

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

DAVID F. EVANS, ET AL.,)
)
 Plaintiffs)
)
 vs.)
)
 THE CITY OF DURHAM,)
 NORTH CAROLINA, ET AL.,)
)
 Defendants)

No. 1:07 CV 739

MOTION TO DISMISS OF
MICHAEL D. NIFONG

The defendant Michael B. Nifong, by his counsel, respectfully shows the Court pursuant to RuleS 12(b)(1) and 12(b)(6), Federal Rules of Civil Procedure, and Local Rule 7.3, that:

- A. The Second Amended Complaint filed February 18, 2010 fails to state a claim against Michael B. Nifong upon which relief can be granted.
- B. The plaintiffs lack standing to seek injunctive relief.
- C. All actions of Michael B. Nifong referenced in the Second Amended Complaint were done in his role as District Attorney and as such are entitled to absolute immunity.

WHEREFORE the defendant Michael B. Nifong respectfully prays the Court for dismissal of all claims against him.

Respectfully submitted,

/s/ James B. Craven III
James B. Craven III
Attorney for Michael B. Nifong
NCSB 997
(919) 688-8295
P.O. Box 1366
Durham, NC 27702

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2010 I electronically filed this motion with the Clerk, through the CM/ECF system which will send notification of such filing to the following:

Charles Davant IV, Esquire
Brendan V. Sullivan, Jr., Esquire
Robert M. Clay, Esquire
Christopher M. Manning, Esquire
Williams & Connolly
725 Twelfth Street, NW
Washington, DC 20005

David S. Rudolf, Esquire
RUDOLF, WIDENHOUSE & FIALKO
213 West Franklin Street
Chapel Hill, NC 27516

Reginald B. Gillespie, Jr., Esquire
FAISON & GILLESPIE
5518-Durham-Chapel Hill Blvd., Ste. 2000
P.O. Box 51729
Durham, NC 27717-1729

Eric P. Stevens, Esquire
POYNER & SPRUILL
3600 Glenwood Avenue
Raleigh, NC 27612

James B. Maxwell, Esquire
MAXWELL, FREEMAN & BOWMAN
P.O. Box 52396
Durham, NC 27717-2396

Patricia P. Kerner, Esquire
TROUTMAN SANDERS
434 Fayetteville Street, Suite 1900
Raleigh, NC 27601

Robert A. Star, Esquire
Nicholas J. Sanservino Jr., Esquire
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART
2301 Sugar Bush Road, Suite 600
Raleigh, NC 27612

Joel M. Craig, Esquire
KENNON, CRAVER, BELO, CRAIG & McKEE
4011 University Drive, Suite 300
P.O. Box 51579
Durham, NC 27707-1579

I further certify that I mailed copies as well to the following:

Barry C. Scheck, Esquire
100 Fifth Avenue
New York, NC 10011

Richard D. Emery, Esquire
EMERY, CELLI, BRINCKERHOFF & ABADY
75 Rockefeller Plaza, 20th Floor
New York, NY 10019

Paul R. Dickinson, Jr., Esquire
LEWIS & ROBERTS
5960 Fairview Road, Ste. 102
Charlotte, NC 28210-3103

James A. Roberts III, Esquire
Lewis & Roberts, PLLC
3700 Glenwood Avenue, Suite 410
Raleigh, NC 27612-5540

Linwood Wilson
6910 Innesbrook Way
Bahama, NC 27503-9700

Roger E. Warin, Esquire
STEPTOE & JOHNSON
1330 Connecticut Ave., NW
Washington, DC 20036

/s/ James B. Craven III
James B. Craven III