
Chattooga River, North Carolina:
Public Trust Doctrine and the Essential Purpose of Portage
in Navigable Waters

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“It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry...”¹

I. Introduction

“Imagine for a moment paddling down your favorite river; the sun is shining, things couldn’t be better you think to yourself with a smile. Suddenly, you see a horizon on the water ahead. You have paddled this river dozens of times and can’t recall any obstruction here. You start to panic. Then you realize that a tree has fallen and created a river-wide strainer. It looks nasty. What should I do you wonder? The tree covers the entire width of the river so paddling around it is not an option. Further the river has begun to narrow creating turbulent water. The thought of getting pinned underwater creeps into your head. You make an easy decision to portage to avoid the danger. As you get out of the water the owner of the adjoining property is waiting with the sheriff to charge you with trespassing. What a day this has turned out to be.”

Currently, North Carolina law does not recognize the right to portage incident to navigation.² Navigation is a public trust right given under the public trust doctrine.³ The doctrine applies to ‘navigable’ waters of the state to ensure the right of use and enjoyment for its citizens.⁴ In turn, ‘navigable’ waters are those capable of supporting pleasure boating.⁵ So, practically speaking, a ‘navigable’ river is one which has the capacity to support kayaking. The public trust doctrine then applies to give kayakers the right to use the river, but not the shores. However, the incidental right to portage is essential to kayaking. The problem is that the state recognizes a definition of navigation that is broader than the rights it gives. In other words, the state is giving rights of sufficiency, but not rights of necessity. I assert that the right of navigation must include the right to portage because it is essential to fulfilling the initial privilege of navigation.

II. Background

The Chattooga River is known to be the top whitewater destination in the East.⁶ It originates in the mountains of North Carolina and flows along the South Carolina and Georgia borders with its terminus in the Tugalo Reservoir.⁷ In 1974, the United States Congress declared the Chattooga River “wild and scenic” pursuant to the Wild and Scenic Rivers Act.⁸ The Act states that it is the policy of the United States that “...certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, *recreational*... values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.”⁹ Whitewater boating was specifically identified as one of the outstanding remarkable values for which the Chattooga was designated.¹⁰

As part of the development plan for the Chattooga River, recreational boating was banned in the headwaters above North Carolina Highway 28.¹¹ The prohibition was a result of increased use of the headwaters for paddling and the frequency of encounters between anglers and boaters.¹² In early 2000, the Sumter National Forest began to revise its Land and Resource Management Plan (“LRMP”) addressing, among others, the issue of recreational access to the headwaters of the Chattooga River.¹³ The revised management plan echoed the prohibition of paddling in the headwaters.¹⁴

Meanwhile, American Whitewater had been rallying support for access to the headwaters.¹⁵ When the revised plan was issued, American Whitewater filed an appeal of the Forest Service’s Final Environmental Impact Statement (“FEIS”) arguing the revised plan was both in contravention to numerous Federal Laws as well as unsupported by data

or other studies.¹⁶ American Whitewater argued for another alternative which would allow access to the headwaters above Highway 28.¹⁷ On Appeal, the hearing officer found the ban to be unsupported and required the Forest Service to conduct a ‘Visitor Use Capacity Analysis’ which would analyze the impacts of recreational boating in the headwaters.¹⁸ The study is anticipated to take 2-years and should be concluded in 2007.¹⁹ In the interim, the Chattooga River is to be managed under the guidance of the 1985 forest plan, which includes the prohibition of recreational boating in the headwaters.²⁰

III. Summary of the Issue

American Whitewater’s appeal opened the possibility for the right to navigate in the headwaters of the Chattooga River. However, several miles of the river pass through private property. In addition, the Chattooga River has never officially been designated as a ‘navigable’ river under North Carolina law. Therefore, this memo argues that:

- 1) Under North Carolina law the Chattooga River is ‘navigable’ for purposes of the public trust doctrine;
- 2) North Carolina law should be changed to recognize that the right of navigation includes the ancillary right of portage because it is essential to navigation.

IV. North Carolina Public Trust Doctrine

It is well established that since the Revolutionary War the state of North Carolina became the owner of lands underneath its navigable waters.²¹ The interest in navigable waterways is “so recognized by the government and the people, and hence it seems to be accepted as a part of the common law of this country arising out of public necessity,

convenience and common consent, that the public have the right to use the rivers, lakes, sounds and parts of them though not strictly public waters.”²² In a seminal case, the United States Supreme Court defined the state public trust as “a title held in trust for the people of the state, that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein, free from obstruction or interference by private parties, and it is not within the legislative power of the state to abdicate this trust by a grant whereby it surrenders its property and general control over the lands of an entire harbor, bay, sea, or lake, though it may grant parcels thereof for the foundations of wharves, piers, docks, and other structures in aid of commerce, or parcels which, being occupied, do not substantially impair the public interest in the waters remaining.”²³

In 1777, the General Assembly enacted the ‘entry laws’ to allow the public to acquire unallocated lands of the state.²⁴ By recognizing the importance of navigable waters as ‘public highways’, land grants under the ‘entry laws’ were presumed not to convey rights in the beds of navigable waters.²⁵ The significance of this presumption is to invalidate claims of private ownership.²⁶ The courts have made clear however that because the public trust doctrine in North Carolina is a common law principle, it cannot invalidate constitutionally prescribed acts of the Legislature.²⁷ As a result, the public trust doctrine will create a presumption that the Legislature did not intend to convey lands that would impugn trust rights in navigable waters; that presumption can be rebutted by “a special grant of the General Assembly conveying lands...free of all public trust rights.”²⁸

A. Navigability

1. Historical Perspective

As a preliminary matter, and intimately tied with the issue of public trust is the concept of ‘navigability’. If a watercourse is ‘navigable’ under state law, it becomes subject to the public trust doctrine.²⁹ The use of ‘navigability’ as a benchmark for applying the public trust doctrine stems back to the early 19th century.³⁰ In one of the state’s earliest decisions defining the appropriate test for navigability, the Supreme Court expressly disclaimed the use of the English ‘ebb and flow’ test, and instead adopted the ‘navigability-in-fact’ test.³¹ As a practical matter, the Court justified its decision based on the extent of the State’s inland waterways where the ‘ebb and flow’ test has no practical application.³² In a concurring opinion Justice Hall noted “[t]here can be no essential difference for the purposes of navigation, whether the water be salt or fresh, or whether the tides regularly flow and ebb or not.”³³

Over the course of the next 50 years, the Court was repeatedly asked to define the test of ‘navigability’ for public trust purposes. The Court in *Glen* held that the test is “any waters, whether sounds, bays, rivers, or creeks, which are wide enough and deep enough for the navigation of sea vessels, are navigable waters, the soil under which is not the subject of entry and grant under our entry law, and the rights of fishing in which are, under our common and statute law, open an common to all the citizens of the State.”³⁴

The test was further refined to include the “capacity of the waters for navigation by any ‘useful vessels’”.³⁵ In *Baum* the Court reiterated the capacity test and expanded the scope of ‘useful vessels’ to include pleasure craft.³⁶ The Court has made clear that navigability is not determined by the waters actual use for commerce or pleasure, but rather the

capacity of the water for such use.³⁷ As a result of *Wilson* and its progeny, the Supreme Court has reaffirmed the State's role in holding navigable waters open for the benefit of the public.

2. Modern Law

The Supreme Court recently revisited the issue of navigability and held “[t]he controlling law of navigability as it relates to the public trust doctrine in North Carolina is as follows: ““If water is navigable for pleasure boating it must be regarded as navigable water, though no craft has ever been put upon it for the purpose of trade or agriculture. The purpose of navigation is not the subject of inquiry, but the fact of the capacity of the water for use in navigation.””³⁸ The pleasure boat test has been interpreted to include “canoes, kayaks, and similar recreational craft.”³⁹

The Chattooga River has never been officially designated as a navigable river. Further, due to the ban on boating in the headwaters, there are few documented cases showing its capacity for such use. However, its capacity for recreational use, including boating, has been the primary reason for its popularity; and similar to *Twiford*, a determination of navigability should not fail for want of evidence of actual use. Primary support for a finding of navigability can be found in Forest Service Reports and the Appellate Hearing Officer's opinion regarding Sumter National Forest's FEIS.

In 1969, the United States Congress charged the Forest Service to determine the eligibility of the Chattooga River for designation as a Wild and Scenic River.⁴⁰ In its report, the Forest Service stated, “rafting or some method of floating is the best way to see this [headwaters] rugged portion of the river.”⁴¹ Further, the Chattooga Wild and Scenic Development Plan identified the increased use of the headwaters by recreational

boaters as their reason for implementing the ban above Highway 28.⁴² It seems clear that the Forest Service recognized the recreational capacity of the river when it encouraged such use. Further, the justification for banning floating in the headwaters implies a significant amount of actual recreational use. Taken together, these statements provide ample support for a finding of recreational capacity of the headwaters.

Second, navigability is supported by the determination of the Appellate Officer's decision to require the Forest Service to conduct a 'visitor use capacity analysis.'⁴³ It is plain that in order to effectuate a meaningful study of the impacts of floating, floating in itself must be possible. In a statement issued on February 3, 2006, the Francis Marion and Sumter National Forest indicated that the study would include "limited boater trials."⁴⁴

Since the Forest Service and the Appellate Hearing Officer have recognized and encouraged recreational boating in the headwaters, the Chattooga River is 'navigable' under the test in *Gwathmey* and for purposes of the public trust doctrine.

B. Public Trust Rights

Once a waterway is determined to be 'navigable', the public trust doctrine gives citizens certain rights of use.⁴⁵ The legislature defined public trust rights to include "the right to navigate, swim, hunt, fish and enjoy all recreational activities in the watercourses of the State and the right to freely use and enjoy the State's ocean and estuarine beaches and public access to the beaches."⁴⁶ The practical scope of these rights is unclear and fuels the conflict between private property rights and public rights. When do public rights become subject to riparian ownership? Conversely, where does riparian ownership give way to public trust rights? The shores or banks? The high-water mark?

The public trust doctrine is a dynamic principle as evidenced by the Supreme Court molding the test of navigability to reflect the dominant use of the waters – the test has changed from one based on commerce to one based on recreation. Similarly, the rights afforded under the public trust doctrine must be addressed to reflect the dominant use of the State’s waterways. This is especially important as the number of people participating in adventure sports, including whitewater rafting and kayaking is increasing exponentially.

There are relatively few cases in North Carolina addressing the scope of public trust rights, none of which specifically addresses the issue of portage. The most recent authority on the subject is a 1998 Attorney General’s Advisory Opinion.⁴⁷ In his opinion, the Attorney General relies on *Gaither* to preclude the public use of river banks and shores incident to navigation.⁴⁸ In that case, the court addressed a ‘general use’ of private property to access navigable waters as opposed to a narrowly focused exception like portaging.⁴⁹ As discussed below, this standard is too broad and needs to be challenged to recognize an exception for the specific right to portage because it is essential to navigation.

VI. Scope of Public Trust Rights - Is portage essential to navigation?

A. North Carolina Case Law

In *Twiford* the Court addressed the scope of the public right of navigation.⁵⁰ It was presented facts indicating a particular body of water was navigable because it was used as a safe-harbor for boats during storms.⁵¹ The court held that these facts supported a finding of navigability and recognized that “the right of navigation includes the right to

anchor as incidental to its beneficial enjoyment.”⁵² Further, in *Baker* the Supreme Court recognized that navigability is not destroyed by occasional barriers or falls in a river otherwise capable of commerce and trade.⁵³

Taken together, *Twiford* and *Baker* seem to implicate the right to portage during navigation. Similar to *Twiford*, portaging is essential to navigation. A fallen tree or dislodged rock impeding the flow of water is no more predictable than a thunderstorm. Further, the right to portage is necessary as a means to avoid danger. In both instances use of the shore is temporary and incidental to the ultimate purpose of navigation. Just as anchoring is essential to navigation, so is the ability to portage. Similarly, by holding that occasional obstructions or falls do not destroy the navigability of a river, the Court in *Baker* must have contemplated some limited use of the shores to get around the obstruction. It stands to reason that the right of navigation would include the right to portage if barriers did not destroy navigability.

Based on the holding in *Twiford* and *Baker* and the seemingly inconsistent rule in *Gaither*, the Attorney General’s opinion needs to be challenged and the right to portage recognized as essential to navigation.

B. Other State Cases

Further support for the proposition that navigation includes the right to portage can be found in other state case law. In *Adirondack League*, a landowner sued a recreational organization and individual kayakers for trespass.⁵⁴ The landowner asserted that the Moose River was non-navigable and thus where it crossed his land was private property.⁵⁵ In proving the river was not navigable, the plaintiff relied on the fact that

there were intermittent obstacles and seasons of minimal flow or drought.⁵⁶ The court recognized that “the existence of occasional obstructions does not destroy the navigability of a river.”⁵⁷ It went on to say “following naturally from this proposition is that in order to circumvent these occasional obstacles, the right to navigate carries with it the incidental privilege to make use, when absolutely necessary, of the bed and banks, including the right to portage on riparian lands.”⁵⁸ Further, any use of the shore that is not strictly confined to the purpose of portage gives right to an action for trespass.⁵⁹

While interpreting its public trust doctrine, the Montana Supreme Court held that the public had a right to make use of waters for recreational purposes “up to the high water marks and may portage around barriers in the water in the least intrusive manner possible.”⁶⁰ Subsequently, a case was brought challenging the constitutionality of statutes enacted in response to the holding of *Curran* and *Hildreth*.⁶¹ Specifically, the court was asked to address the limits of public trust rights.⁶² The statutes in question prescribed the public use of riparian land to include “building duck blinds, boat moorages, and overnight camping.”⁶³ The court found that public trust rights were not as broad as given in the statute because it gave rights that were not necessary for the public’s use and enjoyment of the water.⁶⁴ The court reaffirmed its holding as to the public use of shores, but qualified that use to one “necessary to the utilization of the water itself.”⁶⁵

In *Hallden* a Michigan Appellate court recognized that the state test for navigability was outdated.⁶⁶ It had been using the ‘floating log test’ but decided that since the rivers were no longer used for that purpose the test for navigability should be changed to represent present usage.⁶⁷ As a result, it adopted the recreation test and defined it as “the right to navigate and to exercise the incidents of navigation in a lawful manner at

any point below high water mark on waters of this state which are capable of being navigated by oar or motor propelled small craft.”⁶⁸

Each of these cases recognizes the fact that navigation must include some limited use of the shores. In *Adirondack League* and *Galt* that limited use was expressly for the right of portage. In *Hallden* the court did not prescribe a specific use, but rather distinguished the point where public trust rights applied. Presumably, this includes any incidental right of navigation beneath the high-water mark. Similarly, North Carolina needs to recognize a limited right to use the shores of navigable waters for purposes of portage.

C. Policy Reasons

The proposition that public trust rights include the right to portage further finds support in public policy. First, if boaters do not have a right to portage, then navigable waterways must be kept free from obstruction. North Carolina is blessed with hundreds of miles of rivers offering myriad opportunities for recreation. It would be virtually impossible to maintain each river such that navigation is unobstructed. Further it would be unreasonable to charge land managers and riparian owners with the duty of clearing and maintaining navigable waterways. There is no way to predict when or where an obstruction will form. Similarly, boaters have no means of assessing the condition of rivers. Since the task of keeping rivers clear is unattainable, the right to portage must be recognized as essential to navigation and safety.

Second, it is unreasonable to put the public in the situation of having to decide between trespassing or attempting to navigate a dangerous situation. If a boater comes

upon a blockage in a stream s/he has two options; s/he could get out of the water and walk around the obstruction, or s/he could attempt to paddle through. Of course the very nature of running water does not allow him to turn around and paddle upstream. The purpose of the public trust doctrine is to enable the use and enjoyment of the states natural environment. If the state is going to encourage this use, then it should provide the means necessary to do it safely and without legal recourse. For this reason, the right to portage should be recognized.

Finally, a blanket prohibition on the use of shores is too broad and is outweighed by public interest and safety. If the right to portage is not recognized there is no balance between public trust rights and private property rights. The risk to riparian owners is that a footpath will become embedded in the edge of their property where a portage route has formed. If the shore of the river is rock or even beach, there will hardly be a trace of use. On the other hand, the risk to boaters could be a dangerous strainer or hydraulic. Property owners may argue that the right to portage can be abused and that right will slowly encroach farther into their land. Boaters are on the water for the purpose of boating, seeking the thrill and spirit of the water. It is hard to imagine a situation where boaters would be more interested in navigating the land rather than the water. Further, the right to portage exists only when necessary and in only the least intrusive means. Anything past this incidental use is grounds for an action in trespass. Thus, by allowing the limited use of riparian land for portage, the property rights of riparian owners and the safety and public trust rights of boaters are taken into account and their competing interest balanced.

VI. Methods of recognizing the right to portage

As this memo demonstrates, the laws of North Carolina are incompatible with the privileges afforded under the public trust doctrine. Admittedly, this memo argues for the exception, rather than the rule; however the right to portage should no less be recognized because it is essential to the very right of navigation. There are several avenues available to affect this change: 1) the Department of Administration can acquire easements or write regulations, 2) the State may regulate the use of navigable waters under its Police Power, and 3) the courts or the General Assembly can recognize the right to portage under judicial review or by enact appropriate legislation.

A. North Carolina Statute

The General Assembly has expressly provided the Department of Administration the ability to obtain land and easements necessary to further the public trust right in navigable waters.⁶⁹ Section 146-1 states this intent and recognizes the need for a balance between the rights of riparian owners and the “State’s obligation to protect public trust rights...”⁷⁰ To carry out this purpose the legislature created the Department of Administration and “authorized and empowered [it] to acquire by purchase, gift, condemnation or otherwise: (5) Lands necessary for public parks and forestry purposes; (8) Lands necessary to provide public access to the waters within the State.”⁷¹ Further, to fund this purpose, the legislature created the Natural Resource Easement Fund which is to be used “for the sole purpose of enhancing public trust resources and increasing the public's access to and use of public trust resources.”⁷² Since the right to navigation must include the right to portage, the Department of Administration has the authority to

acquire easements or write regulations necessary to protect public trust right. To provide access and use of waters in any meaningful way, the right to portage must be included because it is necessary for use.

B. State Police Power

Since it is a governmental responsibility to protect the public in navigable waters, the state may use its police powers to recognize the right to portage. “[T]he State may properly exercise its police power to regulate the use of navigable-in-fact waters, to protect the public health, safety, or welfare.”⁷³ The blanket prohibition on use of shores is far too broad and does not recognize the safety issues it creates. A boater has limited options when he comes upon a barrier in the river; one option currently results in a trespass and the other may put that person’s safety in jeopardy. It is an important public interest to be able to use public trust resources safely. By not allowing boaters to make limited use of the shores, the state is endangering the public and therefore it is an acceptable use of police powers to regulate navigable waters.

C. Judicial Review and Legislative Enactments

The courts and the legislature are further outlets to recognize the right to portage. In an action seeking judicial review of the Attorney General’s Advisory Opinion the court can determine the scope of the public trust rights and the reasonable use these rights. In addition, the General Assembly can pass legislation recognizing the right to portage.

VII. Conclusion

The public trust doctrine applies to the Chattooga River because it is navigable-in-fact, as it has the capacity to support recreational boating. In order for the public to enjoy the full panoply of rights afforded under the public trust doctrine, the right of navigation needs to be recognized as including the right to portage. The right to portage is essential to navigation because it provides a means of avoiding unpredictable dangers on a river. The limited right to use riparian land includes only what is absolutely necessary to circumvent an obstacle. The right to portage is sufficiently focused to protect private property rights while simultaneously balancing public trust rights and safety in navigable waters. For recreational boaters on the headwaters of the Chattooga this means the right to use riparian land to the least extent necessary for the purpose of portage incident to navigation. Since limited use of shores is essential to navigation, the law in North Carolina should be changed to recognize the incidental right to portage on the Chattooga River.

“Now, imagine for a moment paddling down the Chattooga River; the sun is shining, things couldn’t be better you think to yourself with a smile. When you see that strainer up ahead, you take-out, carefully walk around the tree, and put-in the water in anticipation for the beautiful day ahead.”

¹N.C. Const. Art. XIV, § 5
² 1998 WL 205277 N.C.A.G.
³ See generally, *Gwathmey v. State*, 342 N.C. 287 (1995)
⁴ *Id.*
⁵ *Id.*
⁶ Cassady and Dunlap, “World Whitewater: A Global Guide For River Runners”, Ragged Mountain Press 1999, p. 42-44.
⁷ *Id.*
⁸ 16 U.S.C.A. §§ 1271 et seq. (see §§ 1274(a)(10) and 1276(a)(4) for specific designations.)
⁹ *Id.*
¹⁰ 41 CFR 11830
¹¹ Francis Marion and Sumter National Forest website, www.fs.fed.us/r8/fms/forest/projects/history.shtml
¹² *Id.*
¹³ *Id.*
¹⁴ *Id.*
¹⁵ *Id.*
¹⁶ Decision for Appeal of the Sumter National Forest Land and Resource Management Plan Revision, April 28, 2005
¹⁷ *Id.*
¹⁸ *Id.*
¹⁹ *Id.*
²⁰ *Id.*
²¹ *Gwathmey*, 342 N.C. at 293
²² *State v. Narrows Island Club*, 100 N.C. 477, 481 (1888)
²³ *Illinois Cent. R. Co. v. Illinois*, 146 U.S. 387 (1892)
²⁴ *Gwathmey*, 342 N.C. at 294
²⁵ *Id.* at 304
²⁶ *Id.* at 293
²⁷ *Id.* at 304
²⁸ *Id.*
²⁹ *Gwathmey v. State*, 342 N.C. 287, 293-94 (1995)
³⁰ *Wilson v. Forbes*, 13 N.C. 30 (1828)
³¹ *Id.* at 34-5
³² *Id.*
³³ *Id.* at 38
³⁴ *State v. Glen*, 52 N.C. 321, 325 (1859)
³⁵ *State v. Narrows Island Club*, 100 N.C. 477, 481 (1888).
³⁶ *State v. Baum*, 128 N.C. 600, 604 (1901)
³⁷ *State v. Twiford*, 136 N.C. 603, 606 (1904)
³⁸ *Gwathmey v. State*, 342 N.C. at 301
³⁹ 1998 WL 205277 N.C.A.G. p. 2
⁴⁰ Forest Service website, see *supra* FN.12
⁴¹ <http://www.fs.fed.us/r8/fms/forest/projects/history.shtml>
⁴² Sumter National Forest, Final Environmental Impact Statement and Revised Land and Resource Management Plan, January 2004
⁴³ Decision for Appeal of the Sumter National Forest Land and Resource Management Plan Revision, p.6 Hearing Officer ordered the Forest Service to conduct a visitor use capacity analysis and that if the study “require[s] user trials, 36 CFR 261.77 provides the Regional Forester with the authority to permit boating on sections of the river that are currently closed.”
⁴⁴ Sumter National Forest News Release, “Data Gathering Techniques Announced for Chattooga Wild and Scenic River’s Visitor Use Capacity Analysis, February 3, 2006
⁴⁵ *Gwathmey*, 342 N.C. at 293
⁴⁶ N.C.G.S. § 1-45.1, (see also *Friends of Hatteras Island Nat’l Historic Maritime Forest Land Trust for Pres., Inc. v. Coastal Res. Comm’n*, 117 N.C.App. 556, 574 (1995))
⁴⁷ 1998 WL 205277 (N.C.A.G.)

⁴⁸ *Gaither v. Albemarle Hospital*, 235 N.C. 431, 444 (1952)
⁴⁹ *Id.*
⁵⁰ *State v. Twiford*, 136 N.C. 603 (1904)
⁵¹ *Id.*
⁵² *Id.*
⁵³ *Broadnax v. Baker*, 94 N.C. 675 (1886)
⁵⁴ *Adirondack League Club, Inc. v. Sierra Club*, 92 N.Y.2d 591 (1998)
⁵⁵ *Id.* at 600
⁵⁶ *Id.* at 606-07
⁵⁷ *Id.*
⁵⁸ *Id.* (quoting, *People ex Rel Erie R.R. Co. v. State Tax Commn.*, 266 App.Div. 452, 454 (1943))
⁵⁹ *Id.* at 607
⁶⁰ *Montana Coalition for Stream Access, Inc. v. Curran*, 682 P.2d 163 (Mont. 1984) and *Montana Coalition for Stream Access, Inc., v. Hildreth*, 684 P.2d 1088 (Mont. 1984)
⁶¹ *Galt v. State Dept. of Fish, Wildlife, and Parks*, 731 P.2d 912 (Mont. 1987)
⁶² *Id.* at 913
⁶³ *Id.* at 914
⁶⁴ *Id.* at 915
⁶⁵ *Id.*
⁶⁶ *Kelley ex rel. MacMullen v. Hallden*, 51 Mich.App. 176 (Mich.App. 1974)
⁶⁷ *Id.* at 179-80
⁶⁸ *Id.* at 189-91
⁶⁹ N.C.G.S. § 146-1
⁷⁰ N.C.G.S. § 146-1(b)
⁷¹ N.C.G.S. § 146-22.1
⁷² N.C.G.S. § 146-14.1
⁷³ 1998 WL 205277 NCAG