Update on Civil Cases Affecting State or Local Government in North Carolina

PUBLIC LAW FOR THE PUBLIC'S LAWYER

UNC SCHOOL OF GOVERNMENT

OCTOBER 27, 2022

EMPLOYMENT LAW CASES

Russell v. NCDPS - COA - April 2022

- Plaintiff was a correctional officer at Central Prison who suffered a work injury, came back and suffered re-injury. Was unable to work as a result.
- Plaintiff was separated from State employment due to unavailability of work because of his work restrictions. 25 NCAC 1C.1007
- Plaintiff grieved his separation by mail March 20, 2020. Many DPS employees were working remotely and mail not being checked everyday.
- Plaintiff emailed a photo of grievance on April 7 – intake coordinator said it was unable to print form – he emailed another copy.
- Agency informed him on April 16 that his grievance was untimely and employee appealed.
- ALJ reversed termination and denied MTD based on "the effects COVID-19 has had on the operation of our State government offices."
- Unavailability means: the employee is unable to return to all of the position's essential duties as set forth in the employee's job description or designated work schedule due to a medical condition or the vagueness of a medical prognosis, and the employee and the agency are unable to reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's medical condition [Holding: Motive not important (falsification enough] 25 N.C. Admin. Code 1C.1007 (2021).
- COA applied "whole record" held there was a rational basis in evidence to support ALJ's finding that grievance was timely. ALJ can substitute their judgment for agency.
- Dissent finds no subject matter jurisdiction because there was no evidence mailed letter was even received and Chief Justice's COVID extensions (and OAH's same extensions) only applied to documents filed with courts, not to internal executive branch agency filings. "A claimant, even with a valid ticket, who arrives at the station late sees the train has already left."

Lake v. State Health Plan - SC - March 2022

- Class action of 220,000 retirees challenged 2021 changes to State Health Plan eliminating option to remain enrolled in a premium-free 80/20 preferred provider organization health insurance plan. (State started offering health coverage in 1972). State said it never promised lifetime enrollment, and even if so, the plan offered was same or greater value.
- SC sided with retirees. Retirees possessed a vested right protected under the Contracts Clause Art. 1, Sec. 10 but genuine issues remain on whether that right was substantially impaired.
- Retirees must demonstrate that GA "substantially impaired" these rights.
- If retirees can show substantial impairment, then state must be given chance to show that change was reasonable and necessary to serve important public purpose. (particularly fact intensive)
- Relative value of different health insurance plans and potential differences in the value of the bargain struck by class members whose rights vested at different times was fact issue. (and whether it was reasonable and necessary)
- A public employee has a right to expect that the retirement rights bargained for in exchange for his loyalty and continued services, and continually promised him over many years, will not be removed or diminished. Summary Judgment for retirees reversed.
- Dissent finds issue of fact on impairment of contract.

Hinton v. NCDPS – COA - July 2022

- Correctional officer dismissed for unacceptable personal conduct after using excessive force on an inmate. Video evidence showed assault on an inmate in lunch line.
- COA reviews questions of law de novo and fact intensive issues via "whole record test"
- ALJ affirmed termination and COA reversed saying ALJ did not sufficiently articulate why and how employee's conduct constituted excessive force. Remanded

JUST CAUSE ANALYSIS: First, determine whether the employee engaged in the conduct the employer alleges. The second inquiry is whether the employee's conduct falls within one of the categories of unacceptable personal conduct provided by the Administrative Code. Unacceptable personal conduct does not necessarily establish just cause for all types of discipline. If the employee's act qualifies as a type of unacceptable conduct, the tribunal proceeds to the third inquiry: whether that misconduct amounted to just cause for the disciplinary action taken.

Constitutional Case Law

Cryan vs. YMCA, et al – COA – Nov. 2021

- Facial vs as applied constitutional issues before three judge panels.
- Civil claims arising out of alleged sex abuse occurring over 20 years ago.
- Defendant as a defense challenged the constitutionality of the 2019 Safe Child Act (which was an amendment to NCGS 17(e) expanding the time to allow a plaintiff to file a lawsuit "as applied" – *Plaintiff* then moved to transfer to 3 judge panel. Judge punted on 12(b)(6) and transferred to panel.
- COA granted certiorari and held that trial court is free to transfer an action to a three-judge panel on its own motion based on a facial challenge to an act of the General Assembly [but] a trial court is not free to impute a facial challenge argument on a party. Nor is a trial court free to transfer a matter to a three-judge panel so that the three-judge panel may decide whether a facial challenge was raised. The plain language of the statutory scheme clearly provides that a party must affirmatively raise a facial challenge.
- See *Kelly v. State of NC*, Oct. 2022 for discussion of blurry line between as applied and facial challenges (The line between facial and as-applied relief is a fluid one, and many constitutional challenges may occupy an intermediate position on the spectrum between purely as-applied relief and complete facial invalidation.)

Fearrington vs. City of Greenville
COA - March 2022

- Plaintiff challenged the constitutionality of Greenville's Red Light Camera Enforcement program after the General Assembly enacted a local act authorizing Greenville to have red light cameras with $ 100.00 fines. Plaintiff entered intersection in 0.4 seconds of light turning red.
- Cameras generated $ 2,495,380.00 in revenue from 2017 to 2019 and per interlocal agreement School Board got 71%. Trial Court dismissed all claims. (my math = 24,953.8 red light violations)
- Plaintiff appealed saying that $ 31.85 per ticket fee charged by the manufacturer ATS violated Art. IX, Sec. 7.
- COA reversed and ruled for challengers holding that challengers had standing, there were no adequate state remedies, and money distribution scheme violated Art. IX, Sec. 7 "Fines and Forfeitures Clause" because schools did not receive "clear proceeds" (aka "net proceeds").
- The clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State shall be faithfully appropriated and used exclusively for maintaining free public schools. And, NCGS 115C-437 says no more than 10% for costs and collection. Due process claims failed (familiar traffic light is reminder that this liberty is not absolute).

Vaitovas v. City of Greenville COA –March 2022

- Challenge to Red light cameras under Article II, Section 24(1)(a) of the North Carolina Constitution, which prevents the General Assembly from passing any local acts related to health, sanitation, and the abatement of nuisances. (similar issue below)
- When there is merely the "existence of a tangential or incidental connection between the challenged legislation and health and sanitation," the law is not one relating to health or sanitation.
- Plaintiff introduced statements by police, city officials and statements on the floor of the State House. COA said: "what individual legislators think about the purpose of a statute is rarely (if ever) helpful in interpreting the intent of the General Assembly as a whole. And what local officials think about a statute is even less so.
- COA held that the local act allowing Greenville to operate these cameras had only an incidental effect on health and 3 judge panel correctly dismissed.

Rural Empowerment Assc. vs. NCCOA – Dec 2021

- General Assembly recently amended the 1979 Right to Farm Act twice in response to numerous claims against hog farms under nuisance theories "to reduce loss of agricultural resources."
- Amendments limited nuisance actions to ½ mile radius and had to be filed within 1 year of establishment or "fundamental change" (NCGS 106-701)(several exclusions were listed to fundamental change like ownership, technology, etc.)
- This is a facial challenge with 3 Judge panel to these amendments alleging amendments violate Article 1, Section 19 Law of the Land clause (NC's 14th Amendment) and alleges these new laws exceed the state's police power.
- COA applied established analysis for police power "(1) Is the statute in its application reasonably necessary to promote the accomplishment of a public good and (2) is the interference with the owner's right to use his property as he deems appropriate reasonable in degree?"
- COA found both in favor of the State. These acts protect availability of food, fiber and other products.
- COA held amendments did not violate Fundamental Right to Property, were not Local, Private or Special Acts (Art. II, § 24) and did not deprive plaintiffs' of right to Trial By Jury (Art. I, § 25).

Lannan et al v. UNC Bd. Of Gov. – COA – Oct. 2022

- NCSU and UNC students sued (calling it a class action) under implied contract theory and *Corum* for return of certain student fees, such as academic registration, education technology, library services, etc.
- In August 2020 both colleges went online. Parking permits were "worthless" and student did not receive the services covered by the various fees.
- Court dismissed *Corum* claim but not contract claim.
- Immediately appealable - certiorari was allowed to review denial of state's MTD on contract.
- COA Holding: sovereign immunity only applies as a defense against contracts implied in law (quantum meruit), not contracts implied in fact.
- In the educational context the educational institutions agreed to accept and enroll the students, and the students have agreed to pay certain fees for particular services to be provided as part of their education.
- Plaintiffs adequately pled implied contract claims based on fees paid.
- Plaintiff properly alleged breach – parking fees were not refunded after students were "evicted".
- Corum claim fails since plaintiffs' adequate remedy is the implied contract claim.

Kinsley vs. Ace Speedway - COA - August 2022

- Speedway was Ordered closed after Governor's Executive Order on mass gatherings during Covid restrictions (no more than 50 outdoors). Ace continued to race with thousands of spectators and State DHHS sued and got injunction against Ace prohibiting them from operating.
- Ace counterclaimed under Fruits of Labor and Equal Protection.
- Governor got involved by sending letter to local sheriff.
- State later dismissed case after Executive Order was amended. Ace did not. State sought dismissal of counterclaims under sovereign immunity. Judicial notice of factual data surrounding the COVID-19 pandemic appropriate in this as applies challenge.
- Doctrine of sovereign immunity cannot stand as a barrier to North Carolina citizens who seek to remedy violations of their rights guaranteed by the Declaration of Rights of our Constitution.
- COA held defendants stated a claim under Fruits of Their Own Labor provisions of Art. 1, Sec 1.
- Defendants stated a claim for unlawful Selective enforcement of the law is barred by an individual's right to equal protection when enforcement is based upon an arbitrary classification based on Art. 1, Sec. 19. Must show a pattern of conscious discrimination evidencing administration "with an evil eye and an unequal hand." Ace has sufficiently pled that the Secretary singled its racetrack out for enforcement in bad faith for the invidious purpose of silencing its lawful expression of discontent with the Governor's actions.

NAACP v. Moore - Supreme Court – August 2022

Novel legal issue: Can a legislature coming from unconstitutionally racially gerrymandered districts possess unreviewable authority to initiate the process of changing the North Carolina Constitution?

SC said no. The actual issue was justiciable. SC held that the principles of popular sovereignty and democratic self rule requires that the legislature "validly hold legislative office." But trial court needed to determine if the unconstitutional legislators were decisive and if so, then consider the following:

If answer is no- stop. If yes, was a substantial risk that each challenged constitutional amendment would (1) immunize legislators elected due to unconstitutional racial gerrymandering from democratic accountability going forward; (2) perpetuate the continued exclusion of a category of voters from the democratic process; or (3) constitute intentional discrimination against the same category of voters discriminated against in the reapportionment process that resulted in the unconstitutionally gerrymandered districts.

NOTE: "In a caustic and unprecedented manner, the dissent suggests that our resolution of this case can only have resulted from pure partisan bias and intellectual dishonesty. This accusation is beneath the dignity of this Court."

Kelly v. State of NC – COA - October 18, 2022

- Constitutional challenge to the Opportunity Scholarship Program (school vouchers) to nonpublic schools up to $4200.00 a school year.
- Plaintiffs contended, inter alia, that program discriminates because it is conditioned on faith and orientation (some schools required adherence to certain beliefs).
- Plaintiff asked trial court to declare the Program to be unconstitutional as implemented and enjoin its implementation.
- Defendants moved to transfer to 3 judge panel- excellent discussion of facial vs as applied. Certiorari granted. Majority agreed with defendants. Suit was "attack on the statute itself."
- Pursuant to G.S. 1-267.1, any facial challenge goes to three-judge panel if a claimant raises such a challenge in the claimant's complaint, or if such a challenge is raised by the defendant in the defendant's responsive pleading, or within 30 days of filing the defendant's answer or responsive pleading. Court looks to "breadth of remedy requested" and relief will reach "beyond the circumstances of this particular plaintiff."
- A party's "label" (facial challenge or an as applied challenge) "is not what matters."
- Dissent believes it is too early to decide, that appeal is interlocutory (NCGS 1-267.1 is not mandatory venue law).

IMMUNITY AND SUIT CAPACITY CASES

Baznik vs. FCA US, et al – COA - November 2021

- Public official immunity case involving a fatal automobile accident in Wake County alleging.
- Plaintiff alleged that an intersection was negligently designed and constructed by DOT.
- Plaintiff brought suit against DOT Division Traffic Engineer, Division Sign Supervisor and another engineer in their individual capacities only.
- Defendants moved to dismiss asserting sovereign and public official immunity. Trial court denied motion and appeal was taken.
- COA held that immunity defense was a question of personal jurisdiction and personal jurisdiction is immediately appealable.
- COA reiterated the rule that public employees can be sued for mere negligence in performing their duties while a public official cannot be individually liable.
- COA restated rule that to be a public official you have to 1) have position created by statute or constitution 2) exercise a portion of the sovereign power and 3) exercise discretion (employee performs ministerial duties). NOTE: Oath can be a factor but not required.
- Here, none of the statutes cited "created" these DOT positions – they created DOT.
- Motion to dismiss was properly denied.

Est. of Graham v. Lambert - COA - March 2022

- Pedestrian was hit by Police officer while crossing road while - traveling 18 mph above posted speed limit responding to domestic call with a firearm.
- Dash cam showed officer tap the touch pad of his laptop and deviate slightly from lane of travel.
- Defendant police officer was entitled to public official immunity in individual capacity and governmental in official capacity.
- Denial of governmental immunity and POI immediately appealable.
- COA found officer "may have been negligent but was not grossly negligent."
- Contrasted *Truhan vs. Walston* where officer was driving 100 mph, officer responding to a minor car accident to act as traffic control, passed a school, fire station and many homes, and no lights or sirens.

State of NC v. Kinston Charter School
SC - December 2021

- State sued charter school and CEO (and CEO's wife as Chair of the Board of Directors) for mismanagement under False Claims Act. (questionable hiring, loans of 100K with 30k for "fees", etc.)
- Defendants claimed sovereign immunity, public official immunity and that Academy was not a "person" under False Claims Act.
- COA held that charter schools, as public schools exercise the power of the State and are an extension of the State itself (constitution makes the state solely responsible for ensuring a sound basic education.
- HOLDING: Charter School Act did not make charter school state agencies; charter school not entitled to sovereign immunity; Academy was a "person" for purposes of False Claims Act; and CEO/Principal was not a "public official" entitled to PO Immunity.
- NOTE* Unpublished case NAACP v State of NC is another charter school challenge where COA held that plaintiff could not demonstrate direct injury to support a DJA challenge.

Birchard v. BCBSNC – COA - May 2022

- Suit against BCBSNC and State Health Plan (trustees) for denial of coverage for a particular treatment as not medically necessary.
- Suit was filed in Superior Court alleging breach of contract, unfair and deceptive trade practices and bad faith.
- BCBS is the State Health Plan's external "utilization review organization".
- HOLDING: Plaintiff's right to review the independent review organization's decision lies by statute with the Industrial Commission. See NCGS § 58-50-61 and NCGS § 143-129(a)
- Suit in Superior Court is not proper and has no subject matter jurisdiction.

Est. of Ladd v. Funderburk - COA - October 2022

- During a winter storm in 2018, a 80’ to 90’ red oak tree fell from defendant’s yard and hit plaintiff’s decedent killing him. Plaintiff's sued defendant tree owner, and defendant “cross-sued” (3rd party complaint) the Town of Matthews for contribution.
- Town said the street was maintained by the state and they were entitled to immunity.
- Prior case law held that town/city had no duty when there were potentially dangerous trees on private property and near a street.
- Town ordinance said Town may order the removal of any tree declared to be a public nuisance” or, “[i]n situations involving an imminent threat to the public health, safety or welfare, the Town shall make reasonable attempts to contact the property owner but may proceed expeditiously without prior notice” to eliminate the threat.
- COA held the fact that government had authority to act does not mean it is under an obligation to act. In opting not to act, it was done in governmental capacity, not proprietary. Dismissal proper.

Bartley v. High Point – Supreme Court - June 2022

- In the bad facts make bad law category, we discussed this case last year. In this excessive force case, police officer attempted to pull over a man who crossed double yellow line. Plaintiff says he did not see the officer. Plaintiff reached his driveway and then got out to get his pet cat.
- Officer was in unmarked car, plain cloths and did not identify himself as officer at first. Plaintiff did not obey command to get in car and was slammed into trunk.
- Summary judgment properly denied. 4 to 3 decision that there was issue of fact as to whether defendant acted with malice thereby depriving him of public official immunity defense. An individual will not enjoy the immunity's protections if his action "was (1) outside the scope of official authority, (2) done with malice, or (3) corrupt.
- Dissent says "It is a difficult time to be in law enforcement. The majority today makes it even more challenging by expanding exposure to personal liability for increasingly common encounters with recalcitrant members of our society."

Walker v. Wake Co. Sheriff - COA - July 2022

- Defense of qualified privilege case arising in a defamation claim against a public official or employee. Plaintiff was arrested for assault.
- TV News reporter emailed Public Information Officer to see if the arrest was related to plaintiff's employment at Capital Nursing. PIO wrote back "related to his employer."
- TV Station broadcast "New at 6:00 a Wake County man who works with the elderly is facing an assault charge. [Plaintiff] works for Capital Nursing. According to the warrant Walker hit the victim in the face with a closed fist. The Sheriff's Office is telling us the charge is related to his job. We've reached out to Capital Nursing but so far they have refused to comment."
- This was not true. Thereafter, plaintiff was fired from his job at Capital Nursing and sued for defamation.
- WTVD relied on fact that statement came from government official.
- The defense of privilege is based upon the premise that some information, although defamatory, is of sufficient public or social interest to entitle the individual disseminating the information to protection against an action for defamation. Actual malice defeats QP.
- Public official immunity issue was not ripe-perhaps Summary Judgment.
- WTVD was entitled to the "fair report privilege." But, 12(b)(6) and 12(c) not proper for Sheriff and PIO.

Coastal Conservation v. State of NC – COA - Sept. 2022

- Plaintiffs sued under the Public Trust doctrine (Art. 1, Sec. 38) alleging that the state mismanaged coastal fisheries resources and allowed for-profit harvesting of finfish or shellfish in quantities or through methods that cause overexploitation or undue wastage to North Carolina's coastal fisheries resources.
- "The public trust doctrine is a common law principle providing that certain land associated with bodies of water is held in trust by the State for the benefit of the public." State moved to dismissed saying common law doctrine claim cannot be brought against State without its consent.
- COA held 'judge made" sovereign immunity not applicable. "It may well be that the logic of the doctrine of sovereign immunity is unsound and that the reasons which led to its adoption are not as forceful today as they were when it was adopted. However, . . . we feel that any further modification or the repeal of the doctrine of sovereign immunity should come from the General Assembly, not this Court." Steelman v. New Bern 1971 case).
- Plaintiffs stated claim under Art. XIV, Sec 5 "[i]t shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry ."

Attorneys’ Fee Cases

Batson vs. Coastal Resources Commission COA- March 2022

- Deals with attorneys' fees against a state agency under NCGS 6-19.1. CRC is "gatekeeper" and gives the OK for contested case petition.
- Coastal Resource Commission rejected challenger's petition to contest permit to build new bridge over Harker's Island – Upon judicial review, trial court remanded back to OAH for a contested case proceeding and found that CRC's "repeated determinations" that Petitioners claims were frivolous was not "supported by the record or the plain meaning of the words 'not frivolous' as used in the statute."
- Judge on the judicial review then awarded petitioner $ 89,444.00 attorneys fees under NCGS 6-19.1.
- COA held that Court may in its discretion allow fees if 1) court finds that the agency acted without substantial justification in pressing its claim and 2) court finds that there are no special circumstances that would make the award unjust. COA held that petitioner was prevailing party and agency had burden of proving substantial justification (enough to satisfy a reasonable person.) Here there was evidence of substantial justification - but case was remanded for further findings on substantial justification and intent on applying an erroneous standard.
- Dissent seeks complete reversal because agency did not initiate or press any claims, superior court was without jurisdiction, NCAPA was proper analysis.

Coates vs. Durham County – COA - March 2022

- Deals with attorneys' fees against local units of government. Attorneys' fees award under the 2018 version of NCGS 6-21.7 based upon successful appeal of Board of Adjustment for special use permit.
- 2018 version says Court MAY award if city or county acted outside scope of legal authority and SHALL award if action was abuse of discretion.
- New version says: Court must find local gov't "violated a statute or case law setting forth unambiguous limits on its authority, the court shall award reasonable attorneys' fees and costs to the party who successfully challenged the city's or county's action."
- Attorney fee order vacated for lack of appropriate findings.
- Companion case Sarvis v. Durham.

Alexander vs. NC Bd. Of Elections
COA - January 2022

- (This is both constitutional law and attorneys' fee case). Plaintiffs were district court judges (and voters and member of legislature) who challenged a 2018 Session Law that converted Mecklenburg's District Court Elections from 21 seats elected county wide to 21 seats elected from 8 districts.
- While case was pending, in Nov 2019 a consent order was entered to temporarily suspend the operation of the law (filing period was about to begin).
- General Assembly repealed the law in July 2020.
- Three judge panel agreed that case was moot and plaintiffs' contention that the "capable of repetition yet evading review" exception to mootness was not met but awarded plaintiffs' attorneys' fees of $ 165,114.00.
- COA affirmed panel's decision that claims were moot but reversed panel's attorneys' fees decision holding that panel was without jurisdiction to decide that because under NCGS 1-267.1 the court where the action originated maintains jurisdiction over all other matters other than facial challenge.

MISCELLANEOUS

In the Matter of Chastain – COA - February 2022

- Petition to remove the Clerk of Court in Franklin County.
- State Const. Art. IV only allows the Senior Resident Superior Court Judge to remove the Clerk for "misconduct." Here, Judge Lock was not Resident Superior Judge but that was not fatal.
- "Rule of Necessity" would require a party to hear a matter even though it may violate a ethical canon if refusal to hear it would result in a denial of a litigant's constitutional right to have a question properly presented. (eg: Governor can properly consider clemency even if he prosecuted it.
- Clerk can be also be "disqualified from holding any officer" if guilty of corruption or malpractice. (Art. VI also provides disqualification for any person who shall deny the being of Almighty God.)
- So, NCGS 7A-105 allows removal by filing of a sworn affidavit for willful misconduct. Here, Judge made findings and relied on actions which were not in the sworn affidavit and thus violated Clerk's due process.
- Remanded to decided if facts in affidavit were corruption or malpractice before the senior regular resident judge.

County of Mecklenburg v. Ryan
COA - February 2022

- What a mess! Would the outcome be the same if the party was not a public body?
- This is a tax foreclosure involving a disabled wheelchair bound adult who was allegedly blind. County tried multiple service tries, trips to home, etc. Finally, service was by publication.
- County got default judgment for back taxed and foreclosed, selling property to another person. Meanwhile taxpayer paid tax bill online with no human interaction.
- County called 12 times, two field visits, two delinquency notices on door, 7 notices in the Charlotte Observer, 5 set offs to NCDOR. Disabled adult was allowed to grab a pair of pants that were too small and forcibly removed – was rolled out the door.
- COA found "due diligence" for services publication was not met because the County did not use plaintiff's email to notify her, even though they had her email on file and that communication with her via email was needed because of her disabilities. Therefore, default would be set aside.
- COA set aside the default judgment, found that the purchaser was a good faith purchaser (who could rely on the county's assertions that the commissioner's deed was good and found that property owner was entitled to restitution.

New Hanover Board Of Education vs. Stein SC - February 2022

- The case that will not go away. Challenge to payments made by Smithfield companies from 2000 agreement allowing Attorney General to administer an environmental enhancement program funded by the settlement. Board thinks these payments should go to schools.
- Supreme Court held the funds were not civil penalties and disagrees. And disagrees. After 1st SC opinion was filed, plaintiff filed supplement brief in COA after newly enacted statute required that "all funds received by the State, including cash gifts and donations, shall be deposited in the State treasury."
- COA directed to remand to trial court to reinstate summary judgment for the Attorney General.
- Although this Court does, on occasion, remand cases to the lower courts for the consideration of additional issues. In the event that we remand a case to the Court of Appeals or a trial court "for further proceedings not inconsistent with [its] opinion," such language should not be interpreted as an invitation to consider new claims that are unrelated to any contention that had been advanced before this Court.

Society for Hist. Preservation v. Asheville COA- April 2022

- Breach of contract claim based upon removal of a statue. where parties agreed “to purchase and contract for the Restoration on the Vance Monument at Pack Square Park .. Upon completion of [plaintiff]’s work of said Restoration in accordance with the terms and conditions set forth in this Agreement, the City agrees to accept said donation.
- City voted to remove monument.
- COA affirmed dismissal saying Plaintiff did not suffer a legal injury and city agreeing to accept donation did not mean it agreed to keep it.

Harper v Hall – Supreme Court - February 2022

- Landmark ruling of first impression- thirteen (13) briefs, 217 pages.
- Art. 1, Sec. 10 says in laconic terms "All election shall be free." (came from Glorious Revolution of 1699) (Patrick Henry gerrymandered to detriment of James Madison and Henry drafted it!)
- NC Supreme Court did what the US Supreme Court did not.
- Despite finding that these maps were "extreme partisan outliers[,]" "highly non-responsive" to the will of the people, and "incompatible with democratic principles[,]" the three-judge panel below allowed the maps to stand because it concluded that judicial action "would be usurping the political power and prerogatives" of the General Assembly.
- Supreme Court "emphatically disagrees" and the dissent emphatically agrees.
- "We seek neither proportional representation for members of any political party, nor to guarantee representation to any particular group."
- Supreme Court held political gerrymander claims are justiciable. Held that maps violated "free elections" clause, free speech and freedom of assembly as wall as equal protection clauses. Recognized manageable standards, rejected elections clause argument (Moore v Harper to be heard in US Supreme Court December 7). Struck house, senate and congressional maps.
- Dissent - "It does not help public confidence that in an unprecedented act, a member of the majority used social media to publicize this Court's initial order when it was released, despite the fact that the case was still pending."

PUBLIC RECORD CASE

In Re: Pub. Records Request to DHHS COA - May 2022

- More procedural than substantive.
- Media made public record request for SBI files into investigation of inmate death in Forsyth County while 6 involuntary manslaughter charges were pending. District Attorney via special proceeding filing objected to release and trial court granted protective order.
- State appeal order dissolving temporary protective order.
- It was improper for the District Attorney to file a request for temporary protective order to keep the media coalition from accessing the records.
- No summons was issued and media was not informed of *ex parte* protective order.
- COA did not reach the underlying issue as to whether the documents at issue are public records within the meaning of the Public Records Act.

Public Contracts

Hodge Const. vs. Brunswick Water – COA - July 2022

- Government contracts case. Plaintiff submitted bid for construction of public water and treatment system and per NCGS 143-129(b) made a 5% security deposit of $ 254,241.62. Plaintiff was the lowest bidder by approximately $ 900,000.
- After opening of bids, plaintiff requested that bid be withdrawn but not within the 72 hours after bids were opened as required.
- Based on the language in Section 143-129.1, we conclude that a bidder may still withdraw its bid from consideration after the 72-hour period and prior to the award of the contract but that said bidder forfeits its deposit, even if it could be shown that the bidder would not have been the successful bidder.

NC Court of Appeals Opinions Filed by Year							
Year	Opinions Filed	Concurring	Dissents[1]	Published	Unpublished	Publication %	Dissent %
2020	965	48	82	367	598	38%	8.50%
2021	732	37	43	267	465	36%	5.87%
2022[2]	651	21	34	244	404	37%	5.22%
[1]Includes dissent in part, concur in part							
[2]Through 09/30/2022							

NC Court of Appeals Filings and Dispositions by Year					
Year	Records Filed	Opinions Filed	Motions Filed	Petitions Filed	En Banc Filed
2020	945	965	4103	667	26
2021	817	732	3304	663	28
2022[1]	810	651	3154	494	19
[1]Through 09/30/2022					