IN THE SPECIAL SUPREME COURT OF TENNESSEE
AT NASHVILLE
July 19, 2013 Session

JOHN JAY HOOKER ET AL. v. GOVERNOR BILL HASLAM ET AL.

Appeal by Permission from the Court of Appeals, Middle Section
Circuit Court for Davidson County
No. 12C-735 Hamilton V. Gayden, Judge

No. M2012-01299-SC-R11-CV

ORDER

Plaintiff, John J. Hooker, has filed a Petition to Rehear. After careful and thorough consideration, the Court finds that no cognizable reason for rehearing has been presented, *see* Rule 39, Tenn. R. App. P., and is, therefore, of the opinion that the petition should be denied.

Even though neither of the parties raised the question of mootness, the Court was obligated independently to raise the question *sua sponte* since mootness goes to the Court's jurisdiction. *See, e.g., Iron Arrow Honor Society v. Heckler,* 464 U.S. 67, 70 (1983) (per curiam); *Mine Reclamation Corp. v. FERC,* 30 F.3d 1519, 1522 (D.C. Cir. 1994). There is no reasonable dispute – and the Petition to Rehear does not suggest anything to the contrary – that the issue of the constitutionality of the statutory Judicial Nominating Commission is moot in this case.

Moreover, Mr. Hooker has suffered no harm from this Court's holding that the challenge to the constitutionality of the Judicial Nominating Commission under the Tennessee Plan is moot in this case. According to Mr. Hooker himself, the issue remains justiciable in other lawsuits that he has filed and that are currently pending in the trial courts. In those other lawsuits the issue is raised in a factual context different from the one that was before this Court. The Court of Appeals in this case upheld the constitutionality of the statutory Judicial Nominating Commission, a decision adverse to Mr. Hooker. We have, however, vacated the decision of the Court of Appeals on that issue. Thus, if Mr. Hooker is correct that the issue is not moot in the context of his other cases, then he is free to litigate the issue without any collateral legal harm from the mooted claim in this case. For example, the issue is not *res judicata*, nor is Mr. Hooker collaterally estopped from raising it in another case with a different factual predicate that may preserve the issue as justiciable.

No rehearing is required to address the issue of the competence of the Court of Appeals. As is clear from our Opinion, we did not rely on the holding or the reasoning of the Court of Appeals, but arrived at a decision based on our own, independent analysis of each of the issues presented, including Mr. Hooker's challenge to the constitutionality of the Tennessee Plan on the ground that it requires statewide elections for intermediate appellate judges.

Contrary to Mr. Hooker's assertion, our holding that the judges of the intermediate appellate courts may be elected statewide does not ignore the fact that article VI, section 4, of the Tennessee Constitution provides that judges of the inferior courts "shall have been a resident of the State for five years and of the circuit or district one year." Residence in the State for five years is a prerequisite for a seat on any bench. There is no constitutional requirement that an inferior court established by the legislature must be in all instances a court limited to a particular circuit or district, but, if and when a judge of an inferior court is to be assigned to a circuit or a district, residence in that circuit or district for one year is also a prerequisite for holding office under article VI, section 4. However, as we explained in our Opinion, the intermediate appellate courts are statewide courts, they are not delimited by circuit or district. The judges of the intermediate appellate courts are not assigned to a circuit or a district; they are "assigned" to the entire state. Thus, the one-year residence requirement does not apply to them.

For the same reason, the constitutional limitation on voting by district or circuit is inapplicable to appellate court judges. Article VI, section 4, provides that judges of the "Circuit and Chancery Courts, and of other inferior Courts, shall be elected by the qualified voters of the district or circuit to which they are to be assigned." Since the judges of the intermediate appellate courts are not assigned to any district or circuit, voting by district or circuit is not required.

This is in no way changed or affected by the statutory requirement that no more than four of the twelve judges on each intermediate appellate court may "reside" in any one of the three "grand divisions" of Tennessee. Tenn. Code Ann. §16-4-102 and §16-5-102. Mr. Hooker erroneously equates "grand division" with "district." Those terms, as used in the Constitution, refer to two very different concepts. As used in the Constitution, a "district" is a political subdivision, usually a subdivision of a county, as determined by the legislature. *See, e.g.,* Art. VI, § 15 (repealed in 1978, but previously providing that the legislature was to divide Tennessee's counties into "districts of convenient size" for the purpose of electing justices of the peace and constables); and Art. VII, § 1 (providing for the division of counties into districts from which legislators are to be elected and providing for the reapportionment of the districts from time to time). While a "district" usually connotes a subunit of a county and may be subject to reconfiguration (*see, e.g.,* Art. VII, § 1, requiring that districts be reapportioned at least every ten years), a "grand division" refers to one of three permanently defined, large umbrella units, each composed of many counties – and, accordingly, of many districts.

Tenn. Code Ann. §4-1-201 through § 4-1-204. Thus, a grand division is not – and cannot be – a district within the meaning of article VI, section 4.

Even if a grand division were deemed to be a "district," the statutory limitation on residence by grand division would still be irrelevant, since, as we explained at length in our Opinion, the judges of the intermediate appellate courts are not "assigned" to any grand division. The statutory residence requirement by grand division is merely a limiting qualification for the office of intermediate appellate judge; it is not a limitation on voting. *Cf., e.g., Dusch v. Davis*, 387 U.S. 112 (1967).

Article VI, section 2, of the Constitution illustrates that a geographical qualification for holding office is separate and distinct from voting for that office. Of the five judges of the Supreme Court, "not more than two shall reside in any one grand division of the State." Art. VI, § 2. This is a geographical prerequisite to holding office. However, this residency limitation notwithstanding, the Constitution itself provides that all the judges of the Supreme Court "shall be elected by the qualified voters of the State." Art. VI, section 3. Thus, despite the geographical limit on residency as a qualification for holding office, the Constitution mandates statewide voting for judges of the Supreme Court.

The statutes creating the intermediate courts of appeal distinguish between a residency requirement for a candidate for office and residence of voters for purposes of voting in exactly the same way as does the Constitution in establishing the Supreme Court. In both instances, a judicial candidate can be required to live in a certain geographic area as a qualification for office, but still be elected statewide without regard to geographic area in which the qualified voters reside.

Simply put, the intermediate appellate judges, like the judges of the Supreme Court, are required to live in a certain area as a qualification for holding office, but they are not "assigned" to that area. Rather, they are "assigned" to the state at large and therefore may be elected by the qualified voters of the entire state.

The Petition to Rehear is denied. The costs are taxed to John Jay Hooker, for which execution may issue if necessary. We adhere to the views and holdings expressed in our Opinion filed on March 17, 2014, and the accompanying Order. This Court will entertain no further petitions, motions, requests, or pleadings of any kind seeking reconsideration or rehearing of any of its orders. Mandate shall issue immediately.

It is so ORDERED.

PER CURIAM