

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
No. 2:24-CV-00026-D-RN

JOYCE SYKES FITCH, MARK MIXON,
SHERRYREED ROBINSON, and
ADRIANA BLAKEMAN, individually
and as members of THE CONCERNED
CITIZENS OF TYRRELL COUNTY,

Plaintiffs,

v.

TYRRELL COUNTY,

Defendant.

**DEFENDANT'S MOTION FOR
PROTECTIVE ORDER
PROHIBITING DEPOSITIONS OF
TYRRELL COUNTY
COMMISSIONERS**

NOW COMES Defendant Tyrrell County pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, and local rules 7.1 and 7.2, and respectfully moves this Court for entry of a Protective Order and to prohibit depositions of current or former Tyrrell County commissioners because the commissioners have legislative immunity.

Plaintiffs sued Tyrrell County over a panel on a Confederate monument that reads, in part, "In Appreciation of our Faithful Slaves." [DE 19] Tyrrell County moved to dismiss the suit, arguing that it cannot remove, relocate, or alter the monument in any way due to North Carolina's Monument Protection Act, codified at N.C. Gen. Stat. § 100-2.1 [DE 20, 21]

This Court granted the motion, in part, and dismissed plaintiffs' claim for relief under 42 U.S.C. § 1982. [DE 26] It allowed the plaintiffs' 42 U.S.C. § 1983 claim for a

fourteenth amendment equal protection violation to proceed. [Id.]

Now, plaintiffs seek to depose Tyrrell County commissioners regarding the county's position on the monument. The commissioners, however, have legislative privilege from testifying about policymaking. And the commissioners have not waived this privilege. In turn, this Court should enter a protective order that prohibits the commissioners' compelled testimony because they have legislative privilege.

Federal, state, and local legislators have absolute immunity from civil liability for their legislative acts. *Bogan v. Scott-Harris*, 523 U.S. 44, 46 (1998). This immunity also functions as an evidentiary and testimonial privilege. *Miles-Un-Ltd., Inc. v. Town of New Shoreham, R.I.*, 917 F. Supp. 91, 98 (D. N.H. 1996).

Legislative privilege applies only when the action taken is legislative, not administrative. *Alexander v. Holden*, 66 F.3d 62, 65 (4th Cir. 1995). An action is legislative when it involves "broad policy considerations" that affect "the larger population." *Id.* The commissioners' decisions regarding the monument are patently legislative. They flow from a deliberative process. And they impact everyone. As such, the commissioners have legislative privilege.

In addition, the commissioners have not waived their privilege. Courts can only find waiver when a legislator makes an "explicit and unequivocal renunciations of the protection." *A Helping Hand, LLC v. Balt. County*, 295 F. Supp. 2d 585, 591 (D. Md. 2003). (internal citations omitted). Meeting with constituents and discussing issues, however, is not a waiver. *Id.* (citing *Bruce v. Riddle*, 631 F.2d 272, 279-80 (4th Cir. 1980)). The Tyrrell County commissioners have not waived their privilege. Their

comments at public meetings reflect ordinary legislative business that does not amount to waiver.

For these reasons, Tyrrell County respectfully requests that this Court grant this motion for protective order to prohibit the depositions of any past or present Tyrrell County commissioners regarding the monument, and to award such other relief as the Court deems just and proper.

This the 5th day of January 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2026 I electronically filed the foregoing *Defendant's Motion for Protective Order* with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to counsel of record:

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