IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:08-CV-00119

EDWARD CARRINGTON, *et al.*,	
Plaintiffs,	**THE CITY OF DURHAM'S SUPPLEMENTAL BRIEF IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT**
v.	
DUKE UNIVERSITY, *et al.*,	
Defendants.	

The fundamental premise of Plaintiffs' new state constitutional claim is an asserted right to be free from "malicious investigation." This is the same premise underlying their federal due process claims. But there is no such right under either constitution.

As the City has explained, unless a criminal suspect suffers a deprivation of a cognizable liberty or property interest, a federal due process claim in this context is deficient. *See* City's Open Br. (Doc. No. 73) at 26-34; City's Reply Br. (Doc. No. 109) at 10-16. Plaintiffs—who were never arrested, indicted, or subjected to a trial—have failed to allege any such deprivation. For that reason, their federal due process claims must be rejected. And their new claim, brought under the North Carolina Constitution's due process provision—which courts have consistently interpreted as synonymous with its federal counterpart—should be rejected for the same reason.

There is good reason for this: Both the U.S. and the North Carolina Constitutions reflect careful balancing between the rights of citizens and the need for police to effectively investigate criminal wrongdoing. Allowing anyone who feels unfairly entangled in a criminal investigation—whether former criminal suspects, targets of investigative inquiry, or material witnesses—to bring such claims would destroy that careful balance and undermine effective law enforcement. Concerned over potential civil suits, police would think twice before pursuing any lead, conducting any witness interview, or drafting any police report in response to reports of serious crimes. Neither the U.S. nor the North Carolina Constitution countenances such folly.

But even if such a claim *did* exist, Plaintiffs could not assert it here. A court's recognition of a direct claim under the North Carolina Constitution is an "extraordinary exercise of its inherent constitutional power," *Corum v. University of N.C.*, 413 S.E.2d 276, 291 (N.C. 1992), which may be exercised *only* when no other adequate remedy is available, *id.* at 291-92. Alternate remedies are, however, undoubtedly available here: Common law claims may be brought (and have been brought) against individual actors in their individual capacities—providing a remedy for the harm allegedly suffered. *See Glenn-Robinson v. Acker*, 538 S.E.2d 601, 632 (N.C. Ct. App. 2000) (dismissing constitutional claims against city in light of availability of claims against city police officer in individual capacity). The availability of such alternate remedies precludes direct claims against the City under the state constitution.

For these reasons, Plaintiffs' state constitutional claim must be dismissed.

I. BACKGROUND

Plaintiffs' original Complaint was filed on February 21, 2008. *See* Doc. No. 1. On September 1, 2009, they sought leave to amend the Complaint, adding a claim against the City pursuant to the North Carolina Constitution. *See* Doc. No. 140. On February 16, 2010, the Court found that leave to amend was not required under the Federal Rules. Doc. No. 144. The Court ruled that after Plaintiffs filed their amended Complaint, the then-pending motions to dismiss would be moot; Defendants could file renewed motions to dismiss; and the City could address new matters reflected in the First Amended Complaint in a supplemental memorandum not to exceed 20 pages. *Id.* Plaintiffs filed their First Amended Complaint on February 22, 2010. *See* Doc. No. 145.

II. PLAINTIFFS' DUE PROCESS CLAIMS UNDER THE STATE CONSTITUTION FAIL FOR MULTIPLE REASONS

A. The Various Harms Alleged By Plaintiffs Are No More Cognizable Here Than in the Federal Context.

North Carolina courts have held that the "law of the land" provision in Section 19 of the state constitution[1] is synonymous with the "due process of law" provision of the Fourteenth Amendment to the United States Constitution. *State v. Bryant*, 614 S.E.2d 479, 485 (N.C. 2005); *accord Tri-County Paving, Inc. v. Ashe County*, 281 F.3d 430, 435 n.6 (4th Cir. 2002) ("North Carolina courts have consistently interpreted the due process and equal protection clauses of the North Carolina Constitution as synonymous with their

[1] In full, Section 19 provides: "No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin."

Fourteenth Amendment counterparts."); *Shavitz v. City of High Point*, 270 F. Supp. 2d 702, 709 n.5 (M.D.N.C. 2003) (Beaty, J.) (citation omitted). Thus, the fundamental requirements for valid claims are the same: First and foremost, a plaintiff must adequately plead a deprivation of a cognizable liberty or property interest. *See State v. Carolina Utility Customers Ass'n*, 446 S.E.2d 332, 344 (N.C. 1994) ("Where there is no property interest, there is no entitlement to constitutional protection."); *In re W.B.M.*, No. COA09-205, 2010 WL 702752, at *7 (N.C. Ct. App. Mar. 2, 2010) (due process requires "liberty or property interest which has been interfered with by the State"). Thus, regardless of how Plaintiffs choose to characterize Defendants' alleged conduct—"malicious investigation," "false public statements," and so on—no claim exists unless they *also* allege a deprivation of a cognizable liberty or property interest. Plaintiffs' failure to do so is fatal to their federal and state due process claims alike.

For example, the fundamental feature of Plaintiffs' Complaint is their allegation that they have suffered, and continue to suffer, reputational harm. *See, e.g.*, FAC ¶ 13 ("And their injuries include, especially, irreparable harm to their reputations . . . . "). But, as the City explained in its original briefs, reputational harm cannot ground any due process claim under the U.S. Constitution. *See Siegert v. Gilley*, 500 U.S. 226, 233-34 (1991); *see also* City's Open. Br. at 30-34; City's Reply Br. at 13-16. This is equally true under the state constitution. *See, e.g.*, *Toomer v. Garrett*, 574 S.E.2d 76 (N.C. Ct. App. 2002). In *Toomer*, for example, the plaintiff asserted both federal and state procedural due process claims, each premised on allegations that his state employer "inserted 'false and stigmatic information' into his personnel file, the dissemination of which has

deprived him of occupational liberty." *Id*. at 87. Addressing the federal claims first, the court found that the plaintiff's due process claim failed because he had not suffered a deprivation of property or liberty, since the reputational harm did not occur in connection with an employment action of any kind, "much less a dismissal or demotion." *Id.* Having found that the plaintiff's claim failed the "stigma plus" test for federal purposes, and observing that "[d]ecisions as to the scope of procedural due process provided by the federal constitution are highly persuasive with respect to that afforded under our state constitution," the court dismissed the state constitutional claim on the very same grounds. *Id.*

In light of *Toomer*, the arguments Plaintiffs previously advanced to support their federal due process claims are equally unavailing here. For example, in attempting to meet the "stigma plus" test in support of their federal due process claims, Plaintiffs offered but one liberty deprivation to serve as the required "plus"—the cancellation of Duke lacrosse games in 2006. *See* Opp. Br. (Doc. No. 95) at 37. But as the City has explained, *see* Reply Br. at 13-16, this approach fails for multiple reasons. First, Plaintiffs allege that the loss of the lacrosse season was *caused by* the alleged reputational harm itself. *See* FAC ¶ 652 (alleging that loss of "unique athletic opportunity" was "a direct and foreseeable consequence" of "inflaming" public opinion against Plaintiffs). It therefore cannot serve as the "plus" in the "stigma plus" test under either the federal or state constitution. *See Siegert*, 500 U.S. at 234 (damage that "flows from" alleged injury to reputation not cognizable property or liberty interest); *Toomer*, 574 S.E.2d at 83 (finding no liberty deprivation despite allegations of harassment and public humiliation

arising as a result of reputational harm). Second, Plaintiffs themselves claim that the lacrosse season was cancelled by Duke for its own political reasons. *See* FAC ¶ 289 (alleging season cancelled to "distance Duke and its administrators from the lacrosse players and to appease the angry mob of faculty, student, and community activists"). Accordingly, the fundamental requirement of state action is absent. *See Paul v. Davis*, 424 U.S. 693, 711 (1976) ("the procedural guarantees of the Fourteenth Amendment apply whenever *the State* seeks to remove or significantly alter [a] protected status") (emphasis added). That requirement, of course, applies equally to the state constitution. *See Weston v. Carolina Medicorp., Inc.*, 402 S.E.2d 653, 657 (N.C. Ct. App. 1991) ("'[S]tate action' is required to trigger the 'synonymous' due process provisions of the Fourteenth Amendment to the United States Constitution and Article I, § 19 of the North Carolina Constitution."). Thus, Plaintiffs' attempts to state a "stigma plus" claim are defective under both the federal and state constitutions.

The other harms alleged by Plaintiffs ring equally hollow. Plaintiffs theorize that City investigators "hid" exculpatory evidence by, for example, purposefully failing to take written notes at a meeting during the course of the investigation. *See* FAC ¶ 384. But even if such allegations could support a due process claim in some contexts (*but see, e.g., Koubriti v. Convertino*, 593 F.3d 459, 471 (6th Cir. 2010) (finding no existing case law supporting argument that an order not to take notes during interviews violates U.S. Constitution, and granting qualified immunity)), such allegations are irrelevant in light of the fact that Plaintiffs were never subjected to a trial. *See* Open. Br. at 26-29; *see also Jean v. Collins*, 221 F.3d 656, 659 (4th Cir. 2000) (Wilkinson, J.) (no *Brady*

violation unless "failure to disclose the exculpatory information deprived the § 1983 plaintiffs of their right to a fair trial") (citation omitted); *accord id.* at 674 (Murnaghan, J.) ("no court has ever recognized [a] freestanding liberty interest in exculpatory evidence").[2]

Because Plaintiffs do not allege a deprivation of a cognizable property or liberty interest, their state due process claim is fatally defective.

B. A Substantive Due Process Theory Would Fail For Additional Reasons.

To the extent Plaintiffs style their Section 19 claim as implicating *substantive* due process, it also fails for numerous reasons. First, the requirement to plead a deprivation of liberty or property still applies. Therefore, Plaintiffs' failure to do so dooms any substantive due process claim just as it dooms any procedural due process claim. *See, e.g., Gravitte v. North Carolina Div. of Motor Vehicles*, 33 Fed. App'x 45 (4th Cir. 2002) ("A plaintiff seeking to assert a substantive due process claim must allege the deprivation of a cognizable interest in life, liberty, or property; a mere allegation of 'arbitrary' government conduct in the air, so to speak, will not suffice."); *Ware v. Fort*, 478 S.E.2d 218, 222 (N.C. Ct. App. 1996) (mere fact that state actor maliciously refused to reappoint professor was insufficient to state a substantive or procedural due process claim under

[2] Nor do Plaintiffs' other alleged harms give rise to liberty or property deprivations. For example, the only conceivable "property" at issue with respect to key card information underlying Causes of Action 8, 10, and 20, is the attorneys' fees incurred while fighting the subpoena. *See, e.g.*, FAC ¶ 439. But such fees are not of constitutional import. *See, e.g., Avila v. Pappas*, 591 F.3d 552, 554 (7th Cir. 2010) (finding due process claim frivolous and noting "[n]o court has held that the expense of retaining a criminal-defense lawyer infringes a 'fundamental' right to put the money to other ends . . . .").

federal or state constitutions, because professor had no cognizable property right to appointment in first place).[3]

Second, the U.S. Supreme Court has rejected substantive due process claims in the pre-trial context. *See Albright v. Oliver*, 510 U.S. 266 (1994); *see also Brooks v. City of Winston-Salem*, 85 F.3d 178, 184 n.6 (4th Cir. N.C. 1996) (noting that *Albright* rejected the argument that "a defendant is deprived of substantive due process by continued prosecution in the absence of probable cause"). Since the state due process provisions have been interpreted as synonymous with federal due process protections, this Court should reject a state due process claim grounded on pre-trial conduct.

Third, the North Carolina Constitution imposes the same stringent "shocks the conscience" test on due process claims as its federal counterpart. *See Farrell v. Transylvania County Bd. of Educ.*, 682 S.E.2d 224, 229-30 (N.C. Ct. App. 2009) (applying same "shocks the conscience" standards to Section 19 and Fourth Amendment allegations); *General Textile Printing & Processing Corp. v. City of Rocky Mount*, 908 F. Supp. 1295, 1305 (E.D.N.C. 1995) (same). Allegations that meet the "shocks the conscience" standard typically involve depravity, torture, or wanton infliction of bodily

[3] *See also MLC Auto., LLC v. Town of Southern Pines*, 532 F.3d 269, 281 (4th Cir. 2008) ("To establish a violation of substantive due process, [plaintiffs] must 'demonstrate (1) that they had property or a property interest; (2) that the state deprived them of this property or property interest; and (3) that the state's action falls so far beyond the outer limits of legitimate governmental action that *no process* could cure the deficiency.'") (citation omitted); *Pagan v. Calderon*, 448 F.3d 16, 32 (1st Cir. 2006) ("Where, as here, a plaintiff's substantive due process claim challenges the specific acts of a state officer, the plaintiff must show *both* that the acts were so egregious as to shock the conscience *and* that they deprived him of a protected interest in life, liberty, or property.").

harm. *See, e.g.*, *Farrell*, 682 S.E.2d at 229-30 (describing heightened liberty interest, under federal and state constitutions, in freedom from interference with "integrity of the human body" from sadistic use of force and finding substantive due process claim stated in light of repeated physical abuse of disabled child). As the City has explained, *see* Open. Br. at 29-30; Reply Br. at 11-12 n.8, Plaintiffs' allegations do not even come close to meeting that standard. For these reasons, to the extent Plaintiffs claim a substantive due process violation under Section 19, that claim must be rejected.

C. The Alleged Facts Purporting to Support State Due Process Claims Are Demonstrably Implausible Under *Iqbal*.

Plaintiffs' state constitutional claim fails for yet another reason: their allegations fail to meet the pleading standard clarified by the U.S. Supreme Court in *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009). *Iqbal* requires that a court cull out any allegations that are conclusory in nature before evaluating whether the remaining factual allegations are sufficient to state a claim. *See id.* at 1951-52. Because *Iqbal* is an interpretation of Rule 8, *see Iqbal*, 129 S. Ct. at 1953 (citation omitted), it applies to any civil action brought in federal court, whether that action relies on federal or state causes of action. *See, e.g.*, *Collum v. Charlotte-Mecklenburg Bd. of Educ.*, No. 3:07-CV-534, 2010 WL 702462, *1, 9-10 (W.D.N.C. Feb. 23, 2010) (applying *Iqbal* to claim under North Carolina Constitution).

As the City has already explained, *see* Supp. Br. (*Iqbal*) (Doc. No. 135) at 4-9, the Complaint is littered with conclusory allegations: According to Plaintiffs, malice was afoot far and wide, with one or more conspiracies bent on convicting innocent people of

rape. *See, e.g.*, FAC ¶¶ 190, 384, 423. Yet, once stripped of the purple prose, the remaining factual allegations in the Complaint suggest nothing of the sort. Even if it were theoretically *possible* that the City investigators and chain of command conspired among themselves and with others to intentionally convict innocent people of rape, the allegations are *at least* as consistent with conduct devoid of such wickedness—a felony investigation carried out under unusually trying circumstances. *See generally* City's Supp. Br. (*Iqbal*) (Doc. No. 135) at 4-10 (outlining lack of factual underpinnings for malice and conspiracy allegations). Because Plaintiffs' state constitutional claim depends on the very same conclusory allegations of maliciousness and conspiracy as their federal constitutional claims, Plaintiffs' new claim is deficient under *Iqbal* and must be dismissed.

Once the conclusory allegations are stripped away, the true nature of Plaintiffs' Complaint becomes clear: Plaintiffs believe that City investigators should have taken less time investigating; that they should have weighed the available evidence differently; and that they never should have suspected these Plaintiffs of any wrongdoing. These sorts of complaints, however, are not unique to Plaintiffs—such complaints are commonplace among any suspect who feels he or she was wrongly targeted. No matter how understandable such a reaction may be, it cannot support a due process claim.

A recent Fourth Circuit case illustrates this point. In *Wolf v. Fauquier County Board of Supervisors*, 555 F.3d 311 (4th Cir. 2009), a child's parents asserted a procedural due process claim against investigators because, they alleged, the investigation into possible child abuse was unnecessarily prolonged and intrusive. *Id*. at

323. The Fourth Circuit explained why such a claim could not, and should not, be recognized:

> With respect to the procedural due process claim, [the plaintiff] points to a number of ways in which she claims the investigation could have been better handled and more quickly resolved. But she cannot show that the investigation did not meet minimum standards required by procedural due process . . . . In a sense plaintiffs' claim is the opposite of most procedural due process claims. Where most plaintiffs allege that government officials act too precipitously and without adequate information in depriving a plaintiff of a protected interest, in this case plaintiffs allege that [the agency] sought too much information and spent too long investigating. While it is regrettable that [the plaintiff] had to spend time addressing an undeniably intrusive inquiry, [the agency's] investigation, even if imperfect, did not deprive [the plaintiff] of due process . . . .

Id. at 323; *cf. Sunrise Corp. of Myrtle Beach v. City of Myrtle Beach*, 420 F.3d 322, 328 (4th Cir. 2005) (examining the level of review in an administrative proceeding, and declaring that "[i]ndeed, the very extent of review is an indication of the existence of procedural due process, rather than its absence."). Here, as well, while Plaintiffs take issue with the length, degree, and intrusiveness of the criminal investigation into Crystal Mangum's rape claim, such complaints do not give rise to a due process claim under the state constitution.

III. BECAUSE ADEQUATE ALTERNATIVE REMEDIES ARE AVAILABLE TO PLAINTIFFS, THEIR NEW CLAIM IS PRECLUDED

A court's recognition of a direct claim brought under the state constitution is an "extraordinary exercise of its inherent constitutional power," *Corum v. University of N.C.*, 413 S.E.2d 276, 291 (N.C. 1992), which may be exercised *only* when no other adequate remedies are available, *id.* at 291-92. Because such remedies are available here, Plaintiffs' state constitutional claim must be dismissed.

As the North Carolina Supreme Court recently confirmed, a court must look to any remedies available "based on the same facts" forming the basis of Plaintiffs' constitutional claim. *See Craig v. New Hanover County Bd. of Educ.*, 678 S.E.2d 351, 355 (N.C. 2009). A remedy is adequate for these purposes when, "if successful, [it] would have compensated [a plaintiff] for the same injury he claims in his direct constitutional action." *Rousselo v. Starling*, 495 S.E.2d 725, 731 (N.C. Ct. App. 1998) (citation omitted). Moreover, "the *form* of relief available . . . is irrelevant." *Iglasias v. Wolford*, 539 F. Supp. 2d 831, 839 (E.D.N.C. 2008). A remedy may be adequate even though it arises by virtue of different types of available claims,[4] in different venues or proceedings,[5] or against different defendants.[6] Moreover, whether the alternate remedy would ultimately be successful is irrelevant: Even if a claim wholly lacks merit—or is defective for other (non-immunity-based) reasons—its availability precludes a direct constitutional claim based on the same alleged facts. *See, e.g.*, *Alt v. Parker*, 435 S.E.2d 773, 779 (N.C. Ct. App. 1993) (holding that plaintiff's claim for false imprisonment

[4] *See, e.g.*, *Copper v. Denlinger*, 688 S.E.2d 426 (N.C. 2010) (administrative appeal provided adequate remedy precluding state constitutional claim); *Alt v. Parker*, 435 S.E.2d 773, 779 (N.C. Ct. App. 1993) (available administrative remedies precluded constitutional tort claim).

[5] *See, e.g.*, *Love-Lane v. Martin*, 355 F.3d 766, 789 (4th Cir. 2004) (precluding assertion of North Carolina constitutional claim in federal venue when statutory remedy had been available in state venue).

[6] *See, e.g.*, *Cooper v. Brunswick County Bd. of Educ.*, No. 7:08-CV-48, 2009 WL 1491447, at *4 (E.D.N.C. May 26, 2009) (finding that "a state-law remedy is still 'adequate' notwithstanding that a plaintiff could not use it to sue his preferred defendant").

constituted adequate state-law remedy notwithstanding that "plaintiff's claim for false imprisonment is fatally deficient").

Here, common law claims are available against other defendants in their individual capacities. And courts in North Carolina have repeatedly concluded that when common-law claims against individual government actors in their individual capacities are available, they are "adequate remedies." For example, in *Glenn-Robinson v. Acker*, 538 S.E.2d 601 (N.C. Ct. App. 2000), the court examined whether the plaintiff could bring a constitutional claim against the city arising out of a false arrest by a city law enforcement officer. *See id.* at 632. The court first determined whether the plaintiff could bring a claim against a city law enforcement officer in his individual capacity. *Id.* Finding that such a claim against an individual officer was available, the court held that a constitutional claim against the city for the same conduct was precluded. *Id.* Other cases are in accord. *See, e.g.*, *Cooper v. Brunswick County Bd. of Educ*., No. 7:08-CV-48-BO, 2009 WL 1491447, at *4 (E.D.N.C. May 26, 2009) ("[T]he existence of an adequate alternate remedy is premised on whether there is a remedy available to plaintiff for the violation, not on whether there is a right to obtain that remedy *from the State* in a common law tort action. That is, a state-law remedy is still 'adequate' notwithstanding that a plaintiff could not use it to sue his preferred defendant.") (citation omitted) (emphasis added); *Iglesias v. Wolford*, 539 F. Supp. 2d 831 (E.D.N.C. 2008); *Seaton v. Owens*, No. 1:02CV00734, 2003 WL 22937693, at *8 (M.D.N.C. Dec. 8, 2003) (finding that available claims against officer in individual capacity "supplant[ed] the direct

constitutional claims" against government).[7] Since Plaintiffs have available to them common-law claims against a number of individual defendants—and they have, in fact, asserted many such claims—precludes a direct claim brought under the North Carolina Constitution.[8] The fact that the claims against individual City Defendants lack merit—

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[7] In finding that a common law action against an officer in his individual capacity was an adequate alternate remedy—so as to preclude a constitutional claim against the government based on the same conduct—the *Rousselo* court observed:

> *Corum* did not hold that there had to be a remedy *against the State of North Carolina* in order to foreclose a direct constitutional claim. . . . [T]he existence of an adequate alternate remedy is premised on whether there is a remedy available to plaintiff *for the violation*, not on whether there is a right to obtain that remedy *from the State* in a common law tort action. Furthermore, we have implicitly held otherwise in [*Alt v. Parker*, 435 S.E.2d 773, 779 (N.C. Ct. App. 1993)], where the existence of the common law tort of false imprisonment foreclosed a direct constitutional claim against the state.

Rousselo, 495 S.E.2d at 731 (emphasis added). Notably, the *Rousselo* plaintiffs had argued that where an available common-law remedy appeared to be more difficult to prove than the state constitutional claim they wished to assert, such a remedy should not be considered "adequate." *Id.* The court disagreed: "We decline to hold that [the plaintiff] has no adequate remedy merely because the existing common law claim might require more of him." *Id.* at 732.

[8] Even if the availability of individual capacity claims did not suffice in this context, Plaintiffs would not have been without other alternatives. For example, they could have brought a direct state-court action against Nifong's employer, the State of North Carolina, for a purported violation of their state constitutional rights. While Plaintiffs do somersaults to construct a supervisory role for *the City*, Nifong—as a matter of law—was the responsibility of the State. *See* City's Open. Br. at 34-36. Any claims based on negligent supervision of Michael Nifong, *see, e.g.*, FAC ¶¶ 676-80, must be brought against Nifong's employer, the State of North Carolina. *See* N.C. Gen. Stat. § 143-291 *et seq*. Moreover, Plaintiffs have, of course, brought federal constitutional claims against the City itself. *See, e.g., Giraldo v. California Dept. of Corrections and Rehabilitation*, 85 Cal. Repr. 3d 371, 390 (Cal. Ct. App. 2009) (rejecting state constitutional claim in part because plaintiff had parallel Eighth Amendment claim available pursuant to Section 1983); *Board of County Comm'rs of Douglas Co. v. Sundheim*, 926 P.2d 545, 553 & n.14 (Colo. 1996) (en banc) (same, as to due process).

for the reasons discussed in the City's and those individual Defendants' opening briefs—is irrelevant. The claims are still "available" as an alternate remedy within the meaning of North Carolina law, *see, e.g.*, *Alt*, 435 S.E.2d at 779, and so preclude Plaintiffs' state constitutional claim against the City.

IV. CONCLUSION

Plaintiffs' claim brought under the North Carolina Constitution must be dismissed.

This the 15th day of March, 2010.

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This the 15th day of March, 2010.

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