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

Joyce Sykes Fitch, et al.,

Plaintiffs,

v.

Tyrell County Board of Commissioners,

Defendant.

Order

This case is before the court on Defendant Tyrell County's motion for a protective order. The County seeks to prevent the Plaintiffs from deposing current and former members of the County's Board of Commissioners. The County asserts that its members have legislative immunity which shields them from giving compelled testimony. The Plaintiffs disagree, arguing that the County is not entitled to immunity.

After reviewing the record and the parties' arguments, the undersigned concludes that Tyrell County is not entitled to a protective order. Because legislative immunity is personal to the commissioners, the County may not assert the immunity on their behalf. For this reason, the court will deny the County's motion for a protective order. D.E. 43.[1]

I. Background

In 1902, Tyrell County erected a statue beside the county courthouse memorializing the Confederacy. Am. Compl. ¶ 13, D.E. 19. The statue depicts a soldier standing atop a pedestal. *Id.* ¶ 14. One face of the pedestal reads: "IN APPRECIATION OF OUR FAITHFUL SLAVES." *Id.*

[1] The presiding district judge has referred this matter for resolution under 28 U.S.C. § 636(b)(1)(A).

Plaintiffs allege that this language violates the Fourteenth Amendment's Equal Protection Clause and seek declaratory and injunctive relief prohibiting the County from continuing to display the challenged message. *Id.* ¶ 69.

II. Discussion

Relying on the doctrine of legislative immunity, Tyrell County seeks a protective order prohibiting Plaintiffs from deposing its county commissioners. Under Rule 26(b)(1), parties may obtain discovery regarding any nonprivileged matter that is relevant to a claim or defense and proportional to the needs of the case. Although discovery is broad, Rule 26(c)(1) permits a court, for good cause, to issue a protective order to shield a party or person from annoyance, embarrassment, oppression, or undue burden or expense. The party seeking a protective order bears the burden of establishing good cause. *Martin* v. *Bimbo Foods Bakers Distrib., LLC*, 313 F.R.D. 1, 6 (E.D.N.C. 2016).

Tyrell County seeks a protective order barring depositions of current and former commissioners based on legislative immunity. The County bears the burden of establishing that such immunity applies and that it justifies the requested relief.

A. Legislative Immunity Generally

The Constitution's Speech or Debate Clause affords members of Congress immunity for legislative acts. U.S. Const. art. I, § 6, cl. 1. The Supreme Court has extended analogous immunity to state and local legislators to preserve the independence of the legislative function. *Bogan* v. *Scott-Harris*, 523 U.S. 44, 49 (1998). Thus, local legislators are absolutely immune from suit for actions taken in their legislative capacities. *Front Royal & Warren Cnty. Indus. Park Corp.* v. *Town of Front Royal*, 865 F.2d 77, 79 (4th Cir. 1989). Legislative immunity also includes a

testimonial privilege protecting legislators from compelled testimony concerning legislative acts. *EEOC* v. *Washington Suburban Sanitary Comm'n*, 631 F.3d 174, 181 (4th Cir. 2011).

Legislative immunity, however, belongs to individual legislators, not to the governmental entity. *Tenney* v. *Brandhove*, 341 U.S. 367, 378 (1951); *Burtnick* v. *McLean*, 76 F.3d 611, 613 (4th Cir. 1996). Since the privilege is personal, each legislator must assert or waive it individually. *Marylanders for Fair Representation, Inc.* v. *Schaefer*, 144 F.R.D. 292, 299 (D. Md. 1992); *A Helping Hand, LLC* v. *Baltimore Cnty.*, 295 F. Supp. 2d 585, 591 (D. Md. 2003).

Here, none of the individual county commissioners have sought to use legislative immunity to avoid deposition. Nor is there any evidence in the record suggesting that they wish to do so. And since the County cannot raise legislative immunity on their behalf, it has not established good cause for a protective order. Thus the motion for a protective order is denied.

III. Conclusion

Legislative immunity is personal to individual legislators. Since Tyrell County has attempted to assert the privilege on behalf of its county commissioners, it has not shown good cause for a protective order. The motion (D.E. 43) is denied without prejudice. Each party will bear their own costs.

Dated: February 19, 2026

Robert T. Numbers, II
United States Magistrate Judge