

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA
STATE ETHICS COMMISSION

**COMPLAINT CONCERNING UNETHICAL CONDUCT
AND POTENTIAL STATUTORY VIOLATIONS REGARDING
PATRICK LLOYD “PAT” McCrORY
STATE OF NORTH CAROLINA, OFFICE OF THE GOVERNOR**

INTRODUCTION

North Carolina General Statute (“N.C. Gen. Stat.”) § 138A-21 of the State Government Ethics Act states the purpose of disclosure of the financial and personal interests applicable to Patrick Lloyd “Pat” McCrory, the current Governor of North Carolina (“Governor McCrory”), is to assist he and those who he appoints, elects, hires, supervises, or advises (or receives advice from) to identify and avoid conflicts of interest and potential conflicts of interest between Governor McCrory’s private interests and his public duties.

It is critical to the integrity of governance that Governor McCrory examines, evaluates, and discloses those personal and financial interests that could be, or could cause, a conflict of interest or potential conflict of interest between his private interests and his public duties. Governor McCrory is statutorily obligated to take an active, thorough, and conscientious role in his disclosure and review process, including having a complete knowledge of how his public position or duties might impact his private interests.

More importantly, Governor McCrory has an ongoing affirmative statutory duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of the public disclosure of economic interests and fully disclose any conflict of interest or potential conflict of interest between his public and private interests by timely, accurately, and fully filing a Statement of Economic Interests.

Governor McCrory’s selective disclosure, omissions and incomplete disclosure on Statement of Economic Interests raise critical questions for public trust in government, to the true origin, purpose, or intent of compensation, gifts, favors, appointments and executive regulatory decisions.

SUMMARY

As demonstrated within this Complaint, Governor McCrory has failed to meet his statutory disclosure obligations and duties to the people of North Carolina on multiple occasions. In examining Governor McCrory’s numerous filings, a pattern of incomplete disclosure commencing with his very first ethics filing in 2008:

Duke Energy

- Governor McCrory's 2008 Statement of Economic Interests ("SEI") filing failed to disclose that his Duke Energy Retirement 401(k) plan held **40%** of its total assets in Duke Energy common stock. He was statutorily required to disclose his ownership of over \$10,000 of Duke Energy stock.
- Further, when asked on the same filing, "Are you aware of any other economic or financial information necessary to fully disclose any actual or potential conflicts of interest you may have had during the preceding year or have currently?" Pat McCrory answered No, despite owning Duke stock and failing to disclose.
- Just seventeen months earlier, in October 2006, North Carolina Lottery Commissioner Kevin Geddings was prosecuted, convicted and received a 48-month federal prison term, for failure to disclose a conflict of interest to this very question on his SEI form.
- Governor McCrory failed to disclose his ownership of over \$10,000 of Duke Energy stock on his first 2014 SEI form filing, despite the fact that **28%** of Governor McCrory's Duke Energy Retirement Savings 401(k) plan net worth in December 2013 was tied directly to the common stock value of Duke Energy.
- Following the February 2, 2014 Duke Energy coal ash spill into Dan River any executive governmental action or inaction by Governor McCrory took in regards to Duke Energy would have a material impact upon Duke Energy common stock's value, significantly affecting the value of his Duke Energy Retirement 401(k) plan. Governor McCrory making decisions (or not making decisions) in regards to Duke was a clear conflict of interest with his own personal net worth.
- As of July 1, 2013, Governor McCrory has appointed a majority of the NC Utilities Commission, the body that regulates Duke Energy and approves electricity rate increases.

Tree.com

- Despite a direct regulatory conflict of interest, twenty-six (26) days after being sworn in, Governor McCrory continued serving as Director of a publicly traded corporation, Tree.com, a mortgage brokerage company regulated by the State of North Carolina. The Board of Tree.com took the unprecedented step of gifting Governor McCrory all of his remaining 10,063 unvested Restricted Stock Units options, a direct monetary benefit worth at least, \$171,071 at the time of the gift.

- This gift of accelerated vesting was never given to other previous Tree.com board directors who resigned, according to SEC filings. The CEO of Tree.com, Douglas Lebda acknowledged it was the first time the company had done so on December 17, 2014 to the *New York Times*.
- “Doing it under the circumstances that they did, at least as the facts are presented, raises some significant ethical questions,” said Thomas O. Gorman, a Washington lawyer who previously worked for the Securities and Exchange Commission and read the A.P. story after its publication. “It raises a very serious appearance of impropriety question.”
- According to Duke Law Professor, and securities expert, James Cox speaking to the *Raleigh News & Observer* on December 20, 2014, “That he was able to get a special benefit that was never contracted for before he became governor makes it a question of whether it was a payment for cooperation. It can easily be read that way.”
- Just over 2 months later, McCrory re-appointed the acting Commissioner of Banks. Within three months of McCrory’s accelerated payout from Tree.com, he had appointed a majority of the members of the North Carolina Banking Commission, according to the Associated Press.
- According to the North Carolina Banking Commission’s public website, the mission of the North Carolina Banking Commission is, “the N.C. Office of the Commissioner of Banks (NCCOB)... is responsible for the chartering and regulation of North Carolina’s state banks, trust companies, **mortgage companies**, as well as registration and licensing of various financial institutions operating in North Carolina to **promote and maintain the strength and fairness of the North Carolina financial services marketplace** through the supervision and regulation of financial service providers in that marketplace.” (Emphasis added)
- Tree.com agreed to pay South Carolina regulators over \$3 million stemming from allegations of misleading customers, while McCrory was on the Board according to the Associated Press.
- Tree.com reports currently being in negotiations with Massachusetts and up to 34 other states to settle regulator complaints according to the Associated Press.
- When Governor McCrory was a gubernatorial candidate, he omitted to report owning 7,243 Restricted Stock Units options of Tree.com on December 31, 2011 on his 2012 SEI.
- Governor McCrory omitted to report owning 10,063 Restricted Stock Units options of Tree.com on December 31, 2013 on each of his three 2014 SEI filings.

Governor McCrory has claimed this is a non-issue, as he reported income from Tree.com in other parts of the form and that he found the form confusing. However, on his 2013 SEI covering the period before he was governor (calendar year 2012), McCrory reported his Tree.com stock options properly in the question that specifically asks about stock options. (NC SEI Question 5(b))

- In all, for Governor McCrory's four years of Board of Directors service with Tree.com, he received over \$1,000,000 worth of Tree.com stock at no cost to him, \$255,680 in directors fees and at least \$10,063 in dividends (valuation as of Governor McCrory's 2014 SEI reporting date on December 31, 2013).

McCrory & Company

- Governor McCrory's brother Phil, founded McCrory & Company, LLC, a North Carolina limited liability company incorporated in North Carolina.
- Governor McCrory has consistently denied being an officer or partner of McCrory & Company. However, SEC filings made under penalty of perjury and McCrory & Company's own website state unequivocally that Pat McCrory was a Partner with the company. Governor McCrory failed to list on any of his SEI filings, being a Partner in McCrory & Company (Question 6a). Governor McCrory characterized himself as a "consultant".
- McCrory & Company paid Governor McCrory in excess of \$5,000 during 2011, 2012 and 2013, with the last payment apparently made after he was sworn in as governor. McCrory & Company's client list includes several companies doing business with the State of North Carolina or its agencies according to the company's publicly available and archived website.
- Governor McCrory failed to list any 2012 income from McCrory & Company on either of his two 2013 SEI filings which covered the election cycle filing period. Governor McCrory then listed receiving over \$5,000 from McCrory & Company on his 2014 SEI form as being received in 2013 from 2012 work.
- Among the state contractors that McCrory & Company list as clients is Bentley Systems which also paid Governor McCrory directly over \$10,000.
- Since 2008, Bentley Systems has contributed \$510,900 to the Republican Governors Association (RGA). It contributed \$85,000 in the 2012 election cycle, \$75,450 in 2013, and \$100,00 in 2014 to the RGA. The RGA spent over \$4.8 million supporting Pat McCrory's 2008 campaign and \$5.6 million for his 2012 election, or a total of \$10.4 million in electing Pat McCrory North Carolina Governor.

- The founders of Bentley Systems, Keith A. Bentley, Gregory S. Bentley and Barry J. Bentley collectively contributed \$9,000 to Governor McCrory's 2012 campaign. In addition, Bentley Systems Federal PAC made a special filing with the State Board of Elections during 2012 permitting a \$4,000 federal PAC contribution to Governor McCrory's election campaign, then declared itself inactive within the same filing.
- In all, Bentley Systems and other state contractors have paid undisclosed sums to Governor McCrory and his brother through the McCrory & Company, LLC while Governor McCrory oversaw agencies that awarded those companies contracts. In addition Bentley and its founders gave large sums to entities engaged in electioneering activities beneficial to Governor McCrory.

Despite media scrutiny, and Governor McCrory filing multiple differing Statements of Economic Interests in both 2013 and 2014, the people of North Carolina are still unclear if Governor McCrory's personal and financial interests could be, or are conflicts of interest between his private interests and his public duties.

Equally unclear is whether further conflicts of interest exist from yet undisclosed facts, given Governor McCrory's past and current unwillingness to fully disclose his stock holdings, work history, income sources, business relationships, or potential conflicts of interest.

COMPLAINT CONCERNING UNETHICAL CONDUCT

Consequently, the undersigned Complainant, files this Complaint with the North Carolina State Ethics Commission (“Ethics Commission”) concerning Patrick Lloyd “Pat” McCrory, the current Governor of North Carolina (“Governor McCrory”) for potential criminal violations, as outlined below, of North Carolina General Statutes (“N.C. Gen. Stat.”) §§ 14-230 for willfully failing to discharge duties; 14-231 for failing to make reports and discharge other duties; 14-234 for receiving a gift, favor or reward in exchange for awarding of contracts; 14-234.1 for misuse of confidential information; 133-32 for gifts and favors; and 138A-26 for concealing or failing to disclose material information, all of which are Class 1 misdemeanors, potential perjury charges for violations concerning 138A-24, as well as 138A-27 for providing false information, which is a Class H felony; and 14-217 providing for bribery of officials, which is a Class I felony (collectively, the “Potential Criminal Violations”).

Further, Complainant files this Complaint with the Ethics Commission concerning Patrick Lloyd “Pat” McCrory, the current Governor of North Carolina (“Governor McCrory”) for potential civil violations, as outlined below, of N.C. Gen. Stat. §§ 138A-22 and 138A-24 for failing to file correct and accurate statement of economic interests as required, 138A-31 for use of public position for private gain, 138A-32 for receipt of anything of value, 138A-33 for compensation in conjunction with advice or assistance given, 138A-34 for use of information for private gain, and 138A-35 for failure by Governor McCrory to make a due and diligent effort before taking any action to determine whether he has a conflict of interest. If Governor McCrory was unable to determine whether a conflict of interest existed, he had a duty to inquire of the Ethics Commission as to that conflict (collectively, the “Potential Civil Violations”).

Upon receipt of a complaint concerning unethical conduct by a covered person, the Ethics Commission is charged with conducting inquiries of such complaints. Therefore, Complainants request the Ethics Commission take the following actions:

- (a) Exercise its authority under N.C. Gen. Stat. § 138A-12 and conduct an inquiry and investigation into whether Governor McCrory’s administrative policies, filings, non-filings, actions, inactions, statements or misstatements resulted in any Potential Criminal and Civil Violations.
- (b) Exercise its authority under N.C. Gen. Stat. § 138A-12 to hire an investigator and issue subpoenas and subpoenas duces tecum, as necessary, in order to adequately and fully investigate the Potential Criminal and Civil Violations
- (c) Exercise its authority under N.C. Gen. Stat. § 138A-12(h) & (i) and hold a public hearing concerning Governor McCrory and the Potential Criminal and Civil Violations.
- (d) Exercise its authority under N.C. Gen. Stat. § 138A-12(k)(1) and upon finding substantial evidence of Potential Criminal Violations by Governor McCrory refer the matter to the

North Carolina Attorney General for investigation and referral to the Wake County District Attorney for potential prosecution.

In conjunction with filing this Complaint, the Complainant(s) hereby submit and incorporate by reference into the Complaint, the following to the Ethics Commission: an outline of narrative facts; media news accounts; attached materials [Exhibits 1 – 66]; and specific questions concerning these materials, facts and news account raise for consideration during the Commission’s investigative and deliberative process of the Potential Criminal and Civil Violations.

STATEMENT OF ECONOMIC INTEREST FILINGS

1. On March 10, 2008, candidate for North Carolina Governor, Patrick Lloyd “Pat” McCrory (“Pat McCrory”) executed and filed a 2008 Statement of Economic Interest (“2008 SEI”) with the North Carolina State Board of Elections, filed under N.C. Gen. Stat. § 138A-22(d) requiring an SEI filing for a candidate for an office subject to the State Government Ethics Act. [Exhibit 1 – *10 March 2008 McCrory SEI*]
2. In signing his 2008 SEI, Pat McCrory certified that he had read his statement and that, to the best of his knowledge and belief, the statement was true, complete and accurate. His certification also provided that he had not transferred, and would not transfer, any asset, interest, or other property with the intent to conceal it from disclosure while retaining an equitable interest therein.
3. The 2008 SEI required “If you, your spouse, or members of your immediate family have assets or liabilities with a market value of at least \$10,000 in the following categories, please provide the requested, information as of December 31st of the preceding year unless another time period is specified in the question.” In response to the 2008 SEI Question 5(a), Pat McCrory stated he owned no stock in a publically owned company valued at over \$10,000.
4. However, subsequent media statements and SEI filings clearly demonstrate Pat McCrory owned and participated in a 401(k) plan that owned over \$10,000 of Duke Energy stock during calendar year 2007.
5. While completing the 2008 SEI, Pat McCrory was a Duke Energy employee, participating for 28 years in the Duke Energy Retirement Savings Plan (the company’s 401(k) plan). The actual asset value balance of Pat McCrory’s Duke Energy Retirement Savings 401(k) plan on December 31, 2007 or during calendar year 2008 is unknown. However, given Pat McCrory’s subsequent SEI filings, it clearly contained over \$10,000 of Duke Energy stock, necessitating an affirmative answer and listing under 2008 SEI Question 5(a).
6. The near certainty of requiring this affirmative response is contained within Duke Energy Retirement Savings Plan’s 2008 Annual Form 11-K Report filed with the Securities and

Exchange Commission (“SEC”). Beyond Pat McCrory’s personal residence, his Duke Energy Retirement Savings 401(k) plan was the only other asset listed on his 2008 SEI. Therefore, 40% of Pat McCrory’s 401(k) plan was tied directly to the common stock value of Duke Energy in December 2008. From the Report:

“Investment securities, in general, are exposed to various risks, such as interest rate, credit and overall market volatility risks. Further, due to the level of risk associated with certain investment securities, it is reasonably possible that changes in the values of investment securities will occur in the near term and that such changes could materially affect the amounts reported in the accompanying statements of net assets available for benefits.

The Plan has invested a significant portion of its assets in the Company’s common stock. **This investment in the Company’s common stock approximates 40 percent and 38 percent of the Plan’s net assets available for benefits as of December 31, 2008 and 2007, respectively. As a result of this concentration, any significant fluctuation in the market value of this stock could affect individual Participant accounts and the net assets of the Plan.** [Exhibit 8 – [26 June 2009 Duke Energy Retirement Savings Plan Form 11-K](#), p. 9] (emphasis added)

7. Pat McCrory’s 2008 SEI’s final Question 19 asked, “Are you aware of any other economic or financial information necessary to fully disclose any actual or potential conflicts of interest you may have had during the preceding year or have currently?” Pat McCrory checked: “__Yes X No. If so, please provide that information. Please indicate “none” if you do not have any additional information to disclose.” Despite having 40% of his 401(k) plan dependent on the value of Duke Energy common stock, Pat McCrory answered: NONE.
8. Just seventeen months earlier, in October 2006, Lottery Commissioner Kevin Geddings was prosecuted, convicted and received a 48-month federal prison term, for failure to disclose a conflict of interest to this question on his SEI form. “Geddings, a former chief of staff for South Carolina Gov. Jim Hodges, testified in his own defense, telling jurors that he “was not as precise” as he should have been when filing the state ethics disclosure form.” [Exhibit 9 – Robertson, Gary. “[N.C. Lottery Head Guilty of Mail Fraud](#)” *Washington Post* 12 October 2006] [Exhibit 10 – Kane, Dan and Curliss, J. Andrew. “[Geddings guilty on five counts](#)” *Raleigh News & Observer* 13 October 2006]
9. On February 16, 2012, candidate for North Carolina Governor, Patrick Lloyd “Pat” McCrory executed and filed a 2012 Statement of Economic Interest (“2012 SEI”) for calendar year 2011 with the North Carolina State Board of Elections, filed under N.C. Gen. Stat. § 138A-22(d) requiring an SEI filing for a candidate for an office subject to the State Government Ethics Act. [Exhibit 2 – [16 February 2012 McCrory SEI](#)]

10. In signing his 2012 SEI, Pat McCrory certified that he had read his statement and that, to the best of his knowledge and belief, the statement was true, complete and accurate. His certification also provided that he had not transferred, and would not transfer, any asset, interest, or other property with the intent to conceal it from disclosure while retaining an equitable interest therein.
11. The 2012 SEI required “If you, your spouse, or members of your immediate family have assets or liabilities with a market value of at least \$10,000 in the following categories, please provide the requested, information as of December 31st of the preceding year unless another time period is specified in the question.” In response to the 2012 SEI Question 5(a), Pat McCrory stated he owned over \$10,000 of stock in the publicly owned companies of:

Owner of Interest	Full Name of Company
Patrick McCrory	Duke Energy Company
Patrick McCrory	Spectra
Patrick McCrory	Tree/Lending Tree
Patrick McCrory	Kewaunee Scientific Corporation

12. Subsequent statements from Governor McCrory confirm the Duke Energy stock holdings listed in 2012 SEI Question 5(a) were held in his Duke Energy Retirement Savings 401(k) plan. “I have stated in my records I have some 401-K and in my original 401-K some Duke Energy value, but in my 14 years as mayor of Charlotte, in my one year as governor, I separate my job as governor [from his investments], McCrory said.” [Exhibit 11 – Huffman, Dane. [“McCrory has sharp exchange with reporter over Duke Energy questions.”](#) WNCN News 14 February 2014] [Exhibit 12 – Curliss, J. Andrew and Jarvis, Craig. [“McCrory misstated Duke Energy holdings, sold stock after coal-ash spill”](#) Raleigh News & Observer 13 August 2014]
13. The actual asset value balance of Pat McCrory’s 401(k) plan on December 31, 2012 is unknown. In February 2014, Governor McCrory indicated the plan was the Duke Energy Retirement Savings Plan, and it contained over \$10,000 of Duke Energy stock.

However, 30% of Governor McCrory’s Duke Energy Retirement Savings 401(k) plan net worth in December 2012 was tied directly to the common stock value of Duke Energy.

“The Plan has invested a significant portion of its assets in the Duke Energy Common Stock Fund. This investment in the Duke Energy Common Stock Fund approximates 30% and 37% of the Plan’s net assets available for benefits as of December 31, 2012 and 2011, respectively. As a result of this concentration, any significant fluctuation in the market value of the Duke Energy Common Stock Fund could affect individual participant

accounts and the net assets of the Plan.” [Exhibit 13 – [21 June 2013 Duke Energy Retirement Savings Plan Form 11-K](#), p. 14] (emphasis added)

14. Following the February 2, 2014 Duke Energy coal ash spill into Dan River any executive public statement, governmental action or inaction, Governor McCrory took in regards to Duke Energy could have a material impact upon Duke Energy common stock’s value, thereby significantly affecting the value of one of his largest personal asset (according to SEI filings) - his Duke Energy Retirement 401(k) plan.
15. In response to 2012 SEI Question 5(b), “Do you, your spouse, or members of your immediate family hold stock options valued at \$10,000 or more in a company or business?”, Pat McCrory stated he owned over \$10,000 of stock options in the publicly owned companies of:

Owner of Stock Option	Full Name of Company
Patrick McCrory	Kewaunee Scientific Corporation

16. However, Pat McCrory omitted listing 7,433 unvested Restricted Stock Units granted to him by Tree.com (2,697 shares on 28 April 2010 and 4,355 shares on 30 December 2011). [Exhibit 14 – [30 April 2010 Tree.com Form 4](#)] [Exhibit 15 – [30 December 2011 Tree.com Form 4](#)]
17. On December 31, 2011, Pat McCrory had ownership of 14,436 Tree.com shares. Further, Pat McCrory received \$62,500 in directors fees and a \$50,000 in stock awards for a total compensation of \$112,000. [Exhibit 16 – [27 April 2012 Tree.com Schedule 14A Definitive Proxy Statement](#), pp. 36, 39]
18. Other than these disclosures, his residence at 1963 Maryland Avenue, Charlotte, North Carolina, Pat McCrory listed no other assets over \$10,000 in value.
19. In response to 2012 SEI Question 10 to “List each source of income (not specific amounts) of more than \$5,000 received by you, your spouse, or members of your immediate family during the preceding calendar year. Include salary, wages, state/local government retirement, professional fees, honoraria, interest, dividends, rental income, business income, and other types of income required to be reported on your federal tax return.”, Governor McCrory listed the following:

Name of Source	Type of Business/Industry	Type of Income
Moore & Van Allen PLLC	Law Firm	Salary
McCrory & Company	Sales Training	Consultant Fee
Tulsa Council of Government	Non-Profit	Honorarium
401 K/Cash Balance	Stocks/Bonds	Investments/Dividends
Lending Tree Lending	Mortgage	Director’s Fees/Stock

Kewaunee	Manufacturing	Director's Fees
Bentley Systems	Engineering Software	Consultant Fees
Public Financial Management	Finance Management	Consultant Fees
Belo Corp.	Media Company	Consultant Fees
YMCA	Non-Profit	Honorarium

20. In response to 2012 SEI Question 12, to list all sources of consulting income over \$10,000, Pat McCrory listed the following:

Engineering Software	Consultant Fees
Finance Management	Consultant Fees
Media Company	Consultant Fees

As these consulting fees track SEI Question 10, it appears the companies responsible for paying Pat McCrory over \$10,000 each in calendar year 2011, are Bentley Systems, Public Financial Management and Belo Corporation.

21. McCrory & Company is not listed as paying Pat McCrory any consulting income or commission fees under 2012 SEI Questions 10 or 12 over \$5,000 or \$10,000.
22. In response to 2012 SEI Question 19(a), to "List the name of each business with which you are associated where you, or a member of your immediate family is an employee, director, officer, partner, proprietor, or member or manager," Pat McCrory listed the following:

Name of Company	Role of Person
McCrory & Company	Contractor
Lending Tree	Director
Kewaunee Scientific Corp.	Director
Moore & Van Allen PLLC	Employee

23. In 2012 SEI Question 19(a), Pat McCrory states his position with McCrory & Company is one of a "contractor". This is not how his position was characterized in successive SEC filings:

"Mr. McCrory is a **partner of McCrory & Company**, a sales consulting company, and serves as Mayor of Charlotte, North Carolina, a position he has held since 1995." [Exhibit 17 – [24 July 2009 Kewaunee Schedule 14A Definitive Proxy Statement](#), p. 2] (emphasis added)

Mr. McCrory is a **partner of McCrory & Company**, a sales consulting company, and serves as Mayor of Charlotte, a position he has held since 1995. [Exhibit 18 – [19 March 2009 Tree.com Schedule 14A Definitive Proxy Statement](#), p. 7] (emphasis added)

“Since January 2010, he [Pat McCrory] has been Senior Director of Strategic Initiatives for the law firm of Moore & Van Allen, Charlotte, North Carolina, and since January 2009, he has been a **partner of McCrory & Company**, a sales consulting company” [Exhibit 19 – [23 July 2010 Kewaunee Schedule 14A Definitive Proxy Statement](#), p. 1] (emphasis added)

“Mr. McCrory is a **partner of McCrory & Company**, a sales consulting company, and, since January 2010, has served as Senior Director of Strategic Initiatives at Moore & Van Allen PLLC, a law firm. [Exhibit 20 – [19 March 2010 Tree.com Schedule 14A Definitive Proxy Statement](#), p. 7] (emphasis added)

“Mr. McCrory is a **partner of McCrory & Company**, a sales consulting company, and is Senior Director of Strategic Initiatives for the law firm of Moore & Van Allen, Charlotte, North Carolina since January 2010.” [Exhibit 21 – [22 July 2011 Kewaunee Schedule 14A Definitive Proxy Statement](#), p. 2] (emphasis added)

Mr. McCrory is a **partner of McCrory & Company**, a sales consulting company and, since January 2010, has served as Senior Director of Strategic Initiatives at Moore & Van Allen PLLC, a law firm. [Exhibit 22 – [28 July 2011 Tree.com Schedule 14A Definitive Proxy Statement](#), p. 8] (emphasis added)

“Mr. McCrory is a **partner of McCrory & Company**, a sales consulting company, and is Senior Director of Strategic Initiatives for the law firm of Moore & Van Allen, Charlotte, North Carolina since January 2010.” [Exhibit 23 – [20 July 2012 Kewaunee Schedule 14A Definitive Proxy Statement](#), p. 3] (emphasis added)

Mr. McCrory is a **partner of McCrory & Company**, a sales consulting company and, since January 2010, has served as Senior Director of Strategic Initiatives at Moore & Van Allen PLLC, a law firm. [Exhibit 16 – [27 April 2012 Tree.com Schedule 14A Definitive Proxy Statement](#), p. 8] (emphasis added)

Furthermore, McCrory & Company’s archived website describes Patrick McCrory as a Partner. “**Pat McCrory is a Partner with McCrory & Company. His major focus is client development, strategic planning and leadership consulting.**” [Exhibit 24 – [7 August 2009 McCrory & Company – About Us website](#)] (emphasis added)

24. This omission becomes important in an examination of possible conflicts of interest. McCrory & Company is owned by Governor McCrory’s brother Philip W. McCrory. Governor McCrory discloses he received over \$5,000 in “consultant fee” or “commission

fee” on his 2012, 2013 and 2014 SEIs. However, given the omission of his actual role as Partner, is that the proper characterization of these payments?

25. As McCrory & Company is a private company, its client list is not public. However, its website over time has disclosed the following clients:

ADP	DigitalGlobe	Red Hat
Amicas	FirstRate Investment Systems	SecureWorks
Beck Group	Gorman Health	Strategic Technologies
Bentley Software	Grant Thornton	Transamerica
Catalyst Solutions	Huron Consulting	TriZetto
Cirrus Health	Intelligent Buildings	Unifi
Cisco	Jones Lang LaSalle	UNUM Provident
CSG International	Peak 10	Weight Watchers
Dell SecureWorks	Perot Systems	Wight & Company

Several of these companies do business with the state of North Carolina such as Bentley Software (as noted below) and Huron Consulting (UNC Chapel Hill). Other listed companies may do business with the State, or McCrory & Company may have other undisclosed clients that do. [Exhibit 25 - [2013 McCrory & Company Website](#)]

26. Governor McCrory’s failure to disclose his being a Partner does not permit an examination of possible conflicts of interest. This becomes evident with McCrory & Company’s November 15, 2012 congratulations on Pat McCrory’s election, “We are proud to announce that McCrory & Company Partner, Pat McCrory has been elected Governor of the state of North Carolina and will begin his new responsibilities in early January, 2013. **For the past 4 years, Pat has been active in the important role of client development as well as with helping McCrory & Company’s clients that target the public sector. Pat has been instrumental in helping clients understand the unique complexities, as well as with the “situational fluency” that are necessary to successfully sell to the public sector.** We wish Pat well in this important new role.” [Exhibit 26 – [15 November 2012 McCrory & Company – News Item Website](#)] (emphasis added)
27. Did Governor McCrory’s “helping McCrory & Company’s clients that target the public sector” include clients that would benefit from future State of North Carolina contracts or business? Or “clients that target the public sector” who could or did also provide financial support to a candidacy?
28. In response to 2012 SEI Question 19(b), to “If you know that any company or business entity listed In 19(a) above has any material business dealings or business contracts with the State, or is regulated by the State, provide a brief description of that business activity,” Pat McCrory listed the following:

Name of Company	Role of Person
Kewaunee Scientific Corp.	Product Sales
Lending Tree	Regulatory
Moore & Van Allen	Legal

29. Although Bentley Systems is listed as paying fees over \$5,000 to Pat McCrory on this 2012 SEI, he characterizes these fees as consulting, thereby falling outside SEI Questions 19(a) and (b) definitions for disclosure. Bentley Systems is a software company that provides architects, engineers, constructors, and owner-operators with comprehensive architecture and engineering software solutions for sustaining infrastructure.
30. Bentley Systems sells software to the North Carolina Department of Transportation, and perhaps other North Carolina and local governmental agencies. For example, “Bentley employs a structured, proven methodology for implementation and automation of OS/OW permitting and routing solutions. Bentley ARPS streamlines online issuance of overweight and/or over-dimensional permits to commercial and hazmat vehicles. It ensures compliance with each state’s or province’s statutes and procedures, and eases multistate crossings. ARPS is used by the Colorado DOT, Maryland State Highway Administration, Michigan DOT, Minnesota DOT, North Carolina DOT, and South Carolina DOT. Since 1990, more than six million permits have been issued by ARPS. “[Exhibit 27 - [22 November 2002 I-26 Bentley Project NCDOT](#)] [Exhibit 28 - [1 May 2006 Bentley Press Release](#)]
31. On September 30, 2010 Bentley Systems announced the launch of the Bentley Infrastructure Ambassadors Council with Pat McCrory being appointed ambassador. “The newly appointed ambassadors will engage the global communities of practitioners, constituents, and organizations interested in the key challenges of and opportunities resulting from sustaining infrastructure.” [Exhibit 29 - [30 September 2010 Bentley Press Release](#)]
32. The Bentley Ambassador Council Seminars included participation by Pat McCrory, Moore & Van Allen and the Charlotte Mecklenburg Utility Department in January and March 2011. [Exhibit 30 - [2011 Bentley Webinars](#)]
33. The corporation Bentley Systems has contributed \$510,900 to the Republican Governors Association (“RGA”) since 2008. Bentley Systems contributed \$85,000 in the 2012 election cycle, \$75,450 in 2013, and \$100,00 in 2014 to the RGA. The RGA spent over \$4.8 million supporting Pat McCrory’s 2008 campaign and \$5.6 million for his 2012 election, or a total of \$10.4 million in electing Pat McCrory North Carolina Governor. [Exhibit 31 - Open Secrets. [Bentley Systems RGA Contributions](#)]
34. The founders of Bentley Systems, Keith A. Bentley, Gregory S. Bentley and Barry J. Bentley collectively contributed \$9,000 to Governor McCrory’s 2012 election effort. In

addition, Bentley Systems Federal PAC made a special filing with the State Board of Elections permitting a \$4,000 federal PAC contribution, then declared itself inactive with the same filing. Gregory S. Bentley is a prolific contributor to Republicans. [Exhibit 32 – 20 April 2012 NCSBOE Bentley Systems Federal PAC report] [Exhibit 33 - Open Secrets. [Gregory S. Bentley Contributions.](#)]

35. On the afternoon of January 5, 2013, Patrick Lloyd “Pat” McCrory took the oath of office to become North Carolina Governor (“Governor McCrory”).
36. Governor McCrory resigned as a Director from publicly owned Tree.com effective January 31, 2013. “On January 4, 2013, Patrick McCrory, who was elected as Governor of North Carolina on November 6, 2012, gave notice of his resignation as a member of the Board of Directors of Tree.com, Inc. (the “Company”), effective January 31, 2013. Mr. McCrory was inaugurated as Governor on January 5, 2013. Mr. McCrory’s decision to resign from the Board of Directors of the Company was not a result of any disagreement with the Company or its management.” [Exhibit 34 – [2 May 2014 Tree.com Schedule 14A Definitive Proxy Statement](#), p. 30]
37. On April 9, 2013, Governor McCrory executed and filed the first of two 2013 Statement of Economic Interest (“First 2013 SEI”) for calendar year 2012 with the Ethics Commission, filed under N.C. Gen. Stat. § 138A-22(d) requiring an SEI filing for a candidate for an office subject to the State Government Ethics Act. [Exhibit 3 – *9 April 2013 McCrory SEI*]
38. In signing his First 2013 SEI, Governor McCrory certified that he had read his statement and that, to the best of his knowledge and belief, the statement was true, complete and accurate. His certification also provided that he had not transferred, and would not transfer, any asset, interest, or other property with the intent to conceal it from disclosure while retaining an equitable interest therein.
39. The First 2013 SEI required “If you, your spouse, or members of your immediate family have assets or liabilities with a market value of at least \$10,000 in the following categories, please provide the requested, information as of December 31st of the preceding year unless another time period is specified in the question.” In response to the First 2013 SEI Question 5(a), Governor McCrory stated he owned over \$10,000 of stock in the publicly owned companies of:

Owner of Interest	Full Name of Company
Patrick McCrory	Duke Energy Company
Patrick McCrory	Spectra
Patrick McCrory	Tree.com

40. In a change from Pat McCrory's 2012 SEI for Question 5(a), Governor McCrory omits holding any stock ownership of over \$10,000 in Kewaunee Scientific Corporation on his First 2013 SEI.
41. In response to the First 2013 SEI Question 5(b), "Do you, your spouse, or members of your immediate family hold stock options valued at \$10,000 or more in a company or business?", Pat McCrory stated he owned over \$10,000 of stock options in the publicly owned companies of:

Owner of Stock Option	Full Name of Company
Patrick McCrory	Tree.com

42. On Governor McCrory's First 2013 SEI and Second 2013 SEI, he listed his unvested Tree.com Restricted Stock Units under Question 5(b). This would be consistent with the nature of the awards, being essentially options subject to time periods for exercise and vesting (meaning if one resigns or is fired from the company, the right to receive the stock is forfeited or terminated). According to Tree.com's Third Amended and Restated Tree.com, Inc. 2008 Stock and Annual Incentive Plan, "Restricted Stock Units are Awards denominated in Shares that will be settled, subject to the terms and conditions of the Restricted Stock Units, in an amount in cash, Shares or both, based upon the Fair Market Value of a specified number of Shares. ...Subject to the provisions of the Plan and the applicable Award Agreement, during the period, if any, set by the Committee, commencing with the date of such Restricted Stock Units for which such vesting restrictions apply and until the expiration of such vesting restrictions (the "Restriction Period"), **the Participant shall not be permitted to sell, assign, transfer, pledge or otherwise encumber Restricted Stock Units. ...upon a Participant's Termination of Employment for any reason during the Restriction Period, all Restricted Stock Units still subject to restriction shall be forfeited by such Participant...**" [Exhibit 35 – [11 May 2012 Tree.com Schedule 14A Definitive Additional Proxy Soliciting Materials](#), Annex A-11] (emphasis added)
43. In response to the First 2013 SEI Question 5(b), Governor McCrory also stated he over \$10,000 in stock options of publicly owned company Tree.com. According to Tree.com's May 31, 2013 Revised Definitive Proxy Statement Schedule 14A filed with SEC, Pat McCrory received \$57,972 in directors fees and \$80,232 in stock option awards for a total compensation of \$138,204 for the year ended December 31, 2012. Pat McCrory had 5,518 shares of restricted stock units granted to him with a total number of 10,063 held by him on December 31, 2012. [Exhibit 43 – [31 May 2013 Tree Schedule 14A Definitive Proxy Statement](#), p. 29]
44. Other than these disclosures, his residence at 1963 Maryland Avenue, Charlotte, North Carolina, Governor McCrory listed no other assets over \$10,000 in value.

45. In response to the First 2013 SEI Question 10 to “List each source of income (not specific amounts) of more than \$5,000 received by you, your spouse, or members of your immediate family during the preceding calendar year. Include salary, wages, state/local government retirement, professional fees, honoraria, interest, dividends, rental income, business income, and other types of income required to be reported on your federal tax return,” Governor McCrory listed the following:

Name of Source	Type of Business/Industry	Type of Income
Moore & Van Allen PLLC	Law Firm	Salary – Resigned Dec. 12
McCrory & Company	Sales Training	Consultant Fee – Resig..
Tree.com	Director Fee	Director Fee-Resigned Jan
401 K/Cash Balance	Stocks/Bonds	Investments/Dividends
Kewaunee	Manufacturing	Director Fee - Resigned

46. Bentley Systems is not listed as paying consulting fees to Governor McCrory on this First 2013 SEI. As noted previously, Bentley Systems does business with the State of North Carolina.
47. In response to the First 2013 SEI Question 12, to list all sources of consulting income over \$10,000, Governor McCrory listed the following:

Engineering Software	Consultant Fees
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As consulting fees should track SEI Question 10, why was the company paying Governor McCrory over \$10,000 in calendar year 2012 not listed? Given the same information from Pat McCrory’s 2012 SEI the company appears to be Bentley Systems.

48. In response to First 2013 SEI Question 19(a), to “List the name of each business with which you are associated where you, or a member of your immediate family is an employee, director, officer, partner, proprietor, or member or manager,” Governor McCrory checked the box stating “No Business Associations” and skipped Question 19(b).
49. As previously indicated, Governor McCrory failed to disclose his being a Partner in McCrory & Company.
50. This response also omits that Governor McCrory was still serving on the boards of Kewaunee Scientific Corporation and Tree.com until January 2013, after he was sworn in as Governor.
51. On April 15, 2013, Governor McCrory executed and filed the second of two 2013 Statement of Economic Interest (“Second 2013 SEI”) for calendar year 2012 with the

Ethics Commission, filed under N.C. Gen. Stat. § 138A-22(d) requiring an SEI filing for a candidate for an office subject to the State Government Ethics Act. [Exhibit 4 – 15 April 2013 McCrory SEI]

- 52. In signing his Second 2013 SEI, Governor McCrory certified that he had read his statement and that, to the best of his knowledge and belief, the statement was true, complete and accurate. His certification also provided that he had not transferred, and would not transfer, any asset, interest, or other property with the intent to conceal it from disclosure while retaining an equitable interest therein.
- 53. A series of changes were made to Governor McCrory’s Second 2013 SEI in an apparent attempt to address some of the omissions in the First 2013 SEI.
- 54. The Second 2013 SEI required “If you, your spouse, or members of your immediate family have assets or liabilities with a market value of at least \$10,000 in the following categories, please provide the requested, information as of December 31st of the preceding year unless another time period is specified in the question.” In a change from the First 2013 SEI for Question 5(a), the Second 2013 SEI amends Governor McCrory’s answer to holding stock ownership of over \$10,000 in Kewaunee Scientific Corporation:

Owner of Interest	Full Name of Company
Patrick McCrory	Duke Energy Company
Patrick McCrory	Spectra
Patrick McCrory	Tree.com
Patrick McCrory	Kewaunee Scientific Corporation - Sold prior to becoming Governor

- 55. In response to the Second 2013 SEI Question 5(b), “Do you, your spouse, or members of your immediate family hold stock options valued at \$10,000 or more in a company or business?”, Pat McCrory stated he owned over \$10,000 of stock options in the publicly owned companies of:

Owner of Stock Option	Full Name of Company
Patrick McCrory	Tree.com

- 56. In response to the Second 2013 SEI Question 10, to list all sources of income over \$5,000, Governor McCrory added Bentley Systems. Also, to the extent they existed previously, the dates Governor McCrory resigned from the companies listed under First 2013 SEI Question 10, were removed.

Name of Source	Type of Business/Industry	Type of Income
Moore & Van Allen PLLC	Law Firm	Salary - Resigned

McCrorry & Company	Sales Training	Consultant Fee - Resigned
Tree.com	Director Fee	Director Fee – Resigned
401 K/Cash Balance	Stocks/Bonds	Dividends
Kewaunee	Manufacturing	Director Fee - Resigned
Bentley Systems	Engineering Software	Consultant Fee - Resigned

1. Once again, these resignation entries are misleading for at least two companies, Kewaunee and Tree.com. “Patrick L. McCrorry, a director of Kewaunee Scientific Corporation (the “Company”), has been elected Governor of North Carolina and has notified the Company that he will be resigning from the Company’s Board of Directors when he takes office on January 5, 2013.” According to SEC filings, Governor McCrorry did not resign from Kewaunee until January 6th; “Resigned as a director on January 6, 2013.” Governor McCrorry did not resign from Tree.com until January 31, 2013 (26 days after being sworn in as Governor). [Exhibit 37 – [6 December 2012 Kewaunee Form 8-K](#); [8 January 2013 Kewaunee Form 8-K](#)] [Exhibit 38 – [26 July 2013 Kewaunee Schedule 14A Definitive Proxy Statement](#), p. 8][Exhibit 34 – [2 May 2014 Tree.com Schedule 14A Definitive Proxy Statement](#), p. 30]
2. In response to the Second 2013 SEI Question 19(a), to “List the name of each business with which you are associated where you, or a member of your immediate family is an employee, director, officer, partner, proprietor, or member or manager,” Governor McCrorry checked the box stating “No Business Associations” and skipped Question 19(b).
3. As previously indicated, Governor McCrorry failed to disclose his being a Partner in McCrorry & Company.
4. This response was also inaccurate on December 31, 2013 as Governor McCrorry was still serving on the boards of Kewaunee Scientific Corporation and Tree.com until January 2013, after he was sworn in as Governor.
5. On April 15, 2014, Governor McCrorry executed and filed the first of three 2014 Statement of Economic Interest or Supplements (“First 2014 SEI”) for calendar year 2013 with the Ethics Commission, filed under N.C. Gen. Stat. § 138A-22(d) requiring an SEI filing for a candidate for an office subject to the State Government Ethics Act. [Exhibit 5 – *15 April 2014 McCrorry SEI*]
6. In signing his First 2014 SEI, Governor McCrorry certified that he had read his statement and that, to the best of his knowledge and belief, the statement was true, complete and accurate. His certification also provided that he had not transferred, and would not transfer, any asset, interest, or other property with the intent to conceal it from disclosure while retaining an equitable interest therein.

7. The First 2014 SEI required “If you, your spouse, or members of your immediate family have assets or liabilities with a market value of at least \$10,000 in the following categories, please provide the requested, information as of December 31st of the preceding year unless another time period is specified in the question.” In response to the First 2014 SEI Question 5(a), Governor McCrory stated he owned over \$10,000 of stock in the publicly owned companies of:

Owner of Interest	Full Name of Company
Patrick McCrory	Spectra Energy
Patrick McCrory	Tree.com

8. As became evident, this was incorrect, as Governor McCrory owned over \$10,000 of Duke Energy common stock. Indeed, from previous SEI filings, Duke SEC filings and Governor McCrory’s media statements, his Duke Energy Retirement Savings 401(k) total stock holdings were comprised of at least 30%, and possibly 40%, of Duke Energy common stock. The actual asset value balance of Pat McCrory’s 401(k) plan on December 31, 2012 is unknown. However, Governor McCrory in February 2014 indicated the plan was the Duke Energy Retirement Savings Plan, and it contained over \$10,000 of Duke Energy stock.

In December 2013, 28% of Governor McCrory’s Duke Energy Retirement Savings 401(k) plan net worth was tied directly to the common stock value of Duke Energy.

“The Plan has invested a significant portion of its assets in the Duke Energy Common Stock Fund. **This investment in the Duke Energy Common Stock Fund approximates 28% and 30% of the Plan’s net assets available for benefits as of December 31, 2013 and 2012, respectively. As a result of this concentration, any significant fluctuation in the market value of the Duke Energy Common Stock Fund could affect individual participant accounts and the net assets of the Plan.**” [Exhibit 39 – [18 June 2014 Duke Energy Retirement Savings Plan Form 11-K](#), p. 10] (emphasis added)

9. Yet, Governor McCrory actively touted the very absence of his Duke Energy common stock disclosure on his First 2014 SEI.

“Gov. Pat McCrory has sold the stock he used to own in Duke Energy, the power giant that has come under fire following a Feb. 2 coal ash spill on the Dan River. ... “As public records have shown since April 15, the governor is not a shareholder of Duke Energy” McCrory spokesman Josh Ellis said. “This eliminates the often repeated, ridiculous and false, partisan left-wing attacks challenging the intent of our decisions and policies.” Ellis did not specify when McCrory sold the stock, saying only, “before April 15.””

[Exhibit 40 - Binker, Mark. "[McCrory sells Duke Energy stock.](#)" 1 May 2014 WRAL]

"Two weeks later, his office publicized the absence of Duke on the disclosure report, saying it "eliminates the often repeated, ridiculous and false, partisan left-wing attacks challenging the intent of our decisions and policies."

"We haven't broken any rules or ethics violations or anything," the governor said. "We were trying to tell the truth."

Two days after he sold the last of his stock, the governor announced an "action plan" to tackle toxic coal ash at Duke's power plants across the state, his highest-profile response to the spill that occurred in early February."

[Exhibit 41 - Curliss, J. Andrew and Bonner, Lynn. "[McCrory says no rules were broken in ethics filings on Duke Energy stock sale.](#)" 14 August 2014 Raleigh News & Observer]

10. In response to the First 2014 SEI Question 5(b), "Do you, your spouse, or members of your immediate family hold stock options valued at \$10,000 or more in a company or business?", Pat McCrory stated he owned no options over \$10,000 in the publicly owned companies of:

Owner of Stock Option	Full Name of Company

In response to the First 2014 SEI Question 5(b), Governor McCrory omits holding over \$10,000 in stock options of publicly owned company Tree.com, previously listed in both of Governor McCrory's 2013 SEIs. Governor McCrory resigned from Tree.com's Board of Directors effective January 31, 2103 – twenty six days after he was sworn in as North Carolina Governor.

11. However, Governor McCrory held 10,063 Tree.com unvested restricted stock units options as of December 31, 2013. These were required to be reported on all of his three 2014 SEI filings. [Exhibit 42 - [31 January 2013 Tree.com SEC Form 4](#)]
12. Tree.com's Proxy Statement Schedule 14A information filed May 2, 2014 with the SEC states: "Patrick McCrory resigned from the Board of Directors effective January 31, 2013. **At the time of Mr. McCrory's resignation, the vesting of his unvested equity awards [\$58,000 original award] was accelerated by the Board of Directors.**" [Exhibit

34 - [2 May 2014 Tree.com SEC Form 14A Definitive Proxy Statement](#), p. 30] (Original Award insert added) (Emphasis added)

13. "Upon his or her initial election to our Board of Directors, each non-employee director receives a grant of restricted stock units with a dollar value of up to \$50,000, with the actual amount of the grant being pro-rated based upon the amount of time from such appointment to the date of our next annual meeting of stockholders. Upon his or her re-election to our Board of Directors, each non-employee director receives a grant of restricted stock units with a dollar value of up to \$50,000. The terms of these restricted stock units provide for (1) vesting in two equal annual installments commencing on the first anniversary of the grant date, (2) cancellation and forfeiture of unvested units in their entirety upon termination of service on our Board of Directors and (3) full acceleration of vesting upon a change in control of Tree.com." [Exhibit 43 - [31 May 2013 Tree.com SEC Form 14A Revised Definitive Proxy Statement](#), p. 30] (Emphasis added)
14. Associated Press succinctly summarized the facts, potential conflicts and violations resulting from Governor McCrory's actions:

"Soon after taking office, North Carolina Gov. Pat McCrory and U.S. Rep. Mark Sanford of South Carolina accepted six-figure stock payouts from an online mortgage broker accused by regulators of deceiving its customers.

The two Republicans served as directors at Tree.com, the Charlotte-based corporate parent of the website LendingTree. As board members, they were entitled to large chunks of restricted company stock if they held their positions long enough. Both resigned after their election victories, which would have rendered their unvested stock worthless had the board not taken special action to provide them early payouts.

...

In the months after receiving his \$171,071 payout of stock from Tree.com, McCrory appointed the state's banking director and a majority of the banking commissioners who regulate mortgage brokers.

McCrory spokesman Josh Ellis said there was nothing irregular about that.

"There's absolutely no conflict and nothing improper about these appointments," he said.

Some of Tree.com's payments to McCrory and Sanford weren't publicly disclosed until May 2014, when the company filed its 2013 year-end proxy statement with the U.S. Securities and Exchange Commission. Other details — such as the fact that Sanford received his \$108,539 in Tree.com stock after taking office in Congress — have never been made public until now.

McCrary declined requests for an interview. In a written statement, Ellis said the governor fully complied with state law and "continues to uphold high ethical standards."

...

McCrary joined the Tree.com board in January 2009, a year before ending his last term as Charlotte's mayor. Like all board directors, he was awarded restricted company stock as a performance and retention bonus, which vested in annual installments — as long as he stayed on the board.

While no North Carolina law bars elected officials from serving on corporate boards while in office, they are prohibited from taking official actions that might benefit their personal holdings.

McCrary won election as governor in November 2012. Company records show that he filed his resignation as director the day before his Jan. 5 inauguration, but made it effective Jan. 31, 2013 — the day after the next board meeting, and 26 days after his swearing-in.

That Jan. 30, the board voted to accelerate the vesting of McCrary's 10,063 restricted shares, valued on that date at \$171,071, even though thousands of the shares were not due to vest for another 16 months.

McCrary also was paid \$4,375 in directors' fees for his board service in January 2013, the records show, although Ellis said the governor did not participate in the January board meeting.

And even after McCrary's departure, Tree.com paid its directors a special \$1 per share cash dividend on any unvested stock they held at the end of the prior year, giving the governor another \$10,063 on April 12, 2013, according to the SEC records.

McCrary's total take of \$185,509 from Tree.com in 2013 far exceeded the \$139,590 salary he earned as governor that year.

Tree.com founder and Chief Executive Officer Doug Lebda told AP that "he was worth it," adding 10 times the value of what he was paid.

...

Despite his Tree.com payments, McCrary did not recuse himself from naming the state banking director in the weeks before receiving his special dividend, or from naming eight commissioners to the regulatory agency 18 days later. In addition to licensing mortgage brokers, the commission investigates complaints, which are kept secret under state law unless they result in discipline.

North Carolina's regulators won't comment on whether LendingTree faces any such complaints in its home state, but records show the company has had issues with regulators elsewhere.

The company paid \$3 million to South Carolina in 2012 after regulators said it failed to tell customers it was being paid by the lenders it recommended as having the best mortgage rates.

Tree.com also told the SEC that it has been negotiating to settle "various alleged violations" of state and federal laws with Massachusetts in a case that may be joined by up to 34 other states.

..."

[Exhibit 44 - Biesecker, Michael and Weiss, Mitch. "[AP: Carolinas politicians get payouts from broker](#)" 18 December 2014 *Associated Press* – *WRAL*]

15. Timeline of North Carolina Gov. Pat McCrory's payouts from Tree.com:

- January 4, 2013: McCrory files notice of resignation from board of Tree.com, with an effective date of Jan. 31.
- January 5, 2013: McCrory sworn in as governor.
- January 30, 2013: Tree.com board votes to accelerate vesting of McCrory's remaining 10,063 shares of restricted stock units, converting them to common shares with a cash value on that date of \$171,071.
- March 18, 2013: McCrory appoints Ray Grace as acting Commissioner of Banks. The staff he supervises has regulatory oversight over mortgage brokers such as Tree.com's subsidiary LendingTree.
- April 12, 2013: McCrory paid \$10,063 a special dividend by Tree.com, \$1 a share for each restricted stock unit owned at end of 2012. At some point in 2013, he is also paid \$4,375 in director's fees, bringing his total cash compensation from Tree.com for the year to \$14,438.
- April 15, 2013: McCrory files ethics disclosure form covering 2012. He doesn't disclose his "business association" with Tree.com for

2012 or the potential conflict of interest created by the state's regulatory oversight of the company.

- April 30, 2013: McCrory appoints eight members to state Banking Commission. His appointees now make up a majority of the 14-member board.
- April 15, 2014: McCrory files his ethics disclosure form for 2013. McCrory does not disclose the \$14,438 in director's fees and cash dividends he received from Tree.com in 2013. The ethics form instructs officials to disclose all sources of income of more than \$5,000, including any salary, wages, professional fees and dividends.
- December 17, 2014: McCrory denies any wrongdoing, saying he fully complied with the law.

[Exhibit 45 – [“Timeline of NC Gov McCrory's payouts from Tree.com”](#), 18 December 2014 *Associated Press – WRAL*]

16. This gift of accelerated vesting was never given to other previous Tree.com board directors who resigned, according to SEC filings.

“On December 12, 2012, Christopher R. Hayek, Senior Vice President and Chief Accounting Officer of Tree.com, Inc. (the “Company”), announced he will resign from the Company effective January 31, 2013. ... Mr. Hayek’s restricted stock units scheduled to vest after February 2013 will terminate.” [Exhibit 46 – [14 December 2012 Tree.com Form 8-K](#), p. 2]

“Reflects forfeiture of the November 1, 2010 grant of 25,000 restricted stock units to Mr. [Steven] Ozonian upon the termination of his employment with Tree.com on March 31, 2011.” [Exhibit 16 – [27 April 2012 Tree.com SEC Form 14A Definitive Proxy Statement](#), p. 36]

17. The CEO of Tree.com, Douglas Lebda acknowledged it was the first time the company had done so on December 17, 2014 to the *New York Times*.

...

The revelations could lead to official inquiries related to the business dealings of the two men, both of whom are longtime officeholders in their states and, Securities and Exchange Commission records show, resigned from Tree.com’s board in 2013.

Mr. McCrory's resignation took effect nearly a month after he became governor, while Mr. Sanford left the board on May 16, 2013, a day after he rejoined the House of Representatives after winning a special election.

Prompted by departures of Mr. McCrory and Mr. Sanford, both Republicans, the board agreed to accelerate the vesting schedules of the restricted stock shares they had accrued while overseeing the company, which is based in Charlotte, N.C., and has for years been scrutinized by regulators for possible violations of securities standards. The actions allowed stock holdings that would have otherwise become valueless to turn into payments of \$171,071 for Mr. McCrory and \$108,539 for Mr. Sanford, The A.P. reported.

...

But Mr. Lebda acknowledged that Mr. McCrory, who as governor appointed members of a North Carolina panel that regulates banking, was the first person to benefit from such a decision by the board. He said a similar situation had never before come up at Tree.com, which became a public company in 2008 and whose businesses include LendingTree.

...

Although Mr. Lebda insisted the payments were ethically sound, others said they had misgivings about how they were handled by the company's board.

"Doing it under the circumstances that they did, at least as the facts are presented, raises some significant ethical questions," said Thomas O. Gorman, a Washington lawyer who previously worked for the Securities and Exchange Commission and read the A.P. story after its publication. "It raises a very serious appearance of impropriety question."

He added: "Doing it the way they did it by taking the action after they're elected and then paying them after they're elected makes it look, at least on the surface, like you've got a company making payments to an elected official."

[Exhibit 47 – Blinder, Alan. ["Pat McCrory and Mark Sanford Fire Back at Article About Stock Payouts"](#) 17 December 2014 *New York Times*]

18. According to Duke Law Professor, and securities expert, James Cox:

"This whole thing has a very bad odor." For one, Cox said, boards that are too willing to accelerate vesting may be abusing the terms of the stock options approved by the stockholders.

Cox added that the practice is even more questionable when it's used to compensate directors who have assumed public office. And it's exceptionally questionable when the departing director is becoming the governor who will appoint the company's regulators, in this case the state's banking director and the majority of the banking commissioners.

Of McCrory, Cox said, "That he was able to get a special benefit that was never contracted for before he became governor makes it a question of whether it was a payment for cooperation. It can easily be read that way."

[Exhibit 48 – Barnett, Ned. "[McCrory blames the messenger](#)" 20 December 2014 *Raleigh News & Observer*](emphasis added)

19. On December 31, 2013, the date of valuation for Governor McCrory's 2014 SEI filing, Governor McCrory owned 31,672 shares (assuming no unreported sales) of Tree.com stock granted to him at no cost during his four years of board service. Tree.com stock closed trading on December 31, 2103 at \$32.84 a share, making Governor McCrory's holdings worth \$1,040,108. [Exhibit 49 – [31 January 2013 Tree.com SEC Form 4](#)]
20. In summary, totaling Tree.com's 2009, 2010, 2011, 2012 and 2013 SEC Schedule 14A filings amounts, Pat McCrory received over \$1,000,000 worth of Tree.com stock at no cost to him, \$255,680 in directors fees and at least \$10,063 in dividends (valuation as of Governor McCrory's 2014 SEI December 31, 2013 reporting date).
21. In response to the First 2014 SEI Question 10 to "List each source of income (not specific amounts) of more than \$5,000 received by you, your spouse, or members of your immediate family during the preceding calendar year. Include salary, wages, state/local government retirement, professional fees, honoraria, interest, dividends, rental income, business income, and other types of income required to be reported on your federal tax return," Governor McCrory listed the following:

Name of Source	Type of Business/Industry	Type of Income
McCrory & Company	Sales Training	Commission fee earned in 2012
State of NC	Governor	Salary

22. Neither Governor McCrory's previous investment holdings or directors fee disclosures for Tree.com or 401 K/Cash Balance are listed as having provided more than \$5,000 in income. Of course, this would also draw attention to the lack of 401(k) disclosure with Duke Energy common stock holdings.
23. This filing is incorrect as Governor McCrory received \$4,375 in directors fees and \$10,063 in a special stock dividend or a total of \$14,438 from Tree.com for the year ended

December 31, 2013. Tree.com's Proxy Statement Schedule 14A information filed May 2, 2014 with the SEC states:

"The amounts in this column include \$7,304 each for Messrs. Horan, Lackey, Levin, Ozonian, **\$10,063 for Mr. McCrory**, and \$5,518 for Mr. Sanford. These amounts are dividend equivalent payments provided to directors' then outstanding restricted stock units in connection with the Company's special dividend that was paid to Company shareholders in December 2012. The directors' restricted stock unit agreements provide for payment of dividend equivalent amounts if the Company declares and pays a dividend on common stock. The dividend equivalent payments were equal to the dividend that would have been paid with respect to each restricted stock unit as if the restricted stock unit had been an actual share of common stock and **was paid to** Messrs. Horan, Lackey, Levin, Ozonian and Sanford on August 16, 2013 and to **Mr. McCrory on April 12, 2013.**" [Exhibit 34 – [2 May 2014 Tree.com Schedule 14A Definitive Proxy Statement](#), p. 30] (Emphasis added)

24. This stock dividend payment in 2013 is not listed on any of Governor McCrory's three (3) 2014 SEIs. Curiously, Tree.com paid Governor McCrory his \$10,063 dividend four (4) months prior to other directors on April 12, 2013. Of course, as was subsequently disclosed, Governor McCrory believed the cut-off date for disclosure was the filing date of April 15th of the current year for an SEI, not the correct December 31st of the preceding year.
25. Governor McCrory was unrepentant in defending his actions.

"...McCrory's office issued several statements denying the governor had done anything improper or illegal, saying he had adequately disclosed the income and his business relationship with the company on his ethics forms. McCrory's re-election campaign appealed to supporters for cash to "fight back" against the AP report.

"I continue to uphold high ethical standards and follow the law," McCrory said in a written statement.

...

The AP investigation relied on public documents Tree.com filed with the U.S. Securities and Exchange Commission, interviews with top company officials and ethics disclosure forms filed by the politicians.

North Carolina officials are required to disclose their business dealings and their sources of compensation on annual ethics forms.

On his forms covering 2013, McCrory didn't disclose the \$14,438 in fees and cash dividends he received from Tree.com. The forms specifically ask officials to include stock dividends and fees exceeding \$5,000 from a single source.

McCrory's office said the governor wasn't required to disclose his cash compensation from Tree.com, citing a passage in state law reading: "if that source is not listed under subdivision (2) of this subsection." Because McCrory had disclosed owning more than \$10,000 in Tree.com stock, as required under subdivision (2), McCrory spokesman Josh Ellis said the governor had no obligation to report his Tree.com income later on the same form.

Jane Pinsky, director of the non-partisan North Carolina Coalition for Lobbying & Government Reform, said she had never heard that interpretation of the statute.

"The governor should be setting an example," Pinsky said. "He can't just play to the letter of the law, but needs to follow the spirit of the law. He should be, if anything, over disclosing. He should be showing that ethics matter and that filling out those forms matter."

...

[Exhibit 50 – Biesecker, Michael and Weiss, Mitch. "[Analysts question McCrory's payout disclosure](#)" 17 December 2014 *Associated Press – WRAL*]

26. Governor McCrory's obfuscation regarding statutory interpretation is misplaced. The statute upon which he relies for bolstering his argument is quite clear:

[N.C.G.S. § 138A-24. Contents of statement.](#)

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the Commission. Answers must be provided to all questions. (emphasis added)

27. In response to the First 2014 SEI Question 19(a), to "List the name of each business with which you are associated where you, or a member of your immediate family is an employee, director, officer, partner, proprietor, or member or manager," Governor McCrory checked the box stating "No Business Associations" and skipped Question 19(b).
28. As previously indicated, this is incorrect unless Governor McCrory resigned as Partner in McCrory & Company prior to December 31, 2013. If he resigned as Partner, then why were over \$5,000 in "commission fees" paid to him in 2013 from work completed in 2012?

And what company was responsible for the work resulting in those “commission fees”? Was it a company that does business with the State of North Carolina?

29. On May 16, 2014, Governor McCrory executed and filed the second of three 2014 Statement of Economic Interest or Supplements (“Second 2014 SEI”) for calendar year 2013 with the Ethics Commission, filed under N.C. Gen. Stat. § 138A-22(d) requiring an SEI filing for a candidate for an office subject to the State Government Ethics Act. [Exhibit 6 – 16 May 2014 McCrory SEI]
30. In signing his Second 2014 SEI, Governor McCrory certified that he had read his statement and that, to the best of his knowledge and belief, the statement was true, complete and accurate. His certification also provided that he had not transferred, and would not transfer, any asset, interest, or other property with the intent to conceal it from disclosure while retaining an equitable interest therein.
31. The Second 2014 SEI required “If you, your spouse, or members of your immediate family have assets or liabilities with a market value of at least \$10,000 in the following categories, please provide the requested, information as of December 31st of the preceding year unless another time period is specified in the question.” In response to the Second 2014 SEI Question 5(a), Governor McCrory amended his First 2014 SEI statement that he owned over \$10,000 of stock in the publicly owned companies of:

Owner of Interest	Full Name of Company
Patrick McCrory	Spectra Energy (Correction: Sold Prior to April 15, 2014)
Patrick McCrory	Tree.com

32. Yet again, Governor McCrory’s Second 2014 was erroneous as Governor McCrory owned over \$10,000 of Duke Energy common stock as of December 31, 2013. From previous SEI filings and Duke SEC filings, it appears that Governor McCrory’s 401(k) total stock holdings were comprised of at least 28%, and possibly 40%, of Duke Energy common stock.
33. When confronted by the media again over whether he held Duke Energy stock, Governor McCrory provided varying answers:

“On Feb. 14, [2014] McCrory indicated in an exchange with a reporter at a news conference that he still owned the company’s stock, saying, “I have some 401(k) and in my original 401(k) some Duke Energy value.” He declined to answer a follow-up question. Ellis said McCrory sold the stock after that exchange. ... Ellis said he could not be more specific about the timing of McCrory’s stock sale. **He said the governor, a Republican, sold his holdings sometime between Feb. 14 and April 15 this year.** McCrory was not available for an interview, Ellis said.”

[Exhibit 51 – Curliss, J. Andrew and Jarvis, Craig. “[McCrory misstated Duke Energy holdings, sold stock after coal-ash spill](#)” 13 August 2014 *Raleigh News & Observer*] (date insert and emphasis added)

“I completed the selling of all my energy (stocks) — both Spectra and Duke — right before I submitted that report,” McCrory said. McCrory sold his last shares in both companies between April 9 and 14, McCrory spokesman Josh Ellis said. The spokesman could not explain why the governor’s statement erroneously listed ownership of more than \$10,000 in Spectra Energy shares in his April 15 filing when both they and the Duke Energy shares had been sold by that date.

[Exhibit 52 – Associated Press. “[McCrory defends handling of shares](#)” 18 August 2014 *Winston Salem Journal*]

“On April 15, the day after his sales were complete, McCrory filed an ethics disclosure covering the 2013 calendar year that said he did not own Duke stock as of Dec. 31. That wasn’t the case; Stephens said in an interview he thought the form was asking for a disclosure as of April 15. The governor said he wanted to be transparent – and let the public know he was no longer a shareholder. Two weeks later, his office publicized the absence of Duke on the disclosure report, saying it “eliminates the often repeated, ridiculous and false, partisan left-wing attacks challenging the intent of our decisions and policies.”

This week, McCrory amended the filing to reflect what it asks for, which are his holdings as of Dec. 31. Public officials who “knowingly” do not disclose information on the ethics disclosure form can face criminal penalties. McCrory signed the form as true. He had taken the State Ethics Commission’s required training on the ethics law in July 2013, according to records. If he had filed the form correctly in April, as he now has, “It would have looked like I owned the stock when, in fact, I divested from it” at the time the report was filed, McCrory said.

[Exhibit 53 – Curliss, J. Andrew and Bonner, Lynn. “[McCrory says no rules were broken in ethics filings on Duke Energy stock sale](#)” 14 August 2014 *Raleigh News & Observer*]

34. In response to the Second 2014 SEI Question 5(b), Governor McCrory omits holding over \$10,000 in stock options of publicly owned company Tree.com, previously listed in both of Governor McCrory’s 2013 SEIs. Governor McCrory resigned from Tree.com’s Board of Directors effective January 31, 2013.

35. Governor McCrory’s filing is incorrect as he received \$4,375 in directors fees and \$10,063 in a special stock dividend or a total of \$14,438 for the year ended December 31, 2013. Once again, Governor McCrory ignores his director fee payments and stock dividends from Tree.com, along with the accelerated vesting of his unvested equity awards by the Board of Directors.
36. In response to the Second 2014 SEI Question 10 to “List each source of income (not specific amounts) of more than \$5,000 received by you, your spouse, or members of your immediate family during the preceding calendar year. Include salary, wages, state/local government retirement, professional fees, honoraria, interest, dividends, rental income, business income, and other types of income required to be reported on your federal tax return,” Governor McCrory listed the following:

Name of Source	Type of Business/Industry	Type of Income
McCrory & Company	Sales Training	Commission fee earned in 2012
State of NC	Governor	Salary

37. Again, neither Governor McCrory’s previous investment holdings or directors fee disclosures for Tree.com or 401 K/Cash Balance are listed as having provided more than \$5,000 in income. Of course, this would also draw attention to the lack of 401(k) disclosure with Duke Energy common stock holdings.
38. In response to the Second 2014 SEI Question 19(a), to “List the name of each business with which you are associated where you, or a member of your immediate family is an employee, director, officer, partner, proprietor, or member or manager,” Governor McCrory checked the box stating “No Business Associations” and skipped Question 19(b).
39. Once again, this is erroneous unless Governor McCrory resigned as Partner in McCrory & Company prior to December 31, 2013. If he resigned as Partner, then why were over \$5,000 in “commission fees” paid to him in 2013 from work completed in 2012? And what company was responsible for the work resulting in those “commission fees”? Was it a company that does business with the State of North Carolina?
40. On August 13, 2014, Governor McCrory executed and filed the third of three 2014 Statement of Economic Interest or Supplements (“Third 2014 SEI”) for calendar year 2013 with the Ethics Commission, filed under N.C. Gen. Stat. § 138A-22(d) requiring an SEI filing for a candidate for an office subject to the State Government Ethics Act. [Exhibit 7 – 13 August 2014 McCrory SEI]
41. In signing his Third 2014 SEI, Governor McCrory certified that he had read his statement and that, to the best of his knowledge and belief, the statement was true, complete and accurate. His certification also provided that he had not transferred, and would not

transfer, any asset, interest, or other property with the intent to conceal it from disclosure while retaining an equitable interest therein.

42. In Governor McCrory’s Third 2014 SEI, he supplemented his answer to Question 5(a), Governor McCrory amended his First and Second 2014 SEI statements that he owned over \$10,000 of stock in the publicly owned companies. The Third 2014 SEI required a yes or no answer to: “Do you, your spouse, or members of your immediate family own interest (generally stock) valued at \$10,000 or more in a publicly owned company? In response to the First 2014 SEI Question 5(a), Governor McCrory stated yes, he owned over \$10,000 of stock in the publicly owned companies of:

Owner of Interest	Full Name of Company
Patrick McCrory	Duke Energy Corporation
Patrick McCrory	Spectra Energy

43. Of course, this omits Tree.com along with the other omissions previously noted for the First and Second 2014 SEIs.
44. While an individual’s past actions do not necessarily presage future actions, a historical context illustrates Pat McCrory’s views on omissions and conflicts of interest. On October 1, 1997, then Mayor Pat McCrory testified “on Capitol Hill against stringent new federal air-quality regulations. Environmental Protection Agency guidelines announced this summer would require cities like Charlotte to drastically curb the amount of nitrogen oxides, which contribute heavily to ozone pollution.” The *Charlotte Observer* noted that “Charlotte suffers chronic air pollution problems that result primarily from automobiles and power plants.” [Exhibit 54 – Chapman, Dan. “McCrory to Speak Against EPA Air Limits.” 1 October 1997 *Charlotte Observer*]
45. However, Mayor McCrory failed to disclose he also worked for Duke Energy which would have a \$600 million cost in meeting the proposed air-quality regulations. McCrory never noted in his testimony that Duke Power employed him. His testimony began: “Mr. Chairman and committee Members, I am Pat McCrory, Mayor of Charlotte, North Carolina. I am here today on behalf of The U.S. Conference of Mayors where I serve as the Chair of the Energy and Environment Committee.” The *Charlotte Observer* reported, “Duke Energy expects to spend about \$600 million for new emission controls on its plants.”

[Testimony of Pat McCrory before Joint Hearing of the Health And Environment & Over-Sight And Investigations Subcommittees of the House Commerce Committee Subject: Clean Air Act Implementation, Co-Chairs: Reps. Michael Bilirakis (R-FL) & Joe Barton (R-TX), 2123 Rayburn Office Building, Washington, DC. 1 October 1997 *Federal News Service*] [Exhibit 54 –

Chapman, Dan. "McCrorry to Speak Against EPA Air Limits." 1 October 1997 *Charlotte Observer*]

46. McCrorry did not view this omission of his employer as a conflict of interest. "If the city had a very smoggy summer, commuters might have to pay more for cleaner-burning fuel or emission inspections. Industries would have to install new, expensive equipment to better trap their emissions. That would also apply to McCrorry's employer, Duke Energy, which runs some coal-burning power plants that federal officials list among big contributors to Charlotte's smog problems. The company is expected to have to pay \$600 million for new emission controls, it says. McCrorry said he was speaking as mayor of the Queen City's residents and representative of the U.S. Conference of Mayors - and both have grave reservations about the standards. He sees no conflict in speaking on the issue and working for a big utility company. 'If you work for any company in Charlotte, you'd have a conflict,' he said of opposing the standards. 'This impacts everybody.'" [Exhibit 55 – Leonnig, Carol. "McCrorry: Clean-Air Plan Is Too Much." 2 October 1997 *Charlotte Observer*] (emphasis added)
47. "When asked about a possible conflict of interest arising from his appearance on Capitol Hill as Charlotte's mayor to testify about a matter that would directly affect his employer, Duke Power (where he serves as manager of business relations), McCrorry replied, "No, in fact it's quite beneficial because I'm very knowledgeable on the subject. ..." [Exhibit 56 – Boykin, Sam. "[Something In The Air.](#)" 13 October 2001 *Creative Loafing Charlotte*]
48. In a more egregious example, *News & Observer* columnist Rob Christensen's chronicled then Mayor Pro Tempore McCrorry's official actions conflicting with his role as Duke Power employee in the North Carolina Supreme Court case, *City of Charlotte v. Cook*, 348 N.C. 222 (1998):

The N.C. Court of Appeals ruled that the City of Charlotte exceeded its authority when it voted to condemn the Cook property. The N.C. Supreme Court reversed the decision and ruled in favor of the city. But the Supreme Court raised questions about the role of McCrorry, who was then mayor pro tem. McCrorry signed an affidavit saying he would have recused himself if he'd known the vote benefited Duke. But during the court proceedings, internal Duke emails were produced from Larry Shephard, the project manager at Duke. In one of the emails, dated March 22, 1994, Shephard wrote, "I will contact Pat McCrorry to let him know what this is about. He may be able to influence others, but he will most likely have to not vote given the possible conflict of interest."

"The mayor pro tem of the city was an employee of Duke Power Co.," the Supreme Court said in a majority opinion. "The mayor was absent from the meeting at which the City Council voted to condemn the property, and the mayor pro tem presided over the meeting. The mayor pro tem voted to condemn a fee-simple title. He filed an affidavit in which he said that if he had known Duke Power Co.

was involved in the matter, he would not have participated in the meeting. There was some evidence that he knew Duke was involved. The defendants say this makes the action by the Council arbitrary and capricious. We cannot so hold. An ethical problem involving the Council has to rise to a much higher level than this one for us to upset a decision by the Council.”

In a dissenting opinion, Justice I. Beverly Lake, a former Republican nominee for governor, went even further. “I must respectfully dissent because I believe this decision, while satisfying two of our corporate giants, works a grave injustice upon innocent and powerless people and impairs the law on the taking of private property for a public purpose,” Lake wrote. “The record evidences multiple Duke Power internal email messages and memoranda that Duke Power and the City collaborated to have the City acquire a fee-simple title to the property in order that Duke could provide the power to the plant. These email messages indicate that the mayor pro tempore of the City, an employee of Duke Power, as well as the project director had contact with Duke Power officials and discussed condemning a fee-simple interest for the project. The mayor pro tempore (McCrorry) chaired the 12 September 1994 City Council meeting where the subject of condemning a fee simple was discussed, and he voted in favor of a fee-simple condemnation.” [Exhibit 57 – Christensen, Rob. “[Fact check: McCrorry’s role in Duke Power easement case](#)” 12 October 2012 *Raleigh News & Observer*]

TREE.COM AND DUKE ENERGY CORPORATION **GOVERNOR PAT McCRORY’S CONFLICTS OF INTEREST**

49. Reaction to Governor McCrorry’s explanations for filing erroneous and misleading SEIs for Duke Energy stock holdings was swift from the *Charlotte Observer*:

McCrorry’s mishandling of his Duke stock

We’re not sure which is most upsetting:

- That Gov. Pat McCrorry owned a substantial amount of Duke Energy stock for his first 15 months in office, including for two months after Duke’s massive coal ash spill, even though that posed an obvious conflict of interest as the utility lobbied the administration hard on all kinds of matters.
- That McCrorry filed an inaccurate report with the State Ethics Commission, saying he didn’t own any Duke stock as of Dec. 31, 2013, when in fact he did. Doing so reveals either a desire to mislead or gross incompetence by him and his general counsel.

- That McCrory still doesn't get it. The governor maintains "we haven't broken any rules" when that is indisputably untrue. He says he is "amazed" at the questions surrounding his mistake, fully unable to comprehend that it's a matter most North Carolinians consider newsworthy.

Let's take them one at a time.

Duke, a regulated utility, gave more than \$650,000 in campaign contributions to candidates in 2013 and lobbies the McCrory administration and legislators on an array of issues. The governor appoints members of the Utilities Commission and the administration (occasionally) enforces environmental laws. Yet McCrory, who worked at Duke for 29 years, held on to his Duke stock into April, even as he was orchestrating the state's response to Duke's spill into the Dan River. That is a direct conflict. He should have sold it the day after he was elected, or at least put his holdings into a blind trust as many other high-ranking elected officials do.

McCrory blames the inaccurate report on his general counsel, Bob Stephens. The forms ask for McCrory's holdings as of Dec. 31, 2013. McCrory says Stephens "misread" the forms and thought they should reflect holdings as of April 15, 2014, one day after the governor sold the last of his Duke stock.

The governor hopes that excuse is good enough. We don't recommend you try using it with the IRS if you misstate information on your Form 1040. And scores of other public officials with significantly smaller teams of legal experts managed to read the instructions correctly. It would be stunning for Stephens, with vast experience in public affairs and a 40-year legal career, to overlook something so basic.

Even today, McCrory is not being transparent. He won't say how much Duke stock he owned; state law is flawed in that it requires him only to say whether it was worth more than \$10,000, but it could be any amount above that.

Rather than owning the mistake, McCrory issued a defensive statement and said he broke no rules. In May, a spokesman pointed to the now-discredited disclosure report and said it "eliminates the often repeated, ridiculous and false, partisan left-wing attacks challenging the intent of our decisions and policies." That reminds one of Hillary Clinton dismissing probes into her husband as just a "vast right-wing conspiracy."

No conspiracy put Monica Lewinsky in the Oval Office, no conspiracy convicted Gov. Mike Easley of campaign finance irregularities. And, governor, no conspiracy made you hang on to a personal stake in a company you're supposed to be regulating for the good of the state.

[Exhibit 58 – "[McCrory's mishandling of his Duke stock.](#)" 16 August 2014 *Charlotte Observer*]

50. Likewise, reaction to Governor McCrory's explanations for filing erroneous and misleading SEIs for Tree.com accelerated stock vesting, directors fees and dividends was once again swift from the *Charlotte Observer*:

"...The governor has done everything in a proper and ethical manner," his office said. "This is a classic example of partisan drive-by journalism that deliberately misrepresents the facts."

Not so fast. The heart of the story – the actual payouts themselves – remains largely undisputed. Even if no laws have been broken, so much smells funny here that it's hard to know where to begin.

At the center of it all are questions about the way McCrory wound down his role as a member of the board of directors for Tree.com, the Charlotte-based parent firm for LendingTree.

He filed his resignation from the board on Jan. 4, 2013 – the day before he was sworn in as governor. However, he made the resignation effective Jan. 31. That was the day after a Tree.com board meeting in which board members voted to accelerate the vesting of his 10,063 restricted shares of the company's stock.

Those shares, valued at \$171,071, weren't set to vest for another 16 months. And with McCrory leaving the board, the shares would have become worthless had the board not taken action.

It's not uncommon for exiting private corporate board members to get stock payouts. Sometimes they're even accelerated, as McCrory's was. But such payouts are not common for elected officials, and more than a dozen securities lawyers and ethics experts told the AP the situation raises significant concerns.

It means we had a governor who, as he mulled his choice for state banking director, also happened to be in line for an uncommonly thoughtful act of financial kindness from Tree.com's board. Around that same time, he

named eight commissioners to the state regulatory agency that licenses mortgage brokers and investigates complaints against them.

When a governor can receive that much money – more than his \$139,590 state salary – from a company with business before the regulators he appoints, that's a problem. When a governor doesn't think the people who elected him might want to know that, perhaps that's an even bigger problem.

The ethics form requires the governor to disclose whether he's on a corporate board. But McCrory contends the wording of that question left it unclear whether he was being asked for his status at the moment he filled out the form, or if it sought to learn if he'd been on a board during the previous calendar year. (His aides note that he disclosed elsewhere on the form that he held more than \$10,000 worth of Tree.com stock. The form didn't require more specifics).

McCrory insists he did nothing improper. The money was paid to him for service he provided before becoming governor, aides say, and he didn't participate in the board meeting where the accelerated vesting was approved.

He says he only stayed on the board until the end of January because Tree.com needed him to. CEO Doug Lebda concurred, saying he asked McCrory to stay on past his swearing in so the company could have more time to find another independent director.

But the explanation still feels shaky. His seat stayed vacant for more than a year. A company spokeswoman later clarified to the AP that Lebda needed McCrory to stay on to give the firm time to shift committee assignments to meet SEC requirements.

Again, the whole thing smells funny.

Maybe that's why Team McCrory has gone into full damage-control-attack mode.

By late Wednesday, McCrory came out with a harder-edged statement defending his integrity and saying the story had been written "with malice and intent to do harm" – code, as journalists know, for a lawsuit threat.

The governor knows exactly how bad this smells. And what he's essentially telling us is: "This isn't what it looks like!" What does it look like?

Something we see far too often at the intersection of politics and business – the insider’s sweet deal.

No matter how many times Lebda says McCrory’s sage boardroom advice was worth millions, nobody outside that boardroom’s buying that. Average citizens – the ones who don’t get invited to sit on corporate boards – know his political influence had as much to do with his value to Tree.com as his mortgage banking savvy. ...”

[Exhibit 59 – [“McCrory’s stock deal smells funny”](#) 17 December 2014 *Charlotte Observer*]

51. From the Raleigh *News & Observer*:

Gov. Pat McCrory had a rough week. It started with an Associated Press report that said he failed to properly disclose compensation he received in 2013 from Tree.com, an online mortgage broker and the Charlotte-based parent company of the website Lending Tree. It ended with his engaging in carefully selected media interviews during which he declared himself a feisty, upright businessman who doesn’t break the law.

Let’s start with his “I am not a crook” defense. It’s an odd defense because no one said he was a crook. What the AP story said was that the timing of the compensation to McCrory raised conflict-of-interest issues and that his reporting of that compensation on financial disclosure forms was at best sloppily incomplete and at worst deliberately obscure.

All that is true. And truth is the ultimate defense against libel no matter how much the governor hints at legal action against one of the story’s two reporters by declaring he reported with malice. Indeed, the actionable issue here may be the governor’s engaging in slander by impugning the reporter’s motives and ethics.

It appears McCrory got himself into this situation by being too hungry for easy money. He served on the board of Tree.com for four years and received more than \$600,000 in director’s fees, dividends and stocks, the AP reported. His qualifications for that generous compensation apparently were his having been the mayor of Charlotte, a longtime employee of Duke Energy and, although not a lawyer, an employee of a large law and lobbying firm. Tree.com – a target of complaints, lawsuits and reviews by regulators – no doubt valued McCrory for his political status rather than his wisdom about online mortgage brokering.

Clearly political connections must have been the appeal in Tree.com's selection of another board member who also got ill-timed compensation: disgraced former South Carolina Gov. Mark Sanford, now a U.S. representative. Did Tree.com want Sanford – a man who used public funds to fly to Argentina for trysts with his mistress – for his ethics and judgment?

The AP story cited McCrory and Sanford for cashing in Tree.com restricted stock options under special terms after they assumed public office. As directors, they were compensated with stock options, but to encourage stability on the board, the options are nullified if directors leave the board early. When both McCrory and Sanford did so, the Tree.com board voted to accelerate the vesting of their options so they wouldn't go away uncompensated. The acceleration provided McCrory a \$171,071 payout. Sanford received \$108,539.

Thomas Lee Hazen, a professor who specializes in securities law at the University of North Carolina at Chapel Hill's law school, said accelerated vesting is not unheard of and can be a matter of fairness. But Hazen said of the McCrory and Sanford deal, "What could make it unusual is the public official aspect of it."

James D. Cox, a Duke law professor who is also an expert in securities law, was more emphatic. He said, "This whole thing has a very bad odor." For one, Cox said, boards that are too willing to accelerate vesting may be abusing the terms of the stock options approved by the stockholders.

Cox added that the practice is even more questionable when it's used to compensate directors who have assumed public office. And it's exceptionally questionable when the departing director is becoming the governor who will appoint the company's regulators, in this case the state's banking director and the majority of the banking commissioners.

Of McCrory, Cox said, "That he was able to get a special benefit that was never contracted for before he became governor makes it a question of whether it was a payment for cooperation. It can easily be read that way."

McCrory declined to give the AP an interview when it was preparing the story, but he jumped into a full media push after the story appeared. The governor's interview with WRAL's David Crabtree was a remarkable exercise in misdirection. McCrory took a few stabs at blaming the messenger. Then he assumed the role of victim, saying there's a left-wing bias against people who come into government from business.

What McCrory should have done was close his relationship with Tree.com well before the election. Since he didn't, he should have at least disclosed that in his first year in office he received more compensation from Tree.com than he did from the state of North Carolina. Having failed that, he should have admitted to the AP that the timing of the acceleration of his stock options – the board approved them weeks after he was inaugurated – was a mistake in terms of disclosure and appearance even if the compensation had no effect on his appointments.

[Exhibit 60 – Barnett, Ned. "[McCrory blames the messenger](#)" 20 December 2014 *Raleigh News & Observer*]

52. Criticism and concern of Governor McCrory's executive actions regarding Duke Energy began before he was inaugurated. Would proper disclosure on his all 2008 – 2014 SEI filings muted or inflamed this criticism? Did it cause Governor McCrory to knowingly and intentionally file "erroneous" SEIs?
53. On January 4, 2013, the organizations of AARP North Carolina and NC WARN sent a letter urging incoming Governor McCrory to recuse himself from making several upcoming appointments to the NC Utilities Commission due to his unprecedented conflict of interest – having worked for Duke Energy for 28 years. "After being employed at Duke Energy for 28 years, you have an actual conflict of interest. Because of this, we ask you to recuse yourself from making these appointments, and to establish a process for choosing commissioners, the chairman and the executive director that is transparent, ethical and fair to all North Carolinians." [Exhibit 61 – AARP and NC WARN. "[Governor's recusal sought due to Duke Energy career.](#)" 4 January 2013]
54. A little over a month later on February 11, 2013, the same organizations sent a second letter regarding legislation that passed the North Carolina Senate requiring that whenever legislative leadership and the governor changes party, the seated NC Utilities Commissioners would be thrown out and replaced.

"The present Senate Bill 10, which passed the Senate last week, makes your conflict of interest situation, to our knowledge, unprecedented in state history. If the bill passes, you would be required to appoint all the members of the Utilities Commission. The public perception would be inescapable that Duke Energy had captured its regulator, and had done so with the Governor's assistance.

The Utilities Commission provisions of the bill would set the precedent that whenever legislative leadership and the governor changes party, the seated commissioners would be thrown out and replaced. It would do away with the Commission's institutional legitimacy as well as its knowledge base and continuity gained by handling its highly complex legal,

technical, and policy issues. The public, already skeptical that utility regulation is in the public's interest, would see the Commission as just a rubber stamp wielded by politicians and their utility industry backers. Instead of bolstering faith in the integrity and effectiveness of state government, the bill would take cynicism to a new level."

[Exhibit 62 – AARP and NC WARN. "[Senate Bill 10 and the N.C. Utilities Commission](#)" 11 February 2013]

55. Speaking directly to Pat McCrory's 2012 SEI (and the importance of disclosure), NC WARN sent another letter to Governor Pat McCrory:

NC WARN has obtained your most recent Statement of Economic Interest filing from the NC Ethics Commission, which shows your ownership of a large amount of Duke Energy stock as of February 16, 2012. We therefore reiterate the January 4th call by AARP NC and NC WARN that you recuse yourself from appointments to the NC Utilities Commission.

In addition, we restate our February 11th request that you publicly state your opposition to Senate Bill 10, which would allow you to immediately replace all members of the Utilities Commission – the regulators who set electricity customers' rates and approve Duke's plans to invest billions of customer dollars building power plants North Carolina does not need.

Most importantly, we think you will agree that the People of North Carolina deserve to know: What is the value of your holdings in Duke Energy?

The SEI requires only that you indicate if holdings exceed \$10,000. Since you worked at Duke Energy for 28 years, it seems likely that your stock ownership could reach into six figures, if not into the millions.

As we noted to you earlier, your career at Duke Energy already created a powerful conflict of interest. Now that conflict is compounded by the knowledge that you have profited alongside Duke even after you left the corporation, and might well still be doing so.

Your conflict of interest regarding the NC Utilities Commission and its Public Staff, to our knowledge, has no precedent in North Carolina or anywhere else in the United States. We urge you to encourage public trust in State Government by taking the steps noted above, and those outlined in our January 4th letter, that would create a firewall between the governor's office and his long-time corporate connections.

[Exhibit 63 – NC WARN. [“Is Governor still profiting from Duke Energy as he plans to replace its regulators?”](#) 14 February 2013]

56. In March 2013, the criticism continued from NC WARN. “With North Carolina Gov. Pat McCrory (R) refusing to respond to a request to disclose the exact amount of Duke Energy stock he holds, a watchdog group is running a [full-page ad](#) in the state’s newspapers questioning whether it’s ethical for him to make appointments to the N.C. Utilities Commission (NCUC) that regulates the energy giant. “We know of no precedent where a corporate energy executive moves into the governor’s mansion, hangs on to a large block of stock, then appoints his long-time boss’s regulators -- especially when that corporation has tens of billions of dollars in rate hikes on the drawing board,” says NC WARN Executive Director Jim Warren.” [Exhibit 64 – Sturgis, Sue. [“Energy watchdog pressures NC governor over conflict of interest.”](#) 4 March 2013 *Institute of Southern Studies*]

57. On McCrory’s legislative plan, state legislator Rep. Harrison said,

“The plan in its entirety treats Duke Energy too gingerly, repeating too much of the language from a letter the company’s president, Lynn Good, wrote last month, describing how utility executives think the coal ash threat should be tackled, Harrison said.

“A lot of what’s in there seems to follow what Duke Energy says its own plan would be,” she said about the administration’s proposal.

Other parts of the full McCrory proposal echo a so-called sweetheart court settlement that the DENR proposed as a way of sidestepping efforts by environmental groups to make Duke Energy pursue more aggressive cleanups at some of its plants that have problems with coal ash ponds, Harrison said.”

[Exhibit 65 – Wireback, Taft. [“Gov. Pat McCrory irks legislators in coal ash pond announcement.”](#) 18 April 2014 *Greensboro News & Record*]

58. A summary of Democracy North Carolina’s research detailed the \$437,000 donated by Duke and its subsidiaries during 2013 to Republican candidates and organizations drew disturbing coincidences between contributions and regulatory actions. Executive Director Bob Hall stated:

“In several cases, the dates of a donation and an action related to coal ash have an eerie coincidence, but Hall was reluctant to draw a precise *quid pro quo* related to any single donation. “The whole mess should be probed,” he said.”

- On January 18, 2013, the Pat McCrory Committee logged in a \$4,000 donation from Duke Energy's PAC. Less than two weeks earlier, on January 8, the Southern Environmental Law Center ("SELC") announced it was filing a lawsuit to stop Duke's coal ash pollution.
- On April 24, 2013, the Republican Governors Association received \$100,000 from the company – less than a month after SELC notified Duke and North Carolina regulators that it would file a lawsuit under the Clean Water Act to stop Duke's coal ash pollution of Mountain Island Lake, a vital source of drinking water for the greater Charlotte area.
- On September 17, 2013, the Republican Governors Association received \$175,000 from the company, bringing the total to \$275,000 for 2013. SELC and conservation groups filed suit on September 12 against the coal ash pollution of Sutton Lake near Wilmington and on August 29, SELC moved to block the NC Department of Natural Resources' ability to craft a second weak agreement with Duke that would allow the company to continue its coal ash pollution.
- On September 20, 2013, the Republican State Leadership Committee received \$50,000 from Duke Energy. RSLC is a 527 "soft money" committee that has spent millions on ads to elect GOP lawmakers in North Carolina, on consultants for the NC GOP's 2011 redistricting plan, and on the re-election of NC Supreme Court Justice Paul Newby in 2012.
- During 2013, Duke Energy's PAC sent \$100,000 in campaign contributions to three dozen North Carolina Republican legislators and Council of State members, plus \$8,000 to the Republican Party and Committee to Elect Republican Women. That total of \$108,000 is four times the \$27,000 that the PAC gave to 11 NC Democratic officials during 2013; it gave nothing to state Democratic Party committees during the year.
- All totaled, Duke gave \$325,000 to the two national Republican groups, \$4,000 to McCrory, and \$108,000 to other GOP state politicians and party committees for a total of \$437,000 in 2013. During the year, Duke gave about half that amount to the Democratic Governors Association (\$200,000) and to NC politicians (\$27,000) – or a total of \$227,000. No donations from Duke were found to a 527 Democratic committee similar to the Republican State Leadership Committee.

[Exhibit 66 – Hall, Bob. ["As Coal Ash Controversy Intensified, Duke Gave Another \\$437,000 to Help GOP Causes in 2013."](#) 14 February 2014 *Democracy North Carolina*]

POTENTIAL STATUTORY VIOLATIONS

1. Pat McCrory's 2008 Statement of Economic Interests ("SEI") filing failed to disclose that his Duke Energy Retirement 401(k) plan held 40% of its total assets in Duke Energy common stock. He was statutorily required to disclose his ownership of over \$10,000 of Duke Energy stock. Further, when asked on the same filing, "Are you aware of any other economic or financial information necessary to fully disclose any actual or potential conflicts of interest you may have had during the preceding year or have currently?", despite owning Duke stock and failing to disclose, Pat McCrory answered No. Governor McCrory continued his statutory failure to disclose his ownership of over \$10,000 of Duke Energy stock on his 2014 SEI form. These failures potentially violate N.C. Gen. Stat. §§ 138A-24, 138A-26 and 138A-27¹.
2. Following the February 2, 2014 Duke Energy coal ash spill into Dan River any executive governmental action or inaction by Governor McCrory took in regards to Duke Energy would have a material impact upon Duke Energy common stock's value, significantly affecting the value of his Duke Energy Retirement 401(k) plan. Governor McCrory making decisions (or not making decisions) in regards to Duke was a clear conflict of interest with his own personal net worth. These actions potentially violate N.C. Gen. Stat. §§ 14-234.1, 138B-31, 138B-32, 138B-33, 138B-34 and 138B-35.
3. Despite a direct regulatory conflict of interest, twenty-six (26) days after being sworn in, Governor McCrory continued serving as Director of a publicly traded corporation, Tree.com, a mortgage brokerage company regulated by the State of North Carolina. Tree.com gifted Governor McCrory all of his remaining unvested restricted stock units, a direct monetary benefit worth \$171,071. This gift of accelerated vesting was not given to other Tree.com board directors who resigned, according to SEC filings. These actions potentially violate N.C. Gen. Stat. §§ 14-234.1, 138B-31, 138B-32, 138B-33, 138B-34 and 138B-35.
4. Governor McCrory omitted unvested restricted stock unit grants on his 2014 SEI filing, despite three filings and previously listing other Tree.com restricted stock unit grants under options on prior year SEI filings. Governor McCrory omitted to report owning 7,243 restricted stock units Tree.com stock on December 31, 2012 on his 2013 SEI. Governor McCrory omitted to report receiving a \$10,063 Tree.com stock dividend during December 2012 on his 2013 SEI. These actions potentially violate N.C. Gen. Stat. §§ 138B-24, 138B-26, 138B-27 and 138B-35.
5. At least three companies transacting ongoing business with the State of North Carolina or its agencies, or regulated by the state, Kewaunee Scientific Corporation, Tree.com and

¹ Statutory references are described in greater detail in following Appendix.

Bentley Systems, each directly paid Pat McCrory over \$10,000 each while he was running for Governor. For his approximate four year service as a director of Kewaunee Scientific Corporation, a company that does business with the State of North Carolina, Pat McCrory received \$167,773 in total compensation, and as a director of Tree.com, a company that is regulated by State of North Carolina, Pat McCrory received over \$1,000,000 worth of Tree.com stock at no cost to him, \$255,680 in directors fees and at least \$10,063 in dividends (valuation as of Governor McCrory's SEI December 31, 2013 reporting date) in total compensation according to Securities and Exchange Commission filings. These actions potentially violate N.C. Gen. Stat. §§ 14-217, 14-234, 14-234.1, 133-32, 138B-31, 138B-32, 138B-33, 138B-34 and 138B-35.

6. In addition to paying Pat McCrory over \$10,000 directly, Bentley Systems contributed to the RGA. Since 2008, Bentley Systems has contributed \$510,900 to the RGA. It contributed \$85,000 in the 2012 election cycle and \$75,450 in 2013 to the RGA. The RGA spent over \$4.8 million supporting Pat McCrory's 2008 campaign and \$5.6 million for his 2012 election, or a total of \$10.4 million in electing Pat McCrory North Carolina Governor. The founders of Bentley Systems, Keith A. Bentley, Gregory S. Bentley and Barry J. Bentley collectively contributed \$9,000 to Governor McCrory's 2012 campaign. In addition, Bentley Systems Federal PAC made a special filing with the State Board of Elections during 2012 permitting a \$4,000 federal PAC contribution to Governor McCrory's election campaign, then declared itself inactive within the same filing. These actions potentially violate N.C. Gen. Stat. §§ 14-217, 14-234, 14-234.1, 133-32, 138B-31, 138B-32, 138B-33, 138B-34 and 138B-35.

7. Pat McCrory consistently denied being an officer or partner of McCrory & Company, his brother's company. However, SEC filings and McCrory & Company's own website state that Pat McCrory was a Partner with the company. Governor McCrory failed to list on any of his SEI filings, being a Partner in McCrory & Company. McCrory & Company paid Governor McCrory in excess of \$5,000 during 2011, 2012 and 2013, with the last payment apparently made after he was sworn in as governor. McCrory & Company client list includes several companies doing business with the State of North Carolina or its agencies. Failed to list 2012 income from McCrory & Company on either of his 2013 SEI filing during the election cycle filing. Governor McCrory then listed receiving over \$5,000 from McCrory & Company on his 2014 form as being received in 2013 from 2012 work. These failures to disclose violate N.C. Gen. Stat. §§ 138A-24, 138A-26 and 138A-27. Further, depending on the results of the State Ethics Commission's investigation, these actions potentially violate N.C. Gen. Stat. §§ 14-217, 14-234, 14-234.1, 133-32, 138B-31, 138B-32, 138B-33, 138B-34 and 138B-35.

8. After becoming governor in 2013, McCrory gained authority to make numerous decisions that could affect Duke Energy's bottom line, including making appointments at the state commission that approves utility rates. Campaign finance reports show Duke Energy, its political action committee, executives and their immediate families have donated at least \$1.1 million to Governor McCrory's campaigns and affiliated groups that spent money on

TV ads, mailings and events to support him. Depending on the results of the State Ethics Commission's investigation, these actions potentially violate N.C. Gen. Stat. §§ 14-217, 14-234, 14-234.1, 138B-31, 138B-32, 138B-33, 138B-34 and 138B-35.

9. Governor McCrory has consistently said he sees no conflict of interest in his role as elected official and corporate shareholder. These denials, failure to disclose and to examine his conflicts of interest potentially violate N.C. Gen. Stat. §§ 138A-24, 138A-26, 138A-27, 138A-31, 138A-34 and 138A-35.

Complainants hereby respectfully request the Ethics Commission exercise its authority under N.C. Gen. Stat. § 138A-12 and conduct an inquiry and investigation into whether Governor McCrory's administrative policies, filings, non-filings, actions, inactions, statements or misstatements have resulted in any statutory criminal and civil violations.

Submitted this 9th day of January, 2015

Contact Information:

<i>Complainant</i> Progress North Carolina Action Gerrick Brenner, Executive Director PO Box 41306 Raleigh, NC 27629 gerrickbrenner@progressnc.org	<i>Attorney for Complainant</i> Michael L. Weisel Bailey & Dixon, LLP PO Box 1351 Raleigh, NC 27602 919.828.0731 mlweisel@bdixon.com
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SWORN COMPLAINT

I hereby swear or affirm, under penalty of perjury and other penalties established by North Carolina law, that the information provided in this complaint is true, correct, complete, to the best of and my own personal knowledge, or if not, upon my own information and belief, believing the information to be true based upon North Carolina State Ethics Commission and North Carolina State Board of Elections filings, media news stories and commentary, along with public internet postings.

Progress North Carolina Action
A North Carolina nonprofit corporation



Gerrick Brenner
Executive Director



Gerrick Brenner, Individually

January 9, 2015

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, Dorothy C. Benz, a Notary Public in and for said County and State, do hereby certify that both individually, and on behalf of Progress North Carolina Action, Gerrick Brenner, its Executive Director, personally appeared before me this day and acknowledged the due execution of the foregoing Complaint.

SWORN TO and subscribed before me this day.

WITNESS my hand and official stamp this 9 day of January, 2015.



Dorothy C. Benz
Dorothy C. Benz

My Commission Expires: March 23, 2019

APPENDIX

APPLICABLE OR POTENTIALLY APPLICABLE STATUTES

1. N.C. Gen. Stat. § 138A-21 outlines the purpose of Section 138A: “The purpose of disclosure of the financial and personal interests by covered persons is to assist covered persons and those who appoint, elect, hire, supervise, or advise them identify and avoid conflicts of interest and potential conflicts of interest between the covered person's private interests and the covered person's public duties. It is critical to this process that current and prospective covered persons examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the covered person's private interests and the covered person's public duties. Covered persons must take an active, thorough, and conscientious role in the disclosure and review process, including having a complete knowledge of how the covered person's public position or duties might impact the covered person's private interests. Covered persons have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of this Chapter and to fully disclose any conflict of interest or potential conflict of interest between the covered person's public and private interests, but the disclosure, review, and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information.
2. N.C. Gen. Stat. § 138A-24(a) provides “Any statement of economic interest filed under this Article shall be on a form prescribed by the Commission. Answers must be provided to all questions. ... (c) Each statement of economic interest shall contain a certification by the filing person that the filing person has read the statement and that, to the best of the filing person's knowledge and belief, the statement is true, correct, and complete. The filing person's certification also shall provide that the filing person has not transferred, and will not transfer, any asset, interest, or other property with the intent to conceal it from disclosure while retaining an equitable interest therein. ... (d) All information provided in the statement of economic interest shall be current as of the last day of December of the year preceding the date the statement of economic interest was due.”
3. N.C. Gen. Stat. § 138A-26 states “[a] filing person who knowingly conceals or knowingly fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be guilty of a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45.”
4. N.C. Gen. Stat. § 138A-27 states, “A filing person who provides false information on a statement of economic interest as required under this Article knowing that the information is false is guilty of a Class H felony and shall be subject to disciplinary action under G.S. 138A-45.”

5. N.C. Gen. Stat. § 138A-31 states a “covered person or legislative employee shall not knowingly use the covered person's or legislative employee's public position in an official action or legislative action that will result in financial benefit to the covered person or legislative employee, a member of the covered person's or legislative employee's extended family, or business with which the covered person or legislative employee is associated.
6. N.C. Gen. Stat. § 138A-32, (a) provides a “covered person or a legislative employee shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the covered person or legislative employee, or for another person, in return for being influenced in the discharge of the covered person's or legislative employee's official responsibilities, other than that which is received by the covered person or the legislative employee from the State for acting in the covered person's or legislative employee's official capacity. ... (d) No public servant shall knowingly accept a gift from a person whom the public servant knows or has reason to know any of the following: (1) Is doing or is seeking to do business of any kind with the public servant's employing entity. (2) Is engaged in activities that are regulated or controlled by the public servant's employing entity. (3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties.”
7. N.C. Gen. Stat. § 138A-33 states a “public servant or legislative employee shall not solicit or receive personal financial gain, other than that received by the public servant or legislative employee from the State, or with the approval of the employing entity, for acting in the public servant's or legislative employee's official capacity, or for advice or assistance given in the course of carrying out the public servant's or legislative employee's duties.”
8. N.C. Gen. Stat. § 138A-34 states “a public servant or legislative employee shall not use or disclose nonpublic information gained in the course of, or by reason of, the public servant's or legislative employee's official responsibilities in a way that would affect a personal financial interest of the public servant or legislative employee, a member of the public servant's or legislative employee's extended family, or a person or governmental unit with whom or business with which the public servant or legislative employee is associated. A public servant or legislative employee shall not improperly use or improperly disclose any confidential information.”
9. N.C. Gen. Stat. § 138A-35 provides other rules of conduct:
 - (a) A public servant shall make a due and diligent effort before taking any action, including voting or participating in discussions with other public servants on a board on which the public servant also serves, to determine whether the public servant has a conflict of interest. If the public servant is unable to determine whether or not a

- (b) conflict of interest may exist, the public servant has a duty to inquire of the Commission as to that conflict.
 - (c) A public servant shall continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest.
 - (d) A public servant shall obey all other civil laws, administrative requirements, and criminal statutes governing conduct of State government applicable to appointees and employees.
10. N.C. Gen. Stat. § 133-32 in which gifts and favors are regulated and (a) “It shall be unlawful for any contractor, subcontractor, or supplier who: (1) Has a contract with a governmental agency; or (2) Has performed under such a contract within the past year; or (3) Anticipates bidding on such a contract in the future to make gifts or to give favors to any officer or employee of a governmental agency who is charged with the duty of: (1) Preparing plans, specifications, or estimates for public contract; or (2) Awarding or administering public contracts; or (3) Inspecting or supervising construction. It shall also be unlawful for any officer or employee of a governmental agency who is charged with the duty of: (1) Preparing plans, specifications, or estimates for public contracts; or (2) Awarding or administering public contracts; or (3) Inspecting or supervising construction willfully to receive or accept any such gift or favor.
- (b) A violation of subsection (a) shall be a Class 1 misdemeanor.
11. Executive Order No. 24 issued by Governor Perdue on October 1, 2009 incorporated N.C. Gen. Stat. § 133-32 to cover and prohibit all State employees in the Cabinet agencies and Governor’s office from receiving gifts or favors from contractors, subcontractors, or suppliers to State agencies. It remains in effect.
12. N.C. Gen. Stat. §14-230 for willfully failing to discharge duties; N.C. Gen. Stat. §14-231 for failing to make reports and discharge other duties; and N.C. Gen. Stat. §14-234.1 involving misuse of confidential information, all of which are Class 1 misdemeanors.
13. N.C. Gen. Stat. § 14-217(a) provides “[i]f any person holding office, or who has filed a notice of candidacy for or been nominated for such office, under the laws of this State who, except in payment of his legal salary, fees or perquisites, shall receive, or consent to receive, directly or indirectly, anything of value or personal advantage, or the promise thereof, for performing or omitting to perform any official act, which lay within the scope of his official authority and was connected with the discharge of his official and legal duties, or with the express or implied understanding that his official action, or omission to act, is to be in any degree influenced thereby, he shall be punished as a Class F felon. ... (d) For purposes of this section,

a thing of value or personal advantage shall include a campaign contribution made or received under Article 22A of Chapter 163 of the General Statutes.

14. N.C. Gen. Stat. § 14-234(a) provides “no public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract...no public officer or employee may solicit or receive any gift, favor, reward, service, or promise of reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves. ...(4) A public officer or employee derives a direct benefit from a contract if the person or his or her spouse: (i) has more than a ten percent (10%) ownership or other interest in an entity that is a party to the contract; (ii) derives any income or commission directly from the contract; or (iii) acquires property under the contract. ... (e) Anyone violating this section shall be guilty of a Class 1 misdemeanor.

EXHIBITS