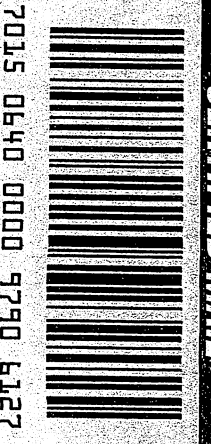


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Franklin, Tennessee 37064



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The Honorable David Ruffin, Chair  
North Carolina Historical Commission  
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Raleigh, North Carolina 27699-4610

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January 27, 2021

## **Via Certified Return Receipt U.S. Mail**

The Honorable David Ruffin, Chair  
North Carolina Historical Commission  
4610 Mail Service Center  
Raleigh, North Carolina 27699-4610

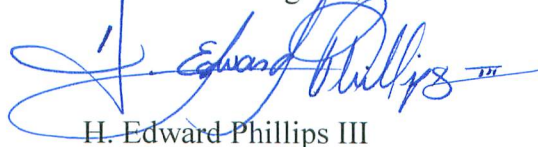
Re: *Petition to Preserve Historic Artifact*

Dear Chairman Ruffin:

Please find enclosed a *Petition to Preserve Historic Artifact* filed on behalf of my client, the *Society for the Historical Preservation of the Twenty-Sixth North Carolina Troops, Inc.* (the 26th NC) in relation to the *Zebulon Baird Vance Monument* located in Asheville, Buncombe County, North Carolina. The 26<sup>th</sup> NC entered into a contract (Donation Agreement) with the City of Asheville in 2015 to raise funds, implement a plan to restore and preserve the monument, and oversee the entirety of the restoration/preservation project. With that in mind, and given the fact that the North Carolina Department of Natural and Cultural Resources supported the restoration/preservation efforts in 2015, the 26<sup>th</sup> NC respectfully seeks the aid of the North Carolina Historical Commission to ensure the continued preservation of this historical and cultural artifact, historical site, and an object of remembrance.

Also enclosed is a duplicate copy of the *Petition* that I asked be stamped received and returned to me in the self-addressed postage pre-paid envelope. As always, please feel free to contact me with any questions.

With Sincere regards,



H. Edward Phillips III



**PETITION TO PRESERVE HISTORIC ARTIFACT – THE ZEBULON VANCE  
MONUMENT AT ASHEVILLE, BUNCOMBE COUNTY, NORTH CAROLINA**

*Introduction*

This *Petition to Preserve Historic Artifact – The Zebulon Vance Monument* (hereinafter, the “Petition”) is submitted to the North Carolina Historical Commission pursuant to N.C. Gen. Stat. §§ 143B-62 and 100-2.1 requesting assistance related to the preservation of the Zebulon Vance Monument (e.g., “object of remembrance”) located in Asheville, Buncombe County, North Carolina.

*Parties*

1. The Petitioner herein is the *Society for the Historical Preservation of the Twenty-Sixth North Carolina Troops, Inc.* (hereinafter the “26<sup>th</sup> NC” or the “Petitioner”) 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 Greensboro, North Carolina.

2. The North Carolina Historical Commission (the “Commission”) is charged with legislative duties and responsibilities as regarding preservation of certain properties within the State that have historical and cultural significance. *See* N.C. Gen. Stat. § 143B-51(a), which vests the Department of Natural and Cultural Resources with “...all executive functions of the State in relation to the development and preservation of libraries, historical records, sites and property...” (Emphasis added to original).

3. The Petitioner asserts that the Zebulon Baird Vance Monument (“*Vance Monument*”) located in Asheville, North Carolina does have historical and cultural significance and should be preserved for future generations of North Carolinians as it is a historical site and is, upon information and belief, property that is owned by the City of Asheville. Further, the historical

and cultural significance of the *Vance Monument* is based upon the fact that the Monument is dedicated to former North Carolina Governor Zebulon Baird Vance,<sup>1</sup> who served two non-consecutive terms as governor of the Old North State, one term as a U.S. Congressman representing the state of North Carolina, and was serving in the Senate of the United States on behalf of the citizens of North Carolina, when he died in 1894, during his third term.<sup>2</sup> Additionally, the Petitioner – 26<sup>th</sup> NC spent significant time, effort and resources to facilitate and fund the 2015 restoration and preservation of the *Vance Monument*; and was the only organization specifically authorized to do so.

4. In its desire to assist in the restoration of the *Vance Monument*, the Petitioner – 26<sup>th</sup> NC, entered into a contract with the City of Asheville on March 30, 2015, for the express purpose of restoring the same, which had been in a state of disrepair for a number of years. To that end, the Petitioner began its restoration and preservation efforts in 2012, resulting in the contract with the City of Asheville, which required among other things, that the 26<sup>th</sup> NC procure funds amounting to over one hundred thirty-eight thousand dollars (\$138,447.38)<sup>3</sup> to complete the task, arrange for necessary permitting, and vetting of contractors while engaging the same to perform the restoration/preservation work. Moreover, the City of Asheville, the Vance Birthplace in Weaverville, North Carolina, and the North Carolina Department of Natural and Cultural

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<sup>1</sup> Zebulon Baird Vance will hereinafter be referred to as “Zebulon B. Vance”)

<sup>2</sup> It is interesting to note that while serving as the wartime Governor of North Carolina, Vance assisted in obtaining food for Federal (Union) prisoners held in Salisbury, North Carolina, and this humanitarian act led to his release by federal authorities after being arrested and imprisoned at the conclusion of the Civil War. See [http://toto.lib.unca.edu/web\\_exhibits/WNC\\_pack/default\\_pack.htm](http://toto.lib.unca.edu/web_exhibits/WNC_pack/default_pack.htm).

<sup>3</sup> The City of Asheville donated a total of thirty thousand one hundred six dollars and thirty-eight cents (\$30,106.38), and Buncombe County contributed seven thousand five hundred dollars (\$7,500) to the restoration/preservation efforts. The total contributed by the 26<sup>th</sup> NC, once the city and county contributions are removed, is significant at one hundred eight thousand three hundred forty-one dollars (\$108,341) and represents the overwhelming majority of funds raised for the *Vance Monument* project restoration/preservation project.

Resources all supported these restoration/preservation efforts, which culminated in a rededication ceremony for the newly restored and preserved “monument” in June of 2015.

5. It is the express statutory duty of the North Carolina Historical Commission to evaluate and aid in historic preservation within the state of North Carolina, including providing assistance to agencies, counties, municipalities, organizations and individuals to further those ends. The Commission’s preservation efforts involve the acquisition, disposition, preservation, and use of records, artifacts, real and personal property, and other materials and properties of historical, archaeological, architectural, or other cultural value. See N.C. Gen. Stat. § 143B-62 (emphasis added to original).

6. The Petitioners seek the aid of the Commission to assist and further their efforts aimed at preserving the *Vance Monument* (“object of remembrance”) which, as set forth above, is located in Asheville, Buncombe County, North Carolina under the powers granted to the Commission in Section 143B-62,<sup>4</sup> and other powers the Commission is authorized to exercise pursuant to N.C. Gen. Stat. § 100-2.1 to assist in the Petitioner’s continuing effort to preserve the *Vance Monument*, which is also an object of remembrance and is further protected under Section 100-2.1.

### Property

7. As the Commission is likely aware, the Zebulon *Vance Monument* (or object of remembrance), which was dedicated on May 10, 1898, and rededicated on June 6, 2015, stands on

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<sup>4</sup> Not only does N.C. Gen. Stat. § 143B-62, require that the Commission aid in historic preservation, subsection (f) of section 143B-62 requires that the Commission provide “... State aid or appropriations through the Department of Natural and Cultural Resources to counties, municipalities, organizations, or individuals for the purpose of historic preservation or restoration.” (Emphasis to original). The Petitioner, the 26th NC, is an “organization” which has taken an active role, as part of its mission, to engage in historic preservation, and now seeks the aid of the Commission as it relates to the *Vance Monument*.

Pack Square Park located at the intersection of Broadway, Market, and College Streets in Asheville, North Carolina.<sup>5/6</sup> All of the streets near the *Vance Monument*, as well as Pack Square are open to the public as public property. Further, as set forth above, during the 2015 Monument Restoration, the 26<sup>th</sup> NC raised and donated for materials, services, and labor associated with the restoration of the *Vance Monument*, with the restoration work being completed that same year using all of the donations raised by the Petitioner.

8. Restoration as defined by Merriam Webster's Dictionary is an "act of restoring or the condition of being restored: such as (a): a bringing back to a former position or condition." Further, as defined by Merriam Webster's Dictionary preservation "as the act, process, or result of preserving something: such as (a): the activity or process of keeping something valued alive, intact, or free from damage or decay."

9. Despite the work of the Petitioner in 2015 to restore and/or preserve the *Vance Monument*, the Buncombe County Commission unanimously voted to adopt a task force recommendation to remove and demolish of the *Vance Monument* on December 7, 2020. The following day on December 8, 2020, the Asheville City Council also voted six to one (6-1) to remove this protected object of remembrance.

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<sup>5</sup> The *Vance Monument* and Pack Square Park are also part of the Downtown Asheville Historic District, and is specifically included within the district on the National Register for the Historic Places.

<sup>6</sup> Approximately two years after the death of Senator Vance, noted citizen of Asheville, George Willis Pack approached the Buncombe Co. Board of Commissioners about erecting a monument to his friend, and proposed donating \$2,000 to that effort in May of 1896. The County Board of Commissioners accepted his offer and donated the land upon which to erect the *Vance Monument*. Pack was born in Peterboro, Fenner Township in Madison County, New York on June 6, 1831. In seeking to expand his lumber business, Pack came to Asheville, and it was there that he settled and became involved in local and national politics from his newly adopted community. During the Civil War, he was a member of the Michigan General Assembly, and supported Abraham Lincoln's reelection bid in 1864, becoming an elector from that state. Pack was also a staunch abolitionist, having been influenced in his religious instruction by the anti-slavery leader and philanthropist, Gerrit Smith while living in his home state of New York. As is common knowledge, Pack Square Park where the *Vance Monument* is located is named in his honor. See: [http://toto.lib.unca.edu/web\\_exhibits/WNC\\_pack/default\\_pack.htm](http://toto.lib.unca.edu/web_exhibits/WNC_pack/default_pack.htm).

### Jurisdiction

10. The Commission has jurisdiction to approve the Petition under the terms of N.C. Gen. Stat. § 143B-62 provides that the Commission has the authority to provide aid to organizations (and other entities, including agencies, counties, municipalities and individuals) “...in the interest of historic preservation.” Moreover, N.C. Gen. Stat. § 100-2.1(b), mandates in pertinent part 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.” (Emphasis added to original). Additionally, standing is conferred to the 26<sup>th</sup> NC under N.C. Gen Stat. § 143B-62 as the 26<sup>th</sup> NC is an organization that is expressly seeking the Commission’s aid in preserving the *Vance Monument*. Moreover, the efforts of the 26<sup>th</sup> NC, in the 2015 restoration/preservation project of the *Vance Monument* in raising the majority of funding and expending time and effort to do the same has provided this organization with standing.

11. It is important to note that Zebulon B. Vance, in addition to his political career serving the citizens of North Carolina, he also served as a Colonel in the 26th North Carolina Infantry Regiment during the American Civil War. As a result of his military service, and through action taken by both the Congress of the United States and the Department of Defense, there has been a recognition that American Veterans as defined under federal law also include any persons who “served for ninety days or more in the active military or naval service during the Civil War”(see 38 U.S.C. § 1532(c) (2018)) including those individuals “...who served in the military or naval forces of the Confederate States of America...” See 38 U.S.C. § 1501(3) (2018). Thus, Zebulon B. Vance is in fact an American War Veteran.



12. Moreover, in a case recently decided by a three-judge panel by the North Carolina Court of Appeals, the Honorable John M. Tyson, in his dissenting opinion noted that veterans such as Colonel Zebulon B. Vance fall under the protection of federal statutes that seek to ensure the preservation of memorials to American War Veterans. In that case, *United Daughter of the Confederacy, North Carolina Division, Inc. vs. City of Winston-Salem*, (NC Ct. App. No. COA19-947), Judge Tyson’s dissent stated that the statue (e.g. memorial) in question, the Confederate Soldiers Memorial at the old Forsythe County Courthouse located in the City of Winston-Salem, was properly protected by numerous federal statues including “Veterans Memorial Preservation and Recognition Act 18 U.S.C. § 1369 (2018) Furthermore, as Judge Tyson opined, that not only Congress desired to protect these memorials, that taking any action against the same was violative of federal law. Therefore, removing the *Vance Monument* is a clear violation of these federal statues, and the exact action that the Historical Commission has the duty to protect against.

13. Finally, it must be noted that the application of N.C. Gen. Stat. § 100-2.1 to monuments, statues, memorials and the like (“objects of remembrance”) owned by political subdivisions of the state of North Carolina is now pending before the Supreme Court of North Carolina as the United Daughters of the Confederacy, North Carolina Division, Inc. (“UDC”), appealed the decision by the Court of Appeals. The appeal was perfected by the filing the UDC’s Notice of Appeal on January 14, 2021. As a result, the questions related to standing of organizations such as the UDC, the application of N.C. Gen. Stat. § 100-2.1, application of federal law to North Carolina objects of remembrance, and the duties and obligations of the political subdivisions of the state of North Carolina and those of the North Carolina Historical Commission to enforce the law are in a state of flux until resolved by the Supreme Court of North Carolina.

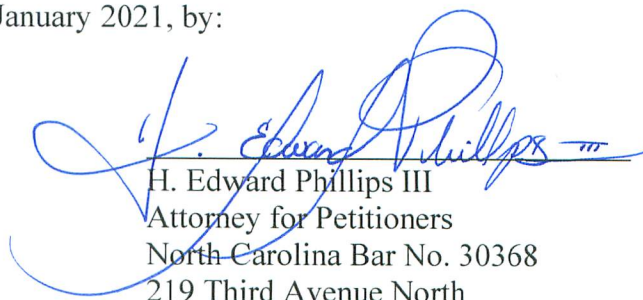


Requested Relief

**WHEREFORE**, Petitioner prays that the North Carolina Historical Commission:

1. This *Petition* be deemed properly filed and promptly considers it at the Commission's next meeting, or schedules a special meeting to consider the same;
2. That should the North Carolina Historical Commission determine it is appropriate that the Petitioner file a legal brief, the Petitioner shall be provided the opportunity to do so and grant Petitioner the opportunity to present oral argument prior to any agency action;
3. That should no briefing be required, then the Petitioner requests that the North Carolina Historical Commission promptly approve this *Petition* and enter an order requiring that the *Vance Monument* ("object of remembrance") be maintained in place at its current location in Asheville, North Carolina at Pack Square Park in Downtown Asheville; and
4. Award the Petitioner such further and other relief as the North Carolina Historical Commission deems just and proper, and is authorized and obligated to do so.

Respectfully submitted this 27<sup>th</sup> day of January 2021, by:

  
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