

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
26CV024512-910

SCOTT PRESENT, an individual,
Plaintiff,

v.

STATE OF NORTH CAROLINA;
DESTIN HALL, in his official capacity
as Speaker of the North Carolina
House of Representatives; PHILIP E.
BERGER, in his official capacity
as the President Pro Tempore of the
North Carolina Senate,
Defendants.

ORDER ON MOTION TO TRANSFER

THIS MATTER is before the Court on Plaintiff's Motion to Transfer Facial Constitutional Challenge to 3 Judge Panel Pursuant to N.C.G.S. §1-267.1 ("Motion," ECF No. 29).

1. In the Motion, Plaintiff requests that the Court transfer the facial constitutional challenge he has asserted in this action to a three-judge panel pursuant to N.C.G.S. § 1-267.1.

2. In this lawsuit, Plaintiff has asserted both facial and as-applied constitutional challenges (under both federal and North Carolina law) to N.C.G.S. § 55-7-48(1).

3. N.C.G.S. § 1-267.1(a) states in pertinent part as follows:

Any action that is a facial challenge to the validity of an act of the General Assembly shall be, unless filed in the Superior Court of Wake County, transferred pursuant to G.S. 1A-1, Rule 42(b)(4), to the Superior Court of Wake County. All actions referenced in this subsection 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.

N.C.G.S. § 1-267.1(a).

4. Our Supreme Court has made clear that “[a]s-applied constitutional challenges . . . may be resolved in the first instance by a single judge.” *Hoke Cnty. Bd. of Educ. v. State*, 389 N.C. 198, 259 (2026). Moreover, it is clear that if the statute being challenged is found to be constitutional as applied to the party raising the challenge, an accompanying facial challenge necessarily fails. *See State v. Nanes*, 297 N.C. App. 863, 873 (2025) (holding that statute “was constitutionally applied to Defendant” and therefore “facially constitutional as well because Defendant has failed to show that there are no set of circumstances under which the act would be invalid.”) (cleaned up).

5. **ACCORDINGLY**, the Court **DEFERS** ruling on Plaintiff’s Motion until it has ruled on the State Defendants’ Motion to Dismiss the as-applied challenges.

SO ORDERED, this the 8th day of September 2026.

/s/ Mark A. Davis
Mark A. Davis
Special Superior Court Judge for
Complex Business Cases