

IN THE SUPREME COURT OF VIRGINIA

Record No. 210113

HELEN MARIE TAYLOR, *et al.*,
Appellants,

v.

RALPH S. NORTHAM, *et al.*,
Appellees.

BRIEF *AMICUS CURIAE* OF HISTORIANS DAVID W. BLIGHT AND GAINES M. FOSTER IN SUPPORT OF APPELLEES

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INTERESTS OF AMICI CURIAE

David W. Blight is the Sterling Professor of American History and Director of the Gilder Lehrman Center for the Study of Slavery, Resistance and Abolition at Yale University. He is the author of numerous books, articles, and essays on post-Civil War American history, including *Race and Reunion: The Civil War in American Memory* and *Frederick Douglass: Prophet of Freedom*, for which he received (among other recognitions) the Pulitzer Prize for History, Abraham Lincoln Prize, Bancroft Prize, and Parkman Prize of the Society of American Historians.

Gaines M. Foster is the LSU Foundation M.J. Foster Professor of History at Louisiana State University. He is the author of numerous books and articles on the South since the Civil War and the continuing battle over American memory of the war.

Professor Blight and Professor Foster have a strong interest in furthering public understanding of American history, and, in particular, the origins and meanings of Confederate monuments. They submit this brief to help explain the full context and significance of the Robert E. Lee statue on Monument Avenue in Richmond, and to support the Commonwealth's decision to remove it.

STATEMENT AND STANDARD OF REVIEW

Amici adopt the statement of facts, procedural history, and standard of review set forth in Appellees' principal brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The 1890 unveiling of the Robert E. Lee statue on Monument Avenue marked an inflection point in Americans' memory of the Civil War. In contrast to earlier, subdued memorials focused on mourning the dead, the Lee statue's debut celebrated white Southerners' victory over Reconstruction, the reassertion of white racial supremacy in the South, and the emergence of the Lost Cause movement. That movement, reflected by the Lee statue and countless other grandiose monuments and markers across the South, espoused a pernicious and misleading narrative: that the Confederacy nobly fought for home, hearth, and state sovereignty—but not for slavery.

Given this history, removal of the Lee statue from Monument Avenue would not be an act of historical erasure. To the contrary, it would be part of a broader reckoning with historical *truth* that has led many institutions to rethink Confederate displays. Lee and other Confederate leaders knowingly betrayed their country to preserve the institution of slavery and its systematic subjugation of Black Americans.

Denying that truth while reasserting control over those whom the Confederacy sought to enslave was the essential goal of the Lost Cause movement. That is what the Lee monument has always represented to the broader world beyond Richmond. The Commonwealth's decision to remove the monument must be understood in this context.

ARGUMENT

Challengers to the decision to remove the Lee statue repeatedly reference the Commonwealth's pledge in 1890 to further the "[m]onumental purpose to which [the Lee statue and surrounding plot] have been devoted." Taylor Br. 7, 40 (quoting JA 15). But they obscure or misstate what that purpose was. It was not simply, as the challengers insist, to honor Confederate veterans or attract real estate development. *Contra* Taylor Br. 5. A fuller picture of the context before, during, and after construction of the Lee monument reveals its role as a powerful instrument of Confederate memory and racial supremacy. This brief endeavors to explain that history.

I. CONFEDERATE MOURNING AFTER THE CIVIL WAR

The immediate aftermath of the Civil War left Southerners, like all Americans, grieving the enormous cost of the conflict. The war took the lives of an estimated two percent of the American population—the

equivalent of six million Americans today. Drew Faust, *This Republic of Suffering* xi (2008). As one might expect, the pain and loss of the war was first memorialized in simple sepulchers and funereal monuments erected in cemeteries. A pyramid built in Richmond's Hollywood Cemetery, for example, bore the plain inscription, "To the Confederate Dead." Caroline E. Janney, *Remembering the Civil War: Reunion and the Limits of Reconciliation* 135 (Reprint ed., 2016).

For decades after the war, the memorialization of grief held constant across the South. Nearly a fifth of all white Southern military-aged males had died in the conflict, and the South was, in the words of one newspaper, "a land of mourning." Faust, *supra*, at 149. Early monuments, often erected by local memorial associations, focused on "themes of ceremonial bereavement." Gaines M. Foster, *Ghosts of the Confederacy: Defeat, the Lost Cause, and the Emergence of the New South* 40 (1987). Indeed, "[o]ver 90 percent of [early Confederate monuments] had some funereal aspect, either in placement or design." *Id.* Southerners deliberately located these monuments on the periphery of public view, far away from hubs like the town square. From 1865-1885, "southerners placed approximately 70 percent of their Confederate

monuments in cemeteries.” *Id.* at 40-41. And around three quarters of monuments were of funereal design, “evok[ing] mourning rather than featuring a Confederate soldier.” *Id.* at 41. The most common design from this early period “was some form of a classical obelisk, often with an urn or drape on top.” *Id.* These monuments—both in placement and design—reflected a consensus that a monument to the war “should not be a triumphal memorial.” *Id.* (internal quotation marks omitted).



Photograph of Memorial to Fallen Confederate Soldiers at Old Chapel Cemetery in Millwood, Virginia, *Wikimedia Commons* (Dec. 30, 2018).

Unveiling ceremonies matched the somber tone of the memorials they featured. Addresses, which were scant, followed a “theme of bereavement,” and there was little appetite for celebration. Foster, *supra*, at 41. More frequently, “emphasis remained on the *process* of bereavement: the creation of cemeteries, the erection of funereal monuments, and the springtime decoration of the graves” on Memorial Day. *Id.* at 43 (emphasis added). In this way, for the decades immediately following the end of the war, “the cemetery remained the public site of [Confederate] memorialization;” with “obelisks and stone pyramids appear[ing] as markers of the recent past that so haunted every community.” David W. Blight, *Race and Reunion: The Civil War in American Memory* 77 (2001).

The Lee statue on Monument Avenue bears no resemblance to these early war memorials. Beginning in the 1880s, the subdued nature of Confederate memorialization began to change. The deaths of Confederate leaders, increased enthusiasm for rapprochement between white Northerners and white Southerners, and anxieties about social change reshaped Confederate memorialization tradition into something quite different. “[B]ereavement of the early memorial movement gave

way to greater celebration of the Confederacy.” Foster, *supra*, at 89. Rather than mourn the dead, Southerners began crafting an idealized myth of the Confederate cause, idolizing its leaders, and lauding its supposed virtues. By the early 20th century, hardly a city square or town green in the South lacked a Civil War memorial of some kind. Behind this dramatic change in Confederate memorialization was a stunningly successful effort to remake the public’s memory of the Confederacy and its leaders. The Lee monument stood at the center of that movement.

II. THE LOST CAUSE MOVEMENT AND THE LEE MONUMENT CAMPAIGN

By 1870, most white Southerners viewed Reconstruction—the post-war efforts to institute Black suffrage, civil rights, and other social and economic reforms in the South—as “a hated, imposed regime.” Blight, *supra*, at 106. Chief among those who resisted Reconstruction were the so-called “diehards,” Confederate absolutists who labored to preserve white supremacy in the South. It was in this “Southern culture awash in an admixture of physical destruction, the psychological trauma of defeat, a Democratic Party resisting Reconstruction, racial violence, and with time, an abiding sentimentalism,” that the Lost Cause narrative took root. *Id.* at 258.

Obliteration of the common understanding of slavery as the war's central cause was a necessary step in the Southern turn from mourning the Confederate dead to lionizing Confederate leaders. "From the earliest days of memorial activity, the diehards were determined to collect and write a Confederate version of the history of the war" that omitted slavery and celebrated Southern heroics. *Id.* at 259. Former high-ranking officers and political leaders of the Confederacy formed a "highly orchestrated grassroots partisan" campaign, using "white supremacy as both means and ends." *Id.* at 259 (emphasis omitted). The strongest article of faith in this historical revision campaign was that state sovereignty—not slavery—was the cause of the war. *Id.* at 282-83. *See also* JA at 506 (Ayers testimony). Movement leaders thus "fashioned Confederate memory into a revival crusade and the Old South into a lost racial utopia," which the North had supposedly disrupted. Blight, *supra*, at 281. Of course, every crusade needs a figurehead or patron saint. And long after his death in 1870, Lost Cause adherents "made Robert E. Lee into the God-like embodiment of a leader whose cause could be defeated only by overpowering odds." *Id.* at 258.

As Reconstruction was defeated by terror, Democratic party revival, and an economic depression in the 1870s, and Southern diehards regained local political control, Lost Cause proponents needed a new, morally victorious narrative of the war to justify and solidify their grip on power. In their eyes, white Southerners “had won the second war over Reconstruction; they had thrown off ‘Negro rule’ and redeemed their states.” *Id.* at 264. It was this triumphant atmosphere—not any impulse to mourn Confederate losses or honor veterans—that culminated in the unveiling of a monument to Lee in Richmond in 1890. As historian Edward Ayers explained at trial, the Lee memorial “bec[a]me[] a way of declaring that, even though [white Southerners] ha[d] lost political control in the United States, they still ha[d] local control of their own public space, even though black people [were] vying for political power.” JA 501.

Three rival groups representing different facets of the white Virginia elite competed to raise funds and control the Lee monument campaign. A unit of former officers from Lee’s Army of Northern Virginia, led by the notorious “irreconcilable” Jubal Early, wanted not only to lionize their former commander, but also “to perpetuate the policy

and imagery of Southern defiance.” Kirk Savage, *Standing Soldiers, Kneeling Slaves: Race, War, and Monument in Nineteenth-Century America* 135 (New ed., 2018). Another group, a “ladies’ committee” from pedigreed Virginia families, aimed to erect “a monument of artistic distinction.” *Id.* And a third, an official state organization led by the Virginia Governor (initially James Kemper and later Fitzhugh Lee, a former Confederate general and relative of Robert’s), “saw in the monument campaign an opportunity for political accommodation between North and South.” *Id.* But despite their varying priorities, the groups “shared the presuppositions of white supremacy and shared the same basic image of Lee as ‘power in repose.’” *Id.*

The monument’s placement and design reflect that image of Confederate power. Hollywood Cemetery and the Confederate Veterans Home, among other humbler sites, were rejected. Virginia Dept. of Historic Resources, *National Register of Historic Places Registration Form* Section 8 at 5 (2002). By contrast, the Allen tract offered an open, yet-to-be developed area that provided “the ideal setting for a larger than life image of Lee,” and notably stood on higher elevation than did the George Washington equestrian statue in Capitol Square. *Id.*

The selected design served to deify Lee as well. The bronze equestrian sculpture by Marius Jean Antonin Mercié stands twenty-one feet tall atop a 40-foot granite pedestal designed by French architect Paul Pujol. *Id.* at Section 7, p. 1. It depicts Lee astride his horse in full Confederate regalia. Organizers had rejected Mercié’s first model, which showed Lee “as he passed among his dying troops on the field of Gettysburg,” and specifically insisted that its height be increased so that it would surpass that of the Washington statue. *Id.* at Section 8, p. 6.



Photograph of Lee Monument in Richmond, Martin Falbisoner, *Wikimedia Commons* (Sept. 7, 2013).

In this dramatic fashion, Lee was installed “as the South’s premier representative.” Savage, *supra*, at 131. The image of Lee, towering over all, fit the Lost Cause narrative: that the Confederacy should be remembered as “a glorious military record rather than a political struggle to secure a slaveholding nation.” *Id.* As Savage writes, “[w]ith striking success the monument helped refashion an image of white rule freed from the brutal footing of slavery, even as that image depended upon and perpetuated the structure of racial domination instituted under slavery.” *Id.* at 157. Indeed, the construction of the Lee monument, and the celebration of its unveiling in May 1890, marked “a high point in this campaign to restructure the historical memory of Southern society.” *Id.* Attended by a crowd estimated between 100,000 and 150,000 people, “the Lost Cause on display in Richmond in 1890 was less an act of mourning and more of a celebration.” Blight, *supra*, at 267, 269.

III. THE LEE MONUMENT’S UNVEILING AND RECEPTION

Understanding the Lee statue as a monument to the Lost Cause and the reassertion of white Southern supremacy after Reconstruction is not a modern invention. To the contrary, that reality was understood at the time of the monument’s unveiling by proponents and critics alike.

Frederick Douglass warned in 1870 that white Southern worship of Lee would only serve to “reawaken the conflict,” predicting that “[m]onuments to the ‘lost cause’ will prove monuments of folly.” Douglass, *Monuments of Folly*, NEW NATIONAL ERA, Dec. 1, 1870. With the Lee monument’s debut, “a new, more dynamic Lost Cause was thrown into bold relief.” Blight, *supra*, at 269.

For Governor Fitzhugh Lee, “the Lee monument project was part of a larger political campaign to legitimate Southern white supremacy in the national consciousness.” Savage, *supra*, at 138. As Professor Ayers explained at trial, “it was a monument to the reassertion of power that the white conservatives, former Confederates, had lost for 30 years.” JA 510. And the unveiling ceremony “deliberately rallied whites of all classes together, papering over class divisions that had erupted earlier in the campaign.” Savage, *supra*, 150-51. Colonel Archer Anderson, a veteran of Lee’s Army who delivered the keynote address at the monument’s dedication, “asserted the righteousness of the Lost Cause and the supremacy of its leadership,” citing Lee’s efforts on behalf of the Confederacy as “supreme proof of Lee’s greatness of soul” and a model for white Southerners. *Registration Form*, Section 8 at 8.



Photograph of Unveiling of the Equestrian Statue of Robert E. Lee, May 29, 1890, *Wikimedia Commons* (image printed as it was reproduced in E. Benjamin Andrews, *History of the United States* (v. 5, 1912)).

Black Virginians, meanwhile, largely condemned or declined to participate in the canonization of Lee. Richmond's three Black city council members were the only ones who refused to vote for a \$7,500 city

appropriation for the monument's dedication ceremonies. Savage, *supra*, at 152. John Mitchell Jr.—one of the abstaining council members and owner of the *Planet* newspaper—wrote that those who wore the “clinking chains of slavery” should have the right to “keep silent” on the matter. *Id.* That resistance was hardly unexpected. A few years earlier, a much-publicized dispute erupted when white legislators in Virginia proposed to purchase an official portrait of Lee for the State Capitol. Black legislators resisted the proposal because “General Lee had fought to keep [them] in slavery,” and the *Richmond Dispatch* wrote that “nobody was surprised” at their response. *Id.* at 138 (alterations in original).

As for the unveiling, “[t]he only African American participants reported in the white newspapers were the faithful body servants of old Confederate veterans.” *Id.* at 151. But Mitchell gave a clear-eyed account. From his perspective, the worship of Lee, the parades of Confederate officers, and crowds waving Confederate flags on May 29, 1890 handed down “to generations unborn a legacy of treason and blood.” Janney, *supra*, at 219. The message of the day was unmistakable to Black Virginians. After the dedication ceremony, Mitchell reported that “[a]n old colored man after seeing the mammoth parade of the

ex-Confederates on May 29th and gazing at the rebel flags, exclaimed, “The Southern white folks is on top—the Southern white folks is on top!” Savage, *supra*, at 151. As Savage writes, “[h]ere was a stunningly clear statement of the case, which stripped the civilizing clothing off the monument and the ritual surrounding it, to lay bare its simple message of white domination.” *Id.* at 151-52.

Early, the monument campaign organizer who presided over the unveiling, was undoubtedly pleased with this potent and intended effect. According to *The New York Times*, Early introduced two of his former slaves to Congressman Charles T. O’Ferrall at the ceremony, remarking that “these are respectable darkies.” Janney, *supra*, at 220. According to Early, these men knew their place as “faithful slaves” who had not abandoned their white masters or attempted to taint Southern politics by supporting Reconstruction. *Id.*

IV. ‘A LEGACY OF TREASON AND BLOOD’

Mitchell’s prediction that celebration of Lee and the Lost Cause would perpetuate “a legacy of treason and blood” proved prescient. This remaking of Confederate memory “endured to haunt America into the 1920s and beyond.” Blight, *supra*, at 258. “Especially in racial terms,”

the Lost Cause movement's transformation of military defeat into partisan victory over Reconstruction "reverberated as part of the very heartbeat of the Jim Crow South." *Id.*

"By the 1890s segregation had become the accepted substitute for slavery." Charles Reagan Wilson, *Baptized in Blood: The Religion of the Lost Cause, 1865-1920* 109 (1980). Just a few months after the Lee monument's unveiling in 1890, Southern states began enacting laws aimed at disfranchising Black voters. These tools of political subjugation—property qualifications, literacy tests, poll taxes—were replicated in each former Confederate state over the next two decades, effectively eliminating Black Americans from Southern political life. Blight, *supra*, at 271-72. Within ten years of the Lee monument's unveiling, Virginia rewrote its constitution to "basically end black voting for at least the next half century." JA 515.

"[I]t's easy to forget that 90 percent of all African-American people lived in the South as late as 1910, and their presence represented a formidable threat to the former Confederates." Henry Louis Gates Jr., *The 'Lost Cause' That Built Jim Crow*, N.Y. Times (Nov. 8, 2019). Black Southerners wielded considerable political power during Reconstruction,

with more than 2,000 elected Black officials holding office throughout the South, including 20 congressmen and two U.S. Senators. *Id.* Disfranchisement dismantled that power structure, and after 1901, no Black officeholder would represent a Southern state in Congress for more than seven decades. *Id.* This was what Frederick Douglass called “endeavoring to retain the new wine of liberty in the old bottles of slavery.” *Id.* As Gates writes, “the Confederacy didn’t die in April 1865; it simply morphed.” *Id.*

Confederate groups invoked Lee and the war’s memory to shore up this political codification of white supremacy. By the turn of the century, the United Daughters of the Confederacy and the Sons of Confederate Veterans had placed Confederate flags, portraits of Lee and other Confederate leaders, and pro-Confederate textbooks in classrooms across the South. Janney, *supra*, at 275. These groups held essay contests and recruited children as young as six to join the Children of the Confederacy. *Id.* “Using the memory of the war, the Daughters’ campaign of indoctrination emphasized the inferiority of African Americans and the benevolence of slavery.” *Id.* And the Daughters especially exalted Lee as their shining hero and the greatest of Americans.

In this radical retelling, the story of the Lost Cause did not end with military surrender, but instead with the overthrow of Reconstruction. Articles in the *Confederate Veteran* referred to Reconstruction as “the nightmare after the death of the Confederacy’ or a ‘worse persecution than war.” *Id.* at 276 (citation omitted). “Writers heralded those who had survived the dark days of ‘negro rule’ and praised the heroics of groups like the [Ku Klux] Klan for reclaiming ‘home rule.” *Id.* (citation omitted). In this way, the Lost Cause movement “mitigate[d] the humiliation inflicted by Union victory” by “celebrating those who had taken up arms against black equality.” *Id.* The worst violence and terror of the Jim Crow South thus grew from the seeds of the Lost Cause narrative.

Tangible monuments to the Lost Cause continued to go up as well. The United Daughters of the Confederacy Museum, housed in the former Confederate White House in Richmond, opened its doors in 1896. Wilson, *supra*, at 18-19; Blight, *supra*, at 255. The city erected statues of two more Lost Cause icons on Monument Avenue: J.E.B. Stuart and Jefferson Davis. Savage, *supra*, at 148. The 1907 dedication of the Davis statue drew 200,000 attendees to witness some 12,000 members of

Confederate veterans' groups parade through the streets. Wilson, *supra*, at 29. These events cemented Richmond as “the Mecca of the Lost Cause,” and Monument Avenue as “the sacred road to it.” *Id.* And they continued to send the unmistakable message that Black Virginians were not welcome. Racial covenants forbade African Americans from buying or renting property near Monument Avenue and “a major selling point” of the area “[was] that no black people would ever live near you.” JA 514.

Even 50 years after the end of the Civil War, statues of Lee and other Confederate leaders were being erected in towns and cities across the South. Like the Richmond monument that inspired them, these icons had far more to do with Lost Cause mythologizing and entrenched white supremacy than honoring Confederate soldiers. They were inextricably intertwined with a rise in “public and celebratory white supremacy” and “local embrace of the KKK.” Kirt von Daacke & Ashley Schmidt, *UVA and the History of Race: When the KKK Flourished in Charlottesville*, UVA TODAY (Sept. 25, 2019). For example, the weekend before the dedication of the Lee statue in Charlottesville in 1924, a gleeful and “immense throng of spectators” gathered to watch a Klan parade featuring “white robed figures . . . march[ing] to music” through the

streets. *Klan Parade Drew Big Crowd*, THE DAILY PROGRESS, May 19, 1924, at 1.

These events cannot be separated from Lee and Lost Cause iconography depicting him. In the early 20th century, celebrations of Lee's birthday became "almost a religious holiday in the South." Thomas L. Connelly, *The Marble Man: Robert E. Lee and His Image in American Society* 100 (1977). Southerners "made Lee's character the climax of the Lost Cause argument"—"[t]o justify Lee was to justify the Southern cause." *Id.* at 108. The Klan, "as the most passionate organization associated with this highly ritualized civil religion," symbolized "the mystical wing of the Lost Cause." Wilson, *supra*, at 100.

Nor can the enduring legacy of Lee and the Lost Cause be separated from the statue on Monument Avenue. Its message of racial domination, recognized by Mitchell and Early on the very day the statue was unveiled, has endured. In 1928, W.E.B. DuBois, the famed historian and the first Black student to receive a PhD from Harvard University, lambasted the annual celebration of Lee's birthday as a "ridiculous" effort "to seek to excuse Robert Lee as the most formidable agency this nation ever raised to make 4 million human beings goods instead of men." Julius D. Spain

Sr. et al., *Arlington County's progress on race and social justice is poisoned by its official logo*, WASHINGTON POST (Aug. 14, 2020). A Black Richmond resident, Robert Leon Bacon, wrote in 1955 that the prospect of going to Monument Avenue instilled in him a fear that he would be lynched, beaten, or electrocuted. JA 518, 714. And in recent years, Lee statues in Virginia and elsewhere have become rallying points for white nationalists seeking a return to racial domination. See, e.g., Laura Vozzella, *White nationalist Richard Spencer leads torch-bearing protesters defending Lee statue*, WASHINGTON POST (May 14, 2017); Doug Stanglin, *1 dead, 19 injured as car hits crowd after a 'Unite the Right' rally in Charlottesville; driver in custody*, USA TODAY (Aug. 12, 2017). The Commonwealth's decision to remove the Lee statue must be understood in this full historical context.

CONCLUSION

The judgment of the Circuit Court for the City of Richmond should be affirmed.

Dated: April 19, 2021

Respectfully submitted,



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CERTIFICATE OF SERVICE AND FILING

Pursuant to Rules 5:26 and 5:30 of the Supreme Court of Virginia,

I hereby certify the following:

1. That on April 19, 2021, an electronic copy of the foregoing brief was filed with the Clerk of the Supreme Court of Virginia via VACES, and an electronic copy of the foregoing motion was served, via electronic mail, to the following counsel of record for the parties:

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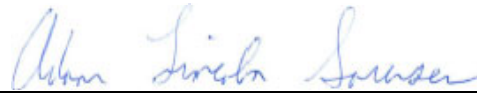
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2. That this brief does not exceed 50 pages in compliance with Rule
5:26.

Dated: April 19, 2021



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