

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
2019 NOV -4 P 4: SUPERIOR COURT DIVISION

CHATHAM COUNTY

CHATHAM CO.. C.S.C.

19-CVS-809

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

Plaintiffs,

v.

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.

and

WEST CHATHAM BRANCH OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE
and CHATHAM FOR ALL,

Defendant-Intervenors.

MOTION TO DISMISS

N.C. Rule of Civ. Pro. 12(b)(1) & 12(b)(6)

COME NOW the Defendant-Intervenors, West Chatham Branch of the National
Association for the Advancement of Colored People ("NAACP") and Chatham For All ("CFA"), "

and move to dismiss the Complaint in this matter, pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure.

1. The Complaint purports to seek a declaratory judgment regarding the applicability of N.C. Gen. Stat. § 100-2.1 to the decision by the Defendant Chatham County Board of Commissioners (“BOCC”) to revoke the license allowing Plaintiff United Daughters of the Confederacy (“UDC”) to keep its monument (“the Monument”) on county property.

2. The Complaint fails to establish that any of the Plaintiffs have or will suffer an injury in fact or invasion of any legally protected interest that can only be remedied by a favorable decision of the Court. In fact, Plaintiffs specifically deny having any legal interest in the Monument. Compl. ¶¶ 17-18. Therefore, Plaintiffs lack standing to bring this action, and the Complaint should be dismissed pursuant to N.C. Rule of Civ. Pro. 12(b)(1) for lack of subject matter jurisdiction.

3. The Complaint purports to assert a claim under N.C. Gen. Stat. § 100-2.1. However, by its express language, that statute creates no private right of action to challenge the County’s decision to revoke the license or remove a public trespass from county property. Because the statute upon which Plaintiffs rely does not provide a cause of action, this Court has no jurisdiction to consider the matter or provide a remedy. Even if the Court were to find that Plaintiffs had a legal interest in the Monument, the complaint should be dismissed for lack of subject matter jurisdiction because Plaintiffs have no claim under N.C. Gen. Stat. § 100-2.1.

4. The vote by the Defendant to rescind the UDC license constitutes a proper exercise of the BOCC’s legislative authority under North Carolina law. No law exists to support Plaintiffs’ claims, and the Complaint fails to allege any facts to support their claims. Therefore,

the Complaint should be dismissed pursuant to Rule 12(b)(1) and 12(b)(2) of the North Carolina Rules of Civil Procedure.

5. Plaintiffs otherwise lack standing to sue.

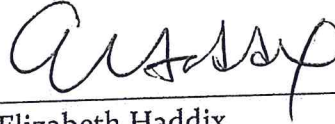
6. The Complaint otherwise fails to state a claim upon which relief may be granted.

WHEREFORE, Defendant-Intervenors respectfully request that the Court dismiss the Complaint with prejudice, enter judgment for the Defendant and Defendant-Intervenors on all claims, and grant such other relief as the Court deems appropriate.

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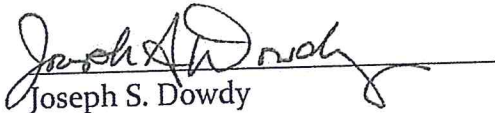
Respectfully submitted, this the 4th day of November 2019.

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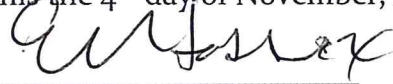
CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing MOTION TO DISMISS has been served on all parties and/or counsel by U.S. Postal Service, first-class delivery, with a courtesy copy by direct transmission to the electronic mailing addresses shown below:

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This the 4th day of November, 2019.



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