Clearinghouse

School Law Bulletin *looks at recent court decisions and attorney general's opinions*

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Cases and Opinions That Affect North Carolina

Court addresses Article IX, Section 7 of the state constitution and civil fines and penalties belonging (or not) to the public schools. North Carolina School Boards Association v. Moore, 160 N.C. App. 253, 585 S.E.2d 418 (2003).

Facts: Article IX, Section 7 (hereinafter Section 7) of the North Carolina Constitution provides that the clear proceeds of all penalties and forfeitures or fines collected for breach of state penal laws belong to the public schools in the various counties and are to be used to maintain free public schools. The North Carolina School Boards Association (NCSBA) filed an action seeking determination of three issues: (1) that various payments collected by the state belonged to the schools under Section 7; (2) that Article 31A of Chapter 115C of the North Carolina General Statutes (G.S. 115C-457.1–457.3), which establishes a central civil penalty fund and directs that the funds in it be transferred to the School Technology Fund, violates Section 7; and (3) that the statute of limitations on claims for funds granted to schools under Section 7 is three years rather than one.

The trial court granted judgment before trial to the NCSBA on all its claims. The defendants appealed; they were represented in name by Richard H. Moore but included many other chief executive officers of various state departments that assess, collect, or distribute payments from individuals or entities that fail to comply with certain statutory or regulatory requirements.

Holding: The North Carolina Court of Appeals reversed in part and affirmed in part the trial court's judgment.

First the court found that Article 31A does not violate Section 7. The NCSBA contended that Article 31A was inconsistent with the intent of Section 7 because Section 7 requires monies collected under it to remain in the counties where the violation occurred, whereas Article 31A mandates that they be remitted to a central state fund. Moreover, the NCSBA contended, Section 7 vests decisions about use of the funds with local boards of education, while Article 31A requires that the funds be used exclusively for school technology. The court, however, found that Section 7 was ambiguous, at best, about the collection, distribution, and use of the funds.

The purpose of Section 7, the court held, was twofold: first, to support the public school system, and second, to prevent the diversion of public school property from its intended use. Because the General Assembly is empowered to enact legislation to give effect to constitutional provisions, and because Article 31A is consistent with Section 7's purposes, the legislation is constitutional.

The court next ruled on whether several specific payments authorized under state law constituted funds subject to Section 7. In so doing, the court emphasized that the name given to a particular payment (e.g., fine or penalty) was not determinative of its nature. Only payments that accrue to the state and are the result of penal law violations are subject to Section 7. With these considerations in mind, the court found the following payments subject to Section 7: (1) payments collected by the Department of Transportation (DOT) from owners of vehicles that exceed axle-weight limitations; (2) payments collected by the DOT for lapses in insurance coverage; and (3) payments made by a violator of environmental

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regulations to perform—or fund the performance of—a supplemental environmental project in lieu of paying a civil penalty.

The following payments are not subject to Section 7: (1) payments collected by the Department of Revenue for failure to comply with regulatory or statutory tax provisions; (2) payments collected by the Employment Security Commission for overdue contributions to the unemployment insurance fund, late filing of wage reports, and tendering a worthless check; (3) payments designated as "civil penalties" collected by University of North Carolina (UNC) campuses for traffic, parking, and vehicle registration violations; (4) payments collected by UNC campuses for loss, damage, or late return of library materials; (5) payments collected by the Department of Revenue from persons dealing in unauthorized substances; (6) payments from local public school systems to state agencies for various statutory and regulatory violations; and (7) payments collected by state agencies and licensing boards for licensees' failure to comply with licensing requirements in a timely manner.

Finally, the court upheld the trial court's application of the three-year statute of limitations to the NCSBA's claims for Section 7 funds.

Court preliminarily enjoins school's dress code. Newsom v. Albemarle County School Board, 354 F.3d 249 (4th Cir. 2003).

Facts: The 2002–2003 student/parent handbook for the Jack Jouett Middle School in Albemarle County (Va.) prohibited students from wearing, among other things, clothing that depicts weapons or violence. Alan Newsom, a student at the school, filed suit, alleging that the dress code violated the First Amendment because it was an unconstitutionally overbroad and vague limitation on free speech. In the federal court for the Western District of Virginia, Newsom sought a preliminary injunction to halt application of the code until the court determines the merits of his claim. The court denied his request because it found he did not show a substantial likelihood of prevailing on his claim at trial. Newsom appealed.

Holding: The Fourth Circuit Court of Appeals reversed the district court and remanded the case with an order to enter a preliminary injunction.

In considering a preliminary injunction, a court considers four things: (1) the likelihood that the plaintiff will suffer irreparable harm if the injunction is denied; (2) the likelihood of harm to the defendant if the injunction is granted; (3) the likelihood that the plaintiff will prevail on the merits; and (4) the public interest. The court began its opinion by considering Newsom's likelihood of success on the merits.

The court agreed with Newsom's allegation that the dress code was unconstitutionally overbroad because its prohibition of clothing relating to weapons included too much expression that is protected by the First Amendment. School officials may limit student speech when it causes, or is likely to cause, a substantial disruption of the educational process. However, the fear of disruption must be well founded and specific, not just a remote apprehension. The court noted that the board presented no evidence that any article of clothing containing a message related to weapons had ever caused a disruption at Jouett or was significantly likely to do so.

The court went on to note that even if the board's apprehension of disruption had been reasonable, the dress code prohibited too broad a swath of expression to be constitutional: it covered lawful, nonviolent, and nonthreatening symbols of important organizations and ideals. The State Seal of the Commonwealth of Virginia, for example, shows a woman with one foot on the chest of a vanquished tyrant, holding a spear; the seal would be barred under the dress code. And although the policy would allow a student to wear a T-shirt with the message "No War," another student would be banned from wearing a T-shirt with a picture of an army tank that urges support for American troops. Indeed, a T-shirt bearing the school's slogan, "Guns and School Don't Mix" might even be prohibited under the code. Thus the court found that Newsom's likelihood of success on the merits of his claim was high.

The court also addressed the other three issues considered in granting a preliminary injunction. As to the possibility of irreparable injury, the court noted that an infringement of the right to free speech, even for a short period of time, is considered an irreparable injury. Next the court found that the school board would in no way be harmed by an order preventing it from enforcing its unconstitutional dress code. Finally, the court concluded by stating that upholding a constitutional right serves the public interest.

Preventing parents of home-schooled children from using county community center for private educational instruction did not violate the First Amendment. Goulart v. Meadows, 345 F.3d 239 (4th Cir. 2003).

Facts: Lydia Goulart, mother of a home-schooled student, and others (the plaintiffs) filed suit against Calvert County (Md.), alleging that its policy of prohibiting the use of its community centers for private educational instruction intended to meet state educational requirements violated their right to free speech. The federal court for the District of Maryland found that the plaintiffs' proposed use of county property for a meeting of a geography and fiber arts club did not constitute expressive activity entitled to First Amendment protection and granted judgment to the county. The plaintiffs appealed.

Holding: The Fourth Circuit Court of Appeals affirmed the district court ruling, but under different reasoning.

Unlike the district court, the appeals court found that the plaintiffs' proposed use of the community center was expressive activity protected by the First Amendment. The transmission of knowledge or concepts by way of the spoken or written word (that is, speech) presumptively qualifies as protected expressive activity; thus the district court erred in requiring the plaintiffs to present proof that their proposed activity was speech.

Although the plaintiffs' speech falls within the category of activity protected by the First Amendment, it is not entirely insulated from governmental restriction. When the government operates a forum it opens to the public for expressive activity, it may reserve it for certain groups or types of discussion. In determining whether this initial restriction is constitutional, a court only needs to find that an exclusion is reasonable and neutral as to the viewpoint of the speech. However, if the government excludes a speaker who falls within the category of people to whom the forum is generally available, a court—to uphold the exclusion—must find that it is justified by a compelling governmental interest and is narrowly tailored to serve that interest.

The plaintiffs pointed out that the county allowed other, general community enrichment classes to take place at the center, and also allowed persons taking such classes to subsequently seek state educational credit. The plaintiffs' classes, which were also intended to satisfy state education requirements, thus fell within the category of activities allowed at the center; therefore, continued the plaintiffs, the county's policy was subject to strict judicial scrutiny. The court rejected this contention, finding that the purpose of the two activities was sufficiently different to remove the plaintiffs' proposed use from the category of allowed activities.

The court went on to find the county's restriction viewpoint-neutral and reasonable. The plaintiffs would have been free to teach their classes at the center from any viewpoint so long as the classes were not intended to meet state educational requirements. The use policy reflected no animus against the home-school perspective. And, as the community center is used for recreation, community meetings, and informal community enrichment and education, it was reasonable to exclude formal private education. In addition, it was reasonable for the county to restrict its support of formal education to the public schools.

Finally, the court rejected the plaintiffs' alternative First Amendment argument: that even if they could be reasonably distinguished from other users of the center, their exclusion was still unconstitutional because their intended activity implicated a fundamental constitutional right—the right to educate their children as they see fit. The court rejected this argument, finding that the use policy did not implicate the plaintiffs' freedom to make decisions concerning their children's education.

Court dismisses employee's discrimination claim. Westry v. North Carolina A&T State University, 286 F. Supp. 2d 597 (M.D.N.C. 2003).

Facts: Terence Westry, an African American male, was hired as a computer laboratory coordinator for North Carolina A&T (A&T) in 1994 at a salary of $24,799. In 1998 A&T reclassified his position as Computer Consultant I and raised his salary to approximately $31,000. In 1999 and 2000, Anwar Karim, director of Westry's department, hired several Caucasian male computer consultants at salaries ranging from $32,000 to $35,000. To equalize compensation among newer and older employees, Karim asked employees to submit their résumés in order to give them in-range salary increases. Westry, who felt that Karim should be familiar with his résumé, refused to submit one and received no raise.

During this same period, Karim asked for volunteers to staff the help desk. No one volunteered, and Karim later named one of the new hires, a white male, as help desk manager, with a 10-percent pay increase. A Computer Consultant III position was also posted on A&T's Human Resources bulletin board and its Web site. There was only one applicant for this position, a white male who ultimately received it. Westry did apply for another computer consulting position but declined an opportunity to interview for it.

Westry filed a discrimination complaint, alleging that he received a lower salary than Caucasian and female computer consultants and was denied promotions given to these employees. A&T moved to dismiss his claims before trial.

Holding: The federal court for the Middle District of North Carolina dismissed Westry's claims.

The court found that Westry had succeeded in presenting a prima facie wage discrimination claim. In 2000 he earned $33,167 as a Computer Consultant I, while newly hired Caucasian employees of the same classification earned $35,000. However, Westry failed to rebut the nondiscriminatory explanation for this discrepancy A&T put forward: that the university could not fill openings for the position without raising the hiring salary but had attempted to equalize salaries among employees. Westry—because he refused to submit his résumé—failed to qualify for a commensurate salary. As he produced no evidence showing that these reasons were pretexts for discriminatory motives, the court dismissed his claim.

The court also found Westry's promotion-discrimination claim lacking. He first alleged that he was discriminated against in relation to the help desk position. However, as he had never volunteered for the position, he failed to make the

basic showing required to proceed to trial. His claim in relation to the Computer Consultant III position also failed. Westry alleged that he was not given appropriate notice of the opening but did not dispute that the position was posted on the A&T Web site and the Human Resources Bulletin Board. Because he had access to the posting, Westry could not assert that the position was kept a secret. Nor could he show that any application he would have made for the position faced certain rejection. The white male hired for the position was the only applicant for it. Finally, although A&T advertised many other computer consultant openings, Westry had applied for only one of them and then declined the opportunity to interview for it.

Rejected applicant failed to show that board was motivated by racism or sexism in denying him position. Denning v. Tyrrell County Board of Education, No. 2:02-CV-24-BO(1), ___ F. Supp. 2d ___ (E.D.N.C. May 28, 2003).

Facts: In July 2000 the Tyrrell County Board of Education hired Walter Denning, a Caucasian male, on a one-year contract to teach a special education class. Denning held North Carolina licenses as a superintendent, principal, curriculum specialist, and teacher. He rejected the board's offer to renew the teaching contract after one year. At the time of his initial employment application, Denning expressed interest in the position of curriculum director, but the board told him that it didn't have funding for the position. After assuming his teaching position, he expressed interest in an open assistant principal position and was invited to apply for it, although he allegedly was informed the board already had an African American woman in mind for the position. The board pointed out that Denning ultimately did not apply for the job.

The board hired Jana Rawls, a black woman, for the assistant principalship. Rawls had attended graduate school in educational administration on a North Carolina Principal's Fellow scholarship. As part of the fellowship, she was required to perform an internship as an assistant principal at no cost to the school system that hired her. The board, finding that in addition to her professional qualifications Rawls had good rapport with the school community, gave her the position. At the end of the school year, it promoted Rawls to a high school principalship and promoted the then-principal, Pearl Ogletree—also a black woman—to the position of curriculum director.

Denning filed suit, alleging that he was denied these positions because of his race. He argued that neither Rawls nor Ogletree possessed the licenses or certifications required for their positions. The board moved to dismiss the suit before trial.

Holding: The federal court for the Eastern District of North Carolina granted the board's motion.

Denning was required to prove four things to establish a prima facie case of race discrimination: (1) that he belonged to a protected class; (2) that he applied for the position in question; (3) that he was qualified for the position; and (4) that he was rejected under circumstances giving rise to an inference of unlawful discrimination. Because Denning failed to present evidence that he actually applied for the assistant principal position, or would have but for the board's discrimination, the court dismissed this part of his claim.

The board conceded that Denning had shown the four elements with respect to the curriculum director position but argued that it had legitimate nondiscriminatory reasons for its hiring decisions. Rawls and Ogletree were well qualified for their positions, asserted the board, by virtue of their significant experience within the Tyrrell County school system. Denning, in contrast, was relatively new to the school system and admitted that he was not a part of the school community and knew virtually no one. Rawls and Ogletree had administrative experience within the school system, but Denning had never worked in any capacity in public education outside of special education. Finally, Rawls and Ogletree had consistent, progressive career experiences with increasing responsibilities over time. Denning's employment history showed periods of apparent unemployment and short-term employment.

Denning failed to show that the reasons asserted were mere pretexts for discrimination. Although he offered statements by the board to the effect that it wanted to increase the number of certified minority staff members in the school system, he did not show that the individual decisions to hire Rawls and Ogletree were made on the basis of race rather than merit. Denning also failed to refute the board's evidence showing that both Rawls and Ogletree possessed, or were qualified to possess, all the necessary licenses and certifications for their positions.

Court allows discrimination claim to go to trial. Mixon v. Tyrrell County Public Schools, No. 2:02-CV-22-BO, ___ F. Supp. 2d ___ (E.D.N.C. August 20, 2003).

Facts: Mark Mixon, an African American male, applied for permanent teaching positions in the Tyrrell County Public Schools in 1995 and 1996 but was not hired, although he did serve as a substitute teacher. In January of 1997 he filed a complaint with the Equal Employment Opportunity Commission (EEOC), alleging race and sex discrimination in the board's refusal to hire him on a permanent basis. In September 1997 Mixon was hired on a year-to-year contract as head coach of the Tyrrell County Middle School football team. In February 2000 he filed another EEOC complaint, alleging that the board had discriminated against him by denying him permanent employment since 1996, by retaliating against him for his 1997

EEOC complaint, and by discriminating against black males generally by failing to hire them for permanent teaching positions. In June 2000 the board notified Mixon that his contract as head coach would not be renewed because of concerns about the tardiness, poor sportsmanship, and inadequate preparation of the team. Instead, the board offered him an assistant coaching position, which he declined.

In August 2000 Mixon filed his third discrimination charge in federal court for the Eastern District of North Carolina, alleging that his demotion was in retaliation for his earlier EEOC claims. The school board moved to dismiss the charge before trial.

Holding: The court denied the board's motion.

To satisfy the basic requirements of a retaliation claim, Mixon had to show that he engaged in protected activity, that the board took adverse employment action against him, and that the two events were causally linked. The board conceded that Mixon's first two EEOC complaints constituted protected activity and that his nonrenewal as head coach amounted to adverse employment action. It argued, however, that Mixon failed to show a causal connection between the two. The nonrenewal of his contract, according to the board, occurred before the board knew of the February 2000 complaint. And in any event, the board contended, the gap in time between the February 2000 letter and the June 2000 nonrenewal was too long to infer a causal connection. Finally, argued the board, it had offered nondiscriminatory reasons for the nonrenewal.

The court, however, found that the two events were sufficiently close in time to raise triable issues of fact.

Age and ethnic discrimination claims dismissed. Dai v. University of North Carolina at Chapel Hill, 203 WL 22113444, ___F. Supp.2d ___ (M.D.N.C. 2003).

Facts: In 1999 (after working under a series of year-to-year contracts) Ji-Da Dai, a fifty-eight-year-old Chinese man, signed an employment contract with the University of Chapel Hill at North Carolina (UNC CH) for a three-year term as an associate research professor in the biology department. In 2000 he was terminated because funds were not available for his position, a contingency provided for in his contract. Dai believed that there was another reason for his termination: Shortly after signing the contract, Dai had informed his supervisor, Lawrence Gilbert, that he would no longer perform for him such personal services as cleaning his home, doing yard work, and driving him places. Dai had also raised concerns about receiving lower pay than younger, white colleagues and having fewer opportunities to attend off-campus workshops.

After his termination, Dai filed a grievance with the university's faculty grievance committee, alleging that Gilbert had discriminated against him based on his age and ethnic origin. The committee found Dai's evidence insufficient to support this claim but did find that the biology department had not made every reasonable effort to give Dai twelve months' notice of termination, as the university's code requires. The committee ruled that the department should make every reasonable effort to find money to fund Dai's salary for another twelve months. This recommendation was affirmed in a series of appeals within UNC, after which Dai filed his discrimination claim in federal court. UNC CH and Gilbert, the defendants, moved to dismiss the claim before trial.

Holding: The federal court for the Middle District of North Carolina granted the defendants' request.

The court dismissed Dai's Title VII claim because the statute of limitations on that action had passed. Title VII gives the aggrieved person 180 days after a discriminatory employment action to file a complaint with the Equal Employment Opportunity Commission. Dai was terminated on August 18, 1999, but did not file suit until May 8, 2001.

The court next dismissed several of Dai's claims on the basis of sovereign immunity. The Eleventh Amendment bars suits seeking money damages from the state unless the state has waived its immunity. As to Dai's claim of wrongful discharge under the North Carolina Equal Employment Practices Act (NCEEPA) and his breach of contract claim, the court found that the state had not waived its immunity from suit because it required such tort claims to be addressed through an administrative procedure in the North Carolina Industrial Commission. The court made a similar ruling on Dai's Section 1983 claims against UNC CH and Gilbert in his professional capacity.

The court also accepted the defendants' argument that Dai's Section 1983 claim against Gilbert in his individual capacity was barred by collateral estoppel. (*Collateral estoppel* bars relitigation of an issue that has already been resolved in a previous judicial proceeding.) Dai argued that the university's administrative process did not constitute a judicial resolution of his claim, but the court disagreed. The key factor in determining whether a proceeding is judicial is whether the aggrieved person has a full and fair opportunity to litigate the issues. In his hearing before the faculty grievance committee, Dai examined witnesses, introduced documentary evidence, and had an attorney's advice; thus he had a full and fair opportunity to litigate. The committee's finding was also reviewed by several other administrative bodies of the university. When, ultimately, the board of governors affirmed the ruling, Dai chose not to appeal it but filed a civil action under Section 1983. Because the ruling was not appealed, the court found that it must be given preclusive effect.

The court dismissed Dai's infliction of emotional distress claims for failure to allege conduct sufficient to support them. Gilbert's conduct, as alleged by Dai, was not so extreme

and outrageous as to be utterly intolerable in a civilized community—as is required to prove intentional infliction of emotional distress. And, because Dai's claim was based on discrimination, conduct that is by its nature intentional, Dai could not support a claim for negligent infliction of emotional distress.

Employee's claim of malicious prosecution survives motion to dismiss. Beatenhead v. Lincoln County Board of Education, unpublished, 588 S.E.2d 86 (N.C. App. 2003).

Facts: Suzanne Beatenhead, a cafeteria manager in the Lincoln County school system, was charged with felony larceny by an employee, though the charges were dropped shortly after prosecution began. Beatenhead filed suit against the board and Martin Eaddy, a board member, alleging malicious prosecution and intentional and negligent infliction of emotional distress. The defendants moved to have the suit dismissed on the basis of immunity. The trial court granted the motion as to the emotional distress claims but denied it as to the malicious prosecution claim. The defendants appealed.

Holding: In an unpublished opinion, the North Carolina Court of Appeals affirmed the trial court's ruling. Not all wrongful acts by governmental entities are shielded by governmental immunity, began the court. Public officials like Eaddy may be held personally liable for actions that are malicious, corrupt, or that occur outside the scope of their official duties. Because malicious prosecution falls within this body of wrongs, a fact finder must be allowed to adjudge whether the defendants' actions were in fact motivated by malice.

Fourth circuit reverses district court ruling in defamation case. Hugger v. the Rutherford Institute, 63 Fed.App. 683, unpublished (4th Cir. 2003).

Facts: Joyce Darnell contacted the Rutherford Institute, a nonprofit civil rights and religious liberty organization, alleging that her daughter Hanna's constitutional rights had been violated at school. Specifically, Darnell stated that Hanna's principal, Vickie Hugger, and her teacher, Carolyn Settle, at C.B. Eller Elementary School (Wilkes County, N.C.) had twice forced Hanna to say "damn" as part of a reading-aloud assignment and had prevented the girl from expressing her religious beliefs through the letters "WWJD" ("What would Jesus do?"). After some investigation, the institute issued a press release, also published on its Internet site, recounting Hanna's allegations as fact and accusing Hugger and Settle of violating Hanna's First Amendment rights to freedom of expression and religious liberty.

A week later Hanna retracted her story, admitting that she had lied. The institute then published a full retraction and apology on its Internet site and in a press release. It also sent letters of apology to Hugger, Settle, and the superintendent. Hugger and Settle filed suit, alleging defamation, among other things.

The federal court for the Western District of North Carolina dismissed the defamation claim before trial, finding that Hugger and Settle had failed to present any evidence that the Rutherford Institute had acted with actual malice. A showing of *actual malice* (that is, acting with knowledge that a statement is false or with reckless disregard as to its truth or falsity) is a constitutional requirement in defamation cases involving public officials. The court in this case also determined that Hugger and Settle were *public officials*—a decision of first impression in North Carolina.

Editor's Note: Public officials *hold positions of such importance that the public has an independent interest in the qualifications and performance of the persons who hold them beyond the general interest the public has in the qualifications and performance of all government employees.*

The Rutherford Institute appealed.

Holding: In an unpublished opinion, the Fourth Circuit Court of Appeals reversed the district court's ruling, finding that the district court had violated a decision rule providing that courts should avoid resolution of constitutional issues unless they are essential to the disposition of a case. In this case, the district court had failed to address whether the institute's statements were defamatory under state law before moving on to the public official analysis. The appeals court ruled that state defamation law, which could very well have provided a basis for disposing of the claim, should be considered on remand. (For more on this case, *see* David Hostetler's article on school cyberlaw, "Part I. Cyberspeech: First Amendment and Defamation," in this issue.)

Court addresses challenge to G.S. 14-269.2, prohibiting weapons possession on public school property. State of North Carolina v. Haskins, 160 N.C. App. 349, 585 S.E.2d 766 (2003), *rev. denied*, 357 N.C. 580, 589 S.E.2d 356 (2003).

Facts: Gerald Haskins, a bail bondsman, pursued a fugitive through an elementary school. He was subsequently arrested and convicted of possessing a weapon on school property, in violation of Section 14-269.2 of the North Carolina General Statutes (hereinafter G.S.). He appealed his conviction, asserting three arguments: (1) that a requirement of criminal intent must be read into the statute; (2) that the trial court erred in denying his request for jury instruction on the defense of necessity; and (3) that the trial court erred in ruling that he was not a state actor exempt from the prohibition of G.S. 14-269.2.

Holding: The North Carolina Court of Appeals affirmed the trial court's rulings.

The relevant part of G.S. 14-269.2 provides that "[i]t shall be a Class I felony for any person to possess or carry . . . any gun, rifle, pistol, or other firearm of any kind on educational property." Haskins's first argument was that although the language of the statute includes no reference to criminal intent, the court should read into the statute a requirement of willfulness. The court rejected this argument, noting that the U.S. Supreme Court has upheld the imposition of criminal penalties without a finding of criminal intent on the part of the violator.

The court went on to reject Haskins's claim that without an intent requirement, G.S. 14-269.2 violates the Equal Protection Clause by making an irrational distinction between those exempt from prosecution under the statute (e.g., volunteer firemen on campus for a fire prevention talk) and those lacking criminal intent to violate the statute but still subject to prosecution (e.g., Haskins, or a night custodian who brings a gun to protect himself while performing his duties). The court found that the list of exemptions from prosecution—which includes various law enforcement and public safety officers, school security personnel, and school personnel who have removed a weapon from the possession of another person (and who must then turn over the weapon as soon as possible to law enforcement personnel)—was reasonably related to the goal of deterring weapon possession on school property and thus did not violate the Equal Protection Clause.

Haskins's assertion that he was entitled to a jury instruction on the defense of necessity was also unsuccessful. The defense of necessity excuses a person from criminal liability if he or she acted under the duress of circumstances to protect life or limb or health in a reasonable manner and with no other acceptable choice. Haskins argued that his belief that an armed fugitive had entered school property justified his pursuit of the man into the school. The court demurred, finding that other, more acceptable, options were available to Haskins, including leaving his gun with one of his colleagues before entering the school, or calling law enforcement officials and alerting them to the situation.

In his last defense, Haskins argued that as a bail bondsman attempting to arrest a fugitive he was acting as an officer of the state in his official duties and was thus exempt from liability under G.S. 14-269.2. The court found that bail bondsmen are not state officers: they do not hold a public office created by the constitution or state statute, although a statute defines the position and contains provisions to regulate it.

Court finds that the city of High Point has not unlawfully diverted fines and penalties from the Guilford County Board of Education. Shavitz v. City of High Point, 270 F. Supp.2d 702 (M.D.N.C. 2003).

Facts: Henry Shavitz was assessed a $50 civil penalty for a red light violation in the city of High Point (N.C.). He was identified by a traffic control photographic system that High Point (along with several other municipalities) was authorized to use by G.S. 160A-300.1. Shavitz was fined under a High Point city ordinance, Section 10-1-306, but refused to pay his fine or appeal its imposition. Eventually, he filed suit against the city, arguing that the system violated numerous federal and state constitutional provisions. His most important allegation, for our purposes, was that Section 10-1-306, which directs that fines collected under it be deposited in the city's Red Light Camera Campaign Penalties Fund, unconstitutionally diverts funds that should be deposited with the Guilford County Board of Education under Article IX, Section 7 of the North Carolina Constitution.

Holding: The federal court for the Middle District of North Carolina rejected Shavitz's argument. First of all, the court noted that Shavitz himself had no standing to assert the claim on behalf of the school board. The court nonetheless addressed the merits of the claim, because the board had joined the action, seeking an order that the city be required to pay to the board fines collected under Section 10-1-306.

The court ruled that the board was not entitled to the clear proceeds of fines collected under Section 10-1-306 because Article IX, Section 7 directs that only monies collected for violations of *state* penal laws be diverted to the schools. G.S. 160A-300.1 creates no law whose violation could give rise to such fines; only the *local* ordinance, Section 10-1-306, does so. ■