

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

MICHAEL LANDERS

PLAINTIFF

V. NO. 60CV-15-\_\_\_\_\_.

GAIL H. STONE, Executive Director  
ARKANSAS JUDICIAL RETIREMENT  
SYSTEM

DEFENDANT

**COMPLAINT**

Plaintiff Michael Landers, by and through his attorneys, for his  
COMPLAINT against Gail H. Stone, in her official capacity as Executive Director  
of the Arkansas Judicial Retirement System, states:

**I.**

**PARTIES AND JURISDICTION**

1. Michael Landers is a Circuit Judge in the Thirteenth Judicial District  
and a resident of Union County, Arkansas.

2. Gail H. Stone is the Executive Director of the Arkansas Judicial  
Retirement System.

3. This Petition and Complaint is brought pursuant to Rule 57 of the Arkansas Rules of Civil Procedure, and Arkansas Code Annotated, Sections 16-90-1114(a), 16-111-101, et seq., and 25-19-101, et seq., to determine the rights and status of the parties with respect to the Plaintiff's right to continue to serve as a Judge and to retain his full right to all retirement benefits provided by law.

4. This Court has jurisdiction over this matter.

5. The proper venue for this action is Pulaski County, Arkansas.

## **II.**

### **FACTS**

6. Plaintiff is qualified to serve as a Circuit Judge under Amendment 80 of the Constitution of the State of Arkansas. Plaintiff is currently serving as a Circuit Judge and would like to continue to so serve.

7. The General Assembly has created a judicial retirement system. Ark. Code Ann. § 24-8-201 et seq; § 24-8-701 et seq.. That system provides a retirement income for qualified persons who have served as judges for the required length of time.

8. That system further provides for a forfeiture of those benefits should any judge who continues to serve after the term of office in which he or she reaches the age of 70 or until he or she completes the term of office in which he or she receives sufficient credited service to retire. Ark. Code Ann § 24-8-215; Ark.

Code Ann. § 24-8-710. Pursuant to the statute, a judge who continues to serve after the term in which he or she reaches his or her 70th birthday or in which his or her right to retirement benefits vests, would forfeit “all retirement benefits.” “All retirement benefits” would include withholdings from the judge’s pay and any payments that the judge makes into the system from the judge’s own personal funds. *Id.*

9. A judge’s right to a retirement benefit vests upon attainment of eight (8) years of service. Ark. Code Ann. § 24-8-711.

10. Plaintiff has served as a judge for ten and one half years.

11. Plaintiff is currently 69 years of age. Plaintiff’s current term of office expires December 31, 2016. Plaintiff is physically and mentally able to serve as Circuit Judge. There is no known or anticipated opposition to Plaintiff should he seek another term. Plaintiff desires to seek reelection in 2016.

12. Plaintiff would like to seek re-election, however were he do to do so, he would risk forfeiture of his retirement benefits under the provision.

13. The forfeiture provision of the act effectively deprives the Plaintiff of the right to run for election for another term as Circuit Judge, even though he is qualified under the Constitution of the State of Arkansas to run for such election and serve if elected.

### **III.**

#### **AMENDMENT 80 OF THE CONSTITUTION OF THE STATE OF ARKANSAS AND ARK. CODE ANN § 24-8-201 ET SEQ and ARK. CODE ANN. §24-8-701 ET SEQ.**

14. The Constitution of the State of Arkansas provides the requirements for a Circuit Judge. Ark. Const. Amend. 80 Section 16(B). The Plaintiff meets those requirements.

15. As a Citizen of the State of Arkansas who meets the Constitutional requirements to serve as a Circuit Judge, Plaintiff has a Constitutional right to run for the position of Circuit Judge, and if so elected, to serve.

16. A provision that Plaintiff must forfeit his vested and accrued rights to a pension in order to exercise his constitutional right to run for the position of Circuit Judge and to so serve as elected effectively modifies the Constitutional qualifications for Circuit Judges.

17. The legislature may not do indirectly what it may not do directly.

18. The legislature may not impose different or additional requirements or qualifications to serve as Circuit Judge.

19. The statute of forfeiture, Ark. Code Ann. § 24-8-710, was enacted in 1965 with no basis in fact. Since that time, the life expectancy of American males has increased 8.8 years and the life expectancy of American females 7.7 years (as of 2011). The legislature's continued imposition of a forfeiture to penalize judges who seek reelection after the age of 70 is therefore arbitrary, capricious, and an abuse of discretion.

#### **IV.**

#### **EQUAL PROTECTION**

20. The statutory scheme set forth above deprives the Plaintiff of equal protection of the laws. There is no rational basis for a scheme that permits a judge to continue to serve well after age 70 if he or she is willing to forfeit pension rights, but otherwise imposes a severe penalty on any judge who chooses to continue to serve. Furthermore, depending on the interpretation of the statute, a judge could be elected for the first time at age 70 or later and serve well beyond his or her seventieth birthday without forfeiting his or her retirement benefits. There is no rational basis for the forfeiture provision whatsoever, regardless of which standard is to be applied in evaluating it.

21. The age limit on judicial retirement constitutes an indirect qualification for office as all retiring judges and justices, save one, have complied with its mandate over the past 50 years.

**V.**

**DUE PROCESS OF LAW—TAKING WITHOUT JUST  
COMPENSATION**

22. Judges who continue to serve are deprived of their property without due process of law by having their personal contributions to the system taken from them.

23. The confiscation of the judges' personal contribution would constitute a taking of private property without just compensation in violation of the Fifth Amendment of the Constitution of the United States of America and Section II Article 22 of the Constitution of the State of Arkansas.

**VI.**

**REMEDIES SOUGHT**

24. The Defendant should be enjoined from enforcing the forfeiture provisions of Ark. Code Ann. § 24-8-215(c) AND § 14-8-701 (b) (2) (B) as such provisions are in violation of the Constitution of the United States of America and the State of Arkansas.

25. Plaintiff seeks a declaratory judgment pursuant to Rule 57 of the Arkansas Rules of Civil Procedure and Ark. Code Ann. § 16-111-101 through 16-111-111 that the forfeiture provisions of Ark. Code Ann. § 24-8-215 and § 24-8-

710 violate the Constitution of the State of Arkansas and are therefore void and of no effect.

26. Plaintiff seeks an injunction as the Plaintiff does not have an adequate remedy at law.

## **VII.**

### **CONCLUSION**

27. This Court should declare the forfeiture provisions of Ark. Code Ann. § 24-8-215(c) and § 24-8-710 (b) (2) (B) void as being in violation of the Constitution of the State of Arkansas and enjoin Defendant from enforcing such provisions.

WHEREFORE, Plaintiff prays for an Order from this Court granting his Complaint against the Defendant, for an Order declaring the forfeiture provisions of Ark. Code Ann. § 24-8-215 and 24-8-710 void as being in violation of the Constitution of the State of Arkansas and enjoin Defendant from enforcing such provisions and for all other just and proper relief.

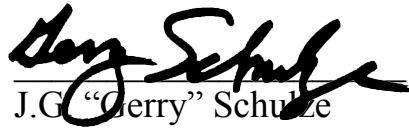
**RESPECTFULLY SUBMITTED**

Brian G. Brooks  
Ark. Bar No 94209  
Brian G. Brooks, Attorney at Law, PLLC  
P.O. Box 605  
Greenbrier, AR 72058  
(501) 733-3457

and

J.G. "Gerry" Schulze  
Ark. Bar No. 83156  
Baker, Schulze, Murphy & Patterson  
2311 Biscayne Drive  
Suite 300  
Little Rock, AR 72227  
Telephone: (501) 537-1000  
Facsimile (501) 537-1001  
[gschulze@bsmplawfirm.com](mailto:gschulze@bsmplawfirm.com)  
[www.arkadvocates.com](http://www.arkadvocates.com)

by:

  
J.G. "Gerry" Schulze