

SUPREME COURT OF NORTH CAROLINA

State ex rel. Martin v. Preston, 325 N.C. 438

385 S.E.2d 473 (1989) · No. No. 58PA89 · Decided November 9, 1989

SUMMARY

The Supreme Court of North Carolina reviewed a challenge to Chapter 509 of the 1987 North Carolina Session Laws, which reorganized superior court judicial districts and postponed certain judicial elections. The court held that the election postponements did not unconstitutionally extend judicial terms, violate voting rights, or create vacancies requiring gubernatorial appointments, because incumbent judges could hold over until successors were elected and qualified.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Mitchell, Justice
JURISDICTION	North Carolina
DECIDED	November 9, 1989
DOCKET	No. 58PA89
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from a superior court judgment granting in part and denying in part cross-motions for summary judgment and granting partial injunctive relief in a declaratory judgment action challenging Chapter 509 of the 1987 North Carolina Session Laws. The Supreme Court of North Carolina granted discretionary review before decision by the Court of Appeals.
STANDARD OF REVIEW	De novo review of constitutional and statutory questions and summary judgment based on stipulated, undisputed facts; legislative enactments receive a strong presumption of constitutionality.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of North Carolina.
PARTIES	James G. Martin, as Governor of North Carolina and as a citizen and Governor v. Edwin S. Preston, Jr., Henry V. Barnette, Jr., Franklin R. Brown, Robert E. Gaines, Donald Stephens, North Carolina State Board of Elections, North Carolina Association of Black Lawyers

TOPICS

election law

election administration

constitutional law

statutory interpretation

separation of powers

PRACTICE AREAS

constitutional law

election law

state government

judicial administration

QUESTIONS PRESENTED

1. Whether Chapter 509 unconstitutionally extended the terms of incumbent superior court judges by postponing elections for nine judgeships.
2. Whether postponement of the election for the District 27A judgeship created a vacancy requiring gubernatorial appointment.
3. Whether Chapter 509's assignment of incumbent superior court judges to newly created districts violated the North Carolina Constitution.
4. Whether the creation of superior court districts that split counties or included portions of multiple counties violated the North Carolina Constitution.
5. Whether Chapter 509's requirement that superior court candidates reside in the district as it would exist when they took office was constitutional.
6. Whether Chapter 509 violated North Carolina constitutional protections concerning voting, candidacy for office, separation of powers, or exclusive emoluments and privileges.

HOLDINGS

1. The legislature may create a one-time delay or hiatus between eight-year terms of superior court judges to eliminate staggered elections when the delay serves a legitimate public purpose and is no longer than necessary to accomplish that purpose. The delay does not extend the incumbent's constitutional term; the incumbent holds over until a successor is elected and qualified.
2. No vacancy arose when Judge Gaines's term expired because Chapter 509 validly delayed the election and the constitutional hold-over provision permitted him to continue serving until his successor was elected and qualified.
3. Chapter 509 constitutionally assigned incumbent superior court judges to newly created districts carved from the former districts for which they were elected, provided the new districts included the judges' residences.
4. The North Carolina Constitution does not require superior court judicial districts to consist of whole counties or whole counties combined. The General Assembly may create districts crossing county lines if the resulting division is convenient.
5. The statutory requirement that a superior court candidate reside, at the time of filing, in the judicial district as it will exist when the candidate takes office is constitutional.
6. Chapter 509 does not violate the North Carolina Constitution and remains fully effective; the portions of the trial court's judgment declaring provisions unconstitutional were reversed and the injunction was

dissolved, while the remaining portions upholding the statute were affirmed.

KEY QUOTATIONS

“when the constitution fixes the duration of a term it is not in the power of the legislature either to extend or abridge it.” (480-481)

“For the foregoing reasons, we conclude that Chapter 509 as enacted by the General Assembly does not violate our State Constitution and is fully effective.” (486-487)

FACTUAL BACKGROUND

Chapter 509 increased North Carolina's superior court judicial districts from thirty-four to sixty, divided some counties and former districts, reassigned incumbent judges, altered the election dates of nine judgeships, and imposed a residency requirement tied to the district as it would exist when a successful candidate took office. The legislation sought, among other purposes, to eliminate staggered terms in multi-seat districts, improve judicial administration, and maintain compliance with the Voting Rights Act. The Governor challenged the legislation under the North Carolina Constitution, including provisions concerning judicial terms, vacancies, voting rights, appointments, separation of powers, emoluments, district boundaries, and candidate residency.

PROCEDURAL HISTORY

The Governor filed a declaratory judgment action seeking construction of Chapter 509, declarations that portions of the statute violated the North Carolina Constitution, and an injunction against elections conducted under the statute. The trial court, proceeding on stipulated facts, held certain provisions delaying elections unconstitutional and enjoined their enforcement, while upholding the remaining challenged provisions. Both sides appealed, and the Supreme Court allowed discretionary review before Court of Appeals review.

DISPOSITION

other

CASES CITED

- Bayard v. Singleton, 1 N.C. (Mart.) 5 (1787)
- Marbury v. Madison, 5 U.S. (1 Cranch) 137, 2 L. Ed. 135 (1803)
- University v. Foy, 5 N.C. (1 Mur.) 58 (1805)
- Hoke v. Henderson, 15 N.C. (4 Dev.) 1 (1833)
- Mial v. Ellington, 134 N.C. 131, 46 S.E. 961 (1903)
- McIntyre v. Clarkson, 254 N.C. 510, 119 S.E.2d 888 (1961)
- Lassiter v. Board of Elections, 248 N.C. 102, 102 S.E.2d 853 (1958)
- Airport Authority v. Johnson, 226 N.C. 1, 36 S.E.2d 803 (1946)
- Glenn v. Board of Education, 210 N.C. 525, 187 S.E. 781 (1936)
- Perry v. Stancil, 237 N.C. 442, 75 S.E.2d 512 (1953)

- State v. Emery, 224 N.C. 581, 31 S.E.2d 858 (1944)
- Elliott v. Gardner, 203 N.C. 749, 166 S.E. 918 (1932)
- State v. Arrington, 311 N.C. 633, 319 S.E.2d 254 (1984)
- PruneYard Shopping Center v. Robins, 447 U.S. 74, 100 S. Ct. 2035, 64 L. Ed. 2d 741 (1980)
- Murdock v. City of Memphis, 87 U.S. (20 Wall.) 590, 22 L. Ed. 429 (1875)
- White v. Pate, 308 N.C. 759, 304 S.E.2d 199 (1983)
- Watch Co. v. Brand Distributors and Watch Co. v. Motor Market, 285 N.C. 467, 206 S.E.2d 141 (1974)
- Wilson v. Clark, 63 Kan. 505, 65 P. 705 (1901)
- Murray v. Payne, 137 Kan. 685, 21 P.2d 333 (1933)
- McCoy v. Story, 243 Ark. 1, 417 S.W.2d 954 (1967)
- Scott v. State ex rel. Gibbs, 151 Ind. 556, 52 N.E. 163 (1898)
- Jordan v. Bailey, 37 Minn. 174, 33 N.W. 778 (1887)
- State ex rel. Attorney General v. McGovney, 92 Mo. 428, 3 S.W. 867 (1887)
- Best v. Moorhead, 96 Neb. 602, 148 N.W. 551 (1914)
- State ex rel. Barton v. McCracken, 51 Ohio St. 123, 36 N.E. 941 (1894)
- State ex rel. Wagner v. Compson, 34 Or. 25, 54 P. 349 (1898)
- State Board of Education v. Commission of Finance, 122 Utah 164, 247 P.2d 435 (1952)
- Gemmer v. State ex rel. Stephens, 163 Ind. 150, 71 N.E. 478 (1904)
- Opinion of the Judges, 114 N.C. 925, 21 S.E. 963 (1894)
- In re Advisory Opinion, 314 N.C. 679, 335 S.E.2d 890 (1985)
- Penny v. Board of Elections, 217 N.C. 276, 7 S.E.2d 559 (1940)
- Lowe v. Tarble, 312 N.C. 467, 323 S.E.2d 19 (1984), aff'd on rehearing, 313 N.C. 460, 329 S.E.2d 648 (1985)
- Town of Emerald Isle v. State, 320 N.C. 640, 360 S.E.2d 756 (1987)
- Mitchell v. Financing Authority, 273 N.C. 137, 159 S.E.2d 745 (1968)

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