

617

- A. Quickies
 - 1. Alex Jones and Hearsay

Plaintiffs played a bunch of InfoWars clips. At the end of the day, defense wants to play an InfoWars clip. Plaintiffs object that it's hearsay.

Rule 802

Hearsay is not admissible unless permitted by federal statute, these rules, or other rules prescribed by the Supreme Court.

Rule 801

<https://www.rulesofevidence.org/article-viii/rule-801/>

(c) Hearsay. "Hearsay" means a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.

(d) Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay:

(2) An Opposing Party's Statement. The statement is offered against an opposing party and:

- (A) was made by the party in an individual or representative capacity;
- (B) is one the party manifested that it adopted or believed to be true;
- (C) was made by a person whom the party authorized to make a statement on the subject;
- (D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
- (E) was made by the party's coconspirator during and in furtherance of the conspiracy.

So that's why.

-Ineffective assistance of counsel?

No, that's not a thing in a civil case. Standards come from *Strickland v. Washington*, 466 U.S. 668 (1984)

https://scholar.google.com/scholar_case?case=16585781351150334057

-habeas corpus

-standard is

To prove ineffective assistance, a defendant must show (1) that their trial lawyer's performance fell below an "objective standard of reasonableness" and (2) "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

Appealing a civil case is just... appealing. You can sue the lawyers for malpractice.

2. AWW

[Chris Kiser](#)

Hey guys, Andrew is wrong to treat the probability of unintentional data loss as negligible in OA615. TL;DR: Andrew's substantive point is already well-supported without the sufficient, but unnecessary support of poorly developed technical evidence. Andrew is correct if he is describing the probability of an end user accidentally erasing data with a backup. The probability that the end user erased that data is 0. If the end user wanted to intentionally erase that data, then there would be an increased probability they successfully erase that data proportionate to their level of access to the backup drives. However, erasing data is about preventing recovering of any usable data intended for erasure. Because of the massive scale and complexity of the US government's backup operation, data loss from accidental deletion won't happen, but incidental loss will still happen. Data can still be lost due to corruption, drive failures, network errors, etc. Those issues can result in isolated losses where only some of the data is rendered totally useless. In terms of the secret service texts (assuming they're all government phones), the probability that the relevant texts would be lost incidentally is very low (likely a small fraction of a percent). That small chance is only negligible if the effect of bias is also negligible. We have to consider how likely it would be that any significant document relevant to 1/6 would have been lost incidentally. We also have to consider extenuating circumstances on that day that may have increased the probability of incidental data loss for that medium. None of this is to say that Andrew is substantively wrong about the texts likely being intentionally destroyed or hidden, but the technical support for the argument is a lot harder to develop than Andrew implies. Ultimately, we know that the probability of incidental loss could be extremely high, but that probability is independent of the probability of someone attempting to erase those records. The technical argument may be sufficient in itself to support Andrew's argument, but his argument is supported by A LOT already from what we know of Trump's past behavior obstructing and hiding information.

B. The Green Party is a wholly-owned subsidiary of the Republican Party

1. Background

-state of race

NC Senate to succeed Richard Burr (R-NC), basically a slight edge to Republican Ted Budd over Cheri Beasley, but this is a tossup race.

-Beasley

* former public defender AND Chief Justice of the NC Supreme Court, Black woman

Issues:

-public option for ACA

-\$15/hr minimum wage

-codify Roe v Wade

-Freedom to Vote Act & John Lewis Voting Rights Act

-climate change

NOW

-ballot signatures

Absolutely subject to political chicanery but NOT the same as Republican voter suppression

-Matthew Hoh

-I invited him to be on the show

-atheist

-seems to be a true-believing progressive

-still blogging

<https://matthewhoh.com/>

-if you are not a Democrat or Republican, you can run for Senate

-statewide office

NC Stat. § 163-122

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_163/GS_163-122.pdf

If the office is a statewide office, file written petitions with the State Board of Elections supporting the voter's candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the day of the primary election and must be signed by qualified voters of the State equal in number to one and a half percent (1.5%) of the total number of voters who voted in the most recent general election for Governor. Also, the petition must be signed by at least 200 registered voters from each of three congressional districts in North Carolina. The petitions shall be divided into sections based on the county in which the signatures were obtained.

7 million registered voters in North Carolina

5,546,000 voted in the last gubernatorial election

1.5% of that is 83,190 by May 17.

Get to work, Matt!

...or, you can do this One Weird Trick that really works

NC Stat. § 163.96: create a new party

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_163/GS_163-96.pdf

- (a) (2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to one-quarter of one percent (0.25%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of three congressional districts in North Carolina. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate.

163.98: that new party gets an automatic line on the ballot

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_163/GS_163-98.pdf

In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163-96, it shall be entitled to have the names of its candidates **for national, State, congressional, and local offices printed on the official ballots**

Instead of 1.5%, you need 0.25% (one-sixth), or **13,865**.

By the way, this is how you know the Green Party of North Carolina is not a real political party. There are hundreds of local races in North Carolina, and they are running TWO candidates

<https://www.ncgreenparty.org/candidates>

-Matthew Hoh for US Senate

-one guy named Joshua Bradley, running for Raleigh City Council at-large.

2. The Petition to Qualify the Green Party “as a new party” – governed by 163.96

-use volunteers

-also pay outfits, and they pay canvassers, often by the signature

-so not only do people lie

-that means canvassers are incentivized to make up fake names

They have the little check mark!

PETITION TO CREATE A NEW POLITICAL PARTY (NCGS § 163-96 (a)(2))

Josh M

THE UNDERSIGNED QUALIFIED REGISTERED VOTERS IN WAKE COUNTY HEREBY PETITION FOR THE FORMATION OF A NEW POLITICAL PARTY TO BE NAMED NORTH CAROLINA GREEN PARTY AND WHOSE STATE CHAIRMAN IS ANTHONY NDEGE, RESIDING AT 1713 CHAPEL STREET, WINSTON-SALEM 27127, AND WHO CAN BE REACHED BY TELEPHONE AT 336-577-1421.

IT IS ILLEGAL TO SIGN THE NAME OF ANOTHER PERSON TO A PETITION. (G. S. 163-221)

BCE ONLY	Line No.	Print your name (must be printed legibly)	Residence Address and City/Town (no PO Box numbers)	ZIP code	Birth date (DD/MM/YYYY)	Signature
✓	1	Corinthia Evans	2002 Manderleigh Dr	27545		C. Evans
	2	XXXXXXXXXX	XXXXXXXXXX			
✓	3	Keyante Cherry	812 Terrastone Pl	27519		Keyante Cherry
✓	4	Demonte Blue	1663 Plexor Ln	27545		Demonte Blue
✓	5	Shaneeka Bell	1151 Cannonball Run #301	27545		Shaneeka Bell
✓	6	Jacob Green	2830 Manorcrest Ct #231	27609		Jacob Green
✓	7	Dondra Griffin	5800 Peacecrest Dr	27610		Dondra Griffin
✓	8	Eboni Young	506 Glenbrook Dr	27610		Eboni Young
✓	9	Deasia Goodman	5324 Baywood Forest Dr	27545		Deasia Goodman
✓	10	Summer Hardin	7837 Harps Mill Woods Run	27615		Summer Hardin
✓	11	Karrin Leonard	2513 Shepherd Valley St	27610		Karrin Leonard
✓	12	Lofton Woods	2301 Fox Ridge Manor Rd	27610		Lofton Woods
✓	13	Tajasia Pitts	410 Montview Way	27545		Tajasia Pitts
✓	14	Comryn Hunter	404 Little Acres Dr	27545		Comryn Hunter
✓	15	Nytil Thomas	2253 Ballston Pl	27545		Nytil Thomas

SUBMIT COMPLETED FORMS TO THE OFFICE OF (COUNTY) BOARD OF ELECTIONS.

Josh Mullins

-all of the docs are public

<https://dl.ncsbe.gov/?prefix=State Board Meeting Docs/2022-06-30/Green%20Party%20Petition/>

-you know this is going to happen

So the Green Party got 22,547 signatures; they needed 13,865. But of those 22,000, a bunch were obvious fraud on its face, struck by the local county boards of election

<https://vt.ncsbe.gov/PetLkup/PetitionResult/?CountyID=0&PetitionName=NORTH%20CAROLINA%20GREEN%20PARTY>

as of June 1, they were 2,088 over (15,953). That's down to 15,740 valid signatures (1875 over) as of today

Where's what the NC State Bd of Elections says:

1. We got complaints in May before you filed from our County Board of Elections as these petitions were coming in
2. "Obvious fraud" like same handwriting, similar incomplete information (name/address/DOB crossed out), partial DOBs, duplicate voters
3. Submitted prior 2018 Green Party petitions which have dead voters, identifying a different party chair
4. One firm collected 1,000 signatures by itself
5. 3 individuals contracted gathered 1,472 signatures and only 624 passed initial review

163-96 requires:

(c) Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained, and it shall be the chairman's duty: (1) To examine the signatures on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county. (2) To attach to the petition his signed certificate a. Stating that the signatures on the petition have been checked against the registration records and b. Indicating the number found qualified and registered to vote in his county. (3) To return each petition, together with the certificate required by the preceding subdivision, to the person who presented it to him for checking.

Class 2 misdemeanor to sign the name of another person to any petition under G.S. 163-96 for the formulation of a new political party. G.S. § 163-221(a)(2).

Any name signed on a petition, in violation of this section, shall be void.

Class I felony for "any person knowingly to swear falsely with respect to any matter pertaining to any primary or election". G.S. § 163-275(4).

So... they voted to investigate. Still "in progress"

<https://vt.ncsbe.gov/PetLkup/PetitionResult/?CountyID=0&PetitionName=All%20Statewide%20Petitions>

SO IS EVERY OTHER STATEWIDE PETITION EXCEPT ONE IS STILL "IN PROGRESS"

-"The American Political party", "The Veterans Party of North America," the "Constitution Party of North Carolina," and candidates like Gordon Thomas Ward for Governor (write-in), or Diana Jimison for US House 10 (write-in).. they're all being investigated

Complaint filed alleges that there are hundreds of fraudulent entries.

-two weeks ago the Green party filed its complaint; amended on 7/21

-hearing on 8/8

Count I

86. NCSBE's failure to certify NCGP as a new political party, despite NCGP's compliance with all applicable requirements under state law, severely burdens Plaintiffs' First Amendment rights.

87. NCSBE's failure to certify NCGP as a new political party is not justified by any legitimate or compelling state interest.

88. NCSBE's failure to certify NCGP as a new political party causes injury to and violates rights guaranteed to Plaintiffs by the First and Fourteenth Amendments.

Count II

92. NCSBE's failure to certify NCGP as a new political party causes injury to and violates rights guaranteed to Plaintiffs by the Fourteenth Amendment.

-Republican Party, two days ago, filed a motion to submit an amicus brief that gives 23 pages of better support for these arguments

-their interest in appearing is "hey, people are saying keeping Hoh off the ballot would be good for the Democrats, so we oppose that."

-what's going on right now

Hoh's tweet & screenshots of texts

<https://twitter.com/MatthewPHoh/status/1540745516169961472>

-did you sign the Green Party petition?

1-yes 2-no 3- not sure 4-wrong number

If you say yes, "If the Green party is on the ballot, it will give Republicans a huge advantage that will help them win North Carolina in 2022 and 2024. In past elections, we've seen that the Green Party takes votes away from Democrats, which helps Republicans win. With abortion rights in the balance, we can't afford to give Republicans more of an advantage. Are you interested in asking the elections board to have your name removed from this petition?"

1-yes 2-no

If no,

"I understand this seems like a lot of effort, but we want to make sure Democratic candidates have the best chance to win this November, and this could make a big difference. Are you sure?"

If you're sure, they say, "thank you for your time, have a nice day." And then Hoh asked, "who is this?" And they replied "Democratic Senatorial Campaign Committee."

Conover v. Newton, 256 S.E.2d 216 (N.C. 1979)

"the better rule is that the individual petitioner may, as of right, withdraw his name from the petition at any time before final action thereupon . . ."

Matthew Hoh's senate page says they've created a page for the legal proceedings

<https://www.matthewhohforsenate.org/legal/>

Created 7/25

Conveniently leaves out the motion to file an amicus brief by the Republican Party

Hearing on 8/8

We'll be watching.

Already ruled by State Supreme Court of Montana

https://helenair.com/news/state-and-regional/govt-and-politics/stapleton-certifies-montana-general-election-ballot/article_1443485b-5f3f-54d5-81dc-f5e701158063.html

Rs financed an effort to add the Green Party to MT's ballot; those candidates were removed after the GOP's involvement was revealed. "It later became clear the effort to qualify the Green Party was financed by the Montana Republican Party." -8/31/20

“Independent State Legislature Doctrine”

Article I, section 4, of the Constitution of the United States provides:

"The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

- everyone agrees with that
- special meaning to “in each State by the Legislature thereof”
- “WITH NO REVIEW BY ANYONE EVER FOR ANY REASON”

At the time of the Framing, “the public meaning of state ‘legislature’ was clear and well accepted* * * : A state ‘legislature’ was * * * an entity created and constrained by its state constitution.” (Akhil Amar)

- worse than you’ve heard
- you’re hearing in the context of “stealing the 2024 election,” which is a risk, but it’s... I can’t believe I’m going to say this, not the biggest risk.

Relationship between the US Supreme Court and state Supreme Courts

- Dobbs can say that abortion is no longer found in the 1st, 5th, 9th, and 14th Amendments to the Constitution.
- STATE Supreme Courts, interpreting identical language in STATE Constitutions, are free to say yes the fuck it is
- Kansas! (276)

<https://openargs.com/oa276-did-kansas-really-show-us-the-way-forward-on-abortion-rights/>

The one thing you definitely can’t do is have the US Supreme Court tell a state Supreme Court that it can’t rule on individual rights protected under the State Constitution. That’s beyond *Lochner*. That’s tyranny that leave-the-country level.

1) So what happened?

https://www.supremecourt.gov/DocketPDF/21/21-1271/218823/20220317132356259_2022-03-17%20Moore%20Cert.%20Petition.pdf

On November 4, 2021, the legislature enacted new redistricting plans for the state legislature and Congress. Twelve days later, Respondents invoked the process the legislature had created to challenge these plans. First, the legislature prescribed for “action[s] challenging the validity of any act ... that apportion or redistricts State legislative or congressional districts [to] be filed in the Superior Court of Wake County and [to] be heard and determined by a three-judge panel.” N.C.G.S. § 1-267.1(a); see id. § 1-81.1(a).

Weeklong trial, 3-judge panel. After a weeklong trial, the three-judge panel—a bipartisan panel designated by North Carolina’s Republican Chief Justice and composed of two Republicans and one Democrat—found that the maps were the product of “intentional, pro-Republican partisan

redistricting.” The panel also found that the maps were “extreme partisan outliers,” and that the congressional map was more advantageous to Republicans than 99.9999% of neutral maps. These extreme gerrymanders, the panel found, were “designed to systematically prevent Democrats from gaining a tie or majority” of seats, even if their candidates won a significant majority of votes.

Trial court said no remedy – on appeal – the state Supreme Court reversed, and said: Consistent with the Supreme Court’s guidance in *Rucho v. Common Cause* “[p]rovisions in state statutes and state constitutions can provide standards and guidance for state courts to apply,” the court held that partisan-gerrymandering claims are justiciable under the state constitution. Pet. App. 72a. It issued a detailed order on February 4 and followed with a full opinion on February 14.

UNIQUELY STATE constitutional right

The court began with the state constitution’s Free Elections Clause, which was enacted by the legislature in 1969. This clause, the court emphasized, “has no analogue in the federal Constitution” and is one of the “provision[s] that makes the state constitution ‘more detailed and specific ... in the protection of the rights of its citizens.’” Pet. App. 91a (quoting *Corum v. Univ. of N.C. ex rel. Governors*, 413 S.E.2d 276, 290 (N.C. 1992)). Looking to history, the court observed that this clause ultimately “derived from a clause in the English Bill of Rights of 1689,” which “was adopted in response to the king’s efforts to manipulate parliamentary elections by diluting the vote ... to attain ‘electoral advantage.’” *Id.* The court concluded that this clause protects the people’s “right ... to fair and equal representation in the governance of their affairs.” Pet. App. 92a.

Invalidated, sent back to the legislature to redraw the districts.

Legislature crammed through a congressional plan on partisan grounds.

Back to the courts

Trial court **rejected** the plaintiffs’ proposed maps, said, to defer to the legislature as much as possible, we’ll modify the legislature’s plan by the special masters working with neutral court experts, as approved by statute, for an interim plan for the 2022 congressional elections.

MORE deferential to the legislature than what the plaintiffs wanted.

Appealed to state supreme court

-enjoined the gerrymandered plan

-went with the trial court’s plan

Amicus by the national Republican redistricting trust

https://www.supremecourt.gov/DocketPDF/21/21-1271/221520/20220420152937016_21-1271%20Amicus%20NRRT%20Supp.%20Pet..pdf

In those circumstances, some state and federal judicial bodies occasionally take liberties and move from applying election regulations to modifying them or creating new ones. Doing so, however, amounts to unconstitutional usurpation of the legislative power from the legislatures. Article I, Section 4 exists to stop these encroachments in their tracks.

LIKE WHAT?

This was seen when concerns about the COVID19 pandemic affected the 2020 election. For example, in *Republican Party v. Degraffenreid*, the “Pennsylvania Legislature established an unambiguous deadline for receiving mail-in ballots.” 141 S. Ct. 732, 732 (2020) (Thomas, J., dissenting from denial of certiorari). “Dissatisfied, the Pennsylvania Supreme Court extended the deadline by three days.” *Id.* In so doing, the Pennsylvania Supreme Court usurped legislative power away from the Pennsylvania Legislature and rewrote the State’s election rules. See also *Republican Party v. Boockvar*, 141 S. Ct. 1, 2 (2020) (Alito, J., concurring). A similar situation occurred in *Democratic National Committee v. Wisconsin State Legislature*, where a federal court rewrote Wisconsin election law and extended the deadline to return absentee ballots. 141 S. Ct. at 29 (Gorsuch, J., concurring in denial of application to vacate stay).

SO YEAH, THAT’S WHAT THEY WANT TO INVALIDATE

LEGAL THEORY

Dicta from the concurrence!

Bush v. Gore, 531 U.S. 98 (2000)

https://scholar.google.com/scholar_case?case=2298973060085224552

The individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the electoral college. U. S. Const., Art. II, § 1. This is the source for the statement in *McPherson v. Blacker*, 146 U. S. 1, 35 (1892), that the state legislature's power to select the manner for appointing electors is **plenary**; it may, if it so chooses, select the electors itself, which indeed was the manner used by state legislatures in several States for many years after the framing of our Constitution. *Id.*, at 28-33.

What does “plenary” mean?

-WITHOUT LIMITATION

-mostly see it used analogistically – best I can come up with is “literally”

-will say that governors have “plenary” powers during emergencies – that means they can impose masking requirements. It doesn’t mean they can round up podcasters and execute them

-only power I can come up with that is literally plenary is the pardon power

McPherson v. Blacker

https://scholar.google.com/scholar_case?case=12718508074854824379

(p. 35):

This power is conferred upon the legislatures of the States by the Constitution of the United States, and cannot be taken from them or modified by their State constitutions any more than can their power to elect Senators of the United States. **Whatever provisions may be made by statute, or by the state constitution, to choose electors by the people, there is no doubt of the right of the legislature to resume the power at any time, for it can neither be taken away nor abdicated.**” Senate Rep. 1st Sess. 43 Cong. No. 395.

[not plenary]

From this review, in which we have been assisted by the laborious research of counsel, and which might have been greatly expanded, it is seen that from the formation of the government until now the practical construction of the clause has conceded plenary power to the state legislatures in the matter of the appointment of electors.

Even in the heated controversy of 1876-1877 the electoral vote of Colorado cast by electors chosen by the legislature passed unchallenged; and our attention has not been drawn to any previous attempt to submit to the courts the determination of the constitutionality of state action.

In short, the appointment and mode of appointment of electors belong exclusively to the States under the Constitution of the United States.

Belonging to the STATES is different than what is being argued now, which is “belonging to the **state legislature**”

Smiley v. Holm, 1932 Supreme Court case involving a Minnesota law that let the governor veto redistricting efforts

https://scholar.google.com/scholar_case?case=1547832757359985052

key: if ISL is true, that would be unconstitutional – it would restrict the plenary power of the legislature for federal offices

It clearly follows that there is nothing in Article I, section 4, which precludes a State from providing that legislative action in districting the State for congressional elections shall be subject to the veto power of the Governor as in other cases of the exercise of the lawmaking power.

State legislature’s power could be plenary

-would mean you get state supreme court review of *state* offices, but NOT federal offices

SO HERE’S WHAT THAT MEANS

Opposition:

https://www.supremecourt.gov/DocketPDF/21/21-1271/225909/20220520133247549_21-1271%20BIO%20NCLCV.pdf