

A PAST FORGOTTEN: A LOOK AT GOVERNMENTAL
EFFORTS TO RECOVER AND RESTORE HISTORIC
AFRICAN AMERICAN CEMETERIES

Anyah Barber & Dr. Terry Brock***

“We must never forget that Black History is American History.”
—Congresswoman Yvette D. Clark¹

TABLE OF CONTENTS

INTRODUCTION	836
I. A POSSIBLE FEDERAL SOLUTION?	838
A. <i>Deep Dive into the African American Burial Grounds Preservation Act</i>	838
1. <i>54 U.S.C. § 308601. Definitions</i>	838
2. <i>54 U.S.C. § 308602. United States African-American Burial Grounds Preservation Program</i>	839
3. <i>54 U.S.C. § 308603. Authority to Make Grants</i>	839
4. <i>54 U.S.C. § 308604. Cooperative Agreements and Memoranda of Understanding</i>	839
5. <i>54 U.S.C. § 308605. Private Property Protection</i>	840
B. <i>Contrasting the African American Burial Grounds Preservation Act with the Native American Graves Protection and Repatriation Act</i>	840
1. <i>A Brief History on Native Americans in the United States</i>	841

* J.D. 2024, Wake Forest University School of Law; B.A. 2021, Mathematics and Secondary Education, Clemson University; Associate Attorney at Boykin & Davis, LLC. I would like to give the biggest thank you to Professor Tanya Marsh and Dr. Terry Brock for allowing me to explore this topic in my own way and bring this topic to light. Also, a thank you to Ryan Valerio, Nicholas Rader, Maeve Hickey, Mark Lee, and the *Wake Forest Law Review* team for helping my vision come to fruition.

** Part Time Assistant Professor and Research Associate of African American Studies, Research Associate with Cultural Heritage and Preservation Studies, Manager of Archaeology at the Wake Forest Historical Museum, and Director of the Cultural Heritage and Archaeology Research Group at Wake Forest University.

1. Yvette D. Clarke, *Black History Is American History*, HUFFINGTON POST (May 25, 2011), <https://perma.cc/2RNY-PVS5>.

2. <i>Dissection of Provisions in the Native American Graves Protection and Repatriation Act</i>	842
3. <i>Comparing and Contrasting One Preservation Act to Another</i>	843
II. STATE ACTION: IS IT BEING TAKEN?	845
A. <i>Efforts in Florida and Virginia</i>	845
B. <i>North Carolina</i>	846
III. IS THIS ENOUGH?.....	848
CONCLUSION.....	850

INTRODUCTION

For many people, death care begins far before the death of an individual. However, the penultimate milestone in death care is the funeral. The funeral:

- Helps confirm the reality and finality of death.
- Provides a climate for mourning and the expression of grief.
- Allows the sorrows of one to become the sorrows of many.
- Is one of the few times love is given and not expected in return.
- Is a vehicle for the community to pay its respects.
- Encourages the affirmation of religious faith.
- Is a declaration that a life that has been lived as well as a sociological statement that a death has occurred.²

But what happens after the funeral? The committal is performed, usually at a cemetery, and then it is followed by a reception. Days, weeks, and months pass, but then what? For many, the grieving process may include visiting the cemetery where their loved ones are buried, but eventually the grief passes, and they visit less and less often. As this cycle continues, burial plots, and eventually the cemetery itself, fall into disarray as development increases, the ground shifts, trees grow, headstones fall, and a number of other environmental factors transpire.

While some cemeteries are well maintained, others go neglected for years to the point where they are unrecognizable or lost entirely. All too often, this is the reality of African American families and the cemeteries where their ancestors are buried.³ Across the United States, remains of African Americans have been found in unofficial cemeteries or unmarked graves, and there is no official count of how many similar sites may be in existence.⁴ “In contrast with law’s

2. NAT’L FUNERAL DIRS. ASS’N, *THE FUNERAL FROM ANCIENT EGYPT TO PRESENT DAY AMERICA* 12 (1967).

3. See Elizabeth Williamson, *America’s Black Cemeteries and Three Women Trying to Save Them*, N.Y. TIMES (Sept. 27, 2023), <https://www.nytimes.com/2023/09/27/us/black-cemeteries.html>.

4. Justin Dunnavant et al., *Craft an African American Graves Protection and Repatriation Act*, NATURE (May 19, 2021), <https://perma.cc/9DS6-QSSD>.

solicitous treatment of cemeteries generally, . . . the history of legal treatment of slave and other long-standing African-American burial grounds has been one of neglect or outright disregard.”⁵ To some, neglected cemeteries may be just that, but to many African Americans, “the neglect of [African American] burial grounds is an extension of the racism Black people experience while living.”⁶ Although the United States has grown significantly since the time of slavery, African Americans, and many other minority populations, still face many challenges even in the twenty-first century, not only while living, but even in death.

The *Unmarked* documentary chronicles the rise in preservation and restoration efforts of African American cemeteries.⁷ Focused on the South, *Unmarked* chronicles the stories of various families who are descendants of slaves and their efforts to recover the historic cemeteries where their ancestors are buried.⁸ The documentary highlights that restoration efforts of African American cemeteries have largely been organized by community groups and families.⁹ The federal government, along with several state and local governments, have begun passing legislation that aims to preserve and restore African American cemeteries in an effort to combat the systemic struggles of African Americans.¹⁰ Although many preservation and restoration efforts are in the early stages, this progress brings hope to many families, communities, and cities working to preserve history.

This Essay will take an in-depth review of the current state of preservation and restoration efforts in the United States. Part I explores the federal African American Burial Grounds Preservation Act and compares it with the Native American Graves Protection and Repatriation Act.¹¹ Part II will look at the efforts of some of the Southern states, with a focus on North Carolina and Preservation Forsyth’s Unmarked Initiative. Finally, Part III will reflect on the thoughts of North Carolina lawmakers as well as other individuals involved in the preservation and restoration efforts within the state. “Without history, you have no beings of who you are, where you’re

5. Mary L. Clark, *Treading on Hallowed Ground: Implications for Property Law and Critical Theory of Land Associated with Human Death and Burial*, 94 KY. L.J. 487, 514 (2006).

6. Char Adams, *The Growing Movement to Save Black Cemeteries*, NBC NEWS (Feb. 10, 2022), <https://www.nbcnews.com/news/nbcblk/growing-movement-black-cemeteries-rca15566>.

7. UNMARKED (First Run Features 2020), <https://perma.cc/4RHX-HQE6>.

8. *Id.*

9. *Id.*

10. *See, e.g.*, 54 U.S.C. §§ 308601–05 (federal appropriation bill for historic African American cemeteries); VA. CODE ANN. § 10.1-2211.2 (2024) (creation of the historic cemeteries program which focuses on African American cemeteries); FLA. STAT. § 267.21 (2023).

11. 25 U.S.C. §§ 3001–11.

from, and how you got to where you are today.”¹² The widespread effort to preserve and restore African American cemeteries is a testament to the rich history African Americans provide to the United States that is worthy of remembrance.

I. A POSSIBLE FEDERAL SOLUTION?

Promulgated in 2022, the bipartisan African American Burial Grounds Preservation Act “establishes a program at the National Park Service to provide competitive grants and technical assistance to local partners to research, identify, survey and preserve these cemeteries.”¹³ Although the Act is the first of its kind for African Americans at the federal level, its provisions reveal much left to be accomplished. A look at the Native American Graves Protection and Repatriation Act contrasted with the African American Burial Grounds Preservation Act shows dramatic differences between the two pieces of legislation.

A. *Deep Dive into the African American Burial Grounds Preservation Act*

“Preserving burial grounds and connecting with the memory of our lost loved ones and ancestors transcends cultures and communities—it connects us with our past and guides us as we enter the future.”¹⁴ As stated above, the African American Burial Grounds Preservation Act generally provides a mechanism for specific entities to apply for grants that may be used for enumerated preservation and restoration acts. The Act in total is comprised of five distinct provisions, each discussed in turn below.

1. *54 U.S.C. § 308601. Definitions*

Section 308601 defines the terms burial ground, historic, and program as used throughout the Act.¹⁵ The Act broadly defines a burial ground” as a physical location where human remains are deposited “below, on, or above the surface of the earth.”¹⁶ The Act considers property to be “historic” when it dates back fifty or more years.¹⁷

12. UNMARKED, *supra* note 7.

13. *Brown, Casey, Adams, Fitzpatrick Urge Administration to Fund African American Burial Grounds in Budget*, SHERROD BROWN U.S. SENATOR FOR OHIO, (Feb. 7, 2023), <https://perma.cc/TW4S-6JQ7>.

14. *Id.* (quoting Letter from Sen. Sherrod Brown et al., U.S. Cong., to Deb Haaland, U.S. Sec’y of the Interior, and Shalanda Young, Dir. of the Off. of Mgmt. & Budget (Feb. 3, 2023), <https://perma.cc/9VFM-GGA2>).

15. 54 U.S.C. § 308601.

16. *Id.* § 308601(1).

17. *Id.* § 308601(2).

2. *54 U.S.C. § 308602. United States African-American Burial Grounds Preservation Program*

Section 308602 authorizes the Secretary to establish the African-American Burial Grounds Preservation Program.¹⁸ Under the Act, the Secretary is required to consult with the National Trust for Historic Preservation and the African American heritage community to develop a grant program.¹⁹ In addition to the federal budget appropriation, the Secretary is also authorized to accept donations to further the mission of the Act.²⁰ Furthermore, 54 U.S.C. § 308602(d) provides that a grant under the Act may only be considered “(1) with the consent of the property owner; and (2) at the request of an individual, landowner, private or nonprofit organization, State, Tribal, or local government, or other entity.”²¹ Essentially, to receive a grant under the Act, consent must be given, and someone must apply for the grant.

3. *54 U.S.C. § 308603. Authority to Make Grants*

Section 308603 formalizes the requirements for making grants and establishes the funding for the Act. Under § 308603(a), a grant may be made for

- (1) the identification of historic African-American burial grounds that may qualify for the Program;
- (2) the preservation and restoration of African-American burial grounds;
- (3) the interpretation of African-American burial grounds; and
- (4) related research and documentation for historic African-American burial grounds.²²

The designated appropriated amount of the Act is \$3,000,000 per fiscal year;²³ however, any leftover funds from the year may be rolled over to the next fiscal year.²⁴

4. *54 U.S.C. § 308604. Cooperative Agreements and Memoranda of Understanding*

Section 308604 allows the Secretary to enter cooperative agreements and memoranda of understanding with the entities and individuals applying for the grant.²⁵ This provision helps further the

18. *Id.* § 308602.

19. *Id.* § 308602(b).

20. *Id.* § 308602(c).

21. *Id.* § 308602(d).

22. *Id.* § 308603(a)(1)–(4).

23. *Id.* § 308603(b)(1).

24. *Id.* § 308603(b)(2).

25. *Id.* § 308604.

aims of the Act while also working to maintain coordination between all federal and non-federal elements of the grant.

5. *54 U.S.C. § 308605. Private Property Protection*

Section 308605 essentially protects the property rights of private property owners. The written consent of the property owner is required before proceeding,²⁶ and the Secretary is prohibited from providing requirements or land management guidance as it relates to private property.²⁷

A dissection of each provision of the African American Burial Grounds Preservation Act shows that, at its core, the federal government has provided a mechanism for entities to apply for grant funding for purposes involving historic African American burial grounds. Because the first fiscal year that the Act went into effect was 2023,²⁸ there is no associated case law or much known about its practical effects. There are many other federal laws and regulations dealing with the preservation of historical property and sites,²⁹ and the interplay between them and the African American Burial Grounds Protection Act will either assist the reparations to the African American community or prove this Act to be a figurehead for the wrongs that the United States has committed against African Americans since the country's inception.

B. *Contrasting the African American Burial Grounds Preservation Act with the Native American Graves Protection and Repatriation Act*

Although the African American Burial Grounds Preservation Act may be the first of its kind specifically promulgated for African Americans, the Native American Graves Protection and Repatriation Act paved the way for its existence. The Native American Graves Protection and Repatriation Act is based on human rights.³⁰ It seeks to rectify the past harms the United States government has inflicted on Native Americans, which were similar, but still distinct, from the mistreatment imposed on African Americans. A comprehensive view of the Native American Graves Protection and Repatriation Act will reveal any inconsistencies with or room for growth in the African American Burial Grounds Preservation Act.

26. *Id.* § 308605(1).

27. *Id.* § 308605(2).

28. *Id.* § 308603(b)(2).

29. *See, e.g.*, 54 U.S.C. §§ 302101–108 (federal historic preservation programs); National Historic Preservation Act, 36 C.F.R. § 800.1 (2000) (requiring “[f]ederal agencies to take into account the effects of their undertakings on historic properties”).

30. 136 CONG. REC. 35678 (1990) (statement of Sen. Daniel Inouye) (“[T]he bill before us today is not about the validity of museums or the value of scientific inquiry. Rather, it is about human rights.”).

1. *A Brief History on Native Americans in the United States*

Before discussing the intricacies of the Native American Graves Protection and Repatriation Act itself, it is important to note the differences in the histories of Native Americans and African Americans. In a few words, the history of Native Americans in the United States is a story of “discovery,” conquest, and colonization. Prior to European explorers “discovering” America, which they believed was the country India, Native Americans inhabited much of the North American continent.³¹ “Europeans crossed the ocean believing that lands inhabited by ‘heathens and infidels’ should be possessed by Europeans.”³² The later doctrine of discovery further led to Native American land being taken by the European settlers.³³

Contrasting the ideas of discovery and conquest associated with Native Americans, African Americans have a different history. In short, the history of African Americans in the United States has its roots in chattel slavery. As Europeans migrated to the Americas and began building settlements, plantation farming spread and led to an increased demand for labor, which was solved through slavery.³⁴ African Americans were taken from their home countries, shipped to America, and then sold into slavery and forced to work for white masters in unthinkable conditions.³⁵

The histories of Native Americans and African Americans are substantially different and should not be compared to one another, yet the treatment of the two racial groups in the United States is inextricably intertwined.³⁶ There is nothing that will completely rectify the immense harm done to Native American and African American families, but the passage and implementation of preservation and restoration efforts is a starting point. A comparison between the Native American Graves Protection and Repatriation Act and the African American Burial Grounds Preservation Act is not meant to engage a discussion about which history is worse or more deserving of protection; rather, the comparison is an effort to understand the protections that each provides and illustrate that the African American Burial Grounds Protection Act needs improvement.

31. See Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709, 1721 (1993).

32. JUAN F. PEREA ET AL., *RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA* 195 (3d ed. 2015).

33. See *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543, 595 (1823) (holding that European conquest justified European control over lands formerly owned by Native Americans).

34. See Harris, *supra* note 31, at 1717.

35. *Id.* at 1717–18.

36. See, e.g., *id.*

2. *Dissection of Provisions in the Native American Graves Protection and Repatriation Act*

The Native American Graves Protection and Repatriation Act begins with a list of definitions.³⁷ Most notably, the Act defines the terms cultural affiliation, cultural items, Indian tribe, Native American, Native Hawaiian, and tribal lands as they are used within the Act. Under the Act, a cultural affiliation is a shared group identity that can reasonably be traced from a currently recognized Indian tribe or Native Hawaiian organization to an earlier identifiable group.³⁸ Cultural items include: human remains; funerary objects in the possession or control of a federal agency or museum; funerary objects not in the possession or control of a federal agency or museum, but that are still related to an Indian tribe; sacred, ceremonial objects used by Native American religious leaders; and cultural patrimony or items that have ongoing importance to Native American tribes.³⁹ An Indian tribe is defined as an organized group or community of Indians,⁴⁰ but, interestingly, the word Indian is not defined in the Act. Native American is defined as being related to a tribe or culture that is indigenous to the United States.⁴¹ Native Hawaiian is defined as a person who is a descendant of the people occupying the state currently known as Hawaii prior to 1778.⁴² Under the Act, tribal lands include: “(A) all lands within the exterior boundaries of any Indian reservation; (B) all dependent Indian communities; [and] (C) any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Public Law 86-3.”⁴³

25 U.S.C. § 3002 tackles ownership of Native American human remains and objects discovered on federal or tribal lands. Based on this provision, the order of distribution for human remains and objects, based on priority, is as follows: (1) lineal descendants; (2) the tribe or organization on whose tribal land the remains or object was discovered; (3) the tribe or organization with the closest cultural affiliation as the recovered remains or object; and (4) if found on federal land recognized as the land of an Indian tribe, then that tribe if it states a claim or a different tribe if it has a stronger cultural relationship than the tribe where the remains were found.⁴⁴ Interestingly, this order of distribution established by the Act mimics

37. 25 U.S.C. § 3001.

38. *Id.* § 3001(2).

39. *Id.* § 3001(3)(A)–(D).

40. *Id.* § 3001(7).

41. *Id.* § 3001(9).

42. *Id.* § 3001(10).

43. *Id.* § 3001(15)(A)–(C).

44. *Id.* § 3002(a)(1)–(2).

state laws on intestate succession.⁴⁵ Additionally, § 3002(c) provides safeguards against the excavation and removal of Native American human remains and objects such that it is only permitted if four enumerated conditions are met.⁴⁶ Section 3002(d) provides for a notice requirement in cases of inadvertent discovery.⁴⁷

One of the most notable provisions of this Act is the repatriation provision.⁴⁸ Generally, § 3005 allows Native American individuals, tribes, and organizations to request Native American cultural items from federal agencies and museums.⁴⁹ The only exception to the general rule is if “such items are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States.”⁵⁰ However, even under the scientific study exception, the cultural items must be returned to the requesting party within ninety days of completion of the scientific study.⁵¹

Finally, 25 U.S.C. § 3008 authorizes the Secretary to make grants that support the purpose of the Act. Specifically, Indian tribes and Native Hawaiian organizations may be granted funds to assist with repatriation,⁵² and museums may be granted funds to assist with conducting inventory and identifying cultural items.⁵³ Although no specific amount is appropriated per fiscal year to carry out this Act, the Secretary is authorized to appropriate funds as necessary to carry out the purpose of the Act.⁵⁴

3. *Comparing and Contrasting One Preservation Act to Another*

A simple look at the length of the section in this Article on the provisions of the African American Burial Grounds Preservation Act compared to the length of the section on a select few of the provisions of the Native American Graves Protection and Repatriation Act shows that it is far less comprehensive. However, that is to be expected as the former was passed in 2022 while the latter was originally promulgated in 1990.⁵⁵ Over the course of three decades, the Native American Graves Protection and Repatriation Act has evolved and been amended, emphasizing that change is always slow

45. *See, e.g.*, N.C. GEN. STAT. § 29-14 (2012) (describing the share of a decedent’s surviving spouse); *id.* § 29-15 (describing the intestate share of all individuals other than the surviving spouse).

46. 25 U.S.C. § 3002(c)(1)–(4).

47. *Id.* § 3002(d)(1).

48. *See id.* § 3005.

49. *Id.* § 3005(a)(1)–(5).

50. *Id.* § 3005(b).

51. *Id.*

52. *Id.* § 3008(a).

53. *Id.* § 3008(b).

54. *Id.* § 3012.

55. *Id.* § 3001; 54 U.S.C. §§ 308601–05.

to come. Looking at the Native American Graves Protection and Repatriation Act will help outline the evolution of the African American Burial Grounds Preservation Act.

In the Race and the Law class offered by Wake Forest University School of Law, class discussions often begin with a discussion of the question “What’s in a name?” These discussions dissect common understandings of frequently occurring words in the readings. Taking this same question but shifting the focus to the names of these two preservation acts, there are obvious differences in the titles of the acts. The African American Act only indicates protection of burial grounds, while the Native American Act indicates protection and repatriation of graves and objects. Taking into account the different histories of African Americans and Native Americans, mainly the fact that Native Americans were already living on the land, it makes logical sense that a historic preservation act for Native Americans would include repatriation as their land was stolen from them. Repatriation is a large part of the Native American Act, and it feels like a similar concept should be implemented for African Americans, but it should be based on their unique history. The term that likely comes to mind is reparations, but there is a debate over the legitimacy of paying reparations to descendants of slaves,⁵⁶ which is outside the scope of this Essay.

Additionally, at face value, one would think the African American Burial Grounds Protection Act provides a mechanism for protecting African American burial grounds. However, the text of the Act reveals that it does nothing more than provide funding for private identification and preservation efforts. On the other hand, the name Native American Graves Protection and Repatriation Act indicates a mechanism for protecting Native American graves and for the return of culturally significant objects. Upon further examination, the Act is far more comprehensive than indicated as it deals with human remains, cultural artifacts, the establishment of a review committee,⁵⁷ and penalties for violations of the Act.⁵⁸

The Native American Graves Protection and Repatriation Act is a far more comprehensive piece of legislation than the African American Burial Grounds Preservation Act, and it provides more rights and protections for Native Americans than are provided for African Americans. Although the African American Burial Grounds Act has the potential to evolve and be amended, the Native American Burial Grounds and Repatriation Act should have served as a guidepost. The African American Burial Grounds Act should be more comprehensive, provide more protections and not just funding, and provide an enforcement mechanism for the protections afforded by the

56. *Confronting Slavery’s Legacy: The Repatriations Question*, BROWN UNIV.’S SLAVERY & JUST. REP. (2024), <https://perma.cc/AN6C-SBJL>.

57. *See* 25 U.S.C. § 3006.

58. *Id.* § 3007.

Act. The African American Burial Grounds Act is a start, but much work needs to be done at the federal level to provide a solution to the destruction of African American cemeteries and burial grounds.

II. STATE ACTION: IS IT BEING TAKEN?

In the wake of the passing of the African American Burial Grounds Protection Act, “[t]he fight for Black cemeteries is being fought on several fronts in a growing movement urging the nation to value and honor Black life and death.”⁵⁹ Some states have begun passing their own laws that focus on the preservation and restoration of African American cemeteries.⁶⁰ This Part will explore the legislative efforts of three Southern states: Florida, Virginia, and North Carolina. The Section on North Carolina will primarily focus on the efforts of Forsyth County, where twenty-six African American cemeteries have been identified.⁶¹

A. *Efforts in Florida and Virginia*

In 2019, the modern city of Clearwater, previously a thriving African American neighborhood in the early part of the twentieth century, exhumed the presumed graves of over 300 people under a paved parking lot, a building, and an adjacent street.⁶² It was previously believed that the cemetery and the people buried there had been relocated due to development in the 1950s.⁶³ This is yet another example of African American history being slowly erased over time.

To help combat these issues, the African American Burial Ground Project was launched out of the University of South Florida Library in 2022.⁶⁴ The project aims to “recover and reinterpret” the African American cemeteries in Florida while currently focusing on the Tampa Bay area.⁶⁵ Additionally, the Historic Cemeteries Program was established by the Florida legislature to provide grant funding for genealogical and historical research of colleges, universities, and qualified nonprofits, as well as restoration and maintenance efforts of

59. Adams, *supra* note 6.

60. See, e.g., N.H. REV. STAT. ANN. § 227-C:8-d (2024) (providing for consultation with the appropriate Native American and African American communities when human remains are discovered); MO. REV. STAT. § 253.387 (2023) (establishing the acquisition of the historic Antioch Cemetery by the Missouri Department of Natural Resources for purposes of historic preservation).

61. Terry P. Brock, *Identifying and Documenting Cemeteries*, UNMARKED INITIATIVE (2024), <https://perma.cc/C2H5-B7DW>.

62. Kolbe Nelson, *Florida City Reckoning with Its Past as Paved Over Black Cemeteries Uncovered*, CBS NEWS (Nov. 27, 2022), <https://perma.cc/W6XD-6JV6>.

63. *Id.*

64. *The African American Burial Ground & Remembering Project*, AFR. AM. EXPERIENCE FLA. (Apr. 11, 2022), <https://perma.cc/5QVQ-QPS2>.

65. *Id.*

local governments and qualified nonprofits.⁶⁶ The Historic Cemeteries Program also establishes an Advisory Council to provide guidance on the program⁶⁷ and collaborates with the efforts of the University of South Florida.⁶⁸

Virginia is one of the states with the most advanced laws on the restoration and preservation of historic cemetery sites, including African American cemeteries. However, historically, African American cemeteries have been neglected in this state too. The Virginia Department of Historic Resources established the African American Cemetery and Graves Fund in 2017 to support the preservation and restoration of African American cemeteries meeting certain qualifications.⁶⁹ In the 2023–24 fiscal year, the Fund gave grants to forty-nine historic African American cemeteries throughout the state.⁷⁰ In 2019, the Virginia African American Advisory Board was established.⁷¹ The Board is comprised of twenty-six members in total, twenty-one of whom are non-legislative members, and most of whom are African American.⁷² The purpose of the Board is to “advise the Governor on the development of economic, professional, cultural, educational, and governmental links between the Commonwealth of Virginia and the African American community.”⁷³ Although it does not specifically deal with the preservation and restoration of African American cemeteries, the Board has the discretion to carry out business-related issues of concern and importance to the African American community.⁷⁴

The collaborative approach to restoration and preservation between the community, universities, and local and state governments in Florida and Virginia may prove beneficial for helping repair the broken history of African Americans, however, only time will tell and there is much more to be done.

B. North Carolina

In North Carolina, the legislature has made limited efforts to specifically protect African American cemeteries. In general, these efforts have been focused on the protection of historical and archaeological sites as they pertain to preservation laws. However, North Carolina’s Office of the State Archaeologist has made a unique

66. FLA. STAT. ANN. § 267.21(2)(a)–(b) (2024).

67. *Id.* § 267.22 (2024).

68. *Id.* § 267.21(1)(d) (2024).

69. *See* VA. CODE ANN. § 10.1-2211.2 (2023).

70. Joanna Wilson Green, *Grave Matters: The African American Cemetery & Graves Fund*, VA. DEP’T HIST. RES. (July 31, 2024), <https://perma.cc/GB5Z-UTWG>.

71. VA. CODE ANN. § 2.2-2492 (2023).

72. *Id.*

73. *Virginia African American Advisory Board*, COMMONWEALTH VA. (2024), <https://perma.cc/XKT4-HG89>.

74. *See* VA. CODE ANN. § 2.2-2494(2)–(4) (2023).

step in the ways that they categorize and document cemeteries through the creation of the Historic Cemetery Program. This program is designed to first, “identify, inventory, map, describe, and permanently record” all historic (fifty years or older) cemeteries, and second, “help descendants, researchers, and interested North Carolinians” with questions related to historic cemeteries.⁷⁵ In building this inventory, the program is establishing a cemetery as a historic resource that is distinct from the other two forms of historic sites that are captured by the state: historic architecture and archaeological sites. While not exclusive to African American cemeteries, the establishment of a dedicated program and staff member to cemetery preservation, with a specific focus on community engagement, is a valuable resource for communities. It also has demonstrated that the preservation of historic cemeteries is increasingly a priority for the State of North Carolina.

This emphasis led Preservation Forsyth, a non-profit historic preservation organization in Forsyth County, North Carolina, to begin the Unmarked Initiative, an effort to ensure that every African American cemetery in Forsyth County was documented with the Historic Cemetery Program.⁷⁶ Through a collaboration with Wake Forest University’s Cultural Heritage and Archaeology Research Group (CHARG), they applied for a Certified Local Government (CLG) Grant.⁷⁷ The accepted proposal had two components: First, to convert the paper documentation forms provided by the Historic Cemetery Program into a Geographic Information System (GIS).⁷⁸ Second, to enter the paper inventory of cemeteries documented by the Forsyth County Historic Resources Commission into the new GIS.⁷⁹

This effort had important results. First, it ensured that all 301 historic cemeteries in Forsyth County are now documented with the state.⁸⁰ Second, it identified twenty-six historic African American

75. *Cemetery Program*, N.C. OFF. STATE ARCHAEOLOGY, <https://perma.cc/EQ88-ATAL>.

76. *See Unmarked Initiative: Preserving African American Cemeteries in Forsyth County*, UNMARKED INITIATIVE (2024), <https://perma.cc/KZ5C-9GQN>.

77. *See id*; Terry Brock, *Preservation Forsyth and the Unmarked Initiative Research Grant Received*, CHARG (Oct. 21, 2022), <https://perma.cc/S8DB-66HC>. The Certified Local Government Grant program was federally mandated through an amendment to the National Historic Preservation Act of 1966 and provides funds to State Historic Preservation Offices throughout the United States to be distributed to Certified Local Governments for preservation projects. In North Carolina, these projects are administered through the North Carolina Preservation Office. *See Certified Local Government Program*, N.C. STATE HIST. PRES. OFF. (2024), <https://perma.cc/MRN5-7TCQ>.

78. *Unmarked Initiative*, PRES. FORSYTH (2024), <https://perma.cc/Z8UU-LMQQ>.

79. Brock, *supra* note 77.

80. *Identifying and Documenting Cemeteries*, UNMARKED INITIATIVE (2024), <https://perma.cc/6AMW-UC4Z>.

cemeteries.⁸¹ Third, it showed that many of these cemeteries required resurveying, as they had not been documented since the early 1980s.⁸²

The additional significance of this project is how it emphasizes the critical importance of community involvement in cemetery preservation. There is no lack of enthusiasm amongst the broader community for cemetery preservation. As Adam Rosenblatt notes in his recent book *Cemetery Citizens*, these volunteers come to neglected and abandoned cemeteries with many different motives.⁸³ What they often lack are resources and technical expertise. This project highlights how, collaboratively, government, universities, and community organizations can work together to meet the needs of these cemeteries.

III. IS THIS ENOUGH?

Although the efforts to preserve and restore have made headway during the twenty-first century, both nationally and in the State of North Carolina, there is still a great deal to be done. Through this research, Melissa Timo, a Historic Cemetery Specialist at the North Carolina State Office of Archaeology, was kind enough to speak about the state of affairs in North Carolina and what more needs to be done to further this fight to save African American history.⁸⁴

The mission of the North Carolina State Office of Archaeology is twofold. The first objective is based on researching, identifying and recording historic cemeteries as defined by federal regulation.⁸⁵ The second objective involves providing assistance to families, local communities, and others with their questions about cemeteries.⁸⁶ Melissa's main goals are to capture information and help citizens with basic historic preservation.⁸⁷ Many African American communities that are descendants of slaves are beginning to speak up and demand respect for their ancestors and communities, and this is where the bulk of Melissa's work lies. Melissa stated that her role involves a lot of time and community-building to help protect the knowledge held in these historic sites, as the physical location may not be saved.⁸⁸ But, with the knowledge recorded, this history is not lost.

81. *Id.*

82. *Id.*

83. See ADAM ROSENBLATT, *CEMETERY CITIZENS: RECLAIMING THE PAST AND WORKING FOR JUSTICE IN AMERICAN BURIAL GROUNDS* 4 (2024) ("Volunteers arrive in cemeteries with different ways of understanding what they see and thinking about why they are doing this work.").

84. See Zoom Interview with Melissa Timo, Historic Cemetery Specialist, N.C. Off. State of Archaeology (Apr. 11, 2024).

85. N.C. OFF. STATE ARCHAEOLOGY, *supra* note 75; see also 36 C.F.R. § 60.4 (2024).

86. N.C. OFF. STATE ARCHAEOLOGY, *supra* note 75.

87. Zoom Interview with Melissa Timo, *supra* note 84.

88. *Id.*

Although not all cemeteries may be capable of being saved, of those that are, technological advancements have paved the way for more precise identification and recording methods. Ground penetrating radar, a type of geographic information system, has made the process of discovering, mapping, and recording cemeteries drastically more efficient.⁸⁹ Ground penetrating radars send pulses that penetrate the Earth and bounce off of objects, like graves, below the Earth's surface.⁹⁰ The use of this technology allows for the creation of a 3D image of what is underground before disturbing the landscape. This allows for graves to be discovered and "re-marked" in an effort to locate the outer boundaries of a forgotten cemetery or even burial grounds on familial property. Although the use of this technology is remarkable in the preservation and restoration efforts of local governments and organizations, some of the more pressing issues faced by African Americans cannot be remedied with technological advancement.

In speaking with Melissa, some of the biggest challenges for African American communities dealing with preservation and restoration efforts included actual or uneven enforcement of existing laws, issues with heirs property, and maintaining ownership of historic cemeteries and lands if privately owned. Sections 14-148 and 14-149 of North Carolina's statutory code criminalize the defacing and desecration of grave sites, but these laws are enforced by local law enforcement and subject to the District Attorney's office proceeding with prosecution. These laws, along with many others,⁹¹ are currently in effect, but are seldomly charged or prosecuted. This lack of enforcement allows for the destruction and defacing of African American and other historic cemeteries. The issues surrounding heirs property and maintenance of ownership go hand in hand. Heirs property is common among many families, but in African American communities, there is a disconnection between families and their land. It is less common for families to remain in their familial homes or ancestral land, thus, without proper recordation, the rightful owners of land are less identifiable after a few generations. All of these compounding issues make it increasingly more difficult for the rich history of African Americans in North Carolina and across the nation to be preserved throughout history. And until then, much more work is needed to preserve and restore African American cemeteries.

89. Sabine Fiedler et al., *The Effectiveness of Ground-Penetrating Radar Surveys in the Location of Unmarked Burial Sites in Modern Cemeteries*, 68 J. APPLIED GEOPHYSICS 380, 380 (2009).

90. *Id.*

91. See *Useful Cemetery Laws*, N.C. OFF. STATE ARCHAEOLOGY (2024), <https://perma.cc/BS5S-8QX9>.

CONCLUSION

As discussed in Part I, and as seconded by Melissa Timo, the most prominent next step for historic African American cemeteries is having federal legislation that resembles the Native American Graves Protection and Repatriation Act. “Cemeteries aren’t just places, they have emotions and trauma attached to them.”⁹² As such, they should be treated with the dignity and respect that the African American community deserves. There is a long history of mistreatment of African Americans in the United States, and this mistreatment is tenfold in the South, but in death there is dignity, and our historic African American cemeteries deserve the time and dedication for appropriate preservation and restoration.

92. Zoom Interview with Melissa Timo, *supra* note 84.