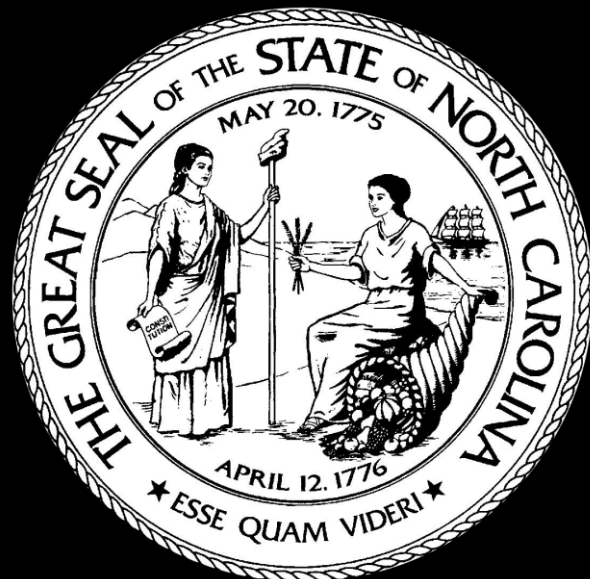


A Collection of  
Selected Debates  
In the  
**North Carolina  
General Assembly**

2009 - 2016

*With commentary  
by Rep. Paul Stam*





**Transcribed and Compiled by the**  
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***Transcripts have been edited for clarity and grammar.***

*Audio for House Floor debates is available online at [www.ncleg.net](http://www.ncleg.net) under  
“Audio” – “House Audio Archives.”*

*Audio for House and Senate Committee debates was obtained from  
respective Committee Clerks.*

*Audio for Senate Floor debates was obtained from the  
Senate Principal Clerk’s Office.*

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[www.paulstam.info/debate-transcripts](http://www.paulstam.info/debate-transcripts)**





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# IN THEIR OWN WORDS

## INTRODUCTION

*Selected NC House Debates*

*2009-2016*

*November 2016*

This online publication is unlike any you have ever seen. It consists of transcripts of many of the debates in the North Carolina House of Representatives from 2009-2016. Some debates in the Senate and some debates in committees are included. I have prefaced each section with my comments for context.

I enjoy primary sources. When an historian or analyst tells me what somebody said, I am not as convinced unless I can actually read or hear the words.

Aside from the public interest in the subjects of these debates there is also a bit of legislative history here from which lawyers might argue legislative intent. For rules on how legislative debate is used in law you might want to see pages 5 – 9 of a law review I authored, 28 *Issues in Law and Medicine* 3 (2012), entitled “Woman’s Right to Know Act: A Legislative History” and an article that I co-authored with Amy O’Neal entitled “The 2011 Tribal-State Gaming Compact: A 2012 North Carolina Legislative History,” 6 *Charlotte Law Review* 17 at 20-27 (2015).

It is no surprise that my own debates are featured in this collection and that House debates predominate. Beginning in 2009 House floor debates have been archived electronically on the Internet at [www.ncleg.net](http://www.ncleg.net). For House floor debates we provide links to the audio. Senate debates are recorded but they are not archived on the Internet. House Committee debates are recorded but they are not on the Internet and the recordings are usually discarded after the minutes have been prepared.

These debates cover the waterfront: Budgets, Incentives, Property Rights, Criminal Procedure and the Death Penalty. They include extensive debates on each of the pro-life bills that have been passed since 2011. Since there are always threats to sue over every pro-life measure, see [this article](#) for the legal end result on each. I also include parts of the debates on the marriage amendment, SB 2 (magistrate recusal) and HB 2 Privacy and Security Act of 2016.

Opponents of legislation will often say there was little or no debate or that there was no separate vote. In the Opportunity Scholarships litigation, opponents told the Superior Court there had been little debate and no separate recorded votes. The full transcripts of those 2013 debates were ninety-eight pages with four separate recorded votes—two in committee and two on the floor—on the precise issue of Opportunity Scholarships.

Grammar: I did not realize until beginning this project how different grammar and syntax are for oral speeches than when the same thought is written. Few members speak from a written text. After a sentence is begun we often change our mind as to where it is headed. Those sentences are difficult to diagram. I have made grammatical corrections so that the transcripts will be clear and so that those who taught us English in “grammar school” will not be ashamed. These “corrections” have not changed the meaning. Check the audio.

Enjoy,



Rep. Paul Stam

North Carolina House of Representatives

Speaker Pro Tem, 2013-2016

House Republican Leader, 2007-2012

Member 1989-90 and 2003-2016

You may contact me at [paulstam@stamlawfirm.com](mailto:paulstam@stamlawfirm.com) or view other articles at [www.paulstam.info](http://www.paulstam.info).

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# **PART I**

## **2009-2010 Biennium**

*January 28, 2009 - July 9, 2010*



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**HR 1 – Temporary House Rules  
House Floor Debate  
January 28, 2009**

*The Rules set the tone for the Session. In a democracy there is always tension between the Majority, which should be able to pass measures that have majority support, while the Minority should have the right to be fully heard. Most, but not all, of the reforms advocated in this debate were finally made when the Majority changed in 2011.*

Audio available at [this link](#).  
Debate begins at: 01:08:14

**Speaker Joe Hackney (D):** For what purpose does the member from Pasquotank, Representative Owens, arise?

**Rep. Bill Owens (D – Rules Chair):** Mr. Speaker, I place the resolution with the Clerk for consideration by the body.

**Speaker Hackney:** The Clerk will file the resolution and assign a number...House Resolution 1, Clerk will read.

**Reading Clerk:** House Resolution 1, Representative Owens – a House Resolution to adopt temporary rules for the 2009 Session of the House of Representatives.

**Speaker Hackney:** Representative Owens is recognized to explain the resolution.

**Rep. Owens:** Thank you very much, Mr. Speaker. Ladies and Gentlemen of the House, you have a copy of the resolution before you. You also have a summary explaining the 2009 Temporary Rules and, as you see by the first line on your explanation, it basically just has amendments only to bill deadlines. Otherwise it's the Permanent Rules that we had last year.

Representative Stam, we were making a lot of changes to the Temporary Rules, but I saw that you said oppose whatever it was, so we left them the same. I'm just kidding with you. Seriously, there will be time for debate with the Permanent Rules later on, and I request that you go ahead and support these Temporary Rules today. Thank you very much.

**Speaker Hackney:** Further discussion, further debate? For what purpose does the gentleman from Wake, Representative Stam, arise?"

**Rep. Paul Stam (R – Republican Leader):** To debate the resolution.

**Speaker Hackney:** The gentleman has the floor.

**Rep. Stam:** Thank you, Mr. Speaker, Members of the House. And if I may stray from my proper debate for just a moment to congratulate you on your election as Speaker. You presided last Session with skill, ability and dignity. I look forward to working with you, and I'm sure our caucus does, as well.

And I'd like to congratulate Representative Owens for his work as Rules Chairman last year, and it's not surprising that the proposed Temporary Rules are last year's rules. My debate does not go to the amendments but to lines 4 and 5 of the bill before you which incorporates those permanent amendments: the Permanent Rules from last year's Temporary Rules. I would love to vote "yes" someday (actually it's been since 1989 that I voted for the Rules) and I'm hoping that I can vote for the Permanent Rules in a month or so, Representative Owens. I mean that very sincerely. I'm also tempted to just say let's put this debate back a month after we've had time to digest it.

The reason I want to explain my difficulties with the Rules now is, first of all, that then the Members will be attuned to some of the issues and can remonstrate with the Rules Committee and put in their two cents. But not only that, so that the lobbying and reform community out there will find members who are attuned to what the issues are so that they can have this discussion with you as well as the general public.

Therefore I have to discuss some of the specific rules that cause severe problems first to the majority party, secondly to a majority of the House (which is not always the same as the majority party) and thirdly to the majority

of North Carolinians. Unfortunately since you don't have this 31-page document which is incorporated by reference, I have to go over some of these rules with you which to all the members who were present last year are intimately familiar. But we do have some freshmen and maybe some of us needed to be refreshed. I know I had to look them up.

When you go to Rule 26 you find some interesting things. I'm going to do this sort of in order and then I'll explain how it harms these various majorities. First of all, Rule 26 is about committees. And the word "Chair" extends to and includes Co-Chairs. Well, we think of a Co-Chair as maybe two people but actually for Appropriations last year it was eight people. So they're all "Chairs." Then we find that for members of permanent subcommittees that the composition of those has to reflect the composition of the partisan membership of the House. And that's done. That's accomplished through the Speaker and the Speaker's staff. And we also find that standing committees that have no permanent subcommittees also are appointed in a manner to reflect the partisan membership of the House. But what is not included are conference committees and permanent standing committees with no clerk—with permanent subcommittees.

So the effect of that is for the big vote of the year—the budget committee vote—the Appropriations Committee has an inordinate number of members of the majority party because all eight of those Co-Chairs are in addition to the other people who are added as partisan membership. And then when you get to the Conference Committee, if you'll recall the 2007 Conference, it was 66 members of the majority party and 7 members of the minority party. Then we find in Rule 26(g) that each of these Chairs—remember that there are eight of them—are voting members of each permanent subcommittee of Appropriations. That means if you have an Appropriations subcommittee of ten members, all eight of those Co-Chairs can come in and vote. So if you ever do anything that is contrary to their wishes or desires, they can just out-vote you. And I've had several Appropriations subcommittee Co-Chairs of the majority party privately complain that their work was essentially irrelevant.

Then if you go to page 25 (This is Rule 43.) we find a rule that was put into the Rules for the first time last Session (but it had been applied for a while before that) which says that essentially not only on the floor but even in the Appropriations Committee there are a lot of things you can't do. Some of those are very proper: not getting the budget out of balance or whatever. But a couple of them are really problematic. For example, you can only affect appropriations within departments, agencies or programs within the jurisdiction of the subcommittee.

Well, the effect of all of those is this. In 2009 we are going to have a tough budget year...tough. The major priorities, however, will be decided by the Co-Chairs of the Appropriations Committee solely because they set the budget that is before the full committee and it cannot be changed, even in committee, as to the big questions. For example, if Representative Rapp over there wants to put more money in Education and take it out of Cultural Resources, even if he has 99% approval of everybody, it can't happen because it's out of order. I guess it wouldn't be 99% if those eight Co-Chairs had agreed to it, but the majority of this House cannot work its will on the budget under these rules.

And then we go to conference and, although the House Rule requires that no matters that are not in controversy between the House and the Senate appear in the Conference Report, the Senate doesn't do that. And so we had last Session and in the 2008 budget \$400 million of extra spending that wasn't in the House bill and wasn't in the Senate bill. Actually I think it's \$700 million now that wasn't in the Senate bill but yet miraculously appeared in the Conference Report to bring our spending up in 2007 from about 6.5% percent to 9.5%. And I think that's the cause of some of our problems we have today—that excessive spending from 2007. And it's caused by the Rules.

Now Representative Lewis is going to mention one other significant problem with the Rules, but I want to mention one other. Rule 36(a) says, "All House bills and resolutions shall be reported from the standing committee or permanent committee to which referred with recommendations," with an exception that doesn't relate. Well, as you know, hundreds of such bills were not heard, maybe 1,000—I'm not sure—during the last Session. I don't imply by that that all these bills need a lot of time. All my bills don't need a lot of time. Some of them just need to be voted down—quickly—and maybe some of yours, too. But our Rule says they're all supposed to be heard and voted on. A long while back they would have a meeting at which they would vote down all the bad bills and dispose of a lot of them, but at least you would have a vote on them.

Well, we have a procedure to get really important bills out called Rule 39, "Recall a bill from standing committee." There is a procedure to do that. Unfortunately (and this happened to the Marriage Amendment last year which was supported by a majority of this House and which is supported by about 70% of North Carolinians) we also have a Rule 36(b)(2) that if a bill that is sent back to the Floor from that committee when a motion for recall is pending, the Speaker or the Presiding Officer, whoever it is, can just deflect it to another committee to start that 10-day clock running again so that we do not actually have a recall provision in our Rules. It's there, but we don't have it. It's not effective. We have a rule requiring all your bills to be heard. It's there but it's not effective because it's not enforceable. These things need to be examined.

Now just very briefly I'll conclude by telling how this affects the majority party. Essentially under our Rules today, the budget (and this is different than other bills) is solely the property of the majority party because only your eight Co-Chairs really affect it, except at the very margins. If I were in the majority party in 2009 I'd want to share that pain with somebody. It's going to be painful. The cuts are going to be painful. But by these rules you don't involve the minority party.

Secondly, these Rules do not support a majority of the House. And this really relates more to the situation that Representative Lewis will be discussing, so I'll pass on that. But it also doesn't reflect the will of a majority of North Carolinians. I used the example of the Marriage Amendment. We're the only state in the southeast without a Marriage Amendment. The vast majority of our citizens want to pass it but we can't get a vote on it because of these rules.

I'm hopeful that when Representative Owens proposes his Permanent Rules that I can vote for them and will vote for them if the necessary changes are made. I don't need every change I propose to be made. There's good in these; there's bad in them. All bills have good and bad. But hopefully we'll get back to a situation where a majority can actually affect the outcome here in the House on all matters, not just some.

**Speaker Hackney:** For what purpose does the gentleman from Guilford, Representative Blust, arise?

**Rep. John Blust (R):** To speak on the resolution.

**Speaker Hackney:** The Gentleman has the floor and may speak on the resolution.

**Rep. Blust:** Thank you, Mr. Speaker and Members of the House. Well, here we are again in a new Session. I'm excited. I think you are. It seems like we were just in the last campaign, a campaign in which we heard soaring rhetoric—rhetoric about reaching across the aisle. Heard it mentioned from the highest office down to some of the lowest. We heard it here again that we need to reach across the aisle. We heard rhetoric about the need for change. We heard rhetoric today about the great challenge facing us this term, and surely it is a great challenge. But it seems that if we're going to really live up to that rhetoric, if we're going to match the rhetoric with reality, if we're going to match deeds to the words, if we're going to truly walk the talk, it's time to make a change in these Rules. It's time to let this body function as the body it was set up originally to be.

Speaker Hackney mentioned that we all have unique perspectives. Well, it would be wrong to again adopt Rules that cut out the perspective effectively of people in this Chamber who received half the votes in the last election and that's what we've seen under these Rules in the past. View the old Rules as the old and the new Rules as the change. So it's time for us to really put meaning to what we say and match it and let's adopt some new Rules that actually let this body function so that when a vast majority of Members of this body who were duly elected believe that something should pass, that that can at least get a hearing. I've seen things that have passed the Senate with a unanimous vote that came over here and somewhere got lost in the shuffle. That's just not the right way that we ought to operate, especially when times call for us to put aside the old way of doing things and really make a new beginning and really produce some change that people can believe in. Thank you."

**Speaker Hackney:** For what purpose does the gentleman from Harnett, Representative Lewis, arise?

**Rep. David Lewis (R):** To speak on the resolution.

**Speaker Hackney:** The gentleman has the floor and may speak on House Resolution 1, the Temporary Rules.

**Rep. Lewis:** Thank you, Mr. Speaker, and with your indulgence I also would like to congratulate you on your election. I'd like to thank you for the dignity and the fairness that you bring to the chair.

Ladies and Gentlemen of the House, my only concern that I wish to address, and I know this is old hat for many of you who have served in the past, but if you'll notice Representative Stam had distributed on your desk a 4-page handout. This is an example of the kind of tightly-drawn, excessively-wordy titles that are put on bills in committees of this House. You heard the very eloquent words earlier of the gentleman from Cumberland when he said that the whole is greater than the sum of the parts. My concern with this is that our House Rules empower committees to make title changes and add important amendments or provisions but forbid the House as a whole to do so. That is a concern that I have expressed in years past and unfortunately it remains in the Rules that we are about to adopt today. Thank you, Mr. Speaker, and thank you, Ladies and Gentlemen of the House.

**Speaker Hackney:** For what purpose does the gentleman from Pasquotank, Representative Owens, arise?

**Rep. Owens:** To speak a second time, Mr. Speaker.

**Speaker Hackney:** The gentleman has the floor.

**Rep. Owens:** Thank you. You know, two years ago we did change the Rules, and this past Session we certainly allowed debate. The Speaker and his team—we allowed more debate than has ever been allowed on this House floor. Also we didn't bury bills in committees like had been done before. We didn't cut off debate. We did some, but very rarely as had been done in the past both by Democrat and Republican leadership. We tried our very best to do it. Representative Blust, we even suspended rules for you one day. That was a very rare occasion but we did it for you. So we tried to treat everyone the same whether it was Democrat or Republican, and we know there are always rules that people would like to see to be different. And you can suspend the rules if you've got the votes on the floor of this House. And if you have the votes, Representative Lewis, you can do exactly what you're saying that you want to do. But these Rules were put in place—most of them many, many years ago—and they stayed in place the four years the Republicans were in power. If anything, we certainly relaxed them two years ago. These are the Temporary Rules. We hope that you will support them. We will certainly, Representative Stam, debate some of these issues and concerns and talk about them and take them up when we do the Permanent Rules. I ask you for your support today on the Temporary Rules. Thank you.

**Speaker Hackney:** Further discussion, further debate? If not, the question before the House is the adoption of House Resolution 1. All those in favor will vote "aye," all opposed will vote "no." The Clerk will open the vote... The Clerk will lock the machine and record the vote. Eighty-two having voted in the affirmative and 36 in the negative, House Resolution 1 has been adopted and is order printed.

~ Fin ~

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**HB 80 – Ban Electronic Sweepstakes  
Rep. Paul Stam – House Floor Debate  
July 7, 2010**

*Video Poker and Electronic Sweepstakes are perennial topics of discussion. These sleazy operators always find someone willing to carry their water. Rep. McGuirt, a former sheriff of Union County, once described these "games" not as gambling but as larceny. We are constantly having to plug the loopholes.*

Audio available at [this link](#).  
Debate begins at: 01:39:50  
Rep. Stam's speech: 02:42:13

**Rep. Paul Stam (R – Republican Leader):** I'd like to just briefly address the jobs question. Of course, we hear it's tens of thousands of jobs. I don't know how many it is, but the thought is that if we pass this bill then suddenly all the jobs go away. Well, let's just think about it. The money that is spent comes from somewhere. So where will that money be spent? Well, obviously it will be spent on groceries. It will be spent on mortgage payments. It will be spent on stuff that makes economic activity increase instead of the negative sum game of gambling. So net, there is no loss of jobs.

Secondly, I will point out that jobs sometimes can be an excuse. The information on what I'm going to give is secondhand or third-hand, so if those of you who have firsthand information about this can clear it up, that would be fine. In 2006 when we did this same bill (we passed a ban and phase-out), there was also a bill to correct an ABC statute. The courts had said that the wording wasn't quite right so that in our ABC establishment there had to be allowed obscene performances and until we could correct that language that was going to have to happen. That bill passed the Senate unanimously, bipartisan. It came to the House to the House Judiciary Committee. It passed House Judiciary II unanimously and it just got held for weeks and weeks and weeks until the waning days of the session by our former Speaker—not the current Speaker who wouldn't have done this. The former Speaker just wouldn't let it



come up. In those days he didn't like to tell why he wouldn't let things come up but finally somebody prevailed on him to say, "Now why is this?" He said it was a jobs issue. And he was talking of course about the jobs of the strippers down there in Charlotte. So jobs are jobs. This is not a jobs bill one way or the other. The money will be spent...

**Rep. Earl Jones (D):** Mr. Speaker?

**Speaker Joe Hackney (D):** For what purpose does the gentleman from Guilford, Representative Jones, arise?

**Rep. Jones:** I'd like to ask the gentleman a question.

**Speaker Hackney:** Will the gentleman from Wake yield?

**Rep. Stam:** I will.

**Speaker Hackney:** He yields.

**Rep. Jones:** Sir, have you ever heard of the words "underemployed" and "unemployed?"

**Rep. Stam:** Yes.

**Rep. Jones:** Do you know what "underemployed" means?

**Rep. Stam:** I do.

**Rep. Jones:** Could you define for me...?

**Speaker Hackney:** Will the gentleman yield for another question?

**Rep. Stam:** I will.

**Rep. Jones:** Will you define from your perspective what an "underemployed person" means?

**Rep. Stam:** I would say that that means a person who is not working as much as that person would like to work and who is seeking additional hours or months.

**Rep. Jones:** Follow-up, Mr. Speaker?

**Speaker Hackney:** Will the gentleman yield again?

**Rep. Stam:** I will.

**Rep. Jones:** You had indicated that you hadn't done any research to verify how many jobs or whether there were jobs being created...the number of jobs that people are in regarding video lottery. Is that not correct?

**Rep. Stam:** No, I didn't say I didn't conduct any research. I said that there are estimates out there but who knows...The analysis is the same whether they claim 10,000 or 1,000 or 100. The money goes to buy stuff which will create employment.

**Rep. Jones:** One last follow-up, Mr. Speaker?

**Speaker Hackney:** Does the gentleman yield again?

**Rep. Stam:** I will.

**Speaker Hackney:** He yields.

**Rep. Jones:** Assuming that there are, and factually there are ten-thousand-plus jobs, do you think that this General Assembly should be in the business today of creating jobs and helping small businesses (in this case, six-hundred-plus) or should we be in the business of eliminating jobs and shutting down small business enterprise?

**Rep. Stam:** I'll answer that. In general we should be in favor of creating and retaining jobs.

I'll close with this true story how I got into this bill this spring. I had a fellow come to see me. He and his wife had a small part-time business in a small shopping center. He came to me for bankruptcy or foreclosure counseling. I said, "You made it through the worst part of the recession. Why are you having problems now?" He said, "I have a small shop in a shopping center and I've just lost half my business." "Well, how'd you lose half your business?" One of these internet cafes came in and set up shop right next to him. His regular customers couldn't get parking spaces and they didn't really want to associate with the people who were there all the time anyway.

As Representative Iler said, 11 mayors in a row that he talked to said, "Please get rid of this." The mayor of Fuquay-Varina says, "Please stop it." Holly Springs: "Please stop." The mayor of Apex says, "Please stop." It's harming the economy; it's not helping the economy.

~ Fin ~

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**HB 748 – Citizens United Response  
Selected Remarks on House Concurrence  
July 10, 2010**

*The First Amendment, protecting our rights to religious liberty and freedom of speech,  
is not always popular. The press enjoys its near monopoly on political discourse and  
always finds political allies on the left.*

Audio available at [this link](#).  
Debate begins: 00:19:55

**Speaker Joe Hackney (D):** Members of the House, this is a Senate Committee Substitute back for concurrence with six Senate amendments un-engrossed. The lady from Wake, Representative Ross, is recognized to first describe the Senate Committee Substitute and then we'll take up the amendments. The lady has the floor.

**Rep. Deborah Ross (D):** Thank you, Mr. Speaker and Ladies and Gentlemen of the House. This is the sort of omnibus response to the US Supreme Court case in Citizens United which said that corporations and unions can spend unlimited amounts of money for or against candidates. And they said that and that is their first amendment right and we have laws on our books that say that they can't do that. So the first thing this bill does is repeal the now unconstitutional laws. What the Citizens United case did say is that when corporations and unions spend money for or against a candidate (their own money—it's not coordinated with the candidate; they do it all on their own), they can be forced to disclose that they've done it and where they get their money from. And so this bill adds in some additional disclosure requirements for folks who engage in that kind of speech.

It also defines "coordination." And if an independent group or person "coordinates" with a candidate to make...to spend money for or against a candidate, that's considered a campaign contribution. We just had never defined that in North Carolina law and so what we did was we took the Federal definition of "coordination" rather than make it up on our own so we would have guidelines and regulations and case law and not run afoul of the First Amendment in defining "coordination."

Most of what is in the bill Representative Stam and I have worked on, but we do not take ownership over the changes that were made by the Senate. I'm ultimately going to recommend that we concur with what the Senate did because I don't think that their changes did huge harm to what the House had done. If we had had more time, we would probably have a conference committee but I don't think this is a situation where the Senate just did something, went off on a lark of their own and we didn't know what they were doing. Representative Stam and I worked together to submit an initial draft to the Senate and then they did what the Senate always does and put their own special mark on it. So that's what this bill does. I'm more than happy to answer specific questions about it after we get through the six amendments. Thanks, Mr. Speaker.

**Speaker Hackney:** The Clerk will read Senate Amendment number 1.

**Reading Clerk:** Senator Clodfelter moves to amend the bill on page 9, line 43 by deleting “G.S. 163-278 (a)(7) and (8)” and substituting...

**Speaker Hackney:** The lady from Wake is recognized to explain Senate Amendment number 1.

**Rep. Ross:** Thank you, Mr. Speaker. Senate Amendment number 1: the first part of it is a technical amendment because the .39 isn't in the original citation so it's just a citation change. And the second part of the amendment is just to deal with modern technology about what our new TVs are like and our friends in the broadcast industry brought that to our attention. So Senate Amendment number 1 is just fine.

**Speaker Hackney:** Now the question before the House is the concurrence with Senate Amendment number 1. Further discussion, further debate? All those in favor of concurrence with Senate Amendment number 1 will vote aye; those opposed will vote no. Clerk will open the vote...Lock the machine and record the vote. One-hundred and four having voted in the affirmative, none in the negative, Amendment number 1 has been adopted. Clerk will read Senate Amendment number 2.

**Reading Clerk:** Amendment number 2: Senator Berger of Rockingham moves to amend the bill on page 6, line 51 and on page 7, line 2 by deleting “individual” and substituting “individual person.”

**Speaker Hackney:** The lady from Wake is recognized to explain Amendment number 2.

**Rep. Ross:** Thank you, Mr. Speaker. This is a technical amendment to make sure that we use the appropriate terminology.

**Speaker Hackney:** Further discussion, further debate. The question before the House is the concurrence with Senate Amendment number 2 for Senate Committee Substitute for House Bill 748. All those in favor of the amendment will vote aye; those opposed will vote no. Clerk will open the vote...The Clerk will lock the machine and record the vote. One-hundred and four having voted in the affirmative, one in the negative, the House has concurred in Senate Amendment number 2. The Clerk will read Senate Amendment number 3.

**Reading Clerk:** Senator Brunstetter moves to amend the bill on page 4, line 35 by deleting the phrase “or” on that line.

**Speaker Hackney:** The lady from Wake is recognized to explain Amendment number 3.

**Rep. Ross:** Thank you, Mr. Speaker. Amendment number 3 exempts push polls from an exemption where you don't need to do disclosures. There's a whole list of different things where these disclosures don't apply, like to the media and things like that. And we put polls in there, but Senator Brunstetter and evidently everybody in the Senate was concerned that by putting polls in there, push polls would end up being exempt from having any of this disclosure and so that's what this amendment does.

*[dialogue removed]*

**Speaker Hackney:** ...Now the question before the House is concurrence with Senate Amendment number 3. All those in favor of concurrence will vote aye; those opposed will vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. One-hundred and five having voted in the affirmative, none in the negative, the House has concurred in Senate Amendment number 3 and the Clerk will read Senate Amendment number 4.

**Reading Clerk:** Amendment number 4: Senator Stein moves to amend the bill on page 3, line 46 and on page 4, line 3 by deleting “internet” on those lines.

**Speaker Hackney:** The lady from Wake is recognized to explain the amendment.

**Rep. Ross:** Thank you, Mr. Speaker. The internet was never in the bill that we were interested in and the Senate got all excited and put the internet in for disclosure purposes. And then the Senate was informed that that would run afoul of the FCC and might have Commerce Clause problems, so they decided to take it out on the floor.

**Speaker Hackney:** Further discussion, further debate? The question before the House is concurrence with Senate Amendment number 4. All those in favor of concurrence will vote aye; those opposed will vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. One-hundred and four having voted in the affirmative, none in the negative, the House has concurred in Senate Amendment number 4. The Clerk will read Senate Amendment number 5...I'm informed that Senate Amendment number 5 failed and so no motion is necessary with respect to that. The Clerk will read Senate Amendment number 6."

**Reading Clerk:** Amendment number 6: Senator Hunt moves to amend the bill on page 5, line 41 by adding after the period...

**Speaker Hackney:** The lady from Wake, Representative Ross, is recognized to explain the amendment.

**Rep. Ross:** Mr. Speaker, I believe that we have a substitute to Amendment number 6 that has Amendment number 7 on it. And this should be Senator Jenkins' amendment instead of Senator Hunt's amendment.

**Rep. Paul Stam (R):** Mr. Speaker?

**Speaker Hackney:** For what purpose does the gentleman from Wake, Representative Stam, arise?

**Rep. Stam:** I don't have that one and I'm looking around and a lot of people don't have that one. It might be controversial. Apparently a couple rows over here didn't get it.

**Speaker Hackney:** You don't have it because they didn't adopt it, so we didn't hand it out. The Clerk will read Amendment number 7.

**Reading Clerk:** Amendment number 7: Senator Jenkins moves to amend the bill on page 8, line 4 by deleting "ten thousand dollars (\$10,000)" and substituting "five thousand dollars (\$5,000)."

**Speaker Hackney:** Now does everybody have a copy of this one? The lady from Wake is recognized to explain the amendment.

**Rep. Ross:** Thank you, Mr. Speaker. This reduces the threshold of expenditures where it would trigger reporting requirements from \$10,000 to \$5,000.

**Speaker Hackney:** For what purpose does the gentleman from Wake, Representative Stam, arise?

**Rep. Stam:** To speak on that amendment.

**Speaker Hackney:** The gentleman has the floor.

**Rep. Stam:** I believe copies are being passed out now on this side. To explain my opposition to this amendment I would have to explain some of the bill itself. So I'll do that just briefly and save most of my remarks for the end. I did work with Representative Ross over a couple months, had very productive discussions and there are some good things in this bill. But as usual, the Senate added a lot of stuff. And one thing they did here is just to make even more independent expenditures immediately reportable, if that's what it does here on page 8.

My basic opposition to these kinds of bills which have come across in the past is that they are regulating criminal...actually at the end criminalizing speech. They're very much like the Alien and Sedition Act of 1798 which is roundly denounced in the history books. But we've had that debate in the past. I was willing to live with the original text we sent over because as sort of a price for reinserting this electioneering communication the original drafts reduced some of those requirements in other areas. But here the Senate has once again jacked it up and it's

just making it more onerous on an individual or a corporation. Everybody thinks, "Well, this will be AT&T or General Motors." Well, it also might be "Mom and Pop, LLC."

So if you look on page 8, line 4 what this is talking about is when you have to file electronically so that if you're only spending let's say \$6,000, you have to file electronically. I believe that's what that threshold is. And it's just not necessary. You cannot really affect an election with \$6,000. So why impose that extra expense on a Mom and Pop organization that might not have a computer but decides that they want to spend that money. So I oppose this amendment. It was controversial in the Senate. As you'll see it passed 26 to 20.

**Speaker Hackney:** For what purpose does the lady from Wake, Representative Ross, arise?

**Rep. Ross:** To speak on the amendment, Mr. Speaker.

**Speaker Hackney:** The lady has the floor.

**Rep. Ross:** Ladies and Gentlemen, I think the thought of the Senate was that if you've got \$5,000 to spend in an era where virtually everybody has access to the internet, particularly people who have \$5,000 to spend, you can get online and do your filing.

**Speaker Hackney:** Further discussion, further debate? The question before the House is the motion to concur in Senate Amendment number 7. All those in favor of concurrence will vote aye; those opposed will vote no. Clerk will open the vote... The Clerk will lock the machine and record the vote. Sixty having voted in the affirmative, 44 in the negative, the House has concurred in Senate Amendment number 7. The clerk will read Senate Amendment number 10.

**Reading Clerk:** Amendment number 10: Senator Stein moves to amend the bill on page 1, line 6 by deleting "and" on that line and on page 1...

**Speaker Hackney:** The lady from Wake, Representative Ross, is recognized to explain the amendment.

**Rep. Ross:** Thank you, Mr. Speaker. This requires 48-hour reporting for that same \$5,000 contribution. So since you're online doing it anyway, you may as well be able to do it in 2 days.

**Speaker Hackney:** For what purpose does the gentleman from Wake, Representative Stam, arise?

**Rep. Stam:** To speak on the amendment.

**Speaker Hackney:** The gentleman has the floor.

**Rep. Stam:** This is sort of the same issue. It's extra regulation on fairly small contributions or expenditures. And although it's nice to think that everybody is online and has a computer and knows how to hook up with the Board of Elections because we do it regularly, these people are not the people who do it regularly. They're the people who may decide at the last minute they want to say something about a politician they don't like and it may be you. And so maybe you want them to have to do this. But guess what, that's not what democracy is about. Citizens get to criticize us without excessive regulations. So I would encourage your 'no' vote. It was controversial in the Senate and only passed 28 to 18.

**Rep. Ross:** Mr. Speaker?

**Speaker Hackney:** For what purpose does the lady from Wake, Representative Ross, arise?

**Rep. Ross:** To speak a second time on the amendment.

**Speaker Hackney:** The lady has the floor.

**Rep. Ross:** Thank you, Mr. Speaker. Just to remind the Members of the body that we file 48-hour reports for \$1000 contributions.

**Speaker Hackney:** Further discussion, further debate? The question before the House is concurrence in the House with Senate Amendment number 10. All those in favor of concurrence will vote aye; those opposed will vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. Sixty-three having voted in the affirmative, 41 in the negative, the House has concurred in Senate Amendment number 10. The lady from Wake is recognized for further comments on the Senate Committee Substitute as amended.

**Rep. Ross:** Thank you, Mr. Speaker and ladies and gentlemen. I would say this about the bill. I do think it's the heart and probably 90% of this bill is what Representative Stam and I worked on. And I would have preferred maybe that what we sent over would be exactly the same coming back. But I do think in the end we actually got a better deal than we usually do when we send things over to the Senate. And I think that this is the first step in response to the Citizens United case. We have not gone as far as a lot of other states that have imposed a lot more restrictions for two reasons: One, because I believe that we're more conscious of the First Amendment and two, because I think our statutes are set up in a much fairer way for people who want to express themselves. And the efforts for the 90% that I was talking about that I engaged with Representative Stam I think reflect that. The Senate generally, you know, likes to restrict speech a little bit more and so they added some of these amendments and a couple of other provisions. But I don't think any of them comes even close to the line of being unconstitutional. And I think this is a good, fair response to Citizens United and I encourage you to vote green to concur.

**Speaker Hackney:** For what purpose does the gentleman from Wake, Representative Stam, arise?

**Rep. Stam:** To speak on the motion.

**Speaker Hackney:** The gentleman has the floor.

**Rep. Stam:** Ladies and gentlemen, I would have liked to have been able to vote yes, but actually on First Amendment stuff I'm not as willing to compromise as perhaps on other things. Let me just point out what I believe are three defects in this if you accept the basic premise that people have a presumptive right to speak when they want to and regulation should only be there when absolutely necessary.

If you'll look at page 3 (this so-called "electioneering communication") if you look on line 49 to 50, it includes communication aired or transmitted within 60 days of the time set for absentee voting to begin. That means in even-numbered years, and actually some in odd-number years because this for the first time applies this to municipal elections as well, if I recall correctly, Representative Ross...But if you'll see what we thought would be good was 30 days or 40 days before an election—but this is 60 days before the time set for absentee voting to begin. So that means what you're really talking about is three months before the general, three months before the primary. So half of the year is a First-Amendment-free zone for some people who want to speak about their local politician and say how cruddy they are or how wonderful they are but don't particularly want to be regulated.

Secondly, if you turn the page (and this is a couple of places: page 4 and on page 5 also, line 27) these mass mailings can be to 20,000 or more households cumulative per election in a statewide election. That is, if you think about it, if a person mails, you know, three times say. And what good is a mailing if you don't do it three, four or five times? I think that's right. All of you all are experts on mail. If you don't to it three, four or five times, it's really worthless. So that means if you mailed to 4- or 5,000 households in a statewide election—*statewide election*—that you're subject to this regulation when obviously that can't really affect the election. It's just not enough to really affect it.

Finally, all of this on pages 8 to 9, I believe...I may have the page wrong. All this extra reporting about donors and that kind of thing is just really...First of all it's easy to get around it and it's just unnecessary. I oppose it and I'd ask you to oppose it. It was controversial in the Senate. I believe there were 20 votes against it and I urge you to vote no. Although I wish on July 10<sup>th</sup> I could have voted yes on this, I can't.

[dialogue removed]

**Rep. Bill Current (R):** ...Now my question to Representative Stam, if he would yield?

**Rep. Stam:** Yes, sir.

**Rep. Current:** Has the Judiciary Committee of the House heard this bill or heard this information?

**Rep. Stam:** No.

**Rep. Current:** Has the Campaign Finance Committee heard this information?

**Rep. Stam:** No.

**Rep. Current:** Well what are we doing talking about it tonight? I think it's disgraceful that we would be voting on something that hasn't been vetted in this House.

**Rep. Stam:** I think that's a question and I'll say this should have been taken up three or four weeks ago. We shouldn't talk badly about the other body because they may talk bad about us. But it should have been three or four weeks ago, Representative Current.

**Speaker Hackney:** For what purpose does the gentleman from Catawba, Rep. Hilton, arise?

**Rep. Mark Hilton (R):** To ask Representative Ross a question.

**Speaker Hackney:** Does the lady from Wake yield?

**Rep. Ross:** I yield.

**Rep. Hilton:** "Thank you, Representative Ross. I just heard about this bill earlier today and from hearing some of the debate it really hasn't gone through a House committee. And what I've done is I've contacted some groups who do these mail-outs. And two that I've contacted said that they're very disturbed by this bill and what this requirement would put on them. Have you talked to groups like the NRA and folks like this? Have they responded about how they feel about this bill?"

**Rep. Ross:** Well, Rep. Hilton, I have talked to a number of groups about this bill because it's been the Senate in Senate JI and the Senate floor for the last two and half weeks. So I went to Senate JI and a lot of the groups talked to me about trying to get me to get them to make changes in the bill. The NRA did not contact me about this bill, though they have contacted me about other bills this session—so they know how to find me. The people who did most of the lobbying on this bill and who were hanging around were the broadcasters. They saw a lot of problems with some of the law like the scan-line thing that I told you about. They didn't like a lot of the disclosure provisions in the bill and we worked with them to try to get those issues accommodated. There were a couple of other interest groups that came and talked to me about the bill. I assume, since the Senate hung around with this bill for so long...I mean, the Senate definitely was transparent with this bill. It was all over the place. And they held it up in committee for a couple weeks. So all those groups talked to those folks. But I'm sure that there were some groups out there that didn't talk to me in particular that talked to Senators.

*[dialogue removed]*

**Speaker Hackney:** For what purpose does the gentleman from Cleveland, Representative Moore, arise?

**Rep. Tim Moore (R):** To ask a question of Representative Ross.

**Speaker Hackney:** Will the lady from Wake yield?

**Rep. Ross:** I yield.

**Speaker Hackney:** She yields.

**Rep. Moore:** Representative Ross, is there any type of fiscal impact through this legislation? I know there's some mandates to the State Board of Elections to, it looks like additional review and perhaps some additional enforcement. Was there any fiscal impact that was foreseen through this?

**Rep. Ross:** Representative Moore, no, there isn't. As a matter of fact, we gave the State Board of Elections a lot of extra...some extra money in the budget. So they're going to be able to do the work, the minimal extra work they're required to do in this bill.

**Rep. Moore:** Thank you for answering that. To briefly speak on the bill, Mr. Speaker?

**Speaker Hackney:** The gentleman has the floor.

**Rep. Moore:** Or on the motion, rather...Ladies and gentlemen, I know it's late. Election law is something I've always liked following and reviewing and I believe the majority of this bill appears to be compliance language with respect to the US Supreme Court decision.

The problem, and I guess I can't really fault those in this chamber, but the problem is that this bill has been laid here at...really at the last minute trying to review this. I've got real concern with voting for it. There's an ethics bill that will be coming up later tonight that I think the parties have worked very hard on. People have had a lot of input in throughout the process and there's been a lot of discussion as to the particularities or as to the fine print. And unfortunately I don't know that this bill has had that same type of vetting for some of the issues. Based upon that I would urge the members to vote against it because if you...What we're doing statutorily is we are expanding the ability of corporations and others to advertise, to do things. Of course that's compliance language. But there are other matters in there. So I'm not really taking much issue with the House sponsors of this bill but I just wish the process had gone better because I do fear that there are some unintended consequences. And there are some amendments that I would have rather not seen adopted. So I would encourage the body to vote red.

**Speaker Hackney:** For what purpose does the gentleman from Wake, Representative Dollar, arise?

**Rep. Nelson Dollar (R):** To see if Representative Stam would yield for a question.

**Speaker Hackney:** Will the gentleman from Wake yield?

**Rep. Stam:** I do.

**Speaker Hackney:** He yields.

**Rep. Dollar:** Representative Stam, if you look on page 5 under item number 13 (I think it's line 30 where there's the definition of a person there) and we're talking about compliance with this act...Is it your interpretation that this would apply--and I've heard this debated recently outside the halls of the Senate--to 501(c)3s? In other words, to organizations that cannot by law--by Federal law--actually take a position in an election for or against a particular candidate but do very often provide information to the public and to their constituencies, for example, on how people vote or where they stand on issues?

**Rep. Stam:** Well, the answer to that is yes, it does apply to nonprofits and let me show you how that works. If you go to page 3...Let's take a hypothetical. I was trying to think of a bill that we've had this year but I don't want to get on one side or the other. Let's say there's the Association for the Promotion of Apple Pie and Parenthood (We're all in favor of that.) and they want to give an award to...I'm sure they'd give one to Representative Lewis there in January and Representative Ross in April and Representative Parmon in September and Representative Carney there in December. And let's just suppose they had 5,000 households on their mailing list. And they didn't say, "Vote for this person." They didn't say, "Oppose this person." They just named them. That cumulatively would be 20,000 mailings. So therefore that Association for Parenthood and Apple Pie would have to go through all this regulatory filing. So nonprofits are very concerned, even those who are not so innocuous as apple pie. They're very concerned about this.

**Rep. Dollar:** Follow-up?

**Speaker Hackney:** Will the gentleman yield again?

**Rep. Stam:** I do.



**Speaker Hackney:** He yields.

**Rep. Dollar:** So there's the potential here for having to disclose a host of individuals who were contributing to organizations—various organizations that are not doing so for any particular political purpose, not for or against a particular candidate in a campaign—that will now have to have their names disclosed even though, in this process, even though they're not giving for any what we would normally think of as a campaign purpose?

**Rep. Stam:** That's correct. If you look at page 7, lines 40 to 41, one of the situations where a donor's name would be disclosed is if the donor or the filer knew or had *reason* to know of the filer's intent to make independent expenditures with the donation. Now if it had just said 'knew' I might be okay with that. But because it said "had reason to know," these donors have to sort of guess what other people would think is in their brain. So I think it will discourage charitable contributions because they don't really know what that organization is going to do later. Now I don't know if that will truly happen or not. We'll have to wait and see. But it certainly is a possibility under this legislation."

**Rep. Dollar:** One final question, if the gentleman would yield?

**Speaker Hackney:** Does the gentlemen yield?

**Rep. Stam:** What time is it? Yes, I do.

**Speaker Hackney:** He yields.

**Rep. Dollar:** So it would be your interpretation, and particularly given as other members have already mentioned that we in the House and our committees didn't get an opportunity to go over this and do the normal amendment process... We have no ability to amend it. It's coming here with no ability to make any adjustments by the House—just by one Chamber, not two. But my final question is do you believe this could potentially have a chilling effect on speech, even speech that's not even necessarily directed in a particular campaign for or against a particular candidate?

**Rep. Stam:** Parts of the bill have that potential. Parts are good. I just tend to not want to compromise on the First Amendment.

**Speaker Hackney:** For what purpose does the lady from Wake, Representative Ross, arise?

**Rep. Ross:** To speak a second time on the motion, Mr. Speaker.

**Speaker Hackney:** The lady has the floor.

**Rep. Ross:** Thank you, Mr. Speaker and ladies and gentlemen. I just want to respond to a couple things before I encourage you again to vote green on this motion. First of all, I don't think it was the intent of myself or Representative Stam for us to be voting on this today. We provided this language early. The process has gotten slowed down. I would say I actually commend the Senate on this even though I wish they had done it a little earlier in the session. They spent quite a long time on this bill and had the public have a lot of opportunity to comment on it. I wish that had happened on both sides, but it's not like this was a rush job for another rush job. So there has been a lot going on. Representative Stam and I have seen every draft of the bill and we lodged objections. Some of our objections were taken. Some of them were not. And we have personally circulated the bill to a wide variety of groups. It's not my fault that the members haven't seen it. It would have been my preference that they did. I warned JI for the last week that we were going to meet and go over this bill line by line which is what we do, and that would have been my preference. So that is that explanation, but it is what it is.

I would say one thing about the little colloquy that we had over here between Representative Stam and Representative Dollar. The Mom and Apple Pie advertisement of what great people Representative Lewis and I are wouldn't fall under that donor provision because it wouldn't be an independent expenditure and that's what you're talking about on page 7 of the bill. An independent expenditure advocates for or against a clearly identified candidate. I do agree with Representative Stam that it's bad to have to say things about what when you name a candidate all throughout the year, and in fact I voted with Representative Stam against that law that we enacted

several years ago. It passed, though. And I think we should take that law off the books. One of the things that this bill doesn't do is take that law off the books because the Senate didn't want to take a law off the books that Citizens United didn't make us take it off.

But in support of this motion and in support of this bill, it is not a lawsuit waiting to happen. It is a balanced approach. There may be a couple things we would have done differently, but it is in the mainstream of responses to Citizens United. It is about disclosure. It is about sharing more information with the public so that the public knows who is telling them things about the political process. I think in general disclosure is a good thing. The US Supreme Court said it is the antidote to unlimited investment of money. I also think about Citizens United (and this is my personal opinion and I think it might bear out in this state. We'll just have to see what the experiment is this next election.) that we're not going to see the influx of corporate money that everybody's been talking about because corporations know how to get their way without spending all their money on political ads. They form PACs and that's how they get their way. I think we're going to see a lot more work from grassroots groups that are going to have to disclose (and you may or may not agree with that) and from our friends in the unions. And so we'll see what happens with this bill, but I do think it's a modest response and I encourage you to vote green to concur.

**Speaker Hackney:** For what purpose does the gentleman from Cleveland, Representative Moore, arise?

**Rep. Moore:** Just a question of Representative Ross. It's I guess a technical question.

**Speaker Hackney:** Will the lady yield?

**Rep. Ross:** I yield.

**Rep. Moore:** Representative Ross, page 4 lines 22, this has to do with the exemption on electioneering communication having to do under (d), the communication... What was the rationale behind requiring that the General Assembly actually be in session when exempting that advocacy provision?

**Rep. Ross:** Representative Moore, that was to comply with the First Amendment ability to petition the government for a redress of your grievances.

**Rep. Moore:** Follow-up?

**Speaker Hackney:** Does the lady yield again?

**Rep. Ross:** I yield.

**Speaker Hackney:** She yields.

**Rep. Moore:** My questions is: why would we have to be in session? My argument is that it should be more open, that that should be exempt at any time—not only while we're in session but, you know, during the interim periods or at any other time. Why was it limited to only while we are in session?

**Rep. Ross:** Representative Moore, it was limited because... first of all because it's existing law. This is just a restatement of the existing law that was moved to this section. It's not a new section that we added. Actually Representative Stam was involved with this subsection (g) which is more of a new section. But that is an exemption that's been in current law that allows for that kind of advocacy and makes sure that you don't have to have the kind of extra disclosures because the public won't necessarily be misled and we want to fully protect the right to petition the government for redress of your grievances.

**Speaker Hackney:** For what purpose does the gentleman from Davidson, Representative Holliman, arise?

**Rep. Hugh Holliman (D):** To speak on the bill.

**Speaker Hackney:** The gentleman has the floor.

**Rep. Holliman:** Thank you, Mr. Speaker. I think we're making a lot more out of regulations than what this bill does. What it says is if you choose to be a part of the election process that you have to do reporting and you have to disclose who's giving you the money, just like you and I and everyone else does. I'd hope we'd support this bill and go ahead and pass it.

**Speaker Hackney:** Further discussion, further debate? The question before the House is the concurrence motion by the lady from Wake that the House do concur with the Senate Committee Substitute for House Bill 748. All those in favor of concurrence will vote aye; those opposed will vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. Fifty-seven having voted in the affirmative, 47 in the negative, the House has concurred in the Senate Committee Substitute as amended for House Bill 748. The bill will be enrolled and sent to the Governor.

~ Fin ~

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**HB 1659 – Eminent Domain**  
**Rep. Paul Stam – Remarks on 2nd Reading**  
**June 28, 2010**

*This was the first time the House passed a bipartisan bill to stop the abuse of condemnation law.  
Since 2010 the House has passed similar measures in 2011, 2013, 2014 and 2015.  
Whether under Democrats or Republicans, the Senate never passed it.*

Audio available at [this link](#).  
Debate begins: 00:56:05  
Rep. Stam's remarks: 00:56:30

**Rep. Paul Stam (R – Republican Leader):** Thank you, Mr. Speaker, Members of the House. This relates to eminent domain—that is, the forced sale to the government of land. This says that private property shall not be taken by eminent domain except for a public use. That's what we all thought it meant for probably hundreds of years. What is public use? Roads, court houses, sewer, water...It's also public utilities even though they are owned by a private entity because a utility is, by definition, something to which the public has a right to obtain service upon payment of a fee.

The public use is not the only test. That's the reason for this bill. There are two other tests possible: "public purpose" and "public benefit." In *Kelo v. New London, CT* (2005) the United States Supreme Court unexpectedly said that public purpose is sufficient so that the Town of New London could take a lady's home where she had lived all her life, make her sell it and then (the town could) sell it to developers so they could make more money and the city could get more taxes. Fortunately in *Kelo* the US Supreme Court also said that the states were free to restrict eminent domain more than that. Many states have done so. This General Assembly in 2006 restricted the statutory grounds for eminent domain, but not to the extent that it should have.

The other possibility is "public benefit." That is: "Would the public benefit by this taking?" And that language is still in our statutes, General Statute 40A-3, which is the principle condemnation statute. That kind of taking has been upheld by the North Carolina Supreme Court about 9 years ago (*FedEx v. Piedmont Triad*). So this bill is intended as a constitutional amendment which will change things, but it is not a radical bill. It's only getting us to where the vast majority of us thought the law was to start with: public use.

It does two other things. First, it specifies that a public use does not include the taking of property in order to convey an interest in that property for economic development. That's the *Kelo v. New London* situation.

Next, it puts this language in our constitution: "Just compensation shall be paid." Now if that's all we were saying, this bill would not be necessary because the North Carolina Supreme Court has held for hundreds of years that those five words are implicit in our "law-of-the-land" clause which goes back to Magna Carta. Since we are one of the only states that doesn't actually have it in our Constitution, I thought it would be good to put it there.

Finally, the last part of that sentence: "and if demanded, shall be determined by a jury." There are 49 state constitutions that require these cases to be determined by a jury—that is the issue of damages in condemnation cases.

North Carolina is the only state in the nation in which that is not a constitutional provision. Our State Supreme Court has held that if the General Assembly felt like it, we could take away trial-by-jury in these cases. So even

though trial-by-jury is normally afforded by statute, it is a good idea to put that in the Constitution where it needs to be.

You will notice that the date of the referendum is Nov. 6<sup>th</sup> of 2012. It's not this November. There was some thinking that maybe there wasn't enough time to prepare for it by this November but certainly in two and a quarter years we'll have time to have a good robust debate.

Finally, we did get a fiscal note on the bill and it is \$400. This will be paid in a couple of years for some reprogramming. Representative Lewis, who will speak next, is good for the \$400 if the Treasury can't afford it.

**HB 1659 – Eminent Domain  
Rep. Paul Stam – Remarks on 3rd Reading  
June 29, 2010**

Audio available at [this link](#).

Debate begins: 02:20:10

Rep. Stam's remarks: 02:20:38

**Rep. Paul Stam (R – Republican Leader):** Thank you, Mr. Speaker. We can feel the bipartisan love on this bill and vote for it. If you have any questions that you thought about overnight, I'd be glad to answer them.

~ Fin ~

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**HJR 1940 – Honoring NC Veterans on Memorial Day  
Rep. Paul Stam – Remarks on Adoption  
May 26, 2010**

*My father was a radar officer on a Destroyer hit by kamikazes at the Battle of Okinawa (May 1945).  
In 2010 I met the Navy medic who rescued him from the Sea of Japan and took care of him  
on the way to the hospital in Hawaii. In 2010 Dr. Robert Sharpe was a  
Professor of Public Health at NC Central University.  
Later that year my family was able to meet Dr. Sharpe. We became good friends.*

Audio available at [this link](#).

Debate begins: 00:50:09

Rep. Stam's Remarks: 00:57:38

**Rep. Paul Stam (R – Republican Leader):** Mr. Speaker, Members of the House, the newspapers of Southern Wake County—The Apex Herald and the Fuquay-Varina Independent—have contributed to our understanding of World War II. Every week they run lengthy articles about different veterans of World War II and their memories. I typically will clip those and send it to the veteran with a “thank you” for their service.

There was one in there last month, a series of three articles about Doctor Robert Sharpe. He is a professor at the Department of Public Health Education at North Carolina Central University. The article detailed his service in World War II as a Navy Corpsman. The article happened to mention that he was at the Battle of Okinawa. I wrote him a typical “thank you” and mentioned that my father had been wounded at the Battle of Okinawa. I mentioned the name of my father's ship. He was on a destroyer as a radar officer. The picket line at Okinawa was where all the kamikazes came in.

Doctor Sharpe wrote back that he was a corpsman on the mother ship of my father's destroyer which had no corpsmen. So he and his crew took care of the injured men from my father's ship and probably saved my father's life. But he doesn't remember him for sure.

I am going to have an opportunity to meet Doctor Sharpe and thank him. And I think it's very important that we get the memories of these veterans of World War II while they are still here.

~ Fin ~

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**HB 1973 – Various Economic Incentives**  
**Rep. Paul Stam – Remarks on 2nd Reading**  
**June 17, 2010**

*Targeted tax incentives are proposed every year. Free-market conservatives joined by real economists usually lose the battle but are winning in the court of public opinion.*

Audio available at [this link](#).  
Debate begins: 00:27:40  
Rep. Stam's remarks: 01:48:00

**Acting Speaker William Wainwright (D – Speaker Pro Tem):** For what purpose does the gentleman from Wake, Representative Stam, arise?

**Rep. Paul Stam (R – Republican Leader):** To speak on the [Lewis] amendment.

**Speaker Wainwright:** The gentleman is recognized to debate the amendment.

**Rep. Stam:** Thank you, Mr. Speaker. Thirty of us suffered through that Joint Select Committee on Tax Reform during the interim. We had stacks of paper. I am going to read two sentences from the UNC study. I hope you'll listen to it. This sunset is not on all economic incentives.

I disagree with part of the study. UNC says some incentives work. They like JDIG. But this is one they say doesn't work. Two-thirds of Article 3 J credits are the M&E credit: manufacturing and equipment. This is what the study that we paid for says about that credit. "Taken in conjunction with other tax credits, the M&E credit does not appear to increase average employment levels at all. Companies only taking the M&E tax credit in 2004 demonstrate an employment loss in subsequent years."

Why would you not sunset this thing? It's the one they all agree doesn't work.

Now in my friend from Pasquotank's [Rep. Bill Owens] economics, this credit doesn't cost anything because the State only pays it if the jobs come. But we had another study on these same types of credits done by people at UNC and Elon. That study found that 96% of the jobs for which we gave the credit (they got the money) were not induced by the credit. In other words, this whole idea that we only pay these credits if we have income coming in is a complete fallacy of logic and fact.

I support the [Lewis] amendment. It doesn't harm the bill at all. It only takes a few million dollars out of the \$300 million price tag. I ask you to support it."

**HB 1973 – Various Economic Incentives**  
**Rep. Paul Stam – Remarks on 3rd Reading**  
**June 21, 2010**

Audio available at [this link](#).  
Debate begins: 00:54:43  
Rep. Stam's remarks: 00:56:29

**Rep. Paul Stam (R – Republican Leader):** Mr. Speaker, Members of the House, I just want to make sure that we're at least aware of the reports that we pay for and commission.

One of the extravagant claims about this bill is that it will create jobs. That is of course not the case, in my opinion. Take just the one program that has been around the longest and yet seems to have the most devoted following: the Bill Lee Act. I'll just read you three or four sentences from the research you paid for:

"The job creation tax credit is not changing the rate of job growth for most companies adding new jobs. The machinery and equipment tax credit is being taken by companies shedding jobs. Company interviews and surveys reveal that the Lee Act does not influence business decisions and is regarded as an after-the-fact entitlement tax credit."

Final sentence:

“In most cases company presidents, CEOs, owners and other decision makers were unaware that their companies were even taking tax credits against the company’s job creation investment and/or research activities.”

Vote for this if you care to. But do not claim that you voted for jobs.

~ Fin ~

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**SB 461 – North Carolina Racial Justice Act  
Rep. Paul Stam – Remarks on 2nd Reading  
July 14, 2009**

*For years opponents of the death penalty for first degree murder failed to pass a moratorium on the death penalty. In 2009 they hit upon the right tactic to achieve their moratorium. More on this in subsequent years when the legislative Majority changed.*

Audio available at [this link](#).

Debate begins: 00:35:00

Rep. Stam’s remarks begin at: 00:57:42

**Rep. Paul Stam (R – Republican Leader):** Mr. Speaker, Members of the House, you will notice you have not heard one thing from either of the first two speakers about how the bill actually works. I’ll explain that to you. But first I would like to set the scene with the cost of the bill. By the cost of the bill I’m really not talking about the tens of millions of dollars that it will cost, but rather what’s in this notebook: 20 or more studies that I received from the Attorney General of North Carolina on the deterrent effect of the death penalty for murder. I didn’t make these up; I got it from our own Attorney General.

The statistical evidence now is almost overwhelming that the punishment of premeditated, deliberate murder by capital punishment deters homicides. Different people have different estimates. A conservative estimate is that it’s 25 to 50 homicides a year which are deterred by a functioning death penalty system. This bill really is not about race; it’s about the death penalty. I’ll explain that in a minute.

If you pass this bill, what you have done is create another three-year (approximately) moratorium on the death penalty for premeditated, deliberate first degree murder. We have now completed a three-year moratorium in fact and these innocent homicide victims who have suffered as a result are therefore approximately 75 to 150...let’s say 120 innocent people. A majority of them are African American. We have about 120 seats in this chamber. Just put one of these victims in every seat and write “deceased due to the moratorium.” If you vote for this bill then sign your name to that because that’s the true cost of this bill.

I’d like now to take you through the bill since you haven’t gotten that from any of the sponsors. First, it’s called the “North Carolina Racial Justice Act,” which is very interesting. Just think of the reaction if we called it the Sexual Justice Act. We execute vastly more men than women. If we were to apply the same logic of this bill to sex differences, we would have to vastly increase the number of women executed before we could execute any more men. Is that what you want? Then look at the rest of the title and that gives you a clue to the nature of the bill. Whenever it takes 25 lines to write a title for a 58 line bill, you know that the sponsors don’t want you to touch neither jot nor tittle so that a majority of the House cannot work its will.

Look at the bottom of the first page—that’s the important part. Lines 33 and 34 are the advertisement for the bill: “No person shall be subject to or given a sentence of death or shall be executed pursuant to any judgment that was sought or obtained on the basis of race.” But that’s no change! That’s existing law. That principle is protected by voluminous procedural protections that this body has created over the last decade.

The heart of the bill, what the bill really does, is on the next page in sub-section (a), lines 1 through 5, and it makes an irrational inference. Let me read it with you. “A finding that race was the basis of the decision to seek or oppose the death sentence,” –and that is on a particular person, for example, Representative Steen here–“may be established if the court finds that race was a significant factor in decisions to seek or impose the sentence of death in

the county, the prosecutorial district, the judicial division of the state at the time the death sentence was sought or opposed.”

If Representative Steen was sentenced 20 years ago (and lots of people on death row were sentenced 20 years ago) he can now attempt to get out of his sentence of death for murdering half a dozen people—because you really have to try hard to be executed in this state. One simple little murder will rarely do it. The way he is going to try to get out of it is to show that 20 years ago other people were discriminated against. Now, the reason I say that’s an irrational inference is suppose we did it just the other way. Suppose the State was allowed to prove that there was no discrimination against Representative Steen...I think we’re both Dutch. We may be the only two Dutch people here. If I can prove statistically that for Dutchmen there has been a perfect symmetry between their proportion of the number of murders and their sentences to death row, then I can use that as evidence to prove that I did not discriminate against him. And if I suggested such a ridiculous argument you would jump up and say that’s an irrational inference—but it’s just as irrational the other way.

It’s interesting that Representative Womble talked about the Kentucky Act. The Kentucky Act was not retroactive. It’s the retroactive feature of this bill, of course, that creates the huge financial train wreck costs. This allows every person of the 163 murderers currently on death row to make this claim. Now, they’ve already had a chance to make similar claims in litigation, but the US Supreme Court has said that they can’t use only statistical evidence about what other people did at another time to prove motive in this case. But every one of them has had the right to make the claim that racial prejudice was exhibited against them for the last 8 to 15 years they have been on death row.

Now, let’s just look at what procedural protections we currently have in place, because it’s extensive. As I said, you have to almost volunteer to be on death row, unless you murdered 6 or 8 people. But since 1996 we’ve had open file discovery. Essentially we have an 8 to 15 year moratorium for every person on death row. That’s the norm for what it takes to get through the process. We have the Innocence Protection Act (2001) when pre-trial and post-trial DNA testing was augmented to prevent the conviction of the innocent. In 2001 no death penalty for mentally retarded was added. In 2001 prosecutors were granted authority to use discretion in deciding not to seek the death penalty. Ironically the proponents of this bill and other moratorium bills now point to the use of that discretion as an argument for a moratorium. It’s like the Menendez brothers who killed their parents and then threw themselves on the mercy of the court as orphans.

Since 1996 capital defendants are provided two attorneys at trial and at post-conviction hearings, all at taxpayer expense. The Supreme Court considers proportionality in reviewing all death penalty cases on direct appeal. In 2006, I assisted with the Innocence Inquiry Commission, and innocence claims are rare. Of the 43 convicts executed after North Carolina re-instated capital punishment in 1977, not one had any credible claim of actual innocence. We’re constantly told that it’s minority, African American population on death row. But 65% of those actually executed have been white. That sheds a new light on the claim of disproportionality.

I did ask the Academy if they really thought that one of those convicted in the modern era (and by “modern era” I mean after about 1970s when the death penalty was re-instated) had been innocent. One of them gave me the name of Junior Brown. Well I checked on Junior Brown. Junior was a chef. His distinctive ring was found behind the liver of the deceased. And the slice marks for getting into this lady to put the ring in there were made by a knife that was consistent with his chef’s knife. He didn’t actually claim to be innocent. He never claimed anything. He never testified. At one hearing his lawyer said he might have been somewhere else. But that’s the one claim of innocence—Junior Brown.

To me the big problem with the bill is the clogging of the systems so that there will be no death sentences carried out for several years. On page 3 you see that every person on death row has a year to make this motion. And why would any person on death row NOT make the motion? If they’re African American, they’ll claim it’s disproportionality according to population. If they are not African American, they’ll claim disproportionality in consideration of the numbers of murders committed. Locke Bell, the prosecutor in Gaston County, says one of the ironies of this bill is that it will make seeking the death penalty almost impossible. “Of all the defendants in Gaston County on death row, only one is black. All the rest are white men. I have two pending capital cases, both involving white defendants.” In order to prosecute more white men capitally, he’s first going to have to get some death sentences imposed on some black men. That’s the way the bill will work if we are foolish enough to pass it.

Tom Keith, the district attorney of Forsyth County, says that he’s going to have to lay aside the rest of his business to comply with this because you’re not going to appropriate money to fund what would need to be done. He’s prosecuted 450 murder cases and this bill is going to require him to go find those 450 murder cases, dig them out of the cold storage, reconstruct them and figure out why he sought the death penalty in this case and not that case.



Now, maybe you think that we just have an infinite amount of money and that that's how we should be spending our funds in justice and public safety. Frankly, I think we ought to spend it on catching new criminals, prosecuting them and letting the justice system deal with them. Apparently the proponents of this legislation think that all the district attorney of Forsyth has to do for the next few years is to go dig up the past so he can prove something which will in the end not even help a person of a minority race.

I hope you'll vote against the bill. In my judgment, it's the most foolish bill we've considered all year. But you'll make your own judgment and I hope we have a good debate on it.

~ Fin ~

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**SB 897 – Appropriations Act of 2010**  
**Rep. Paul Stam – Remarks on 2nd Reading**  
**June 3, 2010**

*In the middle of the Great Recession, Democrats increased tax rates –  
the worst recipe for economic recovery.*

Audio available at [this link](#).

Debate begins: 00:17:25

Rep. Stam's remarks: 01:43:35

**Rep. Paul Stam (R – Republican Leader):** Mr. Speaker, Members of the House: I'm going to vote against this (2010-2011) budget for four principal reasons:

First, it spends more than last year. We're in a recession. The Governor claimed that this was a 5% reduction per capita from 08-09. In fact, it's a 2.25% increase. The chart you have is not *exactly* accurate. I will have more accurate figures after the close of the fiscal year. But the middle of a bad recession is not the time to be increasing spending.

Second, the budget is fundamentally unbalanced. In that regard, it is not fiscally responsible. It relies on \$488 million in hoped-for Federal spending that is not law. The way to handle this would be one of two ways if the proponents actually thought this money was coming: First, you could enact the budget without it and then, if the money becomes available, pass a supplemental budget either at the end of the session or in a special session. Second, you could appropriate money contingent on its passage. Neither of these approaches has been taken. This violates the spirit, if not the letter, of our State Constitution.

Third, the budget fundamentally fails at its proclaimed principal goal and that is to create or retain jobs. This budget does not do that. Let me take the two principal provisions that the proponents have in the budget bill. They are a tad of tax relief for a few small businesses, but they will not create jobs. The large "temporary" tax increase last year of a billion dollars is typical for a long session budget, then in the short session in even-numbered years to give a tithe or less of those tax increases back. The people are not fooled. Let's take them one at a time. Section 13.13(a) is a \$250 tax credit for certain employers who provide health insurance for their employees. That's good. But would one person in the majority stand up and explain to me how \$250 will inspire someone to hire for a year? The second provision [Section 31.14(a)] for putting people back to work (that is, who have been unemployed) is for \$333 a year for three years. But it is contingent on many things beyond the control of the employer. Even if it were not contingent, no one would hire based on so trivial an inducement. But since it is contingent and cannot be planned for, it will not cause the hiring of one person.

But it is \$7 million of tax relief for the people who happen to hire someone in that category and retroactively have a CPA tell them they qualified.

A much better approach would be that of the Blust Amendment which he will offer today and which was voted down in Finance. It provides a cap on small business income at a 6.9% rate. That would actually be something that businesses could plan for and would actually induce hiring.

The fourth reason is the \$3 billion hole next year that you all recognize. We have more government than we can afford. This budget treads water and does nothing to fix that hole.



**SB 897 – Appropriations Act of 2010**  
**Rep. Paul Stam – Remarks on Concurrence**  
**June 29, 2010**

*Audio available at [this link](#).*

*Debate begins: 00:20:54*

*Rep. Stam's remarks: 00:55:57*

**Speaker Joe Hackney (D):** For what purpose does the gentleman from Wake, Representative Stam, arise?

**Rep. Paul Stam (R – Republican Leader):** To speak on the budget.

**Speaker Hackney:** The gentleman has the floor.

**Rep. Stam:** I'd like to make four brief points because we've already covered this in the debate a month ago. We're told this budget cuts and cuts and cuts. Actually it spends 2% more than the current year we're in right now. If Federal Medicare Assistance money doesn't come, it will be about a 1% increase. We could spend what we're spending right now. We know we can do it because we're doing it.

I'd like to mention three other things in the budget and then save other remarks for tomorrow. First of all, the process: Page 10 of your budget is about money for the schools from the extra lottery money. Lines 7 to 9 prohibit charter schools from receiving any of that money. This House either unanimously or almost unanimously struck those three lines when we adopted the budget. The Conference Report puts it back in so we're not funding our public charter schools equitably and puts in jeopardy our application for Race to the Top money. Our Governor and Mr. Harrison told the Secretary of Education, "Oh, we treat our public charter schools just like the traditional public schools." I want to know if any of the Co-Chairs of that subcommittee would like to answer how they fought for that provision and, if they conceded to the Senate, what did they get for dropping that provision.

I would like to address the jobs question (pg. 174). This is the small business tax relief. First I would like to say that this provision is superior in many ways to the House and Senate individual budgets where the credits were so targeted that no one could tell beforehand whether you would qualify. So they really didn't do anything for the economy. This is a real tax credit of about \$34 million for small business relief. That's good. But I want to point out two things. First of all (line 32-33) it's limited to small businesses whose cumulative gross receipts don't exceed \$1 million. So that means I'll probably get that credit because a law firm doesn't have a lot of cost-of-goods sold. It's all income. A lot of people, maybe insurance agents, people who are in business where they're selling their time and advice and counsel will qualify for that. But if you're a homebuilder and you sell 4 or 5 homes, your gross receipts will be more than that and you won't qualify though you're not even making any money. It's not structured well. But nevertheless, it is \$34 million of tax relief.

I've put on your desk a comparison of tax rates. This is the real problem. It's not the little carve-outs like the \$34 million of tax relief that are the problem. The problem is that for all of our competitive states we're higher on the marginal rate than almost anybody on everything (except Tennessee on income tax because they don't have an income tax and tax other things a lot higher). What did we do in 2009? We taxed an additional \$1.3 billion and now we're going to give back \$34 million. Giving back the \$34 million is good but that's only 2 or 3% of what we dumped on the economy last year. In other words we're keeping 97% of it.

Finally, (page 6) we didn't have an opportunity to debate FMAP and what we would do if it does not come. I suggested when we debated the original budget that the way to handle that would be to not appropriate what we didn't have and have a supplemental budget, but what we have here is a contingent reduction. I think it's very telling that if you look at these priorities you see (line 26) that these "savings" are to be made in priority order. Only two of them are really cuts in spending at all. And only one of them is a real cut in spending. That's number 8, the 1% Management Flexibility Reduction which is a real cut. That's the LAST priority! That's the last thing the conferees said the Governor should do if we don't get that \$518 million in FMAP to actually to reduce spending. You could make an argument that number 5, the Reduction of Medicaid Provider Rates, is also a reduction in state spending but that's just putting the reduction on somebody else—making them pay for your own lack of priorities. But all of the other six savings are not reductions in spending. They're just moving money from one account to the other. You're facing hard times and you start emptying your savings account. You cash in your CDs. But you keep spending more than you're bringing in and ultimately you're getting down to the bottom line. This will hurt us terribly next year and I'm going to vote against the Conference Report on the budget.

**SB 897 – Appropriations Act of 2010**  
**Rep. Paul Stam – Remarks on Concurrence**  
**June 30, 2010**

Audio available at [this link](#).

Debate begins: 00:08:14

Rep. Stam's remarks: 0:09:20

**Rep. Paul Stam (R – Republican Leader):** Mr. Speaker, Members of the House, I had a good long speech yesterday so I'm not going to repeat, but I would like to expose the argument that somehow the minority party hasn't given ideas for the budget for ways to save money or ways to improve efficiency. It's not that the alternative ideas haven't been presented. It's that the majority hasn't voted for them or hasn't considered them.

Just to give you a few examples: I have on your desk a bill by Representative Blackwood - House Bill 1503 from 2007 with a good fiscal memorandum showing all the good savings that we could have had from this tax cut. I'm not here to debate his bill but it would have been nice if the Committee on Commerce had ever considered it.

The next item I have on your desk is a roll-call from June 4, 2007. In 2007 times were rolling well. The House passed a pretty high-priced budget and the Senate sent us back a bill that was only about a 6% increase. And we knew that it was going to come back in the end at about a 9 or 10% increase. So we got together and decided that the Senate bill would be the best we could have and we wanted to debate the Senate budget passed by an almost unanimous Senate in 2007. But we were cut off with no debate. You called the previous question. There's the vote: 65 to 50. You didn't want to hear about that Senate budget. And then you voted not to concur 68 to 47. We ended up, I believe, with a 9.8% increase in spending that year when we could have had about a 6% increase.

From 2008: We proposed a conference committee substitute between the Senate and the House that took ingredients from the Senate Democrats' plan, the House Democrats' plan and basically in most cases took the lower figure on each and came up with a great spending plan which was not considered. And I recall on the floor Representative Haire asking us that year, "Well, don't you have a plan?" And I said, "Well, we do, Representative Haire, and here it is." And I have the backup. The actual details are about 10 to 15 pages.

Then we come to 2009. Representative Neumann offered an amendment. The vote was 50 to 64. You wouldn't suspend the rules so we could get \$150 million extra federal dollars times two years. That's \$300 million—you just turned it down—that could have been used in our budget in hard times.

2010: I've got here a memo from Fiscal Research. The summary shows state and county savings by giving a tax credit for private education to save \$50 million annually. There are tax credits that cost money; there are tax credits that save money. This one would save money. But you turned it down because you didn't want to suspend the rules and the rules were what you concocted...

**Rep. Hugh Holliman (D – Majority Leader):** Mr. Speaker?

**Speaker Hackney:** For what purpose does the gentleman from Davidson, Representative Holliman, arise?

**Rep. Holliman:** Wondering if the Minority Leader would yield for a question?

**Speaker Hackney:** Does the gentleman from Wake yield?

**Rep. Stam:** I'll yield.

**Speaker Hackney:** He yields.

**Rep. Holliman:** Rep. Stam, how much money are you talking about there saving?

**Rep. Stam:** This one's \$50 million. This one's (Neumann) \$300 million. This one (2008) would have been \$327 million less than your spending plan. I'm about to give you another one here that's \$200 million.

**Rep. Holliman:** Another question?

**Speaker Hackney:** Does the gentleman yield for another question?

**Rep. Stam:** I will.

**Rep. Holliman:** You realize that we cut \$2.1 billion over that same period of time.

**Rep. Stam:** That is not correct, Rep. Holliman. That's a different subject, but I'd be glad to address that.

**Rep. Holliman:** Well, that's exactly what we cut.

**Rep. Stam:** Alright, I'll address that when I finish my litany. And I could go on and on, but I'll just give you another example. In July of 2008 everybody knew that the economy was going bad. Representative Daughtry offered in the Appropriations Committee an amendment to reduce spending 1%, exempting the necessary items. He was ruled out of order. Fortunately we were allowed to debate it on the floor. Now there's a criticism of 1% across the board cuts that can be made and that is that you're not really thinking about it. You're not prioritizing. And one can make that criticism. But the majority in this house can't make that criticism because that's exactly what you're telling the Governor to do on page 6 of this bill. Yet in July of 2008 a 1% reversion offered by Representative Daughtry was rejected. (That would have saved about \$200 million.)

So I'd like for the House to be a little more forthcoming when we talk about alternatives offered by the minority. The truth is the majority likes to tax more and spend more. We want to tax less and spend less. That's just a fact, not a philosophical point. That's just true.

Now I have to digress a little since Rep. Holliman talks about all the cuts, cuts, cuts that have been made. One of the speakers yesterday referred to the money report with all the negative, negative, negative, negative items. Well, you know that all those negatives are cuts against a projected budget which was just a piece of paper that we happened to pass last year. They're not an actual cut in real spending. The real spending next year is projected by this budget to be about 2% higher than the current year that we close today. So you can talk about balancing the budget although it's fundamentally unbalanced. You can say on a cash basis we're not printing money, but you can't say you really cut when every year you spent more than the previous year per capita. Thanks.

~ Fin ~

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**SB 1015 – Homeowner and Homebuyer Protection Act**  
**Rep. Paul Stam – Remarks on 2nd Reading**  
**July 1, 2010**

*During the Great Recession any bill with this title would be sure to pass.  
But it did nothing to help homeowners. In 2015 we trimmed this law back a bit.*

Audio available at [this link](#).

Debate begins: 02:07:05

Rep. Stam's remarks: 02:21:35

**Rep. Paul Stam (R – Republican Leader):** Thank you, Mr. Speaker. Members of the House, I'm only going to speak on Section 2 today and will save my remarks about the rest of the bill for third reading.

The first thing this section does is eviscerate the Statute of Frauds which says that real estate contracts have to be in writing. That's a great thing about practicing real estate law. You actually can go by what is written down and expect people to usually abide by it. I thought, "Well how far does that go back?" General Statute 20-2 says it goes back to the 29<sup>th</sup> year of the reign of King Charles II, and we have carried it forward in our common law ever since then.

Now, the Statute of Frauds does not preclude actions to prevent fraud. In other words, you can't use the Statute of Frauds to perpetrate a fraud. So we have in place today many remedies for fraudulent transactions. I'll name them but I won't go into all the details: constructive trusts, reformation of a deed absolute to show that it's really a mortgage, and unfair and deceptive trade practices... You can get treble damages with attorneys' fees for certain sales of property if you can prove that it's either unfair or deceptive. Then we have parol trusts. So we have these from remedies today. But in every one you either have to prove a fiduciary relationship or prove fault or fraud.

This bill turns that on its head. This is where you should have had a rifle to attack the problem instead of a shotgun that is going to affect many, many other transactions that were never intended.

Now to establish my bona fides on this, in the 2003 session and the 2005 session I co-sponsored the “‘Subject To’ Real Estate” legislation with Representative Ross. This House passed it twice unanimously. That went specifically after the scam of “We buy houses; we take over payments” by people who don’t really buy the house or really take over the payments—they just pretend to. It went specifically after the problem. This bill doesn’t do that. I’m going to show you how and then I’m going to come back and try by amendment to make it a little bit better...

[dialogue removed]

...There are all sorts of exemptions, as Representative Rhyne has mentioned. One of my amendments will narrow those exemptions a lot (line 33 to 34). Whenever you hear that “Everybody’s on board” on this bill and “There’s no opposition,” I think of *The Pirates of Penzance* and *H.M.S. Pinafore*, by Gilbert and Sullivan. The pirates put their captives on board and say, “Everybody’s on board.” They’re on board because they don’t want worse things to happen to them. Look at that first exemption (line 33 to 34): “A bona fide non-profit organization that regularly provides financial housing or social services to individuals.” So the proponents can do this scam (if it’s a scam) but be exempt from the law. Now that’s weird. And I’ve asked them three different times why they should be exempt from it. There is no explanation. (Note: On 3<sup>rd</sup> reading this exemption was removed.)

Next page: Should a state, federal or local government agency be able to do this scam? Why are they exempt? The bill exempts banks and savings institutions and credit unions.

Look at the next section: Foreclosure Rescue Transactions. Well that’s what it is called but it doesn’t even have to be that to be within the ambit of this bill. If Tim Moore here was my cousin and came to me and said, “Brother, I’m having a little trouble at work. Lost my job. Please buy my house for \$100,000. You take care of the mortgage.” And I say, “Well Tim, I’ll be glad to do that. Maybe we can work something out. Maybe I’ll make a little money on it. Who knows, maybe you’ll get a decent value.” Well, who knows what they said because the Statute of Frauds no longer applies as you’ll see later. Several years from now when Tim is not quite so happy with me for taking over his house or other reasons, his recollection of that conversation is going to be quite different than my recollection. That’s why we have the Statute of Frauds and that’s what this bill eviscerates—a statute that we’ve had ever since 1670 A.D. It came over with the Lords Proprietors and the common law of England.

So let’s look at the rest of this section: “...is transferring a principal residence and they make representations that the transfer of the residential property will enable the transferor to prevent or postpone...” These “representations” don’t have to be in writing. They can be oral—which means who knows? Who knows what was said? And that is really one of the strange things about this because if I make no representation, if I just take his property at 1/3 the value because he’s tired of it and can’t pay the mortgage then there’s no problem. The bill doesn’t address that. It’s only if our conversation, that he can reconstruct years later, says that I actually promised him something that he can use this.

Now if you get down to 75-121, what’s unlawful: “to arrange, offer, promote, solicit, assist with for financial gain or with the expectation of financial gain.” That means if I have any motive of renting that property out or charging him rent—\$100 a month or \$500 a month, or whatever—then that’s the only intent I have to have here. I don’t have to have a fraudulent intent. I don’t have to have a willful intent, a knowing intent or any other kind of intent except that I might want to collect the rent from my cousin.

Then the next criteria is a sale for “50% or less” of fair market value. I’m sure everybody knows that appraisals are something that tells us what a property is worth. I have a case right now (it’s not a house but I’ll use the example anyway) where the Town of Cary had an appraisal for a property at \$400,000 and the landowner’s appraisal is \$2.2 million. That’s more than the usual discrepancy. But anybody who thinks that an appraisal means that the appraisal figure is the fair market value just doesn’t understand appraisals. But the bill doesn’t even tell you that you have to get an appraisal. In the example I gave, these two guys decided to make a deal. The bill talks about an appraisal but it doesn’t say you even have to have one or what the effect of that appraisal is.

Finally (75-122) the remedies for this unfair trade practice: Now every other unfair trade practice requires proof of a fraud or an intention or proof of unfair or deceptive trade practice. This one says it *is* an unfair trade practice even if you don’t prove that there was anything unfair. It just *is* unfair if years later a jury believes that you paid less than 50% for that property and that there was some conversation and who knows what, who said what to whom about it. Not only that, it is treble damages. So an unscrupulous scam artist—just think about this—could be the victim. In the case that I gave here Representative Moore could come to me. He’s having trouble selling that property. So he says, “Buy my property for \$100,000,” and it turns out that a jury years later believes that that was 45% of the value. That’s a way for him to make \$150,000 because he can then prove that I paid him less than half and he can sue me

for treble damages plus attorneys' fees. Do I think that's what the proponents intended by their bill? No. I think they intend to do good but they just don't know how real estate transactions work.

**SB 1015 – Homeowner and Homebuyer Protection Act**  
**Rep. Paul Stam – Remarks on 3rd Reading**  
**July 6, 2010**

*Audio available at [this link](#).  
Debate begins: 02:09:16  
Rep. Stam's remarks: 02:19:55*

**Rep. Paul Stam (R – Republican Leader):** The way I read it now the contracts “to effectuate a foreclosure rescue action in which the transferee pays at least 50%” shall be in writing. But what isn't there is that the representations shall be in writing if later on it is determined that they paid 48%. Of course you don't know beforehand whether you paid one or the other. I am really perplexed by this and I can't vote for it when I'm perplexed. They put the words “in writing” but in the context of something that doesn't violate the statute anyway. How will you know whether you violated it until years later and a jury decides that the value back during the recession of 2010 was something different than you thought?

~ *Fin* ~

## **PART II**

### **2011-2012 Biennium**

*January 26, 2011 – July 3, 2012*

*The elections of 2010 produced House and Senate Republican majorities for the first time since 1898.  
In 1995-1998 there was a GOP majority but only in the House. We had a big agenda.*



**HB 2 – Protect Health Care Freedom: p. 28 - 36**

**HB 8 – Eminent Domain: p. 36 - 39**

**HB 92 – Repeal Land Transfer Tax: p. 39 - 40**

**HB 200 – Appropriations Act of 2011: p. 40 - 41**

**HB 351 – Restore Confidence in Government: p. 42**

**HB 650 – Amend Various Gun Laws/Castle Doctrine: p. 42 - 44**

**HB 854 – Abortion-Woman’s Right to Know Act: p. 44 - 99**

**HB 947 – Eugenics Compensation Program: p. 100 - 118**

**HB 950 – Modify 2011 Appropriations Act: p. 118 - 119**

**SB 9 – No Discriminatory Purpose in Death Penalty: p. 119 - 121**

**SB 416 – Amend Death Penalty Procedures: p. 122 - 175**

**SB 514 – Defense of Marriage: p. 175 - 189**

**SB 582 – Authorize Indian Gaming/Revenue: p. 189 - 199**



**HB 2 – Protect Health Care Freedom**  
**Selected Remarks on 2nd Reading**  
**February 2, 2011**

*Thom Tillis was elected Speaker and I was Majority Leader. The very first bill of the session attempted to defend North Carolinians from the ravages of Obamacare. Governor Bev Perdue vetoed the bill.*

Audio available at [this link](#).

Debate begins: 00:06:05

Rep. Stam's remarks: 00:15:14

**Rep. Paul Stam (R – Majority Leader):** Thank you, Mr. Speaker. Members of the House, I rise in support of this bill, House Bill 2. And at the conclusion of my remarks I'd like to offer an amendment as well.

Mr. Speaker, this bill is somewhat about what you think about healthcare, somewhat what you think about the law and the Constitution, but more than anything, it's more about what you think about yourself. Are you a citizen or are you a child? Are you a ward of the State or are you part of the people that directs the State? In this bill we attempt to say that the State of North Carolina is not going to act as the parent for our citizens who are adults and are not incompetent or otherwise convicted or under some other disability or disadvantage. The vast majority of us can make our own decisions.

I want to think back to 1775, if that's the right date of the Boston Tea Party. And it's just by coincidence that that was a tea party. What did the people of Boston protest? From the letters of correspondence which came from all over the nation: Don't pay this tax that the British government has imposed on this tea because we do not have the ability or the right to vote on this tax. But you know what? The people really didn't have to drink tea. Tea is not essential for life. But they still had the protest.

What if the British Crown had passed a law ordering everyone in the colonies to drink tea for your health? You would have had an eruption you would not have believed. But that's essentially what the current federal law does—orders you to do things that they think—the Big Brother in Washington thinks—is good for your health.

We believe it's unconstitutional. We believe it's a job killer for the reasons Representative Murry mentioned. People are afraid to hire because they do not know what the consequence of hiring full-time, permanent people will be. So in this bill we seek to establish a principle of what the State of North Carolina will not require of its own citizens. That helps us on a Tenth Amendment claim in the litigation by establishing that policy. We have an interstate commerce claim; we have a taxation claim that's there. But the bill itself, Subsection (a), establishes that basic principle.

Now, Subsection (b) establishes several exceptions or exemptions from the basic principle. These are mostly common sense. And we've even yesterday and today received some good ideas from Representative Martin and from Representative Bradley, in committee from Representative Stevens, and in committee from Representative Weiss—things that were not really contemplated to be prohibited under (a). I'd just like to go over those briefly with you. This bill is not intended to modify these following things. Now of course a subsequent Assembly can, if it does so specifically, address these exceptions or create new exceptions, but that would be something we really can't control. The principle is established in (a).

Now let me also say some folks in explaining this bill say that all it has to do with is insurance and the Federal law. But no, the bill is not just about insurance; it's also about health care itself. This bill says to Representative Hager here—and I use him because he is trim and lean, but let's just suppose that he were more corpulent—the law cannot order him to get trim and lean, even though it would be good for his health. Now, there are consequences of doing healthy things, but we don't believe the State of North Carolina should order people to do those things as a condition simply of living and breathing.

Now the exceptions—I'll just very briefly mention them. The common law Doctrine of Necessaries: If you marry somebody and you present yourself at the hospital, your spouse does not sign the admission forms and financial responsibility forms and you can't pay, they can still ask the spouse to pay. That's just a consequence of being married.

It does not address Scope of Practice. This doesn't say which specialties do what. In Subsection 3, it does not address the question of Advanced Directives. If Representative Guice can refuse a particular treatment, then he can create Representative Cleveland as his Power of Attorney—Attorney in fact—to act for him to refuse that same treatment or to buy that same treatment.

In Subsection 4, it's not intended and does not apply to the laws relating to the duty of a parent or guardian to their minor or ward. Those are addressed in other statutes. We're not intending to affect those whatsoever. Subsection 5 does not address, does not modify or increase or limit the screening of newborns because they're helpless. They need this to be considered.

It doesn't affect workers comp laws and being ordered to receive treatment as a condition of receiving payments. The reason is that you don't have to receive the payments. If you don't want to be treated, you can just say, "No more payments. I quit."

Number 7: It does not modify the scope of treatments that are ordered under involuntary commitments for mental illness or substance abuse because in a sense these folks are actually wards of the State because of their mental condition.

Subsection 8 I will address later. I'll have an amendment that will elaborate and expand on that. And, as suggested by Representative Weiss in committee, if a company decides to avail itself of incentives and agrees to provide health insurance for its employees as a condition of receiving those incentives, this is not designed to change that at all.

Subsection (c) is what so much of the talk is about and this would have the Attorney General join one of the three federal lawsuits, or file a suit on his own on behalf of the State of North Carolina. The Attorney General is a lawyer for the State, a constitutional officer, and nobody is asking the Attorney General to engage in any nullification. We're asking him to do what lawyers do all the time: present the position of the State of North Carolina to the courts.

With that, Mr. Speaker, if I could be recognized for an amendment?

**Speaker Thom Tillis (R):** The gentleman is recognized to send forward the amendment. The clerk will read.

**Reading Clerk:** Rep. Stam moves to amend the bill on page 2, line 5 by rewriting the line to read...

**Speaker Tillis:** The gentleman is recognized to explain the amendment.

**Rep. Stam:** Thank you, Mr. Speaker. The first and third of these proposed changes come from a suggestion by Representative Martin from Chapter 13A of the Public Health statutes, which would also say that this bill is not intended to modify or limit laws concerning hereditary congenital disorders, examination and testing of a child for lead poisoning. And then on lines 10-13 also, if there is a terrorist incident, there is a provision in the law for testing of persons to determine exposure to nuclear, biological and chemical agents.

The second change is a rewriting of Subsection 8 to specify that the taking of DNA or any other biological evidence, which could be blood or something else, is in accordance with Chapter 15A of the North Carolina General Statutes which is our section on criminal procedure. With that, Mr. Speaker, I urge the adoption of the amendment.

**Speaker Tillis:** Representative Martin, please state your purpose.

**Rep. Grier Martin (D):** To see if the gentleman from Wake, Representative Stam, would yield to a question.

**Speaker Tillis:** Does the gentleman yield?

**Rep. Stam:** I will.

**Speaker Tillis:** The gentleman yields.

**Rep. Martin:** Thanks, Mr. Speaker. Rep. Stam, we were having a discussion, which was cut short by the ding of the bell, on one item that might not be included in your amendment. And I wanted to clarify with you how you propose to resolve that.

**Rep. Stam:** Yes. Representative Martin, as I understand it there is one other item in Chapter 130A that is potentially includable, and I'll state what it is. On that one, I would like to have a chance to discuss that with the sponsors. If you decide to offer it, or if we decide to offer it on third reading, I would support the offering of it. So people can be thinking about it, it is section 440, the health assessment required for children entering kindergarten in the public



schools. We just haven't had a chance to talk about that. As I understand it, that is the only thing left out of my amendment that would have been included in your more inclusive amendment.

**Rep. Martin:** To speak on the amendment, Mr. Speaker?

**Speaker Tillis:** The gentleman has the floor.

**Rep. Martin:** Thank you, Mr. Speaker. Members, I think this is a good amendment. It addressed some of the concerns that were brought up in committee and just insures that we have a few more exemptions for the bill [in many of] the public health functions that we have. So I'd urge members to support it.

**Speaker Tillis:** Further discussion, further debate on the amendment? If not, the question before the House is the adoption of the amendment offered by the gentleman from Wake to House Bill 2. All those in favor will vote aye, all those opposed will vote no. The Clerk will open the vote... The Clerk will lock the machine and record the vote. One-hundred and thirteen having voted in the affirmative and none in the negative, the amendment passes... Three in the negative—excuse the Chair.

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*Rep. Rapp's remarks: 02:07:11*

**Rep. Ray Rapp (D):** Thank you, Mr. Speaker. Let me also thank you for not putting a limit on the debate today. I think it is a very important measure that's under consideration and I really appreciate your extending the ability for us to address it.

Mr. Speaker, I am concerned though that about 13 of us petitioned the Judiciary Chair for a public hearing on this and that was denied last week. I think this is a monumental bill we're undertaking as our first piece of significant legislation of this body, and I think not to have as many people, the health providers and those people who would benefit from this bill not heard is a serious mistake.

And because of that, I want to really personalize this because this summer, specifically the weekend of July 4, I rushed to Washington D.C. (Bethesda, Maryland) where my son was in the N.I.H. Hospital. He's 19 years old. I was called by my wife, we had just finished budget meetings, and she said you need to get here quickly. At that point his blood pressure was 71 over 61, so I jumped in the car and drove at a high rate of speed, as you can imagine, to the hospital in Bethesda. My son almost died. Very simple. But he was surrounded by what I consider real angels. The angels of the National Institute of Health and about 130 doctors I think eventually weighed in on his case because for three and a half years we had watched my son's condition deteriorate and no one knew what was going on.

We saw some of the best hospitals (doctors) we had in western North Carolina. He was brought to the Chapel Hill hospital and a great team looked at him. And the best they could tell me after a great deal and number of examinations was that it was a "head-scratcher; we don't know what is wrong with your son." It was out of prayer and many other ways that my son was finally at N.I.H. And I can't tell you to this day why N.I.H. agreed to take his case. I think it was because they were looking at cases involving fevers and they've been showing up nationally.

And of course, if it is not something that had broad applicability, they don't deal with it. But thank the good Lord that they took his case and we took him up there. They saved his life. The disease, it turns out—and this, by the way, was after three and a half years trying to determine what was going on—was Addison's Disease. Addison's Disease is not curable, but it is treatable, and we're very grateful for that.

But now as I look at what's going on and what we're doing with this bill, I am really stressed and distressed at a very personal level and I just shared that with you. Aaron is 19. He is a sophomore at Mars Hill College right now. Once he is 21 and ready to graduate, I hope everything will stay on track. Then he will be in the same situation that Representative Fisher's daughter is facing. He has a pre-existing condition. The competition in the health care business is how not to service the sickest among us. The competition is to get those who are well on their rolls, because that is where the profit is.

Now my son is in double-jeopardy. My wife and I have talked about it. Number 1 is when he graduates in two years, if that is the case, and he goes out on his own, he can't stay under our health care plan. That's number one. Number 2, with a pre-existing condition, what he is going to face trying to get health care coverage? So he's facing double-jeopardy.

Now, I understand that this is a personal thing, and I'm just bringing it to you on a very fundamental level: How is this bill going to impact him by pulling the rug out from under him? I can't in good conscience vote for this bill—not just because of my son, but because of the other people that will be denied accessible, affordable health care.

I hope you'll reconsider this bill and vote no. This really can do violence to some efforts—and as flawed as many of them are in this free, affordable health care bill—to try to address the health care issue. And I'll admit that and I'll be willing to work with anyone...But it is a federal issue. And that is the other reason I'm curious about our debating this. But it is an issue that I think needs to...or rather a bill, a law that can stand to be corrected. And I'm willing to stand behind that. But I don't think pulling the rug out of the entire law as we're proposing here is the way to do it and I would urge you to vote no.

**HB 2 – Protect Health Care Freedom  
Selected Remarks on Concurrence  
February 22, 2011**

*Audio available at [this link](#).*

*Debate begins: 00:49:23*

*Rep. Stam's remarks: 00:49:40*

**Speaker Thom Tillis (R):** Representative Stam is recognized to explain the bill.

**Rep. Paul Stam (R – Majority Leader):** Thank you, Mr. Speaker. House Bill 2 comes back to us from the Senate with two amendments that are unexceptional. The first one was actually suggested by Representative Stevens. This is on a summary prepared by staff and we just didn't have time to get this done in the House because third reading was not objected to. We were planning to do it on third reading. It's a physical and mental examination of a party, or blood and genetic testing on paternity. And then the Senate also added in some appropriation language. I'd be glad to answer questions on any of this. I move that we concur in the Senate Committee Substitute for House Bill 2.

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*Rep. Rapp's remarks: 00:58:20*

**Speaker Tillis:** Representative Rapp, please state your purpose.

**Rep. Ray Rapp (D):** To make an inquiry of the bill sponsor, please.

**Speaker Tillis:** Does the gentleman yield?

**Rep. Stam:** I yield.

**Speaker Tillis:** He yields.

**Rep. Rapp:** Thank you, Mr. Speaker. Representative Stam, thank you for yielding. I'm curious to the line that's been added to this in regards to providing funds either by the Department of Justice or from other grants or funding. What is the thinking behind that? What funding are you talking about? Special grants?

**Rep. Stam:** I'm not thinking of anything in particular. That's something the Senate added. The Department of Justice is funded by appropriations plus grants. It gets grants from the Department of Justice. I didn't have anything particular in mind there. The long and short of it is that it was not an additional appropriation, but to spend the money within their available resources.

**Rep. Rapp:** Follow up?

**Speaker Tillis:** Does the gentleman yield for another question?

**Rep. Stam:** I do.

**Speaker Tillis:** He yields.

**Rep. Rapp:** Would you agree that's a little confusing in the language that we're looking at?

**Rep. Stam:** No, I wouldn't. I can diagram the sentence for you and explain it. I don't know the amount of the "other funding," but it doesn't matter since the Department of Justice gets hundreds of millions of dollars, and within that they can certainly find the few thousand dollars to implement this bill.

**Rep. Rapp:** May I speak on the bill?

**Speaker Tillis:** The gentleman is recognized to speak on the bill.

**Rep. Rapp:** Thank you, Mr. Speaker. The dollar amount that we heard from the Attorney General, by the way, so we can be very specific is \$344,000 that he feels is required in order to become engaged and involved in this lawsuit. So I think it's not unreasonable to ask where that money is coming from when we're looking at the kind of budget shortfall that we're dealing with, and yet insisting that the Attorney General find \$344,000 to enter into a suit, ladies and gentlemen, that is underway, will be decided with the other states that are involved in that suit. When it gets to the Supreme Court, a decision will be rendered and it will apply to all of us, not just to North Carolina or any individual state. So to spend this money in a time when we're in a budget shortfall and the lawsuit is going on seems to me superfluous at best.

I'm not going to raise all the issues that we raised earlier because I think we debated this for, I believe, 3 hours and 10 minutes, Mr. Speaker. And again I'll thank you for letting the debate run its full course that day. So I won't go through that again, but I think we need to step back from this and vote no on this. I think that makes the most sense. And without getting too much further down the line, we're talking about again this additional money, and that's all I'm going to say. It just seems not the best thing, the wisest use of funding expenditures at this time. Thank you, Mr. Speaker.

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*Rep. Stam's second remarks: 01:11:56*

**Rep. Stam:** Thank you, Mr. Speaker. To speak a final time on the bill.

First of all, I generally don't like tabling either. This is sort of an exceptional circumstance. It's not an amendment, but rather a motion to postpone indefinitely—the effect of which is to negate the motion itself. Therefore, the parameters of that debate are exactly the same whether it's a motion to postpone indefinitely, which is a decision on the merits, or the motion to concur. The ability of Representative Haire to debate the motion to concur has been unlimited.

I've already discussed the funding, but I would go back to what I began my debate with a week or two ago that this bill really asks if we are children or citizens. And I won't suggest that Representative Haire made the craziest argument I've ever heard, but it certainly was odder than Representative Moore's because apparently what he tells us is that as citizens of North Carolina we can't do anything about what they do in Washington. We can't even appeal to Caesar. We have to just take our lumps whatever they say is it.

Now it is not correct that a bill is constitutional until the US Supreme Court says it is unconstitutional. First of all, lower federal courts declare things unconstitutional all the time, and our State Supreme Court, our State trial courts can do that.

**Rep. Phil Haire (D):** Does Representative Stam yield...

**Speaker Tillis:** Representative Haire, please state your purpose.

**Rep. Haire:** Would Rep. Stam yield for a question?

**Speaker Tillis:** Does the gentleman yield?

**Rep. Stam:** With delight.

**Speaker Tillis:** He yields with delight.

**Rep. Haire:** Thank you. And I think we have a divided court opinion here that two or three courts have held this to be constitutional and two courts have held it to be unconstitutional. I'm talking about the Federal Patient Affordability Act. Is that correct, to your knowledge?

**Rep. Stam:** It's not exactly 2 and 2, but that's approximately correct for the purpose of our discussion.

**Rep. Haire:** Follow-up?

**Speaker Tillis:** Does the gentleman yield?

**Rep. Stam:** I do.

**Speaker Tillis:** He yields.

**Rep. Haire:** And so the ultimate decision... Would you agree that this is still valid law because the Supreme Court has not ruled that it's constitutional or unconstitutional?

**Rep. Stam:** I agree that this is highly likely to go to the US Supreme Court, and therefore why the Department of Justice is stalling on getting it up there is just incomprehensible. But it is not the case that the statute cannot be declared unconstitutional by a lower court...

**Rep. Haire:** One more follow-up?

**Speaker Tillis:** Does the gentleman yield for one more follow-up?

**Rep. Stam:** If I could first finish the last sentence and then I will.

**Speaker Tillis:** The gentleman may continue

**Rep. Haire:** I didn't mean to interrupt. Go right ahead.

**Rep. Stam:** That's what I have to say at home a lot with my kids, you know, to let me finish my sentence. But this has been declared unconstitutional by a couple of federal courts. And I would be glad to answer another question.

**Rep. Haire:** Thank you. But none of these lower courts have issued a stay against the Patient Affordability Care Act that Congress adopted?

**Rep. Stam:** Correct, on the theory that...and the *stated* theory—not just the theory, but the stated opinion that a declaration of rights is sufficient and that injunctive relief is not necessary because the United States of America will honor a declaratory judgment.

**Rep. Haire:** One other follow-up?

**Speaker Tillis:** Does the gentleman yield for another follow-up?

**Rep. Stam:** I do.

**Rep. Haire:** Representative Stam, you're waffling on me here. You're waffling over the case no federal court has declared it unconstitutional—put a stay against the bill. Therefore it is an existing law in the United States of America at the present time. Do you agree to that?

**Rep. Stam:** Well, I'm not waffling a bit; I'm telling you the situation. And that is that two federal courts have said that this is unconstitutional. One said the entire law is unconstitutional and one said the individual mandate is

unconstitutional, and they said that an injunction is not necessary because the Department of Justice would honor a declaratory judgment.

**Rep. Haire:** Excuse me, could I ask for a clarification? One more question?

**Speaker Tillis:** Does the gentleman wish to ask a follow-up question?

**Rep. Haire:** Yes. You're not answering the question.

**Speaker Tillis:** Would the gentleman yield?

**Rep. Haire:** You're not answering the question.

**Rep. Stam:** I do yield.

**Rep. Haire:** Excuse me. I'm sorry.

**Speaker Tillis:** The Chair will direct the debate. The gentleman is recognized to ask a follow-up question.

**Rep. Haire:** But Representative Stam, you keep saying that no court has declared it unconstitutional and put a stay on it.

**Rep. Stam:** I've said exactly the opposite of that.

**Rep. Haire:** Has any court put a stay against this rule at this time?

**Rep. Stam:** Not a stay, just a declaratory judgment.

**Rep. Haire:** Thank you. That's all.

**Speaker Tillis:** The gentleman has the floor.

**Rep. Stam:** Thank you, Mr. Speaker. What I would like to suggest is that Representative Haire says that since we swear to support the Constitution and we take an oath and we say we're not going to secede from the Union, then we just have to take it. If we read the Constitution and pray, we have to vote no on this bill. Well, I would suggest to you that, as I indicated in my debate two weeks ago—of course there's more than that in the bill that is not affected by that litigation—but even taking this part on its own, this is the American way: to challenge unconstitutional things in court. That's what we're asking them to do. This is not about secession. This is not about nullification. This is not about our allegiance to the United States and the State of North Carolina. This is using the very methodologies and modalities of the law to fix it, to challenge it just like, Representative Haire, the Apostle Paul appealed to Caesar rather than just lying down on the ground and letting them kill him.

**HB 2 – Protect Health Care Freedom**  
**Rep. Paul Stam – Remarks on the Veto Override**  
**March 9, 2011**

*Audio available at [this link](#).  
Debate begins: 01:36:36  
Rep. Stam's remarks: 01:36:55*

**Rep. Paul Stam (R – Majority Leader):** Thank you, Mr. Speaker. Members of the House, I hope you'll vote green, which is the appropriate color to vote if you want to override the veto. I'm not going to recount all the reasons for the bill that we had in great length on second reading, third reading, on the motion to concur and the debate in Judiciary. You remember all those. Except I will repeat that this bill asks you to decide whether you are a citizen of

North Carolina or a subject—a child—because this bill protects your freedom to decide what health care you want and what health insurance you want.

But let me address the reasons stated by the Governor in vetoing it. She received a letter from the Attorney General on February 23<sup>rd</sup> sent after this Act was enacted by the General Assembly. Attorney General Cooper made several claims; I'm only going to mention a few.

First, he makes the obvious but irrelevant point that the Supremacy Clause of the US Constitution provides that state legislators cannot enact laws that directly violate federal law. But he fails to note that the Supremacy Clause itself limits those federal laws which have supremacy to those that are enacted pursuant to the US Constitution. Twenty-seven states have already received declarations by federal judges that the provision in question is not pursuant to the US Constitution. If Attorney General Cooper had joined those states when we asked him to last year, North Carolina would already have that declaration.

Now what is also interesting is that Attorney General Cooper and the Department of Justice was asked by our Fiscal Research Division—before the bill was enacted—what it would cost. Our non-partisan Fiscal Research Division received a memo from him that did not mention any of the fiscal horrors he now claims. But it did suggest that the Department of Justice might have to represent 800,000 individual clients in North Carolina at a cost of 8 million hours of attorney staff time. Our Fiscal Research Division respectfully called these claims excessive and noted that North Carolina could join the Florida litigation involving 26 other states so far successful by simply requesting to be included. The individual mandate, which is the federal law that that Attorney General claims the bill conflicts with, is not even effective until 2014, giving him plenty of time to join the challenge to this unconstitutional usurpation of power.

Let me now address for a moment the Governor's veto message. And in part of this I'm going to have to call upon Representative Faison and his dictionaries over there. First, Governor Perdue said she vetoed it because it actually is contradictory to the federal Constitution. "A state can't pass a law that is out of obedience with federal laws, and this House Bill 2 clearly is." I don't know what obedience is; we tried to look it up in the dictionary. But it has something to do with something about obeying something. I'm not going to dwell on what that might mean. But it is contradicted by the memo that I asked our staff on February 28<sup>th</sup> to prepare and which I've passed out to all the members. It makes many good points and I would refer you to it. Everyone has this. We'll put it online if it's not already online. On page 2, the long paragraph:

"The Division cannot speak to whether the individual mandate is or is not constitutional. Nevertheless, strong arguments support the position of the General Assembly, as stated in House Bill 2, that Congress acted outside its Commerce Clause powers when creating the individual mandate."

The Governor just dismisses that, and we provided a copy of this to the Governor and her advisors before she vetoed it. So she just blew this opinion off in deciding that it *clearly* is unconstitutional, even though 27 states have received a declaration that it's not. Then if you go down to the bottom of page 2—everyone here can read, so I'm not going to read the whole thing. But you have to see a few of the highlights.

"The right of a state to challenge the constitutionality of a Congressional action is not denied simply because Congress chose to act. If this were true, no state could ever challenge an act of Congress. In fact, with regards to the ACA specifically, several court..."

And then it goes on to mention the federal court litigation where 27 states have already won at least the opening rounds. Then the first full paragraph is important:

"Moreover, House Bill 2 does not stand in contradiction to the ACA. House Bill 2 will be effective when it becomes law. The individual mandate within the ACA will not take effect until 2014. A Supremacy Clause argument against House Bill 2 is premature. At this time, House Bill 2 stands as good, constitutional law without current conflict for federal law."

If you look at that last sentence, our staff said, "Therefore, the Supremacy Clause as an argument for federal preemption does not apply with regards to House Bill 2 at this time." Now, that was her first argument, and that was that it's *clearly* unconstitutional and we have to be in obedience of federal law as if we're children that can't speak up and say, "Hey, let's look at this again."

But then the staff also looked at this question—and this was raised in debate—of the Attorney General’s duties under House Bill 2. Representative Lewis mentioned this that our Constitution says basically that the Legislature sets the policy. If you go to page 4, the first full paragraph:

“[T]he bill explicitly directs the Attorney General ‘to bring or defend a state or federal action or proceeding on behalf of the residents...’ The North Carolina Constitution provides that the duties of the Attorney General shall be prescribed by law...If House Bill 2 becomes law, the duties of the Attorney to enforce its provisions will be prescribed by law...”

So he has a clear duty: a clear duty to act. That’s not in controversy.

Then she raises this parade of horrors that the Attorney General raised in his letter and his Solicitor General’s opinion. And in that she talks about there are unintended consequences that dramatically affect our Medicaid program, potentially hurting the children’s health insurance program, uninsured motorists to have insurance, attacking college students for having insurance. So she raises all these issues, not a single one of which was raised by the Attorney General with us before enactment. And our staff looks at each one in general and basically says that in some cases the Attorney General is just wrong and in other cases it’s just merely arguable. I don’t even know where this “attacking college students for having insurance” comes from. Our whole bill says that one of the main purposes of the bill is to tell everybody, which presumably includes college students, that they don’t have to have insurance and nowhere does it say that we’re going to take their insurance away from them if they want it. It’s just made up out of whole cloth.

So I raise these points to ask you to override the Governor’s veto. We’ve only done it once before. That time we really didn’t have a debate. We’ll have a good debate on this one. Mr. Speaker, I ask people to push the green button.

~ Fin ~

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**HB 8 – Eminent Domain**  
**Rep. Paul Stam – Remarks on 2nd Reading**  
**April 26, 2011**

*Eminent Domain reform was one of ten points in the Republican election promises made in 2010.  
The House delivered with a big bipartisan vote. Other tries would come in 2013, 2014 and 2015.*

Audio available at [this link](#).

Debate begins: 00:09:57

Rep. Stam’s remarks: 00:10:20

**Rep. Paul Stam (R – Majority Leader):** Mr. Speaker, Members of the House, I’m in a dilemma whether to speak for 1 or 2 minutes or a long time. Arguing for the short time, this is the fourth time this amendment substantively has been on the floor of this House and discussed. It’s only two sentences long and rather straightforward. Arguing for a longer explanation is that it is a constitutional amendment and I would really enjoy going back to Hugo Grotius in 1625 and how Thomas Jefferson quoted John Locke—the flesh-and-blood John Locke—on this subject. We would have an interesting historical debate. What I will do is take a middle course—that is, give a middle-size explanation of this very important but straightforward proposed constitutional amendment.

I put on your desks three articles. The first is, “I’d rather be a hammer.” This is from the London Economist four years ago and shows where “public use” versus “public benefit” collides. In Shanghai, China the “nail” households would keep the condemnations from taking place. The picture is not really that clear. It’s a construction site. This person’s property is on top of that big mound of dirt because he just refused to leave. The way they would actually take possession of property there is just bulldoze it down and talk to you later about paying you ten cents on the dollar. I thought it was interesting that (on the final page, first full paragraph) Communist China has actually adopted an amendment protecting private property rights, but (last paragraph), “The press is questioning the government’s right to cite ill-defined ‘public interest’ as an excuse for knocking down homes.”

Then the article: “BB&T Opposes Land Seizures.” John Allison on behalf of this great bank says they’re just not going to finance any property if it was acquired by the government taking it from a private person and then

transferring it to another private person. I happened to meet Mr. Allison a couple months ago. He told me that decision was wildly popular and BB&T got thousands of new customers. The people of North Carolina don't like this kind of thing.

And then finally I have an article about Donald Trump and eminent domain. Now I'm not taking sides in any future primary but if you want to know the real bad guy of condemnation law, it's Donald Trump. This gives some of the ways he built his empire.

What is eminent domain? It's the process of condemnation. But there are two kinds of condemnation and I don't want you to be confused. If you don't keep your property up, you don't mow your grass, weeds come up and it's in bad repair they can put a placard across it that says you can't go in here anymore. That's a kind of condemnation but that's not what we're talking about.

This kind of condemnation is when the government decides, "We're going to take your property and we'll pay you just compensation." Now historically that has been allowed for a public use. That's what we all thought it meant for hundreds of years. What is public use? Roads, courthouses, sewer, water, public utilities—even though they are owned by a private entity because for a public utility the public has a right to obtain services upon payment of a fee.

But public use is not the only test, and North Carolina has also used a test called "public use *and* public benefit...*or* public benefit." A lot of the confusion has come because of *and* versus *or*. Now those in English or in Logic will say that "or" is disjunctive and that "and" is conjunctive. But in statutory construction and also in conversation we get those words mixed up. What was meant to be a limitation on condemnation for public use—that is it must *also* be a public benefit—has been turned into a disjunctive—that is, "We can condemn even if it's not a public use *if* it's a public benefit." And that's gotten us into trouble. This bill limits condemnations by eminent domain to those for a public use.

Now, it does two other things. First, it says "just compensation shall be paid." Now some have said we're the weakest in the nation in property rights because that's not in our Constitution. But actually that is in our Constitution in the "law of the land" provision of Article 1, Section 19, which derives from Magna Carta and has always been interpreted to mean that just compensation shall be paid. So that's in this proposal but it's not the reason for the bill because that's the law anyway. But the second section also says that if the parties want, that compensation will be determined by a jury. We're the only state in the nation in which a jury trial on the question of compensation is not guaranteed constitutionally. That second sentence puts that protection in the Constitution. Our statutes mainly require it but our Supreme Court has said in the past that that's only by grace and not by constitution.

Now, what else does the bill do? Some people will say this bill doesn't do a thing and others say it will just radically change our law. Well, it doesn't do either. There is no radical change. We're keeping the public use test and what the public benefit test was supposed to mean—that is, an additional limitation but not a disjunctive limitation.

And we prove that by doing one other thing: In the main statute on condemnation (G.S. 40A-3) it says in the prefatory language of each "for the public use *or* benefit." And what this does is strikes out the "or benefit" so it is clear that we are using the "public use" test.

This proposal would be submitted to the people in November of 2012 when most people vote.

Now there have been some who have said we could do something much stronger. They have given us a list of some states that they say have been stronger. I'm not going to go through them all but I'm just going to mention a couple to illustrate the problem. We're told, for example, that Florida has a much stronger property rights amendment than this one. The Florida one begins well: "Private property taken by eminent domain," etc., etc., "*except as provided by general law* passed by a 3/5 vote of the membership of each House of the Legislature." In other words, they establish a really tough constitutional right and then they allow the Assembly to run right over it. I'm looking at a periodical from a few years ago: "Georgia passes a strong property rights law." The first part of it's good. But then it says, "These condemnations must be approved by the county or city in which the property is located." In other words, they can override the constitutional provision just by making sure there's a vote of the governing board.

So I would submit to you that this bill protects legitimate interests of local government, of state government, of utilities and the public that uses utilities. It's concise. I like that in constitutional amendments. It uses the old words instead of inventing new words. And I commend it to you. Thank you, Mr. Speaker.



**HB 8 – Eminent Domain**  
**Rep. Paul Stam – Remarks on 3rd Reading**  
**April 28, 2011**

*Audio available at [this link](#).*

*Debate begins: 01:22:58*

*Rep. Stam's remarks: 01:23:20*

**Rep. Paul Stam (R – Majority Leader):** Thank you, Mr. Speakers. Members of the House, this bill has been a long time coming. The first effort was in 1989 and this is the fifth version. Today the House will finally send this to the Senate to send it on to the people to decide whether they want this protection—not for property rights, but for the rights of people to own property.

I would like to address just a couple of things that came up on second reading. There were some very good questions raised by Representative Michaux concerning the effect on housing redevelopment. If you would turn in your bill to page 2, line 6 where it talks about other public condemners. It says “for the public” and then it strikes “use or benefit” and then reinserts “use.” So the effect there is to strike the word, “or benefit.” Now that is in a section of the Statutes whether or not the constitutional amendment passes. But it also clarifies the intent of the Assembly that the true test is “public use” and not “public benefit.” And in that statute, 40A-3(c), other public condemners includes housing authorities. So the effect of the amendment, both the statutory amendment and the constitutional amendment, is to restrict what can be done in the case of blight. The government can certainly still do urban redevelopment, but for the parcels that are condemned—that is, taking the property by eminent domain—that property could only be used for a public use like a school or a fire station or a community center. It could not be taken first and then sold as part of the plan to private developers so they could make more money. I just wanted to clarify that that is actually one of the purposes of this bill.

I would also like to make clear the reason we’re striking “or benefit.” The term “or benefit” has been in our statute for a long time but that’s because there is an ambiguity in what the word “or” means. Is it conjunctive or disjunctive? Maybe our grammar has gotten more precise in writing but less precise orally. In days past “or” sometimes meant “and.” Courts would use that “or benefit”—the public benefit—as a limitation on a taking. But more recently they’ve used it as a disjunctive alternate version and amalgamated it with “public purpose” so that things that are not a public use like roads, schools, court houses, utilities, could still be considered a public benefit. So that’s the reason it has to be struck from the statutes because of that amalgamation and that misuse of the word “or.”

So I urge you to vote again for the amendment. For many of you it will be the sixth time you voted for this amendment: two readings twice before. And I believe that actually a large majority of the House has actually voted for it at least five times now.

Mr. Speaker, if I could be recognized for a clarifying amendment?

**Speaker Thom Tillis (R):** The gentleman is recognized to send forward an amendment.

**Reading Clerk:** Representative Stam moves to amend the bill on page 1, lines 27 through 31 by rewriting those lines to read...

**Speaker Tillis:** The member may explain the amendment.

**Rep. Stam:** As I mentioned, in G.S. 40A-3 we are changing four different subsections. And by doing that, we are reaffirming the rights of those condemners to condemn for those purposes if it’s in fact a public use. Well, in one of the sections the utilities (and in case anyone wants to know, Duke Energy in particular, but it would apply to all utilities) saw an ambiguity and just wanted to make sure that the bill does what I told Representative Jackson (in committee) it would. This is in connection with electricity and I think his question was about gas, but it’s the same question. And so what this amendment would do is in that subsection that talks about those who can construct electric power lines, it adds the words “including those to connect to customers.” This is current case law. The question is whether a power line can go across somebody who objects to connect to a customer and the answer is yes. That would be true before this statute; it would be true after the statute. But just to make it clear, those words are added “including those to connect to customers.” So Mr. Speaker, I move the adoption of the amendment.

**Speaker Tillis:** Further discussion, further debate on the amendment? If not, the question before the House is the passage of the amendment offered by Rep. Stam to the committee substitute to House Bill 8. All those in favor will

vote aye, all those opposed will vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. One-hundred and twelve having voted in the affirmative and three in the negative, the amendment passes.

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*Additional remarks: 01:47:00*

**Speaker Tillis:** Further discussion, further debate? If not, the question before the House is the Committee Substitute to House Bill 8, as amended, on its third reading. All those in favor will vote aye; all those opposed will vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. Ninety-eight having voted in the affirmative and 18 in the negative, the Committee Substitute to House Bill 8, as amended, has passed its third reading and will be engrossed and sent to the Senate.

*~ Fin ~*

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**HB 92 – Repeal Land Transfer Tax**  
**Rep. Paul Stam – Remarks on 3rd Reading**  
**March 8, 2011**

*The “Land Transfer Tax” was defeated in twenty-four out of twenty-four local referenda. Repeal was not hard.*

*Audio available at [this link](#).*

*Debate begins: 00:54:15*

*Rep. Stam’s remarks: 01:03:33*

**Rep. Paul Stam (R – Majority Leader):** Thank you, Mr. Speaker. There are some odd things I’ve heard and I want to address those. I heard the lady from Mecklenburg talk about the good support this tax has, the powerful arguments. But memory serves that only a minority of the House was in favor of this land transfer tax. Only a minority of the Senate was in favor of it. The only way they could get it passed was to stick it in a conference report on the budget, which was unamendable, and jam it down our throats. If there had ever been a majority, we would have seen a vote on the floor. We didn’t.

Another argument comes up: “Let the people vote. Let the people vote.” Well, our Constitution requires votes for constitutional amendments and for bonds. Representative Luebke raised this argument: “Let the people vote.” Well, when we had 98 sponsors on an eminent domain constitutional amendment—was Representative Luebke asking us to let the people vote? No. For years and years it was jammed down until we finally passed it in the House, knowing of course that the Senate would kill it. Then we’re supposed to vote on bonds. What did the minority do for most of the last decade? They put Certificates of Participation in the conference report on the budget so the people could not vote on new debt.

“Let the people vote. Let the people vote.” Well, this particular land transfer tax is a one-way vote. It’s only a vote to raise taxes. And do you know what they’ve done? They’ve had this vote the Friday before Labor Day. Another one set it in the beginning of January, all designed to turn down voter participation. And then you wonder: why is it only additional taxes that the people should vote on? Do they want the people to have referenda to reduce taxes? Well, we have a representative government. We have local people. We elect them. We don’t set everything out for referenda. But apparently only tax increases should be something to let the people vote on.

The actual merits of this kind of tax...It is an irrational tax. And by that I mean it’s nothing new. We have deed stamps. This is just a supersized deed stamp. One of the predecessors of this was 1797 when William Pitt the Younger asked the British Parliament to double the Stamp Tax. This is nothing new. But economists tell us that taxes purely on transfers are not good things. It’s much better to tax production or consumption or income because this transfer tax is an irrational tax. It’s a tax, for example, when you trade property. Each side pays this land transfer tax even if there’s absolutely no change in usage of land or anything. If you sell a house at a loss you pay this tax. It’s much better to tax gains or income rather than a tax purely on a transfer.

It’s an irrational tax. It’s often advocated for as a way to make “growth pay for itself.” But in that respect it’s irrational. I’ll just give this one example: The Smith family has three cars and three kids in public school and they sell to the Jones family with two cars and two kids already in college. Well, they pay the tax even though the burden

on the infrastructure is going down. Somebody lives in a house and has 18 kids and they all go to public school. But they just never transfer the property. They die with it. They don't pay the tax.

So it's an irrational tax. Stop defending it. The people have rejected it 24 times in a row. If you want to put something on the ballot put a constitutional amendment there. Put bonds there.

~ Fin ~

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**HB 200 – Appropriations Act of 2011**  
**Rep. Paul Stam – Remarks on Concurrence**  
**June 3, 2011**

*Our first budget (for 2011-13) was hard. The Recession was in full force. But we had promised the people we would not raise tax rates. Governor Bev Perdue vetoed the budget primarily because we did not raise the state sales tax from 4.75% to 5.75%. That would have been very bad for an economy in recession. There were a few brave Democrats who joined us to pass it notwithstanding her veto.*

Audio available at [this link](#).

Debate begins: 00:23:27

Rep. Stam's remarks: 03:27:05

**Rep. Paul Stam (R – Majority Leader):** Mr. Speaker, Members of the House: “Draconian, deadly, dangerous, devastating, decimating and delirious”—these are some of the words I’ve heard about this budget. But the cold, hard reality is quite different. I’m not going to have to speak long because what I want you to know is on five pieces of paper that I put on your desk. Take a look at them. And they are all prepared either by our fiscal staff or by the Kenan-Flagler School of Business (at UNC-CH).

The first is by Marshall Barnes of the Fiscal Research Division on position reductions. I’ve heard 20,000; I’ve heard 30,000—or whatever you hear. But what this report says is that the positions cut are 8,492 net. And what some forget is that we have about 30,000 per-year turnover anyway.

Look at Table 23 from the Kenan Flagler School of Business. What does this report say this budget does for employment? It puts more jobs in the private sector than the positions it loses in the public sector (many of which are unfilled and almost all of which will be dealt with by attrition). It puts more jobs in the private sector. There are 11,723 jobs from the expiration of the 1% sales tax, 1,868 jobs from the expiration of the personal income tax and 245 from the expiration of the corporate income surtax. And then from what’s in the tax package—the business income tax, the exemption of the first \$50,000 in business income—arises another 1,100 jobs. These add up to about 14,900 new jobs.

Please turn to the next piece of paper: “Comparisons/Governor.” This tells us the real difference in spending. Remember these terms? “Delirious, devastating, draconian, decimating...?” Well, the Governor proposes a real cut in spending of about 2.3%. This budget proposes a real cut in spending of about 4.4%. The difference is barely discernable. Draconian?

The next chart is: “Public Schools/General Fund Budget/Governor vs. Senate.” It’s a \$43 million difference—less than half of 1%. That’s what all this rhetoric is about. The difference is one half of 1% between the Governor’s budget for public schools and our budget.

There is a two-sided document. You can argue it both ways, depending on how you adjust. But if you would look at the page that says “Paul Stam,” this looks at education spending as opposed to budget. I think spending is more important. Budgets can be unrealistic. Spending is what actually impacts a student in the classroom. Of course we can be more precise on a budget number because it’s an artificial construct, but spending we have to estimate and project. These figures come from Fiscal Research except the little blocks on the end. (Those were added by me after consultation with Fiscal Research who say we have to expect a natural reversion of about 1%.) Under the Governor’s proposal there would be about a 3% real cut in state spending on education, whereas under this budget it would be 4.7%. Again, barely discernable. “Draconian, decimating, delirious, deadly, dangerous?” And if you look at the public schools—just K-12, which is where the rhetoric comes—under the Governor’s budget it’s a 1.7% cut and under this budget it is 2.3%. If you tried to subtract them you could hardly come up with a difference there (a little more than half of one percent).

So I think it's time to put all this rhetoric aside and realize that this is a responsible budget in a difficult year. We don't have that federal stimulus money of a billion dollars from last year and yet we came up with a great budget.

Now there is one consistent theme. Speaker Hackney, Minority Leader: When we were facing a \$4 billion shortfall he wanted about a billion dollars of new taxes. When it was a \$3 billion shortfall he wanted about a billion dollars of new taxes. When it came to a \$2 billion dollar shortfall he wanted a billion dollars of new taxes.

I take it that what he really wants is more taxes—and we reject that. I urge you to vote for the motion to concur.

**HB 200 – Appropriations Act of 2011**  
**Rep. Paul Stam – Remarks on the Veto Override**  
**June 15, 2011**

Audio available at [this link](#).

Debate begins: 00:02:42

Rep. Stam's remarks: 00:09:05

**Rep. Paul Stam (R – Majority Leader):** Mr. Speaker, members of the House: “Draconian, deadly, dangerous, devastating, decimating and delirious...” Those are just some of the words we’ve heard from the opposition and the Governor about this budget. But the cold, hard reality is quite different.

First, this budget creates jobs. The Kenan-Flagler School of Business at Chapel Hill estimates that this budget will create about 14,900 new jobs in the private sector this year beginning July 1<sup>st</sup>. For example: 11,723 jobs from the expiration of the temporary increase in the sales tax, another 2,000 jobs from the expiration of the surtax on income. The business exemption in the budget would create another 1,000 jobs. These add up to about 14,900 jobs. What the Governor objects to is that these jobs will be in the private sector and will be created one at a time, business by business. There won't be a ribbon-cutting to attend.

Remember those terms: “delirious, devastating, draconian, decimating?” Well, the Governor proposes a real cut in spending of about 2.3%. This budget has a real cut of about 4.4%, hardly a discernable difference. The reality is quite different than the rhetoric. In K-12 spending the difference is one half of 1% from the Governor's budget. So I think it's time to put all this rhetoric aside and realize that this is a responsible budget in a difficult year.

In October of 2008 the Governor promised that there would be no tax increases during a recession. Ever since she was elected Governor she has consistently demanded one thing: higher taxes. She got her temporary taxes for two years—a billion and a half per year.

And then coming to this year's budget we're facing a \$4 billion shortfall. She wanted a billion dollars in new taxes. When it was a \$3 billion shortfall she wanted a billion dollars in new taxes. When it was a \$2 billion shortfall she wanted a billion dollars in new taxes.

There is a theme there: she just wants more and higher taxes. Two years ago she got her higher taxes. We're just not going to keep doing that to the people of North Carolina. They are going to get \$1.5 billion every year for the next two years in their pockets to spend in the economy instead of spending in government.

I urge passage of the bill notwithstanding the Governor's objections.

~ Fin ~

**HB 351 – Restore Confidence in Government**  
**Rep. Paul Stam – Remarks on 3rd Reading**  
**June 9, 2011**

*Republicans had been trying since 2005 to require Voter ID. 2011 was the first time the Assembly passed it, but Governor Bev Perdue vetoed it. We were unable to override her veto, so I changed my vote from yes to no so we could try again later. It finally passed in 2013 and has been in the courts ever since.*

Audio available at [this link](#).

Debate begins: 04:00:00

Rep. Stam's remarks: 04:55:36

**Rep. Paul Stam (R – Majority Leader):** Thank you, Mr. Speaker. Members of the House—wow! We hear about all this voter suppression like they had down in Georgia. They passed a bill and low and behold the increase in voter turnout amongst minority population went up faster than it did here. That was a big suppression effort.

And then I think...I'm not going to use the word hypocrisy; I'm going to just say an incoherence between this point and that point in the argument. I remember down here in 2003 when a bill was thrown out on the floor 15 minutes before we had to vote on it. Oh, it was called "Redistricting." The effect of that bill was to give a majority to what is now the minority party, even though our party got 52% of the vote, the minority got 44% and the Libertarians got 4%. That should be a landslide, but because of the manipulation of the districts the landslide by the voters turned out as a majority for the minority. Now you talk about voter suppression—that's voter suppression.

This bill is not about voter suppression; this bill is just finding out who's properly before you. You know, you can show up at the polls and say, "I'm John Jones and I live on Sunshine Street," and you can vote. And you can get the records of people who haven't voted in a long time and you can just do it. And you can sign your name, "John Jones." And nobody's going to catch you because almost never is that one vote the difference in the election. But when people do it a lot it can be a big difference.

And then I hear about voter suppression and the opposition to Representative Rayne Brown's bill on capital projects. Well, that's one way to suppress voters—just take away all the questions from the ballot forum. That's taking it away.

But let's get real. This is not about voter suppression. This is about finding out who the voters are, making sure they vote one time and one time only, so that the other people don't have to worry that their votes are being diluted.

~ Fin ~

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**HB 650 – Amend Various Gun Laws/Castle Doctrine**  
**Rep. Paul Stam – Remarks on Amendment 3 by Rep. Chuck McGrady**  
**June 7, 2011**

*Every session there is a gun bill. But one provision went too far. Second Amendment rights are very important, but they do not trump property rights which English law protected before firearms were invented.*

Audio available at [this link](#).

Debate begins: 02:29:20

Rep. Stam's remarks: 02:36:15

**Rep. Paul Stam (R):** Mr. Speaker, Members of the House: If this is an issue of property rights, the bill sponsor is dead wrong. A compromise is good; we compromise all the time. But if it's a matter of property rights, you don't compromise with people who happen to be in a committee room. You compromise with every single land owner in the state. And if you want to take their property by essentially creating an easement in everybody's property in the state, then you pay them billions of dollars in damages by eminent domain.

This House has taken a strong stand for property rights this session with the passage of House Bill 8 and the passage of the annexation reform bill.

But there is something that actually goes back farther than the right to keep and bear arms. That of course is in the United States Constitution in 1791, and in our North Carolina Declaration of Rights in 1868. It was recognized that people had the right to keep and bear arms for hundreds of years before that. Long before people even had firearms, they had property.

I've put on your desk a four-page excerpt from Blackstone's *Commentaries on the Laws of England* (Book II, pg. 207, 213, 221-2) that will explain why the bill sponsor is just completely wrong on the question of property rights. Now what is Blackstone's *Commentaries*? It was basically the law book American law was built upon because it was published in the 1770s.

**Rep. Mark Hilton (R):** Mr. Speaker?

**Speaker Thom Tillis (R):** Representative Hilton, please state your purpose.

**Rep. Hilton:** To ask Representative Stam a question.

**Rep. Stam:** I yield.

**Speaker Tillis:** The gentleman yields.

**Rep. Hilton:** Representative Stam, if those property rights trump this other person's vehicle property rights, let's say—and you've answered this question to me before and I'd like for you to answer it to the body—what if this other person has a Bible in their car and they drive on? Do those property rights also say, "No, can't have a Bible in your car?"

**Rep. Stam:** I'm going to explain that, Representative Hilton. And the fact is, if someone was so crazy as to put a sign on the door saying no one with a Bible may come in then it would be trespassing to come in with a Bible. Now, I'll be discussing some exceptions such as places of public accommodation and public property, but this bill—Section 13—is not about public property; it's about private property.

Blackstone explained it this way. When Blackstone is talking about the Laws of England, he's not talking just about the laws of 1776, but common law, which he believed to have coalesced around 900 A.D. The people who framed our Constitution thought since this was the main law book that this right of private property came from about 900 A.D.

On the middle of that first page: what are property rights? "The right of property [is] that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe." Have you ever heard such extravagant language? What he's saying is that the right of private property is the right of Representative McGee, who owns an acre of land, to keep everyone else in the world off of it. He's got that right. Now of course a lot of times people own land with twenty other people, and they give easements, but that's just an exception to the rule.

Now if you look at the second page: "It is agreed upon all hands, that occupancy gave also the original right to the permanent property in the substance of the earth itself, which excludes everyone else but the owner from the use of it." In other words, that's what it means to own real estate: you have the right to exclude anybody else from coming on it.

**Rep. Bill Faison (D):** Mr. Speaker?

**Speaker Tillis:** Representative Faison, please state your purpose.

**Rep. Faison:** I wondered if the gentleman might yield for a question.

**Speaker Tillis:** Does the gentleman yield?

**Rep. Stam:** I do.

**Speaker Tillis:** He yields.

**Rep. Faison:** I'm following you right up to this point. You've talked about the right to exclude someone from your property, but if you've excluded them from the property, you've excluded their car from the property, and it doesn't seem to apply to the issue at hand. I guess where you're probably going is to somehow parse it out so that you're not just excluding them, you're excluding their relative possessions. But unless you're going to a place where you're talking about excluding relative possessions, what difference does Blackstone's Commentary on holding freehold interest in real estate have to do with the issue?

**Rep. Stam:** Representative Faison, there are exceptions which come from the Thirteenth and Fourteenth Amendments, and since they are later than the Second Amendment and Fifth Amendment, they trump them. Those exceptions are places of public accommodation.

Have you ever seen "No shirt, no shoes—no service"? The person who owns the business gets to set the terms upon which you enter unless there's a federal law based upon the Thirteenth and Fourteenth Amendments—for example: racial discrimination. The basic principle is that the owner of the property gets to decide who comes on the property and upon what terms. If you go to Blackstone, page 221 at the bottom, the land is "permanent, fixed, and immovable: and therefore in this I may take a certain substantial property: of which the law will take notice and not of the other." Listen to this: "Land hath also, in its legal signification, an indefinite extent upwards as well as downwards. *Cujus est solum, ejus est usque ad coelom*," which means: "He who owns the soil owns it to the heavens." Airplanes and satellites have changed that idea, but basically as far as you can build, you own. That's been the law of North Carolina ever since the first English person set foot at Manteo. If you own this spot of land, you own it to the heavens. He says the word "land" includes not only the face of the earth, but everything under it or over it.

The point is this: whoever owns this square meter of land right here owns everything upward, including that if a car comes through it and there's a cavity in the trunk or a glove compartment where a firearm is, that property is owned by the owner of the soil. It's owned by the lawyer who may have some quirky idea that he doesn't want a lot of guns in his parking lot. It's owned by that private school teacher who thinks it's just not a good idea, crazy as it might sound, to have guns immediately available.

So I say to the bill sponsor, do not say that you support private property rights if you oppose this amendment. You do not understand property rights if you oppose this amendment. I'd urge you to pass it.

~ Fin ~

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**HB 854 – Abortion-Woman's Right to Know Act  
Selected Remarks in House Judiciary Subcommittee B  
May 11, 2011**

*From 1999 to 2010 Speakers Jim Black and Joe Hackney refused to let any pro-life bills come to the floor. In my opinion this one has saved the lives of about 4000 children every year. You will notice that opponents rarely mention the unborn child. In the 1970s and 1980s there were many pro-life elected Democrats. Not anymore. For a full explanation of this bill, see "The Woman's Right To Know Act; A Legislative History" 28 Issues in Law and Medicine, p. 3 (2012).*

**Chair Sarah Stevens (R):** We only have one bill before us today and that is House Bill 854: Abortion—a Woman's Right to Know.

**Rep. Paul Stam (R – Majority Leader):** There's a slight [audio unclear]...PCS.

**Chair Stevens:** I believe there is going to be a PCS before us. It's in your file and, without objection, it's before us. We're going to also allow additional 25 minutes pro and 25 minutes con on speakers. I have a list of pro speakers; does anybody have for me a list of con speakers—speakers against the bill? Thank you very much, Representative Glazier. I will also keep calling them. We will keep time. We don't limit a speaker's time, but we limit the time of all speaking, both for and against the bill, to 25 minutes each. Then we will open it up to committee discussion and we'll put a second vote on this bill today.

First, I'll recognize the sponsors of the bill, Representative Samuelson and Representative McElraft, to see if there's anything else you'd like to say. Do you have an order?

**Rep. (unidentified):** Those two are reversed.

**Chair Stevens:** Two first?

**Rep. (unidentified):** The other one is running late.

**Chair Stevens:** Alright. Do you have anything to say about the bill?

**Rep. Ruth Samuelson (R):** No, only I appreciate your consideration from last week and I urge your support. Thank you.

**Chair Stevens:** And I guess before we get into the speakers, since we do have a PCS before us I'd ask the staff to explain just the differences between the previous bill and the proposed amendment.

**Hal Pell (Staff Attorney):** The major difference between the two bills is that in the original bill there is a reporting requirement section—a somewhat extensive reporting requirement section—that's not in the PCS. And I believe there's one other substantive revision where a sentence relating to a notification to the person that is seeking an abortion concerning a statement about *[audio unclear]* and that particular sentence and phrase is removed from the PCS so that is no longer a requirement that that be given to the person seeking the abortion. I think those are the changes.

**Chair Stevens:** Just questions on the PCS. Representative Hilton.

**Rep. Mark Hilton (R):** The reporting requirement—can someone speak to exactly why that was taken out?

**Rep. Stam:** I can speak to that.

**Chair Stevens:** Representative Stam.

**Rep. Stam:** The sponsor and myself, in consultation with the advocates, decided that it was really not necessary for the bill and would impede the bill's progress.

**Chair Stevens:** Representative Glazier, on the PCS.

**Rep. Rick Glazier (D):** Sorry, there was a lot of noise when Hal was saying about this reporting requirement, about this sentence... He was talking about a sentence that was taken out and I missed that part.

**Hal Pell:** And I was looking for the original bill—I had the PCS in front of me—but there was a statement or a sentence that was required to be given to the woman and it began that a life begins at conception, and that's out.

**Rep. Glazier:** Thank you.

*[Dialogue from outside speakers removed]*

**Chair Stevens:** Thank you. All right, now we'll open up to committee discussion, including questions from any of the speakers that the members would wish to ask. Representative Stam.

**Rep. Stam:** Yes. If I could start by making a motion and be briefly heard? Of course, we'll have a good debate. I do move that the Proposed Committee Substitute be given a favorable report, unfavorable to the original bill, and ask to be recognized to speak on it.

**Chair Stevens:** You're recognized, Representative Stam... Representative Michaux?

**Rep. Mickey Michaux (D):** I think this has been referenced in most of the debate *[audio unclear]*...because we've got a fiscal note...



**Rep. Stam:** I'm going to address that, Representative Michaux.

**Chair Stevens:** Alright.

**Rep. Michaux:** Okay, great.

**Rep. Stam:** Yes, and I'll address that to start with. There is a fiscal note and I'm glad it's there. I am not moving that it go to Appropriations. I consulted with the Chair of Appropriations and he said it doesn't need to go there. And I'll tell you why. If you read it carefully, there is about a hundred, about \$200,000 maximum of expense. The \$7 million there is of the supposed increase of births and then Medicaid births. Well, I hope so; I don't know so. Of course that's speculative, but if you read page 5 of the fiscal note as well, he also notes studies and fiscal notes that I got from staff two years ago indicating the possibility that it saves \$34 million a year. So if that's only 1/5 as probable as the improbable of the note itself, then it's a wash. And the Chair of Appropriations says he doesn't want it to come to Appropriations.

Briefly, 30 years ago the State Senate passed a bill very similar to this. It was bipartisan; the first four main sponsors were all Chairs of committees in the Democratic State Senate. It also passed the House in 1997 on a bipartisan basis. It was about 75 votes, if I recall.

This is consistent with what about 24 states do, although all of them are a little bit different. It's what's necessary for people to be truly informed. Because the Medical Society sent you a letter, we also have a letter that's been handed out from Dr. John Thorp who is an officer of that same group that sent out that letter. He's also the Distinguished Professor of OB/GYN, Director of the Women's Primary Healthcare at Chapel Hill. And he says, of course, it's appropriate. And attached to his letter is a review of the evidence—a published review that, if you read it, indicates that women are simply not being told of the problem of the possible risks.

I'll finish with this. Three years ago after I discussed with Dr. Bowes, the Distinguished Professor of Fetal and Maternal Medicine at Chapel Hill, and Dr. McCaffrey, Neonatologist and professor over there, the link between induced abortion and prematurity, extreme low birth weight, I brought this to the attention of and provided 63 studies to Child Fatality Task Force and in particular, the Perinatal Committee, because this is perinatal: conception to a certain time after birth. If they had paid attention then we would probably have saved in that 2 ½ year period hundreds of additional excess cases of cerebral palsy and hundreds of millions of dollars.

It is time to do what we started to do in 1981 and do it today. Thank you, Madam Chair.

**Chair Stevens:** Representative Glazier.

**Rep. Glazier:** Thank you, Madam Chair. My comments will not be quite as brief as Representative Stam, but I think all of us want to speak and should on this issue. I will note, and I'll come back to it, the 1981 bill that Representative Stam referred to is a couple paragraphs long. Our current bill is nine pages. So to say that they passed the same bill in 1981 simply is incorrect.

The Due Process Clause of the Fourteenth Amendment states, "No state shall deprive any person of life, or liberty, or property without due process of law." And although a literal reading of that clause would suggest that it covers only procedures by which a state deprives persons of liberty, the clause has been understood to contain a substantive component, as well, that bars certain government actions regardless of fairness of the procedures used to implement them. A woman's right to have an abortion, particularly in the first trimester, is a fundamental right protected by the substantive Due Process Clause of the Fourteenth Amendment.

In *Roe v. Wade*, the Supreme Court overturned the Texas statute prohibiting abortions unless abortion was necessary to save the life of the mother. The court held that the right of personal privacy includes the right to have an abortion. That right is not unqualified and must be considered against important state interests and regulation. The court determined that because abortion is a fundamental right, those regulations should survive or be looked at under strict scrutiny. Therefore, state regulations are valid only if the regulation can be justified by a compelling state interest and the regulation is narrowly drawn to further that legitimate state interest. According to the court, the State's interest in those cases is preserving and protecting the health of the mother and protecting potential human life as it increases its substantiality while the woman nears term.

Several years, and in fact several decades later, the court reaffirmed its commitment to *Roe* in *Planned Parenthood v. Casey* when the court established the "undue burden" test of determining whether a statute that restricts abortion would pass constitutional muster. Under *Casey*, a statute is invalid on its face if it places an undue burden on a woman's right to have an abortion before the fetus obtains viability. And an undue burden exists under

the law if the state regulation has the effect of placing a substantial obstacle in the path of a woman's choice to obtain an abortion before the fetus obtains viability. A statute, the court said, that creates a substantial obstacle for a large fraction of those women affected by the regulation creates an undue burden and is unconstitutional. States may enact regulations to further the health and safety of a woman seeking an abortion but unnecessary health regulations that have the purpose or the effect of presenting a substantial obstacle for a woman seeking an abortion impose an undue burden on that right and are unconstitutional.

It is evident, I think, that the State of North Carolina has a legitimate interest at the outset of a pregnancy of protecting the health of a woman seeking an abortion. And that interest is sufficiently important to allow the State to regulate abortion providers and how the process works. However, *Casey* and its predecessors teach us that health regulations which are not reasonably related to maternal health, or which depart from accepted medical practice cannot withstand constitutional scrutiny. This bill is, in my opinion, riddled with unnecessary requirement—requirements not reasonably related to maternal health or which departed from accepted medical practice.

The bill contains some basic information we can all use and gain: medical risks, the name of the physician, probable gestational age. With those requirements I agree. But the majority can't rest content there. The endless protestations of those involved with the bill that the bill is informational completely overlooks the natural effect of the one-sided, state-censored government information it requires. The sponsors' assurances about the benign purpose of the law are belied by its [audio unclear]. This bill should be seen precisely for what it is: a substitution of a woman's judgment about her body by the State of North Carolina. Government has no business substituting its own desired outcome for the reasoned and often gut-wrenching decision of a woman or she and her family.

On a personal level, I am tired of the abortion debate. Its opponents too often have a hidden agenda, but abortion-rights supporters also can sometimes deny the obvious: something dies when an abortion is performed. It is not yet a baby, but it is also not remotely anyone else's business—but something does die. It is the tension between the woman and the fetus—the woman who, particularly in the first trimester, has a constitutional right to choose, but she cannot, of course, ignore that there are two important parts of the equation: biology tells her so. By contrast, as exemplified by this bill, abortion opponents have never understood the psychology. They do not understand there are times when an embryo is an embedded blessing and other times when it is a nightmare, and often the failure to recognize how deeply felt by women is the notion of the right to protect the process over one's own body.

Like too much in public policy, we sit here deciding what to tell the women of North Carolina without ever asking many of the women what [audio unclear]. And this bill determines they all must be told the same thing, at the same time and in the same way. How paternalistic and insulting.

I am tired of abortion, of the dishonest arguments, the intractability of conflict, and mainly of the insensitivity too often of all of us who pass judgment. No matter what we legislate today, or adjudicate or pontificate, women will continue to find a way to end pregnancies they cannot bear to turn, by the hospitalities of their own bodies, into children. They always have and they always will.

This bill determines one size of information and procedure fits all: a 14-year-old rape victim, the married couple, the single 40-year-old woman, the 18-year-old headed to college on scholarship, the physically ill, the academically gifted. And so we reduce today this most complex decision to a statutory formula. But of course no case, let alone all of them, would fit neatly into the black and white statutory box. Reproductive decisions take place in a messy gray zone of hard choices being formed by individual circumstances and conscience.

In the end, the bill sponsors have drafted a bill that sets forth their view of the law as they would like you to see it, not what the law contains today. As State Legislators sworn to uphold the Constitution, that is unacceptable. State statutes need to be based on evidence of a public health issue, on research or investigation, strong medical opinion of what procedures are necessary or advisable. And yet it seems to me, despite testimony today, the drafters have, for the record, sought fairly minimal assistance from current knowledgeable medical experts or organizations. No meaningful information exists about the cost of these requirements. In fact we've heard almost nothing about the cost of the requirements—about the actual woman or her provider. And the statute contains a myriad of detailed and costly provisions that are medically unnecessary and they are not designed to further the health of the woman seeking an abortion or likely in most cases to accomplish this goal.

In truth, as I conclude, the statute's purpose and clearer effect is to place a substantial psychological, physical and fiscal obstacle in the path of a woman seeking a pre-viability abortion. The US Supreme Court has upheld informed and written consent regulations but only where the State has demonstrated they are genuinely to further an important health-related interest. A state may not, under the guise of securing informed consent, require the delivery of information designated to influence the woman's informed choice between childbirth and abortion. And rigid requirements that apply to all, that set out a specific litany of information to be imparted to every woman, regardless of the needs of the patient, unconstitutionally intrudes on the discretion of a pregnant woman and her physician. The

statute before us comes perilously close to state-imposed medicine, and I dissent from its passage and will vote against this bill.

**Chair Stevens:** Thank you. Representative Michaux.

**Rep. Michaux:** Yes ma'am. Thank you, Madame Chair and members of this committee. The first thing I'm sure that [audio unclear] million dollars fiscal note [audio unclear] is a significant non-funded expenditure. But let me say this to you in the majority: You came into the office this year and there were several principles on which you may have run your campaign, and one of them was "Take big government out of people's lives." And now here you are with a bill now putting big government back into people's lives. The people whose lives you are putting big government back into ought to be mad with you and angry with you because you really are insulting not only the promises that you made but you're insulting the intelligence of the people whom this affects. The women in this state really don't want you messing in their business. It is their business, and you want to get us out of, you know, get government out of expensive... This is expensive, and putting it back in there.

How many other times in our present situations is the doctor required to give information that you're requiring them to give in this situation? I don't know of any. The other thing is the no criminal penalties [audio unclear]...to any doctor who doesn't give out any portion of these instructions or whatever you want to call them—you set them up for a malpractice suit. [audio unclear]...So what you're doing now is setting them up for more instances of malpractice and that's just wrong and just like my colleague, Rick, I'm going to have to vote against it.

**Chair Stevens:** Thank you for your input. Representative Martin.

**Rep. Grier Martin (D):** Thank you very much, Madame Chair. Others have addressed the policy and opposition to this bill and I can't state it any more eloquently. So the point that Representative Michaux touched on, which is our concern, that this is not going to go to Appropriations—I think I understood Chairman Stam's point on why it's not going to Appropriations since the bulk of the cost will result from increased healthcare cost and so forth. I don't know if I agree, depending on how speculative that is, but even if we did exclude that portion, which is the bulk of the cost of the fiscal note, and just looked at what, to me at least, appears to be pretty certain: the cost of printing and the cost of the website which, compared to the overall cost, is not significant but it's all in part about 150,000 dollars. In our large multi-billion dollar budget you may argue that's just a drop in the bucket, but at the same time that's money that I think could save a teacher's job. Probably a couple of teacher's assistants' jobs and so forth.

So for that reason I think it needs to go to Appropriations. Particularly given the budget crunch we face now and last biennium, every drop of money needs to be scrutinized: first of all to make sure we actually have the revenue to pay the cost, but second of all to, even if there's going to be savings associated with the bill, we see what else we might spend those savings on. I know I had a bill that didn't pass last year and I think the fiscal note on it was roughly 100,000 dollars. It was to address homelessness and veterans. I think if I went up to then-Chairman Michaux and ask him "Hey, can I get this bill passed and not have it go to Appropriations?" he'd still be laughing now. I think it's just a matter of the way we run things here taking care of taxpayer dollars. Regardless of where we stand—pro or con—in the policy decisions, we take it to Appropriations.

In the big Appropriations meeting today, Chairman Barnhart limited debate, or tried to limit it, just to the Appropriations involved and tried to keep outside cost issues excluded. You can argue whether or not that's the best policy but one that I think would even work for a controversial bill like this. So I would advocate that this move to Appropriations.

**Chair Stevens:** And Representative Samuelson would like to speak briefly about the fiscal note.

**Rep. Samuelson:** Thank you, Madame Chair. Members of the committee, I did not make the decision about the referral to Appropriations, but I did see the note this morning and frankly was appalled at the figure—particularly when I realized that they were putting a price on the life of a child. They were saying that because this child was born rather than terminated that therefore we've got this huge fiscal note. And frankly I called the person who drafted it and said "Well, gee, then you forgot to add the cost of their public education and their college education, and what if they had Medicaid for several years after they're born? If we're going to include the cost of their birth then we should include the rest of it." So frankly, I was a little offended that they had put a price on the life of this child by including that in there. Now on the bit about the website, there can be differences of opinion as to how much that's going to cost, printing the materials, and I can understand that. But I thought it was a mistake on the part

of the drafter of the fiscal note to put a price on the life of a person for a fiscal note that has to do, not with whether or not she can have the abortion, but with what she knows when she goes in to make that decision.

**Rep. Stam:** And just, very briefly on that.

**Chair Stevens:** Representative Stam.

**Rep. Stam:** The rule is “substantial effect on appropriations;” it’s not “any effect.” And I would suggest, Representative Martin, your bill which I supported—that somebody didn’t like your bill and that’s why they withheld a 100,000, but we actually have a ...

*[Rep. Michaux starts to protest.]*

**Chair Stevens:** Let the Chair continue to conduct things. We are going to take a vote on this bill today, and I do have three more people who want to speak, so Representative Bryant.

**Rep. Angela Bryant (D):** Thank you, Madam Chair. Well, I oppose the bill and have several concerns, but I have a couple of questions first.

One is: if I go to see the doctor and I feel like I already have all the information I need and I told them, “I served on the J-committee with Stam *[laughter]* and I don’t want to listen to this or talk to people in advance. I know all of this information and I’ve made my decision. I’ve talked with my doctor, talked with my preacher. I talked with my Representative, and everything else and whoever else I’m supposed to talk to and I’m ready for my medical procedure. I’d appreciate not being put through all this, you know, state-ordered propaganda. What would happen?

**Rep. Stam:** If I can address that?

**Chair Stevens:** Representative Stam.

**Rep. Stam:** There is a medical emergency exception, but if your case is not an emergency...

**Rep. Bryant:** This bill is in this committee. We can make it one. *[laughter]*

**Chair Stam:** But yes, you would have to go through that, say, 20-minute whatever. And since I do refinances and have to go through the same spiel for people who have gone through the 3-day right before doing refinances...I have to go through the same half-hour spiel with them even if it’s their fifth refinance.

**Rep. Bryant:** Follow-up?

**Rep. Samuelson:** May I add to that answer? Thank you. You don’t have to read the written materials. There’s a portion of it that you can receive either written or orally and that part you don’t have to. But the part about whether...what’s your doctor’s name is and whether he or she has liability insurance—yes, that part you would need to go through.

**Rep. Bryant:** No, I’m saying I know his name and you let me know about your insurance, but I don’t really want to hear the rest of this. Would I not be able to have my procedure?

**Rep. Samuelson:** The portion that is offered in writing you just sign that you received it. You are not required to read it.

**Rep. Bryant:** But if I don’t want to hear any of this par...the rest of the information, would I be...would a doctor then say, “Well, I cannot give you this procedure if you do not listen to the...”

**Rep. Stam:** Will you address that to Dr. Brannon?

**Rep. Samuelson:** Dr. Brannon?

**Rep. Bryant:** And if I don't want an ultra...

**Rep. Stam:** We have a minute left on our side.

**Rep. Bryant:** Suppose I don't want an ultrasound because I already had one?

**Chair Stevens:** Dr. Brannon?

**Rep. Samuelson:** Well, if you already had one then that qualifies. You just sign that you already had one.

**Rep. Stam:** Within 72 hours...

**Rep. Samuelson:** ...Within 72 hours.

**Chair Stevens:** I think that's your answer.

**Rep. Bryant:** If I had not had one within 72 hours, I wouldn't be able to have the procedure?

**Chair Stevens:** You would have to have your ultrasound.

**Rep. Bryant:** My bottom-line question is what in this process would keep me from having the procedure if I objected to it? An ultrasound would keep me from having the procedure. Is there anything else in this which mandates...?

**Rep. Samuelson:** If you object to having the ultrasound within 24—within at least 24...well, 4 hours before the abortion up to 72 hours before—if you refuse to have the ultrasound, yes, you would not be able to have the abortion.

**Rep. Stam:** But you don't have to look at it.

**Rep. Bryant:** But if I have one prior to 72 hours I would not be able to...Follow-up?

**Rep. Samuelson:** Correct, because the situation could change in the 72 hours. So part of this is for the doctor's benefit to know the condition of your pregnancy; part of it is for you. And so if it's been more than 72 hours, something could have changed. But you don't have to look at the ultrasound. This does not require you to look at it; it simply requires that you have it and it be available that you *could* look at it.

**Rep. Bryant:** Follow-up, please? I have to pay for it?

**Rep. Samuelson:** You may, or you may also...Part of the information that you'd be provided in the written materials, should you choose to read them, is where you can get an ultrasound for free if it's available in your community. Also in many cases, and I understand Planned Parenthood does this, but in many cases built into the cost of the abortion is an ultrasound. So what this would require is simply that the ultrasound be available for you to see. That would already be built into the cost of the abortion.

**Rep. Bryant:** Follow-up? Is there any way that this process could cause me to miss the deadline that would allow me to have an abortion? If for some reason I show up and it's the last day that I can have a medically safe abortion and I can't...So you do all of this in 24 hours...?

**Rep. Stam, Rep. Samuelson and Rep. Bryant:** *[audio unclear]*

**Rep. Bryant:** ...and I would then not be able to have my abortion because I just showed up, you know, a day too late?

**Chair Stevens:** We have a doctor. I think he can answer that.

*[audio unclear]*

**Rep. Samuelson:** While he's coming up I'll simply say, having delivered several children, they were never within 24 hours estimating exactly how far along you were. So I have a hard time believing that the 24-hour notification would prevent someone from being able to have an abortion because of the deadline, but I'll let him address that.

**Dr. Greg Brannon:** I want to go back to the first when you talk about any procedure...If you came in to me and we had to do a hysterectomy and you say, "Greg, I know all about it. I don't want any more," and I stop there—I don't go over all the risk factors—and something goes wrong, I'm held accountable.

So I'm seeing that procedure. I think it should be completely full-informed consented. The actual cutoff for date of viability, I'm not sure I exactly...I don't do abortions, so maybe I'd better defer that to one who does those. But the idea that you come to me and say, "Greg, I don't want to know anymore." I'm still... I have to still walk you through steps and all the possibilities.

**Rep. Bryant:** Follow-up? I understand you have to walk me through the medical information, but a lot of this information isn't nothing about medical...

**Dr. Brannon:** An ultrasound does help...

**Rep. Bryant:** But I don't want to know the propaganda. It's about my medical procedure.

**Dr. Brannon:** Well, an ultrasound is very important to know exactly how far you are.

**Chair Stevens:** We're going to...Let's go to Representative Bord...Let me go to Rep. Bordsen a little bit so we can let the other two people be sure to speak.

**Rep. Alice Bordsen (D):** I'd like to have Representative Bryant...

**Chair Stevens:** Then I'll go to Representative Burr.

**Rep. Bordsen:** Then I'll come...I will come after Bryant.

**Chair Stevens:** Well, I'm trying to control the time. That's part of what I'm trying to do to control the time.

**Rep. Bordsen:** I'm glad to go ahead and make my point now because I think this has actually provided us an excellent opportunity to really see writ large what a sham this whole thing is. I mean, this is just part of a long...and as Representative Glazier said, I am also just tired of [audio unclear]...over, because I'm also a [audio unclear]...as most of you here. And this kind of argument over abortion has been going on for years and years and years.

But make no mistake, it's not about abortion...It's not about abortion. This is all about women...It's about women. And we know this because if this issue were really grounded in the heart-felt desire to end or to curtail abortion, or to make sure that women were doing well, we would be working hard on the other end of the spectrum and we aren't. We would be working hard to make sure that every woman of child-bearing years, regardless of age, but of child-bearing years has free and easy access to contraception and is urged to use it no matter what. But we don't do that. We don't have discussions about making sure that people don't have unintended pregnancies. We talk about it at the end of the line rather than the beginning of the line and there is no end to this discussion.

But from a quick read of this bill, one could draw one of two conclusions that the bill sponsors [audio unclear]...One: women are really stupid, and two: women lack a moral compass. How else can you explain the micromanaging and the condescending approach to women who are trying to terminate an unintended pregnancy?

The first assumption one could draw from the bill is that it's based on the premise that women are stupid or we would not be engaged with such a bill that governs this micromanaging. We don't do it for any other... in this particular way. We don't do it with any other medical condition. We do not treat people as though they are this stupid. We don't do it for life and death cancer treatments. We don't do it for end-of-life decisions to this degree. We don't do it with even incompetency proceedings with our elderly folks that we're trying to take care of. Women must be truly stupid or we wouldn't do this. But that assumption actually can be quickly dispelled, because if we believed that women as a group or as a gender were so stupid, we would be eager to insure that a maximum number of these stupid people were given ready and free access to birth control so that fewer of them could actually be left

to reproduce and have the responsibility for rearing our otherwise precious babies. But we're not doing that. So it's not because women are stupid.

The next possibility is that women lack a moral compass. This bill could be seen as micromanaging the process because of a *mandatory* ultrasound in which [audio unclear] wants to bring the pregnant but morally-challenged woman back to a moral center where she will disavow the immoral tendencies she's displayed when she sought to end the unintended pregnancy. No, that can't be it either. That cannot be the underpinning of the bill. If it were, we would be horrified at the thought of such immoral women being in the position of rearing and morally grounding our children. We would be eager to insure that women have ready and free access to contraception so that fewer of these immoral women would be in the position of rearing our precious children. But that's not happening. We aren't talking about contraception. The presumption must be dispelled...dispelled. We are not acting out of a conviction that women lack a moral compass, and thank you very much to the bill sponsors.

So if the bill is not trying to help weak and stupid women defend themselves against the wicked doctors and activists and trying to bring them back to their moral high ground, then what is the bill trying to do? Have no doubt, don't be misled: this bill is not about abortion. This is about women. It's about women gatekeepers, about women knowing and accepting their *natural* role, about women being returned to the [audio unclear]...whether they like it or not.

For the many decades that we have been engaged in a discussion, a debate, a controversy... It's a battle over what we call abortion, but it is not abortion at all. It is about returning women to their place as keepers [audio unclear]... Our society is in the last stages of a terrible battle over gender roles.

There are many things that [audio unclear] say about the destruction that our whole society and world-wide is going through right now. We're dealing with huge economies, changes in our economy from the state economy to the national economy to an international one. People are worried about keeping their jobs. What do they need to do? How do they need to be educated? Communities are being dispelled. We have populations going from one country to another faster than we can handle it. But people are worried and upset, and they are looking, as they always do in a time of transition, as we are transitioning over the roles of women, over where we can find stability.

There are many people in our country who see the changing role of women as one of those changes that *can* be controlled. We *can* be stabilized. Women as the center of the home, women as the ones who say "no" to the inappropriate influences, women who are to be protected—that is the safe place. And we who are my age grew up knowing that. But this so-called stability took a terrible toll. We who are older were all too familiar with that toll. When women couldn't control their fertility and became pregnant, they paid the price. If they were unmarried, we saw them... We saw them disappear from our homes. They didn't come back. We saw heartbroken adult women quietly surrender their children because they were not married and it was almost impossible for them to take care of them. We saw women who had far too many children when birth control was either unavailable, unacceptable or impermissible because of religious affiliations that governed the household.

But this bill is about abortion only as far as it is a further harassing tactic to the ultimate destruction of the right to terminate an unintended pregnancy and making misbehaving have consequences. The obscene aspect of this bill is that there is no demonstrated concern for women so that they *can* control their fertility. This demonstrates that having them unable to resolve the unintended pregnancy is the goal...It is the goal. To return to the so-called stability of days when pregnancy was punishment, to say that if you act badly you will get pregnant—the ultimate weapon...The weapon is the baby. If you do not act properly, you will become pregnant. With this bill it is almost impossible to become not pregnant. That punishment then becomes that baby. Now how obscene is that? Behave or you will have a baby.

If the bill sponsors here in North Carolina, in Texas, in Oklahoma, in each of the other states were nearly the same wretched bill is being run really cared about the rights of the unborn, they would make sure that...that each and every day they were working to make sure that every single female of child-bearing age, whether a minor or as a full-grown woman, has free, easy and is urged to have access to contraception that works for her body and her life circumstances. We would resolve this on the front end not the back end. We would act proactively, not reactively.

No woman should ever become pregnant unless she chooses to, but that isn't [audio unclear]...It purports to protect women. It does not. It purports to help women make better and more informed decisions about abortion. It does not. This bill has nothing to do with abortion. It has only to do with women and their place in society. Abortion is the distraction. Don't be deceived. It's not about abortion. It's about women. This is pathetic exercise in deception. I would strongly urge you to vote against this bill.

**Chair Stevens:** Representative Burr.

**Rep. Justin Burr (R):** Thank you, Madam Chairman. I didn't take drama in high school, so I'll just cut to the chase. You know, who would have thought life would be controversial? Who would have thought? I mean, out of all the things in the world, who would have thought? You know, to me this is a bill that is pro-choice. It's giving women an option. It's showing them the two paths they can take. I mean, what's more pro-choice than that? If you're truly pro-choice, this is a good bill. And I would argue Planned Parenthood is not pro-choice; they're pro-abortion, plain and simple. They advocate for abortion. So, I mean, they can stand up here and say they're pro-choice all day long and scream it till the cows come home, but it's just not the case.

You know, several things I want to point out. My understanding, and correct me if I'm wrong, 25 states already require a waiting period right now. So we would be the 26<sup>th</sup>. So, already half the states in this country already require it. A number of states already require ultrasounds. And...

**Chair Stevens:** Representative Haire, if we could yield the floor to Representative Burr.

**Rep. Burr:** As I was saying before I was interrupted, there are already currently a number of states that require ultrasounds. My understanding is that a number of the folks...a number of the women [*audio unclear*]...Representative Bordsen, though I won't use the word she said, I think most women are intelligent. I guess we're going to have to disagree about that. But most of the women appear to have...My understanding from what I read, 90% have abortions out of convenience, not out of health reasons. So I won't...

**Chair Stevens:** We'll stay in order please...Maintain order.

**Rep. Burr:** So I would like to [*audio unclear*]...that out, but I also would like to go back. Representative Glazier wanted to quote the Fourteenth Amendment that we cannot deny *life*, liberty or prosperity, the pursuit of happiness. But I'd like to point out "*life*" is in there. And I do believe that's right and we should support the Fourteenth Amendment.

And as the Chair of the Health and Human Services Appropriations Committee, I'd like to point out that this fiscal note...One, I think that's ridiculous that we're saying that we're going to have a fiscal impact because children are born. I mean, that's absurd to me. We don't base anything off that here at this body. But with the budget that we put together, I have no doubt that if we have to spend \$6.7 million next year because more children are born, that we can do it.

I appreciate you filing this bill. I appreciate you having the courage to do what you're doing. Both of you, thank you for doing this.

**Chair Stevens:** And Representative Bryant, I didn't really intend to cut you off. You have 3 or 4 more minutes. Would you like to talk?

**Rep. Bryant:** Well, I just need to get one...

**Chair Stevens:** Sure.

**Rep. Bryant:** I've been sitting here combing through this because I'm confused, and I apologize that it's so overwhelming to me. I don't get the example [*audio unclear*]...

**Chair Stevens:** Are you taking Representative Blackwood's place?

[*laughter*]

**Rep. Bryant:** I am. Angela Blackwood. [*laughter*] I just need to hear, what is it that I have to sit down and listen to, to get this abortion? That's what I want to know. Exactly what is it I have to listen to...?

**Chair Stevens:** Staff will...Staff will explain it.

**Rep. Bryant:** And in what...Your assumption is it will be written and something I have to listen to.



**Hal Pell:** There are two provisions in the bill. If you look on page 2, it starts at 90-21.82. That's the informed consent, and subdivision 1 is basically the medical information portion of that information. You would have to hear the name of the physician that you see under sub-subdivision a, b, c, d, e...

**Rep. Bryant:** I have to actually be told that?

**Hal Pell:** Those are things that you must inform the woman, by telephone or in person. It can be by telephone. Those are the things that you have to be told. Okay?

**Rep. Bryant:** Okay.

**Hal Pell:** And then over on page 3: the location of a hospital, relating to the doctor's clinical rights. So that's the information you have to be told. Now, relating to the medical...number 2 on page 3. Okay, now these are other things that the physician or qualified professional must inform the woman of, and it can be concurrent to the 24-hour period, so it doesn't have to be an additional 24 hours period. It can happen at the same time as the other. And if you'll look down again at line 32, you'll see the [audio unclear] ...that the person must also be informed of.

**Rep. Bryant:** Right.

**Hal Pell:** And those are the a, b, c, d, e, and then again, the same woman's right to either review those printed materials that are on the internet or not.

**Rep. Bryant:** So I have to be told, and I have to write?

**Hal Pell:** You have to be told there are printed materials and you can have them mailed to you or you can look at them on the internet.

**Rep. Bryant:** But now, Representative Stam, you said I could get material and not listen? I'm trying to see where that is.

**Rep. Samuelson (?):** No, he's gone over the things that have to be spoken to you, and then there's another package of stuff there that is given to you in written form. You don't have to read it, but it has to either be given to you, mailed to you, or you can get it on the internet.

**Rep. Bryant:** I want to make my comment now.

**Chair Stevens:** Please.

**Rep. Bryant:** This is my concern, because I was a little confused about that. If these items in number 2, in particular, are not about my medical...This is propaganda...social services information...And you know, what the husband has to legally do, etc., etc. [audio unclear]...and that's also my concern. And I feel like it's a one-size-fits-all situation. We have it applying, whether it's an issue of sexual violence, whether it's an issue of genetic issues, whether it's an issue of convenience like Burr was talking about, or whether it's an issue of a difficult family situation, psychological situation. We have a one-size-fits-all formula. A state-ordered formula or propaganda, in my opinion, that's biased and based on political point-of-view that fits all these situations.

And I also worry about political judgment of the professional or the doctor providing this. What is going through this process and forcing them to say this and listening to this and seeing your client getting agitated or some psychological, negative psychological consequences of this...Does the professional have the authority to say, "Well, what I'm doing is unhealthy and unhelpful to this patient who has come to me, given what they have already said they wanted?" So I feel like this is unfair to the women. It's unsafe for women. It's based on a political agenda and not based on health, and I think there are truly reasonable ways that you could have provided to come up with these same goals. And again it's over-reaching and going overboard given the authority...I mean, I understand you have power and you have the majority, but I think this is going too far. It's definitely not supportive of women and I'm pained—strongly pained—by it.

And surely while there are racial disparities as it relates to what women's choices are and societal pressures related to that, this information is not solving that problem. And I think there are African-American women who

probably want and need more information and if this bill said if women wanted or needed more information or if it was targeted to address racial disparities in healthcare access, I could see that. But this is, again, a one-size-fits-all that will not solve any of those problems. And I strongly urge opposition.

**Chair Stevens:** And I don't think that I would call you Representative Blackwood after that because you have clearly got what you understand. We're going to entertain the motion and we're going to do a roll-call vote, but first I'm going to allow Representative Samuelson to make some final comments.

**Rep. Samuelson:** Thank you Madame Chair. Members of the committee, a lot of people have suggested that they know what my motives are and my intents in running this bill. I will grant to those who know me—many of you don't—but to those who do that you don't really think that I think that women are stupid or immoral. In fact, my motive behind this bill has to do with the fact that I think women are very intelligent and very moral, but they are not always informed. I can't tell you the things I thought I knew going into delivery that afterward I said, "You didn't tell me that," and he said, "Yes we did," but I didn't remember it.

This is about making sure that women know what they need to know before they make a very serious decision. I'm not downplaying it; I'm not implying that the mother somehow flippantly makes this decision. I'm recognizing the seriousness of it and her need to have that information and to have it ahead of time.

Now, I'm not a doctor. I was a Communications major, and one thing as a Communications major was we learned that over 70% of communication is tone, it's setting, it's non-verbal's. And so yes, this may be prescriptive, but that doesn't require that the doctor give it in a cold, calculated, hard way. It can be done with sensitivity to the way the woman is addressing it, responding to it. It can be done in a setting that affirms that she is able to make a moral choice, that she's able to make an intelligent choice. Just because we are saying that these are the things that need to be covered doesn't mean we are telling them the tone of voice, the setting and everything else that goes around it.

I believe that the women in North Carolina are very capable of making the right choice for them and their family if given the full amount of information with enough time to consider it. I urge your support for the bill.

**Chair Stevens:** Representative McElraft.

**Rep. Pat McElraft (R):** Thank you Madame Chair. Members of the committee, I wish all the women had the doctor that you had. And I'm so sorry about your situation, but you heard from Ms. Stewart...I think that was her name. Ms. Stewart had five abortions and not at one time was she ever properly shown the ultrasound. And I come from this from a personal issue too, and I'm going to tell more about it on the floor debate. But I have a niece by marriage to my nephew. Not only was she not given a chance to see an ultrasound, when she asked for it the nurse said, "You have been doing drugs. Your baby is going to be deformed." She said, "But let me see an ultrasound so I know." They would not allow her to do that. They would not allow her to see it.

Finally another nurse came in after my nephew came through the door demanding that she see the ultrasound. When he came through the door he was very threatening I'm sure. But after she saw the ultrasound and saw that she was further along than anybody at Planned Parenthood ever told her she was and that there was a perfectly formed little human baby in her womb she was so upset. She didn't know the name of her doctor. She didn't even know...She was in a dark house, sent there by Planned Parenthood. And I tell you, there are multitudes of women who do not get to look at their ultrasound. It's a money-making business...It's a money-making business. And we need to let the Ms. Stewart's of the world and my nieces of the world be informed. It's not a true choice unless you have all the facts. Thank you.

**Chair Stevens:** Representative Stam is recognized for a motion.

**Rep. Stam:** I move that the Proposed Committee Substitute be given a favorable report, unfavorable to the original bill.

**Chair Stevens:** Madam Clerk, would you call the roll?

**Committee Clerk:**

Bordsen: *No.* Bordsen, no.

Bryant: *No.* Bryant, no.

Burr: *Aye.* Burr, yes.

Faircloth: *Aye*. Faircloth, yes.  
Glazier: *No*. Glazier, no.  
Guice: *Aye*. Guice, yes.  
Haire: *No*. Haire, no.  
Hilton: *Aye*. Hilton, yes.  
Ingle: *Aye*. Ingle, aye.  
Martin:  
Michaux: *No*. Michaux, no.  
Pridgen: *Yes*. Pridgen, yes.  
Stam: *Aye*. Stam, aye.  
Stevens: *Aye*. Stevens, aye.  
Daughtry: *Aye*. Daughtry, aye.

[audio unclear]

**Chair Stevens:** By a vote of nine to five the bill carries. Thank you. And thank you everyone for your decorum. I know it's a very emotional issue, but thank you for your attention. If anybody has any recorded statements they want to submit to the committee, we'd be happy to accept them if you'll just see our clerk.

**HB 854 – Abortion-Woman's Right to Know Act  
Remarks on House 2nd Reading  
June 8, 2011**

Audio available at [this link](#)  
Debate begins: 01:08:44

**Acting Speaker Dale Folwell (R – Speaker Pro Tem):** Representative Samuelson is recognized to explain the bill.

**Rep. Ruth Samuelson (R):** Thank you, Mr. Speaker. Ladies and gentlemen of the House, this bill has been out there for a while, but I'm going to take a minute to go through it, just so we know what is in it and what is not. There will be an amendment coming to take out a section.

The short version is we do a lot of talking around here about transparency and taking the time to know all the facts and to deliberate about a decision before we make it, because the decisions we make here are very important. The decision about an abortion is also a very important decision that needs time and needs to make sure people have full information to make the decision that is best for them to live with for their entire life. We believe there is a way to address that that respects the women and lives they are carrying, and that's this bill.

The first section of it is basically definitions. You got this handed out to you last night if you need it, but what we do starting in the next portion on page two is the informed consent for an abortion, and it has two parts. The first part is really going over the medical information. Who is the doctor? Does he or she have liability insurance? What are the risks of carrying to term or terminating the pregnancy? How close is the hospital? And it includes information on offering the ultrasound, which we have now called a "real-time view." In addition to what we would call the medical information, there is a requirement that there would be some information on the social services, or what other public services may be available to the woman should she choose to carry to term. This information is also included. Then there is a packet of information that the doctor doing this review will need to give her, but she is not required to read it.

Both the medical and social information can be received in two ways. The woman, if she lives far away, may call and receive the information in a conversation by phone and then receive the written materials in the mail or find them online, or she may come into an office and meet with someone face-to-face and receive the written materials or find the rest of those materials online. We've tried to address people's concern about people who may be travelling the distance and making sure that can be done. That has to be done 24 hours before she can go for an abortion. Also, at some point between seventy-two and four hours before the abortion, she will have an ultrasound. In ninety percent or more of the abortions today, an ultrasound is already done, so this is not an onerous requirement. She is now offered the opportunity to see the ultrasound or not. She is not required to see it, but she is offered an opportunity to see it.

Then, if you go to another section, we have informed consent of a minor. We already have laws about minors needing to have informed consent. The one piece we're going to take out is going to have to do with that. Mr. Speaker, if you don't mind, I'd like to send forth my amendment.

**Speaker Folwell:** The lady is recognized to explain the amendment.

**Rep. Samuelson:** Section 2 had to do with parental consent. It copied a portion of our existing law and added that parental consent needed to be notarized. There were some questions about the notarization on a couple of levels. People had brought up concerns about HIPPA, even though this does not violate HIPPA. We listened to those concerns and addressed that. The other issue is when a woman may be coerced into having an abortion, sometimes the person who is doing the coercing is also part of the issue of having it notarized, so we thought we would address that. Someone brought to me the idea, in some small towns, of the rumor mill issue that can happen if someone has to go get a notary, so we respect her privacy on that. I do request that you support the amendment to remove the requirement that a minor's consent be notarized.

**Speaker Folwell:** Representative Ross, please state your purpose.

**Rep. Deborah Ross (D):** To speak on the amendment.

**Speaker Folwell:** The lady is recognized to speak on the amendment.

**Rep. Ross:** Thank you, Mr. Speaker and ladies and gentlemen. I want to thank Representative Samuelson for this amendment; I think it's a very good amendment. It definitely will protect the privacy of the young woman and her parent, and please do not underestimate what a notary who does not have any duty of confidentiality might share with others. I commend the amendment to you.

**Speaker Folwell:** Further discussion, further debate on the amendment? If not, the question before the House is the passage of the amendment offered by Representative Samuelson to the House Committee Substitute on House Bill 854.

*[Amendment passes, 109-2]*

**Speaker Folwell:** Representative Samuelson is recognized to debate the bill.

**Rep. Samuelson:** Thank you, Mr. Speaker, and thank you, ladies and gentlemen for supporting that amendment. I'll make the rest of my comments very short. There is a fiscal note that goes to this; if you have seen the fiscal note, it said \$6.7 million. I'll admit, when I looked at it, I was shocked until I realized that \$6.6 million of it is due to the estimation that 1,149 additional children will be born as a result of the passage this bill. They calculated that a certain percentage—I think 50% or so—would be likely to be delivered either fully on Medicaid or partially on Medicaid, and so this was the additional Medicaid cost of those children being born. To help offset that cost, they noted that there are medical risks associated with abortion and as a cost that would have been incurred if we do not pass the bill there would be an additional \$39 million. So, even though there may be a cost of the children that are born, the ones that are born that will have fewer medical risks also had savings. I urge your support of the bill for that.

One other comment: unless people wonder if we're trend-setting, thirty-four other states already require something of this sort in terms of counseling before an abortion and a waiting period. I do urge your support.

**Speaker Folwell:** Representative Parfitt, please state your purpose.

**Rep. Diane Parfitt (D):** To speak on the bill.

**Speaker Folwell:** The lady is recognized to debate the bill.

**Rep. Parfitt:** Thank you, Mr. Speaker. I stand before you and my colleagues today to debate House Bill 854, titled "Woman's Right to Know."

When I came to Raleigh it was because of my work fighting for child-advocacy issues, healthcare issues, jobs and education. I did not intend to be in the heat of the abortion debate. I believed we'd settled that with Roe v. Wade, and I'm surprised that in 2011 we have devoted so much time here to this and other issues related to women's freedoms. Rest assured this is about women's freedoms; this is not an abortion bill.

We are moving backward instead of forwards on issues that are important to North Carolinians: education, jobs and the economy. I have heard bills introduced in this House called "simple bills" or "good bills" or "bad bills," and many times they are anything but simple, good or bad. Those single words cannot come close to describing this bill. It is not only a bad bill, but an intrusion into the basic principles of privacy in the doctor-patient relationship, as well as the personal crisis that faces any woman who has an unwanted pregnancy.

The first issue I have is with the privacy of the doctor-patient relationship. It will be violated with this bill that requires the physician to provide informed consent as preordained by the State. We currently have a statute on the books that requires physicians to provide all patients with informed consent prior to any medical or surgical procedure. Physicians are trained to do this in a kind, professional manner that is directed to the needs of the patient. They can respond quickly to a patient who requires more information and ease the concerns or adapt to a patient who responds best to less graphic details.

In the case of pediatric patients, with whom I spent over fifteen years providing direct nursing care, the physician always provides information to the patients, delivered at the level they can understand. As a child they need to know what is happening to them, but the physician is also required to provide informed consent to the parent or guardian. With this bill, the physician *must* provide graphic, detailed informed consent to both the minor child who is pregnant and the parent or guardian. There is no provision in this bill for adapting the informed consent to the age-appropriateness of the child.

This may sound like a small detail, but imagine for a minute that you are a fourteen-year-old girl who has been raped by her father and you are pregnant. Yes, I am very sorry to say this does happen. I worked with cases like this before. This fourteen-year-old girl barely understands what has happened to her. She has been sexually abused by a person she has trusted, and now she is going to have a baby while she is only a child herself. What this bill wants to do is re-traumatize her by showing a scared, vulnerable young girl an ultrasound of a fetus, make her listen to a fetal heartbeat, if it's detectable, and tell her that as a consequence of this abortion, she may never get pregnant again.

An ultrasound is not normally done until the twentieth week of pregnancy, but we are proposing to do it before then. This part of the informed consent is of negligible consequence.

According to the Mayo Clinic, infertility is rarely a problem after a therapeutic abortion. I contacted a nationally-known and respected child expert on child sexual abuse, Dr. Howard Loughlin of Fayetteville. He is recognized for his work with victims of sexual abuse. He shared these thoughts with me based on his experience with abuse victims:

I think everyone should be fully informed about any medical procedure before authorizing this. This includes non-surgical alternatives, including taking pregnancy to term, adoption, etc., and surgical risks. I don't support following this mandated protocol in any case, but I am extremely concerned about requiring its use in cases where the pregnancy is the result of a crime, however the crime is classified: rape, statutory rape, incest, or sexual abuse. ... Women and girls who are victims of a crime have already suffered major emotional trauma. They and their legal guardians do need full information about their alternatives and pros and cons, but in my opinion, adherence to this protocol provides a significant risk of further adding to their long-term trauma regardless of whether or not they decide to have an abortion.

One more consequence of government-dictated informed consent is that it does not respond to the needs or appropriateness of the patient situation. Many patients of other types of medical or surgical procedures have difficulty with informed consent. My husband is a urologist, and he takes care of patients with problems of the kidneys, ureter, bladder and male genitalia. One of the procedures he does on young boys is surgery for undescended testicles. This is when one or both of the testicles in a baby boy fail to move into the scrotum before birth. There are no symptoms besides that which a physician can detect upon exam. If the testicle has not descended by age one, it is recommended that surgery be performed to prevent irreversible damage resulting in infertility. In over 35 years of practice, my husband has performed many such surgeries, and in every case he has provided informed consent to the parents, usually both parents. In many cases, it is the father who has difficulty hearing the details of the informed consent. On several occasions, the fathers have gotten light-headed and almost passed out in his office with the

description of the surgery. If my husband did not respond to the capacity of the parents to handle the informed consent, he would not be doing his job.

Can you imagine if he continued to force the parent who had passed out to listen to the description of the surgery? A caring, professionally-trained doctor will adapt to the situation and tailor the informed consent to the patient's ability to understand, at the same time comforting and assuring the patient. If the physician has to follow a government-dictated script, he or she cannot do this.

In closing, I want to say this is a punitive bill directed at controlling women's reproductive rights. It intrudes on the doctor's ability to provide medical counseling to patients in response to their needs. It has politicians determining what informed consent is: a one-size-fits-all with no allowance for what the patients need.

I also want to share with you some comments made by my colleagues across the aisle. On Monday, May 16<sup>th</sup>, while debating the bill to allow patients access to their pathological materials, Representative Glen Bradley stood in favor of that bill because, he said, "Patients should have the right to have control over their bodies." On Tuesday, May 17<sup>th</sup>, while debating the Right to Life license plate, Representative Gillespie said, "People have a right to counsel any way they want."

I ask you to trust women to do what is best in their life situation, to trust doctors to practice medicine the way they were trained, and to recognize that many times medical procedures are performed that we do not like, but are in the best interest of the patient. I am asking my colleagues to vote no on House Bill 854 and for the concerned citizens of North Carolina to stand up for women's rights.

**Speaker Folwell:** For what purpose does the lady from Wilson, Representative Farmer-Butterfield, rise?

**Rep. Jean Farmer-Butterfield (D):** To speak on the bill.

**Speaker Folwell:** The lady has the floor to speak on the bill.

**Rep. Farmer-Butterfield:** Thank you, Mr. Speaker. Ladies and gentlemen: bad medicine, bad policy, pure politics. The bill tells medical providers how to practice medicine and almost exactly what to say to the patient. Folks, doctors took an oath—a medical oath—so this is not necessary. It puts doctors (from surveys I've done) in a position of worrying about liability versus patient care and treatment. It intervenes in the planning of medical care and treatment between the patient, the doctor, and other medical providers.

It places demands and limits in terms of Planned Parenthood. In fact, Planned Parenthood would do prevention in many instances, so why would you not want to support Planned Parenthood?

You're talking about a 24-hour waiting period, an ultrasound, an opportunity to view images and hear a heart-tone? Women should not be intimidated and frightened. They should not be put to shame any more than they already are in seeking and determining any form of medical screening and treatment.

From the ladies that I've talked to—and I've talked to several in different parts of the state about this bill—it is already agonizing and difficult to make a decision like this. Why make it more difficult? Contacts with people who have contemplated an abortion and elected not to have one were made, and contacts were made with those who did have abortions. My survey indicated that 60% of the women I talked with oppose this bill. There are no provisions for gender equality and justice—provisions are for gender inequality and oppression. Who else has to have these kind of directives in their medical treatment? Certainly not for prostate cancer. Why do it for women?

Indeed, I thought Republicans wanted to take regulations out of the lives of people, but now we're putting them into the lives of women. Bad medicine, bad policy, pure politics. Vote no.

**Speaker Folwell:** For what purpose does the lady from Guilford, Representative Adams, rise?

**Rep. Alma Adams (D):** Thank you Mr. Speaker. I'd like to ask the lady, Representative Samuelson, a question, and then I'd like to speak on the bill.

**Speaker Folwell:** Representative Samuelson, do you yield for a question?

**Rep. Samuelson:** I yield.

**Speaker Folwell:** She yields.

**Rep. Adams:** Thank you. Representative Samuelson, I've had the chance to look at this bill pretty thoroughly. On page four, line 36-41, the bill speaks to providing assistance and giving women basically a list of services--and I think I'm quoting the right part. Are there any guarantees in terms of services? Providing a list does not necessarily mean they will get them. Are any provisions made to really help the women to secure those services?

**Rep. Samuelson:** The information is for information purposes only to let her know what services may be available, and they're supposed to tie it as much as possible to the geography where she lives. However, there is never any guarantee that she would necessarily qualify for them. It's simply additional information, which adds to the plus of a 24-hour waiting period, as she would then have time to check and see if the likelihood is that she would qualify for them.

**Rep. Adams:** Thank you. One other question, Mr. Speaker?

**Speaker Folwell:** Does the lady yield for a follow-up?

**Rep. Samuelson:** I yield.

**Rep. Adams:** On page five you make reference to drawings being the work of an artist. I'm curious about who creates them and who would review them for accuracy. I'm not talking about the camera thing; I think it says drawings, and I'm curious about what that means, who would do them and how they would be reviewed for accuracy.

**Rep. Samuelson:** I don't see the line that says drawings, but I assume you're referring to the printed information and the pictures that are supposed to be in that. That would be determined later by the Department [*of Health and Human Services*] as they draft them. There are models that have been done in twenty other states that have this exact sort of thing. I don't see the line that you're exactly referring to.

**Rep. Adams:** May I respond, Mr. Speaker?

**Speaker Folwell:** Does the lady yield for additional questions?

**Rep. Samuelson:** I yield.

**Rep. Adams:** On page five, line two, at the very top of the page.

**Rep. Samuelson:** Okay, what you're talking about starts on page four, at the very bottom, "The pictures shall contain the dimensions...?"

**Rep. Adams:** Yes.

**Rep. Samuelson:** The materials will be determined by the Department, so they will determine who drafts them. There are samples that have been done all over the country where these other states have done them, and I'm sure they will find...It's a picture. I was assuming it was a photograph, and I don't have a strong feeling one way or the other, but I do know that's determined by the Department.

**Rep. Adams:** Thank you. To speak on the bill, Mr. Speaker?

**Speaker Folwell:** The lady is recognized to speak on the bill.

**Rep. Adams:** Thank you very much, Mr. Speaker. Ladies and gentlemen of the House, America is a nation built on a foundation that values choice, liberty, and freedom. "No woman can call herself free who does not own and control her own body." Those words are as true today as they were many years ago when Margaret Sanger made them. The very definition of the word choice is the liberty to choose.

A woman does have the right to know. She has the right to know that her right to privacy should be her choice. She has the constitutional right to know that her right to freedom of choice should be protected. More than 38 years ago, Jane Roe's challenge to protect the woman's right to choice brought about the historic Supreme Court decision

Roe v. Wade, which held that a *woman*, not the legislature, a *woman*, not the congress, a *woman*, not the courts, a *woman*, not even her husband, but a *woman* with her doctor should be able to make a choice about whether or not to have an abortion.

This bill takes away basic protections for women's health that have been guaranteed since that 1973 landmark decision. It overlooks the diversity of women who seek abortions and their reasons for doing so—reasons that are as diverse as the women who seek their care. This bill as has been described is discriminatory and attempts to control women, and it treats them as if they have no individual concerns.

This legislature would not single out a medical procedure affecting only men. If men could have abortions, it would be a civil right. We would not require a man to sit through intrusive, coercive counseling for a medical procedure, mandated by politicians who don't trust him. Of course we would not.

House Bill 854, conspicuously called "Woman's Right to Know," really wants women to know that the government has no respect for her as a person or her ability to think or to make decisions about her health without their interference. It frightens, it shames, it torments, it terrorizes women to make them feel guilty for making the choice of abortion in the first place. According to the *Durham Herald*, "This bill is written as though women who walk through the clinic door did so by accident."

Women are thinkers. We are intelligent and capable of making sound judgment calls about our health. This bill seems to suggest that women aren't capable of making health decisions without politicians telling her what to do. This bill overlooks the fact that women make approximately 80% of healthcare decisions for their families, according to the Department of Labor.

What's next? Are we going to start second-guessing every health decision that a woman must make for her family? Let's be real about it...or should I say it's really about trust, or the lack of trust. Some of us trust women to make personal decisions without government intervention and some of us do not. Some of us do not believe that women have the right to make reproductive health decisions. It's obvious that proponents of this bill don't like the decision that a woman has made to have an abortion in the first place, so they want to change her mind.

Propaganda that we receive from the Right to Life folks claims that African-American women are targeted and have more abortions. I want to speak to that as one of the six women who fit in that category on this floor. As an African-American woman I'm offended at this deliberately skewed, one-sided opinion that doesn't give the real picture.

The *Trust Black Women* partnership, which is a group of old and young women both pro-choice and pro-life says that, "Every woman has the human right to have a child, to not have a child, and to parent the child she has." They agree that black women make decisions every day about whether to parent or not, or whether or not to give birth. They claim, "Those who think they should dictate our choices won't be there when the child is born, to help us fight for better education and increase childcare, help our kids out of jail, keep them out of jail, to help send our children to college or get affordable healthcare."

Abortion rates are higher among African-American women, yes, and other ethnic racial minorities, because they have higher rates of unintended pregnancies. That is a proven fact. Because of that they're more likely than other women to seek abortion. A large number of minority women who receive abortions are poor and do so through clinics; therefore, data is more available on these women. If we had numbers on other women who were not African-American—perhaps Caucasian women who pay privately—it would probably reveal some different numbers altogether. If we're truly concerned about women's health, then the real question should be, "What can we do to help these women have fewer unintended pregnancies and achieve better health outcomes?"

Sixty percent of women who have abortions already have a child or children. They know what it means to be pregnant, to give birth and to know the love of a child, and they also know the responsibility. In fact, the number one reason that women give for choosing abortion is concern or responsibility to other individuals. Placing restrictions on abortion will do little to reduce the demand for them.

The result will be returning to the dark days: the back-alley abortions with coat hangers. I don't think we want that. As women, your right is to know that women deserve better than House Bill 854. This is outrageous, an insult to women's reproductive rights and our freedom as people, and I encourage you to vote no.

**Speaker Folwell:** For what purpose does the lady from Carteret, Representative McElraft, rise?

**Rep. Pat McElraft (R):** To speak on the bill.

**Speaker Folwell:** The lady has the floor.



**Rep. McElraft:** Thank you, Mr. Speaker and members of the House. I've heard a lot about doctor-patient relationships. If all that we had in Planned Parenthood and other abortion clinics was doctor-patient relationships and they truly informed like they should, then we wouldn't be here today.

I have a small group of affidavits of women. This is just a small portion of them; I couldn't bring the big stack that I have. These are women who went through abortion clinics, had no idea who their doctor was, didn't get any information. They just said, "Do you want an abortion? Give me the money and we'll do it." Now that's wrong. That's wrong because women have the right—and I stand here for all women, it doesn't matter what race—we have the right to know what is happening to our body and not to be hidden. We had testimony from women in Judiciary B who came up and said, "I had five abortions and not one time did I know my doctor's name. If I had had a reason to sue that doctor, I would not have even known his name."

On your desk you have a picture. I have a personal story about this, and this is the reason from day one that I got here, I got on the Woman's Right to Know bill. I call this law "Colby's Law." Fourteen years ago my sister's son—my nephew—and his girlfriend were deeply into drugs and alcohol, *deeply*. She went to Planned Parenthood and got her birth control, but she got pregnant. She went to Planned Parenthood, asked them what her choices were and they told her she would have a deformed baby because of her drug use. Her only option was abortion. "Do you have the money?"

They got the money together and my nephew told her, "If you have the abortion, I'll never see you again. I will go with you and do what you want on this issue." So he went with her to what she describes as "a very dark house." In that very dark house a nurse attended to her. My nephew asked the nurse if she could at least see the ultrasound. The nurse said, "I can't show you that. I'll get fired." And she then looked and said, "Why? It's my ultrasound. Why can't I see it? What are you hiding from me?" [The nurse] said, "I will be fired."

Because my nephew threatened her, the nurse showed my niece the ultrasound. There was a perfectly formed little human baby in that ultrasound. They had lied to her about how far along she was. They had lied to her about the deformity of that baby.

She left there immediately. As you can see in the picture, we had a wonderful wedding. She wore white, and Colby was in her abdomen. She carried him and she's had two other sons.

This is a loving family that has been blessed by a young man named Colby. Colby is the delight of our lives. Colby knows this story and he tells his testimony. He talks about what might not have been. And my wonderful niece-in-law talks about how she would have never had the other two children that she had because she would have committed suicide.

This is not what women should go through. This is not what families should go through. They should have every bit of information before they make that all-important decision. This is not about taking away a woman's right to have an abortion; this is about giving her the knowledge she needs. My sister has this quote: she says, "Pat, it's not a true choice unless you have all the information." Please support this bill.

**Speaker Folwell:** For what purpose does the gentleman from Cumberland, Representative Glazier, rise?

**Rep. Rick Glaizer (D):** To debate the bill, Mr. Speaker.

**Speaker Folwell:** The gentleman has the floor.

**Rep. Glazier:** Thank you, Mr. Speaker, and thank you, members. Thank you, Representative McElraft, for sharing, and to all the people who will be sharing stories on the floor tonight. I'll start by talking for a minute about the law, since the law is what we're seeking to change here. The due process clause of the Constitution is involved here, and it is understood to have a lot of components, but one of them is to bar certain government actions no matter what the process or the fairness of the process used.

So we go back for a minute to the law that we seek to change today. In *Roe v. Wade*, the court overturned a Texas law that prohibited abortions unless an abortion was necessary to save the life of the mother. The court held that the personal right to privacy includes the right to have an abortion, but that right is not unqualified, and must be considered against important state interests and regulations. The court determined that because abortion is a fundamental right, state regulations should be strictly reviewed and valid only if the regulation could be justified by a compelling state interest, and the regulation was narrowly drawn to further that state interest.

According to the court several decades later, in the decision *Planned Parenthood v. Casey* (decided by multiple justices of the Supreme Court, including Justices Souter, O'Connor, and Kennedy, just as Justice Blackmun was the chief author in *Roe*), the court announced a test in abortion cases and abortion-related regulations. We call it the "undue burden" test for determining whether a statute restricting abortions in any way can pass constitutional

muster. Under *Casey*, a statute is invalid on its face if it places an undue burden on a woman to obtain an abortion before the fetus attains viability. The court went on to define what that is for all of us who have to make decisions like the one we face today, and that is: “Does the statute have the effect of placing a substantial obstacle in the path of a woman’s choice to an abortion before the fetus obtains viability?” And if, in fact, a large fraction of the women affected by the regulation are *so* affected, it is unconstitutional. The court went on to say that the state’s discretion to regulate on the basis of maternal health, whether that’s informed consent or providing information, does not permit it to adopt regulations that depart from sound, accepted medical practice.

As I said in committee, and as I think Representative McElraft and Representative Samuelson have highlighted, this bill contains some basic information that should be provided in every case: general medical risks, name of physician, probable gestational age. Those are things we can agree upon. But the majority in this bill is not content to stop there. Instead it adds several pages of general regulations to use on everyone, and then the requirement that all women must undergo an ultrasound prior to the abortion.

The majority’s protestations of “information only” in this bill continually overlook the natural effects of its one-sided and governmentally-censored information the rest of the bill requires that every woman receive. The sponsors’ assurances—and I believe them in their minds—about the benign purposes of the law are simply belied by its content. This bill has to be seen for what it is: the substitution of a woman’s judgment about her body by the State of North Carolina. The arrogance of the assumption of power that’s contained in this bill has to leave one breathless. The government has no business substituting its own desired outcome for the intensely personal and private judgment of a woman, or she with her family, and she with her God.

I am, as I said in committee, so tired of abortion. Its opponents too often have an agenda, and claim moral superiority that devalue or belittle women that choose the opposite. But abortion rights supporters also sometimes deny the obvious, as Anna Quinlin wrote a number of years ago, and I have always saved the article: “Something dies when an abortion takes place. It is not yet a baby, and it is not remotely the government’s business. But something does die.”

In the tension between the woman and the fetus, the woman, particularly during the first trimester, has the constitutional right in the United States to choose, whether we agree with that or we don’t. However, we all must also know that she cannot ignore that there are two parts to the equation when she makes that decision. The biology of her body tells her that. By contrast, as exemplified in the bill, abortion opponents have never fully understood, in my view, the woman’s psychology across the board here. There are times for many of us when the embryo that is embedded is an incredible blessing, but there are times for some women in which it is a nightmare. We do injustice when we decide that all cases are alike.

Like too much in public policy, we sit here today to try to tell the women of North Carolina what the law is about themselves without *asking* the women of North Carolina. This bill determines that all of them must be told the same thing, in the same way, at the same time. I am tired of abortion, of the dishonesty of the arguments on both sides, of the intractability of the conflict, and mainly of the insensitivity of all of us who pass judgment.

No matter what we legislate today, no matter what we pontificate at our microphones, women will continue to find a way to end pregnancies they cannot bear to turn by the hospitality of their bodies into children. They always have and they always will, whether they do it legally or illegally.

This bill, as Representative Adams said—not meaning to perhaps—may well return us to a time where those abortions were more cruel and harsh and medically unsafe. This bill determines that one size of information fits all, whether a fourteen-year-old rape victim or a married couple, a single forty-year-old woman or an eighteen-year-old headed off to college, the physically ill or the physically fit. We’ve reduced today the most complicated decision to a statutory formula. But of course no woman, let alone all of them, will fit neatly into a black-and-white statutory box. Reproductive decisions take place in the messy grey zone of gut-wrenching choices informed by extraordinary individual circumstances like that highlighted by Representative McElraft and by conscience.

This statute is based on some, but precious little, evidence of medicine, yet it seeks to resolve a major public health issue. It is not based for the most part on peer-reviewed research or serious investigation of medical opinion. There was medical opinion produced at this committee, but on both sides to some degree the medical opinion came from looking out over the crowd of research and only recognizing the friendly hands of each side. The drafters have, from the record, sought only minimal assistance from current knowledgeable national and international medical experts and organizations. No meaningful steps were taken in the committee to evaluate the cost of compliance to the women or the providers, and the statute, if you read it, contains a myriad of detailed and costly provisions that are in some cases medically unnecessary and in others (as I’ll detail in a minute) harmful. They are neither designed to further the health of the woman seeking the abortion, nor likely in most cases to accomplish it. In truth, this statute’s all-transparent purpose and clear effect is to place a substantial psychological, physical, and fiscal obstacle in the place of a woman seeking a pre-viability abortion.

The United States Supreme Court has upheld informed and written consent requirements, but only when the State first has demonstrated that they genuinely further an important health interest. A state may *not* under the law of this country, under the guise of securing informed consent, require the delivery of information designed to influence the woman's informed choice between childbirth and abortion, and rigid requirements like the ones in this bill are stone-like that mandate a specific litany of information to be imparted to every woman, regardless of her own circumstances, unconstitutionally intrude on the discretion of the pregnant woman and her decision. We opened this legislative session with an attack on the mandated federal government health plan, but here we have, as Representative Ross would say, "writ large state-imposed medicine."

My wife and I are both Jewish. One of the diseases that can afflict people of my faith is Tay-Sachs, which can and will kill nearly every baby born with it. We're all tested before marriage to ensure that we're reproductively compatible. Assume with me that that test goes wrong and doesn't pick up the lack of compatibility, and assume with me that the couple gets pregnant with a horribly deformed child who will die very quickly an incredibly painful death. Assume with me that early in the pregnancy through amnio that was found out. Assume with me that couple has to make the decision whether to abort. They will spend time praying, they will spend time together crying, and they will fundamentally make a decision. What this bill tells me is that if I'm in that circumstance sitting there with my wife before we have to make the decision and once we've made it, I have to be told all this information, my wife has to be told that, and then she has to sit and listen and see an ultrasound of a baby she can't bear to bring into this world. How omnipotent everyone in this place must think they are! As a husband and as a human being, my outrage would know few limits at that point--nor do I think any husband's would.

This legislation that we pass must define the liberty of all North Carolinians and not mandate a moral code for our people by criminalizing those who view their spirituality and their conscience and reproductive freedom differently because of their unique circumstances. This bill is a statement of moral repugnance pretending to be a preference between two reasonable choices to solve a problem, and it is no such thing. In the end, the bill sponsors have drafted a bill that sets forth their view of the law as they wish it to be, not as it is. As state legislators sworn to uphold the Constitution, that is simply unacceptable. Today the State of North Carolina in this bill intervenes in the most intimate and private and spiritual decisions in a place it has no right to go. Today we decide we know better than every woman in North Carolina about her body and her mind and her soul.

There is another world out there, my friends, that the majority on this bill refuses or fails to see. And in one sense, never have the worlds been further apart than they are at this moment. But in another, the distance between them I fear, is only one block long: the steps between here and the Governor's Mansion. If this bill travels that one block, we can only hope that this state's first female Governor will make the same decision about reproductive freedom that the nation's first female justice of the United States Supreme Court, Sandra Day O'Connor, made. The women of North Carolina await our decision and quite possibly hers. Paraphrasing Justice Harry Blackmun: for today at least, the right of women in North Carolina to decide for themselves remains. But the signs are evident; dark clouds threaten everywhere. Despite the heat of the day, a chill wind blows through this chamber, threatening to extinguish the light. I will vote no on this bill.

**Speaker Folwell:** Representative Weiss is recognized to comment on the bill.

**Rep. Jennifer Weiss (D):** Thank you, Mr. Speaker. I'd like to ask the bill sponsor, the lady from Mecklenburg, some questions, and then possibly speak on the bill.

**Speaker Folwell:** The lady is in order. Does Representative Samuelson yield for a series of questions?

**Rep. Samuelson:** I yield.

**Speaker Folwell:** She yields.

**Rep. Weiss:** Thank you, Representative Samuelson. Now, I've looked closely at this bill and it's my understanding (Is this correct?) that there is a requirement that within 72 hours of having an abortion, a woman must have an ultrasound performed?

**Rep. Samuelson:** You're correct: between 72 and four hours, because the doctor needs to know the condition and gestational age of the baby.

**Rep. Weiss:** And is there a requirement in the bill that in a healthcare setting where an abortion is to be performed that the ultrasound must be administered either by a doctor or by a qualified technician?

**Rep. Samuelson:** I believe that's what it says.

**Rep. Weiss:** Can you please tell us what the standards are for a "qualified technician" under this bill?

**Rep. Samuelson:** I cannot. I am not trained in that and that is not part of *[my knowledge of the bill]*. For example, I don't know what the qualifications are to be a doctor who can perform an abortion. If there's someone here who does know the answer to that, or can tell me where it is... See page two, section nine: "A registered diagnostic medical sonographer who is certified in obstetrics and gynecology by the American Registry for Diagnostic Medical Sonography (ARDMS) or a nurse midwife or advanced practice nurse practitioner in obstetrics with certification in obstetrical ultrasonography."

**Rep. Weiss:** If a woman cannot afford an ultrasound, how can she meet this requirement?

**Rep. Samuelson:** Our understanding is that there are several options. Since ninety percent of abortions already include (built into the cost of the abortion) an ultrasound, ninety percent of them at least would be covered by that. We also include in that additional information if there is anywhere in her general area where she may get one free.

**Rep. Weiss:** For those women who are referred on the state website to an agency that provides free ultrasound services, will that agency have a qualified technician under the definition of the bill perform the ultrasound?

**Rep. Samuelson:** If they are going to qualify under this and sign a certification, they will need to be.

**Rep. Weiss:** Is there language in the bill that requires that all the agencies listed on the state website be required to employ only qualified technicians to perform ultrasounds?

**Rep. Samuelson:** The requirement is when they go to perform the ultrasound and sign this particular form.

**Rep. Weiss:** Will all the agencies that are listed on the state website be required to provide a certification to any woman who requests one to ensure that she has met this legal requirement under the bill?

**Rep. Samuelson:** If she is going to certify that she has had the ultrasound, there will have to be the form there for them to sign.

**Rep. Weiss:** Can you show me in the bill where the state requires these agencies to comply with this requirement?

**Rep. Samuelson:** I'm not sure I understand the question. In other words, if an agency does not comply, and she goes to get the ultrasound, then they won't be able to sign the form, and it won't satisfy the requirement. In that case, she'd have to get the ultrasound somewhere else. In other words, it's not guaranteeing that every listed place is a place where she'll necessarily be able to, because these things can change. It's offering her information, a place where she *may* go to get an ultrasound. If she gets there and for some reason they do not have the person they need, that would not qualify.

**Rep. Weiss:** May I speak on the bill, Mr. Speaker?

**Speaker Folwell:** Thank you, Representative Samuelson. Representative Weiss is recognized to speak on the bill.

**Rep. Weiss:** Thank you, Mr. Speaker and members. This bill is requiring ultrasounds for women patients who seek to have an abortion, and is requiring the State to post information on an official website about agencies that provide free ultrasounds for pregnant women. As you know, the bill mandates a 72-hour window for the ultrasound to be in compliance with the law. However, there is nothing in the bill that requires those agencies listed on the state website to ensure that women receive these services from qualified technicians in compliance with the law. This is yet another example of how this bill is creating additional barriers and hurdles for women who are seeking abortions and who are trying to comply with the state law. They need an ultrasound, they look on the state website, they see

where free ultrasounds are performed, they go get the ultrasound, and then they find out when they come back to get the abortion that the ultrasound...

**Speaker Folwell:** For what purpose does the lady from Carteret, Representative McElraft, rise?

**Rep. McElraft:** I wanted to ask Representative Weiss a question.

**Speaker Folwell:** Does Representative Weiss yield?

**Rep. Weiss:** Yes, I yield.

**Speaker Folwell:** She yields.

**Rep. McElraft:** Representative Weiss, do you understand that in the State of North Carolina, all ultrasound technicians have to be certified and licensed or they cannot do ultrasounds legally in the State of North Carolina?

**Rep. Weiss:** Representative McElraft, there is nothing in this bill that requires that the services provided on this website are required to hire certified technicians, and it is my understanding that there are places that do offer free ultrasounds that may not, in fact, be compliant.

**Rep. McElraft:** Follow-up?

**Speaker Folwell:** The lady yields for additional questions.

**Rep. McElraft:** Would you not think that if those places are not performing ultrasounds with certified technicians that someone would not be reporting them, especially if this bill goes through?

**Rep. Weiss:** Representative McElraft, what I see is what I see in the statute, and there is nothing in this bill that requires any places listed on that website to be in compliance with that law.

**Speaker Folwell:** Representative Weiss, you have the floor.

**Rep. Weiss:** Thank you very much. This is yet another example of how this bill is creating additional barriers and hurdles for women who are seeking abortions and who are trying to comply with the state law. I believe that the women of our state deserve better than to be sent through a myriad of government-created hurdles and a maze of complicated, government-ordained regulations, which judging by this section are deliberately crafted to be difficult to comply with when they're facing this very important personal healthcare decision, and I will be voting no.

**Speaker Folwell:** For what purpose does the lady from Nash, Representative Bryant, rise?

**Rep. Angela Bryant (D):** To speak on the bill, Mr. Chair.

**Speaker Folwell:** The lady is recognized to speak on the bill.

**Rep. Bryant:** Mr. Speaker Pro Tem and ladies and gentlemen of the House, I want to speak to you about my concerns with this legislation. The first thing that concerns me is really the name of the legislation, the "Woman's Right to Know," because I don't feel like it protects my right to know anything.

It would be different if the bill was set up to say that if I ask for information it must be given to me, or if it's not given to me I have certain rights; I could surely support that kind of approach. But this is not my right to know; this bill is about the majority using their power to determine that I have to listen to what they want me to hear about my healthcare transaction regardless of whether I want to know it or not, and whether my doctor thinks it's appropriate for my situation or not, and regardless of whether I already know it. I have no capability to waive it and say I have already researched this and know my information and that I'm ready for my procedure. I have no rights whatsoever. So this is not about my rights; this is about your power to proscribe what all women in this state who are seeking abortion services have to listen to based on your philosophy about this particular issue. That is so patently unfair.

In addition to this, it can put my health and the health of other women at risk, in that regardless of what deadline we're facing in regard to the allowable time for these services or what our personal situations are, we have to wait this amount of time, and now I hear Representative Samuelson say to go from free agency to free agency to see if they can sign my form to give me an ultrasound that I don't even want because you all have passed a law saying I have to have it. This is really not about protecting women or helping women know anything; this is based on some notion of women as the property of the State, property of men, or property of the majority who hold this philosophy and now have to power to force us to approach this choice in a way that *[they]* believe is right rather than what we need, or what we decide is appropriate in a consultation with our doctors and families in our situation.

In addition to this, I'm concerned about some of the penalty provisions in this bill that allow other people, even if I was a victim of rape or incest, the person who violated me could actually file an action against the doctor I'm seeing because these proscribed rules were not followed. I feel like that really is not about my right to know; that doubles any offense that I may have already endured.

In addition, I worry about the safety of doctors. It's very obvious to me that some of the provisions in here are about the doctors identifying themselves in advance, etc. It's only putting them at risk. And we know that while there are people who support this philosophy who are very interested in protecting the lives of these babies—these fetuses who may become babies—and the lives of women, they are not as interested in protecting the sanctity of lives of the doctors who are providing these services. These doctors are constantly at risk of being murdered or injured by people who believe in this movement, and so *[this bill]* is definitely exposing our doctors and healthcare providers to extreme risk of death and injury all in the interest of life, which is definitely a double standard to me.

I want to make one other point about the fiscal note that talks about saving money because there are some risks which come about with induced abortions which, if we reduce the number by virtue of this scheme and all these barriers to the process, that therefore we'll save Medicaid money. If you look at that fiscal note, it cites one study about the risks of the abortion procedure. It doesn't cite a body of literature or a range of studies, and the material that I have looked at shows that the body of credible literature says there's no significant increased risk of cerebral palsy or preterm birth or these other consequences for subsequent pregnancies from a woman having had an induced abortion at a previous time. So it definitely concerns me that this is all sort of positioned from one philosophical point of view and not, as Representative Glazier mentioned, on a broad-based approach taking into account all credible literature and points of view from all the stakeholders and participants involved in this, including the very clear variance in opinion about this from the women in this state whom this will be imposed upon.

All I can say is, "Thank God I'm almost sixty years old," but for the women who are still of childbearing age, please vote red.

**Speaker Folwell:** Representative Ross is recognized to comment on the bill.

**Rep. Ross:** Thank you very much, Mr. Speaker. Ladies and gentlemen, we've heard a lot about the forced information in this bill, and what the State's rights are, and how this is a one-size-fits-all bill, and I'm not going to repeat all of that. What I'd like to do is inform the members who haven't read the bill—because sometimes members don't read bills—and the public about the other things that are in this bill, because we've gotten these handouts about polls, and do people think women need to know things, and do they think they need to wait 24 hours, and we can have disagreements about that.

I think what the public also needs to know, and what you need to know if you haven't read this bill—and if you'd like to read along with me, please turn to page six, at the bottom of the page, under "Civil Remedies"—is that this body, and in particular the new leadership of this body, seems to be very concerned that there have been frivolous lawsuits filed against doctors in North Carolina, and that we're going to run the medical profession out *[of business]*, and that we need to change how we deal with tort reform so that we can protect our doctors from frivolous lawsuits.

Let me tell you, ladies and gentlemen: this bill creates a bunch of frivolous lawsuits with attorney's fees, for the attorney that files the frivolous lawsuit—isn't that exciting? What this bill says is that any person who has had an abortion without getting even one shred of the information that's now state-imposed in here can sue the doctor, even if they don't regret having the abortion, even if they were not physically injured. If only one of the pieces of information was not shared with them, they can sue the doctor and get attorney's fees.

But not only can they sue the doctor, the Attorney General can sue the doctor, and if the woman who had the abortion and didn't get that information was forty years old, her mother can sue the doctor, or her sister can sue the doctor, or, as Representative Bryant pointed out, her rapist could sue the doctor. The rapist could get damages, and the rapist's attorney could get attorney's fees.

This bill creates all sorts of ways to sue doctors who provide healthcare to women, ways we haven't seen in this state, ways that we haven't seen in virtually any state. What I'm not understanding here is why, if we care so much about not having frivolous lawsuits, we're creating a path to frivolous lawsuits.

What this bill is trying to do is get people to not perform a procedure that women are entitled to under the Constitution. Something is very interesting about the next generation of OB/GYNs and folks who perform these procedures. It used to be that older men were our OB/GYNs, because there were more men in the medical profession. The trend now, because there has been so much hostility toward people who provide abortions, is that this generation of people who are willing to give women this constitutionally-protected medical care is now women. It's women. It's women who are unafraid. They're unafraid because they know their sisters' needs. The OB/GYNs who I've seen speak out on this bill have primarily been women. They're willing to put their lives on the line and endure frivolous lawsuits because they sympathize with the situations of other women.

Don't lie to the public. This bill is about shutting down the ability to get an abortion in North Carolina and this bill is an attack on doctors. Please vote no.

**Speaker Folwell:** Representative Keever from Buncombe is recognized to comment on the bill.

**Rep. Patsy Keever (D):** Thank you Mr. Speaker. I just have a few things to say. First of all, if we really care about eliminating abortions, I would encourage this body to put a little more funding into health education and support systems so that we could decrease the need for abortions. That is something we can all agree on.

Secondly, I certainly support women having all the information that they need before making that decision, but I am not for having specific information forced down the throat of a woman by a government body.

Thirdly, I agree that this bill is poorly named: what a woman really has the right to know is that she will be given the right and the respect of this state to make her decision regarding her life and her body. Many of my colleagues promote the idea of local decision-making. Folks, this is the ultimate local decision. It is abominable to me that this legislative body is trying to enter in to this most personal of decisions.

Yesterday Representative Cook talked about grown-ups being allowed to make decisions in reference to voting for judges. Shouldn't women be allowed to make this much more critical, much more personal decision? I urge you to vote no.

**Speaker Folwell:** For what purpose does the lady from Orange, Representative Insko, rise?

**Rep. Verla Insko (D):** To debate the bill.

**Speaker Folwell:** The lady has the floor.

**Rep. Insko:** Thank you, Mr. Speaker. Members, we've been talking about this issue I think since the beginning of the session. And I think that every time the subject has come up, there's been one common ground, and that is that the purpose is to reduce the number of abortions.

After one of the Health & Human Services Committee meetings, a young man approached me and said that he'd like to talk about this some more. We did have some discussion, and I said we should see where we agree. I said that I agree we should reduce the number of abortions, and he agreed on that, so I asked what church he goes to. He said he was a Baptist, and I said I'm a Baptist—so we agreed on that, too. So I said, "How about contraception? That's a good way to reduce abortion." Then he said that even though he was a Baptist, he didn't agree with contraception. He said he did not think we should have contraceptives available to people who were having sex outside of marriage, I guess regardless of their age. We didn't discuss that. Actually, we didn't talk about that—maybe he doesn't believe in contraceptives in any event.

But my brother is Catholic, his family's Catholic, and I have other Catholic family members, even though I'm Baptist. We're a good, integrated extended family. The Catholics in my family use contraceptives and do family planning, so I was curious about this issue, about whether or not this issue is really just about abortion or if we were really also talking about the issue of contraception, and shouldn't we be talking about whether we agree on contraception.

So I went to the web and found some information from the Guttmacher Report on public policy. The Guttmacher Institute is "advancing reproductive health worldwide through research, policy analysis, and public education." I found in this article: "Contraceptive Use Is Key to Reducing Abortion Worldwide." "Extensive evidence demonstrates, however, that when modern contraceptives are made available to women, their increased use

over time replaces previous reliance on abortion and becomes the major factor associated with reduced abortion rates.”

If we want to reduce abortion rates, shouldn't we be talking about contraception instead of these divisive issues that are just to pull out our base at the next election and that divide us? Shouldn't we, when the issue of children and babies and health is with us, shouldn't we be trying to find common ground? They go on to say, “Policymakers seeking to reduce the incidence of abortion would do well to address its root cause—unintended pregnancy—by facilitating widespread access to modern contraceptives and by promoting their effective use.”

There's another website that I found that I thought was also helpful. It had to do with a country that had a very low rate of abortion. The Netherlands has no restrictions on abortion yet has an abortion rate almost 70% lower than that of the United States. That is because in that country contraceptive devices are widely available and free. Sixty-seven percent of sexually-active Dutch females use oral contraceptives compared to 25% in the United States. U.S. women who use contraceptives are 85% less likely to have an abortion than women who do not.

I think we're not talking about the right subject today, and maybe that's a more uncomfortable subject to talk about. The issue we ought to be talking about is contraception and how to prevent abortions and how to get together. Or, we can just stay divided and at each other's throats, trying to pull out our bases for the next election that has absolutely nothing to do with children or women or health. I hope that you will vote no on this, and that the next time we have a bill before us it will be about how we can prevent conceptions and how we can prevent abortions, and we can all vote for the bill.

**Speaker Folwell:** Representative Fisher is recognized to comment on the bill.

**Rep. Susan Fisher (D):** Thank you, Mr. Speaker Pro Tem, and ladies and gentlemen of the House. This again is another instance where everything has been said. So many of you have spoken so eloquently on both sides of this issue, and I have to say that I have been moved by people who have spoken on both sides. I understand that the bill sponsors believe they are doing a good and necessary thing, but this is the government delving into private and personal areas of decision-making.

As I see it, it seeks to lay guilt at the feet of victims of rape and incest, or at the feet of young people—teenage couples who are ill-equipped to carry a fetus to term, much less raise a child.

We've determined in the debate that young women can have the ultrasound performed at low or no cost around the state. What I would like to know is if we will be there, as a state, when the child is born. As we looked throughout this session at tremendous cuts to Health & Human Services, to Education, I want to know if after the young women and girls we are asking to go to these extraordinary measures to have their private lives invaded, will we as a state be there to educate, to hire, to provide healthcare for these parents, for these children, once the child is here. I have some real doubts about that when you look at the budget process we've just been through.

Like Representative Insko, I long for the day when we talk about how to prevent abortion in a more reasoned way, rather than in a way that seeks to control and lay guilt and ask for young people to do things that we really have no business asking them to do. I urge you to vote no on this bill.

**Speaker Folwell:** Representative Haire is recognized to comment on the bill.

**Rep. Phil Haire (D):** Thank you, Mr. Speaker. You know, there's been some wonderful debate on both sides that have been explained, but I have a little legal problem with this. I certainly want to comment that Representative Glazier did an eloquent job on what he did. But you know, I want to go back a little further than that to what I see as the basis of this bill and some other bills that have come up here. I think to do that, you have to go back to the late 1500s.

At that time, when you go back to the late 1500s, there was a King James in England, and he brought all these scholars together that could read Latin and Hebrew and the other. And they got all these Christian books, or books that had been written over a thousand or fifteen hundred years, and they worked, and they put them all together, and it came out about 1600 in what we know today as the King James Version of the Bible. Now remember, that was only put together by men, but it supposedly has the divine inspiration of God to put it together. So, from that time we have seen a growth of a lot of different sects, religions, and all that believe in the same book.

I mean, you know, we've had Anglican, Catholic, Episcopalian, Methodist, Baptist, Presbyterian, Mormon, Seventh Day Adventist, and the list goes on and on of people who still use the Bible as a reference. At the same time, each of those denominations has a different view of what is said in the book. Remember that during this period of time the king ruled supreme in England and whatever was done as far as law or religion all came out of the king.



When this country separated from England, one of the first things that we did under the United States Constitution, under Article One, it said as follows: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." We've tried to protect that over the years, but I certainly am starting to see that there's a back-door approach to this!

We find that a lot of people are running on moral issues for political office and when they do that they bring these moral issues in, like abortion that we're talking about today, or when life begins. That is your right to believe it, but I don't want to believe it, and other people in this chamber don't want to believe it. And throughout this state, should your beliefs and views be dictated over the views of the people of the State of North Carolina that do not believe the same as you do? That gets back to what I consider a back-handed way of avoiding what the Constitution says, because we're not prohibiting the free exercise of religion; what we're doing is using the back door as a pulpit to politics.

That's right; this is a way of using a pulpit in politics, religion in regulations. Whatever we believe, whatever we hear at home, when we go to church—if you go to church on Sunday—or whatever you listen to, or see on television, that has had the effect of being able to come forward and to say that we're going to bring these particular views that we have and express, regardless of what other people think, and inject them into legislation. I mean, I don't say this, but you know some people might say that this bill might be characterized as 'females are frivolous,' 'daughters are dumb,' 'sisters are stupid,' or 'mothers are morons.' I say that not to insult anybody, but it is a little bit... Consider the fact here that we always hear stories about young girls... that when you talk about a bill like this, you always want to use the least possible illustration to put forth your point.

If you read the statistics, most abortions are performed on married women. In many instances, these women already have children and do not want more children. So why suddenly is it necessary to go through all of this procedure that's put there, unless it's an attempt to impose a back-door belief on some female who wants to have the right to exercise what she considers to be whether or not she wants to bring forth birth... to bring forth a child?

Now I'll defend for each of you the right to believe, but don't try to impress what you believe on me by doing this type of bill. I think that's what we're trying to do. Somebody characterized this bill a little differently, as "going back to the old days of trying to keep women barefoot and pregnant." That being said, if this bill passes, I'd like to send forth an amendment in order to balance it off. I don't know if the amendments have been handed out. Mr. Speaker, has it been handed out?

**Speaker Thom Tillis (R):** The gentleman will yield, and the gentleman is recognized to send forth an amendment. The House will be at ease.

**Rep. Haire:** Thank you, Mr. Speaker.

**Speaker Tillis:** Representative Haire, your amendment has been ruled out of order. It is not germane. Does the gentleman wish to continue speaking on the bill?

**Rep. Haire:** Well, he ruled my amendment out of order, but I hope some of you will take time to read it, because it's not just a woman who gets pregnant on her own...

**Speaker Tillis:** The gentleman's amendment was ruled out of order. If the gentleman wishes to continue speaking to the substance of the bill, he will be in order. If he speaks on an amendment that is not before us, he will be ruled out of order and will be asked to suspend.

**Rep. Haire:** Thank you, Mr. Speaker; I certainly don't want to get out of order. Anyway...

**Speaker Tillis:** The gentleman is coming dangerously close.

**Rep. Haire:** Thank you, ladies and gentlemen, for your time. I'm sure maybe one or two of you have listened to this, but as I was saying, I think it's a back-handed assault on the First Amendment of the United States Constitution, trying to put somebody else's views on us, whatever it is. And so for that reason I hope that you would vote against this bill. Thank you.

**Speaker Tillis:** Representative Faison, please state your purpose.

**Rep. Bill Faison (D):** To speak on the bill, Mr. Speaker.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Faison:** Thank you, Mr. Speaker. Folks, you know, when things are being presented as something they're not, they don't come out quite right. I think that's what happens with this bill. You realize we have a whole body about informed consent? Representative Hollo could tell us about that. Representative Carney could tell us about that. Informed consent routinely for patients when they do things. To tell a doctor or healthcare provider what they're going to do in informed consent is beyond the skill of this body, invading a relationship we shouldn't be into. What a doctor needs to tell his patient and what a patient needs to know from the doctor—that's something the patient and the healthcare provider work out between them, not something we as legislators with our various backgrounds—almost none of which are in medicine—are in a position to come up and say.

What it appears on the face to be intended to do is impose, as best as I can tell, a psychological disadvantage on a woman. I don't know if this is true, but I think it's true. I don't think guys come with much of a guilt complex built in, but I think most women come with one there, and I think women and men are driven by different things. I believe if I've ever seen anything intended to be a guilt trip on anybody in my life, it's this piece of legislation.

My reaction to it is probably gender-specific and maybe not the right one, but my reaction to it is this: Since I was about fifteen years old, I've been working and making my own way, buying my own clothes, helping pay for my education. I have been making my own way since I was a relatively young guy, and I have carried the load of a man in doing that in every respect as I've gone through life. As a result of that, like all of us, I have a certain view of who I am, and part of that is that I can figure out for myself, with the help and advice of people I choose to consult, what I want to do in life.

The idea that this body would tell me I'm going to have to have as information, not what I get to decide I want to know; that this body would invade the process of my decision-making is wrong. I can't see, following the Golden Rule, you know—*Do unto others as you want to be done unto*—I can't see why it is we would tell a woman what information she's going to have to have, and what she's going to have to hear from anybody on a particular question she may have if she's got a question at all. There are plenty of people who meet with their family and their friends to talk about important decisions in life. When they've made them, they're not going to a physician to ask "What do I want to do?" They're going to a physician saying, "You've got certain skills I'm in need of, and I now wish to have the use and benefit of those skills."

To invade that process legislatively, to have healthcare providers working on the guilt aspect of a woman's mind over a matter that she has already decided—in consultation with her religious counselors and advisors, in consultation with her family, in consultation with her significant other, in consultation with her friends—is just simply wrong. I would encourage everyone to vote against this, to vote in favor of respecting a woman's right to choose for herself and how she would get information and what she will do with her own body.

**Speaker Tillis:** Representative Martha Alexander, please state your purpose.

**Rep. Martha Alexander (D):** To speak on the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. M. Alexander:** Thank you, Mr. Speaker and ladies and gentlemen of the House. This bill is not about sound medicine; it seems to be more about government intrusion into very personal matters. This bill is not about being helpful; it is a burden to physicians, telling them what to do. On page two, lines 24-26, it begins to list all that they have to say, not leaving discretion to the physician. This bill does not trust women to make personal decisions. This bill is not about understanding that women are capable, that women do seek help and truth, and are very capable of making their decisions.

I want to be sure that everybody has all of the information, and I think we've had good debates here on the floor this afternoon. One of the things I'd like to bring to your attention is the fact that no, we don't want people to go into dark houses—absolutely not. Nobody wants that. I don't know if you all are aware of the fact that in order to be a free-standing facility, there are nine pages of regulations that have to be followed.

This is not something that people take lightly, and people need to have all of the information for several reasons. One is that they need to be able to make a choice. For some people, as Representative McElraft so well expressed, sometimes the choice is to have that baby.

But sometimes, perhaps in the case of rape or incest, that wouldn't be the choice for that person. I don't know of any woman who I have ever talked to or asked informally before I ever became a legislator what they would do if

they were faced with having to make a choice about abortion... In other words, if they knew the child was deformed, what would they do, or what would they do if it was out of wedlock? I've never known one woman who could just gleefully say, "Oh, this is what I'm going to do!"

Years ago when I was taking courses in counseling, I remember—just as well as if it were yesterday—hearing a tape of an hour counseling session with a young woman who had to face that. But more importantly, years ago when I was the chaplain's assistant in a hospital, a woman walked in off the street, a young woman who was just seeking more help. She had already done a lot of work on what would happen, what abortion was all about. She was very distraught and dismayed. I spent several hours with her, and I don't know if you've ever sat down with a person and looked at them face-to-face while they're having to make this decision, but it was wrenching for me to hear this person and all that they were going through, and what their circumstances were. The chaplain was gone, and when the chaplain was away in that hospital, I was sort of the person they turned to. She had come in off the street, and what I found out later during that discussion was that she was a friend of the chaplain's, and she had finally made her decision that she was going to have an abortion.

Now let me tell you, that was not easy for me. I was a younger woman then, and I had two small children, and it was just hard for me to sit there and listen. But you know what I realized? This was her choice. This was her life. She had circumstances I could not even begin to fathom, and I was there to be a listening post for her, and in the end it was to be her decision. As I said, she had sought help and she had information, and she elected to have an abortion.

There was an article in our paper that summed it up best of all the things I've seen on both sides of the issue recently, and particularly with this bill. *The Charlotte Observer* says:

"The writer is a physician. I am a lifelong Republican and considered it once to be the party that worked to limit the intrusion of government in our lives. ... My career in Maternal Fetal Medicine has been dedicated to helping women have successful pregnancies when they otherwise might not be able to. I place great value on the doctor-patient relationship. The success of the practice of medicine depends on the trust in that relationship. If you are a reasonable person and read the entirety of this bill, you will be appalled... This past April, the North Carolina Obstetrical and Gynecological Society executive board unanimously decided to oppose this bill, even though several members would not be considered pro-choice. We were united in protecting our patients."

That's what we need to do for the women in the state of North Carolina: we need to protect them. I urge you to vote no. Thank you.

**Speaker Tillis:** Representative Samuelson, please state your purpose.

**Rep. Samuelson:** To speak a second time on the bill.

**Speaker Tillis:** The lady is recognized to speak a second time on the bill.

**Rep. Samuelson:** Ladies and gentlemen, we've had a lot of debate today and we've heard a lot of challenging information. So I want to go quickly through a couple of things.

The doctor-patient relationship: Someone passed me a note that reminded me that the doctors who are already doing informed consent and maintaining a relationship with their patients have nothing to fear from this.

Constitutionality: The Supreme Court has upheld a similar version from Pennsylvania.

Did we ask the women? Yes. There was a survey that asked women. Interestingly even I was surprised, frankly, and pleased with our next generation. Women ages 18 to 44 support this 63%. I'll admit I was floored.

Rape and trauma: Representative Faison, if you are correct that men have a lower sense of guilt than women. That may explain why rape and incest are a problem. But there are women in this room who have experienced that personally and I will tell you that knowing that it has something to do with men's sense of guilt doesn't make it any easier. And frankly, for a woman who has already had something inflicted upon her that had no informed consent and no waiting period, to imply that somehow or another that the fact she is going to be given complete information and time to make her own decision is somehow traumatic? I find myself rather appalled by that idea.

This is all about respecting women. It's about recognizing the fact that we are intelligent. We have a strong moral compass. We are able to make decisions when we have complete information. Frankly, giving us a little bit of time doesn't hurt.

People who support abortion have said to me for years and years and years, “Ruth, I hate abortion. I want abortions to be safe, though. I want them to be legal and I want them to be rare.” Ladies and gentlemen, this bill keeps abortions legal. It keeps abortions safe by making sure that the woman and the doctor have the information they need. And by golly, we know that it helps to make it more rare. There is no reason not to support this bill. It’s still her choice. It is her *informed* choice. I urge your support.

**HB 854 – Abortion-Woman’s Right to Know Act**  
**Remarks on Senate 2nd and 3rd Reading**  
**June 15, 2011**

**President:** House Bill 854, the Clerk will read.

**Reading Clerk:** House Bill 854: Abortion–Woman’s Right to Act, to Know Act.

**President:** Senator Daniel is recognized to explain the bill.

**Sen. Warren Daniel (R):** Thank you, Mr. President. I have a feeling we’re about to all get wound up again. We do a lot of talking around here about transparency and taking the time to know all of the facts about an issue, to deliberate about a decision before we make it because the decisions we make here in this Chamber are very important. But there are few decisions in life that can be considered as important as a woman’s decision about an abortion. It’s literally a life and death decision and one that should be deliberated with great care.

This bill would protect a woman’s right to know the medical risks associated with an abortion, its alternatives, and will provide nonjudgmental, scientifically accurate medical facts about the development of her unborn child before making a permanent, life-affecting decision. North Carolina is currently one of only two Southern states without a “Woman’s Right to Know” law. There are approximately 30,000 abortion performed in our state every year, and a “Woman’s Right to Know” law has statistically shown to reduce that number dramatically by as much as 10%. This bill is designed to make sure people have full information to make the decision that is best for them to live with for their entire life. We believe that it accomplishes this in such a way which respects women and the lives they are carrying.

Just to briefly go over the major provisions of the bill: the first section contains a list of definitions. The second section is the informed consent section which is divided into two parts.

The first part requires providing medical information: who is the doctor, does he or she have liability insurance, what are the risks of carrying to term, what are the risks of terminating a pregnancy, how close is the hospital, does the doctor have clinical privileges. This section also includes information on an ultrasound which is called a “real-time view” in the bill. There’s a reason for that, irrelevant for the time being. The second part requires that there be information on medical and social services that may be available to a woman should she choose to carry her child to term. The next section is a packet of information the doctor or medical provider will need to give the woman. She is not required to read it. This information is both medical and social and can be received in two ways. The woman, if she lives far away, or if she chooses, may call and receive the written materials through the mail or online or she can come to the office and meet with somebody face-to-face to receive them in person. This has to be completed 24 hours before the abortion procedure. At some point between 72 and 4 hours before the abortion an ultrasound will have to be done. In 90% or more of the abortions done today an ultrasound is already done. This is not an onerous requirement. The woman will now be offered the opportunity to see the ultrasound. She is not required to see it, but she will have the opportunity to see it.

There is a fiscal note associated with this bill that should be on your desk. It says that the annual cost of the bill is 6.7 million dollars. This is due to the estimate data that 2,900 will be saved annually. Approximately 1,149 of them are estimated to be covered either fully or partially by Medicaid. On page 5 of the fiscal note there is an offset to this cost based on reduced future medical risks associated with fewer abortions. This estimate is 39 million dollars.

If you’re wondering if we’re trend-setting, 34 other states already require something of this sort in terms of counseling before an abortion and a waiting period. You should have a map on your desk of those states. One to add to that is Indiana which is currently shown on this map as not having a “Woman’s Right to Know” law.

Are we adding regulations to the abortion industry? Yes we are. In a myriad of other areas we have tens of thousands of regulations already on the books and, whether you agree with them or not, what are they designed to

do? Save lives and make our citizens safer. We pass bills every day that are designed to protect motorists, pedestrians, school children, the elderly, and on and on.

We know statistically this bill will save lives. Pro-choice people often say, "I hate abortions, but I want abortions to be safe, I want them to be legal, I want them to be rare." And ladies and gentlemen, I would submit to you that this bill keeps abortion legal, keeps abortion safe, and makes sure a woman and her doctor have the information they need. And we know statistically that it helps to make it more rare. There is no reason not to support this choice, this bill. It's still a woman's choice—it's her informed choice, and I urge your support.

**President:** Discussion and debate on the bill?

**Sen. Linda Garrou (D):** Mr. President?

**President:** Senator Garrou, for what purpose do you arise?

**Sen. Garrou:** To speak on the bill.

**President:** You have the floor to debate the bill.

**Sen. Garrou:** Ladies and gentlemen, I had the opportunity to deliver the prayer today. I talked about fathers, and I wasn't just talking about fathers. I was talking about fathers and mothers and parents and families and children and the things that we do because we support our children. It is so important that we respect men and women.

I don't think I've ever been down here in the 14 years since I've been here and haven't had men stand up on this floor and complain about bills and complain about the government and complain about this that and the other. What if we were running a bill that said "Men's Right to Know?" How many of you would jump on this bill? Well, good for you. This bill is not necessary.

The majority of things that [you] are talking about in this bill are already in law. What is it about women that we can't make a decision? What is it about women that we don't care enough about our faith, our God, our bodies, our babies that we've got to have people come tell us how we should live our lives and how we should perform in certain ways?

I said this morning in the Rules Committee I would have been hard pressed to have an abortion. I really can't imagine that I would have ever been willing to have an abortion. At one point I had two teenage daughters and my husband and I talked about the fact that we sat down and talked with our children about respecting themselves as women, treating themselves with respect, the kind of lives that they ought to lead, and the kind of young women that we should be. But John Garrou and I often said we were never tested. And we really were not.

You know, I don't know. I'm sure that my daughters had too much to drink and I don't know if they had sex in high school or not. It isn't that important. I would like to think they did not. But I had conversations with them about having sex with boys. I remember being in high school. And I talked about what happens when you get pregnant. I had a friend who at the age of 15 got pregnant and she got married. And I felt so sorry for her. She missed all kinds of things. I was proud of her in the fact that she got married, but why would we put women in the position of feeling like they're being held to a certain level? They're being asked to, you know, make some of these decisions that other people are not being asked to make. It's insulting, and it's not the right thing to do.

My girls and I talked about this a lot. Both of them had the same expression, had the same concerns. Both of them said to me "Mom, we would never have an abortion. If we got pregnant, we would deliver a child." And I was really proud of them because I think that's what can happen.

But for 10 years I worked for the Guardian ad Litem and I saw children in situations that I hope no other children have to be in. Little boys and little girls who were not wanted, who were abused, who were neglected, and I had people talk about what it was like to go out and visit with some of these families. What it was like to go out and talk to a mother who didn't know how to be a mother, who didn't know how to care for her children, and that they were expected at age 15, 16, 14, 13, 12, to have a child and to be able to look after that child.

So we're going to say that this 12-year-old, this 13-year-old—in some situations it was the step-father or the father who had impregnated this child—that we're going to have all these hoops they're going to have to go through, as if life isn't hard enough. Being a young woman, a teenage woman and I think if you got any woman that's in here they'll tell you that being a teenage girl is pretty rough some times. All the pressures of things: you've got to look good, you've got to be smart, you've got to be cool, you've got to be all these things. And it's tough. We ask a lot of women. There are so many things in this bill that I admire people who say "We want to do everything we can to

keep people from having an abortion.” And I agree with that. But I think this is not the right way. This isn’t the way to go. And I would urge you to vote against this bill.

**President:** Further debate? Senator Kinnaird, for what purpose do you rise?

**Sen. Ellie Kinnaird (D):** To debate the bill.

**President:** You have the floor.

**Sen. Kinnaird:** I, too, am a mother, I have three boys...or I guess they’re men now. They’re probably your age, some of you. I have a granddaughter who is 24, and then I have another grandson and another granddaughter. So I know what it is to be a parent and a grandparent. It is the most precious, most important part of my life. There is no doubt about it. But this bill is an insult to women. The title: you have to conclude that women are ignorant, unintelligent, and so they arrived at this decision lightly.

I would think that most women who have arrived at this have probably talked with their primary care doctor. This is not something that women arrive at lightly, and to say that they don’t know what they are doing is an insult to women. I guess what I find ironic is this is the party whose motto is, “Get government out of our lives.” Except in the bedroom? Except in the doctor’s office? And I guess the thing that really bothers me is that we took money from Planned Parenthood that gives out thousands upon thousands of free contraceptives. That is the public health policy that we should be embracing, helping women when they need help. I urge you to vote against this bill.

**President:** Further discussion and debate? Senator Robinson, for what purpose do you rise?

**Sen. Gladys Robinson (D):** To speak on the bill.

**President:** You have the floor.

**Sen. Robinson:** I agree with the Senators Kinnaird and Garrou. You know, it says “Woman’s *Right to Know Act*.” Right to know what? How to have sex? Right to know what? That boys like to have sex? And you don’t teach your boys early? And girls have to be taught what to do? Sex education is something that a lot of you have been against for a long time. And I know it because I worked as a parent on committees with school systems that wanted to educate kids about what was going on. And you said “Well, parents ought to tell them. Their parents ought to tell them what happens.”

Well, this state is an abstinence state, but when we move to another level you want to say women—this sounds to me—like women are ignorant. “You don’t know about your bodies, you don’t know what happens, you don’t know how to make decisions,” yet we’re elected like you are. I’m elected like you are.

Statistics say most of the women who have abortions are African-American women. Really? Well, are they all ignorant? Are they low-income? What I heard is that more have more than a high school education. And even if they didn’t, who has a right to tell someone else what to do with their bodies?

African-American women from slavery—and I know you don’t want to hear that Senator Apodaca—from slavery were told what to do with their bodies...what to do with their bodies. And weren’t told—were handled. We have come full circle in this country, and nobody has the right to tell a woman, especially not me and any others, what to do with their bodies.

This bill doesn’t make sense. I talked with a woman today. She was a white woman. Educated woman. And she said to me, “You know what? I was raped.” It’s called forced sex. She was a professional woman. She said the trauma of that was too much to handle that, all that she went through. “And it took me a long time to get to a point where I could survive and go forth with my career and my family. Had I been pregnant,” she said, “I don’t know, maybe I would have had an abortion because thinking about what happened to me, and having to prove to someone that it wasn’t consensual, I’d carry additional pain about the trauma of the situation and then what life means after that.”

The thing that bothers me mostly is that in this Senate what I’ve heard mostly is cutbacks on women, low-income folk. We don’t want to educate children. We don’t want to start them at an early age to make sure that the children of single parents have an opportunity for education, for life. We want to cut the money back for that. We want to cut More at Four back. We want to cut public school back, and that’s where a lot of low-income kids go. And then we don’t want to send them on to college, but we want gun legislation.

Seems kind of strange to me. We want to legislate what people ought to do in terms of whether they decide to have children or not, but this General Assembly does not want to support the children. You can't talk out of both sides of your mouth. It's up to women what they decide to do with their bodies, and none of you have the right to tell them what to do.

**Sen. William Purcell (D):** Mr. President?

**President:** Senator Purcell, for what purpose do you rise?

**Sen. Purcell:** To speak on the bill.

**President:** You have the floor.

**Sen. Purcell:** Thank you, Mr. President. As others have said, it's always seemed a little disingenuous to me that a party that believes so strongly in individual rights and less government—and I've heard that over and over in this chamber, the Senator Tillman—that that same party at the same time believes that big government knows better than a woman what is best for one of the most intimate parts of her body: her uterus. A little disingenuous to say at least.

It seems to be going around, some feeling that those who support this legislation are being religious or more Christian or more Jewish or more something than those who don't support this legislation. Some seem to believe they know what God wants done and the rest of us just don't seem to understand. I am obviously not a theologian, but I wish religion and God's will were that simple. But it's not that simple in so many cases, and I believe that this is one of them.

Those of you who are trying may succeed in stopping legal abortions in North Carolina, and I believe that is your goal, even though the Supreme Court of the United States has said very clearly that a woman has a right to have her pregnancy terminated. But before anyone gets too cavalier about knowing what is right in this situation, let me complicate things a little bit for you.

I began practicing medicine when there was no legal way to terminate an unwanted pregnancy, in the United States. Those who had money could fly overseas for the procedure, but there was no choice for the poor who could not afford the expense of overseas travel. In one of those years, during a three month period when I was working on the obstetrical service in the city hospital—and to remind you, this was just on my shift in a three-month period in one of the hundreds of hospitals in this country—I personally cared for two young women, one about age 18 and one about age 19, who came to our emergency room on separate days. For whatever reasons—it could have been fear of their father, or whatever, I don't know the reasons—both of them found their pregnancies to be so threatening that they had to terminate them, and both attempted to do it using a coat hangers (*sic*). I watched as both of them bled to death right in front of me as we pumped blood and did everything else that we could to try to save their lives. I shall never forget the look of despair on their faces as they died. You can say they shouldn't have done that, and I agree.

But you know they will do it again across this state if you succeed in making it extremely expensive, difficult or almost impossible for a woman to have a pregnancy terminated by placing more and more barriers in her way. There are many issues that we face today where right and wrong are not clear. And I believe that anyone who is intellectually honest will agree that this is one of them. One thing that is very clear to me is that a woman is better off if such decisions are made between her and her doctor rather than big government making the decision for her. I cannot support this legislation.

**President:** Senator Mansfield, for what purpose do you rise?

**Sen. Eric Mansfield (D):** To debate the bill, Mr. President

**President:** You have the floor.

**Sen. Mansfield:** Ladies and gentlemen of the Senate, I have one particular problem with this and I actually think Senator Wilson (*sic*) was having a very calm discussion about this problem. If you look on the fiscal note on page 5 it says "Changes to the Practice of Medicine" and, specifically, it says "The Content of Informed Consent." A critical part of the practice of medicine will be set by the Legislature rather than by a qualified medical professional. Nowhere in the history of North Carolina has the Legislature ever come in between the physician and a patient. What this bill does... To no other specialty in medicine—not to EMTs, Cardiothoracic surgeons, Neurologists, no

other specialty—will we go in as the legislative body and say, “You must have this type of consent” —not in the history of medicine in the State of North Carolina.

When you look at the risks of a termination of a pregnancy, which is .25% and you look at the risk of coronary bypass graft... The risk of death in coronary artery bypass graft in this nation in the best institution is 2-4%. The risk of death in the termination of a pregnancy is .25% and yet we have not told any Cardiothoracic surgeon in all of North Carolina when the risks are infinitely higher that they must have a consent that is defined by the Legislature of North Carolina.

I don't know of any attorney that would allow the North Carolina General Assembly to come in and tell them specifically how to have a relationship with the person they are trying to represent. I have great, great problems because I truly believe that if you want to talk about abortion—fine, talk about abortion. But when it comes to a relationship between me and my patient, I don't believe this body has that right to step in and tell me how I should interact with that patient.

Today is National Time-Out Day, and National Time-Out Day is where we recognize that in medicine we stop, take some time, talk to our patients and introduce to them what they are going to have, what procedure they're going to have and they talk back to us. It's already in code right now. It's already in law right now. Most of the things that are in this bill are already in law.

And so my problem, again, is that this body is standing in between physician and a patient. And each time they say that we're doing this because the patients are not informed, but every article that I've read—even the articles that you've brought me—every article talks about counseling, they don't talk about the procedure. Not one single article that you can bring me shows me that these women don't have informed consent. Now they may not have informed counseling, but certainly they're having informed consent.

And so just as a practitioner—and the North Carolina Medical Society is with me on this—we believe that this is a big, big step of government going in between a physician and their patient. And specifically, not all physicians, but you're taking one procedure out of all the procedures that we do in North Carolina. We're taking one procedure and coming in between an informed consent. And for that reason I can't support it.

**President:** Further discussion and debate? Senator Goolsby, for what purpose do you rise?

**Sen. Thom Goolsby (R):** To speak on the bill.

**President:** You have the floor.

**Sen. Goolsby:** Dr. Mansfield, I would respectfully disagree with the analogy that you used. One thing that makes this procedure unlike most, if not all, other procedures and the person who performs it... You talked about the risk to life. To the baby that's aborted: it's 100%. You left that statistic out, sir.

“We hold these truths to be self-evident, that all men are created equal, endowed by their Creator with certain inalienable rights,” those being life, liberty, and the pursuit of happiness. That is from our Declaration of Independence. We hold these truths to be self-evident that all men are created...*created*. That's the key word. I believe that this bill is necessary to make sure that when someone makes a decision to deal with one of God's creations, they know all of the inherent risks.

We have paperwork that's been handed out that shows that 65% of the women who go through these procedures have post-traumatic stress disorder. And go through the list: ectopic pregnancy, all the other problems they suffer with later in life. What we ask in this bill is for that information and more to be given out reasonably so that before they take this drastic step and deal with one of God's creations they know what they are doing. I think it's reasonable, it's constitutional and it's the right thing to do. And I will sleep better at night voting for it.

**President:** Further discussion and debate? Senator McKissick, for what purpose do you rise?

**Sen. Floyd McKissick (D):** To speak on the bill.

**President:** You have the floor.

**Sen. McKissick:** Well, one thing that this bill clearly does, in my opinion, is to insult the intelligence of women. It insults it in a way that, in my mind, is quite profound. It should, most likely, offend anybody who sits there and looks at the provisions that it includes. More importantly it involves a meddling—a meddling issue that is, in fact,



constitutionally protected. You look at the Supreme Court. They talk about that vast [audio *unclear*]...of rights that need to be protected and among them is privacy. If there ever was an invasion of privacy this bill does it.

**Sen. Kathy Harrington (R):** Mr. President?

**President:** Senator Harrington, for what purpose do you rise?

**Sen. Harrington:** To speak on the bill.

**President:** You have the floor.

**Sen. Harrington:** As a woman who is proud to vote for this bill, I would like to stand here and tell you that I am not insulted by it. It is sorely needed.

**President:** Further discussion and debate? Hearing none, the question before the Senate is the passage of the second Committee Substitute of House Bill 854 on its second reading. Those in favor will vote aye; those opposed will vote no. Five seconds will be allowed for the vote. The clerk will record the vote...Twenty-nine having voted in the affirmative and 20 in the negative, the second Committee Substitute of House Bill 854 has passed its second reading and, without objection, will be read a third time.

**Reading Clerk:** The North Carolina General Assembly enacts.

**President:** Further debate? Hearing none, the question before the Senate is the passage of the second Committee Substitute of House Bill 854 on its third reading. All in favor will say aye; all opposed no...The ayes have it. The second Committee Substitute of House Bill 854 has passed its third reading and will be enrolled and sent to the Governor.

**HB 854 – Abortion—A Woman’s Right to Know  
House Remarks on the Veto Override  
July 26, 2011**

*On the veto override vote we needed four House Democrats to vote for the bill.  
William Brisson, Jim Crawford, Dewey Hill and Tim Spear came through.*

Audio available at [this link](#).  
Debate begins: 00:18:35

**Speaker Thom Tillis (R):** Rep. Samuelson is recognized for a motion and to speak on the bill.

**Rep. Ruth Samuelson (R):** Thank you, Mr. Speaker. I just remembered there are certain words I’m supposed to use for the veto override. Would someone coach me, please?

**Speaker Tillis:** The Chair acknowledges the motion from Rep. Samuelson for the passage of House Bill 854, notwithstanding the Governor’s objections.

**Rep. Samuelson:** Thank you very much.

**Speaker Tillis:** The lady has the floor.

**Rep. Samuelson:** Members, as I was thinking today about what hasn’t already been said, I was reminded of a song from the 1970s that will be familiar to most of you. However, since we’re not allowed to sing on the House floor, I’ll just quote the opening refrain to you:

I am woman, hear me roar  
In numbers too big to ignore  
I know too much to go back and pretend

In response to this bill, I have heard the roars of post-abortive women, and this is what they're saying: "Don't talk down to me because I'm young or scared or poor." "Don't rush me just because I've been here before and I should 'know the drill.'" "Don't assume this is my decision because the person who came with me said, 'We've agreed this is best.'" "Don't assume that I know what I'm doing because I act confident and didn't ask any questions."

Then again, they're hearing in their heads, "My sister said the pain would go away eventually." "My boyfriend said we can't afford a baby, but he'll pay for an abortion." "My parents will cut me off, and I have to finish school to get a good job." "I just can't manage another child."

What do all these women have in common? They wanted to be heard, and they wanted to be respected. That's what this bill is ultimately about: respecting women enough to give them the time and the information that they need to counter the noise in their heads from the sisters, the boyfriends, the parents, the media and maybe even the protesters outside the clinic. It's about trusting them to use that information to make a fully informed choice.

Abortion will still be legal. Abortion will be even safer. Abortion will be more rare. In the majority of other states where they already have some form of informed consent, women changed their minds. Women want this bill—*large numbers* of women want this bill. Recent surveys in North Carolina show that over sixty percent of women of childbearing age support this bill, and over fifty percent of Democrats—male and female—support the bill. Don't ignore their voices.

The Governor vetoed this bill because she said it interferes with the doctor-patient relationship, that what to say should be left up to the doctor. Well, we can't have it both ways. Who do we defer to in this situation: the doctor who may get a little information on how to inform a patient before facing significant surgery, or the woman making a life-altering decision for herself and for the baby she is carrying? I'm choosing respect for the woman and her choice—a fully informed choice. I ask you do the same and override the veto. Thank you.

**Speaker Tillis:** Representative Parfitt, please state your purpose.

**Rep. Diane Parfitt (D):** To speak on the bill.

**Speaker Tillis:** The lady is recognized to debate the motion.

**Rep. Parfitt:** Thank you. Members of the House, we have debated this bill many times and I don't know if anything I have to say will change your vote in any way, but I think it's important that we continue speaking out on why this is a bad bill.

People voting for this bill have said that it gives women choices—by forcing them to listen to a state-mandated informed consent. Following that argument, the intended result is to convince women not to have abortions. Practitioners of good counseling methods know that your goal in counseling is to help your patient make their own choices, not based on your preconceived ideas. I know of no person who works in reproductive healthcare services for women who would ever counsel a woman to have an abortion. Their job is to support the woman who has made her decision while giving her the necessary information to come to this decision.

One of the biggest objections to this bill is that it requires the same informed consent for everyone—one size fits all. A mother of three children who finds herself pregnant again who has decided to have an abortion: she may have already talked with her husband or other family members, her best friend, or her counselor, or she may have struggled to make this decision alone. She would be forced to hear a government-mandated informed consent that does not take into account her personal situation.

We have victims of rape: fifteen percent of rapes in the United States are to children under twelve years of age. Forty-four percent are under eighteen years of age. Of the 64,000 women raped in the United States, 3,200 resulted in pregnancy. In the case of pediatric patients, with whom I spent fifteen years providing direct nursing care, the physician always provides information to the patient delivered at a level that they can understand. As a child, they need to know what is happening to them, too, but the physician is also required to give the informed consent to their parent or guardian. With this bill, the physician must provide graphically detailed informed consent both to the minor child who is pregnant and the parent or guardian. There is no provision in this bill for adapting the informed consent to the age-appropriateness of the child. This may sound like a small detail, but imagine for a minute that you are a fourteen-year-old girl, raped by her father, and you are pregnant. Yes, this happens. The fourteen-year-old girl

barely understands what has happened to her. She has been sexually abused by a person she trusted and now she's going to have a baby while she is still a child herself. What this bill wants to do is to re-traumatize her by showing a scared, vulnerable young girl an ultrasound of a fetus, make her listen to the fetus' heartbeat if it is detectable, and tell her as a consequence of this abortion, she may never be able to get pregnant again.

This part of the informed consent is in fact not true. According to the Mayo Clinic, infertility is rarely a problem after a therapeutic abortion. I have contacted a nationally-known and respected expert on child sexual abuse. Dr. Howard Loughlin of North Carolina is recognized for his work with victims of sexual abuse. He shared these thoughts with me based on his many years of experience with victims of sexual abuse:

"I think everyone should be fully informed about any medical procedure before authorizing this. This includes non-surgical alternatives, including taking pregnancy to term, adoption, etc., and surgical risks. I don't support following this mandated protocol in any case, but I am especially concerned about requiring its use in cases where the pregnancy is the result of a crime, however the crime is classified: rape, statutory rape, incest, or sexual abuse. The women and girls who are victims of a crime have already suffered major emotional and physical trauma. They and their legal guardians, too, need full information about their alternatives and pros and cons[of each of these procedures], but in my opinion, adherence to this protocol provides a significant risk of further adding to their long-term trauma regardless of whether or not they decide to have an abortion."

We already have laws for informed consent in North Carolina. Physicians already follow the appropriate informed consent for any surgical procedure they perform—without the government interfering. Please support the Governor's veto and protect women from the invasion of government into the doctor-patient relationship. Thank you.

**Speaker Tillis:** Representative Adams, please state your purpose.

**Rep. Alma Adams (D):** To speak on the override.

**Speaker Tillis:** The lady is recognized to debate the motion.

**Rep. Adams:** Thank you, Mr. Speaker. Ladies and gentlemen of the House: America, in spite of all the problems we have, is still a nation built on a foundation that values choice, liberty, and freedom. "No woman can call herself free who does not own and control her own body." Margaret Sanger spoke those words many years ago, and they are still true today.

The Governor vetoed House Bill 854 because it takes the choice from a woman to make a decision about her health from her and places it in the hands of this Legislature. The right to privacy—a Constitutional right—should be a woman's choice, and it should be protected. This right to choice was granted in 1973, more than 38 years ago, brought about by the historic Supreme Court decision *Roe v. Wade*, which held that a *woman*, not the Legislature, a *woman*, not the Congress, a *woman*, not the courts, a *woman*, not even her husband, but a *woman* with her doctor should be able to make the choice about her body and whether or not to have an abortion.

House Bill 854 takes away basic protections from women's health that have been granted since this landmark decision in 1973. It overlooks the diversity of women who seek abortions and their reasons for doing so, reasons that are just as diverse as the women themselves. This bill is discriminatory; it treats women differently who, by the way, are created equally to any man here.

In April of this year, the *Herald Sun* was quoted as saying, "There tends to be two kinds of bills that deal with abortion: some are about women's health and the others are about women's rights. The way to distinguish between the two," the article says, "is often to ask this question: would this be an important law if it were applied to patients having any other kind of surgery? If the answer is yes, it's probably about health. If the answer is no, then it's not about health; it's simply social policy." Well folks, the answer is *no*. It's not about health. It's political, and we all know that.

Why should my rights to make a decision about my health as a woman be the business of this Legislature? I was created from the womb of my mother just like every person here. My gender should not determine whether or not I can make a decision about what to do with my body. This Legislature would not single out a medical procedure affecting only men. If men could have abortions, it would be a civil right, and it would not be up for discussion

today. Would we require a man to sit through intrusive, coercive counseling for a medical procedure, mandated by politicians who don't trust him? Of course we would not.

This bill attempts to control women treating them as if they have no individual concerns, as has been said: a one-size approach fits all.

House Bill 854 is conspicuously called the "Woman's Right to Know," and really wants a woman to know that the government has no respect for her as a person or her ability to make decisions about her health without their interference. It frightens, it shames, it torments and terrorizes women to make them feel guilty for making the choice of abortion in the first place. According to the *Durham Herald*, "This bill is written as though women who walk through the clinic door did so by accident."

This bill overlooks the fact that women make approximately eighty percent of healthcare decisions for their families. Let's be real about it, or should I say this bill is really about trust, or the lack of trust. Some of us trust women to make personal health decisions without government intervention and some of us do not, because some of us do not believe that women have the right to make reproductive health decisions. Some of us want to control some of us, because it's obvious that proponents of this bill don't like the decision that women have made to have an abortion in the first place, so they want to change her mind.

As an African-American woman I'm offended by a lot of the propaganda that I've heard which really does not give the true picture about black women. I just simply want to say that many organizations, including the *Trust Black Women* partnership, have said that black women need to make decisions every day, about whether to parent or not, or just whether to give birth. A large number of minority women who receive abortions are poor, as has been recorded, and they rely on clinics oftentimes, and the data is recorded there. If we had information about other women who don't go [to clinics], perhaps the information would be different. If we're truly concerned about women's health, then the question we should be asking is, "What can we do to help these women have fewer unintended pregnancies and achieve better health outcomes?"

Placing restrictions on abortion will not reduce the demand for them, and it will not make them safer, as has been said. The result will be a return to the dark days: the back-alley abortions with coat hangers. I don't think we want that. As women, our right is to know that women deserve better than House Bill 854. This legislation is an outrageous insult to women's reproductive rights and our freedom as people, and I urge you to sustain the Governor's veto by voting no.

**Speaker Tillis:** Representative Ross, please state your purpose.

**Rep. Deborah Ross (D):** To speak on the motion.

**Speaker Tillis:** The lady is recognized to debate the motion.

**Rep. Ross:** Thank you very much, Mr. Speaker. I'll start out my remarks by urging you to vote no, and I'll end my remarks by urging you to vote no. I want to quote one of the former members of this House, a Republican woman when this bill came up on the floor more than ten years ago. She said, "Anybody who votes for this bill is committing malpractice, because the Legislature will be telling a doctor how to deal with an individual patient and their needs."

Yesterday we overrode the Governor's veto on a malpractice bill that limited the types of damages that people who have been severely injured can receive. That was a sad, sad vote. I brought your attention to how we're dealing with malpractice—or the allegation of malpractice—in this bill, because the news media hasn't really been reporting on it. I want to tell you how this bill is all about attacking doctors.

Please look at page five of the bill at the very bottom on civil remedies. This bill will allow any person upon whom an abortion has been performed, or the father of the unborn child (note that there's no qualification, so that would include a rapist), to sue a doctor who violated this bill in any way. That would include a doctor who didn't think an ultrasound was necessary for a woman who had a severely deformed fetus and has already looked at an ultrasound multiple times to see those deformities. This would allow a suit against that doctor. This would allow a suit for money damages, it would allow a suit to prevent that doctor from performing abortions and it would allow for the collection of attorney's fees. Imagine that. Just yesterday, we limited suits against doctors who commit significant malpractice; we didn't allow for any kind of attorney's fees against them. One of the main purposes of this bill is to stop people from providing abortions in North Carolina and create the most stringent kinds of lawsuits against them. Be honest about that.

Now I'm going to tell you something that I talked about on the floor the last time we discussed this bill. There's something heartening to me. There is a whole cadre of women doctors who understand the needs of their sisters and

who are unafraid to perform these essential services. Many of us got an email from them yesterday, telling us how important it is to have access to safe, legal abortion. No woman *wants* to have an abortion. No doctor takes glee in providing that service. This bill is about dissuading women from exercising a choice or embarrassing and shaming them. But even worse than that, this bill is an intimidation of the doctors who perform those services.

Please, *please* vote no on this motion. Respect women, and respect our physicians.

**Speaker Tillis:** Representative Weiss, please state your purpose.

**Rep. Jennifer Weiss (D):** To speak on the motion.

**Speaker Tillis:** The lady is recognized to debate the motion.

**Rep. Weiss:** Thank you, Mr. Speaker. Earlier we googled Helen Reddy because we figured if she was no longer with us she'd be spinning in her grave to be quoted—or misquoted—about “I am woman, hear me roar.” I want you all to remember that what that song was about was a woman proclaiming her equality and her power. My able technology helper, my seatmate, found Helen Reddy's views about abortion:

“As a moral issue, abortion will be debated as long as humankind is able to debate. I respect all points of view as being valid to the holder. What concerns me is abortion as a legal and political issue. I am against all reproductive laws for the same reason I am against the draft. I believe that legal ownership of one's body is the most basic civil and human right. Without it, we are all slaves to whatever government is in power at any given time.”

I would just say if you are against abortion, then let's work together to make it rarer. Let's work together to make sure women have good healthcare. I didn't see that in the budget that was passed this year. Let's work together to make sure that young people understand their bodies and that they have the support they need. Let's make sure that every child in this state is a wanted child. Let's *not* put so many hurdles and barriers in front of women and treat them all like they don't have a brain and can't make their own decisions.

Let's *not* put them in a position of desperation where they may end up getting services from someone who is not a doctor, who is not legally authorized to perform a legal medical procedure. One of our former colleagues, Representative Margaret Dixon, told me that when she was at Carolina she had a good friend, a nice girl from Fayetteville, who got pregnant. That young woman went to get an abortion before abortion was legal. She was a nice girl. She and her boyfriend went, she got an abortion and she ended up going blind because that was what was there at the time. That was the option that she had. She did not have an option for safe, legal abortion.

This is a medical procedure; it's a personal decision. I trust women to make decisions that are right for themselves, and I would ask you to please vote no on this motion.

**Speaker Tillis:** Representative Kelly Alexander, please state your purpose.

**Rep. Kelly Alexander (D):** To speak on the motion.

**Speaker Tillis:** The gentleman is recognized to speak on the motion.

**Rep. K. Alexander:** Thank you, Mr. Speaker. Ladies and gentlemen of the House, I got interested in this whole notion of informed consent. I got so interested that I went to the website of the American Medical Association. What I found there was a directive to all physicians that deals with what they should be doing in any relationship with a patient. I thought that it would be interesting to share that. Physicians are directed to discuss:

- The patient's diagnosis, if known;
- The nature and purpose of a proposed treatment or procedure;
- The risks and benefits of a proposed treatment or procedure;

- Alternatives (regardless of their cost or the extent to which the treatment options are covered by health insurance);
- The risks and benefits of the alternative treatment or procedure; and
- The risks and benefits of not receiving or undergoing a treatment or procedure.

In turn, your patient should have an opportunity to ask questions to elicit a better understanding of the treatment or procedure, so that he or she can make an informed decision to proceed or to refuse a particular course of medical intervention.

Now, if that's what the AMA is telling physicians that they should be doing in all cases, I submit to you that House Bill 854 is more than likely a bridge too far. It's a bridge too far, I believe, because if you believe that we should have limited government, then you believe that you should be minimizing, not maximizing, the intrusion of government into the personal decision-space of each and every one of us. Clearly, this bill takes us into that space. It takes us into not only the personal decision-space of women, but intrudes directly into the doctor-patient relationship because it specifies ad nauseam what a doctor is supposed to do, way beyond the guidelines of the AMA. It's bad legislation.

I don't propose to have my crystal ball here at the desk, so I can't tell to what extent anybody who supports this is doing it for a political *[reason]* or whatever the reason is. Logically, this is so far out of bounds in terms of those of you in this chamber who purport to believe in limited government and have spoken on limited government so many times and so eloquently in other pieces of legislation, that to support this is to throw what you have said before and what I believed that you believe to be the case, that you are walking away from your core beliefs. I urge you to join me in voting to sustain the Governor's veto in this measure, because this measure has no place in the lexicon of North Carolina legislation. It simply does not.

Think about what you're doing. Think about your principles. Think about what the AMA says informed consent is. Look at what the bill says. Measure those things, and I believe you will come out on the same side of this issue as I am, and I stand clearly opposed to overriding the Governor's veto. Thank you, Mr. Speaker, ladies and gentlemen.

**Speaker Tillis:** Representative Glazier, please state your purpose.

**Rep. Rick Glazier (D):** To debate the motion, Mr. Speaker.

**Speaker Tillis:** The gentleman is recognized to debate the motion.

**Rep. Glazier:** Thank you, members. Thank you, Mr. Speaker. I spoke at length opposing this bill when it hit the floor, and so today I simply highlight my sadness that we are again at a medically-, socially-, and Constitutionally-dangerous precipice.

In determining whether a regulation's purpose or effect is to place a substantial obstacle in the path of a woman seeking a legal pre-viability abortion, we normally look at three things: expert testimony—but no expert was really introduced in the hearings, empirical studies—but only a precious few from select friend were put in the record, and common sense. On the latter, I would suggest that the evidence couldn't be clearer: that the clear goal of many associated with the bill is not to inform, but to hinder; not to provide options, but to limit them; not to assist a woman with choices, but to direct her on a single path only. This statute contains a myriad of detailed and costly provisions that are in many cases medically unnecessary, disengaged from the unique patient circumstances, and not designed to further the physical or mental health of women seeking first-trimester abortions, nor likely to accomplish that goal. Indeed in some cases, as I suggested on the floor, the procedures in this bill will have the opposite effect and will substantially increase the fiscal, physical, and mental cost of the abortion.

Each woman is unique, with a unique medical history and a unique life circumstance, but this bill makes no differentiation—none between the rape victim and the married couple with the horribly defective fetus, none between the mother with diabetes and the incest victim, none even between the married and unmarried couple. All are to be given the same mandated information on life choices, all are to be given the list of adoption agencies, all are to be given an ultrasound, and all must hear the fetal heartbeat—even women, with the support of their husband and family, who have decided they cannot bear to bring into the world a genetically diseased and tortured baby that will be little more than alive for a short period of time.

Is this a process truly designed to give women in this circumstance information to make an intelligent choice? Hardly. The result instead is to mentally punish her and physically, graphically exacerbate her pain. Why should we expect a different result? This is precisely the purpose behind the law: not to inform but to dissuade, not to help or assist but to statutorily condemn.

In our committee hearings, I heard tossed around the idea that the truth is that ninety percent of all abortions are ones of convenience. I think as Oscar Wilde said, "The pure and simple truth is never pure, and rarely simple." Abortion is extraordinarily complex and defies such politically useful but practically absurd characterizations. Senator Tom Coburn of Oklahoma in the U.S. Senate, a surgeon who believes abortion should be outlawed, performed two abortions on women with heart disease. What if those women had, instead of a heart condition, a mental illness that made them suicidal in the face of pregnancy? Convenience or medical necessity?

What constitutes convenience? If you are destitute, is that convenient or realistic? We insult women by suggesting that abortion is ever easily encapsulated in words like "convenience," and we insult ourselves by passing a law that mandates that all abortions should be treated equally.

For many decades, as Representative Adams said, the law of this country and in this state has been in the fundamental right of privacy to protect citizens against governmental intrusion into intimate family matters: procreation, childrearing, marriage, and contraceptive decisions. The guiding principle behind all of that is the understanding that these decisions profoundly affect bodily integrity, identity, and destiny, and of all the things we are as human beings, these decisions must be out of the reach of government. Until today, the women of North Carolina thought they could rely on this bedrock principle. They will awake tomorrow to a different world.

This bill at its core forces a woman during the most difficult moment of her life to endure state-imposed physical invasion and will, in effect, deprive them of the basic control over her life as it relates to what was, until today, her decision about how to proceed with her pregnancy. For the healthcare provider, as Representative Ross said, these rules now enmesh them in a state-imposed medical straightjacket, creating enormous and potentially criminal conflicts between what is in the best interest of the patient and what the State says is in the interest of all patients. You fear a government-imposed healthcare system. Why? This bill has created one far more intrusive than anything being proposed in Washington.

Finally, in the end will this bill achieve what I think its real goal is: to reduce the number of abortions? Perhaps it might in the short term, but I doubt it in the long term. As Anna Quinlin had written, no matter what we care to legislate, "Women will continue to find a way to end pregnancies that they cannot bear to turn by the hospitality of their bodies into children." Before they had the chance to do that in medically safe clinics, with expertly trained and caring staffs, to rich and poor alike. Now what I believe the result of this bill will be, particularly for the poor women of this state, is increasingly a return to the unsafe and uncaring days of yore: caustic chemicals, knitting needles, bootleg curettes, unlicensed doctors. When that happens, will those of us in this chamber comfort the parents and children of those who are now dead? Will we offer to them more than our versions of the Word of God and see how much good they do? Will we put our hands on their backs and say we understand? This still makes clear to me that some will never understand.

As we decide on this veto, let me say what the bill is...precisely what it is: a substitution by the State for the intensely personal judgment of the woman. This Legislature has no business substituting its own desired outcome for the private, intimate, spiritual decisions of the women of North Carolina. As the sociological conclusion of this bill it is implausible, and it is doubly implausible as an interpretation of the Constitution. We deal today with life and death, of both the woman and the fetus, but this bill at its core truly respects only one part of that equation, and it is most decidedly not the woman. The aspirations and settled understanding of North Carolina women are brutally changed by this bill and what it represents. Far from the objective "right to know" that it purports to be, it will be for many women a callous and profoundly destructive reminder of the power of government over our lives and that of our families.

Several weeks ago I suggested on the floor that we were perilously close to extinguishing the light. Today I fear the darkness has arrived, as the single vote needed to extinguish the light seems to have been found by the majority. With it the scourge of poverty will be accelerated, the freedom of women restricted, and all of our liberties as human beings in this state less secure than when we woke up this morning. To someone who believes that the role of this body is to protect the Constitution and to alleviate human suffering wherever we find it, this is a sad moment. Neither goal will ever be enhanced by this vote.

Mr. Speaker, it goes without saying I will vote to sustain the Governor's courageous, correct and compassionate veto. Thank you.

**Speaker Tillis:** Representative Farmer-Butterfield, please state your purpose.

**Rep. Jean Farmer-Butterfield (D):** To speak on the bill.

**Speaker Tillis:** The lady is recognized to debate the motion.

**Rep. Farmer-Butterfield:** Thank you. In my opinion, House Bill 854 should be given the short title of “A Woman’s Need to Be Fully Protected and Cared for and Told What to Do and How to Do It by Government.” Bad medicine. Bad public policy. Pure politics. Please vote no to sustain the Governor’s veto.

**Speaker Tillis:** Representative Martin, please state your purpose.

**Rep. Grier Martin (D):** To debate the motion.

**Speaker Tillis:** The gentleman is recognized to debate the motion.

**Rep. Martin:** Thank you very much, Mr. Speaker. Ladies and gentlemen of the House, our state has a long history of divisions. From colonial history, we’ve divided ourselves along geographic lines: mountains versus down east, urban versus rural; early in our history: free versus enslaved, black versus white, and so many other ways. But so many times in this body, we have stepped forward and spoken—not as a mountain legislator, not as an urban legislator, not as a black or white legislator—but as a *legislator*, a servant of the people of North Carolina. I believe that when we’ve done that we’re at our best, and some of my finest moments in this Legislature have come when we’ve joined together to do that, whether just before my time, when mountain and coastal legislators came together to raise our state from the floods, or as we’ve joined black and white, Democrat and Republican, following Representative Womble’s lead to try to atone for the horrors of eugenics.

In so many ways we have spoken, not as a particular category or class, but as servants of the people of North Carolina. This legislation goes directly against that and instead seeks to divide North Carolina along gender or sex lines. Just like a craven pack of hyenas trying to separate part of the herd away so they can tear into it, this bill seeks to divide women away from the rest of the herd so that the State can prey on them by inserting itself into a decision that should only be between that woman and her doctor.

So I speak to you today having been divided, not as a legislator but as a man, urging you to sustain the Governor’s veto and vote against this motion.

**Speaker Tillis:** Representative McGuirt, please state your purpose.

**Rep. Frank McGuirt (D):** To debate the motion.

**Speaker Tillis:** The gentleman is recognized to debate the motion.

**Rep. McGuirt:** Mr. Speaker, thank you. Ladies and gentlemen of the House, I’d never thought I’d stand in this chamber in this state and make this statement, but George Orwell was right: *1984* is here! It took it until 2011 to get here, but it’s here! That’s what I thought when I first read this bill, because this is Big Brother! This is Big Brother bashing his way into the O.R., bashing his way into the relationship between a doctor and his patient, and this is wrong. This is Big Government, and I can’t believe it’s coming from the party in this chamber that advocates for less government intrusion into our lives. This is Big Government; this is wrong, and I urge to join me in voting NO to override the Governor.

**Speaker Tillis:** Representative Insko, please state your purpose.

**Rep. Verla Insko (D):** To debate the motion.

**Speaker Tillis:** The lady is recognized to debate the motion.

**Rep. Insko:** Thank you, Mr. Speaker. I would just say that I agree with the speakers who oppose this motion. One thing that hasn’t been said is that this bill discriminates against poor women because women of means have always been able to find a safe abortion and they will continue to do so. We don’t have any business discriminating against poor women when women of means will continue to have this option. I urge you to vote no on this motion.



**Speaker Tillis:** Representative Parfitt, please state your purpose.

**Rep. Parfitt:** To speak a second time on the motion.

**Speaker Tillis:** The lady is recognized to debate the motion a second time.

**Rep. Parfitt:** I appreciate the opportunity that we have had to have full debate on this issue. Sometimes we think we're just reiterating what has been said before, but I learn something new every time my colleagues get up to speak. I was reminded by Representative Ross of a part of this bill that is one of the most disgusting parts of it: the part that allows the rapist to have rights. Do we want to be an organization, a body that gives more rights to the rapist than we do to the woman? One thing that Representative Samuelson said would be hopefully in her mind a consequence of this bill is that there would be less abortions, so perhaps there would be less abortions by women who have been raped. We actually have laws on the books that take care of that, and in the *Georgetown Law Journal* it discusses the consequences of women who choose to raise children who were the result of rape. A certain percentage of women *do* do that, and that is their choice, and I think that's what we're speaking about—that it is their right, and we don't want to interfere in their right any more than anyone else's right to make their own personal decision. In fact, most state laws allow the rapist to have parental rights. Are we going to be dooming more women to this? One case states,

“I was raped in North Carolina and the rapist won joint custody. Torment does not come close to describe what I live. The courts have not only tied and bound me to the rapist, but also the infant child that was conceived by violence. The rapist's violence has earned him even more control over my life.”

So the bill that we are trying to pass today that grants rights to a rapist—we should be ashamed of ourselves. We should not be letting this go. Please, *please* support and sustain the Governor's veto and vote against this bill. Thank you.

**Speaker Tillis:** Representative Graham, please state your purpose.

**Rep. Charles Graham (D):** To speak on the motion, Mr. Speaker.

**Speaker Tillis:** The gentleman is recognized to debate the motion.

**Rep. Graham:** Mr. Speaker, members of the House, I want to read a statement that I have received from an organization, and this is one of the reasons that compelled me to support (*sic*) this override, and I'd like to read this statement.

“I'm an executive director of a rape crisis center, and I've worked with our organization for twenty years now. Although pregnancy after rape is uncommon, it isn't unheard of. In those cases where victims find themselves pregnant as a result of rape, they find themselves faced with a terrible situation. In the years I've worked with victims of sexual violence, I've known a few women who have kept their babies conceived through rape, others who gave their child up for adoption, and a few who elected to terminate the pregnancy. In all cases, the trauma of the rape was compounded by the pregnancy and none of the choices were easy. Sadly, it seems I see more young girls who are victims of incest or rape who have become pregnant.

“After reading the language of House Bill 854, I'm concerned that revisions of the bill would further traumatize women who are already facing a most unfortunate circumstance. Former President Jimmy Carter has said that his hope is that all pregnancies would be welcome and joyous, and abortion a rare occurrence, and when abortion is necessary, he believed it should be safe and compassionately offered. I urge you to vote against House Bill 854 because of the trauma it could cause to women who are pregnant as a result of violence.”

This is one of the reasons I will be supporting the governor's veto. Thank you, Mr. Speaker.

**Speaker Tillis:** Representative Alexander, please state your purpose.

**Rep. Martha Alexander (D):** To debate the motion.

**Speaker Tillis:** The lady is recognized to debate the motion.

**Rep. M. Alexander:** Mr. Speaker, thank you very much. Ladies and gentlemen of the House, I appreciate those who have stood in support of sustaining the Governor's veto. I think one of the things that we keep forgetting is that when women have been faced with this choice that they have to make it is done in pain, it is done in seeking help from others, and to think that women have not sought medical help, have not gone to clinics where help is available, have not taken into consideration the many different aspects and trauma of the state that they're in, whether it's incest, whether it's rape, or whether they just got pregnant and didn't really mean to.

If you've ever had someone stand before you who has had to make this type of decision, you know that we do not need to have this bill. We do not need to dictate to women who have the ability to make the decisions that are best for them. There is absolutely no reason that any legislature, any law-making body, should be dealing with this type of subject, which is between a patient and the doctor. We don't do this for anything else. Why should we do it for this? As Representative Adams has said, if we were talking about this and it was something that men had to put up with, you wouldn't want us to have something set out in great detail like this. I don't believe you would.

But this is not about women sitting here in this body. This is about your wives and your children and your grandchildren, and for all women, not just those who are poor. There are people who are rich who find themselves in the same type of dilemma. It's not for people on one side of the street or the other. It's for women in general. There is just no reason in this body why we should have this even before us, and I would ask that you sustain the Governor's veto. Thank you.

**Speaker Tillis:** Representative Blust, please state your purpose.

**Rep. John Blust (R):** To speak on the motion.

**Speaker Tillis:** The gentleman is recognized to debate the motion.

**Rep. Blust:** Thank you, Mr. Speaker and members of the House. When I came in here I wasn't planning on saying anything on this motion, but I really don't want to sit here and have the official House of the people hear debate so on one side versus another of this issue, and most of which, if we get to the crux, is trying to take the moral high ground on one side versus the other when I think the opposite is true.

I'm not going to try to refute everything that has been said in support of the Governor's veto, so much of which was not correct, but I will say this: the bill does not affect the choice of the pregnant woman. It doesn't do that at all. We can argue whether there should be a choice or not, but the bill does not go into that particular argument over the abortion issue. The bill just says that you ought to take some time and be sure to know certain things. I'm speaking to this mainly because of an experience I have had. I have been involved in an unplanned pregnancy and I have seen the ultrasound. I knew—I *knew*—when I saw it that this was a life. This was my daughter. This was Barbara. It wasn't a blob of cells. It wasn't a thing. This was my little baby in the womb.

I've heard over the years so many times the mantra of the now-minority party: that we will be judged as a society by how we treat our most vulnerable. I ask you, what is possibly more vulnerable than a baby human being in her mother's womb? (Now let me use the euphemisms that give us comfort and keep us from thinking about what's really happening.) Had that pregnancy been terminated, that would not have been just a medical procedure; that would have been the destruction of Barbara Blust. There's no way to get around that.

Of all the speakers today on this issue, I think only Representative Glazier even acknowledged that there's another life involved. We're just saying—the proponents of this bill—there are *two* lives involved, and that other one: who speaks for her interests? We're talking about women. Ever since *Roe v. Wade*, this isn't just some small little thing that people sometimes go in for medical procedures. Folks, there have been fifty million souls destroyed. Does that not bother you at all? I remember the Clintons said that abortions should be "safe, legal and rare." Why rare? Isn't the fact that we want it rare some acknowledgement that there's a moral question involved?

This bill is just saying, "Take your time—a little bit—and think about that." This has been something that's bothered me, because when Barbara was born she was five pounds, six ounces—a tiny little thing—and she had

actually been induced to come a little early. She was shrinking in the last week or so, so we needed to bring her early. Because she was so tiny and had shrunk, her mother became a food nazi—I say that jokingly. We fed her all we could, and many a time I held this itty bitty thing—after they’re born, they’re so vulnerable and innocent—I have so many times held her right here and fed her and watched her with wonderment, and I’ve thought about—I’m sorry, but I’ve thought about all the children, the tiny, vulnerable babies just like Barbara who didn’t even get this far. They were destroyed, and I think, *shouldn’t I be doing even more?*

This bill doesn’t even go to the abortion issue and stopping it. This is a small thing to ask someone to do who’s given custody of such a precious commodity, to just take a little time and see something that does give you information. It does tell you a lot to see it, and I think that’s what some of the opposition is... They’re afraid of what women might do when they see a piece of evidence, and [*the opposition*] doesn’t want that.

I’ll tell you this in closing: if there’s one thing I have learned, it’s that a life is a miracle. It’s just been something to see little Barbara grow and know that she came from nothing, and here’s a little human life with all the possibilities before it, and it really is... Life is a miracle. It’s a miracle, it’s a blessing, and it deserves at least a modicum of protection of some kind from the State. Otherwise, why do we even have governments if they don’t do something to protect the most vulnerable of lives? I ask you to join me in voting for this veto override.

**Speaker Tillis:** Representative McLawhorn, please state your purpose.

**Rep. Marian McLawhorn (D):** Thank you, Mr. Speaker. I hadn’t planned to speak on this issue...

**Speaker Tillis:** The lady is recognized to debate the motion.

**Rep. McLawhorn:** Thank you very much. I had not planned to speak on this issue, either. I think this is a personal issue for every single one of us who is sitting in a chair in this chamber or who is standing in the gallery. It is certainly personal with me. My husband and I have four children, and they’re all blessings—you’re absolutely right, Representative Blust. They’re all not perfect, but exactly what I want, and we have grandchildren.

My husband and I made those choices together, and I’m very fortunate that we were able to do that, but not all pregnancies and decisions are perfect, and it gets personal. I think about my daughter, and I think about if she were sexually assaulted or raped and the choice that she would have to make, as an intelligent woman, the choice and the agony she would have to go through in deciding what she was going to do and how I would certainly support her on that. It just gets personal with that.

I think this bill is not the right way to go with that, and I will be voting to sustain the Governor’s veto.

**Speaker Tillis:** Representative Hackney, please state your purpose.

**Rep. Joe Hackney (D):** To speak on the bill.

**Speaker Tillis:** The gentleman is recognized to debate the motion.

**Rep. Hackney:** Thank you, Mr. Speaker and members. I join with those voices who say that this is an extreme bill, one of the most extreme in the United States of America. I join with those who say it is an intrusion into the doctor-patient relationship. There’s been much talk about informed consent and what it means in this context, and I think most of you know that informed consent already exists as a requirement in North Carolina for medical procedures, and that this bill is not necessary for that purpose. It’s real purpose, I believe, as has been stated by many others is to discourage and push women toward a particular choice—not to give choice, but to push toward a particular choice. It is in my view, as has been expressed passionately by many women on this floor, disrespectful for women, not respectful.

It is particularly disrespectful for those who have been victims of rape, of incest, or some sort of criminal wrongdoing. It will, I predict to you, drive them away from physicians for whatever remedies they may seek, and that is bad public policy for North Carolina.

There is another part of this equation which is little debated here today. Representative Glazier touched on it, and that is if it is lawful under the Supreme Court decisions of the United States. It has been held by that court that this right, like personal decisions relating to marriage, procreation, and contraception, is central to the liberty protected by the Fourteenth Amendment. North Carolina cannot “prevent any woman from making the ultimate decision to terminate her pregnancy before viability, or” —and this is the important part for today’s debate—“place a substantial obstacle in the path of a woman seeking an abortion.”

No one can legitimately argue that this does not place such an obstacle. I would urge you support the Governor's rational decision to prevent this intrusion into the medical relationship between a woman and her doctor. I urge you to vote no.

**Speaker Tillis:** Representative Keever, please state your purpose.

**Rep. Patsy Keever (D):** To speak on the bill, please.

**Speaker Tillis:** The lady is recognized to debate the motion.

**Rep. Keever:** Thank you, Mr. Speaker. I, too, was not planning to speak, but I feel so strongly about this bill, and I wish there were some words that I could use to convince everybody, or at least one or two, or whatever votes we need to sustain the Governor's veto.

What concerns me is that we're talking about rape—it's been mentioned several times—and we all just accept that... This society is in trouble when we can sit in this body and talk about rape without cringing inside. Clearly the vote will go how it will go. I desperately hope that some of you will come around and help sustain the Governor's veto, but I also hope that whatever way the vote goes, as a body we look at ways to educate women and *men* and *young boys*—Who do you think's doing the raping?—that we look at the situation that we have in our society and that we try to change that.

Abortion should not be the issue. I don't think it is the issue in this case, but I think it's the underlying thing of what many people want. There should be fewer abortions, there should be more education, there should be better health, there should be contraception, and every baby should be wanted and needed and loved. Those of you that are talking about the miracle of birth: as a grandmother, as I stand here and talk to you. I have an eight-week-old grandchild that I adore. I have three other grandchildren.

We all know what it is to love another human being, but do we know what it is to be that other human being and not be loved, to be neglected, to be abused? Let us think carefully about this vote. Please sustain the veto. Thank you.

**Speaker Tillis:** Representative Hamilton, please state your purpose.

**Rep. Susi Hamilton (D):** To debate the bill.

**Speaker Tillis:** The lady is recognized to debate the motion.

**Rep. Hamilton:** Thank you, Mr. Speaker. I'm a mother. I talk about her all the time. Parker Elizabeth Hamilton is six years and three quarters; she'll be seven in October. She is indeed the light of our life, her father and I. I have a friend who, during the same period of time I was pregnant with Parker, was pregnant as well. They very much wanted their son; he, too, would've been the delight of their life. My friend developed melanoma during her pregnancy. She was strongly encouraged by her doctors to terminate this pregnancy. After all, pregnancy is cell division, and cancer is accelerated by the presence of a fetus in the womb when the mother is ill. She chose not to terminate the pregnancy, and I supported her in her decision. Her baby boy was born. He's perfect and healthy. She died when he was eight months old as a result of her cancer.

This is not an issue that the Legislature of the State of North Carolina should be advising on. We should not be telling our doctors what to say to their patients. Pregnancy is a medical condition. The mother is a patient as well as the child. Politicians should not be scripting the conversation between a doctor and his patient or her patient any more than insurance companies should be doing so. I implore you: sustain the Governor's veto. Thank you.

**Speaker Tillis:** Representative Samuelson, please state your purpose.

**Rep. Samuelson:** To speak a second time on the bill.

**Speaker Tillis:** The lady is recognized to debate the motion a second time.

**Rep. Samuelson:** We've heard a lot this afternoon, very impassioned and dramatic. On the Constitutionality: twenty-six other states have something like this. We're the only state in the southeast that doesn't. Precedent: sterilization requires a thirty-day waiting period, so let's not assume we have no other rules around waiting periods.

This isn't going to remove the woman's right to choose. She still chooses with *more* information. My question is: what is so dangerous about information that we somehow or another don't want to make sure that she knows what she's doing and has the information she would get in any other medical procedure that we have? Frankly, ultrasounds are already required, so why wouldn't we want to make sure she has the *option* of seeing that ultrasound?

The one that speaks to most of us more is the whole issue of rape. We brought up that someone was a mother; I'm a mother. I'm an adoptive mother, and in fact both of my adoptive children have special needs and may have been suggested in some cases better not to have been born.

I am also a rape victim, and I will tell you that for fifteen years, I could not stand to have anyone touch me whom I did not know well. It impacted just about everything I did in my life. To tell me that somehow or another a woman who has been raped, let alone by someone she is related to who may very well have brought her to the clinic, that somehow or another it's better for her not to know what's going to happen to her *once again*? To not have the chance to weigh her alternatives *once again*? To act like somehow or another saying, "Look, this is what's going on and here's some time to think about it," respecting her choice is *traumatic* and *victimizing*?

I'll tell you what traumatic and victimizing is! I know I am not the only woman here who could stand up and say the same thing. I urge you: respect the women, whether they've been raped or got pregnant willingly. Respect them. Give them the information they need. Honor their choices. Override this veto.

**Speaker Tillis:** Further discussion, further debate? If not, the question before the House is the passage of House Bill 854, notwithstanding the Governor's objections. All in favor will vote aye; all those opposed will vote no. The Clerk will open the vote... The Clerk will lock the machine and record the vote. Seventy-two having voted in the affirmative and forty-seven in the negative, House Bill 854 has passed and will become law notwithstanding the Governor's objections.

*[Cheers erupt from the gallery]*

**Speaker Tillis:** The gallery will please come to order. We understand the emotions in this bill, but we try to be even-handed in our management of the chamber.

#### **HB 854 – Abortion-Woman's Right to Know Act Senate Remarks on the Veto Override July 28, 2011**

**President:** Public bills: House Bill 854, the Clerk will read.

**Reading Clerk:** House Bill 854: Abortion, Women's Right to Know Act

**President:** Senator Daniel is recognized to explain bill...or to explain the motion.

**Sen. Warren Daniel (R):** Thank you, Mr. President and members of the Senate. We discussed this bill in depth earlier this session so I won't go into the specifics today. In general terms this bill requires that women receive a consultation with a doctor, are given information on alternatives for abortion, are offered an ultrasound, and are given a twenty-four-hour waiting period before having an abortion.

I've learned in my brief time in the Legislature, as the President has pointed out on at least one occasion, that our long, eloquent floor speeches rarely change the result of a vote, so I won't debate all the merits of the bill. But I would like to make a couple of comparisons to current laws we have on the books in North Carolina that have a waiting period.

The first is divorce. A person who wants to file a petition for a divorce has to wait a year after separation before they can seek a divorce. Why? Because we value the institution of marriage and we want to see couples work things out and stay together, and a one year waiting period can help facilitate reconciliation.

The second is home refinance loans. If you want to refinance your house you have to wait three days from the time you sign the documents before the loan becomes final and money is disbursed. The attorney is required to give the borrower three copies of a form that would allow them to cancel the transaction for the next 72 hours. Why? Because we don't want lenders taking advantage of homeowners and we want homeowners to take the time to consider whether they want to put their homes at risk by taking out their equity.

One year to get a divorce, three days to refinance your house, twenty-four hours to terminate a life. If a one-year waiting period saves a marriage, if the three-day waiting period prevents a bad financial decision, I think those of us in this room would agree that those laws serve their purposes and that the waiting periods were worth the inconvenience. And if a 24-hour waiting period saves one life I would hope that all of us here would likewise agree that any inconvenience for the doctor or patient was also worth it and was insignificant—because every life has dignity and value and every person bears the mark of Almighty God.

This bill does not take away a woman's access to abortion, but rather ensures that she will have the tools necessary to make a truly informed decision. It's not an attack on personal freedom but a guarantee of it, because it safeguards her right to know and make an informed decision. There's no downside to providing pregnant women with more information at a time when they are considering an abortion. We know that this bill will save lives—almost 3,000 a year in fact as estimated by the Research Division. So if you believe that abortions should be safe, legal, and rare, there is no reason not to support this bill. It is still a woman's choice—it's her informed choice. Life is at stake, and I urge your support of the motion.

**President:** Senator Kinnaird, for what purpose do you rise?

**Sen. Ellie Kinnaird (D):** To speak on the bill.

**President:** You have the floor.

**Sen. Kinnaird:** Thank you. This is a very serious bill, and everyone here knows it's a serious bill. I am a mother of three sons, a grandmother of two granddaughters and a grandson. I have put most of my life into those children and those grandchildren. So I know what it means to have a baby, to bring them up, and to be involved in their lives while they are growing up and when they are grown up.

You know, no woman wants to make this choice...No woman wants to make this choice. But what's difficult about this bill is that you're attributing to women the inability to make one of the most important decisions of her life. You know, women can do everything that men can do, plus one. We can bear a child. And all women grow up knowing this special privilege that has been given to her.

If an unplanned pregnancy occurs, there is a major change in the direction of her life. A lot of thought goes into it—and it isn't a 24-hour decision. She may have a month or a month and a half of great concern, of great fear, of what a major decision this is. Much anguish and thought goes into that decision to end that special privilege—that power that only women have. And you know, the decision is not made in a vacuum. A husband is very often a part of this, and part of that anguish and part of that decision. A father is involved in all aspects of this result.

The doctor's part of helping a woman make this grave, grave decision: it's not as though she comes in one day to make that decision. And what this really *is* is government coming between a man, a woman, her family, and her doctor. You know, if you're really serious about unplanned pregnancies you should give contraception freely to every man and woman. That's what it would mean to end abortion. For a party that says "keeping government out of our lives," this is an incredible intrusion into a woman's life in the most difficult decision she will ever make. I urge you to vote against the bill.

**President:** Senator Garrou, for what purpose do you rise?

**Sen. Linda Garrou (D):** To speak to the bill. Thank you

**President:** You have the floor.

**Sen. Garrou:** Thank you, Mr. President. Senator Kinnaird was very eloquent with her statements and certainly I would agree with those. As a mother of two daughters and a grandmother of four children I know about birth. I know about the decisions that have to be made. I know about the critical problems that people face as they face pregnancies.

I had a granddaughter who arrived about nine weeks early, weighed in at less than the size of a chicken that I buy at a grocery store some of the time. We had real concerns about what was going to happen with her life. I know what life means and I know what life provides to people. I know the gift; I know, Senator Daniel, that God created me in my mother's womb. I realize that. And I wish I could say to you that I thought this bill was going to prevent abortions. But that's not what it's going to do. This bill is going to put more women in jeopardy.

We cut off Planned Parenthood money. We've got county departments of health where you have to wait three months to get a cancer smear done, to get my mammogram, or to have any kind of family planning. We've done all those things and yet we're going to say "Okay women, we've done those things to you and now you're just left out there to have to deal with some of these issues that are so extremely private to you and your God."

I can't tell you some of the kind of emails I've received from people since I spoke out against this bill. It is really amazing to me...It is really amazing to me. And I've said to people "I respect your decision and I would appreciate it if you would respect my decision. I'm not going to make a decision for you, and I wish you wouldn't make a decision for me." I have a relationship that I know the value of life. I know the value of marriage – I've been married 45 years—I know the relationship between a woman and her doctor, and I know how important it is.

The irony, just as Senator Kinnaird said, about being down here: I guess this session I've never heard as many bellicose statements about "Get government out of the way. Get government out of our business. Let us make those decisions." And yet you want to make a decision that's going to affect me as a woman—not anymore, obviously—but for women in general: for your wife, for your daughter, for your granddaughter.

And you are going to say...You're going to pretend that it's going to make a difference. But it isn't going to make a difference. It's going to put women in greater peril. It is going to put a woman who is scared, who is in a terrible situation, a woman who does not have the support of a man or perhaps who does have the support of a man and cannot afford another child.

I told you the last time we were here, I couldn't even think of a situation where I would have had an abortion. My husband served on the special children's center for years and we talked about the fact that had we ever had a child with severe disabilities that we would have considered that a great gift and one that we would have gladly turned our lives around so that we could stand up and support that child because we would believe that that child was a gift from God—and a gift from God to us.

So this isn't about something like that. But again, it's a serious, serious assault on women...It's a serious assault on women. You know, we came down here talking about jobs—creating jobs in North Carolina—about what we were going to do about education, what we were going to do about some of these other things that made such a difference from (*sic*) our state. We spent a lot of time talking about license tags, taking away rights of people to vote. We spent some time in here yesterday talking about how mom and dad need to be in this district. We've spent some time on really some pretty serious, silly things.

But this is serious...This is serious because we're going to see more women lose the opportunity of the help that they need. And again, as I said, I wish that it was going to cut out abortion. I wish we could lower the number of abortions we're going to have, but we're not. We can't say that we are because we're not. So I would ask that you stand with me today—with women across North Carolina—to sustain this veto. Let's get back to the business we were supposed to be sent down here to do: to improve education, create jobs, do some of the thing that are going to keep North Carolina from moving down to the lower level of South Carolina or some of these other states that we don't think who are the kind who are our equal. Let's get back to doing that, and leave women's business to women. Thank you.

**President:** Further discussion and debate?

**Sen. Gladys Robinson (D):** Mr. President?

**President:** Senator Robinson, for what purpose do you rise?

**Sen. Robinson:** To speak on the bill.

**President:** You have the floor.

**Sen. Robinson:** I just heard Sen. Daniel talk about waiting periods and the statutes regarding divorce and home equity and those kinds of things and what we require. Well, I agree with my two Democratic colleagues, the women who said that we talked about a lot of issues. We've debated a lot of issues that affect the quality of life for the people of North Carolina in terms of education, taking away some of the health, public health access, but this one is one that talks about taking away personal freedom. Not, you know, we talk about taking away voting rights—I've talked about that—but we're talking about a personal freedom. I'm also a mother of two daughters. My husband is deceased, but we have two granddaughters. And we made the choice to have those two daughters. We could afford them, and we provided the quality of life that has allowed them to be productive citizens, have good jobs, etc.

But I also have a division of my agency that works with women who are abused. Women who are abused by partners, who may be in the streets, who may be on drugs, who may have been incarcerated, or women in their own homes who don't have access to some of the very services we just took away.

We just took away funds for Summit House, and that's a place that allowed these women to go to have counseling, to have support. It was a respite for women as well as a place for their children. We see women who come in who have been beaten who already told the law enforcement that this person was a threat. They filed a warrant, but they were beaten, they were abused and they were raped. And they have no alternative; they have no recourse. They have to make a serious decision in terms of, "Do I have this baby that I can't afford or do I abort it?"

And so you're taking away from them who already don't have many rights—who have very little money, very few support systems—the ability to make their own decision about the course of their life. And that's a travesty because you have access...I doubt if there's any person here who doesn't have access to the best health care resources, to psychological or psychiatric services. And if you had any abuse going on in your home you could get an attorney; you could do whatever you need to. But the women I serve—the women we serve—can't do that.

And so I want to read a letter from another victim—another woman—who says:

"I am a survivor of rape. Date rape. It was a traumatic and emotional time for me. And to this day, over 20 years later, I still deal with emotional scars of this life event. I am also a person with a rare genetic disability. My medical professionals have worked for years to advise me on how to best manage my disability, and on my medical options regarding family planning. I have always wanted to be a mother. I have always wanted to raise a child and see that child grow into a vibrant member of society. I have been blessed recently to become a step-mom to two wonderful children whom I love dearly. It is with this desire that I need to express my disability and the ability to give birth to a child would be medically complicated and could result in a miscarriage, in hemorrhaging and in other significant issues for both myself and the child. As I got older, my medical doctors began the difficult decision, discussion of terminating a pregnancy due to the significant challenges I could face as I age. I use birth control regularly, but as we all know, at times the best precautions do fail. If I had become pregnant, the choices would have been heart-breaking. This discussion, and in fact this decision, would have been heart-breaking, but this decision and discussion should be between my medical team, my husband, and my conscience. This legislation demands that I see an ultrasound of my child—a child I would never be able to hold, a child I would never be able to love, a child I would never be able to raise. There would be no alternatives for me, but to give up this life."

And so I ask you on behalf of this woman and the other women that we work with on a regular basis, to oppose this bill.

**President:** Any further debate?

**Sen. William Purcell (D):** Mr. President?

**President:** Senator Purcell, for what purpose do you rise?

**Sen. Purcell:** To speak on the bill, Mr. President.

**President:** You have the floor.

**Sen. Purcell:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I previously stated when this bill was before us that if you succeed in making it more expensive or more difficult for a woman to have her pregnancy terminated by placing more and more barriers in her way, you will see an increase in self-induced or back-alley abortions, especially among low-income North Carolinians, as we did before it was legal to have a pregnancy terminated.

I also related to you cases of two young women that I cared for who died after they induced abortion using coat hangers. Like the others, I have heard over and over from those now in charge of this chamber that we have too much government, that we should get government out of our lives. Yet at the same time you support legislation such as this which tells a physician that they must inform patients of thirteen specific items. And you are doing this at a



time when you have made major cuts to pregnancy prevention programs which will certainly result in many more unwanted pregnancies and increased requests for pregnancy terminations.

For the first time in history, this bill, or our government, tells physicians what they must tell their patients. Not only what they should tell them, but when they should do it. No physician licensed to practice medicine in North Carolina with all of the liability problems, no physician licensed in this state is going to perform any kind of surgery, including abortions, without discussion with the patient before the procedure.

The implication that physicians presently don't discuss the ramifications of the pregnancy termination with their patients is absolutely not true. Also, no woman, as has been stated, makes a decision to have her pregnancy terminated without going through thorough, considerable anguish and concern. No one is happy about abortion. I am certainly not. But a physician is the best person to help a pregnant woman as she makes her decision. And that can only be done in the confines, in the confidential doctor-patient relationships.

For this legislation, big government, by telling physicians what they must say, completely undermines this doctor-patient relationship, which has been a sacred part of healthcare in this state from the beginning.

This legislation is an insult to North Carolina's physicians and healthcare providers. It is humiliating to women in time of crisis. It implies that women don't know how to make decisions regarding their own bodies. It is complicated, it adds unnecessary expense, it is legislation that is not needed, and it is an intrusion into matters that can best be decided between a physician and their patient.

**President:** Senator Mansfield, for what purpose do you rise?

**Sen. Eric Mansfield (D):** To debate the bill.

**President:** You have the floor.

**Sen. Mansfield:** Thank you, Mr. President. Ladies and Gentlemen of the Senate, just want to reiterate what Senator Purcell has already said. And in the last month since we first debated this, I've probably have been inundated with a bunch of emails, and I, like Senator Garrou, have been a bit taken aback by the tenor and the tone of these discussions. However, I read about 42 peer-reviewed articles around this conversation. I've also gone on YouTube and I've watched the video testimony and I've read everything that has come through the General Assembly and I'm convinced that we do not have an informed consent problem, but we have an informed counseling problem and this bill does not address that.

This bill talks about informed consent, that physicians don't get informed consent, but there are people who came to the General Assembly and said that they've had multiple abortions—one lady said she had five, one lady said she had three. And to lead us to believe that this person got out of their car and went to a facility, signed a bunch of paperwork, and then had their clothes taken off, put on a gown, and then went back and had a procedure performed, woke up in the recovery room, walked out of that facility, and no one in the entire facility told them they were having a procedure or the complications and the risk of that procedure—I just don't believe that happens in North Carolina.

And for someone to say that has happened three times—that they got out of their car, walked into a facility, disrobed, signed paperwork, had a procedure, went to the recovery room, went back to their car, and then say they had no idea what just happened to them when I know for a fact...I perform about 45 surgeries per month—about 1,000 surgeries per year for the last 14 years—and there's not a single patient of mine that's ever gone to the operating room where I didn't talk to them about their consent or their nurse did not talk to them about their consent. As a matter of fact, now, because of JCAHO, we have time-out procedures, where before anything is done we have to ask the patient "Do you understand the procedure that you're about to have performed?" And then we ask them, "Do you understand what the risks and the complications of this procedure will be?" And then they must answer in the affirmative and then tell us exactly what the procedure and exactly what the complications are. If at any point does that system fail, the entire system stops. Everyone in the operating room stops and we start over again.

And so when you say that doctors are not sitting here, talking to patients and tell them that yes, you do have the risks of a perforated uterus, you do have a risk of bleeding, you do have a risk for infection, and yes there's even a risk for death—I just don't believe that.

The second bill that came from the House over here was the bill on the President's health plan. And with record numbers of vigor and vitality and passion many of you stood up and talked about the individual mandate and how big government should not impede upon the progress of individuals, particularly the citizens of North Carolina. And yet we stand here right now and we're going to allow big government to do something that has never been done in the history of North Carolina: allow them to come between the patient and their physician and tell the physician how

to do an informed consent. Even our Research Division put in their notes “for the first time in the history of North Carolina...” We’re going to do something that has never been done by the General Assembly.

Now many of you freshmen came up here just like I did saying that we need to decrease the amount that government impedes upon lives, and at some point government should be about helping people and then leaving people alone to handle their own affairs. And yet we take this hypocritical stance because we say its okay when we stand up against the President for health care, but for this thing we’re going to look the other way.

It’s no small wonder that the North Carolina Medical Society is against this bill. And that’s not a left-leaning organization. It’s no small wonder that the North Carolina Medical Society of OB/GYNs are against this bill. That’s not a left-leaning organization. They are against this bill, not because of the pro-life versus pro-choice argument; they’re against this bill because of the physician-patient relationship. And I would wonder, if we as a General Assembly stood up and looked at every lawyer in this room and said, “We’re going to tell you how to interact with your client,” how many more of you would not be standing up railing against that same measure?

If this is about abortion then make it about abortion and vote against it. If this is about informed consent you have not one shred of evidence to prove that that physicians in this state, in this procedure, are not giving informed consent. Not one shred of evidence, not one piece of scientific-peer-reviewed journal has ever come across my desk that proves your point. And if we as a body are going to be about evidence—you have none. If it’s going to be about policy—you have none. If it’s about politics—you win the day. I ask you to vote against it.

**President:** Senator Berger of Franklin, for what purpose do you rise?

**Sen. Doug Berger (D):** To see if Senator Daniel will yield to a question.

**President:** Senator Daniel, do you yield?

**Sen. Daniel:** I yield.

**President:** He yields.

**Sen. D. Berger:** Senator Daniel, I want to draw your attention to Section 90-21.88a on Page 6

**Sen. Daniel:** Is that line 36?

**Sen. D. Berger:** It begins at 36 and line 37. Can you tell me if a father rapes his daughter and the doctor does not follow the protocol set forth in this statute that that perpetrator of incest would have a cause of action to sue the doctor under this bill? I mean, can a person who’s raped his daughter sue the doctor under this bill?

**Sen. Daniel:** Senator Berger, my understanding, if you would refer to NCGS 14-27.2 & 3, the statues that deal with first degree and second degree rape. Second section, c of both of those sections reads, “Upon conviction, a person convicted under this section has no rights, the custody rights of inheritance of any child born as the result of commission of the rape, nor shall the person have any rights relating to the child.” So my understanding is that the rapist would have no parental rights.

**Sen. D. Berger:** Follow-up?

**President:** Follow-up.

**Sen. D. Berger:** Typically, well...So if the father has raped his child and has yet to be convicted, he would have a cause of action, wouldn’t he? I mean, if he gets his daughter pregnant and he learns, or wants to make the argument that the protocol on the procedure wasn’t followed, and he hasn’t come to be convicted of the act of incest yet, he could have a cause of action under this bill, couldn’t he, Senator Daniel?

**Sen. Daniel:** I’m not sure if I agree with that statement and I also refer you, Senator Berger, to Section 15b-30, the Crime Victims Financial Recovery Assistance Act, which was passed in 2004. Paragraph 1 of that bill says, “No person who commits a crime shall thereafter gain monetary profit as a result of committing the crime.” I’d certainly be glad to...If you think the language isn’t specific enough, I’d be glad to work with you in the future on correcting.

**Sen. D. Berger:** Well, I think that this...

**President:** Follow-up.

**Sen. D. Berger:** I'd like to speak on the bill.

**President:** Okay, you do have the floor to debate the bill...[audio unclear]

**Sen. D. Berger:** I think this is a very serious problem in this bill. And I think those of you know that I worked with the Republican Majority in support of making it a separate crime to intentionally end a woman's pregnancy, and for the most part, most of the Democrats in here, we came together on a very difficult moral question. And I had always kind of envisioned when we explore these issues, that I would probably support certain measures that could help reduce the choice of abortion. But there's an appropriate way and an inappropriate way, and I want everyone to understand in here my personal background in coming to this issue.

Both my sister and I were adopted and so I wouldn't be here standing here today if it weren't for parents who wanted to have a child and my biological mother making the decision...instead of choosing an abortion, making my sister and I available to my parents. And this is a really important value within the context of my family. My daughter just in the past two years has converted to Catholicism and would describe herself as a pro-life Democrat. And my granddaughter is going to be raised up in the Catholic faith and I suspect, given my daughter's views on the issue of abortion choice, that my granddaughter will also be a pro-life Democrat.

But this bill goes too far. When you start talking about victims of rape and victims of incest, that is a highly, highly personal decision with what to do when you've been traumatized. The idea of taking a woman who's been raped or a young child...I'm thinking of if my daughter had been raped or my granddaughter gets raped, that they would then be required to go through this process I think is highly offensive and is such a major intrusion of government.

This bill really is extreme. I mean, Texas right now is doing the very same thing we're doing. They passed a similar law this year, but they provided exceptions to victims of rape and incest in the requirement to have to go through this ultrasound process. You could have crafted a bill that could have been bipartisan, I believe. But instead, you as a party...Somewhere the center has fallen out of your party. Somewhere the diversity of your party has now slid to one side of the political spectrum and this is basically an ideological bill here furthering and advancing those people that believe women should not be able to exercise their constitutional right to control their own body in any circumstance—rape, incest being the most egregious circumstances under which a woman may find herself having to exercise this choice.

It's very, very disappointing. I know that you are good people on the other side of the aisle. I mean, I worked with many of you for years and I welcome and worked well with you, Senator Daniel. You know, you and I share many of the same views on a range of issues, but this is just morally wrong going this far. Unfortunately, because it's so extreme, I will be voting to sustain the Governor's veto.

**President:** Senator Stein, for what purpose do you rise?

**Sen. Josh Stein (D):** To debate the bill.

**President:** You have the floor.

**Sen. Stein:** Ladies and gentlemen of the Senate, imagine a young couple that wants a child, learns that they're pregnant—the joy that they feel. Then they discover *in utero* that that child has Tay-Sachs. Tay-Sachs is a genetic disorder that causes the relentless deterioration of medical, mental and physical abilities from about six months till generally death at about four years old. Some women who have discovered that their fetus has Tay-Sachs carry that child to term and raise [it until] that child tragically dies. Others choose to terminate that pregnancy.

That is their constitutional right. Making that choice is incredibly difficult and emotionally challenging. It is a decision that that woman should make in consultation with her husband, her support network and her God—not her state government.

With this bill, the government assumes she hasn't given any thought to this important decision. What does the bill require of the government? What does the bill have the government require this woman go through before she can exercise her constitutional right?

First, the government insists that 24 hours before the procedure she be told of matters such as the liability insurance information of the physician, the clinical privileges of the physician at a nearby hospital, that the government provides food stamps to poor people, that her husband is liable for child support, that she can put her baby with the genetic disorder up for adoption, and that she has the right to see a document with pictures of fetuses at various stages of development.

Second, the government requires that this woman sign a certification that she learned all this valuable information. Then the government requires that that woman come into her procedure four hours before the procedure and sit for an ultrasound. That the screen—by law—that the government requires be turned in her field of view. In a moment of apparent compassion, the bill literally says, “She may avert her eyes.” She may avert her eyes from the fetus that she desperately wanted but made an emotionally wrenching decision to terminate that pregnancy.

It doesn’t say she can close her eyes or turn her head. I guess if she does either of those things she’s violated the law. It says also that she doesn’t have to hear a description. Let me tell you what she has to hear: “In addition to this ultrasound, the provider shall provide a description of the presence, location, and dimension of the unborn child within the uterus, the number of unborn children depicted. They shall offer her the opportunity to hear a fetal heartbeat.” It says, “The provider must describe the presence of external members and internal organs, if present and viewable.”

Again, in a moment of compassion, the bill says she doesn’t have to hear those words. I don’t know how you don’t hear words that are, by law subject to liability, required to be spoken when those words are spoken three feet from your head. How do you not hear those words? How do you not hear how many digits your fetus has when you wanted that baby in the first place?

This government not only requires that the woman certify that these descriptions were made, that she have this ultrasound be put in front of her face. Even if she says she doesn’t want it turned in her view it, by law, must be turned in her view. She has to affirmatively state on that form whether she chose to avert her eyes. Why in the world do you think state government needs to put on a written documentation that must be saved for seven years that a woman chose to avert her eyes from an ultrasound of a baby she wanted to have?

On Tuesday I got an email from a constituent. She wrote me:

“I had an abortion many years ago. I knew my options; I weighed my choices very thoroughly. I made my choice with my boyfriend. We drove to Wake County because my insurance didn’t have service locations near where I was living at the time and then drove back the same day. If I had to go through all the hoops that this bill is trying to put in place I would not have been able to proceed with my decision back then. It would have taken my choice away from me entirely. This bill attempts to step in and say ‘No, no, little lady, if this is the choice you are making, you could have possibly not have made an informed decision. Let me show you why you should choose something else.’ To walk up to a stranger—even in a doctor’s office—and say ‘I want an abortion’ is a very hard choice. Most women out there will think long and hard about making that choice without the government jumping in and making them jump through all those hoops. Please vote ‘No.’ Not necessarily because you support abortion, but because you realize that being female does not mean that you are stupid, and that choosing abortion is not an easy choice, no matter what. But it is that: a choice. And one that all women should have without someone second or third guessing her.”

And my only comment would be is that that someone is the state government second or third guessing her. This bill represents big government in matters most intrusive and most personal.

The last bill we discussed was a bill that told the people of Guilford County, the people of Mecklenburg County, the people of Buncombe County: “You don’t know how to draw your own district lines. It doesn’t matter that you actually have a hearing scheduled tonight to do just that. We in Raleigh—we big state government—are going to tell the people of Mecklenburg, the people of Guilford, the people of Buncombe, we’ll draw your lines for you.”

Put that bill to this bill which tells all the women in the state: “We know what information you must consider before you make this most important decision that you will ever make.” The Republican Party: the party of big government that doesn’t trust its people.

**Sen Clark Jenkins (D):** Mr. President.

**President:** Senator Jenkins, for what purpose do you rise?

**Sen. Jenkins:** To debate the bill.

**President:** You have the floor.

**Sen. Jenkins:** I'm sure, ladies and gentlemen of the Senate, as you know, I represent a part of the state that I very much love. It's not a very high-wealth part of the state. One issue with this bill that really does trouble me is the fact that I think it disproportionately picks on people I represent. I would have to agree that I don't think anybody goes through this procedure just because they want to. They do it because they probably have to. It's not a matter in a lot of areas where you have a man and a wife making that decision. It's a matter of a woman having to make that decision, and I don't know that you should put her through this. I think there's a real risk, as my friend Dr. Purcell said and Dr. Mansfield said, that what you will do is that you will simply just push this procedure into the hands of unlicensed and untrained people. And that alone is enough reason for me to vote against this bill.

But there is another issue that I point out as I look around this room. And I am the father of four children, a grandfather of six, the seventh one due in several months, so I would say that I very much like children. But one thing that I don't have that a lot of other people in this room don't have, is a set of ovaries. And I don't think it's up to me to decide what a doctor and a woman concur about on her health. And for that reason I would commend to you that you vote against this bill.

**President:** Further debate? Senator McKissick, for what purpose do you rise?

**Sen. Floyd McKissick (D):** To speak on the bill.

**President:** You have the floor.

**Sen. McKissick:** If we really think back to what we're dealing with here in many instances, it's the right of privacy. And when the US Supreme Court in Roe v. Wade made its decision, it was based upon the constitutional right of privacy. And in my mind, there could be no greater intrusion on the privacy of an individual than to dictate to tell them what should be said in communications between a woman and her doctor on the issue as important as the termination of a pregnancy.

If we really think about this, you're taking a person at one of those points in their lives where it's emotionally turbulent. They are going through all the issues that their probably debating internally about whether this is the right decision or not, but when they come into that office they've already made that decision.

This bill is about, really, in my mind, trying to overturn Roe v. Wade in a very subtle way. It's about trying to establish barriers to the woman's right to terminate a pregnancy. And I really suspect that if we were in chamber today and rather than it being 90% male it was 90% female, I don't think we'd be sitting here debating the wisdom of this bill. I think the vast majority of women here in the state of North Carolina, given the right to sit there and cast an opinion on this bill, would simply say, "This is a personal decision—an immensely personal decision—that I feel I need to reach with my medical provider."

It's not about informed consent. It's about private [audio unclear] doctors as the result of potential liability from being involved in practices that may conduct abortions. It's about deterring women from having abortions who have decided that may be the only choice that they have through the circumstances that they are dealing with in their lives.

Where are we at this point in time casting judgment about what should be done in those communications? Whether they should look at a monitor, whether they should listen to a heartbeat... Think about it: these are not the types of decisions that government should be involved in. The majority that's now in control of this chamber, over the years, has repeatedly talked about intrusion into the lives of individuals. What greater intrusion can you come up with... can you craft? What greater intrusion can you possibly craft that would go into someone's life at this particular time and moment when they're wrestling with a very difficult choice—a choice they had probably made when they already had entered in to the doctor's office?

In my mind, this is a poorly crafted bill. In my mind, this is a bill that shouldn't even be before us today. I think the ultimate goal, as I said, is really to get there and get a good over rule over-written Roe v Wade. You'd probably find a way to do it [sic] and if that's going to happen just let the Supreme Court go ahead and do that, if that's what they want to do. I think it'd be a mistake if they did so. But to sit here and to craft all these [audio unclear] with what are immensely personal decisions by a chamber that is disproportionately male is a very poor decision to make.

**President:** Further discussion and debate? Hearing none, the question before...

**Sen. Jim Davis (R):** Mr. President?

**President:** Senator Davis, for what purpose do you rise?

**Sen. Davis:** I'd like to ask Senator Mansfield if he'd yield to a question.

**President:** Senator Mansfield, do you yield?

**Sen. Mansfield:** Sure.

**President:** He yields.

**Sen. Davis:** Senator Mansfield, I have no doubt in my mind that you are a loving, caring physician and you do the best for your patients. When you do an invasive procedure on a patient, the day that they get...the hour that they get that procedure, is that the time that you give them the informed consent?

**Sen. Mansfield:** It depends. I've had it both ways. I was just saying this on last Friday. Unfortunately I was likely to be in surgery tomorrow; I had a guy walk in my office who needed surgery that day. He had gone to a bunch of other people and other doctors, and other doctors didn't diagnose him. I diagnosed his problem and said, "Hey, we got a slot open today. If you haven't eaten since 8:30, I'll take your surgery right now." The guy said "I haven't had anything to eat because I haven't been able to eat." So we took him to surgery the same day. And certainly in most of our emergency or urgent cases we take them to surgery the same day. We walk into the emergency room, we meet them for 15, 20, 30 minutes, and take them to surgery right then.

Most times we can't do that because for a patient to go to surgery, most times they can't eat 6 to 8 hours prior to them having surgery. But certainly in emergency cases, in urgent cases, and cases where they haven't eaten. A lot of times we have pediatric cases where a child will stick something up their nose, which happens quite a bit in Fayetteville, and we'll tell them "Look..." We'll tell the mom, "Look, tomorrow morning, come to the office bright and early and I'll see if I can get that piece of corn out of his nose. And if I can't get the corn out of his nose then we'll take him right to surgery that same day." So, yeah, it just depends on the case.

**Sen. Davis:** Follow-up, Mr. President?

**President:** Follow-up.

**Sen. Davis:** But that's not your preference?

**Sen. Mansfield:** No, no it's not our preference. No, partic-...No, it isn't.

**Sen. Davis:** Okay. Mr. President, I'd like to speak on the bill.

**President:** You have the floor.

**Sen. Davis:** I think a fetus is a lot different than a piece of corn up your nose. I'm here to speak to you as the father of an adopted child, and I will forever be grateful to a woman who chose not to abort. My son is 35. He's a contributing member of society; he's provided me with two of the most beautiful granddaughters a grandfather would ever want. And I will be forever grateful for having him as my son. And for people to suggest that 24 hours is an onerous reg-...is a, you know, an onerous requirement—I'm sorry, I just can't accept that. My son is worth more than 24 hours' notice. Thank you.

**President:** Further debate? Hearing none, the question before the Senate is the motion to override the Governor's veto of the second Committee Substitute of House Bill 854. Those in favor of the override will vote aye, those opposed will vote no. Five seconds will be allowed for the voting. The Clerk will record the vote...Twenty-nine having voted in the affirmative and 19 in the negative—that is 3/5<sup>ths</sup>—the motion passes and House Bill 854 becomes law, notwithstanding the Governor's objection.

~ Fin ~

**HB 947 – Eugenics Compensation Program**  
**Remarks on House 2nd and 3rd Readings**  
**June 5, 2012**

*North Carolina was the first state to provide compensation for victims of this horrible program.  
In 2015 Virginia followed suit. For a full discussion of the program, see  
["Eugenics in North Carolina"](#) on my website."*

Audio available at [this link](#).  
Debate begins: 01:40:37

**Speaker Thom Tillis (R):** Ladies and gentleman, we are back to the calendar. House Bill 947, the Clerk will read.

**Reading Clerk:** Committee Substitute number 2, for House Bill 947, a bill to be entitled an Act to provide monetary compensation to persons asexualized or sterilized under the authority of the Eugenics Board of North Carolina. General Assembly of North Carolina enacts.

**Speaker Tillis:** Further discussion, further debate? Representative Parmon, please state your purpose.

**Rep. Earline Parmon (D):** To debate the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Parmon:** Thank you, Mr. Speaker and colleagues. House Bill 947 is a bill that will compensate victims of the North Carolina Eugenics program \$50,000. This bill was worked on with a bipartisan workgroup that looked at all the technical issues, talked about any IRS issues, and we really fully discussed this bill. Out of that bill came the recommendation that these victims were due compensation from the State because, as citizens, their rights had been violated.

This bill was heard in the full Judiciary Committee. It had a full hearing in Finance and Appropriations. There has been lots of time to debate this bill. This bill started out, I think, in about... We started with these bills in 2003. And if my colleague, Representative Womble, was here today, he would say that we've come a long way on this bill. We've tried to address all the concerns of the victims and other people across the state that had questions, and today is the right day to do the right thing.

So on behalf of Representative Womble, the bipartisan workgroup that worked on House Bill 947 and all of the sponsors, we ask you to vote green on this compensation for victims of the North Carolina Eugenics Program. And Mr. Speaker, I think Representative Stam has an amendment. Thank you.

**Speaker Tillis:** Representative Stam, please state your purpose.

**Rep. Paul Stam (R):** To offer an amendment.

**Speaker Tillis:** The gentleman is recognized to send forth an amendment. The Clerk will read.

**Reading Clerk:** Representative Stam moves to amend the bill on page 1, line 31 and on page 2, line 12 by deleting the words, "March 1, 2010," and substituting "May 16, 2012."

**Speaker Tillis:** The gentleman is recognized to debate the amendment.

**Rep. Stam:** Mr. Speaker, members of the House: every bill like this needs to have a cutoff date, and cutoff dates are recognized in the law. They're always arbitrary. All statutes of limitations, statutes of repose are arbitrary. But there was some concern about it, so the cutoff date for this would be those persons living on or after May 16<sup>th</sup>, 2012–May 16<sup>th</sup> being the day that we convened this short session and the bill was introduced. And although I would like to say more about the bill later, that's all I need to say on the amendment...except that I would like to not yield but suggest the Chair recognize Representative Michaux.

**Speaker Tillis:** Representative Michaux, please state your purpose.

**Rep. Mickey Michaux (D):** To discuss the amendment.

**Speaker Tillis:** The gentleman is recognized to debate the amendment.

**Rep. Michaux:** What this amendment does is simply takes two people...the descendants of two people, who have died since we've gotten serious about this, out. There's been a lot of talk about that that people don't like particular part of it. I don't particularly like the amendment because it does deprive the descendants of those people. It's just \$100,000 we're talking about. But I'm going to ask you to support the amendment. One of the reasons is these folks on the other side are talking about getting out of here. I know the sentiment on the other side is to do the same thing that this amendment does. And if we don't get this bill out of here, nobody will be able to get the compensation that they are due under this bill. So I ask that you support the amendment.

**Speaker Tillis:** Representative Parmon, please state your purpose.

**Rep. Parmon:** To speak on the amendment.

**Speaker Tillis:** The lady is recognized to debate the amendment.

**Rep. Parmon:** Thank you, Mr. Speaker. I, too, ask you to support the amendment. I've talked to other members of the workgroup who helped develop this bill and we have a lot of debate on this two people who are since deceased. But in order to compensate all the other victims and to get a bill out of the House and Senate, I will ask you to support the amendment. Thank you.

**Speaker Tillis:** Further discussion, further debate on the amendment? If not, the question before the House is the passage of the amendment offered by Representative Stam for the House Committee Substitute number 2 for House Bill 947. All those in favor will vote all; all those opposed will vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. One-hundred and thirteen having voted in the affirmative and four in the negative, the amendment passes. Representative Stam, please state your purpose.

**Rep. Stam:** To speak on the bill as amended.

**Speaker Tillis:** The gentleman is recognized to speak on the bill as amended.

**Rep. Stam:** Thank you, Mr. Speaker, and I appreciate your co-sponsorship of this bill. We cannot solve all the problems of the past. We can't really solve most of the problems of the past. But this is one that we can ameliorate and solve. We have some people (hundreds, perhaps a couple of thousand) who have had their bodies changed—they're still living—by order of the State Eugenics Board, consisting of five executive officers, between 1933 and 1974.

In one committee I misstated the change that occurred in 1974, so I want to make that clear. I was speaking hurriedly and mentioned that I thought the people from '33 to '74 had *no* due process; they had *some*. But what they didn't have before their bodies were mutilated was a right to a jury trial on that question. And of course, the right to a jury trial is one of the most ancient rights of free people, and they didn't have that. And they also didn't have the benefit of separation of powers. You all know the distinction between the Executive, the Legislative and the Judicial Branch, and essentially these folks had their bodies mutilated by an order of the Executive Branch rather than by an order of the Judiciary. So the procedures violated two fundamental principles of, not only our Constitution, but our entire system of justice going back for many hundreds of years.

The bill, as crafted, has a remedy. Claims will be decided by the Industrial Commission—not because it has anything to do with industry, but because the Industrial Commission is the commission that we use to decide tort claims against the State. These folks can't bring a tort claim; the bill is very clear that their statutes of limitation expired long ago. This compensation program is a matter of grace and not a matter of law. But it's something we ought to do. These folks are still living. We don't know who they are. There may be more than the hundred and fifty or so that have identified themselves. As I said, there may be a couple thousand. But whoever they are, they need compensation; we owe it to them—not in a legal sense, but in a moral sense.



There have been thoughts that, well, if we do this then somebody else will come up as a group and say they demand this, they demand that. And obviously anybody...If you've been here at the Assembly and have an email account, you know that people demand things all the time. But I can assure you that there is no *legal* claim that other people would have just because we compensated these victims of a sad program that lasted for several decades and had its genesis in a philosophy that is very alien to the American spirit. I ask your vote on this bill.

**Speaker Tillis:** Representative Michaux, please state your purpose.

**Rep. Michaux:** To speak on the bill, Mr. Speaker.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Michaux:** Mr. Speaker, ladies and gentlemen of the House: this, in fact, has been a long time coming. Things happened to people who had not given their permission. It was the State that did these awful things to people without their permission, without their knowledge, and sometimes because of ignorance displayed by a lot of other folks. I think it's time, like most of us do, to go ahead on and take this sad chapter of our history and throw it to the winds. We don't need to be living under this plague for forever, and I think that by doing this we'll, in essence, compensate those who were wrongfully wronged.

Right now the bill actually contains a program in there which will help identify other people. If I remember correctly the number that has been identified already is about one-hundred and thirty-two out of the some seven-thousand six-hundred folks that were involuntarily sterilized during this period of time. But there is going to be an ongoing effort to find these folks and to give them the same compensation that the ones we have already identified can get.

I hope that you will take this into consideration in your vote and understand that this isn't giving anything to anybody that is not due to those folks who were wronged by the State. I trust that you will take that into account and that you will support this bill.

**Speaker Tillis:** Representative Luebke, please state your purpose.

**Rep. Paul Luebke (D):** To speak on the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Luebke:** Thank you, Mr. Speaker. Members of the House, this is the least we can do in this bill...It's the least we can do. We need to recognize, I think, as members of this General Assembly, as North Carolina legislators, that our state was one of the worst, if not the worst, in terms of the promulgation of this program and the maintenance of this program. More than seven-thousand people in this state were either castrated or sterilized. And while most states gave up on the eugenics programs fairly immediately after World War II, our state stuck with this until 1974. And in fact, the law was still on the books until 2002-2003 and the period where Representative Womble took the leadership. I was honored to be working with him in those early years where we, first of all, repealed the law. The law had still been on the books even though no one had been in fact affected by it since 1974.

So we have taken some steps in the last ten years, and this is an important step. Let's remember that it is a sad day for North Carolina. Let us also remember that the victims of this eugenics program were overwhelmingly low-income people. They were low-income people, white and black, who were not in a position to defend themselves. They did not understand how they could fight the system, and they were victims of this system. I urge us all, in honor of those persons, to vote for the bill.

**Speaker Tillis:** Representative Blust, please state your purpose.

**Rep. John Blust (R):** To send forth an amendment.

**Speaker Tillis:** The gentleman is recognized to send forth an amendment. The Clerk will read.

**Reading Clerk:** Representative Blust moves to amend the bill on page 1, line 34 by deleting the words "fifty-thousand dollars" and substituting the words, "twenty-thousand dollars."

**Speaker Tillis:** The gentleman is recognized to debate the amendment.

**Rep. Blust:** Thank you, Mr. Speaker. Members of the House, this amendment will restore the bill—or at least the idea behind the bill—to its status when several of us first heard the subject breached. I have asked in committee how the figure \$50,000 was reached, and no one has provided me an answer yet except that some group that considered it came up with that figure. But nobody has been able to go behind the figure and see the rationale for that figure.

This is probably something that an actual cash figure can never really be rationalized. I mean, who is to say how much something like this is worth? But I bring the amendment to you simply because one of the perplexing things about the timing of this bill has been the fact that we waited decades until we have a budget...I hate to overuse the word “crisis,” but you know what kind of situation our budget is in. And I can remember years when we had billion-dollar-plus surpluses when the minority party now was the majority party, and this didn’t seem to be nearly the priority that suddenly it’s become here forty and fifty years after the fact.

It’s hard for me, and I think some of us, in a year where we have now for the third or fourth year in a row not given teachers or state employees any raise whatsoever, and suddenly we have this pressing reason to use up ten-million dollars. I think that’s what was appropriated in the budget toward this. Also, in general, I just don’t know how you go back in the present, given present way of looking at things that have—to use the President’s terminology: when our thinking has evolved over time—and enforce those standards on the past. And it worries me as to what we’re doing in a presidential fashion, given all the various people and groups that might feel the past has somehow aggrieved them or their ancestors.

So this particular amendment is really budgetary in nature. I probably wouldn’t have nearly as hard a time with this bill if it were a better budget year and there was some logical way to put a price on things. But I think this still is enough money that makes the State admit we think we were wrong. So I don’t think it hurts the intent of the bill, but it will save the State some money because I don’t think that, in the end, it’s a monetary stipend that can make up for what’s been done. So I urge adoption of the amendment.

**Speaker Tillis:** Representative Dollar, please state your purpose.

**Rep. Nelson Dollar (R):** To speak on the amendment.

**Speaker Tillis:** The gentleman is recognized to debate the amendment.

**Rep. Dollar:** Thank you, Mr. Speaker. I’ll save the balance of my remarks for the bill. But I would just simply say it’s been my experience as a non-lawyer but someone who has a spouse that spent thirteen years at the Industrial Commission who had to value these types of things, it seems to me—and I know there’s some people here with experience in tort law—it seems to me that loss of reproductive function is of pretty high value. And so to lower it to twenty-thousand seems to me to be very much out of line with what we would be otherwise compensating for in other arenas of state government.

I would agree with one point that Representative Blust made, and that is that certainly the compensation should have been done a long time ago. But it wasn’t, and now is as good as any time to right a wrong. And I would urge you to vote no on the amendment.

**Speaker Tillis:** Representative Stam, please state your purpose.

**Rep. Stam:** To speak on the amendment.

**Speaker Tillis:** The gentleman is recognized to debate the amendment.

**Rep. Stam:** I oppose the amendment same as I would oppose an amendment by, maybe, Representative Brown to raise it to a hundred thousand. This is a negotiated figure. The way we arrived at it: The Speaker appointed a workgroup and the workgroup looked at all the factors. There had been an executive order by the Governor that established a task force. This is a figure the task force came up with, but the task force suggested many other elements of compensation which the workgroup did not accept. It is true—this is one thirtieth of one percent of our budget for the year of nonrecurring money. But for one, I am so glad that Representative Blust was able to reproduce and I think that that was worth more than fifty thousand.

**Speaker Tillis:** Representative Glazier, please state your purpose.

**Rep. Rick Glazier (D):** To debate the amendment, Mr. Speaker.

**Speaker Tillis:** The gentleman is recognized to debate the amendment.

**Rep. Glazier:** Thank you, Mr. Speaker. You know, the victims here were not passive, but they were the victims of state-intervention with no sense of due process. Unreasonably seized were these children, and fundamentally had their lives altered. And I know the argument that was just made about budget years but, you know, victims don't wait and aren't chosen based on the budget year. These children didn't ask to be sterilized, and it has waited a long time for this to...

**Rep. Blust:** Mr. Speaker?

**Speaker Tillis:** Representative Blust, please state your purpose.

**Rep. Blust:** To see if Representative Glazier will yield for a question.

**Speaker Tillis:** Will the gentleman yield?

**Rep. Glazier:** I will not yield until after my comments.

**Speaker Tillis:** The gentleman will yield at the end of his comments.

**Rep. Glazier:** Thank you, Mr. Speaker. And third, there is, it seems to me, real merit in the figure the Committee came to, and I want to express it this way: We passed several years ago in this body a Wrongful Compensation Act for people who are innocent when they are charged with a crime, convicted and then later determined to have a pardon of innocence because we got it wrong. And the figure that was done based on federal work and the consensus among all states was fifty-thousand dollars per year. If we are willing—and rightfully so—to compensate people who were innocent when charged for part of their life taken from them at fifty-thousand a year, these victims had a part of their life taken away from them for the rest of their lives, and fifty-thousand total seems to be at the short end of the range based on that piece of evidence.

Representative Stam is right: juries make compensation decisions all the time based on a variety of factors and it is inherently subjective. But we at least have some gauge that this body has done as a piece of evidence about what taking a fundamental right of a person's body from them costs.

**Rep. Kelly Hastings (R):** Mr. Speaker?

**Rep. Glazier:** ...For that I would vote against the amendment.

**Speaker Tillis:** Representative Hastings, please state your purpose.

**Rep. Hastings:** To see if Representative Glazier would yield for a question.

**Speaker Tillis:** Representative Hastings, if you will indulge the Chair, I believe it would be more appropriate for Representative Blust to be able to...He's already got a request in the queue, and then we'll come back to you. Does the gentleman yield?

**Rep. Glazier:** I do. Thank you, Mr. Speaker.

**Speaker Tillis:** He yields.

**Rep. Blust:** Representative Glazier, all the sudden this is a pressing thing for us to take care of, a matter to address. In June of 2012 isn't it true that you were in the majority for, what, ten years in this body, or eight years since you've been here? And where was the pressing need to pay fifty-thousand to each of these people when you had the ability to get that done?

**Rep. Glazier:** Representative, two points I think I would say in response. First, there was an inordinate amount of work that has been done to lead us to this point by a series of bills that Representative Womble and Representative Parmon have moved throughout the time that I've been in this General Assembly, inordinate amount of work to figure out and create the compensation committee that the Speaker of the House did in a bipartisan fashion. To the extent that we delayed or weren't able to get to a point today, that was a mistake of years past in a bipartisan way and it is now a bipartisan effort to rectify those years of delay and the justice that has been betrayed for these people all these years. To say that it should have been done years prior as a reason not to do it now is absurd.

**Speaker Tillis:** Representative Hastings...Does the gentleman yield to Representative Hastings?

**Rep. Glazier:** I do, Mr. Speaker.

**Speaker Tillis:** He yields.

**Rep. Hastings:** Representative Glazier, from a historical perspective could you tell me, when this particular program was passed, who was the Speaker of the House and who was the Governor at that time?

**Rep. Glazier:** The Eugenics Program?

**Rep. Hastings:** Yes.

**Rep. Glazier:** Well the Eugenics Program itself started, I think, in the 1930s and went through till about 1970 or so with about eight-thousand children who were victims of the Eugenics Program.

**Rep. Hastings:** Follow-up?

**Speaker Tillis:** Does the gentleman yield?

**Rep. Glazier:** Certainly.

**Speaker Tillis:** He yields.

**Rep. Hastings:** So, can you tell me who the Speaker of the House and who the Governor was at the time that this became, I'm assuming, law?

**Rep. Glazier:** Well, Representative Hastings, I really can't tell you who was the Speaker of the House and the Governor in the 1930s when it became law of this state...

**Rep. Hastings:** Follow-up?

**Rep. Glazier:** ...1929

**Speaker Tillis:** Does the gentleman yield?

**Rep. Glazier:** Certainly.

**Rep. Hastings:** In committee the other day this form of repayment was characterized by a member as a reparation. Does this meet the technical definition of "reparation?"

**Rep. Glazier:** Well, again, for me I view it as a reparation for a wrong that was committed, if that's what you're asking. I don't know that we have a definition of "reparation" in this state, but there is certainly a definition of "reparation" that exists in international law. And international law would suggest that "reparation" is, essentially, compensation for a societal wrong against a group of individuals that society believes they have a moral—as Representative Stam said—obligation to repay. And in that sense yes, I believe it absolutely does.

**Rep. Hastings:** Thank you, Mr. Speaker.

**Speaker Tillis:** Representative Parmon, please state your purpose.

**Rep. Parmon:** To speak on the amendment.

**Speaker Tillis:** The lady is recognized to debate the amendment.

**Rep. Parmon:** First, I rise to say that I'm opposed to the amendment and would ask members of this body to vote against the amendment. In listening to the comments from other members of this body why we should pay fifty-thousand dollars... Well, I would have liked to have given you the opportunity to speak to an only child of a sterilization victim who said to me, "I will never have the opportunity of having a sibling sister or brother," and to have talked to victims who are not going to come forward because of the secret that they've carried for so many years. So the fifty-thousand dollars, I agree with Representative Blust... That number we didn't just come up with arbitrarily. It was looked at by a committee and recommended. But I agree, fifty-thousand dollars isn't a consideration that a lot of us were pleased with, but that was the recommendation and we accepted it. And we ask to vote against the amendment. Thank you.

**Speaker Tillis:** Representative Weiss, please state your purpose.

**Rep. Jennifer Weiss (D):** Thank you, Mr. Speaker—to speak on the amendment.

**Speaker Tillis:** The lady is recognized to debate the amendment.

**Rep. Weiss:** Thank you. I would just say that many of us, first, are very pleased that this is being handled in a bipartisan manner. It was a long journey to get to this day. I'm glad we're here working on this issue today in a bipartisan way. I expected the amendment actually to ask for a larger sum. I don't know how you put a price on this. Fifty-thousand dollars, when you multiply it by all those victims, may seem like a lot when you step back from it. But when you think about what a human being has endured, what these people went through and what they were deprived of, fifty thousand dollars is a tiny, tiny amount of money. If someone said to me, "We have taken away your ability to have children. And, by the way," you know, decades later, "here's fifty thousand dollars..." Many of the people who have gone through this expressed dismay at this figure, and I think we can all understand why. There is no amount of money that makes up for this. I would urge you to vote no on this amendment. They've come to terms with this number. I think this is a number we need to move forward with. We need to accept responsibility and address this, and I will be voting no on this amendment.

**Speaker Tillis:** Representative Michaux, please state your purpose.

**Rep. Michaux:** To speak on the amendment.

**Speaker Tillis:** The gentleman is recognized to debate the amendment.

**Rep. Michaux:** For those who don't quite understand, this thing has been vetted and done everything with, and the figure reached was [audio unclear] in two instances. Now some say that, you know, you started this some time ago and why didn't you do it then. Well, let me tell you, I was Senior Chair of Appropriations for at least four years when we discussed this whole thing. What you don't understand is that this process has taken time in order to identify folks who were harmed by this, in order to seek them out, in order to do all the necessary research to reach this point.

Now in 2010 I didn't think you all would be here in charge and that we would definitely... Now I can very much tell you this, we were definitely... We had reached the point where we had begun to find these people. They were beginning to come forward. And of course in 2010 we would have done it, you know, had we been in char... I'm being very honest with you, whatever the situation was. And at that time... at that time it was at a basis, Representative Blust, of twenty-thousand dollars. The more the Committee got into it, the more they looked at it, the more people they found, they then said, you know, "Well why, if you're going to pay," as Representative Glazier has said. "If you're going to pay an individual fifty-thousand dollars a year for each year that he was wrongfully incarcerated, why should we not at least get to that point where it is that you have scarred and maimed an individual for life?"

Now Representative Blust, you're a good lawyer. I would ask you in taking a personal injury case that maims and disfigures somebody, you put it to a jury—you're looking for as much as you can get. And in this instance we looked for as much as we could get within the affordable means that could be gotten—and that's the figure that we reached. It's not the figure that everybody agreed on; the figures were much higher. But at least it was a figure that was agreed on and there was no...you know, whether you liked it or not, that was it. And we are going to do this because it is owed to these folks. We owe them much, much more than that. We've given them the apology and now we're giving them the compensation—the *compensation*, Representative Hastings—that they are due for the damage that we've done to them. I urge you to vote against this amendment.

**Speaker Tillis:** Representative Justice, please state your purpose.

**Rep. Carolyn Justice (R):** To speak on the amendment.

**Rep. Tillis:** The lady is recognized to debate the amendment.

**Rep. Justice:** I, too, have been through some soul searching with this like many of you. I've come down to this: this is pre-abortion and we all know how many of us feel about abortion. If it had happened to me, it would have been the abortion of two children because that is how many children I have. If you had four children that is what it would have been to you. We all know that this should have been done in a year where we were flush with money. We're not flush with money right now, and this is a bad time to be spending fifty-thousand dollars on each of these. We also know that there is a time when you just have to do what is right. And this is one of those times.

**Speaker Tillis:** Representative Blust, please state your purpose.

**Rep. Blust:** To speak a second time on the amendment.

**Speaker Tillis:** The gentleman is recognized to debate the amendment a second time.

**Rep. Blust:** Thank you, Mr. Speaker. Members of the House, one of the factors that hasn't been mentioned yet: all these victims, people who were part of this program, are not in identical situations, at least as this issue has come and I've heard various people talk about it. You've got people from all different kinds of backgrounds and all different kinds of level of family participation. I understand that in some instances the families actually asked for this to happen. And it just seems like the...

**Rep. Weiss:** Mr. Speaker?

**Rep. Blust:** ...even the ones...

**Speaker Tillis:** The...The members will clear the line. Representative Weiss...

**Rep. Weiss:** I was wondering if the gentleman would yield for a...

**Rep. Blust:** I yield.

**Speaker Tillis:** The gentleman yields.

**Rep. Weiss:** Thank you. Representative Blust, are you aware that in some situations family members were told that they would not receive food stamps or any type of social services help unless they signed these contracts? Are you aware that this was done under duress in many cases?

**Rep. Blust:** Representative Weiss, I'll be happy to answer that. Even though the last time I asked you to yield, you didn't, I'll be glad to. I've been told all kinds of things, and that's my point. There are different factors involved. I understand many of these people since then have received all kinds of government benefits and, in fact, I think the bill as crafted says this isn't going to affect their eligibility for anything in the future. So many have received stipends from the State, sometimes for many years, that some might argue is some sort of compensation.

So this is just a lot of money. And one of my big thoughts here...I thought about perhaps structuring the amendment to pay this over time. I have great qualms as to how much this is going to help some of the victims in that here's going to be a fifty-thousand check. And I'm just wondering how many a year from now are still going to have that fifty thousand and are going to even benefit from it. I just don't know if they're even set up to handle this in many situations. So this is something that very much sounds good on the surface, but the way it's going to be carried out is somewhat of a careless use of scare taxpayer dollars. So I would urge you to vote for the amendment.

**Rep. Marvin Lucas (D):** Mr. Speaker?

**Speaker Tillis:** Representative Lucas, please state your purpose.

**Rep. Lucas:** Thank you. I wonder if Representative Blust would yield for a question.

**Speaker Tillis:** Does the gentleman yield?

**Rep. Blust:** I yield.

**Speaker Tillis:** He yields.

**Rep. Lucas:** Thank you. Thank you, Representative Blust. Representative Blust, would you concede that all of these victims have one thing in common, and that is that their bodies were mutilated?

**Rep. Blust:** You know, maybe there was a different practice back...So many of these took place so many years ago, I don't know what the medical procedure was right now. But Representative Lucas, if that term is correct then there are many people right now who are going to a provider and paying a thousand dollars plus to have their bodies mutilated. I don't know if that's a proper term to use. They had it altered, but I don't know that mutilized [*sic*] is the proper verb.

**Speaker Tillis:** Ladies and gentlemen, the Chair would observe that the amendment before us has to do with the amount of the compensation and would encourage all of the debate at this time to be on the substance of the amendment. There will be ample time to debate the bill. Representative Lucas, did you have a follow-up question?

**Rep. Lucas:** One follow-up, please.

**Speaker Tillis:** Does the gentleman yield?

**Rep. Blust:** I yield.

**Speaker Tillis:** He yields.

**Rep. Lucas:** Would you concede that the amount of money in question here is not something that we can subjectively or objectively view right now and that fifty thousand is on the table and we ought to leave it there?

**Rep. Blust:** I agree. I think each case is totally different and should rest on its own facts. I can't tell you exactly what the right amount of cash might be, or if cash is the right way to make amends, if you will, for this. But right now we're in a... You've seen the situation with the budget that we're in, and it seems to me an inopportune time to be taking out an open-ended—because the work *hasn't* been done yet to figure out exactly how many there might be—an open-ended commitment just to pay fifty-thousand dollars to people.

**Speaker Tillis:** Representative Martha Alexander, please state your purpose.

**Rep. Martha Alexander (D):** Mr. Speaker, I would like to direct a question to Representative Parmon, and then I would like to speak on the amendment.

**Speaker Tillis:** Does the lady yield?

**Rep. Parmon:** I yield.

**Speaker Tillis:** She yields.

**Rep. M. Alexander:** Representative Parmon, are you aware of how many extra benefits people who were caught up in this process have had through the State at this point?

**Rep. Parmon:** Representative Alexander, as far as I know and in any research that has been done, they have not any other direct benefits as victims of eugenics.

**Rep. M. Alexander:** Thank you. And to speak..."

**Speaker Tillis:** The lady is recognized to debate the amendment.

**Rep. M. Alexander:** To debate the amendment. Thank you very much, Mr. Speaker. Ladies and gentlemen of the House, this is a process that's been going on really a lot longer than I think most of you realize. I can't come up with the very exact date, but it's been in the works for at least, I would say, six or eight years. There was an initial committee when this issue was first raised, and some of us had the opportunity to sit on that committee, and we looked at all sorts of things. There's a nice marker that some of you might be aware of that speaks to this program. And from the very beginning we talked about how to be compensated. I want to commend the Committee that has come up with the fifty-thousand dollars. There is not enough money in the world to give anyone for what has been done to them. As Representative Justice said, this is the right time to do the right thing, and I would encourage you to vote no on this amendment. Thank you.

**Speaker Tillis:** Further discussion, further debate on the amendment? If not, the question before the House is the passage of the amendment offered by Representative Blust to the House Committee Substitute number 2 for House Bill 947. All those in favor will vote aye; all those opposed will vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. Thirty-three having voted in the affirmative and eighty-four in the negative, the amendment fails.

Ladies and gentlemen, we are back on the bill. Representative Warren, please state your purpose.

**Rep. David Lewis (R):** Mr. Speaker?

**Speaker Tillis:** Representative Lewis...The gentleman will yield. Representative Lewis, please state your purpose.

**Rep. Lewis:** I had a malfunction and wish to be recorded as voting no on the amendment we just considered.

**Speaker Tillis:** The gentleman will be recorded as voting no. Representative Warren, please state your purpose.

**Rep. Harry Warren (R):** To ask the bill sponsor, Representative Stam, a question.

**Speaker Tillis:** Does the gentleman yield?

**Rep. Stam:** I do.

**Speaker Tillis:** He yields.

**Rep. H. Warren:** Representative Stam, we have in the budget passed 11.1, I believe, million dollars for the Eugenics Fund. Ten-million of that was to go to the fifty-thousand-dollar awards. We have identified one-hundred and thirty-five people, which would be about six-million, seven-hundred and fifty-thousand dollars, leaving us three-million, two-hundred and fifty thousand dollars for further awards, which would be about another sixty-five people. The statistics that you gave me on "presumed living victims" was twenty-nine hundred, forty-four. I can assume that we're going to find sixty-five people; I think you would agree with that. So my question is, once we exhaust this remaining 3.2 million dollars, where are the rest of the funds going to come from?



**Rep. Stam:** Thank you—good question. The twenty-nine hundred figure is not up-to-date. The State Demographer reduced that estimate to between fifteen-hundred and two thousand. So let's say the upper end of that—two thousand people—are still living. Then the question is how many of them want to be identified? I had a call from a family last week who thinks their nephew was probably a victim of this and they have no interest in receiving the money, but some of that thousand will. What the bill does is say that it is the intent of the Assembly that, if the funds are insufficient, that future Assemblies will appropriate sufficient monies to carry it out. If you wanted my ballpark estimate, you know, there may be another twenty, thirty, forty million in future years the next two or three years that would have to be paid out. Nobody knows for sure. What we do know for sure is that this year it would be eleven million...probably.

**Rep. H. Warren:** Follow-up?

**Rep. Stam:** Yes.

**Speaker Tillis:** The gentleman yields.

**Rep. H. Warren:** Well, then assuming that you're correct and we get another twenty million or so determined between now and before the next Assembly comes in, looking at the number of people in this building right now who are not coming back in either chamber...I's been bandied around that maybe fifty-five to as much as sixty-five percent of the next General Assembly will be freshmen and sophomores. If that's the case and they don't agree with what appears to be the majority here on this issue, what liability will the State have to the cases that are determined between now and December 31<sup>st</sup>, 2015?

**Rep. Stam:** Once the money runs out, there's no liability. But I would expect future Assemblies to appropriate enough money to compensate those who are identified.

**Rep. H. Warren:** Follow-up, please?

**Speaker Tillis:** Does the gentleman yield? He yields.

**Rep. H. Warren:** I guess the question I would have for you then is, are we creating...In looking at this—and I've had the benefit of one of your presentations in Finance—some people aren't even aware that this was done to them. So if we notify them through the Committee, as the bill says they are to do—implement a plan and an outreach to find these people – and we notify them and we let them know that they were a victim and that they are possibly entitled to fifty-thousand dollars, and then we turn around and we can't pay it—what good have we done?

**Rep. Stam:** Well, that's a good question. And I don't think the Office of Sterilization Vic—whatever that office's name is—is going to write a letter and send it to brother McGee and say, "Hey, guess what? You were sterilized." It's going to be much more sensitive than that. And again, there are a lot of people who would gain nothing from it, so even if they deci... We just don't know. You're asking about the future, and we all just have to take the best estimates and predict.

**Rep. H. Warren:** Well Representative Stam, I realize a...

**Speaker Tillis:** Does the gentleman wish to ask a follow-up?

**Rep. H. Warren:** Please.

**Rep. Stam:** I do yield.

**Speaker Tillis:** Does the gentleman yield? He yields.

**Rep. H. Warren:** I realize I'm talking about the future, but this is the natural progression of the bill that we're going to pass. It says in the bill, "The Office shall plan and implement an outreach program to attempt to notify the victims who may be possible qualified recipients." So at some point the conversation is going to be initiated to tell them why we're reaching out to them and what it's about. So I don't think it's hypothetical to say that we're going to reach a

situation after the sixty-sixth person has exhausted the remaining 3.2 million dollars. And if we don't have the funding until the next General Assembly, again, I'm concerned about what damage we may do to victims that we notified and we don't reimburse.

**Rep. Stam:** Well, my guess...my best estimate is that we would have sufficient monies appropriated to pay those who make claims through the Industrial Commission during the fiscal year that begins July 1, and that whoever is Governor will propose a budget for 2013-2014 that would be enough to compensate those whose claims were verified. I may be wrong on that, but I think I'm very right on that as a prophet. I'm not a very a very good prophet, but...

**Rep. H. Warren:** Thank you for the answer.

**Speaker Tillis:** Representative McGee, please state your purpose.

**Rep. Bill McGee (R):** To speak on the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. McGee:** Thank you, Mr. Speaker and ladies and gentlemen of the House. I have made a few notes to really tell myself why I am going to vote for this, but I want to share them with you. And I have made notes to keep my mind going in one way, not to jump on its horse and ride off in all directions. But the thing that I want to do is to connect a bit for you the history and the fact that some people think that things go in cycle and in waves. I am an ex-stockbroker and many people base their bets, so to speak, on the stock market on a cycle or a wave. I think that can be applied to society as well.

In the 1930's, there were studies mainly in England about birth control. And I would like to discuss a bit about the thought processes and mindset of the brightest and most respected minds of that era concerning birth control, eugenics, and then euthanasia.

Birth control segued into eugenics—one, to give racial purity as the main reason. That is what they used. They wanted a racially pure body in England. And for societal improvement. Number one, based on self-appointed authorities with the erudite selects' acceptance of whatever premise that these people offered. Number two, consideration was then given to sterilization and euthanasia. And three, it went further to racial extermination by lethal means. And we all know that that took place.

The other thing that they wanted to do was to control the growth of population, which would exceed the earth's ability to feed the population. That's something called the Malthusian Theory, and it states that the earth grows in a geometrical ratio, and the population of the earth grows on a geometrical ratio, and food only arithmetically. So the food supply will never keep up with the growth of the population. The European model that was perfected by these learned people was defeated in England. But, many names supported it. Many names that you would know supported it: Anthony Eden was one. But the ideas were exported to the U.S.A. and to Germany, and they began to be carried to extremes. Sterilization in the U.S.A. and we know what took place: death in Germany and the occupied areas.

Just one moment... There is a book written by a lady named Laura Hillenbrand who wrote of the things that took place in California concerning this, among others. But, Louis Zamperini was a 1936 Olympian who was shot down over the Pacific in the war and survived 47 days in a life-raft. That does not have anything to do with this bill, but at one time he thought he was going to be sent before the board in California and perhaps be sterilized. And it did scare him so badly, that he straightened himself up from his youthful endeavors and became an Olympic hero. In the 1930's, according to Laura Hillenbrand, America was infatuated by the pseudoscience of eugenics and its promise of strengthening the human race by culling the unfit from the genetic pool along with the feeble-minded, insane, and criminal sex out of wedlock.

Some eugenicists advocated euthanasia then, and then mental hospitals quietly carried this out through lethal neglect. In an Illinois hospital, she gives an example of a mental hospital where patients were given milk from cows who had TB with the thought that only the undesirables among that group of people would perish. Anyway, there were some terrible things done to people across the country, not only in North Carolina. It's been said that North Carolina was most egregious, and maybe so from the population viewpoint where seven thousand people were sterilized, but in California, twenty thousand people were sterilized.

This action in the North Carolina General Assembly will create a footnote to be studied and considered by those who even now wish to progress to euthanasia. This has already been given airtime, and I heard a lady speak on the

radio who wanted to talk about having the State give her the authority to do away with her two children who were not perfect children, and who would, in her words, be better off if they were not living. This action that we are going to take—I hope it will pass—may help to open some eyes as to the possibility of yet another lessening of the sanctity of life and the promulgation of efforts to make the human race in their held images, whatever they may be.

We need to pass this bill to ease the burden cast upon those who are bearing the weight of the omnipotent power of a misguided state. And more importantly, to note that on some future date, enough people will seek to redress and rectify those wrongs which were, and perhaps are, being perpetrated today. So I think that this is a point in time, if we pass this, which will be looked upon by some of those in the future who are wanting to take liberty with the sanctity of life and say, “Well you know, maybe we shouldn’t do this because at some point in time an elected group of people is going to pay these people that we’re providing this wrong to.” So for those reasons, mainly for myself, I am going to vote “yes” on this issue and I wish you would too.

**Speaker Tillis:** Representative Hurley, please state your purpose.

**Rep. Pat Hurley (R):** To speak on the bill, please.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Hurley:** Thank you, Mr. Speaker. Ladies and gentlemen of the House, I became interested in this when I came down in 2007 to serve here, and I heard about this from Representative Womble. I have been across the state where there have been hearings on this; I’ve met many of the victims of this. I have met a doctor who was involved with this and have talked with him.

These were not just children; these were older people, too. In Randolph County we had a lady who already had two children, but she became depressed. And so they decided to sterilize her; they didn’t think she needed any more children. They didn’t realize that this depression could be corrected with the right medication at that time. There was also a fourteen-year-old girl who ran away from home because she was being abused at home. They said she was promiscuous; they sterilized her. There’s another lady—the one that speaks out more than anyone, I guess—was raped when she was fourteen. She became pregnant, and when she had the baby, they sterilized her.

I just feel that this was wrong. Yes, it was legal, but it was just wrong, and I think it’s time to right it and go down in history for doing the right thing. And I thank Representative Womble and Parmon for bringing this forward. Thank you.

**Speaker Tillis:** Representative Pridgen, please state your purpose.

**Rep. G.L. Pridgen (R):** To debate the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Pridgen:** Thank you, Mr. Speaker. I think one thing that everyone here has agreed on so far: sterilization was wrong. But this happened...the last time it happened was in 1974. That was thirty-eight years ago. Over half of the North Carolinians living today were not even alive then.

Now, we cannot right a wrong with money. Two wrongs don’t make a right. We’ve got eugenics versus tax payers. We’re punishing people for something they had nothing to do with. I don’t think that is right. So, why are we doing... We’re punishing them just the same way the other people were punished. We do not have the money for schools and are having to cut many departments, yet we’re going to spend money on this program.

How can we obligate future generations and Assemblies to pay for it? That’s another problem. The State owes enough without adding an infinite amount, because it can run anywhere from ten million to three-hundred and ninety million if all seventy-six hundred people are paid. The assumption is one-hundred and thirty-two people; six million, six-hundred thousand dollars. The estimate from the state center was twenty-nine ninety-four, which is one-hundred and forty-nine million, seven-hundred dollars. Representative Stam said that they’ve narrowed that to two thousand. That’s one-hundred million dollars. And if all seventy-six hundred people are paid, that’s three-hundred and eighty million dollars.

I do not have a problem with... Well, I do have a problem. I have a problem that this happened to the people to start with. This should never have happened in this country. But at the same time, why are we punishing the people who had nothing to do with it to try to make something right. Thank you.

**Speaker Tillis:** Representative Hall, please state your purpose.

**Rep. Larry Hall (D):** To speak on the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Hall:** Mr. Speaker, I'll make this brief, and I appreciate being given this opportunity to speak on this bill late in the debate process. It's interesting, and I think we have to go ahead and take responsibility for it.

People of North Carolina are going to thank us; their children thank us, your grandchildren thank you for the great investment that was made in the university system. I've heard some people talk about how the responsibility that we have as an ongoing government is somehow on some magic date, so we're not responsible for what happened in the past. Now we can get the praise and the benefit for a great university system and our children can go there, but they should not be thankful for those who had the foresight to put a system in place for them to attend a university system that can't be built overnight.

And so follows the responsibility for the acts that go wrong or that are bad, or that affect negatively our citizens. We do bear some ongoing responsibility. And yes, the taxpayers of North Carolina are going to pay for these victims as well as accrue whatever benefits come from the decisions we make today and tomorrow and the rest of the time we're here. And so you can't just isolate things you don't like because maybe they make you think about errors that we made in the past. But yes, there are things we can do to resolve those, and when we can, we should.

I heard Representative Blust, I think, say he wouldn't have a problem with the amount if we were in better budget times. We've already made the apology, though, so it's not a question of are we apologizing with this.

When I heard someone say, "What about the amount?" Was it fair? Is it in today's dollars versus what the dollars would have been had we paid the people? A good question. Was the pain they suffered in yesterday's pain measurements versus today's? What about the drugs that they would have had to resolve the pain and the psychological counseling they may have had had we been able to transport them forward in time. They didn't have that either. Maybe their pain was greater, maybe the psychological counseling...

I even wondered as I heard Representative Blust speak. I thought about it, and I think he would have been eligible to have been sterilized under this program during the time while he was a young man. And therefore, he would have been deprived of the opportunity to have a daughter and have another generation. And then I thought about all the other North Carolina families that might have been the same way, that their families actually ended as a result of this program in some instances, that no more generations would be there to carry out their name.

And so, we have a bill. We've made the step to acknowledge our responsibility as a state, as a body, as a conscience, as a people. I think we should vote yes on this and move forward and do what we will to help resolve this as we go forward in the future. I hope you'll support the bill.

**Rep. Blust:** Mr. Speaker?

**Acting Speaker Dale Folwell (R – Speaker Pro Tem):** For what purpose does the gentleman from Guilford, Representative Blust, rise?

**Rep. Blust:** Would Representative Hall yield for a question?

**Speaker Folwell:** Does Representative Hall yield?

**Rep. Hall:** I yield for a question.

**Speaker Folwell:** He yields.

**Rep. Blust:** Representative Hall, you made the point that a body like the State goes on to counter the argument that, hey, most of the people in North Carolina weren't here then, weren't involved, didn't have anything to do with it and really shouldn't be called upon to make up the harm because it was the State and the State goes on. Does a political party go on over time?

**Rep. Hall:** I guess the question would be, as an entity, does the political party, as an entity... And of course, we know parties are registered, etcetera, so they have a lot of characteristics. So I'm not sure exactly how you want to define a political party. But I know how to define responsibility. As long as an entity continues that can bear that

responsibility, then some decision has to be made. Do I ignore it? Do I meet it? Do I delay it? Those decisions get to be made and I think in...

**Rep. Blust:** Follow-up?

**Rep. Hall:** ...this case, that decision was made by the board or the panel that was established and the testimony was taken. And so again, I would say that the members of this House should support that and support that process that we've had ongoing as a state and as a legislature.

**Speaker Folwell:** Does Representative Hall yield for a follow-up?

**Rep. Hall:** I yield.

**Speaker Folwell:** He yields.

**Rep. Blust:** Representative Hall, isn't it true that when this program was enacted, there was a Democratic Governor, there were overwhelming Democratic majorities in the legislature. Those facts held true over every decade that the program was in place, including Terry Sanford, who didn't do a thing to stop it; Dan Moore who was Chief Justice and a Governor, who wrote the opinion that said this was a valid and reasonable exercise of state's police power and there was a compelling State interest behind this program. Wasn't the Supreme Court that upheld the program seven to nothing Democrat, and didn't the program end when the first Republican Governor was elected in over a century?

**Rep. Hall:** Well, I think we can talk about when man first walked on the moon and some other things that happened during those same periods of time, but it probably would not reflect where we are today and what our responsibility is as a legislature and serving Representatives.

So yes, people in the past made mistakes, but that does not make us a prisoner of the past. We are here in the present; we need to do what we know is right and not try to hold ourselves hostage to what errors people made in the past. I don't know if those same gentlemen you talked about or those same leaders you talked about are responsible for the health care system you have, for the roads and highways and transportation systems you have. I don't know if you're trying to do an accurate accounting of all the good and the bad they may or may not have done.

But we're here now on this issue. We've had the study that is necessary to be done, and we have an opportunity to make a difference and set an example going forward so that ten years from now people will look at this General Assembly and say Representative Blust and his colleagues recognized what was wrong and they made an effort to right it. And I think this is the right time to be on the right side and do the right thing. So I welcome your vote, your support, and I hope the rest of you will support this bill and vote yes.

**Speaker Folwell:** Representative Alexander from Mecklenburg is recognized to speak on the bill.

**Rep. Kelly Alexander (D):** Thank you, Mr. Speaker. I wonder about some of the logic that I've listened to on this debate today. For instance, according to some of this logic, we should hold the Republican Party responsible because Daniel Lindsay Russell was Governor at the same time the State Constitution was amended to put a literacy requirement in and disenfranchise black folk and write in *[audio unclear]* clauses. But that doesn't make any sense...not in the least.

We've talked a lot about money, and a great deal was made about fifty-thousand dollars. Well, I let my fingers do the walking and I did a little research to figure out what happens in compensation cases when somebody suffers some kind of sexual dysfunction through no fault of their own. Well, it looks like if you are male that you are minimally going to be entitled to about one-hundred and eight thousand dollars, and if you're female you're going to be minimally entitled to about one-hundred and twenty-five thousand dollars.

But this isn't about money; it's about doing the right thing. It appears that everybody in here understands that what happened during this era of eugenics and this era of legal, but morally reprehensible, sterilizations was wrong. Everybody in here, I think, understands that the State, through the function of its legislature and the function of its administrative side, has apologized. And now we get down to, after making the apology, what can we do as a token of recompense—and that's all it is: a token. And this bill provides that token.

Now, when I first joined this august body, a previous legislature had made some promises about something that it was going to do with the institution down in my neck of the woods called Johnson and Wales, and we were already beginning to experience some budgetary issues. But yet, a General Assembly not bound legally by a

commitment made morally, if by another Assembly, went ahead and put some money in the budget to meet that obligation. And it is my understanding that we've continued to put a little money into the budget in order to meet that obligation.

So I don't think that there's ever going to be a problem, if we can ever cross this Rubicon, about whether or not a future General Assembly will look back on the moral obligation to right a wrong in terms of how much money it's going to cost. I don't think we need to be concerned with that.

What we need to be concerned with is doing the right thing, and the right thing is to vote for this particular piece of legislation. And in voting for it, we should remember those folk who have stood on this fading carpet and many a time over the last number of years tried to get us to understand things like the Racial Justice Act and the justice in that, tried to get us to understand that we needed to deal with this whole issue of this eugenics program, and tried to get us to understand how we need to deal with the history of North Carolina and to deal with how, in this 21<sup>st</sup> Century, we can't just abandon the connection between our past and the future we want to move into. It's all about doing the right thing. Whether you're a Democrat, whether you're a Republican, whether you're a Federalist, whether you're a Whig, whether you believe that twenty-thousand dollars ought to be in or fifty-thousand dollars ought to be in—you ought to vote for this so that we can do something to move off of this dime and move together into the future. Thank you.

**Speaker Folwell:** Representative Adams from Guilford is recognized to speak on the bill.

**Rep. Alma Adams (D):** Thank you, Mr. Speaker. Ladies and gentlemen of the House, I'll be brief. None of us are perfect. And you know, when you make a mistake, you really should acknowledge that and take corrective action. We have an opportunity to do that. A legislature created this law. You know, people ask me every day and they call about things that we've done that they don't think we should have done. And they say, "Well, what can you do to change this or that?" And of course, I've always said you can't change policy until you change policymakers. But a legislature created this law and we need to take the appropriate action as a legislature to do what's right—because it is indeed the right thing to do. Not because of political expediency or popularity or any of those things, but because it is indeed right. And I think we have an opportunity to do that today. And I would hope that you would, and I would urge you to vote for this bill. We've had a lot of discussion on it. We've come a long way to get to this process, and now it's time for us to act and do what's right. Thank you.

**Speaker Folwell:** Representative Ross from Wake is recognized to speak on the bill.

**Rep. Deborah Ross (D):** Thank you, Mr. Speaker. I know that this debate has gone on a long time. What I would like to do is to just erase the blaming and the pointing fingers and to say this is a time to atone for a dark time in North Carolina's history. We have an opportunity to not only say, "I'm sorry," but to do something very small to make something right. Every generation has a scar on it like this scar. We have an opportunity to do something right. Let's hold hands, let's join forces and do just that.

**Speaker Folwell:** Representative Jones from Rockingham is recognized to speak on the bill.

**Rep. Bert Jones (R):** Thank you, Mr. Speaker...Am I back? Okay. I think we do all need to acknowledge that this eugenics program was extremely egregious. It was terrible. And I hope that it's not lost that there are going to be some votes on both sides of this issue, and I think we know the die is cast and know what the final vote is going to be. I debated myself whether I would speak about this or not, because I don't think we're going to really change any minds one way or the other. But I do want to say, I think, on behalf of some of us here that don't plan to vote for the bill and just explain a few of the reasons why.

You know, it's been said that we need to do the right thing, that this will solve this problem, that this will right a wrong. And with all due respect to many friends on both sides of the aisle here that are going to vote for this bill today, this is not going to right a wrong. You know, we have estimated that some seventy-six hundred people were treated in this egregious manner, and the proposed solution here is that we're going to pay out fifty-thousand dollars to maybe about two-hundred of them – less than three percent, I guess, of those that were affected. And I just can't resolve in my mind how that rights a wrong. I don't think that it does. I think that this wrong was committed for a span of over forty years from the early 30s to the early 70s. It peaked in the 50s and 60s according to the numbers. But I don't think that giving the reparations to a very small percentage of those that were affected really solves this problem. And I can't help but wonder how many people, if they were here maybe a generation ago when the

problem was every bit as egregious and more recent would have come to the conclusion that the General Assembly should appropriate three-hundred and eighty million dollars and compensate all of the victims.

Now we heard earlier a very true statement that came from one of the children, I guess, of one of the victims that already had a child and then this happened. They talked about how they would never have the opportunity to have siblings. And it just seems to me unfair to penalize those people simply because their victims, their ancestors, their parent or whatever, has already died. You know, if we were really about, “Okay, this is just doing the right thing and money doesn’t matter,” you know, I think we would probably be looking to compensate the estate, the family of every victim that was sterilized in this way. We know that we probably can’t afford to do that, so we’re going to take the pot of money that we think that we can afford and we’re going to divide it among the two or three percent. And a lot of people are going to leave here feeling better that we’ve righted a wrong, that we’ve really done something. I just don’t quite see that.

I think there are people here in the chamber that think that, truly... You know, it’s been asked, “How do you put a price on this?” And the answer is: you don’t....you don’t. How do you solve this problem? And with all due respect, I don’t think that this is the solution that does. So with all due respect to the proponents and to the victims for whom I have the greatest sympathy—I really do. And I think everybody in this chamber does, regardless how they will vote today, and I think that should not be lost. But I honestly can’t say that it is fair to the citizens of North Carolina who we were elected to represent in 2012 to say that “it is your responsibility to pay this to three percent of the victims in 2012 for something that was done two, three, four, five generations ago.”

So I hope you’ll understand. You have my sympathies. I understand it’s going to pass, but I will not vote for the bill. Thank you.

**Speaker Folwell:** Representative McCormick from Yadkin is recognized to speak on the bill... Representative Ingle from Alamance is recognized to speak on the bill.

**Rep. Dan Ingle (R):** Thank you, Mr. Speaker. You know, we have an obligation by the people that elected us to office to serve. And one of those things is they look for us to do the right thing, and sometimes it hurts—it hurts in the pocketbooks of those that we do serve—the citizens. This is one of those times, but it’s the right thing to do.

It’s just like when a person that is tried for an offense in a court of law and maybe every single thing is done right. Yet later on because of the evidence that comes down in the case ten years later, we see that they, in fact, did not commit the crime. That person’s been in jail for ten years—in prison. What do we do? We compensate them for that time because we can’t bring it back.

Well, it is the same way with these victims that have lost their ability to have children and other things. That can’t be brought back to them. Now they are aging. The only way we can help them and make it right is to compensate them. We’re doing the right thing here, and I support this bill.

**Speaker Folwell:** Representative Keever from Buncombe is recognized to speak on the bill.

**Rep. Patsy Keever (D):** To speak on the bill, please.

**Speaker Folwell:** The lady has the floor.

**Rep. Keever:** Just briefly, we can’t make this right; we know that. But we can say we’re sorry and put our money where our mouth is. I urge you to vote for this.

**Speaker Folwell:** Representative Jordan from Ashe is recognized to speak on the bill.

**Rep. Jonathan Jordan (R):** Thank you, Mr. Speaker. The Eugenics Program targeted poor and rural North Carolinians. More white women were victims than black women. More white men than black men. It was not a racist thing. It was a low income thing. It was a rural thing. This is an extremely sad chapter of our state history.

Oliver Wendell Holmes, a United States Justice on the U.S. Supreme Court, wrote in a case in 1927, “It is better for all the world if, instead of waiting to execute degenerate offspring for crime or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes.”

That is eugenics. That was the policy in place. And as I said on an earlier issue today: the ends do not justify the means. This may not be a perfect bill, but this will be apologizing for the horrendous state action and the horrendous

government intrusion on personal rights and freedoms that our state is responsible for. And I'll be voting yes on this bill.

**Speaker Folwell:** Speaker Tillis from Mecklenburg is recognized to speak on the bill.

**Speaker Tillis:** Thank you, Mr. Speaker. Ladies and gentlemen of the House, listen to this quote: "The unnatural and increasingly rapid growth of the feeble-minded and insane classes, coupled as it is with the steady restriction among all the thrifty, energetic, and superior stocks, constitutes a national and race danger which it is impossible to exaggerate."

We had elected officials and leaders who had the audacity to think that they knew what the great race was. They would actually exercise the absolute power of government to take away a God-given right that you have. That's the arrogance that eugenics represented. There are probably other points and times in history and, sadly, there will probably be other points and times in the future where other legislatures are going to have to look at this and say "Folks, that's just wrong."

Now when I started looking at this bill back in 2007, the same time that Representative Hurley did, I took it from strictly...It wasn't from the heart, it was from the head. As a conservative; as somebody who actually has sat in this chamber and heard people talk about the wrongness of annexations, the wrongness of other government takings, the wrongness of eminent domain and how bad that is and how we need to correct it and how sometimes we even need to go back and reverse past decisions of other elected officials; I look at this and I think it's probably the most egregious example of that. It's that simple.

Now every once in a while, I think you have a chance to make history, and this is one of those chances. North Carolina was an outlier. If you haven't looked at the eugenics program in North Carolina, it is truly one of the most egregious in these United States. Tennessee never had a eugenics program. South Carolina and Georgia ended theirs in 1963. They did I think probably 10% of the forced eugenics in South Carolina, about half in Georgia.

But North Carolina did something really strange. While everybody else was ramping down after the Second World War, we for some reason in the 50s and 60s went up. We went to kids 14 years old—a girl that was raped. After she was raped and after she brought the baby to term, she was told that she was feeble-minded and that was why they were going to have to sterilize her after she brought her baby to term. Now, that "feeble-minded" woman has become a very articulate spokesperson and the proud mother of a 30-some-odd-year-old man who is himself very successful and very articulate. Feeble-minded? I don't think so. And that woman was roughly the age of my sister back in around 1968 when that happened. That woman, that young girl, was three or four years younger than most of these Pages on the back row.

But we all of the sudden...There are people living today, there are people all around this community, that have had this thing done to them and this is an opportunity to say, "We're going to put this to rest. We're going to make a decision. We're going to memorialize." Sometimes we have to look at what the predecessors in this institution did and say, "That was wrong." That's the opportunity we have today. I hope you'll support the bill.

**Speaker Folwell:** Further discussion, further debate?

**Rep. Hastings:** Mr. Speaker?...Mr. Speaker?

**Speaker Folwell:** For what purpose does the gentleman from Gaston, Representative Hastings, rise?

**Rep. Hastings:** To see if Representative Jordan will yield for a quick question.

**Speaker Folwell:** Does Representative Jordan yield?

**Rep. Jordan:** Yes, I do...

**Speaker Folwell:** He yields.

**Rep. Jordan:** ...with trepidation.

**Rep. Hastings:** Representative Jordan—this is with all due respect, sir, and it's truly a question. And I'm not going to discuss the Equal Protection Clause of the US Constitution; I'm going to focus on the State Constitution, and you're going to help make my decision today. Our law of the land and equal protection of the laws provision in our State



Constitution addresses equal protection. And if we pass this today for a wrong based on state action, are we also going to have to come back and pass a similar provision—a reparation, as one of our Representatives called it—for every other wrong that the State has perpetrated?

**Rep. Jordan:** The answer to that is only if future General Assemblies say that a legal process was incorrect and goes through this sort of process would that ever be a possibility.

**Rep. Hastings:** Thank you, sir.

**Speaker Folwell:** Further discussion, further debate? If not, the question before the House is the passage of the House Committee Substitute for House Bill 947 as amended on its second reading. All those in favor will vote aye; all those opposed will vote no. The Clerk will open the vote... The Clerk will lock the machine and record the vote. Eighty-six having voted in favor; thirty-one against, the House Committee Substitute number two for House Bill 947 has passed its second reading and without objection... will be read a third time.

**Reading Clerk:** General Assembly of North Carolina enacts.

**Speaker Folwell:** Further discussion, further debate? If not, the question before the House is the passage of the House Committee Substitute for House Bill 947 on its third reading as amended. All those in favor will say aye.

[Aye.]

All those opposed will say no.

[No.]

The ayes have it and the House Committee Substitute for House Bill 947 and will be engrossed and sent to the Senate by special message.

~ Fin ~

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**HB 950 – Modify 2011 Appropriations Act  
Selected Remarks on Adoption of the Conference Report  
June 21, 2012**

*Joe Hackney was the House Minority Leader and had been Speaker and Majority Leader.  
He was by far the best debater. But this debate illustrates that even in the trough of a recession  
liberals always want to spend more money.*

Audio available at [this link](#)

Debate begins: 00:22:31

Rep. Hackney's comments: 02:04:55

**Speaker Thom Tillis (R):** Representative Hackney is recognized for a period not to exceed three minutes.

**Rep. Joe Hackney (D – Minority Leader):** Mr. Speaker and members, thank you for a second opportunity, although I will say I don't know why, with a twenty-billion-dollar budget, we can't let people talk—as we have in the past, I might say. So I think it's regrettable that... I know we're saying things you don't want to hear, but I'm going to tell you they are things your constituents are going to tell you.

This is a bill that takes us backward on jobs. And I'm going to tell you that I believe the best jobs plan is a good education plan; that the best education for our kids in our schools results from the time and attention from a caring, dedicated, well-trained education professional. And you can put them in there in the classroom or you can take them away. This budget takes them away. I don't know how many will be taken away. You have once again left those

choices up to the local LEAs as to how many of them will be taken away, but we know that they will be taken away. That represents a retreat, a going backwards for North Carolina.

We have less money for Rural Center, less money for Clean Water Management Trust Fund than we should have. We have less money to get kids ready for school with Smart Start, and we have less money than we need for the job training programs in the community colleges. As has been noted by other speakers, you have put policy—unexamined, bad policy—in this budget where it does not belong.

Let me speak for a minute about eugenics. You know, the House, one of the things we've done in a bipartisan manner this time—not very many things, but it's one that we should talk about because it was bipartisan—is the eugenics compensation for the victims of this unfortunate period in North Carolina history. That money is not in this budget and it does not appear that you fought very hard to get it in. So that remains for another day, and I do hope that one day, that will happen. But it's yet another reason why this conference report is not the solution to moving North Carolina forward.

**Speaker Tillis:** Representative Hackney, the gentlemen's time has expired. We will provide you with an additional twenty seconds to summarize.

**Rep. Hackney:** This is another reason why this budget, this conference report, does not move North Carolina forward, but moves North Carolina backwards once again, just as the budget last year did. Thank you very much.

**Speaker Tillis:** Representative Stam is recognized for a period not to exceed three minutes.

**Rep. Paul Stam (R – Majority Leader):** Thank you, Mr. Speaker. Representatives of the House, I'm voting "aye" on this conference report. I know that there is general unhappiness from some members. Representative Bordsen doesn't like what we do in Justice. Representatives Glazier and Rapp have never been happy with what we've done in K-12 education. Representative Hackney, there's never enough money for the universities... So we're generally unhappy, but, we have to vote green or red.

And what the folks have not explained to you is what it would mean if their red vote prevails: \$250 million less in education, \$275 million less in Medicaid. K-12 would have a \$509 million flex cut. Do you really want to defend that? The last budget they prepared, a billion dollars was taken out of K-12 during those times. Are they really against a 1.2% raise for state employees and teachers? I'm for it. As usual, the solution for the minority is higher taxes, and this is coupled with \$3,400 jobs.

They perhaps forget that the three reductions in personal and corporate tax, eliminating the surcharge on the personal income tax, the surcharge on the corporate income tax, and the exemption on the first \$50,000, not the last 50,000, of self-employed income—those together are projected to yearly create 4,000 jobs. Apparently, 4,000 jobs in the private sector are not of any consequence to those who want jobs in the public sector.

I encourage you to vote for this very responsible budget. We are still in a recession, we did not raise tax rates, we're not going to raise tax rates during this session, and I encourage you to vote yes.

~ Fin ~

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**SB 9 – No Discriminatory Purpose in Death Penalty**  
**Rep. Paul Stam – Remarks on 2nd Reading**  
**June 16, 2011**

*The 2009 Racial Justice Act was intended as a "permanent" moratorium.  
This was our first effort to roll it back by exposing its true nature. Governor Perdue vetoed it.*

Audio available at [this link](#)

Debate begins: 06:59:20

Rep. Stam's comments: 07:08:47

**Rep. Paul Stam (R – Majority Leader):** Mr. Speaker, members of the House: page two of the bill states what the law will be if this bill passes:

“At trial or upon a motion for appropriate relief filed pursuant to Article 89 of Chapter 15A of the General Statutes, a finding that race was the basis of the decision to seek or impose a death sentence may be established if the court finds that the State acted with discriminatory purpose in seeking the death penalty or in selecting the jury that sentenced the defendant, or one or more of the jurors acted with discriminatory purpose in the guilt-innocence or sentencing phases of the defendant's trial.”

Isn't that what you want the law to be? Isn't that what you thought the law was? Hasn't that been the law for decades? This bill seeks to return us to commonsense with regard to the death penalty.

When Senate Bill 461 was passed two years ago, the question was called without allowing the minority leader to speak just before a speech I was going to give on third reading. I did transcribe what I said on second reading and you have a copy of it before you. Many of the issues are the same and it's not because I am a great prophet. Much of what we're telling you that has come to pass we told you exactly what would happen two years ago on August 9<sup>th</sup>. It's come to pass.

We've had two years of a moratorium on the death penalty. In the case arising out of Forsyth County there has been a discovery order entered that says we'll complete this within another two years. Then you have to have the hearing and you have to have the appeals. One of the things I prophesied in this speech that you have in your hands was that it was at least a three-year moratorium on the death penalty. Actually it's turning out to be about five or six years.

What is the cost of all this? Well, here's a book that I brought to the floor two years ago. I have it on a CD. I've given dozens of copies to the press. They've never reported it. These are studies that the Attorney General, Mr. Cooper, provided to me that show that the death penalty for murder has a deterrent effect. Dozens and dozens—by now hundreds—of innocent victims have died because of this moratorium. If anybody wants to debate deterrence, I'll do that in rebuttal. The essays and articles I have read from some professors have so many logical fallacies that I'll enjoy talking about it.

Actually executing people for murder deters. But if you don't do it and just pretend to do it, of course it does not deter. There's a real cost in innocent human lives by this moratorium—innocent human lives—and there's a cost to the families, as well. Yesterday we had a family in the gallery. They came up here at their own initiative, expense and urgency: an African-American family who had been a victim of the murder of their seventeen-year-old daughter and attempted murder of their son. They are urgent to implore you to stop using race as a reason not to execute cold-blooded murderers.

The Racial Justice Act has no more to do with racial justice than if I were to create a bill called “Sexual Justice in Murder.” Overwhelmingly those prosecuted, convicted and executed for first degree murder are men. I'm a man. Am I out there demanding equal executions of women? No. But that's the logic of the RJA. If we can't prove by statistics in another county, in another universe, in another century, that an equal number of men and women have been prosecuted, convicted, or executed, that somehow our system is wrong. I reject that idea of collective punishment.

Representative Steen and I are the only people here of Dutch descent. If one of us murdered a half a dozen people in a heinous manner would you think it right that I try to say, “Oh, there's been a disproportionate number of Dutch people executed in this state. Therefore, I should not suffer that penalty.”? That would be preposterous. I read one of these studies by a professor trying to convince us that the RJA is a good idea. He talked about Union County in 1933, the things that happened there as the reason why a murderer of eight people who raped a half a dozen others should be sentenced to life in prison without parole instead of death. Does that even make sense to you?

Two years ago Representative Womble talked a lot about the Kentucky bill. That's the only other state that has something called the Racial Justice Act. But that bill was not retroactive. It's the retroactive feature that is causing the huge financial train wreck in our state. We predicted in 2009 that every murderer on death row would raise an issue here. We were scoffed at. Now 152 out of 156 of these cold-blooded murders made that motion. Don't tell us you're surprised. We told you on the floor that's what would happen under Senate Bill 461. Their lawyers would be guilty of legal malpractice not to file.

We have extensive protections under our current death penalty laws to protect people from being executed if they are innocent. You almost have to volunteer for the death penalty or kill six or eight people on video to get it. That's an exaggeration, but it's practically true. Since 1996 we've had open file discovery. Before Senate Bill 461 we had an eight- to fifteen-year moratorium for every person. Last year's bill just lengthened that by another five or six years and added another eight judges, at least, to the forty-five judges who are already reviewing every conviction for first degree murder that involved the death penalty.

We have the Innocence Protection Act, and the act relating to DNA. In 2001 additional discretion was given to prosecutors in deciding whether to seek the death penalty. Ironically, the opponents of the death penalty use that very discretion as a reason to criticize the death penalty. Since 1996, capital defendants have been given two attorneys at trial and post-convictions hearings, all at taxpayer expense. We have proportionality review. Of the forty-three convicts who were actually executed in the modern era not a single one had a credible claim of innocence. (If anybody wants to talk about Junior Brown, I'll talk about Junior Brown.)

I'll give credit to about a half dozen people who voted for the RJA innocently, who thought they were doing something about racial justice. But, the rest knew the effects of the bill would be simply to clog the courts so that nothing could happen for years.

I'd like to close with excerpts from a letter from a district attorney—I won't say which one; I'll tell you privately later if you care. This district attorney is spending all of his time working on these RJA cases from 1993, '95 and '96.

"The RJA is about ending the death penalty sanction in all murder cases regardless of the circumstances. Their intention is to stop all executions. It is intentionally drafted in a way to permit all defendants, regardless of race or the race of their victims, to challenge their death sentence based on nothing more than statistics or things that happened in a different place at a different time. It has created a quagmire of new and very complex litigation which my small office must deal with. It has forced me to reallocate resources within my office, as has every other DA in the state, and re-litigate cases that are years old.

"That means I have fewer resources to prosecute murderers and rapists and drug traffickers whose cases are pending now and are sitting in jail now. When I tell the families of murder victims that one reason their loved one's killer has not gone to trial yet is because I don't have enough people to do all my work, I'm going to explain to them how three of my prosecutors and myself have spent and continue to spend nights and weekends in my office working on these cases from the mid-nineteen-nineties instead of these current cases."

He mentions these three cases, and I'll let you decide whether these people are subject to the death penalty because of their race.

M.R. randomly abducted and murdered a pregnant woman from the mall a few days before Christmas while she was shopping for toys for her nieces and nephews. He robbed her, raped her, stabbed her and left her to die, naked except for her socks, inside a creek. It took her fifteen to twenty minutes to die and she would have been conscious half that time but died from blood loss. He bought himself a color TV with her credit card later that night. Was he executed because of his race? We're going to spend about five or six years to find out.

S.F., out on bond for another homicide in the same county: He got drunk and shot a man in the back with a shotgun in front of the man's wife. The same guy had served time previously for belying a victim at a gas station with a bowie knife. He cut from the back of his neck all the way down to his buttocks for no reason.

R.B., a crack-head, broke into his elderly mother's house to steal from her and ran into his mother's elderly boyfriend, pistol-whipped him, robbed him, tied him to a chair, and burned the house down around him while he was still alive and conscious. He had previously served time for armed robbery.

Then the DA concludes, "The RJA is about stopping all executions. It's not about race; race is a pretext. Race is a means to an end. It's a red-herring intended to deceive well-meaning legislators who didn't know the truth of what they were voting for."

I urge you to support this bill.

~ Fin ~

**SB 416 – Amend Death Penalty Procedures**  
**Remarks in the House Judiciary B Committee**  
**June 6, 2012**

*So we tried again...*

**Rep. Paul Stam (R – Majority Leader):** Thank you, ladies and gentlemen. This Committee considered Senate Bill 9 in the last session which in legal effect would have been a repeal of the Racial Justice Act. Although technically it wasn't, it would have had that effect.

This is an amendment to the Racial Justice Act. What this amendment does is enshrine the law—what we think that law is: that is, “No person shall be subject to or given a sentence of death or shall be executed pursuant to any judgment that was sought or obtained on the basis of race.” What it does that's different is it looks at statistics that are somehow relevant to that question both as to time and location. The location would be in the county or the prosecutorial district. The time period would be on line 19-20: “from the date that is 24 months prior to the commission of the offense to the date that is 24 months after the imposition of the death sentence.”

In other words, something that has something to do with the question, as opposed to going into statistics about what happened three hundred miles away in a different district, in a different era in somebody else's court. That's trying to get relevancy to the statistics.

The second thing it does, in lines 23-32, is clear up what had been a bone of contention and that is what would happen if someone were successful in one of these petitions but was originally sentenced to death a couple of decades ago, and there is at least some chance that they would not be sentenced to life without parole but would rather go under the old parole procedures. What this bill does is say that if you're going to ask for this relief, then you have to put in black and white on the record, in writing and orally, that you are waiving any requests for parole. That's lines 23-32. The court, in lines 29 and 30, makes an oral inquiry to confirm the defendant's waiver which shall be part of the record. In other words, that dispute would no longer be part of the dialogue.

Page 3, lines 19-21 make it clear that it's in the county or prosecutorial district.

Line 23 requires that “the race of the defendant was a significant factor.” This bill expands what can be included as evidence. We had in the other bill sworn testimony of attorneys, prosecutors, and law enforcement officers. This adds judicial officials as well. Statistical evidence by itself would be insufficient, but it would be admissible. The State gets to offer rebuttal evidence.

Line 35 tells when the claim must be raised. If before trial, then under the general rules of practice. Currently, that's Rule 24 but that could conceivably change so it's just “under the general rules.”

It tells where to raise it in post-conviction. If the court, on the record, finds that on its face it doesn't state a claim, the court can dismiss it. But if the court does find that it states a sufficient claim, the court will schedule a hearing and may prescribe a time prior to the hearing for each party to give a forecast of its proposed evidence. That's sort of a discovery hearing. Then lines 46-50 specify what the Court does if it finds that race was a significant factor in the decision to superimpose the sentence of death.

I believe that this bill has the original intent of the Racial Justice Act by those who spoke in favor of it. That is, to make sure we're not sentencing people to death because of their race. What it doesn't do is include the intent of those who knew what the Racial Justice Act was, and that was just an indefinite moratorium on the death penalty. That is gone.

There's a lot of technical stuff. How it affects current hearings: this bill would put a stop to current hearings. They could, within sixty days, recast their motions under the new law and still be in the queue to having their hearings.

I hope the Committee will support this. The spectacle of virtually every person on death row who was sentenced to death for cold-blooded murder claiming racial prejudice, no matter what their race, revealed to everybody the deficiencies in Senate Bill 461.

Thank you.

**Chair Sarah Stevens (R):** It is the intent of the Chair to allow members of the public who wish to speak an opportunity to speak, but we are going to limit that. You can either speak in favor of this bill or against this bill. Those members of the public who would like to speak, we'd ask you to make your way around and speak with Nicole, an intern with my office, and we'll sign up with a list of pro or con.

In the meantime, I'm going to be taking some comments from the members of the Committee. I'm going to ask Representative Burr in about seven minutes if he would come up and co-chair; I need to step out for a few minutes. We'll first ask staff if they have anything they need to add to what Representative Stam has done.

**Hal Pell (Staff Attorney):** Nothing, unless there are any questions concerning session law language on procedure.

**Chair Stevens:** Okay. Representative Glazier.

**Rep. Rick Glazier (D):** Requesting if we can reserve any time for comment and questions?

**Chair Stevens:** Sure.

**Rep. Glazier:** Question for Mr. Pell: Could you explain in a little bit more detail Subsection (f) of page 2 and the limitations it puts on the time in which a defendant can file?

**Hal Pell:** Which section number?

**Rep. Glazier:** It is page 2, f.

**Hal Pell:** Okay. The practice under the Racial Justice Act would be the same as it currently is. In other words, if it's before trial, then they would bring a pre-trial motion. If it's a post-conviction motion, it would be under the normal rules in Article 8 of Chapter 15a. For a post-conviction motion for appropriate relief, that would be under the current deadlines for filing a motion. All those who have already filed under the prior session law, their appeal would still be preserved.

**Rep. Glazier:** So the only limitation you see, at least on time, is the time on the use of statistical evidence or the evidence period in that two-plus-two-year category?

**Hal Pell:** The bill provides that there would be the two years before the defense and the two years after the imposition of the death sentence. That would be the time period that statistical evidence would be deemed relevant under this bill.

**Rep. Glazier:** Is that just limited to statistical evidence or does it include any evidence?

**Hal Pell:** Any evidence.

**Rep. Glazier:** So, the prosecutor can in this case have been a prosecutor for twenty-five years and have struck ninety-three percent of jurors on the basis of race over the prior twenty-four years of his career. But he had only one case in the next two years—the defendant's case—and didn't strike a black juror during that period of time. Then the only evidence that a defendant can present is that two-year period? The fact that he racially struck ninety-three percent of jurors over that twenty-four-year period would never be used, is that correct?

**Hal Pell:** That would be correct. Under that act, statistical evidence would have to be limited to the two years before the offence. There could be other relevant evidence that is not statistical, such as witness testimony concerning the prosecutor's motive.

**Rep. Glazier:** You told me a minute ago that the two year limitation is for all evidence.

**Hal Pell:** No, I meant during that two year period as well.

**Rep. Glazier:** So, the prosecutor who struck ninety-three percent of the jurors in a twenty-four-year career, then had just one case after and didn't strike any, he was a member of the KKK, and called blacks "niggers," and we had evidence of that fact. All this had occurred five years prior. That couldn't come into evidence either under this?

**Hal Pell:** That's a good question because I don't know whether a motion for appropriate relief based on newly discovered evidence, if it was direct evidence like that or testimony like that, would be admissible. I'm not sure if that would be excluded or not.

**Rep. Glazier:** You just said, though, that your reading of this is that it excludes any evidence prior to the two years before the event. If that's the case, how could it come in to evidence?

**Rep. Stam:** Point of order.

**Chair Stevens:** Representative Stam.

**Rep. Stam:** Point of order was that he sought to just ask questions and yet he is debating the staff.

**Chair Stevens:** Alright.

**Hal Pell:** I've had an opportunity to look over that issue and I'd like to respond.

**Chair Stevens:** Alright. I'm going to get back to you. That is a good point. Let's take questions right now and we'll invite you to come back to comment. And again, nobody is signed up for public comment. Okay, we have one now. Representative Haire.

**Rep. Phil Haire (D):** Under the Racial Justice Act, how many people have been acquitted or found to be subject to racial prejudice?

**Hal Pell:** I know of one case, the Robinson case, in which the Judge has ruled that.

**Rep. Haire:** Do you know how many cases are pending?

**Hal Pell:** I can't give you a number. I know anecdotally there are two cases maybe in Forsyth County, but I can't be totally accurate.

**Chair Stevens:** Representative Bryant.

**Rep. Haire:** Excuse me, just another question for Representative Stam.

**Chair Stevens:** Representative Haire.

**Rep. Haire:** What is broken about this current law that needs to be fixed?

**Rep. Stam:** That's debate, but I'll be glad to answer the question. The General Assembly, Representative Haire, has decreed that the correct punishment for first degree murder is either death or, upon the discretion of the jury, life imprisonment. We have one-hundred and fifty-five people—practically everyone on death row—who claimed that the only reason they're there is because of their race. That's broken.

**Chair Stevens:** Representative Haire, do you have additional questions at this time?

**Rep. Haire:** I would like to ask Representative Stam another question. Based on the fact that we know at least one person has been turned loose...[*audio unclear*]

**Chair Stevens:** The Committee will come to order.

**Rep. Haire:** Excuse me, I misspoke. I've always heard [*audio unclear*]...

**Rep. Stam:** There's not a shred of evidence that any of these people are innocent. They have all been convicted by a jury. They've had forty-five judges, at least, look at their cases. They've taken an average of eight to fifteen years already, and this adds an additional eight judges to each case and an additional four, five or six years. That's broken.

**Acting Chair Justin Burr (R):** I believe Mr. Pell wants to address that question as well.

**Hal Pell:** No, no. I had a specific comment about the relevancy issue. There were two cases in Buncombe County that were recently turned loose because of misconduct on behalf of the state prosecution for the case.

**Chair Burr:** Do we have additional questions for staff at this point? Representative Bryant.

**Rep. Angela Bryant (D):** I'd like to ask two questions, but I'd just like to make sure I'm reserving time for comment. This is not my comment.

**Chair Burr:** Go ahead.

**Rep. Bryant:** I just know that we don't have a bill summary. Is there a reason we don't have a bill summary? Am I missing something?

**Hal Pell:** No, there is a bill summary.

**Rep. Bryant:** Okay, if I could get a copy of the bill summary? I apologize if I'm somehow missing it, but it's not in my paperwork. Okay, thank you. Then my question, Representative Burr, is what are the differences as it relates to the finding of race being a significant factor? I was trying to read as I heard Representative Stam on this bill, and in that process he said something about race of the defendant and race as a significant factor. So what is the change?

**Hal Pell:** In the original bill, on page 2 as part of Subsection (d), you'll see that lines 3-9 are struck through. Originally, there were provisions that one or more of the following applies. In other words, the statistical evidence would be irrelevant relating to whether a death penalty was: "sought or imposed significantly more frequently upon persons of one race than upon persons of another race," or "death sentences were sought or imposed significantly more frequently as punishment for capital offenses against persons." That's race of the victim and the last one is preemptory challenges. The PCS just provides a general statement that proving race was a factor and does not specifically set out those categories for relevancy.

**Rep. Bryant:** Follow-up? That's in Subsection (d)?

**Hal Pell:** Correct. That's in Subsection (d).

**Rep. Bryant:** And the follow-up is where in this area is something about the race of the defendant or somebody?

**Hal Pell:** That's on line 23 of page 2.

**Rep. Bryant:** And how does that factor into the rest of the bill? Would you walk me through that? And is that different, is what I'm asking.

**Hal Pell:** *[audio unclear]*...relevant to a finding that it was sought or imposed and includes statistical evidence derived from the county or prosecutorial district where the defendant was sentenced to death or other evidence that the race of the defendant was a significant factor. So this would say that the defendant was sentenced to death because of their race.

**Rep. Bryant:** So, statistical evidence would be allowed where race of the defendant was a significant factor. That's the only basis upon which statistical evidence would be relevant, as it related to the race of the defendant?

**Hal Pell:** That would be my reading: that it's the race of the defendant that was a significant factor.

**Rep. Bryant:** So it would have to be direct discrimination related to the defendant's race, and if there's racial discrimination related to others involved in the criminal process that would affect the fairness or justice experienced by the defendant that evidence is not allowed?

**Hal Pell:** Not necessarily. If a juror was excluded because of his attitudes toward the race of the defendant, that would be relevant.



**Rep. Bryant:** But if a juror is struck because of stereotypes and presumptions about the juror's attitude toward the death penalty or the prosecutors or the criminal justice system or whatever rationale they use for striking black people regardless of their race...Excuse me, let me rephrase. If you are accused of the death penalty and they strike me from the jury because they believe that I might...because I'm black and I have sympathetic attitudes or prejudices—I don't know what the prejudice is—or something else that would not somehow make me capable, then that would not be allowed even though it may affect your ability to have a nondiscriminatory jury?

**Hal Pell:** If you had a bias against the defendant, then you could be struck by a challenge for cause. In other words, you would not be eligible to be a juror in the first instance. If, for example, there was a black defendant under North Carolina federal law, if the prosecutor uses a preemptory challenge to strike that prospective juror, then the State is required to state a race-neutral reason under *Batson v. Kentucky* for why they would strike that juror. If it's not apparent from their testimony that they're biased, according to the judge, and the State has no basis for a challenge for cause and the State uses a preemptory challenge, then that challenge would be subject to review by the court.

**Rep. Bryant:** Sorry, one more follow-up? Under *Batson* the race-neutral reason is not related to the defendant, it's related to race discrimination across the board, is that correct?

**Hal Pell:** My understanding would be that it would be related to the juror and that defendant. In other words, based on the testimony of that juror the court can decide that that juror does not appear to be biased. But if the prosecutor moves to strike the juror or moves a preemptory challenge against the juror, then the prosecutor has to provide a race-neutral reason why that juror should not be allowed on the jury. So it is confined to that system.

I can, I think, respond to Representative Glazier's question earlier in a couple of ways. The current Racial Justice Act requires that the evidence be at the time of the offence. I do believe that one of the judges hearing these cases has limited that evidence to a 5-year period before and after the offence in an attempt to apply some reasonableness standard to the question of what "at the time of the offence" means in our statute. Some judges may have looked at ten or twenty years, like you mentioned, from when the offence occurred and allowed that evidence. My understanding was this was an attempt to create some kind of statutory framework for the language that is currently in the statute: "at the time of the offence."

However, you also raised the question about a prosecutor that maybe twenty years before—whether that evidence was admissible. This only applies to claims that were brought under the Racial Justice Act. If the defendant has a due process or equal protections claim that may be brought against his conviction based on other newly discovered evidence, that could be a separate constitutionally-based challenge that would not even be proceeding under this because the relief would certainly be not to just be sentenced to life without parole but, because they did not receive a fair trial, they should get a rehearing in the normal appellate process.

That's what distinguishes this from other statutes, such as Kentucky's. Kentucky law says that you can't seek the death penalty; it doesn't say anything about imposing. Kentucky's act ensures that there's no real issue whether a defendant received a fundamentally fair trial or not and then go back and try to undo that. North Carolina is the only jurisdiction anywhere that says that if the defendant shows that he was deprived of the right for a case to be tried where race was not a factor, that they're still convicted—they still have life without parole. That's the distinguishing factor.

That type of situation where it's outside of those two-year periods would necessarily be brought outside of this act. Then it would be up to the courts to determine whether it's relevant to an equal protection or a due process claim and those procedures.

**Chair Burr:** Representative Bordsen, I believe you're next. Please keep in mind that we do have public comments and would like to get to those. It is the intention to try to vote on this at 15 after 11. Go right ahead.

**Rep. Alice Bordsen (D):** If you don't mind, I'd rather hear Representative Glazier's response if I could. Mine is a question about process.

**Chair Burr:** Well, is it a response or is it a question, Representative Glazier?

**Rep. Glazier:** I have a question.

**Rep. Bordsen:** Okay. Well then my question is purely about process for today and it's colored somewhat by the fact that I'm very disturbed that this very significant piece of legislation is being revisited so soon. I came in a couple minutes late, so help me understand here.

I was interested very much in the initial exchange between Hal Pell and Representative Glazier, to which Representative Stam raised a point of order that that exchange was actually going into the area of debate, and that we are to have the opportunity for questions and then it will be followed by a period of public comment, then we will vote rather than having a meeting where this huge issue is debated. We will not be having this meeting for discussion purposes only. It sounds like we are not to have actual engaged debate but we are expected to vote in such a short amount of time.

So let me understand. Is that true that we are not to be engaging in debate in this meeting? We are to have time for questions, a separate time for comment, and then vote?

**Chair Burr:** Maybe because you walked in a few minutes late you missed it, but the point at this time is to take questions for staff that you may have. If you have questions for staff, you can address those now. We're then going to move into public comments, and as soon as we finish up public comments if you would like to debate you'll be recognized at that time.

**Rep. Borden:** I do have a question. The question came because I was struck by the fact that, although Representative Glazier had continuing questions, one question begets another question begets another question on the same subject that really needed clarification that was objected to and point of order was called. I fail to understand. That was really not debate; that was clarifying a series of questions which we need, I think, in making our vote an informed vote.

**Rep. Stam:** Brief response. I note the opponents are using all their time for questions. Since you weren't here earlier, you didn't realize that Representative Glazier was on his eighth question at that time. The point is seldom noticed that in a deliberative assembly, you actually have to ask permission of the body the third time you speak. We frequently grant permission, but if you want to move on to the debate part, we need to move on to the debate part.

**Rep. Grier Martin (D):** Mr. Chairman, point of order.

**Chair Burr:** Representative Martin.

**Rep. Martin:** Thank you. Representative Stam has, I believe, correctly stated what the default rule is for a deliberative body. However, it has been a longstanding custom and practice in this body that in committee we don't observe that rule. It is clear that the custom and the rule by which we're governed does not apply.

**Chair Burr:** Well, it would be the Chair's preference that we get back to the discussion on the bill rather than debating procedures. As we are trying to have that discussion at this time it seems to me there's an effort being made to delay the discussion. Hopefully we'll hear from the public. So at this time, we'll move to Representative Glazier who I believe has a question for staff.

**Rep. Glazier:** I do have a question and it's on page one. Can you tell us under (a)(1), there are a couple ways to read this, and my question is, would a defendant who is deciding whether to file an RJA petition but may also have an actual innocence petition if he files RJA, does (a)(1) bar him from filing actual innocence?

**Hal Pell:** I believe if this defendant goes through the process and receives relief under this act—life without parole—I don't see how that's a bar to any future claim. This would just be a waiver as to getting relief under this act.

**Rep. Glazier:** Follow-up? So it's meant to be a section that says if you sort of solve the issue that some thought was out there for life without parole, and that you're consenting to that if you win your petition? So, staff's point is that this does not bar a defendant from filing actual innocence or any other petition as a result of this language. Is that correct?

**Hal Pell:** I would say so. I believe we've had actual innocence proceedings where the defense pled guilty.

**Rep. Glazier:** That's why I'm asking, to make sure that's correct.

**Chair Burr:** Okay, Representative Haire.

**Rep. Haire:** Down on page 1, starting with subsection (a)(1) about if a person agrees to plead guilty to life imprisonment without parole, it says here that he gives up any rights that they might have to file any motion to the court for any reason, is that correct?

**Hal Pell:** No sir, this only says that a condition for filing this motion and consideration of this motion is that, if they get their relief, then they're waiving any objections to the imposition of that relief. That's all this is saying.

**Rep. Haire:** Is there any other place where if a person agrees to take this life without parole that he or she cannot go and file any objection that he or she might have to any of the procedure that took place or violation of prosecutorial rights or anything?

**Hal Pell:** I would have to confirm this, but if there's a plea agreement—and maybe the practitioners who are currently practicing may be able to answer this better than I can—if you have a plea agreement, unless there's some fundamental flaw in that process of obtaining the plea, the defendant pleads guilty in return for a life sentence. I believe that they can't then challenge that on appeal if they negotiated that plea unless there's some fundamental defect in the process of obtaining that plea.

**Rep. Haire:** Of course, when you're facing a death sentence that's a heck of a roll of the dice, as you would call it, that you'd be taking *[audio unclear]*...but rather than risk it, you would elect to take the life sentence without parole?

**Hal Pell:** A defendant would most likely claim a violation of equal protection or due process if they had evidence of discrimination such as information that a juror was prejudiced or etcetera as part of an appeal.

**Rep. Haire:** But see, this says here that the defendant “knowingly and voluntarily waives any objection based upon any common law, statutory law, or the federal or State constitutions to the imposition of the sentence of life imprisonment without parole.”

**Hal Pell:** Correct, for this particular proceeding.

**Rep. Haire:** And there's no recourse? Once you enter the plea that's it, it's over, under this?

**Hal Pell:** If you file a petition under the current act or under this act and you are successful then you will get a life without parole sentence. The petitioner in filing under this act—this act clarifies perhaps current law—cannot object later and say: “This is ex post facto. I asked for life without parole. There's a constitutional law issue here that I couldn't have been punished this way before, and therefore I must get life with parole instead of life without parole.” They're waiving that objection to that constitutionally based challenge.

There may also be a due process challenge to this because in this situation the courts are saying the defendant basically did not receive a fundamentally fair trial, that they did not receive what they are entitled to, which is a sentence that was not based on race. Under this act the court is basically finding that race was a significant factor in their receiving the death penalty. That could be a potential due process violation.

That separates our RJA from other jurisdictions that are just ameliorating death sentences. There's no issue in those cases of whether the defendant was denied any rights. The State is just saying, “We're going to reduce your sentence from death to life without parole.” Our statute is singular in that form as far as jurisprudence in that it says: “We are saying that race was a factor in your case. But you're not getting a new trial; you're not getting a new rehearing because if you got a new rehearing you would not be eligible for life without parole if you committed your crime before 1994.” So, there's a potential due process issue as well and that's why, at least to my understanding, that the sponsors wanted a waiver provision in this act. Just to clarify that those constitutional issues would not be potentially raised by a petitioner.

**Rep. Bryant:** I think I've got a better way to ask this question. In the elements that are stuck on page 2 in lines 3-9, which of those elements are still allowable under the new Subsection (d) and which are not?

**Hal Pell:** Well, the first one: “Death sentences were sought or imposed significantly more frequently upon persons of one race than upon persons of another race.” I think that fairly encompasses that the race of the defendant was a factor. So I believe that would be encompassed in the PCS that we have.

If you’re looking at the race of the victim, I don’t think that’s necessarily encompassed in the PCS. Line 23 is pretty clear that it’s the race of the defendant that was a significant factor.

**Rep. Bryant:** So number three is excluded?

**Hal Pell:** Three: “Race was a significant factor in decisions to exercise peremptory challenges.” That could be possible as well because the race of the defendant would be an issue in the use of a peremptory challenge.

**Rep. Bryant:** That means that the discriminatory use of peremptory challenges has to somehow be connected to the race of the defendant, which would more than likely eliminate any opportunities for racial discrimination against a white defendant by striking black jurors who the striker believes would be less favorable to them and more favorable to a defendant not being given the death penalty?

**Hal Pell:** The court, if it’s not clear from testimony...For example if it’s a white defendant and a black juror would not be favorable to the death penalty and the district attorney believes that he doesn’t want that juror on the jury, because he believes that they might be. First of all, if the black juror does not indicate—especially if the prosecutors ask, “Would you be able to return a death penalty?” and they say yes—but the prosecutor thinks that he might not or she might not, then yes, they could use peremptory challenge.

**Rep. Bryant:** That’s not my question. My question is can that kind of racial discrimination be alleged under this act if it’s a white defendant and the discrimination is against jurors or a group of people serving in the jury and that affected the fairness of the trial process itself?

**Hal Pell:** I can’t give you a clear answer on that. All I can say is that sometimes jurors...It’s not based on their race whether they’re white or they’re black or whatever they are. If the district attorney doesn’t think they can vote for the death penalty then they want to challenge that juror. But the way this is drafted, it’s the race of the defendant that is the statistical evidence.

**Chair Burr:** At this time we’re going to move into a time for public comment...

*[dialogue removed]*

**Chair Burr:** ...Representative Parmon.

**Rep. Earline Parmon (D):** Thank you, Mr. Chairman and Committee. As one of the original sponsors of the Racial Justice Act, whose main intention was to create in North Carolina a fair and unbiased criminal justice system, Senate Bill 416 will simply take us back where we started. On April the 20<sup>th</sup> of this year, Judge Weeks found significant racial bias in the North Carolina death penalty cases. Judge Weeks concluded that the defendant introduced a wealth of evidence showing the persistent, pervasive, and distorting role of race in jury selection.

Senate Bill 416 simply will gut the RJA which is nationally recognized as a historic piece of legislation for North Carolina that would ensure that we have an unbiased criminal justice system. I realize as I stand here that Senate Bill 416 will probably pass. But I want to go on record as saying that North Carolina continues to go backwards when we will knowingly allow racial discrimination in our criminal justice system. This bill will not only allow people not to claim racial discrimination, but even if they’re innocent, under what we’re doing here today, they cannot claim it. I just think that this is the wrong thing for us to do in North Carolina.

**Chair Burr:** Thank you, Representative Parmon...

*[dialogue removed]*

**Chair Stevens:** ...Thank you. And that concludes our public comment based on the list that I was provided. The Chair now recognizes Representative Stam, and I believe he has an amendment to send forth.

**Rep. Stam:** I'd like to debate and then when the copies are made I'll send forth the amendment.

**Chair Stevens:** Representative Stam is recognized.

**Rep. Stam:** What the amendment relates to is a question that Representative Glazier raised on page 1, sub (a)(1) and I think Representative Haire asked about. The intent of that section is to put to bed this question about whether someone who committed a crime in 1993 could, in fact, get parole even though the Racial Justice Act said they can't get parole. That's what they're waiving is that claim. The amendment will make that clear. They're not waiving claims to innocence or that type of thing. As soon as it gets back, I'll offer it. I'll just speak a minute on the bill itself.

**Chair Stevens:** Representative Glazier, do you have comments on the amendment?

**Rep. Glazier:** I do, but I'll wait until you have sent forth the amendment.

**Chair Stevens:** Alright, go ahead Representative Stam.

**Rep. Stam:** I passed out a copy of a letter from Gretchen Ingle from the Center for Death Penalty Litigation about the Fayetteville litigation which I think explains what's wrong with the RJA. Apparently, if you read between the lines here, Judge Weeks was willing and able to issue an order granting relief to three other defendants, without even granting a hearing to the State, on the theory "Oh, we've already proved that there was discrimination in the state for twenty years. We don't have to consider Mr. Augustine or Coffman or Walters because they live in the same state; they live in the same county." That's what's wrong with that case. It's completely contrary to the basic principles of Western justice: we consider each case on its own merits. Therefore, I'm going to be supporting the bill. At this point, I'd like to introduce a motion for the adoption of the amendment which is being passed out.

**Chair Stevens:** Representative Stam has an amendment before us. Representative Stam, you're recognized to explain the amendment.

**Rep. Stam:** What it does is just rewrite those lines to make it clear that, if you go down to lines 10 and 11 on, any "federal or state constitution that would otherwise require that the defendant be eligible for parole." This is a provision about parole or not parole, not about innocence. So I move the introduction of the amendment.

**Chair Stevens:** Discussion on the amendment? Representative Glazier.

**Rep. Glazier:** *[audio unclear]*

**Chair Stevens:** Any other questions or comments on the amendment? Seeing none, we have a motion to support the amendment. All those in favor say "aye." ... All those opposed, "no." ... Seeing none, the amendment passes and is rolled into the PCS. Let's have some discussion and debate, but let's limit it to about ten or twelve minutes because we do have a lot of people here for mechanics lien which we are simply having discussion on. Representative Glazier.

**Rep. Glazier:** Thank you, Madam Chair. I'll try to be very brief with my comments. What this bill does is effectively what Ty Hunter says it does. It leaves the law "no person may be executed on the basis of race" and then eliminates any practical method to ever prove it. It eliminates statistical evidence that is not done in a manner that is 100% accurate and proved to 100% degree insufficient to prove discrimination. It blatantly disregards the role of unconscious bias that all the social research indicates occurs not only in the criminal justice system but in our lives. It ignores every bit of evidence that was taken in the case.

Before, the argument against racial justice at least had the cover that we didn't know and that we were attacking finality of judgments and people thought, "There's never been any evidence proven of racial discrimination." Now we have, after a multi-million-dollar study and case of enormous magnitude, the following findings from Judge Weeks' order:

"The main testimony, without contradiction, is large disparities in strike rates based across the state, across all struck eligible venire members in the MSU study. The court finds the prosecutor struck 56.2% of

eligible black venire members compared to 25.7% of all other members. This difference is statistically significant. The probability of this disparity occurring in a race neutral jury selection process is less than one in ten-trillion. The court finds that the average rate per case at which prosecutors in North Carolina struck eligible black venire members is significantly higher than the rate at which they struck others. Of the 166 cases statewide including at least one black member prosecutors struck an average of 56% of eligible black venire members compared to only 24.8% of all other eligible members. The probability of this disparity occurring in a racially neutral jury selection process is less than one in ten-trillion squared.”

And he goes on:

“Race was a significant factor in the prosecutorial decisions to exercise preemptory strikes in capital cases in North Carolina at the time of Robinson’s trial in 1994. Race was a significant factor in prosecutorial decisions to exercise preemptory strikes in capital cases in North Carolina in the former second Judicial Division at the time of Robinson’s trial in 1994.”

And he goes on and he concludes that, “The prosecutors intentionally used the race of venire members as a significant factor to exercise preemptory strikes in capital cases in North Carolina, the former second Judicial Division, and Cumberland County in this case.”

What this bill essentially does and mandates is that we play ostrich and completely disregard the findings of race. Yesterday, on the floor of the House of Representatives, we sought to right a decades-old wrong. Today, sadly, we appear ready to extend one in the face of all the evidence to the contrary.

**Chair Stevens:** Thank you, Representative Glazier. Just as a Chair, I’m going to take a few minutes to make a personal comment. I was part of the interim study committee that looked at this. I think for the first time we all actually looked at the statistics. The shocking factor for what he’s saying about prosecutors is true, if you look only that way. But when you go to the defense side, you find that racial balance reoccurs because they’re more likely to strike the white jurors. When we got to the end, there were racially balanced juries according to the statistical evidence that was there. But this bill says only look at the prosecutorial strikes. That does seem a little patently unfair. Representative Martin.

**Rep. Martin:** Thank you, Madam Chair. I’d like to talk about, first of all, the process that this bill is following and, second of all, delve into the merits. The title of the bill suggests that this is a bill to amend the Racial Justice Act. Others have contended that it repeals the Racial Justice Act. It is just an attempt to amend it. First of all, if it’s repealing it, we’ve already got a bill in the garage to do that, so this is not necessary. This whole process is not at all necessary; we could just continue to deal with the bill in the garage that actually, I think folks would agree, does repeal the Racial Justice Act.

If, on the other hand, this bill just seeks to amend the RJA, then I think it really...I think everyone on all sides of this issue would agree that the death penalty is a serious matter—literally a matter of life and death—and this bill deserves a more deliberative process than what it so far has gotten. I’ve found in my time here in this body that it’s best when we deal with complicated issues of great magnitude when we follow the proper process with extensive time for notification, debate, and to get the interested parties here to talk about it. On the other hand, this body is at its worst when leadership of Democratic or Republican parties runs bills through quickly with the specific intent of, I think, trying to minimize that sort of discussion and debate. I think there’s still time for the process this bill takes to fall into the former category rather than the latter. It’s my hope that this is what will happen.

Let me talk now about the merits in this case. My criminal experience is limited to second-chair non-capital offences. There are those in this room on both sides of the issue with more capital experience than I have. But I was born and raised in North Carolina, and I can say with certainty that there was and remains racism in my home state. I am certain that racism still affects death penalty sentencing. I’ve also found that the type of racism we have in my home state does cross geographic boundaries, it does cross prosecutorial boundaries and it does, most certainly, cross county lines. I’ve also found that it crosses temporal lines—that racism persists over time. To try to limit the discussion of the impact of racism on death penalty cases artificially to geographic boundaries and temporal boundaries does not fit in with my understanding of racism in North Carolina. Thank you.

**Chair Stevens:** Thank you, Representative Martin. Representative Michaux, I have you down and I’ll give you up to five minutes. Representative Bordsen wants to speak, but we may run out of time because we do want to vote on this bill. To just make one comment to Representative Martin’s contentions, this bill has been extensively reviewed

and studied and this is a compromise that has been reached. We did extensive studies and reviews of Judge Weeks' decisions and the information that came in in that study. So it's not an immediate rush to judgment. Representative Michaux.

**Rep. Mickey Michaux (D):** Well, first of all, I want to object to you trying to limit me in my response to just five minutes. Here you've got an important bill sitting out here that some people want to get passed and some people don't want it to pass. My take on it is it's unnecessary for us to even be talking about this situation. The reason for that is you have already passed a bill that repeals the Racial Justice Act. You, Mr. Stam and the rest of your colleagues, have passed that bill. That bill was vetoed by the Governor. You don't have the votes to override the veto, so you're going to repeal this bill in a backdoor manner. That's exactly what you're doing. You don't want to tell the truth about what you're doing it for, but that's it. If you had the votes to override...

**Chair Stevens:** Representative Michaux, I just want you to stick to the bill.

**Rep. Michaux:** I'm talking—I talk the way I want to talk.

**Chair Stevens:** Representative Michaux.

**Rep. Michaux:** You don't tell me what to talk about. I'm talking about this bill and the effects of that this bill will have. Don't tell me what to say.

**Chair Stevens:** Representative Michaux, I am directing the Committee and I want to keep it relevant to the bill.

**Rep. Michaux:** And I'm talking about what you're up to, which involves this bill. Now if you don't like what I'm saying, that's too bad. That's your problem; it's not mine. What I'm telling you is that you've got a bill that has passed that has repealed the Racial Justice Act. You're trying to do it with this bill because you know you can't override the bill that you passed.

**Chair Stevens:** And we'd like your comments to be on this bill.

**Rep. Michaux:** I will make my comments any way I want to.

**Chair Stevens:** And Representative Michaux, we may end the comments.

**Rep. Michaux:** No, no, no. Do what? You're not going to tell me about my comments. I make them the way I want to.

**Rep. Stevens:** They need to be relevant to the bill. That's what we're trying to do

**Rep. Michaux:** *[audio unclear]*

**Chair Stevens:** The bill...the bill. I'm not trying to; he is...

**Rep. Michaux:** You've got the votes. You've got the votes to do what you want to do. So why are you going to limit anybody in what they want to say? You got the votes to do it, and it's probably going to end in another veto. You're going to be looking at the same thing. So, I'm going to say what I want to say whether you like it or not. And you've interrupted me so much here that it gets to a point that the only thing I'm saying is that this bill that you've got here today is simply subterfuge trying to do something to reintroduce a veto override on the Racial Justice Act because you can't do it any other way. It's not going to be successful this time. Take your questions *[audio unclear]*...

**Chair Stevens:** We do have another bill to take up that is somewhat time sensitive on mechanics and *[audio unclear]*...liens. It has not been resolved and it's going to take a little while to fully resolve it, but this committee needs to get on board. It is something that's very much going to be affecting commerce. We've already heard title insurance companies may be refusing to write coverage in the state, which is going to affect banking.

This bill has, in essence, been debated many times. You're right: all of the issues surrounding that have been debated. Representative Bordsen.

**Rep. Bordsen:** Yes, Madam Chair. I would like to [audio unclear]...

**Rep. Haire:** Inquiry of the Chair?...Inquiry of the Chair, please?

**Chair Stevens:** Yes?

**Rep. Haire:** It was my understanding that the mechanics bill was not going to be voted on today, it was just going to be discussed.

**Chair Stevens:** It's not going to be voted on, but we want to present the information so that we will be in a position to start taking it up next week and you can start to deal with some of the issues your constituents may raise. Representative Bordsen.

**Rep. Bordsen:** Thank you, Madam Chair. It is interesting to note that we can spread the mechanics lien bill over two meetings but we can only have one on this matter. I would also like to back up Representative Martin's comments about being a native of North Carolina and hearing that with my work on JPS. In the time that I have been here it has been an enlightening process. Anybody who's from this state and thinks that we are not hardwired to be engaging in discriminatory thinking, it's just part of being. We have a history that leads us to it. We have to keep working all the time to make sure we do better and that is exactly the purpose of the Racial Justice Act: to keep us working hard to root it out, especially in this most important area of our life, our public life that dictates private life.

I find this whole experience today really a sad exercise. We all know what the purpose of this bill is. It is not to reform the Racial Justice Act. So when the Racial Justice Act cannot be gutted in a legitimate veto override—because of this questionable garage process that we seem to have started—under the guise of reform, the sponsors are engaging in a very sad process. You may have spent time studying during the interim. If you recall, most of us were not allowed to be on interim study committees. So whatever study there was during the interim, it did not include this committee, and it is this committee that has to make a vote today. It doesn't speak well for the bill sponsors to do this in a time and a manner, especially in consideration of a matter of life and death, race and prejudice. It's a sad exercise at any time. It's especially sad since we have really only started dealing with the Racial Justice Act and here we are trying to end it. So as we vote, madam chair, that's my opinion but I would like to ask for the ayes and nos.

**Chair Stevens:** The ayes and nos having been called for, Representative Stam.

**Rep. Stam:** I move that the committee substitute as amended be rolled into a new committee substitute to be given a favorable report, unfavorable to the original bill.

**Chair Stevens:** That motion being before us, we'll call for the ayes and nos.

**SB 416 – Amend Death Penalty Procedures  
Remarks in the House Judiciary B Committee  
June 11, 2012 – 5:00 p.m. Meeting**

**Acting Chair Dan Ingle (R):** Today we have a PCS that we're looking at. Do I have a motion on a PCS for Senate Bill 416? So moved. Thank you, Representative Daughtry. It is before us now. Members this is what I plan to do today. This will be a roll-call vote. We will take that vote at 5:50 p.m. I'd like Representative Stam to explain the changes to the members that are in that PCS. Then we'll ask Hal Pell of our staff to give his explanations of the changes. During that time, if there's anyone here who would like to speak, if they would see our Committee Clerk Julie Garrison and sign up. We will give you three minutes apiece because of our time constraints. Once we finish with the speakers, then we'll take questions from members up until 5:50. So that's what plans are and at this time I'll call on Representative Stam.

**Rep. Paul Stam (R – Majority Leader):** Thank you, Mr. Chairman. This proposal has four changes from the one we did last Wednesday. Two of the changes were based upon comments that the opponents had. There was a



proposed amendment that was put in a PCS that went out Friday that has been taken out of this version that related to discovery motions. That was taken out based on comments made by opponents and agreed to by the DAs. What's left is before you, aside from a few format changes. Substantively, there are four changes.

The first one is Section 1 on page 1, line 14. This takes the Council of State out of the protocol business. No offense to the Secretary of Agriculture, but he just doesn't have a particular expertise on this subject, nor does the State Treasurer. This just takes them out of this.

Section 2 relates to what happens if there is a notice of intent to seek the death penalty that is perhaps not scheduled at the right time. This is based upon some important decisions and some dissents that Hal Pell will speak to at greater length. This was suggested by some DAs who presented amendments on the miscarriages of the Racial Justice Act.

Then Section 3: If you recall, the previous proposal called for the time period to be from two years prior to the time of the commission of the offence. Based upon some relatively good thinking by some of the opponents, this has been extended to ten years prior to the commission of the offence. (This is just technical but the previous version said twenty-four months after the imposition of the death penalty and we changed that to two years so we were consistent in terminology.)

In Subsection (a)(1) the language is as the committee had it when it left us. We made it clear down in lines 13-17 that this waiver does not constitute a waiver for claiming that you are, for example, innocent of the offence. It's waiving a claim that you can somehow get parole if you receive this alternate punishment.

The fourth one was a major point sought by Representative Glazier. In line 45 on page 2, the previous version said that "if the court finds that race was a significant factor in the decision to impose the death penalty," but did not include "(ii) race was a significant factor in decisions to exercise peremptory challenges during jury selection." That's back in the bill. It previously was in page 2 lines 30 and 31 which had been stricken. It's still stricken, but it is effectively put back in the bill on line 46.

Those are the changes. Those changes are consistent with the theory of the last PCS that the focus should be on the defendant's case—not the world in general, not all the problems of the past, but on this case, this decade, this county or prosecutorial district. I highly recommend the PCS to you.

I move that we give this a favorable report, unfavorable to the original bill.

**Chair Ingle:** We have a motion. Representative Burr makes that motion at this time. I noticed that a couple of people continued to come in while Representative Stam was speaking. If any of you in the audience would like to speak, you may sign up for three minutes. See Julie Garrison, our Committee Clerk, to sign up. I'll call on Mr. Pell at this time.

**Hal Pell (Staff Attorney):** I don't have anything to add as far as the specific changes between the third edition and what went out on Friday. If there are any questions about those changes, let me know.

**Chair Ingle:** Thank you Mr. Pell...

*[dialogue removed]*

**Chair Ingle:** ...Before we start on questions, Members, Representative Stam has one announcement he'd like to make.

**Rep. Stam:** For those who may not be here till the end, it is the intent that the bill be on the floor tomorrow.

**Chair Ingle:** Thank you, Representative Stam. I will take questions from members at this time. Representative Glazier.

**Rep. Rick Glazier (D):** Are we taking questions or debate at this time?

**Chair Ingle:** We have about thirty-five minutes and I'll be happy to do both, sir.

**Rep. Glazier:** I have a number of comments on the bill, but I won't repeat the comments I made last time. First, for the changes that were made, I find the addition of Section 2 interesting since it has not appeared in any prior version and has utterly nothing to do with the Racial Justice Act. It is my view, based on prior case law from the North Carolina Supreme Court, that Section 2 is patently unconstitutional. The General Assembly has no capacity to do

what it is doing in Section 2. I'll argue that further on the floor, but I think that if you are trying to write a bill for a section to be stricken, that will be stricken pretty quickly based on prior precedent in the Supreme Court of North Carolina.

We've now got a ten-year limitation; let's talk about what that means. The first thing it means is that there's going to be intense additional cost in litigation and delay on all these cases. What it will do is possibly have the opposite intention of those who propose it. There isn't any study out there that does the ten-year data. The ten-year data is based on ten-year increments, obviously depending on when the event took place. You're going to have to have a completely new data set and new analysis done statistically by both those in favor of the bill and those opposing it. That would be extraordinarily problematic in terms of how it's going to proceed.

But I have a much more difficult [audio unclear]... The definition in this bill says all of the evidence that is relevant is in that ten-year period. So I raise the issue of what happens with a prosecutor who has a long history of issues outside that ten-year period—does that become irrelevant? Now we're just saying that it's equally irrelevant if the prosecutor has been a prosecutor for twenty years. We're legislatively marking the first ten years irrelevant and saying only the last ten years of their career matter.

The second problem that we have is assumed because the standard is that we can only apply for those ten years in the judicial district. Judicial-division and state-wide evidence are now irrelevant, if we pass this. So I have an ADA who's been in Wake County for ten years and prosecuted death cases, and then moved, as DAs do, to become the DA of another county for 5 years. So the bill says that all those cases the ADA tried in the other county, whether it's ten years or none, are irrelevant. We don't get to know about the discrimination that that ADA did in other counties—first, because part of it is time-barred, but more importantly because all of it is barred because it's not in this prosecutorial district. You could have an ADA who prosecuted twenty death cases and has a record of discrimination statistically and anecdotally, but it all becomes irrelevant under this bill because it didn't occur in the district that he's now prosecuting this one case in. That makes utterly no sense to me, at all.

Stereotyping, prejudice, and discrimination are enduring human phenomenon. This bill simply seeks to discredit it all. It is yet another part of the sort of "science doesn't matter right now" theory. It seeks to discredit all of the science cited in Weeks' opinion, and makes it irrelevant.

Third, what it also does, in Section 8 it essentially says this: the Robinson case, since it's been tried and had findings of fact, is excluded from the new bill. That's great for Mr. Robinson. It says that, whatever the findings are in that case, we're not going to have this bill apply here. Here's what it raises: I can't think of a better equal protection, due process, law of the land, access to courts, series of claims that, for example, other defendants in Cumberland County tried by the same prosecutors. What we're saying in this bill is that the data is relevant enough and clear enough that in Robinson we're going to allow it to prevail and we're going to give him life. But that same data not only is irrelevant, it may not under this bill form the basis alone to change the sentence of the other people tried in the same county by the same prosecutors. I can't think of a clearer case of an equal protection or a due process violation than this bill creates by saying, "Robinson's data is good for Robinson, but it's not good to be applied or used in any other circumstance and can't, by this bill, be the basis upon which relief is granted, whereas it was the basis on which relief was granted in Robinson."

Finally, this bill is government at its disingenuous worst. This is a bill that pays absolutely lip-service to the existence of racial bias in the criminal justice system. It eviscerates the only method of relief that's available. The bill makes facial improvements while at the same time ensuring that the result will always be the same: repealing the Racial Justice Act and make it absolutely totally impossible for a defendant to ever, ever obtain relief on those grounds. For those reasons, I urge you to vote no.

**Chair Ingle:** Thank you, Representative Glazier. Representative Stam.

**Rep. Stam:** Representative Glazier claims that a couple of things are patently unconstitutional. I'd refer the committee to Article IV, Section 13:

"Rules of procedure. The Supreme Court shall have exclusive authority to make rules of procedure and practice for the Appellate Division. The General Assembly may make rules of procedure and practice for the Superior Court and District Court Divisions, and the General Assembly may delegate this authority to the Supreme Court."

It's clear by our Constitution that the General Assembly can establish rules of procedure in the district and superior courts. For example, in the Rules of Evidence we have a limitation going back ten years for certain kinds of evidence—prior crimes, for example. According to Representative Glazier, that's patently unconstitutional because

someone else may have had a crime eleven years ago and it's an equal protection problem to allow it if it's nine years ago but not if it's eleven years ago. I reject that argument.

**Chair Ingle:** Thank you, Representative Stam. Representative Martin.

**Rep. Grier Martin (D):** Thank you very much, Mr. Chairman. Like Representative Glazier, I'm concerned about the addition of some of the new sections here that we really have not seen at all before.

I don't understand why we would want to rush in so casually to remove the Council of State from the process. The bill sponsors act as if we're going to remove them just because they don't know anything about this. From my reading of the Constitution and the statutes where the Council of State is mentioned, we don't expect our Council of State to be experts in anything other than the field from which they're appointed. But we do, over time, seem to place them in a position of council of advisors as wise men and women whose advice and consent is required because of their wisdom and the trust placed in them by the people.

There may be arguments to take them out of the process by which they approve the method of execution. There may be arguments for that, there may be arguments against that, and I'd like to hear those. I don't know what any single member of the Council of State has to say about this. I would like to learn more about the role they've played in these decisions in the past. Maybe it belongs here, maybe it doesn't, but this needs a lot more process before I can say for sure.

Mr. Chairman, I'd be more than happy to yield to a question or comment from Representative Stam.

**Chair Ingle:** Thank you. Representative Stam.

**Rep. Stam:** Just on that point, that provision in Section 2 was put out seventy-two hours ago, so we've had a chance to look over things. To discuss the Connor case with regard to the Council of State, would you direct that to staff, Mr. Pell?

**Hal Pell:** The Supreme Court in State v. Connor ruled that, in fact, the Governor and the Council did not have to have any substantive knowledge or information to review those procedures. The basis of that case was that the objection that the Governor and the Council being in the law having to approve it made it subject to an attack under the Administrative Procedures Act. That's the case that went up to the Supreme Court. The Court ruled in Connor, one, that the Governor and Council did not have to have any real substantive knowledge and know about those procedures but, two, that it was not subject to attack under the Administrative Procedures Act. Basically, the ruling in Connor is as stated in the summary: that if a defendant has an objection to the protocols as they are currently written, their remedy is superior and federal courts. What this change would basically do is to say that any issues regarding review of Council of State would no longer be an issue in the state or federal courts as far as their role in the process.

**Chair Ingle:** Thank you, Mr. Pell. Representative Martin.

**Rep. Martin:** Now I'm up to level two on my knowledge on this issue. Again, that's why this sort of thing really should go through a more extensive process. I appreciate the seventy-two hours' notice we got, but I was at the beach checking my phone only occasionally. There are members of the public who know more about this. The weekend is a bad time to do that. In any case, seventy-two hours on matters of life and death is probably not the standard we'd like to live up to here.

Beyond that, I don't see any reason to ignore racism that existed twelve years ago because of an arbitrary ten-year cutoff. This again, as Representative Glazier said, seems to be part of a disturbing trend towards ignoring facts and ignoring reality. We know racism exists. There is significant statistic evidence out there to show that it has an effect on the imposition of the death penalty in North Carolina. To not say that that is sufficient when it may, in certain cases, be overwhelming, is just burying our head in the sand to the facts that are out there.

With regard to geographic boundaries, it is true that varying parts of our state do differ in the effect that racism has on society as a whole and particularly in the imposition of the death penalty. That's the sort of thing that I think is right for debate between the prosecution and the defense. Evidence can be introduced on state-wide racism and its effect on the death penalty and that can be countered with evidence that it doesn't apply locally. That's exactly the sort of debate that should be had. I think this bill would limit that.

For those reasons, I am as opposed to this version as I was to the previous version.

**Chair Ingle:** Thank you, Representative Martin. Representative Michaux.

**Rep. Mickey Michaux (D):** If I may ask a question first, Mr. Chairman. What we're discussing here this afternoon will bring us back to what we had before, is that the whole bill or just the changes that are being made?

**Chair Ingle:** I would respectfully appreciate if we just stayed with the changes. We've got twenty minutes, sir. Go ahead, Representative Michaux. You speak on any part of it you'd like to, sir.

**Rep. Michaux:** Thank you, sir. I'm still confused, Mr. Chairman, about how this is going to affect those cases that are already undergoing trial. I'd like to have someone explain that to me.

**Chair Ingle:** I'd ask Mr. Pell if he could explain that.

**Hal Pell:** This, as pointed out in Section 6, would apply to pending claims. Any motion that was filed by a petitioner after the passage of the Racial Justice Act would not be terminated. The bill does provide for a 60 day period of time, if this bill passes, for them to amend their pleadings accordingly. The procedures would apply to those cases. In the Robinson case, and there may be another, if they do have findings of fact and conclusions of law before the effective date, this would not affect those cases unless they were overturned on appeal. What was pointed to earlier in Section 5, was to point out that this is not, if it passes, a new act which gives persons on post-conviction another motion, it just allows for amendment of those motions.

**Chair Ingle:** Representative Michaux.

**Rep. Michaux:** I just have another question. Persons who have already been tried under the Racial Justice Act in the past, nothing will happen to those people, they will follow the course as they are still under that Racial Justice Act?

**Hal Pell:** No, it would not. They would be limited to county and prosecutorial district statistics, as opposed to statewide if this passes.

**Rep. Michaux:** How can you do that? You've got people who have already filed under the law that's in effect, and you're going to change the rules of the game in the middle of the game?

**Hal Pell:** Our laws do not prevent the State, as mentioned, from changing procedural rules for a defendant. In other words, if the case has not been tried and adjudicated, the Legislature can change rules. I don't have it with me, but I have a memorandum on that point.

**Rep. Michaux:** I'd like to see that. I guess the further question is, there are no constitutional guarantees that those persons who have already filed a case will be heard based on the law that they filed the case under? Is that what you're telling me?

**Hal Pell:** That's correct--if the law changes on procedural requirements. There are limitations, of course, on punishment, but that is correct.

**Rep. Michaux:** Okay, I will let it end on that.

**Chair Ingle:** Thank you, Representative Michaux. Representative Haire.

**Rep. Phil Haire (D):** Thank you, Mr. Chairman. I've got three sets of questions I'd like to ask. Number one is under Section 2. It says: "A court may discipline or sanction the State for failure to comply with the time requirements in Rule 24, but shall not declare a case as noncapital as a consequence of such failure."

If the defendant is sitting in jail and the State fails to comply with Rule 24, what can the judge do? They can tell the defendant sitting in jail the State is not complying with its time requirements. Looking at Mr. Pell's argument, it removes the authority of the judge to declare a case as a noncapital due to failure to comply with the time limits for holding a Rule 24 hearing. Who has the authority then to tell the State that they must comply with the rule? If the judge can't say, "Well, either you're going to do it or I'm going to dismiss it and make the case a noncapital case," if the judge can't do that, what are you going to do?

**Hal Pell:** Let me give a little background on this. In 2001 the Supreme Court of North Carolina decided a judge could not declare a case noncapital. At that time the court said that it was not discretionary upon the district attorney to bring a case capital or not; they are required to bring it capital if there are aggravating circumstances. In 2010, in a case called *State v. Defoe* the Supreme Court said that the rationale the court had was based on the fact that the Legislature passed a law making it discretionary for the district attorney to bring a case capital. At that time and from that point on, judges could declare a case noncapital. The argument was not constitutionally based; they just said it was within the prerogative of the court to do that. The dissent in that case said that this was a violation of separation of powers for the court to change a case from capital to noncapital.

The court can discipline the DA for failing to comply. I'll give you the example from *Defoe*. There was a conflict of interest and the case was turned over to the Attorney General to prosecute. There was delay of a year or two in bringing the case to court. There's no indication of whether the defendant was out on bond or not. The DA can be sanctioned for not having the hearing or can be held in contempt of court for not having the hearing. There are mechanisms with which to take.

The only thing I can say is that this issue of whether the judge has discretion or not is not constitutionally based; it's just the court saying that the judge has the authority to do that as a sanction.

**Rep. Haire:** Just to follow up on that, there was a case that went unresolved for two years until they got around to the issue of what happened to the defendant. Chances are if he's charged with a capital offence, they're not letting him out on a bond. That's my first problem with this piece of legislation.

The second one I would see is on page 3. It says on line 5: "The claim shall be raised by the defendant at the pretrial conference." That's what it says. It doesn't say "may;" it says "shall" be filled then. Yet you come down in Subsection (g) on line 19: "If the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the defendant's case at the time the death sentence was sought or imposed..."

Now if the death sentence is imposed, that means the case has already taken place. How, at a pre-trial meeting, could the defendant know whether or not the district attorney's office was going to use racial bias in the selection of a jury?

**Hal Pell:** On line 8 it says "shall be raised at the pretrial conference...or in postconviction proceedings," because again you have the dual timelines. A defendant, based on information, may believe that the case was actually charged capitally before the trial. If the defendant has that information, that a capital charge was sought on the basis of race, then it can be brought in a pre-trial proceeding to avoid the case being tried capitally. So there are two circumstances: one where the defendant has the information before trial, can avoid a capital proceeding, and can raise it at pre-trial. But if he or she does not have that information, the law provides for a post-conviction proceeding where they will be able to have that information if it was imposed.

It's my understanding, and this is somewhat anecdotal, that a lot of judges are actually delaying these hearings to post-conviction proceedings at this time. That's just for the Committee's benefit. That's my understanding from practice. The State Bar or the DA's may be able to corroborate that, but that's my understanding.

**Rep. Haire:** Assuming a defendant was tried, found guilty and the death penalty was imposed, but it was subsequently found out that there was racism involved in the trial so the case was set aside and he was sentenced to life imprisonment without the possibility of parole. Would this preclude the defendant from subsequently bringing a petition under the innocence act that shows that evidence was withheld or anything else or he or she was not guilty? Would this preclude that?

**Hal Pell:** No, it would not. In the same way, because a defendant has a claim under this act doesn't mean that defendant with a claim of racial prejudice can't bring a claim in the normal course of appellate proceedings that is not under this act for a new hearing, for a new trial, for a new sentencing hearing based on racial discrimination.

**Rep. Haire:** One other quick question. On page 2, it says on line 45: "either (i) the race of the defendant was a significant factor or (ii) race was a significant factor in decisions to exercise peremptory challenges during jury selection." Could race enter into the equation as far as the victim was concerned?

**Hal Pell:** I think that goes to on lines 27 and 28, perhaps that's what you're asking. In the current Racial Justice Act, statistics based on the race of the victim are allowed. Under this act, that would not be allowed. Statistics based on race would not be allowed.

**Chair Ingle:** Thank you. Representative Bryant.

**Rep. Angela Bryant (D):** Thank you, Mr. Chair. I just need you to follow up on that final answer because that threw me out of the loop. I'd ask you to repeat that final answer that you gave.

**Hal Pell:** Under the current act, on page 2 lines 27-29, statistics that relate to the race of the victim are admissible. Now, under the two measures on line 45 and 46 they aren't. In other words, it's the race of the defendant or race was a factor to exercise preemptory challenges.

**Rep. Bryant:** Can Representative Stam or staff tell me the origin of the Governor or Council of State having this role to approve the protocol in the bill?

**Rep. Stam:** I think it's been in for many, many, many decades. We really need to change those protocols, and that's a barrier to doing things that might actually benefit defendants. I've discussed this with the Minority Leader in years past.

**Rep. Bryant:** Follow-up on that? Is that statutory?

**Rep. Stam:** Statutory? Yes.

**Rep. Bryant:** Do we know the reason behind that? What was it before the Council of State?

**Hal Pell:** I can't tell you. The DAs requested this. Perhaps the sponsor can. You mean the reason why the Council of State was put in there originally? I cannot tell you; it's over a hundred years old. We're trying to check the exact date.

**Rep. Bryant:** Thank you. Follow-up? In repealing 15(a)-2012--and again I haven't had a chance to track all of this--where is it that the life imprisonment without parole would be the consequence of a successful finding under this act or is it there?

**Hal Pell:** That was actually in the original bill that went through committee. It was just printed out in a line-through, so this is nothing new in the PCS from that bill. It was moved on page 3 lines 19-23.

**Rep. Bryant:** Okay. The ten years before commission of the offence and the two years after the imposition of the death penalty is the timeframe within which the allegations of discrimination and evidence can be used to prove discriminatory behavior as an aspect of the challenge, is that correct? What are the timeframes...Remind me again of the timeframes for bringing the challenge?

**Hal Pell:** A post-conviction motion? It's in Article 8 and it's in the statutes. It is a period of time based on a final denial of writ of certiorari to the U.S. Supreme Court.

**Chair Ingle:** Thank you. Representative Faircloth and then Glazier.

**Rep. Faircloth:** *[audio unclear]*

**Chair Ingle:** Thank you. Representative Glazier.

**Rep. Glazier:** With respect to the Cumberland case that's been referred to, one of the speakers said *[audio unclear]*...statistics not only state-wide but also by prosecutorial district and by county were used in determining racial discrimination. If that's the case, what in this document would have *[audio unclear]*...that other than that ten years of probation? *[audio unclear]*...On page 3, Section d *[audio unclear]*...Statistical evidence, that's why it's a gutting and full repeal of the RJA. That sentence, no matter what else you do here, says the RJA is irrelevant and data is irrelevant.

**Chair Ingle:** Thank you. I have Glazier, Daughtry, and Bryant signed up. Members, we'll go an extra five minutes if we need to, but we are going to take the vote at five minutes 'til. Representative Glazier.

**Rep. Glazier:** Hal Pell just kind of made my point, but the point is that you could have, as you do in the Robinson case, a finding that there is a one in ten-trillion-squared chance that there was a racially neutral reason for what happened and it is insufficient under this act. That to me is the gist of why this is a gross repeal of the Racial Justice Act.

**Chair Ingle:** Thank you. Representative Bryant.

**Rep. Bryant:** I had a question for Mr. Pell about Sections 6, 7, and 8. It was somewhere in there that you mentioned that we had a case that said that you could make procedural changes ex post facto. It appears to me that these changes are substantive because we are actually changing what the course of action is. Are there cases that define the difference between substantive and procedural or can we make substantive changes because of that last one?

**Rep. Stam:** Mr. Chair, can I answer that?

**Chair Ingle:** Representative Stam.

**Rep. Stam:** We actually distributed that memo a year ago and I will ask the staff to distribute it to every member of the committee as soon as possible.

**Chair Ingle:** Thank you. Mr. Pell, I think you have an answer for Representative Bryant.

**Hal Pell:** The way he's framed it, for a capital defendant they have a 120 days from the latest whole series of things, including if the U.S. Supreme Court denies a writ of certiorari on direct appeal following a denial of discretionary review by the Supreme Court of North Carolina. It's all based upon final orders after a series of appeals.

**Rep. Bryant:** Thank you. Anything on the substantive switch?

**Hal Pell:** Again, there's a difference between changes in the law that affect the amount of punishment someone can receive and whether they have any vested rights in how the State procedurally tries a case versus what was the law at the time of the offense, what the maximum punishment was, whether the intent of the change was to increase the punishment of the crime or whether it was just a change in the procedure under which the person is being tried. Like I said, it's a lengthy memo and I will provide it.

**Chair Ingle:** Alright members, at this time I'll ask if our Clerk will call the roll. We have a motion before us: favorable report on the PCS.

**Rep. Haire:** Point of order, Mr. Chair.

**Chair Ingle:** Point of order.

**Rep. Haire:** I believe we have until 5 minutes until 6. I still see four minutes on the clock.

**Chair Ingle:** Yes sir, Representative Haire. I also called the names out for the last three that signed up to vote, and Representative Daughtry decided he did not want to speak so I did exactly what I said I was going to do.

**Rep. Haire:** Follow-up on the question I asked earlier, please?

**Rep. Ingle:** No sir, we will take the vote at this time. We have run over, sir. I was going to allow those five minutes for those three speakers that had signed up. We do have the motion for a favorable report on the PCS from Representative Burr, unfavorable on the last PCS. Ms. Clerk, if you'd call the roll please.

**SB 416 – Amend Death Penalty Procedures  
Remarks on 2nd Reading  
June 12, 2012**

*Audio available at [this link](#)  
Debate begins: 01:24:38*

**Speaker Thom Tillis (R):** Senate Bill 416, the Clerk will read.

**Reading Clerk:** House Committee Substitute number 2 for Senate Bill 416, a bill to be entitled “An Act to amend the death penalty procedures.” General Assembly of North Carolina enacts.

**Speaker Tillis:** Representative Stam is recognized to debate the bill.

**Rep. Paul Stam (R – Majority Leader):** Thank you, Mr. Speaker. May I have the assistance of staff?

**Speaker Tillis:** The gentleman will have, without objection, the assistance of staff.

**Rep. Stam:** Mr. Speaker, Members of the House: since the late 70s, North Carolina in the modern era has had a legislative policy that we’ll have an opportunity for death penalty for first-degree murderers, decided by the jury. But we’ve had a moratorium in effect since 2006. And of course there is no deterrent effect from a penalty that is not carried out. Now this will be the fourth debate on this same subject in the last few years, not including third readings in the Senate or whatever: 2008, 2009, 2011, 2012. I’ll try not to be more repetitive than I have to be.

Before Senate Bill 461 was passed in 2009—sometimes called the “Racial Justice Act,” but inappropriately since it has very little to do with race and nothing to do with justice—it took forty-five judges an average of eight to fifteen years before someone could conceivably be executed for first-degree murder. With the advent of the Racial Justice Act, it now appears that it will be fifty-three judges and fourteen to twenty years. In effect, it’s an indefinite moratorium on the death penalty. One of the proponents was quoted after we passed it saying this is the end of the death penalty. Another proponent was quoted publically as saying he didn’t understand that white defendants could use it if they murdered white people or of the same race and had the same race of jurors. But it has all those effects. It’s an indefinite moratorium and it just clogs up the prosecutorial function that is so important to any concept of ordered liberty.

In January the House did not have enough votes to put into law Senate Bill 9. The Speaker appointed a Select Committee on Discrimination in the Death Penalty and we had several hearings. We had heard that the opponents of the death penalty might have some suggestions of ways to change things. But I, for one—maybe others heard some suggestions from the opponents of the death penalty—I never heard any. So the proponents of the death penalty have come forward with a proposal which is before you.

Now Senate Bill 9, I candidly told people last year that although technically it was not a repeal of Senate Bill 461, it was, in operative effect, a repeal. This one is not. It amends certain death penalty procedures, including the Racial Justice Act, to do what justice is supposed to do—that is focus on the defendant and the crime instead of society in general.

Let me just take you briefly through the sections of the bill. Section 1 deals with the protocols for administering the death penalty, and this amendment takes the Governor and the Council of State out of it. That was just another avenue for people to have litigation about. It tied up the death penalty for a while on claims that the methodology for executing murders had not been properly approved by the Council of State. This just removes that archaic provision from the statutes.

Section 2 addresses a separation of powers issue. If you look at your bill summary which has been placed on your desk, there are time limits for when a district attorney has to give notice of whether the district attorney is going to seek the death penalty or not and there have been conflicting rulings on this. In 2010 the North Carolina Supreme Court held a trial court could require a case to be tried non-capitally if the State had delayed in seeking this Rule 24 proceeding. This Section 2, which was sought by the Conference of District Attorneys, basically says you can have all of the other remedies against the District Attorney that you want to have, but what a judge can’t do is declare it non-capital because that really violates the separation of powers doctrine.

If you go to Section 3 of the bill—page 1, line 33—this is really the heart of it. I’m going to start in the middle of the sentence...Maybe I won’t start in the middle of the sentence. That would be improper. But the change is in the middle of the sentence: “A finding that race was the basis of a decision to seek or impose the death sentence may be



established if the court finds that race was a significant factor in decisions to seek or impose the death penalty *in the defendant's case*.”

This gets back to the first principle of justice in western civilization. I won't go back through the history of that; there's a lot to it. We're trying to discover what happened. In a criminal case we're trying to find out what the defendant did, why and to what effect at the time the death sentence was sought or imposed. Here the bill limits that time to approximately a fifteen-year window: ten years before the offense, two years after the sentence is imposed, and then there are usually two or three years in-between. That's about how long it takes to get these cases to trial. So it's a pretty wide area. Now the original bill was two and two. Representative Glazier said that just wasn't long enough, so we accommodated that thought by making it fifteen years. I'm sure he'll say it should be forever, and we'll talk about that.

Lines 5 through 15 address a question that has been raised by some and that is, what is the effect of this law that says if the finding is made that the defendant gets a sentence of life imprisonment without parole? There is a plausible and possible argument that those convicted before 1994 can take advantage of the act and still get parole. I don't know what a court would rule on that, but what this does is it lays that question to rest by saying that for a defendant to seek relief under this act the defendant has to say in writing and before the judge, “I realize that if I win under this act, it's life in prison without parole.” There were questions whether that waiver meant that a person couldn't appeal on other grounds—for example, innocence. And the answer is no, it doesn't mean that. We changed the wording to make that clear.

The next part of the bill, Subsection (b)—a lot is stricken out there on line 16 to 31, but then part of it is put back in lines 39 to 48. So I'll explain what is left out and what is included. On line 39, the evidence “relevant to establish the finding that race was a significant factor in decisions to seek or impose the sentence of death in the *county or prosecutorial district*.” That is: where this happened and where it was tried as opposed to all over the state. That's a change. “...where the defendant was sentenced to death or *other* evidence that (1) the race of the defendant was a significant factor or (2) race was a significant factor in decisions to exercise peremptory challenges during jury selection.”

Now members need to know that without regard to this act, even if this act had never passed, under Batson v. Kentucky if a prosecutor in a capital case or any criminal case strikes a person of a minority race, the prosecutor has to explain to the judge a race-neutral reason why that peremptory was done. Those claims under Batson v. Kentucky are there whether or not the defendant seeks relief under this act. And this can be proved by sworn testimony of attorneys, prosecutors, law enforcement officers, and this bill adds judicial officials. That is, the judge presiding over the case can testify about what happened at the trial. “Jurors or others involved in the criminal justice system...” And then there's a limitation under our rules of evidence. That's not changed under what you can ask a juror.

Lines 49 to 51: Statistical evidence *is* admissible, and if it's relevant it can be very important. But all by itself it's not sufficient to establish that race is a significant factor under this article. If you look at page 3, the defendant has to state with particularity how the evidence supports the claim that race was a significant factor in these decisions in that county or prosecutorial district. It tells when to raise it and how the judge is to handle it.

Down on line 17 again the emphasis is on the defendant's case at the time the death sentence was sought or imposed. If the judge makes these findings, then the court shall order that the death sentence shall not be sought, or that the death sentence imposed by the judgment shall be vacated and be sentenced to life imprisonment without the possibility of parole.

The rest of the bill in summary basically says we're changing the rules of procedure and that applies to all these folks who are on death row. In committee there was tremendous angst about this. “How in the world can you change the procedures on these hundred-and-fifty-some people who have already filed their motions?” Well, all one-hundred and fifty of them took advantage of the change of procedure that this Assembly gave them in 2009, and there's no constitutional prohibition on changing the procedure. It might be different if they had committed their murder during the interim and perhaps told their attorney, “You know, I'm going to have some proof that I'm only committing this murder because I'm counting on that Senate Bill 461,” and then we changed the rules on them and they detrimentally relied on that act. I don't think too many of them will make that claim.

So I recommend the bill to you for approval. As I say, it gets the focus where it should belong: on the person who is alleged to be a first-degree murderer. It puts the focus on the prosecution, where the prosecution occurred and when it occurred, not in another century, not in another state...Where's Roger West? You know, Fayetteville is not affected that much by Cherokee County or by different people. So I urge you to vote for the bill.

**Speaker Tillis:** Representative Parmon, please state your purpose.

**Rep. Earline Parmon (D):** Thank you, Mr. Speaker. To speak on the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Parmon:** Thank you. I am listening to Representative Stam's insistence that Senate Bill 416 is an amendment, but I want you to really look at the bill as outlined and understand that this is repealing the Racial Justice Act—it's not an amendment. The Racial Justice Act was just passed in 2009, ladies and gentlemen. And that act was passed to ensure that we would have fairness in our criminal justice system after many studies have proven that there is discrimination through jury selection in our criminal justice system.

The Supreme Court in many instances when dealing with issues like housing and unemployment has used statistics to rule on such issues. And under Senate Bill 416, page 3, lines 1-3 states in no uncertain terms "statistical evidence alone is insufficient to establish that race was a significant factor under this article." As we know, recently in Cumberland County a judge found by the preponderance of the evidence that racial discrimination across this state was prevalent and therefore ruled that the Racial Justice Act was needed and now we find ourselves less than two months later trying to push discrimination again into the law.

Representative Stam would have us to believe that the Racial Justice Act should just focus on the county in which a defendant was sentenced and convicted. But the data showed by studies by the University of Michigan shows across North Carolina that systematically exclusions of jurors—black jurors and other minorities—indeed played significantly in the outcome in the sentence of death. So I'm asking you to really think about this news editorial in the *Winston-Salem Journal* today, and I quote—I want you to really think about this question—"What does the Legislature have to fear in ensuring that there is no racial bias in carrying out the ultimate punishment because, after all, errors made in death penalty cases can't be corrected once the sentence is carried out."

Ladies and gentlemen, the Racial Justice Act is needed because we know that there is racial discrimination and it's been proven by data by many universities. I would ask you to vote against Senate Bill 416. North Carolina does not need to continue to move in the wrong direction. Thank you.

**Speaker Tillis:** Representative Glazier, please state your purpose.

**Rep. Rick Glazier (D):** To debate the bill, Mr. Speaker.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Glazier:** Thank you very much, Mr. Speaker. Members, I will not be short in my comments today. This is a matter of life and death, and a matter in my view, as well, of the soul of the State of North Carolina. And for those reasons I'm going to be very deliberative in my comments.

I'm going to break my comments into three parts. First, I think for so many of us who in here aren't lawyers, those of us who talk about this case often talk as lawyers, but it is important to understand what peremptory challenges are and aren't and at the heart of what we're doing here. So I'm going to talk a little about that. Then I want to talk about the findings of Judge Weeks because we're not writing on a clean slate anymore. We have a court opinion that says there is overwhelming evidence in this state of historical racial discrimination in the selection of juries in the State of North Carolina in every place in the state, almost without regard to geography or date. And so I want to talk about what this bill will do to Judge Weeks' decision and what it means when we talk about the effect of this bill on the history that we are seeking to wipe out by what we're doing. And then third, I want to talk about the three big issues I have with the bill and why I agree completely with Representative Parmon and why I think no reasoned observer can think differently. This bill simply pays lip-service to the notion that we have racial bias in our criminal justice system but then proceeds to simply eviscerate the only way left to prove it. And so I want to talk about that.

So what's a peremptory challenge? A peremptory challenge allows a lawyer to challenge a potential juror on any basis. I may not like Representative Horn because of the fact that his arms are crossed or that he's a Winston Churchill fan. I can get rid of him. I can get rid of anybody off a jury—six in a criminal case, fourteen in a capital case—for any reason but a discriminatory one on the basis of race and gender. Now at best, it's an educated process and an educated guess, but at worst it is an expression of naked prejudice.

In 1965 it got so bad in our country that that United State Supreme Court passed a decision, *Swain v. Alabama*, and they said this: "A state's purposeful or deliberate denial to Negroes on account of race as participation as jurors violates the equal protection clause of the United States." And twenty-one years later in *Batson v. Kentucky* the court recognized that *Swain* presented no ability to prove the claim that they said might exist. And so they created a three-prong test to try to improve the circumstances, and said that when a juror is challenged, if a defendant believes the

juror was being challenged on the basis of race, they first had to create some inference that that occurred. If that happened, the prosecutor had to respond with what was an articulable, race-neutral reason, and then the burden to show that the prosecutor improperly exercised the challenge shifted back to the defendant to essentially show pretext. At a time in our history when racism may have been more blatant—and we all know that existed—there were lots of ways to filter through that. People admitted to their biases. We had statements to friends. We had organizations they belonged to. There were ways to get there. But over time as we have become, I hope, less prejudiced as a society and as people, people still harbor those prejudices and biases, but they are much more subtle and much more hidden. And so the devices that ferreted them out to some degree no longer are sufficient.

The big question now—and has been for the last twenty years in racial bias in jury selection—is not was the attorney consciously, deliberately exercising racial prejudice. That happened. But in a lot of cases what happened—and on the defense side, I’ve been there, was involved in eight capital cases, did multiple felony trials; I understand the circumstances—but the issue was whether we subconsciously, unconsciously discriminated. And that, I think, has become imminently clear through the social data that has been accumulated in the last fifteen years.

We all categorize things. It’s the only way we get to survive and sort of filter data. And to put it simply, good people discriminate even when they’re not aware that they are discriminating. You know, in that regard we all have probably three sets of attitudes. We have the attitude that we agree and make public. That attitude might be something like, “I think that everyone should be treated equally.” Then some, we have the attitudes that we keep to ourselves; we don’t want to make them public. They may not be politically correct. They may not be part of the majority, and so we hold them. So maybe someone has an attitude, “You know, I think that more people that are black are on welfare because there are more lazy black people.” That’s an attitude. People aren’t going to tell you that if they have it, but we all know some people who have it. And then there is the third set of attitudes. And they’re the sort of attitudes that we aren’t even aware that we have that we’ve simply accumulated over time: part of our culture, part of an environment, part of our family. They are the things we think unconsciously.

I can remember when Representative Burris-Floyd was first elected and she came into the chamber a couple of sessions ago. I didn’t know her, didn’t know who she was, didn’t know her political party, but I immediately assumed, “Black female—must be a Democrat.” Wasn’t. That was my background that gave me that assumption. I might see someone walking down the street who is an old gentleman in bad tattered clothes who’s begging, and I will immediately think, “Homeless and not doing well, and how sad.” But of course, if I learn that person is a monk and that’s part of their training and their religion and what they do, that piece of information changes completely what I think. But I need that information to have made that decision.

Remember, in the context of jury selection, we don’t have that information. In the context of jury selection it is our attitudes—those first, second and third things—that control. We have to make, as lawyers, split-second judgments. And if, in fact, those attitudes reflect, either consciously or sub-consciously, the biases or prejudices that surrounded our upbringing, it’s not a surprise, nor is it a terrible thing to admit that that was part of a system. And the only way that we get past that is to accept responsibility that that was part of the system, and then spend our time, instead of trying to find ways to get around that, to find ways not to do it anymore—to improve.

So you would think that, given that context, it wouldn’t come as a surprise, or it shouldn’t come as a surprise, that there would be a lot of training for defense attorneys and for lawyers who are prosecutors as ways to think about *Batson v. Kentucky* and comply. But instead nearly every bit of training in North Carolina over the last 20 years by the Conference of District Attorneys and otherwise—and this is true in many states throughout the country—was exactly the opposite. The training there is to come up with a list of reasons you can always articulate at a moment’s notice that would make your reason for striking that juror not because they’re black or Hispanic, but because it’s facially neutral.

Listen to some of the reasons that lawyers are trained to use...trained to use: They failed to make eye contact, seemed nervous, strong personality, I’m going to get rid of them because their arms were crossed. Here’s one I particularly like: Wore a hat one day and squinted the next. Too grandmotherly; too young. This person was divorced. Had someone who was in an accident. Unmarried; married. Held a Bible in their hand. Didn’t hold a Bible in their hand. Wore a t-shirt. Wore earrings in each ear. Wore a nose ring. Worked two jobs. Seemed to over-intellectualize the case...All of those, by the way, from cases where jurors were struck for those reasons.

There’s an interesting study that was done about a prosecutor who actually said this...gave this information at a training session—not in this state, but similar to training here. He was caught on the video saying, quote,

“Let’s face it, there’s the blacks in the low-income areas. You don’t want those people on your jury. You know, in selecting blacks again you really don’t want the educated ones either. And this goes across the board all races. You don’t want the smart people. In my experience black women, young black women are very bad. There’s an antagonism. I guess maybe that’s because they’re downtrodden in two respects.

They got two minorities: they're women and blacks that are downtrodden. So young black women are difficult, I've found."

And then he noted ways in this training for district attorneys to conceal race-based strikes: "If you have a black juror, you question him at length. Find something you can mark down and articulate later. 'Well, the woman had a kid about the same age as the defendant and I thought she'd sympathize with him.'"

And then he even warned of the consequences of failing to heed his advice: "I'm telling you, rookie prosecutors, if you go in there and you think you're going to be able to be some noble civil libertarian and try to get those jurors and be fair, you're going to lose and you're going to be out of office."

Now that's the reality of the peremptory strike process that leads to what happens in this case and all of these cases.

So what does Judge Weeks find in North Carolina? He says in his findings—and what you will overrule effectively and end if you vote this bill—Judge Weeks says *Robinson* introduced a wealth of evidence showing the persistent, pervasive and distorting role of race in jury selection throughout North Carolina. The evidence, largely un rebutted by the State, requires relief in this case and should serve as a clear signal of the need for reform in the capital jury selection proceedings in the future. But instead of meeting that challenge, here we sit today to deny its existence.

Well, here are some of the other findings of Judge Weeks. Judge Weeks says the heart of Robinson's evidence was an exhaustive study of jury selection in North Carolina. Seventy-four hundred minority members drawn from one-hundred and seventy-three death cases, and two studies done—one a complete unadjusted study for race and decisions, the other a regression study of a 25% random sample drawn from those. And here's what the judge finds:

"Finding: The result of the unadjusted study with remarkable consistency across time and jurisdiction shows race is highly correlated with strike decisions in North Carolina. The adjusted regression results show that none of the explanations for strikes frequently proffered by prosecutors or cited in published opinions diminish the robust and consistent finding that race is correlated distinctly with strike decisions in North Carolina."

Here come the two findings that I think we all should be concerned about:

"The statistician testified without contradiction to large disparity in strike rates based across race. Across all strike-eligible minority members in the study, 52.6% of eligible black citizens were struck and only 25.7% of everyone else. This probability of this disparity occurring in a racially neutral jury selection process is less than one in ten trillion...one in ten trillion. The court also finds the average rate per case at which prosecutors in North Carolina struck eligible minority members significantly higher than the rates at which they struck other members."

The probability of this disparity occurring in a racially neutral jury selection process is less than one in ten trillion squared. So he makes the not-remarkable finding that race was a materially practically and statistically significant factor in the exercise of peremptory challenges by prosecutors seeking to impose the death penalty in capital cases.

**Acting Speaker Dale Folwell (R – Speaker Pro Tem):** For what purpose does the gentleman from Alamance, Rep. Ingle, rise?

**Rep. Dan Ingle (R):** To ask if the gentleman would respectfully yield to a brief question.

**Speaker Folwell:** Does Representative Glazier yield?

**Rep. Glazier:** Mr. Speaker, I will gladly yield at the end of my comments, if that's alright.

**Speaker Folwell:** Representative Glazier, you have about forty-five seconds left in your comments.

**Rep. Glazier:** Thank you. In North Carolina between January of 1990 and 2010, in North Carolina between 1990 and 1999, in North Carolina between 1990 and 1994—all of those findings. So where does that leave us? Well, three

things that Representative Stam's bill does. The first, Representative Stam's bill says that the statistical evidence can never be sufficient. Never. Not one in ten trillion. Not one in ten trillion squared. It can never prove the case, which means, effectively, you can never prove race discrimination in jury selection.

Second point and then I'll conclude... Second point: There is an exception carved out in this bill for the Robinson case. So Robinson, if this order is upheld, gets relief, but every other defendant...

**Speaker Folwell:** Representative Glazier, your time is expired. I gave you an extra minute.

**Rep. Glazier:** Thank you, Mr. Speaker. I'll ask to speak a second time.

**Speaker Folwell:** Thank you, Representative Glazier. For what purpose does the gentleman from Wake, Representative Dollar, rise?

**Rep. Nelson Dollar (R):** To speak on the bill.

**Speaker Folwell:** The gentleman has the floor.

**Rep. Dollar:** Thank you, Mr. Speaker. Members of the House, I want to tell you a quick couple of stories. The first one involves Bob Denning. Bob Denning was in his house. He was waiting for a meal on April the 24<sup>th</sup>, 2008. Along comes Tim Hartford. Tim Hartford and his girlfriend broke in. They robbed the old man, and then they started beating him. Tim Hartford beat this man to death and then left.

But he comes back. He forgot his sunglasses. When he comes back, walking up the sidewalk are Bill Magnus and Anne Magnus delivering Meals on Wheels. So what did Tim Hartford do? He shot Anne Magnus in the back and killed her in cold blood. He shot multiple times. He also shot her husband, Bill Magnus. Bill Magnus survived. Do you know why he survived? Because Hartford ran out of bullets. It's the only reason.

And we come in here today and we say, "Oh, you know, we've got to go through all the statistics and everything." This is about monsters. Monsters: evil people doing unspeakable, inhuman acts. That's what this is about.

We said just a few years ago that this act would be accessed by people like Tim Hartford for which race is no factor whatsoever in his jury, in his victims, and in the killer. But he's accessed the Racial Justice Act. What sense does that make?

Let me mention another one of these one-hundred and fifty of the most evil, vile people that you can't even imagine unless you really read the files. The truth is never put in the paper of what these people do, the inhumanity. Let's talk about Henry Wallace. Let me read you the list of the people that Henry Wallace killed: Tashonda Bethea, Michelle Stinson, Shawna Hawk, Caroline Love, Sharon Nance, Valencia Jumper, Audrey Spain, Brandi June Henderson, Vanessa Little Mack, Betty Jean Baucom. Ten women murdered viciously. Michelle Stinson was murdered in front of her own son. That doesn't even count all the rapes and all the torturing that Henry Wallace inflicted on his victims and on others that he wasn't successful at killing. This is ridiculous.

A couple of weeks ago I talked to a dear friend of mine who is now retired, a former Chief Superior Court judge in the State of North Carolina. He presided over the trial of thirty capital cases during his career here in North Carolina—thirty capital cases. He had but one thing to ask of me. He said to me, "Nelson, are y'all please going to repeal that Racial Justice Act? People do not know what these killers are all about. They haven't seen them. They haven't read the crime records. They don't know about a little girl left mutilated and dying in a pea field and having that defended in court with no remorse whatsoever."

However well-intended the Racial Justice Act was—and I'm sure it was well-intended—the effect has been obscene. The victims cry out. Change this injustice. I hope you'll think about the victims. I hope you will vote in favor of this bill.

**Speaker Folwell:** Representative Hall from Durham is recognized to speak on the bill.

**Rep. Larry Hall (D):** Thank you, Mr. Speaker and members of the House. I want to talk a little bit, probably from a different perspective, because I think in the overall discussion of these matters a lot has been lost about the people of North Carolina. I had two handouts that I sent out to your desks. The first one I'd ask you to look at is the North Carolina State Constitution. The first page about halfway down, the middle of the page, it says "The Oath of Members" and it details the oath that a lot of us took but maybe forgot about.

Maybe we got up here and decided that we have a responsibility to just the neighbor down the street and not the neighbor across town, or maybe to our individual family, or maybe to our business partner and not the rest of the community. Maybe we've lost the magnitude of the responsibility that we have and the challenge that we have as a result of the oath that we took.

So when you look at the Oath of Members I'll draw your attention to the last line: "and will faithfully discharge his duty as a member of the Senate or House of Representatives." What is that duty? To support the Constitution and laws of the United States and the Constitution and laws of the State of North Carolina.

I'd also draw your attention to the last section, Section 26: Jury Service. It reads: "No person shall be excluded from jury service on account of sex, race, color, religion, or national origin."

So, certainly the Racial Justice Act really is about that. It really is about the sanctity of our justice system, about our oath to support and defend the Constitution of the state. It doesn't give us the opportunity to say, "We like this part of the Constitution but we don't like that part, so let's pick and choose. This is a menu at a restaurant." It doesn't say that in our oath that we take. It doesn't say, "Support the part of the Constitution you like, that fits well within your comfort zone." It doesn't say that.

So, as we talk about this, don't forget our responsibility to the Constitution and the citizens—all of them—of North Carolina and their rights under the Constitution, one of which is severely under attack under this bill. Jury service: "No person shall be excluded from jury service on account of sex, race, color, religion, or national origin."

It gets real simple. Before we get to all the theories that have been spun by Representative Stam about why this should or should not happen, it comes back to something you can basically understand. You don't have to be a criminal defense lawyer, you don't have to be a judge, you don't have to be any of those other things, you don't have to be a statistician—you just have to be able to understand what was your oath, what was your pledge, and what is your duty. A lot of people have made a lot of hay about, "I'm going down there and I'm going to defend the Constitution. I'm going to do what's right under the Constitution. I'm going to protect your rights." Now the challenge comes. Some people now want to back out of the challenge and say, "Well, I just don't understand, so I'm just going to vote because I like the guy who's putting up the bill," or "I just didn't have the time and I don't have the experience."

Well, this is real simple: the statistics show, the court hearing was held, the discrimination is latent, pervasive throughout the jury systems in North Carolina whether by County, whether statewide, whether by prosecutorial district. The studies were done. The experts were there. The hearing was held. The facts are there. So now people are saying, "I don't like the facts. I don't like the outcome. So I don't want you to be able to prove it again." I want you to exclude statistics basically from being given the consideration they should be so I don't have to admit that on my watch I failed the people of North Carolina. I didn't defend their right to serve on a jury. I ignored the Constitution I swore to uphold and defend. I did all of that."

Now, real interesting, we started today's session with the National Guard coming in here and everybody on their feet clapping and encouraging them. But did you really see what happened? Did you see people from all corners of North Carolina, from all races and national hues and colours, and folks from different sexes in here? Did you see what really came before you? Did you see who you sent out to defend your right to sit here and claim you're going to defend the Constitution and they defend your right to do it. Then you take the oath, then you face the challenge, and you turn away and you celebrate. It's not an option. We sent them out of here under the presumption that we're going to support them, that when they come home they'll have a fair chance at justice.

That's not what we're doing today. We're saying, "You're going to fight. You leave your blood on the battlefield wherever it might be that we decide. When you come home, if we like you, we'll let you have a shot at justice. If the skin color of people in the jury pool is right, we'll let you have a shot at justice. If the sex or the age or the hairstyle of the people in the jury pool suits our prejudices then you might have a chance at justice. But because you fought for it, because you risked your life for it, that gives you no guarantee because we will not carry out our oath in this body."

I want to direct your attention quickly to what we did do because I contend that what we're doing is a bait and switch. I want you to look at the second item I handed out. It's the House Select Committee on Racism in Capital Cases. I heard Representative Stam say something to the effect that, he was on the committee—if you look at the list of names of the persons we had these meetings—and that people who supported the Racial Justice Act didn't come forward with solutions or ways to change the act. Well that's correct, but let's look at what this House Select Committee was established for: "The committee may study evidence of racial discrimination in capital cases and determine if legislative action is needed to address such issues."

Now as you look at that committee, you will note the make-up of the party members whether they may be Democrat or Republican. So certainly there should not have been a fear, let's say, as to what if anything was put forward from that committee as recommended legislation as to what would have come out of that committee.

I want to direct your attention to number 6 on the second page: “Members of the committee shall receive per diem, assistance, and travel allowance.” At the time it appeared that we thought it was so important that we have this committee look at these issues that we would pay the expense of supporting the committee and pay for the members to attend. The members did attend and we did have two meetings.

Finally, look at section number 9: “The committee may submit an interim report on the results of this study, including any proposed legislation, on or before May 1<sup>st</sup>, 2012, by filing a copy of the report with the Office of the Speaker of the House.”

We never had any suggested or recommended legislation. Representative Stam was on that committee and he never submitted any recommended legislation. I don’t want you to get confused and think that his piece of legislation came out of that committee. There was no discussion of a piece of legislation out of that committee. There was no meeting where we voted on it. We had two meetings. The notes and the minutes from those meetings are available. Now people around this building have been implying that somehow this was a compromise or somehow this was a piece of legislation that came out of a joint effort. The singular accomplishment in the committee meetings that we had was to review the study that led to the case decision in Fayetteville and show the validity of that study.

The validity of our court system is at stake. It’s that way every day. I want to read just a small portion of the judge’s statements about our court system and how important it is that we have our juries play their role without being impeded by discrimination.

“Defendants are harmed, of course, when racial discrimination in jury selection compromises the right of trial by an impartial jury. Racial minorities are harmed more generally, for prosecutors drawing racial lines in picking juries establish state-sponsored group stereotypes rooted or reflective of historical prejudice. Nor is the harm just limited to minorities. When the government’s choice of jurors is tainted with racial bias, that overt wrong casts doubt over the obligation of the parties, the jury, and indeed the court to adhere to the law throughout the trial. The very integrity of the court is jeopardized when a prosecutor’s discrimination invites cynicism respecting the jury’s neutrality and undermines the public confidence in adjudication.”

The case that happened in Fayetteville was one where it was acknowledged even by the prosecution’s expert that the statistics were indeed important and correct. There is an acknowledgement that selection procedures that purposefully exclude one segment of our society from juries undermines the public confidence in the fairness of our system of justice. Fairness and reliability in the imposition of capital sentences—that is what this case is about. That is what promotes confidence in our system of justice.

So we’re here today. We want to ignore the facts. We don’t want to be measured. We say everything we do should have measurable outcomes. Then when we have the measurable outcomes and we don’t like what they say, we say, “Let’s exclude measurable outcomes from the process now. Let’s not be bound by the same standard that we have put everyone else on.”

I’d ask that you vote against this bill, that you not yield to your temptation to avoid having the courage to do the right thing. Don’t turn away from the mirror that shows us the errors of our past and the errors that we will repeat if we don’t measure what we do and how it affects us. I’d ask you again to vote against this bill.

**Speaker Folwell:** Representative Alexander from Mecklenburg is recognized to speak on the bill.

**Rep. Kelly Alexander (D):** Thank you, Mr. Speaker. First I want to apologize for my voice. I’ve been attacked by allergies or something, so it’s not quite the way I normally talk. But I’ve been sitting back here and I’ve been listening and it’s remarkable to me how small the world is.

Earlier somebody mentioned Henry Wallace. Many of you know about my background with the NAACP, but I doubt that many of you know about my involvement with an organization called Mothers of Murdered Offspring. I got involved with this organization because one of Mr. Wallace’s victims, Shawna Hawk, was very close to a gentleman that used to work for me when I served on the Charlotte City Council. I got more information than I ever wanted to know about serial killers and about the victims of Mr. Wallace. I spent more time than I want to remember standing around at candlelight vigils at sites where violence has taken place.

I understand from a personal standpoint the emotions that rack people, because in my professional life I’m a funeral director. I’ve had to stand with families who have suffered violence and have had to try to console parents and sons and daughters who have been left behind. But even in the midst of all of that, I understand that there is one

thing that we can't do. There are many things that we can do in this General Assembly, but one of the things that we can't do is that, if we make a mistake and someone is executed because of that mistake, we cannot bring them back.

Duke University did a study recently and I had circulated to everybody's desk information about that study. Much of what we debated when the Racial Justice Act was approved, we talked about peremptory challenges and there has been a lot of focus on that. But Duke University did something very different; they looked at the jury pool. In looking at the jury pool, what they found kind of echoed what Judge Weeks said in his opinion. What they found in this Duke study is that when you have juries formed from an all-white jury pool, convictions for black defendants are sixteen percent more frequent than for white defendants... sixteen percent. Then they discuss the inclusion of at least one African-American in the jury pool—not on the jury, in the jury pool. One African-American nearly eliminates that sixteen percent disparity.

We truly have a problem. The problem that we should be focusing on rather than repealing the Racial Justice Act ought to be how to create equitable jury pools. Only when we have an equitable jury pool can we approach justice. When you had a jury pool that had no African-Americans in it, black defendants were convicted eighty-one percent of the time and white defendants were convicted sixty-six percent of the time. One African-American in the jury pool—just one—eliminated statistically these disparities.

So what we ought to be debating today is some kind of bill that would make it virtually impossible for prosecutors to go to these jumped-up schools and learn how to subvert the process and exclude black folk from the jury pool. Duke didn't have the ability to study what happens when you exclude Asians, what happens when you exclude Jews, what happens when you take Hindus out of the jury pool. But I suspect that when we get to the point when we can really analyze this stuff, we're going to find that when you don't have a jury pool that is truly reflective of the makeup of your community that we have a problem.

We have, I think, a Sixth Amendment problem right now. The Sixth Amendment to the Constitution was adopted on December the 15<sup>th</sup>, 1791, a few years before any of us got here. It says, in part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed." That is the United States Constitution, the Sixth Amendment to the Constitution, one of the amendments that was very important... Incidentally, it was important for the people in North Carolina that this amendment, along with some others, were put into the Constitution in order for us to ratify that Constitution and adhere to the proto-United States.

Here we are a couple of hundred years down the trail. My good friend, Representative Hall, shared with you what the North Carolina Constitution, just amended about thirty or forty years ago, says about the same thing: jury pools. This piece of legislation that we are debating today would go a long way to reversing what we just did to try to address what a judge has already found to be a universal problem in this state.

Remember, ladies and gentleman, members of this Legislature, that we are talking here about something that if we make a mistake we cannot reverse. As much as I despise people like Henry Wallace and what folks like Henry Wallace have done, I want you to understand that he is not having a happy-feelings party being locked up over there in Central Prison right now. The people who, under the Racial Justice Act, find that their sentences are going to be changed—those sentences are not being changed to anything that anybody actually in this body would want to experience, because life without benefit of parole in our prison system with all of its problems is not a vacation. Some people would consider it a lingering death. But the issue should be creating an equitable jury pool.

I'm standing up here today not speaking from the head but speaking from the heart. I remember the struggle that Representative Womble put forward time and time again to bring the Racial Justice Act and the essence of the relief that he wanted us to consider to the forefront. I remember my conversations. When I got to this body, one of the things that I remember him coming to my desk and saying to me was how important this was. He wanted to know whether or not I was going to be on board to work with him on it. I was proud to sign up and sail with that ship. I hope that we will have the wisdom not to reverse something that people all over the country now look to as a model.

I want to thank you for giving me these few minutes to share my thoughts with you. I'm not going to take all of my time. In fact, I'm going to sit down. I'm going to hope as I sit down that you will actually think, that this won't be our standard, set-piece debates, that we will actually think what we are doing because what we do today will resonate. It will resonate into the future and it will resonate with the families, not just of victims, but with the families of people who every day go into our judicial system and look at juries who don't look like themselves and listen to erudite, highly-educated folk game the system against them. It is for those people that I have stood this afternoon to speak.

**Speaker Folwell:** Representative Michaux from Durham is recognized to speak on the bill.



**Rep. Mickey Michaux (D):** Thank you, Mr. Speaker. I shall be extremely brief on this because here again Representative Alexander indicated that what we seem to lack here is a thought process that says things should be fair, equitable and straightforward. I'm not going to try to inflame you by bringing out any statistics because I think anybody hates heinous acts of crime and believes that those persons who commit those heinous acts of crime ought to be punished. The problem is that they should be fairly punished. We don't live in a time of Inquisition or anything like that. What we're living in is a time when we understand that to treat one person differently from another person is just not the right thing to do.

I just want to limit it to just this one thing. We have had a case already heard under the current Racial Justice Act. It was a full hearing. Nobody can doubt that Judge Weeks carried out a hearing that examined every facet of what the Racial Justice Act, as it now exists, called for. In making his decision, he made his decision based on the evidence that was given him—the evidence given him at that hearing were the facts that racism is still a matter of fact in this state—not because of anything else that just popped up in his mind, but because of what he was given statistically. So now he has made his ruling. His ruling did not, contrary to what a lot of people will tell you, turn that defendant loose. It took him off of death row and put him in prison for the rest of his life.

It's decided now that maybe what we need to do now is appeal this decision, but let me give you the effects of the decision. The decision that he made says the Racial Justice Act is legal. It is lawful. It is what is in the law. We follow the law all the way down. So you've got another one-hundred and fifty folks out there who have filed under the Racial Justice Act to have their cases heard also.

But right now, the Racial Justice Act is the law because it has been ruled on in a court of law. But it's going up on appeal. The decision now rests in the courts of appeal. What happens when those judges and the justices say that Weeks ruled legally and constitutionally on the Racial Justice Act? You are here today trying to subvert what should be going through the courts. You can't even wait. You may even get a good decision out of the courts that says it's unconstitutional. But you don't want to wait for that. You want to go out here and do something now.

The other problem there is that the Racial Justice Act is the law. A case has been heard, has been ruled on based on what the law is now. You've got other folks out there who are going to file. It just appears to me that these folks out of a sense of whatever you want to call it, out of just a pure sense of coming together with everything, that there is an equal protection involvement here. Since the law has already been done, these folks that have already filed are entitled to some equal protection under the law as it exists now. Not in any *ex post facto* because that is simply procedural, but simply because of the fact that the law has been done, then here we have a problem.

So why can't we just wait until this thing takes its course right on through the courts like it should and the final decision is given there? Then you will have an opportunity to act on that instead of making a rush to judgment on what should be. It's just too early to do anything about it. All the bugaboos that you hear about it are totally wrong. Let's just wait and see what the courts do about it and vote this bill down.

**Speaker Folwell:** Representative Faison from Orange is recognized to speak on the bill.

**Rep. Bill Faison (D):** To debate the bill, Mr. Speaker.

**Speaker Folwell:** The gentleman has the floor.

**Rep. Faison:** Thank you, Mr. Speaker. You know folks, there are some givens, and one has been illustrated very well by Representative Glazier going back then, and Representative Alexander going back through some of the statistics. And that is, plain and simple, that racial discrimination still exists and that there are ways to demonstrate and prove and show it, and so it does exist.

When we look at the criminal law it's not just about how we punish someone and whether or not we can punish them enough for the bad things they've done. As much as anything, it is about whether the rest of folks feel like the law is fair and whether it is providing adequate protection to them.

As I look at this body, most of it looks Caucasian from here. So it's difficult, I think, for the majority of this body to put itself in a position to think about what it's like if a series of laws get applied differently, not because of what you did or who you did it to, but because of the shade of your skin or the texture of your hair. It's just not right. It's important within our society that all people within our society not only are treated correctly but feel like they're treated correctly.

What we know is not everybody is treated correctly and correctly feels like they're not getting treated correctly. So to that end this bill takes a move in the direction of saying to folks, "Look, we are going to take a special effort to deal with what we already know exists which is the discriminatory application of some laws." How are we going to

deal with it? Well, the way we're going to deal with it is give the same judge who decides whether to impose the death penalty the ability to decide what facts the judge will let into evidence. That's generally what happens now.

Do you realize when we go into a courtroom now a judge decides what is relevant and what is material? If that's statistics, fine, it comes in. If that's the testimony of a witness, fine, it comes in. If it is some other demonstrative thing that will help that judge discern the truth of what has happened and that is material—that is, that it makes it more likely that it applies to the issue at hand—or that is probative—it makes it more likely than not that it occurred—then the judge lets it in. All the Racial Justice Act has done up to now is to say it's up to the judge to decide what it is the judge should consider in weighing the question of whether or not discrimination that we know exists has played a role in the imposition of the death penalty. What this bill now does is take away from the judge the broad discretion to decide what is probative and what is not. This body shouldn't be deciding that or limiting that.

There's nothing unusual about using statistics. We have cases now that are referred to as 1981 and 1983 cases dealing with discrimination. They are proved by statistics, but we don't stop there if we're looking at patent and trademark infringement cases. Those cases are largely proved or disproved by statistics. But it's not unusual that we use those in that regard because when we're trying to make decisions about whether to expand a business or not, we use statistics. When we're trying to make decisions about whether to invest or not, we use statistics. In trying to make decisions about whether or not to get involved in a banking operation or expand a banking operation. It is ultimately statistics that are modeling for us the truth of the situation so we can make decisions.

Permitting a judge broad discretion in using statistics to decide this very fundamental question which goes, not just to whether or not someone's life will be taken—which heaven knows is important enough—but goes even to a broader societal question of whether or not roughly twenty and a half percent of the population in this state will be in a position to feel like someone is taking an extra effort, as they should, to administer laws fairly and justly without regard to issues such as identifiable race. So in that regard, I think we got it right when we named it the Racial Justice Act because that's what it seeks to achieve. I think we got it right when we passed the Racial Justice Act and included within it the full scope of what a judge may now consider. I think what this bill proposes to do is to start getting it wrong again by taking away from a judge that which may be considered to decide the fundamental question. For me, I'm voting against this and I would encourage everyone else to do the same.

**Speaker Folwell:** Representative Bryant from Nash is recognized to speak on the bill.

**Rep. Angela Bryant (D):** Thank you, Mr. Speaker and ladies and gentlemen of the House. I just want to make a few brief points about the bill. First is that I, like everyone else, was moved by Representative Dollar's description of the monsters who engage in this act and, therefore, may take advantage of the Racial Justice Act or other legal remedies and procedures that our Constitution and our statutes of laws provide for citizens.

I think the unique role we have as citizens of the United States is a decision by our Founders that we, by our oaths, are bound by, and that is that just because we face monsters we will not ourselves become monsters. We are upholding a system of laws that will apply regardless of what monsters we face. Just as the men and women on death row have done monstrous things, it is also monstrous that we would uphold discrimination that would keep myself and people from my group from serving on juries because some district attorney believed that people like me are less likely to favor them or favor the death penalty or favor whatever it is they are basing their stereotype on. That is also monstrous in its years of replication over and over again in the cases in this state.

Similarly, it is also a concern to me and monstrous that we would want to validate without this judicial procedure a death penalty that we know is applied differentially based on who the victims are. It also really bothers me and is scary to me that there are people who are offended by the fact that white people would challenge being racially discriminated against. It really concerns me that we only see that going in one direction.

It also bothers me that we are angry that X-number of people have filed under this act. We have all kinds of provisions in our laws for people to take account of, and the principle under our Constitution and our rule of law is that it is open to everybody. We have procedures to deal with and judges to dismiss claims that are invalid and not properly brought and sanctions and consequences for doing that.

But we don't narrow the window of the causes of action because we're just upset by how many people file a claim for their rights. We live under a system where we would rather you file and it be reviewed and dismissed than not to have the right at all. That is what our freedom depends on: that we all have that right. We, as wise and wonderful as we are, cannot imagine and prejudge every case and circumstance that may be brought in terms of racial discrimination.

That's why it disturbs me that we have this time limit that will apply when we don't know every factual circumstance that may be presented. It's a ten-year window before a case was closed that the records of the district

attorney in that case has done in the past. It goes back beyond ten years because they went and did something else and then came back and started prosecuting cases. Or we limit it to two years after the fact when we know by watching the work of the Innocence Commission and other post-conviction proceedings we've had in our state that there are things that have come to light several years after many of these cases that have been egregious and have been proved to violate people's rights. So that was the concern I raised to you on that point.

It also bothers me that the district attorneys want us to trust them in their implementation of the rule of law, but yet somehow they don't trust themselves being reviewed under the same rule of law and judicial process that they want us to trust them to administer. That really is scary to me.

I am concerned about striking the Council of State in the first section of this bill from the responsibility to review and be responsible for the protocol for the death penalty. Leaving that to the superintendent of the penitentiary really bothers me when I think it is appropriate that the highest elected officials of our state together as a body are responsible for one of the most serious acts of our state that occurs. The fact that they are responsible for that protocol does not impede, at this point, the death penalty because the court cases have reviewed the protocol and found it to be appropriate. That process did work in terms of them having that role and the court system and the rule of law being used to review how they implemented that protocol and whether it was fair under our constitution.

Finally, it is concerning to me that we narrowed the scope of these cases to the prosecutorial district that the case is in. How we are influenced by racial prejudice and discrimination and how we are influenced by racism in our community does not end and begin at some geographical line. The standards and expectations and stereotypes about when DAs need to implement the death penalty in order to have community support, what kind of people they need to have on the jury to win verdicts, all of the ways in which racial prejudice permeates the death penalty system, doesn't end and begin at the county line. I disagree with the member who said that what happens in Cherokee does not influence what happens in Fayetteville and vice-versa. What happens all over our state influences the standards and expectations that our district attorneys and court system personnel are implementing and the ways we as communities are responsible in demanding of them to take action around this most ultimate penalty.

For these reasons I ask that you vote no on this bill which is indeed a repeal of the Racial Justice Act and not an amendment. I am very sad that we would for the political reasons involved in this—like we want to support continuing the racial discrimination that has already been well documented in the implementation of the death penalty in this state. It is a very sad day for me that we would want to vote for that. So I ask you to please vote no. Thank you.

**Speaker Folwell:** Representative Glazier from Cumberland is recognized to speak on the bill a second time.

**Rep. Glazier:** Thank you, Mr. Speaker. I'll conclude my remarks by citing the three major deficits this bill has and what the result will be. First, if you look at page 3 of your bill, subparagraph (e), the line, of course, that guts the bill is the line that says: "Statistical evidence alone is insufficient to establish that race was a significant factor under this Article." The point here being that, no matter whether you prove by 100% your statistics, no matter that the statistics show a one in ten trillion times two chance, this act says statistics alone will never be significant enough. They will never be able to prove the ultimate issue. If that's the case, you have essentially through this bill eliminated the Racial Justice Act.

Second, if you look at Section 8 of the bill, Section 8 of this bill says that this act does not apply to any motion that is pending that was heard and findings were made. That's the Robinson case. So if the Robinson case is upheld on appeal because of the findings of Judge Weeks, Robinson will get life without parole. But any other defendant tried the same year, by the same prosecutors, in the same county, who put on the exact same evidence, would lose. They would have to lose because they're under the new act. This act would say, "The evidence that Judge Weeks found—and we're upholding that's relevant enough, important enough—that it's sufficient enough for him to get relief, that same evidence is insufficient for those defendants similarly situated and they should die." Now regardless of your view of the Racial Justice Act or the death penalty, that is fundamentally as unfair as it gets. It is the classic equal protection and due process argument set up for all of these defendants. You want them clearly to prevail? You have just signed a bill that will do that, in my opinion.

Third, if you go to Section 3(d), we've eliminated in this bill the ability, not only to have statewide statistical evidence, but lost in the shuffle is this bill's elimination of judicial division evidence. The only evidence allowed is—not only statistical but anecdotal—is county or prosecutorial district. I raised this in committee. You have an ADA who works for ten years in Wake County, prosecutes lots of death cases, and has a record of fairly demonstratively clear racial bias in the jury selection. He comes to Cumberland County. He's there five years. He tries a couple cases. Now, all the data, if one of those cases comes through the Racial Justice Act under this bill, all the data of what he did in Wake County is not usable—not usable because the limitation is only the evidence in that judicial

district. Well, almost all of our ADAs move and become DAs if they want to and not necessarily in their county. We're mobile. We may be an ADA in Wake and get experience and move back home to Halifax or move back home to Cherokee and try the case.

What makes this argument about not looking at statewide evidence even more significant is we all forget we are a uniform system of courts, a general court of justice where what happens in one county ought to be the same kind of justice one gets in another. But this repeal makes clear that cannot happen as a matter of law, ever. Again, whatever your view of the RJA, this is an extremely flawed bill in every respect. No one should doubt the intent and what it does. It is to repeal and wipe clean an historical slate.

In the end, my final comment, I guess, would be no one can disagree with Representative Dollar. There are a lot of monsters out there who've done some terrible, awful, heinous, atrocious and cruel things. That is precisely why, when it comes to the issue of race and law, when emotion holds sway, we ought to let reason hold the day. I close with an op-ed from a murder victim's family in Fayetteville who said, at the end, in opposing this repeal:

"Executions tainted by racial bias are a dishonor to all of us and to the memories of our murdered family members. We do not solve the problem of crime, we don't solve the problem of the death penalty, by casting aside findings of Judge Weeks that have found that we have a bad history in these cases of racial prejudice in jury selection."

Instead, I think we would all be better served if we did what Representative Daughtry suggested a couple of weeks ago and look to find ways to find the resources that our criminal justice system desperately needs, look to find ways to make sure that the errors that we committed before are systemically eliminated, look to find ways to create confidence by all segments in our community in the criminal justice system. If we focused our efforts on that instead of repeatedly on this, we would find, I think, a lot of answers to these problems. If we err at all, I would prefer to err on the side of life as opposed to choosing to err on the side of death. I think in the end God will favor us for that decision far more.

**Speaker Folwell:** Representative Harrison from Guilford County is recognized to speak on the bill.

**Rep. Pricey Harrison (D):** Thank you, Mr. Speaker. Ladies and gentlemen of the House, it's very difficult to follow Representative Glazier on this subject but I'll try. We know that race has been an issue in our judicial system for more than one-hundred and fifty years. As has been stated a number of times today, Judge Weeks very unequivocally stated in his opinion that intentional discrimination based on race occurs throughout North Carolina in capital cases. The Racial Justice Act was an attempt to address this problem.

It's important to remember the historical context because we've had a number of attempts to fix this but we've always gotten around it for some reason. The U.S. Congress and the Supreme Court have been dealing with this since 1975 with the Civil Rights Act that prohibited excluding jurors based on race. That continued with the numerous court cases have been cited here on the floor. It wasn't even until the 60s and 70s that African-Americans were allowed to be on juries, and then we started to get around that with the preemptive strikes. As Representative Glazier mentioned, we've got fourteen available on capital cases. That's more than any other state in the country.

Despite these efforts to reign in racial bias in judicial proceedings, we continue to try to get around them. Representative Stam mentioned Batson which requires race-neutral decisions in jury selections. Well, as Judge Weeks pointed out in his findings, in 1995 and in 2011 North Carolina prosecutors were actually trained to get around the requirements of Batson. I think that's fairly significant. We know that we have a racial discrimination problem. We're training the prosecutors how to get around that.

It continues to be a problem, which is why we need the Racial Justice Act. Even if you don't understand or agree with the Racial Justice Act as passed two years ago, you do need to understand the problem is significant. Attempts to address it have never been enough. It's not just about the criminals, it's also about the rights of all citizens regardless of race to serve on our juries and participate in our government. This is about law-abiding citizens being excluded from jury service because of the color of their skin. It's about the integrity of our court system and of our government.

A court has found, based on extensive research, scientific study, and evidence from both sides, overwhelming evidence of discrimination in jury selection in North Carolina. To ignore that, to defy that, by repealing our mechanism for addressing it is wrong. I urge you to vote "no".

**Speaker Folwell:** Members, it's five o'clock. We thank you for your service today and we look forward to seeing you tomorrow. Pages...[laughter] Pages are now released and we look forward to seeing you tomorrow...

**Rep. John Blust (R):** Mr. Speaker?

**Speaker Folwell:** For what purpose does the gentleman from Guilford, Representative Blust, rise?

**Rep. Blust:** Were you about to dismiss the members?

**Speaker Folwell:** Noted. Representative Haire from Jackson is recognized to speak on the bill.

**Rep. Phil Haire (D):** Thank you, Mr. Speaker. I've got a couple of observations perhaps I'd like to make. It's interesting that we've heard a lot of talk about Judge Weeks' ruling down in Fayetteville and its findings. Well, if you go look at this summary of the death sentences bill, in 2010 the North Carolina Supreme Court held that a trial court could require a case to be tried non-capitally if the State delayed in seeking a hearing under Rule 24. That's been taken away.

Now you know, when you look back—and I know a lot of you folks go to church—but when you look back in the history of this country there has been a whole lot of prejudice in the past. So we're not immune to anything. If you go back and you look the first people who came over here were Puritans. They were prosecuted in England, and they came over and set up a very structured society. Then later on, the Irish came over and they were discriminated against for years upon years. Then later on, during World War I the Germans were discriminated against. In fact, many of you may have, if you go back in your history far enough and look, you'll find that your names might have been German at one time but it was Anglicized during World War I. And in World War II, what did we do? We locked the Japanese up in internment camps on the West Coast because we didn't trust them.

Now we have a lot of problems, we think, with Latinos. It's interesting if you go over to the Museum of History that there's an exhibit in the North Carolina Museum of History right now today called Latino Life. Of course, now we hear a lot about Muslims. Wonder where you'd be if you'd go into court and you'd see somebody in a turban or a female in the head covering that they wear? Of course, unfortunately for African-Americans, we had a long history or prejudice against them.

What have we tried to do? I'll complement Representative Hall for giving us a copy of the North Carolina State Constitution. That's what we believe in, so what we're trying to do here is to complement or give meaning to the North Carolina State Constitution. Those of us that go to Church or synagogue or whatever you go to, how can you say, "Well, we believe that this stuff that we believe in the Bible, but when it comes to being fair and equitable we have a question about it."

It gets back to remind me what the whole court system should be about. Those of us that are old enough to remember the old TV show called Dragnet. The head detective used to say "Just the facts, ma'am." Well that's what we want in this judicial system, is just the facts—that everything be fair and reasonable and equitable. Finally, I would go—and I heard what Representative Dollar said. I would make an observation on it: the statistics show that it costs twice as much to kill somebody—to execute them—as it does to lock them up for life. But that's not the issue here. The issue here is: we believe in a court system—and I see Representative Stam leaving, I'm obviously not stirring him—but in the court system where we try criminal cases, we've heard for years it's better to turn ten guilty people loose than it is to convict one innocent person. We've all heard that. It's been around court for years. I say that what we have now is an opportunity to protect the innocent and not take an opportunity on convicting someone that's guilty. So for that reason I ask you to vote against it...

**Rep. Stam:** Mr. Speaker?

**Rep. Haire:** ...And yes, I'll...

**Speaker Folwell:** For what purpose does the gentleman from Wake, Representative Stam, rise?

**Rep. Stam:** To ask Representative Haire a question.

**Rep. Haire:** I yield, yes.

**Rep. Stam:** Representative Haire...

**Speaker Folwell:** Representative Haire, do you yield?

**Rep. Haire:** I certainly do yield.

**Speaker Folwell:** He yields.

**Rep. Stam:** Do you realize that every one of these folks has been convicted as first degree murderers and none of these claims are based on innocence?

**Rep. Haire:** Well, the only thing I know is it might be based on innocence because we had an instance up in Asheville just last fall that the Innocence Commission found two men that were locked up in prison on a crime they did not even commit but they had all this evidence against them and they were released after serving some twenty years in prison because the State had not disclosed the evidence that it should have disclosed in the case.

**Speaker Folwell:** For what purpose does the lady from Randolph... Representative Hurley is recognized to speak on the bill.

**Rep. Pat Hurley (R):** Thank you, I'd like to speak on the bill. I did not know much about this until this came up and I started researching it last December. As of December the 12<sup>th</sup>, 2011, there were one-hundred and fifty-eight people on death row. Of those, in my county there were eight. Of those eight, there were six white people, there was one black defendant, and there was one American-Indian defendant.

Of the victims, the first was a white defendant and a white victim. The next was a white defendant and a white victim and it was a child rape. She was put into a garbage bag and thrown in a closet, and she was murdered. Another one was a white defendant and white victim. He was previously convicted of first degree rape and sentenced to life but he was paroled and got out and killed. The third defendant was a black defendant with a white victim. He raped and stabbed the victim. Then there was another white defendant-white victim. Defendant here too had a previous manslaughter charge. Another one was a white defendant-white victim. The defendant robbed and shot the victim while victim begged for his life. Then there was another white defendant-white victim. He shot two young men over a thirty-dollar drug debt. The Indian defendant had a white victim. He killed a deputy serving warrants and shot a second deputy.

None of these cases are in doubt of the guilt of the defendant. I ask you to vote for this bill. Thank you.

**Speaker Folwell:** Representative Womble, please state your purpose.

**Rep. Larry Womble (D):** To speak on the bill, Mr. Speaker.

**Speaker Folwell:** The gentleman is recognized to debate the bill.

**Rep. Womble:** Thank you, Mr. Speaker. Thank you, ladies and gentlemen. Representatives of this great House, I won't keep you long because fatigue is setting in on me just as I am sure it is setting in on you. But there is such a thing as justice and just us. To many times the needle or the hand has swung, not to justice, but to just us. It shouldn't be that way, but it is. I am very proud of this Legislature in the last few recent years for the legislation that we have done. It means that we are compassionate. It means that we want to do the right thing. No matter what your pigmentation, no matter what's the texture of your hair, no matter what side of the railroad track you grew up on, in North Carolina you can get a fair deal.

I, like some of you and hopefully all of you, am appalled at those kinds of things that Representative Dollar mentioned. I abhor them too. I hate them. At the same time, we must set an example as not to sink to the same level of some of these other people who seek revenge based upon color alone. Yes, I've been very proud of you—all of you—individually and collectively because when it came to those kinds of bills that I have sponsored with your help, you stood with me and you passed them, and I don't have to name them. Now is your opportunity to stand again for rightness and justice.

The Racial Justice Act was passed in the year 2009 to address the documented... I said to address *documented*, racial disparities in our state of North Carolina. I'm not a legislator in the other states, but I am a legislator in North Carolina. That's what we tried to do in 2009. This is not a perfect bill. I never said it was perfect when I originated this bill with a lot of you all's help. But it's a good bill that goes a long way to saying, "North Carolina is going to do the right thing." The Supreme Court has widely upheld the use of statistics in proving discrimination in cases

relating to housing and employment and in other areas. If we can use stats in these areas, what's wrong with using stats in this area?

Before the pages left, I was going to refer to them because they're watching us. Hopefully somewhere somebody, some young person, is watching us and instead of talking about doing the right thing we will do the right thing. Somewhere I read that we should be rather than to seem.

Section (f), page 3, line 47, states: "with particularity how the evidence supports the data that race was a significant factor in" the seeking of the death penalty. Now, I'm going to let you in on a little secret and some of you have heard me say this. There are people in my family that believe in the death penalty. There are people who say...who use such terms: "Larry, we need to fry 'em. Let's go ahead and fry 'em." "Go on and kill 'em. Kill 'em out of the way, we won't have to worry about 'em no more." And I say, "Yes, if that's what you want to do. But let's make sure we do it fair. Let's make sure that we do the right one." We have Daryl Hunt, a good example, one vote short...one. We should not make a mistake like that. If you do happen to kill an innocent person, we made a mistake. We can't say "Oops, I forgot" or "That was a mistake." It's too late now.

The Racial Justice Act is just a tool. It's not the end all to everything. We just say that it's a tool in the toolbox. You don't have to use it, the person doesn't have to use it if they don't want to. Then it's up to the judge. The judge will make that decision.

I also want to let you know that there are rumors that have been going around. Somebody told me if you tell a lie long enough and often enough somebody will believe it. There's a rumor going around that this bill that we passed in 2009 is a get-out-of-jail bill. You can get out of jail. They're going to come and get out of jail and be right back in your neighborhood. They're going to move next door to you, and they're going to wreak havoc on you and your family. That is the farthest thing from the truth. They will spend the rest of their natural life incarcerated in jail. So don't believe the hype. That's a scare tactic, ladies and gentlemen. You ought to be able to see through that. If somebody tells you they're going to allow them to get out of jail, tell them to read the bill.

The other thing, and I'm almost through, is that the bill that we passed had large and widespread support across this entire state, those who believe in the death penalty and those who don't. This is not a death penalty bill that we passed. People have made it that. It wasn't anything to do with the death penalty; it was about fairness and objectivity. More than seven-hundred people of faith, religious leaders, across this state endorsed and supported what we've called the Racial Justice Act. Yes, some people say it's a misnomer, but I believe it's the correct title. North Carolina has never shied away or run or buried its head in the sand. Yes: Racial Justice Act. We need to be cognizant of that.

Let me close by saying that we have a magnificent opportunity before us. Don't squander it. Don't let it slip through your fingers because of what your friends or neighbors might say if you repeal this bill that's before us: Senate Bill 416. Stand up. Have some courage. Have some backbone. Have some conviction. This 416 is not representative of this great body. I hope that we will defeat this. Plus, keep in mind, ladies and gentlemen, it's already a law and it's already been ruled on more than once.

I thank you for your attention. I thank you for the service. And I thank you for listening to me. You've been hearing me speak on racial justice so many times and maybe too many times. Mr. Speaker, ladies and gentlemen, I beg you, I implore you, whatever else I have to do, for you to vote no. Punch red for Senate Bill 416. Thank you.

**Speaker Folwell:** Further discussion, further debate? If not, the question before the House is the passage of the House committee substitute for Senate Bill 416 on its second reading. All those in favor will vote aye; all those opposed will vote no. The Clerk will open the vote...

**SB 416 – Amend Death Penalty Procedures  
Remarks on 3rd Reading  
June 13, 2012**

*And even more debate the next day...*

Audio available at [this link](#)  
Debate begins: 01:41:05

**Acting Speaker Dale Folwell (R – Speaker Pro Tem):** Senate Bill 416, the Clerk will read.

**Reading Clerk:** House Committee Substitute number 2 for Senate Bill 416, a bill to be entitled An Act to Amend Death Penalty Procedures. The General Assembly of North Carolina enacts.

**Speaker Thom Tillis (R):** Representative Stam, please state your purpose.

**Rep. Paul Stam (R – Majority Leader):** To debate the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Stam:** Mr. Speaker, members of the House, I hope to speak no more than five minutes on this. I want to just mention a few things that are not particularly repetitive. I had a statistician visit my house. I decided he was unpleasant company, so I stuck his head in the oven and his feet in the freezer and asked him how he felt. He said, “On average, I feel fine.” So with statistics if you ask the wrong question you get the wrong answer.

We have a statistician here in North Carolina, a retired professor emeritus at the Department of Psychology at UNC Chapel Hill, who has testified in some of these cases and examined the studies that were quoted by the opponents of the death penalty. He says, first of all, all these studies refer to odds, a very different concept than probability. The studies cited are so badly controlled that even the odds statements are wrong. He concludes: “I do not believe that there is valid statistical evidence of racial discrimination in the death penalty. Death penalty opponents should focus their attention on other issues such as morality of the death penalty.” Dr. Elliot Cramer is a card-carrying member of the ACLU and actually opposes the death penalty. He just says the statistical studies are bogus.

Let me explain why I think that’s important. I passed in our subcommittee meeting a June 5<sup>th</sup> letter from the Center for Death Penalty Litigation to the presiding Judge in Fayetteville. This is in reply to something...It appears apparent that what it’s replying to is a suggestion by the Judge that he is just going to enter judgment without another hearing for another three defendants because they’re also from Cumberland County. But these folks say “Well, the State has actually requested a hearing. We’ll have to have a hearing. We’re not going to do any new evidence. We’re just going to introduce all the same old evidence. We’ll object to any evidence that is cumulative. No additional evidence from the State will alter the court’s conclusion.” In other words, what happened in Marcus Robinson’s case is really irrelevant because the same statewide statistics mean that these other folks are going to get relief under the Senate Bill 461.

Now, on that point, I think the opponents of the death penalty have not gone nearly far enough, because if they really and truly in their hearts believe what they say about the evidence about peremptory challenges, just think about it: what they’re really saying is that the trial itself was unfair and biased—not just the sentence, but the trial. So they should be asking for a new trial for every single person on death row. They should be asking for a new trial—not just a commutation of the sentence—for every felon convicted before a jury in the State of North Carolina since 1990 because that’s what they think their evidence proves: that every jury has been tainted by this. But in fact, Marcus Robinson—to take a case as an example—had a jury and...Oh, he had three members of minority races on his jury. So, the argument of the Representative from Mecklenburg that having just one minority on a jury will really help wouldn’t have helped Marcus Robinson because he had three, and they were willing to give him death. But Judge Weeks says: “No, these first-degree murderers should stay in prison instead.”

I urge your support for the bill and to get us back to the basic principle of Western Civilization that justice is individual and personal, based on what *you* did.

**Speaker Tillis:** Representative Hackney, please state your purpose.



**Rep. Joe Hackney (D – Minority Leader):** To speak on the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Hackney:** Thank you, Mr. Speaker and members. I will try not to be long but I want to make several points that are hopefully not repetitive. The first point I want to make is that, whether you believe in the death penalty and speeding up the death penalty in North Carolina or not, you should be against this bill because, in my opinion—and I will explain what I’m going to talk about—in my opinion this adds to the current process of getting through these cases, these death penalty post-conviction matters. I believe it adds a minimum of two years to the process. There was substantial additional litigation added by this bill over and above the others.

Now you will note that an orderly process had been put in place for the Racial Justice Act claims. Everybody agreed that one case would go first, certain others would go behind, and there’s an orderly process they would go up on appeal. Now you have this bill come along and if it’s enacted—if the Governor signs it, and it goes into law—you have the additional argument of, “What does this bill mean?” So what you’re going to have is all the rest of the litigation is going to be put on hold while we go litigate for two years. As Representative Glazier already said to you, under the Equal Protection clause of the United States Constitution there’s going to be a substantial argument about how you can treat these other folks differently from Marcus Robinson. His rights, of course, have already vested. It’s arguable whether the other folks’ rights have vested as well.

In addition, there’s going to be additional litigation about the so-called “waiver” language in the bill. Now, Representative Stam has explained to you that it’s supposed to clear something up. I submit to you that it’s fogged it up and is itself fodder for litigation. You read it in its plain terms and it says you give up all your rights if you file a racial discrimination claim and, of course, you have to do that at the beginning. So, how in the world can that work? It is not going to work, there will be additional litigation about it and it will not be fair.

Representative Stam criticizes statistical evidence. I will note, with respect to Mr. Cramer that he mentioned, that it is my understanding that the State examined his evidence and decided not to submit it to the jury. So I guess that can tell you what they thought about it, even though Representative Stam seems to be convinced by it.

But let me tell you what this bill does. If you can show that 100% of the black defendants get death and 100% of the white defendants get life, you still do not have a claim under the Racial Justice Act. Now how can that be? Is that really what we want to be saying in North Carolina? How can that be? That statistical evidence—no matter what, no matter how overwhelming, and even though, as Representative Faison has noted, it’s used in employment cases and housing cases and in other kinds of cases—it’s never enough on its own.

The territorial limitation in this bill is nonsensical because, as has been noted already, the assistant DAs do move around. You could have an assistant DA who’s an avowed racist who moves from one district to the other and his record could not be considered under this bill.

I’ll go back, lastly, to the first thing Representative Stam said yesterday, something about fifty-three judges having passed on a death penalty case to get it to the end. Well, I’ll tell you this. Fifty-three judges were not enough to keep seven innocent people from being released from death row because of actual innocence...seven. I don’t know about you but the worst thing that could happen in the criminal justice system... We know we have people who sometimes get sent to prison who are innocent and we do the best we can to correct those. We know that sometimes mistakes are made. The absolute single worst thing that can happen in the criminal justice system is an innocent person being put to death under the death penalty by the State of North Carolina. I don’t know if that’s ever happened, but I know that there have been some mighty close calls. I think we should take every avenue we have to try to assure that that does not happen.

I just end up with the...I don’t always agree with Dr. Barber and the NAACP, but I think what he put out has it right. We now know, as a result of litigation, that race does impact death penalty trials and death penalty sentencing in North Carolina. We know that. The judge has found it. The judge has done a thorough job, and we know that. Yet we still, we come back with a bill after that to say that you have no remedy. Make no mistake, under this bill there will be no remedy—no remedy in North Carolina for any additional...

**Rep. John Blust (R):** Mr. Speaker?

**Rep. Hackney:** ...death penalty...

**Speaker Tillis:** Representative Blust, please state your purpose.

**Rep. Blust:** To see if Representative Hackney will yield for a question.

**Speaker Tillis:** Does the gentleman yield?

**Rep. Hackney:** I do yield.

**Speaker Tillis:** He yields.

**Rep. Blust:** Representative Hackney, am I not understanding the whole Racial Justice Act set up here? Even without the Racial Justice Act—whether the way it was passed in 2009 or the way this bill amends it—does it at all affect a defendant’s appeal rights that have existed all along? Wouldn’t any defendant have a right if there were discrepancies in a trial or there was a racist district attorney—couldn’t a defendant bring that out in appeals or motions that have existed all along?

**Rep. Hackney:** Representative Blust, I would have said yes, he has the option to bring that out—until you look at the waiver language that Representative Stam has put in here which I think forecloses some of that. But the answer to your question is that do you want someone who can now show—even though their appeals may be exhausted—do you want someone who can now show that they got the death penalty rather than life imprisonment to be executed when they can show that it was the result of racism? Is that what you want? Because that’s what this bill would do.

Mr. Speaker, I simply end up by saying again, back to my point that I was making, that the Racial Justice Act has been used in the courts to prove that systemic racism exists and needs to be addressed. This bill takes away—if it survives after all the litigation that is going to ensue because of it—takes away the right to a remedy for that discrimination.

**Speaker Tillis:** Ladies and gentlemen of the House, for your planning purposes, it is the intent of the Chair to move through the entire calendar today. There may be one other potential bill added, but the Chair anticipates significant debate. Representative Ross, please state your purpose.

**Rep. Deborah Ross (D):** To speak on the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Ross:** Thank you, Mr. Speaker and ladies and gentlemen. I only want to make two points. I think that they’re important points because they’re points that you’re going to hear about later on, particularly in September, October, and early November. The first point is that all the Racial Justice Act does—the current one—is give people who are on death row an opportunity to challenge that death sentence for a possibility of getting life imprisonment without parole. I want to be clear about that. Representative Stam said that, too. A few people have said that. But given that there were so many mailers sent out in the fall of 2010 lying about what the Racial Justice Act does, I think it’s just important that we all know that and agree so that if we consent to having such flyers mailed out in the fall of 2012, we’ll tell people that that’s a lie. It is a lie to say that the Racial Justice Act results in people getting out of prison. They would be there for life without parole.

The second lie I would like to expose is that this bill does not repeal the Racial Justice Act. There is absolutely no question at all, under the law, that this bill repeals the Racial Justice Act. It also goes on to invalidate some things that our North Carolina Supreme Court said within the last two years—our Republican-controlled North Carolina Supreme Court. That wasn’t good enough for the people who are running this bill. But if you want to know where the repeal of the Racial Justice Act is, the biggest part of this is on page 2, lines 49 and 50. I’ll just read them to you in case you’re confused about whether or not this bill repeals the Racial Justice Act: “Statistical evidence alone is insufficient to establish that race was a significant factor under this Article.”

That’s the repeal. You can’t prove that there was racial discrimination based on statistics, even if all of those statistics come in the same prosecutorial district, come from the same prosecutor, come within a ten-year limit from before the case. So, even if all the statistics that you have involve the same exact prosecutor in the same exact prosecutorial district and involve, say, a hundred cases—because, you know, if the death penalty comes back in force we may just have that—you can’t use those statistics. You have to catch the person saying something racist. Can’t use the statistics. That’s what this bill does.

There were a lot of complaints about the current Racial Justice Act because it goes statewide. We’ve heard why that might be necessary since prosecutors move around. But this bill didn’t just limit it to the prosecutorial district. It limited it to the district, to the time, and then said, “Oh by the way, even if you show these overwhelming statistics—

not good enough.” Now right after that it says that the State can use statistics to rebut a claim. So evidently statistics are good enough for the prosecutor but not good enough for the person who’s on death row

I just want those two facts to be very, very clear in your mind when you vote. If you vote for this bill and you have that conviction, go on ahead. Just don’t go home and lie about it.

**Speaker Tillis:** Representative Luebke, please state your purpose.

**Rep. Paul Luebke (D):** To speak on the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Luebke:** Thank you, Mr. Speaker and members of the House. I’m struck from the debate yesterday about the position of the advocates of the bill. It comes across as if there is no prejudice and no discrimination in North Carolina, or that there is no history of prejudice and discrimination in North Carolina.

Let’s just think about our state’s history. Until 1964—until the passage of the federal Civil Rights Act—discrimination was legal in North Carolina. There is with that a great deal of learning that goes on among all citizens—especially white citizens—about the notion of racial discrimination and racial prejudice: that it is, in fact, acceptable. We can go to 1983 when a well-known U.S. Senator on the floor of the U.S. Senate argued vociferously against a national holiday to honor Dr. Martin Luther King. We can go, around that same period, to a discrimination suit that was filed against the State of North Carolina about voting discrimination. Federal courts heard that suit, looked at the totality of circumstances which included primarily statistics. It was on the basis of statistics that the court ruled. In 1986, the U.S. Supreme Court agreed. The U.S. Supreme Court agreed that the totality of circumstances the statistics demonstrated in the suit was sufficient to require changes in our voting rights law.

Now we come to basically twenty-five years later and the question seems to be, “Is there any discrimination or prejudice left in North Carolina?” It seems the argument is being made: no. The bill is written in such a way that the criminal justice system would produce members of that system who would, if there were any prejudice, would be coming forward and acting out that prejudice and discrimination. Friends, in twenty-five years people have learned in this state—white people have learned in this state—to use the right language, to use the proper words. That doesn’t change what’s in people’s hearts and it doesn’t change what is, in fact, how people act. That’s why we come to a situation like the Racial Justice Act because people have been claiming in the court system for a long time that there’s no prejudice, there’s no discrimination.

So, the study is undertaken by the Michigan State researchers and they find this extraordinary difference in terms of the number of African Americans who are struck potentially from being jurors compared to whites. When they see that in the numbers it shows something about how unconsciously or consciously many in the criminal justice system are operating. It shows that, when you actually get to the point, there is plenty of prejudice and discrimination in the criminal justice system—but you won’t find people saying it. So the part of the bill that requires there to be statements from those in the criminal justice system that can be put into the record, those are not likely to be said. When you have, as Representative Blust references, a racist district attorney or assistant district attorney, that ADA is not going to use the language of racism, so it’s not going to be in the record.

That’s why, friends, we need to rely on statistics. We have in the current bill a reliance on statistics. In voting for the bill before us today, we are undermining the idea of racial justice in the criminal justice system. Members, I urge you to vote no on this bill.

**Speaker Tillis:** Representative Womble, please state your purpose.

**Rep. Larry Womble (D):** Thank you, Mr. Speaker—to speak on the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Womble:** Thank you again, Mr. Speaker. Ladies and gentlemen, I will not be long. I believe most of us, if not all of us, have already decided how we’re going to vote on this. The eloquent renditions of Paul Luebke, Leader Hackney, Deborah Ross, and so many others I don’t think are going to convince you. I like surprises every now and then. I hope that you will surprise me and vote this terrible, terrible bill down. You have to find it within your heart. You know it. Everyone else in this state knows that there is racism. There’s no way in the world that we can continue to cover this up, we can continue to sugar coat it, we can continue to sweep it under the rug. Let’s be big boys and big girls and face reality. Yes, it does exist. Yes, this Legislature is going to do something about it. I don’t

mean for us to do something about it in the negative way like this bill here. Senate Bill 416 is a negative bill. It guts the bill that was passed in 2009. There is widespread support for the bill that we have now, so why tamper with it? Why bother with it?

I mentioned to you yesterday about the number of people of faith across all colors, across all faiths, that support this. I want to let you know today that there is an organization of over several people—HKonJ, Dr. William Barber—that exists and speaks to the right thing to do—not the political thing, not the social thing, but the right thing to do. My grandmother used to say, “Right is right, and right won’t wrong nobody.”

Let’s do the right thing here. Surprise me. Vote this very negative bill down. North Carolina cannot stand with honor if we pass this bill. I urge you to vote red. Thank you so very much.

**Speaker Tillis:** Representative Lucas, please state your purpose.

**Rep. Marvin Lucas (D):** To speak on the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Lucas:** Thank you, Mr. Speaker. Ladies and gentlemen, I’m not naïve to a level of thinking that my commentary will change one vote in this chamber. But I would like to lay something on your conscience and, yes, on your hearts. In medieval times—and I’m sure that Representative Stam would attest to this—logic and persuasive oratory had merit. Today, sometimes it does, sometimes it doesn’t. But moral oratory should always supersede logical oratory. I would like to submit to you a moral perspective.

I’d like to begin by saying that I favor capital punishment. I do favor capital punishment.

Lyndon Johnson, one of our favorite presidents, used to say that it’s easy to do what’s right but it’s hard to know what’s right. But, in your hearts I know that the representatives on this floor know what’s right. I know we know what’s right. When one analyzes jury selection practices that use preemptory challenges that can be arbitrary and capricious to the extent that it yields exemption of greater than fifty percent of persons who look like me or minorities, I know that in your heart that you recognize that this is wrong. We can do better than that.

Most of this stems from a case from my county, Cumberland, involving a defendant named Marcus Robinson who’d been given the death sentences. As a result of the action taken by Judge Weeks, many conclude that that death sentences no longer exists. But I submit to you that it does. The man still is condemned to death, and it doesn’t matter whether the execution is carried out by sources here in Raleigh or whether it will be carried out by the ultimate grim reaper, God Himself. That man will never leave prison alive. So, he has a death sentence. That’s not going to change.

Why not continue to do what’s right? We know that in our heart of hearts this is the right thing to do. Nobody will, as we say, get away from the death sentence because of this legislation. If they’ve been condemned they will continue to be condemned for the rest of their lives in prison, and they will die there. I urge you to vote no.

**Speaker Tillis:** Representative Brandon, please state your purpose.

**Rep. Marcus Brandon (D):** To speak on the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Brandon:** I appreciate you, Mr. Speaker. I have to admit that I had never heard of the Racial Justice Act until I came into the General Assembly. My good friend, Larry Womble, talked to me about the merits of the bill. I am one that really tries to stay out of racial politics. I think sometimes it’s unproductive and I try to stay out of it. But you can never, ever make the mistake of taking race out of a lot of factors, especially when it involves life or death situations like we’re talking about right now. The fact is that—and this is just a fact—African Americans do represent a disproportionate number of people on death row. This is not just in death row cases—any justice system. You can go to Guilford County and you can see a line of people outside for traffic court and, even though we have a county that’s sixty percent white, eighty percent of the people in the line are black. These are just facts.

One of the things that people ask me is, “What is your biggest surprise that you have learned in your first year in the General Assembly?” I tell them the blatant ignoring of facts. We just ignore it. It happens on both sides of the aisle. We just look at facts and we’re like, “Oh, that’s right there but we’re just going to ignore that.” Now we have a bill where we put into the bill that we’re going to ignore the facts. I think that’s very, very disappointing because facts are really the only thing that drives us. It’s the only concrete thing that we have to make decisions. Now we

have a bill that says, “You know what? We don’t need facts. We’re just going to go off of what we *think* we know, not what we *should* know.” That is a big mistake for this body to do that.

So we’re ignoring facts and doing things in politics. On the right, I understand your perspective on this and I understand what Representative Dollar said yesterday about the emotions of this. But we are still the United State of America, and I don’t care if someone came in and killed all of us on this floor: that person is still entitled to due process and is still entitled to a fair shake under the law. All of us are and that’s what the United States is. We cannot just go off of emotion. We can’t just ignore facts. We have to have due process of the law. That’s just who we are as people.

The truth is the intent of this law is really brilliant. We’ve been having this debate for two-hundred years or more and we’re trying to figure it out. Now we have finally got the courage to stand up and try to deal with the situation that we’ve been dealing with for centuries. North Carolina said that we’re going to deal with it and we’re going to look at it on its merits and we’re going to make sure that people have equal access and equal opportunity under the law, which is what we all should be here for.

I’m very disappointed in the fact that we’re dealing all this time with one-hundred and fifty of our constituents whose two options are: they’re going to spend life in jail or they’re going to be terminated by death by our justice system. I feel that if you’re going to do something that egregious, if we’re going to go that far, then of course we should make sure that we look at all the facts. We should look at all the processes and make sure that people have their fair share. This is not necessarily about Democrats and Republicans. I think that this law should not be repealed but it should serve as a national model. In the United States and in North Carolina we should not and cannot have a justice system that weighs punishment by the putting of the value of someone’s life and the currency being race. No matter who you are, that is not who we are as people, and I urge you to vote no.

**Speaker Tillis:** Representative Adams, please state your purpose. If the lady chooses to...

**Rep. Alma Adams (D):** To speak on the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Adams:** Thank you. Representative Brandon, some other things that you probably should have learned is that we do what we want to down here. We use facts when they’re appropriate for us to use them. History is still known to serve as a viable record to which we must refer and acknowledge. Statistics and data are acceptable variables, but we choose to ignore them when we want to. The bill that we passed in this chamber yesterday which shamefully guts, as has been said, the Racial Justice Act, is a clear indication that we have disregarded history because history does document evidence of racial disparity. The passage of Senate Bill 416 gutted a bill that had already become law and was used in the courts to prove that systemic racism, as has already been noted, does exist in North Carolina. In fact, it exists throughout this nation.

Gutting the Racial Justice bill under the guise of an amendment to that bill is a clear indication that we really don’t want to address the reality of racial bias in our current legal system or, for that matter, racism in our society and even in our state. We are a body voted on by the people of our state who trust us to do the right thing because it is the right thing. Most of us try to do what’s right, I think. But we need to be fair to all people, whether you like those people or not, whether you like what they’ve done or not. They should have an opportunity, if they are innocent, to provide the evidence.

But all of the evidence shows that the death penalty is flawed with racial bias. As we take this final vote today, we need to be reminded that the Racial Justice Act passed this chamber. When it passed this chamber in 2009 with the support of proponents and opponents of the death penalty—we need to remember that—they all agreed that racial bias has no application in the ultimate punishment of death.

The Racial Justice Act has revealed what the racial justice movement in our country has argued for centuries. That is that racism hurts everybody. It hurts white people, too. So, we’ll all be hurt—our citizens also—by the action that we’ve taken here. I urge you to vote no on this bill.

**Speaker Tillis:** Representative Parmon, please state your purpose.

**Rep. Earline Parmon (D):** To speak on the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Parmon:** Thank you, Mr. Speaker and colleagues. Most of what I was going to talk about on this day has been articulated very adequately by my colleagues. Those are some of the legal issues that we as a state will have to face. I understand that some of my colleagues that voted for this bill were under the impression that if we pass Senate Bill 416 that it will fast forward the death penalty. I will stand here today and tell you—and not from a legal standpoint, because I don't know a lot about the legal stuff—but this in fact will prolong anyone on death row now from being executed because of the appeals and other issues we will have to address.

Yesterday, I heard one of my colleagues speak about the guilt of all of the people on death row from a particular county. Well I'm standing here today to tell you that the Racial Justice Act is not about the guilt or innocence of any of the people that have filed under this act. What it is about, though, is that are we as policymakers, as has been said, going to ignore the fact and put discrimination knowingly in our criminal justice system. As I look at the votes, it's just strange to me how that many people can vote without thinking about the facts or proven statistical data and would rather continue the racist sentencing in our criminal justice system.

Yesterday I had visits from victims' families, people that had been killed and the defendant is actually on death row, who said that they were against this bill. I'm just appealing to you today as colleagues and policymakers in the State of North Carolina, with the facts known to each of us, that there is racial discrimination in sentencing and in jury selection in the State of North Carolina. I want to appeal to you in the name of justice. Let's not knowingly put discrimination in our criminal justice system. Please vote no on Senate Bill 416. Thank you.

**Speaker Tillis:** Representative McGuirt, please state your purpose.

**Rep. Frank McGuirt (D):** To debate the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. McGuirt:** Thank you, Mr. Speaker. I have neither the oratorical skills not the articulation of many who speak in this chamber, but I sometimes wonder what good all the rhetoric does. I looked around a while ago and there were probably about a fourth of the members out of the chamber. So I know, to paraphrase Mr. Lincoln, what I say here will not be long remembered.

Representative Dollar doesn't need to tell me about the horrors committed by murderers. I've been there, done that. I've picked up the pieces. I have photographed, I have fingerprinted, I have bagged the hands of the victims. I've put them in the bag. I've been there with the medical examiner. I've been to the autopsy.

Representative Stam implied that all of us who oppose this bill are opposed to the death penalty. I favor the death penalty. I feel that there must be an ultimate penalty for those whose heinous acts result in first degree murder under our law. I've investigated first degree murders. I've testified in the cases of first degree murder. I've supervised investigations of first degree murders. There are two inmates that are probably on death row right now that I helped put there, and I think they both deserve to die.

But I know that while our justice system is the best on earth, it's not perfect. We've read, and it seems like we've read of several times recently, of cases right here in North Carolina of convictions being overturned, set-aside, because of errors made by our system. People freed for unintentional mistakes: Daryl Hunt, Ronald Cotton, Greg Taylor. I'm sure there are others.

So while I think we must have an ultimate penalty, I also know that we must leave no stone unturned when it comes to insuring that justice is done, that no one is wrongly convicted. How horrible it would be to convict an innocent man or woman, especially if any prejudice—perhaps a latent prejudice—contributed to that execution. Please join me in voting no on this bill. Thank you.

**Speaker Tillis:** Representative Martha Alexander, please state your purpose.

**Rep. Martha Alexander (D):** To speak please.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. M. Alexander:** Thank you very much, Mr. Speaker and ladies and gentlemen of the House. When I left the chamber last night, the only thing that kept coming to me was the fact that we're not just dealing with people on death row, whether you are for or against the death penalty, we are talking about human beings. We are talking about people who've gotten into trouble. We are talking about human beings.

I don't know about you, but over the years I have taken interest in some of the different cases on death row. I've been called at home and I've been called here in Raleigh when the execution was about to take place. It was about 10 o'clock at night and they would say, "So-and-so is going to be killed. We're going to implement the death penalty at 2 o'clock in the morning." I don't know if you've ever spent those kind of four hours wondering, "How did they get there? Who are their families? Who are they leaving behind? What about the victims?" I've been staying at the same place over these years that I've been here and that's where the families stayed. So when I was called and I was here, I was very aware that I was in the same place and that we the State...we were the State who take part in all of this.

So, why, why would we now take away another tool? Why would we take away something that can be utilized in our court system to ensure that we don't have the death of someone who is innocent? It matters not the race, it matters not the sex, it matters not the crime—it is whether or not we are going to commute a sentence to someone who is innocent. We've heard all of the statistics. A lot of the legal issues have been brought forward. But the bottom line for me is that we're talking about human beings. We need to be very careful about what we do. So I would plead with you, please vote no on Senate Bill 416.

**Speaker Tillis:** Ladies and gentlemen of the House, at this time we have four lights on. It is the intent of the Chair to take a vote on this matter at 4:45. Currently the order—and it will be called in order—is Glazier, Farmer-Butterfield, Weiss, and Bordsen. Representative Glazier, please state your purpose.

**Rep. Rick Glazier (D):** To briefly debate the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Glazier:** Thank you, Mr. Speaker. I rise, even though I spent a lot of time yesterday, I really just want to respond with four points that haven't been raised in any of the debate previously in the hopes that the information is helpful and for the record.

First, Representative Stam mentioned at the beginning the expert who's testimony was not heard for a lot of reasons. For those of you who haven't read the opinion, just so it's clear who the experts were who have rendered the testimony, here are the four credentials: the first graduated from Tufts University with his PhD from Michigan, the second graduated from NYU with his second degree from Harvard, the third is a PhD mathematician from the University of Minnesota who teaches at the University of Iowa and at Stanford and has written one of the seminal texts in the country on biostatistics, and the fourth is a professor from Michigan State with a JD from Colorado and a PhD from the University of Michigan. You couldn't have four more credentialed statisticians, mathematicians and experts who gave their testimony in this case. If there's a question about that, I thought would answer it.

Second, we have a part of the death penalty statute in this state—and those who are in the criminal justice system know it and Representative Stam and I actually worked on a bill several years ago to deal with the issue—called proportionality review. What it requires is if there be a death penalty in this state that one of the issues the court must look at is whether or not that death sentence is proportionate to other death sentences in the case in terms of the facts, unrelated to the issue that we're talking about except as I'll connect it in a moment. When the court does that proportionality review in every death case, the comparison pool it looks at is statewide. It doesn't look at district or prosecutorial district. It looks at all the other death cases in the state. So here we have a bill that says you can't use statistics as the final way to look at it from a statewide point of view, they're no longer relevant. But if we're going to affirm the death sentence on proportionality review, there we look at all the cases from the state. The inconsistency is patently transparent, and I would suggest will also raise a new level of litigation.

The third issue that I would suggest, I don't know how many of you have talked to any superior court judges who've tried some death cases since the Racial Justice Act has been in effect and the hearing has been held, but if you talk to them the one thing that you will know is that what they say is the deterrent effect of this act has led to a whole new regime in how [audio unclear] and jury selection is conducted in the state. In fact, it is meticulously looked at now and all of those things that we have talked about that have happened historically both the judges, the prosecutors, and the defense attorneys now are making doubly sure don't happen again. So exactly what you want to happen, a change in the system has occurred. You undo this bill, you undo the deterrents and you change back to the same culture that existed before.

Finally, what I would suggest to you: if we vote, and we did yesterday, and for those who are going to vote, everyone on the floor today, we don't write on a clean slate. We have Judge Weeks' opinion. How many of you in here have read it? How many read the opinion you're getting ready to reverse? Did you read any of the findings, the three-hundred and fifty or so that were made, or the conclusions upon which they were based? We can't all read

everything that comes our way or we'd all be carried out in strait jackets I think. But we're about to change one of the biggest policy changes in the state. We are about to embark the state on a whole new round of litigation and cost. We are upsetting the confidence of a portion of our system. And we're doing it on the basis of not having read, I suspect most of you, the opinion that we've been talking about. When we're talking about life and death, it seems to me that we at least owe that amount of justice to ourselves, to the State of North Carolina and to the citizens who elected us, let alone the people who were the victims in these cases or those on death row. If you can go tonight and vote to reverse this opinion by voting for this bill and tell yourself you did it with full knowledge and understanding without having read that opinion, with all due respect, I think you're lying to yourself. I would hope that no one would vote for this bill who hasn't at least read this opinion. Thank you.

**Speaker Tillis:** Representative Farmer-Butterfield, please state your purpose.

**Rep. Jean Farmer-Butterfield (D):** To debate the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Farmer-Butterfield:** Thank you, Mr. Speaker. In North Carolina there have been eight men exonerated from death row who would have actually been murdered in this state if the system had went faster or if they had not followed up on their right to appeal. Representative McGuirt talked about three people who were exonerated who were not on death row but had life imprisonment. So I say to you that racial bias has no place in the application of the ultimate punishment of death. Support for the Racial Justice Act was not an endorsement of violence. It was not a sign that anyone is soft on crime. And voting no on Senate Bill 416 is neither a sign.

Criminal justice enforcement is always strengthened when the system confronts racial bias directly and attempts to rid it of its practices. Family members of murder victims supported the Racial Justice Act. People who are for and against the death penalty supported the Racial Justice Act. In fact, some of the members right here on this floor have indicated that today. So I ask that you vote no on Senate Bill 416.

**Speaker Tillis:** Representative Weiss, please state your purpose.

**Rep. Jennifer Weiss (D):** Thank you, Mr. Speaker. To speak briefly on the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Weiss:** Thank you, Mr. Speaker and members. I know the hour is late. I would simply say that those of us who voted for the Racial Justice Act a few years ago did it because we recognized that there was a problem with our justice system. We voted that way to try to ensure that our justice system was fair, to make it fairer, to make it right for all of us because if people don't have confidence in their justice system then it is not just. It is broken and we did it to try to fix it. In thinking about yesterday's vote and about today's vote, I would just say when I came to the General Assembly the lesson I learned was that change was incremental. I guess what I've learned recently is that sometimes we don't always move forward.

But I am reminded of a quote by Dr. Martin Luther King, Jr. that he uttered on a few occasions. He uttered it a few days before he died, but earlier than that he uttered it on March 25th, 1965 having completed the third march to Montgomery. He said this on the steps of the Alabama State Capital. He said:

“I know you're asking today, “How long will it take?” I come to say to you this afternoon, however difficult the moment, however frustrating the hour, it will not be long, because truth crushed to earth will rise again. How long? Not long, because no lie can live forever. How long? Not long, because you shall reap what you sow. How long? Not long, because the arc of the moral universe is long but it bends toward justice.”

I have faith that no matter what happens today—I hope that people reconsider and will change their vote—but no matter what happens today, I have faith that ultimately the arc of the moral universe bends toward justice.

**Speaker Tillis:** Representative Bordsen, please state your purpose.

**Rep. Alice Bordsen (D):** To speak on the bill, Mr. Speaker.



**Speaker Tillis:** The lady is recognized to speak on the bill.

**Rep. Bordsen:** What we do today is really more about us than anything else. It's about whether we are fair and consistent and predictable in the decisions we make about what happens to that guilty person. Whether that guilty person who has done terrible things is allowed to live in a confined situation but is allowed to live, or whether we kill them.

Every one of us here speaks from a position of what they know or what their experiences are, but I don't think that we've talked very much about those who are left behind. Those who have suffered from the loss of such a terrible act that puts that guilty person in the position of either being imprisoned for life or being killed. Maybe there are people in this room who have had the terrible experience of that loss. I have. Six years ago, one of our closest friends was murdered and was murdered in such a way that identifying his body was a challenge. The person who did that, subsequent to that murder, went on to kill his infant daughter, attempt to kill his girlfriend, the mother of that baby, and raped and murdered the caretaker for that baby. This is one of the people that fits in Representative Dollar's categories of monsters.

It is an indescribable experience to have a loss like this. You spend a great deal of time just trying to figure out "Is it real?" and how can something that awful that you only read about happen in your life to somebody you knew so well and somebody who was, in this case, such a gentle person. Then you have to deal with the thoughts of that person's actual demise. In this case it was a person who was extraordinarily brutalized then left in a dark basement to expire alone. That is no small thing to come to grips with. Then you try to figure out what to do with that person's family, and with the other people who knew them so well.

Once you get through some of those things—and it takes a few years—then everything that happens in the legal system is important because it starts putting pieces back so that you can build a structure around that event so that you can handle it. So when the person is finally apprehended, that's an enormous relief. When there is a trial going on, that's an enormous relief. You have to feel that it's going along well because it's putting something back together; it's making some sense. When there is a verdict of guilt or innocence, that's a relief. It's one more step.

But when the decision is made about what to do with that person—in this case we're talking about a person who might be allowed to live or we might kill them—if there is uncertainty about it, it takes away enormously from any relief. You don't have a resolution to it. What you really need is clarity. You need to know that if they were allowed to live, you know why it was and that it was the right thing for the right reasons. If they are to be killed by us, if we are to take that profound step of killing them because they killed, then we have to know that if they're going to be killed that there's pattern to it—that that fits, it's a natural thing to happen. It's being done for the right reasons.

Right now, I would say there's a great lack of public confidence, especially when it comes to any aspect of race, about how we reach that decision about which murderers get to live and which murderers are we going to kill. So as long as we let that fester—and just defeating this bill today will not resolve the issue; it is festering. As long as it continues to fester—and you know it's going to. We have a history in this state and we don't deal with it honestly, we don't talk about it well enough. We deal with it reactively. But as long as we don't confront it and turn ourselves inside out to make sure that everybody knows that race played no part in the decision whether to let them live or whether to let them die, we do a disservice to everybody who's left. Each person who sees that murderer continuing to live or knowing that they died, if you don't know for sure that it was done for the right reasons, you really can't move on.

It's important that we defeat this bill. It's important that we be willing to every day do what it takes to open whatever books, look at whatever statistics, do whatever it is, to make sure that anybody that we're going to kill is killed for the reasons that we have set out and that we believe are right and it does not involve any kind of even imbedded racism. You know we can't escape it. We are what we are. We are all born with prejudice, we are all born with things that we do and we think and we act upon without ever really wanting to. I would ask you to think again and vote no on this bill.

**Speaker Tillis:** Representative Moore please state your purpose.

**Rep. Tim Moore (R):** To debate the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Moore:** Thank you, Mr. Speaker. Ladies and gentlemen of the House, I had the pleasure of chairing the House Select Committee on Racial Discrimination in Capital Cases. We had two formal meetings and then one meeting

where we went over and actually toured Central Prison to actually see death row, to actually be there. In the meetings we had, I think members would agree, we brought in a lot of information on both sides. We heard from those who support the current version of the Racial Justice Act and from those who support this proposed amendment. It's important to note a couple of things because a lot of things have been said that frankly aren't completely accurate. So I want to address a couple of those briefly, given the late hour.

First of all, the statistics that were presented had to do with the jury pool and the challenges. Those were the statistics that came from the Michigan State study. What that study showed—and there were numerous attacks on those statistics—and what it showed in some cases—in *some* cases—is that a higher number of black jurors were removed from the jury pool by the State and also that a higher number of white jurors were removed by the defense attorneys in some cases but not all.

Then there were other factors that came into play. Folks, we heard from district attorneys. We heard from folks involved. The whole point is that when jurors are excused from a jury there are a myriad of reasons why they may. Maybe they have a criminal record. Maybe they know something about the case. Maybe they're related to someone involved. There are a number of factors. Maybe they have strong opinions one way or the other about the death penalty. In trying to take one characteristic and say, "That's it," is simply not appropriate. We had numerous folks that would testify to that.

When we had our testimony, and again this has been a few months ago, but I think I may have been the one who asked the question of the presenter from Michigan State which was, "Are you saying that there was racism in the trials?" And the answer was no. What they were saying was that in isolated cases there were these statistics. That's what it was. Well, that has mushroomed into this concept that simply has not been proven.

Now, let's talk about the process. I'm going to tell you, if a person has not received a fair trial on a death penalty case, if they truly didn't get a fair trial, then guess what, they shouldn't be staying in prison for life. If they didn't get a fair trial, they should get a new trial. This bill simply says that if they have some sort of finding that it was not a fair trial, then they spend the rest of their life in prison. That makes no sense.

So, where is North Carolina in the picture of this? Folks, we're the only state that does this. Kentucky has something somewhat similar, but it's not retroactive. It doesn't go nearly as far. Nobody else is doing this. Nobody. What we are doing is allowing death penalty cases from years ago to be re-litigated, to be brought back up over something that... If there was a problem in the trial, that's what the appellate courts are for. When a person goes through a trial and they're convicted, this is an issue to raise. If there was racism involved, that is prejudice, that is a prejudicial issue, that is an issue that you argue on appeal with the facts. On a death penalty appeal, I think most folks agree, the courts are pretty lenient. They're going to make sure that they give every benefit to that defendant, as they should.

So now here we are. And I do believe it is in some ways a well thought out plan by those who oppose the death penalty to try to find one way or another to do a collateral attack. But we shouldn't do it. This bill is a fix. Folks in our committee, we heard from families...

**Rep. Larry Hall (D):** Mr. Speaker?

**Rep. Moore:** ...I won't yield yet, but I will when I'm done.

**Speaker Tillis:** The gentleman does not yield if that was the intent. Was the intent to make an inquiry?

**Rep. Hall:** Well, I hadn't decided which one and I didn't know if Representative Moore was reading my mind or not, but I was thinking about asking if...

**Speaker Tillis:** Representative Hall, please state your purpose.

**Representative Hall:** Ask the member a question.

**Speaker Tillis:** The gentleman does not yield.

**Rep. Moore:** At the conclusion I'll be glad to.

**Rep. Hall:** Thank you, Mr. Speaker. I'd appreciate a question at the conclusion.

**Rep. Moore:** We heard from a number of folks in our committee. We heard from victims of crime, families of victims. We heard from African-American families, we heard from white families. We heard from everybody. The thing that they all had in common was that they had a family member, a loved one, who was murdered. It didn't matter who did it but they were murdered, and that defendant had been found guilty by a jury of twelve of their peers, had gone through multiple appellate processes, and at the end of the day was told, "Yes, you did it. You are convicted."

You know, even the proponents of the bill...I don't think anybody is alleging that this is an innocence-based thing. Nobody is standing up saying this is to free someone who is innocent. There are other ways to do that. A couple of speakers against this bill made a comment that this is the only tool available. No it's not. A motion for appropriate relief is available. How do you think the folks who had gotten convicted before and had DNA evidence brought forward, how do you think they got out? It was through a motion for appropriate relief where there was evidence, where there was something brought forward to show they did not commit the crime. There's nobody saying, that I've heard, that the folks who are convicted that are potentially going to be freed from the death penalty on this are innocent. Nobody is saying that.

So let's cut to the chase. I submit to you, if you support the death penalty—support this bill. The district attorneys have reviewed it. They're solidly in support of it. The law enforcement folks I've heard from support our bill. It's a carefully crafted approach at trying to ensure that there is not racial discrimination in capital cases. In fact, I don't think there should be racial discrimination in any case from a speeding ticket to whatever else. A person is entitled to a fair trial, regardless of how they look or where they're from.

That being said, Mr. Speaker, I would urge the body's support. If the gentleman from Durham still wishes to propound a question, I'll be glad to yield.

**Speaker Tillis:** Representative Hall, please state your purpose.

**Rep. Hall:** Ask the member a question.

**Speaker Tillis:** Does the gentleman yield?

**Rep. Moore:** I do.

**Speaker Tillis:** He yields.

**Rep. Hall:** Yes, Mr. Speaker, thank you. Representative Moore, I wanted to ask you a question about whether or not, when we had that study committee, whether or not the expert, I believe Mr. Cramer, admitted that he had not done a study himself—a statistical study or any other study—of the death penalty selection process for juries in North Carolina.

**Rep. Moore:** With respect to that, I know we heard from a number of statisticians and sometimes it felt like we were back in statistics class in college, I think. With respect to Cramer, I don't remember his exact remarks. I do know he went through and critiqued the method and there were several, what he identified as flaws to the methodology. I think Representative Stam went into more detail on that when he spoke yesterday. There were several flaws with the way it was done. And it's like anything with statistics: you can take a number of things and try to draw a pattern. And so I do recall his testimony. I think he actually spoke to us twice, if I'm not mistaken about that. And if you'll recall, even—I believe it was Professor O'Bryan that spoke to our committee—she even acknowledged some of the flaws in the statistics, or some of the poten...She didn't call it flaws, but some of the issues.

**Rep. Hall:** Follow-up?

**Rep. Moore:** I'll yield.

**Speaker Tillis:** The gentleman yields.

**Rep. Hall:** And isn't it correct that, despite the fact upon adjournment of our second committee meeting where we were instructed we would come back and draw or draft some legislation to be presented to this session, that we did not have a third meeting to draft such legislation? Is that correct?

**Rep. Moore:** That is correct. What we decided to do was to allow more collaboration to happen. As you know our last meeting was on, I believe, March the 27th. We were getting close to session and it was my opinion as Chair of the committee that we should take a more measured approach to try to see if we could find a way to build consensus. I submit to you that the vote yesterday indicates that we did.

**Rep. Hall:** Another follow-up?

**Rep. Moore:** I'll yield.

**Speaker Tillis:** The gentleman yields.

**Rep. Hall:** Isn't it correct that you did not file an extension of time for us to report back and that you did not communicate with the other members of the committee, myself in particular, that you wanted to do this additional collaboration and have that additional time?

**Rep. Moore:** Well, I don't think anyone's going to argue that this issue being on the calendar since it's been pending since last year is going to be something that no one expected to see. With respect to this particular legislation, this was transferred back over to Representative Stam's Judiciary Committee that dealt with it back last year during the long session. We felt that was more appropriate. And so, as the gentleman is aware it's gone through the committee process here. It's gone through the multiple hearings that Representative Stam has held and followed the normal course. So once we decided that...Once we came back in session there was obviously no need for the select committee to meet anymore.

**Rep. Hall:** One last follow-up?

**Rep. Moore:** I'll yield.

**Speaker Tillis:** The gentleman yields.

**Rep. Hall:** Isn't it correct that the members of the Committee were not notified that you had planned to transfer the matter to Representative Stam of your own volition and that other committee members weren't allowed to vote or participate in that decision process?

**Rep. Moore:** I don't know that that's really a decision for the Committee to make, just to be frank with you. You know the rules as well as I do, that's just the way the process works. But it went through the open process. I don't recall how many meetings. Representative Stam had two meetings of his Judiciary Committee. There have been multiple conversations, so I don't know what the exact complaint is. This thing has been thoroughly vetted. We've gone through the process. We went through the process last year. This body passed it, but the Governor vetoed it. It came back and then it's gone back through the committee process and everybody who's wanted to have a say-so on it has been involved. Obviously, there's been several hours of debate allowed on this bill, both yesterday and today. So, I really would take issue with any procedural complaints. I think this bill has had its day and it's time to vote.

**Speaker Tillis:** Further discussion, further debate? If not, the question before the House is the passage of the House Committee Substitute number 2 for Senate Bill 416. All those in favor will vote aye; all those opposed will vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. Seventy-three having voted in the affirmative and forty-seven in the negative, the House Committee Substitute for Senate Bill 416 has passed its third reading and will be returned to the Senate by special messenger.

**SB 416 – Amend Death Penalty Procedures  
Remarks on the Veto Override  
July 2, 2012**

*Audio available at [this link](#)  
Debate begins: 00:32:34*

**Speaker Thom Tillis (R):** Senate Bill 416. The Clerk will read.

**Reading Clerk:** An Act to Amend the Death Penalty Procedures.

**Speaker Tillis:** Representative Stam, please state your purpose.

**Rep. Paul Stam (R – Majority Leader):** To speak on the passage, notwithstanding the objection of the Governor.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Stam:** Mr. Speaker, members of the House, we've talked about this a half a dozen times recently. It's time to go forward with real justice—that is, justice that considers the fact that race may have played a part and has all of those three remedies still available but does not rely on statistics alone from other places, other times, other actors, other defendants. I urge passage of the law, notwithstanding the objection of the Governor.

**Speaker Tillis:** Representative Parmon, please state your purpose.

**Rep. Earline Parmon (D):** Thank you, Mr. Speaker—to speak on the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Parmon:** I stand to ask us to sustain the Governor's veto override on this Racial Justice Act. Representative Stam says that the elements of the bill still allow it to be an effective bill. In fact, when you take the statistics out of the bill, then it renders it void. We in North Carolina know and history shows that in our court system racism is alive and well. If we vote to override the Governor's veto, we will be voting to knowingly allow that racism in jury selection and in our criminal justice system is okay with us. As policymakers in this state we cannot afford to say that we are okay with racism in our criminal justice system. Please vote no. Thank you.

**Speaker Tillis:** Representative Bradley, please state your purpose.

**Rep. Glen Bradley (R):** To speak on the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Bradley:** Thank you, Mr. Speaker. Ladies and gentlemen, what we have before us today is perhaps the most perfect example of both sides of the debate being dead wrong and then coming together to throw out anything that was good and keeping everything that was already bad to begin with.

To my colleagues on the other side of the aisle, we have a caucus completely overlooking the concept of individual rights to vehemently argue in favor of applying statistics to individual judicial outcomes. Anybody who has taken Sociology 101 will know that statistics can be extremely accurate in describing the characteristics, dynamics, and predicting the future actions of a large group or collective of people, but they are absolutely useless when applied to the individual. Justice must unquestioningly be an individual issue. By clinging blindly to the perpetuation of statistical calculations, you are perpetuating collectivism. By perpetuating collectivism, you are perpetuating racism. Racism, after all, is just a particularly ugly form of collectivism. If you honestly wanted to end racism, as I do, then you would reject the application of statistics to individual cases justice, as I do, because until we as a society consider every human being an individual in their own right we will never be rid of the disgusting scourge of racism in our day.

To my colleagues on this side of the aisle, rather than examine the pertinent and critical issues that brought this legislation to the statues in the first place, we have instead shut our eyes, stuck our fingers in our eyes, and pretended

that the problem simply doesn't exist. As I said—and I meant what I said—statistics are good and useful for discussing group and collective dynamics, like that facts that African-Americans make up twelve to fourteen percent of drug users but fifty-one percent of drug convictions. That is intolerable. Racism in the justice system is not something that used to exist fifty to eighty years ago but went away. Racism in the justice system exists right now and someone, somewhere in North Carolina is being victimized by prejudice as we speak.

Now I know that the Racial Justice Act of 2009 is certainly not the answer, as it simply perpetuates the problem of racism and makes it worse by perpetuating the philosophy of collectivism over individuality in America today. However, the answer is not to simply shut our eyes and pretend that it does not exist either. When I heard that there was a compromise bill on the RJA, I was originally happy to hear it, because after all the nonsense of Senate Bill 9, I had some glimmer of hope that someone somewhere was trying to do the right thing. I could not possibly have been more wrong. The worst part of the Racial Justice Act of 2009—the statistics piece that actually perpetuates and exacerbates racism—was kept even if only slightly limited. While the only good part—the process to go about securing a hearing and making a case for an individual being the victim of racism—was rejected and eliminated.

So, what is a man of principle supposed to do? We either help perpetuate racism by supporting the original RJA and its collectivist philosophy, or pretend that racism doesn't exist by repealing it altogether. That's like asking, "Do you want to be shot in the head, or do you want to be shot in the heart?" Neither one.

This so-called compromise bill at least is slightly more straightforward. By tossing out everything that was good from both sides of the argument and by keeping everything that was bad from both sides of the argument, this bill is universally bad because it both perpetuates racism through statistics while at the same time pretending that it doesn't exist by eliminating the hearing process altogether. We desperately need to reform the Racial Justice Act of 2009—there is no question about it—because that act, as it is currently construed, will continue to divide our society and continue to make racism worse and more entrenched as time goes on. Mark my words and count on it.

But this bill is not the answer. It will only make these things even worse than the 2009 RJA. I beg my colleagues on both sides of the aisle to come back to this issue in 2013 and prepare a reform bill for the RJA that eliminates entirely the use of statistics for individual case determinations while preserving the individual case-by-case based hearing process. In order to give that process a chance to happen, I will not at this time support a veto override. Thank you.

**Speaker Tillis:** Representative Faison, please state your purpose.

**Rep. Bill Faison (D):** To debate the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Faison:** Thank you, Mr. Speaker. You know, folks, the simple truth about this bill is that permitting a judge to search for the truth using whatever tools are available, including statistics, is an eminently reasonable thing to do. No part of this bill requires a judge to use statistics at all. In fact, no part of this bill requires a judge to hear from anyone at all on this issue. It *permits* the judge to hear from the district attorney, to hear from the jurors, to consider statistics. But it only permits the judge to do that as the judge discharges his responsibility in searching for the truth to answer the very pertinent question which is, "Was racial prejudice an issue in the imposition of the death penalty?"—a thing that is absolutely unacceptable, and a search for the truth that we should support.

We were right to pass the Racial Justice Act to begin with. We were wrong to gut it and remove from the judge discretion for considering things as ordinary, as normal, and as every-day in our society as statistical analysis of facts which are used in business and banking and everything we do all the time, and to somehow demonize them in this bill, the heart of which is to say to over twenty percent of our population that we know and recognize that racial discrimination has existed, we know and recognize that racial discrimination does exist, and we know and recognize that it is unacceptable within our society to continue to foster racial discrimination.

In this bill and on this so very important issue of whether a person lives or dies, that a judge may consider all normal, relevant facts—not only those known by people but those discernible through mathematical modeling of the issues—in determining the truth and reaching the point of a verdict and a decision which is just. In that regard, the Governor is right to have vetoed this bill and we are right to sustain her veto.

**Speaker Tillis:** Representative Harrison, please state your purpose.

**Rep. Pricey Harrison (D):** To debate the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Harrison:** Thank you, Mr. Speaker. Ladies and gentlemen of the House, I don't want to repeat what I said during the discussion of the repeal of the Racial Justice Act about two weeks ago, but I do want to remind you that the court has found that we have intentional discrimination based on race throughout our court systems in North Carolina in capital cases, and it's most blatant during jury selection. We know that we have been trying to deal with this issue since 1875, to try and find a solution to eliminate racial discrimination in judicial proceedings. There have been a number of court cases, most recently Batson, that require a race-neutral reason for striking jurors. We also know that our DAs have been trained in 1995 and 2011 on how to get around Batson, to come up with excuses for race-neutral reasons. It's not just an issue that relates to the defendants in these criminal cases but also the individuals who want to serve on the jury and are denied that opportunity.

I think that this is about the integrity of our court system and of our government. I think we had a good solution here in the Racial Justice Act. This bill 416 that basically repealed the Racial Justice Act and the Governor rightly vetoed ought to be sustained—the Governor's veto ought to be sustained. I think that to defy the overwhelming evidence of discrimination in jury selection in North Carolina by repealing the Racial Justice Act is just plain wrong. Thank you.

**Speaker Tillis:** Representative Glazier, please state your purpose.

**Rep. Rick Glazier (D):** To debate the motion, Mr. Speaker.

**Speaker Tillis:** The gentleman is recognized to debate the motion.

**Rep. Glazier:** Thank you very much, Mr. Speaker. I'm not going to repeat either all of my arguments that I made when the bill first came up, but instead to tell you about a case—some of the people in this chamber know this case and some who are new don't.

Many years ago, I was asked as a lawyer—and I've done sixteen capital cases: eight at the court request of trial and eight on appeal. But the one that strikes me is the one that wasn't capital that I was asked to do. I spent many years on it and it's a case that's affected the law in a lot of ways in this chamber. It's the case of Leslie Jean. But, the racial aspect of it is what I want to talk about today.

Leslie Jean was someone who came to the United States to serve in the United States military. He was at Camp Lejeune, and he was from the Caribbean. He served honorably until one day he happened to be at the wrong place at the wrong time. He was arrested in Jacksonville for two rapes that he steadfastly said he didn't commit. Leslie Jean was represented at trial by an African-American attorney. The prosecutor was white. Leslie Jean had a Caribbean look to him and looked African-American to sight. The woman he allegedly raped was white and was the main witness in the case. She testified at trial that he was the man who raped her for forty-five minutes.

The jury that was picked in that case was all white in 1982, all of the African-Americans having been struck by the prosecutor from the jury panel. The witnesses in the case were simply the victim and a police officer who saw someone running from the scene about a mile away, neither of which had very good sight in terms of making a pure identification and in fact, both of which had to undergo hypnosis in order to make their identification. That hypnosis, by the way, changed dramatically their identification and they chose Leslie Jean as the person they saw. Leslie Jean had four alibi witnesses who placed him in the chow line at Camp Lejeune at the time the rapes occurred, including the base Prison Chaplain. All of his alibi witnesses were black. Leslie Jean, on this evidence, was convicted of the two rapes by the all-white jury, of the white victim, against his black alibi witnesses.

It took eight years and every court to finally overturn his conviction only by the fortuitous finding of some evidence that showed that the witnesses' identifications had changed under hypnosis and that, in fact, their original identification of the alleged assailant didn't look at all like Leslie Jean. Finally, the 4<sup>th</sup> Circuit reversed the case. It took another eight years for us to find DNA evidence that had been stored away in a clerk's office in a file that no one knew about. Finally, after almost eighteen years, Leslie Jean was found to be completely innocent of the crime he said he was innocent of from the first day based on the DNA evidence, and he became one of the first exonerees in our state.

By the way, now as a result of post-traumatic stress syndrome from all those years in prison for a crime he didn't commit having come to this country to serve it, he ended up falling down some stairs and is now a quadriplegic in New York.

Leslie Jean would not have been convicted had it not been for race in jury selection in North Carolina. Leslie Jean was convicted in that case very much on the basis of issues of race and issues of race permeating the jury selection process. Everyone in that case knows about that now.

I say that because the case and the issue that we raise today is very real. Most of the people on death row deserve to be on death row and most of those people should lose their RJA cases if they file them because race didn't play a part. But it did play a part in some and every one of us in the criminal justice system knows that. If we do what this bill says today, we make it almost impossible to ever ferret out the cases that are the true real ones that matter, the ones where race played a role in jury selection and the jury selection played a role in guilt or innocence or in life or death.

Today, sadly, we have a bill and an override pending that asks us to turn a blind eye to justice. Victims are never enhanced when the reason that their assailant is sent to death is because of the color of their skin. We are in the midst of a process now to resolve that, once and for all to bring race—which really is the most jagged wound in our society—to a healing process. Yet we seek to cut off those cases which are nearing conclusion and finally resorting a sense of justice to *all* aspects of society—this bill cuts it off.

We train our prosecutors statewide. We review these cases statewide in proportionality review. But now we have a bill that says we can't look at statewide statistics. We look at statistics in every other aspect of every thing we do on this floor, but we say it can't ever matter in this bill.

There are ways to fix the RJA, as Representative Bradley suggests. He and I might disagree on what those are, but I agree with the fundamental principle and that is if we vote to override we will never get the true compromise that can actually not only fix the justice system here but fix this particular issue in ways that model for the rest of the nation. To refuse to consider patent evidence establishing the influence of race in death cases in North Carolina I would suggest, my colleagues, brings us perilously close to state-condoned murder, and that I'm not willing to do.

We can do better. The governor suggests we can do better. We can find a way to get at the heart of the race issue without eviscerating the statute. I really implore my colleagues—as someone who teaches criminal justice, as someone who is involved in this issue, as someone who has seen these cases—to say, “We've got to find a way to allow the few cases that have merit to seek final justice for all parties without eliminating the ability to ever get there and without eliminating ability to have closure for all of us.” By doing this veto override, we reopen a wound that was close to healing and I think we do no justice for anyone. Thank you.

**Speaker Tillis:** Representative Hackney, please state your purpose.

**Rep. Joe Hackney (D – Minority Leader):** To speak on the override.

**Speaker Tillis:** The gentleman is recognized to debate.

**Rep. Hackney:** Mr. Speaker, members, some of you have heard me on this floor before say, that after all my years in the court system, most of us know that race can sometimes—sometimes does—play a role in the criminal justice system. After much deliberation and study, we found a way to address it and, as Representative Glazier says, to try to pick out the difference between those cases where race played a role and those cases where it did not. And we didn't start with the whole criminal justice system; we started only with those cases with the finality of the death penalty...the finality of the death penalty—because if the death penalty is carried out there is no longer any remedy for anyone.

So now what we have is a situation where the racial bias in one case was proved in court. It was proved. I don't think anyone who has followed that or has read it can come to any other conclusion but that it was proven in court. Certainly the trial judge had no doubt about the outcome. So what we're doing today is turning our back on the only sensible remedy that has been devised for racism in court as it relates to the death penalty, and I think that's a sad thing for us to do here in North Carolina.

Critics have pointed out that everybody filed a motion. Well, most of those motions will be disposed of in short order when the time comes and are not likely to take up the kind of court time that the recent case did. Instead, what we have here is a purported fix which I have argued before and I will argue again simply engenders more litigation because now, how are you going to treat folks differently than Marcus Robinson was treated? There's going to be litigation about that. And what you have done, I think, if you override this veto, is add a couple more years to the litigation surrounding this issue.

So members of the House, let's confront racism in our courts. Let's don't ignore it. Let's don't push it aside. Let's don't pretend it doesn't exist. Let's address it. That's what I'm for; I ask you to be for it too.



**Speaker Tillis:** Representative Womble, please state your purpose.

**Rep. Larry Womble (D):** Thank you, Mr. Speaker—to speak on the override.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Womble:** Thank you, Mr. Speaker, and thank you, ladies and gentlemen. This, in my estimation, is a very, very sad day in the history of North Carolina, for us to sit here and consider a bill such as this. Not only is it a sad day, but I'm very disappointed that this has come before us. I'll be more so if this passes.

I'm putting trust and I'm putting confidence in you, the members of this great House who passed this bill and the bill originally in 2009 was enacted into a law. That was a great day for us in North Carolina. Why should we go back and try to undo something that was good, something that distinguished North Carolina, something that said, "We're going to face this, we're not going to run from it, we're not going to pretend it doesn't exist"? Many of the people across this state rejoiced in this Legislature for taking the stand that it took back in 2009.

Here we are in 2012: we are supposed to be progressing rather than regressing. If you support 416, we are regressing. Let's uphold the Governor's veto of this. The original bill may not have been perfect. I don't know of too many bills that were passed in this Legislature since all the years that I've been serving that were perfect bills. But the bill we passed in 2009 moved North Carolina to the forefront of equality, moved North Carolina to the forefront of righteousness. We did not turn a blind eye; we stood up and we faced it, and we defeated that evil that permeates itself in our court system. Yes, it does exist. Well, if it does exist why don't we correct it? And we did correct it. This is a sad day, rather than the great day we had. I'm depending on you, these honorable ladies and gentlemen of this legislature to support the Governor in this override. I know I will.

In closing, let me say to those of us who do believe in the death penalty—it will still be there. It is not eliminating the death penalty. We can still kill people if we want to kill them. So if that's your fear, let me eliminate that fear right now. No, it does not get rid of the death penalty. These people will not walk the streets, they will not be your neighbors, they will not live beside you—they will be incarcerated for life.

The other thing we like to say at the legislature, "We want to give people an extra tool. We want to give them an extra hammer or a nail in that toolbox." Well this is that tool that we passed in 2009. And that's all it was, it was a tool that the judges could use if they wanted to. The judges have the final say so in what comes before them.

I urge all of you, individually and collectively, to vote red...Vote red. The eyes of the nation, on this particular day right before July 4<sup>th</sup>, right before the holiday of this great nation, the eyes of this nation are on North Carolina. So on July the 4<sup>th</sup>, the birthday, let's uphold the Governor. Vote no, and when you leave here today you can hold your head up high, you can stick your chest out. "Yes, I did the right thing." And the right thing is to vote red, overwhelmingly, on 416. This is our opportunity to stand in the center one more time. Let's not lose this.

Thank you, Mr. Speaker. Thank you, ladies and gentlemen of this great House.

**Speaker Tillis:** Representative Stam, please state your purpose.

**Rep. Stam:** To speak a second time on passage of the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill a second time.

**Rep. Stam:** Mr. Speaker, members of the House: Representative Womble is correct in one regard. He says this is something that distinguishes North Carolina. We're absolutely unique. Not even Kentucky has anything like what we have here. Is it because the other forty-nine states don't believe that racial discrimination in criminal justice is a bad thing or that they have no procedures to deal with it? Of course they do. And if bill passes and becomes law, we will still have four ways that defendants can deal with claims of discrimination.

*Batson vs. Kentucky* allows challenges to every single strike of a juror before the trial judge, and that's appealable to the North Carolina Supreme Court. Secondly there are...Thirdly, I guess, since that's two—motions for appropriate relief are right there in Chapter 15A with anything you can think of, if you can think of that *you* were discriminated against. And fourth, there's the remedy of *habeas corpus* in the federal courts. So let nobody leave here thinking that if we pass this bill, nobody can come into court and claim racial discrimination.

Now Marcus Robinson—we heard from Speaker Hackney that it was proved in court by the trial judge that there was racial discrimination. Actually, the trial judge was not even allowed to speak at that hearing. And Marcus Robinson had three non-white jurors on his jury—exactly what you would expect statistically in Cumberland County. But that's the craziness that comes from the RJA.

I urge you to vote green. This is about justice, not about groups—individual. This is what we’re about as part of western civilization.

**Speaker Tillis:** Further discussion, further debate?...If not, the question before the House is the passage of Senate Bill 416, notwithstanding the Governor’s objection. All in favor will vote aye; all opposed will vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. Seventy-two having voted in the affirmative and forty-eight in the negative, Senate Bill 416 becomes law. The Senate will be so notified.

~ Fin ~

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**SB 514 – Defense of Marriage  
Rep. Paul Stam - Remarks on 2nd Reading  
September 12, 2011**

*In 1669 the second law passed in North Carolina established marriage between a husband and a wife. At a special session the General Assembly voted to put the question to the people. The vote on the referendum was 61% to 39%. Rather than include the voluminous House and Senate debates that were repetitive, I have included a debate at Chapel Hill that summarized the issues. Later the federal courts legalized same-sex marriage nationwide.*

Audio available at [this link](#)

Debate begins: 00:42:42

Rep. Stam’s comments: 00:45:16

**Speaker Thom Tillis (R):** Rep. Stam, please state your purpose.

**Rep. Paul Stam (R – Majority Leader):** To speak on the bill.

**Speaker Tillis:** The gentleman is recognized to debate on the bill.

**Rep. Stam:** Mr. Speaker, members of the House: For a long time—since 1669—North Carolina has had marriage as that between a man and wife. I put on your desks Acts of the Albemarle General Assembly. These are actually the very first two laws passed by the Colonial Assembly. You may be interested to read what the first law was—I have Representative Cleveland checking it out because it’s amnesty for immigrants. But they were legal immigrants! But the very second law—and this was even before we had the Constitution drawn up by none other than John Locke himself for North Carolina—I’m not going to read it, it’s in Old English.

And then we had another statute [*that*] made it clear marriage is between a man and a woman. Back in 1996 the General Assembly passed another law—Senate Bill 1487. I have that on your desks: “Marriages, whether created by common law, contracted, or performed outside of North Carolina between individuals of the same gender are not valid in North Carolina.” As an aside for a few of the linguists here, I actually have an objection to this law and that is that they used “gender” instead of the proper word. But I think we know what they mean: male and female.

Turn the page and take a look at some of the illustrious people who voted for this bill. It includes former Speaker Brubaker, former Speaker Morgan, former Speaker Black, former Speaker Ramsey, former Rules Chair Culpepper, former Speaker Hackney and Governor Perdue. On the Senate side it includes Attorney General Cooper. And there are a host of others that are still here in the House: Representatives Hill and Crawford, I’m sure I’m forgetting some.

The measure that we have before you today is exactly the same policy about marriage as was adopted by this Assembly in 1996. That is: there’ll be no same-sex marriages performed in North Carolina and those performed outside North Carolina will not be recognized. There is no difference in the policy.

I calculated on the back of an envelope that since that time there have been about twenty-five thousand bills filed. Of those twenty-five thousand bills that have been filed by your predecessors (and maybe yourselves) not a single one of them has attempted to change the policy that we have about marriage. So why are we here today? The reason is because of court decisions and legislative decisions in other states which have forced us to this.

About thirty states have passed amendments to their constitutions protecting the institution of marriage from redefinition by judges. We're the only state in the southeast that has not. Every state that has put it before its people has passed it. In one state, Arizona, it failed once and then was put before the Arizona people again. It passed. The question is this: Are we going to let the people decide or judicial decisions based upon the decision of about half a dozen states? This is what happened in those states.

I'll take Iowa as an example. Now you would think of Iowa as a place to grow corn and ethanol. In the bell-shaped curve Iowa is right there in the center. It votes one way one year, the other way the other year, it's neither conservative nor liberal, it's just right there in the middle. And it had statutory provisions limiting marriage to those of opposite sexes. But it had a Supreme Court that decided that somehow in the interstices of their state constitution, imbedded in there from the 1800s was a command that the state of Iowa must have same sex marriages.

We have that same issue in our state Constitution from 1868. It would be very possible for a judge in North Carolina, so disposed, to decide that same-sex marriage has been in our Constitution all along.

We cannot upset the settled expectations of our people as to what marriage is and what it's not. Several states have gone back and forth on this. For example, California has had conflicting decisions—up and back and up and back. They had situations, I believe, where eighteen-thousand people were married—same-sex marriages—before Proposition 8 stopped them. Then you have a federal judge saying that was unconstitutional, and then that's been stayed by another judge. We cannot stand that—to not know the status of the marriages in North Carolina. When I say “can't stand it” I don't mean from an ethical standpoint. I mean it affects how people manage their affairs.

So, I recommend it to you—and, Mr. Speaker, I also have and would like to put this in the record—what I've put before you: a memorandum by the Alliance Defense Fund dated September 9, 2011, addressed to me and I'll give the original to the clerk with a slight change that I'll mention here that's initialed. It is an accurate statement, in my opinion, of the legal effect of this amendment.

The amendment reads, it's very short: “Marriage between one man and one woman is the only domestic legal union that is valid or recognized in this state.” Now that was the Senate bill, and the legal effect of the seven previous bills that have been introduced in this House from 2004-2010 is exactly the same. We have had this before us for seven years, if I'm counting correctly. This is the first time we've ever had the first hearing on it, but the problem has not gone away.

Since we first introduced this in 2004 we've had several additional states that have legalized same-sex marriage. For example, New York State, and of course the effect of that is that since there is such a large population in New York, and since so many New Yorkers want to leave New York—where are they going to come? Well, they come south because now that we have air conditioning it's a good place to come. They used to not want to come down here except in the winter time. Well, I hope they come. I'm from New Jersey myself and I left 40-some years ago. I like to go back and visit, but I'm not going to live there.

They're all going to come south and they're going to bring with them their same-sex marriages and they're going to want to get divorced, they're going to have to decide child custody issues and lots of other things. And we're not equipped to handle that if a court decides to the contrary. I've decided not to read this memorandum to you, but rather, as the designated manager in charge of this Senate bill, tell you before the vote that, in my opinion, this memorandum dated September 9, 2011, to me from a reputable lawyer accurately states the effect of the amendment.

And I'm just going to very briefly mention a couple of things. First of all, “a domestic legal union.” There's been a complaint that that is so vague that nobody knows what it is. I saw from a lawyer saying, “Well, it's never been used in North Carolina. We don't know what it means.” But actually that is the language of Title 1 of the United States Code. “For the purpose of federal law, marriage means only a legal union between one man and one woman as husband and wife.” This federal definition of marriage enacted in 1996 in the Federal Defense of Marriage Act is consistent with the longstanding definition in Black's Law Dictionary that marriage is the “legal union between one man and one woman as husband and wife.” It has never been challenged as vague in the context of a governmentally recognized family status. In the context of a marriage provision with the addition of the additional modifier “domestic,” legal union cannot reasonably be construed to refer to a trade union or a labor union or even a credit union.

Second, it does include what has happened in several states and that is civil unions, domestic partnerships. Let me give you an example: The New Hampshire (or perhaps Vermont) Supreme Court said, “Well, you don't have to have marriage for same-sex couples, but you have to provide another legal status that has exactly the same incidents as marriage.” So, it's just interchangeable words. So what this is saying is that no matter what you call it, if it's an intimate relationship connected with a family, then the only one of those that is recognized in North Carolina is that between one man and one woman.

Some have tried to say that this would prevent private companies from offering benefits, whether it's life insurance or health insurance, or any other kind of insurance, to domestic partners. Well, the answer is first of all it wouldn't have that affect under the basic principle that a Constitution deals with the actions of government rather than private parties. But to allay that concern that some had, we made it crystal clear by the second sentence that this section does not prohibit a private party from entering into contracts with another private party, nor does this section prohibit courts from adjudicating the rights of private parties pursuant to such contracts.

Speaker Hackney told us in Rules Committee that he doesn't know what a private party is, or that our courts won't know what a private party is. Well, I'll invite you to read any contract. It says, "A, B, C and D – the parties of the first part, hereby contract with Jones, Smith and Wesson, the parties of the second contract, to do the following..." Lawyers know what parties to a contract are: they are the contracting parties. And courts will be able to recognize those contracts and adjudicate it without running afoul of this amendment.

I've heard all sorts of stuff. For example, that this amendment would cause great harm to our domestic violence laws. The citations that we saw from one publication were to a case that had been overruled by the Supreme Court of Ohio. In other words, this has come up twice, in Ohio and Kansas, and in both situations those concerns were beat down. And my opinion is there's not a slightest chance that this would somehow legalize domestic violence. I don't even see the argument to that.

Mr. Speaker, this amendment has effects. While it doesn't stop private parties from contracting for same-sex partner benefits, it will affect whether the state or local government can do the same. It would not stop a local government from offering benefits to individuals who might have same-sex partners, but it would prevent them from offering those benefits on that basis. And I'm going to give you an example. The University of North Carolina has a health insurance program that allows you to add your domestic partner. I took a look at that last week. There are two ways to get your domestic partner on there...

**Speaker Tillis:** Twenty seconds, Representative Stam.

**Rep. Stam:** Twenty seconds. It would not allow you to use option number 1 based upon a same-sex marriage from another state, but it would allow you under the six criteria to check off three of them like, "We're living at the same house," or "We're paying rent together." And if you met it under those objective criteria, they could do it. I urge your support of the bill proposing an amendment to the Constitution.

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*Rep. Stam's 2nd speech: 03:59:08*

**Speaker Tillis:** Rep. Stam, please state your purpose.

**Rep. Stam:** To speak a second time on the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill a second time.

**Rep. Stam:** Mr. Speaker, it's 5 till 6:00; I'm not going to repeat anything I've said before. But as the manager in charge of the Senate Bill, I do want to state one thing for the record concerning domestic violence. And I think by me stating this it might actually help Representative Hackney's thoughts on this. I don't think he's correct at all that this changes the effect of our domestic violence law. If you look at the categories, there are six categories. Now one conceivably could be affected, that is "current or former spouses." So obviously if someone is not a same-sex spouse, they are not a spouse under this. But they're not under our law anyway today.

But there are several other categories there that would cover that situation, even if they were living in a same-sex relationship or domestic partnership or whatever. That is "are current or former household members." And the reason I mention this is Equality NC put out this publication you might have seen. Their only citation to the holding that domestic violence law is unconstitutional as applied to unmarried domestic violence victims is an Ohio case that was later overturned on appeal to the Ohio Supreme Court. And I have a staff memo here from Hal Pell, who concludes after looking at the Ohio cases, "Consequently at the outset the lower court ruling just doesn't appear in S106." That's the Senate version. "It would be inapposite to cite the reasoning of the lower appellate court in Ward which was reversed by Carswell. This would be true on the issue of whether SB 106 invalidates or doesn't invalidate the domestic crimes law. The Ohio Supreme Court held that the Ohio domestic crimes law which applied

to persons who were living as spouses did not create or recognize the legal relationship that approximates the designs, qualities or significance of marriage as prohibited by their amendment.”

So I think there’s really no basis for that concern, but I did want to state it on the record for whatever that would do for the interpretation of the amendment as construed. I encourage the members to vote aye on the amendment.

**SB 514 – Defense of Marriage**  
**Rep. Dan Soucek - Remarks on Concurrence**  
**September 13, 2011**

**President:** Senator Soucek, for what purpose do you rise?

**Sen. Dan Soucek (R):** To speak on the bill.

**President:** You have the floor.

**Sen. Soucek:** Thank you, Mr. President. Many of you, if not all of you, have been asked, as I have been, “Why do we need a Marriage Amendment?” I say, when we look at the natural family it is the fundamental, time-tested building-block of society. It’s been shown throughout history, across cultures, across religion to be the environment where we raise and nurture children in the healthiest possible way.

Is there a better environment for children than a low-conflict relationship with a mother and father? Statistics overwhelmingly say no. When you look at all the different rates—graduation rates, education, crime—this is the environment we want to promote to look to the future of our society.

Where does our future come from? Our future comes from our children. They’ll be the ones who lead in the next generation. They’re the ones who are going to exist. Without procreation between a man and a woman we no longer have society. And this is the fundamental building block of how we do this in the healthiest possible way.

Now, some people have looked at—that’s the purpose of marriage, marriage is not a system of benefits. There are benefits the State uses to correlate with marriage but that’s not its primary purpose and therefore should not be an argument as to why it should be other than between a man and a woman. It is for the purpose of a healthy family and a healthy society.

This is also not a partisan issue. You can look at the vote in the House yesterday—we had bipartisan support of this amendment. You can look at this body here. For the last eight years Senator Forrester has been moving forward with this. We have had members of both parties co-sponsor this bill, members of the rank-and-file as well as leadership. In 2005, Senator Walter Dalton was a co-sponsor of this bill. It’s not a partisan bill, and we have not made this an issue to be partisan. When we had concerns that were addressed about it being on the November ballot and about it being for voter turnout, we agreed to move it to a primary ballot because that will not be between Republicans and Democrats—because this is an issue that is important to us as the State of North Carolina and not because of partisan divide.

Another issue that’s been talked about is economics and contract law. I really don’t think there’s a lot of validity to these arguments. There isn’t data. I’ve done the research as to the economic viability of states and communities based on marriage and what the state’s laws are. In fact, when you look at ALEC (American Legislative Exchange Council) they did a survey of the ten most economically healthy states: nine of the ten have laws affirming marriage. In fact, all ten of the bottom states that are rated by them as economically least-healthy all have laws that deteriorate traditional marriage, natural marriage. And one economically interesting fact is that they have calculated the amount of money it costs the State in the past budget spent on broken families and they estimate it to be 1.3 billion dollars. There is an economic impact.

Any of you who sat in any of the committees...I’ve been in the J-1 committee, I’ve been on the Education Committee, JPS, and the break-down of the family has cost so much money and so much heart-ache and so much of our state dollars that I look at this as a possible effect on all areas of state government in a very healthy way.

And finally, I think it comes down to something Senator Forrester said about letting the people vote. When you look at the preamble to the Constitution of North Carolina it begins with, “We the people of the State of North Carolina.” And that’s what we’re asking this body to do: to put this on the ballot so that the people of North Carolina can vote on this. Thirty-one of thirty-one states that have voted on this have voted to affirm marriage in their Constitution. I don’t see why, as the only state in the southeast, we will not be a state that allows our people to vote on it as well. The Constitution is the people’s document and they have the ultimate authority, and we should give them the ultimate authority on this.

There are many issues that are complicated that our system of government allows legislators: budget issues, complex legislative issues—these are roles of legislators because of the complexity of it and trying to put it to the vote of the people would be very difficult to explain. This is not like that. This is not a law; this is a constitutional amendment for the people's Constitution and people are uniquely qualified. They live their daily lives in and around marriage. They see society. They see it in their everyday life and therefore are uniquely qualified to answer this question.

So I'll ask you—will we have a system that allows a judge to determine what the people of North Carolina want or are we going to let them vote on a constitutional amendment?

**“Defense of Marriage” Constitutional Amendment  
Debate between Rep. Paul Stam & Rep. Rick Glazier  
University of North Carolina at Chapel Hill  
Moderated by Prof. Mike Gerhardt  
October 2011**

**Professor Mike Gerhardt:** Good afternoon. For those of you who don't know, my name is Mike Gerhardt. I teach Constitutional Law here and have the privilege of also directing the Center on Law and Government. And I just want to say a couple of words before we get started today.

I'm first grateful for everybody to be here and grateful for our two legislators to be here, as well. What you may not know is that the Center on Law and Government does occasionally sponsor some programs. The main purpose of those programs is to educate people about the law and how lawyers make decisions about difficult issues outside the courts. And I hope that today's program will be in that same spirit. It's about education. I know that the issues that we're going to be talking about today are ones on which people have very strong feelings. I think it's safe to say our speakers have very strong feelings. I know everyone here has strong feelings. But there's no better place to have this discussion than a law school.

A law school is the ideal place for people to talk about difficult issues in a civil, respectful and tolerant way. The stock and trade for lawyers, as you know, is argument. And what we're going to listen to today are the different arguments these two lawyers have to share with us.

What I'd also like to do is give you a sense of our format and then we'll get started. We'll move as quickly as we can because time is fleeting. When I'm done our speakers will take turns speaking, each taking ten minutes, and then after that I will have a question for each of them followed up by a brief response and then another comment by the other speaker. And then as I do this, you should hopefully be filling out index cards with questions that you may have. I've already gotten some questions sent to me. But if you do have questions, please send them down so I can see them. We think that would be the most aurally efficient way to ensure that questions get asked so that I don't get eight or nine of the same questions asked in a row. I will try to be as fair as possible in reading through them and prioritizing them and asking your questions best I can so that we can make the most use of our time together.

And let me also just mention, of course, since we are in a law school: yes, it is true—the First Amendment does apply here. We take that seriously as well. But the First Amendment also tests us. It tests us to try to make choices and make decisions as carefully as we can to use our speech responsibly. And I see this as a class, and I'd like to proceed in that manner, with your indulgence.

So, the first person I would like to introduce is Representative Paul Stam who is the Republican Leader in the House. He has introduced the amendment we'll talk about today. Paul is a graduate of our law school, and we welcome him here. Our other speaker is Rick Glazier from Fayetteville. He's not a graduate of our law school, but we do welcome him here. We think of him as a friend. And we really appreciate his attendance as well.

So without any further ado, let me let Paul begin and we'll go from there.

**Rep. Paul Stam (R – Majority Leader):** Thank you very much, Professor. When I was a student here almost forty years ago, I always sat on the second row on the ends. And I'll tell y'all why if you want to know why: it was for strategic legislative purposes.

I would like to talk for about ten or twelve minutes and hopefully raise enough questions in my talk that you'll have plenty for us at the end.

I passed out—perhaps I didn't have enough copies—three items that I'd like to refer to. One is an Act Concerning Marriage from 1669. The very second law enacted by the Colonial Legislature involved marriage, even before we had the Constitution written by John Locke. If you're interested, the very first law was the problems of amnesty for immigrants, so I would suggest you read that for some good ideas because there were a lot of people coming here

being chased by their creditors. But the second law arose because there weren't enough Church of England ministers to marry people. So this act said, well, the Governor and the Council of State can do it.

At the very bottom, the operative words begin, "And be it enacted by the Pallatine and the Lords Proprietors of Carolina by and with the consent of the Present Grand Assembly and authority, that any two persons desiring to be joyned together in the holy state of matrimony taking three or four of their Neighbors along with them, and repairing to the Governor or anyone of the Councell before him declaring that they doe joyne together in the holy state of Wedlock And doe accept one the other for man and wife." Turn the page, please.

Then we've had for many, many years—I believe since 1871—General Statute 51-1 which set out "a male and female person." Then, in 1996, when some of the discussions were happening in Hawaii...A Hawaii court had found that their limitation of marriage to man and woman might not be constitutional, so there was a Federal Defense of Marriage Act—which you're hearing a lot about—but then also this one at the state level that says, well, what it says—you can read it. [G.S. 51-1.2]

It's exactly the same policy—although not the same operative legal effect—as what's down at the bottom which is the text of the proposed amendment that will be on the ballot in May, or whenever the first primary is, in 2012. That is, we're not recognizing same-sex marriage and we're not recognizing functional equivalents of same-sex marriage either. So that's been the policy for about three hundred and forty years in North Carolina, and of course goes back thousands of years. But that doesn't mean that this hasn't—the debate you're having today—hasn't been a matter of discussion for thousands of years. You know the Greeks, of course, discussed quite a bit whether same-sex intimate relations were a good or bad thing and how to raise children. It's...The more I'm in the Legislature, Professor, the more I realize there are very few new discussions that have not happened before.

But I raise this especially—realizing this was reaffirmed as recently as fifteen years ago—when I hear so much talk about the fact that this amendment is hate-speech because I have here all the people that...a lot of the people who've engaged in this exact same form of hate-speech by voting for that bill in 1996. And you know, since 1996, we've had a back-of-the-envelope calculation: about twenty-five thousand bills filed in the Assembly and there has not been a single one of the twenty-five thousand to repeal the marriage laws that we have. Instead, the purpose, the program is to try to get judges to do it—either this state or of another state—to accomplish what could never be accomplished through the representatives of the people.

Now, I passed out another piece of paper that has an amendment on one side and a vote on the other side that was offered just last Monday as an amendment to the proposed marriage amendment. And I'll, at some point, be asking Representative Glazier why forty-three people would think that it would be a good idea to put in the Constitution, "Marriage belongs to the dominion of God under the authority of the church. Licensure of marriage is prohibited in this state."

In other words, the ultimate goal, of course, is to do away with state sanctioning of marriage. And you have to realize why the State got involved in marriage to start with: it wasn't about love, or romance; it was about children. So that, for example, in medieval Europe as people would go around and have secret marriages, no one really knew whose child was the child of whom, who was otherwise married, and for me to marry that person would be bigamy, but they maybe didn't tell me about it. There was no licensure, so how would you know?

But it's been maintained—not because of love or romance, but for the welfare of children. Let me take just about two or three more minutes?

**Prof. Gerhardt:** Okay.

**Rep. Stam:** ...To say what the amendment does and doesn't do. You have the text of it before you. It restricts state recognition of intimate family legally-recognized unions to a marriage of one man and one woman. Therefore it prohibits polygamy, bigamy. It prohibits same-sex marriage. It prohibits anything that's not one man and one woman. And you'll disc... You'll realize after a while that everyone in this room would put some limit on who could marry whom. Now you may not come into it thinking that, but if you drill down deep, certainly no one here would say that two three-year-olds could marry, or that I could essentially kidnap somebody and have a valid marriage by kidnapping somebody. The question is: if there're going to be limits, what are they?

Now, what the bill does not do is restrict the private—the amendment would not do—is restrict the private, contractual affairs of individual people.

I'm just going to use one example that I think illustrates it since most or all of you are students here at Carolina. There is a health policy plan, and you can get someone else on your health policy plan two ways. One is by proving you are married to that person, or have a civil union certificate from some other state. The second way...And that would not be permitted if this amendment passes. It's probably not permitted now under our current statute, but that appears to have been forgotten. But there's a second way that you can do it, and that is answer a questionnaire, file

an affidavit that you're not married, that you have a mutual commitment to share responsibility, and you have six possibilities like, "Do I share the rent?" and you have to check off three out of the six things. That type of benefit for another person would be allowed under the amendment. And if corporations want to give whatever benefits they want to whomever they want, that is not prohibited by the amendment either.

Those are sort of the major legal affects, and I'll have time, I'm sure, for lots more questions.

**Prof. Gerhardt:** Thank you.

**Rep. Stam:** Thank you.

**Prof. Gerhardt:** Rick, the floor is yours.

**Rep. Rick Glazier (D):** Thank you very much, Dean and students and Professor. Let's be clear what the proposed amendment suggests. It goes far more than what Rep. Stam talks about. It bars heterosexual and homosexual domestic partnerships. It bars heterosexual and homosexual civil unions. And it is not a codification of existing law, but a vast expansion creating one of the most personally intrusive and extreme laws in the country, setting North Carolina on an eight-month course for a bitter and divisive campaign pitting North Carolinian against North Carolinian, family members against each other, and almost certainly setting the stage for acts of prejudice across the state on all fronts.

At a time when North Carolina needed leadership and unity, our citizens found little in the General Assembly last week. And what was the exigency for this amendment requiring a special legislative session to adopt it since the law, as Representative Stam has suggested, has been clear for years—literally decades—that marriage is the only recognized institution between a man and woman under the current law? So why the need for the amendment?

Was there a new law being proposed by someone in the legislature? No. In fact, none had ever been. Was there a federal or state lawsuit seeking to overturn the current law? None, and to my knowledge, none had ever been filed. Was there overwhelming support or polling data indicating this issue was top of mind and awareness for the vast majority of North Carolinians? No. Jobs and education and health care: that's on people's minds. Practically every topic was ahead of this proposal.

The sad genesis of this amendment—the first one ever proposed in North Carolina to my understanding that seeks to eliminate minority rights rather than expand them—was, quite simply, fear. The North Carolina Legislature seeks the public to amend our Constitution out of nothing but fear: fear of aberrant judges, fear of the unknown for some, fear of North Carolinians who just might search in their capacity for liberty to encompass some different principle than prior generations had allowed. As Justice Kennedy has written, "Liberty presumes an autonomy of self that includes freedom of thought, belief, and expression—and certain intimate conduct," but apparently not in the North Carolina Legislature.

So what is the effect of this amendment? Well at a minimum—and we're going to talk about an effect that not many of us even thought about until the other day—but at a minimum it appears to change the rules of legal recognition of joint parenting rights, legal recognition of a child's relationship to her parents, eligibility for public housing and housing subsidies, potentially access to employer-based health and other benefits by partners as well as non-biological non-jointly adopted children, access to Medicaid and Medicare benefits, ability to enroll non-biological children in public schools, ability to make health care decisions for partners, ability to obtain life insurance, effects on many existing deeds, trusts, and wills, and it enormously affects the domestic violence laws in this state—precisely the reason for the state Domestic Violence Coalition's opposition to this bill. And, I might add, probably costs 25% to those who receive SSDI and Medicaid benefits from a disability and who now live in domestic partnerships under the Federal Marriage Amendment.

This amendment offered in final form fifteen minutes before it was put on a Rules Committee Calendar, discussed in a committee for less than one hour—with no public debate, nobody allowed to speak, including law professors—then debated and voted on the floor of the House not one hour later, is a model of how never to govern—sure to be included in every political science textbook in this country. And it threatens to alter the family-law landscape in ways never even contemplated by its authors and I can guarantee you certainly not understood by the people who voted on it in the House of Representatives.

In *Zablocki v. Redhail* the court wrote this, "Marriage and relationships is a coming together, for better or worse, hopefully enduringly intimate to the degree of being sacred. It is an association that promotes harmony in living and a bilateral loyalty between partners." And Justice Blackmun later wrote in dissent in *Bowers*, soon in future years to become the majority, "And we protect family because it contributes powerfully to the happiness of individuals, not because of a preference for a typical stereotypical household."



Domestic partnerships contain many of the exact same functions this bill outlaws. An agreement between parties that recognizes families may include a third category of not married and not single people, using legal principles so that relationships can be acknowledged by lawyers and employers, legislators and citizens. These partners exhibit mutual obligations to each other of support and of love and companionship and subsistence and permanence, yet this amendment seeks to eliminate that as a North Carolina value and a legally recognized identity—with great cost not only to the couple, but our society. The right to intimate association guaranteed to all of us becomes meaningless if it only applies to heterosexuals. To be permitted to have a life-time relationship with someone that has virtually no legal effect is a gross example of unequal treatment by a society.

Civil rights are not defined as a reward given for good behavior. How many other people, Representative Stam, do we intend to constitutionally vote off the island this session? Just as in *Plessy v. Ferguson*, for that perpetuated a particular harm, “the disguised harm facilitated by separate but equal,” the same is true here. This amendment does nothing less than create an equal discriminatory doctrine of tolerance but not acceptance. We have just abandoned nationally the “Don’t Ask, Don’t Tell” policy, and now in North Carolina we seek to constitutionalize a far more virulent form of it when the nation and international history is moving in the exact opposite direction.

The family unit doesn’t simply co-exist with our constitutional system; it is an integral part of it. It presupposes a social system of values. Family units allow the individuals to work together and provide the resources and social support they need to navigate life. Family members care for each other and are committed to shared interests and there is emotional attachment that derives from the intimacy of daily association. And families in any form all meet the incredibly human and societal need for trust and love and closeness. And despite the efforts of some, and some of my colleagues—this amendment, no government can ever outlaw or create a second class of human relationships in this country. And the attempt in this amendment, aside from all the personal suffering I believe it’s going to cause many fellow citizens, also fails to recognize its economical form. Individual interdependence reduces economic burden on society and when disruption occurs like unemployment—10.4% in our society—when that happens, family members are often capable of bearing this burden without reliance on outside sources. But through this amendment we now cut them off from this safety net.

This amendment fails to realize that the conflict over same-gender relationships is not a zero-sum game. Instead, each long-term committed relationship is part of a system in which the prosperity and well-being of the whole system is dependent on the prosperity and well-being of each of its parts. And long-term legally recognized relationships are a unifying force, not a divisive one. Society benefits writ large when its members can take care of themselves. And throughout history it is family and long-term committed relationships that make that a reality—regardless of their form, unlimited by biology. It is the nurturing of family values that affects the quality of family life, not the form of the family.

Liz Taylor, I’m certain, loved all her husbands—all seven of them, but I think that society is a whole lot better off by a LGBT couple in a committed lifelong relationship than someone who marries seven or eight times. In short, a limited view of family directly contradicts the importance of family to society.

Representative Stam argues tradition—1669, a time when, I believe, we burned witches at the stake. You argue tradition. Well, like *Fiddler on the Roof*, on the other hand, if it is tradition of this state to deny important ties based on love, it is a tradition which has relied on intolerance and fear and prejudice and it does not apply to everyone.

I would suggest this state has a more powerful tradition: pluralism—of making room in the law for all who wish to participate and meaningfully contribute to our society. The challenge of leadership that we failed last week is to focus this state on shared values and not on our differences. The test of freedom’s substance is the right to difference as to things that touch the heart of the existing order. We are all scared of the dark, but the real problem is when we’re scared to see the light. And in the end, what this amendment does is it fails to recognize that constitutionally we are not just expanding a statute, we are expounding on a Constitution. This court—the court in *West Virginia Board of Education v. Barnett*—many decades ago wrote, and they had it right, “The very purpose of the Bill of Rights is to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and establish them as legal principles to be applied by the courts. One’s right to life and liberty may not be submitted to a vote. They depend on the outcome of no election.”

But under this amendment, the most intimate personal decision as human beings we will ever make—who we wish to spend our life with—now becomes subject to a government stamp of approval and enshrined in the Constitution of this state, and we do it out of nothing but fear.

I close with the idea that I think is best stated actually by author Anna Quindlen: “No one ever does the right thing from fear, and so many of the wrong things are done in its shadow. Homophobia, prejudice: all bricks in a wall that divide us—bricks of clay of fear to that which is different.” “At the heart of liberty is the right to define one’s own existence as to the meaning of the universe,” said Justice Kennedy, “and of the mystery of human life.” And the

heterosexual majority not only denies love and commitment in this amendment as values held by homosexual citizens, but it prevents them from claiming those values even when that is empirically not the case.

The Constitution, I suggest, Representative Stam, of North Carolina, was not designed as a tool to divide the citizens of this state one from the other, nor as a device to maintain the majority's fiction about the minority. We have enemies enough, as 9/11 said, to all of our shared values as North Carolinians. We threaten our own good when we make enemies of our friends.

The Constitution holds equality as an ideal, and the divisiveness and irrationality and fear at the heart of this amendment cannot be tolerated. The law of North Carolina and the people of North Carolina should and do beat with a better blood.

[Applause]

**Prof. Gerhardt:** *[motions for silence and tries to speak]*

**Rep. Stam:** Let them clap.

**Prof. Gerhardt:** I don't get applause in my classes. No. Let me ask Representative Stam the first question, if I may. And I'm combining questions that come in to me, so I'm sorry if they won't be the exact wording that has come to me. But a couple of the questions have focused on the procedure last week and the special procedure that cut off debate and limited debate and limited input on this particular measure. For something as important as a proposed state Constitutional Amendment, why that procedure and also why the timing in May, which would seem to, as the question puts it, "stack the deck" to ensure that the Republicans will have more of an opportunity than otherwise?

**Rep. Stam:** Okay. The reason I'm standing is not because you have to stand in class, but because my chair is broken and I'm having to sit on my heels.

First of all, why it's in May as opposed to November was at the insistence of Governor Perdue who told a dozen Democrats that they could vote for it if it was in May but not November. That's why. We wanted it in November. The idea that it actually helps Republicans is because they'll vote more. Actually, usually more Democrats vote in the primary, so that's the reason for that.

The procedure: We debated it for three and a half hours on the floor. It is of the exact same operative legal effect as thirteen previous marriage amendments that had been introduced in 2003-2010 which were always sent to the Rules Committee of the House and the Ways and Means Committee of the Senate. So they've had eight years to do all the studying they wanted.

We had hundreds or thousands of emails and letters and phone calls. There wasn't a single person at the Assembly who didn't have plenty of input. And when you have a special session, you can drag things out or you can proceed—and we proceeded. And it would be ungracious to say that I learned that at the feet of my friend Representative Glazier the last session. But there was no lack of discussion, there was no lack of study. All the legal memos went to everybody, they had all seen them, and we proceeded to a vote. We're a democracy.

**Prof. Gerhardt:** Rick, for a minute or so?

**Rep. Glazier:** Yes. So the idea, of course, of a Legislature is that it's the public's house. And regardless of the emails we received and whether members read them, or the memos we received and whether members read them, the whole idea of debating the public's business in public is so that they get to participate in the debate. There was no public participation in this debate. It was a set-up from the day we walked in, the minute we walked in. And we can't say that we're a transparent body and then hand out a new version of the bill fifteen minutes before a committee hearing, allow no public input on that even when the lawyers on that committee disagree reasonably on the language. And I'll show you what it's led to. If you take a look at your bill, you'll see...or at the law, you'll see that actually what the law does that we passed has two parts to the constitutional amendment. A first sentence which defines the marriage as the only recognized entity and a second which seeks to undo some of the concern about business relationships.

Well unfortunately, if you look at the last section of the bill, the second sentence is omitted from what is going on the ballot. The only thing going on the ballot is the first sentence. The public doesn't even get to vote, hear or debate the second sentence. Now as law students, at least it seems to me, when we're putting a constitutional amendment on the ballot, it ought to be the language that the people are actually voting on, for a full discussion. How we're going to interpret it. The legal issues that are going to come out of it should the amendment pass—and I

believe it will fail—but should it pass, all lie at the hands of the Legislature and the majority who sought to get this through as fast as possible, to limit the political damage, to meet the political exigencies of a sect of their political ideology, and we are all now left to pay the price. It is the wrong way to have proceeded; at least it seems to me. I would think the Founding Fathers are rolling over in their graves thinking that's how we amend the Constitution of this state.

**Rep. Stam:** Very briefly, the version which supposedly came out fifteen minutes earlier was actually circulated three days earlier and Equality NC actually gave it to one of our members three days earlier because he had gotten it. So there was no surprise to anybody who was paying attention.

**Rep. Glazier:** Deliberate, then, that we have no second sentence on the ballot?

**Rep. Stam:** Well actually, I have a little sympathy with you there. I remember going to Amendment One in 2004, Tax Increment Financing, and you cannot tell from that ballot wording actually what it did and there's actually a lawsuit about that. But for time immemorial, we have from the expert here, the wording on the ballot is set by the Assembly and it almost never is the entire thing. This just hap... This bill, amendment happens to be shorter than most, but the sentence you complain about not being on the ballot is not even strictly necessary because that's the effect of the first sentence anyway. It was just put on there because some so-called business leaders were claiming—incorrectly—that it would stop private contracts.

**Rep. Glazier:** Generally, I would think superfluous language doesn't make its way into Constitutional Amendments, especially when you don't have time to look at it. [Applause] And second...secondly, I think that the vast majority of your legal staff—the legal staff at the legislature and the lawyers in the legislature—would beg to differ that that second sentence is of no meaning.

**Rep. Stam:** It's unnecessary; it's not that it has no meaning. It would be the s...It's the way it would have been interpreted anyway.

**Rep. Glazier:** I am not telepathic enough to know how the courts are going to interpret it.

**Rep. Stam:** But you don't object to the second sentence?

**Rep. Glazier:** I don't object to the second sentence. I object to the whole amendment, but...but in the end we don't do any favors to the public. It's one thing to short-hand statement a constitutional amendment but keep essentially the same text in there in order to fit on a ballot initiative. It's another thing to take out a second sentence which was deliberately put in as a political compromise to get the votes to put the thing on the ballot to begin with.

**Prof. Gerhardt:** Now I teach legislative process. So if this is confusing to anybody, you know where to go. No, but it's a very important point, and that's why I wanted to let them have a chance to air it and we may not even be finished with it, but let me ask Rick a question then.

Representative Stam talked about the history of state regulation of marriage. And historically, marriage has been something that has been left to state regulation. As Representative Stam points out, marriage is restricted in all sorts of ways: age, relationship, perhaps even residence, other...other conditions. So why is this not the same as the other kinds of restrictions? In other words, why can't the State make a choice here like it does in every other situation with respect to marriage?

**Rep. Glazier:** First, as to the regulation of marriage, I'm reminded of the *Loving v. Virginia* case. States regulated marriage to the point that in the 1950s and '60s where legislatures in the South passed laws that said that people who were black and white couldn't marry and it was felony to do so. That became unconstitutional and struck down. So, legislative determinations as to marriage also have had constitutionally difficult origin—not only in this state, but elsewhere.

Second, we're not putting in a statute to be changed as generations believe that definitions might should change. We're enshrining in the Constitution an inherently unequal circumstance.

Third, Representative Stam talked earlier about this idea of marriage as the only sort of idea behind family relationships—talked about the fact that marriage exists solely for procreation. In that case, I suspect we ought to invalidate all infertile marriages, infertile folks who are married. Maybe we ought to invalidate everyone who's a

senior citizen and past the child bearing years, or we ought to invalidate people who choose simply to get married simply out of that very old-fashioned concept of love, but don't choose to have children. What a ridiculous dichotomy we create.

And in this case, on top of it, the Constitution is a living and breathing document, both of North Carolina and of the United States. It isn't fixed. The Founding Fathers didn't presume to be omnipotent about what liberty entailed. They didn't presume to have that knowledge that the North Carolina Legislature now decides it could have forever. And so the idea of the definition of marriage has changed over time, between societies and between cultures. And now we seek to enshrine one view forever in the North Carolina Constitution at odds with every other principle we have as a human and civil right, and that is simply wrong.

**Prof. Gerhardt:** Representative Stam.

**Rep. Stam:** Yes, two things. If I recall, *Griswold v. Connecticut* which found in the penumbras, emanating from the penumbras of the Constitution this right to privacy...I haven't read it in a long time, but if I recall, Justice Douglas went on and on about the wonders of married love between a man and a woman and that somehow then justified what he did. Here's my question, because I don't think you answered the professor's question. And that is, if you...But I'm going to make it a different way. If you accomplish your program, and that is to get same-sex marriage legal in North Carolina, what will you say to the loving threesome who comes before us next year and says, "Why can't we get married?" Give a rational response, unless you really do think they should then make the cut somewhere else.

**Rep. Glazier:** You were talking about the idea, for example, of polygamy. The State has an interest, and I think you had used the word in your press conference as well, the concept of why can't we allow, if we're talking strictly about love, an incestuous relationship. Well in incest, first of all...

**Rep. Stam:** I said adult incest.

**Rep. Glazier:** Okay, just a relationship...First of all, the State has a right to regulate in terms of health benefits and health issues the issues that come from an incestuous relationship where you have scientific data of what can happen with regards to children that result from that union. And so the State has a completely compelling—individual interest aside from who someone chooses to love—to regulate. As to polygamy, the State has an interest in stability of relationships. The State has an interest in assuming and dealing with the legal consequences of individual relationships, whatever that form may be. It doesn't have an interest in saying only one biological way that can happen. It does have an interest in saying we don't get to have the societal stability when you've got ten wives or twelve husbands. And I think the State has the capacity at some point to potentially regulate that.

There is an argument, as you suggest and as Rep. Bradley's amendment suggested, the State ought not be in the business generally, outside of compelling health reasons, of regulating marriage. But assuming that it can, there is a whole-gulf difference between the issues of polygamy and bigamy and the issue incest, adult incest relationships, and the issue of whether a couple, two people, have the right to have a full lifetime of legal recognition of their loving relationship between consenting adults that does no harm to any individual. And finally, I would suggest that if we're really concerned about the protection of marriage, maybe we ought to do something about domestic violence, and child abuse, and poverty, because I think they far more affect marriage than the gay couple down the street.

[Applause]

**Prof. Gerhardt:** We have about ten minutes or so left, but I wanted to turn to Rep. Stam the question—and a number of index cards have this—but there is obviously a fairly strong degree of interest in the audience about the impact of this amendment on the economy of North Carolina. That a number of businesses—for example, Wells-Fargo, Bank of America—might actually end up moving out of the state or no longer hire as many people here and so there's a concern that this is going to have a tremendously negative effect on an already weak economy and make North Carolina a considerably less attractive place for businesses either to stay here or move here.

**Rep. Stam:** Professor, that's really a complete non-issue, a red herring. I'm going to stand...

**Prof. Gerhardt:** Sorry about that.

**Rep. Stam:** It's alright. There are thirty states with marriage amendments. If there was some effect of this issue on business, we've had the policy of no-same-sex-marriage for three-hundred and forty years. This doesn't change that policy; it just makes it more difficult for a judge or a subsequent legislature to change. A study was done by the American Legislative Exchange Council of rich states and poor states. Their study had nothing to do with marriage laws. All they did was consider economic, regulatory, and tax criteria. The ten states that they considered rich all had marriage amendments. The ten states they labeled as poor all had either same-sex marriage or laws regarding other aspects of family-law that undermine marriage. Now, I would say that that does not prove that marriage helps an economy but it makes it comple... I think it proves that it's completely specious to say that a company is not going to come here or stay here because of that when the very amendment itself says that the amendment does not affect private contracts of private parties. They can still offer their domestic benefits to their employees if they want to; the amendment does not stop that.

**Prof. Gerhardt:** Rick.

**Rep. Glazier:** Of course, municipalities are barred from doing that and a number of municipalities offer those benefits. And I might add before I directly answer the question, it was interesting in looking at data... You know, there's sort of that old saying about there's lots of forms of data and, on occasion, it actually comports with the truth. And, and so what you've got is the state with the highest marriage rate and non-divorce rate is Massachusetts, who recognized legal marriages between people of the same sex.

That having been said, let's talk about the business issue. We had a number of business leaders from across this state who long ago recognized the necessity in a creative economy, in an economy where we're all interdependent on each other throughout this world, of increasing our capacity of tolerance and diversity and understanding and that means hiring all people regardless of sexual orientation, regardless of gender, based on the merits of who they are—not who they sleep with, and not who they marry—and to provide benefits to every individual.

This amendment goes far beyond the idea of marriage. As we said at the beginning, you outlaw... This amendment, if it passes, outlaws domestic partnerships, it outlaws civil unions, it even outlaws them if they're heterosexual so far as a legal, recognized entity is concerned. To suggest that any data from another state that has a far more restrictive definition is even comparable to what this bill is going to do is precisely the problem in not having people testify, in not listening to the business community, in not listening to people who have far greater experience.

And the last thing I will say—every society has a way of looking at their time and their society and morals and mores of how they are going to operate. And they change over time. There was a time in this country not long ago when it was perceived fine to execute fifteen- and sixteen-year-olds. But that changed over a period of twenty years due to national consensus and international consensus. There was a time not twenty years ago when we executed the mentally retarded, but the Supreme Court recognized that things change as common decency and standards change.

And what you just said at the beginning was we want to enshrine this to make sure that future generations and future legislators don't get to change it, essentially means we trust people—we only trust them right now. We don't trust them to guide their own future, we don't trust them to change as society changes, we don't trust them, in fact, at all. What we want is we want now and we want it to be forever. And I'm sorry, but we need to end the year of living dangerously in North Carolina.

*[Applause]*

**Prof. Gerhardt:** Let me...I'm going to take off from a couple of points that I think Representative Stam made—but you can amplify them if I get them wrong—to ask Rick a question. And this comes up in a number of different ways, but one issue that does come up is how this proposed amendment makes things any different or worse in so far as gay and lesbians are concerned. And so if it doesn't change the status quo legally in a sense, what's the problem with it?

**Rep. Glazier:** Well, I think it does change the status quo in every way. First, as I've articulated a couple of times, this goes way beyond the language of the current statute and essentially bans the civil unions and domestic partnerships, which is a far expansion. Second, we're enshrining a principle in the Constitution—not something that's changed easily, not something that, that is meant to change easily, apparently except in this legislative session. And in the end what we're also doing is we're sending a signal—a signal of creating a second class of relationships in this state, and sending a signal to a whole vast array of people that they no longer, as I suggested earlier, belong on the

island. I think that is the worst possible signal a society can send. I think it does economic harm. I think it does moral harm. I think it does social harm. I think it denigrates relationships. I think it pits people against each other.

And I think, for good reason, the North Carolina Constitution has never previously been amended to restrict the rights of the minority. The structure of the Constitution is to create majority rule but it is to put in place restrictions that stop sometimes the worst of our individual selves and make us turn and look in the mirror before we do these things to look at who we want to be in the future. This particular bill, this amendment simply seeks to hide the mirror from us now and for the rest of the time that it's in the Constitution, and that I do not think is what we want as a people in North Carolina.

**Prof. Gerhardt:** Representative Stam.

**Rep. Stam:** Briefly respond. Two of the ways that Representative Glazier said it changes existing law is, one, with respect to domestic partnerships and civil unions. He's asking you to commit the fallacy of the forth term, which I won't explicate. But what that means is if they are the functional equivalent of marriage then yes, that is what was meant by our statute in 1996 anyway. If they are not the functional equivalent of marriage—they're just a private arrangement that an employer may or may not recognize in the way of giving benefits—then it doesn't affect them.

Secondly, he has claimed once or twice today that this eviscerates our domestic violence laws. I was Co-chair of the House Select Committee on Domestic Violence Criminal Law and I think I have some understanding of that. Rick and I actually worked together on this in our Judiciary Committee. I cannot understand that argument. I look at the statute and I just cannot understand it. If somebody wants to write a law review article and explain how that happens, I'd like to read it.

**Rep. Glazier:** Well...

**Rep. Stam:** And cert... And certainly and as the manager of the Senate bill on the House floor as part of the legislative history I told the world before the vote that it doesn't. Unfortunately, the opposition refused to let us get in other legal papers that actually would have helped their cause in lawsuits five or six years from now. But I don't believe that claim at all.

**Rep. Glazier:** When legislative history is... And actually I talked about this before we got here. It's maybe the one time in my life I agree with Justice Scalia. Legislative history probably doesn't exist. It certainly doesn't exist in a formal way at the legislature and it certainly doesn't exist in the mind of one legislator who's voting. It is what the majority has decided and in this case the text is clear—clear at least enough to know that it is not what the text is of the current statute.

**Rep. Stam:** But the domestic violence laws don't depend upon...

**Rep. Glazier:** The domestic... The domestic violence laws under an amendment far less onerous than this one were struck down in seven Court of Appeals opinions by the State of Ohio before the Supreme Court...

**Rep. Stam:** But reversed...

**Rep. Glazier:** ...had to get involved in a split decision. And so the law is at least such in Ohio, which doesn't include half of what ours does... The law in Ohio at least was so unclear seven panels of their Court of Appeals believed that there was no protection any longer allowed under the domestic violence laws of the State of Ohio because of the elimination of the domestic partnership concept and because of the elimination of who can be covered by them.

The Domestic Violence Coalition of this state looked at it. Their lawyers looked at it. And with due respect to your legal skill and my legal skill, they decided that this strikes at the heart of the domestic violence protection. I choose to talk to the lawyers who are intimately involved in this defending those women, defending those parties, and they say there's a problem. At the minimum you know what that should have meant? We actually should have had a public hearing on this bill.

**Prof. Gerhardt:** Let me ask one last question, if I may, just because we're running out of time and we're going to go over and I guess I'll... We'll have to account for that later. But this also has just been asked a number of different ways, but I'll largely read this because it's capturing the spirit of a lot of questions:

“On August 30<sup>th</sup>, 2011 during a press conference which addressed your proposed amendment, Representative Stam, against equality for same-sex couples, you stated that ‘equal rights is offended not only when you treat the same people differently but when you treat different things the same’” unquote...and they are different – and that’s the unquote. “Yet the first section of the Constitution of the State of North Carolina explicitly states, ‘We hold it to be self-evident that all persons are created equal.’ Can you explain how your view of equality, the Declaration of Independence’s statement on all men being created equal and this amendment to the constitution can co-exist?”

**Rep. Stam:** Well, all persons are created equal, but that doesn’t imply, for example, that three people can claim to be married. And Rep. Glazier never answered that question how he would tell three people they couldn’t be married once he told any two people they could. It’s a con...Equal protection...I believe that what I quoted either came from Aristotle or Plato. It’s not something we just thought of last month. But that is: Different things can be treated differently if the things or people are in a very different relationship. That’s obvious equal protection law.

**Rep. Glazier:** Different things can be treated differently but people ought to be treated the same. People are not things.

[Applause]

Secondly...Secondly, the government has the right under equal protection to make distinctions and classifications where there is a compelling governmental interest. There is not a compelling governmental interest to tell a gay couple they can’t have a domestic partnership but to tell other people that they have the right to marry. There is no compelling governmental interest involved in this. This is not the circumstance that you suggested with your polygamy example.

And finally, we engage here in an incredibly slippery slope. So if gay folks aren’t allowed, don’t have the fundamental right, to do the one thing as human beings that we all want to do, which is to decide who we want to live with, who we want to marry, who we want to have a relationship with and explain to me—maybe you should tell the folks—did that mean that they also don’t have the right to public office? That’s a lesser constitutional right to run for public office then it is to decide who you’re going to spend your day with.

Or perhaps they don’t have a right to go to a public school at in-state tuition. Where’s the slope stop, Representative Stam? How many people do we have to affect? How many rights have to be affected if the most traumatic, most important right in our lives is going to be controlled with the government? What stops the government from controlling and out-casting these same people to every other right in life? And that is the slope you are starting us on and it is the one that the people of North Carolina are going to have to stop.

[Applause]

**Prof. Gerhardt:** Let me give...I’m going to use...I’ll ask one more question. Give you each roughly about thirty, forty seconds to answer it and then this table will fall away. But...

**Rep. Glazier:** Like a chair.

**Prof. Gerhardt:** There’s a case on its way to the Supreme Court of the United States that may be challenging the constitutionality of a ban on gay marriage. How does that case, if it does get decided by the Supreme Court, what would be the ramifications of that case for this amendment. In other words...

**Rep. Stam:** Well, under...

**Prof. Gerhardt:** ...You want to avoid courts interfering with this but there’s a court going to hear a case in the near future.

**Rep. Stam:** Right. That’s a fairly easy one. Obviously under the Supremacy Clause, we have to go with the Federal Constitution. We’ve had one court do that. I believe it was the Ninth Circuit. But the real danger is the half...the precedent of the half-a-dozen state courts that found something in their constitution. That’s where the real danger is—not from the Federal Courts. You can read that US Constitution backwards and forwards and not find that in any

penumbra, or emanation from a penumbra, a right to same-sex marriage. And I don't think the US Supreme Court would uphold that. But if they do, we have to live with it.

**Prof. Gerhardt:** Okay. Rick?

**Rep. Glazier:** Well, I'm going to close actually with agreement with Rep. Stam. I think that we'll, certainly under the Supremacy Clause, have to abide by the Supreme Court's decision. It's my view that...that whether it's the Ninth Circuit case or at some point they will take the case and I think that one day this issue will be put to an end by the United States Supreme Court. And I believe that this amendment will be struck down as a violation of the Federal Constitution.

**Prof. Gerhardt:** The difference is if...if the court does get involved that's a whole different centers issue. So you'd have to come hear a different program on that. I think you've done credit to the Law School. I want to thank our participants today for their good discussion.

~ Fin ~

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**SB 582 – Authorize Indian Gaming/Revenue  
Select Remarks on 2nd Reading  
May 31, 2012**

*Gambling is always contentious. This was the only substantive bill that passed in the  
2011-2012 session in which a majority of House Republicans voted no.*

Audio available at [this link](#)

Debate begins: 01:10:03

Rep. Stam's comments: 01:18:28

**Speaker Thom Tillis (R):** Representative Stam, please state your purpose.

**Rep. Paul Stam (R):** To speak on the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Stam:** Mr. Speaker, members of the House: the Cherokee Nation is indeed a sovereign nation under law, but this bill purports to affect the law outside the lands of the Cherokees, and therein lies the problem.

I will explain why I think the compact is legally flawed. You do not have to agree with me that it is legally flawed. If you think that there is even a one-third chance or a ten percent chance that my argument may be correct, then this is the worst bill for the State of North Carolina I have ever seen. I don't know who was negotiating on our side. I want to take you through a few papers that have been put on your desk so you can understand the background.

The first is the last few articles of our Declaration of Rights. That's the equivalent of the Bill of Rights in the U.S. Constitution. These are the four provisions that apply:

“No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.”

There are some who will argue that the Cherokee nation is not a person. We will debate that and I will show you that that is not for sure and that it well could be considered a person under our Constitution. Section 33 doesn't say anything about persons. What it says is:

“No hereditary emoluments, privileges, or honors shall be granted or conferred in this State.”

Section 34 says:



“Perpetuities and monopolies are contrary to the genius of a free state and shall not be allowed.”

Section 35 lumps it all together:

“A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.”

This compact and bill violates all three—and therefore all four—of these provisions of the Constitution we have taken an oath to uphold.

It is a separate or exclusive privilege from the community. It is a hereditary privilege because it is based upon bloodline. It would be conferred or granted by the state. And it is a monopoly.

One thing that’s been amazing to me has been the explanations I’ve heard of the bill. Almost no one actually discusses the compact itself. When you put all the amendments to the compact together it’s about twenty-eight pages long. Did anyone ever point this part out to you?

Section 4.1(A): “In the event that any live table gaming is permitted for any person other than the tribe in the geographical zone encompassing the portions of the State of North Carolina located west of interstate highway I-26 as that interstate highway is presently located as of this execution date, the State shall forfeit its right to the monthly payments required by section 4.1.”

Think about that for a minute. Under this compact the estimate that I’ve heard is that the State will get about three million dollars for education per year for the next thirty years. That is really a trivial amount of money. This is a tiny fraction of our education budget. However, if someone successfully challenges this exclusivity provision and wins, we don’t even get that money. We get nothing from the rest of the Cherokee gambling. If that provision is successfully challenged, the State of North Carolina gets a big fat zero for education.

The next document is a memorandum by Jeanette Doran of the Institute for Constitutional Law explaining why this is an exclusive emolument or privilege and why it is a hereditary privilege. The point is not whether you agree with it. If you can conceptually think that maybe someone west of I-26 will decide that they would like to have live table gaming as well, they might find a judge that agrees with them. Someone will see all the profit going to the Cherokee Nation. Of course they will. Do they have a chance of winning? Of course they have a chance. And if they win North Carolina gets a big fat zero.

Black’s Law Dictionary defines what a monopoly is:

“control or advantage obtained by a supplier or producer over the commercial market within a given region. The market condition exists when only one economic entity produces a particular product or provides a particular service.”

Of course this is a monopoly. That’s the bargained-for consideration that the Tribe wanted in exchange for turning over four to eight percent of profits to the State.

John Orth wrote the book on our State Constitution. He deals with these three provisions. Many of the cases that discuss one of these provisions discuss all three of them because they fit together. A successful plaintiff only has to win under one of these three provisions. But I’ve heard the Cherokee Nation is not a person so therefore the first provision doesn’t apply.

This next memo mentions the *Pfizer* case. The majority held that foreign nations were persons and another case where the Supreme Court decided that sometimes Tribes are “persons” and sometimes they are not. It depends on the legislative history of the time.

Back in December I put myself to sleep for about a month in a row reading the latest issue of the Campbell Law Review, “*A Story of Privileges and Immunities from Medieval Concept to the Colonies*.” What are the privileges and immunities that are included in our Constitution? They primarily relate to trade and the ability to trade freely. Unlike in Europe, unlike under the kings, unlike under the charters that were given to the explorers who went to America, Englishmen wanted the ability to trade fairly and without monopoly. There was a constant struggle between the colonists and the Crown. In the Articles of Confederation (even before the Constitution) they put in the “privileges and immunities” clause. It had mostly to do with trade.

The reason I mentioned the Articles of Confederation (around 1777 or thereabouts) is because the provision in our Constitution is based on the Virginia Declaration of Rights. That’s when it was written. People were thinking at

the time that they didn't want to be like England which had primogeniture and guilds and monopolies, and only one person could sell salt and the Queen granted licenses for another person to sell tea. They wanted to be free.

Section 34 says that monopolies are "contrary to the genius of a free state." What is the genius? It's the animating idea behind a republican form of government. People are free...

**Speaker Tillis:** Representative Blust, please state your purpose.

**Rep. John Blust (R):** To ask if Rep. Stam will yield for a question.

**Speaker Tillis:** Does the gentleman yield?

**Rep. Stam:** In about two minutes.

**Speaker Tillis:** The gentleman does not yield.

**Rep. Stam:** That was the animating principle of the American experiment: Freedom for all. Now, we know that they didn't grant freedom to everybody at the time. There has been a constant struggle to make "all" actually all. But that's the animating idea. This compact is exactly contrary to what the people who founded North Carolina wanted to do. I'm not going to talk about jobs. It's easy to counter those types of arguments. As legislators we've got a duty to the Constitution of this state as well.

I urge you to vote "no." Unless it wasn't obvious, I am not speaking for the majority caucus on this. I just happen to be a Representative for the 37<sup>th</sup> District who cannot vote for a compact such as this.

**Speaker Tillis:** Representative Blust, or does the gentleman yield at this time?

**Rep. Stam:** I do now.

**Speaker Tillis:** The gentleman yields.

**Rep. Blust:** Representative Stam, this bill is dealing with a document called the First Amended and Restated Tribal Compact. So there has been a tribal compact in existence for a while. Would your same analysis have applied to the compact that's been in existence? To your knowledge has anyone ever brought the suit that you say they might prevail on?

**Rep. Stam:** Representative Blust, I haven't seen that first compact. I think someone did actually file suit. I don't know the result. It's very different than this one which, by the way, was not actually signed until about a week ago. It's been very difficult for people to try to analyze it because they didn't get around to actually agreeing to it until after the Senate passed the bill. Thank you.

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*Rep. Rapp's comments: 01:45:44*

**Speaker Tillis:** Representative Rapp, please state your purpose.

**Rep. Ray Rapp (D):** To debate the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Rapp:** Thank you, Mr. Speaker. Members, I have had a great deal of grief about this bill. And I want to tell you that I have the highest regard—the highest regard—for the Eastern Band of the Cherokees. And let me say that what Representative Haire said, what we heard earlier from Representative West and from Representative Fisher, is indeed the case. I know no group of individuals that has been better stewards of the resources than this current leadership that exists in Cherokee. And what you've heard about the schools, what you've heard about the infrastructure and the community, the transformation in the last twenty to twenty-five years is remarkable. There is absolutely no question about that.

What I am concerned about, though, and the reason that I'm standing to oppose this measure is because this is not about simply adding live gaming to the existing casino—this is about expansion. Now if this were just about adding live gambling to the existing facility, I would have supported it. It's there. And in previous rulings, decisions, discussions it's believed to have been fine and acceptable and appropriate. It's there, and no matter what happens about this bill today, it will be there tomorrow, as well. So we're not making a decision about those one-thousand, eight-hundred people who have jobs there today losing them based on what you do here today. That is not a factor in this conversation.

What is a factor is whether or not we want to see it expand, and that's my problem. In fact, my original conversation with the Chief and members of the tribe in my office a year ago, my understanding was that that was what it was going to be—the addition of live gambling—and they made their case very effectively. But my understanding was: in the existing facility. Subsequently, as the negotiations evolved, they were talking about four sites—four additional sites. It is now down to two additional sites for a total of three that would be located in the far west. And that's where my problem comes in.

Now, I'm not going to repeat what you've heard. I'm going to just try to add some things. But you know the amount of money we might generate from this, the two to three million dollars per year. They like to talk about this as sixty to ninety million dollars. It's two to three million dollars per year. When you put that across the state budget, you can do the equation of what that translates into in terms of revenue for the state.

But let's talk about the other thing that has not, to my knowledge, been included in the discussion about this. What about ALE's enforcement of the gaming laws? What about the expense of the law enforcement being factored into the control of the games? What about the social costs of this, as well? Anyone who has dealt with that, and I think Representative Hilton spoke eloquently just as a police officer, but I've heard this from our county sheriffs and several of our local law enforcement people about spouses coming to them, pleading with them to stop their husbands or wives from gambling because the family is short of money. There is a social cost. We do get involved. There's no way of getting around that. So from the standpoint of the social cost from law enforcement, I think we need to take that into account, as well.

Some of you are aware of the poll that was reported by the North Carolina Policy Watch (it was done May 15<sup>th</sup> - that's when it was put out) in which 53% of the folks in this state said they opposed this living gambling, 38% said they favored it and 9% said they were undecided. But 53%—a majority—were opposed to it.

There's another context that I want to put this in because some of you know I've been here for ten years. I was one of the ones who voted against the Education Lottery. I had the same concerns that you've heard expressed about it. And I also helped to author the legislation banning video gaming, as well as the sweepstakes gaming which is in the courts right now. We're waiting for the arguments to be heard this September in the Supreme Court on that law. But I think what I'm concerned about and what you've seen is across this State there's a wildfire opening of sweepstakes parlors, the video gambling, and I challenge anybody to not find one of those in your community today. I mean, they've sprung up just everywhere. And what I don't want to see happen is that North Carolina becomes the State of gambling. But if I look around—and this is a small piece of it in the bill we're looking at, combined with what we're involved in with the video gambling and the video sweepstakes—I see some dark days ahead for North Carolina.

So for this reason I'm going to oppose this legislation. I have an amendment that I want to propose, but I want to talk to the bill advocates before I introduce it to the body. I'm really looking for a way to help my friends, and I consider them my friends for many, many years in the Cherokee tribe. And I'm looking for a way to find some common ground, but I'm not going to introduce it until I talk to Representative West, until I talk to Representative Haire. But I want to, Mr. Speaker, let folks know that I probably will be introducing an amendment shortly. Thank you.

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*Rep. Harrison's question: 01:57:38*

**Speaker Tillis:** Representative Harrison, please state your purpose.

**Rep. Pricey Harrison (D):** To ask Representative Stam a question. Is he in the chamber?

**Speaker Tillis:** The gentleman is returning to his seat...He anticipates by the pace that he is prepared to respond.

**Rep. Harrison:** Thank you, Mr. Speaker.

**Speaker Tillis:** The gentleman yields.

**Rep. Harrison:** Representative Stam, I appreciate your scholarship on this, and I had a chance to skim this document from the Institute for Constitutional Law. I didn't get to read it carefully, but as I understand it, there is a case to be made that there's a chance that this contract might be deemed to be a hereditary emolument?

**Rep. Stam:** A hereditary privilege, I would say. Yes. A good chance, excellent chance.

**Rep. Harrison:** Thank you . A follow-up?

**Speaker Tillis:** Does the gentleman yield to a follow-up?

**Rep. Harrison:** Yes, thank you. So if that were the case, say, the gambling industry were to challenge this and it were deemed by a court to be the hereditary privilege, would that mean that the entire state could possibly be opened to Class 3 gaming?

**Rep. Stam:** Representative Harrison, if you look at page two of the bill which is 292.2, and if you go down to subsection (c): "Nothing in this section shall modify or affect laws applicable to persons or entities other than the tribes..." A judge would have a choice—a difficult choice—to say that the whole law goes down or subsection (c) goes down. So I don't know whether a judge would open up the whole state or throw the whole law out. My opinion would be more likely a judge would throw out subsection (c) because judges tend to like to interfere as little as possible with legislation.

**Rep. Harrison:** Thank you, Mr. Speaker. Thank you, Representative Stam.

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*Rep. Jones' question: 02:12:52*

**Rep. Bert Jones (R):** ...Mr. Speaker, if he would yield for a question, I would like to ask a question for Representative Stam.

**Speaker Tillis:** Does the gentleman yield?

**Rep. Stam:** I do yield.

**Speaker Tillis:** He yields.

**Rep. Jones:** Thank you, Representative Stam. You heard the argument made about tribal sovereignty and how basically we shouldn't interfere because this is a sovereign nation. I'm not a lawyer. I don't play one on TV. We've got some good lawyers here, maybe you could explain a little bit. I did do a little research and I understand that sovereignty given to Indian Tribes in the United States is a little bit different than the sovereignty we extend, for instance, to other nations. Could you maybe speak to that question?

**Rep. Stam:** I could. We could look at this by asking, "What if this were Germany?" Germany is a truly sovereign nation. If there were a trade pact between Germany and the United States that said the United States could manufacture cars in Michigan but not manufacture them in North Carolina, would we put up with that? No.

Indian tribes in law are called "domestic dependent nations." They are called "nations," but they are "domestic dependent nations." Cherokees, like all other Indian tribes, serve in the United States Army. They don't serve in the Cherokee army. They vote in our elections. It is not the same as Germany or France. If all this law did was to say that Indians can gamble with each other on Indian land then Representative Bradley would have some kind of point. But this bill and compact tells the State of North Carolina that people cannot engage in certain businesses and competition with the Cherokees outside of tribal land: a totally different situation.

**Rep. Jones:** Thank you, Rep. Stam. Again, I would just say that I do oppose the bill and I ask that you would vote against it. Thank you.

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*Rep. Stam's second comments: 02:32:41*

**Speaker Tillis:** Representative Stam, please state your purpose.

**Rep. Stam:** To speak a second time.

**Speaker Tillis:** The gentleman is recognized to debate the bill a second time.

**Rep. Stam:** Thank you. I just want to disabuse the members who think that there's anything in this bill that will get rid of one video game. I am glad that the members recognize that video games are a menace. But this bill does not require the destruction or removal of one single video game.

Secondly—and I address this to all the folks out east who have thought about the tolls across Pamlico Sound—in 1879, in Washington Toll Bridge Company v. Commissioners of Beaufort, the Supreme Court of North Carolina considered a law that said those passing over the bridge would pay one half the existing rates if they were residents of a certain part of Beaufort and Pitt while everybody else paid full freight, and prohibited the opening of another bridge somewhere else to get around it. Our Supreme Court law said this violated the monopoly provision, the exclusive emoluments provision, and is contrary to the genius of a free state, and this is what I want to explain.

We've had several speeches saying that this will be good economically for the Cherokees. Guess what? All monopolies are good for the monopolist and they harm those who are not part of the monopoly. That's why our State Constitution has been forbidding monopolies for hundreds of years as contrary to the genius of a free state.

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**SB 582 – Authorize Indian Gaming/Revenue**  
**Select Remarks on 3rd Reading**  
**June 5, 2012**

Audio available at [this link](#)

*Debate begins: 00:34:23*

*Rep. Stam's comments: 00:35:00*

**Speaker Thom Tillis (R):** Representative Stam, please state your purpose.

**Rep. Paul Stam (R):** To debate the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Stam:** I won't rehash what I had to say on Thursday, but I have put a memo on your desk to explain why the fact that in a particular U.S. Supreme Court decision an Indian tribe was found to be not a "person," is irrelevant to the consideration before you today. I will also suggest a solution to the problem. I won't go over the five reasons in the memo, but they are there for the record.

Representative Harrison asked on Thursday what would happen in the event that a judge looked at these provisions of our State Constitution and decided that this exclusive zone west of I-26 violated one of the three provisions. I mentioned to her that no one knows exactly what would happen but a judge would have different possibilities. One of the possibilities would be just to strike the provision that says the bill doesn't affect gambling off of Indian lands and just open it up to the whole state. We could have gambling in the rotunda of the Capitol here, might even have it in the chapel. Well, maybe not. But we would have it through the whole state. That's one of the possibilities. You don't know. I don't know. No one knows.

I am about to propose an amendment. Mr. Speaker, at this time I'd like to introduce an amendment.

**Speaker Tillis:** Representative Stam is recognized to send forth an amendment. The Clerk will read.

**Reading Clerk:** Representative Stam moves to amend the bill on page 2, line 37, rewriting the line.

**Rep. Stam:** What the amendment does is add this language: “If a final order by a court of competent jurisdiction holds that any provision of this act is invalid, then this act is void.”

This is the opposite of a severability clause. It is a non-severability clause. In other words, they think they have got the t’s crossed and the i’s dotted. Everything should be nice and tidy up there amongst the Cherokee Nation and no harm will come to the rest of the state. I say if that’s what you really think, vote for the amendment—it won’t hurt your bill a bit.

What it will do is to keep a judge from opening up the whole State of North Carolina to gambling so we’re not like Las Vegas down in Duplin County. I urge you to adopt this amendment.

**Speaker Tillis:** Representative Moore, please state your purpose.

**Rep. Tim Moore (R):** To debate the amendment.

**Speaker Tillis:** The gentleman is recognized to debate the amendment.

**Rep. T. Moore:** Thank you, Mr. Speaker. Ladies and gentlemen of the House, this amendment, I would submit to you, is often what is referred to sometimes in the legal world as a “poison pill.” What this amendment is designed to do is, of course by those who are opposing it—those who are putting up a valiant effort against the bill—and it’s designed to undermine the bill. Here’s why: a severability agreement essentially says if any one part of the bill is struck down by a court, even if it’s just a minor part, you know, it continues on.

A non-severability amendment has the opposite effect. Representative Stam did correctly identify that. And what it would have the effect of doing is, let’s say that some part of this compact or the bill was struck down by the court for some technical reason. It had nothing to do with...no significant bearing on the bill. With this language it would have the effect of invalidating the entire thing at that point.

So without this language the way it would work is let’s say the court struck down a key provision of the bill. Then in that case the court could also strike down the entire law. But this language, if you put it in the bill, folks, is going to make it so that some minor technicality could completely de-rail this legislation. So I would submit to you that those who are supporting this amendment are simply those who are opposed to the bill, and I would ask the members to oppose this amendment. Thank you.

**Speaker Tillis:** Representative Owens, please state your purpose.

**Rep. Bill Owens (D):** To speak on the amendment.

**Speaker Tillis:** The gentleman is recognized to debate the amendment.

**Rep. Owens:** Thank you very much, Mr. Speaker. Ladies and gentlemen of the House, I too rise to oppose the amendment for a number of reasons. But you know if you did something like this—and let’s just say it goes through to the Cherokee and they hire our four-hundred people right away and then they start doing away with machines and then something like this would take place—you’d have to go back to the way we are. Those four-hundred people would have to be laid off. All the economic monies that were spent and all the investments that were made would be wasted money. This is almost a catfish amendment as far as I’m concerned because it really kills and destroys the whole intent of this bill. And it would cause major, major problems. Please vote no.

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*Rep. Stam’s second comments: 00:42:36*

**Speaker Tillis:** Representative Stam, please state your purpose.

**Rep. Stam:** To speak a second time on the amendment.

**Speaker Tillis:** The gentleman is recognized a second time for debate on the amendment.

**Rep. Stam:** Of course the predicate for the opposition is that courts strike down things out of statutes that are just technical, just because they don't like it, or just because they don't like the policy. As Representative Moore knows, they can only strike down a statute or part of a statute if it is unconstitutional. We do have constitutional review but we don't have statutory review for good looks or statutory review for policy. The only way a part of this would be struck down is if perhaps a court said that this is giving a set of persons an exclusive, separate or hereditary privilege by the State or that the bill establishes a monopoly contrary to the genius of a free state.

The only way something is knocked out is if it is unconstitutional according to our Declaration of Rights. There you have on page six of the compact: if the exclusive area is struck down, North Carolina gets no money from this for thirty years. On page 2, lines 22-24, there is a provision that says this only affects recognized Indian tribes operating games in accordance with subsection (a). If a judge decides the way to deal with a monopoly, hereditary emolument or exclusive set of privileges is to strike that one paragraph: "Boom," gambling is all over the State of North Carolina. So I encourage you, if you're serious...

**Rep. Phil Haire (D):** Mr. Speaker?

**Speaker Tillis:** Representative Haire, please state your purpose.

**Rep. Haire:** Would Representative Stam yield for a question?

**Speaker Tillis:** Does the gentleman yield?

**Rep. Stam:** I do.

**Rep. Haire:** Thank you. Representative Stam, you understand that this bill can only operate under the National Indian Gaming Act?

**Rep. Stam:** Yes.

**Rep. Haire:** Follow up?

**Speaker Tillis:** Does the gentleman yield? He yields.

**Rep. Haire:** Would the National Indian Gaming Act apply to the rest of North Carolina if this were struck down?

**Rep. Stam:** No.

**Rep. Haire:** Follow up?

**Speaker Tillis:** Does the gentleman yield? He yields.

**Rep. Haire:** Then how can you say that if this were struck down it would open up the rest of the State of North Carolina when the only right to gamble flows from the National Indian Gaming Act?

**Rep. Stam:** I hope that's not what I said. This body could legalize every kind of gambling in the world tomorrow without regard to the Indian Gaming Act. If a court decided that it would solve the unconstitutional problem part of this bill by excising lines 22-24, then the rest of us would have to have this in our geographic areas.

**Rep. Haire:** One more follow up?

**Speaker Tillis:** Does the gentleman yield? He yields.

**Rep. Haire:** We're not talking about what possibly might be tomorrow. We're talking about the bill in front of us today, do you agree?

**Rep. Stam:** No. I think we're looking at what the bill before us today might do tomorrow. The amendment before you makes clear that the proponents of the bill really believe their brave words about how constitutional it is and so they're not worried about this amendment.

**Speaker Tillis:** Rep. Michaux, please state your purpose.

**Rep. Mickey Michaux (D):** Would the gentleman from Wake yield for a question?

**Speaker Tillis:** Does the gentleman yield?

**Rep. Stam:** I do.

**Rep. Michaux:** Your amendment says: "If a final order by a court of competent jurisdiction holds that any provision of this act is invalid, then this act is void." Are you telling me that if a court of competent jurisdiction finds one particular portion of this bill invalid, the whole act has been declared invalid? Is that what you're telling me?

**Rep. Stam:** That's correct. Because you know the court could only find a part invalid if it violates the Constitution, not because it violates what they had for dinner last night.

**Rep. Michaux:** Another question?

**Speaker Tillis:** Does the gentleman yield?

**Rep. Stam:** I do.

**Rep. Michaux:** Even if they find a part of it unconstitutional, under your amendment the whole act would be invalid, correct?

**Rep. Stam:** Same as the last time I answered, yes.

**Rep. Michaux:** Just a comment on the amendment.

**Speaker Tillis:** The gentleman is recognized to debate the amendment.

**Rep. Michaux:** Ladies and gentleman, what he's doing is, this is not a—I don't know what Rep. Moore called it; it's not even a catfish amendment. This is a gut-wrenching amendment is what this is because if a court of competent jurisdiction comes in and finds that the date is wrong, then the whole act is wrong. That's not the way we do business here. That's why you put in, "If any portion of this act is found unconstitutional or wrong than that portion is stricken," and it doesn't affect the rest of it. This completely guts the whole thing. I hope you will vote against it.

**Speaker Tillis:** Further discussion, further debate on the amendment. If not, the question before the House is the passage of the amendment offered by Representative Stam for the House Committee Substitute for Senate Bill 582. All those in favor will vote aye; all those opposed will vote no. The clerk will open the vote...The clerk will lock the machine and record the vote. Thirty-one having voted in the affirmative and eighty-six in the negative, the amendment fails. Further discussion, further debate on the bill? Representative Rapp, please state your purpose.

**Rep. Ray Rapp (D):** To debate the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Rapp:** Thank you, Mr. Speaker. I think that last vote on the amendment probably suggests what's about to happen, but I did make an observation or comment last week that I would introduce an amendment that would have limited the expansion—the expansion of the gambling to one location: the existing casino.

I talked with a number of folks who were on both sides of this issue last week and received no support for that. Most importantly, I talked with Representative West and Representative Haire and they were not in favor of this. This would be offered as a compromise—what I thought was a compromise—but I've been told repeatedly, and by the



Chief of the Tribe this morning, Chief Hicks, that they were not interested in this. As a result, this compromise amendment will not be introduced.

I do want to say, though, that this...What we're about to do here is about to expand gambling in Western North Carolina. And, again, I put it in the context of what's going on with our video gambling as well as the sweepstakes machines that are spreading across the state. It's part of a big picture. And what I said last week I'll repeat again today: we will be moving this state incrementally, not in one fell swoop, but incrementally we're moving North Carolina into becoming a state of gambling. And all you have to do is go into your towns, into your cities, look around you and see the proliferation that's going on to see if what I'm saying isn't true.

And I'm afraid that this is just one small piece in this broader expansion that is going on. I was not going to get involved because I was not going to get into a lawyer's discussion of the amendment that was introduced because I won't pretend to have that knowledge. But I do appreciate Representative Stam's efforts to try to at least curtail some of what's about to happen.

I really do think that what we're talking about is socially corrosive. I will, if I do return next year, come back with legislation, not about the Cherokee Indians, but about perhaps banning all sweepstakes until September when arguments are heard so it will be late next year or into early 2013 before we get a decision on that. And I would certainly want you on alert that if I am here there would be legislation I intend to introduce to ban that.

Thank you, Mr. Speaker, for this time. I did want to explain to the House why I did not introduce the amendment. But in talking to many of the members individually and I did from both sides, and I did not see support for it, and I didn't want to waste the body's time by introducing an amendment that was about to fail. Thank you.

**Speaker Tillis:** Rep. Starnes, please state your purpose.

**Rep. Edgar Starnes (R):** To speak on the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Starnes:** Thank you, Mr. Speaker. Ladies and gentlemen of the House, what we're fixing to do is change the way North Carolina looks. And I don't think it's going to be a good look after this legislation is passed. We're getting ready to make a major change in the gambling law in North Carolina. Gambling is going to be expanded in ways that we never would have dreamed of just a few years ago.

You know, I've observed in my years down here that the parties in power always seem to assume a mantle or a slogan or a theme that they like to pursue. And when the Democrats were in control it usually had to do with revolving around children. And they passed a lot of legislation, and some of it was done in the name of children that really had nothing to do with children. But what are the Republicans doing? Our slogan has become jobs. But I'm afraid what we're doing is passing legislation in the name of jobs that's not about jobs--this is about gambling. And yes, there are a few jobs in this, but they're gambling jobs.

You know, if we continue to go down this road, where does it stop? Where does it end? Where are we going to be in the next generation in our lifetime? If they want to talk about jobs and gambling, look at other states where they have the horse racing and the gambling. That's the type of gambling that creates a lot of jobs: the dog racing. But is that what we want to do? Is that the type of industry that we want to develop and bring and promote to North Carolina? I don't. I wish I could say something today to change the minds of ten people so this bill would be defeated, but that's not going to happen. Everybody knows how they're going to vote.

But folks, make no mistake about it. There are a few jobs in here, but they're gambling jobs. I don't like it. And I think in a generation from now we're going to look back and we're going to say, "You know, I don't know if we used our best judgment when we passed that bill." Thank you.

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*Rep. Owen's comments: 01:03:25*

**Speaker Tillis:** ...Representative Owens, please state your purpose.

**Rep. Owens:** To speak on the bill briefly.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Owens:** Thank you very much, Mr. Speaker. Ladies and gentlemen, I wasn't going to speak, but legitimate business is already there. It's the largest hotel in North Carolina. If you went to Cherokee twenty-five, thirty years ago and saw the condition of the people and the region and you go there today...Everybody I hear speaking hasn't been to Cherokee. I have. I'm going to tell you it's amazing what they've done out there and what they've done for the people. And this bill basically, for the most part, exchanges a machine for a person with a job. It creates economic development. It brings in excess of a million more tourists a year to North Carolina that will spend money for other reasons. Please, I encourage you to vote yes.

*For a full explanation, see the law review article "The 2011 Tribal-State Gaming Compact; 2012 NC Legislative History with Amy O'Neal" 6 Charlotte Law Review 17 (2015) by Paul Stam and Amy O'Neal.*

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## **PART III**

### **2013-2014 Biennium**

*January 9, 2013 – August 20, 2014*



**Speaker Pro Tem Nomination & Acceptance Speeches: p. 201 - 202**

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**Speaker Pro Tem Election  
Nomination & Acceptance Speeches  
January 9, 2013**

*While my election as Speaker Pro Tem was unanimous, the nomination by my caucus was 35-30.*

Audio available at [this link](#)  
Speeches begin:00:57:12

**Speaker Thom Tillis (R):** The question before the House is the election of the Speaker Pro Tempore of the North Carolina House of Representatives. The gentleman from Wake County, Representative Dollar, is recognized to state his purpose.

**Rep. Nelson Dollar (R):** Mr. Speaker, to place the name of Representative Paul Stam in nomination for Speaker Pro Tempore of the North Carolina House.

**Speaker Tillis:** The gentleman is recognized and may approach the well of the House.

**Rep. Dollar:** Mr. Speaker, Members of the House, Honored Guests, Ladies and Gentlemen: It is my high honor and distinct privilege to place in nomination the name of Paul Stam of Wake County for the Office of Speaker Pro Tempore of the North Carolina House.

Paul Stam has a long and distinguished record of service. He served his country as a Marine. He has served his Church as a Sunday School teacher. He has served his community and profession as a noted attorney. He has served his Party as a local and state leader. And Paul Stam has served this House as both its Minority and Majority Leader.

Over the years Paul Stam has been one of the leading conservative Republican activists in North Carolina. He has worked tirelessly for the enactment of conservative principles in drafting the platform of our Party, in the election of countless state and local officials, and in his service as a Caucus Leader.

Paul Stam is a Legislator's Legislator—long respected on both side of the aisle for his knowledge of the issues and the law, his ability to craft legislation, and his steadfast honesty and integrity. Paul Stam is an open book and his word is his bond.

He is a man of unshakable character. After difficult legislative battles when rhetoric can often become heated, Skip Stam is as quick to offer a smile and a handshake to his adversaries as he is his allies. He serves as an example in our democratic process that you can fight passionately for deeply held beliefs and when the battle is over, win or lose, hold no grudges or ill will for his opponents in a campaign, in court or in this chamber.

The best compliment and highest recommendation I can make on behalf of Paul Stam is simply this: he lives, works and serves with the Christian ideals he believes in.

Allow me to close with a true story: Jack Veach was a prominent businessman and community leader in Western North Carolina and a national leader in the forestry products industry. One year after helping a young man get elected to Congress, Mr. Veach went to see the new congressman-elect. His advice was brief and to the point: "Son, when a person gets elected to Congress and goes to Washington they have two choices: You can grow or you can swell." After a moment of silence, Mr. Veach leaned forward and said—"GROW." Jack Veach's words challenge all of us, newly elected members and veteran members alike.

Over the years Paul Stam has become a trusted and valued servant leader in this House. He chose to Grow and this body has benefited from that choice. I humbly ask the Members of this House to choose him today as our Speaker Pro Tem. Thank you.

**Speaker Tillis:** The lady from Carteret County, Representative McElraft, is recognized to state her purpose.

**Rep. Pat McElraft (R):** Thank you, Mr. Speaker. I rise to second the nomination of Representative Paul Stam.

**Speaker Tillis:** The lady is recognized for that purpose and may approach the well of the House.

**Rep. McElraft:** Ladies and gentlemen of the House, it is my honor to second the nomination of Representative Paul Stam as Speaker Pro Tem. Representative Stam has served seven terms in our House, serving as the House Republican Leader since 2007 and the House Majority Leader since 2011. He has been a strong and steading force in the Legislature. As a true statesman, Representative Stam is someone who can respect opposing views without wavering from his consistently conservative principles. These are just a few of the reasons why I encourage you, my colleagues, to join me in voting for Representative Paul Stam for Speaker Pro Tempore of the North Carolina House of Representatives.

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*Rep. Stam's comments:00:57:12*

**Rep. Paul Stam (R):** I accept your election. Your Excellencies, Governor McCrory and Lieutenant Governor Forest, Mr. Speaker, Madam Clerk, members, families, visitors, and especially my wife, Dottie. She has supported me faithfully for almost thirty years in this legislative effort. And she is a wonderful grandmother. She brought along two of my seven grandchildren today. I would like to speak about the way the House should operate by using three examples from my grandchildren.

First, any grandfather likes to talk about his grandchildren. And second, if you did not have them, about half of you would not be here. You are here because you want to insure the future of your grandchildren and great-grandchildren and posterity. My grandchildren go from seven, six, five, four, two, and two one-year-olds.

The older boys like to watch, over and over and over again, the musical version of the "Phantom of the Opera." They like the music and the romance, but especially they like picking out the bad guys and the good guys. The bad guy wears a cape and a sword but so does the good guy, who wears a cape and a sword. They always want to know how you tell the difference. Fortunately in that musical the bad guy usually wears a mask so it's easy to tell. But sometimes we can't tell who the good guy is. What is the right course to go down legislatively here? Which members of the public can be believed and which ones cannot? We have to discern good from evil.

My older boys also believe that all sports are contact sports whether it is swimming or basketball. For example, on Christmas day we all played soccer, a dozen of us, including the four little boys. Even those who were on the same team were tackling each other and were on the ground constantly. Here in the General Assembly (Representative Lewis, you must have some youngsters because you understand this concept), there is little need to engage in aggressive contact especially with members of the same team, that is Members of the House. We can save it for the Senate.

One of the favorite things they like to do with me is to play chess. The younger boys, ages two and four, like to challenge me to play by saying "Yeye, let's play chess. I am going to take all your pieces." And that challenge is enough to get me out of my chair to take them on. We have different ways of playing; they don't know all the rules yet. As they get older they will realize they can win without taking all of my pieces. And this is partially a matter of strategy but also a matter of character.

One of my older boys was challenged to a game of chess with a very ill relative. These were two of the most competitive people I know. He was four years old at the time. His relative, my brother, was fifty-seven, and they were emailing about how they were going to defeat each other in chess when they got together. They finally began this game. I noticed that my four-year old grandson was giving away his pieces. We asked him, "Will, why are you doing this? Why are you giving away your pieces and not trying to win?" He said he was trying to "be kind." We can all learn from that: We don't always have to take all of our opponent's pieces (in order to win). Second, as we defeat them, we can be kind. That is true in the House, as well, in the Assembly and in all of government.

I wish you all, everyone here, well as we embark on what I think will be a great and historic Session. Thank you for this opportunity, Mr. Speaker.

*~ Fin ~*

**HB 8 – Eminent Domain  
Remarks on 2nd & 3rd Reading  
February 12, 2013**

*For the third time the House passed this reform on a bipartisan vote of 110 to 8,  
fulfilling again the promise that House Republicans made to the people in 2010.*

Audio available at [this link](#)  
Debate begins:00:25:45

**Speaker Thom Tillis (R):** House Bill 8, the Clerk will read.

**Reading Clerk:** Committee Substitute for House Bill 8, a bill to be entitled an Act to amend the North Carolina Constitution to prohibit condemnation of private property except for public use, to provide for the payment of just compensation with right of trial by jury in all condemnation cases, and to make similar statutory changes. The General Assembly of North Carolina enacts.

**Speaker Tillis:** Representative McGrady, please state your purpose.

**Rep. Chuck McGrady (R – Primary Sponsor):** To debate the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. McGrady:** Mr. Speaker, colleagues, House Bill 8 proposes a constitutional amendment to the North Carolina Constitution to prohibit the condemnation of private property except for public use, requires the payment of just compensation for property taken and requires the compensation to be determined by a jury trial if requested by any party. The bill also includes some statutory changes consistent with the constitutional amendment. I am going to try to explain the constitutional amendment part of this and the Speaker Pro Tem, Representative Stam, will be addressing the statutory provisions of the bill.

Section 1 is the heart of the bill. It provides for the constitutional amendment. I'll be explaining that in some detail in just a moment. Section 2 provides that the amendment shall be submitted to the voters at the next statewide general election on November 4, 2014. Section 3 explains how the amendment becomes effective upon certification to the Secretary of State. And finally, Sections 4 and 5 are the statutory provisions.

Now this bill relates to eminent domain—in other words, the forced sale of land to the government. Most basically, the proposed constitutional amendment says that private property shall not be taken by eminent domain except for a public use. So what is a public use? Roads, schools, sewers, courthouses. And it is also public utilities acquisition of rights of way even though they are owned by a private entity, because the utility by definition is giving something to the public and the public has a right to obtain service upon payment of a fee. So this probably sounds fairly simple.

So, the question is why do we need a constitutional amendment? Aside from the public use test, there are two other tests sometimes used when deciding whether a government can use its power of eminent domain. Sometimes courts, rather than talking in terms of public use, talk about public purpose or public benefit. And with time, the test has really gotten fuzzy or even morphed. This became real clear when the United State Supreme Court decided a case out of Connecticut, the so called *Kelo* case. Surprisingly, in its rather unpopular decision, the Supreme Court said that a public purpose was sufficient under the United States Constitution so that a Connecticut town could force a sale of property by one private land owner to the town, which in turn sold the property to another private land owner, a land developer in this case.

Fortunately, in *Kelo* the Supreme Court said that the states were free to restrict eminent domain more than that and that is precisely what we are trying to do in this bill. We are trying to clearly establish a constitutional standard under the North Carolina Constitution. Now I guess we could debate the difference between public use, public benefit, and public purpose. But I frankly don't think that is really critical to thinking about this bill. What is critical is that you understand what this bill would do, assuming North Carolina voters approve the proposed constitutional amendment.

First, as I've already suggested, the bill will mean that a public use does not include the taking of property in order to convey an interest in that property for economic development. The use of eminent domain as approved by

*Kelo* will not be possible in North Carolina. Second, it puts language in our Constitution specifically saying just compensation shall be paid. While those five words have been determined by the North Carolina Supreme Court to have been implicit in our “Law of the Land” clause (Article I, Section 19) which goes back to Magna Carta, (1215 A.D), we are one of the only states that does not actually have that in our Constitution. Third, we are the only state that does not require in its Constitution that the issue of damages in condemnation cases be decided by a jury. A jury trial in eminent domain cases is so fundamental that it should be spelled out in the Constitution.

The bill provides for a referendum and the date of that referendum is November of 2014. That is the next general election that is coming up. This is not a bill that is going to require additional cost because we are already going to be running an election statewide at the time. No additional precincts are going to need to be opened up. If we had held the referendum, for example, in November of this year, it would have been more expensive because there are counties and areas that are unincorporated that would not normally be holding elections at that time.

I think the final thing I’ll mention before I sit down is that this bill has come up many number of times in recent years. In the last session it passed with nearly a hundred votes. The members on this side of the aisle supported it unanimously, but the members on the other side of the aisle, also, two out of three legislators also supported it.

This is a good bill—a good proposal for a constitutional amendment. It is about protecting private property rights. It is about stating what is fundamental, and that is just compensation and a jury trial when the state or our local governments use that power to seize private property. And I urge the body to support the bill and the constitutional amendment. Thank you, Mr. Speaker.

**Speaker Tillis:** Representative Stam, please state your purpose.

**Rep. Paul Stam (R – Primary Sponsor):** To speak on the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Stam:** Mr. Speaker, Members of the House, the first sentence on line eleven is very simple, but the explanation would be very complicated. The case law for a couple hundred years is all over the place because the courts just have not used consistent terminology. So, what do we do? Do we have a bill that runs for two or three pages or maybe write a law review article ahead of time to explain it? No, our bill drafters came up with what I think is an ingenious solution. That is, by incorporating in Sections 4 and 5 some statutory language, the constitutional amendment will be construed in *in pari material*—that is, we know what the intent of the Assembly was with the constitutional amendment because in the very same bill the Assembly reiterated some statutes, changed some statutes, and added some language. So we know what the intent is.

For that reason I put on your desk the statute which is carried forwarded, amended and changed. This is the main statute by which all condemnations in North Carolina are performed. It is not the only one but it is the main one. By incorporating 40A-3 it makes it clear that those condemnors listed in 40A-3 doing the kinds of things listed in 40A-3, are doing it for a public use unless certain facts demonstrate that it is not, which is always possible.

So for example, if you take the very first line of 40A-3a (this is private condemnors like Duke Energy or a railroad company) for the public use, and then it strikes out “or benefit.” So we are going only with condemnations that are to be used by the public, not ones that just might be good for us or we might like or we might prefer or we might think we would be happier about, but public use. But because it incorporates the rest of 40A-3, you see all of those types of condemnors there and the kind of things they can do and so we know that by passing this constitutional amendment we are not putting in jeopardy any of those parts of 40A-3.

Now if you turn the page, same thing under 40A-3(b) (local public condemnors) we will be striking out the word “or benefit.” But still all those local condemnors (that’s cities and counties) all of the things that they can condemn for, which are subsections one through eleven, we are restating - these are public uses. So they don’t have to get nervous. Then in 40A-3(c) (other public condemnors) like sanitary districts—same thing.

Now the final part of the bill, that is Section 4 of the bill, goes through incorporating 40A-3 and makes that one change. And then the final part of the bill, Section 5, is the only part that was not in the House-passed bill last year. That was actually suggested by a Senate Subcommittee although the Senate never took it up. And what it does is to make sure that connecting to the utility is also considered a public use. Now this is a policy decision. I think it reaches the right result and that is one of the points in controversy in condemnation law (public use law) is whether if you connect up to one customer, is that a public use? This bill says yes, we are not prohibiting hooking up to one “customer or customers” as a public use and we know that because it is singular or plural and it is in the same piece of paper as the constitutional amendment. Now Section 6 (the statutory changes) go into effect immediately when

the bill becomes law for takings on or after that date, unlike the constitutional amendment which will take effect after the referendum by the people. I would be glad to answer any questions. Thank you, Mr. Speaker.

**Speaker Tillis:** Further discussion, further debate? Representative Michaux, please state your purpose.

**Rep. Mickey Michaux (D):** To speak on the bill, Mr. Speaker.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Michaux:** And to say this is one of the times that I might, you know, regret later on, but at least I'll join you a little bit on this. This really solves a problem that many folks have faced in the matters of condemnation. And there are a lot of "ifs, ands and buts" about it, but the one primary thing that we do cut out here is that fact that no government can condemn private property and then sell it to a private developer for private use, which has been how this whole eminent domain situation has come about over the past years. You may still have a few problems with it, but I think this really gets at the basic forefront of the problem. The *Kelo* case did present some good things about it. But in order to avoid a lot of the major problems that we had, particularly this thing about the government condemning properties and selling it to private developers, I think this helpfully clears that up. And hopefully you'll support this amendment. Like I say, I'm asking you to support this Republican thing here. But this is just one of those instances that it happens.

**Speaker Tillis:** Will the gentleman please restate.

**Rep. Michaux:** No, not hardly.

**Speaker Tillis:** Representative Insko, please state your purpose.

**Rep. Verla Insko (D):** To debate the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Insko:** Thank you, Mr. Speaker. Members, I am going to vote against this bill. Our local governments have some questions about it whether or not it will restrict transit. Those questions have not been answered yet. And so I'll be doing some more studying on in it. But I am going to vote no on it today.

**Speaker Tillis:** Representative Goodman, please state your purpose.

**Rep. Ken Goodman (D – Primary Sponsor):** To debate the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Goodman:** Today we have a rare event. We have Representative Michaux and Representative Stam both standing up in favor of the same bill. It has to be a good bill. I ask your support. Thank you.

**Speaker Tillis:** Further discussion, further debate? If not, the question before the House is the passage of the House Committee Substitute to House Bill 8 on its second reading. All those in favor, vote aye; all opposed, vote no. The Clerk will open the vote... All members wishing to record please do so at this time. The Clerk will lock the machine and record the vote. One-hundred and ten having voted in the affirmative and eight in the negative, the House Committee Substitute for House Bill 8 has passed its second reading...and, without objection, will be read a third time.

**Reading Clerk:** The General Assembly of North Carolina enacts.

**Speaker Tillis:** Further discussion, further debate? Ladies and gentleman this is also another electronic vote because it is an authorization of a constitutional amendment—and for the freshmen's information, that is seventy-two, if all members are present and voting: seventy-two versus a simple majority. Further discussion further debate? If not, the question before the House is the passage of the House Committee Substitute for House Bill 8 on its third reading.



All those in favor will vote aye; all opposed, vote no. The Clerk will open the vote... All members wishing to record please do so at this time, including Representative Shepard. The Clerk will lock the machine and record the vote. One-hundred and ten having voted in the affirmative and eight in the negative, the House Committee Substitute for House Bill 8 has passed its third reading and will be sent to the Senate.

~ Fin ~

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**HB 269 – Children w/Disabilities Scholarship Grants  
Remarks on 2nd and 3rd Readings  
May 15, 2013**

*I worked with Democrats for years on this, my signature initiative. But only three Democrats voted for it when it left the House. You have to read Rep. Brandon's comments.*

Audio available at [this link](#)  
Debate begins:06:02:02

**Speaker Thom Tillis (R):** House Bill 269, the Clerk will read.

**Reading Clerk:** Committee Substitute number two for House Bill 269, a bill to be entitled, An Act to Create Special Education Scholarship Grants for Children with Disabilities. General Assembly of North Carolina enacts.

**Speaker Tillis:** Representative Stam is recognized to debate the bill. The House will come to order.

**Rep. Paul Stam (R – Speaker Pro Tem):** Mr. Speaker, members of the House, I have a technical amendment and then after that is disposed of, I would like to recognize Representative Jordan. But if I could introduce a technical amendment?

**Speaker Tillis:** Representative Stam is recognized to send forth an amendment. The Clerk will read.

**Reading Clerk:** Representative Stam moves to amend the bill on page 3, line 27, by rewriting the line to read.

**Speaker Tillis:** The gentleman is recognized to debate the amendment.

**Rep. Stam:** Mr. Speaker, members of the House, this is what used to be called the Royal amendment. Even though this bill requires appropriations, since we have not passed the budget yet we have to pass this amendment so we are not appropriating money prematurely. I move the adoption of the amendment.

**Speaker Tillis:** Further discussion, further debate on the amendment? If not, the question before the House is the passage of the amendment sent forth by Representative Stam for the House Committee Substitute number two for House Bill 269. All in favor vote aye; all opposed vote no. The Clerk will open the vote...All members please record. The Clerk will lock the machine and record the vote. One hundred and seven having voted in the affirmative, none in the negative, the amendment passes. We are now back on the bill. Representative Jordan, please state your purpose.

**Rep. Jonathan Jordan (R – Primary Sponsor):** To debate the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Jordan:** Thank you Mr. Speaker. House Bill 269 is a continuation of the bill that we passed last session under House Bill 344 to serve children with disabilities. The major difference in this bill and current law is that current law is a tax credit and there are number of lower income folks who are not able to take advantage of this situation who have children with disabilities. This will change it to a special education scholarship grant. We have had multiple

hours of debate in Finance and Appropriations and maybe another committee or two. I would stand ready to answer any questions at this point.

**Speaker Tillis:** Representative Gill, please state your purpose.

**Rep. Rosa Gill (D):** To ask the sponsor a question.

**Speaker Tillis:** Representative Jordan, does the gentleman yield?

**Rep. Jordan:** Yes.

**Speaker Tillis:** The gentleman yields.

**Rep. Gill:** I understand last year we allocated money for the tax credit, and this year we are talking about allocating money for a scholarship. Is that the same money?

**Rep. Jordan:** It is for the same purpose. The money will now be a grant as opposed to needing to apply against the income of the families who receive these scholarships.

**Rep. Gill:** Follow-up?

**Rep. Jordan:** And I yield.

**Speaker Tillis:** Does the gentleman yield? He yields.

**Rep. Gill:** Well, if this is the case, then will we need additional monies for the tax credit that people are currently receiving and monies for the scholarship?

**Rep. Jordan:** No, ma'am. The scholarship grant takes the place of the tax credit. We are repealing the tax credit. So that money that was going out as expenditure will now be applied to the scholarship grants. So it will not be in addition to the previous tax credit, it will be replacing it.

**Rep. Gill:** Follow-up?

**Speaker Tillis:** Does the gentleman yield? The gentleman yields.

**Rep. Gill:** The amount of money that we have in this bill, was it reduced by the number of tax credits that were given last year?

**Rep. Jordan:** Yes, ma'am.

**Rep. Gill:** Thank you

**Speaker Tillis:** Representative Brandon, please state your purpose.

**Rep. Marcus Brandon (D – Primary Sponsor):** To speak on the bill, and I'd like to offer an amendment.

**Speaker Tillis:** In which order does the gentleman wish to be recognized?

**Rep. Brandon:** The amendment first.

**Speaker Tillis:** The gentleman is recognized to send forward an amendment. The Clerk will read.

**Reading Clerk:** Representative Brandon moves to amend the bill on page 2, line 14, by rewriting that line to read.

**Speaker Tillis:** The gentleman is recognized to debate the amendment.

**Rep. Brandon:** Ladies and gentlemen, Mr. Speaker, I appreciate it. This is just really an amendment that will create a little bit more accountability. The bill sponsors are okay with it. The ARC, the organization that deals with children with disabilities, also is okay with it. I urge your support of the bill.

**Speaker Tillis:** Representative Jordan, please state your purpose.

**Rep. Jordan:** Representative Brandon is correct. He is also one of the primary sponsors of the bill. I am supportive of the amendment as well.

**Speaker Tillis:** Further discussion, further debate on the amendment? If not the question before the House is the passage of the amendment sent forth by Representative Brandon to the House Committee Substitute number two for House Bill 269. All in favor vote aye; all opposed vote no. The Clerk will open the vote...All members please record...Representative Insko...The Clerk will lock the machine and record the vote. One hundred and five voted in the affirmative and three in the negative, the amendment passes. We are now back on the bill. Representative Brandon, please state your purpose.

**Rep. Brandon:** To speak on the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Brandon:** Folks, I am a proud primary sponsor of this bill. We did this bill last year. It passed out of here maybe with just a few people voting against it. It passed the Senate unanimously. This year we are back with a very similar bill that allows people who were not able take advantage of it—now they can take advantage of it. This is a really good bill because the folks that I represent and a lot of you represent now, because it's not a refundable tax credit, if it is a grant now will be able to receive the tax credit. This bill is about choice. Sometimes you will hear rhetoric about that, but we do believe that parents have the right to choose what school they want to, especially if they have a children with special needs. The public schools do a great job with special needs, but there are parents that are looking for choice. This gives them the ability to do that. This gives us a grant to be able to do the same thing for folks who are limited in income, to those who need it the most. I urge you to support the bill. Thank you.

**Speaker Tillis:** Representative Hamilton, please state your purpose.

**Rep. Susi Hamilton (D):** To ask the bill sponsor a question.

**Speaker Tillis:** The House will come to order. Those needing to carry on conversations, please exit the chamber. The lady wishes to direct a question towards Representative Jordan?

**Rep. Hamilton:** Representative Jordan—yes, sir.

**Speaker Tillis:** Does the gentleman yield?

**Rep. Jordan:** Yes, sir, I do.

**Speaker Tillis:** The gentleman yields.

**Rep. Hamilton:** Thank you. Representative Jordan, the parents are reimbursed for the cost of tuition in two installments, one if the first semester and one in the second?

**Rep. Jordan:** Yes, that is correct.

**Rep. Hamilton:** Follow-up?

**Speaker Tillis:** The gentleman yields.

**Rep. Hamilton:** Currently, do public schools offer the treatment for children with disabilities for free?

**Rep. Jordan:** The schools offer some treatments, yes. And the ones that they do offer are free. Many families have to go outside and provide other services at their own cost.

**Rep. Hamilton:** Okay. But predominantly, children with not-so-severe disabilities, they are dealt with in the public school system?...Follow-up? Sorry, Mr. Speaker.

**Rep. Jordan:** They are for a large part, yes.

**Rep. Hamilton:** Okay. Mr. Speaker, I would like to be recognized to send forward an amendment.

**Speaker Tillis:** The lady is recognized to send forth an amendment. The Clerk will read.

**Reading Clerk:** Representative Hamilton moves to amend the bill on page 2, line 14, by rewriting that line to read.

**Speaker Tillis:** The lady is recognized to debate the amendment.

**Rep. Hamilton:** Effectively what my amendment will do is require that the private school or the non-public school provide the same free services that are already being provided for by the public school system. The intent of this amendment is to protect the purpose of this bill which is to assist low-income families with tuition support. You will find that across the state most private schools do not provide the disability treatment—treatment for ADHD, treatment for the more moderate disabilities—for free. They in fact charge an additional fee for special tutoring services or special treatment. In fact there are many private schools throughout the state that don't even provide for an assessment of a child. That must be paid for out of the parents' pocket as opposed to an assessment for a child, which is provided for in the public school system. So what this bill affectively does is, again, it protects the purpose of the bill, which is to provide tuition reimbursement for low-income families for children with disabilities. It would require that the non-public schools provide these services at no additional cost to parents.

**Rep Stam:** Mr. Speaker, point of order.

**Speaker Tillis:** Representative Stam, please state your point.

**Rep. Stam:** Under Rule 43, a House amendment deleting a previously-adopted House amendment should not be in order. It appears to be the same line that Representative Brandon just amended. If that's true...It is a little hard on these computers to put them all side by side...

**Speaker Tillis:** The House will be at ease...The Chair rules the amendment out of order. The amendment is withdrawn. Representative Jordan, please state your purpose...Representative Goodman, please state your purpose.

**Rep. Ken Goodman (D):** Thank you, Mr. Speaker. I would like to use my "Get out of jail free" card and change my vote on Representative Brandon's amendment from no to yes.

**Speaker Tillis:** The gentleman will be recorded as having voted aye on the Brandon amendment. Representative Insko, please state your purpose.

**Rep. Verla Insko (D):** To comment on the bill.

**Speaker Tillis:** The lady is recognized to debate the bill as amended.

**Rep. Insko:** Thank you, Mr. Speaker.

**Speaker Tillis:** The House will come to order.

**Rep. Insko:** Ladies and gentlemen of the House, this is a really important bill for us to be getting better and more special education services to children who need them. This population of children is badly underserved across the entire state. I served on the Chapel Hill-Carrboro Board of Education for eight years and was a County

Commissioner. Much of my time was spent trying to improve services for children with disabilities. The federal government never paid the amount of money that they promised they would pay, and so it's been left up to the states and local governments to supplement those services.

Unfortunately it costs a lot more than three-thousand dollars a semester or six-thousand dollars a year to provide an adequate and appropriate education for these children. Many of you live in larger communities that have special schools for children with disabilities. And if you do...Salem has them, Charlotte has them, Raleigh has schools, Durham has a school. I think there's one in Asheville, also. The tuition for those schools is probably ten-thousand dollars a semester, and the class sizes are four and five students each because that's the best way for these children to learn and to catch up. Three-thousand dollars a semester will be a small down-payment on the amount of money it will cost to send these children to an appropriate school.

So I'm in favor of helping children with disabilities. I think we need to be putting more money into all these programs. This bill will...It could help the people who have more money, but it will not help low-income parents because they will not, first of all, have the money to drive their children to school. They won't be able to get off work. Transportation will be a problem. So I would like to be able to support a bill that actually did do this. This bill is not adequate to do that. I'm going to vote against this bill. I hope we'll have a better bill sometime...

**Rep. Brandon:** Mr. Speaker?

**Speaker Tillis:** Representative Brandon, please state your purpose.

**Rep. Brandon:** To ask Representative Insko a question.

**Speaker Tillis:** Representative Insko, does the lady yield?

**Rep. Insko:** I yield.

**Speaker Tillis:** The lady yields.

**Rep. Brandon:** Representative Insko, I just heard you say that you would support a bill that would do all that. I want to know did you consider making an amendment to increase the cost, maybe making it from three thousand to maybe seven- or eight-thousand dollars for low-income students? I certainly would support that amendment if you wanted to do that.

**Rep. Insko:** Well thank you, Representative Brandon. I would support an amendment that would increase the amount of money for *all* children with disabilities that go to public schools or to private schools. I would do that.

**Speaker Tillis:** Further discussion, further debate? Representative Adams, please state your purpose.

**Rep. Alma Adams (D):** To ask the bill sponsor a question.

**Speaker Tillis:** Representative Jordan, does the gentleman yield?

**Rep. Jordan:** Yes, sir, I do.

**Speaker Tillis:** The gentleman yields.

**Rep. Adams:** Thank you, Representative. I think in committee when we talked about this bill, there was some discussion about the fact that the money follows the student. Is that correct?

**Rep. Jordan:** I believe so, yes.

**Rep. Adams:** Follow-up, Mr. Speaker?

**Speaker Tillis:** Does the gentleman yield?

**Rep. Jordan:** Yes, I do.

**Speaker Tillis:** The gentleman yields.

**Rep. Adams:** Is there a point where a student leaves public school, goes to private school because that is what these funds will do, and they need to come back—will the money come back?

**Rep. Jordan:** I am not sure of that answer to that. Got to ask maybe one of the other sponsors.

**Speaker Tillis:** Does the lady wish to redirect the question to Representative Stam?

**Rep. Adams:** Yes

**Speaker Tillis:** Representative Stam, does the gentleman yield?

**Rep Stam:** I do.

**Speaker Tillis:** The gentleman yields.

**Rep. Stam:** And I heard the question. Representative Adams, this is a reimbursement after you have paid for the tuition and the special services on a daily basis for that semester. So they don't come back that semester. Thank you for the question.

**Rep. Adams:** Thank you for the answer. May I speak on the bill, Mr. Speaker?

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Adams:** Thank you, Mr. Speaker. Well, I needed that clarification, and I think that makes it a little bit worse for the children that we are talking about. We are talking about poorest—the poorest of children, which means the parents are poor. Children live in poverty because their parents live in poverty. Now how in the world... We're talking about a reimbursement. We're talking about the fact they've got to spend the money first that they don't have. And as Representative Insko has said, the cost of the tuition—the money that's being provided, six-thousand dollars, is not going to offset that. And for some parents, these parents that you're talking about, six-hundred dollars would probably be a problem for them to raise.

So while we are say that we want to help the poorest of children—and I think that's good and I certainly support *all* children, particularly children with disabilities—but we're setting them up for failure. They're not going to be able to attend. They're not going to be able to get there. They're not going to be able to raise the funds to offset what is going to be provided for them. And I'll tell you, I don't even see how they're going to have it to pay on the front end and to be reimbursed for it. Let's just be real this. There are some other things going on here. The money that's being provided for the poorest of children will not help them get the education that we say, or that the bill sponsors say they want them to have. They will not be able to... Now I've researched schools all over this state, even those in Guilford. You cannot pay for it on six-thousand dollars a year. But you've got to have the six-thousand dollars to pay for it upfront.

This is not a good bill. It does not do what the sponsors say it will do. And I think we need to be realistic. Yes, some people will be able to pay the difference, but it won't be the poorest of children that we're talking about. I am going to oppose the bill. I hope you will as well.

**Speaker Tillis:** Representative Holley, please state your purpose?

**Rep. Yvonne Holley (D):** To speak to the bill.

**Speaker Tillis:** The lady is recognized to debate the bill as amended.

**Rep. Holley:** My problem with the bill is even more basic than that. This money is supposed to be going to disabled children to attend a private facility, but nowhere in this bill does it say it's going to address the disability. Now the public school system has had to address the disability of these children. They've done an IEP and they are getting daily work done on this. Yet nowhere in this bill, when the child goes to the private school, is there any

accountability for them addressing the issues that the disabled child brought with them. This is a very, very significant problem with this bill. This money can go to tuition, but it's not going toward the speech therapy. It's not going for the other therapies that the child may need, and that's where I think the major, major flaw is with this bill. And I can't approve it. Thank you.

**Speaker Tillis:** Representative Brandon, please state your purpose.

**Rep. Brandon:** To speak a second time on the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill a second time.

**Rep. Brandon:** I think that people miss the whole point of what choice means. I mean, it's a mindboggling argument to me to think that someone who has a special needs child that is looking for choice would actually take their child to a school that is inadequate. Who would do that? Who in the world would do that? If you had a child that had special needs and you knew the services that they need, why would you ever take them to a school that didn't serve them correctly? It's a false argument. Please vote for the bill.

**Speaker Tillis:** Further discussion, further debate? Representative Lucas, please state your purpose.

**Rep. Marvin Lucas (D):** To ask Representative Brandon a question.

**Speaker Tillis:** Representative Brandon, does the gentleman yield?

**Rep. Brandon:** Absolutely.

**Speaker Tillis:** The gentleman yields.

**Rep. Lucas:** Representative Brandon, using the scenario that Representative Holley just indicated, a child who needs speech therapy, is this private school going to provide a certified speech clinician for that child?

**Rep. Brandon:** I think that if the parent had a child that had a speech deficiency that was looking for choice, they would not take their child to a school that did not have a speech therapist. It does not make sense, because they would actually have to pay for the cost of the private school. They might have to make up the difference of the three-thousand dollars or they might, just like Representative Insko said, they would have to drive there. Why in the world would you drive to a school, pay additional costs and not have the services? I don't understand that.

**Speaker Tillis:** Representative Adams, please state your purpose.

**Rep. Adams:** To speak a second time.

**Speaker Tillis:** The lady is recognized to debate the bill a second time.

**Rep. Adams:** Thank you, Mr. Speaker. Thank you. I don't think anyone has suggested that the schools were inadequate. I'm certainly suggesting that the pocketbooks of these parents are inadequate, and that's the problem. We can set up this process and provide funds, but if they can't take advantage of it, then this bill and what we're offering doesn't do them any good. I believe that parents are going to try to select good schools for their children. That is not my concern. Once they identify the school, do they have the money in their pocket? If you're talking about the poorest of parents, they do not. It's a bad bill.

**Speaker Tillis:** Further discussion, further debate? If not, the question before the House is the passage of the House Committee Substitute for House Bill 269 as amended on its second reading. All in favor vote aye; all opposed vote no. The Clerk will open the vote...All members please record...The Clerk will lock the machine and record the vote. Seventy-four having voted in the affirmative and thirty-seven in the negative, the House Committee Substitute number 2 to House Bill 269 as amended has passed its second reading and without objection...

**Rep. Larry Hall (D):** Objection.

**Speaker Tillis:** Objection having been raised, the bill remains on the calendar.

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*3rd reading begins:07:27:00*

**Rep. Hall:** Mr. Speaker?

**Speaker Tillis:** Representative Hall, please state your purpose.

**Rep. Hall:** To be recognized to remove my objection on third to House Bill 269.

**Speaker Tillis:** Is there further objection? Is the lady prepared to send forward her amendment? Without objection, House Bill 269, the Clerk will read.

**Reading Clerk:** General Assembly of North Carolina enacts.

*[unrelated dialogue omitted]*

**Speaker Tillis:** Representative Hamilton, please state your purpose.

**Rep. Hamilton:** Thank you, Mr. Speaker. To debate the amendment. I'll be...

**Speaker Tillis:** The lady should probably send it forth first.

**Rep. Hamilton:** Yes, beg your pardon.

**Speaker Tillis:** The lady is recognized to send forth an amendment. The Clerk will read.

**Reading Clerk:** Representative Hamilton moves to amend the bill on page 2, line 14, by inserting the following sentence before the sentence that begins with the phrase, "The Authority..."

**Speaker Tillis:** The lady is recognized to send forward the amendment...or the lady is recognized to *debate* the amendment.

**Rep. Hamilton:** We just have to decide. I won't belabor the point. This just to put the amendment I sent forth earlier in a different place so that it was not in conflict with the amendment that had been passed earlier. So with that, I'll be happy to answer any questions.

**Speaker Tillis:** Representative Stam, please state your purpose.

**Rep. Stam:** To debate the amendment.

**Speaker Tillis:** The gentleman is recognized to debate the amendment.

**Rep. Stam:** Assuming it is the same text there, what this amendment does is something that is not required in public schools today, and we certainly don't want to require in private schools. And that is that all of the special ed and related services required be at the school. That shouldn't be. You may have received a communication from ARC giving the reasons why this is not possible or not a good idea. A lot of parents even in public schools today, they get some of their special ed services in the public school and they go out and buy them elsewhere.

So we want the parents to have the freedom. I'll just give an example because it's very similar to the one that was asked for Representative Brandon. You may have a child with a speech problem. That child may want to go to ABC School and then every afternoon after school go get those speech services at a private clinic. This amendment would prohibit that. The sponsors of this bill very much ask you to defeat this amendment.



**Speaker Tillis:** Representative Insko, please state your purpose.

**Rep. Insko:** To ask Representative Hamilton a question.

**Speaker Tillis:** Representative Hamilton, does the lady yield?

**Rep. Hamilton:** Yes, I do.

**Speaker Tillis:** The lady yields.

**Rep. Insko:** Representative Hamilton, is there anything in your amendment that requires the services to be provided at the location?

**Rep. Hamilton:** No. Thank you for asking the question, Representative Insko. I was going to address that myself. It does not require the services to be provided *at* the school—physically at the non-public school location—but that a non-public school not charge any additional fees or tuition associated with special services for the child, therefore protecting the tuition reimbursement for the child that the bill is intended to provide.

**Rep. Stam:** To speak a second...?

**Speaker Tillis:** Representative Stam is recognized to debate the amendment a second time.

**Rep. Stam:** To speak a second time, Mr. Speaker. On line 6: “required by the students IEP on a daily basis *from* the non-public school.” Now, we debated this almost three hours in the three committees to which this was sent. So each of you heard it in one, in some cases two, and for some of you, you heard it three times. Every single objection in those committees was not really to the bill, but to existing law. Representative Hamilton again wants to change existing law to make what we have less useful for the people who need it and use it. What the *bill* does is to make the existing program possible for those of lower income.

**Rep. Insko:** Mr. Speaker?

**Rep. Stam:** And I...I will yield.

**Speaker Tillis:** Representative Insko, please state your purpose.

**Rep. Insko:** To ask the speaker a question—Representative Stam.

**Speaker Tillis:** Representative Stam, does the gentleman yield?

**Rep. Stam:** I do.

**Speaker Tillis:** The gentleman yields.

**Rep. Insko:** Representative Stam, I still don’t agree with your interpretation. I understand that students do take field trips. They go to Morehead Planetarium and they are receiving services there. It’s offsite. It’s still a service that’s provided by the school. So, I mean...Can you correct me if I’m wrong about that?

**Rep. Stam:** I can. This amendment requires that the special education and related services be received *from* the non-public school. Existing law...

**Rep. Insko:** Follow-up?

**Rep. Stam:** Let me finish my answer and then I’ll be glad to accept the follow-up. Existing law does not require that. Existing law says that you can be reimbursed for tuition and/or special education and related services. And for your information, “related services” is not just some vague term. It is a term of art and it is four pages in the federal

register. So everybody in the field knows what those are. And I just want you to know that the disability rights groups very much oppose your amendment.

**Speaker Tillis:** Representative Hamilton, please state your purpose.

**Rep. Hamilton:** Just to, I guess, debate the amendment with the speaker.

**Speaker Tillis:** The lady is recognized to debate the amendment a second time. The Speaker is up here. The other person who...

**Rep. Hamilton:** The other speaker.

**Speaker Tillis:** ...just spoke, but he's not actually the Speaker. The lady is recognized.

**Rep. Hamilton:** Thank you very much, Mr. Speaker. I think we have a difference of opinion on interpretation here. I'm happy to send forth some perfecting language to make sure that everyone understands that you don't have to actually have the treatment on campus. The intent of the amendment is to make certain that the non-public school provides the services at no additional fee or tuition cost to the students, therefore not utilizing the tuition reimbursement for purposes other than tuition reimbursement.

**Speaker Tillis:** Further discussion, further debate on the amendment? If not, the question before the House is the passage of the amendment sent forward by Representative Hamilton to the House Committee Substitute number 2 for House Bill 269. All in favor vote aye; all opposed vote no. The Clerk will open the vote...All members please record. The Clerk will lock the machine and record the vote. Forty-two having voted in the affirmative, seventy in the negative, the amendment fails.

We are now back on the bill. Further discussion, further debate? If not, the question before the House is the passage the House Committee Substitute number 2 to House Bill 269 upon its third reading. All in favor say...All in favor...We're going to go ahead and do a recorded vote. All in favor vote aye; all opposed vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. Seventy-five having voted in the affirmative, thirty-six in the negative, the House Committee Substitute number 2 to House Bill 269 has passed its third reading and will be sent to the Senate after Representative Cleveland is recorded as having voted aye.

~ Fin ~

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**HB 712 – Clarifying Changes/Special Ed Scholarships**  
**Remarks on Concurrence**  
**June 25, 2014**

*Portions of the debate related to Section 8 and  
child care licensure are omitted.*

*But the next year many more came around and the bipartisan vote was 87 to 26, including 17 Democrats.*

Audio available at [this link](#)  
Debate begins:00:12:25

**Acting Speaker Tim Moore (R):** House Bill 712, the Clerk will read.

**Reading Clerk:** Senate Committee Substitute for House Bill 712, a bill to be entitled an act to revise and clarify the special education scholarships for children with disabilities and to exempt certain schools from child care licensure requirements.

**Speaker T. Moore:** For what purpose does the gentleman from Wake, Representative Stam, rise?

**Rep. Paul Stam (R – Speaker Pro Tem):** To make a motion and debate the motion.

**Speaker T. Moore:** The gentleman is recognized for a motion and to debate the motion.

**Rep. Stam:** I move that we concur in the Senate Committee Substitute. Mr. Speaker and members of the House, this comes to us from the Senate forty-eight to nothing. In 2011 we passed Tax Credits for Special Needs Students, and then last year we revised that and changed it into a grant program instead of tax credits.

Since then, operational difficulties came up. Many parents found it hard to understand and get reimbursement, to know the rules. And so we obtained information from State Education Assistance Authority, took some suggestions from DPI. Disability rights groups have worked on this like the ARC and the Autism Society. And we came up with what we believe to be a consensus bill. It's five pages. I'm going to read it to you. I'm going to hit two or three highlights just to give you a flavor of it.

For example, there are definitions for educational technology that can be reimbursed that were not there before. We delete the requirement that a child just entering the program have an IEP—Individualized Education Plan—because they might not just have it there in kindergarten. They just...they won't have it. But they can conditionally, if their parents are sure that they are in fact disabled, they can enter. If it turns out that they're identified during the year as a disabled child under federal statutes, the state statutes, then they will be reimbursed.

Section 3 I think is important—a response to some suggestions from DPI. On the website it will tell parents if they access this program that they do not have certain rights that they would otherwise have under federal law. It clarifies how much related services and tuition reimbursements and educational technology has to be accessed during the semester: seventy-five days. And then it makes non-public the records of these applications because all these parents' personal information is not a public record.

*[Debate on Section 8 omitted.]*

So I hope you'll support this important but hopefully noncontroversial bill.

**Speaker T. Moore:** For what purpose does the gentleman from Onslow, Representative Cleveland, rise? For what purpose does the gentleman from Wake, Representative Hall, rise? For what purpose does the gentleman from Cumberland, Representative Glazier, rise?

**Rep. Rick Glazier (D):** To debate the bill, Mr. Speaker.

**Speaker T. Moore:** The gentleman is recognized to debate the bill.

**Rep. Glazier:** Thank you, Mr. Speaker. So you will notice that this has Representative Jackson and myself and Representative Stam as the sponsors of this bill. Well, that was true two iterations ago. It having now been stripped for the second time, it is Representative Stam's bill—I claim no credit. But I will say a couple things about it.

First, I think it is, for the most part, technical and clarifying. It's technical and clarifying fixes to Representative Stam's underlying unconstitutional bill. But it is what I think Representative Stam accurately portrayed it to be. And I will say this: whether people vote for it or not, I believe truly the underlying bill is now unconstitutional and will eventually so be held, but there is no court case on this. There is no court opinion, and so the program is in place.

I do think what Representative Stam is trying to do with this bill is to actually get some of those scholarships, or those opportunities, in the hands of some kids who may actually need them. And as long as the program remains unchallenged, it seems a legitimate policy to try to do that until it is challenged.

So with that in mind, I throw it open to my colleagues to vote your conscience on what you think. But I just wanted to make it clear that at least if I were to vote yes, and I probably am going to be, it shouldn't be construed as a view that I believe the underlying program constitutional. I believe it's clearly not. But it is in place and it hasn't yet been challenged, and that being so, we ought to at least try to fix what we can fix for the time being. Thank you.

**Speaker T. Moore:** For what purpose does the gentleman from Durham, Representative Michaux, rise?

**Rep. Mickey Michaux (D):** To ask Representative Stam a question.

**Speaker T. Moore:** Does the gentleman from Wake yield to the gentleman from Durham?

**Rep. Stam:** I do.

**Speaker T. Moore:** He yields.

**Rep. Michaux:** Representative Stam, is this the bill that is a scholarship reimbursement?

**Rep. Stam:** Yes. This is the one...It's not like Opportunity Scholarships that you get at the beginning of the year. You sign up for it. They can preapprove your expenses if they want to know, "Will I be reimbursed?" But then they have to submit receipts at the end of the semester to actually get reimbursed.

**Rep. Michaux:** Follow-up?

**Speaker T. Moore:** Does the gentleman yield for an additional question?

**Rep. Stam:** I do.

**Speaker T. Moore:** He yields.

**Rep. Michaux:** I just want to be very clear that this is not money going in, but the person has to be in school and then, at the end of the semester or whenever, they will be reimbursed up to a certain point for what has been spent. Is that correct?

**Rep. Stam:** That is right.

**Rep. Michaux:** Oh...

**Speaker T. Moore:** For what purpose does...Further discussion, further debate? If not, the question before the House is the motion to concur with the Senate Committee Substitute for House Bill 712. So many as favor adoption of the motion will vote aye; those opposed will vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. Eighty-seven having voted in the affirmative and twenty-six in the negative, the motion is adopted. The bill is ordered enrolled and sent to the Governor.

~ Fin ~

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**HB 944 – Opportunity Scholarship Act  
Selected Remarks in the House Education Committee  
May 21, 2013**

*Opportunity Scholarships for lower income students were more controversial. Only one Democrat, Marcus Brandon, voted for the bill. These committee debates were more illuminating than floor debates. After the scholarships became law they were tied up in litigation for 1.5 years. Opponents claimed there were no separate votes in the House and little debate. But four separate recorded votes and 98 pages of transcripts of the debates paint the true picture. A majority of African American voters, in particular, and even Democrat voters are supportive. Their legislative leaders are out of step with the voters they represent.*

**Chair J.H. Langdon (R):** The procedure I am going to do today since we've got shorter time is...We probably are not going to have time to actually let members have all the input since we have all these people who have come to want to have the input from the public. We will let the bill be presented, then we will hear from the public. We will start out with those speaking for it and then after, those speaking against.

**Rep. Paul Luebke (D):** Mr. Chairman, just in terms of your procedure, we've got an hour and I'm hoping you give us time for members to debate the bill, or are you trying to vote the bill out today?

**Chair Langdon:** I am not trying to do that. You will have all the time you need. We will probably have to deal with that at another meeting, but the intent is to let the members have as much input as they need.

**Rep. Luebke:** Thank you for clarifying, Mr. Chairman.

**Chair Langdon:** What I'm trying to do is, because people have come today anticipating us to have a two hour meeting, that we would have time for all of this, but we don't. We simply have one hour, so what I'm trying to do is let the people that have driven from wherever to come here have a chance to have input today and then our members would be the last group to have input before we vote. We probably will not be voting today, just because of the time factor of getting there.

**Rep. Tricia Cotham (D):** Thank you, Mr. Chairman. I just wanted to welcome you back to the committee and we are glad to see you back in health and that you are here.

**Chair Langdon:** Let me remind you that, of course, I'm not completely 100% yet, so Linda said she would cover for me if I need to sit.

**Rep. Marvin Lucas (D):** Thank you, Mr. Chair. You might also be reminded that Chair Johnson has been under the weather also and we are glad to have her back.

**Chair Langdon:** We have been corresponding to one another about our conditions and about when we would get ready to go again. Our bill is HB 944, Opportunity Scholarship Act. This is a PCS, so Representative Cleveland moves that we have the PCS brought before us. The PCS is before us.

**Rep. Rob Bryan (R):** Thank you, members. I know that the PCS just went out Friday or Saturday over the weekend. So I know there may be even the old bill still floating out there. There are a few emails that I get that still have old information, so I'm going to try to run through the bill. I'm going to try to do it by hitting the highlights as much as possible. I know we have a lot of folks that want to speak. I at least want to get at some of the changes for some of you that have already reviewed the first bill once.

First, it has been a real pleasure for me to work with my co-sponsors and I think you'll see from the revisions that we have actually been working together. I can tell you I took a car drive through his district recently and I've been on loads of phone calls with these guys trying to make this the best bill possible. With that, let me get into it.

Obviously, the Opportunity Scholarship Act is a bill that would provide scholarship grants in the maximum amount of \$4,200 to eligible students to attend non-public schools. The PCS that you see before you will require the State Education Assistance Authority (SEAA) to be the administrator of the program. They're going to be the ones to award the grants. We have it set up in a two year process right now.

I want to tell you what the eligibility is for the first year, which would be this upcoming year 2013-14. To be an eligible student in the 2013-14 year, there are two factors. They have to reside in a household with an income level not in excess of free and reduced lunch (that is 185% of the federal poverty guidelines). So you have to meet that first criteria. You also have to be a full-time student assigned to and attending a North Carolina public school during the prior 2013 spring semester. So those two requirements are the first year requirements only. You must have been in a public school the prior semester and you must be at free and reduced lunch level or below.

And just to reiterate what the State Education Assistance Authority's role will be in both years: They will be creating temporary rules for all of this, including a process which will likely be a lottery process, similar to what you may have seen for charter schools in the past.

Let me jump into the second year. For school year 2014-15, these are the criteria. You have to reside in a household with an income level not in excess of 133% of the free and reduced level, which I think it says is about 240% of poverty guidelines. In addition to that requirement, you have to meet one of the following criteria: You have to be a full-time public school student the prior semester, received a scholarship grant the prior year, be entering kindergarten or first grade, be in foster care or have been adopted within the last year—just those two sort of extra criteria, which is a very small number of students. It also sets forth the timelines for next year. They would start putting applications out no later than February 1 and do an additional lottery or whatever mechanism they create no later than March 1.

Let me talk about the award priority, especially for the second year. First priority for that second year is going to go to those students who received the scholarship grant the prior year. Now, they have to still meet the income requirement and that's going to have gone up slightly. So a family could actually have made a little more money in the year and still qualify, but they still have to be below the general number. In addition, second priority goes as follows: At least 50% of the new funds must be used for students who qualify for free and reduced lunch (that initial

level) and below. In addition, no more than 35% of the funds can be used for grants for students entering kindergarten or first grade, and then any remaining funds are doled out just to who's eligible.

Again with the amount of the scholarship, for free and reduced lunch students they can get the full \$4,200. For students above that number but still below the 133%, they can get up to 90% of the \$4,200. So there's some level of parent participation in that payment. On eligibility, the Education Assistance Authority will verify—they'll select a random number, a set number, to verify and they will, on an annual basis, also establish rules, and they can revoke someone's award if they don't follow the rules. With respect to some of the additional obligations of the SEAA, I think most of them are actually outlined in Section... Well, let me skip ahead and go over some of the obligations of the non-public schools.

For the non-public schools receiving grants, they have a number of obligations they have to comply with. They have to provide the SEAA with information on tuition and fees every year. They have to conduct certain criminal background checks. They have to provide parents receiving grants with annual written explanations of the students' progress, including test scores on standardized tests. They also have to submit annually the test scores of any standardized tests administered to any student receiving the grant. This data is not a public record. It is an individual test, but it can be used for data purposes. They also have to provide graduation rates of the students receiving the grants.

Further, they also have to contract with a CPA—and these are two requirements relate to what I'll call schools that have a fairly significant number of students. A lot of schools may take a couple of students. Obviously, the burdens we put on a school taking a couple students are less than a school that takes a hundred students in a scholarship program. In this example, if a school receives more than \$300,000 in grants—maybe 70 kids or so—in that instance they will have to go through a financial review with a CPA and provide that information. In addition, if you have more than twenty-five students, you have to provide aggregate test data. So if you have that many students at your school, you have to provide aggregate test data back to the program. With respect to the endorsement process, the school would be getting money twice a year and it has to be endorsed by the students' parents or guardians. Let me let my co-sponsors jump in. I think I've covered the basics.

**Rep. Marcus Brandon (D):** I just want to thank Representative Bryan. I know that he is a freshman, but it did not seem like it working on the bill with him. We really had a deliberative process and we worked very hard and I just want to reiterate some of the things that the... I hear some of the rhetoric that comes out of what this bill is about and I wanted to let you know about what this bill is not.

Some people say that this is a way for wealthy people to get scholarships. That is not true. As you can look at the bill, you cannot really make more than \$50,000 a year and be able to achieve this. And so I hardly think we can call that wealthy. One of the other things that we were able to do is make sure that no matter what, how we deal with this bill in the future or how we deal with this program in the future, that 50% of the kids will always—that are free and reduced lunch—will always have access to this scholarship which was very important for me because as we go through this bill and look at this process, a lot of folks in the communities that look like mine will have to be able to build the capacity to be able to make sure that people will be able to take advantage of it. And so because of the fact that we have reserved that money for 50% of free and reduced lunch kids, I think that we will always have the access question answered.

One of the things that I like about the bill also that we worked with Representatives Bryan and Brown and Hanes is that any savings that comes out of this—and there will be a savings and every single state that has implemented it has ended up with a savings and North Carolina will be no different—and once we do get the savings, we have set up a place where LEAs can go and be able to retrieve that money for a public/private partnership.

I think that because of all the changes that we made in the bill, I think it's really one of the better bills that we've had in the General Assembly and I think it encompasses the values of both parties. And especially for me as a Progressive Democrat, this definitely talks about the issues of justice and equal opportunity and equal access and I'll just leave you with this because I want people to understand where it comes from and what that looks like. If you are able to look at a parent and look them dead square in the face and that parent is a poor parent and you know that they don't have the same opportunities and the same access as someone that lives across town—if you are prepared to look them directly in the face and say, “Yes, ma'am, I know that your child has had three F's on their report card. Yes, ma'am, I know that they have been suspended twice. And yes, ma'am, I know that that school is not working for them, but therefore you live in that zip code and must attend that school.” If you are prepared to call that Progressive, if you're prepared to call that Democratic ideals, if you're prepared to call that equal opportunity and equal access, I will challenge you on that. But I will say that I stand up here as a Progressive Democrat, and say that I will be fighting for my constituents for equal opportunity and for equal access.

**Rep. Brian Brown (R):** Good afternoon, members. I too want to thank Representative Bryan for his work, as well as the other co-sponsors of this bill who have worked really very hard to create a bill that will be working for the future of North Carolina. You know, I say it all the time, several weeks ago, us four stood on a stage along with the Speaker in Greensboro and heard from over three thousand parents from all across this state. Not just from Greensboro—they traveled miles and miles and miles to come to talk to us and it wasn't to see us, it was to tell us and encourage us to continue pushing on with this bill, to make sure that we give their kids an opportunity that they don't currently have. And this isn't just about urban districts. I live in a rural district and this is about an opportunity to provide these kids with a future that they don't currently have. There are community outreach centers in my district that, if you walk in there, these kids are bright, bright children who just do not have the opportunity to succeed in their current environment. This is a chance to align their ability with their opportunity. And that's what we need, ladies and gentlemen. That is the fact. That is the future of North Carolina. I sincerely urge you to help us support this bill and I look forward to the information that will be given today as well. Thank you very much.

**Rep. Ed Hanes (D):** Good afternoon, ladies and gentlemen. Talents are universal, but opportunities are not. Talents are universal, but opportunities are not. As I thought about this bill, as we spoke at our news conference yesterday afternoon, and as I contemplated and reflected on my life as a public school student—I am a product of the public school system of Winston-Salem, Forsyth County. My parents were both administrators in the Winston-Salem, Forsyth County school system for over thirty-five years. My aunts and uncles are all teachers. Most of my cousins are teachers up and down the east coast of this great nation. And as I thought about where we stand today, I came to a simple conclusion. And that is all of our students in our public schools do not have equal opportunity at a sound and basic education. That is promised to our students constitutionally in this State—a sound and basic opportunity, a chance at that.

I firmly believe that it is perhaps the number one civil rights issue of our day: education. It keeps our homes sound. It keeps the futures of our students sound. And according to every statistic, once our students are reading at a proficient level at the end of the third grade, it keeps them from being qualified for jail. It keeps them from joining us in Raleigh, colleagues, while we sit on Jones Street and they become qualified for Central Prison. That is simply the reality.

When I ran for the North Carolina General Assembly, I ran on the idea of uniting, on the idea of pulling our colleagues in the General Assembly out of silos. And I was not all the way there when it came to tax credits or vouchers, but as I started doing the research and I started looking at the realities after I gathered information from the Department of Public Instruction with regard to third grade reading proficiency, and as I looked across the State, I became quite embarrassed at what I saw. I saw numbers that reflected in Charlotte, for education or for economically disadvantaged students, 55% reading proficient. Nash County: 55% reading proficient. North Hampton County: 51% reading proficient. Chapel Hill: 48% reading proficient at the end of third grade. Asheboro: 49%. And then I looked at my own county, Forsyth County, Winston-Salem. And I thought, surely, the county where I grew up in, the county where I attended a magnet school, two magnet schools and was one of the first to participate in true public/private partnerships, and I thought, surely, that is not what I will find in Winston-Salem, Forsyth County. And what I found was 48% reading proficiency at the end of third grade. I found elementary schools that are reading proficient at 26% at the end of third grade, 33% at the end of third grade, 40% at the end of third grade.

There is nothing equal about that. Our parents and our children deserve choice. I decided at that point that I could no longer sit back and take another ten years nor ten months nor ten days nor ten minutes nor ten seconds. I decided that I would join this group and lead from the front and take a bill that I had questions about and do what I could do to legislate this bill to make it better. I believe that we have done that. I believe that it is a work in progress, and that we will continue to do it. I also believe that we must 100%...We have to support our public schools. We have to understand that those schools can not only just survive, that they have to thrive and that this is a million-piece process, this is a million-piece puzzle. This is just one of the very small pieces and part of that piece is to give our parents choice. Thank you.

**Chair Langdon:** That concludes the presentations by the bill's sponsors....

**HB 944 – Opportunity Scholarship Act**  
**Selected Remarks in the House Education Committee**  
**May 28, 2013**

**Chair Linda Johnson (R):** ...Rodney Ellis is next to speak.

**Rodney Ellis (President of NCAE):** Thank you, Ma'am. I am Rodney Ellis Sr. and a Language Arts teacher from the Forsyth Winston-Salem School System where I have spent my career working exclusively with students who qualify for free and reduced lunch. Over that twenty-two-year span I have worked in pre-k programs, before and after school programs, charter schools and for the last sixteen years, for the public school system. So what I share with you today is not based on research and data but based on personal experience.

Through those experiences I have learned that parents and guardians of at risk students are sending to public schools the best they have with all they have. I have witnessed their struggle to fund field trips, provide school supplies, put food on the table, keep a roof over their heads, and I assure you that for most of them there are no additional funds available in the household to offset costs for tuition to private schools. Given the current state of our economy, I would argue that very few will benefit from this legislation and at what cost to North Carolina public school system?

If this legislation should pass I believe it would mark the beginning of the total dismantle of public education in North Carolina. Initially this bill targets the free and reduced lunch students in our state. Next year, it will be open to all students, with the argument being: if it is good enough for free and reduced lunch population, then it's good enough for all students. And let's be honest about it, ultimately that is the intent—to provide tax breaks for those who can already afford the choice proponents argue this bill will provide for those who need it the most.

I listened to the arguments last week for choice. At what choice are you really providing for this bill? I listened to the data presented that lists that public schools are failing minority students. Instead of using that data to attack public schools, why aren't we using it to determine how we address the challenges facing public schools and at risks students? You have assembled before you stakeholders of all interested parties. Instead of debating the merits of one school system over the other, we should be addressing our questions and concerns and we should be discussing our ideas, practices and policies that are proven effective. Throughout this legislative session, the North Carolina House of Representatives has exhibited a willingness to work collaboratively and laterally, regardless of party affiliation. You have opened your doors to stakeholders and interested parties. I ask that you oppose this bill.

*[dialogue removed]*

**Chair Johnson:** Thank you. Now the bill sponsors will come forward and explain the changes in the PCS.

**Rep. Rob Bryan (R):** Thank you, Madam Chair. You all do have a PCS before you—I think from the one we looked at from last week with one additional change. The change includes the annual administration of standardized tests in grades 3 or higher. Right now for nonpublic schools they're only required to take tests 3, 6, 8, and 11 maybe, so this requires annual testing for any students receiving scholarships. And that is the only change to the PCS.

**Chair Johnson:** Thank you so much. We are open for questions.

**Rep. Alma Adams (D):** I have question and to make a comment. What is the actual amount that you are requesting? Initially I think I saw \$90 million. Is there a change to that?

**Rep. Bryan:** Sure. It's not a change from last week's PCS, but from the original bill that was filed there is a change. It is \$10 million for this coming fiscal year and \$40 million for the following fiscal year.

**Rep. Adams:** Follow up? So how does that impact the number of children you are purposing to serve? If you initially had ninety and now you have fifty?

**Rep. Bryan:** Well, part of it is a timing issue, given how late in the year we are. So initially, about two-thousand students and then seven-thousand the following. So about nine-thousand total.



**Rep. Rick Glazier (D):** I have a comment. There has been an argument that has been made to this bill that if you have the eligibility of the income levels that are set, that this is going to open wide opportunities for those who are poor to access private choices. So I decided to test that theory out with some data.

Over the past week, we contacted twenty-four private schools in eight counties and the vast majority were actually religious based because those tend to have lower cost in tuition rather than the richer private schools. If you combine those, this voucher would mean that someone who gets the voucher who is going to elementary school would still have to come up with on average \$5,689 for that year. Middle school: \$7,150. High school: \$8,457. So to say that this is going to create access to the poor to these schools, as an economic matter, is simply not correct—at least not in this state. I would be glad to share the specific data.

Second, this idea that even if they got the voucher and got assistance from the school—and most of these schools do have a system in place, but if you look at their assistance in scholarship forms they are to say the least substantial and a lot of people will not be filling out those forms. If you’ve looked at them, you’ll figure out why. But even if they were, the difference is private schools get to choose. They get to turn away the ELS kid; they get to turn away the kid with a discipline problem. They can turn away healthcare concerns that they can’t meet. So the only poor kids who are going to get access this at all are the ones where the parents are involved, have a good academic record, are not a risk and are going to leave the public school, which then are even higher rates of at-risk kids, ESL kids, kids with discipline problems and it is just going to jack up the cost of educating kids in public classrooms.

This bill, in my view, has all the problems that vouchers have. It will weaken public education and undermine opportunity for the vast majority. It is a waste of taxpayer dollars and promotes a divided North Carolina. I will conclude my comments with what I have always believed and that is that public education is the one institution that binds the people of our country—that one nation, under one flag, and common set of values. If we divide that into hundreds of private schools we do incredible damage to the fabric of society. For economic, educational, social, moral and political reasons, this bill should be defeated.

**Rep. Marcus Brandon (D):** I do appreciate the fact that you yourself supported the tax credit for special needs which was actually less money than this one. I am really confused on that because what I would tell you is that the people in my community, they may not have an IEP and they may not be considered special needs, but their needs are indeed special and it is the same exact situation. There have been several people here who have been serving this population who are poor that have said they can accommodate. We have a program in Charlotte that does the same thing with less money and they have been accommodating. We don’t really need to start with, “What can the people do?” The people in the community can do whatever they want to do.

**Rep. Rosa Gill (D):** I want to send forth an amendment. If you look on page four at the obligations of the nonpublic school accepting eligible students receiving the scholarship grants, nowhere in there do I see where the private schools have to make available tuition and fee charges by the schools. I want to offer an amendment that will say that on an annual basis the nonpublic school must make available to everyone the tuition and fees they charge.

**Rep. Adams:** I support the amendment.

**Rep. Paul Stam (R – Speaker Pro Tem):** Isn’t that already on lines 5 and 6 already? Providing that to the Authority would make it become public record.

**Chair Johnson:** Staff, can we have a ruling on that?

**Rep. Gill:** Giving it to the Authority does not make it public. The Authority is the only one receiving the information. This amendment is saying that if they are going to put the application on file then they ought to put the tuition and the fees charged on their website also. Make it public knowledge. It’s taxpayer’s money!

**Kara McGraw (Staff Attorney):** Representative Stam is correct. They are going to provide that information to the Authority and then an individual could, through a public records request, get that information. This amendment would make it more directly accessible to the public by requiring them to provide it directly to the public rather than going around through the authority.

**Rep. Bryan:** Conceptually we don’t have any problems with the amendment. We would like to work with the Representative on tweaking the language.

**Rep. Jeff Elmore (R):** This morning in Ed Approps, the Senate budget is making an effort that the school systems budgets be posted online and made more public. This amendment seems to be more in line with that policy in the public schools. I just wanted to make that comment.

**Rep. Jeff Collins (R):** What constitutes a public notice that you want? In the newspaper? On a website?

*[The amendment fails on a voice vote.]*

**Rep. Deborah Ross (D):** My question is to what schools would this apply to? I have a Muslim school in my district that is interested in vouchers and I would like to know if they would be included?

**Rep. Brandon:** Please let them know that they are just as available as anyone else.

**Rep. Ross:** I understand this is going to Appropriations and that there have been some claims to saving taxpayers money in the end. I think it would be important to know how many students would have to leave the public schools in order to see the money being saved overall, because if you have one student leaves the classroom, you still need the teacher there for the other students. I think there is a difference in the fixed cost and the incremental cost. In order to have an appropriate fiscal note, all this should be considered that from just one or two students leaving it won't provide savings.

**Rep. Bryan:** Representative Ross, I appreciate your comment and that is obviously what everyone is concerned about and the collective impact. They have done studies in all the places where they have similar programs and they have saved money. There are a lot of variables to consider when doing that. I would say in urban areas where they tend to be more exercised, like Mecklenburg or Wake who have a high level of growth, if you take 500 students out of a growth that was going to be 5,000 you just have 4,500 students now...variables like school buildings. We as bill sponsors have the fiscal note that shows cost savings that will be before Appropriations, but I'd be glad to get you a copy of that.

**Rep. Mickey Michaux (D):** My concern is that the information given to us is from local school systems like Milwaukee, Miami and Cleveland. I haven't heard any data that has been given to us for state-wide systems where this has been in effect. Second, what happens to those kids who are in impoverished communities who do not have access to this education that you talk about? I'm talking about counties like Warren County and others who don't have private schools. How do we provide for the education for those kids when you're going to be taking money away from the public schools? Thirdly, we know that private schools cherry pick. So I don't care what color you are or what has happened in your life, those private schools are going to cherry pick the students. I happened to see an ad in the newspaper this weekend congratulating a particular private school. They had pictures in there of the graduates and of the ninety-some graduates there were only three that could be identified as being of minority youth. Lastly, why would you not put a diversity clause in this legislation that would guarantee that it would approximate the number of students in public education?

**Rep. Chris Whitmire (R):** Thank you, Madam Chair. I will speak on the bill then ask a question at the end. In my district which includes three counties people have lots of great choices. Let me emphasize what serves over 87% of the kids in this state is traditional public education. Transylvania County includes 90% composite scores just last year. The list of accolades goes on and on with graduation rates and so on. Henderson County, ninth overall on the SAT but ninety-second least in ADM funding, Transylvania County is not far behind that. Polk County: three out of the four elementary schools were not just honors schools of excellence, but national Blue Ribbon schools of Excellence. In the last five years their overall graduation rate has been north of 89%. That is three rural counties that when you continue to take away, take away, folks, no matter what their political dominion is, their kids end up taking it in the shorts.

As an example, we cut our athletic department when I was a school board member, and oh by the way, we were the most fiscally effective school system in the state as deemed by DPI. We had to cut it by 50%. My little girl was wearing a basketball uniform that was eleven years old. Now that might sound like a sob story, but my point is, folks, there are some great choices. I can't necessarily help if some areas have some major issues but I have to speak up for my district and my area where this bill robs Peter to pay Paul.

In the end I have great concern with the transparency, accountability in the terms of report-ability of testing. The criminal backgrounds checks are okay but then again one classification is good for the other. Only one at the highest level? I don't think that makes sense. In the end, the money just doesn't add up.

I look at what we have in terms of private school opportunities in this area where I live. We have a couple private schools that at K-8 are at \$14,000 a year; ninth- graduation is \$19,000. When I look at those that are affordable that this \$4,200 would work for, their capacity is extremely limited with not much chance of increasing. I spoke with one individual who runs a great school where their maximum they could accept is five students. I only have two of those in one county, and I may have missed some, but the capacity that they could help is very limited.

So when all is said and done my question is this: Is this bill going to be a stand-alone that goes through Appropriations and on to the floor for a House vote? Or will it be embedded into the budget with no further hearing? Thank you.

**Rep. Paul Luebke (D):** I propose a simple amendment. I hope that it is a simple oversight, subconscious error on the part of the drafters. On page 1, line 9, I purpose the word "additional" be inserted before educational foundation. Similar on page 5 you talk about the gains of students receiving scholarship grants. It has been indicated with reference to Milwaukee, it is possible there be losses so in the interest should you be a little bit objective and at least say gains or losses? So those are tiny changes to help balance some of the statements.

**Rep. Bryan:** We are fine with the amendment.

*[The amendment passes on a voice vote.]*

**Rep. Luebke:** Madam Chair, I have a few additional points I would like to make. The repayment issue is troublesome to me. How would you be repaid if someone were to be in the school for one quarter then decides to go back to public school? I don't see anything in the bill that takes that back. The assertion from Representative Bryan's handout that schools can't take money from students who aren't in seats—that is not true. Read the website and some of these schools say that you pay 100% whether you leave or not.

The most important issue before us is the separation of Church and State. First of all the bill does not require students to be accredited by SACS. You get into Christian teachers who profess to believe in Jesus Christ. Some schools reduce the tuition for parents who profess to be Christian or Catholic. Due to the make-up of the Supreme Court, I don't see how it wouldn't stand up, but I don't see how you can support a bill that so flagrantly gives taxpayer money to schools who state as their mission to teach a denomination in the Christian faith. And there are schools that will teach from the Quran. I think this is wrong and needs to come out of the bill to go to any school whose website preaches Christianity or Islam as the teaching mission. I wonder if Representative Bryan will defend the lack of separation in Church and State.

**Rep. Bryan:** This bill is for parents to make a choice for their children. We are not giving money to a Christian school; it is the parent giving the money to the school, and it is there choice to do so. We already do that in our Pre-K and our colleges. I assume you would not like us to stop supporting those programs? The majority of us agree that we don't want to take away things like the GI Bill.

**Rep. Susan Fisher (D):** I wonder if the sponsors have made sure that the nonpublic schools will not charge more than the amount of the vouchers? At St. David's in Wake County tuition is \$39,650 a year. Cary Academy is \$17,775 a year. Cardinal Gibbons, if not a Catholic, is \$13,380 a year... This is a ridiculous use of taxpayer money. I am proud that our school system did not close during the Great Depression and here we are in the Great Recession getting ready to shut down our school system. Is this where we really want to be? I ask you to vote against this bill.

**Rep. Bert Jones (R):** A philosophical question determines where you are: Whose decision should it be? Who is responsible for these children? Any time there is parental choice, there is a red herring debate. The proponents want to make it seem we are against public education, which is not the case. Through all the debate we have heard that nonpublic school has no accountability to any of us. I believe every school is held responsible by the parent of the child that attends there. We've been told that we were elected to represent public schools. We were elected to represent the people of North Carolina, whether they decide to send their kids to public schools or private schools, home schools, charter schools. The parents have a God-given right.

**Rep. Larry Bell (D):** I would like to speak to oppose this bill and to endorse everything that Representative Whitmire said.

**Rep. Charles Graham (D):** This bill takes away from rural counties including Robeson County. I am appalled by this. I have a question. What are the qualifications of the teachers in these private schools?

**Rep. Bryan:** Whatever the private school's standards are which could be higher than public schools. And to be clear, the bill does not take any money away from the local districts. I don't know where that came from but it is not true.

**Rep. Graham:** I am concerned that we are talking out of both sides of our mouth by saying we support public education but then we have this bill come up. I strongly believe that we as a body have an obligation to meet what is identified in our State Constitution and publically fund and support public education 100%. We should not move in this direction.

**Rep. Collins:** I went to public school and taught in a private school that was church-affiliated for twelve years. Many times we had students who had been kicked out of public schools because of behavior problems. So I don't appreciate the stance that private schools cherry pick their students. We have schools all around the state that don't have tuition as high as what others have mentioned. The private school in Rocky Mount that I helped set up is between \$6,700 and \$7,000 a year so a \$4,200 scholarship sure would help a lot. This is a real-world example where this could work.

**Rep. Adams:** There is still a lot of money that would need to be made up, and for parents living in poverty \$2,800 is too much. Even \$200 is too much. Choice is fine. Choice in education when interfered by using public dollars, that is wrong. By pulling out this money from funding our public schools system we are dismantling the school system. The previous amendment would have at least added some sort of accountability. This is a very bad bill.

**Rep. Bryan:** My general comment is that this, in size, is a pilot bill. School choice is just one piece of the educational puzzle that we need to address student needs. It saves us money and we will get into the fiscal note soon. For folks in other counties, if folks don't exercise on it, it does nothing to your funding. These tuition questions that come up, when you look at Florida, which we are modeled after, it tends to be the poorest of the poor that participate. The average family exercising has an income of \$24,000 a year. The scholarship there ranges from \$4,100 to \$4,300 per year. The average tuition cost there is \$5,600. Many schools are mission focused, so the schools want to have the students come and make efforts with the family to find ways to make up the additional cost, sometimes through volunteer hours at the school. I have additional information that may go out through email to combat some of the interesting claims we have heard here today.

*[Bill passes by a vote of 27 in favor to 21 against.]*

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**SB 402 – Appropriations Act of 2013  
Opportunity Scholarship Remarks in the  
House Appropriations Education Subcommittee  
June 7, 2013**

**Rep. Rick Glazier (D):** ...Amendment AMK-18 – Thank you, Mr. Chair. This is an amendment which essentially deletes the Opportunity Scholarship provisions of the money report—better known as the vouchers—in the second year biennium, deleting that money in the first year because there is a 2 million dollar or so add to the budget. It takes money from several different places. It increases the DPI fund slightly back to the Senate and allows the State Board to allocate that reduction at its convenience. It also, as you look, it increases the fund by \$3,000.

Two other items: The essence of it is to take out the Education Opportunity Scholarship from the bill. I do that for a couple reasons. First, as everyone in here knows the arguments, there is a strong division about whether or not vouchers are good public policy or not good public policy. Secondly, I think it is inappropriate to put it in the budget. This is a purely major policy matter that ought to be on an up or down vote on its own. It ought to stand that

way as we discussed in committee the other day. It is not something that ought to be decided for people to have to vote for or against the budget. This is a dramatic change in how we fund education in this state. And it is in my opinion significant enough for public education that Opportunity Scholarships should be removed from the budget and the money reallocated.

**Chair Chuck McGrady (R):** Discussion on the Glazier amendment?

**Rep. Glazier:** And I call for the ayes and noes when the motion is called.

**Chair McGrady:** I intended to do that without your request. Further discussion on the Glazier amendment? Representative Elmore.

**Rep. Jeff Elmore (R):** I did not get an opportunity to make a comment when this came up in the Education Committee. I just want to say a few words about this policy. As you hear both sides of the argument—money from local schools, lack of accountability, fear of religious issues brought up, parent participation—I agree with the component of parental control. That is essential. We need to have parents involved in their children’s education. But they define opportunity in this policy as being an idea of choice. I don’t see opportunity for children as an idea of choice in this context. It is more of educational freedom.

When they give the examples of the success stories that these kids are having in these private environments or in their modified environments, it is because they are not suffering from the regulations that we are putting on our own public schools: high stakes testing, common core standards, things of that nature. We are continually regulating the public schools to force these entities to become more successful. The reason why I don’t think this is good policy at this time is until we can work on bringing these regulations in the public schools down to where we can have a true competitive playing field then this would be good public policy. But we are not to that point yet with our education reform efforts. We need to look at it as a whole instead of pieces of junk. So I would support Representative Glazier’s amendment.

**Chair McGrady:** Chairman Horn.

**Rep. Craig Horn (R):** The position of the Chairs is to oppose this amendment based on several factors. House Bill 944 has passed the Education Committee. It is not just a policy, it is a fact. It is working its way through. If we ignore fact, then not fund them if we think they are worthy of funding, then we are not doing our job.

Now with regard to the issue unto itself, it is the view of the Chairs that one size does not fit all. And although public schools do a marvelous job in this state—I think a spectacular job in this state—we feel there are some children that are not well served by the public schools available to them. Their parents want better for their children. And who has no choice, who has no opportunity or freedom in education—or no opportunity in education, generally speaking? It is the poorest among us. House Bill 944 is focused on the poorest among these kids to ensure where possible we are going to give it a try, so to speak, because we are limited just in the number of dollars available to less than one tenth of 1% of the kids in this state in the first year, and I think it is a 0.5% in the second year.

This type of project has proven its worth in other states. We think it is a good idea. It is an opportunity for the poorest kids in our state to find a system that works best for them. We ask you to vote no.

**Chair McGrady:** Representative Whitmire then Representative Gill

**Rep. Chris Whitmire (R):** Everybody heard me a couple of weeks ago. This 944 has not passed a House vote. [*It passed*] one committee. It is referred to Appropriations, so we are short on Appropriations. But it said on the website it has been to Approps. Whatever that is, this is one item that has not gone through all the vetting.

With that, as a school board chairman, as a parent, it brings a lot of parents into putting time into our public schools where I live and having an incredible choice, just as you heard me the other day—an incredible performance. As a school board chairman I had to sign all the paperwork that said we are cutting athletics 50%, furniture and supplies and a whole lot of other deep cuts a few years ago. We were able to restore them to only a 60% cut during my last budget cycle. I have been in the trenches.

The accountability shortcomings on 944, which is what this essentially is, I have problems with: background checks. But ultimately by taking this money and putting it back to where it was taken from, we are putting money back into the classrooms that serve 87% of the kids, not 3 to 4%. There will be another day, another time when the budget is better.

Health care, Medicaid—as we continue to do continuing funding, and it is absolutely essential that we do, every little positive element we are seeing on revenue is getting pulled away and we don't have the excess money to do this which serves such a small element of the population. And again, I tremendously support the private schools, but the capacity is so limited.

With the handout that Representative Stam, who I have great respect for, handed out earlier today, one of those is my area is closed and the other two...Well, 20 to 25,000 per semester—that is an extreme example. It is either very expensive to the tune of 14 to 20,000 per year or it is affordable. But where it is affordable the capacity is greatly limited by bricks and mortar of where it is at. It is usually at a church where it is part of their mission, and I support that wholeheartedly. But it is really, really tough. Take away from the big one and there are no complaints. And I ask that you support the amendment.

**Chair McGrady:** Representative Gill

**Rep. Rosa Gill (D):** I was going to say something similar to what Representative Whitmire said that I did not think this bill had been vetted—the Opportunity Scholarship. We did get to vote on the Disability Scholarship but we did not get an opportunity to vote on the Opportunity Scholarship.

Giving these opportunities to the poorest of poor—that is the biggest fallacy of this whole thing. The poorest of the poor would not be able to attend a nonpublic school based on this scholarship. If you look at it, when we talk about the poorest of poor and we talk about our pre-kindergarten program, we talk about 100% of the poverty rate and here we are talking about more than 100% and then in the second year it goes even higher. Let's just be open about this whole process, it is to help some of our middle class families who want to go to nonpublic schools, help pay for the tuition of the nonpublic schools.

I agree with the amendment and will be voting for the amendment because I think that, first of all, there are quite a few members of our legislature that did not get a chance to vote on this Opportunity Scholarship deal and probably would vote against it. If it is going to be policy then I think that every legislator should have the opportunity to vote on it.

**Chair McGrady:** I am going to be keeping a speakers list throughout. I've got Lucas, Michaux, Bryan, Brown, Malone and Stam and Goodman. I know we are taking up one of the more controversial issues first and so I understand we will have extended discussion. But I don't want to be here till 10 o'clock at night, so try to refrain from repeating. Representative Lucas.

**Rep. Marvin Lucas (D):** Thank you, sir. My remarks will be brief. Someone once told me that revenue could be considered *[audio unclear]*...Not to be witty. Suffice to say assuming that the types of parents that we are attempting to address, primarily assuming that they cannot be served in our regular public schools. They can. Many school systems do that. They have magnet schools that really, really attract these kinds of students. The resources can be developed in those school systems that don't have it. I am not convinced that we need to go outside the public schools.

**Rep. Mickey Michaux (D):** I would like to go back to the idea that there are only going to be a limited number of schools that are going to...first of all that need scholarships that will be available to them. That's number one. And then when you start cherry picking them and looking at it, what happens when that student fails in that private school, doesn't meet the standard of that private school? That person has to go back to the public school. You can ask them to return the money. But I can tell that if you look outside the public school, if you take the problems that we are in, then you aren't taking money away, taking \$4,200 away. That cuts in half what we already give, what it costs us to teach these students in public schools. *[audio unclear]*...Just taking more money away, I just can't do it. Are you going to find full scholarships? Then that's something you can give them.

**Rep. Rob Bryan (R):** Thank you, Mr. Chair. A couple of comments. First, on the vetting: you know, this is a bipartisan bill, and it's changed since it was filed. In fact, working with Representative Hanes, Representative Brandon, and Representative Brown, and I, we lowered these numbers to make sure it was applying to the most needy of kids. In fact, it's very much modeled on, very similar to the way the Florida tax credit program runs. So let me first say, it has been vetted and worked on in a bipartisan manner and passed, frankly, what is probably the hardest committee for it to pass already.

Second, with respect to the cost notion, let me be clear: this saves money. In every single state that has run this it saves money. The idea that it is robbing Peter to pay Paul or something like that is just completely wrong. This is a

cost savings. You can just tell it by the numbers. This is a \$4,200 scholarship. To educate a child, we pay much more than that. You can also look at the fiscal note to deal with that. In our own fiscal note, there is local savings across the board over the five year period. So we get our money in both state and local. Part of the way our existing fiscal note formula is done—and our fiscal folks have done a great deal of work on this, but it's based on a demand formula—and part of that has to put in a tuition number. From that perspective, the tuition number... We don't have data on North Carolina tuitions; we've had to put in the national number. And really to go to the point on this, in Florida, where they run this program, which probably has similar private school numbers (and by the way, we do have some data that has not been able to be used) but in Florida where they run a program similar, the average tuition in a school that a kid exercises on is about \$5,600 a year. Their scholarship number is about \$4,100. But what happens in the private schools is those schools find ways for those parents either to pay a little bit of money or they may give volunteer hours. There's lots of ways they make up that extra money.

What's amazing is in Florida, the average family exercising on this makes \$24,000 a year, which is about 115% above the poverty level. They're making that little money and they're actually able to exercise on these units. Some people keep saying that it's only these other kids that are wealthier that would be exercising on this. That's not historically been the case. As far as we've had, it's really some of the students at these lowest levels that are actually able to realize the benefit of it. And what they're able to do is get back up to grade level and it's serving very express needs that haven't been met. These students, for whatever they're unique reasons are, they have needed to be in a private school context where they get the attention or special programs that really helps them. So from this idea that kids can't exercise on it, it's just not true. Their program has grown from 10,000 to over 50,000 kids. This is something that people can exercise on. It's just not the case that they won't do it. And so it's a cost saver. I think that covers it.

**Rep. Brian Brown (R):** Thank you, Mr. Chair. Representative Bryan, the majority of what I wanted to talk about from a fiscal aspect is in regards to Representative Gill's notion that this would mask... effectively could be driven towards those most in need. And I guess if you think those who receive free and reduced lunch are not the most in need, then I don't know what else to do. I think that's a fallacy.

In regards to accountability, with this particular bill... Ladies and gentlemen, this is the most accountability we can provide. We have the accountability of parents to send their kids to a school of their choice, evaluate that option, and then make another choice: "Do I keep my child in that particular institution or do I move them back to public schools?" This is the ultimate accountability for these kids. And I ask you to oppose this amendment and put the control in the parents' hands. If you are not about seeing these children who truly have ability to succeed but not just because of academics—because many parents will tell you, it's not just about the teachers; they are doing a great job. It's about the environment that they are in—an environment that they cannot learn in, an environment that's riddled with gang violence, an environment that's riddled with all types of social issues that are driving kids down.

It's an opportunity to save some of our children and put them on a better path and break the cycle. This is a great bill, this is a great use of our money and it is a great savings to our state. Please oppose this amendment.

**Rep. Paul Stam (R – Speaker Pro Tem):** Two quick things. One on process: "Let's hear it in Appropriations Committee"—we are going to hear it in Appropriations Committee Tuesday and I have no doubt Representative Glazier will move again to take it out or somebody else will. And then we'll hear the bill on the floor on Wednesday and you can do another amendment. So that's process.

The only part that I've ever heard that makes any sense was draining the public schools of money. So I did a little bit—I've passed it around to everybody here. When I do math... I forgot how to do algebra. I studied it, but I forgot it, but I know how to do addition, subtraction, multiplication and division. If the numerator goes down—yes, but if the denominator goes down, it gives you a different dividend. So I've given you this, straight from the numbers from your packet here. Basically, yes, in the first year there's savings. The second year, it costs the same, but that's outweighed by the savings in the counties. In the subsequent years, the subsequent savings in the counties builds. But from a per-pupil basis, in the first year (you've got it there) the kid in the traditional public school will have an additional \$1.40 per kid. In the second year: an additional \$7.00 per kid. That doesn't include the savings at the local level which was at the bottom. You cannot talk about losing money if you don't understand you are also losing costs. They balance each other.

**Rep. Ken Goodman (D):** Thank you, Mr. Chair. I would like to make a point to take issue with the cost analysis that we have heard here. From a business point of view, everybody that's in business understands fixed and variable costs. A company will take fixed costs and spread it over so many units. What I'm saying is, when you take a child out of school, you still pay the principal. The cost of that principal goes up proportionately. The cost of the cafeteria

if you take a few children out goes up proportionally in shared cost. The utilities, none of those things decline with the loss of students. If you have a classroom where you lose three of fifteen students, you can't get rid of 20% of the teacher. I mean, those costs remain. So the cost per child increases as you take children out of the school. I think we've demonstrated that when we talked about the small school a lot earlier today. So I just believe that the analysis is very flawed when you talk about how much money you save. I know in my business, every time I try to cut a cost, cut my advertising bill the same way, my sales go down, so my costs—when I look at it as a percentage, I didn't save any money. So I think we've experienced the same thing in the school system and I just wanted to make that point.

**Rep. Glazier:** Thank you, gentlemen. I want to close with just two quick points. First, we all said at the beginning that the two biggest priorities we had for public education were to be able to pay teachers and to be able to cut into the large discretionary cuts that exist. The budget that we're getting ready to look at is unable because of money to do much of either. That is Representative Whitmire's point, I think. If you look at simply the budget you are being presented, there's no question that it costs more than it saves when you just look at the second year. The second year of the budget shows there's \$4 million out, and if you look at the next several years, the State continues to lose money: \$5 or \$6 million the next year, 7 or 8 the next. This is not a money-saver. There may be valid policy reasons to do things, but it is not from the state perspective a money saver. And in the end, given where we are, we ought to be focused on the two things we know we ought to be doing for public education, not something as divisive as this. With that, Mr. Chair, I do call for the ayes and noes.

**Chair McGrady:** I've got two last speakers who are speaking a second time: Representative Whitmire and then Representative Bryan. Okay, I'll add you. You'll get the last word then. Representative Whitmire.

**Rep. Whitmire:** Very briefly, the fixed cost issue is certainly very real. I personally, after being in the trenches for many years, I don't think that this would actually reflect savings. Representative Goodman talked to that, but you know, obviously you can't do away with 20% of a teacher. You can't necessarily just not use a building anymore. It's not clean. You might have two students in this class, one in another, and it's just a trickle effect and you've still got the fixed costs. Here is the bigger concern of some of the conversations that we've had. In a day and time when our public schools, in what we do today matters for tomorrow, for 1.5 million kids. They don't get to hit the position freeze like you would in a flight simulator to talk about it and catch up. We are cutting them over and over and over. And with that, is this concept in a time when the money is not there to do it, is it...? And I argue that there in my area our public schools are strong and the vast majority of the population that is not politically demeaning is proud of them and appreciates them. But for those cases in areas where they have issues, I would highly encourage all to get involved and put your time and not just your money and your criticism in the schools. Does 944, or this piece of the budget, fix the problem or provide an escape? And both of those concepts can have a lot of repercussions when you think through it. Please, I would ask you to support Representative Glazier's amendment.

**Rep. Bryan:** Just a couple brief comments. One, on the cost, just to reiterate: our fiscal note right now which, actually, we put a midpoint on a range. So for one, even on the state side, we'll collect that after the first year, which the first year is the one set year that we know that we have a \$2 million savings in. The rest is really based partially on data that hopefully we'll collect over the first year. But more significantly, it shows in our note, very large, maybe \$50 million—I can't remember the exact number—of savings to local school districts, which is much greater than any costs to the State which are all very minor. So you have a very large local cost-savings.

And just to address the point that others have made about the... I mean, when you have a school districts that are growing, especially like the larger urban counties where this is most likely to be exercised, instead of going up by 5,000 students next year, they only go up by 4,000 students, so that leaves students exercising the scholarships. That's part of how you understand why there's actually cost-savings here. You're not building new schools now.

More significantly is the two sort of related questions: student outcomes, and the impact on public schools. All of the studies done show positive impact on public schools. Twenty-two out of twenty-three studies—these are studies using random assignment—have shown positive impact. One study showed no impact on student achievement. Twenty-two of twenty-three showed a positive impact on the public schools by having a scholarship program. Last, all the studies done, or eleven out of twelve studies done—again, one study showing no impact on student achievement—the other eleven have all had positive impact on student achievement. If we are about student outcomes and increasing our public schools, you should be voting against this amendment.

**Chair McGrady:** Representative Malone, and then we will come to a vote.



**Rep. Chris Malone (R):** Real quick. Representative Bryan just hit on the fiscal money being saved by counties so I will go straight to one other thing. On accountability, when you send your kid to a school—and there are people sending their kids to private schools, Catholic schools, whatever type it might be—there’s a lot of accountability in that. Many of us have paid that school for their kids’ attendance there and those schools know they have to be accountable to those parents in order to be their choice. I know that a lot of schools around the state were failing to be approved by Advanced Ed. I think there’s tons of accountability in this program. I think having parents have the right to put their kids in that school is paramount. I was a little concerned about certain things, but I am very happy with where we are and I ask you to support the bill.

**Chair McGrady:** Moving to the vote. You can call a vote roll. This is on the amendment.

*[The amendment failed by a vote of 6 in favor to 9 against.]*

Are there any other amendments relating to the Opportunity Scholarship? Representative Elmore, you are recognized to send forth an amendment.

**Rep. Elmore:** The amendment number is S402 ALE-22. Thank you for letting me go ahead and run it, because I know that Representative Brown has to leave. What my hope was to do with this amendment was I was concerned with the additional appropriation we had to put forth to run this program. So what I decided would be a common sense way to help with that is to limit this scholarship to only two counties: Mecklenburg and Wake County. That’s about 20% of the student population statewide. When I got the numbers back, what I actually found out from the formula that they were using, I figured that there would be a cost savings to this, but what I found was that there was an additional appropriations needed to be able to run the program just in those two counties even though it was less than the statewide program. What this amendment would do, it would take the money there that we need in addition just for the two counties from the textbook fund for a total of about \$6 million over the two years. That’s applying the scholarship just to two counties.

**Chair McGrady:** Further discussion on the amendment? Chairman Horn.

**Rep. Horn:** The Chairs recommend voting against this amendment. Reducing textbook spending and supplies is not a good option for the schools all across the State of North Carolina.

**Rep. Elmore:** Mr. Chairman, because of the concerns of the Chairs and the additional cost of this, I withdraw my amendment.

**Chair McGrady:** Are there any other amendments related to the Opportunity Scholarship? I just sort of wanted a statement if it’s possible. Representative Glazier, you have...?

**Rep. Glazier:** Not in the money portion of it, just additional coverage of the bill.

**Chair McGrady:** We can go ahead and take that up while we are on this subject. What’s the number on it? We are going to AMK-17 Version 1, an amendment put forward by Representative Glazier. Now this goes to the special provisions; this is not in the Money Report. Representative Glazier

**Rep. Glazier:** Thank you. The special provision that it changes is really just kind of summarizing a bunch of the authority of reporting issues. It’s already in there and I’m willing to talk through those changes *[audio unclear]*... An additional *[audio unclear]*... it would require Ed Oversight to carry out in *[audio unclear]*... and look at the data and ask *[audio unclear]*... And then we can figure whether we want at that point an extension of the program beyond 2018-19. Effectively putting in a sunset based on data to say, “Okay, did this experiment work or did it not?” Without it, we are accepting it and then never having a timetable to reject it. So if the data is good, they can choose to extend it. If the data is not so good, then we ought to be in a position where it’s going to have to be reevaluated.

**Rep. Stam:** I am trying to figure out what the difference is between the first part. Let me address section (n). Now this is sunseting the bill. It’s not a tax credit. It’s an appropriation. So if the money isn’t appropriated in the next biennium, it’s gone. Now, we hope it will stay, but it requires a positive act of the Assembly to appropriate it. And I don’t understand the first part, so I oppose the amendment.

And the other reason: if a kid starts in this program, they get grandfathered in. You don't want to start them in a program in second grade that is already set to end in fourth grade when their parents have no stability.

**Rep. Horn:** The Chairs recommend that you vote against this amendment. A sunset provision is by far a huge concern to stop a project midstream. So we urge you to vote against it. And no, I don't understand the first part of it either, Representative Glazier.

**Rep. Michaux:** If Representative Stam says that it already has a sunset on it, what's wrong with putting this one on it too? I'm just wondering what he's saying.

**Rep. Glazier:** I called it a sunset. I was trying to summarize it. That's not really what this is. I want to be really clear. It is a bizarre argument that is being made against it because Representative Stam says that if the General Assembly doesn't want to appropriate money next year, two years, then it ought to be trashed. That's true. I'm not at all saying that it should or shouldn't. This isn't at all saying that it has to stop. All this says is, make sure there is in law a provision that there has to be a review of the data and that there ought to be a decision made by 2018-19, which gives it potentially four full years and into the fifth. You look at the data and say, "Is it good to be run for longer or is it not?" This doesn't stop it. This simply says you've got to make a choice. You got to be able to look at the data and say, "Is it working or is it not working?" It doesn't say it ends. It says that that's the choice that Assembly has to make at that point. Somebody ought to be able to say whether this is working or not. I can't for the life of me, for a group that always is talking about—and that's all of us—that we need to look at the data, that we need to have an accountability date, that we will impose an accountability date. We set them on public schools every year.

**Rep. Whitmire:** Question for either of the bill sponsors.

**Chair McGrady:** State your question.

**Rep. Whitmire:** Question is: in either of your opinions, would this mitigate some of the concerns that you've heard in all the work that you've put into this with the accountability that is not a public record until it hits a certain threshold?

**Chair McGrady:** Are you asking that of the Chairs or are you asking that of Representative Glazier? You can ask it of staff, too. Just direct your question. Where do you want your question to go?

**Rep. Whitmire:** Mr. Chair, if I could please direct the question to Representative Bryan. There have been a lot of things for this, plus or minus this. You've done tremendous work on this. Is this something that might address some of the accountability concerns without the lateral review of this body?

**Rep. Bryan:** Yeah, I think we have worked hard to try to put some standards in. I think this in large part already matches what Florida does. But my ultimate sense is that parents are the ultimate accountability. In our public schools, which we do examine, but when they're not performing, there's not an option. Parents actually can restore their child back out, so that's the ultimate accountability. So I don't think it's necessary.

**Chair McGrady:** Further discussion on AMK-17, put forward by Representative Glazier? If not, the vote is on the amendment. All in favor say aye... Opposed, no. In the opinion of the Chairs, the noes have it, the amendment fails. Representative Glazier, you've got AMK-16. You want to put that forward? Let's make sure everyone has it. AMK-16, put forward by Representative Glazier.

**Rep. Glazier:** AMK-16 does not have the issue that the last one did, but it does rearrange the language so that it really is clear about what we are stating and look at the learning gains and losses and to look at the effects of what's happening with the voucher program. I would hope there is no opposition to this.

**Rep. Horn:** The Chairs have no objection to this amendment.

**Rep. Stam:** I just couldn't figure out what the difference was in the underlying language. It appears to be about...I would defer to Representative Bryan in that.

**Chair McGrady:** Representative Bryan, would you like to speak to this amendment?

**Rep. Bryan:** Just give me one second.

**Chair McGrady:** Okay. Representative Horn, can you respond to the question that has come forth?

**Rep. Horn:** To the best of my ability, I see this as roughly oversight without the dates that you had put into the previous amendment. The Chairs have no objection.

**Chair McGrady:** The vote is on the amendment put forward by Representative Glazier. All in favor of the motion indicate by saying aye... Opposed?...The motion passes. Are there any other amendments related to the Opportunity Scholarship? I just wanted to try to take that in a compact fashion.

**SB 402 – Appropriations Act of 2013  
Opportunity Scholarship Remarks in the  
House Appropriations Committee  
June 11, 2013**

**Chair:** The next amendment is offered by Representative Whitmire. It is AMK-19 V3, Amendment number 14. And Representative Whitmire is recognized to present his amendment.

**Rep. Chris Whitmire (R):** Thank you, Mr. Chair. Very briefly, this amendment takes the vouchers/Opportunity Scholarships and puts the money for that back in ADM so it best affects the classroom of 87% of our students in the state. You've all heard my thoughts in terms of the efficacy of how the funding actually works, having gone through it, having to make drastic cuts to the school board chairmen year after year after year in some very high-performing systems. I want you to think of these two thoughts as you consider how you vote and I ask that you support this amendment.

When the middle class goes to the polls and they realize, "Oh, we heard all about the voucher bill, but I didn't qualify." And I know that it grows exponentially over time, but then when they get to that point over time, they realize that the capacity—especially in the rural areas—of private schools would serve less than 4% of students in the state and have extremely limited capacity in those that the \$4,200 a year would actually work for. And for those that do have capacity, in my area in western North Carolina in general, they range from 14,000-25,000 a year.

And the final thought's this...And I support these schools absolutely wholeheartedly and I have talked to many of them in my area recently. Do we think that Christian schools want government bureaucrats setting the standards and making demands on them? Absolutely not. What we have here is the potential for an absolute Trojan Horse that brings government into a private setting and ultimately undermines and compromises what those schools stand for in the first place. I ask you to support the amendment.

**Rep. Craig Horn (R):** Thank you, Mr. Chairman. I certainly appreciate Representative Whitmire's enthusiasm and strong support for public schools. Can't say that we look particularly as kindly toward rewriting the entire K-12 education budget as this amendment does, where it addresses supplies cuts, it addresses flex cuts, it addresses DPI cuts. We would encourage the Appropriations Committee to vote against this amendment.

**Rep. Rob Bryan (R):** Thank you, Mr. Chairman. Let me make a few points. Obviously, as one of the bill sponsors for House Bill 944, which is a bipartisan bill filed with Representatives Brandon, Hanes and Brown, I am a fan of the bill. And let me tell you why I disagree with the amendment and with Representative Whitmire's comment. I think the Opportunity Scholarship bill does three very significant things that are what we should be all about. It saves money, it improves public schools and it improves student outcomes. And despite all the rhetoric and concern we have, the State of Florida which been running a program which our program is largely modeled on, that program's been running for ten years. The sky has not fallen. And in fact, the exact opposite has happened. Florida has saved millions of dollars. I think they are set this year to save \$7 million. Their public schools have improved. And their student outcomes have improved.

In particular, we can see in studies that have been done...There have been twenty-three studies on the impact on public schools of having choice programs. Twenty-two of those studies show that public schools actually improve. One study showed no impact. No negative studies. These are sort of the gold standard, random-assignment type

studies. On student outcomes, twelve different studies have been done. One of them showed no impact on student improvement. Eleven showed positive student outcomes. And that's not achievement, it's also in attainment. More kids matriculated in college, more high school diplomas—that's been the impact of school choice and that's what the impact will be of this House Bill.

It is, in size, a small program. Effectively, you could call it a pilot program in that you only have about a half of 1% of students that will initially be able to use this. But these are the students that are most in need and most desire an opportunity, a chance that they have not been given. It's not a silver bullet to fix all of our educational problems, but it is one piece of the educational puzzle that parents and their students need. I ask you to vote against the amendment.

**Rep. Marcus Brandon (D):** Thank you, Mr. Chair. I also was a proud sponsor of the bill. I would like for you to oppose this amendment. I think that it is very important to know that my colleague, Representative Bryan, let you know about the program in Florida. But folks, we have a very similar program in Charlotte, North Carolina that does basically the same exact thing with much less money, and it is providing access and opportunity to a number of kids that are in the same demographic in Charlotte.

So I think we need to be very careful when we hear the rhetoric that people won't be able to access this scholarship. We've been doing it. The community has been doing it for years and years and years and years. And you can see private school after private school... And so this is not necessarily like Representative Whitmire is saying talking about \$14,000, \$15,000 schools. If their parents choose to send them there, then I guess that's okay. But we are talking about private schools and other organizations that have been taking care of this demographic for a number of years and this is just giving us one more step up that we can do that.

And if you guys want to look at the Charlotte scholarship program, you can see where this has been a great access for a lot of folks and a lot of folks that are in the community that need some type of opportunity and some type of choice. I urge that you please oppose this amendment and give dignity and respect to parents all across this state who need a choice. Thank you.

**Rep. Josh Dobson (R):** Thank you, Mr. Chairman. In addition to the remarks that Representative Whitmire has made, I also would like to support this amendment for three reasons. One, I think this is a major shift in education policy in our state. And I think it's a debate that we need to have, but I do not believe that it needs to be in the budget. I think it needs to be a separate item that's debated, discussed and then, however it turns out, we'll move forward from there. So, I think for that reason, because of the policy decision, it does not need to be in the budget.

Second, I believe our local school districts have been hit hard already. They're already doing more with less. They're already doing the best they can to thread the needle with the funds, and to take more funds out of our public schools is something that I am opposed to.

And finally—and I'll be brief—I believe in free markets. I believe in competition. But I do not believe that vouchers will make our fifth grade teachers at Newland Elementary or Crossnore Elementary work harder than they're already working. I think they're already giving it all they have.

So for those three reasons, I would support this amendment and I would encourage you to do the same. Thank you, Mr. Chairman.

**Rep. Ruth Samuelson (R):** Thank you, Mr. Chairman. Members, about two weeks ago my husband and I got invited to a fundraiser for a Christian school in Charlotte that resides in a fragile, very culturally diverse community. They have thrived in that community by raising money from people like me to help them support the scholarship program that they have for students. However, they're recognizing that the demand exceeds their ability to meet it because they need things like this Opportunity Scholarship.

When we showed up there, they said, "Oh, we are so excited that you came. Can you tell us the status of this? We already know some kids that are struggling in school right now that need this kind of environment and only with something like this Opportunity Scholarship can we provide them a place in our schools."

So I do ask that you oppose the amendment. And just as an FYI, their current tuition rate is \$5,400. So with this scholarship, they can easily raise the money to help match the difference so they can afford to have these children come. It's not a \$15,000 school; it's a \$5,400 school that meets the needs of kids that often don't have the kinds of options that the rest of us have. I urge you to oppose the amendment.

**Rep. Alma Adams (R):** Thank you, Mr. Speaker. I want to speak in support of the amendment. I hear a lot about opportunity and if we've got folks like the Representative over there who just spoke and said they had the dollars to provide for these students, I think they need to do it. I don't think we need to continue to raid our public schools. If

you want to go to a private school, that's the choice that you make as a parent. And I would still continue to say that these parents that we're talking about who are at the lowest end of the scale will not have the funds to make this opportunity a real opportunity for these children. The children that that bill proposes to support will not be supported. I was opposed to that bill and I am supporting this amendment because it will correct the action that was taken before, and I hope that you would support the amendment.

**Rep. Whitmire:** Thank you, Mr. Chair. To speak a second time on the amendment? Folks, I have great respect for the sponsors of this bill, and that has been stated to them personally many times. Their intent, while it is genuine, the means of doing it...I just have to emphasize, I have great concern because being in an area where parents invest time in their schools and making them better, this in effect serves more as an escape than it does as a help. This has not had a full House vote. It's in the budget, as with a couple other things that hadn't been fully vetted. So that's why, with that, I will rest my case and ask, Mr. Chair, for a showing of the ayes and the noes, and we can conclude the debate please.

**Rep. J.H. Langdon (R):** Thank you, Mr. Chairman. Everybody knows that I spent my life in public education. I think this a step in the wrong direction, for two reasons. We've just taken out of the budget all the policy items that the Senate put in; here we are putting in the same kinds of things. It is inappropriate and we should not be doing that and I urge you to support the amendment.

**Rep. Frank Iler (R):** Thank you, Mr. Chairman. It takes a lot for me to speak on this type of issue, but I finally had to step up a little bit. I couldn't disagree more about the gentlemen who are saying this shouldn't be in the budget. To me this is an underhanded way to de-fang 944 before it even gets off the ground. So, I really do not agree with the amendment. The funding should be in the budget and it can always not be used if 944 doesn't pass. But obviously, if 944 passes and becomes law, then there's no funds at that point. The argument that very few people can take advantage of it, but it's going to destroy public schools—you can't make both those arguments at the same time. I'm sorry, it's not logical at all. If very few people use it, then it's not going to have any effect. If a lot of people use it, it still won't destroy public schools because it is a small percentage, as someone already mentioned. Thank you.

**Rep. Larry Hall (D):** Thank you, Mr. Chairman. I will speak briefly. I won't reiterate the points that have already been made about the drain on the public school system resources that would happen or the unfairness of having a major policy shift happen in the budget without having a full discussion, but I will assert this: Those families out there who might would qualify for this type of assistance—those who already have their children in schools, in programs that may have run out of resources or are no longer eligible for whatever assistance programs they're on—they would be disclosed from...or foreclosed from participating in the program. So for some reason we are creating now two tiers in addition to taking money from public schools where these families will have to go back to should they lose the other support. So I'm going to support the amendment and I hope you will to.

**Rep. Marilyn Avila (R):** Thank you, Mr. Chairman. We've talked about technicalities in here and how we haven't had a chance to discuss this. If anybody believes that vouchers haven't been discussed for a few years, they haven't been awake. The State has a responsibility to educate our children. Our kids had an option. We could have sent them to private schools. We chose the public schools because our schools were such that the kids got a good education. Now, there were a few years I had to kind of monitor things a lot and that wasn't the fault of the school in whole, but our kids got a good education.

That's not the case in a lot of our public schools. We might as well admit that. I don't feel like we are doing our children justice by not using our tax dollars to move them into a school where they can get the education that they need. These are the children that we are talking about. We are talking about children who simply cannot get what it is they need in our public schools. The schools that we fund in general can't be everything to everybody. We are going to have to have the opportunity for those children who need specialized education whether it's small classrooms or certain emphasis or certain types of teaching. And we are not doing our children the justice by crippling them and not being able to put them in an environment and get them educated and become productive citizens. Thank you.

**Rep. Mickey Michaux (D):** Thank you, Mr. Chairman. Just to speak briefly. What concerns me basically about this is that this is a situation you say that everybody can take advantage of about \$4,200 even on a \$5,400. Some kids can't afford that. But what's more disturbing is the areas where you don't have the opportunity for those kids to

become enrolled in a private institution. There are places down east that don't have these schools in the area. What are you going to do with all those kids that can't do that? If you are really going to open up this thing, then what you should do is you should at least provide what it costs for us to educate a child in our public school system. You ought to put that kind of money in a scholarship program for them to be able to take advantage of it.

I don't care what you say, I look every day during this season of the year—a lot of the private schools are running pictures of their classes. I look at a lot of them in the paper. I looked at one of them this morning. Out of about one hundred and two graduates there were maybe eight dark faces—same color as me—in that picture. There was one run the other week in a school that was not quite as expensive as the one that was run this morning. There were only three faces out of ninety-eight that took advantage.

The final thing on this is that unfortunately these schools, they're not like charter schools. Charter schools at least get the money for educating those kids. But here these schools cherry pick. I mean, let's face it folks, if you don't cut in those schools, you're out. It's just that way. In order to get in the schools you've got to be able to meet the standards of that school to get in. How do you get in? If you're saying our public schools are failing us, how do you get into those schools? And if you get in there, how do you stay in them?

This \$4,200 you giving is nothing but a mere taking away of \$4,200 that could be used in our schools. Why don't we go ahead and put what we need into our public system and make our schools even better than some of those schools you want to put these kids in?

**Rep. Jeff Elmore (R):** Thank you, Mr. Chairman. I would just like to speak about the amendment. Since this is Appropriations, I would like to talk about the actual financial side of it. A concern of mine that I have is that this policy is stated as saving money. I am concerned with the ADM adjustment if we can actually predict that. In the Education Subcommittee I was hoping to draw up an amendment that would save money dealing with this, only applying Opportunity Scholarships to Wake and Mecklenburg County, but after it was run through our formulas, it was found that that would cost an additional \$8 million of appropriation to be able to cover it. A concern that I have is that our estimates with the ADM adjustment with these Opportunity Scholarships—if they can be accurate, if that's a true number that we could actually use—are we going to have a shortfall with it that has to be back-filled? I don't know if all of that has been panned out yet with this policy change and that's a concern of mine. Thank you, Mr. Chair.

**Rep. Verla Insko (D):** Thank you, Mr. Chairman. Members, every year since I've been a member of the General Assembly, with the exception of the last few years, Republicans and Democrats alike joined together to take steps to improve educational opportunities for our children. We started Smart Start. We gave star rating to our day care centers. We increased our child care subsidy. We had dropout prevention programs. We expanded our teacher training programs. We had superb teacher development programs go on. We saw the achievement gap beginning to close. And our school ratings and the quality of our school education across the state improved.

I don't know why we are stopping our efforts to improve public education. I don't know why the advances, the success, we have had in these programs that are paying off...Our public schools are getting better. I don't understand why we aren't continuing on that same track of making our schools better every year. You're never going to have schools that you think are perfect. You're always going to have to be trying to improve the schools. We've been doing that and we've been successful. It is very distressing to see us now taking steps to undermine—intentionally undermine—and put at a disadvantage our public school system that is responsible for serving every child.

I believe every one of these scholarships will be used. All the money that is available will be used. But it will go to parents. And I would just add that there are schools that have lower than \$15,000 or \$20,000 tuition. The Durham school for children is a very good school. Its tuition is not...it's below \$10,000 a year. So those schools do exist, but by and large across the state, the tuition is higher. And in those schools that are private schools, they don't have buses to pick up children, so working parents have to arrange for their children to get transportation. There are often extra expenses like paying for your athletic uniforms, paying for field trips. It's not all free. Plus private schools already give tuition waivers to bright minority students that are academically gifted that they want in their student body and they already give tuition waivers to athletes that they want. Many of these voucher programs will go to these students that would already have been admitted.

I don't have any problem with people sending their children to private schools. My grandchildren attend private school and we are happy to pay our taxes to have our children go to public schools. So I think at this time, we are just beginning to enlarge our programs and concentrate on the jobs of the future through our public school system. This is not the time to take away resources from our system and I urge you to vote for the amendment.

**Rep. Rick Glazier (D):** Thank you, Mr. Chairman. And I will try to be brief, Mr. Chairman. It seems to me right now we are having a terribly difficult time as a General Assembly. I know the Chairs are struggling to fund our first system of public education. It seems a really inappropriate time to start trying to fund a second system of public education—or a second system of education.

I can improve on a number of the comments, particularly those by Representative Dobson and Representative Elmore and Representative Whitmire, but we are not putting in this budget a raise for teachers who are demoralized this year after a number of years—by both Democrats and Republicans—of not funding teacher raises. We're not attacking at all the discretionary cut which has hampered badly, because of the recession, the school system.

There's no question at all but that vouchers will increase the cost past this first year over the next several years. In addition, I really think that the problem with vouchers as it's expressed is summed up in the percentages. This bill talks about 130% free and reduced or poverty level, which is a good thing even if you can believe that those students will be able to make up the difference of the \$5,000 they need for elementary or the \$6,000 more for middle or the \$7,000 more for high school, which is the average for what they need.

But Representative Whitmire may have hit the point. What do you say to all those people who earned \$50,000 or \$60,000 and have three kids and want this option? That your tax dollars will go not to their kids? Well, I think that the real answer to that came when the original bill was drafted, which had a 300% level. That was the true intent and we all know that was going to move to 400% or 500% because that's where this was scheduled to go. Only because of trying to cobble together votes has it been reduced to the real poverty level children. And we know based on the data that those are not the children who are likely going to seriously be able to access in most places. And even if they get the scholarship, will private schools, for that amount of money, adequately give children a sound, basic education who are ADD and ADHD and rheumatoid arthritis and all of the hard to educate children who cost far more than that?

So we meet ourselves coming and going here. We don't have enough in it to make a difference. When we put more in it, we are really doing exactly what many of us fear, which is trying to fund a whole new system of education. And so wherever you fall on this, as a matter of policy as complex and wherever you fall on this in the end, timing is everything. Governing is about the scarce allocation of resources and in the end, this is not the year to be funding a voucher program even if we make this public policy choice. And I would urge us to adopt the amendment.

**Rep. Sarah Stevens (R):** Thank you, Mr. Chair. I want to speak against the amendment. It's been interesting to sit and watch the debate for the amendment because we are taking entirely too much from public schools and yet we are not doing enough that will send it out away from here. As a parent, I was fortunate enough to live in Surry County where we have three school systems. They are competitive against each other. They may as well be somewhat private schools because the two city schools will compete against each other and the county schools are trying to keep up. So I had the advantage that my children were at a school that was much more intimate in its discussion.

Now as my children have grown, one wants to be in a total university population of 1,600. The other one is at a university that's 80,000 to 100,000 people. There's a difference in children that parents recognize as to whether they need more one-on-one instruction—which these tuition scholarships would give, or these vouchers would give—whereas others would function in whatever school it is. The people who argue that it is only going to cherry pick—well, I'm sorry. If parents are involved enough to get their children to these schools, then those children should have the benefit. This is about the children, not a system, not about the traditional public schools. This is about what's best for each and every one of those individual children.

**Rep. Bryan:** Thank you, Mr. Chairman. To speak a second time? I just want to make a couple of follow-up comments. First, with respect to cost, just to be clear: our own fiscal note on the state and local combined savings over a five-year period shows about \$40 million in savings. So when you talk about money and what you're going to do about money, if you don't vote against this amendment, you will have less money. So let's be clear. You will have less money for your public schools. All the studies that have been done on choice programs show savings.

Second point, with respect to access: people have made a lot of comments about whether or not kids will be able to use the scholarship. Florida, again, started this program ten years ago. They started with about ten thousand students. Just FYI, they have not changed their income limits. It's in the roughly 185% to 225% of federal poverty guidelines range. Over that ten-year period, haven't changed their income limits. But the number of students utilizing the scholarship—which has gone from about a \$3,500 scholarship to about a \$4,100 this year—has gone from 10,000 to over 50,000. And they are schools that are serving those students' needs.

And remember again, just when you think about the savings, there are all these schools out there that the brick and mortar is not paid for by us. The transportation and all these other things are not paid for by us, but these students are able to utilize it. Let me encourage you to vote against the amendment.

**Rep. Dennis Riddell (R):** Thank you, Mr. Chairman. Folks, I've been listening to the debate on this for quite some time now. I have not spoken to the Committee about it, but it's time for me to be heard on this. I am very thankful that we have something like the Opportunity Scholarship coming forward. I oppose the amendment brought forward by my good friend and seat-mate, Representative Whitmire. It was said in a previous meeting that this was robbing Peter to pay Paul. Unfortunately, there are some pockets of education—public education in our state—where Peter has been robbing Paul and Paula's child of a sufficient education.

We have many programs that we have put in place to help disadvantaged children, help them get a good public education. We have a disadvantaged students supplemental fund. There's a low wealth supplement. There's a small county supplement. There's the at-risk student services. There's the improving student accountability and many, many more that we either put in place in the past or are currently place. But there are some schools where these programs are not doing the job.

We cannot take children who are in a high poverty situation where there's high teacher turnover or low student performance and leave them there without any hope. The Opportunity Scholarship plans to provide them an opportunity to succeed and get them out of a school where they have no hope. And rather than consigning them to a future of failure or mediocrity or getting involved in gangs or ending up in crime and in jail, you give them a hope for an education. You give them the hope of a future to help them amount to something and be a benefit to their community and a blessing to their parents.

This is a good, good step we are making here with public education, the Opportunity Scholarship. I would encourage you to please vote down the amendment. This is simply keeping children from getting access to the education that they deserve. Thank you.

**Rep. Michele Presnell (R):** I have a question for Representative Whitmire.

**Rep. Whitmire:** I yield.

**Rep. Presnell:** I really wanted to vote for this amendment, but I do want to point out on line 17 it says, "reduces the state support for the DPI operation including salaries and benefits by 2.5%". I just wanted you to explain that.

**Rep. Whitmire:** In looking at the fiscal note and the math, which I take great issue with because it doesn't account for fixed costs and a whole lot of things that turn into rather creative math—but I will give absolutely credit where credit is due to the bill sponsors. We had to come up with the difference. You take away so much, and you think if you just put it back in, it would be the same. And that's where they say it saves money, but it does not. I can attest to that. So we had to look for places.

And with that, the DPI cut, which—you know, everything is doing more and more and more with less—that additional cut to DPI would put the House budget the same as the Senate budget when it comes to DPI. When it comes to instructional supplies, we looked at many things. And yes, there are many things that are hurting for funds, but that was the least of those that I and others—many others in this room—came to consensus to take the instructional supplies. Now there are a couple of provisions that Friday we were able to put into instructional supplies; we mitigated a little bit. If you go into the next year, you will find that that take-away actually gets replenished almost double. So in the two-year it actually comes out better, but we had to do that in order to make the numbers work.

**Rep. Paul Stam (R – Speaker Pro Tem):** Thank you, Mr. Chairman. Members of the committee, of course I oppose the amendment. Math includes addition, subtraction, multiplication, and division and I know a little bit of algebra. But for this, you really don't need that. If you take... And I've shared this information with many of the people who have spoken for this amendment. They forget when you divide you have a numerator and a denominator. If you take money away from the numerator but don't take it away from the denominator, you can pretend you are losing money. But if you change the denominator, you find out that after the Opportunity Scholarships pass, the traditional public schools next year will have an additional \$1.30 per pupil. In the next year they will have an additional \$7 and some cents per pupil and the LEAs will save more money—save about \$7 or \$8 dollars per pupil beginning in year two. If your decision is based on support for the public schools—if that's your reason: the fiscal impact—you will vote no on this amendment.

*[The amendment failed by a vote of 38 in favor to 48 against.]*



**SB 402 – Appropriations Act of 2013**  
**Opportunity Scholarship Remarks on 2nd Reading**  
**June 12, 2013**

Audio available at [this link](#)

*Rep. Horn's comments: 01:02:23*

**Rep. Craig Horn (R):** ... We have also funded some initiatives. It is a responsible thing for this Legislature to do to fund things that we expect to come through, in particular, Opportunity Scholarships—*opportunity* for the poorest among us to have a chance for parents to a school that fits them rather than a one-size-fits-all...

\* \* \* \*

*Rep. Hanes' comments: 05:38:40*

**Rep. Ed Hanes (D):** Thank you, Mr. Speaker. What this amendment will do is remove Opportunity Scholarships from the budget and ultimately assign funds to the teachers assistants allotment. Ladies and gentlemen, you all know that I am a principle sponsor on House Bill 944 and so the announcement that House Bill 944 had been placed into the House budget created a huge dilemma for me and education advocates across the state. Not everyone in this chamber has had the opportunity to hear debate on a stand-alone bill, fully vetted on the House floor. While I remain a passionate advocate of all of our children's constitutional rights to an equal education and an equal opportunity at a sound and basic education, that passion must be balanced with the right to open debate and for our bills to rise and fall upon their own merit. As a matter of principle, I believe in choice for economically disadvantaged students. I ran for the seat as a choice advocate and I stand by that. The decision to place 944 in the budget, however, ensures that there will be no further debate on this important issue and I cannot support that decision. I would ask that you support the amendment.

**Acting Speaker Tim Moore (R):** For what purpose does the gentleman from Guilford, Representative Brandon, rise?

**Rep. Marcus Brandon (D):** To debate the amendment, please.

**Speaker Tillis:** The gentleman has the floor to debate the amendment.

**Rep. Brandon:** Although I agree with my colleague, Representative Hanes, in principle that the bill should be debated, I think we have had a lot of debate about this issue. There are a lot of issues that are in the budget that we have to deal with this way. So it is not enough for me to be able to take it out of the bill, simply because needs of our community are too great for a technicality. We have a number of children that need, deserve, this opportunity. And I urge that you continue to support dignity, justice, equal opportunity and equal access for children all across this state and support the amendment...I mean, go against the amendment. Thank you.

**Speaker T. Moore:** For what purpose does the gentleman from Mecklenburg, Representative Bryan, rise?

**Rep. Rob Bryan (R):** To speak on the amendment

**Speaker T. Moore:** The gentleman has the floor to debate the amendment.

**Rep. Bryan:** Thank you, Mr. Speaker. Just first, obviously we have had a good bipartisan bill and I will respectfully disagree with my co-sponsor, Representative Hanes, in speaking against this amendment. We have had a very full debate. In fact, ninety of us sat and debated yesterday in full Appropriations. This is after a full debate in our House Education Policy with public folks speaking with two separate meetings. We also debated in Ed Appropriations and we will debate here again. So I think we have had a full and fair debate. And to my other co-sponsor, Representative Brandon's point, this is about providing opportunities for students.

Let me say a couple things to reiterate some points that were made yesterday. I said three things that I will reiterate again, which is: this program saves money. Having Opportunity Scholarships will save the State money. It improves public schools and, most importantly, it improves student outcomes, which is what we should be about.

I want to address one point about public schools. You keep hearing concerns from folks in public schools worried about what's going to happen. I want to share two brief quotes or stories. One is from a superintendent down in Florida and I have referenced this previously. Florida has run a great program. It's been in existence for ten years, and I'm going to read to you from the superintendent in Jacksonville schools. So despite all the concern about what happened to schools, this is what she said:

"I support choice because I think parents need options, especially those that don't have the financial means to go to a private school. I just don't believe that anyone should tell a parent where they should send their child to school. I am vehemently opposed to limiting options, especially to parents whose children are in lower performing schools or whose parents don't have the financial means to have the same flexibility that a parent would have of means. And that is historically what has happened in our public education system."

In Florida you will hear story after story of folks who previously did not support this bill, or previously did not support choice and now do. And in fact, we had a school choice day here—one of the speakers was a former chair, or head, of the Democratic Party in Florida in the Senate. And he came and said "Hey, I voted against it the first time" and he's voted for it every time since. He's seen the benefit that it's been. With that I will implore you to vote against the amendment.

**Speaker T. Moore:** For what purpose does the gentleman from Cumberland, Representative Glazier, rise?

**Rep. Rick Glazier (D):** First to see if Representative Bryan might yield for a question, possibly a second. Then to speak to the amendment.

**Speaker T. Moore:** Does the gentleman from Mecklenburg yield to the gentleman from Cumberland?

**Rep. Bryan:** I do.

**Speaker T. Moore:** He yields.

**Rep. Glazier:** Thank you very much, Mr. Speaker. Thank you, Representative. Representative, just so I'm clear before we debate: Is it your intent and is it the provision's—which is essentially the bill—goal to provide every student who receives a voucher with a sound basic education?

**Rep. Bryan:** Yes. I think parents will make choices that will give their children a sound basic education. That's right.

**Rep. Glazier:** Follow-up, please?

**Speaker T. Moore:** Does the gentleman yield to a second question?

**Rep. Bryan:** I do.

**Speaker T. Moore:** He does.

**Rep. Glazier:** Just again, I want to be clear. It is your intent though, that the tax-payer money, the voucher money, be used to educate children so that the schools that they attend provide a sound, basic education to every child that uses the voucher. Is that correct?

**Rep. Bryan:** Parents will make choices that give their kids a sound basic education. They will. I'm confident in that.

**Rep. Glazier:** I'm sorry...Last question, Mr. Speaker.

**Speaker T. Moore:** Does the gentleman yield to a final question?

**Rep. Bryan:** I do.

**Speaker T. Moore:** He yields.

**Rep. Glazier:** How will we determine whether or not they are receiving a sound basic education at the schools where the voucher and the taxpayer money are being used?

**Rep. Bryan:** The parents do that. We have homeschools. We have loads of different things in the state. We have loads of different opportunities for people, and the kids are provided a sound basic education. We do have testing measures we already have in private schools, and we've increased the testing measures we have in this bill.

**Rep. Glazier:** To speak to the bill, Mr. Speaker.

**Speaker T. Moore:** The gentleman from Cumberland recognized to debate the bill...I'm sorry, I mean to debate the amendment.

**Rep. Glazier:** I'm sorry, Mr. Speaker. Thank you. I have debated this before and I'll try to keep my comments brief. I come to this from a different perspective than a lot of you. As a school board member for six years, I fought and our district created one of the first choice programs in the state: a governed choice program that created fifty-two different options in our school system for a lot of the reasons we talked about. I also believe and signed on and voted for House Bill 269 this year because I think that there are rare occasions in which our system doesn't provide what it needs to for extraordinary exceptionalities and that is important. But I am opposed to this provision for a number of reasons that it is in the bill and why I am speaking to Rep. Hanes' amendment.

First, Representative Brandon, this is not a technicality. To have fundamentally altered and to create effectively a second system of education when we can't adequately fund the first is a huge matter of policy and I think deserved a separate up or down vote. I opposed a discussion years ago in this body that suggested that a lottery vote ought to be put in the budget because I thought it deserved an up or down vote, and it did. Whether we agree or disagree on the procedure used on it is another matter. But it was an up or down vote. This is no different and it deserved an independent analysis.

Second, vouchers in this case are being used in the bill in a way very different than when the bill was filed. When this bill was filed, it had a 300%, as I recall, rate of poverty to look at for eligibility which, just so you know, would have meant that 65% of children in the state would have had access to the voucher. It has been reduced to the 130% and that's not a bad thing, and I appreciate the efforts that did that. But the problem with that is multiple. One, what does one say to the parents of the multiple kids who see their tax money being spent on the 130% and they're at 140%? And people would say, "Well, there has to be a cut-off."

**Rep. Frank Iler (R):** Mr. Speaker?

**Speaker T. Moore:** For what purpose does the gentleman from Brunswick, Representative Iler, rise?

**Rep. Iler:** To see if Representative Glazier would yield for a question.

**Speaker T. Moore:** Does the gentleman yield for a question?

**Rep. Glazier:** Certainly.

**Speaker T. Moore:** He yields.

**Rep. Iler:** Do I understand that if it was at 300% you'd vote for this—for the bill, and against the amendment?

**Rep. Glazier:** No, Representative, I wouldn't and I was going to get to why. What I'm suggesting in my argument is the problems that exist at the 130, not that I would vote for it at 300. I've been pretty clear that I'm opposed to the voucher system as a whole as an abdication of the public school system, except in those exceptional cases when there really has to be a choice because the public school is not providing the particularized service that is absolutely

required for the child and can't otherwise do that. But at the 130 percent, we're creating an incredible division and that's not what public education is supposed to be about. We're supposed to be about unifying.

And to me at least this state's commitment to universal, free public education has been an absolutely crucial element in the ability of generations of North Carolinians to improve their lives. And it is unlikely that this state would have ever emerged as a leader had it left the development of education to the whim and will of a free market. The market is a wonderful mechanism in my view for the development of small and large enterprises, and it is extremely successful for the production and distribution of a wide range of high quality goods and services. But the market, for all of its strengths, is not the appropriate mechanism to supply services that should be distributed equally to people in every neighborhood, in every city and in every town, without regard to their ability to pay or their political power or where they live.

And the reality of course is when this voucher goes into effect, if it does, it will have precisely the opposite effect. In many of our districts, as Representative Whitmire eloquently has argued several times, there are no real private options. And so the options will be concentrated and some children may, if they are able to cobble together the resources, may have that option. But the poor child in the rural county is not going to have that option. And that to me is the antithesis of public education. And these are public dollars being spent for it.

If we were at 300% we'd have, of course, the opposite problem, which is really where a lot of the proponents and I--this is not for Representative Bryan, who I believe has done an incredibly eloquent job and articulate job with this. But we all know that if we were at that level the problem of course was the original fiscal note had \$90 million or more. And we are opening up exactly what those of us that are concerned about would say, and that is we are truly trying to replace the system. And so you end up with both problems because you're trying to do something that was never intended for the delivery of public education.

I am not at all someone opposed to reform. There are a whole lot of reforms that we need to do, but those reforms involve time, and attention, and love to each child, and they involve resources. And in this budget we are not providing--although hopefully one day we may get to the point--but we are not providing a pay raise for teachers. We are not at all getting into the discretionary cut that is massively...

**Rep. Brandon:** Mr. Speaker?

**Rep. Glazier:** ...the school systems. I do not yield...

**Speaker T. Moore:** For what purpose does the gentleman from Guilford rise?

**Rep. Brandon:** To see if Representative Glazier would yield for a question.

**Speaker T. Moore:** Does the gentleman yield to a question?

**Rep. Glazier:** I do not yield to a question.

**Speaker T. Moore:** The gentleman does not yield to a question. The gentleman from Cumberland continues to have the floor to debate the amendment.

**Rep. Glazier:** Thank you, Mr. Speaker. And so, where we are in this position there may be a time and a place for limited movement but it is not this year. I don't know how we can go out and say that we are establishing and funding a second system potentially to exponentially grow--and we all know that's likely where it's headed--when we can't adequately fund the first one that 92% of our students are in.

You know, there are arguments to be made about the cost. But again, I quote from Representative Whitmire the other day, and he is right, and those of us who have served on the school board know, that in the end, this will cost a lot of money. And you can put all the fiscal notes you want out; we know it costs state money. The argument is of course is it saves some local money. But kids don't come in neat packages of twenty-three. We're not going to be able to shift those costs. Unless the voucher program is maximized--and I mean maximized--you don't ever have those savings. And so you're again stuck with the problem that you're in effect doing a major cut to public schools.

Forget the issue of who we're leaving behind. Forget the issue of whether or not the private schools will accept children with vouchers. Choice does not mean that they get to be accepted. There are a whole lot of kids that if I had the choice and I was in a private school, based on their academic record or their disciplinary record or their exceptionality, that I might not want to deal with or feel that my school could deal with, but the public schools don't

have that choice. We accept every child, whether they are ADD or ADHD or rheumatoid arthritis or traumatic brain injury or academically gifted.

And for me the ultimate deciding point on this is about public education. Public education has always been—and maybe because I’m the first person in my family to graduate from college and maybe because it was instilled in me—but it is the once place in our country that remains the place that we are united under one flag, under one set of values. And if we take that away and if we create hundreds of different of places, we take away the one thing right now that seems to be binding us together at a time that we desperately need that.

So my opposition and my reason for supporting Representative Hanes’ amendment rests on four different grounds, in sum. One, as a matter of policy this is so important that it should be decided separately. Second, where we are headed, I believe, on this is to damage seriously urban—particularly urban—education, without providing rural kids any real options. Third, because in the end we don’t have the money right now to do what we should for public education, we at least ought to have the decency to wait until we can adequately fund the kids in public schools before we try to establish a separate system here. And, finally, because I honestly don’t believe that the poor children, whether they are urban or rural, will be able to fix this by finding resources in order to attend and use the voucher. Thank you, Mr. Speaker.

**Speaker T. Moore:** For what purpose does the gentleman from Brunswick, Representative Iler, rise?

**Rep. Iler:** Almost changed my mind, Mr. Speaker, but to see if Representative Glazier would yield for a question.

**Speaker T. Moore:** Does the gentleman from Cumberland yield to a question from the gentleman from Brunswick?

**Rep. Glazier:** Absolutely

**Speaker T. Moore:** He yields.

**Rep. Iler:** Representative Glazier, I got here just in time to be in the minority and—I have a question coming—but I don’t remember a pay raise the first budget of 09-10 either. Matter of fact, it was fewer in dollars than we had in the last budget. But my question is, is there a single child in North Carolina that you can think of—in my district, your district, in Representative Whitmire’s district—that would not have a choice given—whether this passes or not, and given the whole spectrum of choices—that would not have a free choice of a school, whether or not this passes?

**Rep. Glazier:** Let me just make sure I understand the question so I’m answering it. Is there any district in which there would be no choice whatsoever, is that the question?

**Rep. Iler:** That’s correct: a free choice, no choice whatsoever, including transportation and free breakfast and lunch.

**Rep. Glazier:** Well, obviously everybody has the option in public school with transportation and lunch, but you’re asking about the choice. My view is, and I haven’t parsed all 100 counties, I suspect that every county has at least an option somewhere. And I don’t know that to be true, but I suspect that there is at least if not in that county in an adjoining country. But there is a wide difference between having a choice to go somewhere and having a quality choice. And if you look at the Florida experience, will all due respect to Representative Bryan, it is entirely a mixed bag. There are some parts of Florida where the voucher may be used at this point moderately successfully, although not many in my view, but there are plenty of places in Florida where those choices are really bad and where the data is really bad as well. And if you look at Milwaukee and Racine which have the largest experience with this, you’ll see that three weeks ago that the test scores came out from both districts and both of those tests score showed that those voucher kids performed statistically substantially below their counterparts in the public school system.

**Rep. Iler:** Follow-up, Mr. Speaker?

**Speaker T. Moore:** Does the gentleman from Cumberland yield to a second question?

**Rep. Glazier:** Certainly

**Speaker T. Moore:** He yields.

**Rep. Iler:** I certainly don't want to debate because I'm not a trial attorney, and I have high regard for your skills. . .

**Rep. Glazier:** And I'm not a trial attorney anymore either, Representative.

**Rep. Iler:** Pardon my... That's how much I know about it...

**Speaker T. Moore:** Does the gentleman wish to propound an additional question?

**Rep. Iler:** I do.

**Speaker T. Moore:** Does the gentleman yield?

**Rep. Glazier:** Certainly.

**Speaker T. Moore:** He yields

**Rep. Iler:** So you will admit—good, bad, or indifferent—that since each county has at least one LEA, you'll admit there is a free choice available to every child somewhere in North Carolina whether or not this passes?

**Rep. Glazier:** Oh certainly, I agree that there is a public school system in every county in North Carolina. Yes, sir.

**Speaker T. Moore:** For what purpose does the gentleman from Lee, Representative Stone, rise?

**Rep. Mike Stone (R):** To speak on the bill.

**Speaker T. Moore:** The gentleman has the floor to debate the amendment.

**Rep. Stone:** Thank you. Ladies and gentlemen, I want to tell you all, first of all that I appreciate the bill's sponsors for the original intent of the bill. And I want to tell you in Lee County we have several great schools that are public schools. For the record, I have two children and both are in public education. My daughter goes and my son goes to a school called Tranway Elementary. It's extremely popular. The parents are involved in all five grades—extremely involved. And so when I ask the teachers what makes the kids so smart at this school, they say it's because the parents are involved, the parents do so much. They really are at this one school.

And then I hear this discussion and it takes me back to 2010. I'm in a rural community and we're having debates—school board debates and NC House debates—and a lady stands up and she asked the school board members. She said, "I have talked to the superintendent, I've talked to the principals, I've talked to the teachers, I've talked to everyone I could talk to, but I can't get anyone to help me with the choice of my child with the problem I having." And it was education. She was very sincere in her trying to solve a problem. No one there could answer her question. So my question is if that was my child or your child, we'd move that kid. Everyone in this room has the funds available to move your child tomorrow if you have one, or your grandchild. It wouldn't be a debate, it wouldn't be a question.

We ask parents to get involved and then when we have a poor parent get involved, you disenfranchise them. You don't give them an opportunity. You don't let a poor parent make a decision about how to help their child's whole future because you're worried about the public education. I told you I have two children in public education. I'm very concerned about public education. But I want to empower the parent. Let them make a choice on what's best for their child when no one else listens. And in some of these rural communities that happens a lot more than you know. And we're fortunate, we have great schools. But at the end of the day, let the parents make a decision.

This bill affects no one except the poor parents, who we continue not to listen to, to protect the public school system. We've got good employees and bad employees in every industry in the State of North Carolina. Do not think that one government entity is going to be exempt from that. So I ask you to vote no against this amendment and help empower those parents that make a decision on how and what's best for their child in the future. Thank you.

**Speaker T. Moore:** For what purpose does the gentleman from Rockingham, Representative Jones, rise?

**Rep. Bert Jones (R):** To debate the amendment.

**Speaker T. Moore:** The gentleman has the floor to debate the amendment.

**Rep. Jones:** Thank you, Mr. Speaker. Ladies and gentlemen of the House, I cannot more strongly implore you to vote against this amendment. I want to address first of all and just reject the very suggestion that this bill and this issue has not been well debated and well vetted. It's been through Appropriations, it's been through Education—two of the largest committees. The vast majority of the members have already participated in this debate. But further than that, ladies and gentlemen, I would suggest that this is a core philosophical debate. You know, how you feel about this particular issue really boils down to how you answer this question: Who is ultimately responsible for the children and should make basic decisions about how and where the children should be educated? Is it the parents or is it the State?

Now during the course of this debate and with some of my conversations with some of the opponents of school choice, if you will, I've heard comments like, "Some parents will make poor decisions." We've heard that we're concerned that some of these private schools, if you will, are not accountable enough to us, and we'll talk about who "us" is. But even on the floor today, we've heard the statement made, "Well, how will we determine that the children are getting a sound basic education?" And ladies and gentlemen, I ask: who are "we"? Are we talking about the General Assembly, the Department of Public Instruction or the parents? It's already been well-said that the parents will make the decision that is best for their children. And I will suggest that in those very, very rare instances where there is abuse and neglect that we have social services intact. There are laws to protect those children.

Another statement we've heard in one of the committees that debated this bill is that, "You are elected to represent the public schools." Ladies and gentlemen, I was elected to represent people. Every child, every parent, every family—we should support them all, whether their parents choose to send them to private schools, public schools, charter schools, homeschool. Those are the people that we were elected to represent. Education is about a life, often a child—not a system. I think that many on the left for a long time have conveniently neglected this truth, if you will.

I want to speak for a moment...I've been listening to the course of this debate and throughout the whole process I keep hearing about vouchers. I had a little debate with someone that came to my office that was against school choice, and we talked about that and they readily admitted that, no, this is not vouchers. But as they said "Well, that's our word for it." Well, ladies and gentlemen, I would suggest that words mean things. In case you're not aware of it, a voucher is a piece of paper that entitles the holder to a discount, or it may be exchanged for goods or services. It's like a coupon, if you will. You might have a coupon or a voucher that entitles you to go down to the local McDonalds and get a free cone of ice cream or something. "And why is that important?" you might say. "Well, what difference does that make?" Well, I would suggest that it makes all the difference in the world because it makes a very important assumption. Because if someone issues a voucher or coupon, if you will, then it suggests that they have the right, the authority to do that. In other words, we are telling the parents, if you will, when we talk about vouchers that the State has the right to determine your child's education—that if you somehow receive a voucher from the government, that you can take that voucher, and then you can make the choice that you want to make but not unless you do. And I suggest that, if you will, my friends, that we not continue to let the left control the narrative, if you will, control this debate. This is not about vouchers . . .

**Rep. Ken Goodman (D):** Mr. Speaker?

**Speaker T. Moore:** For what purpose does the gentleman from Richmond, Representative Goodman, rise?

**Rep. Goodman:** Would Representative Jones yield for a question?

**Speaker T. Moore:** Does the gentleman from Rockingham yield to a question from the gentleman from Richmond?

**Rep. Jones:** I would gladly yield to my friend when I complete my remarks.

**Speaker T. Moore:** He does not yield this time.

**Rep. Goodman:** Thank you.

**Speaker T. Moore:** The gentleman from Rockingham continues to have the floor to debate the amendment.

**Rep. Jones:** So I would suggest, ladies and gentlemen, that we don't need to bow to the assumption that the government needs to tell Mom and Dad, "Yes, we may think you have the right to decide and we'll decide when that is and where that is."

**Rep. Charles Graham (D):** Mr. Speaker?

**Speaker T. Moore:** For what purpose does the gentleman from Robeson, Representative Graham, rise?

**Rep. C. Graham:** Point of order.

**Speaker T. Moore:** The gentleman may state his Point of Order.

**Rep. C. Graham:** Is he speaking on the amendment or is he talking about the bill?

**Speaker T. Moore:** It is the opinion of the Chair that the gentleman is properly debating the amendment and the gentleman's point of order is denied. The gentleman from Rockingham continues to have the floor.

**Rep. Jones:** Thank you, Mr. Speaker, and I will just conclude my remarks by saying this: I represent citizens—not vassals, not serfs, not subjects—but citizens with God-given rights including life, liberty and the pursuit of happiness. And I would add that our State Constitution adds this phrase: "the enjoyment of the fruits of their own labor." We don't hear that one very much. I think that the parents and the teachers and the students of this state are tired of being used as pawns in political games. And I think that parents out to be able to exercise their God-given right. And it shouldn't depend on their income; it shouldn't depend on their zip code. I think we ought to have the wherewithal to stand up here today and tell the citizens of North Carolina that we represent that we respect their God-given rights to do that, that we're going to stand for them, and we're going to stand for these Opportunity Scholarships and quit talking about vouchers because they don't need the government's, or they should not need the government's permission to decide what is best for their children.

And with that, Mr. Speaker, I will conclude my remarks, and I would be glad to yield to any questions.

**Rep. Goodman:** Mr. Speaker?

**Speaker T. Moore:** For what purpose does the gentleman from Richmond rise?

**Rep. Goodman:** May I ask my question?

**Speaker T. Moore:** Does the gentleman yield?

**Rep. Jones:** I yield.

**Speaker T. Moore:** He yields to the gentleman.

**Rep. Goodman:** You said earlier that you thought parents should be able to make the decision if their children go to public schools, charter schools, private schools, home schools...What about no school? Do you think parents should be able to make that decision for their children?

**Rep. Jones:** I think that a parent ought to be able to decide what is the proper education for their children. Now...

**Rep. Goodman:** Follow-up?

**Rep. Jones:** If I can finish my answer. I think that we have laws on the books as far as drop-out rate, drop out or whatever—what you might define as school. I think that every child should be educated, and I think that the Constitution of the State of North Carolina makes it very clear that everyone has the right to the privilege of an education. No one here wants to deny that right. No one here wants to deny that privilege. But for anybody to make the argument that passing a bill such as this or an amendment such as is being debated here—Opportunity Scholarships—is somehow denying that right to anyone, I can't accept that argument.



**Rep. Goodman:** Follow-up?

**Speaker T. Moore:** Representative Goodman wishes to propound an additional question, Representative Jones. Do you yield?

**Rep. Jones:** I yield.

**Rep. Goodman:** So you think if a parent made the decision that his children didn't need any school that the State should be able to intervene and make a decision for that parent?

**Rep. Jones:** I will clarify my remarks once again. I believe that the State has determined that children up to a certain age are not allowed to drop out of school. As long as they are within that age, they're going to be receiving an education somewhere, whether it's traditional public schools, charter public schools, private schools or home schools. I believe that the parents ought to have the right to make the determination of what is best for their child because one size doesn't fit all, and it's not the right of the State to tell the child's parents what is best for that child.

**Rep. Goodman:** One more follow-up?

**Speaker T. Moore:** Does the gentleman yield to an additional question?

**Rep. Jones:** I yield.

**Speaker T. Moore:** He yields.

**Rep. Goodman:** So you agree that there are limits to a parent's decision to make, or a parent's right to make decisions about education for their children?

**Rep. Jones:** Absolutely, and I think I made it very clear earlier that we have social services. Nobody here's advocating that there's no parent out there that is not somehow... We realize that there's abuse and neglect that takes place in this State. We have laws to protect children against that. Nobody is saying that every parent is perfect, but I am saying that I don't have a right to tell you how to raise your children, and you don't have a right to tell anybody else in here how to raise theirs. And I don't think that the State has the right to determine that certain parents should not have an opportunity to send their children to the school of their choice.

**Rep. Goodman:** Thank you.

**Speaker T. Moore:** For what purpose does the lady from Guilford, Representative Adams, rise?

**Rep. Alma Adams (D):** Speak on the amendment.

**Speaker T. Moore:** The lady has the floor to debate the amendment.

**Rep. Adams:** Thank you, Mr. Speaker. Ladies and gentlemen of the House, we need to support this amendment. I want to thank Representative Hanes for his courage, first of all, since he had taken a position regarding the bill. But it's unfortunate that we are really debating the bill here, and we're doing that because when the bill was in committee it went straight to the folks to put in the budget. And we should have had it here. That's a part of the process to debate it. And it wasn't right for it to happen that way – so now we have to stand up and talk about it if we feel strongly about it.

But you know, when we talk about what's fair... I mean, I have been involved with education and with public education, and we do have choices. And I think parents should have choices. But I think the real question is whether or not the government should tell taxpayers that we should pay for those private choices that parents want to make. And I just believe there's a cost that comes with that. And so, if you make that choice that is not afforded in public education where the majority of the children will have to be served, then you should make the choice to pay the difference and to pay for that. So I still don't believe that with what we are not doing in terms of supporting our

public schools—we don't have enough money to provide what's needed there and for us to take dollars away from public education and to give it to parents for private schools is wrong.

But I think when we talk about these children who are disadvantaged and who need opportunities—all children need opportunities—but I still will tell you that you're not going to get those opportunities if the funding, the differences that you will need in terms of the funding is not available to you. So you really don't have the opportunity if you are at the poorest end of the ladder. So perhaps some folks a little bit above that can pay, and that's probably who's going to really get these opportunities.

So yeah, we have a lot of God-given rights, and I think some of those cost money. And that's what we're talking about right now, and who should pay, and the public taxpayer should not pay for private schools. That's not what we're here to do and that's not what we should do.

So again, I want to thank Representative Hanes for this amendment. It is a good amendment because we didn't do the right thing in putting this bill into this budget. So I'm going to support the amendment and I hope you will, as well.

**Speaker T. Moore:** For what purpose does the gentleman from Guilford, Representative Brandon, rise?

**Rep. Brandon:** To speak a second time on the amendment, please.

**Speaker T. Moore:** The gentleman has the floor to debate the amendment.

**Rep. Brandon:** I just wanted to say that...I just wanted people to understand a couple of points about this bill, because I keep hearing a lot of false arguments about it. And what I really want everybody to know is that this just boils down to one issue: if you can look at a parent in the face and understand that this mother comes and tells you, "Yes, I understand that my child has three Fs on their report card, they have been suspended twice from this school, and it's clearly not working out for me," and if you can look that parent in the face and say, "Because you live in that zip code, therefore...I understand your child is going to become a statistic, and I understand your child might go to jail because of that, but because you live in that zip code, you have to go to that school." And if anybody in the world believes that it's constitutional, number one, I will challenge you on that. If any of my colleagues want to believe that that's a progressive thing, I will challenge you on that.

**Rep. Elmer Floyd (D):** Mr. Speaker?

**Rep. Brandon:** I do not yield.

**Rep. Floyd:** Mr. Speaker?...Mr. Speaker?

**Speaker T. Moore:** For what purpose does the gentleman from Cumberland, Representative Floyd, rise?

**Rep. Floyd:** I'm not asking the gentleman to yield; I just want him to speak on the amendment...

**Speaker T. Moore:** Okay, does the...

**Rep. Floyd:** ...not the bill.

**Speaker T. Moore:** Well, the gentleman...The gentleman is not propounding a question. I assume the gentleman is trying to rise to a point of order. The Chair would...

**Rep. Floyd:** Yes.

**Speaker T. Moore:** ...rule that the gentleman is properly debating the amendment at this time. The gentleman from Guilford, Representative Brandon, continues to have the floor to debate the amendment.

**Rep. Brandon:** Thank you. And this is really all this is about. It's really simply about giving someone the dignity and the respect and the honor to make sure that they do the best that they can do for their child.

And we have a lot of other arguments to talk about: "Well, this might not help everybody." Can someone in this body tell me when we ever make a bill that helps 100% of people? We have IB programs—International

Baccalaureate Programs. That does not help 100% of people. Should we take that out? We have magnet schools. That does not help 100% of the people. Should we take that out? Of course not. There will never be a bill that helps 100% of the people, which is why this bill is so important. What we have to do is look at things differently and create the space and the opportunity so people can have more choices.

This is not something that all folks will choose, but it does give the opportunity to that parent that wants to choose that to be able to do that. And whenever you have some people on one side of the track that is able to make that decision... See, if it was the other person example that I gave you, if it was another person that lives across town—not one that lives in my district—who has the money, and if their child gets suspended from school and if it's not working out for them, then they simply can just go make another choice and put their kid in a private school. And guess what, they get to go to a college and they get to be a productive citizen in society. That does not happen in my community. And for anybody to believe that that is a justice conversation, I will challenge you on that, because it's not—not even close.

This is a matter of fairness. If some people get to do it, why do not the people in my community get to do it? And I'm tired of hearing people telling me what we can do. I remember two years ago when everybody had the charter school debate and it was like, "Oh, there's no way that that's going to be able to happen. The poor folks are not going to be able to take advantage of it." That's what I heard, but I will let you know that we have a charter school in my community that we started last year. Ninety-eight percent of them are free and reduced lunch, 91% of them have passed the benchmarks, 100% of them receive transportation and food. We did everything...

**Rep. Floyd:** Mr. Speaker?

**Rep. Brandon:** ...that everybody said that we could not do, and we can continue to do that. For those folks...

**Speaker T. Moore:** The gentleman... Representative Brandon, the gentleman will suspend. For what purpose does the gentleman from Cumberland, Rep...

**Rep. Floyd:** Point of order, Mr. Speaker.

**Speaker T. Moore:** The gentleman may state his point of order

**Rep. Floyd:** Mr. Speaker, I'm confused. I'm reading the amendment and I'm listening at [sic] Representative Brandon. Could we stay on the amendment please, Mr. Speaker?

**Speaker T. Moore:** The gentleman... The Chair accepts the gentleman's point. However, the Chair has tried to give both sides wide latitude to debate beginning with Representative Glazier and through all sides, given the nature of the issue. That being said, the Chair would ask the gentleman to try to confine his remarks a little bit more to the issue hand, as well as the subsequent speakers. The gentleman from Guilford has about approximately one minute left.

**Rep. Brandon:** Okay. I was just wanting to make sure that everyone understood with the charter school bill we had the same exact arguments as we have here today and that there's nothing different. But I just wanted to be clear that we have a program in Charlotte, we have a program in Greensboro, we have private schools in Greensboro—all across the State—that have been doing this for years. So please stop saying that people don't have access and people in my community won't be able to do it. My community can do whatever we want to do. We may be poor, but we are not stupid and we had been able to stretch a dollar further than anybody that I know for decades. So please, please vote against the amendment. Thank you.

**Speaker T. Moore:** For what purpose does the gentleman from Mecklenburg, the other Representative Moore, rise?

**Rep. Rodney Moore (D):** To speak on the amendment, Mr. Speaker.

**Speaker T. Moore:** The gentleman has the floor to debate the amendment.

**Rep. R. Moore:** You know, I appreciate the passion of every speaker that has spoken on this amendment for the last forty-five minutes. But I have to rise... It's very rare that I rise to talk about education issues, but I want to make some clarity. I heard Representative Jones talk about choice. Representative Jones, I believe in choice, as well. I

heard Representative Stone talk about his two children and how he would...what he would do if he had an opportunity if it was different.

This amendment does not threaten any of those things. What it does is say that this is a major policy decision that we're making, and it's not effectively killing the debate on 944. It's actually just taking it out and putting it as a stand-alone bill so the House—the Body—can debate it in a judicious way and decide whether it stands on its own merits or that it dies on this floor. That's the only thing that this amendment does.

So if you talk about choice, if you talk about free speech, this is the proper way to debate it—not hide it in the budget. You put it on the floor and let it stand for itself, because this issue is too critical to the children of North Carolina, no matter what side that you may be on, to hide it in the budget. Thank you.

**Speaker T. Moore:** For what purpose does the gentleman from Mecklenburg, Representative Alexander, rise?

**Rep. Kelly Alexander (D):** To speak on the amendment.

**Speaker T. Moore:** The gentleman has the floor to debate the amendment.

**Rep. Alexander:** Thank you, Mr. Speaker. Ladies and gentlemen, it's been a long time since I've been so confused. This morning I joined with some of you in the Finance Committee and I heard a discussion about why it was impermissible for citizens now to check off three dollars on their tax return and have that money to go to the political party of their choice. And the argument, if I understood it correctly, ultimately was that was a somehow impermissible way to select winners and losers, that there were a bunch of political parties out there and not all of them were being able to be benefitted from that system. And so that system has to go.

Well, a few hours later I came in here and the principles that I thought I had heard my esteemed colleagues from across the Rubicon talk about this morning, seems to have been turned on their head, because all of a sudden it's okay to take public money and give it to private citizens, where this morning we were taking...private citizens were checking off some of their tax money and saying that that money should go in a particular political direction. Well, by this evening we've now flipped, and we flipped in such a way that I'm just being...I don't quite get it. And maybe some of y'all can give this poor urban waif some direction.

You see, the last time I looked, these vouchers or these Opportunity Scholarships, or these transfers of tax money—whatever you want to call them—did not rise to the point that all of this choice that I've heard people talk about can be afforded. See, if you have a tuition somewhere that's up at this level and you've got some transfer of public money that's down at this level, there's a gap. And if you don't have resources to bridge that gap, you still don't have choice. You got rhetoric; you got a hunting license, but you don't really have a choice.

And then there's...I don't know. You know, again, I'm simple. It's hard for me to figure out how we can even contemplate this when we can't afford to deal with the traditional public schools. We can't afford to give teachers raises. We can't afford to supply teaching assistants. We got a judge in one of these buildings somewhere around here that's told us that there's a disparity between the amount of money that some counties have in traditional public education and the amount of money that other counties have. And the judge, as I recall, has said that we're supposed to be putting money out there to make sure that there's a basic level for all students.

Well, if we're supposed to be funding that and we don't have money for these other things, how in the name of Jehovah can we afford to put—what is it? Forty-two hundred, sixty-five? Whatever it is...Where is the money coming from? Somebody got a printing press down in the basement here, or something? I mean, I don't get it. And because I don't get it, I don't think the citizens of North Carolina are going to get it. I don't think most of the people in here, when they stop, you know, with the rhetoric and what not, will get it.

And I think that it's important that this amendment pass so we can get this mess out of the budget. The budget's messed up enough. We can get this out of the budget and try to focus on that educational opportunity that we're supposed to be giving to all the young people of this state, all the citizens in the state. And like I said, I'm confused. I couldn't even find any guidance here from Abraham Lincoln...

**Rep. Iler:** Mr. Chairman?

**Rep. Alexander:** So, you know, please...

**Speaker T. Moore:** For what...For what purpose does the gentleman from Brunswick, Representative Iler, rise?

**Rep. Iler:** To see if Representative Alexander will yield for a simple question.

**Speaker T. Moore:** Does the gentleman from Mecklenburg yield to a question from the gentleman from Brunswick?

**Rep. Alexander:** Most certainly.

**Speaker T. Moore:** He yields.

**Rep. Iler:** Thank you, sir. Maybe the confusion could be put up just a little bit with a simple question, and that's the only kind I know how to do is a simple question. But would it be helpful if we thought that public money ultimately came from the citizens, from taxpayers? Would that clear up some of the back, you know, underlying confusion?

**Rep. Alexander:** That doesn't clear that up because that's what I think I said from the beginning. This morning it was coming from the taxpayers and there was an objection to the taxpayer doing certain kinds of directions. This evening it's coming from the same taxpayers and it's inadequate to do what everybody says it's going to do, and yet it's permissible at sundown what wasn't permissible at sunup. And that's what's confusing me. But anyway, please vote green on this so we can move on to deal with the rest of this wonderful...

**Rep. Brandon:** Mr. Speaker?

**Rep. Alexander:** ...document.

**Speaker T. Moore:** For what purpose does the gentleman from Guilford, Representative Brandon, rise?

**Rep. Brandon:** I wish to ask my good friend from Mecklenburg a quick question.

**Speaker T. Moore:** Does the gentleman from Mecklenburg yield to a question from the gentleman from Guilford?

**Rep. Alexander:** Most decidedly.

**Speaker T. Moore:** He yields.

**Rep. Brandon:** Representative Alexander, you have been here for quite a while, correct?

**Rep. Alexander:** Only since about the middle of 2008.

**Rep. Brandon:** Follow-up?

**Speaker T. Moore:** Does the gentleman wish to propound a second question?

**Rep. Brandon:** Yes, follow-up?

**Speaker T. Moore:** Does the gentleman yield?

**Rep. Alexander:** Yes.

**Speaker T. Moore:** He yields.

**Rep. Brandon:** I hear your point on the funding and it really... You have a good point. But my question is, to you and to the whole body, when was the last time that this body adequately funded public education? And the follow-up question to that is how long am I supposed to tell my community to wait till we actually do adequately fund public education?

**Rep. Alexander:** Well, you know, I think your community and my community are quite similar. And, you know, in my brief career, you know, I've talked in public schools, I've helped organize private schools, I shook the can on corners to help raise money for poor folks and middle class folk and the whole nine yards, and I'll tell you—I don't

think we've ever adequately funded the education in this state. And we've got a judge down the street here that has said that and has asked us to do it. And I don't believe that if we follow this scholarship operation as it is written into the budget that we're going to end up adequately funding public education, because I've got a whole bunch of emails from teaching assistants and other folks to that effect. So, yeah, we do need to figure out a way to do it better. There's no question about it. But this isn't the way to do it. Vote green.

**Rep. Floyd:** Mr. Speaker?

**Rep. Brandon:** Thank you, Mr. Chair.

**Speaker T. Moore:** For what purpose does the gentleman from Cumberland, Representative Floyd rise?

**Rep. Floyd:** Mr. Speaker, inquiry of the Chair?

**Speaker T. Moore:** The gentleman may state his inquiry.

**Rep. Floyd:** Mr. Speaker, you assured through your communication to us that the remaining speakers are going to speak on the amendment. I'd just like to asked the Speaker, inquiry of the Chair, is it possible that the remaining speakers speak on *this* amendment...not the bill?

**Speaker T. Moore:** Representative Floyd, if the Chair was sitting at his desk he would probably be begging to call...to make a motion at this point, but he is not at this time. That being said, all those members who are wishing to speak are encouraged to stick to the amendment. But it does appear the amendment is a substantive amendment and that the Chair has tried to give wide latitude to members to fully debate it on both sides of the issue.

For what purpose does the gentleman from Chowan, Representative Steinburg, rise?

**Rep. Bob Steinburg (R):** Thank you, Mr. Speaker. To speak on the amendment, which will please...

**Speaker T. Moore:** The gentleman has the floor to debate the amendment.

**Rep. Steinburg:** ...some folks here. Earlier...Let's see here, it's 6:30. A couple of hours ago I got up and spoke about public schools--rural public schools--and the need for us to continue to adequately fund those schools. And this body voted overwhelmingly--I think it was 104 to 3, or something like that--to do so. So I want to just preface my remarks as I speak to this amendment on the fact that I am someone who enthusiastically supports public schools. In my other life I have raised hundreds of thousands of dollars for public schools. I'm a book buddy and...

**Rep. Jimmy Dixon (R):** Mr. Speaker?

**Speaker T. Moore:** For what purpose does the gentleman from Duplin, Representative Dixon, rise?

**Rep. Dixon:** Inquiry of the Chair?

**Speaker T. Moore:** The gentleman may state his inquiry to the Chair.

**Rep. Dixon:** Mr. Speaker, if I do not participate in this debate, will my vote, whether it's green or red, still count as much as anybody else's vote?

**Speaker T. Moore:** It absolutely will, Representative Dixon.

**Rep. Dixon:** Thank you, Mr. Speaker.

**Speaker T. Moore:** The gentleman from Chowan continues to have the floor.

**Rep. Steinburg:** I don't even know if I understood what he did. What....Can someone explain that to me? Representative Dixon, are you...?

**Speaker T. Moore:** I think...I think what the gentleman was saying is he's ready to vote...

**Rep. Steinburg:** He's ready to vote.

**Speaker T. Moore:** ...but if the gentleman from Chowan continues to...

**Rep. Steinburg:** Well, there's still five in the queue. So, you know, I appreciate it. But anyway what we come down to with this debate on this particular issue is this: we've kind of framed it, or some have framed it as an either/or. You're either for public education, or you're against public education, and that seems to be the substance of this debate, when in fact this is not an either/or situation. There's been plenty of money that has been spent on public education in North Carolina over the last ten or twelve years, and I would like to refer folks back to the Leandro case. Judge Howard Manning—I'm sure most of us here are familiar with that particular case when...

**Rep. Sarah Stevens (R):** Mr. Speaker?

**Speaker T. Moore:** For what purpose does the...There are so many yellow lights. For what purpose does the lady from Surry, Representative Stevens, rise?

**Rep. Stevens:** To see if Representative Steinburg would yield for a question.

**Speaker T. Moore:** Does the gentleman from Chowan yield to the lady from Surry?

**Rep. Steinburg:** When I'm finished.

**Speaker T. Moore:** He does not yield at this time.

**Rep. Steinburg:** Thank you. The problem with his findings were that we had a number of public schools that were failing...I see the queue at thirty-seven, thirty-eight, thirty-nine. I've only been up here for two minute, for heaven's sake.

My point is that there is...this is not an either-or situation. That we have...We can do both and we need to do both. By going back to the Manning decision, there are schools ten years later after that decision was rendered—ten years later—who are still...They're failing. Their reading grades are failing. And so, do we continue just trotting down the same course that we've been trotting down, or do we try and do something different?

This is what this Opportunity Scholarship is all about. You've heard it said that it's about creating choice—well it is. And it's also about creating success, and it's about creating competition. So for this debate to continue—and I know mine won't very much longer—but for this debate to continue as an either/or I think is making a big mistake. I think we need to be thinking about the students, the opportunity they will be given, some of them to escape failing schools and failing school systems, while at the same time we are trying to stabilize and in fact even improve our public school system, which is going to take a lot more to do than just money.

So if that pleases the Speaker and pleases Representative Dixon and everyone else, I'll go ahead and sit down. Thank you.

**Speaker T. Moore:** For what purpose does the gentleman from Cumberland, Representative Lucas, rise?

**Rep. Marvin Lucas (D):** To speak on the amendment.

**Speaker T. Moore:** The gentleman has the floor to debate the amendment.

**Rep. Lucas:** Thank you, Mr. Speaker. I realize that the hour is long, but I support the amendment. And I'm a little bit concerned because you've had a proponent who supported the bill, and it seems like now that many of those who were with him a few days ago have now turned on him, and I don't understand that.

But I've heard time and time again that parents need choice because it helps students. You know, and I'm concerned about parents having choice and helping students, and I think we all are. I heard Representative Brandon say that these students are being suspended, and he blames that on the school, and I think he's misguided. He ought to blame that on the parent. Parents are responsible for children's deportment, not the school.

Now, I support these parents being able to help their children, but I also will submit to you that there is a residual of students who have delinquent parents. You may not believe that. Ask any qualified educator and they will tell you. I can tell you some right here in this chamber: Representative Richardson, Representative Holloway, Representative Cotham, Representative Langdon, Representative Whitmire, Representative Johnson, Representative Larry Bell, Representative Charles Graham. They've been on the firing line, and they can tell you that you have in schools what we call *loco parentis*. We are those children's parents because those parents have abdicated their responsibilities.

Now the parents that you're talking about have not abdicated their responsibilities; they are there for the children. But what about those children who have those delinquent parents—who's advocating for them? Tell me who? Those dedicated and qualified social workers, those dedicated and qualified guidance counselors, those dedicated and qualified principals, those dedicated and qualified superintendents...And by the way, how many superintendents have asked for this voucher bill? I don't know of any because they're on the firing line.

Now, if we're truly interested in giving children choices, look at those children who've come from, I mean, decrepit circumstances who had a great teacher—that *loco parentis* teacher—and they will tell you, many successful folk will tell you, "I was successful in life because I had a teacher who cared. My parents weren't there for me. I had a teacher who cared." These students that you're attempting to help have parents.

Now if you're really interested in vouchers—well, you see, you don't like that word, you're interested in choice—then you ought to be trebly, *trebly* interested in those students who have delinquent parents. Give scholarships to them. I rest my case.

**Rep. Floyd:** Mr. Speaker?

**Speaker T. Moore:** For what purpose does the gentleman from Cumberland, Representative Floyd, rise?

**Rep. Floyd:** Inquiry of the Chair?

**Speaker T. Moore:** The gentleman may state his inquiry.

**Rep. Floyd:** Mr. Speaker, I just wanted to ask a question—maybe you can help me understand. Is there anyone above you that could address the question that you would normally address?

**Speaker T. Moore:** Representative Floyd, there are many above me. But it does appear that the queue is growing smaller, so hopefully it will continue that way. For what purpose does the gentleman from Craven...

**Rep. Jonathan Jordan (R):** Mr. Speaker?

**Speaker T. Moore:** For what purpose does the gentleman from Ashe, Representative Jordan, rise?

**Rep. Jordan:** Inquiry of the Chair?

**Speaker T. Moore:** The gentleman may state his inquiry.

**Rep. Jordan:** Mr. Chairman, my inquiry is: is the person propounding an amendment able to call the question Representative Floyd is discussing?

**Speaker T. Moore:** The maker of the amendment would be in order to do that...

**Rep. Jordan:** Thank you, Mr. Chairman.

**Speaker T. Moore:** ...as well as the other designated individuals. For what purpose does the gentleman from Craven, Representative Speciale, rise?

**Rep. Michael Speciale (R):** I just had my light on in hopes that it would stop someone else from turning theirs on.

**Speaker T. Moore:** For what purpose does the gentleman from Wake, Representative Stam, rise?



**Rep. Paul Stam (R):** To speak on the amendment.

**Speaker T. Moore:** The gentleman has the floor to debate the amendment. The House will come to order.

**Rep. Stam:** I'd like to make two points which have not been discussed yet today. And I would discourage Representative Hanes from making a Motion for the Previous Question because the Speaker would like to speak.

First, Representative Adams says public taxpayers should not pay for private schools, but she's been getting her salary from public taxpayers at private schools for years. It's called the Legislative Tuition Grants which go to North Carolina students at Bennett College, Shaw, St. Augustine...

**Rep. David Lewis (R):** Mr. Speaker? Mr. Speaker?

**Speaker T. Moore:** For what purpose does the gentleman from Harnett, Representative Lewis, rise?

**Rep. Lewis:** Reluctantly to a point of order—I don't believe the gentleman is speaking about the matter that's before us.

**Speaker T. Moore:** The Chair would... The Chair has tried to give wide latitude and would ask the Speaker Pro Tem if he could try to bring his remarks a little closer in line with the amendment.

**Rep. Stam:** Yes I will, Mr. Speaker. The amendment deletes several pages of Opportunity Scholarships which are attacked on the basis that they are the use of taxpayer money for private choices. I am pointing out, first of all, that this has not even been controversial in this House for several years, and we've been doing it for forty years of giving public tax money to students at private colleges in thirty-five private colleges in North Carolina. For about fifteen years we've been doing it in preschool; it's called SmartStart. No objection from the left to using public tax dollars at private preschools.

Second point, I've put on your desks... One of the arguments in favor of the amendment—and I oppose the amendment—is that we just don't have enough money. We're not funding the traditional public schools. We're not giving pay raises. But the people who make that argument forget that when you divide in arithmetic, if the numerator changes but the denominator changes, the result can be that we're spending more per pupil with the Opportunity Scholarships than without—just a little bit. But when you include the local money, it's quite a bit of additional money per pupil if you have these Opportunity Scholarships, and I urge you to defeat the amendment.

**Speaker T. Moore:** For what purpose does the gentleman from Iredell, Representative Brawley, rise?

**Rep. Robert Brawley (R):** Reluctantly to speak on the amendment.

**Speaker T. Moore:** The gentleman has the floor to debate the amendment.

**Rep. R. Brawley:** Thank you, Mr. Speaker. Ladies and gentlemen, by now as you already know, everything in politics goes round and around, and this debate has gone around in a circle. Down here years ago I have fought for home schooling, I fought for charter schools, I fought for people to have that choice. The choice they wanted was to get away from government rules and government regulations and government telling them how to educate their children.

And when I first saw Opportunity Scholarships, I thought "Oh man, this is going to be great!" But the first email I got was from a charter school parent with a little different perspective. "We sent our children to charter schools because we wanted to get away from the government telling us what to do. If we accept that money, then the government is going to tell us what to do." And there are forty-three pages of what the schools have to meet in order to accept this scholarship grant.

So I think the circle you're going to see if we continue with the Opportunity Scholarship direction, is somebody's going to have to find a way again to get away from government control of the educational process. I urge you to vote for the amendment and let's keep our public schools as public schools. Thank you.

**Speaker T. Moore:** For what purpose does the gentleman from Mecklenburg, Speaker Tillis, rise?

**Speaker Thom Tillis (R):** To debate the amendment.

**Speaker T. Moore:** The House will come to order. Members will take their seats...

**Speaker Tillis:** Thank you, Mr. Speaker...

**Speaker T. Moore:** ...The gentleman has the floor.

**Speaker Tillis:** Ladies and gentlemen of the House, I'd like to maybe talk about some of the discussion here. And Representative Floyd, just to give you my perspective if I was up at the dais right now, this amendment really is about the policy. It has an appropriation in the budget, but the policy is there. So you can't debate this amendment without basically debating the policy that would fail as a result of this amendment passing. And let me say from the beginning, I hope that you will vote against this amendment.

I want to start, though, to kind of calm things down in terms of traditional K through 12 education. I want to thank the hardworking teachers and principals and the volunteers in the school for some of the extraordinary work that they're doing today. There are many wonderful examples of education outcomes in K through 12 public school. I no longer—and I'm very careful to make sure that I remind myself of this—I no longer say K through 12 public education in North Carolina is broke. It's a great political stump speech, but it's factually not true.

If you go to school systems, you will find some great things going on. The problem is it's not going on everywhere. We have Mission Possible over in Guilford County. We have Project Lift over in Mecklenburg County trying to serve the needs of some of the poorest, most at-risk children in this state who desperately need an option other than the traditional option that they're receiving. That's why the Gates Foundation and other businesses have contributed some fifty-five million dollars to help these children. If we don't help them, we lose them. That's a great K through 12 public program that's going on.

We can go to the digital conversion that's happening in Mooresville. We introduced Doctor Mark Edwards earlier today—National Superintendent of the Year. Those children in Mooresville don't need a choice because their public school education is rated one of the best in the United States. President Obama was there last week talking about it. The problem is it's not available everywhere. That choice—that public school choice—is not available everywhere.

You know, Representative Brandon I consider to be one of the most courageous people in this body. I remember his speech a couple years ago when we were trying to lift the cap on charter schools. This man moved into a district to get closer to the people he wanted to serve. He got to know these people. He got to know the mothers and the fathers who have children that they desperately want to educate, they desperately want to have a better life, they desperately want to get out of the poverty and the day-to-day near-death experiences that they have in in some of these communities that they live in. They need a choice.

You know, I heard somebody say in the debate that now is not the time or the place. I believe right now, right here in North Carolina now is the time and this legislative body right here is the place where this begins.

You know, there's some people that I've talked to - some of my members—they've said, "Thom, this doesn't help me. I live in a rural district. There aren't any private school options." Well, this actually provides the opportunity for potentially some of those schools to be created because they can't make the math work with the poor people that want a choice that can't afford it. Now there may be potentially faith-based private schools, other private schools that can come up because parents can have the choice, communities can have the choice to come together and help these children.

I've had others say, "Well Thom, my school system is not a problem. My teachers reject this. They think it's a threat." Well guess what, you don't have a problem, you've got a good school system. You've got a Mooresville graded school system—probably not going to be a lot of choice options there. You don't *need* them. Hopefully, if Project Lift is successful, those babies over in west Mecklenburg County won't need it. But the reality is there are parents, mothers, single mothers of small children who desperately want a choice.

Now, I want to talk about process for a minute because it's very important to me. You know, I love the debate devices and it's good and I admire everybody for doing it, but let's be realistic here. This bill was vetted in Education Policy Committee twice. In one case we had public hearings, we had public comments. In the next case we had full debate among the members in Education Policy—fully debated. But it started even before that. We've been talking about this and vetting this with members. We had some members go visit Florida to see how it was working there: what would work and what wouldn't work.

Then it goes to Appropriations and Finance where the Chairs rightfully allowed debate on the policy—not to constrain it to the matter of the Finance issue, which the Chair could have easily done, or to the Appropriations issue. They allowed full and complete debate.

So for anyone to suggest to me that a process where we were allowing public input and vetting of the members and they're voting on this amendment because the process was somehow foiled doesn't understand the process that this bill went through.

About a month, month and a half ago, I went to a meeting in Greensboro. The auditorium was full of about...I don't know, more than two-thousand people. Ninety-five percent of them were African American. There were many small children there. There were many single mothers there. There were many parents there on a Tuesday night coming out trying to figure out how they can support choice for these children—choice for their babies. They weren't there for any other reason than to say, "Dear God, give me an option that let these children get into a path that will make them successful. Deliver them from the poverty and the situations, the challenges that they have every day, and give them hope." This policy gives those poor parents—almost invariably and disproportionately favored to the African American community—an opportunity to prove that choice works.

This policy is effectively a pilot; it focuses on the poorest people in this state giving them a choice. If it works, we can come back and talk late about whether or not it should be extended. But folks, let's try to give this generation of children who can benefit from this policy out of this chamber today a choice. Let's continue to work on public schools that deserve our attention, that deserve our focus, that deserve increased funding, deserve more flexibility to do great things they're already doing, but let's vote no on this amendment. Let's move forward on doing something very different for the children of our state.

**Speaker T. Moore:** The question before the House is the adoption of amendment ALE33 sent forth by the gentleman from Forsyth, Representative Hanes...

**Rep. Larry Hall (D):** Mr. Speaker, point of order.

**Speaker T. Moore:** The gentleman may state his point of order.

**Rep. L. Hall:** To speak on the amendment.

**Speaker T. Moore:** The question has been put to the body at this point. The question before the House is the adoption of the amendment sent forth by Representative Hanes. Those in favor of the adoption of the amendment will vote aye; those opposed will vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. Fifty-two having voted in the affirmative and sixty-five voting in the negative, the amendment fails.

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*Rep. Michaux's comments: 07:27:59*

**Rep. Mickey Michaux (D):** ...The fact of the matter is I've seen things that you criticized us for when we were in power that you have already done. And because you did it, I guess it's alright, but it doesn't bless what we did in the same way. For instance, you've got...One of the reasons that bill is so thick is because you've got more special provisions in that bill than you can shake a stick at. We did not allow to any great extent special provisions. One of the things that I did was I did not allow our folks to come in with those special provisions. If it came in a stand-up-alone bill, that's what is done. But you've just put in the...what do they call, the Excellent Opportunity, the Opportunities bill which is a stand-alone bill. You've put in the Excellent School's Act, which came from the Senate, as a part of this, even though you cut it down a bit...

**SB 402 – Appropriations Act of 2013**  
**Opportunity Scholarship Remarks on Concurrence**  
**July 24, 2013**

Audio available at [this link](#)

Rep. Adams' comments: 03:07:48

**Rep. Alma Adam (D):** (03:07:48) ...And I'm concerned that by cutting the dollars that we are from public schools, it will result in our loss of teachers and assistants, as well. And instead of providing resources to the public schools as we should be, we're diverting many of those dollars for private school vouchers...

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Rep. Stam's question: 03:12:10

**Rep. Paul Stam (R – Speaker Pro Tem):** Mr. Speaker?

**Acting Speaker Justin Burr (R):** Representative Stam, please state your purpose.

**Rep. Stam:** Would Representative Adams yield for a question?

**Speaker Burr:** Representative Adams, do you yield?

**Rep. Adams:** Yes, sir, I will.

**Speaker Burr:** She yields.

**Rep. Stam:** Representative Adams, you talked about the diversion of resources from what you call vouchers. Since the fiscal memo shows it's a 1.7 million savings, would you propose if we did...in that first year, do you propose that we do away with the Opportunity Scholarships and maybe have fewer teacher assistants and fewer teachers, or fewer books? Where would you make up that 1.7 million in savings that you want to do away with?

**Rep. Adams:** I'm not sure I understand your question, Representative Stam, and it probably sounds like a little trick. You can talk to me about that later. Thank you very much.

**Rep. Rick Glazier (D):** Mr. Speaker?

**Speaker Burr:** Representative Glazier, please state your purpose.

**Rep. Glazier:** Wonder if Representative Adams would yield for a question?

**Speaker Burr:** Representative Adams, do you yield?

**Rep. Adams:** Yes, I will.

**Speaker Burr:** She yields.

**Rep. Glazier:** Representative Adams, Representative Stam asked you if you would try to find the \$1.5 million that the fiscal note said for year one. I wonder if you were aware, and I'm sure that you were, that for every succeeding year after that it is a multi-million-dollar loss to the State, with those losses increasing each and every time. And that's not even counting the additional losses that will happen to local schools and local school districts that are not accounted for in a fiscal note that's fairly limited. Would that be correct?

**Rep. Adams:** You're absolutely correct. I'm sure Representative Stam knows that, as well. Thank you.

**Rep. Glazier:** Thank you.

**Rep. Stam:** Mr. Speaker?

**Speaker Burr:** Representative Stam, please state your purpose.

**Rep. Stam:** Would Representative Glazier yield for a question?

**Speaker Burr:** Representative Glazier, do you yield?

**Rep. Glazier:** Be delighted.

**Speaker Burr:** He yields.

**Rep. Stam:** Representative Glazier, are you not aware that in the subsequent years the savings to local LEAs exceed the cost to the State?

**Rep. Glazier:** No, Representative Stam, and I'll tell you why. The fiscal note—and I read it entirely, the multi-versions of the fiscal note—show a continuing and extended losses to the State going anywhere from 2.2 million, as I recall, all the way up to 6 to 7 million dollars, depending on the year out. There are projected—some projected—savings to the local units. But the problem, of course is an inability to really accurately at all project the savings to the local unit and all of the deficits that are not taken into account in the fiscal note that will happen in the local unit—because it's all based on, number one: how many students enroll, number two: what you do with the percentages, number three: what schools they come from and what happens there since they don't come and aren't going to go in neat packages of twenty. I could go on, but those are at least my first few points. Thank you, Representative.

**Rep. Nelson Dollar (R):** Mr. Speaker?...Mr. Speaker?

**Speaker Burr:** Representative Dollar, please state your purpose.

**Rep. Dollar:** To see if Representative Stam would yield for a question?

**Rep. Stam:** Yeah, I would.

**Speaker Burr:** Representative Stam, do you yield? He yields.

**Rep. Stam:** I do.

**Rep. Dollar:** Representative Stam, from your detailed research, could you explain what the experience in—the actual experience—in Florida was with this program?

**Rep. Stam:** Oh, in Florida I think last year—Representative Bryan has the exact figure—their equivalent to our Fiscal Research Division showed \$58 million in savings in one year to the State of Florida.

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*Rep. Graham's comments: 03:21:54*

**Rep. Charles Graham (D):** ...It's hard for them [*teachers*] to understand, at this point in our history, why are we being treated this way, giving away millions in vouchers—and yes, I'm going to call a spade a spade; it is a voucher. Teachers don't understand...

(03:25:07) ...You can't convince me or the other teachers across this state that they're important today. On top of that, you're saying to our teachers, "Well, let's put \$10 million in private education and let's let those teachers out there teach to a different standard. Let's let those teachers not be required to have a teacher's certificate. Let's not

have a level playing surface.” This is what this tells me: it tells me that we’ve got two systems when the Constitution says we should support one...

~ Fin ~

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**SB 744 – Appropriations Act of 2014  
Opportunity Scholarship Remarks in the  
House Appropriations Education Subcommittee  
June 10, 2014**

**Chair Chuck McGrady (R):** I’m moving to Representative Glazier’s amendment: Repeal Opportunity Scholarship Statutes. Representative Glazier.

**Rep. Rick Glazier (D):** Representative Glazier doesn’t have the amendment...Now he does.

**Chair McGrady:** Now you do, okay. Representative Glazier.

**Rep. Glazier:** Thank you. This is an amendment...And Mr. Chairman, I call for the...

**Chair McGrady:** Folks, listen up please.

**Rep. Glazier:** I call for the ayes and noes...

**Chair McGrady:** I was going to get the ayes and noes on that, Representative Glazier.

**Rep. Glazier:** This is an ongoing—and I’ll make it short—policy debate. We are continuing in this budget when we can’t fully fund the school systems—the public schools systems and public school teachers—to fund a voucher program. This repeals the money that’s going to that voucher program and puts it back in to fund teachers that we are unable to fund in this budget [*audio unclear*]...a forty-eight-million-dollar cut [*audio unclear*]...in the budget. So it is to fund some of those forty-eight-million-dollar cuts in teachers that are in the budget with the voucher system funds.

**Chair McGrady:** Representative Brown.

**Rep. Brian Brown (R):** Inquiry of the Chair?

**Chair McGrady:** State your inquiry.

**Rep. B. Brown:** The amendment seems to repeal Session Law 2013. Would that not be a violation of our rules changing substantive policy [*audio unclear*]...?

**Chair McGrady:** Can I get some staff support on this one?...Representative Glazier, the objection is based on Rule 8 which says that amendments cannot change substantive policy or law. Your amendment, on its face, says that it is a repeal of the Opportunity Scholarship statute, and I believe, on its face, it is in violation of the procedures set in place. So I will rule the amendment out of order, but I’ll state in my place that if you were to simply strike the money for the Opportunity Scholarships, such an amendment would be in order.

**Rep. Glazier:** Well, I would make a motion to have a perfecting amendment, if you’d prefer to do it that way...

**Chair McGrady:** If...

**Rep. Glazier:** ...or I can...

**Chair McGrady:** This is of enough importance that let's go ahead and get it right as opposed to try to handle this on the floor. We're going to move...Again, we'll displace this one and we will come back to you, Representative Glazier.

**Rep. Glazier:** Thank you, Mr. Chair.

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**Chair McGrady:** We're going to come back to the Glazier amendment, which is being passed out now, related to Opportunity Scholarships. This is substituting for the earlier Opportunity Scholarship language consistent with the Chair's ruling on that. Representative Glazier.

**Rep. Glazier:** Thank you, Mr. Chairman...

**Rep. Paul Stam (R – Speaker Pro Tem):** Mr. Chairman, I have a point of order.

**Chair McGrady:** Representative Stam.

**Rep. Stam:** Here's my point of order: One of the, if I'm...Is this ALE-56?

**Chair McGrady:** This is the...

**Rep. Stam:** Okay...

**Chair McGrady:** I don't have it in front of me. I need the new amendment.

**Rep. Stam:** Amendments cannot increase total spending within the proposed subcommittee...Okay. He is going to eliminate ten million. But according to the fiscal note on 944 and the fiscal memo that Mr. Nordstrom did for me after the budget passed, as passed it actually saved money, so instead of...for a net savings of about two million. So he's attempting to take some money that we already know saves money and use it to spend money. So instead of spending the money, what he needs to do is to find a cut somewhere of about two million dollars. So I don't think it's in order at all. It will throw you completely out of balance.

**Chair McGrady:** Representative Glazier.

**Rep. Glazier:** Well, to speak to that, first of all the rules relate to what's in this budget. What's in this budget is a ten-million-dollar new appropriation, or a ten-million dollar appropriation that goes to this scholarship. It is taking that and putting it in teachers. What may be subjective and speculative as to what may happen at LEA levels or elsewhere is not a part of this budget. And so it would be impossible to craft an amendment that you want because we don't know what that number's going to be or might be or will be. We do know the ten for ten, and there's certainly nothing in the rules that prohibit us from doing this amendment.

**Chair McGrady:** On the...The Chair rules that the amendment is in order, and Representative Glazier, proceed.

**Rep. Glazier:** Now to speak to this—and I call again for the ayes and noes on this vote—but this is to take the money that is going otherwise to fund the vouchers and instead fund the continuing cut that we've had, because we can't afford it in this budget, to the teachers in grades two and three. We've been through all the policy arguments; I'm not going to go back through them, but that's precisely what this does.

**Chair McGrady:** Representative Horn.

**Rep. Craig Horn (R):** Representative Glazier, yes—we have been through the policy arguments and it was decided by the General Assembly that the Opportunity Scholarships are a policy that we wish to pursue because it really addresses the needs of those folks that are the poorest. They don't have an option. So what, in effect, your amendment does, of course, is it just eliminates the Opportunity Scholarships, and I don't think that that was the...that is the intent or desire of the Legislature. It's certainly not mine. And because it would eliminate the

Opportunity Scholarships I, of course, have to vote against it and would encourage the Committee to vote against it. It's a policy that... We've already been down this road. It's already been decided, and now we're going around the back door trying to find a way to undo what we've already done.

**Chair McGrady:** Representative Bryan and then Representative Brown.

**Rep. Rob Bryan (R):** Yeah, I'll just reiterate to Representative Stam's point that it is in fact set to save money. So at the end of the day this will be a cost-loser for us to take this out. In addition, to further Representative Horn's point, we had almost double the number of applicants in a very brief period of time the window was even open, and I think those folks deserve the option.

**Chair McGrady:** Representative Brown and then Representative Stam.

**Rep. B. Brown:** I won't debate the policy again; we've done that through and through. I do disagree that I believe this amendment again is out of order. By defunding it by ten million dollars, you are essentially repealing Opportunity Scholarships, which is a substantive change in policy that is not allowable underneath this Subcommittee's rules. So again, I would ask for this to be held out of order and pulled from this vote.

**Chair McGrady:** Noted. Representative Stam.

**Rep. Stam:** Yeah, a couple points. On page F2 of your money report—if you'd refer there—even if this is not a matter of a point of order, which has already been ruled on, if you'll notice here there is a positive appropriation to the public schools for \$11,797,941 because those very kids won't be there. So if we accept Representative Glazier's amendment, which I hope we won't, we need to then repeal that one right there because you've just got to recognize reality.

We have five-thousand, five-hundred parents that applied, about one-thousand of them are on their face ineligible. We have four-thousand, five-hundred parents who've been in limbo since February because of Representative Glazier's lawsuit, which he gave an affidavit. And in this lawsuit they claimed that there had been no discussion about this; it just slipped into the budget. We provided to them forty-six pages of transcripts of all the debates we had, and since y'all are on this Subcommittee you know all four places we did it. We have thoroughly discussed this. It has been defeated every time, and I would encourage you to defeat it one more time and let those poor kids—71% of whom are minorities, and all of whom are, by definition, poor because they have to have less than free and reduced price lunch please let them have an opportunity for an education that they might otherwise lack.

**Chair McGrady:** Further discussion on the amendment? Representative Michaux.

**Rep. Mickey Michaux (D):** I just want to say never let it be said I played the race card.

*[laughter]*

**Chair McGrady:** Could we call the ayes and nays.

**Clerk:** Blackwell.

**Rep. Bryan:** No.

**Rep. Hugh Blackwell (R):** No.

**Clerk:** Whitmire.

**Clerk:** Horn.

**Rep. Chris Whitmire (R):** No.

**Rep. Horn:** No.

**Clerk:** Bell.

**Clerk:** McGrady.

**Rep. Bell:** Aye.

**Chair McGrady:** No.

**Clerk:** Brown.

**Clerk:** Bryan.

**Rep. B. Brown:** No.



**Clerk:** Conrad.

**Rep. Debra Conrad (R):** No.

**Clerk:** Elmore.

**Rep. Jeff Elmore (R):** No.

**Clerk:** Gill.

**Rep. Rosa Gill (D):** Yes...aye.

**Clerk:** Glazier.

**Rep. Glazier:** Aye.

**Clerk:** Goodman.

**Rep. Ken Goodman (D):** Aye.

**Clerk:** Lucas.

**Rep. Marvin Lucas (D):** Aye.

**Clerk:** Michaux.

**Rep. Michaux:** Aye.

**Clerk:** Stam.

**Rep. Stam:** No.

**Clerk:** Steinburg.

**Rep. Bob Steinburg (R):** No.

**Clerk:** Ten noes, six yesses.

**Chair McGrady:** The amendment fails.

**SB 744 – Appropriations Act of 2014  
Opportunity Scholarship Remarks on 2nd Reading  
June 12, 2014**

*Audio available at [this link](#)*

*Debate begins: 02:37:33*

**Acting Speaker Mitch Setzer (R):** For what purpose does Representative Goodman arise?

**Rep. Ken Goodman (D):** To send forth an amendment.

**Speaker Setzer:** The gentleman is recognized to send forth an amendment. The Clerk will read.

**Reading Clerk:** Representative Goodman moves to amend the bill on page 2, line 36, by decreasing the amount on line 36 by 10,000,000, and further...

**Speaker Setzer:** Representative Goodman is recognized to explain his amendment.

**Rep. Goodman:** Thank you, Mr. Speaker. This amendment simply removes \$10,000,000 that was appropriated for the Opportunity Scholarship Act, or vouchers, and returns it to DPI to modify classroom teacher allocations in grade two and three.

If I could debate the amendment, I would just like to say that we've heard all the arguments for and against the voucher program, but my argument, the reason I want it removed is it violates the Constitution of this state that says public education funds will be used only for public schools. And the courts have weighed in on this, and until those constitutional questions are answered, I think we should not be spending state money here.

**Speaker Setzer:** For what purpose does Representative Stam of Wake arise?

**Rep. Paul Stam (R):** To speak on the amendment.

**Speaker Setzer:** The gentleman is recognized to speak on the amendment.

**Rep. Stam:** Part of my amendment could be a point of order, but I'd rather have a vote on it. He takes that ten million and then spends it somewhere else. But unfortunately for Representative Goodman, the fiscal memorandum

shows that that ten million saves us 11.6 million. So rather than spending it somewhere else, he really needs to find something else to cut. Others will speak to the merits of it; I just wanted to point that out so you realize what you're actually doing here is losing money.

**Rep. Goodman:** Mr. Speaker?

**Speaker Setzer:** For what purpose does Representative Bryan of Mecklenburg arise?

**Rep. Rob Bryan (R):** To speak to the amendment.

**Rep. Goodman:** Mr. Speaker?

**Speaker Setzer:** You're rec...For what purpose does Representative...

**Rep. Goodman:** Mr. Speaker, may I answer Representative Stam's point, please, sir?

**Speaker Setzer:** Would you like to speak a second time?

**Rep. Goodman:** I would.

**Speaker Setzer:** This will be your last?

**Rep. Goodman:** To answer his point, we discussed this with staff and staff says that's not so. They say it's a ten-for-ten swap, so staff disagrees. Thank you.

**Speaker Setzer:** For what purpose does Representative Bryan of Mecklenburg arise again?

**Rep. Bryan:** To debate the amendment.

**Speaker Setzer:** You're recognized to debate the amendment.

**Rep. Bryan:** Thank you, Mr. Speaker. First I would say that only in this calendar year due to the technical amendment we've made is that actually correct. It would be a two-million savings I believe in the next fiscal year, which means there's a two-million-dollar cut we would have to make based on the savings. I'm not going to go through all the long conversations we've had before. We've talked a lot and debated this issue a lot. Let me just clarify, though, you know, this is a scholarship for low-income kids that do not have good options. We have had over five-thousand families apply in a very brief window of time. And this scholarship pool unfortunately only allow about half of those families the opportunity they need, but I urge you to let them have that opportunity and to vote down this amendment.

**Speaker Setzer:** For what purpose does Representative Brandon of Guilford arise?

**Rep. Marcus Brandon (D):** To speak on the amendment.

**Speaker Setzer:** The gentleman is recognized to speak on the amendment.

**Rep. Brandon:** I would like to ask the colleagues that we would please vote down this amendment. As a sponsor of this bill I would like for you to know that...Representative Goodman said that there were some constitutional issues. I would remind you of our constitutional responsibility which is to make sure that we provide a quality education for every single child in this state. And we have numbers and we have data that shows for thirty-five, forty years that there are particular segments of our population that have not been receiving a quality education. And that is not because we have bad teachers, and it's not because we have bad principals; it's because we have a bad system, and we are trying to fix that.

And a lot of my colleagues would like to engage in a fantasy conversation, and that fantasy being as long as we continue to invest in public education, everything will be fine. Well, we've been having that conversation for the

better part of fifty years, and the only people that suffer from it are the people that live in my community. And so if you are going to really do your constitutional duty, you will understand that the Constitution provides you the right to make sure that you provide a quality education for every child.

And it's interesting to me that we have decided that this particular bill is unconstitutional when Representative Goodman and others who are against this bill voted for the special needs scholarship which is exactly the same exact bill. And I will tell you that my children might not roll up in school with an IEP, and they might not come to school with a wheelchair, but the needs are indeed special. And we owe it in this body to make sure that we provide that same opportunity that we did with children with special needs, the same thing that we do for children in pre-K and More at Four. That, folks, is a voucher program... That's a voucher program. People can take money from the State and they can go to whatever preschool or whatever daycare they want to go to, and it doesn't matter if it's religious or it's not.

So I would be very careful about saying this is unconstitutional because we do it in every facet of education, except in K through 12. We do it in higher education, we do it in pre-K, we do it everywhere, but somehow we're manipulated to think that because we want to give kids in my community the same opportunity that we give special needs, the same opportunity we give preschoolers and the same opportunities that we give higher ed kids, that somehow it is unconstitutional. I will let you know there is nothing unconstitutional about giving poor and minority children the same exact opportunity as every other children—nothing unconstitutional about it. Thank you.

**Speaker Setzer:** Thank you. For what purpose does Representative Glazier of Cumberland arise?

**Rep. Rick Glazier (D):** To debate the amendment, Mr. Speaker.

**Speaker Setzer:** The gentleman is recognized to debate the amendment.

**Rep. Glazier:** So today we confront a frighteningly bizarre question: Does Article 9, Section 6 allow what its text plainly prohibits? Needless to say, except that this budget obliges us to say it, the question answers itself.

I think a little constitutional history might be in order for a constitutional decision that doesn't relate at all to preschool or colleges because, of course, those who've read the Constitution know that the provisions don't apply to them. They apply only to K-12. That being said, it ought to be that we think about this. This is not the policy debate. We've had that; we agree or disagree on whether vouchers will solve it.

But we now have a court decision stayed only because of a *writ of supersedeas* that has nothing to do with the merits. In fact, if you read what a *writ of supersedeas* is, it's simply to stay the decision so there can be a more legitimate discussion at the court on the merits before the decision is made. And in fact, the trial will be had on the merits, and I suspect the trial court's injunction will eventually be upheld on the merits. But we at least ought to know the argument because that's what's at issue here. So I'm going to make it, and then I'm going to ask for your consideration on the merits of the legal issue, not the policy of vouchers. Others can make that back and forth and we've done it in this chamber quite a bit.

Article 1, Section 15 of the Constitution of North Carolina states, "The people have a right to the privilege of education, and it is the duty of the State to guard and maintain it." The meaning of that is specified in Article 9. Here's the language of Article 9, Section 2: "The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools." And Article 9, Section 6 then sets forth exactly how the State is to do that. And at the end of that article it says as to the money that can be used, "and together with so much of the revenue of the State as may be set apart for that purpose, shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools."

**Rep. Kelly Hastings (R):** Mr. Speaker?...Mr. Speaker?

**Speaker Setzer:** For what purpose does Representative Hastings arise?

**Rep. Hastings:** To see if Representative Glazier would yield for a question.

**Speaker Setzer:** Representative Glazier, would you yield for a question?

**Rep. Glazier:** I do not yield at this time, Representative Hastings, but I'd be delighted to when I finish.

**Speaker Setzer:** He does not yield at this time. You may continue, Representative Glazier.

**Rep. Glazier:** The 1868 Constitution committed the State to providing education through a general and uniform system of public schools. At that time, Article 9, Section 4 obliged us to fund public schools, “to an irreducible education fund which shall be faithfully appropriated for establishing and perfecting in the state a system of free public schools.” In 1875 Section 4 was amended so that state revenues could be expended “for the purposes of education” “to be faithfully appropriated for establishing a state system of free and public schools.”

Well, we all know the history of what happened in our state and much of the country between the late 1800s and 1955. And in 1955 the North Carolina General Assembly appointed, as a result of *Brown v. Board of Education*, the Pearsall Commission which, in order to avoid to some extent segregation, recommended this General Assembly enact a voucher program that provided taxpayer funded grants for use in private schools for kids who were otherwise assigned to an integrated public school. The General Assembly enacted that Pearsall Plan in 1956 and amended the Constitution—or allowed to be authorized under a new Section 12—that, notwithstanding any other provision of the Constitution, the General Assembly could provide for those vouchers very specifically.

A decade later in litigation in federal court, the Pearsall Plan and Article 9, Section 12 was struck down...

**Rep. John Szoka (R):** Mr. Speaker?

**Speaker Setzer:** For what purpose does Representative Szoka arise?

**Rep. Szoka:** Mr. Speaker, on a point of order. I thought we were debating the amount that was being appropriated, not the policy, and I don’t see how Representative Glazier’s explanation right now relates to the appropriation.

**Speaker Setzer:** The point of order...

**Rep. Glazier:** Mr. Speaker...

**Speaker Setzer:** Representative Glazier.

**Rep. Glazier:** It directly relates to it because what Representative Goodman is doing is saying the ten million is being unconstitutionally appropriated and needs to be put to a constitutionally appropriate space. I think that in a few minutes my argument will end and people will be able to vote, but we ought to be able to make the reason for Representative Goodman’s amendment.

**Speaker Setzer:** Proceed.

**Rep. Glazier:** Thank you, Mr. Speaker. So the Pearsall Plan was struck down by the federal courts. As a result of that—and this is the key—in 1968 the State Constitution was amended. Article 12 that allowed for the vouchers was removed. Section 12 was replaced, Section 4 and Section 6 were changed, and the wording we now have came into play, which is unlike almost any other state constitution in the country. And it says that the money we expend here for public education—for education of the public—has to be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.

Whatever else we can say, it is only a tortured reading of the Constitution that could suggest that money that goes to families to allow them to make choices to send their children to a private school with the taxpayer-funded voucher is money used exclusively for the establishment of public schools. It is precisely this point that the trial judge enjoined us on, and yet here we are today attempting to go for yet another constitutional issue with it.

There is lots of discussion we can have about the policy, and it is up to the public, though. We sometimes forget that the Constitution takes some issues away from us. That’s the purpose of it: to remove certain issues from public debate. It may be the public wants vouchers; it may be they don’t.

But because we have this constitutional provision, if you want, as the majority, to have vouchers in this state, there is only one way for you to do it—and I would vote for you to do this—put an amendment on the ballot that asks the State to revise the Constitution, take out the word “exclusively.” You do that, you get the public to vote for it, then we can put in place a voucher policy by statute or otherwise. You leave that word in as it is, the public has taken this issue from us, and this is the public’s Constitution, not ours. And there are some things that are removed from the policy debate and this is it.

And Representative Goodman is exactly right. This is not a policy discussion; this is a constitutional law discussion. And eventually the justices of the Supreme Court, I think...And unfortunately you are doing a disjustice to them because we have put this in their laps in a political year, and that is unfortunate. But I expect they will come up with the right answer when all is said and done because there is no other way to read the word “exclusively.”

Now, Representative Stam would argue because you’re putting 11.6 million dollars back in the budget that that’s going to undo the problem, recognizing the trial court might have been right, and trying to create a way around it. The problem is you can’t get through the back door what you’re not allowed to get through the front door. The Constitution doesn’t say because you put extra money in the budget for public education that other public funds can be used to fund non-exclusive public schools. That’s not what the Constitution says. And it doesn’t say what’s in the public education fund; it says taxpayer funds must be used exclusively. There is no way to get around that.

We can argue all we want about vouchers, but as we said on the floor last year and as the trial court has now affirmed and, I believe, will eventually be affirmed up the chain, we have put in place something that is unconstitutional. There’s only one way to get the policy you want and that’s to do it the right way. Amend the Constitution then create your voucher program. But for now, Representative Goodman is exactly correct.

**Speaker Setzer:** For what purpose does Representative Stam of Wake arise?

**Rep. Stam:** To speak a second time on the amendment.

**Speaker Setzer:** You are recognized to speak a second time.

**Rep. Stam:** And I ask you to vote no. In the lawsuit I filed a forty-six-page affidavit, but I’m not going to go over it. I’ll email it to you. Representative Glazier filed a long affidavit and he’s just wrong on this. Let me tell you why he’s wrong. If you have your Constitution—because I want you to feel good about the fact that you’re following the Constitution when you are—but if you’re in Article 9, first of all there’s a provision: “Religion, morality and knowledge being necessary to good government, the happiness of mankind, schools shall forever be encouraged.” So we’ve got to have these public schools to help to do religion and morality...

**Rep. Harry Warren (R):** Mr. Speaker?

**Rep. Stam:** School attendance...I’ll yield later. “That every child shall attend the public schools, unless educated by other means.” So from the beginning we’ve recognized private education.

Now we go to the state school fund to which Representative Glazier cites, but he’s completely wrong on the source of the money involved. If you have your money report today—the blue thing—this is under the UNC system, not...You won’t see it here, it was in last year’s money report. But it’s not under the public schools at all; it’s under the UNC system and allocated to the State Education Assistance Authority, which is the same one that disburses money to Meredith and Duke and thirty-five other private colleges.

So the whole...In other words, when you look at the Constitution, Article 9, Section 6, it says—the last four lines, if you’re in this little book—“together with *so much* of the revenue of the State as may be set apart for that purpose.” This ten million was never set apart for that purpose of the K-12. It never entered that system whatever, whenever, ever. The entire predicate of their constitutional lawsuit is based upon a misunderstanding by some of our budget process.

**Rep. Warren:** Mr. Speaker?

**Speaker Setzer:** For what purpose does Representative Warren of Rowan arise?

**Rep. Warren:** To see if Representative Stam would yield for a question.

**Speaker Setzer:** Representative Stam, do you yield?

**Rep. Stam:** I do.

**Speaker Setzer:** Representative Stam yields.

**Rep. Warren:** Representative Stam, when I was working on the Voter ID bill, I ran across a lot of things in the Constitution that we don't adhere to, like the Literacy Act, a requirement in Section 6, or the statement in Section 8 of Article 6 that you're ineligible to run for office if you don't profess a belief in God.

But looking at Article 9 in Section 2, the Constitution states, "The General Assembly shall provide that every child of appropriate age and of sufficient mental and physical ability shall attend the public schools, unless educated by other means." Now since you have identified the different source of the funding, wouldn't this other means, Opportunity Scholarships, qualify as the other means we're referring to in the Constitution?

**Rep. Stam:** Exactly!

**Speaker Thom Tillis (R):** Representative Horn, please state your purpose.

**Rep. Craig Horn (R):** To debate the bill...or the amendment.

**Speaker Tillis:** The gentleman is recognized to debate the amendment.

**Rep. Horn:** Well, thank goodness I'm not a constitutional scholar or a legal scholar or an attorney or anything else like that. Thank goodness. I am a grandpa and a father, and I want a good education for my kids. And I suspect everyone in here wants a good education for their children and grandchildren. And I think everyone in here agrees that not everything works for everybody. I think everyone in here agrees that not every child learns the same thing at the same rate or in the same way. It just doesn't happen.

So this General Assembly took that challenge two years ago to address that issue. Not everything works for everyone. We came up with a solution that allowed folks that didn't have the means that I'm lucky enough to have...If my kids aren't getting a good education, if my grandkids aren't getting a good education someplace, I'm fortunate enough I have the means to send them someplace else. But there are a lot of really hardworking people in this State that don't have those means.

Now I'm not going to really carry this on to any length of time. We don't have, I think, the patience. We've already debated the sense of the issue. But we made a decision two years ago, we committed ourselves to a system, and now we're funding the system in the budget as we had committed.

I am not a constitutional lawyer, thank God. I am a grandpa, and I want my kids to get a good education. And I want the poor kids from poor families across this state to have an opportunity for their kids to get a good education. Please vote down this amendment.

**Speaker Tillis:** Representative Hastings, please state your purpose.

**Rep. Hastings:** To see if Representative Glazier would yield for a question.

**Speaker Tillis:** Representative Glazier, does the gentleman yield?

**Rep. Glazier:** Certainly, Mr. Speaker.

**Speaker Tillis:** The gentleman yields.

**Rep. Hastings:** Representative Glazier, I was going to see if you could clarify a constitutional issue for me. And the staff tells me that state-appropriated dollars to private colleges and universities dates back all the way to the 1970s, and that would be taxpayers' dollars going to a private college.

**Rep. Glazier:** Absolutely.

**Rep. Hastings:** Did you support those?

**Rep. Glazier:** I do.

**Rep. Hastings:** Thank you, sir.

**Rep. Glazier:** And I'll finish my answer to you. I do, except, of course, the constitutional provision...

**Speaker Tillis:** Does the gentleman wish to debate the amendment a second time?

**Rep. Glazier:** I wish to debate the amendment a second time.

**Speaker Tillis:** The gentleman is recognized to debate the amendment a second time.

**Rep. Glazier:** Thank you, Mr. Speaker. Representative Hastings, it's a good question, raised in part, as well, by Representative Brandon in his discussion. Except, of course, the constitutional provision that we're interpreting has nothing to do with colleges and universities. It relates to K-12. So the provisions as relate to what we do and give to colleges and universities are not covered by Article 9, Section 6. Thank you, Mr. Speaker.

**Speaker Tillis:** Representative Hastings, please state your purpose.

**Rep. Hastings:** To see if Representative Glazier would yield for a second question.

**Speaker Tillis:** Representative Glazier, does the gentleman yield?

**Rep. Glazier:** Yes, sir.

**Speaker Tillis:** The gentleman yields.

**Rep. Hastings:** Representative Glazier, my copy of the State Constitution says a uniform system of free public schools; it doesn't say K through 12. Would that be correct?

**Rep. Glazier:** Representative Hastings, if you read the history of that constitutional provision, it's clear that the free system of public schools it's referring to is K-12. It is not referring to colleges and universities that have their...

**Rep. Hastings:** Thank you, sir.

**Rep. Glazier:** ...own independent, constitutional provision.

**Speaker Tillis:** Representative Brandon, please state your purpose.

**Rep. Brandon:** To speak a second time on the amendment.

**Speaker Tillis:** The gentleman is recognized to debate the amendment a second time.

**Rep. Brandon:** Representative Hastings, to your other point of this before I speak on that, I would say that our tax credit—the same exact bill for special needs—is definitely within the provision of K through 12, and Representative Glazier also voted for that measure, also.

So this is the crux of my statement - and I'm leaving, so I can make these statements because I know it's hard for some people to hear. But I want people to know that when I came here, I noticed some things that were the whole reason why I ran for office. And I felt like I needed to come because I felt like that people in my community get marginalized a lot. And the whole reason why this is important and why we have to be here and talk about this is because, folks, it doesn't matter what anybody says. You can make any argument you want. You can talk about it the way you want to talk about it. But we have hard data—hard specific data. But more importantly that I have human lives that are affected by this.

You can't concentrate on a problem for forty years and it doesn't get better and it's an impossibility, and that's exactly what has happened. We continue to come down here year after year, year after year. We make the campaign promises, we do all of that. But there is one population for forty straight years, or more, that has continued to have the same exact numbers.

But nobody got up during the special needs and talked these constitutional issues. Nobody got up and spoke about it that way. And nobody, for years, talked about any other thing other than what's going on in my community.

But anytime that there's something for poor and minority kids, whether you're Democrat or Republican, in the history of this chamber we automatically now we have a problem. We didn't have a problem before it for the other children, but you have a problem with it for my kids, and I think that's a problem. I think it's a huge problem.

And I would say to my caucus and to the folks in this General Assembly: I won't be back, but please stop marginalizing my children for political rhetoric. If you were serious about it, it wouldn't have the same number for fifty years. It's not possible, it's just not possible. So you folks that are going to stay here, there are going to be people that will get up and continue to say the same exact rhetoric that has been said for thirty-five, forty years. And I want you to look deep into yourself and say, "Does that represent my constituency?"

Folks, I'm here to tell you I am very proud. I do not miss a beat sleeping at night knowing that the fact that I'm going to have Ms. Jones, who does not have a choice because she lives in a zip code and she's poor, will now get a different choice. I sleep very well because of that. I hope you sleep very well by voting down this amendment and continuing this policy. Thank you very much.

**Speaker Tillis:** Representative Hanes, please state your purpose.

**Rep. Ed Hanes (D):** To speak on the amendment.

**Speaker Tillis:** The gentleman is recognized to debate the amendment.

**Rep. Hanes:** Good afternoon, colleagues. The last time I stood to speak with regard to this Opportunity Scholarship program, or the voucher program, I stood to ask that the program be pulled out of the budget. I did that. It was the right thing to do. It was an appropriate thing to do and I stand by that. Today I stand to oppose this amendment and to explain to you a little bit about why I want to do that.

My colleague several minutes ago, as he often does, spoke quite eloquently in terms of his constitutional analysis. And I wanted to touch base on that just a little bit. When we started with Article 9, Section 2, the uniform system of schools, I won't go so far as to say my good friend, Representative Glazier, was wrong—would never do that. But what I will say is that there's a little misdirection going on, and we conveniently stepped over a little bit of the language here.

So let me start, I want to read that in full. "General and uniform system: term. The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students." That is the key language: "where *equal* opportunity shall be provided" for poor students.

Then we moved on and moved to Section 6. And I was surprised we took quite the strict constructionist approach to that language in Section 6 where we spoke the words, "and it shall be faithfully appropriated and used exclusively for establishing a uniform system of *free* public schools."

I take umbrage at the word "free" when we start talking about public schools in the communities that some of us represent. I don't know if students who are forced to go to schools that are 99% free and reduced lunch...I don't know how free that is. I think those students are being taxed in ways that are unimaginable.

Let me read a couple of numbers for you here. These are the end of third grade proficiency scores for some of our counties. Alamance: 26% proficient for economically disadvantaged students. Alexander: 41%, Alleghany: 44%, Anson: 29, Ash: 36, Bladen: 24, Burke: 38, Caldwell: 36, Cherokee: 37, Cleveland: 38, Columbus: 19, Craven: 30, Davie: 36 and my home county of Forsyth: 23–23% in Forsyth County economically disadvantaged students.

In Forsyth County there are a few different schools that I represent. One of them is a school that my daughter attends. Their end of grade third grade reading proficiency: 86%. Public school: 86%. That's the neighborhood I live in. Here are a couple of scores for schools that are less than one and a half miles from where I live, and these are the scores of schools that my father grew up in: 13.8%, 99% free and reduced lunch; 10%, 99% free and reduced lunch; 13.7%, 99% free and reduced lunch and 6%...6%, 97% *eligible* for jail, according to the Department of Corrections. There's nothing free about that when 99% of those students look like me, or look like anyone else who is poor and does not have the opportunity.

I have a real problem today with people in this Assembly, in my caucus who will get ready ten minutes from now to vote yes on this amendment and they have children in private school and will tell you that they are there because they cannot send their kids to an 80% free and reduced lunch school! Now why is that? Why is it good for us, but not good for the rest of the State of North Carolina when we're talking about poor children?



Ladies and gentlemen, this is the kind of hypocrisy that the State of North Carolina and the citizens do not want. I understand it's a difficult issue. I understand we have our own folks that we have to answer to. I understand that the NCAE is upset. I understand that folks on both sides of the aisle have people that they have to answer to. But at the end of the day, we ought to be able to agree that we are going to stand for poor children. If you can vote for a disability voucher bill, then you can vote for *this* voucher bill. You can vote down this amendment. Let's have some consistency here.

Everybody talks to me about how folks aren't ready. "You don't want to do this, Rep., because people aren't ready. People in your communities aren't necessarily ready. The public schools aren't ready." We've been talking about not being ready since the beginning of time. It is a constant argument that has happened back to the biblical ages, folks.

Some folks weren't ready when Moses went to Pharaoh and he said what? "Let my people go." Thirty-five hundred families in this state of families who look like me said they want to go. *Let them go*. People weren't ready, everybody wasn't ready when it came time to run. It didn't mean Harriet Tubman had a bad idea. Everybody wasn't ready when it came time to march across the bridge. It didn't mean King's dream wasn't valid. Just because people weren't ready to stand up didn't mean the Greensboro Four were wrong to sit in.

This is what we're talking about! We're talking about opportunity! We don't have to always agree, but we need to be consistent. Ladies and gentlemen, if we can vote on one thing going forward, if we can come together on one thing, let's please always do it when we're talking about the needs of poor children. Thank you.

[applause]

**Rep. Hanes:** Please don't...Please don't do that...Please don't do that.

**Speaker Tillis:** The gentleman...Please take your seat. The question before the House is the passage of the amendment sent forth by Representative Goodman to the House Committee Substitute number two for Senate Bill 744. All in favor vote aye; all opposed vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. Forty-three having voted in the affirmative and seventy-one in the negative, the amendment fails.

~ Fin ~

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**HB 1224 – Local Sales Tax Options/Econ. Devpt. Changes**  
**Remarks on Concurrence**  
**August 19, 2014**

*In the last fourteen years this is the only bill for targeted tax incentives or expenditures that failed on the floor. Proponents lobbied it hard but it was loaded up with so much unrelated junk that many different groups were against it—not just free market conservatives.*

Audio available at [this link](#)

Debate begins: 00:06:19

**Speaker Thom Tillis (R):** ...That leaves three other bills on the calendar. Each of those bills are interrelated. Should 1224 not pass, House Bill 718 and House Bill 189 will also be moved off of the calendar. So we will either vote on three bills today, depending upon the disposition of 1224, or simply 1224...

[unrelated dialogue omitted]

...House Bill 1224, the Clerk will read.

**Reading Clerk:** To the President of the Senate and the Speaker of the House of Representatives, the conferees appointed to resolve the differences between the Senate and the House of Representatives on House Bill 1224, a bill to be entitled an Act to limit the total local government sales and use tax to two and one-half percent; to give counties the flexibility to use up to one-half percent of the local sales and use tax for public transportation. The

conferees recommend the Senate and the House of Representatives adopt this report. Conferees for the Senate: Senator Rucho, Chair; Senators Gunn and Rabon. Conferees for the House of Representatives: Representative Lewis, Chair; Representatives T. Moore, Samuelson and Presnell.

**Speaker Tillis:** Representative Lewis, please state your purpose.

**Rep. David Lewis (R):** For a motion, Mr. Speaker.

**Speaker Tillis:** The gentleman is recognized for a motion.

**Rep. Lewis:** Thank you, Mr. Speaker. I move that the House do adopt the Conference Report for House Bill 1224.

**Speaker Tillis:** The gentleman has made his motion and the gentleman is recognized to debate the motion.

**Rep. Lewis:** Thank you, Mr. Speaker. Ladies and gentlemen of the House, the Conference Report that you have before you for House Bill 1224 is a very important piece of legislation. It is my intent as quickly as I can to go through the provisions of the bill, then I'm going to try to speak briefly about why I think the provisions of the bill are important.

Section 1 of the bill gives the counties greater ability and maximum flexibility to use their sales tax authority to allow them to impose a sales tax up to 2.5 percent. Currently, as you know, most of our counties are allowed to go up to 2.25. We treat certain counties differently in this state. This bill empowers...it treats all counties the same with the exception of those that already have the authority to go up to 2.75 percent, in which case, as we'll discuss later on, they would also retain that. But again I would point out that this gives, by a majority vote of your county commission and a referendum of the people in their respective counties, the right to set their sales tax rate. It's an issue of fairness; it treats all counties the same.

Part 2 of the bill deals with the JMAC program. It increases what expenses qualify. It lowers the investment threshold from sixty-five million to fifty million, and I'll speak more about that in just a moment.

Part 3 of the bill creates the new Job Catalyst Fund. This fund is what you've heard referred to as the "closing fund," or the last little bit of incentive that may need to be offered to bring jobs to our state.

Part 4 of the bill deals with changes to our JDIG program. Part 5 of the bill deals with the crowdfunding concept. Part 6 of the bill deals with the confidentiality of unemployment information, and Part 7 of the bill is purely technical changes.

Now, let me take just a moment with the House's indulgence and the Speaker's, to talk about a few provisions of this bill just for the record. First of all, the attempt to give counties true equality in being able to establish a referendum to set their sales tax is important. I have distributed to you what this could mean in potential revenue to our counties to meet the obligations that they have. Suffice it to say that under this bill, and with the correcting bills that will follow should this bill pass, every county will have more flexibility, more opportunities to meet the obligations that they have.

Part 3 of the bill deals with the closing fund. If there's any word that's overused on this floor it's the word "toolbox." But since that seems to be the standard language that we use, I'll stick with the program. The Job Catalyst Fund provides the framework for assisting the State in just filling in the gaps that may exist in our already good and extensive toolbox. The existing tools that we have are important and they keep our state competitive most of the time. But there are some cases in which there might be a large manufacturing project with a large capital investment, large number of jobs and JDIG just doesn't get us all the way there. It's important to understand that in those rare cases it's important that the State have the flexibility to support local communities in providing infrastructure for site prep, that this can make the difference in landing jobs for the people of our state.

The changes to the JDIG program are also very important. I'm advised by the Secretary of Commerce that North Carolina has a pipeline of projects right now representing nearly three thousand jobs across the state in counties as far flung as Brunswick, Cleveland, Wilson, Pitt, Buncombe and Guilford. The list just goes on. All of them may not happen. That's the way the economic development game works. But you have to signal that you're in business and that you want them, and that's what this bill would do.

JDIG is used in rural communities. Many of my friends from the rural part of the state have asked me about this. This has been used to bring jobs to Rockingham County, to Bladen, Davie, Rowan, Pender, Catawba, Lee, Burke. This truly is a statewide program. But it's also important—I speak straight to my friends who, like I, represent a rural district—it's also important to understand that if a JDIG award is made in a Tier 3 county, which is more of

our urban counties, that twenty-five percent of that grant goes into the industrial development fund which funds infrastructure in rural counties.

I want to speak only briefly about the part dealing with the confidentiality of the unemployment insurance which passed the House unanimously some time ago. This does correct the problem that we discussed on the floor of the House. With your indulgence I will not re-discuss that.

Part 7 of the bill is purely technical changes. All of the changes contained in Part 7 of this bill have previously passed the House and they again are purely technical corrections to various revenue laws.

Mr. Speaker, I appreciate the opportunity to explain this bill and I look forward to the debate.

*[unrelated dialogue omitted]*

**Speaker Tillis:** Representative Stam, please state your purpose.

**Rep. Paul Stam (R):** To speak on the conference report.

**Speaker Tillis:** The gentleman is recognized to debate the motion.

**Rep. Stam:** Mr. Speaker, members: this bill has a nominal cost, if used as intended, of two-hundred million dollars. Now some of that is in the future and it would be appropriate to discount it for its present worth. I don't have the data to exactly do it, but I am going to estimate it to cost one-hundred and fifty million dollars. We are supposedly voting on this in order to fix a TA (Teacher's Assistant) problem which has a statewide significance, as estimated by OSBM, of about four million dollars. So the Senate wants us to trade one-hundred and fifty million dollars for four million dollars.

...Other people will be addressing the sales tax issue—I would like to address the expenditure part. All of us, when we go to see our civic clubs or other political clubs, we are in favor of free enterprise. I'd like to read you just one sentence, but it is a long sentence.

“A statesman (that's you) who should attempt to direct private people (that's them) in what manner they ought to employ their capital, would not only load himself with a most unnecessary attention, but assume an authority which could safely be trusted, not only to no single person, but to no council or senate (or house) whatever, and which would nowhere be so dangerous as in the hands of a man who had folly and presumption enough to fancy himself fit to exercise it.”

I don't think I have the ability to decide where this one-hundred and fifty million dollars should go and I don't think Commerce does either. Oh, who said that by the way? Well that was actually written three-hundred years ago or so but is equally applicable to our vote today. That is Adam Smith in the “The Wealth of Nations,” for those of you who claim to be for free enterprise.

Now, let's take them one at a time. The JMAC modification is to keep an employer here, Evergreen, which otherwise might leave, when they have already agreed to invest fifty million dollars and they have been there forever and natural gas is coming. Well I feel sorry for Evergreen that EPA has harassed them with this new rule change. But they are not going anywhere. I feel sorry and I wish we could give them twelve-million dollars, but it is not saving jobs because those jobs aren't going anywhere anyway.

Let's look at JDIG. When I mention the one-hundred and fifty million dollar figure other people say, “Well, we'll get that money back from the taxes that people pay from their new employment.” That assumes that there is new employment. But we have had study after study that shows the lack of proof that this actually induces employment. We had a program, the Bill Lee Act, and we had UNC look at it and they determined that ninety-six percent of the jobs for which credit was taken would have come here anyway. Four (4) percent were actually induced but you were paying for ninety-six percent that were not induced. That was from the economists at Chapel Hill.

Take a look at what I passed out from the Mercatus Center Research Summary of 2014. This is just one of dozens and dozens of research *[papers]* by people who don't have a stake in the money to be received. The economists who study it say this kind of stuff just does not affect the overall economic well-being of a state. It doesn't work and the reason it doesn't work is this: When Apple or Google decided to come to North Carolina (and blessings to the counties where they came), we paid a million dollars per job for those. And I will concede that

probably induced them to come, paying one million dollars per job. We got hosed in how much we paid but it probably did induce them.

Then you see all the announcements that come out—I saw one today in the Insider about some new company that was coming. The amount of money they paid per job for the state and local was so little it could not possibly have affected the decision to locate. If you pay way too much or if you do not pay enough to induce, then that money paid by the State is an incredible waste of money. It is only if you are exactly on the button, exactly the deciding factor that it actually induces anything. But how will you ever know?

I put on your desks the press release from 2009 about the Dell Incentives. We paid about twenty-eight thousand dollars per job...to get Dell there. And supposedly we had all these claw-backs and repayment schemes but we didn't—we didn't. The only way really to get a claw-back on this money is to put a deed of trust on the property so that you are a secured creditor so that you have priority over the trustee in bankruptcy and other creditors. We didn't do that so they (Dell) didn't pay everything back.

In the Finance Committee we considered this Catalyst Fund. I suggested to the Secretary (of Commerce) three things. One, get a real claw-back for security. They didn't do that. The second thing I suggested was take Tier 3 counties out of this. Tier 3 counties don't need it. They refused to do that. So Tier 3 counties are going to get most of this money. How do I know? JDIG, that is everybody's favorite program—JDIG: eighty-six percent of it goes to Tier 3 counties. If you are from a Tier 1 or Tier 2 county and think you are going to get all this money for projects, it is not going to happen. They wouldn't take that [*suggestion*].

I also suggested that they reduce the number of jobs and amount of investment by half so that two good projects could qualify instead of one huge project. They refused to do that. It is the same idea. It is only the huge project that produces economic wealth, and we know that is just not true.

They add up to one-hundred and fifty million dollars. And some people will say, "Well, one-hundred and fifty million dollars, that is the present worth but some of this is going to go for six years or twelve years." But folks, we do this every session. It is usually the last week of a session and they try to jam down a big giveaway to an out-of-state corporation and that is what we have here. So you have to add this one-hundred and fifty million dollars every year.

And that one-hundred and fifty million dollars, different people would do different things with it—that is the present worth. Some people would use it for teacher assistants. Some people would use it for medical care. Some people would use it to fix our buildings. Some people would put it in reserves so we have a true rainy day reserve. But don't think that this is free money that we are passing out and that somehow we are going to get it back from these companies, because that is not why they come here. They come here because of a calculation based on all of their costs, all of the benefits and this catalyst fund of twenty-million dollars can't possibly be enough to actually induce Continental Tire to come to Brunswick County. Thank you.

**Speaker Tillis:** Representative Presnell, please state your purpose.

**Rep. Michele Presnell (R):** To speak on the Conference Report.

**Speaker Tillis:** The lady is recognized to debate the motion.

**Rep. Presnell:** Evergreen: I want to take time to explain this to you. This is one thousand jobs, three-hundred of which come directly from Buncombe County from Representative Fisher's district, and Representative Moffitt and Representative Ramsey's district. There are eleven counties involved that have actual employees that go to the paper mill for jobs. My district is Haywood where the paper mill is located. People come from Madison County and Yancey County, Representative McGrady's district, Representative Hager's district, Representative West—his district, Representative Dobson, Representative Whitmire, Representative Queen and Representative Jordan.

These jobs are real, real jobs. If we lose these—we are a Tier 2 county, my whole district is—if we lose these, we are going to be the poorest of the poor. And it will take twenty years to gain any kind of jobs back in that area. These mountain people need these jobs. These are seventy-eight-thousand-dollars-a-year-plus-benefits kind of jobs. You don't find those in the mountains. They're not just everywhere. These are very, very high-paying jobs.

I went to some of my logger friends, the Gillies, and I asked them, "Exactly how does the Canton Paper Mill affect you?" And he was very adamant. He said the small trees that they cut when they clear for a business or whatever's coming in, the smaller trees are loaded and they go down to Rutherford County, Representative Hager's district, and they are chipped. And from there they send them to the paper mill in Canton and they make the paper:

paper cups, paper plates, regular paper. Their whole...They've been there for a very long time. They change what they're going to make sometimes, but it is a very necessary kind of a thing.

This is a business that needs your help. The EPA Boiler MACT regulation, straight out of Washington, has told them they have to change to natural gas. They're doing this because they're forced to do it. This will cost them...They're putting in fifty-million; they're only asking for 12.8 million from this state. They need a little bit of a boost, a little bit of help. For years to come this will be five-million dollars a year more that this company is going to have to pay because they are being forced to go to natural gas.

I will say one more thing. This is infrastructure. A lot of you that are in the urban areas; you already have natural gas that comes to your counties. We don't. Up in the mountains we do not. This is going to bring infrastructure and natural gas to all the mountain counties so that we can hook onto it eventually. We need this so that there will be more manufacturing jobs once we have that natural gas there.

I certainly do hope you will help me and vote for this bill. Thank you.

**Speaker Tillis:** Representative Jackson, please state your purpose.

**Rep. Darren Jackson (D):** To speak on the motion.

**Speaker Tillis:** The gentleman is recognized to debate the motion.

**Rep. Jackson:** Thank you, Mr. Speaker. Thank you, everyone. It pains me to stand up and speak today, and so I hope you'll listen to what I have to say. I don't usually stand up and interrupt others with questions. I wait to the end. I hope you will give me that same courtesy.

We should have been out of here two weeks ago when we had a chance. And that's when House leadership made a commitment to me personally that 1224 was dead. A promise around here apparently does not mean what it means when I give someone my word. I am not naive about the political process, but I do think when House leadership comes...

**Speaker Tillis:** Representative Jackson, the Chair is going—and the Chair does apologize for interrupting—but just to set proper context, the Chair is taking up 1224 under the understanding, and it will be explained later, that the other two bills—the change in material provision, which I believe is the one you were concerned with—is the only reason it's being considered. Twelve-twenty-four in its current form will not be allowed to go into law without the other two bills taken up today being passed. If they are not passed, this bill will not go into law. The gentleman may proceed.

**Rep. Jackson:** Thank you, Mr. Speaker. Well, my problem is with 1224, and I raised...some of you saw me raise it in Rules and saw me approach the Chairman and speak privately. And then when we came back to session, leadership came, took a knee beside my desk and told me this bill was dead. And I said, "All I need is your word," and I was told, "You have it." And I said, "That's good enough for me. I'll sit down and be quiet."

I know it's a popular myth about Raleigh and D.C. politicians that they'll say anything to get elected and never keep their promises, but it doesn't have to be that way. We can treat each other with respect and honesty. If I'm against your bill, I'll tell you. I don't need to break my promises. People should honor their commitments. When they don't, we descend into chaos, and that's what we've been the last two weeks.

So I'll address this bill on its merits. We have been told that to fix the TA issue we have to pass this bill. But I want to be clear to those that are listening at home today. Our budget...The Democrats didn't fire these TAs or cut positions; that's your budget. You own that choice. You don't get to stand up on the floor and tell us that we're wrong for not supporting TAs when the Senate has made any fix unpalatable to us. They're extorting us, and the Majority in this chamber is letting them do it.

It's a really simple fix. We've heard it in Rules, but we're buckling to Senate leadership in order to hurt a few large counties, or maybe some personal vendetta against one particular one. The Senate is holding this whole process hostage—not the Democrats. Just because we've decided to be a rubber stamp for the Senate doesn't mean my caucus plans to be a rubber stamp for you. We can go back to Rules right now and we can vote out a clean TA fix and put it on the floor and be done with this today.

I don't speak for them, but my guess is that Representative Tine, Representative Reives, Representative Glazier, Representative Queen—they voted against the budget in part because it cut educational positions, including TAs, despite the Majority's and the Governor's very public announcement otherwise. They voted against it, like I did,

because it gave five-hundred dollars to some state employees scrubbing our children's bathrooms and feeding them lunch every day, but it gave a thousand dollars to the state employees doing the same exact work...

**Speaker Tillis:** Representative Jackson, the gentleman will focus on the content of the conference report in question.

**Rep. Jackson:** Thank you, Mr. Speaker. I think that's absurd. I think it's absurd that the lunch lady at Kitty Hawk Elementary only got five hundred dollars and the lunch lady here got a thousand.

Representative Tine didn't vote against teachers like your negative mail that's been sent out last week claims. That's your budget that cut money from education and reduced positions in education in the classroom. Representative Reives didn't tell teachers and students they weren't worth it, as the negative mail claims. That would be your budget that said to our longest-serving teachers, those that have been in the classroom twenty-nine years, they were only entitled to a hundred-and-forty-three dollar raise—about approximately what our per diem is in one day.

If you want to be able to fix those problems, then let's do a clean bill and we'll support that. But if you want a corporate welfare bill, then pass that in a separate bill, too. After we pass it, if the Senate doesn't take up either of these, they own those decisions, not us. We will have done what we could to fix them.

I'm not going to address the walking-around money that Representative Stam referred to, the twenty million or two-hundred million. Other members can speak to that. I will say that I think everyone here is aware that these funds are for specific projects that nobody else's district will benefit from. So I don't blame the five or so members that want jobs for their districts for standing up and supporting this bill. They're doing what they need to do.

But for the other hundred and fifteen of us in here, I hope you'll think about this. The current owner of Evergreen paid 1.5 billion dollars for that package in 2010. On the first day of August this year they filed a regulatory filing with the SEC stating that they are considering a corporate restructuring and sell-off of three divisions, including Evergreen. At a multiple of ten-times last year's annual earnings, which were two-hundred and forty-one million dollars for Evergreen, that's at a projected sale price of 2.4 billion dollars. So the company's made a sixty percent gain, at least on paper, in the last four years.

And we're talking about a company that is owned by the richest person in New Zealand; he's not even American. He's the two-hundred and twenty-ninth richest person in the world. He has a net worth of 7.1 billion dollars as of last year. How do I tell my folks back in eastern Wake County that we cut the sales tax holiday a few weeks ago that was very popular in my area so that we could give the two-hundred and twenty-ninth richest man in the world fourteen million dollars? He may well invest it back in that plant, but single parents in my district were investing that tax savings into school clothes and school supplies for their children until you took it away. But after paying 1.5 billion dollars for that factory, do you really believe if you don't give him fourteen million dollars that he's going to close that factory or lose those jobs? What kind of crazy thinking is that?

I'm going to ask you to vote against the Senate arm-twisting and take a stand to extortion-like tactics, which is what I would term it. I'm going to ask you to vote against going back on your word and the commitments that your leadership has made. It's going to take your vote to make them keep their word. I'm going to ask you to vote against corporate welfare and walking-around money for the Department of Commerce. I'm going to ask you to vote against giving billionaires the hard-earned tax money of our residents. I simply ask that you vote against this bill.

**Speaker Tillis:** Representative Dollar, please state your purpose.

**Rep. Nelson Dollar (R):** To speak to the Conference Report.

**Speaker Tillis:** The gentleman is recognized to debate the motion.

**Rep. Dollar:** Thank you, Mr. Speaker. Members of the House, let me mention just a couple of areas in this bill that greatly concern me. You know, the first is as it relates to Wake County. And I know that there are subsequent bills that are supposed to modify 1224, but let me tell you what the net effect would be for those of us here in Wake County. Currently Wake County has two-percent on its local sales tax. This would put Wake County in the position of if they want to do anything about transportation over the course of the next two years to either have to vote for three-quarters of a cent in sales tax—in two separate votes—but three-quarters of a cent increase in sales tax in 2016, or do a quarter in 2016 and not be able to address transportation until 2018. Now that is just not fair to the now one million citizens who live here in Wake County.

The basic transit plan that we have been discussing here in Wake County is based on busses. We need it. We are looking at that, our County Commissioners have been looking at that. We need that opportunity. But we don't need to have our hand forced in local government to say, "Well, you've got to do that quarter cent in 2016," because if you look at what we passed earlier in Senate Bill 403, we would have to have the vote in that year, and that's the scenario that we have. And so our Chamber is opposed to this, and a host of our other leading citizens are opposed to this here in Wake County because it's simply not fair to the one million citizens who live here and their opportunity in local government to be able to have some control over their tools to make local decisions.

The other area that concerns me very greatly is this Job Catalyst Fund, and the term "walking-around" money unfortunately is kind of the right term. For the last...at least the last ten years that I've been here, we have worked and actually on a bipartisan basis in this House to have controls over the incentives. Now I have not been a purist on incentives. There are some incentives that I have voted for on this floor; there are other incentives that I have voted against.

But one thing I can speak of that I have been consistent on is that we have the appropriate controls, that we have the appropriate claw-back provisions, that we pass incentives where we really know what it is we're going to be doing with the money, and that we have criticized folks on both sides of the aisle, you know, for past governors of having walking-around money and how we wanted to get away from that. This is sort of back to the future in this provision when the Secretary will actually come up with the guidelines. And it really doesn't matter which secretary. We've had some very fine secretaries from both sides of the aisle serve in that office. It's not about the individual; it's about the principle involved. And this is not the right principle for committing twenty-million dollars and who knows what amount of future money. And if this money doesn't...I mean, this money doesn't revert; it stays there. Who knows what the fund will be in the future.

And also, some of the provisions that are in there—I'm not sure that you Tier 1 counties are even going to have projects that will be able to access this. This is just, you know, trying to shoot for some big fish out there that may or may not be out there and under a scenario whereby it will be basically up to the Secretary of Commerce to decide what the regulations are, what the guidelines are, who gets the money, how much, and who doesn't get the money.

Now that is contrary to what we've been attempting to do on a bipartisan basis for accountability in these funds for the last ten years, and I would request you to vote no on this conference report.

**Speaker Tillis:** Representative Hurley, please state your purpose.

**Rep. Pat Hurley (R):** To debate the motion.

**Speaker Tillis:** The lady is recognized to debate the motion.

**Rep. Hurley:** Thank you, Mr. Speaker. Ladies and gentlemen of the House, I'm just going to speak to what I know in Randolph County. When I first came down here eight years ago I was definitely against incentives, but I have learned how much it has helped Randolph County. And I'm going to speak to the JDIG fund in particular because that is what has helped us very much.

A company in Minnesota which was then known as Malt-O-Meal Cereal Company, one of the top four in the country, came to Randolph and looked at the store...In 2009 we had a building that hadn't been in use for two and a half years—the Unilever building, and they had a hundred and fifty jobs. It had been closed for two and a half years. MOM Brands created a hundred and twenty-four new jobs. They invested a hundred and twenty-four million. They received a 1.09 million JDIG grant from the State of North Carolina. In 2010, MOM Brands announced a major expansion where they created eighty more jobs. They invested a hundred and thirty-six million dollars then. They received a three-hundred and fifty thousand dollar grant from One North Carolina Fund from our State of North Carolina incentives.

MOM Brands is now the largest taxpayer in Randolph County and the City of Asheboro. They met and exceeded their commitment. And I don't know in any reports where they're doing whether this is taken away or added, but they did do what they committed to do for our county and city. They are a great corporate citizen with us. They have donated a million bowls of cereal to North Carolina Food Banks. They have supported the United Way ten thousand dollars each year. They support the Randolph County Partnership for Children at their annual fundraiser. They're a supporter of Randolph Hospital. They support the YMCA Capital Fund. They support the Randolph Community College Foundation, and they are an active supporter of Asheboro Chamber and the Randolph County EDC.

Over the past twenty years, Randolph County and its cities have a very accountable and successful return on investment from economic development incentives: thirty-seven projects for new and existing industries, 2,851 jobs created, 712,115,225 in new capital investment, 16,758,383 in state incentives promised, 14,718,289 dollars in local incentives promised, 10,309,000 of these incentives used exclusively for public infrastructure and they refilled ten vacant buildings with these programs. I know this worked in Randolph County.

And my taxpayer dollars are used just as your taxpayer dollars are. They're not used for everything we want, or we need or our family needs. I don't have any children in the public schools; I don't have anyone in the prison system and my tax dollars are going there. And I know we promised we would do this and the State promised that they would pay for this, but our taxpayer dollars don't go for everything that we want. But this does help our citizens and it does create jobs. And that's why we supposedly came down here—to help our citizens and create jobs, and this will create jobs.

And I don't like everything in any of the bills hardly that I vote for, but we need to step up to the plate and do what is right for North Carolina. Thank you. Please vote yes.

**Speaker Tillis:** Ladies and gentlemen, the Chair would ask any member who intends to speak on the bill to turn their light on at this time... There are twelve lights on. Any member who has his lights on will be entitled to speak. I guess thirteen with Representative Stam requesting to speak a second time. We are going to take a vote on this bill at 1 p.m. The Chair is going to allocate two minutes for each of the speakers and they will be recognized in the turn that they turned their lights on. So Representative Stone is recognized to debate the motion for a period not to exceed two minutes.

**Rep. Mike Stone (R):** Thank you, Mr. Speaker. I'd like to ask Representative Michaux a question first, please?

**Speaker Tillis:** Representative Michaux, does the gentleman yield?

**Rep. Mickey Michaux (D):** Yes.

**Speaker Tillis:** The gentleman yields.

**Rep. Stone:** Representative Michaux, I asked you this question, or picked you because you've had the longest period of serving of any legislator up here. And in your thirty-some years in Raleigh, have you ever had a bill come before you where two bills depended on one other bill passing?

**Rep. Michaux:** I cannot very honestly recall anything like that. They have tried to do that, but every time you put the label of blackmail on it, it goes away.

**Rep. Stone:** Thank you. To debate the bill?

**Speaker Tillis:** The gentleman is recognized for the remaining two-minute period.

**Rep. Stone:** Ladies and gentlemen, I bring this before you because it's the process. I've tried to promise myself that I was just going to be a normal, everyday person today and remember before I was ever in Raleigh, before I ever got here what everyday people think. And I want to remind you that when they see what we do in Raleigh, putting five bills, three bills depends on another bill passing, they think we are crazy.

Now this process may not be our fault. It's probably been going on for decades, who knows. Representative Michaux says he's never seen some of this before. But I once read an article that Washington, D.C. had the worst process in the nation. The interesting thing I remember about that article, because it was before I was ever in politics or even thought about becoming, was Raleigh ranked number two. I bet you there's some pretty proud people today in Washington as they see what we're doing down here in North Carolina where you've got to pass two bills to get one bill. This is just not what we decided...or what we should be deciding to do as a General Assembly to represent the State of North Carolina.

So the real question becomes, when do you stand up and make a change? Is today that day? Are we all tired of passing five things and getting four we don't like, or do you want to have each bill stand on its own? Make the choice. Stand up. Vote no.



**Speaker Tillis:** Representative Tine, please state your purpose.

**Rep. Paul Tine (D):** Debate the motion.

**Speaker Tillis:** The gentleman is recognized to debate the motion.

**Rep. Tine:** Thank you. I heard my name mentioned earlier and wanted to go ahead and give my own reasons for what I'm doing today. I try to make my decisions based on first-the district, second-the state, and last-my party, and it's caused me some problems from time to time. But I want you to understand the context of the decision I'm making today, and that is we have made a lot of decisions about where we are going to spend our limited resources in this state. Are they going to be spread fairly across the state, or are they going to be in one area or another?

And if we look at the transportation plan, we took a sizeable amount of money out of northeast North Carolina to make room for a statewide bucket that now my first project is one-hundred and twenty-first –twenty years away before we're going to see transportation funding. We added ferries in there making it more difficult on our local division bucket.

We made economic development harder. We have no plan right now to really get after economic development. There is no infrastructure to do it and I'm hearing from our folks that there's more red tape now than there ever was before to be able to get assistance from the State.

The district level northeast is not going to be included in this plan. For five-hundred jobs to come to Hyde, Washington, Tyrell, Camden, Pasquotank it's going to be next to impossible. Eight-hundred jobs to come to Dare County? We've never had an employer that big in our existence.

It's not good for the State either, because when you ignore some of our most challenged counties in the State, you're making a choice that you're going to have to send them another type of money because we have two types of money that can go out to us: things that support economic development like education and transportation, or we send us welfare and we send us food stamps. And that's not good for North Carolina.

So I'd ask you to vote no. Go back to the drawing board and come up with a plan that's going to be good for all of North Carolina.

**Speaker Tillis:** Representative Tine, that was perfectly timed. Representative Lucas, please state your purpose.

**Rep. Marvin Lucas (D):** To debate the motion.

**Speaker Tillis:** The gentleman is recognized to debate the motion for a period of two minutes.

**Rep. Lucas:** Thank you, Mr. Speaker. I shall not be long because much of what I had intended to say has already been espoused, particularly by Representatives Dollar and Stam. But suffice it to say that it's difficult for us to expend twenty-million dollars in a fair manner across this state. Yes, I recognized that we will give a lion's share to projects such as Evergreen, Goodyear, possibly Continental. But that still does not address the needs of the small Tier 1 counties, and therein lies my problem. These counties, by-and-large, will still be without any economic resources or advantages. And so I don't know how we're helping them. I know that many of the folk who represent these rural counties think that this may be...*may* be a remote potential for them, but realistically it probably is not. And so until we can address something that's concrete and specific for these rural, struggling counties, I'm going to have difficulty supporting it. Thank you.

**Speaker Tillis:** Representative Pittman is recognized for a period not to exceed two minutes.

**Rep. Larry Pittman (R):** Thank you, sir. When I talked to Senator Rucho last year about the tax reform bill, I made the statement to him that eliminating corporate income taxes would eliminate the justification for incentives. He not only agreed with me but, as I recall, he seemed to state that that was part of his motivation in that bill. And we passed that tax reform and in it, having reduced corporate income taxes, it seems to me counterintuitive now to turn around and increase incentives programs.

Twelve twenty-four expands tax incentives programs and gives the Secretary of Commerce, I believe, too much power without checks and balances. It means more government intrusion in matters of private enterprise. It means moving, I believe, more towards socialism.

I believe in smaller government, which should mean keeping government within the bounds of its legitimate responsibility and reducing the budget wherever possible. If we can't eliminate corporate income taxes, personal income taxes and incentives all at once, we should at least reduce government spending by reducing incentives spending toward the goal of eliminating them, not expanding them. I also believe that the Teacher Assistant fix that we need to the budget should not be held hostage to 1224, and I don't believe in cooperating with extortion.

You know, comparing it to drug addiction, some people go cold turkey, some people need to be weaned off, but either one is better than staying hooked. I want to get us off the addiction to incentives. I'd like to do it cold turkey, but if we can't, we should at least be reducing what we're doing with incentives towards that goal of eliminating it and not just staying hooked on it. So I ask you to vote against this bill. Thank you.

**Speaker Tillis:** Representative Carney, please state your purpose.

**Rep. Becky Carney (D):** To speak on the bill, Mr. Speaker.

**Speaker Tillis:** The lady is recognized for a period not to exceed two minutes.

**Rep. Carney:** Thank you, Mr. Speaker. And ladies and gentlemen of the House, I rise today just to ask you to think about a couple of things relevant to what we are doing, what this process has been since we came here the end of May.

Twelve twenty-four was filed by Representative Presnell—and you can look it up—on May 27th. It was sent through the committee process. It was a clean Evergreen bill. Everybody was sold on a great project bringing jobs in the future. And let me tell you, you can go home today, no matter how this vote turns out, and a hundred and ten of us can say, “I voted to bring jobs to North Carolina...I voted to bring jobs to North Carolina,” —because we did, and we sent it to the Senate.

And it sat over there. It went... That was on June the 25th we voted on that. So it sat over there through the month of July, and it grew, and it grew and it grew. And it came back over here. And then on August 1st we sent it to Rules. It used to be when a bill was sent to Rules over here it was dead. Well, that's no longer the case because we know we resurrected it yesterday. But on Friday, a lot of us in here said, “No, we're not going to bring it back up. We've dealt with it.”

Now, we had two choices. We were told we were coming back to do a simple technical corrections bill for Teaching Assistants. We did that in Rules: clean bill, passed it out, didn't come back to the floor. We're still having that hanging over us because the Senate says, “We need 1224.”

There's so many things wrong with this process. I cannot figure out why from the time 1224 was first heard in this chamber I never heard from the State Economic Development Association. I didn't hear from my chamber. I didn't hear from the North Carolina Chamber... But all of the sudden this has become more important than... coal ash we may take up—but Medicaid. We cannot afford this economic development plan if you will just take the time to look at the trees... and not the forest. Vote no.

**Speaker Tillis:** Representative Ramsey, please state your purpose.

**Rep. Nathan Ramsey (R):** Mr. Speaker, to speak on the motion.

**Speaker Tillis:** The gentleman is recognized to debate the motion.

**Rep. Ramsey:** Thank you, Mr. Speaker. This should not be a contentious bill. This bill does things that we all wanted to do. We all want to adjourn and go home. We have a bicameral legislature. We cannot tell the people across the way what to do and they cannot tell us what to do. We have to have a meeting of the minds. And it's not extortion for them to ask for certain things in an adjournment, and it's not extortion for us to ask certain things from the Senate. But it takes two to tango, and that's what we're trying to do today so we can adjourn and finish the people's business.

It addresses the Teacher Assistant issue. We didn't cut teacher assistants. We had a pot of money that increased funding for teachers... the total pot of money for teachers and teacher assistants. And this allows local schools to have the flexibility to fund teacher assistants or more teachers. That's what my school districts want; that's what all our school districts want and that's good for all people in this state.

The North Carolina Economic Development Association sent us an email today, sent us an email previously, saying they support this bill. They're not Democrats; they're not Republicans. They think it will help us be more competitive for jobs. My local chamber, the Asheville Chamber of Commerce, the Henderson County Chamber of Commerce contacted us and they said, "Pass this bill."

We did some good things with tax reform, but we're still competing against South Carolina, Texas and other states that are outgunning us on incentives. We don't have to offer the most incentives. We have the best community college system. We have the best universities. We have the best quality of life. But we need to be in the game. And you know who's opposed to this bill? Economic developers from those states.

And finally, I sympathize with my friends from Wake County, but we're talking two years down the road. So the next General Assembly, we can't bind them. And so, in 2015, Wake County comprises ten percent of the State's population, ten percent of the members of this body, and we can come in and make a fix to address the concerns that the folks from Wake County have suggested.

So, I was contacted by Democrats from my community asking me to support this bill...I was contacted by Republicans. This is not a partisan bill. I ask you to please support this bill. Thank you.

**Speaker Tillis:** Representative Jones, please state your purpose.

**Rep. Bert Jones (R):** To debate the motion.

**Speaker Tillis:** The gentleman is recognized for two minutes.

**Rep. Jones:** Thank you, Mr. Speaker. Ladies and gentlemen of the House, House Bill 1224 is a package of several totally unrelated issues—very controversial issues—each of which could have been considered on its own merit and not at the end of the session. If you like the bill, vote for it. If you don't, vote against it. But I believe most people that I've heard from think that this process is disrespectful to this institution, disrespectful to our members, and therefore disrespectful to the citizens of North Carolina that we are honored to represent.

This is not a partisan issue. I believe that most members from this House representing both sides of the aisle strongly desire the opportunity to pass a stand-alone bill to fix the concern about the Teacher Assistants. This is not about whether North Carolina will use incentives or not. We've already passed a budget that funds incentives.

Ladies and gentlemen, with all due respect, this is a sad day for this institution. I oppose the bill and I oppose the process and I will vote no.

**Speaker Tillis:** Representative Collins, please state your purpose.

**Rep. Jeff Collins (R):** Debate the motion.

**Speaker Tillis:** For two minutes.

**Rep. Collins:** I'd like to point out a couple things that really we haven't dealt with much this time around. I'll try not to repeat what anybody's said. A couple of the provisions that are actually probably more likeable to some of the folks here, one deals with the county option issue. We were handed a sheet that showed what the counties are charging currently as far as sales tax goes. Now, I looked up my two counties and then I kind of did a quick count. And if I counted correctly, sixty-five out of a hundred counties right now are only charging two percent sales tax, which means they can go up anytime they want to another quarter cent without this provision. So, sixty-five of the one hundred counties don't need House Bill 1224. You might look and see whether your counties are on there. Both of mine are.

The second thing I'd like to point out is that I, too, don't like what's going on sometimes with EPA and the way they're making businesses spend a lot of money on things that really are controversial. But you know, we've gone the other direction in North Carolina over the last four years. We've tried to reign in regulatory hindrance of business and so forth. So not only with this particular provision are we being held hostage by the Senate; I'd say we're being held hostage by federal regulators. Are we going to have to come and bail out our companies in North Carolina every time federal regulators put extra expense on them? I'd say the folks there in western North Carolina need to be taking this up with their US Congressmen and their Senators. They're the ones that can control what the federal folks are doing. And when they get off the reservation, they need to let them know that, they really do.

Third thing I'd like to point out is that Secretary Decker has said on a number of occasions that she feels like as we get further down the tax reform process incentives will become less necessary. But we have already done some tax reform. We've done a good bit of tax reform. When I came to this chamber four years ago, the Tax Foundation ranked us forty-second best tax burden, and now we're up to seventeenth. Most of our other surrounding states were in the teens. Now I see that South Carolina's down to thirty-seventh, Georgia's down to thirty-second. Surveys of corporate CEOs have shown that things like incentives, short-term boosts, are a part of their decision-making process, but a much smaller part than long-term profitability, which is based on your tax rates, it's based in infrastructure...I would ask that you vote against this bill. Let's take a long-term approach and let our tax reform work. Thank you.

*[unrelated dialogue omitted]*

**Speaker Tillis:** ...Representative Wilkins, please state your purpose.

**Rep. Winkie Wilkins (D):** To speak to the motion, Mr. Speaker.

**Speaker Tillis:** The gentleman is recognized for two minutes.

**Rep. Wilkins:** Thank you, Mr. Speaker. I'm trying to figure if I can come up with enough stuff to say to pack into two minutes. We're going to wind up debating this bill for a little over an hour, and that is after we have spent about ten hours in caucus preparing to debate it. But still I'm supposed to speak to the bill and to my own feelings about it. Well, I'll tell you this, I am...I've been here almost ten years and for the first time ever I'm preparing to vote against a business incentives package. But I'm not just voting against a business incentives package; I'm voting against a poorly conceived package. Many of you have already said it; I'll repeat it. We can do better. Let's kill this thing and do better. Thank you very much.

**Speaker Tillis:** Representative Speciale, please state your purpose.

**Rep. Michael Speciale (R):** To speak on the motion.

**Speaker Tillis:** The gentleman is recognized to debate the motion for two minutes.

**Rep. Speciale:** I'll be brief as I can. I'm finishing up my first two-year term up here, but I can tell you that I sat up in that balcony for the last fourteen years watching what was going on down here. I watched Frank Williams, who's not here. I watched John Blust. I watched Leo Daughtry. I watched some of the old folks over the years, the folks that have been here. I watched them arguing on the floor here as I looked down, arguing against this type of thing, arguing against these walk-around-money bills, this type of stuff, these incentives.

And I thought, "Oh, if only the Republicans could be in charge." And that's what a lot of the State thought. "If only the Republicans were in charge, they would fix this. They would quit doing this. They would quit spending our money. They would quit taking those dollars out of my pocket and giving it to someone else. If only..." And we got the chance. And I thought, "Okay, things are going to be better and I'm going to be part of that. I'm going to be up here and I'm going to help make things different."

And I'm so glad that we're smarter than the folks that were here before us because we've got this new catalyst fund. We've never had something like that...Oh, wait a minute. That is still walking-around money, isn't it? The very thing that we argued year after year after year about Easley, about Perdue having this walking-around fund.

Only thing I can say is please think about what you're doing here. Please think about who sent you up here and why they sent you here. I am going to vote what's best for North Carolina—I'm going to vote against this.

**Speaker Tillis:** Representative Steve Ross is recognized for a period not to exceed two minutes to debate the motion.

**Rep. Stephen Ross (R):** Thank you, Mr. Speaker. I'll give it a try. You know, since 2007-2008 we've been going through what they call the Great Recession. I don't have to tell you what that did to North Carolina and the rest of the country. We all ran, or most of us ran on a platform of trying to create jobs. Well, creating jobs means more than lip service.

I spent about twenty years in local government working trying to bring business to my community. I was actually one of the early negotiators on the Honda/Aero deal, and I don't have to tell some of you what that deal did for the Piedmont Triad of North Carolina. Not only has it brought hundreds of jobs and hundreds of millions of dollars to the Triad, but it's also brought a lot of other aerospace industry in to piggyback on top of it.

Now I don't like the process; I don't think there's any of us in here that like the process of what's taken place. But I know one thing: you have to be competitive. If you're not competitive, you're not in the game. Now I've been looking at some of the figures from some of our surrounding states and incidentally, all your southern states have this kind of package. Thirty-seven million in South Carolina sitting there, you know, as a closing fund. Seventy-six million in Texas. And by the way, Texas ranks number eleven in the Tax Foundation rankings. That's a little better than us, but they still have seventy-six million sitting there. What about Alabama? A hundred and thirty-one million.

Now I said yesterday to a group of people, I said, "I don't want to go into a gun fight being the only person that don't have a gun." So why do we want North Carolina to go into job creation until our Commerce Department... You know, you're going to go out here and some of these states have got some pretty good size cannons and you're not going to have anything to shoot back with.

I don't like incentives, but until Congress changes and levels the playing field, it's a fact of life. And one last thing in closing in addressing the Evergreen situation and a comment that was made earlier, that's a lot of people up there that have jobs. And I don't think there's a single person up there that has a job that cares who owns the company. Thank you.

**Speaker Tillis:** Representative McElraft is recognized for a period not to exceed two minutes to debate the motion.

**Rep. Pat McElraft (R):** Thank you, Mr. Speaker. I just wanted to clarify a couple of things. One thing on the sales tax for the counties—as a former county commissioner, it's very important that we have these new sales tax changes. And yes, I'm a two-cent county, and why haven't my county commissioners passed the sales tax? Because it would have been for a general purpose. This actually will specify that sales tax for education, if you go 43A I believe it is.

So that will be much easier for my county commissioners then to pass it knowing that the State now is giving at the ninth level nationally for education—ninth level. And when you add in our locals, we drop down into the forties. This will give our counties an opportunity to be able to raise money to start pitching in their fair share. We have Medicaid that we took away from the counties, and now it's time that they pitch in their fair share. This will give them that opportunity because they can earmark that money for education and make it easier to pass.

On incentives quickly—I know I only have two minutes. We are tying our Commerce Secretary's hands behind her back if she doesn't have the same tools—I'll go with the tools in the toolbox—that other states surrounding us have. And you know what? I've heard that it's immoral to do incentives. And I'm not for incentives when we have all the jobs that we can have in this state, when no one's unemployed. I'm not for incentives; I'm for tax reform that helped us and I think it will help bring more corporations here and already has.

But right now we're not to the point where we can't look and have tax incentives to bring those other jobs in. How moral is it to leave someone without a job? How moral is it... It is very moral to be able to give someone a hand up instead of a handout. That's what we're about. Thank you. Vote for this bill please.

**Speaker Tillis:** The question before the House is the adoption of the Conference Report for House Bill 1224. All in favor vote aye; all opposed vote no. The Clerk will open the vote... The Clerk will lock the machine and record the vote. Forty-seven having voted in the affirmative and fifty-four in the negative, the motion fails.

~ Fin ~

**SB 306 – Capital Punishment/Amendments**  
**Remarks on 2nd Reading**  
**June 4, 2013**

*The death penalty debate returns because the “moratorium” has remained in effect since 2006 in practice.  
While the 2012 legislation was effectively a repeal of the “moratorium,”  
this legislation made it even more explicit.*

Audio available at [this link](#)  
Debate begins: 00:53:28

**Speaker Thom Tillis (R):** Senate Bill 306, the Clerk will read.

**Reading Clerk:** House Committee Substitute for Senate Bill 306, a bill to be entitled “An Act to exclude the administration of a lethal injection from the practice of medicine, to codify the law that prohibits regulatory boards from sanctioning health care professionals for assisting in the execution process, to amend the law on administration of a lethal injection, to require the setting of an execution date if any of the events which are provided by this statute have occurred, to eliminate the process by which a defendant may use statistics to have a sentence of death reduced to life in prison without parole, to require periodic reports on the training and availability of personnel to carry out a death sentence, and to require periodic reports on the status of pending post-convictions capital cases.” The General Assembly of North Carolina enacts.

**Speaker Tillis:** Representative Stam, please state your purpose.

**Rep. Paul Stam (R – Speaker Pro Tem):** To speak on the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Stam:** Mr. Speaker and members of the House, for many of you this will be the fifth time that you have debated this, not including second and third readings as more than one time. If you’ve been on the relevant committees, it may have been ten or twelve times. And so I’m tempted to say very little and just vote. But I realize that a very large portion of this House is new. You’re not new to the public debate that has occurred in your communities but you may be new to the legal debate. So I will say something about it. It’s very serious.

I’m passing around two pages of excerpts from debates that we’ve had in the past in 2009, 2011 and 2012, and I’ll come to that at the end. What it addresses is a phenomenon that we had a couple of years ago and even last week—that is, people who support the so-called Racial Justice Act but had no idea that it could be applied to, or relief could be sought by, for example, a white defendant who killed a white person, tried by a white judge and a white jury and claimed that he or she was discriminated against on the basis of race. That’s what the underlying bill we want to repeal does. Whether you believe it or not, that’s true.

I’d like to go through the bill with you because it does some other things other than that repeal, although I expect most of the debate to occur on that repeal. The first section allows doctors, nurses, pharmacists to participate in executions—in other words do their job—without fear of professional retribution. In 2007 the Medical Board issued a statement prohibiting doctors from participating in executions even though State law required a doctor to be there. The North Carolina Supreme Court later ruled that the Board could not punish doctors for doing that and this section codifies that decision.

Section 2 directs the Attorney General to notify the Department of Public Safety when legal appeals are exhausted for a particular case, and then directs the Department of Public Safety to ensure the protocols for execution remain constitutionally sound. It directs the Attorney General to provide the Assembly with periodic updates on what’s happening with these hundred and fifty or so appeals that have been wandering around in the appellate courts for fifteen, twenty, twenty-five years.

Section 5(a) repeals the so-called Racial Justice Act while reaffirming in Section 5(b) the multiple avenues of appeal available to ensure a fair hearing in any case where there’s actual discrimination based on race. And so that I don’t have to jump up and down every time someone claims that there’s no remedy if there’s actual racial discrimination, all I’ll do is just hold up my hand. It will say “five” and five means Section 5(b). Read Section 5(b);

you'll see it there. No one wants actual racial discrimination. What we don't want also is for race to be used as a pretext—a pretext in order to stop the death penalty which has been the public policy of this State for those who have committed deliberate, premeditated murder under aggravating circumstances.

When the Racial Justice Act passed in 2009 it effectively imposed a five- to six-year moratorium on the death penalty (I prophesied it would be three or four years; I was wrong.) by allowing all inmates on death row at the time to claim that they were racially discriminated against. As I said, even white defendants claimed racial discrimination. I think there were one-hundred and fifty-six inmates at that time. One-hundred and fifty-two of them made these claims. I guess the other four are just volunteers who want to be executed. The reason for this is that it (the RJA) allows murderers to seek relief by proving that someone else was discriminated against in another time, another place, another decade, another county. As I said, almost all the murderers sought relief.

Why does this matter? I've shown this book before. This is probably the fifth time I've shown this book. It's twenty-eight studies furnished to me by the Attorney General's office which demonstrate that there is a statistically significant deterrent effect of having the death penalty on whether or not you have additional homicides. And a rough count of the people who have now died in North Carolina—innocent people who have died in North Carolina, a majority of whom are African Americans—because of this moratorium would be approximately the number of people seated here and the number of people filling the galleries. That's been the human cost of this so-called Racial Justice Act.

Let me go to the paper I passed out—two page piece of paper there. I'm not going to read the whole thing. I could quote myself but that's boring even to me. In the debate on the 2009 act before it went into effect what's underlined there is we told them this allows every person of the one-hundred and sixty-three murderers currently on death row to make this claim. Every one of them has had the right to make the claim that racial prejudice was exhibited against them for the last eight to fifteen years they've been on death row. In other words, before this act went into effect the typical murderer had eight to fifteen years on death row if they ended up being executed, having their case reviewed by forty-five judges. What the Racial Justice Act did was add six years approximately. So that becomes then fourteen to twenty-one years, and instead of forty-five judges, fifty-three judges. How many judges is enough?

It was easy to tell from the bill itself why this would happen. They got an immediate one-year stay because they had a year to make their motion. And now they've been in litigation on those motions for, I believe, about three years now. If they're African American they claim it's disproportionality according to population. If not, they'll claim disproportionality in other ways. Locke Bell, the prosecutor in Gaston County, told us in committee and in paper that one of the ironies of the bill is that it will make seeking the death penalty almost impossible. Of all the defendants in Gaston County on death row only one is black, all the rest are white men. He said, "I have two pending capital cases both involving white defendants. In order to prosecute more white men capitally, I'm going to have to first get some death sentences imposed on some black men." That's the way the bill will work if we're foolish enough to pass it: quotas on the death penalty.

And then in that debate in 2011 when we knew what had happened, we explained again that this was not about actual racial discrimination, but rather discrimination proved that somebody else did it in somebody else's case in somebody else's time.

Well we weren't able to get an override of the Governor's veto in 2011, but in 2012 we did. And I have a short excerpt from that. "Another proponent was quoted publicly"—I think that was Representative Womble—"as saying he didn't understand that white defendants could use it if they murdered white people or of the same race and had the same race of jurors. But it has all of those effects." It (the RJA) is probably one of the most foolish laws we ever passed.

And if you would look at Section 5(b) of the bill you'll see that even after this (This is on page 4, beginning on line 44) upon repeal... When we pass this law a capital defendant retains all of the rights which the State and Federal Constitutions provide to ensure that the prosecutors who selected a jury and who sought a capital conviction did not do so on the basis of race, that the jury that hears his or her case is impartial and that the trial was free from prejudicial error of any kind. These rights are protected through multiple avenues of appeal, habeas corpus, motions for appropriate relief and we don't need this extraneous act which is unique in the nation. They'll try to tell you that Kentucky has a similar law and I'll explain why Kentucky's is completely different if that comes up.

But remember this: every time you hear that this law is necessary to ensure that we are free from racial discrimination, I'm going to hold up my hand here. It's going to say "5(b)." I want you to go look at page 4, those lines, and you'll see that that is not so. Thank you, Mr. Speaker.

*[unrelated dialogue removed]*

**Acting Speaker Justin Burr (R):** ...Representative Glazier, please state your purpose.

**Rep. Rick Glazier (D):** To debate the bill, Mr. Speaker.

**Speaker Burr:** The gentleman has the floor.

**Rep. Glazier:** Thank you, Mr. Speaker. Members, my son is much smarter than his dad and he studied the RJA in college and in grad school as we were going through this. And so I called him and asked if he would play devil's advocate with me as I defended the Act and while he gave the arguments against it. The conversation went a bit like this:

Philip said, "Dad, isn't the RJA designed to answer whether anyone on death row was sentenced to death due to a significant reason that it was the color of their skin?"

And I said, "That's right, son."

And he said, "Dad, didn't the Act allow overwhelming statistic evidence of discrimination to show patterns of discrimination just like we do in civil cases?"

"Yup."

"And Dad, didn't the original Act order an outside university with no ties to North Carolina to look at two decades of cases and present their findings wherever that massive evidence led?"

"Absolutely."

"It was Michigan State, wasn't it, Dad?"

"Go Spartans," said I.

"That study, Dad," said Philip, "found in jury selection that the prosecution struck over two times as many qualified black jurors as white jurors in those two decades of cases. And in fact, over forty percent of those on death row had all white juries or just one minority juror on that jury."

"Yes," said I. "Son, you have to know that wasn't a North Carolina study and you have to remember it was done out of state."

Well, Dad, the study was peer-reviewed, wasn't it?"

"Yup."

"And it had the same findings as the Carolina study done by professors at the university two years prior with a smaller number of cases?"

"Yup."

"And its authors were nationally acclaimed?"

"That's true."

"And it was introduced into evidence in the first RJA trial and the judge found it valid and credible and statistically unassailable?"

"That's true. But you've got to remember, Son," said I, "as one Senator said in this debate on this bill on the Senate floor about five weeks ago, the judge who tried that RJA case was black and probably biased."

"I see," said my son. "So Judge Weeks, that same judge who's on the law faculty at Carolina and Central and Duke...?"

"Yeah, that's the one."

"And he's been on the bench twenty years?"

"Yes, he has."

"And he has one of the lowest reversal rates the state over that twenty years?"

"Yes, he does."

"And he was asked by the Chief Justice to be the specific judge to try the murder of Michael Jordan's father?"

"He was."

"And he's handed down death sentences in cases as a trial judge, including one of yours, Dad—isn't that the case?"

And I said, "Yes, he did, and we're not going to talk about that."

"But the Senator still said he was biased because he was black? Dad, do you think if Judge Ammons or Judge Don Stephens out of Wake County had tried the case that that Senator would have said they were biased because they were white?"

"No, Son, that would be discriminatory, wouldn't it?"

"Oh, I see," said Philip. "Well, Dad, since the RJA passed there have been several trials."



“That’s true.”

“And in the first trial didn’t Judge Weeks find overwhelming evidence that discrimination in Cumberland County in jury selection occurred, where he said there was very powerful evidence race was a significant factor in the exercise of grand pre-jury strikes in Cumberland County? And he found evidence that North Carolina prosecutors systemically ‘engaged in training from 1995 till 2011, not in how to comply with the Batson decision prohibiting race as part of jury strikes, but in how to circumvent it.’ And didn’t he find that race was a materially, practically and statistically significant factor in jury selection in these cases for twenty years in North Carolina in the Second Judicial Division and in Cumberland County?”

“Yes, he did, Son. But some of that evidence was contradicted at trial.”

“Well,” Philip said, “by another study?”

And I said, “Well, no—not exactly. The State had a partial study, but they said they didn’t have time to complete the study.”

“But Michigan State did?” said my son.

And I said, “Yes.”

He said, “Well, who then contradicted it?”

I said, “Well the prosecutors who tried those cases said that they didn’t make their strikes based on race and they should have been believed.”

And my son said, “Well, kind of like when the defendant said he didn’t do it, they should be believed?”

I said, “Well, not exactly. There’s a difference.”

“Well, aren’t they both self-serving?”

“Well, maybe – but one’s an argument made by an officer of the State and the other is facing a penalty.”

“Oh,” said my son.

Well, the other thing I said is, “Remember who has the burden of proof here. It’s the defendant. The State has already found him guilty. The defendant has to prove that there was race here.”

“Oh,” said my son. “So the State controls all of the records of their own jury selection, and they control those records on trial and on appeal, and they don’t have to disclose their jury records to anybody. But the defendant has to prove that those jury records show discrimination.”

“Now you’re getting it, Philip. We live in a great State.”

“Well, didn’t Judge Weeks and the expert statistician from Michigan State find the probability that racial disparity like he found occurring in these cases—that they would occur in a racially-neutral process would be less than one in ten trillion squared?”

“Yes. But Son, you know what Mark Twain said about statistics: ‘Statistics—damn statistics and lies.’ And remember also, Son, that the Supreme Court in McCleskey vs. Kemp said that statistics should never be enough to prove race discrimination in capital cases.”

“But Dad,” said my son, “didn’t Justice Powell, who wrote that opinion, before he died state to the New York Times that the one wish he had was that he had voted differently in that case and that he had come to the conclusion that was the biggest mistake he ever made on the Supreme Court?”

“Well, that’s true, Son. But you’ve got to remember judges never make mistakes. He just did that for posterity.”

“Oh,” said Philip, recalling the Dred Scott opinions, and Korematsu and Plessy vs. Ferguson.

“And remember, Philip, we’re talking about the original RJA. We repealed that last year. So now statistical evidence can only be used as background evidence, not dispositive. It has to be geographically limited and time limited, and racial discrimination can only be proven by real anecdotal evidence of race.”

“I see,” said Philip. “But didn’t Judge Weeks just hold a second trial after that new Act? And after a long opinion in which both sides got to put on all their evidence and cross examine their witnesses and make full arguments, and didn’t he find this time a few months ago even more evidence, this time in the prosecutor’s own notes, of racial bias in jury selection.”

“Well, that’s what the order said, Son, but judges make mistakes.”

“But Dad, I thought you just said a minute ago that judges never make mistakes.”

“Philip, you have a memory like your mother. Two points, my son: first, Judge Weeks’ decision was just about Cumberland County and that’s on appeal and that’s not affected by this order, and we’ll know whether Judge Weeks was right or not after that appeal. But this new act is going to stop that from happening in any other county. So we’ll find out what happened in Cumberland County really.”

“I see,” said Philip. “So it’s okay for Cumberland County defendants to have the opportunity to prove that their trials were racially tainted by race-based jury selection, but now it won’t be okay for anyone else in the state to have the same opportunity. What exactly do you call that, Dad?”

“A uniform system of justice of general courts,” says I. And then there was the second point. “This Act, as Representative Stam says, creates a very long process, it delays executions, and besides—a defendant can always prove race discrimination at trial, or on appeal, or on motions for appropriation relief or all those five-fingered things that Representative Stam is talking about.”

“Well Dad, let me ask you about that. Don’t you think it’s worth time to get an answer to the most pressing and divisive issue of race in death penalty cases that’s existed in the criminal justice system for generations? And isn’t it true that both cases are at the North Carolina Supreme Court and, should that court decide those cases, once they do (which should be within the next year) all of the other cases will then fall very quickly one way or the other? And isn’t it true, Dad, don’t you think that the prosecutors now have the ability and have always had the ability to move to dismiss RJA appeals that are frivolous? And isn’t it possible, Dad, that other judges like Judge Weeks in other places might find that race played a significant role in jury selection? And isn’t it right, Dad, that the RJA was designed to ferret out and stop now and forever race discrimination in jury selection? And isn’t it time, if the repeal is done, isn’t it true that we will never, ever get the final answer that we have now spent all this time and money and emotion trying to find? And wouldn’t we want to remember that over the last twelve years there have been three innocent people released from death row in North Carolina after they were convicted by a jury, had their appeal upheld by the courts, lost their motions for appropriate relief or lost their federal habeas petitions and all those five wonderful things that Representative Stam’s figures raise?”

“Well Son, those are all great questions, but witness’s families need finality. The system needs finality.”

“But Dad, you always taught me that nothing is settled until it’s settled right, didn’t you?”

“Yes, I did.”

“And here we’re talking about life and death, and race and prejudice, Dad. Shouldn’t we take time and the money needed to get it right for future generations?”

“Well, that may be true, Son.”

“Dad, I have just one last question. If all this evidence could have been uncovered at people’s trials and appeals and MARs and habeas—and we’ve had great lawyers trying those cases—why did it never happen? Why did it take the RJA to find out about all that evidence?”

“Well, Son, there really is a good answer to this: because a prosecutor’s notes on jury selection and trial strategy are protected. Lawyers have to be able to write down their thoughts and opinions and strategy and innermost thoughts free from the belief that someone will then get to review them.”

“So,” said Philip, “the RJA was the first time those notes really were made available?”

“Basically that’s true.”

“Well Dad, if that’s true, then wasn’t it the first time that these things were uncovered? For example,” he said, “that Kenneth Rouse had an all-white jury because the prosecutor dismissed all the people of color who were qualified for the jury, and one of the jurors who voted to sentence him to death admitted that he lied to be on the jury. That juror’s mother was sexually assaulted and murdered and her killer executed, and the juror deliberately concealed that fact from the judge and the prosecutor and the defense attorneys. And he admitted after trial that ‘black men rape white women so they can brag to their families,’ and ‘blacks don’t care about living as much as whites,’ and referred to African Americans routinely as ‘niggers,’ and that bigotry influenced his decision to vote for death. Isn’t that true, Dad?”

“Well, it is.”

“And isn’t it true that the courts have never meaningfully considered that claim but would have to under the Racial Justice Act? And how about Quintel Augustine who was convicted by an all-white jury and there were unsigned, handwritten notes turned over many years ago that said ‘jury strike list’ on it. And those notes had comments like, ‘This juror is from a respectable black family.’ ‘This juror is a black wino.’ Or a white juror as ‘a trafficking marijuana pot boat early in the 80s, but a fine guy.’ And those notes and many like them were never uncovered because lawyers never had access to them before RJA. And we learned through RJA discovery that prosecutors were trained in this state how to avoid *Batson* through cheat-sheets that we’ll talk about later through other people.”

“That’s true.”

“And isn’t it true, Dad, that we learned in 1995 in a case called *State vs. Prevette* the prosecutor struck an African American member from the jury because he was a veteran in the United States Army but then kept white veterans?”

“That’s true.”

“And didn’t we learn the prosecutor in another case called *State vs. Fibido* struck a black member because he answered questions ‘yeah’ instead of ‘yes’ six times. And isn’t it true in another case the notes suggested a

prosecutor struck an African American because he didn't feel like he'd been a victim even though he had his car broken into one time?"

"Yeah, and many more."

"Well," said my son, "what do you say about that?"

"Well," I said, "there were great notes—clear and specific. Good grammar and syntax on those notes. All told, they were great notes."

"But juries and judges didn't get to see them," said my son.

"No," I said. "But remember that sometimes lawyers, like people, write down things they don't mean."

**Speaker Burr:** The gentleman's time has expired. If you'd like to be recognized for a second time, you may be and have five additional minutes.

**Rep. Glazier:** Recognized for a second time.

**Speaker Burr:** The gentleman is recognized.

**Rep. Glazier:** Thank you.

**Speaker Burr:** I will state, based on the Speaker's intentions, there is I believe forty-five minutes left for the minority to speak and...

**Rep. John Blust (R):** Mr. Speaker?

**Rep. Glazier:** And Mr. Speaker, I'll be finishing in about three or four minutes.

**Rep. Blust:** Mr. Speaker?

**Speaker Burr:** Representative Blust, please state your purpose.

**Rep. Blust:** Will the gentleman yield for a question since he was interrupted?

**Speaker Burr:** Representative Glazier, do you yield?

**Rep. Glazier:** No, sir.

**Speaker Burr:** The gentleman does not yield. Representative Glazier, you have the floor.

**Rep. Glazier:** Thank you very much, Mr. Speaker.

"Remember sometimes, Son, lawyers write down things by mistake."

"So," he said, "the DAs who wrote on those notes that said 'black wino—strike him' might really have meant 'white and sober?'"

"Well, not exactly, Son."

"Or maybe when they wrote 'black—bad neighborhood' they meant 'white—good neighborhood?'"

"No, Son."

"So Dad, let me ask you finally, if this RJA is repealed, it's going to be repealed despite a UNC study showing racial prejudice in jury selection in North Carolina and a one-million dollar Michigan State study that says the odds against race discrimination having occurred fortuitously is one to ten trillion squared, and two court decisions headed to the Supreme Court with detailed findings by a respected judge holding the study to be valid and finding massive anecdotal evidence from pages of prosecutors' notes that race played a significant factor in those cases, and cases pending in other courts around this state that would be stopped, and the North Carolina Supreme Court hasn't even had time to rule on the first two cases, but if they did, they would establish the law for the state if we let them do it, and all the rest of the cases would be resolved, and now we will never know whether race played a part or didn't play a part in those cases? Is that true?"

And I said, "Yes."

And he said, “Well Dad, what exactly do you call this system?”

And I said, “Equal justice under the law, Son. We’re very proud of it here in North Carolina.”

For the reasons my son articulated more eloquently than I and the many inconvenient truths he’s highlighted, they should resolve our decision today. We can no more pretend that we have completely escaped the grip of a historical legacy spanning centuries as a society and the prosecutor and defense lawyers who tried these cases could rise above the legal culture of that same society in which they operated and were trained. We remain imprisoned by the past as long as we continue to deny its existence. And if instead of accepting the consequences of what we did and hoping and ensuring it never happens again, we simply bury the evidence in Hogan’s Heroes’ Sergeant Schultz ‘I see nothing, I know nothing, I hear nothing’ routine, we will never again have the confidence of our full society in the fairness and accuracy of the criminal justice system and, more importantly, in the truth of equal justice under the law.

We will not, on this floor, be remembered for most decisions we ever cast—unemployment changes, tax reform changes, employment security changes. But every once in a while in the generation when you’re a legislator you will cast a vote for which history will remember you. I know you came to this floor many of you from caucuses—we did—and have a set view perhaps of coming in. But what we do today goes way past our caucuses and our ideology and our political obligations. We decide here today a matter of life and death and of whether we leave ragged questions unanswered about our own history or whether we move together confidently to heal all those wounds. We decide a case, an issue about the soul of this state and have an opportunity that generations have asked for to resolve the issue of race discrimination in the criminal justice system. Fundamentally that decision is up to each of you, and for me I will be voting to give the courts a chance to answer it. Thank you.

**Speaker Burr:** Representative Stevens, please state your purpose.

**Rep. Sarah Stevens (R):** To speak on the bill.

**Speaker Burr:** The lady has the floor.

**Rep. Stevens:** Thank you, Mr. Speaker. Ladies and gentlemen of the House, I too have been involved with the Racial Justice Act since its inception. I was in two of the initial committees that heard the initial Racial Justice bill, and as an attorney I saw it fraught with all kinds of problems and concerns.

I will tell you about the first—and it was a pretrial motion—the first Racial Justice Act case motion that was heard in my district. A young man fleeing from a murder in South Carolina came through my county, stopped at a rest area, climbed the fence and went into a house and killed two people just to get their car and a little bit of money. They didn’t know him. It didn’t matter. He didn’t care who his victims were. Should Racial Justice apply to him? Oh yeah, I forgot to tell you: he’s white and so were the victims, but he got to claim under the Racial Justice Act. He got to not have it considered on the facts of the case.

And that’s the biggest thing about the Racial Justice Act. It doesn’t matter what the underlying facts are. It doesn’t matter how many offenses this person has done in their own life. Everything we’ve ever learned about criminal justice is we judge a person based upon their prior record, their prior acts in terms of sentencing. We look at the actual crime they did. Was it heinous? Was it in the commission of another felony? You know, there are very specific facts to get the death penalty. And there is not a person on death row that the jury has not found that they had prior criminal histories—multiple prior criminal histories—that the crime they committed was especially heinous. To me, race doesn’t and shouldn’t matter; the facts of the case should matter.

Now I sat in on some interim study committees with Racial Justice and listened to some of the facts and statistics. And what I heard was we’re looking at jury selection only from the perspective of the prosecutor. We’re not looking at final jury composition. And I’ve been told that that’s racially consistent when you get to the end. It’s racially consistent with the makeup of the general population. So we’re only looking at it from the prosecutor’s perspective.

Now as we talk about the trial in Cumberland County that went on, guess what? The trial judge who tried him initially wanted to take the stand and testify about any type of racial prejudice he saw in the trial, and he was not allowed to, even though the original bill allowed that.

Representative Glazier said he’d like to see this go on up to the Supreme Court. But if it goes up to the Supreme Court it’s going up under the old law which said if there was a racial justice problem factually or statistically fifteen, twenty years ago in one area of the state, it could be used to apply to the entire state.

I, too, had some discussions with my daughter about Racial Justice. She was taking an African American Studies class at the University of Tennessee and she wanted to ask me a lot more questions about Racial Justice. And every time I tried to explain to her that we're going to try a criminal case based on statistics, she kept going, "That doesn't make sense. Why are you using statistics? Why don't the facts of the case matter?" I mean, we were told about cases in these committees where one person tied up another one and then taped his face completely with the thick packing tape and left him to die. Now for us, did that matter what his race was? Did it matter what the person who committed the crime was? A cruel and heinous—left to die and suffocate for the want of \$100. Look at the facts underlying a case.

The true intent of the initial Racial Justice Act was to end the death penalty, to put a moratorium on it. Ladies and gentlemen, we don't need the Racial Justice Act. As Representative Glazier indicated, we've had Batson challenges where you can challenge about racial motivations in jurors. There are other things that if you can show the kind of prejudices that he was showing... I mean, we had one in our area in which a diner in a dining area was overheard to be using racial slurs and that stopped the entire jury and went for a mistrial. We have the abilities in place. If there are specific areas of the state where we are having this kind of problem, we need to focus on tackling the problem, not letting murderers get off. We either have the actual vote and speech on doing away with the death penalty or we don't. But this is not the way to go about it.

I just jotted down some notes because I wasn't expecting to stand up, but to me we need to look at all death penalty cases under the specific facts. If you really wanted to do away with any kind of prejudices at all, you have a jury picked at random, you find facts without them even seeing the witnesses, and then you put it in a computer and let the computer decide. That makes more sense than what we're doing.

But we do not need this Racial Justice Act. It has created nothing but a delay in the system, a tremendous amount of costs that were understated grossly by our Fiscal Research Department. It has been used and abused to delay trials and to try to effectively end the death penalty. So I would ask you to support this repeal.

**Speaker Burr:** Representative Harrison, please state your purpose.

**Rep. Pricey Harrison (D):** To debate the bill.

**Speaker Burr:** The lady has the floor.

**Rep. Harrison:** Thank you. Mr. Speaker. Ladies and gentlemen of the House, I'm not as eloquent as my seatmate across the aisle here, but I do want to point out the need for the Racial Justice Act and why this bill is so wrong-headed.

We know that our country has had a long history of racial discrimination in our court system, especially in jury selection. It dates back two centuries. We've had multiple efforts to address it in 19<sup>th</sup> Century congressional acts and US Supreme Court decisions in the 20<sup>th</sup> Century and even more recently. The Supreme Court confirmed in McKleskey that racism in our country is a problem and that states need to figure out a way to address it at the state level, which is what we had done with RJA.

In the recent rulings on RJA, Judge Weeks had found intentional racial discrimination throughout our court system. Studies, as Representative Glazier has pointed out, have shown that in North Carolina qualified black jurors have been struck two and a half to three times as often as qualified white jurors and that forty percent of defendants on death row have been sentenced to death by a jury that was either all white or had only one person of color on the jury. This is clearly a problem and this is one of the many that RJA was meant to address.

The US Supreme Court ruled in Batson vs. Kentucky that qualified jurors could not be struck based on race alone. And it's been stated by others, like Representative Stam and Stevens, that Batson provides sufficient protections to ensure that race doesn't play a role in our criminal justice system. But all a prosecutor needs to do to comply with the ruling is to offer a race-neutral reason for striking the juror.

And it's because of the RJA litigation we found through discovery that, instead of complying with Batson, the Conference of DAs has provided DAs with cheat sheets on how to get around Batson. It was in the evidence, these cheat sheets. They reference items such as inappropriate dress, physical appearance, age, attitude. These are ways that the DAs got around the Batson restriction. The Conference of DAs held what they called "Top Gun Training" in which one-pager cheat sheets listing these race neutral reasons a prosecutor could use in a Batson objection in striking a black juror. So rather than being trained how to comply with the law, this demonstrates a calculated and largely successful effort to circumvent Batson. In the Racial Justice Act cases heard thus far, the court has found that

DAs across this state have relied on this training handout to avoid Batson's mandate resulting in racial discrimination in juror selection. It's clearly a problem.

Additional evidence, as Representative Glazier pointed out, in the Cumberland County cases are the notes—these prosecutor's notes that were written in the jurors' strikes, and that's very troubling. You've got an Assistant DA who's writing comments like 'black wino,' 'drugs,' and 'respectful black family' but when inquired by the judge the prosecutor did not have a similar comment on a white family. In contrast to the 'black wino,' you've got a white country boy that drinks, but he's okay. We never would have known about this were it not for the RJA litigation. There's no other mechanism in the law for finding this out because many of the defendants have already exhausted their appeals and there's no other way to introduce this evidence. This is another important reason why we should not be repealing the statute.

Judge Weeks said in his most recent ruling: "I had hoped that acknowledgment of the ugly truth of racial discrimination revealed by defendants' evidence in RJA cases around the state would be the first step in creating a system of justice that is free from the pernicious imbalance of race, a system that truly lives up to our ideal of equal justice under the law." This will not happen if we pass Senate Bill 306.

When decisions are being made based on the color of one's skin, justice is not being served. I urge you to vote no. Thank you.

**Rep. Stam:** Mr. Speaker?

**Speaker Burr:** Representative Stam, please state your purpose.

**Rep. Stam:** Would Representative Harrison yield?

**Speaker Burr:** Representative Harrison, do you yield?

**Rep. Harrison:** I yield.

**Speaker Burr:** She yields.

**Rep. Stam:** Representative Harrison, assuming just for sake of argument that there's been racial discrimination in the selection of a particular jury, why should the defendant get life in prison without parole, which is what the Racial Justice Act calls for?

**Rep. Harrison:** I'm not an expert in this area of criminal law, but it's my understanding that you want a jury that represents the diversity of the community and also a jury of one's peers. And when the jury does not reflect that diversity you don't get fair rulings from the jury. That's my understanding.

**Rep. Stam:** Mr. Speaker, a second question?

**Speaker Burr:** Does the lady yield?

**Rep. Harrison:** I yield.

**Speaker Burr:** She yields.

**Rep. Stam:** Here's my question. If you have this bad jury, why should the defendant who had this bad jury—and we know he's a murderer because none of them have raised a claim of innocence—why should he get life in prison without parole if this prejudiced jury tried his case?

**Rep. Harrison:** If I could, I believe that the point is that you want a process that's transparent and fair. And if you have a jury that's issuing these decisions that's not a fairly composed jury that there is some lack of confidence in the system and the ruling from the jury. I guess that's my answer. Thank you.

**Speaker Burr:** Members, at this time we have six members of the minority party that are still in the queue to speak and there's thirty-six minutes left for the minority side. So that's six minutes apiece. Nobody's going to be cut off

from debate but at the six-minute mark, just if we want to split the time up among the six that are left, I'll hit the bell. You can continue to speak and eat up other's times but just to make sure that every member has an opportunity to speak, we want to make sure they are aware as they're speaking. So at this time, Representative Daughtry, please state your purpose.

**Rep. Leo Daughtry (R):** To debate the bill.

**Speaker Burr:** The gentleman has the floor.

**Rep. Daughtry:** Thank you, Mr. Speaker. Hearing Representative Glazier's remarks is very troubling to me—to hear about our court system and the way he described it as DAs that were, I would say, even crooked, judges that were biased. I've been going around the courts of this state for over four years and I don't know that I'm in the same country that he's in. I don't see what he sees. I see a place where people are doing the best they can do and an institution to provide justice for all.

I've also been around here a long time and this debate is not about racial discrimination. It never has been. It's about the death penalty. That's what we're debating. Five or six years ago we were here and we didn't have lethal injection because we couldn't get a doctor to give the injection for fear of losing their license. So we did not have the death penalty carried out since 2006, and this is a continuation of us not having the death penalty.

I don't know about you, but in my district my constituents favor the death penalty. They believe that crimes are committed that are so egregious and so horrible that the only appropriate punishment is the death penalty. You may think otherwise in your district. You may think that the best approach would be life in prison. But I submit to you the thing for you to do is run a bill to decide whether or not we should end the death penalty or whether or not we should continue the death penalty because right now we're doing this side attack, this end run. We haven't had a death penalty since 2006. We've had people on death row since 1985. We ought to have justice that's swift and sure. But the way we're trying to do this is to put people in prison for their life, as Representative Stam said, and not give them a lethal injection.

I don't understand the kind of court that I've been hearing described over there. It's not the way we have our court system. And we have some of the finest lawyers. We have specialists who defend those people who have been convicted and received the death penalty as a cottage industry where people go and they defend the death penalty all the way to the Supreme Court. We have the Commission on Actual Innocence in our state. We have Motions for Appropriate Relief. I think our court system is the finest in the world and I think the attack on our court system is wrong. And I don't know of anybody that should be any prouder of what we've done to protect our citizens and at the same time protect the defendants than we've done. I hope you'll support the bill.

**Speaker Burr:** Representative Michaux, please state your purpose.

**Rep. Mickey Michaux (D):** To speak on the bill, Mr. Speaker.

**Speaker Burr:** The gentleman has the floor.

**Rep. Michaux:** Mr. Speaker and ladies and gentlemen of the House, you know I don't try to get up and become an edifier of anything; I try to be plain and true.

Representative Daughtry, it's unfortunate that you haven't walked in my shoes or in the shoes of any other black person in this state when you were convicted because you were black. I've had to defend that. I've walked in the courtroom when the judge looked at me and I had a law book in my hands and said, "Boy, what you doing with that book? It ain't going to do you no good. I'm the law here." Now that's fact and that has happened. So when you walk in my shoes then you will understand what's happening here.

Now the other thing is that this bill... The Racial Justice Act is not about the death penalty. It is about an individual getting a free trial, a trial free from any prejudice at all. And when you knock out jurors because you think that they have a prejudice in favor of the defendant, or that they would be more in favor of the prosecution's side, that is discrimination in picking a jury.

Judge Weeks I think did a great job. He didn't use the statistics that everybody says that this thing used from out of state. He used what he called this: "Defendants presented a wealth of case anecdotal and historical evidence of racial bias in jury selection." And he was talking about Cumberland County, but it affected every other county in the state because there was other anecdotal evidence that came in that case from other counties also. The case is now

before the Supreme Court. It's been appealed and they are in the process of making a decision on that and we ought to let them go ahead and make the decision on that.

But as I said before, this is not about the death penalty. It's not about the heinous act or anything like that. These persons have been convicted and were given the death penalty. There's not a "get out of jail" pass. It's simply stating that simply because you had a jury that was not of your peers, that there was racial prejudice involved in the picking of that jury, that you were guilty of the crime but instead of putting you to death you're going to be put in prison for the rest of your life. And to some that may be, you know, more...Some folks wish for death more than having to spend life in prison.

The other thing is that some folks have said that this adds time to the people who are on death row. It gives them additional time. That does not have to be true. There are things that a District Attorney can do in order to shorten that time: a motion to dismiss a motion for appropriate relief. I asked one district attorney this when this was in committee and he said, "Yes, I have filed a motion, but it's not going to be until 2015 before we hear it." Well, there's several things there. Number one is the he can ask for an expedited hearing. And I have not appeared in court yet when an expedited hearing was asked for that it wasn't given. So that means that you don't have to have that extra time in there that's involved.

The second thing that's been said is, "Well, if you've got a white-on-white case that you can't show racial prejudice in the picking of a jury." Well, as Representative Daughtry says, I have a little bit of faith fortunately in the justice system, and I believe that those claims that are frivolous will be thrown out in a matter of a few days if the District Attorney asks for it to be done.

There's just so many ways to do this. But the bottom line, my friends, is there should be no prejudice of any kind in the picking of a jury that's going to impact your life or anybody else's life. There are scare tactics used in here. They bring in pictures of these heinous crimes and what not. These people have been convicted. They've already been convicted. They don't get out of jail because of this. But there should have been no racial prejudice shown in the picking of that jury, and that's what has been shown in this instance.

I'm simply asking: let the courts make the decision. Representative Daughtry, if you have that much faith in the courts, that matter is now being decided by our Supreme Court. So let's see what our Supreme Court has to say about this matter before we rush into something that we're going to regret later on. I would suggest that you vote against this bill, or, Representative Stam, take Section 5 out of the bill and let's...You raised your hand. You're right. Five—take it out. Thank you.

**Rep. Jonathan Jordan (R):** Mr. Speaker?

**Speaker Burr:** Representative Jordan, please state your purpose.

**Rep. Jordan:** To ask the gentleman if he would yield to an inquiry.

**Speaker Burr:** Representative Michaux, do you yield?

**Rep. Michaux:** Yes.

**Rep. Jordan:** Since you've done, Representative Michaux...One of the cases that Judge Weeks removed from death row was a 2000 case, *State vs. Walters* (a Native American defendant, two white victims), was a gang initiation. That had a six black and six white jury. Can you explain the racism that would be present in that kind of case?

**Rep. Michaux:** I can't explain it because I didn't hear the case and I don't have the facts before me at this time. If you give me a few moments, I've got Judge Weeks' decision here. If you give me a few minutes and ask me later maybe I'll have a chance to go through it and see why he did that, if you don't mind.

**Rep. Larry Hall (D):** Mr. Speaker, inquiry of the Chair?

**Speaker Burr:** Yes sir, Representative Hall, please state your inquiry.

**Rep. L. Hall:** I just want to know and make sure that any time that we spend responding to questions, that that time does not count against our allotment?



**Speaker Burr:** That's correct, sir. Representative Adams, please state your purpose.

**Rep. Alma Adams (D):** Thank you, Mr. Speaker. To speak on the bill.

**Speaker Burr:** The lady has the floor.

**Rep. Adams:** Thank you. Mr. Speaker. Ladies and gentlemen of the House, there are many things as individuals that we don't like to talk about because those things tend to make us uncomfortable. Racism is one of those things. Race shouldn't matter, but it does matter, and in some cases it matters whether you live or whether you die. Racism is everywhere, and it's even in the justice system. And North Carolina took a big step to eradicate racism and to ensure fairness and integrity in our justice system when we passed the Racial Justice Act.

Representative Larry Womble did a lot of work on this bill and I'm sure he's frowning about what we're doing right now. Integrity and fairness are not foolish words. Fairness is a good "f" word. The Racial Justice Act allows people facing the death penalty—black, white, male or female—to present evidence of racial bias, including statistics, in court. And as Representative Michaux has said, it doesn't get them out of jail, just off of death row. And none of us really should want to execute any person whose death sentence was based on race discrimination, whether discrimination was utilized or applied by prosecutors or jurors.

The first priority of our criminal justice system—and I'm not a lawyer—should be to ensure justice and fairness and to not uphold verdicts that have any hint of racial discrimination. No one, supporters of capital punishment or opponents of capital punishment, want racial discrimination to be a factor in the courtroom and it should not be.

In this General Assembly we talk a lot about working across the aisle. Now the concepts imbedded in the Racial Justice Act as it was proposed was supported by a cross section of people around this State, including Democrats and Republicans, by supporters and opponents of the death penalty. And, as a matter of fact, eight Republicans in the Senate voted for the Racial Justice Act.

As an African American I certainly can understand the comments that Representative Michaux has made because if you haven't walked in these shoes you don't know how they feel. But I can tell you that more people who look like me fall victim to a justice system that is not always just for us. And because of the impact of that existing racism we needed the Racial Justice Act in the first place to ensure the fairness and integrity in our justice system to help prevent more innocent African American defendants from being wrongly sentenced to death. And there are many cases to support the fact right here in North Carolina that race has been a factor, and we've heard several of those today. We've had several cases that were mentioned by Representative Glazier.

The point I'm trying to make is simply this: that the justice system is comprised of human beings, and human beings are not perfect. None of us are. And unfortunately, some people are still guided by conscious or unconscious racial bias. We might not like to talk about it, but racism is alive, it's well and it's real. It's real and it is a real problem. And as policymakers we have a responsibility to ensure that, as much as possible, that fairness prevails in everything that we do. And the least we can do is to put in place a mechanism that provides for all people, regardless of race or religion, regardless of socioeconomic status, the right to a system that treats them fairly and justly.

The Racial Justice Act provides that sense of assurance and we should leave this law intact to continue to do what it was intended to do to ensure fairness, equity and justice. So let's not undo the good that we did by instituting the Racial Justice Act that was needed then and it's still needed now. Vote against this bill. Thank you, Mr. Speaker.

**Speaker Burr:** Representative Luebke, please state your purpose.

**Rep. Paul Luebke (D):** To speak on the bill.

**Speaker Burr:** The gentleman has the floor.

**Rep. Luebke:** Thank you. Mr. Speaker. Members of the House, I just wish to comment on a few points that have been made in debate and add a few points that have not yet been raised.

The first is that there's been a lot of reference, I think primarily from Representative Stam, about the deterrent effect of the death penalty. And I would just like to note, as has been noted, we have not had any executions since 2006, and since 2006 the murder rate in this state has dropped. So that whole linkage that some talk about is simply not there. The murder rate has dropped since 2006 and no executions since 2006. First point.

Second point—this is not, Representative Stam, the so-called "Racial Justice Act." It is the Racial Justice Act. And I was one of the primary sponsors of this bill. And I want to thank publically former Representative Larry

Womble of Forsyth County for his great leadership in working on this bill and ultimately having this bill come into law.

Actually what we have here today are two bills. I think that Representative Daughtry said you want a death penalty restoration bill, or you said, Representative Daughtry, of course, abolition bill. You said put one in. I feel the same way. You want a death penalty restoration bill, put that in. But what we have here is two separate bills merged into one. We have the death penalty restoration clear and we have the repeal of the Racial Justice Act. And that's most unfortunate because there are some members here who would vote to restore the death penalty but will not vote to repeal the Racial Justice Act. And people should just be very clear about that. And it's most unfortunate that they're not separate bills. Senator Goolsby chose to put them together and unfortunately the committee system here brought it that way as well.

It's important again to remember that in the Racial Justice Act that people are not let out. The infamous and reprehensible campaign ad from 2010 that was used that said that those who voted for the Racial Justice Act had voted to let convicted murderers out of jail and back on the street—some of you know it was actually used against one of our Representatives not here who had voted against the bill, yet it was used against him in his attempt to be reelected and he did lose that campaign. The fact is it's life without parole. It's no picnic to be in jail without parole for the rest of your life.

**Rep. Stam:** Mr. Speaker?

**Speaker Burr:** Representative Stam...

**Rep. Luebke:** I will yield at the end of my remarks, Mr. Speaker.

**Speaker Burr:** The gentleman does not yield.

**Rep. Luebke:** The fascinating thing about the bill is Section 5(a), Representative Stam's reference to Section 5—5(a) just repeals the use of statistics. Now some of you know I teach sociology and it's just kind of amazing if you went into class and said, "Now class, we're not going to use any data in our class. We just don't want to use data." But that's basically what this bill says is, "Let's not use data. Let's not look at jury compositions." That's really what the Racial Justice Act is about is looking at jury compositions and its impact on court cases. And there's been a lot of consternation on the part of some people that white defendants, whites on death row were making use of the Racial Justice Act. But look, the Racial Justice Act allows people to do that because it's asking about jury composition and whether jury composition has something to do with the conviction of someone and the giving of a capital sentence—the death penalty, whether the defendant is black, white or green. It's looking at the fact whether the jury, having constituted relatively—well, basically one or zero African Americans on the jury—whether that has some impact on the death penalty.

Now I know some of you say, "Oh god, don't go into sociology, Luebke." But the fact is that African Americans are far more skeptical of the justice system than are white Americans (Representative Michaux addressed that directly) with good reason. If you don't know what DWB is, ask an African American, especially an African American male: "driving while black." And that just summarizes a lot of the problems that African Americans have with the criminal justice system. It's why African Americans might be more likely not to give a white defendant the death penalty. It's as simple as that. So there's nothing complex why white defendants on death row would abuse the Racial Justice Act.

In sum, the Racial Justice Act is a good act. It's unfortunate that it's gotten merged with the other bill about death penalty restoration. They should have been split and we should sustain the Racial Justice Act. Thank you. I hope, members, you'll vote no this bill.

**Rep. Stam:** Mr. Speaker?

**Speaker Burr:** Representative Stam, please state your purpose.

**Rep. Stam:** Would Representative Luebke yield for two questions?

**Speaker Burr:** Representative Luebke do you yield?

**Rep. Luebke:** For two? Okay, of course. Go ahead.

**Rep. Stam:** First one: Would you explain to the House why these one-hundred and fifty-two convicted murderers who apparently had tainted juries, why they should spend their life in prison without parole instead of getting a new trial?

**Rep. Luebke:** Under this bill it simply asks the question of whether there is a problem with jury selection. And it's saying in order not to have—I don't want to be personal—but folks like you say, "Oh, these folks got off." It's saying "You're not going to get off. You're going to have life without parole," precisely to try to undercut the criticism that this bill is about letting murderers back out on the street.

**Rep. Stam:** Second question, Mr. Speaker?

**Speaker Burr:** Does the gentleman yield?

**Rep. Luebke:** I yield.

**Rep. Stam:** And here I address you as a sociologist—probably the only one here. Representative Jordan asked Representative Michaux about one of the cases that Judge Weeks said was infected with racism: *State vs. Walters*—a gang initiation case. It had six black citizens of Cumberland County on the jury. Do you believe that six black jurors from Cumberland County could be so infected by racism that they would sentence someone to death?

**Rep. Luebke:** Representative Stam, Judge Weeks worked on that case. I didn't. Talk to him.

**Speaker Burr:** Representative Pierce, please state your purpose.

**Rep. Garland Pierce (D):** To speak on the bill, Mr. Speaker.

**Speaker Burr:** The gentleman has the floor.

**Rep. Pierce:** Thank you, Mr. Speaker. I just want to add a few comments. There's a question that's asked, and I think many of us have talked around it today, but why does jury diversity matter? Beyond the constitutional issues which sometimes strike individuals from the pool based on their race systematically includes the inclusion of African American jurors undermine the public confidence of both individuals who are in the court systems. Studies have shown that communities' perceptions of justice is based upon its faith in the process by which the outcome achieved by the process and make sure that it's fair and transparent. A lack of jury diversity represents just the type of procedure issues that trigger community fears about the unfairness of the system. Additionally, diversity in the makeup of the jury influences decisions during the trial which determines a person's guilt or innocence is a matter significant, especially in a first degree murder trial.

Twelve jurors from different groups who are not a part of that group sometimes weigh their experiences not understanding the experiences of others. Jury diversity does in no way guarantee that a jury is more likely to be friendly to the defendant than an all-white jury. It simply means that the conversation deliberation to reach the final decision will be more thoughtful and based on a full range of experience than a jury selection from one homogenous group that shares the racial identity or socioeconomic background.

And I think sometimes in our communities, particularly the African American community, as many have already said, there is a fear of the court system, not being aware of what's going to happen. Many of our young men sometimes, and women, when they go into the system they feel like... And sometimes justice, I know that she said that she's blind, but sometimes she pulls up to see who's on trial. And that's sad that in America, even in North Carolina, that we still have those issues. So I would ask you to vote no on this bill. Thank you.

**Speaker Burr:** Representative Terry, please state your purpose.

**Rep. Evelyn Terry (D):** Thank you, Mr. Speaker. To debate the bill.

**Speaker Burr:** The lady has the floor.

**Rep. Terry:** Thank you very much. Ladies and gentlemen, I don't know the law as these eloquent lawyers have spoken here today, and therefore I'm going to speak about this from a very personal standpoint. And I hope you'll bear with me as I do so.

Since 1999, five innocent men have been released from death row. Wrongfully convicted individuals often serve decades incarcerated before the courts recognize their innocence. When someone is placed on death row wrongfully, our state perpetuates the cycle of victimization. And I want to stand here today to tell you that my neighbor, whom I have learned to love and respect for his gentle nature and his humility, was on death row for nineteen years. His case was twice appealed by the North Carolina Supreme Court, one granting a new trial in 1989 and one denying a new trial in 1994 despite new DNA that declared Darrell innocent of the crime that he was convicted of twice in this state.

I must say to you today that I am honored to be just a person who has learned to find out about this man who fell victim to a system that our State—good, bad or indifferent—just did not find a way forward to do anything about until those who recognized that this is a life, that there is not enough evidence, that despite all of the trials, despite all of the court processes that took place, the fact remained that he was an innocent and is an innocent person.

I simply ask you to listen to your heart and realize that everybody who goes through these systems of court trials and justice often times is confronted by situations that have been perpetuated because of a culture of whatever it is that really does say that race matters. And there are those who also believe that class matters. There is also the whole notion of the idea that if you don't have enough money you cannot pay your way out of this stuff. I simply ask you to consider the fact that I live next door to a gentleman who spent nineteen years of the best part of his life incarcerated, convicted by two juries here in the great State that I love that is North Carolina. I cannot support anything that allows this to continue to happen. The whole world is watching. Thank you.

**Speaker Tillis:** Representative Tim Moore, please state your purpose.

**Rep. Tim Moore (R):** To debate the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. T. Moore:** Thank you, Mr. Speaker. Members of the House, I know the hour is growing long. I'll make this brief. Last year the Speaker asked me to chair an interim committee that looked at the issue of capital punishment and we did that. A number of you were on that committee. Part of that even included a visit to death row. And we went over there—saw everything from where they live to where the executions take place. Talked with a number of folks and we had several hearings. Had folks come in who testified. We had those who had been wrongfully convicted and we had a number of the family members, folks who came in and testified. There were family members of all races. There were death row defendants of all races. So the one thing I picked up from it is it wasn't a racial issue.

You know, there's been much made about the fact there have been some bad convictions. That's true. I think we acknowledge that's happened. But in those cases those folks were vindicated through motions for appropriate relief, through DNA evidence, through other things.

The flaw of this bill is that it doesn't go to a problem with a particular case. It tries to put a carte blanche solution to something that is not that. Under this law, under this bill as it presently is unless we amend it, a person could walk into a Wal-Mart and shoot ten people, point blank range, caught on video, no dispute that they did it, and still try to use the Racial Justice Act as a basis to avoid the death penalty.

Here's another irony with the Racial Justice Act the way it presently is: it would allow a man who was an avowed white supremacist, a member of the Aryan Nation who murdered an African American victim to argue that he was a victim of racism. That's the flaw with the law as it's currently written.

Members, this bill corrects that. This bill is to push through justice to make sure that a person is judged for crimes they committed, not for what somebody else did. Members, I would urge the body to support this bill.

**Speaker Tillis:** Representative Farmer-Butterfield, please state your purpose.

**Rep. Jean Farmer-Butterfield (D):** To speak on the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Farmer-Butterfield:** Ladies and gentlemen, the passage of this bill and its goals to restart executions do not make North Carolina a safer place to live. The death penalty ties up tremendous amounts of money, a lot of resources. Yet less than one percent of individuals tried for first degree murder receive death sentences. What if you were not able to serve on a jury because you went to a particular university, were not a high school graduate, had no law enforcement connections or military connections, or you just lacked eye contact? Instead of focusing our efforts on rushing to restart executions, we ought to be considering how we can better serve victims and actually take steps to make communities safer. Killing somebody by mistake once in a while is not okay. North Carolina is better than this. I ask that you oppose Senate Bill 306.

**Speaker Tillis:** Representative Larry Hall, please state your purpose.

**Rep. L. Hall:** Inquiry of the Chair.

**Speaker Tillis:** The gentleman may state his inquiry.

**Rep. L. Hall:** The amount of time left for...?

**Speaker Tillis:** Thirteen minutes.

**Rep. L. Hall:** To speak on the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. L. Hall:** Thank you, Mr. Speaker, and I'll certainly save some time for others. But I wanted to make sure we didn't get too far off the subject. And part of the question we face now...And yes, racism is uncomfortable and all of us in here—black, white, Indian or otherwise—have experienced moments when we caught ourselves and said, "That was probably a racist thought. That was probably a stereotypical thought that I had." And of course, being a Marine, I have thoughts of people being inferior to me all the time. [*laughter*] Maybe so. But our responsibility is probably the greatest.

You know, we talk about passing bills that will create judgeships and bills that will eliminate judgeships, and bills that increase the penalties and bills that take away the funding necessary to pay the judges to enforce the greater penalties. And all of that responsibility falls on us. So we can't take part of it and walk away from the rest of it.

You know, when we talk about these cases and the question of these constitutional rights involved—this jury of your peers and the selection process—it's important to note that not only are the rights of the accused at issue, but the rights of those who are in jury service are at issue as well. That they deserve to be treated fairly and not discriminated against. That is a portion of this act that we have to understand.

Samuel Poole—many of you might not know him, or Christopher Spicer. Maybe Tim Ennis—some of you might know that name. Alfred Rivera—sound familiar? Alvin Gell, Jonathan Hofner, Glenn Chapman. Maybe Levon Bo Jones. How about Ronald Cotton? You know Darrell Hunt—you heard his name. Duane Dell. Maybe you don't know these gentlemen, but they are North Carolinians. Maybe you think they should have the same rights as the rest of us to be treated fairly. They're death-row and non-death-row exonerees, though. They went through the system, they were treated unfairly. And as a result we had people on death row that should not have been there.

Now what does that do to our system and the confidence of our public in that system? That responsibility we still have. If we have not improved that system since we've been here, then we failed our duty. We make judges. We make the law. We give them the budget and we tell them to enforce it. I love DAs—they have a role to serve. If they want to be legislators, they need to put their name on the ballot and run if they want to make the laws. They have a duty to enforce the law through prosecution. And sure, they have a lot of discretion. But to have the shameful act of consciously having training to subvert the law in order to be able to mete out the death penalty after we know time after time how dangerous that is, thinking about the number of innocent people who we have taken off of death row in North Carolina.

So every precaution we can take to ensure fairness is essential. And the names of those gentlemen I read who lost parts of their lives that we can never repay, no matter what price. I don't know what the price it is to you to hold your grandbaby in your arms. I don't know what price it is to you to hold your loved one before you get on that trip to come to Raleigh and when you get back. I don't know what the price was for you to see your child graduate or see

your parent on their eightieth birthday. I don't know what that value is to you and I don't know what it was to those men. But everything we can do to make this system work properly and fairly and abide by the highest standards we have an obligation to do. Let the rest follow.

We're paid to lead. We come down here, we take that oath—and this is one of the times we should take it the most seriously that we should hold that standard high and say we do not want there to be any question when the ultimate penalty is given as to whether there was any bias. Whether it's as to race of a juror or race of a defendant, we don't want there to be a question. We want to sleep at night with a clear conscience, get up in the morning and look in the mirror and know we did what we should do in our position with the responsibility we have as legislators. There's no one else we can look to. No one else has this ultimate power. This is the ultimate power. Any power that the judges have, we've given to them—we, as representatives of the people. And they entrust us to ensure those powers are used not only judiciously but fairly. And there can be no room in our system for there to be a question in anyone's mind as to whether discrimination played a role in the selection of the jury, in the selection of the punishment to be requested, in the decision that's made by the jury.

We've been down this road. Yes, it's a tough issue. I've faced discrimination and I know I've battled discrimination. Every one of you in your heart and in your mind know that you have to battle that every day, whether it's sex discrimination, race discrimination, classism, all of them. But the one thing that we can all aspire to is justice, the standard we can set—and no one can say that this bill will further the interest of justice. It may further those who want revenge, those who want to even the score, those who want to feel better, but not those who want justice.

So I'm going to ask you to vote for justice. I'm going to ask you to hold the State to a higher standard and lead the way to get there. Don't take the easy out and say let's just let things go by the way. Take a position. Make a difference. You wanted to be here—this is your opportunity. You say you're a leader—this is your opportunity. You say North Carolina is the best State in the best country in the world—this is your opportunity to live up to it. But you can't take a vote and bow your head and skulk home and then just hope that everything turns out alright. North Carolina's depending on you.

**Speaker Tillis:** Representative Dollar, please state your purpose.

**Rep. Nelson Dollar (R):** To debate the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Dollar:** Thank you, Mr. Speaker and members of the House. You know, I've heard a lot about process today. I've heard a lot about statistics. But let's talk about justice because that's what this is about. As Representative Daughtry said, this is about the death penalty and what is just. And I put the question to the House today: What is just?

A couple of cases. Anne Mangus—do you know what she was doing one morning? She and her husband went to the home of Mr. Denning over in Winston-Salem. They were delivering Meals on Wheels. A gentleman by the name of Timothy Herford happened to come back to the house because the person they were delivering the meals to he had beaten to death earlier in the morning but had left his sunglasses. He comes back for his sunglasses. He sees the Manguses. He pulls his gun; he shoots her in the back and kills her. And the only reason why her husband was also not killed to become the third murder victim that morning was that Hertford ran out of bullets. This gentleman in the sad case of the Racial Justice Act the Winston-Salem Journal a couple of years ago... Do you know what he had? It was a white victim... victims, a white defendant, white lawyers, white judge, eight out of fifteen jurors were white, yet he accesses the supposed Racial Justice Act. Is that justice? Is that right?

Think about the case... This is back in 1995. You may remember it from way back in Readers Digest: "Free to Kill: the murder of an 11-year-old girl." You know, she would have been thirty-eight today. She could be a member of this House. She could be in the gallery. She could have kids. She could be a career person. She could be all of those things. Where is she? What's justice for her? Her name was Amy Jackson, by the way. Look it up.

Go down to Charlotte. Let's talk about some African American victims. You were naming names a while ago. Let me give you some names. Let me give you the name of Tashanda Bethaya, Michelle Stinson, Shawna Hawk, Carolina Love, Sharon Nance, Valencia Jumper, Audrey Spane, Brandi June Henderson, Vanessa Little Mack, Betty Jean Baucom. Do you know what they have in common? Many of them were raped. Many of them kidnapped. Many of them were tortured. And they were all murdered by Henry Wallace. And now he is appealing under the North Carolina Racial Justice Act? What's justice about that? Where's the justice for the victims in this state?

And just recently down in Cumberland County the three people who have accessed this under, I believe all under Judge Weeks, two of them involved cop killers. We have three murdered law enforcement officers: a Deputy Sheriff, a Highway Patrol Trooper out there doing their job. What's justice for them? Is it statistics?

You need to decide in your heart what is just. When someone takes a four-year-old girl in Randolph County, rapes her, murders her, puts her tortured body in a bag of trash, throws it in a closet, throws trash on it, what's justice? Keep in your mind the victims of these hideous, horrible, coldblooded killers and decide for yourself what is justice in North Carolina.

**Speaker Tillis:** Further discussion, further debate? If not, the question before the House is the passage of the House Committee Substitute for Senate Bill 306 on its second reading. All in favor vote aye; all opposed vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. Seventy-seven having voted in the affirmative and forty in the negative, the House Committee Substitute to Senate Bill 306 has passed its second reading and without objection...

**Rep. Glazier:** Objection.

**Speaker Tillis:** Objection having been raised, the bill remains on the calendar.

**SB 306 – Capital Punishment/Amendments  
Remarks on 3rd Reading  
June 5, 2013**

*Audio available at [this link](#)  
Debate begins: 01:00:44*

**Speaker Thom Tillis (R):** Senate Bill 306, the Clerk will read.

**Reading Clerk:** House Committee Substitute for Senate Bill 306, a bill to be entitled “An Act to exclude the administration of a lethal injection from the practice of medicine, to codify the law that prohibits regulatory boards from sanctioning health care professionals for assisting in the execution process, to amend the law on administration of a lethal injection, to require the setting of an execution date if any of the events which are provided by this statute have occurred, to eliminate the process by which a defendant may use statistics to have a sentence of death reduced to life in prison without parole, to require periodic reports on the training and availability of personnel to carry out a death sentence, and to require periodic reports on the status of pending post-convictions capital cases.” The General Assembly of North Carolina enacts.

**Speaker Tillis:** Representative Stam, please state your purpose.

**Rep. Paul Stam (R – Speaker Pro Tem):** To speak on the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Stam:** Mr. Speaker and members of the House, we debated this a long time yesterday and we learned, of course, that the so-called “Racial Justice Act”—Whoa! Section 5. If it's repealed, a capital defendant retains all of the rights which the State and Federal Constitutions provide to ensure that the prosecutors who selected a jury who sought a capital conviction did not do so on the basis of race, that the jury that hears his or her case is impartial, that the trial was free of prejudicial error of all kinds. And yet ninety percent of the debate from the opposition assumed that that wasn't still the law. It is.

I saw a newspaper report today that said, “The Racial Justice Act allows a defendant to prove that race infected his case.” Actually they said “their”—bad grammar. But “his case.” It doesn't. Other laws do that. I encourage you to vote again for the bill. Get justice back into the death penalty scenario.

**Speaker Tillis:** Representative Jackson, please state your purpose.

**Rep. Darren Jackson (D):** To send forth an amendment.

**Speaker Tillis:** The gentleman is recognized to send forth an amendment. The Clerk will read.

**Reading Clerk:** Representative Jackson moves to amend the bill on page 1, lines 8 through 10, by rewriting the lines to read...

**Speaker Tillis:** The gentleman is recognized to debate the amendment.

**Rep. Jackson:** Thank you, Mr. Speaker. Ladies and gentlemen, yesterday I objected to third reading so I could prepare this amendment because I do support capital punishment. But I also am proud to have voted for the Racial Justice Act four years ago. You can say how I voted four years ago but you cannot say why. You don't know what was in my mind, nor do you know what was in my heart. Many of us that voted for the Racial Justice Act did not do so because we wanted to see an end to the death penalty as stated yesterday by proponents of this bill. We voted for the RJA because we wanted the death penalty to be applied uniformly and without regard to race. Be it the perpetrator, the victim or an individual juror, race should play no part in the process.

Now you don't need my vote to pass this bill, so I know what kind of support I'm going to get for my amendment. But it's important to let my constituents know why I voted the way I did on this bill. I would absolutely vote for this bill should my amendment succeed. My amendment would delete Section 5 of the bill while allowing the remainder to move forward in an effort to restart capital punishment.

I agree that health care professionals that choose to participate in a state-sanctioned punishment shouldn't be at risk of professional discipline. I certainly believe that lethal injection is a better, more humane alternative to the electric chair or gas chamber. This more humane method requires the assistance of professionals and so I support it.

But let me tell you why I think deleting Section 5 will actually result in capital punishment restarting sooner and why many of you as proponents of the death penalty should support deleting this section. Passage of Section 5 will have the unintended consequence of giving one-hundred and forty convicted murderers at least two additional claims to litigate in state and federal courts. You heard Representative Stam say that Section 5 spells out all these rights that these people already have, but by deleting Section 5 you are actually giving two additional claims based upon constitutional doctrines that were not discussed on the floor yesterday, at least not in detail.

The first is equal protection. Judges Weeks has made decisions already in a few cases. These cases are on appeal to the Supreme Court. Now we're going to come behind them and say that the Racial Justice Act cannot be used by over one-hundred and forty other defendants. How do we tell other defendants, some in Cumberland County, some in Bladen County, which I believe is in the same district, that a few defendants were allowed use of this procedural defense but the remaining of you are not? How is that equal protection under the law? What court is going to uphold that unequal treatment?

The second potential claim created by Section 5 of this bill is what is known as the prohibition against *ex post facto*, or retroactive laws. And that's actually something I was surprised not to hear about yesterday. In the United States, the Congress and the states are prohibited from passing *ex post facto* laws by the US Constitution. No criminal laws regarding punishment may be retroactive. When it comes to a criminal law or punishment, you don't give someone a right, allow them to assert it and then take it away. To do so I believe is a violation of the *ex post facto* laws. It certainly will raise a claim that will have to be litigated in courts for years to come, which brings me to my final point.

There's no fiscal note with this bill and you should expect a high cost with passage of Section 5 of this bill because you are giftwrapping even more avenues for appeals for these murderers. And the State is going to have to defend those cases and those actions and maybe even pay their attorneys to prosecute them. But regardless of the cost, you are...

**Rep. Jeff Collins (R):** Mr. Speaker?

**Speaker Tillis:** Representative Collins, please state your purpose.

**Rep. Collins:** To see if Representative Jackson would yield for a question.

**Speaker Tillis:** Does the gentleman yield?



**Rep. Jackson:** Yes, I yield.

**Rep. Collins:** Representative Jackson, do you have any estimate as to how much the Racial Justice Act has already cost us in court costs in North Carolina?

**Rep. Jackson:** Mr. Speaker, if I could respond? I looked at the fiscal note, Representative Collins, last night from the Act back in 2009 and it was an indeterminate amount and I don't have anything to add to that.

But regardless of the cost, like it or not, the Racial Justice Act gave these one-hundred and forty murderers an avenue of contesting their death sentences. Now many of these claims are probably not legitimate or valid and they're probably going to be dismissed soon when the Supreme Court makes its pronouncement or when some prosecutors actually start to make and schedule motions to dismiss. So while we are currently less than a year from closing many, if not all, of these claims, passage of Section 5 will add new constitutional claims that will require many more years of litigation in state and federal court.

It may sound counterintuitive to those of you who fought the Racial Justice Act since its inception in 2009, but if you actually support restarting capital punishment any time soon, then you shouldn't support Section 5 of this bill. It will add five, ten years more to the delay in executing anyone. Deleting Section 5 as my amendment does is the only way to truly restart capital punishment. I would ask for your support.

**Speaker Tillis:** Representative Stam, please state your purpose.

**Rep. Stam:** To debate the amendment and then make a motion.

**Speaker Tillis:** The gentleman is recognized to debate the amendment.

**Rep. Stam:** Mr. Speaker and members of the House, at the conclusion of my remarks I'm going to do a motion to table, and I informed Representative Jackson that I'd do this after giving him a chance to explain it. The reason, of course, is that we've debated this exact same issue an hour and a half yesterday and this is the fifth time we've debated this in the last three or four years. One thing that's not a reason is the fact that when it was passed in 2009 the question was called without allowing the Minority Leader (then Representative Stam) even to speak on the bill—if you can imagine that, Representative Hall.

But I would like to address these two claims. First of all, the *ex post facto* law doesn't apply. We had a very good memorandum from staff—Hal Pell. In the North Carolina Constitution, it's Article 1, Section 16 if you want to open your books if you have it there. "Retrospective laws punishing acts committed before the existence of such laws and by them only declared criminal, are oppressive, unjust and incompatible with liberty, and therefore no *ex post facto* law shall be enacted." Well, the reason I mention that is the only person who can claim *ex post facto* on this would be the murderer who committed the murder after 2009 but before Senate Bill 416. That would be an interesting case. But none of the people on death row are in that category, or if they are maybe it's one of them.

Secondly, equal protection. This is interesting. Just because Judge Weeks applied facts, many of which could still be asserted even without the Racial Justice Act, but he shoehorned it into the Racial Justice Act (I think he thought we were kidding with the 2012 law), just because he picks out four out of the queue of one-hundred and fifty-four, therefore you have to apply to all one-hundred and fifty others that same law. Well, that would constitute Judge Weeks the lawgiver of North Carolina. If you want to apply equal protection to that claim, you would apply it the other way and get his four people back in the queue.

So I think we've debated this at great length. It's a serious subject. It needs to be debated at great length and we've done that. And so therefore, Mr. Speaker, I move to table the amendment.

**Speaker Tillis:** The motion by Representative Stam has been duly seconded by Representative Moore. The question before the House is the motion to lay upon the table the amendment sent forth by Representative Jackson to the House Committee Substitute for Senate Bill 306. All in favor vote aye; all opposed vote no. The Clerk will open the vote... The Clerk will lock the machine and record the vote. Seventy-three having voted in the affirmation, thirty-nine in the negative, the motion passes. Ladies and gentlemen, we're back on the bill. Representative Lucas, please state your purpose.

**Rep. Marvin Lucas (D):** To debate the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Lucas:** Thank you, Mr. Speaker. I too, like Representative Jackson, believe in the death penalty. I believe that certain crimes are so hideous and so despicable that capital punishment is in order. But I also believe that we in society—we the collective society—must be moral in administering whatever judgment that we administer. There's no question that all of the instances that I listened to yesterday in terms of perpetrators of hideous crimes deserve the death penalty. I don't feel sorry for any of them.

But my problem, like that of Representative Jackson, is with Section 5: how we go about our jury selection. Yes, I wish we had another bill, and perhaps one day we'll get one. This is what Judge Weeks was alluding to. In our society we have to and we should, if we're going to stick with our moral fortitude, do it the right way. We all want justice we all want to see criminals who commit despicable crimes receive justice for their immoral acts. But you know, District Attorneys, as we saw yesterday—and I would say also Defense Attorneys—are given liberal latitude when it comes to recusals or strikes in jury selection, and that's a problem. We ought to admit that that's a problem. We shouldn't want it either way—for the DAs or for the defense.

We ought to respect our citizens' rights to serve on juries. I understand that there are needs at times for strikes, but these strikes should not be arbitrary or capricious, or in some instances immoral strikes. Let's do it the right way. And we can, as legislators, do it the right way. If we could fix this Section 5, you have my unequivocal support of the death penalty. I don't think we need to confuse the two. Let us do the right thing. And until we can do the right thing, I have to vote no.

**Speaker Tillis:** Representative Baskerville, please state your purpose.

**Rep. Nathan Baskerville (D):** To debate the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Baskerville:** Thank you, Mr. Speaker. I had intended on making some remarks yesterday afternoon, but we ran out of time. So I'll make them today. I can certainly understand and respect Representative Daughtry's remarks yesterday and can certainly relate to Representative Michaux's sentiments regarding his experience as an attorney in our state. As a former Assistant District Attorney in six different counties spread across two prosecutorial districts, I believe that we have good District Attorneys in our state. And I believe that by and large, most of them are good and fair and try to dispense justice in a neutral fashion. But just like over the years this body, that by and large has been filled with good members who follow the law and do things the right way, from time to time we've had members here who didn't follow the law and didn't do things how they should have. There's no difference in any other aspect of society.

Now, we all are moved by the stories that we heard from Representative Moore and Dollar yesterday—acts so heinous that they almost are unimaginable. Now the Racial Justice Act is not designed to overturn the jury's decision...

**Rep. Tim Moore (R):** Mr. Speaker?

**Speaker Tillis:** Representative Moore, please state your purpose.

**Rep. T. Moore:** Would the gentleman yield to a question?

**Speaker Tillis:** Representative Baskerville, does the gentleman yield?

**Rep. Baskerville:** Certainly.

**Speaker Tillis:** The gentleman yields.

**Rep. T. Moore:** Representative Baskerville, is the gentleman familiar with the notion of motions for appropriate relief?

**Rep. Baskerville:** Yes, sir.

**Rep. T. Moore:** Additional question?

**Speaker Tillis:** Does the gentleman yield?

**Rep. Baskerville:** Yes.

**Speaker Tillis:** The gentleman yields.

**Rep. T. Moore:** Is the gentleman aware that a motion for appropriate relief can be filed and is filed before the existence of, and exclusive of, the Racial Justice Act to address exactly the kinds of questions that the gentleman is speaking of?

**Rep. Baskerville:** I'm aware that individuals can file motions for appropriate relief, you know, in very limited circumstances. I mean, the avenues to file the motions were just limited last session, I believe. I am *not* aware of a motion for appropriate relief that allows individuals to look at their jury selection.

**Rep. T. Moore:** One additional question?

**Speaker Tillis:** Does the gentleman yield?

**Rep. Baskerville:** Yes, sir.

**Speaker Tillis:** The gentleman yields.

**Rep. T. Moore:** Is the gentleman aware that under the motion for appropriate relief statute that one of the grounds upon which that a defendant may assert is prejudicial error?

**Rep. Baskerville:** I am aware that...

**Rep. T. Moore:** Thank you.

**Rep. Baskerville:** ...yes. Sure.

**Speaker Tillis:** The gentleman has the floor.

**Rep. Baskerville:** Thank you, Mr. Speaker. Once again, RJA is not designed to overturn the jury's decision regarding guilty or not guilty. The RJA is designed to ensure a fair, equal treatment in jury selection process. Now any trial lawyer worth their salt is going to tell you how critical jury selection is. It's perhaps the most critical juncture in a jury trial. Those are the twelve people that are going to listen to your side and listen to the other side and render their decision. Selecting the twelve people that are going to decide guilty or not guilty—that's a critical juncture in the proceedings. The RJA provides a vehicle to ensure that that selection process was executed properly.

You know, that's why when I hear stories recounting the heinous, horrible crimes that occur, or stories that detail a racially equal jury (six blacks and six whites), I respect those stories. But the RJA does not mandate that you have black folks on the jury. The RJA does not mandate that you have to have equal blacks and whites on a jury. The RJA is a process to make sure that that selection was done with impartiality and not done in a discriminatory fashion.

It does not prohibit executions. Just like my other colleagues, if the RJA would prohibit executions in this state I would not be able to support it because there are certain aggravated crimes that are so reprehensible that person has made it clear that they don't want to participate in civil society anymore and they've got to go, and I support that.

But I also don't see a problem when we hear stories about, you know, white folks availing themselves of the protection of the RJA. The RJA is to eliminate racial discrimination in jury selection regardless of whether it's a black person or a white person. I think that it's a great idea that white North Carolinians, black North Carolinians, Hispanic North Carolinians—all of them are going to be entitled to a jury that was selected properly. I wonder if we

had a bill that said only black folks could avail themselves of the protections of the RJA, would that pass this House? Of course it wouldn't. That's a completely specious argument.

I wonder would the proponents...

**Rep. Sarah Stevens (R):** Mr. Speaker?

**Speaker Tillis:** Representative Stevens, please state your purpose.

**Rep. Stevens:** To see if the gentleman would yield for a question.

**Speaker Tillis:** Does the gentleman yield?

**Rep. Baskerville:** Certainly.

**Speaker Tillis:** The gentleman yields.

**Rep. Stevens:** And Representative Baskerville, on your same argument, how do you feel about discrimination based on gender?

**Rep. Baskerville:** How do I feel about discrimination based on gender? I think it's a bad thing. I don't think we ought to discriminate based on gender.

**Rep. Stevens:** And...I mean, follow up?

**Speaker Tillis:** Does the gentleman yield?

**Rep. Stevens:** Do you know how many women are on death row as compared to men?

**Rep. Baskerville:** I would imagine it's less women on death row as men on death row.

**Speaker Tillis:** Does the lady wish to ask another question?

**Rep. Stevens:** Please.

**Speaker Tillis:** Does the gentleman yield?

**Rep. Baskerville:** Certainly.

**Speaker Tillis:** The gentleman yields.

**Rep. Stevens:** And would it be substantially less women than there are men?

**Rep. Baskerville:** I would...I don't know the answer to that, but I'm willing to venture the answer is yes.

**Rep. Stevens:** So, one last follow up?

**Speaker Tillis:** Does the gentleman yield?

**Rep. Baskerville:** Yes.

**Speaker Tillis:** The gentleman yields.

**Rep. Stevens:** So based on that statistically don't we have gender bias on death row?

**Rep. Baskerville:** Once again...Once again, Representative Stevens, I appreciate your question. The issue is not who is on death row, whether they're male or female, whether they're black or white. The issue is the selection of the jurors. I mean, I think we're getting off tangent here. I don't think we ought to discriminate against women. I don't think we ought to discriminate against anybody when we're selecting the twelve people who are going to decide whether someone lives or dies. There is no rectifying situation after you, you know, pull that switch. So I think that's the wrong argument. If there was a bill that said that...I just think that's not the issue here with the Racial Justice Act.

Justice: the establishment or determination of rights according to the rules of law and equity. Justice—we heard a lot about justice yesterday. The rule of law says that there shall be no discrimination in a jury selection process. RJA allows us to make sure that those rights are protected. The rules of equity insure that victims of crimes, they know that our government (the prosecutors) will protect their interests and pursue those responsible individuals in a legal fashion. It's not just justice for the victims. It's not just justice for the criminals. It's justice for all. I think that the RJA is a just bill and ask that y'all vote against this particular bill. Thank you.

**Speaker Tillis:** Representative Richardson, please state your purpose.

**Rep. Bobbie Richardson (D):** Thank you, Mr. Speaker. I would like to ask a question of Representative Stam.

**Speaker Tillis:** Representative Stam?

**Rep. Richardson:** Yes. I'm sorry. I think he is one of the sponsors of this bill and that's why I'm directing this question to him. As a freshman...

**Speaker Tillis:** The Chair assumes the gentleman yields.

**Rep. Richardson:** I'm sorry.

**Rep. Stam:** I do.

**Speaker Tillis:** The gentleman yields.

**Rep. Richardson:** Okay. As a freshman, naturally I do not have the history of the RJA and the issues surrounding the passing of it. But in committee meetings we were presented with information and "evidence as to the reason why we have RJA." And it was because it was proven that discrimination was being done in jury selection. So when I lay down at night, I think about this bill and I think about the fact that we have a bill and now we want to repeal the bill, and I wonder what kind of impact does that have on me as a voter here in this body that because a bill may be written badly or because people don't like the bill we want to repeal the bill. So what kind of consequences do I as a voter have to face based on whether or not this bill passes today?

**Rep. Stam:** Thank you for your question, Representative. You heard a speech by Representative Glazier and you thought it was evidence, but Representative Glazier is an advocate. And for example, he gave, you know, a Michigan State survey. I went to Michigan State—the School of Criminal Justice. And I had little juvenile delinquents that I took care of as part of an independent study. And this was in 1971-72, and I guarantee you that every one of them thought that the death penalty for murder was that you got the electric chair because they watched...What's that FBI show?...Dragnet! But you know what? Michigan had not had the death penalty since it was a territory in 1843.

The deterrent factor of the death penalty is not what you have on the books but what actually happens. Now if you think that some professor at Michigan State University is going to get tenure, when the public policy of the State of Michigan is opposed to capital punishment for almost two-hundred years, for doing a rational study, you're not thinking the way universities think.

There were so many problems with that study that was cited as evidence and the biggest problem was this: They compared murder versus a murder, but not with the same aggravating circumstances. In other words, you have to almost volunteer to be executed, or else kill six people or slice people up. But that study did not adequately take into account aggravating circumstances. In other words, you heard evidence but you didn't hear the cross-examination.

**Rep. Richardson:** Follow up?

**Speaker Tillis:** Representative Stam, does the gentleman yield?

**Rep. Stam:** I do.

**Speaker Tillis:** The gentleman yields.

**Rep. Richardson:** Excuse me for up and downing. I mean, somebody says “stand up” and somebody else says “sit down.” But also, I’m still not sure that my question was answered because I thought there was a case (and maybe I misunderstood) that had been taken to court that some evidence had come out of it. Am I incorrect on that?

**Rep. Stam:** Yes, the *Robinson* case—Judge Weeks, who is one judge, found that there had been prejudice in other cases in North Carolina in other places, other years, other decades, other cases. And then in Robinson’s case where there were three minority people on the jury, which at that time was roughly proportional to the population in Cumberland County, he decided that therefore Mr. Robinson had been discriminated against. But that’s not what the law should be. The law should be whether *Mr. Robinson* was discriminated against, not whether other people had been discriminated against in other cases.

**Rep. Richardson:** Can I follow up?

**Speaker Tillis:** Does the gentleman yield?

**Rep. Stam:** I do.

**Speaker Tillis:** The gentleman yields.

**Rep. Richardson:** So, this is a law that we’re repealing. My question again is as a legislator and we vote to repeal that law, what consequences will this body face by doing away with a law that was a law, to make it...

**Rep. Stam:** As far as I know, it’s been four-hundred and fifty years since a legislature was actually punished for its legislative acts. So no, you can’t be punished for anything you do here, except you can be unelected.

**Rep. Richardson:** Thank you.

**Speaker Tillis:** Representative Stevens, please state your purpose.

**Rep. Stevens:** To see if Representative Moore would yield for a question?

**Speaker Tillis:** Representative Moore, does the gentleman yield?

**Rep. T. Moore:** Of course.

**Speaker Tillis:** The gentleman yields.

**Rep. Stevens:** Representative Moore, you heard me ask the question about gender differences on death row?

**Rep. T. Moore:** I did. Yes.

**Rep. Stevens:** And Representative Moore, did you inquire and see what the gender makeup was on death row?

**Rep. T. Moore:** I did. According to the data I received from the Department of Corrections there are presently one-hundred and fifty-six people on death row. One-hundred and fifty-two are men, four are women.

**Rep. Stevens:** One last question?

**Rep. T. Moore:** I yield.

**Speaker Tillis:** The gentleman yields.

**Rep. Stevens:** Representative Moore, are you aware that anyone has tried to bring up the issue of gender discrimination?

**Rep. T. Moore:** No, and it's an interesting thing with this whole concept of this bill that no one has. I think if you take some of the arguments used for the RJA, just looking at raw numbers and nothing else, you would have had to come to a conclusion that there was a...that a Gender Justice Act is necessary just based off of the numbers alone. And I think it just highlights the flaw in this bill...or excuse me, the flaw in the current law and the necessity for this bill to roll it back.

**Speaker Tillis:** Representative Glazier, please state your purpose.

**Rep. Rick Glazier (D):** To debate the bill very briefly.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Glazier:** Thank you very much, Mr. Speaker. I had my say on the merits of the bill yesterday and don't plan to abuse the body today. But I did rise to answer a couple of questions because they were raised and this is such an important bill. I think at least the information ought to be available to people.

First, and I wasn't planning to address this, but since the last go around of questions I agree completely with Representative Stevens and Representative Moore on the data. Of course, that's like comparing apples and oranges and suggesting they come from the same tree. I mean, in the end the question is how many women are on death row versus how many murders there are versus how many men versus how many murderers. So sex discrimination may or may not be there but it has nothing to do with this and we're not even comparing the correct data. That being said, I'll move past gender discrimination which, by the way, is also unconstitutional. And we know that by Supreme Court decisions.

The issue that was interesting was raised by Representative Jordan yesterday. Representative Jordan asked the question, and I think it deserves a really full response, as to why Judge Weeks looked at and found race discrimination in jury selection in the *Waters* case when the *Waters* jury had six African Americans on the jury and six white members of the jury, or at least that appears to be based on the record. Well, I think there are a couple of answers.

First, the Supreme Court has made it very clear, as Representatives Jackson and Baskerville and Michaux have said, that racially-motivated exclusion of even one juror is unconstitutional. *Batson* said that. And so whether it's one or it's ten doesn't really matter—that violates the law.

But in the *Waters* case there really is a much more interesting answer. And since it's from my home county—I actually wasn't sure of it—I went back and read the record last night. The prosecutors in *Waters* struck ten of the nineteen eligible African American jurors—that is, they made their discretionary challenges to ten. That's 52.6% of them. They struck only four of the twenty-six white jurors who were potential for a strike rate of 15%. Secondly, they excluded many of those African American jurors, but they couldn't exclude them all because the prosecutor ran out of challenges. And some of the additional jurors who got on the jury because she had no more challenges to exercise were black. And if she could have struck them she might would have, but she couldn't because she ran out of challenges.

The interesting third part of this is if you go read the judge's findings and then the record in this case, the judge found that the reasons that prosecutor in that struck ten of those nineteen African American jurors were so "transparently pre-textual" that he came close to finding that she perjured herself on the witness stand. And just for the record, let me tell you three things that came out—and this is of many findings. So the State struck black minority member Jay Whitfield "because in part he knew some gang guys from playing basketball." The record showed that that juror had potential limited contact with certain individuals during a pick-up game and he overheard them talking about potential gang activity. He was asked by the prosecutor would that affect his decision and he said that that exposure wasn't going to affect him at all. But the State struck him. However, they didn't strike a non-black jury

member named Tami Johnson who'd gone through basic training and become "good friends" with a gang member and also testified she knew people in high school who were in gangs. That was one example, said the judge.

Second example, said the judge: the State submitted an affidavit asserting that in this case the prosecutor struck a black juror, Ellen Gardner, because her brother had been convicted of drug charges and received five years house arrest. And by the way, that's a legitimate reason to strike a juror in and of itself. The problem, of course, is, said the court, that her explanation that that's why she struck the juror was implausible for a couple of reasons. One, the transcript revealed that Gardner wasn't close to her brother. She testified she believed he'd been treated fairly by the system and that her experience wouldn't affect jury service. Okay, you may or may not believe her. Her brother's experience was six years before jury selection. Well, that may or may not be sufficient. But here's the problem: the prosecutor then went on and accepted a non-black, a white jury member, Amelia Smith, whose brother was then at the moment she testified in jail for first degree murder and she was in touch with her brother through letters. Now you go explain that one.

And finally--this is again just several examples--the State struck minority member Calvin Smith because he was seventy-four years of age, they said. Alright, but in other cases tried in nearly the same county, same area of time by the same prosecutor, she accepted white jurors who were seventy, seventy and seventy-three years old. Now I admit there's a difference between seventy-three and seventy-four and I appreciate each year at my age, that one year. But those are what we're talking about.

Those are transparently pre-textual reasons for strikes. And I don't know...I wasn't the judge who decided this, but he found that, among many others were so obviously aimed based on the sheets that the prosecutor had where she was checking off using anything she could to get black jurors off, that that violated the Constitution. Our job here isn't to say whether he was right or wrong or whether she was. But our job is also not to cut off the process.

I'm going to close my comments with a very personal comment. And I take this act very personally because I don't think it was and I've never said it was written the best way. And I am a pretty deep believer, like Representative Jackson actually, in capital punishment. I would have had no problem voting for the death penalty for every single defendant at the Nuremburg trials and I wouldn't have any problem voting in a lot of egregious cases. But I also probably know more than anyone else on this floor, having been appointed by the court to defend defendants in eight capital cases and then eight on appeal, that sometimes we get it right and sometimes we get it wrong. I said this to my caucus and in our committee. I know some of these prosecutors. Some of them are good friends and they, in many cases, have no race-based bones in my view in their body. But they also were a product of their culture and their training and their time. I'm a product of my culture and training and time.

I grew up and my mom grew up in a very white area of Pennsylvania and I loved her very much. She died twenty-five years ago. But my mom grew up teaching me when I was a kid that I wasn't allowed to go in a swimming pool if a black person was in that pool. It took me a long time to realize as a kid how wrong my mom was. I never stopped loving her, but she was wrong and I had to face that and move past it. And the prosecutors that made these strikes were good people, but they were wrong. And we have to acknowledge that and then try to make sure that we do better. And we cannot acknowledge it by throwing away the Racial Justice Act. Thank you.

**Speaker Tillis:** Representative McNeill, please state your purpose.

**Rep. Allen McNeill (R):** To debate the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. McNeill:** Thank you. I'll be brief. There were a lot of names read on the floor yesterday. I want to read another name: Tony Summy. April the 27<sup>th</sup>, 2003 was a quiet Sunday. And I got a phone call at home that would change my life tremendously. Tony Summy was one of my deputies sheriffs, worked for me for several years. Got a call that he and another officer had been shot. I responded to that scene, and I saw that deputy lying on the front steps of that trailer, his blood spread on the ground where the person he was trying to serve a warrant on had taken his gun away from him and shot him in the chest and in the neck. And he lay there and he bled to death. The officer that was with him...the same defendant pointed the gun between his eyes and was fixing to pull the trigger and the gun malfunctioned giving the officer just a few seconds to escape. But the guy followed him, shot him in the arm. He almost bled to death before help could get there. He was airlifted. Luckily he lived.

Now the person that did all that, when he came to trial he pled guilty, so he was found guilty. The trial was the punishment phase where you either get the death penalty or not. He did get the death penalty and he's on death row now. Now he was officially listed as an American Indian, but I don't believe that jury found him guilty because of



his race. I think that jury found him guilty because he was a hard-working deputy sheriff out trying to do his duty, because he committed the crime and he deserved that punishment. I don't think any law is fair—whether it was passed last week, today or next week—that allows anyone to cite statistics—statewide statistics—in the repeal. If something was done wrong in that trial it should serve on its merits and it should be investigated. And if a district attorney or a judge or somebody did something wrong in that particular trial, that's fine. They should have to stand for that and the wrong should be made right. But the use of statewide statistics to overturn or to look at some of these convictions in my mind is totally wrong and it will never be right, no matter what anyone says. Thank you.

**Speaker Tillis:** Representative Collins, please state your purpose.

**Rep. Collins:** To briefly debate the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Collins:** First of all, let me say to Representative Jackson I empathize with you extremely and I would never try to divine what your motives are or anything—but welcome to my world. I can't tell you how many times in the last three years I've had people from the other side of the aisle tell me what a horrible person I am because they can read my mind and tell exactly why I'm voting for a bill. So I have great empathy for you on that. I would never try to tell anybody what their motives are because I simply am not a mind reader. I've never been good at it, don't claim to be.

I do know that I and most people on my side of this issue believe that the Racial Justice Act, regardless of what the intent was, has been basically a de facto moratorium on the death penalty. I didn't realize though that the public on the other side of this issue also feels that way until I began to get an email earlier this week—the very same one at least five times. And it's only two lines long and my response is only three lines long, so I'd like to read it to you. That email says, "Dear Representative, please vote against S306. The bill will amend the capital punishment law and will effectively reinstate the death penalty in North Carolina. I believe that capital punishment is wrong and I urge you to oppose this legislation." My response was: "I agree that the bill will reinstitute the death penalty and thank you for your honesty on this matter. Most proponents of the so-called Racial Justice Act will not admit that it is in effect a moratorium on the death penalty. For my part, I believe the death penalty is reasonable justice for those who wantonly take innocent human life, so I plan to vote for this bill."

I would encourage you to do likewise so that we can relieve our state from this de facto moratorium on the death penalty.

**Speaker Tillis:** Further discussion, further debate? If not, the question before the House is the passage of the House Committee Substitute to Senate Bill 306 on its third reading. All in favor vote aye, all opposed vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. Seventy-six having voted in the affirmative...The Chair will be recorded as having voted aye. Seventy-seven having voted in the affirmative and thirty-nine in the negative, the House Committee Substitute to Senate Bill 306 has passed its third reading and will be returned to the Senate.

~ Fin ~

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**SB 353 – Health and Safety Law Changes**  
**Remarks on 2nd and 3rd Readings**  
**July 11, 2013**

*The media claimed that this 2013 pro-life bill was passed by trickery in the “dead of the night.”  
For a refutation of that nonsense see [this article](#). Lawsuits were threatened but none were ever filed.*

Audio available at [this link](#)  
Debate begins: 02:20:45

**Speaker Thom Tillis (R):** Senate Bill 353, the Clerk will read.

**Reading Clerk:** House Committee Substitute for Senate Bill 353, a bill to be entitled an Act to modify certain laws pertaining to abortion, to limit abortion coverage under health insurance plans offered under a health benefit exchange operating in North Carolina or offered by a county or municipality, to prohibit a person from performing or attempting to perform an abortion when the sex of the unborn child is a significant factor in seeking the abortion, to direct the Department of Health and Human Services to amend rules and conduct a study pertaining to clinics certified by the Department of Health and Human Services to be suitable facilities for the performance of abortions, to amend the Women’s Right to Know Act, and to increase penalties for unsafe movements by drivers that threaten the property and safety of motorcyclists. General Assembly of North Carolina enacts.

**Speaker Tillis:** Representative Samuelson, please state your purpose.

**Rep. Ruth Samuelson (R):** To debate the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Samuelson:** Ladies and gentlemen, we all know that this is a controversial bill, and I would be lying if I didn’t tell you sometimes this makes me a little nervous. This is the second time today I get to handle a Senate bill. Fortunately though, on this one most of it’s a bill that we’ve already passed. But before I go into the details, I just wanted to reiterate that this is really all about protecting the health and safety of women. We are not out here trying to shut down the...the word’s been “shut down every abortion clinic in North Carolina except one.” What we are attempting to do is to protect the health and safety of women by raising the standards of many of those clinics—standards which have not been raised since 1994.

There are a number of facts that will still—they’re true now—that will still be true when we’re done. One is Roe v. Wade will still be legal. But the other fact is that problems do exist in our abortion clinics, and we need to address some of those. And so that’s what we will do.

As I go into the details of the bill, I’m going to skim through the first parts and focus most of my explanation on the parts that are new to this floor...to this body.

Oh, but there was one thing...Sorry, I’ll be less formal. I did want to address the process that got us to where we are right now. Over the course of this session we had passed a couple of other bills that are now incorporated here, and we sent them over to the Senate. They took those pieces, put them together, added a piece of their own and sent it back over to us. The normal reaction we would do is to concur or not concur. If we had chosen to concur, the only debate on their changes would have been here on the House floor – no opportunity for amendments and only one debate. If we’d chosen not to concur, the normal action would be we would not concur; we would appoint a small conference committee; those people would meet in private; they’d bring it back and the only public debate would be on this floor one time.

By doing it the way we’ve done it here, what we have allowed is for there to be a public hearing that we had on...Tuesday (I lose my days sometimes here)...on Tuesday to let the public voice their interest, their concerns about this bill, to let members do the same thing, and most importantly to let Secretary Wos of the DHHS address the concerns that she and the Governor had with some of the way the language had been done. We then took it before a committee and had that committee thoroughly debate the bill, had opportunities for amendments, and now we’re bringing it back here under a very public process.

So I want some of the people who have complained about the process and how this has happened to understand that we have had more debate and more opportunity for change, discussion and corrections under this process than we would if we'd followed the normal process of concur or not concur. So with that said, I'd like to go over the details of the bill and then we will open it up for questions.

On the first section which starts on page 1, line 18—the Healthcare Conscience Protection Act—this portion all the way over until you get to part 3 on page 2 was included originally in our Conscience Protection Act which was sponsored, as a reminder, by Representatives Schaffer, Martin, Conrad and Brown.

Then if you get over to the next section which was the part that says, “Clarify law/prohibit sex-selective abortion,” I was the primary sponsor on that. Once again, we had a lot of debate on that one when it came through the first time. It was me, Pat McElraft, Representative Turner and Representative Schaffer. And all of that goes around till we get to the portion that is now on the Amend Woman’s Right to Know bill, and I will not forget to mention the motorcycle portion when I’m done.

Amend Woman’s Right to Know Act—what I’d like to do is go through those and talk about the way it came over from the Senate and then how we fixed it based on what the feedback was that we got back from DHHS.

The first section was amending the Woman’s Right to Know bill having to do with the physical presence of the doctor during the abortion, whether through a clinical abortion or whether it was through a pharmaceutical abortion. When we got it over from the Senate it included a requirement that the doctor be physically present not only when they were performing the clinical procedure but also for all three doses of the abortion pill. It can sometimes be two doses; often it’s three doses. The DHHS Secretary had concerns about that on the basis of the health and safety of the woman. Her complaint, which we eventually began to agree with, was that when the woman takes that first dosage of her pill and then she’s supposed to take the second one, there’s a timeframe within which she should take that second pill. If for some reason—car breaks down, family crisis, or whatever—she could not get back to the clinic in order to take that second dose in time, that could jeopardize the health and safety of the woman. So we agreed on that point and decided that we would make it so that the doctor is only physically required to be present for the first dosage of the pill. We felt like that was a reasonable concession for the health and safety of the woman.

The other reason (People asked us, “Well, why does the doctor even have to be physically present for the first dose of the pill?”) was because part of the abortion procedure is making sure that the woman is at the point in the pregnancy where she is supposed to safely be able to take that pill. There had been concerns, there’d been anecdotal stories in the past that there were women who had gone there, gotten their pills, taken them and given them to someone else. So we wanted to make sure that her safety was protected by having her take the first dose there, and then she can have the others to take home and take.

The second section that’s new has to do with information on the state website. If you remember from the Woman’s Right to Know bill we do have a state website now that gives all the information for women about abortion. The one thing we had not done was list the resources that a woman may contact for assistance if she finds out after the ultrasound that her unborn child may have disability or serious abnormality. And so we wanted to make sure that they knew where those resources were should they need that kind of information which is one of those unfortunate things sometimes as the mother of a child with special needs.

Then we got to Section 4. This is the one that got the most controversy. The way it came over from the Senate was that the DHHS was to write rules to review the standards for our clinics that had not been reviewed since 1994, and it was to raise them to the level of the ambulatory surgical care center. The concern had to do with the fact that an ambulatory surgical care center does things other than just abortions. It does...I don’t even know if they do abortions, but they do other things, and so therefore their standards are broader and different than what you might need for an abortion clinic.

So what we did was we rewrote those so that they only apply if they’re relevant to the issue of having an abortion. It has on here that they must do so in order to not...Let’s see, wait a minute...the standards applicable for clinics certified by the Department to be suitable facilities for the performance of abortions. So the complaint that it was bringing all kinds of standards that would shut down the clinics has been taken care of in this adjustment.

The other thing we added in there was language that says they must make these changes *while not unduly restricting access*. The concern had been that if we made these standards too hard we would be restricting access to women for the clinic. And so therefore we made sure that it says, “while not unduly restricting access.” So we have made those standards. The DHHS Secretary agrees with them.

And as a little background (I think one of my other members will speak later; they’ve got the documentation), while changes were made twice in the seventies, once in the eighties and once in the early nineties, those standards have not been updated since then and it’s time to look at them and make sure that the health and the safety of the women are up to current standards when they’re doing these types of procedures.

Another new section that actually came out and I'll thank Representative Insko. I don't see her here—but she helped bring this up when we were in the public hearing. The Secretary mentioned concerns about inspections—that they're supposed to do these inspections but they can't get them done as often as they should do them. And the Secretary's response was an issue with staffing, trying to know how should they do inspections, how should the inspections be done. So we added a new section that directs the Department to do a study and come back to us in the short session and tell us what they think should be the protocol for inspections and how to get those inspections done and how much would they need from us in an appropriation to make sure that those facilities are inspected on a regular basis.

In a way, this also ties into the one about increasing standards. Our Doctor Fulghum in one of the meetings brought up a correct statement, which the Secretary confirmed, which is many of these clinics are up to really good standards, but they haven't been inspected in so long that we can't make sure that they are in compliance. So it's the combination of getting the standards where they need to be and getting the inspections done in such a way that they can be handled safely. That's all the new part on the abortion clinics.

The rest of it has to do with motorcycle safety. It's not motorcycle helmets. I know many people asked if it was motorcycle helmets; it's not motorcycle helmets. It's basically for another safety issue. If someone's on a motorcycle and you run them off the road, there ought to be some sort of penalties. And so what they did is look at how do we make sure that for motorcycles, who are all sharing the roads with cars, that if there is a violation that they are appropriately dealt with legally.

That's the gist of the bill. That's not the gist necessarily of all the issues we will hear today. Abortion is a very sensitive subject; I'm aware that it's a very sensitive subject. We have lots of different opinions on it. But I will say that personally it matters a lot to me that we respect the women who are faced with these decisions but we do so in such a way as we did with the Woman's Right to Know bill of making sure that they have all the information that they need in order to make that abortion decision in a safe and informed manner. But on the other hand we also need to make sure that the facilities they go into are properly inspected, are properly up to standards and that they are not putting their health in danger once they make that decision to move forward. I urge your support of this bill.

**Speaker Tillis:** Ladies and gentlemen of the House, at this time the Clerk advises the Chair that there are no amendments in possession of the Clerk. Any member wishing to send forth an amendment will have a deadline of 1:15...I'm sorry, 2:15 to send forth an amendment in order for it to be in order. Any amendment submitted after 2:15 will be ruled out of order. Representative Avila, please state your purpose.

**Rep. Marilyn Avila (R):** To debate the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Avila:** There's not an awful lot—thank you, Mr. Speaker—that I can add to the wonderful comments that Representative Samuelson made because I stand before you as conflicted as quite a number of us do in here over this particular issue.

A few weeks ago I stood up and told you that I could not be judged on my votes by simply who I am as a woman, as a Christian, as a southerner, as a Republican—and I'm split between the people that I am and this vote. As a Christian, a woman and a mother I'm very much opposed to abortion. I believe in birth beginning at the moment of conception, and I believe that all life is holy and should be honored. But I also understand that as a legislator I am bound by my oath to enforce and support the laws of the land which, as Representative Samuelson pointed out, is Roe v. Wade. And I, as a State Representative, am in no position to bring about change at the level that that law is enforced.

But what I am able to do as a State Legislator is to make sure and certain that every woman who faces that horrible decision and makes that choice to have an abortion because of her personal circumstances is guaranteed by the State of North Carolina that she's walking into the safest and most up-to-date facility to handle her at that moment of need, whatever it may be, as simple or as complicated as it may turn out.

It absolutely appalls me that for nineteen years we have not looked at and reviewed and updated the standards and requirements of facilities that take this type of step surgically, medically in a woman's life. Nineteen years ago I'm sure a lot of us walked into a doctor's office and they reached over into a bottle of alcohol and pulled out a thermometer and shook it down and stuck it in your mouth. They don't do that today. They've got a digital thermometer that has a disposable cover. When they finish with it they throw it away. Don't you say that there have

been some changes that we need to look at, we need to consider to make sure that the optimum safety for the women in the State of North Carolina is taken care of by the people in this body? Thank you.

**Speaker Tillis:** Representative Conrad, please state your purpose.

**Rep. Debra Conrad (R):** To debate the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Conrad:** Thank you, Mr. Speaker. Well, as Representative Samuelson pointed out, I was one of the primary sponsors on the original bill that is Section 1 and 2 of this new bill. Just to briefly remind you of what those were: it regarded healthcare workers who might have religious, moral or ethical objections to participating in an abortion procedure, and also that taxpayer funds would not be paying for abortions through the new exchanges set up by the Affordable Care Act.

But I really want to address most of my comments today to the new section that was added by the Senate and clarified by the House over a very open and deliberation procedure in both the Health and Human Services Committee and also on Judiciary B, of which I am a member. I am really quite glad that this section was added, actually, because I am very concerned about regulations in healthcare. We debate regulations on this House floor on a lot of issues—energy, building—for all types of businesses, and we have differing opinions on the degree or complexity or necessity of those regulations. But I would think on this issue—and I’m talking about broader healthcare, not just abortion procedures—that we would all be on the same page that we could not have a deficiency in regulations and standards for the safety, regardless of what medical procedure you’re going to have.

I guess in my life I’ve had a unique combination of experiences that really emphasized the importance of this to me. I’ve had the opportunity to be on the Board of Trustees of one of the largest healthcare companies here in North Carolina for a dozen years, and we spent a lot of time talking about the quality of care and regulations and what new procedures we need to put in place to protect the patients from something as simple as making sure all the employees wash their hands to more complicated procedures.

I had the experience in one of my first positions of actually being a healthcare worker. I was a chemist and microbiologist in a laboratory, and I can tell you you’re very well trained in the importance of procedures. Now I often say that probably was the most stressful job I had. When you know that the accuracy of a test that you’re doing could affect someone’s life or their treatment, or a doctor would give me a call and say, “What antibiotic is the one that is going to help my patient the most,” and I had to give him an answer—I can tell you I have known the importance of healthcare regulations.

Also, from a small child I’ve had a lot of orthopedic surgery, from the time I was four years old until a couple years ago. And as the patient you get a third dimension of perspective of how important healthcare regulations are. And as many regulations as there are, there are often still significant events and things that go wrong in healthcare.

But we need to do, whether we’re talking about something as important as abortion, we need to make sure that the safety of those who are undergoing those procedures have no deficiencies and we can’t let the fact that we’re dealing with something of such an emotional nature hinder us in pursuing inspecting on a more frequent basis these abortion clinics but also imposing new and higher standards and I ask for your support for this bill.

**Speaker Tillis:** Representative Schaffer, please state your purpose.

**Rep. Jacqueline Schaffer (R):** To debate the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Schaffer:** Thank you, Mr. Speaker. Ladies and gentlemen, we’ve already heard it mentioned a few times already this issue of the abortion right that is protected under *Roe v. Wade*. Since 1973 when the Court acknowledged that women had this right to an abortion, it has come up with some other very important qualifiers to that right.

What we know is that a woman’s right to an abortion does not exist in a vacuum. This very important qualifier is that the State has an important interest in promoting the health and safety of women who would seek an abortion. As such, reasonable regulations and limitations may be placed on the method of abortion, the processes surrounding it so that we can promote the health and safety of women.

Recent events in our state, just as recently as this past Friday afternoon, have indicated that we as a whole as a state are doing a poor job in advocating for that right and promoting that health and safety of women choosing an abortion. On this past Friday afternoon, DHHS shut down the Baker Clinic for Women in Durham because (and I quote), “conditions at the Baker Clinic for Women present an imminent danger to the health, safety and welfare of clients, and that emergency action is required to protect the clients.”

Now I have the complaint; I want to read a few lines from that. It says, “The investigative findings revealed potential imminent threat to the health and safety of patients. Based on the survey findings, the facility failed to ensure quality control was performed in blood banking. Based on the survey findings, the facility failed to perform quality control testing on one-hundred and eight patients that received RHD testing, failed to ensure that *[audio unclear]*...anti-D blood *[audio unclear]*...reagent manufacturer’s performance specifications were verified prior to patient testing, failed to ensure a positive and negative red blood cell control material was tested at least once daily when RHD testing was performed, failed to follow...” and I could go on. What we have here is...

**Rep. Beverly Earl (D):** Representative Schaffer? Mr. Speaker?

**Speaker Tillis:** Representative Earl, please state your purpose.

**Rep. Earl:** I’d like to ask the lady a question.

**Speaker Tillis:** Does the lady yield?

**Rep. Schaffer:** I would be happy to yield at the end of my statement.

**Rep. Earl:** Thank you.

**Speaker Tillis:** The lady may continue.

**Rep. Schaffer:** Thank you. What we have here is a theme of problems in the laboratory, problems with blood testing, etc. Many have said that since the Baker Clinic was shut down that that means that our regulations are working. If this were an isolated incident, however, I might be persuaded to that effect, but that’s simply not the case. I have copies of some of the complaints that have come against abortion clinics over the last decade and a spreadsheet that lists these recurrent complaints, and we find that they are coming against the same abortion clinics for the same reasons time and again.

I’ll give one brief example. We have in Raleigh Preferred Women’s Health Center. In 2008: no proper procedures for collecting blood specimens. It did not meet HHS proficiency standards. It lacked reported proficiency evaluations from some testing personnel. Then we have similar a short time later further deficiencies listed for laboratory incidents. We have the same clinic time and again having problems with their RH blood testing, their HDG testing. We have a lot of breakdown in the laboratory.

When you go through the full list—and it really is a long list—we have this recurring theme. There’s a blatant disregard for standards, repeated lab deficiencies, failure to properly administer drugs and this improper RH testing and HDG testing, as I mentioned. We do have a problem here, it is recurring and we need to do something to fix that. The current regulations and the inspections, as few and far between as they are, are simply not solving the problem for us.

Now I have a copy of the regulations governing our abortion clinics, and they pale in detail and in breadth in comparison to what we require for our ambulatory surgical centers. Interestingly enough, not that I’m saying that we need to do it this way, but they also pale in detail and in breadth to what we require of animal shelters and things promoting animal welfare. And I would submit to you we need to be protecting and promoting the health and safety of women with at least the same amount of detail and care that we would regulate what’s going on in our animal shelters. But of course, we are talking about abortion, so perhaps the discussion of animal and even ambulatory surgical centers is a bit misplaced.

That being the case, I’d like to draw your attention to this packet that I have. This comes from the National Abortion Federation and is the 2013 Clinical Policy Guidelines. The mission of the National Abortion Federation is to ensure that women have legal, safe, healthy access to the abortion procedures. So everything that they’re doing in this packet is to ensure the safety of women in approaching this medical procedure. This fifty-five-page set of guidelines certainly overshadows the eleven pages of guidelines that we have for our current abortion clinics.

One particular guideline that I'd like to mention, simply because it has been mentioned time and again in the complaints against abortion clinics in this state, has to do with RH testing. One of these standards is that it says, "RH status must be documented in all women undergoing abortion," and then it goes on to explain the reasons why, the data supporting that, that there is no data that supports that a lack of that testing is okay. This is a repeated offense that's going on in our clinics and we must address this.

Our regulations governing these abortion clinics have not been updated since 1994, as we've heard. We have major problems that are going on in this State. They need to be addressed. This bill simply authorizes HHS to review and update our rules and our regulations governing these abortion clinics so that we can fully promote that State interest that we have in protecting the health and safety of women. This gives HHS tools in their toolbox in terms of promoting the health and safety of women. I urge your support of the bill.

**Speaker Tillis:** Representative Earle, does the lady wish to state her question at this time?

**Rep. Earle:** Yes.

**Speaker Tillis:** Ladies and gentlemen, just also for the purposes of time and counting, it is the opinion of the Chair that any questions posed, the time to pose the question and to respond to the question will be counted against the fully allotted time for the member posing the question to debate the bill. The lady may state her question.

**Rep. Earle:** Thank you, Mr. Speaker. In committee the other day the Secretary indicated that if she had adequate funding she could do more inspecting. And you mentioned, and it seemed to be a negative indication, that there was a facility that was closed in Durham. There was also one closed in Charlotte. Do you not think that that is a good thing and an indication that the system is working? It was closed, so do you not think that that was what should have happened?

**Rep. Schaffer:** Well, this is the point that I made that when we have repeat offenders time and again that they are consistently being written up for the same offenses for the same blood testing problems with the same failure to do their duty under these regulations—yes, we do have a problem. The regulations aren't working because clinics are not upholding their duty under these regulations. They're being cited for the same problems time and again.

**Rep. Earle:** Follow-up?

**Speaker Tillis:** Does the lady yield?

**Rep. Schaffer:** Yes.

**Speaker Tillis:** The lady yields.

**Rep. Earle:** Was there an indication that there was a continuation or prior violations with either one of these?

**Rep. Schaffer:** Yes, there have been several problems with the Charlotte clinic. The Durham clinic has been open only for a few months. But, I mean, I gave a few examples. I've got other clinics that I'm referring to. We have quite a bit of documentation that demonstrates that these clinics are engaging in repeat problems. They're failing to discharge their duty under these regulations, and they are being cited time and again for the same problem. They're being shut down, then they're reopening when they get up to par, and then they're being shut down again when they violate.

**Rep. Earle:** Follow-up?

**Speaker Tillis:** The lady yields.

**Rep. Earle:** That was not the indication that we got from the committee. But again, is that not the way that the system is supposed to work? If there is a violation, should they not be closed? And that is exactly what happened.

**Rep. Schaffer:** Absolutely, they should be closed...

**Rep. Earle:** Yes or no please, ma'am, if you don't mind.

**Rep. Schaffer:** No, I'm going to answer the way that I would like to answer it...

**Speaker Tillis:** The members will yield. The Chair will direct the discussion. There will be no discourse after the question is stated...

**Rep. Earle:** Yes, sir.

**Speaker Tillis:** ...unless it's directed through the Chair.

**Rep. Schaffer:** Absolutely, it is the way that it should work.

**Rep. Earle:** Okay, thank you.

**Rep. Schaffer:** These clinics...

**Rep. Earle:** Thank you, ma'am.

**Rep. Schaffer:** ...should be shut down...

**Speaker Tillis:** Representative Earle, the Chair again will direct the lady after the lady's asked the question, the member will be provided time to answer the question.

**Rep. Earle:** Thank you. I was just acknowledging that I appreciated her answer.

**Speaker Tillis:** And the Chair would like for the edification of the other members up to and including thanking the Chair or the member before the member is completed with answering the question will be out of order...The lady may proceed.

**Rep. Schaffer:** Thank you, Mr. Speaker. It is the way that the system should work, but the problem is that the system is not holding these clinics accountable. Shutting them down time and again, time and again, time and again shows that ultimately these clinics are not operating the way that they need to be operating. If we can allow HHS to have further, more frequent inspections, that we can have standards that are more in line with what even the National Abortion Federation requests...I mean, our standards would not even come up to those standards. So ultimately we do need to get these things up to par.

**Speaker Tillis:** Members, also with respect to the rule, the Chair would ask any member interested with respect to the Chair's ruling on any discourse or questions asked members as they're speaking to refer to page 52 of your Mason's Manual, Section 61, paragraph 2. Representative Adams, please state your purpose.

**Rep. Alma Adams (D):** Thank you, Mr. Speaker. I'd like to ask the bill sponsor a question and I'd like to speak on the bill.

**Speaker Tillis:** Representative Samuelson?

**Rep. Samuelson:** I yield.

**Speaker Tillis:** The lady yields.

**Rep. Adams:** Thank you. Representative Samuelson, this bill, you say, is all about safety. And it does, as I look at it, target women's health clinics that provide abortion. My question is have you investigated other medical clinics or doctors' offices that provide much higher risk procedures than abortion to determine if there have been violations?



**Rep. Samuelson:** Those have been done by others. It was not part of my research on this bill that came over from the Senate. I've been assured that they have. I also have confidence that our DHHS Secretary will let us know if there's a need to change any of the standards in other branches, or if they're having problems with inspections on those, as well.

**Rep. Adams:** Follow-up?

**Speaker Tillis:** The lady yields.

**Rep. Samuelson:** I yield.

**Rep. Adams:** So you're saying that you don't know or, I mean, you don't have any data at this point?

**Rep. Samuelson:** I know that these things have been done, but it's not the data that I was collecting at this point. That's not what I was charged with. I do know that ambulatory care centers do automatically have higher standards than what we've currently got for our abortion centers. Our abortion centers need to be brought into the 21<sup>st</sup> Century.

**Rep. Adams:** Okay. One last question, Mr. Speaker?

**Speaker Tillis:** The lady yields.

**Rep. Adams:** You talked about the process and the procedure, and you sort of said that it was open. I'm curious about why the public was not given notice about the bill change, especially when it went to the J Committee, and it comes out under another number and name.

**Rep. Samuelson:** Well, we gave four days' notice, as I recall, on the public hearing that had to do with the Health Committee. On that particular one—yes, it was quick. It's the end of session; things move more rapidly at this time of year. However, as I pointed out, it was still an open process in a committee as opposed to a conference report, which is not an open process.

**Rep. Adams:** Okay, one final question on that?

**Speaker Tillis:** Does the lady yield?

**Rep. Samuelson:** I will yield for all questions.

**Speaker Tillis:** The lady yields.

**Rep. Adams:** Okay. And so you indicated—I was in the J committee when I heard that the meeting was going on—but you said you worked this out with the Secretary and the Governor the evening before?

**Rep. Samuelson:** No, we worked it out up to the last minute.

**Rep. Adams:** Okay. To speak on the bill, please?

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Adams:** Thank you. Members of the House, it does appear to me that there were meetings in private and that there was not full disclosure around this bill. But I just want to stand in opposition to Senate Bill 353—a.k.a. 695. As a woman I am personally insulted by the maneuvers around getting this bill to the floor today. We appreciate the time that has been allotted to allow us to at least have some comment about it at this point because actually I sat in when the bill was in the Senate, and that bill came to that floor hurriedly—no input from legislators even as well until they got to the floor. But you know, we've made a mockery of women's health and safety by taking a motorcycle bill, gutting it in order to pass the most sweeping legislation that will affect women's lives.

And I can't think of, as long as I've been here, what other bill that would focus on any other issue—especially health—that we would not allow, that we would not seek out input from stakeholders, from other professionals in those fields. None, absolutely none. There was no input allowed or requested from any women's health center provider who offer health care services that include safe, legal abortions; no weigh-in from physicians who provide abortion care about the restrictions and the regulations that would be required for them.

And as contentious and as sensitive as this bill is, we deliberately put up all kinds of barriers to keep the public out. There was no real transparency. There's been insufficient public notice about where and when the bill would be heard. As a matter of fact, the bill came under another name: the Bicycle Safety Act, or the Motorcycle Safety Act. The bill targets...

**Rep. Sarah Stevens (R):** Mr. Speaker?

**Rep. Adams:** It targets...

**Speaker Tillis:** Representative, the lady will yield. Representative Stevens, please state your purpose.

**Rep. Stevens:** Just a point of order. I know, I think she wants to talk about the bill and we have mentioned process because it's been such a big issue, but I believe she is going quite far afield here.

**Speaker Tillis:** The point is well taken. The lady may proceed.

**Rep. Adams:** This bill targets the women...

**Rep. Larry Hall (D):** Mr. Speaker?

**Speaker Tillis:** Representative Larry Hall, please state your purpose?

**Rep. L. Hall:** A point of order.

**Speaker Tillis:** The gentleman may state his point.

**Rep. L. Hall:** Mr. Speaker, if my memory serves me correctly, the prime bill sponsor took extensive time in explaining the process by which the bill came to the floor and put that in the record, and I would hope that we also could deal with the relevancy of that in addressing the bill.

**Speaker Tillis:** Representative Hall, you'll note that the Chair did not provide any additional directions to Representative Adams, but the Chair would remind everybody that the time is limited. Some of Representative Adams' has already been allocated for questions and if she wishes to speak on the content of the bill, it may be something that she would wish to keep in mind.

**Rep. Adams:** Thank you, Mr. Speaker. The bill targets and it singles out women's reproductive clinics that perform safe and legal abortions, but it doesn't target other agencies, as well. It is an unnecessary bill. It is not needed. Regulations are in place and they're working. So if it's not broke, why are we trying to fix it? Laws in our state...

**Rep. Stevens:** Mr. Speaker?

**Speaker Tillis:** Representative Stevens, please state your purpose.

**Rep. Stevens:** I'd like to see if Representative Adams would yield for a question.

**Rep. Adams:** No. No, I will not yield. I'd like to get through my comments.

**Speaker Tillis:** The lady does not yield.

**Rep. Adams:** Laws in our state regulating clinics that provide safe, legal abortions are working and they have been working. And you've heard that when we found instances where they weren't working, they were shut down—and that's exactly what should have happened. This bill is a decoy; it's an attempt to regulate something that's already regulated. When rules already work and when we find that they're broken, we fix them.

Now without commenting on the intent of the bill sponsors, I will say that if these regulations are imposed and if they are implemented, the end result will be that clinics that provide abortion care will be put out of business. The result will be the elimination of women's access to safe and legal abortions, and that is a constitutional right that we have as women. Now of the seventeen clinics in North Carolina only one would meet the standards outlined in this bill, and we still don't know what all of those standards will be. But when these clinics are shut down, safe, legal abortions are no longer accessible to women who need them. And other critically preventive health services that many of these agencies provide like preventive services and pap smears and cancer screenings—those things will not be available, as well.

So if we really cared about women's health, about her safety, why are we rushing this bill? What is the rush? Now I realize that this is a motorcycle bill, and they move pretty fast—but why wouldn't we want to get stakeholders and citizens when we're crafting this bill, why wouldn't we want to get them involved? Why wouldn't we want to get the input from abortion providers? Why wouldn't we want to know what this bill costs? We don't even have a fiscal note. And why have we been so afraid of public scrutiny? And so why would we push so hurriedly for the establishment of rules when the DHHS Secretary has already said that they don't have enough staff to do what's required of them right now?

Well, let me tell you what I think. I think and I believe—I truly believe—that this bill is about limiting choices for women to make the choices that she needs to make about her body. We don't need to be making those choices for her. This is not a compromise bill. It's not about safety; it's about not allowing women to choose. It's about limiting her right to make that choice. This bill, the way it was handled makes it clear to me that it's about politics. It's not about women's health; it's not about safety.

Ironically a.k.a. 655 now 353—Family, Faith and Freedom—it doesn't do anything to support or respect family, or me as a woman, or me as part of a family. It does nothing to restore my faith in this General Assembly's ability to respect or to trust women to make personal decisions that only she and her doctor and her family ought to make. Vote no on this incredibly horrible bill.

**Speaker Tillis:** Representative Farmer-Butterfield, please state your purpose.

**Rep. Jean Farmer-Butterfield (D):** To debate the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Farmer-Butterfield:** Thank you, Mr. Speaker. Ladies and gentlemen, I strongly encourage all of you to vote against Senate Bill 353. This bill is just another ploy to control women's abortion rights by imposing excessive and unnecessary requirements. It is a trap.

These antics did not work through House Bill 695, so instead the Senate places almost identical within Senate Bill 353. Senate Bill 353 was intended to keep motorcyclists safe, not regulate abortions. The requirements of ambulatory surgical centers have been eliminated. However instead, the authority has been granted to the Department of Health and Human Services to apply requirements for the licensure of ambulatory surgical centers if standards are applicable. This could still close clinics in North Carolina depending on what the Department decides to do—might be cost prohibitive. These other additions to the bill are still an attempt to control women's abortion rights rather than protect their health and safety. They limit; they restrict; they control.

Senate Bill 353 would eliminate insurance coverage for abortion in certain insurance plans and limits the funding under other health plans, including county and city employees' plans. This is an attempt to limit access and the ability to pay for legal abortions. Women who want this medically legal procedure, whether surgical or chemical, should be assured that the decision is a private one controlled by them, their family, friends and physicians, as Representative Adams said.

Are these regulations really necessary to protect women's health, or are they a decoy for another agenda? This is an anti-women's bill in disguise, a wolf in sheep's clothing, and another attempt to try to slip in anti-abortion legislation with little public notice. Women seek to be in charge of this process, but some of our fellow legislators are trying to take control of this process.

North Carolina already has intense regulations on abortions and clinics that perform them for safety purposes. This bill is not about safety; it is about limiting choice. There's no medical or scientific basis for actually promoting women's health and safety with these proposed restrictions. It is just an honor-less and biased bill. More than half of the states now have laws instituting honor-less and irrelevant licensing requirements known as targeted regulation of abortion provider laws—a trap.

There needs to be more research done, additional inspectors hired, actual safety precautions instead of proposing anti-abortion legislation. That's where the money needs to be going, as pointed out by Secretary Wos of the Department of Health and Human Services. These facilities need to be regulated by the Health Service Regulations section of the Department. Yes, they need to be visited more than every three to five years to monitor and enforce.

This is a trap. This has absolutely nothing to do with protecting us women and everything to do with shutting down clinics across these United States. This is a wolf in sheep's clothing. Don't fall for this trap. North Carolina is better than this. I plead you vote no on Senate Bill 353. Thank you.

**Rep. Stevens:** Mr. Speaker?

**Speaker Tillis:** Rep. Stevens, please state your purpose.

**Rep. Stevens:** I want to see if Representative Farmer-Butterfield would yield to a question.

**Speaker Tillis:** Does the lady yield?

**Rep. Farmer-Butterfield:** I'll yield.

**Speaker Tillis:** The lady yields.

**Rep. Stevens:** Thank you. Representative Farmer-Butterfield, does it concern you that the rules have not been updated in thirty years and don't include some of the National Abortion Foundation's recommendations?

**Rep. Farmer-Butterfield:** You know, I don't have a problem with the rules being updated. I think the key thing is that they don't need to avoid people having legal abortions in this state and they don't need to be cost-prohibitive. In fact, I wonder why no one in the Department of Health and Human Services in the eleven years that I've been here has even talked about the need to update these. So I question whether or not it's more enforcement than rules and regulations unless the experts tell me differently. I question that because it hasn't been raised.

**Rep. Stevens:** May I follow-up?

**Speaker Tillis:** Does the lady yield?

**Rep. Farmer-Butterfield:** Yes.

**Speaker Tillis:** The lady yields.

**Rep. Stevens:** And it would not bother you then if a part of what they adopted as clinic rules were some of those particular standards that we've talked about for other clinics and for other abortion clinics—that we bring up those standards?

**Rep. Farmer-Butterfield:** Tell me specifically what standards you're referring to.

**Rep. Stevens:** And I'll be happy to...

**Speaker Tillis:** The Chair will remind the members that to the extent possible direct the discourse through the Chair. Representative Glazier, please state your purpose.

**Rep. Rick Glazier (D):** To debate the bill, Mr. Speaker.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Glazier:** Thank you. So members, let me get this straight. Out of a purported concern for women's health, and in light of the constitutional rule of Roe v. Wade and an ostensible, at least, genuflect to the outcry over the Senate process and substance of the Senate bill, the Majority, in what it portrays as an admirable exercise of legislative restraint, abstains today from passing a bill eliminating abortion access outright. It does so because, after all, that would mean a direct constitutional confrontation it was sure to lose.

So this bill emerges from yet another secret rewrite by moonlight to the early morning sun yesterday under the intriguing and wholly non-transparent title of "The Motorcycle Safety Act," with some minimalist change in the wording but, as Representative Samuelson conceded yesterday in committee (quote), "the same intent" (end quote) as the widely criticized Senate bill. The result, of course, is precisely the same as the Senate bill, and no different than if the bill expressly eliminated access.

No one really believes the Majority's bait-and-switch today. No one is persuaded the bill is really about women's health except those already persuaded. And not a dime's worth of principle exists between the Senate bill or this one or one that would have directly eliminated reproductive choice. They all would take a slightly different route, but they end up at the same intended destination: effective elimination of meaningful choice in this state. And any claims to the contrary are insulting to the intelligence.

So let's start, since we're rewriting the law of abortion, with what the law of abortion is. In Planned Parenthood v. Casey, the Court established the "undue burden" test for determining whether a statute restricting abortions could pass constitutional muster. Under Casey a law is invalid if it places an undue burden on a woman's right to have a pre-viability abortion, and an undue burden exists if the state regulation has the effect of placing a substantial obstacle in the path of a woman's choice to that abortion. A state's discretion to regulate on the basis of maternal health does not permit it to adopt regulations that depart from accepted medical practice.

In some quarters those are known as constitutional principles, but not, apparently, in the North Carolina General Assembly. The Majority today in an attempt to show public-relations compliance with the Right to Privacy suggests a general health rationale to uphold the bill's three key provisions.

One: a physician's presence (whatever that is) and supervision (however you define it) is needed throughout, "the entire abortion procedure." And don't strain yourself for looking for that definition because it doesn't exist in the bill or the law, and the floor managers yesterday in committee could not answer what the real definition is.

Second: A physician's presence is mandated for the administration of any medications swallowed to design to abort the fetus, but not for further doses, as Representative Samuelson correctly acknowledged.

And third: The Secretary of Health and Human Services is given total discretion to decide on what procedures and rules are needed for clinic and patient safety including—and let's be clear because the bill says it—any option that's pertinent to ambulatory surgical facility regulations.

When asked if these rules met the Casey standard, the Majority repeatedly and robotically said they create no undue burden, they are necessary for a mother's health and they ensure safety. Well: wrong, wrong and wrong again. Repeatedly saying those phrases without content hardly gives them more merit.

To answer the real constitutional issue raised by this bill, we need go no farther than asking if there are compelling facts, as the law requires, sufficient to justify these highly invasive governmental intrusions into a woman's fundamental Right of Privacy and her access to it. Well where to begin...maybe where I just ended because not a single fact was truly presented in any serious form in either the Senate or the House.

And what's the first giveaway to that? Well, the first giveaway is the absence of any legislative findings on the record or in the bill. There's not so much as a preamble to this bill or this new section to support why the bill or these provisions are medically necessary, medically reasonable or legally valid. Across this nation there are a number of bills this session that have been filed and some passed in other states seeking to change the law of abortion in those states. And what I would defy any of you is to go to any of those bills that were enacted and find a one that doesn't contain a copious legislative record or findings. The arrogance of the House determination to simply impose its ideological will here today without even attempting to create the findings to show why the provisions are necessary and reasonable medically and legally valid is breathtaking. Of course good reason exists as to why there are no legislative findings in the bill, and that's because there's no legislative record of evidence to support them.

As to the first provision, the record here is stunning for its nonexistence. No testimony, no studies, no evidence of any kind was presented in the Senate. But of course, why should any of us expect that to have occurred because the goal there was to move fast with no notice and no record, and they succeeded.

Here we at least had, as Representative Samuelson has correctly stated, a public hearing. But most of the concerns raised by many at that hearing, including requests by the Secretary for long-term review and study of dozens of issues occur, but no testimony other than a few brief three-minute comments by members of the audience. There was no medical evidence requested, no studies introduced, and the committee that listened to the comments was not even the committee that ended up being assigned and voting the bill—a first, I would expect, in the annals of state governance, nor the committee comments, for that matter, transcribed for those of us who weren't there - although I was for part of it—to read and at least say we have the comments in front of us.

Next, the first provision of the three that I mentioned in this bill, which hasn't been talked about in the previous discussions, creates the physician requirement. It sets out whole new terms undefined in prior law and in this bill, like the term “entire abortion procedure.” What does that mean? Is the physician to be physically present with the patient an hour pre-op and an hour post-op as was suggested in the committee yesterday? And if so, what a surprise to the North Carolina Medical Society to learn that nearly all its surgeries for generations have been done wrong, since this almost never occurs.

And what does the term “presence” mean? Actual physical presence, as some of the bill sponsors said? Constructive presence in the building, as others suggested? Or maybe metaphysical in some way like telephonically? And what does it mean if they can be in the facility? Within so many yards of the room? Within so many feet? Seconds away? Could they go outside for a smoke? Well, no one knows. The bills that invade a constitutional right at least ought to define the terms of the invasion.

As to the second provision, clearly the winner of the most feeble provision of the bill award, what possible reason exists to watch the pill being ingested? And if it's needed for the first, why not the second or third? And if it is to see if the woman is ready and it is the right time for her to take the pill—well, that's truly important and I agree with Representative Samuelson there. But the physician doesn't have to be in the room when the nurse comes with the pill and she swallows it. That is absurd.

And what a surprise I suspect it is to the anesthesiologists in this state who earlier this session fought over the term “supervision” in bills before us. Supervision, for them it means “in the building.” They can be in several ORs at the same time as long as the CRNA is there and available if needed. Well, let me suggest to you men and women who are anesthesiologists—no longer, guys. If it's medically necessary that “supervision” mean physically present in the same room for the operation for abortion, it sure should be for anesthesiologists where someone can become brain-dead and die because of a lack of oxygen.

The consequences of what we do today with the words we have in this bill matter to all patients and all doctors and all facilities, and it cannot be neatly [*audio unclear*]...into abortions. But of course, when we race to put on the calendar ideological bills without taking the time to talk with medical societies and boards and practitioners and facilities, do we expect a different result?

Finally, as to the third provision in the bill that authorizes the study of what rules are needed but orders the effective date of compliance with those rules months before the study is to finish—someone else on our side will talk about that—but more important to me, the bill provides no guidance whatsoever to practitioners or facilities of what is expected, when compliance will be expected, the costs of that compliance, how they can prepare to comply and indeed comply. Just notice that any and everything is possible, including all the mandates of an ambulatory surgical center—whatever they are, because we don't have it in the record what they are—and the Secretary saying the other day that there are serious issues that deserve long-term study (apparently at least a night's worth).

Casey teaches us that health regulations which are unnecessary and not reasonably related to maternal health or depart from accepted medical practice cannot withstand constitutional scrutiny and must be invalidated. I assure you these will. In reality, this bill is nothing but a legislative fuselage aimed at smothering the Right to Privacy and a woman's right to choose under any circumstances. The bill tramples on access and marches backward in time, all but eliminating any cost- and time-effective way to practice medicine in this arena and for facilities to plan and comply with what amounts to a standard-less, unbridled discretionary law changeable at the political whim of the Department, our Governor or our Legislature. It is a betrayal of settled expectations of the women of North Carolina to reproductive choice.

And you know, it takes real cheek for the Majority to assure us their only concern is women's health and those who do abortions, says Senator Daniel, safely have nothing to fear from this law when what has proceeded before and succeeded since the filing of all these measures has been a virtual assault in public and private speeches on the concept of abortion by bill sponsors and co-sponsors, and lectures on how abortion should be eliminated. For many in the Majority the story of abortion is always black and white: have an abortion—you've done a bad thing. But the truth, of course, is the Majority of women in this state and nation and world know it's far more complex. No one today should doubt the only restraint on the Majority's reach on this and other issues like it is what it thinks it can get

away with—and the answer to that question lies with the courts and the electorate, both of whom we shall hear from soon enough.

Some today have excoriated the process used to get this bill to the floor, and to an extent I agree, but in a sense the Majority has done us a favor. It has given us the most transparent view of what really underlies the bill: a pretention to power confined by neither the Constitution nor the current sentiment of a majority of North Carolinians. The bill is astounding to me and unprecedented, except it continues and takes to a new extreme the recent tendency in the House and the Senate to turn constitutional protections for minority rights into a repeal of this State's traditions of tolerance.

And it is to me fundamentally wrong to use some newly-found constitutional protections as springboards for major changes—like the Second Amendment with whom this legislative body is conducting an amorous affair—while treating others like senile relatives to be closeted in the attic until they quit annoying us—like the Right to Privacy in bodily integrity and reproductive choice.

In the end, North Carolina should be scared of what this bill portends when a legislature feels unrestrained by its oath, unrestrained by any sense of responsibility to cast a middle ground on a divisive issues in a centrist state, and unrestrained by any understanding of women and families who lead lives outside our narrow cultural lens as legislators. Nineteen eighty-four may have come a bit later than predicted, but it is here at last, and with all pretense to moderation shorn of its fictitious cover.

Justice Kagan recently stated, “To a hammer, everything looks like a nail.” And to an extreme legislative Majority bent on eliminating the right to choice, everything looks like a health regulation ready to be abused and used to dismantle access to that choice.

The House bills which we passed were bad enough, but it added—as I finish, Mr. Speaker—but it added the Senate provisions. In the end I dissent from the procedural and substantive choices created today in the House. But at least the Legislature has maintained the right of itself to make those choices—a right it now denies to the women of North Carolina. Thank you.

**Rep. John Blust (R):** Mr. Speaker?

**Acting Speaker Tim Moore (R):** For what purpose does the...For what purpose does the gentleman from Guilford, Representative Blust, arise?

**Rep. Blust:** May I ask Representative Glazier a question? I guess that would go to any time I might have?

**Speaker T. Moore:** Does the gentleman from Cumberland yield to a question from the gentleman from Guilford?

**Rep. Glazier:** Certainly.

**Speaker T. Moore:** He yields.

**Rep. Blust:** Representative Glazier, so much of what you said—it sounded nice but it's incorrect and I hardly know where to start. But I'll limit it to one question. Are you aware that the Forth Circuit has upheld a very similar law to this in South Carolina?

**Rep. Glazier:** I read the Greenville opinion from the year 2000, Representative Blust, and the Greenville opinion which at the time—obviously cert was denied thirteen years ago—had about ten different provisions in it. It was a two-to-one decision, as you'll recall, with Judge Hamilton writing a brilliant dissenting opinion, and an awful lot of the provisions that we're talking about here—particularly the physician presence provision and the physician presence provision for medication—weren't in that bill. The facility provision to some degree was, but written entirely differently, and there, there were actually a whole series of standards. And in that case, Representative Blust, there were copious legislative findings cited by the Majority opinion by Justice Niemeyer and cited by Judge Hamilton in his dissent. And in that case, as well, there were a whole series of exhibits and evidence introduced before the South Carolina Legislature, none of which are here. We are, as Representative Samuelson said, in a different time—so we can't rely on another state's findings thirteen years ago, can we? And if we can't, where are ours?

**Speaker T. Moore:** For what purpose does the lady from Buncombe, Representative Fisher, rise?

**Rep. Susan Fisher (D):** To debate the bill, Mr. Speaker.

**Speaker T. Moore:** The lady has the floor to debate the bill.

**Rep. Fisher:** Thank you, Mr. Speaker, and ladies and gentlemen of the House... So we are told to believe that this is an improvement on what the Senate did last week while we in the House were given the week off. Well, this is just another version of the same political game-playing. Maybe we could call it, "Sneak Attack on Women's Reproductive Healthcare Version 2.0," because it does not matter what we call it—it is what it is: the deceitful hijacking of women's access to a constitutionally protected medical procedure.

The Republican Majority must think that their constituents can't read or else they might have given some thought to dropping language that they criticized their Senate counterparts for having put into a Sharia Law bill into a Motorcycle Safety bill. Really?

Well, it does not matter where this language appears—it still does all of the same damage that the Senate version did. It renders this week's carefully orchestrated Health and Human Services Committee meeting on the Senate bill nothing but a charade. No lessons learned from last week; a bill with all the same ingredients still done in a rush. Still no stakeholder or Health and Human Service Department input until the last minutes. Still tells physicians how to do their jobs. Still interferes with local governments' decision-making. And all of this happened still with no public notice.

If the goal had been to protect the health and safety of women in this State, often what we do is we go and look at other examples in other states to see what they've done. I mean, I know we've all been looking at Texas lately, but have we looked at Maryland? Maryland just tightened the oversight of their abortion clinics, but it just came into force this year. Their regulations just came into effect this year. North Carolina has had regulations in effect since '94—before way before now.

If the goal is to protect the health and safety of women, why would we not look at other states who are just now getting around to it who actually had people on both sides of the aisle in agreement? This is the thing I came here to do—to work toward agreement on both sides of the aisle. This Maryland bill had even the Maryland officials of Planned Parenthood—a group leery of new regulations because, in its view, they are too often driven by politics—calling these rules reasonable and helpful. We have to begin to take politics out of these legislative exercises, and we need to begin to talk to the Departments first, or at least look at other states and what they're doing.

Where does this bill leave women in North Carolina? Well, it looks like the only facility that will qualify to provide services under this bill, just as in the Senate version, is in my district in Asheville. This is going to make it difficult, if not impossible, for women in the rest of the state—and particularly in rural areas—to access reproductive health care. Why is this happening and under the guise of the safety and health of women? It is clear that this is about pushing a political agenda, not about protecting women.

It is obvious with the numbers of voters that have signed petitions and that have appeared week after week on the Halifax Mall that we must give women more respect than to ignore the democratic process. Let me just say that, according to the Centers for Disease Control, the medical record for abortions in the United States indicates that the procedure is quite safe overall. Ten women died...

**Rep. Stevens:** Mr. Speaker? Point of order.

**Speaker T. Moore:** For what purpose does the lady from Surry, Representative Stevens, rise?

**Rep. Stevens:** Are we back on the bill or are we going to discuss abortion? I mean, I think we're here talking about clinics and the regulation of clinics as opposed to whether abortion is safe, period.

**Speaker T. Moore:** The Chair will accept the lady's Point of Order. I would not rule the lady from Buncombe out of order at this point but would encourage the lady from Buncombe to keep her remarks as relevant as possible to this bill without venturing off as much as possible.

**Rep. Fisher:** Thank you, Mr. Speaker, and I will just say that this does address the matter of safety of women. This bill purports to be about health and safety of women, and the CDC says that ten women died of abortion-related cause out of 1.2 million procedures in 2010, and that the number of deaths in 2009 was twelve. And for many years the death rate has hovered around one per 100,000 procedures, according to Dr. David Grimes, a professor of



Obstetrics and Gynecology at the University of North Carolina School of Medicine. And today he is quoted as saying that having an abortion is safer than having an injection of penicillin.

So if this is about the health and safety of women, as I said earlier, we have seen numbers of voters that have signed petitions, that have appeared week after week on the Halifax Mall, and it is clear to me that we must give women more respect than to ignore the democratic process. Ladies and gentlemen, we must listen to their voices. We must listen to their voices and vote no. Thank you.

**Speaker T. Moore:** For what purpose does the gentleman from Vance, Representative Baskerville, rise?

**Rep. Nathan Baskerville (D):** To debate the bill.

**Speaker T. Moore:** The gentleman has the floor to debate the bill.

**Rep. Baskerville:** Thank you, Mr. Speaker. I just want to take a few moments this afternoon to talk about this so-called Family, Faith and Freedom Act. Started out as a Family, Faith and Freedom Act—an act that was so important and vitally necessary that it was hastily buried in a motorcycle bill in the cover of darkness, only to be resurrected in its current form under a different title: Health and Safety Law Changes. And the procedure happened this way because that was the way that this Majority party figured that they could get the legislation passed. It was done this way because all of the women in North Carolina know that this bill does nothing to protect their constitutionally guaranteed freedoms, including that Right to Privacy, and that it does nothing to improve women's health or safety.

This bill, in my opinion, is yet another power grab by this Republican Party—the most recent example of our state being tutored by this Republican Majority on what big government really looks like. Case in point: part two of the bill takes away authority from local officials to insure city and county employees as they see fit. Sections 2(b) and (c) dictates all the way from Raleigh down to the one-hundred counties in our state as to what those county commissioners and city councilmen can and cannot offer as a part of their health insurance package to their employees.

Now, I'll contend to you that local control works, and if a county wants to offer more reproductive health coverage than what's offered to teachers and state employees, then they ought to have the freedom to do that. No—but this big government Republican Majority thinks that they know better than all of the city council men and women, all of the county commissioners what's best for their employees in their counties. I ask you, how does that section improve women's safety? How does that section protect individual freedoms?

If you think I'm exaggerating here about this big government power grab, let me tell you what Doctor Aldona Wos, the Governor's Secretary of Health and Human Services, said in a committee meeting. Doctor Wos essentially told us that her agency couldn't even accommodate all the new authority; they couldn't even handle all the new power that this Legislature wants to give to them. I interpreted her remarks to mean that this bill is a bridge too far. But instead of compromising and paring down the bill, this new version gives even more power, even more government authority to the current Secretary of HHS, as well as all future secretaries of HHS, to impose whatever new rules or regulations they want to. The Department is authorized to apply *any* requirement for ambulatory surgical centers to certify abortion facilities. This legislation is forcing the Department to do the dirty work for this sweeping right-wing agenda.

But if you look at Section 4 of this bill, this bill literally allows this Legislature to invade the privacy of the doctor's office and literally dictates to the doctor—once again, all the way from Raleigh—how long that doctor must be in the room for these procedures. That is the very embodiment of big brother looking over your shoulder. That is a decision that should be made between a woman and her doctor at that time in the privacy of the doctor's office, and this Legislature ought to respect that right and that privacy.

Now, to the men and women in North Carolina, when you hear my Republican colleagues profess to you that they believe in privacy and that they believe in personal liberties and individual freedoms, I want you to think back to today. Think back to this unprecedented big-government intrusion into the private lives of women, their families and their doctors.

The actions today are not only detrimental to women's health, it's also detrimental to our economy. Businesses are not inclined to come to a state where they'll be subjected to hastily-crafted sweeping legislation at the drop of a dime with no public notice. But you don't have to take my word for that, you can follow the most recent survey conducted by CNBC that ranks the competitiveness of all fifty States in America. This year we were ranked the twelfth-most competitive state in...

**Rep. Stevens:** Mr. Speaker, point of order.

**Speaker T. Moore:** The lady from Surry has the floor to state her point of order.

**Rep. Stevens:** We've now gone from clinics and regulating clinics to our standing as business-friendly? I think we've moved very far afield here now.

**Speaker T. Moore:** Representative Baskerville, the Chair would ask you...I realize this is an emotional issue and that there's a little bit of political discussion that's permitted on this. The Chair is trying to give wide latitude but would ask the member to try to contain his remarks more relevant to the issues at hand.

**Rep. Baskerville:** I appreciate your indulgence, Mr. Speaker. When I get a point of order that means I'm really cooking, that means I'm on to something.

Now last year we were ranked fourth; this year we're ranked twelfth. You know why? Because we fell to thirtieth out of fifty states for quality of life. Quality of life impacts our business competitiveness here in this State. Please believe business leaders read these bills. They read the headlines that explain how this body has taken a regressive turn for the worst. They see the thousands of protestors who gather here weekly to decry the legislative measures that impact their quality of life. Kudos to our Republican-controlled Legislature for fulfilling the campaign promises of creating a business-friendly environment. I think that some of my colleagues might...

**Speaker T. Moore:** The gentleman will be reminded to contain his remarks to the bill if he wishes to continue to have the floor to debate.

**Rep. Baskerville:** Yes, sir. I think that some of my colleagues...and I'm wrapping it up. I think that some of my colleagues will speak more to this issue, but I just want to say one last thing--and it literally comes from my friend and colleague on the other side, Representative Jeter, speaking passionately about the airport. He said, "The decision I make is my own. My decision is personal. The airport is in my backyard." That is what millions of North Carolina women are trying to tell us. That decisions that they want to make is their own decision--that's a personal decision to them. Now they don't have an airport in their backyard, but this is their body we're talking about. And I have faith in our women that they will exercise their constitutional freedoms to make the right choice for their families. I ask that you vote no.

**Speaker T. Moore:** For what purpose does the...

**Rep. Dean Arp (R):** Mr. Speaker?

**Speaker T. Moore:** Just a moment. For what purpose does the gentleman from Union, Representative Arp, rise?

**Rep. Arp:** To ask my esteemed colleague, Representative Baskerville, a question.

**Speaker T. Moore:** Does the gentleman from Vance yield to a question from the gentleman from Union?

**Rep. Baskerville:** I will for the gentleman from Union.

**Speaker T. Moore:** He yields.

**Rep. Arp:** Thank you very much. You began your comments regarding the freedom to offer abortion services through municipalities and so forth and then ended up the comments regarding the personal choice. Is it your position that you want to force taxpayers to pay for those abortions through taxpayer dollars?

**Rep. Baskerville:** May I answer?

**Speaker T. Moore:** The gentleman yielded to the question and may answer.

**Rep. Baskerville:** No, sir, that's not my personal position. My position is that if a local city council or a local county commission—who are directly elected by those constituents—decided they wanted to offer additional abortion services on their health insurance plans, they ought to be allowed to do that and not be told by Raleigh that they can't.

**Rep. Arp:** Follow-up?

**Speaker T. Moore:** Does the gentleman yield?

**Rep. Baskerville:** Yes.

**Speaker T. Moore:** The gentleman yields.

**Rep. Arp:** The local funds that would use to pay for those services would be tax dollars, is that correct?

**Rep. Baskerville:** Well, I know that the Affordable Care Act already bans any public funding for abortion coverages in the insurance plans...

**Rep. Susi Hamilton (D):** Mr. Speaker?

**Speaker Tillis:** Representative Hamilton, please state your purpose.

**Rep. Hamilton:** Inquiry of the Chair, please?

**Speaker Tillis:** The lady may state her inquiry. The gentleman is in the middle of answering a question to another member. Is it relevant to this discourse here, or can the lady wait?

**Rep. Hamilton:** It is. I'm curious as to whose time is being used during this discourse.

**Speaker Tillis:** As stated by the Chair at the beginning of the meeting, the time that the gentleman spends responding to a question is allocated against the time of the person asking the question. The gentleman may proceed...Just as that time was allocated to Representative Hamilton. The gentleman may proceed.

**Rep. Baskerville:** I'm done. Thank you.

**Speaker Tillis:** Representative Stevens, please state your purpose.

**Rep. Stevens:** To speak on the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Stevens:** Thank you, Mr. Speaker. Members of the House, I want to get to some of the questions that you've been asking over there as if this were just pulled magically out of the air, that there was no need for this bill. Let me first tell you we got the information from the Department of Health and Human Services.

There have been two-hundred and five citations issued against these clinics in the last ten years. A Preferred Women's Health in Raleigh had thirty-three citations since 2001. A Preferred Women's Health in Charlotte has had forty-one citations. This is a clinic that was just closed in the last month, but the investigation had been going on for three years. A Woman's Choice in North Carolina in Greensboro had five complaints since 2001. All of these are since 2001 to the extent that they've been open. A Woman's Choice of Raleigh has had thirteen citations. These are not just the inspection itself, but these are the problems that were found. Chris Clinic for Women in Jacksonville had had nine complaints. Eastern OB/GYN in Chapel Hill had had fifteen citations. Family Reproductive of Charlotte had had four. Hallmark Women's Clinic had had fourteen. Piedmont Carolinas Medical had had eight. Planned Parenthood of Central North Carolina in Chapel Hill had had eleven. Planned Parenthood of Wilmington had had nine. Planned Parenthood of Winston-Salem had nineteen. Women's Health Alliance of Chapel Hill had had ten.

And the Baker Clinic that had only been open for six months had already received six citations in those in those six months. Yes, the system is set up properly, but the problem is repeat offenders are hard to get to.

Now, the rest of you talked about these rules and what was in these rules, and I challenge to see how many of you, in fact, have read these rules. They're less than ten pages of rules that currently govern clinics that were set up in 1974. I believe that's the correct statement. They were set up in 1974 and have not been revised in almost—what is that, forty years we're coming up on? Things have changed during that time. The standards and needs have changed during that time.

Now, were these frivolous little complaints? No. We've looked at the documented complaints. As Representative Schaffer said, she has a timetable showing these complaints. These complaints were things such as breaking open a vial of intravenous medicine to divide it among four patients, both of which were violations—breaking open the tube and giving it to multiple different patients. They found dirty, unsterilized equipment that was going to be used on women in some of these clinics. They found dried blood on the lamps that were used to investigate these women. So don't tell me this is not about health and safety; that's exactly what it's about.

We need very specific rules. The National Abortion Foundation—which we looked at their manual that was sent to us—has standards. They go on for fifty pages with standards that are bare minimum of what you should do. Then they have recommendations that are sort of steering, and then they have other things that are optional. North Carolina's not bothered to look at that because the National Abortion Foundation didn't come into effect or set up its standards and rules until 1996!

All we've done with this bill is give the authority to Health and Human Services to do what needs to be done. In the last six months they've had to close two clinics, and I'll bet it took an act of Congress because there's very little in those rules that they could rely on. So you know these things had to be egregious. I'll be happy to share them with any of you and share the information. I can tell you there's a box of documents downstairs. I can tell you there's a file folder on Ruth Samuelson's desk that has all the complaints about the one clinic that did get closed down. I can tell you that this has not been treated lightly, and it is very much concerned over women's health and safety.

There is not a war on women. There's a group of people here trying to make sure that those people who go in at that most vulnerable time are provided safe and effective healthcare under the best standards and conditions possible. And I'm sorry if you don't believe that, but that's the truth. We know that Roe v. Wade is the law. We know that abortion is out there, but it should be safe and clean and sterile, as well as legal, and that's what we're here for.

**Speaker Tillis:** Representative Richardson, please state your purpose.

**Rep. Bobbie Richardson (D):** Thank you, Mr. Speaker—to debate the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Richardson:** I've been sitting and listening, and I'm not going to be as eloquent as many of the other speakers, but I question the motives of and the authenticity of this bill because for the very citation that Representative Stevens just spoke of...

**Rep. Paul Stam (R – Speaker Pro Tem):** Mr. Speaker?

**Speaker Tillis:** Representative Stam, please state your purpose.

**Rep. Stam:** Point of order: did the lady say, "I question the motives of...?"

**Speaker Tillis:** The...

**Rep. Richardson:** Of the bill, I mean, not of the people—of the bill...

**Speaker Tillis:** The Chair will remind for the third time today...

**Rep. Richardson:** Thank you.

**Speaker Tillis:** ...that the—the Chair will continue to ask the member to suspend...

**Rep. Richardson:** Yes.

**Speaker Tillis:** ...that the discourse is managed by the Chair.

**Rep. Richardson:** Thank you.

**Speaker Tillis:** Any member...Every member will wait until the Chair acknowledges the member's right to continue speaking before they speak. Discussions will be ruled out of order and the remaining time for that member for that opportunity to debate will be ended at that time. They will be recognized for a second time, should they have it, after I rule them out of order. The lady has the floor.

**Rep. Richardson:** Thank you, Mr. Speaker. I apologize. I would like to correct that statement. I question the motive of the bill if we are saying that the bill has been written for the safety of women's health when there is no fiscal note on this bill and we have given the Secretary of DHHS the authority to make rules and to come back to this committee with the necessary resources that will be needed to implement, which seems to say to me that we have no intentions of putting money into correcting the issues that were cited because there's no fiscal note.

We have asked that this bill go into effect October 1, 2013, but we don't have to have temporary rules until January of 2014, and then we wait until April of 2014 to report back what those findings are. So I question why we don't have a fiscal note knowing that the Secretary has stated to us that her office and her staff are not capable of being able to implement these regulations or to follow up with any more frequent monitoring of such facilities because she does not have enough resources.

So I do question the motive of the bill in the sense that it's said that it's for safety reasons. I question why we would propose a bill without studying it to find out what the fiscal responsibilities would be for the State, for the provider and what financial impact it will have upon women who access those clinics that may possibly be closed, whether they are safe or not. Thank you.

**Speaker Tillis:** Representative Brandon, please state your purpose.

**Rep. Marcus Brandon (D):** To speak on the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Brandon:** Thank you, Mr. Speaker. I have listened to this debate of this bill, and it's really almost laughable at the arguments that I hear. I continue to be amazed at our ability to demagogue in this General Assembly on important issues concerning this state. We all know what this is about. This bill has nothing to do with the safety of women, no matter how much we want to continue to say it. This is a radical bill that gives the ability for radical politicians to impose radical beliefs on the rights of women. That's all this is about. If you wanted to increase the safety of women and have quality access to healthcare, you would not have abdicated your responsibility by denying them Medicaid expansion or the Affordable Health Care Act that denied...

**Speaker Tillis:** Representative Brandon...

**Rep. Brandon:** Yes.

**Speaker Tillis:** The gentleman will be mindful of the scope of his comments.

**Rep. Brandon:** It is...Okay. I apologize, Mr. Chair, but we do have to talk about, when we're talking about the safety and the health care of women we have to talk about *all* of the things that we've done in this General Assembly that go along with that, and we can't just come up today and all of the sudden we care about it when we have proved for many, many bills that we might not have cared about it.

But I really want to talk about what this does is if you are a pro-life person--and a lot of people on the other side who claim that...And I'm not going to be long in my comments because I just really want to make this point for you guys that if you are pro-life, pro-life exists after birth. And that's just a fact. We can't continue to deny people health care, we can't deny people unemployment coverage, we can't deny people Earned Income Tax Credits and then...

**Speaker Tillis:** Representative Brandon, that will be the last time the Chair allows you to run that far afield. The gentleman may continue.

**Rep. Brandon:** Mr. Speaker, I continue to maintain that this is an overall point I'm trying to make in terms of the point of the bills—that everyone continues to try to make this about the healthcare of women and about the protection of women and I'm trying to correlate how other bills in this General Assembly has not actually correlated with this one. But I understand your point, and my point is this: Folks, if we're going to really do some work, we're really going to be able to deal with the issues, if we really want to deal with health care for women, if we really want to make things safe, then we really need to look at a comprehensive way and the way we deal with our lawmaking. And we need to deal with it comprehensively and make sure that all women have access to health care, not just in an abortion clinic but in all clinics. And we need to make sure that when they want to make a decision—this important decision—that they have adequate services and adequate ways to be able to do that. And that includes making sure that once the baby is born, that they are able to be able to take care of that. And my position continues and maintains to be, even if it's out of order, that we have not done that and we need to continue to do that. Thank you.

**Speaker Tillis:** Representative Presnell, please state your purpose.

**Rep. Michele Presnell (R):** To speak on the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Presnell:** I've been standing here listening and I'm trying to put myself in the shoes of a young woman going into an abortion clinic. I personally will never and would never attend any place like that—but I'm trying to put myself in a state of mind of what these women are going to go in there and see. They're not going to see the blood on the table or the surgical instruments that have not been sterilized. I would hope in their mind they are asking the Lord is this the right thing to be doing. I don't think they're looking at the infectious diseases that could be transmitted through the surgical instruments that have not been sterilized at all.

On a tour in December 11<sup>th</sup> of 2012, which is only about two weeks before Christmas, at 10 a.m. with the surgical procedures scheduled to begin around 11:30 there was dried blood observed on an exam light, on a chair and the door jam in procedure room number two. There was thick dust on the exam table in number 3. The tour of the procedure room in number one revealed dead insects in the window. This young lady is not going to have that on her mind.

We as legislators have got to do something that will take care of these women when they're in there having a procedure like this done. It is ludicrous to think that that woman is going to have in her mind looking at stuff and saying, "It's not clean for me to be here, and maybe I need to leave." That's not what she should have on her mind.

I'm just tired of listening to this whole thing and I just had to tell you how I feel. Thank you.

**Rep. Yvonne Holley (D):** Mr. Speaker, can I ask a question please?

**Speaker Tillis:** Representative Holley, please state your purpose. If the lady's purpose is to ask the question, may she direct the...to whom does she wish to direct the question?

**Rep. Holley:** To Representative Presnell.

**Speaker Tillis:** Representative Presnell, does the lady yield?

**Rep. Presnell:** Yes, I will.

**Speaker Tillis:** The lady yields.

**Rep. Holley:** Representative Presnell, I understand what you're staying and there are exceptions to every rule and there will be facilities that are like that, but would you prefer her to go to some back-alley with a nasty coat hanger?

**Rep. Presnell:** Personally, I'd prefer that she plan ahead, okay? There are a lot of birth procedures that you can take care of in the way of birth control. But no, there's other places that are clean that she could possibly go to if that's what she has in mind.

**Rep. Holley:** I just want to just urge you to...

**Speaker Tillis:** Does the lady wish to ask a follow-up question?

**Rep. Holley:** Follow-up?

**Speaker Tillis:** Does the lady yield?

**Rep. Presnell:** Yes, I do.

**Speaker Tillis:** The lady yields.

**Rep. Holley:** All I'm saying is that we need to be careful when we say one incident is the norm because it's not. You can also go into a dental clinic and see the same things. You can go into a number of facilities. I'm just pointing out that the alternative sometimes can be worse and this is not... You know, you can't use the instances of one facility to blanket everything. Thank you.

**Rep. Blust:** Mr. Speaker?

**Speaker Tillis:** Representative Blust, please state your purpose.

**Rep. Blust:** Point of order.

**Speaker Tillis:** The gentleman may state his point.

**Rep. Blust:** Listening to the debate and it's been actually several of the speakers and I'm listening intently—would it be in order to do what we do for resolutions and have the bill read in its entirety, particularly Section 4? Because I'm not sure the members are debating the bill as it's written.

**Speaker Tillis:** The Chair would hope that those who take this matter seriously would have taken time to read the bill and the implications of the implementation of the bill, but the Chair would not take your question to have the bill read in its entirety. Representative Cunningham, please state your purpose.

**Rep. Carla Cunningham (D):** To speak on the bill, Mr. Speaker.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Cunningham:** Thank you very much. I have received numerous emails from medical professionals in my county, Mecklenburg County. I'm going to read just one to you.

“As a Charlotinian and a physician, I am saddened by the bill, especially the latest version that places limitations on simple, safe procedures for women. This bill would institute unneeded barriers to care both financially and by limiting availability. We recognize the need to keep abortion safe, legal and rare, but this provision will place women at risk of requiring...” Excuse me. “Medical abortions are extremely safe and simple, and requiring a physician's presence would be the equivalent of requiring a doctor to supervise a diabetic injecting insulin. Furthermore, meeting the requirements of ambulatory surgery centers is insufficient, high-cost and not medically necessary. I urge you not to support the bill. – Doctor Everett, Medical Physician

Now I will make my comments. As a healthcare provider and a member of the American Nursing Association, I believe the healthcare patient has the right to privacy and the right to make decisions about personal health based on

full information and without coercion. It is the obligation of the healthcare provider to share with a client all relevant information about health choices that are legal and to support that client, regardless of the decision the client makes. Abortion is a reproductive alternative that is legal and that the healthcare provider can objectively discuss when counseling clients. If the State limits the provision of such information to the client, an unethical and clinically inappropriate restraint will be imposed on the provider and the provider-client relationship will be jeopardized.

Just as the client also has rights, the nurse also has rights, including the right to refuse to participate in a particular case on ethical grounds. However, if the nurse becomes involved in such a case and the client's life is in jeopardy, the nurse is obliged to provide for the client's safety, to avoid abandonment and to withdraw only when assured that alternative sources of nursing care are available to the client.

The fact that thousands of North Carolina women are seeking abortion is a symptom, it is not a disease. The treatment lies in addressing the problems underlying a deteriorating social fabric. Healthcare providers have the right and the responsibility to seek viable solutions to these problems that signal social failure, such as ineffective family planning, efficient prenatal care, drug and alcohol abuse treatment, domestic violence, unsuccessful parenting, sexually transmitted disease and inadequate child care.

Today we are restricting access to women in North Carolina who are determined...*determined* to make their own reproductive choices. I want to believe you want to help the women of North Carolina to live productive lives. The women of North Carolina are intelligent, strong and capable of making these vital decisions for themselves. We should allow them to make their own life-changing decisions for themselves. You want to help women? Then institute equal pay, reinstate their unemployment benefits so they can support their...

**Speaker Tillis:** Representative Cunningham, the member will remember the admonishment from a prior speaker. The Chair would appreciate if the lady focuses on the subject of the bill.

**Rep. Cunningham:** Thank you. I will continue, thank you. Assisting with family planning tools, increase funding to woman/infant/children programs to provide care for their children...

**Speaker Tillis:** Representative Cunningham, this will be the last time the Chair tries to provide the member with the proper direction on scope before the lady is ruled out of order and her first time to debate.

**Rep. Cunningham:** Thank you, Mr. Speaker. I will try to stay with the content, but my point of view is that this is not a one-sided issue where only one thing affects one thing. This is a full view. One thing always affects another. The social...I will move on. The social failures that I have mentioned above, if addressed, can empower the women of North Carolina and their families. When women are whole, their families are whole. Let the women of North Carolina determine their own destinies. I ask you to vote for the women of North Carolina by voting no for this bill. Thank you.

**Speaker Tillis:** Representative Queen, please state your purpose.

**Rep. Joe Sam Queen (D):** Thank you—to debate the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Queen:** I find it quite ironic to stand here in this General Assembly and talk to you about regulating healthcare. This General Assembly has been all about regulatory reform, reducing the regulatory burden. Whether it's been about fracking or aquifers or job safety or conservation issues, we've been about regulatory reform, and that has been about reducing regulation, streamlining aspects of our economy. But when it comes to women's healthcare, we find that government can really use regulation to be an obstructionist, to add hurdles, to add cost, to add inconvenience and delay to access to, again, an important service for women in this State, and women's healthcare in general because the intent of this bill is really...The outcome of this bill is to make it harder for healthcare professionals to provide women access to their constitutionally protected medical procedures.

It's not about safety, and it's quite clear that what we are doing here is using government's power to make it more difficult to have access to quality care. Access to quality care is what creates safety, what creates better outcomes.

Now I do think there is room to improve all medical procedures. My wife is a physician. I've been on my hospital's foundation board, designed hospital facilities, designed medical facilities. I'm an architect, as you know.



To use the Division of Facility Services to make it harder to create access is just contrary to common sense and decency in this state.

We have had these women's clinics in North Carolina for forty years, and our state has regulated them carefully, thoughtfully. They have provided services adequately and safely, but like any hospital, like any clinic, like any hospital facility, there is room for improvement—room for improvement in safety. Three or four years ago when I was in the Senate, we had an initiative to save a hundred thousand lives from the Hospital Association. There were a hundred thousand lives in America in a year that were lost through preventable causes in hospitals.

There is absolutely room to improve safety in every kind of medical facility, but this approach with no findings, no research, no authentic looking at the facts, review the facts, including experts to help you identify what would be an initiative that would have positive results. I think there's plenty of room for our Department of Health and Human Services to look at all our healthcare facilities and come up with such strategies and procedures, so I'm not opposed to that thought. But it's transparent to me that this is just government obstruction for women's rights, and I will be voting against this bill and hope you will. And I hope we can actually be sincere about how much we could improve healthcare if we took it seriously to discover the possibilities for improvement through good research, through real fact-finding and real research in this regard. Thank you.

**Speaker Tillis:** Representative Earle, please state your purpose.

**Rep. Earle:** To speak on the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Earle:** Thank you. Mr. Speaker and members, I'll be very brief, but I have two reasons that I really need to speak. One is that I ride a motorcycle, and I want to let my motorcycle buddies know that when I vote against this, it's not because I'm not concerned about their safety on the highway. So I felt it necessary to make that point.

The other thing is, much of what I wanted to say has already been said. So I'm not going to go over it, but this legislation, this bill is supposed to be different, but it has basically the same language that closes these facilities. And, of course, we're hearing some of the same safety rhetoric that we heard in committee when we were dealing with the Senate bill. I just want to be very clear on some things that I have gathered from the legislation.

You know, to me this is just another backdoor way of attacking Roe v. Wade. And you know, abortion is legal in North Carolina and it's legal in this country, but if you continue to chip away at the infrastructure, you basically limit the choices that women have.

And I also want to say, too, that this is not about safety issues or health issues for women because when you start closing these facilities—and it's my understanding that all of them would be closed with the exception of maybe one and maybe two, but for all practical purposes you're closing all of these facilities—well, that's going to drive women to go to these backroom places that existed before we had these facilities to come into existence. And if you're going to talk about the health of these women, then I would think that that would be a major consideration because you're going to be sending them to unsanitary places with probably providers that have not trained. And that ought to be a major consideration because the need or the desire for abortion is not going to go away just because you closed the facility.

And I just want to mention, too, that in my opinion here we have done more legislation that impacts women then we have that creates jobs or has a major impact on the economy. So I mean, you know, we are basically focusing, not just in North Carolina but across this country, a huge amount of legislation that's dealing with restricting the rights of women. Now I don't know if that's what...I keep hearing that folk didn't campaign on those kinds of issues, they campaigned on jobs and the economy and all, but basically that's what we're doing.

And the message I got from the Secretary is that, if she had more resources, she could effectively do a better job of looking at all of the abortion centers, the ambulatory surgical centers across the State, and that was one of her major concerns.

And I also kind of question the fact that there were two facilities that were closed and then, you know, we hear about the other citations. Obviously the Secretary did not feel that that it was necessary to close the facilities, or else she would have closed those also. And if we look and make some comparisons when we look at restaurants when they receive citations or whatever they're called, basically we give them the opportunity to correct it and stay open. And they could have a negative impact on our health, as well, but we allow them to make the corrections that are necessary and to stay open and to move on. And as I said, evidently these citations that they received, DHHS obviously didn't think that they were severe enough to close them. They have the oversight.

But basically I just think that, you know, we need to rethink this. This is not very much different from the legislation that came over from the Senate, and if we didn't think that that was good, the leadership didn't think that was good, then we ought not think that this is good.

And we should also consider any office that does a surgical procedure, then we should make sure that they come under these same guidelines. If we're going to put these kind of stipulations and set rules for abortion centers, then we should look at putting all of these different offices – dental offices, some time ago I had a foot surgery done in an office. So we need to look at every office that does a surgical procedure and putting them under some kind of guidelines and regulations, and the same ones that we do for abortion.

And I would ask you not to support this at this particular time. Thank you.

**Speaker Tillis:** Representative Hamilton, please state your purpose.

**Rep. Hamilton:** To debate the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Hamilton:** Thank you, Mr. Chairman. I rise today to speak on another provision in this bill that has been less prominent in our discussions today and somewhat overlooked. It's our rights as citizens of this country and in this great state to privacy where our healthcare is concerned, unless the individual chooses to disclose that information.

This bill requires the court to make the decision regarding a woman's private healthcare and medical treatment. If she has already refused to consent to allowing a party who is bringing a lawsuit against her to disclose her identity—I'll quote the bill—"The court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted shall be preserved. Further, the court shall make the ruling determining that the woman's anonymity should be preserved." So the patient is either obliged to consent to the disclosure of her identity, or a judge will make that decision for her.

It seems to me like this flies in the face of our HIPPA laws—if not in fact, certainly in the spirit of their intent of the law which allows all citizens of our country to their privacy in their medical treatment. So not only are my colleagues limiting access to healthcare for women, they are also eliminating patients' rights to privacy regarding their medical care. I urge you strongly to vote against this bill.

**Speaker Tillis:** Representative Avila, please state your purpose.

**Rep. Avila:** To debate the bill a second time.

**Speaker Tillis:** The lady is recognized to debate the bill a second time.

**Rep. Avila:** Thank you, Mr. Speaker. Ladies and gentlemen, I wasn't planning to speak a second time, but as the scientist in me a couple of comments caught my eye and based on personal experience as a second reason, I felt I needed to speak about the quality of care and training that we seem to be lacking in some of these facilities.

First of all, it was Representative Schaeffer who went through a list of some of the issues with her documentation. It was followed up by Representative Stevens enumerating some of the issues that were found in clinics. The one in particular that caught my ear was the RH factor and the mishandling of blood diagnosis and evaluation. Personally I have a history with that particular issue; my mother was an RH negative factor blood. I, as the firstborn, was RH positive. At the time I was born, my mother's body began to develop antibodies to any future RH positive babies that she might have, which turned out to be my younger sister.

My younger sister, who was born in 1958 before the immunoglobulin shot was developed, was severely jaundiced, and over a period of months she had to have an entire blood transfusion, CC by CC. And I sat in the hospital where she was being given those shots to remove her blood and to replace it and it was horrible because you can imagine the size of a blood vessel of a baby that size.

With the mishandling of the blood work being done in these clinics, we are opening that door to a lot of women who are not getting the kind of counseling and the kind of analysis of their blood that will let them know that they may have a future problem. And that's where I feel like we need to clamp down extremely hard. I've read through the restrictions, I've read through the rules. I don't see anything about what the certifications are for the people who are doing the blood work. Where is that? Show me that in statute or in our rules that demand the type of quality care

of the people who are taking the blood, making an analysis that's going to affect the future of that woman who is going through a terrible choice of an abortion but may want to have a child in the future.

We have got to tighten up and we have got to hold these people accountable just like every physician who's ever been held accountable for every surgery I've ever had and the two times that I delivered my children. I strongly ask for your support for the health and safety of the women of North Carolina. Thank you.

**Speaker Tillis:** Representative McManus, please state your purpose.

**Rep. Deb McManus (D):** To ask the bill sponsor four questions, if I may, and then to debate the bill.

**Speaker Tillis:** Representative Samuelson, does the lady yield?

**Rep. Samuelson:** I yield, I yield, I yield, I yield.

**Speaker Tillis:** The lady yields.

**Rep. McManus:** Okay, I got confused in part of this bill and I did want to ask what something refers to. On the bill on page three, lines...basically forty-three down there's the definition of an attempt to perform an abortion and I couldn't find what that related to anywhere else in the bill. Does it? I'm just...This is a legitimate question; I'm not trying to make a point or anything.

**Rep. Samuelson:** Yes, this is the part that is related to the Clarify Law/Prohibit Sex-Selection Abortion, which we passed earlier in the session. So it goes with that portion.

**Rep. McManus:** Okay, so attempting...Okay, I'm looking back where it...I'll look at that than. Okay, thank you. My next question also refers to something in the bill on page four, lines fifteen, sixteen, seventeen. It talks about the physician performing a surgical abortion shall be physically present during the performance of the entire abortion procedure, and I was curious as to entire abortion procedure, whether that included...Okay, they treat the cervix first and then there's a waiting period while that medication takes effect before an abortion's performed, and then there's a recovery procedure. Does it refer to all of that as the abortion procedure, or is it actually referring to the actual surgical abortion?

**Rep. Samuelson:** This was the question that Representative Glazier brought up and, I would say, misinterpreted the answer he received from Representative Stam. I asked around in the meantime and was told that the abortion part is the actual abortion itself—the procedure, the abortion itself.

**Rep. McManus:** Okay, good. Thank you. And then in Section 4 on that same page it says that the Department of Health and Human Services is authorized to apply any requirement for the licensure of ambulatory surgical centers to the standards applicable to clinics certified by the Department to be suitable facilities for the performance of abortions. And this is just because I don't know this because of lack of experience, but would those be entirely up to that Department or are those something that would come back to be approved by this Body?

**Rep. Samuelson:** That's part of the rules-making process. There were some complaints earlier that there would be no input from the clinics and such on these rules. That's where that would come in. When they go through the rules-making process, they ask for public input and then they make the rules. So the Department would make the rules.

**Rep. McManus:** Okay, well when I'm looking at the current rules, they all have like...

**Speaker Tillis:** Representative McManus, this will be the last question before the Chair goes back to the more classical process of engaging in the discussion...

**Rep. McManus:** I just...

**Speaker Tillis:** ...because you asked for four questions, she yielded four times...

**Rep. McManus:** I truly didn't understand these things...

**Speaker Tillis:** Yes...

**Rep. McManus:** So I didn't know if the...I'm still not clear if the Body will...if we approve those because there's, like, approval dates under these rules. So...

**Rep. Samuelson:** We do not. It goes through the rules-making process...

**Rep. McManus:** Okay...

**Rep. Samuelson:** ...the formal rules-making process. There's public input, there's time for people to object. They look at what would be viewed as—the word they use—suitable facilities for the performance of abortions, and if people think they were unsuitable either because they were too broad or not broad enough, the public would be able to file letters of complaint and that sort of thing.

**Rep. McManus:** Okay. Thank you very much. I just needed clarification on some things, so I do appreciate that. Now, if I could, I would like to debate the bill please.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. McManus:** Okay, in 1973 the United States legalized abortions nationwide and almost immediately after that, pregnancy related deaths and hospitalizations due to complications of unsafe abortions effectively ended in the US. They pretty much disappeared after that, whereas prior to that there were a lot of hospitalizations. Abortions are currently one of the safest surgical procedures for women in the United States. Fewer than one half of one percent of women obtaining abortions experience a complication, and the risk of death associated with abortion is about one tenth of that associated with childbirth. If we pass laws to decrease access to abortion, then there are going to be more illegal, unsafe, unsanitary abortions, and I'm afraid it will make some of those criticisms in the abortion clinics look like nothing.

Those are bad, and I admit it, and I thought about some of these things and thought, "Okay, yeah, that's a bad thing—a bug on a windowsill." But now I dare say there could be a dead bug on a windowsill in my house at this time. My husband is a medical...He's a family practice doctor. His office was invaded by lady bugs one year. They were all over Siler City. They came in on patients. We found dead bugs everywhere. We vacuumed every day, but there were dead bugs. So sometimes there are extenuating circumstances. That's not to imply that these clinics weren't bad; they may have been and if they were closed down they probably deserved that—but there are extenuating circumstances. One of his citations on an inspection was that he was to have Benadryl. He had generic Benadryl; they said he had to have name brand Benadryl and that was a citation. So he had to go buy name brand Benadryl. Sometimes those things are a little odd.

But if we start restricting access to abortions, we're going to see illegal ones again. And the public health tragedy caused by unsafe abortions is especially tragic because it's largely preventable—we don't have to make it so. By increasing access to safe services and improving the quality and availability of post-abortion care, we're protecting women, we're protecting their safety. And because almost every abortion is preceded by an unintended pregnancy, expanding access to contraceptive care, info and services is another factor that would protect women.

According to the World Health Organization, unsafe abortion is the cause of seventy-thousand maternal deaths worldwide each year—or one in eight pregnancy-related deaths among women. That translates to seven women per hour dying from a maternal death from an unsafe abortion in the world. The cost in women's lives and health because of unsafe abortions are a human tragedy.

But then there are other costs to society—actual financial costs. Each year an estimated five-million women are hospitalized for the treatment of abortion complications worldwide...

**Rep. Stevens:** Mr. Speaker?

**Speaker Tillis:** Representative Stevens, please state your purpose.

**Rep. Stevens:** What I'm hearing is, in essence, going worldwide as opposed to this bill, and it actually goes to supporting the bill to make sure that abortions are safe...

**Rep. McManus:** Then that should make you happy...

**Rep. Stevens:** ...But we're going further worldwide...

**Speaker Tills:** Representative McManus will yield. Representative Stevens, the Chair is going to allow some latitude.

**Rep. McManus:** I do think abortion statistics are important. And no, right now we don't have as many illegal, unsafe abortions because we have had widespread access in North Carolina. But if we start limiting it, we may be looking at the same problems that they have had worldwide.

As I was saying, an estimated five million women a year are hospitalized because of treatment of abortion complications at a cost of at least four-hundred and sixty-million dollars. And that's in countries with much lower per-capita spending on healthcare.

I worry about what we're doing to young women because these are options I don't think anybody chooses lightly. When Representative Presnell said she could not ever imagine doing that, I would agree. And yet, through my husband's medical practice, I've seen a lot of people who thought they would never imagine doing that until their child was the one that was pregnant and it was different. We don't know what we would do until we're in that situation. We think we do, and I think I know what I would do.

We had an unplanned pregnancy in my extended family a year ago, and it was my nephew's girlfriend. They had not been dating that long; he was in school. And my brother called to tell me about this, said "I don't know what we're going to do. I can't tell Mom and Dad. I can't believe this happened. They said they were using birth control and it failed." He said, "I never thought I would wish somebody would have an abortion, but I kind of wish that's what she would choose right now because I'm afraid my son won't finish school, won't finish college if she has this baby."

Now she did choose to have the baby. Her mother kicked her out; her mother wanted her to have the abortion. But her mother kicked her out. She moved in with my brother's family and they are now the parents of a beautiful almost one-year-old daughter. She'll be one in August. She made the right choice for her—but she had the option of making a choice and she had that availability no matter what choice she did make. And that's why I'm pleading with people to vote against this.

This bill is... When you try to read it—and this is not a criticism of the bill sponsor—it's a messy-looking bill. All the pieces in it don't seem to flow and fit well. It was obviously put together quickly. We shouldn't be doing this kind of thing in haste. These are decisions that are too big to do in haste. So I ask that we wait, that we vote no this time, that we come back.

I agree that maybe perhaps regulations need to be looked at on these facilities. Though actually, when there was a question about where was it that it says what kind of person administers different things, there is a portion of the regulations because I actually compared all the regulations for the ambulatory care versus the abortion clinics and there is a page in there that says that abortion clinics must... Let's see... Abortion clinics must comply with the rules governing sanitation of hospitals, nursing and rest homes, sanitariums, sanatoriums, and educational and other institutions contained in 15A NCAC 18A.1300. And if you look those up, they're pretty detailed, and they were actually... A large portion of them were updated more recently than the ambulatory surgical care center information because some of them were updated as recently as 2003 and 2004. So... And actually, the ambulatory surgical care were only updated in 2003, so that's been ten years, too. So they are operating under the same guidance as hospitals and nursing homes. So they are actually good regulations in there; you just have to take a step further and look at what it refers to to see what they are.

I spent a lot of time on this because I think it's so important. It's such a personal decision for everybody, and I think we should leave that up to individuals. Taking care of facilities: yes, but not in a way that limits and restricts them. That's the wrong choice for North Carolina. I ask that you vote against this bill, please.

**Speaker T. Moore:** For what purpose does the lady from Guilford, Representative Adams, rise?

**Rep. Adams:** To speak a second time, Mr. Speaker.

**Speaker T. Moore:** The lady is recognized to debate the bill a second time.

**Rep. Adams:** Thank you, Mr. Speaker. Like a thief in the night to steal women's reproductive rights, this bill came hurriedly through the Senate, rerouted through the House on a motorcycle, we think. No input from stakeholders, no public scrutiny, no transparency, no fiscal note. But when you look at the overall outcome of this bill, it's safe to say that it's really not about safety. It's about limiting women's choices, her freedoms, her access and her privacy; restricting local governments from providing abortion care services in the plans that they offer to their employees; eliminating abortion care in health exchanges or local or state health plans.

And it really discriminates unfairly, forcing women to spend more on their medical care than men. I'm not going to talk about the men in here because somebody will stand up and say I'm off the target. But it is targeting... This bill does target, I think unfairly, centers that provide abortion care. It is a very bold, in-your-face, disrespectful, vicious attack on women's health. And it would, as the outcome if all of this is put in place, it would restrict women's access to safe and legal reproductive healthcare. It does deny her choice. It does deny her right to privacy.

Now, I believe that no woman can herself be free who does not own and control their own body. That's not my quote; I'm sure you know who made it. Eliminating safe and legal abortions in this State—it's already been said, but we need to remember that it will not reduce the need for abortions. They're going to happen. So what will the next step be? Well, we're going to go back to the days that none of us should want to relive again when abortions were not legal, when they were not safe but they were fatal. And we won't go back, Representative McElraft, to the dark houses, but we'll go to the dark alleyways where...

**Rep. Pat Hurley (R):** Mr. Speaker?

**Rep. Adams:** ...surgical instruments are...

**Rep. Hurley:** Mr. Speaker?

**Rep. Adams:** ...coat hangers.

**Rep. Hurley:** Right here... Over here—Representative Hurley.

**Speaker T. Moore:** Oh, I'm sorry. For what purpose does the lady from Randolph, Representative Hurley, rise?

**Rep. Hurley:** To ask Representative Adams a question, please.

**Speaker T. Moore:** Does the lady from Guilford yield to a question from the lady from Randolph?

**Rep. Adams:** Yes.

**Speaker T. Moore:** She yields.

**Rep. Hurley:** Representative Adams, don't we still have hospitals? I mean, you keep talking about alleys. It really bothers me because I really... As a Christian I am very concerned about this and listening all day to this debate, but we still have hospitals. Women can go to hospitals where they're clean and where they're taken care of if they have to go anywhere. If they do this, if they don't plan ahead, they can go to hospitals, can't they?

**Rep. Adams:** Is that a question?

**Speaker T. Moore:** The lady has the floor to respond to the question.

**Rep. Adams:** I suppose they could go. And I am concerned and I am a Christian, too—let me say that for the record. But let me go back and say again that we're going to go back to those days and there'll be people who can't afford to go. We've got a lot of women right now who have no medical...no health insurance. And some of these surgical centers that are in place right now provide preventive care, other kinds of services, so there won't be anywhere for them to go.

But we know, if you go back to those days, it will be the dark alleys. And the surgical instruments that they'll use won't be the surgical instruments that they might be using in these centers, but they're going to be coat hangers. And what a terrible day for North Carolina women. Shame on us. That's what's going to happen—coat hangers. Do we want that blood on our hands? I do not.

**Speaker T. Moore:** For what purpose does the lady from Mecklenburg, Representative Carney, rise?

**Rep. Becky Carney (D):** To ask the bill sponsor a question and comment on the bill.

**Speaker T. Moore:** Does the lady from Mecklenburg yield to a question from the lady from Mecklenburg?

**Rep. Samuelson:** I yield.

**Speaker T. Moore:** She yields.

**Rep. Carney:** Thank you, Representative Samuelson and Mr. Speaker. After the public hearing that was held, and you all said in there that you were committed to not closing facilities, but you also said that you were committed to protecting the health of women going to these centers. Did you all in your overnight working to correct the other bill from the Senate, did you give any consideration to just bringing forward a bill that dealt just with these clinics across the state that have had problems and updating those codes and standards?

**Rep. Samuelson:** Can I ask her to clarify her question a moment, Mr. Speaker?

**Speaker Tillis:** If the lady yields, yes.

**Rep. Samuelson:** I'm not sure I understand what the alternative you were asking. Did we consider only addressing the needs in those clinics that had been shut down?

**Rep. Carney:** Mr. Speaker, may I? I'm sorry, the clarification is did you give any consideration to just addressing that issue that's in Section 4 that you've given to the Secretary that authority to study and move forward? Was there any consideration given to just addressing that issue along with the helmet safety—I know you needed the bill—instead of adding all the other bills that we've already voted on in this House?

**Rep. Samuelson:** No, that did not come up. When we met with the Secretary, we only dealt with her question. Her questions and concerns were just in the new portion that had been sent over by the Senate. So we addressed her concerns and made sure that she was comfortable with this, and part of that was making sure that the direction for them to make rules were reasonable to make...to ensure that we would not unnecessarily be shutting down clinics. She was also concerned about not making the standards so tough that they were not able to be complied with.

**Rep. Carney:** Thank you. Mr. Speaker, to speak on the bill?

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. Carney:** Ladies and gentlemen, I asked that because several people have said all this bill does is address the health and safety of the women in this State. When the bill that is before us...and I've read it, I've underlined it and gone back over it and asked questions and taken notes. There are five sections to this bill—or four rather. And that is, those are bills that we have already passed in this House. So I'm conflicted as to why we needed to add those into a new bill along with addressing that issue that we heard from the public, we heard from the Secretary that they're...and we've heard from everybody here.

We heard from Representative Fisher quoting the Maryland situation where they have addressed those concerns in a bipartisan way with the entities like Planned Parenthood at the table. If that is truly the goal of what we're trying to accomplish in here today for the women of this state, then why are we not dealing with that one issue? Why was this not a priority of the Majority from the Senate and the House that at the beginning of this session, if you knew all these violations had been going on at all of these clinics and all of these centers, why was that not a priority to set it

up in a bill standing on its own, work with the Department, work with the healthcare providers, work with the people in those clinics, and let's take those standards and modernize them in a bipartisan way?

But we all know that this came as a shock when we were on our spring break, as my granddaughter called it—that I got a spring break from the General Assembly for the Fourth of July. But we were out of town and that happened up here overnight. And then we come back and, yes, to the credit of the House, we had a public hearing after the fact—after the outcry and the outpouring of, “What are you doing to us as women?” And now, two days after that, we have a new bill. And I understand the end of session—I’ve been here ten years—but not on issues like this. Not on major decisions that are impacting numerous people. Go down the chain; it’s not just that woman who’s faced with a horrific decision.

And I cannot begin to walk in any one of those women’s shoes to even think what it would be like to walk in, to even have to comprehend being extremely poor, not having anybody to stand beside me and I’m scared to death and I’m young and I’m helpless and I’m vulnerable. I can’t even take care of myself, and yet some male got me pregnant. Did I intend for that to happen? No, I don’t know.

It is so complex, and we’re asked today to just blanket say all these bills we’ve already passed in here that I voted against: the sex-selection, the Woman’s Right to Know, telling doctors what you’ve got to do to a woman in that office, what you’ve got to make her look at in an ultrasound—on and on and on. And not one person has taken the time to go out there into these impoverished areas of North Carolina—high poverty rate in the state—and it’s those young girls...those young girls that are getting pregnant. Nowhere have we begun to address contraception. Do you know that pregnancy is a leading cause of adolescent death? If you know that and yet we’re not doing one thing to put in these bills to educate these kids, these young girls, these young women on contraception.

So you want to avoid all this stuff about abortion? Let’s teach our young people, and let’s do it with our taxpayer dollars, and let’s stand up and let’s help them. Let’s address poverty, let’s address those young women who don’t have anybody like our daughters, our granddaughters, our nieces, our nephews, our friends’ kids—they have a network. Ladies and gentlemen, wake up! North Carolina has a huge problem with poverty, and that’s where a lot of these abortions are coming from. It’s not...And maybe there are women that are in the high end of income that are getting abortions, but they’re getting them through that process of hospitals with health insurance and doctors that are qualified to do it. What are we doing?

I believe we are headed down a road to make this worse. I agree, and I think every woman in here, every woman in this balcony, every woman in this state says, “Yes, if you’re going to have an abortion, make it safe, make it accessible and make it clean.” But that’s not what we’re doing here. We’re passing it off. We’re passing it off to the Secretary. We’re passing off our responsibility of studying it, of looking at the issue seriously, looking at what those recommendations should be from us as lawmakers. Not, “Go look at it, Madame Secretary”—who said, “Our Department can’t handle all this.” “Go look at it. You study it. You come back to us and then we’ll decide.” But in the meantime, once again, we’re waving in a bill all the bills we’ve already debated in here that have passed.

And we’ve said to our motorcycle friends, who need our help, with taking the safety piece in this bill by adding this in—that’s what we do when we tack on bills to another bill...Those of us over here who think that this is too much, too quickly—and we’ve had a whole long session to deal with this and it came overnight—but we’re saying we will be voting against the Motorcycle Safety Act, when we voted for it to begin with.

What are we doing? I just ask you to think about it. We are not being deliberative and doing what we are charged to do—and that is to come up here and look seriously at what laws we impose on the people of this state. I ask you please to reconsider and vote no. And yet again today, I’m asking you, take your time, go back to the table. Let’s make a bill, let’s bring a bill in here that addresses these centers that everybody’s been saying: all the citations and the closings and the re-openings. If that needs to be addressed, let’s do it and let’s do it bipartisanship, and let’s do it with the medical profession at the table. Thank you, Mr. Speaker.

**Speaker Tillis:** Representative Fulghum, please state your purpose.

**Rep. Jim Fulghum (R):** To speak on the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Fulghum:** I have really struggled with keeping my mouth shut because I’ve worked in the medical fields for over thirty-five years. There are two-hundred and fifty-four facilities in this state that are currently licensed to do abortion. Sixteen abortion clinics do the majority—probably far more than the majority. All the ambulatory surgical



centers are licensed to do abortions. All the hospitals are licensed to do abortions. So let's just can this back-alley nonsense.

Now, the Secretary said that, despite the Planned Parenthood representative comment in her interview with Skip Stam on *On the Record*, these abortion clinics are not inspected every year. They're lucky to get inspected every three to five years for medical purposes. The current regulations from 1994 are actually pretty good: call for recovery room, procedure room, corridors to accommodate stretchers, elevators to accommodate patients and medical procedures that are set up to take care of medical records and staffing requirements and so on.

Making regulations is a waste of time unless you enforce them. They're not being enforced on a regular basis, but we're doing better...than Pennsylvania did. Governor Ridge decided politically to not enforce the annual inspections in Pennsylvania during his administration and look at what that got him? For seventeen years they didn't do annual inspections and they had a horror show on their hands.

I'm not claiming we have something like that in North Carolina; we don't need to. No other state should. But we have the opportunity here, and the Secretary's agreed to cooperate with finding out how many staffing problems she has to be able to enforce this to get the job done to bring these sixteen abortion clinics—nine of which preceded building in 1994. And when I asked the division head of Health Service Regulation were they in compliance with the current regulations, he said, "We assume so." And I really didn't want to get out of my chair and go over and ask him again, but I felt like I should.

I think this bill gets us to a place we ought to be. I honestly don't think it's going to hurt anybody. As we've seen the last six months, HHS is in the saddle and doing a better job. And I encourage passage of this bill. Thank you.

**Speaker Tillis:** Representative McManus, please state your purpose.

**Rep. McManus:** To debate the bill again.

**Speaker Tillis:** The lady is recognized to debate the bill a second time.

**Rep. McManus:** Actually, I just wanted to share a bit of information since there was a question about could they not go to hospitals and have abortions. So I'm going to share just a bit here. In North Carolina...well, in the South—let me back up a moment. First, the percentage of OB/GYNs performing abortions in the United States dropped to fourteen percent by 2008—from twenty-two to fourteen percent in 2008. OB/GYNs who were least likely to provide abortion services included doctors located in rural communities in the South and Southwest. Southern doctors accounted for just eight percent of OB/GYNs that reported providing abortions. And seventy percent of all abortions were provided in abortion clinics, twenty-four percent in other types of clinics, only four percent in hospitals and one percent in private physician offices. In 2008, there were thirty-one abortion providers who actually were providing in North Carolina (The other places are licensed but don't necessarily provide.) and this represents a sixteen percent decline from 2006 when there were thirty-seven.

So it's rare that it happens in a hospital unless it's medically necessitated, and only seventeen percent of OB/GYNs—even nation-wide—report doing abortions, and only eight percent in North Carolina. So it's unlikely to happen in a hospital. That's what I wanted to share. Thank you.

**Speaker Tillis:** Representative McElraft, please state your purpose.

**Rep. Pat McElraft (R):** To speak on the bill.

**Speaker Tillis:** The lady is recognized to debate the bill.

**Rep. McElraft:** I've sat here and listened about safe, healthy access, and that's exactly what this bill is about, whether you believe it or not on the other side. Poor women should not have any less access to clean conditions, to sanitary conditions than those who can afford to go to that one facility in Asheville that you talked about that would meet these requirements.

Let me just give you some of the organisms that are life-threatening that can be transferred from unsterilized medical surgical equipment: *Staphylococcus aureus* (which can be methicillin resistant), *Streptococcus pyogenes* (which is the flesh-eating bacteria), *Chlamydia*, *Neisseria gonorrhoeae*...

**Rep. Fisher:** Mr. Speaker?

**Rep. McElraft:** ...HIV herpes...

**Speaker Tillis:** Representative Fisher, please state your purpose.

**Rep. Fisher:** Thank you, Mr. Speaker—a point of order. I...

**Speaker Tillis:** The lady may state her point.

**Rep. Fisher:** Thank you. I guess my question is, are these not things that could happen anywhere, not just in clinics that can provide abortion or abortion services?

**Speaker Tillis:** Representative Fisher, the Chair is not a medical professional. I think that the lady is trying to suggest that they do at least happen in these conditions. And if the conditions are not sterile, I assume, by her comments, that they may be more likely. The lady may proceed.

**Rep. McElraft:** Thank you, Mr. Speaker. I'll answer that question. Yes, these can be organisms that are transported in other clinics, too. But other clinics of the ambulatory status and licensing are different than what these certified North Carolina abortion clinics are; they have higher standards. They're inspected not only by our public health department, but they're inspected by CAP and Joint Chiefs and some of the other inspecting groups that they do the proficiency testing and all through.

So these are not... These are organisms—many of them vaginal organisms—that can be transmitted from patient to patient. Do these women not deserve to not have that kind of an operation where they have to go in there and wonder if the equipment is sterile or not? They have been through a lot. They have made a hard decision. And when they go for that abortion, they need to know that these facilities are up to the par of any sterile facility that you would expect to have any kind of surgery in.

I also wanted to mention something. Representative Fisher was bragging about the Maryland abortion clinics, and I think you all see something that's passed on your desk. It was interesting to me that their abortion clinics are licensed not certified. Also interesting to me that they were investigated and found that it was common practice to administer a drug—the abortion drug—without the presence of a doctor, and they shut them down for that reason. This is what we want to emulate, and that's what we're trying to emulate in this bill.

And you talked about, should we have done a study. Who better to do a study than our health officials who have medical backgrounds? That's what the rule-making process is all about. That's why... The Secretary even went about what the Senate did and said, "We are going to have temporary rules. Let us do temporary rules until we have time to make the permanent rules." She felt in the six months she's been here, they've closed down two abortion clinics.

I'm sorry, but you know what? When you all were in charge over there, how many times did you take all of these discrepancies, and when did you write your bill and try to do what was right for these poor women who have gone through these abortion clinics that should have been shut down? Yes, Representative Adams, we are back in those black days in some of these clinics, and I'm tired of these poor women being put through something like that.

It is time that we do our job in the State of North Carolina and bring these clinics up to the standards that they should be for these women. The reason they don't want to bring them up to the standards? It's all about money... It's all about money. Some of these facilities are nothing but money-making facilities, and it's all about money. Why would you not want to have a doctor there when you administer an abortion drug? Why would you not want to have a doctor there when you are doing a medical, surgical abortion? It's all about money.

We need to protect the women of our state. We need to let the Department of Health and Human Services do what should have been done years ago under different administrations and was not done. It's time that we take control of these clinics and bring them to the standards they should be at so our women do not have to...

**Rep. Adams:** Mr. Speaker?

**Rep. McElraft:** ...suffer anymore.

**Speaker Tillis:** Representative Adams, please state your purpose.

**Rep. Adams:** Question for the Representative.

**Speaker Tillis:** Representative McElraft, does the lady yield.

**Rep. McElraft:** I'd be happy to.

**Speaker Tillis:** The lady yields.

**Rep. Adams:** Thank you, Representative McElraft. You mentioned that we didn't do this before. I think you've been here quite a while. Did you raise this issue? And we've had, even when the Democrats were in control, we took up bills that you all might have brought to this body. Did you do bills?

**Rep. McElraft:** May I answer? I'll be happy to answer that. Representative Adams, until these two abortion clinics were shut down this year, I didn't realize how bad it was. And you know what? It's interesting that you all had all of these discrepancies about abortion clinics and you didn't do anything.

It's not about the health and safety of women; it's about abortion on demand at any cost to the women, and we need to protect these women. They need to know that these unsterilized instruments are there, that the blood is spattered in these facilities. We need to clean it up so they have the same right as someone who has a lot of money and can go to an ambulatory facility.

**Rep. Adams:** Mr. Speaker?

**Speaker Tillis:** Representative Adams, please state your purpose.

**Rep. Adams:** Question for the lady.

**Speaker Tillis:** Representative McElraft, does the lady yield? The lady does not yield...Ladies and gentlemen, just as a time-check, the Clerk advises me that the Minority caucus has twenty minutes remaining; the Majority caucus has ten minutes remaining. Representative Lucas, please state your purpose.

**Rep. Marvin Lucas (D):** Thank you, Mr. Speaker—to speak briefly on the bill.

**Speaker Tillis:** The gentleman is recognized to debate the bill.

**Rep. Lucas:** Thank you. I really hadn't planned to speak at all, but I've sat here for about—oh, better than three hours now as we've bantered back and forth over an issue that the Supreme Court decided many years ago that the process was legal. And for the life of me, in these three hours of debate, I don't think we've made one inch of progress one way or the other, and I wish that we could just stop this debate. I know that we're talking about something that's very sensitive to everybody, and it's sensitive to me, too. But these sensitive issues are better settled in the confines of our homes and our communities and not on this floor. I wish we could stop this. In the analogy of the sports arena, we're at overtime—well past overtime—and we ought to be getting out of here. Thank you.

**Speaker Tillis:** Representative Cunningham, please state your purpose.

**Rep. Cunningham:** To speak finally on the bill just to clarify...

**Speaker Tillis:** The lady is recognized to debate the bill a second time.

**Rep. Cunningham:** Thank you, Mr. Speaker. Something that Representative McElraft said about poor women—it's not only poor women that seek out abortion in the State of North Carolina. Women of all financial status seek out abortion; it's just that they may not have to go to an abortion clinic. Sometimes they can get their obstetricians or gynecologists to admit them and they have the procedure in a nicely equipped facility.

And all nosocomial infections—those are infections that you get inside of facilities—not only can you get it in an abortion facility, you can get it in a hospital, you can get it in a nursing home. You can get a nosocomial internal infection anywhere in a medical facility.

Clarity: nursing homes, hospitals, all types of facilities at some point in their history come up with a violation of something that is required by regulatory. So this is not unusual that you will find a couple facilities that are not within compliance. It is not unusual. Lots of hospitals are out of compliance right here today. Lots of nursing home facilities are out of compliance here today. How do I know? Because I've been in them. They've often given the opportunity to correct those issues. Once they are correct then they are back in compliance, and they operate as usual until the next inspection comes along.

If regulatory is done where the inspections can be done properly and on time, effectively and with a normalcy of when they should occur, within a period of time these issues can be corrected without going any further stipulating that a facility increase what is in their facility, which is not going to help with the safety of the client when the health is not in the building, but is in the hands of the people that care for them. Thank you.

**Speaker Tillis:** Representative Farmer-Butterfield, please state your purpose.

**Rep. Farmer-Butterfield:** To ask the bill sponsor a question.

**Speaker Tillis:** Representative Samuelson, does the lady yield?

**Rep. Samuelson:** I yield.

**Speaker Tillis:** The lady yields.

**Rep. Farmer-Butterfield:** Representative Samuelson, tell me if there have been any deaths or women negatively harmed by use of abortion centers in North Carolina in the last few years.

**Rep. Samuelson:** I am not personally aware of any deaths, but I have heard of negative harm. I would have to ask somebody else for the details on it. I was...Not something I've been keeping the stats on.

**Speaker Tillis:** Representative Farmer-Butterfield, the Chair understands that Representative Stam may be able to...

**Rep. Farmer-Butterfield:** Okay...

**Speaker Tillis:** ...answer your question. Does the lady wish to redirect?

**Rep. Farmer-Butterfield:** Thank you, I just...

**Speaker Tillis:** Representative Stam, does the gentleman yield?

**Rep. Farmer-Butterfield:** I just wanted to ask [inaudible]...

**Rep. Stam:** I yield.

**Speaker Tillis:** The gentleman yields.

**Rep. Stam:** Representative Farmer-Butterfield, Ms. Nancy had a safe, legal abortion here, I believe, at the Fleming Center in Raleigh by Doctor Clarence Washington. That evening she went and bled out and died up in Rocky Mount. He was uninsured, insolvent, later went to prison for federal tax evasion and had his license removed.

**Rep. Farmer-Butterfield:** Follow-up?

**Rep. Stam:** But he did thousands of abortions before then.

**Rep. Farmer-Butterfield:** Follow-up?

**Speaker Tillis:** Does the gentleman yield?

**Rep. Stam:** I do.

**Speaker Tillis:** The gentleman yields.

**Rep. Farmer-Butterfield:** How many other incidents? How many others in North Carolina in the last three years, or five—either one?

**Rep. Stam:** You wouldn't know because they go to other places to die.

**Rep. Farmer-Butterfield:** Out of state? Is that the...

**Speaker Tillis:** The House will come to order.

**Rep. Farmer-Butterfield:** Follow-up question?

**Speaker Tillis:** Does the gentleman yield?

**Rep. Stam:** I do.

**Speaker Tillis:** The gentleman yields.

**Rep. Farmer-Butterfield:** Are you insinuating that the women go out of state?

**Rep. Stam:** No. They're rarely likely to go back to the clinic for the...I mean, not necessarily out of state, but they don't necessarily go to the clinic for serious complications, nor do they go back to the clinic when they're in their next pregnancy. They have a preterm birth, and about a hundred a year die in North Carolina because of that prior induced abortion.

**Rep. Farmer-Butterfield:** One last question, Mr. Speaker?

**Speaker Tillis:** Does the gentleman yield?

**Rep. Stam:** I do.

**Speaker Tillis:** The gentleman yields.

**Rep. Farmer-Butterfield:** And if Representative Stam can't answer this question, I'd be glad for a lady to do so. Exactly which one of the standards in the ambulatory surgical centers, their regulations, will make abortions safer in North Carolina in the clinics?

**Rep. Stam:** Well, I'll tell you a defect in the clinic certification is that you don't even have to be an OB/GYN to do abortions at an abortion clinic. You can be a foot doctor, a brain surgeon, a doctor of osteopathy. And the clinic regulations say you only have to bring an OB/GYN in *if* there's a complication.

**Rep. Farmer-Butterfield:** Comment?

**Speaker Tillis:** The lady is recognized to debate the bill a second time.

**Rep. Farmer-Butterfield:** I really believe that this debate today indicates the importance of this issue and the fact that women are articulate, they're bright, they have a mind of their own and they're good decision-makers. This body is representative of that. It is also representative of the fact that there are a lot of confident people in the State

of North Carolina and there are a lot of confident legislators in this body. And we should all be able to sit down and address this issue and come up with a solution.

But when we're not transparent and we hide things, in spite of the fact that we are in a majority situation where you have seventy-eight members in this body and you know you have the votes...For the life of me, I do not understand why this could not have been more open and transparent than it was. And therefore, it leads to situations like this—distrust...Thank you.

**Speaker Tillis:** Further discussion, further debate? Representative Samuelson, please state your purpose.

**Rep. Samuelson:** To debate a second time on the...

**Speaker Tillis:** The lady is recognized to debate the bill a second time.

**Rep. Samuelson:** Members, we've had a lengthy debate on a bill that otherwise would have been here only for concurrence or non-concurrence. And there have been a number of things that have been said about the bill, some of which are correct, some of which are incorrect. I'm not going to correct all of them. I just want to address two because I thought they stood out and needed to be addressed.

Representative Hamilton brought up some concerns about a part of the bill that we have not been debating much. I just wanted to alleviate your concerns on the privacy piece. Those are contained only in the sex-selection abortion piece and only come into play if there is a legal lawsuit against the doctor who is accused of performing an abortion for the purpose of sex-selection—so very narrow application in those very specific instances.

But that brings up a question that Representative Carney and others brought up, which is, "Why does this bill have all of those parts in it?" Because that's the way the Senate sent it to us. So the Senate said, "We wanted to put all those bills (that we had already sent over to them) in one piece," and that's the way they did it. So that's why they're put together.

But then the question of why did we not earlier address the issue of standards and say, "Well gee, the standards need to be updated, why didn't we start this process six months ago and do all of that study before we came up?" Well frankly, that was before the incident in Philadelphia where a doctor up there is now going to jail for the horrendous conditions that were in his abortion clinic—which caused some people to say, "Well gee, are these kinds of things starting to happen around North Carolina?" And as they looked around, they said, "Gee, we've got some problems with some of the situations in North Carolina, and in fact, we have recently had two abortion centers closed." So yeah, it would have been nice to have done that earlier. It could have been done in previous administrations. But a horrid incident in another state caused us to look again at what's happening in our state.

In fact, Representative Blust was kind enough to send an article about some abortion deaths in Maryland, which makes me go to the point that has caused me the most befuddlement in all of this is the issue of this being cost-prohibitive. You don't increase safety because it's cost-prohibitive. You don't raise standards because it's cost-prohibitive. People are dying in abortion clinics. Maybe they didn't die in the abortion clinic in North Carolina, but do we want even one person to die in an abortion clinic in North Carolina before we raise the standards? And in terms of whether raising the standards is legally verifiable, it passed in South Carolina in the courts.

Alright, so there is precedence in this. There is a reason to say we are not going to wait until women die in an abortion clinic for us to raise the standards. We have consulted with the DHHS Secretary, who, by the way, is a strong woman. If you haven't met her, she's one of the few that can intimidate me. And she is a strong woman, and she has acknowledged that our standards need to be reviewed.

She has also acknowledged that we need to increase the amount of inspections. And our Speaker said to me the other day, and may have said it in committee, I can't remember, but that if we need to do some audits, let's go to the DHHS Secretary and ask her, "How much would it cost for you to audit every abortion clinic or every abortion facility (we could ask her and figure out what she wanted) between now and when we back?" And if we can afford it, let's look at how much that would cost and find a way to put it in our budget now.

This is a problem that needs to be addressed. It should have been addressed years ago. As someone said to me earlier, we need our standards to be in the 21<sup>st</sup> Century. We've been in the 21<sup>st</sup> Century for thirteen years and we haven't increased our standards since way before that. This is not about shutting down centers. This is not about making abortion illegal. Women will still have the right to choose, but as a result of this bill, they will have the right to make that choice in a safe facility. I urge your support.

**Speaker Tillis:** The question before the House is the passage of the House Committee Substitute to Senate Bill 353 on its second reading. All in favor vote aye; all opposed vote no. The Clerk will open the vote, and the machine will be open for an extended period to allow members to return to the chamber...All members please record...The Clerk will lock the machine and record the vote. Seventy-four having voted in the affirmative and forty-one in the negative, the House Committee Substitute to Senate Bill 353 has passed its second reading and will now be read a third time.

**Reading Clerk:** General Assembly of North Carolina enacts.

**Speaker Tillis:** The question before the House is the passage of the House Committee Substitute to Senate Bill 353 on its third reading. Ladies and gentlemen, because of the nature of the vote, the Chair has the discretion to go voice vote. We are going to record this vote. All in favor will vote aye; all opposed will vote no. The Clerk will open the vote...All members please record. The Clerk will lock the machine and record the vote. Seventy-four having voted in the affirmative and forty-one in the negative, the House Committee Substitute to Senate Bill 353 has passed its third reading and will be sent to the Senate.

Representative Wilkins, please state your purpose.

**Rep. Winkie Wilkins (D):** Inquiry of the Chair.

**Speaker Tillis:** The gentleman may state his inquiry.

**Rep. Wilkins:** Mr. Speaker, do you share with me the feeling that our gallery-ites did really, really well today?

**Speaker Tillis:** The Chair was just about to make that recommenda...or to make that...Ladies and gentlemen, I know there are people in the gallery on both sides of this issue, and I think that you were extraordinary in your respect to this institution. And I hope that you were able to learn something from what we did here. And the members themselves—I know that there’s great emotion on both sides of this issue...

*[yelling from the gallery]*

**Speaker Tillis:** The gallery will be cleared to the right...And up to this point, I shared my sentiment with Representative Wilkins. I’m not really sure why someone thinks that that’s really respectful of this body, but it is what it is.

~ Fin ~

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**SB 793 – Charter School Modifications  
Remarks on Concurrence  
July 25, 2014**

*When charter schools were first authorized in 1995 it was a bipartisan effort. But by 2013 the Democrat Party orthodoxy was unfriendly to public charters. Rep. Brandon was the exception.*

Audio available at [this link](#)  
Debate begins: 00:38:55

**Speaker Thom Tillis (R):** Senate Bill 793, the Clerk will read.

**Reading Clerk:** To the President of the Senate, the Speaker of the House of Representatives: The conferees appointed to resolve the differences between the Senate and the House of Representatives on Senate Bill 793, a bill to be entitled, “An act to provide that a teacher employed by a charter school may serve as a nonvoting member of the board of directors for the charter school,” et al.

**Speaker Tillis:** Representative Hardister, please state your purpose.

**Rep. Jon Hardister (R):** To make a motion and to debate the motion.

**Speaker Tillis:** The gentleman is recognized for a motion and to debate the motion.

**Rep. Hardister:** Thank you, Mr. Speaker. Members, you may recall this bill passed the House a few weeks ago. It went to conference. It makes a variety of technical changes to charter school laws. There were changes made in conference, but the overall content of the bill remains the same. The bill primarily focuses on charter school approval, transparency and operational procedures. The conference report passed the Senate on unanimous vote, forty-five to zero. I think it’s a good bill, and I would appreciate your support of the conference report. Thank you.

**Speaker Tillis:** Representative Cotham, please state your purpose.

**Rep. Tricia Cotham (D):** To debate the conference report.

**Speaker Tillis:** The lady is recognized to debate the motion.

**Rep. Cotham:** Thank you, Mr. Speaker and members. That was a pretty brief synopsis of a pretty big bill. So congratulations, Representative Hardister—you’re learning how things work here. I’m going to violate those rules today and talk about this bill, this conference report, and ask you not to adopt the conference report.

A little bit of history: As you all know, charter schools were originally created to be labs of innovation to look at what’s going well in our schools, what’s not. Let’s try some new things, let’s see if it works. Let’s hopefully share that information with our traditional schools—all with the interest of improving student achievement and holding everyone accountable. And in a lot of ways in North Carolina at a lot of great charter schools that we have in our state, they’re doing that. And that’s something we should be proud of.

North Carolina, when the Democrats were in charge, proceeded very cautiously when it came to adopting and accepting new charter schools. Some people said we were a little too cautious. And so when the Republicans took over, we saw a lot of sweeping changes when it came to charter school laws and the number of charters we could have, and what these charters would look like and what they would not look like. As a result there’s been some problems, some confusion and some modifications that needed to be made. And that’s kind of where we are today.

So this conference report corrects some problems, explains some things, but leaves a lot out. I was a conferee on this conference report and I take that role very seriously and with honor. I was very disappointed in a few things that happened and I... You know, there are political differences and we come from different walks of life. But I could not sign this conference report and that’s the first time that I’ve ever not signed a conference report. And I did not take that decision lightly because, just as I voted for your budget, I do try to really look at things with overall what can I live with, what can I not live with. And there were two big issues in this conference report that I cannot accept.



The first one is the discrimination clause. And that's going to be talked about more by one of my colleagues, but I believe that all children are children of God—I really do believe that. And I think that we should not discriminate against any child or anyone in general. And so that gave me great pause and I did vote against that in the conference report. I was the only no, but I still was a no.

But the second issue that I'm going to focus a little bit more on really kind of sent my brain spiraling and running and asking a lot of questions, which is kind of a dangerous time for me because I like to think about processes and patterns. And I kind of got a hint of some things that might be happening or could happen, and that all revolves around transparency. I believe that public money should be transparent and that we are responsible to the taxpayers.

And so if a charter school, let's say, is operated by what we call an EMO—an Educational Management Organization that's a for-profit company—if they operate a charter school and have their teachers...And they will not have to disclose their teachers' salaries, which I think is fine and good and that was never really the big source of heartburn that many people had. The problem comes in with those non-teachers and *that* public money and where it's going and what we, as taxpayers, and those who are responsible for looking out for where are those tax dollars going and is there transparency.

So I kind of started to think about this. And as someone who is a sitting principal and has a principal license, if I had a charter school and had an EMO for-profit company with charter schools, I would have my staff—my teachers—and they would again be subject to public records. But then, hypothetically of course, I could hire my friends and family, maybe even some of you to work for me at my private charter school as employees of this company, this EMO, this company which, let's be mindful, is still getting public money so the money is flowing. And I could pay you whatever we want, whatever we agree upon.

Now is this...Am I trying to say that all charters are doing this? Absolutely not...Absolutely not. But even if one is doing it with public taxpayer dollars, shouldn't that be a problem? Shouldn't that cause us concern, because yesterday I heard so many of you talk about we are responsible for public dollars and we don't want someone to use public dollars for their own economic impact. And that was my good friend from Gaston County who said that. And so I ask you the same thing when it comes to charter schools. There's too many questions around transparency. And so if there are too many questions around transparency, then it likely says we're not transparent, and that's really the issue here.

And so the Senate got this bill very quickly. They didn't know it was coming. There was a nice little quick presentation. Everybody was told it was good, we're moving, we fixed the problem, move on. They voted forty-five to zero. Then my phone started ringing last night off the hook of, "Oh my gosh, what happened?" School systems started calling other members, myself, asking questions.

And I just think that if we have so much confusion, if we're making the law so ambiguous, if we're having so much ambiguity, why are we doing this? And again, we are responsible to the taxpayer dollars. And I think that this should give all of us cause and pause, and we should say, "Yes, we believe in transparency. We believe in accountability." We don't want a school that's set up in Wilmington to get upwards of fifteen-million dollars of public money where those EMO salaries go to...have 99% public money to pay whomever they want how much ever they want, and we know nothing. Doesn't that give any of us concern? Is that really being transparent? Our own governor told that newspaper that he would veto this bill if public disclosure was not in there, and I hope he will stand to his word.

And so I really ask you to really think about that and support public tax dollars but going for public good, for public education and really knowing where our money is going, because if the money flows then we should know where it goes and that's not happening. And that's a serious problem. That's an ethical problem for me and I could not support this conference report. And so you might hear some things that, you know, "Well, we have disclosure," or "Well, they're going to be the same as everybody else." Not exactly.

And there's a reason why this is probably all happening today or the attempt yesterday until I objected. I noticed in an article that I read in a newspaper that a public records request was filed for a certain for-profit charter entity. And they said that they would respond and give all this information over next week. So if this bill passes today, if the Governor changes his veto stance and signs it, then it becomes law. And then that charter school, knowing what they probably knew, they're not going to give over those records next week because now they don't have to because we just said they don't. I have a problem with that and I hope that you will, too. I ask you not to adopt the conference report.

**Speaker Tillis:** Representative Meyer, please state your purpose.

**Rep. Graig Meyer (D):** Mr. Speaker, I'd like to ask Representative Hardister a question.

**Speaker Tillis:** Representative Hardister, does the gentleman yield?

**Rep. Hardister:** I do.

**Speaker Tillis:** The gentleman yields.

**Rep. Meyer:** Thank you, Representative Hardister. When we debated this bill in the House we had a little bit of controversy about protections for lesbian, gay, bisexual, transgender students. We had a great moment of unanimity where we found a compromise amendment to take care of our concerns. We voted one-hundred and fifteen to zero to support that amendment, thanks to Representative Ramsey. And now when this comes back to us it appears that those protections are gone. Why would we support a conference report where that unanimous stand that we took has been stricken from the bill?

**Rep. Hardister:** Representative Meyer, thank you for the question. When we voted on that amendment, it was...I have the language here. It was...What it...Okay, here's what it says: "A charter school should not discriminate against any student with respect to any category protected under the United States Constitution under federal law applicable to the states."

In the conference committee we felt like we don't need to subject that kind of policy in a charter school bill because it could have broad effect. And so we felt like that's something that ought to be taken up in a long session. If we're going to mirror federal law, that's something that ought to be vetted, debated, go through the process. So what we did as a compromise in the conference committee is we decided to take existing state law as it applies to traditional public schools and apply that to charter schools. And that's what we have in the bill now.

**Rep. Meyer:** Mr. Speaker, may I debate the bill?

**Speaker Tillis:** The gentleman is recognized to debate the motion.

**Rep. Meyer:** My concern is that we did have a thorough process where our amendment to provide protections for LGBT students was thoroughly debated by this body. We debated that over two days, in fact, and we passed an amendment unanimously. Our job is to make state law and the existing state law does not protect LGBT students in the course of enrollment or even just maintaining enrollment in charter schools. I believe that this body stood up for protecting those students and we should continue to stand up for protecting those students. And therefore, we should vote not to concur to provide our best effort to tell our colleagues in the Senate that we value justice for all students.

**Speaker Tillis:** Representative Brandon, please state your purpose.

**Rep. Marcus Brandon (D):** To ask Representative Hardister a question please.

**Speaker Tillis:** Representative Hardister, does the gentleman yield?

**Rep. Hardister:** Yes sir.

**Speaker Tillis:** The gentleman yields.

**Rep. Brandon:** Representative Hardister, you said that there were some provisions that you guys have put in under existing state law. Can you explain what state law? And on a follow-up question, you said that it was going to create a broad effect. Can you explain broad effect when it comes to the Constitution and protecting children, and what broad effect would that actually affect?

**Rep. Hardister:** Okay, thanks for the question. To be 100% honest with you, I'm not sure what type of broad effect, but I think when we subject our state laws to adopting into our state law any type of federal law—bringing that into the State of North Carolina—I think we need to be very judicious about that.

And because I'm not an attorney, it's kind of hard for me to explain, but in the conference committee we said, you know, this could be...this could have consequences across the state, not just for charter schools, but for other...you know, other parts of the State of North Carolina that would be effected by taking in the federal law. So to be honest with you, I'm not 100% sure.

I think there's nobody in this body that wants to see anybody discriminated based on who they are as a person. But I think it's sensible to say that we have, you know...we have in the State of North Carolina law that will protect people from discrimination that applies to traditional public schools and has for a long time. And so we took that and applied it to charter schools in this bill.

I believe Representative Lewis passed out a document that everybody should have on their desks that touches on this. And I would say, Mr. Speaker, I spoke to Representative Lewis before starting debate and he said he may want to speak to this. He can probably speak with more authority than I can.

What I can say, Representative Brandon, is that I want to do what's right for all children, regardless of who they are in their background and who they are as a person. But when you get into federal law versus state law, and so on and so forth, I think for some of us it's kind of hard to wrap our head around and we want to be very judicious about what we're doing.

So I think the spirit, the intent of where...at least where I'm coming from with this bill is the same as yours. And, you know, beyond that I would just say that again, we're trying to take discrimination law in North Carolina existing and apply it to charter schools. And then when we move on to next session, I would commit to work with anyone who wants to take a look at can we strength those laws, can we strengthen laws or expand upon laws in any way that would help protect our children from discrimination.

But again, Mr. Speaker, I may see if Representative Lewis would like to explain the document that he has passed out. I believe he could probably explain this better than I can.

**Speaker Tillis:** Representative Brandon, I understand that Representative Lewis is going to speak momentarily. I think he's going to address that. You can either direct the question then or see if the question is answered at that time.

**Rep. Brandon:** I will yield to Representative Lewis to explain where LGBT folks are protected in this bill.

**Speaker Tillis:** Representative...Does the gentleman wish to debate or has he redirected the question. Representative Lewis, does the gentleman wish to yield to the gentleman from Guilford in response to the question?

**Rep. David Lewis (R):** Sure.

**Speaker Tillis:** The gentleman yields.

**Rep. Lewis:** Representative Brandon, I believe you asked where the nondiscrimination language appears in this bill? And I'm sorry, I was trying to listen to what you said, but I wasn't sure if you were going to ask me or I was going to speak. So let me just take a shot, and if I don't get where you ask, I'll try again.

Discrimination against anyone at any time for anything is wrong. It's against the law. It's defined in state statute numerous times exactly the way it's defined in this bill. State law in no statute, in no section of exiting law--and this gets part to what Representative Meyer asked--in no part of existing law does the kind of language that you've asked about appear. So this bill provides the exact same protection.

That was what we...As I listened to the good debate on this bill, I heard two things. I heard, one, we want the charter schools--the public charter schools--to be subject to the same kind of rules that the traditional public are. That's what this language does. This language does protect all kids. And, as I said, there's no other statute that speaks to the kind of language that you have asked about. You know, because you've been here for several years now, we often as we draft bills attempt to mimic or to reiterate existing language in bills. That's what this bill does.

**Rep. Brandon:** Thank you. Can I speak on the bill, Mr. Speaker?

**Speaker Tillis:** The gentleman is recognized to debate the motion.

**Rep. Brandon:** The problem here is that we can pull from state law as much as we want to pull from state law and we can imply that this does protect all kids. The problem in the State of North Carolina is that the LGBT community

is not a protected class. There is no state law that protects it. We have national origin, we have religion, we have sex, we have race, but we don't have that protected class from that. So there is nothing we're pulling from. That's the reason why we had to pull from federal law because the State of North Carolina doesn't protect LGBT students, or people for that matter.

A principal of a charter school, regardless of what this bill says, can say because there are no protections that we are not taking LGBT students. Heck, we just had it happen in Wilmington. Said that, "We're not taking gay students," and he wanted to take public money. And he was able to say that. That same principal cannot get up and say, "I'm not taking black children." That would be illegal. But he was able to get up and say, "We're not taking gay students," and it was totally legal. And he doesn't have to take them, and he won't. And that is the problem...

**Speaker Tillis:** Representative Iler, please state your purpose.

**Rep. Frank Iler (R):** Propound a question to the speaker.

**Speaker Tillis:** Representative Brandon, does the gentleman yield?

**Rep. Brandon:** Absolutely.

**Speaker Tillis:** The gentleman yields.

**Rep. Iler:** Okay, Representative Brandon, in fear of channeling a former representative here, I'm a little bit confused. So you're referring to a school that was going to deny acceptance to gay students. Was that a charter school or a Christian school, or what was that?

**Rep. Brandon:** It was a private school taking public money for vouchers. And the debate was if he was going to take public money from vouchers would he be still able to discriminate against LGBT students? And he decided not to take public money so he could continue to discriminate.

**Rep. Iler:** A follow-up question?

**Speaker Tillis:** Does the gentleman yield?

**Rep. Brandon:** Yes.

**Speaker Tillis:** The gentleman yields.

**Rep. Iler:** My recollection is that it was a Christian school, not a charter school. Additional question, has something changed in the last few years that we still admit students to charter schools by lottery, or have we changed that so we can pick and choose not by lottery?

**Rep. Brandon:** A lot of charter schools that start don't even have to have a lottery. I have a charter school. We don't have a lottery; we're not a capacity yet. The problem here is do I expect...I've been living in this world for thirty-nine years. Do I expect a school to get up and do what the school in Wilmington did? No, I know that's the exception. But that's the reason why we make laws. I don't expect maybe two or three charter schools to even say such a thing. But if they do say such a thing, we have to have a law to protect it and right now we do not.

That same principal in Wilmington, regardless if it's a private school, if it's a private school he still cannot get up and say, "I don't take black children." Even if he's a private school, he can't say that. He can't say, "I'm not going to take certain children because of who they are," because that's not American and that's not the Constitution. He still said it and there's no protection for that student, regardless of who they are.

It doesn't matter if you're a public, private, charter, virtual, whatever—you should never be able to discriminate based on anybody. And we have a law...We have a policy in the State of North Carolina that a man can stand up in front of his school and say, "I'm not taking these children." And that is ridiculous. It should never happen that way.

We have protections for every child except the LGBT child. I'm not coming back here, but what I would say is that this policy that we have in this bill is not...I understand where Hardister is saying, "Are we going to bring this into the charter school bill?" I don't think...I understand that argument. But the problem is that there are no

protections. And if you really are serious about making sure that the Constitution applies to everybody, you don't go and select and choose who the Constitution applies to and who the Constitution does not apply to.

Oh, it's too broad, or it's this, it's that. And we make all these excuse of why we don't protect people. But protections are part of the Constitution.

**Rep. Iler:** One additional question?

**Speaker Tillis:** Does the gentleman yield to a follow-up?

**Rep. Brandon:** Yes.

**Speaker Tillis:** The gentleman yields.

**Rep. Iler:** I hope this is the last one. So you are... Given the answer that I heard, you are still in agreement that a charter school has the same protections that a traditional public school has? These other schools are—private, Christian, other kinds of schools—are not part of this?

**Rep. Brandon:** No, I don't agree with that because we don't have the protection. They can say it. I mean, like even though we say... In order for them to not be able to do it you would have to have a law saying that they can't, and we don't have that law.

The public school doesn't do it because the public school has not... That doesn't necessarily mean that it's not there. We had to put bullying laws in. We still have a long way to go with that. Just because the public school takes them and they have to take them doesn't mean that a charter school has to take them. A charter school can deny people, and if they go to court right now and say, "Hey look, we're not taking this gay student," there is nothing in our policy that says that they have to—nothing, absolutely nothing.

So if they went to court about this today and said, "Hey, we don't want to..." Tell me, somebody get up and show me where that school would have to take an LGBT student. There's nothing in our law where you can see it, you can read it, it's all in black and white, it tells you who it protects. And what it does not protect is the LGBT student; it just doesn't. No matter how much we want to apply it, no matter how much we really want to assert it, and no matter how much we have it in our heart that we want to protect all students, it is not in the language. And if it's not in the language, anybody can do it. And that's just where it is.

So folks, I'm not going to do this. I'm not going to go through a whole long debate about it. I appreciate your one-hundred-and-fifteen/nothing vote on equality, but the real issue here is the LGBT community is not a protected class. You can't draw something from nothing. Don't fool yourself. That stuff is not in this bill because it's not written. And any judge in any court will allow any school and entity to say, "We can discriminate on that," simply because it's not protected.

And like I said, the case in Wilmington, regardless if it's a private school, just understand this: that principal in Wilmington could not get up and say, "I don't take black children," or "I don't take Jewish." He can't say that. But he could get up and say, "I don't take gay children." You deal with that and let me know if you're okay with that... You let me know if you're okay with that for somebody to stand in front of their school and say, "We're not taking you because of who you are." Y'all deal with that.

**Speaker Tillis:** Representative Langdon, please state your purpose.

**Rep. J.H. Langdon (R):** To debate the bill.

**Speaker Tillis:** The gentleman is recognized to debate the motion.

**Rep. Langdon:** I think the question, of course, is do we have law in North Carolina that says public charter schools cannot discriminate, and that is true. They cannot discriminate and I think we're getting off the subject of what is really the law here. So I would hope that you'll, as you consider the conference report, that you'll actually consider that very point. Discrimination cannot be done. And I understand what Representative Brandon is saying. I don't have a problem with... There are issues sometimes, but the state law is pretty clear and I hope you'll consider that when you take your vote.

**Speaker Tillis:** Representative Lewis, please state your purpose.

**Rep. Lewis:** To debate the adoption of the conference report.

**Speaker Tillis:** The gentleman is recognized to debate the motion.

**Rep. Lewis:** Thank you, Mr. Speaker. Ladies and gentlemen of the House, obviously this is a very important issue to everyone in here. And I've listened very closely to the debate on this issue and on other issues that we've done this year. And I just want to make a few points.

I would point out to you that the original objection to this bill, as we referenced earlier by the lady from Mecklenburg, was that it maintained a different standard of public record inspection and access for the public charter schools than the traditional public schools. This corrects that... This corrects that.

The point that is being discussed about contract-type employees, this would be no different than if the Harnett County Schools were to contract with SAS or IBM to come in and redesign their computer system. The contract that the Harnett County school signed with SAS would be fully disclosable to the public. Any contract for management-type—be it janitorial service, administrative service—that are signed by a public charter school is fully disclosable as a part of the public record.

Now, let's go back to the contract with SAS again. While you as a citizen have the right to see the contract that the Harnett County schools may have signed with SAS, you don't have the right to see what SAS pays its people to carry out the contract. And not only do you not have the right to do it for the charter schools or the traditional schools, you don't have the right to do it for any other agency or branch of the State of North Carolina. We heard you loud and clear. You want the charter schools held to the same standard as the traditional public schools. That's what you said. That's what the Governor said. That's what this bill does.

I also want to speak again briefly on the nondiscriminatory language that's in this bill. Discrimination... I've said this before, but I think it bears repeating. Discrimination against anyone at any time for any reason is wrong... is wrong. It's already forbidden by state law, by federal law, by numerous court decisions that have come down, and it's not going to happen.

This bill is not, respectfully, the vehicle to start to try and enumerate different classes of people. This bill treats everybody the same. Every person who wants to go to a public charter school is allowed to go, period.

And you know, I listened closely to the debate yesterday, and one of the things that I heard was that we're not a rubberstamp for the Senate. And I agree with that. That was very well said. But this conference report was adopted by the Senate forty-five to zero.

I heard the same gentleman, I believe, try to differentiate between conservatives and uber-conservatives. So I have to ask, which one of the minority party in the Senate... Are they just the regular Democrats or are they the uber-Democrats? I don't know. All I'm saying is this conference report that we have before us and this motion to adopt it is a straightforward, simple request to make a few changes in the charter school law.

And please let me reiterate two points. First of all, the objections that were heard when this bill was first passed was that this subjects charter schools to a different level of scrutiny and public inspection than traditional public schools. This conference report fixes that. Charter schools are now subject to the exact same disclosure that traditional public schools are and, I might add, every other state agency is. Very important to note.

And since again there's been... And I respect—and I've made a statement similar to this before—I respect the passion and I reject the past abuses and discrimination and attempts to classify people into groups and treat those groups differently. But this bill... this bill merely says we aren't going to do that. We don't allow it now in this state and we're not going to allow it going forward.

This is a good conference report. This shows legitimately listening to the objections that were put out there. Treat the charters the same—that's what you said. Treat the charters the same. This treats the charters the same. This protects the public's right to know, this protects the public money that flows to these public charter schools which educate our kids, and I would urge you to let's adopt this report.

**Speaker Tillis:** Representative Michaux, please state your purpose.

**Rep. Mickey Michaux (D):** To speak on the motion.

**Speaker Tillis:** The gentleman is recognized to debate the motion.

**Rep. Michaux:** Mr. Speaker and ladies and gentlemen of the House, this argument has gone on as before. This body added something to this bill that the Senate decided to take out and put something else in there. But the argument comes down to...Somebody just argued the fact that it means you're not going to discriminate against anybody.

What does discrimination mean? Why do we have to specify those areas where discrimination is identified? It's because discrimination, like all other wording in a lot of instances, is not specific...It's not specific. If you say, "I'm not going to discriminate against you," why am I not going to discriminate against you? Am I not going to discriminate against you because you're white, or because you're gay, or because your creed doesn't say that I should, you know...What does it mean?

What you're doing is saying...You're defining. You're defining what discrimination means, and you do it every day. You've got it in here. You say, "A charter school shall not discriminate against any student on the basis of ethnicity, national origin, gender or disability." It doesn't say anything about sex. It doesn't say, actually, anything about color. Ethnicity is different from color.

What you've got here is something that this House finally decided to do and the Senate decided they wanted to change it and put it back like it was. These words that you put in here have specific meaning. Sexual orientation—everybody shies away from sexual orientation. But if you discriminate on the basis of sexual orientation and you don't discriminate on the basis of race, have you discriminated or have you not discriminated? That's what the problem is here. That's why you have to be specific in what you do and what you say and how these things operate.

We need to go back to the language...And I would admit to you as a lawyer that I'm not totally satisfied with what we passed out of here. But at least, at least it was a move in the right direction. And the Senate now wants to change direction that you made on that. And I think Representative Cotham made an impassioned plea as to why you should not concur in this and go back to where we originally were in this bill, and not have the Senate run roughshod over us as they seem to be trying to do right now. I mean, if you're going to, you know, just give everything back to them—let them do it and we can go home.

**Speaker Tillis:** Representative Moore, please state your purpose.

**Rep. Tim Moore (R):** For a motion.

**Speaker Tillis:** The gentleman is recognized to state his motion.

**Rep. T. Moore:** I move the previous question.

**Speaker Tillis:** Representative Moore moves the previous question. The question before the House: shall the main question now be put. All in favor vote aye; all opposed vote no. The Clerk will open the vote...The Chair will allow time for members to return to their desk...a brief period of time, Representative Catlin...The Clerk will lock the machine and record the vote. Sixty-three having voted in the affirmative and thirty-five in the negative, the motion passes.

The question before the House is the adoption of Senate Bill 793. All in favor vote aye; all opposed vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. Sixty-two having voted in the affirmative and thirty-six in the negative, the conference report for Senate Bill 793 has been adopted. The Senate will be so notified.

Members, for those of you who are wondering why there was no debate, this particular motion is not considered a main question under Rule 19(e). That is why the Chair did not recognize the Minority and Majority Leaders for three minutes.

~ Fin ~

## **PART IV**

### **2015-2016 Biennium**

*January 14, 2015 - July 1, 2016*



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**Speaker Pro Tem Election  
Nomination & Acceptance Speeches  
January 14, 2015**

*Audio available at [this link](#)  
Speeches begin:00:58:28*

**Speaker Tim Moore (R):** The next item on the agenda is the election of the Speaker Pro Tempore. For what purpose does the gentleman from Guilford, Representative Faircloth, rise?

**Rep. John Faircloth (R):** For a nomination and to speak in support.

**Speaker T. Moore:** The gentleman is recognized to submit a nomination and to speak in support of the same.

**Rep. Faircloth:** Thank you, Mr. Speaker. Members of the House, Honored Guests, Ladies and Gentlemen, today it is indeed my high honor and distinct privilege to bring to this legislative body and place in nomination the name of the gentleman from Wake County, the Honorable Paul Stam, for the Office of Speaker Pro Tempore of the North Carolina House.

For those of us who have been here a while, no introduction of Paul Stam is necessary. We know the gentleman, and we know of his love for, and his dedication and many contributions to, this institution and to the State of North Carolina. But for those of you who are newly arrived Members amongst us, or who are visiting the "people's House" today, let me make a few points.

If public service is a desired quality, Paul Stam has met that test throughout his adult life. A U.S. Marine serving his country; a Sunday school teacher serving his church; a practiced and distinguished attorney serving his profession and his community; and a local and state leader serving his Party are just a few examples. With respect to this House, Representative Stam is in his eighth term and has served as Minority and Majority Leader, and, most recently, as Speaker Pro Tem.

Skip Stam is personally responsible for the successful transformation of many in this Chamber from being active and interested citizen-candidates to becoming dedicated and effective legislators. His availability to offer advice; his willingness to collaborate on bill development; his careful deliberation and honesty in his critique; and his stress for cooperation within the Caucus and across the aisle, has consistently resulted in quality legislation in the best interests of those we serve.

Skip is a teacher and a mentor, and I personally thank him for that. I echo and agree with the thoughts of Representative Nelson Dollar when he said that Paul Stam is, quote, "a man of unshakable character. After a difficult legislative battle, when rhetoric can often become heated, Skip Stam is as quick to offer a smile and a handshake to his adversaries as he is to his allies. He serves as an example in our democratic process; that you can fight passionately for deeply held beliefs and when the battle is over, win or lose, hold no grudges or ill will for his opponents in a Campaign, in Court or in this Chamber."

Representative Stam is not one to take on an assignment and do just enough to fulfill the job requirements. We can rest assured that if we see fit to elect him to this office, he will stand ready to assist our Speaker and to participate in the leadership activities necessary to support us all in our duties and responsibilities.

He will personally be involved in promoting meaningful policy development and will personally be participating in the furtherance of legislation in keeping with his strong conservative principles and his deep Christian faith.

I can think of no more well-qualified candidate, nor more concerned inclusive member of the leadership team of this 2015-2016 House, than Paul Stam. For these reasons and more I respectfully ask for the support of the members of this House to elect him as our Speaker Pro Tem. Thank you.

**Speaker T. Moore:** For what purpose does the lady from Randolph, Representative Hurley, rise?

**Rep. Pat Hurley (R):** To second the nomination of Representative Stam and to speak to it.

**Speaker T. Moore:** The lady from Randolph has the floor.

**Rep. Hurley:** Thank you. Ladies and gentlemen of the House, Mr. Speaker and Honored Guests here this morning. I stand to second the nomination of Representative Paul Stam as Speaker Pro Tempore of the North Carolina House in this one hundred fifty-second convening of the General Assembly.

Today Representative Stam will begin serving his eighth term as a member of the House of Representatives. He is one of the most trusted and respected members of this body. I have served with him eight years. During that time he has served as Minority Leader, Majority Leader and Speaker Pro Tem. His door is always open as all of you know. And he will give you advice and answer your questions. He may not always agree with you but he respects you and will give you the truth. His integrity is beyond reproach.

Contrary to what some of you may think, he did not write the Magna Carta. However I am sure he can read it. He is the “go to” person for anything pertaining to history. I am very honored to serve with him, and I can say so much more. But I think you understand who he is and what he stands for. So I humbly ask you to join me in voting for Representative Paul Stam for Speaker Pro Tem of the North Carolina House of Representatives. I am proud to second the nomination.

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*Rep. Stam's comments:01:08:26*

**Rep. Paul Stam (R – Speaker Pro Tem):** Members, guests, Justices Edmunds, Newby and Jackson; I am especially pleased that former Speaker Pro Tem Jack Hunt is here today. He and I served together many years ago when I was young and he was distinguished.

I accept your election. Two years ago on this occasion, I thanked my family and I used the examples of my eldest grandsons for some lessons on how we could do legislation better. But they are here today and I am not going to embarrass Aidan and Will.

This is a time to be reminded of first principles. And 2015 is the 800th anniversary of Magna Carta. Members of the House would be shocked—shocked if I did not mention it and draft it into the service of the House.

Magna Carta was a deal between the nobility and King John. He was in deep trouble and barely kept the crown and perhaps his life by making sixty-three campaign promises. In Section 25 he promised “Every county shall remain at its ancient rent without increase.” Some issues never die. Tax increases and unfunded mandates were not invented last year.

Litigation, then and now, requires years to complete. His campaign promise number forty provides “To no one will we sell, to no one deny or delay, right or justice”. Many of us are working now to realize that promise so that the resolution of criminal charges, at least, may require only months and not years.

In a day when the principles of free trade and free enterprise are attacked from the right and the left King John’s campaign promise number forty-one provides—and *I should say this is all in Latin so this is translated for all of us*—“All merchants may enter or leave England unharmed and without fear, by land or water, for purposes of trade, free from all illegal exactions in accordance with ancient and lawful customs.” Free trade and free enterprise have many friends—except when its friends think it damages their own pocketbooks. Eight-hundred years ago the English realized that free trade and free enterprise are powerful engines of economic growth for the State as a whole.

Environmental issues didn’t just surface fifty years ago. Eight-hundred years ago there were those advocating locking up of land from use by the public. Robin Hood and the Sheriff of Nottingham came to blows over this question. Robin Hood won when campaign promise number forty-seven provided “All forests...”—*remember he was exiled to the forests and he was in trouble for shooting the King’s deer*—“All forests that have been created in our reign shall at once be disafforested and a similar course shall be followed with regard to river banks.” I am not advocating today that we literally fulfill this campaign promise by eliminating the parks at Grandfather Mountain and places like that. I’m just saying this is not a new issue.

Religious Liberty is always an issue. In 1215 the first and last sections of Magna Carta protected the church from the government. In 2015 when the Little Sisters of the Poor, a charitable order of nuns, is threatened with massive fines by the federal government, we need a restoration of religious freedom. When we next reconvene on January 28 there will be a legislative briefing on that subject, open to all.

Magna Carta even addresses separation of powers. And I am glad Senator Tillis is here today because he may get an idea here from promise number sixty-one. North Carolina was perhaps the first state to place that principle of separation of powers in its constitution, on instruction from the inhabitants, Representative Insko, of Orange County to the Provincial Assembly in 1776: But what is the remedy for usurpation of power by an Executive like King

John? Is it lawsuits? Magna Carta suggested a unique consequence. This requires not only a translation from Latin to English but a paraphrase so that you may enjoy it. Senator Tillis, take note.

King John made campaign promise number sixty-one: “If we, or our Attorney General, offend in any respect against any man and offense is made known to the Senate (that is the twenty-five chosen barons) they shall come to us or to the Attorney General to declare it and claim immediate redress. If we, or the Attorney General, make no redress within forty days—forty days—the Senate may then distrain upon and assail us in every way possible, with the support of the whole community of the land, by seizing our castles, our lands, our possessions, and anything else, except only our own person and that of the First Lady and our children, until they have secured such redress as they have determined upon. And having secured that redress the Senate may then resume its normal obedience to us.” That would really turn things around in Washington.

Let us enjoy the session as we address new challenges, new technology, new demographics and the ideas of new representatives. But old principles will often suggest the way forward. Thank you very much for your election.

~ Fin ~

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**HB 3 – Eminent Domain  
Remarks in House Judiciary II Committee  
February 4, 2015**

*The fifth attempt by the House to stop abuses of condemnation law passed on a vote of 113 to 5.  
In 2016 the Senate passed a portion of the reform but coupled it with another  
unrelated amendment that could not pass the House.*

**Chair Jonathan Jordan (R):** The bill that we’re exploring today is House Bill 3, Eminent Domain. At this point I’d like to recognize Representative Chuck McGrady to explain the bill. Of course, we have staff here with us today: Bill Patterson, Jan Paul.

**Rep. Chuck McGrady (R):** Mr. Chairman, colleagues, I usually explain my own bills, but since this legislation involves a constitutional amendment, I’m actually going to ask staff to explain it. It is, I would note, relatively easy to correct a mistake in legislation that is passed, but it is very difficult to correct a mistake in a constitutional amendment. And I just want to make sure that everyone gets a totally unbiased statement of what the proposed legislation does before you hear my advocacy of it and Representative Stam’s advocacy of it. So, Mr. Chairman, if I could turn to Mr. Patterson to explain the bill?

**Chair Jordan:** Okay. Mr. Patterson, please.

**Bill Patterson (Staff Attorney):** Thank you, Mr. Chair. Members of the Committee, House Bill 3...And I think everyone has a summary; a staff summary was prepared for this. House Bill 3 essentially does several things. It proposes a constitutional amendment that would prohibit condemnation of private property except for a public use. It also would require the payment of just compensation for the property that was taken and require compensation to be determined by a jury trial. So that’s the amendment to the Constitution part of this bill.

It would also amend current statutes to make it clear that purposes for which property may be taken under Chapter 40A by a private condemnor, a local public condemnor and certain other specified condemnors would have to be for a public use. Presently those statutes say that it could be for public use or benefit. So the primary changes to the statute, Chapter 40A, are to remove the words “or benefit” so that it’s clear it’s just for public use.

In addition, and I’ll go through the sections, Section 1 is the section of the bill that would add the constitutional amendment. Section 2 would provide that the amendment is to be submitted to the voters at the election on May 3rd, 2016.

Section 3 provides that if the amendment is approved by a majority of the voters at that election, the State Board of Elections will certify the amendment to the Secretary of State, who then will enroll the amendment. And it would become effective upon certification, and it would apply to takings occurring on or after that date...well, after that date.

Section 4 of the bill is the one that would change G.S. 40A-3. This is the section of the statutes that deals with the authority that the State is giving to the classes of condemnors that are specified in that statute to exercise the power of eminent domain. And this is where it would change the purpose for which private, local public and other public condemnors can exercise that power by condemning property. It would change that from “public use or benefit” to “public use.”

In addition, Section 4 of the bill modifies the types of construction for which these private condemnors may acquire property for public use. It replaces the terms “telegraphs and telephones” with “communication facilities.” It also adds facilities related to the distribution of natural gas, and it inserts the word “natural” before the word “gas” in the list of commodities for the transportation of which pipelines or mains may be constructed on condemned property.

Section 5 of the bill would add a new subsection (d) to G.S. 40A-3. This would provide that private condemnors, local public condemnors and other public condemnors subject to this statute shall have and may exercise the power of eminent domain to acquire property for the purpose of connecting to any customers that they may have.

The effective date of this bill: Sections 4 and 5 become effective when the act becomes law and would apply to takings occurring after that date. That’s the statutory changes. The remainder of the act is effective when it becomes law.

That’s a brief synopsis of what the bill would do, Mr. Chair, and I’ll be happy to answer any questions.

**Chair Jordan:** Thank you. Representative McGrady?

**Rep. McGrady:** Sometimes a bill’s title doesn’t tell you much about the bill, but House Bill 3 is not one of those bills. It clearly says it’s about eminent domain, and specifically it proposes to amend the North Carolina Constitution to prohibit condemnation of private property except for a public use, to provide for payment of just compensation with right of trial by jury in all condemnation cases and it makes similar statutory changes. And that’s exactly what this bill does.

It is essentially the same bill that passed the House by a vote of one-hundred and ten to eight in the last Session. I believe all the members that are here voted for this bill the last time. Representative Glazier, Representative Stam, Representative Michaux and myself all spoke to the bill on the floor. Most basically the proposed constitutional amendment says that private property shall not be taken by eminent domain, except for a public use. That’s really the heart of the bill.

Now I’m going to explain the constitutional amendment piece of this and then I’m going to ask Representative Stam, if he would, to explain the statutory piece. But the statutory piece really just dovetails with what is being proposed in the portion of the bill that relates to the constitutional amendment.

So what is a public use? Roads, schools, sewers, courthouses, and it’s also a public utility’s acquisition of public right-of-ways, even though they’re owned by a private entity, because a utility is, by definition, something to which the public has a right to obtain a service upon a payment of a fee. Now this sound simple, so the question is, well, why do we need a constitutional amendment?

Well, aside from the public use test, there are two other tests that sometimes are used when deciding whether a government can use its power of eminent domain—and when I say “used,” I mean to have been mentioned in court cases. And so over a period of time, there’s been different language used. Sometimes courts, rather than talking in terms of public use, they’ve talked in terms of public purpose or public benefit. And with time, the test has gotten fuzzy. And that fuzziness, I guess, is reflected in a US Supreme Court case.

In the US Supreme Court Case, the so-called *Kelo* case, the US Supreme Court was faced with the question of interpreting the federal Constitution with respect to what restrictions would be on the condemnation of private property. And surprisingly, in a very unpopular decision, the Supreme Court said that a public purpose was sufficient under the US Constitution, so that a Connecticut town could force the sale of property by one private landowner to the town, which in turn sold the property to another private landowner—in that case, a developer.

Fortunately in *Kelo* the Supreme Court said that the states were free to restrict eminent domain more than that, and that is precisely what we are trying to do with this bill. We’re trying to clearly establish a constitutional standard under the North Carolina Constitution.

Now I guess you could debate the difference between public use and public benefit or public purpose, but I don’t think that is critical to really thinking about this bill. What is critical is that you understand what this bill would do, assuming North Carolina voters approve the proposed amendment.

First, as already suggested, the bill would mean that a public use does not include the taking of property in order to convey an interest in that property for economic development. The use of eminent domain, as approved in *Kelo*, would not be possible with the passage of this constitutional amendment.

Second, the constitutional amendment provides language that specifically says that “just compensation shall be paid.” While these five words have been determined by the North Carolina Supreme Court to have been implicit in our law-of-the-land clause, which I’m guessing dates back to the Magna Carta, we are one of only a handful of states that don’t actually have that in our Constitution.

Third, I tell you that we’re the only state that doesn’t require in its constitution that the issue of damages in condemnation cases be decided by a jury. The sponsors of this legislation believe that a jury trial in eminent domain cases is so fundamental that it should be spelled out in the Constitution.

So, Sections 1 through 3 of the bill relate to the constitutional amendment and how it would be...when it would be voted on. And it’s a relatively short provision that will be put before the voters. And now I’ll ask Representative Stam to address the remaining provisions, which are the statutory provisions.

**Rep. Paul Stam (R – Speaker Pro Tem):** Thank you. May I ask the Sergeants at Arms to pass something out?

**Chair Jordan:** Yes, sir.

**Rep. Stam:** Representative McGrady has accurately described the constitutional provision. There was concern amongst utilities, cities, counties for years that this provision would somehow override their existing eminent domain authority to do utilities, although the case law is clear that public utilities are a public use.

So, you know, how can we deal with that without making a constitutional amendment that was several pages long? This is going in the Declaration of Rights, which are fundamental things, and it’s not a statute. There are people who want to put lots of provisions about condemnation law in this Constitution, and I invite them, if they want to do that, to get a bill drafted and have a fiscal note on it and then we can debate it. But that’s never going to happen. But it’s a legitimate concern of these cities, counties and utilities.

So we hit upon a solution. And I would like to give credit to a lot of this to Gerry Cohen, our ex-officio member of the House for decades, for helping come up with this solution that in the same piece of paper that the Assembly votes on, we would establish what was and what was not legislative intent.

So because there are a lot of ambiguous cases distinguishing *use* and *benefit*, we have the same document in the statutes four times strike the word “or benefit”—in the disjunctive: or. It doesn’t mean that taking it for public use is not for a public benefit; it means that if it’s *only* for the public benefit, but not for a public use, it wouldn’t qualify—in other words, to get more tax money out of somebody.

So that’s the reason “or benefit” is stricken four times. That’s actually going back to the original purpose from about, Chuck, 1929 when the “or benefit” language was placed in the statutes where it was actually used as a conjunctive. That is, you had to satisfy both tests, not just one. They had different rules of grammar, apparently, in those days. But in some of the more recent cases they’ve used it, as in standard English, as an “or.” So that’s the reason for that striking. And that would take effect even if the people vote this amendment down.

The second thing is the underlined parts of these statutes are changing some language to clarify just to make sure that in modern language we’re doing what the court cases are already saying that we’re going to do. Just for example, because this has come up amongst some people, on page 2, line 3, there’s an underlining: “facilities related to the distribution of natural gas.” That was in a court case in the Court of Appeals in 2011 where our Court of Appeals said that there was a power of eminent domain for the distribution of natural gas. It does not mean for the production of natural gas or seizing people’s property to drill on it or anything like that. It’s for gas distribution. It’s already in the law; that’s intended to be clarifying.

Same with the connection of customers. There’s pretty good law that almost all of that Section 5 has been apparently actually in our law now for several years, decades. There always comes up the question of what if it’s to one customer? And this makes clear that the distribution of utilities to even a single customer is a public use. And some of the cases gave examples. For example, a telephone line to one customer—yeah, maybe only that one customer’s using it, but everybody in the world can call that person. Or the internet: you may be one person at the top of a mountain, but everybody in the world in Timbuktu can send you an email. Follow what I’m saying?

Okay, a couple of final things. I passed out this one article: “I’d rather be a hammer than a nail.” And if you google nail households in China, you see that the only way they have to stop the taking of property by eminent domain is to just stay in the house, because if you don’t, they’ll just come in the night and bulldoze you down.

That's the way they do it. But there are a lot of these nail houses. In other words, it's a world-wide phenomenon that people want their property protected from taking by the government.

Last little bit of history. Chuck mentioned the version right before us was passed, I think one-hundred and three to eight or something like that, in the last session. We actually passed it with a tweak different earlier in the session, the same one-hundred and three to eight or ten. I'm hopeful we can resolve any issues with the Senate. I will note that in 2007 the version of this was sponsored by ninety-six House members, including one of the principal sponsors—Dan Blue. So I'm counting on our Senator Dan Blue to break through over there.

So with that, Mr. Speaker, knowing we'll have a lot of discussion, I do move for a favorable report on the bill.

**Chair Jordan:** Thank you, Representative Stam. Representative Stam moves for a favorable motion for discussion. Is there discussion from the committee? Representative Michaux.

**Rep. Mickey Michaux (D):** Yeah, I voted for it. In fact, this matter has been before this body on numerous occasions. I think [audio unclear]...Wegner wrote a [audio unclear]...we had at the time, I think I'll be Chairman of J...something with constitutional amendments. And I was Chairman of Constitutional Amendments. I was made Chairman of that in order to kill all constitutional amendments.

[laughter]

**Chair Jordan:** They couldn't have picked a better one.

**Rep. Michaux:** But this one survived. I want you to, however, make it clear that the basic genesis for this, the fact that private property was being condemned and then sold to private developers for the benefit of the private developers, not necessarily for the public. The only question that arises in that is that if you, in fact, condemn for a public purpose and sell to a private developer in order to...For instance, something like urban renewal—getting rid of slum areas. How are you clarifying that and clearing that particular point up, if you sell to a private developer in that situation?

**Chair Jordan:** Representative Stam?

**Rep. Stam:** Yes. Right after *Kelo*, which I believe was 2005, in the 2006 Session there was a statutory amendment that drastically basically prohibited condemning property just because it's blighted. Now what you can do if you have an area that's blighted and some people will sell and some people won't, you can still condemn a particular property for a school or for a park or a post office and get rid of it that way. And the second thing—this is condemnation by eminent domain. It's often confused with another kind of condemnation, which is what a city or town does because the property is below building code and they won't bring it up, and that's not affected by this constitutional amendment. Cities and counties can still condemn the property. If the property owner won't fix it, the city or county can demolish it, repair it, whatever, and then put a lien on the property for the cost of that.

**Rep. Michaux:** But that is not eminent domain.

**Rep. Stam:** That is not eminent domain, but that is still possible. That is not affected by this bill.

**Rep. Michaux:** But...

**Chair Jordan:** Follow-up?

**Rep. Michaux:** Yeah.

**Chair Jordan:** Yes, sir.

**Rep. Michaux:** Just to be clear, the fact that you go into an urban renewal project and clear blight, and then you condemn that property. Nobody's selling it; you condemn it under the eminent domain statute [audio unclear] this constitutional amendment [audio unclear]...If you sell it to a private developer, that has to be for a public purpose, does it not?

**Rep. Stam:** This amendment would require it be for a public use, not just for a public purpose. Let me give an example, which is what actually instigated me to begin this a few years ago. There was an area in Fuquay-Varina that had some blight, and there were areas that didn't have blight, but they were condemning it all. And I represented a family that had owned some of the property there for a hundred years and had been acquired by the grandfather who worked on the railroads in the winter and in the summers he'd come and build houses. Well, the properties that were blighted can be dealt with by the non-eminent-domain condemnation. But the properties that were just vacant or not blighted at all could not be condemned by eminent domain under this constitutional amendment, *and* couldn't be condemned now under our statutes that were passed in 2006.

**Chair Jordan:** Thank you. Representative Faircloth?

**Rep. John Faircloth (R):** Thank you, Mr. Chairman. I think what I'm concerned about may have been answered, but I want to verify. Let's say that a city working with its Housing Authority wants to condemn some property or take *[audio unclear]* with eminent domain some property in order to build public housing. That would be a public purpose under this *[audio unclear]*...

**Rep. Stam:** But not a public use.

**Rep. Faircloth:** So they could not...So are you saying they could not do that *[audio unclear]*...?

**Rep. Stam:** Well, if the government itself is going to own the housing, they could.

**Rep. Faircloth:** Well, a Housing Authority...

**Rep. Stam:** If the government itself is going to own the housing, yes.

**Rep. Faircloth:** Alright. Follow-up?

**Chair Jordan:** Yes.

**Rep. Faircloth:** Assuming that, then let's say a Housing Authority buys the property, gets the property through eminent domain, builds the housing development, operates it for fifteen years and then decides to sell it. What's the effect on that?

**Rep. Stam:** Good question. In my opinion, the way it would be interpreted by the courts was, if that was the plan to start with, you can't do it. But there is no prohibition...Let's even take Housing Authority off. Let's say you decide to buy the property for a school—clear public use—and five years later they decide that that school site is surplus and they want to build the school two miles away. That is not prohibited by this because the acquisition was for a public use.

**Chair Jordan:** Representative Conrad?

**Rep. Debra Conrad (R):** Yes. I definitely support this bill, but I was reading an email this morning—and maybe Representative McGrady can respond—that sort of characterize the language in 19.1 as not perhaps having enough teeth in it compared to what some of our neighboring states have done, and perhaps *[audio unclear]*...a little lack of clarity in what the legislative intent might be. I don't know if that's the case or not, but just was wondering how you would respond to such a *[audio unclear]*...

**Chair Jordan:** Representative McGrady.

**Rep. McGrady:** I think I saw the same email moments before arriving here and have not had a chance to look at it. It specifically related back to language that John Locke or Civitas were suggesting in South Carolina and Virginia were strong. I don't know Virginia law and I don't know the South Carolina Constitution either. I think the points that we're making—that is, first putting in place public use, clearly knocking out public purpose and public benefit—is

the prime reason for the bill, with the idea of just compensation and jury trial being two pieces that are not in our Constitution.

I would recommend the language that we put forward to you. And this has been an evolving process over the two decades that Skip Stam's been around. But the language that we're putting forward here is really clean. If you read the Virginia and South Carolina provisions, you've got to be a lawyer. Ours is two sentences, and I think a non-lawyer can look at it and figure out what this means.

And so that was my initial take on it. I want to look back at that, Representative Conrad, and I probably will...I'll send you an email with copies to the rest of the Committee to respond specifically...I mean, response to the email. But it just came up so late I couldn't do more than that.

**Rep. Stam:** May I address that, as well?

**Chair Jordan:** Yes. Representative Stam.

**Rep. Stam:** I have prepared and will be submitting a bill that will reform DOT condemnations by statute. And I would invite you to join me in it, especially because it relates to Forsyth County and the problems there. A lot of what they're objecting to in this email is that we're not putting statutes in the Constitution. And there are two problems with that. One is that you've got to get a lot more votes to pass a constitutional amendment than a statute. And number two, the fiscal note on what they propose would be very high and would prohibit what we're doing here. It's not that they're bad ideas. It's just they're not appropriate for a Constitution.

**Chair Jordan:** Chairman Blust?

**Rep. John Blust (R):** Does this bill differ at all from two years ago, and if so, could you specifically point out those differences?

**Rep. Stam:** Yes, I can. The question's on the statutory part.

**Rep. McGrady:** Yeah, I was going to say the only portion of the constitutional portion of this is really just the change in the date for when the referendum would occur. The changes that are here from the earlier bill are in the statutory provisions. They're on the bottom of the first page and the top of the second, I believe. Representative Stam, if...?

**Rep. Stam:** Yes. We passed it twice in 2013. This verbiage is identical to the second time we passed it. The one change between the first time we passed it and the second time in a different bill is on page 2, lines 2 and 3, adding "facilities related to the distribution of natural gas." And really that concept was in there to start with with gas and the Court of Appeals case that I mentioned in 2011. And really, if you think—I don't mean you in particular—but if people think about it, that's a limitation on what they can do for gas because it's for distribution as opposed to production of gas. So that was the change between House Bill 8 and the House Committee Substitute for Senate Bill 636, which passed later in the session.

**Chair Jordan:** Yes, Representative Stam...I mean, Representative McGrady?

**Rep. McGrady:** I was going to...I mean, there's been some Twitter discussion and email discussion about how the word "natural gas" arrived in this thing, distribution of natural gas and speculation that this had to do something with fracking. It doesn't. We're talking about distribution here. An energy company can't use eminent domain to go out and put down a drill site. We're talking about how an energy company or a telephone company gets its service...it distributes what it distributes. And again, there's nothing like that going on in this language.

**Rep. Stam:** And that is not a change from existing law; it's just codifying existing law.

**Rep. McGrady:** Yeah.

**Chair Jordan:** Follow-up, Chairman Blust?



**Rep. Blust:** On a separate question, then, with just the constitutional part. And I know you want it to be succinct, and it is—but I’m wondering, the just compensation shall be paid and shall be determined by a jury at the...okay, at the request of any party. So that would not stop...Most of these things are done by agreement, and this just then preserves the ability to go get a jury, if you so choose?

**Rep. McGrady:** That’s exactly right.

**Chair Jordan:** Representative Bumgardner?

**Rep. Dana Bumgardner (R):** On page 2 at the top there where it says...on line 6, I’m just curious how you arrived at number *a* there: not less than 50 or more than 100 feet?

**Rep. McGrady:** It’s current law.

**Rep. Stam:** That’s current law. That’s not being changed. I have no idea why. And that can be changed later.

**Chair Jordan:** Follow-up?

**Rep. Bumgardner:** Well, if you put this in a constitutional amendment, you might want to think about that...

**Rep. Stam:** That’s not in the constitutional amendment.

**Rep. Bumgardner:** Okay.

**Rep. McGrady:** That’s in the statutory portion. If we decided, you know, on policy grounds we wanted to change those numbers, the General Assembly could do it. We’re just trying to make sure that the statutes comports with what we’re putting into the Constitution.

**Chair Jordan:** Further discussion or debate?

**Rep. Michaux:** Mr. Chairman?

**Chair Jordan:** Yes, Representative Michaux?

**Rep. Michaux:** Just as I’ve said before, the bottom line is to do away with this idea of a utility or anybody else condemning property and then turning it into a private development. That’s the whole bottom line for this situation. It’s happened so much. Cities violated it, utilities violated it[*audio unclear*] This puts a stop to that practice.

**Chair Jordan:** Thank you, Representative. Further debate or discussion from the Committee? Alright, Representative Stam has a favorable motion for House Bill 3. All those in favor signify by saying aye.

[Aye]

Opposed nay. The ayes have it. House Bill 3 has passed...

**Rep. Michaux:** Mr. Chairman?

**Chair Jordan:** ...House Judiciary II...

**Rep. Michaux:** Mr. Chairman?

**Chair Jordan:** Representative Michaux.

**Rep. Michaux:** Before you...I’d like to recognize my mayor—if you’ll stand—Mayor Bell...

**Chair Jordan:** Absolutely. Mayor Bell...

**Rep. Michaux:** I know he's got an interest in this.

**Mayor Bill Bell:** Quite a bit.

**Chair Jordan:** Mayor Bell from Durham, welcome.

**Rep. Stam:** Mr. Chairman?

**Chair Jordan:** Representative Stam.

**Rep. Stam:** Just for the information of the public, we think it will be on the calendar tomorrow. So if the members will plan to be there and the public.

**Chair Jordan:** Okay.

**Rep. Michaux:** It takes...?

**Rep. Stam:** It will require a three-fifths majority.

**Chair Jordan:** Alright. It's passed House Judiciary II, so we'll report that to the floor. Is there any other business coming before the Committee? Seeing none, we're adjourned.

**HB 3 – Eminent Domain  
Remarks on 2nd Reading  
February 5, 2015**

*Audio available at [this link](#)*

*Debate begin: 00:12:22*

**Speaker Tim Moore (R):** House Bill 3, the Clerk will read.

**Reading Clerk:** House Bill 3, by Representatives McGrady, Stam, Lewis and Goodman. An Act to amend the North Carolina Constitution to prohibit condemnation of private property except for a public use, to provide for the payment of just compensation with the right of trial by jury in all condemnation cases and to make similar statutory changes. General Assembly of North Carolina enacts.

**Speaker T. Moore:** For what purpose does the gentleman from Henderson, Representative McGrady, rise?

**Rep. Chuck McGrady (R – Primary Sponsor):** To speak on the bill.

**Speaker T. Moore:** The gentleman has the floor to debate the bill.

**Rep. McGrady:** Mr. Speaker, colleagues, House Bill 3 proposes a constitutional amendment to the North Carolina Constitution to prohibit the condemnation of private property except for a public use, requires the payment of just compensation for property taken and requires the compensation to be determined by jury trial if requested by any party. The bill also includes some statutory changes consistent with the constitutional amendment. The Speaker Pro Tem, Representative Stam, will be addressing those when he speaks on the bill.

For many of us, this bill probably seems very familiar. The reason for that is that a nearly identical bill passed one-hundred and ten to eight in 2013, and identical provisions were included in an omnibus bill, Senate Bill 636, last year that passed one-hundred and three to ten. So this bill has been before us before in essentially the same form we see it today. And it comes to the floor upon a unanimous vote of the Judiciary 2 Committee. And I'd say that suggests that the bill has had rather consistent and broad bipartisan support.

Section 1 of the bill is the heart of the bill. It provides for the constitutional amendment. I'll explain the details of that in a moment. Section 2 provides the amendment shall be submitted to voters in the next statewide general election on May 3 of 2016—that's the primaries. And Section 3 explains how the amendment becomes effective upon certification by the Secretary of the State. Sections 4 and 5 are the statutory provisions which Representative Stam will be discussing. Section 6 provides the effective date.

Now this bill relates to eminent domain—in other words, the forced sale of land to the government. Most basically, the proposed constitutional amendment says that private property shall not be taken by eminent domain except for a public use. So what is a public use? Obviously roads, schools, sewers, courthouses. And it's also public utilities' acquisition of rights-of-way, even though they are owned by a private entity, because a utility is, by definition, something to which the public has a right to obtain service upon payment of a fee.

Now, the concept of public use—that sounds simple. So the question is why do we need a constitutional amendment? Well, aside from the "public use" test, there are two other tests or phrases sometimes used when deciding whether a government can use the power of eminent domain. Sometimes courts have talked in terms of "public purpose" or "public benefit," and with time the test, frankly, has gotten rather fuzzy or has morphed.

This became really clear when the U.S. Supreme Court decided a case out of Connecticut, the Kelo case. Surprisingly, in its very unpopular decision, the U.S. Supreme Court said that "a public purpose" was sufficient under the U.S. Constitution so that a Connecticut town could force the sale of property by one private landowner to the town which in turn sold the property to another private landowner—in that case a developer.

Fortunately, in Kelo the Supreme Court said that the states were free to restrict eminent domain more than that under their constitutions. That is precisely what we are trying to do with this bill. We are trying to clearly establish a constitutional standard under the NC Constitution. Now I would tell you that I really don't view this standard as any different than what our current law is. We're not trying to make new law here; we're just trying to make sure that North Carolina's law stays what it is and doesn't sort of morph back to a lower standard that has been established by the U.S. Supreme Court.

Now I guess we could debate the difference between public use and public benefit or public purpose, but I don't think that is critical for you in thinking about this bill. What is critical for you to understand is what this bill would do, assuming North Carolina voters approve the proposed amendment. First, as already suggested, the bill will mean that a public use does not include the taking of property in order to convey an interest in that property for economic development. The use of eminent domain, as approved in Kelo, will not be possible in North Carolina if we pass the bill and the voters approve this constitutional amendment.

Second, it puts language in our Constitution specifically saying, "Just compensation shall be paid." While these five words have been determined by the North Carolina Supreme Court to have been implicit in our "law-of-the-land" clause, which I'm guessing dates back to the Magna Carta, we are one of the only states that doesn't actually have that in our Constitution.

Third, we are the only state that does not require in its constitution that the issue of damages in condemnation cases be decided by a jury. The sponsors of this legislation believe that a jury trial in eminent domain cases is so fundamental that it should be spelled out in our constitution, and forty-nine other states do that.

So I recommend the bill to you. Obviously it is a bill that has had broad support in the House. I don't think it changes our law based on the case law that is out there. It does fix some language in statutes and in court opinions that, as we saw in the Kelo case, can sort of move in a direction other than where North Carolina has been. And so I ask your support for the bill.

**Acting Speaker Leo Daughtry (R):** For what purpose does the gentleman from Wake, Representative Stam, arise?

**Rep. Paul Stam (R – Primary Sponsor):** To debate the bill.

**Speaker Daughtry:** The gentleman has the floor to debate the bill.

**Rep. Stam:** Mr. Speaker, members of the House, I'll address the statutory changes in just a moment. I put on your desks an article from *The Economist* a few years ago that explains the nail households in China. If you google "nail households," you'll see some really strange things: highways that split just to go around a house because the people in the house refuse to move, and so they go around them. Normally the way they take property in China is when people are gone they just bulldoze them down. And if you look at the second page of this article, the very last paragraph, they have a very ill-defined "(public) interest" criteria, which is very similar to the public purpose or public benefit test that we're trying to get rid of.

The reason I put this out here: we are addressing a universal, worldwide desire that people have—that their property—particularly their homes—not be taken from them forcibly for an improper purpose. And I believe that if we put this before the people we will have overwhelming support. We have it at a May primary referendum so that nobody thinks he or she will get an advantage in a November election.

Second, this bill is, after twenty-six years, hopefully finally coming to fruition. From the beginning it has always been bipartisan. I remember Senator Dan Blue—he was a Representative—was a primary sponsor. Representative Goodman is a (primary) sponsor this year. One time (2007) we had ninety-six sponsors to try to get the then-Speaker to bring the thing out.

Now, why do we want to make the statutory changes in this bill? We could have constructed a constitutional amendment that would have taken two pages to completely explain all the nuances. But that's just not really appropriate for a constitution. Instead, by putting the statutory changes in the same piece of paper that you vote on, we are establishing irrevocably what the legislative intent is. Frankly, a lot of utility companies, cities and counties were very concerned with the original drafts of the constitutional amendment because they thought—incorrectly—but nevertheless they thought it would stop the use of eminent domain for utilities. It's not designed to do that at all. But what it is designed to do is to make sure we're talking about "public use" and not "benefit," "purpose" or "public interest."

There have been hundreds of years of cases from the appellate courts that have discussed this and, frankly, they're conflicting, confusing and some of them could be interpreted to mean that we are using the "public benefit" test. About eighty or ninety years ago when that phrase was first put into the statutes—"public use or benefit"—the "benefit" was used as an additional restriction on condemnation by eminent domain. It was not an alternate test. They didn't have proper grammar lessons from their English teachers. They thought the disjunctive and conjunctive were the same thing. But in more recent years it has morphed into some courts in North Carolina thinking that a "benefit" would be enough. So this makes clear that it's just the "public use".

Then we modernize some of the language about utilities. For example, instead of telegraph and telephone, we use "communication facilities." This, frankly, was at the request of a lot of the utilities. There was some discussion about the phrase, "distribution of natural gas," being included in here. Representative McGrady and I have tried to figure out how some people think this has something to do with fracking. It is our opinion it has nothing to do with fracking. This is the distribution of a utility—natural gas—and there has already been a Court of Appeals decision in 2011 that said the distribution of natural gas is proper for condemnation.

I need to make one clarification that Representative Michaux asked me to make. I'm happy to do it, because in terminology there's an ambiguity... The word "condemnation" is used in two completely different ways. This bill talks about condemnation by eminent domain. That is the power of the State, which has been in English law for seven or eight-hundred years, I think... doesn't go back to the Magna Carta, it's a little more recent than that. But that's the taking by the government of property upon payment of compensation.

There's another usage of the word "condemnation," and that's under the police power. That is, if Representative Cleveland here—and I'll use him as an example because I've been to his lovely home and I know this is counter-factual. But just suppose that all the building codes were violated in his house and it was an eyesore, and the inspectors came along and said, "You can't live here anymore, George. This is not safe." And they put up a condemnation sign: "Do not enter. You have to fix it or we're going to tear it down." That is not eminent domain. They give you an opportunity to fix it—usually. If you fix it, fine; if you don't, they can tear it down and charge the cost of tearing it down to you. It's a lien on the land and you might lose your property because you don't pay the lien. That process would not be affected by this bill at all because that has nothing to do with eminent domain.

I encourage you to vote for it. I'm very optimistic that this will come through to fruition after twenty-six years. I really appreciate the hard work that Representative McGrady has put in on this. Thank you, Mr. Speaker.

**Speaker Daughtry:** For what purpose does the gentleman from Durham, Representative Michaux, arise?

**Rep. Mickey Michaux (D):** To speak on the bill.

**Speaker Daughtry:** The gentleman has the floor to speak on the bill.

**Rep. Michaux:** That twenty-six years ago that Representative Stam referred to was probably when I was Chair of a Judiciary Committee and had the bill before us at that time, indicating that this question has been before this body and before this state for a long period of time.

Condemnation, particularly of private property, has always been a problem. After the *Kelo* case had come out from Connecticut, it gave the states an opportunity at that point to make clarification. And after all the legalese that you've

heard here, it's very simple. You cannot take something that has happened in the past...A lot of condemnations have resulted in the city or the utility or whatever taking private property under condemnation authority and then selling it back to a private developer. This has been a distinct problem in this state. This bill, in my estimation, clarifies that situation that they cannot do that at this time.

The other thing, if you really want to put it into perspective, it does not stop a city or county from declaring an area blighted. I asked Representative Stam to explain that to you simply because that is one of the fears that many cities and counties may have—that they cannot go in and declare an area blighted and under the condemnation proceedings take that area. They still, under the other procedure, can do that and cause you...And then that property can be taken because you don't pay the lien as a result of what they have done on that.

But we just wanted to clear up the fact that you just can't go in and take property and then sell it to a private developer for a lesser price so that they can make a profit. We need this. We need this for clarification and I hope that you will support it.

**Speaker Daughtry:** For what purpose does the gentleman from Cabarrus, Representative Pittman, arise?

**Rep. Larry Pittman (R):** To ask Representative Stam a question.

**Rep. Stam:** I yield.

**Speaker Daughtry:** Representative Stam, do you yield for a question?

**Rep. Stam:** I yield.

**Rep. Pittman:** Thank you, sir. For those folks, like myself, who might have a little bit of fear of ambiguity, never knowing how the courts are going to interpret something later on, what assurance do we have, as good as this is (and I do support the bill), but what assurance do we have that "public use" will be understood not to include taking property for purpose of conveyance to a third party interest for economic development?

**Rep. Stam:** Representative Pittman, thank you for the question, and indeed in several past drafts of this bill in many other sessions that was specifically added in. It's not here because it's not necessary because if it's for private development by definition it is not a public use. That is my position, the position of all the sponsors which we here state on the record.

**Speaker Daughtry:** For what purpose does the gentleman from Gaston, Representative Torbett, arise?

**Rep. John Torbett (R):** Thank you, Mr. Speaker. To ask the bill sponsor a question.

**Speaker Daughtry:** Representative McGrady, do you yield for a question?

**Rep. McGrady:** I yield.

**Rep. Torbett:** Thank you, Representative. I have a few just for clarity's sake. Could a municipal or governing entity take a piece of property for public good to run a sewer line, let's say, that was along a creek bed on the back of my property?

**Rep. McGrady:** Yes.

**Speaker Daughtry:** Follow-up question?

**Rep. Torbett:** Thank you, Mr. Speaker. Could a governing entity—municipality, county, state—take a piece of property maybe running along a creek bed on the back of my property to implement a walking-trail, greenway or something like?

**Rep. McGrady:** Yes, probably. A greenway is typically viewed as a park and a park is a public use, and potentially that's possible, yes.

**Rep. Torbett:** Follow-up?

**Speaker Daughtry:** Further question?

**Rep. Torbett:** Thank you, Mr. Speaker. Representative, would it be available for a municipality or county government or state government to take a parcel of land to erect a utility, but inevitably take more than is actually needed for that utility, thereby having more-than-needed property that would be in turn sold back to another entity?

**Rep. McGrady:** I might...I can't really give you a yes or no to that because I can think of two situations that would lead to different positions. A utility or municipality could acquire property that it thought it needed for its public use and it turned out to be more land than it needed. But at the point in time that it was acquiring it, you know, let's say the train station was going to have this footprint and then they redesigned the train station and it got smaller. And so yes, they could end up with additional property.

But that situation is actually sort of what we're trying to avoid here. One of the things that has been suggested, whether it's in relationship to an airport or a train facility, is that well, the municipality will obtain a large tract of land for airport purposes or for rail. And by the way, we're going to add a little more land so we can put in some nice restaurants and stores and other things. No—they're not in a position to acquire property for what now is not a public use.

And so again, I'm sorry to not be able to give you an answer yes or no but...And I suspect that if a municipality moved forward to condemn land truly for a public use, but under the guise of getting more land for nonpublic use, that would be challengeable in a court. I think a court would see right through that.

**Rep. Torbett:** Final question, Mr. Speaker?

**Speaker Daughtry:** Do you yield for a further question?

**Rep. McGrady:** I do, Mr. Speaker.

**Rep. Torbett:** Can a city, county or state governing entity acquire a piece of property with the intent in the future to apply a utility or [*audio unclear*]...and if so, is there a timeline for that future use? Thank you, Mr. Speaker.

**Rep. McGrady:** Mr. Speaker, maybe I can refer that one to Representative Stam?

**Speaker Daughtry:** Representative Stam, do you yield to answer the question?

**Rep. Stam:** I would. The case I referred to earlier regarding distribution of natural gas, *Town of Midland v. Morris* in 2011, specifically—I think it's this case; it may be another case—specifically said it can be for a future use. But it has to be for a future use for the utility; it can't be a situation where they buy it for one purpose with the present intent to use it for something else.

**Speaker Daughtry:** For what purpose does the gentleman from New Hanover, Representative Catlin, arise?

**Rep. Rick Catlin (R):** Thank you, Mr. Speaker. To ask Representative Stam a question.

**Speaker Daughtry:** Representative Stam, do you yield?

**Rep. Stam:** I do.

**Rep. Catlin:** Thank you. This is a clarification for public use and private benefit. If you are looking at properties that have limited public access, like state parks or an airport or a military base, would that still be considered public access for eminent domain acquisitions?

**Rep. Stam:** Yes...yes. Now, I'll give you an example. A cartway...Y'all know what a cartway is? An involuntary way of getting into property to harvest some timber. That's been justified by our Supreme Court, upon payment of compensation, because theoretically the public can use that cartway even if it's just to a tract of land in the woods. It

doesn't mean that every single member of the public can necessarily use it. But if public entities or public agencies or public ports can use it, certainly I would think that would be a public use.

**Rep. Catlin:** Follow-up?

**Speaker Daughtry:** Do you yield for a follow-up question?

**Rep. Stam:** I do.

**Rep. Catlin:** Just a clarification. So the ports can use eminent domain, an airport can use it if they want to expand a runway, or the military can use it?

**Rep. Stam:** Yes. Now let me, just for information, elaborate and give a nuance because this bill is intended to affect a particular use that was used by an airport one time. Piedmont Triad Airport wanted to expand so that FedEx could have a particular location, and they essentially took private property so that FedEx could own land. But for the hub, the runways, the roads—yes, that's a public use.

**Rep. Catlin:** One more follow-up, please?

**Speaker Daughtry:** Another follow-up?

**Rep. Stam:** I yield.

**Rep. Catlin:** Who makes that decision?

**Rep. Stam:** Well, all cases like this ultimately would be decided by courts. This bill gives tightened guidelines so that the courts are much less likely to find "public use" than if we did not pass the bill.

**Rep. Catlin:** Thank you.

**Speaker Daughtry:** For what purpose does the gentleman from Union, Representative Brody, arise?

**Rep. Mark Brody (R):** Mr. Speaker, could I ask Representative Stam a question please?

**Speaker Daughtry:** Representative Stam, do you yield?

**Rep. Stam:** I yield.

**Rep. Brody:** Representative Stam, I wanted to just inquire about the extent of the definition of the word "taking," and in particular what I would call—it may not be a legal term, but I would call "temporary taking" that would ultimately cause an adverse effect on the property. Would that be included in... Would just compensation be allowed under this provision to allow for temporary taking? And if you want, I can give you an example.

**Rep. Stam:** Not just allowed, but required. Under our current law, temporary takings of land require just compensation as much as if it's permanent.

**Rep. Brody:** Thank you.

**Speaker Daughtry:** For what purpose does the gentleman from Richmond, Representative Goodman, arise?

**Rep. Ken Goodman (D – Primary Sponsor):** To ask Representative McGrady a question.

**Speaker Daughtry:** Representative McGrady, do you yield?

**Rep. Goodman:** Representative McGrady, in reference to the questions that Representative Torbett asked about the creek bank and the sewer line and the greenway, can't government entities do that under current law?

**Rep. McGrady:** This amendment doesn't change that in any regard. We're not trying to change the law at all. Governments have the ability to condemn for public use, and all of those were public uses. And I might add, thank you for your co-sponsorship of the bill.

**Rep. Goodman:** Glad to help. One more question, Mr. Speaker?

**Speaker Daughtry:** Follow-up? Do you yield?

**Rep. McGrady:** I yield.

**Rep. Goodman:** Does this bill in any way expand the government's ability to condemn property?

**Rep. McGrady:** No.

**Rep. Goodman:** Thank you.

**Rep. Elmer Floyd (D):** Mr. Speaker?

**Speaker Daughtry:** For what purpose does the gentleman from Guilford, Representative Faircloth, arise?

**Rep. Floyd:** Mr. Speaker?

**Rep. John Faircloth (R):** For a question of Representative McGrady.

**Rep. McGrady:** I yield.

**Rep. Faircloth:** Thank you, Mr. Speaker. Representative McGrady, has there been any input from the local governments on this particular bill, and if so, could you enlighten us on what it might have been?

**Rep. McGrady:** To my knowledge neither the County Commissioners Association nor the League of Municipalities has formally taken a position on the bill. There are municipalities that are concerned that, you know, this in some way restricts them from things they would like to do. That may be possible if they were thinking about using eminent domain for economic development purposes. But to my knowledge, none of the associations and none of the municipalities or anything have come out in opposition to the bill.

**Speaker Daughtry:** For what purpose does the gentleman from Cumberland, Representative Floyd, arise?

**Rep. Floyd:** Mr. Speaker, I want to know if the bill sponsor will yield for a question?

**Speaker Daughtry:** Do you yield?

**Rep. McGrady:** I yield.

**Rep. Floyd:** Representative McGrady, this is your bill and I think it's a very good bill. We've had a very lengthy discussion on it and so could you do the appropriate thing at this time, please?

[laughter]

**Rep. McGrady:** Since it's the first day of the session and the first bill that we're taking up of a substantive nature, and because it's a constitutional amendment which makes it more important, I'm not going to do that inappropriate thing at this time.



**Speaker Daughtry:** Representative Bumgardner, do you have a question?

**Rep. Dana Bumgardner (R):** Thank you, Mr. Speaker. I still have the same question. I'd like to ask Representative Stam a question.

**Speaker Daughtry:** Representative Stam, do you yield?

**Rep. Stam:** I yield.

**Rep. Bumgardner:** I still have the same issue with this bill. I support this 100%, except it seems like on page 2, line 6 we're saying "not less than fifty feet and not more than one-hundred." We're saying if you're going to take somebody's property, you have to take fifty feet. And if we're going to take property, let's take as little as we need. And for any liquid purpose, so if you want a sewer line across somebody else's property to get to another piece of property, you don't need fifty feet. Ten would be plenty, but I'm just... Other than that I have no problem whatsoever with this bill.

**Rep. Stam:** Representative Bumgardner, that's in a part of the statute that is not changing. Why fifty feet was there? Could have been for safety reasons, I don't know. But we were not trying to change the law in that section at all, and there will be other bills later on about condemnation to which an amendment might be appropriate if you contact the relevant utilities to see why that fifty-foot was in there to start with.

**Speaker Daughtry:** Further questions, further debate? If not, the Clerk will open the vote... The Clerk will record the vote and close the machine. One-hundred and six having voted in favor of the bill, five against the bill, the bill passes first reading...

**Rep. Sarah Stevens (R):** Mr. Speaker?

**Speaker Daughtry:** ...second reading and will be read a third time...

**Rep. Michael Speciale (R):** Object.

**Speaker Daughtry:** ...without objection. Objection being raised, the bill will be carried over.

**Rep. Stevens:** Mr. Speaker, I'd like to be recorded as voting yes.

**Speaker Daughtry:** The lady will be recorded as voting yes.

**Rep. Bobbie Richardson (D):** Mr. Speaker, I would also like to be recorded as voting yes—Richardson?

**Speaker Daughtry:** The lady will be recorded as voting yes.

**Speaker T. Moore:** For what purpose does the lady from Forsyth, Representative Terry, rise?

**Rep. Evelyn Terry (D):** Mr. Speaker, I'd like to be recorded as voting yes, but the machine...

**Speaker T. Moore:** The lady will be recorded as having voted aye on the bill. For what purpose does the gentleman from Guilford, Representative Johnson, rise?

**Rep. Ralph Johnson (D):** To be recorded for voting yes.

**Speaker T. Moore:** The gentleman will be recorded as having voted aye. Is that the same for Representative Graham? Is that the same...

**Rep. Charles Graham (D):** Yes.

**Speaker T. Moore:** The gentleman will also be recorded as having voted aye. For what purpose does the gentleman from Harnett, Representative Lewis, rise?

**Rep. David Lewis (R):** Mr. Speaker, I have a motion pertaining to the third reading of House Bill 3.

**Speaker T. Moore:** The gentleman is recognized for his motion and to debate the motion.

**Rep. Lewis:** Thank you, Mr. Speaker. I would move that the third reading, which would normally be held at the next House session which is February 9<sup>th</sup>, instead be held February 10<sup>th</sup>.

**Speaker T. Moore:** Without objection, so ordered.

*Later Speaker Moore noted that, for the purpose of the journal, the vote on 2<sup>nd</sup> reading was one-hundred and eleven in the affirmative and four in the negative.*

**HB 3 – Eminent Domain  
Remarks on 3rd Reading  
February 10, 2015**

Audio available at [this link](#)  
Debate begin: 00:02:07

**Speaker Tim Moore (R):** House Bill 3, the Clerk will read.

**Reading Clerk:** House Bill 3, Representative McGrady: an act to amend the North Carolina Constitution to prohibit condemnation of private property except for a public use, to provide for the payment of just compensation with the right of trial by jury in all condemnation cases and to make similar statutory changes.

**Speaker T. Moore:** The gentleman from Henderson, Representative McGrady, has the floor to debate, and because of an injury last night, without objection, the rule requiring the member to stand will be waived. Is there objection? If there is objection, you have to go deal with Representative McGrady. The gentleman is recognized to debate the bill.

**Rep. Chuck McGrady (R – Primary Sponsor):** Thank you, Mr. Speaker, and for that indulgence. Members, this is the bill that proposes a constitutional amendment to the North Carolina Constitution to prohibit the condemnation of private property except for a public use, requires the payment of just compensation for the property taken and requires compensation to be determined by a jury trial if requested by any party. We had a very strong vote on the bill yesterday...excuse me, the end of last week with one-hundred and eleven members supporting the bill. It's similar to the support the bill has received in the recent past. And, to my knowledge, nothing has changed since we debated it other than the Answer Man in the Asheville paper—not always a paper that would expectedly support this—has come out and definitively said that this bill has nothing to do with fracking. And so I will stop there and ask for a vote to send this bill to the Senate.

**Speaker T. Moore:** Further discussion, further debate? If not, the question before the House is the passage of House Bill 3 on its third reading. All those...I believe the question's been put, Representative Pittman. I'm sorry, I just saw your light. The Chair will withdraw the question. For what purpose does the gentleman from Cabarrus, Representative Pittman, rise?

**Rep. Larry Pittman (R):** To offer an amendment, or send forth an amendment.

**Speaker T. Moore:** The gentleman is recognized to send forth an amendment.

**Rep. Pittman:** I believe it's coming up on the Dashboard now.

**Speaker T. Moore:** The Clerk will read the amendment.

**Reading Clerk:** Representative Pittman moves to amend the bill on page 1, line 12, by inserting the following between the period and the quotation mark.

**Speaker T. Moore:** The gentleman from Cabarrus has the floor to debate the amendment.

**Rep. Pittman:** Thank you, Mr. Speaker. This is actually a pretty good bill and I have co-sponsored it. I will support it, regardless, but I feel that it leaves a little bit lacking because it does not make clear enough, I think, for our courts what our intent is. And so I wish to add this wording that “a public use does not include the taking of property for the purpose of thereafter conveying an interest in the property to a third party for economic development.” This is what happened in the Kelo case and I do feel that we need to be a bit more specific than the bill currently is by placing this language in there to make sure that the courts understand that it is our absolute intention that what happened in Kelo will not happen in the State of North Carolina. So it’s a good bill, but this is just intended to improve it and make it a little more clear on that fact and I’d appreciate your support for the amendment. Thank you.

**Speaker T. Moore:** For what purpose does the gentleman from Wake, Speaker Pro Tem Stam, rise?

**Rep. Paul Stam (R – Primary Sponsor):** To debate the amendment.

**Speaker T. Moore:** The gentleman has the floor to debate the amendment.

**Rep. Stam:** Mr. Speaker, Members of the House, reluctantly I ask you to defeat the amendment—oppose it—because it’s not necessary. You’ll recall—and I’ve got the transcript here—this question was raised on second reading. Representative Pittman: “What assurance do we have that ‘public use’ will be understood not to include taking property for purpose of conveyance to a third party interest for economic development?”

And my reply to him was this: “Representative Pittman, thank you for the question, and indeed in several drafts of that bill in many other sessions that language was specifically added in. It’s not here because it’s not necessary because, if it’s for private development, by definition it is not a public use.”

I have two objections. One is aesthetic and the other is practical. And by aesthetic I mean it just doesn’t fit. If you happen to have your Constitutions here, if you’d pull it out and if you’d go to the Declaration of Rights which is Article I, most of these fundamental rights are one or two sentences. We don’t want to just add an extra unnecessary sentence to the Declaration of Rights just because we feel that we want to be repetitive.

I have a relative—I won’t name who he or she is or the relationship—who on a telephone call will first tell you what she’s going to tell you and then she tells you what she’s telling you and then completes the call by telling you what she told you. Do you know anybody like that? Well, aesthetically in the Constitution we just don’t need to have a lot of stray words.

And in contrast to the Declaration of Rights, which are fundamental, there on Article V, Section 14 we have Project Development Financing. Do you remember that? TIFs? And it goes on for two whole pages and has only been used once or twice, usually with disastrous consequences. Those of you from Roanoke Rapids might know what I’m talking about. So it just doesn’t fit in a Constitution to add unnecessary words.

But the second reason is practical, and that is one of the statutes of...not statutes, rules of construction of constitutions and statutes is that the Assembly did not intend any words to be without effect. So if a court is construing this, they will construe that that second sentence means something different than the first sentence, otherwise we wouldn’t have added it. And since the first sentence completely limits a taking by eminent domain for those for a public use, what is a court going to do with the second sentence? It’s not going to think of it as an additional restriction because it’s already restricted. I’m afraid that if it’s in there they will say, “Well, that was really what this whole thing was about,” and only apply it to economic development activities. And that’s the motivating factor behind this constitutional amendment—the Kelo v. New London case—but it’s not the only thing it would cover.

So I’m afraid that, although Representative Pittman’s intent is exactly my intent, the effect of including it is actually contrary to his own intent. I ask you to not agree to the amendment.

**Speaker T. Moore:** For what purpose does the gentleman from Rutherford, Representative Hager, rise?

**Rep. Mike Hager (R – Majority Leader):** Mr. Speaker, to see if Representative Stam will yield for a question?

**Speaker T. Moore:** Does the gentleman from Wake yield to the gentleman from Rutherford?

**Rep. Stam:** I do.

**Speaker T. Moore:** He yields.

**Rep. Hager:** Thank you, Representative Stam. If an entity or municipality decided they needed twenty acres or a tract of land, a park or whatever, and then through their due diligence, once they purchase the land, went through the process, they decide they only needed ten acres and they already own the twenty acres. Could they then, years down the road—one year, two years, three years—take that other ten acres and convey it for a private use?

**Rep. Stam:** Representative Hager, this question was asked to Representative McGrady Thursday. And I'll give essentially the same answer but specifically to your question. If the taking of the twenty was a ruse to get the ten acres for the park and convey the other ten acres to a private party, a court will see through that and stop it. If in fact it becomes surplus property after the taking, then this amendment will not stop that.

**Speaker T. Moore:** For what purpose does the gentleman from Henderson, Representative McGrady, rise?

**Rep. McGrady:** To speak to the amendment.

**Speaker T. Moore:** The gentleman has the floor to debate the amendment.

**Rep. McGrady:** I urge the body also, as the Speaker Pro Tem has, to vote no on the amendment, but that isn't because I have any disagreement with my colleague from Cabarrus regarding the intent here. You know, many of us are not lawyers; I happen to be a recovering one. But the issue here is the language that we put forward needs to not have more than it needs to have. And so if you'd look at the amendment that is stated, I mean, if you just had to pull out three phrases, the first one would be "public use," the second one would be "just compensation," and the third one would be "jury trial." Those are the three big pieces of what this constitutional amendment does.

I would say to my colleagues that the amendment is...the strength of the amendment actually is its brevity. One can actually read it and figure it out. And by the reference to public use we are explicitly *not* adopting the *Kelo* standard that was established by the US Supreme Court under the Federal Constitution. We are setting a higher standard. And my view is similar to the Speaker Pro Tem in that, if we add this additional language, we're actually potentially undercutting the constitutional amendment that we're putting in place.

And therefore, while I agree with the gentleman's intent, our intent is exactly the same, and my belief is that we've accomplished what needs to be accomplished by the language in the fairly straightforward constitutional amendment that's in the bill. So I urge a "no" vote on the amendment.

**Speaker T. Moore:** For what purpose does the gentleman from Mecklenburg, Representative Brawley, rise?

**Rep. Bill Brawley (R):** I wondered if the gentleman from Wake, Representative Stam, would yield for a question.

**Speaker T. Moore:** Does the gentleman from Wake yield to the gentleman from Mecklenburg?

**Rep. Stam:** I yield.

**Speaker T. Moore:** He yields.

**Rep. Brawley:** Thank you, Representative. You've introduced a bill like this on several other occasions. How many times have you tried to do eminent domain?

**Rep. Stam:** Approximately six or seven times, and it's passed the House four times.

**Rep. Brawley:** Would the gentleman accept a second question?

**Speaker T. Moore:** Does the gentleman yield to a second question?

**Rep. Stam:** I would yield to a series of questions, yes.

**Speaker T. Moore:** He yields.

**Rep. Brawley:** Well, I think I might wrap it up with this one. Not being an attorney and having heard a lot of attorney talk, what I would like to ask you as a simple businessman: Is the bill better the way it is, or would it be better with the amendment at protecting property rights in North Carolina?

**Rep. Stam:** As is.

**Rep. Brawley:** Thank you.

**Speaker T. Moore:** For what purpose does the gentleman from New Hanover, Representative Catlin, rise?

**Rep. Rick Catlin (R):** To see if Representative Stam would yield for a question.

**Speaker T. Moore:** Does the gentleman from Wake yield to the gentleman from New Hanover?

**Rep. Stam:** I do.

**Speaker T. Moore:** He yields.

**Rep. Catlin:** Thank you. The unamended bill—the original bill—would it also prevent new land use restrictions that were not approved by the property owner?

**Rep. Stam:** Would you clarify if these are public land restrictions or private land restrictions?

**Rep. Catlin:** Well, let's just say for an environmental situation that the County wants to put a land-use restriction on you so that does not have to be remediated.

**Rep. Stam:** It would not. Now there is...By its terms it would not. Now, if the land-use restriction was so onerous that there was no practical use that could be made for (the land) at all, then if the restriction essentially kept it as a public use, it would also not be prohibited but just compensation should be paid. But that's rarely the case.

**Rep. Catlin:** Well, thank you for answering my question.

**Speaker T. Moore:** For what purpose does the gentleman from Craven, Representative Speciale, rise?

**Rep. Michael Speciale (R):** To speak on the bill.

**Speaker T. Moore:** The gentleman has the floor to debate the amendment.

**Rep. Speciale:** I think that if we're going to do a constitutional amendment that we need to be real serious about what we're doing and we need to make sure that it does what it's intended to do. So I have a question for the bill sponsor.

**Speaker T. Moore:** Does the gentleman...For McGrady or for Stam?

**Rep. Speciale:** We'll go with Stam because he [*audio unclear*]...

**Speaker T. Moore:** Does the gentleman from Wake yield to the gentleman from Craven?

**Rep. Stam:** I do.

**Speaker T. Moore:** He yields.

**Rep. Speciale:** In as few words as possible, what exactly is the bill supposed to do?

**Rep. Stam:** It's in two sentences. It's prohibiting the taking of property by eminent domain, but not by the police power, except for a public use, as distinguished from public benefit, public purpose, public interest. The second sentence doesn't change current law. The first sentence probably doesn't change current law but makes it very clear.

**Rep. Speciale:** Follow-up?

**Speaker T. Moore:** Does the gentleman from Wake yield to a second question?

**Rep. Stam:** I do.

**Speaker T. Moore:** He yields.

**Rep. Speciale:** How does it distinguish for public use as opposed to public benefit or necessity or purpose?

**Rep. Stam:** Well, the way we do that is we, of course, use the term public use. But because the court cases in North Carolina over the last hundred years—and here I would refer to a memo by Dean Judith Wegner a couple years ago who was Dean at Chapel Hill Law School and Professor of Real Estate law. And she provided it to all the lawyers in the Judiciary Committee a memo on all these cases. They are confused, conflicting and all over the place in their terminology, and in some cases they would confuse public benefit and public use or public purpose.

Well, the way we deal with that—because we want to have a legislative history that we are really trimming the purpose for which you can take land by eminent domain to a public use, which has been defined yesterday, or Thursday—the way we do that is on the same piece of paper that you vote on with the constitutional amendment, you are also voting on some statutory changes. And in four places in Chapter 40A—that's where this comes up; 40A is condemnation law by cities, counties, public utilities—where it says “public use or benefit,” we are striking “or benefit.” That's how.

**Rep. Speciale:** Follow-up?

**Speaker T. Moore:** Does the gentleman from Wake yield to an additional question from the gentleman from Craven?

**Rep. Stam:** I yield.

**Speaker T. Moore:** He yields.

**Rep. Speciale:** You're striking, “or benefit.” Are you striking necessity or purpose or any other meaning out of there?

**Rep. Stam:** No, because they're not there. We're striking “or benefit,” because that's what is in the current statutes today as an authorization to the Town of New Bern to condemn for the public use or benefit.

**Rep. Speciale:** Now may I speak on the bill?

**Speaker T. Moore:** The gentleman has the floor to debate the bill, or to debate the amendment actually.

**Rep. Speciale:** The amendment, I'm sorry. This is all very confusing: purpose, use, necessity, benefit. Apparently it's confusing to the courts, as well, because they keep changing it from one thing to another. It went from use to necessity to purpose to whatever, and this is how we ended up with *Kelo v. New London*.

If we're going to do an amendment, let's make it count. Let's make it clear. I love the way our colleague spun the benefits, or the aesthetics about how this thing...I've read it half a dozen times with his amendment and it sounds just fine. But you know what, even if it did sound a little awkward, does it get the job done? Does it protect your property? Does it keep the State from taking it in a situation like *Kelo v. New London*? The amendment will do that.

I objected to third reading the other day because I wanted to also put in there compensation, explaining what it is, to ensure that this amendment was worth its value and its effort. But it's a much more complicated thing than it appears to

be, so it's going to take some work. But I would ask you all, okay, to vote for this amendment because I think it clarifies what needs to be clarified in the minds of the people of this State. Thank you.

**Speaker T. Moore:** For what purpose does the gentleman from Nash, Representative Collins, rise?

**Rep. Jeff Collins (R):** To see if Representative Stam would yield for a question.

**Speaker T. Moore:** Does the gentleman from Wake yield to the gentleman from Nash?

**Rep. Stam:** I do.

**Speaker T. Moore:** He yields.

**Rep. Collins:** Representative Stam, do you think it would make it any clearer that this amendment is modifying the use of the term "public use," or just trying to make clearer what that is rather than adding another conflicting statement, if the amendment were wrapped in parentheses rather than just left as is?

**Rep. Stam:** No. Legislative history is interesting. There's a canard out there that North Carolina does not have legislative history, but we do. And now that all the words that I'm saying and Representative Pittman said and you're saying are recorded forever on the internet, this now becomes part of the legislative history. So I think it's clear that the motivating factor behind introducing the amendment was a situation that Representative Pittman discussed.

But the reason we don't want to put it in parentheses or...How would a court deal with that? The court would have one choice between two things. Either they're going to say that that second sentence expands the protection or it clarifies the intent of the protection so that it only applies to economic development situations. But that would be taking away from the protection. And I cannot conceive or imagine a situation that would be protected by his amendment that is not already protected by the first sentence, because if it's a public use, it's not being transferred to a third party...for the purpose of being transferred to a third party.

So I think, no matter how you put it in, it would be possibly dangerous. Probably not, but why take a chance?

**Speaker T. Moore:** For what purpose does the gentleman from Rockingham, Representative Jones, rise?

**Rep. Bert Jones (R):** To take my turn at offering a question to Representative Stam.

**Speaker T. Moore:** Does the gentleman from Wake yield to the gentleman from Rockingham?

**Rep. Stam:** I do.

**Speaker T. Moore:** He yields.

**Rep. Jones:** Thank you, Representative Stam. Is there a legal definition for the term, "public use" versus "public benefit," and if so, can you tell us briefly what that would be?

**Rep. Stam:** Well, Representative McGrady described that in his debate Thursday. A public use is either things owned by the public bodies—like schools, roads, prisons, sewers, water systems—or public utilities which, as he explained, the public gets to use on payment of a fee, and courts have held for hundreds of years that those are public uses. So those are public uses.

But what's a public benefit? That's in the eye of the beholder. A public benefit would be something like if we build a factory on your land—tear down your house and let's put a factory there. We'll get more property taxes and more people will be employed there. That's what happened in *Kelo v. New London, CT*. New London decided that it would be a better town to take this lady's house from her that had been in her family for forever, and she could live somewhere else and they would put, I believe it was Pfizer that wanted to redevelop that area. By the way, that project never happened. They took her property and they never built it.

So that could be interpreted as public benefit, and in fact, in some of our cases in North Carolina, some of the opinions of the Supreme Court sound like they're talking about public benefit rather than public use. That's what we want to clarify. We are not going to take people's property only for a public benefit.

**Speaker T. Moore:** For what purpose does the gentleman from Cabarrus, Representative Pittman, rise?

**Rep. Pittman:** To speak to the amendment a second time.

**Speaker T. Moore:** The gentleman has the floor to debate the amendment a second time.

**Rep. Pittman:** Thank you, Mr. Speaker. I have absolutely no doubt that Representative Stam and Representative McGrady have the very best intentions and are trying with their amendment to the State Constitution to do exactly what I would want to do. I just want to make sure that it works, and that's why I'm offering this amendment because, you know, I think the language in the United States Constitution should have been clear enough that the Supreme Court would never have done what they did in *Kelo*. Apparently it wasn't, so I want to make it more clear.

It kind of reminds me of the time I came home from work. I stopped at the store on the way and had my arms full of groceries, managed to get my key in and unlock the door and go in. Next morning I got up and I looked all over the house and could not find my keys anywhere. Turned everything upside-down, no keys, till I went outside, unlocked that door (I had a thumb latch on the inside), unlocked the door and there were my keys hanging in the lock outside. Now there was nothing wrong with that lock. It could do its job; it worked perfectly. But since I left the key there, it could have been compromised, you know? I want to make sure this lock works, and that's why I want to put this amendment to this bill. Thank you.

**Speaker T. Moore:** Further discussion, further debate? If not, the question before the House is the adoption of Amendment 1 offered by Representative Pittman to the third reading of House Bill 3. All favoring adoption of the amendment will vote aye; all those opposed will vote no. The Clerk will open the vote... Representative Warren, does the gentleman wish to vote on this amendment? The Clerk will lock the machine and record the vote. Ten having voted in the affirmative and one-hundred and eight in the negative, the amendment fails.

We're now back on third reading of the bill. Further discussion, further debate? If not, the question before the House is the passage of House Bill 2 on its third reading. All those favoring passage of the bill will vote aye; those opposed will vote no. The Clerk will open the vote... The Clerk will lock the machine and record the vote. One-hundred and thirteen having voted in the affirmative and five in the negative, House Bill 3 passes its third reading and will be sent to the Senate.

~ Fin ~

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**HB 97 – 2015 Appropriations Act  
Remarks on School Choice Amendments in the  
House Appropriations Education Subcommittee  
May 14, 2015**

*By 2015 Opportunity Scholarships were approved by the North Carolina Supreme Court  
and in operation. But attacks continued.*

**Chair Brian Holloway (R):** We will get started. The very first amendment we have up—and I will try to read the Representative who is presenting the amendment and the number—the number is H97-AMM-78, Version 1. It's Representative Michaux, and the Sergeants at Arms are passing out this amendment. Representative Michaux, you are recognized to present your amendment.

[unrelated dialogue omitted]

**Rep. Mickey Michaux (D):** Okay, this amendment actually takes...reduces item 67 on page F11, which is Opportunity Scholarships, by one million...one and a half million dollars. And it also, page 51...I'm sorry, line 51, page F9—this is the teachers assistants—adds the money to teachers assistants. And it also...That's what it does. It takes that amount of money from there and puts it into teachers...I'm sorry. It puts it into [audio unclear]...It reduces [audio unclear]...



**Chair Holloway:** And Representative Michaux, and I do apologize too, and any Members, I'll recognize you, and if you want to explain your amendment you can, and if you want to defer to staff to let them explain the amendment, you also have that option. But Representative Michaux, I know you've been here a long time and you knew that, but...

*[unrelated dialogue omitted]*

**Chair Holloway:** Okay, we'll let staff go ahead and give further explanation.

**Kris Nordstrom (Fiscal Staff):** Okay, this first amendment reduces item 67 on page 11. It's the Opportunity Scholarships. So it reduces that first year of non-recurring by 1.5 million and increases funding for item 51 on page F9, Advancement Activity Limitations. What it does is it adds to the list of campuses that would be protected here, just in the first year, North Carolina Central, North Carolina A&T and Winston-Salem State.

**Rep. Michaux:** Mr. Chairman?

**Chair Holloway:** Yes sir, Representative Michaux.

**Rep. Michaux:** What this does is, in the overall budget, the advancement advertising—advertising for raising funds—has been limited to \$1 million for all of the institutions save certain institutions. What I have done is I have added these other institutions, which are the HBCUs, which really need more than just a million dollars in order to raise funds. That's what this does, takes them out of that exemption.

**Chair Holloway:** Are there any comments from members or Chairs? We'll start with Chairs who wish to comment. Representative Bryan...Chairman Bryan.

**Rep. Rob Bryan (R):** I think all the Chairs are *[audio unclear]*...in the past, we *[audio unclear]*...that Opportunity Scholarships are *[audio unclear]*...

**Chair Holloway:** Representative Bryan, did you—I'm sorry, Representative Bell—did you finish your comments? Representative Glazier.

**Rep. Rick Glazier (D):** Two comments...

**Chair Holloway:** Yes.

**Rep. Glazier:** Thank you, Mr. Chair. Number one, on the sort of substance portion of the problem with item 51, there really is an issue there. And I guess my question first, to the staff or the Committee Chair, can anyone tell us whether or not the Board of Governors approves of the \$17.9 million cut to the money that allows us to raise money at these institutions? Has this been a Board-of-Governors-approved *[audio unclear]*...or position?

**Chair Holloway:** Staff, did you catch that?

**Staff:** It's not a Board of Governors request. I don't know if someone from UNC wants to speak to how they feel about it...

**Rep. Hugh Blackwell (R):** I think you can be assured that they are absolutely in favor of continuing to get \$17 million from us in item 51...

**Woman:** They would oppose this...

**Chair Holloway:** Let's go through the Chair. Let's keep all the conversations...I don't mind the debate, but let's go through the Chair. Representative Glazier.

**Rep. Glazier:** So I understand that the Board of Governors then did not approve, or has not gotten their list approval of the cuts to their capacity and other institutions to raise money or to have that \$1 million cap, which is, I think, what Representative Michaux is getting at, is we could at least add other institutions to be allowed to do that. So I agree with that.

And I guess to where he's taking it from, my simple comment, and I know it's philosophical, is he's simply taking money from an unconstitutional voucher program and putting it into a constitutional requirement that we have for universities.

**Chair Holloway:** Yes. Representative Stam.

**Rep. Stam:** Another way you can say this is that, since that figure he's taking it from is approximately the necessary amount to fund low-income kids who have already applied for school next summer, that he's taking this from the mouths of the poor and giving it to high-paid fundraisers who get six-figure salaries.

**Chair Holloway:** Representative Michaux.

**Rep. Michaux:** Representative Stam is up to his usual humor [*audio unclear*]...The problem there, Representative Stam, is that what you're talking about is a matter that is now present in a court situation but that's going to be declared constitutional or unconstitutional. Hopefully they will be declared unconstitutional before this budget goes into effect, and we will then have this money to pay the bills [*audio unclear*]...

**Chair Holloway:** Any further discussion or debate? Seeing none, all those in favor of the amendment signify by saying aye.

(Aye)

All opposed no.

(No)

In the opinion of the Chairs, the noes have it. The noes do have it; the amendment fails.

Next up, Representative Michaux, H97-AMM-76, Version 2. Representative Michaux, do you want to explain it or do you want me to let staff start with it?

**Rep. Michaux:** Oh, yeah. I can...

**Chair Holloway:** This one's pretty simple, straight-forward.

**Rep. Michaux:** This is a very simple, straight-forward...What this does is this takes all of Representative Stam's money and gives it to the teacher assistants.

**Chair Holloway:** Representative Michaux, my only question is what were you going to do if I had run that amendment first?

**Rep. Michaux:** I would be happy to [*audio unclear*]...

[laughter]

**Chair Holloway:** Any questions or comments from the members? Representative Glazier.

**Rep. Glazier:** In all seriousness, it was [*audio unclear*]...But I do want to say, and this is in deference to what I think has been a lot of really good work on this budget by the Chairs and a lot of new things that I agree with, but in the budget it looks to me like, with teachers assistants, we're not really adding any [*audio unclear*]... not cutting

anymore [audio unclear]...replacing the funds that the teachers assistants (lost from) the lottery [audio unclear]...But it has to be kept in mind that over the last couple years we have cut half of the teacher assistants across the state, and so that's a huge problem. And we're doing that, in seriousness, while we are creating a [audio unclear]...voucher program. And that has been a real harm to the public education system while the voucher program has been created.

And I understand the arguments back and forth, but I think Representative Michaux's amendment is a legitimate discussion point of what the value is. Do you continue the harm ongoing by having only K-1 teachers assistants and still not replacing any of the damage done by taking out the 2 and 3, while we're talking about not only continuing the voucher program, while it's in court and has been declared unconstitutional by a trial court, but we're adding to it \$6.8 million? And I think that's more the point he's getting at. And it may be the same motion, and I understand that, but I think it's a very legitimate public policy issue.

**Chair Holloway:** Chairman Bryan.

**Rep. Bryan:** Thank you, Chairman Holloway. I'll just respond briefly. The Chairs are also against this amendment. Just to follow up a little, I would say that we increased a number of the other budgets in which there's flexibility. And so for textbooks, TAs and teachers, we've actually expanded greatly the flexibility...what money is actually there, and there's flexibility for the District to spend that money. When you think about the number of kids actually getting the scholarship: it's currently about one-thousand two-hundred. This might expand it to thirty-six or thirty-seven hundred out of well over 1.5 million kids, which is less than...It's about a third of one percent of all the kids that are eligible. It's a very tiny amount for kids with parents who are looking for a better option for their child.

**Chair Holloway:** Representative Stam.

**Rep. Stam:** I would just raise this question. This is nonrecurring money, which I understand on the student side because, if the provision were declared unconstitutional, there's some logic there to make it nonrecurring. But how in the world can you hire teacher assistants with nonrecurring money? Isn't that sort of a non-something-you-would-do, Representative Michaux?

**Rep. Michaux:** It's what you all did last year...

**Chair Holloway:** Representative, let's...Let's go through...

**Rep. Michaux:** I'm sorry...I'm sorry.

**Chair Holloway:** ...the Chair. I'll get Representative Whitmire, then I'll come back to Representative Michaux. Representative Whit...Representative Whitmire passes. Representative Michaux.

**Rep. Michaux:** It's what you did last session, Mr. Stam. You all took that money—that lottery money—and now you don't have it in there. So here again, then we'll be finding another place to do it.

**Chair Holloway:** Representative Glazier.

**Rep. Glazier:** Just one final comment that follows Representative Stam's point and Representative Bryan's point. So if you just look at it as a cost-benefit on numbers, if there are one-thousand two-hundred kids getting the scholarship for the sixteen or seventeen million that we're talking about. And that may go up a little, but let's just use the [audio unclear]...kids being served by this. If you took that and gave that to teacher assistants, that would hire, as my calculations show, about five-hundred and ten teacher assistants. If that's the case and they serve twenty students minimum in each of those classrooms, that's ten-thousand-plus kids easily being served by the same amount that you're serving with the scholarship for one-thousand five-hundred kids. So if we're going to look at numbers, there's multiple ways to look at it.

**Chair Holloway:** Yes sir. Representative Stam.

**Rep. Stam:** Representative Glazier's not up on the math on this. There are one-thousand one-hundred in there today. That's only costing about \$6 million. So this is like tripling the number, not just going up by a few hundred. But that's still less than those who've already applied and are qualified.

**Chair Holloway:** Guys, this has been more excitement than that Pacquiao/Mayweather fight they had a few weeks ago. Y'all are actually throwing some punches.

Yes, Chairman Bryan.

**Rep. Bryan:** Just a final comment. Not to belabor the arguments we've already had, but ultimately, doing this saves the State money. And, you know, I'm not going to get into the same conversations we've had, but that's [*audio unclear*]...

**Chair Holloway:** Any other discussion or comments from the members?

**Rep. Michaux:** I call for the ayes and noes.

**Chair Holloway:** Representative Michaux calling for the ayes and noes. We will do that, Representative Michaux. Would you be satisfied by a show of hands or do you really want us to call each Member's name? I'll do either way. I'll do whatever you prefer.

**Rep. Michaux:** Let's just call names...

**Chair Holloway:** Alright. If you'll call the roll, clerk.

**Clerk:** Representative Michaux?

**Rep. Michaux:** No...Aye.

[*laughter*]

Nobody calls me first.

**Clerk:** Representative Lucas?

**Rep. Marvin Lucas (D):** Aye.

**Clerk:** Representative Fraley?

**Rep. John Fraley (R):** No.

**Clerk:** Representative Elmore?

**Rep. Jeff Elmore (R):** No.

**Clerk:** Representative Conrad?

**Rep. Debra Conrad (R):** No.

**Clerk:** Representative Brockman?

**Rep. Cecil Brockman (D):** No.

**Clerk:** Representative Bell?

**Rep. Larry Bell (D):** Aye.

**Clerk:** Representative Whitmire?

**Rep. Chris Whitmire (R):** No.

**Clerk:** Representative Stam?

**Rep. Paul Stam (R – Speaker Pro Tem):** No.

**Clerk:** Representative Glazier?

**Rep. Glazier:** Aye.

**Clerk:** Representative Gill?

**Rep. Rosa Gill (D):** Aye.

**Clerk:** Representative Horn?

**Rep. Craig Horn (R):** No.

**Clerk:** Representative Bryan?

**Rep. Bryan:** No.

**Clerk:** Representative Blackwell?

**Rep. Blackwell:** No.

**Chair Holloway:** Nine voting no and five in the affirmative, the noes have it. We will get all the Opportunity Scholarship ones. This one should be the last one: Representative Glazier, H97-ALE-18, Version 2. Representative Glazier, do you want to present it?

**Rep. Glazier:** I can...

**Chair Holloway:** Yes. Representative Glazier, you're recognized.

**Rep. Glazier:** Very quickly, this is the \$6.8 million additional dollars, not touching the existing Opportunity Scholarship money, and it moves it to reduce the ongoing discretionary cuts to the University. And for all the arguments before said, they stand. This is taking State money from an unconstitutional program and giving it to a constitutional [audio unclear]...

**Chair Holloway:** Any discussion from the members? Representative Elmore.

**Rep. Elmore:** What is the status on the court case? Does anybody have any idea when the decision is going to be made?

**Chair Holloway:** Representative Elmore, I cannot give you a certain answer, but it is our understanding that it is soon and that it is expected to potentially have a decision before the session comes to the end and perhaps before we even...not before the House completes its budget, but before the budget is completed by the General Assembly. But to say that with an air of certainty, you know, I wouldn't bet my life on it. But we understand it's coming up soon.

**Rep. Elmore:** A follow-up?

**Chair Holloway:** Yes, sir. Follow-up.

**Rep. Elmore:** Where is that information coming from?

**Chair Holloway:** Staff maybe want to elaborate? I'll defer to staff. They may be able to say, or maybe Representative Stam or one of our attorneys? They want to know...Representative Elmore is wanting to know the status of the case, when they expect the hearing, and I was saying it was probably in the very near future, perhaps before we adjourn the session and perhaps before we make a final version of the budget.

**Rep. Stam:** I clerked there forty years ago, so my information is really up-to-date. Nobody knows that. However, what we do know is that last fall the Supreme Court modified the stay and allowed the administration to go forward during this year so that we would not get in the problems we had last summer: stop, start, stop, start. So SEAA is allowed to process applications, even today, and that has not been enjoined.

**Rep. Elmore:** Mr. Chair, can I ask a question?

**Chair Holloway:** Yes, absolutely. Representative Elmore.

**Rep. Elmore:** Did the Court not say that it was to continue the service on the children that are already enrolled in the program, but would this not be considered expansion dollars?

**Rep. Stam:** This is considered expansion dollars, but the Court has not enjoined the General Assembly from providing for the next year. And in fact, the Court specifically said in a two-sentence order that the Administration for next year could take place so that we did not get in a situation of come, say, July and the...

**Chair Holloway:** Representative Elmore, to further expound upon your question, it is expansion. But as far as, are we legally able to expand a program that is currently involved in a court decision? The answer is yes, we can. However, if the case were to not be ruled in favor of Opportunity Scholarships, obviously the money would have to be reverted back to the State. But if the case is found in favor of Opportunity Scholarships, then they would get their recurring \$10 million that they are receiving in this budget, in addition to the \$6.8 million that has been expanded in

this budget. And the \$6.8 million, where that number came from, that is the amount that they had to revert back to the State last year. Once the court case came into play and their appropriations were suspended, they could not spend those dollars. So that money had to revert back to the State, and this is giving them what they had to revert back to the State last year.

**Rep. Elmore:** Mr. Chair, may I ask a question?

**Chair Holloway:** Follow-up.

**Rep. Elmore:** So, if I'm understanding you correctly, because I don't want us to get in a situation where we have \$6.8 million literally just floating because we cannot spend it on anything...

**Chair Holloway:** Sure.

**Rep. Elmore:** You're saying that situation will not happen?

**Chair Holloway:** It should not, if all indicators that we are being given are true that they will make a decision before we pass a final budget—again, not before the House passes its version, but before the final version is signed and stamped and sealed in blood that we should have an affirmative answer as to what is going to happen. So whatever we spend or don't spend, it's not going to be in limbo is what I understand. But again, I'm not betting my life on that because I don't predict what the courts do or don't do, and that's why I deferred to my legal friends.

**Rep. Elmore:** So we can spend it in this process is what I'm asking.

**Chair Holloway:** Yes. Representative Michaux. And I'll get you, Representative Glazier.

**Rep. Glazier:** Thank you.

**Rep. Michaux:** Mr. Chairman, I just wanted to... You made a statement that...something being affirmative. There is nothing affirmative...

**Chair Holloway:** I said that I wouldn't bet my life on it. I said that I'm being told they're going to make a decision. I'm just telling you what I'm hearing.

**Rep. Michaux:** But you said it would be an affirmative decision...

**Rep. Horn:** I think you meant definitive rather than affirmative.

**Chair Holloway:** I apologize. It's been a long day. Representative Glazier.

**Rep. Glazier:** Just a quick follow-up to Representative Stam's point, I mean, just so that everybody [*audio unclear*]...for our records. The Court did, as Representative Stam said, allow next year's administration to move forward, but nothing in their couple-sentence order suggested, gave us authority or took away authority, for that matter, to expand the program or add students. It simply said go ahead with the enrollment. So, we go at our own risk is the answer truly to Representative Elmore's question, and those who take the vouchers and the schools that take the vouchers go ahead at their own risk if they don't rule before we get out. If they do, then we'll all know and we'll go from there.

I think the point being made, and it's a good one, by Representative Elmore's point is this is premature. We really could add this, if we wanted to, on the Senate side, but we ought not be adding to what has been ruled [*audio unclear*]...trial courts an unconstitutional program right now. And the Appellate Court and Supreme Court [*audio unclear*]...allow enrollment for next year didn't say that we had the capacity to go ahead and expand it. So I just...To be clear, it didn't say either way.

**Chair Holloway:** Sure. Further discussion, further debate by the members? All those in favor of the amendment signify by saying aye.

(Aye)

All opposed no.

(No)

It appears the noes have it. The noes do have it. The amendment fails.

~ Fin ~

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**HB 117 – NC Competes Act  
Rep. Stam’s Remarks on 2nd Reading  
March 4, 2015**

*The 2015 targeted tax incentive bill passed the House 78 to 24.*

Audio available at [this link](#)

Debate begins: 00:10:88

Rep. Stam’s comments: 00:23:25

**Speaker Tim Moore (R):** For what purpose does the gentleman from Wake, Representative Stam, rise?

**Rep. Paul Stam (R):** To speak on the bill.

**Speaker T. Moore:** The gentleman has the floor to debate the bill for a period of not more than five minutes.

[laughter]

**Rep. Stam:** Thank you, Mr. Speaker. I requested that, and if the Clerk could ding the bell at five minutes, I’ll wrap up. And that’s because I left my whole speech on your desk Monday night, and I know you’ve taken it home and read it.

Seeing is believing. But we also know that there are optical illusions, mirages...My grandchildren have card tricks; I can’t figure out how they work. We used to think that eye-witness ID was the gold standard for figuring out who committed the crime. Now we know that it’s probably the least reliable way of figuring out who was there. Thank goodness we now have DNA. So the question is whether you’re going to believe your lying eyes or you’re going to believe me.

By observation we see that the earth is flat and that the sun revolves around the earth—but we know that’s not true. Statisticians teach us that correlation does not imply causation. About two-thousand five-hundred years ago, the ancients categorized logical fallacies. One of them, *post hoc ergo propter hoc*: “after this, therefore because of this,” is a logical fallacy. But for those of you who don’t know Latin it’s: “The rooster crows because he thinks he made the sun come up.”

The entire basis for this bill is this: if we can locate some game-changers and transformers, that we’ll improve our State. But the academic research is to the contrary. And I put one on your desk Monday night from the Southern Journal of Economics: “Do Economic Effects Justify the Use of Fiscal Incentives?” After studying one-hundred and nine different big-industry locations, the conclusion is: “The results show that large firms fail to produce significant net-benefits for their host communities, calling into question the high-stakes bidding war over jobs and investment.”

And then if you go to the end of the article, which I’m sure you’ve read...“One thing seems clear—recruitment did not lead to more rapid regional growth. In all likelihood, the absence of significant growth impacts means that large companies simply displace other sources of job and income growth in the regional economy.”

In other words, you’re taking the money from George and giving it to J.H. You’re taking it from all the small businesses and giving it to the shareholders of big businesses. You’re taking it from the taxpayers of Wake County

and giving it to Lenovo so they'll move from Durham County across the line into Wake County. There's no net increase in the income of the region by doing this. And it's very expensive.

**HB 117 – NC Competes Act  
Rep. Stam's Remarks on 3rd Reading  
March 5, 2015**

Audio available at [this link](#)

Debate begins: 00:21:30

Rep. Stam's comments: 00:26:40

**Speaker Tim Moore (R):** For what purpose does the gentleman from Wake, Representative Stam, rise?

**Rep. Paul Stam (R):** To speak on the bill for a time not to exceed four minutes.

**Speaker T. Moore:** Alright. The gentleman has the floor to speak to the bill.

**Rep. Stam:** Mr. Speaker, members of the House, I concede that the sponsors of this bill are not just intending to waste money, but rather that they sincerely believe that that money will be spent to make the State a more prosperous state. But the economists disagree.

In the early days of the modern era of incentives—the mid-90s—there were some problems. We had examples where the incentive would be given after the building was under construction. We had situations where the CEO would say afterwards, “I didn’t even know about the incentive; my accountants got that. Thanks. Appreciate it.” We had a situation a few years ago in Wilson where Bridgestone Firestone got thirty million after the building was already in operation. It was a retroactive inducement!! But the whole point of these incentives is to try to get them to come when, but for the incentive, they wouldn’t have come.

You may wonder why I put this piece of paper on your desk. You’ve probably all seen a HUD-1 settlement statement. I’ve prepared thousands of them. Every homeowner has signed one of these. And if you notice at the very bottom of page 2 it says, “Warning: It is a crime to knowingly make false statements to the United States on this or any other similar form.” And then the second page is our law on mortgage fraud making it a big felony...a state felony to make false statements on this. In other words, every CEO who owns a home has probably signed this and has been willing to say under penalty of going to prison, “Everything on this settlement statement is correct.”

But to get incentives, they check a box. They don’t really have to say under oath or penalty of perjury or any other consequence that it’s really true. I offered an amendment in Finance the other day that said that they would check that box under oath, and the Committee, in its wisdom, decided not to do that.

I just wanted you to realize that the process by which we allow these incentives to go forward, that the company does not really have to say, “I need these incentives to come; I’m not coming unless you give them to me. But if you give them to me, I will come.” That’s not the current process.

**HB 117 – NC Competes Act  
Rep. Stam's Remarks on Adoption of the Conference Report  
September 22, 2015**

Audio available at [this link](#)

Debate begins: 00:15:22

Rep. Stam's comments: 00:22:09

**Rep. Paul Stam (R):** Mr. Speaker, members of the House, I am going to demonstrate that I am concerned about your health and your time. Why your health? Well, for about the thirteenth time in a row, we are debating incentives and some of you might have a heart attack here on the floor if I didn’t speak against it. So I will. But I am also concerned for your time. Instead of taking fifteen minutes, I have put copies on your desks of the last two speeches because everything in those applies to the conference report.



All I will add is this: the biggest figure I see in the bill is fifty million. If you are reading the bill and think that this is a fifty-million dollar question, that is not correct. This is really a four-hundred million dollar question. According to the fiscal memo, JDIG is the whole enchilada in this bill. The rest of it is peanuts. This is a maximum of seven-hundred and eighty million or a minimum of two-hundred and forty-three million of what it really costs. Say five-hundred million and discount that to present value. It's maybe about a four-hundred million dollar bill.

For four-hundred million dollars, we could build a lot of roads, we could extend water, we could extend sewer, and we would get ten times the economic activity than from this bill. To demonstrate that, I will go only to page 2 of the paper I passed out earlier.

Last February, when we had this on the floor, I passed out an article from the Southern Journal of Economics. This Journal studied one-hundred and nine different big industries locations to see what the effect was on economic activity. We know that there is an effect of Representative Dollar giving money to Representative Johnson and Representative Johnson giving money to Representative Holloway. What happens with these incentives is that one person gives money to another.

But what does it do for the region? The results show that "large firms fail to produce significant net benefits for their host communities, calling into question the high stakes bidding war between jobs and investments. One thing seems clear, recruitment did not lead to more rapid regional growth. In all likelihood, the absence of significant growth impacts means that large companies simply displace other sources of job and income growth in the regional economy." Thank you.

\* \* \* \*

*Rep. Stam's second comments: 00:50:00*

**Rep. Stam:** Representative Conrad, some people were here when we did the Dell deal. We were told that we couldn't change a coma or a sentence of it, we had to do it. Do you know that when it failed the State did not get all of its money back? This House refused to adopt an amendment that some of us proposed that would have assured that we would have gotten our money back. And that claw-back provision is still not in this bill [HB 117].

\* \* \* \*

*Rep. Stam's question: 01:23:18*

**Rep. Stam:** Representative Brawley, I heard the explanation of JDIG that they have to say that "but for these incentives, they would not be coming."

**Rep. Bill Brawley (R):** Yes, sir.

**Rep. Stam:** Well they have to check a box but they don't actually have to say it under oath or penalty of perjury. I offered an amendment in Finance Committee...that the CEO would actually have to say that it was true. Why did the sponsors oppose an amendment that would actually require the CEO to say it was really true (what was on their application)?

**Rep. Brawley:** I think if every CEO in the nation had a job requirement that they always tell the truth under oath, there would be a severe shortage of senior management, don't you agree Representative Stam?

~ Fin ~

**HB 173 – Omnibus Criminal Law Bill**  
**Remarks on 2nd Reading**  
**March 18, 2015**

*From 2014-2015 a “stakeholder group” came up with dozens of criminal justice proposals to shorten the time between arrest and disposition. Most of the reforms were in this bill.*

Audio available at [this link](#)  
Debate begins: 01:25:24

**Acting Speaker David Lewis (R):** House Bill 173, the Clerk will read.

**Reading Clerk:** Representative Stam, Faircloth, Glazier, R. Turner. House Bill 173, a bill to be entitled an act to amend various criminal laws for the purpose of improving trial court efficiency. The General Assembly of North Carolina enacts.

**Speaker Lewis:** For what purpose does the gentleman from Wake, Representative Stam, arise?

**Rep. Paul Stam (R – Speaker Pro Tem):** To explain the bill.

**Speaker Lewis:** The gentleman has the floor to debate the bill.

**Rep. Stam:** Thank you, Mr. Speaker. Before I begin, I’m going to object to third reading in view of the hour. Members have asked questions about it. Haven’t heard opposition, but there are questions that they want to have resolved.

“To no one will we delay right or justice.” That’s a problem we have. Our criminal justice system disposes of crimes in sometimes short periods, but sometimes one year, three years, four years. There’s not much deterrence if a criminal is not sentenced for a long period of time, and there’s no justice for an innocent defendant who has to wait that long to clear his or her name. I testified last year in a DWI case where the DWI had occurred three years prior to my testimony. We have to solve this problem.

Beginning this last fall, we began to collect suggestions from people all over the criminal justice system—prosecution, defense, AOC, clerks, magistrates, district court, superior court...I’m leaving somebody out...Coalition Against Domestic Violence, Coalition against Sexual Assault—to ask them, how can we shorten the period between arrest and disposition without harming anyone’s rights that they’re entitled to? And this bill before you is a collection of ideas.

Now we have a package. There are three or four other bills not in here that either have to go to Appropriations or Finance, or in a couple of cases are a little bit controversial. But this package was agreed to by forty or fifty stakeholders who looked at it over a period of months, and although it’s somewhat complicated, hopefully it’s not that controversial.

Mr. Speaker, when I get to it, I will ask other members to be recognized to explain different parts—Representative Faircloth, Representative Glazier, Representative Jackson—because they know more about certain provisions than I’ll ever hope to know.

Section 1: There’s a tension here. Do I over-explain it or under-explain it? So I’m going to try to explain it some, but not all the details, and then you can hit us with questions if you have them. The first section of the bill is maybe counterintuitive. Remember, the entire purpose of the bill is to eliminate delay, but here we are giving defendants more time to collect funds to pay court costs. This will decrease the chance of a license being revoked, for example, for failure to comply with court costs. This will help DMV’s caseload of driving with a license revoked and license restoration. Essentially, a lot of criminals operate month to month, and if you give them twenty days to do something, they’re just not going to get a check before they need to pay the money. So, consensus that by giving them forty days, we will unclog the system and there will be a lot less motions that have to be made in court to rectify things.

Section 2 I won’t explain. It’s just a reporting requirement. Section 3 gives magistrates more authority. Magistrates are judges. They preside in many of the administrative traffic courts. They screen for indigency and appoint counsel where appropriate by statute. But that authority may only be granted to attorney magistrates. There

are many highly-qualified magistrates who don't have law degrees that are quite capable of doing this and, frankly, they teach the new lawyer magistrates how to do it. In many of these cases, the defendants indicate a desire to waive counsel and dispose of the case immediately. But instead of having them sign a waiver and dispose of a guilty plea, the magistrate is forced to send the case to a district court judge to have the waiver signed or continue the case till a later date. Unnecessary delay.

Section 4: I'm going to ask Representative Jackson to explain that after I explain some others. I do have a technical amendment to change the wording of the title of that section.

Section 5 conforms our state law to a decision of the US Supreme Court in *Hall v. Florida*. The reason we put this in statute, whether you agree with it or not—and I don't particularly agree with it—there's no point in having cases go forward under a mistaken apprehension of the law that then has to be appealed and re-tried and done all over again. So this is just doing what we have to do. It's like eating spinach...I do actually like spinach now after decades of not.

Section 6...I've gotten more comment about Section 6 because it gives a judge discretion in whether to put people who are guilty of sexual battery on the registry: the ten- to thirty-year registry for sex offenders. Some people have called wanting it to become more liberal—I'll use that term. They want it to become retroactive to their case. Others can't believe we're doing it anyway because we're being soft on crime. But you have to understand, these are not the felonies of rape or second degree rape or first-degree sexual offense. And I'm not minimizing it, but this is the misdemeanor of sexual battery, which is a touching or contact in a sexual nature, but it's not always the predator that you really want on the registry, that you want stigmatized properly, usually for thirty years. We asked the people involved in this and the Coalition Against Domestic Violence and the Coalition Against Sexual Assault were in favor of this. I didn't think they would be, but they had no objection in our stakeholder meeting. This will help get people to plead guilty to this when they are guilty of it, because the main reason they don't plead guilty is they don't want to be on that list for thirty years.

Section 7 and 8 are really just efficiency things of sending orders via electrons through cyberspace and through fax rather than delivering hard copies, just to move the process along.

Section 9 takes from "shall" to "may" a requirement about doubling the bond in certain cases. And we just passed it a couple years ago, and there've been some really...The magistrates have told us this has resulted in some terribly high bails for things that just should not have terribly high bails just because of the sequence in which the charges came through. As a matter of fact, we have a letter from one magistrate who says that people have realized this, so they'll now bring charges one day after the other so they can get their opponent...get their bonds doubled and require them to have secure bonds for things that they would have very small bonds otherwise. Again, this was a consensus idea that would really help our judicial system.

I'm going to ask Representative Glazier to explain Section 10.

Section 11 adopts the federal rules on evidence for business records. This applies to civil as well as criminal cases, and just allows more evidence to come in upon a piece of paper rather than a live witness. It was submitted to the Bar Association—their civil lawyers—and they were fine with it.

I'm going to ask Representative Glazier to explain Section 12 and Representative Faircloth to explain Sections 13 and 14, and ask Representative Rena Turner, who sort of checked it all out from the clerk side, to just sort of bless it all and say it was good. And I see she says it's good, is that right?

So thank you. We'll be glad to answer questions, but I would ask the Speaker if he would recognize Representative Jackson and Glazier and Faircloth for a couple of other sections.

**Speaker Lewis:** For what purpose does the gentleman from Wake, Representative Jackson, arise?

**Rep. Darren Jackson (D):** To speak on the bill.

**Speaker Lewis:** The gentleman has the floor to debate the bill.

**Rep. Jackson:** Thank you, Mr. Speaker. Ladies and gentlemen, the part of the bill that I've been asked to explain has to do with remands. And so these are DWI cases that...What we found was, several years ago, the smart defense attorneys would have a client who had multiple offenses pending, would give notice of appeal in one case, which was treated as a first offender, and then while that case was on appeal, would come in and do the second case, and that was treated as a first offense. And then they would withdraw the appeal.

So the General Assembly said, "We need to stop that." And so we did that. This body acted in the mid-2000s, before I got here, and said when you have an appeal that's withdrawn, the judge has to look at it and do a new

sentencing. If the judge sees a new factor, then he can treat it the way it should be treated. And that's a good thing in those cases.

But there are a lot of cases where there's nothing that's changed. The person has appealed the DWI—they only had one—to get an interlock put in, or to come up with money, or to do their substance abuse treatment, or whatever reason, but yet we require these second hearings for all those cases. And it takes about a half a day, I'm told, in Wake County. Every Monday morning we have Superior Court. Everybody lines up, decides they want a remand. They've brought their money to court and are ready to take care of it. Then they have to fill out this form and assign them to another courtroom. A clerk has to take the file to the other courtroom, and then another district court judge and another prosecutor have to sit there and basically say, "Yes, nothing has changed."

And so this small change in the bill will allow that to no longer be necessary. A superior court judge and the prosecutor who are attending to the remand will have to certify that there have been no new sentencing factors—so that basically means no new charges nor convictions to DWI offenses. And so I'd ask for your support.

**Speaker Lewis:** For what purpose does the gentleman from Cumberland, Representative Glazier, arise?

**Rep. Rick Glazier (D):** Thank you, Mr. Speaker—to debate the bill and explain two sections.

**Speaker Lewis:** The gentleman has the floor to debate the bill.

**Rep. Glazier:** Thank you very much, Mr. Speaker. Just an overall comment first, and then the explanation of the two sections. And I said this in Judiciary, I think Representative Stam should be commended on the process he used. He had multiple stakeholder meetings—transparent, out in the open from all sides for several months—to put this together. And it's a process that worked well and, I think, got rid of controversial provisions, put others in that nobody had thought about until the meetings. And I think it's a great process and appreciate what he did to get here today.

On part 10 of the bill, which is disposition of certain types of biological evidence, very briefly if you look at the provisions on page 7 that are existing law, what you'll find is we had put in place a fairly substantial way of dealing with collections of forensic evidence and how we can store that and how long we have to store that, given limited space. And for different types of convictions, there are set times in which it can be destroyed once those things happen.

The issue comes up given a lot of space issues and cost issues in storing this, and what's added on page 8 is: what do you do when you have items that are bulky, that are of a character that render keeping them impracticable or extremely costly for a long period of time, and can you get in a position where you can simply take samples and keep those and return items like cars or large pieces of furniture or large property? And the answer here is that we set out a process that simply allows a court to hear a petition by the district attorney or others that this bulky item is really difficult to keep or should otherwise be returned to the owner. It gives notice to the defendant from a due process point of view. The court will then decide after a hearing and can return the property. And I think all sides agree that that's a good process.

And finally, Section 12 of the bill clarifies enhanced penalties for violations of domestic protective orders. And here, if you look in page 9, what you'll see is the way the language had previously set out, there's certain enhancements that don't apply under the prior law to people who were charged with certain things, but really we want it to apply to people who are charged, if they're not convicted. This simply makes it clear these enhancements don't apply on the conviction side because they're already enhanced under the conviction. But just because someone's charged doesn't mean on other crimes those other enhancements are going to occur. This allows this to take place under those circumstances. And I know of no objection to either provision, Mr. Speaker.

**Speaker Lewis:** For what purpose does the gentleman from Guilford, Representative Faircloth, arise?

**Rep. John Faircloth (R):** To debate the bill, Mr. Speaker.

**Speaker Lewis:** The gentleman has the floor to debate the bill.

**Rep. Faircloth:** Thank you, Mr. Speaker, and thank you, members of the House. These two articles are helpful to law enforcement and to the courts in doing their duties and to expedite matters, as Representative Stam mentioned.

Part 12: Allow extension of order entered in street gang nuisance abatement after court hearing. You'll recall in...Most of you will recall in 2011-12, I believe it was, we passed a bill which allowed a court to find that a street gang or a member of a street gang or a place being used by a street gang to commit crimes, and so forth, could be declared a nuisance by the courts. And the process was for the community to bring a suit, usually through the city attorneys or police attorneys, what have you. And the court could then rule that that street gang or that part of a street gang was a nuisance and could then order that the nuisance be abated by whatever the judge thought was appropriate. That worked well and has helped the agencies and the cities and counties to address these gang problems.

We found one problem, and that is that the order would expire after one year. And in some cases these situations go on further than one year. And when they did, when the city or county would try to continue to abate the nuisance, they found out they had to start all over again with a new suit. And that didn't seem to make sense; we need to expedite matters. So what this does is, if the situation runs beyond one year, an order under this section shall expire one year after the entry unless extended by the court for good cause established by the plaintiff after a hearing. So it doesn't take away anybody's rights. Everything still works as it did, works as a good abatement of the nuisance for the community, but does expedite the matter. So I ask you to look favorably on that.

The second one I want to speak to is part 14: Amend Certificate of Relief. A Certificate of Relief, many people haven't heard what that is, but it's simply a court action that allows some people who, because of some criminal action they've been involved in along the way that...and they're perhaps applying for a job that requires some type of certification, or there's something they're trying to seek to set their life off in a better path, and this allows through action of the court for a person to seek a Certificate of Relief.

The change is really not that great a change; it simply simplifies the wording so that it says an individual who is convicted of criminal offenses no higher than a Class G felony. So that simplifies it. Before it listed out Class G, Class H, Class I felonies, misdemeanors, etc. So this just simplifies the action and allows them to petition based upon their most serious offense and have the court decide whether or not they should be awarded a Certificate of Relief. If they receive the Certificate of Relief, it doesn't set them free of everything. It's still up to the agency issuing the certification or whatever the privilege may be to decide if that Certificate of Relief is adequate, but at least it gives that person a chance to get a new start in life.

So I ask that you look favorably on those two pieces. And Mr. Chair, if I may, I'd like to debate the bill.

**Speaker Tim Moore (R):** The gentleman has the floor to continue debating the bill.

**Rep. Faircloth:** Thank you, Mr. Speaker. I want to echo Representative Glazier's comments about Representative Stam's work on this. This is really the way I believe, as some others have said, when we have these particularly technical, hard-to-deal-with legal issues, that we ought to work together. And it took a long time. It took several months for Representative Stam to bring this all to fruition. But in the long run, it's going to save an awful lot of money and trouble for our legal system. And there are other things that we work on in this Assembly that I would hope we would use somewhat the same technique: sit around the table, talk it out and make it work. And I urge you to support the bill.

**Speaker T. Moore:** For what purpose does the lady from Iredell, Representative Turner, rise?

**Rep. Rena Turner (R):** To speak on the bill.

**Speaker T. Moore:** The lady has the floor to debate the bill.

**Rep. Turner:** Thank you, Mr. Speaker. I would also just briefly add how proud and pleased I was to be a part of this bill and how judiciously it was created by getting all the stakeholders together. I don't think we'll have any pushback from this because the people who would have been involved in clamoring about this were there at the table. So this is the way we should do business, and I appreciate Representative Stam for bringing this together and allowing me to be part of it, as the others have said. I'm happy to give my blessing and ask that you vote green. Thank you.

**Speaker T. Moore:** For what purpose does the gentleman from Wake, Representative Stam, rise?

**Rep. Stam:** To offer an amendment.

**Speaker T. Moore:** The gentleman is recognized to send forth an amendment. The Clerk will read.

**Reading Clerk:** Representative Stam moves to amend the bill on page 7, lines 12 through 13.

**Speaker T. Moore:** The gentleman from Wake has the floor to debate the amendment.

**Rep. Stam:** Mr. Speaker, Members of the House, of all the amendments I've ever offered, this is the least significant, but please vote for it anyway. It just conforms the title, an internal title to the text.

**Speaker T. Moore:** Further discussion, further debate on the amendment itself? If not, the question before the House is the adoption of Amendment 1 offered by Representative Stam on the second reading of House Committee Substitute of House Bill 173. So many favoring adoption of the amendment will vote aye; those opposed will vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. One-hundred and fifteen having voted in the affirmative and none in the negative, Amendment 1 is adopted. We are now back on the bill. For what purpose does the gentleman from Gaston, Representative Hastings, rise?

**Rep. Kelly Hastings (R):** To see if Representative Stam would yield for a question.

**Speaker T. Moore:** Does the gentleman from Wake...

**Rep. Stam:** I yield.

**Speaker T. Moore:** ...yield to the gentleman from Gaston? He yields.

**Rep. Stam:** I do.

**Rep. Hastings:** Representative Stam, very respectfully I didn't have the luxury of being on any of the committees, so I'm trying to work my way through this bill here quickly, and I'm going over the misdemeanor punishment chart. In the sexual battery issue in Section 6, just to clarify, the sexual battery is an A1 misdemeanor, correct?

**Rep. Stam:** Correct. That's the most serious misdemeanor.

**Rep. Hastings:** Follow-up?

**Rep. Stam:** I do, I yield.

**Rep. Hastings:** And then I'm looking over the prior conviction levels—the 1, 2 and 3 conviction levels—and I'm just wondering if it was the intent...When we're trying to determine if the person has mitigating or aggravating circumstances, I'm assuming that depending on the level 1, 2 or 3, that would be relevant when that decision is made regarding whether the person is a danger?

**Rep. Stam:** Certainly.

**Rep. Hastings:** Follow-up?

**Acting Speaker Craig Horn (R):** Follow-up?

**Rep. Stam:** I yield.

**Speaker Horn:** The gentleman is recognized for a follow-up.

**Rep. Hastings:** In...and respectfully—like I said, I apologize; I'm trying to work my way through this—but in the A1 misdemeanors, that's considered serious enough for some people to receive active time, is that correct?

**Rep. Stam:** That's correct. And actually many people don't know it's more likely to get active time on an A1 misdemeanor than a Class I felony.

**Rep. Hastings:** Thank you, Mr. Speaker.

**Speaker Horn:** For what purpose does the gentleman from Lee, Mr. Reives, rise?

**Rep. Robert Reives (D):** To debate the bill.

**Speaker Horn:** The gentleman is recognized to debate the bill.

**Rep. Reives:** Now just for the record, I hit my button early, so I'm going to be now repeating what Representatives Faircloth and Glazier have just said, and I just want to commend Representative Stam. As a person who's done criminal prosecution and criminal defense, I thought he did an amazing job getting together the stakeholders on this matter, talking the issues through and making sure they came up with a good, clean bill that worked for everybody. He came up with a lot of compromises, and I just wanted to thank him personally, as somebody who's going to be practicing doing a lot of this stuff, for all the efforts that you put through. I know this is something that he started last year, and for him to identify the problem and to work on it like he did, I think it's commendable and I, like Representative Faircloth, hope to see a lot more of that during this session. Thank you.

**Speaker Horn:** And for what purpose does the gentleman from Mecklenburg, Representative Bishop, rise?

**Rep. Dan Bishop (R):** Inquiry of Representative Stam.

**Speaker Horn:** Does the gentleman...

**Rep. Stam:** I yield.

**Rep. Bishop:** Thank you, Mr. Speaker. Representative Stam, I noticed in Section 11(a) of the bill—and I'm a civil litigator, so I don't know that much about the rest of the parts—but there seems to be a great revision to Rule 803 in the Rules of Evidence to permit custodians of business records to authenticate those records, not by live testimony but, as the rule is now revised to say, it says "or by certification made by the custodian or witness." My question is, is the intention there, the word "certification," is that to mean an affidavit?

**Rep. Stam:** Well, it could be an affidavit, but I don't think it has to be an affidavit. But this is the, as I understand it, this is the federal rule.

**Rep. Bishop:** Follow-up, Mr. Speaker?

**Speaker Horn:** Does the gentleman yield for a follow-up?

**Rep. Stam:** I do.

**Rep. Bishop:** The word...I just did a quick search through the Rules of Civil Procedure and the only place that the word "certification" appears is in the Rule 11 context where an attorney's signature is taken to be a certification of certain things like a good well-grounded in fact and so forth—the Rule 11 inquiry. I believe this would be a very useful change if it were made clear that the requirement is to have an affidavit. I'm unfamiliar with...I can't speak specifically to whether this language has been put in federal Rule 803—the certification language—but it's otherwise to me unknown. I believe it would be a great revision if it were an affidavit, and that would be a better word.

**Rep. Stam:** Representative Bishop—and you do more litigation than I do—I'm going to object...As I mentioned, I'm objecting to third reading, and if we could overnight get the answer to that, that would be great.

**Rep. Bishop:** I thank the gentleman. Thank you, Mr. Speaker.

**Speaker Horn:** Seeing no further discussion, no further debate, the question before the House is the passage of House Bill 173 on its second reading. All those in favor will vote aye; all those opposed will vote no. The Clerk will open the vote...Representative Goodman?...The Clerk will lock the machine and close the vote. The ayes are one-hundred and sixteen, there's one in the negative, and the bill will be...The bill passes. It will remain on the calendar for third reading. Representative Stam?

**Rep. Stam:** I forgot to object, but you left it on the calendar. Thank you. You read my mind.

**HB 173 – Omnibus Criminal Law Bill  
Remarks on 3rd Reading  
March 24, 2015**

*Audio available at [this link](#)  
Debate begins: 00:18:22*

**Speaker Tim Moore (R):** House Bill 173, the Clerk will read.

**Reading Clerk:** Representatives Stam, Faircloth, Glazier, R. Turner: House Bill 173, a bill to be entitled an act to amend various criminal laws for the purpose of improving trial court efficiency. The General Assembly of North Carolina enacts.

**Speaker T. Moore:** For what purpose does the gentleman from Wake, Representative Stam, rise?

**Rep. Paul Stam (R – Speaker Pro Tem):** To speak on the bill.

**Speaker T. Moore:** The gentleman has the floor to debate the bill.

**Rep. Stam:** Ladies and gentlemen, I believe it was last Wednesday we passed this on second reading—I believe one-hundred and sixteen votes. Representative Glazier has worked with Representative Bishop to offer an amendment which I consider relatively technical, and they know a whole lot more about it than I did, anyway. So I would encourage you to vote for it, and if you have further questions...I had a couple of other questions from other members about a particular section and I believe we've got that resolved. So any further questions, I'd be glad to answer. And I would ask that you recognize either Representative Glazier or Bishop.

**Speaker T. Moore:** For what purpose does the gentleman from Cumberland, Representative Glazier, rise?

**Rep. Rick Glazier (D):** To send forth an amendment, Mr. Speaker.

**Speaker T. Moore:** The gentleman is recognized to send forth an amendment. The Clerk will read.

**Reading Clerk:** Representative Glazier moves to amend the bill on page 8, line 34 by rewriting the line to read.

**Speaker T. Moore:** The gentleman from Cumberland has the floor to debate the amendment.

**Rep. Glazier:** Thank you, Mr. Speaker, and credit to Representative Bishop who caught this. This is a change in the Rules of Evidence for North Carolina in both civil and criminal cases, and we were trying, when this was drafted, to track the federal rule, but the federal rule used a term called "certification" that there is no North Carolina equivalent to directly. But we call what amounts as close to certification a "document under seal," so you'll see that term in here. This was to comport with the federal rules, but using our terminology. And we also ran it by several evidence professors at law schools to make sure about this. I know of no opposition, and I appreciate again Representative Bishop catching this. Thank you.

**Speaker T. Moore:** Further discussion, further debate on the amendment? If not, the question before the House is Amendment 2 sent forth by Representative Glazier. So many favoring adoption of the amendment will vote aye;



those opposed will vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. One-hundred and fourteen having voted in the affirmative and none in the negative, the amendment is adopted.

We are now back on the bill. Further discussion, further debate? If not, the question before the House is the passage of the House Committee Substitute to House Bill 173 on its third reading. So many favoring passage of the bill will vote aye; those opposed will vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. One-hundred and thirteen having voted in the affirmative and one in the negative, the House Committee Substitute to House Bill 173 passes its third reading. The bill is ordered engrossed and sent to the Senate.

*Rep. Pittman's request: 00:25:00*

**Speaker T. Moore:** For what purpose does the gentleman from Cabarrus, Representative Pittman, rise?

**Rep. Larry Pittman (R):** I'm sorry, sir. I would like to change my vote on House Bill 173 to a no.

**Speaker T. Moore:** The gentleman will be recorded as having voted no on House Bill 173

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**HB 201 – Zoning Changes/Citizen Input  
Rep. Stam's Remarks on 2nd Reading  
March 24, 2015**

*For almost a century cities were blocked from zoning changes if a  
small minority opposed it. This reform was long overdue.*

*Audio available at [this link](#)  
Debate begins: 01:07:06*

**Acting Speaker Leo Daughtry (R):** For what purpose does the gentleman from Wake arise?

**Rep. Paul Stam (R – Speaker Pro Tem):** To debate the bill at great length. *[laughter]* To debate the bill.

**Speaker Daughtry:** The person has the floor to debate the bill.

**Rep. Stam:** Mr. Speaker, members of the House, the almost-definition of democracy is that the acts of a majority are the acts of the group. A North Carolina Supreme Court case cites Jefferson's Manual of 1801 for this proposition: "The voice of the majority decides, for the *lex majoris partis* is the law of all councils, elections, etc. when not otherwise expressly provided."

So that...For example, y'all remember the huge tax increase in 1993 passed by two votes in the US House and one vote in the US Senate. The IRS will collect those taxes as vigorously as taxes which pass unanimously. Democracy with a small "d" is what we have.

But, because we're also a republic, we have protections for the minority to protect their fundamental rights. So for example, if we want to do away with the First Amendment to the US Constitution, those who don't like the decisions therein, they realize that they have to have a constitutional amendment proposed by two-thirds of the US House, two-thirds of the US Senate and ratified by thirty-eight states.

In North Carolina to pass a constitutional amendment is three-fifths here, three-fifths in the Senate plus a majority of the voters. North Carolina law requires a majority vote for approval of a special or conditional use through quasi-judicial proceedings. So we can amend our Constitution, approve special uses with a substantially smaller vote than what one individual or two individuals or a group of individuals can trigger for a rezoning.

I shared a true story with the Local Government Committee; I'd like to share it with you, as well. When I was seven or eight years old I lived in Greensboro. A couple of blocks away I had a wonderful treehouse that I really enjoyed playing in every day. I came home one day to find the tree cut, a house being built. For those of you in Greensboro, this was the corner of Edgewater and Homewood right by Friendly Shopping Center. And I came home

bitterly complaining to my mother that they had taken down my tree and that this should not be allowed to happen. And she very wisely told me that when I grew up I could buy my own tree and be in charge of my own tree, and that until I was able to do that I should stop crying about it and grow up—which I did.

People always like to control other people's property. It's a universal tendency. And there are ways to control other people's property: restrictive covenants, easements, half-a-dozen other legal ways to control other people's property. But to do that you have to have a legal right to do it. And it's precisely because neighbors often have no legal right to control other people's property that they want to do it through this supermajority requirement that's in our protest petition law that's been there about ninety years.

But whatever may have been the reason ninety years ago, it no longer applies. For the last twenty-six years property owners have been able to tailor their rezoning requests as a conditional use to provide a better fit within the specific environments of their site. And many city councils require that and just won't pass it without that. Many local governments now require applicants to meet with, not only adjacent owners, but also those within a large area to inform them of the request and to solicit their input which can be addressed in the form of conditions.

If the protest petition ninety years ago was envisioned as a means of leveling the playing field and assuring notification of and input from adjacent owners, then current practices more than suffice. Rezoning today don't take months. They take long, long periods—sometimes years—which sometimes cause the projects to fail, not because the property owner doesn't want to do it, not because a majority of the elected council members don't want to do it, but because a minority of the council don't want to do it. That's not democratic government; that's rule by minority.

If you were going to have a different vote for a rezoning than a majority, it would make more sense to say that it *shall* be rezoned unless three-fourths of the council supported [*sic—should have said “opposed”*] it because the property owner actually has a fundamental right to use the property, whereas the neighbors do not. If they had wanted to have a fundamental right with regard to the property, they would have bought that right or inherited it or traded for it, which by definition they hadn't.

Our State Supreme Court a couple years ago in *High Rock Lake Partners v. NCDOT* said this: To confirm that we all enjoy “due process rights that protect property owners from state delegations of power that give neighbors the authority to regulate the way another person uses his or her property.” The protest petition law we have flies in the face of this principle.

Now the bill itself was before this body two years ago, and as part of another bill passed by about eighty-five to twenty-five, or something like that. I think that this bill is an improvement on what this House has already passed because in the first part of the bill on page 1 we make clear that not only adjacent owners but anybody in the city can protest the zoning change and that that protest will be brought to the attention of the council if they just get it in two days early—not just the people who happen to border it. What it doesn't do is allow this minority of the citizens to change democracy into something less than a democracy by saying that you have to have a three-fourths vote to do it.

The section on page 2 of the bill repeals the sections about giving the three-fourths vote. Section 3 is just a conforming change. Section 4 is what it is.

Section 5 fixes a problem. In cities... This only applies to cities, by the way. Ninety-nine counties don't have this protest vote provision for their zoning. But cities also have a very strange provision, and it's on page 2, line 31 through 34. “In all other cases a failure to vote by a member who is physically present in the council chamber or who has withdrawn without being excused by a majority vote of the remaining members present shall be recorded as an affirmative vote.” That is weird to say that just because you stepped out to use the restroom or you decided to leave early that you're in favor of whatever somebody happens to put before you. I mean, that's giving a power of attorney like nothing you've ever seen before. It doesn't have to even be for the benefit of the person giving it. It's just whoever wants to use it.

So I didn't dare to take that sentence out for all purposes because I didn't want this bill to be about that. But we say that in case of rezonings that that rule doesn't apply. And the reason I say that is if we're going to go from a three-fourths vote to a majority vote, it ought to at least be a true majority, because theoretically under current law if it was majority vote actually one person could be in favor, two could be against and the motion passes because two people happen to walk out.

So that's part of the improvement of the bill: Section 5 and the beginning parts. I urge you to vote for it, and I am looking forward to the debate. Thank you, Mr. Speaker.

~ Fin ~

**HB 465 – Women and Children’s Protection Act of 2015**  
**Remarks on Concurrence**  
**June 3, 2015**

*The 2015 pro-life bill was similar to those of 2011 and 2013 in two respects: threats of lawsuits that did not materialize and lack of mention of the unborn child by opponents.*

Audio available at [this link](#)  
Debate begins: 01:22:11

**Speaker Tim Moore (R):** House Bill 465, the Clerk will read.

**Reading Clerk:** Representatives Schaffer, McElraft, R. Turner and S. Martin: House Bill 465, a bill to be entitled an act to enact the Women and Children’s Protection Act of 2015. The General Assembly of North Carolina enacts.

**Speaker T. Moore:** For what purpose does the lady from Mecklenburg, Representative Schaffer, rise?

**Rep. Jacqueline Schaffer (R):** For a motion.

**Speaker T. Moore:** The lady is recognized to state her motion.

**Rep. Schaffer:** Thank you, Mr. Speaker. I move that the House do now concur with the Senate changes to House Bill 465.

**Speaker T. Moore:** The lady has moved that the House do concur with the Senate Committee Substitute for House Bill 465. The lady has the floor to debate the motion.

**Rep. Schaffer:** Thank you, Mr. Speaker. Ladies and gentlemen, I want to take you through some of the changes that the Senate put in our House Bill 465. There were a lot of great minds that were looking at this particular bill. And what came out of the Senate was really an attempt to strengthen some of our...In addition to some of the laws that we put, or the provisions that we put in the original bill, they have added in some provisions regarding some criminal law protections as well as some family law issues. So I do want to take you through those briefly, and then we can discuss any of those and if anyone has any questions.

But kind of looking at those criminal law, as well as family law provisions, one of the changes that the Senate made was to define statutory rape as engaging in a sexual act with a person who is fifteen-years-old or younger. Current law simply says the act has to be with a thirteen-,fourteen- or fifteen-year-old. We want to understand that if that happens for individuals under thirteen, that that still is statutory rape.

An additional change has to do with making some administrative changes that would improve the collection and payment of child support to our families when...really holding individuals accountable who are responsible to be making those payments. This would strengthen the ability for those payments to be made.

Additionally the bill would permit the electronic filing of documents in Chapter 50B and 50C cases under the local rules approved by AOC or under any uniform state rules adopted by the Supreme Court.

Next the bill would make it an aggravating sentencing factor to knowingly commit an offense that is seen or heard by a minor who is not an accomplice to the offense. And specifically there’s some clarifying language that an assault that is committed “in the presence of a minor” occurs when the minor can see or hear the assault.

Additionally we have...It permits the court to impose conditions of pre-trial release in domestic violence cases to protect individuals that the defendant is dating or has dated.

And then finally, on this kind of section, we have an important loophole that we’ve closed here in our sex offender statutes. What it would do is that it requires registered sex offenders to stay away from premises frequented by minors if they have committed federal crimes or crimes in other states that are substantially similar to our own criminal statutes in North Carolina dealing with sex offenses.

Moving on to some of the other provisions that the Senate added in is the creation of a Maternal Mortality Review Committee in DHHS to study and recommend ways to prevent deaths that result from complications of pregnancy and childbirth.

Additionally, there's the requirement that physicians who perform abortions other than in a medical emergency, that they must be Board-certified or certifiable in Obstetrics or Gynecology. An important amendment occurred on the Senate floor on Monday night and that was they added in that physicians who possess sufficient training based on established medical standards in safe abortion care, abortion complications and miscarriage management are also authorized to perform abortions. So taking into some of the concern for some of the rural counties who may not have some of these individuals present, and I believe that that amendment passed almost unanimously on the Senate floor.

Almost nearing the end, we have requiring annual inspection by DHHS in clinics where abortions are performed and publication of the results of those inspections that occur on or after January 1, 2013. They have to be published on the DHHS website as well as the Woman's Right to Know Act website.

Another important provision that a lot of us have discussed has to do with prohibiting clinics from employing...these abortion clinics from employing individuals under the age of eighteen.

Another important amendment that the Senate made on the floor on Monday night had to do with certain hospitals that were concerned that they were going to get looped into some of these restrictions. So what they did is they amended that particular inspection requirement to clarify that hospitals licensed under Chapter 131E of the General Statutes that they are exempt.

Those are the changes that occurred in the Senate bill. As you can see, there are a lot of great provisions to strengthen our criminal law provisions, our family law provisions. You know, the new title of the bill is "Women and Children's Protection Act of 2015," and that really is what it is—really protecting our women and children. So I would urge the members to vote to concur on the changes to House Bill 465. Thank you.

**Acting Speaker Paul Stam (R – Speaker Pro Tem):** Representative Fisher is recognized.

**Rep. Susan Fisher (D):** Thank you, Mr. Speaker—to debate the motion to concur.

**Speaker Stam:** You're recognized.

**Rep. Fisher:** Thank you. Ladies and gentlemen, all I can say is "wow." My colleague on the floor, Representative Jordan, just referred to a bill that went over as one and came back as eight. Well, I think this one went over as one and came back as nine possibly. I've lost count.

But on many of the items that were added to this bill over in the Senate, you might have found that this entire body could have voted in favor of them had you given them the chance to be distinct and separately-considered bills. But as it stands with the other pieces that are in this bill—for example, a 72-hour waiting period for women who do not need the Legislature of North Carolina dictating to them how to care for their bodies or to seek reproductive care for themselves, and with the idea that the records that are confidential between a woman and her physician are supposed to be then turned over to the State—those are things that I just, I cannot go along with.

To me, adding these extra provisions to a bill that went over one way and comes back entirely different is the worst kind of cynical politics, and I urge the body not to concur. Thank you.

**Speaker Stam:** Representative Michaux is recognized.

**Rep. Mickey Michaux (D):** To speak on the motion and to make a motion.

**Speaker Stam:** You're recognized to speak on the motion.

**Rep. Michaux:** Thank you, Mr. Speaker. Ladies and gentlemen of the House, this is...The Senate is back at it again. What they're doing is really making, I guess, campaign fodder out of this bill because now, if you vote against this bill, they're going to use everything that many of us have stood for for so long, going to force us to vote against this bill. Anything dealing with domestic violence, anything dealing with children, anything dealing...all of that they added in here as sweeteners to try to get you to support this bill.

And Mr. Speaker, as I have looked at this, I would like at this point to move under Chapter 32, Sections 310 to 316 of Mason's Manual, a motion to divide Sections 1 through 6 of this bill to move that they do stand alone.

**Speaker Stam:** Let me consult with the Clerk...The House will be at ease for just a moment or two. Don't leave...

...

**Speaker T. Moore:** The Chair will know better than to step out of the Chamber for a few minutes next time. I gave the Speaker Pro Tem the gavel for ten minutes and what happens?

Upon review of Section 312 it does appear that the gentleman is in order to make a motion, which I believe the gentleman from Durham is making, that the question be divided. And I believe the gentleman has moved that Sections 1 through 6, which I guess would include Section 6(b)—I just want to make sure I have the gentleman's motion correct—which is on page 9, line 6—the gentleman is moving that that section of the bill through section... I guess the first eight pages all the way to section 6(b) of page 9 be in one vote, and that the remainder of the bill with Section 7 all the way to the end be in a separate vote. Is that the gentleman's motion?

**Rep. Michaux:** That's correct, Mr. Speaker.

**Speaker T. Moore:** Okay. The gentleman has made his motion. The Chair will permit the gentleman to debate the motion, if he wishes.

**Rep. Michaux:** I don't wish to debate it.

**Speaker T. Moore:** Okay. Is there any debate on the motion to divide the question? The Chair sees lights from Representatives Glazier and Cunningham. The members are just wishing to debate the bill? Does the gentleman from Durham, Representative Luebke, wish to debate the motion? The gentleman from Durham, Representative Luebke, has the floor to debate the motion.

**Rep. Paul Luebke (D):** Mr. Speaker, members of the House: Representative Michaux has made clear the importance of the division simply to take two separate bills. The Senate just took these completely separate topics, put them into one bill. We ought to be able to do better in the House. We ought to acknowledge the correctness of the Michaux motion and all of us, regardless of party and regardless of where we stand on these bills merged together into one bill, we ought to support the Michaux motion. I urge people to do so.

**Speaker T. Moore:** For what purpose does the gentleman from Harnett, Representative Lewis, rise?

**Rep. David Lewis (R):** To debate the motion.

**Speaker T. Moore:** The gentleman has the floor to debate the motion.

**Rep. Lewis:** Mr. Speaker and members, the gentleman from Durham is right in making the request, and I think it is certainly worthy of note that the Speaker is allowing this question to be considered. However, I rise to ask the members to defeat the gentleman's request. To certainly the best of my knowledge and as much as I can tell from asking those that have been here for longer than I have, a Motion to Divide, while the gentleman is correct from Durham—it is in Mason's Rules—has never been done before.

This House, by precedent, has never allowed this to go on before. The standard practice that we have observed for as long as anyone can recall is that the Motion to Concur is on the bill as a whole. Therefore, while I commend the gentleman for his sharp and good knowledge of parliamentary procedure and I commend the Speaker for allowing this open debate to occur, I respectfully request that the members defeat the motion to divide the concurrence vote.

Thank you, Mr. Speaker.

**Speaker T. Moore:** Further discussion or debate...

**Rep. Michaux:** Mr. Speaker?

**Speaker T. Moore:** ...on the motion?

**Rep. Michaux:** Mr. Speaker?

**Speaker T. Moore:** For what purpose does the gentleman from Durham, Representative Michaux, rise?

**Rep. Michaux:** I do wish to speak on the motion now.

**Speaker T. Moore:** The gentleman has the floor to debate the motion.

**Rep. Michaux:** Mr. Speaker and ladies and gentlemen of the House, I learned this a long time ago. This has been done and requested before. It's been denied once and I think granted once. And you really don't have to put this to a vote; the Speaker can make the decision on it.

But let me tell you, when I started out, before I made the motion I suggested to you that you ought to take a close look at what has been added by the Senate to a House bill that was passed. And what they have added in there in order to sweeten the pot to try to get everybody to vote on this bill, they added all these good items in there. Every one of those items from Section 1 through 6 are items that should be voted on separately because they deal with statutory rape, they deal with how you handle child matters, domestic violence matters. All of these are items that should be voted on separately. And that's all that I'm asking to do with this motion is to pull those things out, vote on those items separately, and then the other items...all items actually being voted on separately and vote your conscience on the way you want to go.

Now, and it's the vote for concurrence. You would vote to concur on 1 through 6, and you would vote to concur or not to concur. You would vote to concur or not concur on 1 through 6; you can vote to concur or not concur on 7 through 8. It's just that simple. And I would suggest to you on this that you vote to allow this to go through, and then when you do, that you vote for concurrence on items—my suggestion—for items 1 through 6 and vote as you wish on Sections 7 and 8. That's all.

**Speaker T. Moore:** For what purpose does the gentleman from Wake, Representative Stam, rise?

**Rep. Stam:** To speak on the motion.

**Speaker T. Moore:** The gentleman has the floor to debate the motion.

**Rep. Stam:** Mr. Speaker, members of the House: innovation is not bad, but we certainly haven't ever done this since 1989. And if something happened before then, maybe Representative Michaux knows about it.

The folks who want to vote for Sections 1 to 6, but not the rest of the bill, have a remedy. They can take credit even if they voted against it. I worked for years to repeal the gift tax. And finally when Speaker Hackney put that in the budget, I had to vote against it—my own bill. But I took credit for it, and nobody knew the difference.

The real remedy, if they do not like parts of the bill, is just what we did on 909, that is, vote to not concur. And then you get a conference report on the good parts and the bad parts. I ask you to vote no on this motion to divide.

**Speaker T. Moore:** For what purpose does the gentleman from Rutherford, Representative Hager, rise?

**Rep. Mike Hager (R – Majority Leader):** To debate the motion.

**Speaker T. Moore:** The gentleman has the floor to debate the motion.

**Rep. Hager:** Thank you, Mr. Speaker. I'm not sure how many of you guys were in the Senate Chamber when they discussed and debated this bill that we sent over from the House or not, but I was. I sat there and listened to the debate; I sat there and listened to the amendments. And that wasn't...They didn't take this part and debate it separately outside the bill, and they didn't take this part and debate it outside the bill. It was all as a part of the debate of the bill. It was all included in the bill, and it was all meant to stay together. It wasn't separate issues. It wasn't this issue stood alone from other issues. It was all put together. It was all debated together, and it was all agreed on together, just like we do in this Chamber.

So as we debate bills here, you know, we add things to it. We learn things as we go through the debate and therefore we make amendments, we make motions, we do things to make the bill better. I think the bill's better, and I think it ought to be voted on as a whole. So please vote down this motion.

**Speaker T. Moore:** For want purpose does the gentleman from Durham, Representative Hall, rise?

**Rep. Larry Hall (D):** To speak on the motion.

**Speaker T. Moore:** The gentleman has the floor to debate the motion.

**Rep. L. Hall:** Thank you, Mr. Speaker. Fellow members, I wanted to just take you back for a minute. I heard Speaker Pro Tem Stam say that this is something new, and maybe we shouldn't do it just because it's something new. And then I thought about that motto, "First in Flight." Kind of thought back: well, you know, these guys were on a sand dune and there were detractors or someone. And someone might have said, "Well, don't take a chance because you can fly, because you could make history, because you could do something to improve. Don't do that because this would be the first time it's done. So don't do it."

Here we have something that's within our rules and, admittedly, it has been done before. It hasn't been done recently. We've had a class this morning or today about Parliamentary Procedure and what our rights are. This is in our rules. We can do this, and this restores this bill more toward what the initial intentions were when it went to the Senate.

These other items that are unrelated got put on this bill. They could have been voted out separately out of the Senate, but they were not. We could hold true to what we sent to the Senate and vote on that part and then have an active voice on voting on the other portions of the bill, as would have been the preferred method.

So I'd ask you to support this motion and let's divide this bill, vote on it true to what our intent was, and then vote on the other portions that have been added. Thank you.

**Speaker T. Moore:** Representatives Glazier and Cunningham, the members have their lights on to debate the substance of the bill, not the motion, is that correct? Okay. For what purpose does the gentleman from Harnett...? Okay. Seeing no further discussion or debate, the question before the House is the motion of Representative Michaux that the question be divided on the Senate Committee Substitute for House 465 on the motion to concur. Those in favor will vote aye; those opposed will vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. Forty-seven having voted in the affirmative and sixty-eight in the negative, the motion fails.

Members, the Chair has further reviewed this, and the Chair would believe frankly that, in the future, should such a motion be made on a concurrence motion that the motion would be ruled out of order. And the basis for the Chair's decision is very simply in the nature of a concurrence vote.

And as the discussion was ongoing, the Chair was thinking through this. The motion is to either concur with the bill saying that the House agrees with the Senate version of the bill, or not concur which means the House does not agree with the Senate bill. There is no mechanism whereby we can effectively agree with part of a bill and not agree with part of a bill. If the House does not choose to agree with the bill, then the correct motion would be a motion not to concur in that case.

So the Chair is going to allow the vote...The vote occurred; the Chair will go with that. But in the future should such a motion be made, it will be ruled out of order.

For what purpose does the lady from Mecklenburg, Representative Cunningham, rise?

**Rep. Carla Cunningham (D):** To speak on the bill for concurrence.

**Speaker T. Moore:** The lady has the floor to debate the motion.

**Rep. Cunningham:** Thank you, Mr. Speaker. As I looked at the new bill that arrived from the Senate, I noticed the title, and it says: "Women and Children's Protection Act of 2015." And I said, is that right? Because when you start talking about domestic violence in the State of North Carolina, forty-two percent are men, and there's a lot of domestic violence inside of the bill. And to me, both of those issues are so huge that they could stand alone.

UNCC did a report last year and did a study. In Mecklenburg County alone there were thirty-five thousand calls to domestic violence for the police, and there were fifteen-thousand calls logged with the Domestic Violence Coalition. The four top counties in the State of North Carolina that have the highest domestic violence: Guilford County, Wake County, Mecklenburg and Durham County.

But moreover, when we start talking about domestic violence, I feel no justice...no justice in this Chamber to have domestic violence stuck inside of another bill, because to me as a woman and some men that are suffering domestic violence across this state and losing their lives—losing their lives—domestic violence deserves its own space. It deserves its own space.

Whether you agree with me or not, it is just one of those items that causes the burning of my soul that we are not addressing in the State of North Carolina to the fullest capacity that it needs to be addressed. Lives are lost every day. One to three lives are lost every day. So I do like the domestic violence that's included in the bill, but I think it deserves more of a validity by us in the State House. I ask you not to concur. Thank you.

**Speaker Stam:** Representative Glazier is recognized.

**Rep. Rick Glazier (D):** Thank you, Mr. Speaker. To speak to the motion.

**Speaker Stam:** You're recognized.

**Rep. Glazier:** Thank you. Members, first and not for nothing, when this bill was in the Senate the other day and the Senate did its bait and switch, take a look with me at Section 1, since we've decided to keep it in the bill. Section 1 was intended for a good purpose: to remove a procedural burden for victims of serious sexual acts. But what it also does, if you look, is to expose younger alleged defendants to being charged with a statutory sex offense.

Currently an alleged defendant must be at least twelve to be charged with that kind of offense. You can take a look at 14-27.2 and 14-27.4. But the new language the Senate inserted now allows children as young as six to be charged with a statutory sex offense. Well, that's what happens when bad process takes place and no one gets to vet the provisions that are added. So you're now voting, just so you know, to allow felony sex offenses to be charged against someone as young as six years of age.

Second, turning to the remainder of the bill which was the real bill and not part of the sham bill that the Senate passed: the seventy-two-hour provision. We've argued about that before and so I'll keep my comments brief. But especially telling once again is the absence of any statement of legislative findings. The legislative record on that issue, I remind you all, contains no documentation or evidence, no studies or surveys, no academic analysis, not even anything as anemic as a simple expert report—not in the House, which we stated on the floor as a reason to oppose it when the House passed. And the Senate had a chance to document the record, but the Senate refused to. And then not again in the House today.

Just for the record, every bit of existing medical evidence has been clear for decades. Delays of any source in obtaining an abortion, whether administrative, legal, financial or logistical, have the same net effect. That is, they increase the risk and cost with no benefit to the woman. Point of fact in the most recent days is the most recent advice from the World Health Organization which says that abortion should be provided promptly upon request. But legislators in the House apparently know more about best medical practices than the doctors at the World Health Organization. We don't know what they know outside of that because we have no record to support it.

Missouri Governor Jay Nixon said the following when he vetoed a seventy-two-hour waiting-period bill out of Missouri: "Lengthening the already extensive waiting period serves no demonstrable purpose other than to create emotional and financial hardships for women who have undoubtedly already spent considerable time wrestling with perhaps the most difficult decision they will ever have to make. Expanding the mandatory waiting period presupposes that women are unable to make up their own minds without further government intervention. This is insulting to women, particularly in light of what the law already requires."

So let's at least be clear as to this provision. Tripling the existing twenty-four-hour mandatory delay to seventy-two hours is fundamentally under every bit of credible medical evidence medically unnecessary. And it will be, in the minds of most of us, absolutely enjoined by a federal court. The Majority here pays the kind of lip service to the value of a woman's right that is typical when a principle is about to be callously disregarded. In the Majority's view, a woman's right to choose is an empty and hollow concept with little meaning. On this issue at least then as to the seventy-two hours the Majority tries to mask it as a women's health issue. But their bluff has been called and the Majority lays barely a pair on the table.

Third issue: the issue that was added on the Senate side of the gynecological provision that at least was amended in part. I can't sum it up any better than a Chapel Hill physician Dr. Ferrari said: "You simply don't need specialized training to work with a uterus." Family doctors have lots of experience with taking care of women who are pregnant. They have a requirement to learn obstetrics and to learn women's health and [audio unclear] patient gynecological procedures. And although Senator Van Duyn's amendment adopted by the Senate modifies that restriction some, let's be clear again that it is added in contravention to all medical evidence, not with the support of the North Carolina Medical Society and not as a provisions that's intended to aid in a woman's health, but instead truly intended to simply restrict again the supply capacity for a woman's exercise of their right to choice.



Indeed, it takes real cheek by the Majority to assure us that what's going on here at all has anything to do with a woman's health or a woman's right to choose when the record for four years in this Chamber and outside it has been littered by a number of members on this bill by an assault—vitriolic and virtual—on any woman's right to choose in most circumstances.

Finally, this bill is not about the interpretation of the Constitution but the creation of a new one. The Majority is on a legislative quest, as righteous in their mind and as pure in their mind as it is extreme and ideological and dangerous in mine, and nothing will stand in their way today, least of all the Constitution of the United States.

The result of this legislation—will it be less abortions? Hardly—they'll simply occur elsewhere in the back alleys and dark rooms and places where members on the House floor will never dare to tread in our society. More services for the unwanted, or in some cases unloved, and in others potentially mortally impaired children that will be born due to a lack of access in this state to the poor of abortion? Don't kid yourself. Wait till next week when the Senate budget comes out. More condoms, more contraceptives or true family planning? Don't be ridiculous. Abstinence apparently is the only name of the game in town.

And look at the bills filed in the last four sessions and the provisions we've passed in budgets. We're probably lucky in the public that we haven't reverted to *Griswold v. Connecticut* where it was made a felony for a married couple to even purchase a condom. No, on this House floor we love the unborn child, but as for the living mother and the child she may be forced to bear, well that's a horse of a different constitutional color. No longer is it a family's choice, a parents' choice or a woman's choice. No, it's now the government's choice. George Orwell was right; 1984 has arrived simply a few decades later than he predicted.

It goes without saying I oppose this bill and the motion to concur. And I guess when it passes we will have to yet again leave it to the federal courts to clean up the elephant's constitutional mess on the legislative circus sawdust trail that we continue to tread on the social agenda. Thank you.

**Speaker Stam:** Representative Harrison is recognized.

**Rep. Pricey Harrison (D):** Thank you, Mr. Speaker. Ladies and gentlemen of the House, I'll debate the motion briefly. It's tough to follow Representative Glazier's eloquence. But I do want to remind members that the continual interferences of this Chamber into women's reproductive rights are playing out in the worst way on the least of these—the women of less means. Those who can afford it will be able to find and seek the care that they need at the time that they need it, but the ones that can't afford it—the single mother of four who needs this service is going to have to take two days off of work to go get the service that she needs. And I just think this is unfortunate. And we do not have an exception for victims of rape or incest, so you have to live with that horror for a couple of extra days. And I just think that's unconscionable. I would encourage you to vote no on the motion to concur. Thank you.

**Speaker Stam:** Representative Lucas is recognized.

**Rep. Marvin Lucas (D):** Thank you, Mr. Speaker—to speak on the motion.

**Speaker Stam:** You're recognized.

**Rep. Lucas:** Thank you. Ladies and gentlemen, I stand with conflicted emotions. I don't think there's anyone in this room who would not vote for the provisions in the first part of this bill if they were allowed to stand alone. That would be unconscionable to vote against those. But in our zest—or in the Senate's zest, I should say; I don't think this belongs to the House—in the Senate's zest to put provisions in this bill that would make it difficult to vote against, I don't think many of us realized that we were putting in a provision that would make a six-year-old a criminal. That, to me, is tantamount to haste making waste.

It reminds me of the Shakespearean play, "The Merchant of Venice," where the villain Shylock insisted upon a pound of flesh. Yes, we're willing to concede that pound—some of us are—to concede that pound of flesh as it relates to the delay on abortions. But you know, Shylock wanted his pound of flesh, but the decision came that he could get that pound of flesh but he was not entitled to one ounce of blood. And he was entitled to one pound—not one pound, one ounce, not fifteen ounces, but exactly one pound.

I'm reminded that that might be what we're doing here. We need to be careful how we craft legislation that's designed for specific purposes. If we're interested in human beings, as we all ought to be and I think we all are, then please look at this very carefully. And if you examine this very carefully, perhaps you may be influenced to vote no.

**Speaker Stam:** Further discussion or debate? If not, the question before the House is the adoption of the motion to concur in the Senate Committee Substitute for House Bill 465. The Clerk will open the vote... The Clerk will lock the machine and record the vote. The ayes are seventy-one, the noes are forty-three. The motion is passed. The bill will be enrolled and sent to the Governor.

~ Fin ~

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**SB 2 – Magistrates Recusal for Civil Ceremonies**  
**Rep. Stam’s Remarks on 2nd Reading**  
**May 27, 2015**

*The U.S. Supreme Court in 2014 put some of our magistrates and registers of deeds in an untenable position. This law provided a reasonable accommodation. Lawsuits were threatened but failed.*

Audio available at [this link](#)

Debate begins: 01:12:54

Rep. Stam’s comments: 01:18:10

**Speaker Tim Moore (R):** For what purpose does the gentleman from Wake, Representative Stam, rise?

**Rep. Paul Stam (R – Speaker Pro Tem):** To speak on the bill.

**Speaker T. Moore:** The gentleman has the floor to debate the bill.

**Rep. Stam:** Mr. Speaker, members of the House: applying neutral principals of law that have been longstanding, this controversy would have been easily resolved. Title VII of the Civil Rights Act of 1964 makes it an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual’s religion. That’s been well-known. 1964—that’s fifty-one years ago.

This law applies to both public and private employees, but it expressly excludes some employees, including magistrates. So a few years ago the Government Employee Rights Act was passed that requires the same analysis for government employees like magistrates with a couple of distinctions. One, they don’t get a jury trial and, two, they can’t get punitive damages.

But under Title VII, the way it works out is an employee establishes a *prima facie* claim by showing a bona fide religious belief (“Bona fide” just means you actually believe it.) that conflicts with an employment requirement; number two, that the employee/magistrate informs the employer of this belief, and three, that the employee was disciplined for failure to comply with the conflicting employment requirement. Once that’s shown, the government then has to show that it could not reasonably accommodate this conflict. That’s the law. Has been the federal law for many, many, many years.

Two days or so after the federal court issued its decree on marriage, the Administrative Office of the Courts sent a memo to all magistrates and judicial officials that if every magistrate didn’t conform, that magistrate could be suspended, fired and even subject to criminal prosecution. And the Attorney General wouldn’t defend them.

In correspondence just that month, the head of the Administrative Office of the Courts told Senator Berger, “You will note that our memo stops short of saying that every magistrate in a county must conduct weddings, only that if any magistrate conducts any weddings, the magistrate must comply with the federal rulings and treat citizens equally.” Well, that was pretty good. It wasn’t saying they actually had to do them.

And then in correspondence with me a month later from the Administrative Office of the Courts: “I personally tend to agree with your first point that a magistrate can avoid potential liability by not being permitted to conduct marriages, but even that position is debatable and requires the Chief District Court Judge to oversee taking away a power granted by the Assembly.” And then he goes on: “I agree with your second point, it is not necessary that every person seeking to be married be accommodated on the spot, but every person coming to be married is now entitled to be treated by our judicial officials just like others seeking to exercise the same right.”

Despite these concessions, the Administrative Office of the Courts—the employer—refused to accommodate these people. I had a member of my community who had been a magistrate for twenty years. He was the one who taught the younger magistrates how to do it. He was told, “You will start doing it by such-and-such a date. If not, you’re fired.” He hid out doing the graveyard shift for a while. I don’t know how it finally turned out, but it was an employment issue.

This conflict is completely unnecessary. This bill solves the conflict. Without this bill, the State will be sued under GERA (Government Employee Rights Act). The State has already been sued by a couple of magistrates under the Constitution. And so what we’re doing today is just reasonably accommodating the positions of our employees. We’re doing what we’re supposed to have done under federal law all along. People who want to get married can get married. They will not face discrimination; they will be married.

...

We have to solve this problem. We can solve it today. We can send this to the Governor and be finished with this particular error that the Administrative Office of the Courts caused last October.

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*Rep. Stam’s question: 01:40:24*

**Rep. Stam:** On that point, Representative Martin, do you remember a couple of weeks ago Representative Adcock had an amendment on the execution bill to exempt physician assistants from participating in executions? Do you recall that?

**Rep. Grier Martin (D):** Yes.

**Rep. Stam:** And her amendment did not require that physician assistants not participate in medicine at all, just that because it was against her code of ethics, that she should not have to participate in this one procedure of taking the life of another person. What did you think of that amendment?

**Rep. G. Martin:** Mr. Speaker, I believe the gentleman is violating our rules in that he is presenting arguments under the form of a question. Both Masons, as incorporated in our rules, prohibit that. Further...

**Acting Speaker Leo Daughtry (R):** You don’t have to answer if you don’t want to.

**Rep. G. Martin:** Well, I’m trying to figure out exactly how to answer it, and I’m also trying to figure out the relevance of it. I think he could use one of his two times to speak on the bill to talk about that, but I’m happy to try to answer a question about Conscientious Objector provision or magistrates also.

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*Rep. Stam’s second comments: 03:24:40*

**Speaker T. Moore:** For what purpose does the gentleman from Wake, Representative Stam, rise?

**Rep. Stam:** To speak a second time.

**Speaker T. Moore:** The gentleman has the floor to debate the bill a second time.

**Rep. Stam:** Mr. Speaker, members of the House, unlike some others, I do desire to persuade you to change your vote to yes. I’m not making this speech for the television cameras. Second, I don’t think it is necessary, or even perhaps desirable, to decide this vote based upon your theology of marriage, whatever it is. Instead, this vote comes down to what you think of the Constitution and the employment and discrimination laws of the United States of America. And what I’d like to do is look at a couple of the profound ironies in this debate.

The term “magistrate,” in our society is the least-high judge. But in history, the term “magistrate” can refer to the Chief Justice of the Supreme Court or the Governor or the governmental leader of the nation. What is the most solemn duty that the Government does—ever? And I think many of you would say when it imposes the death penalty for whatever purpose—murder.

We “death-qualify” jurors. We ask them before they are admitted to be jurors, “If we show you all the evidence in the case, can you vote for the death penalty?” And only those who say “yes” are allowed to be on the jury. Is it really the position of the opponents of this bill that we should “death-qualify” the trial judge, as well? Because our law says that if that jury comes back and says “death,” that that judge shall impose the death penalty.

If there were one of our superior court judges who had a sincerely-held religious belief that he or she could not impose the death penalty for murder, no matter what, should that judge be impeached and removed from office? Should that judge be subject to discipline by the Judicial Standards Commission? Obviously not!

We would accommodate that. AOC would send that judge to hear civil cases or hear only robberies and rapes. We wouldn’t do something so foolish as to get rid of a judge just because of a sincerely-held religious belief. Representative Bryan mentioned the district attorney/assistant district attorney who could easily handle other cases, but no, we’re going to fire that person because he or she won’t do the one thing they can’t do. That’s one irony.

The second irony is that the party of John Kennedy, Lyndon Johnson and Hubert Humphrey apparently does not like Title VII of the Civil Rights Act of 1964. This bill is based upon Title VII of the Civil Rights Act of ‘64. Let me remind you of the predicates: sincerely-held religious belief, informs employer of the belief, disciplined for failure to comply with conflicting employment requirement, and if so, there has to be shown reasonable attempts to accommodate.

Magistrates are not subject to Title VII because they’re subject to a parallel federal statute, but assistant register of deeds would be subject to Title VII. And we actually have a case out of Oregon that applies Title VII to the case of an assistant clerk of court who didn’t want to process domestic partnership registrations. And they looked at: did she sincerely believe this? Did she communicate it to the employer? Was she disciplined? Yes, she was fired. And then a reasonable way to accommodate? And they looked at all the issues that Representative Reives and Floyd discussed. Representative Turner mentioned this.

The marrying duties of a magistrate are trivial as far as the total duties of a magistrate. It would be easy to accommodate but our foolish Administrative Office of the Courts refused to do it, so we have to do it today. I urge you to vote yes.

**SB 2 – Magistrates Recusal for Civil Ceremonies**  
**Rep. Stam’s Remarks on 3rd Reading**  
**May 28, 2015**

*Audio available at [this link](#)*

*Debate begins: 00:12:25*

*Rep. Stam’s comments: 00:22:11*

**Speaker Tim Moore (R):** For what purpose does the gentleman from Wake, Representative Stam, rise?

**Rep. Paul Stam (R – Speaker Pro Tem):** To speak on the bill.

**Speaker T. Moore:** The gentleman has the floor to debate the bill.

**Rep. Stam:** Mr. Speaker, Members of the House: Representative Luebke and Representative Grier Martin prove my point. Representative Luebke, as an employee of the University of North Carolina in Greensboro, is covered by Title VII of the Civil Rights Act of 1964. He is entitled, if he has a sincerely held religious belief against teaching some group of students—I can’t figure out what the belief might be, but suppose he did—he’s entitled to state that to his employer, and if subject to disciplinary action, to at least explore whether reasonable accommodation could be made. As a teacher he has that right under federal law.

These clerks of court, register of deeds are also covered under Title VII. They’re entitled to accommodation. Magistrates are entitled to accommodation under the Government Employee Rights Act.

Let me give you a counterexample to Representative Luebke that is more directly on point. I cannot imagine a sincerely-held religious belief that would say he doesn’t have to teach some particular group of students, but he

might not want to teach a particular course. For example, I don't know if this is religious, but he might not want to teach a course on the merits of the free-enterprise system. But, I withdraw the example...I withdraw...

**Rep. Paul Luebke (D):** Would the gentleman yield for a question?

**Rep. Stam:** I withdraw that example, Representative Luebke. But, take a teacher in one of the LEAs that still has corporal punishment—not capital punishment, but corporal punishment. And a policy in those districts—I think there are ten or fifteen of them—that says if you're engaged in a fistfight, you will be corporally punished. And we have rules on how that should be done. But a particular teacher says to the principal, "I have religious convictions against hitting another person. I would like to be excused from that duty. Under Title VII, I'm entitled to be accommodated."

...

Under Title VII, that teacher would be entitled to be accommodated. But the opponents of this bill say, "No, you must fire that teacher because when that teacher signed up to teach in such-and-such a school system, he or she knew the policy. They're not going with the policy. They've got to do all the duties. So, Teacher Lubeke, you must be the one to hit that kid against your sincere..." No, you wouldn't agree with that. You would argue that that teacher should be accommodated, and that's all this bill does. It applies the principles of Title VII and the principles of the Government Employee Rights Act to a particular circumstance that we have here.

I wish the bill wasn't necessary. It is necessary. I encourage you to vote for it, and I would be glad to yield to any questions.

**Speaker T. Moore:** Does the gentleman from Vance, Representative Baskerville, wish to propose a question to the gentleman from Wake?

**Rep. Nathan Baskerville (D):** Yes. Inquiry to Representative Stam.

**Speaker T. Moore:** And does the gentleman from Wake yield?

**Rep. Stam:** I do.

**Speaker T. Moore:** He yields.

**Rep. Baskerville:** Thank you, Mr. Speaker. Thank you, Representative Stam. So you got to it a little bit towards the end there. My question is, did those teachers have to put their hand on the Bible and swear an oath to uphold the laws of the State of North Carolina? Or did those teachers have to swear an oath to teach a particular student whatever subject matter you're saying concerns their sincerely-held religious belief?

**Rep. Stam:** Thank you for the question. I want to answer it. I was thinking of answering that argument point yesterday and things just went on too long. And the argument is that the duties were there. They know the duties are there. It really is not consequential whether they signed an oath or not. They're entitled to accommodation whether or not the oath. But let's say they swore an oath.

The logical fallacy in that argument—I don't even remember the Latin name, but it's called "assuming the consequent." That is, you assume the conclusion of your argument, and then that becomes a premise of your question—the premise being that a magistrate has a duty to do everything in such-and-such a statute. Therefore, if this bill passes, the magistrate...or doesn't pass, the magistrate still has a duty to that same thing. It's a logical fallacy we've known for twenty-five hundred years. [*Editor's note: The fallacy is named "petitio principii," commonly referred to as circular reasoning or begging the question.*]

But guess what! We are the General Assembly—we can *change* the duties. Or as Representative Stevens says, we can change the authority of the magistrates, and that's what this bill does. It says the individual magistrate does not have such-and-such a duty; the duty is changed.

I hope I've answered your question.

**Rep. Graig Meyer (D):** Mr. Speaker?

**Speaker T. Moore:** For what purpose does the gentleman from Orange, Rep. Meyer, rise?

**Rep. Meyer:** To ask a question of Representative Stam.

**Speaker T. Moore:** Does the gentleman from Wake yield to the gentleman from Orange?

**Rep. Stam:** I do.

**Speaker T. Moore:** He yields.

**Rep. Meyer:** First of all I think, Representative Stam, that it's *post hoc ergo propter hoc* that you're looking for from the Latin.

**Rep. Stam:** That's not that fallacy. That's the fallacy created many times on this floor which I translate as: the rooster thinking the sun rose because he crowed.

[laughter]

That's a different one.

**Rep. Meyer:** Should have known better than to go after Stam on Latin...

**Speaker T. Moore:** Does the gentleman wish to try another question?

[laughter]

**Rep. Meyer:** I do have a question.

**Speaker T. Moore:** And does the gentleman from Wake yield?

**Rep. Stam:** I yield.

**Speaker T. Moore:** He yields.

**Rep. Meyer:** I do have a question. Representative Stam, you said that you could not imagine a case where a teacher would hold the sincerely-held religious belief that would cause them to recuse themselves from teaching the students in those classrooms. Can you imagine a case where a magistrate would hold a sincerely-held religious belief in which they would recuse themselves from marriage because they don't believe it's appropriate to marry a heterosexual couple? If you can imagine that, please tell us what religious belief that would be.

**Rep. Stam:** I can actually imagine that because we had a former member of this House who expressed that idea on floor and actually got about forty votes from that side for his amendment—and in the next primary he got thirteen percent of the vote—he thought the government should not get involved in marriage at all.

I think that on this point the words of Representative Grier Martin are conclusive. And I'll just...I noted the things he said. "The bill text does not contain discriminatory language." Do you remember that? And he complimented Representative Arp on the way he presented the bill—totally non-discriminatory.

The principle of law is that, in discerning legislative intent, the random comments of individual members, like myself in this particular case, don't count. But the remarks of the manager of the bill do and the text of the bill does. So Representative Martin has told us that the bill does not contain discriminatory language.

**Speaker T. Moore:** For what purpose does the gentleman from Richmond, Representative Goodman, rise?

**Rep. Ken Goodman (D):** To ask Representative Stam a question, or a series of questions.

**Speaker T. Moore:** Does the gentleman from Wake yield to the gentleman from Richmond?...He yields.

**Rep. Goodman:** Representative Stam, I heard you explain to Representative Luebke and others that there is accommodation available under the Constitution for a teacher that doesn't want to teach a certain course because of some religious conviction, or a teacher who does not want to provide corporal punishment because of a religious conviction. And I thought I heard you say there was accommodation, the same rule applies for magistrates and register of deeds. Is that correct?

**Rep. Stam:** Yes. I believe you weren't here yesterday. I'll go through it briefly...Or were you here?

**Rep. Goodman:** I was here for most of it.

**Rep. Stam:** Let me just briefly explain. Title VII applies to most employees, including government employees, but it excludes a particular class of employees like magistrates. A few years later the US Congress passed the Government Employee Rights Act, which does cover magistrates. The remedies are a little bit different. They don't get a jury trial; they can't get punitive damages, but the same right to have reasonable accommodation applies to government employees such as magistrates.

**Rep. Goodman:** Follow-up?

**Speaker T. Moore:** Does the gentleman yield to an additional question?

**Rep. Stam:** I do.

**Speaker T. Moore:** He yields.

**Rep. Goodman:** So if they have this right to reasonable accommodation already, what's the point of the bill?

**Rep. Stam:** To save us from a lot of lawsuits that we're going to lose. [*And Rep. Stam should have added: "And to save our employees from having to file lawsuits."*]

**Rep. Goodman:** Thank you.

\* \* \* \*

*Rep. Pittman's question: 00:36:06*

**Speaker T. Moore:** For what purpose does the gentleman from Cabarrus, Representative Pittman, rise?

**Rep. Larry Pittman (R):** To ask Representative Stam a question or two.

**Speaker T. Moore:** Does the gentleman from Wake yield to the gentleman from Cabarrus?

**Rep. Stam:** I do.

**Speaker T. Moore:** He yields.

**Rep. Pittman:** Representative Stam, I'm looking at Article XIV, Section 6, which was placed in our Constitution as a result of a vote on the Marriage Amendment. And I know that has been ruled unconstitutional, but I'm a little unclear on what's going on with the courts right now. And I'm wondering, has that actually been removed from our Constitution, or is that still undecided since it hasn't gone to the Supreme Court?

**Rep. Stam:** Representative Pittman, that's currently on, I'll say, appeal (*certiorari*) to the US Supreme Court. A three-judge panel of the Fourth Circuit ruled two to one against us. Speaker Tillis and President Pro Tem Berger

were allowed to intervene for the purpose of appeal. They perfected an appeal. When the Supreme Court rules in the case, everybody says in June, we'll know which way the wind is blowing there. But our case is actually on appeal.

**Rep. Pittman:** Follow-up?

**Speaker T. Moore:** Does the gentleman from Wake yield to a second question?

**Rep. Stam:** I do.

**Speaker T. Moore:** He yields.

**Rep. Pittman:** Well, if that being the status at the moment, would that mean that, really, this has not been decided as being unconstitutional; it's just an opinion of that lower court at this point?

**Rep. Stam:** No, I wouldn't say that because that lower court decision of the three-judge panel of the Fourth Circuit stands unless it's reversed. And they issued an...or approved an injunction, so I wouldn't say it's nothing. But it's not final.

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*Rep. Michaux's question: 00:38:55*

**Speaker T. Moore:** For what purpose does the gentleman from Durham, Representative Michaux, rise?

**Rep. Mickey Michaux (D):** To ask Representative Stam a question.

**Speaker T. Moore:** Does the gentleman from Wake yield to the gentleman from Durham?

**Rep. Stam:** I do.

**Speaker T. Moore:** He yields.

**Rep. Michaux:** Representative Stam, could you give me your opinion as to an accommodation statute overriding a constitutional provision?

**Rep. Stam:** Well, a statute, Representative Michaux, cannot override a constitutional provision, but there is no constitutional provision that says every magistrate has to marry everybody. That doesn't exist.

**Rep. Michaux:** Another question.

**Speaker T. Moore:** Does the gentleman from Wake yield to a second question?

**Rep. Stam:** I do.

**Speaker T. Moore:** He yields.

**Rep. Michaux:** But there is a constitutional amendment giving people protection against the law...against unconstitutional law...against making constitutional laws, right? In other words, you cannot make a statute that's unconstitutional...an accommodational statute that's unconstitutional.

**Rep. Stam:** That's correct.

**Rep. Michaux:** But you do have...

**Speaker T. Moore:** Does the gentleman wish to ask a third question?



**Rep. Michaux:** Yes.

**Speaker T. Moore:** And does the gentleman from Wake yield to a third question?

**Rep. Stam:** I yield.

**Speaker T. Moore:** He yields.

**Rep. Michaux:** Alright, then would not this particular statute, this accommodation statute, violate the Fourteenth Amendment of the Constitution?

**Rep. Stam:** Absolutely not. It upholds the Fourteenth Amendment.

**Rep. Michaux:** May I ask another question?

**Speaker T. Moore:** Does the gentleman yield to a fourth question?

**Rep. Stam:** I do.

**Speaker T. Moore:** He yields.

**Rep. Michaux:** How does it uphold the Fourteenth Amendment?

**Rep. Stam:** The Fourteenth Amendment provides for due process of law. I would guess that when Title VII of the Civil Rights Act of 1964 was enacted that the stated constitutional provision that it was pursuant to was probably the Fourteenth Amendment, maybe the Fifteenth as well. And it's been upheld hundreds of times.

**Rep. Michaux:** Another question?

**Speaker T. Moore:** Does the gentleman yield to a fifth question?

**Rep. Stam:** I do.

**Speaker T. Moore:** He yields.

**Rep. Michaux:** The LGBT-type marriage that this seems to attack, is this not legal at this present time?

**Rep. Stam:** Well, the premise...

**Rep. Michaux:** Gay marriage is legal at the present time.

**Rep. Stam:** I deny the premise of your question...The premise of your question is that this bill attacks a certain type of marriage. Representative Martin assured us that the words do not. Now you can read into it something more than is there.

~ *Fin* ~

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**SB 673 – Natural Gas Econ. Dev. Infrastructure**  
**Rep. Stam's Remarks on 2nd Reading**  
**June 30, 2016**

*A rare mea culpa and restitution for a prior bad vote.*

Audio available at [this link](#)

Debate begins: 05:37:45

Rep. Stam's comments: 05:39:34

**Acting Speaker Leo Daughtry (R):** For what purpose does the gentleman from Wake, Representative Stam, arise?

**Rep. Paul Stam (R – Speaker Pro Tem):** To speak on the bill.

**Speaker Daughtry:** The gentleman has the floor to speak on the bill.

**Rep. Stam:** Mr. Speaker, members of the House: I'm told that I voted for this last year on an identical bill. I plead temporary insanity. You know how I have fought targeted tax incentives and that kind of thing for the last sixteen years. This is actually worse.

I am in favor of providing infrastructure—public infrastructure—for economic development, if we can afford it and to the degree we can afford. That would be the proper way to do this—to appropriate five, ten, fifteen million dollars to land this project.

But what this bill does is something quite different. And the term—I didn't make this term up, it's the term they use—it “socializes the infeasible costs”—that is, the cost that would not be justified for this project itself—and makes the other ratepayers pay that. I don't think that's right.

If you want to spend money for a new person to come on board, appropriate the money. Don't make other people pay for it just because they happen to be on a line that's nearby.

~ Fin ~

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**HB 2 – Public Facilities Privacy & Security Act**  
**Rep. Stam's and Rep. Bishop's Remarks on 2nd Reading**  
**2016 Extra Session 2 - March 23, 2016**

*“In 2016 the City of Charlotte passed an ordinance that would set itself on fire.  
The debates of the primary sponsors are included.”*

Audio available at [this link](#)

Debate begins: 00:18:00

**Speaker Tim Moore (R):** House Bill 2, the Clerk will read.

**Reading Clerk:** Representatives Bishop, Stam, Howard and Steinburg, House Bill 2, a bill to be entitled “An act to provide for single-sex multiple occupancy bathrooms and changing facilities in schools and public agencies and to create statewide consistency in regulation of employment and public accommodations.” General Assembly of North Carolina enacts.

**Speaker T. Moore:** For what purpose does the gentleman from Wake, Representative Stam, rise?

**Rep. Paul Stam (R – Primary Sponsor):** To speak on the bill.

**Speaker T. Moore:** The gentleman has the floor to debate the bill. Members, the House will come to order. Members are asked to please take their seats, or if members would like to have conversation, I would ask members please step off the floor to do so. The gentleman from Wake has the floor to debate the bill.

**Rep. Stam:** Thank you, Mr. Speaker. Members of the House, this is a commonsense bill that protects the privacy expectations of our citizens while clarifying local authority. Representative Bishop will give us a paragraph-by-paragraph explanation. Would the House indulge me if I went into history for just three or four minutes?

In 1669, the first law passed by the Assembly, the Albemarle Assembly, protected debtors fleeing from Virginia and South Carolina. This was not a good thing for commerce. In 1787, (after) the Articles of Confederation, we realized that we needed a true nation, and so the Constitution protects interstate commerce and requires the recognition of foreign judgments so that we can collect the debts from those people in Representatives Tine's and Steinburg's districts. I think they're still there. It's a move toward free flow of commerce, interstate commerce, and that's why the United States is the economic powerhouse of the world—plus natural resources.

In North Carolina there's been a continual struggle for free intrastate commerce. Until 1835, people came down here to Raleigh—they didn't have nice seats like this, but they came to the other building—and they brought all sorts of crazy economic things that would just apply to their town. And in the Constitution of 1835, we said in Article II, Section 24, "There will be no local bills on trade." We want intrastate commerce to be free.

That is one of the main thrusts of this bill, that when people want to do business in this state on matters of employment rights that there will be a common market throughout the state, common expectations. If a person travels to Hickory, they don't expect a different rule in the government facilities of Hickory of who can be in a washroom. If they want to bid on a contract in Hickory, they can expect that they can pay their employees according to the law and there won't be some special deal just for Hickory. This will help the economy of the state greatly and recognize the privacy rights of every citizen of this state.

**Speaker T. Moore:** For what purpose does the gentleman from Mecklenburg, Representative Bishop, rise?

**Rep. Dan Bishop (R – Primary Sponsor):** To debate the bill.

**Speaker T. Moore:** The gentleman has the floor to debate the bill.

**Rep. Bishop:** Thank you, Mr. Speaker. As we just did in a good committee meeting, I'd like to briefly tick through the three parts of the bill and address the various components for the benefit of all the members.

The bill begins with a recitation of the constitutional principles that Representative Stam just referred to that the General Assembly may not enact local acts regulating labor, trade, mining and manufacturing—topics of commerce and business—and also that localities (cities and counties) have the powers that are delegated to them by the General Assembly. Beginning with that premise, we then have three parts of the substantive provisions of the bill.

Part 1 concerns single-sex, multiple occupancy bathroom and changing facilities, and within that part there are two sections: one for K-12 public schools, one for state agency local government facilities. In both instances what we're establishing is that bathrooms and other distinctly private facilities will be maintained and designated according to biological sex, and that the usage of them will be in accordance with that. Biological sex, the sections both state, is the physical condition of being male or female, which is stated on a person's birth certificate. I made the point in committee and will make it again here that our existing laws concerning the content of birth certificates provides that if someone has sex reassignment surgery, and that's certified by a physician, their birth certificate can be amended as to the gender.

Both of these provisions, in setting forth that if there are multiple-occupancy facilities they'll be by sex, also says there's nothing to preclude any of these government bodies from having single-occupancy facilities that are designated according to sex or are unisex. And there also are several exceptions that apply—for example, if someone needs to go into the restroom or changing facility to assist another person—and those are set forth in detail.

The second part of the bill goes to the part...second and third parts relate to clarifying the limits of local authority for the sake of having uniform and statewide consistency in business regulation. So part two makes those provisions in two respects. If you look at Sections 2.2 and 2.3 on page 4, those say that when a local government contracts with a vendor—a contractor to build a building, or a contractor to sell something—or contracts for competitions for professional services, in those events cities and counties cannot impose employment practices and/or policies concerning the sales or provision of goods, services or accommodations to the public through their contracting relationships.

I'm sorry, I omitted to mention one thing about the first part that's very, very important. As I said, as to multiple-occupancy bathrooms facilities and other distinctly private facilities, the regulation concerns government facilities only; it mandates nothing with respect to private businesses. They are free to adopt the policies they deem most appropriate.

So back to part two, local governments cannot impose employment and selling policies on their contracting partners who are private businesses.

And the third provision, which I'm going to come to last, Section 2.1, makes clear that local governments also cannot mandate wage practices in private businesses. And the reason it's here is because the two provisions that we've modified in Sections 2.2 and 2.3 previously were modified in 2013 to make clear that local governments could not mandate wage policies through their contracting. We've now generalized that appropriately, and we've made it a subject of what we call "field preemption." The North Carolina Wage and Hour Act already provides a complete and integrative legislative scheme regulating wages and conditions of employment. And we simply added a statement that the law candidly already should reflect. I mean that is to say it is the law, although some may dispute it or some may attempt to overstep it, that the Wage and Hour Act preempts local governments and disallows them from regulating in the same field. They cannot regulate wage policy of private businesses. They can set wage policy for themselves any way they want to.

Part three concerns protection of rights in employment and public accommodations. For the first time we are proposing that the General Assembly enact a statement, a public policy statement, on public accommodations discrimination disapproving that. Since 1976 we've had a parallel statement of public policy against employment discrimination. And both of these policies cover all suspect and quasi-suspect classifications recognized by the United States Supreme Court: race, color, religion, national origin, sex. They also cover in the one instance—the employment discrimination—age and handicap. Those two are not added to the statement of public policy concerning public accommodations discrimination. I'd like to take just a moment to explain why.

Age is uniquely appropriate for protection in the employment circumstance, and that's why it appears in the employment policy, not the public accommodations policy. Handicap is actually covered comprehensively in employment, as well as in public accommodations, in another part of the General Statutes: Chapter 168A. And there was a case in 2015 from the Court of Appeals on the employment discrimination side in which the fact that handicap is mentioned here but not robustly treated here, a plaintiff lost rights by bringing their claim for relief under the wrong law. The court said had they proceeded under 168A, they wouldn't have fallen into the trap of not having secured their rights most robustly. So we've omitted that because it would only be window-dressing to repeat that in the public accommodations non-discrimination part.

But this is historic. There's never been such a statewide non-discrimination statement on public accommodations in North Carolina, and we're doing it here.

For both of these statements of public policy, we've also done something else that clarifies law—clarifies law concerning the authority of localities. And that is to state, even though it would have otherwise been evident in a court decision, that we are regulating the field comprehensively. We are preempting the field. That means that localities are not free to adopt a patchwork of inconsistent law governing these business practices across the state.

In each case, as to say in the employment discrimination, as well as public accommodations discrimination policy statements, the Human Resources Commission of the Department of Administration is empowered to receive complaints, investigate and conciliate complaints arising under those areas. Also, for the sake of consistency, places of public accommodation—the definition is borrowed by reference from the disability anti-discrimination statute so that, again, we don't have inconsistency in terms of what constitutes a public accommodation.

The remainder of the bill, other than a severability provision, is part five. And it merely provides that this act becomes effective when it becomes law and applies to any action taken on or after that date, to any ordinance, resolution, regulation or policy adopted or amended on or after that date, or to any contract entered into on or after that date. However, the provisions concerning preemption will apply immediately and to prior ordinances preempting those and ending their effect as a matter of law.

Thank you, Mr. Speaker.

**Rep. Darren Jackson (D):** Mr. Speaker?

**Speaker T. Moore:** Just a moment...*(unrelated dialogue omitted)*...The Chair noticed Representative Jackson first, so for what purpose does the gentleman from Wake, Representative Jackson, rise?

**Rep. Jackson:** To ask Representative Bishop a question about his explanation.

**Speaker T. Moore:** Does the gentleman from Mecklenburg yield to the gentleman from Wake?

**Rep. Bishop:** I do.

**Speaker T. Moore:** He yields.

**Rep. Jackson:** Representative Bishop, thank you for that. I'm looking at page 4, Section 3.2. Right at the bottom of the page there's a line—the new part of that section reads, “This article does not create and it shall not be construed to create or support a statutory or common-law private right of action, and no person may bring any civil action based upon the public policy expressed herein.” Do you see that?

**Rep. Bishop:** I do.

**Rep. Jackson:** Follow-up?

**Speaker T. Moore:** Does the gentleman yield to an additional question?

**Rep. Bishop:** I yield.

**Speaker T. Moore:** He yields.

**Rep. Jackson:** And would I be correct if I stated that that Section 143-422.2 is also in that same article? Is that correct?

**Rep. Bishop:** That is correct.

**Rep. Jackson:** And...Mr. Speaker, follow-up?

**Speaker T. Moore:** Does the gentleman wish to ask an additional question?

**Rep. Jackson:** I do.

**Speaker T. Moore:** And does the gentleman from Mecklenburg yield to an additional question?

**Rep. Bishop:** I yield.

**Speaker T. Moore:** He yields.

**Rep. Jackson:** And so the effect of putting that line in this proposed legislation would be to eliminate all wrongful discharge state law lawsuits against public policy. Is that correct?

**Rep. Bishop:** No.

**Rep. Jackson:** Follow-up?

**Speaker T. Moore:** Does the gentleman yield to an additional question?

**Rep. Bishop:** I yield.

**Speaker T. Moore:** He yields.

**Rep. Jackson:** Does it not say that no person shall bring any civil action based upon the public policy expressed herein?

**Rep. Bishop:** That's what it says.

**Rep. Jackson:** But you don't believe...

**Speaker T. Moore:** Does the gentleman yield to an additional question?

**Rep. Bishop:** I yield.

**Speaker T. Moore:** He yields.

**Rep. Jackson:** But it's your belief that you would still have a Section 422.2 wrongful discharge against public policy lawsuit if this bill passes?

**Rep. Bishop:** There is no such thing as a 422.2 wrongful discharge lawsuit. There is, if I may explain...The courts of North Carolina, under the common law have created a right of action for violation of public policy in a termination of employment, but it's not created by the statute. It exists as a matter of common law, and it can exist for a variety of public policy violations. This is one of them. That is to say, this has been read by courts to provide one of the examples of a basis for public policy discharge claim for relief. And it's true this language would end that particular action. But in those cases, if there is an employment discrimination violation, a plaintiff in that situation already has far more robust relief under Title VII of the federal Civil Rights Act of 1964 than they have under this provision. It costs them nothing substantively and was necessary to make parallel the two provisions that we are proposing to enact.

**Rep. Jackson:** Follow-up, Mr. Speaker?

**Speaker T. Moore:** Does the gentleman yield to an additional question?

**Rep. Bishop:** I yield.

**Speaker T. Moore:** He yields.

**Rep. Jackson:** You would agree with me that federal court rights and state court rights would be two different constitutional rights—is that correct?

**Rep. Bishop:** Well, we're talking about statutory rights, not constitutional rights. But yes, the Title VII has far more robust private rights and remedies for someone who suffers employment discrimination than are afforded by this statute here...or afforded by virtue of the public policy expressed in the statute.

**Rep. Jackson:** Follow-up, Mr. Speaker?

**Speaker T. Moore:** Does the gentleman from Mecklenburg yield to an additional question?

**Rep. Bishop:** I yield.

**Speaker T. Moore:** He yields.

**Rep. Jackson:** Okay, so looking at the case law under that statute, there was a lady who was fired for wrongful discharge because she refused to provide sexual favors to her employer, and the court held that she would have a case for wrongful discharge under statute 143-422.2 in state court. And I ask you that if we pass this law, would she still have that right tomorrow?

**Rep. Bishop:** Well, I don't know if that's an accurate reading of what the case would say. It may say that she has a right of action for a discharge in violation of public policy informed by the statute, but it wouldn't be brought under the statute. And she certainly would have a claim for relief under Title VII with rights of back-pay, front-pay, reinstatement, punitive damages, attorneys' fees, etc. She'd have, as I said, far more robust relief under Title VII

then she would have under the public policy termination common law right of action informed by this statement of public policy, along with many other statements of public policy.

**Rep. Jackson:** Follow-up, Mr. Speaker?

**Speaker T. Moore:** Does the gentleman from Mecklenburg yield to an additional question?

**Rep. Bishop:** I yield.

**Speaker T. Moore:** He yields.

**Rep. Jackson:** If this young lady lived in...If she lived at the coast, where would she file such a Title VII action?

**Rep. Bishop:** She would file a charge of discrimination with the Equal Employment Opportunity Commission, and from that point...I can go through the whole process with you if you want to, but she would file it in her regional EEOC office...originally. And then depending on how the charge was disposed of, she or the EEOC would bring the lawsuit in the appropriate court where she lives.

So if you're asking...Maybe you're asking about which court system. She could bring it in state or federal court. It could be removed to federal court. That's usually what employers want to do.

**Rep. Jackson:** Follow-up, Mr. Speaker?

**Speaker T. Moore:** Does the gentleman yield to an additional question?

**Rep. Bishop:** I yield.

**Speaker T. Moore:** He yields.

**Rep. Jackson:** How about an employee who is wrongfully discharged because of their race? Would they have a state claim of action after this bill passes?

**Rep. Bishop:** They would have a federal claim for relief under Title VII. They also would have another claim for federal relief under 42 U.S. Code § 1981.

**Rep. Jackson:** Final question, Mr. Speaker?

**Speaker T. Moore:** Does the gentleman yield to a final question?

**Rep. Bishop:** I yield.

**Speaker T. Moore:** He yields.

**Rep. Jackson:** Would it be fair to say that they will have fewer claims of relief and potential avenues of recovery with passage of this bill?

**Rep. Bishop:** It's conceivable...Let me make sure that I'm clear as I say this for the folks who are non-lawyers. As you know, Representative Jackson, when we file a lawsuit, we name in the lawsuit all of the claims—all of the legal claim theories—that we can think of. But as it also turns out in many, many cases, it's superfluous. That is, what you're interested in if you're a plaintiff is, "What remedies do I get?" And that's why I've spoken over and over again about the remedial rights that are available under federal non-discrimination law. They are very robust. There is nothing forfeited to a plaintiff by not having a public policy cause of action for this specific public policy issue by virtue of the change in this bill. They'll have ample rights under federal law as we've kind of illustrated by our interchange.

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*Rep. Stam's question: 00:47:30*

**Rep. Mickey Michaux (D):** ...We all have talked about how we like things to happen at a local level, and what you're doing in here is taking away complete and total authority from those particular bodies. And with that, Mr. Speaker...

**Rep. Stam:** Mr. Speaker?

**Speaker T. Moore:** For what purpose does the gentleman from Wake, Representative Stam, rise?

**Rep. Stam:** Would Representative Michaux yield for one question on that point before he makes another?

**Speaker T. Moore:** Does the gentleman from Durham yield to the gentleman from Wake?

**Rep. Michaux:** I yield...Yes, sir.

**Speaker T. Moore:** He yields.

**Rep. Stam:** Representative Michaux, I know you don't have a statute book in front of you, but could you tell us what statute gives local government the authority to regulate employment practices or accommodations?

**Rep. Michaux:** The same statute that takes away that authority from them. In other words, there is no....there is no...

**Rep. Stam:** Ah...

**Rep. Michaux:** There is none. And what you're doing is, if they wanted to do it like some have done...For instance, there are cities and counties that have passed minimum wage laws...

**Rep. Bishop:** Mr. Speaker?

**Rep. Michaux:** ...You want to come into...and do that...

**Speaker T. Moore:** For what...I think the gentleman has another question. For what purpose does the gentleman from Mecklenburg, Representative Bishop, rise?

**Rep. Bishop:** To ask the Representative if he would yield for a question.

**Speaker T. Moore:** Does the gentleman from Durham yield to the gentleman from Mecklenburg?

**Rep. Michaux:** Yes.

**Speaker T. Moore:** He yields.

**Rep. Bishop:** Representative, do you believe it's important that cities and counties act within their legal authority?

**Rep. Michaux:** I believe that cities and counties should act within their legal authority as long as it's for the betterment of their communities. They're the ones that are closer to the people really than we are, and they're the ones that ought to be able to make decisions for themselves and not have us do it up here.

**Rep. Bishop:** Follow-up, Mr. Speaker?

**Speaker T. Moore:** Does the gentleman from Durham yield to an additional question?



**Rep. Michaux:** Yes, sir, I yield.

**Speaker T. Moore:** He yields.

**Rep. Bishop:** Wouldn't you agree, though, that the rule of law requires that they follow the limitations on their authority that are set forth in statutes from the General Assembly?

**Rep. Michaux:** I would agree. I would agree also that states are required to do the same thing as it concerns federal law and the constitution.

**Rep. Bishop:** Thank you, sir.

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*Rep. Stam's remarks on Rep. Grier Martin's amendment: 01:05:40*

**Speaker T. Moore:** Further discussion or debate on this amendment? For what purpose does the gentleman from Wake, Representative Stam, rise?

**Rep. Stam:** To speak on the amendment and make a motion.

**Speaker T. Moore:** The gentleman has the floor to debate the amendment.

**Rep. Stam:** Ladies and gentlemen, first of all, let's be clear. Page 3, line 44 makes clear that cities and counties can have whatever classifications they want that are otherwise lawful for their own employees. Here we're talking about, you know, not their own employees.

In my youth I was in the military, and so I've been a veteran for forty-five years. I have yet to have ever had anyone ask me before I bought groceries, "Are you a veteran?" And it's hard to imagine that anyone would discriminate against you in employment because you're a veteran. So I don't even understand the need for veteran status. It's not a mark against a person.

But secondly, you can go endlessly on. Now the other two items that Representative Martin has mentioned suffer from definitional problems. But let's take New York City, for example. They prohibit discrimination on the basis of arrest history, convict status, incarceration history, credit history, source of income, caregiver status, occupation, ancestry, weight, height, place of birth, homelessness, political affiliation, student status... The list can go on and on. What is in the bill are the suspect classes that have already been recognized in law. Representative Martin is right that if he wants to change that law, he's at the right place—the General Assembly—but the wrong time. And this should not be done by cities and counties.

So Mr. Speaker, I move to table the amendment.

**Speaker T. Moore:** The gentleman is recognized for a motion. The gentleman has moved that the bill (*sic.*) do lie upon the table. Is the motion seconded?...And seconded by Representative Cleveland. The question before the House is the motion to lay the amendment upon the table. Those in favor will vote aye; those opposed will vote no. The Clerk will open the vote...Representative Baskerville...Is Representative Brown on the floor? Rayne Brown? The Clerk will lock the machine and record the vote. Seventy having voted in the affirmative and thirty-six in the negative, the motion is adopted and the bill (*sic.*) does lie upon the table...

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*Rep. Bishop's remarks on Rep. Elmer Floyd's amendment: 01:20:18*

**Speaker T. Moore:** For what purpose does the gentleman from Mecklenburg, Representative Bishop, rise?

**Rep. Bishop:** To debate the amendment.

**Speaker T. Moore:** The gentleman has the floor to debate the amendment.

**Rep. Bishop:** The amendment would take out not only the provision clarifying that local governments may not regulate wage policy, but also those sections that provide that localities cannot regulate the employment practices and selling practices of contractors to those governments. And it affords an opportunity to say this really is one of the most egregious aspects of the overreach of authority reflected in the Charlotte ordinance. For it wasn't enough to mow down the right of anyone to disagree with the social policy revisions being done within the City of Charlotte, but they also sought to reach beyond their borders and instruct businesses throughout the State of North Carolina who might seek to do business with the City of Charlotte how they must operate their businesses—which points up again why it's important...

You know, we sit in one house of a bicameral legislature. Bicameralism exists now the world over as a bulwark against invasions of freedom. And I've learned in the short time being up here that having five or six people think something is a good idea is a long way from home when it comes to making law. You've got to get an old ornery committee chairman like Chairman Brawley to allow you to be heard in his committee. You have to answer a lot of questions. And you find out that if you haven't vetted out your language very carefully, as the case has been in Charlotte—where, by the way, if you read the plain language, they eliminated sex-specific facilities completely. And then if you get through the questions in that committee, you've probably got a serial referral to another committee—maybe two. And after you get favorable reports from those committees, if you can do that, then you come to the floor of the House where people are making speeches if they're running for congress.

**Rep. Graig Meyer (D):** Mr. Speaker?

**Speaker T. Moore:** For what purpose does the gentleman from Orange, Representative Meyer, rise?

**Rep. Meyer:** Can I ask Representative Bishop a question?

**Speaker T. Moore:** Does the gentleman from Mecklenburg yield to the gentleman from Orange?

**Rep. Bishop:** I'm on a roll, so I don't think I'll yield.

**Speaker T. Moore:** He doesn't yield at this time.

**Rep. Bishop:** And then, if you get a majority of this body of one-hundred and twenty people to vote yes, then it really gets tough because you have to go across the chamber and start over again with a whole other set of committees, one of which is Rules. You have to get through both bodies, and that's how something becomes law.

Or here's a neat trick: let's just go to a city council where you can find a handful of radicals under the influence of an activist group that's got a lot of money from out-of-state and get six of those people to enact something that goes to the heart of statewide interest, and then impose that, not only on your own citizens, but on everyone that might be operating a business across the state.

That is the picture of the subversion of the rule of law. And the reason I asked the question: nobody yet has suggested that there's a statute in the General Statutes that confers authority on the City Council of Charlotte to do what they've done. Indeed, to my colleague Representative Moore who spoke of this being about fear, I want to suggest to all of us that we'd be better served in our debating with one another if we did not ascribe the basis of motives to the opposition that we face. Fear and ignorance—I don't know how many times I've heard in the last month or so that everyone who might be opposed to what Charlotte has done must be acting out of fear and ignorance...

**Rep. Rodney Moore (D):** Mr. Speaker?

**Speaker T. Moore:** For what purpose does the gentleman from Mecklenburg, Representative Moore, rise?

**Rep. R. Moore:** To ask my delegation member, Representative Bishop, a question.

**Speaker T. Moore:** Representative Bishop, does the gentleman yield to a question from Representative Moore?

**Rep. Bishop:** Returning the favor, I'm not yet done. Not at this time.

**Speaker T. Moore:** He does not yield. Representative Bishop continues to have the floor to debate the amendment.

**Rep. Bishop:** Thank you, Mr. Speaker. I would submit that taking the step of mandating a particular approach on every business of whatever ilk throughout the City of Charlotte and across the State of North Carolina that may want to do business with the City of Charlotte implies fear. Can we not trust that people acting in goodwill will find ways to accommodate each other without having an ever-expanding list of groups and subgroups and sub-subgroups laid out in law so that we can divide each other up?

It's got nothing to do with fear. I trust my fellow man and woman to do the right thing almost all of the time. They need not be "rode herd on," if you will. That's why we establish things like bicameral legislatures and separation of powers—I didn't even mention that. Once you get through the committees, the Senate and the House, you got to go to the Governor and get a signature. None of that occurs when you can get a few people to come up and run something through that is a great idea, as far as they know.

So I urge you, ladies and gentlemen—this bill is a carefully crafted, integrated measure reasonably to deal with an abuse of authority, and I urge you to defeat the amendment.

**Speaker T. Moore:** For what purpose does the gentleman from Mecklenburg, Representative Moore, rise?

**Rep. R. Moore:** To ask my colleague a question.

**Speaker T. Moore:** Does the gentlemen from Mecklenburg yield to the gentleman from Mecklenburg?

**Rep. Bishop:** At this time I'm pleased to yield.

**Speaker T. Moore:** He yields.

**Rep. R. Moore:** Senator...I'm sorry, Representative Bishop...

**Rep. Bishop:** Yes, Congressman?

[laughter]

**Rep. R. Moore:** Trust me, and Representative Bishop, for some reason...that's a Freudian slip. Sir, do you really believe, or do...You talked about outside groups coming in and pandering and those things. Is that not done on either side of the political philosophy spectrum whether you're a far-right or far-left advocate? Is that not the norm of our political process at this particular point in time?

**Rep. Bishop:** I think General Assemblies like ours are the worst of all possible forms of government, except for the others. That is to say, a lot of garbage comes out of here, a lot of influence is peddled around, a lot of things I disagree with happen. But I think to my core that the system of government that we all live under, the institution that we have here with all you fine people on the floor, and those in the other chamber, and those in the United States Congress that is similarly separated for checks and balances upon the abuse of power—those devices are core and fundamental to our maintenance of our freedoms and they absolutely deserve to be respected. If one political force decides they're going to take a shortcut and they're going to try to restructure things or overstep their authority until they're stopped, then they ought to be stopped for the sake of the institutions that we hold dear. And they're not just institutions for their own sake, but because they protect our freedom.

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*Rep. Meyer's question: 01:30:10*

**Speaker T. Moore:** For what purpose does the gentleman from Orange, Representative Meyer, rise?

**Rep. Meyer:** Thank you, Mr. Speaker—to ask the gentleman from Mecklenburg, the bill sponsor, two questions.

**Speaker T. Moore:** Does the gentleman from Mecklenburg yield to the gentleman from Orange?

**Rep. Bishop:** I yield for one question, and we'll see.

**Speaker T. Moore:** He yields.

**Rep. Meyer:** I think you'll be able to answer both of these questions, Representative.

**Rep. Bishop:** I'll try my best.

**Rep. Meyer:** In your comments you said that an elected city council of seven members—I don't know how many members are on the Mecklenburg board—but you said that an elected city council because they have fewer members and a different process than our legislature, that them enacting a local ordinance is a subversion of...

**Rep. Harry Warren (R):** Mr. Speaker?

**Rep. Meyer:** ...the rule of law.

**Speaker T. Moore:** Just a moment. For what purpose does the gentleman from Rowan, Representative Warren, rise?

**Rep. Warren:** Mr. Speaker, it seems to me that the discourse has gotten off the...is not germane to the amendment.

**Speaker T. Moore:** I think the gentleman is rising to a point of order. The Chair will simply...The Chair believes the gentleman from Orange is still within the confines of the debate, and the Chair did give the gentleman from Mecklenburg a little bit of wide latitude to debate the amendment. So I think that questions of a wide latitude probably would be permissible. The gentleman from Orange has the floor to continue propounding the question.

**Rep. Meyer:** Thank you, Mr. Speaker. Representative Bishop, can you elaborate on your point that a city council passing a local ordinance is somehow a subversion of the rule of law?

**Rep. Bishop:** I certainly can. Thank you for the question. City councils and county commissions—I was a county commissioner—are critical to the functioning of state government. They handle matters of local concern, and they are agents of the General Assembly in seeing to it that good government is available everywhere. And in appropriate areas, they maximize local control. But it is fundamental to the operating of that system properly that authority be delegated and that authority exercised by localities be within their delegated authority.

So for example, zoning is a power we have expressly conferred upon municipalities and counties. And folks know the needs and requirements of zoning questions in Charlotte and Mecklenburg County in ways and details we couldn't possibly know up here. The conditions in Charlotte and Mecklenburg are far different than they are in my mother's home county, Bladen, and so different decisions need to be made.

What we're talking about here is something for which there's never been a delegation of authority to a locality. And furthermore, it is a matter of statewide interest. It is not something that varies in terms of what is right and just from community to community in how the law can be orderly. We make those decisions as a statewide community...

**Rep. Elmer Floyd (D):** Mr. Speaker?

**Rep. Bishop:** ...That's the way the system is set up.

**Speaker T. Moore:** For what purpose does the gentleman from Cumberland, Representative Floyd, rise?

**Rep. Floyd:** Is this relevant to my amendment?

**Speaker T. Moore:** Well, Representative Meyer asked the question, so I...

**Rep. Floyd:** I'm just...I'm referring to—is this referencing my...?

**Speaker T. Moore:** Representative Floyd, the Chair did give some wide latitude to Representative Bishop to debate the amendment, and the Chair also gave Representative Meyer wide latitude for a question, but it's probably time to rein it in just a little bit...

**Rep. Floyd:** Yes sir, that why I'm calling the...May I, Mr. Speaker?

**Speaker T. Moore:** Well...

**Rep. Floyd:** May I?

**Speaker T. Moore:** For what purpose does the gentleman from Cumberland rise?

**Rep. Floyd:** Call for the previous question.

**Speaker T. Moore:** The gentleman has moved the adoption of the previous question. Those in favor of the previous question will vote aye. Those opposed will vote no. The clerk will open the vote...

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*Rep. Stam's question: 01:38:35*

**Rep. Michaux:** ...I still say that there's an opportunity right now for you all to do what you came in here to do and not affect the cities and counties and the authority that they may have or that they may not have.

**Rep. Stam:** Mr. Speaker?

**Speaker T. Moore:** For what purpose does the gentleman from Wake, Representative Stam, rise?

**Rep. Stam:** Would Representative Michaux yield for a question?

**Rep. Michaux:** Yes sir...

**Speaker T. Moore:** Does the gentleman from Durham yield to the gentleman from Wake?

**Rep. Michaux:** I sure do.

**Speaker T. Moore:** He yields.

**Rep. Stam:** Representative Michaux, do you know that in the last forty-four years not a single school has lost Title IX funding for enacting laws and policies that require students to use restrooms and locker rooms of their biological sex—not once in forty-four years?

**Rep. Michaux:** I understand that.

**Rep. Stam:** A second question...

**Rep. Michaux:** I understand that they have not *yet* lost anything, yes.

**Rep. Stam:** A second question?

**Speaker T. Moore:** Does the gentleman yield to an additional question?

**Rep. Michaux:** I do yield.

**Speaker T. Moore:** He yields.

**Rep. Stam:** Does the paper you have there happen to mention that 34 Code of Federal Regulations Section 106.33 says that, “a recipient may provide separate toilet, locker rooms and shower facilities on the basis of sex”—have they told you that in their little talking points?

**Rep. Michaux:** I don’t need for them to tell me that because I know that. But I also know that in some federal law there’s a mention of sexual orientation also, Representative Stam, which is not in your bill here today.

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*Rep. Blust’s question: (02:18:22)*

**Speaker T. Moore:** For what purpose does the gentleman from Guilford, Representative Blust, rise?

**Rep. John Blust (R):** To see if Representative Bishop would...

**Speaker T. Moore:** Representative Bishop is at the Speaker’s dais right now. Does the gentleman wish to debate the bill or does the gentleman...?

**Rep. Blust:** No—I’ll direct my question to Representative Stam.

**Speaker T. Moore:** Does the gentleman from Wake yield to the gentleman from Guilford?

**Rep. Stam:** I do.

**Speaker T. Moore:** He yields.

**Rep. Blust:** Representative Stam, I had two understandings about this that I want to be sure about this matter. Representative Dollar just covered one which was the fact that the Charlotte ordinance absolutely went beyond what was already permitted by law, and we’re just making it clear what that law that already exists is. The other one, as I understood it, is the Charlotte ordinance didn’t just affect Charlotte—and I want to be sure on this—that that ordinance affected anyone from the state who visited Charlotte or who did business in Charlotte and, hence, it had statewide implications, and that the Legislature that represents the entire state therefore is the proper forum in which this kind of matter can be corrected?

**Rep. Stam:** That is correct, Representative Blust. That ordinance affected anyone who traveled through Charlotte. It affected all the business owners and non-profit owners because their “place of public accommodation” definition was extremely broad. It affected every business that wants to do business with Charlotte by contracting with Charlotte. So I would say it was economic imperialism.

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*Rep. Bishop’s amendment: (02:46:17)*

**Speaker T. Moore:** The gentleman from Mecklenburg, Representative Bishop, is recognized to send forth an amendment. The Clerk will read.

**Reading Clerk:** Representative Bishop moves to amend the bill on page 3, lines 46 through 47 by deleting those lines and substituting the following.

**Speaker T. Moore:** The gentleman has the floor to debate the amendment.

**Rep. Bishop:** Thank you, Mr. Speaker. At that location this is the portion of the bill clarifying that cities and localities don't have authority to regulate wage levels, and there are exceptions in the bill to make sure that, for example, the local government can regulate its own compensation levels to employees. And then there are several items relating to federal community development block grants and economic development incentives where those are integral to the program.

In item number 2, by including part 2H of Article 10 of Chapter 143B, as opposed to just Chapter 143B, we were insufficiently complete. So we are changing that line to make sure that there is no interference with the economic development incentives programs, and I support the amendment.

**Speaker T. Moore:** Further discussion or debate on the amendment? I see three lights. Do any of these members wish to debate the amendment? For what purpose does the lady from Guilford, Representative Harrison, rise?

**Rep. Pricey Harrison (D):** To ask the amendment sponsor a question.

**Speaker T. Moore:** Does the gentleman from Mecklenburg yield to the lady from Guilford?

**Rep. Bishop:** I would defer the question to Representative Hager.

**Speaker T. Moore:** Would the lady redirect her question to the gentleman from Rutherford?

**Rep. Harrison:** Sure, please.

**Speaker T. Moore:** And does the gentleman from Rutherford yield?

**Rep. Mike Hager (R – Majority Leader):** I do.

**Speaker T. Moore:** He does.

**Rep. Harrison:** I just want to make sure I heard it right because the City of Greensboro has a living wage standard for its employees. Are you saying that by clarifying in this language that the cities will be able to adopt policies to pay their employees living wages?

**Rep. Hager:** Representative Harrison, that has not changed. What this deals specifically with is part 2H of Article 10 dealt with the One NC Fund and how those contracts are laid with the local piece of it, and those have certain wage goals. We actually missed JDIG, so we added JDIG back in there. This captures JDIG now.

**Speaker T. Moore:** Further discuss or debate on the amendment? If not, the question before the House is the adoption of Amendment 4 sent forth by Representative Bishop. Those in favor will vote aye; those opposed will vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. One-hundred and eight having voted in the affirmative and none in the negative, the amendment is adopted.

We are now back on debate on the bill. For what purpose does the gentleman from Mecklenburg, Representative Moore, rise?

**Rep. R. Moore:** To ask a question of my delegation mate, Representative Bishop.

**Speaker T. Moore:** Does the gentleman from Mecklenburg yield to the other gentleman from Mecklenburg?

**Rep. Bishop:** I yield.

**Speaker T. Moore:** He yields.

**Rep. R. Moore:** Representative Bishop, you mentioned in your comments that private businesses were not...there was no mandate for private business. But let me ask you this...I need some clarity for private businesses who acquire public accommodations like bars, restaurants, movie theaters and those things. How does this particular law apply to that? I just wanted to get some clarity on that particular piece of it.

**Rep. Bishop:** If I understand the Representative's question, the answer is that they are free to adopt whatever policies they think best.

**Rep. R. Moore:** Follow-up?

**Speaker T. Moore:** Does the gentleman yield to an additional question?

**Rep. Bishop:** I yield.

**Speaker T. Moore:** He yields.

**Rep. R. Moore:** And so, without framing it in a very ugly way, so you're saying that if a private business refuses by their particular policy to not serve a person based upon their sexual orientation or something of that nature, or sexual identity, then that would be allowed by that private business, that we wouldn't have any jurisdiction over that particular choice is what I'm understanding.

**Rep. Bishop:** Well, the statewide statement of public policy concerning public accommodation discrimination sets forth all of the protected classes under Supreme Court jurisprudence and quasi-suspect classes. So the ones that are listed in there, those are the ones that there is a public policy statement concerning discrimination. And otherwise, there's not a mandate on people's bathroom use one way or the other. They are free to do what they wish.

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*Rep. Bishop's second debate: 02:54:50*

**Speaker T. Moore:** For what purpose does the gentleman from Mecklenburg, Representative Bishop, rise?

**Rep. Bishop:** To debate the bill a second time.

**Speaker T. Moore:** The gentleman has the floor to debate the bill a second time.

**Rep. Bishop:** I do know that making good decisions requires accurate facts, and there are a couple of items that I think it worth attending to that have been said during the course of debate or that have been said in the community.

WRAL today released a story early on saying that a draft of the bill eliminated protections for folks with disabilities from discrimination. And I just want to say—I said it in committee, I want to say it here—that's factually wrong. There's a separate statute in North Carolina, Chapter 168A, that provides comprehensive protection from discrimination for those who are disabled. That's in addition to federal law—Federal Americans with Disabilities Act. So that's just factually wrong.

In the course of the Minority Leader's comments he listed the names of a lot of companies who have policies—enlightened policies—concerning how employees will be treated. And I think it was clear, but I just want to make it clear in case there was an implication to the contrary, those companies will be entirely free to continue pursuing the policies that they in their wisdom have decided to adopt. And that's perfectly consistent with the idea that we want to maximize freedom of...in fact, the absence of a problem that should have led to the creation of an emergency as it has occurred.

Representative Hamilton recited, or stated she was reciting part of the holding in a lawsuit that was pending in the eastern district of Virginia decided in 2015 that is now on appeal to the Fourth Circuit Court of Appeals. In reciting what she said was the holding, she was reciting, in fact, the Obama Department of Education to say that not allowing a child in school to go into the multi-occupancy bathroom facilities of the opposite sex as a transgender child was a violation of Title IX. In fact, the court there held against the Obama Administration. That decision is on appeal in the Fourth Circuit. But that position that some have suggested could have some implication for Title IX funding—the Obama Administration's position—has not been accepted by any court anywhere in the country.

The other decision out on that point comes from...it's in the case *Johnston v. University of Pittsburgh* from the western district of Pennsylvania. That one was in March of 2015. That case is on appeal, as well, in the Third Circuit. But no court has embraced that position at this point in time.



Should that occur someday—should a court with jurisdiction for this area decide that Title IX does not mean when it says “sex” what everybody has always understood what it means, and that the regulation under Title IX that’s been quoted twice by Representative Dollar and Representative Stam that explicitly permits separate toilet, locker room and shower facilities on the basis of sex—if that regulation is, by virtue of those decisions (a decision hereafter to occur) will be invalidated, then there will be a process after that point in time which North Carolina or any other jurisdiction that has had separate bathrooms for boys and girls will be able to adapt before there would ever be any implication for Title IX funding to go away. So that is really immaterial to the decision we’re making today. And I guess I should also say if those decisions occur, they would preempt what we’re doing today to the extent there was an inconsistency. So it is a figment of folk’s imagination to say that that is a risk.

To the point about why we’re here, in January—January 19, I believe it was—I released a public statement in anticipation, because the Mayor of Charlotte, newly elected, had repeated time and again that this was going to be at the top of the City Council’s priority list—amazing as that is—and I urged her and the City Council not to go down this divisive route. And I’ve spent an inordinate amount of time, because I laid out for them the law and the fact that they were not authorized to do what they contemplated doing.

I would have been better served on behalf of the people I represent if I could have spent the time that I spent on this learning more about our process for Medicaid reform, about additional tax reform that we need to do, about budget adjustments in the upcoming short session. We’d all be better served if those folks had not precipitated this need for a short session. I wish that they had not. I regret that it has produced the division among us that it has. But I am confident that this body owes it to the people of North Carolina to correct this egregious overreach and poor public policy. Thank you very much.

**Speaker T. Moore:** Further discussion, further debate? If not, the question before the House is the passage of House Bill 2 on its second reading. Those in favor will vote aye; those opposed will vote no. The Clerk will open the vote...The Clerk will lock the machine and record the vote. Eighty-three having voted in the affirmative and twenty-five in the negative, House Bill 2 passes its second reading and will be read a third time.

**Reading Clerk:** General Assembly of North Carolina enacts.

**Speaker T. Moore:** Further discussion, further debate? If not, the question before the House is the passage of House Bill 2 on its third reading. Those in favor will vote aye; those opposed will vote no. The Clerk will open the vote...Is Representative Dobson still on the floor?...The Clerk will lock the machine and record the vote. Eighty-three having voted in the affirmative and twenty-four in the negative, House Bill 2 passes its third reading. The bill is ordered engrossed and sent to the Senate. Representative Dobson, the Chair saw you on the floor when the question was put. Does the gentleman wish to be recorded as having voted aye?

**Rep. Josh Dobson (R):** Yes.

**Speaker T. Moore:** The gentleman will be recorded as having voted aye.

~ Fin ~

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**Rep. Stam's Retirement Announcement  
Point of Personal Privilege and Adjournment  
September 30, 2015**

*Sixteen years is a long time for anyone to serve in this way.*

Audio available at [this link](#)

Rep. Stam's comments: 01:13:54

**Speaker Tim Moore (R):** The gentleman from Wake, Representative Stam, is recognized to speak to a point of personal privilege and a motion.

**Rep. Paul Stam (R – Speaker Pro Tem):** Mr. Speaker, members of the House, I will not be a candidate for re-election to the House. The new filing schedule means that I should make this decision and let the public know sooner than I would have wished. When my term ends, it will have been sixteen years in the House.

When I first came here, I had a long action list to accomplish but the longer I have stayed, the longer the list grows. I'll never get to the end of it. So, the 2016 Session will be a whirlwind of action as the Senate passes all the bills I have sent them and that I have kept safely in storage in Senate Rules or Senate Ways and Means.

I have derived a great deal of satisfaction from my service in the House and the friendships that I've shared with each of you.

For a motion, Mr. Speaker?

**Speaker T. Moore:** The gentleman is recognized for a motion.

**Rep. Stam:** Mr. Speaker, subject to ratification of bills, receipt of messages from the Senate, conference reports, I move that the House adjourn pursuant to Senate Joint Resolution 721, to reconvene Monday, April 25th, 2016, at seven o'clock p.m.

**Speaker T. Moore:** Representative Stam moves, seconded by Representative Lewis, that the House do now adjourn subject to subject to ratification of bills, receipt of messages from the Senate, and conference reports, to reconvene on Monday, April 25, 2016, at seven o'clock p.m. Those in favor will say aye.

[loud aye]

Those opposed will say no.

[crickets]

The ayes have it. We stand adjourned.

~ Fin ~

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**Rep. Stam's Farewell Address**  
**Point of Personal Privilege and Comments by Members**  
**July 1, 2016**

Audio available at [this link](#)  
Comments begin: 06:36:20

**Speaker Tim Moore (R):** The gentleman from Wake, Representative Stam, is recognized to speak to a point of personal privilege.

**Rep. Paul Stam (R – Speaker Pro Tem):** Thank you, Mr. Speaker. Very briefly, it's been a privilege to work with you all. I did a little checklist here and discovered that I had worked with eighty-two of you collaborating on legislation. Naturally, just from the nature of things, the majority of those were Republicans. Fifty-nine Republicans and twenty-three Democrats have let me work with them on bills, and even worked with me on killing bad bills. And I will say to you that the best thing you ever do might be the bad bills you kill.

I will miss you—sort of. I have a tennis match tomorrow and eight grandchildren to take care of, but I will retain my pen and my cell phone and my email. I have all of your addresses, and I'm sure you'll hear from me more than you want. Au revoir.

[applause]

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*Rep. Dollar's comments: 06:38:30*

**Speaker T. Moore:** For what purpose does the gentleman from Wake, Representative Dollar, rise?

**Rep. Nelson Dollar (R):** For a point of personal privilege.

**Speaker T. Moore:** The gentleman is recognized to speak to a point of personal privilege.

**Rep. Dollar:** Thank you, Mr. Speaker and members of the House. I just wanted to take a moment and express my appreciation for the member who is probably most responsible for me being here to start with. So you can blame him; you can blame Representative Stam. I sat in adjoining seats in the back row when I got here in 2005, and the thing that I think most exemplifies Skip, if I had to sum up in a couple of words, is that he really is a master at the legislative process. As much as anybody, he cares about the craft. He cares about the craft of the law. He cares about the craft of the bills that we produce in this House, and we will sorely miss him. And even when we were in the minority, a number of the members on the other side would often consult with him when he would raise a point about a bill. And very often I remember in 2005 and 2006 he did more amendments I think than all other Republicans combined. But it was because he was wanting to get it right, whatever the policy was going to be.

He is a man of integrity. He is a man who has meant a lot to me. He is someone whom I can vote against him from time to time, and he's still your friend. He does it the right way, and I can't thank him enough. We're losing, with Leo leaving and J.H. leaving and Roger leaving and a number of others who have been here, long and short, we're losing quite a bit of legislative power and brain power and character and expertise. You will all be sorely missed. Thank you.

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*Rep. Bryan's comments: 06:54:28*

**Speaker T. Moore:** For what purpose does the gentleman from Mecklenburg, Representative Bryan, rise?

**Rep. Rob Bryan (R):** To speak to a moment of personal privilege.

**Speaker T. Moore:** The gentleman is recognized to speak to a point of personal privilege.

**Rep. Bryan:** Thank you, Mr. Speaker. I couldn't let tonight go by without making a comment about Representative Stam. I wrote him a letter when I heard he was retiring. I'm not going to read the entirety of the letter. But I thought at the time often when someone is retiring, all those things you said behind their back, this is the time you put those things away; you move forward. And I realized, Skip is one of those guys that often you say good things—you know, he's off doing his own thing and you often say good things behind his back without ever telling him to his face.

I wrote down a couple of those things for him and I thought I would mention one of them tonight which I know all of you can relate to, for humor or otherwise. I called him the Latin Legal Eagle. That was one of the terms we would use behind his back for references to obscure Latin phrases, his quoting of the Magna Carta. I think one time Representative Meyer tried to give Skip some Latin reference and Skip had to correct him on the Latin, which is often the case.

And as I thought about it, there is a Latin phrase so applicable around here—and frankly I think about many of the folks stepping out, like Representative Stam, Denise, J.H., and the others, that this phrase applies so well to—our state motto: *Esse Quam Videri*, which is “to be, rather than to seem.” And I think all of you that know Skip, one of the things that is most true about him: you know where he is. As Nelson rightly said, you can vote with him or against him; he's your friend immediately after. He shakes your hand and moves on.

And so Skip, for me as a legislator, I would like to live that phrase as well as you have. And so I thank you.

**Speaker T. Moore:** For what purpose does the gentleman from Wake, Representative Pendleton, rise?

**Rep. Gary Pendleton (R):** I would like to recognize Skip, if I could?

**Speaker T. Moore:** The gentleman is recognized to speak to a point of personal privilege.

**Rep. Pendleton:** Some of you have heard this and some of you haven't, but Skip and I go way back about thirty-five years. Twenty-six years ago he called me one Sunday night and he said, “Gary, you've got to run for Wake County Commissioner.” And I said, “I don't really even know what a Wake County Commissioner does.” So he told me a little bit about it. It was late on Sunday night and I said, well, I knew I could get off the hook with him because I said “I'm going to pray about it.” You know he would want me to do that. This was twenty-six years ago.

So, my wife and I prayed about it, and he had told me that no one else was going to file. There were three open seats. I knew what he was thinking: I was probably the only one stupid enough that might run. But because of him I got into elective office and I never would have had he not harangued me on this. The filing cutoff was the next day at noon. I went down there and he met me down there, and I filed for Wake County Commissioner and became one.

Skip, thank you for your friendship. It's going to continue.

**Speaker T. Moore:** For what purpose does the gentleman from Nash, Representative Collins, rise?

**Rep. Jeff Collins (R):** For a moment of personal privilege.

**Speaker T. Moore:** The gentleman is recognized to speak to a point of personal privilege.

**Rep. Collins:** Well, I don't usually do this. You can probably count the personal privileges I've had in six years on one hand, and probably never to do this type of thing before. But I'd be remiss if I didn't say a little bit about what Skip Stam means to me.

Six years ago at about this time of year I was very happily involved in my professional association—had never given a thought to running for political office of any type. And I got a telephone call from a gentleman I didn't know who identified himself as Skip Stam. He said he was interested in talking to me about possibly running for the North Carolina House. I told him I thought he was out of his mind but I would listen to him.

We met at the Remington Grill in Louisburg. He was heading from Raleigh to Warrenton for some kind of civic event and I was going from my office in Henderson to my office in Rocky Mount. So we met at that fine dining establishment, and we talked for about an hour about what it meant to run for office. My questions were very much on the line of how much can I still work and make a living while I'm doing this. He was as honest with me as you can be when you're trying to recruit a candidate, I think. And I said, “I'll think about it.”

Well, about five days later in my office these three guys in dark suits come in. And I'm wondering, is this the SEC? Is this the IRS? I've never had this type of audit before. And it was Thom Tillis and two gentlemen from the GOP Headquarters in Raleigh come to seal the deal.

Well they didn't; I didn't let them know till about two months later. But once I got here, very fortunately my seatmate, Mike Hager, and I were sitting three rows back. We were sitting right here where these two gentlemen are. And sitting right in front of Mike was Skip Stam. And so I can't tell you how many times that freshman year, as a bill would come up, I would lean over and frantically punch, "Skip, is this a good bill?!" "Skip, how should we vote on this?!" "Skip....!" I could read the bill and understand it, but still didn't know enough about a lot of the processes around here to know whether things were good or bad, or whether things were hidden in them.

Skip was my mentor early on. He's the guy who's responsible for getting me into this to start with, so you can thank him or blame him. I'm not sure which I want to do at this point in time. My wife blames you, Skip.

But anyway, I will always admire Skip. He's been a true friend, a true mentor, and he's given me a lot of ideas about bills to run with. And I appreciate that. He knows how to delegate things as well as how to get things done. He's even given me files now of things that he's interested in me working on that I am interested in working on, also.

And Skip, I hope you'll continue to help me with that. I'm sure I'll still need your advice. I'm just proud to have been associated with you and thankful to know you.

**Speaker T. Moore:** For what purpose does the gentleman from Duplin, Representative Dixon, rise?

**Rep. Jimmy Dixon (R):** For a point of privilege.

**Speaker T. Moore:** The gentleman is recognized to speak to a point of personal privilege.

**Rep. Dixon:** My telephone call from Skip Stam came about 11:15 pm on a Saturday night. I didn't know who Skip Stam was, didn't know what a Majority Leader was, and I really didn't care. But I'm here because of his efforts, and tonight will not be the first time that I've told Skip how much I appreciate what his influence is. I've tried to let him know each time that I've been in his company that I appreciate the influence that he's had, and I've tried to be complimentary of what he's done.

Additionally, I've had the great privilege of meeting one of the finest gentlemen that I've ever known in my life. And I appreciate J.H. Langdon and the opportunity that I've had to work with him on the House Agriculture Committee.

So if nothing else ever happened to me in my career here in the General Assembly, my association with those two people, along with everyone else in this House...

One of the first statements that I ever made, and some people thought that it was weird or crazy, and I was embarrassed after I made it, and I directed my question sort of in the direction of former Speaker Joe Hackney—not directly to him, but I said when I came up here there were a lot of people on this side of the aisle that I did not like. And then I quoted Abraham Lincoln who said, "I don't like that man over there; I must get to know him better." I can truly say that I know of no one on the floor of this House that has not become a friend. Thank you.

**Speaker T. Moore:** For what purpose does the gentleman from Mecklenburg, Representative Brawley, rise?

**Rep. Bill Brawley (R):** For a point of personal privilege.

**Speaker T. Moore:** The gentleman is recognized to speak to a point of personal privilege.

**Rep. Brawley:** Thank you, Mr. Speaker. I don't really want to talk about what these people mean to me, but what they've meant to the State. Denise, Skip, Leo, J.H., Tricia: people sometimes maybe I don't agree with, but we here—those who are leaving and those who stay—we are walking in the steps of the Founding Fathers. We are doing in this building what they had in mind when they fought the British and some of them died. This is what has been protected by the lifeblood of American service-people for over two-hundred years to keep this idea going.

It's embodied in a statue on the other side of the Old Capitol. It's the Houdon statue of George Washington. And some of you have heard me tell you this. It's not unique to me, I got it from David McCullough. Washington is standing on what appears to be a tree stump, but is in fact the fasces of old Rome, the symbol of authority. Beside him is the sword he has taken off. He is shedding the cloak of travel and picking up the walking stick of the civilian

farmer while still wearing his uniform. It is to capture the moment that he has returned to Mount Vernon after having given up command of the Continental Army after the victory at Yorktown. It is something we take for granted but was almost unique in history at that time.

Washington, like many of his contemporaries, was a student of the Roman Republic, and one of the heroes was Cincinnatus, a great general who, when Rome was threatened by a Carthaginian invasion, was made the first dictator. He was given absolute power. He raised an army, he trained it, he led it against the Carthaginians, defeated them, returned to Rome the most powerful man in Italy and could have become the first emperor. He did not. He gave up his staff of office and returned to civilian life. That is what Washington did. He could have been King of America and instead, gave up the power and returned to Mount Vernon. It created a tradition in this country of the citizen who assumes power for a while, exercises it for the common good and gives it back...

~ *Fin* ~

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