

# The Professional Licensing Coalition (PLC)

*A Federal Approach to the North Carolina Decision*

***NASBAs 109<sup>th</sup> Annual Meeting***

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*John W. Johnson, NASBA Director  
Legislative and Governmental Affairs*

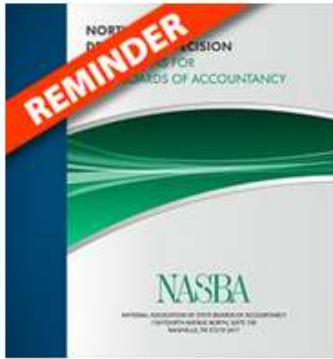
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Mission Driven - Member Focused



### ANTITRUST LAW AND STATE ACTION IMMUNITY: A PRIMER FOR STATE BOARD MEMBERS, STAFF AND LEGAL COUNSEL

JUNE 1, 2016

West Virginia Board of Accountancy and Legal Counsel:

As you know, on March 15, 2016, Governor Tomblin signed into law Senate Bill 271. This legislation adds a new section to Chapter 30 (§30-9-33) that requires members of the West Virginia Board of Accountancy, and their representatives from the Attorney General's office, to obtain initial training on the subject of federal antitrust law and state action immunity by July 1, 2016.

In order to be in compliance with the §30-9-33, the National Association of State Boards of Accountancy (NASBA) is pleased to provide the following training in federal antitrust law and state action immunity. Please click on the below link to participate in this webinar.

[VIEW THE WEBINAR](#)

NASBA experts on federal antitrust law and state action immunity will be available via



Mission Driven - Member Focused

DECISION IN ANTITRUST CASE:  
STATE BOARDS  
TO KNOW!

Directors:  
is long-awaited ruling in the Federal Board of Dental Examiners. This ruling the extent of the decision's application to  
at 3:00 p.m. EST to provide you with the  
State Board of Dental Examiners v. Federal  
and what activities need to be supervised,  
and  
ponding to the Supreme Court decision.  
nix & Nichols, P.A. (NASBA's outside legal  
out the case, discuss its implications for State  
actions.

ate in the Webinar

the button below and remember to sign in as a

UNCH THE WEBINAR

ess Number: 1-719-867-0497

Dear Board of Accountancy Presid

We have preliminarily reviewed the  
Allen. The following is a general ass  
Obviously, the decision left some im  
perspective since some of the report  
concern.

Overview



# Overview of Supreme Court Ruling

- 6-3 decision (Alito, Scalia and Thomas dissenting)
- **Majority's Conclusion:** Because a “controlling number” of the Board’s decision makers are “active market participants in the occupation the Board regulates,” the Board is treated as a **private actor** and must show active supervision by the State.

# How Much State Supervision is Required?

- Test is “flexible and context-dependent”
- Don’t need day-to-day involvement in operations or micromanagement of every decision
- Review mechanism must provide “realistic assurance” that conduct “promotes state policy, rather than merely the party’s individual interests”
- **Four requirements:** (1) supervisor must review substance, not merely procedures; (2) must have power to veto/modify; (3) mere potential for supervision not enough; and (4) supervisor can’t be an active market participant

*“It may take years for many  
States to decide what steps  
they will take”*

*Justice Samuel Alito ~ Dissent  
2015 FTC/NC Dental Decision*

# Navigating Through NC Dental

- These short-term solutions implicate interests of licensing boards and their members -
  - Added layers of “active supervision” oversight may undercut the role of board independence and expertise in matters of public health and safety.
  - Board members and employees are subject to the threat of treble antitrust damages and ongoing litigation expense while elements of a board’s state action defense are adjudicated.
  - Qualified professionals may be deterred from public service in fear of personal liability overhang; board recruitment more difficult.

# 2016 Legislation



## Dental Board Case Fallout – Executive Order and Attorney General Opinion



- Active Supervision
- Board Composition
- Other

- Executive Order
- Attorney General Opinion/Input
- Executive Order & AG Opinion/Input



*Mary Fallin*  
Governor

**FILED**

JUL 17 2015

OKLAHOMA SECRETARY  
OF STATE

**EXECUTIVE DEPARTMENT**  
**EXECUTIVE ORDER 2015-33**

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I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the power and authority vested in me by Section 2 of Article VI of the Oklahoma Constitution, hereby order all state boards who have a majority of members who are participants of markets that are directly or indirectly controlled by the board, to immediately implement and adopt the following procedures.

Attorney General Guidance

Attorney General Scott Pruitt issued a letter to this office on July 6, 2015, recommending



LEGISLATURE OF THE STATE OF IDAHO  
Sixty-third Legislature Second Regular Session - 2016

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 482

BY HEALTH AND WELFARE COMMITTEE

AN ACT

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SECTION 54-2106, IDAHO CODE, TO REVISE QUAL-

## TO REVISE QUALIFICATIONS FOR MEMBERS OF THE BOARD OF ACCOUNTANCY

CORRECTIONS; AMENDING SECTION 54-313, IDAHO CODE, TO PROVIDE FOR RE-  
MOVAL OF A BOARD MEMBER; AMENDING SECTION 54-314, IDAHO CODE, TO REVISE  
PROVISIONS REGARDING FILLING VACANCIES ON THE BOARD; AMENDING SECTION  
54-521, IDAHO CODE, TO REVISE QUALIFICATIONS FOR MEMBERS OF THE BOARD OF  
BARBER EXAMINERS, TO PROVIDE FOR REMOVAL OF A BOARD MEMBER AND TO MAKE  
A TECHNICAL CORRECTION; AMENDING SECTION 54-604, IDAHO CODE, TO REVISE  
QUALIFICATIONS FOR MEMBERS OF THE BOARD OF PODIATRY AND TO MAKE TECHNICAL  
CORRECTIONS; AMENDING SECTION 54-828, IDAHO CODE, TO REVISE QUALIFI-  
CATIONS FOR MEMBERS OF THE BOARD OF COSMETOLOGY; AMENDING SECTION  
54-829, IDAHO CODE, TO REVISE QUALIFICATIONS FOR MEMBERS OF THE BOARD OF  
COSMETOLOGY; AMENDING SECTION 54-907, IDAHO CODE, TO REVISE QUALIFICA-  
TIONS FOR MEMBERS OF THE BOARD OF DENTISTRY; AMENDING SECTION 54-908,  
IDAHO CODE, TO AUTHORIZE THE GOVERNOR TO APPOINT CERTAIN PERSONS TO  
THE BOARD; AMENDING SECTION 54-1006, IDAHO CODE, TO REVISE QUALIFICA-  
TIONS FOR MEMBERS OF THE IDAHO ELECTRICAL BOARD AND TO MAKE A TECHNICAL  
CORRECTION; AMENDING SECTION 54-1105, IDAHO CODE, TO REVISE QUALIFICA-  
TIONS FOR MEMBERS OF THE BOARD OF MORTICIANS; AMENDING SECTION 54-1203,  
IDAHO CODE, TO REVISE QUALIFICATIONS FOR MEMBERS OF THE BOARD OF LI-  
CENSURE OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS;  
AMENDING SECTION 54-1204, IDAHO CODE, TO PROVIDE FOR A PUBLIC MEMBER OF  
THE BOARD; AMENDING SECTION 54-1206, IDAHO CODE, TO REVISE A PROVISION  
REGARDING REMOVAL OF BOARD MEMBERS; AMENDING SECTION 54-1403, IDAHO  
CODE, TO PROVIDE THAT ALL MEMBERS OF THE BOARD OF NURSING SHALL SERVE AT  
THE PLEASURE OF THE GOVERNOR; AMENDING SECTION 54-1503, IDAHO CODE, TO  
REVISE QUALIFICATIONS FOR MEMBERS OF THE BOARD OF OPTOMETRY; AMENDING

# Defense and Indemnification of Board Members

- Risk Management advises that there is no coverage of defense costs, damages or attorney fee awards in the event a Board Member is sued for Antitrust Violation
- However, if suit includes both Antitrust and other covered claims, i.e. 1983, total defense cost would be covered, but only damages for covered claims would be paid by Risk Management
- Explore options for obtaining coverage through DMS

Who pays?

*The above information was provide by the Florida Attorney General  
in a PowerPoint presentation to all Florida regulatory boards (Slide #38)*

March 1, 2016

Honorable Rick Scott, Governor State of Florida  
The Capitol  
400 South Monroe Street  
Tallahassee, Florida 32399-0001

Re: Florida State Board of Accountancy  
Federal Trade Commission Antitrust Activities

Dear Governor Scott:

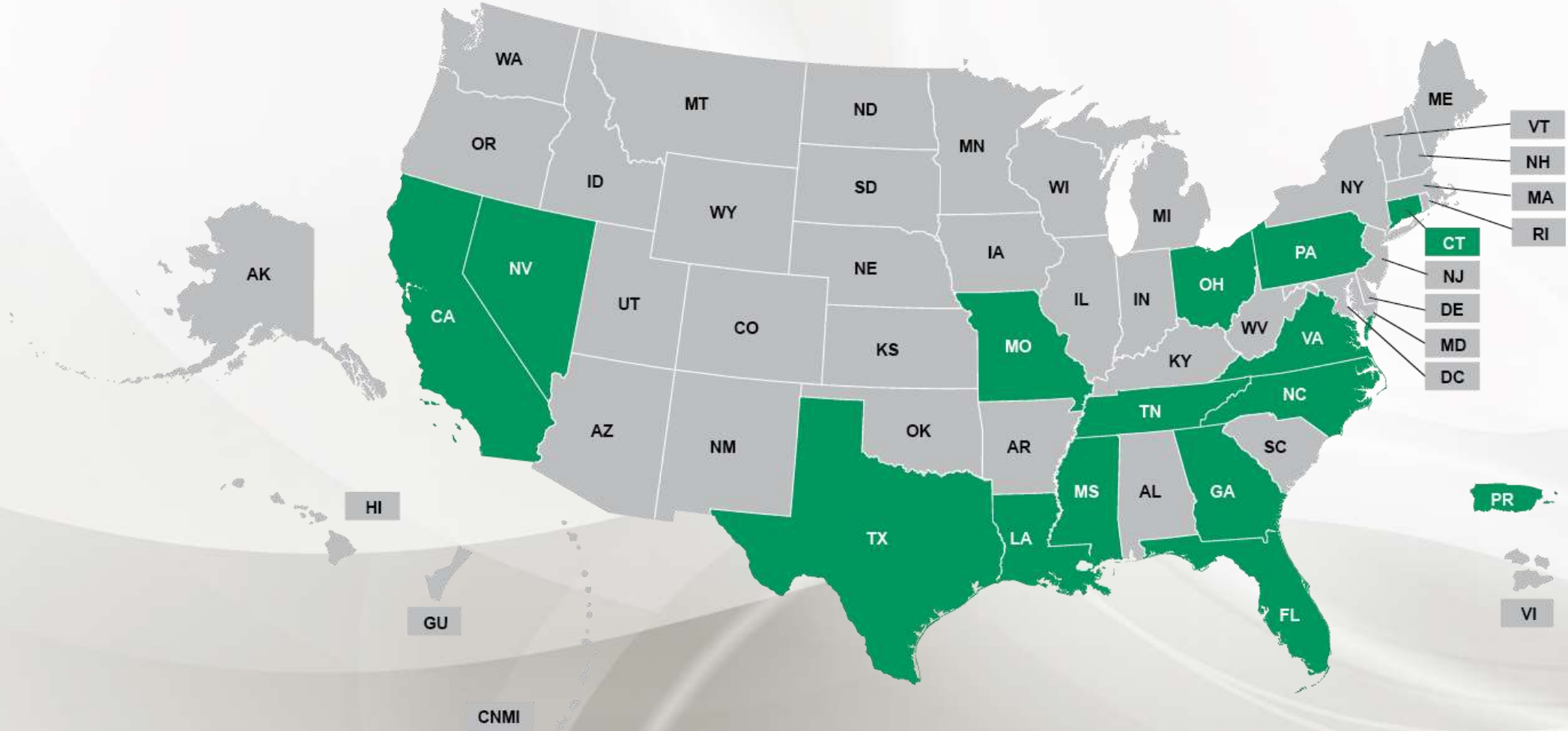
I was honored to learn when you appointed me to the Florida Board of Accountancy in 2011 and reappointed me in 2014. Having served as a member of this Board for five years, we have operated in a manner that balances protection of the public while creating a regulatory environment to embrace CPA mobility which encourages job creation. Taxation and Auditing are two of the largest

I was disappointed to recently learn that our volunteer service will now come at great personal and financial risk.

When the members were appointed to serve in essentially a voluntary position, we understood that the BOA was immune from antitrust suits so long as we acted in the best interest of the State. A recent Supreme Court Case involving the North Carolina Dentistry Board interpreted requirements for antitrust immunity and held that Regulatory Boards and their members in States like Florida have **NO** immunity from antitrust claims because of the composition of Florida Regulatory Boards and Florida's regulatory oversight structure.

NASBA

# States With NC Dental Fallout Litigation Seeking Monetary Damages Against Boards and/or Board Members



# NASBA STATE BOARD REPORT

A Digest of Current Developments Affecting State Accountancy Regulation

Volume XLV, Number 5 May 2016

## Ted Long Vice Chair Nominee

Theodore W. Long, Jr., CPA (CFE), was selected on May 5 as the Nominating Committee's candidate for NASBA Vice Chair 2016-2017, to stand for election at the November Annual Business Meeting. If elected Vice Chair by the member State Boards of Accountancy, Mr. Long will automatically succeed to NASBA Chair 2017-2018. Former NASBA Treasurer, Director-at-Large and Chair of the CPE Advisory, Global Strategies, UAA Mobility Implementation, and Relations with Member Boards Committees, Mr. Long also served as NASBA's Great Lakes Regional Director and was a member of numerous NASBA task forces. He served on the Accountancy Board of Ohio for eleven years, including three terms as its Chair. Mr. Long is a retired partner of Ernst & Young, LLP.



## Board Exposes UAA Changes

Changes to Model Rules related to the forthcoming revision of the Uniform CPA Examination and a change to the Uniform Accountancy Act to enable additional recognition of international professionals were approved for exposure for comment at the April 22, 2016 meeting of the NASBA Board of Directors. The change to Section 6 of the Uniform Accountancy Act would enable international auditors who hold designations that have been evaluated by the NASBA/AICPA International Qualifications Appraisal Board (IQAB) to be substantially equivalent to the U.S. CPA to be eligible for a quicker pathway to state licensure --without requiring mutual recognition of U.S. CPAs by their home country's licensing body.

"We know there are qualified professionals who are in the United States, but who cannot sign audit reports because they are not licensed as CPAs. While they may be doing the work, someone else in the firm has to sign off on the report," IQAB Chair Ted Ladden explained. "If they are working here, we want them to be regulated by the State Boards. In a global economy, international accountants are a valuable asset to U.S. accounting firms and we want that asset to be available to them and the U.S. clients they serve." The expectation is that other countries will want to recognize U.S. CPAs. "The ultimate goal is mutual recognition agreements covering professionals around the world," Mr. Ladden said.

The modifications being proposed for Model Rules 5-3, 5-4, 5-5, 5-6 and 5-7 would provide for changes in support of the revised Uniform CPA Examination. Among these are clarification that the Examination tests for the knowledge and skills required for a "newly licensed" CPA and that the Examination is "one component" of qualifying for a license. The changes would delete specification of the total number of sections comprising the Examination. They also state candidates could test for at least two months in each quarter.

(Continued on Page 2)

## NASBA Joins Coalition

NASBA has joined with representatives from other national professional licensing board associations to form a coalition in response to the *North Carolina Dental Board* case. The Professional Licensing Coalition (PLC) has spearheaded a federal effort to eliminate the threat of anti-trust financial liability from regulatory boards and their members when they are acting in their official capacity. The strategy is to amend the 1984 Local Government Anti-Trust Act (LGAA) to include state regulatory boards. NASBA Director of Governmental and Legislative Affairs John Johnson is serving as NASBA's representative to the coalition to help shape legislation that will protect those who serve on State Boards from potential litigation. ♦

NASBA

# **Professional Licensing Coalition (PLC)**

***American Association of Veterinary State Boards (AAVSB)***

***American Institute of Architects***

***American Psychological Association (APA)***

***Association of Social Work Boards (ASWB)***

***Association of State and Provincial Psychology Boards (ASPPB) \****

***Board of Certification for the Athletic Trainer (BOC)***

***Council of Landscape Architectural Registration Boards (CLARB) \****

***Federation of Association of Regulatory Boards (FARB) \****

***Federation of State Boards of Physical Therapy (FSBPT) \****

***Federation of State Medical Boards (FSMB) \****

***National Association of State Board of Accountancy (NASBA) \****

***National Board for Certification in Occupational Therapy (NBCOT) \****

***National Council of Architectural Registration Boards (NCARB) \****

***\* Original Coalition Partners***

**NASBA**

# United States Supreme Court

## COMMUNITY COMMUNICATIONS CO., v. BOULDER, (1982)

No. 80-1350

Argued: October 13, 1981    Decided: January 13, 1982

Respondent city of Boulder is a "home rule" municipality, granted by the Colorado Constitution extensive powers of self-government in local and municipal matters. Petitioner is the assignee of a permit granted by a city ordinance to conduct a cable television business within the city limits. Originally, only limited service within a certain area of the city could be provided by petitioner, but improved technology offered petitioner an opportunity to expand its business into other areas, and also offered opportunities to potential competitors, one of whom expressed interest in obtaining a permit to provide competing service. The City Council then enacted an "emergency" ordinance prohibiting petitioner from expanding its business for three months, during which time the Council was to draft a model cable television ordinance and to invite new businesses to enter the market under the terms of that ordinance. Petitioner filed suit in Federal District Court, alleging that such a restriction would violate 1 of the Sherman Act, and seeking a preliminary injunction to prevent the city from restricting petitioner's proposed expansion. The city responded that its moratorium ordinance could not be violative of the antitrust laws because, inter alia, the city enjoyed antitrust immunity under the "state action" doctrine of *Parker v. Brown*, 317 U.S. 341 . The District Court held that the *Parker* exemption was inapplicable and that the city was therefore subject to antitrust liability. Accordingly, the District Court issued a preliminary injunction. The Court of Appeals reversed, holding that the city's action satisfied the criteria for a *Parker* exemption.

*“It will take a considerable feat of  
judicial gymnastics to conclude  
that municipalities are not subject  
to treble damages ...”*

*Justice William Rehnquist ~ Dissent  
1982 City of Boulder Decision*



# INCREASE IN SUITS STRAINS BUDGETS OF MANY CITIES

By **ROBERT LINDSEY**, Special to the New York Times

**LOS ANGELES** — Officials of cities around the country say they are being swamped by a surge of multimillion-dollar court judgments that are straining their budgets, forcing cutbacks in services and in some cases threatening bankruptcy. Specialists on municipal law estimate that the cost to taxpayers for settling such claims, which runs hundreds of millions of dollars a year, has tripled over the past five years.

They attribute the increase to court decisions and legislation in the 1970's broadening the cities' liability in suits involving antitrust, civil rights and other laws and in personal injury lawsuits. \$6 Million for Surf Injury A swimmer who became paralyzed after diving into the surf at a town beach recently won a \$6 million judgment against the city of Newport Beach in California.

In New York City, jurors awarded \$1.5 million last year to the survivors of a man who drove his car into the rear of a transit bus.

**City officials in Grayslake, Ill., face a \$28.5 million antitrust judgment because they refused to allow a developer to tie a new subdivision into the city's sewer system.**

## Local Government Antitrust Act of 1984

Sec. 2 For purposes of this Act—

**(1)** the term “local government” means—

**(A)** a city, county, parish, town, township, village, or any other general function governmental unit established by State law, or  
**(B)** a school district, sanitary district, or any other special function governmental unit established by State law in one or more States,

**(2)** the term “person” has the meaning given it in subsection (a) of the first section of the Clayton Act [15 U.S.C. 12(a)], but does not include any local government as defined in paragraph (1) of this section, and

**(3)** the term “State” has the meaning given it in section 4G(2) of the Clayton Act (15 U.S.C. 15g(2)).

**Sec. 3 (a)** No damages, interest on damages, costs, or attorney’s fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) from any local government, or official or employee thereof acting in an official capacity.

**(b)** Subsection (a) shall not apply to cases commenced before the effective date of this Act unless the defendant establishes and the court determines, in light of all the circumstances, including the stage of litigation and the availability of alternative relief under the Clayton Act, that it would be inequitable not to apply this subsection to a pending case. In consideration of this section, existence of a jury verdict, district court judgment, or any stage of litigation subsequent thereto, shall be deemed to be prima facie evidence that subsection (a) shall not apply.

**Sec. 4 (a) No damages, interest on damages, costs or attorney’s fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) in any claim against a person based on any official action directed by a local government, or official or employee thereof acting in an official capacity.**

**(b)** Subsection (a) shall not apply with respect to cases commenced before the effective date of this Act.

## Local Government Antitrust Act of 1984

Ronald Reagan on Signing the Local Government Antitrust Act of 1984 -October 24, 1984:

“Today I am signing into law H.R. 6027, the Local Government Antitrust Act of 1984, which clarifies the application of the Federal antitrust laws to the official conduct of local governments. This bill provides much needed and timely relief for our cities, towns, school districts, sanitary districts, and other similar local governmental bodies from the threat of massive treble damages in the antitrust cases that are being brought with increasing frequency against them. ***While the antitrust laws serve very important purposes, they were never intended to threaten public treasuries and the taxpayers' pocketbooks, or to disrupt the good faith functioning of local units of governments.*** The administration has been a strong supporter of this legislation, and I commend the efforts of the local officials and those in the Senate and House of Representatives who worked so hard for its enactment during the 98th Congress.”

## Proposed Legislation Would Insert “State Licensing Board” Into the LGAA

### State Licensing Board Antitrust Act

Sec. 2 For purposes of this Act—

(1) the term “local government” means—

(A) a city, county, parish, town, township, village, or any other general function governmental unit established by State law, or

(B) a school district, sanitary district, or any other special function governmental unit established by State law in one or more States,

**(2) the term “state licensing board” means a board composed of two or more members established by a State for the purpose of: (a) regulating the qualifications and practices of any occupation or profession; or (b) determining whether specific persons are authorized to engage in and/or practice such occupation or profession,**

**(23)** the term “person” has the meaning given it in subsection (a) of the first section of the Clayton Act [15 U.S.C. 12(a)], but does not include any local government as defined in paragraph (1) of this section, and

**(34)** the term “State” has the meaning given it in section 4G(2) of the Clayton Act (15 U.S.C. 15g(2)).

**Sec. 3 (a)** No damages, interest on damages, costs, or attorney’s fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) from any local government **or state licensing board**, or official or employee thereof acting in an official capacity.

**(b)** Subsection (a) shall not apply to cases commenced before the effective date of this Act **with respect to a local government, or the State Licensing Board Antitrust Act with respect to a state licensing board** unless the defendant establishes and the court determines, in light of all the circumstances, including the stage of litigation and the availability of alternative relief under the Clayton Act, that it would be inequitable not to apply this subsection to a pending case. In consideration of this section, existence of a jury verdict, district court judgment, or any stage of litigation subsequent thereto, shall be deemed to be prima facie evidence that subsection (a) shall not apply.

**Sec. 4 (a)** No damages, interest on damages, costs or attorney’s fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) in any claim against a person based on any official action directed by a local government **or state licensing board**, or official or employee thereof acting in an official capacity.

**(b)** Subsection (a) shall not apply with respect to cases commenced before the effective date of this Act **with respect to a local government, or the State Licensing Board Antitrust Act with respect to a state licensing board.**



## **NASBA Umbrella Participants**

**AICPA – Diana Deem**

**Georgia Society of CPA – Don Cook**

**Georgia BOA – Julian Deal and Mike Mixon**

**Iowa Society of CPA – Cindy Adams**

**Iowa BOA – Ted Lodden\***

**Minnesota Society of CPA – Geno Fragnito**

**Minnesota BOA – Sharon Jensen and Alan Wilensky**

**Pennsylvania Society of CPA – Mike Colgan and Peter Calcara**

**Texas BOA – Congressman Mike Conaway\***

**\* Former BOA Members**

## **Professional Licensing Coalition**

### **Legislative Counsel**

**Constantine Cannon LLP**

**Steve Cannon**

**Wilmer Hale**

**Jonathan Yarowsky**

# House of Representative Committee On The Judiciary – 114<sup>th</sup> Congress

## Minority Members

**John Conyers, Jr. (D-MI) *Ranking Minority Member***

**Jerrold Lewis "Jerry" Nadler (D-NY)**

**Zoe Lofgren (D-CA)**

**Sheila Jackson-Lee (D-TX)**

**Stephen Ira "Steve" Cohen (D-TN)**

**\*+Henry C. "Hank" Johnson, Jr. (D-GA)**

**Pedro R. Pierluisi (D-PR)**

**Dr. Judy Chu, PhD (D-CA)**

**\*Antitrust Subcommittee Member**

**+Ranking Democrat on Subcommittee**

**Theodore Eliot "Ted" Deutch (D-FL)**

**Luis V. Gutierrez (D-IL)**

**Karen R. Bass (D-CA)**

**Cedric Levon Richmond (D-LA)**

**\*Suzan K. DelBene (D-WA)**

**\*Hakeem Jeffries (D-NY)**

**\*David N. Cicilline (D-RI)**

**\*Scott Harvey Peters (D-CA)**

[DISCUSSION DRAFT]

114TH CONGRESS

2D SESSION

**H. R.** \_\_\_\_\_

To limit the liability of State licensing boards under the antitrust laws.

IN THE HOUSE OF REPRESENTATIVES

M\_\_\_\_, \_\_\_\_\_ introduced the following bill; which was referred to the

Committee on \_\_\_\_\_

**"STATE LICENSING BOARD ANTITRUST ACT OF 2016".**

2. *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4           This Act may be cited as the "State Licensing Board

5       Antitrust Act of 2016".

6 **SEC. 2. DEFINITIONS.**

7       For purposes of this Act:

8           (1) **STATE.**—The term "State" has the mean-

9       ing given it in section 4G(2) of the Clayton Act (15

10      U.S.C. 15g(2)).

**NASBA**

# House of Representative Committee On The Judiciary – 114<sup>th</sup> Congress

## Minority Members

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**Sheila Jackson-Lee (D-TX)**

**Stephen Ira "Steve" Cohen (D-TN)**

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**\*Suzan K. DelBene (D-WA)**

**\*Hakeem Jeffries (D-NY)**

**\*David N. Cicilline (D-RI)**

**\*Scott Harvey Peters (D-CA)**



# House of Representative Committee On The Judiciary – 114<sup>th</sup> Congress Majority Members

Robert W. "Bob" Goodlatte (R-VA) Chairman  
Frank James "Jim" Sensenbrenner, Jr. (R-WI)  
Lamar S. Smith (R-TX)  
Steve Chabot (R-OH)  
**\*Darrell Edward Issa (R-CA)**  
J. Randy Forbes (R-VA)  
Steven A. "Steve" King (R-IA)  
Trent Franks (R-AZ)  
Louie Gohmert (R-TX)  
James D. "Jim" Jordan (R-OH)  
Ted Poe (R-TX)  
\*Michael D. "Mike" Bishop (R-MI)

\*Antitrust Subcommittee Member  
+Ranking Republican on Subcommittee

Jason Chaffetz (R-UT)  
\*+Thomas Anthony "Tom" Marino (R-PA)  
Harold W. "Trey" Gowdy, III (R-SC)  
Raúl Rafael Labrador (R-ID)  
\*Randolph Blake Farenthold (R-TX)  
\*Doug Collins, USAFR (R-GA)  
Ron DeSantis, USNR (R-FL)  
\*Mimi Walters (R-CA)  
Kenneth R. "Ken" Buck (R-CO)  
\*John Ratcliffe (R-TX)  
\*David "Dave" Trott (R-MI)

# Senate Committee

## On The Judiciary – 114<sup>th</sup> Congress

### Majority Members

\*Charles E. "Chuck" Grassley (R-IA) Chairman  
\*Orrin G. Hatch (R-UT)  
Jefferson Beauregard "Jeff" Sessions, III (R-AL)  
Lindsey O. Graham, USAFR (Ret) (R-SC)  
John Cornyn (R-TX)  
\*Michael S. "Mike" Lee (R-UT)  
R. Edward "Ted" Cruz (R-TX)  
David Vitter (R-LA)  
Jeff Flake (R-AZ)  
\*David A. Perdue, Jr. (R-GA)  
\*Thom Tillis (R-NC)

\*Antitrust Subcommittee Member

### Minority Members

**Patrick J. Leahy (D-VT) Ranking Minority Member**  
Dianne Feinstein (D-CA)  
Charles E. "Chuck" Schumer (D-NY)  
Richard J. "Dick" Durbin (D-IL)  
Sheldon Whitehouse (D-RI)  
\*Amy Klobuchar (DFL-MN)  
\*Al Franken (DFL-MN)  
\*Christopher A. "Chris" Coons (D-DE)  
**\*Richard "Dick" Blumenthal (D-CT)**

## Talking Points to our Federal Antitrust Remedies Solution to *NC Dental Board v. FTC* Supreme Court Opinion

U.S. Supreme Court's February 2015 opinion in *NC State Board of Dental Examiners v. Federal Trade Commission* (No. 13-534) requires state agencies "controlled" by "active market participants" to demonstrate two elements if they seek to invoke/enjoy state action immunity from federal antitrust law:

- 1) clearly-articulated state policy supporting their otherwise anticompetitive actions; and
- 2) active state supervision over such actions by a disinterested state official/entity.

Supreme Court expressly left open whether boards and board members could be liable for treble damages and attorneys' fees if found liable under antitrust law.

Most licensing boards are populated by gubernatorially appointed volunteers looking to serve their state by utilizing their expertise to regulate. These individuals may now be unnecessarily subjected to personal liability for simply serving on these state boards.

As states have tried to grapple with the case's fallout, they have struggled with interpreting the case and determining whether and how to implement its requirements.

A federal solution is necessary to ensure that we do not deter current and prospective state board members from serving because they are uncertain as to any potential liability that could arise from their public service.

This situation has a lot of similarities to 1978-1984, the timeframe leading up to the passage of the Local Government Antitrust Act of 1984 (which was enacted to protect local governments and local government officials by removing the threat of monetary damages and removing the incentives for attorneys' fees that might encourage private damage litigation).

We are seeking a bipartisan federal legislative solution to the problems created by the Supreme Court's opinion. This solution focuses on adding state licensing boards and board members into the Local Government Antitrust Act.

MEETINGS & EVENTS  
INTERNATIONAL  
NEWS  
PUBLICATIONS  
BOARDS OF ACCOUNTANCY

PRODUCTS & SERVICES



MEDIA & RESOURCES



Member Portal  
Member Products & Services  
Meetings & Events  
Legislative Support  
Gateway  
Committees  
PROC Resources  
Enforcement Tools  
NASBA Awards  
ED Login



## NASBA Launches Legislative Tracking System

Board Statutes  
Board Statutes  
Key Person Contact Program  
Legislative Tracking  
Session Snapshot  
North Carolina Dental Case

ORI

### LATEST NEWS

NASBA Launches Call for Proposals by Accounting Education Review Board  
NASBA Announces 2014 Best in Business Finalist  
NASBA Releases 2013 CPA Examination Statistics

### EVENTS

27th Annual Conference for Executive Directors and Board Staff – March 3-6, 2014  
28th Annual Conference for Board of Accountancy Legal Counsel – March 2-6, 2014  
Eastern Regional Meeting – June 4-6, 2014

### BLOGS/FEATURES

NASBA Chair Addresses Outlines His Initiatives for 2013-14  
NASBA Hosts 13th Annual Meeting  
Delving in Know: Awards Committee

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## North Carolina Dental Case

The Supreme Court's 2015 decision in *At-C State Board of Dental Examiners v. Federal Trade Commission (FTC Dental Board)* now requires that licensee-controlled State Boards be "actively supervised" by a residual state entity in order to enjoy immunity from federal antitrust law.

The Supreme Court's ruling has left state regulators with questions concerning the extent of the decision's application to Boards of Accountancy. In order to assist State Boards in understanding those federal applications, NASBA is providing the following white paper, which offers an overview of the pro-competitive aspects of accountancy regulation, the history of state licensing board immunity, the effects of the Supreme Court's decision in the North Carolina case, and implications for State Boards of Accountancy going forward.

The paper is also intended to be an evergreen document that may be updated as future litigation and state and federal guidance provide greater clarity on this topic. Additional material can be found using the links below.

[North Carolina Dental Case Decision Implications for State Boards of Accountancy](#)

**Federal Antitrust and State Action Immunity – June 1, 2016**

**West Virginia Antitrust Training**

**Antitrust v. Brown, 337 U.S. 342 (1948)**

- Antitrust legislation passed and required the licensing of public utilities.
- The Supreme Court held that the Federal Trade Commission could not bring an antitrust suit against a public utility because it was a public utility.
- The Supreme Court held that the Federal Trade Commission could not bring an antitrust suit against a public utility because it was a public utility.
- Antitrust legislation passed and required the licensing of public utilities.

Watch the video to learn more about the antitrust case and its implications for state boards of accountancy.

4:27  HD

Legislation Filed in Response to NC Dental Decision

Legislative Support Links

[Legislative Support Home](#)  
[Board Statutes](#)  
[Legislative Tracking](#)  
[Session Snapshot](#)

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