

Supreme Court of Kentucky

FROM THE 48TH JUDICIAL CIRCUIT
FRANKLIN CIRCUIT COURT, DIVISION 1
CASE NO. 18-CI-00379

COMMONWEALTH OF KENTUCKY
Ex re. ANDY BESHEAR, ATTORNEY
GENERAL, et al.

PLAINTIFFS

V.

MATTHEW G. BEVIN, in his official capacity as
Governor of the Commonwealth of Kentucky, et al.

DEFENDANTS

ORDER DENYING REQUEST FOR DISQUALIFICATION

This matter is before the Chief Justice upon the certification of the Clerk of the Franklin Circuit Court of the affidavit of Defendants, Matthew G. Bevin, et al., which seeks to disqualify the Honorable Phillip Shepherd, 48th Judicial Circuit, Division 1, from presiding in the above-styled action.

Upon review, it is ORDERED that Defendants have failed to demonstrate any disqualifying circumstance that would require the appointment of a special judge under Kentucky Revised Statutes (KRS) 26A.020.

As a point of clarification, the letter to the Chief Justice from the Governor's general counsel, M. Stephen Pitt, states "it has long been the rule in Kentucky and elsewhere that a judge with a public pension cannot sit in judgment of legislation that could affect that pension," citing *Talbott v.*

Thomas,¹ a 1941 decision of the then-Kentucky Court of Appeals, and *Hall v. Elected Officials' Retirement Plan*,² as the sources of this “rule.”

The *Talbott* case addressed the constitutionality of legislation specifically relating to the “retirement of Judges of the Courts of Appeals.”³ The case was brought by six of the seven members of the Court of Appeals, who were the parties before the high court. Similarly, *Hall* involved a class action challenge to statutory changes to Arizona’s Elected Officials’ Retirement Plan. In the order certifying the class action, the Superior Court of Arizona, Maricopa County, specifically defined the membership of the class to include “any member of the Elected Officials’ Retirement Plan who was actively employed ... as a justice of the Arizona Supreme Court on July 20, 2011.”⁴

As the Governor’s counsel correctly notes, all members of the Court did recuse in *Talbott*. And four of the five justices of the Arizona Supreme Court recused in *Hall*. But the situations in *Talbott* and *Hall* are different than the case at hand. In *Talbott*, the parties to the underlying litigation were also the judges in the Court hearing the appeal, and they unquestionably had a direct financial interest in the outcome of the case, which addressed the constitutionality of legislation relating specifically to judges of the Court of Appeals. Similarly, the justices who recused in *Hall* were members of the class who brought the underlying lawsuit, and they had a financial interest in the

¹ 151 S.W.2d 1 (Ky. 1941)

² 383 P.3d 1107 (Ariz. 2016).

³ *Talbott*, 151 S.W.2d at 2.

⁴ *Hall v. Elected Officials' Retirement Plan*, No. CV2011-021234, 2015 WL 13297983 (Ariz. Super. Ct. Jan. 27, 2015).

outcome of the case, which challenged a change to the formula for calculating future benefit increases for retired members of the Elected Officials' Retirement Plan.

Neither of these potentially disqualifying circumstances applies to the present case. Accordingly, the Chief Justice rejects the argument that *Talbott* and *Hall* stand for the broad proposition that “a judge with a public pension cannot sit in judgment of legislation that could affect that pension.”

The Defendants' request is denied without prejudice of any party to seek appellate review after entry of a final judgment.

The Clerk of the Franklin Circuit Court shall place a copy of this order in the record of this case and shall serve copies on parties or their counsel.

Entered this 6th day of June 2018.


CHIEF JUSTICE

Copies to: Jean C. Logue, Chief Regional Circuit Judge, Bluegrass Region
Phillip Shepherd, 48th Judicial Circuit, Division 1
Amy Feldman, Clerk, Franklin Circuit Court