

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
Case No.: 1:08-cv-119

|                           |   |                       |
|---------------------------|---|-----------------------|
| EDWARD CARRINGTON, et al, | ) |                       |
|                           | ) |                       |
| Plaintiffs,               | ) |                       |
|                           | ) | Case No.: 1:08-cv-119 |
| vs.                       | ) |                       |
|                           | ) |                       |
| DUKE UNIVERSITY, et al.   | ) |                       |
|                           | ) |                       |
| Defendants.               | ) |                       |

---

**DEFENDANT DAVID ADDISON’S AMENDED  
MOTION TO DISMISS PLAINTIFFS’ FIRST AMENDED COMPLAINT  
FED. R. CIV. P. 12(b)(6)**

---

Defendant David Addison (“Defendant”) respectfully moves the Court, pursuant to FED. R. CIV. P. 12(b)(6), to dismiss Plaintiffs’ First Amended Complaint for failure to state a claim upon which relief can be granted. In support thereof, and pursuant to this Court’s February 16, 2010 Order, (Docket # 144), Defendant incorporates the reasons set forth in his Brief in support of his original Motion to Dismiss, (Docket # 59), his Reply Brief in Support of his Motion to Dismiss, (Docket # 103), his Supplemental Brief in Support of their Motion to Dismiss, (Docket # 134), and his Memorandum of Subsequently Decided Authority, (Docket # 143).

Defendant notes that in their First Amended Complaint Plaintiffs eliminated causes of action against Defendant in his official capacity where the

City was named. Thus, it is not now necessary for the Court to consider pages 14-15 (regarding official capacity claims) in Defendant's initial brief (Docket # 59).

Because of the complexity of the causes of action at issue in this case, Defendant requests oral argument be scheduled on their Motion to Dismiss pursuant to Local Rule 7.3(c)(1).

WHEREFORE, Defendant Addison respectfully prays the Court that:

1. The Action against this Defendant be dismissed;
2. Judgment be entered for Defendant;
3. Plaintiffs have and recover nothing from Defendant; and
4. Defendant have such other and further relief as the Court shall deem just and proper.

Respectfully submitted, this the 10th day of March, 2010.

MAXWELL, FREEMAN & BOWMAN,  
P.A.

By: /s/ James B. Maxwell  
James B. Maxwell  
N.C. State Bar No. 2933  
*Attorneys for Defendant Addison*  
P.O. Box 52396  
Durham, North Carolina 27717  
Telephone: (919) 493-6464  
[jmaxwell@mfbpa.com](mailto:jmaxwell@mfbpa.com)

## CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the foregoing Defendant, David Addison's, Motion to Dismiss Plaintiffs' First Amended Complaint with the Clerk of Court using the CM/ECF system which will send notification to the following:

|                            |                                                                                                                                                                                                                                                                                                                                                                  |
|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CHARLES J. COOPER          | <a href="mailto:ccooper@cooperkirk.com">ccooper@cooperkirk.com</a><br><a href="mailto:bkoukoutchos@cooperkirk.com">bkoukoutchos@cooperkirk.com</a><br><a href="mailto:dlehn@cooperkirk.com">dlehn@cooperkirk.com</a><br><a href="mailto:dthompson@cooperkirk.com">dthompson@cooperkirk.com</a><br><a href="mailto:nmoss@cooperkirk.com">nmoss@cooperkirk.com</a> |
| JAMES DONALD COWAN, JR.    | <a href="mailto:Don.cowman@elliswinters.com">Don.cowman@elliswinters.com</a><br><a href="mailto:Dixie.wells@elliswinters.com">Dixie.wells@elliswinters.com</a>                                                                                                                                                                                                   |
| REGINALD B. GILLESPIE, JR. | <a href="mailto:rgillespie@faison-gillespie.com">rgillespie@faison-gillespie.com</a>                                                                                                                                                                                                                                                                             |
| JAMIE S. GORELICK          | <a href="mailto:Jamie.gorelick@wilmerhale.com">Jamie.gorelick@wilmerhale.com</a><br><a href="mailto:Jennifer.oconnor@wilmerhale.com">Jennifer.oconnor@wilmerhale.com</a><br><a href="mailto:Paul.wolfson@wilmerhale.com">Paul.wolfson@wilmerhale.com</a><br><a href="mailto:William.lee@wilmerhale.com">William.lee@wilmerhale.com</a>                           |
| PATRICIA P. KERNER         | <a href="mailto:Tricia.kerner@troutmansanders.com">Tricia.kerner@troutmansanders.com</a><br><a href="mailto:martin.warf@troutmansanders.com">martin.warf@troutmansanders.com</a><br><a href="mailto:Hannah.styron@troutmansanders.com">Hannah.styron@troutmansanders.com</a>                                                                                     |
| KENNETH KYRE, JR.          | <a href="mailto:kkyre@pckb-law.com">kkyre@pckb-law.com</a>                                                                                                                                                                                                                                                                                                       |
| DAVID W. LONG              | <a href="mailto:dwlong@poyners.com">dwlong@poyners.com</a><br><a href="mailto:estevens@poyners.com">estevens@poyners.com</a>                                                                                                                                                                                                                                     |
| DAN McLAMB                 | <a href="mailto:dmclamb@ymwlaw.com">dmclamb@ymwlaw.com</a><br><a href="mailto:spruitt@ymwlaw.com">spruitt@ymwlaw.com</a><br><a href="mailto:cyounger@ymwlaw.com">cyounger@ymwlaw.com</a>                                                                                                                                                                         |
| JOEL M. CRAIG              | <a href="mailto:jcraig@kennoncraver.com">jcraig@kennoncraver.com</a><br><a href="mailto:hsappenfield@kennoncraver.com">hsappenfield@kennoncraver.com</a>                                                                                                                                                                                                         |
| WILLIAM THOMAS, III        | <a href="mailto:Thomas@tfmattorneys.com">Thomas@tfmattorneys.com</a>                                                                                                                                                                                                                                                                                             |
| LINWOOD WILSON             | <a href="mailto:linwoodw@aol.com">linwoodw@aol.com</a>                                                                                                                                                                                                                                                                                                           |

ROGER E. WARIN

[rwarin@step toe.com](mailto:rwarin@step toe.com)  
[mvatis@step toe.com](mailto:mvatis@step toe.com)  
[mherrington@step toe.com](mailto:mherrington@step toe.com)  
[jpnolan@step toe.com](mailto:jpnolan@step toe.com)  
[lquadrino@step toe.com](mailto:lquadrino@step toe.com)

This the 10<sup>th</sup> day of March, 2010.

/S/James B. Maxwell  
Maxwell, Freeman & Bowman, P.A.  
Attorneys for David Addison  
P. O. Box 52396  
Durham, NC 27717-2396  
(919) 493-6464  
State Bar No.: 2933