

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

WAKE COUNTY

Civil Action No. 14-CVS-\_\_\_\_\_

\_\_\_\_\_  
HAW RIVER ASSEMBLY and KEELY  
WOOD PURICZ,

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.

**COMPLAINT FOR  
DECLARATORY JUDGMENT  
(COMP)**

Plaintiffs, Haw River Assembly and Keely Wood Puricz, hereby allege and say:

## NATURE OF THE ACTION

1. Pursuant to the Uniform Declaratory Judgment Act, N.C. Gen. Stat. § 1-253, *et seq.*, and Rule 57 of the North Carolina Rules of Civil Procedure, Plaintiffs, Haw River Assembly and Keely Wood Puricz (collectively, “Plaintiffs”), hereby seek Declaratory Judgment facially challenging the constitutionality of N.C. Gen. Stat. § 143B-293.2 (a), which governs appointments to the North Carolina Mining and Energy Commission (“MEC”) of the Department of Environment and Natural Resources (“NCDENR”). The statutory composition of the MEC mandated by the North Carolina General Assembly (“N.C.G.A.”) in N.C. Gen. Stat. § 143B-293.2 (a), with five members appointed by the Governor and eight members appointed by the North Carolina General Assembly, usurps the functions of the executive and judicial branches of State government in violation of Article I, Section 6 of the Constitution of North Carolina on its face, and therefore all actions of the MEC are null and void *ab initio*.

## THE PARTIES

2. Plaintiff Haw River Assembly (“HRA”) is a § 501(c)(3) nonprofit citizens advocate organization founded in 1982, with its principal place of business located in Bynum, North Carolina. HRA has approximately 1,000 members, most of whom live, work, and/or recreate in the vicinity of the Haw River and Jordan Lake. HRA’s mission is to promote environmental education, conservation and pollution prevention; to speak as a voice for the river in the public arena; and to put into peoples’ hands the tools and the knowledge they need to be effective guardians of the Haw River. HRA was created and organized to restore and protect the Haw River and Jordan Lake. HRA has an interest in preventing contamination of the Haw River and the creeks and reservoirs that flow into the Haw River. Pollution from natural gas extraction would harm the organization’s interests, its members, and its work to preserve and safeguard the Haw River. To those ends, HRA has opposed the regulations drafted by the Mining and Energy

Commission. *See* Affidavit of Elaine Chiosso attached as Exhibit 1. Furthermore, HRA has members who live directly above the Triassic Basin shale formation where natural gas extraction in North Carolina is most likely to occur. HRA's members use, enjoy, and benefit aesthetically, economically, and recreationally from Jordan Lake. The proposed rules are not adequate to protect HRA's members from the risks associated with gas extraction. *See* Affidavit of Martha Girolami of attached as Exhibit 2.

3. Plaintiff Haw River Assembly has standing to bring this lawsuit on behalf of its members in that its members would otherwise have standing to sue in their own rights; the interests it seeks to protect are germane to its purpose; and neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit.

4. Plaintiff Keely Wood Puricz lives, works and pays taxes in Lee County, North Carolina, in the vicinity of the area where extraction of natural gas by horizontal drilling and hydraulic fracturing ("fracking") is likely to occur.

5. Plaintiff Keely Wood Puricz owns 12 acres of land in Lee County, North Carolina. She raises horses on this land. The owner of a neighboring 100-acre tract of land has leased that property for natural gas drilling and extraction. Thus Plaintiff Puricz is at a high risk of being force pooled into a drilling unit once natural gas extraction begins in North Carolina. *See* Affidavit of Keely Wood Puricz, attached as Exhibit 3. (Forced pooling is a mechanism used to compel landowners who have not elected to participate in a pool or drilling unit voluntarily, through private contract, to join the pool.)

6. Plaintiffs have standing to bring this lawsuit as parties "whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise." N.C. Gen. Stat. § 1-254.

7. Plaintiffs are aggrieved and irreparably harmed by the legislative appointees' presence on the MEC, their issuance of draft rules that heavily favor industry, and their continued pursuit of gas companies to frack in North Carolina as quickly as possible. These actual and potential injuries will not be redressed except by an order from this Court, declaring that Defendants issued the draft rules in violation of the Constitution of North Carolina and vacating the draft rules.

8. Defendant MEC is a State commission whose members are appointed by the Speaker of the House, the President *Pro Tempore* of the Senate, and the Governor, and which is authorized by statute to adopt rules necessary to administer the Oil and Gas Conservation Act.

9. Defendant NCDENR is an administrative agency of the State of North Carolina, authorized by statute, *inter alia*, to enforce rules adopted by the MEC.

10. Defendant State of North Carolina, through its General Assembly, enacts local and general legislation, including N.C. Gen Stat. § 143B-293.2.

11. Defendant Vikram Rao is a member and Chairman of the MEC, appointed by Senator Philip Berger, President *Pro Tempore* of the North Carolina Senate (hereafter "President Berger"). Upon information and belief, Defendant Rao is a citizen and resident of Orange County, North Carolina, and is named as a defendant herein in his official capacity as a member and Chairman of the MEC, not in his individual capacity.

12. Defendant Ray Covington is a member of the MEC, appointed by Representative Thom Tillis, Speaker of the North Carolina House (hereafter "Speaker Tillis"). Upon information and belief, Defendant Covington is a citizen and resident of Guilford County, North Carolina, and is named as a defendant herein in his official capacity as a member of the MEC, not in his individual capacity.

13. Defendant Ivan Gilmore is a member of the MEC, appointed by President Berger. Upon information and belief, Defendant Gilmore is a citizen and resident of Beaufort County, North Carolina, and is named as a defendant herein in his official capacity as a member of the MEC, not in his individual capacity.

14. Defendant Martin Matthews is a member of the MEC, appointed by Speaker Tillis. Upon information and belief, Defendant Matthews is a citizen and resident of Lee County, North Carolina, and is named as a defendant herein in his official capacity as a member of the MEC, not in his individual capacity.

15. Defendant George Howard is a member of the MEC, appointed by President Berger. Upon information and belief, Defendant Howard is a citizen and resident of Wake County, North Carolina, and is named as a defendant herein in his official capacity as a member of the MEC, not in his individual capacity.

16. Defendant Charles Taylor is a member of the MEC, appointed by Speaker Tillis. Upon information and belief, Defendant Taylor is a citizen and resident of Lee County, North Carolina, and is named as a defendant herein in his official capacity as a member of the MEC, not in his individual capacity.

17. Defendant James Womack is a member of the MEC, appointed by President Berger. Upon information and belief, Defendant Womack is a citizen and resident of Lee County, North Carolina, and is named as a defendant herein in his official capacity as a member of the MEC, not in his individual capacity.

#### **JURISDICTION AND VENUE**

18. The Superior Court has jurisdiction over this action pursuant to the North Carolina Declaratory Judgment Act, N.C. Gen. Stat. § 1-253 *et. seq.*

19. This Court has the power to “declare rights, status, and other legal relations, whether or not further relief is or could be claimed,” and such declaration shall have the force and effect of a final judgment or decree.

20. An action under the Declaratory Judgment Act is appropriate, as it will “serve a useful purpose in clarifying and settling the legal relations at issue,” and will “terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.”

21. The Declaratory Judgment Act is to be liberally construed and administered. An actual, justiciable controversy exists between the Plaintiff and Defendants at present.

22. Venue for this action is proper in Wake County pursuant to N.C. Gen. Stat. § 1-77(2), in that Defendants are named herein in their official capacity and the causes of action asserted herein arose from official acts of the North Carolina General Assembly (“NCGA”) and the MEC occurring in Wake County, North Carolina.

### **FACTS AND ALLEGATIONS**

23. The MEC is an administrative agency duly formed and existing under the laws of North Carolina pursuant to N.C. Gen. Stat. § 143B-293.1(a), whose powers and duties are enumerated in N.C. Gen. Stat. § 143B-293.1(b) and (c).

24. Members of the MEC are public officers.

25. The Constitution of the State of North Carolina, in Art. I § 6, provides that the legislative, executive, and supreme judicial powers of the State Government shall be forever separate and distinct from each other.

26. N.C. Gen. Stat. § 143B-293.2 sets forth the membership and appointment of MEC members, granting to the NCGA the authority to make eight appointments, and to the Governor the authority to make five appointments. The legislative members of the MEC are in a clear majority position on the MEC.

27. The composition of the MEC represents a usurpation of executive power by the legislature.

28. There have been two Chairmen of the MEC, James Womack and Vikram Rao, both of whom have been legislative appointees.

29. The NCGA has continually pushed the legislatively appointed members of the MEC to promote fracking to the citizens of North Carolina by requiring these members: (1) to attend numerous legislative committee meetings to answer leading questions from legislators; (2) to accompany legislators to “town hall” meetings in their districts to give presentations on the alleged benefits of fracking to the legislators’ constituents and to answer all questions directed by constituents to their legislators; and (3) to meet unreasonable deadlines put in place by the legislature in order to get the rules passed as quickly as possible.

30. The legislative appointees’ induction into office and service as members of the MEC violate Article I, Section 6 of the Constitution of North Carolina, and therefore all of their acts as purported members of the MEC are null and void *ab initio*.

31. These null and void actions include electing officers, providing reports to the NCGA, issuing draft rules, holding public hearings, responding to rulemaking petitions, and reviewing public comments.

#### **CLAIMS FOR RELIEF**

32. Plaintiffs reallege and incorporate herein by reference the foregoing paragraphs of this Complaint.

33. There exists a present controversy between Plaintiffs on the one hand, and Defendants, on the other hand, as to the constitutionality of N.C. Gen. Stat. § 143B-293.2 with

respect to the mandate that the majority of appointments to the MEC come from the legislative branch rather than the executive branch.

34. Plaintiffs seek a declaratory judgment from this Court that N.C. Gen. Stat. § 143B-293.2, which grants the Governor of North Carolina three fewer appointments to the MEC than are granted to the NCGA, is facially unconstitutional and void as violating the fundamental principles of separation of powers set forth in the North Carolina State Constitution, and therefore all of Defendants' acts as purported members of the MEC are null and void *ab initio*.

**PRAYER FOR RELIEF**

WHEREFORE, based upon all the allegations contained in the foregoing paragraphs, Plaintiffs respectfully request that this Court:

1. Adjudge and declare that N.C. Gen. Stat. § 143B-293.2 does not comply with the requirements of Article I, Section 6 of the North Carolina State Constitution;
2. Adjudge and declare the purportedly official acts of Defendants while unlawfully and unconstitutionally holding the office of member of the North Carolina Mining and Energy Commission to be null and void *ab initio*;
3. Award costs to Plaintiffs pursuant to N.C. Gen. Stat. § 1-263;
4. Award reasonable attorneys' fees to Plaintiffs as permitted by law; and
5. Grant any other and further relief that the Court deems to be just and proper.



Respectfully submitted, this the 5<sup>th</sup> day of January, 2015.



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Derb Carter

N.C. Bar No. 10644

Mary Maclean Asbill

N.C. Bar No. 38936

Brooks Rainey Pearson

N.C. Bar No. 41513

Southern Environmental Law Center

601 West Rosemary Street, Suite 220

Chapel Hill, NC 27516-2356

Telephone: (919) 967-1450

Facsimile: (919) 929-9421

*Attorneys for Plaintiffs Haw River Assembly and  
Keely Wood Puricz*