



## NC Supreme Court Cases to Watch

November 1, 2023

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Last month, the United States Supreme Court began its new term. The media have covered some of the arguments and we can expect more coverage as the term continues and opinions are released in coming months. Our State's highest court, the North Carolina Supreme Court hears cases throughout the year, including some in the summer months. Partly owing to that, the state supreme court has far less of the ceremony and public attention seen with SCTOUS's annual October term. Still, the NC Supreme Court has several important cases on its calendar and more likely to be added. Cases involving hot-button issues like redistricting and education funding get a lot of attention, but the court hears much more than cases like those. Below are a few of the cases to be decided by the North Carolina Supreme Court.

### **COVID-19—Legal Battles Still Linger**

For many North Carolinians, COVID-19 and its havoc linger only in our memories, but legal battles spawned by the government and its response to the pandemic still rage in the courts.

*North State Deli v. Cincinnati Insurance Co.* is one of thousands across the country arising out of COVID-19 and related government shutdown orders. The plaintiffs are a group of 16 restaurants who, suffering economic devastation in the wake of shutdown orders, turned to their "business interruption" insurance policies. When their insurer denied their business interruption claims, they sued. On October 9, 2020, the Durham County Superior Court entered an order declaring that Plaintiffs' business interruption insurance policies sold by The Cincinnati Insurance Company and The Cincinnati Casualty Company

("Cincinnati") provide coverage for losses incurred due to the Covid-19 pandemic and related government shutdown orders ("Government Orders"). On July 5, 2022, the North Carolina Court of Appeals reversed that decision. The business owners asked the North Carolina Supreme Court to review the case. According to the [plaintiffs' court filing](#), "In North Carolina, at least hundreds of businesses have filed claims seeking coverage" under business interruption policies similar to those at issue and "at least dozens of lawsuits have been initiated in North Carolina state and federal courts." On September 1, 2023, the state supreme court agreed to hear the case.

Another COVID-19 case stems from a small business's refusal to comply with the government's orders. When the Governor and other executive branch officials issued shutdown orders, Ace Speedway in Alamance County defied the orders and kept holding races. The N.C. Department of Health and Human Services sued to stop the speedway. Although an injunction was issued, the speedway counterclaimed under the state constitution, alleging selective enforcement of the laws and a violation of the business owner's right to earn a living. The suit seeks damages for those constitutional violations. The trial court

allowed two of the business's claims to go forward and the Court of Appeals affirmed. The Secretary of Health and Human Services (Dr. Mandy Cohen at the time the case began; now Kody Kinsley) appealed to the North Carolina Supreme Court. The case, *Kinsley v. Ace Speedway*, will be heard on November 7, 2023 by the North Carolina Supreme Court. The crux of the case is whether the speedway has valid claims under the state constitution and whether damages are recoverable at all. On the latter point, the NC Department of Justice hopes to limit what are known as "*Corum* claims." Those are a type of legal claim brought directly under our state constitution — by limiting the circumstances in which plaintiffs can reach the state's coffers. The [NCDOJ argues the Secretary](#) has sovereign immunity and can't be sued for these claims. [NCICL previously filed a friend of the court brief in the case]

Two separate class action cases involve claims against the University of North Carolina System and COVID-19. On July 1, 2020, Governor Roy Cooper signed into law NC Gen Stat. §116-311 to protect universities in the UNC System from claims for refunds and fees paid for the 2020 spring semester. In one

case, [\*Dieckhaus v. Board of Governors\*](#), a class action seeks a refund of those fees and challenges the immunity legislation in NC Gen Stat §116-311 as unconstitutional.

The other case, *Lannan v. Board of Governors*, seeks a refund of fees due to closures at NC State and UNC in fall 2020, outside timeframe for the immunity set out in N.C. Gen Stat §116-311. The plaintiffs' claims are based on implied-contract theory. The [university acknowledges](#) that it can be sued for breaches of express contracts, but it argues that it retains sovereign immunity against implied-contract theories. The trial court refused to dismiss the case and the Court of Appeals affirmed that decision.

### **Education Funding**

The decades-long case, commonly known as *Leandro v. North Carolina*, is returning to the state's highest court again, though it is now *Hoke County Bd of Educ. v. State*. [In 2022](#), the North Carolina Supreme Court said that a court could order specific educational funding. The court remanded the case to the trial court to determine the amount to be paid. Now that this has happened, the legislature has appealed

and is seeking reconsideration of that 2022 ruling. The Supreme Court [elected to take the case prior](#) to a determination by the Court of Appeals, as it has done on two prior occasions. The legislative defendants in the case argue that the court lacks subject matter jurisdiction. NCICL has previously filed [friend of the court briefs](#) and anticipates doing so again.

The constitution's Fines and Forfeitures Clause, which requires that revenue from civil penalties go to public schools, is center stage in another case. The city of Greenville operates a red-light camera program but, rather than giving the "clear proceeds" to public schools as required by the Article IX, §7 of the North Carolina Constitution, diverts the money to the Alabama company that operates the cameras. In *Fearrington v. City of Greenville*, the court will decide whether this diversion violates the constitution. [NCICL filed a friend of the court brief](#) arguing the diversion of funds is not constitutional.

### **Certificate of Need**

The North Carolina Supreme Court granted discretionary review to determine the constitutionality of the state's certificate-of-need (CON) law.

Under the law, the state determines medical needs for various services, like MRI machines. The state then grants certificates of need to health care providers so that the precise number of services, and no more than that, is provided across the state. In *Singleton v. DHHS*, the court will decide whether this statutory scheme violates various provisions of the state constitution.

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### About NCICL

NCICL envisions a North Carolina of individual liberty and a thriving, innovative economy, with state and local governments committed to following the state and federal constitutions.

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### Our Mission

- To help the public hold policymakers accountable by providing resources to understand constitutional law issues as they develop.

- To educate the public, bar, and policymakers about constitutional principles--why they are important, when they are at risk, and how to preserve them.
- To promote liberty by encouraging a limited and transparent government and promoting free enterprise.

### About the Author

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*“A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.”*

Constitution of 197, art. I, §35  
Constitution of 1868, art. I, § 29  
Constitution of 1176, Declaration of Rights, § 21