
**In the
SUPREME COURT OF VIRGINIA**

Record No. 210133

HELEN MARIE TAYLOR, *et al.*,

Appellants,

v.

**RALPH S. NORTHAM, in his Official Capacity as
GOVERNOR OF VIRGINIA, *et al.*,**

Appellees.

**BRIEF OF AMICI CURIAE
PROFESSORS THOMAS J. BROWN, W. FITZHUGH BRUNDAGE,
KAREN L. COX, HILARY N. GREEN, KIRK SAVAGE,
AND DELL UPTON IN SUPPORT OF APPELLEES**

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STATEMENT OF INTEREST OF AMICI CURIAE

Amici are professors of history who have written extensively on the Civil War and Confederate monuments, including recent efforts to remove, relocate, and contextualize such monuments. Amici include:

- Thomas J. Brown of the University of South Carolina, whose representative works include *Civil War Monuments and the Militarization of America* (2019) and *Civil War Canon: Sites of Confederate Memory in South Carolina* (2015).
- W. Fitzhugh Brundage of the University of North Carolina, whose representative works include *The Southern Past: A Clash of Race and Memory* (2005) and *Where These Memories Grow: History, Memory, and Southern Identity* (W. Fitzhugh Brundage ed., 2008).
- Karen L. Cox of the University of North Carolina, whose representative works include *No Common Ground: Confederate Monuments and the Ongoing Fight for Racial Justice* (2021) and *Dixie's Daughters: The United Daughters of the Confederacy and the Preservation of Confederate Culture* (2d ed. 2019).
- Hilary N. Green of the University of Alabama, whose representative works include *The Burden of the University of Alabama's Hallowed Grounds*, 42 *Public Historian* 28 (Nov. 2020) and *Unforgettable Sacrifice* (forthcoming).

- Kirk Savage of the University of Pittsburgh, whose representative works include *Standing Soldiers, Kneeling Slaves: Race, War, and Monument in Nineteenth Century America* (1997) and *The Civil War in Art and Memory* (Kirk Savage ed., 2016).
- Dell Upton of the University of California, Berkeley, whose representative works include *What Can and Can't Be Said: Race, Uplift, and Monument Building in the Contemporary South* (2015) and *Confederate Monuments and Civic Values in the Wake of Charlottesville*, Soc'y of Architectural Historians (Sept. 13, 2017), <https://www.sah.org/publications-and-research/sah-blog/sah-blog/2017/09/13/confederate-monuments-and-civic-values-in-the-wake-of-charlottesville>.

Amici present this brief in support of the Commonwealth's efforts to relocate the Robert E. Lee Monument in Richmond. Amici hope that this historical presentation of the broader effort to remove Confederate symbols will aid the Court's consideration of this case.

ARGUMENT

Virginia's decision to relocate the Robert E. Lee Monument is part of a decades-long movement by states and localities across the country to reconsider public commemorations of the Confederacy. For many Americans, Confederate monuments serve as a stark reminder of the centuries of oppression that Black

Americans experienced under the brutal system of slavery—a system that the Civil War was fought to protect. Acknowledging that, states and localities have removed over 150 Confederate monuments and over 300 Confederate symbols in the last six years alone. *See SPLC Reports Over 160 Confederate Symbols Removed in 2020*, Southern Poverty Law Center (Feb. 23, 2021).¹

The General Assembly’s decision to remove the Lee Monument is an important part of that story. Today, the statue of General Lee stands alone on Monument Avenue; the City of Richmond has removed all other Confederate statues. The injunction imposed below is the only thing keeping Virginia from removing the statue of Lee as well. Amici urge this Court to affirm the decision below, vacate the injunction, and allow Virginia to carry out the will of its democratically elected officials to remove the Lee Monument.

I. VIRGINIA’S EFFORTS TO RELOCATE THE LEE MONUMENT ARE PART OF A DECADES-LONG EFFORT BY STATES AND LOCALITIES TO REMOVE, RELOCATE, AND CONTEXTUALIZE CONFEDERATE SYMBOLS

Modern efforts to remove, relocate, and contextualize Confederate symbols began in the late 1980s. These efforts gained significant traction after the Charleston Massacre, the Unite the Right Rally, and the killing of George Floyd.

¹ <https://www.splcenter.org/presscenter/splc-reports-over-160-confederate-symbols-removed-2020>.

Like the monuments themselves, those events reminded the country of the violence that had long been and still is perpetrated on Black Americans.

A. Modern Efforts To Remove Confederate Monuments Began In The Late 1980s

The late 1980s ushered in the beginning of significant efforts to remove Confederate flags and monuments. See Karen L. Cox, *No Common Ground: Confederate Monuments and the Ongoing Fight for Racial Justice* 122 (2021). One such effort took place in 1987, in Shreveport, Louisiana. *Id.* at 125. Shreveport sits in a parish where Black people were killed and terrorized in such high numbers it was nicknamed “Bloody Caddo.” See Jennifer Hill, *The History and Enduring Legacy of Bloody Caddo*, Bayou Brief (updated June 13, 2020).² At the courthouse in “Bloody Caddo” stood a 30-foot tall Confederate monument and flag. See Cox, *supra*, at 125; Janet McConnaughey, *Louisiana Parish Can Move Confederate Statue from Courthouse*, Associated Press (July 21, 2020).³ In 1987, several residents of Caddo Parish called for the removal of the flag, while editors of the Shreveport Journal sought the relocation not only of the flag but the monument too. See Cox, *supra*, at 126-28. But neither of those calls was immediately successful. Although the Caddo Parish Commission ultimately voted

² <https://www.bayoubrief.com/2017/12/13/the-history-and-enduring-legacy-of-bloody-caddo/>.

³ <https://apnews.com/article/73cfc3dc0fdec7f37092be6ac1c59aad>.

to relocate the monument, that vote did not occur until 2017, and the Commission is currently seeking places for relocation. See Christian Henson, *Caddo Parish Commission Kicks Out Confederate Monument*, ArkLaTex (updated Mar. 1, 2020);⁴ *Caddo Parish Accepting Bids to Move Confederate Monument; Patriotic Writings to Be Added to Temporary Barriers*, KTBS 3 ABC (Jan. 29, 2021).⁵

Although the Shreveport effort was not initially successful, the larger movement to relocate Confederate flags and monuments remained undeterred. In the same year, the Southeast Regional Conference of the NAACP passed a resolution calling for the removal of the Confederate flag from the South Carolina and Alabama statehouses. See *NAACP Asks Removal of Stars and Bars*, L.A. Times (Mar. 9, 1987).⁶ Alabama State Representative Alvin Holmes echoed that call, declaring that “[e]very Confederate flag or symbol of the Confederacy should be barred from Alabama and every other part of the country.” David Treadwell, *Symbol of Racism?: Confederate Flag: Battle Still Raging*, L.A. Times (Mar. 9, 1987);⁷ see Cox, *supra*, at 124. And in 2001, “leading Republicans and Democrats

⁴ <https://www.arklatexhomepage.com/news/local-news/caddo-parish-commission-kicks-out-confederate-monument/>.

⁵ https://www.ktbs.com/news/caddo-parish-accepting-bids-to-move-confederate-monument-patriotic-writings-to-be-added-to-temporary/article_fa8ff6d2-629d-11eb-8216-eb4c2e09f7d5.html.

⁶ <https://www.latimes.com/archives/la-xpm-1987-03-09-mn-8370-story.html>.

⁷ <https://www.latimes.com/archives/la-xpm-1987-03-09-mn-8324-story.html>.

[in Mississippi] endorsed the adoption of a new [state] flag” that did not include Confederate imagery. W. Fitzhugh Brundage, *The Southern Past: A Clash of Race and Memory* 341 (2005).

But the backlash to this movement was considerable. Over the next several years, numerous white supremacist groups emerged and congregated at the South’s still-standing Confederate monuments. *See Cox, supra*, at 130. In 1992, for example, members of the Aryan National Front marched to the Confederate monument in Birmingham, Alabama, shouting neo-Nazi salutes and taunting counter-protesters with racial epithets. *See White Supremacists March in Birmingham*, *Deseret News* (June 14, 1992).⁸

Yet despite the backlash, the movement for removal persisted. Although slow and unsuccessful at times, the movement finally received a win in 2000 when Selma’s first Black mayor, James Perkins Jr., ordered the removal of a Nathan Bedford Forrest monument from public property. *See Cox, supra*, at 138-40. As the years passed, the movement to reconsider Confederate iconography continued to grow—especially after the brutal attack on Black churchgoers in Charleston.

⁸ <https://www.deseret.com/1992/6/14/18989343/caption-only-white-supremacists-march-in-birmingham>.

B. The Charleston Massacre Awakened A New Push By State Officials To Remove Confederate Monuments

On June 17, 2015, white supremacist Dylann Roof brutally murdered nine Black churchgoers in Charleston, South Carolina during a prayer service. *See* Samuel Momdu, *The Charleston Church Massacre*, Black Past (Sept. 30, 2017);⁹ Frances Robles, *Dylann Roof Photos and a Manifesto Are Posted on Website*, N.Y. Times (June 20, 2015).¹⁰ After the attack, numerous photos of Roof posing with Confederate flags and at Confederate heritage sites surfaced. Robles, *supra*. The mass killing, motivated purely by racial hatred, sparked a new push to remove Confederate flags and monuments, including by politicians who had previously opposed removal or stayed silent. *See* Bill Barrow, *After Charleston, South Revisits Its Many Confederate Images*, Associated Press (June 23, 2015).¹¹ One such politician was then-candidate Donald Trump, who told South Carolina to put its Confederate flag in a museum “and let it go.” Arthur Lee, *As a Candidate, Trump Said Confederate Flag Should Be ‘Put in a Museum,’* Atlanta Journal-Constitution (July 7, 2020).¹²

⁹ <https://www.blackpast.org/african-american-history/charleston-church-massacre-2015/>.

¹⁰ <https://www.nmytimes.com/2015/06/21/us/dylann-storm-roof-photos-website-charleston-church-shooting.html>.

¹¹ <https://apnews.com/article/e148e606c5b04686832a228ad8866fe6>.

¹² <https://www.ajc.com/news/candidate-trump-said-confederate-flag-should-put-museum/ed3alzfbPmJFAeCgCM584I/>.

Calls for the removal of Confederate flags were bipartisan and swift. *See* Barrow, *After Charleston, South Revisits Its Many Confederate Images*, *supra*. Less than a week after the shooting, Alabama’s longest-serving Black legislator, Alvin Holmes, renewed his call to remove Confederate flags from the state capitol. *See Rep. Alvin Holmes, SPLC React to Removal of Confederate Flags*, Alabama News Network (updated Nov. 18, 2015).¹³ Within a month, Alabama Governor Robert Bentley ordered them taken down. *See* Brian Lyman, & Doug Stanglin, *Alabama Gov. Orders Confederate Flags Removed from Capitol Grounds*, USA Today (June 24, 2015).¹⁴ At the same time, Republican Governor Nikki Haley urged the South Carolina Legislature to remove its Confederate flag. *See* Stephanie McCrummen & Elahe Izadi, *Confederate Flag Comes Down on South Carolina’s Statehouse Grounds*, Wash. Post (July 10, 2015).¹⁵ As Governor Haley put it, “In South Carolina, we honor tradition, we honor history, we honor heritage, but there’s a place for that flag, and that flag needs to be in a museum, where we will continue to make sure people will honor it appropriately.” *Id.* The South Carolina “statehouse . . . belongs to everyone. And no one should drive by the

¹³ <https://www.alabamaneews.net/2015/06/25/rep-alvin-holmes-splc-react-to-removal-of-confederate-flags>.

¹⁴ <https://www.usatoday.com/story/news/nation/2015/06/24/alabama-governor-confederate-flag-robert-bentley/29210283/>.

¹⁵ <https://www.washingtonpost.com/news/post-nation/wp/2015/07/10/watch-live-as-the-confederate-flag-comes-down-in-south-carolina/>.

statehouse and feel pain. . . . [or] like they don't belong.” *Id.* Shortly thereafter, the legislature voted to relocate the flag to a museum. *Id.*

During this period, Virginia was also finally able to start phasing out license plates with Confederate imagery, after the U.S. Supreme Court held that states were not required to manufacture such plates. *See* Halimah Abdullah, *Virginia to Stop Offering Confederate License Plates*, NBC News (June 23, 2015);¹⁶ *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 219-20 (2015). Meanwhile, Mississippi’s Republican House Speaker, Philip Gunn, announced his support for changing the state flag—although that process would ultimately take five more years. *See* Alex Johnson, *Tide Turning? Mississippi GOP Leader Says Banish the Confederate Flag*, NBC (updated June 23, 2015);¹⁷ Rick Rojas, *Mississippi Governor Signs Law to Remove Flag With Confederate Emblem*, N.Y. Times (updated July 2, 2020).¹⁸

At the same time, other leaders pushed for the removal of Confederate monuments. Republican Governor Bill Haslam announced his support for the removal of the Nathan Bedford Forrest statue in the Tennessee State Capitol. *See* Eryn Taylor, *Governor Haslem Supports Removal of Nathan Bedford Forrest Bust*

¹⁶ <https://www.nbcnews.com/storyline/confederate-flag-furor/virginia-stop-offering-confederate-license-plates-n380316>.

¹⁷ <https://www.nbcnews.com/storyline/confederate-flag-furor/tide-turning-mississippi-gop-leader-says-banish-confederate-flag-n380066>.

¹⁸ <https://www.nytimes.com/2020/06/30/us/mississippi-flag.html>.

from Capitol, WREG (June 23, 2015).¹⁹ Similarly, Republican Senator Mitch McConnell stated that the Jefferson Davis statue should be removed from the Kentucky State Capitol. See Nora Kelly Lee & National Journal, *Mitch McConnell to Kentucky Capitol: Lose the Jefferson Davis Statue*, Atlantic (June 23, 2015).²⁰ And the Democratic mayor of New Orleans, Mitch Landrieu, called for the removal of four Confederate monuments in the City. See Daniel Victor, *New Orleans City Council Votes to Remove Confederate Monuments*, N.Y. Times (Dec. 17, 2015).²¹ As Mayor Landrieu explained, those statues “were not erected just to honor [Confederate leaders], but as a part of the movement which became known as The Cult of the Lost Cause.” *Mitch Landrieu’s Speech on the Removal of Confederate Monuments in New Orleans*, N.Y. Times (May 23, 2017).²² They “purposefully celebrate a fictional, sanitized Confederacy; ignoring the death, ignoring the enslavement, and the terror that it actually stood for.” *Id.*

¹⁹ <https://wreg.com/news/governor-haslam-supports-removal-of-nathan-bedford-forrest-bust-from-capitol/>.

²⁰ <https://www.theatlantic.com/politics/archive/2015/06/mitch-mcconnell-to-kentucky-capitol-lose-the-jefferson-davis-statue/448515/>.

²¹ <https://www.nytimes.com/2015/12/18/us/new-orleans-city-council-confederate-monuments-vote.html>.

²² <https://www.nytimes.com/2017/05/23/opinion/mitch-landrieus-speech-transcript.html>.

C. The Unite The Right Rally In Charlottesville Further Reinvigorated Removal Efforts

Despite its many new successes, the movement to remove Confederate monuments continued to be met with hostility—especially from white supremacist groups. This hostility came to a head in Charlottesville during the Unite the Right Rally of August 2017. Several months prior, the Charlottesville City Council had unanimously voted to remove a statue of Robert E. Lee. *See* Elizabeth Tyree, *Charlottesville City Council Votes to Remove Lee Statue*, ABC13 News (Feb. 7, 2017).²³ Angered by the vote, large groups of white nationalists took to the streets, chanting “Blood and Soil,” and “Jews will not replace us,” while making monkey noises at Black counter-protesters. Joe Heim, *Recounting a Day of Rage, Hate, Violence, and Death*, Wash. Post (Aug. 14, 2017).²⁴ During the two-day rally, a white supremacist deliberately drove his car through a crowd of counter-protesters, killing 32-year-old Heather Heyer and injuring many others. *Id.*

Though the Unite the Right Rally was intended to protect Confederate monuments, it ironically spurred the largest wave of removals up to that time. *From 2017: Confederate Monuments Are Coming Down Across the United States.*

²³ <https://wset.com/news/local/charlottesville-city-council-votes-to-remove-lee-statue>.

²⁴ <https://www.washingtonpost.com/graphics/2017/local/charlottesville-timeline/>.

Here's A List., N.Y. Times (Aug. 28, 2017).²⁵ Virginians especially worked toward removal. Just two weeks after the rally, Randolph College in Lynchburg removed a statue of a Confederate soldier on campus. *See Randolph College Removes Statue of Confederate Soldier*, WSLs (Aug. 25, 2017).²⁶ The University of Virginia also removed two plaques honoring Confederate soldiers, relocating them to a setting “where they [could] be preserved as artifacts of the era in which they were erected, and utilized to provide context to the history of the University.” *See Resolution With Respect to Civil War Tablets*, Board of Visitors (Sept. 14-15, 2017).²⁷ And in Alexandria, the city council relocated a painting of Lee from City Hall to a museum. *See Kathy Stewart, Robert E. Lee Painting Relocated from Alexandria City Hall to Museum*, WTOP (Nov. 20, 2017).²⁸

This wave of removal, relocation, and contextualization efforts was by no means limited to Virginia. Dozens of monuments were removed across the country, the overwhelming majority by democratically elected officials. *See App. 1-17; From 2017: Confederate Monuments Are Coming Down Across the United*

²⁵ <https://www.nytimes.com/interactive/2017/08/16/us/confederate-monuments-removed.html>.

²⁶ <https://web.archive.org/web/20171010104542/https://www.wsls.com/news/virginia/lynchburg/randolph-college-removes-statue-of-confederate-solider>.

²⁷ <https://bov.virginia.edu/system/files/public/minutes/%2717%20SEPT%20FULL%20BOARD%20MINUTES.pdf>.

²⁸ <https://wtop.com/alexandria/2017/11/robert-e-lee-painting-quietly-removed-alexandria-city-hall>.

States. Here's A List., supra. For example, the mayor of Baltimore ordered the removal of a monument to Lee and Stonewall Jackson, *see* Nicholas Fandos, Russell Goldman, & Jess Bidgood, *Baltimore Mayor Had Statues Removed in 'Best Interest of My City,'* N.Y. Times (Aug. 16, 2017),²⁹ while the Lexington Fayette-Urban County Council relocated two Kentucky statues of Confederate soldiers to a local cemetery, *see* Kara Taylor, *Lexington Removes Confederate Statues After Attorney General OKs Jurisdiction,* NBC News (Oct. 18, 2017).³⁰ “By relocating these statues[,] we are not destroying, hiding or sanitizing history,” said the mayor; “[w]e are honoring and learning our history through this relocation.” *See* Jim Gray (@JimGrayLexKy), Twitter (Aug. 17, 2017, 9:49 PM).³¹ Other mayors agreed. The mayor of St. Petersburg, Florida ordered the removal of a Stonewall Jackson marker. *See* Associated Press, *Mayor Orders Stonewall Jackson Confederate Marker Removed from St. Petersburg's Waterfront,* Florida Times-Union (Aug. 16, 2017).³² And San Diego's mayor removed a plaque honoring Jefferson Davis. *See* Joshua Stewart, *Plaque Honoring*

²⁹ <https://www.nytimes.com/2017/08/16/us/baltimore-confederate-statues.html>.

³⁰ <https://www.nbcnews.com/news/us-news/lexington-removes-confederate-statues-after-attorney-general-oks-jurisdiction-n811951>.

³¹ <https://twitter.com/JimGrayLexKY/status/898361186231693312>.

³² <https://www.jacksonville.com/news/florida/2017-08-16/mayor-orders-stonewall-jackson-confederate-marker-removed-st-petersburg-s>.

Confederate President Quietly Removed from Horton Plaza Park in San Diego, L.A. Times (Aug. 16, 2017).³³

After the Unite the Right Rally, even those officials who had previously opposed removal were motivated to change their position. Two short years before the rally, the mayor of Helena, Montana had opposed the City Commission's call to remove a Confederate monument. Josh Delk, *Montana City to Remove Confederate Fountain*, Hill (Aug. 17, 2017).³⁴ Less than a week after the rally, he changed his mind, stating: "I believe the time has come for [its] removal" *Id.*

D. The Killing Of George Floyd Sparked The Most Successful Wave of Monument Removals To Date

The brutal killing of George Floyd, a Black man, at the hands of Derek Chauvin, a White officer in the Minneapolis Police Department, ignited the largest and most successful push to remove Confederate monuments. On May 25, 2020, officers arrested Floyd on suspicion of using a counterfeit \$20 bill. *See* Jorge Fitz-Gibbon, *Counterfeit \$20 Bill Now Part of George Floyd Murder Case*, N.Y. Post (July 8, 2020).³⁵ After Floyd was handcuffed and lying on the ground, Officer Chauvin knelt on the back of Floyd's neck for nine minutes and twenty-nine

³³ <https://www.latimes.com/local/lanow/la-me-horton-plaza-confederate-2017-0816-story.html>.

³⁴ <https://thehill.com/business-a-lobbying/347038-helena-to-remove-confederate-memorial-without-city-council-vote?rl=1>.

³⁵ <https://nypost.com/2020/07/08/counterfeit-20-bill-now-part-of-george-floyd-murder-case/>.

seconds while Floyd struggled to breathe. *See* Eric Levenson, *Former Officer Knelt on George Floyd for 9 Minutes and 29 Seconds—Not the Infamous 8:46*, CNN (Mar. 30, 2021).³⁶ Despite numerous pleas by bystanders and Floyd himself, Officer Chauvin refused to lift his knee, even after another officer said he could not find Floyd’s pulse. *See* Andy Mannix, *Prosecutor: Ex-Officers Pinned George Floyd for 9½ Minutes, Including After They Couldn’t Find Pulse*, Star Tribune (Oct. 14, 2020).³⁷ Floyd was pronounced dead an hour later. *See* Nicholas Bogel-Burroughs, *George Floyd Was Dead by the Time Medical Help Arrived, a Paramedic Testified*, N.Y. Times (Apr. 1, 2021).³⁸

George Floyd’s death led to a renewed focus on removing Confederate monuments. “In the six months since the murder of George Floyd, eighty-five Confederate monuments have come down in communities where slavery was legal before the Civil War” Thomas J. Brown, *Iconoclasm and the Monumental Presence of the Civil War*, 11 J. Civil War Era 145, 145 (June 2021). Indeed, two-thirds of all Confederate monuments that have ever been removed were removed in the last year. Bonnie Berkowitz & Adrian Blanco, *A Record Number of Confederate Monuments Fell in 2020, but Hundreds Still Stand. Here’s Where.*,

³⁶ <https://www.cnn.com/2021/03/29/us/george-floyd-timing-929-846/index.html>.

³⁷ <https://www.startribune.com/prosecutor-ex-officers-pinned-george-floyd-for-91-2-minutes-including-after-they-couldn-t-find-pulse/572731391/>.

³⁸ <https://www.nytimes.com/2021/04/01/us/george-floyd-emt-paramedics.html>.

Wash. Post (updated Mar. 12, 2021).³⁹ Such monuments became a focal point because the killing of George Floyd “prompted an urgent reckoning of America’s intractable race problems[,] [a] subset of [which] involves our country’s enduring landscape of memorials to Confederate soldiers who fought to preserve slavery.” Robert Draper, *Toppling Statues is a First Step Toward Ending Confederate Myths*, Nat’l Geographic (July 2, 2020).⁴⁰

While a handful of monuments were toppled by protesters angered by the killing, democratically elected officials were responsible for the vast majority of removals. App. 1-17; *2020 Confederate Symbol Removals*, Southern Poverty Law Center (last visited Apr. 13, 2021).⁴¹ And even where protesters toppled or tried to topple statues, government officials often later approved their professional removal or the professional removal of nearby monuments, allowing them to be preserved and displayed in more appropriate contexts. For example, after protesters toppled a statue of Jefferson Davis on Monument Avenue, the Mayor of Richmond removed statues of J.E.B. Stuart, Stonewall Jackson, and Matthew Fontaine Maury. See Ryan W. Miller, *Another Confederate Statue in Richmond, Va.*,

³⁹ <https://www.washingtonpost.com/graphics/2020/national/confederate-monuments/>.

⁴⁰ <https://www.nationalgeographic.com/history/article/toppling-statues-is-first-step-toward-ending-confederate-myths>.

⁴¹ <https://www.splcenter.org/data-projects/2020-confederate-symbol-removals>.

Comes Down Along Monument Avenue, USA Today (July 7, 2020).⁴² The City Council voted unanimously to make that removal permanent. See City of Richmond Ordinance No. 2020-154 (Aug. 3, 2020).⁴³

Again, Virginia was not alone. In Birmingham, Alabama, after protesters attempted to topple a five-story-tall monument, the mayor appeared with a megaphone and declared: “[A]llow me to finish the job for you.” See Colin Dwyer, *Confederate Monument Being Removed After Birmingham Mayor Vows To ‘Finish The Job,’* NPR (June 2, 2020).⁴⁴ Just two days later, the mayor had it removed. *Id.*; Audra D.S. Burch, *Birmingham Mayor Orders Removal of Confederate Monument in Public Park*, N.Y. Times (updated June 23, 2020).⁴⁵ During a peaceful protest, the mayor of Jacksonville, Florida announced that all Confederate monuments in the city were coming down, stating: “We hear you I understand your anger and frustration. . . . We are bringing forth legislation that will unite all government agencies with the public to hear your voice.” See Aurielle Eady, *Jacksonville Mayor: All Confederate Monuments Citywide Will Be*

⁴² <https://www.usatoday.com/story/news/nation/2020/07/07/jeb-stuart-confederate-statue-richmond-monument-avenue-removed/5390265002/>.

⁴³ <https://richmondva.legistar.com/LegislationDetail.aspx?ID=4582895&GUID=7AF4B6D7-0EF9-4F52-8E9E-07FF9ADD4487>.

⁴⁴ <https://www.npr.org/2020/06/02/867659459/confederate-monument-removed-after-birmingham-mayors-vow-to-finish-the-job>.

⁴⁵ <https://www.nytimes.com/2020/06/02/us/george-floyd-birmingham-confederate-statue.html>.

Removed, Action News Jax (June 9, 2020);⁴⁶ City of Jacksonville (COJ) (@CityofJax), Twitter (June 9, 2020 10:11 AM).⁴⁷

Tennessee and Kentucky also voted to remove Confederate statues from their state capitols. *See* Aaron Cantrell, *Tennessee Historical Commission Votes to Remove Nathan Bedford Forrest Bust from Capitol*, News Channel 5 (updated Mar. 10, 2021);⁴⁸ Martin Pengelly, *Kentucky Confederate Statue Removal Reveals Evidence of Jim Crow Past*, Guardian (June 13, 2020).⁴⁹ And city commissioners in Rocky Mount, North Carolina and several counties in Texas voted to remove Confederate statues too. *See* WNCN Digital Desk & Bridget Chapman, *Rocky Mount Approves Removal of Confederate Monument*, WAVY (June 9, 2020);⁵⁰ Catherine Marfin, *Denton, Tarrant Counties Vote to Remove Confederate Monuments*, Dallas Morning News (June 9, 2020).⁵¹ Meanwhile, Athens-Clarke County, Georgia and the University of Alabama removed Confederate monuments

⁴⁶ <https://www.actionnewsjax.com/news/local/duval-county/jacksonville-mayor-all-confederate-monuments-citywide-be-removed/FG5JM2CYHNAABCQFAK5C5P TCVM/>.

⁴⁷ <https://twitter.com/CityofJax/status/1270357892504354819>.

⁴⁸ <https://www.newschannel5.com/news/tennessee-historical-commission-to-vote-on-whether-to-remove-nathan-bedford-forrest-bust>.

⁴⁹ <https://www.theguardian.com/us-news/2020/jun/13/jefferson-davis-statue-removal-kentucky-jim-crow>.

⁵⁰ <https://www.wavy.com/news/north-carolina/rocky-mount-approves-removal-of-confederate-monument/>.

⁵¹ <https://www.dallasnews.com/news/2020/06/09/denton-tarrant-counties-vote-to-removed-confederate-monuments-from-cities/>.

on or near public university campuses. See Associated Press, *Georgia City Dismantling Confederate Monument from 1872*, ABC News (Aug. 11, 2020);⁵² Hilary N. Green, *The Burden of the University of Alabama's Hallowed Grounds*, 42 *Public Historian* 28, 32 (Nov. 2020).

The removal of these monuments from places of public honor has coincided with meaningful reflection on how to best remember the Civil War. As the National Trust for Historic Preservation put it: “While some have suggested that removal [of Confederate monuments] may result in erasing history, we believe that removal may be necessary to achieve the greater good of ensuring racial justice and equality. And their history needs not end with their removal: we support relocation of these monuments to museums or other places where they may be preserved so that their history as elements of Jim Crow and racial injustice can be recognized and interpreted.” *National Trust for Historic Preservation Statement on Confederate Monuments* (June 18, 2020);⁵³ see also Dell Upton, *Confederate Monuments and Civic Values in the Wake of Charlottesville*, Soc’y of Architectural Historians (Sept. 13, 2017) (“This is not a question of preserving or erasing history. . . . This is a debate about which aspects of history ought to be celebrated

⁵² <https://abcnews.go.com/US/wireStory/georgia-city-dismantling-confederate-monument-1872-72308589>.

⁵³ <https://savingplaces.org/press-center/media-resources/national-trust-statement-on-confederate-memorials#.YHBSCY5KiUm>.

in the civic realm.” (italicization omitted)).⁵⁴ Indeed, many of these monuments have been relocated to museums or other appropriate private settings. See Erik Ortiz, *These Confederate Statues Were Removed. But Where Did They Go?*, NBC News (updated Sept. 21, 2020).⁵⁵ And Virginia now requires localities seeking to remove monuments to offer them to “any museum, historical society, government, or military battlefield” for a period of 30 days. Va. Code § 15.2-1812(B).

* * *

The arc of the battle over Confederate monuments has been long. But after many years—and after the horrific events of Charleston, Charlottesville, and Minneapolis—that fight has garnered majority support in many states. Led by democratically elected officials, Confederate monuments are being removed and recontextualized across the country.

II. DISPLAY OF THE LEE MONUMENT IS CONTRARY TO VIRGINIA’S PUBLIC POLICY AND THE DEMOCRATIC CONSENSUS OF VIRGINIANS

The Lee Monument is a vestige of a prior era, still standing only because of the injunction imposed below. That injunction prevents the Commonwealth from carrying out the decision of its democratically elected leaders—a decision strongly

⁵⁴ <https://www.sah.org/publications-and-research/sah-blog/sah-blog/2017/09/13/confederate-monuments-and-civic-values-in-the-wake-of-charlottesville>.

⁵⁵ <https://www.nbcnews.com/news/us-news/these-confederate-statues-were-removed-where-did-they-go-n1240268>.

supported by Richmond city officials and in line with the efforts of numerous sister states. Amici urge this Court to respect the voice of Virginia’s people, affirm the judgment below, and vacate the injunction.

A. The Commonwealth Has Removed Or Relocated Numerous Public Commemorations Of Confederate Leaders

In 2020, Virginia removed or relocated more Confederate symbols than any other state in the country—71 in total. *See* WTVR CBS 6 Web Staff, *Virginia Leads Country with 71 Confederate Monuments, Symbols Removed in 2020*, WTVR CBS 6 News (Mar. 2, 2021).⁵⁶ Each and every one of those removals was ultimately supported by democratically elected officials—whether legislative or executive. *See 2020 Confederate Symbol Removals, supra*. This removal is no different.

To highlight just a few, Virginia has (1) removed its statue of General Lee from the U.S. Capitol; (2) removed all statues of Confederate leaders from the Old House Chamber of the State Capitol; (3) eliminated a holiday celebrating Generals Lee and Stonewall Jackson and added a holiday celebrating the abolition of slavery; and (4) changed the names of roadways and military installations honoring Confederate leaders. *See* J.A. 409 (taking judicial notice of several of these events).

⁵⁶ <https://www.wtvr.com/news/local-news/virginia-leads-country-with-71-confederate-monuments-symbols-removed-in-2020>.

1. Removal Of The Lee Statue In The U.S. Capitol

On July 24, 2020, Virginia’s Commission for Historical Statues in the United States Capitol unanimously recommended the removal of a statue of Robert E. Lee from the National Statuary Hall Collection. *See* Press Release, Office of the Governor, *Commission Recommends Removal of Virginia’s Robert E. Lee Statue from U.S. Capitol* (July 24, 2020) (“*Commission Recommends Removal*”).⁵⁷ The National Statuary Hall Collection comprises one hundred statues (two per state), each honoring local historical figures. *Id.* Since 1909, Virginia’s two statues had depicted General Lee and President Washington. *Id.* But as Governor Northam explained, Lee “has never represented all Virginians.” *Id.*

Indeed, the Lee statue was controversial from the start. Black Americans and Union veterans’ groups strongly opposed the effort to add a statue of Lee to the Capitol, “push[ing] back against Lost Cause followers who wished to minimize or outright remove slavery from the history of the [Civil] [W]ar.” Memorandum re: Research and Historical Analysis on Statuary Hall, from Matt Gottlieb to Comm’n for Historical Statues in the U.S. Capitol, at 2-5 (July 13, 2020) (“Statuary Hall Memo”);⁵⁸ *see also* Matt Ford, *The Statues of Unliberty*, Atlantic

⁵⁷ <https://www.governor.virginia.gov/newsroom/all-releases/2020/july/headline-859644-en.html>.

⁵⁸ <https://www.dhr.virginia.gov/wp-content/uploads/2020/07/Lee-Statue-in-Statuary-Hall-memo-.pdf>.

(Aug. 14, 2017).⁵⁹ The Black-owned newspaper, the *Richmond Planet*, criticized Virginia’s proposal as the “acme of political folly.” *Again on the Rampage*, *Richmond Planet*, at 4 (Mar. 28, 1903).⁶⁰ The State of Kansas threatened to submit a statue of John Brown, a well-known abolitionist, in response. *See Statuary Hall Memo*, *supra*, at 5. And a Michigan congressman introduced a retaliatory resolution to erect a statue of John Brown in Richmond, to honor the man “instrumental in ridding the United States of the curse of human slavery.” *War Bitterness Revived*, *N.Y. Times*, at 13 (Mar. 8, 1903).⁶¹

Even after it was installed, the statue remained controversial. The Chicago Branch of the Grand Army of the Republic denounced the statue “as against public policy” and “the fundamental principles of our Republic,” *Object to Lee Statue*, *N.Y. Times*, at 1 (Jan. 2, 1910),⁶² while the *Richmond Planet* described it as the “fulfillment of all of the hopes of the radical, moss-back Negro-haters of the Southland,” *The Negros Producing Power*, *Richmond Planet*, at 4 (Dec. 4, 1909).⁶³

⁵⁹ <https://www.theatlantic.com/politics/archive/2017/08/confederate-statues-congress/536760>.

⁶⁰ https://chroniclingamerica.loc.gov/data/batches/vi_cred_ver01/data/sn84025841/00175047153/1903032801/0113.pdf.

⁶¹ <https://timesmachine.nytimes.com/timesmachine/1903/03/08/issue.html>.

⁶² <https://timesmachine.nytimes.com/timesmachine/1910/01/02/105072201.html?pageNumber=1>.

⁶³ https://chroniclingamerica.loc.gov/data/batches/vi_cred_ver01/data/sn84025841/00175048145/1909120401/0331.pdf.

Indeed, the statue prompted so many protests that President Taft was forced to seek an opinion from his Attorney General as to whether any law prevented its display. *See No Law Bars Lee From the Capitol*, N.Y. Times at 3 (Aug. 1, 1910);⁶⁴ 28 Op. Atty. Gen. 355, 355-57 (1910).

It was against this historical backdrop that Virginia created the Commission for Historical Statues in 2020 to “determine whether the statue of Robert E. Lee should remain” in the Capitol and, if not, “[t]o recommend . . . a replacement.” 2020 Va. Acts ch. 1099, § 5.2.⁶⁵ The Commission received 49 written comments, 48 of which supported removal. *See Final Minutes, Commission for Historical Statues in the United States Capitol*, at 4 (July 24, 2020, 9:30 AM).⁶⁶ All of those who spoke at the Commission’s public hearing also supported removal. *See id.* at 3-4. Following the hearing, the Commission unanimously voted to remove the statue. *Id.* at 4. Not long after, the U.S. House of Representatives passed a bill, with significant bipartisan support, to remove other Confederate statues from the Capitol. *See H.R. 7573*, 116th Cong. § 3(a) (2020);⁶⁷ Felicia Sonmez & Donna

⁶⁴ <https://timesmachine.nytimes.com/timesmachine/1910/08/01/104945142.html?pageNumber=3>.

⁶⁵ <https://law.lis.virginia.gov/uncodifiedacts/2020/session1/chapter1099/>.

⁶⁶ <https://www.dhr.virginia.gov/wp-content/uploads/2020/08/FINAL-MINUTES-7.24.20.pdf>. The comments are available at https://www.dhr.virginia.gov/wp-content/uploads/2020/07/Emails_Redacted.pdf.

⁶⁷ <https://www.congress.gov/bill/116th-congress/house-bill/7573/text>.

Cassata, *House Votes to Remove Confederate Statues from Capitol and Replace Bust of Chief Justice who Wrote Dred Scott Decision*, Wash. Post (July 22, 2020) (noting vote of 305-113, with 72 Republicans voting in favor).⁶⁸

Virginia chose to donate the Lee statue to the Virginia Museum of History and Culture and replace it with one of Barbara Rose Johns, a Virginian instrumental in school desegregation. See Press Release, Office of the Governor, *Virginia Removes Confederate Statue from U.S. Capitol* (Dec. 21, 2020).⁶⁹ As Governor Northam stated, “[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.” *Id.* The Johns statue will “embod[y] the inclusive Commonwealth we aspire to be.” See *Commission Recommends Removal, supra*.

2. Removal Of Statues Of Confederate Leaders And Segregationists From The Virginia State Capitol

In 2020, Virginia also removed statues of Lee, Jefferson Davis, Stonewall Jackson, and others from the Old House Chamber of the State Capitol. See *Lee Statue, Confederate Busts Removed from Old House Chamber of State Capitol*,

⁶⁸ https://www.washingtonpost.com/powerpost/house-to-vote-on-removing-confederate-statues-from-the-capitol-and-replacing-bust-of-segregationist-chief-justice/2020/07/22/72873a50-cba0-11ea-b0e3-d55bda07d66a_story.html.

⁶⁹ <https://www.governor.virginia.gov/newsroom/all-releases/2020/december/headline-890324-en.html>.

CBS 19 News (updated Aug. 14, 2020).⁷⁰ The Speaker of the House of Delegates ordered their removal, explaining: “Virginia has a story to tell that extends far beyond glorifying the Confederacy and its participants. The Confederacy’s primary objective in the Civil War was to preserve an ideology that maintained the enslavement of human beings Now is the time to provide context to our Capitol to truly tell the Commonwealth’s whole history.” *Id.*

The General Assembly later elected to remove a statue of former U.S. Senator Harry Byrd—who, as Governor of Virginia, had led the push to erect the Lee statue in the Old House Chamber—from the Capitol lawn. 2021 Va. Acts ch. 197, § 1;⁷¹ see Alan Suderman, *Iconic Confederate Busts, Robert E. Lee Statue Evicted from Virginia State Capitol*, ABC7 News (July 24, 2020) (noting Byrd’s involvement in the erection of the Lee statue).⁷² A staunch segregationist, Senator Byrd was the architect of Virginia’s “Massive Resistance” to *Brown v. Board of Education*. See Andrew Cain, *Legislators Send Northam Bill to Remove Segregationist Harry Byrd Sr.’s Statue from Capitol Square*, Richmond Times-

⁷⁰ <https://www.cbs19news.com/story/42409881/lee-statue-confederate-busts-removed-from-old-house-chamber-of-virginia-state-capitol>.

⁷¹ <https://legiscan.com/VA/text/HB2208/id/2239294/Virginia-2021-HB2208-Prefiled.html>.

⁷² <https://wjla.com/news/local/virginia-confederate-monument-state-capitol-robert-e-lee-statue>.

Dispatch (Feb. 23, 2021).⁷³ The vote to remove his statue was bipartisan and nearly unanimous in the Senate. *See* H. 2208, 2021 Special Sess. I (Va. Legis. Info. Sys.).⁷⁴ Although Senator Byrd was not himself a Confederate, the General Assembly’s decision to remove his statue was part of the Commonwealth’s broader “reevaluation of its historical landscape.” *See* Associated Press, *Vote to Remove Statue of Segregationist from Va. Capitol Grounds Moves Forward*, ABC13 News (Jan. 23, 2021).⁷⁵ And like the removal of Confederate symbols, it was meant to convey a message of inclusion.

3. Elimination Of State Holiday Honoring Confederate Leaders And Creation Of State Holiday Honoring The Abolition Of Slavery

Virginia has taken numerous other actions to shift commemoration away from the Confederacy toward civil rights accomplishments. For example, the General Assembly voted to eliminate Lee-Jackson Day as a state holiday. *See* 2020 Va. Acts ch. 418.⁷⁶ It also voted unanimously to recognize Juneteenth as a holiday “to commemorate the announcement of the abolition of slavery in Texas, the last of the former Confederate States of America to abolish slavery, and to

⁷³ https://richmond.com/news/state-and-regional/govt-and-politics/legislators-send-northam-bill-to-remove-segregationist-harry-byrd-sr-s-statue-from-capitol-square/article_94b7e176-f4de-5ba5-bc42-1d75eb367fb3.html

⁷⁴ <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=hb2208>.

⁷⁵ <https://wset.com/news/local/vote-to-remove-statue-of-segregationist-from-va-capitol-grounds-moves-forward>.

⁷⁶ <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0418+pdf>.

recognize the significant roles and many contributions of African Americans to the Commonwealth and the nation.” 2020 Va. Acts ch. 5;⁷⁷ see S. 5031, 2020 Special Sess. I (Va. Legis. Info. Sys.).⁷⁸

4. Changes To Names Of Roadways And Military Installations Honoring Confederate Leaders

Finally, Virginia has taken steps to rename roadways and military installations that commemorate Confederate generals. In another bipartisan vote, the General Assembly elected to rename “[a]ny section of U.S. Route 1 in Virginia that is designated as ‘Jefferson Davis Highway’” as “‘Emancipation Highway.’” See H. 2075, 2021 Special Sess. I (Va. Legis. Info. Sys.).⁷⁹ It also authorized Arlington County to choose a new name for U.S. Route 29, currently known as “Lee Highway.” See 2021 Va. Acts ch. 261.⁸⁰

In addition, the U.S. Congress also enacted legislation, over President Trump’s veto, to rename federal military bases in Virginia, including Fort Lee, Fort Pickett, and Fort A.P. Hill. See Pub. L. No. 116-283, §370, 134 Stat. 3388, 3553-54 (2021); Catie Edmondson & Emily Cochrane, *Defying Trump, Lawmakers Move to Strip Military Bases of Confederate Names*, N.Y. Times (updated July 22,

⁷⁷ <https://lis.virginia.gov/cgi-bin/legp604.exe?202+ful+CHAP0005+pdf>.

⁷⁸ <https://lis.virginia.gov/cgi-bin/legp604.exe?202+sum+SB5031>.

⁷⁹ <https://lis.virginia.gov/cgi-bin/legp604.exe?212+sum+HB2075>.

⁸⁰ <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0261+pdf>.

2020).⁸¹ Senator Lamar Alexander (R-Tenn.) explained his support for that legislation, stating that while he “do[es] not think we ought to try to rewrite history,” “it’s always appropriate to review the people and places that we honor to see if they fit the context of the times in which we live.” Felicia Sonmez & Paul Kane, *Trump Faces Clash with Congress over Confederate Names on Military Bases*, Wash. Post (June 11, 2020).⁸² Governor Northam also recently announced his intent to rename Camp Pendleton, named after the Confederate Army’s chief of artillery. See Dave Ress, *Northam to Rename Virginia Beach’s Camp Pendleton, Which Honors Confederate General*, *Virginian-Pilot* (Jan. 20, 2021).⁸³

Taken together, these democratic actions reveal the desire of Virginians to confront the reality of the Commonwealth’s Confederate past and to eliminate public sites of honor to leaders who fought to preserve a system of slavery.

B. The City of Richmond Has Removed All Locally Owned Confederate Statues On Monument Avenue

Not only did the Commonwealth remove or relocate numerous Confederate monuments on state and federal property, it also returned control over monuments

⁸¹ <https://www.nytimes.com/2020/07/20/us/politics/congress-trump-confederate-base-names.html>.

⁸² https://www.washingtonpost.com/politics/trump-faces-showdown-with-congress-over-confederate-names-on-military-bases/2020/06/11/981d2178-abeb-11ea-94d2-d7bc43b26bf9_story.html.

⁸³ <https://www.pilotonline.com/government/virginia/dp-nw-pendleton-20210120-b67gocbkrvdmpkju5ca5zg3ndi-story.html>.

on municipal property to local governments. The City Council of Richmond took full advantage of that authorization—voting unanimously to remove *every* locally owned Confederate statue on Monument Avenue. The Lee Monument now stands alone as the single commemoration of the Confederacy on that street.

Prior to 2020, state law made it illegal for “the authorities of [any] locality . . . to disturb or interfere with any monuments or memorials” to the Confederacy. Va. Code § 15.2-1812 (2019); *see also City of Charlottesville v. Payne*, No. 200790, 2021 WL 1220822, at *6 (Va. Apr. 1, 2021). The City of Richmond petitioned the General Assembly to enact legislation that would empower it to determine the fate of war memorials on city property. *See City of Richmond Res. 2019-R071*.⁸⁴ And the General Assembly did so. *See 2020 Va. Acts ch. 1101* (codified at Va. Code § 15.2-1812);⁸⁵ *see also Brown*, 11 J. Civil War Era at 150 (describing this legislation as a “heartening reversal of the antidemocratic pattern” by which state laws prevented “local majorities, particularly in cities and towns, from coalescing in repudiation of statues”).

This legislation permits localities to “remove, relocate, contextualize, or cover any . . . monument or memorial” on public property, excluding those in public cemeteries. 2020 Va. Acts ch. 1101, *supra*. The law vests “sole authority

⁸⁴ <https://richmondva.legistar.com/LegislationDetail.aspx?ID=4278071&GUID=E886C05B-3EF1-45D2-A178-498A7BCF4D00>.

⁸⁵ <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1101+pdf>.

to determine the final disposition of the monument or memorial” in the locality. *Id.* It also repealed a private cause of action that had previously allowed “any person having an interest in the matter” to file suit to prevent the removal of such monuments. *Id.*; *see also Stoney v. Anonymous*, No. 200901, 2020 WL 5094625, at *2-4 (Va. Aug. 26, 2020) (unpublished) (vacating injunction against Richmond for lack of a cause of action). In other words, the Commonwealth made clear that there would be no heckler’s vetoes. Local governments would be responsible for determining the fate of their monuments.

The City of Richmond exercised that authority. Mayor Levar Stoney of Richmond “[took] down the monument to Stonewall Jackson [on Monument Avenue] on the very same day the law changed.” Cox, *supra*, at 171. The City Council subsequently voted to permanently remove all Confederate statues, including those to Stonewall Jackson, Jefferson Davis, and J.E.B. Stuart. *See City of Richmond Ordinance No. 2020-154, supra.*

In many ways, Richmond’s decision to remove these monuments was a long time coming. As with many other monuments described in this brief, the statues on Monument Avenue have long been a source of controversy and a symbol of oppression. And efforts to combat the oppressive message they send are not new.

Indeed, in the 1990s, Black members of the City Council sought to add statues of civil rights heroes to Monument Avenue. *See Cox, supra*, at 122, 133-

36; Kirk Savage, *Standing Soldiers, Kneeling Slaves: Race, War, and Monument in Nineteenth Century America* 211-12 (2d prtg. 2017). But that idea faced significant opposition. “Many local whites dug in to ‘protect’ the Confederate landscape,” Savage, *supra*, at 212, and one city councilman even “suggest[ed] that placing a civil rights statue alongside the city’s grand Confederate monuments was like ‘putting a toilet in your living room,’” Cox, *supra*, at 133. The idea was ultimately “dropped in favor of a popular icon whose appeal crossed racial lines”—Arthur Ashe, a Black tennis player. Savage, *supra*, at 212. Yet Confederate groups objected to Ashe’s statue too. The “Council of Conservative Citizens protested the event by hoisting Confederate flags during the ceremonies, and anonymous white supremacists circulated racist leaflets in the surrounding neighborhoods.” Brundage, *supra*, at 316.

Over the last few years, Richmond has continued to grapple with its history as the former capital of the Confederacy. In 2017, Mayor Levar Stoney created the Monument Avenue Commission to consider the possibility of removing the statues and to assess how to “correct the ‘false narrative’ conveyed by the statues found along the historic thoroughfare.” Cox, *supra*, at 164-65. Although it has taken several years and tragedies, Richmond has now chosen a new narrative.

C. A Judicial Decision Compelling Continued Or Perpetual Display Of The Lee Monument Would Be Contrary To The Democratic Consensus Of Virginians

The Commonwealth’s decision to remove the Lee Monument is in line with that new narrative. Governor Northam announced his intent to relocate the monument shortly after the death of George Floyd, and the General Assembly subsequently voted to direct the Department of General Services to “remove and store the Robert E. Lee Monument or any part thereof.” Va. Acts ch. 56, ¶ 79(I), 2020 Special Sess. I.⁸⁶ Plaintiffs seek to prevent the Commonwealth from carrying out this directive. Plaintiffs raise a bevy of arguments, but they all reduce to a single claim—that the Governor and the General Assembly of 1889 could and did bind Virginians to the continued display of the Lee statue more than one hundred years later. That claim is troubling and profoundly anti-democratic.

When Virginia accepted the statue in 1889, it passed a joint resolution referencing a so-called “guarantee” that Virginia would “hold said statue . . . perpetually sacred to [its] monumental purpose.” J.A. 405 (citation omitted). The 1890 deed conveying the land recorded a similar “guarantee.” *Id.* (citation omitted). Regardless of whether those “guarantees” were enforceable then, they surely are not now. *See* Va. Br. 23-25, 49-68. The General Assembly has repealed the 1889 resolution. *See* Va. Acts ch. 56, ¶ 79(I), *supra*. And to the extent the

⁸⁶ <https://budget.lis.virginia.gov/get/budget/4283/HB5005/>.

precatory statement in the deed was ever enforceable, the General Assembly has since declared it unenforceable as against public policy. *See id.* As the Circuit Court recognized, the General Assembly is “the sole author of public policy” and “the current public policy of the General Assembly, and therefore the Commonwealth, [is] to remove the Lee Monument.” J.A. 412. This Court should not lightly interpose its own judgment for that of the democratically elected and politically accountable branches of the Commonwealth. *Cf. Payne*, 2021 WL 1220822, at *8 (“The judiciary is not to substitute its own judgment in place of the General Assembly’s . . .”).

Ultimately, the Lee statue is an outlier on Monument Avenue—a remnant of a prior era that the Commonwealth and the City no longer wish to commemorate. Many Virginians see the statue as “a hollow reminder of a painful ideology and acts of oppression against black people.” Robert W. Lee IV, Opinion, *Robert E. Lee Is my Ancestor. Take Down his Statue, and Let his Cause Be Lost*, Wash. Post (June 7, 2020).⁸⁷ Indeed, a “neighborhood poll of more than 200 households near Monument Avenue found that ‘all but a handful’ support[] the statue’s removal.” Isis Davis-Marks, *Virginia Museum Will Lead Efforts to Reimagine Richmond Avenue Once Lined with Confederate Monuments*, Smithsonian Magazine (Dec.

⁸⁷ <https://www.washingtonpost.com/opinions/2020/06/07/robert-e-lee-is-my-ancestor-take-down-his-statue-let-his-cause-be-lost/>.

18, 2020).⁸⁸ That is because, as Professor Kevin Gaines testified, “the monument stands as a very stark contradiction to the values . . . of freedom and equality . . . that we profess to uphold in our society today.” J.A. 564. There is a ““consensus”” that the monument and others like it ““are a troubling presence.”” *Id.* at 412 (quoting Dr. Gaines). Removing the monument would thus be a “powerful symbol, that our society stands for the values of equality before the law” and “democracy for all, not democracy for some.” *Id.* at 599.

Government monuments “play an important role in defining the identity that a city projects to its own residents and to the outside world.” *Pleasant Grove City v. Sumnum*, 555 U.S. 460, 472 (2009). Citizens of Virginia and Richmond have made their voices heard—the Lee Monument does not represent the values they wish to project. This Court should respect that decision.

⁸⁸ <https://www.smithsonianmag.com/smart-news/virginias-governor-wants-spend-11-million-reinventing-confederate-monument-180976574>.

CONCLUSION

For the foregoing reasons, amici urge the Court to affirm the decision below and vacate the injunction.

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Respectfully submitted,

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CERTIFICATE

The undersigned hereby certifies that Rule 5:26 of the Rules of the Supreme Court of Virginia has been complied with on this 19th day of April, 2021. The undersigned also certifies that the brief contains 8,710 words, in compliance with the word limit. The undersigned further certifies that on April 19, 2021, the foregoing Brief of Amici Curiae in Support of Appellees was filed with the Clerk of the Supreme Court of Virginia via VACES, and an electronic copy served via email and mail to:

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