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WAKE COUNTY, C.S.C.

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STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 15 CVS 15903
SABRA FAIRES, BENNETT LITTLE COTTEN, DIANE P. LAHTI Plaintiffs, 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	**Brief In Support of Plaintiffs' Motion for Summary Judgment**

Plaintiffs submit this brief in support of their motion for summary judgment.

SUMMARY OF THE CASE

This is a declaratory judgment action challenging the constitutionality of North Carolina Session Law 2015-66 [attached as Exhibit A]. The act, starting this year, replaces the nonpartisan primary and election of supreme court justices with a retention referendum in which only the incumbent justice appears on the ballot with "FOR/AGAINST" next to his name. Plaintiff Sabra Faires is qualified to and desires to be a candidate for justice in 2016 but, like every other person in the state other than the incumbent justice, is barred by the act from running.

The act is unconstitutional. First and most obviously, the retention referendum does not satisfy the constitutional requirement that justices "shall be elected by the qualified voters . . . ."

The constitution consistently uses the word "election" to refer to contests between opposing candidates for office and consistently uses other phrases not including "election" for a for/against kind of ballot. If a retention referendum satisfies the constitutional requirement of an election for this one office, such a referendum could be used for all other offices for which the constitution, by the same language, requires election — governor, attorney general, commissioner of agriculture, state senator and representative, sheriff, and so on. It is hard to imagine a result more destructive of the democratic framework of North Carolina government.

When the drafters of the 1868 constitution first provided for election of justices they could not have contemplated a retention referendum because the concept was not conceived until nearly half a century later and was not actually adopted by any other state until 1934. Until 2015 every North Carolina legislature and study commission understood that a constitutional amendment would be needed to allow a retention referendum. Consequently, each one of the 33 retention bills introduced in the General Assembly from 1962 until Session Law 2015-66 was in the form of a constitutional amendment. And every other state that uses a retention referendum has specific authorization in its constitution.

Second, if the retention referendum is considered an election for office, the General Assembly has violated the constitution by adding an additional qualification for office — that one may run only if one already holds the office. The constitution establishes the qualifications for office, including justice of the supreme court, and it is beyond the power of the legislature to add to those qualifications.

This case is not about the merits of switching from elections to retention votes, nor do plaintiffs argue that election is the best method of choosing judges. In 1868, however, the people of North Carolina decided to make election of judges part of the fundamental law of the state, and that decision may be altered only by a constitutional amendment. The General Assembly usurped the power of the people in 2015 by enacting Session Law 2015-66 without the required three-fifths majority in each house and without a statewide referendum.

FACTS

The essential facts are not in dispute. Article IV, § 16 of the North Carolina Constitution provides that "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." Prior to the enactment of Session Law 2015-66, justices of the supreme court were elected in the general election following a nonpartisan primary in which the top two vote getters were placed on the November ballot.

The term of one seat on the court expires at the end of 2016 and, except for new G.S. § 7A-4.1 added by Session Law 2015-66, would be up for election this year. Instead, under the new statute, the incumbent justice filed a notice of his desire to continue in office and the State Board of Elections scheduled a retention referendum for November 8th for that justice rather than opening filing to other candidates and scheduling an election. The only proposition on the ballot will be: "[ ] FOR [ ] AGAINST The retention of [name of Justice] on the North Carolina Supreme Court for a new term of eight years."

Plaintiff Sabra Faires is a licensed lawyer and registered voter of Wake County who meets all the constitutional requirements for the office of justice of the supreme court. She desires to file and run for the seat whose term expires at the end of 2016. Affidavit of Sabra Faires. Plaintiffs Bennett Cotten and Diane Lahti are voters of Wake County who desire to vote for justice of the supreme court. Affidavit of Bennett Little Cotten; Affidavit of Diane Lahti. By enactment of Session Law 2015-66 the General Assembly has deprived plaintiff Faires of her right to be a candidate for the supreme court and has deprived plaintiffs Cotten and Lahti of their rights to vote for the supreme court and to vote on amendments to the state constitution.

ARGUMENT

I. A retention referendum is not an election for office.

A. The North Carolina Constitution uses "election" only to refer to contests between opposing candidates for public office, and uses other language not including "election" for any instance of voting for or against a ballot proposition.

The word "election" has a plain and clear meaning in the state constitution. When used in connection with a ballot proposition, it is never used to refer to anything other than a contest between candidates for public office, and each reference to such a contest for office includes the word "election." There are numerous instances in which the constitution speaks to other kinds of ballot propositions such as for/against votes on bonds and constitutional amendments, but it never uses the word "election" to describe those kinds of votes. A retention referendum is not an election.

The constitution says that "The Governor and Lieutenant Governor shall be elected by the qualified voters of the State . . . ." N.C. Const., Art. III, § 2(1). That "A Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Labor, and a Commissioner of Insurance shall be elected by the qualified voters of the State . . . ." *Id.*, Art. III, § 7(1). That "A Clerk of the Superior Court for each county shall be elected for a term of four years by the qualified voters thereof . . . ." *Id.*, Art. IV, § 9(3). That "District Judges shall be elected for each district . . . ." *Id.*, Art. IV, § 10. That "The Senators shall be elected from districts." *Id.*, Art. II, § 3. That "The Representatives shall be elected from districts." *Id.*, Art. II, § 5. That "In each county a Sheriff shall be elected by the qualified voters thereof . . . ." *Id.*, Art. VII, § 2. That for a constitutional convention "Delegates to the Convention shall be elected by the qualified voters . . . ." *Id.*, Art. XIII, § 1. [emphasis added in each instance][1]

[1] There are three instances in the constitution in which word "chosen" is used in connection with selection of a public official by the voters, and each time that word is paired with another provision declaiming the "election" of that official. Article IV, § 18 says that for each prosecutorial district a district attorney "shall be chosen for a term of four years by the qualified voters thereof . . ."; the same section says only lawyers

And, when it comes to supreme court justices Article IV, §16 of the North Carolina Constitution likewise says:

> 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. [emphasis added]

By contrast, "election" or "elected" is not used in the constitution when speaking of a for/against ballot proposition of any kind. Instead, in each of those situations the constitution refers to a proposition being "submitted to the voters" or being "approved by a majority" of the voters. The language used for each of the constitutional provisions on a vote for something other than a public official is as follows:

> A constitutional amendment approved by the General Assembly "shall be submitted to the qualified voters of this State. . . ." Art. II, § 22(2).
>
> Local property taxes other than those set by uniform state law must be "approved by a majority of the qualified voters . . . ." of the local government unit. Art. V, § 2(5).
>
> The legislature may not increase state debt unless "approved by a majority of the qualified voters of the State . . . ." Art. V, § 3(1).
>
> The legislature may not lend the credit of the state to others unless it is "submitted to a direct vote of the people of the State, and is approved by a majority of the qualified voters . . . ." Art. V, § 3(2).
>
> The legislature may not pay any debt incurred by the 1868 convention or 1868-70 legislatures unless it is "submitted to the people of the State and is approved by a majority of all the qualified voters at a referendum . . . ." Art. V, § 3(4).
>
> The legislature may not allow local governments to contract debt unless "approved by a majority of the qualified voters of the unit . . . ." Art. V, § 4(2).
>
> A local government may not incur debt, other than as authorized by general state law, unless "approved by a majority of the qualified voters of the unit . . . ." Art. V, §4(3).
>
> Instruments of indebtedness for project development financing pledging specified revenues may be issued without "approval by referendum." Art. V, § 14.

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are eligible for "election." Article II, §§ 2 and 4, respectively, say that senators and representatives are to be biennially "chosen by ballot"; §§ 3 and 5 say those legislators "shall be elected from districts."

> The legislature may not call a constitutional convention unless it is "submitted to the qualified voters of the State . . . ." Art. XIII, § 1.
>
> Any constitutional amendment approved by a convention must be "submitted to the qualified voters of the State . . . ." Art. XIII, § 3.
>
> The legislature may not amend the constitution except by adopting an act by three-fifths vote and "submitting the proposal to the qualified voters of the State for their ratification or rejection." Art. XIII, § 4.

Thus, the constitution is consistent. For selection of public officials, the constitution uses the words "shall be elected," but for submission of a for/against proposition it uses "submitted to the people" or "approved by a majority of qualified voters" or "referendum" or some combination of those words. On its face, then, the constitution does not consider the election of a public officer to be the same as a referendum. And a for/against referendum on retention of a supreme court justice would not be an election.

A list of all constitutional provisions containing the word "election" or "elect," and also showing all provisions referring to a for/against style vote, is attached as Exhibit B.

B. If supreme court justices may be "elected" by a retention referendum then so may every other public officer named in the constitution.

While Session Law 2015-66 only concerns supreme court justices, the effect of holding it constitutional would be to open the door to a complete dismantling of the democratic form of government in North Carolina. It is not possible to say that a retention referendum satisfies the requirement that justices "shall be elected" and not reach the same conclusion for every other office that the constitution says "shall be elected." If, without constitutional amendment, the General Assembly can decide that a supreme court justice who has served one term can be "elected" to a second and subsequent terms through a for/against referendum, it may just as well decide that a governor who has served one term may be "elected" to a second term by a for/against referendum with no opposing candidate permitted on the ballot. Or that legislators themselves, once elected, may keep returning every two years upon approval at a for/against referendum with no one allowed to oppose them. And the same would be true for Secretary of

State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, Commissioner of Insurance, clerk of court, and sheriff.

Such a result is so clearly contrary to the meaning and intent of the constitution that there is no need to argue the point further. There is simply no way to say that the words "shall be elected" mean one thing for supreme court justice and something different for every other office. The absurdity of that result starkly demonstrates the fundamental flaw of Session Law 2015-66.

C. The use of a retention referendum to satisfy the requirement of election could not have been contemplated nor intended by the drafters of the Constitution of 1868 when they provided for election of supreme court justices.

The election of supreme court justices in North Carolina originated with the Constitution of 1868. When the state's first constitution was adopted in 1776 the direct election of judges was unknown in the colonies, and North Carolina then and until 1868 provided for selection of judges by the legislature. When the question of judicial selection arose in the 1868 constitutional convention the only debate was whether to have the General Assembly continue to choose judges, have the governor appoint with legislative confirmation, or provide for direct election by the people. John V. Orth, "Tuesday, February 11, 1868: The Day North Carolina Chose Direct Election of Judges," 70 N.C. Law Review 1825, 1828 (1992); Judge Robert N. Hunter, Jr., "Do Nonpartisan, Publicly Financed Judicial Elections Enhance Relative Judicial Independence?", 93 N.C. Law Review 1825, 1834-37 (2015).

The drafters of the 1868 constitution did not discuss and could not have intended to allow judges to be "elected" by retention referendum, nor could they have even contemplated the idea. The only kind of election for office they knew was one in which opposing candidates ran against each other. Indeed, it was not until 1914 that the idea of a retention referendum was first floated by Northwestern University law professor Albert Kales. Susan B. Carbon and Larry C. Berkson, *Judicial Retention Elections in the United States,* American Judicature Society, p.2 (Chicago 1980). Retention voting then remained a purely theoretical concept until adopted by

California in 1934 when appointment of judges with subsequent retention referenda was one of several statewide propositions included in a "Curb Crime" campaign spearheaded by a young Oakland district attorney, Earl Warren. Missouri followed with adoption of a "merit plan" in 1940 that became the namesake for the nominating commission/gubernatorial appointment/retention referendum model that advocates have promoted in North Carolina and other states ever since. Jed Handelsman Shugerman, *The People's Courts: Pursuing Judicial Independence in America*, pp. 177-180, 197-206 (2012).

D. Legislators have known and recognized for decades that a constitutional amendment is necessary to change the method of selecting supreme court justices.

It is remarkable that in 2015 the General Assembly ignored the need for a constitutional amendment even though they had been told repeatedly for over half a century — ever since the current Article IV was adopted in 1962 — that it was required, and even though every one of the thirty plus proposals for retention voting during that time was in the form of a constitutional amendment.

The current Article IV of the constitution, carrying forward the judicial election provisions from 1868, was adopted in November 1962. The 1962 amendments were a result of the work in the 1950s of the North Carolina Bar Association's Committee on Improving and Expediting the Administration of Justice in North Carolina, better known as the Bell Commission. Although a subcommittee of the commission had recommended a "Missouri Plan" for selection of judges — candidates to be nominated by a nonpartisan commission, appointed by the governor, and subject to a retention referendum after a year or two in office — no final agreement could be reached within the commission and the issue was referred back to the subcommittee for further study. As Professor Drennan of the UNC School of Government states in reporting that history: "That time never came. The report of the full Committee included no provision for any change in the selection of appellate or general jurisdiction judges." James C. Drennan, "Judicial Reform in North Carolina," in *Judicial Reform in the States* 19, 23 (Champagne & Haydel, eds., 1993)

(hereafter "Drennan"). Drennan goes on to describe how the Missouri Plan did not make it into the North Carolina legislature's proposed constitutional amendments and the consequences for future reform efforts:

> The first version of the proposed constitutional amendment did not receive legislative approval, for reasons other than the selection method recommended. But the version that did pass in 1961 provided for election of all judges. That proposed amendment was approved by the people at the general election in 1962, and the window of opportunity for those who sought change had shut. Elections were the only constitutionally approved method of selecting judges. The significance of the closing of that window is that judicial selection became for future reformers a constitutional issue. And that meant that moving away from elections would require a 3/5's vote of the membership of each house (not just those present and voting) to put the issue before the people in the form of a referendum.

Drennan, at 23.

Following the adoption of the 1962 constitutional amendments, the General Assembly created the bipartisan Courts Commission to propose legislation to implement the new unified statewide court system. With the new system fully in place statewide in 1970, the Courts Commission returned to further reforms. Its 1971 report focused on judicial selection, discipline and retirement, including a Missouri Plan substituting appointment and retention votes for the election of appellate judges. The commission knew a constitutional amendment was needed: "The Commission's deliberations have led it to conclude that in each of these three areas — selection, discipline and removal, and retirement — major legislation would be beneficial. In each instance, a constitutional amendment is required." Report of the Courts Commission to the North Carolina General Assembly 1971, at 2.

The proposed constitutional amendment did not pass the legislature in 1971 and the Courts Commission returned with the same proposal for the 1973 and 1975 sessions. Samuel Latham Grimes, "'Without Favor, Denial, or Delay': Will North Carolina Finally Adopt the Merit Selection of Judges?", 76 N.C. Law Review 2266, 2300 (1998) (hereafter "Grimes"). Each time identical constitutional amendments were introduced in the Senate and House, co-sponsored by

Courts Commission members from both parties. In 1973 the proposal made it to the floor of the House but failed the three-fifths vote required for a constitutional amendment.

The North Carolina Bar Association was the principal backer of the proposed constitutional amendment for merit selection in 1977, and it was endorsed by Chief Justice Susie Sharp, but it failed of the three-fifths majority on the House floor. *Id.,* at 2300-01. The same legislation — as always, a constitutional amendment — was introduced and failed again in 1977.

Following a short lull, attempts to pass a constitutional amendment for merit selection resumed with introduction of a Missouri Plan in the Senate in 1985, but no action was taken. The 1989 legislation, which ended up passing the Senate but was not considered in the House, was the product of the General Assembly's Judicial Selection Study Commission created in 1987 with bipartisan membership, including appointments by the governor, chief justice, and attorney general. Drennan served as commission staff. The commission recognized, yet again, the need for a constitutional amendment: "No change of the magnitude recommended here can be done without a constitutional amendment, and that will require a vote of the people." Report of Judicial Selection Study Commission to the Governor, Chief Justice, Attorney General and the 1989 General Assembly of North Carolina, at 8 (Feb. 15, 1989).

In 1991 the Senate passed a modified version of the Judicial Selection Study Commission's proposed constitutional amendment but the House did not act on either that bill or the one introduced in the House. Grimes, at 2304-05. In 1995 two versions of a constitutional amendment were introduced in the House and one in the Senate. The Senate bill got the necessary vote in that chamber but failed to obtain the super majority in the House. Only a single House bill was introduced in 1997 and it died in committee. A single Senate bill was brought forward in 1999, passing the Senate but failing to get a three-fifths majority in the House. All proposals were written as constitutional amendments.

The story is the same for the 2000s. Two Senate bills and one House bill were introduced in 2001, a single Senate bill in 2003, two Senate bills and one House bill in 2005, a single Senate bill in 2007, one bill in each house in 2009 and 2011, and two Senate bills in 2013. Most bills had sponsors from both parties, almost all provided for a retention referendum in lieu of an election, all were in the form of a constitutional amendment, and none was able to obtain the three-fifths majority needed in both chambers.

In their reviews of the history of failed attempts to move to retention voting in North Carolina both Drennan and Grimes emphasize that the principal barrier to change is the need for a constitutional amendment:

> The second problem facing the reformers is that they are dealing with a constitutional issue. To get to the point where they begin worrying about how the public will vote on a referendum, they have to obtain a 3/5's majority of each house. — Drennan, at 37.

> Second, the proponents of judicial reform are dealing with a constitutional issue, meaning they will have to convert more than a mere majority of the General Assembly to their viewpoint. Before an issue may be put before the public, three-fifths of the General Assembly must approve a constitutional amendment. Hence, a two-fifths minority can effectively block any proposal. Even if the measures pass the General Assembly, a referendum still would have to be approved by a majority of the public. — Grimes, at 2324.

Two bills incorporating a retention referendum for judges were introduced in 2015. One, House Bill 720, was written as a constitutional amendment and died in committee. The second, House Bill 222, became Session Law 2015-66, without obtaining the three-fifths majority in both houses needed to submit a constitutional amendment to the voters.

In sum, from the adoption of the current Article IV in 1962 through the 2015 session of the General Assembly 34 separate bills were introduced to switch from contested elections to an appointment/retention referendum model for appellate judges (and sometimes also for some trial judges) and every one except the bill that became Session Law 2015-66 was a proposed constitutional amendment. The need for a constitutional amendment was recognized by the Bell Commission, the Courts Commission, governors, the North Carolina Bar Association, the

Judicial Selection Study Commission, Professor Drennan, and every sponsor of legislation, Republican and Democrat, for over fifty years. None of the bills, however, could muster the three-fifths vote needed in both houses to put a constitutional amendment on the ballot — just as House Bill 222/SL 2015-66 could not get such a majority.

As House Bill 222 came to the floor in 2015, members were warned a final time, by one of their own, of the need to amend the constitution. Just before the vote a veteran lawyer legislator, Rep. Paul "Skip" Stam, the speaker pro tem, circulated a memorandum to House members questioning the constitutionality of the act. B. Smith, "House Passes Retention Election Bill for Judges," Carolina Journal Online, John Locke Foundation, Raleigh, Apr. 22, 2015. Unfortunately, members ignored what they had been told and known for half a century.

A list of all bills introduced in the General Assembly concerning retention voting is attached as Exhibit C.[2]

E. All other states that use retention referenda have specific authority in their state constitutions to do so.

As discussed above, the first state to move to retention votes for judges was California in 1934, the result of a statewide ballot proposition. Today 19 states use the retention method for some or all judges: Alaska, Arizona, California, Colorado, Florida, Illinois, Indiana, Iowa, Kansas, Maryland, Missouri, Nebraska, New Mexico, Oklahoma, Pennsylvania, South Dakota, Tennessee, Utah, and Wyoming. In each of those 19 states, the state constitution specifically provides for a Missouri Plan-style selection process using a retention referendum. The relevant constitutional provision for each state is listed in attached Exhibit D.

In none of the 19 states is a constitutional provision for "election" of judges relied upon for the authorization to use a retention vote. The use of constitutional amendments by other

[2] The list of bills does not include companion legislation to implement the proposed constitutional amendments. In 1973, for example, Senate Bill 72, the proposed constitutional amendment for a Missouri Plan was accompanied by Senate Bill 120 to amend various statutes to implement the plan if the constitutional amendment was approved. A number of the proposed constitutional amendments have had companion implementing legislation that would take effect only upon approval of the constitutional change.

states does not by itself establish that an amendment is needed in North Carolina, but it is consistent with the conclusion reached by the Bell Commission, the Courts Commission, the North Carolina Bar Association, the Judicial Selection Study Commission — and the General Assembly until 2015.

The one outlier is Tennessee. Although Tennessee now has a specific constitutional provision on retention voting, it did not when the state legislature first enacted its "merit selection" plan for appellate judges in 1971, featuring retention votes. The Tennessee legislation has been challenged in court a number of times over the years for various reasons. The most relevant decision was *State ex rel. Higgins v. Dunn*, 496 S.W.2d 480 (Tenn. 1973), in which the Tennessee Supreme Court held that the use of a retention referendum satisfied the state constitutional requirement that judges be elected. A special supreme court, appointed by the governor when all members of the sitting court had to disqualify themselves, ruled the same way in 1996 in *State ex rel. Hooker v. Thompson*, 249 S.W.3d 331 (Tenn. 1996), deciding there was no basis to overrule the *Higgins v. Dunn* decision.

Higgins v. Dunn does not help Session Law 2015-66. The essence of the decision was that the Tennessee constitution did not define "election"; that the term "election" was used three times in the constitution to refer to referenda that were for/against propositions (local debt, constitutional amendments, and ratification of private acts); and that, therefore, the legislature was free to consider a for/against retention referendum for judges to be an "election." "It seems to us that if the Constitution itself denominates these methods of ratification as elections, it cannot be that Chapter 198 [the merit selection plan for judges] is unconstitutional because the elections therein provided for are limited to approval or disapproval." *Higgins v. Dunn*, 496 S.W.2d at 489.

Unlike Tennessee, North Carolina's constitution, as shown above, uses the words "election" or "elect" to refer only to contests between opposing candidates. Unlike Tennessee, those words are never used to refer to a for/against proposition. Unlike Tennessee, every

reference in the North Carolina constitution to a for/against referendum kind of voting uses a phrase such as "submitted to the qualified voters" or "approved by a majority of the qualified voters" or "approval by referendum." The reasoning at the core of the Tennessee decision simply is not applicable to the North Carolina Constitution.

Not surprisingly, *Higgins v. Dunn* did not put the validity of retention voting to rest but instead prompted decades of further controversy, prompting one law professor to conclude in 2008 that the ongoing questions about the constitutionality of the act "comprise a compelling case for the view that many appellate judges in Tennessee have been selected in an unconstitutional manner for the better part of four decades." Brian T. Fitzpatrick, "Election as Appointment: The Tennessee Plan Reconsidered," 75 Tenn. Law Review, 473, 476 (2008). The Tennessee legislature decided to finally put the constitutionality issue to rest by submitting a constitutional amendment to the voters in November 2014 to specifically authorize an appointment/retention referendum system. It was approved.

Because of the difference in the two state constitutions, *Higgins v. Dunn* is not applicable to S.L. 2015-66. The larger lesson for North Carolina from Tennessee is that attempting to implement retention voting without a constitutional amendment is so clearly wrong that it will not be accepted, and that the only way to avoid years of controversy is to properly amend the state constitution.

II. The act unconstitutionally adds an additional qualification for office by allowing only the incumbent to be a candidate.

If the retention referendum enacted by Session Law 2015-66 is considered an election, the act is unconstitutional for another reason: it adds an additional qualification for office in violation of Article VI, § 6 which provides that "Every qualified voter in North Carolina who is 21 years of age, except as in this Constitution disqualified, shall be eligible for election by the

people to office." Plaintiff Faires meets all the qualifications for election to the office of supreme court justice but is barred by S.L. 2015-66 from being a candidate.

The qualifications for elected office set out in the constitution are that the person be at least 21 years old (Art. VI, § 6); be qualified to vote for the office, i.e., registered to vote and eligible to vote for that particular office (Art. VI, § 8); and not have lost one's citizenship rights for conviction of a felony (Art. VI, § 8). For supreme court justice there is an additional constitutional qualification that the person be licensed to practice law in North Carolina (Art. IV, § 22).

It is well established that "under Article VI, Section 6, '[t]he Legislature is . . . forbidden by the organic instrument to disqualify any voter, not disqualified by [the Constitution] from holding any office. The General Assembly cannot render any "voter" ineligible for office by exacting any additional qualifications . . . .'" *Moore v. Knightdale Bd. of Elections,* 331 N.C. 1, 5 (1992), quoting *State ex rel. S.B. Spruill v. Bateman*, 162 N.C. 588, 591 (1913).

The *Moore* decision is directly on point. There the General Assembly had enacted a statute prohibiting any person from being a candidate for an elected office if the person already held another elected office and the terms of the two offices would overlap by more than 40 days — the "resign-to-run" statute. The statute, for example, prohibited a county commissioner in the middle of a four-year term from running for the legislature. For Carl Moore, elected to a four-year term on the Knightdale Town Council in 1989, it meant that he could not be a candidate for mayor in 1991 unless he resigned his council seat. He argued that the General Assembly had added an additional qualification for office in violation of the constitution, and he won. The supreme court's reasoning is directly applicable here.

The principal argument to uphold the resign-to-run statute was that it did not add a qualification for office, only a qualification on candidacy, and was within the legislature's authority to reasonably regulate the conduct of elections. The court agreed that technically the statute restricted only qualification for candidacy, not qualification for office, but held that it was a distinction without a difference. "Construing the statute as a qualification on candidacy is

ineffective because the words candidacy and election in this context are related in such a manner that an additional qualification on candidacy inevitably constitutes an additional qualification on election to office." *Moore*, at 7. The court went on to reject other defenses of the resign-to-run statute not relevant here, e.g., that the act was a reasonable measure to implement the constitutional prohibition on dual office-holding and that it was merely a regulation of election procedures. The court concluded: "Rather than operating as a regulation of the procedures necessary to the orderly conduct of the election, this statute effectively disqualifies a distinct category of potential candidates." *Id.*, at 10-11.

Session Law 2015-66 likewise disqualifies a distinct category of individuals from being candidates for supreme court justice in 2016 and from holding that office, and it is a much larger and more insidious category than in *Moore*. The new law disqualifies every person who is not the sitting justice on the court. Plaintiff Faires is barred from being a candidate for the supreme court seat expiring this year, as is every other one of the 20,000 lawyers in the state. The only person who may be a candidate in the "election" for supreme court justice in 2016 is the sitting justice — because that is the additional qualification for the office the General Assembly unconstitutionally wrote into the law.

CONCLUSION

Plaintiffs are entitled to summary judgment declaring Session Law 2015-66 unconstitutional. The retention referendum in which the incumbent is the only person in the state who may be a candidate for the supreme court in 2016 defies the plain sense meaning of Article IV, § 16 of the State Constitution that justices "shall be elected'; contradicts the history of the constitution; ignores the legal conclusion reached by every proponent of retention voting for more than half a century; and would leave North Carolina alone as the only state acting without constitutional authority. Moreover, even if a retention referendum is considered an election, the legislature will have added an unconstitutional new qualification for the office of supreme court justice: the only person who may run for the office is the incumbent.

RESPECTFULLY SUBMITTED, this 25th day of January 2016.

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CERTIFICATE OF SERVICE

I certify that this Brief in Support of 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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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SESSION LAW 2015-66
HOUSE BILL 222

AN ACT ALLOWING VOTERS TO ELECT, AND THEN RETAIN, JUSTICES OF THE NORTH CAROLINA SUPREME COURT FOR ELECTION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 7A of the General Statutes is amended by adding a new Article to read:

"Article 1A.
"Retention Elections.

"**§ 7A-4.1. Retention elections.**

(a) A Justice of the Supreme Court who was elected to that office by vote of the voters who desires to continue in office shall be subject to approval by the qualified voters of the whole State in a retention election at the general election immediately preceding the expiration of the elected term. Approval shall be by a majority of votes cast on the issue of the justice's retention in accordance with this Article.

(b) If a Justice of the Supreme Court was appointed to fill a vacancy to that office, then the next election for that office shall be by ballot as provided by Article 25 of Chapter 163 of the General Statutes. Following that election, the justice shall be eligible for retention election as provided for in this Article.

(c) A justice seeking retention shall indicate the desire to continue in office by filing a notice to that effect with the State Board of Elections no later than 12:00 noon on the first business day of July in the year prior to the general election immediately preceding the expiration of the elected term. The notice shall be on a form provided by the State Board of Elections. Notice may be withdrawn at any time prior to December 15 of that year. If no retention notice is filed, or if it is filed and timely withdrawn, then an election shall be held the next year to elect a successor in accordance with Article 25 of Chapter 163 of the General Statutes.

(d) At the time of filing the notice under this Article, the justice shall pay to the State Board of Elections a filing fee for the office the candidate seeks in the amount of one percent (1%) of the annual salary of the office sought.

(e) Except as provided for in this Article, retention elections shall be conducted and canvassed in accordance with rules of the State Board of Elections in the same general manner as general elections under Chapter 163 of the General Statutes. The State Board of Elections shall certify the results.

(f) The question on the ballot shall be substantially in the following form, as appropriate:

Justices of the Supreme Court. –

"[ ] FOR [ ] AGAINST

The retention of [name of Justice] on the North Carolina Supreme Court for a new term of eight years."

(g) If a person who has filed a notice of intent for a retention election dies or is removed from office prior to the time that the ballots are printed, the retention election is cancelled and the vacancy shall be filled as provided by law. If a person who has filed a notice calling a retention election dies or is removed from office after the ballots are printed, the State Board of Elections may cancel the retention election if it determines that the ballots can be reprinted without significant expense. If the ballots cannot be reprinted, then the results of the retention election shall be ineffective.

"**§ 7A-4.2. Retention approval; failure to retain.**

(a) If the voters vote to approve the retention in office, the justice shall be retained for a new eight-year term.

(b) If the voters fail to approve the retention in office, the office shall be deemed vacant at the end of the term of office, and the vacancy shall be filled as provided by law."

SECTION 2. G.S. 7A-10(a) reads as rewritten:

"(a) The Supreme Court shall consist of a Chief Justice and six associate justices, elected by the qualified voters of the State for terms of eight years. Such election shall be under Article 25 of Chapter 163 of the General Statutes or Article 1A of this Chapter. Before entering upon the duties of ~~his~~ the office, each justice shall take an oath of office. Four justices shall constitute a quorum for the transaction of the business of the court. Except as otherwise provided in this subsection, sessions of the court shall be held in the city of Raleigh, and scheduled by rule of court so as to discharge expeditiously the court's business. The court may by rule hold sessions not more than twice annually in the Old Chowan County Courthouse (1767) in the Town of Edenton, which is a State-owned court facility that is designated as a National Historic Landmark by the United States Department of the Interior."

SECTION 3. G.S. 163-1 is amended in the table relating to entries for "Justices and State Judges of the Appellate Division" by deleting the word "At" at the beginning of the entry under the column titled "Date of Election" and substituting the phrase "Except as provided in Article 1A of Chapter 7A of the General Statutes, at".

SECTION 4. G.S. 163-165.6(b) reads as rewritten:

"(b) Order of Precedence for Candidate Ballot Items. – The State Board of Elections shall promulgate rules prescribing the order of offices to be voted on the official ballot. Those rules shall adhere to the following guidelines:

(1) Federal offices shall be listed before State and local offices. Member of the United States House of Representatives shall be listed immediately after United States Senator.

(2) State and local offices shall be listed according to the size of the electorate.

(3) Partisan offices, regardless of the size of the constituency, shall be listed before nonpartisan offices.

(4) When offices are in the same class, they shall be listed in alphabetical order by office name, or in numerical or alphabetical order by district name. Governor and Lieutenant Governor, in that order, shall be listed before other Council of State offices. Mayor shall be listed before other citywide offices. Chair of a board, where elected separately, shall be listed before other board seats having the same electorate. Chief Justice shall be listed before Associate Justices.

(5) Ballot items for full terms of an office shall be listed before ballot items for partial terms of the same office.

(6) Ballot items for retention elections held under Article 1A of Chapter 7A of the General Statutes shall be grouped with like State offices, but shall be listed after offices for which an election is conducted under Article 25 of this Chapter."

SECTION 5. G.S. 163-182.16 reads as rewritten:

"**§ 163-182.16. Governor to issue commissions for certain offices.**

The Secretary of State shall send a notice to the Governor that a certificate of election has been issued for any of the following offices, and upon receiving the notice, the Governor shall provide to each such elected official a commission attesting to that person's ~~election:~~election or retention:

(1) Members of the United States House of Representatives.

(2) Justices, judges, and district attorneys of the General Court of Justice."

SECTION 6. G.S. 163-321 reads as rewritten:

"**§ 163-321. Applicability.**

The nomination and election of justices of the Supreme Court, judges of the Court of Appeals, and superior and district court judges of the General Court of Justice shall be as provided by this Article. Retention elections of Justices of the Supreme Court shall be as provided in Article 1A of Chapter 7A of the General Statutes."

SECTION 7. G.S. 163-335 reads as rewritten:

"**§ 163-335. Other rules.**

(a) Except as provided by this Article, the conduct of elections shall be governed by Subchapter VI of this Chapter.

(b) Following election under this Article, a duly elected justice of the Supreme Court may opt for a retention election under Article 1A of Chapter 7A of the General Statutes. Any such retention shall be conducted in accordance with this Chapter except as specifically stated in that Article."

SECTION 8.(a) G.S. 163-278.6(4) reads as rewritten:

"(4) The term "candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has taken positive action for the purpose of bringing about that individual's ~~nomination~~ nomination, retention, or election to public office. Examples of positive action ~~include:~~include any of the following:

a. Filing a notice of ~~candidacy~~ candidacy, filing a notice to be retained, or a petition requesting to be a ~~candidate,~~candidate.

b. Being certified as a nominee of a political party for a ~~vacancy,~~vacancy.

c. Otherwise qualifying as a candidate in a manner authorized by ~~law,~~law.

d. Making a public announcement of a definite intent to run for public office in a particular ~~election, or~~election.

e. Receiving funds or making payments or giving the consent for anyone else to receive funds or transfer anything of value for the purpose of bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value.

Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held. Special definitions of "candidate" and "candidate campaign committee" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z."

SECTION 8.(b) G.S. 163-278.38Z(2) reads as rewritten:

"(2) "Candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has filed a notice of ~~candidacy~~ candidacy, notice of retention, or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy, or has otherwise qualified as a candidate in a manner authorized by law, or has filed a statement of organization under G.S. 163-278.7 and is required to file periodic financial disclosure statements under G.S. 163-278.9."

SECTION 9. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of June, 2015.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 10:00 a.m. this 11th day of June, 2015

NORTH CAROLINA CONSTITUTIONAL PROVISIONS ON ELECTIONS			
Article	**Section**	**Title**	**Text**
			Provisions Concerning Election of Particular Offices
II	2	Number of Senators	The Senate shall be composed of 50 Senators, biennially **chosen by ballot.**
II	3	Senate Districts	The Senators shall be **elected** from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the senate districts and the apportionment of Senators among those districts, subject to the following requirements...
II	4	Number of Representatives	The House of Representatives shall be composed of 120 Representatives, biennially **chosen by ballot.**
II	5	Representative Districts	The Representatives shall be **elected** from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the representative districts and the apportionment of Representatives among those districts, subject to the following requirements...
III	2(1)	Gov. and Lt. Gov.: election, term, and qualifications	The Governor and Lieutenant Governor shall be **elected by the qualified voters** of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are **elected.** Their term of office shall be four years and shall commence on the first day of January next afer their **election** and continue until their successors are **elected** and qualified.
III	2(2)	Gov. and Lt. Gov.: election, term, and qualifications	No person shall be eligible for **election** to the office of Governor or Lieutenant Governor unless, at the time of his **election,** he shall have attained the age of 30 years and shall have been a citizen of the United States for five years and a resident of this State for two years immediately preceding his **election.** No person **elected** to the office of Governor or Lieutenant Governor shall be eligible for **election** to more than two consecutive terms of the same office.
III	7(1)	Other elective officers	A Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Labor, and a Commissioner of Insurance shall be **elected** by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are **elected.** Their term of office shall be four years and shall commence on the first day of January next after their **election** and continue until their successors are **elected** and qualified.
IV	9(3)	Superior Courts	A Clerk of the Superior Court for each county shall be **elected** for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are **elected.** If the office of Clerk of the Superior Court becomes vacant otherwise than by the expiration of the term, or if the people fail to **elect,** the senior regular resident Judge of the Superior Court serving the county shall appoint to fill the vacancy until an **election** can be regularly held.
IV	10	District Courts	The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. District Judges shall be **elected** for each district for a term of four years, in a manner prescribed by law. When more than one District Judge is authorized and **elected** for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is **elected...**
IV	16	Terms of Office and election of Justices...	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. Justices of the Supreme Court and Judges of the Court of Appeals shall be **elected by the qualified voters** of the State. Regular Judges of the Superior Court may be **elected by the qualified voters** of the State or by the voters of their respective districts, as the General Assembly may prescribe.
IV	18	District Attorney and Prosecutorial Districts	The General Assembly shall, from time to time, divide the State into a convenient number of prosecutorial districts, for each of which a District Attorney shall be **chosen** for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are **elected.** Only persons duly authorized to practice law in the courts of this State shall be eligible for **election** or appointment as a District Attorney...
VII	2	Sheriffs	In each county a Sheriff shall be **elected by the qualified voters** thereof at the same time and places as members of the General Assembly are **elected** and shall hold his office for a period of four years, subject to removal for cause as provided by law. No person is eligible to serve as Sheriff if that person has been convicted of a felony against this State, the United States, or another state, whether or not that person has been restored to the rights of citizenship in the manner prescribed by law...
XIII	1	Convention of the People	Delegates to the Convention shall be **elected by the qualified voters** at the time and in the manner prescribed in the act of submission.
			Other Provisions Referring to Election for Office
II	6	Qualifications for Senator	Each Senator, at the time of his **election,** shall be not less than 25 years of age, shall be a qualified voter of the State, and shall have resided in the State as a citizen for two years and in the district for which he is chosen for one year immediately preceding his **election.**
II	7	Qualifications for Representative	Each Representative, at the time of his **election,** shall be a qualified voter of the State, and shall have resided in the district for which he is chosen for one year immediately preceding his **election.**
II	8	Elections	The **election** for members of the General Assembly shall be held for the respective districts in 1972 and every two years thereafter, at the places and on the day prescribed by law.

II	9	Term of Office	The term of office of Senators and Representatives shall commence on the first day of January next after their **election.**
II	20	Powers of the General Assembly	Each house shall be judge of the qualifications and **elections** of its own members . . .
II	22(5)	Action on Bills	[not subject to veto]: Every bill...(5) Revising the districts for the **election** of members of the House of Representatives of the Congress of the United States and the apportionment of Representatives among those districts and containing no other matter.
III	3(1)	Succession to office of Governor	The Lieutenant Governor-elect shall become Governor upon the failure of the Governor-elect to qualify. The Lieutenant Governor shall become Governor upon the death, resignation, or removal from office of the Governor. The further order of succession to the office of Governor shall be prescribed by law. A successor shall serve for the remainder of the term of the Governor whom he succeeds and until a new Governor is **elected** and qualified.
III	7(3)	Other elective officers	If the office of any of these officers is vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve until his successor is **elected** and qualified. Every such vacancy shall be filled by **election** at the first **election** for members of the General Assembly that occurs more than 60 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in this Section. When a vacancy occurs in the office of any of the officers named in this Section and the term expires on the first day of January succeeding the next **election** for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.
III	7(4)	Other elective officers	Upon the occurrence of a vacancy in the office of any one of these officers for any of the causes stated in the preceding paragraph, the Governor may appoint an interim officer to perform the duties of that office until a person is appointed or **elected** pursuant to this Section to fill the vacancy and is qualified.
III	7(7)	Other elective officers	Only persons duly authorized to practice law in the courts of this State shall be eligible for appointment or **election** as Attorney General.
IV	9(1)	Superior Courts	The General Assembly shall, from time to time, divide the State into a convenient number of Superior Court judicial districts and shall provide for the **election** of one or more Superior Court Judges for each district. Each regular Superior Court Judge shall reside in the district for which he is **elected.** The General Assembly may provide by general law for the selection or appointment of special or emergency Superior Court Judges not selected for a particular judicial district.
IV	19	Vacancies	Unless otherwise provided in this Article, all vacancies occurring in the offices provided for by this Article shall be filled by appointment of the Governor, and the appointees shall hold their places until the next **election** for members of the General Assembly that is held more than NC Constitution 60 days after the vacancy occurs, when **elections** shall be held to fill the offices. When the unexpired term of any of the offices named in this Article of the Constitution in which a vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next **election** for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any person **elected** or appointed to any of these offices shall fail to qualify, the office shall be appointed to, held and filled as provided in case of vacancies occurring therein. All incumbents of these offices shall hold until their successors are qualified.
IV	22	Qualifications of Justices and Judges	Only persons duly authorized to practice law in the courts of this State shall be eligible for **election** or appointment as a Justice of the Supreme Court, Judge of the Court of Appeals, Judge of the Superior Court, or Judge of District Court. This section shall not apply to persons **elected** to or serving in such capacities on or before January 1, 1981.
VI	9	Dual Office Holding	It is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of authority inherent in the holding of multiple offices by an individual be avoided. Therefore, no person who holds any office or place of trust or profit under the United States or any department thereof, or under any other state or government, shall be eligible to hold any office in this State that is filled by **election by the people.** No person shall hold concurrently any two offices in this State that are filled by **election of the people.** No person shall hold concurrently any two or more appointive offices or places of trust or profit, or any combination of elective and appointive offices or places of trust or profit, except as the General Assembly shall provide by general law.
VI	10	Continuation in Office	In the absence of any contrary provision, all officers in this State, whether appointed or **elected,** shall hold their positions until other appointments are made or, if the offices are elective, until their successors are chosen and qualified.
XIV	4	Continuity of Laws	The laws of North Carolina not in conflict with this Constitution shall continue in force until lawfully altered. Except as otherwise specifically provided, the adoption of this Constitution shall not have the effect of vacating any office or term of office now filled or held by virtue of any **election** or appointment made under the prior Constitution of North Carolina and the laws of the State enacted pursuant thereto.
			Provisions Concerning For/Against Ballot Propositions
II	22(2)	Action on Bills	Every bill proposing a new or revised Constitution or an amendment or amendments to this Constitution or calling a convention of the people of this State, and containing no other matter, shall be **submitted to the qualified voters** of this State after it shall have been read three times in each house and signed by the presiding officers of both houses.
V	2(5)	State and Local Taxation	The General Assembly shall not authorize any county, city or town, special district, or other unit of local government to levy taxes on property, except for purposes authorized by general law uniformly applicable throughout the State, unless the tax is **approved by a majority of the qualified voters** of the unit who vote thereon.
V	3(1)	Limitations upon the increase of State debt	The General Assembly shall have no power to contract debts secured by a pledge of the faith and credit of the State, unless approved **by a majority of the qualified voters** of the State who vote thereon...
V	3(2)	Limitations upon the increase of State debt	The General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except a corporation in which the State has a controlling interest, unless the subject is **submitted to a direct vote of the people of the State, and is approved by a majority of the qualified voters** who vote thereon.

V	3(4)	Limitations upon the increase of State debt	The General Assembly shall never assume or pay any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States. Neither shall the General Assembly assume or pay any debt or bond incurred or issued by authority of the Convention of 1868, the special session of the General Assembly of 1868, or the General Assemblies of 1868-69 and 1869-70, unless the subject is submitted to the people of the State and is approved by a majority of all the qualified voters at a referendum held for that sole purpose.
V	4(2)	Limitations upon the increase of local government debt	The General Assembly shall have no power to authorize any county, city or town, special district, or other unit of local government to contract debts secured by a pledge of its faith and credit unless approved by a majority of the qualified voters of the unit who vote thereon...
V	4(3)	Limitations upon the increase of local government debt	No county, city or town, special district, or other unit of local government shall give or lend its credit in aid of any person, association, or corporation, except for public purposes as authorized by general law, and unless approved by a majority of the qualified voters of the unit who vote thereon.
V	14	Project Development Financing	As long as no revenues are pledged other than the set-aside proceeds authorized by this section and the revenues authorized in the preceding sentence, these instruments of indebtedness may be issued without approval by referendum.
VIII	1	Convention of the People	No Convention of the People of this State shall ever be called unless by the concurrence of two-thirds of all the members of each house of the General Assembly, and unless the proposition "Convention or No Convention" is first submitted to the qualified voters of the State at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast upon the proposition are in favor of a Convention, it shall assemble on the day prescribed by the General Assembly.
VIII	3	Revision or amendment by Convention of the People	A Convention of the People of this State may be called pursuant to Section 1 of this Article to propose a new or revised Constitution or to propose amendments to this Constitution. Every new or revised Constitution and every constitutional amendment adopted by a Convention shall be submitted to the qualified voters of the State at the time and in the manner prescribed by the Convention. If a majority of the votes cast thereon are in favor of ratification of the new or revised Constitution or the constitutional amendment or amendments, it or they shall become effective January first next after ratification by the qualified voters unless a different effective date is prescribed by the Convention.
VIII	4	Revision or amendment by legislative initiation	A proposal of a new or revised Constitution or an amendment or amendments to this Constitution may be initiated by the General Assembly, but only if three-fifths of all the members of each house shall adopt an act submitting the proposal to the qualified voters of the State for their ratification or rejection. The proposal shall be submitted at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast thereon are in favor of the proposed new or revised Constitution or constitutional amendment or amendments, it or they shall become effective January first next after ratification by the voters unless a different effective date is prescribed in the act submitting the proposal or proposals to the qualified voters.
			Provisions Concerning Conduct of Elections Generally
I	8	Frequent Elections	For redress of grievances and for amending and strengthening the laws, elections shall be often held.
I	9	Free elections	All elections shall be free.
VI	1	Who May Vote	Every person born in the United States and every person who has been naturalized, 18 years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.
VI	2(1)	Qualifications of voter	Any person who has resided in the State of North Carolina for one year and in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote at any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which that person has removed until 30 days after the removal.
VI	2(2)	Qualifications of voter	The General Assembly may reduce the time of residence for persons voting in presidential elections. A person made eligible by reason of a reduction in time of residence shall possess the other qualifications set out in this Article, shall only be entitled to vote for President and Vice President of the United States or for electors for President and Vice President, and shall not thereby become eligible to hold office in this State.
VI	5	Elections by people and General Assembly	All elections by the people shall be by ballot, and all elections by the General Assembly shall be viva voce. A contested election for any office established by Article III of this Constitution shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law.
VI	6	Eligibility to elective office	Every qualified voter in North Carolina who is 21 years of age, except as in this Constitution disqualified, shall be eligible for election by the people to office.
VI	7	Oath	Before entering upon the duties of an office, a person elected or appointed to the office shall take and subscribe the following oath: "I, _____, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not NC Constitution Page 27 inconsistent therewith, and that I will faithfully discharge the duties of my office as _____, so help me God."
VI	8	Disqualifications for office	The following persons shall be disqualified for office: First, any person who shall deny the being of Almighty God. Second, with respect to any office that is filled by election by the people, any person who is not qualified to vote in an election for that office. Third, any person who has been adjudged guilty of treason or any other felony against this State or the United States, or any person who has been adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, or any person who has been adjudged guilty of corruption or malpractice in any office, or any person who has been removed by impeachment from any office, and who has not been restored to the rights of citizenship in the manner prescribed by law.
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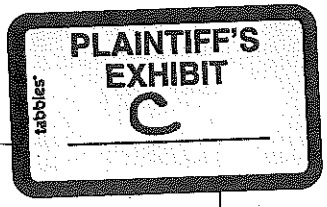

Bills Introduced in General Assembly from 1963-2015 Regarding Appointment/Retention

Session	Bill	Proposal	Outcome
1971	H84	Constitutional Amendment: Missouri Plan*	No action
	S59	Constitutional Amendment: Missouri Plan	No action
1973	H76	Constitutional Amendment: Missouri Plan	Failed 3rd reading in House
	S72	Constitutional Amendment: Missouri Plan	Died in committee
1975	H212	Constitutional Amendment: Missouri Plan	Died in committee
	S145	Constitutional Amendment: Missouri Plan	Died in committee
1977	H310	Constitutional Amendment: Missouri Plan	Failed 2nd reading in House
	S158	Constitutional Amendment: Missouri Plan	Died in committee
1979	H1164	Constitutional Amendment: Missouri Plan	Died in committee
1985	S676	Constitutional Amendment: Missouri Plan	Died in committee
1989	S218	Constitutional Amendment: Appointment, legislature sets retention procedure	Passed Senate, died in House committee
1991	H102	Constitutional Amendment: Appointment, legislature sets retention procedure	Died in committee
	S71	Constitutional Amendment: Appointment, legislature sets retention procedure	Passed Senate, died in House committee
1995	H21	Constitutional Amendment: Appointment with legislative advice and consent.	Died in committee
	H560	Constitutional Amendment: Appointment with legislative advice and consent.	Died in committee
	S971	Constitutional Amendment: Governor nominates, legislature confirms, then retention	Passed Senate, failed 2nd House reading
1997	H1145	Constitutional Amendment: Missouri Plan	Died in committee
1999	S12	Constitutional Amendment: Appointment, then retention.	Passed Senate, failed 2nd House reading

2001	H989	Constitutional Amendment: Appointment, then retention.	Died in committee
	S787	Constitutional Amendment: Appointment, then retention.	Passed Senate, died in House committee
	S883	Constitutional Amendment: Appointment, then retention.	Died in committee
2003	S584	Constitutional Amendment: Appointment, then retention.	Died in committee
2005	H1373	Constitutional Amendment: Appointment, then retention.	Died in committee
	S523	Constitutional Amendment: Appointment, then retention.	Passed Senate, died in House committee
	S855	Constitutional Amendment: Appointment, then retention.	Died in committee
2007	S957	Constitutional Amendment: Appointment, then retention.	Died in committee
2009	H414	Constitutional Amendment: Appointment, then retention.	Died in committee
	S878	Constitutional Amendment: Appointment, then retention.	Died in committee
2011	H325	Constitutional Amendment: Appointment, then retention.	Died in committee
	S458	Constitutional Amendment: Commission nominates two candidates; governor selects one to fill vacancy; contested election between the two, then retention.	Died in committee
2013	S699	Constitutional Amendment: Commission nominatess two candidates; governor selects one to fill vacancy; contested election between the two, then retention.	Died in committee
	S360	Constitutional Amendment: Appointment, then retention.	Died in committee
2015	H720	Constitutional Amendment: Legislature appoints trial judges, then retention.	Died in committee
	H222	**Statutory Amendment: Contested initial election, then retention.**	**Enacted as Session Law 2015-66**

*The "Missouri Plan" includes a nominating commission, gubernatorial appointment from among nominees, and then a retention referendum on the appointed judge.

STATE CONSTITUTIONAL PROVISIONS ON RETENTION REFERENDA FOR JUDGES

State	State Constitutional Citation	Summary
Alaska	AK Const., Art. 4, § 6	Supreme court justices and superior court judges
Arizona	AZ Const., Art. 6 § 38	Justices and judges of the supreme court and intermediate appellate court, and superior court judges in counties having a population of two hundred fifty thousand or more
California	CA Const., Art. 6, § 16(d)	Judges of the Supreme Court and courts of appeal
Colorado	CO Const., Art. 6, § 25	Justices of the supreme court and judges of any other court of record
Florida	FL Const., Art. 5 § 10	All justices and judges
Illinois	IL Const., Art. 6, § 12	Supreme, Appellate and Circuit Judges
Indiana	IN Const., Art. 7, § 11	Justices of the Supreme Court and Judges of the Court of Appeals
Iowa	IA Const., Art. 5, § 17	All judges
Kansas	KS Const., Art. 3, § 5(c)	Justices of the supreme court
Maryland	MD Const., Art. 4, § 5A	Appellate judges
Missouri	MO Const., Art. 5, § 25(c)(1)	All judges
Nebraska	NE Const., Art. V, § 21(3)	Justices or Judges of the Supreme Court, district court, and other courts
New Mexico	NM Const., Art. 6, § 33	Justices of the supreme court, judges of the court of appeals, district judges and metropolitan court judges
Oklahoma	OK Const., Art. 7-B, § 2	All judges
Pennsylvania	PA Const., Art. 5, § 15	All justices and judges
South Dakota	SD Const., Art. 5, § 7	Supreme Court justices
Tennessee	TN Const., Art. 6, § 3	Judges of the Supreme Court and intermediate appellate courts
Utah	UT Const., Art. 8, § 9	Supreme Court justices and judges of other courts of record
Wyoming	WY Const., Art. 5, § 4(g), (h)	All justices and judges