
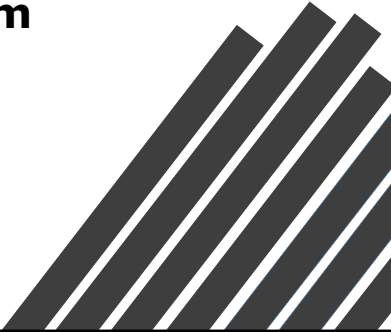


Short-Term Rentals

Rebecca Badgett





S.L. 2019-73

AN ACT TO CLARIFY THAT PROPERTIES SUBJECT TO THE VACATION RENTAL ACT ARE ALSO SUBJECT TO THE GENERAL STATUTES GOVERNING CITY AND COUNTY ENFORCEMENT OF HAZARDOUS AND UNLAWFUL CONDITIONS

- Vacation Rental: "The rental of residential property for vacation, leisure, or recreation purposes for fewer than 90 days by a person who has a place of permanent residence to which he or she intends to return."
 - Short-term rentals (STRs) are subject to the Act

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Periodic Inspection Statutes

G.S. 153A-364, G.S.160A-424

- Recodified to the Minimum Housing Code (G.S. Ch. 160D, Art. 12). The Code sets the minimal quality and safety requirements for buildings and residential structures.
- Periodic inspection statute requirements:
 - Reasonable cause to inspect buildings and residential structures
 - Prohibit the adoption or enforcement of an ordinance that requires an owner to obtain a permit or permission to lease, rent or register a rental property
 - Prohibit a requirement of enrollment in a governmental program as a condition of obtaining a certificate of occupancy
 - Prohibit the levying of a special fee on residential property not also levied on other commercial and residential property

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Authority for Local Regulation of STRs

- *Land Use Regulation*: Through zoning, local governments may define a land use, set reasonable development standards, and require zoning permits for certain land uses.
 - STRs may be regulated as a separate land use through zoning

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Questions?



Evaluation: https://unc.az1.qualtrics.com/jfe/form/SV_eFp3ul60xRD91Fr

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Land Use and Zoning

Adam Lovelady



UNC SCHOOL OF GOVERNMENT

UNC

2019 North Carolina Legislation Related to Planning and Development Regulation

Additional Resources

nc160D.sog.unc.edu

CHAPTER 160D
A NEW LAND USE LAW FOR NORTH CAROLINA

2019 Legislative Update Webinar

Outline

- Zoning and Subdivision Rules
- Other Development Regulations
- Permit Choice Expanded
- Attorneys Fees and Judicial Review
- Chapter 160D

2019 Legislative Update Webinar

No Third Party Down-Zoning

- Neighbor cannot request down-zoning without owner consent
- Local government may still initiate
- Down-zoning defined to be reduction in density or permitted uses
- Applies to zoning applications submitted on or after July 11, 2019

G.S. 153A-343 & 160A-384; [S.L. 2019-111](#) (S 355), Pt I.

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Conditional Approvals S.L. 2019-111 (S.B. 355), Part I

- | | |
|--|--|
| <p>Conditional Zoning</p> <ul style="list-style-type: none"> • Conditions for plan conformance • Conditions to address impacts • Conditions consented to by owner (flexibility) | <p>Special Use Permit</p> <ul style="list-style-type: none"> • "reasonable and appropriate conditions" • But only if authorized (less flexibility) |
|--|--|

effective immediately and "clarify and restate the intent of existing law and apply to ordinances adopted before, on, and after the effective date."

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Small Houses

- Zoning may not set minimum house size
- Applies to any structure built to one- and two-family building code
- Private restrictive covenants not affected

G.S. 160A-381, 153A-340, [S.L. 2019-174](#)

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Subdivision Performance Guarantees

- Scope
- Amount
- Timing

• [S.L. 2019-79](#) (S 313) amends G.S. 160A-372 and 153A-331

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Outline

- Zoning and Subdivision Rules
- Other Development Regulations
- Permit Choice Expanded
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- Chapter 160D

2019 Legislative Update Webinar

Building Code

- Exempts movie, television, stage sets if one year or less life and have fire code inspection
- May issue temporary CO
- One- and two-family initial plan reviews must be complete in 15 days
- DOI to provide guidance paper on plan review and interpretation

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Environment

- EMC to develop standards for decommissioned wind and solar equipment
- Cities may not regulate off-site wastewater that has state approval
- New program for alternative on-site wastewater systems

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Housing

- Report by cities over 90k population
- Strategy for more affordable housing
- List measures taken for more moderate income housing, strategies employed

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Signs in the ROW

- For NCDOT highways, signs remaining for forty days after election is deemed abandoned property and may be removed and disposed of without penalty
- Cities must adopt comparable provision
- Effective December 1, 2019

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Transportation

- Map Act and authority for city corridor maps repealed
- NCDOT to update the *Subdivision Roads Minimum Construction Standards Manual* by July 1, 2020
- Driveway Permits: cannot require applicant to acquire ROW from third party, applicant can voluntarily do it

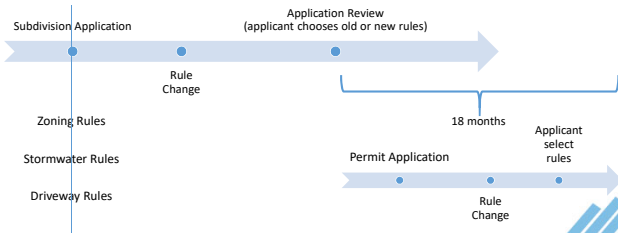
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Outline

- Zoning and Subdivision Rules
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Permit Choice



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Permit Choice

- Applicant not required to wait for new rule to be approved
- If applicant wins court challenge, may be able to choose original rules
- Applicant must be actively pursuing the approval; six-month delay waives rights
- Aggrieved party may seek court order compelling compliance; set for immediate hearing
- Mandatory attorneys' fees for "action inconsistent with, or in violation of" permit choice of vested rights

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Outline

- Zoning and Subdivision Rules
- Other Development Regulations
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- Chapter 160D

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Judicial Review

S.L. 2019-111 (S 355), Part I

- Fines stayed during appeal
- Applicants can skip board of adjustment for some challenges
- Challenges to conditions—get written consent
- Appeals of Quasi-Judicial Decisions

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Attorneys' Fees

- Unambiguous Limits
 - If "the city or county violated a statute or case law setting forth unambiguous limits on its authority, the court shall award reasonable attorneys' fees and costs."
 - "unambiguous" means "that the limits of authority are not reasonably susceptible to multiple constructions."
- Permit Choice and Vested Rights
 - If "the city or county took action inconsistent with, or in violation of, [the Permit Choice and Vested Rights statutes set forth at], the court shall award reasonable attorneys' fees and costs."
- Other matters
 - "may award reasonable attorneys' fees and costs to the prevailing private litigant."

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Outline

- Zoning and Subdivision Rules
- Other Development Regulations
- Permit Choice Expanded
- Attorneys Fees and Judicial Review
- Chapter 160D

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Chapter 160D: What is it?

- Consolidates, reorganizes, modernizes planning and development regulation statutes
- Effective January 2021
 - Planning requirement effective July 2022

CHAPTER 160D

A NEW LAND USE LAW FOR NORTH CAROLINA

Chapter 160D Changes

- Comprehensive Plan required
- Decision processes streamlined
- Terminology simplified
- Conflicts of interest standards strengthened
- Administration authority clarified
- And more



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Publication & Workshops

- Durham (AM Course), NC - [Click here to register for this course offering](#)
January 16, 2020
- Durham (PM Course), NC - [Click here to register for this course offering](#)
January 16, 2020
- Asheville, NC - [Click here to register for this course offering](#)
January 21, 2020
- Greenville, NC - [Click here to register for this course offering](#)
January 22, 2020
- Wilmington, NC - [Click here to register for this course offering](#)
January 23, 2020
- Kernersville, NC - [Click here to register for this course offering](#)
January 28, 2020
- Charlotte, NC - [Click here to register for this course offering](#)
January 30, 2020
- Charlotte, NC - [Click here to register for this course offering](#)
January 31, 2020




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Resources at nc160D.sog.unc.edu

- Legislative Text, S.L. 2019-111 (SB 355) available [here](#).
- Annotated Bill (as introduced) available [here](#); update with concurrent changes available November 2019)
- On-Demand Training (Winter 2020)
- Explanatory Book (Winter 2020)
- Regional Workshops (Winter 2020)
- Checklist for Ordinance Update (Winter 2020)
- Cross-Over Chart (Winter 2020)
- Conference Sessions
 - NCAZO Annual Conference (August 2019)
 - APA-NC Planning Conference (October 9, 2019)(160D Session and General Legislative Session)
 - NC Permitting Professionals Association (November 4, 2019)
 - Master Clerks Academy (November 14, 2019)
 - NC Bar Association Zoning, Planning, and Land Use Section Meeting (November 7, 2019)
 - County Attorneys Conference (February 2020)
 - City Attorneys Conference (March 2020)
- 2019 North Carolina Legislation Relating to Planning and Development Regulation (general legislative bulletin)

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Questions?



Evaluation: https://unc.az1.qualtrics.com/jfe/form/SV_eFp3uL60xRD91Fr

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Public Health

Jill D. Moore





Reporting juvenile crime victims to law enforcement

New G.S. 14-318.6, effective December 1:
 A person age 18 or older who knows or should have reasonably known that a juvenile has been or is the victim of a violent offense, a sexual offense, or misdemeanor child abuse must make an immediate report to local law enforcement.

[S.L. 2019-245](#) (S 199), Part I

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Who must report?


General rule: Universal reporting

- Any adult (18+) who knows or reasonably should have known about the offense

Exceptions: Some people with statutory privileges

- Attorneys
- Psychologists, psychological associates, their employees & agents
- Certified or licensed social workers engaged in private delivery of social work services
- Licensed mental health counselors (professional counselors)
- Employees and agents of rape crisis centers & domestic violence programs

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Which offenses must be reported?

Violent offense against a juvenile

- Offense that causes non-accidental serious bodily injury, or serious physical or mental injury

Sexual offense against a juvenile

- "Sexually violent offense" is defined by reference to specific criminal statutes
- The term includes rape, some of the statutory offenses, some offenses committed by parents/parent substitutes, some offenses committed by teachers/school personnel, offenses related to trafficking/prostitution of minors, child pornography, indecent liberties, and more

Misdemeanor child abuse

- Parent or other person providing care or supervision to a child under age 16 inflicts physical injury on the child, or allows physical injury to be inflicted, or creates or allows to be created a substantial risk of physical injury by other than accidental means

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What is in a report? How is it made?

Required contents

- Victim information: name, address, age, name & address of parent/guardian/custodian/caretaker, present whereabouts if not home address, nature & extent of any injury or condition resulting from offense or abuse
- Offender information: name, address, age
- Location where offense was committed
- Names & ages of other juveniles present or in danger
- Any other information the person making the report believes might be helpful in establishing the need for law enforcement involvement

Manner and timing of report

- Orally or by telephone
- Immediately

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What else is in the new law?

- Immunity from civil or criminal liability for good faith:
 - Making a report
 - Cooperating with a law enforcement investigation pursuant to a report
 - Participating in judicial proceedings resulting from a report
- Penalty—class 1 misdemeanor to:
 - Willfully or knowingly fail to make a required report
 - Willfully or knowingly prevent another person from making a required report
- Law enforcement reports to DSS

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Issues for local health departments

Exceptions for some health care providers but not others

- No exception for physicians, physician assistants, nurse practitioners, nurses, dentists, etc.

HIPAA Privacy Rule

- Disclosing protected health information (PHI) to make a report under the new law:
 - Reports allowed by HIPAA, but may disclose only the information specified in law
 - Must inform patient/personal representative of the report (limited exceptions)
 - Disclosures of PHI for investigations or judicial proceedings that result from a report are not authorized by this law; HIPAA has additional requirements pertaining to such disclosures
- Administrative requirements:
 - Amending policies/procedures regarding disclosures of PHI to law enforcement
 - Training workforce in new requirements

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Issues for local health departments (cont.)

Interaction with other confidentiality laws

- Other laws may prohibit or limit some reports (fact-specific determination)

Interaction with other mandated reporting laws

- Other laws requiring reports to law enforcement or DSS are still in effect
- Different requirements under different laws: may be variation in when to report, what to report, how to report, who must report, etc.
- Report to law enforcement under new law is separate from, and in addition to, any report to DSS that may be required

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Opioid response

Opioid Epidemic Response Act ([S.L. 2019-159](#) (H 325))

- Decriminalizes possession and use of equipment used to test illicit substances for contaminants
- State funds may be used for syringe exchange programs
- Buprenorphine prescribers no longer required to register with NC DHHS

Death by distribution of controlled substances a felony ([S.L. 2019-83](#) (H 474))

- Death by distribution occurs when a person unlawfully sells certain controlled substances (opioids, methamphetamine, cocaine, others) and ingestion of the substance causes the user's death

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Environmental health

- On-site wastewater rules have been disapproved
 - [S.L. 2019-151](#) (H 268)
- No liability for local health departments for evaluations conducted by licensed soil scientists or geologists
 - [S.L. 2019-126](#) (H 761)
- Artificial swimming lagoons will be regulated
 - [S.L. 2019-88](#) (H 529)
- 2017 Food Code to be incorporated into state rules
 - [S.L. 2019-129](#) (H 735)

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Social Services

Aimee Wall




System Reform/MOUs ([S.L. 2017-41](#))

- Background
 - State-supervised, county-administered system
 - G.S. 108A-74 established new framework for supervision that included written agreements
 - Performance standards
 - Corrective action plans
 - Possibility of state intervention in service delivery



Blogs.realdealdocs.com

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MOU Adjustments ([S.L. 2019-240](#))

If

- County does not provide child welfare services in accordance with law or demonstrate reasonable efforts to do so *and*
- Failure to do so poses a substantial threat to safety and welfare of children

Then

- DHHS provides county with notice and "opportunity to be heard,"
- Withholds funding for the service,
- Ensures provision of services (contract or DHHS), and
- Implement corrective action plan.

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MOU Adjustments ([S.L. 2019-240](#))

Existing	New (child only)
<ul style="list-style-type: none"> The county shall not withdraw funds previously obligated or appropriated for program administration and services. 	<ul style="list-style-type: none"> <u>County funding of the services in question shall continue</u> and at no time during the period of time that the Secretary is taking action shall a county withdraw funds previously obligated or appropriated for the services.

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MOU Adjustments ([S.L. 2019-240](#))

Existing	New (child only)
<ul style="list-style-type: none"> The county shall continue to pay the county's or region's nonfederal share for the program services and administration. 	<ul style="list-style-type: none"> The county shall also pay the nonfederal share of any additional cost that may be incurred to operate the services in question <u>at the level necessary to comply fully with State law and Social Services Commission rules.</u>

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MOU Adjustments ([S.L. 2019-240](#))

- Clarifies that performance standards may be measured annually rather than monthly
- County manager and DSS board must be notified if corrective action plan required
- Eliminates references to DHHS regional offices

- Changes effective July 1, 2020

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Hold the Phone!!

- NC FAST ([S.L. 2019-240](#))
 - Components for child welfare
 - Intake/assessment
 - Case management
 - Delay implementation of the case management component but continue trying to improve it
 - Issue RFI for contract to improve or replace case management component; contract requires approval from DHHS
 - Allow counties who have opted-in to intake and assessment to opt-out
- Medicaid Transformation
 - DHHS announced Tuesday (11/19) that it would be suspending implementation of Medicaid managed care.
 - Will remain a fee-for-service system for now

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Questions?





Evaluation: https://unc.az1.qualtrics.com/jfe/form/SV_eFp3uL60xRD91Fr

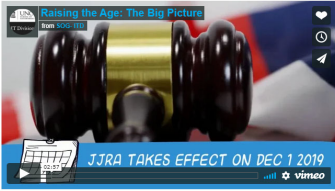
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Juvenile Justice

Jacqui Greene




Raise the Age



<https://www.sog.unc.edu/resources/microsites/juvenile-law/resources-and-links-raise-age>

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Raise the Age



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Raise the Age – Expanded Juvenile Jurisdiction

+ All crimes and infractions, and indirect contempt, committed at ages 16 and 17

Except:

- ✗** Motor vehicle offenses under G.S. Chapter 20
- ✗** Youth falls under once an adult, always an adult

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Once an Adult, Always an Adult

No subsequent juvenile court jurisdiction after conviction for ANY	Felony
	Non-chapter 20 (motor vehicle) misdemeanor
	Impaired driving offense

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Jurisdiction – Age Limits

Offense committed under age 16	Offense committed at age 16	Offense committed at age 17
Terminated by order of the court OR	Terminated by order of the court OR	Terminated by order of the court OR
Youth reaches age 18*	Youth reaches age 19	Youth reaches age 20

* In some limited circumstances, jurisdiction for very serious felonies committed under age 16 and resulting in a commitment to a YDC can extend to age 19 or 21

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Transfer – Offenses at 16&17

Mandatory

- **A-G** felonies
- Upon notice to juvenile and finding that **bill of indictment** returned OR
- Notice, hearing, and finding of **probable cause**

Discretionary

- **H&I** felonies
- Notice, hearing, and finding of **probable cause**
- May transfer pursuant to **transfer hearing** statute (7B-2203)

G.S. 7B-2200.5

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Pre-trial Secure Confinement (if required)

Under juvenile jurisdiction	• In juvenile detention
Transferred to Superior Court	• Under 18 – juvenile detention • 18 and over - jail
Original criminal jurisdiction (Ch. 20 or once an adult, always an adult)	• Jail regardless of age

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Juvenile Disposition – DSS Custody

Cannot order DSS custody (or custody to anyone else) at age 18 or older

Can dispositions ordered under age 18 continue after the juvenile's 18th birthday?

- Blog post: *Delinquency and DSS Custody – Take Two*
• <https://civil.sog.unc.edu/delinquency-and-dss-custody-take-two/>
- Bulletin: *Delinquency and DSS Custody without Abuse, Neglect, or Dependency: How Does That Work?*
• https://www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/2019-07-19%2020190464_JLB_201902.pdf

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School-Justice Partnerships

"Judicial leadership is a key component of the successful implementation of an SJP. Therefore, it is the policy of the NCAOC that chief district court judges will use their authority as "conveners" to bring key stakeholders together within their local communities to develop and implement an SJP Memorandum of Understanding"

NCAOC Policy on School Justice Partnerships and the Role of Chief District Court Judges as Conveners
August 1, 2019

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Questions?



Evaluation: https://unc.az1.qualtrics.com/jfe/form/SV_eFp3uL60xRD91Fr

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Redistricting and Election Laws

Bob Joyce



UNC SCHOOL OF GOVERNMENT

Districts the General Assembly Draws

- U.S. House of Representatives (Congressional) districts
- N.C. Senate districts
- N.C. House districts

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When and Why

After each census
"One person one vote"

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2010

Census

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2011

General Assembly draws new:

- Congressional districts
- State House districts
- State Senate districts

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Three Important Contrasts

- Congressional districts vs. legislative districts
- Federal courts (federal law) vs. state courts (state law)
- Racial gerrymandering vs. partisan gerrymandering

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Congressional/federal court/racial

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Congressional/federal court/racial

Lawsuit about the Congressional districts in federal court claims that the 2011 maps were racial gerrymanders under the U.S. Constitution

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Congressional/federal court/racial

- 2016
 - Federal court: 2011 maps contained unconstitutional racial gerrymander
 - General Assembly draws new maps
- 2017
 - US Supreme Court affirms holding of racial gerrymander

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Legislative/federal court/racial

Lawsuit about the Congressional districts in federal court claims that the 2011 maps were racial gerrymanders

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Legislative/federal/racial

2016

- Federal court: 2011 maps contained racial gerrymander
- U.S. Supreme Court: Don't draw new maps yet

2017

- U.S. Supreme Court: Affirms holding of racial gerrymander
- General Assembly draws new maps

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Keep in Mind at this Point

In two separate lawsuits, the U.S. Supreme Court affirmed findings of unconstitutional racial gerrymandering in all three maps:

- Congressional districts
- Legislative districts (State House and State Senate)

The General Assembly, as a result, redrew all three maps

And that led to new lawsuits

And, as we shall see, that led to truly groundbreaking new legal rulings, unlike any we have seen before

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Congressional/federal/partisan

New lawsuit about the Congressional districts in federal court claims that the 2016 maps were partisan gerrymanders

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Congressional/federal court/partisan

- 2018
 - Federal court: 2016 Congressional maps contained unconstitutional partisan gerrymander
- 2019
 - US Supreme Court: federal courts are closed to partisan gerrymander claims

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Legislative/state court/partisan

- 2018
 - Lawsuit challenges new state districts in state court under state constitution
- 2019
 - State superior court 3-judge panel: 2017 districts contain partisan gerrymanders unconstitutional under the state constitution
 - General Assembly draws new districts, to be used only in 2020 elections

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Congressional/state/partisan

- 2019
 - Lawsuit challenges the 2016 Congressional maps as partisan gerrymander in state court under state constitution
 - State superior court 3-judge panel: don't use those 2016 maps until we can decide this question (or, if you want, go ahead and draw new districts)
 - General Assembly draws new maps to be used only in 2020 elections

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Follow All That? Here's the Recap

- US Supreme Court finds that all 2011 maps were unconstitutional racial gerrymanders
- General Assembly drew new maps
- Federal court found that the new Congressional maps were unconstitutional partisan gerrymanders
- But U.S. Supreme Court said that the federal courts are not open to that question
- State superior court found that all* the new maps were unconstitutional partisan gerrymanders
- General Assembly drew all new maps for 2020 alone

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So Much For Redistricting

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Other Elections Law Matters in 2019

Nothing nearly as exciting as redistricting

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Questions?



Evaluation: https://unc.az1.qualtrics.com/jfe/form/SV_eFp3uL60xRD91Fr

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Local Government Potpourri

Aimee Wall





Ordinance Report to Joint Legislative Committee: Round Two (S.L. 2019-198)

- [S.L. 2018-69](#)
 - By 1 December 2018, each city and county had to submit complete list of its criminally enforceable ordinances, including description of conduct prohibited by each ordinance.
 - Many cities and counties failed to meet requirement.
- [S.L. 2019-198](#)
 - Extended report deadline to 1 November 2019
 - Exempted any city with < 1,000 residents & any county with < 20,000 residents
 - Imposed penalty for noncompliance: 2-year ban on adoption of criminally enforceable ordinances



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Questions?



Evaluation: https://unc.az1.qualtrics.com/jfe/form/SV_eFp3uL60xRD91Fr

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