

FILED

NORTH CAROLINA

WAKE COUNTY

2016 DEC 29 PM 3: 54

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
16-CVS-15607

NORTH CAROLINA STATE BOARD OF EDUCATION, WAKE COUNTY, C.S.C.

BY
Plaintiff,

v.

THE STATE OF NORTH CAROLINA,
Defendant.

TEMPORARY RESTRAINING ORDER

THIS MATTER is before the Court on the Plaintiff North Carolina State Board of Education's motion for temporary restraining order.

The Court has considered the verified complaint and the arguments and submissions of counsel in attendance at the hearing on this motion. The Board's counsel were present at the hearing, and advised the Court that they had given the Defendant, the State of North Carolina, notice of the Board's intent to seek a temporary restraining order. The State's counsel were present at the hearing.

IT APPEARS to the Court that good cause exists to grant the motion.

First, the Board has shown that it is likely to succeed on the merits. It is well-settled that when a constitution expressly confers certain powers and duties on an entity, those powers and duties cannot be transferred to someone else without a constitutional amendment. Article IX, Section 5 of the North Carolina Constitution expressly confers certain "powers and duties" on the Board. Those constitutional powers and duties include:

- the power and duty to "supervise . . . the free public school system";
- the power and duty to "administer the free public school system";

- the power and duty to “supervise . . . the educational funds provided for [the free public school system’s] support”; and
- the power and duty to “administer . . . the educational funds provided for [the free public school system’s] support.”

The provisions of Session Law 2016-126 challenged in the verified complaint (hereinafter “the Transfer Legislation”) attempt to transfer these constitutional powers and duties, however, from the Board to the Superintendent of Public Instruction. Thus, the Board is likely to succeed on the merits of its claims that the Transfer Legislation is unconstitutional.

Second, the Transfer Legislation will cause irreparable harm if not immediately enjoined. As a matter of law, violations of the North Carolina Constitution constitute *per se* irreparable harm. As described above, the Board is likely to succeed on the merits of its claims that the Transfer Legislation is unconstitutional. Therefore, no further showing of irreparable harm is required. Even if a further showing of irreparable harm were required, moreover, the Transfer Legislation threatens to cause irreparable harm to the Board, the employees of the public school system, and—most importantly—North Carolina’s 1.5 million public school students unless the status quo is preserved. Thus, there is sufficient irreparable harm to warrant immediate injunctive relief.

Third, the balance of equities also favors granting immediate injunctive relief. As described above, without immediate injunctive relief, the Transfer Legislation will cause irreparable harm. Conversely, immediate injunctive relief will not result in any harm. The Board has exercised its constitutional powers and fulfilled its constitutional duties for the past 148 years. Allowing the Board to continue doing so while this case is resolved only preserves this longstanding status quo.

WHEREFORE, the Board's motion for temporary restraining order is **GRANTED**.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that until a decision on the Board's motion for preliminary injunction:

- (a) The State is restrained and enjoined from taking any action to implement or enforce the Transfer Legislation.
- (b) Under Rule 65(d) of the North Carolina Rules of Civil Procedure, the State's "officers, agents, servants, employees, and attorneys, and . . . those persons in active concert or participation with them who receive actual notice in any manner of [this] order by personal service or otherwise" are likewise enjoined from taking any action to implement or enforce the Transfer Legislation.

Counsel for the Board shall serve copies of this order on the Chief Deputy Attorney General, the President Pro Tempore of the North Carolina Senate, the Speaker of the North Carolina House of Representatives, and the Superintendent of Public Instruction-Elect.

Unless the State consents to an extension of this temporary restraining order, the Board's motion for preliminary injunction shall be heard before the undersigned Superior Court Judge

~~within ten days from the date of this order, or as soon thereafter as the Court may hear this matter.~~ *Friday January 6, 2017 at 9:30 Courtroom 10C.*

So ordered the 29th day of December at 4:00 p.m.

Donald W. Stephens
The Honorable Donald W. Stephens
Senior Resident Superior Court Judge
Wake County Superior Court

WWS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served by hand-delivery to the following:

State of North Carolina
c/o Grayson G. Kelley
Chief Deputy Attorney General
North Carolina Attorney General's Office
114 W Edenton Street
Raleigh, North Carolina 27603

The Honorable Philip E. Berger
President Pro Tempore of the North Carolina Senate
Legislative Building
16 W. Jones Street, Room 2007
Raleigh, North Carolina 27601

The Honorable Timothy K. Moore
Speaker of the North Carolina House of Representatives
Legislative Building
16 W. Jones Street, Room 2304
Raleigh, North Carolina 27601

Mark Johnson
2680 Arbor Place Ct.
Winston-Salem, North Carolina 27104

This the 30th day of December, 2016.


Andrew H. Erteschik