



**North Carolina Department of Natural and Cultural Resources  
Office of the Secretary**

Governor Roy Cooper

Secretary Susi H. Hamilton

October 21, 2020

VIA CERTIFIED MAIL AND ELECTRONIC MAIL TO [edward@phillipslawpractice.com](mailto:edward@phillipslawpractice.com)

Mr. H. Edward Phillips  
219 Third Avenue North  
Franklin, Tennessee 37064

**\*\*\*DENIAL OF REQUEST FOR DECLARATORY RULING\*\*\***

Dear Mr. Phillips:

Your request for a declaratory ruling regarding the application of N.C. Gen. Stat. § 100-2.1 and the Pasquotank County confederate monument was received by the Department of Natural and Cultural Resources ("DNCR" or "the Department") on September 22, 2020. This letter serves as the Department's written decision to deny the request pursuant to N.C. Gen. Stat. § 150B-4 and 07 NCAC 01B .0110. It also refers this matter to the North Carolina Historical Commission ("NCHC" or "the Commission") if it wishes to consider the request or requested relief.

Your request was addressed to DNCR, and as Secretary it is my or my designee's responsibility to decide whether to grant or deny the request under the aforementioned statute and rule. However, the only requested relief in your request are proposed actions by the Commission, and not the Department. Section III. of your request refers to the authority of the NCHC under N.C. Gen. Stat. § 100-2.1, section V. alleges that NCHC approval was required before Pasquotank County removed its local confederate monument, and section VI. asks for a hearing and declaratory ruling by the NCHC. Although administratively housed with DNCR, the NCHC is an independent advisory and regulatory body with rulemaking authority separate from the Department's under N.C. Gen. Stat. § 143B-62. As Secretary of the Department, I do not set the agenda or otherwise determine the business of the Commission and cannot grant the relief you seek. This matter and your requested relief are not appropriately addressed by the declaratory ruling process established under the Department's rules in the North Carolina Administrative Code, and therefore your request is denied under 07 NCAC 01B .0110(b)(3).

I will note that even if your request sought relief from DNCR and not the NCHC, the Department would likely deny the request pursuant to 07 NCAC 01B .0110(b)(2) because "[t]here has been a similar determination in a previous contested case or declaratory ruling." In December 2011, the Historical

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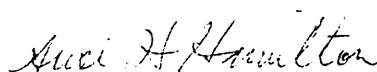
LOCATION:  
109 East Jones Street  
Raleigh, NC 27601

H. Edward Phillips  
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Preservation Action Committee and North Carolina Sons of Confederate Veterans, Inc. petitioned DNCR's predecessor, the Department of Cultural Resources, for a declaratory ruling that a confederate monument previously located in the city of Reidsville was state property and therefore improperly removed without prior approval of the NCHC. The Department issued a declaratory ruling denying all requested relief because the petitioners were not persons aggrieved and lacked standing. The Rockingham County Superior Court subsequently dismissed the petitioners' complaint requesting judicial review for lack of standing, and the North Carolina Court of Appeals upheld that dismissal in *Historical Pres. Action Comm., Inc. v. City of Reidsville*, 230 N.C. App. 598 (2013).

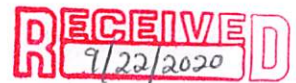
By way of this letter, I am forwarding your request to David Ruffin, chair of the NCHC, and Karen Blum, Special Deputy Attorney General of the North Carolina Department of Justice and the Commission's counsel in this matter. Although not styled as requests for declaratory rulings, the Commission has previously addressed other petitions regarding N.C. Gen. Stat. § 100-2.1 and submitted by both state agencies and members of the public. If you have any questions regarding the Commission and its consideration of your request, please contact Ms. Blum at (919) 716-6816 or [kblum@ncdoj.gov](mailto:kblum@ncdoj.gov).

Sincerely,



Susi H. Hamilton

cc: David Ruffin, Chair, North Carolina Historical Commission  
Karen Blum, Special Deputy Attorney General, North Carolina Department of Justice



BEFORE THE NORTH CAROLINA DEPARTMENT  
OF CULTURAL RESOURCES, AT RALEIGH, NORTH CAROLINA

IN RE: PASQUOTANK COUNTY )  
CONFEDERATE MONUMENT )  
)  
)  
) Case No. \_\_\_\_\_  
)  
NORTH CAROLINA DIVISION SONS OF )  
CONFEDERATE VETERANS, INC., )  
)  
Petitioners. )  
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PETITION FOR DECLARATORY RULING REGARDING  
THE APPLICATION OF N.C. GEN. STAT. § 100-2.11945

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Pursuant to N.C. Gen. Stat. § 150B-4, and 7 N.C. Admin. Code § 1B.0110, the Petitioners, The Col. William F. Martin Camp 1521 Sons of Confederate Veterans, and The North Carolina Division Sons of the Confederate Veterans, Inc., by and through undersigned counsel respectfully petition the North Carolina Historical Commission through the North Carolina Department of Natural and Cultural Resources to issue a declaratory ruling as it relates to the application of pertinent sections of Chapter 100 of the North Carolina General Statutes related to **Monuments, Memorials and Parks**, as well as N.C. Gen. Stat. § 100-2.1 to the Pasquotank County Confederate Soldiers Monument.

**I. PETITIONERS**

1. The Col. William F. Martin Camp 1521 Sons of Confederate Veterans (the W.F. Martin Camp 1521”) is an entity within the North Carolina Division Sons of the Confederate

Veterans, and is a North Carolina 501(c)(3) non-profit corporation operating under the laws of the state of North Carolina, having its principal place of business in Camden, Pasquotank County, North Carolina, and was chartered in Elizabeth City, North Carolina at its founding. The W.F. Martin Camp 1521 is a lineage society which seeks to preserve the memory of the Camp's ancestors who served in the Confederate States Army during the Civil War. Like all Sons of Confederate Veteran camps, its mission is not only to preserve the history of the Civil War and the soldiers of the Confederate States Army, its principal charitable purpose is "to aid and assist in the erection of suitable and enduring monuments and memorials to all Southern valor, civil and military, wherever done and wherever found."

2. The North Carolina Division Sons of the Confederate Veterans, Inc. (the "North Carolina Division – SCV"), is a North Carolina 501(c)(3) non-profit corporation operating under the laws of the state of North Carolina, having its principal place of business in Wake County, North Carolina, and a mailing address of 805 Cool Springs Road Sanford, North Carolina 27330. The North Carolina Division is a lineage society vested with the mission, and the duty to preserve the history of the Civil War, as well as the memory of the soldiers of the Confederate States Army, with its principal charitable purpose being "to aid and assist in the erection of suitable and enduring monuments and memorials to all Southern valor, civil and military, wherever done and wherever found."

## **II. INTRODUCTION**

3. The North Carolina Department of Natural and Cultural Resources ("DCR")<sup>1</sup> has authority to issue a declaratory ruling with respect to these issues, which involves interpreting the

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<sup>1</sup> On September 8, 2015, the DCR's name was changed to the North Carolina Department of Natural and Cultural Resources, upon the transfer of a number of divisions to be placed under the control of DCR, which included those divisions responsible for maintaining the state of North Carolina's natural resources. Some of the official references to

applicability of the following rules and statutes which are administered by DCR – N.C. Gen. Stat. §§ 100-2, 100-2.1, 100-3, 100-9, 100-10, and 16 U.S.C. § 470 (the National Historic Preservation Act of 1966).

4. The North Carolina Historical Commission (the “Commission”), which is an agency within the DCR, is charged with promulgating “rules and regulations to be followed in the acquisition, disposition, preservation, and use of records, artifacts, real and personal property,” See N.C. Gen. Stat§ 143B-62. Additionally, under N.C. Gen. Stat. § 100-2.1, the Commission is vested with primary jurisdiction to resolve matters related to the proposed removal, relocation and/or alteration of an object of remembrance located on any public property located within the state. Moreover, the public policy goal of the Act favors preservation of objects of remembrance, and not an indefinite temporary removal of the same, or a permanent removal unless the object of remembrance “... shall be relocated to a site of similar prominence, honor, visibility, availability, and access that are within the boundaries of the jurisdiction from which it was relocated.” Additionally, “[a]n object of remembrance may not be relocated to a museum, cemetery, or mausoleum unless it was originally placed at such a location.”

5. Pasquotank County was established under the powers granted to the North Carolina General Assembly under Article VII, § 1 of the Constitution of the State of North Carolina, specifically, “[t]he General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except

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the DCR have not changed, such as under 7 N.C. Admin. Code § 1B.0110, which relates to the process for filing a request for a declaratory ruling. As a result, this *Petition* will refer to the Department under its former nomenclature. See <https://www.ncpedia.org/cultural-resources-department>; and <https://www.nc.gov/agency/natural-and-cultural-resources-department>

as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.”<sup>2</sup>

6. Pasquotank County is governed by its County Board of Commissioners, which is a seven-member Board representing Pasquotank County. Specifically, the commissioners are elected at-large and from districts in county-wide elections to serve four-year staggered terms, with four members required to reside in specified districts, and three members elected at-large. The Board of Commissioners elects a Chairman and Vice-Chairman at its December meeting. See <https://www.pasquotankcountync.org/aboutboard>.

7. The Pasquotank County Confederate Soldiers Monument (e.g. “object of remembrance”) is located near the Pasquotank County Courthouse at 206 E Main Street in Elizabeth City, North Carolina.

8. The Pasquotank County Confederate Soldiers Monument (the “Confederate Monument”) was originally erected in 1911, with its dedication held on May 10<sup>th</sup> of that year. See: <https://docsouth.unc.edu/commland/monument/515/#:~:text=This%20statue%20is%20located%20at,flag%20and%20the%20year%201865>.

9. On July 13, 2020, the Pasquotank County Commission held a vote related to the removal of the Confederate Monument, and by a split vote of four to three (4-3), decided to remove

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<sup>2</sup> Pasquotank Co., was originally established as Pasquotank Precinct in the British Colony of North Carolina in 1684 form then Carteret Precinct within the Albemarle region. The Pasquotank Precinct was granted status as a county by the Royal Government on March 6, 1739, and was within the established territory recognized under the First Constitution of the state of North Carolina adopted at Halifax, North Carolina on December 18, 1776, after the adoption of the *Declaration of Independence* by the Continental Congress assembled in Philadelphia on July 2, 1776. Subsequently, the North Carolina General Assembly modified the boundary lines of Pasquotank County to create other counties, or to define county boundary lines, first on May 9, 1777, then on December 19, 1804, with final action taken on March 6, 1909. Thus, Pasquotank was, and has been since the adoption of the first state constitution, under the control of the Government of the State of North Carolina and bound by its laws.

See: [https://publications.newberry.org/ahcbp.documents/NC\\_Individual\\_County\\_Chronologies.htm](https://publications.newberry.org/ahcbp.documents/NC_Individual_County_Chronologies.htm); <https://www.ncpedia.org/anchor/introduction-colonial-north>; and [https://avalon.law.yale.edu/18th\\_century/nc07.asp#b2](https://avalon.law.yale.edu/18th_century/nc07.asp#b2)

the monument. Specifically, according to reporting, Commissioner Cecil Perry stated that the. “[i]t does not belong on this property[.]” when referring to the Confederate Monument, and its current location on the grounds of the Pasquotank County Courthouse.

10. The North Carolina Division – SCV is concerned that the action taken by the Pasquotank Board of Commissioners in its vote to remove the Pasquotank County Confederate Monument violates the requirements of the North Carolina Monument Protection Act (the “Act”), codified at N.C. Gen. Stat. § 100-2.1. The North Carolina Division – SCV believes that the Act compels the state of North Carolina or any political subdivision of the state to seek the approval of the North Carolina Historical Commission prior to the removal or relocation of any object of remembrance from public property, either on a temporary or permanent basis.

### **III. JURISDICTION**

11. The Commission has jurisdiction to entertain this *Petition for Declaratory Ruling* under N.C. Gen. Stat. § 100-2.1(a), which establishes that no “monument, memorial, or work of art owned by the State be removed, relocated, or altered in any way without the approval of the North Carolina Historical Commission.” Moreover, subsection (b) of the Act, which is much broader than subsection (a), places limitations on removal, and specifically states that “[a]n object of remembrance located on public property may not be permanently removed and may only be relocated, whether temporarily or permanently, under the circumstances listed in this subsection and subject to the limitations in this subsection.” To that end, this subsection also states that “[t]he circumstances under which an object of remembrance may be relocated are either of the following: (1) [w]hen appropriate measures are required by the State or a political subdivision of the State to preserve the object, or

(2) When necessary for construction, renovation, or reconfiguration of buildings, open spaces, parking, or transportation projects.” Emphasis added to original.



#### IV. STATEMENT OF FACTS

12. Prior to the events of May 25, 2020, in relation to the senseless death of George Floyd while in the custody of the Minneapolis Police Department, there had been relatively little public objection to any war memorials, Confederate or otherwise. This was true for decades anywhere in the State of North Carolina – until a mob of demonstrators and political protesters illegally tore down and vandalized a Confederate monument located outside the Durham County Courthouse on August 14, 2017. However, the actions of these protestors and vandals in 2017, as well as subsequent protests related to Confederate monuments since May of this year, do not represent the actual sentiment related to the existence of the same. This is particularly underscored by the release of a Wall Street Journal/NBC News Poll on July 23, 2020, concerning public sentiment surrounding Confederate memorialization, which demonstrate that the large majority of the American people do not favor completely removing these monuments from the public forum.<sup>3</sup>

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<sup>3</sup> The Wall Street Journal/NBC News Poll provides the following useful information related to four questions concerning Confederate Monuments in public spaces. The four questions asked of the participants within the polling sample are as follows:

1. Should Confederate Monuments be removed and destroyed? 10% of those polled supported this option;
2. Should Confederate Monuments be moved to museums or private property? 31% of those polled supported this option;
3. Should Confederate Monuments be left in place with contextual markers? 41% of those polled supported this option; and
4. Should Confederate Monuments remain in place as is? 16% of those polled supported this option;

Moreover, only twenty-two percent (22%) of African American participants participating in the poll wished to remove and destroy these monuments, with the vast majority, seventy-four percent (74%) falling in the middle ground by supporting options two (2) and three (3), please see the poll results at: <https://www.wsj.com/articles/after-confederate-monuments-fall-where-do-they-go-11595509200>. Polling results demonstrate that 57% of the population desire to maintain these monuments in place.

The WSJ/NBC News polling results also reinforce the fact that a large majority of Americans, including members of the African American community, support a more moderate and measured approach concerning the resolution of the monument issue. Additionally, both Alamance and Gaston counties have cast votes to keep their Confederate Monuments in place, which is consistent not only with the polling, but supports the objectives of N.C. Gen. Stat. § 100-2.1, which applies to the state of North Carolina, and its political subdivisions possessing monuments located on public property.

13. The Confederate Monument located at the Pasquotank County Courthouse, is an object of remembrance as that term is defined under the Act, which specifically "... means a monument, memorial, plaque, statue, marker, or display of a permanent character that commemorates an event, a person, or military service that is part of North Carolina's history." See N.C. Gen. Stat. § 100-2.1(b). As this monument is dedicated to the Confederate soldiers, as it states on the monument's rear, north face that it is dedicated: "TO OUR CONFEDERATE DEAD[.]" which means that it clearly falls within the definition of an object of remembrance as it is a monument memorializing the Confederate dead from Pasquotank County, while also commemorating persons engaged in military service within the Confederate Military, and is clearly part of North Carolina's history and ties to national history related to the American Civil War. See *Appeal of Clayton-Marcus Co., Inc.*, 286 N.C. 215, 219; 210 S.E.2d 199, 203 (1974) ("In the construction of any statute, . . . words must be given their common and ordinary meaning .... Where, however, the statute, itself, contains a definition of a word used therein, that definition controls[.]")

14. The Confederate Monument is likewise located within the confines of the downtown historical district as recognized by the National Park Service, and appears on the Register of National Historic Places. Additionally, the Confederate Monument also represents Elizabeth City's history related to the Civil War and the military action that occurred within the confines of Elizabeth City and the environs of Pasquotank County during that period. Thus, there is no denying that the maintenance and inclusion of the Confederate Monument supports both local tourism, and in particular, Civil War tourism as it is part and parcel of those objects, buildings and features that are the essence of the Elizabeth City Historical District and integral features of this National Historic Place.

15. As the Commission is aware, the National Register of Historic Places is the official list of the Nation's historic places that have been recognized as worthy of preservation. The designation on the list is authorized by the National Historic Preservation Act of 1966 (16 U.S.C. § 470), and is managed by the National Park Service, as part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources, which certainly includes the Pasquotank County Confederate Monument in Elizabeth City.

16. The location of this Confederate Monument near the Pasquotank County Courthouse in Elizabeth City, North Carolina, is public property as contemplated under N.C. Gen. Stat. § 100-2.1(b),<sup>4/5</sup> and as result, the Commission may enter a Declaratory Ruling declaring that the Confederate

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<sup>4</sup> See the Blog – *Statues and Statutes: Limits on Removing Monuments from Public Property*, Assoc. Prof. Adam Lovelady – UNC Chapel Hill, School of Government, posted August 22, 2017. Prof. Lovelady states in pertinent part that “North Carolina law limits the extent to which the objects of remembrance may be removed from public property or relocated. That law [e.g. the Act] applies to a broad array of memorials, monuments, statues and other objects, including the many Confederate monuments found on county courthouse grounds and other public property across the State.” (Emphasis added to original).

<sup>5</sup> See also “North Carolina’s Heritage Protection Act: Cementing Confederate Monuments in North Carolina’s Landscape,” Kasi E. Wahlers, *94 N.C.L. Rev.* 2176 (2016) at pp. 2184 to 2185, wherein the author states the following:

In addition to the powers granted to the Commission within the HPA, this appointed body also has the power to approve any monument, memorial, or work of art before it becomes state property. Following the delegation of authority to the Commission, the “Limitations on Removal” subsection states that “[a]n object of remembrance located on public property may not be permanently removed and may only be relocated, whether temporarily or permanently, under the circumstances listed in this subsection and subject to the limitations in this subsection.” The statute then lists two circumstances in which relocation is appropriate: “(1) [w]hen appropriate measures are required by the State or a political subdivision of the State to *preserve* the object [and] (2) [w]hen necessary for *construction, renovation, or reconfiguration* of buildings, open spaces, parking, or transportation projects.” **In sum, the HPA effectively prohibits any object of remembrance from being permanently removed,** and it only permits relocation in those two narrow circumstances. (Emphasis added to original and internal footnotes removed.)

See p. 2189 as follows:

*The statute’s legislative history suggests that the law applies to all public property within the state, effectively prohibiting local governments from controlling their own monuments.* The intent of legislators to make the HPA applicable to all public property is clear when examining rejected proposals to narrow the scope of the HPA. (Emphasis added to original).

Monument located in Elizabeth City, and within Pasquotank County that acknowledges that these entities are political subdivision of the state of North Carolina, and are both subject to the provisions of the Act.<sup>6</sup> Specifically, Pasquotank County is also subject to the restraints and requirements of the Act related to the temporary or permanent removal and relocation of objects of remembrance such as the Confederate Monument at issue in this immediate filing.

17. Finally, as set forth in the Statute, the grounds for removal and relocation of the Monuments are exceedingly narrow. See Kasi E. Wahlers, *North Carolina's Heritage Protection Act: Cementing Confederate Monuments in North Carolina's Landscape*, 94 N.C. L. Rev. 2176, 2185 (Sept. 1, 2016) (“In sum, the [Act] effectively prohibits any object of remembrance from being permanently removed, and it only permits relocation in ... two narrow circumstances.”); see also *id.* at 2188-89 (“When considering the way[,] the statute operates as opposed to how it appears on its face, the North Carolina [Act] is functionally a complete prohibition of monument removal.”).

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Please note that Ms. Wahlers refers to N.C. Gen. Stat. § 100-2.1 as the “Heritage Protection Act.” See Footnote No. 20 at p. 2180. Ms. Wahlers in her article specifically notes that a number of Southern states have passed such laws, which she refers to as heritage protection laws, and which is the actual title of the Tennessee law codified as Tenn. Code. Ann. § 4-1-412. However, when the General Assembly passed North Carolina’s monument protection law, on July 23, 2015, the actual name of the legislation is the “Cultural History Artifact Management and Patriotism Act of 2015,” which is set forth under Chapter 100, as “**Protection of monuments, memorials, and works of art.**”

<sup>6</sup> Chapter 100 of the North Carolina General Statutes also provides authority for political subdivisions of the State, to protect monuments by erecting fencing around the same, and to provide funding to erect monuments to conflicts such as the “War Between the States,” the Great War, and the Second World War. See N.C. Gen. Stat. §§ 100-9 and 100-10, respectively. This statutory authority contemplates that local governments would expend time, resources and treasure to memorialize America’s war veterans, and with the passage of N.C. Gen. Stat. § 100-2.1 in 2015 by the North Carolina General Assembly, the legislature ensured that these objects of remembrance would be preserved for all North Carolinians into the future regardless of whether the history of the wars themselves fell out of vogue and even if the same fate applied to the veterans themselves.

## V. CLAIMS REQUIRING REDRESS

18. Petitioners are aggrieved by the vote of the Pasquotank Board of Commissioners approving the removal of the Monument and other actions taken in violation of the above-named statutes and rules in ways that include, but are not limited to, the following:

- a. The W.F. Martin Camp 1521's members include citizens and taxpayers of Pasquotank County and Elizabeth City, who, because of the direct conflict between the proposed removal of the Confederate Monument and the SCV's stated purpose, suffer an aesthetic injury that is distinct from the aesthetic injury suffered by the population of Pasquotank County as a whole. Also, because the Pasquotank Board of Commissioners failed to follow the requirements of N.C. Gen. Stat. § 100-2.1, the Camp has suffered a procedural injury.
- b. Moreover, the W.F. Martin Camp 1521, as the local camp in Pasquotank County, its members have a sufficient geographical nexus to the monument site in Elizabeth City, North Carolina as to have suffered an environmental and/or aesthetic consequence from the procedural missteps related to the denial of the application of N.C. Gen. Stat. § 100-2.1 by the Pasquotank County Board of Commissioners to these facts.<sup>7</sup> In

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<sup>7</sup> It is important to note that the North Carolina Court of Appeals, in *Orange County v. North Carolina Dep't of Transp.* 46 N.C. App; 350, 265 S.E.2d 890 (NC Ct. App. 1980), discussed the legal standard for persons aggrieved (e.g. aggrieved parties) within an administrative law setting. Specifically, the Court of Appeals in citing a Federal Court case of the *City of Davis v. Coleman*, 521 F.2d 661, 671 (9<sup>th</sup> Cir. U.S. Ct. App. 1975) in relation to an injury suffered by a potential litigant stated that there must be a "sufficient geographical nexus to the site of the challenged project [in this instance challenged action] that ...[the party] may be expected to suffer whatever ... consequences the project may have."

In that same vein, the W.F. Martin Camp 1521, as the local SCV Camp in Pasquotank County will suffer a harm that is unique to the Camp and its members are they are located in the community that will be impacted by the Pasquotank Board of County Commissioners July 13, 2020 vote to remove the Confederate Monument. Moreover, the Camp's members whose families have lived in the county since before the Civil War, are the descendants of the very men memorialized by the County's Confederate Monument. Therefore, the injury suffered by these individuals is more unique than anyone else who is simply a local resident with no genealogical connection to the war, or any other member of the general public. Moreover, in keeping within the framework of the *Orange County* case, it should be noted that the members of the W.F. Martin Camp 1521, and the Camp itself, will suffer an aesthetic injury that is in many ways akin to the environmental

denying that the Act applies, the local government has further injured the W.F. Martin Camp 1521 in failing to submit to the requirements of N.C. Gen. Stat. § 100-2.1 in so much as these actions clear the way for the removal of the Confederate Monument in Elizabeth City without the involvement of the Commission;

- c. The North Carolina Division – SCV’s members include citizens and taxpayers of Pasquotank County and Elizabeth City, who, because of the direct conflict between the proposed removal of the Confederate Monument and the SCV’s purpose, suffer an aesthetic injury that is distinct from the aesthetic injury suffered by the population of Pasquotank County as a whole, and the North Carolina Division – SCV has also suffered by the failure of Pasquotank County to follow the requirements of N.C. Gen. Stat. § 100-2.1;
- d. The North Carolina Division – SCV is the legal successor-in-interest to the United Confederate Veterans (“UCV”) and claims the UCV’s reversionary interest, if any in the Confederate Monument should it no longer be put to public use; and

19. All actions taken to date in violation of the above-named statutes and rules may be corrected by a ruling from DCR that Pasquotank County Board of Commissioner’s July 13, 2020 vote to remove the Confederate Monument was improper, and could only be made with the express intent to seek approval of the North Carolina Historical Commission. However, consequences of inaction by the DCR and the Commission by not adjudicating this matter and ultimately issuing a declaratory ruling are expected to include, but not be limited to:

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injuries that were alleged to be suffered by the local businesses and residents who were challenging the construction of I-40.

- a. Loss of public access to the Monument, and failure to preserve or conserve the Monument in conformity with the requirements of the Act;
- b. Loss of protection for other historic monuments and historic districts statewide under similar factual circumstances, due to the precedential nature of this matter;
- c. The alteration of such historic districts that will remove valuable historical and cultural assets from North Carolina's landscape in the pursuit of sanitizing these areas so that future generations of citizens will not be required to think critically of past events that have shaped the history of the state and the nation; and
- d. The potential withdrawal of the National Historic Landmark designation that protects these districts "[w]hen a designated property is altered so that it has lost its ability to convey its national significance, the withdrawal of its NHL designation must be considered."<sup>8</sup>

20. Moreover, there is a diverse opinion among local governments as to what, if any requirements of the Act apply. Under these circumstances alone, justification exists to hear this matter and reconcile the issues raised as to the application of the Act through the issuance of a fully vetted declaratory ruling.

21. As it stands, it is unclear as to what Pasquotank County intends as the ultimate fate of its Confederate Monument and whether the County understands what is required of it in relation to the restrictions placed upon it by the Act juxtaposed with its express desire to remove the monument (or object of remembrance).

22. This dilemma has been caused by the cavalier comments of Governor Cooper related to the three Confederate Monuments that were ultimately removed from the Old State Capitol

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<sup>8</sup> See <https://www.nps.gov/subjects/nationalhistoriclandmarks/withdrawn.htm>

Grounds at Union Square in Raleigh in June of this year. The comments of Governor Cooper were made on August 15, 2017, in which he stated, among other things, that “[s]ome people cling to the belief that the Civil War was fought over states’ rights. But history is not on their side. We cannot continue to glorify a war against the United States of America fought in the defense of slavery. These monuments should come down.” Emphasis added. Governor Cooper went on to state that “... the North Carolina legislature must repeal a 2015 law that prevents removal or relocation of monuments. Cities, counties and the state must have the authority and opportunity to make these decisions.” Emphasis added to original.

23. When the Confederate Monuments were removed from Raleigh between June 19-26, 2020, Governor Cooper’s anti-monument statements, which he began making in 2017 through June of 2020, became action throughout this summer and have now emboldened cities, counties and municipalities throughout the state to ignore the requirements of the Act. Some of the state’s political subdivisions such as Pasquotank and Gaston counties, either through their own action or through legal opinions provided by counsel have simply opined that the requirements of the Act apply only to the State and not its political subdivisions.

24. Fortunately, Gaston County reversed course when, on August 21, 2020, the North Carolina Division – SCV rejected the County’s offer to take possession of the monument once it was removed, citing the fact that the North Carolina Division – SCV believed the law applied to the political subdivisions of the state, and that the SCV could not take permanent possession. As a result, on August 25, 2020, when presented with the possibility of litigation to determine whether N.C. Gen. Stat § 100-2.1 applied to the Gaston County Confederate Monument, the Gaston County Board of Commissioners cast a new vote to rescind its prior decision in favor of removing the monument. Thus, the question related to whether the Act applies must consider that monuments are structures



that erected on real property, or are fixtures which are affixed to real property that are either owned by the state of North Carolina or owned by the political subdivisions of the State.

25. Additionally, without clear guidance from the Commission related to questions over which it has primary jurisdiction, other local governments within the State have opined that the public safety exception of the Act permits them to wantonly remove Confederate Monuments to protect “public safety” until the threat of protests, vandalism and riots abate, with a ninety-day (90 day) period after cessation of such threats, which the Act would then presumably require the re-erection of these monuments. The later position contorts the clear language of the Act. Moreover, the divergent views taken by political subdivisions of the State have caused a split among local governments. There are those that question whether the Act even applies, or if local government officials through the political process can discern for themselves, what sections of the Act can be cherry picked or contorted to support their position and support subsequent removal without a decision from the Commission holding otherwise.

26. Proposed and actual action taken to ensure “public safety” as justification for removal of “objects of remembrance” also contradicts precedent already established by the North Carolina Historical Commission on August 22, 2018, when disposing of the Petition to Permanently Relocate Objects of Remembrance filed on September 8, 2017, by the North Carolina Department of Administration at Governor Cooper’s behest. It was in this matter that the Commission refused to grant the petition to remove the three Confederate Monuments (objects of remembrance) at Union Square in Raleigh as actual protests and the fear of protests does not fall within the public safety exception under N.C. Gen. Stat. § 100-2.1(c). The Act does not provide for permanent removal based on fear created by protestors. Instead, local governments (and the State itself) have sufficient tools

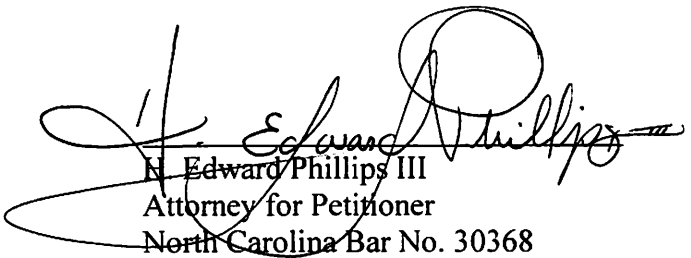
at their disposal to maintain law and order and protect the public safety without creating a political exception that does not exist in order to quell threats of potential violent riots or protests.

**VI. REQUESTED RELIEF**

**WHEREFORE**, based on the foregoing, the Petitioners respectfully request that:

1. The North Carolina Historical Commission set this matter for oral hearing and establish a briefing schedule;
2. Issue a declaratory ruling in favor of Petitioners after hearing and oral argument; and
3. Award the Petitioners such other relief as the Commission deems proper and equitable regarding the issues presented above.

Respectfully submitted this 16<sup>th</sup> day of September 2020, by:



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