

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**  
Civil Action No. \_\_\_\_\_

**NATIONAL ASSOCIATION FOR )  
THE ADVANCEMENT OF )  
COLORED PEOPLE ALAMANCE )  
COUNTY BRANCH, et al. )**

**Plaintiffs,**

**v.**

**JERRY PETERMAN, et al.,**

**Defendants.**

**MOTION FOR A  
TEMPORARY  
RESTRAINING ORDER  
AND PRELIMINARY  
INJUNCTION**

Pursuant to Fed. R. Civ. P. 65 and LR 65.1, Plaintiffs Alamance County Branch of the National Association for the Advancement of Colored People (“NAACP”), Tamara O. Kersey, Colleen Tenae Turner, Terence Colin Dodd, Destiny Clarke, Annie Simpson, Nerissa Rivera, Adam Rose, and Gregory Drumwright move this Court to temporarily restrain and preliminarily enjoin Defendants from enforcing Art. VI, Sections 18-172, 18-174–181 of Graham, North Carolina’s Code of Ordinances (hereinafter, “The Ordinance”).

<sup>1</sup>The Ordinance unconstitutionally (1) blocks two or more people who wish to protest—and even single individuals who seek to march while carrying a sign—in Graham from doing so without a permit, (2) subjects those seeking a permit to vague and, in effect,

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<sup>1</sup> Links to the City of Graham’s ordinances are available at <https://www.cityofgraham.com/ordinances/>

content- and viewpoint-based standards, and (3) severely restricts the size and conduct of protests for which a permit is obtained. In support of this Motion, Plaintiffs state as follows:

1. The Ordinance makes it unlawful for two or more people to gather “for the purpose of protesting” or “making known any position or thought” anywhere in the City without first obtaining the Chief of Police’s permission at least 24 hours in advance. Chapter 18, Art VI. §§ 18-172, 18-175, 18-178.
2. The Ordinance additionally makes it unlawful for any individual to parade or march “in or upon the public streets, sidewalks, parks or other public places” without first obtaining the Chief of Police’s permission at least 24 hours in advance. Chapter 18, Art VI. §§ 18-172, 18-175, 18-178.
3. The Ordinance allows the Chief to limit even permitted gatherings to six people and order their dispersal upon any violation of the permit, no matter how small. Chapter 18, Art VI. § 18-181.
4. The Ordinance also bans the exercise of any speech or assembly rights by minors unless they obtain the discretionary permission of the Chief. Chapter 18, Art VI. § 18-177.
5. Plaintiffs are organizations or individuals who have recently engaged in or attempted to engage in protests near the Alamance County courthouse in the central square of Graham, North Carolina, where a Confederate monument prominently stands. Plaintiffs seek to organize and engage in imminent future protests in

Graham, including as soon this July 4 weekend, but will not be able to do so without obtaining a permit. The Ordinance impermissibly burdens and violates the constitutional rights of Plaintiffs and others like them who seek to protest in Graham.

6. On July 2, 2020, Plaintiffs filed a Complaint in this Court pursuant to 42 U.S.C. § 1983 alleging that the Ordinance violates the First and Fourteenth Amendments to the United States Constitution and seeking preliminary and permanent injunctive relief.
7. As demonstrated in the attached exhibits and their brief accompanying this Motion, Plaintiffs meet all four requirements for a temporary restraining order and preliminary injunction pursuant to Fed. R. Civ. P. 65 and LR 65.1.
8. *First*, Plaintiffs are likely to succeed on the merits of their claims that the Ordinance violates the First Amendment to the United States Constitution because: (a) it is not narrowly tailored to achieve any compelling government interest; (b) it constitutes an unconstitutional prior restraint; and (c) it is not a reasonable time, place, and manner restriction. Plaintiffs are also likely to succeed on their claim that the Ordinance violates the Fourteenth Amendment because it is impermissibly vague.
9. *Second*, the Ordinance forces Plaintiffs to choose between forgoing their constitutional rights to protest or facing arrest and fines, and thus imposes ongoing, irreparable harm on Plaintiffs. Plaintiffs show by their declarations attached to this

Motion that they will suffer immediate and irreparable loss of their rights to protest this weekend and in the days imminently following, necessitating that a restraining order be entered before Defendants may be heard in opposition.

10. *Third*, entry of an injunction poses no harm to Defendants, as it would restrain enforcement of an unconstitutional law.

11. *Fourth*, an injunction would be in the public interest because it would uphold Plaintiffs' constitutional rights and enable them and countless other speakers to exercise their First and Fourteenth Amendment rights during the pendency of this litigation.

12. Plaintiffs' counsel hereby certifies that they have attempted to provide notice to Defendants of this Motion by contacting the offices of the Graham City attorney and the Alamance County attorney by telephone and email on the afternoon of July 2, 2020, and by emailing them the Complaint and the instant Motion, brief, and attachments contemporaneously with this filing.

13. Plaintiffs should not be required to post a security bond because no harm, pecuniary or otherwise, will result to Defendants if an injunction is granted. *See Pashby v. Delia*, 709 F.3d 307, 332 (4th Cir. 2013) (“[T]he district court retains the discretion to set the bond amount as it sees fit or waive the security requirement.”); *Planned Parenthood of Cent. N.C. v. Cansler*, 804 F. Supp. 2d 482, 501 (M.D.N.C. 2011) (“Given the lack of any monetary injury to Defendant, no bond will be required.”);

*Doe v. Pittsylvania Cty., Va.*, 842 F. Supp. 2d 927, 937 (W.D. Va. 2012) (fixing security bond at \$0 because “there can be no monetary damages or other harm to the Board from conducting its meetings in a manner consistent with the Establishment Clause[.]”); *Complete Angler, LLC v. City of Clearwater, Fla.*, 607 F. Supp. 2d 1326, 1335 (M.D. Fla. 2009) (“Waiving the bond requirement is particularly appropriate where a plaintiff alleges the infringement of a fundamental constitutional right.”).

WHEREFORE, Plaintiffs respectfully request that this Court:

- (a) Immediately enter an order temporarily restraining Defendants from enforcing the Ordinance;
- (b) Set a date on which to hear oral argument on Plaintiffs’ Motion for a Preliminary Injunction;
- (c) Preliminarily enjoin enforcement of the Ordinance;
- (d) Order Defendants to immediately notify their officers, attorneys, agents, employees, and other persons in active concert or participation with them, of any temporary restraining order or preliminary injunction that is entered;
- (e) If a temporary restraining order or preliminary injunction is entered, waive the requirement of a security bond; and
- (f) Order such other relief as this Court deems just and equitable.

Respectfully submitted this 2nd day of July, 2020,

/s/ Kristi L. Graunke

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*Counsel for Plaintiffs*

### **CERTIFICATE OF SERVICE**

I certify that on July 2, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and e-mailed true copies of this motion and attachments to the following:

Robert M. Ward, Graham City Attorney

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J. Bryan Coleman, Graham City Attorney

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s/ Kristi Graunke  
*Counsel for Plaintiffs*

## DECLARATION OF ALAMANCE COUNTY BRANCH OF THE NAACP

I, Barrett Brown, do hereby say under oath the following:

1. I am of legal age and competent to provide this affidavit. All the information herein is based on my own personal knowledge.
2. I am an adult African American resident of Graham, North Carolina, and serve as President of the Alamance County Branch of the NAACP. I am authorized to provide this affidavit on the West Chatham NAACP's behalf.
3. The NAACP has pursued its mission to ensure the political, educational, social and economic equality of rights of all persons and to eliminate racial hatred and discrimination since 1909. Our branch has pursued a variety of strategies to carry out this goal, including public education and advocacy, and, where necessary, litigation, for the benefit of our members and our mission.
4. As part of that mission, our Branch has advocated for the removal of the Confederate monument located in front of the Historic County Courthouse in Graham, because it glorifies the legacy of slavery and racial oppression of African Americans in Alamance County. For that reason, our Branch joined Alamance and Elon University leaders in a written request to the County to remove the Confederate monument from Graham's town square. We have also advocated for criminal justice, against racialized policing of our communities of color, and against police violence against African Americans in Alamance County and nationally.
5. The NAACP is an expressive association that seeks to promote the interests of our members and equality for all people, free from racial discrimination. NAACP engages in expression, including protest, to advance the interests of our members and equality for all people, free from racial discrimination.
6. NAACP has a direct and immediate interest in the issues presented in recent protests of racialized police violence and the Confederate monument in Graham, and in the rights of our members to participate, now and in the future, in such public demonstrations and protests against institutionalized racism, police violence and the Confederate monument-- rights enshrined in the laws and traditions of this state and nation, including the right to assemble with others and to freedom of speech and movement. Those rights have been trampled through the City of Graham's ordinance provisions and so-called "State of Emergency" orders issued since the killing by police of George Floyd in Minneapolis.
7. Due to Graham's permit ordinance and "emergency" orders banning protest, our Branch has been forced to divert resources to assess, plan for and educate our



members about public gatherings, demonstrations and protests which it has organized or in which its members wish to participate that would trigger unlawful conduct by law enforcement officers in Graham. We have also been deterred from exercising our rights to protest. We plan to nevertheless protest at the monument site this July 4, 2020, despite the reasonable and justified fears many of our members have of being arrested and/or harassed.

8. That diversion of resources includes applying for a permit under the City's ordinance on June 26, 2020 for a gathering organized by faith leaders in Alamance County and the NAACP to protest the continued presence of the Confederate monument in Graham's public square. We are concerned that the City's delay in responding to our permit application will limit attendance and hinder planning for that event. We also divert resources to hear from and talk with our members about their concerns about getting arrested or harassed by Alamance Sheriff deputies and Graham police just for going out into the street with a "Black Lives Matter" sign or other message about the Confederate monument, white supremacy, racial justice or equal treatment. Our members are also reasonably concerned that if white supremacists / neo-confederate demonstrators were to threaten or harass them on public property near the monument, neither GPD nor the Sheriff's department would protect them.

9. The time and effort we have expended due to the unlawful permit ordinance and repeated "State of Emergency" orders has reduced our capacity to plan events and programming consistent with our organizational mission. The City, County and Sheriff Department's actions are directly frustrating our capacity to fulfill our mission of effecting community and institutional change through peaceful public demonstrations in downtown Graham and at the Confederate monument site.

This the 2<sup>nd</sup> day of July, 2020, I affirm, under the penalties for perjury, that the foregoing representations are true and accurate.

***Barrett Brown***

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Barrett Brown, President, Alamance County NAACP

## **AFFIDAVIT OF TAMARA O. KERSEY**

I, Tamara O. Kersey, do hereby say under oath the following:

1. I am of legal age and competent to provide this affidavit. All the information herein is based on my own personal knowledge.

2. I am an adult African American resident of Graham, North Carolina, Associate Pastor of Wayman Chapel AME in Graham, and a member of the Alamance County Branch of the NAACP ("the Branch" or "NAACP"). I currently serve as the Branch's Community Coordination Committee Chairperson.

3. I have wanted on a number of occasions, most recently in response to the killing of George Floyd by police in Minneapolis, to protest in Graham. I have attended vigils, rallies and/or protests in Mebane and in Burlington against racist police brutality in the wake the killing of George Floyd. I want to organize a protest, sponsored by the NAACP and faith leadership, in resistance to the feeling of a pall over the city of Graham stemming from national and local police brutality and to protest the continued presence of the Confederate monument in our public square. I desired to organize and/or join faith leaders and those with religious conviction on public property in Graham.

4. However, because of Art. VI of Graham's Code of Ordinances, which requires any group of "two or more persons" gathering "for the purpose of protesting any matter or making known any position or thought of the group or of attracting attention thereto," I had to apply for a permit from the Graham police chief at least 24 hours in advance. In addition, because of the additional authority given to the police under the Mayor of Graham's "Declaration of State of Emergency" on June 25 and June 27 to further restrict people's freedom of movement and ability to protest on public property, I have not exercised my constitutional rights to assemble and speak out against injustice out of fear I will be arrested.

5. Before the City's June 27 "Amended Declaration of State of Emergency" came out, I petitioned Graham Police Department for a permit the morning of Friday, June 26 to hold a "Prayer in the Park" in the Sesquicentennial Park in downtown Graham for the dates July 18 or 25. The park is approximately 30 feet across from the courthouse. I am organizing this event with other faith leaders in Alamance County and the NAACP. Our message at this event is to call on our local government and law enforcement officials to address their inequitable treatment of individuals who have gathered near the Confederate monument in Graham. Those government officials, City police and the Alamance County Sheriff Department have allowed neo-confederate demonstrators to congregate with their firearms and other weapons on display, while anti-racist demonstrators have been ordered to disperse. This is not only a threat to public safety, it is also a suppression of our constitutional rights in the public square.

6. In fact, the City's June 25 curfew and June 27 prohibition on protests or permits looks to me to have been motivated by a demonstration that was to be held on June 25 to protest racialized policing and the continued presence of the Confederate monument.

7. As an African American resident of Graham, I experience the Confederate monument as racist government speech. It venerates the Confederate States of America, whose primary, if not only, purpose was to keep African Americans enslaved. The Graham monument's inscription celebrates the soldiers who fought to preserve slavery and promotes the mythical, racist and dangerous "Lost Cause" narrative. Because of where it is located, on the North side of the Alamance County Courthouse, the monument speaks for the whole county, and the message is that the Confederacy should have been the victor over the United States in the Civil War to preserve slavery, that black people are inferior and should be enslaved.

8. I would like to be able to join with others who feel as I do about this monument to peaceably protest it without having to first seek permission from the same government entities that engage in racially inequitable treatment of protestors, and without risking arrest. I plan to go to exercise my rights to protest at the monument on July 4, 2020, although I am fearful of being arrested and/or harassed.

9. I have not received any response to my permit application, despite repeated requests to the Graham Police Chief, which makes it impossible for me to plan the Prayer Vigil for later this month. I also worry that the permit will be denied based on the ordinance's vague standards and the viewpoint I, the NAACP and my fellow faith leaders seek to express. It is a violation of my First Amendment rights for me to even have to apply for this permit. For that reason, and to stop the City's continued violation of my rights through its "State of Emergency" declarations that have been issued regularly since George Floyd's killing by police on May 25, 2020, I am suing the City of Graham.

I affirm, under the penalties for perjury, that the foregoing representations are true and accurate.



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Tamara O. Kersey

Date: 07/2/2020

## **DECLARATION AND AFFIDAVIT OF TENAE TURNER**

1. My name is Colleen Tenae Turner and I am over the age of eighteen and am competent to provide the information that follows based upon my personal knowledge.

2. I have lived in Alamance County for almost my entire life. I went to Graham Middle School. I graduated from Graham High School. During my time in the marching band, we marched about the court square. It was a time filled with joy and happiness. When I was on the courthouse square, trying to become Homecoming Queen, we rode around that same square and waved at the town.

3. It pains me to know that I am not allowed to express my concerns for my community in the same manner I once celebrated it. I sought to gather with others to express support for black lives, advocate for the removal of the monument and advocate for equally representative government, and I was denied that right.

4. I believe that all black lives matter, but not because I believe that any other person's life is less than, but because I recognize the underrepresentation of the black community, even within the community. I recognize the struggle of all underrepresented people and their intersections, which includes women, LGBTQ+, the latinx community, the poor, the indigenous and the immigrant communities and others.

5. I believe the monument is a symbol for the white supremacy that oppresses us all. Removing and placing the monument in a safe museum would be an important gesture of support against the white supremacy that is ingrained in our small community and in the broader world.

6. Since the killing of George Floyd, I have been feeling trapped. I have felt trapped within a system that will never cater to me. There is a sobering reality that at any point in time, that could have been any black man in my life. It could have even been me. I did not feel relief until I was able to gather with others in protest. While protesting I found relief and comfort because I knew that gathered with others, we were being heard.

7. I submitted an application for a group demonstration to the Graham City Police on June 24, 2020 at 4:33pm. In my application, I requested a permit for a group of one hundred to three hundred (100-300) people to demonstrate at the Alamance County Historical Courthouse in Graham on June 27, 2020.

8. On June 26, 2020 at 9:15pm, Graham Assistant Chief of Police, Kristy Cole, emailed me a document denying my application.

9. The document stated multiple reasons for the denial of my application including:
- a. an incomplete address;

- b. the potential for the demonstration to interfere with orderly movement of individuals and property owner's right to "enjoy peaceful occupancy and use of their property";
- c. excessive diversion of police from other necessary duties; and
- d. that "[r]ecent events in Court Square on 6/20/20 has already placed business owners in fear for the safety of their property, as well as, their employees. We feel that this event would further enhance the fear and concerns that they have."

10. On June 27, 2020, I submitted a new application for permit to demonstrate that I hoped would address the concerns outlined in the "recommendations" section of the denial email from my June 24, 2020 application.

11. In this new application, I requested a permit for a demonstration on June 28, 2020 at the Alamance County Historical Courthouse from 6pm to 8pm for up to eight people, including one minor.

12. The application included my complete address and stated that protestors would be social distancing at least 6 feet, wearing masks, and not yelling or chanting, though they would be holding signs.

13. On June 27, 2020 at 7:04pm, Chief Cole wrote to me saying I would "need to seek written permission from Alamance County to be on the grounds of county property" and asked me to resubmit my application with this written permission included.

14. I replied that demonstrators would protest on the grass at the courthouse or on the sidewalk immediately adjacent to the courthouse.

15. Chief Cole replied that she was unable to issue a permit for group demonstration due to the June 27, 2020 State of Emergency.

16. Our nation takes pride in our freedoms of speech and assembly. It is something that is typically used to show why our nation is greater than the next. We aren't supposed to be deprived of it, but Graham and the larger Alamance County found a way to strip us of the freedoms afforded to us by the Constitution. Graham's ordinance requiring us to get a permit to protest and their policies, and practices to stop protesting have blocked us from exercising our rights. We must now limit how we exercise our constitutional rights to only what the Sheriff and the Police Department will allow.

17. This Fourth of July weekend, I would like to be able to spontaneously go with a small group of people (less than 10), and walk on the public sidewalks of Graham and the steps at the Alamance Historical Courthouse in Graham without having to first seek a permit from the City of Graham, and without seeking the permission of the Alamance County Manager.

18. I am participating in this lawsuit because I want Graham and Alamance County to open up the city of Graham and the courthouse grounds to peaceful demonstration. I want all law enforcement—including the Graham Police Department, the Alamance County Sheriff, and the

State Police—to respect my right to demonstrate against symbols of government-endorsed white supremacy such as the Confederate monument in front of the county courthouse in Graham.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 2, 2020.



Tenae Turner

## AFFIDAVIT OF TERENCE COLIN DODD

I, Terence Colin Dodd, do hereby say under oath the following:

1. I am of legal age and competent to provide this affidavit. All the information herein is based on my own personal knowledge.
2. I am a Caucasian male resident of Hillsborough, North Carolina. On the evening of June 26, 2020, I read online about communications from the Alamance Sheriff's department and City of Graham about the City permit requirement for any protest and the City's "State of Emergency" refusal to issue permits. I was quite angered about this, because it is my right to peaceably assemble and be on public property to exercise my First Amendment rights to protest.
3. I wanted to protest the presence of the Confederate monument in Graham because it symbolizes white supremacy and the continuing suppression of the rights of African Americans to be treated equally. So I drove to Graham the next morning, arriving around 5:30am on Saturday, June 27. I parked in a municipal lot downtown. I had prepared a poster sign that read "Black Lives Matter." I peacefully and calmly approached the monument at around 6:00am. My plan was to stay there with my sign for as long as I could, and to use my mobile phone to videotape any encounter with law enforcement officers.
4. I coordinated with no one. I am not a member of any group, or affiliated with any civil rights organization, although I support many civil rights causes when I vote.
5. As I approached the monument, I became very nervous as I saw the Alamance Sheriff Department cruiser parked on one side of the monument. I stopped about 6 feet away from the cruiser, and a deputy in uniform promptly got out.
6. I was nervous and my voice was shaking with emotion as I asked the deputy where I was allowed to be. I was completely by myself, so there was no danger to anyone or to any property, including the monument. I thought if ever there was a good time to let a citizen demonstrate freely, surely this was it, just one month after the killing of George Floyd by police in Minneapolis.
7. I had already stepped back away from the deputy, but he immediately ordered me to step back further. He then walked towards me, and he was not wearing any covering over his mouth and nose, which clearly demonstrated that he had no intention of protecting me or my health or my civil rights.
8. I asked him to explain the ordinance or other legal authority that permitted him to prevent me from demonstrating at the Confederate monument on the courthouse steps. He did not answer me, but instead called on his radio for backup. At this point I noticed that the red light and the green light on his body camera on.

9. Within seconds, it seemed to me, a half dozen squad cars joined us as well as a parade of Sheriff deputies. I estimate there were eight to ten. I felt overwhelmed and fearful in their presence, despite the privilege my race affords me. I just kept saying to them, "Tell me the law, tell me what law I'm breaking," and asking if I was under arrest.

10. I asked who would arrest me if I refused to move. They told me Graham Police Department (GPD). I told them to call GPD. At that point I reminded all of the deputies that they needed to be wearing a mask, especially if they had any intention of getting within 6 ft of me.

11. A GPD officer soon arrived on the scene and eventually told me that I could peacefully walk on the sidewalk around the town square as much as I liked, but that I had to be alone, because if anyone else joined me, I would be in violation of the ordinance.

12. I insisted on being allowed to be there with my sign near the monument on County property.

13. I was very afraid for my safety. I stood my ground for a few minutes until they gave me a 2-minute warning, threatening to arrest me if I did not leave. Intimidated and angry, I retreated to the sidewalk across the street with about 30 seconds to spare.

14. I spent the next three hours walking around the courthouse square. I was not harassed further. I left in my car shortly before 10:00 a.m.

15. I know I walked into the situation with a lot of privilege, but I did not feel at all safe, not one bit, having been forced by those law enforcement officers off of public property and restricted to the sidewalk around the square. The three hours I spent doing that were some of the most stressful I've ever experienced.

16. I am participating in this lawsuit because I want Alamance County to open up the courthouse grounds to peaceful demonstration. I want all law enforcement—including GPD and Alamance County and State Police-- to respect my right to demonstrate against symbols of government-endorsed white supremacy such as the Confederate monument in front of the county courthouse in Graham. I intend to return to Graham to protest in the near future. However, I do not feel safe protesting there because of the way the Sheriff deputies and Graham police officers treated me on June 27, and because of what I have seen in the news and online about their very different and favorable treatment of neo-confederate demonstrators near the monument.



I affirm, under the penalties for perjury, that the foregoing representations are true and accurate.

Terence Colin Dodd

***T. Colin Dodd***

Date:

*2 July 2020*

## **DECLARATION AND AFFIDAVIT OF DESTINY CLARKE**

1. My name is Destiny Clarke and I am over the age of eighteen and am competent to provide the information that follows based upon my personal knowledge.
2. I arrived in downtown Graham, North Carolina on June 28, 2020 at approximately 7:00pm.
3. I exited my car and began walking alone and silently on W Elm St in Graham carrying a “Black Lives Matter” sign.
4. As I turned onto the sidewalk on NW Court Square, I was stopped by a Graham police officer who threatened to arrest me if I did not leave the area.
5. The officer told me that there was no protesting allowed and that I needed to leave or be arrested.
6. I replied, “I don’t have to leave because it’s a public place and it’s before curfew.”
7. The officer persisted in threatening to arrest me if I didn’t leave.
8. I offered to throw away my sign and then threw it away.
9. As I was throwing away my “Black Lives Matter” sign, the officer continued to threaten to arrest me if I didn’t leave.
10. Once I threw away my sign, the officer left.
11. During the interaction, a family passed me, carrying ice cream, and the officer did not interact with them or ask them to leave.
12. I believe that I was being threatened with arrest specifically because I was carrying a sign with a political message.
13. I effectively was not allowed to walk alone on a public sidewalk in Graham solely because I was carrying a poster with political speech on it.
14. I would like to be able to spontaneously take a small group of people (less than 10), and walk on the public sidewalks and steps at the historic courthouse in downtown Graham, North Carolina without having to first seek a permit from the City of Graham in advance, and without seeking the permission of the Alamance County Manager.
15. I am participating in this lawsuit because I want Graham and Alamance County to open up the city of Graham and the courthouse grounds to peaceful demonstration. I want all law

enforcement—including the Graham Police Department, the Alamance County Sheriff, and the State Police—to respect my right to demonstrate against symbols of government-endorsed white supremacy such as the Confederate monument in front of the county courthouse in Graham.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 2, 2020.

  
\_\_\_\_\_  
Destiny Clarke

## **DECLARATION AND AFFIDAVIT OF NERISSA RIVERA**

1. My name is Nerissa Rivera and I am over the age of eighteen and am competent to provide the information that follows based upon my personal knowledge.
2. I am a fifty-nine year-old female Latina resident of Burlington, North Carolina.
3. On June 27, 2020 I was planning to go to a protest that was organized by Tenae Turner. I had seen the group demonstration announced on Facebook.
4. I had previously joined with another small group of people to walk around Graham in black T-shirts in support of Black Lives Matter in mid-June.
5. I oppose the Confederate Monument standing outside the Alamance Historic Courthouse in downtown Graham because it represents murder, inequality, and racism. It frustrates me to see police officers wasting taxpayer money protecting the monument when there is real police work that needs to be done.
6. I learned that Ms. Turner cancelled the demonstration because she didn't get a permit, and didn't want anyone to get arrested or injured.
7. Then I learned about an announcement from the Alamance County sheriff's office that no more permits would be issued.
8. I decided to go to downtown Graham anyone and conduct a protest of one.
9. I found out about a lunch meeting downtown to strategize. I met with a group of friends. Some of them were members of an organization I belong to: Down Home North Carolina.
10. The restaurant where we met was near the Historic Alamance County Courthouse in downtown Graham.
11. When we left, one of the Black members of our groups asked people to walk her back to her car because she didn't feel safe.
12. I joined a group to walk with her back to her car, and we walked in pairs, socially distanced apart on the sidewalk together.
13. We were not holding signs.
14. When we crossed the street, two law enforcement officers approached us and said we could not protest.

15. Members of our group responded to the officers that we were not protesting, and explained we were walking the woman to her car.

16. Officers said they would allow us to walk to the car, but would not allow us to protest. Officers instructed us that if we started to protest they would order us to leave.

17. We entered a local business owned by an African American woman, and then exited to walk our colleague to her car.

18. We walked a second time along the path we had just taken.

19. Officers approached again and ordered us to disperse.

20. Across the street, there were a group of white people with confederate flags. And we asked the officers why the other group was not ordered to leave.

21. Officers responded that they had not been instructed to concentrate on the area where the other group with the Confederate flags was located.

22. I left the scene without being able to demonstrate with my group.

23. This Fourth of July weekend, I would like to be able to spontaneously go with a small group of people (less than 10), and walk on the public sidewalks of Graham and the steps at the Alamance Historical Courthouse in Graham without having to first seek a permit from the City of Graham, and without seeking the permission of the Alamance County Manager.

24. I am participating in this lawsuit because I want Graham and Alamance County to open up the city of Graham and the courthouse grounds to peaceful demonstration. I want all law enforcement—including the Graham Police Department, the Alamance County Sheriff, and the State Police—to respect my right to demonstrate against symbols of government-endorsed white supremacy such as the Confederate monument in front of the county courthouse in Graham.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 2, 2020.

*Nerissa Rivera*

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Nerissa Rivera

## **DECLARATION AND AFFIDAVIT OF ADAM ROSE**

1. My name is Adam Rose and I am over the age of eighteen and am competent to provide the information that follows based upon my personal knowledge.

2. I have lived in Alamance County all of my life, except for time spent in various countries with the Army NC National Guard that I retired from in 2017. I now reside in Graham, NC and am proud to call Graham home. Graham and Alamance County have always strived to present an image of welcoming and forward thinking, but recent actions have spoken louder than those words.

3. On June 2nd 2020, I was shocked to see in the media that 33 officers from the Alamance County Sheriff's Office and the Graham Police Department arrived in response to a group of 8 citizens wanting to demonstrate and express their thoughts on current situations. I began looking at the city of Graham's handling of the situations that arose thereafter with curfews being imposed on the city. During the curfews, I rode through downtown Graham after curfew. I saw that the curfew wasn't being enforced, as there were police present and plenty of foot and vehicle traffic, yet I didn't see anyone being stopped.

4. I began to question if the curfew was truly necessary or if it's only purpose was to give law enforcement another tool to use to arrest someone that they felt was a threat. I attempted to present these concerns to the Graham City Council at their meeting on June 9th, 2020.

5. My comments didn't receive any response and City Councilman Ricky Hall left the meeting while my comments were being read so they weren't even received by the full board.

6. On June 21, 2020 I saw Facebook posts calling for all "Patriots" to come protect the Confederate Soldier monument. On my way home, I rode through Court Square and was surprised to see that numerous groups wearing Confederate flags, waving Confederate flags on makeshift sticks, and with Presidential campaign flags were being allowed to congregate on the sidewalks around the monument. I even saw that some of these groups were armed with pistols on their hips. I was confused by this because I knew that NC law prevented carrying weapons at demonstrations and yet they were being openly carried around what constitutes a demonstration under Graham's ordinances. After seeing this, it became apparent that various groups were having the laws applied to them differently.

7. On June 26th, 2020 I heard that a Black Lives Matter group was planning an unpermitted demonstration in Graham, NC. Soon after that I saw the Alamance County Sheriff's Office post on Facebook that there would be no permits to protest issued for the foreseeable future and that any group attempting to protest without a permit would be subject to arrest.

8. This announcement struck me to my core. I couldn't believe that a government entity would so flagrantly deny protestors their First Amendment rights.

9. At my first opportunity, I went to the Graham Police Department to immediately file for a permit to protest because I felt I needed to express my thoughts to everyone possible that this declaration was unconstitutional.

10. When I joined the Army, I swore to an oath to “Support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same”.

11. For 17 years I strived to live the 7 Army Values of Loyalty, Duty, Respect, Selfless Service, Honor, Integrity, and Personal Courage that are so deeply instilled in everyone that serves. I’m not aware of an expiration date on my oath of enlistment and I can’t forget those values that I learned for so long just because I don’t wear the uniform any longer.

12. The United States of America isn’t defined by where our borders fall on a map, it’s defined by the principles and ideology listed in the Constitution. I can’t sit idly by and watch as those principles are eroded by government entities without letting my voice be heard.

13. I filed for a permit for a group demonstration on June 26th, 2020 with the Graham Police Department. I wanted to celebrate First Amendment rights and to protest the statement published by the Alamance County Sheriff’s Office of banning demonstrations.

14. Being that I knew there was a demonstration already planned for Saturday June 27th, 2020 and that the process required 24 hours’ notice, I applied for a demonstration planned to take place on Sunday June 28th, 2020. I chose 9:30 am to 10:30 am as there would be less traffic on a Sunday morning and would be longer than the 24 hours’ notice required.

15. I also chose a location of the corner of Main Street and Court Square as there is a garden there that would allow pedestrian traffic to bypass the demonstration and travel unaffected. I kept the number small at only 6 people as I thought that would be an easy number for law enforcement to devote resources to and wouldn’t require too many resources in order to facilitate.

16. I was told Lieutenant Duane Flood of the Graham PD would be in touch with me about the approval or denial, and on Saturday June 27th, 2020 when I hadn’t heard from anyone on the status of my application I called and left a voicemail with my contact information.

17. On Saturday June 28th, 2020 Assistant Chief Kristy Cole of the Graham Police Department called me at around 8:45 pm to tell me that my permit had been denied due to the State of Emergency proclamation by the Mayor. The accommodations I had made in my application in order to help keep the demonstration as small and easy to facilitate as possible weren’t enough and they could not approve ANY permits for demonstration during the proclamation.

18. Assistant Chief Cole offered to accommodate the demonstration after the proclamation was lifted, which I explained to her that this defeated the purpose of protesting the

proclamation and showed the irony of their policy requiring a citizen to get permission of the organizations they feel are oppressing them in order to protest the oppression that they feel they are experiencing.

19. As a veteran that served my country honorably and was rightfully prevented from exercising my first amendment right to the fullest during that time, it is painful and humiliating that after so many years of service the time that I decide to exercise my rights I am denied with no rightful justification. Instead, the Court Square is turned into a defensive position and anyone trying to exercise their rights are too intimidated to try because of the statements of law enforcement and by their overwhelming presence. My rights were denied based on the actions of others and with me having no recourse in order to regain them in a timely manner.

20. In the words of one of our Founding Fathers, Benjamin Franklin, “They who can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety”.

21. This weekend, I would like I would like the option to spontaneously go with a small group of people (less than 10), and walk on the public sidewalks of Graham and the steps at the Alamance Historical Courthouse in Graham without having to first seek a permit from the City of Graham, and without seeking the permission of the Alamance County Manager.

22. I am participating in this lawsuit because I want Graham and Alamance County to open up the city of Graham and the courthouse grounds to peaceful demonstration. I want all law enforcement—including the Graham Police Department, the Alamance County Sheriff, and the State Police—to respect my right to demonstrate against symbols of government-endorsed white supremacy such as the Confederate monument in front of the county courthouse in Graham.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 2, 2020.

*Adam Rose*

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Adam Rose



## DECLARATION AND AFFIDAVIT OF ANNIE SIMPSON

1. My name is Annie Simpson and I am over the age of eighteen and am competent to provide the information that follows based upon my personal knowledge.

2. On June 29, 2020 at 3:25pm, I called the Graham Police Department to inquire about how to apply for a permit to demonstrate at the Alamance County Historical Courthouse.

3. Chief Kristy Cole informed me that I would have to submit written permission from the Alamance County Manager's Office along with my application for demonstration permit in order to hold a permitted demonstration at the courthouse

4. On June 29, 2020 at 4:02pm, I called the Alamance County Manager's Office to inquire about the process of acquiring written permission to demonstrate at the Alamance County Historical Courthouse.

5. I told the individual that I was applying for a protest permit with Graham PD and that the protest would be on county property at the courthouse.

6. I asked for the email address for the county manager's office so I could request the written permission Graham PD told me was needed. The person I spoke with asked me what I needed the permit for and I answered that I was applying for a protest permit. After waiting on hold, the person at the County Manager's office said, "I'm not sure why Graham is telling you to contact the County Manager because the County does not issue any kind of protest permits. You'll have to go through the city of Graham."

7. I explained again that it was Graham Assistant Police Chief Kristy Cole who had sent me to the County Manager, to gain written permission to be on county property outside the Alamance County Historical Courthouse.

8. In response, the County Manager's Office said, "We don't allow any kind of protest on the courthouse grounds."

9. I asked for clarification and the representative from the County Manager's Office confirmed that no protests are allowed on courthouse grounds. I again asked for the County Manager's email address so I could send a written request and was given the email address for Bryan Haygood, Alamance County Manager.

10. On June 29, 2020 at 4:08pm, I sent Mr. Haygood an email requesting written permission to demonstrate on the steps and/or grass of the Alamance County Historical Courthouse.

11. As of this filing, I have received no reply and am therefore unable to begin the process of requesting a permit from Graham to demonstrate at the Alamance County Historical Courthouse.



12. I am unaware of any written policy stating that protests are not allowed on the grass or steps of the Alamance County Historical Courthouse. And, I am not aware of any written policy stating that individuals must contact Alamance County in order to be granted a permit from Graham to demonstrate at the Alamance County Historical Courthouse.

13. As a life-long resident of North Carolina, I've seen first-hand the white-supremacist violence attracted by Confederate monuments. While I was a student at UNC, violent racists were emboldened by the University's explicit commitment to the monument, which was erected in obvious defense of racial intimidation and a racist social order. These racists threatened to kill my friends and fellow activists.

14. These death threats were issued repeatedly online and in person for years, often as racists demonstrated at the monument. Not to mention, video evidence and eyewitness accounts, including those offered under oath, show that these racists were allowed to intimidate, denigrate, and physically maim students and community members as we protested in defense of Black lives. Confederate monuments not only serve as material nodes of a long-lasting white-supremacist social hierarchy, but are rallying points for dangerous hate groups who harm citizens and threaten to do far worse.

15. When we stand together in dissent against unjust systems and iconography, and make our voices heard, we signal to our communities that we will not accept racist violence, badged and un-badged. Moreover, the fight for Black lives is not bound by zip-codes or county borders. What happens in Graham, or Alamance County, affects populations outside of those demarcations: nothing happens in a vacuum.

16. I should not have to file for a permit to protest to begin with. I have a right to protest freely on public property. This right is incredibly important to me as I believe that no-one should have to gain permission to publically express dissent. That suppression of speech in opposition to the presumed status-quo, by its very definition, is fascism.

17. The Graham Police Department, in collaboration with the Alamance County Manager's Office, has denied me right to protest though bureaucratic nonsense.

18. My interest in protesting in Graham is to support the waves of recent protests against police violence and systemic racism, insist that Black Lives Matter here, and demonstrate a strong opposition to the Alamance County Confederate Monument. This struggle is urgent in Graham, as Alamance County is home to ACTBAC (Alamance County Taking Back Alamance County), a local hate group known for threatening anti-racist activists, bringing weapons to Confederate monuments, and stealing student art honoring victims of racial violence.


19. This Fourth of July weekend, I would like to be able to spontaneously go with a small group of people (less than 10), and walk on the public sidewalks of Graham and the steps at the Alamance Historical Courthouse in Graham without having to first seek a permit from the City of Graham, and without seeking the permission of the Alamance County Manager.



20. I am participating in this lawsuit because I want Graham and Alamance County to open up the city of Graham and the courthouse grounds to peaceful demonstration. I want all law enforcement—including the Graham Police Department, the Alamance County Sheriff, and the State Police—to respect my right to demonstrate against symbols of government-endorsed white supremacy such as the Confederate monument in front of the county courthouse in Graham.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 2, 2020.

  
Annie Simpson

## **DECLARATION OF GREGORY B. DRUMWRIGHT**

I, Gregory B. Drumwright, do hereby say under oath the following:

1. I am of legal age and competent to provide this affidavit. All the information herein is based on my own personal knowledge.
2. I am an adult African American resident of Greensboro, North Carolina, Professor of Communications at High Point University, a community organizer and social justice activist, and Senior Minister of the Citadel Church in Greensboro.
3. On July 1, 2020, I applied for a permit for a peaceful demonstration to take place at the courthouse square in Graham on July 11, 2020 to protest racialized policing and police brutality against Black people and our communities, and to protest the Confederate monument there. Soon after emailing the permit application to the Graham Police Department (GPD), I received an emailed acknowledgement of receipt of my application stating that it would be forwarded to GPD Lieutenant Flood, who would then follow up with me.
4. I later telephoned Lt. Flood, who told me that he had seen my application and would get back to me about it.
5. Lieutenant Flood has not responded to my subsequent calls or otherwise given me any information about the status of my application. The delay is making it very difficult for me to plan and make arrangements for our demonstration on July 11, 2020.
6. Later on July 1, I called Graham's Assistant City Manager, Aaron Holland, concerning my permit application. Mr. Holland told me that Sheriff Johnson was not allowing any permits for protests to be issued.
7. I plan to go to Graham on July 4, 2020, accompanied by other community members who have been denied their civil rights, to demonstrate and protest peaceably in and around the courthouse square in Graham. These community members have witnessed white people who want to keep the Confederate monument demonstrating in the same public space without any interference by any law enforcement officers. However, the GPD and Sheriff deputies have ordered those of us who oppose the monument because it glorifies the legacy of slavery and racial oppression of African Americans in Alamance County to leave that same property.
8. Based on the language of Graham's ordinance and officers' and deputies' treatment of those with a social justice message, I don't expect to ever be granted a permit by GPD. In addition to protesting the Confederate monument and police racialized brutality, my message is also about the disproportionate numbers of African

Americans arrested, charged and convicted by Alamance County law enforcement and court.

This the 2<sup>nd</sup> day of July, 2020, I affirm, under the penalties for perjury, that the foregoing representations are true and accurate.

A handwritten signature in black ink that reads "Greg Drumwright". The signature is written in a cursive style with a large, stylized "G" and "D".

Gregory B. Drumwright

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**  
Civil Action No. \_\_\_\_\_

**NATIONAL ASSOCIATION FOR )  
THE ADVANCEMENT OF )  
COLORED PEOPLE ALAMANCE )  
COUNTY BRANCH, et al. )**

**Plaintiffs, )**

**v. )**

**JERRY PETERMAN, et al., )**

**Defendants. )**

**PROPOSED TEMPORARY  
RESTRAINING ORDER**

Plaintiffs Alamance County Branch of the National Association for the Advancement of Colored People (“NAACP”), Tamara O. Kersey, Colleen Tenae Turner, Terence Colin Dodd, Destiny Clarke, Annie Simpson, Nerissa Rivera, Adam Rose, and Gregory Drumwright, have moved pursuant to Fed. R. Civ. P. 65 and LR 65.1 for a temporary restraining order and a preliminary injunction restraining enforcement of Chapter 18, Art. VI, Sections 18-172 and 18-174 through 181 of the City of Graham (“City”), North Carolina’s Code of Ordinances (“the Ordinance”). Among other things, the Ordinance makes it unlawful for any person to gather with anyone else “for the purpose of protesting” or “making known any position or thought” anywhere in the City without first obtaining the Chief of Police’s permission at least 24 hours in advance. Plaintiffs argue that the Ordinance violates the First and Fourteenth Amendments to the United States Constitution.

After review of the declarations, documentary evidence, and briefing submitted by Plaintiffs, the Court will grant the motion for a temporary restraining order.

### **BAC GROUND**

The Ordinance provides that “[n]o parade, picket line or group demonstration is permitted on the sidewalks or streets of the city unless a permit therefor has been issued by the city.” Chapter 18, Art. VI. § 18-175. It defines group demonstration as “any assembly together or concert of action between two or more persons for the purpose of protesting any matter or making known any position or thought of the group or of attracting attention thereto,” parade as “any parade, march, ceremony, show, exhibition or procession of any kind in or upon the public streets, sidewalks, parks or other public places,” and picket line as “any persons formed together for the purpose of making known any position or promotion of said persons or on behalf of any organization.” *Id.* § 18-172.

To enforce the Ordinance, the Chief of Police is authorized to:

- (1) Require a written application . . . to be filed 24 hours in advance of such parade, picket line or group demonstration . . .
- (2) Refuse to issue such permit when the activity or purpose stated in the application would violate any ordinance of the city or statute of the state, or when the activity or purpose would endanger the public health or safety, or hinder or prevent the orderly movement of pedestrian or vehicular traffic on the sidewalks or streets of the city.
- (3) Specify in the permit whether or not minors below the age of 18 years will be permitted to participate. The chief of police or, in his absence, the next highest ranking police officer of the city on duty shall pass upon whether or not minors below the age of 18 years shall be permitted to participate . . . and shall base his determination upon whether or not the purpose, time or

place of the participation will be detrimental to or endanger the health, welfare or safety of said minors.

*Id.* § 18-178.

Moreover, the Ordinance provides that the Chief or other designated officer must, “among other considerations provided,” find as a requisite before issuing any permit that the activity will not (1) “require excessive diversion of police from other necessary duties”; (2) “interfere with the right of property owners in the area to enjoy peaceful occupancy and use of their property”; or (3) “unreasonabl[y] interfere[] with normal vehicular or pedestrian traffic in the area, . . . prevent normal police or fire protection to the public, [or] . . . be likely to cause injury to persons or property or provoke disorderly conduct or create a public disturbance.” *Id.* § 18-179.

If the Chief of Police grants the permit, he then has discretion to limit the protest or other gathering to “not more than six persons . . . [in] the entire width of [the] street or sidewalk within . . . 100 feet.” *Id.* § 18-181. During a permitted protest, parade, demonstration, or picket, he has discretion to order individuals to disperse upon a violation of any of the terms of the permit. *Id.* § 18-176. If individuals fail to disperse, they may be subject to arrest under NC Gen. Stat. § 14-288.5.

The Ordinance also makes it illegal for any minor to be present at an expressive gathering without explicit permission from the Chief or other designated officer. It authorizes them to deny such permission upon their own determination that attending would be “detrimental to or endanger [the minor’s] health, welfare or safety.” Art. VI §§



18-177, 178. Each violation of the Ordinance is “punishable as a misdemeanor, subject to a fine not to exceed \$500.” Ch. 1 § 1-12.

In their Complaint and in declarations, Plaintiffs assert that they regularly attempt to exercise their First Amendment rights to protest, assemble, and associate in Graham. In particular, Plaintiffs describe recent efforts to protest institutionalized racism, police violence against Black people, and the continued presence of the Confederate monument in front of the Alamance County Historic Courthouse in Graham. Because of the Ordinance, however, Plaintiffs contend that their exercise of their First Amendment rights has been impermissibly burdened and restrained. The Court summarizes pertinent parts of Plaintiffs’ allegations, as set forth in their sworn declarations, as follows:

Plaintiff Alamance County Branch of the National Association for the Advancement of Colored People (“NAACP”) and its members seek to protest racialized police violence and the Confederate monument in Graham. Due to the Ordinance, NAACP asserts it has been forced to divert resources to assess, plan for, and educate its members about public assemblies and demonstrations in Graham, including by applying for a permit to protest the Confederate monument. NAACP says that it fears that its permit applications will be denied due to the viewpoint it and its members wish to express. In addition, because the Ordinance does not set forth a deadline by which Defendant Prichard or his designee must respond to an application, NAACP asserts that it fears that any approval or denial will issue too close in time to the planned protest for them to sufficiently publicize and plan the event. NAACP further states that some of its members plan to protest near the Confederate monument on July 4, but fear harassment and arrest when they do so.

Plaintiff Tamara O. Kersey, who is from Graham, asserts that she has attended vigils and rallies elsewhere in Alamance County to protest police brutality in the wake of the killing of George Floyd, but she has not protested in her hometown. She states that the Ordinance has placed her in fear of being sanctioned for doing so without a permit. Rather than forgo exercising her constitutional rights, she states that she has subjected herself to Graham's permit system, but is concerned that her request may be denied under the Ordinance's subjective standards, and also that the delay caused by waiting for the City's response will limit attendance and hinder her planned protest. She also plans to protest at the Confederate monument on July 4, 2020, despite fears she will be harassed or arrested.

Plaintiff Colleen Tenae Turner grew up in Alamance County and went to school in Graham. She asserts that she would like to be able to gather with others and protest there to raise her concerns with racism in Graham, to express support for Black lives, and advocate for removal of the Confederate monument. She sought a permit for a protest in Graham on June 27, 2020, but Graham Police Department Assistant Chief Kristy Cole denied her request in part because the protest might interfere with the orderly movement of individuals and with property owners' rights to "enjoy peaceful occupancy and use of their property," might divert excessive police from other necessary duties, and might "further enhance the fear and concerns that [local business owners] have." Following that denial, she sought a permit for a smaller gathering on that same day. Assistant Chief Cole denied that request as well, on the basis of a State of Emergency order that the City has since rescinded. Plaintiff Turner testifies that she intends to continue her attempts to organize permitted protests, but is concerned that the City will continue to stifle her efforts

and silence her voice. She would also like to be able to protest spontaneously at the monument this July 4, 2020.

Plaintiff Nerissa Rivera planned to attend the June 27, 2020 protest for which Ms. Turner sought a permit because she opposes the continued presence of the Confederate monument in downtown Graham, which she sees as a representation of murder, inequality, and racism. After learning that the City denied Ms. Turner's permit, Ms. Rivera decided to go to downtown Graham and protest by herself. While in Graham, she met a group of friends for lunch. As they were walking back to one woman's car, they were stopped by Graham police officers who told them they could not protest and that, if they started to protest, the officers would order them to leave. Plaintiff Rivera and her friends left briefly and then walked back along the same path. That time, the officers ordered them to disperse, though Plaintiff Rivera, who is Latina, asserts that the police allowed a group of white people with Confederate flags to congregate across the road. Plaintiff Rivera states that she would like to spontaneously protest with a small group on the public sidewalks near the monument in Graham this Fourth of July weekend, but is unable to do so due to the Ordinance's advance permit requirement.

Plaintiff Destiny Clarke lives near Graham and has sought to demonstrate in the City to protest white supremacy, support the Black Lives Matter movement, and oppose the Confederate monument near the Alamance Courthouse. On June 28, 2020, Plaintiff Clarke walked alone in downtown Graham, silently carrying a "Black Lives Matter" sign. As she neared the courthouse square, a City officer stopped her, told her that protesting is prohibited, and threatened to arrest her if she did not leave the area. Concerned that she

would be arrested for exercising her First Amendment rights, Plaintiff Clarke offered to throw away her sign, and subsequently did so. The officer then left. Ms. Clarke wants to continue protesting in Graham, but is reasonably concerned that she may be arrested or fined for doing so.

Plaintiff Terence Colin Dodd asserts that he approached the Confederate monument in front of the Alamance County Historic Courthouse around 6:00am on Saturday, June 27, 2020 with a poster that read “Black Lives Matter.” He alleges that one of Defendant Sheriff Terry Johnson’s deputies was in a squad car parked beside the monument at the crosswalk. As Plaintiff Dodd approached the monument with his sign, the deputy got out of the car, walked toward Plaintiff Dodd and ordered him to step back. Plaintiff Dodd asked the deputy to explain the ordinance or other legal authority that permitted him to prevent Plaintiff Dodd from demonstrating at the Confederate monument on the Historic Courthouse steps. According to Plaintiff Dodd, the deputy did not answer him, but instead called on his radio for backup. A half dozen squad cars and eight to ten Sheriff deputies subsequently arrived, causing Plaintiff Dodd to feel fearful. Graham police officers then arrived and told Plaintiff Dodd that he could not be on County property but could walk on the sidewalk across the street from the Confederate monument so long as he was alone, not with a group. Because he did not want to get arrested, Plaintiff Dodd obeyed the officers and the deputies and walked alone on the sidewalk with his sign until close to 10:00am, when he left.

Plaintiff Annie Simpson is a resident of Concord, North Carolina who asserts that she has sought to organize protests in downtown Graham at the Alamance Courthouse to

protest white supremacy, support the Black Lives Matter movement, and oppose the Confederate Monument situated there. On June 29, 2020, Plaintiff Annie Simpson called the GPD to inquire about how to apply for a permit to demonstrate at the Alamance County Historic Courthouse. Assistant Chief Cole informed Plaintiff Simpson that she would have to submit written permission from the Alamance County Manager's Office along with her application for demonstration permit in order to hold a permitted demonstration at the Historic Courthouse. That same day, Plaintiff Simpson called the Alamance County Manager's Office to inquire about the process of acquiring a permit to demonstrate at the Alamance County Historic Courthouse. Plaintiff Simpson says she was told by the County Manager's Office that no protests are allowed on courthouse grounds.

Plaintiff Adam Rose asserts that he became concerned about police and governmental overreaction to peaceful protests in Graham in early June 2020. On June 26, 2020 Plaintiff Rose filed an application for a permit to demonstrate at Historic Courthouse Square. Plaintiff Rose indicated he planned to attend with 5 others on June 28 for a two-hour period. On June 27, Plaintiff Rose was informed by Assistant Chief Cole that his permit had been denied, and that no permits would be issued for an indefinite period of time.

Plaintiff Gregory Drumwright grew up just outside the city limits of Graham, and still has family living there. He is a social justice activist and organizer, university professor and Senior Minister at the Citadel Church in Greensboro, North Carolina where he now lives. Although Plaintiff Drumwright subjected himself to Graham's permit system for a

racial justice demonstration at the Historic Courthouse square on July 11, the City Assistant Manager informed him that Defendant Peterman has disallowed the issuance of any permits for protests. Plaintiff Drumwright plans to go to the Courthouse square without seeking a permit on July 4, 2020 to peacefully protest with other community members.

On July 2, 2020, Plaintiffs filed a complaint under 42 U.S.C. § 1983 alleging that the Ordinance violates the First and Fourteenth Amendments to the United States Constitution. That same date, they filed a motion for a temporary restraining order and preliminary injunction.

## **ANALYSIS**

To obtain a temporary restraining order, Plaintiffs must demonstrate that they are likely to succeed on the merits of at least one of their claims; they are likely to suffer irreparable harm absent preliminary relief; the equities favor a temporary restraining order; and a temporary restraining order serves the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

### **I. Likelihood of Success on the Merits**

Plaintiffs present three arguments: (1) The Ordinance is a content-based restriction that does not survive strict scrutiny; (2) the Ordinance is an impermissible prior restraint on speech; (3) the Ordinance's restrictions excessively burden speech and are not reasonable time, place, and manner restrictions, and (4) the Ordinance is void for vagueness under the Due Process Clause.

The Court finds Plaintiffs likely to succeed on all four of these claims.

#### **A. Content based restriction**

The First Amendment prohibits the government from “defin[ing] regulated speech by its function or purpose.” *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). A law is “content-based [if] it applie[s] or [does] not apply as a result of content, that is, the topic discussed or the idea or message expressed.” *Cent. Radio Co. Inc. v. City of Norfolk*, 811 F.3d 625, 633 (4th Cir. 2016) (quoting *Reed*, 576 U.S. at 163). “[T]he Constitution demands that content-based restrictions on speech be presumed invalid and that the Government bear the burden of showing their constitutionality,” *Ashcroft v. Am. Civil Liberties Union*, 542 U.S. 656, 660 (2004) (internal citations omitted), by establishing that “the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.” *Reed*, 576 U.S. at 171.

Here, the Ordinance is content-based. The Ordinance specifically regulates those who assemble “for the purpose of protesting.” Chapter 18, Art. VI § 18-172. And it expressly exempts funeral processions, students going to educational activities, and government agencies. *Id.* § 18-173. Therefore, the Ordinance must survive strict scrutiny. The Court finds that it likely does not. The text of the Ordinance shows it is aimed at limiting protest. *See, e.g., id.* § 18-172 (defining “group demonstration” specifically to include those “protesting any matter”). That is not a legitimate, let alone compelling, government interest.

Even if the City’s interest in the Ordinance were compelling, the ban on any protest, assembly, and parades by any individual or group anywhere in the City without a permit would violate the Constitution because it is not narrowly tailored. As the Supreme Court

has recognized, a total ban on expression on public sidewalks does not substantially serve any government purpose. *See United States v. Grace*, 461 U.S. 171, 182 (1983).

The Fourth Circuit's opinion in *Cox v. City of Charleston* is instructive. There, the court struck down a city ordinance similar to this one on First Amendment grounds. The ordinance made it illegal to "organize, hold or participate in any parade, meeting, exhibition, assembly, or procession . . . on the streets or sidewalks of the city" without a permit. 416 F.3d 281, 283 (4th Cir. 2005). While recognizing that "it may be true that the permit requirement succeeds in mitigating the potential of any of the activities listed in the Ordinance to threaten the safety, order, and accessibility of city streets and sidewalks," the Fourth Circuit held that "it does so at too high a cost, namely, by significantly restricting a substantial quantity of speech that does not impede the City's permissible goals." *Id.* at 285 (alterations, marks, and citation omitted). Recognizing this lack of tailoring, the Fourth Circuit held "that the Ordinance burden[s] substantially more speech than is necessary to further the government's legitimate interests,' and therefore facially violates the First Amendment." *Id.* (*Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989)). The court also held that "the unflinching application of the Ordinance to groups as small as two or three renders it constitutionally infirm" and that "[s]pontaneous expression, which is often the most effective kind of expression, is prohibited by the Ordinance," *id.* at 285–86 (alterations omitted).

Here, the Graham Ordinance appears to share those constitutional infirmities, which highlight the lack of sufficient tailoring. Accordingly, the Court finds it likely that the Ordinance violates the Constitution as a content-based restriction on speech.



## **B. Prior restraint**

While the Supreme Court has approved reasonable permit requirements for large demonstrations, *Cox v. New Hampshire*, 312 U.S. 569, 574 (1941), “any system of prior restraints” bears “a heavy presumption against its constitutional validity.” *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963). “An ordinance that requires individuals or groups to obtain a permit before engaging in protected speech is a prior restraint on speech” and “the City bears the burden of proving its constitutionality.” *Cox v. City of Charleston*, 416 F.3d 281, 284 (4th Cir. 2005) (internal citations omitted).

“[A] law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional.” *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150-51 (1969). “It is settled [. . .] that an ordinance which [. . .] makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official—as by requiring a permit or license which may be granted or withheld in the discretion of such official—is an unconstitutional [. . .] prior restraint.” *Staub v. City of Baxley*, 355 U.S. 313, 322 (1958)). Applying this standard in *Shuttlesworth*, the Supreme Court invalidated an Alabama law that, much like the Ordinance, required a permit for “any parade or procession or other public demonstration.” 394 U.S. at 149. There, much like here, the licensing authority could deny a permit if in “its judgment, the public welfare, peace, safety, health, decency, good order, morals or convenience require that it be

refused.” *Id.* at 149-50. The Court held that this gave the administrator “virtually unbridled and absolute power.” *Id.* at 150.

Here, the Graham Ordinance requires a permit for any “parade, picket line or group demonstration” gathering “for the purpose of protesting any matter.” Ch. 18, Art. VI §§ 18-172, 175. The Police Chief has discretion to deny a permit if it endangers “the public health or safety,” hinders “orderly movement of pedestrian or vehicular traffic,” *id.* § 18-178(2), or is likely to “create a public disturbance,” *id.* § 18-179(3). Moreover, the Police Chief may limit gatherings to six people in areas with “normally heavy pedestrian or vehicular traffic,” or set another higher number if “in his judgment, conditions permit” it. *Id.* § 18-181. The Ordinance does not provide notice for how long the permit review process will take or to require the government to provide a justification when a permit is denied.

Plaintiffs argue that the Ordinance invites discriminatory enforcement against disfavored views by authorizing the Police Chief to deny a permit where, in their judgment, a proposed assembly will “require excessive diversion of police from other necessary duties,” without any objective standards. Plaintiffs further argue that this provision allows the government to suppress views that officials fear will draw large crowds either of supporters or counter-demonstrators, and they plausibly contend that they have in fact been threatened and prohibited from protesting because of their support for racial justice and equality. Accordingly, the Court finds it likely that the Ordinance places a prior restraint on free speech in violation of the First Amendment.

### **C. Excessive Burdening of Protected Speech**

The Court agrees with Plaintiffs that the Ordinance also likely violates the First Amendment by burdening Plaintiffs' speech with restrictions on their rights to gather and protest publicly that are not reasonable "time, place, and manner" restrictions. The Ordinance regulates speech in traditional public forums such streets, sidewalks, and parks. These places have "immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thought between citizens, and discussing public questions." *Hague v. Comm. for Indust. Org.*, 307 U.S. 496, 515 (1939). In such spaces, the government may only impose "reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information." *Ward*, 491 U.S. at 791 (quoting *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984)).

"To prove that a content-neutral restriction on protected speech is narrowly tailored to serve a significant governmental interest . . . the government is obliged to demonstrate that it actually tried or considered less-speech-restrictive alternatives and that such alternatives were inadequate to serve the government's interest." *Billups v. City of Charleston*, 961 F.3d 673, 688 (4th Cir. 2020). "Absent such a showing, [courts] cannot simply accept the City's assurances that those other ordinances would be too difficult to enforce or would not sufficiently safeguard its interest." *Id.* at 689. "Rather than enforcing a prior restraint on protected expression, cities can enforce ordinances prohibiting and punishing conduct that disturbs the peace, blocks the sidewalks, or impedes the flow of

traffic.” *Cox*, 416 F.3d at 286. “Cities can also pass ordinances that regulate only the volume, location, or duration of [protected] expression,’ rather than subjecting all speech to a permit requirement.” *Id.* (quoting *Community for Creative Nonviolence v. Turner*, 893 F.2d 1387, 1393 (D.C. Cir. 1990)). “At bottom, the legislative body can enact a permit requirement that burdens expression only to the extent necessary to effectuate the city’s significant interests, and no more so.” *Id.* at 287.

Here, as noted above, the Ordinance is not narrowly tailored to serve a significant government interest. The Ordinance presumptively bans all protest and assembly absent government permission everywhere in the City, without any attempt to tailor the restriction to, for example, the level of traffic in a particular place. And because the Ordinance prohibits any expressive assembly or parade anywhere in the City without 24 hours advance notice to and permission from Defendants—and allow the City police to “establish lines for separation of the general public from [protest] activity,” thereby impermissibly removing land from traditional public forum status at their whim—it does not provide alternative channels for communication. Finally, because the Ordinance allows the Chief to limit gatherings to six people for every hundred feet, it functionally bars any mass protest or assembly.

Plaintiffs are likely to prevail on their claim that the Ordinance excessively burdens their speech in violation of the First Amendment.

#### **D. Void for vagueness**

“It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” *Grayned v. City of Rockford*, 408 U.S. 104, 108

(1972). Due process requires clarity in statutes and ordinances for two reasons. First, a vague law “fails to give ordinary people fair notice of the conduct it punishes,” *Johnson v. United States*, 135 S. Ct. 2551, 2556 (2015), and second, it invites “arbitrary and discriminatory application” by failing to provide “explicit standards for those [government actors] who apply [it].” *Grayned*, 408 U.S. at 108-09. This principle applies to administrative, civil, and criminal prohibitions. *See, e.g., FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253–54 (2012) (civil fines); *Gentile v. State Bar*, 501 U.S. 1030, 1048–51 (1991), (state bar rule); *United States v. Hoechst Celanese Corp.*, 128 F.3d 216, 224 (4th Cir. 1997) (environmental regulations).

Where First Amendment rights are at stake, it is especially important that laws are clear. *See Fox Television Stations, Inc.*, 567 U.S. at 253–54. Vague laws threaten to chill speech because they “inevitably lead citizens to steer far wider of the unlawful zone.” *Grayned*, 408 U.S. at 109 (quotation marks and citation omitted). Moreover, clarity is required “based in part on the need to eliminate the impermissible risk of discriminatory enforcement, for history shows that speech is suppressed when either the speaker or the message is critical of those who enforce the law.” *Gentile*, 501 U.S. at 1051 (citations omitted).

The Supreme Court has repeatedly held that laws that turn on terms such as “disturbing the peace” are void for vagueness. In *Cox v. Louisiana*, the Supreme Court declared unconstitutional a statute that prohibited “congregating with others with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned.” 379 U.S. 536, 551 (1965) (marks and citation omitted). Breach of the peace

statutes are impermissibly vague because they condition legality on the reaction of the speakers' critics, making it impossible for speakers to predict whether they will be punished for their constitutionally protected speech. *See id.* at 552.

Fifty years ago, the District Court for the Eastern District of North Carolina struck down another North Carolina city ordinance that was nearly identical to the Ordinance at issue here as void for vagueness. *Underwood v. City Council of Greenville*, 316 F. Supp. 956 (E.D.N.C. 1970). In that case, the ordinance read:

[T]he chief of police . . . may refuse to issue a permit to march, parade, assemble, picket or demonstrate in any way when and if he determines that said activity would either constitute a clear and present danger to the public health or safety or would hinder or prevent the orderly movement of pedestrian or vehicular traffic on the streets, alleys, or sidewalks.' Further the chief or his designee may specify whether or not minors will be allowed to participate . . .

[A]mong other considerations, [the chief may] consider and find as a requisite to issuance the following:

- (1) the activity will not require excessive diversion of police from other necessary duties;
- (2) the activity will not interfere with the right of property owners in the area to enjoy peaceful and lawful occupancy and use of their property;
- (3) the activity can be conducted without unreasonable interference with normal pedestrian or vehicular traffic in the area, and will not prevent normal police and fire protection to the public, and will not be likely to cause injury to persons or property or to provoke disorderly conduct or to create a public disturbance.

*Id.* at 960. The court held that it was “[c]lear[.]” that this law—which is nearly identical to the Ordinance—was unconstitutionally vague because it failed to give notice as to what is considered a permissible assembly, and it failed to cabin the police chief’s discretion. *Id.*

Here, neither the Police Chief nor Plaintiffs can know whether their acts will provoke disorderly conduct or create a public disturbance. Like the ordinance declared void for vagueness in *Underwood*, the Ordinance enables the Chief of Police to “[r]efuse to issue [a] permit . . . when the activity or purpose would endanger the public health or safety,” Chapter 18, Art VI § 18-178(2), and permits are allowed only when the protest “will not interfere with the right of property owners in the area to enjoy peaceful occupancy” and “will not be likely to cause injury to persons or property or provoke disorderly conduct or create a public disturbance.” *Id.* § 18-179(2)–(3). As in *Cox* and *Underwood*, it is unclear how speakers or the Police Chief will know whether a demonstration will be likely to create a public disturbance or provoke disorderly conduct.

For these reasons, the Court concludes that Plaintiffs are likely to succeed on their Due Process claim as well.

## **II. Irreparable Injury**

“[L]oss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). As the Court finds Plaintiffs likely to prevail on their First Amendment claims, the Court finds them likely to suffer irreparable injury as well. Plaintiffs’ injury is particularly imminent and immediate preliminary injunctive relief is necessary because several Plaintiffs state that they intend to protest this weekend and fear being unable to lawfully





UNITED STATES DISTRICT JUDGE