The Afterlife of Confederate Monuments

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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.
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ABREVIATIONS

SMALL TOWN MONUMENTS

THOUGHTS ON REGULATION
INTRODUCTION

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


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

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


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).


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).


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


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).


consider what to do with removed monuments—particularly if they elect to transfer the statue to a third party.\textsuperscript{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.\textsuperscript{21}

In earlier work, we examined the role that property law tools play in hindering removal efforts.\textsuperscript{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

\textsuperscript{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].

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

\textsuperscript{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

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).
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.\textsuperscript{30} There were three general periods of Confederate monument construction.\textsuperscript{31} The earliest monuments were constructed in close proximity to the conflict.\textsuperscript{32} These monuments were often located in cemeteries or battlefields and generally had a funerary purpose—and were fairly limited in number.\textsuperscript{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.\textsuperscript{34}

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


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/ (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 (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).


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 LOS T 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.


(SCV), led many, if not most, of these efforts. The UDC played a more prominent role in monument building, with a proclaimed goal of installing a Confederate statue in every Southern town, which they were fairly successful in achieving. “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.” Other organizations advocated for a specific memorial or area, contributing to the proliferation of Confederate monuments during this period.

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


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.’”)).


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).


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.\textsuperscript{47} The monuments are a foundational element of the Lost Cause movement.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{50} The installation and dedication ceremonies for Confederate monuments were important to Confederate heritage organizations and


50. Charles H. Wade, \textit{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. \textit{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, \textit{Do Confederate Memorials 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. \textit{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.\footnote{51}

Some additional monument building occurred during the 1960s.\footnote{52} The Southern Poverty Law Center ties this activity to the “civil rights movement[, which] led to a backlash among segregationists.”\footnote{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.”\footnote{54} Monuments have continued to go up, even in recent years.\footnote{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,\footnote{56} which have always been divisive and controversial.\footnote{57} Efforts to remove these troubled statues were largely unsuccessful\footnote{58} until 2015.\footnote{59} That year, Dylann Roof walked into the
historic Emanuel African Methodist Episcopal church in Charleston, South Carolina, and murdered nine congregants. Roof’s social media noted that he drew inspiration from these monuments of the past. This horrific event focused the attention of advocates on monument removal and led to some early successes.

Then, in 2017, far right extremist and white nationalist groups rallied in Charlottesville (the Unite the Right rally) against efforts to remove a statue of Robert E. Lee. This rally, and the murder of Heather Hyer by a white nationalist who drove into a crowd of counterprotesters, further fueled monument removal efforts. In 2019, George Floyd’s murder by Minneapolis police created unprecedented attention to these efforts. This triggered the largest wave of monument removal—resulting in ninety-four removals in 2020.

Over 200 monuments have been removed since 2015. 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

62. See GUNTER & KIZZIRE, supra note 53.
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. The majority of communities have still not taken action regarding their Confederate monuments. Others have decided to retain the monuments, 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). 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. This Section details issues that arise with disposition decisions, emphasizing how state laws and private agreements often dictate the fate


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).


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) may now claim ownership of the monument and seek its return. In many instances, given the age of the monuments, the circumstances upon which they were installed are, at best, unclear. 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. Many, if not most, Confederate monuments were funded, in whole or in part, by Confederate heritage organizations. Local


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

Beyond ownership questions, these organizations sometimes conveyed monuments with reversionary interests or with restrictive covenants requiring public display.\textsuperscript{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.”\textsuperscript{83} The state successfully argued that these restrictive covenants violated public policy, and Richmond was able to remove the Lee Monument in September 2021.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{87} Dealing with ownership

\textsuperscript{81} See, e.g., Greene, supra note 77.
\textsuperscript{86} Id.
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. The majority of these laws are relatively recent in origin and have been enacted in southern states to specifically address Confederate monument removal. These monument laws only apply to public monuments located on public property. The goal of these state statue statutes is to prevent removal, but they may allow removal with state approval or may place strong limitations on where a monument can ultimately be relocated. 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.

To date, eight states have enacted state statue statutes; all are southern states—Kentucky, Tennessee, Virginia, Georgia, North Carolina, South Carolina, Alabama, and Mississippi. Zachary Bray has documented the hurdles these laws present as well as their limitations in preventing monument removal. 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


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 statue statutes in greater depth).


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.\textsuperscript{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.”\textsuperscript{97} Additionally, North Carolina prohibits relocation to museums or cemeteries unless the statues were originally located in a museum or cemetery.\textsuperscript{98} Reviewing the requirements of state statue statutes is then critical for understanding monument relocation.\textsuperscript{99}

\textbf{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.\textsuperscript{100} One prominent example of this is the 2020 destruction of Washington DC’s sole monument to a Confederate general, the Albert Pike Memorial.\textsuperscript{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).\textsuperscript{102} Another dramatic destruction occurred when protestors beheaded the statue of an unknown Confederate soldier in Mount Olivet Cemetery in Frederick, Maryland.\textsuperscript{103} In

\begin{itemize}
  \item \textsuperscript{97} N.C. GEN. STAT. ANN. § 100-2.1(b) (2015).
  \item \textsuperscript{98} Bray, \textit{Monument of Folly}, supra note 18, at 37.
  \item \textsuperscript{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 \textit{Bill Would Raise Penalties for Removing Historic Monuments in Alabama}, \textit{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).
  \item \textsuperscript{100} Olga R. Rodriguez & Jeffrey Collins, \textit{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. \textit{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.”).
  \item \textsuperscript{102} DC Preservation League, \textit{Albert Pike Memorial (1901–1920)}, DC HISTORIC SITES, https://historicsites.dcpreservation.org/items/show/476 [https://perma.cc/L9AP-DTSS].
  \item \textsuperscript{103} Ryan Marshall, \textit{Confederate Statue at Mount Olivet Cemetery Damaged Overnight},

1. Asheville, North Carolina: Vance Monument

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. The Vance Monument Task Force considered three options: (1) reinterpretation, (2) relocation, and (3) destruction/demolition. 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.” In December 2020, the city council accepted this recommendation by a 6–1 vote. The county commission had previously accepted the recommendation unanimously.

In May 2021, demolition began. Estimates for the process ranged from $114,000 to $495,000, exceeding estimates for repurposing the monument.
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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{123} The court also held that the plaintiffs lacked standing to bring any other claims seeking to delay removal.\textsuperscript{124}

Both the city and county voted to destroy the Vance Monument, a move few other communities have elected to do thus far.\textsuperscript{125} Reluctance to destroy a monument is understandable. First, destroying a monument outright feels to some as if history is
being erased, 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). 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. As a result, many local governments choose relocation as a political compromise.

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. It is likely easier to find support to destroy this type of monument compared to a sculpture with artistic merit. Some other monuments, such as Georgia’s Stone Mountain (a 90-foot by 190-foot bas-relief carved into the side of a mountain),

126. Austin Huguelet, Hawley Opposes Renaming Army Bases Honoring Confederate Generals, SPRINGFIELD NEWS (June 12, 2020, 11:00 AM), https://www.newsleader.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.


129. Of course, in some instances state statue statutes 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.

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

2. Charlottesville, Virginia: Lee Monument

When the Charlottesville City Council considered where to transfer its controversial Lee Monument, it received six bids. 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. The proposal had an attractive combination of including local community members and offering to take on the full cost of the statue’s “transformation.”

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. Most requests were from individuals who


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

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”).
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. This monument, initially erected in 1913 by the United Daughters of the Confederacy, was relocated to the Montgomery County courthouse in 1971. In 2015, the community began to grapple with its future. The consensus was that the monument needed to be relocated. The challenge was to find a suitable new home. In 2015, the county erected a wooden box around the monument to protect it from vandalism while local officials debated the monument’s fate. The county manager, based on feedback from constituents, sought to relocate the monument within the county. 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.


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.


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.\footnote{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.\footnote{154} This site was a prominent location at the gateway of the community when crossing the Potomac River from Virginia.\footnote{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.\footnote{156} After the statue was defaced and toppled by protestors in June 2020, the family placed it in storage, but the large pedestal remains.\footnote{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

\footnote{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/blues-ferry-confederate-statue/2020/07/04/e717b1ce-bb3c-11ea-bdaf-a129f921026f_story.html [https://perma.cc/49U5-C7W2].}
\footnote{156. Tan, supra note 154.}
previous location (on a secluded side of the county courthouse), giving the monument greater attention and impact.\textsuperscript{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.\textsuperscript{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)\textsuperscript{160} that the city installed in 1936.\textsuperscript{161} Designed by prominent sculptor, Alexander P. Proctor,\textsuperscript{162} this statue was donated to the city by the Dallas Southern Memorial Association.\textsuperscript{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

\begin{itemize}
\item[160.] Robert E. Lee Park - TX, CULTURAL LANDSCAPE FOUND., https://tclf.org/landscapes/robert-e-lee-park-tx [https://perma.cc/9BEK-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).
\end{itemize}
before any parameters or processes existed for determining whether and how to acquire public art.\footnote{164}

In 2017,\footnote{165} the Dallas City Council voted thirteen-to-one to remove this monument.\footnote{166} Dallas had established a task force to consider the future of the Lee monument and other Confederate iconography in the city.\footnote{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.\footnote{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).\footnote{169} But, Dallas did not feel that the museum would appropriately explain the context of the monument and the Lost

\footnote{164. \textit{Id.}}

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


\footnote{168. Jennifer Scripps, \textit{Recommendations from Mayor’s Task Force on Confederate Monuments}, DALL. CITY HALL (Oct. 17, 2017), \url{https://dallascityhall.com/government/Council%20Meeting%20Documents/qolac_2_recommendations-from-mayors-task-force-on-confederate-monuments_combined_102317.pdf} [\url{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, \textit{What Should Happen to Confederate Statues? A City Auctions One for $1.4 Million}, N.Y. TIMES (June 22, 2019), \url{https://www.nytimes.com/2019/06/22/us/confederate-statues-dallas-nashville.html} [\url{https://perma.cc/24YD-3S6K}].}

Cause movement because of the pro-Confederate messaging contained in some of the museum’s displays.\textsuperscript{170}

In its desire to be rid of the monument, the city declared the monument surplus property\textsuperscript{171} and put it up for auction with a reserve price of $450,000.\textsuperscript{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.\textsuperscript{173} At auction, the monument’s hammer price was $1.4 million.\textsuperscript{174} The monument was purchased by Ronald Holmes, a Texas attorney.\textsuperscript{175} He either bought this for the Lajitas golf resort, in Lajitas, Texas, or gifted it to be installed on the resort’s grounds,\textsuperscript{176} where it is now located.\textsuperscript{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.\textsuperscript{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

\begin{itemize}
\item \textsuperscript{170} See Capps, supra note 136.
\item \textsuperscript{172} Robert Wilonsky, \textit{Dallas’ Robert E. Lee Sculpture is Going, Going, Gone for More than $1.4M at Online Auction}, \textit{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].
\item \textsuperscript{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”).
\item \textsuperscript{174} Wilonsky, supra note 172.
\item \textsuperscript{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.
\item \textsuperscript{178} Matt Goodman, \textit{Dallas’ Robert E. Lee Sculpture is Going to Auction}, \textit{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/Z77N-LNTQ] (explaining that there were restrictions on publicly displaying the monument but some confusion about scope and how this would function).
\end{itemize}
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. 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.” 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. 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 statute 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. Confederate-heritage organizations may claim ownership over monuments that have been in public spaces for decades (if not a century). Even if they are not the clear owners, these heritage organizations may claim to be the successors to a now defunct

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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).

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


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


community as it allows the community to remove the monument relatively quickly and convey (or return) it to this organization. This conveyance is arguably made less controversial by ensuring that it is going to a group that wants the statue. The challenge, however, is what the new organization will do with the monument. 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. 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). This uncertainty has led some communities to return the monuments to the heritage groups to quickly resolve disputed ownership questions. For some monuments, the ownership status is less clear, even if legacy


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-gounds-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].


191. See id.


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
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.\footnote{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].} The statue was originally
commissioned by the Clinton Hatcher Camp, Confederate Veterans and Sons, and
the UDC.\footnote{Id.} These Confederate-heritage organizations raised $2500 with the county
contribution the remaining $500 to pay for the monument and its installation. The
monument was installed in front of the county courthouse in 1908.\footnote{ 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].} 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.\footnote{Id.} The chair of the County Board of Supervisors and a
majority of the Board had previously indicated that they would continue the process
of trying to remove the monument. In June 2020, the UDC wrote to the County Board of Supervisors to request the return of the monument.

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.” 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. The monument was removed in the summer of 2020 by the UDC, and its current location is not publicly known.

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, which is located on a downtown public square. 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). After learning of this plan, an attorney for the UDC objected to the Fuller Story markers and claimed that the UDC owned the square. 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].
202. Id.
203. Id.
207. Id.
Aldermen sought a declaratory judgment to establish ownership of the square. 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.

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.” 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. Thus, Franklin’s Confederate monument will remain in place, but the City of Franklin has control over the surrounding site. 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. The statue was commissioned by the UDC’s Kentucky chapter and was paid for by a mixture of private donations and state funds. The
Commission had jurisdiction over the monument given its location within the state capitol.\footnote{Historic Properties Advisory Comm’n, HISTORIC PROPERTIES, https://historicproperties.ky.gov/ac/Pages/default.aspx [https://perma.cc/97M3-LS4W].}

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.\footnote{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].} This site is itself controversial as it has a massive 351-foot obelisk (also erected by the UDC) honoring the Confederacy’s only president.\footnote{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].} To date, the Davis statue has not been relocated to the state historic site, and it remains in storage.\footnote{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).} 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.\footnote{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)).}

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,\footnote{Jonah Engel Bromwich, Confederate Monument, Shunned by One Kentucky City, Is} the City of Louisville, Kentucky, transferred its Confederate monument to a small, rural Kentucky town, Brandenburg,
located about forty miles south of the city.\textsuperscript{221} The Kentucky Confederate Women’s Monument Association erected Louisville’s seventy-foot tall monument in 1895.\textsuperscript{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,\textsuperscript{223} where it stood until its removal in 2016.\textsuperscript{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.”\textsuperscript{225} Brandenburg is linked to the Civil War as Confederate general John Hunt Morgan raided the city in 1863,\textsuperscript{226} and the community hosts a biennial Civil War reenactment.\textsuperscript{227} The monument was placed in a riverfront park.\textsuperscript{228} Monuments to the Underground Railroad and local Native American tribes are also located in the park.\textsuperscript{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.\textsuperscript{230} Protestors of the monument were also present, but Brandenburg mayor, Ronnie Joyner, was unconcerned about any controversy,

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\textsuperscript{222} Joy M. Giguere, \textit{The (Im)Movable Monument: Identity, Space, and The Louisville Confederate Monument}, 41 PUB. HISTORIAN 56, 56 (2019).


\textsuperscript{228} Ryan, supra note 221.


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.
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. 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. 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.

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.

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242. Id.
This monument was subject to the state’s statue statute, and removal required approval from the Mississippi Department of Archives and History.\textsuperscript{243} In May 2021, this monument was disassembled in anticipation of its move to its new location.\textsuperscript{244} The relocated statue will stand near the graves of unidentified Confederate soldiers in Columbus, Mississippi.\textsuperscript{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.\textsuperscript{246} Installed in 1906, the monument stood near the university’s main administration building.\textsuperscript{247} The monument has long been criticized for advancing Lost Cause ideology.\textsuperscript{248} The dedication speeches, rediscovered in 2020, bear this criticism out.\textsuperscript{249} In 2016, as an initial response to this criticism, the university added a plaque to provide some context for the monument.\textsuperscript{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.\textsuperscript{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.

\begin{itemize}
\item \textsuperscript{245} Associated Press, supra note 243.
\item \textsuperscript{246} Emily Wagster Pettus, \textit{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].
\item \textsuperscript{248} See \textsc{John Neff, Jarod Roll & Anne Twitty}, \textit{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].
\item \textsuperscript{249} Anne Twitty, \textit{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].
\item \textsuperscript{250} Jeffrey S. Vitter, \textit{History, Context, Identity}, UNIV. OF MISS. (June 10, 2016), https://chancellor.olemiss.edu/history-context-identity/ [https://perma.cc/6ZLQ-FKY2].
\end{itemize}
field. Ole Miss has indicated that it will install permanent screening in place of the temporary barriers that have been erected.

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. 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. The council then worked with the UDC to create a plan for its removal, initially placing the monument in storage.

“Fame” was finally moved to the Old Lutheran Cemetery in Salisbury around a year later. 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.” 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.”


253. Id.

254. David Whisenant, After 111 Years, Salisbury Confederate Monument “Fame” Moved, WBTV (July 6, 2020), https://www.wbtv.com/2020/07/06/after-years-salisbury-confederate-monument-fame-is-now-beingMOVED/ [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.


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. 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. 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.” For now, the monument remains in pieces, disassembled on private property. 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.”

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. 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.

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261. Id.


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).


266. Fisher, supra note 260.
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, a public museum in Greenwood, Mississippi, elected not to accept its county’s courthouse monument. Stymied by the museum’s refusal, the county has left the monument in place despite a vote to remove it.

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

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-967fd5a225b7aeab8d871e94a45bd363 [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.
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]


274. Cotter, supra note 270.


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. The county removed the monument in June 2020, and the Texas Historical Commission’s Antiquities Advisory Board unanimously approved the relocation in April 2021. The Advisory Board described this relocation as the “model,” suggesting museums will be a favorable destination in Texas.

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 sitting of the monument. 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.” Some activists disagreed, asking for more minority representation in both the process and

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


282. Garnand, supra note 278.

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. 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. Attempts by the SCV to prevent the removal failed, as Judge Karin Crump denied their temporary restraining order in August of 2015. In 2017, the monument was relocated to the campus’s history museum. 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.” 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.”

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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).


statue has the hashtag #DavisMustFall, and interpretive panels seek to place this monument in context.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{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)\textsuperscript{297} accepted a relocated Confederate monument and is displaying this monument (initially opposite
a collection of sculpted eyeballs) to address the public attention and historic weight of these monuments and removal efforts.\textsuperscript{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.\textsuperscript{299} This monument’s inscription states: “To all heroes of the South who fought for the principles of states rights.”\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{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.\textsuperscript{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.\textsuperscript{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 statute 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.


\textsuperscript{301} HMAACC Receives Confederate Monument from the City of Houston, HMAACC, https://hmaacc.org/hmaac-receives-confederate-monument-from-the-city-of-houston [https://perma.cc/N62F-WXDT].

\textsuperscript{302} Lozano, supra note 300.

\textsuperscript{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).

\textsuperscript{304} Id.
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 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

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

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314. Id.


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.”

Once the monument has been removed, a community has the opportunity and, arguably, the

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 statue 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
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. 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. As we have explored, sometimes communities have little choice (and this decision will be dictated by property law issues or state statue statutes). Where a community has or can create flexibility, 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. 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).


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.


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).


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 communities 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. 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).

composed of a rough-hewn limestone base with a granite shaft that tapers into a pyramidal cap. This small acreage and memorial are surrounded on three sides by James Madison University, a public university. The site and memorial are owned and maintained by the Turner Ashby Chapter of the UDC in Harrisonburg, Virginia. 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.

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. Now local governments must grapple with what to do with these emptied spaces. Monument Avenue in Richmond is the most prominent example. 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.


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].


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

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. 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.

**CONCLUSION**

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

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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].

progress over the past three years, it is estimated that ninety percent of these statues remain in place. 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.