

STATE OF NORTH CAROLINA FILED IN THE GENERAL COURT OF JUSTICE ORANGE COUNTY SUPERIOR COURT DIVISION

DTH MEDIA CORP., 2020 JAN -7 P 2:48 20 CVS _____

Plaintiff, BY [Signature]

v.

COMPLAINT

THE UNIVERSITY OF NORTH CAROLINA; THE UNIVERSITY OF NORTH CAROLINA BOARD OF GOVERNORS; JAMES L. HOLMES, Jr. in his capacity as a member of the Board of Governors; DARRELL ALLISON, in his capacity as a member of the Board of Governors; WENDY MURPHY, in her capacity as a member of the Board of Governors; ANNA SPANGLER NELSON, in her capacity as a Member of the Board of Governors; and ROBERT A. "BOB" RUCHO, in his capacity as a member of the board of Governors,

CERTIFIED TRUE COPY FROM ORIGINAL [Signature] Clerk of Superior Court Orange County

Defendants.

Pursuant to Rules 3, 7 and 8 of the North Carolina Rules of Civil Procedure the plaintiff, complaining of the defendants, alleges and says:

INTRODUCTION

This is an action pursuant to the North Carolina Open Meetings Law, N.C. Gen. Stat. §§ 143-318.10 et seq. and the North Carolina Uniform Declaratory Judgments Act, N.C. Gen. Stat. §§ 1-253 et seq. The Daily Tar Heel seeks to have the court declare null and void, and set aside, certain

actions taken and agreements entered into by defendants The University of North Carolina) and the University of North Carolina Board of Governors in violation of the Open Meetings Law. In one such agreement, dated November 21, 2019 the UNC System agreed to pay the North Carolina Sons of Confederate Veterans, Inc. ("the SCV") \$74,999 to curtail the exercise of its First Amendment rights on UNC campuses. In the second agreement, dated November 27, 2019, the UNC System and the BOG entered into a Consent Judgment with the SCV to settle a civil action filed in the Superior Court of Orange County entitled *North Carolina Division Sons of Confederate Veterans, Inc. v. The University of North Carolina and the University of North Carolina Board of Governors*, 19 CVS 1579 (the "SCV lawsuit").

As explained in detail below, both agreements with the SCV were conceived, negotiated, approved, and executed in total secrecy in violation of the Open Meetings Law. Owing to the defendants' multiple violations of the Open Meetings Law, neither the plaintiff nor the public knew or could have known about either transaction until the afternoon of November 27, 2019, when the UNC System issued a release disclosing that it had obtained court approval of the settlement of the SCV lawsuit. Neither the plaintiff nor the public knew or could have known about the November 21, 2019 settlement agreement until December 16, 2019, when the individual defendants disclosed it in an op-ed piece published by *The News & Observer*.

THE PARTIES

1. Plaintiff DTH Media Corp. is a North Carolina not-for-profit corporation that maintains its principal place of business in Chapel Hill, Orange County, North Carolina. Among other things, the company publishes *The Daily Tar Heel*, a daily print and online newspaper that has covered the University of North Carolina at Chapel Hill and its community since 1893.

2. Defendant The University of North Carolina (the “UNC System”) is a public, multi-institutional university system authorized and governed by Article IX, § 8 of the North Carolina Constitution and Chapter 116 of the North Carolina General Statutes.

3. Defendant The University of North Carolina Board of Governors (the “UNC BOG”) is a body politic and corporate organized and authorized under § 116-3 of the North Carolina General Statutes and is charged under § 116-11 with (among other things) governing the constituent institutions of the UNC System, including the University of North Carolina at Chapel Hill (“UNC-CH”), and with the general determination, control, supervision, management, and governance of all affairs of the constituent institutions of the UNC System. Under N.C. Gen. Stat. § 116-3, the UNC BOG is capable in law of being sued in “all courts whatsoever.” The UNC BOG is a “public body” as defined by N.C. Gen. Stat. § 143-318.10. As such, it is subject to, and required to comply with, the North Carolina Open Meetings Law.

4. Defendant James L. Holmes, Jr. is a resident of Wake County, North Carolina. He is sued in his capacity as a member of the UNC BOG.

5. Defendant Darrell Allison is a resident of Wake County, North Carolina. He is sued in his capacity as a member of the UNC BOG.

6. Defendant Wendy Murphy is a resident of Duplin County, North Carolina. She is sued in her capacity as a member of the UNC BOG, of which she currently is vice-chair.

7. Defendant Anna Spangler Nelson is a resident of Mecklenburg County, North Carolina. She is sued in her capacity as a member of the UNC BOG.

8. Defendant Robert A. "Bob" Rucho is a resident of Iredell County, North Carolina. He is sued in his capacity as a member of the UNC BOG.

JURISDICTION, STANDING, VENUE AND LIMITATIONS

9. This court has subject matter jurisdiction in this action pursuant to N.C. Gen. Stat. §§ 143-318.10 *et seq.* and 1-253 *et seq.*

10. This court has personal jurisdiction over the parties pursuant to N.C. Gen. Stat. § 1-75.4. The plaintiff is a North Carolina corporation and defendants are North Carolina entities or natural persons domiciled in North Carolina.

11. The plaintiff has standing to institute and pursue this action pursuant to N.C. Gen. Stat. §§ 143-318.16, 143-318.16A and 1-253.

12. The claims for relief pleaded in this action accrued no earlier than November 27, 2019, when the defendants UNC System and UNC BOG first disclosed the settlement of the lawsuit entitled *North Carolina Division Sons of Confederate Veterans, Inc. v. The University of North Carolina and the University of North Carolina Board of Governors*, 19 CVS 1579 (Orange County); accordingly, this action is being commenced within the applicable statutes of limitation, including the 45-day limitation prescribed by N.C. Gen. Stat. 143-318.16A(b).

NORTH CAROLINA LAW

13. Pursuant to N.C. Gen. Stat. 143-318.10(b), a “public body”

means any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function.

14. Pursuant to N.C. Gen. Stat. 143-318.10(d), an “official meeting”

means a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body. However, a social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purposes of this Article.

15. Pursuant to N.C. Gen. Stat. 143-318.10(e):

Every public body shall keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to G.S. 143-318.11. Such minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. When a public body meets in closed session, it shall keep a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired. Such accounts may be a written narrative, or video or audio recordings. Such minutes and accounts shall be public records within the meaning of the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes or an account of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session.

16. Pursuant to N.C. Gen. Stat. 143-318.11(a)(3):

If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded.

FACTUAL ALLEGATIONS IN SUPPORT OF PLAINTIFF'S CLAIMS

17. From 1913 until 2018, a monument in the form of a statue of a Confederate soldier colloquially known as "Silent Sam" stood on McCorkle Place on the UNC-CH campus. Over time, and especially in recent years, the statue became the subject of public controversy and the object of public protests by persons and groups opposed to its presence on the campus and of counter-protests by persons and groups that supported its remaining on the campus. On August 20, 2018, protestors used ropes to pull the statue off its pedestal.

18. On August 28, 2018 defendant UNC BOG approved a resolution directing the UNC-CH chancellor and Board of Trustees to develop a plan for Silent Sam's disposition and preservation and present it to the UNC BOG by November 15, 2018.

19. On December 3, 2018 UNC-Chapel Hill completed its *Recommendation for the Disposition and Preservation of the Confederate Monument*, a four-part plan presented by UNC-Chapel Hill to the UNC Board of Governors. The report included the views of a panel of public safety experts, who warned that UNC-Chapel Hill faced a high risk of violence, civil disorder and property damage if the monument returned to campus. The report also proposed for the UNC BOGs' consideration a plan to construct an education center on campus to house the monument, at an estimated capital cost of \$5.3 million plus an additional cost of \$800,000 annually in operating expenses for security personnel and maintenance.

20. On December 14, 2018, at the regular meeting of the UNC BOG, the BOG met in closed session from 11:25 a.m. until 2:20 p.m. According to the minutes of the portion of the UNC BOG meeting held in open session, the BOG voted to go into closed session pursuant to a "printed motion in the Board members' folders." The text of the printed motion is not recorded in the Board meeting minutes, which say only that the closed session was held "pursuant to Sections 143-318.11(a)(1), (a)(3), and (a)(6) of the North Carolina General Statutes." On January 6, 2020 the UNC System released the text of

the printed motion and the minutes of the December 14, 2018 closed session. The printed motion does not indicate that Silent Sam or the UNC-CH proposal for its disposition would be discussed during the closed session, and the minutes reflect only that Chris Swecker, a Charlotte attorney and former assistant director of the FBI, “provided legal and safety advice on a plan to deal with safety concerns arising from campus protests since the events of this past summer related to the toppling of a Confederate monument at UNC-Chapel Hill.” As with the printed motion, the minutes of the closed session, which lasted almost three hours, do not disclose or reflect any discussion as to whether the BOG would or would not support the UNC-CH recommendation regarding Silent Sam.

21. During the December 14, 2018 UNC BOG meeting there was no public discussion of “Silent Sam” or of the UNC-CH recommendation described above, but near the end of the public meeting, and after the UNC BOG emerged from the closed session and conducted other business, UNC BOG Chair Harry Smith put forward a motion stating, among other things, that the UNC BOG “cannot support” the recommendations vis-à-vis the disposition and preservation of Silent Sam put forward by UNC-CH and proposing that UNC BOG members Allison, Holmes, Murphy, Nelson and Rucho “work in conjunction with Chancellor Folt and the UNC-Chapel Hill Board of Trustees to review the options set forth in the [UNC-CH] report and offer a revised recommendation to the UNC Board of Governors by Friday,

March 15, 2019.” The UNC BOG approved Mr. Smith’s motion overwhelmingly with a single negative vote.

22. By adopting Mr. Smith’s motion, the UNC BOG created and established a “public body” as defined by N.C. Gen. Stat. § 143-318.10(b) and appointed, approved, designated or anointed defendants Allison, Holmes, Murphy, Nelson and Rucho as its members. For convenience, the public body is referred to hereafter as the “BOG Silent Sam Committee” or the “SS.”

23. On March 1, 2019 UNC BOG Chair Harry Smith, via the Secretary of the UNC System, sent a message to members of the UNC BOG saying that “[in] order to give our team the time they need to do their work,” he was extending the deadline for the SS to report back to the UNC BOG until the May, 2019 meeting. On May 14, 2019 the UNC System released the following statement on behalf of Mr. Smith:

In early March, we set the May meeting of the UNC Board of Governors as a tentative reporting date to consider possible solutions for the confederate monument at UNC-Chapel Hill, commonly known as Silent Sam. A small group of Board members is prepared to review and discuss options at an appropriate time. However, our Board and the universities have also been focused on a number of other issues, including the legislative session, and there is nothing to report at this time. Therefore, the monument issue will not be on our agenda for the May meeting.

24. Insofar as plaintiff has been able to ascertain, there was no further mention of Silent Sam or the SS in any Board of Governors public meeting session or materials until the afternoon of November 27, 2019.

25. On Monday, November 25, 2019 Jason Tyson, Director of Media Relations for the UNC System, sent the following email message to undisclosed recipients:

The UNC Board of Governors Committee on University Governance will meet by conference call at 10 a.m. on Wednesday, November 27, 2019 in Room 128 of the Center for School Leadership Development, located at 140 Friday Center Drive in Chapel Hill. Please note that some items may be considered in closed session under the provisions of the Open Meetings Law.

26. The Board of Governors Committee on University Governance is a “public body” as defined by N.C. Gen. Stat. § 143-318.10. As such, it is subject to, and required to comply with, the North Carolina Open Meetings Law.

27. Plaintiff is informed and believes that the meeting noticed via Mr. Tyson’s email message on November 25, 2019 was, and was intended to be, an “official meeting” of the Board of Governors Committee on University Governance as defined by N.C. Gen. Stat. § 143-318.10(d). Nevertheless, Mr. Tyson’s email message did not state the purpose of the meeting as required by N.C. Gen. Stat. § 143-318.12(b)(2).

28. According to documents released subsequently by the UNC System, the Committee on University Governance convened its previously noticed meeting via conference call at 10:00 a.m. on Wednesday, November 27, 2019, the day before Thanksgiving. During the meeting, the substantive portion of which was conducted entirely in closed session, the Committee

approved a proposed settlement between the SCV, the UNC System, and the UNC BOG; authorized the payment by UNC-CH of \$2,500,000 to a trust “for the maintenance of Silent Sam;” authorized Interim UNC System President Roper and UNC BOG Chair Ramsey to execute a consent judgment and trust documents; and authorized the UNC BOG’s attorneys to file the consent judgment in court. After the closed session ended, Tom Shanahan, General Counsel for the UNC System, announced that the UNC System Office would issue a press release later in the day regarding the matter discussed in closed session. No other explanation was provided as to what had occurred during the closed session, and the meeting was adjourned at 10:26 a.m. The manner in which the meeting was noticed, and conducted effectively prevented any member of the public, including those who may have attended the meeting, from understanding its purpose or outcome, much less raising questions or objections.

29. The Verified Complaint in the action entitled *North Carolina Division Sons of Confederate Veterans, Inc. v. The University of North Carolina and the University of North Carolina Board of Governors*, 19 CVS 1579, was signed by the SCV’s counsel and verified under oath on November 27 and filed in the Superior Court of Orange County at 11:11 a.m. that morning — 45 minutes after the Committee on University Governance adjourned its meeting. The University System and the UNC BOG filed their Answer to the complaint one minute later. The Consent Judgment approved

by Superior Court Judge Allen Baddour was filed five minutes afterward, at 11:17 a.m. The Verified Complaint is 33 pages long, not including the exhibits. The Answer is 25 pages in length. The Consent Judgment is 19 pages. Each recites myriad and meticulous statements of fact and law.

30. The contents of the Verified Complaint, the Answer and the Consent Judgment and the timing of their respective filings indicate that they were negotiated and drafted well in advance of their approval by the Committee on University Governance. Moreover, the minutes of the Governance Committee's November 27 closed session state that defendant Holmes explained to the Committee that "the Sons of Confederate Veterans threatened legal action to preserve the statute and return it to its original location, which led to conversations concerning settlement."

31. Although the minutes of the Governance Committee's November 27 closed session do not explain who participated in the "conversations concerning settlement" referenced by defendant Holmes, he and the other SS members subsequently disclosed publicly that they had negotiated the settlement of the SCV lawsuit and described the settlement process in detail by publishing an "op-ed" column in the December 16, 2019 edition of *The News & Observer*, a true and accurate copy of which is attached as **Exhibit A** and incorporated by reference. In addition, the SS members also disclosed in the op-ed that they had negotiated a separate agreement with the SCV "limiting its ability to display flags and banners on university campuses" in

exchange for a payment of \$74,999.” This was the defendants’ first disclosure of the Settlement Agreement between the UNC System and the SCV that was executed on November 21, 2019.

32. As a “public body,” the SS was and is subject to, and required to comply with, the North Carolina Open Meetings Law. Among other things, it was required by law to conduct public meetings, give public notice of them, and keep full and accurate minutes of them. Through its undersigned counsel and pursuant to the North Carolina Public Records Law, plaintiff has requested copies of all meeting notices, minutes, communications and other public records related to the meetings and actions of the SS. The defendants’ failure to provide any such records suggests that such records do not exist. Accordingly, the plaintiff is informed and believes that the SS did all of its work in secret and negligently or intentionally ignored, evaded and failed to comply with the Open Meetings Law.

WHEREFORE, the plaintiff respectfully prays unto the court for the entry of:

(1) an order pursuant to N.C. Gen. Stat. §§ 143-318.16A and 1-253 declaring that the actions taken by the defendants in negotiating, approving and executing the settlement of a lawsuit entitled *North Carolina Division Sons of Confederate Veterans, Inc. v. The University of North Carolina and the University of North Carolina Board of Governors*, 19 CVS 1579 (Orange County) were taken in violation of the Open Meetings Law, and that the settlement therefore is null and void;

(2) an order pursuant to N.C. Gen. Stat. §§ 143-318.16A and 1-253 declaring that the actions taken by the defendants in negotiating, approving and executing a Settlement Agreement with the SCV on November 21, 2019 were taken in violation of the Open Meetings Law, and that the Settlement Agreement therefore is null and void;

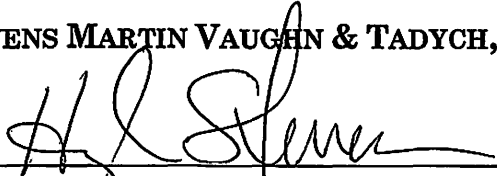
(3) an order, pursuant to N.C. Gen. Stat. § 143-318.16, permanently enjoining the defendants and anyone acting in concert with them from recurring or continuing violations of the Open Meetings Law;

(4) an order awarding the plaintiff its reasonable attorney fees pursuant to N.C. Gen. Stat. § 143-318.16B; and,

(5) such other and further relief as the court may determine to be appropriate and necessary.

This the 7th day of January, 2020.

STEVENS MARTIN VAUGHN & TADYCH, PLLC

By: 
Hugh Stevens (hugh@smvt.com)
N.C. State Bar No. 4158
C. Amanda Martin (amartin@smvt.com)
N.C. State Bar No. 21186
Michael J. Tadych (mike@smvt.com)
N.C. State Bar No. 24556
Attorneys for Plaintiff
1101 Haynes Street, Suite 100
Raleigh, NC 27604
Telephone: 919.582.2300
Facsimile: 866.593.7695

We created a trust to pay a Confederate group to take Silent Sam. It was the best solution.

BY JIM HOLMES, DARRELL ALLISON, WENDY MURPHY, ANNA NELSON AND BOB RUCHO

DECEMBER 16, 2019

After protesters toppled the “Silent Sam” statue on Aug. 20, 2018, the Board of Governors directed the UNC-Chapel Hill Trustees and Chancellor Folt to develop a lawful solution that protects public safety, preserves the monument and its history, and allows the University to focus on its core educational mission.

UNC-Chapel Hill proposed to construct an on-campus facility to house the monument. However, multiple public safety experts believed that UNC-Chapel Hill faced a continued high risk of violence, civil disorder, and property damage if the monument returned to campus.

The Board of Governors tasked us to work with UNC-Chapel Hill to review other options that would accomplish all of the board’s directives.

We recognized that many people felt strongly that the monument should not be on campus. There were also many North Carolinians who strongly believed that the monument should be returned to campus.

We learned that the Sons of Confederate Veterans (SCV) organization was prepared to pursue legal action that could mean the return of the monument to campus. However, the SCV indicated it was open to the placement of the monument elsewhere in return for funding the transportation, repair, maintenance, security, and public display of the monument. Original cost estimates from the SCV exceeded \$5 million, plus annual recurring operating expenses.

The state’s monuments law prevents the removal of a public statue but there is an exemption for private ownership. The SCV arranged to acquire all property rights of the monument from the United Daughters of the Confederacy (UDC). We reached an



agreement with the SCV to settle the threatened litigation with the following terms: The SCV owns the monument;

- The monument will be transferred to the SCV;
- The UNC System and the Board of Governors will fund a separate charitable trust administered by a neutral, independent trustee in the amount of \$2.5 million; the funds will come from interest on the university endowment fund, not tax dollars or tuition and fees.
- The separate charitable trust is to be used only for the preservation of the monument, as determined by the trustee; and
- The monument cannot be located in any of the 14 counties currently containing a UNC System constituent institution.

We also agreed that the SCV would sign a separate agreement limiting its ability to display flags and banners on university campuses, in exchange for a payment of \$74,999. This agreement addressed the possibility that the consent order might not be approved, in which case the SCV agreed that it would not sponsor events on any of our campuses for five years.

The Attorney General's Office confirmed that there was no legal impediment to the UNC System and its Board of Governors agreeing to the proposed settlement, and that it had the authority to consent to the judgment proposed.

We presented the proposed settlement to the board's Governance Committee, since the authority to settle this matter is within its authority outlined in Section 200.5 of the UNC Policy Manual. Twenty members of the Board of Governors participated in the meeting. Only one committee member voted against this settlement. A superior court judge approved the consent order, the SCV took possession of the monument and the UNC System transferred \$2.5 million to the charitable trust from interest accumulated in the UNC-Chapel Hill endowment.

We were given the responsibility to resolve a deeply divisive and personal issue. While we have heard from citizens from across this state who have expressed their gratitude for our efforts of finding a solution to this issue, we also acknowledge that others strongly disagree with the board's decision to approve a settlement. Compromise was a necessity.

However, we remain convinced that our approach offered a lawful and lasting path that ensures the monument never returns to campus. We believe this agreement not only protects and reduces the risk of violence and physical harm to students, faculty, and staff if the monument had returned to the UNC-Chapel Hill campus, but also ensures the same for our 16 other campuses in the UNC System.

Jim Holmes, Darrell Allison, Wendy Murphy, Anna Nelson & Bob Rucho are members of the University of North Carolina System Board of Governors.