

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
et al.,

Plaintiffs,

v.

JERRY PETERMAN, et al.,

Defendants.

Civil Action No.
1:20CV613

**BRIEF IN SUPPORT OF
JOINT MOTION FOR
ENTRY OF CONSENT
ORDER**

NATURE OF THE MOTION

All Plaintiffs and Defendants Terry S. Johnson, Pamela Thompson, Steve Carter, Bill Lashley, Jr., Craig Turner, Jr., John Paisley, and Bryan Hagood (“County Defendants” or “Alamance Defendants”) move the Court to enter the proposed consent order (attached to the Parties’ Joint Motion for Entry of Consent Order) that was negotiated by the parties as a settlement of all of Plaintiffs’ remaining claims in this matter. In support, the parties show the following.

FACTUAL BACKGROUND

On July 2, 2020, Plaintiffs filed a complaint under 42 U.S.C. § 1983 and a motion for temporary restraining order and preliminary injunction challenging enforcement of a City of Graham ordinance that governed the activities of protestors in the City. Among other things, the Ordinance required 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” and anyone at all “march[ing] . . . upon the public streets, sidewalks, parks, or other public places” to acquire a permit from the Graham police chief at least 24 hours in advance. *See* DE 1, 2. Plaintiffs are the Alamance County Branch of the NAACP and eight individuals who regularly attempt to exercise their rights under the First Amendment to the United States Constitution. When this case was filed, the Defendants fell into two groups: the City Defendants—Mayor Peterman, Mayor Pro-Tem Turner, City Council Members Wiggins, Talley, and Hall, City Manager Maness, and Police Chief Prichard—and the County Defendants, including Defendant Johnson. DE 1 ¶¶ 20–28.

On July 5, 2020, Plaintiffs and the City Defendants jointly moved for — and Defendant Johnson consented to — entry of a consent temporary restraining order enjoining the Graham Defendants and Defendant Johnson from enforcing the Graham ordinance. DE 11. On July 6, the Court granted the motion, restraining Defendants from enforcing the Ordinance, ordering that the Ordinance shall have no force or effect pending further orders of the Court, and setting the hearing on Plaintiffs’ Preliminary Injunction Motion. DE 15. The Graham City Council repealed the challenged ordinance on July 14, 2020, and on July 15, 2020, Plaintiffs withdrew their motion for a preliminary injunction enjoining enforcement of the Ordinance. DE 23.

On July 17, 2020, Plaintiffs filed an amended complaint alleging continued actions by Defendants to suppress their First Amendment rights, as well as the rights of other protestors, by prohibiting protests around the Historic Alamance County Courthouse (“the Courthouse”) and by imposing restrictions on protests through the City

of Graham's repeated issuance of "State of Emergency Declarations." DE 27 ¶¶ 5–10. On July 28, 2020, Plaintiffs filed a Second Motion for Temporary Restraining Order and Preliminary Injunction directed against those actions. DE 47. The City Defendants filed a written response with evidence, DE 53, 53-1–53-4, as did the County Defendants, DE 54, 54-1–54-9, and a hearing was held on July 30, 2020. Minute Entry 07/30/2020. Following the hearing, Plaintiffs filed a reply brief, DE 55, and the County Defendants filed a sur-reply, DE 56.

On August 7, 2020, the Court entered an order holding that Plaintiffs were likely to be successful on their claims that the County Defendants were violating their First Amendment rights by prohibiting protests on the steps, grounds, and sidewalks surrounding the Courthouse, and that they would likely suffer irreparable harm absent preliminary relief. DE 57. The Court also held that it was "advisable to give the defendants a short period of time to plan for entry of the preliminary injunction and, if they choose, to develop reasonable time, place, and manner restrictions to protect public safety and county property during ongoing protests on courthouse grounds." *Id.*

On August 12, 2020, the County Defendants filed a response describing a post-injunctive plan and attaching a new facility use policy ("August 12 Policy") governing public access to the Courthouse grounds. DE 58. Before enacting that policy, Alamance Defendants conferred with counsel for Plaintiffs, and made some, but not all, modifications requested by Plaintiffs.

Plaintiffs also filed a response, arguing that the County Defendants' proposed plan failed to comply with constitutional requirements. DE 59. Both parties filed supplemental

briefs. DE 60, 61.

On August 14, the Court issued a Memorandum Opinion and Order finding that (1) Plaintiffs had demonstrated they were likely to succeed on the merits of their claims that the total prohibition on protests on the Courthouse steps, grounds, sidewalks, and reserved parking area (collectively “Courthouse area”) was not a reasonable time, place or manner restriction, nor narrowly tailored to serve a legitimate government interest; (2) because Plaintiffs intend to continue to exercise their First Amendment rights in the Courthouse area, they will suffer irreparable harm absent injunctive relief; and (3) that the equities and public interest favor a preliminary injunction. DE 62 at 14–15. County Defendants were restrained and enjoined from prohibiting all protests on the following spaces in and around the Alamance County Historic Courthouse in Graham, North Carolina: (a) the steps on the north, east, south, and west sides of the Courthouse steps; (b) the lawns between the sidewalks and the Courthouse; (c) the sidewalk encircling the Courthouse and the shorter walkways connecting the steps on each side to that encircling sidewalk; and (d) the area marked “reserved” between the Courthouse sidewalk and the Confederate monument, where cars do not drive or park. DE 63 at 3. Nothing in the Preliminary Injunction prohibits the Defendants from imposing reasonable time, place, and manner restrictions for use of the Courthouse spaces nor prohibits Defendants from temporarily restricting access to the outdoor Courthouse spaces set forth above during short-term emergency situations. *Id.*

County Defendants filed an Answer on October 29, 2020, attaching a copy of the facility use policy as last revised on September 9, 2020 (“September 9 Policy”). DE 69,

69-2. Discovery in this case began on January 11, 2021. Text Order of Dec. 12, 2020 (adopting DE 72 as scheduling order).

QUESTION PRESENTED

1. Is the Consent Order proposed by the parties fair, adequate, reasonable and in the public interest?

LEGAL STANDARD

When reviewing a jointly proposed consent decree, this Court “must ensure that the proposed decree ‘is fair, adequate, and reasonable’ as well as ‘not illegal, a product of collusion, or against the public interest.’” *Carcano v. Cooper*, No. 1:16CV236, 2019 WL 3302208, at *3 (M.D.N.C. July 23, 2019) (quoting *United States v. North Carolina*, 180 F.3d 574, 581 (4th Cir. 1999)). The Court must assess the strengths of a plaintiff’s case, including “the extent of discovery that has taken place, the stage of the proceedings, the want of collusion in the settlement and the experience of plaintiffs’ counsel who negotiated the settlement.” *Id.*

“While a federal district court should not blindly accept the terms of a proposed settlement, it should be guided by the general principle that settlements are encouraged.” *Id.* (quotation marks omitted). The Court will also ensure that it has subject matter jurisdiction. *Id.*

ARGUMENT

All factors weigh in favor of entering the proposed consent order. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this case arises under the

United States Constitution and federal law, and 28 U.S.C. § 1343 because this action seeks to redress the deprivation under color of state law of Plaintiffs' civil rights.

This settlement is fair, adequate, and reasonable. A large portion of the consent order simply makes permanent the preliminary injunction already entered by the Court. *See* Proposed Consent Order at 7-8. Additional relief specified, which includes amendments to the County's "Facility Use Policy," restrictions on arresting people for swearing where their speech does not amount to "fighting words," and training for County law enforcement, aims to ensure that Plaintiffs are able to exercise their First Amendment rights on the Historic Courthouse grounds over the long term. *See id.* at 8-9. Further, there has been no suggestion of collusion between the parties. Plaintiffs and County Defendants have in fact been adverse parties for the duration of this litigation and have vigorously litigated against one another, including the highly contested "Second Motion for a Temporary Restraining Order and Preliminary Injunction" heard before this Court last summer.

As for the stage of proceedings and discovery, County Defendants have answered Plaintiffs' amended complaint. DE 69.¹ Plaintiffs served their first requests for admissions and production of documents on the County Defendants on January 12, 2021 but responses were delayed due to productive settlement discussions. The parties scheduled depositions but ultimately cancelled them after the parties were able to finalize their

¹ In light of settlement negotiations, the Court granted the parties' jointly requested extension of the deadline for further amending the complaint or joining additional parties. DE 75; Text Order of Feb. 17, 2021.

settlement agreement.

Thus, this case is still in its early stages. If it were to proceed, the remaining discovery, summary judgment proceedings, and potential trial would consume significant additional resources for the defendant government officials, the NAACP and individual Plaintiffs, the public interest non-profit law firms representing Plaintiffs, and the Court. These facts favor settlement. *See Carcano*, 2019 WL 3302208 at *5 (settlement would “avoid the consumption of a significant additional amount of time and expense by the parties, including the public fisc, and allow for the efficient use of judicial resources” (cleaned up)).

As for the experience of counsel, Plaintiffs are represented by attorneys affiliated with several major nonprofit legal organizations dedicated to civil rights litigation that frequently litigate in federal court: the Lawyers’ Committee for Civil Rights Under Law, the ACLU of North Carolina, and the national ACLU’s Speech, Privacy, and Technology Project. County Defendants are represented by a law firm with significant civil litigation experience with a focus on representing local government entities. This factor also weighs in favor of settlement. *See id.*

CONCLUSION

For the reasons stated above, the Court should enter the jointly proposed Consent Order.

Respectfully submitted this 16th day of April, 2021.

/s/ Kristi L. Graunke

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**CERTIFICATE OF COMPLIANCE WITH LENGTH LIMITATIONS OF LR
7.3(d)**

Relying on the word count function of Microsoft Word, I hereby certify that this brief complies with the word limitations set forth in LR 7.3.

/s/ Kristi L. Graunke

One of the Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on April 16, 2021 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will serve counsel for Defendants.

/s/ Kristi Graunke
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