

# CONFEDERATE HERITAGE ORGANIZATIONS AND CONFEDERATE MONUMENT REMOVAL

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## ABSTRACT

Prominent players in the debates concerning the removal and relocation of Confederate monuments are the multitude of Confederate heritage organizations. These organizations challenge the removal of Confederate monuments and are frequently successful in their efforts. Often times, these organizations possess a legal interest in the disposition of Confederate monuments either because they have funded the erection of such monuments, worked to maintain monuments, or have residual ownership claims. This Article seeks to highlight the role of Confederate heritage organizations in monument removal and relocation debates. The Authors explore the origins of Confederate monuments, why statues are removed now, the history of heritage organizations, and the operation of such organizations in response to removal attempts. The Authors argue that it is important for communities involved in removal efforts to (1) understand the objectives of heritage groups, (2) understand the history of the monument (3) understand the heritage organizations as an entity, (4) account for the community's goal and long term impacts of removal, and (5) consider the implications of transferring monuments to heritage organizations. Ultimately, the Article encourages communities to become familiar with heritage organizations in order to understand and account for their influence in removal and relocation decisions.

## INTRODUCTION

Confederate heritage organizations have consistently and often successfully challenged removal of Confederate monuments.<sup>1</sup> These groups assert that Confederate monuments represent Southern heritage while minimizing the harms these statues have caused historically and in contemporary society.<sup>2</sup> The legal interests of these groups can be significant, as they frequently funded the erection of monuments, worked to maintain them over the years, and may have residual ownership claims.<sup>3</sup> In the debate over the future of Confederate monuments, Confederate heritage organizations have played a significant role in both intervening to stop removals and in dictating the future of the removed monuments by asserting ownership of them, which not infrequently results in the monuments being transferred to them.<sup>4</sup> This Article seeks to place the role of Confederate heritage organizations in greater focus and to understand how they factor into removal debates.<sup>5</sup> To this end, this Article explores the origins of Confederate monuments, why statues are being removed now, the history of Confederate heritage organizations, and what these groups do in response to removal efforts.

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1. See, e.g., Gregory S. Schneider, *A Virginia County Maneuvers to Protect a Courthouse Statue at the Courthouse*, WASH. POST (Sept. 20, 2022), <https://www.washingtonpost.com/dc-md-va/2022/09/20/mathews-virginia-confederate-statue/> [<https://perma.cc/5VDV-YX2V>] (discussing efforts by a Virginia county and Confederate heritage organizations to permanently protect their Confederate monument, potentially by deeding public land to the non-profit to remove the monument from public control).

2. Zachary Bray, *We Are All Growing Old Together: Making Sense of America's Monument-Protection Laws*, 61 WM. & MARY L. REV. 1259, 1268 (2020) (examining these monuments in the context of diverse viewpoints and the increasing rural/urban divide).

3. See, e.g., Jessica Owley & Jess Phelps, *The Life and Death of Confederate Monuments*, 68 BUFF. L. REV. 1393, 1420-22 (2020) (exploring the types of ownership claims made by Confederate heritage organizations generally).

4. See, e.g., Jessica Owley, Jess Phelps & Sean W. Hughes, *Private Confederate Monuments*, 25 LEWIS & CLARK L. REV. 253, 285-93 (2021) (profiling examples of Confederate heritage organizations and private Confederate monuments).

5. Our earlier articles in this area often have included a discussion of Confederate heritage organizations, but given their importance, this piece specifically profiles their role and provides some guidance on how to address claims made by these organizations.

Ultimately, this Article seeks to provide insight and recommendations to communities facing the removal and disposition arguments from these organizations.<sup>6</sup> The challenges presented by Confederate heritage organizations are significant, but this Article encourages communities to understand these organizations and their goals when considering how to remove monuments and deciding what to do with these statues post-removal.

## I. WHAT ARE CONFEDERATE MONUMENTS?

Confederate monuments, broadly defined, are statues erected to commemorate the Confederacy.<sup>7</sup> These monuments are generally located in the U.S. South.<sup>8</sup> The monuments range from works of public art commissioned from famous artists recognizing a significant Confederate leader<sup>9</sup> to mass-produced statues depicting a solitary Confederate soldier.<sup>10</sup> They range in size from commemorative plaques<sup>11</sup> to entire

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6. SOUTHERN POVERTY LAW CTR., WHOSE HERITAGE? PUBLIC SYMBOLS OF THE CONFEDERACY (3rd Ed. 2022), <https://www.splcenter.org/20220201/whose-heritage-public-symbols-confederacy-third-edition#methodology> [<https://perma.cc/WM6F-TWL9>] [hereinafter WHOSE HERITAGE?]. While largely located in the South, these statues are located across the country, including as far-flung areas as Martha's Vineyard. See Callie Crossley, *The Emotional Divide over Martha's Vineyard's Confederate Monument*, WGBH (May 20, 2019), <https://www.wgbh.org/news/commentary/2019/05/20/the-emotional-divide-over-marthas-vineyards-confederate-monument> [<https://perma.cc/S5G3-FR48>].

7. This Article focuses on physical statues erected in public spaces, and less so on the marker/plaques and place names that also mark the legacy of the Confederacy, which are even more numerous. WHOSE HERITAGE?, *supra* note 6 (providing an overview of Confederate symbols generally).

8. See, e.g., *Whose Heritage? Map*, SOUTHERN POVERTY LAW CTR., <https://www.splcenter.org/whose-heritage-map> [<https://perma.cc/VXJ9-68FH>] (depicting Confederate monuments and memorials nationally).

9. See, e.g., *Frederick C. Hibbard: Raymond Confederate Monument*, BATTLE OF RAYMOND, <http://battleofraymond.org/history/hibbard.htm> [<https://perma.cc/BQW6-4C5K>] (profiling the other work of this Mississippi monument's sculptor).

10. Cara Giamio, *Those Mass-Produced Civil War Statues Were Meant to Stand Forever*, ATLAS OBSCURA (Aug. 25, 2017), <https://www.atlasobscura.com/articles/white-bronze-civil-war-statues> [<https://perma.cc/L4QV-LVGU>]. These statues were also commonly erected in the North to commemorate Union soldiers—often with only slight variation. See Castle Freeman, *The Single Solider Monument*, YANKEE MAG. (Apr. 3, 2015), <https://newengland.com/yankee-magazine/travel/new-england/the-single-soldier-monument-civil-war-memorial/> [<https://perma.cc/FY2Z-Z7E2>].

11. See *Confederate Plaque & College Mace*, WM. & MARY, <https://www.wm.edu/about/history/historiccampus/wrenbuilding/plaqueandmace/index> [<https://perma.cc/2CCL-LYES>] (providing background on a Confederate plaque and other items at the College of William & Mary).

mountainsides.<sup>12</sup> These monuments are generally located in what appear to be public spaces—most frequently on courthouse squares and in town parks.<sup>13</sup> The Southern Poverty Law Center, as of January 2022, estimates that 723 Confederate monuments remain standing in the United States.<sup>14</sup>

While many early monuments were funereal in purpose and were placed in cemeteries, Confederate heritage organizations quickly shifted to strategically using Confederate monuments to support what came to be known as the “Lost Cause.”<sup>15</sup> According to many historians, the Lost Cause has four general elements: (1) that the South fought well and bravely; (2) that the South was not so much defeated as overwhelmed by the North’s superior population and economic weight; (3) the preservation of state’s rights was the root of the conflict—not slavery; and (4) that secession was constitutional (a worthy cause).<sup>16</sup> Several Confederate heritage organizations—chiefly, the United Daughters of the Confederacy (“UDC”)—led efforts to advance the Lost Cause narrative,<sup>17</sup> and the erection of monuments played a strong role in these efforts.<sup>18</sup> The UDC

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12. Ryan Gravel & Scott Morris, *What Can We Do About Stone Mountain’s 150ft Confederacy Carving*, *GUARDIAN* (June 30, 2020), <https://www.theguardian.com/us-news/commentisfree/2020/jun/30/what-we-can-do-now-about-stone-mountains-150ft-confederate-carving> [https://perma.cc/Z9GK-4S5V] (profiling Stone Mountain, the world’s largest bas relief statue, carved into a Georgia mountainside, and which depicts prominent Confederate leaders).

13. See, e.g., Melissa Brown & Kirsten Ficus, *‘Enough’: Tuskegee Councilman Johnny Ford Takes Saw to Confederate Monument in Town Square*, *MONTGOMERY ADVERTISER* (July 7, 2021), <https://www.montgomeryadvertiser.com/story/news/2021/07/07/tuskegee-councilman-johnny-ford-takes-saw-confederate-monument-town-square/7894987002/> [https://perma.cc/P2YF-Q3CD].

14. WHOSE HERITAGE?, *supra* note 6. The true number of Confederate monuments is difficult to ascertain given the ubiquity of these statues and other commemorative markers. As noted, the SPLC has identified 723 Confederate monuments, and a total of 2,089 Confederate memorials (which include street names, school names, parks, etc.). *Id.*

15. James Horton, *Confronting Slavery and Revealing the Lost Cause*, *NAT’L PARK SERV.*, <https://www.nps.gov/articles/confronting-slavery-and-revealing-the-lost-cause.htm> [https://perma.cc/2EKU-LSNZ] (last visited Oct. 18, 2022); KAREN L. COX, *NO COMMON GROUND: CONFEDERATE MONUMENTS AND THE ONGOING FIGHT FOR RACIAL JUSTICE 15-20* (2021) (exploring the Lost Cause narrative and how this led to the erection of monuments across the South).

16. Gary W. Gallagher, *Introduction to THE MYTH OF THE LOST CAUSE AND CIVIL WAR HISTORY 1*, 1–4 (Gary W. Gallagher & Alan T. Nolan eds., 2000); David W. Blight, *Europe in 1989, America in 2020, and the Death of the Lost Cause*, *NEW YORKER*, July 1, 2020, <https://www.newyorker.com/culture/cultural-comment/europe-in-1989-america-in-2020-and-the-death-of-the-lost-cause> [https://perma.cc/MUF5-MJ4J].

17. See, e.g., Amy Lynn Heyse, *Teachers of the Lost Cause: The United Daughters of the Confederacy and the Rhetoric of Their Catechisms*, (2016) (Ph.D. dissertation, University of Maryland) <https://drum.lib.umd.edu/bitstream/handle/1903/4060/umi-umd-3800.pdf?sequence=1&isAllowed=y> [https://perma.cc/H7Q7-J4XD].

18. Adam Chamberlain & Alixandra B. Yanus, *Monuments as Mobilization? The United*

recognized the value of Confederate monuments in conveying their long-lasting reinterpretation of history and devoted substantial time, energy, and resources towards installing these monuments across the South.<sup>19</sup> The majority of these monuments were erected from 1890-1920.<sup>20</sup>

Over their history, most Confederate monuments were commissioned and funded (at least in part) by organizations focused on memorializing the Confederate cause.<sup>21</sup> These monuments were generally not installed on battlefields or in cemeteries, but in central public spaces—such as parks, in front of courthouses and town halls, on town greens, or in town squares.<sup>22</sup> In placing the monuments, these organizations sometimes retained ownership of the statues but also often conveyed them to local governments.<sup>23</sup> The organizations frequently remained involved in the lives of the monuments through upkeep and annual ceremonies.<sup>24</sup> Given the age of most Confederate monuments, their funding and ownership (of the monument and of the lands upon which they sit) are often unclear.<sup>25</sup> For

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*Daughters of the Confederacy and the Memorialization of the Lost Cause*, 102 SOC. SCI. Q. 125, 125-26 (2020).

19. See, e.g., *United Daughters of the Confederacy Monument*, NAT'L PARK SERV. MONOCACY, <https://www.nps.gov/mono/learn/historyculture/confederate-monument.htm> [https://perma.cc/U4Z9-6KZC] (last visited Oct. 23, 2022) (explaining the UDC motivations for these monuments).

20. Heather A. O'Connell, *Racism and Confederate Monument Construction: Temporal Regimes Distinguishing the 1900's, 1960s, and Contemporary Decades*, 8 J. SOCIO., RACE & ETHNICITY 62 (2020) (charting monument construction generally).

21. *The Neo-Confederates*, SOUTHERN POVERTY LAW CTR., <https://www.splcenter.org/fighting-hate/intelligence-report/2000/neo-confederates> [https://perma.cc/ZS8D-6LZM] (summarizing some of these organizations, which vary in approaches and missions). It also is not uncommon for a Confederate monument to have been paid for by a variety of public/private sources—particularly some of the larger projects. See, e.g., Caroline Janney, *United Daughters of the Confederacy*, ENCYC. VA., <https://encyclopediavirginia.org/entries/united-daughters-of-the-confederacy/#:~:text=The%20UDC%20is%20probably%20best,result%20of%20the%20group%27s%20efforts> [https://perma.cc/FM9P-A3RW] (noting that a Confederate monument in Charlottesville was paid for by the UDC, the city, and the county).

22. See, e.g., *Civil War Memory and Monuments to White Supremacy with Art Historian Kirk Savage*, MONUMENT LAB, <https://monumentlab.com/podcast/civil-war-memory-and-monuments-to-white-supremacy-with-art-historian-kirk-savage> [https://perma.cc/K864-WUFA] (explaining the public messaging/public display components to these statues).

23. For more background on the complicated ownership of these monuments, see Owley & Phelps, *supra* note 4.

24. Sarah Vogel song, *They May Sit on Public Land. But Not All Confederate Monuments are Publicly Owned*, VA. MERCURY (July 2, 2020), <https://www.virginiamercury.com/2020/07/02/they-may-sit-on-public-land-and-be-governed-by-state-laws-but-not-all-confederate-monuments-are-publicly-owned/> [https://perma.cc/3BAJ-B6ZE].

25. Emily R. West, *City Claims Daughters of Confederacy Ownership Claims on Franklin Square 'Not Based in Fact'*, THE TENNESSEAN, Oct. 21, 2019,

example, many towns did not have processes about how to accept or dedicate monuments and few saw a need to keep clear records, leaving current communities to wade through historical documents hunting for deeds and conveyance documents.<sup>26</sup> Some monuments were conveyed to communities.<sup>27</sup> Others were not.<sup>28</sup> This lack of clarity around monument ownership often has material impacts on both a monument's removal and relocation.

The pace of removals is uneven. Since roughly 2015, when these symbols of the Confederacy drew renewed scrutiny in the aftermath of the Charleston Church Massacre in South Carolina, approximately 100 have been removed.<sup>29</sup> Subsequent events such as the Black Lives Matter movement, the Unite the Right Rally in Charlottesville,<sup>30</sup> and George Floyd's murder<sup>31</sup> led to additional removals.<sup>32</sup> Frequently these monuments are in communities with large Black populations who have been contesting

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<https://www.tennessean.com/story/news/local/williamson/2019/10/21/franklin-calls-daughters-confederacy-ownership-land-claims-not-based-fact/4023467002/>

26. Gwen Barlow, Note, *Who Owns the Confederate Monument in Winston-Salem?*, 98 N.C. L. REV. FORUM 26 (2019) (examining the ownership of this specific monument).

27. See, e.g., Abbeville County Confederate Monument, Historic Marker Database, <https://www.hmdb.org/m.asp?m=171618> (explaining that based on transfer of monument to the City from the UDC, the City became owners and responsible for replacement of the monument upon its being damaged in a fire).

28. See, e.g., Allia Malik, *Ownership of Confederate Monument Installed in 1993 Central to Lawsuit*, ATLANTA J. CONSTITUTION, May 10, 2022, <https://www.ajc.com/news/ownership-of-confederate-monument-installed-in-1993-central-to-lawsuit/5ZNDPCGCOB3JIRGH4PSTBRTI/> (noting that the ownership of even this recent monument is not clear).

29. Rachel Treisman, *Nearly 100 Confederate Monuments Removed in 2020, Report Says; More Than 700 Remain*, NPR (Feb. 23, 2021), <https://www.npr.org/2021/02/23/970610428/nearly-100-confederate-monuments-removed-in-2020-report-says-more-than-700-remain> [<https://perma.cc/P6YS-RMQ6>] (profiling removal efforts generally).

30. Ben Paviour, *Charlottesville Removes Robert E. Lee Statue that Sparked a Deadly Rally*, NPR, July 10, 2021, <https://www.npr.org/2021/07/10/1014926659/charlottesville-removes-robert-e-lee-statue-that-sparked-a-deadly-rally>

31. Joel Shannon, *Report Counts How Many Confederate Statues Have Been Removed Since George Floyd's Death. It's a Lot.*, USA TODAY (Aug. 12, 2020), <https://www.usatoday.com/story/news/nation/2020/08/12/george-floyd-confederate-monuments-splc/3356819001/> [<https://perma.cc/4WHE-8XYU>].

32. N'Dea Yancey-Bragg, *Nearly 100 Confederate Statues Were Removed in 2020, but Hundreds Remain, New SPLC Data Shows*, USA TODAY (Feb. 23, 2021), <https://www.usatoday.com/story/news/nation/2021/02/23/historic-number-confederate-statues-were-removed-2020-splc/4556708001/> [<https://perma.cc/Q4TR-Q26U>]; but see Roger Chesley, *On Confederate Monuments, Patience Has Run Out*, VA. MERCURY (June 17, 2020), <https://www.virginiamercury.com/2020/06/17/on-confederate-monuments-patience-has-run-out/> [<https://perma.cc/KRY7-GU8B>] (expressing frustration at the pace of monument removal in Virginia).

these statues for generations but only now have made progress in getting them removed.<sup>33</sup> The current push to remove Confederate monuments stems from a growing recognition of why many of these monuments were initially installed and what message they send to current residents.<sup>34</sup>

One obstacle to removal has been state monument protection statutes. Eight state legislatures have passed laws designed to tie the hands of local governments.<sup>35</sup> These laws (generally referred to as “statue statutes”) typically have attempted to preempt local communities’ ability to remove these statutes.<sup>36</sup>

## II. WHAT ARE CONFEDERATE HERITAGE ORGANIZATIONS?

Confederate heritage organizations, defined generally, are organizations that focus on commemorating the Confederacy.<sup>37</sup> We focus on Confederate heritage organizations that used monument construction as a way to redefine the legacy of the Civil War and antebellum society.<sup>38</sup> In this and other ways, the specific efforts to promote the Lost Cause distinguishes the work of Confederate heritage organizations from the work of historic preservation organizations, which may be operating in some of the same spaces. For example, a historic preservation organization might

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33. See, e.g., Karen L. Cox, *Black Protestors Have Been Rallying Against Confederate Statues for Generations*, SMITHSONIAN MAG (Apr. 12, 2021), <https://www.smithsonianmag.com/history/black-protestors-have-been-rallying-against-confederate-statues-generations-180977484/> [<https://perma.cc/46AB-NN68>].

34. See, e.g., Michah Schwatzman & Nelson Tebbe, *Charlottesville’s Monuments Are Unconstitutional*, SLATE (Aug. 25, 2017), <https://slate.com/news-and-politics/2017/08/charlottesvilles-monuments-are-unconstitutional.html> [<https://perma.cc/TLB2-U6MJ>].

35. See, e.g., David Graham, *Local Officials Want to Remove Confederate Monuments – but States Won’t Let Them*, ATLANTIC (Aug. 25, 2017), <https://www.theatlantic.com/politics/archive/2017/08/when-local-officials-want-to-tear-down-confederate-monuments-but-cant/537351/> [<https://perma.cc/3H7A-LUGQ>].

36. Zachary Bray, *Monuments of Folly: How Local Governments Can Challenge Confederate ‘Statue Statutes’*, 81 TEMPLE L. REV. 1, 46-47 (2018) (profiling the origins of these laws and the ways communities have bypassed these laws to remove Confederate monuments in the face of state opposition).

37. See, e.g., Erin L. Thompson, *Opinion: Confederate Heritage Groups Are Keeping the Lost Cause on Life Support*, WASH. POST (Jan. 23, 2022), <https://www.washingtonpost.com/opinions/2022/01/23/confederate-heritage-groups-are-keeping-lost-cause-life-support/> [<https://perma.cc/MED4-5G4R>] (exploring these groups and their role in defending Confederate monuments).

38. Clint Smith, *Why Confederate Lies Live On*, ATLANTIC (June 2021), <https://www.theatlantic.com/magazine/archive/2021/06/why-confederate-lies-live-on/618711/> [<https://perma.cc/F67Z-BF26>].

preserve an antebellum mansion as a house museum, which depending on interpretation, can tell a broader story.<sup>39</sup> Two main organizations operate in this space today—the UDC and the Sons of Confederate Veterans (“SCV”)—but many monuments were initially placed with smaller, place-based organizations, formed with the goal of establishing a specific monument.<sup>40</sup>

Given the losses suffered by the South, the desire for commemoration is not surprising.<sup>41</sup> Many of these organizations, however, promote some version of the Lost Cause mythology, recasting the South’s role in this conflict by generally arguing that the conflict was not about slavery and more generally romanticizing the antebellum period.<sup>42</sup>

Even Confederate heritage organizations focused on monument construction are not monolithic and these groups take different positions on monument removal.<sup>43</sup> This section provides a general overview of Confederate heritage organizations, with a focus on the principal actors involved in monument installation historically and in contesting monument removals today.

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39. See, e.g., Anastacia Scott, *Urban Enslavement in New Orleans: The Development Process*, HERMANN-GRIMA + GALLIER HISTORIC HOUSES (Jan. 21, 2022), <https://hgghh.org/blog/urban-enslavement-tour-development> [<https://perma.cc/B5LW-AKUJ>] (profiling the development of the primary historic house tour for this important New Orleans house museum that focuses on the urban enslavement story, rather than that of the home’s owners). Historic preservation organizations have also come out in support of the removal of monuments in light of the messages that these monuments were intended to convey. See, e.g., *Confederate Monuments – Frequently Asked Questions*, NAT’L TR. FOR HISTORIC PRES., <https://savingplaces.org/confederate-monuments-faqs#.Y0VdOVLmJaQ> [<https://perma.cc/X94V-A948>].

40. COX, *supra* note 15, at 20-27.

41. See, e.g., Drew Gilpin Faust, *Death and Dying*, NAT’L PARK SERV., [https://www.nps.gov/nr/travel/national\\_cemeteries/death.html](https://www.nps.gov/nr/travel/national_cemeteries/death.html) [<https://perma.cc/6R96-6NLM>] (last visited Sept. 30, 2022) (noting that “one in five white southern men of military age did not survive the Civil War.”).

42. Karen L. Cox, *Five Myths About the Lost Cause*, WASH. POST (Jan. 14, 2021, 2:42 PM), [https://www.washingtonpost.com/outlook/five-myths/five-myths-about-the-lost-cause/2021/01/14/78853464-55f9-11eb-a08b-f1381ef3d207\\_story.html](https://www.washingtonpost.com/outlook/five-myths/five-myths-about-the-lost-cause/2021/01/14/78853464-55f9-11eb-a08b-f1381ef3d207_story.html) [<https://perma.cc/7WGA-HTEP>].

43. Allie Kelly & Madi Kirkman, *‘It’s Important They Understand’: Leaders in Silent Sam Reversal Aim to Educate Next Generation*, DAILY TAR HEEL, <https://www.dailytarheel.com/article/2022/09/university-silent-sam-reunion> (explaining that the UDC conveyed its interests in the Silent Sam monument to the SCV to withdraw from the controversy).

### A. Early Memorial and Veterans Organizations

Several veterans groups formed Confederate heritage organizations in the immediate aftermath of the Civil War.<sup>44</sup> These veterans organizations were often less focused on monuments and more focused on reunion events and providing services to veterans.<sup>45</sup> For this reason, early organizations generally faded away with the deaths of the last veterans.<sup>46</sup>

Other groups, such as ladies' associations, coalesced around specific monuments and sought to raise funds and lobby government for funding for their construction.<sup>47</sup> For example, a group might have formed to raise capital to fund the erection of a statue honoring General Robert E. Lee or some other Confederate officer.<sup>48</sup> Sometimes, they erected a monument to a specific military unit (e.g., for the regiment from a town).<sup>49</sup> These monument-specific groups often became inactive upon the completion of the project, and the eventual deaths of the members, or they coalesced into the larger UDC, which formed in the 1890s.<sup>50</sup> Ladies' memorial associations dominated monument building during Reconstruction—

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44. James L. Johnson, *Confederate Veterans' Associations*, ESSENTIAL CIV. WAR CURRICULUM, <https://www.essentialcivilwarcurriculum.com/confederate-veterans-associations.html> [https://perma.cc/YMY4-82SE] (last visited Sept. 30, 2022).

45. *Id.*

46. See Franklin C. Sammons, *Confederate Heritage Organizations*, NEW GA. ENCYC., <https://www.georgiaencyclopedia.org/articles/history-archaeology/confederate-veteran-organizations/> [https://perma.cc/8RE5-MYA6] (last visited Sept. 30, 2022) (explaining that by 1951, only three Confederate veterans attended the United Confederate Veterans, the largest veterans' organizations reunion).

47. See Anderson R. Rouse, *Ladies Memorial Associations*, ESSENTIAL CIV. WAR CURRICULUM, <https://www.essentialcivilwarcurriculum.com/ladies-memorial-associations.html> [https://perma.cc/65AA-QLUT]; (last visited Sept. 30, 2022); see also Caroline E. Janney, *Ladies' Memorial Associations*, ENCYC. VA., <https://encyclopediavirginia.org/entries/ladies-memorial-associations/> [https://perma.cc/AQ2A-XGXQ].

48. *Memorialization of Robert E. Lee and the Lost Cause*, NAT'L PARK SERV. ARLINGTON HOUSE, <https://www.nps.gov/arho/learn/historyculture/memorialization-of-robert-e-lee-and-the-lost-cause.htm> [https://perma.cc/D6EV-7WN9] (last visited Sept. 30, 2022).

49. *Monument to 60th Regt. NC Volunteers, Asheville*, COMMEMORATIVE LANDSCAPES OF N.C., <https://docsouth.unc.edu/commland/monument/550/> [https://perma.cc/4ZNV-CS2H] (last visited Sept. 30, 2022) (profiling this monument's funding from the UDC and its removal in 2020).

50. Rouse, *supra* note 47; see also H.E. Gulley, *Women and the Lost Cause: Preserving a Confederate Identity in the American Deep South*, 18 J. HIST. GEOGRAPHY, Apr. 1993, at 125 (noting that the UDC "emerged as an umbrella organization for memorial groups and shaped public memory in the South by maintaining a positive image of Confederate veterans").

perhaps because men could not act to promote Confederate causes post war without fear of reprisals.<sup>51</sup>

Through these organizations, white Southern women played a powerful role in shaping post-war Southern society.<sup>52</sup> Eager to hold on to this power, women's organizations were the creators and initial promoters of the Lost Cause myth.<sup>53</sup> Dedication ceremonies gave Confederate heritage organizations significant opportunities to articulate their messaging to the larger public.<sup>54</sup> Many ceremonies attracted huge crowds and expanded Lost Cause messaging across southern cities.<sup>55</sup> Annual gatherings or commemoration of special events (e.g., Robert E. Lee's birthday), served to reinforce their message of white Southern superiority.<sup>56</sup> The women members of these groups gradually gravitated to the UDC, with the monument-specific organizations fading away.<sup>57</sup>

Overall, both veterans organizations and monument-specific memorial associations largely became inactive by the middle of the twentieth century, leaving behind their monuments, but not necessarily relinquishing

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51. See John J. Winberry, "Lest We Forget": *The Confederate Monument and the Southern Townscape*, 23 SE. GEOGRAPHER 107, 115 (1983).

52. CAROLINE JANNEY, *BURYING THE DEAD BUT NOT THE PAST: LADIES' MEMORIAL ASSOCIATIONS AND THE LOST CAUSE* 7 (2008) (explaining that these groups "shrewdly manipulated the political conditions" post-war and served "as surrogate government agencies for the defeated confederacy").

53. *Id.* at 87 (explaining that ladies memorial associations "were not only honoring those men who had fought for the South but were securing their own legacy as devoted citizens and participants in the cause"). In Chapter 2 of this book, Janney describes the political dimensions of these ladies' memorial associations. See also KAREN COX, *DIXIES' DAUGHTERS: THE UNITED DAUGHTERS OF THE CONFEDERACY AND THE PRESERVATION OF CONFEDERATE CULTURE* 1 (2003).

54. See *United Daughters of the Confederacy Monument*, *supra* note 19 ("A dedication ceremony for a UDC monument was more than a simple ceremony, it was an event designed to reclaim a mantle of patriotism for Confederate veterans and indoctrinate young, white Southerners in Confederate culture."); see also COX, *supra* note 15, at 27-29 (examining the history of dedication ceremonies).

55. See, e.g., Tina Griego, *Past and Present: The Many-Sided History of the Monument Avenue Debate*, RICHMOND MAG. (June 15, 2015), <https://richmondmagazine.com/news/news/monument-ave-history/> [<https://perma.cc/Z4MX-N63H>] (noting that the 1890 dedication ceremony of the Robert E. Lee statue on Richmond's Monument Avenue drew a crowd of between 100,000 and 150,000 and examining the tensions regarding the installation of the monument event at that time).

56. UNIV. OF VIRGINIA, *The Local Confederate Monument on the Battlefield of the Public Sphere*, <https://xroads.virginia.edu/~Hyper/INCORP/monuments/dedications/dedications.html>.

57. Angela Esco Elder, *United Daughters of the Confederacy*, NEW GEORGIA ENCYCLOPEDIA, <https://www.georgiaencyclopedia.org/articles/history-archaeology/united-daughters-of-the-confederacy/> (explaining that the UDC is the outgrowth of these more scattered associations).

ownership interests.<sup>58</sup> While few, if any, of these early groups still exist, many contemporary organizations situate themselves as successors to these early actors.<sup>59</sup>

### *B. The United Daughters of the Confederacy*

The first, and most successful Confederate heritage organization, is the United Daughters of the Confederacy.<sup>60</sup> Established in 1894 and incorporated in 1919, the group's primary focus was to commemorate the Confederacy.<sup>61</sup> In its efforts to claim the public spaces of the South, the UDC focused on erecting monuments in civic public spaces, such as courthouse grounds or community parks, rather than in cemeteries or on battlefields.<sup>62</sup> The organization adopted this strategy to maximize the impact of these monuments and best spread the Lost Cause narrative.<sup>63</sup>

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58. See, e.g., National Register Nomination, Portsmouth Virginia Confederate Monument, [https://www.dhr.virginia.gov/wp-content/uploads/2018/04/124-0183\\_Confederate\\_Monument\\_1996\\_Final\\_NR\\_Nomination.pdf](https://www.dhr.virginia.gov/wp-content/uploads/2018/04/124-0183_Confederate_Monument_1996_Final_NR_Nomination.pdf) (profiling the various organizations, now defunct, that raised funds for this monument).

59. See, e.g., *McMahon v. Fenves*, Case No. 18-50710 (5th Cir. 2020), <http://www.ca5.uscourts.gov/opinions/pub/18/18-50710-CV0.pdf> (rejecting SCV claim to be a successor-in-interest to monument donors).

60. See Janney, *supra* note 21. See also Pater Galuska, *The Women Who Erected Confederate Statues Are Stunningly Silent*, WASH. POST (Oct. 13, 2017), [https://www.washingtonpost.com/opinions/the-women-who-erected-confederate-statues-are-stunningly-silent/2017/10/13/2e759dde-a920-11e7-b3aa-c0e2e1d41e38\\_story.html](https://www.washingtonpost.com/opinions/the-women-who-erected-confederate-statues-are-stunningly-silent/2017/10/13/2e759dde-a920-11e7-b3aa-c0e2e1d41e38_story.html) [<https://perma.cc/HX3M-6UGE>] (profiling the UDC's role as the most prolific monument funder).

61. Karen Cox, *The Confederacy's Living Monuments*, N.Y. TIMES (Oct. 6, 2017), <https://www.nytimes.com/2017/10/06/opinion/the-confederacys-living-monuments.html> [<https://perma.cc/4JRG-9GJW>] (discussing the UDC's mission to promote its specific version of history); see also Allen Breed, *'The Lost Cause': The Women's Group Fighting for Confederate Monuments*, GUARDIAN (Aug. 10, 2018), <https://www.theguardian.com/us-news/2018/aug/10/united-daughters-of-the-confederacy-statues-lawsuit> [<https://perma.cc/GV6W-WV96>] (examining the role monuments played in this mission).

62. Dep't of the Interior, NPS, Arlington House, The Robert E. Lee Memorial, Memorialization of Robert E. Lee and the Lost Cause, <https://www.nps.gov/arho/learn/historyculture/memorialization-of-robert-e-lee-and-the-lost-cause.htm> (explaining that "[t]he UDC monuments were also innovative in how public they were. There were not just memorials to the fallen but visible reminders for later generations.").

63. *Id.*; see also National Register of Historic Places Multiple Property Documentation Form: *Civil War Sculpture in Arkansas, 1886-1934*, NAT'L PARK SERV., [https://npgallery.nps.gov/NRHP/GetAsset/NRHP/64500015\\_text](https://npgallery.nps.gov/NRHP/GetAsset/NRHP/64500015_text) [<https://perma.cc/H23V-P68E>].

The UDC sought to place statues in numerous communities to honor the Confederate cause and legacy.<sup>64</sup> They erected over 400 monuments.<sup>65</sup> The UDC was also heavily involved in educational efforts to integrate Lost Cause ideology into classrooms and across Southern society.<sup>66</sup> As its mission statement still notes, the UDC seeks to “collect and preserve the material necessary for a truthful history of the War Between the States and to protect, preserve, and mark the places made historic by Confederate valor.”<sup>67</sup> Membership is open to blood descendants of those who served in the military or civil service of the Confederacy.<sup>68</sup>

The UDC functions as a national organization with state divisions and local chapters.<sup>69</sup> There appear to be nineteen active state divisions.<sup>70</sup> There are also chapters (local groups located in states where no state-level organization exists) in fifteen additional states—ranging from Arizona to New Jersey.<sup>71</sup> By 2001, UDC membership had fallen to around 20,000 (and current membership information is lacking), but at its peak, it had hundreds of thousands of members across the country.<sup>72</sup> Until the mid-twentieth century, the UDC “continued to hold sway in southern communities [. . .] before the organization experienced a step decline in membership, likely in response to racial changes following the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. Since the 1960s, the UDC has functioned mostly as a social group [. . .] It’s rarely been involved in political battles over Confederate symbols, flags, or monuments.”<sup>73</sup> In recent years, the UDC has been forced more prominently into the debates

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64. KAREN COX, *DIXIES’ DAUGHTERS: THE UNITED DAUGHTERS OF THE CONFEDERACY AND THE PRESERVATION OF CONFEDERATE CULTURE* 2, 49 (2003).

65. COX, *supra* note 15, at 50-52.,

66. Chamberlain & Yanis, *supra* note 18, at 126-27; *see also* Coleman Lowndes, *How Southern Socialites Rewrote Civil War History*, VOX (Oct. 25, 2017), <https://www.vox.com/videos/2017/10/25/16545362/southern-socialites-civil-war-history> [<https://perma.cc/72YD-J7F8>].

67. *About*, UNITED DAUGHTERS OF THE CONFEDERACY, <https://hqudc.org/about/> [<https://perma.cc/ANU9-D5B6>].

68. *Membership*, United Daughters of the Confederacy, <https://hqudc.org/membership-2/>.

69. *Chapters and Divisions*, UNITED DAUGHTERS OF THE CONFEDERACY, <https://hqudc.org/divisions/> [<https://perma.cc/S73N-GFJ5>](last visited Aug. 9, 2022).

70. *Id.*

71. *Id.*

72. *See* Janney, *supra* note 21.

73. Karen L. Cox, *Setting the Lost Cause on Fire*, AHA PERSPS. (Aug. 6, 2020), <https://www.historians.org/research-and-publications/perspectives-on-history/summer-2020/setting-the-lost-cause-on-fire-protesters-target-the-united-daughters-of-the-confederacy-headquarters> [<https://perma.cc/A45J-FZKD>].

over the future of Confederate iconography due to its potential ownership of Confederate monuments.<sup>74</sup>

Despite its involvement in the monument debate, the current UDC national organization has also tried to distance itself from hate groups that have used Confederate iconography while continuing to support and defend monuments.<sup>75</sup> The UDC is not of one mind, with divisions and chapters sometimes departing from the position of the national organization. Actions regarding specific monument removals appear to be determined at a local chapter level. As discussed below, some chapters are willing to have monuments removed as long as they are returned to the UDC,<sup>76</sup> while other chapters are more inclined to intervene to keep a monument in place.<sup>77</sup> The most prominent example of this defense of Confederate memorialization centered on the UDC's opposition to the renaming of a prominent building on Vanderbilt University's campus.<sup>78</sup> In 1933, the Tennessee chapter of the UDC raised funds to support the construction of a dormitory and, in recognition of this support, the building was named Confederate Memorial Hall.<sup>79</sup> Vanderbilt sought to remove this name for decades, but in 2005, a

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74. See, e.g., *id.* (examining the organization's current role, and the attention paid to it, including a 2020 attempt by protestors to set its Richmond-based headquarters on fire).

75. See, e.g., Brittany Spurill, Erienne Jenkins, & Brooke Parker, *Monuments and the Spaces They Occupy*, DOCSOUTH: COMMEMORATIVE LANDSCAPES, <https://docsouth.unc.edu/commland/features/essays/spruill/> [<https://perma.cc/SF5C-LZCQ>] (profiling litigation where the SCV challenged the UDC's planned relocation of a Confederate monument as an example of the positions these groups have occasionally occupied); see also UNITED DAUGHTERS OF THE CONFEDERACY, <https://hqudc.org/> [<https://perma.cc/2L72-F3RA>] (last visited Oct. 4, 2022) (providing a statement on its landing page asking the public to "[j]oin us in denouncing hate groups and affirming that Confederate memorial statues and monuments are part of our shared American history and should remain in place.").

76. *Daughters of the Confederacy Request Monument Relocation*, WEATHERFORD DEMOCRAT (June 19, 2020), [https://www.weatherforddemocrat.com/news/daughters-of-the-confederacy-request-monument-relocation/article\\_076fb718-b22f-11ea-9f79-5b647f98d69b.html](https://www.weatherforddemocrat.com/news/daughters-of-the-confederacy-request-monument-relocation/article_076fb718-b22f-11ea-9f79-5b647f98d69b.html) [<https://perma.cc/V57G-PXLX>].

77. See, e.g., Josh Kelly, *Base of Confederate Statue to Be Given to UDC and Removed from Courthouse Lawn by End of August*, OWENSBORO TIMES (Aug. 5, 2022), <https://www.owensborotimes.com/features/community/2022/08/base-of-confederate-statue-to-be-given-to-udc-and-removed-from-courthouse-lawn-by-end-of-august/> [<https://perma.cc/BD2M-NADP>] (profiling UDC's opposition to the removal of this statue and ultimately being given the statue to resolve their claims/settle the litigation).

78. *Memorial House*, VAND. UNIV., <https://www.vanderbilt.edu/residentialcolleges/ingram-commons/the-houses/memorial-house/> [<https://perma.cc/9TXC-SLJT>] (last visited Oct. 4, 2022).

79. Richard Gonzales, *Vanderbilt To Pay \$1.2 Million To Remove 'Confederate' from Dormitory*, NPR (Aug. 15, 2016), <https://www.npr.org/sections/thetwo-way/2016/08/15/490136605/vanderbilt-to-pay-1-2-million-to-remove-confederate-from-dormitory> [<https://perma.cc/X3H9-6GWQ>].

Tennessee court ruled the name could only be removed upon Vanderbilt returning the value of the gift to the UDC, which the university was reluctant to repay as it was roughly 1.2 million dollars.<sup>80</sup> In 2016, Vanderbilt was able to obtain private philanthropic support to fund the removal of the Confederate name from the structure.<sup>81</sup> Given the sheer number of monuments that the UDC funded during its heyday—roughly 1890-1920—the UDC ends up involved in many disputes over monument removal and disposition.<sup>82</sup>

### *C. Sons of Confederate Veterans*

The second major organization involved in current Confederate monument debates is the Sons of Confederate Veterans.<sup>83</sup> Established in 1896, the SCV's stated mission is to "serve as a historical, patriotic, and non-political organization, dedicated to ensuring that a true history of the 1861-1865 period is preserved."<sup>84</sup> The SCV is a membership organization open to male descendants of Confederate veterans.<sup>85</sup> It reports to have around 30,000 members nationally.<sup>86</sup> The SCV's structure is similar to the UDC's with a national organization and state and local chapters.<sup>87</sup> Local chapters appear to have autonomy to act without coordination at the national

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80. Marina Koren, *The College Dorm and the Confederacy*, ATLANTIC (Aug. 15, 2016), <https://www.theatlantic.com/news/archive/2016/08/vanderbilt-confederate-hall/495941/> [<https://perma.cc/X2Q7-SNX4>].

81. *Vanderbilt To Remove "Confederate" Inscription from Residence Hall*, VAND. UNIV. (Aug. 15, 2016), <https://news.vanderbilt.edu/2016/08/15/vanderbilt-will-remove-confederate-inscription-from-residence-hall/> [<https://perma.cc/Y4YV-QHLN>].

82. See, e.g., Andrew Oxford, Helen Wieffering, & Grace Oldham, *Confederate Monuments Removed from Arizona Capitol at Request of United Daughters of Confederacy*, ARIZ. REPUBLIC. (July 23, 2020), <https://www.azcentral.com/story/news/politics/arizona/2020/07/23/confederate-monuments-removed-overnight-arizona-capitol/5494682002/> [<https://perma.cc/N3UP-6KDS>] (profiling the return of this Arizona monument to the UDC).

83. *What Is the Sons of Confederate Veterans?*, SONS OF CONFEDERATE VETERANS, <https://scv.org/what-is-the-scv/> [<https://perma.cc/VT2C-SQQA>] (last visited Oct. 3, 2022).

84. *Id.*

85. Katy Waldman, *Guardians of White Innocence*, SLATE (Sept. 25, 2017), <https://slate.com/news-and-politics/2017/09/the-sons-of-confederate-veterans-are-the-guardians-of-white-innocence.html> [<https://perma.cc/W7QZ-YH3B>].

86. James Stout, *Who Are The Sons of Confederate Veterans?*, NATION (Dec. 17, 2021), <https://www.thenation.com/article/society/sons-confederate-veterans-email-list/> [<https://perma.cc/6T7X-GNDG>].

87. *Id.*

level.<sup>88</sup> Some divisions or chapters have intervened in contesting monument removals, with the national organization providing policy support and guidance.<sup>89</sup>

In the 1990s and early 2000s, there were significant debates over the direction of the SCV.<sup>90</sup> The SCV's traditional wing wanted to focus on maintaining gravestones, erecting commemorative markers, and on education and study regarding the Civil War.<sup>91</sup> The SCV's more activist wing wanted to engage more aggressively into what it perceived as attacks on Confederate heritage—including attempts to remove monuments and other Confederate iconography.<sup>92</sup> This divide eventually led to a schism with many traditionalists<sup>93</sup> splitting off and the activist wing remaining in control.<sup>94</sup>

Recently, the SCV has been more aggressively involved in the protection of monuments than the UDC.<sup>95</sup> The SCV is also credited with installing the majority of Confederate monuments erected in the twenty-first century.<sup>96</sup> In some instances, the SCV has sought to establish itself as the successor to predecessor organizations.<sup>97</sup> In at least one instance, the SCV took over a monument challenge from the UDC when that organization did not wish to be involved—the high-profile dispute over the removal of Silent Sam from UNC Chapel Hill's campus.<sup>98</sup>

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88. Schneider, *supra* note 1. (profiling the local SCV chapter's involvement).

89. Jason Wilson, *Manual Advises How To Stop Removal of Confederate Statues: Don't Mention Race*, GUARDIAN (July 4, 2021), <https://www.theguardian.com/us-news/2021/jul/04/sons-of-confederate-veterans-manual-statues-symbols> [<https://perma.cc/74UR-KR6Z>].

90. *SCV Once Again Elects Radical National Leaders*, SOUTHERN POVERTY LAW CTR. (Oct. 19, 2005), <https://www.splcenter.org/fighting-hate/intelligence-report/2005/scv-once-again-elects-radical-national-leaders> [<https://perma.cc/VN8U-QVAH>].

91. *Uncivil War: The Sons of Confederate Veterans is Back in the Hands of Extremists*, SOUTHERN POVERTY LAW CTR. (May 10, 2005), <https://www.splcenter.org/news/2005/05/10/uncivil-war-sons-confederate-veterans-back-hands-extremists> [<https://perma.cc/T2WL-9TZT>].

92. *Id.*

93. The traditionalists of the SCV were associated with a related organization known as the "Military Order of the Stars and Bars." *Id.*

94. *Sons of Confederate Veterans Heads in More Radical Direction*, SOUTHERN POVERTY LAW CTR. (Apr. 19, 2006), <https://www.splcenter.org/fighting-hate/intelligence-report/2006/sons-confederate-veterans-heads-more-radical-direction> [<https://perma.cc/3HEU-BDDN>].

95. COX, *supra* note 15, at 24.

96. *Id.*; Katie Zezima & Aaron Williams, *The Battle Over Our Nation's Confederate Monuments*, WASH. POST (Sept. 12, 2017), [https://www.washingtonpost.com/graphics/2017/national/confederate-monuments/?utm\\_term=.fc547d6a4de1](https://www.washingtonpost.com/graphics/2017/national/confederate-monuments/?utm_term=.fc547d6a4de1) [<https://perma.cc/4RRC-2DB2>].

97. *Id.*

98. Karen L. Cox, *With 'Silent Sam' Deal, UNC Has Betrayed Its Mission*, CNN (Dec. 7, 2019),

Overall, the primary Confederate heritage organizations active today are the UDC and SCV.<sup>99</sup> The UDC has more of the historic role in establishing monuments—leading it to often have more robust ownership claims to challenged monuments—while the SCV has been more aggressive in its defense of monuments, but often without a clear property interest.<sup>100</sup> Given the groups involved, there can be tension in determining which entity has authority to address a statue’s future.<sup>101</sup>

### III. CONFEDERATE HERITAGE ORGANIZATIONS AND MONUMENT REMOVAL

The purpose behind the construction of Confederate monuments was multifaceted.<sup>102</sup> At first, the projects had a memorial function.<sup>103</sup> Constructing monuments to the fallen was one way to acknowledge the losses from the conflict.<sup>104</sup> But quickly, groups shifted their goal from mourning the dead to honoring a mythical southern way of life—The Lost Cause.<sup>105</sup> From the earliest statues to those being erected today, these monuments express political power and control, indicating who has the authority to control public spaces.<sup>106</sup>

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<https://www.cnn.com/2019/12/07/opinions/unc-sons-of-confederate-veterans-silent-sam-cox>  
[<https://perma.cc/3P7C-UCBD>].

99. COX, *supra* note 15, at 24.

100. *Id.*

101. Johanna F. Still, *State Confederate Sons and Daughters Contest Wilmington’s Settlement with Local Chapter*, PORTCITY DAILY (Aug. 9, 2021), <https://portcitydaily.com/local-news/2021/08/09/state-confederate-sons-and-daughters-contest-wilmingtons-settlement-with-local-chapter/> [<https://perma.cc/UC2T-SX7D>] (profiling dispute between UDC/SCV state chapters regarding a settlement struck by a local UDC chapter allowing a monument to be removed).

102. Sarah E. Gardner, *What We Talk About When We Talk About Confederate Monuments*, ORIGINS: CURRENT EVENTS IN HIST. PERSP. (NOV. 2017), <https://origins.osu.edu/article/what-we-talk-about-when-we-talk-about-confederate-monuments> [<https://perma.cc/98R9-GTBE>].

103. COX, *supra* note 15, at 20.

104. *Historical Introduction: Confederate Monuments, Confederate Monument Interpretation Guide*, ATLANTA HIST. CTR., <https://www.atlantahistorycenter.com/learning-and-research/projects-initiatives/confederate-monument-interpretation-guide/historical-introduction-confederate-monuments/> [<https://perma.cc/WR52-AWG7>] (last visited Oct. 7, 2022).

105. See, e.g., Kara Fohner, *Gaston Confederate Monument Has a Racist History, Says Civil War Historian*, GASTON GAZETTE (Mar. 26, 2022), <https://www.gastongazette.com/story/news/2022/03/26/gaston-county-nc-confederate-monument-racist-history-civil-war-historian/9342111002/> [<https://perma.cc/U49V-6RCU>] (explaining the origins of this North Carolina monument).

106. Richard C. Schragger, *What is ‘Government Speech’: The Case of Confederate Monuments*, 108 KY. L.J. 665, 669 (2020).

As Confederate heritage organizations grapple with removal movements, their response turns not only on the motivations of the local chapters but also on the original circumstances of the monuments' installation, including the underlying property law arrangements. The nature of the Confederate heritage organization's response is shaped by the views of the specific entity interested in the monument and its historic relationship to the monument. Sometimes organizations simply remain silent, neither condoning nor protesting monument removal. In other cases, they consent to removal on the condition that they, or an entity with their approval, will get control of the statue post removal. Often, they become involved in the removal debates or plans. They also may choose to actively oppose specific monument proposals, sometimes going so far as to file litigation. They may also work to hinder removal processes by supporting state monument preservation statutes and other policies protecting these monuments.

#### A. *Consent to Removal*

Some Confederate heritage organizations have not challenged removal as long as the monuments are "returned" so that they can be relocated.<sup>107</sup> An example of this is in Loudoun County, Virginia.<sup>108</sup> In 2020, the Loudoun Chapter of the UDC asserted ownership of a monument that stood outside the county courthouse for over a century and requested that the monument be returned to the organization.<sup>109</sup> Such willingness to support removal in exchange for receiving the removed monument happens for a variety of

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107. Megan Gray-Hatfield, *City, UDC Sign Confederate Monument Contract*, GAINESVILLE DAILY REG. (Sept. 1, 2020), [https://www.gainesvilleregister.com/news/local\\_news/city-udc-sign-confederate-monument-contract/article\\_931fbd42-ecab-11ea-a456-ef99ceb4cb58.html](https://www.gainesvilleregister.com/news/local_news/city-udc-sign-confederate-monument-contract/article_931fbd42-ecab-11ea-a456-ef99ceb4cb58.html) [<https://perma.cc/P9UG-NSL5>] (profiling an agreement between the UDC and Gainesville, Texas whereby the town agreed to allow the UDC to remove a monument and to convey the monument to the UDC given the unclear ownership (and lack of town records related to the statue)).

108. Dan Rosenzyski-Ziff, *Silent Sentinal? Confederate Monument Removed from Outside Loudoun County Courthouse*, WASH. POST (July 21, 2020), [https://www.washingtonpost.com/local/virginia-politics/silent-sentinel-confederate-statue-removed-from-outside-loudoun-county-courthouse/2020/07/21/a53f9df0-cb5c-11ea-91f1-28aca4d833a0\\_story.html](https://www.washingtonpost.com/local/virginia-politics/silent-sentinel-confederate-statue-removed-from-outside-loudoun-county-courthouse/2020/07/21/a53f9df0-cb5c-11ea-91f1-28aca4d833a0_story.html) [<https://perma.cc/XN6B-VHBQ>].

109. Danielle Cheslow, *Loudoun Daughters of the Confederacy: We'll Take Our Statue Back*, DCIST (June 29, 2020), <https://dcist.com/story/20/06/29/loudoun-daughters-of-confederacy-well-take-our-statue-back/> [<https://perma.cc/9VQA-YMVC>].

reasons. Some local chapters appear to wish to avoid controversy.<sup>110</sup> Others have used non-opposition to obtain the removed monuments—either based on their affinity for the monuments or a historic connection, which is typically linked to their funding of the monument.<sup>111</sup>

### *B. Challenge Removal*

Confederate heritage organizations have litigated to block removals based on a variety of legal theories.<sup>112</sup> Litigation is fairly common when a community is seeking to remove a monument.<sup>113</sup> Although litigation seeks to keep a monument in place, the frequently achieved outcome is not for the monument to remain in place, but for the organizations to negotiate a resolution that results in the Confederate heritage organization receiving the removed monument.<sup>114</sup>

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110. For example, the oldest monument in North Carolina was removed quietly in 2020 by a private owner. Given the age of the monument, it is likely that that this owner was a Confederate heritage organization. See Mitchell Northam, *Since George Floyd's Death, These Confederate Monuments Have Been Removed in North Carolina*, WUNC, (Dec. 21, 2020), <https://www.wunc.org/race-demographics/2020-12-21/since-george-floyds-death-these-confederate-monuments-have-been-removed-in-north-carolina>.

111. *After 6-1 Vote, Wilmington Settles with Daughters of the Confederacy to Permanently Remove Downtown Statues*, WUNC (Aug. 2, 2021), <https://www.wunc.org/2021-08-02/after-6-1-vote-wilmington-settles-with-daughters-of-the-confederacy-to-permanently-remove-downtown> [https://perma.cc/683K-5UTM] (profiling dispute ending with community conveying title to its monuments to the UDC).

112. Teo Armus, *Lawsuit Seeks to Stop Charlottesville Lee Statue from Being Melted Down*, WASH. POST (June 26, 2022), <https://www.washingtonpost.com/dc-md-va/2022/06/26/charlottesville-robert-lee-statue-lawsuit/> [https://perma.cc/YS6PWR8H]; Jim Little, *Could the Pensacola Confederate Monument Come Back? Federal Ruling May Make it Possible*, PENSACOLA NEWS JOURNAL, May 19, 2022, <https://www.pnj.com/story/news/local/pensacola/2022/05/19/pensacola-confederate-monument-could-restored-after-federal-ruling/9835989002/>

113. See, e.g., Nick Wooten, *Plaintiff in Caddo Confederate Monument Lawsuit Now Wants Apology, Jury Trial*, SHREVEPORT TIMES (Mar. 28, 2018), <https://www.shreveporttimes.com/story/news/2018/03/28/plaintiff-caddo-confederate-monument-lawsuit-now-wants-apologyseek-trial-jury-apology-confederate-mo/463313002/> [https://perma.cc/Q45N-HV4E].

114. Sharon Myers, *Daughters of the Confederacy Agrees to Move Monument in Lexington*, DISPATCH (Oct. 14, 2020), <https://www.the-dispatch.com/story/news/2020/10/14/daughter-confederacy-agrees-move-monument-lexington/3658031001/> [https://perma.cc/XZ5D-EHJE].

### i. Ownership Claims

Confederate heritage organizations may claim ownership over monuments that have been in public spaces for decades, if not a century.<sup>115</sup> Even if they are not the clear owner, these groups may claim to be the successor to a now defunct memorial or veterans' group and seek to block removal or to gain possession of a monument post-removal. The following examples illustrate how ownership claims form a basis for fighting removal (or where unsuccessful in that endeavor, in convincing the local authorities to give them the monument).

- **Daviess County, Kentucky:** In Daviess County, the UDC sought an injunction to block the removal of a Confederate monument.<sup>116</sup> The state division of the UDC claimed ownership of the monument, seeking to prevent removal.<sup>117</sup> The court rejected the UDC's argument, finding that the monument was owned by the fiscal court, who could dispose of the monument as it wished.<sup>118</sup> In contesting the request for an injunction, the County argued that the Kentucky Division of the UDC was not the successor in interest to the John C. Breckenridge Chapter 306 Daughters of the Confederacy, the entity that placed the monument on the courthouse lawn (and which dissolved in 1970) and, therefore, lacked standing.<sup>119</sup> In June 2022, the monument

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115. See, e.g., Brandon Mulder, *Daughters of Confederacy Claims Ownership of Bastrop County Monuments*, AUSTIN AM.-STATESMAN (Aug. 11, 2020), <https://www.statesman.com/story/news/2020/08/11/daughters-of-confederacy-claims-ownership-of-bastrop-county-monuments/113890380/> [<https://perma.cc/GK69-JG32>] (profiling the Texas UDC state chapters claims to removed monuments in this county).

116. Joseph Guzman, *United Daughters of the Confederacy Sues to Stop Removal of Monument*, HILL (Apr. 22, 2021), <https://thehill.com/changing-america/respect/549698-united-daughters-of-the-confederacy-sues-to-stop-removal-of-monument/> [<https://perma.cc/U74S-745F>].

117. *Id.*

118. Rhonda Miller, *Judge Rules Daviess County Confederate Statue Can Be Moved*, WKUNPR (May 2, 2022), <https://www.wkyufm.org/2022-05-02/judge-rules-daviess-county-confederate-statue-can-be-moved/> [<https://perma.cc/PQN3-3A82>].

119. James Mayse, *County Denies Group Owns Statue in Response to Lawsuit*, OWENSBORO MESSENGER-INQUIRER (June 22, 2021), [https://www.messenger-inquirer.com/news/county-denies-group-owns-confederate-statue-in-response-to-lawsuit/article\\_4a464805-fbc5-50dc-837d-3b828cc2f23a.html](https://www.messenger-inquirer.com/news/county-denies-group-owns-confederate-statue-in-response-to-lawsuit/article_4a464805-fbc5-50dc-837d-3b828cc2f23a.html) [<https://perma.cc/PXR5-F7B9>].

was removed from the courthouse grounds, but no decision has been made with regard to its future.<sup>120</sup>

- **Mobile, Alabama:** In Mobile, the local SCV chapter claimed ownership over a monument paid for by the United Confederate Veterans—a defunct veterans organization—without success.<sup>121</sup> In 2021, the monument was relocated to the Mobile History Museum.<sup>122</sup>
- **Alexandria, Louisiana:** In Alexandria, a disputed monument (originally erected elsewhere in town in 1914) has stood in front of the Rapides Parish Courthouse since the 1960s.<sup>123</sup> The Thomas Moore Overton Chapter of the UDC claimed ownership, which led the city to file a petition for declaratory judgment establishing its ownership of the statue.<sup>124</sup> The city’s attorney stated that “[t]here’s no documentation but we, the [C]ity, believe that we are in ownership of the statue.”<sup>125</sup> The city council voted unanimously to remove the monument, but no action to remove the monument is scheduled to be taken until ownership of the statue is resolved.<sup>126</sup>
- **Bastrop County, Texas:** In 2017, Bastrop County explored removing two monuments from its courthouse grounds: a 1910 statue erected by the UDC and a granite marker installed in the 1960s to commemorate a former Texas

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120. Rhonda Miller, *Confederate Statue as Daviess County Courthouse Removed*, WKUNPR (June 1, 2022), <https://www.wkyufm.org/news/2022-06-01/confederate-statue-at-daviess-county-courthouse-removed> [https://perma.cc/DYG7-4PSJ].

121. John Sharp, *Who is the Rightful Owner of Mobile’s Confederate Statues*, ALABAMA.COM, June 16, 2020, <https://www.al.com/news/2020/06/who-is-the-rightful-owner-of-mobiles-confederate-statue.html>.

122. Gabby Easterwood, *Admiral Semmes Statue Permanently Displayed in Mobile History Museum*, WKRG.com, Dec. 17, 2021, <https://www.wkrq.com/mobile-county/admiral-semmes-statue-permanently-displayed-in-mobile-history-museum/>.

123. Schneider, *supra* note 1 (profiling the history of this monument and explaining that it was moved in 1962 to its current location (in front of a courthouse) after a new city hall was built).

124. *Id.*

125. *Id.*

126. *Id.*; see also Dylan Domangue, *Court Date has Not Been Set to Determine Fate of Rapides Confederate Monument*, KALB NEWS (Jan. 5, 2021, 4:38 AM), <https://www.kalb.com/2021/01/05/court-date-has-not-been-set-to-determine-ownership-of-rapides-confederate-monument/>.

governor and Confederate soldier.<sup>127</sup> The UDC claimed ownership of both monuments noting that “[a]t such time as the Texas Division United Daughters of the Confederacy wishes to take possession of these markers, ownership will be returned to them.”<sup>128</sup> The UDC used its ownership claims to influence the relocation discussion. The UDC wanted the statues to be relocated to a Veterans of Foreign Wars park in Smithville, but this location was not chosen or approved by the county, which wanted to relocate these monuments to a county park.<sup>129</sup> As of January 2023, the monuments have not yet been moved and other options continue to be discussed.<sup>130</sup>

- **Loudoun County, Kentucky:** In July 2020, the Loudoun County’s board of supervisors unanimously voted to return a statue of a Confederate soldier to the UDC, which had requested its return when the community begin to explore removal.<sup>131</sup> The statue was originally commissioned by the Clinton Hatcher Camp, Confederate Veterans and Sons, and the UDC.<sup>132</sup> “That private property claim allowed

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127. Cameron Drummond, ‘*New Era of Understanding*’: *Bastrop County Begins Process of Relocating Confederate Monuments*, AUSTIN AM.-STATESMAN (Mar. 27, 2021), <https://www.statesman.com/story/news/2021/03/27/bastrop-county-process-relocating-confederate-monuments-paul-pape-cheryl-lee/6974111002/> [https://perma.cc/8VQB-YHB7].

128. Brandon Mulder, *Daughters of Confederacy Claims Ownership of Bastrop County Monuments*, AUSTIN AM.-STATESMAN (Aug. 11, 2020), <https://www.statesman.com/story/news/2020/08/11/daughters-of-confederacy-claims-ownership-of-bastrop-county-monuments/113890380/> [https://perma.cc/9CZG-MB9L].

129. Cameron Drummond, *Bastrop County Commissioners Court Approves Moving Monuments to Heritage Park*, Austin American Statesman, Feb. 28, 2021, <https://www.statesman.com/story/news/local/bastrop/2021/02/08/bastrop-countys-confederate-monuments-moved-heritage-park-paul-pape/4401207001/>. The State Antiques Advisory Board had to approve this relocation and at its April 2021 meeting, asked for more information about the potential relocation site. See Texas Antiquities Advisory Board, July 26, 2021 at 13 (from the minutes of the April 2021 meeting), <https://www.thc.texas.gov/public/upload/AAB-July-2021.pdf>.

130. Abigail Jones, *What’s the Latest with the Confederate Monuments in Bastrop County?*, KXAN AUSTIN (Sept. 26, 2022), [https://www.kxan.com/news/local/bastrop-county/whats-the-latest-with-the-confederate-monuments-in-bastrop-county/#:~:text=BASTROP%20COUNTY%2C%20Texas%20\(KXAN\),private%20funding%20that%20was%20raised](https://www.kxan.com/news/local/bastrop-county/whats-the-latest-with-the-confederate-monuments-in-bastrop-county/#:~:text=BASTROP%20COUNTY%2C%20Texas%20(KXAN),private%20funding%20that%20was%20raised) [https://perma.cc/R6AE-TS6S].

131. 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/5CF3-H7MU].

132. *Loudoun’s Confederate Statue Removed Overnight*, LOUDOUNNOW (July 21, 2020),

supervisors to avoid a lengthy public process to remove the monument. Instead, they essentially allowed the organization to come reclaim its property.”<sup>133</sup> The Loudoun County monument was removed by the UDC in the summer of 2020, and its current location is not publicly known.<sup>134</sup>

## ii. State Statue Statutes

In addition to efforts to block removals, Confederate heritage organizations have also successfully lobbied for legislation limiting the power of local governments to remove monuments.<sup>135</sup> Eight states have state statute statutes.<sup>136</sup> The general thrust of these laws is to prohibit public monument removal without state approval.<sup>137</sup> These laws have not been universally successful in preventing removal because communities committed to removal have found workarounds.<sup>138</sup> However, these state monument protection laws have slowed and discouraged removal, alongside confining relocation options.<sup>139</sup>

For example, when the City of Memphis removed a statue of Nathan Bedford Forrest, the SCV challenged the action, alleging violation of the 2016 Tennessee Heritage Protection Act.<sup>140</sup> Memphis had tried to

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<https://loudounnow.com/2020/07/21/loudouns-confederate-statue-removed-overnight/>  
[<https://perma.cc/MU9W-ZL5G>].

133. *Id.*

134. *Id.*

135. Zachary Bray, *Monuments of Folly: How Local Governments Can Challenge Confederate “Statue Statutes”*, 91 *TEMPLE L. REV.* 1, 27 (2018). *See also* Deborah R. Gerhardt, *Laws in the Shadows of Confederate Monuments*, 27 *MICH. J. RACE & L.* 1, 29 (2021) (discussing these laws and the motivations behind their passage).

136. Sage Snider, Note, *Grey State, Blue City: Defending Local Control Against Confederate “Historical Preservation”*, 24 *VAND. J. ENT. & TECH. L.* 851, 856 (2022).

137. Jessica Bliss & Holly Meyer, *In the South, Confederate Monuments Often Protected, Hard to Remove Thanks to State Laws*, *TENNESSEAN* (Aug. 17, 2017), <https://www.tennessean.com/story/news/2017/08/17/south-confederate-monuments-often-protected-hard-remove-state-laws/573226001/> [<https://perma.cc/DKD3-B29G>].

138. Bray, *supra* note 135, at 54 (explaining the impact/application of these laws).

139. *See, e.g.*, Lee Harter, *UDC Says It Opposes Relocating Orangeburg Confederate Monument*, *TIMES & DEMOCRAT* (Feb. 1, 2022), [https://thetandd.com/news/local/udc-says-it-opposes-relocating-orangeburg-confederate-monument/article\\_935af1ca-1295-5636-98de-3c323a4a7220.html](https://thetandd.com/news/local/udc-says-it-opposes-relocating-orangeburg-confederate-monument/article_935af1ca-1295-5636-98de-3c323a4a7220.html) [<https://perma.cc/EQ6R-KW7S>] (discussing the impact of South Carolina’s law, including city approval of a monument’s removal and then approval by the state legislature, in influencing the removal of a South Carolina monument).

140. Samuel Hardiman, Katherine Burgess, & Ryan Poe, *Sons of Confederate Veterans Takes*

circumvent the state statue statute by transferring the land on which the monuments sat to a private organization known as Memphis Greenspace.<sup>141</sup> Memphis Greenspace ultimately conveyed the Bedford Forrest statue to the SCV after the Tennessee Supreme Court declined to hear SCV's appeal of its challenges to the removal of the monument.<sup>142</sup> Media reports indicate that Memphis Greenspace is paying for the relocation costs;<sup>143</sup> others have indicated that the SCV is bearing these costs.<sup>144</sup> The terms of the settlement agreement are apparently confidential.<sup>145</sup>

#### IV. WHO OWNS CONFEDERATE MONUMENTS?

Confirming the ownership of a Confederate monument requires close attention and historic research, including researching public records, archives, and other resources,<sup>146</sup> to establish the circumstances under which it was erected and placed in its public location.<sup>147</sup> The age of Confederate monuments makes this research more challenging as documentation related

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*Possession of Memphis Statues*, COMMERCIAL APPEAL, Dec. 17, 2019, <https://www.commercialappeal.com/story/news/local/2019/12/17/sons-confederate-vets-take-memphis-statues/2676510001/>.

141. AP, *A Confederate General's Remains Are Being Moved Out of Memphis*, NAT'L PUB. RADIO, (June 19, 2021, 2:17 PM), <https://www.npr.org/2021/06/19/1008371491/confederate-general-remains-memphis-moved>.

142. Mariah Timms, *Sons of Confederate Veterans Sues Tennessee Over Removal of Forrest Bust from Capitol*, NASHVILLE TENNESSEAN (Aug. 28, 2020), <https://www.tennessean.com/story/news/politics/2020/08/28/sons-confederate-veterans-sues-tennessee-forrest-bust/5655068002/> [<https://perma.cc/DL4X-F7X5>].

143. Kerri Bartlett, *Nathan Bedford Forrest's Remains Could Reach Columbia by Late Winter*, COLUMBIA DAILY HERALD (Jan. 19, 2021, 9:53 AM), <https://www.columbiadailyherald.com/story/news/2021/01/13/confederate-general-ku-klux-klan-nathan-bedford-forrest-remains-relocating-memphis-columbia/6557059002/> [<https://perma.cc/LAW5-5NAZ>].

144. James Bennett, *Will New Confederate Museum in Columbia Be Home to Memphis Statues?*, COLUMBIA DAILY HERALD (Dec. 17, 2019), <https://www.columbiadailyherald.com/news/20191217/will-new-confederate-museum-in-columbia-be-home-to-memphis-statues> [<https://perma.cc/K3A3-ZFMY>].

145. Samuel Hardiman, Katherine Burgess, & Ryan Poe, *Sons of Confederate Veterans Takes Possession of Memphis Statues*, MEMPHIS COM. APPEAL (Dec. 17, 2019), <https://www.commercialappeal.com/story/news/local/2019/12/17/sons-confederate-vets-take-memphis-statues/2676510001/> [<https://perma.cc/D9M7-DJZG>].

146. See, e.g., Gwen Barlow, *Who Owns the Confederate Monument in Winston-Salem*, 98 N.C. L. REV. F. 1467, 1469 (2021) (profiling some of the challenges in documenting ownership and researching these statues).

147. See Randy Arrington, *Still Standing Guard: Confederate Sentries Cleaned and Ready for Maintenance*, PAGE VALLEY NEWS (July 21, 2020), <https://pagevalleynews.com/still-standing-guard-confederate-monuments-cleaned/> [<https://perma.cc/7VZS-RB9X>] (describing ownership issues related to two Confederate monuments in this rural Virginia community).

to the circumstances of the monument's erection may be incomplete, missing, or may never have existed.<sup>148</sup>

Ownership of the underlying land, as real property, is often easier to establish as there should be a clear conveyancing history related to that specific tract within the local registry of deeds. It is not uncommon for a seemingly public park to be owned in fee by a Confederate heritage organization despite decades of public care and maintenance for the area.<sup>149</sup> There is an example of this in Franklin, Tennessee,<sup>150</sup> where a city park featured a UDC-funded Confederate monument.<sup>151</sup> The community wished to add context to the monument and tell a more complete story about the community's history. Before it could install additional monuments and interpretive panels, an attorney for the UDC objected on the basis that the entire park was owned by the UDC.<sup>152</sup> To resolve UDC ownership claims, the UDC and the community were able to reach a settlement whereby the UDC quitclaimed its ownership in the park and the City of Franklin quitclaimed its interest in the land underlying the monument and the monument itself to the UDC.<sup>153</sup> This resolution was successful in addressing the UDC's claim of ownership of the park and Franklin's right to add context to the Confederate monument. However, it largely cuts off the potential to remove the monument from this public space in the future.

From the monument removals in the last few years, a few factors have emerged for determining the merits of ownership claims, including:

- (1) whether the Confederate heritage organization claiming ownership is the group that funded the monument's construction (or if not, does it have a colorable claim as successor?);

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148. Vogelsong, *supra* note 24.

149. *Id.*

150. CITY OF FRANKLIN, *infra* note 152 (profiling the community's effort to add context to its Confederate monument and a timeline of the corresponding litigation over the ownership and control of the square).

151. Jamie McGee, *Remove a Confederate Statue? A Tennessee City Did This Instead*, N.Y. TIMES (Oct. 24, 2021), <https://www.nytimes.com/2021/10/24/us/confederate-statue-tennessee-black-troops.html> [https://perma.cc/D9L6-N7NT].

152. *Lawsuit Settled Between UDC & City of Franklin Regarding Monument*, WILLIAMSON SOURCE (July 23, 2020), <https://williamsonsource.com/lawsuit-settled-between-udc-and-city-of-franklin-regarding-monument/> [https://perma.cc/TG86-JVFB].

153. *Supra* section III, subsection B(i).

- (2) whether the Confederate heritage organization solely funded the monument (or was their funding only one portion of a larger effort involving public funding);
- (3) whether the Confederate heritage organization had an ongoing relationship with the monument (such as paying for its maintenance or restoration); and
- (4) whether the organization continues to care for and repair the monument.

These factors influence the response of Confederate heritage organizations to monument removal actions. If the circumstances upon which the statue was installed on public land are murky, the Confederate heritage organization can claim that it never conveyed the monument to the local government, and therefore, it should be returned to them. The community may be able to rebut these arguments by pointing to the documentary record to establish the conveyancing history, through a quiet title action, or even an adverse possession argument—to establish the community’s title by virtue of resolving ownership in its favor or demonstrating that it is cared for the monument for generations and has established ownership by that fact.<sup>154</sup>

In some cases, the record related to the monument’s installation is more clearly established. Sometimes when conveying monuments to a public body, the Confederate heritage organizations took steps to protect their interests. For example, in Richmond, a deed restriction was contained in the transfer documents related to the Robert E. Lee monument seemingly committing the state of Virginia to perpetually care for and maintain this statue.<sup>155</sup> In 2021, this deed restriction was deemed unenforceable as being against public policy by the Supreme Court of Virginia.<sup>156</sup>

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154. See, e.g., Mickey Powell, *Turner Ashby Camp’s Lawyer Files Opening Brief in Monument Verdict Appeal*, THE WINCHESTER STAR, (Aug. 30, 2022), [https://www.winchesterstar.com/winchester\\_star/turner-ashby-camps-lawyer-files-opening-brief-in-monument-verdict-appeal/article\\_5f13aa58-9d86-516c-a70c-ffffb8e0e9d73.html](https://www.winchesterstar.com/winchester_star/turner-ashby-camps-lawyer-files-opening-brief-in-monument-verdict-appeal/article_5f13aa58-9d86-516c-a70c-ffffb8e0e9d73.html) (summarizing the circuit court’s ruling on property grounds, including adverse possession).

155. AP, *Judge Sides with Virginia, but Robert E. Lee Statue Stays Put for Now*, POLITICO, (Oct. 27, 2020, 8:35 PM), <https://www.politico.com/news/2020/10/27/virginia-robert-e-lee-statue-433026> (summarizing the impact of these deed restrictions, which were ruled invalid by the Virginia Supreme Court in 2021).

156. *Virginia Supreme Court Rules the State Can Remove Statue of Robert E. Lee*, NPR (Sept. 2, 2021), <https://www.npr.org/2021/09/02/1033595859/virginia-supreme-court-remove-statue-robert-e->

Based on the strength of the ownership claim, a community may wish to consider pursuit of a quiet title action to establish its ownership of the monument. Again, given the history of these monuments and the often-relaxed nature of the donations/transfers of the monuments, ownership can often be disputed. Filing a quiet title action allows a community to put all potential claimants on notice of the community's claim of ownership and to obtain a judicial ruling establishing the community's ownership of the monument/land.<sup>157</sup> This approach may have advantages to a negotiated settlement with a Confederate heritage organization as it allows the community more options for addressing the future of the monument.

Additionally, a community may also consider whether eminent domain might be used to condemn a monument and its underlying land for public purposes.<sup>158</sup> While compensation would be owed to the Confederate heritage organization, this may be an option for a community to address private monuments owned by Confederate heritage organizations—although such a condemnation effort would likely be controversial.<sup>159</sup>

#### V. RECOMMENDATIONS TO COMMUNITIES IN ADDRESSING CHALLENGES BY CONFEDERATE HERITAGE ORGANIZATIONS

Confederate heritage organization litigation seeking to block removal has not generally been successful, but litigation—or threats thereof—have resulted in these organizations taking possession of many removed monuments. When faced with a Confederate heritage organization's claims to a monument, a community should take a few steps.

First, understand the objectives of the group. Are they seeking to keep the monument in place or the return of the monument? Depending on what the organization is arguing, this will shape the community's strategy and

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lee-confederate-richmond [https://perma.cc/LD4Z-CHJ8].

157. James C. Kozlowski, *Standing to Challenge Removal of Confederate Monuments*, PARKS AND RECREATION, May 8, 2018, <https://www.nrpa.org/parks-recreation-magazine/2018/may/standing-to-challenge-removal-of-confederate-park-monuments/>.

158. Macon Atkinson, *Confederate Monument in Greenville Draws Renewed Calls for Condemnation and Removal*, GREENVILLE NEWS, (Oct. 10, 2022, 7:27 PM), <https://www.greenvilleonline.com/story/news/local/2022/10/10/confederate-monument-greenville-sc-renewed-call-for-removal/69553319007/>.

159. See also Emily Bezahdi, *Statues of Fraud: Monuments as Public Nuisances*, 18 STAN. J. OF CIVIL RIGHTS & CIVIL LIBERTIES 1 (2022) (arguing for the use of public nuisance theory to support removal).

help the community to focus on their ultimate objectives for their Confederate monument.

Second, understand the history of the monument. The ownership and history of the properties upon which monuments were erected and the monuments themselves are highly variable. While there are common themes, each monument must be examined to determine its ownership. For the real property, ownership can be determined by reference to the local land records, although there can be complications if the land was/is owned by a defunct Confederate heritage organization. Deed restrictions and reversionary interests can complicate ownership and need to be understood. For the monument itself, this research may prove more complicated. The Confederate heritage organization may provide limited documentation related to their ownership claims. Similarly, the community may have some documentation as well. For many monuments, however, the historical record is imprecise. Local governments or monument removal advocates should comb through historical records to learn what they can about the monument's history. Contemporary newspaper accounts are particularly instructive. A local historical society may also have records related to the dedication ceremony or be able to provide more detail about the history of the disputed monument.

Third, understand the Confederate heritage organization itself. Is the group claiming the monument the same as the group that paid for the monument? Is the Confederate heritage organization still an active non-profit organization, or has it gone dormant with individuals asserting to speak for the defunct group? How has the group interacted with the monument in recent years? Has it paid for its upkeep and repair, or has it relied on the community for such care? Such factors are all considered by courts in resolving claims of ownership.<sup>160</sup>

Fourth, a community should consider what it wants to see happen on the ground, as well as the longer-term impacts of its decision.<sup>161</sup> Initially,

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160. Ryan Richardson, *Judge Jones Rules Confederate Monument Owned by Fiscal Court, Can Be Removed*, OWENSBORO TIMES (Apr. 30, 2022, 12:12 AM), <https://www.owensborotimes.com/news/2022/04/judge-jones-rules-confederate-monument-owned-by-fiscal-court-can-be-moved/> [https://perma.cc/HRB7-2LWH] (noting that even if the UDC chapter owned the monument, the UDC chapter failed to exist/became defunct, and was only revived in 2019 to intervene in Confederate monument-related disputes).

161. See, e.g., Owley, Phelps, & Hughes, *supra* note 4, at 274-78 (profiling Rockville's monument relocation and the issues related to its transfer and subsequent relegation back to storage).

many communities sought simply to remove monuments from public spaces but perhaps they gave less thought to the monument post removal.<sup>162</sup> Establishing ownership of a monument can give a community more control and options over a monument's future—even if the community has no desire to see it located within its boundaries. Although transferring or reconveying a monument to a Confederate heritage organization may seem to be an attractive solution to rid a community of its problematic legacy, it likely means that the community is simply transferring its monument to another community which will have to grapple with what it means to have a present-day Confederate monument<sup>163</sup>

Fifth, if a community does wish (or is legally compelled) to transfer a monument to a Confederate heritage organization, it should do so with caution and consider what restrictions it might impose upon the new owner post-transfer.

Ultimately, Confederate heritage organizations are often the most active and most effective advocates against Confederate monument removal given their historical role in creating these monuments and their potential ownership claims. Ownership rights provide the organizations a strong voice in determining a monument's future disposition. In other instances, a Confederate heritage organization may hold a reversionary interest or claim to be a successor to a now defunct Confederate heritage organization. These claims of interests, while a less-clear property interest perhaps, also give these organizations an argument to convince communities and courts of their right to dictate the future of a monument. Understanding these organizations, and having a clear strategy and approach, will ultimately help a community to consider how to address their arguments and work to design the best removal/relocation decision for the entire community.<sup>164</sup>

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162. See, e.g., *A Confederate Statue Is Toppled at White's Ferry, Then Quietly Stored Away*, BETHESDA MAG. (July 6, 2020), <https://bethesdamagazine.com/2020/07/06/a-confederate-statue-is-toppled-at-whites-ferry-then-quietly-stored-away/> [<https://perma.cc/4QYS-B2GA>] (examining Montgomery County's efforts to remove and relocate its Confederate monument, which ultimately was removed from its second location and placed in storage based on public opposition to the increased visibility of the monument post-relocation).

163. See, e.g., Jacob Ryan, *The Town That Wanted Louisville's Confederate Monument*, LOUISVILLE PUB. MEDIA, (Aug. 18, 2017, 12:00 PM), <https://www.lpm.org/news/2017-08-18/the-town-that-wanted-louisvilles-confederate-monument>.

164. Sometimes a community may also negotiate with these groups to help to facilitate the removal of a monument. For example, some states have monument protection laws that only apply to public monuments. If the monument is transferred to a private group, it is no longer public, so it can be removed. Conversely, some communities are now seeking to use this same strategy to insulate

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monuments from removal by transferring monuments to a private organization that is not subject to the same rules/laws, which govern public monuments. Overall, care needs to be given to any strategy involving transfer of a public monument to a private organization.

