

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE  
COUNTY OF WAKE SUPERIOR COURT DIVISION  
05 CV 017197

CHARLES HEATHERLY, et al.	)	
	)	
Plaintiffs,	)	<b>MOTION TO INTERVENE BY</b>
	)	<b>WILLIS WILLIAMS, NORTH</b>
v.	)	<b>CAROLINA FAIR SHARE AND</b>
	)	<b>NORTH CAROLINA COMMON</b>
THE STATE OF NORTH CAROLINA	)	<b>SENSE FOUNDATION</b>
et al.,	)	
	)	
Defendants.	)	

Willis Williams, North Carolina Fair Share and the North Carolina Common Sense Foundation (the "applicant-intervenors") hereby move for leave to intervene as plaintiffs in this action pursuant to Rule 24 of the North Carolina Rules of Civil Procedure.

The applicant-intervenors seek to intervene to participate fully as parties in pursuit of this action, on the grounds that: (1) the claims asserted by the applicants present questions of law and fact in common with the main action, and (2) intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. The court therefore should exercise its discretion to permit intervention pursuant to Rule 24 (b)(2). In support hereof, the applicant-intervenors show as follows:

1. This action was initially filed on December 15, 2005 by Plaintiffs Charles Heatherly, Thomas Spampinato, 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 (the "Heatherly lawsuit"), 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 (hereinafter “the Lottery Act”).

2. Rule 24(b) of the North Carolina Rules of Civil Procedure provides for permissive intervention upon “timely application” by the applicant-intervenors “[w]hen an applicant’s claim or defense and the main action have a question of law or fact in common.” N.C. Gen. Stat. § 1A-1 Rule 24(b)(2).

3. In evaluating such a motion for permissive intervention, the Court must determine whether the proposed intervention would “unduly delay or prejudice the adjudication of the rights of the original parties.” N.C. Gen. Stat. § 1A-1 Rule 24(b)(2).

4. In the instance case, where the applicant-intervenors have timely filed their motion less than one week subsequent to the filing of the original lawsuit, no delay in the litigation of the lawsuit will be caused by granting this motion.

5. Each of the applicant-intervenors moves to intervene in order to challenge the unconstitutional process whereby the Lottery Act was enacted, as well as in its implementation. Willis Williams is a citizen and resident of Martin County, North Carolina and at all times complained of, has been a taxpayer of this State and will likely continue to be a taxpayer of the State. North Carolina Fair Share is a statewide membership organization dedicated to working with low wealth, unemployed and underemployed North Carolinians to bring about a fairer North Carolina. It is a nonprofit corporation organized under the laws of the State of North Carolina with its principal location in Wake County, North Carolina. At all times complained of, the membership of North Carolina Fair Share has consisted of citizens and residents of the State, including persons who have been taxpayers of this State and will likely continue to be taxpayers of the State. The North Carolina Common Sense Foundation is a progressive, nonpartisan,

public policy research organization. It is a nonprofit corporation organized under the laws of the State of North Carolina with its principal location in Wake County, North Carolina. At all times complained of, the membership of North Carolina Common Sense Foundation has consisted of citizens and residents of the State, including persons who have been taxpayers of this State and will likely continue to be taxpayers of the State.

6. The claims asserted by the applicant-intervenors in their Intervening Complaint and Petition for Declaratory Judgment raise issues of law and fact that are the same as those raised in the *Heatherly* lawsuit: The applicant-intervenors' Intervening Complaint and Petition for Declaratory Judgment asserts that the State of North Carolina, together with the North Carolina Lottery Commission, its members, Gov. Michael F. Easley and State Treasurer Richard H. Moore each have violated, and will violate, Article II, Section 23 and Article V, Section 7, of the North Carolina Constitution, in improperly enacting and implementing the Lottery Act. See attached Intervening Complaint and Petition for Declaratory Judgment, ¶¶ 1-3, 15-81. The *Heatherly* lawsuit concerns these same issues. See *Heatherly* Complaint and Petition for Declaratory Judgment ¶¶ 1-3, 18-41, 47-74, filed with the Court on December 15, 2005.

7. No prejudice to the adjudication of the rights of the original parties will occur if the requested intervention were allowed, since this motion is being filed very early in the litigation of this case, prior to any discovery or court hearings or judgment having occurred.

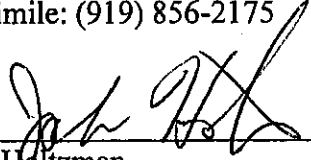
8. Finally, counsel for the applicant-intervenors has consulted with counsel for the existing Plaintiffs, and the existing Plaintiffs do not oppose this motion.

WHEREFORE, the applicant-intervenors move that they be permitted to intervene in this lawsuit.

This 21<sup>st</sup> day of December, 2005.

Counsel for Applicant-Intervenors Willis Williams, North Carolina Fair Share and the North Carolina Common Sense Foundation

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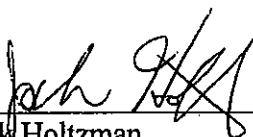
CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served a copy of the foregoing document on the following person(s) and/or entities listed below by facsimile and by mailing the same by U.S. mail, first class, postage prepaid, return receipt requested, addressed as follows:

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This the 21<sup>st</sup> day of December, 2005.

  
\_\_\_\_\_  
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