

January 08, 2025

Sent via email to HEllis@hrem.com

Hornthal, Riley, Ellis & Maland, L.L.P.  
Attorneys at Law  
ATTN: M. H. Hood Ellis, Esquire  
301 East Main Street  
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**Re: Chowan County Confederate Memorial**

Mr. Ellis,

I am writing in response to your letter of December 11<sup>th</sup>, 2024 to myself, and your letter of December 23<sup>rd</sup>, 2024 to Edward Phillips, where you requested that we provide you, and essentially, Judge Tillet a basis for including the “Standing” language in the Consent Judgment as it relates to the Plaintiffs.

In your letter of December 11, 2024, you stated that you will not debate the issues and events that occurred between 1861 and 1865. Fair enough. We do not wish to do so either. However, if the opposition groups and the Town were not debating and relitigating those events today, we would not be talking about moving this memorial in the first place.

It is important to remember, that while the South surrendered in 1865, we have endeavored to live peacefully within the constructs of our government ever since, while loyally supporting the Country. Southern enlistment in the U.S. military has been traditionally higher than any other region of the Country.<sup>1</sup> Meanwhile, today, so-called “social justice” groups continue to attack Southern history, our people, and our heritage. These opposition groups continually attempt to remove our history, and essentially, Southerners from the public square. Governmental entities today, in Edenton, as well as others across the State, continue to listen to these groups when forming local policy. And unfortunately, today, those events between 1861 and 1865 are presently relitigated every day in the courts, the press, and in town meetings across North Carolina and the nation.

The recent filing by the Southern Coalition for Social Justice against the Town of Edenton and Chowan County, a 198-page dump on the Court, demonstrates this clearly. These opposition groups, driven by hatred and discrimination against us, are not being reasonable. They will not

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<sup>1</sup> “The Southern Military Tradition: Sociodemographic Factors, Cultural Legacy, and United States Army Enlistments”

<https://digitalcommons.unomaha.edu/cgi/viewcontent.cgi?article=1019&context=socanthfacpub#:~:text=The%20first%20is%20that%20sociodemographic,military%20tradition%20using%20quantitative%20data.>

be satisfied until the memorial to Chowan County Confederate Veterans, as well as Southern Americans, our heritage groups, and our history are eliminated.

All of us: the Town, the County, the Plaintiffs, the opposition groups, and the Court, need to come to a resolution and sign off on an Agreement resolving this matter forever. Otherwise, we have a false premise of an agreement that will lead to future conflict. If these opposition groups have Standing, so should the Plaintiffs.

**Judge Tillet has authority to include the “Standing” language in the Consent Judgment**

The language of the Memorandum of Understanding, as well as that of the Consent Judgment, assumes that each of the Plaintiffs have standing in this action. If it were otherwise, it would be nonsensical for the Plaintiffs to execute the Consent Judgment. Furthermore, despite your argument to the contrary, it is clear that there are two bases upon which to conclude that the Plaintiffs do have standing in this matter.

First, the entity Plaintiffs have representational standing on behalf of their members. The doctrine of representational standing is not novel. It is well recognized in North Carolina law. As an association of active members which is expressly dedicated to the preservation of history, entity Plaintiffs possess representational standing for their individual members if, “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *River Birch Assocs. v. City of Raleigh*, *supra* at 130, 388 S.E.2d at 555.

This position is consistent with the recent decision of the North Carolina Supreme Court in *United Daughters of the Confederacy v. Joines*, 881 S.E.2d 32 (2022). In *Joines*, the plaintiffs challenged a decision made by the City of Winston Salem to remove a Confederate monument from the grounds of the former Forsyth County courthouse. The trial court granted defendants’ motions to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), and a failure to state a claim upon which relief could be granted pursuant to Rule 12(b)(6). The Court of Appeals affirmed the dismissal order in a non-unanimous decision. The Supreme Court affirmed the decision of the Court of Appeals, in part, and it remanded the case for entry of an order dismissing the complaint without prejudice. Careful consideration of the *Joines* opinion will establish that the case did not limit or abridge the doctrine of representational standing.

Speaking for the Court, Justice Ervin stated:

...we hold that the amended complaint fails to allege sufficient facts necessary to establish associational standing. *Although plaintiff argues that it is a “legacy organization whose purposes include ‘historical, benevolent, memorial, educational and patriotic programs;’ ” that its charter “clearly and [un]equivocally gives it an articulated interest in the status and preservation of objects of remembrance such as the [m]onument;” that it “has succeeded to the interests of those deceased members of an affiliated chapter who were responsible for designing, funding, and erecting the [monument];” and that it has “a specific requirement for membership ... that one is a*

*lineal descendant of an individual who served in the government or the armed forces of the Confederacy,” none of these factual allegations are raised in the amended complaint. In addition, the amended complaint does not identify any of plaintiff’s individual members or describe how the legal rights of any of plaintiff’s individual members have been violated. As a result, the amended complaint fails to allege facts sufficient to show that “the interests [plaintiff] seeks to protect are germane to the organization’s purpose” or that its members “would otherwise have standing to sue in their own right.*

881 S.E.2d at 47, 48 (citations omitted; emphasis added).

Two things are patently clear from Justice Ervin’s opinion: (1) an organization which has articulated purposes can assert standing on behalf of its members in a given case provided that the interests which the entity seeks to protect are germane to its purpose; and (2) the defect in the Plaintiffs’ case was not its theory; instead, the Plaintiffs’ amended complaint did not articulate the interests of its members which it sought to vindicate in the action. That specific holding enabled the Plaintiffs in *Joines* to refile the action and to do so in a pleading which overcomes the deficiencies identified in Justice Ervin’s opinion. Properly understood, the narrow holding of *Joines* is limited to its facts and to the contents of the Plaintiffs’ amended pleading.

The foregoing conclusion is bolstered by Chief Justice Newby’s concurring opinion, which was joined by Justices Berger and Barringer. While concurring in the result, Chief Justice Newby wrote separately, and he expounded upon the concept of representational standing:

*Here the allegations of plaintiff’s amended complaint fail to establish standing. Although plaintiff identifies itself as a nonprofit corporation doing business in North Carolina, plaintiff fails to allege who comprises its organization and where its members live. Plaintiff does not identify any individual members of its organization in its amended complaint or allege the requirements for membership. Further, there is no indication in the amended complaint that any members of plaintiff’s organization reside in Winston-Salem or Forsyth County. Without more information regarding the membership of the organization and where its members reside, plaintiff has failed to demonstrate that its organization or its members have any interest in the monument that is the subject of this case. Moreover, because plaintiff failed to include sufficient allegations in its amended complaint regarding its membership and organizational structure, plaintiff cannot establish taxpayer standing or associational standing. ..*

881 S.E.2d at 60-61 (emphasis added).

Two other recent North Carolina appellate decisions warrant attention and analysis:

***Society for the Historical Preservation of the Twenty-Sixth North Carolina Troops, Inc. v. City of Asheville***

In *Society for the Historical Preservation of the Twenty-Sixth North Carolina Troops, Inc. v. City of Asheville*, 898 S.E.2d 760 (2024) (hereinafter referred to as "*Vance Monument*"), the North Carolina Supreme Court considered the question of representational standing in detail.

*Vance Monument* arose in the context of an agreement between the plaintiff and the City of Asheville involving the restoration of a monument in downtown Asheville dedicated to Zebulon Vance, the actual restoration of the monument, and the subsequent decision of the municipality and the county to remove it. The Superior Court of Buncombe County denied the plaintiff's motion for injunctive relief and granted the defendants' motion to dismiss the complaint for failure to state a claim. The Court of Appeals affirmed the action of the trial court, and the Supreme Court granted discretionary review.

While the Supreme Court affirmed the decision of the Court of Appeals, the court's opinion is illustrative of how the concept of standing should be understood and applied. Drawing a clear distinction between *United Daughters* and *Vance Monument*, Justice Berger wrote:

This Court has “consistently recognized that standing is a necessary prerequisite to a court's proper exercise of subject matter jurisdiction,” ..., and a motion to dismiss for lack of standing is properly made under Rule 12(b)(1). A party seeking to enjoin the removal of a monument owned by a political subdivision of this State through a private suit must, at minimum, allege a legal interest for their claims to survive a motion to dismiss under Rule 12(b)(1).

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...we reiterated in *United Daughters* that “[w]hen a person alleges the infringement of a legal right arising under a cause of action at common law, a statute, or the North Carolina Constitution, ... the legal injury itself gives rise to standing.” ...This is so because our Constitution provides that “every person for an injury done to him in his lands, goods, person, or reputation shall have remedy by due course of law.” ...

It should be self-evident that our holding in *United Daughters* was limited to the facts of that case, rather than a blanket holding that individuals or organizations can never challenge the removal of historical monuments. If such parties, like the plaintiff in *United Daughters*, fail to allege the infringement of a legal right arising under a cause of action at common law, a statute, or the North Carolina Constitution, dismissal is appropriate..... Conversely, if such parties establish standing by alleging an ownership, contractual, or other cognizable interest as described in our precedent, dismissal under Rule 12(b)(1) is error.

898 S.E.2d at 763, 764-765 (citations omitted).

*Vance Monument* clearly and unequivocally stands for the proposition that a properly constituted organization with an articulated interest in the subject matter of the litigation can be found to

have standing to bring a challenge under law, whether the underlying basis arises under common law, statute, or the constitution.

In the present case, the entity Plaintiffs are legacy organizations founded for charitable, educational, and historical purposes arising from their shared commitment to honor and perpetuate those who fought on behalf of the Confederacy and the State of North Carolina. The entity Plaintiffs have members who live in the Town of Edenton, and the complaint makes the specific allegation that Plaintiff Daughters donated a memorial to the Chowan County Confederate soldiers and that memorial was placed upon the grounds of the Chowan County courthouse.

***North Carolina State Conference of the National Association for the Advancement of Colored People v. Alamance County***

In *North Carolina State Conference of the National Association for the Advancement of Colored People v. Alamance County*, 900 S.E.2d 224 (2024) (hereinafter referred to as "*Alamance County*"), the plaintiffs brought an action against Alamance County, its board of commissioners, and multiple commissioners in their official capacities, alleging that maintenance and protection of a Confederate monument outside of the Alamance County Courthouse was unconstitutional. The facts of that case necessarily implicated the provisions of the Monument Protection Act, G.S. § 100-2.1. Defendants' motion for summary judgment was granted by the superior court, and the Court of Appeals affirmed upon construing and interpreting the Act. *Alamance County* authoritatively interprets the scope and purpose of the Monument Protection Act. However, it is important to the present case for a more fundamental reason; *Alamance County* holds *sub silentio* that the parties challenging the presence of the Confederate monument on the grounds of the Alamance County courthouse had standing to bring the challenge under the Act to remove the monument; therefore, if that is the case, why would standing to invoke the Act to prevent removal of a monument not be found on behalf of a constituent taxpayer or an organization asserting representational standing on behalf of that taxpayer member such as a legacy organization? Either the plaintiffs in *Alamance County* and those in the present case have standing or none of them do. *Alamance County* was brought by at least four organizations asserting representational standing on behalf of their members, as well as by five individuals who were residents and taxpayers living in Alamance County.

In the present case, the entity Plaintiffs have asserted representational standing on behalf of their members in a manner consistent with their stated purposes as benevolent, charitable, and historical organizations seeking to preserve the military history of Confederate Veterans from whom they descend; and the Plaintiffs have affirmatively alleged that their members are residents and taxpayers living in Chowan County. There is no fundamental difference between the set of plaintiffs in *Alamance County* and those in the present case. The only real difference is that the Plaintiffs in *Alamance County* were invoking the Monuments Act and the NC Constitution to compel the removal of the Confederate monument, while Plaintiffs in the present action seek a declaratory judgment in defense of the Confederate monument in question to prevent its unlawful removal.

**Taxpayer Standing:**

Leaving aside the question of representational standing, citizens and taxpayers have the right to seek equitable relief when governing authorities are engaged in activities to put property or funds dedicated to the public to unauthorized uses. *Wishart v. Lumberton*, 254 N.C. 94, 96, 118 S.E.2d 35 (1961) (“If the governing authorities were preparing to put public property to an unauthorized use, citizens and taxpayers had the right to seek equitable relief.”). *See also Freeman v. Board of County Commissioners*, 217 N.C. 209, 7 S.E.2d 354 (1940); *compare Freeman v. Board of County Commissioners*, 221 NC 63, 19 S.E. 2d 9 (1942). A citizen, in his own behalf and that of all other taxpayers may maintain a suit seeking to enjoin the governing body of a municipal corporation from transcending their lawful powers or violating their legal duties in any mode which will injuriously affect the taxpayers. *Shaw v. City of Asheville*, 269 N.C. 90, 152 S.E.2d 139 (1967). *See also Goldston v. North Carolina*, 361 N.C. 26, 637 S.E.2d 876 (2006). In the present case, the members of the entity Plaintiffs are residents of Chowan County, and they pay taxes to support the activities of the county and municipal governments.

Upon review of the above, it is clear that standing is inherent in this case and that the Plaintiffs should have their right to be heard recognized specifically in the documents concluding the litigation.

In summary, we think it is appropriate to include the “Standing” language in the Consent Judgment. This language is also necessary to **make clear** the Plaintiffs have standing for any future breach of the Agreements. In this proposed settlement, the Town of Edenton receives everything it wants under the MOU, and the Plaintiffs agree to acquiesce to the removal of the Memorial to a position of arguably less prominence. The Plaintiffs also give up their claim for costs and attorney fees, which are significant to the Plaintiff organizations supported by member donations. We only ask for the “Standing” language to be included in the Consent Judgment.

There are many members and residents of the Town of Edenton and Chowan County who are against moving the Memorial from its present prominent location. In the spirit of compromise, we are willing to recommend this settlement to our members upon the currently proposed terms contained within the MOU as long as the “Standing” language is included in the Consent Judgment. If the Town of Edenton wishes to fight us on this minor request and dissolve the settlement proposal, we will have no choice but to continue with litigation and fight to keep the Memorial in its present location.

Sincerely,

James Barrett Wilson, Jr.  
Attorney for NC Division, Sons of Confederate Veterans

Cc: H. Edward Phillips, III  
Attorney for Plaintiffs

