

## Virginia Supreme Court Authorizes Removal Of General Robert E. Lee Statue In Richmond

2 Sep 2021

A large statue of Confederate General Robert E. Lee has stood for over 100 years on Monument Avenue in Richmond, along with statues of other Confederate notables. Times changed, and calls to remove the statues intensified. Governor Ralph Northam authorized the removal of the statues, but two lawsuits were filed by private individuals to protect Lee's monument. In both cases, the circuit court sided with the Governor, but stayed their rulings until the appeal was resolved. The Virginia Supreme Court today unanimously affirmed both rulings, permitting Lee's statue to be removed. In *Gregory v. Northam*, a descendent of Bettie and Roger Gregory, who originally owned the land where Lee's statue stood, claimed that the bequest gave him the right to preserve the status quo. Although the deed to Virginia contained a "guarantee" that Virginia would "faithfully guard . . . and protect" Lee's monument, the Court held that the descendent did not have any property right to enforce. Such a right would only arise under an easement in gross, and such an easement must be plainly given on the face of the document. No such language was present here, so the descendant's claim failed.

The other case, *Taylor v. Northam*, was filed by owners of nearby land who also cited to a joint resolution passed in 1889 that authorized the Governor to acquire the land for the monument, and promised to "hold the said [monument] perpetually sacred to the monumental purpose to which it has been devoted." The Court noted that such a restrictive covenant must be in keeping with public policy, and while the public policy back in 1889 might have favored the monument, that was then, this is now. Historians testified on behalf of the state opining that the original purpose of the monument was to support the Confederacy's "Lost Cause" ideal of defending their pre-Civil War way of life, including slavery—notions that run directly counter to modern public policy. Today's Virginia was not bound by the declarations of its ancestors, and so the injunctions barring the removal of Lee's statue were "immediately dissolve[d.]"

A link to the opinion in *Gregory v. Northam* is here: <http://www.courts.state.va.us/opinions/opnscvwp/1201307.pdf>

A link to the opinion in *Taylor v. Northam* is here: <http://www.courts.state.va.us/opinions/opnscvwp/1210113.pdf>

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**TAGGED:** Robert E. Lee, *Gregory v. Northam*, easement in gross, *Taylor v. Northam*, restrictive covenant