

STATE OF NORTH CAROLINA
COUNTY OF GASTON

FILED
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 20 CVS 3996

2020 NOV 12 A 9 30

GASTON CO., C. C. C.

NAACP (NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE) GASTON COUNTY BRANCH; NABVETS (NATIONAL ASSOCIATION FOR BLACK VETERANS, INC.) GASTON COUNTY CHAPTER; ETA MU LAMBDA CHAPTER OF ALPHA PHI ALPHA FRATERNITY, INC.; KAREN BRINGLE; GRACIE MOORE; and JOSÉ TROCHE,

Plaintiffs,

v.

GASTON COUNTY; GASTON COUNTY BOARD OF COMMISSIONERS; and COMMISSIONERS TRACY PHILBECK, TOM KEIGHER, CHAD BROWN, JACK BROWN, ALLEN FRALEY, BOB HOVIS and RONNIE WORLEY in their official capacities,

Defendants.

**COMPLAINT AND PETITION FOR
DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF**

Plaintiffs NAACP (National Association for the Advancement of Colored People) Gaston County Branch; NABVETS (National Association for Black Veterans, Inc.) Gaston County Chapter; Eta Mu Lambda Chapter of Alpha Phi Alpha Fraternity, Inc.; Karen Bringle; Gracie Moore; and José Troche (collectively, "Plaintiffs"), by and through counsel, allege as follows:

INTRODUCTION

1. This lawsuit is brought by a multi-racial coalition of citizens and supporting groups because local officials refuse to move a monument valorizing an era of slavery, secession, and

white supremacy from the main entrance to the Gaston County courthouse. The multi-story structure—described by current county officials as the “Confederate Heroes Monument” and topped with an armed soldier—threatens public safety and stands in violation of multiple provisions of the North Carolina Constitution. Its presence harms county taxpayers, particularly Black residents. Yet the Gaston County Board of Commissioners refuses to act. As a result, Plaintiffs must initiate this lawsuit.

2. The text of the North Carolina Constitution and decisions of the Supreme Court of North Carolina allow for this legal action. Taxpayers can bring suit to challenge the illegal or unconstitutional acts of local officials. And North Carolinians can sue directly under the state Constitution when rights protected by that fundamental and supreme law are violated.

3. Plaintiffs ask this court to declare that Gaston County’s Confederate monument stands illegally and to find that defendants have a legal responsibility to end the violation.



(credit: Documenting the American South (DocSouth), UNC Chapel Hill University Library)

PARTIES - Plaintiffs

4. Plaintiff National Association for the Advancement of Colored People Gaston County Branch (Gaston NAACP) is a civil rights organization whose mission includes “eliminat[ing] racial hatred and racial discrimination.” The members of the Gaston NAACP reside and pay taxes in Gaston County. Christopher Thomason is President of the Gaston NAACP.

5. Plaintiff National Association for Black Veterans, Inc., Gaston County Chapter (Gaston NABVETS) seeks to end discrimination and racism on behalf of Black military veterans. A majority of Gaston NABVETS members reside and pay taxes in Gaston County. Foster Steen serves as commander of Gaston NABVETS.

6. Plaintiff Eta Mu Lambda Chapter is the Gaston County-based branch of Alpha Phi Alpha Fraternity, Inc., the first intercollegiate fraternity established for Black men. The Eta Mu Lambda Chapter was organized in 1959. The mission of the chapter, like that of the national fraternity, is “to help correct the educational, economic, political, and social injustices faced by African Americans.” A majority of the Chapter’s members reside and pay taxes in Gaston County. William A. Gardin Jr. is the group’s President.

7. The organizational plaintiffs have standing to bring this action pursuant to *Creeke Pointe Homeowner’s Ass’n, Inc. v. Happ*, 146 N.C. App. 159, 552 S.E.2d 220 (2001), and other cases holding that organizations can seek legal redress on behalf of their members.

8. Gracie Moore is a Black resident of and taxpayer in Gaston County. She moved to Gaston County approximately two years ago.

9. Karen Bringle is a white resident of and taxpayer in Gaston County.

10. José Troche is a Hispanic resident of and taxpayer in Gaston County.

11. The Black organizational and individual plaintiffs have standing to bring this action pursuant to *Corum v. Univ. of North Carolina*, 330 N.C. 761, 413 S.E.2d 276 (1993), *Craig v. New Hanover County Board of Education*, 363 N.C. 334, 678 S.E.2d 351 (2009), and other cases holding that when the constitutional rights of North Carolinians are violated they can seek redress in state court.

12. All Plaintiffs have standing to bring this action pursuant to *Freeman v. Board of County Commissioners*, 217 N.C. 209, 7 S.E.2d 354 (1940), *Goldston v. North Carolina*, 361 N.C. 26, 637 S.E.2d 876 (2006), and other cases holding that taxpayers have standing to challenge unlawful or unconstitutional government actions.

13. All individual plaintiffs and many members of the organizational plaintiffs suffer personal and direct effects from the statue as they must pass within sight of Gaston County's Confederate monument in order to complete routine activities in and around the courthouse. The Black plaintiffs are particularly vulnerable to harms caused by white supremacists attracted to the monument.

PARTIES - Defendants

14. Defendant Gaston County is a body politic and corporate, organized and existing under the laws of the State of North Carolina, with capacity to be sued as provided by North Carolina General Statute (N.C.G.S.) §153A-11.

15. Defendants Tracy Philbeck, Chad Brown, Jack Brown, Bob Hovis, Allen Fraley, Tom Keigher, and Ronnie Worley are the members of the Gaston County Board of Commissioners which is the governing body of Gaston County. These individuals are sued in their official capacities. According to U.S. Census figures, approximately eighteen percent (18%) of the county

population is Black. Commissioners are elected countywide and serve four-year terms. A Black person has not served on the Board since 2008.

JURISDICTION

16. This General Court of Justice has subject matter jurisdiction and authority to hear this civil matter that seeks a declaratory judgment pursuant to N.C.G.S. §7A-240 and §1-253. The Superior Court is the proper division where, as here, the principal relief sought is the enforcement or declaration of any claim of constitutional right. N.C.G.S. §7A-245(a). This court has personal jurisdiction over this matter because defendants Gaston County and the Gaston County Board of Commissioners are units of North Carolina local government subject to suit and the individual defendants are public officers executing their duties in Gaston County.

VENUE

17. Venue is appropriate in Gaston County pursuant to N.C.G.S. §1-77 because some or all of the cause arose in the county and defendants include public officers.

FACTUAL ALLEGATIONS AND BASIS FOR ACTION

I. The Monument Conflicts with North Carolina's Post-Civil War Constitution

18. In 1865, North Carolina gave America the ground on which the Civil War was ended. The war's largest troop surrender was negotiated near Durham while Greensboro provided depots for Confederate arms to be laid down and units to be mustered out. Across the state, newly freed Black Americans began participating in the civic life from which they had been so long, so brutally, and so unjustly excluded.¹

¹ A recent Court of Appeals decision highlights how brief the period of meaningful political participation was for Black North Carolinians before white supremacists used violence, intimidation, and subterfuge to again disenfranchise fellow Americans based on race. "During Reconstruction (1868-1898), 111 African Americans served in our General Assembly Until 1968, no African Americans had served in our General Assembly in the 20th century." *NAACP v. Moore* at 8 & n.11, No. COA10-384 (filed: 15 September 2020).

19. In 1868, citizens enacted a new state Constitution that included two key principles absent from the original North Carolina Constitution of 1776: individual equality and national unity. Overriding any state law to the contrary, and repudiating the Confederacy's contrary belief, the 1868 Constitution declares that "[w]e hold it to be self-evident that all men are created equal" (Article 1, Section 1) and directs that "[s]lavery and involuntary servitude . . . shall be, and are hereby forever prohibited within this State." (Article 1, Section 33). It also speaks repeatedly to the necessity of supporting the Union. The opening line expresses that North Carolina is "grateful . . . for the preservation of the American Union." And the text goes on to offer absolute and permanent fealty to the re-united Nation promising "[t]hat this State shall ever remain a member of the American Union; that the people thereof are part of the American nation; that there is no right on the part of this State to secede; and that all attempts from whatever source or upon whatever pretext, to dissolve said Union, or to sever said nation, ought to be resisted with the whole power of the State. That every citizen of this State owes paramount allegiance to the Constitution and Government of the United States, and that no law or ordinance of the State in contravention or subversion thereof, can have any binding force." (Article 1, Sections 4-5).² All of these provisions were carried over into the North Carolina Constitution effective as of 1971 and remain operative today.

20. The 1971 Constitution adds a provision explicitly guaranteeing equal protection as a matter of law and, separately and additionally, forbids racial discrimination: "No person shall be denied the equal protection of the laws; nor shall any be subjected to discrimination by the State because of race, color, religion, or national origin." It also requires the expenditure of taxpayer

² The 1868 Constitution also rejects any individual's financial claim against the State related to the "insurrection or rebellion against the United States." (Article 1, Section 6).

funds only be for a “public purpose.” (Article V, Section 2: “The power of taxation shall be exercised in a just and equitable manner, for public purposes only.”).

21. The Supreme Court of North Carolina has held that the state Constitution is the “fundamental law of this State” and “that individual rights protected under the Declaration of Rights from violation by the State are constitutional rights. Such constitutional rights are a part of the supreme law of the State.” *Craig*, 363 N.C. at 339, 678 S.E.2d at 355.

22. The North Carolina State Constitution provides greater protection than even the federal Constitution. *Corum*, 330 N.C. at 783, 413 S.E.2d at 290 (“Our Constitution is more detailed and specific than the federal Constitution in the protection of the rights of its citizens. . . . We give our Constitution a liberal interpretation in favor of its citizens with respect to those provisions which were designed to safeguard the liberty and security of the citizens in regard to both person and property.”). *See also Stephenson v. Bartlett*, 355 N.C. 354, 358, 562 S.E.2d 377, 381 (2002) (“It is beyond dispute that this Court has the authority to construe the State Constitution differently from the construction by the United States Supreme Court of the Federal Constitution, as long as our citizens are thereby accorded no lesser rights than they are guaranteed by the parallel federal provision.”) (cleaned up).

II. How the Erection and Dedication of the Monument Defied the Constitution

23. Despite the guarantees of the 1868 Constitution, Gaston County’s Confederate monument was erected as a symbol of white supremacy and a glorification of the secessionist South. This intent was confirmed at its dedication in 1912. According to the *Gaston Gazette*, the keynote speaker “used the occasion to praise white supremacy” and “criticize the right of Black men to vote.” He also “justified the Civil War and praised the battlefield bravery of Confederate soldiers,” adding that “the state ‘stood for the integrity of a whole civilization and a white race,

and today [in 1912] North Carolina holds in trust for the safety of the nation the purest Anglo-Saxon blood to be found on American shores.” (*Gaston Gazette*, “Keynote speaker praised South, white supremacy at dedication of Confederate monument,” July 9, 2020).

24. Gaston County leaders today acknowledge that the monument’s dedication was a celebration of white supremacy. According to the director of the Gaston County Museum of Art & History, the keynote speaker was “paying tribute, but he’s also offering a clear understanding of how they viewed this monument. It’s a legacy of bravery but also what that bravery inspired, that there cannot be equality between the races.” *Id.*

25. At the apparent behest of defendants, the County Museum of Art & History researched and reported on how Confederate memorials such as the monument were viewed by Black North Carolinians when first put in place: “For many African Americans in the South in the early 1900s, the monuments were reminders of their expected place in society and further enforced division between the white and black populace. During this time segregation standards were implemented and civic liberties for the black population were restricted. Also, white supremacy groups, most notably The Ku Klux Klan which had been dismantled in the 1870s, re-emerged spreading fear throughout the African American community.” (Gastonia Confederate Monument Fact Sheet Prepared by the Gaston County Museum of Art & History, presented at Council of Understanding Meeting authorized by defendants, July 7, 2020).

26. According to the American Historical Association’s *Statement on Confederate Monuments* issued in August 2017: “The bulk of the monument building took place not in the immediate aftermath of the Civil War but from the close of the 19th century into the second decade of the 20th [These] [m]emorials to the Confederacy were intended, in part, to obscure the

terrorism required to overthrow Reconstruction, and to intimidate African Americans politically and isolate them from the mainstream of public life.”

III. The Monument’s Characteristics, Including the Towering Armed Confederate Soldier, Carry on the Racial Animus and Subjugation Embraced at Its Unveiling

27. The white supremacy underlying the Gaston County courthouse monument’s dedication did not end at the ceremony’s close. Rather, it lives on in the very appearance of the monument itself, most strikingly in the commendation on the monument’s base: “CONFEDERATE HEROES.” Another inscription on the monument similarly praises the fight for secession and slavery while suggesting a timelessness (“perpetual”) that brings it into the present day. It reads: “THE NOBLE SERVICE OF THE SONS OF GASTON COUNTY IS OUR PERPETUAL HERITAGE.”

28. And the monument is no small thing . . . literally. According to the University of North Carolina at Chapel Hill’s “Documenting the American South” initiative, “[t]he sculpture rests atop a tall column on a tiered base, with the entire structure rising to approximately thirty-five feet.” In addition, according to UNC historians, “[t]he front of the monument bears a bas-relief of the Confederate flag, waving from a broken pole. And the initials of the Confederacy—‘CSA’—in raised lettering adorn each side of the tier above the inscribed faces.”

29. Finally, there is the sculpted soldier himself. With his hands on the barrel of his rifle, he stands armed with a weapon. According to the Gaston County Museum of Art & History, “[t]he statue is of a private in the Confederate army ‘as he went forth to battle.’”

IV. The 1998 Decision to Re-Locate the Offensive Monument to Ensure Its Continuing Prominent Placement in the Midst of Key Government Functions

30. Beyond the monument’s physical characteristics, Gaston County officials have taken affirmative steps in modern times that have exacerbated and enhanced the monument’s

offensiveness. Foremost was the decision in 1998 to uproot and transport the monument several city blocks so that it could continue to stand at the entrance of Gaston County's working courthouse. As the *Gaston Gazette* recently described it: "the monument to an armed and treasonous rebellion against the United States was moved to its place of honor in front of the new courthouse when it opened in the late 1990s." (*Gaston Gazette*, "Our View: Commissioners ignore reality: Monument must go," Aug. 29, 2020). The location of the monument in front of the County's courthouse exacerbates its deleterious effects. As a publication of the North Carolina Administrative Office of the Courts states: "Often, the county courthouse is the main landmark, the showpiece of civic grandeur that residents consider to represent their city and county." (Ava Barlow, *Monuments to Democracy*).

31. The monument's current location at 325 Dr. Martin Luther King Way in Gastonia puts it in the path of all persons with business before the County's Superior and District Courts, the Clerk of Superior Court, and the Register of Deeds. The same building also hosts defendants' twice-a-month public meetings. Other key government services function nearby or even within view of the monument including the Social Services Division, the County's Battered Women's Residence and Resource Center, and the Sheriff's office. In addition, defendants continue to refer to the statue as "The Gaston County Confederate Heroes Monument" in public documents and open meetings.

V. The Monument Continues to Cause Racialized Pain Today

32. Given the intent of the monument, its characteristics, and its placement, it is not surprising that the Plaintiffs and other residents of Gaston County find it to be racially demeaning, racially hostile, and racially discriminatory. Statements reported by media outlets include:

- a. “‘They use this statute as a way of saying we’re still in control here,’ activist Rashaan Stephens said. ‘We’re looking over you, we stand taller than you.’” (WBTV, “Gaston County protestors want confederate monument removed from court house,” June 9, 2020);
- b. “Scotty Reid, an African American veteran of the U.S. Army, said he long wished for the monument to find a new home. He believes monuments like it were erected throughout the South in prominent places and served as a reminder of the Jim Crow-era social order. ‘These things send a message and it’s not a message of justice,’ Reid said. ‘That county courthouse, despite all the problems with the criminal justice system that people are trying to change, justice is supposed to be administered there. That monument is just out of place there.’” (*Gaston Gazette*, “Worley: Time to relocate courthouse’s Confederate monument,” June 17, 2020);
- c. “Gaston County NAACP President Chris Thomason said the monument’s prominence is the problem. ‘That statue is a symbol of hate,’ Thomason said. ‘It has no place on the courthouse grounds, where individuals go looking to seek equal, fair justice.’” (*Gaston Gazette*, “Removal of Gaston County Confederate monument now uncertain,” Aug. 25, 2020). Gaston County NAACP is a plaintiff in this action.

33. The other individual and organizational Black plaintiffs share Mr. Thomason’s perspective. They understandably view Gaston County’s Confederate monument as something that not only symbolizes, but also perpetuates, racial bias and discrimination.

34. Plaintiffs are not alone in their opinion that the monument's current location causes pain and is improper. The editorial page of the *Gaston Gazette* recently pleaded: "That monument has no place in front of our courthouse, a place to which people of all races and ethnicities come for justice before the law [P]lease, do the right thing and get it away from our courthouse." (*Gaston Gazette*, "Our View: Commissioners ignore reality; Monument must go," Aug. 29, 2020).

35. Tellingly, at least one of the defendants recently recognized the material adverse impact the monument has on Black residents of the County. According to the *Gaston Gazette*, County Commissioner Ronnie Worley "referenced a conversation with an African American man last week that influenced his current thoughts on the memorial." According to Worley: "We had a good conversation and he [the Black resident] said, 'When I come here to this courthouse seeking justice and I look at a monument that is a symbol of injustice, I'm not sure I get a fair shake in this building.'" The article goes on to say: "For those who say the monument hurts no one, Worley would still say he agrees, at least in principle. 'But the symbolism means something to a lot of people, and I think symbolism is important,' Worley said." (*Gaston Gazette*, "Worley: Time to relocate courthouse's Confederate monument," June 17, 2020).

36. Given the pain and strong sentiments engendered by the monument, it is not surprising that it has been the catalyst for protests and counter protests. On information and belief, defendants are spending taxpayer funds on personnel and materials in order to protect the monument. Specifically, according to publicly-available communications purporting to be from Gaston County's Public Information Officer Adam J. Gaub, defendants have spent more than \$50,000 in recent months "to rent fencing to provide a protective barrier" around the monument and on "overtime hours" due to "[s]pecial assignment for security at the Monument/Courthouse" and "personnel working for Protest events at the courthouse." The draft minutes from a discussion

about the monument among defendants on July 28, 2020 attributes to Commissioner Worley (“RW”) the statement that defendants “have spent considerable dollars to protect [it]” and it is his “guess that it is higher [than] that [\$50,000].” According to his remarks as published: “Commissioner Worley advised the citizens did not vote to place the monument in front of the old Courthouse; there was never a vote taken to place it there. The County has spent over \$50K since this strife began and is not even defending a lawsuit – it is defending a statue, protecting people, and putting its officers in continual harm’s way.”

37. Media reports state that there have been multiple monument-related arrests.

38. The *Gaston Gazette* reports that the controversy caused by Gaston County’s Confederate monument even has caused the county to expend resources on personnel and materials protecting a monument honoring Dr. Martin Luther King, Jr. “Right now, the monument that sits on county property at the corner of Long Avenue and Dr. Martin Luther King Way is behind fencing, a casualty as protests at the nearby Confederate monument heated up this summer The Gaston County Sheriff’s Office said earlier this month the fencing was placed around both the Martin Luther King monument and the county’s longstanding Confederate monument across the street at the courthouse as a way to reduce resources that were going to protect both protesters and the monuments.” (*Gaston Gazette*, “Fenced in Martin Luther King monument ‘not a good look’ for Gaston,” Oct. 8, 2020).

VI. While Defendants’ Recent Monument-Related Actions Have Been Confusing, in August 2020, Defendants Enacted an Official Policy that the Monument Will Not Be Voluntarily Removed

39. Since the killing of George Floyd in May 2020, and the renewed protests for the removal of Gaston County’s Confederate monument, defendants for a time sent mixed signals on whether they will act voluntarily to end the constitutional violations caused by its presence. In

June 2020, defendant Philbeck (Chair of the Board of Commissioners) created an “Ad Hoc Council of Understanding” to “provide a recommendation to the Board of Commissioners on keeping or relocating the monument.” (Board Action, File #20-302, at 6). The twelve members of the Council were hand-picked by the Commissioners and defendant Keigher was appointed to lead the group. The Council held three meetings throughout July 2020. At the conclusion of its work, the Council voted “to recommend to the BOC [Board of Commissioners] that the monument be relocated.”

40. On August 4, 2020, Commissioners voted 6-1 to remove the monument from the courthouse entrance and transfer ownership to a chapter of the Sons of Confederate Veterans (SCV) for relocation to private property. As defendant Philbeck put it: “Gaston County’s people have spoken on both sides of this discussion and the board has listened.” (*Gaston Gazette*, “Philbeck introduces plan to gift, relocated Confederate monument,” July 31, 2020).

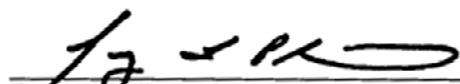
41. But the possibility of voluntary removal ended weeks later when a majority of the Board of Commissioners voted to keep the monument in place after SCV reneged on the transfer plan. According to a resolution enacted on August 25, 2020 and in effect today, “the Gaston County Board of Commissioners establishes that the Confederate Heroes Monument shall remain in its current location outside the Gaston County Courthouse at 325 Dr. Martin Luther King Jr. Way, Gastonia, North Carolina 28052.”

BE IT FURTHER RESOLVED that the Gaston County Board of Commissioners establishes that the Confederate Heroes Monument shall remain in its current location outside of the Gaston County Courthouse at 325 Dr. Martin Luther King Jr., Way, Gastonia, North Carolina 28052.

Adopted this the 25th day of August, 2020.

ATTEST


Donna S. Buff, Clerk to the Board


Tracy L. Philbeck, Chairman

42. While defendants refuse to remove a symbol of white supremacy, public bodies and officials across North Carolina have done so. These include: the City of Rockingham (Richmond County *Daily Journal*, “Rockingham to remove Confederate monument,” Aug. 11, 2020), Pittsboro (*New York Times*, “Confederate Statue in North Carolina Comes Down After 112 years,” Nov. 20, 2019), and the North Carolina Court of Appeals (WRAL.com, “Statue of former chief justice who was slave owner removed from NC Court of Appeals building,” July 8, 2020). Importantly, several Boards of County Commissioners have voted in favor of removing Confederate monuments from courthouse entrances and other prominent public spaces including in Anson, Buncombe, Chatham, Lenoir, Pitt, Vance, and Warren. These actions are consistent with the directive of North Carolina Governor Roy Cooper who stated in June 2020: “Monuments to white supremacy don’t belong in places of allegiance, and it’s past time that these painful memorials be moved in a safe, legal way.”

43. North Carolina General Statute §100-2.1 (the 2015 “Monuments Law”) did not preclude any of these removals and the act does not deter this action. The “Monuments Law” is inapplicable because, by its own terms, “it does not apply to the following . . . [a]n object of remembrance for which a building inspector or similar official has determined poses a threat to public safety because of an unsafe or dangerous condition.” Multiple public officials across North Carolina have determined that Confederate monuments on government property pose a public safety threat and there is no reason to conclude that Gaston County’s monument is distinguishable; as set forth in Paragraph 36 above, defendant Commissioner Worley has conceded that Gaston County’s monument is putting citizens and law officers “in continual harm’s way.” Moreover, Gaston County’s attorney has pronounced publicly that the monument can be removed consistent with the 2015 law. According to WCNC.com, County Attorney Jonathan Sink “said the original

plan [to relocate the monument to private property] fits well within the guidelines of a 2015 state governing public monuments.” (“Removal of Gaston County Confederate monument now uncertain,” Aug. 25, 2020).

44. Indeed, defendants’ now-abandoned plan to transfer the monument to the Sons of Confederate Veterans (SCV) is an admission that removal of the monument is permissible under the “public safety” exception. *See* N.C.G.S. §100-2.1(c)(3).

CAUSES OF ACTION

45. Plaintiffs re-allege and incorporate by reference the allegations stated in the preceding paragraphs as if fully set forth here.

COUNT ONE

Violation of the North Carolina Constitution—Equality and Equal Protection Provisions (Brought by Black Plaintiffs Against All Defendants)

46. Central to our state Constitution are the declarations that “all persons are created equal” (Article I, Section 1) and that “[n]o person shall be denied the equal protection of the laws” (Article I, Section 19).

47. North Carolina courts have held that these equality protections are particularly relevant to and important for Black citizens. As the Court of Appeals has explained: “Courts traditionally have employed a two-tiered scheme of analysis when evaluating equal protection claims. The upper tier of equal protection analysis requiring strict scrutiny of a governmental classification applies only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class.” *Dobrowolska v. Wall*, 138 N.C. App. 1, 14, 530 S.E.2d 590, 600 (2000) (emphasis added). And, as the Supreme Court has noted, a “traditional indicia of suspectness” is being “subjected to [] a history of purposeful unequal treatment.” *White v. Pate*, 308 N.C. 759, 768, 304 S.E.2d 199, 205 (1983).

Just recently, an opinion authored by Chief Justice Beasley provided a stark reminder of the extent to which Black North Carolinians have lived through such a painful history. “After the Civil War and Reconstruction, [] racism and legal segregation remained rampant in North Carolina and across the South The same racially oppressive beliefs that fueled segregation manifested themselves through public lynchings, the disproportionate application of the death penalty against African-American defendants, and the exclusion of African-Americans from juries.” *State v. Robinson* __ N.C. __, __ S.E.2d __, 2020 Lexis 700, at *7–8 (14 Aug. 2020). Chief Justice Beasley added that “racially oppressive practices and beliefs [] permeated every level of American society during the Jim Crow era.” *Id.* Of course, one such manifestation of these racially oppressive practices was the installation of Confederate monuments including the one still standing in front of the Gaston County courthouse.

48. And Gaston County’s Confederate monument is not just a symbol of past and present discrimination but an instrument of it. Every juror who enters the Gaston County courthouse must view a governmental embrace of white supremacy before trying to provide impartial justice. The Black plaintiffs and their members have no choice but to conduct daily activities in the shadow of a demeaning monument that repeatedly attracts those espousing racist and white supremacist views. In addition, the monument inevitably results in impermissible racial stratification and stigmatization.

49. The presence and maintenance of Gaston County’s Confederate monument by defendants denies the Black plaintiffs equal protection under the law. It thus violates their rights under the North Carolina Constitution as established by *Corum* and *Craig*. Because the Black plaintiffs have no other adequate legal remedy, this direct action under the Constitution can proceed. As the *Craig* Court held emphatically: “This Court could hardly have been clearer in its

holding in *Corum*: “[I]n the absence of an adequate state remedy, one whose state constitutional rights have been abridged has a direct claim against the State under our Constitution.” The *Craig* Court added (again affirming and building on *Corum*): “individuals may seek to redress all constitutional violations, in keeping with the ‘fundamental purpose’ of the Declaration of Rights to ‘ensure that the violation of [constitutional] rights is never permitted by anyone who might be invested under the Constitution with the powers of the State.’”

50. Put simply: *Corum* and *Craig* were tailor made for this case and, coupled with the equal protection provision in the state Constitution (along with the anti-race discrimination guarantee discussed below), these cases demand the monument’s removal.

51. The Gaston County Confederate monument amounts to an ongoing violation of Plaintiffs’ rights to equal protection under the North Carolina Constitution. Accordingly, Plaintiffs seek an order granting injunctive relief and requiring immediate removal of the monument. *See Seaboard Air Line R.R. Co. v. Atlantic Coast Line R.R. Co.*, 237 N.C. 88, 94, 74 S.E.2d 430, 434 (1953) (a court of equity “may, by its mandate, compel the undoing of those acts that have been illegally done, as well as it may, by its prohibitive powers, restrain the doing of illegal acts. . . . A mandatory injunction based on sufficient allegations of wrongful invasion of an apparent right may be issued to restore the original situation.”).

COUNT TWO

Violation of the North Carolina Constitution—Anti-Race Discrimination Provision (Brought by Black Plaintiffs Against All Defendants)

52. The North Carolina Constitution goes beyond the United States Constitution in prohibiting race-related discrimination. North Carolinians are promised “equal protection” but then are also separately and additionally guaranteed that no person shall “be subjected to discrimination by the State because of race.” Constitutional scholars view the two provisions as

comprising “the most important section of Article I, the Declaration of Rights.” *See* John V. Orth and Paul M. Newby, The North Carolina State Constitution 68 (2013). Importantly, Professor Orth and Justice Newby also see the two clauses as distinct, noting that the equal protection clause was “drawn from the Fourteenth Amendment” while the nondiscrimination clause was “based on federal civil rights legislation.” *Id.* Their opinion matches that of the legal leaders who proposed the section. “Proposed Sec. 19 adds to the present law of the land provision a guarantee of equal protection of the laws and a prohibition of improper discrimination by the State.” *See* Report of the North Carolina State Constitution Study Commission to the North Carolina State Bar and the North Carolina Bar Association 74 (1968).

53. As noted in Count One, Gaston County’s Confederate monument harms the Black plaintiffs particularly. It thus not only denies them equal protection but also subjects them to discrimination because of their race. And when the Commissioner defendants voted in August 2020 to maintain the monument, they were aware that their official action would bear more heavily on one race—that represented by the Black plaintiffs—than other races. As the Court of Appeals recently affirmed, when official action bears more heavily on one race than another, it constitutes an impermissible and unconstitutional “discriminatory impact.” *Holmes v. Moore*, __N.C. App ___, 840 S.E.2d 244, 254 (2020). The discriminatory impact on the Black plaintiffs resulting from Gaston County’s Confederate monument is a violation of the constitution’s anti-race discrimination provision that must be remedied.

54. The Gaston County Confederate monument amounts to an ongoing violation of Plaintiffs’ rights to be free from race-based discrimination under the North Carolina Constitution. Plaintiffs seek an order granting injunctive relief and requiring immediate removal of the monument.

COUNT THREE

Violation of the North Carolina Constitution—Misuse of Taxpayer Money for Unconstitutional Purposes (Brought by All Plaintiffs Against All Defendants)

55. Too often, Black Americans are unfairly and unlawfully subject to racial discrimination but then must fight alone for the equality they should have received as a birthright. Thankfully, the Supreme Court of North Carolina’s decisions such as *Goldston* allow white and Hispanic residents of Gaston County to ally as co-plaintiffs so the burden of removing a monument, which should never have been erected, need not be shouldered solely by Black community members.

56. Specifically, all Plaintiffs, as individual (or groups comprising) taxpaying residents of Gaston County, have a legal right to public servants who spend county resources for a “public purpose,” that is, on lawful and constitutional activities. But defendants’ expenditures related to the Gaston County courthouse Confederate monument violate multiple provisions of the North Carolina Constitution including Article I, Sections 4-5 (anti-secession, pro-union clauses); Article V, Section 2 (“public purpose” clause); and the racial equality provisions discussed in Count One and Count Two. Put another way, it is illegal, invalid, or otherwise unconstitutional for defendants to maintain a monument that contravenes the anti-secession and pro-union clauses of the North Carolina Constitution and violates its racial equality guarantees. Under *Freeman*, *Goldston*, and other binding decisions of North Carolina’s appellate courts, Gaston County taxpayers such as Plaintiffs have standing to challenge this improper governmental activity. The fact that defendants are spending taxpayer dollars for activities related to these constitutional violations further supports this cause of action.

57. The maintenance of a white supremacist symbol cannot be for a “public purpose” as is also required by the Constitution. It cannot be a “public purpose” for defendants to maintain

a monument which exposes County taxpayers, including Plaintiffs, to subsidizing the security and other costs associated with protecting a piece of unlawful County property. And it cannot be a “public purpose” to maintain a monument which exposes the County, and thus its taxpayers, to negligence suits should someone be seriously injured or killed as a result of monument protests or counter protests. Such a risk is not hypothetical. University of North Carolina at Chapel Hill officials recognized it when considering what to do with the Confederate monument on campus: “the best way to reduce potential legal exposure would be to relocate the Monument to minimize exposure to negligence claims.” (Recommendation for the Disposition and Preservation of the Confederate Monument, Appendix D, Dec. 3, 2018). Gaston County’s Confederate monument also subjects the county, and ultimately its taxpayers, to risk of suit from courthouse employees alleging workplace harassment claims. Courts and the Equal Employment Opportunity Commission (EEOC) have found that the presence of Confederate symbols is evidence of a racially hostile environment under the Civil Rights Act of 1964.³

58. Gaston County residents have demanded publicly and repeatedly that defendants remove the monument. In light of the August 25, 2020 County Commission resolution directing that the “Heroes Monument shall remain in its current location,” Plaintiffs are relieved of any duty to make further demands prior to seeking judicial relief.

59. The August 2020 resolution also makes this action particularly timely. And there are other reasons why it is being brought now. First, individual defendants such as County

³ According to the County’s online Human Resources page, it has more than 1,500 employees. Many of them work in the vicinity of the County’s Confederate monument. The Gaston County Personnel Policy promises that “[a]ll employees are guaranteed the right to work in an environment free from Discrimination.” The policy also condemns workplace harassment (defined as “[u]nsolicited and unwelcome speech or conduct based on race”) and hostile work environments (“[c]onduct resulting from Workplace Harassment or Discrimination that both a reasonable person would find hostile or abusive and one that the particular person who is the object of the harassment perceives to be hostile or abusive”).

Commissioner Worley recently began acknowledging that the monument is a symbol that causes real pain, particularly for Black residents. Second, defendants' own attorney now concedes there is no legal prohibition on the monument's removal. And third, defendants' decision in early August 2020 to authorize the monument's transfer to a private group for placement on private property exhibited—at least for a time—defendants' belief that removal of the monument from the courthouse entrance was in the County's best interests. Taken together, these acknowledgments by defendants (all within the past few months) provide notice to County taxpayers that their elected officials concede the monument's current placement is problematic and damaging. In addition, each and every day the unlawful act of having a monument to slavery, secession, and white supremacy maintained by defendants in a prominent public space is continued and repeated. Yet defendants refuse to act. So, for the good of the County, Plaintiffs must.

60. The Gaston County Confederate monument amounts to an ongoing violation of Plaintiffs' rights to have taxpayer funds used for lawful purposes as guaranteed under the North Carolina Constitution. Plaintiffs seek an order granting injunctive relief and requiring immediate removal of the monument.

COUNT FOUR

Violation of the North Carolina Constitution—Secession Prohibited, Allegiance to the United States Provisions (Brought by All Plaintiffs Against All Defendants)

61. Section 4 and Section 5 of Article I of the North Carolina State Constitution have been in effect since 1868. The passage of time does not diminish their broad and emphatic commands including that “all attempts, from whatever source or upon whatever pretext, to dissolve this Union or to sever this Nation, shall be resisted with the whole power of the State” and “[e]very citizen of this State owes paramount allegiance to the Constitution and government of the United States, and no law or ordinance of the State in contravention or subversion thereof can have any

binding force.” That these provisions remain in full force and effect today is underscored by failed legislative efforts to give voters an opportunity to repeal them. *See News & Observer*, “NC constitution’s ban on secession could be dropped under House bill,” Feb. 22, 2017. By literally proclaiming that those who fought for secession and sought to subvert the government of the United States are “heroes,” Gaston County’s Confederate monument cannot be squared with these dictates. It thus violates the anti-secession, pro-Union provisions in the State Constitution and, lacking other adequate legal remedies to effectuate its removal, Plaintiffs have a right under *Corum* and *Craig* to bring this direct constitutional claim.

62. The Gaston County Confederate monument amounts to an ongoing violation of Plaintiffs’ rights to be free from secession or subversive forces as guaranteed under the North Carolina Constitution. Plaintiffs seek an order granting injunctive relief and requiring immediate removal of the monument.

COUNT FIVE

Declaratory Judgment (Brought by All Plaintiffs Against All Defendants)

63. Pursuant to N.C.G.S. §1-253 *et seq.*, Plaintiffs seek a declaratory judgment or decree because such action by this Court will terminate an actual controversy or remove an uncertainty among the parties. Specifically, Plaintiffs seek and have established grounds for a judgment or decree declaring that the monument violates one or more provisions of the North Carolina Constitution as set forth in Counts One through Four above.

64. The controversy surrounding the monument is a textbook situation for application of the Declaratory Judgment Act. Plaintiffs have properly invoked the Act by setting forth in this pleading “all facts necessary to disclose the existence of an actual controversy between the parties.” *Lide v. Mears*, 231 N.C. 111, 118, 56 S.E.2d 404, 409 (1949). As a result, Plaintiffs have fulfilled “[t]he purpose of the Declaratory Judgment Act [which] is to settle and afford relief from

uncertainty concerning rights, status and other legal relations.” *Consumers Power v. Power Co.*, 285 N.C. 434, 446, 206 S.E.2d 178, 186 (1974).

RELIEF REQUESTED

65. Plaintiffs respectfully request that the Court enter judgment in their favor and against defendants by:

- a. Entering an order declaring that the monument violates one or more provisions of the North Carolina Constitution as set forth in Counts One through Four above;
- b. Entering an order holding that the monument violates one or more provisions of the North Carolina Constitution as set forth in Counts One through Four above, and granting injunctive relief requiring that defendants shall have no more than forty-five (45) days after entry of a final order from this Court to remove the monument and prohibiting its placement on any other public property;
- c. Awarding Plaintiffs their reasonable costs and attorneys’ fees as allowed by law, including N.C.G.S. §6-21.7; and
- d. Providing Plaintiffs all such other relief as is proper and just.

Respectfully submitted this, the ___ day of November 2020.

Cheyenne N. Chambers (NCSB: 48699)
Abraham Rubert-Schewel (NCSB: 56863)
TIN, FULTON, WALKER & OWEN, PLLC
301 East Park Avenue
Charlotte, NC 28203
cchambers@tinfulton.com
(704) 338-1220

Gagan Gupta (NCSB: 53119)
Stuart M. Paynter (NCSB: 42379)
THE PAYNTER LAW FIRM, PLLC
106 S. Churton Street
Hillsborough, NC 27278
ggupta@paynterlaw.com
stuart@paynterlaw.com
(919) 245-3116



Cheryl D. Comer (NCSB: 52085)
1542 Union Road, Suite 103(b)
Gastonia, NC 28054
attcher3@yahoo.com

Hampton Dellinger (NCSB: 19903)
Law Firm of Hampton Dellinger, PLLC
732 Ninth Street, Box 633
Durham, NC 27705
hampton.dellinger@gmail.com
(919) 402-0017

CERTIFICATE OF SERVICE

This is to certify that the undersigned, co-counsel for Plaintiffs has this day served a copy of this COMPLAINT AND PETITION FOR DECLARATORY JUDGMENT and a SUMMONS upon Defendants by certified mail, addressed as follows:

Kim S. Eagle
County Manager
Gaston County Government and Board of Commissioners
128 W. Main Avenue
Gastonia, NC 28053

This the 12 day of November, 2020.



Cheryl D. Comer (NCSB: 52085)
1542 Union Road, Suite 103(b)
Gastonia, NC 28054
attcher3@yahoo.com