

SUPREME COURT OF NORTH CAROLINA

Dickson v. Rucho

366 N.C. 332 (2013) · No. 201PA12 · Decided January 25, 2013

SUMMARY

The Supreme Court of North Carolina considered whether N.C. Gen. Stat. § 120-133 waived legislators’ attorney-client privilege and work-product protection for redistricting-related communications. The Court held that the statute did not clearly and unambiguously waive those common-law protections, affirming in part and reversing in part the discovery order of a three-judge Superior Court panel. Justice Beasley did not participate, and Justice Hudson dissented.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Jackson, Justice; Hudson, Justice
JURISDICTION	North Carolina
DECIDED	January 25, 2013
DOCKET	201PA12
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendants appealed as of right from a three-judge Superior Court panel's order compelling production of redistricting-related documents over claims of attorney-client privilege, legislative privilege, and work-product protection.
STANDARD OF REVIEW	De novo review of the statutory-interpretation question.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Robert Rucho, David Lewis, Nelson Dollar, Jerry Dockham, Philip E. Berger, Thom Tillis, The State Board of Elections, The State of North Carolina, The North Carolina State Board of Elections v. Margaret Dickson, Alicia Chisolm, Ethel Clark, Matthew A. McLean, Melissa Lee Rollizo, C. David Gantt, Valeria Truitt, Alice Graham Underhill, Armin Jancis, Rebecca Judge, Zettie Williams, Tracey Burns-Vann, Lawrence Campbell, Robinson O. Everett, Jr., Linda Garrou, Hayes McNeill, Jim Shaw, Sidney E. Dunston, Alma Adams, R. Steve Bowden, Jason Edward Coley, Karl Bertrand Fields, Pamlyn Stubbs, Don Vaughan, Bob Etheridge, George Graham, Jr., Thomas M.

Chumley, Aisha Dew, Geneal Gregory, Vilma Leake, Rodney W. Moore, Brenda Martin Stevenson, Jane Whitley, I.T. (Tim) Valentine, Lois Watkins, Richard Joyner, Melvin C. McLawhorn, Randall S. Jones, Bobby Charles Townsend, Albert Kirby, Terrence Williams, Norman C. Camp, Mary F. Poole, Stephen T. Smith, Philip A. Baddour, Douglas A. Wilson, North Carolina State Conference of Branches of the NAACP, League of Women Voters of North Carolina, Democracy North Carolina, North Carolina A. Philip Randolph Institute, Reva McNair, Matthew Davis, Tressie Stanton, Anne Wilson, Sharon Hightower, Kay Brandon, Goldie Wells, Gray Newman, Yvonne Stafford, Robert Dawkins, Sara Stohler, Hugh Stohler, Octavia Rainey, Charles Hodge, Marshall Hardy, Martha Gardenhight, Ben Taylor, Keith Rivers, Romallus O. Murphy, Carl White, Rosa Brodie, Herman Lewis, Clarence Albert, Jr., Evester Bailey, Albert Brown, Benjamin Lanier, Gilbert Vaughn, Avie Lester, Theodore Muchiteni, William Hobbs, Jimmie Ray Hawkins, Horace P. Bullock, Roberta Waddle, Christina Davis-McCoy, James Oliver Williams, Margaret Speed, Larry Laverne Brooks, Carolyn S. Allen, Walter Rogers, Sr., Shawn Meachem, Mary Green Bonaparte, Samuel Love, Courtney Patterson, Willie O. Sinclair, Cardes Henry Brown, Jr., Jane Stephens

TOPICS

attorney client privilege

work product doctrine

statutory interpretation

redistricting

appellate jurisdiction

PRACTICE AREAS

evidence

election law

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether N.C.G.S. § 120-133 clearly and unambiguously waives legislators' attorney-client privilege for pre-enactment redistricting communications and documents.
2. Whether N.C.G.S. § 120-133 waives or otherwise eliminates work-product protection for pre-enactment redistricting communications and documents.
3. Whether attorney-client privilege and work-product protection apply to relevant post-enactment communications and documents.

HOLDINGS

1. N.C.G.S. § 120-133 does not waive the attorney-client privilege for pre-enactment redistricting communications and documents because the statute contains no clear and unambiguous statement waiving that common-law protection.
2. N.C.G.S. § 120-133 does not waive work-product protection for pre-enactment redistricting materials because the statute lacks a clear and unambiguous waiver of that doctrine.

3. Attorney-client privilege and work-product protection apply to relevant post-enactment redistricting communications and documents.

KEY QUOTATIONS

“Because any waiver of such well-established legal principles must be clear and unambiguous, we conclude that the statute’s silence on such waivers renders the statute ambiguous as to this issue.” (366 N.C. at 340)

“Therefore, without a clear and unambiguous statement by the General Assembly that it intends to waive its attorney-client privilege or work-product doctrine, we are compelled to exercise judicial restraint and defer to the General Assembly’s judgment regarding the scope of its legislative confidentiality.” (366 N.C. at 345)

FACTUAL BACKGROUND

The North Carolina General Assembly enacted new state and congressional redistricting plans in July 2011 and later enacted corrective legislation addressing a software error. Legislators received legal advice from the Attorney General's Office and private law firms paid with state funds. Plaintiffs challenging the plans sought discovery of communications and documents concerning the redistricting process, while defendants asserted attorney-client privilege and work-product protection.

PROCEDURAL HISTORY

Plaintiffs filed separate actions challenging North Carolina's 2011 redistricting plans, and the actions were consolidated before a three-judge Superior Court panel. After defendants asserted privileges in response to document requests, the panel granted plaintiffs' motion to compel, concluding that N.C.G.S. § 120-133 waived the asserted privileges for specified redistricting materials. Defendants appealed directly to the Supreme Court of North Carolina, which affirmed in part, reversed in part, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to the three-judge Superior Court panel for additional proceedings consistent with the opinion, including application of the attorney-client privilege and work-product doctrine to the disputed materials.

CASES CITED

- Pender Cnty. v. Bartlett, 361 N.C. 491, 649 S.E.2d 364 (2007)
- Bartlett v. Strickland, 556 U.S. 1 (2009)
- In re Vogler Realty, Inc., 365 N.C. 389, 722 S.E.2d 459 (2012)
- Burgess v. Your House of Raleigh, Inc., 326 N.C. 205, 388 S.E.2d 134 (1990)
- Swidler & Berlin v. United States, 524 U.S. 399 (1998)
- In re Miller, 357 N.C. 316, 584 S.E.2d 772 (2003)
- Ridge Cmty. Investors, Inc. v. Berry, 293 N.C. 688, 239 S.E.2d 566 (1977)

- In re D.S., 364 N.C. 184, 694 S.E.2d 758 (2010)
- State v. Flowers, 318 N.C. 208, 347 S.E.2d 773 (1986)
- N.C. Dep't of Corr. v. N.C. Med. Bd., 363 N.C. 189, 675 S.E.2d 641 (2009)
- Bacon v. Lee, 353 N.C. 696, 549 S.E.2d 840 (2001)
- Person v. Bd. of State Tax Comm'rs, 184 N.C. 499, 115 S.E. 336 (1922)
- State ex rel. Martin v. Preston, 325 N.C. 438, 385 S.E.2d 473 (1989)
- State v. Fair, 354 N.C. 131, 557 S.E.2d 500 (2001)
- State v. Brown, 327 N.C. 1, 394 S.E.2d 434 (1990)
- State v. Van Landingham, 283 N.C. 589, 197 S.E.2d 539 (1973)
- Lanvale Props., LLC v. Cnty. of Cabarrus, 366 N.C. 142, 731 S.E.2d 800 (2012)
- State v. Davis, 364 N.C. 297, 698 S.E.2d 65 (2010)
- State v. Hardy, 293 N.C. 105, 235 S.E.2d 828 (1977)
- Willis v. Duke Power Co., 291 N.C. 19, 229 S.E.2d 191 (1976)
- Nat'l Union Fire Ins. Co. v. Murray Sheet Metal Co., 967 F.2d 980 (4th Cir. 1992)
- State v. Buckner, 351 N.C. 401, 527 S.E.2d 307 (2000)