

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
05 CVS 17197

CHARLES HEATHERLY; THOMAS  
SPAMPINATO; W. EDWARD  
GOODALL, JR.; PAUL STAM; WAKE  
COUNTY TAXPAYERS  
ASSOCIATION; and THE NORTH  
CAROLINA FAMILY POLICY COUNCIL

Plaintiffs,

WILLIS WILLIAMS; NORTH  
CAROLINA FAIR SHARE; and NORTH  
CAROLINA COMMON SENSE  
FOUNDATION,

Plaintiff-Intervenors,

VS

**ORDER**

STATE OF NORTH CAROLINA;  
CHARLES A. SANDERS, BRYAN E.  
BEATTY, LINDA CARLISLE, ROBERT  
A. FARRIS, JR., JOHN R.  
MCARTHUR, JIM WOODWARD, and  
ROBERT W. APPLETON, Members of  
the North Carolina Lottery Commission,  
in their official capacity; NORTH  
CAROLINA LOTTERY COMMISSION;  
THOMAS N. SHAHEEN, Executive  
Director of the North Carolina Education  
Lottery, in his official capacity;  
MICHAEL F. EASLEY, Governor of the  
State of North Carolina, in his official  
capacity; RICHARD H. MOORE,  
Treasurer of the State of North  
Carolina, in his official capacity.

Defendants.

FILED  
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JUDGE DEARNEY, C.S.C.  
BY \_\_\_\_\_

THIS CAUSE coming on to be heard and being heard before the undersigned Superior Court Judge presiding at the 20 March 2006 Wake County Civil Session of Superior Court upon the plaintiffs' and plaintiff-intervenors' Complaints and Petitions for Declaratory Judgment challenging the constitutionality of North Carolina's HB 1023 as amended by section 31.1 of SB 622; that this Court, after consideration of the pleadings filed herein, the briefs before the Court, affidavits submitted by plaintiffs and defendants and arguments of counsel, makes the following:

**FINDINGS OF FACT**

1. That all parties are before this Court and are represented by counsel.
2. That the plaintiffs, Charles Heatherly; Thomas Spampinato; W. Edward Goodall, Jr.; Paul Stam; Wake County Taxpayers Association; and the North Carolina Family Policy Council, are represented by Robert F. Orr, Pamela B. Cashwell and Jeanette Doran Brooks.
3. That the plaintiff-intervenors, Willis Williams; North Carolina Fair Share; and North Carolina Common Sense Foundation, are represented by Jack Holtzman.
4. That the defendants, State of North Carolina; Charles A. Sanders, Bryan E. Beatty, Linda Carlisle, Robert A. Farris, Jr., John R. McArthur, Jim Woodward, and Robert W. Appleton, Members of the North Carolina Lottery Commission, in their official capacity; North Carolina Lottery Commission; Thomas N. Shaheen, Executive Director of the North Carolina Education Lottery, in his official capacity; Michael F. Easley, Governor of the State of North Carolina, in his official capacity; Richard H. Moore, Treasurer of the State of North Carolina, in his official capacity, are represented by Norma S. Harrell, Special Deputy Attorney General, and Ronald M. Marquette, Special Deputy Attorney General.
5. That the individual plaintiffs and individual plaintiff-intervenors are citizens and residents of North Carolina and with the exception of Thomas Spampinato pay taxes to the State of North Carolina.

6. That as citizens and residents of the State of North Carolina the individual plaintiffs and individual plaintiff-intervenors have standing to bring this action.
7. That the corporate plaintiffs and plaintiff-intervenors are public policy, nonprofit corporations; all are organized under the laws of North Carolina and operate within North Carolina.
8. That the corporate plaintiffs, Wake County Taxpayers Association and The North Carolina Family Policy Council, and the corporate plaintiff-intervenors, North Carolina Fair Share and North Carolina Common Sense Foundation, have alleged no special condition which would allow them and provide them with standing to pursue this matter.
9. That plaintiffs, Wake County Taxpayers Association and The North Carolina Family Policy Council, and the plaintiff-intervenors, North Carolina Fair Share and North Carolina Common Sense Foundation, lack standing and have no standing to pursue this matter.
10. That plaintiffs, Wake County Taxpayers Association and The North Carolina Family Policy Council, and the plaintiff-intervenors, North Carolina Fair Share and North Carolina Common Sense Foundation must be dismissed from this action for lack of standing to bring and pursue this action.
11. That this Court has jurisdiction of the subject matter.
12. That this Court provided opportunity for counsel for all parties to be heard.
13. That this Court has reviewed the plaintiffs' complaint and the plaintiff-intervenors' complaint of record and notes that they are substantially the same, most particularly in Counts One, Two, Three, Four, Five and Six.
14. That this Court has previously dismissed Count Four and Count Five of both complaints pursuant to Rule 12 (b) (6) of the North Carolina Rules of Civil Procedure.

15. That the Lottery Act was proposed in House Bill 1023 of the 2005 General Assembly and was filed on the House of Representatives on March 30, 2005.
16. That a Committee Substitute to House Bill 1023 was given a favorable report in the House of Representatives on April 6, 2005, and passed its second and third readings in the House on that day.
17. That the yeas and nays of the vote on the second reading of House Bill 1023 were recorded in the House Journal.
18. That the yeas and nays of the vote on the third reading of House Bill 1023 were not recorded in the House Journal.
19. That on April 7, 2005 House Bill 1023 as passed by the House of Representatives was received by the Senate and read for the first time.
20. That House Bill 1023 was then referred to the Senate Committee on Rules and Operations on April 7, 2005.
21. That on May 5, 2005 Senate Bill 622 ("Budget Bill") was passed in the Senate.
22. That Senate Bill 622 contained provisions under section 31.1 which relate to a State Lottery.
23. That the House passed Senate Bill 622 on June 16, 2005 without reference to a State Lottery (section 31.1).
24. That Senate Bill 622 was sent to a Conference Committee.
25. That the Conference Committee approved Senate Bill 622 with the Lottery provisions of section 31.1 included.
26. That Senate Bill 622 was read three separate times on three separate days in both the House and the Senate and the yeas and the nays on the second and third readings were recorded in both journals.
27. That Senate Bill 622 entitled **AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS,**

- INSTITUTIONS, AND AGENCIES, AND FOR OTHER PURPOSES** was ratified by the General Assembly of North Carolina on August 11, 2005.
28. That ratified Senate Bill 622 was signed by the Governor on August 13, 2005 and became law.
  29. That ratified Senate Bill contains **PART XXXI. LOTTERY.**
  30. That **PART XXXI. LOTTERY** provides that if House Bill 1023, 2005 Regular Session, becomes law, then various provisions of the North Carolina General Statutes are rewritten.
  31. That on August 30, 2005, the Senate considered the Committee Substitute of House Bill 1023.
  32. That Committee Substitute of House Bill 1023 passed in the Senate by a vote of 28 to 20 on August 30, 2005.
  33. That Committee Substitute of House Bill 1023 passed its second reading (25-24) and third readings on August 30, 2005 and was ordered enrolled and sent to the Governor by special message.
  34. That the ratified HB 1023, as amended by SB 622, is the Lottery Act which is the subject of this litigation.
  35. That the Lottery Act establishes the North Carolina State Lottery Fund as an enterprise fund within the State Treasury.
  36. That the Lottery Act establishes the North Carolina State Lottery Commission as a self-supporting agency of the State of North Carolina.
  37. That the Lottery Act locates the Lottery Commission in the Department of Commerce for budgetary purposes.
  38. That except for budgetary purposes, the Lottery Commission functions as an independent, self-supporting, and revenue-raising agency of the State of North Carolina.
  39. That the Lottery Act provides how lottery revenues are to be allocated.

40. That the Lottery Act requires the Lottery Commission to withhold for state income tax purposes 7% from the winnings reportable to the Internal Revenue Service, and revenue laws were amended to provide that Lottery winnings are taxable income for non-residents winning Lottery prizes in North Carolina.
41. That the Lottery Act directed the State Treasurer to lend up to \$10 million to the Lottery Commission for start-up expenses, at an interest rate comparable to private market short term rates, with all loan money to be repaid within twenty-four months.
42. That in reliance on the Lottery Act, the defendants established the Lottery Commission and initiated activities of that Commission.
43. That in furtherance of the establishment of the Lottery Commission and in efforts to comply with the mandate of the North Carolina General Assembly, the Lottery Commission hired employees, entered into contracts, collected application fees, expended large sums of money and engaged in other activities necessary for the establishment of a lottery.
44. That the money expended by the Lottery Commission cannot be unspent.
45. That the legal position and reliance of those who entered into contracts with the Lottery Commission cannot be dismissed.
46. That a large number of people (notably the employees of the Lottery Commission) altered their economic, legal and planning positions in reliance on the Lottery Act.
47. That it is doubtful that lottery employees could return to their former employment.
48. That the plaintiffs and plaintiff-intervenors had actual or constructive knowledge both of their claims and of the efforts being made to implement the Lottery Act prior to the filing of their respective complaints.
49. That no justification has been shown for the delay in initiating this litigation in December 2005.

50. That this Court has considered whether the doctrine of laches should apply to this litigation and declines to dismiss the plaintiffs' and plaintiff-intervenors' complaints under the doctrine of laches.

51. That the plaintiffs' and plaintiff-intervenors' claims are not barred by the doctrine of sovereign immunity.

52. That the plaintiffs and plaintiff-intervenors claim that the action by the General Assembly of North Carolina in passing the Lottery Act violate Article II, Section 23 of the North Carolina Constitution.

53. That Article II, Section 23 of the North Carolina Constitution provides:

No law shall be enacted to raise money on the credit of the State, or to pledge the faith of the State directly or indirectly for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days, and shall have been agreed to by each house respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the Journal.

54. That the plaintiffs and plaintiff-intervenors claim that the Lottery Act raises money on the credit of the State of North Carolina because lottery tickets will be sold to raise money and that a debt is created on the credit of the State when lottery winnings are to be paid to the holder of a winning lottery ticket by the State.

55. That the plaintiffs and plaintiff-intervenors claim that the Lottery Act pledges the faith of the State for the payment of a debt because lottery winnings will be owed to the holder of a winning lottery ticket.

56. That the sale of lottery tickets does not raise money on the credit of the State of North Carolina because the credit of the State of North Carolina is not pledged when a lottery ticket is sold.

57. That the payment of lottery winnings to the holder of a winning lottery ticket is payable solely from the proceeds of the sale of lottery tickets.

58. That as the payment of lottery winnings is payable solely from the proceeds of the sale of lottery tickets, no debt is created nor is the faith and credit of the State of North Carolina pledged.
59. That Article II, Section 23 of the North Carolina Constitution is applicable to situations where the State of North Carolina is securing money in the present (borrowing money) by promising future repayment, usually with interest.
60. That Article II, Section 23 of the North Carolina Constitution is applicable to situation where the faith and credit of the State of North Carolina is pledged for the payment of debts.
61. That the Lottery Act does not provide for the borrowing of funds in the present by the State of North Carolina and does not provide for pledging the faith and credit of the State of North Carolina for payment of debts.
62. That the plaintiffs and plaintiff-intervenors further claim that the Lottery Act imposes a tax within the meaning of Article II, Section 23 of the State of North Carolina Constitution because a portion of the price of a lottery ticket (35%) is allocated to fund general educational needs of North Carolinians throughout the State.
63. That within the intent and meaning of Article II, Section 23, a tax is a government enforced pecuniary charge or levy to raise money for the maintenance of government.
64. That a tax is a forced contribution to government which has no necessary immediate relationship to a benefit conferred.
65. That the Lottery Act allows a person to voluntarily purchase a lottery ticket and receive immediately in return the opportunity to win a prize.
66. That no person is forced to purchase a lottery ticket.
67. That the Lottery Act does not impose a tax on the purchaser of a lottery ticket.
68. That the Lottery Act is not a law subject to the provisions of Article II, Section 23 of the North Carolina Constitution requiring that "revenue bills" be read in each house

of the General Assembly on three different days and that the yeas and nays on the second and third readings be recorded in the journals.

69. That the plaintiffs and plaintiff-intervenors further claim that the Lottery Act violates Article V, Section 7 of the North Carolina Constitution.

70. That the plaintiffs and plaintiff-intervenors claim that the Lottery Act violates Article V, Section 7 by providing funds from the State Treasury without appropriation in the loan of money from the State Treasurer to the Lottery Commission.

71. That Article V, Section 7 of the North Carolina Constitution provides:

Section 7. Drawing public money.

(1) *State Treasury.* No money shall be drawn from the State treasury but in consequence of appropriations made by law, and an accurate account of the receipts and expenditures of State funds shall be published annually.

(2) *Local treasury.* No money shall be drawn from the treasury of any county, city or town, or other unit of local government except by authority of law.

72. That the Lottery Act creates a Lottery Fund within the State treasury.

73. That the Lottery Act specifically instructs the State Treasurer to lend to the Lottery Commission an amount not to exceed \$10 million.

74. That when money is transferred to the Lottery Fund from the general fund, the money remains within the State treasury and is simply moving money from one account in the State treasury to another account in the State treasury.

75. That the transfer of funds to the Lottery Fund within the State Treasury does not result in drawing money from the State Treasury.

76. That the Lottery Act further directs that certain revenues such as the proceeds from the sale of lottery tickets be deposited in the State Lottery Fund.

77. That the General Assembly specifically provided in the Lottery Act that the "North Carolina State Lottery Fund is appropriated to the Commission and may be expended without further action of the General Assembly for the purposes of operating the Commission and the lottery games."

78. That any expenditures by the Lottery Commission were thereby appropriated and authorized by the North Carolina General Assembly.
79. That the North Carolina General Assembly's express authorization for collection of funds, including loan from the State Treasury, and for the payment for expenses, lottery prizes, and educational purposes, comply with the provisions of Article V, Section 7 of the North Carolina Constitution.
80. That all of the allegations of the complaints of both the plaintiffs and the plaintiff-intervenors alleging that the General Assembly violated Article II, Section 23 and Article V, Section 7 of the Constitution of North Carolina are without merit and should be dismissed.

BASED upon the foregoing **FINDINGS OF FACT**, this Court makes the following:

**CONCLUSIONS OF LAW**

That this Court has jurisdiction of the parties and of the subject matter.

That Wake County Taxpayers Association, The North Carolina Family Policy Council, North Carolina Fair Share and North Carolina Common Sense Foundation, all lack standing and have no standing to pursue this matter.

That the Lottery Act does not provide for the borrowing of funds by the State of North Carolina and does not provide for pledging the faith and credit of the State of North Carolina for payment of debts.

That the Lottery Act does not provide for the raising of money on the credit of the State.

That the Lottery Act does not impose a tax.

That only laws raising money on the credit of the State, pledging the faith and credit of the State directly or indirectly for the payment of any debt, or imposing a tax are subject to the provisions of Article II, Section 23 of the Constitution of North Carolina requiring that "revenue bills" be read in each house of the General Assembly on three

different days and that the yeas and nays on the second and third readings be recorded in the journals.

That the Lottery Act is not a law subject to the provisions of Article II, Section 23 of the Constitution of North Carolina.

That transferring money from one account in the State Treasury in the form of a loan of up to \$10 million to the Lottery Fund within the State Treasury is not a withdrawal from the State Treasury.

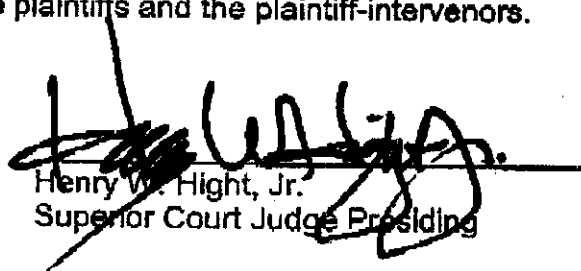
That the General Assembly specifically provided in the Lottery Act that the "North Carolina State Lottery Fund is appropriated to the Commission and may be expended without further action of the General Assembly for the purposes of operating the Commission and the lottery games."

That the North Carolina General Assembly's express authorization in the Lottery Act for collection of funds, including loan from the State Treasury, and for the payment for expenses, lottery prizes, and educational purposes, complies with the provisions of Article V, Section 7 of the North Carolina Constitution.

That all of the allegations of the complaints of both the plaintiffs and the plaintiff-intervenors alleging that the General Assembly violated Article II, Section 23 and Article V, Section 7 of the Constitution of North Carolina are without merit and should be dismissed.

**BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS NOW THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in favor of defendants as to all claims, that plaintiffs' and plaintiff-intervenors' complaints are hereby dismissed with prejudice, and that the costs of this matter shall be taxed and borne by the plaintiffs and the plaintiff-intervenors.**

This is the 21<sup>ST</sup> day of March, 2006.

  
Henry W. Hight, Jr.  
Superior Court Judge Presiding

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served on all parties by personally delivering a copy to the person or by depositing a true copy thereof in the United States Postal Service, first class postage prepaid, addressed to the following:

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This, the 21 day of March, 2006.



Terri Stewart  
Judicial Assistant