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Gwen Barlow

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Who Owns the Confederate Monument in Winston-Salem?*

In 1905, the United Daughters of the Confederacy's James B. Gordon Chapter of Winston-Salem erected a monument to the Confederacy on the grounds of the Forsyth County Courthouse. The monument stood on Forsyth County property until 2014 when the Forsyth County Commissioners sold the old courthouse and the surrounding courthouse square to a real estate developer. After multiple instances of vandalism to the monument, the City of Winston-Salem ordered the United Daughters of the Confederacy ("UDC") to remove the monument. The city and Forsyth County believe that the UDC owns the monument. But, the UDC says that Forsyth County is the true owner. Regardless, the city removed the monument from the courthouse square in March 2019. Ongoing legal proceedings between the UDC and the city, county, and current property owner focus on the question of whether the city is allowed to remove the monument under a state law that prohibits the permanent removal of objects of commemoration. This Recent Development argues that determining the owner of the monument is an essential threshold question and finds that Forsyth County owns the monument using two theories: the common law of gifts and constructive ownership via government speech.

In 1905, the United Daughters of the Confederacy's James B. Gordon Chapter of Winston-Salem erected a monument to the Confederacy on the grounds of the Forsyth County Courthouse.¹ For the next 109 years, the monument, a Confederate soldier holding a rifle by his side atop a pedestal thirty feet high, stood on Forsyth County property. In 2014, the Forsyth County Commissioners sold the old courthouse and the surrounding courthouse square to a real estate developer. The deed excluded certain artifacts and all the public monuments from the sale and allowed for future easements for the county to maintain or remove the artifacts or monuments.² On December 31, 2018, after a few instances of vandalism, the City of Winston-Salem wrote to the United Daughters of the Confederacy ("UDC") directing it to remove the monument because the city believed that the monument belonged to the UDC.³

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1. John Hinton, *Timeline of Winston-Salem's Confederate Monument*, WINSTON-SALEM J. (Jan. 25, 2019), https://www.journalnow.com/uploaded_pdfs/w-nws-statue-p/pdf_df9610c2-2651-5d4d-a06a-4476b0e07b3b.html [<https://perma.cc/7L5D-W47Z> (dark archive)].

2. Warranty Deed from Forsyth County, North Carolina, to Winston Courthouse, LLC (Mar. 18, 2014) Book 3170, Page 2422, 2423, Forsyth County Register of Deeds.

3. Letter from Angela I. Carmon, City Attorney of Winston-Salem, to Peggy Johnson, President of the N.C. Chapter of the United Daughters of the Confederacy, et al. 2 (Dec. 31, 2018), <https://bloximages.newyork1.vip.townnews.com/journalnow.com/content/tncms/assets/v3/editorial/5/f5/5f58d9e0-e174-552b-af11-9ab612b28cc1/5c2c30060d61b.pdf.pdf> [<https://perma.cc/B7R6-5HVX>].

But the UDC contends that it does not own the monument. The UDC believes that the county does.⁴ The county denies ownership and says the UDC owns it. If no party claims it, who owns the Confederate monument in Winston-Salem?

The answer to that question seems like a rendition of Who's on First? No one is sure who owns the monument, and each says it is owned by the other. There are a few instances suggesting that the UDC had claimed an ownership interest over the course of the monument's life.⁵ Now, the UDC argues that Forsyth County owns the monument, because if it does, the North Carolina Heritage Protection Act of 2015⁶ would apply to the monument. Forsyth County, the City of Winston-Salem, and Winston Courthouse, LLC⁷ (the current owner of the courthouse square) argue that the UDC owns the monument for precisely the opposite reason, so that the Heritage Protection Act would not apply.

The Heritage Protection Act⁸ limits permanent removal of all "object[s] of remembrance" from public property.⁹ The Act defines an "object of remembrance" as "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."¹⁰ The Act allows for these objects to be moved on a temporary basis if required to preserve the object or because of construction.¹¹ The Act also permits an "object of remembrance" to be removed permanently under certain conditions: first, "[a]n object of remembrance owned by a private party that is located on public property and that is the subject of a legal agreement between the private party and the State

4. Plaintiffs' Memorandum of Law As to Motion to Dismiss and As to Motion for Preliminary Injunction at 13, *United Daughters of the Confederacy N.C. Div., Inc. v. City of Winston-Salem*, 19 CVS 725 (Super. Ct. N.C. Apr. 25, 2019).

5. See Defendant City of Winston-Salem's Brief in Support of Its Motion to Dismiss at 5, *United Daughters of the Confederacy N.C. Div., Inc.*, 19 CVS 725 (Apr. 25, 2019).

6. See generally Kasi E. Wahlers, *North Carolina's Heritage Protection Act: Cementing Confederate Monuments in North Carolina's Landscape*, 94 N.C. L. REV. 2176, 2180 n.20 (2016) (explaining that statutes such as this one are normally called "Heritage Protection Acts" despite their titles in the enacting statutes), <https://pdfs.semanticscholar.org/6c0b/e44057160441612dbb5aa53290718e04c0ac.pdf> [<https://perma.cc/87UF-LFPT>].

7. Winston Courthouse, LLC claims ownership of the land beneath the monument because it has "not granted any easement to the County with respect to the Statue" and so the monument "is not located on public property and thus is not covered" by the Heritage Protection Act. Letter from Scott T. Horn, Allman Spry Davis Leggett & Crumpler, P.A., to Peggy Johnson, President of the N.C. Chapter of the United Daughters of the Confederacy et al. 2 (Jan. 8, 2019), <https://www.wfdd.org/sites/default/files/Winston-Courthouse-Confederate-Statue-1-8-19.pdf> [<https://perma.cc/JMX7-NG3G>].

8. N.C. GEN. STAT. § 100-2.1 (2017); see also Cultural History Artifact Management and Patriotism Act of 2015, ch. 170, § 3.c, 2015 N.C. Sess. Laws 436, 437 (codified at N.C. Gen. Stat. § 100-2.1).

9. N.C. GEN. STAT. § 100-2.1.

10. *Id.* § 100-2.1(b).

11. *Id.* § 100-2.1(b)(2).

or a political subdivision of the State governing the removal or relocation of the object” may be removed; second, the object may be removed if a “building inspector or similar official has determined [that the object] poses a threat to public safety because of an unsafe or dangerous condition.”¹²

The City of Winston-Salem wrote to the UDC asking the group to remove the monument under the first exception. When it became clear that the UDC had no intention of removing the monument, the Assistant City Manager of the City of Winston-Salem made a public nuisance declaration that the monument should be removed “for the safety of the public . . . and for the preservation and safety of the Statue.”¹³

Since the horrific events that took place in Charlottesville, Virginia, in August 2017,¹⁴ national attention has been called to the continuing dominance of the Confederacy in the built environment of the South.¹⁵ In the aftermath, municipalities, counties, and universities across the country—particularly in the South—have actively worked to avoid becoming “the next Charlottesville.”¹⁶ In its New Year’s Eve letter to the UDC, the Winston-Salem City Attorney’s Office emphasized this, directing the UDC to “remove and relocate . . . the subject Confederate statue from its present location to a more secure location

12. *Id.* § 100-2.1(c)(2)–(3).

13. Defendant City of Winston-Salem’s Affidavit in Opposition to Plaintiffs’ Motion for Injunctive Relief (Fourth Affidavit of Damon Dequenne, Assistant City Manager, City of Winston-Salem) at 2, *United Daughters of the Confederacy N.C. Div., Inc. v. City of Winston-Salem*, 19 CVS 725 (Super. Ct. N.C. Apr. 30, 2019).

14. Joe Heim et al., *One Dead As Car Strikes Crowds Amid Protests of White Nationalist Gathering in Charlottesville*, WASH. POST (Aug. 13, 2017), https://www.washingtonpost.com/local/fights-in-advance-of-saturday-protest-in-charlottesville/2017/08/12/155fb636-7f13-11e7-83c7-5bd5460f0d7e_story.html [<https://perma.cc/HH6U-NQBF> (dark archive)] (describing how Neo-Nazis and white supremacist groups staging a “Unite the Right” rally protesting the removal of a monument of Confederate General Robert E. Lee violently clashed with counterprotesters leading to dozens of injuries and one death).

15. *See, e.g.*, David A. Graham, *The Stubborn Persistence of Confederate Monuments*, ATLANTIC (Apr. 26, 2016), <https://www.theatlantic.com/politics/archive/2016/04/the-stubborn-persistence-of-confederate-monuments/479751/> [<https://perma.cc/D864-LXD4> (dark archive)]; Sarah Mervosh, *What Should Happen to Confederate Statues? A City Auctions One for \$1.4 Million*, N.Y. TIMES (June 22, 2019), <https://www.nytimes.com/2019/06/22/us/confederate-statues-dallas-nashville.html> [<https://perma.cc/4UQY-YFA9> (dark archive)]; Guelda Voien, *The Number—and Locations—of Confederate Monuments in the U.S. Prove How Much Work We Have Left To Do*, ARCHITECTURAL DIG. (Aug. 17, 2017), <https://www.architecturaldigest.com/story/confederate-monuments> [<https://perma.cc/3B82-U4XD>].

16. *See, e.g.*, Janell Ross, Mark Berman & Joel Achenbach, *Mayors Taking Swift Action To Avoid Becoming the Next Charlottesville*, WASH. POST (Aug. 16, 2017), https://www.washingtonpost.com/national/mayors-taking-swift-action-to-avoid-becoming-the-next-charlottesville/2017/08/16/cef677ba-829c-11e7-902a-2a9f2d808496_story.html [<https://perma.cc/4B5#-WLE3> (dark archive)] (describing actions of state and local governments to remove Confederate monuments and to prevent clashes between white nationalists and counterprotestors in the wake of the events in Charlottesville).

where the same can be protected from vandals and others looking to create a Charlottesville type incident in Winston-Salem.”¹⁷

Although the parties to this controversy stake their positions of ownership on the Heritage Protection Act, whether or not the Act applies is of little importance. First, the Act has not been litigated and thus it is unclear how North Carolina courts would deal with this hot topic. Second, the monument has already been removed from the courthouse square,¹⁸ and until the legal battles are resolved it is unlikely that the statue will be re-erected.¹⁹ But ownership of Confederate monuments is a larger issue for North Carolina.²⁰ Because the Heritage Protection Act is still good law, determining ownership of other monuments may not bring them down quickly. But I argue that determining monument ownership will force North Carolina’s municipal and county governments to reckon with their complicity in maintaining racist, white supremacist systems and their responsibility to their current citizens to reshape our civic landscapes.

As I began research for this project, I reached out to Adam Domby, Assistant Professor of History at the College of Charleston, for advice about where to look for a deed of gift or some other document that would easily prove ownership and render this whole exercise moot. Unfortunately for me, he told me that there is likely no documentation of the sort because those who played a part in the erection of this monument never imagined an effort to remove the monument; therefore, there would be no need to ensure legal ownership.²¹ To be certain, I have found no such evidence that there is a title or a deed to this monument, and further, the Clerk of the Forsyth County Board of County Commissioners contends that there is no such title or deed.²²

17. Letter from Angela I. Carmon to Peggy Johnson, *supra* note 3, at 2.

18. Sarah Newell, *As Confederate Statue Comes Down, Onlookers Cheer—And Criticize the Move*, WINSTON-SALEM J. (Mar. 12, 2019), https://www.journalnow.com/news/local/as-confederate-statue-comes-down-onlookers-cheer-and-criticize-the/article_c6e24155-a8cf-5e83-9cf8-92fcd296488a.html [<https://perma.cc/87UF-LFPT> (dark archive)].

19. Wesley Young, *Fate of Confederate Statue From Downtown Winston-Salem Might Not Be Sealed After All*, WINSTON-SALEM J. (Aug. 20, 2019), https://www.journalnow.com/news/local/fate-of-confederate-statue-from-downtown-winston-salem-might-not/article_4e09cb10-3212-512e-9181-611179552955.html#1 [<https://perma.cc/7Q3V-3C32> (dark archive)].

20. See, e.g., Casey Mann, *UDC Awarded Temporary Restraining Order Against Statue Removal, Claiming it Would Cause ‘Irreparable Harm’*, CHATHAM NEWS + REC. (Oct. 28, 2019) <https://www.chathamnewsrecord.com/stories/udc-awarded-temporary-restraining-order-against-statue-removal-claiming-it-would-cause,3706?> [<https://perma.cc/CNN4-SH4F>] (detailing the legal fight between the UDC and County Commissioners of Chatham County, NC over potential removal of the Confederate monument from the county courthouse grounds).

21. Email from Dr. Adam Domby, Assistant Professor of History at College of Charleston to author (Mar. 7, 2019) (on file with author).

22. Affidavit of Ashleigh M. Sloop at 2, United Daughters of the Confederacy N.C. Div., Inc. v. City of Winston-Salem, 19 CVS 725 (Super. Ct. N.C. Apr. 25, 2019).

Without any legal documentation clearly establishing ownership of the monument, the determination should be made by a jury. In *Bullman v. Edney*,²³ the Supreme Court of North Carolina stated that “[o]wnership of personal property, when challenged, is always a mixed question of law and fact. If the facts . . . be in dispute, the question is left to the jury.”²⁴ Now that the monument has been removed, it would be wise for Forsyth County or the UDC to bring an action for a declaratory judgment by jury trial to bring finality to the issue.²⁵ In North Carolina, courts “have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed.”²⁶ Declaratory judgments do not allow for “litigants to fish in judicial ponds for legal advice,” but instead, they serve to “stabiliz[e] legal relations by adjudicating disputes before they have ripened into violence and destruction of the *status quo*.”²⁷ Therefore, a declaratory judgment is the correct way to handle disputes of ownership of this Confederate monument and the many others across the state.

Without any legal documentation of ownership or a declaratory judgment, the issue of ownership can be analyzed under common law property principles and alternative theories of ownership. This Recent Development contends that Forsyth County owns the monument using two theories. First, I apply the common law of gifts to demonstrate that, even without formal documentation, the monument should be construed as a gift given by the UDC to the county. Second, I propose that the monument became county property through constructive ownership. I use the government speech doctrine to build the case for Forsyth County’s constructive ownership of the monument. Specifically through the actions of the county, including giving its permission to erect the monument, and the continued maintenance of the monument for over one hundred years.

This Recent Development will proceed in four parts: Part I discusses the history of the monument; Part II discusses ownership under common law property doctrine; Part III discusses the government speech doctrine and how it applies in this case; and Part IV concludes that Forsyth County owns the monument and that it should take responsibility for its role in upholding white supremacy through its civic landscape.

23. 232 N.C. 465, 61 S.E.2d 338 (1950).

24. *Id.* at 467, 61 S.E.2d at 339.

25. N.C. GEN. STAT. § 1-261 (2017) (allowing for jury trials for declaratory judgment actions if there are questions of fact).

26. *Id.* § 1-253.

27. *Lide v. Mears*, 231 N.C. 111, 117–18, 56 S.E.2d. 404, 409 (1949).

I. THE HISTORY OF THE CONFEDERATE MONUMENT IN WINSTON-SALEM

In the immediate years after the Civil War, memorials to the Confederate dead were erected in cemeteries as women's societies ensured that Confederate soldiers were properly buried and mourned.²⁸ Historian Drew Gilpin Faust argues that this "celebration of Confederate memory . . . emerged in the ensuing decades . . . [in] an effort to affirm that the hundreds of thousands of young southern lives had not, in fact, been given in vain."²⁹ Then, near the turn of the twentieth century, Confederate memorials sprung up more frequently in prominent public places because of the fundraising efforts of private organizations like the UDC.³⁰ The rise in Confederate memorials during this time was not a coincidence.³¹

The years after the Civil War and Reconstruction saw a shift in North Carolina politics. In 1894, a "Fusion" alliance, uniting the Populist Party and the Republican Party, brought small farmers together with blue-collar workers—Blacks together with whites—to challenge the white supremacist, Democratic government that dominated state politics.³² That year, the Fusionists won "almost two-thirds of the seats in the state legislature, ending the long tradition of Democratic control."³³ Two years later, the Fusionists won the governorship and gained further control of the General Assembly.³⁴ Fearful of losing more power, Democrats began a campaign to ensure that in the next election the Fusionists would be sent home from Raleigh, adopting "class-biased race baiting" as their strategy.³⁵ Most newspapers at the time were owned by Democrats,³⁶ and the party used this platform to "hammer[] away relentlessly at the theme of black evil, white unity, and the absolute necessity of the color line."³⁷ The Democrats then began a campaign of terror to reclaim their stature,

28. See DREW GILPIN FAUST, *THIS REPUBLIC OF SUFFERING* 238–49 (2008).

29. *Id.* at 193.

30. See JACQUELYN DOWD HALL, *SISTERS AND REBELS* 42 (2019).

31. FAUST, *supra* note 27, at 247 ("Tied to that era's virulent politics of Jim Crow, disfranchisement, and states' rights, Confederate memory became in the 1890s a force that effectively undermined the emancipationist, nationalist, and egalitarian meaning of the war.")

32. THOMAS W. HANCHETT, *SORTING OUT THE NEW SOUTH CITY* 70–82 (1998).

33. *Id.* at 82.

34. *Id.* at 83.

35. Michael Honey, *Class, Race, and Power in the New South*, in *DEMOCRACY BETRAYED* 163, 171 (David S. Cecelski & Timothy B. Tyson eds., 1998).

36. *Id.*

37. HANCHETT, *supra* note 31, at 85.

which culminated in the Wilmington Massacre³⁸ of 1898.³⁹ Alfred M. Waddell, who would later speak at the dedication of the Confederate Monument in Winston-Salem, “led an army of white men into a predominantly Black Wilmington neighborhood.”⁴⁰ What followed was the slaughter of somewhere between seven and twenty-one black men.⁴¹ Through the terror and destruction of the Wilmington Massacre, further threats of violence, and the chorus of race-baiting in newspapers, white supremacist Democrats were able to suppress the Fusionist vote and Democrats regained control of the North Carolina legislature.⁴² Once back in power, they swiftly disenfranchised Blacks and poor whites to ensure that they would not lose power again.⁴³

The women who supported the Democrats, like the members of the UDC, began fundraising campaigns to erect monuments to the Confederacy to spread the message of white supremacy.⁴⁴ Throughout the South, Confederate monuments were erected by civic organizations of white southern women, who, through their work, became “architects of white historical memory.”⁴⁵ Women’s civic groups throughout the country gave white women voices outside of the home when they were still denied the vote or direct political influence.⁴⁶ In the aftermath of the Civil War, women’s groups erected monuments to the Confederate dead in newly formed Confederate cemeteries.⁴⁷ They created and facilitated the “ritual[] of remembrance” of Confederate Memorial Day.⁴⁸ Even as new generations began replacing the founders of these groups, the dedication to the narrative of the Confederacy did not wane. Groups like the UDC continued their work of instilling the values of white supremacy through monitoring and influencing school curricula, throwing parades and celebrations to the Confederacy, and raising money to erect monuments in public spaces.⁴⁹ The proliferation of Confederate monuments across the South demonstrates

38. White supremacist propaganda has long referred to the violence in Wilmington as the “Wilmington Race Riots.” This is a mischaracterization, and thus it is referred to in this Recent Development as the “Wilmington Massacre.” See Adrienne LaFrance & Vann R. Newkirk II, *The Lost History of an American Coup D’État*, ATLANTIC (Aug. 12, 2017), <https://www.theatlantic.com/politics/archive/2017/08/wilmington-massacre/536457/> [<https://perma.cc/2C8V-SSS3> (dark archive)].

39. Stephen Kantrowitz, *The Two Faces of Domination in North Carolina, 1800–1898*, in DEMOCRACY BETRAYED, *supra* note 34 at 95, 106.

40. *Id.*

41. *Id.* at 107.

42. *Id.*; Honey, *supra* note 34, at 173.

43. HANCHETT, *supra* note 31, at 86.

44. FAUST, *supra* note 27, at 247.

45. W. FITZHUGH BRUNDAGE, THE SOUTHERN PAST 15 (2005).

46. *Id.* at 15, 24–25.

47. *Id.* at 25–27.

48. *Id.* at 26.

49. *Id.* at 26, 54.

that these women “succeeded in their goal of filling the civic spaces of the South with monuments glorifying the Confederacy . . . for ‘unborn generations.’”⁵⁰

The UDC North Carolina Division was founded in 1897,⁵¹ and the James B. Gordon Chapter of Winston-Salem was founded soon after in 1898.⁵² The chapter began fundraising soon after its chartering to commission a Confederate monument and place it on the courthouse square.⁵³ As part of its fundraising efforts, the chapter presented “[t]he first moving picture ever shown in Winston-Salem.”⁵⁴ In March 1905, the Forsyth County Board of County Commissioners “grant[ed] permission to the . . . Daughters of the Confederacy to erect on the northwest corner of the court house square a monument to the Confederate dead.”⁵⁵ In October 1905, to much fanfare, the James B. Gordon Chapter unveiled the monument.⁵⁶ Alfred M. Waddell of Wilmington, who led the Wilmington Massacre, gave the dedication address, exclaiming:

I thank God that monuments to [our] Confederate soldier[s] are readily multiplying in the land. . . . I rejoice that, instead of losing interest in this subject, the Southern people have made their increasing prosperity the measure of their contribution to it, and I rejoice still more that behind every movement of this kind, from start to finish have been our ever faithful and devoted women, who as the present and future mothers of Southern youth, will keep alive in their breasts a just sense of the unselfish patriotism and splendid services of the Confederate soldier and inspire them with an ambition to become his worthy successor.⁵⁷

After the monument was erected, the chapter moved on to other matters. It raised money to send to Confederate veterans and widows homes; it sent funds to help erect or care for other monuments and memorials in North Carolina and in the South; and it supported local schools through purchasing and donating educational materials about the “War Between the States.”⁵⁸

50. *Id.* at 54.

51. *Division History*, UNITED DAUGHTERS CONFEDERACY N.C. DIVISION, INC., <https://ncudc.org/blog/about/division-history/> [<https://perma.cc/NL8S-JEZV>].

52. JANET BLUM SEIPPEL, HISTORY OF THE JAMES B. GORDON CHAPTER UNITED DAUGHTERS OF THE CONFEDERACY MARCH 30-1898-1973 (1973) (available at the State Archives of North Carolina).

53. *Id.*

54. *Id.*

55. *Daughters of the Confederacy Will Place Monument on the North West Side Public Square*, WINSTON-SALEM J., Mar. 21, 1905, at 1, https://www.newspapers.com/clip/27209521/winstonsalem_journal/ [<https://perma.cc/A7S3-5U2H> (dark archive)].

56. *Confederate Monument Unveiled*, WINSTON-SALEM J., Oct. 4, 1905, at 1, <https://bloximages.newyork1.vip.townnews.com/journalnow.com/content/tncms/assets/v3/editorial/f/9c/f9ce2d14-9b2b-11e7-93d3-bf173f92c4fc/59bd9b5ff0355.image.png> [<https://perma.cc/7K58-6M78> (dark archive)].

57. *Id.*

58. See SEIPPEL, *supra* note 51.

There is no evidence in the chapter's minutes that it continued to fund or provide for the care and maintenance of the Confederate monument erected on the courthouse square.⁵⁹ But in 1975, the chapter's minutes include a recommendation by its president "[t]o support the relocation of the Confederate Monument . . . from the Courthouse Square to a 'Monument Square', possibly on the Trade Street Mall."⁶⁰ There is no other mention of the monument in the minutes available at the North Carolina State Archives.

The Confederate Soldiers Monument, as it was known, remained on government-owned property for over one hundred years even as the appearance and status of the building it sat next to changed. When the monument was dedicated, the Forsyth County Courthouse had recently been rebuilt, with a highly stylized building replacing its simple predecessor.⁶¹ This courthouse stood until the 1920s when it was torn down and replaced with a new building, which was then altered in the 1960s.⁶² Shortly thereafter, Forsyth County moved all court functions out of the old courthouse and began using it as office space.⁶³ The county moved out of the courthouse altogether in 2004.⁶⁴ In 2012, the Forsyth County Commissioners approved the sale of the building and surrounding land to Clachan Properties LLC of Richmond, Virginia. The county and the developers closed on the property in early 2014.⁶⁵ The warranty deed between Clachan and Forsyth County "specifically excluded . . . the 'public monuments located outside of the building', and the Owner [Clachan] agreed to grant the County, at the County's request, necessary easements to allow the County continued access to the land and building to 'maintain and/or remove' the monuments at the County's expense."⁶⁶ The building is now a luxury apartment building known as 50 West Fourth.⁶⁷

59. The North Carolina State Archives holds the records of the James B. Gordon Chapter, including nearly all of their minutes. United Daughters of the Confederacy-James B. Gordon Chapter Records, 1898-1998 ORG.139, State Archives of North Carolina.

60. CINDY H. CASEY, *HISTORY OF THE JAMES B. GORDON CHAPTER UNITED DAUGHTERS OF THE CONFEDERACY MARCH 30-1974-1998* (1998) (available at the State Archives of North Carolina).

61. See CATHERINE W. BISHIR & MICHAEL T. SOUTHERN, *A GUIDE TO THE HISTORIC ARCHITECTURE OF PIEDMONT NORTH CAROLINA* 380 (2003).

62. *Id.*

63. Meghann Evans, *County Completes Courthouse Sale, Library Purchase*, WINSTON-SALEM J. (Mar. 19, 2014), https://www.journalnow.com/news/local/county-completes-courthouse-sale-library-purchase/article_be7400e5-5d9e-5824-825d-395d6168036c.html [<https://perma.cc/6JHU-EGPR> (dark archive)].

64. *Id.*

65. *Id.*

66. Letter from Scott T. Horn to Peggy Johnson, *supra* note 7, at 2; see also Warranty Deed from Forsyth County, North Carolina to Winston Courthouse, LLC, *supra* note 2, at 2422.

67. See 50 W. FOURTH, <https://50westfourth.com/> [<https://perma.cc/MUK9-YB7L>]; see also Warranty Deed from Forsyth County, North Carolina, to Winston Courthouse, LLC, *supra* note 2, at 2422.

The most recent controversy over the monument began after the clashes in Charlottesville when vandals used black spray paint to cover the words “Our Confederate Dead” on the pedestal in addition to other graffiti.⁶⁸ A few days prior, a small sign that read “Shame” appeared in front of the statue.⁶⁹ Around Christmas Day, 2018, the monument was again vandalized when the words “Cowards & Traitors’ were written in what looks like a black marker underneath the inscription.”⁷⁰ Less than a week later, the City Attorney’s Office of Winston-Salem wrote to the UDC ordering the removal of the monument.⁷¹ The City Attorney’s Office further wrote, “[i]t does not appear that the statue is publicly owned,” and asserted that “[c]laims of ownership of the statue have come from the United Daughters of the Confederacy.”⁷² It concluded that, “[t]he City is not in a position to provide constant security checks necessary for the protection of the statue and to mitigate the recurring acts of vandalism.”⁷³

The UDC responded with a lawsuit and a press release: “In the 114 years which the Confederate Memorial has stood in Winston Salem [sic], there have only been two recorded instances of graffiti vandalism with no arrests, and just a couple of peaceful protests. This does not make this monument a public nuisance.”⁷⁴ To prohibit the removal of the Confederate monument, the UDC filed a motion for preliminary injunction against the City of Winston-Salem, Forsyth County, and Winston Courthouse, LLC.⁷⁵ The UDC claimed that “[t]he Mayor and the City of Winston-Salem do not have any legal standing or right to remove or alter the statue in any way, as this is a state, county and UDC issue.”⁷⁶

68. Fran Daniel, *Downtown Winston-Salem Confederate Soldiers Monument Vandalized*, WINSTON-SALEM J. (Dec. 26, 2018), https://www.journalnow.com/news/local/downtown-winston-salem-confederate-soldiers-monument-vandalized/article_f55fb276-c1a9-5f79-b9f9-55a35b4f1862.html [<https://perma.cc/E3SW-7CF4> (dark archive)].

69. John Hinton, *Hate or Heritage? Winston-Salem’s Confederate Monument Remains Controversial, 100 Years After Dedication*, WINSTON-SALEM J. (Sep. 17, 2017), https://www.journalnow.com/z-no-digital/hate-or-heritage-winston-salem-s-confederate-monument-remains-controversial/article_53b77f74-0bd9-5519-ac6f-425fc5e52460.html [<https://perma.cc/3J2L-8DGW> (dark archive)].

70. Daniel, *supra* note 67.

71. Letter from Angela I. Carmon to Peggy Johnson, *supra* note 3, at 2.

72. *Id.*

73. *Id.*

74. Press Release, United Daughters of the Confederacy N.C. Division, Do Two Instances of Graffiti a Public Nuisance Make? (Feb. 12, 2019), <https://ncudc.org/blog/wp-content/uploads/2019/02/NCUDC021219.pdf> [<https://perma.cc/PC68-D85B>].

75. Press Release, United Daughters of the Confederacy N.C. Division, Motion for Preliminary Injunction Filed Requesting Court to Hold the Winston-Salem City Officials at Bay to Permit the Court to Rule on the Law Suit Filed by the United Daughters of the Confederacy (Feb. 7, 2019), <https://ncudc.org/blog/wp-content/uploads/2019/02/NCUDC020719.pdf> [<https://perma.cc/6GZQ-SXQL>].

76. *Id.*

Before the legal resolution of the UDC case, in March 2019, the city, with the permission of Winston Courthouse, LLC, removed the statue and put it in a storage facility for safekeeping.⁷⁷

On May 8, Superior Court Judge Eric Morgan issued an order dismissing the UDC's complaint with prejudice, holding that it did not have standing to bring the complaint because it claimed that it did not own the monument.⁷⁸ Although the matter was disposed of due to lack of standing, the UDC and the defendants, the county, Winston-Salem, and Winston Courthouse, LLC, argued matters of ownership in their briefs. The UDC argued that, in addition to the plain language of the warranty deed, because the county gave the UDC permission to erect the monument, accepted the monument, and spent county funds to erect a fence around the monument, the county owns the monument.⁷⁹ The county argued that it never owned the monument because it remained personal property of the UDC:

Because the County consented for Plaintiffs to place the Monument on its property, the Monument never lost its character as personal property, nor did ownership pass to the County. Plaintiffs have not alleged that any document exists whereby the County accepted ownership of the Monument from the United Daughters of the Confederacy. They have not alleged any agreement to leave the Monument in place in perpetuity. Thus, Plaintiffs remain as the owners of the Monument⁸⁰

The county further contended that the deed did not indicate county ownership:

[J]ust because the County did not convey ownership of the Monument to Winston Courthouse does not mean that the County claimed ownership of it. Obviously, the County could not transfer ownership of personal property that it did not own. From the language of the deed, it is evident that the Confederate Monument is personal property, separate from the real property.⁸¹

On May 30, 2019, the UDC filed a notice of appeal, though no hearing has been set as of publication.⁸² For now, the monument remains in storage.⁸³

77. Newell, *supra* note 18.

78. Order at 9–10, *United Daughters of the Confederacy N.C. Div., Inc. v. City of Winston-Salem*, 19 CVS 725 (Super. Ct. N.C. May 8, 2019).

79. Plaintiffs' Brief in Opposition to Defendant Winston-Salem's Brief at 1–3, *United Daughters of the Confederacy N.C. Div., Inc.*, 19 CVS 725 (Apr. 25, 2019).

80. Defendant Forsyth County's Brief in Support of Motion to Dismiss at 5, *United Daughters of the Confederacy N.C. Div., Inc.*, 19 CVS 725 (Apr. 25, 2019).

81. *Id.* at 6.

82. Notice of Appeal, *United Daughters of the Confederacy N.C. Div., Inc.*, 19 CVS 725 (May 30, 2019).

83. Young, *supra* note 19.

The city has offered the UDC the opportunity to take possession of the monument and re-erect it. Otherwise, the city plans to re-erect the monument in the Salem Cemetery, which has consented to have the monument on its grounds.⁸⁴

II. LAW OF GIFTS

The law of gifts may answer the question of ownership. Giving a gift requires that the donor deliver the item to the donee and manifest an intent that the donee become the owner of it.⁸⁵ But delivery and intent alone are not enough to successfully give a gift; the donee must accept the gift for it to be complete.⁸⁶ A donee is “presumed to accept a gift at the time it is made by the donor” unless they “refuse to accept the gift or disclaim it within a reasonable time after the donee learns of the gift.”⁸⁷

In order for the monument to be treated as a gift, first, the UDC must show that it manifested an intent for the county to become the owner of the monument. The county attempts to rebut the UDC’s donative intent by pointing to past statements by the UDC claiming ownership, citing to one newspaper article from 2012 and alluding to other “reports.”⁸⁸ But, if the UDC demonstrate its intent, then the question turns on whether Forsyth County can rebut the presumption of acceptance.

Forsyth County contends that it did not “accept” a gift of the monument when it was erected and unveiled.⁸⁹ But the permission of the county

84. *Id.*

85. RESTATEMENT (SECOND) OF PROP.: DONATIVE TRANSFERS § 31.1 (AM. LAW INST. 1992).

86. *Id.*

87. *Id.* § 31.1 cmt. 1.

88. Welsey Young, *What Becomes of the Statue?*, WINSTON-SALEM J. (Feb. 1, 2012), https://www.journalnow.com/news/local/what-becomes-of-the-statue/article_da0183e5-19ae-5729-8a24-bcae3235db37.html [<https://perma.cc/3JV8-7Q9T>]; see also Defendant City of Winston-Salem’s Brief in Support of Its Motion to Dismiss, *supra* note 5, at 5 (noting that the mayor of Winston-Salem “attempted to negotiate a resolution of this matter with the [UDC]” by the group, including representations made in the local paper by Cindy Case, one-time president of the local UDC chapter).

89. During the unveiling ceremony, the monument was accepted by a member of a Confederate veterans group. *Monument Unveiled to Big Crowd*, W. SENTINEL (WINSTON-SALEM, N.C.), Oct. 5, 1905, at 5, https://universityofnorthcarolinaat Chapel Hill-newspapers-com.libproxy.lib.unc.edu/clip/5887627/monument_unveiled_before_big_crowd_ws/ [<https://perma.cc/R5PS-5BHU> (dark archive)]. This acceptance was almost certainly only symbolic and would have been part of the type of ritual common at UDC monument unveilings. In her history of the UDC, historian Karen L. Cox wrote that an unveiling was “a ritual gathering of the entire white community—men, women, and children—to honor the nation that never was” and was “celebrated as an important moment in history of the community.” KAREN L. COX, *DIXIE’S DAUGHTERS* 60–61 (2003). The pomp and circumstance included parades “led by surviving Confederate veterans” followed by members of the UDC with the white children of the community bringing up the rear, demonstrating the UDC’s vision of “each monument as a gift that connected past generations with future generations.” *Id.* at 61, 63. A child was then selected to “pull the cord that unveiled the monument” to “symbolically open the gift.” *Id.* at 63.

commissioners to erect the monument in the first place,⁹⁰ the county's maintenance of the monument for generations, combined with the lack of proof that the county refused or disclaimed the monument "within a reasonable time," if at all, may demonstrate an acceptance of the gift.

The argument that Forsyth County owns the monument is strengthened by analyzing these circumstances using the government speech doctrine.

III. GOVERNMENT SPEECH DOCTRINE

The United States Supreme Court has found that privately donated monuments can be "government speech" in *Pleasant Grove City v. Summum*.⁹¹ Scholars have developed an analytical framework based on *Summum* and other government speech cases for determining when government speech is present and when the government has the responsibility for the privately donated monument. This Recent Development proposes that if a monument satisfies the criteria to be government speech, then it is effectively controlled and constructively owned by the government speaker.

The Court decided in *Summum* that a private monument placed on public property constituted government speech.⁹² In that case, a religious organization called Summum requested permission from Pleasant Grove City, Utah, to erect a monument in a local park.⁹³ Multiple monuments already occupied the park, including a monument of the Ten Commandments.⁹⁴ The city denied the request and Summum challenged the refusal on First Amendment grounds.⁹⁵ The Court ultimately held that "the placement of a permanent monument in a

The parade in Winston-Salem was cancelled due to rain. *Monument Unveiled to Big Crowd*, *supra* at 5; *see also supra* text accompanying note 56.

90. Defendant Forsyth County's Brief in Support of Motion to Dismiss, *supra* note 80, at 5. In 1905 there was no explicit statutory power under North Carolina law that allowed for county commissioners to accept gifts or donations of personal property. N.C. REVISAL ch. 23, § 1318 (1905). But this power may be implied. As the law stood in 1905, Forsyth County, like all counties, had "the powers prescribed by statute, and those necessarily implied by law, and not others; which powers can only be exercised by the board of commissioners, or in pursuance of a resolution adopted by them." *Id.* § 1309. But, North Carolina law also provided that

[w]henever any monument has been or shall hereafter be erected to the memory of our Confederate dead . . . if such monument is erected by the voluntary subscription of the people and is placed on the courthouse square, then the board of county commissioners of such county [are] permitted to expend . . . public funds of the county . . . to erect a substantial iron fence around such monument in order that the same may be protected.

Id. ch. 86, § 3928. If the county has the power to spend public money to protect a Confederate monument, construed together with the corporate powers of the county, it could be implied that the county also then had the power to accept a Confederate monument on its courthouse square.

91. 555 U.S. 460 (2009).

92. *Id.* at 464.

93. *Id.* at 464–65.

94. *Id.*

95. *Id.* at 466.

public park is best viewed as a form of government speech.”⁹⁶ The Court reaffirmed that the government is allowed to speak for itself,⁹⁷ and that “[a] government entity may exercise this same freedom to express its views when it receives assistance from private sources for the purpose of delivering a government-controlled message.”⁹⁸ Further, Justice Alito wrote:

Just as government-commissioned and government-financed monuments speak for the government, so do privately financed and donated monuments that the government accepts and displays to the public on government land. It certainly is not common for property owners to open up their property for the installation of permanent monuments that convey a message with which they do not wish to be associated.⁹⁹

After the oral arguments, but before the Supreme Court decided *Summum*, law professor Mary Jean Dolan argued that monuments are government speech.¹⁰⁰ Dolan applied the four-factor test that lower courts had laid out in prior government speech cases to the case of a privately donated monument on public property.¹⁰¹ The four-factor test “looks to the government’s expressive purpose, editorial control, role as literal speaker, and ultimate responsibility.”¹⁰²

The first and second factors address the purpose and content of the monument. The first factor, the government’s expressive purpose, boils down to the question, “what was the [government’s] purpose in agreeing to display the monument?”¹⁰³ The expressive purpose of the government is, in turn, demonstrated by the decisionmaking process for each individual monument.¹⁰⁴ The second factor asks how much control a government entity has over the content of the monument.¹⁰⁵ This factor is not governed by whether the

96. *Id.* at 464.

97. The Supreme Court has developed extensive jurisprudence on the interaction between government speech and the First Amendment. *See, e.g.*, *Johanns v. Livestock Mktg. Ass’n*, 544 U.S. 550, 562–63 (2005); *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 229, 235 (2000); *Nat’l Endowment for the Arts v. Finley*, 524 U.S. 569, 597, 599 (1998) (Scalia, J., concurring in judgment); *Columbia Broad. Sys., Inc. v. Democratic Nat’l Comm.*, 412 U.S. 94, 139 n.7 (1973) (Stewart, J., concurring).

98. *Summum*, 555 U.S. at 468.

99. *Id.* at 470–71.

100. Mary Jean Dolan, *Why Monuments are Government Speech: The Hard Case of Pleasant Grove City v. Summum*, 58 CATH. U. L. REV. 7, 8 (2008), ; <https://scholarship.law.edu/cgi/viewcontent.cgi?article=3150&context=lawreview> [<https://perma.cc/ZSN2-2CBH>].

101. *Id.* at 11; *see People for the Ethical Treatment of Animals, Inc. v. Gittens*, 414 F.3d 23, 28–30 (D.C. Cir. 2005); *Wells v. City & Cty. of Denver*, 257 F.3d 1132, 1141 (10th Cir. 2001).

102. Dolan, *supra* note 101, at 11.

103. *Id.* at 33.

104. *Id.* at 25–26.

105. *Id.* at 34.

government entity exercises editorial control but by whether it reserves that right, which it may exercise in the future.¹⁰⁶

Factors three and four address ongoing control after the monument is erected.¹⁰⁷ Determining the literal “speaker” of a monument is a temporal question.¹⁰⁸ When a private organization donates a monument, it is the speaker and its message becomes static—locked in time at the “point of conveyance.”¹⁰⁹ “But the municipality that continues to display the monument, without any modification or added explanation, is ‘speaking’ its message on a long-term, ongoing basis.”¹¹⁰ Who has ultimate responsibility over a monument is more likely the government when either it holds title to the monument or it has assumed legal responsibility for the monument through maintenance of the public property.¹¹¹ The point is further reinforced by the idea that “anyone who alleges some harm caused to them by a statue . . . will sue the municipality. It is highly unlikely [they] would [sue] the original donor” even if the donor’s name is on the statue itself.¹¹²

Dr. Claudia Haupt proposes that between private speech and government speech there is a separate category: mixed public-private speech.¹¹³ Haupt has suggested “effective control” as an appropriate test to determine whether mixed speech should be classified as private or governmental.¹¹⁴ She argues that effective control relates ultimately to power:

[T]he power to initiate a message or to influence the message at its inception; the power to approve the final design of the message; the power to determine how and when the message is articulated; the power to provide a stage and an audience for dissemination of the message; and the power to end, remove, or destroy the message.¹¹⁵

Inquiring about these different types of power asks for different analyses of the monument through time. In her discussion of the power to articulate the message, Haupt addresses the difficulty in determining who is speaking when there is no literal speaker: “Property ownership might be an indicator . . . [but] [s]uch indirect attribution of speech . . . is closely linked to the question of whom a ‘reasonable observer’ would ascribe responsibility for display and

106. *Id.*

107. *Id.* at 36–37.

108. *Id.* at 37.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. Claudia Haupt, *Mixed Public-Private Speech and the Establishment Clause*, 85 TULANE L. REV. 571, 574 (2011).

114. *Id.* at 575.

115. *Id.* at 591.

property ownership, and whether the two entities are the same.”¹¹⁶ Haupt points out that speech can easily become mixed “[w]hen removal of an ostensibly private display is prohibited by the government.”¹¹⁷

The government speech doctrine is relatively new,¹¹⁸ and the tests created to analyze monuments using it make assumptions about a much different state of politics than the conditions in the South in the early 1900s. Nonetheless, it creates a framework from which we can begin to investigate the ownership of the Confederate monument in Winston-Salem.

Forsyth County’s actions and inactions with regard to the Confederate monument fulfill all four factors needed to find government speech as laid out by lower courts and Professor Dolan. The first factor, the purpose of the monument, can be determined by looking to the Forsyth County Commissioners’ decision to permit the erection of the monument. No records of the County Commissioners’ meeting when the decision was made have been located.¹¹⁹ Still, at the time, public debate over the erection of Confederate monuments was rare.¹²⁰ But, with some certainty, the purpose can be found by looking back to the Wilmington Massacre and subsequent implementation of Jim Crow laws in the immediate years preceding the erection of the monument.¹²¹ It is particularly worth noting that, by 1905, Blacks in North Carolina had been disenfranchised and thus were not represented by the elected Board of County Commissioners.¹²²

With respect to the second factor, Forsyth County never attempted to alter the monument. But, in the 1970s, the UDC proposed moving the monument away from the courthouse square, claiming the county was failing to display it prominently enough. It is unclear why the proposed movement failed. Determining why it did—if it was related to ownership questions or if it was because of other obstacles to the proposed move—would help determine what level of editorial control Forsyth County has had over the monument. Without additional information, factor two is met.

The third factor is met because Forsyth County allowed the monument to remain on the courthouse square. And, at some point, this implied permission

116. *Id.* at 594.

117. *Id.* at 598.

118. See, e.g., *Johanns v. Livestock Mktg. Ass’n*, 544 U.S. 550, 562–63 (2005); *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 229, 235 (2000); *Nat’l Endowment for the Arts v. Finley*, 524 U.S. 569, 597, 599 (1998) (Scalia, J., concurring in judgment); *Columbia Broad. Sys., Inc. v. Democratic Nat’l Comm.*, 412 U.S. 94, 139 n.7 (1973) (Stewart, J., concurring).

119. John Hinton, *Winston-Salem’s Confederate Statue: A Symbol of White Supremacy or a Memorial to Confederate Sacrifice?*, WINSTON-SALEM J. (Jan. 26, 2019), https://www.journalnow.com/news/local/winston-salem-s-confederate-statue-a-symbol-of-white-supremacy/article_0170b22a-780c-5d98-b307-81a32c73742b.html [<https://perma.cc/GD2Z-G6GN> (dark archive)].

120. *Id.*

121. See *supra* notes 35–43 and accompanying text.

122. See Hinton, *supra* 119.

transformed Forsyth County into the “speaker” of the monument’s message, according to this test. By simply having the monument on its property “without modification or added explanation,” Forsyth County assumed the message of the monument as its own government speech.

Forsyth County’s ultimate responsibility for the monument meets the fourth factor. The UDC seemingly did not contribute funds to the maintenance of the monument beyond its erection.¹²³ These maintenance and security costs have fallen to the city. The Winston-Salem police have cleaned the monument after acts of vandalism and committed resources for increased security around the monument in their role as keepers of the peace.¹²⁴ Nonetheless, Forsyth County retained ultimate responsibility of the monument as demonstrated by the sale of the property. The conditions in the deed to Winston Courthouse, LLC that excluded the monument from the sale and allowed for a future easement in the property for maintenance tend to show a retained power and dominion over the monument by the county. Further, with no discernible owner, it is likely that—to a reasonable observer—the monument belonged to the county, on whose land it stood for over a hundred years.

Using Haupt’s effective control analysis,¹²⁵ the determination that the monument is government speech stands. There are no records of the Forsyth County Commissioners prior to 1906. While there is no historical record to determine if the county had any power over the design of the monument, it did have the power to initiate the message by allowing the monument to be erected on the courthouse square.¹²⁶ It also had the power to “provide a stage and dissemination of the message” and ultimately “the power to end, remove, or destroy the message.” The fact that the county did not “end, remove, or destroy” the monument did not strip it of the power to do so.

Therefore, under these tests, Forsyth County, at some point during the 109 years the Confederate monument stood on its property, assumed the message, the possession, the control, and the ownership of the monument. Now, Forsyth County has attempted to distance itself from its role in that message and its responsibility in the long-term propagation of that message.

CONCLUSION

Forsyth County became the constructive owner of the monument by failing to deny the gift and by maintaining and assuming control of the

123. See CASEY, *supra* note 59.

124. Lisa O’Donnell, *Remove Confederate Statue or Face Possible Legal Action, Winston-Salem Tells United Daughters of the Confederacy*, WINSTON-SALEM J. (Jan. 1, 2019) https://www.journalnow.com/news/local/remove-confederate-statue-or-face-possible-legal-action-winston-salem/article_be3fd9a2-9da2-5a29-9d29-df0601bd7f27.html [<https://perma.cc/3ET3-WZ7V> (dark archive)].

125. See *supra* notes 113–17 and accompanying text.

126. See Affidavit of Ashleigh M. Sloop, *supra* note 21, at 2.

monument for generations. It allowed the monument to stand and broadcast its message from the county courthouse square.

Scholarship outside of legal academia has explored the ways in which governments approve of political causes through the erection of monuments. Professor Dwyer explains the power given to the causes represented by these monuments: “Consider the manner in which court house lawns commonly attract a plethora of memorials, all of them seeking to legitimate the cause they represent via close association with the seat of government.”¹²⁷ The seat of government that allows a monument to be placed on its courthouse square, “the symbolic locus of the polis,” while denying its role as guardian of the monument allows for an erasure of history more detrimental to the history of the South and the United States than the removal of one Confederate monument. As Professor Clowney said, “Changing the composition of a jurisdiction’s monuments does not erode any universal, objective truth in the name of political correctness; rather, it initiates a process of critically rethinking what values a community holds and who deserves the honor of being remembered in steel and stone.”¹²⁸ By denying its role in the erection of this monument, and ultimately its constructive ownership, Forsyth County demonstrates a desire for political correctness but not a critical rethinking of its community values.

Because these issues have not been litigated fully in North Carolina, the parameters of the Heritage Protection Act are unclear. Cities, counties, and other government entities have progress and history on their side in the effort to remove these monuments from public spaces. Nonetheless, the hastiness with which Winston-Salem removed the Confederate monument in Forsyth County leaves many issues unsettled, particularly the question of who truly owns the monument. Using the government speech doctrine as a proxy for constructive ownership, it seems that Forsyth County owns the monument despite its claims otherwise. Ownership of Confederate monuments has become a liability for local governments, but they cannot shirk responsibility as easily as it seems happened in Forsyth County. Incidents like this will become more commonplace, and better analytical tools are needed to determine who owns these monuments under the law and how that owner plays a part in their removal.

GWEN BARLOW**

127. Owen Dwyer, *Symbolic Accretion and Commemoration*, 5 SOC. & CULTURAL GEOGRAPHY 419, 420 (2004), https://www.researchgate.net/profile/Owen_Dwyer/publication/249005945_Symbolic_Accretion_and_Commemoration/links/5501c5d80cf231de076b979e.pdf [https://perma.cc/J9BA-FJJA (staff uploaded archive)].

128. Stephen Clowney, *Landscape Fairness: Removing Discrimination for the Built Environment*, 2013 UTAH L. REV. 1, 59.

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2019]

CONFEDERATE MONUMENT OWNERSHIP

1485

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