

NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

CHATHAM COUNTY

19 CVS 809

2019 NOV - 6 A 11: 04

BARBARA CLARK PUGH; GENE)
TERRELL BROOKS; THOMAS HENRY) C.S.C.
CLEGG; THE WINNIE DAVIS CHAPTER)
259 OF THE UNITED DAUGHTERS OF)
THE CONFEDERACY,)

Plaintiff,)

vs.)

MOTION FOR PRELIMINARY
INJUNCTION

(Rule 65, North Carolina Rules \
of Civil Procedure)

KAREN HOWARD; MIKE DASHER;)
DIANNA HALES; JIM CRAWFORD; and)
ANDY WILKIE, in their official capacities)
as members of the Board of County)
Commissioners of Chatham County, North)
Carolina,)

Defendants.)

NOW COME Plaintiffs, by and through counsel, and move the Court pursuant to North Carolina General Statute, § 1-253 *et. seq.* and Rule 65 of the North Carolina Rules of Civil Procedure, for entry of a preliminary injunction restraining the Defendants from attempting to remove, alter, disassemble, or destroy the Confederate Monument located upon the premises of the Chatham County Courthouse in Pittsboro, North Carolina, and show unto the Court as follows:

1. Plaintiff Barbara Clark Pugh (hereinafter referred to as "Plaintiff Pugh" has been a citizen and resident of Chatham County, North Carolina for the six months next preceding the filing of this action. Plaintiff Pugh has been assessed property taxes by the Chatham County Tax Assessor, and Plaintiff Pugh has paid such property taxes as the same have come due from time to

time. Plaintiff Pugh is a direct descendant of a member of the armed forces of the Confederate States of America during the War Between the States.

2. Plaintiff Gene Terrell Brooks (hereinafter referred to as "Plaintiff Brooks") has been a citizen and resident of Chatham County, North Carolina for the six months next preceding the filing of this action. Plaintiff Brooks has been assessed property taxes by the Chatham County Tax Assessor, and Plaintiff Brooks has paid such property taxes as the same have come due from time to time. Plaintiff Brooks is a direct descendant of a member of the armed forces of the Confederate States of America during the War Between the States.

3. Plaintiff Thomas Henry Clegg (hereinafter referred to as "Plaintiff Clegg") has been a citizen and resident of Chatham County, North Carolina for the six months next preceding the filing of this action. Plaintiff Clegg has been assessed property taxes by the Chatham County Tax Assessor, and Plaintiff Clegg has paid such property taxes as the same have come due from time to time. Plaintiff Clegg is a direct descendant of a member of the armed forces of the Confederate States of America during the War Between the States.

4. Plaintiff Winnie Davis Chapter 259 of the United Daughters of the Confederacy (hereinafter referred to as "Plaintiff Chapter") is a nonprofit association, other than one created by a trust and other than a limited liability company, consisting of two or more members joined by mutual consent for a common, nonprofit purpose, which is organized and existing under the provisions of Chapter 59B of the North Carolina General Statutes. Pursuant to the provisions of G.S. § 59B-8, Plaintiff Chapter may assert a claim in its name on behalf of its members or persons

referred to as “members” by it if one or more of them have standing to assert a claim in their own right, the interests it seeks to protect are germane to its purposes, and neither the claim asserted nor the relief requested requires the participation of a member or a person referred to as a “member” by it. At all times pertinent to the allegations contained herein, Plaintiff Chapter was a nonprofit association organized and existing under the laws of the State of North Carolina which was operating and existing in Chatham County, North Carolina where it regularly held meetings and engaged in activities germane to its purpose as a Confederate heritage group.

5. Pursuant to the provisions of G.S. § 66-71.5, Plaintiff Chapter has duly filed an assumed business named certificate, recorded on May 8, 2019 in Book 2043, page 959 in the Office of the Register of Deeds of Chatham County, North Carolina.

6. Chatham County is a body politic created and existing under the Constitution of the State of North Carolina and the provisions of Chapter 153A of the North Carolina General Statutes. As such, Chatham County has only such power and authority as might be delegated to it consistent with the provisions of the Constitution of the State of North Carolina and the provisions of Chapter 153A of the North Carolina General Statutes.

7. Defendants are the duly elected or appointed county commissioners for Chatham County, North Carolina. At all times pertinent to the allegations contained herein, Defendants were acting in their official capacities as members of the Chatham County Board of Commissioners.

8. The Superior Court of Chatham County has jurisdiction over the subject matter of this action and the parties hereto pursuant to the provisions of G.S. §1-75.1 et seq., and venue is proper in Chatham County pursuant to G.S. §1-76 et seq.

9. August 19, 2019, a motion was made by Commissioner Crawford, seconded by Commissioner Howard, and passed by a vote of 4-1 of the Board, to terminate "the Monument license" granting the Plaintiff Chapter's right to maintain and keep their monument within the Historic Courthouse circle. The Board directed Plaintiff Chapter to communicate in writing to the county manager their plan for the final disposition of the monument, including both the statue and its pedestal. The Board further directed the county manager to make a good faith effort to assist in the implementation of the Plaintiff Chapter's plan, according the Monument and its custodians their due respect, and, if no such plan was received by the county manager's office by October 1, 2019, the Monument would be considered a public trespass on November 1, 2019.

10. Further, on October 21, 2019, the Defendants passed a resolution directing the employees of Chatham County to remove the Monument on November 1, 2019.

11. It is undisputed that the Monument is located on public property.

12. On October 23, 2019, Plaintiffs filed a complaint seeking the entry of a Declaratory Judgment pertaining to the said Confederate Monument, to which more specific reference is made and incorporated herein. Said complaint also sought a temporary restraining order and a preliminary injunction.

13. The Monument is an "object of remembrance," as defined by North Carolina General Statute §100-2.1.

14. The Monument was placed upon the property of the Historic Chatham County Courthouse in 1907. The Monument has remained there continuously since its erection in 1907, with the exception of a period of time in 1985 during which the County of Chatham expended funds to dismantle, temporarily remove, and restore the Monument while a road construction project was underway around the premises of the Historic Chatham County Courthouse located at 9 East Street, Pittsboro, North Carolina.

15. After completion of the construction project, the County of Chatham reinstalled the Monument to the same location, where it remains today.

16. Plaintiffs affirmatively allege that the Monument is owned by the County of Chatham, and that the County of Chatham has kept and maintained the Monument for over a century.

17. A substantial risk of immediate and irreparable harm to Plaintiff exists, for which there is not adequate remedy at law based upon the following:

- a. The Plaintiffs have adequately alleged, and the Court has found, that County's actions and threatened actions as set forth above are proscribed by N.C.G.S. § 100-2.1.
- b. If Defendants were to initiate against any of Plaintiffs charges of "criminal trespass," it would result in an unfounded criminal liability if the Plaintiffs are ultimately successful in this litigation, and Plaintiffs would have no adequate remedy at law to redress such an injury.
- c. If Defendants were to precipitously remove the Monument, there is no adequate remedy at law for Plaintiffs should it be later determined that its removal was proscribed by law.

18. Issuance of Preliminary Injunction is necessary and appropriate to maintain the *status quo* prior to a full adjudication of the respective rights and obligations of the Parties.

19. Plaintiffs allege and say that they have legitimate and cognizable interests in the Confederate Monument as taxpayers of Chatham County and in the actions of Chatham County which are arguably *ultra vires*.

20. Plaintiffs allege and say that they are able to show a likelihood of success on the merits of their case; that that they are likely to sustain irreparable loss unless a

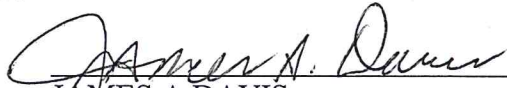
preliminary injunction is issued; and that a preliminary injunction is necessary for the protection of plaintiffs' rights during the course of litigation.

21. Plaintiffs are entitled to a preliminary injunction, upon such conditions as the Court might deem appropriate, restraining and enjoining Defendants from taking affirmative action to remove or relocate the confederate monument and taking any action to charge Plaintiffs with criminal trespass prior to a full adjudication of the respective rights and obligations of the Parties.

WHEREFORE, Plaintiffs respectfully pray:

1. That this verified motion be taken as an affidavit in the cause;
2. That a preliminary injunction be entered restraining and enjoining Defendants from taking affirmative action to remove or relocate the monument prior to a full adjudication of the respective rights and obligations of the Parties; and
3. That they have such other and further relief as to the Court might seem just and proper.

This is the 4th day of November 2019.


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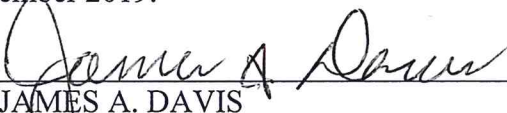
CERTIFICATE OF SERVICE

The undersigned certifies that he is an attorney-at-law who is duly licensed by the North Carolina State Bar; that he is the attorney of record for Plaintiffs herein; and that, on this date, he served copies of the foregoing Motion for Preliminary Injunction by facsimile transmission and deposit of copies thereof with the United States Postal Service for first class delivery to the Defendant's attorneys of record hereinafter identified:

ADDRESSEES:

J. NICHOLAS ELLIS, ESQUIRE
130 South Franklin Street
Rocky Mount, North Carolina 27804

This 4th day of November 2019.



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