

KEY POINTS
IN THE FIGHT TO SAVE THE CONFEDERATE MEMORIAL
IN ARLINGTON NATIONAL CEMETERY

1. REMOVAL ILLEGAL / UNCONSTITUTIONAL

a) Removing the Memorial is illegal because it is a grave marker - the enabling Legislation excluded grave markers

The Secretary of Defense exceeded his authority by adopting a recommendation that is specifically prohibited in the 2021 NDAA that prohibits inclusion of grave markers (Section 370 (j)). The Memorial marks the grave of Jewish artist and American veteran Sir Moses Ezekiel. This cenotaph even meets the Naming Commission's own definition of a grave marker. The 3rd report to congress states "*Markers located at the remains of the fallen. A marker, headstone, foot stone, niche cover, or flat marker containing inscriptions commemorating one or more decedents interred at that location.*" This definition aligns with 38 U.S. Code § 2306 – Headstones, markers, and burial receptacles" US President Warren G. Harding sent a letter to be read at Ezekiel's funeral at Arlington. The *Evening Star* (Washington D.C.) published a full quotation on March 30th, 1921. Here is a small part of it:

. . . he turned his thoughts to his own country, and as the final and finest product of his talents gave to us the monument that from this day will mark his resting place. It is a memorial of a reunited America, the testimony to the tradition of an indissoluble union, the shrine to which are gathered today.

This removal is illegal.

b) Removing the Memorial is illegal - The Army ignored the enabling Legislation that required to consider local sensitivities.

The Secretary of Defense exceeded his authority by adopting a recommendation that did not meet the requirements of the 2021 NDAA section 370(g)(4) that required that local sensitivities be considered. The 8 person naming commission did not ask the opinion of anyone, not even the Congressionally mandated ([10 U.S.C. § 7723](#)) Oversight Committee, the Advisory Committee on Arlington National Cemetery. This is a grave site and an international tourist destination and our nation's sacred shrine. No local sensitivities were considered. This whole thing is illegal.

c) The military (government) is putting the Cart Before the Horse - The Public Scoping Meeting of August 23, 2023 should have occurred BEFORE Secretary Austin decided to accept this recommendation. The Army is violating the 40 Code of Federal Relations Part 1500 Section 1500.1 (a) because they did not consider relevant environment information BEFORE the Secretary of Defense and the Secretary of the

Army ordered removal of the Memorial. The military is trying to fix the legal mess it has made. This whole thing is illegal.

d) **Fire, ready aim. The military/government broke the law when they jumped the gun by holding the August 23, 2023 scoping meeting on mitigation before checking all the required regulatory boxes.**

The National Historic Preservation Act (NHPA) 36 CFR 800.6 requires the Army to complete 6 steps PRIOR to seeking input from the consulting parties and the State Historic Preservation Offices on resolving adverse effects, including modifications or alternatives to avoid, minimize or mitigate a planned action. The Army did not complete all the steps and are trying to fix things now, but they didn't follow the law and that can't be fixed. The Army has not identified all the adverse effects. This whole thing is illegal.

e) **Removal of the Reconciliation Memorial is Unconstitutional and an attack on the historical Diversity of American Culture.** When the humanists wanted to take down a monument in Maryland the Bladensburg Cross, in its 2019 decision, the US Supreme Court said *"Where monuments, symbols, and practices with a longstanding history follow in the tradition of the First Congress in respecting and tolerating different views, endeavoring to achieve inclusivity and nondiscrimination, and recognizing the important role religion plays in the lives of many Americans, they are likewise constitutional."* This memorial cenotaph is a long-standing historical monument and it is unconstitutional after over 100 years, to up and decide that this is offensive and has to go. In fact, just the opposite is true, this memorial is inclusive. It shows various minority groups, and in fact, it was sculpted by a gay Jewish man. Taking down this memorial is Unconstitutional.

f) **Removal of the Reconciliation Memorial is Unconstitutional and an attack on America's Judeo Christian Heritage** Ezekiel's memorial contains is the only memorial at Arlington National Cemetery that includes a scripture verse Isaiah 2:4, "and they shall beat their swords into ploughshares, and their spears into pruning-hooks.". It is featured in the Museum of the Bible's Washington Revolution's flyover. When the humanists wanted to take down a monument in Maryland, the Bladensburg Cross, in its 2019 decision, the US Supreme Court said *citing the French Revolution "... A government that roams the land, tearing down monuments with religious symbolism and scrubbing away any reference to the divine will strike many as aggressively hostile to religion. Militantly secular regimes have carried out such projects in the past and for those with a knowledge of history, the image of monuments being taken down will be evocative, disturbing, and divisive."* Taking down this memorial is Unconstitutional.

g) **The enabling legislation is Unconstitutional as it represents a Bill of Attainder.** Article 1 Section 9, clause 3 of the US Constitution says "No Bill of Attainder or ex post facto law shall be passed. Bills of attainder are acts of the legislature that inflict punishments on a person *supposedly* guilty of high offenses. When Senator Elizabeth Warren called Confederate soldiers 'traitors' on the Senate Floor - a charge that was NEVER brought by the government after the war against any Confederate - and the

2021 NDAA was passed on that basis, Congress passed a bill of Attainder. As such, the whole thing is Unconstitutional. The right of secession was reserved by Virginia, New York and Rhode Island before those states joined the United States Constitution. All the other states accepted the right of secession of Virginia, New York and Rhode Island thus they had it too because all states entered the Union as exact equals.

OTHER IMPORTANT COMMENTS

2. MITIGATION

Background/Importance: As part of the regulatory review process, a property owner must look to mitigate any impacts to the environment or historic resources. This generally relates to replacing windows on historic buildings, etc. As noted above, in this case, the government is asking for input on mitigation even before they have identified the adverse effects to the Area of Potential Effect. Culture is a key word as it relates to mitigation.

a) **Removal of the Reconciliation Memorial cannot be mitigated.**

1. **How do you mitigate removal of a memorial to American ‘reconciliation’?**

This memorial was erected as part of the reconciliation movement in America ignited by the victory in the Spanish-American war. This memorial stands unique in world history when a conquering nation honored the dead of its vanquished. When President Woodrow Wilson accepted the Memorial on behalf of the reunited and reconciled American people saying “*nothing of this sort could have occurred in anything but a democracy...our solemn duty is to see that each one of us is in his own consciousness and in his own conduct a replica of this great reunited people*”. **There is no mitigation for de-reconciliation.** The military is drastically short on recruiting - how will re-opening sectional differences help that? Over 44% of our military has traditionally been recruited in the South. The cultural impacts are unmitigatable.

2. **Removing this Monument encourages division of our nation.** Not everyone agrees with every monument in our country. Are we going to tear down the Washington Monument next because George Washington owned slaves? Are we going to tear down the Arlington House adjacent to the cemetery next because Robert E. Lee lived there? This is a slippery slope - there is no acceptable ‘mitigation’ for the removal of this Memorial and even discussing it sets a dangerous precedent for any American monument anywhere and just encourages division and revolutionary iconoclasm. You can’t even discuss mitigation before you consider all the adverse affects including the cultural divide it will create - you’re putting the cart before the horse.

3. **This monument is being weaponized against America in an asymmetrical war.** There is an asymmetrical war going on against America, our unity, our heritage and our culture and this monument has been weaponized against us just like the World Trade Center and the Pentagon were. When the antisemitic Council of American Islamic Relations, with linkages to Hamas, came out for removing this Memorial, the Secretary of Defense should have considered that maybe, just maybe, he should re-look at this recommendation. But he decided first and listened later. This is like a kangaroo court where the execution is first and the judgment later. It is foolish to even consider mitigation before you have considered the multiple immense impacts of using our own history in the war against us, or even that there is a war going on against America.
4. **Removal is a slippery slope and sets a dangerous precedent at not only Arlington but every National Military Cemetery.** By accepting the fallacy of presentism which subjects all the monuments and memorials at Arlington to a bar that few historical sites will be able to withstand. After all, the US Army was not integrated until 1948. Some people are already saying that all monuments before civil rights should be removed. Using present standards to evaluate culture history, or “presentism” fails to take into account that, at the time in which historical events occurred, those involved did not enjoy the benefit of hindsight that has informed our present views. Will we take down the monuments to the Maine? How about the McClellan gate? The US Army during the Civil war under didn’t allow black soldiers to be buried with white soldiers. How about the Rough Riders monument? The Sheridan Memorial. Constantly re-looking out our past through the lens of the future is suicidal. You cannot mitigate the cultural effects that the precedent of removing this memorial sets.
5. **Removal is an attack on America’s religious heritage.** Of all the monuments and memorials in Arlington National Cemetery, Ezekiel’s memorial contains is the only memorial that includes a scripture verse (Isaiah 2:4, “and they shall beat their swords into ploughshares, and their spears into pruning-hooks.”). Proverbs 22:28 commands us “Remove not the ancient landmark, which thy fathers have set.” The impact on our nationwide cultural heritage would be irreparably harmed and is unmitigatable.
6. **Removal is an antisemitic attack on the deceased artist.** This memorial is the only one sculpted by Jewish-American artist, Sir Moses Ezekiel. Despite being an ethnic minority, his artistic skill and his participation in the Civil War resulted in his award of this important project, which he designed specifically for the site to mark the graves of Southern civil war veterans. After his death, he was also buried at the base of the memorial, and **the memorial became his grave marker.** This is arguably the most important work of a Jewish sculptor in the world. Americans in the early 20th century showed their acceptance of Jewish artists at that time by selecting him to design this work. This attack on not only

Ezekiel's art but also his grave site will signal that antisemitism is alive and well at America's most important military cemetery - Arlington National Cemetery - but would also telegraph to the world that American is now in lockstep with the radical elements in the middle east who want to see the extermination of the Jewish people. That cannot be mitigated.

7. **Removal is an attack on America's art heritage.** Of all the monuments and memorials in Arlington National Cemetery, none are of the artistic quality of the Reconciliation memorial. The 30' bronze was sculpted by world-renowned Jewish-American artist, Sir Moses Ezekiel. Ezekiel became the first non-German to win the Royal School of Art in Berlin's prestigious art competition. Americans in the early 20th century showed in Despite being an ethnic minority, his artistic skill and his participation in the Civil War resulted in his award of this important project and it became his opus work, with over 30 life figures portraying life as he saw it as a young man in the American south. The figures portray various scenes including a young soldier receiving a minister's blessing, a young woman tying a sash around the waist of her beloved and a scene of men marking in the ranks including a man with African features. Nowhere in America will this quality and diversity of sculptural art exist in an American military cemetery if it is removed. It is also the only beaux arts style memorial at Arlington National Cemetery. Art Historian Catesby Leigh calls the removal "the ultimate win for cancel culture" and as such cannot be mitigated.
8. **Removal is politically motivated and the Environmental Impact Study (EIS) must consider this.** Democrat US Senator Elizabeth Warren opportunistically offered the amendment to the 2021 NDAA in the aftermath of the highly politicized police-involved death of George Floyd. Then Republican President Trump vetoed the 2021 NDAA on December 23, 2020, after the contested 2020 presidential election because it "includes provisions that fail to respect our veterans and our military's history". The Naming Commission finished its work and submitted it during the highly contested 2022 Congressional elections and the ensuing contest for Republican Speaker of the House. **During the Biden administration, the oversight committee for Arlington National Cemetery was suspended from the period of February 2020 until November 2022, and the ACANC was not able to conduct its oversight responsibilities, providing input to the Secretary of the Army as required by law (10 USC 7723).** These partisan politics and national tensions which led to the removal recommendation and Austin decision to adopt it without ensuring compliance with historical and environmental protection laws and regulations and outside of the remit of the Naming Commission must be considered as part of the EIS.

3. AREA OF POTENTIAL EFFECT (APE)

Background/Importance: *The Army's proposed "Area of Potential Affect is limited to a circular area that is limited to the boundaries of Arlington National Cemetery, and even excludes the Arlington House itself.*

This is a huge issue because the actual Area of Potential Effect is the entire country, indeed, the entire world.

The Area of Potential Effect is too small because:

- a) **This Reconciliation Memorial is a part of the culture not only of America but the world.** To say that the effect is limited to a small part of a cemetery is disingenuous. This Memorial is eligible to be a contributing object of its own historical significance in Arlington National Cemetery, which is a National Register Historic District, which is the only National Military Cemetery with that designation. Former Secretary of the Navy Jim Webb's recent Op Ed in the *Wall Street Journal* shows how the memorial is a testament to how to re-unify a nation after a civil war. He used it with officials in Vietnam. If America cannot accept its own reconciliation, how can we promote it to other war torn cultures. The APE, as proposed, is just a small area inside the cemetery. This ignores the importance of the reconciliation message that America set by example for the world after our own bloody fratricidal war.
- b) **This memorial is part of the Washington Monumental Corridor Master Plan.** The Monumental Corridor was part of the "American Renaissance" and North-South linkage promoted by renowned architects McMillan and Olmstead. They envisioned a "city beautiful" plan for Washington, DC that extended over the Potomac River into Virginia to Arlington House and the Cemetery. The bridge was to become a symbolic link between North and South from DC to Arlington and the addition of George Washington Memorial Parkway, punctuated with monuments and memorial evidenced this American Renaissance and to demonstrate to the world American unification. This beaux arts style memorial, is the most significant monumental artwork at Arlington is part of the American Renaissance which ignited in monumental art around the country., and as such is individually eligible for inclusion on the National Register. The entire Monumental Corridor, the **Viewshed** from Mount Vernon through to the Capitol must be included in the APE as they are part of the master plan and significant in the north-south reunification and the American Renaissance. The entire **viewshed** of the Washington Monumental core Master Plan but be included.
- c) **The Memorial Site has significance to Canada and other nations, and is eligible to be a UNSECO World Heritage Site.** One of the graves in the plot marked by the memorial is of a Canadian citizen Jerry Cronan who was killed at the Battle of Spotsylvania. There were many more citizens of other nations who perished in service to one of the states represented on the Memorial. These other nations need to be identified and consulted as they are being impacted as well. Because of its significance

in American history, Arlington House and the Arlington National Cemetery are eligible for listing as a UNESCO World Heritage site. I wonder why this has not been done. But listed or not, the impact on the world and peoples of the world must be considered.

- d) **The Memorial site has significance to those buried at it.** There are over 500 soldiers and widows buried at the memorial. Some were relocated there from other sections of Arlington, others from POW camps nearby before the Memorial was erected. However, others chose to be buried there, undoubtedly because of the new Memorial. Who is speaking for them? How can the government determine views of the dead. No impact study on this can ever be complete as the voices of the people who chose to be interred around the memorial cannot be heard. We shouldn't be messing with these peoples graves.