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Judge dismisses Dell incentives case

Triangle Business Journal - 4:27 PM EDT Wednesday by [Patrick Hogan](#)

If a landmark North Carolina tax incentives case is to proceed, it will have to do so in the state Court of Appeals.

Wake County Superior Court Judge Robert Hobgood on Wednesday dismissed a lawsuit challenging \$279 million in state and local incentives granted to [Dell Inc.](#) to build a manufacturing plant in Forsyth County near Winston-Salem.

Former North Carolina State Supreme Court Justice Robert Orr, lead counsel for the seven plaintiffs in the case, said Wednesday afternoon that he plans to file a notice of appeal in the case as early as next week.

"This case was going up through the appellate system one way or another," Orr says. "There's no question in our minds that the plaintiffs will be in support of an appeal."

The lawsuit, filed by Orr's North Carolina Institute for Constitutional Law in 2005, asserts that incentives approved for Dell during a special session of the General Assembly in 2004 violate the commerce clause of the U.S. Constitution and some portions of the state constitution.

In dismissing the suit, Hobgood found in favor of state and local governments and Dell, whose lawyers [argued last week](#) that the plaintiffs in the case could not challenge the constitutionality of the incentives because they have not suffered "a direct and irreparable harm." Orr's team countered that the incentives have hurt its clients directly.

"[Hobgood] made a complete sweep and said that the taxpayers did not show specific injury," Orr says. "He gave us both barrels."

Among the state's law team is former North Carolina Chief Justice Burley Mitchell, who was Orr's colleague on the state Supreme Court.

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