

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
14 CVS 519

JOHN CURTIS JENKINS JR., RAY)
ARNOLD, DALTON R. BUCK JR.)
EMILY SMITH, VELMA S. HICKMAN,)
A.A. ADAMS, JOE V. MANGUM,)
THERON S. HILL)

AMENDED
COMPLAINT

Plaintiff,

vs.

THE TOWN OF)
CHOCOWINITY, NC AND THE)
COMMISSIONERS OF THE TOWN)
OF CHOCOWINITY, NC, A PUBLIC)
BODY, AND ITS MEMBERS,)
IN THEIR OFFICIAL CAPACITIES)

Defendants

NOW COMES the Plaintiffs by and through the undersigned attorney, Mark D. Stewart pursuant to N.C.G.S. §143-318.10, §143-318.11, §143.318.16 and §143.318.16A and moves this Court pursuant to N.C.G.S. §1A-1, Rule 65 to enter a **preliminary injunction** against the above named defendants. Plaintiffs offer the following:

FACTUAL BACKGROUND

1. Recent events at the current Beaufort County confinement facility have culminated in the Beaufort County Commissioners considering erecting a new county confinement facility, which will include a new Beaufort County Sheriff's Office, referred to hereinafter as "jail."

2. The proposed location for the new jail is outside the corporate limits of Chocowinity, NC. Given the nature of the facility to be built and the estimated costs of such a facility, massive amounts of community interest, opposition, and outpouring have amassed.
3. That all named Plaintiffs in this case are citizens and residents of Beaufort County, North Carolina.
4. That the town of Chocowinity is an incorporated town within Beaufort County, North Carolina.
5. Upon information and belief, the Chocowinity, NC town commissioners were informed well in advance of the June 3, 2014 meeting that there would be large numbers of people seeking to participate in the meeting.
6. That upon information and belief, the commissioners had ample time to find an appropriately sized meeting place to accommodate the large crowd but chose not to.
7. Recently the Chocowinity town commissioners held a meeting on Tuesday, June 3, 2014 in the Chocowinity Town Hall.
8. The Chocowinity Town Commissioners is a “public body” as defined within N.C. Gen. Stat. § 143-318.10(b)
9. The June 3, 2014 meeting was an “official meeting” as defined by N.C. Gen. Stat. § 143-318.10(d).
10. The purpose of this meeting was to have public discussion and debate regarding proposed zoning changes which would pave the way for the jail to be built outside of Chocowinity, NC.

11. Numerous residents of Chocowinity and Beaufort County arrived at the Chocowinity, NC town meeting but were denied access.
12. Upon information and belief, potential attendees were informed that there was a limited number of seating available and that others would not be allowed in the meeting room pursuant to fire code regulations.
13. At some point prior to the meeting there was a sign-up sheet for those wishing to speak, but upon information and belief not all who wished to be heard at this meeting were able to do so.
14. At the start of the meeting the room was at or over fire-code capacity and more people were lining the hallway outside of the meeting room and occupying the sidewalks outside of the building.
15. Upon information and belief, a significant portion of seats available to the public were occupied by uniformed and armed Beaufort County Sheriff's deputies which created a chilling effect on private citizens wishing to be heard in opposition to the new Sheriff's Office and jail being discussed.
16. There was no closed circuit television provided for those outside the meeting room. There was no audio equipment set up to allow those outside of the meeting room to hear the meeting.
17. There was no accommodation or attempt to accommodate those who would not fit into the meeting room due to overcrowding.
18. Upon information and belief prior to the meeting an armed law enforcement officer, who is on film, appears to be informing attendees outside of the building that they would not be allowed into the building.

19. Upon information and belief the Chocowinity, NC town commissioners went into closed session during the June 3, 2014 meeting and did not, in accordance with N.C. Gen. Stat. §143-318.10, keep minutes of the closed session.
20. Upon information and belief, an attendee inside the meeting room inquired of the Mayor whether the meeting could be moved to accommodate the large crowd to which the Mayor replied “no.” When asked to explain the Mayor replied, “because I don’t want to.” Attached hereto are affidavits signed by the Plaintiffs detailing their struggle to participate in this session.
21. The affidavits filed with the original complaint are hereby incorporated herein by reference as if fully set forth in the Amended Complaint.

SUPPPORTING LAW

22. North Carolina Gen. Stat. §143-318.10 and case law interpreting that statute has been violated. N.C. Gen. Stat. §143-318.10 states “except as provided in G.S. 143-318.11, 143-318.14A, 143-318.15, and 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.” The North Carolina Court of Appeals has also addressed the issue. “The Board is required by North Carolina General Statute §143-318.9 (the open meetings law) to take reasonable measures to provide for public access to its meetings.” *Garlock et. al v. Wake County Board of Education*, 712 S.E.2d 158 (2011). The NC Court of Appeals stated that this was a case of first impression in North Carolina and relied heavily on a

decision by the New Mexico Supreme Court, “We find the New Mexico court’s analysis of its statute to be persuasive authority in our analysis of the North Carolina statute.” *Id* at 172.

In *Gutierrez*, the Court considered ‘the sole issue of ...whether the fact that the Council Chambers were not large enough to accommodate all of the large crowd that appeared to attend the meeting, rendered invalid the approval of Elliot’s application on the ground that it was not a public meeting.’”

Id. at 171 quoting *Gutierrez v. City of Albuquerque*, 96 N.M. 398, 399 631 P.Ed 304, 305 (1981).

The North Carolina Court of Appeals went on to say that “...requirements for meetings of public bodies to be open and statutory exceptions to open meetings are construed in favor of public access.” *Garlock* at 173. The *Garlock* court noted that to be in compliance with the open meetings law that all persons who wish to attend a meeting must be permitted to do so. However, the court did note that the meeting must be held in a room of reasonable size for the particular meeting. In the instant case, the highly publicized and debated issue of rezoning for a new Sheriff’s Office and jail was held in the same meeting room as all other meetings despite the high turnout of attendees.

Attorney’s fees are provided for pursuant to North Carolina Gen. Stat. §143-318.16B.

WHEREFORE, the Plaintiffs respectfully move this Court to enter a judgment declaring null and void all actions taken by the Chocowinity Town Commissioners during its June 3, 2014 meeting; to enjoin the Chocowinity Town Commissioners from holding any

further meetings which do not comply with N.C.G.S. §143-318.10, §143-318.11, §143-318.16 and §143.318.16A, that the costs of this action be taxed against the Defendants and that the Court award the attorney's fees to the Plaintiffs, and such further relief as the Court deems just and proper.

Respectfully submitted, this the _____ day of June, 2014

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