

COMMONWEALTH OF KENTUCKY  
DAVIESS CIRCUIT COURT DIVISION **II**

CIVIL ACTION NO. 21-CI- 0330

KENTCUKY DIVISION, UNITED )  
DAUGHTERS of the CONFEDERACY®, Inc. )

*Plaintiff,* )

vs. )

JUDGE EXECUTIVE AL MATTINGLY )  
*To Serve by Constable at:* )  
Al Mattingly, Judge Executive )  
212 St. Ann Street )  
Owensboro, KY 42301 )

And )

COMMISSIONER GEORGE WATHEN )  
*To Serve by Constable at:* )  
George Wathen, Commissioner West )  
212 St. Ann Street )  
Owensboro, KY 42301 )

And )

COMMISSIONER CHARLIE CASTLEN )  
*To Serve by Constable at:* )  
Charlie Castlen, Commissioner Central )  
212 St. Ann Street )  
Owensboro, KY 42301 )

And )

COMMISSIONER MIKE KOGER )  
*To Serve by Constable at:* )  
Mike Koger, Commissioner East )  
212 St. Ann Street )  
Owensboro, KY 42301 )

*Defendants.* )

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**VERIFIED COMPLAINT FOR THE RETURN OF PERSONAL PROPERTY**

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Comes now the Plaintiff, the Kentucky Division, United Daughters of the Confederacy<sup>®</sup>, Inc., and for their Complaint against the Defendants, the Daviess County Fiscal Court comprised of Judge Executive Al Mattingly, Commissioner-West George Wathen, Commissioner-Central Charlie Castlen, Commissioner-East Mike Koger, and any successor members, in their official capacities (hereinafter the “Defendants” or “Daviess County Fiscal Court”), states as follows:

1. The Kentucky Division, United Daughters of the Confederacy, Inc. (hereinafter the “Plaintiff” or the “Kentucky Division UDC”) is a 501(c)(3) tax-exempt entity, duly created and authorized under the laws of the Commonwealth of Kentucky to operate as a non-profit corporation. The Plaintiff is headquartered in Calvert City, Kentucky and can be contacted through counsel.

2. The Plaintiff is also an organization whose objectives are “Historical, Benevolent, Educational, Memorial and Patriotic.” Moreover, the Kentucky Division of the United Daughters of the Confederacy<sup>®</sup>, as is true of the national organization, “does not subscribe to policies of individuals, groups or organizations that do not honor and respect the United States of America,” and specifically, the United Daughters of the Confederacy<sup>®</sup> “will not associate with any individual, group or organization identified as being militant, unpatriotic, racist or subversive to the United States of America”

3. It is with this backdrop, that on April 4, 1893, the then standing Daviess County Fiscal Court granted a license to the Daviess County Confederate Association to erect a memorial dedicated to the Confederate dead on the south east corner of the courthouse yard, with a similar

license granted for memorial in memory of the Union (i.e., “Federal”) dead on the north west corner. See attached Exhibit A.

4. Thereafter, the Daviess County Confederate Association partnered with the John C. Breckenridge Chapter 306, Daughters of the Confederacy (later United Daughters of the Confederacy) (hereinafter “Chapter 306”) to fundraise the \$3,500 required bring the Owensboro Confederate Memorial into fruition.

5. After the appropriate funds were raised, Chapter 306 was the entity responsible for commissioning and erecting the Owensboro Confederate Memorial, which was dedicated at a ceremony held the historic postbellum Daviess County Courthouse on September 21, 1900.

6. Chapter 306 ceased to be an operating Chapter of the Kentucky Division UDC in 1970, and the winding up of its affairs were done pursuant to Article XXVIII, Section 3 and Article XVIII, Section 3 B of the United Daughters of the Confederacy® By-laws and Standing Rules, Revision November 2019 related to the dissolution of various UDC entities. Under Article XXVIII the assets of Chapter 306 were transferred by operation of the same to the Kentucky Division UDC, which in pertinent part provides that in the “...event of the dissolution of a Chapter, after payment of authorized expenditures, all assets (unless otherwise limited) and records shall be distributed to the Division, with no part to inure to the benefit of any member or private individual[,]” which means that the Kentucky Division UDC has owned the Owensboro Confederate Memorial since the dissolution of Chapter 306. (Emphasis added to original).

7. The ownership of the Owensboro Confederate Memorial by the Kentucky Division UDC is further reinforced by the fact that the Kentucky Division UDC has consistently and continually filed its Artifact and Monument Inventory list annually with the Commonwealth of Kentucky, and that such list, upon information and belief has listed the Owensboro Confederate

Memorial as property owned by the Plaintiff.

8. The Defendants are the members of the Daviess County Fiscal Court, a legislative body organized pursuant to KY. Rev. Stat. Ann. §67, et seq.

9. The Defendants as the legislative body for Daviess County possess those powers expressly enumerated under applicable statutes. See KY. Rev. Stat. Ann. §67.080. Such powers include the disposition of property. Nevertheless, those powers are limited to real and personal property owned by the County. See KY. Rev. Stat. Ann. §§67.080(b)(3) and 67.0802.

10. By official act, the Daviess County Fiscal Court revoked the 1893 license on August 6, 2020, and created a committee to determine a new site to relocate the Owensboro Confederate Memorial.

11. The Plaintiff has requested the Daviess County Fiscal Court return the memorial but that request has been denied, despite the fact that the proposed June 30, 2020, resolution of the Fiscal Court underscored the uncontroverted fact that the intent was to return the Owensboro Confederate Memorial to its proper owners, the Kentucky Division UDC. A true and exact copy of the draft resolution proposed by the Daviess County Fiscal Court June 30, 2020, Resolution is attached hereto as *Exhibit B*.

12. Moreover, Defendants have stated in various forums since the summer of 2020, that it is the desire that the Owensboro Confederate Memorial be removed and relocated. However, the Defendants have also stated a desire that the Memorial not be relocated within the city limits of Owensboro. Such position rises to the level of limiting the ability of the Kentucky Division UDC to relocate their personal property i.e., the Owensboro Confederate Memorial to anywhere outside of the Owensboro city limits.

13. Any action by the Daviess County Fiscal Court that seeks to limit and or restrict

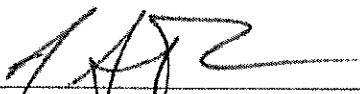
the ability of the Kentucky Division UDC to move or relocate the Owensboro Confederate Memorial within the Owensboro city limits, may violate the *First* and *Fifth Amendments of the Constitution of the United States of America*, and §§ 1 and 13 of the *Constitution of the Commonwealth of Kentucky*.

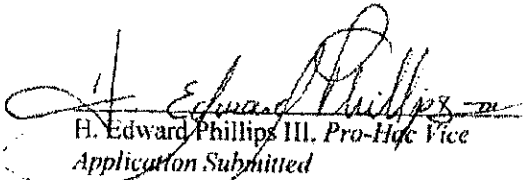
14. Based on the foregoing, the Plaintiff is seeking relief from this Court.

**WHEREFORE**, the Plaintiff, the Kentucky Division, United Daughters of the Confederacy, Inc., prays as follows:

1. For injunctive relief preventing the Daviess County Fiscal Court from permanently relocating the subject memorial;
2. For an Order directing the Daviess County Fiscal Court to return the memorial to the Plaintiff;
3. For Plaintiff's reasonable attorney fees incurred herein;
4. For Plaintiff's court costs and expenses incurred herein;
5. For any and all other relief to which Plaintiff may appear entitled, including, but not limited to leave to amend its pleadings as the premises may indicate.


This the 20th day of April 2021.

  
\_\_\_\_\_  
NICHOLAS P. GOETZ  
GORDON GOETZ JOHNSON CALDWELL, PSC  
121 W. 2<sup>ND</sup> STREET  
P. O. BOX 1539  
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*Attorney for Kentucky Division of the  
United Daughters of the Confederacy, Inc.*

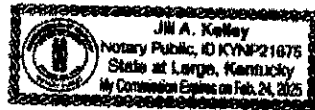
  
H. Edward Phillips III, Pro-Hyge Vice  
Application Submitted  
Tennessee B.P.R. No. 016850  
North Carolina Bar No. 30368  
219 Third Avenue North  
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FAX: (615) 503-6940  
EMAIL: [edward@phillipslawpractice.com](mailto:edward@phillipslawpractice.com)

**VERIFICATION**

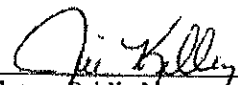
I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

  
Karen Wallace  
Kentucky Division President 2020-2022  
United Daughters of the Confederacy

COMMONWEALTH OF KENTUCKY )  
 )  
COUNTY OF BULLITT )



This Verification was subscribed and sworn to me by Karen Wallace, Kentucky Division President 2020-2022 United Daughters of the Confederacy this 20<sup>th</sup> day of April, 2021.

  
Notary Public No.: 1KYNP21675  
My Commission Expires: Feb. 24, 2025

# EXHIBIT A

At a Regular Term of the Fiscal Court of Daviess Co., held at the Court House in the City of Owensboro, on Tuesday, April 4th, 1893;

Present Hon. J. B. Karn, Judge, and the following,

Justices, Viz:

John Oldham, R. D. Bryant, S. D. Kennady, D. R. Jewell, Ab. Foster, R. C. Barrett, R. Wimsatt, J. F. Camp, R. A. Stowers, R. M. Payne, H. C. McDonald, Ivo Ryon, H. T. Aud, H. A. Burton, I. W. Sutherland, S. Hagan, J. T. Dawson, J. M. Gordon, Ben Stout, J. D. Owen, C. M. Cary and Wm. Goodwin, J. O. Hagan.

Moved and seconded that the Daviess County Confederate association be allowed to erect a monument in the South corner of the Court House Square in memory of the Confederate dead of Daviess County, and that the right be granted for the purpose of erecting a similar monument in memory of the Federal dead in the South East corner of said Court House Yard, neither to occupy a greater space than 15 feet square, and six feet from the corner, and the Ayes and nays being called on said motion resulted as follows, Viz: Ayes: I. W. Sutherland, John Oldham, R. D. Bryant, S. D. Kennady, D. R. Jewell, Ab. Foster, H. A. Burton, R. C. Barrett, J. M. Gordon, J. D. Owen, C. M. Cary, S. Hagan, R. Wimsatt, J. F. Camp, J. T. Dawson, R. A. Stowers, Ben Stout, R. M. Payne, H. C. McDonald, Ivo Ryon, and J. O. Hagan, total Ayes 21, Nays H. T. Aud, total Nays, 1. A majority of the Justices voting in the affirmative said motion was declared carried, and it is ordered by the Court that the right to erect a monument as aforesaid be and the same is hereby granted said Confederate Association.

J. B. Karn, Judge.

A COPY ATTEST:

I. C. Sutherland, County Court Clerk, Daviess County, Kentucky.

By *G. A. Bull* Deputy County Court Clerk.

DEED FOR MONUMENT PLACEMENT  
Courtesy of Museum of Science and History  
Owensboro, Kentucky

# EXHIBIT B

## RESOLUTION 18-2020

### **A RESOLUTION OF THE DAVIESS COUNTY FISCAL COURT REGARDING THE CONFEDERATE MEMORIAL MONUMENT**

**WHEREAS**, Daviess County Fiscal Court desires to move the Confederate Memorial Monument placed on the courthouse lawn in 1900, off of public property; and

**WHEREAS**, it has been determined that the memorial monument belongs to the Kentucky Division United Daughters of the Confederacy; and

**WHEREAS**, the Kentucky Division United Daughters of the Confederacy own a plot of land already being used as a memorial to the Battle of Panther Creek; and

**WHEREAS**, the National Association for the Advancement of Colored People (NAACP), through the Owensboro Kentucky NAACP Branch 3107, agrees that the proper placement of the memorial monument would be on private land owned by the Kentucky Division United Daughters of the Confederacy; and

**NOW THEREFORE**, Daviess County Fiscal Court agrees to return the Confederate Memorial Monument to the Kentucky Division United Daughters of the Confederacy and agrees to relocate the memorial monument to said property.

This the \_\_\_\_\_ day of June, 2020.

**DAVIESS COUNTY FISCAL COURT**

BY: \_\_\_\_\_  
Al Mattingly, Judge/Executive

ATTEST:

\_\_\_\_\_  
Jennifer Warren, Fiscal Court Clerk

PREPARED BY:

\_\_\_\_\_  
Claud Porter, County Attorney



COMMONWEALTH OF KENTUCKY  
DAVISS CIRCUIT COURT DIVISION II

CIVIL ACTION NO. 21-CI-0330

KENTCUKY DIVISION, UNITED )  
DAUGHTERS of the CONFEDERACY®, Inc. )  
 )  
 *Plaintiff,* )  
 )  
 vs. )  
 )  
 JUDGE EXECUTIVE AL MATTINGLY, et al )  
 )  
 *Defendants.* )  
 \_\_\_\_\_ )

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**MOTION FOR A TEMPORARY RESTRAINING ORDER**

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Comes now the Plaintiff, the Kentucky Division, United Daughters of the Confederacy®, Inc. requesting this Court, pursuant to CR 65.03, enter a temporary restraining order restraining the Defendants Judge Executive Al Mattingly, Commissioner-West George Wathen, Commissioner-Central Charlie Castlen, Commissioner-East Mike Koger, and any successor members (hereinafter the "Defendants" or "Daviness County Fiscal Court"), from moving, removing, or otherwise disturbing the Owensboro Confederate Memorial. As grounds the movant would generally adopt the facts as plead in its verified complaint. More specifically, on August 6, 2020 the Daviess County Fiscal Court revoked an 1893 license agreement that allowed for the Owensboro Confederate Memorial to be placed on the south east corner of the courthouse yard. Subsequent to this, the Plaintiff has requested it be allowed to take possession of the Owensboro Confederate Memorial. This request has been denied by the Daviess County Fiscal Court who has instead created a committee to determine a new site to relocate the Owensboro Confederate Memorial. It is further believed that Judge Executive Al Mattingly is negotiating with unknown third parties to take possession of the Owensboro Confederate Memorial, thereby depriving the Plaintiff of its property. See attached Exhibit A.

The Plaintiff would argue that without this restraining order, the Owensboro Confederate

Memorial will be removed and relocated, causing the Plaintiff to suffer immediate and irreparable injury, loss, and damages pending a final judgment in this action, namely the loss of the Memorial and/ or the costs of relocating and restoring the Memorial once it is moved.

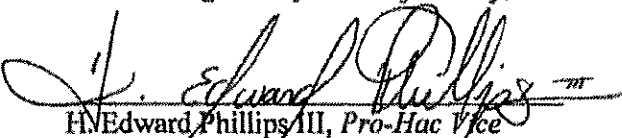
Based on the foregoing, the movants would request that Daviess County Fiscal Court be restrained from making any further action concerning the Owensboro Confederate Memorial during the pendency of this matter.

This the 20 day of April 2021.



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*Attorney for Kentucky Division of the  
United Daughters of the Confederacy, Inc.*



---

Edward Phillips III, *Pro-Hac Vice*  
*Application Submitted*  
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NOTICE

This matter shall be brought before the Hon. Lisa Jones on the 1/14 day of May, 2021 at 9:00 (a.m.) p.m. or as soon thereafter as called at the Daviess County Judicial Center at 100 East Second Street, Owensboro, KY 42303- 4th floor, and via video conference.

CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing was served this 20th day of April 2021 upon the following by Hand Delivery.

Al Mattingly, Judge Executive  
212 St. Ann Street  
Owensboro, KY 42301


George Wathen, Commissioner West  
212 St. Ann Street  
Owensboro, KY 42301

Charlie Castlen, Commissioner Central  
212 St. Ann Street  
Owensboro, KY 42301

Mike Koger, Commissioner East  
212 St. Ann Street  
Owensboro, KY 42301

Courtesy Copy to:

Hon. Claud Porter  
Kirtley Annex (2nd Floor)  
117 East 3rd Street  
Owensboro, KY 42303

  
\_\_\_\_\_  
Nicholas Goetz

reserves."  
In other business,  
Mattingly provided an  
update on the Confeder-  
ate statue.

"All I can tell you is I am  
in contact right now with  
another entity for a poten-  
tial site and I hope to have  
a recommendation some-  
time in late May," he said.  
"I'm not sure I can give  
you any more information  
at this time."

Ellie Ann, the Owensboro  
Museum of Science and  
History and Roschelle  
Woods, a member of the  
board, also worked out.

"We are working dis-  
tantly to complete the  
project," she said.

EXHIBIT  
A

COMMONWEALTH OF KENTUCKY  
DAVIESS CIRCUIT COURT DIVISION II

CIVIL ACTION NO. 21-CI-0330

KENTCUKY DIVISION, UNITED )  
DAUGHTERS of the CONFEDERACY<sup>®</sup>, Inc. )  
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 *Plaintiff,* )  
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 vs. )  
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 JUDGE EXECUTIVE AL MATTINGLY, et al )  
 )  
 *Defendants.* )  
 )  
 \_\_\_\_\_ )

**ORDER**

This matter having been brought by the Plaintiff, the Kentucky Division, United Daughters of the Confederacy<sup>®</sup>, Inc. and with the Court being otherwise sufficiently advised, IT IS HEREBY ORDERED that until further orders of this Court the Defendants, the Daviess County Fiscal Court, is restrained and enjoined from moving the Owensboro Confederate Memorial pending further Orders of the Court. This order shall take effect upon the posting of a bond in the amount of \_\_\_\_\_ with sufficient surety pursuant to CR 65.05 or the depositing of the cash equivalent with the Circuit Clerk.

This the \_\_\_\_ day of May 2021

\_\_\_\_\_  
Judge Lisa Payne Jones  
Daviess Circuit Court, Div. II

Prepared by:

*Nicholas Goetz*  
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