

Civil Case Update (Part 2)

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Cases We Will (*Try To*) Cover

Specific Personal Jurisdiction (Rule 12(b)(2))

- *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1019 (Mar. 25, 2021) (holding no causal link required between defendant's avilment of a forum and plaintiff's claim)
- *Cohen v. Cont'l Motors, Inc.*, 2021-NCCOA-449 (Sept. 7, 2021) (applying *Ford Motor Co.*)
- *Mucha v. Wagner*, 2021-NCSC-82 (Aug. 13, 2021) (finding no personal jurisdiction where defendant made calls to plaintiff without knowing she was located in NC)

Subject Matter Jurisdiction & Appeals

- *Milone & MacBroom, Inc. v. Corkum*, 2021-NCCOA-526 (Oct. 5, 2021) (finding no jurisdiction in trial court to conduct supplemental proceedings where no writ of execution issued or returned)
- *Hull v. Brown*, 2021-NCCOA-525 (Oct. 5, 2021) (dismissing as interlocutory appeal from denial of transfer to three-judge panel before resolution of all matters not concerning validity of statute)

NC Constitution: Fruits of One's Labor Clause

- *Mole' v. The City of Durham*, 2021-NCCOA-527 (Oct. 5, 2021) (reviving plaintiff's claim under the fruits of one's labor clause)

Corporate Relationships & Governmental Responsibility

- *SELC v. NCRR*, 2021-NCSC-84 (Aug. 13, 2021) (finding NCRR not government agency subject to the Public Records Act when control not exercised by government in its capacity as sovereign)
- *Osborne v. Yadkin Valley Econ. Dev. Dist., Inc.*, 2021-NCCOA-454 (Sept. 7, 2021) (PDR PENDING: finding, *inter alia*, that school board could delegate its duty to safely transport students to independent contractor)

Specific Personal Jurisdiction



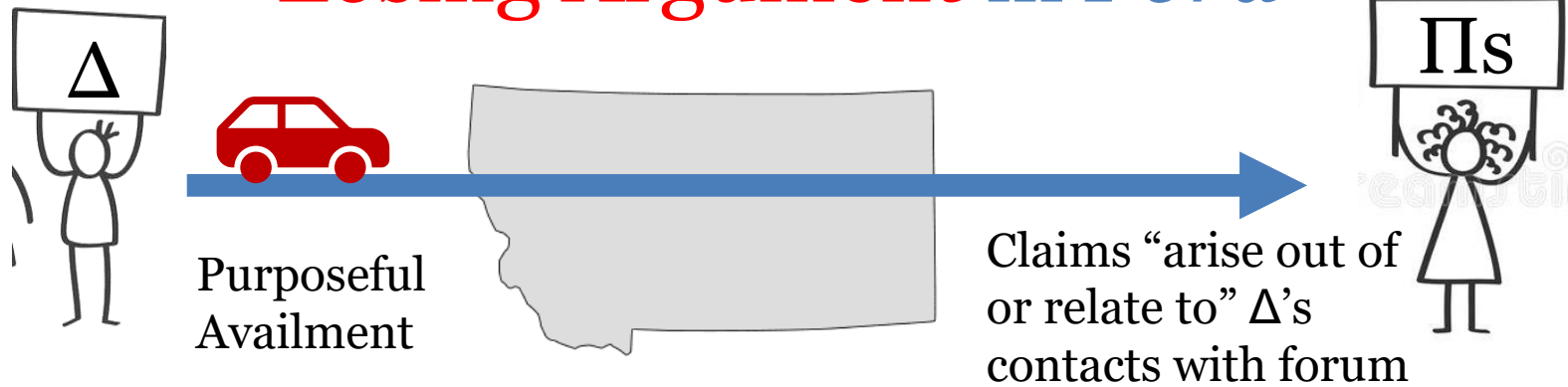
Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.
U.S. Supreme Court

Specific Personal Jurisdiction

“To be subject to that kind of jurisdiction, the defendant must take ‘some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State.’ And the plaintiff’s claims ‘must arise out of or relate to the defendant’s contacts’ with the forum.”

141 S. Ct. 1017, 1019 (2021)

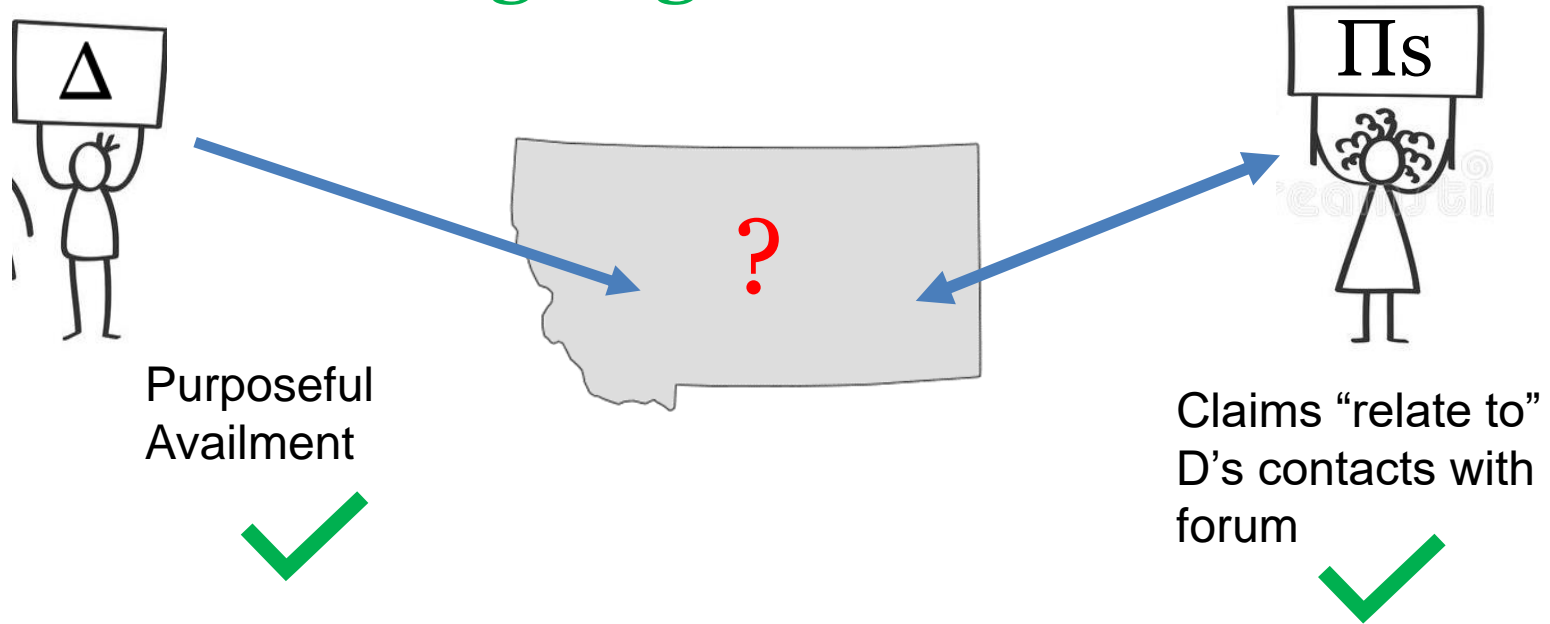
Losing Argument in *Ford*



CONCURRENCE: “To say that the Constitution does not require the kind of proof of causation that Ford would demand . . . is not to say that no causal link of any kind is needed. And here, there is a sufficient link.”

Ford Motor Co., 141 S. Ct. at 1033 (Alito, J., concurring).

Winning Argument in *Ford*



“Some relationships will support jurisdiction without a causal showing. That does not mean anything goes. In the sphere of specific jurisdiction, the phrase ‘relate to’ incorporates real limits, as it must to adequately protect defendants foreign to a forum. But again, we have never framed the specific jurisdiction inquiry as always requiring proof of causation.”

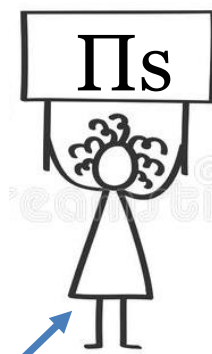
Cohen v. Cont'l Motors, Inc.

2021-NCCOA-449 (Sept. 7, 2021)

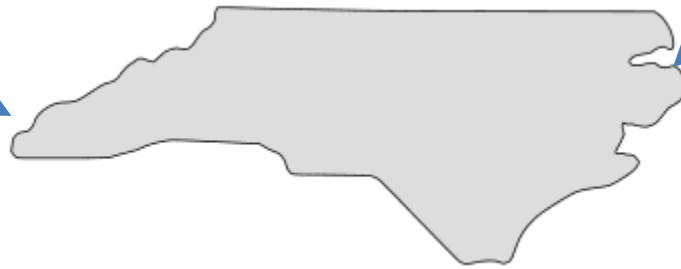




- ❖ Interactive informational website with 14 paid subscribers in NC
- ❖ 2,948 sales of component parts with a total value of \$3,933,480.65 in NC through distributor Triad
- ❖ Maintenance support to companies dealing in CMI components in NC
- ❖ Provided maintenance support to company that installed CMI accident starter adaptor in NC



- ❖ CMI accident starter adaptor installed in NC
- ❖ Accident in NC
- ❖ Cohens reside in NC



✓ Purposeful Availment

✓ Claims “relate to” Δ’s contacts

“[P]ut just a bit differently, there must be an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.”

Cohen at ¶ 26

Mucha v. Wagner

2021-NCSC-82 (Aug. 13, 2021)

Case No. _____
Court General Court of Justice
County District Court Division

PETITIONER/PLAINTIFF NORTH CAROLINA
First _____ Middle _____ Last _____
And/or on behalf of minor family member(s): (List Name And DOB)

Date Of Birth Of Petitioner _____
Other Protected Persons/DOB: _____

G.S. 50B-2, -3, -3.1

DOMESTIC VIOLENCE ORDER OF PROTECTION
 CONSENT ORDER

PETITIONER/PLAINTIFF IDENTIFIERS

RESPONDENT/DEFENDANT VERSUS
First _____ Middle _____ Last _____
Relationship to Petitioner: spouse former spouse
 unmarried, of opposite sex, currently or formerly living together
 unmarried, have a child in common
 of opposite sex, currently or formerly in dating relationship
 current or former household member
parent grandparent child grandchild
Respondent's/Defendant's Address _____

RESPONDENT/DEFENDANT IDENTIFIERS

| | | | | |
|---------------------|-------|------------------------|----|----|
| Sex | Race | DOB | HT | WT |
| Eyes | Hair | Social Security Number | | |
| Drivers License No. | State | Expiration Date | | |

Distinguishing Features _____

CAUTION:
 Weapon Involved

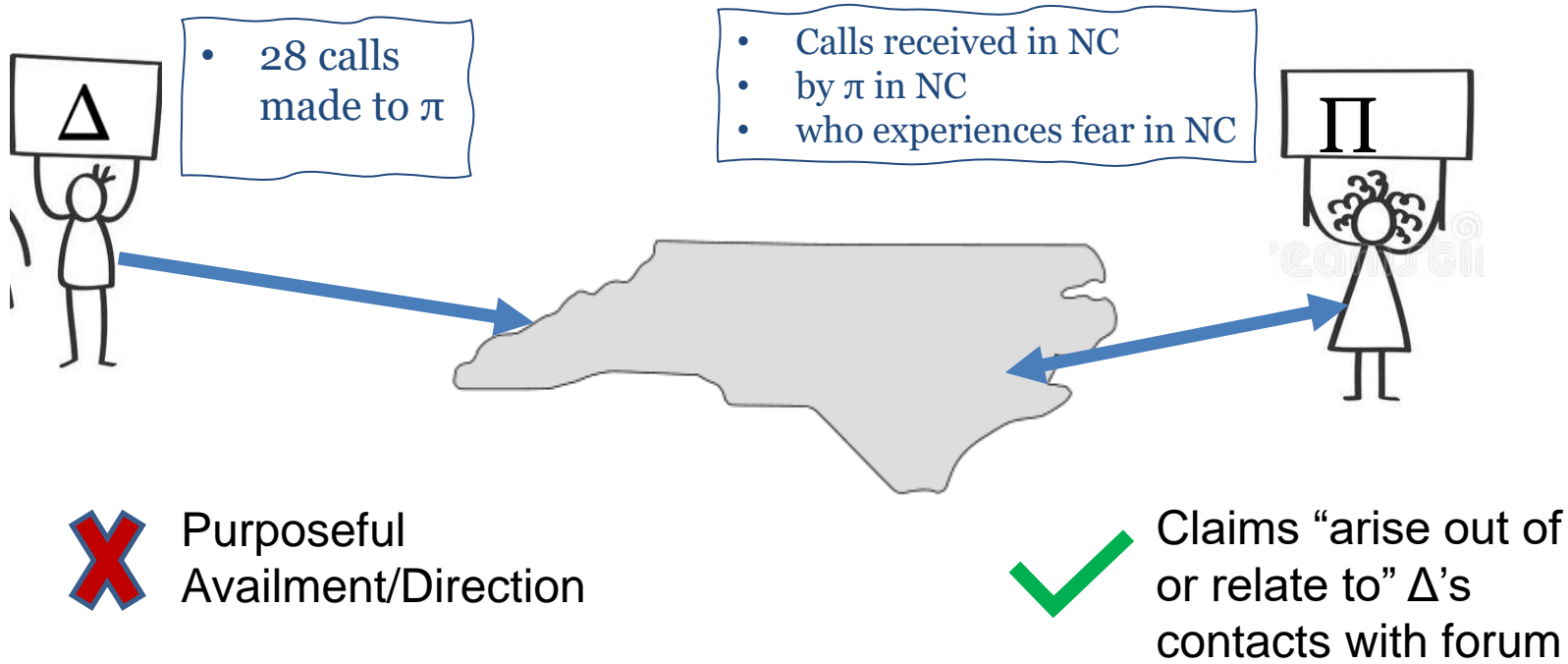
THE COURT HEREBY FINDS THAT:
This matter was heard by the undersigned district court judge, the court has jurisdiction over the parties and subject matter, and the Respondent/Defendant has been provided with reasonable notice and opportunity to be heard.

THE COURT HEREBY ORDERS THAT:
 The above findings of this order are set forth on Page 2.
 The above named Respondent/Defendant shall not commit any further acts of domestic violence or make any threats of domestic violence (G.S. 50B-1).
 The above named Respondent/Defendant shall have no contact with the Petitioner/Plaintiff. No contact includes any defendant-initiated contact, except through an attorney, direct or indirect, by means such as telephone, personal contact, email, pager, gift-giving or telefacsimile machine. [05]
Additional terms of this order are as set forth on Pages 3 and 4.

The terms of this order shall be effective until _____.

WARNINGS TO THE RESPONDENT/DEFENDANT:
This order shall be enforced, even without registration, by the courts of any state or territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265).
Federal law makes it a crime for you to possess, transport, or attempt to transport a firearm if this order does not prohibit you from possessing, transporting, or attempting to transport a firearm.
This order will be enforced anywhere.
Only the Court can change this order.
See additional warnings on page 3.

AOC _____



“Our decision in this case addresses a unique situation characterized by a crucial fact: Wagner lacked any reason to know or suspect that Mucha had moved to and was present in North Carolina.” 2021-NCSC-82, ¶ 25.

Subject Matter Jurisdiction & Interlocutory Appeals

Milone & MacBroom, Inc. v. Corkum

2021-NCCOA-526 (Oct. 5, 2021)

- Supplemental proceedings pursuant to NCGS §1-352 et seq.
- Trial court entered order granting π 's motion to compel and Rule 11 sanctions against Δ

3. The Court finds that the Defendant Corkum's Motion for Protective Order, and his Supplement thereto, were not filed in good faith and were filed for an improper purpose in violation of Rule 11 of the North Carolina Rules of Civil Procedure;

Milone & MacBroom, Inc. con't.

Interlocutory appeal:

- Motion to compel not enforced by sanctions, Rule 11 sanctions has no \$ amount so no substantial right at issue
- COA invokes N.C. R. App. P. 2 to issue Writ of Certiorari

Milone & MacBroom, Inc. con't.

“Indeed, here, we discern a fundamental jurisdictional defect in the institution of the supplemental proceedings in this case which neither party has identified below or in this Court: no writ of execution was issued to enforce the Judgment or returned unsatisfied in whole or in part prior to Plaintiff undertaking supplemental proceedings.”

Hull v. Brown

2021-NCCOA-525 (October 5, 2021)


RULES OF CIVIL PROCEDURE
(G.S. § 1A-1)
Adopted Pursuant to G.S. § 7A-34, Effective July 1, 1970

1A-1 Rules of Civil Procedure

| Rule | Rule | |
|--|--|--|
| ARTICLE 1 Scope of Rules — One Form of Action | | |
| 1. Scope of Rules. | 34. Production of documents, electronically stored information, and things; entry upon land for inspection and other purposes. | |
| 2. One form of action. | 35. Physical and mental examination of persons. | |
| ARTICLE 2 Commencement of Action; Service of Process, Pleadings, Motions, and Orders | | |
| 3. Commencement of action. | 36. Requests for admission; effect of admission. | |
| 4. Process. | ARTICLE 6 Trials | |
| 5. Service and filing of pleadings and other papers. | 37. Failure to make discovery; sanctions. | |
| 6. Time. | 38. Jury trial of right. | |
| ARTICLE 3 Pleadings and Motions | | |
| 7. Pleadings allowed; motions. | 39. Trial by jury or by the court. | |
| 8. General rules of pleadings. | 40. Dismissal of cases for trial; continuances. | |
| 9. Pleading special matters. | 41. Consolidation; separate trials. | |
| 10. Form of pleadings. | 42. Evidence. | |
| 11. Signing and verification of pleadings. | 43. Proof of official record. | |
| 12. Defenses and objections; when and how presented; by pleading or motion; motion for judgment on pleading. | 44.1. Determination of foreign law. | |
| 13. Counterclaim and crossclaim. | 45. Subpoena. | |
| 14. Third-party practice. | 46. Objections and exceptions. | |
| 15. Amended and supplemental pleadings. | 47. Jurors. | |
| 16. Pre-trial procedure; formulating issues. | 48. Juries of less than twelve — majority verdict. | |
| ARTICLE 4 Parties | | |
| 17. Parties plaintiff and defendant; capacity. | 49. Verdicts. | |
| 18. Joinder of claims and remedies. | 50. Motion for a directed verdict and for judgment notwithstanding the verdict. | |
| 19. Necessary joinder of parties. | 51. Instructions to jury. | |
| 20. Permissive joinder of parties. | 52. Findings by the court. | |
| 21. Procedure upon misjoinder and nonjoinder. | 53. Referees. | |
| 22. Interpleader. | ARTICLE 7 Judgment | |
| 23. Class actions. | 54. Judgments | |
| 24. Intervention. | 55. Default | |
| 25. Substitution of parties upon death, incompetency or transfer of interest; abatement. | 56. Summary judgment | |
| ARTICLE 5 Depositions and Discovery | | |
| 26. General provisions governing discovery. | 57. Declaratory judgments | |
| 27. Depositions before action or pending appeal. | 58. Entry of judgments | |
| 28. Persons before whom depositions may be taken. | 59. New Trials; amendment of judgments | |
| 29. Stipulations regarding discovery procedure. | 60. Relief from judgment or order | |
| 30. Depositions upon oral examination. | 61. Harmless error | |
| 31. Depositions upon written questions. | 62. Stay of proceedings to enforce a judgment | |
| 32. Use of depositions in court proceedings. | 63. Disability of a judge | |
| 33. Interrogatories to parties. | ARTICLE 8 Miscellaneous | |
| | 64. Seizure of person or property | |
| | 65. Injunctions | |
| | 66. Omitted | |
| | 67. Omitted | |
| | 68. Offer of judgment and disclaimer | |
| | 69. Omitted | |
| | 70. Judgment for specific acts; vesting title | |
| | 71 to 83. Omitted | |
| | 84. Forms | |

Hull v. Brown con't.

<https://civil.sog.unc.edu/court-of-appeals-holds-that-heart-balm-claims-are-not-facially-unconstitutional/>








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Court of Appeals holds that “heart balm” claims are not facially unconstitutional

This entry was contributed by Ann Anderson on September 6, 2017 at 9:42 am and is filed under Civil Law, Constitutional Issues.

 North Carolina is among only a handful of states still recognizing the civil claims of alienation of affection and criminal conversation. Known as the twin “heart balm” torts, these laws were devised long ago when women were regarded as a type of property and private morals were regular court business. In short, these claims allow a person to sue his or her spouse’s paramour for money damages. To prove “alienation of affection,” a plaintiff must show that the defendant wrongfully alienated and destroyed the genuine love and affection that existed between plaintiff and spouse. (Although lovers typically are the target of these suits, a defendant could be another third person who has set out to create the rift.) To prove criminal conversation, a plaintiff must show that the defendant had sexual intercourse with the plaintiff’s spouse in North Carolina during the marriage (but before separation).

In the other states that have not yet swept them into the dustbin of history, these claims do not often make their way to court. North Carolina appears to be one of only a couple of states in which they are filed regularly and sometimes result in substantial settlements and large verdicts.

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Hull v. Brown con't.

Three-Judge Panel for Facial Challenges to the Validity of an Act of the General Assembly

N.C.G.S. 1-267.1(a1)

NC Rule of Civil Procedure 42(b)(4)

“ . . . the court shall, on its own motion, transfer that portion of the action challenging the validity of the act of the General Assembly to the Superior Court of Wake County for resolution by a three-judge panel *if, after all other matters in the action have been resolved,* a determination as to the facial validity of an act of the General Assembly must be made in order to completely resolve any matters in the case.”

Hull v. Brown con't.

Substantial Right?

Is appeal proper from the denial of a motion to transfer to a three-judge panel based upon a purported facial constitutional challenge to an act of the General Assembly?

N.C.G.S. 1-277(a).

Hull v. Brown con't

Denial of transfer pursuant to G.S. 1-267.1 does not affect a substantial right when:

1. The constitutional challenge is not to “an Act of the General Assembly.” *Estes v. Battiston* (explaining there is no right to the venue for challenge to common law)
2. Transfer is denied before “all other matters” have been fully resolved. *Hull v. Brown* (“This interlocutory appeal is premature.”).

NC Constitution: Fruits of Their Labor



To North Carolina Governmental Employers: Heads-Up – "Unreasonable Employee Discipline" Can Now Get You Sued

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Hostage Negotiations, Marijuana, and Police Officers' Rights in Disciplinary Proceedings

An interesting decision under the North Carolina's unusual constitutional provision protecting people's right to "the enjoyment of the fruits of their own labor."

NC officer was fired for letting suspect smoke pot. He just won a partial court victory

BY JOSH SHAFFER

UPDATED OCTOBER 05, 2021 1:18 PM

t f m r



Mole' v. City of Durham

(COA Oct. 5, 2021)

Plaintiff appeals from trial court's grant of a 12(b)(6) dismissal of three state constitutional claims:

Due Process 

Equal Protection 

Fruits of One's Labor 

N.C. Constitution, Art. I, § 1

“We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty,
the enjoyment of the fruits of their own labor,
and the pursuit of happiness.”

Prior Precedent re Fruits of Labor

- Prohibits licensing restrictions not rationally related to public health, safety, or welfare and not reasonably necessary to promote a public good/prevent public harm
- Prohibits arbitrary cap on towing fees
- Police dep't violated clause when failed to follow own promotion procedure (*Tully v. City of Wilmington*)

Mole' v. City of Durham con't.

- *Tully* Test : Did (1) a clear and established employment policy that furthered a legitimate government interest exist?; (2) was it violated?; and (3) did the violation cause injury?
- YES: City of Durham did not give Plaintiff 72 hours notice of his pre-disciplinary conference as mandated in its employment policy

Corporate Relationships & Governmental Responsibility



SELC V. N.C. RAILROAD

(2021-NCSC-84)



"Great Smoky Mountains Railroad - Bryson City Bridge over the Tuckasegee River, North Carolina" by [Timothy Wildey](#) is licensed under [CC BY-NC 2.0](#)

N.C. Public Records Act

- (a) “Public record” or “public records” shall mean all documents ...[ETC.], made or received pursuant to law or ordinance in connection with the transaction of public business by any **agency** of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority, or other unit of government of the State or of any county, unit, special district or other political subdivision of government.
- (b) The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. . . .” N.C.G.S. § 132-1 (2019).

N.C. Public Records Act

“Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority, or other unit of government of the State or of any county, unit, special district or other political subdivision of government.”

Totality of the Circumstances Test

“[The court] weighs all of the relevant facts and circumstances in order to determine whether the record, when viewed in its entirety, show[s] that the government exercise[s] such substantial control over the operations of the relevant entity as to render it a governmental agency or subdivision, with ‘each new arrangement [to] be examined anew and in its own context.’ . . . [U]ltimately . . . the inquiry . . . [is] in large part, one of statutory construction.”



Totality of the Circumstances Test

- Legislative Intent
- “Substantial Governmental Control”

Majority Approach

Legislative Intent: Does the GA consider the Railroad to be an agency?

NCGS § 124-17 (b) & (c)
requires the Railroad to provide both non-confidential and confidential information to the Governor and General Assembly

Majority Approach

Substantial Governmental Authority: What is the SOURCE of the authority being exercised?

“ [T]he extent to which the State exercises sovereign authority, rather than authority derived from some other source, should be an important feature of any determination concerning the applicability of the Public Records Act.” ¶ 41.



“Thus, given that both the General Assembly and other governmental entities have consistently treated the Railroad as a private corporation rather than a public agency or subdivision and given that the State, acting in its capacity as sovereign, does not have a sufficient degree of control over the day-to-day operations of the Railroad, we hold that [the NCRR is not subject to the Public Records Act].”

SELC at ¶ 43

Dissent's Approach

Legislative Intent: Did the GA consider the Railroad to be an agency for the purposes of the Public Record Act?

Dissent's Approach

Substantial Governmental Authority: Are NCRR's operations sufficiently intertwined with those of the government to subject it to the Public Records Act?

Takeaways

1. NCRB not subject to the PRA.
2. Totality of the circumstances test- no enumerated factors
3. Substantial governmental control must exist as an exercise of sovereign not corporate authority= FORM MATTERS
4. A corporate entity can still be subject to the PRA. (“[T]he Railroad’s separate corporate existence does not, of course, control the outcome of this case...”)

Osborne v. Yadkin Valley

PDR Pending



THANK YOU SO MUCH!

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