



# bulletin



APRIL 2012

Excellence in North Dakota public education through local school board governance ■ VOL XXXVII ISSUE 4

## District Judge Rules in Favor of Measure 2 Opponents

On April 12, South Central District Judge Bruce Romanick denied plaintiff's requests for injunctive relief and for temporary restraining order and has also dismissed the plaintiff's lawsuit against Measure 2 opponents.

In his order, Judge Romanick states that "Empower (the Taxpayer) lacks standing to bring this claim under the Corrupt Practices Act because the act is criminal, the Defendants' actions did not violate Empower's legal rights, and the legislature did not intend to provide a private right of action."

The judge also included in his five-page dismissal order that the lawsuit "could more easily be described as Empower's manifesto advocating their political position rather than a legal complaint setting out a succinct request for relief from the court." Prosecutors, not private citizens, should handle allegations that state law was being violated.

Empower the Taxpayer, the group pushing to abolish property taxes in North Dakota through Measure 2, had asked the court to order public officials and other organizations—including NDSBA—to stop using public funds to fight against Measure 2 and to stop making false statements.

Plaintiffs in the lawsuit have alleged that public officials and organizations were lying when they discuss the potential impact of Measure 2. The judge asked the plaintiffs if they thought defendants were actually lying or was it merely a difference of opinion. That question got to the heart of the issue. The attorney for Empower the Taxpayer would have people believe that whatever they say is factual, but comments by opponents of Measure 2 are lies.

Attorney General Wayne Stenehjem said he believed Romanick's decision was correct stating that, "This law (Corrupt Practices) imposes criminal penalties. In North Dakota criminal

**VOTE NO on MEASURE 2**



For more information:  
[www.Keepitlocalnd.com](http://www.Keepitlocalnd.com)

penalties are enforced by elected state's attorneys."

Immediately following the judge's dismissal of the suit, Empower the Taxpayer announced they would appeal the ruling to the Supreme Court. Attorney Lynn Boughey said he would ask the Supreme Court to resolve an appeal before the June 12 election.

According to the Associated Press, Attorney General Stenehjem says if Measure 2 supporters win in the Supreme Court, there will need to be a trial and that wouldn't happen for months. He and Tax Commissioner Cory Fong say the lawsuit was meant to silence the measure's critics.

The *Fargo Forum's* April 9 editorial on Measure 2 concluded, "Nearly everyone who has thought it through

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## Five Steps to Focused Planning

State law requires school boards to develop a 3- and 5-year long-range plan in even-numbered years. The requirements for process and content are found in **NDCC 15.1-07-26**. The following five steps will help focus your planning process:

1. Evaluate the district's current condition in multiple areas.
2. Develop a proactive plan for the district.
3. Put the plan into action.
4. Evaluate outcomes.
5. Use outcome data for continuous improvement.

**Measure 2**, which will appear on the June ballot, would eliminate school districts' ability to raise revenue through property taxes. This would prevent districts from going to their voters for additional local revenue for operations and building projects. Since future staffing and building needs are required portions of district plans, your process should include alternative plans. If Measure 2 does not pass, those alternative plans do not need to be part of your final 3- and 5-year plans.

Planning forms are available on NDSBA's webpage: [www.ndsba.org](http://www.ndsba.org). Find the link under "Quick Clicks."

## ■ LAWSUIT DISMISSED

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has come to the conclusion that the measure is a recipe for tax chaos” and that “(proponents) mount an attempt to muzzle opponents of the measure by going to court. Instead of listening to local officials and others who have analyzed the potential effects of Measure 2, they aim to shut ‘em down because they don’t like what they say. Well, maybe that’s all they have left when their position is as solid as Red River mud, as weighty as goose down, as clear as grass fire smoke.”

NDSBA will continue to help school boards discern potential impacts of Measure 2 and encourage them to address those possibilities during their 3- and 5-year planning and budget meetings. While the law may prevent school boards from taking a position on initiated measures, the law allows “activities undertaken in the performance of public office.” Budgeting and planning discussions clearly fall within the “official duties” of a school board. It is not only necessary to have those discussions but also essential to do so.

# U.S. Supreme Court Declines to Hear Internet Speech Cases

According to the NSBA publication *American School Board Journal*, school districts need a definitive answer to the question, “Can a school district discipline a student who posts lewd or vicious material online about another student or a school employee--or is that posting protected as ‘off-campus’ speech?”

NSBA, the American Association of School Administrators, and six other organizations urged the U.S. Supreme Court to answer this vital question following a pair of appellate court decisions in favor of students’ free speech rights.

In each of the cases, a student used offensive language online after school hours to berate school administrators, and the students were discipline by school officials. The disciplined students sued their respective school districts based on free speech. Circuit Court decisions held that the students’ behavior did not meet the “substantial disruption” test nor could the school districts establish a sufficient nexus to the school.

In a brief filed with the Supreme Court, NSBA and the other groups said that, in order to further their educational mission, “schools need authority to regulate student speech that originates off campus.”

NSBA argued that expanding use of social networking and other forms of online communication have led to “a stunning increase in harmful student expression that school administrators are forced to address with no clear guiding jurisprudence.”

On January 17, the U.S. Supreme Court declined to hear these cases without comment or recorded dissent. Education organizations were disappointed that it will be at least another year before the high court might wade into the issue.

Federal circuit judges have issued a broad range of opinions on the subject of off-campus speech, and the Supreme Court has yet to address an appropriate First Amendment test for student

online speech that occurs entirely off campus. This leaves school districts in the impossible position of being responsible for protecting students and teachers from online harassment, which might trigger expensive free speech litigation.

Francisco M. Negron Jr., NSBA general counsel, said, “We’ve missed an opportunity to really clarify for school districts what their responsibility and authority is. This is one of those cases where the law is simply lagging behind the times.”



## School Attorneys Available

The following attorneys are 2011-12 members of the North Dakota Council of School Attorneys (NDCSA). They are available to represent your school district should the need arise.

Jon M. Arntson	Fargo	280-0195
William J. Brudvik	Mayville	786-3365
Rachel Bruner-Kaufman	Bismarck	223-2890
Kenneth L. Dalsted	Jamestown	252-6668
Paul F. Ebeltoft, Jr.	Dickinson	225-5297
Janel B. Fredericksen	Wahpeton	642-2668
Brian W. Hankla	Minot	852-2544
Rick D. Johnson	Fargo	237-7215
Tiffany L. Johnson	Bismarck	223-2890
Stuart A. Larson	Hillsboro	436-4461
John Mahoney	Center	794-8760
Jack G. Marcil	Fargo	232-8957
Richard W. Olson	Grand Forks	775-4688
Travis S. Peterson	New Rockford	947-2442
Jonathan P. Sanstead	Bismarck	223-2890
Duane H. Schurman	Walhalla	549-3644
R. E. T. (Richie) Smith	Wahpeton	642-2668
Gary R. Thune	Bismarck	223-2890
J. Thomas Traynor, Jr.	Devils Lake	662-4077
Wyatt Voll	Williston	577-6771

## bulletin

The Bulletin is the official newsletter of the North Dakota School Boards Association. It is published twelve times each year and is mailed as third class mail from New Salem, North Dakota.

**EDITOR** Bev Nielson

**PUBLISHER**

North Dakota School Boards Association  
PO Box 7128  
Bismarck, ND 58507-7128

**TELEPHONE** 1-800-932-8791

**LOCAL** (701)255-4127

**FAX** (701)258-7992

**WEB SITE** [www.ndsba.org](http://www.ndsba.org)

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# Where is the Education Discussion in this Election Season?

The following news release posted by the College Board discusses a survey it conducted that identifies education as the sleeper issue of Campaign 2012.

Although education hasn't traditionally dominated media coverage on the campaign trail, swing state voters clearly believe it should be given more attention. With no party holding a distinct advantage in reflecting voter priorities on education, the issue is up for grabs in swing presidential states and key congressional races.

"The message voters are sending to candidates is clear: 'Don't Forget Ed,'" said Gov. Gaston Caperton, president of the College Board. "People in every region of this country and from all economic backgrounds feel that education is getting short shrift in this campaign. They want the candidates to give more time and attention to their plans for improving educational opportunities in America."

The College Board Swing State Education Survey reveals that education is a top issue for voters in this year's elections, ranked only behind jobs and the economy and on par with government spending. In addition, 70 percent of independent women in swing states believe that "education is extremely important" in this year's elections for president and Congress. This call for a renewed focus on education will be heard more frequently thanks to a campaign announced today by the College Board.

"Don't Forget Ed," the College Board's call to elevate education in the presidential campaign, will launch next month and will continue through Election Day in November. The national grassroots effort will provide students and others concerned about education a vehicle to press for education to be a priority during the political contest of 2012.

Citing the fact that three out of four voters believe that postsecondary education is important to achieving success in the workplace, Caperton said, "Voters understand that postsecondary education lies at the heart of the American Dream. The constituencies we serve, especially

students, teachers, parents and administrators, want to hear answers to the tough questions we face. How can America reclaim its position atop the academic ladder? How can education be both better and more affordable? These questions affect every aspect of our country's future, including economic success and employment opportunities."

The Don't Forget Ed campaign is designed to galvanize these audiences and ensure that their voices are heard by putting pressure on candidates to respond. More details on the campaign, which will launch in May, will follow. To stay informed and participate in Don't Forget Ed, please visit [www.dontforgeted.org](http://www.dontforgeted.org).

In a survey conducted by Hart Research Associates and North Star Opinion Research, voters in key swing states made it clear they want to hear more on candidate plans for improving educational opportunities.

## Survey results include:

- Education is a top issue for voters in this year's elections, ranked only behind jobs and the economy and on par with government spending.
- Focusing on education is seen as a means of getting the economy back on track.
- Large majorities of swing state voters believe improving access to a quality education will have a big impact on America's ability to compete in the global economy, young people's ability to get good jobs, and the quality and safety of communities.
- Three out of four voters believe that a postsecondary degree is important to achieving success in the workplace.
- Candidates who place a priority on education are viewed through a positive lens. They are seen as "forward looking," "caring about ensuring opportunities for all," "in touch with the concerns of the average family," and "understanding what it takes to compete in today's global economy."
- There is widespread support for

increased funding of education, and a majority of voters (55%) would be willing to pay \$200 more in taxes to do so.

- Voters say increased public funds for education should be used to ensure elementary and secondary schools offer well rounded curricula in arts, music, physical education, and to hold down the cost of college tuition.
- At the state level, education is seen as a top policy priority, while feelings toward the federal government's role in education are mixed. Three out of four believe education is an important issue for the president and Congress to address, but the majority say the federal government is doing too much that would be better left to the states.
- Nevertheless, voters say increasing the affordability of college, ensuring students graduate from high school, and improving the quality of public schools should be top goals for the president and Congress to address.
- In terms of the upcoming elections, voters look more favorably on candidates whose education positions address college affordability and emphasize the importance of making America a leader again in postsecondary degrees.

The College Board is a mission-driven not-for-profit organization that connects students to college success and opportunity. Each year, the College Board helps more than seven million students prepare for a successful transition to college through programs and services in college readiness and college success — including the SAT<sup>®</sup> and the Advanced Placement Program<sup>®</sup>. The organization also serves the education community through research and advocacy on behalf of students, educators, and schools. For further information, visit [www.collegeboard.org](http://www.collegeboard.org).

# ND Dropout Prevention Summit

Dropout rates are a problem—you are invited to become part of the solution. The 4th Annual ND Dropout Prevention Summit will be held June 6-7 at Bismarck High School. Session highlights include:

- Students as the Solution—Solution Class, Rapid City, S.D.
- Dropout Prevention in Small Schools—John Berry
- Tracking Students and Their Risk Factors—Susan Therriault, McREL
- Dropout Concerns on the Oil Patch—Panel Discussion
- Why Apply? Encouraging Native Youth to go to College—Tim Mueller

This Summit has become very popular. A 2011 attendee said, “Honestly, it was the most organized, informational, and relevant conference I have been to in a long time. I really learned a lot!”

Register now at [www.ndcel.org](http://www.ndcel.org).



Applicants for superintendent positions are exempt from Veteran's Preference (does not apply to principal positions).

## **New Rockford-Sheyenne School District**

Contact: Janet Heskin, BsMgr.

436 1 Ave. N

New Rockford, ND 58356

701-947-5036

E-mail: [janet.heskin@sendit.nodak.edu](mailto:janet.heskin@sendit.nodak.edu)

Deadline: Open

## **Mt. Pleasant School District**

Contact: Jessica Rosinski, BsMgr.

201 5 St. NE

Rolla, ND 58367

701-477-3151

E-mail:

[Jessica.Rosinski@sendit.nodak.edu](mailto:Jessica.Rosinski@sendit.nodak.edu)

Deadline: Until filled

## **Nesson School District**

Contact: Jennifer Skor, BsMgr.

PO Box 564

Ray, ND 58849

701-568-3301

E-mail: [Jennifer.skor@sendit.nodak.edu](mailto:Jennifer.skor@sendit.nodak.edu)

Deadline: Until filled

## U.S. Department of Education Announces New Bullying Website

According to the U.S. Department of Education blog “Homeroom,” Education Secretary Arne Duncan and Health and Human Services Secretary Kathleen Sebelius have unveiled a revitalized Stop Bullying website: [www.stopbullying.gov](http://www.stopbullying.gov).

The site encourages children, parents, educators, and communities to take action to stop and prevent bullying. It provides a map with detailed information on state laws and policies, interactive webisodes and videos for

young people, practical strategies for schools and communities to ensure safe environments, and suggestions on how parents can talk about this sensitive subject with their children.

The site also explores dangers of cyberbullying and steps young people and parents can take to fight it.

