

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

DAVID F. EVANS, et al.,

Plaintiffs,

v.

CITY OF DURHAM, N.C., et al.,

Defendants.

Civil Action No. 1:07-CV-739

**NOTICE CONCERNING DISMISSAL OF PENDING
UNITED STATES SUPREME COURT CASE**

Plaintiffs David F. Evans, Collin Finnerty, and Reade Seligmann hereby respectfully advise the Court that the United States Supreme Court has dismissed, without decision, *Pottawattomie County, Iowa v. McGhee*, No. 08-1065.

On November 18, 2009, Defendant Michael B. Nifong submitted a “Second Supplemental Memorandum” (Doc. No. 112) in support of his pending Motion to Dismiss (Docket No. 90, consolidated into a single Motion to Dismiss designated as Docket No. 42). Nifong stated that the Supreme Court had granted certiorari in *Pottawattomie County* on the issue of

[w]hether 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.

Nifong 2d Suppl. Mem. at 1. Nifong further stated 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.” *Id.* at 2.

After the November 4, 2009 oral argument before the Supreme Court, the parties to *Pottawattomie County* agreed to a \$12 million settlement of the petitioners' civil rights claims. *See* Ex. 1 (Press Release). The *Pottawattomie County* parties filed an agreed dismissal, and on January 4, 2010, the Clerk of the Supreme Court entered an order of dismissal. *See* Ex. 2 (Supreme Court Docket for No. 08-1065).

Dated: January 5, 2010

Respectfully submitted,

WILLIAMS & CONNOLLY LLP

By: /s/ Charles Davant IV
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(* motion for special appearance
to be filed)

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Case No. 1:07CV739

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2010 I electronically filed the foregoing **NOTICE CONCERNING DISMISSAL OF PENDING UNITED STATES SUPREME COURT CASE** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Reginald B. Gillespie, Jr.
Counsel for Defendant City of Durham

Joel M. Craig
Henry W. Sappenfield
Counsel for Defendant Benjamin Himan

James B. Maxwell,
Counsel for Defendant David Addison

Edwin M. Speas
Eric P. Stevens
Counsel for Defendant Mark Gottlieb

Patricia P. Kerner

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Counsel for Defendants Steven Chalmers, Beverly Council, Ronald Hodge, Jeff Lamb, Patrick Baker, Michael Ripberger, and Lee Russ

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Respectfully submitted,

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