

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

DAVID F. EVANS, ET AL.,)	
)	
Plaintiffs)	No. 1:07 CV 739
)	
vs.)	
)	<u>SECOND SUPPLEMENTAL</u>
THE CITY OF DURHAM,)	<u>MEMORANDUM ON BEHALF</u>
NORTH CAROLINA, ET AL.,)	<u>OF MICHAEL B. NIFONG</u>
)	
Defendants)	

This supplemental memorandum is submitted on behalf of the defendant Michael B. Nifong. On November 4, 2009 the Supreme Court heard oral argument in Pottawattomie County, Iowa v.McGhee, No. 08-1065. Certiorari had been granted on this issue:

Whether a prosecutor is subject to personal liability under 42 U.S.C. 1983 for a wrongful conviction and incarceration where the prosecutor allegedly procured false testimony during the criminal investigation and then introduced that same testimony against the criminal defendant at trial to obtain a conviction.

A number of amicus briefs were filed in support of the Iowa prosecutors, the petitioners, including those by the United States, the National Association of Assistant United States Attorneys, and the National District Attorneys Association. Attached and incorporated herein is a copy of the amicus brief filed July 20, 2009 by Roy Cooper, Attorney General of North Carolina, and the chief law enforcement officers of 26 other states and the District of Columbia,

in support of the Iowa prosecutors/petitioners, i.e. in support of a position of absolute immunity for them. We suggest that if the Supreme Court rules in favor of the Iowa prosecutors/petitioners on the immunity case, such a ruling would likely apply to the defendant Michael B. Nifong in this case.

Respectfully submitted,

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