

FILED

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STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
WAKE COUNTY SUPERIOR COURT DIVISION
WAKE COUNTY BY _____ 15 CVS 15903

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

Plaintiffs' Motion for Summary Judgment

v.)

STATE BOARD OF ELECTIONS;)
A. GRANT WHITNEY, JR, 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)

Pursuant to N.C. General Statutes § 1A-1, Rule 56, Plaintiffs Sabra Faires, Bennett Little Cotten, and Diane Lahti move for summary judgment in their favor, and in support of the motion show the court as follows:

1. This is a declaratory judgment action challenging the constitutionality of North Carolina Session Law 2015-66 which substitutes a retention referendum for the nonpartisan nomination and election of supreme court justices, beginning with the seat on the court whose term expires at the end of 2016.
2. Plaintiffs have filed their complaint and defendants have filed their answer.

3. There are no material facts in dispute and the only issues to be determined by the court are matters of law.
4. The undisputed material facts are:
 - a. Article IV, § 16 of the North Carolina Constitution says, "Justices of the Supreme 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."
 - b. Session Law 2015-66 provides that when an incumbent supreme court justice's term is due to expire the justice may file with the State Board of Elections a notice of desire to continue in office and that in that circumstance the only proposition on the ballot will be "FOR/ AGAINST The retention of [name of justice] on the North Carolina Supreme Court for a term of eight years."
 - c. Session Law 2015-66 was enacted by the General Assembly without amending Article IV, § 16 of the constitution.
 - d. The incumbent justice whose term expires at the end of 2016 has filed the notice required by Session Law 2015-66 and the State Board of Elections has scheduled a referendum for November 8, 2016, on retention of that justice.
 - e. In accordance with Session Law 2015-66 the State Board of Elections did not open filing for any other candidate for supreme court justice during the December 2015 filing period for the 2016 elections.
 - f. Plaintiff Sabra Faires is a registered voter in Wake County and a lawyer licensed in North Carolina who is qualified to be a candidate for supreme court justice, and she desires to be a candidate for the seat whose term expires at the end of 2016. Affidavit of Sabra Faires.
 - g. Under Session Law 2016-66 plaintiff Faires is barred from running for supreme court justice in 2016.

- h. Plaintiffs Bennett Little Cotten and Diane Lahti are registered voters of Wake County who desire to vote for supreme court justice in 2016. Affidavit of Bennett Little Cotten; Affidavit of Diane Lahti.
5. Session Law 2015-66 violates Article IV, §16 of the North Carolina Constitution in that a retention referendum is not an election for the office of supreme court justice as required by the constitution.
 6. Session Law 2015-66 violates Article VI, §§ 6 and 8, and Article IV, §22 of the North Carolina Constitution in that it adds as an additional qualification for the office of supreme court justice that the candidate must be the incumbent justice.

Accordingly, plaintiffs move that the court:

1. Grant summary judgment in their favor;
2. Declare that Session Law 2015-66 is unconstitutional;
3. Enjoin defendants from conducting a retention referendum for supreme court justice;
4. Order defendants to conduct an election for supreme court justice on November 8, 2016, for the seat whose term expires at the end of 2016;
5. Order defendants to prepare and present to the court, within ten days, a schedule for the conduct of an election for supreme court justice in 2016, including a schedule for the filing of notices of candidacy and for conducting a nonpartisan primary in advance of the election;
6. Grant plaintiffs the costs of this action, including attorney fees; and
7. Grant such other and further relief as necessary and appropriate.

A brief in support of plaintiffs' motion is submitted with this motion for summary judgment.

RESPECTFULLY SUBMITTED, this 25th day of January 2016.

THARRINGTON SMITH, LLP

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CERTIFICATE OF SERVICE

I certify that this Plaintiffs' Motion for Summary Judgment was served on the defendants by emailing a true and correct copy to apeters@ncdoj.gov, mtrippe@ncdoj.gov and amajmundar@ncdoj.gov and by placing a true and correct copy in the U.S. Mail, first class postage prepaid, addressed as follows:

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This 26th day of January 2016.

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