

STATE OF NORTH CAROLINA

COUNTY OF ANSON

FILED

DEC -6 P 1:49

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FILE NO.: 22CV5505

*Gerald Cannon, in his individual
capacity and his official capacity
As Sheriff of Anson County,*

Plaintiff

vs.

Anson County,

Defendant.

**COMPLAINT FOR DECLARATORY
JUDGMENT AND MOTION FOR
PRELIMINARY INJUNCTION AND
PERMANENT INJUNCTION**

Now comes the Plaintiff, Gerald Cannon, by and through counsel, and alleges and say:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Gerald Cannon, (hereinafter "Plaintiff"), is a citizen and resident of Anson County, North Carolina.
2. Plaintiff, Gerald Cannon, in his official capacity as Sheriff of Anson County, was nominated by the Anson County Board of Commissioners and took the Oath of Office on December 5, 2022.
3. Defendant, Anson County, (hereinafter "Defendant"), is a body politic existing under the laws of the State of North Carolina.
4. Upon information and belief, the acts and omissions complained herein primarily occurred in Anson, North Carolina.
5. Jurisdiction and venue are proper in the Superior Court for Anson County.

FIRST CLAIM FOR RELIEF

DECLARATORY JUDGMENT

6. The allegations contained in paragraphs 1-5 of this Complaint are realleged and incorporated as if fully set out herein.

7. On or about September 21, 2022, Anson County Sheriff Landric Reid passed away.
8. Pursuant to the Constitution and § N.C.G.S. 162-5, the Chief Deputy shall perform the duties of the Sheriff until a person is appointed by the board of county commissioners.
9. Upon information and belief, after the death of Sheriff Reid, Chief Deputy Scott Howell assumed the role as interim Sheriff of Anson County.
10. Upon information and belief, on October 4th, 2022, Chief Deputy Howell was appointed to fill the unfinished term of Sheriff Landric by the Anson County Board of Commissioners.
11. Upon information and belief, on or about October 8, 2022, the Democratic Party of Anson County met and selected the Plaintiff to fill the vacancy of the Anson County Sheriff.
12. Upon information and belief, after the October 8th meeting, Scott Howell challenged the results and filed a grievance with the North Carolina State Board of Elections.
13. Upon information and belief, the Council on Review deemed the October 8th, 2022, meeting to be invalid and determined the Democratic Party of Anson County shall conduct a second meeting.
14. Upon information and belief, the Council of Review recommended that the North Carolina State Board of Elections and the Anson County Board of Commissioners allow this democratic process to proceed, and that the nominee selected in December would be certified.
15. On or about December 3, 2022, Plaintiff was nominated by the Anson County Democratic Party to fill the vacancy of the Anson County Sheriff.
16. On December 5, 2022, the Chairman of the Anson County Board of Commissioners called an emergency meeting for the purpose of appointing a Sheriff to fill the vacancy of the Anson County Sheriff. Members of the body public were properly noticed pursuant to N.C.G.S. § 143-318.12 and N.C.G.S. § 153A-40.
17. The Chairman of the Anson County Board of Commissioners lawfully called a meeting to address the emergency situation of filling the vacancy of the Anson County Sheriff position.
18. On December 5, 2022, Plaintiff was appointed by the Anson County Board of Commissioners by way of a roll call vote, specifically four (4), out of a total seven (7), members voting to appoint Plaintiff to fill the vacancy of the Anson County Sheriff.
19. All four (4) members were elected or appointed and duly qualified to vote on December 5, 2022, pursuant to their active term and/or pursuant to § N.C.G.S. 128-7.

20. On December 5, 2022, after being appointed by the Anson County Board of Commissioners, Plaintiff took the Oath of Office as the Anson County Sheriff. A notary administered Plaintiff's Oath of Office as the Anson County Sheriff.
21. Upon information and belief, on the evening of December 5, 2022, Plaintiff received a phone call from the Anson County Attorney informing Plaintiff that did not have the authority to direct Plaintiff that the December 5th meeting was illegal and that the subsequent swearing in was illegal.
22. Upon information and belief, on the morning of December 6, 2022, and continuing herein, Defendant has refused to allow Plaintiff to assume his Office as Anson County Sheriff and has refused to allow Plaintiff to carry out his duties and responsibilities as Anson County Sheriff.
23. Upon information and belief, Scott Howell refuses to leave the Office of the Anson County Sheriff.
24. Pursuant to N.C.G.S. § 128-6, persons admitted to office are deemed to hold that office lawfully. Specifically, N.C.G.S. § 128-6 provides, "Any person who shall, by the proper authority, be admitted and sworn into any office, shall be held, deemed, and taken. By force of such admission, to be rightfully in such office until, by judicial sentence, upon a proper proceeding, he shall be ousted therefrom, or his admission thereto, be in due course of law, declared void.
25. As required by N.C.G.S. § 162-8 and 9, Plaintiff obtained a bond prior to assuming the Office of Sheriff.

MOTION FOR PRELIMINARY AND PERMANENT INJUNCTION

26. The allegations contained in paragraphs 1-25 of this Complaint are realleged and incorporated as if fully set out herein.
27. The Plaintiff is likely to prevail on the merits in this action.
28. Upon information and belief, on the evening of December 5, 2022, Plaintiff received a phone call from the Anson County Attorney informing Plaintiff that he was not the Sheriff of Anson County and directing Plaintiff that he is not show up to the Office of the Sheriff or assume the Office of the Sheriff on December 6, 2022.
29. On the morning of December 6, 2022, and continuing herein, Defendant has refused to allow Plaintiff to assume his Office as Anson County Sheriff and has refused to allow Plaintiff to carry out his duties and responsibilities as Anson County Sheriff.

30. The Defendant has intentionally disregarded the actions of the Anson County Board of Commissioners by refusing to accept the Commissioners appointment of the Plaintiff to the Office of the Sheriff. The relief sought by Plaintiff consists of restraining the continuance of the Defendants actions of refusing to allow Plaintiff to assume Office of the Anson County Sheriff.
31. On December 6, 2022, counsel for Plaintiff conferred with counsel for Anson County. After conversation with Plaintiff's counsel, counsel for Anson County concluded that he did not have the authority to direct Plaintiff that the December 5th meeting was illegal and that the subsequent swearing in was illegal.
32. The Plaintiff has suffered and will continue to suffer irreparable harm if Defendant is not enjoined from violating Plaintiff's rights to assume the Office of Anson County Sheriff in that being refused the Office of the Sheriff after being lawfully appointed is irreparable harm to the Plaintiff and to the citizens of Anson County.
33. Issuance of a preliminary injunction is necessary for the protection of the Plaintiff's right to assume Office of the Sheriff and allow Plaintiff to carry out his responsibilities as Anson County Sheriff.
34. The Court has the authority and discretion, pursuant to North Carolina General Statute § 1-485 and Rule 65 of the Rules of Civil Procedure to enter a preliminary injunction in this proceeding.
35. The Plaintiffs asks the Court to preliminary enjoin the Defendant from refusing to allow the Plaintiff to assume the Office of Anson County Sheriff and carry out his duties and responsibilities as Sheriff of Anson County.
36. The Plaintiffs asks the Court to permanently enjoin the Defendant from refusing to allow the Plaintiff to assume the Office of the Anson County Sheriff and carry out his duties and responsibilities as Sheriff of Anson County.

WHEREFORE, the County respectfully prays the Court as follows:

1. The Court grant the Plaintiff a preliminary injunction prohibiting the Defendant from refusing the Plaintiff to assume the Office of the Sheriff of Anson County.
2. The Court grant the Plaintiff a permanent injunction prohibiting the Defendant from refusing the Plaintiff to assume the Office of the Sheriff of Anson County.
3. The Court grant all costs of this action be taxed against the Defendant. Including attorney's fees; and
4. The Court grant the County such other and further relief as the Court deems just and proper.

This the 6th day of December, 2022.



Ellen A. Bragg
Attorney for Plaintiff
Bar #49101



Thomas C. Leitner
Attorney for Plaintiff
Bar #43002

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STATE OF NORTH CAROLINA


IN THE GENERAL COURT OF JUSTICE

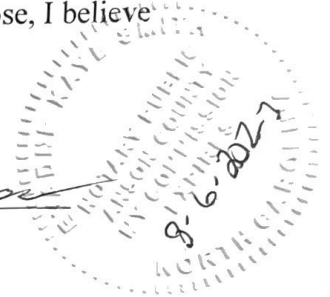
COUNTY OF ANSON

SUPERIOR COURT DIVISION

VERIFICATION

I, Gerald Cannon, first being duly sworn, depose and say that I am the Plaintiff or Defendant named in the foregoing action; that I have read the foregoing and know the contents thereof and that the same is true of my own knowledge, except as to those matters and things therein alleged upon information and belief, and as to those, I believe the same to be true.


Gerald Cannon

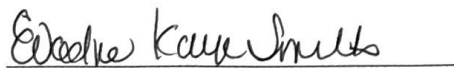


I certify that Gerald Cannon, personally appeared before me this day and

- ☐ I have personal knowledge of the identity of the principal(s)
- ☒ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a driver's license
- ☐ A credible witness has sworn to the identity of the principal(s);

and acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Sworn to and subscribed before me,
this the 6th day of December, 20 22.



Notary Public

My Commission Expires: 8-6-2027

