

# **Legal Challenge to the Validity of the Constitutional Amendment Permitting Tax Increment Financing**

## **Summary**

On November 11, 2006, the North Carolina Institute for Constitutional Law filed a lawsuit in the U.S. District Court for the Eastern District of North Carolina, challenging the legality of the referendum that approved Amendment One.

The plaintiffs challenged Amendment One on two basic grounds. First, the plaintiffs charged that the state failed to get preclearance of the constitutional changes from the United States Justice Department. Because forty North Carolina counties are subject to Section 5 of the Voting Rights Act of 1964, the state must seek approval from the Justice Department before making any statewide changes that constitute a “a change affecting voting.” The US Department of Justice granted preclearance on December 21, 2006 and therefore the parties agreed that the Voting Rights Act complaint should be dismissed as moot.

Second, the plaintiffs charged that the state used misleading and incomplete language in the ballot language and in election materials and that the full text of the actual amendment was only available to voters via the state website. The plaintiffs argued that this violated the Due Process Clause of the 14<sup>th</sup> Amendment, a comparable provision in the North Carolina State Constitution, and 42 U.S.C. § 1983.

The State moved to dismiss these remaining counts, arguing that the statute of limitations barred plaintiffs’ action. The state also argued that because the claims arising under federal law should be dismissed, the court should also decline to exercise supplemental jurisdiction over plaintiffs’ state law claims.

Judge Louise W. Flanagan granted the defendant’s motion to dismiss on August 17, 2007. Rather than rule on the statute of limitations or on the substance of the plaintiff’s argument, she dismissed the remaining federal claims for lack of standing. She noted that there was no allegation that any of the plaintiffs were themselves misled by the ballot language or the summary of the bill created by the Constitutional Amendments Publication Commission. Having dismissed the federal counts the court also declined to exercise supplemental jurisdiction over the state constitutional claim. The North Carolina Institute for Constitutional Law has filed an appeal.