

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Case No. 09 CVS 18806

JASON R. SAINÉ and
DONALD D. REID,

Plaintiffs,

vs.

STATE OF NORTH CAROLINA;
BEVERLY PERDUE, Governor of the
State of North Carolina, in her official
capacity; J. KEITH CRISCO, Secretary
of the North Carolina Department of
Commerce, in his official capacity; and
JOHNSON AND WALES
UNIVERSITY,

Defendants.

**DEFENDANT JOHNSON AND WALES UNIVERSITY'S
MOTION TO DISMISS PLAINTIFFS' COMPLAINT AND
PETITION FOR DECLARATORY JUDGMENT**

NOW COMES Defendant Johnson and Wales University (the "University"), by and through its undersigned attorneys, and pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure hereby moves this Court for entry of an Order dismissing Plaintiffs' Complaint and Petition for Declaratory Judgment ("Complaint") with prejudice for Plaintiffs' lack of standing to bring certain of the claims alleged and for failure to allege any valid claim upon which relief can be granted under either state or federal law. Specifically, the University contends that each claim for relief in Plaintiffs' Complaint must be dismissed for the reasons set forth in this Motion to Dismiss, as follows:

Count 1 – N.C. Constitution
(Exclusive Emoluments Provision Violation)

Count 1 of the Complaint should be dismissed because Plaintiffs fail to state a valid claim under Article I, § 32 of the North Carolina Constitution, the Exclusive Emoluments Clause. Any alleged benefits that the State of North Carolina is providing to the University promote the general welfare, and there is a rational basis for concluding that granting such benefits serves the public purposes of education, occupational training, job creation and economic development. Accordingly, the acts of the General Assembly do not confer on the University any exclusive or separate emolument. Further, even assuming *arguendo* that they do, the acts of the General Assembly are in consideration of public service. Accordingly, Article I, § 32 is not violated, and Count 1 should be dismissed with prejudice under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

Count 2 – N.C. Constitution
(Johnson and Wales Grants Violate the Public Purpose Clause)

Count 2 of the Complaint alleges that the acts of the General Assembly grant the University benefits, grants and/or subsidies that are not for a public purpose and therefore violate Article V, § 2(1) of the North Carolina Constitution (Public Purpose Clause). Consistent with *Maready v. City of Winston-Salem*, 342 N.C. 708, 467 S.E.2d 615 (1996) and its progeny, the complained-of acts of the General Assembly promote the constitutionally valid public purposes of education, occupational training, job creation and economic development, and therefore Count 2 should be dismissed with prejudice under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

Count 3 – N.C. Constitution
(Equal Protection Clause and Law of the Law Clause of the N.C. Constitution)

Count 3 of the Complaint alleges that direct grants to the University ordered by the General Assembly are arbitrary and irrational and deprive Plaintiffs as non-beneficiaries “of their right of equal protection of the laws and due process as guaranteed by Art. I, § 19 of the North Carolina Constitution.” The challenged legislation provides rational means for achieving the State’s legitimate interests in the public purposes of education, occupational training, jobs creation and economic development and, therefore, Plaintiffs have failed to allege valid claims that they have been denied any right guaranteed by Article I, § 19 of the North Carolina Constitution. Thus, Count 3 should be dismissed with prejudice under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. Additionally, Plaintiffs have not presented allegations that would, if taken as true, establish their standing to advance their claims under the Law of the Land Clause of the North Carolina Constitution, and Count 3 should therefore be dismissed with prejudice pursuant to Rule 12(b)(1) of the North Carolina Rules of Civil Procedure for lack of jurisdiction.

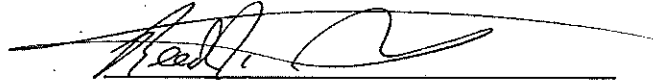
Count 4 – N.C. Declaratory Judgment Act

Count 4 of the Complaint, which seeks a declaratory judgment, fails to state a claim because, as contended above, all of the substantive claims underlying the request for declaratory judgment must be dismissed and because the challenged legislation is constitutional, authorized, and not otherwise unlawful. Count 4 should be dismissed with prejudice under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

WHEREFORE, Defendant Johnson and Wales University respectfully requests that the Court (1) grant its Motion to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure for lack of jurisdiction and failure to state a claim upon which relief can be granted; (2) enter an order dismissing all claims in the Complaint with prejudice; (3) order that the University's attorney's fees and costs incurred in the preparation and filing of this Motion and its presentation to the Court be taxed against the Plaintiff; and (4) grant other and such further relief as the Court deems just and proper.

Respectfully submitted this, the 16th day of November, 2009.

NELSON MULLINS RILEY & SCARBOROUGH, LLP



Reed J. Hollander
N.C. State Bar No. 23405
Stephen D. Martin
N.C. State Bar No. 28658
GlenLake One, Suite 200
4140 Parklake Avenue
Raleigh, NC 27612
Telephone: (919) 877-3800
Facsimile: (919) 877-3799

Attorneys for Defendant Johnson and Wales University

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served a copy of the foregoing document upon counsel of record by mailing a true copy thereof, through United States Mail, first class postage pre-paid, on this the 16th day of November, 2009, and addressed as follows:

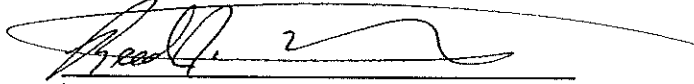
Robert F. Orr
Jeanette K. Doran
333 E. Six Forks Road, Suite 180
Raleigh, NC 27609

Counsel for the Plaintiffs

Norma S. Harrell
Special Deputy Attorney General
North Carolina Department of Justice
114 W. Edenton Street
Raleigh, NC 27603-1013

*Counsel for Defendants State of North Carolina, Beverly Perdue,
and J. Keith Crisco*

NELSON MULLINS RILEY & SCARBOROUGH, LLP



Reed J. Hollander
N.C. State Bar No. 23405
Stephen D. Martin
N.C. State Bar No. 28658
GlenLake One, Suite 200
4140 Parklake Avenue
Raleigh, NC 27612
Telephone: (919) 877-3800
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