

FILED
2006 FEB 15

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 FIAR SHARE; and NORTH)
CAROLINA COMMON SENSE)
FOUNDATION,)

Plaintiff-Intervenors

vs

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.

ORDER ON MOTION
FOR DISMISSAL UNDER
RULES 12 (b) (1), (2) and (6)

THIS CAUSE coming on to be heard and being heard before the undersigned Superior Court Judge presiding at the 13 February 2006 Wake County Civil Session of Superior Court on defendants' motion to dismiss pursuant to Rules 12 (b) (1), (2) and (6) of the North Carolina Rules of Civil Procedure; that this Court, after consideration of the pleadings filed herein, the briefs before the Court, affidavits submitted by plaintiffs solely on the question of standing, and arguments of counsel, makes the following:

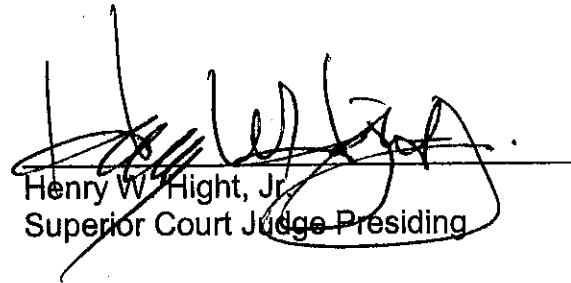
1. That all parties are before this Court and are represented by counsel.
2. That the plaintiffs, Charles Heatherly; Thomas Spampinato; W. Edward Goodall, Jr.; Paul Stam; Wake County Taxpayers Association; and the North Carolina Family Policy Council, are represented by Robert F. Orr, Pamela B. Cashwell and Jeanette Doran Brooks.
3. That the plaintiff-intervenors, Willis Williams; North Carolina Fair Share; and North Carolina Common Sense Foundation, are represented by Jack Holtzman.
4. That the defendants, 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, are represented by Norma S. Harrell, Special Deputy Attorney General, and Ronald M. Marquette, Special Deputy Attorney General.
5. That this Court provided opportunity for counsel for all parties to be heard and to address this Court on the question of whether this Court should dismiss this action pursuant to Rules 12 (b) (1), (2) and (6).

6. That the individual plaintiffs and individual plaintiff-intervenor are citizens and residents of North Carolina and pay taxes to the State of North Carolina.
7. That the Corporate plaintiffs and plaintiff-intervenors are public policy, nonprofit corporations; all are organized under the laws of North Carolina and operate within North Carolina
8. That the plaintiffs have standing to bring this civil action.
9. That this Court has jurisdiction of the subject matter.
10. That this Court has reviewed the plaintiffs' complaint and the plaintiff-intervenors' complaint of record and notes that they are substantially the same, most particularly in Counts One, Two, Three, Four, Five and Six.
11. That this Court has analyzed the sufficiency of the plaintiffs' complaint and the plaintiff-intervenors' complaint under Rule 12 (b) (6) of the North Carolina Rules of Civil Procedure.
12. That this Court liberally construed both complaints in order to determine if the relief prayed for can be granted on any theory.
13. That Count One, Count Two, Count Three, and Count Six in the plaintiffs' complaint and the plaintiff-intervenors' complaint, when so considered, state claims upon which relief may be granted.
14. That the defendants' 12 (b) (6) motion as to One, Count Two, Count Three, and Count Six in the plaintiffs' complaint and the plaintiff-intervenors' complaint should be denied.
15. That Count Four and Count Five in the plaintiffs' complaint and the plaintiff-intervenors' complaint fail to state a claim upon which relief can be granted and should accordingly be dismissed.

UPON THE FOREGOING FINDINGS, IT IS NOW THEREFORE ORDERED AS FOLLOWS:

1. That defendants' motion to dismiss pursuant to Rules 12 (b) (1), and (2) of the North Carolina Rules of Civil Procedure is hereby **DENIED**.
2. That defendants' motion to dismiss pursuant to Rules 12 (b) (6) of the North Carolina Rules of Civil Procedure as to Count Four and Count Five in the plaintiffs' complaint and the plaintiff-intervenors' complaint is hereby **ALLOWED**.
3. That defendants' motion to dismiss pursuant to Rules 12 (b) (6) of the North Carolina Rules of Civil Procedure as to Count One, Count Two, Count Three and Count Six in the plaintiffs' complaint and the plaintiff-intervenors' complaint is hereby **DENIED**.

This is the 15th day of February, 2006.


Henry W. Hight, Jr.
Superior Court Judge Presiding