



Letters to the Editor

Vol. 9, No. 4 Merit Selection of Judges

Jack Betts' article on the selection of judges in North Carolina was in error when it alleges that "the state Republican Party has sued the State in an effort to force a change in the way Superior Court judges are elected" (page 19) and then footnotes (note 8) the cases of *Haith v. Hunt* and *Alexander v. Martin*.

The North Carolina Republican Party has absolutely no connection with those cases, officially or unofficially. In *Haith*, the plaintiff was a black Republican but the case was brought under the Voting Rights Act (VRA) to compel submission for preclearance under Section Five of that Act. In *Alexander*, the plaintiffs are NAACP activists and my co-counsel are NAACP lawyers. Again, it is a VRA action.

In contrast, the Republican opposition to statewide election is based upon the prohibitions against *political* (not racial) gerrymandering and discrimination of the Fourteenth Amendment.

The point is that, while the interests of blacks and Republicans may (and undoubtedly do) converge in the opposition to statewide election, the Republican Party has nothing to do with either the *Haith* or *Alexander* lawsuits.

C. Allen Foster, Attorney
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& Gumbiner, P.A.
Greensboro

Note: Though Mr. Foster is correct that the N.C. Republican Party is not a named plaintiff, Republican Party activists are key players in the litigation. Mr. Foster, the 1984 Republican Party nominee for attorney general and the attorney for an executive board appointed by Republican Gov. Jim Martin, is representing plaintiffs in the *Alexander* case. Other leading Republicans who have assisted in these and other elections law cases are Robert Hunter, Martin's appointee as chairman of the State Board of Elections, and Greensboro attorney Art Donaldson, a 1986 Republican nominee for the N.C. Supreme

Court. Also, the Republican National Committee has intervened in *Gingles v. Thornburg*, the major redistricting case in North Carolina. Since publication of the articles on merit selection, Governor Martin asked the N.C. Supreme Court for an advisory opinion on the legality of the state's method of electing Superior Court judges, but the Court turned down that request. — *The Editors*

Vol. 9, No. 3 N.C. Prisons: Old Problems, Tough Choices

I want to register my enthusiasm and gratitude for your March 1987 issue of the *North Carolina Insight* devoted to prisons and criminal justice issues in North Carolina. This really is an excellent and useful document — well-researched and well-written.

During the 1970s, I gave a lot of attention to and was heavily involved with prisons and criminal justice. Several years ago Sister Evelyn Mattern, our program associate, took this concern under her wing and my attention moved elsewhere. A few weeks ago I had to do a presentation before the Presbyterian Synod of North Carolina on "Alternatives to Imprisonment," and I needed to re-educate myself on the subject. Your magazine was perfectly suited for this purpose, and it served me well.

Incidentally, I am proud of the fact that the North Carolina Council of Churches began advocating alternatives to incarceration as early as 1974. I am enclosing a copy of this statement.

I was pleased also to read about the relatively favorable evaluation of the Fair Sentencing Act. We were heavily involved with that, pushing for both less disparity and less severity. I think we were modestly successful.

Keep up the good work.

Collins Kilburn
Executive Director
North Carolina Council of Churches
Raleigh

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language of standard or uniform contracts to be raised as a shield to prevent [consumers] from prosecuting a suit as a class action. We decline to do so now," Justice Mitchell wrote.¹²

The lending institutions that fought the *Crow* case before the Supreme Court argue that the General Assembly is the proper forum to decide whether such large class actions can be maintained in state courts. The Supreme Court observed that the General Assembly could have barred such actions "expressly and unequivocally" when the legislature passed the class action rule in 1967.¹³ The failure of the legislature to set such limits convinced the Court that "it intended to allow them."¹⁴

One further wrinkle in the class action arena could have an impact on state courts: A 1985 U.S. Supreme Court decision allows state-level class action lawsuits by classes that include individuals who are not citizens of that particular state.¹⁵ As defendant Citicorp noted in its brief before the N.C. Supreme Court, "Our trial judges can expect to be called on to manage class actions that are not even restricted to N.C. citizens, but encompass absentee plaintiffs from all over the country."¹⁶

In the past session, the General Assembly did not revise the language for class actions — but then, no one asked the legislature to do so. The *Crow* opinion was handed down during last spring's General Assembly session, shortly before the deadline for filing new legislation. Perhaps in the 1988 or 1989 sessions of the General Assembly, an attempt

will be made to change the *Crow* decision by legislation. At that time, the General Assembly will have to balance the public's interest in allowing class action lawsuits to challenge alleged wrongdoing against the costs to the businesses involved. ☐☐

FOOTNOTES

¹*Mills v. Cemetery Park Corp.*, 242 N.C. 20, 30, 86 SE 2d 893, 900 (1955), which spelled out how class actions in "community of interest" cases would be permitted.

²*Quiller v. BarclaysAmerican/Credit, Inc.*, 727 F 2d 1067 (11th Cir. 1984). Attorneys fees of \$1.2 million are included in the settlement amount.

³N.C.G.S. 1A-1, Rule 23, Rules of Civil Procedure.

⁴*Ibid.*

⁵*Cocke v. Duke University*, 260 N.C. 1, 131 SE 2d 909 (1963).

⁶*Crow v. Citicorp Acceptance Co., Inc.*, 319 N.C. 274, 354 SE 2d 459 (1987).

⁷Friend of the Court (*amicus curiae*) brief filed by the North Carolina Clients Council, N.C. Legal Services Resource Center, P.O. Box 27343, Raleigh, N.C. 27611, pp. 2-3.

⁸*Maffei v. Alert Cable TV*, 316 N.C. 615, 342 SE 2d 867 (1986).

⁹Friend of the Court brief filed by the lenders, at p. 18. BarclaysAmerican/Financial, Inc. is a named defendant in a lawsuit similar to *Crow v. Citicorp*, called *Bass v. Barclays-American/Financial, Inc.*, No. 85 CVS811, Durham County Superior Court.

¹⁰*Ibid.*, Lenders' Brief, at p. 19.

¹¹Defendant Citicorp Acceptance Co., Inc., brief at p. 19.

¹²*Op. cit.*, *Crow*, at p. 286.

¹³*Ibid.*, Rule 23, Rules of Civil Procedure.

¹⁴*Op. cit.*, *Crow*, at p. 286.

¹⁵*Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 86 L. Ed. 2d 628 (1985).

¹⁶Defendant Citicorp Acceptance Co., Inc., brief at p. 17.

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Aging

[The Center] is to be highly commended for the excellent job [it] did in planning and conducting the Forums on Aging [in October 1986]. The forums brought together older adults, politicians, government officials from all levels, private service providers, and advocates to identify and discuss current issues and problems facing older citizens. They made a number of important points and recommendations and having this variety of people sitting together discussing the issues was in itself valuable. I was impressed with the outcome. These are the sorts of efforts we need to be making in North Carolina so that we can prepare to meet the needs of our older citizens.

Bill Finger's presentation to the General Assembly's House Committee on Aging in April was very well received. The committee members were excited by your report on the outcomes of the forums and the recommendations you made to them about further steps to be taken in preparing to meet

the needs of our growing elderly population. It proved to be a catalyst for the introduction of several pieces of legislation that, if ratified, should prove useful to meeting those needs.

It has been a pleasure working with you on these issues. You have made valuable contributions towards improving services for older people in North Carolina.

John Tanner, Head
Adult & Family Services Branch
Division of Social Services
N.C. Department of Human
Resources
Raleigh

Note: In July 1987, Tanner was named Deputy Director of the Division of Aging in the Department of Human Resources. On June 4, 1987, the N.C. General Assembly passed legislation modeled after a recommendation in Finger's presentation that the Department of Human Resources develop a comprehensive plan for meeting the needs of elderly citizens. That plan, to be developed by Dec. 31, 1987, will be presented to the 1988 General Assembly.

—The Editors