

No. 21-1084

IN THE
Supreme Court of the United States

JANET HELTZEL, *ET AL.*, *Petitioners*,
v.
GLENN A. YOUNGKIN, *ET AL.*, *Respondents*.

On Petition for Writ of Certiorari to the
Virginia Supreme Court

**Brief *Amicus Curiae* of America's Future,
Intercessors for America, Conservative Legal
Def. and Ed. Fund, U.S. Constitutional Rights
Legal Def. Fund, Constitution Party National
Committee, Eagle Forum, Eagle Forum
Foundation, Fitzgerald Griffin Fdn.,
Restoring Liberty Action Committee, and
Virginia State Senator Richard H. Black (ret.)
in Support of Petitioners**

RICK BOYER
INTEGRITY LAW FIRM, PLLC
Lynchburg, VA 24506
JAMES N. CLYMER
CLYMER, MUSSER
& SARNO, P.C.
Lancaster, PA 17603
J. MARK BREWER
BREWER & PRITCHARD, P.C.
Houston, TX 77057
JOSEPH W. MILLER
LAW OFFICES OF
JOSEPH W. MILLER, LLC
Fairbanks, AK 99708

WILLIAM J. OLSON*
JEREMIAH L. MORGAN
WILLIAM J. OLSON, P.C.
370 Maple Ave. W., Ste. 4
Vienna, VA 22180
(703) 356-5070
wjo@mindspring.com
Attorneys for *Amici Curiae*

**Counsel of Record*
March 9, 2022

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INTEREST OF THE *AMICI CURIAE*¹

America's Future, Intercessors for America, Conservative Legal Defense and Education Fund, The United States Constitutional Rights Legal Defense Fund, Inc., Eagle Forum Foundation, and Fitzgerald Griffin Foundation are nonprofit organizations, exempt from federal income tax under Internal Revenue Code ("IRC") section 501(c)(3). Eagle Forum is exempt from federal income tax under IRC section 501(c)(4). The nonprofit *amici* were established, *inter alia*, for the purpose of participating in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law. The Constitution Party National Committee is a national political party. Restoring Liberty Action Committee is an educational organization. Richard H. Black is a former member of the Virginia State Senate.

STATEMENT OF THE CASE

History of the Lee Monument

In October 1870, shortly after the death of General Robert E. Lee, Virginians began raising funds to erect

¹ It is hereby certified that counsel for all parties have consented to the filing of this brief; that counsel of record for all parties received notice of the intention to file this brief at least 10 days prior to its filing; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

a statute in his honor.² *Taylor v. Northam*, 300 Va. 230, 237 (2021). In 1886, the Lee Monument Association was formed under the leadership of Governor Fitzhugh Lee, the General's nephew. *Id.* Construction of the statue began in 1887. *Id.*

On July 18, 1887, businessman Otway S. Allen conveyed to the Lee Monument Association a parcel of land which is located in the middle of what is now Monument Avenue, known as the Monument Avenue Historic District. *Id.* The deed included a restrictive covenant providing that the land would be reserved for the sole purpose of serving as the location for the statue. The deed was referred to below as the "1887 Deed." During its 1889 session, Virginia's General Assembly adopted a Joint Resolution to accept and guarantee protection of the land and statue:

Be it therefore resolved by the general assembly of Virginia, That the **governor** be, and he is hereby **authorized** and requested, in the name and in behalf of the commonwealth, **to accept**, at the hands of the Lee monument association, **the gift** of the monument or equestrian statue of General Robert E. Lee, including the pedestal and circle of ground upon which said statue is to be erected, and to execute any appropriate conveyance of the same, in token of such acceptance, and of **the guarantee of the state that it will hold said statue and pedestal and ground perpetually sacred to the**

² See Application to Place the Lee Monument on the National Register of Historic Places, U.S. Dept. of the Interior.

monumental purpose to which they have been devoted. [Joint Resolution, Acts of Assembly 1889 c. 24 (December 19, 1889) (emphasis added).]

In March 1890, Governor P.W. McKinney executed the deed accepting the property for the Commonwealth subject to the restrictive covenant as instructed by the General Assembly (referred below as the “1890 Deed”). *Taylor*, 300 Va. at 238.

The statue was crafted in bronze by Marius Jean Antonin Mercie in France. It was exhibited in Paris before being dismantled and shipped to Richmond. The 21-foot-high statue set on a 30-foot granite and marble base was dedicated on May 29, 1890.³ Unlike most monuments which contain lengthy descriptions, the monument contained only the word “Lee.” It was listed on the National Register of Historic Places and the Virginia Landmarks Register.

The Lee Monument stood for 130 years, until it became caught up in the reaction to the police killing of George Floyd in Minneapolis, Minnesota on May 26, 2020. Widespread protests and riots spread across the nation⁴ and spread to Richmond.

Hundreds gathered in downtown Richmond on Saturday for a second night of protests

³ Additional information and photographs of the Robert E. Lee Monument are provided by The Historical Marker Database.

⁴ “George Floyd death: Violence erupts on sixth day of protests,” *BBC News* (June 1, 2020).

Multiple businesses near VCU ... were vandalized and graffitied.... On Monument Avenue, statues commemorating Robert E. Lee [and others], were tagged with “F*** Cops,” “RIP George Floyd” and “ACAB,” an acronym for “all cops are bastards.”⁵

The demonstrations in Richmond against the police turned violent:

Police used rubber bullets, tear gas canisters and mace on protesters. Richmond SWAT teams appeared frequently and attempted to break up crowds. WRIC ABC8 News reported that two Capitol police officers are in the hospital with leg injuries after being struck with a baseball bat and beer bottle near Capitol Square. As the crowd moved westward on Franklin Street around 11:30 p.m., one protester threw a brick into the glass door of Beth Ahabah, a Jewish synagogue. [*Id.*]

Eight days later, on June 4, 2020, as protests continued, former Governor Ralph Northam responded, announcing the removal of the Lee Monument.⁶ After litigation, removal of the statue occurred on September 8, 2021.⁷ The Lee statue was

⁵ H. Eason, “Second night of Richmond protest over killing of George Floyd reaches Confederate monuments,” *Commonwealth Times* (May 31, 2020).

⁶ Press Release, Governor Northam to Remove Robert E. Lee Statue in Richmond (June 4, 2020).

⁷ See J. Roback, “Goodbye Where is Robert E. Lee statue going?” *The U.S. Sun* (Sept. 8, 2021).

later transferred to the City of Richmond and then to the Black Museum and Cultural Center of Virginia.⁸ Governor Northam also ordered the removal of the base of the statue, which began on December 6, 2021, was to be accomplished before Governor Northam's term expired on January 15, 2022.⁹

Procedural History

On July 21, 2020, Petitioners filed this action. In Richmond Circuit Court, they were granted a temporary injunction against the removal of the statue.¹⁰ As the case moved toward trial, the General Assembly, in its 2020 special session, adopted a Budget Amendment that purported to repeal the 1889 Joint Resolution and order the destruction of the Lee statue.¹¹ On October 27, 2020, the Circuit Court dismissed petitioners suit. On September 2, 2021, the

⁸ See L. Gershon, "Richmond's Robert E. Lee Statue is Headed to a Black History Museum," *Smithsonian Magazine* (Jan. 5, 2022). The disposition of the Richmond Lee Statue is unknown, but "[a] statue of Confederate Gen. Robert E. Lee that stood in the heart of Charlottesville, Virginia, for almost a century will be melted down into bronze ingots that will be used to create new public art." D. Williams & A. Simonson, "A Black museum plans to melt down Charlottesville Robert E. Lee statue to create new art," *CNN* (Dec. 8, 2021).

⁹ See C. Coleburn, "Work begins to remove Robert E. Lee monument base in Richmond," *6 News Richmond* (Dec. 6, 2021).

¹⁰ *Taylor v. Northam*, 2020 Va. Cir. LEXIS 180 (Richmond Cir. Ct. 2020).

¹¹ Acts of Assembly 2020 c. 24.

Supreme Court of Virginia affirmed the Circuit Court’s dismissal of petitioner’s case.¹² On September 29, 2021, petitioners filed a petition for rehearing. On October 21, 2021, the Virginia Supreme Court denied the petition and dissolved the Circuit Court’s temporary injunction preventing removal of the statue.

SUMMARY OF ARGUMENT

The Lee Monument stood along Monument Avenue in Richmond, Virginia for 130 years, only to fall to a “cancel culture” movement that has spread across the nation like a cancer. While the original targets of opportunity of this movement were Confederate statutes and monuments, the hatred of some for our nation’s past soon manifested in attacks on monuments dedicated to defenders of the Union, including General Ulysses S. Grant and Abraham Lincoln. Andrew Jackson and even George Washington have come under attack. Even Chief Justice John Marshall did not contribute enough to the development of our nation to justify having a “woke” law school named after him. Sadly, great cowardice is being demonstrated by the political branches of government, as few have risen in the defense of the nation’s foundations.

What is even more troubling than this effort to undermine our nation’s history and tradition is the lawless manner in which the destruction is being carried out. This Petition for Certiorari gives this

¹² *Taylor v. Northam*, 300 Va. 230 (Va. 2021).

Court an opportunity to restore the Rule of Law in one important area — preserving the obligation of contracts from abrogation by arbitrary state government action.

Virginia accepted the Lee Monument and land surrounding it giving the Commonwealth’s “guarantee,” confirmed by the General Assembly and the Governor, to “hold said statute and pedestal and ground perpetually sacred to the monumental purpose to which they have been devoted.” Former Governor Ralph Northam’s removal of the Lee Monument was based on his unilateral declaration of the “public policy” of the Commonwealth of Virginia — a responsibility of the state legislature, not the Governor.

After having suffered an intense political embarrassment with the release of his photograph in blackface or a KKK hood, Governor Northam was under intense pressure to repay the “cancel culture” movement for having allowed him to remain in office. When violence came to Richmond after the George Floyd killing, he yielded to the mob by sacrificing the Commonwealth’s pledge. The General Assembly then ratified his action with a Budget Amendment abrogating the restrictive covenant.

These actions by the Governor and General Assembly not only violate the Contract Clause as originally understood by Chief Justice Marshal in *Fletcher v. Peck*, they do not even the test of *Home Building & Loan Assn. v. Blaisdell*. This case provides an excellent vehicle for the Court to review its

Contract Clause jurisprudence and to re-establish its vitality in protecting Americans against arbitrary state action.

ARGUMENT

I. THE VIRGINIA SUPREME COURT APPROVED VIOLATIONS OF THE CONSTITUTION'S CONTRACT CLAUSE BY THE VIRGINIA GOVERNOR AND GENERAL ASSEMBLY.

A. The Virginia Supreme Court Addressed Only Some of the Important Issues Below.

The Virginia Supreme Court cited three grounds to support its decision sanctioning the removal of the Lee Monument. First, the restrictive covenants were at odds with Virginia's public policy, as determined by the Governor and confirmed by the General Assembly's Budget Amendment. Second, "changed circumstances" since 1890 that supported Governor Northam's unilateral breach of the restrictive covenants and order of removal. Third, the 1889 Joint Resolution and the 1890 Deed improperly bound "future administrations' exercise of government speech." The Court never addressed Petitioner's constitutional challenge to the Budget Amendment under the Contract Clause, while sanctioning the Governor's violation of that Clause.

B. The Commonwealth's Removal of the Lee Monument violated the Contract Clause.

The initial decision to remove the Lee Monument was the unilateral act of former Virginia Governor Northam.¹³ When challenged, Northam primarily argued that the very presence of the Lee Monument on land belonging to the Commonwealth constituted government speech, and that since some would infer that the presence of the Monument suggested endorsement of a message that he, as Governor, did not want the Commonwealth to communicate, he had authority to remove it.¹⁴ Additionally, he argued that he had determined that “public policy” had changed since 1890. Northam felt no duty whatsoever to be bound by the Virginia General Assembly’s 1889 Joint Resolution authorizing the Governor to accept the property with the restrictive covenant providing “the guarantee of the state that it will **hold said statue and pedestal and ground perpetually sacred to the monumental purpose** to which they have been devoted.” (Emphasis added.) Northam felt no duty to be bound by the restrictive covenant itself which was set out in the 1890 deed.

Northam believed he, acting alone as Governor, had the authority to declare the public policy of the

¹³ G. Schneider and L. Vozzella, “Northam says Virginia will remove Lee monument in Richmond,” *Washington Post* (June 4, 2020).

¹⁴ “Governor Northam Statement on Removal of Lee Monument,” (Sept. 8, 2021).

Commonwealth, and such a declaration would override both the prior Joint Resolution of the General Assembly and the clear terms of the deed's restrictive covenant. In essence, his unilateral act of determining "public policy" authorized the Commonwealth to abrogate its contract duties reflected in the restrictive covenant. (*See* discussion of the contractual nature of restrictive covenants in *Petition for Certiorari* ("Pet. Cert.") at 9 n.4.) Petitioner describes the shocking implications of the Governor's position, which was approved by the Virginia Supreme Court:

If this Virginia decision is followed, **every contract** entered into by a state government **can be abrogated when a governor** or a court — not the legislature — **decides that the contract violates public policy**. This would leave those who contract with state governments at the mercy of judges and executive or administrative officials who have no legitimate role in setting the Commonwealth's public policy. [*Pet. Cert.* at 9 (emphasis added).]

If this Northam/Virginia Supreme Court position were adopted, it would empower governors to abrogate contracts (including contracts involving the state) at will, in violation of Article I, Section 10, clause 1: "No state shall ... pass any ... Law impairing the Obligation of Contracts...." If the Lee Monument had been removed solely based on the Governor's abrogation of the contractual duty inherent in the restrictive covenant, the Commonwealth could have taken the position that the Contract Clause only extends to a "Law" which was "pass[ed]" by a state legislature,

making the decision of the Virginia Supreme Court more difficult to challenge. Although here the Governor also acted in reliance on a budget amendment passed by the General Assembly — clearly qualifying as a “law” which was “passed” by a “state.”

Interestingly, the Virginia Supreme Court’s opinion expressly denied relying on the Budget Amendment, stating: “there is sufficient evidence ... that the purported restrictive covenants are unenforceable even without considering the 2020 Budget Amendment...” *Taylor*, 300 Va. at 248. It could be that this approach was a strategic effort by the Court to protect its decision from this Court’s review of Petitioner’s Contract Clause claim. If the decision to remove the Monument was that of the Governor alone, then the Commonwealth could argue that there was no “law” abrogating a contract. These *amici* contend that the Contract Clause should apply even to the Governor’s unilateral actions, just as the First Amendment’s admonition that “Congress shall make no law,” applies to the Executive as well.

C. This Case Provides an Opportunity for this Court to Return to a Textual Interpretation of the Contract Clause.

Not long ago, this Court described *Home Building & Loan Assn. v. Blaisdell*, 290 U.S. 398 (1934), as “the leading case in the modern era of Contract Clause interpretation.” *United States Trust Co. v. New Jersey*, 431 U.S. 1, 3 (1977). In *Blaisdell*, this Court recognized the “reserved powers doctrine,” that the “essential attributes of sovereign power” are “reserved

by the States to safeguard the welfare of their citizens.” *Id.* at 21. Yet despite such reserved powers, even “private contracts are not subject to unlimited modification under the police power.” *Id.* at 22. However, “[w]hen a State impairs the obligation of its own contract, the reserved-powers doctrine has a different basis.” *Id.* at 23. “Whatever the propriety of a State's binding itself to a future course of conduct in other contexts, the power to enter into effective financial contracts cannot be questioned....” *Id.* at 24. This doctrine, which prevents states from abrogating debt contracts, is similar to the current case, where a state has abrogated a restrictive covenant and yet retained ownership of the land and control of the Lee Monument.¹⁵

The Court established a test: “an impairment may be constitutional if it is **reasonable** and **necessary** to serve an important public purpose.... In applying this standard, however, **complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake.**” *Id.* at 25 (emphasis added). The Petition for Certiorari demonstrates why neither test was met here (*see* Pet. Cert. at 10-11), to which these *amici* only add that this Court specified that if the state could accomplish its goals through “**alternative means**” without modifying a contract at all, the state could not establish necessity. *U.S. Trust*

¹⁵ *U.S. Trust Company* rejected the “total destruction test,” under which the private party’s contract rights must be totally destroyed to find a violation of the Contract Clause, but even under that test, Petitioners should prevail here. *Id.* at 26.

Co. at 25 (emphasis added). Once the Virginia Supreme Court concluded that the Commonwealth could not be compelled to the “government speech” associated with the Lee Monument, it should have ordered the Lee Monument and the grounds be transferred to a private party willing to abide by the restrictive covenants, but the court never discussed this obvious compromise position. The Virginia Supreme Court was so deferential to the Governor’s demand to destroy the Lee Monument, it was willing to ignore two separate Contract Clause violations.

While these *amici* believe that the Commonwealth violated the test established in *Blaisdell*, this case would be an excellent vehicle for this Court to re-examine that 5-to-4 decision, or at least whether Chief Justice Hughes’ language should be applied outside its factual context: a statute enacted in an emergency, without alternatives, which is temporary in nature. See *U.S. Trust Co.* at 15. Governments routinely view their actions as required by emergencies of one sort or another. Could rioting in Richmond be deemed an emergency to justify an abrogation of contract? *Blaisdell* asserts a method of interpretation difficult to square with textualism, creating exceptions for emergencies: “[T]he prohibition is not an absolute one and is not to be read with literal exactness like a mathematical formula.” *Blaisdell* at 428. In dissent, Justice Sutherland asserted the opposite position: “A provision of the Constitution, it is hardly necessary to say, does not admit of two distinctly opposite interpretations. It does not mean one thing at one time and an entirely different thing at another time.” *Id.* at 448-49 (Sutherland, J., dissenting).

It is time to return to Chief Justice Marshall's understanding that the Contract Clause protects Americans against arbitrary state action even in times of social upheaval:

It is not to be disguised that the framers of the constitution viewed, with some apprehension, **the violent acts which might grow out of the feelings of the moment**; and that the people of the United States, in adopting that instrument, have manifested a determination **to shield themselves and their property from the effects of those sudden and strong passions** to which men are exposed. [*Fletcher v. Peck*, 10 U.S. 87, 137-38 (1810) (emphasis added).]

Without question, the Contract Clause has been weakened over time, and this case provides an excellent vehicle to breathe into it new life, to re-establish its protection of the public from arbitrary state abrogation of contractual commitments — particularly its own.

II. VIRGINIA BREACHED ITS RESTRICTIVE COVENANTS IN SERVICE TO A DANGEROUS “CANCEL CULTURE” MOVEMENT.

A. The Virginia Supreme Court Listened only to the Loudest Voices to Assess Public Policy.

The Virginia Supreme Court sanctioned the Commonwealth's violation of its commitment to abide

by restrictive covenants based on the Governor's unilateral declaration of public policy, supported by the General Assembly's unconstitutional budget amendment. *See* Section I.B., *infra*. If declarations of changes in "public policy" have become so powerful that they can override state contracts, it becomes critical to understand exactly how such public policy is established. The Governor's declaration of public policy appears to have been deeply influenced by two factors: his need to defend his own disturbing racially-tinted personal behavior which had been exposed only the prior year,¹⁶ and his affinity to violent protests¹⁷ involving sketchy organizations such as Black Lives Matter.¹⁸ Neither factor should affect, and certainly not control, public policy formation.

¹⁶ L. Vozzella, J. Morrison and G. Schneider, "Gov. Ralph Northam admits he was in 1984 yearbook photo showing figures in blackface, KKK hood," *Washington Post* (Feb. 1, 2019) ("Northam ... acknowledged appearing in a 'clearly racist and offensive' photograph in his 1984 medical school yearbook that shows a man in blackface and another in a Ku Klux Klan robe.... Northam ... did not say whether he was the man dressed in blackface or the one in a Klan robe and hood.").

¹⁷ *See* K. Schultz, "Live out the mantra that Virginia is for lovers': Northam makes first appearance since protests begin," *WUSA 9* (June 2, 2020) ("**To the protestors** who are out in Richmond and other parts of the commonwealth: I hear you, I am with you, **I pledge to stand by you,**" Northam said. 'I can not know the depth of your pain right now, but I can stand with you and support you and **together we're going to turn this pain into action.**") (Emphasis added.)

¹⁸ *See* K. Lessmiller, "richmond-blm-west," *Courthouse News Service* (June 8, 2021); S. Campbell, "The BLM Mystery: Where did the money go?" *Intelligencer* (Jan. 31, 2022).

While there was no question that the mobs defacing Confederate statues were thrilled with the Governor's removal of the Lee Monument, where referenda to remove Confederate statues were put to a vote by Virginians, the results have been at odds with the Northam position.

In 2020, six Virginia county governments — Charles City, Franklin, Halifax, Lunenburg, Tazewell, and Warren — also put the question to voters. By wide margins, voters said they should stay, with support for the statues ranging from 55 percent in Charles City County to 87 percent in Tazewell, according to preliminary results. Referenda conducted in 2021 demonstrated similar results.¹⁹ It has been reported that there are 80 counties in Virginia which still have Confederate monuments.²⁰

B. The Astonishing Reach of “Cancel Culture.”

The destruction of the Lee Monument must not be viewed in a vacuum. While the first demands from the

¹⁹ See D. Ress, “Virginia counties vote overwhelmingly to keep Confederate monuments,” *Daily Press* (Nov. 3, 2021) (“Mathews [County] voters rejected a proposal to relocate the county’s Soldier’s & Sailor’s Monument on its court green ... by 3,778, or 80% of ballots cast, to 939, or 20%. In Middlesex [County], the vote against moving its Civil War Monument from the courthouse grounds in Saluda was 3,229, or 75% of ballots cast, to 1,076”).

²⁰ See N. Oliver, “In six rural Virginia counties, residents vote overwhelmingly to keep Confederate monuments,” *Virginia Mercury* (Nov. 4, 2020).

“cancel culture” movement were directed at Confederate remembrances, those were only the opening strategy of a sinister political agenda. “Cancel culture” has become almost unbounded in its scope, as the entire history of America is under assault. And the ultimate goal appears to be the undermining of our constitutional republic. In addressing the abuse of power below, this Court could demonstrate real leadership by ensuring that politicians do not abrogate historically significant contracts based on their personal preferences and political expediency.

Ulysses S. Grant. If the motivation of the protestors was only anti-Confederate, then what explains the hatred shown by the cancel culture movement to Northern heroes? In June 2020, “protesters ... pulled down a statue of Ulysses S. Grant — the Union general responsible for the defeat of the Confederacy — because he owned a slave.”²¹ “As president, Grant broke the KKK and fought for Black voting rights,” but some assert his “policy towards Native American people could easily be described as cultural genocide.” *Id.*

Abraham Lincoln. Like so many other leaders in many countries, Lincoln was often inconsistent in his principles. While Lincoln was the author of the Emancipation Proclamation, in his debates with Stephen Douglas, he explained: “I will say then that I am not, nor ever have been in favor of bringing about in any way the social and political equality of the white

²¹ N. Berlatsky, “It wasn’t a mistake to pull down the statue of Ulysses S Grant.” *Independent* (June 22, 2020).

and black races.”²² The Lincoln Memorial in Washington was vandalized during protests.²³

George Washington. Inevitably, protests against Civil War monuments have expanded to target monuments to America’s founders, some of whom also owned slaves:

A group of protesters in Portland, Oregon vandalized and tore down a statue of America’s first president, George Washington. The group draped an American flag, lit on fire, and then toppled the Washington statue on Thursday, June 18. The demonstrators argue Washington owned slaves and therefore should not have statues of him.²⁴

The mayor of the District of Columbia also approved of a “working group” plan to “remove, relocate or contextualize the Washington Monument because of its ‘disqualifying’ history.”²⁵ “The working group

²² “Fact check: Quotes from prominent American statesmen on race are accurate,” *Reuters* (July 6, 2020).

²³ R. Gearty, “Vandals target historic monuments amid George Floyd protests,” *Fox News* (June 7, 2020).

²⁴ C. Parke, “From George Washington to Ulysses S. Grant: Statues, monuments vandalized extend beyond Confederates amid Black Lives Matter protests,” *Fox News* (June 22, 2020).

²⁵ A. Kerr, “DC Mayor Embraces Report That Called For Removal Or Contextualization Of The Washington Monument,” *Daily Caller* (Sept. 1, 2020).

recommended ... removal or contextualization of the Christopher Columbus Fountain, the Benjamin Franklin Statue, the Andrew Jackson Statue and the Jefferson Memorial.” *Id.* Under such an approach, both Washington State and Washington, D.C. would require renaming.

Andrew Jackson. On June 22, 2020, protestors directed their hostility to the statue of Andrew Jackson near the White House.

Protesters ... tried toppling a statue of Andrew Jackson near the White House, while sealing off an area in an act of defiance similar to events in Seattle by declaring off-limits an area dubbed the “Black House Autonomous Zone,” or “BHAZ.”²⁶

As with most leaders of all nations, Jackson demonstrated great strengths such as being the hero of the Battle of New Orleans in the War of 1812, while also being the architect of the Trail of Tears, forcibly relocating the peaceful Cherokees to government reservations.

Theodore Roosevelt. Theodore Roosevelt worked to build the United States Navy into the greatest in the world.²⁷ He “made notable contributions to

²⁶ L. Casiano, “DC protesters try tearing down Andrew Jackson statue at Lafayette Park, set up ‘BHAZ’ near White House,” *Fox News* (June 22, 2020).

²⁷ See J. Yarbrough, “Theodore Roosevelt: Progressive Crusader,” *Heritage Foundation* (Sept. 24, 2012) (“He worked assiduously to

conservation.... He added more than 125 million acres to our national forests.”²⁸ Yet just six weeks ago, on January 19, 2022:

A statue of Theodore Roosevelt that has stood in front of the American Museum of Natural History in Manhattan for more than 80 years was hauled away.... The bronze monument depicting the nation’s 26th president on a horse flanked by an African man and a Native American man — which has sparked protests for glorifying colonialism and racism — was yanked out with a crane....²⁹

As with the Lee Monument, the Roosevelt statue “came under fire amid nationwide Black Lives Matter protests sparked by the police killing of George Floyd in May 2020.” *Id.*

Woodrow Wilson. Woodrow Wilson “earned a Nobel Peace Prize for his efforts to found the League of Nations,” and is described as “[a] progressive reformer

build up the Navy so that by the end of his presidency, it had moved up from fifth to second place internationally, trailing only Great Britain”).

²⁸ “The Life of Theodore Roosevelt,” *National Park Service* (last updated Oct. 9, 2014).

²⁹ N. O’Neill, “Theodore Roosevelt statue removed from American Museum of Natural History,” *New York Post* (Jan. 19, 2022).

who fought against monopolies and child labor.”³⁰ But he wrote that Reconstruction required Southern whites to bear “the intolerable burden of governments sustained by the votes of ignorant negroes.”³¹ How long will it be before Wilson’s birthplace in Staunton, Virginia is targeted?

John Marshall. The federal judiciary will not escape cancel culture, if it is not stopped. In December 2020, the UIC John Marshall Law School decided to remove the name of the most famous Chief Justice of this Court from the school’s name, because Marshall owned slaves.³²

C. States, Cities, and Colleges Could Require Renaming.

New York itself is named after the Duke of York (later to become King James II of England), “one of the most successful slavers in colonial American history.”³³ “The Duke of York ... created Britain’s greatest slave empire known as the Royal African Company, which transported between 90,000 and 100,000 African

³⁰ B. Little, “How Woodrow Wilson Tried to Reverse Black American Progress,” *History.com* (July 14, 2020).

³¹ W. Wilson V, “A History of the American People: Reunion and Nationalization,” at 28 (Cosimo, Inc.: 1901).

³² J. Patrice, “Law School STILL Named After Slaveholder,” *AboveTheLaw.com* (Mar. 24, 2021).

³³ T. Phippen, “New York Is Named After A Horrendous Slave Trader,” *Daily Caller* (Aug. 17, 2017).

slaves to the Caribbean and American colonies between 1672 and 1689.” *Id.* “Slaves purchased for the Royal African Company of England were branded ‘DY,’ Duke of York, after the president of the company.” *Id.*

North and South Carolina are named after the English King Charles I. “By 1632 the British monarch Charles I ... gave a monopoly licence to a private company to trade in slaves from Africa.”³⁴ Virginia is named after Queen Elizabeth I, known as the “Virgin Queen” who “directly sent pirate John Hawkins to get slaves by any means necessary.” *Id.* Louisiana is named after the French King Louis XIV. In his “Code Noir,” or “Black Code,” Louis established an entire code for the administration of slavery in French colonies in America.³⁵

Numerous American universities would also have to be renamed. The Brown family, for whom Brown University is named, owned slaves and invested in the slave trade.³⁶ Johns Hopkins, for whom another university is named, once thought to be an abolitionist,

³⁴ S. Scott, “The British monarchy’s involvement in slavery,” *Jamaica Observer* (Mar. 25, 2018).

³⁵ See Le Code Noir, Ou Edit Du Roy.

³⁶ J. Melish, “Recovering (from) Slavery: Four Struggles to Tell the Truth,” printed in L. Horton; J.O. Horton (eds.). “Slavery and Public History: The Tough Stuff of American Memory,” at 103-34 (The New Press: 2006).

actually owned slaves.³⁷ Henry Rutgers, for whom Rutgers University is named, was a third-generation slaveholder.³⁸ Elihu Yale, for whom the university is named, was “an active and successful slave trader.”³⁹

As with other nations, the history of America is scarred by war, injustice and, the lives of every man scarred by sin. *See Romans 3:10; Romans 3:23.* If history is to “cancelled” for its disturbing moments, it is difficult to identify any historically notable figure who might not qualify for cancellation, or any notable cultural landmark that will go unscathed.

D. Karl Marx on Destroying a Nation’s Traditions.

The effort to demonize America’s history and destroy the appreciation of Americans for her history, both good and bad, constitutes an assault on America which is much more invidious than a physical assault which can be readily recognized and repelled. Those assaulting the nation’s history may have many motivations, but knowingly or not, they are implementing a strategy taught by Karl Marx. Today, those tactics wear modern “Americanized” garments

³⁷ P. Helsel, “Johns Hopkins, long believed by university to be abolitionist, owned slaves, records show,” *NBC News* (Dec. 10, 2020).

³⁸ *See* Rutgers University, Scarlet and Black Research Center, Biography of Henry Rutgers.

³⁹ J. Yannielli, “Elihu Yale was a Slave Trader” (Nov. 1, 2014).

called “critical race theory,” “critical legal studies,” and the like.

Karl Marx believed in the necessity of destroying a nation’s past in order to create a Marxist present. “Marx saw tradition as a tool of the bourgeoisie. Adherence to the past served as a mere distraction in proletariat’s quest for emancipation and supremacy. ‘In bourgeois society,’ Marx wrote, ‘the past dominates the present; in Communist society, the present dominates the past.’”⁴⁰ “As Marx preached, the citizenry must condemn and cast off their own history if there is to be individual and societal progress.”⁴¹ “In America, capitalism and constitutionalism are ramparts that stand against Marxism and progressivism and, therefore, must be discredited and ultimately demolished.” *Id.* at 47.

“CRT [critical race theory] inherits from its Critical Legal Theory ancestor the commitment to **dismantle all aspects of society through unremitting criticism.**”⁴² CRT adopts “[t]he Marxist analysis of society made up of categories of oppressors and oppressed.” *Id.* at 1. CRT stresses “[t]he concomitant

⁴⁰ J. Miltimore, “5 Things Marx Wanted to Abolish (Besides Private Property),” *Foundation for Economic Education* (Oct. 31, 2017).

⁴¹ M. Levin, “American Marxism,” at 45-46 (Threshold Editions: 2021).

⁴² J. Butcher and M. Gonzalez, “Critical Race Theory, the New Intolerance, and Its Grip on America,” *Heritage Foundation*, at 8 (Dec. 7, 2020) (emphasis added).

need to dismantle all societal norms through relentless criticism ... [and] replacement of all systems of power and even the descriptions of those systems with a worldview that describes only oppressors and the oppressed.” *Id.* at 2.

The fundamental protections of America’s Constitution are the ultimate targets of Marxism/CRT. “Freedom of speech is ... in CRT’s sights.” *Id.* at 9. As far back as 1968, critical legal theorist Herbert Marcuse decried the ideal of equal justice under law:

It should be evident by now that the exercise of civil rights by those who don’t have them presupposes the withdrawal of civil rights from those who prevent their exercise, and that liberation of the Damned of the Earth presupposes suppression not only of their old but also of their new masters....⁴³

Accordingly, Marcuse called for “intolerance even toward thought, opinion, and word, and finally, intolerance in the opposite direction, that is, toward the self-styled conservatives, to the political Right....” *Id.*

In addition to CRT’s central tenets of disrupting systems of power and destabilizing classical liberal civil and political structures, CRT and Critical Theory

⁴³ A. Feenberg and W. Leiss, eds., The Essential Marcuse 51 (Beacon Press: 2007).

object to free speech as a cornerstone of society.”⁴⁴ Richard Delgado wrote in 1994, “We are raising the possibility that the correct argument may sometimes be: the First Amendment condemns [the suppression of speech, even hate speech], therefore the First Amendment (or the way we understand it) is wrong.”⁴⁵

Generations of Americans have understood that Marxism is incompatible with American constitutional liberties. And that is now the view of today’s CRT theorists and their protestor allies, who demand that both truth and our liberties and our history be surrendered for the “greater good.”

In his book 1984,⁴⁶ George Orwell anticipated the future toward which we are heading:

Every record has been destroyed or falsified, every book rewritten, every picture has been repainted, **every statue** and street building **has been renamed**, every date has been altered. And the process is continuing day by day and minute by minute. History has stopped. **Nothing exists except an endless present in which the Party is always right.** [Emphasis added.]

⁴⁴ J. Butcher and M. Gonzalez at 26 (Dec. 7, 2020).

⁴⁵ C. Demaske, “Critical Race Theory”, *The First Amendment Encyclopedia* (2009).

⁴⁶ G. Orwell, 1984 at 147 (Houghton Mifflin: 1983).

It is time for men and women of good will to ask themselves the question posed by King David: “If the foundations be destroyed, What can the righteous do?” *Psalm* 11:3. Should this Court grant Certiorari to uphold the Constitution’s Contract Clause, it would do its part to defend the rule of law from the rule of the mob.

CONCLUSION

For the reasons set forth in the Petition for Writ of Certiorari and those above, the Court should grant the Petition.

Respectfully submitted,

RICK BOYER INTEGRITY LAW FIRM, PLLC P.O. Box 10953 Lynchburg, VA 24506	WILLIAM J. OLSON* JEREMIAH L. MORGAN WILLIAM J. OLSON, P.C. 370 Maple Ave. W., Ste. 4 Vienna, VA 22180 (703) 356-5070 wjo@mindspring.com <i>Attorneys for Amici Curiae</i>
JAMES N. CLYMER CLYMER, MUSSER & SARNO, P.C. 408 West Chestnut St. Lancaster, PA 17603 <i>Attorney for CLDEF</i>	JOSEPH W. MILLER LAW OFFICES OF JOSEPH W. MILLER, LLC P.O. Box 83440 Fairbanks, AK 99708 <i>Attorney for RLAC</i>
J. MARK BREWER BREWER & PRITCHARD, P.C. 800 Bering Drive Suite 201A Houston, TX 77057 <i>Attorney for CLDEF</i>	* <i>Counsel of Record</i> March 9, 2022