

# Legislative Report: Dec. 2016 Sessions



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## Shenanigans and Power Grabs: The December “Special Sessions” of the N. C. General Assembly

*Some called what the veto-proof Republican majority in the North Carolina General Assembly pulled off in its December 14-21, 2016 special sessions “shenanigans,” which the Oxford Dictionary defines as “secret or dishonest activity or maneuvering.” Others, including the New York Times, called it a “brazen power grab,” defined as “the acquisition or arrogation of power, control, etc.; a political coup.” Either way, the shoe fits.*

It all began when Attorney General Roy Cooper defeated incumbent Governor Pat McCrory in the race for governor. For weeks after the election, McCrory refused to concede defeat, demanding recounts and claiming, without any evidence, widespread voter fraud. These tactics got him nowhere.

Having lost the governorship, McCrory hastily convened a “special session,” purportedly to pass financial assistance for parts of the state hit by wildfires and Hurricane Matthew. When that special session quickly concluded, legislative leaders called for another special session to begin just two hours later, surprising Democratic lawmakers as well as the media and the public. Leadership’s claim that the surprise session was impromptu was belied by the signatures on the request dated two days earlier.

Twenty-eight new bills were introduced, to be debated and voted upon the very next day, but only legislation aimed directly at stripping Governor-elect Cooper of his power moved forward. The length of those two bills, 25 and 18 pages, made plain they had been in the works for some time.

One of the bills, Senate Bill 4, passed on a party-line vote and was quickly signed by Gov. McCrory. The new law made three significant changes.

First, SB 4 changed the composition of the state and local boards of elections. Previously, the majority of the state board and local boards were to be of the party of the governor. Under the new law, the numbers will be evened on these boards, with a  $\frac{3}{4}$  vote required for any

action, guaranteeing gridlock. Moreover, under the new law the chair of each board will rotate between parties each year, with Republicans serving as chairs in the even-numbered years when the elections for president, Council of State, and legislature occur. Gov. Cooper sued to have these changes declared unconstitutional, and a three-judge panel agreed to block their implementation pending the outcome of that lawsuit.

Second, apparently unhappy that a Democrat won in a non-partisan election for a seat on the state Supreme Court, the new law provides that all appellate elections will be partisan and also makes it more difficult for constitutional challenges to get to the state Supreme Court, which, thanks to the election of Associate Justice Mike Morgan in November, now has a majority of justices who are Democrats.

Finally, the law changes the way that the Chair of the Industrial Commission (IC), which decides workers’ compensation cases, is selected. The Chair handles all hiring at the IC, including deputies who hear the cases, and serves a four-year term, which, since he was previously appointed by McCrory, would have expired after Cooper became governor on January 1. To deny Gov. Cooper that power, the new law required Gov. McCrory to choose a new chair on December 30, and Gov. McCrory re-appointed the current chair.

The other bill, House Bill 17, among other things, shifted power away from the State Board of Education and into the hands of the newly elected State Superintendent, who happens to be a Republican. HB 17 also dramatically reduced the number of state employees Cooper may hire

as governor from 1400 to 425 while giving job protection to political appointees hired by McCrory who did not previously have such protection. HB 17 also made Gov. Cooper's cabinet appointments, one of the major ways that he might be able to influence the direction of our state, contingent on Senate approval.

In addition, the legislature confirmed two McCrory nominees, including his budget director, to the Special Superior Court, and the wife of McCrory's chief of staff, to fill an open seat on the Industrial Commission.

Republicans have attempted to defend their actions as something Democrats did over thirty years ago when Democratic lawmakers attempted to restrict some of Republican Gov. Martin's appointments. However, Gov. Martin himself told the Charlotte Observer that he thought Republicans today went "too far," citing a provision in HB 17 that takes away the governor's ability to make appointments to the boards of trustees of the UNC campuses. Bob Phillips, president of the government watchdog group Common Cause North Carolina said "we've never quite seen something like what is going on now," and that "we're in unprecedented, uncharted territory with this."

The legislature's actions drew headlines across the country. What actually went on was captured well in two New York Times pieces and one in the Washington Post. One Times op-ed piece summed up: "McCrory tried to change the election's rules to help himself; pretended he did not lose afterward; and is ultimately overturning some of the election's consequences."

In addition to giving our state another black eye in the view of the rest of the country, the legislature's mischief brought local protests such that both the president of the Senate and the speaker of the House repeatedly closed the doors of the chambers' galleries and had dozens of citizens arrested. The Democratic caucuses supported the protests. Sen. Van Duyn observed that "What [the Republicans] did, with the process they put in place, completely cut the public out in any other way but through protest."

On Wednesday, Dec. 21, Gov. McCrory called one final special session. Governor-elect Cooper had convinced the Charlotte city council to repeal the ordinance that led to the infamous HB 2, with the clear understanding that HB 2 would also be repealed by the legislature. Not only did many Republicans continue to oppose repeal of HB 2, their leaders attached strings to repeal, forbidding any local employment or non-discrimination ordinances until 30 days after the 2017 legislative session concludes, a proviso that the legislature could later extend. That bill did not pass. Neither did one introduced by Democrats

that would have repealed HB 2 completely with no strings attached. So, thanks to the legislature, our state is stuck with a law that is costing us millions in lost jobs and revenue.

Finally, based on the legislature's "extreme gerrymandering, voter suppression of black and brown residents, and the usurpation of incoming governor Roy Cooper's power through hasty legislation," the Electoral Integrity Project stated that North Carolina can no longer be classified as a "fully functioning democracy." Indeed, the EIP reported that our state, which received a score of 58, would rank, were it a nation, in the same neighborhood as the governments of Cuba, Sierra Leone and Indonesia, meaning that it is "a deeply flawed, partly free democracy, that is only slightly ahead of the failed democracies that constitute much of the developing world."

*More information about the previous biennium of the North Carolina General Assembly can be found in our September 2017 Legislative Report: 2015-16 Session, available upon request by contacting our office.*

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