C. Monument to Lincoln and Emancipation which features a problematic design and kneeling slave. See J. Peter Byrne, *The Freedmen's Memorial to Lincoln: A Postscript to Stone Monuments and Flexible Laws: A Postscript to Stone Monuments and Flexible Laws* (Aug. 2020) (unpublished manuscript) (on file with the Georgetown University Law Center), <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=3322&context=facpub> [<https://perma.cc/W5T5-F262>].

71. See Christina Simko, David Cunningham & Nicole Fox, *Contesting Commemorative Landscapes: Confederate Monuments and Trajectories of Change*, 69 SOC. PROBS 591 (2022) (profiling examples of how communities have addressed some of these monuments).

72. See, e.g., Alexandra Kelley, *Mississippi County Votes to Keep Confederate Monument*, HILL (July 7, 2020), <https://thehill.com/changing-america/respect/diversity-inclusion/506165-mississippi-county-votes-to-keep-confederate> [<https://perma.cc/9VUS-RVGE>].

73. John Burnett & Piper McDaniel, *Confederate Statues Come Down Around the U.S., but Not Everywhere*, NPR (Oct. 6, 2020, 5:00 AM), <https://www.npr.org/2020/10/06/919193176/confederate-statues-come-down-around-u-s-but-not-everywhere> [<https://perma.cc/QX4L-BAHM>] (providing a list of votes to retain monuments by community).

74. See, e.g., Avery Anapol, *NC Panel Votes to Keep Confederate Monuments, Add Context About Slavery*, HILL (Aug. 22, 2018, 12:41 PM), <https://thehill.com/homenews/state-watch/403035-north-carolina-committee-votes-to-keep-confederate-monuments-add-context> [<https://perma.cc/6T7B-Z4DJ>] (profiling state commissions' 10–1 vote to retain Confederate monuments at the state's capitol, while adding context).

75. Public opinion ranges widely on what to do with removed monuments. See Ned Oliver, *With Confederates Vanquished, What's Next for Richmond's Monument Avenue?*, VA. MERCURY (Sept. 8, 2021, 2:31 PM), <https://www.virginiamercury.com/2021/09/08/with-confederates-vanquished-whats-next-for-richmonds-monument-avenue/> [<https://perma.cc/57LB-F5YR>] (profiling proposals for the monuments removed from Richmond's Monument Avenue).

of removed monuments. To understand what communities have done with removed monuments, we describe what factors influence a community's decision regarding destinations and provide several examples of where monuments have ended up.

A. Factors Influencing Relocation Decisions

A few overarching factors shape relocation decisions. First, property law principles can influence processes once communities realize a statute's ownership is not clear or discover that there are potential restrictions against removal in its deed. Second, state legislatures have passed laws to block local communities' ability to remove Confederate statues without state approval. Alongside these legal questions, more practical questions also emerge related to local and state politics and the physical structure of the monuments in question.

1. Common Law Questions

Property law often plays a surprising role in post-removal decisions and influences relocation options. While public ownership of Confederate monuments is often assumed, many involve private property interests. For example, a monument in a public park may have been paid for by a Confederate heritage organization a century ago—and that organization (or its claimed successor)⁷⁶ may now claim ownership of the monument and seek its return.⁷⁷ In many instances, given the age of the monuments, the circumstances upon which they were installed are, at best, unclear.⁷⁸ For example, when viewing a monument in front of a county courthouse or in the middle of a town square, people assume the monument to be public. Yet investigations into some monuments reveal that these statues were never actually conveyed to the local governments.⁷⁹ Many, if not most, Confederate monuments were funded, in whole or in part, by Confederate heritage organizations.⁸⁰ Local

76. James Mayse, *County Denies Group Owns Confederate Statue in Response to Lawsuit*, MESSANGER-INQUIRER (May 13, 2021), https://www.messenger-inquirer.com/news/county-denies-group-owns-confederate-statue-in-response-to-lawsuit/article_4a464805-fbc5-50dc-837d-3b828cc2f23a.html [https://perma.cc/CMR9-RAMA].

77. See, e.g., Renss Greene, *Daughters of the Confederacy to Reclaim Courthouse Statue*, LOUDOUN NOW (June 30, 2020), <https://loudounnow.com/2020/06/30/daughters-of-the-confederacy-to-reclaim-courthouse-statue/> [https://perma.cc/Y6LD-HJ3S] (exploring the return of a courthouse monument to the UDC).

78. Gwen Barlow, *Who Owns the Confederate Monument in Winston-Salem?*, 98 N.C.L. REV. ADDENDUM 1467, 1468 (2019).

79. Erika Williams, *Confederate Statue Removed from NC Courthouse Grounds*, COURTHOUSE NEWS SERV. (Mar. 12, 2019), <https://www.courthousenews.com/confederate-statue-removed-from-nc-courthouse-grounds> [https://perma.cc/Z893-47KJ].

80. See, e.g., *Monocacy National Battlefield, United Daughters of the Confederacy Monument*, NAT'L PARK SERV. (Oct. 23, 2020), <https://www.nps.gov/mono/learn/historyculture/confederate-monument.htm> [https://perma.cc/DRQ7-JSPD].

communities may simply have given these heritage organizations permission to display the monument without accepting title to the statue.⁸¹

Beyond ownership questions, these organizations sometimes conveyed monuments with reversionary interests or with restrictive covenants requiring public display.⁸² Richmond's Lee monument was conveyed to the state of Virginia with a restrictive covenant requiring that the state keep this monument "perpetually sacred."⁸³ The state successfully argued that these restrictive covenants violated public policy, and Richmond was able to remove the Lee Monument in September 2021.⁸⁴ To add one more layer, in some instances, the organization that gifted the monument no longer exists, but a contemporary Confederate heritage organization claims to be its successor. In Dallas, the local Sons of Confederate Veterans attempted to quiet title to the City's Confederate Cemetery, which the Sterling Price Camp of the United Confederate Veterans conveyed to the city in 1936.⁸⁵ This UCV subchapter became inactive nearly a century ago, and the SCV chapter had formed in 2001, which led the court to summarily reject this claim.⁸⁶

Given the age of most of these monuments, the often-complicated ownership history may counterintuitively result in local governments having to challenge these Confederate heritage organizations to establish title to statues they do not want to display so that they can control the monument's future.⁸⁷ Dealing with ownership

81. See, e.g., Greene, *supra* note 77.

82. Sarah Vogelsong, *They May Sit on Public Land. But Not All Confederate Monuments Are Publicly Owned*, VA. MERCURY (July 2, 2020, 12:03 AM), <https://www.virginiamercury.com/2020/07/02/they-may-sit-on-public-land-and-be-governed-by-state-laws-but-not-all-confederate-monuments-are-publicly-owned/> [https://perma.cc/5G4E-8GTD]; see also WSFA 12 News Staff & Brady Tolbert, *Lawsuit Filed Over Ownership of Tuskegee Town Square*, WSFA12NEWS (Sept. 9, 2021, 2:22 PM), <https://www.wsfa.com/2021/09/09/commissioners-address-status-tuskegee-confederate-statue-3-pm/> [https://perma.cc/GG9Q-SHEL] (examining ownership dispute between town and UDC over ownership of the town square).

83. See, e.g., Anna Tait, *Latest Legal Hurdle to Removing Confederate Statues in Virginia: The Wishes of Their Long-Dead White Donors*, CONVERSATION (June 19, 2020, 10:18 AM), <https://theconversation.com/latest-legal-hurdle-to-removing-confederate-statues-in-virginia-the-wishes-of-their-long-dead-white-donors-141156> [https://perma.cc/86UA-7HHY] (profiling these restrictions generally).

84. Frank Green, *Rehearing Sought in Virginia Supreme Court in Lee Monument Removal Case; Gov.'s Office: 'This Truly is a Lost Cause'*, RICHMOND TIMES-DISPATCH (Sept. 29, 2021), https://richmond.com/news/local/rehearing-sought-from-virginia-supreme-court-in-lee-monument-removal-case-gov-s-office-this/article_f738824e-db52-51c2-827d-7c1de102c5b3.html [https://perma.cc/4L4G-NQL2]; AP, *Virginia Supreme Court Rules the State Can Remove Statue of Robert E. Lee*, NPR (Sept. 2, 2021, 10:57 AM), <https://www.npr.org/2021/09/02/1033595859/virginia-supreme-court-remove-statue-robert-e-lee-confederate-richmond> [https://perma.cc/XWQ9-E58W].

85. *Patterson v. Rawlings*, 287 F. Supp. 3d 632 (N.D. Tex., 2018).

86. *Id.*

87. See, e.g., Joseph Guzman, *United Daughters of the Confederacy Sues to Stop Removal of Monument*, HILL (Apr. 22, 2021), <https://thehill.com/changing-america/respect/549698-united-daughters-of-the-confederacy-sues-to-stop-removal-of-monument> [https://perma.cc/N6S2-368U] (exploring the UDC ownership claims related to a disputed Kentucky monument).

questions and claims, as profiled more thoroughly below, can strongly influence a monument's future location, as a community may deem it necessary or expedient to transfer the monument to end a dispute, which may have long-term consequences.

2. State Statue Statutes

Another factor influencing monument relocations is whether the state in which the Confederate monument is located has a state law that restricts the removal of a monument by a local community without receiving state approval.⁸⁸ The majority of these laws are relatively recent in origin and have been enacted in southern states to specifically address Confederate monument removal.⁸⁹ These monument laws only apply to public monuments located on public property.⁹⁰ The goal of these state statute statutes is to prevent removal, but they may allow removal with state approval⁹¹ or may place strong limitations on where a monument can ultimately be relocated.⁹² In some cases, these laws may even lead a community to agree that they do not own a monument in order to avoid having it deemed public property, and subject to restrictions against removal under these statutes.⁹³

To date, eight states have enacted state statute statutes; all are southern states—Kentucky, Tennessee, Virginia, Georgia, North Carolina, South Carolina, Alabama, and Mississippi.⁹⁴ Zachary Bray has documented the hurdles these laws present as well as their limitations in preventing monument removal.⁹⁵ These laws do, however, impact removals and, more specifically, the locations where a Confederate monument can go once it has been removed. For example, under Virginia's Act, a community has to first offer the statue to museums, historical societies, governments, or military battlefields—but retains discretion to make the final determination on

88. Zachary Bray, *We Are All Growing Old Together: Making Sense of America's Monument-Protection Laws*, 61 WM. & MARY L. REV. 1259 (2020) [hereinafter Bray, *We Are All Growing Old Together*].

89. See, e.g., Debbie Elliot, *Confederate Monuments Are Removed as Americans Consider How to Remember the Past*, NPR, (Dec. 30, 2021, 5:07 AM), <https://www.npr.org/2021/12/30/1069027408/confederate-monuments-are-removed-as-americans-consider-how-to-remember-the-past> [<https://perma.cc/MD35-FX3W>] (discussing Alabama's legislation and its impacts).

90. Aneil Kovvali, *Confederate Statue Removal*, 70 STAN. L. REV. ONLINE 82, 82–83 (2017).

91. But state approval is often not easily obtained. See, e.g., Michael Hardy, *A Texas Agency Is Defending the Confederacy*, TEX. OBSERVER (Mar. 10, 2021, 8:00 AM), <https://www.texasobserver.org/a-texas-agency-is-defending-the-confederacy/> [<https://perma.cc/LD5J-AFDD>].

92. Bray, *Monument of Folly*, *supra* note 18 (profiling statute statutes in greater depth).

93. See, e.g., Vogelsong, *supra* note 82, <https://www.virginiamercury.com/2020/07/02/they-may-sit-on-public-land-and-be-governed-by-state-laws-but-not-all-confederate-monuments-are-publicly-owned> [<https://perma.cc/D78A-V62U>] (summarizing the public/private property interests involved in these monuments).

94. Bray, *Monument of Folly*, *supra* note 18, at 40 (discussing South Carolina's law, one of the more restrictive of these statutes).

95. Bray, *We Are All Growing Old Together*, *supra* note 88, at 1291.

where it should go.⁹⁶ Under North Carolina's law, the Cultural History Artifact Management and Patriotism Act of 2015, a monument can only be relocated to "a site of similar prominence, honor, visibility, availability, and access that [is] within the boundaries of the jurisdiction from which [the monument] was relocated."⁹⁷ Additionally, North Carolina prohibits relocation to museums or cemeteries unless the statues were originally located in a museum or cemetery.⁹⁸ Reviewing the requirements of state statue statutes is then critical for understanding monument relocation.⁹⁹

B. Destroyed Monuments

One option for a removed Confederate monument is to dismantle, melt down, or otherwise destroy the monument. Sometimes the decision is taken out of the hands of public officials because the monument is damaged in the removal process. This has happened when monuments have been taken down by protestors.¹⁰⁰ One prominent example of this is the 2020 destruction of Washington DC's sole monument to a Confederate general, the Albert Pike Memorial.¹⁰¹ Protestors toppled the monument and set it on fire, which led the National Park Service to remove what was left of the damaged monument (although its pedestal remains).¹⁰² Another dramatic destruction occurred when protestors beheaded the statue of an unknown Confederate soldier in Mount Olivet Cemetery in Frederick, Maryland.¹⁰³ In

96. Act of Apr. 10, 2020, ch. 1100, sec. 183, § 15.2-1812(A)-(B), 2020 Va. Acts. (effective July 1, 2020).

97. N.C. GEN. STAT. ANN. § 100-2.1(b) (2015).

98. Bray, *Monument of Folly*, *supra* note 18, at 37.

99. Despite the barriers that these laws present, several cities have been able to navigate these laws or find ways to remove monuments in the face of state-level opposition. For example, in Alabama, the state law's penalties were interpreted to be a onetime penalty of \$25,000, which communities elected to simply pay. See *Bill Would Raise Penalties for Removing Historic Monuments in Alabama*, ADVANCE LOCAL (Feb. 8, 2022, 6:09 PM), <https://www.al.com/news/2022/02/bill-would-raise-penalties-for-removing-historical-monuments-in-alabama.html> [<https://perma.cc/28KC-58MU>] (profiling this penalty and state proposals to change the law to raise the penalty to a \$5000 a day to block this workaround).

100. Olga R. Rodriguez & Jeffrey Collins, *Statues Toppled Throughout US in Protests Against Racism*, AP NEWS, (June 20, 2020), <https://apnews.com/article/violence-us-news-ap-top-news-north-carolina-police-9a01ee49102df70f10ce54ae04a46fa6> [<https://perma.cc/MA76-7M6R>]. While protestors removing monuments often makes the news, it does not happen frequently. ERIN L. THOMPSON, SMASHING STATUES: THE RISE AND FALL OF AMERICA'S PUBLIC MONUMENTS 101 (2022) ("Protesters pulled down only around a dozen Confederate monuments and twenty monuments to other controversial historical figures like Columbus.").

101. Rachel Sadon & Christian Zapata, *Protestors Topple, Burn Statue of Confederate General Albert Pike in Judiciary Square*, DCIST, (June 20, 2020, 2:16 AM), <https://dcist.com/story/20/06/20/protesters-confederate-general-statue-albert-pike-in-dc/> [<https://perma.cc/E3ET-PGWY>].

102. DC Preservation League, *Albert Pike Memorial (1901–1920)*, DC HISTORIC SITES, <https://historicsites.dcpreservation.org/items/show/476> [<https://perma.cc/L9AP-DTSS>].

103. Ryan Marshall, *Confederate Statue at Mount Olivet Cemetery Damaged Overnight*,

Durham, North Carolina, a Confederate monument surprised protestors when it tumbled at the crowd's first tug of a rope and crumpled upon landing.¹⁰⁴ More recently, some communities have decided through public processes to destroy their monuments as part of their effort to address the monuments' troubled legacies.

1. Asheville, North Carolina: Vance Monument

From 1898 to 2021, a seventy-five-foot-tall Confederate monument stood in downtown Asheville, North Carolina. The monument honored Zebulon Vance, a slaveholder and Confederate soldier who later served as the state's governor and a U.S. senator.¹⁰⁵ According to at least one historian, Vance "fought bitterly against civil rights for Black Americans."¹⁰⁶ Originally the monument only had the name Vance inscribed on each side, but the UDC added a bronze plaque in the 1930s noting his Confederate and legislative service.¹⁰⁷ The granite obelisk had been restored as

FREDERICK NEWS-POST (June 30, 2020), https://www.fredericknewspost.com/news/crime_and_justice/confederate-statue-at-mount-olivet-cemetery-damaged-overnight/article_a8a7754c-a551-5472-84f7-f05fa9c5fb3e.html [<https://perma.cc/7NCL-8EVZ>] (describing parts of the monuments as "shattered" and stating that local officials do not plan to repair the beheaded monument or others that were damaged nearby).

104. Maggie Astor, *Protesters in Durham Topple a Confederate Monument*, N.Y. TIMES (Aug. 14, 2017), <https://www.nytimes.com/2017/08/14/us/protesters-in-durham-topple-a-confederate-monument.html> [<https://perma.cc/EEN8-6LN5>] (showing a video of the protestors pulling down the monument with little difficulty). See also *Toppling the Downtown Confederate Monument, 2017*, DURHAM CIV. RTS. PROJECT https://www.durhamcountylibrary.org/exhibits/dcrhp/events/toppling_of_the_downtown_confederate_monument_2017/ [<https://perma.cc/US3J-6HK4>] (Sept. 18, 2020) (describing the origin and background of the toppled monument).

105. See *Zebulon Vance Statue*, ARCHITECT OF THE CAPITOL, <https://www.aoc.gov/explore-capitol-campus/art/zebulon-vance> [<https://perma.cc/4UME-T4D2>]. A statue of Vance is one of North Carolina's two statues in the National Statutory Hall. See *The Art Collection*, ARCHITECT OF THE CAPITOL, <https://www.aoc.gov/explore-capitol-campus/art> [<https://perma.cc/RX5A-KQJ7>] (filter results for "Sculpture" and "North Carolina").

106. Matt Bush, *Demolition of Vance Monument Begins in Asheville, Will Take Roughly Two Weeks*, BLUE RIDGE PUB. RADIO (May 17, 2021, 4:23 PM), <https://www.bpr.org/post/demolition-vance-monument-begins-asheville-will-take-roughly-two-weeks#stream/0> [<https://perma.cc/LGK9-CR9R>]. Statues of Vance remain in the North Carolina and U.S. capitols. See also Matt Bush, *Asheville City Council Approves Removal of Vance Monument*, BLUE RIDGE PUB. RADIO, (Mar. 23, 2021, 7:41 PM) <https://www.bpr.org/post/asheville-city-council-approves-removal-vance-monument#stream/0> [<https://perma.cc/8ZSM-KLP7>].

107. Polly McDaniel, *Asheville City Council Approves Vance Monument Removal, Visioning Process for Future of the Site*, THE CITY OF ASHEVILLE (Mar. 23, 2021), <https://www.ashevillenc.gov/news/asheville-city-council-approves-vance-monument-removal-visioning-process-for-future-of-the-site/> [<https://perma.cc/967T-RFE6>].

recently as 2015.¹⁰⁸ Asheville's town square was also a site where slave auctions occurred.¹⁰⁹

In 2020, the city of Asheville and Buncombe County passed a joint resolution agreeing to cover the monument until a decision could be made on its future by a jointly appointed task force.¹¹⁰ The Vance Monument Task Force¹¹¹ considered three options: (1) reinterpretation,¹¹² (2) relocation, and (3) destruction/demolition.¹¹³ The task force ultimately recommended demolition to "make way for a new, inclusive, and uplifting piece of public art," noting that "[i]f the monument is left in its original form rather than completely removed or its materials not altered beyond recognition, it will continue to serve as a symbol of white supremacy."¹¹⁴ In December 2020, the city council accepted this recommendation by a 6–1 vote.¹¹⁵ The county commission had previously accepted the recommendation unanimously.¹¹⁶

In May 2021, demolition began.¹¹⁷ Estimates for the process ranged from \$114,000 to \$495,000, exceeding estimates for repurposing the monument.¹¹⁸ In

108. *Zebulon Vance Monument, Asheville*, COMMEMORATIVE LANDSCAPES, <https://docsouth.unc.edu/comm/land/monument/205/> [<https://perma.cc/T2NJ-RKVF>].

109. Matt Bush, *The Future of the Vance Monument Pt. 1—A Closer Look at Zebulon Vance's Political Career*, BLUE RIDGE PUB. RADIO (Aug. 8, 2017, 3:45 PM), <https://www.bpr.org/news/2017-08-08/the-future-of-the-vance-monument-pt-1-a-closer-look-at-zebulon-vances-political-career> [<https://perma.cc/5P23-J4V6>].

110. Helen Chickering, *Asheville's Vance Monument Will Soon Be Hidden from Sight*, BLUE RIDGE PUB. RADIO (July 8, 2020, 6:52 PM), <https://www.bpr.org/post/ashevilles-vance-monument-will-soon-be-hidden-sight#stream/0> [<https://perma.cc/6DSP-DGZV>]; Matt Bush, *Vance Monument Fully Shrouded, Lee Marker Removed*, BLUE RIDGE PUB. RADIO (July 10, 2020, 3:34 PM), <https://www.bpr.org/post/vance-monument-fully-shrouded-lee-marker-removed#stream/0> [<https://perma.cc/UB3S-7N2X>].

111. *Vance Monument Task Force*, CITY OF ASHEVILLE (Dec. 17, 2021), <https://www.ashevilenc.gov/department/equity-inclusion/vance-monument-task-force/> [<https://perma.cc/W95H-P4HB>].

112. The Task Force's discussion about repurposing the Vance Monument was particularly interesting. The Task Force rededicated the monument as a monument to Black contributions to Asheville before electing to demolish the monument outright (removing the references to Vance and the Confederacy from the obelisk). Vance Monument Task Force, Joint Taskforce Final Recommendation, FINAL REP., (Feb. 2021) (on file with authors).

113. *Id.*

114. *Id.* at 26.

115. Matt Bush, *Asheville City Council Accepts Recommendation to Remove Vance Monument, but Questions Remain*, BLUE RIDGE PUB. RADIO (Dec. 8, 2020, 10:46 PM), <https://www.bpr.org/post/asheville-city-council-accepts-recommendation-remove-vance-monument-questions-remain#stream/0> [<https://perma.cc/JM4G-Y9BD>]. In March 2021, Asheville approved the removal (after previously accepting the Task Force recommendation). See McDaniel, *supra* note 107.

116. See Bush, *supra* note 115.

117. Clarissa Donnelly-DeRoven, *Work Pauses Temporarily on Vance Monument Demolition as Crew Hit 'Complications'*, ASHEVILLE CITIZEN TIMES (May 19, 2021, 8:08 PM), <https://www.citizen-times.com/story/news/2021/05/19/work-pauses-asheville-vance-monument-demolition-engineering-complications/5171848001/> [<https://perma.cc/URV5-7M5D>].

118. Matt Bush, *Asheville City Council Votes Tuesday on Whether to Remove Vance*

addition to the removal costs, \$50,000 to \$70,000 in additional expenses was anticipated for revisioning the future use of the site post-removal.¹¹⁹ Shortly after removal work commenced, a Confederate heritage organization, the Society for the Historical Preservation of the 26th North Carolina Troops, obtained an order halting this destruction.¹²⁰ At the time of the order, the monument had almost entirely been disassembled, and the city agreed to stop work and retain the monument's materials pending resolution of the litigation.¹²¹ The Society argued that it had a 2015 agreement with the city to restore the monument and that they had given the city \$138,000 to do so.¹²² Because there was an agreement to restore the monument, the organization argued, the city breached its contract by removing (and planning to destroy) the monument. However, because the restoration work had been completed, the court dismissed the suit, and the Court of Appeals affirmed.¹²³ The court also held that the plaintiffs lacked standing to bring any other claims seeking to delay removal.¹²⁴

Both the city and county voted to destroy the Vance Monument, a move few other communities have elected to do thus far.¹²⁵ Reluctance to destroy a monument is understandable. First, destroying a monument outright feels to some as if history is

Monument, BLUE RIDGE PUB. RADIO (Mar. 22, 2021, 1:50 PM), <https://www.bpr.org/post/ashville-city-council-votes-tuesday-whether-remove-vance-monument#stream/0> [https://perma.cc/JEA2-G75U].

119. CITY OF ASHEVILLE, STAFF REPORT: PRESENTATION OF INFORMATION ON VANCE MONUMENT IN RESPONSE TO COUNCIL REQUEST 1 (2021) (on file with authors).

120. Derek Lacey, *Vance Monument: With Work Halted, Removal Could Stall for Months*, ASHEVILLE CITIZEN TIMES (June 8, 2021, 1:53 PM), <https://www.citizen-times.com/story/news/2021/06/08/nc-ashville-vance-monument-removal-work-stopped-could-stall-months/7584023002/> [https://perma.cc/46VF-T8UP].

121. *Id.* In April 2022, the North Carolina Court of Appeals dismissed the challenge to the removal. The monument's final removal is still subject to a stay pending a determination on whether the state supreme court will hear the case. See Sarah Honosky, *NC Supreme Court Issues Vance Monument Stay Order; City Responds to Request for Appeal*, ASHEVILLE CITIZEN TIMES (May 4, 2022, 5:03 AM), <https://www.citizen-times.com/story/news/local/2022/05/04/vance-monument-n-c-supreme-court-filings-continue-city-responds/9620691002/> [https://perma.cc/6WP5-JLT2].

122. Associated Press & Zyneria Byrd, *N.C. Court Upholds Asheville's Removal of Vance Obelisk*, SPECTRUM NEWS 1 (Apr. 6, 2022, 7:49 AM), <https://spectrumlocalnews.com/nc/charlotte/news/2022/04/06/nc-court-upholds-ashville-s-removal-of-vance-obelisk#:~:text=Zebulon%20Vance%20in%20Asheville.,demolition%20while%20appeals%20were%20heard> [https://perma.cc/9XHS-VVYQ].

123. *Id.*

124. Soc'y for the Hist. Preservation of the Twenty-Sixth N.C. Troops v. City of Asheville, No. 21 CVS 1182 (Buncombe Cnty. Sup. Ct. Apr. 30, 2021) (order dismissing complaint) (PDF available at <https://wlos.com/news/local/judge-dismisses-lawsuit-seeking-to-block-removal-of-vance-monument> [https://perma.cc/XEL8-ZM98]).

125. Simone Jasper, *Confederate Monument Honoring Former North Carolina Governor Will Be Destroyed*, CHARLOTTE OBSERVER (Mar. 25, 2021, 2:54 PM), <https://www.charlotteobserver.com/news/state/north-carolina/article250165860.html> [https://perma.cc/MK6F-4S72].

being erased,¹²⁶ even if that version of history is flawed (or, relatedly, it could be viewed as being important for documenting the views of that time period).¹²⁷ Second, these monuments often have supporters who are strongly opposed to removal from their public locations, which makes outright destruction more controversial. Third, destruction is not reversible, making it more likely for opposition groups to obtain injunctive relief blocking the removal effort.¹²⁸ As a result, many local governments choose relocation as a political compromise.¹²⁹

For the Vance Monument, the physical features of the monument may also have played a role in its fate. The Vance Monument was a simple obelisk made of granite block.¹³⁰ It is likely easier to find support to destroy this type of monument compared to a sculpture with artistic merit.¹³¹ Some other monuments, such as Georgia's Stone Mountain (a 90-foot by 190-foot bas-relief carved into the side of a mountain),¹³²

126. Austin Huguelet, *Hawley Opposes Renaming Army Bases Honoring Confederate Generals*, SPRINGFIELD NEWS (June 12, 2020, 11:00 AM), <https://www.news-leader.com/story/news/2020/06/11/missouri-senator-hawley-opposes-renaming-confederate-named-military-bases/5346912002/> [<https://perma.cc/H4WL-Q3YE>] (quoting U.S. Senator Josh Hawley's description of renaming army bases as an attempt to erase history). This argument is unconvincing, but we mention it because it is often repeated by those opposing monument removal. Removing a statue will not lead anyone to believe that the Civil War never happened. The history that may be masked is the history of people in power using monuments to oppress. That history can be told without the monument remaining in place.

127. Alan Marcus & Walter Woodward, *Monuments "Expire"—but Offensive Monuments Can Become Powerful History Lessons*, CONVERSATION (Sept. 4, 2020, 8:24 AM), <https://theconversation.com/monuments-expire-but-offensive-monuments-can-become-powerful-history-lessons-143318> [<https://perma.cc/HE6C-99A8>] (history professors arguing for recontextualizing instead of removing monuments and giving examples of various projects grappling with monuments in Russia and Europe).

128. *Is it Too Late? Removal of Vance Monument Halted by N.C. Court of Appeals Decision*, CITIZEN TIMES (June 5, 2021, 9:30 AM), <https://www.citizen-times.com/story/news/2021/06/05/vance-monument-court-appeals-decision-halts-removal-too-late/7559937002/> [<https://perma.cc/A3T3-Q3SS>] (providing copy of the "Emergency Motion for a Stay Pending Appeal" granted by the North Carolina Court of Appeals to stop further demolition of the Vance monument).

129. Of course, in some instances state statute or property law encumbrances may prohibit destruction and require relocation.

130. *Zebulon Vance Monument, Asheville*, *supra* note 108.

131. An issue that arises with the removal of monuments with artistic merit is the artist's rights (during their lifetime) under the Visual Artists Rights Act (VARA). Under VARA, artists of certain qualifying art will have ongoing rights to prevent the destruction or alteration of their works. Given the age of most of these monuments, there is not a high likelihood that VARA will apply to a monument removal. *See, e.g.*, Phelps & Owley, *Etched in Stone*, *supra* note 22, at 652–54.

132. Timothy Pratt & Rick Rojas, *Giant Confederate Monument Will Remain at Revamped Stone Mountain*, N.Y. TIMES (May 24, 2021), <https://www.nytimes.com/2021/05/24/us/stone-mountain-confederate-monument-georgia.html> [<https://perma.cc/ZW3V-X27R>]; *see also* Theresa Waldrop & Jamiel Lynch, *Nation's Largest Confederate Memorial to Get New Exhibit Telling the 'Whole Story' of Georgia's Stone Mountain*, CNN (May 25, 2021, 10:36 AM), <https://www.cnn.com/2021/05/24/us/stone-mountain-georgia-confederate-memorial-changes/index.html> [<https://perma.cc/23FB-SQJJ>].

likely cannot be removed without destroying the monument or incurring great cost.¹³³ In such cases, removal means destruction.

2. Charlottesville, Virginia: Lee Monument

When the Charlottesville City Council considered where to transfer its controversial Lee Monument,¹³⁴ it received six bids.¹³⁵ The Jefferson School African American Heritage Center's winning proposal, *Swords into Plowshares*, proposes to melt the statue into bronze blocks and to then commission artists to transform the material into other works.¹³⁶ The proposal had an attractive combination of including local community members and offering to take on the full cost of the statue's "transformation."¹³⁷

Prior to the officially submitted bids, several interested parties requested that Charlottesville convey the statue (and others owned by the city) to them, including the town of Goshen, Virginia. Goshen argued it would value the statues and display them in front of its community center.¹³⁸ Most requests were from individuals who

133. Rosalind Bentley, *How the Confederates Might Actually Come off Stone Mountain*, ATLANTA J.-CONST. (Aug. 25, 2017), <https://www.ajc.com/news/local/how-the-confederates-might-actually-come-off-stone-mountain/ABGCU0QtPdu3WJMaZ0pR6N/> [<https://perma.cc/QD7T-TSYD>] (profiling some of the logistical challenges of removing this stone carving).

134. Hawes Spencer & Michael Levenson, *Charlottesville Removes Robert E. Lee Statue at Center of White Nationalist Rally*, N.Y. TIMES (Nov. 8, 2021), <https://www.nytimes.com/2021/07/09/us/charlottesville-confederate-monuments-lee.html> [<https://perma.cc/B2LX-22N8>].

135. Erin O'Hare, *City Receives Just One Local Proposal for Confederate Statue, and the Organization Wants to Melt Lee Down*, CHARLOTTESVILLE TOMORROW (Oct. 21, 2021), <https://www.cvilletomorrow.org/articles/city-receives-just-one-local-proposal-for-confederate-statue-and-the-organization-wants-to-melt-lee-down/> [<https://perma.cc/MY24-J35T>].

136. The Jefferson Center was not the only one to make such a proposal; Laxart also expressed interest in using Charlottesville's Confederate statues to create new works of art. Jessie Higgins, *Here Are the 32 People and Groups Vying to Take Charlottesville's Confederate Statues*, CHARLOTTESVILLE TOMORROW (July 26, 2021), <https://www.cvilletomorrow.org/articles/here-are-the-32-people-and-groups-vying-to-take-charlottesvilles-confederate-statues/> [<https://perma.cc/DMC6-V8QK>]; Kriston Capps, *The Hot Market for Toppled Confederate Statues*, BLOOMBERG CITY LAB (Dec. 9, 2021, 11:19 AM), <https://www.bloomberg.com/news/articles/2021-12-09/toppled-confederate-monuments-find-eager-new-owners> [<https://perma.cc/8WEE-AARW>] (explaining the general interest in these monuments by some museums).

137. See Andrea Douglas, *Swords into Plowshares Charlottesville*, INDIEGOGO, <https://indiegogo.com/projects/swords-into-plowshares-charlottesville/> [<https://perma.cc/DG9T-HFQJ>] (explaining the project's funding need and currently raised capital/sources of funds).

138. Sarah Polus, *14 Organizations Interested in Acquiring Confederate Statues Removed from Charlottesville*, HILL (July 27, 2021, 4:53 PM), <https://thehill.com/homenews/state-watch/565120-14-organizations-interested-in-acquiring-confederate-statues-removed> [<https://perma.cc/8BLS-NWUJ>].

wanted to display the statues on private property across the United States.¹³⁹ Beginning with early discussions on the fate of Charlottesville's monuments, city council members announced their commitment to transforming the statues instead of just relocating them.¹⁴⁰ As the director of the Jefferson Center, Andrea Douglas, explained:

We don't want to take our trauma and have it moved to another community. The idea that you take an object that has so many connotations that are associated with white supremacy, and then allow it to go to another community where they have to contend with those objects. It feels immoral to us."¹⁴¹

It was this thinking that prevailed and led to the decision to melt down the statue for new public art.

Overall, very few communities have chosen to destroy their Confederate monuments. Charlottesville made this determination through a deliberative public process, which was shaped by some of the specific tensions around the history of its Lee Monument and the aftermath of the Unite the Right Rally in 2017. Not even the Southern Poverty Law Center necessarily supports the destruction of these monuments.¹⁴² The number of communities electing to take this approach may, however, increase given the publicity around Charlottesville's decision, depending on how the implementation and aftermath are received. For now, we do not anticipate that many more communities will use this approach unless the characteristics of a specific monument requires or lends itself to this outcome.¹⁴³

C. Monuments Conveyed to Private Parties

A community faced with the decision about what to do with a Confederate monument often views transferring its monument to a private party as its best (or potentially only) option.¹⁴⁴ As profiled in the following examples, transfers to private

139. Eduardo Medina, *Charlottesville's Statute of Robert E. Lee Will Be Melted Down*, N.Y. TIMES (Dec. 7, 2021), <https://www.nytimes.com/2021/12/07/us/robert-e-lee-statue-melt-charlottesville.html> [<https://perma.cc/2ECK-6BMY>].

140. Higgins, *supra* note 136 (quoting City Councilmember Michael Payne as opposing putting the Lee monument "in a battlefield somewhere where it's without context and still being celebrated").

141. Rachel Hirschheimer, *Jefferson School Preparing for Next Steps for Lee Statue*, NBC29 (Dec. 7, 2021, 5:42 PM), <https://www.nbc29.com/2021/12/07/jefferson-school-preparing-next-steps-lee-statue/> [<https://perma.cc/FY47-TWGR>].

142. *Symbols of Confederacy Removed Since George Floyd's Death*, S. POVERTY L. CTR., <https://www.splcenter.org/symbols-confederacy-removed-george-floyds-death> [<https://perma.cc/3KFB-RADM>] ("SPLC does not support erasing history, nor the defacing and/or destruction of any historic artifact, but it does believe that all Confederate symbols should be placed in their proper historical context.").

143. In addition, legal impediments associated with using this approach, such as state statue laws and deed restrictions, will further limit destruction of removed Confederate monuments.

144. See, e.g., Roberto Roldan, *Richmond to Begin Process of Transferring Confederate*

owners may appear an attractive option for outsourcing responsibility or may be influenced by property law claims of Confederate heritage organizations.

1. Rockville Maryland: Transfer to Private Individual

On courthouse grounds in Rockville, Maryland, a statue of a single Confederate soldier long stood.¹⁴⁵ This monument, initially erected in 1913 by the United Daughters of the Confederacy, was relocated to the Montgomery County courthouse in 1971.¹⁴⁶ In 2015, the community began to grapple with its future.¹⁴⁷ The consensus was that the monument needed to be relocated.¹⁴⁸ The challenge was to find a suitable new home.¹⁴⁹ In 2015, the county erected a wooden box around the monument to protect it from vandalism while local officials debated the monument's fate.¹⁵⁰ The county manager, based on feedback from constituents, sought to relocate the monument within the county.¹⁵¹ A working group focused on possible publicly-owned locations. All proposed locations (the majority of which were historic sites) either declined to take the statue or were found to be inappropriate by the county.¹⁵²

Monuments, VPM (Apr. 21, 2021), <https://vpm.org/news/articles/21641/richmond-to-begin-process-of-transferring-confederate-monuments> [<https://perma.cc/WQE8-ACX5>] (exploring Richmond's process and ranking system for considering future owners of its Monument Avenue monuments).

145. We have discussed this monument in our other work as it presented potential issues from a historic preservation law perspective and was an example of a prominent early removal effort. See Phelps & Owley, *Etched in Stone*, *supra* note 22, at 669–70.

146. Miriam Bunow, *The History and Future of the Rockville Confederate Soldier Statue*, PEERLESS ROCKVILLE (July 16, 2015), <https://www.peerlessrockville.org/2015/07/16/the-history-and-future-of-the-rockville-confederate-soldier-statue/> [<https://perma.cc/TP8D-C42D>].

147. See Rachel Sadon, *After a Century, Rockville Quietly Moves Confederate Statue*, DCIST (July 25, 2017, 10:46 AM), <https://dcist.com/story/17/07/25/after-a-century-rockville-moves-con/> [<https://perma.cc/ASR8-6CDQ>].

148. See Montgomery County, *Summary of Meeting on Confederate Statue*, MONTGOMERY CNTY., MD (July 27, 2015), <https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/Summaryof7-27-15meetingFINALREPORT.pdf> [<https://perma.cc/J9S7-5ZMH>] (summarizing community input on options).

149. See Montgomery County, *Summary of Meeting Regarding Potential Sites to Relocate the Rockville Confederate Monument*, MONTGOMERY CNTY., MD (Aug. 11, 2015), https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/FINAL_SUMMARY_OF_AUGUST_11_MEETING.pdf [<https://perma.cc/T59H-5T4Y>].

150. Bill Turque, *Montgomery Boxes Confederate Statue to Protect it from Vandalism*, WASH. POST (Aug. 3, 2015), https://www.washingtonpost.com/local/md-politics/montgomery-boxes-confederate-statue-to-protect-it-from-vandalism/2015/08/03/a7306142-39fa-11e5-b3ac-8a79bc44e5e2_story.html [<https://perma.cc/CQ25-EJDQ>].

151. David S. Rotenstein, *No Country for Johnny Reb or Bobby Lee*, ACTIVIST HIST. REV. (Aug. 21, 2017), <https://activisthistory.com/2017/08/21/no-country-for-johnny-reb-or-bobby-lee/#> [<https://perma.cc/8R82-73BL>].

152. Aaron Kraut, *Montgomery County Presents Five Options for Relocation of Confederate Statue*, BETHESDA MAG. (Aug. 28, 2015, 9:37 AM),

In the end, the county elected to transfer the monument to a private ferry operator: Historic White's Ferry.¹⁵³

The removal, at county expense, moved the statue to a site once owned by a former Confederate soldier, and where until recently, the ferry boat had been named after a Confederate general.¹⁵⁴ This site was a prominent location at the gateway of the community when crossing the Potomac River from Virginia.¹⁵⁵ Planned interpretive panels noting that Confederate monuments “were sometimes ‘made and placed to intimidate and reinforce ideas of white supremacy’” were not put up during the three years the monument stood at the ferry crossing.¹⁵⁶ After the statue was defaced and toppled by protestors in June 2020, the family placed it in storage, but the large pedestal remains.¹⁵⁷

In conveying the monument to a private owner, Montgomery County lost control of the narrative and arguably made the situation worse. The White's Ferry location, at one of the entries into the county, was much more prominent than the monument's

<https://bethesdamagazine.com/bethesda-beat/news/montgomery-county-presents-five-options-for-relocation-of-confederate-statue/> [<https://perma.cc/9CKU-T7DZ>]; Aaron Kraut, *Public Response Shows Strong Objections to Moving Confederate Statue to Silver Spring Park*, BETHESDA MAG. (Sept. 17, 2015, 9:20 AM), <https://bethesdamagazine.com/bethesda-beat/news/public-response-shows-strong-objections-to-moving-confederate-statue-to-silver-spring-park/> [<https://perma.cc/XEJ9-HZ22>] (noting receiving eighty-five comments against relocation the statue to a local park).

153. Mikaela Lefrak, *Montgomery County Moves Confederate Statue from Rockville to Private Land*, WAMU (July 25, 2017), <https://wamu.org/story/17/07/25/montgomery-county-moves-confederate-statue-private-land/> [<https://perma.cc/SZ2D-7BYP>].

154. Rebecca Tan, *A Confederate Statue is Toppled in Rural Maryland, Then Quietly Stored Away*, WASH. POST (July 4, 2020, 4:40 PM), https://www.washingtonpost.com/local/whites-ferry-confederate-statue/2020/07/04/e717b18e-bb3c-11ea-bdaf-a129f921026f_story.html [<https://perma.cc/49U5-C7W2>].

155. See *After Decade-Long Legal Battle, White's Ferry Closes*, LOUDOUN NOW (Dec. 28, 2021), <https://loudounnow.com/2020/12/28/after-decade-long-legal-battle-whites-ferry-closes/> [<https://perma.cc/5D83-2LKQ>] (explaining the site and the recent closure of the historic ferry after a private property dispute between the ferry owners and adjacent property owners). The ferry has since been sold to a new owner and is looking to find a new landing location to reopen. See Martin Asuetermuhle, *Reopening of White's Ferry Could be Pushed in 2022 as Dispute Over Virginia Landing Continues*, DCIST (Apr. 7, 2021), <https://dcist.com/story/21/04/07/whites-ferry-reopening-could-be-pushed-into-2022-by-continuing-dispute-over-virginia-landing/> [<https://perma.cc/H4HN-7CG3>].

156. Tan, *supra* note 154.

157. *A Confederate Statue is Toppled at White's Ferry, then Quietly Stored Away*, BETHESDA MAG. (July 6, 2020, 8:15 AM), <https://bethesdamagazine.com/bethesda-beat/news/a-confederate-statue-is-toppled-at-whites-ferry-then-quietly-stored-away/> [<https://perma.cc/7PFG-WM9A>]. The pedestal reads “That We Through Life May Not Forget To Love The Thin Grey Line,” a reference to the uniforms worn by the Confederate army. Bill Turke, *Montgomery County Officials Want to Move Confederate Statue to Rockville Park*, WASH. POST (Sept. 23, 2015), https://www.washingtonpost.com/local/md-politics/montgomery-county-decides-on-new-site-for-confederate-monument/2015/09/23/ea7fad18-6227-11e5-9757-e49273f05f65_story.html?utm_term=.3f3b13b3423d [<https://perma.cc/95S9-S4LA>].

previous location (on a secluded side of the county courthouse), giving the monument greater attention and impact.¹⁵⁸ The solution of boxing the monument in place was a more effective solution than this relocation, as it suggested public condemnation of the monument, not celebration. The future status of the monument remains unresolved, but the ultimate decision on the statue's future will now lie with the transferee, rather than the county.

2. Dallas, Texas: Transfer Through Auction Process

Dallas, Texas, has also been grappling with the future of its Confederate monuments.¹⁵⁹ One of the more controversial monuments owned by the city was a statue of Robert E. Lee in the former Robert E. Lee Park (recently renamed Turtle Creek Park)¹⁶⁰ that the city installed in 1936.¹⁶¹ Designed by prominent sculptor, Alexander P. Proctor,¹⁶² this statue was donated to the city by the Dallas Southern Memorial Association.¹⁶³ Shortly thereafter, it appears that the association dissolved, its mission completed. In 1989, this monument became part of the city Public Art Collection as part of a bulk transfer of all public artwork owned by the city (and

158. David Rotenstein, *The Hidden Costs of Relocating Confederate Statues*, HIST. SIDEBAR (Aug. 21, 2017), <https://blog.historian4hire.net/2017/08/21/hidden-costs-of-relocating-confederate-statues/> [<https://perma.cc/A4HF-V3X4>].

159. See Rick Brettell, *Art History, Artist's Intent, Must be Considered in Fate of Confederate Statue in Dallas' Lee Park*, DALL. MORNING NEWS (Sept. 2, 2017, 10:17 PM), <https://www.dallasnews.com/arts-entertainment/visual-arts/2017/09/03/art-history-artists-intent-must-be-considered-in-fate-of-confederate-statue-in-dallas-lee-park/> [<https://perma.cc/Y3ZB-2C2M>] (providing background of the artist and sculpture of the Lee monument). Dallas also had other Confederate monuments and it struggled with determining how to remove them and on what timeline. See Wade Goodwyn, *Dallas Wavers on Confederate Memorial*, NPR (June 14, 2018, 5:16 AM), <https://www.npr.org/2018/06/14/619853307/dallas-wavers-on-confederate-memorial> [<https://perma.cc/T8AS-A3ME>].

160. *Robert E. Lee Park - TX*, CULTURAL LANDSCAPE FOUND., <https://tclf.org/landscapes/robert-e-lee-park-tx> [<https://perma.cc/9BEB-KJGF>] (profiling the history of this park, originally named Oak Lawn Park, which was renamed Lee Park when a replica of Lee's House, the Custis-Lee Mansion, was erected on its grounds during the 1930s). This park's name reverted to its pre-Lee Park name in 2017 (Oak Lawn Park) and in 2019, was officially renamed as Turtle Creek Park. *Our History*, TURTLE CREEK CONSERVANCY, <https://turtlecreekconservancy.org/history/> [<https://perma.cc/2EA5-6345>] (profiling the history of the park and its naming).

161. Peter Simek, *The Real Meaning of the Robert E. Lee Statue*, DALL. MAG. (Nov. 28, 2017, 9:00 AM), <https://www.dmagazine.com/publications/d-magazine/2017/december/robert-e-lee-statue-oak-lawn-art/> [<https://perma.cc/G9LX-VHJ8>].

162. Peter H. Hassrick, *Alexander Phimister Proctor in Texas*, 107 SW. HIST. Q. 218 (2003) (profiling this sculptor's work on the Lee Monument).

163. CITY OF DALLAS, MAYOR'S TASK FORCE ON CONFEDERATE MONUMENTS MEETING MINUTES (Aug. 31, 2017, 6:00 PM), <https://oca-media.s3.us-east-2.amazonaws.com/wp-content/uploads/2017/09/08083914/2017-08-31-Meeting-Minutes-SIGNED.pdf> [<https://perma.cc/V6DF-699J>].

before any parameters or processes existed for determining whether and how to acquire public art).¹⁶⁴

In 2017,¹⁶⁵ the Dallas City Council voted thirteen-to-one to remove this monument.¹⁶⁶ Dallas had established a task force to consider the future of the Lee monument and other Confederate iconography in the city.¹⁶⁷ The task force's recommendation was that the city loan the statue to a museum in North Texas for educational purposes, and failing that, to place the monument in storage for three years to provide time to find an alternative destination.¹⁶⁸ In 2018, Dallas explored relocating the monument with the Texas Civil War Museum near Fort Worth (a relocation that would have cost roughly \$200,000).¹⁶⁹ But, Dallas did not feel that the museum would appropriately explain the context of the monument and the Lost

164. *Id.*

165. This monument had, however, been controversial for longer and was vandalized in 2015. See Peter Holley, *Robert E. Lee Statue Defaced in Dallas*, WASH. POST (July 12, 2015, 3:48 PM), <https://www.washingtonpost.com/news/morning-mix/wp/2015/07/12/robert-e-lee-memorial-defaced-in-dallas/> [<https://perma.cc/G96H-RAR3>].

166. *Dallas Removes Robert E Lee Statue from City Park*, BBC (Sept. 15, 2017), <https://www.bbc.com/news/world-us-canada-41284464> [<https://perma.cc/WXG8-AX9Z>].

167. Alex Macon, *Rawlings Proposes a Task Force on Dallas' Confederate Statues*, DALL. MAG. (Aug. 15, 2017, 1:43 PM), <https://www.dmagazine.com/frontburner/2017/08/dallas-confederate-statues-rawlings-task-force/> [<https://perma.cc/7MQU-GVS4>] (profiling the mayor's decision to establish a task force in early 2017 to address the future of the City's monuments); Tristan Hallman & Robert Wilonsky, *Dallas Mayor's Confederate Monuments Task Force Has Mixed Feelings on Statues' Future*, DALL. MORNING NEWS (Aug. 24, 2017, 5:24 PM), <https://www.dallasnews.com/news/2017/08/24/dallas-mayor-s-confederate-monuments-task-force-has-mixed-feelings-on-statues-future/> [<https://perma.cc/9QV2-88DN>].

168. Jennifer Scripps, *Recommendations from Mayor's Task Force on Confederate Monuments*, DALL. CITY HALL (Oct. 17, 2017), https://dallascityhall.com/government/Council%20Meeting%20Documents/qolac_2_recommendations-from-mayors-task-force-on-confederate-monuments_combined_102317.pdf [<https://perma.cc/WQC6-R3AG>]. It is not clear why the city did not adopt the task force's recommendation to store the monument three years before making a final decision, but as the city's director of the office of cultural affairs indicated, "It was clearly worth money To put it in a crate for perpetuity, was that the best use of a taxpayer asset? But I think you have to do it carefully." Sarah Mervosh, *What Should Happen to Confederate Statues? A City Auctions One for \$1.4 Million*, N.Y. TIMES (June 22, 2019), <https://www.nytimes.com/2019/06/22/us/confederate-statues-dallas-nashville.html> [<https://perma.cc/24YD-3S6K>].

169. Jennifer Scripps, *Confederate Monuments Recommendations and Next Steps*, DALL. CITY HALL (Mar. 12, 2018), https://dallascityhall.com/government/Council%20Meeting%20Documents/a_confederate-monuments-recommendations-and-next-steps_combined_032118.pdf [<https://perma.cc/E6BD-6M46>]; Bud Kennedy, *Why Robert E. Lee Memorial in Dallas May be Coming to Fort Worth Area*, FORT WORTH STAR-TELEGRAM (Mar. 20, 2018, 5:28 PM), <https://www.star-telegram.com/opinion/bud-kennedy/article206104929.html> [<https://perma.cc/TGB8-Z56T>].

Cause movement because of the pro-Confederate messaging contained in some of the museum's displays.¹⁷⁰

In its desire to be rid of the monument, the city declared the monument surplus property¹⁷¹ and put it up for auction with a reserve price of \$450,000.¹⁷² The city imposed a requirement, in its approval to sell the monument that intended to bind the buyer at auction, that the monument not be publicly displayed in the city and that the buyer require future owners to commit to a similar contractual agreement.¹⁷³ At auction, the monument's hammer price was \$1.4 million.¹⁷⁴ The monument was purchased by Ronald Holmes, a Texas attorney.¹⁷⁵ He either bought this for the Lajitas golf resort, in Lajitas, Texas, or gifted it to be installed on the resort's grounds,¹⁷⁶ where it is now located.¹⁷⁷

Although Dallas ceded control over the monument, Dallas's removal provides some guidance to other communities. Importantly, the city required that the monument be removed from the city boundaries and that it not be displayed within the city limits or surrounding areas.¹⁷⁸ While this strategy is beneficial to Dallas, it transfers its problematic monument to another community. Other communities, however, can examine the potential to use gift or transfer agreements to impose

170. See Capps, *supra* note 136.

171. Robert Wilonsky, *Dallas' Robert E. Lee Statue Declared 'Surplus Property' and Will be Sold to the Highest Bidder*, DALL. MORNING NEWS (May 22, 2019, 4:26 PM), <https://www.dallasnews.com/opinion/commentary/2019/05/22/dallas-robert-e-lee-statue-declared-surplus-property-and-will-be-sold-to-the-highest-bidder/> [<https://perma.cc/PVD3-R8EH>].

172. Robert Wilonsky, *Dallas' Robert E. Lee Sculpture is Going, Going, Gone for More than \$1.4M at Online Auction*, DALL. MORNING NEWS (June 5, 2019, 12:41 PM), <https://www.dallasnews.com/opinion/commentary/2019/06/05/dallas-robert-e-lee-sculpture-is-going-going-gone-for-more-than-1-4m-at-online-auction/> [<https://perma.cc/S8G2-NM72>].

173. Dall. City Council, Resolution 19-0825 (2019), <http://citysecretary2.dallascityhall.com/resolutions/2019/05-22-19/19-0825.pdf> [<https://perma.cc/QDX9-83HD>] (approving the sale of the Lee Monument as surplus property and requiring that "the purchaser not publicly display the sculpture in the City of Dallas and that the purchaser shall secure this restriction contractually with any subsequent purchaser if this Sculpture is later sold").

174. Wilonsky, *supra* note 172.

175. Mervosh, *supra* note 168. Dallas planned to use the proceeds of the auction to reimburse its costs for removal and for the removal of another monument. *Id.*

176. Shawn Shinneman, *Dallas' Robert E. Lee Statue Has Landed at Black Jack's Crossing Near Terlingua*, DALL. MAG. (Sept. 20, 2019, 11:21 AM), <https://www.dmagazine.com/frontburner/2019/09/dallas-robert-e-lee-statue-has-landed-at-black-jacks-crossing-in-terlingua/> [<https://perma.cc/A63F-MNMB>].

177. Hayat Norimine, *Dallas' Robert E. Lee Statue Arrives at Kelcy Warren's Golf Course in Lajitas*, DALL. MORNING NEWS (Sept. 20, 2019, 2:14 PM), <https://www.dallasnews.com/news/2019/09/20/dallas-robert-e-lee-statue-arrives-at-kelcy-warren-s-golf-course-in-lajitas/> [<https://perma.cc/924M-AALA>].

178. Matt Goodman, *Dallas' Robert E. Lee Sculpture is Going to Auction*, DALL. MAG. (May 22, 2019, 4:28 PM), <https://www.dmagazine.com/frontburner/2019/05/dallas-robert-e-lee-sculpture-is-going-to-auction/> [<https://perma.cc/ZT7N-LNTQ>] (explaining that there were restrictions on publicly displaying the monument but some confusion about scope and how this would function).

restrictions on a monument's future display and improve upon this concept for their own use. Using these tools may allow for some degree of continued control over a Confederate monument that a community elects to convey to a third party.

3. Monument Relocations Shaped by Confederate-Heritage Organization Ownership Claims: Loudoun County, Virginia, and Franklin, Tennessee

Sometimes the ownership of a monument dictates its post-removal disposition. One complicating aspect of Confederate monuments is their often-blurred ownership.¹⁷⁹ Given their age, it is not always easy to determine who owns a monument with ownership and potential "restrictions and limitations laid out in century-old agreements or articulated only in sources like meeting minutes or contemporary accounts."¹⁸⁰ This can lead to challenging situations. As a Virginia state official noted in addressing efforts to remove monuments in the face of a state law barring communities from removing publicly owned monuments without state approval, "We just have to approach it that each case is unique . . . [but] we only can go on what we are told, either by the county or by the UDC. They don't have to present a deed of ownership" to demonstrate their control or title to the statue for purposes of removing a monument on public lands.¹⁸¹ While this may have been the approach taken by this official, in this case to actually facilitate removals, establishing the ownership of monuments is important to establishing who has rights to the statue and therefore can control its future.

Many monuments are complicated by potential or claimed partial and reversionary property interests, bringing multiple potential owners to the table.¹⁸² Confederate-heritage organizations may claim ownership over monuments that have been in public spaces for decades (if not a century).¹⁸³ Even if they are not the clear owners, these heritage organizations may claim to be the successors to a now defunct

179. See, e.g., Gwen Barlow, *Who Owns the Confederate Monument in Winston-Salem?*, 98 N.C. L. REV. ADDENDUM 1467 (2019) (profiling ownership issues related to this North Carolina monument). In some instances, monuments are "owned" by organizations that no longer exist and have no successor. See Mickey Powell, *Group Seeks Ownership of Clarke County Confederate Monument*, WINCHESTER STAR (Mar. 24, 2021), https://www.winchesterstar.com/winchester_star/group-seeks-ownership-of-clarke-county-confederate-monument/article_336ceba0-e7bb-51b9-a76f-b1b52b38498d.html [<https://perma.cc/3DGN-SV2R>] (exploring the complicated ownership of this monument, which appears to be owned by the Association of the Survivors of the Clarke Cavalry, which no longer exists).

180. Vogelsong, *supra* note 82.

181. *Id.*

182. See, e.g., Brief of Amici Curiae for UNC Alumni and Donors, *North Carolina Division Sons of Confederate Veterans, Inc. v. The University of North Carolina*, No. 19-CV-1579 (M.D.N.C. Jan. 29, 2021) (rebutting UDC claims of ownership of UNC's Silent Sam monument as a conditional gift).

183. See, e.g., Brandon Mulder, *Daughters of Confederacy Claims Ownership of Bastrop County Monuments*, AUSTIN AMERICAN-STATESMAN (Aug. 11, 2020, 12:12 PM), <https://www.statesman.com/story/news/2020/08/11/daughters-of-confederacy-claims-ownership-of-bastrop-county-monuments/113890380/> [<https://perma.cc/ACD7-RVUV>] (profiling the Texas UDC state chapter's claims to removed monuments in this county).

memorial or veterans' group and seek to block removal or to gain possession of a monument post-removal on this basis.¹⁸⁴

If the monument and the land upon which it was located were transferred from a Confederate-heritage organization to a local community, there should be a deed documenting this conveyance in the land records (or, if this transfer did not occur, title to the land should still be in the Confederate-heritage organization's name).¹⁸⁵ This deed may include reversionary interests in favor of the Confederate-heritage organizations or impose deed restrictions requiring the land to be used for the display of the monument (including a reversionary interest in favor of the Confederate-heritage organization) depending on the terms of the defeasible fee that was initially conveyed.¹⁸⁶

Once a monument has been returned to a Confederate-heritage organization, there are few limits on what the organization can do with the monument. A community may be able to enter into a settlement agreement or place restrictions on the transfer of the monument to limit the locations and public display of the statue. If the Confederate-heritage organization places the monument in a location that appears to be public, the community can also take steps through signage to clearly communicate that the monument is a private statue, not a publicly endorsed monument. As a result, a community may wish to consider pursuing a quiet title action (or using its condemnation or eminent domain authority) to clearly establish its ownership and expand its options for addressing the future of the monument.

If such a group has a compelling claim of ownership, a community, however, may feel compelled to transfer the monument back to the group.¹⁸⁷ This is appealing to a

184. See, e.g., John Sharp, *Who Is the Rightful Owner of Mobile's Confederate Statue?*, ALABAMA.COM (June 16, 2020, 4:35 PM), <https://www.al.com/news/2020/06/who-is-the-rightful-owner-of-mobiles-confederate-statue.html> [<https://perma.cc/2N3C-D2X4>] (profiling a local SCV chapter's attempt to claim ownership over a monument paid for by the United Confederate Veterans—a defunct veterans organization of Confederate veterans); see also Andrew Capps, *In New Strategy to Move Mouton Statue, City Argues Confederate Group No Longer Exists*, LAFAYETTE DAILY ADVERTISER (June 28, 2021, 8:00 PM), <https://www.theadvertiser.com/story/news/local/2021/06/29/move-mouton-statue-lafayette-argues-confederate-group-doesnt-exist/5370681001/> [<https://perma.cc/8VQW-P3KB>] (explaining a city's argument that UDC chapter's failure to maintain its existence eliminated their claimed to the statue).

185. See Vogel song, *supra* note 82 (providing some examples of documentation issues related to the transfer and ownership of Confederate monuments in Virginia).

186. See, e.g., Josh Janney, *Foundation: Signage to Be Added to Confederate Statute Site*, WINCHESTER STAR (June 19, 2020), https://www.winchesterstar.com/winchester_star/foundation-signage-to-be-added-to-confederate-statue-site/article_ac041838-63c4-5001-b08a-3c6eec38acad.html [<https://perma.cc/QE9H-8M5M>] (profiling the deed restrictions (and conservation easement) that are blocking relocation/removal of a monument in downtown Winchester, Virginia).

187. See, e.g., Connor Hirsch, *Jefferson City Council Votes to Give Recently Removed Marker Back to United Daughters of the Confederacy*, ABC17 (Nov. 2, 2020, 8:18 PM), <https://abc17news.com/news/2020/11/02/jefferson-city-council-votes-to-give-recently-removed-marker-back-to-united-daughter-of-the-confederacy/> [<https://perma.cc/HRY2-3SWB>]. Conversely, in some instances, the private ownership of the monuments may actually facilitate removal as this exempts the monuments for the protections of state statue statutes.

community as it allows the community to remove the monument relatively quickly and convey (or return) it to this organization.¹⁸⁸ This conveyance is arguably made less controversial by ensuring that it is going to a group that wants the statue.¹⁸⁹ The challenge, however, is what the new organization will do with the monument.¹⁹⁰ If the new organization plans to place it prominently in a publicly accessible place, there will be possible confusion over whether this monument is a public resource or public monument, which means that the root issue has not been entirely addressed.¹⁹¹ Some of these monuments may not have been officially conveyed to the community in which are they located—particularly those installed on publicly owned land (like a courthouse grounds or town square).¹⁹² This uncertainty has led some communities to return the monuments to the heritage groups to quickly resolve disputed ownership questions.¹⁹³ For some monuments, the ownership status is less clear, even if legacy

See, e.g., Mackenzie Wicker & Joel Burgess, *Asheville, Buncombe Leaders Support Confederate Monument Removal, But Legal Hurdles Remain*, ASHEVILLE CITIZEN TIMES (June 11, 2020, 12:29 PM), <https://www.citizen-times.com/story/news/local/2020/06/11/asheville-buncombe-leaders-support-confederate-vance-monument-removal/5333075002/> [<https://perma.cc/UJK7-JQTE>] (noting that the state monument-protection laws only apply to publicly owned monuments in North Carolina).

188. See, e.g., Colleen Quigley, *Leaders Vote to Remove Confederate Statue From Courthouse Grounds in NC Town*, WBTV (Aug. 20, 2019, 10:55 AM), <https://www.wbtv.com/2019/08/20/leaders-vote-remove-confederate-statue-courthouse-grounds-nc-town/> [<https://perma.cc/7U6M-AWSS>] (profiling community's efforts to work with the UDC on "reimagining" its Confederate monument, before the UDC abandoned the effort and the town ultimately voted to give the UDC a deadline to come up with a relocation plan before the monument would be deemed a public nuisance and removed). In 2020, this monument was removed despite a UDC attempt to obtain an injunction barring its removal by application of NC's statue statute. See Derrick Bryson Taylor, *Confederate Statue in North Carolina Comes Down After 112 Years*, N.Y. TIMES (Nov. 20, 2019), <https://www.nytimes.com/2019/11/20/us/pittsboro-confederate-statue.html> [<https://perma.cc/E3DP-ASWE>].

189. See, e.g., Megan Gray-Hatfield, *City, UDC Sign Confederate Monument Contract*, GAINESVILLE DAILY REG. (Sept. 1, 2020), https://www.gainesvilleregister.com/news/local_news/city-udc-sign-confederate-monument-contract/article_931fbd42-ecab-11ea-a456-ef99ceb4cb58.html [<https://perma.cc/KT4H-VW7H>] (profiling the contract that Gainesville, Texas, entered into with the UDC to convey the monument to the organization should the city determine it owns the monument).

190. See Sharon Myers, *The Man Rises Again; Confederate Statue Removed from Uptown Lexington Finds New Home Near Denton*, DISPATCH (Sept. 22, 2021, 7:23 AM), <https://www.the-dispatch.com/story/news/2021/09/22/confederate-statue-removed-lexington-installed-denton-nc-davidson-county-civil-war-protests-lawsuit/5796679001/> [<https://perma.cc/LB8T-WTGT>].

191. See *id.*

192. See, e.g., Melissa Gregory, *Group That Placed Confederate Monument in Alexandria Says Its Owns It, Not City or Parish*, TOWN TALK (Aug. 18, 2020, 11:31 AM), <https://www.thetowntalk.com/story/news/2020/08/18/group-says-they-own-alexandria-confederate-monument/3390945001/> [<https://perma.cc/5USQ-GAUA>] (exploring UDC claims that it "conditionally dedicated" the monument to this Louisiana community and is seeking its return).

193. Daniella Cheslow, *Loudoun Daughters of the Confederacy: We'll Take Our Statue*

funding from the UDC or another organization can be identified (which a local government may wish to locate to resolve ownership questions).¹⁹⁴ All of this complicated conveyancing history matters because if the local government has title to both the monument and the underlying land, it has a freer hand to determine the monument's fate. If the title is less clear, a Confederate-heritage organization may be able to assert ownership, slow down removal, and attempt to dictate the terms upon which the removal occurs (generally resulting in a return of the statue to the Confederate-heritage organization through a stipulation or settlement agreement with the community). Two examples demonstrate some of these issues.

a. Loudoun County, Virginia

In July 2020, Loudoun County's Board of Supervisors voted unanimously to return a statue of a Confederate soldier to the UDC.¹⁹⁵ The statue was originally commissioned by the Clinton Hatcher Camp, Confederate Veterans and Sons, and the UDC.¹⁹⁶ These Confederate-heritage organizations raised \$2500 with the county contributing the remaining \$500 to pay for the monument and its installation. The monument was installed in front of the county courthouse in 1908.¹⁹⁷ In August 2017, the chair of the County Board of Supervisors sought permission from Virginia's General Assembly to remove the monument, as required for public monuments under Virginia's century-old law restricting removal of Confederate monuments. The motion failed, and the county tasked the heritage commission with reviewing the courthouse's history and evaluating options for new memorials to counterbalance the Confederate monument.¹⁹⁸ The chair of the County Board of Supervisors and a majority of the Board had previously indicated that they would continue the process

Back, DCIST (June 29, 2020, 8:00 AM), <https://dcist.com/story/20/06/29/loudoun-daughters-of-confederacy-well-take-our-statue-back/> [<https://perma.cc/8YAK-4KJQ>] (profiling the local UDC chapters' request to have a monument returned to the organization).

194. See, e.g., Kellie Houx, *Liberty Continues to Seek Possible Owners of Land at Center of Confederate Monument Debate*, COURIER TRIB. (May 21, 2021), https://www.mycouriertribune.com/news/city_government/liberty-continues-to-seek-possible-owners-of-land-at-center-of-confederate-monument-debate/article_e4e8c334-ac87-11eb-bc08-37e59f2ba8d9.html [<https://perma.cc/BC2N-NF2H>].

195. Neal Augenstein, *Loudoun Co. Monument Will be Returned to Confederate Group*, WTOP NEWS (July 8, 2020, 1:21 PM), <https://wtop.com/loudoun-county/2020/07/loudoun-co-monument-will-be-returned-to-confederate-group/> [<https://perma.cc/B93P-JXG2>].

196. *Loudoun's Confederate Statue Removed Overnight*, LOUDOUN NOW (July 21, 2020), <https://loudounnow.com/2020/07/21/loudouns-confederate-statue-removed-overnight/> [<https://perma.cc/B6PZ-SRGE>].

197. *Id.*

198. Daniella Cheslow, *Loudoun County's First Black Chair Presides Over Vote to Remove Confederate Monument*, NPR (July 9, 2020), <https://www.npr.org/local/305/2020/07/09/889361177/loudoun-county-s-first-black-chair-presides-over-vote-to-remove-confederate-monument> [<https://perma.cc/EP5D-VSB9>].

of trying to remove the monument.¹⁹⁹ In June 2020, the UDC wrote to the County Board of Supervisors to request the return of the monument.²⁰⁰

After receiving the UDC's request for the return of the monument, the county's vote was to unanimously "affirm that the 'Silent Sentinel' statue belonged to the Loudoun Chapter of the [UDC], and to allow them to remove the statue from public property."²⁰¹ "That private property claim allowed supervisors to avoid a lengthy public process to remove the monument. Instead, they essentially allowed the organization to come reclaim its property."²⁰² The monument was removed in the summer of 2020 by the UDC, and its current location is not publicly known.²⁰³

Loudoun County's monument was controversial (advocates had spent years in opposition) and support for removal was not universal or easily secured across the community. The county had to grapple with Virginia's law limiting removal of public monuments and evidence that the UDC had been a significant funder of the monument (and at least had a facial claim of continued ownership). The return of the monument to the UDC allowed the county to sidestep ownership questions and the application of the state law but left the statue's future in hands of the UDC.

b. Franklin, Tennessee

In Franklin, a dispute initially arose not over removal but about adding context to the town's monument,²⁰⁴ which is located on a downtown public square.²⁰⁵ Franklin planned to place five markers on the square to explain the community's African American history before and after the Civil War (referred to as the Fuller Story).²⁰⁶ After learning of this plan, an attorney for the UDC objected to the Fuller Story markers and claimed that the UDC owned the square.²⁰⁷ In response, the Board of

199. Daniella Cheslow, *Loudoun Daughters of the Confederacy: We'll Take Our Statue Back*, DCIST (June 29, 2020, 8:00 PM), <https://dcist.com/story/20/06/29/loudoun-daughters-of-confederacy-well-take-our-statue-back/> [<https://perma.cc/PZY9-78SH>].

200. Nathaniel Cline, *Update: Loudoun Chapter of the United Daughters of the Confederacy Requests Leesburg Statute be Returned to the Organization*, LOUDOUN TIMES-MIRROR (July 1, 2020), https://www.loudountimes.com/news/developing-loudoun-chapter-of-the-united-daughters-of-the-confederacy-requests-leesburg-statue-be-returned/article_9415c3b0-ba36-11ea-b6f9-df0f33a846bc.html [<https://perma.cc/99V9-MU6J>].

201. *Loudoun's Confederate Statue Removed Overnight*, LOUDOUN NOW (July 21, 2020), <https://loudounnow.com/2020/07/21/loudouns-confederate-statue-removed-overnight/> [<https://perma.cc/YK9Q-WZ6V>].

202. *Id.*

203. *Id.*

204. Shalina Chatlani, *Will Telling a 'Fuller Story' Settle The Controversy Over Franklin's Confederate Monument?*, WPLN NEWS (Apr. 4, 2019), <https://wpln.org/post/will-telling-a-fuller-story-settle-the-controversy-over-franklins-confederate-monument/> [<https://perma.cc/P4QG-Q7L6>].

205. *Public Square*, VISIT FRANKLIN, <https://visitfranklin.com/see-and-do/public-square> [<https://perma.cc/J42P-JQRW>].

206. *The Fuller Story*, CITY OF FRANKLIN, TENN., <https://www.franklintn.gov/our-city/the-fuller-story> [<https://perma.cc/D6XN-WHQA>].

207. *Id.*

Aldermen sought a declaratory judgment to establish ownership of the square.²⁰⁸ The city placed the Fuller Story markers on the square while the litigation continued, and local nonprofits raised \$150,000 to install an additional United States Colored Troops (USCT) monument on the square.²⁰⁹

After two years of litigation, in July 2020, the city approved a settlement agreement. Under this agreement, “[t]he UDC . . . will receive a deed for the monument and the dirt beneath it.”²¹⁰ All other land surrounding the monument is the property of the city, which the city may use to install context and the monument to the USCT.²¹¹ Thus, Franklin’s Confederate monument will remain in place, but the City of Franklin has control over the surrounding site.²¹² The UDC’s ownership of the underlying land means that the city lost control of the monument. It will be hard to remove it without the UDC’s consent. Affirming control over the surrounding area, however, allowed the city to accomplish its other objectives and add the Fuller Story panels to contextualize the monument.

D. Monuments Conveyed to Other Public Entities

Other monuments have found willing hosts in other communities or other public locations, be it a public park or site associated with the memorialized Confederate leader. Because these sites are also publicly owned, these relocated monuments remain publicly endorsed memorials and legacies. The benefit of publicly controlled locations, however, is that meaningful contextualization can be added.

1. Kentucky State Capitol: Jefferson Davis Monument, Transfer to a State Historic Site

In 2020, Kentucky’s Historic Properties Advisory Commission voted to remove a statue of Jefferson Davis from the state capitol’s rotunda, where it had been displayed since 1936.²¹³ The statue was commissioned by the UDC’s Kentucky chapter and was paid for by a mixture of private donations and state funds.²¹⁴ The

208. *Id.*

209. *Id.*

210. Tori Keafer, *Debate over Franklin Public Square Ownership Could Soon Be Settled*, WILLIAMSON HERALD (July 26, 2020), http://www.williamsonherald.com/communities/debate-over-franklin-public-square-ownership-could-soon-be-settled/article_87c6c44c-c7a1-11ea-ac02-c3dcaefe92e2.html [<https://perma.cc/DF6F-4LAQ>].

211. *The Fuller Story*, *supra* note 206; *see also UCST Statue*, BATTLE OF FRANKLIN TRUST, <https://boft.org/usct-statue> [<https://perma.cc/7EQ7-U3WX>].

212. Emily R. West, *Not Every Fight over Confederate Monuments Ends with a Statue Coming Down*, TENNESSEAN (July 30, 2020), <https://www.tennessean.com/story/news/local/williamson/2020/07/30/not-all-confederate-monument-fights-end-removal/5357923002/> [<https://perma.cc/TUF9-QFF4>].

213. Rhonda Miller, *Jefferson Davis Statue Removed from Capitol Rotunda to be Relocated to Rural Todd County Site*, WKMS (July 7, 2020), <https://www.wkms.org/society/2020-07-07/jefferson-davis-statue-removed-from-capitol-rotunda-to-be-relocated-to-rural-todd-county-site> [<https://perma.cc/CN4Z-W2YY>].

214. Stephanie Wolf, *Commission Votes to Remove Jefferson Davis Statue from Kentucky*

Commission had jurisdiction over the monument given its location within the state capitol.²¹⁵

The Commission's preferred relocation site was the state-operated Jefferson Davis Monument State Historic Site located at Jefferson Davis's birthplace in a rural part of the state.²¹⁶ This site is itself controversial as it has a massive 351-foot obelisk (also erected by the UDC) honoring the Confederacy's only president.²¹⁷ To date, the Davis statue has not been relocated to the state historic site, and it remains in storage.²¹⁸ It is not clear whether the delay relates to second thoughts about the appropriateness of the relocation site or whether it is a funding issue.²¹⁹

Removing a monument from a public forum and sending it to a historic site is a common approach considered by communities looking to remove their monuments. The appeal is that the monument is removed from a town square or courthouse to a museum location (or state park or battlefield) where it is, at least arguably, more connected to a commemorative purpose rather than directly promoting a Lost Cause-related viewpoint. The challenge is whether such historic sites can provide sufficient interpretation to place the monuments in their historic context, while not simply allowing the monuments to play their former function in their new location. Additionally, the applicability of this approach is more limited than may be expected as many historical sites have declined to accept relocated monuments to sidestep these controversies and for practical concerns, such as the lack of associated funding for their long-term maintenance and repair.

2. Louisville, Kentucky: Confederate Monument-Transfer to Another Community

After withstanding a lawsuit from the SCV,²²⁰ the City of Louisville, Kentucky, transferred its Confederate monument to a small, rural Kentucky town, Brandenburg,

Capitol, WFPL (June 12, 2020), <https://wfpl.org/commission-votes-to-remove-jefferson-davis-statue-from-kentucky-capitol/> [<https://perma.cc/32ZF-U9JK>].

215. *Historic Properties Advisory Comm'n*, HISTORIC PROPERTIES, <https://historicproperties.ky.gov/ac/Pages/default.aspx> [<https://perma.cc/97M3-LS4W>].

216. Phillip M. Bailey, 'Sins of Our Past': After 84 Years, Jefferson Davis Statue Removed from Kentucky Capitol, *COURIER J.* (June 13, 2020), <https://www.courier-journal.com/story/news/politics/2020/06/13/confederate-statues-jefferson-davis-removed-kentucky-capitol/3179569001/> [<https://perma.cc/BE65-XDHS>].

217. Ian Bateson, *Is There a Place for the President of the Confederacy?*, *N.Y. TIMES* (Oct. 8, 2020), <https://www.nytimes.com/2020/10/08/arts/design/jefferson-davis-monument.html> [<https://perma.cc/2XWJ-5KAK>].

218. Rhonda Miller, *As Jefferson Davis Site in Todd County Prepares to Receive Statue, Not Everyone Supports Relocation*, WKYU FM (July 7, 2020), <https://www.wkyufm.org/post/jefferson-davis-site-todd-county-prepares-receive-statue-not-everyone-supports-relocation#stream/0> [<https://perma.cc/797R-FS8L>] (exploring the cost of the monument relocation and criticism of the relocation site by some advocates).

219. Jack Brammer, *A Year After Removal from Capitol, Is There a KY Home for Jefferson Davis Statue?*, *LEXINGTON HERALD LEADER*, <https://www.kentucky.com/news/politics-government/article251673088.html> [<https://perma.cc/NMQ4-MWYY>] (last updated June 9, 2021) (framing this as a resource issue (requiring funds to upgrade the receiving site and relocate the statute)).

220. Jonah Engel Bromwich, *Confederate Monument, Shunned by One Kentucky City, Is*

located about forty miles south of the city.²²¹ The Kentucky Confederate Women's Monument Association erected Louisville's seventy-foot tall monument in 1895.²²² Originally placed before a reform school on the outer edges of town, it was moved to a street alongside the University of Louisville's campus in 1954,²²³ where it stood until its removal in 2016.²²⁴ In support of the decision, Louisville's mayor indicated that "[t]his new location provides an opportunity to remember and respect our history in a more proper context. And it's close enough that Louisvillians can visit."²²⁵ Brandenburg is linked to the Civil War as Confederate general John Hunt Morgan raided the city in 1863,²²⁶ and the community hosts a biennial Civil War reenactment.²²⁷ The monument was placed in a riverfront park.²²⁸ Monuments to the Underground Railroad and local Native American tribes are also located in the park.²²⁹

Since its installation, Brandenburg has had its own protests surrounding the monument. Crowds of hundreds gathered to celebrate its placement at its new home overlooking the Ohio River.²³⁰ Protestors of the monument were also present, but Brandenburg mayor, Ronnie Joyner, was unconcerned about any controversy,

Welcomed in Another, N.Y. TIMES (May 30, 2017), <https://www.nytimes.com/2017/05/30/us/kentucky-confederate-statue-brandenburg.html> [<https://perma.cc/L6DF-9M9V>].

221. Jacob Ryan, *The Town That Wanted Louisville's Confederate Monument*, WFPL (Aug. 18, 2017), <https://wfpl.org/the-town-that-wanted-a-confederate-monument/> [<https://perma.cc/5DKC-PNSN>].

222. Joy M. Giguere, *The (Im)Movable Monument: Identity, Space, and The Louisville Confederate Monument*, 41 PUB. HISTORIAN 56, 56 (2019).

223. Sons of Confederate Veterans, Ky. Div. v. Louisville Jefferson Cnty. Metro Gov't, No. 16-CI-2009, slip op. at 1 (9th Div. Jefferson Cnty. Jun. 16, 2016), https://www.scribd.com/doc/316250827/Judge-s-ruling-in-Confederate-monument#fullscreen&from_embed [<https://perma.cc/8EB5-3DSY>].

224. *UofL Removes Confederate Monument*, UNIV. OF LOUISVILLE, <https://louisville.edu/sustainability/news/uofl-removes-confederate-monument> [<https://perma.cc/AR5M-CWCP>].

225. *Confederate Monument Moving to Brandenburg*, CITY OF LOUISVILLE, <https://louisvilleky.gov/government/confederate-monument-moving-brandenburg> [<https://perma.cc/Z2S7-XQVX>].

226. *General John Morgan Hunt's Brandenburg Raid*, AM. BATTLEFIELD TRUST, <https://www.battlefields.org/visit/heritage-sites/general-john-hunt-morgans-brandenburg-raid> [<https://perma.cc/WG48-LEUH>].

227. Steve Bittenbender, *Confederate Monument to Be Moved from Louisville, Kentucky*, REUTERS (Nov. 15, 2016), <https://www.reuters.com/article/us-usa-kentucky-monument/confederate-monument-to-be-moved-from-louisville-kentucky-idUSKBN13B05M> [<https://perma.cc/S32Z-B2TF>].

228. Ryan, *supra* note 221.

229. Joseph Gerth, *Brandenburg Celebrates Monument that Celebrates Slavery*, COURIER J. (May 26, 2017), <https://www.courier-journal.com/story/news/local/joseph-gerth/2017/05/26/confederate-monument/345414001/> [<https://perma.cc/DR6A-NU79>].

230. Jonah Engel Bromwich, *Confederate Monument, Shunned by One Kentucky City, Is Welcomed in Another*, N.Y. TIMES (May 30, 2017), <https://www.nytimes.com/2017/05/30/us/kentucky-confederate-statue-brandenburg.html> [<https://perma.cc/EFJ7-5QPV>].

stating, “I never looked at this statue as a black versus white thing or that it had a link to slavery or anything like that.”²³¹ “It’s actually a monument to the Confederate Veterans who fought in the Civil War,” he said.²³² At a monument-removal protest in the summer of 2020, supporters of the monument (often armed) outnumbered those arguing for its removal.²³³

Relocation of a monument to another willing community transfers the problematic monument to another area, which allows the monument to continue to be used as governmentally supported speech. At the time of removal, Louisville Mayor Greg Fisher said, “The stain of slavery and racism that this monument represents for many, many people has no place in a compassionate, forward leaning city.”²³⁴ Yet, despite the recognition of this stain, the mayor did not note any concern with moving that monument to another city.

The public comments from Brandenburg/Meade County in accepting the monument are interesting and further highlight the potentially problematic nature of this transfer. There was considerable support for accepting the monument’s transfer from Louisville, hoping that it could have economic benefits related to tourism.²³⁵ Other individuals and groups had strong reservations about what message accepting this monument sends about the community (potentially being painted as racist), about perceptions of what the community values (as the Confederate monument now dwarfs the Underground Railroad monument), and about maintenance costs and potential vandalism.²³⁶ One commentator noted that “Citizens of Louisville believe it represents something and they want that gone,” and another asked whether anyone “ha[d] asked our non-white residents what they think about this statue?”²³⁷

E. Monuments Conveyed to Cemeteries

Cemeteries, not surprisingly, have also been a common destination for relocated monuments. Cemeteries have played a critical role in the American commemorative landscape—evolving to meet current societal needs.²³⁸ Putting monuments in

231. *Id.*

232. *Id.*

233. Sara Sidery, *Hundreds Gather in Brandenburg, Kentucky to Protect Confederate Monument from Potential Vandalism*, WDRB (June 12, 2020), https://www.wdrb.com/news/hundreds-gather-in-brandenburg-kentucky-to-protect-confederate-monument-from-potential-vandalism/article_66f0a248-ad15-11ea-b82f-33b35a7a6dde.html [<https://perma.cc/YDA5-QXSR>].

234. Bromwich, *supra* note 230.

235. *Responses Received from Meade County Public Forum Seeking Input on Confederate Statue Solicitations from City of Louisville*, MEADE CNTY. (July 21, 2016), http://meade.ca.uky.edu/files/public_forum_proceedings_civil_war_monument.pdf [<https://perma.cc/XWR3-WJZR>].

236. *Id.*

237. *Id.*

238. *Cemetery*, CULTURAL LANDSCAPE FOUND., <https://www.tclf.org/category/designed-landscape-types/cemetery> [<https://perma.cc/PF28-ASYP>] (profiling the role of cemeteries in the cultural landscape and providing important examples); *see also* Alfred L. Brophy, “*These Great and Beautiful Republics of the Dead*”: *Public Constitutionalism and the Antebellum Cemetery* (Univ. of N.C. L. Stud., Working Paper No. 2304305),

cemeteries ties the monuments more clearly to a funereal or commemorative function rather than as an expression of public support for a particularized view of history. While some cemeteries have accepted the relocated monuments, others have rejected them.²³⁹ Some monument removal proponents view cemeteries as acceptable locations for the relocated monuments, and others do not. While monuments in cemeteries are not often targeted by protests, it is also difficult to say that they are apolitical commemorative sites. The examples below consider these issues.

1. Lowndes County Courthouse, Columbus, Mississippi

Erected in 1912, Lowndes County's Confederate monument, a thirty-two-foot-tall monument featuring three soldiers, stood in front of the county's courthouse.²⁴⁰ Only three weeks after the Lowndes County Supervisors voted three-to-two to keep the monument in June 2020, they then voted unanimously to remove it and relocate it to a local cemetery after local protests related to controversial racial remarks one of the supervisors made in the interim period.²⁴¹ As this supervisor explained his decision to reverse course,

I talked to the Daughters of the Confederacy people and they said they didn't have a problem with moving it [to] the Friendship Cemetery as long as they had some say-so in the spot that's going to be down at Friendship, and as long as they didn't damage the monument. If they didn't have a problem with it, I don't have a problem with it.²⁴²

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2304305 [https://perma.cc/2MK5-ENQU] (discussing the various societal roles that cemeteries played before the Civil War).

239. See Phoebe Petrovic, *Confederate Monument in Madison Cemetery Removed*, WIS. PUB. RADIO (Jan. 11, 2019), <https://www.wpr.org/confederate-monument-madison-cemetery-removed> [https://perma.cc/YN2S-WHMD]; see, e.g., Julie Bosman, *Battle Over Confederate Monuments Moves to the Cemeteries*, N.Y. TIMES (Sept. 21, 2017), <https://www.nytimes.com/2017/09/21/us/confederate-monuments-cemeteries.html> [https://perma.cc/P2XM-7G5M]. (stating while some cemeteries are rejecting new monuments, others are removing existing monuments).

240. See *Civil War Monuments*, MISS. ENCYCLOPEDIA (May 25, 2018) <https://mississippiencyclopedia.org/images/civil-war-monuments-01/> [https://perma.cc/G73H-632V]. Brandon Jones, *The Power of Community: Miss County Becomes State's First to Relocate a Confederate Monument*, SPLC ACTION FUND (June 24, 2021), <https://www.splcactionfund.org/blog/2021/06/24/power-community-miss-county-becomes-state%E2%80%99s-first-relocate-confederate-monument> [https://perma.cc/EAD9-854V].

241. Yue Stella Yu, *Lowndes Supes Vote to Move Confederate Monument to Friendship Cemetery*, DISPATCH (July 30, 2020), <https://cdispatch.com/news/2020-07-07/lowndes-supes-vote-to-move-confederate-monument-to-friendship-cemetery/> [https://perma.cc/S6QT-FMD6]. The change in vote came after protests following "Supervisor Harry Sanders' comments . . . that Black people had remained 'dependent' in society since the end of slavery." *Id.*

242. *Id.*

This monument was subject to the state's statue statute, and removal required approval from the Mississippi Department of Archives and History.²⁴³ In May 2021, this monument was disassembled in anticipation of its move to its new location.²⁴⁴ The relocated statue will stand near the graves of unidentified Confederate soldiers in Columbus, Mississippi.²⁴⁵

2. University of Mississippi, Oxford, Mississippi

In 2020, the University of Mississippi removed its Confederate monument from central campus to a Civil War-era cemetery also on the campus.²⁴⁶ Installed in 1906, the monument stood near the university's main administration building.²⁴⁷ The monument has long been criticized for advancing Lost Cause ideology.²⁴⁸ The dedication speeches, rediscovered in 2020, bear this criticism out.²⁴⁹ In 2016, as an initial response to this criticism, the university added a plaque to provide some context for the monument.²⁵⁰ In 2020, however, the university relocated the monument. Shortly after the relocation to the cemetery, the school's chancellor came under fire for a proposal adding headstones to unmarked graves, which students and faculty criticized for turning the cemetery into a greater attraction.²⁵¹ In August 2020, the university set up a barrier to partially obstruct the relocated monument as student-athletes complained that the monument was visible from the football team's practice

243. Associated Press, *Mississippi Board Says County Can Move Confederate Statue*, WJTV (Nov. 2, 2020), <https://www.wjtv.com/news/mississippi-board-says-county-can-move-confederate-statue/> [<https://perma.cc/C9E8-7LDB>].

244. Slim Smith, *Photos: Confederate Monument Removed*, DISPATCH (May 23, 2021), <https://cdispatch.com/news/2021-05-23/photo-confederate-monument-removed/> [<https://perma.cc/359B-DVL8>].

245. Associated Press, *supra* note 243.

246. Emily Wagster Pettus, *Confederate Statue Being Moved at University of Mississippi*, PBS (July 14, 2020), <https://www.pbs.org/newshour/nation/confederate-statue-being-moved-at-university-of-mississippi> [<https://perma.cc/XS27-QXFW>].

247. Associated Press, *Confederate Statue Removed from Prominent Location at Ole Miss*, ATLANTA J.-CONST. (July 14, 2020), <https://www.ajc.com/news/confederate-statue-removed-from-prominent-location-ole-miss/NDhvMIXabfUkBh3KKfy4NK/> [<https://perma.cc/676J-P8RU>].

248. See JOHN NEFF, JAROD ROLL & ANNE TWITTY, A BRIEF HISTORICAL CONTEXTUALIZATION OF THE CONFEDERATE MONUMENT AT THE UNIVERSITY OF MISSISSIPPI (2016), <https://history.wp2.olemiss.edu/wp-content/uploads/sites/6/2017/08/A-Brief-Historical-Contextualization-of-the-Confederate-Monument-at-the-University-of-Mississippi.pdf> [<https://perma.cc/Y5MS-NEMP>].

249. Anne Twitty, *Ole Miss's Monument to White Supremacy*, ATLANTIC (June 19, 2020), <https://www.theatlantic.com/ideas/archive/2020/06/ole-miss-monument-white-supremacy/613255/> [<https://perma.cc/H66P-BJGV>].

250. Jeffrey S. Vitter, *History, Context, Identity*, UNIV. OF MISS. (June 10, 2016), <https://chancellor.olemiss.edu/history-context-identity/> [<https://perma.cc/6ZLQ-FKY2>].

251. Emily Wagster Pettus, *Ole Miss Leader Sorry for How Relocation of Confederate Statue Handled*, CLARION LEDGER (July 17, 2020), <https://www.clarionledger.com/story/news/2020/07/17/ole-miss-confederate-statue-chancellor-apologizes-how-handled/5461677002> [<https://perma.cc/EQ6T-WGQR>].

field.²⁵² Ole Miss has indicated that it will install permanent screening in place of the temporary barriers that have been erected.²⁵³

In some cases, removing a monument does not mean that it is out of sight or removed from public discussions. Some monuments will continue to be controversial in their new locations and may require additional steps, such as screening, to be tolerated by their host community. One positive of the university's decision to retain ownership of its monument is that it can take additional steps to address public concerns regarding its new location.

3. "Fame" Statue—Salisbury, North Carolina

After standing allowing the "Fame" statue to stand in downtown Salisbury for 111 years, the Salisbury County voted to remove it and declared its continued presence a public safety risk.²⁵⁴ A man fired two shots into the air near protesters at the statue leading to charges of inciting a riot and furthering demonstrations the following night.²⁵⁵ The council then worked with the UDC to create a plan for its removal, initially placing the monument in storage.²⁵⁶

"Fame" was finally moved to the Old Lutheran Cemetery in Salisbury around a year later.²⁵⁷ Mayor Karen Alexander stated, "After a year of planning, site research and the preparation, Fame is now in her final location, placed in historical context, overlooking the graves of the soldiers for which she was originally created in perpetuity."²⁵⁸ President of the Salisbury NAACP chapter, Gemale Black, shared a positive sentiment stating, "We, the Salisbury-Rowan NAACP, know that this is the appropriate place for the Fame statue. Moving Fame to the Lutheran Cemetery near the graves of Confederate soldiers gives it context and can still allow for additional historical and educational information to be shared."²⁵⁹

252. Associated Press, *Confederate Statue Partially Hidden After Ole Miss Athletes Said They Didn't Want to See It*, WLOX (Aug. 20, 2020), <https://www.wlox.com/2020/08/20/confederate-statue-partially-hidden-after-ole-miss-athletes-said-they-didnt-want-see-it/> [<https://perma.cc/LNB5-R4CQ>].

253. *Id.*

254. David Whisenant, *After 111 Years, Salisbury Confederate Monument "Fame" Moved*, WBTV (July 6, 2020), <https://www.wbvtv.com/2020/07/06/after-years-salisbury-confederate-monument-fame-is-now-being-moved/> [<https://perma.cc/3RA8-WLHY>]. It is questionable whether under North Carolina state law this as a valid reason for removal. State law requires the monument to be relocated to an equally prominent location. N.C. GEN. STAT. ANN. § 100-2.1(b) (West 2022)

255. Whisenant, *supra* note 254.

256. *After More than 100 Years, Salisbury 'Fame' Confederate Statue Removed Overnight*, SPECTRUM NEWS (July 7, 2020), <https://spectrumlocalnews.com/nc/charlotte/news/2020/07/07/salisbury--fame--statue-to-be-removed-overnight> [<https://perma.cc/CAS8-DRDW>].

257. David Whisenant, *Salisbury Confederate Statue 'Fame' Placed in New Location*, WBTV (July 23, 2021), <https://www.wbvtv.com/2021/07/23/salisbury-confederate-statue-fame-be-placed-new-location/> [<https://perma.cc/MC3L-K596>].

258. *Id.*

259. *Id.*

The examples discussed above show the appeal of relocating a monument from a public courthouse or square to a cemetery. It allows a community to move a disputed monument from a prominent public location (where its impact is most problematic) to a less prominent location where its public speech dimensions are muted. A challenge with cemetery relocations, however, may be an unwillingness to add context to the monument in its new location, and interpreting monuments in a cemetery location may prove difficult or be viewed as unnecessary. For example, a cemetery commission may view its purpose as purely funereal and reject a request to install interpretive panels (which may be important depending on the monument and its messaging). Interpretive panels could also run afoul of a cemetery's restrictions on displays, which are often quite narrow to limit the types of displays considering maintenance obligations.

Other cemeteries, however, have been reluctant to accept transfer requests. An example of this is a monument formerly located in Isle of Wight, Virginia.²⁶⁰ In early 2021, a monument was removed from the county courthouse and was temporarily stored in a local resident's yard—pending a decision on a relocation site.²⁶¹ The consensus was to relocate this monument to a local cemetery, but the cemetery did not accept the transfer. The local cemetery determined that the monument was too large and that they did not want to take on the “liability and responsibility for it.”²⁶² For now, the monument remains in pieces, disassembled on private property.²⁶³ The local resident who accepted the monument is reassembling the monument, and he “plans to place the land his monument sits on under an easement to allow for public viewing, establish a historical association connected to the monument and then control who visits—and why.”²⁶⁴

Other monuments have been removed from cemeteries. North Carolina's oldest Confederate monument, for example, was recently removed from a cemetery at the request of the monument's owner.²⁶⁵ Monuments have also been vandalized at cemeteries, which led Hollywood Cemetery (the historic Richmond cemetery where the highest number of leading Confederates, including Jefferson Davis, is buried) to reject the Monument Avenue monuments.²⁶⁶

260. Marc Fisher, *The Confederacy's Final Resting Place*, WASH. POST (May 30, 2021, 7:51 PM), <https://www.washingtonpost.com/history/2021/05/29/confederate-cemeteries-statues-virginia/> [<https://perma.cc/39MT-NJMJ>].

261. *Id.*

262. Charlotte Rene Woods & Jessie Higgins, *What Could Happen to Charlottesville's Confederate Monuments? Here's Where 29 Others in Virginia Ended Up*, CHARLOTTESVILLE TOMORROW (July 15, 2021), <https://www.cvilletomorrow.org/articles/what-could-happen-to-charlottesvilles-confederate-monuments-heres-where-29-others-in-virginia-ended-up/> [<https://perma.cc/R8SN-PMG6>].

263. Fisher, *supra* note 260.

264. Woods & Higgins, *supra* note 262 (indicating that the owner intends that the area around the monument will be treated like a cemetery).

265. Mitchell Northam, *Since George Floyd's Death, These Confederate Monuments Have Been Removed in North Carolina*, WUNC (Dec. 21, 2020, 4:37 PM), <https://www.wunc.org/race-demographics/2020-12-21/since-george-floyds-death-these-confederate-monuments-have-been-removed-in-north-carolina> [<https://perma.cc/5LLW-8SBV>] (profiling the Cumberland County memorial and its removal).

266. Fisher, *supra* note 260.

F. Monuments Transferred to Museums

Museums have also been a popular relocation option—if a museum can be found to take ownership of a monument. Communities and state heritage commissions often look favorably at museums as relocation sites. In fact, the unavailability of a museum to host a monument may delay its removal as communities fail to agree on other destinations. For example, the Museum of the Mississippi Delta,²⁶⁷ a public museum in Greenwood, Mississippi, elected not to accept its county’s courthouse monument.²⁶⁸ Stymied by the museum’s refusal, the county has left the monument in place despite a vote to remove it.²⁶⁹

If a museum agrees to take possession of a monument,²⁷⁰ as some have argued should be the preferred solution for these monuments,²⁷¹ this creates complex legal and practical issues for the museum.²⁷² Given these challenges, few monuments have been relocated to museums despite often being identified as the preferred site for

267. MUSEUM OF THE MISS. DELTA, [https://www.museumofthemississippidelta.com/\[https://perma.cc/RBQ5-WLU5\]](https://www.museumofthemississippidelta.com/[https://perma.cc/RBQ5-WLU5]).

268. Adam Bakst, *Museum Explains Not Accepting Statue*, GREENWOOD COMMONWEALTH (July 10, 2020, 1:09 PM), <https://www.gwcommonwealth.com/news-top-stories/museum-explains-not-accepting-statue#sthash.OHpNL7zQ.bRxbgyrK.dpbs> [<https://perma.cc/DK4T-M7TX>] (highlighting the controversy over the monument and the physical limitations of their building).

269. Leah Willingham, *What Follows Confederate Statues? 1 Mississippi City’s Fight*, AP NEWS (Aug. 8, 2021), <https://apnews.com/article/confederate-statues-mississippi-emmett-till-967fd5a225b7aceabd871c94a45bd363> [<https://perma.cc/M5H6-U86Y>]. Interestingly, in its vote to remove the Leflore County Confederate monument, the county stipulated that no statues to county history or the civil rights movement would be put up in its place, but the county has decided to erect a statue of Emmett Till (a fourteen-year-old Black youth who was killed during the civil rights movement near the town in 1965) in a nearby park.

270. Holland Cotter, *We Need to Move, Not Destroy, Confederate Monuments*, N.Y. TIMES (Aug. 20, 2017), <https://www.nytimes.com/2017/08/20/arts/design/we-need-to-move-not-destroy-confederate-monuments.html> [<https://perma.cc/DH44-NFEJ>] (arguing that “[a]t a crime scene, you don’t destroy evidence”). Museums have often played conflicting roles within the Confederate heritage space including depicting Lost Cause narratives. See, e.g., Reiko Hillyer, *Relics of Reconciliation: The Confederate Museum and Civil War Memory in the New South*, 33 PUB. HISTORIAN 35 (2011) (profiling the founding and messaging related to the founding of the Confederate Museum in Richmond by the Confederate Memorial Literary Society).

271. See, e.g., Christopher Knight, *Perspective: What to Do with Confederate Monuments? Put Them in Museums as Examples of Ugly History, Not Civic Pride*, L.A. TIMES (Aug. 18, 2017, 7:55 AM), <https://www.latimes.com/entertainment/arts/la-et-cm-confederate-monuments-20170818-htmlstory.html> [<https://perma.cc/U4HJ-UUHD>]; see also Sinclair Devereux Marber, *Bloody Foundation? Ethical and Legal Implications of (Not) Removing the Equestrian Statue of Theodore Roosevelt at the American Museum of Natural History*, 43 COLUM. J.L. & ARTS 85, 102–05 (2019) (exploring the challenges of addressing this problematic statue through various interpretive options).

272. See, e.g., Alexandra M. Harter, *The Role of Museums in the Removal of Monuments*, MUSEUM STUD. AT TUFTS UNIV. (June 22, 2020), <https://sites.tufts.edu/museumstudents/2020/06/22/the-role-of-museums-in-the-removal-of-monuments/> [<https://perma.cc/TRB3-EGKP>].

relocation. This section will explore a few of the overarching challenges before examining a few relocations to consider how these have played out.

First, there are interpretational challenges associated with how to present a monument. Some of the museums that may wish to take possession of relocated monuments may not be neutral in their presentation, and may lean, in the view of those seeking removal, pro-Confederacy. As Dallas explored the nonprofit Texas Civil War Museum for the potential transfer of its Robert E. Lee monument, it concluded that the museum's viewpoint, although purportedly neutral, conveyed support for the Confederate cause.²⁷³

It may, however, not be enough to be neutral ground, but taking ownership of a museum may require it to reconsider its role. As Hollard Cotter argues, for museums to name the message of these oversized propaganda monuments for what they are, they "will have to relinquish their pretense of ideological neutrality. They will have to become truth-telling institutions."²⁷⁴ This may not be something that a museum feels like it has the resources to address in an impactful way or may be reluctant to tackle such a controversial issue.

Second, the nature of the monuments creates a challenge. They are often difficult to house within a museum given the size and weight.²⁷⁵ These monuments are often built to be viewed from a raised perspective (i.e., on a raised plinth) and they will also require ongoing care and conservation work that may be considerable and may go beyond the technical expertise of the museum's staff. A Florida museum recently declined to accept a statue based on cost, estimating that "the cost for the museum when adding in all factors—the move, insurance, maintenance, exhibit signage and other expenses" was well beyond the small museum's ability.²⁷⁶

Third, the nature of an organization's mandate will also potentially play a role in whether the acquisition of the monument fits within its acquisition strategy. How many museums are ready and willing to enter this societal debate is an open question as "more and more [museums] aim to surface issues, not hide them—to be places where communities come together to discuss and wrestle with contemporary questions."²⁷⁷

273. Robert Wilonsky, *Trip to Texas Civil War Museum Shows Why Dallas Should Never Send Its Robert E. Lee Statue There*, DALL. MORNING NEWS (Apr. 24, 2018, 6:42 AM), <https://www.dallasnews.com/opinion/commentary/2018/04/24/trip-to-texas-civil-war-museum-shows-why-dallas-should-never-send-its-robert-e-lee-statue-there/> [<https://perma.cc/BP38-GMBB>]; see also *Dallas Puts Off Confederate Statue Issue After 2017 Removal*, AUSTIN AM. STATESMAN (Jan. 12, 2019, 4:39 PM), <https://www.statesman.com/news/20190112/dallas-puts-off-confederate-statue-issue-after-2017-removal/1> [<https://perma.cc/DZ9T-CH8J>].

274. Cotter, *supra* note 270.

275. See Noah Caldwell, *Where Do Confederate Monuments Go After They Come Down?*, NPR (Aug. 5, 2018, 8:08 AM), <https://www.npr.org/2018/08/05/633952187/where-do-confederate-monuments-go-after-they-come-down> [<https://perma.cc/3TLC-S848>].

276. Jocelyn Flores, *Matheson Museum Declines to Accept 'Old Joe' Confederate Statue*, WUFT (Oct. 3, 2016), <https://www.wuft.org/news/2016/10/03/matheson-museum-declines-to-accept-old-joe-confederate-statue/> [<https://perma.cc/4PMF-YAVT>].

277. Elizabeth Merritt, *Are Museums the Rightful Homes for Confederate Monuments?*, AM. ALL. OF MUSEUMS: CTR. FOR THE FUTURE OF MUSEUMS BLOG (Apr. 3, 2018) (alteration in original), <https://www.aam-us.org/2018/04/03/are-museums-the-rightful-home-for->

This section describes several museums that have accepted monuments, how they evaluated this request, and how they may use these monuments as part of their educational missions.

1. County Courthouse Monument in Denton, Texas, to Courthouse Museum

The Confederate statue in Denton, Texas, was relocated from in front of the county courthouse to the courthouse's museum.²⁷⁸ The county removed the monument in June 2020,²⁷⁹ and the Texas Historical Commission's Antiquities Advisory Board unanimously approved the relocation in April 2021.²⁸⁰ The Advisory Board described this relocation as the "model," suggesting museums will be a favorable destination in Texas.²⁸¹

Deciding to accept the statue also involved logistical hurdles. "Because the monument in its entirety exceeds the height of the museum's ceiling," the display will include the statue and a 3-D rendering of its former appearance. The curator hopes the 3-D rendering will allow the viewer to get some sense of the former perspective and siting of the monument.²⁸² The display will also provide a narrative history of the monument and of slavery in the community. One member of the Courthouse-on-the-Square Art Committee is optimistic for this relocation, stating "[a]lthough the Confederate statue relocation and contextual additions have taken time, it's been well worth it. The committee has worked together to come up with what we think is the best thing for Denton County and the memorial."²⁸³ Some activists disagreed, asking for more minority representation in both the process and

confederate-monuments/ [https://perma.cc/HA7B-3N98].

278. Heana Garnand, *Denton County Confederate Monument to be Relocated Inside Courthouse Museum*, N. TEX. DAILY (Apr. 29, 2021), <https://www.ntdaily.com/denton-county-confederate-monument-to-be-relocated-inside-courthouse-museum/> [https://perma.cc/3LY4-8AST]; see also *Courthouse-on-the-Square Museum*, DENTON CNTY. TEX., <https://www.dentoncounty.gov/Facilities/Facility/Details/CourthouseontheSquare-Museum-11> [https://perma.cc/V7ZY-ZJZZ].

279. Simone Carter, *Denton County Commissioners Vote to Remove Confederate Monument*, DALL. OBSERVER (June 10, 2020, 4:00 AM), <https://www.dallasobserver.com/news/denton-confederate-monument-11918312> [https://perma.cc/57AB-9H2Y].

280. *State Commission Approves Plans for Relocation of Denton Confederate Monument*, CBS DFW (Apr. 15, 2021, 3:34 PM), <https://dfw.cbslocal.com/2021/04/15/state-commission-approves-plans-for-relocation-of-denton-confederate-monument/> [https://perma.cc/5ETT-XHCW]. Advisory Board approval was required because of a state law protecting publicly owned properties, covering the county courthouse.

281. Demetrius Harper, *Denton County Courthouse Confederate Monument Moving Inside to Town Square Museum*, NBC DFW (Apr. 17, 2021, 7:32 PM), <https://www.nbcdfw.com/news/local/denton-county-courthouse-confederate-monument-moving-inside-to-town-square-museum/2607739/> [https://perma.cc/C3MG-V4MS]. Texas Historical Comm'n, Executive Comm., Apr. 14, 2021, https://www.thc.texas.gov/public/upload/Executive-Committee-mtg-packet_April-14-2021_.pdf (providing for the THC approval of this relocation).

282. Garnand, *supra* note 278.

283. Harper, *supra* note 281.

in shaping the version of history presented by the county.²⁸⁴ Many will be monitoring the success of this interpretive strategy.

2. Jefferson Davis Statue at the University of Texas to Campus History Museum

The University of Texas employed a similar strategy to Denton's. Since 1936, a statue of Jefferson Davis with a fountain, which was commissioned by a former Confederate soldier, stood on the campus's South Mall.²⁸⁵

In 2015, the monument was removed from the South Mall in response to an "almost unanimous[]" vote on a resolution for removal drafted by the president and vice president of UT's student government.²⁸⁶ Attempts by the SCV to prevent the removal failed, as Judge Karin Crump denied their temporary restraining order in August of 2015.²⁸⁷ In 2017, the monument was relocated to the campus's history museum.²⁸⁸ The museum's director argued that Confederate monuments "are pieces of art; destroying that is like burning books. They need to be preserved and they belong in museums."²⁸⁹ This statue is now part of the museum's permanent collection. The specific exhibit is referred to as "From Commemoration to Education: Pompeo Coppini's Statue of Jefferson Davis."²⁹⁰ A large label next to the

284. Justin Grass, *One Year Later, Denton County's Confederate Monument Draws Closer to Next Chapter in Controversial Legacy*, DENTON REC.-CHRON. (June 24, 2021), https://dentonrc.com/news/one-year-later-denton-countys-confederate-monument-draws-closer-to-next-chapter-in-controversial-legacy/article_d10ac933-8505-575b-9476-23b897e28e4d.html [<https://perma.cc/LC3M-W6RZ>].

285. Univ. of Tex., *Jefferson Davis Statue*, UT CAMPUS HIST., <http://campushistory.la.utexas.edu/exhibits/show/jefferson-davis> [<https://perma.cc/3RHK-GWHL>]. Originally, this statue was intended to be displayed on an arch with other leading Confederates; the sculptor (and rising costs) convinced the funder to modify this proposal. Univ. of Tex., *Littlefield Fountain*, UT CAMPUS HIST., <http://campushistory.la.utexas.edu/exhibits/show/littlefield-fountain> [<https://perma.cc/5Z4Z-QUQP>] (providing a note from the sculptor explaining opposition to the project and discussing rising costs as leading to a change in the overall design).

286. David Courtney, *Jefferson Davis Is Back at UT*, TEX. MONTHLY (Apr. 17, 2017), <https://www.texasmonthly.com/the-daily-post/jefferson-davis-back-ut/> [<https://perma.cc/YQ8M-LK58>].

287. Mathew Adams, *Judge Denies Sons of Confederate Veterans' Temporary Restraining Order; UT to Relocate Statues*, DAILY TEXAN (Aug. 28, 2015), <https://thedailytexan.com/2015/08/28/judge-denies-sons-of-confederate-veterans-temporary-restraining-order-ut-to-relocate/> [<https://perma.cc/46EU-6DTM>].

288. Cailin Crowe, *What Happened When One University Moved a Confederate Statue to a Museum*, CHRON. HIGHER EDUC. (Sept. 10, 2018), <https://www.chronicle.com/article/what-happened-when-one-university-moved-a-confederate-statue-to-a-museum/> [<https://perma.cc/KDU8-T9EN>].

289. Rick Jervis, *When a Bronze Confederate Needed to Retire, University of Texas Found a Home*, USA TODAY (Aug. 19, 2017, 2:10 PM), <https://www.usatoday.com/story/news/2017/08/18/confederate-statue-retirement-home/580041001/> [<https://perma.cc/Z4HG-D522>].

290. Univ. of Tex., *From Commemoration to Education: Pompeo Coppini's Statue of Jefferson Davis*, BRISCOE CTR. FOR AM. HIST., <https://briscoecenter.org/exhibitions/from-commemoration-to-education-pompeo-coppinis-statue-of-jefferson-davis-2/>

statue has the hashtag #DavisMustFall, and interpretive panels seek to place this monument in context.²⁹¹

3. Richmond's Robert E. Lee Statue to the Virginia Museum of History and Culture

One of the highest profile removals took place on December 21, 2020. Placed in 1909 by the Commonwealth of Virginia, the statue of Confederate General Robert E. Lee was removed from the National Statuary Hall's collection in the United States Capitol.²⁹² Virginia Governor Ralph Northam said in a statement that "[t]he Confederacy is a symbol of Virginia's racist and divisive history, and it is past time we tell our story with images of perseverance, diversity, and inclusion. I look forward to seeing a trailblazing young woman of color represent Virginia in the U.S. Capitol."²⁹³

The 700-pound bronze statue ended its 111-year stint in the U.S. Capitol and immediately found its new home in the Virginia Museum of History and Culture.²⁹⁴ The museum's senior director for curatorial affairs, Andrew Talkov, said the sculpture would help tell "a critical story about change over time" and that he was "grateful to the commonwealth" to be able to add the statue to the museum's collection.²⁹⁵ The Lee statue is now part of the museum's Lost Cause exhibit, which explains that "the monument and murals displayed in this gallery . . . tell us more about the intentions and values of the people who created them than about the historical subjects they depict."²⁹⁶

4. Houston's Spirit of the Confederacy Statue to the Houston Museum of African American Culture

The Houston Museum of African American Culture (HMAAC)²⁹⁷ accepted a relocated Confederate monument and is displaying this monument (initially opposite

[<https://perma.cc/7NVW-3C63>].

291. Courtney, *supra* note 286.

292. Merrit Kennedy, *Virginia Removes Its Robert E. Lee Statue from U.S. Capitol*, NPR (Dec. 21, 2020, 9:39 AM), <https://www.npr.org/2020/12/21/948736896/virginia-removes-its-robert-e-lee-statue-from-u-s-capitol> [<https://perma.cc/FHS7-J3CN>].

293. Off. of the Governor, *Virginia Removes Confederate Statue from U.S. Capitol*, COMMONWEALTH OF VA. (Dec. 21, 2020), <https://www.governor.virginia.gov/newsroom/all-releases/2020/december/headline-890324-en.html> [<https://perma.cc/SUB4-8C62>]. As of December 2022, a new statute had not yet been selected.

294. Andrew Cain, *WATCH NOW: Virginia Museum Says Lee Statue, Formerly at U.S. Capitol, Will Tell Story of 'Change Over Time'*, RICHMOND TIMES DISPATCH (Dec. 22, 2020), https://richmond.com/news/state-and-regional/watch-now-virginia-museum-says-lee-statue-formerly-at-u-s-capitol-will-tell-story/article_89a3ed86-e46b-5781-82ca-4b6e1de16018.html.

295. *Id.*

296. Va. Hist. Soc'y, *The Lost Cause: Myths, Monuments & Murals*, VA. MUSEUM OF HIST. & CULTURE (May 14, 2022), <https://virginiahistory.org/exhibitions/lost-cause> [<https://perma.cc/R2LH-MEFK>].

297. *About*, HMAAC, <https://hmaac.org/hmaac-history> [<https://perma.cc/F9AM->

a collection of sculpted eyeballs) to address the public attention and historic weight of these monuments and removal efforts.²⁹⁸ This monument, which was eight feet tall and erected in 1908 by the Robert E. Lee Chapter of the UDC, was removed from the City of Houston's Sam Houston Park.²⁹⁹ This monument's inscription states: "To all heroes of the South who fought for the principles of states rights."³⁰⁰ The museum notes that the "challenge is how we place this evidence in a narrative context that educates and heals. This museum has and will continue to be up to that challenge."³⁰¹ John Guess Jr., CEO emeritus of the museum, echoed this sentiment by stating, "We understand the pain these monuments bring to people We don't get past that pain and get to healing without at times confronting them."³⁰²

HMAAC's interpretive decisions were important. The museum put the statue in an enclosed courtyard, making sure that it would not be visible to passersby. The curators also worked to bring in other art and artists to keep the conversation going and held a symposium to discuss the statue and the role of Confederate monuments.³⁰³ To ensure that HMAAC had the full ability to interpret and decide the monument's fate, the museum insisted on receiving title to the monument without condition, and to date, the HMAAC has not restored or cleaned the monument.³⁰⁴

Overall, removal of monuments to museums has been a popular solution. It has primarily been employed when a publicly owned monument can be transferred to a local public history museum (as occurred with both the Denton monument and a Raphael Semmes statue in Mobile, Alabama). State statue statutes may also push monuments in this direction as it is viewed as a way to remove the monument from its public setting, but without resulting in the outright destruction of the statue or monument.

LKMW].

298. Isis Davis-Marks, *Why the Houston Museum of African American Culture Is Displaying a Confederate Statue*, SMITHSONIAN MAG. (Sept. 8, 2020), <https://www.smithsonianmag.com/smart-news/why-houston-museum-african-american-culture-displaying-confederate-statue-180975742/> [<https://perma.cc/B4UG-D6CW>].

299. Molly Glentzer, *'Spirit of the Confederacy' Statue Finds New Home in Houston's African American Museum*, HOUST. CHRON. (Aug. 19, 2020, 9:08 AM), <https://www.houstonchronicle.com/life/article/houston-confederate-statue-african-american-museum-15493875.php> [<https://perma.cc/L7NP-LPUT>].

300. Juan A. Lozano, *Houston Museum Says Displaying Confederate Statue Part of Healing*, HOUST. PUB. MEDIA (Aug. 19, 2020, 3:28 PM), <https://www.houstonpublicmedia.org/articles/news/city-of-houston/2020/08/19/380129/houston-museum-says-displaying-confederate-statue-part-of-healing/> [<https://perma.cc/YD37-ZQSV>].

301. *HMAAC Receives Confederate Monument from the City of Houston*, HMAAC, <https://hmaac.org/hmaac-receives-confederate-monument-from-the-city-of-houston> [<https://perma.cc/N62F-WXDT>].

302. Lozano, *supra* note 300.

303. See THOMPSON, *supra* note 100, at 150–53 (discussing eye-shaped sculptures by Bert Long Jr. that surround the statue and plans to invite artists in residences, like Willow Curry, to create artwork that responds to the monument).

304. *Id.*

G. Monuments to Historic Sites

Another popular option is relocating monuments to historic sites. Such locations enable a monument to be placed in a historical context, allowing for contextualization. Battlefields seem particularly appropriate locations for memorials to soldiers on either side of the battle. They are also places of interpretation and, in many ways, are outdoor museums. The direct association with the conflict is appealing to many communities looking to relocate a monument in a non-controversial manner. Other historic sites that have been selected include birthplaces (Jefferson Davis's birthplace, in Kentucky, for example).

Private organizations like the American Battlefields Trust and the Shenandoah Valley Battlefields Foundation have been actively involved in relocating confederate monuments to battlefields.³⁰⁵ For example, in Charlottesville, Virginia, the Albemarle County Board of Supervisors voted unanimously to remove the 111-year-old bronze "At Ready" statue in front of the Albemarle County Courthouse in Charlottesville.³⁰⁶ Virginia state law requires that the county first offer the statue to a museum, historical society, or military battlefield, but retain full discretion on where to relocate a monument.³⁰⁷ Albemarle County used revisions in Virginia's statue statute to remove the monument and approved the transfer to the Shenandoah Valley Battlefields Foundation.³⁰⁸

The last Confederate courthouse monument in Maryland will soon be moved to a battlefield in the same area of Virginia.³⁰⁹ The Talbot City Council voted 3-2 to move the monument to the private Cross Keys Battlefield in Harrisonburg, Virginia.³¹⁰ The Talbot Boys statue was dedicated in 1916 and commemorates over eighty soldiers who fought for the Confederacy.³¹¹ Private funds will be used to cover the costs of the monument's relocation.³¹²

People travel to battlefields because of their interest in the Civil War. Putting a monument on the land seems logical to some communities. After voting to move a

305. See NBC29 Newsroom, *'At Ready' Confederate Statue is Being Removed from Court Square*, *Live Link Here*, NBC29, <https://www.nbc29.com/2020/09/12/albemarle-county-confederate-monuments-removal/> [<https://perma.cc/5NJB-JNMF>], (Sept. 12, 2020, 11:05 AM).

306. *Albemarle County Votes to Remove Confederate Statue*, AP NEWS (Aug. 7, 2020), <https://apnews.com/article/va-state-wire-charlottesville-racial-injustice-virginia-9c451acd6c8d5d37510385c7ac08f658> [<https://perma.cc/4L8G-PBEX>]. The monument, a Confederate soldier surrounded by a cannon and three cannon balls, was put in place in 1909 by the UDC, the county, and the city of Charlottesville.

307. H.1537, 2020 Gen. Assemb., 2020 Sess. (Va. 2020).

308. Derrick Bryson Taylor, *Confederate Statue Near Site of White Nationalist Rally in Charlottesville is Removed*, N.Y. TIMES (Sept. 12, 2020), <https://www.nytimes.com/2020/09/12/us/charlottesville-confederate-statue-at-ready.html> [<https://perma.cc/VUD7-M26X>].

309. *Confederate Statue to Be Moved from Maryland Courthouse Lawn*, AP NEWS (Sept. 15, 2021), <https://apnews.com/article/courts-virginia-maryland-easton-36550675c342961cdb1875ac20b525dd> [<https://perma.cc/38P4-FH4Y>].

310. *Id.*

311. *Id.*

312. *Id.*

bronze statue of a Confederate soldier to the First Battle of Kinston Civil War Memorial,³¹³ Assistant County Manager Joey Bryan stated:

It's already a Civil War battleground and it's been visited for a couple of decades now. So, instead of it being placed where everybody has to see it at a major intersection, it's going to be placed in an already Civil War battlefield where people who want to go see it can go see it there.³¹⁴

H. Monuments Relocated to Storage

Some Confederate monuments have been placed in storage as either a temporary or permanent solution. Placing a monument in storage removes it from public view but misses an opportunity to use the monument to address the statue's legacy and to face the troubled history it represents. A few communities have elected to place monuments in storage while they determine a permanent solution. Some communities might view long-term storage as a permanent solution—avoiding controversies or legal challenges over destruction but also preventing public display and endorsement.

For example, the University of North Carolina's process to remove its Confederate monument has been one of the more high-profile monument debates.³¹⁵ Parties cannot agree on an alternative location and periodic lawsuits and protests leave university leaders at a loss. For now (and perhaps forever) Silent Sam is out of sight in a university storage unit. Baltimore followed a similar route for its confederate monuments. Until 2017, Baltimore had four public monuments to commemorate the Confederacy.³¹⁶ In 2017, Mayor Catherine Pugh ordered their removal, which she justified as necessary to protect against civil unrest.³¹⁷ These monuments were not relocated but were simply removed from a public location without a clear plan. As of 2022, more than four years after this removal, the

313. Sharon Danquah & Annette Weston, *Kinston Confederate Monument to Be Moved to Civil War Memorial Site*, ABC NEWS CHANNEL 12 (June 25, 2020), <https://wcti12.com/news/local/breaking-news-kinston-confederate-monument-to-be-moved-to-civil-war-memorial-site> [<https://perma.cc/898K-A3L3>]. The statue, a bronze Confederate soldier standing with a rifle, was visible from a large intersection of U.S. 70 and U.S. 258 in its old location at the Kingston Lenoir County Visitors Center.

314. *Id.*

315. See, e.g., Vimal Patel, *Chapel Hill's New Civil War*, CHRON. OF HIGHER EDUC. (Dec. 3, 2017), <https://www.chronicle.com/article/chapel-hills-new-civil-war/> [<https://perma.cc/J5EX-Z98F>].

316. Merritt Kennedy, *Baltimore Took Down Confederate Monuments. Now It Has to Decide What to Do with Them*, NPR (Aug. 28, 2017, 3:47 PM), <https://www.npr.org/sections/thetwo-way/2017/08/28/546131805/baltimore-took-down-confederate-monuments-now-it-has-to-decide-what-to-do-with-t> [<https://perma.cc/LZ4T-FD7B>].

317. Nicholas Fandos, Russell Goldman & Jess Bidgood, *Baltimore Mayor Had Statues Removed in 'Best Interest of My City'*, N.Y. TIMES (Aug. 16, 2017), <https://www.nytimes.com/2017/08/16/us/baltimore-confederate-statues.html> [<https://perma.cc/4CVS-FA62>].

monuments remain in storage, and there are no apparent plans to find an alternative location for these statues.

III. EMERGING LEARNING FROM CONTEMPORARY RELOCATION DECISIONS

Above we recounted examples of removed Confederate monuments. We explored the decisions communities made and the forces that shaped where these monuments ultimately went. This examination reveals several important themes that cut across these decisions.

First, communities often forget about property law constraints until they are forced to consider the claims of a Confederate heritage organization. Clouded and uncertain title can constrain efforts to remove Confederate monuments, and heritage organizations can invoke unclear ownership to gain control of a monument once it has been removed. These issues are interrelated. If a Confederate heritage organization can make a colorable claim to title, a community may be more willing to transfer the monument to this group to avoid drawn-out litigation, especially where the historical documents are missing or unclear.

Second, while state statue statutes play a significant role in frustrating removal efforts, they are also important in determining acceptable relocation destinations. Where in place, state monument protection law can significantly limit a community's options for disposal, dictating acceptable new homes and controlling the process for determining the new locations. Some laws still place the primary authority in the local community, but others give this authority to the states (or at least require state approval) of the newly chosen location.

Third, communities are often opportunistic in seeking to remove a monument. Understandably, their main goal is removal. A rush to remove may lead a community to take the path of least resistance (and least expense) in meeting that goal. This impetus has resulted in returning or transferring a monument to a Confederate heritage organization even where the ownership claims may be thin or could be challenged. The rush to remove a monument may result in a community losing control over the statue, and we urge caution to communities in thinking through the long-term ramifications of their disposal, including whether to impose restrictions through property law mechanisms or a settlement agreement with the transferee.

Fourth, the community should consider what to do with *both* the monument and its former location. Removal of a public monument often leaves a significant gap in a community's landscape that can be filled with newly commissioned public art. Addressing the weight of these monuments can hopefully help a community begin to redress its history. For example, in Richmond, on Monument Avenue, the Virginia Museum of Fine Arts is leading a multimillion-dollar proposal to redefine the city's public art through a collaborative process—which the mayor has described as “a massive investment in centering stories of trauma and resilience.”³¹⁸ Once the monument has been removed, a community has the opportunity and, arguably, the

318. Leah Small, *Richmond's Confederate Statues Are Gone. What Should Replace Them?*, GUARDIAN (Sept. 26, 2021, 5:00 AM), <https://www.theguardian.com/us-news/2021/sep/26/richmond-confederate-statues-public-art-virginia> [<https://perma.cc/T5NS-T6EP>].

obligation to grapple with its complicated legacy—and replacing the former public art with newly commissioned public art may be a way to begin on this path.

A. Legislative Recommendations

As discussed above, state statute statutes that constrain removal can constrain communities' options for the post-removal life of Confederate monuments. The statutes often require that even if removal of a monument is approved by a review board (or similar process), the monument must then be relocated to a site of equal stature.

For example, North Carolina's law only requires relocation to a site of equal stature, but it prohibits moving monuments to museums or cemeteries unless they formerly stood in similar facilities.³¹⁹ Therefore, the monuments that have been removed by state and local governments in North Carolina over the past few years sit in storage while a committee determines where they should go. While not currently on display, they may return to public display. Indeed, art historian Erin Thompson urges us to think of these removed monuments lingering in storage as being "reshuffled" instead of being permanently removed.³²⁰ Thompson points out that very few of the over 170 monuments that have come down in recent years should be considered as permanently removed. The specter of them being removed from storage and re-displayed looms large.

B. Recommendations for Community Action

Based on community experiences to date, there are a few specific actions communities can take, in their disposition processes, to best ensure that monument removal is achieving the community's goals, avoids unintended consequences, and begins to address its complicated legacy.

1. Consider the Process

The removal of a Confederate monument should be a public process, allowing a community to meaningfully weigh in on the removal effort and to collectively consider what should happen with these public statues. Public input during the removal process and post-removal relocation site selection is vital. If a monument is transferred to a Confederate organization, absent advanced agreement on where it will land, the public is cut out of the relocation process. Confederate monuments were often installed without transparency or without a public process for accepting or acquiring this public art.³²¹ Historically, this lack of process has allowed private

319. N.C. GEN. STAT. ANN. § 100-2.1(b).

320. See THOMPSON, *supra* note 100, ch. 8. Thompson explains that despite the state law, public officials in North Carolina removed "nearly twenty controversial public monuments . . . claiming they needed to do so to protect the monuments and the public." *Id.* at 165.

321. See Dell Upton, *Confederate Monuments and Civil Values in the Wake of Charlottesville*, SOC'Y OF ARCHITECTURAL HISTORIANS (Sept. 13, 2017, 11:46 AM), <https://www.sah.org/publications-and-research/sah-blog/sah-blog/2017/09/13/confederate-monuments-and-civic-values-in-the-wake-of-charlottesville> [https://perma.cc/32TN-AMSU]

groups to provide or convey artwork for public commemoration and express a viewpoint through their art without the consent or buy-in of the larger community.³²² The lack of a clear public process has also complicated questions of ownership of these artworks, as we have explored. Avoiding the ambiguities of the past with a clear public process and disposition process will both improve the actual decision on where to relocate the monument to and hopefully avoid future ambiguity about the monument's legal status.

2. Think Carefully About the Recipient

One of the most critical decisions a community will need to make is who should be given the statue upon removal.³²³ As we have explored, sometimes communities have little choice (and this decision will be dictated by property law issues or state statute statutes). Where a community has or can create flexibility,³²⁴ a community should be hesitant in conveying to private entities or other local governments because it will lose the ability to control the message of the statue, which could create unintended consequences or simply outsource a problematic monument to another community.³²⁵ Retaining community control over a monument could also lead to some creative ways to contextualize and educate. In July 2020, The George Floyd

("Currently, however, there are checks and balances. It is very difficult to erect a new monument in any public space. Endless rounds of public comment and design review are required.")

322. See QUALITY OF LIFE, ARTS & CULTURE COMM., DALLAS CITY COUNCIL COMM. AGENDA (Oct. 23, 2017), https://dallascityhall.com/government/Council%20Meeting%20Documents/qolac_finalcombined_102317.pdf [<https://perma.cc/VK4A-DDAD>] (explaining that Dallas' Confederate monuments were installed before the City had established any rules or guidance around public art).

323. See, e.g., Scott Calvert & Valerie Bauerlein, *After Confederate Monuments Fall, Where Do They Go?*, WALL ST. J. (July 23, 2020, 9:00 AM), <https://www.wsj.com/articles/after-confederate-monuments-fall-where-do-they-go-11595509200> [<https://perma.cc/DU6Z-FAXU>] (explaining that this process can be complex and involve multiple years of post-removal planning).

324. One strategy to create this opportunity is to closely examine the history of the Confederate heritage organization to determine whether it still legally exists or has a colorable claim. For example, in Lafayette, Louisiana, the local UDC chapter stopped filing a registration with the Secretary of State, and it was unclear whether it really functioned as a viable entity. See Andrew Capps, *In New Strategy to Move Mouton Statue, City Argues Confederate Group No Longer Exists*, DAILY ADVERTISER (June 28, 2021, 8:00 PM), <https://www.theadvertiser.com/story/news/local/2021/06/29/move-mouton-statue-lafayette-argues-confederate-group-doesnt-exist/5370681001/> [<https://perma.cc/Q3A6-RRZA>].

325. Cf. ROCKY MOUNT, N.C., APPROVAL OF MONUMENT TRANSFER AGREEMENT (Jan. 11, 2021), <https://rockymountnc.gov/RockyMountNC/Documents/CityClerk/CouncilMeetings/2021/Items/011121/Item%2016.pdf> [<https://perma.cc/Q8W5-9HMX>] (approving monument transfer agreement whereby the City conveyed the monument to Confederate heritage organizations based upon an agreement that it would be relocated at least fifteen miles from the community and be at the organization's expense).

Foundation projected holograms of Floyd's face on monuments as part of a temporary political and artistic project.³²⁶

While communities should be cautious of conveying monuments to private organizations, they should also be wary of transferring monuments to private individuals. As communities look for solutions for what to do with their removed monuments, anyone willing to take them and cover the cost of transport will be attractive.³²⁷ Even if an organization is interested in taking a Confederate monument, a community should hesitate. Both the UDC and SCV have actively campaigned against removal.³²⁸ When that has failed, they then seek title to the monuments or use a potential ownership claim to acquire the statue.

While transfers to heritage organizations have been reported, it is less clear what the groups are doing with the monuments after taking possession. It is anticipated that these monuments will be relocated to private lands to avoid additional future legal challenges. Initial indications are that these monuments typically have not been relocated in prominent public locations, but instead, in more isolated contexts—out of the public light. For example, the Confederate monument in Shreveport, Louisiana, was relocated from in front of the county courthouse to private land on a local battlefield.³²⁹

Where their hands are not tied, communities should strongly consider whether transferring ownership is the best outcome and whether it is simply relocating the problem to a new location, where they will still need to address the problem in the future.³³⁰ Removing the monuments from public spaces is a good result. But relocating the statue to private land in the community or a neighboring community may not provide much insulation between the community and the public/private impact of these statues.

326. Joel Burgess, *Ashville Confederate Vance Monument to Be 'Replaced' by George Floyd Hologram; Task Force Appointed*, CITIZEN TIMES (July 29, 2020, 2:46 PM) <https://www.citizen-times.com/story/news/local/2020/07/29/ashville-confederate-vance-monument-replaced-george-floyd-hologram-change-org/5537575002/> [<https://perma.cc/G5L5-6YLF>]. See also Change.org, *A Monumental Change: The George Floyd Hologram Memorial Project*, YOUTUBE (Oct. 9, 2020), <https://www.youtube.com/watch?v=csdFUi7XYVU> [<https://perma.cc/6TRD-HMV9>] (showing a video example of the project); Annie Dell'Aria, *Postscript: Reflections from a Summer Without Public Space*, in THE MOVING IMAGE AS PUBLIC ART: SIDEWALK SPECTATORS AND MODES OF ENCHANTMENT 255, 260 (2021).

327. See Mervosh, *supra* note 168 (examining Dallas' removal process and mitigation of removal costs).

328. The UDC and SCV are not unified organizations, and the different branches or offices may have different approaches/attitudes as far as seeking to protect a monument or obtain its return. See Owley, Phelps & Hughes, *supra* note 7, at 260–62 (discussing the structure of both organizations).

329. Kaitlyn Gibson, *Shreveport Chapter of United Daughters of the Confederacy Maintains National Register Status on Monument*, KSLA NEWS 12 <https://www.ksla.com/2021/04/11/shreveport-chapter-united-daughters-confederacy-maintains-national-register-monument/> [<https://perma.cc/ZPW9-JQ2Z>], (Apr. 11, 2021, 11:11 AM).

330. THOMPSON, *supra* note 100, at 170.

3. Consider Using Deed Restrictions/Transfer Agreements

If a community does give up ownership of a monument, it should consider whether and what restrictions it can or should place upon the group taking possession of the statue. In a transfer agreement or a gift agreement, the community could include restrictions on public display (when, where, and how) and could also push for some degree of contextualization. Requiring that the monument be clearly identified by its ownership and requiring some degree of counternarrative could help to address this confusion about whose message the monument is conveying.

Restrictions that local governments should consider imposing on a transferee include: (1) a veto right on the location of display (and all future displays); (2) the opportunity to provide interpretation if the monument is displayed in a publicly accessible location (that, at a minimum, expressly discloses that the monument is not publicly owned or maintained and does not represent the views of the host community); and (3) a right of first refusal on all future transfers of the monument to new owners (at a fixed de minimis cost to avoid future value issues precluding its exercise of its right).

The Dallas monument restricted future display within Dallas but did not (and perhaps could not) limit public display outside of the city limits. Other communities have transferred ownership to communities³³¹ that have been willing to take relocated monuments. A few early monument relocations used this strategy to offload their problematic monument on another host community, but given the increased pushback on Confederate monuments, it has become harder to find a community willing to accept this conveyance (and communities may have, in parallel, become more reluctant to adopt this approach).

4. Distance Private Monuments

Where deed restrictions do not work or maybe alongside deed restrictions, physical signs of public disapproval of Confederate monuments on private land should be added to distance the monument from any perception of public endorsement.

Some private Confederate monument owners strategically place structures to make them appear part of public land. For example, the Turner Ashby Monument in Harrisonburg, Virginia, sits on 1.7 acres of private land—the actual spot where Ashby was killed in 1862.³³² The stone monument is around eight feet tall and

331. See Joy M. Giguere, *The (Im)Movable Monument: Identity, Space, and the Louisville Confederate Monument*, 41 PUB. HISTORIAN 56–82 (2019) (exploring the history of this monument which, in 2017, was relocated from Louisville, Kentucky, to Brandenburg, Kentucky).

332. Nolan Stout, *Foundation Seeks Ashby Easement*, DAILY NEWS-REC. (Oct. 22, 2017), http://www.dnronline.com/news/harrisonburg/foundation-seeks-ashby-easement/article_a903093c-b79f-11e7-a8a3-ef33783e142f.html [https://perma.cc/JNC7-F7H5]. Ashby commanded cavalry under Stonewall Jackson and was integral to Jackson's success in the Valley Campaign. See, e.g., *Turner Ashby*, SHENANDOAH VALLEY BATTLEFIELDS NAT'L HIST. DIST., <https://www.shenandoahatwar.org/history/turner-ashby/> [https://perma.cc/Z4DX-3SWN].

composed of a rough-hewn limestone base with a granite shaft that tapers into a pyramidal cap.³³³ This small acreage and memorial are surrounded on three sides by James Madison University, a public university.³³⁴ The site and memorial are owned and maintained by the Turner Ashby Chapter of the UDC in Harrisonburg, Virginia.³³⁵ Although the monument sits on private property, the property is open to the public, and its proximity to the university masks the private status of the land.³³⁶

Owners of the adjacent public land could also add fencing, landscaping, signs, or other elements to confirm that the community does not support the message and intention of the monument.

5. Appropriately Address the Monument's Former Location

Many of the monuments that have been removed had places of honor within their communities.³³⁷ Now local governments must grapple with what to do with these emptied spaces.³³⁸ Monument Avenue in Richmond is the most prominent example.³³⁹ The city will see some form of public art put in place of the removed statues of the leaders of the Confederacy. Governor Northam has requested ten million dollars in state funding to commission and install more inclusive public art

333. See *General Turner Ashby Monument*, STONE SENTINELS, <https://stonesentinels.com/less-known/harrisonburg/turner-ashby-monument/> [<https://perma.cc/U9N2-YU67>].

334. VA. STATE REV. BD. & BD. HIST. RES., DRAFT MINUTES 11 (June 15, 2017), https://townhall.virginia.gov/L/GetFile.cfm?File=meeting%5C60%5C26112%5CMinutes_DHR_26112_v1.pdf [<https://perma.cc/SV7M-6LC9>].

335. Maral S. Kalbian & Margaret T. Peters, *National Register of Historic Places Registration Form: Turner Ashby Monument*, U.S. DEP'T INTERIOR (Mar. 16, 2017), https://www.dhr.virginia.gov/wp-content/uploads/2018/04/115-5063_Turner_-Ashby_-Monument_2017_NRHP_FINAL.pdf [<https://perma.cc/DE2K-YPYY>].

336. See *id.*

337. See, e.g., Upton, *supra* note 321 (explaining the push to remove Confederate monuments as “a debate about which aspects of history ought to be celebrated in the civic realm”). Some monuments that have been listed as removed may not merit that status. For example, “the Southern Poverty Law Center . . . is working to get these confederate statue-less pedestals removed – challenging states and counties to, as they put it, ‘finish the job.’ The SPLC is amending its records in several cases, changing its ‘removed’ confederate symbols classification, to ‘live.’” Leoneda Inge, *As Confederate Monuments Come Down, the Pedestals Sometimes Remain. Why Some Consider that a Troubling Symbol*, N.C. PUB. RADIO (July 2, 2021, 4:08 PM), <https://www.wunc.org/race-demographics/2021-07-02/monumental> [<https://perma.cc/3YGZ-DWPR>].

338. Chantel M. Rush & Van Turner, Jr., *You've Removed Your Confederate Statues—Now What?*, NEXT CITY (Mar. 10, 2021), <https://nextcity.org/daily/entry/youve-removed-your-confederate-statues-now-what> [<https://perma.cc/UD75-CCSF>] (examining some of the ways communities have dealt with these spaces post-removal).

339. Isis Davis-Marks, *Virginia Museum Will Lead Efforts to Reimagine Richmond Avenue Once Lined with Confederate Monuments*, SMITHSONIAN MAG. (Dec. 18, 2020), <https://www.smithsonianmag.com/smart-news/virginias-governor-wants-spend-11-million-reinventing-confederate-monument-180976574/> [<https://perma.cc/G5UN-FF5H>] (profiling the \$11,000,000 earmarked in the governor's budget for public art in this area).

on the state-owned section of the prominent thoroughfare.³⁴⁰ Baltimore is currently considering what to do with the pedestals left behind by its four Confederate monuments.³⁴¹ One option is to simply let the platforms or pedestals remain empty as silent reminders of what these spaces used to contain.³⁴²

Groups like the Mellon Foundation are funding new monuments more representative of a wider segment of our nation's history, and communities can now decide what to put in these places of honor.³⁴³ To the extent that artwork is commissioned to replace the Confederate monuments in public spaces, the proposed replacements should be commissioned through a public process to allow input on what should fill these spaces. Ownership of the artwork should also be clearly established to avoid future issues with either ownership or the artist's rights to the statue.³⁴⁴

CONCLUSION

In addressing the substantial number of Confederate monuments across the American landscape, efforts toward removal continue.³⁴⁵ Despite meaningful

340. Phillip Morris, *Here's What Might Replace America's Disappearing Confederate Monuments*, NAT'L GEOGRAPHIC (Dec. 14, 2020), <https://www.nationalgeographic.com/history/article/monument-avenue-robert-e-lee-statue-renovation> [<https://perma.cc/68BL-BQHY>].

341. Jonathan M. Pitts, *4 Confederate Statues Stood as Baltimore Landmarks. Now, Their Pedestals Stand Ready to Send a New Message. But What?*, BALT. SUN (Mar. 26, 2021, 6:26 PM), <https://www.baltimoresun.com/maryland/baltimore-city/bs-pr-md-empty-pedestals-20210325-vps3rej2tzdh7oszsy3j3c5nfu-story.html> [<https://perma.cc/6NDQ-GCF9>].

342. Kevin M. Levin, *Why I Changed My Mind About Confederate Monuments*, ATLANTIC (Aug. 19, 2017), <https://www.theatlantic.com/politics/archive/2017/08/why-i-changed-my-mind-about-confederate-monuments/537396/> [<https://perma.cc/U3CD-SGMH>].

343. *The Monuments Project*, MELLON FOUND., <https://mellon.org/initiatives/monuments/> [<https://perma.cc/2R66-PHLT>] (announcing 250-million-dollar initiative focused on public spaces, which includes funding new monuments, contextualizing existing monuments, and removing existing monuments).

344. See, e.g., Margaret Grayson, *Artist Sues Vermont Law School Over Planned Removal of His Slavery-Themed Mural*, SEVEN DAYS (Mar. 16, 2021, 3:27 PM), <https://www.sevendaysvt.com/vermont/artist-sues-vermont-law-school-over-planned-removal-of-his-slavery-themed-mural/Content?oid=32505960> [<https://perma.cc/726W-V8SG>] (profiling an author's lawsuit under the federal Visual Artists Rights Act against the Vermont Law School for its plan to paint over his mural, which many viewed as having offensive depictions of slaves and slavery in its history of the underground railroad; VLS did not apparently obtain a VARA waiver from the author when it commissioned the artwork in the early 1990s). This litigation continues, although VLS now plans to cover the mural with acoustic tiles, rather than paint over the work, to avoid VARA issues associated with alteration of a work without the artist's consent. See Alex Hanson, *Judge Grants Extension to Artist of Controversial Murals at Vermont Law School*, VALLEY NEWS (May 5, 2021, 10:00 PM), <https://www.vnews.com/Court-gives-artist-more-time-to-make-his-case-against-Vermont-Law-School-40316471> [<https://perma.cc/5N5Q-2JNP>].

345. Guelda Voien, *What Should Be Done with All the Empty Confederate Monument Plinths?*, ARCHITECTURAL DIG. (Sept. 11, 2017), <https://www.architecturaldigest.com/story/confederate-monument-plinths>

progress over the past three years, it is estimated that ninety percent of these statues remain in place.³⁴⁶ Removal, however, is not the beginning or the end of the process. There needs to be an equal amount of attention on what to do with a monument once it has been removed from its public location. We encourage advocates and communities to closely consider how to best deal with these complicated legacies. Confederate monuments are part of a community's past, and it is not simple to remove these statues and close the books on this chapter of history. Responsibly removing a public Confederate monument requires considering its legacy and how to ensure that the underlying issues are addressed—not simply outsourced to a new community or location without carefully considering how to manage, restrict, or limit its display. The real and lasting impact of the current wave of removal efforts will ultimately be gauged from community to community and will hinge on both removing these monuments from their public spaces *and* on successfully navigating the relocation process.

[<https://perma.cc/5BXT-F46W>] (“Historically speaking, removing monuments raises three main concerns: urgency, legality, and transparency,” says Yuliya Komska “The first two are especially difficult to bring into unison because they operate on very different timelines.”).

346. Treisman, *supra* note 2.