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February 1, 2021

Via Certified Return Receipt U.S. Mail

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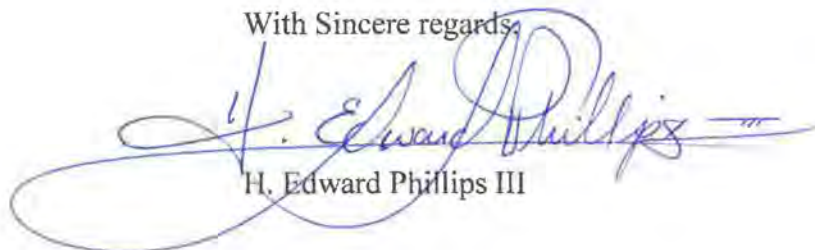
Attorney General Josh Stein, Esq.
Department of Justice – State of North Carolina
114 West Edenton Street
Raleigh, North Carolina 27603

Re: *Petition for Judicial Review and request for Declaratory Order*
The Col. William F. Martin Camp 1521 Sons of Confederate
Veterans, et. al. v. The North Carolina Historical Commission
(Pasquotank Co. Superior Court Case No. 21-CVS-27)

Dear General Stein:

Please find attached hereto a summons issued by the Superior Court of Pasquotank Co. North Carolina for the above titled action. The summons was issued by the Clerk of the Pasquotank County Superior Court on January 26, 2021. Also, attached to the summons is the “as filed” Petition for Judicial Review and request for Declaratory Order including attached exhibits that was caused to be filed on behalf of my clients on January 14, 2021. I look forward to working with your office regarding this matter.

With Sincere regards,



H. Edward Phillips III

STATE OF NORTH CAROLINA

File No.

21-CVS-27

Pasquotank County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff
Col. W. F. Martin Camp 1521 Sons of Confederate Veterans, et. al.
Address
Post Office Box No. 1081
City, State, Zip
Elizabeth City, NC 27906

CIVIL SUMMONS
ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

VERSUS
Name Of Defendant(s)
North Carolina Historical Commission
C/O Hon. Josh Stein, Esq.
North Carolina Attorney General

Date Original Summons Issued
Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1
114 West Edenton Street
Raleigh, NC 27603

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out!
You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!
¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!
Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)
H. Edward Phillips III
219 Third Avenue North
Franklin, Tennessee 37064

Date Issued 11/26/2021 Time 11:18 AM
Signature Teresa Heckel
Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement Time AM PM
Signature
Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

COPY

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF PASQUOTANK

SUPERIOR COURT DIVISION

THE COL. WILLIAM F. MARTIN)
CAMP 1521 SONS OF CONFEDERATE)
VETERANS, and the NORTH CAROLINA)
DIVISION SONS OF CONFEDERATE)
VETERANS, INC.,)

Petitioner.)

v.)

NORTH CAROLINA HISTORICAL)
COMMISSION;)

Respondent.)

TW
2021 JUN 14 1 52 PM

Case Number: 21 CVS-27

PETITION FOR JUDICIAL REVIEW
AND REQUEST FOR DECLARATORY ORDER

NOW COME Petitioners, the Col. William F. Martin Camp 1521 Sons of Confederate Veterans (the "W.F. Martin Camp 1521") and the North Carolina Division Sons of the Confederate Veterans, Inc. (the "North Carolina Division - SCV"), pursuant to N.C. Gen. Stat. §§ 150B-43 and 153B-45(a)(2) seeks review of the denial of a Petition for Declaratory Ruling by the North Carolina Historical Commission (the "Historical Commission") on November 23, 2020, concerning the Pasquotank County Confederate Soldiers Monument (e.g. "Confederate Monument" or "Object of

Remembrance”)¹ which Pasquotank County through its County Board of Commissioners voted four to three (4-3) on July 13, 2020, to remove and/or permanently relocate the Confederate Monument. The decision by the Historical Commission to take no action on the Petition for Declaratory Ruling by the Petitioners was reduced to writing in a letter dated December 14, 2020, delivered via email to undersigned counsel at 3:05 p.m. CST (4:05 p.m. EST) on December 15, 2020. The original letter was received by counsel on December 22, 2020, with a post mark of December 18th.^{2/3} Based on the foregoing, this *Petition for Judicial Review and Request for Declaratory Order* is timely filed thirty (30) days after the receipt (or service) of the final agency decision on December 15, 2020, via email. *The letter from the Historical Commission sent on December 15, 2020, represents the last action taken by any North Carolina agency in relation to the request for declaratory ruling.* As a result of the denial, the Petitioners have in fact exhausted their administrative remedies as a denial to issue a declaratory ruling by an administrative agency is immediately subject to judicial review. See N.C. Gen. Stat. § 150B-4(a1)(2).

Additionally, the Petitioners now seek a Declaratory Ruling from this Honorable Court as it relates to the application of N.C. Gen Stat. § 100-2.1 to property belonging to political

¹ N.C. Gen. Stat. § 100-2.1, which was passed by the North Carolina General Assembly in 2015, is meant to protect public monuments within North Carolina (e.g., monuments, memorials, plaques, statues, markers, or displays of a permanent character commemorating an event, a person, or military service that is part of North Carolina’s history. As passed by the General Assembly, the official name of the legislation is “the Cultural History Artifact Management and Patriotism Act of 2015.” However, for the sake of clarity and brevity, it is referred herein as the “Monument Protection Act,” or the “Act.”

² A copy of the email, the letter, and the envelope bearing the postmark are attached hereto as **Exhibit A**.

³ The Petition for Declaratory Ruling filed before the Historical Commission was done so pursuant to N.C. Gen. Stat. § 150B-4. Additionally, it must be noted that the request was filed pursuant to 7 N.C. Admin. Code 1B.0110 with the North Carolina Department of Natural and Cultural Resources (the “Department”). The Department denied the request via letter sent by email on October 21, 2020, the letter and cover email are attached hereto as **Exhibit B**. However, in denying the Petitioners’ request, the Department forwarded the same to the Historical Commission for its consideration, which ultimately led to the denial of the Petition by the Historical Commission on November 23, 2020, with the final agency decision sent by letter on December 15, 2020, via email.

subdivisions of the state, and in this matter, property owned by Pasquotank County, North Carolina. In support of this *Petition for Judicial Review and Request for Declaratory Ruling*, the Petitioners state as follows:

I. RESPONDENT

1. The Respondent, North Carolina Historical Commission, is a state administrative agency created by the North Carolina General Assembly, which among other things, is vested with the authority to aid and assist in preserving historical sites, artifacts and the like pursuant to N.C. Gen. Stat. § 143B-62. Moreover, the Historical Commission, has authority as a quasi-judicial body with primary jurisdiction to consider disputes or issues arising under the Monument Protection Act.

2. Also, the Historical Commission is imbued with statutory authority, and has the duty under that authority granted by the General Assembly, to protect and preserve properties within the state that are listed on the National Register of Historic Places pursuant to N.C. Gen. Stat. § 121-12. The Elizabeth City Historic District in which the Confederate Monument is located is listed as a property on the National Register. Moreover, the Confederate Monument is part and parcel of the features, historical structures, artifacts and items that comprise the Elizabeth City Historic District.

3. As this matter involves the Confederate Monument in Pasquotank County, it should be noted that Pasquotank 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, Pasquotank 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.

III. VENUE

4. Venue is proper in this matter under N.C. Gen. Stat. § 150-45(a)(2) as the Petitioners, the W.F. Martin Camp 1521 and the North Carolina Division – SCV have members that reside in Pasquotank County. Specifically, the members of the W.F. Martin Camp 1521 conduct their meetings in Elizabeth City, conduct their business operations, and receive business mail at the Camp’s official mailing address at Post Office Box No. 1081, Elizabeth City. The North Carolina Division – SCV also has constituent members living in the county, and has as members men who are descendants of the Confederate officers and enlisted men honored by the Pasquotank Confederate Monument. Both entities are also duly authorized 501(c)(3) non-profits organized and existing under the laws of the state of North Carolina.⁴

5. Additionally, N.C. Gen. Stat. § 150B-45(a)(2) requires that a person aggrieved by an administrative decision of a state agency, desiring judicial review, *must do so by seeking such review in the superior court of the county where the person aggrieved resides.*⁵ As set forth above, both the W.F. Martin Camp 1521 (e.g., the local camp) and North Carolina Division – SCV have members who reside in Elizabeth City as well as other areas within Pasquotank County and represent these members within the context of this immediate action. Also, N.C. Gen. Stat. § 150B-4(a1)(2) provides that if a state administrative agency denies the request for a declaratory

⁴ The W.F. Martin Camp has ___ members while the North Carolina Division – SCV has a total membership of ___ individuals. Both organizations have as their primary mission the preservation of the history of the Civil War and recognition of the valor of the officer, soldiers and sailors of the armed forces of the Confederate States, with a principal charitable purpose “to aid and assist in the erection of suitable and enduring monuments and memorials to all Southern valor, civil and military, wherever done and wherever found.”

⁵ The North Carolina Court of Appeals in *North Carolina State Bd. of Educ. v. North Carolina Learns, Inc.*, 231 N.C. App 270 (2013) in quoting *State v. Empire Power Co.*, 112 N.C. App. 265, 435 S.E. 2d 553 (1993) stated that a “[p]erson” means any natural person, partnership, corporation, body politic and any unincorporated association, organization, or society, which may sue or be sued under a common name.” *Id.* § 150B-2(7). “[W]hether a party is a ‘person aggrieved’ must be determined based on the circumstances of each individual case. *Empire Power Co.* 337 N.C. at 588, 447 S.E.2d at 779.” Both the W.F. Martin Camp 1521 and the North Carolina Division – SCV fall within the definition of person cited above as either organizations and/or societies.

ruling, such "... decision is immediately subject to review.

IV. JURISDICTION

6. This Court has jurisdiction to hear this matter as it is timely filed after the date of receipt of the Commission's letter denying the same on December 15, 2020, and this instant *Petition* is filed within the thirty (30) day period for seeking judicial review as prescribed by N.C. Gen. Stat. § 150B-45(a).

7. As set forth herein, by virtue of a decision of the Historical Commission rendered in relation to the application of the N.C. Gen. Stat. § 100-2.1, and the threatened removal of the Confederate Monument, which is dedicated to the memory of the men from Pasquotank County who died while serving in the Confederate Armed Services during the Civil War, those who were wounded as well as the surviving veterans, we respectfully request that this Honorable Court address the issues set forth herein as a result of the arbitrary and capricious decision of the Historical Commission in denying the Petitioners' request for a declaratory order.

V. STATEMENT OF THE CASE

8. Across the state of North Carolina, a number of communities and even the state government have sought to remove objects of remembrance, especially those related to the men and women who supported the Confederate States of America during the American Civil War from 1861-1865. The term object of remembrance is defined under N.C. Gen. Stat. § 100-2.1(b), as "... a monument, memorial, plaque, statue, marker, or display of a permanent character that commemorates an event, a person, or military service that is part of North Carolina's history." The Pasquotank Confederate Monument falls within this definition. As noted above, the Pasquotank Board of Commissioners voted to remove the Confederate Monument on July 13, 2020.

9. As a direct result of the Board's vote, on September 16, 2020, the W.F. Martin Camp 1521 and the North Carolina Division – SCV caused to be filed a Petition for Declaratory Ruling with the Historical Commission through the North Carolina Department of Natural and Cultural Resources (the "Department") via overnight delivery by FedEx. The Secretary of the Department verified on September 23, 2020, that the Petition for Declaratory Ruling had been received. A true and correct copy of the Petition for Declaratory Ruling is attached hereto as "**Exhibit C**" and is incorporated herein by reference as if set forth in full herein.

10. According to reporting related to the vote of the Board of Commissioners, Commissioner Cecil Perry was quoted as saying that "[i]t does not belong on this property[.]" when referring to the Confederate Monument currently at its original location on the grounds of the Pasquotank County Courthouse near the U.S. District Court in Elizabeth City, North Carolina.

11. The statements of Commissioner Perry are similar in sentiment to those expressed by Governor Roy Cooper related to the Confederate Monuments removed for Union Square in Raleigh in June of last year. The comments from Governor Cooper appeared in his Twitter feed of June 20, 2020, in which he stated that objects of remembrance dedicated to the history of the Confederacy are: "*[m]onuments to white supremacy [that] don't belong in places of allegiance, and it's [sic] past time that these painful memorials be moved...*"

12. Likewise, an additional Tweet seemed to cast aspersions against the North Carolina General Assembly when the Governor stated that "[i]f the legislature had repealed their 2015 law that puts up legal roadblocks to removal[,] we could have avoided the dangerous incidents of last night." When taking the language of the Governor and Commissioner Perry together, it seems as if little regard is given to the Monument Protection Act, and that action taken in violation of the same matters not. In light of the foregoing political actions, the question of whether Pasquotank

County has the authority to remove the Confederate Monument without first seeking approval was brought by the Petitioners before the Historical Commission until the agency denied the request.

VI. HISTORY OF THE CONFEDERATE MONUMENT

13. On or about May 10, 1911, at a public dedication ceremony, the Confederate Monument was formally presented to the County as a gift from the D.H. Hill Chapter of the North Carolina Division of the United Daughters of the Confederacy, and the gift was formally accepted by Pasquotank County and placed on public property owned by Pasquotank County near the County Courthouse.

14. Specifically, the Confederate Monument stands on a plaza between the Pasquotank County Courthouse at 206 East Main Street and what is now the U.S. District Court at 306 East Main Street near the intersection with what was North Pool Street (e.g., the “Real Property”). As the Confederate Monument is affixed to the Real Property owned by Pasquotank County, the Confederate Monument is therefore under the County’s exclusive control and ownership.

15. Furthermore, the September 1910 issue of Confederate Veteran magazine (the official publication of the United Confederate Veterans), Volume XVIII, No. 9, page 424, indicated that four contracts had been signed and orders placed by the United Daughters of the Confederacy to purchase monuments from the McNeel Monument Company of Marietta Georgia to build four monuments, including the Confederate Monument that was eventually gifted to Pasquotank County from the D.H. Hill Chapter of the United Daughters of the Confederacy.

16. Alternatively, the Monument became property of the State in 1910 by virtue of the County, acting in its governmental capacity as a representative of the State of North Carolina, accepted the Monument and affixed it to the Real Property. In addition, the funding of the Confederate Monument came from both private and public sources and was accepted by local

government officials. Therefore, the Monument has, and continues to be, public property located on Real Property owned and controlled exclusively by the county government.⁶

17. Additionally, the D. H. Hill Chapter of the United Daughters of the Confederacy, North Carolina Division, Inc., whose members as set forth herein were responsible for erecting the Pasquotank County Confederate Memorial, has been disbanded for a number of years, leaving the Petitioner the W. F. Martin Camp 1521 as the only Confederate heritage society extant in Pasquotank County to seek protection of the Monument.

VII. STANDARD OF REVIEW

18. The standard of review in this case is controlled by N.C. Gen. Stat. § 150B-51, which states as follows:

§ 150B-51. Scope and standard of review

(a), (a1) Repealed by Sessions Laws, 2011-398, s. 27...

(b) The court reviewing a final decision may affirm the decision or remand the case for further proceedings. It may also reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority or jurisdiction of the agency or administrative law judge;
- (3) Made upon unlawful procedure;

⁶ According to information from the University of North Carolina, the Confederate Monument cost \$2,650 in 1911. The money to fund the purchase and construction of the same was raised by the D.H. Hill Chapter, which raised \$1,000 by local subscription. Also, the local governing bodies – the Elizabeth City Board of Aldermen and the Pasquotank County Commissioners each donated \$500. It should be noted that no funding source has been attributed for the remaining \$650 raised for the purchase of the Monument.

See the web-based information from UNC at:
<https://docsouth.unc.edu/commland/monument/515/>.

(4) Affected by other error of law;

(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or

(6) Arbitrary, capricious, or an abuse of discretion.

(c) In reviewing a final decision in a contested case, the court shall determine whether the petitioner is entitled to the relief sought in the petition based upon its review of the final decision and the official record. With regard to asserted errors pursuant to subdivisions (1) through (4) of subsection (b) of this section, the court shall conduct its review of the final decision using the *de novo* standard of review. With regard to asserted errors pursuant to subdivisions (5) and (6) of subsection (b) of this section, the court shall conduct its review of the final decision using the whole record standard of review.

(d) In reviewing a final decision allowing judgment on the pleadings or summary judgment, the court may enter any order allowed by G.S. 1A-1, Rule 12(c) or Rule 56. If the order of the court does not fully adjudicate the case, the court shall remand the case to the administrative law judge for such further proceedings as are just.

VIII. ASSIGNMENTS OF ERROR

19. The Petitioner asserts that the following errors have been committed under N.C. Gen. Stat. § 150B-51:

20. That the North Carolina Historical Commission violated constitutional provisions related to *a denial of due process* of the Petitioners and the actions of the Historical Commission was *made upon unlawful procedure* in failing to provide the Petitioners the opportunity to brief the legal issues and present oral argument to the agency. Had this process been permitted, the Historical Commission could have opened the matter up for public comment and additional legal argument that would have provided more substance to the agency prior to rendering its decision. It also important to note that the Office of the Attorney General did not seek to participate and provide that office's position related to this issue. Instead, the attorney assigned to the Historical Commission simply provided an opinion as to: (1) whether the Petitioners were aggrieved persons;

(2) whether the Petitioners had legal standing to move forward with a declaratory ruling action in an administrative setting; and (3) whether the Monument Protection Act applied to non-state-owned objects of remembrance. Counsel for the Petitioners was not even allowed to participate or comment during this process thereby amounting to a procedural error that denied due process to the Petitioners guaranteed by the Constitution of the United State of America and the Constitution of the State of North Carolina. The unlawful procedure of denying legal counsel any right to participate in the proceeding before the Historical Commission on November 23, 2020, should be found as reversible error.

21. As noted earlier, the Historical Commission simply denied the Petition for Declaratory Ruling upon the opinion and advice of the agency's assigned counsel, with the Chair of the agency stating that the Historical Commission was denying the petition to avoid a flood of similar petitions related to the application the Monument Protection Act to other objects of remembrance in the state.⁷ In other words, the agency sought to foreclose any additional consideration of the application of N.C. Gen. Stat. § 100-2.1 to any other Confederate monuments and/or memorials located within the state that are not "state-owned" monuments without providing the opportunity of the Petitioners to address the agency's questions or concerns. Such action denies due process and is arbitrary and capricious.

22. The denial of the Petition for Declaratory Ruling also was *in excess of statutory authority, and/or based upon an error of law*. That is, the Historical Commission erred in its interpretation of the plain language of N.C. Gen. Stat. § 100-2.1, by denying that the law applies to all monuments located on public property – the Historical Commission gone far afield from the

⁷ The November 23, 2020 Historical Commission Meeting is available on YouTube via the following link: <https://www.youtube.com/watch?v=84Ii7XT6Nj0>. The November 23rd Meeting Agenda is attached hereto as **Exhibit D**.

standards of statutory interpretation in that the Commission has forced a meaning upon the plain language that is inapposite of the actual language of the statute and the construction of the Historical Commission operates "...to defeat or impair the object of the statute." See *In re B.L.H.*, 2020 N.C. LEXIS 1142, 2020 WL 7415056.

23. The language of N.C. Gen. Stat. § 100-2.1, stands for the proposition that all objects of remembrance located on public property are protected under the statute. To suggest that the statute only applies to "state owned" monuments is problematic at best as § 100-2.1(b) provides in pertinent part as follows: "**Limitations on Removal.** – *An object of remembrance located on public property may not be permanently removed and may only be relocated*, whether temporarily or permanently, under the circumstances listed in this subsection and subject to the limitations in this subsection." For the Historical Commission to opine that the law does not apply to all objects of remembrance located on public property does "violence to the legislative language" and is in excess of its statutory authority that directs the agency to aid in preserving North Carolina history and afford protection to sites that are on the National Register of Historic Places. Finally, the statutory interpretation espoused by the Historical Commission and which was used to render its decision to deny the Petitioners request for a declaratory ruling violates the rules of statutory construction and as a result, the Commission's decision is based upon an error of law.

24. Because of the errors committed by the Historical Commission, the Petitioners have no adequate remedy at law if Pasquotank County acts in a manner to permanently remove the Confederate Monument located in the Elizabeth City Historic District and situated between the County Courthouse and the U.S. District Court, in particular, the Petitioners the W.F. Martin Camp 1521 and the North Carolina Division – SCV have members whose ancestors are the men memorialized by the monument in question as they were soldiers who left Pasquotank County

during the Civil War and answered the call of their State to fight against an invading Federal force. Moreover, there exists a sufficient nexus between the W.F. Martin Camp 1521 and its members to the local Confederate Monument as it represents a memorial to dead and wounded soldiers who died in the service of the state of North Carolina from Pasquotank County in the American Civil War.

IX. REQUEST FOR DECLARATORY ORDER

25. While it has been stated *infra* that the Petition for Declaratory Ruling that had been filed with the Historical Commission, is as if it has been fully set forth verbatim herein, it is still crucial to present to this Honorable Court the reasons Petitioners believe that the Court should enter a declaratory order.

26. Petitioners are aggrieved by the vote of the Pasquotank Board of Commissioners approving the removal of the Confederate Monument and other actions taken in violation of the above-named statutes and rules in ways that include, but are not limited to, the following:

27. The W.F. Martin Camp 1521's members include citizens and taxpayers of Pasquotank County and Elizabeth City, who, because of the direct conflict between the proposed removal of the Confederate Monument and the SCV's stated purpose, suffer an aesthetic injury that is distinct from the aesthetic injury suffered by the population of Pasquotank County as a whole. These men, as do the men of the North Carolina Division – SCV, also suffer from the infliction of an emotional harm related to the removal of the Confederate Monument. Also, because the Pasquotank Board of Commissioners failed to follow the requirements of N.C. Gen. Stat. § 100-2.1, the Camp and the Division have suffered a procedural injury.

28. Moreover, the W.F. Martin Camp 1521, as the local camp in Pasquotank County, its members have a sufficient geographical nexus to the monument site in Elizabeth City, North

Carolina as to have suffered an environmental and/or aesthetic consequence from the procedural missteps related to the denial of the application of N.C. Gen. Stat. § 100-2.1 by the Pasquotank County Board of Commissioners to these facts. In denying that the Act applies, the local government has further injured the W.F. Martin Camp 1521 in failing to submit to the requirements of N.C. Gen. Stat. § 100-2.1 in so much as these actions clear the way for the removal of the Confederate Monument in Elizabeth City without the involvement of the Historical Commission;

29. The North Carolina Division – SCV’s members include citizens and taxpayers of Pasquotank County and Elizabeth City, who, because of the direct conflict between the proposed removal of the Confederate Monument and the SCV’s purpose, suffer an aesthetic injury that is distinct from the aesthetic injury suffered by the population of Pasquotank County as a whole, and the North Carolina Division – SCV has also suffered by the failure of Pasquotank County to follow the requirements of N.C. Gen. Stat. § 100-2.1;

30. The North Carolina Division – SCV is the legal successor-in-interest to the United Confederate Veterans (“UCV”) and claims the UCV’s reversionary interest, if any in the Confederate Monument should it no longer be put to public use; and

31. All actions taken to date in violation of the above-named statutes and rules may be corrected by a ruling from this Court that Pasquotank County Board of Commissioner’s July 13, 2020 vote to remove the Confederate Monument was improper, and could only be made with the express intent to seek approval of the North Carolina Historical Commission. However, consequences of inaction by the Court by not adjudicating this matter and ultimately issuing a declaratory ruling are expected to include, but not be limited to:

- a. Loss of public access to the Monument, and failure to preserve or conserve the Monument in conformity with the requirements of the Act;

- b. Loss of protection for other historic monuments and historic districts statewide under similar factual circumstances, due to the precedential nature of this matter;
- c. The alteration of such historic districts that will remove valuable historical and cultural assets from North Carolina's landscape in the pursuit of sanitizing these areas so that future generations of citizens will not be required to think critically of past events that have shaped the history of the state and the nation; and
- d. The potential withdrawal of the National Historic Landmark designation that protects these districts "[w]hen a designated property is altered so that it has lost its ability to convey its national significance, the withdrawal of its National Historic Landmark designation must be considered."

32. Moreover, there is a diverse opinion among local governments as to what, if any requirements of the Act apply. Under these circumstances alone, justification exists to hear this matter and reconcile the issues raised as to the application of the Act through the issuance of a fully vetted declaratory ruling.

33. As it stands, it is unclear as to what Pasquotank County intends as the ultimate fate of its Confederate Monument and whether the County understands what is required of it in relation to the restrictions placed upon it by the Act juxtaposed with its express desire to remove the Confederate Monument (or Object of Remembrance).

34. This dilemma has been caused by the cavalier comments of Governor Cooper related to the three Confederate Monuments that were ultimately removed from the Old State Capitol Grounds at Union Square in Raleigh in June of last year. The comments of Governor Cooper were made on August 15, 2017, in which he stated, among other things, that "[s]ome people cling to the belief that the Civil War was fought over states' rights. But history is not on

their side. We cannot continue to glorify a war against the United States of America fought in the defense of slavery. These monuments should come down.” Emphasis added. Governor Cooper went on to state that “... the North Carolina legislature must repeal a 2015 law that prevents removal or relocation of monuments. Cities, counties and the state must have the authority and opportunity to make these decisions.” (Emphasis added to original).

35. When the Confederate Monuments were removed from Raleigh between June 19-26, 2020, Governor Cooper’s anti-monument statements, which he began making in 2017 through June of 2020, became action throughout last summer and have now emboldened cities, counties and municipalities throughout the state to ignore the requirements of the Act. Some of the state’s political subdivisions such as Pasquotank and Gaston counties, either through their own action or through legal opinions provided by counsel have simply opined that the requirements of the Act apply only to the State and not its political subdivisions.

36. Fortunately, Gaston County reversed course when, on August 21, 2020, the North Carolina Division – SCV rejected the County’s offer to take possession of the monument once it was removed, citing the fact that the North Carolina Division – SCV believed the law applied to the political subdivisions of the state, and that the SCV could not take permanent possession. As a result, on August 25, 2020, when presented with the possibility of litigation to determine whether N.C. Gen. Stat § 100-2.1 applied to the Gaston County Confederate Monument, the Gaston County Board of Commissioners cast a new vote to rescind its prior decision in favor of removing the monument. Thus, the question related to whether the Act applies must consider that monuments are structures that erected on real property, or are fixtures which are affixed to real property that are either owned by the state of North Carolina or owned by the political subdivisions of the State.

37. Without clear guidance from the Court related to questions concerning the

application of N.C. Gen. Stat. § 100-2.1, other local governments within the State have opined that the public safety exception of the Act permits them to wantonly remove Confederate Monuments to protect “public safety” until the threat of protests, vandalism and riots abate, with a ninety-day (90 day) period after cessation of such threats, which the Act would then requires the re-erection of these monuments. The later position distorts the clear language of N.C. Gen. Stat. § 100-2.1(c)(3), which sets forth that the public safety concern only arises when the structural integrity of the monument itself poses a threat to the public and comes into question after inspection by a building inspector or similar official.

38. Arguably, there seems to be an acceptance among some political subdivisions of the state that these objects of remembrance can be removed when there are mere threats made against the same by individuals or groups that are dissatisfied with these artifacts. This nonsensical position is taken despite the fact that such action requires expenditures of taxpayer funding to remove an object of remembrance every time a perceived threat arises that could be claimed to justify removal. This approach while not only being unsupported by the clear language of N.C. Gen. Stat. § 100-2.1, could also result in damage being caused to these objects of remembrance during the removal process as well as during the process to re-erect these objects of remembrance once the alleged “threat” abates. In other words, such action thwarts the requirements of the Monument Protection Act and the will of the General Assembly through a duly enacted law that seeks to preserve objects of remembrance throughout the state.

39. More importantly, the divergent views taken by political subdivisions of the State have caused a split among local governments. There are those who question whether the Act even applies, or if local government officials through the political process can discern for themselves, what sections of the Act can be cherry picked or contorted to support their position and support

subsequent removal without a decision holding otherwise.

40. Proposed and actual action taken to ensure “public safety” as justification for removal of “objects of remembrance” also contradicts precedent already established by the North Carolina Historical Commission on August 22, 2018, when disposing of the Petition to Permanently Relocate Objects of Remembrance filed on September 8, 2017, by the North Carolina Department of Administration at Governor Cooper’s behest. It was in this matter that the Commission refused to grant the petition to remove the three Confederate Monuments (objects of remembrance) at Union Square in Raleigh as actual protests and the fear of protests does not fall within the public safety exception under N.C. Gen. Stat. § 100-2.1(c). The Act does not provide for permanent removal based on fear created by protestors. Instead, local governments (and the State itself) have sufficient tools at their disposal to maintain law and order and protect the public safety without creating a political exception that does not exist in order to quell threats of potential violent riots or protests.

X. COURT OF APPEALS DECEMBER 15, 2020 OPINION

41. While it is true that the majority of a panel of three judges (the Honorable Wanda Bryant and John Arrowood) of the North Carolina Court of Appeals entered their opinion on December 15, 2020, in *United Daughters of the Confederacy, North Carolina Division, Inc., and James B. Gordon Chapter #211 of the United Daughters of the Confederacy, North Carolina Division, Inc. v. City of Winston-Salem, by and through Allen Joines, Mayor of Winston-Salem, North Carolina, County of Forsyth, by and through David R. Plyer, Chairman of The Board of Commissioners, and Winston Courthouse, LLC* (NC Ct. App. No. COA19-947),⁸ holding that

⁸ See *United Daughters of the Confederacy v. City of Winston-Salem*, 2020 N.C. App. LEXIS 880, 2020 WL 7350071 (N.C. Ct. App. December 15, 2020).

groups such as the United Daughters of the Confederacy lack standing and that the Monument Protection Act only applies to "state-owned" objects of remembrance, a dissent by the Honorable Judge John N. Tyson takes issue with the rationale expressed by the majority. As a result, the United Daughters of the Confederacy, North Carolina Division, Inc. has made it known that the organization has chosen to appeal this matter as of right based on the dissenting opinion of the Honorable Judge Tyson. As a result of this imminent appeal to the Supreme Court of North Carolina, the standing issue is still in a state of flux as is the application of N.C. Gen. Stat. § 100-2.1.

42. It is also hoped that the Supreme Court of North Carolina will address the split existing among counties, cities and other political subdivisions of the state of North Carolina as to whether the Monument Protection Act applies to only state property or all public property as set forth under N.C. Gen. Stat. § 100-2.1(b) concerning limitations on removal and/or permanent relocation of objects of remembrance, which is especially true in light of Judge Tyson's dissent.

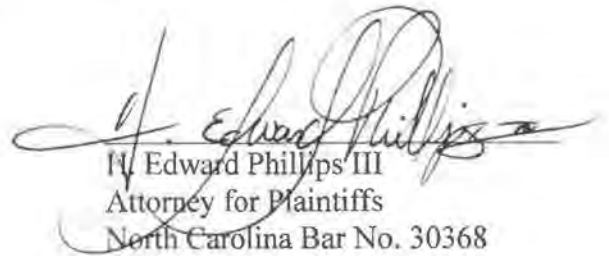
WHEREFORE, based on the foregoing, the Plaintiffs respectfully pray that this Honorable Court:

1. That this Honorable Court reverse and remand the denial of the Petitioners' Request for Declaratory Ruling made by the North Carolina Historical Commission on November 23, 2020, which was reduced to writing on December 14, 2020 and served upon counsel for the Petitioners on December 15, 2020;

3. That this Honorable Court issue declaratory order clarifying that N.C. Gen. Stat. § 100-2.1 applies not only to objects of remembrance owned by the state of North Carolina, but that the law also applies to those objects of remembrance owned by political subdivisions of the State; and

4. That the Petitioners have such other and further relief as this Honorable Court might deem just and proper.

Respectfully submitted this 13th day of January 2021, by:



Edward Phillips III
Attorney for Plaintiffs
North Carolina Bar No. 30368
219 Third Avenue North
Franklin, Tennessee 37064
(615) 599-1785, Ext. 229 (Office)
(615) 503-6940 (Fax)
edward@phillipslawpractice.com

Exhibit A

From: [Backstrom, Parker](#)
To: [H Phillips](#)
Cc: [Cherry, Kevin](#); [Blum, Karen A](#); [Feagan, Phillip H](#)
Subject: NC Historical Commission Response to Petition
Date: Tuesday, December 15, 2020 2:04:09 PM
Attachments: [NCHC Ltr to Edwards 2020-12-14.pdf](#)

Dear Mr. Phillips,

On behalf of Deputy Secretary Kevin Cherry, Secretary of the NC Historical Commission, please see the attached.

kind regards,

Parker Backstrom

Executive Assistant to the Deputy Secretary
Office of Archives and History
4610 Mail Service Center, Raleigh, NC 27699
919-814-6640

#staystrongNC

Learn more @ [nc.gov/covid19](#)

And don't forget your Ws! Wear, Wait, Wash!

WEAR a face covering.

WAIT 6 feet apart from other people.

WASH your hands often.

NCR Logo Horizontal Color



Email correspondence to [\[redacted\]](#) from this [\[redacted\]](#) to [North](#) [\[redacted\]](#) Records [\[redacted\]](#) may be disclosed to third



THE
NORTH CAROLINA
HISTORICAL COMMISSION

4610 Mail Service Center • Raleigh, NC • 27699-4610 • 919-814-6640

December 14, 2020

Mr. H. Edward Phillips
219 Third Avenue North
Franklin, TN 37064

Dear Mr. Phillips,

The North Carolina Historical Commission received your client's petition concerning the Perquimans County Confederate Veterans Monument at its meeting of November 23, 2020.

After receiving advice from counsel concerning local government owned monuments on local government property, the Commission determined in unanimous fashion that your client does not have standing to place a petition before that body for consideration. In addition, it is the understanding of the Commission that it has jurisdiction over state-owned monuments.

For the Commission,

Kevin Cherry
Secretary to the Commission
Deputy Secretary, NC Department of Natural and Cultural Resources



NORTH CAROLINA HISTORICAL COMMISSION

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Raleigh, NC 27699-4610



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Mr. H. Edward Phillips
219 Third Avenue North
Franklin, TN 37064

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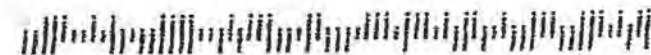


Exhibit B



**North Carolina Department of Natural and Cultural Resources
Office of the Secretary**

Governor Roy Cooper

Secretary Susi H. Hamilton

October 21, 2020

VIA CERTIFIED MAIL AND ELECTRONIC MAIL TO edward@phillipslawpractice.com

Mr. H. Edward Phillips
219 Third Avenue North
Franklin, Tennessee 37064

*****DENIAL OF REQUEST FOR DECLARATORY RULING*****

Dear Mr. Phillips:

Your request for a declaratory ruling regarding the application of N.C. Gen. Stat. § 100-2.1 and the Pasquotank County confederate monument was received by the Department of Natural and Cultural Resources ("DNCR" or "the Department") on September 22, 2020. This letter serves as the Department's written decision to deny the request pursuant to N.C. Gen. Stat. § 150B-4 and 07 NCAC 01B .0110. It also refers this matter to the North Carolina Historical Commission ("NCHC" or "the Commission") if it wishes to consider the request or requested relief.

Your request was addressed to DNCR, and as Secretary it is my or my designee's responsibility to decide whether to grant or deny the request under the aforementioned statute and rule. However, the only requested relief in your request are proposed actions by the Commission, and not the Department. Section III. of your request refers to the authority of the NCHC under N.C. Gen. Stat. § 100-2.1, section V. alleges that NCHC approval was required before Pasquotank County removed its local confederate monument, and section VI. asks for a hearing and declaratory ruling by the NCHC. Although administratively housed with DNCR, the NCHC is an independent advisory and regulatory body with rulemaking authority separate from the Department's under N.C. Gen. Stat. § 143B-62. As Secretary of the Department, I do not set the agenda or otherwise determine the business of the Commission and cannot grant the relief you seek. This matter and your requested relief are not appropriately addressed by the declaratory ruling process established under the Department's rules in the North Carolina Administrative Code, and therefore your request is denied under 07 NCAC 01B .0110(b)(3).

I will note that even if your request sought relief from DNCR and not the NCHC, the Department would likely deny the request pursuant to 07 NCAC 01B .0110(b)(2) because "[t]here has been a similar determination in a previous contested case or declaratory ruling." In December 2011, the Historical

MAILING ADDRESS:
4601 Mail Service Center
Raleigh, NC 27699-4600

Telephone: (919) 814-6800
Fax: (919) 814-1564

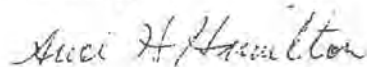
LOCATION:
109 East Jones Street
Raleigh, NC 27601

H. Edward Phillips
Page 2
October 21, 2020

Preservation Action Committee and North Carolina Sons of Confederate Veterans, Inc. petitioned DNCR's predecessor, the Department of Cultural Resources, for a declaratory ruling that a confederate monument previously located in the city of Reidsville was state property and therefore improperly removed without prior approval of the NCHC. The Department issued a declaratory ruling denying all requested relief because the petitioners were not persons aggrieved and lacked standing. The Rockingham County Superior Court subsequently dismissed the petitioners' complaint requesting judicial review for lack of standing, and the North Carolina Court of Appeals upheld that dismissal in *Historical Pres. Action Comm., Inc. v. City of Reidsville*, 230 N.C. App. 598 (2013).

By way of this letter, I am forwarding your request to David Ruffin, chair of the NCHC, and Karen Blum, Special Deputy Attorney General of the North Carolina Department of Justice and the Commission's counsel in this matter. Although not styled as requests for declaratory rulings, the Commission has previously addressed other petitions regarding N.C. Gen. Stat. § 100-2.1 and submitted by both state agencies and members of the public. If you have any questions regarding the Commission and its consideration of your request, please contact Ms. Blum at (919) 716-6816 or kblum@ncdoj.gov.

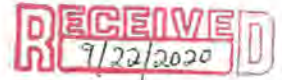
Sincerely,



Susi H. Hamilton

cc: David Ruffin, Chair, North Carolina Historical Commission
Karen Blum, Special Deputy Attorney General, North Carolina Department of Justice

Exhibit C



BEFORE THE NORTH CAROLINA DEPARTMENT
OF CULTURAL RESOURCES, AT RALEIGH, NORTH CAROLINA

IN RE: PASQUOTANK COUNTY)
CONFEDERATE MONUMENT)
)
)
) Case No. _____
)
NORTH CAROLINA DIVISION SONS OF)
CONFEDERATE VETERANS, INC.,)
)
Petitioners.)
)
)
)

PETITION FOR DECLARATORY RULING REGARDING
THE APPLICATION OF N.C. GEN. STAT. § 100-2.1

Pursuant to N.C. Gen. Stat. § 150B-4, and 7 N.C. Admin. Code § 1B.0110, the Petitioners, The Col. William F. Martin Camp 1521 Sons of Confederate Veterans, and The North Carolina Division Sons of the Confederate Veterans, Inc., by and through undersigned counsel respectfully petition the North Carolina Historical Commission through the North Carolina Department of Natural and Cultural Resources to issue a declaratory ruling as it relates to the application of pertinent sections of Chapter 100 of the North Carolina General Statutes related to **Monuments, Memorials and Parks**, as well as N.C. Gen. Stat. § 100-2.1 to the Pasquotank County Confederate Soldiers Monument.

I. PETITIONERS

1. The Col. William F. Martin Camp 1521 Sons of Confederate Veterans (the W.F. Martin Camp 1521") is an entity within the North Carolina Division Sons of the Confederate

Veterans, and is a North Carolina 501(c)(3) non-profit corporation operating under the laws of the state of North Carolina, having its principal place of business in Camden, Pasquotank County, North Carolina, and was chartered in Elizabeth City, North Carolina at its founding. The W.F. Martin Camp 1521 is a lineage society which seeks to preserve the memory of the Camp's ancestors who served in the Confederate States Army during the Civil War. Like all Sons of Confederate Veteran camps, its mission is not only to preserve the history of the Civil War and the soldiers of the Confederate States Army, its principal charitable purpose is "to aid and assist in the erection of suitable and enduring monuments and memorials to all Southern valor, civil and military, wherever done and wherever found."

2. The North Carolina Division Sons of the Confederate Veterans, Inc. (the "North Carolina Division – SCV"), is a North Carolina 501(c)(3) non-profit corporation operating under the laws of the state of North Carolina, having its principal place of business in Wake County, North Carolina, and a mailing address of 805 Cool Springs Road Sanford, North Carolina 27330. The North Carolina Division is a lineage society vested with the mission, and the duty to preserve the history of the Civil War, as well as the memory of the soldiers of the Confederate States Army, with its principal charitable purpose being "to aid and assist in the erection of suitable and enduring monuments and memorials to all Southern valor, civil and military, wherever done and wherever found."

II. INTRODUCTION

3. The North Carolina Department of Natural and Cultural Resources ("DCR")¹ has authority to issue a declaratory ruling with respect to these issues, which involves interpreting the

¹ On September 8, 2015, the DCR's name was changed to the North Carolina Department of Natural and Cultural Resources, upon the transfer of a number of divisions to be placed under the control of DCR, which included those divisions responsible for maintaining the state of North Carolina's natural resources. Some of the official references to

applicability of the following rules and statutes which are administered by DCR – N.C. Gen. Stat. §§ 100-2, 100-2.1, 100-3, 100-9, 100-10, and 16 U.S.C. § 470 (the National Historic Preservation Act of 1966).

4. The North Carolina Historical Commission (the “Commission”), which is an agency within the DCR, is charged with promulgating “rules and regulations to be followed in the acquisition, disposition, preservation, and use of records, artifacts, real and personal property,” See N.C. Gen. Stat§ 143B-62. Additionally, under N.C. Gen. Stat. § 100-2.1, the Commission is vested with primary jurisdiction to resolve matters related to the proposed removal, relocation and/or alteration of an object of remembrance located on any public property located within the state. Moreover, the public policy goal of the Act favors preservation of objects of remembrance, and not an indefinite temporary removal of the same, or a permanent removal unless the object of remembrance “... shall be relocated to a site of similar prominence, honor, visibility, availability, and access that are within the boundaries of the jurisdiction from which it was relocated.” Additionally, “[a]n object of remembrance may not be relocated to a museum, cemetery, or mausoleum unless it was originally placed at such a location.”

5. Pasquotank County was established under the powers granted to the North Carolina General Assembly under Article VII, § 1 of the Constitution of the State of North Carolina, specifically, “[t]he General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except

the DCR have not changed, such as under 7 N.C. Admin. Code § 1B.0110, which relates to the process for filing a request for a declaratory ruling. As a result, this *Petition* will refer to the Department under its former nomenclature. See <https://www.ncpedia.org/cultural-resources-department>; and <https://www.nc.gov/agency/natural-and-cultural-resources-department>

as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.”²

6. Pasquotank County is governed by its County Board of Commissioners, which is a seven-member Board representing Pasquotank County. Specifically, the commissioners are elected at-large and from districts in county-wide elections to serve four-year staggered terms, with four members required to reside in specified districts, and three members elected at-large. The Board of Commissioners elects a Chairman and Vice-Chairman at its December meeting. See <https://www.pasquotankcountync.org/aboutboard>.

7. The Pasquotank County Confederate Soldiers Monument (e.g. “object of remembrance”) is located near the Pasquotank County Courthouse at 206 E Main Street in Elizabeth City, North Carolina.

8. The Pasquotank County Confederate Soldiers Monument (the “Confederate Monument”) was originally erected in 1911, with its dedication held on May 10th of that year. See: <https://docsouth.unc.edu/commland/monument/515/#:~:text=This%20statue%20is%20located%20at,flag%20and%20the%20year%201865>.

9. On July 13, 2020, the Pasquotank County Commission held a vote related to the removal of the Confederate Monument, and by a split vote of four to three (4-3), decided to remove

² Pasquotank Co., was originally established as Pasquotank Precinct in the British Colony of North Carolina in 1684 form then Carteret Precinct within the Albemarle region. The Pasquotank Precinct was granted status as a county by the Royal Government on March 6, 1739, and was within the established territory recognized under the First Constitution of the state of North Carolina adopted at Halifax, North Carolina on December 18, 1776, after the adoption of the *Declaration of Independence* by the Continental Congress assembled in Philadelphia on July 2, 1776. Subsequently, the North Carolina General Assembly modified the boundary lines of Pasquotank County to create other counties, or to define county boundary lines, first on May 9, 1777, then on December 19, 1804, with final action taken on March 6, 1909. Thus, Pasquotank was, and has been since the adoption of the first state constitution, under the control of the Government of the State of North Carolina and bound by its laws.

See: https://publications.newberry.org/ahcbp/documents/NC_Individual_County_Chronologies.htm; <https://www.ncpedia.org/anchor/introduction-colonial-north>; and https://avalon.law.yale.edu/18th_century.nc07.asp#b2

the monument. Specifically, according to reporting, Commissioner Cecil Perry stated that the. “[i]t does not belong on this property[.]” when referring to the Confederate Monument, and its current location on the grounds of the Pasquotank County Courthouse.

10. The North Carolina Division – SCV is concerned that the action taken by the Pasquotank Board of Commissioners in its vote to remove the Pasquotank County Confederate Monument violates the requirements of the North Carolina Monument Protection Act (the “Act”), codified at N.C. Gen. Stat. § 100-2.1. The North Carolina Division – SCV believes that the Act compels the state of North Carolina or any political subdivision of the state to seek the approval of the North Carolina Historical Commission prior to the removal or relocation of any object of remembrance from public property, either on a temporary or permanent basis.

III. JURISDICTION

11. The Commission has jurisdiction to entertain this *Petition for Declaratory Ruling* under N.C. Gen. Stat. § 100-2.1(a), which establishes that no “monument, memorial, or work of art owned by the State be removed, relocated, or altered in any way without the approval of the North Carolina Historical Commission.” Moreover, subsection (b) of the Act, which is much broader than subsection (a), places limitations on removal, and specifically states that “[a]n object of remembrance located on public property may not be permanently removed and may only be relocated, whether temporarily or permanently, under the circumstances listed in this subsection and subject to the limitations in this subsection.” To that end, this subsection also states that “[t]he circumstances under which an object of remembrance may be relocated are either of the following: (1) [w]hen appropriate measures are required by the State or a political subdivision of the State to preserve the object, or

(2) When necessary for construction, renovation, or reconfiguration of buildings, open spaces, parking, or transportation projects.” Emphasis added to original.

IV. STATEMENT OF FACTS

12. Prior to the events of May 25, 2020, in relation to the senseless death of George Floyd while in the custody of the Minneapolis Police Department, there had been relatively little public objection to any war memorials, Confederate or otherwise. This was true for decades anywhere in the State of North Carolina – until a mob of demonstrators and political protesters illegally tore down and vandalized a Confederate monument located outside the Durham County Courthouse on August 14, 2017. However, the actions of these protestors and vandals in 2017, as well as subsequent protests related to Confederate monuments since May of this year, do not represent the actual sentiment related to the existence of the same. This is particularly underscored by the release of a Wall Street Journal/NBC News Poll on July 23, 2020, concerning public sentiment surrounding Confederate memorialization, which demonstrate that the large majority of the American people do not favor completely removing these monuments from the public forum.³

³ The Wall Street Journal/NBC News Poll provides the following useful information related to four questions concerning Confederate Monuments in public spaces. The four questions asked of the participants within the polling sample are as follows:

1. Should Confederate Monuments be removed and destroyed? 10% of those polled supported this option;
2. Should Confederate Monuments be moved to museums or private property? 31% of those polled supported this option;
3. Should Confederate Monuments be left in place with contextual markers? 41% of those polled supported this option; and
4. Should Confederate Monuments remain in place as is? 16% of those polled supported this option;

Moreover, only twenty-two percent (22%) of African American participants participating in the poll wished to remove and destroy these monuments, with the vast majority, seventy-four percent (74%) falling in the middle ground by supporting options two (2) and three (3), please see the poll results at: <https://www.wsj.com/articles/after-confederate-monuments-fall-where-do-they-go-11595509200>. Polling results demonstrate that 57% of the population desire to maintain these monuments in place.

The WSJ/NBC News polling results also reinforce the fact that a large majority of Americans, including members of the African American community, support a more moderate and measured approach concerning the resolution of the monument issue. Additionally, both Alamance and Gaston counties have cast votes to keep their Confederate Monuments in place, which is consistent not only with the polling, but supports the objectives of N.C. Gen. Stat. § 100-2.1, which applies to the state of North Carolina, and its political subdivisions possessing monuments located on public property.

13. The Confederate Monument located at the Pasquotank County Courthouse. is an object of remembrance as that term is defined under the Act, which specifically "... means a monument, memorial, plaque, statue, marker, or display of a permanent character that commemorates an event, a person, or military service that is part of North Carolina's history." See N.C. Gen. Stat. § 100-2.1(b). As this monument is dedicated to the Confederate soldiers, as it states on the monument's rear, north face that it is dedicated: "TO OUR CONFEDERATE DEAD[.]" which means that it clearly falls within the definition of an object of remembrance as it is a monument memorializing the Confederate dead from Pasquotank County, while also commemorating persons engaged in military service within the Confederate Military, and is clearly part of North Carolina's history and ties to national history related to the American Civil War. See *Appeal of Clayton-Marcus Co., Inc.*, 286 N.C. 215, 219; 210 S.E.2d 199, 203 (1974) ("In the construction of any statute, . . . words must be given their common and ordinary meaning Where, however, the statute, itself, contains a definition of a word used therein, that definition controls[.]")

14. The Confederate Monument is likewise located within the confines of the downtown historical district as recognized by the National Park Service, and appears on the Register of National Historic Places. Additionally, the Confederate Monument also represents Elizabeth City's history related to the Civil War and the military action that occurred within the confines of Elizabeth City and the environs of Pasquotank County during that period. Thus, there is no denying that the maintenance and inclusion of the Confederate Monument supports both local tourism, and in particular, Civil War tourism as it is part and parcel of those objects, buildings and features that are the essence of the Elizabeth City Historical District and integral features of this National Historic Place.

15. As the Commission is aware, the National Register of Historic Places is the official list of the Nation's historic places that have been recognized as worthy of preservation. The designation on the list is authorized by the National Historic Preservation Act of 1966 (16 U.S.C. § 470), and is managed by the National Park Service, as part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources, which certainly includes the Pasquotank County Confederate Monument in Elizabeth City.

16. The location of this Confederate Monument near the Pasquotank County Courthouse in Elizabeth City, North Carolina, is public property as contemplated under N.C. Gen. Stat. § 100-2.1(b),^{4/5} and as result, the Commission may enter a Declaratory Ruling declaring that the Confederate

⁴ See the Blog – *Statues and Statutes: Limits on Removing Monuments from Public Property*, Assoc. Prof. Adam Lovelady – UNC Chapel Hill, School of Government, posted August 22, 2017. Prof. Lovelady states in pertinent part that “North Carolina law [limits the extent to which the objects of remembrance may be removed from public property or relocated. That law [e.g. the Act] applies to a broad array of memorials, monuments, statues and other objects, including the many Confederate monuments found on county courthouse grounds and other public property across the State.” (Emphasis added to original).

⁵ See also “North Carolina's Heritage Protection Act: Cementing Confederate Monuments in North Carolina's Landscape,” Kasi E. Wahlers, *94 N.C.L. Rev.* 2176 (2016) at pp. 2184 to 2185, wherein the author states the following:

In addition to the powers granted to the Commission within the HPA, this appointed body also has the power to approve any monument, memorial, or work of art before it becomes state property. Following the delegation of authority to the Commission, the “Limitations on Removal” subsection states that “[a]n object of remembrance located on public property may not be permanently removed and may only be relocated, whether temporarily or permanently, under the circumstances listed in this subsection and subject to the limitations in this subsection.” The statute then lists two circumstances in which relocation is appropriate: “(1) [w]hen appropriate measures are required by the State or a political subdivision of the State to *preserve* the object [and] (2) [w]hen necessary for *construction, renovation, or reconfiguration* of buildings, open spaces, parking, or transportation projects.” **In sum, the HPA effectively prohibits any object of remembrance from being permanently removed,** and it only permits relocation in those two narrow circumstances. (Emphasis added to original and internal footnotes removed.)

See p. 2189 as follows:

The statute's legislative history suggests that the law applies to all public property within the state, effectively prohibiting local governments from controlling their own monuments. The intent of legislators to make the HPA applicable to all public property is clear when examining rejected proposals to narrow the scope of the HPA. (Emphasis added to original).

Monument located in Elizabeth City, and within Pasquotank County that acknowledges that these entities are political subdivision of the state of North Carolina, and are both subject to the provisions of the Act.⁶ Specifically, Pasquotank County is also subject to the restraints and requirements of the Act related to the temporary or permanent removal and relocation of objects of remembrance such as the Confederate Monument at issue in this immediate filing.

17. Finally, as set forth in the Statute, the grounds for removal and relocation of the Monuments are exceedingly narrow. See Kasi E. Wahlers, *North Carolina's Heritage Protection Act: Cementing Confederate Monuments in North Carolina's Landscape*, 94 N.C. L. Rev. 2176, 2185 (Sept. 1, 2016) (“In sum, the [Act] effectively prohibits any object of remembrance from being permanently removed, and it only permits relocation in ... two narrow circumstances.”); see also *id.* at 2188-89 (“When considering the way[,] the statute operates as opposed to how it appears on its face, the North Carolina [Act] is functionally a complete prohibition of monument removal.”).

Please note that Ms. Wahlers refers to N.C. Gen. Stat. § 100-2.1 as the “Heritage Protection Act.” See Footnote No. 20 at p. 2180. Ms. Wahlers in her article specifically notes that a number of Southern states have passed such laws, which she refers to as heritage protection laws, and which is the actual title of the Tennessee law codified as Tenn. Code. Ann. § 4-1-412. However, when the General Assembly passed North Carolina’s monument protection law, on July 23, 2015, the actual name of the legislation is the “Cultural History Artifact Management and Patriotism Act of 2015,” which is set forth under Chapter 100, as “**Protection of monuments, memorials, and works of art.**”

⁶ Chapter 100 of the North Carolina General Statutes also provides authority for political subdivisions of the State, to protect monuments by erecting fencing around the same, and to provide funding to erect monuments to conflicts such as the “War Between the States,” the Great War, and the Second World War. See N.C. Gen. Stat. §§ 100-9 and 100-10, respectively. This statutory authority contemplates that local governments would expend time, resources and treasure to memorialize America’s war veterans, and with the passage of N.C. Gen. Stat. § 100-2.1 in 2015 by the North Carolina General Assembly, the legislature ensured that these objects of remembrance would be preserved for all North Carolinians into the future regardless of whether the history of the wars themselves fell out of vogue and even if the same fate applied to the veterans themselves.

V. CLAIMS REQUIRING REDRESS

18. Petitioners are aggrieved by the vote of the Pasquotank Board of Commissioners approving the removal of the Monument and other actions taken in violation of the above-named statutes and rules in ways that include, but are not limited to, the following:

- a. The W.F. Martin Camp 1521's members include citizens and taxpayers of Pasquotank County and Elizabeth City, who, because of the direct conflict between the proposed removal of the Confederate Monument and the SCV's stated purpose, suffer an aesthetic injury that is distinct from the aesthetic injury suffered by the population of Pasquotank County as a whole. Also, because the Pasquotank Board of Commissioners failed to follow the requirements of N.C. Gen. Stat. § 100-2.1, the Camp has suffered a procedural injury.
- b. Moreover, the W.F. Martin Camp 1521, as the local camp in Pasquotank County, its members have a sufficient geographical nexus to the monument site in Elizabeth City, North Carolina as to have suffered an environmental and/or aesthetic consequence from the procedural missteps related to the denial of the application of N.C. Gen. Stat. § 100-2.1 by the Pasquotank County Board of Commissioners to these facts.⁷ In

⁷ It is important to note that the North Carolina Court of Appeals, in *Orange County v. North Carolina Dep't of Transp.* 46 N.C. App: 350, 265 S.E.2d 890 (NC Ct. App. 1980), discussed the legal standard for persons aggrieved (e.g. aggrieved parties) within an administrative law setting. Specifically, the Court of Appeals in citing a Federal Court case of the *City of Davis v. Coleman*, 521 F.2d 661, 671 (9th Cir. U.S. Ct. App. 1975) in relation to an injury suffered by a potential litigant stated that there must be a "sufficient geographical nexus to the site of the challenged project [in this instance challenged action] that ...[the party] may be expected to suffer whatever ... consequences the project may have."

In that same vein, the W.F. Martin Camp 1521, as the local SCV Camp in Pasquotank County will suffer a harm that is unique to the Camp and its members as they are located in the community that will be impacted by the Pasquotank Board of County Commissioners July 13, 2020 vote to remove the Confederate Monument. Moreover, the Camp's members whose families have lived in the county since before the Civil War, are the descendants of the very men memorialized by the County's Confederate Monument. Therefore, the injury suffered by these individuals is more unique than anyone else who is simply a local resident with no genealogical connection to the war, or any other member of the general public. Moreover, in keeping within the framework of the *Orange County* case, it should be noted that the members of the W.F. Martin Camp 1521, and the Camp itself, will suffer an aesthetic injury that is in many ways akin to the environmental

denying that the Act applies, the local government has further injured the W.F. Martin Camp 1521 in failing to submit to the requirements of N.C. Gen. Stat. § 100-2.1 in so much as these actions clear the way for the removal of the Confederate Monument in Elizabeth City without the involvement of the Commission;

- c. The North Carolina Division – SCV’s members include citizens and taxpayers of Pasquotank County and Elizabeth City, who, because of the direct conflict between the proposed removal of the Confederate Monument and the SCV’s purpose, suffer an aesthetic injury that is distinct from the aesthetic injury suffered by the population of Pasquotank County as a whole, and the North Carolina Division – SCV has also suffered by the failure of Pasquotank County to follow the requirements of N.C. Gen. Stat. § 100-2.1;
- d. The North Carolina Division – SCV is the legal successor-in-interest to the United Confederate Veterans (“UCV”) and claims the UCV’s reversionary interest, if any in the Confederate Monument should it no longer be put to public use; and

19. All actions taken to date in violation of the above-named statutes and rules may be corrected by a ruling from DCR that Pasquotank County Board of Commissioner’s July 13, 2020 vote to remove the Confederate Monument was improper, and could only be made with the express intent to seek approval of the North Carolina Historical Commission. However, consequences of inaction by the DCR and the Commission by not adjudicating this matter and ultimately issuing a declaratory ruling are expected to include, but not be limited to:

injuries that were alleged to be suffered by the local businesses and residents who were challenging the construction of I-40.

- a. Loss of public access to the Monument, and failure to preserve or conserve the Monument in conformity with the requirements of the Act;
- b. Loss of protection for other historic monuments and historic districts statewide under similar factual circumstances, due to the precedential nature of this matter;
- c. The alteration of such historic districts that will remove valuable historical and cultural assets from North Carolina's landscape in the pursuit of sanitizing these areas so that future generations of citizens will not be required to think critically of past events that have shaped the history of the state and the nation; and
- d. The potential withdrawal of the National Historic Landmark designation that protects these districts "[w]hen a designated property is altered so that it has lost its ability to convey its national significance, the withdrawal of its NHL designation must be considered."⁸

20. Moreover, there is a diverse opinion among local governments as to what, if any requirements of the Act apply. Under these circumstances alone, justification exists to hear this matter and reconcile the issues raised as to the application of the Act through the issuance of a fully vetted declaratory ruling.

21. As it stands, it is unclear as to what Pasquotank County intends as the ultimate fate of its Confederate Monument and whether the County understands what is required of it in relation to the restrictions placed upon it by the Act juxtaposed with its express desire to remove the monument (or object of remembrance).

22. This dilemma has been caused by the cavalier comments of Governor Cooper related to the three Confederate Monuments that were ultimately removed from the Old State Capitol

⁸ See <https://www.nps.gov/subjects/nationalhistoriclandmarks/withdrawn.htm>

Grounds at Union Square in Raleigh in June of this year. The comments of Governor Cooper were made on August 15, 2017, in which he stated, among other things, that “[s]ome people cling to the belief that the Civil War was fought over states’ rights. But history is not on their side. We cannot continue to glorify a war against the United States of America fought in the defense of slavery. These monuments should come down.” Emphasis added. Governor Cooper went on to state that “... the North Carolina legislature must repeal a 2015 law that prevents removal or relocation of monuments. Cities, counties and the state must have the authority and opportunity to make these decisions.” Emphasis added to original.

23. When the Confederate Monuments were removed from Raleigh between June 19-26, 2020, Governor Cooper’s anti-monument statements, which he began making in 2017 through June of 2020, became action throughout this summer and have now emboldened cities, counties and municipalities throughout the state to ignore the requirements of the Act. Some of the state’s political subdivisions such as Pasquotank and Gaston counties, either through their own action or through legal opinions provided by counsel have simply opined that the requirements of the Act apply only to the State and not its political subdivisions.

24. Fortunately, Gaston County reversed course when, on August 21, 2020, the North Carolina Division – SCV rejected the County’s offer to take possession of the monument once it was removed, citing the fact that the North Carolina Division – SCV believed the law applied to the political subdivisions of the state, and that the SCV could not take permanent possession. As a result, on August 25, 2020, when presented with the possibility of litigation to determine whether N.C. Gen. Stat § 100-2.1 applied to the Gaston County Confederate Monument, the Gaston County Board of Commissioners cast a new vote to rescind its prior decision in favor of removing the monument. Thus, the question related to whether the Act applies must consider that monuments are structures

that erected on real property, or are fixtures which are affixed to real property that are either owned by the state of North Carolina or owned by the political subdivisions of the State.

25. Additionally, without clear guidance from the Commission related to questions over which it has primary jurisdiction, other local governments within the State have opined that the public safety exception of the Act permits them to wantonly remove Confederate Monuments to protect “public safety” until the threat of protests, vandalism and riots abate, with a ninety-day (90 day) period after cessation of such threats, which the Act would then presumably require the re-erection of these monuments. The later position contorts the clear language of the Act. Moreover, the divergent views taken by political subdivisions of the State have caused a split among local governments. There are those that question whether the Act even applies, or if local government officials through the political process can discern for themselves, what sections of the Act can be cherry picked or contorted to support their position and support subsequent removal without a decision from the Commission holding otherwise.

26. Proposed and actual action taken to ensure “public safety” as justification for removal of “objects of remembrance” also contradicts precedent already established by the North Carolina Historical Commission on August 22, 2018, when disposing of the Petition to Permanently Relocate Objects of Remembrance filed on September 8, 2017, by the North Carolina Department of Administration at Governor Cooper’s behest. It was in this matter that the Commission refused to grant the petition to remove the three Confederate Monuments (objects of remembrance) at Union Square in Raleigh as actual protests and the fear of protests does not fall within the public safety exception under N.C. Gen. Stat. § 100-2.1(c). The Act does not provide for permanent removal based on fear created by protestors. Instead, local governments (and the State itself) have sufficient tools

at their disposal to maintain law and order and protect the public safety without creating a political exception that does not exist in order to quell threats of potential violent riots or protests.

VI. REQUESTED RELIEF

WHEREFORE, based on the foregoing, the Petitioners respectfully request that:

1. The North Carolina Historical Commission set this matter for oral hearing and establish a briefing schedule;
2. Issue a declaratory ruling in favor of Petitioners after hearing and oral argument; and
3. Award the Petitioners such other relief as the Commission deems proper and equitable regarding the issues presented above.

Respectfully submitted this 16th day of September 2020, by:

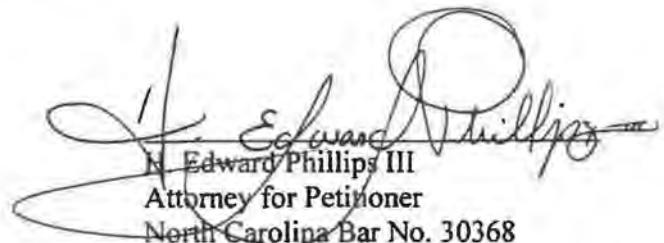

N. Edward Phillips III
Attorney for Petitioner
North Carolina Bar No. 30368
219 Third Avenue North
Franklin, Tennessee 37064
615) 599-1785, Ext. 229 (Office)
615) 503-6940 (Fax)
edward@phillipslawpractice.com

Exhibit D

AGENDA

Meeting of the
North Carolina Historical Commission

1:00 p.m.

November 23, 2020

Zoom Conference Call

03/03/2020

- Welcome/Conflict of Interest Statement
- Approval of NCHC Meeting Minutes from 03 September 2020 and 23 September 2020
- Millie Barbee Resolution
- Accessions and Deaccessions
- Request regarding Pasquotank County Confederate monument
- Adjourn

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NORTH CAROLINA DEPT. OF JUSTICE
ATTORNEY GENERAL

THE LAW OFFICE OF H. EDWARD PHILLIPS, PLLC
219 Third Avenue North
Franklin, Tennessee 37064

Attorney General Josh Stein, Esq.
Dept. of Justice - State of North Carolina
114 West Edenton Street
Raleigh, North Carolina 27603

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*Helen Blum -
Services to
State Attorney*

Andrew Perlmutter

FEB - 5 2021

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STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF PASQUOTANK

21-CVS-27

2021 MAR -5 A 10:15


THE COL. WILLIAM F. MARTIN)
CAMP 1521 SONS OF CONFEDERATE)
VETERANS, and the NORTH CAROLINA)
DIVISION SONS OF CONFEDERATE)
VETERANS, INC.,)

Petitioners,)

v.)

NORTH CAROLINA HISTORICAL)
COMMISSION,)

Respondent.)


**NORTH CAROLINA HISTORICAL
COMMISSION'S MOTIONS TO DISMISS
AND RESPONSE TO PETITION FOR
JUDICIAL REVIEW AND
REQUEST FOR DECLARATORY ORDER**

COMES NOW Respondent, North Carolina Historical Commission (hereinafter "NCHC" or "Commission"), by and through the undersigned counsel, Karen A. Blum, Special Deputy Attorney General, and responds to Petitioners' Petition for Judicial Review and Request for Declaratory Order as follows:

FIRST DEFENSE
MOTIONS TO DISMISS FOR FAILURE TO COMPLY WITH
ADMINISTRATIVE PROCEDURE ACT
G.S. §§ 150B-43, -45, and -46; Rules 12(b)(1), (2), (5), and (6)

NCHC respectfully moves this Honorable Court to dismiss in their entirety the actions filed by Petitioners pursuant to G.S. §§ 150B-43, 150B-45, and 150B-46, and Rules 12(b)(1), 12(b)(2), 12(b)(5), and 12(b)(6) of the North Carolina Rules of Civil Procedure for failure to comply with the Administrative Procedure Act, and lack of subject matter and personal jurisdiction, insufficiency of service of process, failure to state a claim upon which relief can be granted, failure to exhaust administrative remedies, and sovereign immunity.

SECOND DEFENSE
MOTION TO DISMISS—12(b)(1), (2), (6) Sovereign Immunity

NCHC respectfully moves this Honorable Court to dismiss in their entirety the actions filed by Petitioners pursuant to Rules 12(b)(1), 12(b)(2), and 12(b)(6) of the North Carolina Rules of Civil Procedure because Petitioners' claims are barred by the doctrine of sovereign immunity.

THIRD DEFENSE
MOTION TO DISMISS—Rule 12(b)(6) Statute of Limitations

Petitioners' claims are time barred.

FOURTH DEFENSE AND RESPONSE

Without waiving the foregoing defenses and/or motions, NCHC responds to the petition as follows:

I. RESPONDENT

1. It is admitted that the North Carolina Historical Commission is a commission organized within the Department of Natural and Cultural Resources under the Executive Organization Act of 1973, with its primary powers and duties being derived from §§ 121-12 and 143B-62 of the North Carolina General Statutes. It is further admitted that those statutes speak for themselves. Except as herein admitted, the remaining allegations of Paragraph 1 are denied.

2. The allegations regarding the statutory authority of NCHC contain a question of law or call for a legal conclusion to which no response is required. Furthermore, it is admitted that G.S. § 121-12 speaks for itself. To the extent responses are required, except as specifically admitted herein, denied. It is also admitted that the Elizabeth City Historic District, in which the Pasquotank County Confederate Soldier monument [hereinafter "Monument"] is located, is listed on the National Register of Historic Places. It is specifically admitted that the Monument is within the Downtown Local Historic District in Elizabeth City. It is further specifically admitted that the

Pasquotank County Historic Preservation Commission issues certificates of appropriateness related to the treatment of historic properties within that local historic district. Respondent is without knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph. Except as herein admitted, the remaining allegations of Paragraph 2 are denied.

3. It is admitted that the Constitution of the State of North Carolina and Chapter 153A of the North Carolina General Statutes speak for themselves. Except as herein admitted, the remaining allegations of Paragraph 3 are denied. Furthermore, the allegations of Paragraph 3 contain a question of law or call for a legal conclusion to which no response is required. To the extent a response is required, except as specifically admitted herein, denied.

III. VENUE

4. It is denied that venue is proper under G.S. § 150-45(a)(2). It is admitted that G.S. § 150B-45(a)(2) allows judicial review of certain final decisions in the superior court of the county where the person aggrieved by an administrative decision resides. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 4, including footnote 1; therefore, the same are denied.

5. It is admitted that G.S. § 150B-45(a)(2), G.S. 150B-4(a1)(2), and North Carolina State Bd. of Educ. v. North Carolina Learns, Inc., 231 N.C. App. 270 (2013), speak for themselves. To the extent further response is required, except as specifically admitted herein, denied. Furthermore, to the extent the allegations of Paragraph 5, including footnote 2, contain statements of law or legal conclusions to which no responses are required, the same are denied. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 5; therefore, the same are denied.

IV. JURISDICTION

6. Denied.
7. Denied.

V. STATEMENT OF THE CASE

8. It is admitted that G.S. § 100-2.1(b) speaks for itself. Whether the Monument is an object of remembrance under G.S. § 100-2.1 is a statement of law or calls for a legal conclusion to which no response is required. To the extent responses are required, except as specifically admitted herein, denied. Except as herein admitted, the remaining allegations of Paragraph 8 are denied.

9. Respondent is without knowledge or information sufficient to form a belief as to what Petitioners did as a direct result of the Board's vote; therefore, the same is denied. It is admitted upon information and belief that the North Carolina Department of Natural and Cultural Resources [hereinafter "Department"] received, by way of "UPS Next Day Air," a letter addressed to the "Office of the Secretary, Department of Cultural Resources," and a document entitled, "Petition for Declaratory Ruling Regarding the Application of N.C. Gen. Stat. § 100-2.11945." It is further admitted that the caption of the petition was addressed "Before the North Carolina Department of Cultural Resources, at Raleigh, North Carolina." It is further admitted, upon information and belief, that the Department received the document on 23 September 2020. It is admitted that Exhibit C speaks for itself. Except as herein admitted, the remaining allegations of Paragraph 9 are denied.

10. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10; therefore, the same are denied.

11. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11; therefore, the same are denied.

12. It is denied that the question of whether Pasquotank County has the authority to remove the Monument without first seeking approval was brought by Petitioners before NCHC. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 12; therefore, the same are denied.

VI. HISTORY OF THE CONFEDERATE MONUMENT

13. The allegations of paragraph 13 contain a question of law or call for a legal conclusion to which no response is required. To the extent a response is required, except as specifically admitted herein, denied. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 13; therefore, the same are denied.

14. It is admitted upon information and belief that the Monument is located in an area between the Pasquotank County Courthouse and United States Courthouse in Elizabeth City. Respondent is without knowledge or information sufficient to form a belief as to the specific location of the monument or the property upon which it sits; therefore, the same are denied. The remaining allegations of Paragraph 14 contain a question of law or call for a legal conclusion to which no response is required. To the extent a response is required, except as specifically admitted herein, denied.

15. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15; therefore, the same are denied. To the extent the allegations of Paragraph 15 contain a question of law or call for a legal conclusion, no response is required. To the extent a response is required, except as specifically admitted herein, denied.

16. The allegations of Paragraph 16 contain a question of law or call for a legal conclusion to which no response is required. To the extent a response is required, it is specifically denied upon information and belief that the Monument became or is the property of the State of North Carolina. Respondent is without knowledge or information sufficient to form a belief as to truth of the allegations of footnote 3, or the remaining allegations of Paragraph 16; therefore, the same are denied.

17. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17; therefore, the same are denied.

VII. STANDARD OF REVIEW

18. Paragraph 18 contains a statement of law to which no response is required. To the extent a response is required, it is specifically admitted that G.S. § 150B-51 speaks for itself. Except as specifically admitted herein, denied.

VIII. ASSIGNMENTS OF ERROR

19. Denied.

20. Denied.

21. Paragraph 21: Denied. Footnote 4: It is admitted that the video of NCHC's 23 November 2020 meeting is available on YouTube at the link provided by Petitioners. It is admitted that the agenda attached as Exhibit D speaks for itself. Except as herein specifically admitted, the remaining allegations in Paragraph 21 and footnote 4 are denied.

22. Denied.

23. Denied.

24. Denied. It is specifically admitted upon information and belief that Petitioners have adequate remedies at law that they have not pursued.

IX. REQUEST FOR DECLARATORY ORDER

25. Denied.

26. Denied.

27. The allegations of Paragraph 27 contain a question of law or call for a legal conclusion to which no response is required. To the extent a response is required, except as specifically admitted herein, denied. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 27; therefore, the same are denied.

28. Denied.

29. Denied.

30. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 30; therefore, the same are denied.

31. Denied.

a. Denied.

b. Denied.

c. Denied.

d. Denied.

32. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 32; therefore, the same are denied.

33. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 33; therefore, the same are denied.

34. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 34; therefore, the same are denied.

35. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 35; therefore, the same are denied.

36. The allegations of Paragraph 36 contain a question of law or call for a legal conclusion to which no response is required. Furthermore, it is admitted that G.S. § 100-2.1 speaks for itself. To the extent responses are required, except as specifically admitted herein, denied. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 36; therefore, the same are denied.

37. The allegations of Paragraph 37 contain a question of law or call for a legal conclusion to which no response is required. Furthermore, it is admitted that G.S. § 100-2.1 speaks for itself. To the extent responses are required, except as specifically admitted herein, denied. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 37; therefore, the same are denied.

38. The allegations of Paragraph 38 contain a question of law or call for a legal conclusion to which no response is required. Furthermore, it is admitted that G.S. § 100-2.1 speaks for itself. To the extent responses are required, except as specifically admitted herein, denied. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 38; therefore, the same are denied.

39. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 39; therefore, the same are denied.

40. Denied.

X. COURT OF APPEALS DECEMBER 15, 2020 OPINION

41. The allegations of Paragraph 41 contain statements of law or call for legal conclusions to which no responses are required. Furthermore, it is admitted that United Daughters

of the Confederacy, North Carolina Division, Inc., et al. v. Winston-Salem, et al., No. COA19-947 (N.C. Ct. App. Dec. 15, 2020), speaks for itself. To the extent responses are required, except as specifically admitted herein, denied.

42. Respondent is without knowledge or information sufficient to form a belief as to what Petitioners hope; therefore, the same are denied. Furthermore, the allegations of Paragraph 42 contain statements of law or call for legal conclusions to which no responses are required. It is also admitted that the majority and dissenting opinions in United Daughters of the Confederacy, North Carolina Division, Inc., et al. v. Winston-Salem, et al., No. COA19-947 (N.C. Ct. App. Dec. 15, 2020), speak for themselves. To the extent responses are required, except as specifically admitted herein, denied.

GENERAL DENIAL

Responding to each and every claim in Petitioners' demand for relief, to the extent that any paragraph, sentence, statement, or allegation in the Petition for Judicial Review and Request for Declaratory Order has not been expressly admitted by the foregoing responsive answers, the same is hereby expressly denied. Furthermore, NCHC specifically denies that Petitioners are entitled to any of the relief sought.

WHEREFORE, Respondent respectfully prays that this Honorable Court:

1. Grant Respondent's motions to dismiss with prejudice; or
2. Deny Petitioners' claims for relief; and
3. Grant Respondent such other and further relief as this Court deems just and proper.

This the 2d day of March, 2021.

JOSHUA H. STEIN
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read 'K. Blum', with a long horizontal line extending to the right.

Karen A. Blum
Special Deputy Attorney General

North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602
State Bar No. 28431
(919) 716-6816
kblum@ncdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing NORTH CAROLINA HISTORICAL COMMISSION'S MOTIONS TO DISMISS AND RESPONSE TO PETITION FOR JUDICIAL REVIEW AND REQUEST FOR DECLARATORY ORDER upon the following by designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) and Rule 4(j) of the North Carolina Rules of Civil Procedure:

H. Edward Phillips, III
ATTORNEY FOR PETITIONERS
219 Third Avenue North
Franklin, Tennessee 37064

This the 2d day of March, 2021.

A handwritten signature in black ink, appearing to read 'Karen A. Blum', is written over a horizontal line.

Karen A. Blum
Special Deputy Attorney General

STATE OF NORTH CAROLINA
COUNTY OF PASQUOTANK

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21-CVS-27

2021 MAR -5 A 10:15

THE COL. WILLIAM F. MARTIN)
CAMP 1521 SONS OF CONFEDERATE)
VETERANS, and the NORTH CAROLINA)
DIVISION SONS OF CONFEDERATE)
VETERANS, INC.,)



Petitioners,)

**RECORD ON JUDICIAL REVIEW OF
PETITIONER'S PETITION FOR
DECLARATORY RULING**

v.)

NORTH CAROLINA HISTORICAL)
COMMISSION,)

Respondent.)

NOW COMES Respondent, and hereby files this RECORD ON JUDICIAL REVIEW OF PETITIONER'S PETITION FOR DECLARATORY RULING pursuant to G.S. § 150B-47 in response to the Petition for Judicial Review and Request for Declaratory Order filed in the above-captioned matter. The Agency Record consists of the following documents:

1. LETTER FROM PHILLIPS TO DEPARTMENT OF CULTURAL RESOURCES (SEPT. 16, 2020).....3
2. PETITION FOR DECLARATORY RULING REGARDING THE APPLICATION OF N.C. GEN. STAT. § 100-2.11945 (SEPT. 16, 2020)5
3. E-MAIL FROM NEELY TO PHILLIPS TRANSMITTING DENIAL OF REQUEST FOR DECLARATORY RULING (OCT. 21, 2020).....21
4. DENIAL OF REQUEST FOR DECLARATORY RULING BY DEPARTMENT OF NATURAL AND CULTURAL RESOURCES (OCT. 21, 2020)22
5. E-MAIL FROM BLUM TO RUFFIN TRANSMITTING TO HISTORICAL COMMISSION THE DENIAL OF REQUEST FOR DECLARATORY RULING BY DNCR (OCT. 21, 2020).....40
6. AGENDA (NOV. 23, 2020)42

7. LINK TO VIDEO OF NOVEMBER 23, 2020 MEETING OF NORTH CAROLINA HISTORICAL COMMISSION	43
8. DRAFT NORTH CAROLINA HISTORICAL COMMISSION MEETING MINUTES (NOV. 23, 2020) (PENDING APPROVAL AT NEXT MEETING)	44
9. DENIAL OF REQUEST BY NORTH CAROLINA HISTORICAL COMMISSION (DEC. 14, 2020)	52
10. E-MAIL FROM BACKSTROM TO PHILLIPS TRANSMITTING DENIAL OF REQUEST BY NORTH CAROLINA HISTORICAL COMMISSION (DEC. 15, 2020)	53
11. CERTIFICATION OF RECORD ON JUDICIAL REVIEW	54
12. CERTIFICATE OF SERVICE	55



THE LAW OFFICE OF H. EDWARD PHILLIPS, PLLC

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EDWARD@PHILLIPSLAWPRACTICE.COM

Licensed in Tennessee (1994)
North Carolina (2002)

September 16, 2020

Via Overnight Mail

The Office of the Secretary
Department of Cultural Resources
Raleigh, North Carolina 27611

Re: Petition for Declaratory Ruling Regarding the Application of N.C. Gen. Stat.
§ 100-2.1 to the Pasquotank Confederate Soldiers Monument

Dear Team Member:

Please find enclosed for filing a written request for a Declaratory Ruling (e.g. "*Petition*") to be filed with the North Carolina Department of Natural and Cultural Resources and the North Carolina Historical Commission. Also enclosed is a second copy of the *Petition* that I kindly request be stamped filed (or stamped received) along with a self-addressed postage prepaid envelope to return the filed copy to my office. Please note that I have also mailed a courtesy copy of this *Petition* to Mr. R. Michael Cox, Esq., the Pasquotank County Attorney.

Finally, please accept my appreciation for your time and effort in ensuring that the enclosed *Petition* is filed with the Department.

With Sincere regards,

A handwritten signature in black ink, appearing to read "H. Edward Phillips III". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

H. Edward Phillips III

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THE LAW OFFICE OF H. EDWARD PHILLIPS, PLLC
219 Third Avenue North
Franklin, Tennessee 37064

To: The Office of the Secretary
NC Department of Cultural Resources
Raleigh, North Carolina 27611

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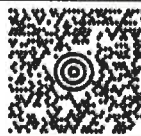
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RALEIGH NC 27611



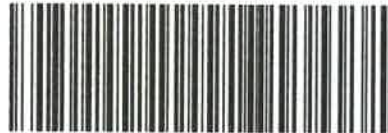
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BEFORE THE NORTH CAROLINA DEPARTMENT
OF CULTURAL RESOURCES, AT RALEIGH, NORTH CAROLINA

IN RE: PASQUOTANK COUNTY)	
CONFEDERATE MONUMENT)	
)	
)	
)	Case No. _____
)	
NORTH CAROLINA DIVISION SONS OF)	
CONFEDERATE VETERANS, INC.,)	
)	
Petitioners.)	
)	
)	
)	

PETITION FOR DECLARATORY RULING REGARDING
THE APPLICATION OF N.C. GEN. STAT. § 100-2.11945

Pursuant to N.C. Gen. Stat. § 150B-4, and 7 N.C. Admin. Code § 1B.0110, the Petitioners, The Col. William F. Martin Camp 1521 Sons of Confederate Veterans, and The North Carolina Division Sons of the Confederate Veterans, Inc., by and through undersigned counsel respectfully petition the North Carolina Historical Commission through the North Carolina Department of Natural and Cultural Resources to issue a declaratory ruling as it relates to the application of pertinent sections of Chapter 100 of the North Carolina General Statutes related to **Monuments, Memorials and Parks**, as well as N.C. Gen. Stat. § 100-2.1 to the Pasquotank County Confederate Soldiers Monument.

I. PETITIONERS

1. The Col. William F. Martin Camp 1521 Sons of Confederate Veterans (the W.F. Martin Camp 1521") is an entity within the North Carolina Division Sons of the Confederate

Veterans, and is a North Carolina 501(c)(3) non-profit corporation operating under the laws of the state of North Carolina, having its principal place of business in Camden, Pasquotank County, North Carolina, and was chartered in Elizabeth City, North Carolina at its founding. The W.F. Martin Camp 1521 is a lineage society which seeks to preserve the memory of the Camp's ancestors who served in the Confederate States Army during the Civil War. Like all Sons of Confederate Veteran camps, its mission is not only to preserve the history of the Civil War and the soldiers of the Confederate States Army, its principal charitable purpose is "to aid and assist in the erection of suitable and enduring monuments and memorials to all Southern valor, civil and military, wherever done and wherever found."

2. The North Carolina Division Sons of the Confederate Veterans, Inc. (the "North Carolina Division – SCV"), is a North Carolina 501(c)(3) non-profit corporation operating under the laws of the state of North Carolina, having its principal place of business in Wake County, North Carolina, and a mailing address of 805 Cool Springs Road Sanford, North Carolina 27330. The North Carolina Division is a lineage society vested with the mission, and the duty to preserve the history of the Civil War, as well as the memory of the soldiers of the Confederate States Army, with its principal charitable purpose being "to aid and assist in the erection of suitable and enduring monuments and memorials to all Southern valor, civil and military, wherever done and wherever found."

II. INTRODUCTION

3. The North Carolina Department of Natural and Cultural Resources ("DCR")¹ has authority to issue a declaratory ruling with respect to these issues, which involves interpreting the

¹ On September 8, 2015, the DCR's name was changed to the North Carolina Department of Natural and Cultural Resources, upon the transfer of a number of divisions to be placed under the control of DCR, which included those divisions responsible for maintaining the state of North Carolina's natural resources. Some of the official references to

applicability of the following rules and statutes which are administered by DCR – N.C. Gen. Stat. §§ 100-2, 100-2.1, 100-3, 100-9, 100-10, and 16 U.S.C. § 470 (the National Historic Preservation Act of 1966).

4. The North Carolina Historical Commission (the “Commission”), which is an agency within the DCR, is charged with promulgating “rules and regulations to be followed in the acquisition, disposition, preservation, and use of records, artifacts, real and personal property,” See N.C. Gen. Stat§ 143B-62. Additionally, under N.C. Gen. Stat. § 100-2.1, the Commission is vested with primary jurisdiction to resolve matters related to the proposed removal, relocation and/or alteration of an object of remembrance located on any public property located within the state. Moreover, the public policy goal of the Act favors preservation of objects of remembrance, and not an indefinite temporary removal of the same, or a permanent removal unless the object of remembrance “... shall be relocated to a site of similar prominence, honor, visibility, availability, and access that are within the boundaries of the jurisdiction from which it was relocated.” Additionally, “[a]n object of remembrance may not be relocated to a museum, cemetery, or mausoleum unless it was originally placed at such a location.”

5. Pasquotank County was established under the powers granted to the North Carolina General Assembly under Article VII, § 1 of the Constitution of the State of North Carolina, specifically, “[t]he General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except

the DCR have not changed, such as under 7 N.C. Admin. Code § 1B.0110, which relates to the process for filing a request for a declaratory ruling. As a result, this *Petition* will refer to the Department under its former nomenclature. See <https://www.ncpedia.org/cultural-resources-department>; and <https://www.nc.gov/agency/natural-and-cultural-resources-department>

as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.”²

6. Pasquotank County is governed by its County Board of Commissioners, which is a seven-member Board representing Pasquotank County. Specifically, the commissioners are elected at-large and from districts in county-wide elections to serve four-year staggered terms, with four members required to reside in specified districts, and three members elected at-large. The Board of Commissioners elects a Chairman and Vice-Chairman at its December meeting. See <https://www.pasquotankcountync.org/aboutboard>.

7. The Pasquotank County Confederate Soldiers Monument (e.g. “object of remembrance”) is located near the Pasquotank County Courthouse at 206 E Main Street in Elizabeth City, North Carolina.

8. The Pasquotank County Confederate Soldiers Monument (the “Confederate Monument”) was originally erected in 1911, with its dedication held on May 10th of that year. See: <https://docsouth.unc.edu/commland/monument/515/#:~:text=This%20statue%20is%20located%20at,flag%20and%20the%20year%201865>.

9. On July 13, 2020, the Pasquotank County Commission held a vote related to the removal of the Confederate Monument, and by a split vote of four to three (4-3), decided to remove

² Pasquotank Co., was originally established as Pasquotank Precinct in the British Colony of North Carolina in 1684 form then Carteret Precinct within the Albemarle region. The Pasquotank Precinct was granted status as a county by the Royal Government on March 6, 1739, and was within the established territory recognized under the First Constitution of the state of North Carolina adopted at Halifax, North Carolina on December 18, 1776, after the adoption of the *Declaration of Independence* by the Continental Congress assembled in Philadelphia on July 2, 1776. Subsequently, the North Carolina General Assembly modified the boundary lines of Pasquotank County to create other counties, or to define county boundary lines, first on May 9, 1777, then on December 19, 1804, with final action taken on March 6, 1909. Thus, Pasquotank was, and has been since the adoption of the first state constitution, under the control of the Government of the State of North Carolina and bound by its laws.

See: https://publications.newberry.org/ahcbp/documents/NC_Individual_County_Chronologies.htm; <https://www.ncpedia.org/anchor/introduction-colonial-north>; and https://avalon.law.yale.edu/18th_century/nc07.asp#b2

the monument. Specifically, according to reporting, Commissioner Cecil Perry stated that the, “[i]t does not belong on this property[,]” when referring to the Confederate Monument, and its current location on the grounds of the Pasquotank County Courthouse.

10. The North Carolina Division – SCV is concerned that the action taken by the Pasquotank Board of Commissioners in its vote to remove the Pasquotank County Confederate Monument violates the requirements of the North Carolina Monument Protection Act (the “Act”), codified at N.C. Gen. Stat. § 100-2.1. The North Carolina Division – SCV believes that the Act compels the state of North Carolina or any political subdivision of the state to seek the approval of the North Carolina Historical Commission prior to the removal or relocation of any object of remembrance from public property, either on a temporary or permanent basis.

III. JURISDICTION

11. The Commission has jurisdiction to entertain this *Petition for Declaratory Ruling* under N.C. Gen. Stat. § 100-2.1(a), which establishes that no “monument, memorial, or work of art owned by the State be removed, relocated, or altered in any way without the approval of the North Carolina Historical Commission.” Moreover, subsection (b) of the Act, which is much broader than subsection (a), places limitations on removal, and specifically states that “[a]n object of remembrance located on public property may not be permanently removed and may only be relocated, whether temporarily or permanently, under the circumstances listed in this subsection and subject to the limitations in this subsection.” To that end, this subsection also states that “[t]he circumstances under which an object of remembrance may be relocated are either of the following: (1) [w]hen appropriate measures are required by the State or a political subdivision of the State to preserve the object, or

(2) When necessary for construction, renovation, or reconfiguration of buildings, open spaces, parking, or transportation projects.” Emphasis added to original.

IV. STATEMENT OF FACTS

12. Prior to the events of May 25, 2020, in relation to the senseless death of George Floyd while in the custody of the Minneapolis Police Department, there had been relatively little public objection to any war memorials, Confederate or otherwise. This was true for decades anywhere in the State of North Carolina – until a mob of demonstrators and political protesters illegally tore down and vandalized a Confederate monument located outside the Durham County Courthouse on August 14, 2017. However, the actions of these protestors and vandals in 2017, as well as subsequent protests related to Confederate monuments since May of this year, do not represent the actual sentiment related to the existence of the same. This is particularly underscored by the release of a Wall Street Journal/NBC News Poll on July 23, 2020, concerning public sentiment surrounding Confederate memorialization, which demonstrate that the large majority of the American people do not favor completely removing these monuments from the public forum.³

³ The Wall Street Journal/NBC News Poll provides the following useful information related to four questions concerning Confederate Monuments in public spaces. The four questions asked of the participants within the polling sample are as follows:

1. Should Confederate Monuments be removed and destroyed? 10% of those polled supported this option;
2. Should Confederate Monuments be moved to museums or private property? 31% of those polled supported this option;
3. Should Confederate Monuments be left in place with contextual markers? 41% of those polled supported this option; and
4. Should Confederate Monuments remain in place as is? 16% of those polled supported this option;

Moreover, only twenty-two percent (22%) of African American participants participating in the poll wished to remove and destroy these monuments, with the vast majority, seventy-four percent (74%) falling in the middle ground by supporting options two (2) and three (3), please see the poll results at: <https://www.wsj.com/articles/after-confederate-monuments-fall-where-do-they-go-11595509200>. Polling results demonstrate that 57% of the population desire to maintain these monuments in place.

The WSJ/NBC News polling results also reinforce the fact that a large majority of Americans, including members of the African American community, support a more moderate and measured approach concerning the resolution of the monument issue. Additionally, both Alamance and Gaston counties have cast votes to keep their Confederate Monuments in place, which is consistent not only with the polling, but supports the objectives of N.C. Gen. Stat. § 100-2.1, which applies to the state of North Carolina, and its political subdivisions possessing monuments located on public property.

13. The Confederate Monument located at the Pasquotank County Courthouse, is an object of remembrance as that term is defined under the Act, which specifically "... means a monument, memorial, plaque, statue, marker, or display of a permanent character that commemorates an event, a person, or military service that is part of North Carolina's history." See N.C. Gen. Stat. § 100-2.1(b). As this monument is dedicated to the Confederate soldiers, as it states on the monument's rear, north face that it is dedicated: "TO OUR CONFEDERATE DEAD[.]" which means that it clearly falls within the definition of an object of remembrance as it is a monument memorializing the Confederate dead from Pasquotank County, while also commemorating persons engaged in military service within the Confederate Military, and is clearly part of North Carolina's history and ties to national history related to the American Civil War. See *Appeal of Clayton-Marcus Co., Inc.*, 286 N.C. 215, 219; 210 S.E.2d 199, 203 (1974) ("In the construction of any statute, . . . words must be given their common and ordinary meaning Where, however, the statute, itself, contains a definition of a word used therein, that definition controls[.]")

14. The Confederate Monument is likewise located within the confines of the downtown historical district as recognized by the National Park Service, and appears on the Register of National Historic Places. Additionally, the Confederate Monument also represents Elizabeth City's history related to the Civil War and the military action that occurred within the confines of Elizabeth City and the environs of Pasquotank County during that period. Thus, there is no denying that the maintenance and inclusion of the Confederate Monument supports both local tourism, and in particular, Civil War tourism as it is part and parcel of those objects, buildings and features that are the essence of the Elizabeth City Historical District and integral features of this National Historic Place.

15. As the Commission is aware, the National Register of Historic Places is the official list of the Nation's historic places that have been recognized as worthy of preservation. The designation on the list is authorized by the National Historic Preservation Act of 1966 (16 U.S.C. § 470), and is managed by the National Park Service, as part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources, which certainly includes the Pasquotank County Confederate Monument in Elizabeth City.

16. The location of this Confederate Monument near the Pasquotank County Courthouse in Elizabeth City, North Carolina, is public property as contemplated under N.C. Gen. Stat. § 100-2.1(b),^{4/5} and as result, the Commission may enter a Declaratory Ruling declaring that the Confederate

⁴ See the Blog – *Statues and Statutes: Limits on Removing Monuments from Public Property*, Assoc. Prof. Adam Lovelady – UNC Chapel Hill, School of Government, posted August 22, 2017. Prof. Lovelady states in pertinent part that “North Carolina law limits the extent to which the objects of remembrance may be removed from public property or relocated. That law [e.g. the Act] applies to a broad array of memorials, monuments, statues and other objects, including the many Confederate monuments found on county courthouse grounds and other public property across the State.” (Emphasis added to original).

⁵ See also “North Carolina’s Heritage Protection Act: Cementing Confederate Monuments in North Carolina’s Landscape,” Kasi E. Wahlers, *94 N.C.L. Rev.* 2176 (2016) at pp. 2184 to 2185, wherein the author states the following:

In addition to the powers granted to the Commission within the HPA, this appointed body also has the power to approve any monument, memorial, or work of art before it becomes state property. Following the delegation of authority to the Commission, the “Limitations on Removal” subsection states that “[a]n object of remembrance located on public property may not be permanently removed and may only be relocated, whether temporarily or permanently, under the circumstances listed in this subsection and subject to the limitations in this subsection.” The statute then lists two circumstances in which relocation is appropriate: “(1) [w]hen appropriate measures are required by the State or a political subdivision of the State to *preserve* the object [and] (2) [w]hen necessary for *construction, renovation, or reconfiguration* of buildings, open spaces, parking, or transportation projects.” **In sum, the HPA effectively prohibits any object of remembrance from being permanently removed,** and it only permits relocation in those two narrow circumstances. (Emphasis added to original and internal footnotes removed.)

See p. 2189 as follows:

The statute’s legislative history suggests that the law applies to all public property within the state, effectively prohibiting local governments from controlling their own monuments. The intent of legislators to make the HPA applicable to all public property is clear when examining rejected proposals to narrow the scope of the HPA. (Emphasis added to original).

Monument located in Elizabeth City, and within Pasquotank County that acknowledges that these entities are political subdivision of the state of North Carolina, and are both subject to the provisions of the Act.⁶ Specifically, Pasquotank County is also subject to the restraints and requirements of the Act related to the temporary or permanent removal and relocation of objects of remembrance such as the Confederate Monument at issue in this immediate filing.

17. Finally, as set forth in the Statute, the grounds for removal and relocation of the Monuments are exceedingly narrow. See Kasi E. Wahlers, *North Carolina's Heritage Protection Act: Cementing Confederate Monuments in North Carolina's Landscape*, 94 N.C. L. Rev. 2176, 2185 (Sept. 1, 2016) ("In sum, the [Act] effectively prohibits any object of remembrance from being permanently removed, and it only permits relocation in ... two narrow circumstances."); see also *id.* at 2188-89 ("When considering the way[,] the statute operates as opposed to how it appears on its face, the North Carolina [Act] is functionally a complete prohibition of monument removal.").

Please note that Ms. Whalers refers to N.C. Gen. Stat. § 100-2.1 as the "Heritage Protection Act." See Footnote No. 20 at p. 2180. Ms. Whalers in her article specifically notes that a number of Southern states have passed such laws, which she refers to as heritage protection laws, and which is the actual title of the Tennessee law codified as Tenn. Code. Ann. § 4-1-412. However, when the General Assembly passed North Carolina's monument protection law, on July 23, 2015, the actual name of the legislation is the "Cultural History Artifact Management and Patriotism Act of 2015," which is set forth under Chapter 100, as "**Protection of monuments, memorials, and works of art.**"

⁶ Chapter 100 of the North Carolina General Statutes also provides authority for political subdivisions of the State, to protect monuments by erecting fencing around the same, and to provide funding to erect monuments to conflicts such as the "War Between the States," the Great War, and the Second World War. See N.C. Gen. Stat. §§ 100-9 and 100-10, respectively. This statutory authority contemplates that local governments would expend time, resources and treasure to memorialize America's war veterans, and with the passage of N.C. Gen. Stat. § 100-2.1 in 2015 by the North Carolina General Assembly, the legislature ensured that these objects of remembrance would be preserved for all North Carolinians into the future regardless of whether the history of the wars themselves fell out of vogue and even if the same fate applied to the veterans themselves.

V. CLAIMS REQUIRING REDRESS

18. Petitioners are aggrieved by the vote of the Pasquotank Board of Commissioners approving the removal of the Monument and other actions taken in violation of the above-named statutes and rules in ways that include, but are not limited to, the following:

- a. The W.F. Martin Camp 1521's members include citizens and taxpayers of Pasquotank County and Elizabeth City, who, because of the direct conflict between the proposed removal of the Confederate Monument and the SCV's stated purpose, suffer an aesthetic injury that is distinct from the aesthetic injury suffered by the population of Pasquotank County as a whole. Also, because the Pasquotank Board of Commissioners failed to follow the requirements of N.C. Gen. Stat. § 100-2.1, the Camp has suffered a procedural injury.
- b. Moreover, the W.F. Martin Camp 1521, as the local camp in Pasquotank County, its members have a sufficient geographical nexus to the monument site in Elizabeth City, North Carolina as to have suffered an environmental and/or aesthetic consequence from the procedural missteps related to the denial of the application of N.C. Gen. Stat. § 100-2.1 by the Pasquotank County Board of Commissioners to these facts.⁷ In

⁷ It is important to note that the North Carolina Court of Appeals, in *Orange County v. North Carolina Dep't of Transp.* 46 N.C. App; 350, 265 S.E.2d 890 (NC Ct. App. 1980), discussed the legal standard for persons aggrieved (e.g. aggrieved parties) within an administrative law setting. Specifically, the Court of Appeals in citing a Federal Court case of the *City of Davis v. Coleman*, 521 F.2d 661, 671 (9th Cir. U.S. Ct. App. 1975) in relation to an injury suffered by a potential litigant stated that there must be a "sufficient geographical nexus to the site of the challenged project [in this instance challenged action] that ...[the party] may be expected to suffer whatever ... consequences the project may have."

In that same vein, the W.F. Martin Camp 1521, as the local SCV Camp in Pasquotank County will suffer a harm that is unique to the Camp and its members are they are located in the community that will be impacted by the Pasquotank Board of County Commissioners July 13, 2020 vote to remove the Confederate Monument. Moreover, the Camp's members whose families have lived in the county since before the Civil War, are the descendants of the very men memorialized by the County's Confederate Monument. Therefore, the injury suffered by these individuals is more unique than anyone else who is simply a local resident with no genealogical connection to the war, or any other member of the general public. Moreover, in keeping within the framework of the *Orange County* case, it should be noted that the members of the W.F. Martin Camp 1521, and the Camp itself, will suffer an aesthetic injury that is in many ways akin to the environmental

denying that the Act applies, the local government has further injured the W.F. Martin Camp 1521 in failing to submit to the requirements of N.C. Gen. Stat. § 100-2.1 in so much as these actions clear the way for the removal of the Confederate Monument in Elizabeth City without the involvement of the Commission;

- c. The North Carolina Division -- SCV's members include citizens and taxpayers of Pasquotank County and Elizabeth City, who, because of the direct conflict between the proposed removal of the Confederate Monument and the SCV's purpose, suffer an aesthetic injury that is distinct from the aesthetic injury suffered by the population of Pasquotank County as a whole, and the North Carolina Division -- SCV has also suffered by the failure of Pasquotank County to follow the requirements of N.C. Gen. Stat. § 100-2.1;
- d. The North Carolina Division -- SCV is the legal successor-in-interest to the United Confederate Veterans ("UCV") and claims the UCV's reversionary interest, if any in the Confederate Monument should it no longer be put to public use; and

19. All actions taken to date in violation of the above-named statutes and rules may be corrected by a ruling from DCR that Pasquotank County Board of Commissioner's July 13, 2020 vote to remove the Confederate Monument was improper, and could only be made with the express intent to seek approval of the North Carolina Historical Commission. However, consequences of inaction by the DCR and the Commission by not adjudicating this matter and ultimately issuing a declaratory ruling are expected to include, but not be limited to:

injuries that were alleged to be suffered by the local businesses and residents who were challenging the construction of I-40.

- a. Loss of public access to the Monument, and failure to preserve or conserve the Monument in conformity with the requirements of the Act;
- b. Loss of protection for other historic monuments and historic districts statewide under similar factual circumstances, due to the precedential nature of this matter;
- c. The alteration of such historic districts that will remove valuable historical and cultural assets from North Carolina's landscape in the pursuit of sanitizing these areas so that future generations of citizens will not be required to think critically of past events that have shaped the history of the state and the nation; and
- d. The potential withdrawal of the National Historic Landmark designation that protects these districts "[w]hen a designated property is altered so that it has lost its ability to convey its national significance, the withdrawal of its NHL designation must be considered."⁸

20. Moreover, there is a diverse opinion among local governments as to what, if any requirements of the Act apply. Under these circumstances alone, justification exists to hear this matter and reconcile the issues raised as to the application of the Act through the issuance of a fully vetted declaratory ruling.

21. As it stands, it is unclear as to what Pasquotank County intends as the ultimate fate of its Confederate Monument and whether the County understands what is required of it in relation to the restrictions placed upon it by the Act juxtaposed with its express desire to remove the monument (or object of remembrance).

22. This dilemma has been caused by the cavalier comments of Governor Cooper related to the three Confederate Monuments that were ultimately removed from the Old State Capitol

⁸ See <https://www.nps.gov/subjects/nationalhistoriclandmarks/withdrawn.htm>

Grounds at Union Square in Raleigh in June of this year. The comments of Governor Cooper were made on August 15, 2017, in which he stated, among other things, that “[s]ome people cling to the belief that the Civil War was fought over states’ rights. But history is not on their side. We cannot continue to glorify a war against the United States of America fought in the defense of slavery. These monuments should come down.” Emphasis added. Governor Cooper went on to state that “... the North Carolina legislature must repeal a 2015 law that prevents removal or relocation of monuments. Cities, counties and the state must have the authority and opportunity to make these decisions.” Emphasis added to original.

23. When the Confederate Monuments were removed from Raleigh between June 19-26, 2020, Governor Cooper’s anti-monument statements, which he began making in 2017 through June of 2020, became action throughout this summer and have now emboldened cities, counties and municipalities throughout the state to ignore the requirements of the Act. Some of the state’s political subdivisions such as Pasquotank and Gaston counties, either through their own action or through legal opinions provided by counsel have simply opined that the requirements of the Act apply only to the State and not its political subdivisions.

24. Fortunately, Gaston County reversed course when, on August 21, 2020, the North Carolina Division – SCV rejected the County’s offer to take possession of the monument once it was removed, citing the fact that the North Carolina Division – SCV believed the law applied to the political subdivisions of the state, and that the SCV could not take permanent possession. As a result, on August 25, 2020, when presented with the possibility of litigation to determine whether N.C. Gen. Stat § 100-2.1 applied to the Gaston County Confederate Monument, the Gaston County Board of Commissioners cast a new vote to rescind its prior decision in favor of removing the monument. Thus, the question related to whether the Act applies must consider that monuments are structures

that erected on real property, or are fixtures which are affixed to real property that are either owned by the state of North Carolina or owned by the political subdivisions of the State.

25. Additionally, without clear guidance from the Commission related to questions over which it has primary jurisdiction, other local governments within the State have opined that the public safety exception of the Act permits them to wantonly remove Confederate Monuments to protect “public safety” until the threat of protests, vandalism and riots abate, with a ninety-day (90 day) period after cessation of such threats, which the Act would then presumably require the re-erection of these monuments. The later position contorts the clear language of the Act. Moreover, the divergent views taken by political subdivisions of the State have caused a split among local governments. There are those that question whether the Act even applies, or if local government officials through the political process can discern for themselves, what sections of the Act can be cherry picked or contorted to support their position and support subsequent removal without a decision from the Commission holding otherwise.

26. Proposed and actual action taken to ensure “public safety” as justification for removal of “objects of remembrance” also contradicts precedent already established by the North Carolina Historical Commission on August 22, 2018, when disposing of the Petition to Permanently Relocate Objects of Remembrance filed on September 8, 2017, by the North Carolina Department of Administration at Governor Cooper’s behest. It was in this matter that the Commission refused to grant the petition to remove the three Confederate Monuments (objects of remembrance) at Union Square in Raleigh as actual protests and the fear of protests does not fall within the public safety exception under N.C. Gen. Stat. § 100-2.1(c). The Act does not provide for permanent removal based on fear created by protestors. Instead, local governments (and the State itself) have sufficient tools

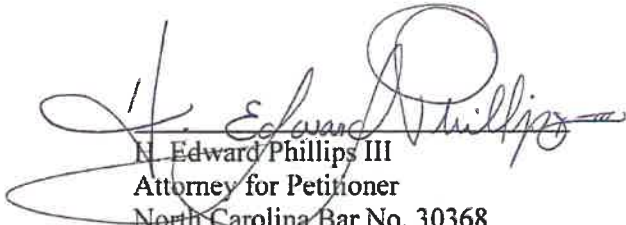
at their disposal to maintain law and order and protect the public safety without creating a political exception that does not exist in order to quell threats of potential violent riots or protests.

VI. REQUESTED RELIEF

WHEREFORE, based on the foregoing, the Petitioners respectfully request that:

1. The North Carolina Historical Commission set this matter for oral hearing and establish a briefing schedule;
2. Issue a declaratory ruling in favor of Petitioners after hearing and oral argument; and
3. Award the Petitioners such other relief as the Commission deems proper and equitable regarding the issues presented above.

Respectfully submitted this 16th day of September 2020, by:



N. Edward Phillips III
Attorney for Petitioner
North Carolina Bar No. 30368
219 Third Avenue North
Franklin, Tennessee 37064
615) 599-1785, Ext. 229 (Office)
615) 503-6940 (Fax)
edward@phillipslawpractice.com

From: [Neely, Alison](#)
To: ["edward@phillipslawpractice.com"](mailto:edward@phillipslawpractice.com)
Subject: Denial of Petition for Declaratory Ruling
Date: Wednesday, October 21, 2020 2:43:00 PM
Attachments: [10_21_2020_Denial_of_Request_for_Declaratory_Ruling.pdf](#)
[image003.png](#)

Mr. Phillips,

Please find attached the denial of the Petition for Declaratory Ruling.

Thank you.

Alison Neely
Paralegal



**North Carolina Department of Natural and Cultural Resources
Office of the Secretary**

Governor Roy Cooper

Secretary Susi H. Hamilton

October 21, 2020

VIA CERTIFIED MAIL AND ELECTRONIC MAIL TO edward@phillipslawpractice.com

Mr. H. Edward Phillips
219 Third Avenue North
Franklin, Tennessee 37064

*****DENIAL OF REQUEST FOR DECLARATORY RULING*****

Dear Mr. Phillips:

Your request for a declaratory ruling regarding the application of N.C. Gen. Stat. § 100-2.1 and the Pasquotank County confederate monument was received by the Department of Natural and Cultural Resources ("DNCR" or "the Department") on September 22, 2020. This letter serves as the Department's written decision to deny the request pursuant to N.C. Gen. Stat. § 150B-4 and 07 NCAC 01B .0110. It also refers this matter to the North Carolina Historical Commission ("NCHC" or "the Commission") if it wishes to consider the request or requested relief.

Your request was addressed to DNCR, and as Secretary it is my or my designee's responsibility to decide whether to grant or deny the request under the aforementioned statute and rule. However, the only requested relief in your request are proposed actions by the Commission, and not the Department. Section III. of your request refers to the authority of the NCHC under N.C. Gen. Stat. § 100-2.1, section V. alleges that NCHC approval was required before Pasquotank County removed its local confederate monument, and section VI. asks for a hearing and declaratory ruling by the NCHC. Although administratively housed with DNCR, the NCHC is an independent advisory and regulatory body with rulemaking authority separate from the Department's under N.C. Gen. Stat. § 143B-62. As Secretary of the Department, I do not set the agenda or otherwise determine the business of the Commission and cannot grant the relief you seek. This matter and your requested relief are not appropriately addressed by the declaratory ruling process established under the Department's rules in the North Carolina Administrative Code, and therefore your request is denied under 07 NCAC 01B .0110(b)(3).

I will note that even if your request sought relief from DNCR and not the NCHC, the Department would likely deny the request pursuant to 07 NCAC 01B .0110(b)(2) because "[t]here has been a similar determination in a previous contested case or declaratory ruling." In December 2011, the Historical

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LOCATION:
109 East Jones Street
Raleigh, NC 27601

H. Edward Phillips
Page 2
October 21, 2020

Preservation Action Committee and North Carolina Sons of Confederate Veterans, Inc. petitioned DNCR's predecessor, the Department of Cultural Resources, for a declaratory ruling that a confederate monument previously located in the city of Reidsville was state property and therefore improperly removed without prior approval of the NCHC. The Department issued a declaratory ruling denying all requested relief because the petitioners were not persons aggrieved and lacked standing. The Rockingham County Superior Court subsequently dismissed the petitioners' complaint requesting judicial review for lack of standing, and the North Carolina Court of Appeals upheld that dismissal in *Historical Pres. Action Comm., Inc. v. City of Reidsville*, 230 N.C. App. 598 (2013).

By way of this letter, I am forwarding your request to David Ruffin, chair of the NCHC, and Karen Blum, Special Deputy Attorney General of the North Carolina Department of Justice and the Commission's counsel in this matter. Although not styled as requests for declaratory rulings, the Commission has previously addressed other petitions regarding N.C. Gen. Stat. § 100-2.1 and submitted by both state agencies and members of the public. If you have any questions regarding the Commission and its consideration of your request, please contact Ms. Blum at (919) 716-6816 or kblum@ncdoj.gov.

Sincerely,



Susi H. Hamilton

cc: David Ruffin, Chair, North Carolina Historical Commission
Karen Blum, Special Deputy Attorney General, North Carolina Department of Justice



BEFORE THE NORTH CAROLINA DEPARTMENT
OF CULTURAL RESOURCES, AT RALEIGH, NORTH CAROLINA

IN RE: PASQUOTANK COUNTY)	
CONFEDERATE MONUMENT)	
)	
)	
)	Case No. _____
)	
NORTH CAROLINA DIVISION SONS OF)	
CONFEDERATE VETERANS, INC.,)	
)	
Petitioners.)	
)	
)	
)	

PETITION FOR DECLARATORY RULING REGARDING
THE APPLICATION OF N.C. GEN. STAT. § 100-2.11945

Pursuant to N.C. Gen. Stat. § 150B-4, and 7 N.C. Admin. Code § 1B.0110, the Petitioners, The Col. William F. Martin Camp 1521 Sons of Confederate Veterans, and The North Carolina Division Sons of the Confederate Veterans, Inc., by and through undersigned counsel respectfully petition the North Carolina Historical Commission through the North Carolina Department of Natural and Cultural Resources to issue a declaratory ruling as it relates to the application of pertinent sections of Chapter 100 of the North Carolina General Statutes related to **Monuments, Memorials and Parks**, as well as N.C. Gen. Stat. § 100-2.1 to the Pasquotank County Confederate Soldiers Monument.

I. PETITIONERS

1. The Col. William F. Martin Camp 1521 Sons of Confederate Veterans (the W.F. Martin Camp 1521") is an entity within the North Carolina Division Sons of the Confederate

Veterans, and is a North Carolina 501(c)(3) non-profit corporation operating under the laws of the state of North Carolina, having its principal place of business in Camden, Pasquotank County, North Carolina, and was chartered in Elizabeth City, North Carolina at its founding. The W.F. Martin Camp 1521 is a lineage society which seeks to preserve the memory of the Camp's ancestors who served in the Confederate States Army during the Civil War. Like all Sons of Confederate Veteran camps, its mission is not only to preserve the history of the Civil War and the soldiers of the Confederate States Army, its principal charitable purpose is "to aid and assist in the erection of suitable and enduring monuments and memorials to all Southern valor, civil and military, wherever done and wherever found."

2. The North Carolina Division Sons of the Confederate Veterans, Inc. (the "North Carolina Division – SCV"), is a North Carolina 501(c)(3) non-profit corporation operating under the laws of the state of North Carolina, having its principal place of business in Wake County, North Carolina, and a mailing address of 805 Cool Springs Road Sanford, North Carolina 27330. The North Carolina Division is a lineage society vested with the mission, and the duty to preserve the history of the Civil War, as well as the memory of the soldiers of the Confederate States Army, with its principal charitable purpose being "to aid and assist in the erection of suitable and enduring monuments and memorials to all Southern valor, civil and military, wherever done and wherever found."

II. INTRODUCTION

3. The North Carolina Department of Natural and Cultural Resources ("DCR")¹ has authority to issue a declaratory ruling with respect to these issues, which involves interpreting the

¹ On September 8, 2015, the DCR's name was changed to the North Carolina Department of Natural and Cultural Resources, upon the transfer of a number of divisions to be placed under the control of DCR, which included those divisions responsible for maintaining the state of North Carolina's natural resources. Some of the official references to

applicability of the following rules and statutes which are administered by DCR – N.C. Gen. Stat. §§ 100-2, 100-2.1, 100-3, 100-9, 100-10, and 16 U.S.C. § 470 (the National Historic Preservation Act of 1966).

4. The North Carolina Historical Commission (the “Commission”), which is an agency within the DCR, is charged with promulgating “rules and regulations to be followed in the acquisition, disposition, preservation, and use of records, artifacts, real and personal property,” See N.C. Gen. Stat§ 143B-62. Additionally, under N.C. Gen. Stat. § 100-2.1, the Commission is vested with primary jurisdiction to resolve matters related to the proposed removal, relocation and/or alteration of an object of remembrance located on any public property located within the state. Moreover, the public policy goal of the Act favors preservation of objects of remembrance, and not an indefinite temporary removal of the same, or a permanent removal unless the object of remembrance “... shall be relocated to a site of similar prominence, honor, visibility, availability, and access that are within the boundaries of the jurisdiction from which it was relocated.” Additionally, “[a]n object of remembrance may not be relocated to a museum, cemetery, or mausoleum unless it was originally placed at such a location.”

5. Pasquotank County was established under the powers granted to the North Carolina General Assembly under Article VII, § 1 of the Constitution of the State of North Carolina, specifically, “[t]he General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except

the DCR have not changed, such as under 7 N.C. Admin. Code § 1B.0110, which relates to the process for filing a request for a declaratory ruling. As a result, this *Petition* will refer to the Department under its former nomenclature. See <https://www.ncpedia.org/cultural-resources-department>; and <https://www.nc.gov/agency/natural-and-cultural-resources-department>

as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.”²

6. Pasquotank County is governed by its County Board of Commissioners, which is a seven-member Board representing Pasquotank County. Specifically, the commissioners are elected at-large and from districts in county-wide elections to serve four-year staggered terms, with four members required to reside in specified districts, and three members elected at-large. The Board of Commissioners elects a Chairman and Vice-Chairman at its December meeting. See <https://www.pasquotankcountync.org/aboutboard>.

7. The Pasquotank County Confederate Soldiers Monument (e.g. “object of remembrance”) is located near the Pasquotank County Courthouse at 206 E Main Street in Elizabeth City, North Carolina.

8. The Pasquotank County Confederate Soldiers Monument (the “Confederate Monument”) was originally erected in 1911, with its dedication held on May 10th of that year. See: <https://docsouth.unc.edu/commland/monument/515/#:~:text=This%20statue%20is%20located%20at%20the%20year%201865>.

9. On July 13, 2020, the Pasquotank County Commission held a vote related to the removal of the Confederate Monument, and by a split vote of four to three (4-3), decided to remove

² Pasquotank Co., was originally established as Pasquotank Precinct in the British Colony of North Carolina in 1684 form then Carteret Precinct within the Albemarle region. The Pasquotank Precinct was granted status as a county by the Royal Government on March 6, 1739, and was within the established territory recognized under the First Constitution of the state of North Carolina adopted at Halifax, North Carolina on December 18, 1776, after the adoption of the *Declaration of Independence* by the Continental Congress assembled in Philadelphia on July 2, 1776. Subsequently, the North Carolina General Assembly modified the boundary lines of Pasquotank County to create other counties, or to define county boundary lines, first on May 9, 1777, then on December 19, 1804, with final action taken on March 6, 1909. Thus, Pasquotank was, and has been since the adoption of the first state constitution, under the control of the Government of the State of North Carolina and bound by its laws.

See: https://publications.newberry.org/ahcbp.documents/NC_Individual_County_Chronologies.htm; <https://www.ncpedia.org/anchor/introduction-colonial-north>; and https://avalon.law.yale.edu/18th_century/nc07.asp#b2

the monument. Specifically, according to reporting, Commissioner Cecil Perry stated that the, “[i]t does not belong on this property[.]” when referring to the Confederate Monument, and its current location on the grounds of the Pasquotank County Courthouse.

10. The North Carolina Division – SCV is concerned that the action taken by the Pasquotank Board of Commissioners in its vote to remove the Pasquotank County Confederate Monument violates the requirements of the North Carolina Monument Protection Act (the “Act”), codified at N.C. Gen. Stat. § 100-2.1. The North Carolina Division – SCV believes that the Act compels the state of North Carolina or any political subdivision of the state to seek the approval of the North Carolina Historical Commission prior to the removal or relocation of any object of remembrance from public property, either on a temporary or permanent basis.

III. JURISDICTION

11. The Commission has jurisdiction to entertain this *Petition for Declaratory Ruling* under N.C. Gen. Stat. § 100-2.1(a), which establishes that no “monument, memorial, or work of art owned by the State be removed, relocated, or altered in any way without the approval of the North Carolina Historical Commission.” Moreover, subsection (b) of the Act, which is much broader than subsection (a), places limitations on removal, and specifically states that “[a]n object of remembrance located on public property may not be permanently removed and may only be relocated, whether temporarily or permanently, under the circumstances listed in this subsection and subject to the limitations in this subsection.” To that end, this subsection also states that “[t]he circumstances under which an object of remembrance may be relocated are either of the following: (1) [w]hen appropriate measures are required by the State or a political subdivision of the State to preserve the object, or

(2) When necessary for construction, renovation, or reconfiguration of buildings, open spaces, parking, or transportation projects.” Emphasis added to original.

IV. STATEMENT OF FACTS

12. Prior to the events of May 25, 2020, in relation to the senseless death of George Floyd while in the custody of the Minneapolis Police Department, there had been relatively little public objection to any war memorials, Confederate or otherwise. This was true for decades anywhere in the State of North Carolina – until a mob of demonstrators and political protesters illegally tore down and vandalized a Confederate monument located outside the Durham County Courthouse on August 14, 2017. However, the actions of these protestors and vandals in 2017, as well as subsequent protests related to Confederate monuments since May of this year, do not represent the actual sentiment related to the existence of the same. This is particularly underscored by the release of a Wall Street Journal/NBC News Poll on July 23, 2020, concerning public sentiment surrounding Confederate memorialization, which demonstrate that the large majority of the American people do not favor completely removing these monuments from the public forum.³

³ The Wall Street Journal/NBC News Poll provides the following useful information related to four questions concerning Confederate Monuments in public spaces. The four questions asked of the participants within the polling sample are as follows:

1. Should Confederate Monuments be removed and destroyed? 10% of those polled supported this option;
2. Should Confederate Monuments be moved to museums or private property? 31% of those polled supported this option;
3. Should Confederate Monuments be left in place with contextual markers? 41% of those polled supported this option; and
4. Should Confederate Monuments remain in place as is? 16% of those polled supported this option;

Moreover, only twenty-two percent (22%) of African American participants participating in the poll wished to remove and destroy these monuments, with the vast majority, seventy-four percent (74%) falling in the middle ground by supporting options two (2) and three (3), please see the poll results at: <https://www.wsj.com/articles/after-confederate-monuments-fall-where-do-they-go-11595509200>. Polling results demonstrate that 57% of the population desire to maintain these monuments in place.

The WSJ/NBC News polling results also reinforce the fact that a large majority of Americans, including members of the African American community, support a more moderate and measured approach concerning the resolution of the monument issue. Additionally, both Alamance and Gaston counties have cast votes to keep their Confederate Monuments in place, which is consistent not only with the polling, but supports the objectives of N.C. Gen. Stat. § 100-2.1, which applies to the state of North Carolina, and its political subdivisions possessing monuments located on public property.

13. The Confederate Monument located at the Pasquotank County Courthouse, is an object of remembrance as that term is defined under the Act, which specifically "... means a monument, memorial, plaque, statue, marker, or display of a permanent character that commemorates an event, a person, or military service that is part of North Carolina's history." See N.C. Gen. Stat. § 100-2.1(b). As this monument is dedicated to the Confederate soldiers, as it states on the monument's rear, north face that it is dedicated: "TO OUR CONFEDERATE DEAD[.]" which means that it clearly falls within the definition of an object of remembrance as it is a monument memorializing the Confederate dead from Pasquotank County, while also commemorating persons engaged in military service within the Confederate Military, and is clearly part of North Carolina's history and ties to national history related to the American Civil War. See *Appeal of Clayton-Marcus Co., Inc.*, 286 N.C. 215, 219; 210 S.E.2d 199, 203 (1974) ("In the construction of any statute, . . . words must be given their common and ordinary meaning Where, however, the statute, itself, contains a definition of a word used therein, that definition controls[.]")

14. The Confederate Monument is likewise located within the confines of the downtown historical district as recognized by the National Park Service, and appears on the Register of National Historic Places. Additionally, the Confederate Monument also represents Elizabeth City's history related to the Civil War and the military action that occurred within the confines of Elizabeth City and the environs of Pasquotank County during that period. Thus, there is no denying that the maintenance and inclusion of the Confederate Monument supports both local tourism, and in particular, Civil War tourism as it is part and parcel of those objects, buildings and features that are the essence of the Elizabeth City Historical District and integral features of this National Historic Place.

15. As the Commission is aware, the National Register of Historic Places is the official list of the Nation's historic places that have been recognized as worthy of preservation. The designation on the list is authorized by the National Historic Preservation Act of 1966 (16 U.S.C. § 470), and is managed by the National Park Service, as part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources, which certainly includes the Pasquotank County Confederate Monument in Elizabeth City.

16. The location of this Confederate Monument near the Pasquotank County Courthouse in Elizabeth City, North Carolina, is public property as contemplated under N.C. Gen. Stat. § 100-2.1(b),^{4/5} and as result, the Commission may enter a Declaratory Ruling declaring that the Confederate

⁴ See the Blog – *Statues and Statutes: Limits on Removing Monuments from Public Property*, Assoc. Prof. Adam Lovelady – UNC Chapel Hill, School of Government, posted August 22, 2017. Prof. Lovelady states in pertinent part that “North Carolina law limits the extent to which the objects of remembrance may be removed from public property or relocated. That law [e.g. the Act] applies to a broad array of memorials, monuments, statues and other objects, including the many Confederate monuments found on county courthouse grounds and other public property across the State.” (Emphasis added to original).

⁵ See also “North Carolina’s Heritage Protection Act: Cementing Confederate Monuments in North Carolina’s Landscape,” Kasi E. Wahlers, *94 N.C.L. Rev.* 2176 (2016) at pp. 2184 to 2185, wherein the author states the following:

In addition to the powers granted to the Commission within the HPA, this appointed body also has the power to approve any monument, memorial, or work of art before it becomes state property. Following the delegation of authority to the Commission, the “Limitations on Removal” subsection states that “[a]n object of remembrance located on public property may not be permanently removed and may only be relocated, whether temporarily or permanently, under the circumstances listed in this subsection and subject to the limitations in this subsection.” The statute then lists two circumstances in which relocation is appropriate: “(1) [w]hen appropriate measures are required by the State or a political subdivision of the State to *preserve* the object [and] (2) [w]hen necessary for *construction, renovation, or reconfiguration* of buildings, open spaces, parking, or transportation projects.” **In sum, the HPA effectively prohibits any object of remembrance from being permanently removed.** and it only permits relocation in those two narrow circumstances. (Emphasis added to original and internal footnotes removed.)

See p. 2189 as follows:

The statute’s legislative history suggests that the law applies to all public property within the state, effectively prohibiting local governments from controlling their own monuments. The intent of legislators to make the HPA applicable to all public property is clear when examining rejected proposals to narrow the scope of the HPA. (Emphasis added to original).

Monument located in Elizabeth City, and within Pasquotank County that acknowledges that these entities are political subdivision of the state of North Carolina, and are both subject to the provisions of the Act.⁶ Specifically, Pasquotank County is also subject to the restraints and requirements of the Act related to the temporary or permanent removal and relocation of objects of remembrance such as the Confederate Monument at issue in this immediate filing.

17. Finally, as set forth in the Statute, the grounds for removal and relocation of the Monuments are exceedingly narrow. See Kasi E. Wahlers, *North Carolina's Heritage Protection Act: Cementing Confederate Monuments in North Carolina's Landscape*, 94 N.C. L. Rev. 2176, 2185 (Sept. 1, 2016) ("In sum, the [Act] effectively prohibits any object of remembrance from being permanently removed, and it only permits relocation in ... two narrow circumstances."); see also *id.* at 2188-89 ("When considering the way[,] the statute operates as opposed to how it appears on its face, the North Carolina [Act] is functionally a complete prohibition of monument removal.").

Please note that Ms. Wahlers refers to N.C. Gen. Stat. § 100-2.1 as the "Heritage Protection Act." See Footnote No. 20 at p. 2180. Ms. Wahlers in her article specifically notes that a number of Southern states have passed such laws, which she refers to as heritage protection laws, and which is the actual title of the Tennessee law codified as Tenn. Code. Ann. § 4-1-412. However, when the General Assembly passed North Carolina's monument protection law, on July 23, 2015, the actual name of the legislation is the "Cultural History Artifact Management and Patriotism Act of 2015," which is set forth under Chapter 100, as "**Protection of monuments, memorials, and works of art.**"

⁶ Chapter 100 of the North Carolina General Statutes also provides authority for political subdivisions of the State, to protect monuments by erecting fencing around the same, and to provide funding to erect monuments to conflicts such as the "War Between the States," the Great War, and the Second World War. See N.C. Gen. Stat. §§ 100-9 and 100-10, respectively. This statutory authority contemplates that local governments would expend time, resources and treasure to memorialize America's war veterans, and with the passage of N.C. Gen. Stat. § 100-2.1 in 2015 by the North Carolina General Assembly, the legislature ensured that these objects of remembrance would be preserved for all North Carolinians into the future regardless of whether the history of the wars themselves fell out of vogue and even if the same fate applied to the veterans themselves.

V. CLAIMS REQUIRING REDRESS

18. Petitioners are aggrieved by the vote of the Pasquotank Board of Commissioners approving the removal of the Monument and other actions taken in violation of the above-named statutes and rules in ways that include, but are not limited to, the following:

- a. The W.F. Martin Camp 1521's members include citizens and taxpayers of Pasquotank County and Elizabeth City, who, because of the direct conflict between the proposed removal of the Confederate Monument and the SCV's stated purpose, suffer an aesthetic injury that is distinct from the aesthetic injury suffered by the population of Pasquotank County as a whole. Also, because the Pasquotank Board of Commissioners failed to follow the requirements of N.C. Gen. Stat. § 100-2.1, the Camp has suffered a procedural injury.
- b. Moreover, the W.F. Martin Camp 1521, as the local camp in Pasquotank County, its members have a sufficient geographical nexus to the monument site in Elizabeth City, North Carolina as to have suffered an environmental and/or aesthetic consequence from the procedural missteps related to the denial of the application of N.C. Gen. Stat. § 100-2.1 by the Pasquotank County Board of Commissioners to these facts.⁷ In

⁷ It is important to note that the North Carolina Court of Appeals, in *Orange County v. North Carolina Dep't of Transp.* 46 N.C. App; 350, 265 S.E.2d 890 (NC Ct. App. 1980), discussed the legal standard for persons aggrieved (e.g. aggrieved parties) within an administrative law setting. Specifically, the Court of Appeals in citing a Federal Court case of the *City of Davis v. Coleman*, 521 F.2d 661, 671 (9th Cir. U.S. Ct. App. 1975) in relation to an injury suffered by a potential litigant stated that there must be a "sufficient geographical nexus to the site of the challenged project [in this instance challenged action] that ...[the party] may be expected to suffer whatever ... consequences the project may have."

In that same vein, the W.F. Martin Camp 1521, as the local SCV Camp in Pasquotank County will suffer a harm that is unique to the Camp and its members are they are located in the community that will be impacted by the Pasquotank Board of County Commissioners July 13, 2020 vote to remove the Confederate Monument. Moreover, the Camp's members whose families have lived in the county since before the Civil War, are the descendants of the very men memorialized by the County's Confederate Monument. Therefore, the injury suffered by these individuals is more unique than anyone else who is simply a local resident with no genealogical connection to the war, or any other member of the general public. Moreover, in keeping within the framework of the *Orange County* case, it should be noted that the members of the W.F. Martin Camp 1521, and the Camp itself, will suffer an aesthetic injury that is in many ways akin to the environmental

denying that the Act applies, the local government has further injured the W.F. Martin Camp 1521 in failing to submit to the requirements of N.C. Gen. Stat. § 100-2.1 in so much as these actions clear the way for the removal of the Confederate Monument in Elizabeth City without the involvement of the Commission;

- c. The North Carolina Division – SCV’s members include citizens and taxpayers of Pasquotank County and Elizabeth City, who, because of the direct conflict between the proposed removal of the Confederate Monument and the SCV’s purpose, suffer an aesthetic injury that is distinct from the aesthetic injury suffered by the population of Pasquotank County as a whole, and the North Carolina Division – SCV has also suffered by the failure of Pasquotank County to follow the requirements of N.C. Gen. Stat. § 100-2.1;
- d. The North Carolina Division – SCV is the legal successor-in-interest to the United Confederate Veterans (“UCV”) and claims the UCV’s reversionary interest, if any in the Confederate Monument should it no longer be put to public use; and

19. All actions taken to date in violation of the above-named statutes and rules may be corrected by a ruling from DCR that Pasquotank County Board of Commissioner’s July 13, 2020 vote to remove the Confederate Monument was improper, and could only be made with the express intent to seek approval of the North Carolina Historical Commission. However, consequences of inaction by the DCR and the Commission by not adjudicating this matter and ultimately issuing a declaratory ruling are expected to include, but not be limited to:

injuries that were alleged to be suffered by the local businesses and residents who were challenging the construction of I-40.

- a. Loss of public access to the Monument, and failure to preserve or conserve the Monument in conformity with the requirements of the Act;
- b. Loss of protection for other historic monuments and historic districts statewide under similar factual circumstances, due to the precedential nature of this matter;
- c. The alteration of such historic districts that will remove valuable historical and cultural assets from North Carolina's landscape in the pursuit of sanitizing these areas so that future generations of citizens will not be required to think critically of past events that have shaped the history of the state and the nation; and
- d. The potential withdrawal of the National Historic Landmark designation that protects these districts "[w]hen a designated property is altered so that it has lost its ability to convey its national significance, the withdrawal of its NHL designation must be considered."⁸

20. Moreover, there is a diverse opinion among local governments as to what, if any requirements of the Act apply. Under these circumstances alone, justification exists to hear this matter and reconcile the issues raised as to the application of the Act through the issuance of a fully vetted declaratory ruling.

21. As it stands, it is unclear as to what Pasquotank County intends as the ultimate fate of its Confederate Monument and whether the County understands what is required of it in relation to the restrictions placed upon it by the Act juxtaposed with its express desire to remove the monument (or object of remembrance).

22. This dilemma has been caused by the cavalier comments of Governor Cooper related to the three Confederate Monuments that were ultimately removed from the Old State Capitol

⁸ See <https://www.nps.gov/subjects/nationalhistoriclandmarks/withdrawn.htm>

Grounds at Union Square in Raleigh in June of this year. The comments of Governor Cooper were made on August 15, 2017, in which he stated, among other things, that “[s]ome people cling to the belief that the Civil War was fought over states’ rights. But history is not on their side. We cannot continue to glorify a war against the United States of America fought in the defense of slavery. These monuments should come down.” Emphasis added. Governor Cooper went on to state that “... the North Carolina legislature must repeal a 2015 law that prevents removal or relocation of monuments. Cities, counties and the state must have the authority and opportunity to make these decisions.” Emphasis added to original.

23. When the Confederate Monuments were removed from Raleigh between June 19-26, 2020, Governor Cooper’s anti-monument statements, which he began making in 2017 through June of 2020, became action throughout this summer and have now emboldened cities, counties and municipalities throughout the state to ignore the requirements of the Act. Some of the state’s political subdivisions such as Pasquotank and Gaston counties, either through their own action or through legal opinions provided by counsel have simply opined that the requirements of the Act apply only to the State and not its political subdivisions.

24. Fortunately, Gaston County reversed course when, on August 21, 2020, the North Carolina Division – SCV rejected the County’s offer to take possession of the monument once it was removed, citing the fact that the North Carolina Division – SCV believed the law applied to the political subdivisions of the state, and that the SCV could not take permanent possession. As a result, on August 25, 2020, when presented with the possibility of litigation to determine whether N.C. Gen. Stat § 100-2.1 applied to the Gaston County Confederate Monument, the Gaston County Board of Commissioners cast a new vote to rescind its prior decision in favor of removing the monument. Thus, the question related to whether the Act applies must consider that monuments are structures

that erected on real property, or are fixtures which are affixed to real property that are either owned by the state of North Carolina or owned by the political subdivisions of the State.

25. Additionally, without clear guidance from the Commission related to questions over which it has primary jurisdiction, other local governments within the State have opined that the public safety exception of the Act permits them to wantonly remove Confederate Monuments to protect “public safety” until the threat of protests, vandalism and riots abate, with a ninety-day (90 day) period after cessation of such threats, which the Act would then presumably require the re-erection of these monuments. The later position contorts the clear language of the Act. Moreover, the divergent views taken by political subdivisions of the State have caused a split among local governments. There are those that question whether the Act even applies, or if local government officials through the political process can discern for themselves, what sections of the Act can be cherry picked or contorted to support their position and support subsequent removal without a decision from the Commission holding otherwise.

26. Proposed and actual action taken to ensure “public safety” as justification for removal of “objects of remembrance” also contradicts precedent already established by the North Carolina Historical Commission on August 22, 2018, when disposing of the Petition to Permanently Relocate Objects of Remembrance filed on September 8, 2017, by the North Carolina Department of Administration at Governor Cooper’s behest. It was in this matter that the Commission refused to grant the petition to remove the three Confederate Monuments (objects of remembrance) at Union Square in Raleigh as actual protests and the fear of protests does not fall within the public safety exception under N.C. Gen. Stat. § 100-2.1(c). The Act does not provide for permanent removal based on fear created by protestors. Instead, local governments (and the State itself) have sufficient tools

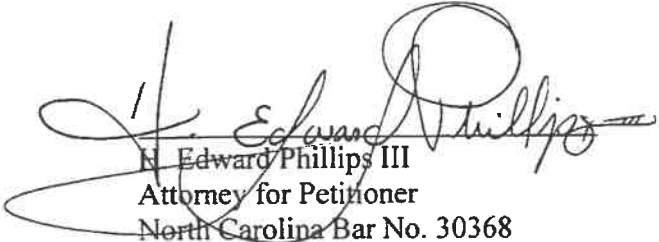
at their disposal to maintain law and order and protect the public safety without creating a political exception that does not exist in order to quell threats of potential violent riots or protests.

VI. REQUESTED RELIEF

WHEREFORE, based on the foregoing, the Petitioners respectfully request that:

1. The North Carolina Historical Commission set this matter for oral hearing and establish a briefing schedule;
2. Issue a declaratory ruling in favor of Petitioners after hearing and oral argument; and
3. Award the Petitioners such other relief as the Commission deems proper and equitable regarding the issues presented above.

Respectfully submitted this 16th day of September 2020, by:


N. Edward Phillips III
Attorney for Petitioner
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615) 503-6940 (Fax)
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Fw: Denial of Petition for Declaratory Ruling

Blum, Karen <KBLUM@ncdoj.gov>

Wed 10/21/2020 14:48

To: Ruffin, David <eis600@gmail.com>

📎 1 attachments (1 MB)

10 21 2020 Denial of Request for Declaratory Ruling.pdf;

Good afternoon, David. Please let me know when you have a chance to discuss this in the next week or so. Thanks.

With highest regards,

Karen



Karen A. Blum
Special Deputy Attorney General
Services to State Agencies Section
Phone: 919-716-6816
Email: kblum@ncdoj.gov
114 W. Edenton St., Raleigh, NC 27603
P.O. Box 629, Raleigh, NC 27602-0629
ncdoj.gov

Please note that messages to or from this address may be public records.

From: Neely, Alison <alison.neely@ncdcr.gov>
Sent: Wednesday, October 21, 2020 14:44
To: Feagan, Phillip H <Phil.Feagan@ncdcr.gov>; Blum, Karen <KBLUM@ncdoj.gov>
Subject: FW: Denial of Petition for Declaratory Ruling

From: Neely, Alison
Sent: Wednesday, October 21, 2020 2:44 PM
To: 'edward@phillipslawpractice.com' <edward@phillipslawpractice.com>
Subject: Denial of Petition for Declaratory Ruling

Mr. Phillips,

Please find attached the denial of the Petition for Declaratory Ruling.

Thank you.

Alison Neely

Paralegal



Alison G. Neely
N.C. Department of Natural and Cultural Resources
Paralegal
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Alison.Neely@ncdcr.gov

109 East Jones Street | 4601 Mail Service Center | Raleigh, North Carolina 27699

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And don't forget your Ws! Wear. Wait. Wash.
WEAR a face covering.
WAIT 6 feet apart from other people.
WASH your hands often.

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AGENDA

Meeting of the
North Carolina Historical Commission

1:00 p.m.

November 23, 2020

Zoom Conference Call

☞☞☞ ☞☞☞

- Welcome/Conflict of Interest Statement
- Approval of NCHC Meeting Minutes from 03 September 2020 and 23 September 2020
- Millie Barbee Resolution
- Accessions and Deaccessions
- Request regarding Pasquotank County Confederate monument
- Adjourn

Link to Video of November 23, 2020 Meeting of North Carolina Historical Commission

North Carolina Historical Commission

November 2020



NC Historical Commission Nov 2020

124 views • Streamed live on Nov 23, 2020

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North Carolina Historical Commission Meeting Minutes

November 23, 2020

Conference Call

The North Carolina Historical Commission (NCHC, Commission) met via Zoom conference call on Monday, November 23, 2020. In attendance were the following commissioners: David Ruffin, Chair; Dr. Mary Lynn Bryan; Samuel B. Dixon; Dr. Valerie A. Johnson; Dr. Malinda Maynor Lowery; B. Perry Morrison Jr.; Susan Phillips; W. Noah Reynolds; and Barbara B. Snowden. Absent were commissioners Dr. David C. Dennard and Dr. Darin Waters.

Other staff members of the North Carolina Department of Natural and Cultural Resources (DNCR) in attendance included: Dr. Kevin Cherry, Deputy Secretary of the DNCR, Director of the Office of Archives and History (OAH), and Secretary of the NCHC; Phil Feagan, General Counsel, DNCR; Sarah Koonts, Director of the Division of Archives and Records (DAR); Michelle Lanier, Director of the Division of State Historic Sites and Properties (DSHSP); and Parker Backstrom, OAH administrative assistant and Recording Secretary of the NCHC.

Also, in attendance were: Karen Blum, Special Deputy Attorney General, North Carolina Department of Justice (DOJ), and General Counsel to the NCHC in matters dealing with the relocation or removal of Confederate monuments; and Matt Zeher, Video Producer for the DNCR, who facilitated the virtual transmission of the video conference call.

Call to Order and Opening Remarks

Chairman Ruffin called the meeting to order at 1:01 P.M. He called roll and noted that a quorum was present.

Conflict of Interest Statement

Mr. Ruffin asked each Commission member, their having had a chance to review the agenda in advance of the meeting, whether any might have a real or perceived conflict of interest pertaining to the business that would come before the Commission this day. No such concerns were expressed, and the meeting went forth.

Approval of Minutes

Chairman Ruffin asked whether anyone had any changes they wish made to either set of minutes sent to them for review in advance of today's meeting. Regarding the minutes from the NCHC's September 3, 2020 meeting, Ms. Phillips asked that the title 'Professor' be replaced by the honorific 'Ms.' With no other changes requested, Mr. Morrison moved acceptance of that set of meeting minutes pending that change. That motion was seconded by Dr. Bryan and a roll call vote to accept was unanimous.

Mr. Morrison then moved to accept the meeting minutes from the September 23, 2020 meeting of the NCHC as written. That motion was seconded by Ms. Phillips, and a roll call vote to carry the motion was unanimous.

Former Commissioner Millie M. Barbee Resolution

Chairman Ruffin reminded the commissioners that a letter to Governor Cooper, asking him to bestow upon former Commission chair and long-time commissioner Millie M. Barbee the title of Commissioner Emeritus, was approved by the Commission at its last meeting. He also noted that Mr. Morrison had requested that that letter be adapted into a resolution that could be sent to Ms. Barbee on behalf of the Commission, recognizing her years of exemplary service to the NCHC. Ms. Snowden commended the resolution, a draft copy of which was sent to commissioners in advance of the meeting, and moved acceptance of it. The motion was seconded by Mr. Morrison and accepted by a unanimous roll call vote.

Accessions and Deaccessions from State History Museums and State Historic Sites

Dr. Cherry referred commissioners to the annotated list of items recommended by the OAH Accessions Committee (OAHAC) for accessioning into and deaccessioning out of state collections. A copy of this list, which was sent to the commissioners prior to the meeting, has been placed in the file for this meeting. He proposed presenting all accessions for the Museum of History (MOH), the Mountain Gateway Museum, the North Carolina Maritime Museums (NCMMs), and the DSHSP as a single slate for approval, and provided a very brief overview of the items. With no questions about any of the items, Dr. Bryan moved approval of the recommendations from the OAHAC. The motion was seconded by Dr. Johnson and carried on unanimous roll call vote.

The only deaccessions recommended are from the NCMMs. After a brief overview of the items on the list and a notation that all would be deaccessioned via auction, Ms. Phillips moved acceptance of the OAHAC recommendations and Mr. Morrison seconded the motion. Typically, said Dr. Cherry, deaccessions have been handled by two separate votes—the first approving the item for deaccession, the second approving the method of disposal. But addressing a question from Mr. Morrison, Dr. Cherry concurred that because the recommended method of disposal is uniform for all items, a single vote on both questions would suffice in this case. The roll call vote to deaccession the items by way of auction was carried unanimously.

Ms. Koonts was given the floor to run through the four groupings of archival materials that the DAR is requesting the NCHC approve for deaccessioning from the state archives. She explained that the deaccession process for these materials, all from the Office of the Governor pertaining to institutionalized prisoners, would transfer the legal custody of the records from the state archives back to the Governor's Office. The physical custody, she said, would remain with the archives. No discussion was forthcoming, so Mr. Morrison moved approval of the deaccession request. The motion was seconded by Ms. Snowden, and a roll call vote to carry the motion was approved unanimously.

Pasquotank County Confederate Monument Issue

Mr. Ruffin directed the commissioners' attention to a petition pertaining to the removal of a confederate monument in Pasquotank County. The petitioner in this case is the North Carolina Division of Sons of Confederate Veterans (SCV), Incorporated. The petition, directed to the DNCR, asked the DNCR for a declaratory ruling on the confederate monument. DNCR Secretary

Susi Hamilton, responding on behalf of the department, denied the request for a declaratory ruling, citing precedent. The commissioners were provided with copies of both the petition and Secretary Hamilton's response letter in advance of the meeting.

Mr. Ruffin stated that although advised by legal counsel that the Commission may enter into closed session to receive legal advice from counsel on the matter, he prefers that discussion about the NCHC's decision whether to consider the SCV's request for a ruling and request for relief be conducted in open session, so as to maintain transparency on the deliberative process. This sentiment was echoed by Mr. Dixon, and no objection to proceeding in open session was heard from any member of the Commission. Mr. Dixon thereby moved that the NCHC waive its right to enter into closed session to discuss the Pasquotank County confederate monument issue. The motion was seconded by Dr. Bryan and carried by unanimous roll call vote.

The NCHC's legal counsel, Karen Blum, was given the floor. She introduced herself and stated that as general counsel to the NCHC on matters dealing with the removal or relocation of confederate monuments, the legal opinions she would offer are hers as counsel to the Commission and do not necessarily represent those of the attorney general's office. She stated for the record her understanding that the Commission opted to waive its right to discuss the petition filed by the SVC and receive legal advice in closed session.

Ms. Blum laid out a framework for subsequent discussion, explaining the basics of the petition submitted to the DNCR, explaining the statutes that pertain to confederate monuments, what parties can petition the Commission, and described what options are available to the Commission in this situation. She explained that on July 13, 2020, the Pasquotank County Board of Commissioners voted to remove the Pasquotank Confederate Soldiers Monument, located near the county courthouse in Elizabeth City. She confirmed that the Secretary of the DNCR received a petition on September 22, 2020 for a declaratory ruling regarding the applicability of N.C.G.S. 100-2.1 to the Pasquotank Confederate Soldiers Monument. As explained, Secretary Hamilton denied the petitioner's request on October 21, 2020 because it was directed to the DNCR, and because it requested relief from the NCHC, despite being directed to the DNCR. In the Secretary's letter of denial, she stated that the NCHC is an independent advisory and regulatory body with independent rule making authority, and that the matter was inappropriately directed to the DNCR. But the Secretary forwarded the petition to the NCHC for its consideration.

Ms. Blum explained that because the petition for declaratory ruling has already been denied by the DNCR, in the opinion of Ms. Blum, the matter is "dead." That said, she advised that the NCHC, if it so chooses, consider this petition, as it opted to do with the handful of citizens' petitions it received several years ago asking the NCHC to remove the Silent Sam statue on the campus of the University of North Carolina at Chapel Hill.

Ms. Blum explained that in the Pasquotank County matter the party requesting relief is the Colonel William F. Martin Camp 1521 SCV and the North Carolina Division of the SCV, hereafter referred collectively as the "SCV." The Colonel William F. Martin Camp claims to be the legal successor in interest to the United Confederate Veterans and claims a reversionary interest in the Pasquotank County monument. She noted that nowhere in the petition is it alleged that the monument is state-owned.

The SCV, said Ms. Blum, is asking the NCHC to schedule an oral hearing with a briefing schedule. It also wants the NCHC to acknowledge that Pasquotank County is a political subdivision of the state and therefore subject to the provisions of the Cultural History and Artifact Management

Patriotism Act of 2015, also known as N.C.G.S. 100. The SCV is also seeking a declaratory ruling that the state or any political subdivision of the state must seek approval of the NCHC prior to relocation or removal of a monument from public property.

Special Deputy Attorney General Blum then explained what the Cultural History and Artifact Management Patriotism Act of 2015 says, and what authority it gives the NCHC in matters of monument removal. G.S. 100-2 says that a monument may not become the property of the state or be placed on state property unless it is approved by the North Carolina Historical Commission. Another statute under that chapter, G.S. 100-2.1(a), states that a monument owned by the state may not be removed, relocated, or altered without the approval of the North Carolina Historical Commission. G.S. 100-2.1(b) puts forth limitations on the removal of “objects of remembrance” from “public property,” not limited to state-owned property. In that statute an object of remembrance is defined as including monuments or a display of permanent character commemorating an event, person or military service in North Carolina History. So, the statute says an object of remembrance “on public property may not be permanently removed,” it can only be relocated, whether temporarily or permanently. There are some exceptions, though, and these exceptions are taken outside G. S. 100-2.1 in its entirety. Those exceptions are for highway markers, objects of remembrance owned by private parties on public property where there is a legal agreement, or an object of remembrance which a building inspector or similar official determined poses a threat to public safety.

Ms. Blum posed the rhetorical questions, what does all of this mean, and who is permitted to petition the NCHC? To petition the NCHC you must be a person aggrieved by an administrative action, as required under the Administrative Procedure Act. A person aggrieved is defined as a “person or group of persons of common interest directly or indirectly affected substantially in his or her or its person, property, or employment by an administrative decision.” As it pertains to the other request put forth in the petition, that for a declaratory ruling, she added that the Administrative Procedure Act says “on request of a person aggrieved, an agency shall issue a declaratory ruling as to the applicability to a given state of facts of a statute administered by the agency.”

Regarding how the NCHC may deal with these requested actions, she noted there is precedent to which the NCHC can refer. In 2013, the North Carolina Court of Appeals ruled on the matter of *Historical Preservation Action Committee and the North Carolina Division of SCV versus the City of Reidsville, North Carolina Department of Cultural Resources, North Carolina Department of Transportation (DOT), and the United Daughters of the Confederacy, North Carolina Division*. That case involved a confederate monument that was situated in the middle of a traffic roundabout in the city of Reidsville. Originally erected by the United Daughters of the Confederacy (UDC), the monument was struck by a vehicle and partially toppled. The toppled soldier and the remaining base of the monument were subsequently removed by the city. In that case the Historical Preservation Action Committee (HPAC) and the North Carolina Division of SCV petitioned the North Carolina Department of Cultural Resources (DCR) for a declaratory ruling for improper removal of the monument. HPAC claimed it suffered an economic taxpayer and aesthetic injury, and the SCV claimed to be a legal successor in interest to the United Confederate Veterans and claimed a diversionary interest.

It was found that the petitioners lacked standing in the matter, and the DCR argued that the petitioners suffered no injury that the DCR could fix by a favorable ruling. There were appeals and eventually the North Carolina Court of Appeals ruled that the groups held no economic standing, and showed no proof of any kind of lowered land value or decreased business activity. More importantly, the Court said that the petitioners had no standing to challenge the disposition of public property because the removal was not the result of actions taken by the DCR or North

Carolina Department of Transportation. The North Carolina Court of Appeals also said that there was no standing to challenge aesthetic injury, even to an environmental plaintiff, much less a plaintiff seeking judicial review of an agency decision.

Applying that precedent to the Pasquotank County case, the SCV is claiming taxpayer standing and aesthetic injury. However, nothing in the petition before the NCHC says the SCV groups are aggrieved by the action of a state agency. Contrarily, the document says that they were aggrieved by the vote of the Pasquotank County Board of Commissioners.

So, it is in Ms. Blum's opinion as the attorney for the NCHC that neither of the SCV groups has standing to bring the matter before the North Carolina Historical Commission. Even if the SCV had standing, the NCHC could offer no remedy. The SCV contends that according to G.S. 100-2.1, the state or any political subdivision of the state must seek approval of the NCHC prior to removal or relocation of a monument from public property. However, in Ms. Blum's opinion, that is not what the cited statute says. Rather, G.S. 100-2 says that monuments cannot become or be placed on state property without NCHC permission, and that monuments owned by the state cannot be removed or relocated without NCHC permission. Again, she said, there is no allegation in the petition that the monument is state-owned, nor is there an allegation in the petition that the removal was an undertaking of the state.

As stated, the SCV groups contend that counties are political subdivisions of the state, therefore, they say, the statute must apply to counties also. However, Chapter 153A lays out the right of counties to own their own property. The general statutes also allow county boards of commissioners to execute the rights and duties of the counties. Therefore, in her opinion, the NCHC does not need to approve the removal of the Pasquotank County Confederate Soldiers Monument in this case.

Concluding her analysis, Ms. Blum opened the floor to questions. Mr. Morrison asked Ms. Blum to confirm his understanding from her summary that: 1. the SCV does not have standing to bring this "petition"; 2. that the monument in question was never erected on state property and is not state-owned, so the NCHC has no authority over the monument, and; 3. that the monument is county property, and as such the county has the right to either erect it or take it down. Ms. Blum replied that as to his first two points, she believes that the SCV holds no standing, and even if it did, she does not think this "petition" is properly before the Commission because the Commission cannot "fix" what the petitioners are asking be fixed.

The SCV is asking the NCHC to issue a declaratory ruling, and claims that G.S. 100-2.1 applies to political subdivisions of the state as well, regarding its right to bring this issue before the North Carolina Historical Commission. But Ms. Blum disagrees with that interpretation of the statute. She reemphasized that Chapter 100 states that matters that deal with the giving of monuments to the state, or the placement of monuments on state property, or the removal of a state-owned monument, may be brought before the NCHC. She reemphasized that there are specific statutes dealing with counties and their boards of commissioners owning property and the rights of those entities to control their own affairs. Therefore, she concludes that the "petition" is not properly before the NCHC.

Mr. Morrison, himself an attorney, offered a simplified concept of "non-standing" for the edification of others by explaining it as a party not having the "right" to ask for relief. Ms. Blum concurred with this explanation. Additionally, she said, the SCV groups would have to be persons aggrieved, and case law defines having standing and being a person aggrieved as essentially the same thing.

Mr. Morrison asked Ms. Blum about the phrase in G.S. 100-2.1 referring to “objects of remembrance” not being county-owned but being on “public property.” He asked her whether this changes her analysis in any way. It does not, she said, because subsection a of the statute cites authority bestowed upon the NCHC, whereas subsection b says nothing about the NCHC, it simply talks about public property, and subsection a is subject to any limitations in subsection b to begin with. Summarized, subsection a states that if what is being removed is a state-owned monument, it would have to go through the NCHC, while nothing in subsection b says that all objects of remembrance on public property, regardless of ownership, would have to go through the NCHC.

Put another way, she construes those subsections of the statute together to mean that if it is a state-owned object of remembrance it goes through the NCHC, and if it is not a state-owned object of remembrance—whether it be city-owned, municipality-owned, or county-owned—it goes through the county board of commissioners. Rephrasing the second sentence, it makes no sense that counties’ affairs would have to run through the NCHC when counties have the right to own their own property, because counties have boards of commissioners to determine the rights and duties of those counties.

Mr. Morrison reframed the issue as he sees it, stating that if the NCHC opts not to consider the petition for declaratory ruling, it would be because the petitioners do not have standing. He asked Ms. Blum whether it would be beneficial to the NCHC to not only state that position, but also reference her analysis of the request, not just as it pertains to the standing issue, but including all the issues summarized. He suggests this be considered, he said, because if the decision goes to appeal and the North Carolina Court of Appeals determines that the NCHC’s refusal to issue a declaratory ruling based upon standing alone was wrong, the issue would come right back to the NCHC. But if the NCHC goes ahead and states something to the effect that its position is that county-owned property is the dominion of the county, not the dominion of the North Carolina Historical Commission, it further supports the NCHC’s decision, and might also convey a message to others out there thinking about bringing these types of requests before the Commission.

Ms. Blum responded that while it is certainly within the purview of the NCHC to issue whatever statement it wishes, it can also simply decline to hear the matter, as it did with the Silent Sam petitioners. She doesn’t recall that an official statement was issued by the Commission on that matter. Rather, it simply decided at the meeting during which that issue came up not to hear the matter. She also noted that it might be more accurate to say that the NCHC doesn’t feel it has any say over this matter, instead of saying outright that it believes this is a county matter. Mr. Morrison asked whether it would be incorrect to say that the NCHC has neither standing nor jurisdiction on this matter and just leave it at that? Ms. Blum said she isn’t sure whether it would be a jurisdictional question or a redressability question, but that it’s probably fair to say that the NCHC has no jurisdiction.

Dr. Johnson thanked Mr. Morrison for his questions about how to move forward, especially his suggestion that a way be found to preempt other parties from coming to the Commission with similar requests for redress on issues of this sort in the future. If the NCHC states its position clearly enough, she said, maybe it will potentially help head off some of those requests. Chairman Ruffin concurred with Dr. Johnson’s understanding of the points put forth by Mr. Morrison, but he reminded the commissioners that the minutes of this meeting, which are public record, will reflect the spirit of whatever ruling the Commission hands down. He also stated that any objective observer should be able to see and appreciate the substantive time, effort, and dedication this body has put into the deliberation of related matters of this nature, or fail to dismiss as non-substantive its

response to requests such as the one before the Commission today. But he also emphasized the importance of the clear establishment of proper legal avenues for recourse by citizens, especially in the current social and cultural environment when many of these objects of remembrance are by their nature controversial.

Mr. Reynolds cited Ms. Blum's reference several times during her analysis to the word "property," which he notes can be defined as either an object itself or the land upon which it is placed. He asked her to clarify how she used the term as it pertained to county-owned property. While the multiple uses of the term "property" may be a little unclear, she said, she construes references to the term as being defined in large part by context. She replied that she interprets the use of the word "property" in G.S. 100, as it relates to the historical commission—as in "... property of the state..." or "...it may not become state property..."—as pertaining to an object itself, such as a monument. The word "property" being preceded by the preposition "on," as in "...on state property..." would refer to real estate property. For example, G.S. 100-2.1(b), dealing with limitations on removal, talks about objects of remembrance on public property, which is a reference to land upon which an object resides.

Mr. Morrison asked Ms. Blum to clarify what specific action is being asked of the Commission. She again referred to the meeting at which the NCHC was asked to rule on the Silent Sam citizens' petitions. In that case the Commission simply declined to hear the matter and went no further by way of explanation. She informed the NCHC that it could simply decline to consider the current petition, if it so chooses, like it did last time, to maintain consistency. Mr. Morrison asked how the decision, once made, would be conveyed to the petitioners. For example, would it be via letter prepared by Ms. Blum and signed by the NCHC's chair? Ms. Blum again stated that the last time the Commission simply declined to hear the matter, and that that decision was not communicated in a letter or written statement but was merely reflected in the minutes of the meeting. She said, though, that the NCHC's ruling could well be conveyed in the form of a letter.

Mr. Morrison stated that if the petitioners were unsuccessful before the NCHC, they should have somewhere to appeal the NCHC's decision. If the NCHC simply declines to hear it, he wondered where the petitioners' appeal would lie. Ms. Blum refrained from offering what could be construed to be advice to the petitioners on that question but reiterated that in her opinion the petition is already dead, having been denied by the secretary of the DNCR, the agency to which the petition was addressed. Her take on the issue is that the matter was simply forwarded by the secretary of the DNCR to the NCHC, to do with it as it wished. She also pointed out that the SCV has in the past communicated directly with the NCHC by sending communications addressed to the chair of the NCHC, so should have recognized that course of action as an avenue it could have taken. In this matter they didn't so in her mind the question becomes simply, does the NCHC wish to entertain the matter or not?

Dr. Cherry noted that the case of the citizens' petition to the NCHC, circumstances were different in the fact that the request was put to the NCHC at a physical meeting, so the decision by the NCHC not to hear the matter was communicated directly to them in a face-to-face manner. And in the Reidsville case, he said, when the petitioners were found not to have standing, they did receive a letter so stating from the secretary of the NCHC. As a matter of courtesy, Mr. Ruffin said he feels it would be appropriate to send the petitioners in the Pasquotank County Confederate Soldiers Monument case a letter informing them of the NCHC's decision. This position was supported by other commissioners.

Speaking for himself and the NCHC, Mr. Ruffin thanked Ms. Blum for the diligent work she put into the matter on behalf of the Commission. Commissioner Phillips then made a motion that the North Carolina Historical Commission decline to address the petition because the matter is not properly before it. The motion was seconded by Commissioner Johnson, and passed unanimously on a roll call vote, with Commissioner Dixon having had to leave the meeting early and therefore not voting on this matter.

Adjournment

At the Chair's invitation, Mr. Morrison moved adjournment. The motion was seconded by Dr. Johnson, and was carried unanimously by voice vote. Chairman Ruffin adjourned the meeting at 2:11 P.M.

Respectfully submitted,

Sarah Koonts

DRAFTS



THE
NORTH CAROLINA
HISTORICAL COMMISSION

4610 Mail Service Center • Raleigh, NC • 27699-4610 • 919-814-6640

December 14, 2020

Mr. H. Edward Phillips
219 Third Avenue North
Franklin, TN 37064

Dear Mr. Phillips,

The North Carolina Historical Commission received your client's petition concerning the Perquimans County Confederate Veterans Monument at its meeting of November 23, 2020.

After receiving advice from counsel concerning local government owned monuments on local government property, the Commission determined in unanimous fashion that your client does not have standing to place a petition before that body for consideration. In addition, it is the understanding of the Commission that it has jurisdiction over state-owned monuments.

For the Commission,

A handwritten signature in black ink, appearing to read "Kevin Cherry", with a long, sweeping underline.

Kevin Cherry
Secretary to the Commission
Deputy Secretary, NC Department of Natural and Cultural Resources

From: Backstrom, Parker <parker.backstrom@ncdcr.gov>
Sent: Tuesday, December 15, 2020 2:50 PM
To: edward@phillipslawpractice.com
Cc: Cherry, Kevin; Blum, Karen A; Feagan, Phillip H
Subject: NC Historical Commission Response to Petition
Attachments: NCHC Ltr to Edwards 2020-12-14.pdf

Dear Mr. Phillips,

On behalf of Deputy Secretary Kevin Cherry, Secretary of the NC Historical Commission, please see the attached.

kind regards,

Parker Backstrom

Executive Assistant to the Deputy Secretary
Office of Archives and History
4610 Mail Service Center, Raleigh, NC 27699
919-814-6640

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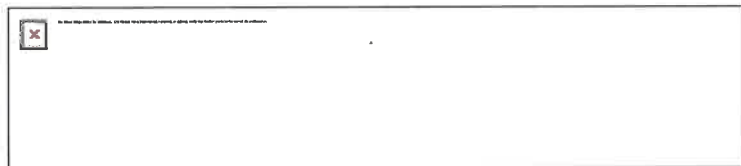
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And don't forget your Ws! Wear. Wait. Wash.

WEAR a face covering.

WAIT 6 feet apart from other people.

WASH your hands often.



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STATE OF NORTH CAROLINA
COUNTY OF PASQUOTANK

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21-CVS-27

THE COL. WILLIAM F. MARTIN)
CAMP 1521 SONS OF CONFEDERATE)
VETERANS, and the NORTH CAROLINA)
DIVISION SONS OF CONFEDERATE)
VETERANS, INC.,)
Petitioners,)
v.)
NORTH CAROLINA HISTORICAL)
COMMISSION,)
Respondent.)

CERTIFICATION OF RECORD ON
JUDICIAL REVIEW

I, Sarah E. Koonts, interim secretary to the North Carolina Historical Commission as interim Deputy Secretary, Office of Archives and History, hereby certify that the foregoing documents are true and accurate copies of the items listed on the Index to the Record on Judicial Review and constitute the record for Petitioner's Petition for Declaratory Ruling.

This, the 2nd day of March, 2021.

Sarah E. Koonts
Sarah E. Koonts
Interim Deputy Secretary, Office of
Archives and History

SWORN TO AND SUBSCRIBED

before me this 2nd day of March, 2021

Sandra L. Day
Signature of Notary Public
My commission expires: _____

My Commission Expires November 6, 2024



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing RECORD ON JUDICIAL REVIEW OF PETITIONER'S PETITION FOR DECLARATORY RULING upon the following by designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) and Rule 4(j) of the North Carolina Rules of Civil Procedure:

H. Edward Phillips, III
ATTORNEY FOR PETITIONERS
219 Third Avenue North
Franklin, Tennessee 37064

This the 2d day of March, 2021.



Karen A. Blum
Special Deputy Attorney General