

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
CIVIL ACTION NO. 1:07-CV-00953**

	)	
<b>RYAN MCFADYEN, <i>et al.</i>,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	<b>THE CITY OF DURHAM’S</b>
<b>v.</b>	)	<b>MOTION TO DISMISS</b>
	)	<b>PLAINTIFFS’ SECOND</b>
<b>DUKE UNIVERSITY, <i>et al.</i>,</b>	)	<b>AMENDED COMPLAINT</b>
	)	
<b>Defendants.</b>	)	
	)	

The City of Durham, North Carolina (the “City”), by and through its attorneys, and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, hereby moves the Court to dismiss all claims against the City in Plaintiffs’ Second Amended Complaint, for failure to state a claim upon which relief can be granted.

IN SUPPORT WHEREOF, the City respectfully shows the following:

1. Plaintiffs’ new Cause of Action, premised on alleged violations of scattered provisions of the North Carolina Constitution, is deficient for the reasons described in the supplemental supporting brief accompanying this Motion. Pursuant to this Court’s Order (Doc. No. 135), the City offers and relies on that accompanying brief in support of this Motion.

2. All remaining Causes of Action in Plaintiffs’ Second Amended Complaint that purport to assert claims against the City are deficient for the reasons described in the City’s prior briefing, namely: its opening and reply briefs in support of its motion to

dismiss (Doc. Nos. 62 & 107) and its supplemental supporting brief (Doc. No. 123).

Pursuant to this Court's Order (Doc. No. 135), the City incorporates those briefs and accompanying exhibits, along with its suggestion of subsequently decided authority (Doc. No. 134), in support of this Motion.

WHEREFORE, the City prays that this Motion be granted, that all Plaintiffs' claims against the City be dismissed, and that the City be awarded such other and further relief as is just and proper.

This the 16th day of March, 2010.

FAISON & GILLESPIE

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CERTIFICATE OF ELECTRONIC FILING AND SERVICE

The undersigned hereby certifies that, pursuant to Rule 5 of the Federal Rules of Civil Procedure and LR5.3 and LR5.4, MDNC, the foregoing pleading, motion, affidavit, notice, or other document/paper has been electronically filed with the Clerk of Court using the CM/ECF system, which system will automatically generate and send a Notice of Electronic Filing (NEF) to the undersigned filing user and registered users of record, and that the Court's electronic records show that each party to this action is represented by at least one registered user of record (or that the party is a registered user of record), to each of whom the NEF will be transmitted.

This the 16th day of March, 2010.

FAISON & GILLESPIE

By: /s/ Reginald B. Gillespie, Jr.

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