

Findings



Dedicated to the
Preservation of the Family.

2009 Session Preview

What to Expect When the General Assembly Returns to Raleigh

By John L. Rustin



At Noon on Wednesday, January 28, 2009, the North Carolina General Assembly will convene in Raleigh to begin the next

two-year state legislative biennium. As lawmakers return to the State Capital, they will face a myriad of issues important to the citizens of the Tar Heel State, not the least of which is the status of the economy and an anticipated state budget shortfall that could range between \$1.6 billion up to \$3 billion.¹ In an overall state budget that now tops \$21 billion, a revenue deficit of this size is substantial and will undoubtedly consume a great deal of our lawmakers' attention and quite possibly lead to the consideration of new sources of state tax revenue. The incoming gubernatorial administration will also bring with it new priorities, initiatives and objectives. Besides the budget and matters of the economy, a number of other important matters will be on the table.

Election Results

Before discussing these issues in some detail, however, it is instructive to understand the legislative landscape. Despite significant changes on the federal level with the election of Barack Obama as President and a Congress in which the Democratic party further extended its majority in both the U.S. House and U.S. Senate, the North Carolina General Assembly remained relatively unchanged. Although Republicans picked up one seat in the North Carolina Senate, Democrats hold a sizeable 30–20 seat majority. Control of

the North Carolina House remains in the hands of Democrats, who maintain a 68–52 seat margin. Democrats were also successful in races for Governor, Lt. Governor, Attorney General, State Auditor, Treasurer, Superintendent of Public Instruction, Insurance Commissioner and Secretary of State, while

Many find it impossible to understand why North Carolina remains the ONLY state in the South that has failed to adopt an amendment to its State Constitution to define marriage as the union of one man and one woman.

Republicans defended the offices of Agriculture Commissioner and Labor Commissioner. From a “big picture” perspective, little changed on the state level as a result of the 2008 General Election, but the maintenance of wide margins of control by Democrats may embolden state leaders to seek a far more liberal agenda than we have seen in years past.

Marriage Amendment

One of the major issues on the minds of North Carolinians is the national effort by homosexual activists to redefine marriage to include the “legal union” of same-sex couples. Many find it impossible to understand why North Carolina

remains the ONLY state in the South that has failed to add the definition of marriage to its State Constitution. Florida, along with Arizona and California, adopted state marriage amendments during the General Election this past November 4, giving North Carolina the dubious distinction of being the only state south of Washington D.C. and east of New Mexico that has yet to protect the definition and institution of marriage through its Constitution. As of November 4, 2008, 30 states have adopted state marriage amendments, while only two states—Massachusetts and Connecticut—are currently issuing marriage licenses to same-sex couples.

North Carolina's failure to adopt a marriage amendment is not a result of a lack of effort. For five years in a row (since 2004), legislation has been introduced in both the State House and Senate that would authorize an amendment to the North Carolina Constitution defining marriage as “the union of one man and one woman at one time” to be presented to the voters of the state for approval. It appears quite clear that the votes to pass such a bill exist in both chambers of the General Assembly and that the measure would receive broad public support in a statewide vote. Recent polls by the Civitas Institute indicate statewide support for a state marriage amendment at 71 percent of likely voters, while 86 percent of likely African-American voters favor defining marriage in the State Constitution.²

The roadblock to consideration of a marriage amendment in the State Legislature has been the failure of the House and Senate leadership to allow a bill to come before lawmakers for a vote. Unlike some

other states that have passed marriage amendments, North Carolina does not have a public initiative and referendum process that allows citizens to gather signatures in order to place a measure on the ballot. As a result, constitutional amendments must first be approved by a supermajority of the North Carolina General Assembly. This means that 72 members of the 120-member House and 30 members of the 50-member Senate must vote in support of marriage amendment legislation. In the 2008 Legislative Session, for example, 66 members of the House signed on as co-sponsors to the marriage amendment bill,³ and many more expressed their support for it.

The lack of a definition of marriage in our State Constitution means that North Carolina is vulnerable to legal actions seeking to overturn our existing marriage law and forcing same-sex “marriage” on our state. While some may suggest that North Carolina’s courts are too “conservative” to rule in favor of homosexual “marriage,” this is exactly what happened in Massachusetts, California and Connecticut. In addition, a New York court recently granted a divorce to a same-sex couple that obtained a marriage license in Massachusetts, paving the way for future rulings that recognize an expanded definition of marriage.

The unwillingness of legislative leaders to act on a marriage amendment and the vulnerability that this has created for our state has prompted organizations like the North Carolina Family Policy Council to increase our efforts to see that the voters of the state soon have the opportunity to add the definition of marriage to our State Constitution. Otherwise the fundamental institution of marriage will remain subject to redefinition by state courts and judicial activists.

Other Pro-Marriage Initiatives

In addition to defending the definition of marriage, we will also be working to strengthen this God-ordained institution through a number of marriage-related initiatives. Society derives extensive economic and social benefits from marriage, and policies that promote strong, healthy marriages profit the entire state. Establishing a firm foundation upon which to build a marriage is essential, and encouraging

unmarried couples considering matrimony to participate in pre-marital counseling will pay dividends for years to come. One way the state can provide an incentive for pre-marital counseling is to waive all or a portion of the marriage license fee when the applicants for a marriage license provide proof that they have participated in a pre-marriage counseling program. Bills to this effect have been introduced in the General Assembly in years past and will be filed again. Once married, couples can benefit greatly from local community-based programs that promote marriage and provide support for married couples. First Things First of Gaston County (FTF-GC) is just such an initiative. Modeled after a program in Chattanooga, Tennessee that reduced divorces in surrounding Hamilton County by

The North Carolina General Assembly has become a graveyard for pro-life initiatives during the last decade.

approximately 33 percent in nine years, FTF-GC is seeking to have a similar impact in North Carolina.⁴ A nominal appropriation by the General Assembly to establish a pilot grant program to assist organizations like FTF-GC will foster stronger marriages in the state.

Furthermore, we will seek to maintain laws that help to defend marriages, such as our civil actions of alienation of affections and criminal conversation. These tort laws allow an aggrieved spouse to seek legal recourse against a third party who intrudes into their marriage and alienates the affections of one spouse from the other (alienation of affection) and/or who commits adultery with their husband or wife (criminal conversation). Bills to abolish these civil actions have been introduced for several sessions but fortunately have failed to garner the support of a majority of our lawmakers.

Life Issues

The North Carolina General Assembly has become a graveyard for pro-life initiatives during the last decade. Legislative leaders, including the chairs of committees to which these measures

are assigned, simply have not allowed pro-life bills to be considered or even receive a hearing in committee. Nonetheless, advocates for life stand firm in their commitment to continue introducing bills to protect the unborn, the infirm and the aged. Among these measures are the following:

- **A Woman’s Right to Know**—would ensure that a woman considering an abortion is informed about the risks of and alternatives to abortion at least 24-hours before an abortion is performed and that she is given other information including the probable gestational age of the child and whether the individual performing the abortion has malpractice insurance and hospital admitting privileges.
- **Ultrasound Prior to Abortion**—similar to “A Woman’s Right to Know,” would require an abortionist to provide a woman considering an abortion the opportunity to view an ultrasound of her unborn child before an abortion is performed. Research shows that a majority of women considering abortion choose to carry their baby to term after viewing an ultrasound.⁵
- **Notarization of Parental Consent**—would direct that the parental consent for a minor’s abortion be notarized or signed at the abortion clinic or hospital with proof of the parent’s identity. This is necessary to close a loophole created by a state court decision that allows a minor to forge her parent’s consent in order to obtain an abortion and absolves the abortionist from having to confirm the validity of the consent.⁶
- **Unborn Victims of Violence**—would recognize an unborn child as a separate victim of a separate crime when a crime is committed against a pregnant woman and the child dies as a result. Although North Carolina law allows for an enhanced penalty for a crime committed against a pregnant woman if that crime results in a stillbirth or miscarriage,⁷ the statute is limited in its effect and fails to recognize the death of the unborn child as a second murder.

- **Choose Life License Plate**—would authorize the issuance of special license plates in North Carolina bearing the pro-life message “Choose Life,” and would direct a portion of the proceeds from the sale of the plates to crisis pregnancy centers across the state.
- **Conscience Protection**—would protect pharmacists and other health care providers from being fired or disciplined if they refuse to dispense drugs or devices that cause an abortion (similar to the protection currently provided to doctors who refuse to participate in or perform abortions based on a moral or religious objection.⁸)

Abortion Funding

The issue of state taxpayer funding of abortion could well become a major battleground this session despite the looming budget shortfall. Since 1995, state abortion funding in North Carolina has been significantly reduced after restrictions were enacted in the budget to prohibit the State Abortion Fund from paying for abortions except in cases of rape, incest or when the life of the mother is at risk.⁹ In the years prior to the enactment of these eligibility restrictions, the General Assembly appropriated as much as \$1.4 million a year to the State Abortion Fund, and the entire appropriation was always exhausted before the end of the state fiscal year. In 1994, for example, the Fund paid for 4,587 abortions. Limiting Fund eligibility to rape, incest and life of mother, all but eliminated this source of abortion dollars, and in the 12 years combined since these restrictions were put into place, the Fund has paid for only one abortion. Because the budget provision containing these restrictions must be re-authorized every session, we must stay ever vigilant to ensure they make it into the final budget bill that is ultimately enacted into law.

State taxpayer dollars, albeit on a limited scale, are also used to pay for abortion and abortion-related services through the State Health Plan and Medicaid. One way the state could trim the ever-increasing expense of health insurance for state employees is to eliminate coverage for abortion, and, in fact, bills have been introduced for several years to do just that. In 2005, the State

Employees Association of North Carolina (SEANC) submitted a letter to the sponsor of the measure in the General Assembly saying SEANC would “maintain a neutral position” on the bill since the association has members “on both sides of the issue.”¹⁰

FOCA

Much of the discussion about abortion legislation in the North Carolina General Assembly could become irrelevant if President Barack Obama follows through with his campaign promise to pursue and sign into law the federal Freedom of Choice Act (FOCA). This legislation would essentially override all state-level restrictions on abortion. According to legislation introduced in the U.S. House in 2007, the bill would direct

[The Freedom of Choice Act] would essentially override all state-level restrictions on abortion.

that, “every woman has the fundamental right to choose to bear a child, to terminate a pregnancy prior to fetal viability, or to terminate a pregnancy after fetal viability when necessary to protect the life or health of the woman.” The measure also states that a government may not:

- *deny or interfere with a woman’s right to choose—*
 - ◇ to bear a child;
 - ◇ to terminate a pregnancy prior to viability; or
 - ◇ to terminate a pregnancy after viability where termination is necessary to protect the life or health of the woman; or
- *discriminate against the exercise of the rights set forth in paragraph (1) in the regulation or provision of benefits, facilities, services, or information.*¹¹

It is important to point out that under *Doe v. Bolton*, the U.S. Supreme Court’s twin 1973 decision to *Roe v. Wade*, that “health” of the woman has been interpreted to include “all factors—physical, emotional, psychological, familial, and the woman’s age—relevant to the well-being of the patient.”¹² In essence, this

extremely broad definition allows abortion for practically any reason whatsoever, and therefore, would override any state restriction on abortion. FOCA also provides that, “An individual aggrieved by a violation of this section may obtain appropriate relief (including relief against a government) in a civil action.” Any local, state or federal policy limiting abortion in any way would be subject to a lawsuit, and governmental entities could be forced to fund an unlimited number of abortions.

Stem Cell Research

North Carolina’s position as a national leader in biotechnology and related research by private and public entities will likely prompt lawmakers to again consider proposals to authorize tax dollars to fund embryonic stem cell (ESC) research in North Carolina. This form of research sacrifices human embryos—human life at its earliest and most vulnerable stage—in order to harvest stem cells for use in medical and scientific experimentation.

An ESC research funding bill passed the State House in 2007 after an initially proposed \$10 million appropriation was removed from the bill, but it was not considered by the State Senate.¹³ In 2008, a \$16 million appropriation for “stem cell research” was filed in the Senate, but it also was not considered.¹⁴ Although the latter did not specify what kind of research was eligible for funding, the bill did not prohibit the funds from being used for ESC research.

To date, treatments and cures for over 70 human ailments have been discovered utilizing research on ethical and non-controversial sources of stem cells including adult human tissue, umbilical cord blood, placenta, and amniotic fluid, while embryonic stem cell research has yet to produce a single remedy.¹⁵ Lawmakers interested in investing state taxpayer dollars wisely should direct funding toward adult stem cell research and avoid ESC research altogether.

LGBT Agenda

Pro-family advocates can expect to see a variety of efforts to promote the LGBT (lesbian, gay, bisexual, transgender) agenda in the legislature. Bolstered by lawmakers’ inaction on the marriage amendment and by the passage of a pro-homosexual measure through the

State House in 2007 (i.e. the “Bullying Bill”), homosexual activists will enter the 2009 Session with more fervor than ever. The linchpin of these efforts will focus on establishing legal protection based on a person’s “sexual orientation” or “gender identity or expression.” These terms do not exist anywhere in state statute at present, but gaining such a foothold in the law would propel an individual’s sexual behavioral choices into the realm of a civil right—equal to their race, nationality, religion, etc.—and would carry with it far-reaching legal and societal implications.

The “Bullying Bill,” which sought to force local school systems to add “sexual orientation” and “gender identity or expression” as protected classifications in their existing anti-bullying and harassment policies, will likely return in 2009.¹⁶ This measure would ultimately result in the promotion of homosexuality and other alternative sexual behaviors as normal and acceptable in our public schools. The State House passed the Bullying Bill in 2007 after an amendment to remove a section of the bill containing “sexual orientation” and “gender identity or expression” was defeated by one vote. Subsequently, the State Senate stripped the objectionable language from the bill and sent it back to the House. The House then delayed further action on the bill until 2008 allowing time for supporters of the House version to work to garner more support in the Senate. When these efforts failed, the House sponsor of the measure allowed the bill to die instead of accepting a statewide public school anti-bullying and harassment law that did not include the pro-homosexual language.

Despite the ultimate failure of this bill, pro-homosexual activists claimed victory for having made more progress with the Bullying Bill than they had with any other LGBT initiative in the General Assembly. “Despite our disappointment about the final outcome on this bill, the 2008 legislative session has made Equality NC a stronger force in the legislature than ever before, and we look forward to continuing to advance the cause of equal rights and justice in the 2009 legislative session,” said Ian Palmquist, executive director of Equality North Carolina, a statewide pro-homosexual advocacy organization.¹⁷

In addition to the Bullying Bill, LGBT activists will be pursuing other avenues to embed “sexual orientation” as a legally protected status into North Carolina law. North Carolina’s hate crimes law, antidiscrimination laws, state employee personnel policies, and even our statute that criminalizes sodomy will be likely targets, as they have been in years past.

Illicit Drug Use

Under the guise of seeking to reduce the spread of HIV/AIDS among the homosexual community, the LGBT lobby will also be working to legalize needle exchange programs (NEPs) in North Carolina. These programs supply needles, syringes and other drug paraphernalia to heroin and cocaine addicts and other intravenous drug users at taxpayer expense, with the notion that providing clean “shooting supplies” will reduce the sharing of needles and syringes

Since our AUM law was enacted in the mid-1990’s, North Carolina’s adolescent pregnancy rate has declined by more than 40 percent, and the abortion rate for girls between 15- and 19-years-old has been cut nearly in half.

among drug addicts and thus slow the spread of blood-borne diseases. In order to circumvent state laws that criminalize the possession and use of drug paraphernalia, NEP participants and staff typically receive immunity from criminal prosecution while they are actively involved in a NEP. Research not only shows that NEPs fail to reduce HIV/AIDS infection, but also that the communities in which they are located act as magnets for drug addicts resulting in increased illegal drug use and higher levels of criminal activity.

On a related note, lawmakers may again be confronted with a proposal to legalize marijuana for “medical purposes.” A bill directing the Legislative Research Commission to study “whether a public benefit would be derived from making

it lawful for physicians to prescribe and patients to possess and use marijuana or its chemical equivalent for medicinal purposes only” was introduced in the State House in 2008. Although the bill was not ratified into law, it did draw an unexpected amount of attention, especially when the bill sponsor brought former U.S. Surgeon General Joycelyn Elders to the legislative building to promote this controversial legislation.

Sex Education

Efforts will also be made again to gut our state’s abstinence until marriage (AUM) education law and replace it with “comprehensive sex education,” which promotes condom and contraceptive use by adolescents and teens, as well as alternative sexual activities as perfectly acceptable and normal. Our AUM law, enacted in 1996, has served as a model for the federal abstinence education law and similar laws in other states. Due to the fact that this law requires the promotion of a “mutually faithful monogamous heterosexual relationship in the context of marriage” as the only appropriate context for sexual activity, it is deemed offensive and discriminatory by those who self-identify as homosexual, bisexual or transgendered. Since our AUM law was enacted in the mid-1990’s, North Carolina’s adolescent pregnancy rate has declined by more than 40 percent, and the abortion rate for girls between 15- and 19-years-old has been cut nearly in half.

In 1996, the U.S. Congress began providing \$50 million a year through the federal Title V program for abstinence education in the states, and North Carolina receives approximately \$1.4 million of these funds each year. These dollars go a long way toward helping our public schools teach an effective, positive, and healthy abstinence message. Nonetheless, these federal funds are in jeopardy, as comprehensive sex education proponents are lobbying Congress to end this appropriation and are pressuring governors and other executive branch officials to stop accepting these federal abstinence education dollars.

School Choice

Also on the education front, we will continue to pursue a broader range of parental choice options in education.

The growth of charter public schools in North Carolina has been stifled by an arbitrary 100-charter cap enacted when the General Assembly initially authorized charter schools in 1996. Despite the fact that a number of North Carolina charter schools have received national attention for their outstanding performance and innovation, there is little incentive for qualified charter school applicants to seek a charter to operate in North Carolina, because so few charters are available. The 100-charter cap was reached several years ago, and charters only become available now when an operating school relinquishes its charter or when the State Board of Education revokes a charter.

Charters have proven to be a positive addition to the North Carolina public school system. By and large, parents who exercise the option to send their child or children to a charter school typically express high levels of satisfaction and are more engaged in their child's education. Charters in North Carolina also serve a variety of student populations from exceptionally high-performing students to those who have fallen through the cracks in traditional public schools and would not be in school but for the charter school they attend. Despite all the benefits charter schools provide, bills to remove or raise the cap consistently have fallen short in the General Assembly.

In addition, efforts to institute more choice through the enactment of educational tax credits for parents who choose to educate their children in private, religious or home schools have been met with hostility from some in the legislature and from many in the public education establishment. Regardless, advocates for choice in public education will continue to promote the benefits of educational tax credits and expanded educational opportunities for our state's school children.

Gambling

Although the public debate over gambling has quelled somewhat since state lawmakers ironically passed legislation to ban video poker in 2006, just a year after enacting a state lottery, gambling proponents are pushing for expanded opportunities to separate our state's citizens from their hard-earned money. The state lottery continues an aggressive trend of introducing a wider array of games and advertising schemes.

In early December, the Lottery Commission approved the addition of a four-digit numbers game similar to the current "Carolina Pick 3" and "Carolina Cash 5" to be introduced sometime in 2009. It also directed staff to research the implementation of Spanish-language advertising, despite a state law that prohibits advertising that "intentionally target[s] specific groups or economic classes."¹⁸ Nonetheless, the Lottery Commission has trimmed its revenue estimates due to current economic conditions but still anticipates over \$1.25 billion in ticket sales for the 2009-2010 fiscal year.¹⁹ Sadly, research shows that in times of economic difficulty, ticket sales often remain high, as players mistakenly look to the lottery as a means to make ends meet.

Reports also suggest that Governor Beverly Perdue may be willing to enter into negotiations with the Eastern Band of Cherokee Indians to authorize the use of Las Vegas-style table games at the Harrah's Cherokee Casino in Western North Carolina.²⁰ Such a change would likely require legislative action in addition to the Governor's willing participation. Advocates for pari-mutuel wagering may also return to the General Assembly seeking authority to gamble on horse racing and conduct off-track betting. Due to the many deleterious effects of gambling on society and the economy, we will continue to oppose these and related efforts.

Conclusion

All in all, the 2009 Session of the North Carolina General Assembly should prove to be a very active session for pro-family advocates. Our ability to promote an agenda that values marriage, life and family will depend greatly upon the willingness of North Carolinians to engage in the battle, especially on issues as important as the State Marriage Amendment.

Rest assured that the North Carolina Family Policy Council will be working every day to educate lawmakers on the impact their decisions will have on families across our state, but we cannot do our job effectively unless you remain involved in the process. Get to know your elected officials, and tell them you appreciate their public service. Utilize our resources to stay informed on the issues, and communicate regularly with your representatives in Raleigh and Wash-

ington D.C. Be sure to keep an eye out for our Special Alerts during session, which will let you know when it is critical that lawmakers hear from you and others. Keep us up-to-date on what you are hearing, and we will do the same. If we work together, we can make sure North Carolina remains "family friendly" for years to come!

John L. Rustin is director of government relations for the North Carolina Family Policy Council.

Copyright © 2009. North Carolina Family Policy Council. All Rights Reserved.

Endnotes

1. Beckwith, Ryan Teague and Mark Johnson, "Rookies get their General Assembly bearings", Under the Dome, *Raleigh News & Observer*, December 3, 2008.
2. <http://www.jwpcivitasinstitute.org/media/poll-results/may-2008-decisionmaker-poll>.
3. House Bill 2903—Defense of Marriage, North Carolina General Assembly, 2008 Session.
4. ElHage, Alysse, "Marriage Education: Strengthening Communities One Marriage at a Time," *Family North Carolina*, May/June 2008. (<http://www.ncfamily.org/FNC/0805S1.html>)
5. "Ultrasound and a Woman's Right to Know," <http://www.heartlink.org/directors/A000000535.cfm>.
6. *Jackson v. A Woman's Choice, Inc.*, 130 N.C. App. 590; 503 S.E.2d 422 (1998).
7. N.C.G.S. 14-18.2.
8. N.C.G.S. 14-45.1(e).
9. 1995 N.C. Session Laws, Chapter 324, Section 23.27 (Budget for FY 1995-1997), as clarified by 1995 N.C. Session Laws, Chapter 507, Section 23.8A.
10. Letter to The Honorable Stephen LaRoque from Suzanne Beasley, Lobbyist, State Employees Association of North Carolina, February 24, 2005
11. House Resolution 1964—Freedom of Choice Act, United States House of Representatives, 110th Congress, introduced April 19, 2007.
12. *Doe v. Bolton*, 410 U.S. 179 (1973).

-
13. House Bill 1837—Stem Cell Research Health and Wellness Act, North Carolina General Assembly, 2007 Session.
 14. Senate Bill 1965—Funds/Stem Cell Research, North Carolina General Assembly, 2008 Session.
 15. David A. Prentice, Ph.D., “Real Promise In Adult Stem Cells: Everything You Need to Know About Stem Cell Research,” *Family North Carolina*, March/April 2007.
 16. House Bill 1366—School Violence Prevention Act, North Carolina General Assembly, 2007 Session.
 17. “By One Vote...” (<http://equalitync.org/news1/20080718>).
 18. N.C.G.S. 18C-114(a)(2)(b).
 19. “Lottery Official Estimates Lower Revenues,” (<http://www.ncfamily.org/stories/081022s1.html>).
 20. Schrader, Jordan, “WNC hopes Perdue is mindful of mountains,” *Citizen-Times.com*, November 9, 2008. (<http://www.citizen-times.com/apps/pbcs.dll/article?AID=2008811090355>).

Organized in 1992, the North Carolina Family Policy Council is a nonpartisan, nonprofit, research and education organization. Our goal is to serve as a voice for families and traditional family values in the public policy arena. We are supported solely by private contributions which are tax deductible as provided by law. Our mailing address is P.O. Box 20607, Raleigh, NC 27619. Phone: (919) 807-0800. Fax: (919) 807-0900. Web: www.ncfamily.org. Findings is a publication of the North Carolina Family Policy Council which is intended to communicate research findings and perspectives on public policy issues that affect the family. Nothing written here should be construed as necessarily reflecting the views of the North Carolina Family Policy Council or as an attempt to aid or hinder the passage of any bill before Congress or the North Carolina General Assembly. Printed January 2009.
