

North Carolina Superior Court Holds State Shield

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On July 27, 2010, N.C. Superior Court Judge Calvin E. Murphy ruled from the bench that North Carolina's shield law, N.C. Gen. Stat. § 8-53.11, protects a newspaper from the compelled disclosure during judicial proceedings of the identities of anonymous commenters to the newspaper's website. Judge Murphy signed the written order in the case on August 16, and it is available [here](#). To our knowledge, this is the first case in which a North Carolina court has ruled that the state's shield law applies to the identities of anonymous website commenters, although other states have been grappling with the issue with respect to their own state shield laws.

The case stems from the criminal proceedings in Gaston County, N.C., against Michael Mead, who has been charged with murder. Mead's attorney issued a subpoena to the publisher of the Gaston Gazette, at first requesting identifying information related to a particular website poster ("justicen2010"), but then later also requesting a copy of the Gaston Gazette's contract with the provider of its website comment forum. (More information on the case is available from the Gazette's website).

The Gazette challenged the subpoena and raised the state shield law as a protection against compelled disclosure. Judge Murphy agreed with the Gazette's position, holding that the information sought by the defendant—both the website commenters' identities *and* the business contract with the comment forum provider—were confidential information related to the newspaper's and publisher's newsgathering and news publishing activities and were obtained while the publisher was acting as a "journalist," as defined in N.C. Gen. Stat. § 8-53.11(a)(1). (Note: The information at issue in this case was confidential, but North Carolina's shield law protects both confidential and non-confidential information.) Thus, the judge held that the shield law applied to the facts at hand.

Further applying the statute, Judge Murphy held that the defendant failed to overcome the qualified privilege set forth in N.C. Gen. Stat. § 8-53.11 by demonstrating clearly and specifically that the information and documents sought (1) were relevant and material to the proper administration of the legal proceeding at issue, (2) could not be obtained from alternative sources, and (3) were essential to the maintenance of a claim or defense. In the absence of this showing by the defendant, Judge Murphy quashed the subpoena.

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With this ruling, the North Carolina Superior Court now joins other state courts that have held their respective state shield laws protect anonymous website commentary from compelled disclosure in judicial proceedings.