

September 13, 2022

Mathews County Board of Supervisors  
50 Brickbat Road  
Mathews, VA 23109

Dear Board of Supervisors,

We write on behalf of the Mathews County NAACP to express its vehement opposition to any Board of Supervisors' action that would transfer the Soldiers and Sailors Monument and surrounding public land to the United Daughters of the Confederacy or the Sons of Confederate Veterans. The County must refrain from favoring Confederate displays, which would be the obvious result of deeding the Soldiers and Sailors Monument and surrounding public land to groups with a pro-Confederate view. Actively supporting the ongoing display of Confederate flags or other memorabilia on the Mathews Courthouse Square creates a hostile and unwelcoming environment for Black families in Mathews County and interferes with the rights of Mathews County residents.

### **Confederate Displays and the Real Consequences for Black Citizens**

The display of Confederate memorials and regalia on public land has been done with the precise intention of valorizing the ideological cornerstone of white supremacy.<sup>1</sup> Confederate monuments were intended to assert that white supremacy would remain a dominant force of social control.<sup>2</sup>

Public commemoration of the Confederacy, and its ideological cornerstones, hinders the well-being of Black residents and damages trust in local institutions. As the Fourth Circuit appropriately observed,

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<sup>1</sup> In March 1861, Alexander Stephens, the Vice-President of the Confederate States, delivered his Cornerstone Speech. He articulated that the foundation, or cornerstone, of the states in rebellion rested “upon the great truth that the negro is not equal to the white man; that slavery—subordination to the superior race—is his natural and normal condition. This, our new government, is the first, in the history of the world, based upon this great physical, philosophical, and moral truth.”

<sup>2</sup> See, e.g., Miles Parks, *Confederate Statues Were Built To Further a 'White Supremacist Future'*, NPR (Aug. 20, 2017), <https://n.pr/37Kxc7Q>. The people erecting Confederate monuments in the early 20th century said as much themselves. In dedicating a Confederate monument of Jefferson Davis at a ceremony in 1927, Senator John Sharp Williams of Mississippi proclaimed that the Confederates fought to preserve “[t]he cause of White Racial Supremacy, which . . . is not a ‘Lost Cause.’ It is a Cause Triumphant. It was never as safe as now since the Missouri Compromise . . . The white man’s family, life, his code of social ethics, his racial integrity—in a word his civilization—the destruction of which in the slave states was dreaded . . . are safe.” Equal Justice Initiative, Case 1:21-cv-01088-ELH Document 14-1 Filed 08/20/21 Page 9 of 76 5 Segregation in America (2018) (quoting The Jefferson Davis Memorial in the Vicksburg National Military Park, Dedication Ceremonies Pamphlet, October 13, 1927), <https://bit.ly/3D1xy8B>.

Black people “undoubtedly view[] [] Confederate symbols as a persistent affront, given the association between those symbols and the history of slavery in this country.” *Crosby by Crosby v. Holsinger*, 816 F.2d 162, 163 (4th Cir. 1987). Indeed, 80 percent of African Americans “view the Confederate flag as a racist symbol.”<sup>3</sup> Confederate imagery is inextricably interwoven with Confederate ideals and cannot be divorced from hatred and violence perpetrated against Black people.

Moreover, the presence of these memorials, particularly on public land (or land that was public before being deeded to a private owner) or adjacent to buildings of public trust, imply a reverence for the institution of slavery and its violent denial of fundamental rights.<sup>4</sup> This implied reverence has real consequences for Black citizens, serving as overtly hostile reminders of slavery and evidence of current day racism.<sup>5</sup> Exposure to Confederate symbols, in one study by a leading psychologist, seemed to trigger prejudicial attitudes.<sup>6</sup>

Fortunately, as our nation grapples with the racist history of the Confederacy, we have seen strides being made across the country and across industries to finally condemn veneration of the Confederate cause. The Board of Supervisors’ consideration of deeding the Soldiers and Sailors Monument and surrounding land on the Historic Courthouse Square to pro-Confederacy groups would move Mathews County backwards. Deeding the monument and the land would prevent citizens in the future from determining through local elections whether to relocate or remove the statue. The County would lose all control over the land, which could be used for any purpose or even re-deeded to a different group. And, any action by the Board of Supervisors to promote and favor Confederate messages would likely violate the federal Constitution, the Virginia Constitution, and federal and state laws including the Equal Protection Clause of the 14th Amendment and the Fair Housing Act.

### **Violation of Equal Protection Clause**

First, deeding the Soldiers and Sailors Monument and land to pro-Confederacy groups violates the Equal Protection Clause of the Fourteenth Amendment, which prohibits states from “denying to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, §1. As part of ensuring that states and state actors are not discriminating on the basis of race nor acting with a racially discriminatory purpose, the Equal Protection Clause requires the “affirmative disestablishment of societal practices that treat people as members of an inferior or dependent caste, as unworthy to participate in the larger community.”<sup>7</sup> Monuments displayed on public land constitute government speech. *See Pleasant Grove City v. Summum*, 555 U.S. 460, 470–71 (2009). When the government displays monuments, “[g]overnment decisionmakers select the monuments that portray what they view

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<sup>3</sup> See Robert P. Jones, *What Does the Confederate Flag Symbolize? Seven in Ten Working-Class Whites Say “Southern Pride”*, Pub. Religion Rsch. Inst. (Aug. 4, 2017), <https://www.prii.org/spotlight/white-working-class-americans-confederate-flag-southern-pride-racism/>.

<sup>4</sup> John M. Coski, *Symbol of the White Race: The Confederate Battle Flag* 157 (Harvard University Press, 2009).

<sup>5</sup> *Id.* See also Komanduri S. Murty & Ashwin G. Vyas, *African American Students’ Reactions to the Confederate Flag: A Social-Psychological Approach to Integrate Post Traumatic Slave Syndrome and Microaggression Theory*, 24 Race, Gender & Class 133, 140 (2017).

<sup>6</sup> Joyce Ehrlinger et al., *How Exposure to the Confederate Flag Affects Willingness to Vote for Barack Obama*, 32 Pol. Psych. 131 (2011).

<sup>7</sup> Charles R. Lawrence, *If He Hollers Let Him Go: Regulating Racist Speech on Campus*, 1990 Duke L.J. 431, 439 (1990).

as appropriate for the place in question, taking into account such content-based factors as esthetics, history, and local culture . . . and intend[] [for] the monument to speak on [their] behalf.” *Id.* at 472-74. By analogy, the decision to deed public land and the monument to pro-Confederacy groups sends the unquestionable messages that the Mathews County Board of Supervisors endorses white supremacy and supports the second-class status of Black people. Such an action would deny Black residents equal protection under the law.

### **Violation of the Fair Housing Act**

In addition to violating the Equal Protection Clause, a decision by Mathews County to deed the monument and land to a private group or groups that has a history and expressed desire to use the land to display Confederate flags and other memorabilia is a form of racial steering that violates the Fair Housing Act. “Racial steering” is “the process of influencing a buyer’s choice of communities based upon the buyer’s race . . . .”<sup>8</sup> Racial steering may occur when an entity encourages “people of a particular race to live—or not to live—in a particular community.”<sup>9</sup> The Fair Housing Act makes it unlawful to “[t]o make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race . . . .” 42 U.S.C. § 3604(c). Deeding land to pro-Confederacy groups known to put up Confederate flags in a plot of land directly adjacent to government buildings implicates the Fair Housing Act by suggesting to an “ordinary reader [or listener] that a particular race is preferred or dispreferred for the housing in question.” *Soules v. U.S. Dep’t of Housing & Urban Dev.*, 967 F.2d 817, 824 (2d Cir. 1992) (quoting *Ragin v. N.Y. Times Co.*, 923 F.2d 995, 999 (2d Cir.)). The message that the Board of Supervisors will send by deeding the monument and land to pro-confederacy groups is that Black residents are not welcome in Mathews County.

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We are continuing to evaluate potential legal challenges to Mathews County’s proposal. We strongly urge the Board of Supervisors to reject any proposal that would further perpetuate a system of values that upholds the inferiority of Black people and fuels violence against them. Should the Board of Supervisors go forward with the conveyance of the Soldiers and Sailors Monument and surrounding land to support and promote Confederate displays on the public square, the Mathews County NAACP will be forced to consider legal action.

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<sup>8</sup> *Steering, Schools, and Equal Professional Service*, Nat’l Ass’n of Realtors (June 9, 2014), <https://www.nar.realtor/articles/steering-schools-and-equal-professional-service#:~:text=The%20REALTORS%C2%AE%20Code%20of,familial%20status%2C%20or%20national%20origin>.

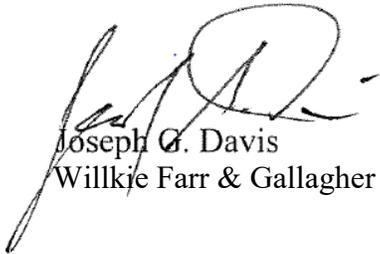
<sup>9</sup> Brief for the Southern Poverty Law Center as Amicus Curiae, *Miss. Rising Coal. v. City of Ocean Springs*, 910 F.3d 191 (5th Cir. 2018); see also, e.g., *McCardell v. U.S. Dep’t of Hous. & Urb. Dev.*, 794 F.3d 510, 518 (5th Cir. 2015) (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 376–78 (1982)); Note, *Racial Steering: The Real Estate Broker and Title VIII*, 85 Yale L.J. 808, 809–10 (1976).

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Sincerely,

A handwritten signature in black ink, appearing to read "Joseph G. Davis". The signature is fluid and cursive, with a large loop at the end.

Joseph G. Davis

Willkie Farr & Gallagher LLP

A handwritten signature in black ink, appearing to read "Kaitlin Banner". The signature is cursive and somewhat stylized.

Kaitlin Banner

Deputy Legal Director

Washington Lawyers' Committee for Civil Rights & Urban Affairs

cc: Andrea Erard, County Attorney, Mathews County, via email, [erardlaw@gmail.com](mailto:erardlaw@gmail.com)  
Ramona Wilson, County Administrator, via email, [rwilson@mathewscountyva.gov](mailto:rwilson@mathewscountyva.gov)