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At SCPC we don't deal with elections or electoral politics. We're concerned with economic and individual freedom – not with candidates. But I do want to make one point about the election. Whatever else may be said about Donald Trump's victory in November, this much is certain: On November 9, people had finally had enough.

I've been saying for a long time – and I wasn't the only one – that Americans were getting tired of the usual political rigmarole. But even I didn't appreciate the depths of disgust with Washington that we saw in Trump's long, steady rise and eventual victory. The president-elect may or may not be a conservative. He may not embrace a vision of smaller government and low taxes across the board. I don't know.

So let's direct a healthy proportion of our attention where it belongs: the South Carolina statehouse. Statehouse politicians have cultivated the state's dependency on federal money, and in the process they've encouraged the federal government to balloon the national debt. The responsibility lies as much, if not more, with statehouse politicians as it does with federal ones.

Second, let's remember that we can do something about it – if we focus our attention where we can make a difference. We should watch what happens on Capitol Hill and in the White House very closely – that's our civic duty as Americans. But when it comes to making an appreciable difference on the things that affect our lives, we can do it right here in South Carolina.

If we want to eliminate the barriers to a free market in medical care, we can do it here. If we want an education system based on parental choice, a system that isn't beholden to federal micromanagement, we can do it here. If we want competition in our energy market, we can do it here. All we have to do is kick our politicians' addiction to federal money.

That will take some doing – there's no denying that. But we can do it. That's a big part of what we're aiming for at the Policy Council, and I cannot thank you enough for helping us.

—Ashley Landess, President

We Can Do It Here

I only know this: He's everything Washington isn't.

But in all this furor against Washington, DC, in all this rage against federal coercion and the Obama administration's failures, let's remember two things.

First, the federal government is able to tell states what to do because the states let them do it. Our research has shown again and again that the federal government gets its way largely because state politicians are happy to accept federal money. On unemployment benefits, school standards, higher-education spending, health care – you name it – state politicians only have to do what the feds tell them to do because the state takes federal money in all these areas.

Think about it: If South Carolina public officials decide the state doesn't want to participate in a federal program, and they turn down federal money for the program, what can federal bureaucrats do, realistically? Sue the state? Unlikely. Roll in with tanks and troops? Not happening. If the U.S. Supreme Court rules that states must comply with a federal mandate, then we'll have to comply – but right now we're complying with hundreds of mandates, not because the Court said we have to, but because our lawmakers can't bring themselves to turn down federal money.

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The Return of the Gas Tax

Will Gov. Nikki Haley’s successor support a gas tax increase? The capital is abuzz with speculation, but no one knows the answer. Even so, editorial boards, Department of Transportation officials, and state lawmakers have all called for a gas tax hike, so it’s fair to assume that the 2017 session will include debate on the state’s alleged need for more revenue.

But lawmakers still haven’t proven this to be a revenue problem. In fact, a far better argument can be made that existing infrastructure money is spent badly, and that the road funding system should be made accountable to taxpayers before politicians breathe another word about tax hikes. Last year’s roads bill, signed by the governor, came nowhere near accomplishing the kind of accountability needed to fix the problem. Indeed, in some ways that bill made the problem worse by giving the appearance of gubernatorial control of the DOT commission while in fact preserving the status quo.

If you haven’t seen our special report on why South Carolina’s roads have deteriorated so badly – and on what we can do about it – go to scpolicycouncil.org/special/roadsreport.

Last year – and the year before – tax hike supporters in the legislature tried half a dozen ways to pass a tax increase without anyone noticing. But well-informed citizens caught the attempts every time. So as we head toward the new session, our policy team stands ready to quickly read and analyze any tax increase legislation that comes down the pike, and our communications team will make sure citizens know about it in plenty of time to make a difference.
It's all in the family.

The Judicial Merit Selection Commission began meeting recently to vet judges for seats around South Carolina, marking the bi-annual migration of judicial candidates to the statehouse. That's where the problem lies: would-be judges are kowtowing to lawmakers again.

On the road to a state judgeship, the first stop is a vetting at the JMSC, a panel composed of six legislators and four other citizens appointed by legislators. It's the same commission where former speaker Bobby Harrell placed his brother.

South Carolina is one of only two states where legislators control judicial screening. That's why the American Bar Association says we don't appoint judges by merit.

It's not unusual here to find former legislators with little or no experience on the bench making their way to higher courts. Former Supreme Court Chief Justice Jean Toal was a longtime legislator with no prior judicial experience.

Lawyer-legislators on the JMSC have participated in questioning and voted favorably on judges that they practice in front of. Challenges to the constitutionally of the JMSC have been shot down in state courts.

Three candidates per seat are approved by the JMSC. Then the statehouse becomes a hive of handshaking and backslapping, with potential judges cozying up to legislators. For some candidates, the support comes easier because they're relatives of legislators. Supreme Court Justice Kaye Hearn's husband, George Hearn, was a House member when she was elected to the Supreme Court.

When the JMSC meets later this month, one of the candidates for Administrative Law court will be Milton Kimpson, Senator Marlon Kimpson's brother. If the JMSC approves him, his brother's position will, it's fair to say, make it likelier that he'll be elected by the legislature.

Then, when the time for reelecting judges comes, the process starts all over again with the JMSC hearing, the handshaking, the backslapping and the voting.

In a state that claims to have three branches of government, South Carolina really doesn't. Equal justice can get lost somewhere in the statehouse.
The Nerve Welcomes
Robert Meyerowitz

Robert began his journalism career reporting from Central America and the Mideast. He became a print reporter for the Anchorage Daily News, in Alaska, where he covered crime and politics on the Last Frontier and transitioned to editing at the Anchorage Press, where he learned how to motivate reporters. From there he moved to the Sunshine State, editing New Times Broward-Palm Beach and working with investigative reporters; served as a visiting professor of journalism at the University of Alaska Fairbanks; edited the Missoula Independent, in Montana; and was the News Editor of the Colorado Springs Independent, in Colorado, before he packed his border collie in his Subaru and came to Columbia to scrutinize the South Carolina statehouse. Contact Robert with stories or ideas at robert@thenerve.org.

A New Way to Keep Up

How can a citizen find out what a bill would do, when lawmakers are likely to take it up, how it was changed the last time they took it up, and where it stands in the legislative process? We strive to make our website the answer to those questions. But it’s not easy. There are hundreds of bills in the legislature at any given time, and they change from week to week.

This year, though, watch out. Our new research director, Phillip Cease, has three full-time researchers reading and examining bills this year. Not only that – we’re in the process of redesigning our website to make it easier to see at a glance what’s happening each week, what bills are up for debate, and what those bills would accomplish in their latest iterations.

For the new layout, go to scpolicycouncil.org/legislation.
The Threats to First Amendment Rights

How secure are your First Amendment rights? Not as secure as you think.

Many Americans assume, wrongly, that their state legislatures deal mainly with low-level issues and that only Congress and the president deal with the really important matters of governance. Certainly in South Carolina, that’s an increasingly dangerous assumption. Indeed, the General Assembly has debated and passed measures that have direct bearing on the First Amendment of the U.S. Constitution. These measures have dealt in significant ways with South Carolinians’ freedoms of speech, assembly, and press.

The trend lines are not encouraging, and citizens would benefit from closely considering what their lawmakers have tried to do in recent years.

Politicians squelching their critics

Since 2014 every omnibus ethics bill has had an “electioneering” provision designed to have a chilling effect on the right to criticize politicians. This provision defines “electioneering” as virtually all communications that reference a candidate during a broad window before an election. Any individual or group that engages in electioneering would be required to file a report with the State Ethics Commission. That would, in turn, force the individual or group to disclose top donors – in effect allowing politicians to bully the supporters of groups they don’t like. (Learn more on this issue by going to scpolicycouncil.org/special/electioneering.)

Putting committee testimony under oath

What started out as a proposed House rule has taken many different forms over the past two sessions – and even though it has been defeated each time, it will almost certainly return in 2017. The proposal would allow legislative committees and subcommittees to require anyone offering public testimony to speak under oath. Anyone who offers testimony that a legislator deems willfully “false, materially misleading, or materially incomplete testimony” would be guilty of “contempt of the General Assembly.”

Since testimony is generally only taken at the subcommittee level it is very possible, were this bill to pass, as few as two legislators could turn an individual over to SLED and have him or her prosecuted. It’s hard not to conclude that the proposal is designed to scare citizens away from offering testimony critical of lawmakers and their decisions.

Citizen activists to register as lobbyists

This legislation would have required any citizen or a representative of any grassroots organization to register with the State Ethics Commission as a lobbyist and pay a $200 registration fee – forcing citizens to either stay silent or pay a fee to talk to their elected officials.

Registration would be required before delivering testimony at a legislative committee or subcommittee, and before speaking at a public hearing on a local ordinance or initiative. In essence, merely speaking to politicians in public forums would require permission and a fee.

No one is arguing that the right to free speech is so inviolable that government can never regulate it. But government may only regulate a constitutional right in narrowly defined circumstances in which regulating that right is the only way another right may be protected. South Carolina lawmakers have not made that case in these three instances, or indeed in any of the many other anti-free speech bills they’ve introduced. One of SCPC’s top priorities in 2017 will be to catch and analyze all such bills – and then to make sure activists know about them.
In November, when President-elect Trump nominated Gov. Nikki Haley to be his ambassador to the United Nations, South Carolina's media was abuzz with talk of succession. With Haley resigning from office (assuming she’s confirmed in January), Lieutenant Gov. Henry McMaster will become governor. But who will become lieutenant governor?

Most in the media assumed that, at least according to the constitution, the senate president pro tempore, Hugh Leatherman, is next in line for the lieutenant governor's office. Of course, nobody thinks Leatherman – the state's most powerful politician – will actually take the powerless office of lieutenant governor; he’ll find a way to avoid that fate.

But what if the whole assumption was wrong? In fact, it may be. When our policy team looked at the law and the constitution, they discovered a little oddity. In 2014, voters passed a constitutional amendment to put the governor and lieutenant governor on the same electoral ticket, and that amendment would allow an ascending lieutenant governor (in this case, Henry McMaster) to choose his own lieutenant. That amendment wasn’t supposed to take effect until 2018. But when lawmakers ratified the language with a bill, they made the provision allowing the governor to choose his own lieutenant, effective immediately.

After The Nerve’s story ran in late November, mainstream media outlets quietly altered their narrative and began asking about this constitutional oddity. (No prizes for guessing how they found out!)

So – did lawmakers intentionally misapply the ballot language to the constitution in order to give Leatherman a way to keep his position in the likely event of Haley’s departure? Maybe, maybe not, but it’s clear that, according to the constitution as it now reads, McMaster should choose his own lieutenant. Whether lawmakers were merely sloppy in amending the constitution according to the outcome of a ballot initiative, and whether they’ll simply ignore the law as written and do what they would have done anyway, we’ll have to wait till January or February to find out.

What’s clear, though, is that if you want assumption-free investigative journalism, read The Nerve.
At SCPC, our policy team reads and analyzes every bill filed in the legislature, and asks this question of each one: *Does it advance or hinder South Carolinians’ individual and economic freedom?* Our communications team asks a related question: *Who needs to know about it, and what’s the fastest way to get the information to them?* And our team at *The Nerve* asks: *What would government officials prefer that taxpayers not know?* No other organization in the state asks these questions. No other organization in the state gets anything close to the results we get. And the credit goes entirely to you, our supporters. We simply cannot do what we do without your help. We hope you’ll stay with us in 2017 – there has never been a better or more hopeful time for eliminating the barriers stopping citizens from creating the freest state in the nation.

So thank you, stay tuned for the upcoming session, and have a terrific holiday.