

# spotlight

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## MAIN STREET, NOT JONES STREET

*The real greed menacing North Carolina is government greed*

**KEY FACTS:** • During policy discussions, much is made of the greed of private individuals, but rarely is government greed mentioned. Government greed is the lust for power that consumes policymakers — the desire to do whatever it takes to stay in power and to give government more power.

• In the North Carolina legislature, government greed is alive and well. Ten policy examples discussed in this report reasonably attest to this lust for power. Some of the examples include:

- **Preserving Eminent Domain Abuse.** *There was overwhelming bipartisan support for a constitutional amendment to protect North Carolinians against eminent domain abuse. The House voted 104-15 in favor of an amendment. To appease special interests, however, the Senate never let the amendment be heard.*
- **Creating the State Water Police.** *To address recent drought conditions, the legislature automatically decided to blame North Carolinians for their water consumption instead of looking inward to determine how government policies affected water-supply issues. As a result, the state has new powers with no real oversight that will allow it to dictate severe water restrictions.*
- **Silencing Political Critics.** *The legislature passed “McCain-Feingold on steroids”; i.e., legislation that prohibits many mass mailings, faxes, and telephone communications that mention candidates in state elections prior to primaries and general elections.*
- **Restricting Third-Party Competition.** *North Carolina has some of the most restrictive ballot-access laws in the country—a good way to keep out the competition and preserve power.*
- **Centrally Planning Private Energy Purchases.** *The legislature recently passed a law based on the assumption that the government, in order to promote energy efficiency, must try to control what energy goods and services consumers use.*
- **Ignoring Parents When it Comes to Education.** *Despite parents clamoring for their children to attend charter schools, the legislature refuses to lift the cap of 100 charter schools. Some legislators would not dare go against the education establishment and risk their legislative seats.*

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during the financial bailout “debate,” much had been made about the greed of financial institutions (i.e. Wall Street). The “greed” of private individuals and groups gets attention during many policy discussions, but rarely is government greed mentioned. Government greed is a lust for power. On Jones Street, where the North Carolina legislature resides, government greed is alive and well.

Legislators repeatedly take actions to protect their own power and do what they can to expand upon that power and the power of government at all levels. Proving greedy intentions is virtually impossible. However, many policies reasonably can be attributed to this lust for power.

This *Spotlight* report cites 10 different examples to demonstrate government greed in North Carolina. Granted, there are many run-of-the-mill new regulations and taxes that could be attributed to this greed. Typical governmental action is not what this report highlights. Instead, to make a more compelling case that greed is at the heart of the decisions, the examples chosen here are extreme, but not uncommon.

The examples feature several common themes. Often they demonstrate a complete disrespect for North Carolinians and even fellow legislators. They also feature blatant attempts to keep competition out of the political arena. They all highlight a government greed for power at the expense of citizens.

### **1. Eminent Domain Reform**

The United States Supreme Court, in *Kelo v. City of New London*,<sup>1</sup> held that the government could seize private property and provide it to another private citizen so long as it would benefit the economic health of the community. For example, if a farm would generate more tax revenue if it were turned into a strip mall, then the government could take the farm and give it instead to a strip mall developer.<sup>2</sup>

This 2005 decision outraged the public and drew significant attention to eminent domain abuse. In North Carolina, there was bipartisan recognition that the state constitution needed to be amended to protect against those kinds of takings. On May 24, 2007, the North Carolina House overwhelmingly passed a constitutional amendment to protect against eminent domain abuse.<sup>3</sup> The vote was an incredible 104-15.<sup>4</sup>

The amendment then went to the North Carolina Senate. The Senate leadership sent the bill to the Ways and Means Committee, a committee that had not met since 2001.<sup>5</sup> It was a not-so-subtle way of killing the amendment. The move ensured that no real protection from eminent domain abuse would exist in North Carolina. More importantly, the move appeased the taxpayer-financed North Carolina League of Municipalities (NCLM), arguably the most powerful special-interest group in Raleigh. Some legislators perceived that opposing such a group would be bad for their political careers.

### **2. Annexation Reform**

As with eminent domain reform, appeasing NCLM was behind the North Carolina Senate’s decision to kill a widely supported measure to reform annexation. Forced annexation is a power given to municipalities to unilaterally force people who had chosen to live in unincorporated areas to live within municipalities.

On July 2, 2008, the House overwhelmingly passed a moratorium on forced annexation.<sup>6</sup> The vote was 98-18.<sup>7</sup> It was not a vote on actual reform—it was simply a vote to freeze the annexation process so the issue could be properly studied. The Senate, as was expected, put NCLM ahead of North Carolinians. The moratorium bill, despite significant grassroots support, was never considered in the Senate.

### **3. Drought-Management Bill**

The legislature passed a drought-management bill on July 18, 2008, in response to water shortages that existed

in the state.<sup>8</sup> Instead of trying to determine how state and local government policies led to water shortages and how water supply could be improved, the legislature blamed North Carolinians first (a common theme) by focusing on restricting water consumption.

The state expanded its power over the public by being able to dictate what kinds of water-conservation measures must be implemented by local governments. Water emergencies will be determined by the governor and the secretary of the Dept. of the Environment and Natural Resources without any real oversight. The poorly drafted drought-management bill creates massive regulation of water use, with its only mention of water supply being a provision that states water supply issues shall be studied.<sup>9</sup>

#### **4. Taxpayer Financing of Elections**

In North Carolina, taxpayers are forced to subsidize the campaigns of judicial and some Council of State candidates (including those they oppose).<sup>10</sup> The judicial financing program was supposed to be financed by taxpayers who voluntarily check a box on their state income-tax returns indicating that they want \$3 of their taxes to be used for the program.

Even though the check-off program was voluntary and would not cost individual taxpayers any additional taxes, they didn't support it.<sup>11</sup> Faced with this lack of voluntary support for taxpayer financing, the legislature decided to ignore the public's will and instead take dollars from the General Fund (general taxpayer dollars) to support the program.<sup>12</sup> The legislature continues to push taxpayer financing, ultimately to reach its desired goal of taxpayer financing of all elections.

Taxpayer financing is an incumbency-protection scheme. Challengers have to overcome built-in advantages held by incumbents. At the heart of taxpayer-financing programs are "matching funds."<sup>13</sup> If an unsubsidized candidate (one that does not receive tax dollars) or an independent group spends beyond a threshold level, matching money is provided to the opponent in order to penalize the unsubsidized candidate.<sup>14</sup> The justification is to equalize funding between the candidates.

The resulting effect, however, is to make it difficult for a challenger to overcome the incumbents' advantages—*perfect for maintaining incumbent power*. As the United States Supreme Court explained in *Buckley v. Valeo*:<sup>15</sup>

Moreover, the equalization of permissible campaign expenditures might serve not to equalize the opportunities of all candidates, but to handicap a candidate who lacked substantial name recognition or exposure of his views before the start of the campaign.<sup>16</sup>

In 2008, the United States Supreme Court in *Davis v. FEC*<sup>17</sup> held that a law that penalizes self-funded candidates who spend beyond a certain threshold level was unconstitutional. The justification used for that law was to equalize funds between candidates—a rationale the Court rejected.<sup>18</sup> This opinion almost certainly means that North Carolina's taxpayer financing systems are unconstitutional.

#### **5. Restrictions on Political Speech**

A great way to protect power is to ensure that critics are silenced. On the federal level, the infamous Bipartisan Campaign Reform Act (i.e., McCain-Feingold)<sup>19</sup> prohibits corporations (*including nonprofits*) and labor unions from using a wide range of political advertisements 30 days prior to a primary election and 60 days prior to a general election.<sup>20</sup> The prohibited advertisements (with some limited exceptions) include broadcast, cable, and satellite ads.<sup>21</sup> The law calls the prohibited advertisements "electioneering communications."<sup>22</sup>

In North Carolina, the legislature developed "McCain-Feingold on steroids" for state elections.<sup>23</sup> It was apparently

not good enough to define “electioneering communications” as including broadcast, cable, and satellite ads. The legislature also chose to prohibit many mass mailings, faxes, and telephone bank communications prior to primaries and general elections.<sup>24</sup>

## **6. Ballot-Access Restrictions**

North Carolina’s ballot-access laws are some of the most restrictive in the country. For a political party to get on the North Carolina ballot through a petition, the party must, among other things, obtain signatures of registered and qualified voters equal to 2 percent of the total number of voters who voted in the previous general election for governor.<sup>25</sup> This 2 percent requirement also applies to independent or unaffiliated candidates.<sup>26</sup> For 2008, the number of signatures required was 69,734.<sup>27</sup>

As a practical matter, the required number of signatures is far greater because unqualified people may sign a petition or there may be faulty information. For example, the Libertarian Party of North Carolina submitted more than 108,000 signatures to get on the 2008 ballot.<sup>28</sup>

The petition requirement for a party is the second most restrictive in the country for statewide office, based on total number of signatures required.<sup>29</sup> Taking account differences in the total number of voters in the 2004 presidential election for each state, the petition requirement for a party is tied as the fifth most restrictive in the country.<sup>30</sup>

## **7. Renewable Energy Mandate**

North Carolina has a program called NC GreenPower that allows citizens voluntarily to pay extra for electricity in order to subsidize the generation of more renewable energy (e.g., wind, solar, and biomass). The Utilities Commission’s own consultant in a December 2006 report explained that the program had been able to generate only 0.011% of the state’s electricity needs.<sup>31</sup> To clarify, this is just over *one-hundredth of one percent*.

Since North Carolinians were not voluntarily supporting renewable energy, the legislature decided to force them to support it. In 2007, the legislature passed Senate Bill 3,<sup>32</sup> which requires utilities to generate 7.5 percent of their electricity from renewable sources.<sup>33</sup> Consumers of course are forced to pay for this requirement through higher electricity prices.<sup>34</sup> The overall bill was filled with provisions<sup>34</sup> to appease special interests—the same interests that keep the legislators in power.<sup>35</sup>

The bill was particularly important to utilities and environmental pressure groups—the impact on the public as usual did not matter. The legislature was even unwilling to require utilities to inform North Carolinian consumers that they were paying extra or how much they were paying to subsidize renewable energy.

Worse, SB 3 even permits utilities to meet about 40 percent of the renewable energy requirement by buying electricity from outside the state.<sup>36</sup> That electricity never gets back into North Carolina. In other words, to appease utilities and environmental pressure groups, North Carolinians actually have to pay a lot more for electricity so that out-of-state individuals can get electricity.

## **8. Energy Behavior Modification**

SB 3 also forces North Carolinians to pay more in their electricity bills to subsidize energy-efficiency programs.<sup>37</sup> These programs generally consist of such things as financial incentives to purchase energy-efficient appliances. Under the programs, electricity consumers pay a hidden fee in their electricity bill (i.e., a tax), which the utility companies then use to reward consumers who do the right thing and buy energy-efficient goods and services.

The whole concept is about power—centrally planning private individuals’ energy decisions, including what light bulbs they choose. The legislature assumes that North Carolinians are ignorant and unable to make decisions on their

own, even though individuals have incentives through energy savings to purchase energy-efficient goods and services that adequately suit their needs.

## **9. Cap on Charter Schools**

The legislature's insatiable appetite for power is at its most obvious level when it comes to charter schools. The best interests of children and their parents are secondary to the interests of the public education establishment. To stay in power, many legislators would never dare go against the interests of the North Carolina Association of Educators (NCAE) and other powerful groups, such as the North Carolina Department of Public Instruction (DPI), that would fight any intrusion upon the government's monopoly on education.

For over a decade, North Carolina has had charter schools.<sup>38</sup> They are tuition-free public schools given more instructional and operational freedom than traditional public schools. By law, there is a cap on the number of charter schools in North Carolina<sup>39</sup> — the cap, which already has been reached, is set at 100 charter schools.

The legislature refuses to lift the artificial cap even though parents are clamoring to have their children attend charter schools. For example, at just one charter school, Frankin Academy in Wake Forest, 1,525 students applied for the 101 open seats available in the 2007-08 school year.<sup>40</sup> Public opinion polls in North Carolina show overwhelming support for lifting the cap.<sup>41</sup> Despite the overwhelming popular appeal of charter schools, powerful public-education interest groups are strongly opposed to lifting the cap, so the legislature has refused to take even the modest step of increasing the cap, which would allow thousands of parents to do what they believe is best for their children.

## **10. Concentration of Power**

Some readers may wonder how it is possible that such widely supported policy reforms as eminent domain reform and annexation reform fail in the North Carolina Senate. The answer is simple, and it is arguably the single biggest problem in North Carolina government: concentration of power.

A few legislators can control almost every aspect of the legislative process, from what bills will be heard on the chamber floor to what bills will be shipped off to die. The legislative rules, as voted on by each legislature, dictate how much control a select group of legislators can have over the House and Senate. Citizens generally have no means of challenging the legislative process to ensure that it does not continue to function as an oligarchy. At the start of the 2009 session, the legislature should develop rules that give a voice to all legislators, and by implication, a voice to all North Carolinians.

## **Conclusion**

The recent election campaign featured constant talk about changing how business is done in Raleigh. In 2009, the new legislature can show that the campaign statements were more than mere rhetoric by changing the climate of government greed.

North Carolinians elect legislators to represent their best interests, not to serve their own self-interests. The ten examples listed in this paper should be a source of embarrassment for past legislatures. There is no reason why the new legislature has to share in this embarrassment—government greed can and should be replaced by a commitment to unselfish service to constituents.

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## End Notes

1. *Kelo v. New London*, 545 U.S. 609 (2005), [laws.findlaw.com/us/000/04-108.html](https://laws.findlaw.com/us/000/04-108.html).
2. *Ibid.*
3. General Assembly of North Carolina, Session 2007, House Bill 878, [www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2007&BillID=H878](http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2007&BillID=H878).
4. *Ibid.*
5. Mitch Kokai, "Voters denied eminent domain vote," *Carolina Journal*, August 16, 2007, [carolinajournal.com/exclusives/display\\_exclusive.html?id=4248](http://carolinajournal.com/exclusives/display_exclusive.html?id=4248).
6. General Assembly of North Carolina, Session 2008, House Bill 2367, [www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2007&BillID=H2367](http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2007&BillID=H2367).
7. *Ibid.*
8. S.L. 2008-143 (HB 2499), General Assembly of North Carolina, [www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2007&BillID=hb+2499&submitButton=Go](http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2007&BillID=hb+2499&submitButton=Go).
9. *Ibid.*, Section 6.
10. For the judicial system, please see N.C. Gen. Stat. § 163-278.61 *et seq.*, [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter\\_163/Article\\_22D.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_163/Article_22D.html). For the taxpayer financing of select Council of State races, which is supposed to be a pilot test only, please see N.C. Gen. Stat. § 163-278.95 *et seq.*, [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter\\_163/Article\\_22J.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_163/Article_22J.html).
11. Only about 6-7% of taxpayers checked the box prior to the legislature going to alternative funding. See Daren Bakst, "Political Welfare: Why Taxpayer-Funded Campaigns are Bad for Taxpayers and Democracy," John Locke Foundation *Policy Report*, April 2006, [www.johnlocke.org/acrobat/policyReports/campaignfinance-policyreport.pdf](http://www.johnlocke.org/acrobat/policyReports/campaignfinance-policyreport.pdf). The report cited the following for the check-off data: Data obtained through April 2006 phone conversations with Bill Spencer, Policy Analysis and Statistics Division, North Carolina Department of Revenue, and supported by the Department of Revenue's table entitled "Table 25: Statistics of Special Programs"; see also Democracy North Carolina's fact sheet on judicial campaign reform, [www.democracy-nc.org/nc](http://www.democracy-nc.org/nc).
12. The legislature first used General Fund dollars (\$725,000) for taxpayer financing in 2004. See the Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets, July 17, 2004, p. J-27, [www.ncga.state.nc.us/Sessions/2003/budget/2004/budgetreport7-17.pdf](http://www.ncga.state.nc.us/Sessions/2003/budget/2004/budgetreport7-17.pdf).
13. N.C. Gen. Stat. § 163-278.67, [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_163/GS\\_163-278.67.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_163/GS_163-278.67.html).
14. *Ibid.*
15. *Buckley v. Valeo*, 424 U.S. 1 (1976), [laws.findlaw.com/us/424/1.html](https://laws.findlaw.com/us/424/1.html).
16. *Ibid.*, pp. 56-57.
17. *Davis v. FEC*, United States Supreme Court, No. 07-320, [laws.findlaw.com/us/000/07-320.html](https://laws.findlaw.com/us/000/07-320.html).
18. *Ibid.*
19. Bipartisan Campaign Reform Act of 2002, Public Law No. 107-155; for helpful resources on this federal law, see this Federal Elections Commission (FEC) web page: [www.fec.gov/pages/bcra/bcra\\_update.shtml](http://www.fec.gov/pages/bcra/bcra_update.shtml).
20. *Ibid.* This specific requirement is codified in statutes at 2 U.S.C. § 434(f)(3) and codified in the regulations at 11 CFR § 100.29. Helpful information can be found on this FEC web page: [www.fec.gov/pages/brochures/electioneering.shtml#Electioneering\\_Communications](http://www.fec.gov/pages/brochures/electioneering.shtml#Electioneering_Communications).
21. *Ibid.*
22. *Ibid.*
23. N.C. Gen. Stat. § 163-278.90, [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_163/GS\\_163-278.90.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_163/GS_163-278.90.html).
24. *Ibid.*
25. N.C. Gen. Stat. § 163-96(a)(2), [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_163/GS\\_163-96.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_163/GS_163-96.html).
26. N.C. Gen. Stat. § 163-122(a)(1), [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_163/GS\\_163-122.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_163/GS_163-122.html).
27. See, e.g., this North Carolinians for Free and Proper Elections web page: [www.ncfpe.com/issues/ballotlaws/gsl63-96.html](http://www.ncfpe.com/issues/ballotlaws/gsl63-96.html).
28. "Libertarians Back on Ballot," North Carolina Libertarian Party press release, May 22, 2008, [lpnc.info/index.htm](http://lpnc.info/index.htm).
29. Richard Winger, editor of *Ballot Access News* and one of the leading national experts on ballot access laws, conducted a 2008 state-by-state comparison based on total number of signatures required. He also compared states taking the total number of signatures required and dividing that number by the total number of votes in the 2004 presidential election—this helps to compare apples to apples. The data are on file with the author of this report.
30. *Ibid.*
31. "Analysis of a Renewable Portfolio Standard for the State of North Carolina," La Capra Associates, December 2006, p. 7, [www.ncuc.commerce.state.nc.us/rps/NC%20RPS%20Report%202012-06.pdf](http://www.ncuc.commerce.state.nc.us/rps/NC%20RPS%20Report%202012-06.pdf).
32. S.L. 2007-397 (SB 3), General Assembly of North Carolina, [www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2007&BillID=sb+3&submitButton=Go](http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2007&BillID=sb+3&submitButton=Go).
33. N.C. Gen. Stat. § 62-133.7(b)(1) and (2).
34. N.C. Gen. Stat. § 62-133.7(h)
35. *Op. cit.*, note 32. See, e.g., Section 10.(h) and Section 11.(e). There also are special requirements in the bill that require utilities to buy a certain percentage of electricity from solar power, swine waste, and poultry waste resources.
36. N.C. Gen. Stat. § 62-133.7(b)(2)(e); see also Daren Bakst, "Electric Shock: North Carolinians Would Be Required to Pay for Electricity in Other States," John Locke Foundation, *Spotlight* No. 329, August 6, 2007, [www.johnlocke.org/spotlights/display\\_story.html?id=178](http://www.johnlocke.org/spotlights/display_story.html?id=178).
37. N.C. Gen. Stat. § 62-133.8
38. S.L. 1995-731, (HB 955), General Assembly of North Carolina, [www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=1995&BillID=H955](http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=1995&BillID=H955); see also the North Carolina Department of Public Instruction's Office of Charter Schools' legislation web page, [www.dpi.state.nc.us/charterschools/policy/legislation](http://www.dpi.state.nc.us/charterschools/policy/legislation).
39. N.C. Gen. Stat. § 115C-238.29D(b), [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_115C/GS\\_115C-238.29D.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-238.29D.html).
40. Debra A. Golden, "Lottery: charters back in the spotlight," *Wake Weekly Journal*, February 15, 2007.
41. Terry Stoops, "Ten Years of Excellence. Why Charter Schools Are Good for North Carolina." John Locke Foundation *Policy Report*, May 2007, pp. 4-5, [www.johnlocke.org/acrobat/policyReports/10yrsncchartersexcellence.pdf](http://www.johnlocke.org/acrobat/policyReports/10yrsncchartersexcellence.pdf).