

NORTH CAROLINA

WAKE COUNTY

FILED

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WAKE COUNTY, C.S.C.

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

FILE NO. 13 CVS 16240

NORTH CAROLINA ASSOCIATION OF  
EDUCATORS, INC., RICHARD J. NIXON,  
RHONDA HOLMES, BRIAN LINK,  
ANNETTE BEATTY, STEPHANIE  
WALLACE and JOHN DEVILLE,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA,

Defendant.

**ORDER**

THIS CAUSE came on to be heard before the undersigned Judge Presiding in the Wake County Civil Superior Court on 12 May 2014 pursuant to Plaintiffs' Motion for Summary Judgment under Rule 56 of the North Carolina Rules of Civil Procedure. Plaintiffs were represented at the hearing by attorneys Narendra K. Ghosh and Burton Craige of Patterson Harkavy LLP, and by Ann McColl of the North Carolina Association of Educators ("NCAE"). Defendant was represented by Melissa L. Trippe, Special Deputy Attorney General, of the North Carolina Department of Justice.

Plaintiffs submitted the affidavits of Annette Beatty, Bruce W. Boyles, Heidi H. Carter, John deVille, David M. Dunaway, Alan W. Duncan, Rodney Ellis, Richard Glazier, Maurice O. Green, Rhonda Holmes, James F. Key II, Brady Johnson, Brian Link, Richard J. Nixon, Jesse Rothstein, William P. Steed, Thomas M. Stern, and Stephanie Wallace. Defendants submitted the affidavits of Eric A. Hanushek and Terry Stoops.

The Court has fully considered the pleadings, briefs, and affidavits submitted by the parties, and the arguments of counsel at the hearing. As set forth in a separate order issued this same day, the Court strikes and has disregarded portions of plaintiffs' affidavits.

Based on the evidence presented and for the purpose of ruling on Plaintiffs' motion for summary judgment, the Court finds the following as:

## UNDISPUTED MATERIAL FACTS

1. Since 1971, North Carolina has had a statutory system governing the employment and dismissal of public school teachers. The statutory provisions establishing this system of employment (“the Career Status Law”) were codified in their most recent form at N.C. Gen. Stat. § 115C-325 (2012).
2. Under the Career Status Law, teachers who were employed by a public school system for fewer than four consecutive years on a full-time basis were deemed to be “probationary” teachers. Probationary teachers were employed from year to year pursuant to annual contracts, which school boards could choose to “nonrenew” at the end of a school year for any cause the boards deemed sufficient, so long as the non-renewal was not “arbitrary, capricious, discriminatory or for personal or political reasons.” *Id.* § 115C-325(m)(2).
3. After a probationary teacher completed four consecutive years as a full-time teacher in the public school system, that teacher would become eligible for career status. The Career Status Law required a school board, near the end of a probationary teacher’s last probationary year, to decide by majority vote whether to grant or deny the teacher career status. *Id.* § 115C-325(c)(1). Teachers who achieved career status would “not be subjected to the requirement of annual appointment.” *Id.* § 115C-325(d)(1). Instead, career status teachers would be employed on the basis of continuing contracts and could only be dismissed, demoted or relegated to part-time status for one of fifteen enumerated reasons, including “Inadequate performance,” “Insubordination,” and “Neglect of duty.” *Id.* § 115C-325(e)(1).
4. Before a career status teacher could be dismissed, demoted, or relegated to part-time status for any of these reasons, the Career Status Law required the school board to provide the teacher with notice, an explanation of the charges, and, if requested by the teacher, a hearing before the board or before an impartial hearing officer. *Id.* § 115C-325(h)(2)-(3). In those cases in which a career status teacher chooses to have a hearing before a hearing officer, the teacher has the right “to be present and heard, to be represented by counsel and to present through witnesses any competent testimony relevant to the issue of whether grounds for dismissal or demotion exist or whether the procedures set forth in [the statute] have been followed.” *Id.* § 115C-325(j)(3).
5. Five of the plaintiffs—Richard J. Nixon, Rhonda Holmes, Stephanie Wallace, John deVille, and Annette Beatty—have earned career status and, like all career status teachers, work for North Carolina school districts under continuing contracts. Thousands of NCAE’s members are career status teachers who earned career status before the enactment of the Career Status Repeal.
6. One of the teacher plaintiffs, Brian Link, was one year short of eligibility for career status as of the end of the 2012-2013 school year. Many NCAE members are full-time teachers who, like plaintiff Link, have not earned career status but would be eligible for career status under the Career Status Law.

7. The plaintiff teachers were statutorily promised career status rights in exchange for meeting the requirements of the Career Status Law. When they made their decisions both to accept teaching positions in North Carolina school districts and to remain in those positions, they reasonably relied on the State's statutory promise that career status protections would be available if they fulfilled those requirements. The protections of the Career Status Law are a valuable part of the overall package of compensation and benefits for plaintiffs and other teachers, benefits that they bargained for both in accepting employment as teachers in North Carolina school districts and remaining in those positions. From the perspective of school administrators, career status protections help attract and retain teachers despite the low salaries established by State salary schedules.

8. North Carolina's four-year probationary period provides extensive time for school districts to evaluate teachers and thus make an informed decision as to whether a given teacher is granted career status in the first instance. Therefore, the Career Status Law gives school administrators the ability to ensure that career status is only granted to teachers who have proven their effectiveness.

9. On those occasions when performance issues arise with teachers who have earned career status, the Career Status Law provides school administrators with tools to handle those performance issues, up to and including the ability to dismiss teachers for inadequate performance. When a career status teacher fails to meet performance standards, and is unresponsive to improvement measures attempted by the district, the Career Status Law does not stand in the way of the teacher's removal. In the vast majority of cases where a district seeks removal of a career status teacher, the teacher agrees to resign without challenging the school district's decision at a hearing. On those few occasions when dismissal hearings occur, school administrators have found that the process is not onerous for the districts.

10. There is no evidence that the Career Status Law prevents North Carolina school districts from achieving the separation of teachers when they believe dismissal is necessary. School administrators are able to make all necessary personnel changes within the framework of the Career Status Law.

11. The General Assembly repealed the Career Status Law, retroactively and prospectively, by enacting Sections 9.6 and 9.7 of the Current Operations and Capital Improvements Appropriations Act of 2013 ("the Career Status Repeal"). On July 26, 2013, Governor Pat McCrory signed the Appropriations Act into law as Session Law 2013-360. The Career Status Repeal fundamentally alters the system of employment established by the Career Status Law and its predecessor statutes. Its provisions take effect as follows:

12. First, as of August 1, 2013, any teacher who has not achieved career status before the beginning of the 2013-14 school year will never be granted career status, but will instead be employed on the basis of one-year contracts until 2018 (with the one-time exception for some teachers noted in paragraph 14 below). Sess. Law 2013-360 § 9.6(f).

13. Second, as of July 1, 2018, the Career Status Repeal revokes the career status of all teachers who had previously earned that status pursuant to the Career Status Law. *Id.* § 9.6(i).

After July 1, 2018, all teachers will be employed on one-, two-, or four-year contracts that can be non-renewed at the discretion of the school board without any right to a hearing. *Id.* §§ 9.6(b) & (j). As a result, career status teachers who had continuing contracts under the Career Status Law—and who could only be dismissed on the basis of one of the statutorily enumerated causes—will be employed on time-limited contracts that are subject to nonrenewal on any basis that is not “arbitrary, capricious, discriminatory, for personal or political reasons, or on any basis prohibited by State or federal law.” *Id.* § 9.6(b). After receiving notice of nonrenewal, former career status teachers will be permitted to request a hearing on a local school board’s nonrenewal decision, but the board will have unfettered discretion to decide whether or not to hold such a hearing. *Id.*

14. Third, the “25% Provision” of the Career Status Repeal provides that school districts shall, before the beginning of the 2014-15 school year, select 25% of their teachers with at least three years of experience and offer those teachers four-year contracts, providing for a \$500 raise in each year of the contract, in exchange for the teachers’ “voluntarily relinquish[ing] career status.” *Id.* §§ 9.6(g) & (h). Apart from referencing “proficiency on the teacher evaluation instrument,” the 25% Provision provides no discernible standards to guide school districts in (1) identifying the pool of teachers eligible to be considered for four-year contracts and related salary increases; and (2) selecting 25% of teachers from the eligible pool to be offered four-year contracts and salary increases. *Id.* § 9.6(g).

Based on the foregoing undisputed facts, the Court makes the following:

### CONCLUSIONS OF LAW

1. Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” N.C. R. Civ. P. 56(c). “Summary judgment, when appropriate, may be rendered against the moving party.” *Id.* In considering a motion for summary judgment, the court is to consider the evidence “in a light most favorable to the non-moving party.” *McCutchen v. McCutchen*, 360 N.C. 280, 286, 624 S.E.2d 620, 625 (2006). Constitutional questions may appropriately be resolved on a motion for summary judgment. *See, e.g., Stone v. State*, 191 N.C. App. 402, 664 S.E.2d 32 (2008).

2. This Court “gives acts of the General Assembly great deference, and a statute will not be declared unconstitutional under our Constitution unless the Constitution clearly prohibits that statute.” *In re Spivey*, 345 N.C. 404, 413, 480 S.E.2d 693, 698 (1997). “Accordingly, there is a strong presumption that the statute at issue is constitutional.” *Rhyne v. K-Mart Corp.*, 358 N.C. 160, 168, 594 S.E.2d 1, 7 (2004). However, when a “government action is challenged as unconstitutional, the courts have a duty to determine whether that action exceeds constitutional limits.” *Leandro v. State*, 346 N.C. 336, 345, 488 S.E.2d 249, 253 (1997).

3. The Contract Clause of Article I, Section 10 of the United States Constitution provides that “[n]o State shall ... pass any ... Law impairing the Obligation of Contracts ....” While the Contract Clause is “facially absolute,” the Supreme Court has long held that “its prohibition must

be accommodated to the inherent police power of the State to safeguard the vital interests of its people.” *Energy Reserves Group, Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 410 (1983). Consequently, courts apply a three-factor test to determine whether a state law violates this prohibition, asking: “(1) whether a contractual obligation is present, (2) whether the state’s actions impaired that contract, and (3) whether the impairment was reasonable and necessary to serve an important public purpose.” *Bailey v. State*, 348 N.C. 130, 141, 500 S.E.2d 54, 60 (1998) (citing *U.S. Trust Co. v. New Jersey*, 431 U.S. 1, 25 (1977)).

4. All teachers who earned career status before the July 26, 2013 enactment of the Career Status Repeal have contractual rights in that status and to the protections established by the Career Status Law. Career status rights constitute a valuable employment benefit that is earned after successfully completing the probationary period, and is part of the offer of employment on which teachers reasonably relied when accepting and continuing employment. These contractual rights for teachers who earned career status before July 26, 2013, are protected by the Contract Clause. See *State of Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 100 (1938) (holding that the state’s offer of tenure benefits, “when accepted as the basis of action by individuals, become contracts between them and the State or its subdivisions”); *Faulkenbury v. Teachers’ & State Employees’ Retirement System*, 345 N.C. 683, 690, 483 S.E.2d 422, 427 (1997) (“[A]t the time the plaintiffs started working for the state or local government, the statutes provided what the plaintiffs’ compensation in the way of retirement benefits would be. The plaintiffs accepted these offers when they took the jobs. This created a contract.”); *Bailey*, 348 N.C. at 146, 150, 500 S.E.2d at 63, 65; *Wiggs v. Edgecombe County*, 361 N.C. 318, 324, 643 S.E.2d 904, 908 (2007).

5. Under the Career Status Repeal, teachers who have earned career status will lose their right to employment on a continuing-contract basis, lose the protection against dismissal or demotion for reasons other than the statutorily specified grounds, and lose the right to a hearing to contest a dismissal or demotion decision before an impartial hearing officer. By eliminating those protections, the Career Status Repeal substantially impairs the contractual rights of career status teachers.

6. The Career Status Repeal’s impairment of the contractual rights of career status teachers was not reasonable and necessary to serve an important public purpose. The Career Status Repeal does not further any public purpose because the undisputed facts demonstrate that, under the Career Status Law, school administrators already have the ability to dismiss career status teachers for inadequate performance whenever necessary. See *Faulkenbury*, 345 N.C. at 694, 483 S.E.2d at 429. Moreover, eliminating career status hurts North Carolina public schools by making it harder for school districts to attract and retain quality teachers.

7. Even if there was an actual need for school administrators to have greater latitude to dismiss ineffective career status teachers, that objective could have been accomplished through less drastic means, such as by amending the grounds for dismissing teachers for performance-related reasons. See *U.S. Trust Co.*, 431 U.S. at 30-31 (holding that a state “is not free to impose a drastic impairment when an evident and more moderate course would serve its purposes equally well”); *Bailey*, 348 N.C. at 152, 500 S.E. 2d at 67 (concluding that statute was not “reasonable and necessary” because “[t]here [were] numerous ways that the State could have achieved [its] goal without impairing the contractual obligations of plaintiffs”). Therefore, the

Career Status Repeal clearly violates the Contract Clause of the United States Constitution by substantially impairing the contractual rights of career status teachers.

8. The Law of the Land Clause of the North Carolina Constitution states that “[n]o person shall be ... in any manner deprived of his ... liberty[] or property, but by the law of the land.” N.C. Const. Art. I, § 19. This clause has long been interpreted to incorporate a protection against the taking of property by the State without just compensation. *See Long v. City of Charlotte*, 306 N.C. 187, 196, 293 S.E.2d 101, 107-08 (1982); *State ex rel. Utilities Comm’n v. Buck Island, Inc.*, 162 N.C. App. 568, 580, 592 S.E.2d 244, 252 (2004). Contract rights, including those created by statute, constitute property rights that are within the Law of the Land Clause’s guarantee against uncompensated takings. *Bailey*, 348 N.C. at 154, 500 S.E.2d at 68.

9. Career status teachers have contractual rights established by the Career Status Law, which are property rights protected by the Law of the Land Clause. By eliminating those contractual rights, the Career Status Repeal constitutes a taking of property without compensation that violates the Law of Land Clause beyond a reasonable doubt. This is a separate and independent ground for concluding the Career Status Repeal is unconstitutional.

10. Probationary teachers who have not yet received career status do not have contractual rights that are protected by the Contract Clause or the Law of the Land Clause. Therefore, Plaintiff Link does not have standing to bring this action.

11. The 25% Provision is inextricably tied to the Career Status Repeal’s revocation of career status rights as of 2018. The 25% Provision seeks to provide an incentive for career status teachers to relinquish their career status rights four years before the revocation of career status takes effect, by offering four-year contracts with \$500 raises in each of those four years in exchange for the teachers voluntarily relinquishing their career status. Because it is predicated on the revocation of career status as of 2018, the 25% Provision cannot be severed from the unconstitutional revocation of career status. *See Fulton Corp. v. Faulkner*, 345 N.C. 419, 421-22, 481 S.E.2d 8, 9 (1997).

12. In addition, the 25% Provision violates the constitutional vagueness doctrine because it provides no discernible, workable standards to guide local school districts in its implementation. *See Malloy v. Cooper*, 162 N.C. App. 504, 507, 592 S.E.2d 17, 20 (2004); *Duke v. Connell*, 790 F. Supp. 50, 54 (D.R.I. 1992).

13. Plaintiffs will be irreparably harmed if Defendant is not enjoined from implementing the Career Status Repeal. Plaintiffs have no other adequate remedy for the legislation’s violation of their constitutional rights.

IT IS THEREFORE ORDERED that:

1. Plaintiffs’ motion for summary judgment is GRANTED IN PART AND DENIED IN PART. Plaintiffs NCAE, Nixon, Holmes, Beatty, deVille, and Wallace are granted summary judgment on their claims as they relate to the revocation of career status from career status

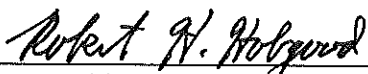
teachers. Defendant is granted summary judgment on the claims brought by Plaintiff Link and the other Plaintiffs' claims on behalf of teachers who have not yet earned career status.

2. The Court DECLARES that Sections 9.6 and 9.7 of Session Law 2013-360 are unconstitutional with regard to teachers who had received career status before July 26, 2013, and that the 25% Provision is unconstitutional.

3. Defendant is PERMANENTLY ENJOINED from implementing and enforcing Sections 9.6 and 9.7 of Session Law 2013-360 with regard to teachers who had received career status before July 26, 2013, and from implementing and enforcing the 25% Provision.

4. The Court has considered defendant State of North Carolina's oral motion that the Court stay its permanent injunction. In the discretion of the Court, the State's motion for a stay is DENIED.

SO ORDERED, this the 5<sup>th</sup> day of June, 2014.

  
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The Honorable Robert H. Hobgood  
Superior Court Judge Presiding