

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
05 CVS 17197

CHARLES HEATHERLY; THOMAS
SPAMPINATO; W. EDWARD
GOODALL, JR.; PAUL STAM; WAKE
COUNTY TAXPAYERS ASSOCIATION;
and THE NORTH CAROLINA FAMILY
POLICY COUNCIL

Plaintiffs,

WILLIS WILLIAMS; NORTH
CAROLINA FAIR SHARE; and NORTH
CAROLINA COMMON SENSE
FOUNDATION,

Plaintiff-Intervenors

v.

STATE OF NORTH CAROLINA;
CHARLES A. SANDERS, BRYAN E.
BEATTY, LINDA CARLISLE, ROBERT
A. FARRIS, JR., JOHN R. MCARTHUR,
JIM WOODWARD, and ROBERT W.
APPLETON, Members of the North
Carolina Lottery Commission, in their
official capacity; NORTH CAROLINA
LOTTERY COMMISSION; THOMAS N.
SHAHEEN, Executive Director of the
North Carolina Education Lottery, in his
official capacity; MICHAEL F. EASLEY,
Governor of the State of North Carolina, in
his official capacity; RICHARD H.
MOORE, Treasurer of the State of North
Carolina, in his official capacity,

Defendants.

MOTION FOR LEAVE TO AMEND
COMPLAINT

FILED
2006 MAR 15

NOW COME plaintiffs and hereby move for leave to amend their Complaint, pursuant to Rule 15(a) of the North Carolina Rules of Civil Procedure, and show unto the Court the following:

1. This action was initially filed on December 15, 2005 by Plaintiffs Charles Heatherly, Thomas Spaminato, W. Edward Goodall, Jr. Paul Stam, Wake County Taxpayers Association and The North Carolina Family Policy Council, against the State of North Carolina, the North Carolina Lottery Commission, its members, Gov. Michael F. Easley and State Treasurer Richard H. Moore, challenging the constitutionality, under the North Carolina Constitution, of the enactment and implementation of House Bill 1023, as amended by section 31.1 of Senate Bill 622 (“the Lottery Act”).
2. Plaintiff-intervenors Willis Williams, North Carolina Fair Share, and North Carolina Common Sense Foundation requested leave to intervene on December 21, 2005, and filed a proposed Intervening Complaint and Petition for Declaratory Judgment.
3. Following a hearing on February 13, 2006, the Court granted plaintiff-intervenors’ motion to intervene by an order dated February 15, 2006.
4. By order dated February 15, 2006, this Court directed that “absent order of this Court no other pleadings are permitted.”
5. Defendants filed their Answer on March 3, 2006 denying, *inter alia*, that Plaintiff Spampinato has paid income taxes to the State at all times relevant to this action.
6. Plaintiffs request leave to amend the Complaint to reflect that Plaintiff Spampinato has in the past paid income taxes to the State, and at all relevant times, has filed income tax returns with the State and paid taxes, other than income taxes, to the State. (See proposed Amended Complaint, ¶ 5).
7. All other allegations and claims in the Complaint remain unchanged by the proposed Amended Complaint.

8. Counsel for plaintiffs have contacted counsel for defendants. Counsel for defendants do not oppose this motion.
9. Counsel for plaintiffs have contacted counsel for plaintiff-intervenors. Counsel for plaintiff-intervenors do not oppose this motion.

WHEREFORE, plaintiffs move that they be permitted to amend the Complaint.

This the 15 day of March, 2006.

Respectfully Submitted,

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Robert F. Orr (N.C. Bar No. 6798)
Jeanette Doran Brooks (N.C. Bar No. 29127)
Counsel for Plaintiffs Charles Heatherly, Thomas
Spampinato; W. Edward Goodall, Jr.; Paul Stam;
Wake County Taxpayers Association; and the North
Carolina Family Policy Council

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing MOTION FOR LEAVE TO AMEND COMPLAINT was served on all parties by:

- Transmitting a true copy thereof to each said party via electronic mail to the electronic mailing addresses as listed below; and
- Depositing a true copy thereof with the United States Postal Service, first-class postage prepaid, addressed to the following:

Electronic Mailing Addresses:

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This the 15th day of March, 2006.

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