

STATE OF NORTH CAROLINA
WAKE COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
2015 MAY - 7 P 3:45 SUPERIOR COURT DIVISION
15 CVS 000127

WAKE COUNTY, C.S.C.

HAW RIVER ASSEMBLY and KEELY
WOOD PURICZ,

BY _____

Plaintiffs,

v.

VIKRAM RAO, in his official capacity as a Member and Chairman of the Mining and Energy Commission; RAY COVINGTON, in his official capacity as a Member of the Mining and Energy Commission; IVAN GILMORE, in his official capacity as a Member of the Mining and Energy Commission; MARTIN MATTHEWS, in his official capacity as a Member of the Mining and Energy Commission; GEORGE HOWARD, in his official capacity as a Member of the Mining and Energy Commission; CHARLES TAYLOR, in his official capacity as a Member of the Mining and Energy Commission; JAMES WOMACK, in his official capacity as a Member of the Mining and Energy Commission; NORTH CAROLINA MINING AND ENERGY COMMISSION; NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE STATE OF NORTH CAROLINA,

Defendants.



ORDER TO STAY PROCEEDINGS AND ENTRY OF A LIMITED PRELIMINARY INJUNCTION

This matter came before the Court on a Motion to Stay Proceedings filed by Defendants the North Carolina Mining and Energy Commission (the "MEC"); Vikram Rao, in his official capacity as both a Member and the Chairman of the MEC, as well as Ray Covington, Ivan Gilmore, Martin Matthews, George Howard, Charles Taylor and James Womack, in their official capacities

as Members of the MEC (cumulatively referred to as “the MEC defendants”); the State of North Carolina (the “State”); and the North Carolina Department of Environment and Natural Resources (“DENR”), and a Motion for Preliminary Injunction filed by Plaintiffs Haw River Assembly and Keely Wood Puricz (“Plaintiffs”). The undersigned Superior Court Judge heard oral arguments on May 1, 2015. Appearing for Plaintiffs were John Suttles, Mary Maclean Asbill, and Brooks Rainey Pearson of the Southern Environmental Law Center. Appearing for the MEC defendants and the State were Special Deputy Attorneys General Melissa L. Trippe and Ann W. Matthews. Appearing for DENR were Alan D. McInnes and William F. Lane of Kilpatrick Townsend and Stockton, LLP.

Plaintiffs opposed the Motion to Stay the Proceedings, and stated that they would withdraw their opposition to a stay of the proceedings if a preliminary injunction were in place. The MEC, the MEC defendants, and the State did not take a position on the Motion for Preliminary Injunction. DENR opposed the Motion for Preliminary Injunction.

After fully and carefully considering the Defendants’ Motion to Stay the Proceedings; the Plaintiffs’ Motion for Preliminary Injunction; the Affidavits of Martha Girolami, Keely Wood Puricz, Elaine Chiosso, and Tracy E. Davis; and the briefs and oral arguments of the parties; the Court has determined that this litigation should be stayed pending the North Carolina Supreme Court’s decision in *Patrick L. McCrory, et al. v. Phillip E. Berger, et al.*, Sup. Ct. Case No. 113A15 (“*McCrory v. Berger*”) or until further order from the Court, and that during the pendency of the stay of this litigation, the MEC should be enjoined from accepting or processing applications for drilling units and from creating any drilling units. This Order does not otherwise enjoin the MEC defendants, the State or DENR from conducting any other lawful activity within the scope of their authority.

Findings of Fact

1. On January 5, 2015, Plaintiffs filed a Complaint for Declaratory Judgment in the above-captioned action, challenging the constitutionality of N.C. Gen. Stat. §143B-293.2(a), which governs appointments to the MEC.

2. On November 14, 2014, pursuant to N.C. Gen. Stat. § 150B-21.3(b)(1), the MEC adopted 15A N.C. Admin. Code Subchapter 5H, a suite of regulations developed for the purpose of governing natural gas extraction in North Carolina (the “MEC rules”). The General Assembly granted the MEC the authority to create and modify drilling units pursuant to N.C. Gen. Stat. § 143-391(a)(12), and the MEC’s rules at 15A NCAC 05H .1200, *et seq.* governing establishment of drilling units are based on this authority. Creation of a drilling unit by the MEC is a necessary prerequisite to accepting or processing an oil and gas well permit application, or for issuing an oil and gas well permit. *See* 15A NCAC 05H .1300, *et seq.*

3. The MEC rules went into effect on March 17, 2015.

4. On March 16, 2015, a three-judge panel formed pursuant to N.C. Gen. Stat. § 1-267.1, ruled in favor of the plaintiffs in *McCrorry v. Berger*, finding, *inter alia*, that: “1. The provisions of N.C. Gen. Stat. §NCGS 143B-293.2(a1) providing for the appointment of members of the North Carolina Oil and Gas Commission by the Legislature are in violation of Article I, Section 6 of the North Carolina Constitution.” Defendants in that case filed an appeal, and the case will be argued before the North Carolina Supreme Court on 30 June, 2015.

5. On April 7, 2015, the Defendants filed a Motion to Stay the Proceedings in this case, pending the North Carolina Supreme Court’s decision in *McCrorry v. Berger*.

6. On April 14, 2015, Plaintiffs filed a Motion for Preliminary Injunction to enjoin implementation of the MEC rules and requested an Expedited Hearing.

Conclusions of Law

7. This Court has jurisdiction to hear this case pursuant to its inherent authority and N.C. Gen. Stat. § 1A, Rule 42 (b)(4).

8. All parties are properly before the Court.

9. A stay is appropriate to preserve judicial economy and judicial resources, as this case raises the same constitutional question that is encompassed by the three-judge panel's decision in *McCrorry v. Berger*, which will be argued before the Supreme Court of North Carolina on June 30, 2015. Issuance of a preliminary injunction is appropriate. Based on the decision of the three-judge panel in *McCrorry v. Berger*, Plaintiffs have demonstrated that they are likely to succeed on the merits of their claim that legislative appointment of a majority of the members of the MEC is an unconstitutional violation of the separation of powers required by Article I, section 6 of the North Carolina Constitution. Plaintiffs have also demonstrated that irreparable harm may result if an injunction is not issued.

10. An injunction to prevent the Commission from accepting or processing applications for drilling units and from creating any drilling units is necessary to preserve the status quo pending the outcome of this litigation and to avoid irreparable harm to Plaintiffs and others who may rely upon the MEC rules.

11. In the exercise of its inherent authority and discretion to determine and order appropriate equitable relief, the Court thus finds that Plaintiffs are entitled to a limited preliminary injunction during the pendency of the stay of this litigation.

BASED UPON the parties' motions, briefs, exhibits, arguments of counsel, and the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED, ADJUDGED, AND DECREED that:

A. Defendants' Motion to Stay is GRANTED pending the North Carolina Supreme Court's decision in *Patrick L. McCrory, et al. v. Phillip E. Berger, et al.*, Sup. Ct. Case No. 113A15, or until further order from the Court;

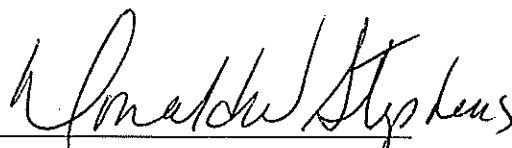
B. Plaintiffs' Motion for Preliminary Injunction is GRANTED, in part, and the MEC is ENJOINED during the pendency of the stay of this case from accepting or processing applications for drilling units and from creating any drilling units;

C. The MEC defendants are not enjoined from conducting any other lawful activity within the scope of their authority;

D. DENR and the State are not enjoined by this Order; and,

E. The parties may request modification of this Order if necessary within a reasonable time following the entry of this Order.

This the 10 day of May, 2015.


Honorable Donald W. Stephens
Senior Resident Superior Court Judge