

3. This claim, denominated by this Court as, and referred to herein as, "Count 41" is Plaintiffs' sole remaining claim against the City.

4. Count 41 is deficient in the following respects:

(a) Plaintiffs fail to give adequate notice of the basis for Count 41.

(b) Plaintiffs have failed to state a claim under any of the provisions of the North Carolina Constitution they cite in Count 41.

(c) Alternative remedies are available for Plaintiffs' alleged injuries; Plaintiffs are therefore precluded under North Carolina law from bringing a claim directly under the North Carolina Constitution.

(d) Count 41 is fatally flawed also because there is no duty owed by the City to Plaintiffs nor is any right conferred upon Plaintiffs that will support a claim under the North Carolina Constitution.

Consequently, Count 41 fails to state a claim upon which relief can be granted, and judgment on the pleadings should be entered in the City's favor, dismissing this action as to the City.

WHEREFORE, Defendant the City of Durham, North Carolina prays that the Court grant this motion for judgment on the pleadings, dismiss Count 41 and this action as to the City, and award the City such other and further relief as is just and proper.

Respectfully submitted, this the 22nd day of April, 2014.

WILSON & RATLEDGE, PLLC

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STATEMENT OF SERVICE BY HAND DELIVERY PRIOR TO FILING

The undersigned hereby certifies that the foregoing pleading, motion, affidavit, notice, or other document/paper was this day served by hand delivery to counsel for Plaintiffs:

by delivering it to and handing it to:

Mr. Robert C. Ekstrand or Ms. Stephanie A. Smith
Ekstrand & Ekstrand, LLP
110 Swift Avenue, Second Floor
Durham, North Carolina 27705

as provided in Rule 5(b)(2)(A) of the Federal Rules of Civil Procedure, or

by leaving it at Mr. Ekstrand's and Ms. Smith's office with a clerk or other person in charge

as provided in Rule 5(b)(2)(B)(i) of the Federal Rules of Civil Procedure.

This the 22nd day of April, 2014.

WILSON & RATLEDGE, PLLC

By: /s/ Reginald B. Gillespie, Jr.
Reginald B. Gillespie, Jr.
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CERTIFICATE OF ELECTRONIC FILING AND ADDITIONAL 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 22nd day of April, 2014.

WILSON & RATLEDGE, PLLC

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