

Report of Governor McAuliffe's Monuments Work Group (2016)

RECOMMENDATIONS FOR COMMUNITY ENGAGEMENT

REGARDING CONFEDERATE MONUMENTS

I. Introduction

Across the Commonwealth and globe, monuments are the focal points of localities and powerful sources of cultural identity. The events, ideals, and people we choose to memorialize are a reflection of our history and values. At their best, monuments educate viewers about the past and inspire a sense of shared purpose and history; at their worst, they can spread inaccurate information, appeal to our basest nature, and divide us.

Because of their physical and philosophical significance, monuments can be a source of considerable controversy. In some cases, information has been uncovered or reinterpreted in the collective consciousness, changing the connotations and perceptions surrounding a monument. With the passage of time, we often come to realize that memorials tell only part of a story, use language that has shifted, or are biased in their presentation.

Nowhere in the United States is a frank and constructive dialogue more necessary or fraught with potential controversy than here in Virginia, home to two Confederate capitals and 136 monuments to the Confederate States of America (CSA).¹ Because of our rich history and the prevalence of Confederate iconography, Virginia is uniquely positioned to host robust local-level conversations regarding the appropriate treatment of memorials relating to the Civil War or other contentious conflicts. If carried out effectively, the Commonwealth's approach will serve as a model and inspiration for other states.

During the 2016 General Assembly session, Governor McAuliffe vetoed HB 587, which would have overridden the authority of city governments to remove or alter war memorials erected before 1998. The bill was intended to address a 2015 decision by Virginia's 22nd Judicial Circuit regarding a local ordinance, adopted by Danville's City Council, to restrict the types of flags flown on municipal property. The resultant removal of the Third National flag of the Confederacy from Sutherlin Mansion, the last capitol of the CSA, spurred legal action by the Heritage Preservation Association and other local groups. Judge James Reynolds found that an amendment extending state-level legal protections to war monuments in all localities (rather than just counties, as was previously the case) did not apply retroactively. This decision, which was not taken up by the Virginia Supreme Court, left open a legal avenue through which the Commonwealth's cities could remove or alter war memorials erected prior to the 1998

¹ See Appendix A, Presentation Prepared by the Virginia Department of Historic Resources.

amendment. Since Virginia’s most recent Confederate monument was erected in 1995, this finding affects all existing Confederate monuments in Virginia cities.

Governor McAuliffe is committed to preserving both Virginia’s historic resources and the local autonomy necessary for the legitimate discussions currently occurring throughout the Commonwealth. Recognizing her experience as a former Mayor and her leadership in Virginia’s historic preservation efforts, the governor directed Virginia Secretary of Natural Resources Molly Ward to convene a diverse work group to consider the issues that arose in the debate over HB 587. The group was asked to pull together resources and best practices to help willing localities foster a constructive dialogue about their monuments. This report is the product of that effort.

II. Work Group Membership and Schedule

Work group members were selected to represent as wide a range of views and stakeholders as possible. Their first meeting was held on August 24th. After initial presentations by representatives from the Virginia Office of the Attorney General and the Virginia Department of Historic Resources, both of which are attached hereto, two smaller breakout groups were formed to consider specific sub-topics in greater detail. The composition of those groups is shown in the table below.

<p>Civic Engagement:</p> <ul style="list-style-type: none"> • Clyde Haulman, former Mayor of the City of Williamsburg • Catherine Hudgins, member of the Fairfax County Board of Supervisors • Carmen Taylor, past President of the Virginia State Conference of the NAACP • Retired Rear Admiral Craig Quigley, Executive Director of the Hampton Roads Military and Federal Facilities Alliance • Delegate Charles Poindexter, Virginia House of Delegates <p>Staff:</p> <ul style="list-style-type: none"> • Bob Brink, Senior Legislative Advisor • Erik Johnston, Deputy Policy Director 	<p>Qualifications and Options:</p> <ul style="list-style-type: none"> • Kathleen Kilpatrick, retired Executive Director of the Capitol Square Preservation Council • Christy Coleman, CEO of the American Civil War Museum • Dr. Edward Ayers, President Emeritus of the University of Richmond • Dr. Oliver Hill, Professor of Experimental Psychology at Virginia State University • Delegate Matthew James, Virginia House of Delegates <p>Staff:</p> <ul style="list-style-type: none"> • Julie Langan, Director of the Virginia Department of Historic Resources • Angela Navarro, Deputy Secretary of Natural Resources
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The Civic Engagement breakout group met again on October 5th to further develop recommendations regarding an effective structure and strategy for public conversations about

war memorials. The Qualifications and Options breakout group met on October 19th to consider what types of monuments localities might want to address and appropriate supplementary materials that might assist them. The work group met again in full on November 14th to offer their final recommendations.

III. Civic Engagement

The Civic Engagement breakout group did not agree on whether localities should have the authority to alter or remove monuments, but did unanimously back inclusive community discussion as an important piece of any related decision-making process. All participants agreed that it was of the utmost importance that the public be able to share their concerns and hear the opinions of their neighbors in a constructive and civil conversation. The recommendations below are designed to assist localities as they develop their public input processes, meeting schedules, and approaches.

Recommendation 1: Start from the same page; include an educational component.

Finding consensus is easier after starting from a common jumping-off point. Local stakeholder processes should begin with an educational component to ensure a shared understanding of relevant history and the conversation's overarching objective. Instead of a passive presentation, participants should be encouraged to actively engage and interact with their peers. An initial focus on facts will help develop the effective lines of communication necessary to constructively and respectfully discuss more contentious and emotionally charged topics further into the process.

A number of universities throughout the Commonwealth have an abundance of experience and resources that may assist in providing the necessary educational information. The history departments of these universities can present information through the lens of a neutral and respected resource. In addition, the Virginia Department of Historic Resources may be consulted to provide historical and contextual information regarding the monument under discussion.

Recommendation 2: Ensure that all stakeholder groups are represented.

First and foremost, consensus building requires an inclusive dialogue. There is no one correct list of stakeholders, but there are models for ensuring the process reaches out to all relevant stakeholder groups. Particular effort should be made to bring in voices previously excluded from community decision-making, including racial minorities, women, and young people. Key individuals and groups should be contacted directly before broader outreach through public meetings. Having all interested people at the table is crucial for developing solutions that work for the community on the whole.

Intellectual diversity is just as important as demographics when getting input from stakeholders. The Veterans of Foreign Wars, the American Legion, Vietnam Veterans of America, and countless other organizations exist to support and represent our nation's veterans. Heritage organizations like the United Daughters of the Confederacy were instrumental in the erection of many of the contentious monuments and continue to exert considerable influence within communities. As the premier advocate for African Americans, the NAACP brings a wealth of understanding and long-ignored insight to the conversation. When a local affiliate of the aforementioned organizations is not available, regional or state-level groups can be brought in to ensure a truly representative dialogue. The perspectives of these and many other groups, as well as the individuals that comprise them, cannot be neglected if a lasting consensus is to be reached.

Many localities are already home to local-level historical societies and commissions with detailed knowledge of local lore and regional history. The potential contributions of these groups cannot be discounted if communities hope to foster an effective, truly representative discussion capable of addressing the specific considerations applicable in their local context. Additionally, the Virginia Foundation for the Humanities has built considerable goodwill in diverse communities across the Commonwealth. In many contexts, its participation in local-level discussions may help foster constructive conversations in which all parties feel comfortable participating.

Recommendation 3: Ensure the process is conducive to conversation.

A worthwhile stakeholder process does more than bring the relevant groups into the same room; it sets the stage for a productive conversation. Considering a media strategy early in the process is a useful step for preventing unnecessary hostility among participants as the conversation develops. Forums, particularly those held in small community settings, are very effective at fostering a constructive dialogue. Icebreakers and other facilitated activities reinforce the shared humanity of participants and offer an important opportunity for seemingly opposed sides to get acquainted.

People should feel empowered to participate, but need to know the group's final decision is not entirely up to them. Discussions should include an agreed upon and explicitly defined process for making decisions. A strong moderator (as discussed in more detail below) is critical for maintaining order and keeping conversation constructive – professional facilitation can be exceedingly effective, but is not always possible. The conversation should be civil at all times. People don't need to agree in order to be respectful – don't let it get personal.

Starting small with neighborhood and civic association meetings is a potentially useful strategy. Dominant personalities should be divided between groups to ensure opportunities for a far-reaching and inclusive dialogue among different stakeholders – the loudest voice isn't necessarily the most important. Participants with conflicting views should be required to work

together with a focus on breaking down barriers. Don't get distracted by tangential issues; there are numerous paths discussions of this nature can take. Always bring the conversation back to the issue at hand. When tensions flare, remind everyone that they are neighbors and return the focus to the shared objective.

Sometimes the best public input comes later in the stakeholder process. The extremes on any issue are often quickest and loudest to comment, but thoughtful though less vocal citizens may share useful insights as the process continues. Don't rush the conversation; it's worth taking the time to find a solution that truly works for the community.

Recommendation 4: Reach out to other communities, professional facilitators, and other resources.

There are multiple resources available to localities engaged in community discussions on this topic. These include resources from other localities that have undertaken similar community engagement processes as well as professional facilitators and foundations with experience in this space.

Many localities in Virginia have been grappling with issues surrounding their monuments for years. Some of these communities have created commissions, study groups, and other forms of engagement that produced recommendations on process and potential solutions. Localities should be encouraged to share information regarding the processes undertaken and lessons learned.

In addition, professional facilitation from neutral third parties is a viable tool for localities. It may be helpful to find a facilitator that is not from the particular community under discussion so that the person may be viewed as unbiased. It is also important to find facilitators with a background in issues of both history and race. Foundations and higher education institutions may provide such services.

IV. Qualifications and Options

The Qualifications and Options breakout group was tasked with developing recommendations regarding the appropriate categorization of contentious monuments and the options available to localities. The group's deliberations revealed a series of potentially useful insights for localities wrestling with their history.

Recommendation 5: Monuments should be preserved – at least somewhere.

As it has been for the general public, the removal of monuments was a source of disagreement among work group members. While participants shared a personal preference that monuments be preserved and interpreted in place, some felt localities should ultimately have the freedom to develop solutions that work for their communities. All agreed that if discussions arise regarding the removal of a monument, its long-term care and appropriate curation as a museum

artifact at a qualified facility must be considered. It was noted that, given the potential for considerable costs and limited funds at the local level, localities may focus on options other than removal. The group was unified around a belief that, good or bad, these monuments represent an important part of our history worth remembering.

Recommendation 6: Signage can provide context and reveal previously untold stories.

Significant people, perspectives, and events from the past are frequently misremembered or entirely omitted from the public consciousness and conversation. All breakout group members agreed that interpretive signage offers opportunities to educate the public while keeping historic resources intact and in place.

Many people envision Virginia's Confederate monuments as having sprung from the blood-soaked earth immediately following the Civil War. In actuality, the majority were erected between 1896 and 1914 in the "separate but equal" era that followed the United States Supreme Court's decision in *Plessy v. Ferguson*. Information about the people and events memorialized, as well as the context of the monument's construction, would go a long way towards changing communal perceptions.

Though the group felt that aesthetic judgements regarding signage should be left at the local level, they recognized the need for a consolidated list of possible funding sources. Because of Virginia's unique historical significance, there may be opportunities for localities to pursue outside funding from national foundations, federal grants, and other sources. Furthermore, as signage is developed, all work group members agreed that the Virginia Department of Historic Resources should be consulted regarding the content and aesthetics.

Additionally, local-level decision makers need to be made aware of new technologies that, like the interactive app developed in Birmingham, Alabama, allow visitors to discover and meaningfully interact with the history around them. The group supported the development of a shared resource to guide localities in search of funding, strategies, and technological solutions, including information regarding potential legal considerations.

Recommendation 7: Reflect the diversity of Virginia through monuments.

Virginia has a rich history that includes heroes of all colors and creeds. Ensuring that our monuments reflect this diversity is crucial as we work to bridge historical divides between people and communities. While the costs of erecting monuments are often astronomical, an effort should be made to ensure that the people and ideas memorialized are broadly representative of our commonwealth, culture, and values. Given the many Confederate monuments and the disproportionate historical veneration of men, it will likely take decades if not generations to successfully diversify Virginia's monuments. Localities should also consider other ways to memorialize underrepresented groups, including naming opportunities for roads and schools.

Recommendation 8: Take advantage of existing resources and expertise.

The commonwealth is home to a host of historians employed by governments, universities, and private institutions. The Virginia Department of Historic Resources has the legal authority to review historical signage on all public and, with the consent of the landowner, private property. There is already a panel of historians from outside the government responsible for reviewing highway markers; a similar process could be used for interpretative signage.

According to work group membership, most historians would be honored to be asked to volunteer for this responsibility and would happily accept the commitment that entails. The Department of Historic Resources would welcome and embrace the administration of this process. In the view of the group, the Department of Historic Resources would ideally function as a repository for best practices and lessons learned while maintaining a historical record of ongoing discussions. These insights would ideally be delivered in the form of a Frequently Asked Questions document with information about the potential costs of removal and the steps necessary for proper curation should that route be pursued.

In addition, since its creation in 1872, the National Park Service has served as our nation's storyteller. By necessity, the agency has developed considerable expertise regarding the appropriate treatment of the more checkered elements of our country's past. While the group ultimately did not support the use of National Register standards for the categorization of monuments and evaluation of historical significance, all agreed that there were many lessons to be learned from the ways in which the National Park Service has addressed these issues.

V. Conclusion

The work group met in full for the last time on November 14, 2016 to review and revise the draft report prepared by Secretary of Natural Resources Molly Ward and her staff. While not all members agreed unanimously or completely on every point, everyone involved appreciated the civil and informative nature of the group's dialogue and felt the process had rendered meaningful results. All expressed support for inclusive community discussions modelled after the conversation in which they had just participated.

The assembled experts felt strongly that this report should be considered as a living, breathing document and a mere starting point for discussions at the local level. While it was not directly the charge from the governor, the recommendations provided herein could be applied to discussions regarding other types of war memorials or other forms of memorialization. A consensus opinion was reached that, ultimately, decisions regarding the appropriate treatment of monuments rest within the communities that house them.

Appendix A

Presentation Prepared by the Virginia Department of Historic Resources

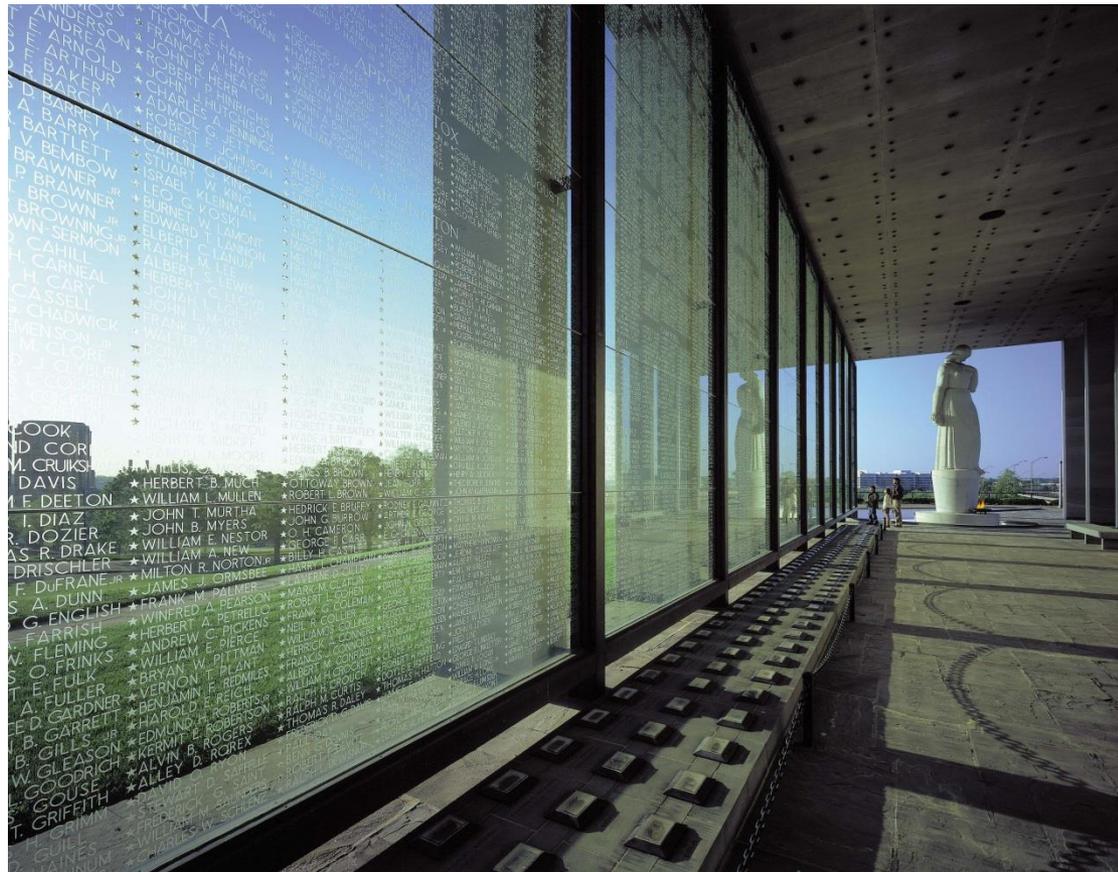
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War Memorials and Monuments in Virginia

Report prepared by the
Virginia Department of
Historic Resources,
Division of Survey and
Register
2016



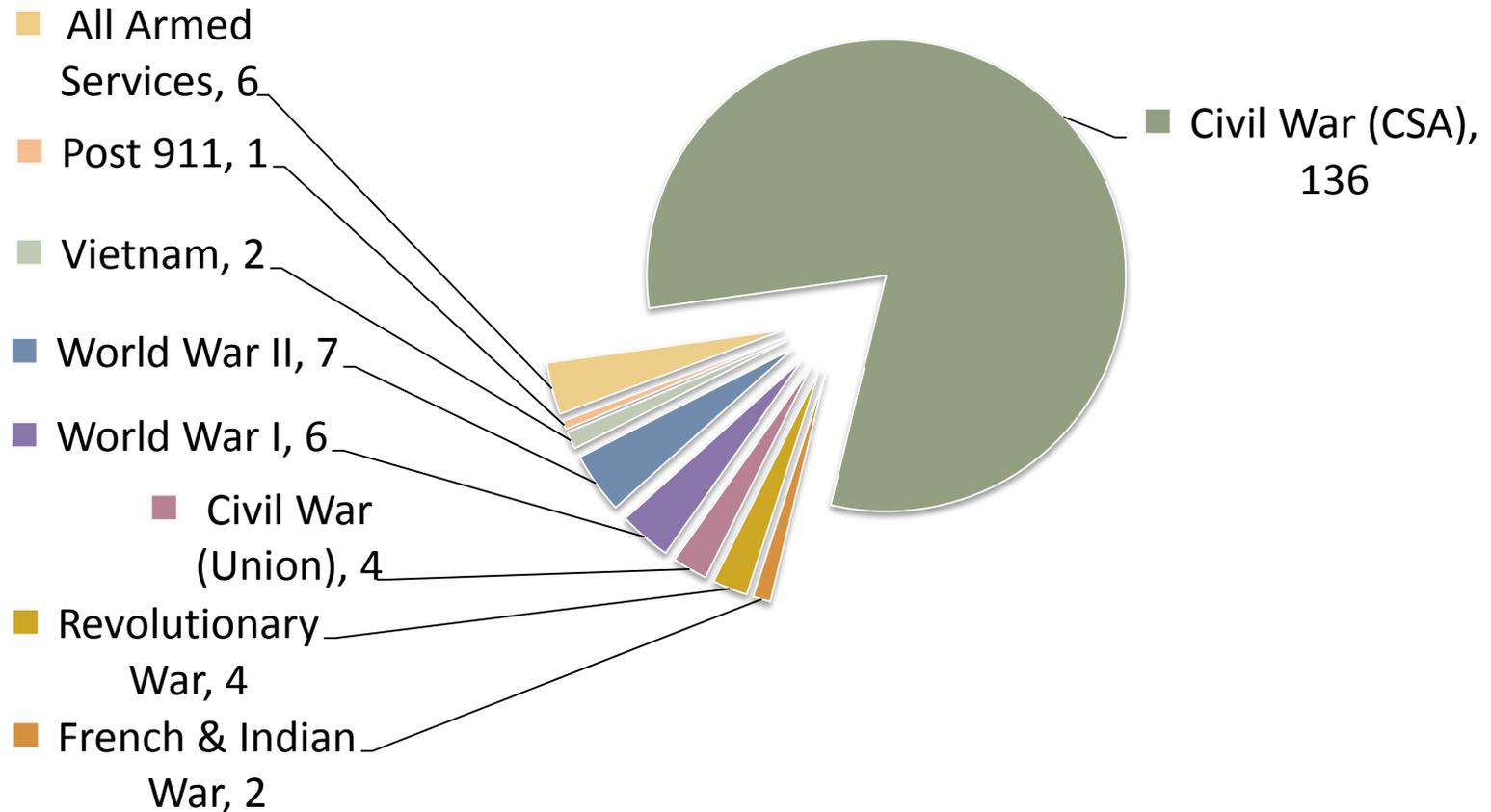
The Virginia War Memorial, Richmond. Construction was completed 1955. The property has been determined eligible for listing in the Virginia Landmarks Register.

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168 War Memorials in Virginia are currently recorded in the Virginia Cultural Resource Information System (VCRIS) maintained by DHR. Of this total, 81 percent pertain to Confederate participants in the American Civil War.



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Town of Manassas Water Tower, listed
June 2016 in VLR/NR

DHR administers two programs designed to recognize the Commonwealth's historic resources and to encourage their continued preservation: the Virginia Landmarks Register (VLR) and the National Register of Historic Places (NR).

The same criteria are used to evaluate resources for inclusion in the state register as are used for the National Register. To be eligible for listing in the registers, a resource:

- Must be historically significant
- Typically must be at least 50 years old, or be of exceptional importance
- Must meet one or more of the four NR register criteria
- Must retain physical integrity

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The registers are Virginia's and the Nation's official lists of Historic properties.

They were created by Code of Virginia in 1965 (VLR) and the NHPA of 1966 (NR).

Both registers list properties individually or as components that contribute to the significance of a historic district.



Listing is primarily honorific and is designed to educate the public about the significance of the designated resource.

Top: Virginia War Memorial Carillon, Richmond. Listed in VLR/NR (1984)
Bottom: Robert E. Lee Memorial, Richmond. Listed in VLR (2006) and NR (2007).

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Listing in the VLR or NR does not ensure protection of historic resources from undesirable development or destruction by government projects.



Listing in the registers informs owners, local planners, government agencies, and others involved in land-use planning of the existence of a historic resource.

Neither the Code of Virginia nor the National Historic Preservation Act requires property owners, developers, or government agencies to avoid negatively impacting a historic resource or, in extreme cases, even destroying it.

Locustville Academy, Accomack County (listed in the VLR, September 2016; NR listing pending).

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Demonstration in August, 1962, prior to the destruction of Penn Station, New York, NY - a pivotal event in the history of historic preservation in the U.S.

The National Historic Preservation Act does require that federal agencies take historic properties into consideration when planning projects. In many cases, state and federal agencies work around the historic property or mitigate the effects that a project has on the historic property.

In the large majority of cases, the federal or state project usually proceeds even if it affects or destroys the resource. In some instances, the force of public opinion has persuaded developers or government agencies to spare a registered property.



How is Historic Significance Determined?

Through the application of established criteria for evaluation

Districts, sites, buildings, structures, and objects are eligible for listing in the registers as long as they are sufficiently significant to American history, architecture, archeology, engineering, or culture. Such properties must also demonstrate that they possess integrity of location, design, setting, materials, workmanship, feeling, and association. Finally, they must also meet one or more of four specific criteria established by the National Park Service:

Criterion A: Concerns properties associated with events that have made a significant contribution to the broad patterns of our history.



Example: Grace Episcopal Church, Bremono Bluff, c. 1835. Constructed as a slave chapel for the Cocke plantation.

While chapels for slaves can be found on large plantations in the deep South, the Bremono Slave Chapel is the only known structure used for such a purpose in Virginia.

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Criterion B: Concerns properties associated with the lives of significant persons in our past, however, just because someone important lived in a building, the building is not automatically significant.



Example: The Stonewall Jackson House, Lexington

This simple town house assumes importance because of its connection with Thomas J. "Stonewall" Jackson. It is neither his birthplace, nor where he died.

It is, however, the only house Jackson ever owned, and where he lived from 1858-1861. It is the building most closely associated with his specific significance – leadership during the American Civil War.

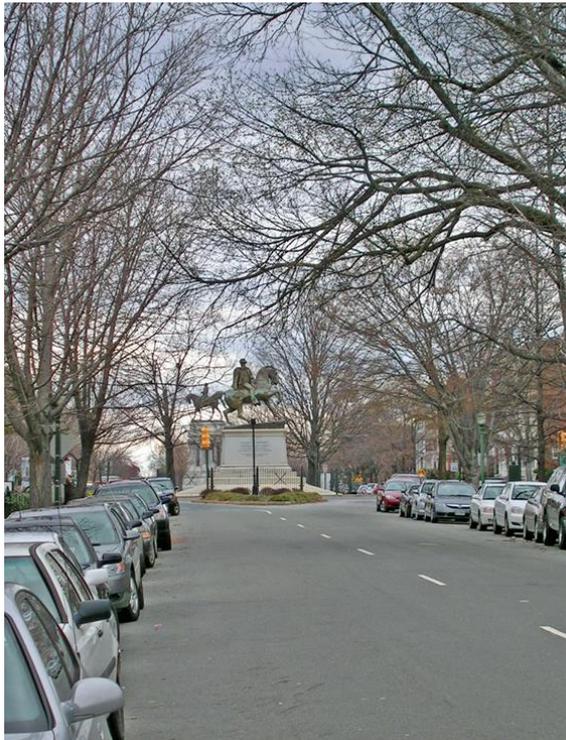
With the outbreak of the Civil War, Jackson left this Lexington home to accept a colonelcy with a Virginia regiment, and to go on to subsequent renown as a general in the Army of Northern Virginia.

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Criterion C: Concerns properties that embody distinctive characteristics of a type, a period, or a method of construction, or represent the work of a master, or possess high artistic values, or represent a significant and distinguishable entity whose individual components may lack distinction.



Example: Monument Avenue Historic District, Richmond.

One of America's most splendid turn-of-the-century residential boulevards, Monument Avenue illustrates the best of Beaux Arts planning ideals and the aspirations of the City Beautiful movement. A building along the avenue, grand though it may be, is not necessarily significant. However, when all the buildings are considered as a group, the entire district achieves a high level of significance.

Monument Avenue Historic District is nationally significant in the areas of architecture and community planning.



Criterion D: Concerns properties that have yielded or may be likely to yield, information important in history or prehistory.



Example: Pamplin Pipe Factory, Pamplin

The property contains the archaeological remains of several consecutive periods of pipe manufacture. Excavation of the Pamplin Pipe Factory site, a facility known to have been in operation since at least 1879, would reveal unique information about the evolution of pipe manufacturing technology during the last one hundred years. Because the remains of a still-earlier pipe manufacturing site are probably present on the property, the opportunity exists for additional primary research from an even earlier period of time.



Monuments, Memorials and Other Commemorative Properties

Ordinarily commemorative properties such as monuments, memorials or grave markers are not eligible for listing in the Virginia Landmarks Register and the National Register of Historic Places.



The King Neptune Statue in Virginia Beach does not meet established criteria for listing in the registers because it has not been in existence for more than fifty years. It would need to possess exceptional significance in order to be listed before then.

Once it is 50 years old, however, it still may not be eligible for listing in the registers. As a monument, one would need to determine that it has qualities of design, age, tradition, or symbolic value that have invested it with its own high level significance.

Future generations may determine that it does possess such qualities. It will become eligible for listing beginning in 2053.



Monuments, Memorials and Other Commemorative Properties



Commemorative properties *can qualify* if they are integral parts of districts that do meet one or more of the established criteria or, as mentioned previously, if design, age, tradition, or symbolic value has invested them with their own exceptional significance:

Example One: The Robert E. Lee Monument, Richmond

The monument was evaluated as being significant to the Commonwealth under Criterion A for its close association with major historical developments in the region and the nation in the three decades following the American Civil War.



Monuments, Memorials and Other Commemorative Properties



The monument is also significant under Criterion C by reason of its outstanding artistic quality and design. It is a masterpiece of the internationally renowned French academic sculptor Marius-Jean-Antonin Mercié.

In addition, the monument meets Criterion A for its association with an important historical event—namely, the unveiling and dedication of the Robert E. Lee Monument on May 29, 1890—an event that marked the largest gathering in Virginia’s state capital since the inauguration of Jefferson Davis and represented “one of the greatest celebrations ever accorded a work of public sculpture.”



Monuments, Memorials and Other Commemorative Properties



Example Two: The Virginia War Memorial Carillon, Richmond

This memorial building is listed in the registers because it meets Criterion A. The carillon is the only structure erected by the Commonwealth of Virginia to memorialize the "patriotism and valor of the soldiers, sailors, marines, and women from Virginia" who served in WWI.

It also meets Criterion C having been designed by the nationally significant architectural firm of Cram and Ferguson, and for exhibiting one of the firm's most opulent examples of the Georgian architectural style.



Monuments, Memorials and Other Commemorative Properties

Example Three: Jefferson Davis Highway Markers

These modest markers meet standards established by Criterion A in several respects:

- 1) Erected by the United Daughters of the Confederacy along Route 1 from the 1920s to 1940s, the stone markers are associated with Lost Cause commemorative programs led by women during the early twentieth century.
- 2) As a group the markers have statewide significance in the area of transportation because of their association with early highway development and promotion.
- 3) They also have statewide significance in the area of social history because of the effort undertaken by women of the United Daughters of the Confederacy to memorialize Jefferson Davis through the highway's markers and educational material.





Monuments, Memorials and Other Commemorative Properties



Example Four: Portsmouth's Confederate Monument

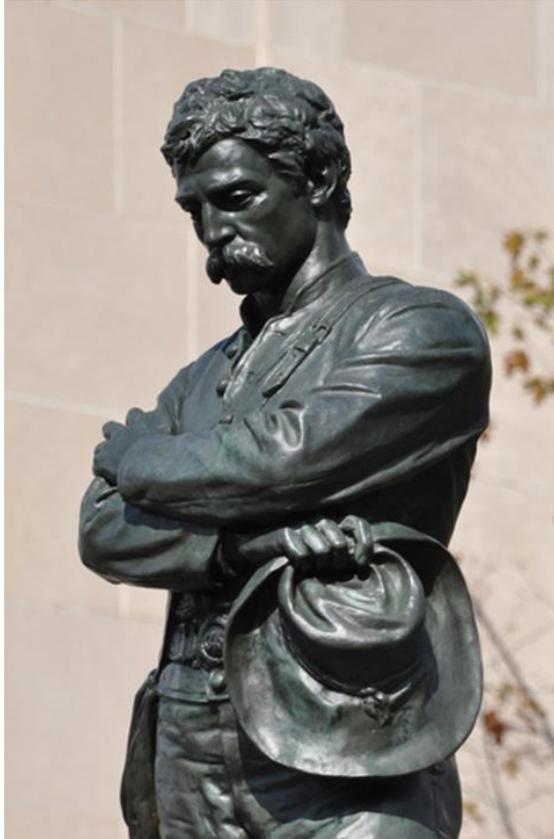
This is one of Virginia's more ambitious Confederate memorials. Unlike most monuments, the statues are not generic figures but were modeled after specific local residents.

The assemblage is one of only three monuments honoring the Confederate sailor. The figure of the sailor faces east toward the route taken by the CSS Virginia for her engagement with the USS Monitor.

Its design and symbolic value, therefore, are considered to have invested the monument with its own historical significance.



Monuments, Memorials and Other Commemorative Properties



Example Six: Appomattox Statue, Alexandria

This statue was recently determined eligible for individual listing on the registers under criteria A and C by the State Review Board.

Fredericksburg artist John Adams Elder submitted a plaster rendering for Alexandria's Confederate Monument based on his painting "Appomattox" that depicts a Confederate soldier following the April, 1965 surrender. The artist, Caspar Buberl, was selected to sculpt the figure. Buberl is noted for the sculptural frieze at the Pension Building in Washington, DC, the statue entitled "Industry" at the Arts and Industries Museum in Washington, DC, and numerous statues to Civil War regiments in both the North and the South.



Disposition of Virginia's Confederate Monuments



Confederate Memorial Fountain Helena, Montana.
Erected in 1914

Memorials associated with the American Civil War abound in the United States.

Memorials to Confederate soldiers exist in the eleven Confederate states, as well as in a number of Union states.

They are found in places that had not achieved statehood by the time of the conflict.



Disposition of Virginia's Confederate Monuments



General Turner Ashby memorial, Harrisonburg

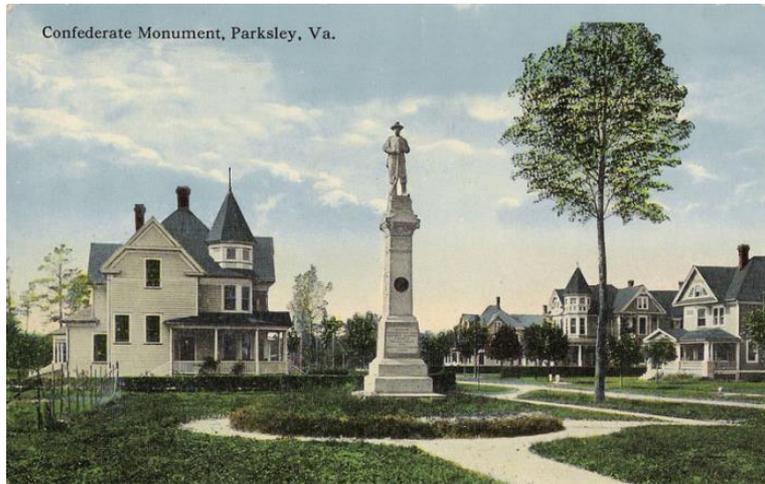
The Virginia Department of Historic Resources has recorded 136 memorials in the Virginia Cultural Resource Information System (VCRIS), however the count is not definitive.

It is estimated that there may be as many as 360 monuments on public and private lands in the Commonwealth*

*Timothy Sedore, *An Illustrated Guide to Virginia's Confederate Monuments*.



Disposition of Virginia's Confederate Monuments



Parksley Confederate Monument ,
Accomack County

Of the 127 jurisdictions of the Commonwealth, 98 have Confederate monuments (77%)

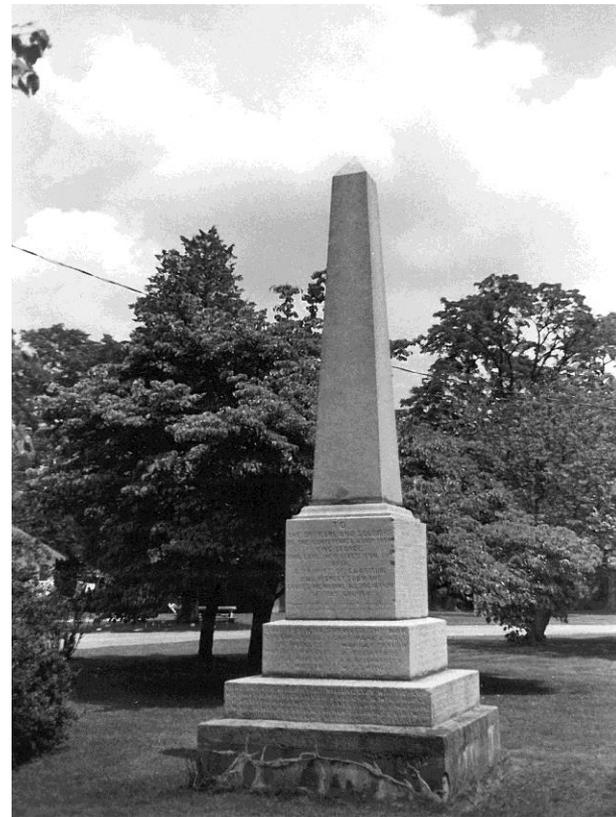
- 65 are located in Registered Historic Districts
- 15 are in Cemeteries
- 5 are along byways/highways
- 3 are in Church Yards
- 3 in Parks, and
- 1 is in Capitol Square Park



Disposition of Virginia's Confederate Monuments

The first monument to be placed in the Commonwealth was most likely the Confederate Obelisk at King George County Courthouse which was erected in 1867.

Because it is a contributing resource to the King George County Courthouse Historic District, it is listed in the Virginia Landmarks Register and the National Register of Historic Places.





Disposition of Virginia's Confederate Monuments

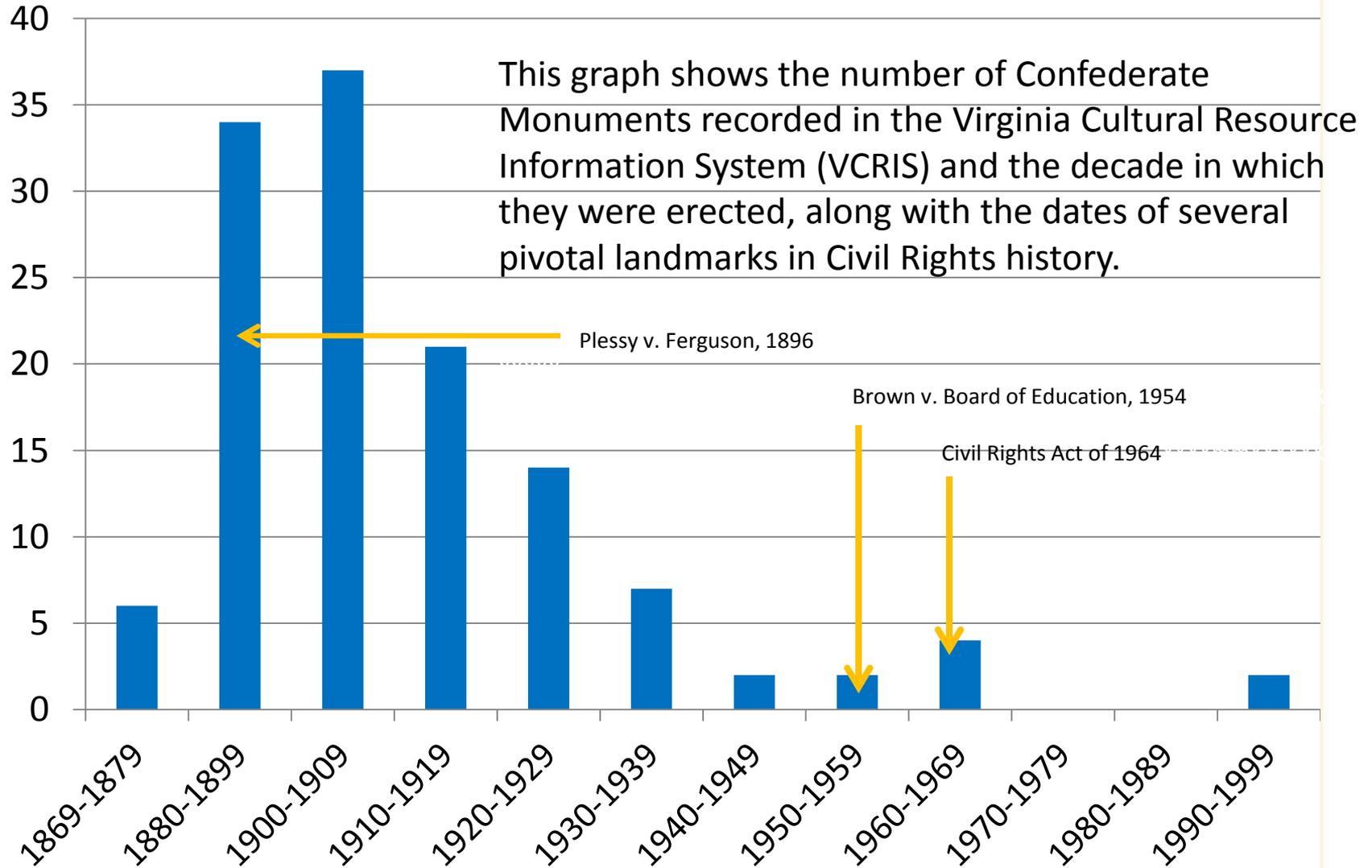


The most recently erected monument was placed on the grounds of the Sutherlin House (Danville Museum of Fine Arts and History), also known as the Last Capitol of the Confederacy in 1995.

Since this photo was taken, the monument has been modified so that it no longer serves the dual purpose of being a flag pole.

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Virginia is not alone in facing the issue of historic monuments that evoke significant controversy.

GERMANY

The Zeppelin Field/Nazi Party Rally Ground, designed by Hitler's architect, Albert Speer, architect, in 1934 in Nuremberg.



photo above, 1938, photo left, 2006



The Issue:

The site is a popular tourist attraction. Germans are asking if public funds should be used to preserve monuments erected by the Nazi Party, despite their value as tangible evidence of an era of astounding significance in the modern age.

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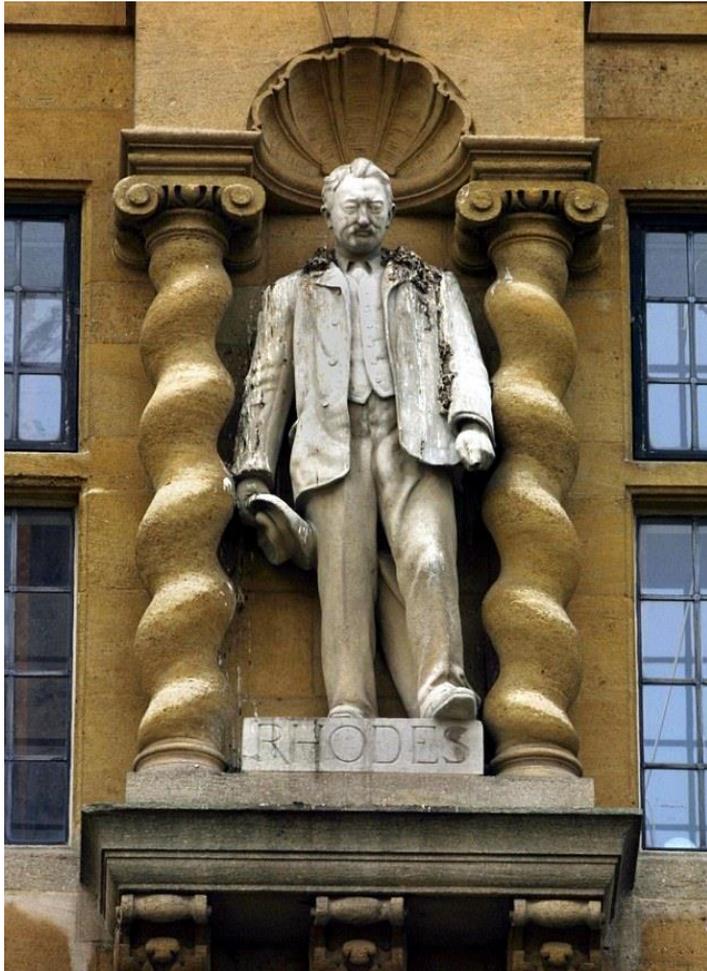
UKRAINE

Lenin Monuments

The Issue:

More than 100 statues of Lenin have been destroyed in the Ukraine to disassociate the county with former domination by the USSR.





GREAT BRITAIN

Cecil John Rhodes
Statue at Oriel College
Oxford University
1906

The Issue:

Statues of Rhodes are considered by many in the Commonwealth of Great Britain to be symbols of European racist philosophy and imperialism. Despite protests, Oxford University elected to leave its statue in place as an acknowledgement of its history - both good and bad.



ITALY

Foro Italico, Rome
(formerly *Foro Mussolini*)
1928-1938, Enrico Del Debbio
and Luigi Moretti, architects



The Issue:

Still a vibrant sports center, the complex continues to attract athletes and tourists as well as both pro- and anti-fascist demonstrations. To many, however, the statuary and architecture exemplify just one more of the many cultural and political movements in Rome's long and influential history.

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CODE OF VIRGINIA

§ 15.2-1812. Memorials for war veterans.

A locality may, within the geographical limits of the locality, authorize and permit the erection of monuments or memorials for any war or conflict, or for any engagement of such war or conflict, to include the following monuments or memorials: Algonquin (1622), French and Indian (1754-1763), Revolutionary (1775-1783), War of 1812 (1812-1815), Mexican (1846-1848), Confederate or Union monuments or memorials of the War Between the States (1861-1865), Spanish-American (1898), World War I (1917-1918), World War II (1941-1945), Korean (1950-1953), Vietnam (1965-1973), Operation Desert Shield-Desert Storm (1990-1991), Global War on Terrorism (2000-), Operation Enduring Freedom (2001-), and Operation Iraqi Freedom (2003-). If such are erected, it shall be unlawful for the authorities of the locality, or any other person or persons, to disturb or interfere with any monuments or memorials so erected, or to prevent its citizens from taking proper measures and exercising proper means for the protection, preservation and care of same. For purposes of this section, "disturb or interfere with" includes removal of, damaging or defacing monuments or memorials, or, in the case of the War Between the States, the placement of Union markings or monuments on previously designated Confederate memorials or the placement of Confederate markings or monuments on previously designated Union memorials.

The governing body may appropriate a sufficient sum of money out of its funds to complete or aid in the erection of monuments or memorials to the veterans of such wars. The governing body may also make a special levy to raise the money necessary for the erection or completion of any such monuments or memorials, or to supplement the funds already raised or that may be raised by private persons, Veterans of Foreign Wars, the American Legion or other organizations. It may also appropriate, out of any funds of such locality, a sufficient sum of money to permanently care for, protect and preserve such monuments or memorials and may expend the same thereafter as other funds are expended.

Code 1950, § 15-696; 1962, c. 623, § 15.1-270; 1982, c. 19; 1988, c. 284; 1997, c. 587; 1998, c. [752](#); 2005, c. [390](#); 2010, c. [860](#).

Appendix B

Presentation Prepared by the Virginia Office of the Attorney General

*This presentation does not constitute an opinion, formal or informal, of the Attorney General, but instead contains legal advice consistent with the view of Assistant Attorney General J. Duncan Pitchford.

Monuments Work Group

Recent Legal History

August 24, 2016

J. Duncan Pitchford
Assistant Attorney General



Please note that this presentation does not constitute an opinion, formal or informal, of the Attorney General. Rather, this presentation contains legal advice, which is the individual view of the staff member providing it.



Statutory protections in the Code of Virginia

Sec. 2742. Circuit court and board of supervisors of any county may authorize and permit the erection of a Confederate monument at the county seat thereof.—The circuit court of any county may, with the concurrence of the board of supervisors of such county entered of record, authorize and permit the erection of a Confederate monument upon the public square of such county at the county seat thereof. And if the same shall be so erected it shall not be lawful thereafter for the authorities of said county, or any other person or persons whatever, to disturb or interfere with any monument so erected, or to prevent the citizens of said county from taking all proper measures and exercising all proper means for the protection, preservation and care of same.

And the boards of supervisors may appropriate a sufficient sum or sums of money out of the funds of any such county to complete or aid in the erection of a monument to the Confederate soldiers of such county upon the public square thereof, or elsewhere at the county seat; and they are also authorized to make a special levy to raise the money necessary for the completion of any such monument, or the erection of a monument to such Confederate soldiers, or to supplement the funds already raised or that may be hereafter raised by private persons, or by Confederate veterans, or other organizations, for the purpose of building such monuments; and they are also authorized and empowered to appropriate from time to time, out of any funds of such county, a sufficient sum or sums of money to permanently care for, protect and preserve the Confederate monument erected upon the public square of any such county, and to expend the same therefor as other county funds are expended. (1904, p. 62; 1910, p. 21.)



Va. Code §15.2-1812

A locality may, within the geographical limits of the locality, authorize and permit the erection of **monuments or memorials for any war or conflict**, or for any engagement of such war or conflict, to include the following monuments or memorials: Algonquin (1622), French and Indian (1754-1763), Revolutionary (1775-1783), War of 1812 (1812-1815), Mexican (1846-1848), Confederate or Union monuments or memorials of the War Between the States (1861-1865), Spanish-American (1898), World War I (1917-1918), World War II (1941-1945), Korean (1950-1953), Vietnam (1965-1973), Operation Desert Shield-Desert Storm (1990-1991), Global War on Terrorism (2000-), Operation Enduring Freedom (2001-), and Operation Iraqi Freedom (2003-). If such are erected, it shall be unlawful for the authorities of the locality, or any other person or persons, to disturb or interfere with any monuments or memorials so erected, or to prevent its citizens from taking proper measures and exercising proper means for the protection, preservation and care of same. For purposes of this section, "disturb or interfere with" includes removal of, damaging or defacing monuments or memorials, or, in the case of the War Between the States, the placement of Union markings or monuments on previously designated Confederate memorials or the placement of Confederate markings or monuments on previously designated Union memorials.

The governing body may appropriate a sufficient sum of money out of its funds to complete or aid in the erection of monuments or memorials to the veterans of such wars. The governing body may also make a special levy to raise the money necessary for the erection or completion of any such monuments or memorials, or to supplement the funds already raised or that may be raised by private persons, Veterans of Foreign Wars, the American Legion or other organizations. It may also appropriate, out of any funds of such locality, a sufficient sum of money to permanently care for, protect and preserve such monuments or memorials and may expend the same thereafter as other funds are expended.



Opinion 2015-50



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Mark R. Herring
Attorney General

August 6, 2015

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7-1-1

W. Clarke Whitfield, Jr., Esquire
Danville City Attorney
Post Office Box 3300
Danville, Virginia 24543

Dear Mr. Whitfield:

I am responding to your request for an official advisory Opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You inquire whether a memorial or marker erected to recognize the historical significance of a building is subject to the protections of § 15.2-1812 of the *Code of Virginia*.



Opinion 2015-50

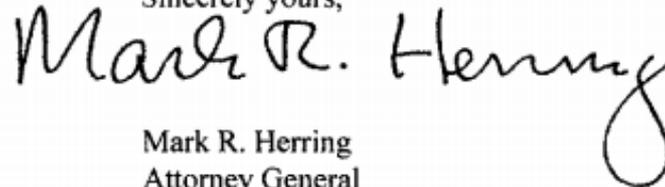
The importance of honoring all of our veterans, especially those who have given their lives and paid the ultimate sacrifice for us, our country and our freedoms, cannot be overstated. These brave men and women deserve our full support, and the General Assembly has chosen to extend certain protections to monuments honoring their service. The General Assembly has not chosen, however, to extend that same level of protection to memorials erected to recognize the historical significance of buildings. Here, the statutes do not address protecting monuments commemorating the historical significance of buildings. The plain language of §§ 18.2-137, 15.2-1812 and 15.2-1812.1 is limited to monuments for any war or conflict and for veterans of those wars and conflicts. Accordingly, it is my view that § 15.2-1812 applies to monuments commemorating certain wars and veterans of those wars, but not to monuments commemorating buildings.

Conclusion

For the reasons stated, it is my view that § 15.2-1812 of the *Code of Virginia* applies to monuments for any war or conflict, including an engagement in such war or conflict, or for war veterans, but not to memorials or markers erected to recognize the historical significance of buildings.

With kind regards, I am

Sincerely yours,



Mark R. Herring
Attorney General



Heritage Preservation Association, Inc. v. City of Danville

- Suit involved a monument located at the Sutherlin Mansion in Danville, which served as the “Last Capitol of the Confederacy”
- HPA had donated the monument in 1995, which included a flag pole displaying the national flag of the Confederacy at the time the Sutherlin Mansion was occupied by the Confederate government
- City of Danville subsequently enacted an ordinance governing flag display, limiting display of flags on City-owned property to the U.S. flag, the Commonwealth of Virginia flag, the City of Danville flag and the POW/MIA flag
- HPA brought suit, claiming the City violated Va. Code § 15.2-1812, and the ordinance breached an agreement between the City and the HPA.



Heritage Preservation Association, Inc. v. City of Danville

- Danville Circuit Court rejected the claims.
- Consistent with Opinion 2015-50, the Court found Va. Code § 15.2-1812 did not extend to the monument at the Sutherlin Mansion as it is a monument recognizing the historical significance of the house, not a “monument or memorial for a war or conflict.”
- The Court also concluded that Va. Code § 15.2-1812 did not apply to the monument because it was erected before the statute became applicable to municipalities, and the General Assembly did not make its application retroactive.
- The Court also rejected the claim that the City could not reconsider the provisions of its resolution accepting the monument, finding it not binding on future City Councils.



Heritage Preservation Association, Inc. v. City of Danville

- HPA sought an appeal from the Supreme Court of Virginia
- On appeal, the HPA did not pursue its arguments regarding the alleged agreement between the City and the HPA
- The Supreme Court of Virginia declined to accept the appeal in June, 2016.



Additional Potential Legal Concerns:

- Some monuments may have other protections, such as listing on the National Register of Historic Places or National Historic Landmark
- Some monuments may be owned by private parties or subject to rights in favor of private groups



Questions?

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