V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF LOUISA

COMMONWEALTH OF VIRGINIA,	)	
Plaintiff,	)	
	)	
v.	)	**CR16000204-01 to -05**
	)	**CR16000239-01 to -02,**
	)	**& CR17000054-00**
DARCEL NATHANIEL MURPHY,	)	**Def Mot. 0031A**
Defendant.	)	

RENEWED MOTION TO CONDUCT TRIAL IN A COURTROOM THAT DOES NOT CONTAIN CONFEDERATE SYMBOLS, MEMORIALS AND ICONOGRAPHY

Darcel N. Murphy, by counsel, hereby renews his motion for this Court to provide a setting for his trial that does not contain images that could be interpreted as glorifying, memorializing, or otherwise endorsing the efforts of those who fought on behalf of the Confederate cause or its principles. Mr. Murphy requests that the Court reconsider its prior rulings in light of recent developments as presented herein. In making this motion, Mr. Murphy relies on his federal and state constitutional rights as protected by the Fifth, Sixth, Eighth, Eleventh, Thirteenth, and Fourteenth Amendments to the United States Constitution and Article I, § 8 of the Constitution of Virginia. Mr. Murphy hereby incorporates, adopts and renews the reasoning and arguments previously made in support of Defense Motion 31 and supplements and renews that motion for the reasons stated herein.

In support of this motion, counsel states:

1. Darcel N. Murphy, stands currently charged, inter alia, with capital murder, which carries the potential of a sentence of death. Mr. Murphy, by counsel, previously filed and argued Defendant's Motion 31 Motion to Conduct Trial in a Courtroom that does

not Contain Confederate Symbols, Memorials and Iconography. The motion was filed on October 15, 2018 and argued on November 11, 2018. With permission of the Court, counsel for the defendant supplemented the motion with affidavits from two expert witnesses on December 6, 2018. The Commonwealth took no position on the motion.

2. The Court issued a written letter opinion on November 15, 2019 denying the motion. In its opinion, the Court stated that "As modified at oral argument, the motion seeks the Court to order the removal of the portrait of Robert E. Lee." Ltr. Opinion Dated Nov. 15, 2019, p.1. The written opinion rests in large part upon the proposition that Robert E. Lee can be considered an admired figure since he has been honored with a state holiday in Virginia. "The most significant representation of that admiration is the fact that he is one of the few individuals, Virginian or otherwise, who have received the honor of having a Virginia state holiday observed in their honor." Id. at p.2. The Court's opinion goes on to state, "It is difficult for the Court to accept that nothing other than the implied original and continuing racism of the Virginia General Assembly supports that distinction. Being so honored makes a compelling case for the inclusion of the portrait." Id.

3. As of March 23, 2020, the compelling case for inclusion of Lee's portrait has now disappeared and been replaced by an equally compelling case for it to be excluded. On March 23, 2020, Governor Ralph Northam signed Senate Bill 601 and House Bill 108 amending Virginia Code § 2.2-3300. The bills removed the state holiday honoring Robert E. Lee and Stonewall Jackson[1].

[1] Stonewall Jackson was another Virginia-born Confederate war general who served as a prominent military subordinate of Robert E. Lee until Jackson was killed during the Civil War in 1863. Like Lee, Jackson has been

4. In his State of the Commonwealth Address on January 6, 2020, Governor Northam stated his support of the removal of the state holiday saying "It commemorates a lost cause. It's time to move on."[2] The Governor was also quoted that day as saying, "It's in honor of two individuals that fought to prolong slavery, which is not a proud aspect of Virginia's history."[3]
5. Additionally, the legislature passed, and the Governor signed into law, House Bill 1406 which establishes a commission to explore the removal and replacement of Robert E. Lee's statue that represents Virginia in the rotunda of the United States Capital building.
6. The Court's prior opinion relied on the fact that the legislature had taken no action to remove the Lee holiday as evidence that Lee could be considered an honorable and respectable person. However, the Virginia General Assembly and Governor have now taken actions demonstrating that Lee is no longer to be considered a person worthy of the honor of a state holiday.
7. The very public elimination and repudiation of the Lee holiday makes a powerful argument for the reconsideration and reversal of the Court's prior ruling. The elected representatives of the citizens of Virginia have made clear that Virginia has reconsidered its past glorification of Lee and decided that he is not worthy of such honor. Those honors were bestowed in much the same time and with the same intent to glorify the Lost Cause narrative by which the portrait of Lee was chosen to reside so prominently in the Louisa Circuit Courtroom.

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venerated by those who seek to promote the Lost Cause mythology of the Confederacy. See, https://en.wikipedia.org/wiki/Stonewall_Jackson.

[2] https://www.governor.virginia.gov/newsroom/all-releases/2020/january/headline-850663-en.html

[3] https://wtvr.com/2020/01/06/northam-lee-jackson-day/

8. It has become even clearer since the Court first heard argument on this motion, that the current public opinion and sentiment in Virginia recognizes that Lee symbolizes racism, slavery and the oppression of African-Americans. The legislature took the additional step of also authorizing the removal and replacement of the Lee statute that is placed in the United States Capitol building as a representation of the Virginia people.

9. On June 4, 2020, Governor Northam ordered the removal of the monument to Robert E. Lee that has been the most prominent statue in Richmond for over 130 years. In his remarks on the removal of the statue, Governor Northam said,

> Symbols matter . . . When a young child looks up and sees something that big and prominent, she knows that it's important. And when it's the biggest thing around, it sends a clear message: This is what we value the most. But that's just not true anymore. In Virginia, we no longer preach a false version of history. One that pretends the Civil War was about "state rights" and not the evils of slavery. No one believes that any longer. And in 2020, we can no longer honor a system that was based on the buying and selling of enslaved people. In 2020!. I want us to tell the little girl the truth. Yes, that statue has been there for a long time. But it was wrong then and it is wrong now. So we're taking it down.

See Attachment A.

10. On that same day, Attorney General Mark Herring also spoke in support of the removal of the Lee statue in Richmond. The top legal representative of the Commonwealth of Virginia said,

> We must dismantle the systemic racism that permeates our communities and build a country that is fair, and just, and safe for all people. That includes removing the painful reminders of a racist past that stain our commonwealth. These grandiose monuments memorializing a racist insurrection do not belong in our public spaces. They do not deserve to stand as a representation of our commonwealth and our people. The way we tell our history as a people influences the way that each of us view our role within our society. When people are constantly surrounded by symbols of white supremacy and hate it introduces and reinforces the false and poisonous notion that there is a hierarchy of races. How do you

> possibly explain these statues to a Black child? What do you tell them about why it is there? You can't, it's indefensible.
> **And how do you tell a black man or a black woman that they're going to get a fair and impartial trial when the entrance to the courthouse is literally blocked by a monument to a movement that sought to keep them enslaved.**
> Virginia has hundreds of public Confederate symbols, including statues, monuments, school names, and until recently a state holiday. These portrayals of the Confederacy and its leaders as grand, heroic figures distort our understanding of history and glorify the oppression and injustice that these men fought a war over. They were raised as part of a deliberate and intentional effort to intimidate and degrade Black Virginians and suppress the growing civil rights movement, and now they must come down as part of deliberate and intentional effort to heal and move forward together. This is an important step because symbols do matter.

See Attachment B (emphasis added).

11. The statements of Governor Northam and Attorney General Herring echo those made by Mr. Murphy in his motions and during argument on this issue.

12. Although it is true that some Virginia citizens still venerate and revere Lee, it is equally clear that more recognize him as an inappropriate symbol of racism, slavery and oppression. Mr. Murphy's death penalty trial should not take place in a courtroom which endorses and prominently displays a symbol which has been found to be offensive and objectionable by so many Virginians and a figure who has been publicly condemned by the Governor and General Assembly. Whether the display is offensive to 70% of the population or only 20%, since the display serves no legitimate purpose the risk of harm greatly outweighs any benefit.

13. Recent events occurring both in the Commonwealth of Virginia and around the country demonstrate that public sentiment does not support the display of racially divisive and incendiary displays.

14. The Court's opinion also states that the defense modified its motion during oral argument to seek only the removal of the portrait of Lee. The defense maintains that

they did not modify their motion at oral argument. The motion and argument on the motion consistently maintained that the defense was seeking either the removal of the Lee portrait and other recognizable confederate iconography from the Louisa courtroom or for Mr. Murphy's trial to occur in a location without such symbols, memorials or iconography.

15. In his final argument to the Court, counsel stated, "Whether that's removed from this courtroom, or the Court had [sic] to decide that trials have to happen someplace else until it is changed by the board of supervisors. That is your obligation to make sure that there isn't anyone that's going to question the fairness of these proceedings or any proceedings going forward that way, that that dark cloud doesn't exist anymore." Hearing Tr. Nov. 11, 2018 p. 40-41.

16. Counsel requests that the court review the transcript of the proceedings and reconsider its finding that counsel modified their position. Counsel objects to any finding that its positions were modified at oral argument. And to the extent that the Court finds that counsel previously modified its argument, Mr. Murphy now reasserts and renews his demand that the Court should order either the removal of the confederate symbols from the courtroom or that Mr. Murphy's trial should occur in a different location.

17. The Court has already heard extensive argument on the motion as originally presented. Counsel for the Defendant would ask that the Court take judicial notice of the newly enacted laws cited in this motion and reconsider its prior ruling accordingly. Counsel does not request additional hearing on this renewed motion but does not oppose any request by the Court for such hearing should the Court wish.

ACCORDINGLY, the Defendant, by counsel, renews his prior Motion 31 and asks the Court to order that any trial in this matter proceed in a location that is free from symbols, memorials, displays and portraits that could be perceived as supporting or endorsing the Confederate cause or any of its supporters, including the portrait of Robert E. Lee that is currently on display.

Respectfully submitted,

DARCEL NATHANIEL MURPHY

By: _____

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CERTIFICATE

The undersigned hereby certifies that, on this _____ day of June, 2020, a true and correct copy of the forgoing Motion was hand delivered to Russell E. McGuire, Commonwealth's Attorney, Louisa County, P.O. Box 128, 100 W. Main Street, Louisa, Virginia 23093.

_____

Attachment A

Statement of Governor Ralph Northam

June 4, 2020

For Immediate Release: June 4, 2020

Contacts: Office of the Governor: Alena Yarmosky, Alena.Yarmosky@governor.virginia.gov

Governor Northam to Remove Robert E. Lee Statue in Richmond

RICHMOND—Governor Ralph Northam today announced plans to remove the statue of Confederate General Robert E. Lee located on Monument Avenue in Richmond, Virginia.

The Governor directed the Department of General Services to safely remove the statue from its pedestal and house it in storage until an appropriate location is determined.

Speakers joining the Governor at today's announcement include City of Richmond Mayor Levar Stoney, Reverend Robert W. Lee IV, Robert Johns, Lieutenant Governor Justin Fairfax, Attorney General Mark Herring, and Zyahna Bryant.

Governor Northam is acting under his executive authority and Section § 2.2-2402 of the Code of Virginia, which provides the Governor the sole authority to approve the removal of a work of art owned by the Commonwealth upon submission of a plan to do so. The Robert E. Lee monument was erected for and is owned by the Commonwealth of Virginia and is considered a work of art pursuant to Section 2.2-2401 of the Code of Virginia.

The Governor's remarks as prepared for delivery are available below.

REMARKS AS PREPARED FOR DELIVERY:

Good morning, everyone.

I want to thank everyone watching from around Virginia and around the country, and I want to thank the many guests who have joined us as we chart a new course in Virginia's history.

Today, we're here to be honest about our past and talk about our future.

I'm no historian, but I strongly believe that we have to confront where we've been, in order to shape where we're going.

And in Virginia, for more than 400 years, we have set high ideals about freedom and equality, but we have fallen short of them.

Some of America's most hopeful and forward-looking moments happened in this Commonwealth and in this capital city. When Americans first dreamed of life, liberty, and the pursuit of happiness—they dreamed here in the Commonwealth.

Virginia adopted a Declaration of Rights before the United States declared independence. It said that all are "equally free and independent and have certain inherent rights." It specifically called out freedom of the press and freedom of religion.

And in a church on a hill 15 blocks from here, Virginia's first elected Governor helped launch the American Revolution when he cried, "Give me liberty, or give me death!" That was Patrick Henry, and I now have the job that he once held—72 governors later.

These are our greatest legacies as Americans. But there's a whole lot more to the story, because those inspiring words and high ideals did not apply to everyone, not then and not now.

Because at the bottom of that same hill, one of the country's largest slave-trading markets was coming to life. A place where Virginians would sell men, women, and children for profit. Americans buying and selling other Americans.

This is just as much the American story, and it's one that we are only just now beginning to tell more fully.

Through 400 years of American history, starting with the enslavement of Africans, through the Civil War, through Jim Crow, and Massive Resistance, and mass incarceration, black oppression has always existed in this country, just in different forms.

The legacy of racism continues not just in isolated incidents like we saw in Minneapolis a few days ago—and I want to acknowledge that our country will honor the life of George Floyd in a memorial service in about three hours.

The legacy of racism also continues as part of a system that touches every person and every aspect of our lives, whether we know it or not. But hearts are in different places, and not everyone can see it—or they don't want to see it.

When I used to teach ambitious young doctors, I would tell them, "The eyes can't see what the mind doesn't know." That's true for all of us.

So, it's time to acknowledge the reality of institutional racism, even if you can't see it. Public policies have kept this reality in place for a long time. That's why we've been working so hard to reform criminal justice laws, expand health care access, make it easier to vote, and so much more.

But symbols matter too, and Virginia has never been willing to deal with symbols. Until now.

Today, Virginia is home to more Confederate commemorations than any other state. That's true because generations ago, Virginia made the decision not to celebrate unity, but to honor the cause of division. You'll see this if you look around Virginia and our capital city.

The statue of Robert E. Lee is the most prominent. Lee himself didn't want a monument, but Virginia built one any way. Lee once said, "I think it is wiser not to keep open the sores of war, but to follow the examples of those nations who endeavored to obliterate the marks of civil strife, to commit to oblivion the feelings engendered." Those are wise words indeed.

So, what happened? Virginia leaders said, we know better.

Instead of choosing to heal the wounds of the American civil war, they chose to keep them on display. They launched a new campaign to undo the results of the Civil War by other means.

They needed a symbol to shore up the cause. And it's quite a symbol. The Lee statue was built in France, and when it arrived by boat on the James River docks, it took 10,000 citizens—and a whole lot of rope to haul three large crates out into the tobacco field where it would be installed. Some business people put it out in the field, so they could eventually build a housing development around it, and make money. It worked.

This happened in May 1890, twenty years after Lee died and a generation after the Civil War ended. 150,000 people came out when the statue was unveiled. But from the beginning, there was no secret about what the statue meant. Almost every one of those 150,000 people waved Confederate flags that day.

John Mitchell was the editor of the Black newspaper, the Richmond Planet, at the time. He wrote, "The emblem of the union had been left behind—a glorification of the lost cause was everywhere." It was a big day, and more big days followed throughout the old south. And as the statues went up, so did lots of new laws. It was all part of the same campaign.

Here's just one example: New laws limited the right to vote. In the years after the Civil War, more than 100,000 African American men were registered to vote in Virginia. But once this campaign took off, that number plummeted by 90 percent, to barely 10,000.

That worked too. Because the people who wrote these laws knew what they were doing. They wrote other new laws to say that once a statue goes up, it can never come down. They wanted the statues to remain forever—they needed the statues to stay forever, because they helped keep the system in place. That also worked. Those laws ruled for more than a century.

But voting matters, and elections matter, and laws can be changed. And this year, we changed them. This year, I proposed legislation to let cities and counties decide what to do with monuments in their communities—take them down, move them somewhere else, or add additional context.

That law takes effect in four weeks, and then local communities will decide. I know Richmond is going to do the right thing.

But the Lee statue is unique. It's different from every other statue in Virginia—both in size and in legal status.

You see, the state owns it, unlike most other statues. That was another part of the plan to keep it up forever. It sits on a 100-foot circle of land, a state-owned island, surrounded by the City of Richmond.

The whole thing is six stories tall. It towers over homes, businesses, and everyone who lives in Richmond—from elegant Monument Avenue to the public housing neighborhood of Gilpin Court. The statue itself weighs 12 tons, and it sits atop a large pedestal. A pedestal is a place of honor. We put things on pedestals when we want people to look up.

Think about the message this sends to people coming from around the world to visit the capital city of one of the largest states in the country. Or to young children. What do you say when a six-year-old African American little girl looks you in the eye, and says: What does this big statue mean? Why is it here?

When a young child looks up and sees something that big and prominent, she knows that it's important. And when it's the biggest thing around, it sends a clear message: This is what we value the most. But that's just not true anymore.

In Virginia, we no longer preach a false version of history. One that pretends the Civil War was about "state rights" and not the evils of slavery. No one believes that any longer.

And in 2020, we can no longer honor a system that was based on the buying and selling of enslaved people. In 2020!

I want us all to tell the little girl the truth. Yes, that statue has been there for a long time. But it was wrong then, and it is wrong now.

So, we're taking it down.

Now, I know some will protest. Some will say, Lee was an honorable man. I know many people will be angry.

But my friends, I believe in a Virginia that studies its past in an honest way. I believe that when we learn more, we can do more. And I believe that when we learn more—when we take that honest look at our past—we must do more than just talk about the future.

We must take action. So, I am directing the Department of General Services to remove the statue of Robert E. Lee as soon as possible. It will go into storage, and we will work with the community to determine its future.

Before we turn to the next speakers, I want to acknowledge all the elected officials, scholars, members of our advisory boards, and other guests who here.

In particular, I want to acknowledge members of the family of Barbara Johns: Mr. Robert Johns and his grandson Mr. Tyrone Mayer, Jr. You all know their family's story.

In 1951, a 16-year-old girl, Barbara Johns, stood up and led a protest—a student strike against substandard conditions at Robert Russa Moton High School in Prince Edward County. She pushed and pushed, and two great American attorneys took up her cause. Oliver Hill and Spottswood Robinson filed suit, next door, in the federal courthouse at the bottom of the hill. That case became Brown v. Board of Education, and it eventually threw out segregated schools in the United States of America.

That is how you make change—you push on the outside, and you push on the inside too.

We'll hear in just a moment from a few of the people who are making change happen.

My friends, I believe in a Virginia that studies its past in an honest way. I believe in a Virginia that learns lessons from the past. And we all know our country needs that example right now.

America is once again looking to Virginia to lead. But make no mistake—removing a symbol is important, but it's only a step.

It doesn't mean problems are solved. We still need change in this country. We need healing most of all. But symbols do matter.

My friends, we all know it's time. And history will prove that.

Now, I would like to introduce the Reverend Robert W. Lee IV. We've been talking about his great-great-grandfather.

# # #

Translations ▼

Attachment B

Statement of Attorney General Mark Herring

June 4, 2020

Commonwealth of Virginia
Office of the Attorney General

Mark Herring
Attorney General

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ATTORNEY GENERAL HERRING REMARKS ON REMOVAL OF LEE MONUMENT

RICHMOND (June 4, 2020) – Attorney General Mark R. Herring delivered the following remarks today on the removal of the Robert E. Lee monument in Richmond.

During his term, Attorney General Herring has taken numerous steps to remove racist Confederate iconography from public spaces. He has long called for the removal of Confederate monuments and repeal of the law that protected these monuments, and this session his team worked on the legislation to repeal it. He worked to allow Norfolk to remove a Confederate monument, helped remove a Confederate flag from city property in Danville, wrote an opinion that facilitated the renaming of Jefferson Davis Highway in parts of Northern Virginia, and won a court case to remove the Confederate battle flag from Virginia license plates.

These past few days have been hard and they have been painful.
They have forced white Americans to confront the safety and privilege that our skin color affords us - a feeling that Black Americans have not had the luxury of knowing.
The weight of fear and pain that our society places on the shoulders of Black Americans is immoral and unsustainable. In conversations I've had over the last week I've heard over and over again words like 'tired' and 'exhausted.'
No one should have to live with the fear that they, their children, or loved ones could be killed if they do something as simple as go for a walk or run an errand.
I can't personally know the weight of that fear but I recognize it and I am listening.
We must dismantle the systemic racism that permeates our communities and build a country that is fair, and just, and safe for all people.
That includes removing the painful reminders of a racist past that stain our commonwealth.
These grandiose monuments memorializing a racist insurrection do not belong in our public spaces.
They do not deserve to stand as a representation of our commonwealth and our people.

The way we tell our history as a people influences the way that each of us view our role within our society.
When people are constantly surrounded by symbols of white supremacy and hate it introduces and reinforces the false and poisonous notion that there is a hierarchy of races.
How do you possibly explain these statues to a Black child? What do you tell them about why it is there? You can't, it's indefensible.
And how do you tell a black man or a black woman that they're going to get a fair and impartial trial when the entrance to the courthouse is literally blocked by a monument to a movement that sought to keep them enslaved.
Virginia has hundreds of public Confederate symbols, including statues, monuments, school names, and until recently a state holiday.
These portrayals of the Confederacy and its leaders as grand, heroic figures distort our understanding of history and glorify the oppression and injustice that these men fought a war over.
They were raised as part of a deliberate and intentional effort to intimidate and degrade Black Virginians and suppress the growing civil rights movement, and now they must come down as part of deliberate and intentional effort to heal and move forward together.
This is an important step because symbols do matter. But taking this monument down will not stop police abuse, close education or health disparities, or erase the systemic racism that permeates every aspect of our country.
There is much, much more that we must do to heal the pain that so many Virginians have been feeling for too long.
We have a long road ahead of us but we cannot allow our fellow Virginians to bear this burden that we have forced them to carry any longer.
We need to do the work to make Virginia the open, welcoming, fair and just place that I know it can be.

https://www.oag.state.va.us/media-center/news-releases/1731-june-4-2020-herring-remarks-on-removal-of-lee-monument