

FILED

STATE OF NORTH CAROLINA

2019 NOV -4 P 4: 07

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

CHATHAM COUNTY

CHATHAM CO., C.S.C.

19-CVS-809

BY YES

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.

MOTION TO INTERVENE

(N.C. Rule of Civ. Pro. 24)

COME NOW the West Chatham Branch of the National Association for the Advancement of Colored People ("NAACP") and Chatham For All ("CFA"), collectively, "Movants," and pursuant to Rule 24(a)(2) of the North Carolina Rules of Civil Procedure move to intervene of right as defendants in this matter, or in the alternative, move for permissive intervention pursuant to Rule 24(b).

1. Movants meet all the requirements for intervention of right under Rule 24(a)(2) of the N.C. Rules of Civil Procedure, which states:

- (a) Intervention of right. Upon timely application anyone shall be permitted to intervene in an action:

(2) When the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

2. This motion is timely. The complaint in this matter was filed less than two weeks ago, on 23 October 2019. The only proceedings thus far has been a hearing on Plaintiff's temporary restraining order. There have been no additional pleadings filed, and the time for defendant to answer has not lapsed.

3. NAACP and CFA have direct and immediate interests relating to the subject of this action, removal of the UDC confederate monument ("the Monument"), from the public property located at the historic Chatham County courthouse in Pittsboro, NC.

4. CFA is a community based nonprofit unincorporated association. CFA's mission is to lawfully and peacefully persuade the Chatham County Board of Commissioners ("BOCC") to remove the Monument from public property, because of the racially discriminatory hate speech it constitutes in its current location in front of the historic courthouse in the center of Pittsboro. CFA seeks to address the false historical narrative that the Monument represents and that the County endorses due to the Monument's current location. *See Exhibit 1, Affidavit of CFA.*

5. The NAACP is the nation's oldest and largest civil rights organization. Its mission is to ensure the political, educational, social and economic equality of rights of all persons and to eliminate racial hatred and discrimination. The NAACP has followed a variety of strategies to carry out this goal, including filing lawsuits and Title VI administrative claims, public education,

direct advocacy, peaceful protests, and civic engagement in order to promote and protect equal rights and to enforce anti-discrimination laws for the benefit of its members. The West Chatham Branch, which is part of the North Carolina State Conference, has worked to pursue that mission across North Carolina, but especially in Chatham County. Because of its location and its clear message of racial hatred and the racist legacy of the Confederacy, the maintenance of the Monument on the courthouse grounds frustrates the mission of the NAACP. See Exhibit 2, Affidavit of NAACP.

6. In pursuit of their missions, Movants engaged in months of public advocacy, education, and direct engagement in support of the removal of the monument, including a massive petition drive. Movants and their members also made appearances before the BOCC urging it to revoke the license and remove the Monument. These efforts are described in detail in Exhibits 1 and 2.

7. In addition, the continuing presence of the Monument and the County's recent vote to remove it has drawn widespread public demonstrations by neo-confederate and alt-right organizations, many of them openly carrying guns, swords and knives and other weapons. See attached Exhibits 1 and Affidavit of Stephanie Terry, attached hereto as Exhibit 3. These protests have further undermined Movants' missions and some of their members are reluctant to be downtown or continue to speak out for fear of being harassed, attacked, threatened, or otherwise harmed by the Confederate supporters. See attached Exhibits 1, 2 and 3.

8. The continued display of the monument in the public square has become a threat to public safety and a public nuisance—the most harmful effects of which are born by African American residents. However, Movants continue to pursue their goals and use their resources to

advocate in support of the removal of the monument even in the face of the presence of armed Confederate supporters. See Exhibits 1, 2 and 3.

9. The disposition of Plaintiffs' action to prevent the removal of the monument directly implicates and would adversely impact Movants' interests as civil rights organizations and advocates of the rights of African Americans. The resolution of the claims at issue may determine the County's ability to remove the Monument and to address the adverse racial harms created by its display on public property. Movants have already worked diligently and successfully through and exhausted the democratic legislative process in pursuit of their missions and to protect their interests. Now that the matter has moved into the courtroom, movants' rights will be prejudiced if they are not permitted to intervene.

10. Movants' interests are not adequately represented by the existing parties in the case. The UDC is an all-white organization dedicated to re-write the racial history of the Civil War as the so-called "Lost Cause" of a just southern struggle, and slavery as benevolent and benign. The UDC seeks to ensure the continued display of the monument with no regard for the legacy of racism and hate it embodies. Its interests, claims, and legal position are directly counter to Movants'. And although the BOCC voted to remove the Monument, it also does not adequately represent Movants' interests. The BOCC represents the general public interest. While that includes Movants, it also includes other Chatham County residents, including the Plaintiffs and their supporters. In addition, the BOCC has presented a different legal position than the Movants, focusing narrowly on the question of ownership and not on the racial discrimination or harms, or likely constitutional violations caused by the continuing display of the Monument.

11. Alternatively, Movants also meet the requirements for permissive intervention

pursuant to Rule 24(b)(2). Under that section of the rule, a timely applicant must show their “claim or defense and the main action have a question of law or fact in common. . . . In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of other parties.” N.C. Gen. Stat. § 1A-1, Rule 24(b)(2).\

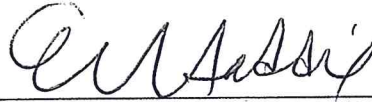
12. As stated above, Movants’ claims regarding the continuing location of the Monument on public property have questions of law and fact in common with the pending action. The UDC claims the Monument must remain in place; both BOCC and Movants assert that the monument should be removed (the former in defense of the government’s policy as enacted by elected representatives, the latter based upon the conviction that the removal is a necessary step for the achievement of racial justice). The resolution of these claims are grounded upon common questions of law and fact. Finally, the intervention will neither unduly delay nor prejudice the adjudication, due to the significant overlap of questions of law and fact, and because Movants are seeking intervention at the early preliminary stages of the case.

13. Counsel for the Plaintiffs and for the Defendant have been notified of this Motion. The Defendants consent to the Motion; Plaintiffs have not responded regarding their position.

WHEREFORE, Movants’ respectfully request that the Court grant their Motion to Intervene of right, pursuant to Rule 24(a)(2) of the North Carolina Rules of Civil Procedure, or in the alternative, that they be granted permissive intervention, pursuant to Rule 24(b). Movants have attached to this Motion a proposed Order and their Motion to Dismiss the Complaint pursuant to N.C. Rule of Civ. Proc. 12(b)(1) and 12(b)(6), and ask that it be accepted as filed as of the date of the Court’s order granting the Motion to Intervene.

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

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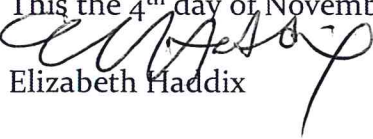
CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing MOTION TO INTERVENE 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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