

STATE OF NORTH CAROLINA

WAKE COUNTY

FILED
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WAKE COUNTY, N.C.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
15 CVS _____

SABRA FAIRES, BENNETT)
LITTLE COTTEN, DIANE P. LAHTI)

Plaintiffs,)

v.)

STATE BOARD OF ELECTIONS;)
JOSHUA B. HOWARD, Chair,)
and RHONDA K. AMOROSO,)
JOSHUA D. MALCOLM, MAJA)
KRICKER, and JAMES L. BAKER)
members, of the State Board (in their)
official capacities only); and)
KIM WESTBROOK STRACH,)
Executive Director of the State)
Board (in her official capacity only),)

Defendants)

COMPLAINT
(Declaratory Judgment Action)
(Three-Judge Panel Required)

This is a facial challenge to the constitutionality of North Carolina Session Law 2015-66 which replaces elections for justices of the Supreme Court with a referendum on whether the justice should be retained in office after the completion of the justice's term. This lawsuit is not about the merits of reforming the manner of selecting judges, whether through the use of a retention referendum or other means. Instead, plaintiffs simply contend that this fundamental change in the selection of justices requires an amendment to the State Constitution.

NATURE OF ACTION

1. This is a declaratory judgment action brought pursuant to Chapter 1, Article 26, of the General Statutes, G.S. § 1-253, et seq.
2. Plaintiff challenges the constitutionality of North Carolina Session Law 2015-66 which provides for justices of the Supreme Court to be subject to a referendum on retention in

office after the conclusion of the justice's first elected term of office rather than being subject to another election. Plaintiffs' facial challenge to the constitutionality of the act requires submission to a three-judge panel of superior court judges pursuant to G.S. § 1-267.1.

3. As a facial constitutional challenge to be heard by a three-judge panel, venue lies in Wake County pursuant to G.S. § 1-267.1.

PARTIES

4. Plaintiff Sabra Faires desires to file for the office of justice of the Supreme Court for the seat whose term expires December 31, 2016. She is a resident of Wake County, has been registered to vote in the county since 1982, and has been a licensed attorney admitted to the bar in North Carolina since 1980. She is qualified legally and professionally to serve on the court, having served as a staff attorney for the General Assembly, the Office of Administrative Hearings, and the Rules Review Commission; as assistant secretary for tax administration in the Department of Revenue; as chief of staff and counsel to the speaker of the House of Representatives; as tax counsel to the Senate; and as a private practitioner.
5. Plaintiff Bennett Little Cotten is a registered voter in Wake County since 1970 and desires to exercise her constitutional right to vote for justice of the Supreme Court in 2016.
6. Plaintiff Diane P. Lahti is a registered voter in Wake County since 1983 and desires to exercise her constitutional right to vote for justice of the Supreme Court in 2016.
7. Defendant State Board of Elections is the agency responsible for conducting elections for the Supreme Court.
8. Defendants Joshua B. Howard, Rhonda K. Amoroso, Joshua D. Malcolm, Maja Kricker and James L. Baker are the chair and members, respectively, of the State Board of Elections and are sued in their official capacities only.
9. Defendant Kim Westbrook Strach is the executive director of the State Board of Elections and is sued in her official capacity only.

10. Although the Attorney General is not named as a party to this action, he is served with a copy of the complaint pursuant to G.S. §1-260.

FACTS

11. Article IV, § 16 of the North Carolina Constitution provides: "Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified."

12. The requirement that justices of the Supreme Court "shall be elected by the qualified voters of the State" has been in the Constitution since 1868.

13. Since the judicial article of the Constitution was rewritten in 1962 to create the current General Court of Justice there have been 34 bills introduced in the General Assembly to provide for a retention referendum for some or all judges in the state. Except for House Bill 222 in the 2015 session, which became Session Law 2015-66, every one of those bills was in the form of a constitutional amendment, regardless of the party affiliation of the sponsor and regardless of whether the bill was proposed by the governor, the Courts Commission, the North Carolina Bar Association or anyone else.

14. Nineteen other states (Alaska, Arizona, California, Colorado, Florida, Illinois, Indiana, Iowa, Kansas, Maryland, Missouri, Nebraska, New Mexico, Oklahoma, Pennsylvania, South Dakota, Tennessee, Utah and Wyoming) use a retention referendum for their appellate judges. In every one of those states the authorization for a retention referendum is in the state constitution.

15. One office of justice of the Supreme Court was elected in 2008 for a term beginning on January 1, 2009, and expiring on December 31, 2016.

16. Session Law 2015-66 was enacted by the 2015 General Assembly and signed by the governor and took effect on June 11, 2015.

17. Session Law 2015-66 enacts a new statute, G.S. § 7A-4.1 which provides that a justice who was elected by the voters and wishes to continue in office following the expiration of that term may notify the State Board of Elections by noon of the first business day in July in the year prior to the general election immediately preceding the expiration of the term that the justice desires to continue in office. If the justice files such notice, the justice is subject to a referendum at the next general election in which the question on the ballot is "FOR" or "AGAINST" "The retention of [name of Justice] on the North Carolina Supreme Court for a term of eight years."
18. The incumbent justice whose term is due to expire at the end of 2016 has timely filed with the State Board of Elections the notice required to trigger the referendum on retention for an additional term of eight years, such referendum to be held on November 8, 2016.
19. Pursuant to S.L. 2015-66 the State Board of Elections has scheduled a retention referendum but not an election for justice of the Supreme Court for 2016 and will not accept notices of candidacy of individuals who wish to file and run for that office, other than the notice of desire to continue in office filed by the incumbent.
20. Plaintiff Sabra Faires is qualified for, desires to file a notice of candidacy for, and desires to be a candidate for the office of justice of the Supreme Court for the term that begins January 1, 2017.

FIRST CLAIM

(A Retention Referendum Is Not An Election)

21. The allegations of the preceding paragraphs are incorporated by reference.
22. A referendum on retention of an incumbent justice of the Supreme Court, as provided in S.L. 2015-66, is not an election for the office as required by Article IV, § 16 of the North Carolina Constitution. The constitution requires an election in which opposing candidates may run for the office.

23. Because S.L. 2015-66 provides for a referendum rather than an election in 2016 for the office of justice of the Supreme Court for the term that expires December 31, 2016, the act violates Article IV, § 16 of the North Carolina Constitution.

SECOND CLAIM
(Unlawful Additional Qualification For Office)

24. The allegations of the preceding paragraphs are incorporated by reference.

25. Article VI, §§ 6 and 8, and Article IV, § 22 of the North Carolina Constitution set forth the qualifications for office in North Carolina, including the office of justice of the Supreme Court.

26. The General Assembly may not require additional qualifications for office beyond those specified in the constitution.

27. If the retention referendum provided in S.L. 2015-66 is considered an election for justice of the Supreme Court, the General Assembly has established an additional qualification for the office, i.e., that the candidate be the incumbent holder of the office.

28. The additional qualification for justice of the Supreme Court provided in S.L. 2015-66 violates Article VI, §§ 6 and 8, and Article IV, § 22 of the North Carolina Constitution.

THIRD CLAIM
(Denial of Right to Vote for Supreme Court)

29. The allegations of the preceding paragraphs are incorporated by reference.

30. Article IV, §16 and Article VI, § 1 of the North Carolina Constitution give voters of the state the right to vote for justices of the Supreme Court in an election.

31. Session Law 2015-66 deprives plaintiffs of this right.

FOURTH CLAIM
(Denial of Right to Vote on Constitutional Amendment)

32. The allegations of the preceding paragraphs are incorporated by reference.

33. Article XIII and Article VI, §1 of the North Carolina Constitution give voters of the state the right to vote on amendments to the constitution, and forbid amendment by any other means.

34. Session Law 2015-66 deprives plaintiffs of this right by purporting to amend the constitution without a vote of the people.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs having stated their claims and being entitled to declaratory judgment in their favor, ask that the court:

1. Declare Session Law 2015-66 unconstitutional pursuant to G.S. § 1-253 et seq., and enjoin defendants from conducting a retention referendum for justice of the Supreme Court as provided in that act;
2. Issue a writ of mandamus to defendants to conduct an election for justice of the Supreme Court on November 8, 2016, and to schedule and conduct all necessary activities for such an election, including accepting notices of candidacies and conducting a nonpartisan primary;
3. Award plaintiffs the costs of this action, including plaintiffs' attorney's fees, pursuant to G.S. § 1-263; and
4. Grant plaintiffs such other and further relief as necessary and appropriate.

RESPECTFULLY SUBMITTED, this 30TH day of November 2015.

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