

**COMMON CORE AND NORTH CAROLINA:**  
**PART I—COMMON CORE’S HISTORY AND STRUCTURE**  
The North Carolina Institute for Constitutional Law<sup>1</sup>  
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As public awareness of the Common Core State Standards Initiative (Common Core) increases in North Carolina, so do the questions about it. This memorandum is the first in a multi-part series of legal memoranda by the North Carolina Institute for Constitutional Law designed to inform the public about the legal issues surrounding Common Core and address some of the questions raised by it. This paper explores the history of Common Core’s development and adoption. It explains what Common Core is, how it began, and how it was rolled out to the public. This paper then explains how and why most states adopted Common Core, what role federal Race to the Top grants played, and how waivers to the No Child Left Behind and Elementary and Secondary Education Act (NCLB/ESEA) continue to keep states locked into the program. Subsequent memoranda will address other issues including privacy concerns and parental rights.

**History of Common Core’s Development**

*Where did Common Core come from?* According to the Common Core website, it is a “state-led effort” to create a “single set of clear educational standards” for K-12 math and English education.<sup>2</sup> The initiative began around 2008 as a collaborative effort by the National Governors Association (NGA) and the Council of Chief State School Officers (CCSSO)—both non-profit, non-governmental organizations—which published a report entitled *Benchmarking for Success: Ensuring U.S. Students Receive a World Class Education*. This document called on states to “adopt[] a common core of internationally benchmarked standards in math and language arts[.]”<sup>3</sup> The goal of standards-based reform, according to the

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<sup>2</sup> Common Core State Standards Initiative, *Frequently Asked Questions*, <http://www.corestandards.org/resources/frequently-asked-questions> (cited herein as Common Core FAQ).

<sup>3</sup> *Benchmarking for Success: Ensuring U.S. Students Receive a World Class Education* 24, A report by the National Governors Association, the Council of Chief State School Officers, and Achieve, Inc., Dec. 19, 2008, <http://www.achievetest.org/BenchmarkingforSuccess>.

North Carolina based Hunt Institute for Educational Leadership and Policy, is “to guide the development of curricula, instructional materials, assessments, and the preparation and professional development of teachers.”<sup>4</sup>

*What is Common Core and how is it funded?* The Common Core Standards are a series of benchmarks in English language arts and mathematics calculated for each grade from kindergarten through twelfth grade. Common Core “set[s] requirements not only for English language arts (ELA) but also for literacy in history/social studies, science, and technical subjects.”<sup>5</sup> At this point, Common Core has not dictated science standards, but as the Hunt Institute explained, “As the Common Core State Standards for English language arts and mathematics were released and being widely adopted across the country, states began to request a collective effort to establish a contemporary set of standards for science education. In response, the Next Generation Science Standards initiative was born.”<sup>6</sup>

The Common Core Standards are copyrighted. The copyright is owned by NGA and CCSSO, the non-governmental entities that crafted Common Core. NGA and CCSSO have granted a public license viewable on the Common Core website.<sup>7</sup> This license allows others to use the copyrighted Common Core material “for purposes that support the Common Core State Standards Initiative.”<sup>8</sup> Typically, when one uses copyrighted material one must get a “license” to use it and the source of the material must be attributed to the owner of the copyright. NGA and CCSSO require such attribution *except* that “States and territories of the United States as well as the District of Columbia that have adopted the Common Core State Standards in whole are exempt from this provision of the License.”<sup>9</sup> Thus, when a state, like North Carolina, publishes Common Core materials, no notice will appear on the material—the reader would have no idea that the Common Core standards are copyright protected and that

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<sup>4</sup> The Hunt Institute, “A Report From the 2008 Governors Education Symposium,” June 8-10, 2008, <http://www.hunt-institute.org/elements/media/event-materials/GES08.PDF>.

<sup>5</sup> Common Core State Standards for English Language Arts & History/Social Studies, Science, and Technical Studies, p. 3 (available at [http://www.corestandards.org/assets/CCSSI\\_ELA%20Standards.pdf](http://www.corestandards.org/assets/CCSSI_ELA%20Standards.pdf)).

<sup>6</sup> *The Hunt Institute’s re:Vision*, No. 3, p. 3 (June 2013)(available at <http://www.hunt-institute.org/knowledge-library/articles/2013-6-11/revision-number-3-june-2013/>).

<sup>7</sup> <http://www.corestandards.org/public-license>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

NGA and CCSSO own the copyright. States choosing to implement Common Core must adopt it verbatim. Under a so-called 15 percent rule, states may add what amounts to 15 percent to the curriculum, but they cannot take anything out of it.<sup>10</sup>

While the NGA and CCSSO have been developing the Common Core Standards, the job of developing assessments (i.e., standardized tests) that are aligned to those standards is currently handled by two consortia: the Partnership for Assessment of Readiness for College and Careers (PARCC) and the Smarter Balanced Assessment Consortium (SBAC).<sup>11</sup> PARCC describes itself as a consortium of 22 states and is funded by a \$186 million Race to the Top grant from the federal government.<sup>12</sup> SBAC is another consortium of states and, according to its website, it received \$175 million grant from the U.S. Department of Education, comprising 99 percent of its resources.<sup>13</sup>

According to one analysis, the Common Core Standards Initiative has received at least \$150 million in funding from various grants made by the Bill & Melinda Gates Foundation.<sup>14</sup> These include a \$2.2 million grant to the North Carolina based Hunt Institute to “promote the broad adoption of rigorous, internationally benchmarked education standards by states.”<sup>15</sup> As noted above, PARCC and SBAC have received \$186 million and \$175 million respectively—a combined \$361 million—in federal tax dollars to develop tests.<sup>16</sup> Additionally, the federal

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<sup>10</sup> John Kendall, et al., *State Adoption of the Common Core State Standards: the 15 Percent Rule 2*, McREL, March 2012, [http://www.mcrel.org/~media/Files/McREL/Homepage/Products/01\\_99/prod17\\_15PercentRule.ashx](http://www.mcrel.org/~media/Files/McREL/Homepage/Products/01_99/prod17_15PercentRule.ashx).

<sup>11</sup> Common Core FAQ. North Carolina is a “governing state” member of SBAC and field-tested assessments for the organization during the 2012-13 school year. <http://www.smarterbalanced.org/about/member-states/#north-carolina>.

<sup>12</sup> <http://www.parcconline.org/about-parcc>.

<sup>13</sup> <http://www.smarterbalanced.org/resources-events/faqs/#2451>.

<sup>14</sup> Valerie Strauss, “Gates gives \$150 million in grants for Common Core Standards,” *The Washington Post*, <http://www.washingtonpost.com/blogs/answer-sheet/wp/2013/05/12/gates-gives-150-million-in-grants-for-common-core-standards/>.

<sup>15</sup> How We Work, Grant, Bill & Melinda Gates Foundation, <http://www.gatesfoundation.org/How-We-Work/Quick-Links/Grants-Database/Grants/2008/05/OPP50361>.

<sup>16</sup> About PARCC, Partnership for Assessment of Readiness for College and Careers, <http://www.parcconline.org/about-parcc>; 31-State Consortium Awarded RTTT Assessment Grant, Smarter Balanced Assessment Consortium, Sept. 2, 2010, <http://www.smarterbalanced.org/news/31-state-consortium-awarded-rttt-assessment->

government spent \$4.35 billion in Race to the Top grants to entice states to adopt Common Core.

*Common Core Roll Out.* The first draft of “college and career readiness standards” was published for public comment by the NGA and CCSSO on September 21, 2009.<sup>17</sup> A “work and feedback group” of more than 130 members and a 25-member “validation committee” composed primarily of teachers, professors, and administrators offered feedback during this time.<sup>18</sup> North Carolina had only limited input during this process; between the work and feedback group and the validation committee, only one member—Professor Jere Confrey of N.C. State University—was from North Carolina.<sup>19</sup> The following spring, in March 2010, the first official draft of the K-12 standards (which are aligned with the college and career readiness standards) was made available to the public,<sup>20</sup> with the final Common Core Standards being released just 3 months later in June 2010.<sup>21</sup> Regarding testing, no uniform assessments are currently available. However, SBAC, says it is working to create assessments aligned with Common Core.<sup>22</sup> Pilot tests were conducted February through May 2013 in over

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grant/(Another page on the SBAC website puts the amount of the federal grant at \$175 million, see <http://www.smarterbalanced.org/resources-events/faqs/#2451>).

<sup>17</sup> Common Core State Standards Available for Comment, The National Governors Association, September 21, 2009, [http://www.nga.org/cms/home/news-room/news-releases/page\\_2009/col2-content/main-content-list/title\\_common-core-state-standards-available-for-comment.html](http://www.nga.org/cms/home/news-room/news-releases/page_2009/col2-content/main-content-list/title_common-core-state-standards-available-for-comment.html).

<sup>18</sup> Common Core Standards Initiative, Process, <http://www.corestandards.org/resources/process> (cited herein as Common Core Process).

<sup>19</sup> Reaching Higher: The Common Core State Standards Validation Committee, A Report From the National Governors Association Center for Best Practices & The Council of Chief State School Officers, June 2010, [http://www.corestandards.org/assets/CommonCoreReport\\_6.10.pdf](http://www.corestandards.org/assets/CommonCoreReport_6.10.pdf).

<sup>20</sup> Draft K-12 Common Core State Standards Available for Comment, National Governors Association, March 10, 2010, [http://www.nga.org/cms/home/news-room/news-releases/page\\_2010/col2-content/main-content-list/title\\_draft-k-12-common-core-state-standards-available-for-comment.html](http://www.nga.org/cms/home/news-room/news-releases/page_2010/col2-content/main-content-list/title_draft-k-12-common-core-state-standards-available-for-comment.html).

<sup>21</sup> Common Core Process, <http://www.corestandards.org/resources/process>.

<sup>22</sup> Practice and Pilot Tests, Smarter Balanced Assessment Consortium, <http://www.smarterbalanced.org/pilot-test/>; NC Dept. of Public Instruction, “Assessment and Accountability: Embracing Transition,” 57, <http://www.ncpublicschools.org/docs/academicservices/conference/2013/presentations/7.pdf>.

5,000 participating schools, including North Carolina schools.<sup>23</sup> By the fall of 2013, practice testing will be expanded and a full field test is expected by 2014.<sup>24</sup>

### **Adoption of Common Core by the States**

*Race to the Top Grants.* As a part of the American Recovery and Reinvestment Act of 2009 (ARRA), the federal government distributed \$4.35 billion dollars to the states via the Race to the Top Fund (RTTT).<sup>25</sup> The RTTT program invited states to compete for federal grant money by reforming benchmarked assessments, incentivizing effective teachers and principals, creating improved data systems, and turning around low-performing schools.<sup>26</sup> Grant applications were evaluated on a rubric, with a total of 500 possible points. Between 70 and 135 points depended on adoption of common standards and assessments.<sup>27</sup> That means that 14-27% of a state's score on its RTTT grant application depended on the state's willingness to embrace Common Core. Thus, adoption of Common Core was a virtual necessity for a winning grant application.<sup>28</sup> The scheme was successful as 45 states, plus the District of

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<sup>23</sup> Pilot testing uses students to develop the Common Core testing. According to SBAC, "The Pilot Test is designed to be a test of the items and performance tasks—not an opportunity to report on student learning—and schools participating in the Pilot Test will not receive student scores." <http://www.smarterbalanced.org/news/smarter-balanced-begins-pilot-test-of-next-generation-student-assessments/> In short, students are being used to create a test but are not themselves evaluated during pilot testing.

<sup>24</sup> <http://www.smarterbalanced.org/pilot-test/>

<sup>25</sup> "Race to the Top Program Executive Summary, U.S. Department of Education 2, Nov. 2009, <http://www2.ed.gov/programs/racetothetop/executive-summary.pdf> (cited herein as RTTT Executive Summary).

<sup>26</sup> President Obama, U.S. Secretary of Education Duncan Announce National Competition to Advance School Reform, Press Release, U.S. Department of Education, July 24, 2009, <http://www2.ed.gov/news/pressreleases/2009/07/07242009.html>.

<sup>27</sup> RTTT Executive Summary 3. The Standards and Assessments section of the grant application accounted for 70 points. In addition, the State Success Factors section pegged 65 points to "articulating state's education reform agenda and LEAs' participation in it." *Id.* at 6. This language refers to "reforms in the four education areas described in the ARRA," which includes "enhanc[ing] the quality of the academic assessments[.]" ARRA § 14005(d)(4).

<sup>28</sup> Robert S. Eitel et al., "The Road to a National Curriculum," A Pioneer Institute White Paper, No. 81, p. 9, Feb. 2012, <http://pioneerinstitute.org/download/the-road-to-a-national-curriculum/>.

Columbia and other territories, have adopted Common Core, although some states like Indiana are now rethinking those decisions.<sup>29</sup>

*North Carolina's Adoption of Common Core.* The North Carolina State Board of Education (SBE) endorsed Common Core multiple times,<sup>30</sup> even before the standards were complete.<sup>31</sup> North Carolina submitted its RTTT grant application in late May of 2010, the SBE formally adopted Common Core in June of that year,<sup>32</sup> and the U.S. Department of Education awarded the State a nearly \$400 million RTTT grant on September 24, 2010.<sup>33</sup> The North Carolina General Assembly followed suit in March and June of 2011, formally codifying North Carolina's participation in Common Core by enacting S.L. 2011-8, S.L. 2011-280, and S.L. 2011-280.<sup>34</sup> Recently, with a change in the composition of the SBE, some members of the SBE, including the Lieutenant Governor, are questioning the wisdom and efficacy of the Common

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<sup>29</sup> Common Core State Standards Initiative, In the States, <http://www.corestandards.org/in-the-states>. Alaska, Nebraska, Texas, and Virginia have not adopted the standards, while Minnesota has adopted the English, but not Mathematics, component. Indiana recently "paused" its implementation of Common Core pending further study. Valerie Strauss, Indiana halts Common Core implementation, *The Washington Post*, May 13, 2013, <http://www.washingtonpost.com/blogs/answer-sheet/wp/2013/05/13/indiana-halts-common-core-implementation/>.

<sup>30</sup> NC Race to the Top Application Appendix 4, p. 15, <http://www2.ed.gov/programs/racetothetop/phase2-applications/appendixes/north-carolina.pdf>.

<sup>31</sup> Minutes of the NC State Board of Education p.11-12, May 6, 2009, <http://www.ncpublicschools.org/docs/sbe-archives/meetings/2009/minutes/final/05fminutes.pdf> (noting that the State Board of Education unanimously endorsed participation in Common Core even though "the common standards are under development[.]").

<sup>32</sup> Minutes of the North Carolina State Board of Education p. 15, Raleigh, NC, June 2, 2010, <http://www.ncpublicschools.org/docs/sbe-archives/meetings/2010/minutes/final/06minutes.pdf>.

<sup>33</sup> Letter to NC State Superintendent of Public Instruction June Atkinson from Interim Director, Race to the Top, Joseph C. Conaty, Sept. 24, 2010, <http://www2.ed.gov/programs/racetothetop/phase2-awards/north-carolina.pdf>. For other state grants, see Race to the Top Fund Awards, U.S. Department of Education, <http://www2.ed.gov/programs/racetothetop/awards.html>.

<sup>34</sup> See N.C.G.S. § 115C-174.11(c)(1) (requiring the SBE to adopt any assessments in grades 3 through 12 that are required as a condition of a federal grant); § 115C-174.11(c)(3) (requiring the SBE to continue to participate in Common Core and to adopt aligned tests); § 115C-12(39) (requiring the SBE to consider Common Core as a factor when establishing accreditation standards for schools).

Core scheme.<sup>35</sup> House Bill 733 proposed a study committee to reevaluate the State's participation in Common Core.

*No Child Left Behind Waivers.* While RTTT grants induced states to adopt Common Core, conditional waivers to the No Child Left Behind Act and the Elementary and Secondary Education Act “cement the Common Core standards and PARCC-SBAC assessments in most states, setting the table for a national curriculum, programs of instruction, and instructional materials.”<sup>36</sup> By adopting Common Core, states are eligible to receive waivers from the mandates of NCLB/ESEA.

This conditional waiver policy began in September 2011 when the U.S. Department of Education invited states to submit NCLB/ESEA waiver requests.<sup>37</sup> Under the waiver authority granted to the Secretary of Education under NCLB/ESEA,<sup>38</sup> states can get “flexibility” waivers of certain NCLB requirements related to, among other things, how Title I funds for low-income schools must be spent and how goals for annual measurable objectives (AMOs) are set.<sup>39</sup> In order to get a waiver, states have to accept four conditions. They must:

1. Adopt college and career ready standards in math and English, along with aligned assessments,
2. Develop differentiated accountability systems to measure and improve student growth,
3. Develop new teacher and principal performance evaluation systems, and
4. End duplicative reporting requirements not connected with improving student outcomes.<sup>40</sup>

The first condition essentially requires states to adopt or continue Common Core (or adopt college and career ready standards approved and certified by a State network of Institutions

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<sup>35</sup> Office of the Lieutenant Governor, press release “LT. Gov. Dan Forest Issues 67 Question to Department of Public Instruction” (July 18, 2013)(available at <http://www.ltgov.state.nc.us/News/PressReleaseDetail.aspx?newsItemId=1161>)

<sup>36</sup> Eitel et al., *supra n. 18*, p. 15.

<sup>37</sup> Letter to Chief State School Officers from U.S. Secretary of Education Arne Duncan, Sept. 23, 2011, <http://www2.ed.gov/policy/gen/guid/secletter/110923.html>.

<sup>38</sup> See Section 9401 of NCLB (20 U.S.C. § 7861).

<sup>39</sup> Letter to NC State Superintendent of Public Instruction from U.S. Secretary of Education Secretary Arne Duncan, May 29, 2012, <http://www2.ed.gov/policy/eseaflex/secretary-letters/nc.doc>.

<sup>40</sup> U.S. Dep’t of Educ., ESEA Flexibility 7 (2011), <http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html>.

of Higher Education).<sup>41</sup> North Carolina submitted its waiver request in February 2012, indicating its adoption of Common Core, and Secretary Duncan approved the waiver on May 29, 2012.<sup>42</sup> Thus, RTTT grants encouraged states to jump on the bandwagon and adopt Common Core. But, in order to receive other federal funding and avoid compliance issues with the NCLB requirements, states like North Carolina have continued to stay on the Common Core bandwagon.

## **Conclusion**

Developed by the NGA and CCSSO, funded by the Bill & Melinda Gates Foundation and federal government, and promoted by federal Race to the Top Grants, Common Core has rapidly been adopted by all but a handful of states. Now as some states begin to reevaluate their participation in Common Core, the threat of the loss of NCLB/ESEA waivers looms large as a disincentive to withdrawing from the program. The coercive nature of the federal government's involvement has major implications for principles of federalism, which is the subject of the second part of this series.

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<sup>41</sup> *Id.* The waiver policy states: "College- and career-ready standards" are content standards for kindergarten through 12<sup>th</sup> grade that build towards college and career readiness by the time of high school graduation. A State's college- and career-ready standards must be either (1) standards that are common to a significant number of States; or (2) standards that are approved by a State network of institutions of higher education, which must certify that students who meet the standards will not need remedial course work at the postsecondary level." (emphasis original).

<sup>42</sup> North Carolina ESEA Flexibility Request 19, Feb. 27, 2012, rev. May 24, 2012, <http://www.ncpublicschools.org/docs/program-monitoring/esea/esea-flexibility-request.pdf>; Letter to NC State Superintendent of Public Instruction from U.S. Secretary of Education Secretary Arne Duncan, May 29, 2012, <http://www2.ed.gov/policy/eseaflex/secretary-letters/nc.doc>.