from the president

The goal is always the same

When I began at the Policy Council almost 20 years ago, there was no such thing as the internet or social media. Cell phones – they were called “cellular” phones then – still weren’t widely available. There was no e-mail to check, no blogs to read, no social media, no smartphones to be distracted by.

I mention this just to illustrate how much our tactics have had to change over the intervening years. The Policy Council’s aim – to promote and protect freedom – demands envisioning new methods all the time. Imagine if SCPC still communicated mainly by mailing and fax.

Our driving principles, however, have not changed. We’re still promoting the principles of limited government, free enterprise, and individual liberty and responsibility.

But how are we persuading people in 2016 of the relevance of those principles? Yes, we have new tools – the internet, Facebook, Twitter, e-mail campaigns. But are we using those tools to make it crystal clear how our principles can be advanced? Are we going beyond merely showing people the failures of government – the ways in which the principles of freedom aren’t heeded in government policies and aren’t understood or appreciated by politicians – and showing citizens what we can and should be driving toward?

The more our team at SCPC has discussed these and similar questions, the more convinced we’ve become that the old categories aren’t doing the job.

What do I mean by the “old categories”? For a long time in the policy world, the way you made your research and analysis available to the public – the way you organized it in your published material or on your website – was by simple topical categories: health care, education, taxes, spending, regulation, and so on. Those categories are still necessary – we still publish plenty of material on health care and tax policy – but they don’t tell people why they should care.

The most important thing about an analysis of South Carolina’s education system is not that it’s about education policy. The most important thing about it is that it points the way to the freedom of choice in education. Similarly, the most important thing about a fact sheet on road funding is not that it explains “tax policy” or “government restructuring.” The most important thing about it is just this – that it shows how citizens can retake control of their own government.

In short, free market think tanks and policy organizations like ours need to start emphasizing the goal of what we’re doing at every opportunity. And what is the goal? It’s always freedom – freedom to spend and invest as much of your own money as possible, freedom to send your child to the school that makes most sense, freedom to choose your own doctor or insurance policy, freedom to run your business in the absence of arbitrary governmental regulations, freedom to own your property without the threat of some agency taking it away for purposes of “economic development” or “public benefit.”

I hope the goal has always been apparent in everything the Policy Council does. Still, it’s never a good idea to assume anything, and for that reason we’re asking ourselves how we can make the goal of freedom more readily apparent in all our published material. After all, we don’t exist to foster discussions of tax policy or education reform (important as those concepts are as means to the end). We exist, rather, to promote the principles of freedom – limited government, free enterprise, and individual liberty and responsibility.

Thank you, today and always, for supporting SCPC and its mission. Let’s use the upcoming legislative year to move closer to the goal – the goal of making South Carolina the freest state in the nation.

All the best,

Ashley Landess
For years, the only news source to raise tough questions about the state’s most powerful politicians was The Nerve. That’s changing – fast. In October, The State, relying on analysis first published by The Nerve and SCPC, ran a damning story about how lawmakers use the State Infrastructure Bank to funnel scarce road money to unnecessary projects in their home districts.

In December, The Nerve revealed that Sen. Hugh Leatherman had exploited a loophole in state law that allows his multimillion-dollar concrete company to categorize itself as “minority”-owned – a designation affording the company lucrative federal contracts. Since then, a Chicago-based law firm specializing in such fraudulent claims is strongly considering the possibility of a lawsuit.

In December and January, The Nerve ran several stories exposing rife corruption at Richland County Council. As this newsletter goes to press, one resignation has ensued, and the scheme has attracted statewide coverage. Meanwhile, one council member has introduced a motion warning fellow councilors against the “unethical behavior” of “leaking confidential information” – that is, talking to the media. Now, after one councilor has been arrested on tax evasion charges (first reported by The Nerve), councilors are debating sweeping transparency measures.

As the 2016 legislative session began, we received word that a coterie of state senators had been appointed to a committee by the president pro tem, and that the purpose of this committee was to hammer out a compromise on raising the gas tax. The problem? This ad hoc committee’s meetings were not open to the public – a clear violation of state law. SCPC and The Nerve quickly publicized the secret meetings, senators on the committee found themselves questioned about it by both their constituents and other news media, and suddenly the meetings stopped – with the remainder of the debate taking place in public meetings.

Late last year, lawmakers introduced a bill that would have given a private pipeline company the power of eminent domain – i.e. the power to take private land. SCPC research staff quickly posted an analysis, activists learned about it on social media, and the Policy Council’s Shane McNamee sent out an op-ed on the subject to newspapers all over the state (read that op-ed on page 7). In February, the bill’s sponsors (who denied that their bill was intended to grant eminent domain to a private company) submitted a different bill, this one explicitly forbidding private companies from assuming eminent domain powers.
“The Policy Council has been very largely responsible for putting some of our senior (and junior) state politicians in bright lights when they were seeking to have all happen behind closed doors.”
— Tom C., e-mail to friends

“I’m constantly amazed at the things The Nerve digs up – things that shouldn’t be going on at all!”
— Bob S., e-mail to SCPC

Dear Ashley and Staff, Really appreciate the watch-dog efforts of the SC Policy Council. In the beginning, with the principles of 1776 and 1787, now long forgotten, we the people (citizens then) were the sovereign power who made government, by consent and compact, to be our servant and not our master! Our founders and framers are still relevant about what government should and should not do.
— Kirk W., note to SCPC

“In spite of the fact that I was a state employee for more than thirty years, and my office was only about 500 feet from the State House, I was pretty much oblivious to most of the corruption that’s so prevalent there. I have become much more aggressive in keeping abreast of the issues and irregularities, and this effort has been made much easier since I subscribed to The Nerve.”
— Dan T., e-mail to SCPC

On Monday, February 8, The Nerve posted a story about how the chairman of the Department of Transportation Commission, Mike Wooten – who also owns a firm that subcontracts with DOT contractors – has repeatedly used his influence to ensure that his firm doesn’t lose money.

On the following day, February 9, Wooten testified before the Senate Finance Committee about DOT funding, and one senator asked him to explain his side of this “blog” story. His answer? In addition to comparing The Nerve to bathroom graffiti (yes, he said that), Wooten simply denied that he had been guilty of self-enrichment. But of course, nothing in The Nerve story had suggested he was enriching himself, only that he was using the authority of his office in an improper way.

* Keep up with the gas tax debate by using the Twitter hashtag #SCRoadsDebate
heads up
Legislation We’re Watching in 2016

**Firearms.** There are at least 15 bills now in the legislature that would curtail South Carolinians’ Second Amendment rights. Among the worst: H.4564 and S.943, which would create a gun registry for all privately held guns in the state; and S.940, which would require all firearm owners to immediately report the loss or theft of a firearm to law enforcement. Failure to report a stolen gun would result in a misdemeanor with penalties up to a $1,000 fine or a year in jail.

**Health care.** S.929 and H.4542 are both “right to try” bills that would allow terminally ill patients to receive and legally use medication that has not fully completed the FDA approval process.

**Education.** At least seven bills would impose new mandates on public schools, from mandatory instruction in voting to mandatory instruction in swimming. By contrast, H.4530 would consolidate school districts to one per county, cutting down on waste and duplication.

**Roads.** H.3579 is quickly shaping up to be the giant “roads bill” that lawmakers will try to get Gov. Haley to sign. The governor has indicated that any roads-related legislation should include “tax relief” and “reform” at the DOT. And although this legislation will certainly include measures that claim to be tax relief and reform, the bill as it’s currently amended is little more than a gigantic tax hike that would actually make the Department of Transportation less accountable to taxpayers.

**Judicial independence.** H.4402 and H.4406 would respectively make family court judges and state Supreme Court justices popularly elected. H.4517 would require the governor to appoint some of the members of the Judicial Merit Selection Commission (JMSC) – a body currently dominated by legislators and their appointees. All three of these bills fail to address the problem of legislative control of the entire judicial system. South Carolina is one of only two states where the legislature is involved in both the nomination and the election of judges (the other is Virginia). Genuine reform isn’t tweaking the current process or making certain judges popularly elected. South Carolina should be emulating the American constitution’s model, with judges appointed by the executive with the advice and consent of the Senate.

On our Websites

Report: What to Do about Roads
Everything you should know about how South Carolina roads are funded, who makes the decisions, why our roads are falling apart, and what can be done about it – all in one place.

Ending Legal Corruption: A Progress Report
What are lawmakers doing in 2016 on “ethics reform”? What are they not doing? And how to tell the fake reforms from the real ones?

What Is ‘Workforce Development’?
Usually it’s a fancy term for central planning or command economics. A bill now in the legislature makes that very, very plain.

Go to: scpolicycouncil.org/workforce

Go to: scpolicycouncil.org/RoadsReport
One of our goals for 2016 – SCPC’s thirtieth anniversary – is to recruit 100 new Policy Council members in each of South Carolina’s 46 counties. Ambitious? Certainly.

But we’re not an ordinary nonprofit think tank. We make things happen. Official behavior and government policies change as a consequence of the work we do. And we think citizens across South Carolina, when they find out what we do, will want to be a part of it.

So tell a neighbor. Tell a colleague.

And if you haven’t already, please consider filling out the attached reply card with a generous gift, or call us at 803-779-5022, ext. 114 Thank you!
Eminent Domain for Private Companies?

[The following op-ed, written by SCPC policy analyst Shane McNamee, was published in weekly and daily papers all over South Carolina.]

In October of 2015, a Senate Judiciary subcommittee met to discuss and take testimony on S.868, a bill that would grant the power of eminent domain to a company constructing any kind of pipeline.

Eminent domain, remember, is a power held by governments – not private companies – to expropriate private property for public use. The bill now in the General Assembly, however, would require private pipeline companies to go through a permitting process with both the Public Service Commission and the Department of Health and Environmental Control before the power of eminent domain could be exercised.

It's worth emphasizing that, with or without a permitting process, this is the first time state law would explicitly allow a non-utility private company to seize private property.

In order to obtain the necessary permit from the PSC, a pipeline company would have to demonstrate that its proposed project serves the “public convenience and necessity.” The state constitution allows the Legislature to define what constitutes a public use, and S.868 defines it in the vaguest way possible: “a use that is vital to the welfare of the people of this State.” In S.868, legislators have chosen to devolve this power to state agencies, like the PSC, that are even less accountable than they are.

Throughout the subcommittee meeting, the bill’s sponsors denied they were expanding the powers of eminent domain. This despite a recent opinion issued by the attorney general explicitly casting doubt on the idea that oil pipeline companies can exercise eminent domain powers; therefore S.868 would, in fact, expand eminent domain powers under current law.

In other words: Oil pipeline companies do not (at least according to the AG) have eminent domain power; S.868 would establish a permitting process whereby oil pipeline companies could attain eminent domain power; therefore S.868 would, in fact, expand eminent domain power.

Why doesn’t the state constitution protect private property? The short answer to that question is: It's vague.

Throughout the subcommittee meeting, the bill’s sponsors denied they were expanding the powers of eminent domain. This despite a recent opinion issued by the attorney general explicitly casting doubt on the idea that oil pipeline companies can exercise eminent domain powers; therefore S.868 would, in fact, expand eminent domain power.

The U.S. Supreme Court held in the 2005 Kelo case that eminent domain could be exercised on behalf of a private company so long as the taking served a “public purpose” (for example, to increase revenue, to attract jobs to the area, or to remove eyesores).

The S.C. constitution was amended after Kelo to say that private property shall not be taken for private use, and that eminent domain may not be used unless the condemnation is for public use.

Unfortunately, however, the constitution doesn’t define “public use.” Thus lawmakers can satisfy this clause with legislative language such as “vital to the welfare of the people of this State.”

The constitution also permits property condemned by the government for “blight” – vaguely defined to include lack of ventilation, light, and sanitary facilities, dilapidation, and deleterious land use – to be taken and transferred to a separate private interest.

Under our state’s weak constitutional protections, many private companies considered to be utilities (telephone companies, electric lighting and power companies, water supply companies, etc.) are currently permitted to exercise eminent domain.

What can be done?

1. The constitution needs a clear definition of public use. This definition should include only projects that are publicly owned and made open and available to all members of the public, such as roads and parks.

2. The constitution should further clarify that eminent domain can only be exercised by the state and never by a private entity.

3. The constitution should disallow the use of eminent domain to eliminate “blight.” Historically, blight takings have often served as pretext for takings for economic development schemes. Florida has already disallowed blight takings, permitting local ordinances to deal with threats to public safety without using eminent domain powers.

South Carolinians too often assume their rights are protected by the allegedly conservative majority running state government. As this bill reminds us, that’s a huge mistake.

[For an update on this bill, see page 3, bottom right.]
If you haven’t visited The Nerve in a while, we invite you to take a look. In January we made the jump to an updated design that will allow us to do all sorts of things we couldn’t do with the old site. Among other things, we’ll have a running Twitter feed, the ability to engage with readers through polls, and we’ll be able to use high-quality images in ways the old site couldn’t accommodate. Best of all, though, the new site is smartphone-friendly, meaning you can read The Nerve on your phone (an unforgiveable shortcoming of the old site). So starting in 2016, lawmakers who read their smartphones during House and Senate sessions – and we’ve watched them do that many times – will get to read about the latest governmental shenanigans on The Nerve.