

THREE-JUDGE PANELS FOR CONSTITUTIONAL CHALLENGES

STATUTORY EXCERPTS

October 2016

§ 1-81.1. Venue in apportionment or redistricting cases; certain injunctive relief actions.

(a1) Venue lies exclusively with the Wake County Superior Court with regard to any claim seeking an order or judgment of a court, either final or interlocutory, to restrain the enforcement, operation, or execution of an act of the General Assembly, in whole or in part, based upon an allegation that the act of the General Assembly is facially invalid on the basis that the act violates the North Carolina Constitution or federal law. Pursuant to G.S. 1-267.1(a1) and G.S. 1-1A, Rule 42(b)(4), claims described in this subsection that are filed or raised in courts other than Wake County Superior Court or that are filed in Wake County Superior Court shall be transferred to a three-judge panel of the Wake County Superior Court if, after all other questions of law in the action have been resolved, a determination as to the facial validity of an act of the General Assembly must be made in order to completely resolve any issues in the case.

§ 1-267.1. Three-judge panel for actions challenging plans apportioning or redistricting State legislative or congressional districts; claims challenging the facial validity of an act of the General Assembly.

(a1) Except as otherwise provided in subsection (a)¹ of this section, any facial challenge to the validity of an act of the General Assembly shall be transferred pursuant to G.S. 1A-1, Rule 42(b)(4), to the Superior Court of Wake County and shall be heard and determined by a three-judge panel of the Superior Court of Wake County, organized as provided by subsection (b2) of this section.

(b2) For each challenge to the validity of statutes and acts subject to subsection (a1) of this section, the Chief Justice of the Supreme Court shall appoint three resident superior court judges to a three-judge panel of the Superior Court of Wake County to hear the challenge. The Chief Justice shall appoint a presiding judge of each three-judge panel. . . .

(c) No order or judgment shall be entered affecting the validity of any act of the General Assembly that apportions or redistricts State legislative or congressional districts, or finds that an act of the General Assembly is facially invalid on the basis that the act violates the North Carolina Constitution or federal law, except by a three-judge panel of the Superior Court of Wake County organized as provided by subsection (b) or subsection (b2) of this section. In the event of disagreement among the three resident superior court judges comprising a three-judge panel, then the opinion of the majority shall prevail.

(d) This section applies only to civil proceedings. Nothing in this section shall be deemed to apply to criminal proceedings, to proceedings under Chapter 15A of the General Statutes, to proceedings making a collateral attack on any judgment entered in a criminal proceeding, or to civil proceedings filed by a taxpayer pursuant to G.S. 105-241.17.

¹ Subsection (a) covers redistricting of State legislative and congressional districts

Rule 42. Consolidation; separate trials.

(b)(4) Pursuant to G.S. 1-267.1, any facial challenge to the validity of an act of the General Assembly, other than a challenge to plans apportioning or redistricting State legislative or congressional districts, shall be heard by a three-judge panel in the Superior Court of Wake County if a claimant raises such a challenge in the claimant's complaint or amended complaint in any court in this State, or if such a challenge is raised by the defendant in the defendant's answer, responsive pleading, or within 30 days of filing the defendant's answer or responsive pleading. In that event, the court shall, on its own motion, transfer that portion of the action challenging the validity of the act of the General Assembly to the Superior Court of Wake County for resolution by a three-judge panel if, after all other matters in the action have been resolved, a determination as to the facial validity of an act of the General Assembly must be made in order to completely resolve any matters in the case. The court in which the action originated shall maintain jurisdiction over all matters other than the challenge to the act's facial validity and shall stay all matters that are contingent upon the outcome of the challenge to the act's facial validity pending a ruling on that challenge and until all appeal rights are exhausted. Once the three-judge panel has ruled and all appeal rights have been exhausted, the matter shall be transferred or remanded to the three-judge panel or the trial court in which the action originated for resolution of any outstanding matters, as appropriate.

§ 7A-27. Appeals of right from the courts of the trial divisions

(a1) Appeal lies of right directly to the Supreme Court from any order or judgment of a court, either final or interlocutory, that holds that an act of the General Assembly is facially invalid on the basis that the act violates the North Carolina Constitution or federal law. Nothing in this subsection shall be deemed to apply to appeals from orders of the trial courts pertaining to criminal proceedings, . . .

(3) From any interlocutory order or judgment of a superior court or district court in a civil action or proceeding that does any of the following: . . .

(f). Grants temporary injunctive relief restraining the State or a political subdivision of the State from enforcing the operation or execution of an act of the General Assembly as applied against a party in a civil action. This sub-subdivision only applies where the State or a political subdivision of the State is a party in the civil action. This sub-subdivision does not apply to facial challenges to an act's validity heard by a three-judge panel pursuant to G.S. 1-267.1.