

SUPREME COURT OF NORTH CAROLINA

North Carolina State Conference of the National Association for the Advancement of Colored People v. Tim Moore and Philip Berger

2022-NCSC-99 · No. No. 261A18-3 · Decided August 19, 2022

SUMMARY

The Supreme Court of North Carolina considered whether a General Assembly substantially composed of legislators elected from unconstitutionally racially gerrymandered districts had authority to propose constitutional amendments. The court held that the North Carolina Constitution imposes limits on that authority under the circumstances, but concluded that the trial court’s categorical invalidation of the challenged amendments was too broad. The court reversed the Court of Appeals and remanded for consideration of whether invalidation was necessary after balancing the equities.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Justice Earls
JURISDICTION	North Carolina
DECIDED	August 19, 2022
DOCKET	No. 261A18-3
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal under N.C.G.S. § 7A-30(2) from a divided Court of Appeals decision reversing a superior court order granting partial summary judgment and declaring two constitutional amendments void ab initio.
STANDARD OF REVIEW	De novo review of the superior court's summary-judgment order and the constitutional issue presented.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of North Carolina
PARTIES	North Carolina State Conference of the National Association for the Advancement of Colored People v. Tim Moore, in his official capacity, Philip Berger, in his official capacity

TOPICS

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QUESTIONS PRESENTED

1. Whether the challenge to the authority of legislators elected from unconstitutionally racially gerrymandered districts to initiate constitutional amendments presented a justiciable controversy.
2. Whether legislators elected from districts conclusively determined to be unconstitutional racial gerrymanders retained authority to initiate the constitutional-amendment process under Article XIII, section 4 of the North Carolina Constitution.
3. Whether the de facto officer doctrine automatically shields constitutional-amendment proposals enacted by such legislators from collateral review after the gerrymandering violation was established.
4. What factors a trial court must consider in deciding whether to invalidate constitutional amendments proposed by a legislature whose members included legislators elected through unconstitutional racial gerrymandering.

HOLDINGS

1. The challenge to the authority of legislators elected through unconstitutional racial gerrymandering to initiate the constitutional-amendment process is justiciable and is not a purely political question.
2. Legislators elected as a result of unconstitutional racial gerrymandering were not de jure officers, but they were de facto officers whose ordinary legislative acts are presumptively valid and not subject to collateral attack.
3. The de facto officer doctrine does not automatically shield acts initiating constitutional amendments when legislators elected through unconstitutional racial gerrymandering could have been decisive in the vote.
4. When legislators elected through unconstitutional gerrymandering could have been decisive in passing an amendment proposal, the court must determine whether there is a substantial risk that the amendment will immunize legislators from democratic accountability, perpetuate exclusion of a category of voters from the political process, or intentionally discriminate against a category of citizens also targeted in the gerrymandering process. If any factor is present, the amendment must be invalidated; otherwise, the amendment must remain in place.
5. Subsequent majority approval by voters does not cure a constitutional defect in the legislative process for submitting an amendment to the electorate.

KEY QUOTATIONS

“Although we agree with Legislative Defendants that the de facto officer doctrine applies in this case, we conclude that we must define its scope in view of the interests the doctrine was designed to advance and the relevant constitutional provisions and principles the amendment process implicates.” (2022-NCSC-99, ¶ 58)

“If any of these factors are present, then the balance of equities requires the court to invalidate the challenged amendment.” (2022-NCSC-99, ¶ 70)

“We reverse the decision of the Court of Appeals and instruct that court to remand this matter to the trial court for further proceedings consistent with this opinion.” (2022-NCSC-99, ¶ 73)

FACTUAL BACKGROUND

The General Assembly that submitted the challenged amendments to voters included many legislators elected from districts that federal courts had conclusively determined were unconstitutional racial gerrymanders. The Tax Cap Amendment and Voter ID Amendment passed by narrow three-fifths supermajorities and were later ratified by North Carolina voters. The 2018 election using remedial district maps denied any political party a three-fifths supermajority in either legislative chamber.

PROCEDURAL HISTORY

The NC NAACP challenged Session Laws 2018-119 and 2018-128, which submitted the Tax Cap Amendment and Voter ID Amendment to North Carolina voters, arguing that the General Assembly lacked authority to initiate constitutional amendments because many legislators had been elected from unconstitutionally racially gerrymandered districts. The Wake County Superior Court granted partial summary judgment to the NC NAACP and invalidated the amendments. A divided Court of Appeals reversed. The Supreme Court of North Carolina reversed the Court of Appeals and remanded for an evidentiary hearing and additional findings under the framework announced in the opinion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The superior court must conduct an evidentiary hearing and enter additional findings of fact and conclusions of law addressing whether the de facto officer doctrine should shield the acts proposing the Voter ID Amendment and/or Tax Cap Amendment from retroactive invalidation. The court must apply the threshold inquiry and the three-factor framework stated in the opinion and remain bound by the prior unchallenged findings of fact.

CASES CITED

- Covington v. North Carolina, 316 F.R.D. 117 (M.D.N.C. 2016), aff'd, 137 S. Ct. 2211 (2017)
- North Carolina v. Covington, 138 S. Ct. 2548 (2018)
- Leonard v. Maxwell, 216 N.C. 89 (1939)
- Baker v. Carr, 369 U.S. 186 (1962)
- State v. Porter, 272 N.C. 463 (1968)
- In re Wingler, 231 N.C. 560 (1950)
- People ex rel. Duncan v. Beach, 294 N.C. 713 (1978)
- Dawson v. Bomar, 322 F.2d 445 (6th Cir. 1963)
- Reade v. City of Durham, 173 N.C. 668 (1917)
- State ex rel. Attorney-General v. Knight, 169 N.C. 333 (1915)

- Vroman v. City of Soldotna, 111 P.3d 343 (Alaska 2005)
- United States v. Carolene Products Co., 304 U.S. 144 (1938)
- Harper v. Hall, 380 N.C. 317, 2022-NCSC-17 (2022)
- Corum v. University of North Carolina, 330 N.C. 761 (1992)
- State ex rel. McCrory v. Berger, 368 N.C. 633 (2016)

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